

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

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**IN RE: THE IMPLEMENTATION OF THE
PUERTO RICO ELECTRIC POWER
AUTHORITY INTEGRATED RESOURCE
PLAN AND MODIFIED ACTION PLAN**

CASE NO.: NEPR-MI-2020-0012

SUBJECT: Updated Procurement Plan

**MOTION TO SUBMIT UPDATED PROCUREMENT PLAN ADDRESSING PLANS
FOR THE SECOND RENEWABLE GENERATION AND ENERGY
STORAGE RESOURCE PROCUREMENT TRANCHE**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority, through its counsel of record and respectfully submits and follows.

1. On August 24, 2020, the Puerto Rico Energy Bureau of the Public Service Regulatory Board (the “Energy Bureau”) approved the Puerto Rico Electric Power Authority (PREPA) Integrated Resource Plan (IRP) and Modified Action Plan.¹ Among other mandates for the implementation of the IRP, the Energy Bureau directed PREPA to develop a series of competitive solicitation processes for procurement of new renewable resources and battery energy storage resources.² The Energy Bureau also ordered PREPA to develop a Procurement Plan and to submit it for the consideration and approval of the Energy Bureau.³ PREPA complied with the Energy Bureau’s directives and, after several procedural events, the Procurement Plan was approved.

2. On December 8, 2020 (the “December 8 Resolution”), the Energy Bureau directed PREPA to adopt a Final Procurement Plan and implement a Request for Proposals (RFP) process to govern

¹ See *Final Resolution and order on the Puerto Rico Electric Power Authority’s Integrated Resources Plan* entered on August 24, 2021 in Case No. CEPR-AP-2018-0001, *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan* (the “Final IRP Order”).

² *Id.*, p. 266, Sec. IV(D)(4)(b), ¶ 859.

³ *Id.*, ¶ 860.

PREPA's procurement of new renewable generation and energy storage resources through a series of procurement tranches. The Energy Bureau required PREPA to "consider the Procurement Plan to be a living document subject to continued revision and application of lessons learned from each tranche of procurement and for other proceedings."⁴ The Energy Bureau accordingly directed PREPA to "file an updated Procurement Plan reflecting the specific plans for the second tranche on or before May 1, 2021 and incorporate into that document both lessons learned from the first tranche and any requirements that originate from the Optimization Proceeding or any other intervening Resolutions or Orders by the Energy Bureau."⁵

3. On April 30, 2021, PREPA requested the Energy Bureau to grant an extension of time, to August 31, 2021, for the filing of the updated Procurement Plan required by the December 8 Resolution.

4. On May 11, 2021, the Energy Bureau entered a Resolution and Order partially granting PREPA's request (the "May 11 Resolution"). Upon review of PREPA's arguments, the Energy Bureau ordered PREPA to file the Updated Procurement Plan on or before June 15, 2021. The Energy Bureau further ordered PREPA to accompany the Updated Procurement Plan with a detailed report on the issues faced by PREPA during the current procurement process and the solutions implemented to address the same in the next procurement tranche.

5. In compliance with the Final IRP Order, the December 8 Resolution and the May 11 Resolution, PREPA submits for the consideration and approval of the Energy Bureau the Updated Procurement Plan. Exhibit A. Also, PREPA submits for the consideration of the Energy Bureau a revision of the Tranche 1 RFP document to reflect the changes that will be implemented in the

⁴ December 8 Resolution, p. 5, Sec. IV(A)(1) and Appendix A at Sec. I(2).

⁵ *Id.*

Tranche 2 RFP document. Exhibit B.

6. The Updated Procurement Plan was developed in accordance with the Energy Bureau's orders and, therefore, PREPA requests the Energy Bureau to enter an order approving the Updated Procurement Plan as herein submitted.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 15th day of June 2021.

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Exhibit A

RENEWABLE ENERGY GENERATION AND ENERGY STORAGE RESOURCE PROCUREMENT PLAN – UPDATE NO. 1

Submission to the Puerto Rico Energy Bureau

Date Issued: June 15, 2021



**Puerto Rico
Electric Power
Authority**

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I. INTRODUCTION

This version of the Renewable Energy and Energy Storage Resource Procurement Plan updates the version which the Puerto Rico Electric Power Authority (“**PREPA**”) submitted to the Puerto Rico Energy Bureau (“**Energy Bureau**”) on December 22, 2021 (as updated, the “**Procurement Plan**”), as required by the Energy Bureau’s May 11, 2021 Resolution and Order in Case No. NEPR-MI-2020-0012, *In Re: The Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan*. The Procurement Plan seeks proposals from Proponents interested in designing, constructing, installing, operating and maintaining all forms of renewable generation as defined by Act 82 (defined below), energy storage and/or virtual power plant projects at one or more sites across Puerto Rico. This version of the Procurement Plan incorporates (i) the lessons PREPA learned in administering Request for Proposals No. 112648, Renewable Energy Generation and Energy Storage Resources, Tranche 1 of 6 (the “**Tranche 1 RFP**”), and (ii) those requirements that originated from the planned Optimization Proceeding and other Energy Bureau Resolutions and Orders issued after the publication of the Tranche 1 RFP. For the Tranche 1 RFP, PREPA has administered and will continue to administer the RFP process through the award of all Contracts. However, it is possible that for Tranches 2-6 of the RFP, the Puerto Rico Public-Private Partnerships Authority (“**P3A**”) will administer each process for, on behalf of, and working in collaboration with PREPA.

II. EXECUTIVE SUMMARY

1. Background & Context

As background and context for the preparation of this Procurement Plan:

- a. on March 15, 2018, the Energy Bureau issued a Resolution and Order which directed PREPA to file an updated Integrated Resource Plan (“**IRP**”), as required under Puerto Rico Act 57 of May 27, 2014 (Act 57-2014). PREPA prepared an IRP intended to consider all reasonable resources to satisfy the demand for electrical services over a twenty (20) year planning horizon. On February 13, 2019, PREPA filed its IRP along with supporting workpapers and other documentation with the Energy Bureau. PREPA subsequently amended and refiled this IRP on June 7, 2019;
- b. on August 24, 2020, the Energy Bureau issued a “*Final Resolution and Order on the Puerto Rico Electric Power Authority’s Integrated Resource Plan*” (the “**Final Order**”) that approved, in part, and rejected, in part, PREPA’s proposed IRP. The Final Order modified PREPA’s Action Plan and ordered that PREPA adopt and implement this modified Action Plan (the “**Modified Action Plan**”). In the Final Order, the Energy Bureau found that:
 - i. *increased deployment of solar photovoltaic (PV) and battery resources should be pursued if the results of procurement processes produce costs that reflect the parameters associated with Scenario S3S2 (for all loading levels under that scenario)*

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and if those resources are available for faster installation than was assumed for PREPA's ESM Plan; and

- ii. *a Modified Preferred Resource Plan for the purpose of initial procurement planning includes the solar PV and battery energy storage quantities contained in Scenario S3S2B for the first five years of the Action Plan period;*
- c. the Final Order's Modified Action Plan contains specific directives and requirements, which included the formulation of the Procurement Plan. As summarized in Section A3 of the Final Order, the Energy Bureau ordered:
 - i. *PREPA to develop, with the Energy Bureau's guidance and approval, a detailed procurement plan for renewable resources and battery energy storage to achieve compliance with the renewable portfolio standard ("RPS");*
 - ii. *PREPA to issue a series of RFPs for the provision of (a) renewable energy in support of Act 82's RPS goals, and (b) battery energy storage in support of (i) capacity requirements needed to meet PREPA's peak load requirements and (ii) requirements for integration of renewable energy generation;*
 - iii. *that competitive procurements to obtain Power Purchase and Operating Agreements (PPOA) for these resources must be open to all forms of renewable energy, including, but not limited to wind, hydro, solar PV, Virtual Power Plant (VPP), and storage ... that PREPA should not unnecessarily limit the level of overall procurement to 250 MW blocks, but rather needs to pursue a strategy that attempts to procure the amount of resources required under S3S2B; and*
 - iv. *PREPA to submit to the Energy Bureau a draft renewable resource and battery energy storage resource procurement plan (Procurement Plan) on or before sixty (60) days from the notification date of the Final Resolution and Order.*

PREPA filed a status report on the development of its draft Procurement Plan with the Energy Bureau on September 23, 2020. The Energy Bureau opened a new docket for the consideration of PREPA's Procurement Plan on October 6, 2020, designating the new docket as Case No. NEPR-MI-2020-0012. On October 9, 2020, at PREPA's request, the Energy Bureau convened a Technical Conference to address PREPA's Procurement Plan status report. PREPA submitted its draft Procurement Plan by Motion dated October 23, 2020. PREPA subsequently sought a further Technical Conference and reiterated this request on three occasions in November and December; and

- d. on December 8, 2020, in Case No. NEPR-MI-2020-0012, the Energy Bureau issued a Resolution and Order (the "**Procurement Plan Resolution**") which specified changes to PREPA's draft Procurement Plan and directed PREPA to make corresponding changes to the draft Request for Proposals ("**RFP**") document that accompanied that draft Procurement Plan. Finding that these changes will align the Final Procurement Plan and associated RFPs with its

Final Order and applicable regulations and laws, the Energy Bureau approved some of the core elements of PREPA's draft Procurement Plan, modified others and directed certain questions relating to technical issues to PREPA. The Energy Bureau ordered PREPA to carry out the terms of the Procurement Plan as modified by the Procurement Plan Resolution and as specified in the included Technical Appendices.

2. Content of Procurement Plan

This Procurement Plan (i) positions PREPA to satisfy the requirements of the Final Order and the Procurement Plan Resolution, and (ii) provides a thoughtful approach to building out future renewable energy and energy storage resources in accordance with the requirements of Act 82, informed by the lessons learned in the administration of the Tranche 1 RFP to date. Ultimately, the Procurement Plan aims to:

- a. increase the availability of renewable energy and energy storage resources as part of PREPA's generation system;
- b. reduce energy prices to levels consistent with PREPA's 2020 Certified Fiscal Plan projections; and
- c. increase the resiliency of PREPA's transmission and distribution system (the "**T&D System**") as required by the IRP.

As set out in Article III, the Procurement Plan follows the format indirectly specified in Section IV, Subsection D(4)(b) of the Final Order, as follows:

- a. **(Procurement Plan Description)** Section 1 provides a detailed overview of the current iteration of the Procurement Plan.
- b. **(Counter-Party Risk)** Section 2 discusses how this Procurement Plan has been structured to minimize PREPA counter-party risk and thus potentially incentivize bidders to offer lower prices, given PREPA's current financial status and prospects for its improvement over time.
- c. **(Request for Proposals Template)** Section 3 discusses the template which PREPA developed for the Tranche 1 RFP, as updated to reflect lessons learned in the administration of that RFP Tranche (as defined below) and the specifics of this iteration of the Procurement Plan.
- d. **(Proposal/Contract Terms & Conditions)** Section 4 describes key contract terms and conditions under which respondents proposing each type of energy resource (each, a "**Proponent**") will develop, finance and install renewable generation and energy storage resources, and make such resources available for dispatch by the T&D Operator (as defined below) (each, a "**Contract**").
- e. **(Procurement Scale / Type)** Section 5 discusses the scale and type of energy resources which PREPA intends to procure in accordance with this Procurement Plan.

- f. **(Planned Implementation Timeline)** Section 6 presents a planned timeline for the selection and development of energy resources through the achievement of commercial operation.
- g. **(RFP Schedule)** Section 7 describes the current schedule for the issuance and administration of RFPs for Tranches 2-6.
- h. **(Adjustments for Distributed Generation)** Section 8 describes how resource quantities requested in individual RFP Tranches subsequent to the first two (2) Tranches may be adjusted to account for installations of distributed generation (“**DG**”) resources that contribute to the resource quantities targeted in the Modified Preferred Resource Plan, and for resources in excess of the minimum amounts required in each of the earlier RFPs that may be selected and developed.
- i. **(Evaluation Parameters)** Section 9 sets forth the parameters to be applied in evaluating energy resource proposals as discussed in the Final Order and the Procurement Plan Resolution.
- j. **(Other Considerations)** Section 10 (i) discusses considerations specific to combined or individual proposals for renewable generation, energy storage or combinations of renewable generation and energy storage resources, and proposals which aggregate energy storage and other energy resources for connection to the distribution system (each, a “**Virtual Power Plant**” or “**VPP**”), and (ii) discusses the renewable generation integration study that has been performed to assess the current capability of the T&D System to accommodate increased levels of renewable generation capacity.

3. Lessons Learned from Tranche 1 RFP Process

While PREPA has not commenced its evaluation of Proponent proposals submitted through the Tranche 1 RFP process as of the date of this Procurement Plan, PREPA has identified the following three (3) lessons learned from the Tranche 1 RFP process to date:

- a. **(Peak Irradiance Period Curtailment)** Notwithstanding the parallel scale-up of energy storage resource capacity connected to the T&D System, the rapid scale-up of utility-scale renewable energy resources within the Puerto Rico generation mix likely means that PREPA will need to curtail the dispatch of material quantities of energy sourced from PV energy resources in the future, primarily during the peak irradiance levels between 11 am and 3 pm each day, which will expose PREPA to the risk of accruing take-or-pay liability under each Solar PPOA (as defined below) (the “**Peak Irradiance Period**”). To mitigate such risk, PREPA recommends the deployment of strategies for shifting daily energy production to either side of, and enhancing demand during, the Peak Irradiance Period, including:
 - i. deploying energy storage resources in accordance with the amounts and timeline specified by the Energy Bureau for Tranches 1-6;
 - ii. taking actions to support the development and selection of non-solar renewable energy resources, such as wind power projects, which make available material quantities of

energy for dispatch into the T&D System outside of the Peak Irradiance Period. This may require (A) carve-outs for wind turbine projects in future RFP Tranches, and/or (B) the prioritization during the RFP selection process of non-solar renewable energy resources such as wind power projects;

- iii. prioritizing (during the RFP selection process) VPP resources, which provide demand-build services during the Peak Irradiance Period;
- iv. prioritizing (during the RFP selection process) to the extent that PREPA determines the potential additional costs of such resources to be in the best interest of ratepayers, additional utility-scale energy storage resources, which store the excess energy, produced during the Peak Irradiance Period;
- v. adopting a time-of-dispatch price structure under which PREPA pays for energy at (A) when made available for dispatch outside of the Peak Irradiance Period, the bid price, and (B) when made available for dispatch within such period, a material discount from the bid price;
- vi. coordinating the T&D System capacity upgrades with the scale-up of new PV energy resources; and
- vii. requiring accurate day-ahead and week-ahead renewable energy production forecasts, which allow the T&D Operator to balance electrical supply with demand, plan for and minimize potential renewable curtailment and maximize system reliability, during the Peak Irradiance Period.

While thermal generation resources interconnected with the T&D System would ideally ‘fit around’ and support the scale-up of renewable energy resources, which PREPA will procure, many of PREPA’s current thermal energy resources lack the flexibility and reliability to provide such support, which will exacerbate the curtailment problem.

- b. **(Parallel Procurement of GCCC System)** PREPA’s existing communication infrastructure has the capability to integrate utility-scale renewable energy and, with some modifications, energy storage resources connected to the transmission system. PREPA, however, does not have the communications and energy management infrastructure in place, required for the integration of VPP resources connected to the distribution system. Thus, in parallel with its procurement of VPP resources, PREPA will need to separately procure an Energy Management System, Advanced Distribution Monitoring System, GIS System, Advanced Metering Infrastructure and other systems (collectively, the “**Grid Control Center Communication System**” or “**GCCC System**”) which will allow PREPA to communicate with, dispatch and integrate VPP resources. The March 2021 version of the PREPA 10-Year Infrastructure Plan prepared for submission to the Central Office for Recovery, Reconstruction and Resiliency, the Federal Emergency Management Agency (“**FEMA**”) and the Energy Bureau allocates approximately \$ 380 Million of Federal funding for the purchase of various components of the Grid Control Center Communication System. As PREPA does not have control over the

deployment of these funds by FEMA and the other involved federal and Puerto Rico agencies, PREPA cannot currently forecast when it will purchase and install the GCCC System. Nor can PREPA identify the vendors that will supply the GCCC System or the types of systems and technologies which the selected vendors will supply. The uncertainty around the timing and final specifications of the GCCC System:

- i. exposes PREPA to the risk of accruing liability for delays in commissioning under each Grid Service Agreement due to the likelihood that PREPA may not have the ability to integrate VPP resources selected as part of the Tranche 1 RFP process within the two year period in which Proponents have to install, test and commission such resources; and
- ii. prevents PREPA from finalizing MTRs for VPP resources, which heavily depend on the specifications of systems that collectively comprise the GCCC System.

For the foregoing reasons, PREPA recommends suspending the procurement of VPP resources as part of the RFPs for Tranche 1 and Tranche 2 until such time as PREPA purchases the GCCC System.

- c. **(Source Code Access)** To dispatch resources, VPP Proponents will utilize a Grid Services Delivery System (the “GSDS”), which depends upon multiple bespoke and proprietary computer source code for its operation (the “Source Code”). The owner of the Source Code incorporated in each GSDS will typically grant the VPP aggregator a non-exclusive license to use the Source Code for purposes of operating the GSDS. Due to the proprietary nature of Source Code, a third party such as PREPA cannot take over the operation of a VPP without first obtaining license rights to use the relevant Source Code. Source Code access could become essential to the operation of the VPP in the event that either (i) the VPP aggregator enters into bankruptcy or otherwise fails to perform under the Grid Services Agreement with PREPA, or (ii) a Source Code owner enters into bankruptcy or otherwise fails to update and maintain the Source Code. For this reason, a State-owned utility in at least one other US electricity market requires (A) VPP aggregators to place a human readable version of the Source Code into escrow, and (B) each Source Code owner to grant such utility a non-exclusive license to use the escrowed Source Code upon the occurrence of either of the foregoing events (collectively, the “Escrow & Licensing Requirements”). With each GSDS utilizing up to thirty (30) or more separate assemblies of Source Code, compliance with the Escrow & Licensing Requirements involves a highly complex, time-consuming and cost intensive process with as many as thirty (30) or more Source Code owners. For the Tranche 1 RFP, PREPA initially prepared a template Grid Service Agreement which, among other things, obligated a VPP aggregator to comply with specific Escrow & Licensing Requirements. Two (2) VPP Proponents, however, vigorously pushed back on the Escrow & Licensing Requirements and in the end, PREPA withdrew these requirements from the Proposal form of Grid Service Agreement. Thus, the terms of the current Grid Service Agreement expose PREPA to the risk of the permanent loss of access to VPP resources arising out of PREPA’s inability to utilize the Source Code incorporated into a GSDS. This risk will not become material until the aggregate size of VPP Resources becomes so large that the T&D Operator will be unable to

source replacement capacity from other resources connected to the T&D System to compensate for the loss of VPP resources as to which PREPA or its successor lacks the necessary rights to step in and use the required Source Code. To safeguard the secure and resilient operation of the T&D System, PREPA recommends that the Escrow & Licensing Requirements should apply when VPPs connected to the distribution system achieve an aggregate resource capacity of at least 100 MW.

III. PROCUREMENT PLAN

1. Procurement Plan Description

The Energy Bureau has endorsed PREPA's plan to (i) use RFPs for the solicitation of new renewable generation and energy storage resources on a competitive basis, based on terms and conditions set forth in template Contracts, and (ii) engage selected Proponents through the finalization and execution of Contracts covering these resources. The Procurement Plan envisions the issuance of six (6) RFPs (each, a "**Tranche**" and collectively, the "**Tranches**"), spaced over a three-year timeline in accordance with the guidance provided by the Final Order on minimum energy resource quantities and timing, as set out in Table 1-4 of Section 1.4 (*Procurement Schedule*) below.

With this approach, PREPA aims to secure the following benefits:

- a. PREPA will have an opportunity to model the renewable integration and the T&D System to determine any needed system upgrades and the preferred interconnection locations to which projects can be connected (minimizing system impacts). These locations will likely evolve over time, as the T&D System improves and PREPA allocates preferred interconnection locations to selected Proponents in earlier RFP Tranches.
- b. This approach allows LUMA Energy, LLC and LUMA Energy ServCo (collectively, the "**T&D Operator**") jointly acting in their capacity as the "*Operator*" under the Operation & Maintenance Agreement, dated June 22, 2020, with P3A and PREPA, to plan for system improvements that support large-scale renewable energy and energy storage integration.
- c. PREPA can spread procurement commitments associated with each Contract over time and take advantage of future technological gains as well as reduced capacity and energy pricing.
- d. This approach buys additional time for PREPA to improve its credit position as it navigates the Title III process. PREPA expects that renewable resource capacity and energy pricing will improve as its credit position improves.

PREPA has engaged the services of Sargent & Lundy to evaluate system impacts associated with the addition of new renewable energy resources, identify needed system upgrades, determine an approximate capacity value that results in minimal system impacts, and provide an initial screening for preferred interconnection locations. Through the work Sargent & Lundy continues to perform, PREPA will identify the scale and scope of the system improvements required to accommodate the addition of both renewable generation and energy storage resources procured under the RFP. PREPA will prioritize the procurement of complementary energy storage installations and "no regrets"

necessary T&D System improvements that will support both near-term and longer-term increases in the interconnection of new renewable energy resources.

The Procurement Plan Resolution requires PREPA to develop, maintain, update and file with the Energy Bureau every six (6) months a timeline for anticipated installation of energy storage and renewable energy resources. The first of these timelines will be submitted on or before July 30, 2021, in accordance with the Energy Bureau’s June 3, 2021 Resolution and Order granting extensions of time in Case No. NEPR-MI-2020-0012. In addition, PREPA will attempt to streamline its interconnection analyses and allow for installations of the required renewable and storage resources and T&D System improvements as rapidly as possible.

The following provides a discussion of PREPA’s Vision Statement, key regulatory drivers, the procurement process, acceptable renewable energy resources, the status of the development of an RFP and the Contracts and uncertainties and unknowns.

1.1 PREPA Vision Statement

Noting the need for an efficient and resilient system, on February 1, 2018, the PREPA Governing Board released its vision statement to guide the future of the utility.

Figure 1-1 – PREPA’s Five Pillars



The Governing Board’s vision addresses the reliability and resilience of the system, the transition to a system that is sustainable both financially and environmentally, and its importance in acting as an economic growth engine for Puerto Rico. These elements were noted and factored into the structuring of the IRP submissions. The resulting Procurement Plan takes a positive step towards realizing this vision through the procurement of renewable energy and storage resources, designed for reliability and resilience, which will reduce PREPA’s dependence upon fossil fuel resources. The following table presents the Vision Statement:

Table 1-1 – 2018 Governing Board Vision Statement

Pillar	Summary
System is Customer-Centric	The system serves the customer with affordable, reliable power, with transparent metrics for quality of service and with equitable consideration across all customers. Quality/Reliability can be differentiated for customers in a manner that serves their total cost and risk objectives. Customers are engaged by innovative products and value-added services that provide choice among rate plan and risk management options and provide access to wholesale contracting options for large customers. Customers are empowered with behind-the-meter alternatives for energy efficiency, demand management, and distributed generation, with the ability to become prosumers if they so choose.
System Promotes Financial Viability	The system is premised on positive economics on both sides of the meter. Rates are reasonable and create value for the customer, while pricing is sufficient to cover costs. Rate and market design create incentives to purchase, consume or produce energy in a manner that benefits the entire system. Subsidies are minimized, and those that remain have a non-distortionary impact. Operational excellence and sound long-term planning reduce the cost to serve. Rates are affordable within a model that allows the utility to earn a reasonable rate of return and service its debt. The business model is robust to changes such as outmigration and reduction in energy demand and does not create disincentives for adoption of cheaper energy resources, either at the grid level or at the customer premises.
System is Reliable and Resilient	The grid is thoughtfully planned, well maintained and safely operated to achieve defined reliability and resiliency goals. There is visibility into the system at all levels, and control where appropriate. Standards for recoverability create a measure for resilience. The choice of architecture (distributed vs. regionalized vs. centralized) is intentionally made to balance reliability/resilience and cost objectives while also taking advantage of advancements in technology and innovation.
System is a Model of Sustainability	There is a progressive focus on diversifying energy resources and reducing the carbon intensity of the power sector, in both primary generation and backup generation. Power generation is efficient and minimizes emissions. Customers have incentives to use energy wisely and to generate their own clean energy. The grid and grid systems are designed to take maximum advantage of increasingly cost-effective renewable power generation alternatives and to integrate emerging technologies.
System serves as an Economic	The quality, reliability, and cost of power attracts new commercial and industrial development to Puerto Rico and encourages existing commercial and industrial customers to expand their operations. Transformation and reinvestment in the power system creates new jobs. Innovation in the generation and delivery of

Pillar	Summary
Growth Engine for Puerto Rico	power creates a local ecosystem of businesses that provide for evolving needs for equipment, technology and services in Puerto Rico and beyond.

1.2 Key Regulatory Drivers

The Final Order provided a summary of Puerto Rico’s laws and regulations as they apply to the IRP and the Modified Action Plan. This Section 1.2 restates these “regulatory drivers,” in part to reinforce the importance of these legislative initiatives. The Energy Bureau structured the Modified Action Plan to support compliance with these laws and regulations, and PREPA has developed this Procurement Plan in accordance with the Modified Action Plan.

- a. **Act 82-2010:** Act 82-2010, as amended (“**Act 82**”), known as the Puerto Rico Energy Diversification Policy through Sustainable and Alternative Renewable Energy Act, established the first renewable energy portfolio standard in Puerto Rico and required that a retail energy provider procure twelve percent (12%) of its power needs through renewable energy by 2015, fifteen percent (15%) by 2020 with a goal of reaching twenty percent (20%) by 2035. Act 82 was amended in 2019 to, among other things, establish new RPS milestones: twenty percent (20%) by 2022, forty percent (40%) by 2025, sixty percent (60%) by 2040 and one hundred percent (100%) by 2050. Act 82 created Renewable Energy Certificates (RECs) that encompassed all the environmental and social attributes of one megawatt-hour (MWh) of electricity and that could be traded beyond the borders of Puerto Rico.
- b. **Act 83-2010:** Act 83-2010, as amended (“**Act 83**”), known as the Puerto Rico Green Energy Incentives Act, was established to, among other things: achieve the diversification of energy sources; reduce the dependency on fossil fuels; reduce and stabilize energy costs; reduce the flight of capital caused by the import of fossil fuels; and preserve and improve the environment. Act 83 also created a Green Energy Fund to fund the development of sustainable energy systems that further energy use savings and efficiency. The legislation also contained Green Energy Initiatives and tax benefits to encourage consumers and businesses to use renewable energy.
- c. **Act 120-2018:** Act 120-2018, as amended (“**Act 120**”), known as the Puerto Rico Electric Power System Transformation Act, created the legal framework required for the sale, disposition, and/or transfer of the assets, operations, functions, and services of PREPA. Under Act 120, any contract related to a PREPA Transaction must have an Energy Compliance Certificate from the Energy Bureau. Moreover, the legislation grants PREPA and P3A the authority to sell PREPA assets related to electric power generation and transfer or delegate any of PREPA’s operations, functions, or services. The legislation also notes, however, that the regulatory framework must be consistent with the new realities in Puerto Rico and the energy industry; it must, therefore, among other things, allow for the use of DG, microgrids and more renewable energy. The Legislature also notes that the electric system must be resilient to weather events and the effects of climate change on the island. Act 120-2018 also points out

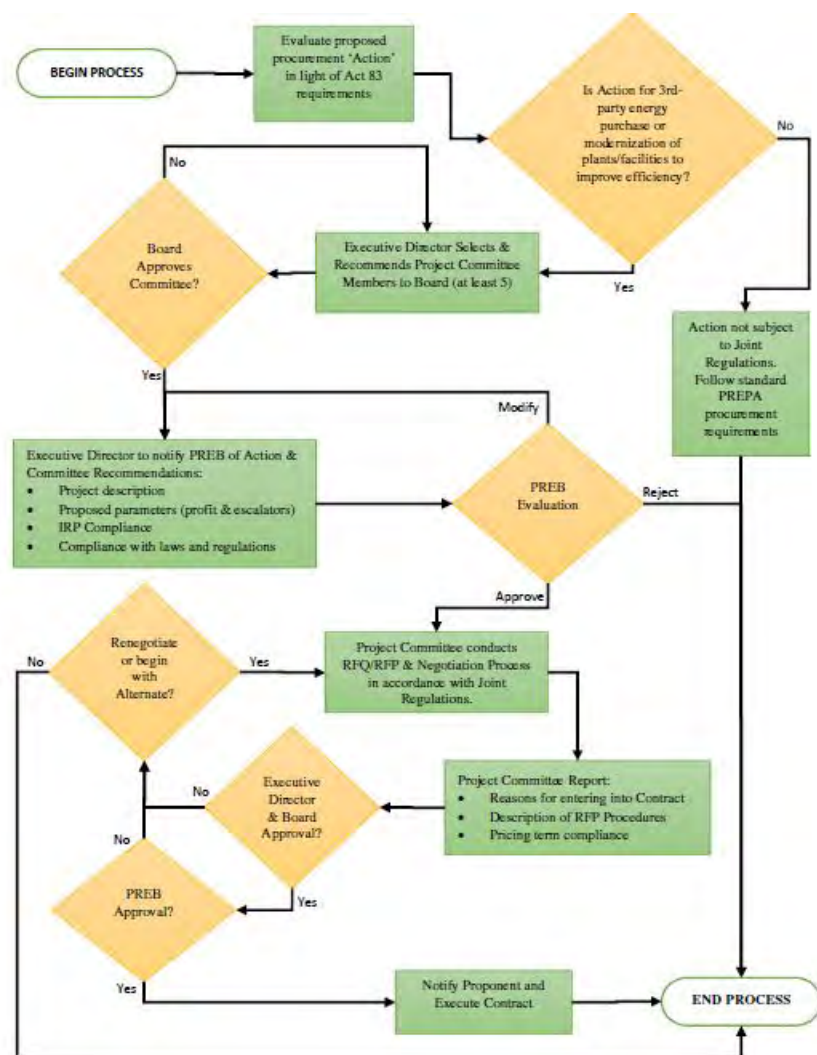
“...the importance of regulating the energy industry and the need to have an independent regulatory entity that carries out its duties firmly and resolutely.”

- d. **Act 17-2019:** Act 17-2019 (“**Act 17**”), known as the Puerto Rico Energy Public Policy Act, built upon the foundation created for integrated resource planning in Act 57 and sharpened the focus on accelerated renewable energy provision, energy conservation and efficiency, DR and DG. In so doing, Act 17 increased the renewable portfolio to a minimum of twenty percent (20%) by 2022, forty percent (40%) by 2025, sixty percent (60%) by 2040 and one hundred percent (100%) by 2050 and created an energy efficiency target of thirty percent (30%) by 2040. Act 17 also emphasizes the role of “prosumer” generation, and envisions an enhanced role for microgrids. Further, Act 17 reinforces the authority of the Energy Bureau to conduct IRP proceedings. Act 17 also states that the IRP will be prepared by the electric power company responsible for the operations of the electrical system and shall be approved by the Energy Bureau. Allowance for preparation by an entity other than PREPA acknowledges the changes contemplated under future IRPs as a result of the implementation of Act 120. The legislation also set forth more detail than that contained within Act 57 on the content of the IRP, but the content requirements are consistent with the Energy Bureau’s IRP requirements contained in Regulation 9021. A central point throughout the legislation is that actions taken regarding generation and related matters must conform to the approved IRP, thereby highlighting the importance of the IRP as a central planning tool. Any changes or amendments to the IRP shall be approved by the Energy Bureau.

1.3 Procurement Process

The Final Order addressed the Procurement Process by referencing Regulation 8815, attached to this document for ease of reference as Appendix 1 (the “**Joint Regulation 8815**”). As stated in the Final Order, “*PREPA or the T&D Operator, with oversight by the Energy Bureau under the processes of Regulation 8815, shall run all competitive auctions in accordance with this Modified Action Plan.*” Joint Regulation 8815, also known as the *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*, governs the processes for contracting with third parties for the purchase of energy. The following flowchart represents a high-level summary of the procurement process required by Joint Regulation 8815.

Figure 1-1 – Summary Procurement Process - Joint Regulation 8815



PREPA and the Puerto Rico Energy Commission (the Energy Bureau’s predecessor) developed and promulgated Joint Regulation 8815 in 2016. This regulation addresses the formation of an evaluation committee, the Process to Issue RFQs/RFPs, the Evaluation and Selection Process, Selection of Proponents, Contract Award, and Reconsideration and Review.

A high-level summary of the key components of Joint Regulation 8815 as it applies to this Procurement Plan follows.

- a. **(Evaluation Committees)** A committee (the “**Evaluation Committee**”) with at least five (5) members, appointed by the Executive Director and approved by PREPA’s Governing Board, will manage the administration of, and evaluate all proposals submitted by Proponents relating to, the RFP(s) in accordance with this Procurement Plan.

b. **(RFP Issuance)** The Procurement Plan Resolution directs PREPA to consolidate the RFQ and the RFP process to expedite the procurement process. Thus, the consideration of each Proponent's qualifications will be incorporated into the evaluation of individual resource proposals in determining the winning Proponents. For the issuance of an RFP, the Evaluation Committee shall advertise the RFP by means of a public notice in one newspaper of general circulation, the internet sites for PREPA and the Energy Bureau, and, at the discretion of the Evaluation Committee, in one or more national or international journals. The RFP shall include the following provisions:

- i. a description of the Project and its importance based on the IRP;
- ii. a description of the proposed schedule for the procurement process;
- iii. a due date, time, and method for submission of requests for clarification(s) and proposals (and the place for submission of proposals);
- iv. instructions as to the format of proposals and the information required for a proposal to be considered complete;
- v. any options or alternative proposals allowed;
- vi. applicable proponent eligibility requirements, scoring criteria, and minimum resource size;
- vii. applicable proposal evaluation criteria that will be used to evaluate proposals and proponents;
- viii. applicable proposal security;
- ix. a statement regarding funding contingencies or other conditions, contingencies, approvals, authorizations, or certifications which are required to award a Contract;
- x. a draft of the proposed Contract or summaries of key terms and conditions;
- xi. parameters approved by the Energy Bureau in connection with profit margins and pricing escalators;
- xii. PREPA's authorized representative for RFP communications;
- xiii. policy statements encouraging local participation; and
- xiv. other applicable terms and conditions as determined by PREPA's Governing Board.

Proposals received on or before the due date set forth in the RFP will be stamped (date and time of receipt) and will be kept in the custody of PREPA. PREPA will not disclose the proposals publicly and only members of the Evaluation Committee, the Energy Bureau and

other members designated by the Governing Board or Executive Director of PREPA shall have access to the proposals during the selection and evaluation period.

- c. **(Evaluation and Selection Process)** Joint Regulation 8815 establishes a three-phase selection process: (i) quality control review (“**Phase I**”), (ii) evaluation committee review and recommendation (“**Phase II**”), and (iii) contract negotiation (“**Phase III**”). Phase I allows PREPA to determine which proposals satisfy the minimum requirements outlined in the RFP. PREPA will notify each Proponent whether such Proponent’s proposal passed Phase I evaluation and advance to Phase II. During Phase II, the Evaluation Committee will review and evaluate each proposal in accordance with the selection criteria. The Evaluation Committee may select one or more proposals to advance to Phase III evaluation. To comply with the Procurement Plan, PREPA will require more than one Proponent. Therefore, the Evaluation Committee will likely make recommendations to PREPA’s Executive Director and the Governing Board to carry out discussions and negotiations with more than one Proponent at the same time for proposals that fall within a competitive range as defined in the regulation. Assuming negotiations will proceed with more than one Proponent during Phase III, each Proponent will receive written notification containing the details and describing the following procedures:
- i. No statement or action shall bind PREPA other than a Contract with a Proponent, duly executed and delivered by PREPA, which has become effective in accordance with its terms.
 - ii. The Evaluation Committee may invite each Proponent to one or more meetings to discuss and answer questions.
 - iii. The Evaluation Committee shall determine the content and scope of each meeting.
 - iv. If the Evaluation Committee convenes any meetings with a Proponent of energy resources that fall within the competitive price range, then the Evaluation Committee will give all Proponents that propose a similar energy resource and a price that falls within such competitive price range, an opportunity to discuss and review their proposals with an authorized representative of the Evaluation Committee.
 - v. The Evaluation Committee shall establish procedures and schedules to control meetings, advise Proponents on deficiencies and allow an opportunity to cure, resolve uncertainties or otherwise clarify the terms and conditions of the proposal, address any suspected mistakes, provide an opportunity to modify economic terms, technical aspects, or other aspects which may result from the discussions, and keep a record of the date, time, place, and attendees of the meetings.
 - vi. The Evaluation Committee may require Proponents to submit, in writing, confirmation of any clarification of a proposal.

- vii. Authorized Representatives of the Evaluation Committee may carry out negotiations in whole or in part through written or telephone communications, at the discretion of the Evaluation Committee.
- viii. The Evaluation Committee may request “Best and Final Offers” or proceed to negotiations with one (or more) proponents within the competitive range.
- ix. Additional negotiations may follow receipt of Best and Final Offers.

Subject to PREPA’s right to reject any or all proposals, PREPA shall select the proposal(s) considered most advantageous to PREPA, PREPA’s ratepayers and Puerto Rico. Proposals judged to be “most advantageous” will meet minimum requirements, demonstrate economic benefits, reliability, and resiliency, and fit with the overall needs of the T&D System. In accordance with the Energy Bureau’s directive, the RFP evaluation process during Phase I and II shall not exceed seventy-five (75) days unless circumstances require that the Evaluation Committee extend such process. The Evaluation Committee will evaluate proposals, based on price/cost and relevant estimated system upgrade costs as well as non-price terms such as construction and operational experience, risks and risk mitigation measures, and other pertinent criteria. The RFP will clearly define the scoring system and all evaluation criteria.

- d. **(Selection of Proponents)** Joint Regulation 8815 prohibits the selection of Proponents that have been convicted of any of the offenses set forth in Act 458-2000. Other grounds for disqualification include when a Proponent:
 - i. enters into insolvency or bankruptcy;
 - ii. makes a formal, public announcement that it is unable, or does not intend, to pay its debts and obligations;
 - iii. has been convicted of any of the criminal offenses set forth in Act 428-2004;
 - iv. has not fulfilled its obligations relating to the payment of taxes under the laws of the Commonwealth or the relevant jurisdiction in which it maintains its principal operations;
 - v. has engaged in collusive acts or is guilty of serious misrepresentations;
 - vi. has experienced material changes to its business;
 - vii. fails to comply with substantive requirements of the RFP; or
 - viii. is otherwise in material breach of Joint Regulation 8815.

When assessing the financial condition of a Proponent, PREPA may consider bank statements, financial statements (last three (3) fiscal years), or other information that would allow it to assess the financial condition of the Proponent. The Evaluation Committee shall specify in the

RFP the financial information which the Proponent must provide to comply with the applicable minimum standards of financial condition.

- e. **(Approval of Contract(s))** Upon completion of the negotiation of the Contract(s) with a Proponent, the Evaluation Committee shall prepare a report which shall include the reasons for entering into such Contract(s), the reasons for selecting the Proponent(s), a description of the procedures followed, and other information pertinent to the procedures followed and the evaluations conducted. The Evaluation Committee shall provide the report and proposed Contract(s) to the Executive Director and the Governing Board of PREPA within thirty (30) days for approval. The Governing Board shall have the right to reject, accept, or return the proposed Contract for renegotiation. If the Governing Board of PREPA approves the report and Contract(s), PREPA shall provide a copy of the report and the Contract(s) to the Energy Bureau for its evaluation and approval. If the Energy Bureau approves the Contract(s), the Evaluation Committee will notify Proponents of the RFP results. Once the Energy Bureau approves a Contract, PREPA shall have no right to modify the Contract or the scope of the Project in any material way without the approval of the Energy Bureau. Subject to (i) the completion of the required Feasibility, System Impact and Facilities Studies, (ii) the approval by the Governing Board and the Energy Bureau, and (iii) the review and approval by the Financial Oversight and Management Board for Puerto Rico (“**FOMB**”), PREPA and the Proponent may execute the Contract(s).
- f. **(Reconsideration and Review)** Proponents may request reconsideration of the final awarding of a Contract in accordance with applicable administrative law. These reconsideration and judicial review rights will be described in the notifications sent to Proponents.

1.4 Procurement Schedule

As specified in the Final Order, the Procurement Plan communicates the expected timeline for the release of subsequent RFPs in sequence (i.e., every six (6) months, over the next three (3) years for a total of six (6) tranches of RFP releases). These RFP Tranches contemplate the procurement of renewable energy resources in quantities and within timelines conforming with Act 82’s RPS goals, and the procurement of energy storage resources in support of capacity needed to meet PREPA’s peak load requirements and in support of renewable energy generation integration requirements.

The schedule of minimum RFP quantities, in conformance with quantities targeted in the Modified Preferred Resource Plan, follows:

- a. **1st Tranche:** at least 1,000 MW solar PV (or energy-equivalent other renewable), at least 500 MW (2,000 MWh or equivalent) battery energy storage;
- b. **2nd Tranche:** at least 500 MW solar PV (or energy-equivalent other renewable), at least 250 MW (1,000 MWh or equivalent) battery energy storage;
- c. **3rd Tranche:** at least 500 MW solar PV (or energy-equivalent other renewable), 250 MW (1,000 MWh or equivalent) battery energy storage;

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- d. **4th Tranche:** at least 500 MW solar PV (or energy-equivalent other renewable), 250 MW (1,000 MWh or equivalent) battery energy storage;
- e. **5th Tranche:** 500 MW solar PV (or energy-equivalent other renewable), 125 MW (500 MWh or equivalent) battery energy storage; and
- f. **6th Tranche:** 750 MW solar PV (or energy-equivalent other renewable), 125 MW (500 MWh or equivalent) battery energy storage.

Table 1-4 - Guidance for Renewables, and Battery Energy Storage RFP Tranches

RFP Target Release Date	Procurement Tranche	Renewables, MW		4-hr. Battery Storage equivalent, MW ¹	
		Minimum	Cumulative	Minimum	Cumulative
Dec-20 (actually released Feb-22)	1	1000	1000	500	500
Jun-21	2	500	1500	250	750
Dec-21	3	500	2000	250	1000
Jun-22	4	500	2500	250	1250
Dec-22	5	500	3000	125	1375
Jun-23	6	750	3750	125	1500

1) Other storage durations (i.e., 2-hour and 6-hour) will be considered.

PREPA issued the Tranche 1 RFP on February 22, 2021 and expects the RFP for Tranche 2 RFP to be issued by the end of June 2021. The target release dates for subsequent RFPs occur every six (6) months, over the next three (3) years, for a total of six (6) tranches of RFP releases. The procurement of resources may be front-loaded within the five-year period in order to allow time for construction, interconnections, and commissioning within the five-year Action Plan.

1.5 Uncertainties and Unknowns

As part of a competitive procurement plan, PREPA must describe internal or external staffing resources, constraints, and potential solutions to any constraints, as required, in order to meet the renewable energy generation and storage resource levels specified in the Modified Preferred Resource Plan.

PREPA does not currently have the internal capability and staff to evaluate project feasibility, system impacts or facility requirements. PREPA will rely on (i) external staffing resources until PREPA has hired or otherwise secured alternate capabilities, and (ii) support made available by LUMA as the Operator of the T&D System.

PREPA anticipates that integration of some proposed projects will require substantial T&D System upgrades. In evaluating such proposals, PREPA will attempt to identify synergies and the timing of (a) new battery storage resources; (b) staged transmission reinforcements whose initial components can be completed in advance of an entire transmission project; (c) complementary retirement of

existing older thermal resources; and (d) operational guidance that can allow a project to proceed in stages, or with operational limitations based on system needs, subject to curtailment under certain conditions. PREPA will consider ways in which combinations of new storage resources and phased T&D System improvements may help mitigate constraints that may otherwise limit renewable energy deployments and will consider the assumptions used in interconnection analyses that account for these factors.

While Proponents have shown a high level of interest in the Tranche 1 RFP process, PREPA cannot yet determine whether this process will yield a sufficient number of high-quality, competitive proposals to procure the minimum quantities of renewable energy, energy storage and VPP resources, contemplated for Tranche 1. In addition, recent modeling and analysis by PREPA and its advisors indicates that the T&D System will require more than 1,500 MW (6,000 MWh) of energy storage resources to support appropriate levels of resource adequacy in the future. PREPA recommends that the Energy Bureau, PREPA and the T&D Operator discuss ways to ensure the deployment of a level of energy storage capacity that will support resource adequacy. PREPA has also commenced the assessment of (i) the quantities of renewable energy, required to ensure that the T&D Operator can fully charge the energy storage resources on a daily basis, and (ii) the risks and potential shortfalls of such an approach.

2. Counter-Party Risk

PREPA's current credit rating of CA, a non-investment grade rating reflecting PREPA's Title III status, presents a significant factor in the determination of Contract prices. A lower credit rating indicates a higher counter-party risk, which Proponents will factor into their cost of capital calculations. This results in higher cost of capital and a higher levelized cost of energy ("LCOE") in generating and energy storage resource proposals than would be appropriate if PREPA had a better credit rating, all else held equal. Proponents will usually determine contract price based on LCOE. As PREPA's credit rating improves, particularly as PREPA reaches an investment grade rating, PREPA's cost of capital should decrease, its riskiness as a contract counter-party will decline, and the LCOE should decrease as well, all else being equal. PREPA expects its credit rating to improve upon emergence from the ongoing PROMESA Title III proceeding. For earlier Tranches, which may result in Contracts executed prior to PREPA's emergence from its Title III proceedings, PREPA will give preference in its evaluation to Proponents that accept an automatic step-down in Contract price upon such emergence.

3. Request for Proposals (RFP) Template

Appendix 2 (*RFP Template*) sets forth the current version of the RFP template for energy resources, and this Section 3 provides a high level overview of the template.

3.1 Background Information for the RFP

Each RFP will encourage Proponents to review the following documents, which provide further technical background:

- a. **PREPA Integrated Resource Plan:** <https://aeepr.com/es-pr/QuienesSomos/Paginas/ley57/Plan-Integrado-de-Recursos.aspx>
- b. **Energy Bureau Final Order on the PREPA IRP:** <https://energia.pr.gov/wp-content/uploads/2020/08/AP20180001-IRP-Final-Resolution-and-Order.pdf>
- c. **Energy Bureau Procurement Plan Resolution:** <https://energia.pr.gov/en/dockets/?docket=nepr-mi-2020-0012>

Each RFP will also encourage Proponents to review the following additional documents, which are available for download at <http://www.p3.pr.gov> or at <https://energia.pr.gov/en/laws/>, for further background and the legal framework:

- a. PREPA Organic Act, Act No. 83-1941, as amended;
- b. Public-Private Partnership Authority Act, Act No. 29-2009, as amended;
- c. Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Participatory Public-Private Partnerships Contracts under Act No. 29-2009, as amended;
- d. Puerto Rico Energy Transformation and RELIEF Act, Act No. 57-2014, as amended;
- e. PREPA Revitalization Act, Act No. 4-2016, as amended;
- f. Act 82;
- g. Act 83;
- h. Act 17; and
- i. Act 120.

3.2 RFP General Overview

Proponent Qualifications

Each RFP Tranche will solicit combined Statements of Qualifications and responses from companies and consortia interested in designing, constructing, installing, operating and maintaining renewable energy generation, energy storage and/or VPP resources at one or more sites across Puerto Rico. Proponents should demonstrate:

- a. capability and experience developing, constructing, installing, testing, and operating renewable energy resources;
- b. capability and experience managing renewable energy and energy storage technology;
- c. financial strength and capital resources engaged for project funding;

- d. strong technical expertise, with a track record of high-quality operations; and
- e. experience complying with regulatory and permitting approvals in Puerto Rico.

Energy Resource Characteristics

In accordance with the Final Order, the proposed resources may include, but are not limited to, solar PV, wind or hydro, energy storage, VPPs, or any combination of these technologies. The Final Order requires that PREPA not unnecessarily limit the level of overall procurement to 250 MW blocks, but rather directs PREPA to pursue a strategy that attempts to procure the resource capacity required under scenario S3S2B evaluated in the IRP. PREPA will seek renewable energy resources and energy storage projects on approximately a 2:1 MW ratio to conform to the overall targets for each Tranche of the RFP. To meet these thresholds, PREPA must consider both stand-alone and co-located renewable energy and energy storage projects on an integrated and non-integrated basis. If “shovel ready” utility scale renewable projects are available for expedited installation under agreements previously executed by PREPA, PREPA shall procure stand-alone energy storage projects with multiple hour duration and roughly one-half of the projected capacity of these “shovel ready” projects to be expedited for installation, either at utility scale or at distributed scale as a VPP, as part of RFP Tranche 1 selections.

All project proposals must comply with the appropriate PREPA Minimum Technical Requirements (“MTRs”), and with PREPA’s current interconnection standards and requirements. A Proponent’s ability to comply with MTRs and interconnection requirements will form part of the RFP selection criteria.

Proponents of all projects except VPPs shall submit all-inclusive turnkey proposals. The utility-scale renewable energy resources must have a minimum nominal rating of 20 MW, measured at the electrical interconnection point with the T&D System. VPP projects must have a minimum nominal rating of 5 MW made available through multiple electrical interconnections that do not exceed 1 MW AC of capacity. The standalone energy storage resources will have a minimum nominal rating of 20 MW and four (4) hours of storage. Storage alternatives offering two (2) hours and six (6) hours of storage will also be considered.

Proponents may also offer energy storage projects paired with a utility scale renewable energy project. For standalone energy storage, such offerings will be required to have a minimum nominal rating of 20 MW and four (4) hours of storage. Alternatives offering two (2) hours and six (6) hours of storage may also be considered. Proposals for hydro generation resources will not require energy storage support.

The same criteria used for the selection of utility scale renewable energy resources will apply to the evaluation of VPP proposals, except that the minimum capacity requirement shall be 5 MWs, which the Proponent must secure from multiple sites with different points of electrical interconnection that do not exceed 1 MW AC of capacity at each electrical interconnection. A Proponent may source energy and capacity for VPPs from existing facilities that do not currently sell such energy and capacity to PREPA. Proponents of VPPs will be responsible for all metering, SCADA, and other forms

of telemetry to create the VPP. VPPs will comply with applicable MTRs and interconnection standards.

Resultant Contracts

For each selected project, the Proponent shall enter into a Contract and an Interconnection Agreement under which the Proponent would sell, and PREPA would purchase: (a) for renewable generation, the net electric output, subject to specific energy delivery guarantees; (b) for energy storage resources, energy storage capacity subject to specific energy delivery and operating guarantees; (c) for VPP resources, capacity subject to specific energy delivery and operation guarantees; and (d) in each case, associated rights, benefits and credits of the Project, including environmental attributes (or “RECs”).

3.3 Specific RFP Requirements

With the RFP process described in this Procurement Plan, PREPA seeks to comply with the requirements of the IRP and the Energy Bureau’s Final Order and Procurement Plan Resolution. PREPA will contract under this Plan, and PREPA will evaluate and select resource proposals, on a competitive basis in accordance with the process set forth below and in the RFP.

a. **(Procurement Timeline)** Act 82, as amended by Act 120, requires PREPA to procure renewable energy resources in the following quantities by the end of specified years: twenty percent (20%) by 2022, forty percent (40%) by 2025, sixty percent (60%) by 2040, and one hundred percent (100%) by 2050. In order to comply with these targets, PREPA will solicit proposals to develop renewable generation and energy storage resources that can achieve commercial operation within twenty-four (24) months from the relevant Contract’s execution date. This timeline, the Energy Bureau has concluded, should provide the Proponent with enough time to finalize all arrangements required to proceed, which are expected to include:

- i. Site Control;
- ii. Transmission Interconnect;
- iii. Permitting and Licensing;
- iv. Environmental Assessment;
- v. Engineer, Procure, & Construct (EPC) contract; and
- vi. Financial Closure;

and with enough time to execute the work required to install the project to achieve commercial operation, which will include:

- vii. Final engineering and design;
- viii. Equipment procurement, fabrication and delivery;

- ix. Construction; and
- x. Startup and commissioning.

Proposals should demonstrate the Proponent's ability to achieve commercial operation in a timeframe not to exceed twenty-four (24) months from the signing of the Contract. PREPA may also consider proposals with commercial operation dates not to exceed thirty (30) months from signing of the Contract, but projects proposing a shorter timeline will be preferred, and shorter development times will be given a higher score in the RFP evaluation process.

- b. **(Proposal Submission Requirements)** Each RFP Tranche will require Proponents of utility scale renewable energy and energy storage resources to provide a project description, which shall cover the following, as relevant to the proposal:
 - i. Basic project description, including (1) project name; (2) site location (including map and site layout); (3) technology; (4) generating or discharge capacity; (5) MTR compliance strategy; (6) grid connection point and electrical one-line diagrams; (7) ancillary service capabilities; (8) forecasted commercial operation date; and (9) ownership structure;
 - ii. Site ownership, usage, and development status;
 - iii. Current status of issuance of all permits, licenses and other authorizations required for the implementation of the project;
 - iv. A detailed operation and maintenance plan, covering the proposed supply term;
 - v. Environmental permitting plan addressing all potentially applicable environmental permits (federal and local) including the following, as applicable:
 - 1. List of potentially applicable permits evaluated or to be evaluated;
 - 2. Result of applicability analysis for each potentially applicable permit or status of evaluation; and
 - 3. Planned approach to obtain applicable permits including the following:
 - A. List of key activities necessary to obtain each applicable permit(s) and associated timing;
 - B. Identification of key individuals or consultants; and
 - C. Experience of those individuals in specific jurisdictions of project;
 - vi. Transmission or distribution upgrade plans, as applicable, demonstrating compliance with the requirements of Regulation 8915 or Regulation 8916, as applicable, status of

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interconnection or transmission service requests, and status of related agreements and approvals;

- vii. A detailed description and drawings of transmission or distribution and substation facilities associated with the proposed project, and descriptions of any special protection schemes associated with the resource and their use. PREPA and the T&D Operator require Energy Resources that offer operational flexibility. Proponents must provide a detailed description of the scheduling or dispatch process, ramp rates, automatic generation control, existing or planned Inter-Control Center Protocol ties to PREPA and any energy magnitude and duration limitations. Proponents must also describe the capability, if any, of the resource to provide reactive support and dynamic reactive reserve;
- viii. Proponents' design and development experience with the proposed technology or, in the case of proponents of VPPs, with the aggregation of multiple energy supply, storage or controllable load resources into a VPP;
- ix. Proponents' operating experience with the proposed technology or, in the case of proponents of VPPs, with the aggregation of resources into a VPP and the management of such resources effectively to provide capacity and energy in response to dispatch instructions issued by the T&D Operator;
- x. Financing plan, including (1) sources of debt and equity; (2) equity percentage by sponsor; (3) financing rates and other terms; (4) level of commitment by potential lenders for construction financing and permanent financing; and (5) tax credit qualifications;
- xi. Proponents' management team and key individuals responsible for project permitting, financing, design, construction, and operation;
- xii. Major milestone schedule, including provisions for (1) site acquisition, control, and development; (2) permitting and licensing; (3) transmission upgrades and interconnection, if applicable and as relevant to the project location; (4) financing; (5) engineering, procurement, and construction; and (6) testing;
- xiii. For each of the above categories, Proponents shall provide references to any supporting documents or attachments;
- xiv. Pricing terms which convey the essence of the proposed resource cost. The pricing proposal shall indicate:
 - 1. Construction Start Date & Commercial Operation Date;
 - 2. Supply Period;

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3. For Renewable Energy Resource proposals, the “Base Rate” as defined in the relevant Final Proposal Version of Contract, representing the unit price of electricity, expressed in U.S. Dollars per kWh¹;
4. For Energy Storage Resource proposals:
 - A. the “Capability Payment Price” or “CPP” as defined in the relevant Final Proposal Version of Contract, representing the monthly price of Energy Storage Resource capacity, expressed in U.S. Dollars per MW of discharge capacity; and
 - B. the “Variable O&M Price” or “VOMP” as defined in the relevant Final Proposal Version of Contract, representing additional compensation for variable usage of the Facility, expressed in U.S. Dollars per MWh of discharge energy; and
5. For VPP proposals:
 - A. the “Demand Build Price” or “DB\$” as defined in the relevant Final Proposal Version of Contract, representing the monthly price of Demand Build Services, expressed in U.S. Dollars per kW-Month; and
 - B. the “Demand Reduction Price” or “DR\$” as defined in the relevant Final Proposal Version of Contract, representing the monthly price of Demand Reduction Services, expressed in U.S. Dollars per kW-Month;
- xv. For all projects, Proponents shall estimate Project Interconnection Costs to (A) for Renewable Energy Resources and Energy Storage Resources, design, supply, install, test and commission the interconnection infrastructure required for the delivery of the project’s energy or energy storage capacity (as applicable) to the T&D System, and (B) for VPPs, install communication and metering systems that will enable the T&D Operator to issue dispatch instructions to the VPP aggregator or its agent;
- xvi. For all projects, Proponents shall specify performance:
 1. For renewable energy generation proposals, the Energy Production Forecast shall indicate, as applicable given the nature of the proposed resource (i.e., solar PV, wind or hydro), the forecasted P10, P50, and P90 annual energy forecast in MWh for each day and hour (8,760 entries); and
 2. For standalone energy storage resources, the guaranteed performance shall indicate:

¹ Note: PREPA will consider time-of-dispatch pricing following consultation with PREB.

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- A. Guaranteed Capacity (MW / MWh);
- B. Peak Charging Time (hours);
- C. Peak Discharging Time (hours);
- D. AC-AC Round Trip Efficiency (%); and
- E. Equivalent Availability Factor (%);

The guaranteed values shall account for long-term performance degradation;

- xvii. Proponents shall indicate the anticipated suppliers, models, and countries of manufacture for major plant equipment;
- xviii. Proponents must provide specific evidence demonstrating their ability to raise financing;
- xix. To the extent that a Proponent currently owns, or holds leasehold rights in, each parcel of land forming part of the site of the proposed project, such Proponent shall submit a certified true and correct copy of the deed of title or lease agreement, evidencing such ownership over, or leasehold interest in, such parcels of land. To the extent that a Proponent does not yet own or exercise control over a parcel of land that will form part of the proposed project site, the Proponent shall submit either:
 - 1. the original version of a letter from the registered title holder of such parcel (A) confirming such owner's intention to transfer ownership of, or grant a lease over, such parcel to Proponent for the purpose of implementing the proposed project upon the award of a Contract by PREPA to the Proponent, and (B) attaching a certified true and correct copy of the deed of title for such parcel; or
 - 2. a certified true and correct copy of a legally-binding agreement evidencing that the registered title holder of such parcel has granted the Proponent an option to purchase or lease such parcel upon the award by PREPA of a Contract for the implementation of the proposed project in form and substance reasonably satisfactory to PREPA;
- xx. For Energy Resource proposals other than a Demand Resource proposal, the Proponent shall submit a detailed breakdown of the fixed and variable costs to operate and maintain the proposed resource in ten (10) year increments during the supply period;
- xxi. Each Proponent shall submit a business continuity plan, detailed by scenario, with the aim of ensuring service continuity during all identified potential threats to the operation of the proposed resource, including the occurrence of bomb threats, war, hurricanes, tornadoes (including waterspouts), earthquakes, tsunamis, active shooters, pandemics and other threats to public health and plane crashes; and

- xxii. Each Proponent must submit a summary of all legal proceedings, claims, actions, or suits against the Proponent, the guarantor, or involving the facility or site.
- c. **(Virtual Power Plants)** As specified in the Final Order, quantities sought in Tranches subsequent to the first two RFP Tranches may be adjusted as necessary to account for installations of distributed generation that contribute to meeting overall quantities in the Modified Preferred Resource Plan. To that end, PREPA will support the deployment of DG resources under existing programs. In addition, each RFP will be structured such that all resources and storage amounts can be aggregates of smaller installations (also known as VPPs). As specified in the Final Order and in the Procurement Plan Resolution, VPPs are explicitly allowed and must be able to compete on fair terms. Each RFP Tranche will allow Proponents of VPPs to submit responses, with the assumption that the characteristics of the VPPs, including pricing and reliability, will be comparable to those provided on a utility scale. VPPs will be subject to the same selection criteria as other utility scale renewable energy resources except that the minimum capacity requirement will be reduced to 5 MWs, which must be spread across multiple sites with different points of electrical interconnection that do not exceed 1 MW AC of capacity at each electrical interconnection for installations to meet the minimum capacity requirement. Energy and capacity for VPPs may be sourced from existing facilities that do not currently sell such energy or capacity to PREPA. Proponents of VPPs will be responsible for all metering, SCADA, and other forms of telemetry to create the VPP. VPPs will be required to comply with applicable MTRs and interconnection standards, which will reflect the distributed nature of VPP generating and storage resources, their location on the T&D System (on distribution-level circuits) and their limited ability to provide certain services (e.g., voltage regulation). Other considerations applicable to VPPs include the following:
- i. the Proponent shall source energy and capacity from VPPs aggregating only newly-installed energy resources or existing energy resources, which do not currently make available energy or capacity for dispatch by the T&D Operator;
 - ii. the Proponent shall install and maintain all metering, SCADA and other forms of telemetry to establish, monitor, control and dispatch such VPP at its own cost and expense;
 - iii. VPPs shall comply with applicable MTRs and PREPA's standards for interconnection with the T&D System;
 - iv. VPPs shall be capable of supplying a minimum of 5 MW of dependable capacity, which the Proponent must aggregate from multiple sites;
 - v. VPPs must use existing, proven technology;
 - vi. all VPPs other than VPPs consisting exclusively of Demand Response Resources shall satisfy the same performance requirements as this RFP requires for a utility-scale Energy Resource;

- vii. the supply period for a VPP shall extend for a period of ten (10) to twenty-five (25) years from the Commercial Operation Date;
- viii. VPP Proponents will be responsible for funding all required changes/additions to the distribution and transmission system required by the project;
- ix. the Proponent shall demonstrate that each Energy Resource and Demand Response Resource forming part of a proposed VPP can effect capacity responses / load reductions within the response time required when the T&D Operator curtails generation or sheds load on the T&D System throughout the entire supply period. PREPA will favor VPPs incorporating Energy Resources that can provide a rapid response and/or ramp up or down in response to specific control signals. VPP Proponents should detail the full, demonstrated capability of the proposed resource;
- x. the Proponent shall contractually undertake to, and demonstrate its capability to, manage all capacity dispatch and load reduction instructions, including all notices, resource participation registration and deregistration, communications, controls, equipment, and other processes required to satisfy the T&D Operator's dispatch instructions;
- xi. contract prices for VPP proposals shall cover all property and local taxes and tax abatements related to such VPP; and
- xii. the resiliency benefits provided by VPPs will be taken into account in the evaluation of individual VPP project proposals by, among other things, accounting for potentially avoided transmission expenditures and transmission and distribution system loss savings.

Lessons learned through the solicitation of VPP resources in the Tranche 1 RFP will be applied to the procurement of VPP resources in subsequent Tranches. Data and insights obtained in the consideration of VPP resource proposals will be used to (1) refine performance requirements (e.g., commercial terms); (2) more precisely assess the value that VPPs can provide (e.g., grid services); and (3) gauge and potentially shorten the timeline for deployment and operation of VPPs.

Proposals for VPPs must, at minimum, have the following characteristics:

- i. The generation and storage resources aggregated into the VPP must be complete, commercially operable, and available to commence operation under a Grid Service Agreement with PREPA (each, a "GSA") within a maximum of twenty-four (24) months from the date on which PREPA and a Proponent satisfy all of the conditions precedent for the effectiveness of such agreement.
- ii. VPP Proponents shall provide:

1. the contractual framework under which the Proponent would supply capacity and (if applicable) energy, as well as other grid services, to PREPA from Energy Resources owned by third parties;
2. the responsibilities of the Proponent relating to the assembly, registration and confirmation of the status of resources to be provided by third parties;
3. certified true and correct copies of each agreement that would govern the relationship between the Proponent, as an aggregator and individual third parties committing their resources for aggregation into the VPP;
4. the manner in which the Proponent would coordinate and dispatch resources;
5. the nature of the assets, including software, servers, network communications equipment, resource control equipment, sensors and monitoring equipment required to support the dispatch of resources committed to the VPP;
6. the geographical location of each Energy Resource, and, where applicable, Demand Response Resource, forming part of the proposed VPP;
7. a description of the aggregation of the program participants, and expected generating capacity and load drop values, equipment, and technology;
8. a description of the Proponent's plans for recruiting, engaging, monitoring the performance of and maintaining the participation of program participants;
9. for each Energy Resource forming part of a VPP, each performance penalty imposed on either the third party which owns such resource or the Proponent in association with such resource within the past five (5) years; and
10. any material actions, suits, claims, or proceedings (threatened or pending) against the Proponent, relating to each Energy Resource forming part of the proposed VPP.

4. Proposal/Contract Terms & Conditions

4.1 General

Each RFP Tranche will solicit proposals for turn-key systems that will be fully operational upon testing and commissioning. Proponents shall procure, install and operate all transmission facilities that will be part of the Proponent's facilities, such as the interconnection line and breakers, that are necessary to interconnect the Proponent's project to the T&D System. Proponents will also be responsible for all necessary upgrades to transmission facilities required to accommodate the interconnection of the project. Equipment and real property required to support such upgrades shall be transferred to PREPA upon commissioning. Contracts with Proponents will obligate Proponents to provide operation,

maintenance, and monitoring services for the renewable generation and energy storage resources they propose.

Proposals must meet the following requirements:

- a. each Proponent may submit more than one (1) proposal if each proposal separately complies with the RFP requirements on a standalone basis;
- b. the price submission set forth in each proposal to develop and construct an Energy Resource shall cover all of the Proponent's costs to (i) install, test and commission the transmission or distribution infrastructure required to connect such resource to the T&D System, and (ii) ensure that such resource complies with all Applicable Law currently in effect;
- c. each Proponent shall identify all property and local taxes and tax abatements, related to its proposed project and Contract prices shall cover all such taxes;
- d. proposals should demonstrate an ability to achieve commercial operation in a timeframe not to exceed twenty-four (24) months from the signing of the Contract. PREPA will also consider proposals with a guaranteed commercial operation date not to exceed thirty (30) months from signing of the Contract, but such proposals will receive a lower score in the RFP evaluation process than those proposing shorter development times;
- e. for Renewable Energy Resource proposals, Proponents shall report project capacity and P50 Energy Yield for such resources during the proposed supply period;
- f. prior to the date on which PREPA will sign a Contract, each Proponent shall provide evidence of its ability to provide equity funding at least equal to thirty percent (30%) of the forecasted costs to develop the proposed project by the forecasted date on which the Proponent will first draw down on loan facilities made available by lenders to the project;
- g. the supply period under each Contract (i) for both utility-scale and VPP resources, may extend for a duration of up to twenty-five (25) years, and (ii) for VPP resources, extend for a minimum of ten (10) years for VPPs;
- h. proposals must be site-specific;
- i. each renewable energy resource proposal must qualify as a renewable energy resource;
- j. the facility will comply with PREPA MTRs applicable to the technology;
- k. proposals should identify specific point(s) of interconnection;
- l. proposals should identify and include costs of any property and local taxes and tax abatements;
- m. the asset must use an existing proven technology;

- n. proposals should explain any identified environmental liabilities (e.g., potential site remediation requirements);
- o. proposals should identify any material actions, suits, claims, or proceedings (threatened or pending) against the Proponent;
- p. the financing plan shall include either the Proponent's or guarantors' senior unsecured debt and/or corporate issuer ratings documentation from Fitch, Moody's and Standard & Poor's showing the name of the rating agency, the type of rating, and the rating of the Proponent or guarantor; and
- q. production forecasts for renewable energy facilities and performance guarantees shall be subject to performance tests and remedies such as liquidated damages to be negotiated with PREPA. Proposals should provide supporting energy production reports (PVsyst, wind resource assessment, hydro assessment, etc.) documenting assumptions used in the production forecasts.

Each RFP Tranche will include draft Contract templates for a Solar PPOA, ITC Compliant ESSA, Standalone ESSA and GSA each as defined in Section 4.3 (*Final Proposal Version of Contracts*).

4.2 Contract Exceptions

Following its delivery of a Notice of Intent to Respond, each responding Proponent should (a) review the preliminary template version of the relevant Contract set forth in the Appendices of the RFP, and (b) submit a revised version of such Contract that shows all of the material changes proposed by such Proponent in blackline form together with a brief explanation of the rationale for each such change as a comment linked to the relevant provision containing such change (the "**Contract Exceptions**"). Proponents are encouraged to minimize the number of changes to a Contract template they suggest. The Contract Exceptions need not include changes related to the contextualization of the Contract for such Proponent's specific project proposal(s), which will be done during the final negotiation of a Contract with the Proponents of selected proposals.

4.3 Final Proposal Version of Contracts

Upon receipt of Proponents' Contract Exceptions, the Evaluation Committee will review and assess all such proposed exceptions, and prepare and issue to all Proponents a final form version of each Contract template, that takes into account in each case the Contract Exceptions but only to the extent that the Evaluation Committee deems this necessary in its sole discretion (each, a "**Final Proposal Version of Contract**"). Appendices 3-6 of this Procurement Plan set forth the Final Proposal Version of Contract for (a) the Power Purchase & Operating Agreement for Solar PV Facilities (the "**Solar PPOA**"), (b) the Energy Storage Services Agreement for ITC Compliant Energy Storage Resources (the "**ITC Compliant ESSA**"), (c) the Energy Storage Services Agreement for Standalone Energy Storage Resources (the "**Standalone ESSA**"), and (d) the GSA for VPP Resources, in each case for the Tranche 1 RFP. Each Proponent should submit their proposals in response to an RFP on the assumption that the relevant Final Proposal Version of Contract shall govern the terms and conditions

under which such Proponent will design, construct, install, own, operate and maintain its proposed project as well as make available renewable energy and/or energy storage capacity and related services (as applicable) for sale to PREPA. To the extent that a Proponent intends to submit a proposal for a Renewable Energy Resource other than solar PV technology, PREPA should develop and issue a Contract template that accommodates such other resource as part of the package of documents representing the Final Proposal Version of Contracts.

4.4 Interconnection Studies; Interconnection Agreement Negotiations

During the proposal evaluation process, PREPA will arrange to have interconnection studies performed and system upgrade cost estimates prepared as follows:

- a. a feasibility study for short-listed candidate projects will be performed to develop order-of-magnitude interconnection and T&D System upgrade cost estimates;
- b. Proponents will be allowed to adjust pricing to reflect Feasibility Study results;
- c. Feasibility Study results will influence the selection of a final short-list of projects, and may be iterative; and
- d. PREPA will require completion of a System Impact Study followed by a Facilities Study for short-listed projects.

The Proponent shall bear the interconnection and system upgrade study costs. Additionally, the Proponent will be responsible for the procurement and installation of all equipment shown by these studies to be necessary to interconnect the Proponent's proposed facility to the T&D System. PREPA and the Proponent shall execute an Interconnection Agreement that reflects the study results in coordination with the execution of the Contract. PREPA expects to use a *pro forma* interconnection agreement, wherein the primary points of negotiation will be related to the physical interconnection requirements.

4.5 Effectiveness of Contracts

Subject to Joint Regulation 8815 and relevant directives of the FOMB, each Contract executed by PREPA shall only enter into full force and effect upon approval from PREPA's Executive Director, PREPA's Governing Board, the Energy Bureau and the FOMB.

5. Procurement Scale / Type

The Final Order requires flexibility in the award of renewable energy contracts. As stated in the Final Order, "[t]he Procurement Plan must allow for PREPA to choose to select resources for PPOAs in excess of the 1,000 MW minimum (solar PV or energy- equivalent other renewable) or 500 MW minimum (battery energy storage, 4-hour duration equivalent) for either or both renewable energy and battery storage capacity if cost-effective economically and if installation feasibility allows. The Procurement Plan may contemplate contracting a lower quantity of resources than the minimum solicitation amount, depending on the responses received."

PREPA will strive to contract for the minimum quantities of renewable and energy storage resources identified in the Final Order, and if circumstances warrant, will present opportunities to its Governing Board and the Energy Bureau, in accordance with Regulation 8815, to exceed the specified minimum quantities. Further, if transmission studies indicate that significant system upgrades are required to support the Tranche 1 and 2 RFPs, PREPA will communicate these costs and upgrades to the Energy Bureau.

6. Planned Implementation Timeline

As the Energy Bureau has directed and as described in Section 3.3 (*Specific RFP Requirements*), each RFP Tranche will solicit energy resource proposals that can reach commercial operation within twenty-four (24) months of the execution date each Contract. PREPA may consider proposals with commercial operation commencement dates not to exceed thirty (30) months from the Closing Date, but such proposals will be disfavored; shorter development times will be given a higher score in the RFP evaluation process.

7. RFP Schedule

As described in Section 1.3 (*Procurement Process*), PREPA has developed, with the Energy Bureau's guidance and approval, a Procurement Plan to comply with the Modified Action Plan for renewable generation and energy storage resources to achieve compliance with the RPS. In accordance with Energy Bureau directives, PREPA plans to issue a series of RFPs (RFP Tranches) for the provision of renewable energy in support of attainment of Act 82's RPS goals, and for the provision of battery energy storage capacity in quantities needed to meet PREPA's peak load requirements and to satisfy requirements for the integration of renewable energy generation.

PREPA issued the Tranche 1 RFP on February 22, 2021. It expects to issue Tranche 2 on June 30, 2021. The expected timeline of the release of subsequent RFPs will be six (6) month intervals to be issued in sequence (i.e., every six (6) months, over the next three (3) years for a total of six (6) tranches of RFP releases). The procurement of resources may be front-loaded within the five-year period in order to allow time for construction, interconnections, and commissioning within the five-year Action Plan.

8. Adjustments for Distributed Generation (DG)

As specified in the Final Order, quantities of resources sought subsequent to the first two RFP Tranches may be adjusted if or as necessary to account for installations of DG that contribute to meeting overall quantities specified in the Modified Preferred Resource Plan, and for resources that PREPA identifies and contracts in excess of the minimum amounts required in each of the earlier RFPs. For purposes of the Procurement Plan, DG resources are resources added to the system outside of the RFP process.

PREPA will support the deployment of distributed generation resources under existing programs (e.g., net metering). In addition, PREPA will structure the RFPs issued under this Procurement Plan such that all resources and storage amounts can be aggregates of smaller installations (that is, VPPs are

explicitly allowed and will be able to compete on fair terms). As long as the T&D Operator has visibility into the VPP, and the characteristics of the distributed resource, including pricing and reliability, are comparable to resources provided on a utility scale, there is no reason VPPs cannot compete with utility-scale resources for provision of energy and storage capacity.

9. Evaluation Parameters

9.1A General

The Final Order and the Procurement Plan Resolution specified certain evaluation parameters to be employed in evaluating responses to an RFP. Proposals made in response to each RFP issued under this Procurement Plan shall indicate the proposed RFP Tranche, and shall address at least the following evaluation parameters:

- a. Least-cost, energy basis (measured on the basis of levelized cost of energy).
- b. Least-cost, capacity basis. The proposal should specifically describe the manner in which the project will provide ancillary services (e.g., frequency response, operating reserve, reactive support) in addition to capacity to meet peak load.
- c. Recognition of T&D System loss benefits associated with the selection of VPP and DG bids.
- d. Recognition of the potential that proposed resources will provide additional resiliency benefits and/or will permit avoidance of incremental T&D System costs.
- e. Estimated timeline for completing installation of resources, with faster installation timelines to be accorded preference.
- f. Technical superiority of location for interconnection purposes.
- g. Adherence to locational preferences closer to load.
- h. Community impacts and acceptance of proposed resource.
- i. Locational diversity around the island of Puerto Rico in proportion to load, within each MiniGrid region, and especially in MiniGrid regions exhibiting relatively less existing capacity in proportion to existing peak load.

9.1B Minimum Requirements of RFP Response

- a. **(General)** As a minimum, proposals will be expected to identify clearly their pricing structure, estimate the project's connection costs and impacts upon the existing T&D System, and provide a timeline for completing installation as described herein.
- b. **(Technical and Operational Capabilities Minimum Criteria)** Proponents shall demonstrate the following:

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- i. Ownership / establishment by Proponent (or, for a Proponent consortium, at least one (1) member of such consortium) of one (1) or more existing renewable energy and/or energy storage resources, including VPPs, (each, a “**Reference Project**”), with each Reference Project satisfying the following requirements:
 1. For renewable energy and/or energy storage resources other than VPPs:
 - A. experience developing, financing, constructing and operating such project;
 - B. compliance with the initial development timeline for such project;
 - C. utilization of cost-effective technology;
 - D. installed capacity of at least 20 MW;
 - E. utilization of technology similar to that which the Proponent intends to submit in its proposal under this RFP; and
 - F. direct or indirect ownership by the Proponent or its Affiliate of at least thirty-five percent (35%) of the legal entity which directly owns such Reference Project.
 2. For energy storage resources, experience developing and assembling the proposed system for such resource in at least one (1) commercial (non-demonstration) grid-connected installation;
 3. For VPPs:
 - A. experience aggregating multiple generation and/or storage resources; and
 - B. installed VPP capacity either (i) currently in commercial operation, supplying capacity and energy to one (1) or more purchasers, or (ii) contractually committed to supply capacity and energy prior to the second anniversary of the issuance of this RFP;
- ii. For each existing energy and/or energy storage project designated as a Reference Project, a certification confirming no material or sustained violation of Applicable Law, relating to any environmental matter involving the development, construction or operation of such project during the past three (3) years;
- iii. For each Reference Project, a certification confirming such project’s compliance with energy-related policies, practices, and regulations and all other Applicable Law during the past three (3) years; and

- iv. For each Reference Project, a certification confirming no record of Unsatisfactory Performance.

Each RFP shall require that all Proponents satisfy the minimum eligibility requirements set forth in Section 3.2 of the Tranche 1 RFP.

- c. **(Interconnection Requirements)** PREPA will view a Proponent's T&D System interconnection plan as a crucial factor in evaluating the delivery risk associated with each proposal submitted in response to an RFP. PREPA shall indicate to Proponents, to the best of its ability, the extent to which any transmission or distribution locational limitations could affect the cost and feasibility of interconnecting utility scale renewable or energy storage projects at various points on the T&D System. It will also, insofar as is practicable, identify limitations that could limit the location or geographic dispersion of resources to be aggregated as VPPs. Proponents must consider the following factors in any proposal submitted pursuant to any RFP Tranche:

- i. The physical limitations on the delivery of energy to the T&D System.
 - 1. Utility-scale energy resources (i.e., Energy Resources other than VPPs) can interconnect to the transmission systems at a voltage level of at least 38 kV.
 - 2. the capacity of an energy resource connecting to the 38 kV system cannot exceed 25 MW.
 - 3. the power generation / discharge capacity of a renewable energy resource and/or energy storage resources that will form part of a VPP at each point of interconnection to the T&D System cannot exceed 1 MW and shall comply with the applicable interconnection regulations; and
 - 4. for all VPP resources proposals, PREPA will give a preference to those resources connected to 13.2 kV feeders, the highest distribution voltage in Puerto Rico.
- ii. Projected system upgrade costs required by the additional energy injected onto the T&D System by the proposed resource.
- iii. Rights-of-way necessary to construct the transmission lines and interconnection facilities needed to connect the proposed resource to the T&D System.

Proponents (other than those proposing a VPP resource) shall (i) provide a detailed T&D System interconnection plan with their proposals, and (ii) ensure that the proposed transmission system or distribution system interconnection plan satisfies all applicable MTR requirements, as well as relevant requirements of Regulation 8915 or Regulation 8916, as applicable.

Each Proponent should exercise its best efforts to provide an accurate estimate of the Proponent's Estimated Interconnection Costs. Following PREPA's selection of proposals for further consideration in Phase II, PREPA will conduct a Feasibility Study on such projects to assess order-of-magnitude interconnection and required T&D System upgrade costs ("PREPA's Estimated Costs"). PREPA will cluster such proposals for interconnection studies. Such studies will analyze the impacts of integrating a group or cluster of Energy Resources at specific locations when ranking or selecting proposals for further consideration, in particular with regard to assessing any required network upgrades or the potential to utilize shared interconnection facilities across multiple projects. Following selection of proposals for Phase III, System Impact Studies followed by Facility Studies will be completed for final short-listed projects.

While each Proponent shall have the responsibility to fund all of the T&D System interconnection costs under the Contract, PREPA will permit a Proponent to adjust its price proposal in the Contract to the extent that PREPA's Estimated Costs exceed the Proponent's Estimated Interconnection Costs for purposes of allowing a Proponent to recover such excess costs through the Contract price. Where the Proponent's Estimated Interconnection Costs exceed PREPA's Estimated Costs, the Relevant Authority will correspondingly require a downward adjustment of the proposed Contract price to reflect a Proponent's need to recover interconnection costs lower than the Proponent's Estimated Interconnection Costs.

- d. **(Minimum Technical Requirements for Projects)** The Relevant Authority will prepare MTRs describing minimum technical requirements required for each technology group connected to the T&D System and include the MTRs in the RFP for:

- i. Utility-Scale Solar;
- ii. Wind; and
- iii. Energy Storage.

For VPP proposals, the RFP for Tranche 1 and Tranche 2 will invite Proponents to submit draft versions of MTRs together with their proposals. On the basis of this input, the Relevant Authority will prepare standard form MTRs for VPPs for issuance during Tranches 3 through 6.

- e. **(Financial Minimum Criteria)**

- i. Financial Capacity of Team: Proponent must demonstrate adequate financial wherewithal to complete the development of its proposed project.
- ii. Financial Capability of Team: Proponent must demonstrate adequate financial wherewithal to fulfill the terms of the Contract and Interconnection Agreements.

9.2 Phase I Quality Control Review

As described in Section 1.3 (*Procurement Process*), Joint Regulation 8815 establishes a three-phase selection process: (a) quality control review, (b) the Evaluation Committee review and recommendation, and (c) Contract negotiation. The purpose of the quality control review is to determine which proposals satisfy the minimum requirements outlined in an RFP. The Relevant Authority will notify each Proponent whether its proposal passed the Phase I quality control evaluation and whether such proposal will advance to Phase II.

The Relevant Authority's quality control review will use the information supplied by the Proponents in each proposal. Each Proponent shall provide the information listed in the Proposal Completeness Checklist by the Proposal Submission Deadline to be included in the evaluation.

During the quality control review, the Relevant Authority will determine which proposals satisfy the minimum requirements outlined in the RFP. The Relevant Authority (i) will reject any proposal that fails to comply with the Financial and No Disbarment Criteria, and (ii) reserves the right to reject any proposal for any reason whatsoever regardless of whether such proposal complies with such requirements in accordance with the RFP, in each case without scoring, and any such proposal will not advance to the next phase. The Relevant Authority will notify each Proponent whether its proposal(s) passed the quality control review and whether such Proponent will advance to Phase II.

9.3 Phase II

The Relevant Authority will publish a list of median price proposals for each technology group that will advance to Phase II on its website. Each selected Proponent shall deliver to the Relevant Authority the Proposal Security within seven (7) business days of such Proponent's receipt of notification of such selection.

During Phase II, the Evaluation Committee will review and evaluate each proposal in accordance with the selection criteria. For the Procurement Plan, the Evaluation Committee will likely select more than one Proponent. Phase II will be divided into a qualitative evaluation and a pricing evaluation. The Evaluation Committee will assign weights for each of the price-related and qualitative criteria. The Evaluation Committee may select one or more proposals to advance to Phase III.

- a. **(Phase II – Qualitative Evaluation)** In connection with its qualitative evaluation, the Relevant Authority will conduct Feasibility Studies and independently model interconnection and system upgrade costs, where possible analyzing clusters of potential projects, based on an initial selection of RFP responses that the Relevant Authority ranks high on its list of projects eligible for contracting. In addition, the Relevant Authority will evaluate the extent to which multiple projects have proposed or can be made to share the same interconnection facility, if reasonable and applicable for any given set of proposals. The Relevant Authority shall give priority to those proposals that provide resource installations at or technically close to the indicated priority locations. The Relevant Authority will evaluate the impact of each proposed resource on the T&D System and will endeavor to notify Proponents whose proposals will require additional network upgrades. The Proponents' proposal should include the Proponent's Estimated Interconnection Costs. The Relevant Authority's review will include:

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- i. verification that a Proponent has provided all information listed in the Proposal Completeness Checklist;
- ii. organization of the proposals into groups according to (1) the proposed technology, and (2) groups that will allow for distributed generation benefits to be recognized for resiliency and for avoided T&D System cost purposes;
- iii. a review of the information supplied by the Proponent in the RFP proposal data forms;
- iv. development of a qualitative score according to the information supplied by each Proponent for the proposed type of Energy Resource and technology, based on the qualitative evaluation criteria specified below;
- v. calculation of an initial qualitative score according to the information supplied by the Proponent for the proposed technology. The qualitative score will be based on technical viability, development status, developer experience, and financing plan and qualifications. The Evaluation Committee will prefer projects with faster installation timelines, and those with better technical locations for interconnection purposes;
- vi. calculation of the composite Phase II score from the weighted qualitative score; and
- vii. development of a list of preferred proposals from the highest scoring proposals within each technology category.

The Phase II qualitative evaluation will also consider the following criteria:

Table 0-3 — Phase II Qualitative Criteria

Item	Category / Criteria
A	Technical Viability
B	Development and Schedule Risk
C	Permitting Risk
D	Environmental Impacts
E	Contractor Experience
F	Financing Plan and Qualifications
G	T&D System Integration
H	Site Control
I	Community Impacts and Acceptance
J	Operations and Maintenance Plan
K	Additional Benefit of VPP
L	Contract Exceptions (if applicable)

The Phase II qualitative evaluation will use the information supplied by the Proponent in the proposal data forms and templates contained in the RFP Appendices, considering the following criteria:

- i. **(Technical Viability)** The Evaluation Committee will review each proposal for conformance to the technical requirements in the RFP including compliance with appropriate PREPA MTRs.
- ii. **(Development and Schedule Risk)** The Evaluation Committee will assess the completeness and feasibility of the proposed project implementation and evaluate the likelihood of meeting the milestone dates and expected performance.
- iii. **(Permitting Risk)** The Evaluation Committee will examine the Proponent’s permitting plan and schedule and the likelihood that the Proponent can obtain required permits. This examination will consider whether the Proponent has identified the relevant permits and approvals necessary for construction and operation of the proposed project.

- iv. **(Environmental Impacts)** The Evaluation Committee will assess the project’s overall impact on the environment, whether the project will likely result in potentially significant environmental impacts, and the degree to which potential impacts can be satisfactorily mitigated. This will include an examination of any known sensitive environmental features on or adjacent to the site such as waterways, wetlands, floodplains, archaeology and architectural resources, historic properties, degraded ambient air quality, contamination, ongoing hazardous materials remediation, threatened and endangered species, airports, residences or other sensitive noise receptors, and a discussion of storm-resistant features and other reliability features to determine the suitability of the project at the proposed site location.
- v. **(Experience)** The Evaluation Committee will evaluate the Proponent’s experience and success in developing projects of a design and size similar to the proposed project.
- vi. **(Debt Financing Plan and Qualifications)** The Evaluation Committee will evaluate the Proponent’s proposed financing plan and experience in successfully financing projects of a similar size and complexity. The evaluation will also determine if the Proponent has any financing commitment for the project that will be provided by a creditworthy entity that is likely to be acceptable in form and substance to the Relevant Authority.
- vii. **(T&D System Integration)** The project’s technical characteristics will be evaluated to identify those projects that address PREPA’s system needs as defined in the RFP and the IRP. The evaluation team will evaluate risks to reliability (voltage control, reactive capability, protection coordination, frequency response, etc.) and deliverability to the T&D System, as well as the potential for avoidance of T&D System costs and enhancement of system resiliency associated with particular project locations or configurations.
- viii. **(Site Control)** The Project Committee will assess whether a Proponent owns or leases the project site (and, in the case of a lease, will consider the alignment of the term of such lease with the term of the applicable Contract) or otherwise has the ability to obtain control over, and access to, such site prior to the occurrence of the “Guaranteed Construction Start Date” set forth in the template Contract. This evaluation criterion does not apply to proposals for VPPs.
- ix. **(Community Impacts and Acceptance)** The Evaluation Committee will review the proposal for potential socioeconomic benefits and harm to the community. The committee will assess known community support for or opposition to a Proponent’s project, including the Proponent’s plan to manage community relations.
- x. **(Operations and Maintenance Plan)** Proponents are asked in Appendix C of each RFP to provide information about their operations and maintenance plan, as applicable, including contract term, scope, experience, and pricing. Proponents proposing a VPP as a resource should provide detailed information concerning their plans to identify,

aggregate and contract for individual generation and storage resources that will be dedicated to such resource.

- xi. **(Additional Benefit of VPPs)** The Evaluation Committee will consider and evaluate the additional benefits that distributed resources procured as part of a VPP may provide, including (i) the potential to avoid transmission and distribution costs (including T&D System losses), (ii) the possible enhancement of local resiliency by serving critical or priority loads, and (iii) the potential for completion of any required installation in shorter periods, or more immediate availability as a capacity resource based on an existing installation, than would be true of a new-build project.

During the screening process, the Evaluation Committee may request additional information or clarifications from the Proponents. These requests, and any communications with a Proponent during the evaluation process, shall not be construed as contract negotiations. Requests made by the Evaluation Committee for additional information or clarifications will be in writing via email. Proposals with outstanding requests beyond the response period may be removed from consideration and further evaluation.

At the conclusion of the Phase II qualitative evaluation, the Relevant Authority will notify Proponents whether their proposals will advance for further evaluation of pricing proposals.

- b. **(Phase II – Pricing Evaluation)** The Phase II evaluation will determine the cost effectiveness of the shortlisted proposals. This detailed pricing evaluation will include and reflect information received in response to any clarifying questions, interviews, site visits, and other due diligence, and will consider the all-in costs that each proposal will likely impose on Ratepayers, to the extent that the evaluation team can quantify such costs. Such all-in costs will include:
 - i. contract charges, including pass through costs;
 - ii. costs for required transmission reinforcements;
 - iii. costs for required distribution reinforcements;
 - iv. system impacts including, but not limited to, impact on transmission transfer capability, and PREPA capacity requirements and deliverability; and
 - v. LCOE or, in the case of energy storage proposals, LCOS.

The LCOE or LCOS, as applicable, is defined as the present value of the estimated annual costs of a proposal or cost component of a proposal over the evaluation period (i.e., the proposed Contract term) divided by the equivalent present value of the energy (or capacity) that resource is estimated to produce over the same period. Levelized cost is expressed in \$/MWh or \$/kW-year.

Paragraph (b) (*Pricing Evaluation*) of Section 6.2 (*Phase II: Evaluation Committee Review and Recommendation*) of the RFP template sets forth the other pricing-related factors the Evaluation Committee will consider in the final pricing assessment during Phase II evaluation.

The Evaluation Committee will give preference in its evaluation to Proponents whose pricing proposals consider the future emergence of PREPA from protection under PROMESA and contain a price adjustment mechanism that would reflect PREPA's improved credit quality at such time. PREPA anticipates that Puerto Rico's emergence from Title III bankruptcy will make PREPA a more attractive contract counter-party, that project developers will factor this into their cost of capital calculations and that they will incorporate the results in their project's LCOE or LCOS. Proponents should identify any information they believe they will need from PREPA in order to conduct a pricing sensitivity analysis around Puerto Rico's pre- and post-emergence from Title III bankruptcy.

Following completion of the Phase II pricing evaluations, the Evaluation Committee will recommend proposals to proceed with Phase III contract negotiations as described in Section 1.3 (*Procurement Process*). Selection of a proposal for contract negotiations shall not be construed as a commitment to execute a Contract. During the period between the Relevant Authority's selection of proposals for Phase III evaluation and the date of execution of any Contract, the Relevant Authority will conduct additional due diligence on the proposals. This may include, but not be limited to, onsite visits, management interviews, environmental, legal and regulatory due diligence, detailed engineering assessments, and facility dispatch modeling.

10. Other Considerations

The Tranche 1 RFP solicits proposals for at least 1,000 MW of renewable energy and 500 MW of battery storage capacity resources. Greater quantities of renewable generation and energy storage resources may be selected if Proponents submit cost-effective energy resource proposals with feasible installation plans, thus accelerating the level of installations that would otherwise arise from subsequent RFPs. Energy storage bids can include MW and MWh from existing resources currently not contracted to PREPA, if they meet technical requirements for visibility, control and other related technical needs.

This Procurement Plan treats DG renewable resources as resources built and operated by PREPA's customers which offset demand and, for the most part, benefit from PREPA's net-metering programs. VPPs may aggregate DG, renewable resources and energy storage resources such that the VPP behaves, from the utility's perspective, as a single renewable energy resource. Proponents may submit VPP resource proposals that aggregate smaller installations, including existing facilities. VPP Proponents may participate in PREPA's net-metering programs to the extent that they elect this option, in accordance with the discussion of this subject set forth in Appendix A to the Procurement Plan Resolution, at item VII. 2.

Lessons learned in the solicitation of VPP resource proposals in the initial RFP Tranches will inform the procurement of VPP resources in subsequent RFP Tranches. In keeping with the Energy Bureau's directive in this regard, PREPA anticipates that data, insights and lessons learned from its conduct of

the initial RFP will be used in subsequent Tranches to (a) set realistic performance requirements (e.g., commercial terms); (b) assess the value that VPPs can provide (e.g., grid services); and (c) better gauge and potentially shorten the timeline for deployment and operation of VPPs based on its experience and best practices.

PREPA has commissioned a renewable generation integration study in order to assess the current capability of PREPA's grid to accommodate increased levels of renewable generation capacity. This study addresses the penetration of the maximum PV generation and energy storage system required to comply with the RPS guidelines of 40% renewable energy penetration by 2025 and includes both electrical and production cost/economic dispatch analyses. It also identifies, at a high level, preferred interconnection locations on T&D System based on the current capacity of the system and needed electrical system upgrades, in addition to providing a modeling basis for Feasibility, System Impact, and Facility Studies. The relevant findings from the renewable generation integration study will be made available to assist Proponents with their proposals. Thus far, the ongoing renewable generation integration analysis indicates that for the existing grid, the maximum acceptable penetration of renewable generation, given the current topology of the power grid without any additional electrical support, would be around 650 MW (existing plus new projects) before major system upgrades must be undertaken.

Each RFP will include an attachment that lists those substations where interconnection is considered feasible for utility scale installations, where it is technically possible to determine this. The list will furnish (a) explanatory caveats where uncertainties exist as to the range of potential interconnection capacity, and (b) the maximum quantities of renewable energy or battery storage system capacity that can be connected at each of these locations, for the purpose of indicating to developers where feasible locations are. The Relevant Authority is not bound by this information to accommodate any given MW amount at any given connection point, and it should not be construed as a limitation on the maximum amount of renewable energy or battery storage system MWs that can be connected to the grid.

Priority locations to be identified in the RFP and accompanying materials will include locations for utility scale and distributed generation renewable energy projects with energy storage. The Relevant Authority will strive to identify those locations at which interconnection of required energy and storage resources will enhance reliability and can be accomplished quickly.

The Relevant Authority will reflect in its procurement process explicit performance incentive metrics related to the timeliness and effectiveness of the Relevant Authority's procurement and interconnection of resources consistent with metrics reporting requirements being developed under Case No. NEPR-MI-2019-0007.

Appendix 1. Joint Regulation 8815

DRAFT

COMMONWEALTH OF PUERTO RICO
PUERTO RICO ELECTRIC POWER AUTHORITY
PUERTO RICO ENERGY COMMISSION

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
Pursuant to Act No. 83 of May 2, 1941, as amended, and Act No. 57-2014, as amended

Date of Approval by the Energy Commission: September 1, 2016

Date of Approval by the Puerto Rico Electric Power Authority: August 12, 2016

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ARTICLE 1 LEGAL BASIS; PURPOSE OF REGULATION

1.1 Legal Basis. This 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 AND OTHER RESOURCES (this “Regulation”) is promulgated by virtue of the power vested in the Puerto Rico Energy Commission and the Puerto Rico Electric Power Authority by Sections 6B(a)(ii), 6B(a)(iii) of Act No. 83 of May 2, 1941, as amended, and Article 6.3 of Act No. 57-2014, as amended.

1.2 Purpose of Regulation. The purpose of this Regulation is to establish a procurement, evaluation, selection, negotiation and award process for contracting with third parties for the purchase of energy and for the procurement, evaluation, selection, negotiation and award process for the modernization and upgrade of the generation fleet and other resources of the Authority, that is consistent and transparent, and that encourages and supports a climate of private sector innovation and investment in the Commonwealth to address the specific power generation needs of the Authority. In order to carry out the purposes of the Acts, this Regulation provides guidelines and procedures for, among others: (i) soliciting, obtaining and evaluating proposals by third parties; (ii) selecting the entities or individuals that will enter into agreements with the Authority; (iii) negotiating and awarding agreements; and (iv) defining the process for the approval by the Energy Commission of the final agreements to be executed.

ARTICLE 2 DEFINITIONS

Capitalized terms used in this Regulation but not defined herein will have the meaning given to such terms in the Act.

The following terms used in this Regulation have the meanings set forth below, except where the context clearly indicates a different meaning.

2.1 Acts: means Act No. 83 of May 2, 1941, as may be amended from time to time, including as amended by Act No. 57-2014; and Act 57-2014, as may be amended from time to time, including as amended by Act No. 4-2016.

2.2 Addendum: means a written supplement issued by the Authority after the issuance of a Request for Proposals, which includes changes or additions to (i) the terms and conditions of a Request for Proposal; (ii) the conceptual design or the plans and specifications of a Project, (iii) the terms or conditions of the related Contract, or (iv) any other document related to a Request for Proposals.

2.3 Affiliate: means, with respect to any Person, any other Person (i) that directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common control with, such Person.

2.4 Authority or PREPA: means the Puerto Rico Electric Power Authority.

2.5 Authorized Representative: means the member or members of the Project Committee and any other advisors designated by the Executive Director to support the Project Committee, including to negotiate with Proponents on behalf of the Authority, identified in the RFP as the single point of contact with Proponents during the RFP.

2.6 Award of Contract: means the approval of a Contract by the Board and the Energy Commission.

2.7 Board: means the board of directors of the Authority.

2.8 Business day: means a day other than a Saturday, Sunday or a day on which banking institutions in the Commonwealth are authorized or permitted under applicable law to be closed to the public.

2.9 Commonwealth: means the Commonwealth of Puerto Rico.

2.10 Competitive Range: means those Proposals received by the Authority in response to a Request for Proposals that the Project Committee determines, in its discretion, have a reasonable probability of being recommended for an Award of Contract.

2.11 Contract: means the agreement proposed, negotiated and executed between the Authority and the selected Proponent, which Contract shall be approved by the Board and the Energy Commission as provided in this Regulation.

2.12 Control: means possessing the power to direct or cause the direction of management and policies of a Person, whether through direct or indirect ownership of voting interests, by irrevocable contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

2.13 Energy Commission: mean the Puerto Rico Energy Commission, created under Act 57-2014, as amended.

2.14 Executive Director: means the Executive Director of the Authority.

2.15 Evaluation Criteria: means the criteria adopted by the Project Committee, in accordance with the nature of the RFQ or RFP to be issued, which will be used to evaluate, rank, select and recommend Proposals for rejection or award.

2.16 Individual Meeting: means a meeting or telephone conference held by representatives of the Project Committee with an individual prospective Proponents or a

Proponent, at which the prospective Proponent or Proponents will have an opportunity to raise questions and seek clarification related to the RFP, subject to Section 4.6 of this Regulation.

2.17 IRP: means the Integrated Resources Plan required under Act 57-2014, as may be amended from time to time and approved by the Energy Commission.

2.18 Person: means any natural person or legal entity organized under the laws of the Commonwealth of Puerto Rico, the United States of America, any of its states or territories, or of any foreign country, any federal agency, or any combination of the above. The term shall include any department, agency, municipal entity, government instrumentality, individual, firm, partnership, stock company, association, public or private corporation, or cooperative union or nonprofit entity duly constituted and authorized under the laws of the Commonwealth of Puerto Rico, the United States of America, any of its states or territories, or foreign country.

2.19 Pre-Proposal Conference: means a meeting or telephone conference prior to the due date of an RFP where all Persons who have registered their interest in participating per the instructions included in the RFQ or RFP, are invited to participate, raise questions and seek any clarification related to the RFP in accordance with Section 4.6 of this Regulation.

2.20 Project: means any project suitable for a procurement process under this Regulation based on a determination made by the Authority and in accordance with the IRP.

2.21 Project Committee: means the committee designated in accordance with Section 3.1 of this Regulation that shall receive and evaluate qualifications and/or Proposals received in an RFQ and/or RFP process, negotiate with the highest ranking Proponent or Proponents, as determined by the Project Committee in accordance with this Regulation, and make recommendation for the selection, negotiation, approval and signing of a Contract.

2.22 Proponent: mean a Person or its affiliated or related entities who has submitted a Proposal to the Authority pursuant to this Regulation, including those who submit a Proposal jointly under a consortium that complies with the provisions of the RFQ or RFP. Consortia that intend to submit proposals must comply jointly with the requirements of this Regulation and any other requirements that apply to consortia in the RFQ and/or RFP. Unless otherwise specified, any provision applicable to Proponents in this Regulation shall equally apply to the members of a consortium.

2.23 Proposal: means a written proposal made by a Proponent related to a Project in response to a Request for Proposals issued by the Authority.

2.24 Proposal Security: means a bond, guaranty, or other security posted in the form of legal currency of the United States of America, certified check or money order payable to the Authority, or through a letter of credit, a financial guaranty bond or guarantee issued by a bank or financial institution acceptable to the Authority (which in case of a surety or insurance company, must be authorized to issue financial guaranty bonds in the Commonwealth), required to be submitted by the Proponent with its Proposal under an RFP, to secure compliance by a Proponent with the requirements of this Regulation and the terms of the corresponding RFP, as applicable, and secure the execution by the Proponent of the Contract if selected for the Award of Contract. The Proposal Security will cover any expense, including but not limited to fees and expenses of advisors and consultants, and any damages that may be incurred or suffered by the Authority as a consequence of the failure by the Proponent to meet its obligations under the RFP. The amount of the Proposal Security applicable to each Project will be determined by the Project Committee and specified in the related RFP.

2.25 Request for Proposals or RFP: means the document that the Authority prepares, publishes and distributes, in accordance with Article 4 of this Regulation, requesting Proposals in connection with a potential Project or a portion thereof, as amended and supplemented from time to time.

2.26 Request for Qualifications or RFQ: means the document that the Authority prepares, publishes and distributes, requesting prospective Proponents to submit their qualifications to participate in an RFP process.

2.27 Selected Proponent: means the Person, or consortium, selected for Award of Contract for a Project with the Authority.

ARTICLE 3 PROJECT COMMITTEE

3.1 Composition and Responsibility of Project Committee. The Executive Director shall recommend candidates and the Board shall appoint the members of the Project Committee, which Committee shall be comprised of no less than five (5) members for each Project. The Project Committee shall assist in the preparation of the RFQs and RFPs, in the evaluation and selection of Proponents and in the negotiation of the terms of the Contract. The members of each Project Committee shall be designated in accordance with the nature of the Project and the specialized background necessary to understand the scope of the Project and the needs of the Authority. The Project Committee will not be deemed a committee of the Board. The Board may, in its discretion as recommended by the Executed Director, terminate a Project Committee or replace a Project Committee with another such committee. The Board may also, in its discretion as recommended by the Executed Director, remove any member of a Project Committee and make new appointments to a Project Committee, to the extent that such removal

and/or appointment is in the best interests of the Authority and goals pursued with the Project. The following requirements will apply to each Project Committee:

(a) The Board, at the recommendation of the Executive Director, shall designate the person who shall act as chairperson of the Project Committee. The chairperson of the Project Committee will designate a secretary and, at his or her option, an assistant secretary, who need not be a member of the Project Committee, and may designate any other member of the Project Committee to serve as chairperson in his or her absence.

(b) The Project Committee may designate any subcommittee according to Section 3.4 of this Regulation, and may request the Executive Director to assign advisors to support the Project Committee according to Section 3.5 of this Regulation.

(c) The Project Committee will carry out any additional task related to the selection, negotiation and award procedure contained in this Regulation, as requested by the Board.

3.2 Meetings of the Project Committee. The Project Committee will meet as often as is necessary to perform its duties and responsibilities as described in this Regulation. The chairperson of the Project Committee, or the member designated by the chairperson in his or her absence, will summon all members to and preside over all meetings of the Project Committee, will set the frequency and length of each meeting and the agenda of items to be addressed at each meeting. The chairperson will ensure that the agenda for each meeting, and to the extent available, all key documents to be considered in the meeting, are circulated in advance of the meeting to all the other members. A quorum will be required at all Project Committee meetings. A quorum will exist at any meeting of the Project Committee if a majority of its members are present. Once a member is present for any purpose at a meeting other than solely to object to

holding the meeting or transacting business at the meeting, the member will be deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting.

3.3 Actions of the Project Committee. Recommendations of, and approvals by, the Project Committee, including the determination of the Competitive Range and the recommendation to be presented to the Board for the Award of Contract, will require the affirmative vote of a majority of the members. The Project Committee jointly with the Executive Director will provide non-binding recommendations to the Board regarding the selection of any Proponent and the evaluation of any Proposal.

The Project Committee will keep a written record of the decisions and recommendations made and other actions taken by the Project Committee.

The secretary or assistant secretary of the Project Committee will keep a record of each meeting, keep custody of the Project Committee calendar, and carry out any other task related to his or her office, as required by the chairperson of the Project Committee.

The Project Committee meetings will be documented in a minute that will be reviewed and approved by its members and signed by the secretary or assistant secretary of the Project Committee after such approval is received.

3.4 Subcommittees of the Project Committee. The Project Committee, in its discretion, may appoint one or more subcommittees of the Project Committee which may include participants who are not members of the Project Committee, to provide technical or specialized assistance and advice to the Project Committee and the Authority in the process of evaluating prospective Proponents and Proposals, and negotiating the terms of a Contract. Each subcommittee will have such responsibility and shall carry out its proceedings as directed by the Project Committee. Notwithstanding the above, the ultimate determinations and

recommendations to the Executive Director and the Board shall be made by the Project Committee.

3.5 Advisors to the Authority and Project Committee. The Executive Director may appoint employees of the Authority or external consultants, advisors or agents to assist the Project Committee in the review of the Proposals and the selection and negotiation process for a Project, or provide any other assistance that is deemed necessary or appropriate in connection with an Award of Contract, including participating in the subcommittees of the Project Committee. The individuals or entities providing such assistance will participate in any evaluation and negotiation process conducted by the Project Committee as the Project Committee or subcommittee, as applicable, may deem necessary, but shall have no vote on any final determinations and recommendations of the Project Committee to the Board, which shall reside solely in the Project Committee.

ARTICLE 4 PROCESS TO ISSUE RFQS/RFPS, RECEIVE AND EVALUATE PROPOSALS

4.1 Creation of Project Committee. Once the Authority intends to pursue a Project, which Project shall be consistent with the IRP as approved by the Energy Commission, and its goals and objectives, the Authority will create a Project Committee. The Project Committee may also be constituted in advance to determine whether or not to pursue a Project.

4.2 Notification and Approval of RFP content by the Energy Commission. Prior to launching any public procurement process, and after receiving the approval of the Board to proceed with the proposed Project and procurement process, the Executive Director will notify in writing to the Energy Commission the recommendation of the Project Committee with respect to (i) the proposed Project, including all associated documents that explain the Project, (ii) the

proposed parameters to determine such profit margin and price escalators, (iii) consistency with the IRP approved by the Energy Commission, and (iv) compliance with this Regulation, the Acts and other laws and regulations related to procurement processes by the Authority and the powers of the Energy Commission. The parameters related to the profit margin and price escalators shall be based on industry costs and profitability benchmarks in accordance with the anticipated nature of the Project. The recommendation to the Energy Commission will also provide a detailed narrative, with specific examples, regarding how the proposed project and the terms of the Contract, as described in the proposed RFP and approved by the Board, complies with the IRP. The Energy Commission shall, within ten (10) days from receipt of the notification from the Executive Director, identify any additional information it deems necessary to conduct its evaluation. Upon receipt of such information, the Energy Commission will review and approve, reject or propose modifications to the Project or the parameters within forty-five (45) days from receipt of the notice of the recommendation from the Executive Director or the date in which all additional information, if any, requested by the Energy Commission is provided, whichever occurs later. If the Energy Commission does not respond within the specified forty-five (45) day period, the proposed Project and parameters shall be deemed approved by it. When the Energy Commission proposes modifications to the proposed Project, the above-mentioned forty-five (45) day period for approval or rejection of the proposed Project will commence from the date the modified proposal is notified to the Energy Commission. These communications shall be maintained confidential while the administrative competitive procurement process is ongoing.

4.3 Qualification of Proponents. In anticipation of an RFP or as otherwise required by the Board, the Project Committee may, but shall not be obligated to, conduct an RFQ process (which, for all intents and purposes under this Regulation, may take the form of a request for

expressions of interest, provided it ascertains the necessary information regarding the qualifications of participants) to identify those prospective Proponents that satisfy minimum standards of: (a) financial and bonding condition; and/or (b) technical and professional capabilities. Any such minimum standards will be specified in the RFQ (or in the RFP if no previous RFQ is issued) and will be related and proportionate to the subject matter of the anticipated Project. At a minimum, however, participants interested in becoming Proponents must meet the following requirements and conditions, which may by no means impair fair competition and the public interest, to wit:

- (i) At the time of execution of the Contract, the Proponent shall be a Person authorized to do business in the Commonwealth of Puerto Rico;
- (ii) The Proponent shall have available such corporate or equity capital or securities or other financial resources (including the ability to draw upon committed lines of credit) that, in the judgment of the Authority are necessary for the proper execution of the Project;
- (iii) The Proponent shall have a good reputation and the managerial, organizational and technical capacities, as well as the experience, to develop and administer the Project; and
- (iv) The Proponent (or, in the case of a consortium, each consortium member on its own behalf) shall certify that neither he or she, and in the case of a legal entity, its directors or officers, and in the case of a private corporation, the shareholders (or their equivalent) with direct or substantial control over the corporate policy, and in the case of a partnership, its partners, and in the case of natural person or legal entity, any other natural person or legal entity that is the alter ego or the passive economic agent thereof,

have been formally convicted for acts of corruption, including any of the crimes listed in Act No. 458 of December 29, 2000, as amended, whether in Puerto Rico or in any jurisdiction of the United States of America or in any foreign country. Likewise, the Proponent (or, in the case of a consortium, each consortium member on its own behalf) shall certify that the latter complies and shall continue to comply at all times with laws which prohibit corruption or regulate crimes against public functions or funds, as may apply to the Proponent, whether federal or State statutes, including the Foreign Corrupt Practices Act. For the avoidance of doubt, no member of a consortium shall be required to make certifications as to any other member of its consortium. The Project Committee may, in addition to such minimum standards, include other qualification requirements in the RFQ or RFP.

The RFQ will be announced by means of a public notice in accordance with the procedures and standards for RFP set forth in Section 4.4 of this Regulation, to the extent applicable.

The Project Committee, in making its evaluation of the qualifications of a prospective Proponent, may disqualify a prospective Proponent, thereby excluding such prospective Proponent from the RFP process, if the prospective Proponent fails to satisfy minimum standards of financial and bonding condition, or technical, professional ability, or such other criteria set forth in the RFQ or RFP.

If the Project Committee elects not to issue an RFQ before publishing an RFP for any Project, the Project Committee will make its evaluation of the qualifications of the prospective Proponents as part of the RFP process in accordance with the qualifications requirements contained in the RFP and this Section 4.3. If an RFQ process that meets the requirements of this

Sections 4.3 has been carried out for a particular Project, the Project Committee may rely on the results of such prior RFQ process in lieu of launching a new RFQ.

4.4 Issuance of Request for Proposals. Except to the extent a prior RFQ process for the related Project had been effected by means of public notices providing the same or similar information to be provided in the RFP, the Project Committee will solicit proposals from prospective Proponents by means of a public notice of a Request for Proposal for each Project. The RFP will be published by the Authority in one newspaper of general circulation in the Commonwealth, in the Internet at the website of the Authority and the Energy Commission, and, in the discretion of the Project Committee, in one or more national or international journals. The Authority may also employ such other methods and processes, including other means of electronic communication or roadshows, as it deems advisable in order to disseminate the RFP. The publication and dissemination of an RFP in the above referenced fashion shall be considered to provide reasonable notice to the largest number of potential qualified Proponents that can be reasonably anticipated to submit qualified Proposals.

The Project Committee may also solicit Proposals directly from prospective Proponents through a notice of Request for Proposal if it believes that such entities may be qualified to participate in a specific Project.

When a prior RFQ shall have been conducted and qualified prospective Proponents selected, the Authority may determine in its discretion to distribute the RFP only to such qualified proponents.

4.5 Content of the Request for Proposals. The RFP will include the following items, without it being construed as a limitation or that their order defines their importance, unless otherwise approved by the Board and the Energy Commission, in its discretion:

(a) a description of the Project that would be developed and/or operated and its importance based on the IRP;

(b) a description of the proposed schedule by which all steps of the procurement process, including an anticipated schedule for Individual Meetings and Pre-Proposal Conferences, are expected to be implemented and completed;

(c) a due date, time and method for submission of (i) requests for clarification or information and (ii) the Proposals and the place where Proposals shall be submitted;

(d) instructions as to the format in which to submit Proposals, to the extent different than those set forth in this Regulation, and the minimum information and materials that must be submitted in order for the Proposals to be considered complete;

(e) any options or alternative proposals allowed as further described in this Regulation;

(f) applicable minimum Proponent eligibility requirements, scoring criteria and minimum resource size solicited;

(g) applicable minimum Proposal Evaluation Criteria that will be used in evaluating the Proposals and the Proponents, including any unique capabilities or qualifications which will be required of Proponents if a related RFQ has not been previously issued (or no prior unrelated RFQ is being relied on);

(h) any applicable Proposal Security;

(i) if applicable, a statement as to any funding contingencies or other conditions, contingencies, approvals, authorizations, or certifications which are required for award or execution of a Contract;

(j) a draft of the proposed Contract or summaries of its key terms and conditions, specifying the manner in which Proponents will be allowed to submit comments or suggestions to the draft Contract, provided that any revised draft of a Contract proposed by the Authority will be distributed to all Proponents;

(k) the parameters approved by the Energy Commission before issuance of the RFP in connection with profit margins and pricing escalators that will be allowed under the Contract as provided in Section 4.2 of this Regulation. These pricing escalators and profit margins will be based on ranges of acceptable profitability for similar projects in the industry, taking into account approximate construction costs, required returns for third parties and PREPA, and factoring in potential risk premiums reflecting PREPA's unique credit situation. PREPA will make Proponent profitability estimates based on known contract terms, utilizing approximate project costs and escalations based on industry benchmarks and similar customary indicators. The parametric ranges for each specific RFP will be reviewed upfront by the Energy Commission and their approval is subject to the result of the evaluation conducted by the Energy Commission.

(l) the Authorized Representative who will serve as single point of contact for communications during the RFP;

(m) a policy statement encouraging the participation of local suppliers, contractors, advisors and investors as advisors or consortium members in potential Projects; and

(n) any other applicable terms and conditions which may be useful to, or should be required from, the Proponents, as determined by the Board.

Notwithstanding the foregoing, any requirements included in the RFP may be modified through the issuance of an Addendum by the Authority pursuant to Section 4.6 of this

Regulation, provided however that any Addendum that modifies the proposed Project or the parameters subject to the approval of the Energy Commission, specifically items (a) and (l), shall be subject to approval by the Energy Commission prior to the issuance of the Addendum.

4.6 Requests for Information or Clarification of an RFP. The prospective Proponents may seek clarification, explanation or interpretation of the RFP only as provided in this section.

A prospective Proponent may request from the Authority a clarification, explanation or interpretation of any matter contained in the RFP up to fifteen (15) days (or such greater or lesser number of days as specified in the RFP) prior to the related due date for Proposals specified in the RFP. Any such request from prospective Proponents must be made in writing and must be specific and reasonable as to the information requested. The Project Committee shall have the discretion to abstain from addressing Requests for Information or Clarification that do not reference specific pieces of information or that are determined by the Project Committee to be too broad, vague, burdensome or irrelevant, or if a Request for Information solicits information that is subject to confidentiality obligations by the Authority.

After issuance of the RFP, representatives from the Authority and the Project Committee may participate in one or more Individual Meetings and Pre-Proposal Conferences. Questions pertinent to the RFP that are presented at an Individual Meeting or Pre-Proposal Conference that the Project Committee consider may be of general interest to all prospective Proponents, the Authority's response thereto, and any other written response by the Project Committee to written requests from prospective Proponents will be compiled in one or more Addendum and circulated to all prospective Proponents that have registered for the process; provided that the Addendum shall not disclose the identity of the Proponents that have submitted Requests for Information or

Clarification. Only written responses provided by the Project Committee will be official. Any other type of communication with any officer, employee or agent of the Authority or the Project Committee, including any oral response during any Individual Meeting or any Pre-Proposal Conference, will not be considered an official response of the Authority or of such committee.

A Proponent may be permitted under the terms of the RFP to request the confidential treatment of all or a portion of a Request for Information or Clarification to the extent such Request for Information or Clarification contains information identified by such Proponent to the Authority as proprietary or as a trade secret, and the Project Committee shall have the right to accept or reject in its reasonable discretion such request for confidential treatment.

4.7 Preparation of Proposals. Proposals should provide a straightforward and concise description of the Proponent's capabilities to complete or perform the proposed Project. Emphasis should be placed on completeness and clarity of content. In addition, unless otherwise specified in the RFP, Proposals submitted for consideration must comply with the following requirements, in addition to any other requirements specified in the RFP:

(a) All information requested under the RFP must be submitted. Proponents failing to submit all information requested by the RFP may be given an opportunity to promptly submit missing information but shall be given a lowered evaluation of their Proposal. Proposals that lack critical required information may be rejected.

(b) Proposals should include a comprehensive scope of work, schedule for completion of the Project and provide enough information about the Project to determine whether it satisfies the Evaluation Criteria.

(c) All Proposals must be submitted in both electronic format and in the number of hardcopies requested in the RFP.

(d) Proposals must include an executive summary and use cross-references rather than repetition in addressing the items in the RFP.

(e) The financial plan for the Project must contain enough detail so that an analysis would reveal whether the proposed financing is feasible. The financial plan must disclose the full extent of any expected public sector financing and/or concession commitments, as well as sufficient information to verify compliance with, and compare with other Proposals, the profit margins and escalator parameters approved by the Energy Commission for the Project.

4.8 Submission of Proposals. Proposals, including any Alternative Proposals approved for submission, will be delivered to the Authority on or before the due date set in the RFP for receipt of Proposals in accordance with the instructions contained in the RFP and, unless otherwise specified in the RFP, must comply with the following requirements:

(a) Proponents will be required to deliver such number of hard copies as specified in the RFP and one (1) electronic copy in searchable portable document format (“pdf”) of their Proposal, unless otherwise noted by the Authority in the RFP.

(b) The Authority will designate one contact on behalf of the Authority (which may be an individual, department, or electronic or physical address) to receive all Proposals and to act as the point of contact for each RFP process. In the absence of such a designation, Proposals will be delivered to the attention of the General Counsel of the Authority.

(c) For purpose of this Regulation, a Proposal will be considered filed at the Authority on the hour and date it is stamped as received at the designated contact address.

(d) The Proposal cover page must include the title of the Proposal, the name and address of the Proponent, the Person authorized to act on behalf of the Proponent and his or her email address and telephone and fax numbers. Unsealed envelopes or packages will not be

accepted. Each RFP will include more specific instructions and details about segregating envelopes and other submittal instructions.

(e) Any Proposal submitted by mail or personally delivered by the Proponent or its representative which is received after the date specified in the RFP may be rejected and returned to the Proponent unopened. The Project Committee may, in its discretion, agree to grant an extension to the submission deadline if requested by a Proponent prior to the due date specified in the RFP. An extension of the submission deadline upon the request of a Proponent may only be granted for a reasonable excuse and must be offered to all Proponents without discrimination.

(f) Proposals received on or before the due date set in the RFP will be stamped (date and time of receipt) and will be kept in the custody of the Authority. Such Proposals will not be opened until the date and time established in the RFP for the opening of the Proposals.

(g) Proposals will not be read publicly. Copies of the Proposals will not be generated by the Authority. Only the members of the Project Committee, the Energy Commission and other persons designated by the Board or the Executive Director will have access to the Proposals during the selection and evaluation period, including profit margins and escalators included in the negotiated Contract. After the conclusion of an RFP process, the Authority will make Proposals and other elements of the administrative record available for review except for those portions that are confidential or have proprietary information or that would clearly and adversely affect the financial, competitive or bargaining position of the Authority and/or the Proponent as identified and requested by Proponents and determined by the Authority in accordance with applicable laws and regulation.

(h) Failure by a prospective Proponent to submit a compliant Proposal within the period specified in the RFP will preclude such Proposal from consideration by the Authority and the Project Committee.

(i) Proponents who submit a Proposal may be required to give one or more oral presentations of their Proposal to the Project Committee.

(j) As further provided under Section 4.14 of this Regulation, Proponents, other than members of a consortium, will not discuss or communicate, directly or indirectly, with any other Proponents(s) or any director, officer, employee, consultant, advisor, agent, representative or team member of any other Proponent regarding the preparation, content or representation of their statements of qualifications under an RFP or Proposals. Statements of qualifications and Proposals will be submitted without any connection, knowledge, comparison of information, or arrangement, with any other prospective Proponent or any director, officer, employee, consultant, advisor, agent, representative or team member of any other prospective Proponent. By submitting a response to an RFQ or RFP, a Proponent, on its own behalf and as authorized agent of each firm, corporation or individual member of a consortium or the Proponent, represents and confirms to the Authority, with the knowledge and intention that the Authority may rely on such representation and confirmation, that its response has been prepared without collusion or fraud, and in fair competition with responses from other Proponents. The Authority retains the absolute discretion of disqualifying any Proponent or Proposal in respect to which the Authority has reasons to believe that there has been any collusion or fraud involved.

4.9 Submission of Alternative Proposals. Prior to the deadline for submitting proposals under the RFP, Proponents may submit an alternative technical or design concept in response to the RFP (an "Alternative Proposal"), provided it clearly explains the justification

behind providing separate or Alternative Proposals. A Proponent submitting an Alternative Proposal must continue to comply with the RFP in all respects, including submitting a Proposal in accordance with the Project requirements specified therein. In order for an Alternative Proposal to be considered by the Authority, it must comply with the following eligibility requirements:

(a) Alternative Proposal must integrate with, and must not conflict or be inconsistent with, the Project requirements outlined in the RFP.

(b) Alternative Proposal must not change the nature or purpose of the Project and must achieve the goals desired from the RFP.

(c) Alternative Proposal may not result in delays in the proposed Project timeline under the RFP.

(d) Alternative Proposal must demonstrate, in quantifiable terms, the savings and gains to the Authority in terms of time, cost or the allocation of economic risks, rights and remedies that would result from adopting such Alternative Proposal.

(e) Alternative Proposal must not require burdensome additional permits or authorizations that would not otherwise be required under the RFP.

For the avoidance of doubt, the Authority retains the right to reject any Alternative Proposal and it may exclude such Alternative Proposal from being considered if it does not comply with the requirements of this Section 4.9 and any other specification provided in the RFP.

4.10 Bidding Fee. A bidding fee will be determined by the Authority on a case by case basis and will be included in the RFQ and/or RFP for the proposed Project. Failure to pay the bidding fee shall suspend consideration of a Proposal. All fees shall be paid in the form

established by the Authority in the RFP. Costs and expenses incurred by Proponents in connection with participating in any RFQ and RFP processes, including to prepare and present their Proposals, negotiate the Contract and execute it, shall be the sole responsibility of each Proponent. The Authority shall not be responsible to reimburse or in any way compensate Proponents for such costs and expenses.

4.11 Modification of Proposals. The Project Committee will only accept a modification to a previously submitted Proposal if the modification is received before the due date specified in the RFP for such Proposal. All modifications will be in writing and will be executed and submitted in the same form and manner as the original Proposal in accordance with the terms of the RFP.

4.12 Cancellation of RFP. The Board upon recommendation of the Executive Director and the Project Committee, may cancel an RFP process at any time. If the Executive Director and the Project Committee recommend that the RFP be cancelled, they shall indicate the reason or reasons for such recommendation. The Authority then may conduct a new RFP or take any other action the Board deems appropriate upon recommendation of the Executive Director.

4.13 Communications with the Authority. The Proponents or their representatives shall not contact or communicate with the Authority or its representatives during any stage of an RFP process, including during the evaluation or the negotiation process, other than those representatives of the Authority that have been designated as Authorized Representatives pursuant to Section 5.1(c) of this Regulation, and only under the circumstances permitted in the RFP. Any Proponent (including any member of a consortium) that wishes to communicate with the Authority in connection with other matters unrelated to the RFP process must first receive the consent of the Project Committee. Communications by Proponents with the Authority that

compromise the integrity of the RFP process shall not be allowed and shall result in disqualification of such Proponents from the RFP process.

4.14 Non-Collusion Obligation. As required under Section 4.09(j) of this Regulation, Proponents in an RFP are prohibited from undertaking any activities of a collusive nature. Collusive activities include any consultations, communications or agreements among Proponents that aim to restrict competition or impact the Project price during the process. Proponents participating in the RFP will be required to execute non-disclosure agreements with the Authority and shall not be permitted to discuss among themselves the nature or contents of their Proposals or their communications and meetings with the Authority.

ARTICLE 5 EVALUATION AND SELECTION PROCESS

5.1 Evaluation Process. Unless otherwise specified in a particular RFP, the Project Committee will subject Proposals submitted under an RFP process to the following three-phase evaluation, selection and negotiation process, as applicable. All Proposals, evaluations, discussions and negotiations will be kept confidential throughout the evaluation, selection and negotiation process until the signing of the Contract, subject to the provisions of this Regulation:

(a) Phase One: Quality Control Review. The Project Committee will determine which Proposals passed the quality control review by satisfying the minimum requirements outlined in the RFP and this Regulation. Failure to meet the Evaluation Criteria and other conditions specified in an RFP or this Regulation shall constitute sufficient cause for failing the quality control review.

Each Proponent will be notified in writing by the Project Committee that its Proposal has either failed or passed the quality control review and whether it will be advanced to Phase Two. The Project Committee may extend the duration of the Phase One quality control

review, in its discretion, due to the volume of Proposals, the complexity of Proposals, the need for additional information, timely cooperation by the Proponents, or other reasonable circumstances. The Project Committee may reject Proposals that: (i) are incomplete; (ii) do not address the requirements of the RFP; or (iii) do not comply with the requirements of this Regulation. Proposal Security will be returned to those Proponents which Proposals are rejected in Phase One.

The Project Committee may, in its discretion, disregard any error or defect in the documents of any Proposal, as long as such matters can be corrected or clarified without prejudice to the Authority. The Project Committee may also reject any and all Proposals submitted in this Phase One, if deemed in the best interests of the Authority.

If only one Proposal is received, such Proposal may be considered and advanced to Phase Two if the Board, as recommended by the Project Committee and the Executive Director, determines that it is in the best interests of the Authority to do so.

(b) Phase Two: Project Committee Review and Recommendation.

The Project Committee will review and evaluate all Proposals that passed the quality control review. Consistent with the policy goals of transparency and accountability, the Project Committee will establish a publicly accessible anticipated schedule for the review of the Proposals and the negotiation of the Contract, if required. Moreover, at any time during Phase Two, the Project Committee may request additional information from a Proponent regarding its Proposal in order to assist the Project Committee in its review and evaluation of the Proposal. Based upon the review of the Proposals, the Project Committee will select one Proposal or may not select any Proposal. In the event the RFP calls for competitive negotiations, the Project Committee may select one or more Proposals. If none of the Proposals are selected

by the Project Committee, each Proponent who had advanced to Phase Two will be notified in writing and their Proposal Security returned.

If an RFP calls for a competitive negotiation process, the Project Committee will review and consider the Proposals based on the Evaluation Criteria to determine the ranking of each Proposal. Based on such ranking, the Project Committee will determine the Proposals that are within the Competitive Range. The Project Committee shall make recommendations to the Executive Director, and then, with his concurrence, jointly to the Board to, (A) carry out discussions and negotiations with more than one Proponent at the same time, whose Proposals are within the Competitive Range as contemplated in Section 5.1(c) below; or (B) negotiate with the one Proponent achieving the highest rank and, if unsuccessful, continue successive negotiations in strict order of ranking given to each Proposal, as contemplated in Section 5.1(d) of this Regulation. The Board, based on the Executive Director and Project Committee's joint recommendations, shall determine which approach the Project Committee will follow.

The Proponents whose Proposals do not fall within the Competitive Range, as defined in Section 2.9 of this Regulation, will be notified in writing and their Proposal Security returned.

(c) Phase Three (A): Negotiations with Multiple Proponents. If the Project Committee has elected to carry out discussions and negotiations with Proponents whose Proposals fall within the Competitive Range, such Proponents will receive a written notification containing the details and explaining that negotiations will be conducted according to the following procedures:

(i) No statement made or action taken by the Board, the Executive Director, the Project Committee, any employee or officer of the Authority, or any advisor or consultant to or other agent or representative of the Authority during the discussions and negotiations will bind the Authority related to the particular RFP in any way. Only the Contract, when effective in accordance with its terms, will be binding on the Authority.

(ii) Each Proponent who falls within the Competitive Range may be invited to one or more meetings with the Authorized Representatives to discuss, and answer questions with respect to, any aspect of its Proposal.

(iii) The content and scope of each meeting with each Proponent will be determined by the Project Committee, based on the content of and circumstances relating to the Proponent's Proposal. The purpose of each meeting will be to clarify any doubts as to the requirements of the RFP and confirm that the terms of the Contract are understood; improve technical or other aspects of the Proposal in an effort to assure compliance with the specifications and performance requirements; discuss the basis of the proposed economic terms in an effort to improve the economic terms for the Authority; and discuss any other pertinent details of the Proposal so as to result in a better Proposal and Contract for the Authority.

(iv) If any meetings are held with a Proponent who falls in the Competitive Range, then all Proponents who are within the Competitive Range will be given an opportunity to discuss and review their Proposals with the Authorized Representatives. The discussions, however, will be based on the facts and circumstances relating to each Proposal, as described in paragraph (ii) above. The information discussed in such meetings may vary for each Proponent.

(v) The Project Committee and the Executive Director, or others whom the Board may designate, will:

(1) Establish procedures and schedules to carry out the discussions and to control the meetings;

(2) Advise the Proponent as to deficiencies in its Proposal so that it is given the opportunity to meet the requirements of the Authority;

(3) Attempt to resolve any uncertainties concerning the Proposal, and otherwise clarify the terms and conditions of the Proposal;

(4) Address any suspected mistakes that may be found to exist;

(5) Provide the Proponent with an opportunity to submit any modification to the economic terms, technical aspects or any other aspects of its Proposal which may result from the discussions, or the opportunity to provide additional documentation or analysis to assist the Project Committee in assessing the feasibility of the Project and the Proponent's qualifications; and

(6) Keep a record of the date, time, place, and attendees of the meetings.

(vi) After each interview or meeting with any Proponent, the Project Committee may require the Proponent to submit in writing confirmation of any clarification of a Proposal discussed in the meeting within the timeframe discussed during the meeting.

(vii) Discussions and negotiations may be carried out in whole or in part through written or telephone communications without in-person meetings or interviews, at the discretion of the Project Committee.

(viii) After such discussions and parallel negotiations, the Project Committee may, in its discretion, request “best and final offers” from Proponents within the Competitive Range in response to the discussions and negotiations held or proceed to negotiations with one of the Proponents within the Competitive Range which may culminate in an Award of Contract.

(ix) If the Project Committee determines to conduct a “best and final offer” process, additional discussions or negotiations may be conducted after the Project Committee receives the “best and final offer,” if the Project Committee determines, in its discretion, that such additional discussions or negotiations are in the Authority’s best interest to improve any previous Proposal or Proposals. As part of such discussions, the Project Committee may request a further resubmission of Proposals or, if no improvement or more beneficial terms are obtained for the Authority, the Project Committee may proceed to negotiate with the Proponent who submitted the highest ranking Proposal pursuant to the process established in Section 5.1(d) below.

(d) Phase Three (B): Negotiations with Highest Ranking Proponent. If the Project Committee elects to carry out discussions and negotiations with the Proponent whose Proposal received the highest rank, the Project Committee will notify in writing the Proponents of the Proposals which fall within the Competitive Range but were not the highest ranking Proponent or failed to provide a better Proposal after the Project Committee conducted negotiations with multiple Proponents under Section 5.1(c) above, that negotiations will be conducted with the highest ranking Proponent. The highest ranking Proponents will receive a written notification containing the details and explaining that negotiations will be conducted according to the following procedures:

(i) No statement made or action taken by the Board, the Project Committee, any employee or officer of the Authority, or any advisor or consultant to or other agent or representative of the Authority or of the Project Committee during the discussions and negotiations will bind the Authority or the Project Committee in any way. Only the Contract, when effective in accordance with its terms, will be binding on the Authority. The Proponent may not contact or communicate with the Authority, its representatives or the Energy Commission, other than with Authorized Representatives during the negotiation process and only as provided in this Regulation and in any specific instructions provided by the Project Committee.

(ii) The Proponent with the highest ranking which falls within the Competitive Range will be invited to one or more meetings with the Authorized Representatives to discuss, and answer questions with respect to, any aspect of its Proposal.

(iii) The content and scope of the meetings with the Proponent will be determined by the Project Committee, based on the content of and circumstances relating to the Proponent's Proposal. The purpose of such meeting will be to clarify any doubts as to the requirements of the RFP and confirm that the terms of the Contract are understood; improve technical or other aspects of the Proposal in an effort to assure compliance with the specifications and performance requirements; discuss the basis of the proposed economic terms in an effort to improve the economic terms for the Authority; and discuss any other pertinent details of the Proposal so as to result in a better Proposal and Contract for the Authority.

(iv) The Project Committee and the Executive Director, or others whom the Board may designate, will:

(1) Establish procedures and schedules to carry out the discussions and to control the meetings;

(2) Advise the Proponent as to deficiencies in its Proposal so that it is given an opportunity to meet the requirements of the Authority;

(3) Attempt to resolve any uncertainties concerning the Proposal, and otherwise clarify the terms and conditions of the Proposal;

(4) Address any suspected mistakes that may be found to exist;

(5) Provide the Proponent with an opportunity to submit any modification to the economic terms, technical aspects or any other aspects of its Proposal which may result from the discussions, or the opportunity to provide additional documentation or analysis to assist the Project Committee in assessing the feasibility of the Project and the Proponent's qualifications; and

(6) Keep a record of the date, time, place, and attendees of the meetings.

(v) After each interview or meeting with the Proponent, the Project Committee may require the Proponent to submit in writing confirmation of any clarification of a Proposal discussed in the meeting.

(vi) Discussions and negotiations may be carried out in whole or in part through written or telephone communications without in-person meetings or interviews, at the discretion of the Project Committee.

(vii) Additional discussions or negotiations may be conducted after the Authority receives a revised Proposal. If negotiations are not successful the Project Committee

may at any time discontinue further negotiations and discussions with any Proponent, and may commence negotiations with the next highest ranking Proponent as described in this section.

(e) Subject to the Authority's right to reject any or all Proposals and subject to the Energy Commission approval of the final Contract to be negotiated, the Authority will select the Proposal considered most advantageous to it, considering the Evaluation Criteria.

(f) Prior to the Award of a Contract, information related to Proposal or its evaluation will not be discussed with anyone other than the Proponent who submitted it and personnel involved in the evaluation and selection process.

(g) The RFP evaluation process will last no more than ninety (90) days, unless circumstances outside the control of the Project Committee require such process to be extended.

(h) Proposals will be evaluated on both price or cost criteria, such as price or service fee, and relevant system upgrade costs (when applicable), as well as non-price terms such as Proponent experience constructing and operating similar facilities, project risks and proposed risk mitigation measures, and other pertinent criteria. Proposals will also be evaluated by the degree to which they conform to the requirements established in the standard form of contracts included as part of the RFP.

(i) The respective scoring system of all Evaluation Criteria should be clearly defined in the RFP.

5.2 Amendment to Procurement Process. Nothing in this Regulation shall limit the Authority's power to amend the procurement process set forth herein pursuant to an amendment to this Regulation or to modify it in connection with a particular RFP in the manner set forth in such RFP to the extent not in conflict with the Acts and other applicable law.

ARTICLE 6 SELECTION OF PROPONENTS

6.1 Disqualifying Events. The Project Committee shall treat as ineligible and shall not select a Proponent in accordance with this Regulation if it comes to the attention and knowledge of the Project Committee, after a Proponent has been qualified, that the Proponent or any affiliated Person has been convicted of any of the offenses set forth in Act 458-2000, as amended. Any Person by virtue of its participation in an RFQ or RFP process, authorizes the Authority to apply to the relevant competent governmental authority to obtain further information regarding the prospective Proponent or Proponent and in particular, details of convictions of the offenses listed in Act 428-2004.

6.2 Other Grounds for Disqualification. The Project Committee may treat a Proponent as ineligible, or decide not to select such Proponent or approve an Award of Contract to such Proponent on one or more of the following grounds, namely that such Proponent (or any of its members in the case of a consortium):

(a) is bankrupt or insolvent, or shall have made a general assignment for the benefit of its creditors, or any proceeding shall have been instituted by or against it seeking to adjudicate it bankrupt or insolvent, or seeking liquidation or winding up, protection, composition of its debts or any similar relief under any law relating to bankruptcy, insolvency or reorganization or relief of debtors;

(b) makes a formal, public announcement that it is unable to or intends not to pay its debts and obligations as they become due;

(c) has been convicted or has pled guilty in Puerto Rico or in any jurisdiction within the United States or foreign jurisdictions, of any of the criminal offenses set forth in Act 428-2004, including not only the Proponent's but the Proponent's and the respective consortium

member's President(s), Vice-president(s), executive director(s) or chief executive officer(s), managing member(s), member(s) of the board(s) of directors, or persons occupying equivalent positions, as required under Act No. 56-2014.

(d) has not fulfilled its obligations relating to the payment of taxes under the laws of the Commonwealth or the relevant jurisdiction in which it maintains its principal operations; or

(e) has engaged in collusive acts or is guilty of serious misrepresentation in any information provided to the Authority or the Project Committee or otherwise provided to comply with this Regulation;

(f) has experienced a material change in the nature of its business or its financial condition since qualifying to participate in the RFP;

(g) fails to comply with any substantive requirement of the RFP; or

(h) is otherwise in material breach of this Regulation.

6.3 Information as to Financial Condition. In assessing whether a prospective Proponent or Proponent meets any minimum standards of financial condition required by the Project Committee for the purpose of Section 4.4 of this Regulation and in selecting the Proponents under an RFQ or an RFP, the Authority may take into account any of the following information:

(a) appropriate statements from the principal bank(s) of the Proponent;

(b) financial statements for the previous three fiscal years; and

(c) any other information acceptable to the Authority that would allow the Proponent to demonstrate its financial condition.

The Project Committee shall specify in the RFQ, the RFP or any other notice or invitation for a proposal, the financial information which the Proponent must provide to comply with the applicable minimum standards of financial condition.

ARTICLE 7 CONTRACT AWARD

7.1 Approval of the Contract; Preparation of Report

(a) Upon completion of the negotiation for the Contract, the Project Committee shall prepare a report, which shall include the reasons for entering into the Contract, the reasons for selecting the chosen Proponent, a description of the procedure followed, including comparisons between the favored Proponent and other proposals presented, an explanation of how the pricing terms included in the Contract comply with the parameters established in the RFP and previously approved by the Energy Commission, as well as all other information pertinent to the procedure followed and the evaluation conducted. The report should detail the evaluation by the Project Committee of each of the steps in the competitive procurement process, including Proponents qualifications, Proposals evaluations, and selection of a final shortlist, as well as, its assessment regarding whether the process was conducted fairly and transparently.

(b) The report and the proposed Contract as negotiated shall be presented for the approval of the Executive Director and the Board not later than thirty (30) days after completion of the negotiation of the Contract, or such longer period approved by the Board. The Board shall have the option to reject or accept the proposed Contract or require it to be further negotiated with the Proponent.

(c) Should the Board reject the Contract, the Authority may choose to continue negotiating with the favored Proponent if the Board reasonably determines that

continuing to negotiate with the Proponent may result in curing the grounds for rejecting the Contract. If an agreement cannot be reached within a reasonable period as determined by the Board, the Authority may begin negotiations with the second best and subsequent Proponent or Proponents from the list of evaluated Proposals, if the Project Committee, in its reasonable judgment, and as approved by the Board, determines that such second-best Proposal or Proposals, as they may be further improved through the negotiation process, present sufficient benefits to justify continuing with the negotiations under the RFP process at hand.

(d) If the Board approves the proposed Contract, a copy of the report, along with the proposed Contract, shall be submitted to the Energy Commission for their evaluation. The Commission shall have the authority to review the terms of the Contract to ensure compliance with the previously approved terms of the RFP and the form of Contract that was included in such RFP. The Energy Commission will also confirm that changes in the scope of the Project, if any, do not render it inconsistent with the IRP. In order to help in the analysis to be conducted by the Energy Commission of the terms of the Contract, the Project Committee will prepare an analysis of its estimate of the potential range of Project profit margins and price escalators on the Proponent's project and compare it to industry benchmarks. The report submitted by the Project Committee shall include a detailed financial analysis which shall demonstrate the profitability ranges based on actual contractual terms and capital cost, operating cost, fuel, and other industry benchmarks. The Energy Commission may ask for additional supporting information to make its evaluation, which requested information shall be submitted to the Authority within ten (10) days from receipt of the request for approval of the Contract. The Energy Commission shall complete its evaluation process of such Contract in a period of not more than thirty (30) days, from the date in which the report and proposed Contract formally

submitted, or, if additional information is requested, from the date in which such information is provided. Should the Commission fail to issue a written response prior to said thirty (30) days, the proposed Contract shall be deemed to have been approved by the Commission. If after its evaluation, the Energy Commission rejects the changes made to the model Contract during the negotiation with the selected Proponent, or if it determines that the changes, if any, in the scope of the Project have rendered it inconsistent with the IRP, the Energy Commission will state the grounds for the rejection of the Contract and will provide opportunity to the Project Committee for further negotiation of the terms of said Contract in order for it to address the issues noted by the Energy Commission. Should the Energy Commission require the selected Proponent to submit actual costs and profitability information, it shall directly require such information from such Proponent on a confidential basis in accordance with the Acts and confidentiality processes and procedures established by the Energy Commission. Once PREPA has reached a new agreement, the process of approval of such Contract will begin as provided in this Section 7.1.

(e) If each of the Board and the Energy Commission approve the Contract, the Authority shall give written notice of such approvals and a final award notification to the selected Proponent. The Authority shall also notify all other Proponents that their proposals have not been accepted, disclose the identity of the Proponent thus selected and indicate to the Proponents that they shall have access to the Authority record that pertains to the selection procedure and the Award of the Contract.

7.2 Award of Contract; Cancellation.

(a) Once the Project Committee has selected a Proposal, the Project Committee and the Proponent have finalized the negotiation of the Contract, the Contract has been approved by the Board and the Energy Commission as provided in Section 7.1 above, and

notifications to all Proponents have been issued, the Contract may be executed as provided in Section 7.3 below.

(b) After a Contract is approved by the Energy Commission, the Board may cancel the Award of the Contract at any time before the Contract is signed by the Authority and the Proponent, without recourse or liability to the Authority, the Board, the Project Committee, any Authorized Representative, or any of their agents and advisors, provided the Energy Commission approves such cancellation. The Authority shall provide the Energy Commission a detailed written explanation of the basis for the Board's decision to proceed with the cancellation of the Contract.

(c) Once approved by the Energy Commission, and before the Contract is executed, the terms of an approved Contract or the scope of the Project cannot be modified without prior approval by the Energy Commission.

7.3 Execution of the Contract. Upon the Award of Contract, the Proponent will execute the Contract, after submitting any required security specified in the RFP to guarantee the Proponent's performance of the Contract and any evidence of insurance requested, and carry out all other actions established as requirements of the Contract's execution within the time period established by the Authority. The Contract shall not be enforceable or effective until it has been completed and approved, and signed by all parties. If the Selected Proponent does not execute the Contract or does not comply with any requirement for such execution within the time limit specified by the Authority, the Authority may, in its discretion, extend the deadline for execution of the Contract, or renegotiate the Contract with the next highest ranking Proposal, on terms and conditions no less favorable as a whole to the Authority (after taking into account any change in

the general conditions at the time of renegotiation), if the Authority and the Project Committee determine that such award is in the best interests of the Authority.

7.4 Contract Content. In addition of the requirement that the Contract shall reflect acceptable profit margin and pricing escalator terms in accordance with the Energy Commission approved parameters, the Contract shall also comply with the following:

(a) Required Terms and Conditions. — A Contract executed under the provisions of this Regulation shall contain, insofar as applicable, provisions concerning:

(i) A definition and description of the Project to be developed by the selected Proponent;

(ii) in the case of new facilities or repairs, replacements or improvements to existing facilities, the plan for the financing, development, design, building, rebuilding, repair, replacement, improvement, maintenance, operation or administration of the facility;

(iii) the term;

(iv) the contractual rights and the mechanisms available to the Authority to ensure compliance by the selected Proponent with the conditions of the Contract, including but not limited to compliance with the Project specifications, quality standards, adequate maintenance of the facility, if applicable, or compliance with the approved design and other standards for building, repair or improvement projects or to ascertain compliance by the Proponent with its obligations under the Contract;

(v) In the case of Contracts whereby the Proponent shall charge fees to the Authority for rendering a service or providing energy: (A) the right that the selected Proponent shall have, if any, to charge and adjust fees or pricing for rendering such goods or

services, (B) the contractual limitations and conditions with which the Proponent must comply in order to alter or modify such fees or charges, and (C) the mechanisms available to the Authority to ensure that the Proponent complies with such limitations and conditions. It may also be provided that the adjustments in prices or charges may be computed (1) on the basis of fixed adjustment amounts previously agreed in the Contract or (2) by price units as specified in the Contract or (3) on the basis of costs that are attributable to the circumstances which have led to the adjustment as provided for in the Contract or (4) in such other way as the Authority and the selected Proponent mutually agree, provided however that any pricing and adjustment mechanism agreed shall be within the boundaries of the pricing and escalator parameters approved by the Energy Commission.

(vi) The obligation to comply with applicable federal and local laws;

(vii) The causes for terminating the Contract, as well as the rights and remedies available in cases of the noncompliance or the delay in the compliance of obligations under the Contract by both the Authority and the selected Proponent; provided, that the Authority shall not be responsible for unforeseeable, special, indirect or punitive damages;

(viii) Non-binding informal proceedings to hear allegations by the parties as to breach or interpretation of contract, which proceeding may provide for the Executive Director or his or her delegates, and the equivalent officer(s) of the contractor, or the delegates thereof, to meet to discuss their discrepancies and try to settle these before resorting to such formal methods for the settlement of disputes as they may have agreed;

(ix) The procedures and rules for amending or assigning the Contract, providing that any amendment to the economic and technical terms of the Contract or the scope of the Project, must be approved by the Energy Commission;

(x) The rights concerning inspections by the Authority or any independent engineer of the parties or the creditors of the project for the building or repair of or improvements to the Project facility, as well as the operational compliance under the terms and conditions agreed to under the Contract;

(xi) The requirements for obtaining and maintaining all such insurance policies as required by law and such other additional policies as the Authority, in its judgment, deems to be necessary for the Contract;

(xii) The requirement for the selected Proponent to periodically file audited financial statements with the Authority or with such other entity as the parties may agree;

(xiii) The requirement for the selected Proponent to file such other report in connection with the Contract as may be requested by the Authority;

(xiv) The circumstances under which the Contract may be modified in order to maintain a financial balance between the parties, as well as the provisions on noncompliance and the remedies allowed in such cases, including the imposition of penalties, fines and such other circumstances as the parties may agree under the Contract. The Contract shall likewise contain a provision on sanctions for breach thereof and shall include the required statutory clauses, including that the contractor shall be subject to the provisions of Act No. 84 of June 18, 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, and that the provisions of the Contract cannot be demanded until the Contract has been recorded at the Commonwealth of Puerto Rico Comptroller's Office, as required by Public Law 18, October 30, 1975, as amended, and regulation thereunder;

(xv) The terms and conditions related to the transfer of the goods or services object of the Contract, and the transition duties related thereto, once said Contract has been terminated or expired;

(xvi) The kind of bond or security to ensure compliance with the Contract;

(xvii) A provision establishing that the Contract shall be governed by the laws of the Commonwealth of Puerto Rico;

(xviii) Any provision required by law or agreed by the parties to protect the best interests of Authority, the Commonwealth of Puerto Rico and the clients.

(b) Assignment of Contract. All clauses, conditions and laws that govern Contracts shall be binding and enforceable for all parties through the term of the Contract. Therefore, without prejudice to any transfer or change of control restrictions specified in the Contract, any change or transfer of the rights of a contractor to a third party with respect to the rights of the contractor shall make this third party a successor contractor that shall have the same responsibilities and benefits of the original contractor and that shall comply with the requirement of a qualified selected Proponent. Any permitted change in contractor shall not be considered a novation of any type whatsoever to demand changes or the extinction of the clauses of the Contract. If a successor contractor that is permitted under the terms of the Contract requests a change in the Contract, it shall be submitted to and approved by the Board and the Energy Commission to the extent that it impacts pricing or adjustments to the escalator or the scope of the Project.

(c) Additional Terms and Conditions. — A Contract executed under provisions of this Regulation shall also provide for the following:

(i) A clause through which each contracting party makes a commitment to defend and indemnify the other party for any claim caused by its own negligent acts or omission;

(ii) Subject to the limitations of Section 7.4(a)(viii) of this Regulation, damages as applicable under certain circumstances, such as payable specific or liquid damages in cases of termination without just cause or delays in completing the Project, as applicable;

(iii) Provisions on extensions to the Contract within the limits allowed under this Regulation;

(iv) Provisions on compliance with applicable laws, norms and regulations that are applicable to the contractor and to activities object of the Contract, including a requirement and conditions that contractor shall at all times comply with provisions applicable to it as an Electric Power Company or Electric Power Generation Company, as such terms are defined in Act 57-2014; and

(v) Any other term or condition as the Project Committee may deem appropriate.

(d) (d)Term of Contract.—The term of a Contract executed under this Act shall be that which the Authority deems shall serve the best interests of the People of Puerto Rico.

ARTICLE 8 RECONSIDERATION AND REVIEW

8.1 Reconsideration by the Authority; Judicial Review. Proponents shall be entitled to request the Authority, in writing, to reconsider its determination of the final awarding of a Contract in accordance with administrative law. The Authority shall notify of such reconsideration and subsequent judicial review rights in the notifications it sends to Proponents.

The reconsideration and judicial review shall follow applicable administrative legal provisions contemplated for such processes.

**ARTICLE 9 APPROVAL BY THE ENERGY COMMISSION OF CONTRACT
APPROVED BY THE PUBLIC PRIVATE PARTNERSHIP AUTHORITY UNDER ACT
29-2009 AND SECTION 6C OF ACT 83 OF MAY 2, 1941, AS AMENDED**

9.1 If for the procurement of a project the Authority determines that the process and scope of this Regulation is not adequate, the Authority has the option of submitting to the Public Private Partnership Authority (“PPP Authority”) the contemplated project to be procured following the process of Act 29-2009 as modified by Section 6C of Act 83 of May 2, 1941, as amended (“Act 29”). Prior to submitting such contemplated project, the Authority shall obtain the approval of the Energy Commission with respect to the scope of the project and its consistency with the IRP, the Acts and other laws and regulations related to procurement processes by the PPP Authority and the powers of the Energy Commission. To the extent feasible and available at this stage, the Authority shall also propose to the Energy Commission for approval, a range of profit margin and price escalator parameters in connection with such project. The Energy Commission shall ensure that the Proposed project and contract terms, if available, are consistent with the IRP. If the proposed profit margins and pricing escalators parameters are available and presented to the Energy Commission, the Commission shall also ensure that they are acceptable to the Commission. The process for the evaluation and approval of the Commission shall follow the process set forth in Section 4.2 of this Regulation.

9.2 Once submitted to the PPP Authority, this Regulation shall not apply, but the final Contract negotiated and approved pursuant to such Act 29 process shall be submitted to the Energy Commission for verification and determination that its terms, and any change to the

scope of the Project, if any, do not render it inconsistent with the IRP and that the profit margin and price escalators in the Contract comply with the parameters previously approved by the Energy Commission or, if not previously presented to and approved by the Energy Commission, are otherwise acceptable to the Energy Commission.

ARTICLE 10 MISCELLANEOUS

10.1 Computation of Periods. Where an action is required to be taken under this Regulation or the Act: (a) within a certain period after an action is taken, the day on which that action is taken shall not be counted in the calculation of that period; (b) within a certain period, that period must include at least two business days; and (c) within a certain period and the last day of that period is not a business day, the period shall be extended to include the next business day.

10.2 Confidentiality. All Proposals submitted to the Authority shall become the property of the Authority, except for documents or information submitted by Proponents which are trade secrets, proprietary information or privileged or confidential information of the Proponent. Proponents are advised to familiarize themselves with the confidentiality and publication provisions under Puerto Rico Law to ensure that documents identified by Proponents as “confidential” or “proprietary” will not be subject to disclosure. If a Proponent has special concerns about confidential or proprietary information that it would desire to make available to the Authority or the Project Committee, prior to submission of its Proposal, such Proponent may wish to: (i) make a written request to the Authority for a meeting to specify and justify proposed confidential or proprietary documents; (ii) make oral presentation to the Project Committee’s staff and legal counsel; and (iii) receive written notification from the Project Committee accepting or rejecting confidentiality requests. Failure to take such precautions prior to

submission of a Proposal may subject confidential or proprietary information to disclosure under the Acts.

The Authority will endeavor to maintain the confidentiality of any information that a Proponent indicates to be, and the Authority agrees is, proprietary or a trade secret, or that must otherwise be protected from publication according to law, except as required by law or by a court order. The Authority shall determine whether or not information and materials provided by a Proponent are exempt from disclosure.

Once the Contract has been executed, the Authority shall make public the report of the Project Committee which shall contain the information related to the procurement, evaluation, scoring, selection and negotiation process, and the information contained in the Proposal as required by law, except trade secrets, proprietary or privileged information of the Proponent clearly identified as such by the Proponent, or information that must otherwise be protected from publication according to law, unless otherwise ordered by a court order, in each case, if the Authority determines that the protection of such information is appropriate. In no event shall the Commonwealth or the Authority be liable to a Proponent for the disclosure required by law or a court order of all or a portion of a Proposal submitted to the Authority.

Each member of the Project Committee, the Board and the Energy Commission engaging in a Project procurement process that is associated with reviewing or selecting the submitted Proposals or final approval may have access to privileged and confidential information. Misuse of this confidential information would be a breach of the fiduciary responsibility that each team member has with the Project Committee and the Authority. In an effort to maintain the highest levels of confidence and trust in the procurement process, the participants from the public and

the private sectors must be aware of their responsibilities to the public and remain vigilant of any misuse of confidential, non-public information.

10.3 Intent. This regulation is intended to provide flexible procedures and, accordingly, it shall be interpreted liberally so as to effectuate that intent and its purposes.

10.4 Severability. If any word, sentence, section, paragraph or article of this Regulation is declared unconstitutional or void by a court of law, such declaration will not affect, impair or annul any of the remaining provisions and parts of this Regulation, and its effect will be limited to the specific word, sentence, section, paragraph or article declared unconstitutional or void. The invalidity or nullity of any word, sentence, section, paragraph or article in any instance will not be construed to affect or impair in any way its applicability or validity in any other instance.

10.5 Tax Advantaged Bonds. The generation fleet and other resources of the Authority includes assets that have been or will be financed or refinanced in whole or in part with the proceeds of bonds the interest on which is excluded from gross income for federal income tax purposes and bonds the interest on which is taxable but for which the Authority has and will receive a direct federal subsidy equal to a percentage of each interest payment on such bonds (the "Tax Advantaged Bonds"). The United States Internal Revenue Code and the regulations promulgated thereunder set forth requirements that must be satisfied when the Tax Advantaged Bonds are issued and as long as such bonds remain outstanding in order to retain its tax advantaged status. The Project Committee shall ascertain whether any Project, Proposal, or Alternative Proposals includes assets that have been or will be financed or refinanced with the proceeds of any Tax Advantaged Bonds and, as part of its RFP and evaluation process, consider what actions, if any, may be required to maintain the tax advantaged status of such bonds.

10.6 Effective Date. This regulation was approved by the Board of Directors of the Puerto Rico Electric Power Authority on August 12, 2016 and by the Puerto Rico Energy Commission on September 1, 2016.

**PUERTO RICO ELECTRIC POWER
AUTHORITY**



By: **Javier Quintana**
Executive Director

PUERTO RICO ENERGY COMMISSION



By: **Agustín F Carbó Lugo**
Chairman



By: **Ángel R. Rivera de la Cruz**
Associate Commissioner



By: **José H. Román Morales**
Associate Commissioner

Appendix 2. RFP Template

DRAFT

REQUEST FOR PROPOSALS

No. [●]

Renewable Energy Generation and Energy Storage Resources

Tranche 2 of 6

Puerto Rico Electric Power Authority

DATE ISSUED: June 30, 2021

RESPONSES DUE DATE: September 9, 2021



**Puerto Rico
Electric Power
Authority**

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DISCLAIMER

The Puerto Rico Electric Power Authority has prepared this Request for Proposals for informational purposes only and delivery to parties who may have an interest in pursuing a potential transaction as further described herein. This Request for Proposals does not purport to be all-inclusive or to contain all the information that a Proponent (as defined herein) may desire in investigating a potential transaction. The Puerto Rico Electric Power Authority does not make any express or implied warranty as to the accuracy or completeness of the information contained herein or otherwise made available in connection with further investigations by the recipient.

1. INTRODUCTION

1.1 Glossary

Unless the context otherwise requires, in this RFP:

“**2019 RSA**” has the meaning given in paragraph (c) of Section 1.11 (*Title III Status*);

“**9019 Motion**” has the meaning given in paragraph (c) of Section 1.11 (*Title III Status*);

“**Act 17**” has the meaning given in Section 1.5 (*Relevant Information and Regulations*);

“**Act 57-2014**” has the meaning given in Section 1.5 (*Relevant Information and Regulations*);

“**Act 82-2010**” has the meaning given in Section 1.5 (*Relevant Information and Regulations*);

“**Act 120**” has the meaning given in Section 1.5 (*Relevant Information and Regulations*);

“**Act 211-2018**” means the Act for the Execution of the Reorganization Plan of the Puerto Rico Public Service Regulatory Board, Act No. 211-2018;

“**AAFAP**” means the Autoridad de Asesoría Financiera y Agencia Fiscal de Puerto Rico;

“**Affiliate**” means, with respect to a specified entity, an entity that directly or indirectly, through one or more intermediaries, Controls (e.g., is a parent or grandparent company), is Controlled by (e.g., is a subsidiary) or is under common Control (e.g., is a sister company) with such specified entity;

“**Applicable Law**” means any law (including statutory and common law), statute, constitution, decree, judgment, treaty, regulation, rule, by-law, order, other legislative measure, directive, requirement or guideline of, or made by, any Authority;

“**Authority**” means any national, regional or local government or governmental, administrative, fiscal, judicial, or government-owned body, department, commission, authority, tribunal, agency or entity;

“**Bankruptcy Code**” the United States Bankruptcy Code, 11 U.S.C. 101 et seq., as amended.

“**Best and Final Offer**” has the meaning given in Section 6.3 (*Phase III: Interconnection Evaluation & Contract*);

“**Best Interest Determination**” has the meaning given in Section 6.3 (*Phase III: Interconnection Evaluation & Contract*);

“**Bid Expiration Date**” has the meaning given in Section 6.6 (*Proposal Security*);

“**Charging Energy**” means the Energy received into, and stored in, an Energy Storage Resource for later discharge into the T&D System;

“COD” means, for any Energy Resource, the date on which such resource commences commercial operation;

“Co-Located Integrated Resources” means a Renewable Energy Resource co-located with an Energy Storage Resource which collectively makes available Energy for dispatch by the T&D Operator on a fully-integrated basis through a single electric interconnection with the Transmission System;

“Co-Located Standalone Resources” means a Renewable Energy Resource co-located with an Energy Storage Resource which (i) makes available energy storage services and Energy for dispatch by the T&D Operator independently through two (2) separate electrical interconnections with the Transmission System, and (ii) sources charging Energy for the Energy Storage Resource exclusively from the Transmission System;

“Co-Located ITC Compliant Resources” means an Energy Storage Resource co-located with a Renewable Energy Resource which (i) makes available energy storage services and Energy for dispatch by the T&D Operator independently through two (2) separate electrical interconnections with the Transmission System, and (ii) sources charging Energy for the Energy Storage Resource from (A) for purposes of complying with the ITC Renewable Energy Charging Requirement during the ITC Period, the Renewable Energy Resource, and (B) the Transmission System;

“Confidential Information” has the meaning given in Section 2.11 (*Confidentiality of Responses & Proprietary Information*).

“Contract” means a PPOA, an ESSA for Standalone Energy Storage Resources, an ESSA for ITC Compliant Energy Storage Resources or a Grid Services Agreement (as applicable);

“Contract Exceptions” has the meaning given in Section 2.7 (*Contract Exceptions*);

“Contract Exceptions Deadline” means the date that corresponds to the same term set forth in Table 2-1 (*Milestone Schedule*);

“Control” means (i) the ownership (whether directly or indirectly) of more than fifty percent (50%) of the total issued voting share capital or other voting interest of that company or corporation, or (ii) the ability to unilaterally appoint a majority of the board directors or equivalent body of that company or corporation through the ownership of securities with voting power or otherwise, without the need of the vote or approval of another, or (iii) the ability to otherwise unilaterally direct the business affairs and/or operations of that company or corporation, without the need of the vote or approval of another and the terms **“Controls”**, **“Controlled”** and **“Controlling”** shall have correlative meanings. For the avoidance of doubt, a company or corporation owned by two (2) shareholders each holding exactly fifty percent (50%) of the total issued and outstanding shares shall not be considered under the control of each shareholder;

“December 8 Energy Bureau Order” means Resolution and Order of the Energy Bureau in Case No. NEPR-MI-2020-0012, dated December 8, 2020;

“Demand Response” means the ability to change utility-supplied electric usage by end-use customers from their normal consumption patterns in response to changes in the price of electricity

during a day and/or season or other economic compensation designed to induce change in the use of utility-supplied electricity, facilitating the balance by the T&D Operator of supply and demand for Energy;

“Demand Response Regulation” means the Energy Bureau Regulation for Energy Efficiency and Demand Response issued under Case No. NEPR-MI-2019-0015 on December 10, 2020;

“Demand Response Resource” means an aggregation of end-use customers, connected to the Distribution System, that collectively participate in a Demand Response program of at least 50 kW, established by a DR Aggregator;

“Distributed Energy Storage VPP” means any VPP which (i) makes available Energy Storage Resource(s) with an aggregate power discharge capacity of at least 5 MW continuously over a period of four (4) hours, and (ii) sources Charging Energy from Renewable Energy Resource(s), located (together with such Energy Storage Resources) within a geographical area that forms, or may eventually form, part of a microgrid or part of a single-site distributed resiliency solution, as contemplated by Section II(6) of Appendix A of the December 8 Energy Bureau Order;

“Distribution System” means the network of distribution lines interconnected at voltages below 38 kV and associated electric substations owned by PREPA, which distribute electricity to end-users in the Commonwealth of Puerto Rico;

“dollars” and **“\$”** means United States dollars.

“DR Aggregator” has the meaning given to the term “Demand Response Aggregator” in the Demand Response Regulation;

“Energy” means three-phase, 60-cycle AC electric energy;

“Energy Bureau” means the Puerto Rico Energy Bureau of the Puerto Rico Public Service Regulatory Board, a specialized independent entity in charge of regulating, supervising, and enforcing the energy public policy of the Government of Puerto Rico, created by Act 57-2014, as amended and renamed and reorganized by virtue of the Reorganization Plan of the Puerto Rico Public Service Regulatory Board and Act 211-2018, formerly known as the Puerto Rico Energy Commission;

“Energy Resource” means a Renewable Energy Resource, Energy Storage Resource, Distributed Energy Storage VPP or other VPP, as applicable;

“Energy Storage Resource” means a battery energy storage system or any other form of energy storage system that satisfy the requirements of the applicable MTR;

“Energy Storage Services Agreement” or **“ESSA”** means an agreement, which sets forth the terms and conditions under which a Proponent sells, and PREPA purchases, Energy Storage Resource capacity and related attributes;

“Facility Study” means for each proposal selected by PREPA for Phase III, an engineering study to determine required modifications to the T&D System, including the cost and scheduled

completion date for such modifications, required to provide grid support services needed to integrate the proposed project into the T&D System;

“Feasibility Study” means, for each proposal selected by PREPA for Phase II, a study of the feasibility of such proposal, including the interconnection of the proposed project with the T&D System;

“Final Proposal Version of Contract” has the meaning given in Section 2.8 (*Final Proposal Version of Contracts*);

“Final Resolution” has the meaning given in Section 1.2 (*Purpose of RFP*);

“Financial and No Disbarment Criteria” has the meaning given to it in Section 3.2 (*Minimum Eligibility Requirements*).

“GENCO Operator” has the meaning given in Section 1.3 (*PREPA and the Transformation of the Electric System*);

“Grid Services Agreement” or **“GSA”** means an agreement with a Proponent of a VPP that establishes the terms and conditions under which the Proponent sells, and PREPA purchases, Energy Resource capacity and related attributes and services furnished by such VPP;

“FOMB” means the Financial Oversight & Management Board for Puerto Rico;

“IPPs” has the meaning given to it in paragraph (e) of Section 1.11 (*Title III Status*);

“IRP” has the meaning given in Section 1.2 (*Purpose of RFP*);

“ITC Period” means, for any Co-Located ITC Compliant Resource, the period that commences on the COD for such resource and expires on the date when the ITC Renewable Energy Charging Requirement terminates or expires under Applicable Law;

“ITC Renewable Energy Charging Requirement” means the requirement under Treasury Regulations § 1.48-9(d)(6) that a storage device derive not more than a specified percentage of its charging energy from sources other than solar energy to qualify for (or to avoid recapture of) the investment tax credit available for “energy property” under Internal Revenue Code § 48(a)(3)(i);

“kV” means kilovolts;

“kWh” means kilowatt-hours;

“Land Option Agreement” has the meaning given in paragraph (g) of Section 5.2 (*Proposal Content*);

“LCOE” means, for a Renewable Energy Resource or VPP, the levelized cost of energy, which equals the present value of the estimated annual payments, or payment component, to be made in respect of a Renewable Energy Resource or VPP (as applicable) over the supply period arising out of a Contract, divided by the volume of energy which such resource will produce over the same

period (which, for Renewable Energy Resources, PREPA shall base on the P50 Energy Yield) expressed in dollars per MWh;

“**LCOS**” means, for an Energy Storage Resource, the levelized cost of energy storage capacity, which equals the present value of the estimated annual payments, or payment component, to be made in respect of an Energy Storage Resource over the supply period arising out of a Contract, divided by the power rating capacity, which such resource will likely make available over the same period, expressed in dollars per MWh;

“**Lead Member**” means, for any Proponent consortium, the lead member of such consortium that has the power to act for and on behalf, and legally bind, each of the Other Members, of such consortium on all matters related to this RFP, including the execution and delivery of a Contract;

“**LUMA**” has the meaning given in Section 1.3 (*PREPA and the Transformation of the Electric System*);

“**MER**” has the meaning given in Section 3.2 (*Minimum Eligibility Requirements*);

“**Milestone Schedule**” has the meaning given in Section 2.3 (*Milestone Schedule*);

“**Minimum Amount**” means, for any Proponent, an amount equal to the greater of (i) thirty percent (30%) of the estimated costs of such Proponent’s proposed project, and (ii) seventy-five million dollars (\$75,000,000);

“**MTR**” has the meaning given in Section 1.2 (*Purpose of RFP*);

“**MW**” means megawatts;

“**MWh**” means megawatt-hours;

“**Net Capacity**” means the contracted capacity measured at the point of interconnection;

“**No Disbarment Certification**” has the meaning given in Table 3-1 (*Minimum Eligibility Requirements*);

“**Non-Disclosure Agreement**” or “**NDA**” means, for each Proponent, a completed version of an agreement in the form set forth in Appendix E (*Form of Non-Disclosure Agreement*), duly-executed by an authorized representative of such Proponent or each member of a Proponent consortium.

“**Notice of Intent to Respond**” means, for each Proponent, a completed version of the form set forth in Appendix A (*Form of Notice of Intent to Respond*), duly-executed by an authorized representative of such Proponent or Proponent consortium ;

“**Operating Procedures**” means the procedures to be followed in order to integrate the Energy Resource into the T&D System;

“Other Members” means, for any Proponent consortium, all of the members of such consortium other than the Lead Member;

“P3A” means the Puerto Rico Public-Private Partnerships Authority, or any successor thereto;

“P50 Energy Yield” means, for any period of time, an estimate of the net electrical output, expressed as kWh, that the proposed facility can deliver to the T&D System with a probability of occurrence of fifty percent (50%) for such period, other than during any period of scheduled outages, based on the forecasted ambient conditions at the site during such period;

“Performance Security” has the meaning given in the relevant Final Proposal Version of Contract;

“Permitted Guarantor” means, for any Resource Provider, any Person that (i) directly or indirectly holds an ownership interest of at least twenty-five percent (25%) in such Resource Provider and (ii) satisfies the financial capability requirement set forth in paragraph (a) of Section 4.5 (*Section Four: Financial Capability*);

“Person” means an individual, a corporation, a partnership, a limited liability company, a joint venture or other form of legal entity;

“Phase I” means the first phase of the proposal evaluation process, as further described in Section 6.1 (*Phase I: Quality Control Review*);

“Phase II” means the second phase of the proposal evaluation process, as further described in Section 6.2 (*Phase II: Project Committee Review and Recommendation*);

“Phase III” means the third phase of the proposal evaluation process, as further described in Section 6.3 (*Phase III: Interconnection Evaluation & Contract*);

“Power Purchase and Operating Agreement” or **“PPOA”** means an agreement that sets forth the terms and conditions under which a Proponent sells, and PREPA purchases, Energy produced by one or more Renewable Energy Resources;

“PPP Act” has the meaning given in Section 1.5 (*Relevant Information and Regulations*);

“PPP Regulation” has the meaning given in Section 1.5 (*Relevant Information and Regulations*);

“PREPA” means the Puerto Rico Electric Power Authority, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created pursuant to Act 83 of May 2, 1941, as amended;

“PREPA’s Estimated Costs” has the meaning given in Section 1.10 (*Interconnection Requirements*);

“PROMESA” has the meaning given in Section 1.11 (*Title III Status*);

“Proponent’s Estimated Interconnection Costs” has the meaning given in paragraph (c) of Section 5.2 (*Proposal Content*);

“Proponent” means (i) any Person, or (ii) a consortium of Persons, in each case that submit(s) a Notice of Intent to Respond and NDA to PREPA in accordance with Section 2.5 (*Notice of Intent to Respond & Non-Disclosure Agreement*);

“Proposal Completeness Checklist” means the form set forth in Appendix C (*Form of Proposal Completeness Checklist*);

“Proposal Security” means either (i) an irrevocable stand-by letter of credit, substantially in the form set forth in Appendix H (*Form of Irrevocable Stand-By Letter of Credit*), issued by a Qualified Bank, or (ii) a bid bond substantially in the form set forth in Appendix P (*Form of Bid Bond*), issued by an insurance company, authorized to do business in Puerto Rico;

“Proposal Submission Deadline” means the date that corresponds to the same term set forth in Table 2-1 (*Milestone Schedule*);

“Purchased Fuel Payments” or **“PFP”** has the meaning given in paragraph (e) of Section 1.11 (*Title III Status*);

“Purchased Power Payments” or **“PPP”** has the meaning given in paragraph (e) of Section 1.11 (*Title III Status*);

“Qualified Bank” means a national bank, national association, commercial bank or other financial institution registered in the United States, having a branch located within Puerto Rico or the contiguous United States, and otherwise acceptable to PREPA that has a long-term issuer rating of at least (i) if headquartered within Puerto Rico, then “B+” by Standard & Poor’s Ratings Services, “B1” by Moody’s Investors Services Inc., or “B+” by Fitch Ratings Inc. or (ii) if headquartered outside of Puerto Rico, then “A-” by Standard & Poor’s Ratings Services, “A3” by Moody’s Investors Services Inc., or “A-” by Fitch Ratings Inc., or in each case if the relevant rating agencies cease to engage in business or rate the obligations in question, then an equivalent rating from another internationally recognized rating agency selected by Proponent with the written consent of PREPA; provided that, if such financial institution’s ratings satisfy such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications;

“Rate-payers” has the meaning given in paragraph (e) of Section 1.11 (*Title III Status*);

“Rate-payer Tariff” has the meaning given in paragraph (e) of Section 1.11 (*Title III Status*);

“Reference Project” has the meaning given in Table 3-1 (*Minimum Eligibility Requirements*);

“Regulation 8915” means PREPA Regulation 8915 – Reglamento para Interconectar Generadores con el Sistema de Distribución Eléctrica de la Autoridad y Participar en los Programas de Medición Neta (*Regulation for Interconnecting Generators with the Authority’s Electrical Distribution System and Participate in the Net Metering Programs*) approved by the Secretary of State on February 6, 2017;

“Regulation 8916” means PREPA Regulation 8916 – Reglamento para Interconectar Generadores con el Sistema de Transmisión o Subtransmisión Eléctrica de la Autoridad de Energía Eléctrica y Participar en los Programas de Medición Neta (*Regulation for Interconnecting Generators with the Authority’s Electric Transmission or Subtransmission System and Participate in the Net Metering Programs*) approved by the Secretary of State on February 6, 2017;

“Release Date” means, for any Contract, the earlier to occur of (i) the date on which the Resource Provider has discharged all of its payment obligations arising under such Contract prior to COD in full, and (ii) the date on which such Resource Provider demonstrates to PREPA’s reasonable satisfaction that the direct shareholders of such Resource Provider have contributed an aggregate amount of equity in cash to such Resource Provider in exchange for the issuance of shares in such Resource Provider of at least the Minimum Amount;

“Renewable Energy Resource” means any renewable energy resource that qualifies as “green energy” under Act 82-2010, including, but not limited to, solar PV generating facilities, wind generating facilities, hydroelectric generating facilities or any combination of these technologies;

“Request for Clarification Submittal Deadline” means the date that corresponds to the same term set forth in Table 2-1 (*Milestone Schedule*);

“Request for Proposals” or **“RFP”** means this Request for Proposals No. [●], Renewable Energy Generation and Energy Storage Systems – Tranche 2 as amended by all addenda issued by PREPA, relating to such request for proposals;

“Resource and Technology Group” has the meaning given in paragraph (a) of Section 6.2 (*Phase II: Project Committee Review and Recommendation*);

“Resource Provider” has the meaning set forth in Section 2.9 (*Designation of Resource Provider*);

“Restricted Parties” has the meaning given in Section 5.4 (*Restricted Parties*);

“SOQ” has the meaning given in Section 1.8 (*General Requirements*);

“System Impact Study” means for each proposal selected by PREPA for advancement to Phase III, a study that will, at a minimum, (i) determine the power capabilities of the major interconnection equipment required to complete the interconnection facilities, (ii) specify the maximum fault currents necessary to specify short circuit duty and interrupting ratings, (iii) approve or disapprove generator step-up (GSU) transformer impedance and transformer tap ranges necessary for proper control of voltage and reactive power flow, (iv) quantify impact to the T&D System and the actions and costs required to mitigate such impact, (v) designate the T&D Operator dispatching centers that will coordinate the operation of the facility, and (vi) specify the proposed design requirements for the facility and the interconnection facilities;

“T&D Operator” has the meaning given in Section 1.3 (*PREPA and the Transformation of the Electric System*);

“T&D System” means the Transmission System and the Distribution System;

“Team Member” has the meaning given in paragraph (k) of Section 4.3 (*Section Two: Corporate Structure*);

“Testing Protocols” means PREPA’s standard protocols for testing and commissioning the applicable Energy Resource, comprising steps for establishing (i) an indication of the date, time and duration of the tests; (ii) the procedure for specific tests, including tests related to the applicable MTR compliance and reliable operation; (iii) the success or failure criteria for the tests; and (iv) the system for documenting the results of the tests;

“Title III Court” has the meaning given in paragraph (b) of Section 1.11 (*Title III Status*);

“Tranche” has the meaning given in Section 1.2 (*Purpose of RFP*);

“Transmission System” means the network of transmission lines interconnected at 38 kV or above and associated electric substations owned by PREPA, which transmit electricity to the Distribution System;

“Unrestricted Net Worth” means, for any Person, the sum of (i) the subscribed and paid-up equity (including additional paid-in capital), and (ii) the Unrestricted Retained Earnings, in each case of such Person;

“Unrestricted Retained Earnings” means, for any Person, the amount of accumulated profits and gains realized out of the normal and continuous operations of such Person after deducting distributions to stockholders and transfers to capital stock or other accounts, and which is (i) not appropriated by its board of such Person for corporate expansion projects or programs; (ii) not covered by a restriction for dividend declaration under a loan agreement; (iii) not required to be retained under special circumstances obtaining in such Person such as when there is a need for a special reserve for probable contingences; and (iv) not otherwise covered by any other legal restriction (which refers to any injunction, judgement, or order issued by any judicial Authority) on the ability of such Person to distribute or otherwise apply its equity;

“Unsatisfactory Performance” means (i) for each Energy Resource designated as a Reference Project for which a Proponent or its Affiliate has commenced the development or commercial operation; and (ii) for each VPP designated as a Reference Project for which a Proponent or its Affiliate has commenced performance under its power or grid services agreement, in each case within the past three (3) years, the failure by such Proponent or Affiliate to (A) perform a material obligation arising out of a contract, or (B) satisfy a material condition of an authorization or license, in each case relating to such Reference Project;

“VPP” means a combination of (i) an Energy Storage Resource, and (ii) one or more Energy Storage Resources, Renewable Energy Resources or Demand Response Resources with an aggregated net capacity of at least 5 MW, measured at each of the five or more points of interconnection (limited to 1 MW each) with the Distribution System, which a Proponent aggregator or its agent assembles, registers, contracts to call upon and control, monitors, controls and makes available for direct or indirect dispatch by the T&D Operator or its successor through a software-based central control system in accordance with the terms of a Grid Services Agreement.

1.2 Purpose of RFP

This RFP solicits proposals for (i) the design, construction, installation, ownership, operation and maintenance of Energy Resources, installed at sites across the island of Puerto Rico, and (ii) the sale and purchase of Energy or capacity, made available by such resources, during a supply period of up to twenty-five (25) years. Energy Resources must comply with the applicable minimum technical requirements set forth in Appendix I (*Minimum Technical Requirements (MTR)*) (the “**MTR**”).

This RFP represents the second of six (6) tranches (each, a “**Tranche**”) of request for proposals that PREPA intends to issue in accordance with the IRP, the Final Resolution and the December 8 Energy Bureau Order, which requires the procurement by PREPA of a cumulative total of 3,750 MW of Renewable Energy Resources and 1,500 MW of Energy Storage Resources during a three (3) year period. PREPA issued the Request for Proposals, Renewable Energy Generation and Energy Storage Systems – Tranche 1 on February 22, 2021 and will continue to administer such request for proposals. PREPA has issued, and will administer, this RFP as well as the requests for proposals covering Tranche 3 through Tranche 6.

Act 82-2010, as amended by Act 17, directs PREPA to procure Renewable Energy Resources in accordance with the following milestones relative to the aggregate percentage of generation supplying its system: twenty percent (20%) by 2022, forty percent (40%) by 2025, sixty percent (60%) by 2040, and one hundred percent (100%) by 2050. In order to achieve the established targets, PREPA seeks Energy Resources that can achieve commercial operation in no more than twenty-four (24) months from the date on which a selected Proponent executes a Contract, with preference given to those proposals that can achieve commercial operation within a shorter timeframe.

The Energy Bureau issued its final Resolution and Order on PREPA’s Integrated Resource Plan (“**IRP**”) in Case No. CEPR-AP-2018-0001 on August 24, 2020 (the “**Final Resolution**”). In the Final Resolution, the Energy Bureau approved a modified preferred resource plan and a modified action plan, which PREPA will follow over the next five (5) years for the procurement of new Energy Resources and the retirement of many of its fossil-fueled generating units. In addition, on December 8, 2020, the Energy Bureau issued the December 8 Energy Bureau Order in which it directed PREPA to use every effort to comply with the IRP, modified preferred resource plan and modified action plan approved in the Final Resolution and to achieve the forty percent (40%) renewable energy generation target for 2025 as required by Act 82-2010, as amended by Act 17. The Energy Bureau also ordered PREPA to implement a Procurement Plan and develop a request for proposals template in accordance with the December 8 Energy Bureau Order.

1.3 PREPA and the Transformation of the Electric System

PREPA, which will serve as the initial contracting party in connection with this RFP, has 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 provides electricity to approximately 1.5 million customers, making it one of the largest public utilities in the United States by customers served. With nearly 6,000 employees, PREPA generates approximately \$3.5 billion in annual revenues.

On January 22, 2018, the Governor of Puerto Rico announced his intent to transform and modernize PREPA's electric system through private ownership or operation of PREPA's assets. On June 20, 2018, the Governor of Puerto Rico signed into the law Act 120, with the stated goal of transforming Puerto Rico's energy system into a modern, sustainable, reliable, efficient, cost-effective, and resilient one. On June 22, 2020, P3A announced the selection of LUMA Energy, LLC ("**LUMA**") to operate, maintain and modernize the T&D System for fifteen (15) years through a public-private partnership. LUMA assumed the role of "**T&D Operator**" of the T&D System on June 1, 2021. As part of the transformation process, PREPA will assign all Contracts awarded pursuant to this RFP to an Affiliate of PREPA. P3A separately issued a request for qualifications in August 2020 from potential bidders to operate and maintain PREPA's legacy thermal generation assets. The selected bidder or bidders (the "**GENCO Operator**") will provide these services upon closing of the transaction. Appendix L (*Puerto Rico Electricity Sector Transformation*) depicts the structural changes of the electric system upon the closing of the transformation transactions with the T&D Operator and the GENCO Operator.

1.4 Historical Context

In September 2017, Hurricane Irma and Hurricane María made landfall in Puerto Rico. Irma made landfall as a Category 5 storm, followed two (2) weeks later by María which made landfall as a Category 4 storm. The hurricanes caused massive infrastructure damage, private property damage and loss of life.

On September 5 and 17, 2017, the Governor of Puerto Rico requested separate federal declarations of emergency and disaster for Puerto Rico, which were approved by the President of the United States. On October 26, 2017, the President of the United States signed the Additional Supplemental Appropriations for Disaster Relief Requirements Act 2017, which provided \$36.5 billion in FY 2018 of emergency supplemental appropriations for Puerto Rico in connection with Irma and María disaster recovery efforts.

Prior to the impact of Irma and María, Puerto Rico already had an inherently deficient energy infrastructure. In particular, the planning, design, and operation of an isolated island-based electricity system imposes on PREPA significant challenges with respect to system stability and reliability. Puerto Rico's sensitivity to system load variations and significant system frequency fluctuations can trigger under frequency load shedding within seconds of generation outages or the activation of transmission system contingencies.

1.5 Relevant Information and Regulations

PREPA encourages interested Proponents to review the following documents which provide further technical background:

- a. The IRP:

<https://acepr.com/es-pr/QuienesSomos/Paginas/ley57/Plan-Integrado-de-Recursos.aspx>

- b. The Energy Bureau Final Resolution on the IRP:

<https://energia.pr.gov/wp-content/uploads/2020/08/AP20180001-IRP-Final-Resolution-and-Order.pdf>

- c. The December 8 Energy Bureau Order:

<https://energia.pr.gov/wp-content/uploads/sites/7/2020/12/Resolution-and-Order-NEPR-MI-2020-0012.pdf>

PREPA also encourages Proponents to review the following documents, which are available for download at <http://www.p3.pr.gov> or <https://energia.pr.gov/en/laws>, for further background and the legal framework:

- a. PREPA Organic Act, Act No. 83-1941, as amended;
- b. Public-Private Partnership Authority Act, Act No. 29-2009, as amended (the “**PPP Act**”);
- c. Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Participatory Public- Private Partnerships Contracts under Act No. 29-2009, as amended (the “**PPP Regulation**”);
- d. Puerto Rico Energy Transformation and RELIEF Act, Act No. 57-2014 (“**Act 57-2014**”), as amended;
- e. PREPA Revitalization Act, Act No. 4-2016, as amended;
- f. Law for Diversification through Sustainable and Alternative Energy in Puerto Rico, Act No. 82-2010, as amended (“**Act 82-2010**”);
- g. Puerto Rico Green Energy Incentives Act, Act 83-2010;
- h. Puerto Rico Electric System Transformation Act, Act No. 120-2018, as amended (“**Act 120**”);
- i. Puerto Rico Energy Public Policy Act, Act No. 17-2019 (“**Act 17**”);
- j. Regulation 8915; and
- k. Regulation 8916.

Proponents should carefully review Act 120, the PPP Act and the PPP Regulation (each available at: <http://www.p3.pr.gov> or <https://energia.pr.gov/en/laws>), as well as Act 17 (available at: <https://energia.pr.gov/wp-content/uploads/sites/7/2019/05/Act-17-2019.pdf>), and should ensure that, in addition to the terms and conditions of this RFP, they comply with all applicable provisions set out therein.

1.6 Contract Terms and Conditions

The Resource Provider designated by a Proponent of a proposal for the development of a Renewable Energy Resource, if selected by PREPA, will enter into a PPOA with PREPA, which

will govern the terms and conditions under which such Resource Provider shall sell, and PREPA shall purchase, Energy for the supply term under the PPOA. Appendix F (*Form of Solar PPOA*) sets forth a preliminary template version designed for solar PV generation resource proposals. To the extent that a Proponent intends to submit a proposal for a Renewable Energy Resource other than solar PV technology, PREPA will develop and issue a PPOA template that accommodates such other resource as part of the package of documents representing the Final Proposal Version of Contracts.

The Resource Provider designated by a Proponent of a proposal for the development of Co-Located Integrated Resources selected by PREPA shall enter into a PPOA for the sale and purchase of Energy, ancillary services and related attributes. The Resource Provider designated by a Proponent of a proposal for the development of Co-Located Standalone Resources, selected by PREPA, shall enter into (i) a PPOA for the sale and purchase of Energy, ancillary services and related attributes made available by the Renewable Energy Resource component, and (ii) an ESSA for the sale and purchase of energy storage services and related attributes, made available independently by the Energy Storage Resource component, in each case as set forth in such proposal.

The Resource Provider designated by a Proponent of a proposal for the development of Co-Located ITC Compliant Resources selected by PREPA shall enter into (i) a PPOA for the sale and purchase of Energy, ancillary services and related attributes made available by the Renewable Energy Resource component, and (ii) an ESSA for the sale and purchase of energy storage services and related attributes, made available independently by the Energy Storage Resource component, in each case as set forth in such proposal. Appendix R (*Form of ESSA for ITC Compliant Energy Storage Resources*) sets forth a preliminary template version.

The Resource Provider designated by a Proponent of a proposal for the development of an Energy Storage Resource on a purely standalone basis (i.e., without co-location or integration with another Energy Resource) selected by PREPA will enter into an ESSA with PREPA, which will govern the terms and conditions under which such Resource Provider sells, and PREPA purchases, energy storage services and related attributes for the supply period of the Contract. Appendix G (*Form of ESSA for Standalone Energy Storage Resources*) sets forth a preliminary template version.

The Resource Provider designated by a Proponent of a proposal for the development of a VPP selected by PREPA will enter into a Grid Services Agreement with PREPA, which will govern the terms and conditions under which such Resource Provider shall sell, and PREPA shall purchase, Energy Resource capacity and related attributes for the supply period. Appendix Q (*Form of Grid Services Agreement*) sets forth a preliminary template version.

In addition to the execution and delivery by a Resource Provider of a Contract with PREPA and to the extent that such Resource Provider does not meet the financial capability requirement set forth in paragraph (a) of Section 4.5 (*Section Four: Financial Capability*), the Proponent that designated such Resource Provider shall arrange for a Permitted Guarantor to deliver a guarantee of the punctual payment by such Resource Provider of its obligations arising out of the Contract up to the Release Date in favor of PREPA in form and substance satisfactory to PREPA.

1.7 Tranche 2 RFP Scope of Supply

For this Tranche 2, PREPA intends to procure at least 500 MW of Renewable Energy Resource capacity and at least 250 MW (1,000 MWh) of Energy Storage Resource capacity with an effective duration of four (4) hours, as well as all of their associated environmental credits under the terms and conditions set forth in the Contract. PREPA will accept proposals for all, or a portion, of such capacity. Renewable Energy Resources offered in response to this RFP on a stand-alone basis (i.e., other than those aggregated into a VPP) must have generating capacity of at least 20 MW. Proponents may propose supply durations of up to twenty-five (25) years. Proponents may propose either new or existing Energy Resources, provided that any existing Energy Resource so proposed may not be covered by an existing PPOA, net metering arrangement or other contract with PREPA.¹ All proposed Energy Resources shall comply with the relevant part(s) of the corresponding MTR for the specific technology, as adjusted for site-level MTRs as the T&D System evolves.

PREPA will give a preference to Energy Storage Resources with 4-hour discharge durations but will also consider two (2) hour and six (6) hour discharge durations. Energy Storage Resources shall provide delivered Energy during PREPA's evening peak periods, which normally extend from 6 pm through 10 pm but may also provide ancillary service capability such as frequency response, regulating capacity or operating reserves.

1.8 General Requirements

Each Proponent shall (i) submit a duly-completed version of a statement of qualifications in the form set forth in Section 4 (*SOQ SUBMISSION REQUIREMENTS*) (the "**SOQ**"), (ii) submit its proposal(s) in the format required by Section 5 (*PROPOSAL SUBMISSION REQUIREMENTS*) and in accordance with the other requirements of this RFP, (iii) clearly label and organize all attachments, documents, schedules, etc. submitted as a part of a proposal in a fashion that facilitates easy location and review, and (iv) submit a certification confirming that the proposal complies with, and the proposed Energy Resource(s), if selected and constructed, would fully comply with, Applicable Law.

Each Proponent shall satisfy the following requirements:

- a. Each Proponent may submit more than one (1) proposal if each proposal separately complies with Section 6 (*PROPOSED PROJECT EVALUATION*) on a standalone basis.
- b. The price submission set forth in each proposal to develop and construct an Energy Resource shall cover all of the Proponent's costs to (i) install, test and commission the transmission or distribution infrastructure required to connect such resource to the T&D System, and (ii) ensure that such resource complies with all Applicable Law currently in effect.

¹ Note: Proponents of non-operating, utility-scale solar projects with PPOAs that were subject to renegotiation in 2019-2020, but which ultimately did not receive stakeholder approval, may participate in this RFP.

- c. Each Proponent shall identify all property and local taxes and tax abatements, related to its proposed project and Contract prices shall cover all such taxes.
- d. Proposals should demonstrate an ability to achieve commercial operation in a timeframe not to exceed twenty-four (24) months from the signing of the Contract. Consideration may be given to proposals with a COD not to exceed thirty (30) months from signing of the Contract, but such proposals will be disfavored relative to those proposing shorter development times, which will be given a higher score in the RFP evaluation process.
- e. For Renewable Energy Resource proposals, Proponents shall report project capacity and P50 Energy Yield for such resources during the proposed supply period.
- f. Prior to the date on which PREPA will sign a Contract, each Proponent shall provide evidence of its ability to provide equity funding at least equal to thirty percent (30%) of the forecasted costs to develop the proposed project by the forecasted date on which the Proponent will first draw down on loan facilities made available by lenders to the project.

1.9 VPP Specific Requirements

- a. Proponents of VPPs shall specifically identify / submit as part of their proposals:
 - i. the contractual framework under which the Proponent would supply capacity and (if applicable) Energy, as well as other grid services, to PREPA from Energy Resources owned by third parties;
 - ii. the responsibilities of the Proponent relating to the assembly, registration and confirmation of the status of resources to be provided by third parties;
 - iii. certified true and correct copies of each agreement that would govern the relationship between the Proponent, as an aggregator and individual third parties committing their resources for aggregation into the VPP;
 - iv. the manner in which the Proponent would coordinate and dispatch resources;
 - v. the nature of the assets, including software, servers, network communications equipment, resource control equipment, sensors and monitoring equipment required to support the dispatch of resources committed to the VPP;
 - vi. the geographical location of each Energy Resource, and, where applicable, Demand Response Resource, forming part of the proposed VPP;
 - vii. a description of the aggregation of the program participants, and expected generating capacity and load drop values, equipment, and technology;
 - viii. a description of the Proponent's plans for recruiting, engaging, monitoring the performance of and maintaining the participation of program participants;

- ix. for each Energy Resource forming part of a VPP, each performance penalty imposed on either the third party which owns such resource or the Proponent in association with such resource within the past five (5) years; and
 - x. any material actions, suits, claims, or proceedings (threatened or pending) against the Proponent, relating to each Energy Resource, forming part of the proposed VPP.
- b. Each VPP proposal shall satisfy the following requirements:
- i. the Proponent shall source energy and capacity from VPPs aggregating only new or existing facilities that do not currently sell such energy and capacity to PREPA;
 - ii. the Proponent shall install and maintain all metering, SCADA and other forms of telemetry to establish, monitor, control and dispatch such VPP at its own cost and expense;
 - iii. VPPs shall comply with applicable MTRs and PREPA's standards for interconnection with the T&D System;
 - iv. VPPs shall be capable of supplying a minimum of 5 MW of dependable capacity, which the Proponent must aggregate from multiple sites;
 - v. VPPs shall use existing, proven technology;
 - vi. all VPPs other than VPPs consisting exclusively of Demand Response Resources shall satisfy the same performance requirements as this RFP requires for a utility-scale Energy Resource;
 - vii. the supply period for a VPP shall extend for a period of ten (10) to twenty-five (25) years from COD;
 - viii. the Proponent selected by PREPA shall fund the cost of all upgrades to and new installations added to the T&D System required to accommodate such VPP;
 - ix. the Proponent shall demonstrate that each Energy Resource and Demand Response Resource forming part of a proposed VPP can effect capacity responses / load reductions within the response time required when the T&D Operator curtails generation or sheds load on the T&D System throughout the entire supply period. PREPA will favor VPPs incorporating Energy Resources that can provide a rapid response and/or ramp up or down in response to specific control signals. VPP Proponents should detail the full, demonstrated capability of the proposed resource;
 - x. the Proponent shall contractually undertake to, and demonstrate its capability to, manage all capacity dispatch and load reduction instructions, including all notices, resource participation registration and deregistration, communications, controls, equipment, and other processes required to satisfy PREPA's dispatch instructions; and

- xi. Contract prices for VPP proposals shall cover all property and local taxes and tax abatements related to such VPP.

During the evaluation stage, PREPA will give preference to Distributed Energy Storage VPPs.

1.10 Interconnection Requirements

Proponents' T&D System interconnection plan will be a crucial factor in evaluating the delivery risk associated with any proposal. Proposals contemplating interconnection with the Distribution System must demonstrate that the proposed interconnection will satisfy the applicable requirements of Regulation 8915. Proposals contemplating interconnection with the Transmission System must demonstrate that the proposed interconnection will satisfy the applicable requirements of Regulation 8916.

Proponents must consider the following factors in any proposal submitted pursuant to this RFP:

- a. The physical limitations on the delivery of Energy to the T&D System:
 - i. utility-scale Energy Resources (i.e., Energy Resources other than VPPs) can interconnect to either PREPA's 38 kV system or the 115 kV system;
 - ii. the resource capacity of a project connecting to the 38 kV system cannot exceed 25 MW;
 - iii. the power generation/discharge capacity at each point of interconnection to the T&D System of a Renewable Energy Resource and/or Energy Storage Resource that will form part of a VPP cannot exceed 1 MW and shall comply with the applicable interconnection regulations; and
 - iv. for Distribution System-connected, Energy Resource proposals, PREPA will give a preference to those resources connected to 13.2 kV feeders, the highest distribution voltage in Puerto Rico.
- b. Rights-of-way required to construct the transmission or distribution lines and interconnection facilities needed to connect the proposed resource to the T&D System, as the case may be.
- c. Substations where interconnection is considered most preferable for utility scale installations, as specified in Appendix K (*Interconnection Locations with Conditionally Available Capacity*).

Proponents (other than Proponents proposing a VPP resource) shall (i) provide a detailed T&D System interconnection plan with their proposals, and (ii) ensure that the proposed transmission system or distribution system interconnection plan satisfies all applicable MTR requirements, as well as relevant requirements of Regulation 8915 or Regulation 8916, as applicable.

Each Proponent should exercise its best efforts to provide an accurate estimate of the Proponent's Estimated Interconnection Costs. Following PREPA's selection of proposals for Phase II, PREPA

will conduct a Feasibility Study on such projects to assess order-of-magnitude interconnection and required T&D System upgrade costs (“**PREPA’s Estimated Costs**”). PREPA will cluster such proposals for interconnection studies. In such studies PREPA will analyze the impacts of integrating a group or cluster of Energy Resources at specific locations when ranking or selecting proposals for further consideration, in particular with regard to assessing any required network upgrades or the potential to utilize shared interconnection facilities across multiple projects. Following PREPA’s selection of proposals for Phase III, PREPA will conduct a System Impact Study followed by a Facility Study for final short-listed projects.

While each Resource Provider shall have the responsibility to fund all of the T&D System interconnection costs under the Contract, PREPA will permit a Proponent to adjust its price proposal in the Contract to the extent that PREPA’s Estimated Costs exceed the Proponent’s Estimated Interconnection Costs for purposes of allowing a Proponent to recover such excess costs through the tariff mechanism. Where the Proponent’s Estimated Interconnection Costs exceed PREPA’s Estimated Costs, PREPA will correspondingly require a downward adjustment of the proposed price to reflect a Proponent’s need to recover the lower level of interconnection costs than the Proponent’s Estimated Interconnection Costs.

PREPA has identified, and set forth in Appendix K (*Interconnection Locations with Conditionally Available Capacity*), a list of the preliminary locations to allow for reliable interconnection of Energy Resource capacity. In several instances, this list also sets forth particular conditions or caveats as required by technical uncertainties associated with a specific location.

1.11 Title III Status

This Section provides an update of the ongoing debt restructuring efforts of PREPA under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (“**PROMESA**”).

- a. (**PREPA’s Financial Liabilities**) As of the bankruptcy filing date, PREPA’s financial obligations principally consisted of (i) approximately \$8.3 billion in principal amount of power revenue bonds, (ii) approximately \$700 million in principal amount under two (2) matured fuel line loans, and (iii) approximately \$52.2 million notional amount under two (2) interest rate swaps.
- b. (**PREPA Title III Case**) On July 2, 2017, at the request of the Governor of Puerto Rico, the FOMB filed a petition for relief for PREPA pursuant to PROMESA section 304(a), thereby commencing a case under Title III of PROMESA in the United States District Court for the District of Puerto Rico (the “**Title III Court**”). Pursuant to PROMESA section 315 (48 U.S.C. § 2175), the FOMB serves as PREPA’s representative in its Title III case, Case No. 17 BK 4780-LTS (D.P.R. 2017). Upon commencement of PREPA’s Title III case, an automatic stay of litigation related to the financial indebtedness and other obligations of PREPA immediately went into effect, which affords PREPA protection while PREPA continues efforts to negotiate with its creditors to adjust its debts.

c. **(Restructuring Support Agreement)**

- i. On May 3, 2019, FOMB, AAFAF, PREPA, the Ad Hoc PREPA Bondholder Group, Assured Guaranty Corp., and Assured Guaranty Municipal Corp. executed the Definitive Restructuring Support Agreement (together with the annexes, exhibits, and schedules attached thereto, as each may be amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms of the 2019 RSA, the “**2019 RSA**”). The 2019 RSA contemplates the issuance of new securitization bonds in a plan of adjustment for PREPA, which securitization bonds would be payable from a transition charge imposed on PREPA’s customers and certain other electricity users, through a special purpose issuer in order to restructure at a discount PREPA’s outstanding long-term debt. Under the 2019 RSA, the bondholders would exchange their existing Authority bonds for two (2) types of new securitization bonds. The Series A bonds would be exchanged for approximately sixty-seven decimal five percent (67.5%) of the face amount of the existing bonds. The Series B bonds would be exchanged for ten percent (10%) of the face amount of the existing bonds. The repayment of the Series B bonds is contingent to the demand for electricity and the repayment of the Series A bonds. The issuance of securitization contemplated under the 2019 RSA only becomes effective after confirmation of a plan of adjustment for PREPA and passage of any required legislation. As of this date, the FOMB has not filed a plan of adjustment for PREPA and neither the Governor of Puerto Rico, nor any Puerto Rico legislator, has presented to the Puerto Rico legislature a bill to approve the transactions contemplated by the 2019 RSA.
- ii. On May 10, 2019, the FOMB and AAFAF filed a joint motion to approve the and settlements embodied in the 2019 RSA (the “**9019 Motion**”). Numerous parties objected to the 9019 Motion and discovery was conducted, resulting in several adjournments of the motion. In response to the spread of COVID-19 and its effects on the people and economy of Puerto Rico, on March 27, 2020, the FOMB and AAFAF asked the Title III Court to adjourn all hearing and briefing deadlines in connection with the 9019 Motion. The request was granted, and all the deadlines related to the consideration of the 2019 RSA are currently stayed. Pursuant to the District Court orders, the FOMB and AAFAF file periodic reports providing an update on PREPA’s financial condition and proposing next steps with respect to the 2019 Motion and the settlements subject to the approval of the Title III Court. There is no current timeline for proceeding with the 9019 Motion or associated with the filing of a plan of adjustment and disclosure statement for PREPA.

- d. **(Lack of Incorporation of Bankruptcy Code 363 into PROMESA)** PROMESA did not incorporate the provisions of section 363 of the Bankruptcy Code that otherwise would limit a debtor’s ability to use of funds and assets outside of the ordinary course of business. As a result, PROMESA does not prevent PREPA from using its cash, including cash that is part of a secured lender’s collateral. Specifically, section 363(b) of the Bankruptcy Code, which, absent court approval, restricts a debtor’s use, sale, or lease of property outside the ordinary course of business, does not apply in Chapter 9 or under PROMESA. Accordingly,

PREPA does not require Title III Court approval prior to entering into any contracts regarding any use, sale, or lease of its property.

- e. **(Title III Impact on PREPA's Ability to Remit Fuel / Power Purchase Payments)** The process under Title III of PROMESA has not had a material impact on PREPA's ability to remit payments for fuel and energy to fuel suppliers and independent power producers in Puerto Rico ("IPPs"), respectively. PREPA has remitted payments under its fuel supply contracts and power purchase agreements with IPPs in full and generally on time on all undisputed invoices during the past two (2) years largely due to a regulatory structure that ensures sufficient liquidity for these payments. As background, the regulatory framework for the determination by the Energy Bureau of tariff rates for the sale of power by PREPA (the "**Rate-Payer Tariff**") to end-users (the "**Rate-Payers**") requires the Energy Bureau to consider four (4) primary components: (i) the base rate, (ii) the provisional rate, (iii) an adjustment for purchased fuel payments, remitted to fuel suppliers pursuant to fuel supply contracts with PREPA ("**Purchased Fuel Payments**" or "**PFP**"), and (iv) an adjustment for purchased power payments, remitted to IPPs pursuant to PPOAs with PREPA ("**Purchased Power Payments**" or "**PPP**"). To ensure PREPA has sufficient revenue to fund the Purchased Fuel Payments and Purchased Power Payments, the Energy Bureau reviews and resets the adjustment clauses of the Rate-Payer Tariff every three (3) months based on the Purchased Fuel Payments and Purchased Power Payments, projected expenses and a reconciliation with actual expenses each quarter. The schematic captioned "*Today*" on the left side of Appendix L (*Puerto Rico Electricity Sector Transformation*) shows the current structure of the electricity sector in Puerto Rico as well as the revenue streams running from Ratepayers to PREPA and from PREPA to IPPs and fuel suppliers. As the projects selected by PREPA for implementation under this RFP will likely achieve commercial operation after closing of the transactions with the T&D Operator and the GENCO Operator, described in Section 1.3 (*PREPA and the Transformation of the Electric System*), the schematic depicted as "*Upon Closing of T&D and GENCO Transactions*" on the right side of Appendix L (*Puerto Rico Electricity Sector Transformation*) shows the transformed electricity sector structure, including the Resource Providers, as well as the revenue streams running from Rate-Payers to PREPA and from PREPA to Resource Providers. Importantly, amounts remitted by PREPA to Resource Providers under a Contract will qualify as "*Purchased Power Payments*" under the regulatory framework for purposes of setting the Rate-Payer Tariff.

1.12 Local Participation

PREPA will encourage Proponents to engage local subcontractors, professionals, relevant service providers and other local parties headquartered in Puerto Rico to the greatest extent possible and provide descriptions of their current and/or anticipated business arrangements with such local parties.

1.13 Capacity Assessment of Co-Located Energy Resources

PREPA will apply the following guidelines when assessing the capacity of co-located Energy Resource proposals (other than Energy Resources forming part of a VPP):

- a. Co-located Energy Resources must meet the minimum capacity requirement of at least 20 MW at each point of electrical interconnection with the Transmission System.
- b. PREPA's assessment of the capacity of any proposal to install a Renewable Energy Resource paired together with an Energy Storage Resource will depend whether the T&D Operator can dispatch these co-located Energy Resources independently. If a Proponent proposes to install Co-Located Standalone Resources or Co-Located ITC Compliant Resources, then PREPA would effectively view each co-located Energy Resource as a separate proposal for purposes of assessing compliance with the minimum capacity requirement. Thus, PREPA would disqualify hypothetical Co-Located Standalone Resources or Co-Located ITC Compliant Resources proposal which proposed the installation of a 10 MW Renewable Energy Resource co-located with a 10 MW Energy Storage Resource, since the 10 MW capacity at the electrical interconnection of each proposed Energy Resource falls below the 20 MW minimum capacity requirement.
- c. If a Proponent proposes to install Co-Located Integrated Resources, then PREPA will count only the proposed generation capacity for purposes of assessing compliance with the minimum capacity requirement and would not factor the discharge capacity of the Energy Storage Resource component of such proposal into this assessment. Thus, PREPA would similarly disqualify a hypothetical Co-Located Integrated Resources proposal which proposed the installation of a 10 MW Renewable Energy Resource co-located with a 10 MW Energy Storage Resource, since the 10 MW generating capacity falls below the 20 MW minimum capacity requirement.
- d. When assessing the capacity of a Renewable Energy Resource proposal, PREPA will disregard the storage capacity, required by the MTRs.

2. INSTRUCTIONS TO PROPONENTS

2.1 Communications

Except as otherwise expressly set forth in this RFP, each Proponent shall communicate with PREPA regarding all RFP matters via the Event No. 112648 on PowerAdvocate® through the following link prior to the selection or rejection by PREPA of such Proponent's proposal(s):

<https://www.poweradvocate.com/pR.do?okey=112648&pubEvent=true>

Each Proponent shall use the “**Messaging**” tab of the event No. 112648 on PowerAdvocate® for all communications with PREPA, and address all such communications to PREPA's designated point of contact for this RFP:



PREPA will not accept oral questions and will respond to all questions and requests for clarification in writing via the aforementioned link, duly-submitted in accordance with Section 2.6 (*Request for Clarification*).

Except as set forth above, Proponents shall not communicate, and shall ensure that each of their advisors and Affiliates do not communicate, with (A) representatives of PREPA or any other instrumentality of the Government of Puerto Rico (including any member of the evaluation committee, any advisor of PREPA in the RFP process, any PREPA employee or representative, any directors, officers or consultants of PREPA), or relevant entities of federal government, or any other entities involved in the administration of the RFP process, and (B) other Proponents, such as directors, officials, employees, consultants, advisors, agents or representatives regarding any matter related to the preparation, contents and presentation of this RFP during the submission and selection processes. Failure to comply with these communications restrictions will result in immediate disqualification of the Proponent initiating such communication from further participation in the RFP process.

Appendix M (*PowerAdvocate® Guide*) sets forth the PowerAdvocate® guide. For technical assistance with the sourcing platform application, please contact PowerAdvocate®'s technical support at (857) 453-5800, or by email at: support@PowerAdvocate.com. Each Proponent shall ensure that it has fully-uploaded its proposal documents before the time and date of the Proposal Submission Deadline.

2.2 Addenda

PREPA reserves the right to modify the RFP documents up to three (3) days prior to the Proposal Submission Deadline. Any changes or modifications to this RFP's terms, conditions, or specifications will be made through addenda posted on the Event No. 112648 on PowerAdvocate®. It is the sole responsibility of the Proponent to monitor the Event No. 112648 on PowerAdvocate® for additional information, updates, amendments or addenda concerning this RFP that may be uploaded on an ongoing basis, without notice to the Proponents.

2.3 Milestone Schedule

Table 2-1 (*Milestone Schedule*) below summarizes the key timeline milestones of this RFP (as amended, the "**Milestone Schedule**").

Table 2-1 - Milestone Schedule

No	Milestone	Date
1	RFP Released to Public	30 June 2021
2	Kick-Off Presentation Made Available	06 July 2021
3	Kick-Off Presentation	09 July 2021
4	Notice of Intent to Respond and signed NDA Deadline	30 July 2021
5	Contract Exceptions Deadline	06 August 2021
6	Release of Final Proposal Version of Contracts	20 August 2021

No	Milestone	Date
7	Request for Clarification Submittal Deadline	25 August 2021
8	Proposal Submission Deadline & Commencement of Phase I Evaluation	09 September 2021
9	Proposal Hard Copy Submission Deadline	16 September 2021
10	Selection of Proposals for Phase II Evaluation	30 September 2021
11	Selection of Proposals for Phase III Evaluation	23 November 2021
12	FOMB Approval of Execution Version of Contracts	22 December 2021
13	Execution of Contracts with Proponent(s) Selected for Phase III Evaluation	06 January 2021
14	Energy Bureau Approval of Contracts Executed in Milestone No. 13	16 February 2021

This RFP includes the Milestone Schedule for illustrative purposes only. Target dates and deadlines remain subject to modification, including with respect to additional requirements and approvals. Each Proponent shall periodically review Event No. 112648 on PowerAdvocate® (as described in Section 2.1 (*Communications*)) for regular updates to the Milestone Schedule and other important information.

2.4 Kick-Off Presentation

PREPA will make available a recorded kick-off presentation of this RFP via the “**Tab No. 1 – Download Documents**” of Event No. 112648 on PowerAdvocate® after 10:00 am Atlantic Standard Time on July 10, 2021, due to the current global pandemic caused by COVID-19 and social distancing restrictions. For the convenience of potential Proponents, PREPA will make available a draft version of the kick-off presentation via the “**Messaging**” Tab of Event No. 112648 on PowerAdvocate® on July 05, 2021. Proponents may submit Requests for Clarifications about the draft version up to three (3) days prior to the kick-off presentation through the “Messaging” tab of the Event No. 112648 on PowerAdvocate®, which PREPA will evaluate and may address in its sole discretion in the final version of the kick-off presentation.

PREPA will make the final version of the recorded kick-off presentation for this RFP available as Appendix N in the “**Tab No. 1 – Download Documents**” of Event No. 112648 on PowerAdvocate® following the presentation of the recorded kick-off meeting on July 10th. To view the draft and final versions of the kick-off presentation, select the option of Slide Show in PowerPoint and at each slide press play in the audio icon located in the right of the slide.

2.5 Notice of Intent to Respond & Non-Disclosure Agreement

Proponents shall confirm their intent to submit a proposal in response to this RFP by submitting to PREPA (i) a Notice of Intent to Respond, and (ii) a Non-Disclosure Agreement, in each case through the “**Messaging**” tab of Event No. 112648 on PowerAdvocate® by no later than 8:00 pm Atlantic Standard Time on or before the deadline for submission set forth in the Milestone Schedule.

2.6 Request for Clarification

Proponents shall submit all questions relating to, and requests for an interpretation of, this RFP and a Contract in accordance with Section 2.1 (*Communications*) no later than 8:00 pm Atlantic Standard Time on or before the Request for Clarification Submittal Deadline through the “**Messaging**” tab of the Event No. 112648 on PowerAdvocate®. PREPA will have no responsibility for answers to questions or responses to requests for interpretation of this RFP or a Contract other than those questions and requests submitted as set forth herein. PREPA will only accept such questions and requests for interpretation up to the Request for Clarification Submittal Deadline.

Proponents must submit their questions in the Form of Request for Clarification included as Appendix B (*Form of Request for Clarifications*). This document must be submitted in PDF and Word format and each question must reference the page number and section of the RFP (including appendices) or Contract, as applicable. If responses to the request for clarifications constitute a modification or generate additional information, PREPA will provide such clarification through an addendum posted on the event No. 112648 on PowerAdvocate®. Questions should not contain proprietary information, because the answers will be published in the public domain. PREPA does not guarantee answers to all questions or comments received. Again, Proponents should check the Event No. 112648 on PowerAdvocate® periodically for updates and postings.

Each Proponent has the responsibility to inform PREPA of any conflicting statements, need for clarification, or omissions of pertinent data from this RFP prior to the Request for Clarification Submittal Deadline. In the event that PREPA has not responded by the Proposal Submission Deadline to a question or request for interpretation submitted by a Proponent prior to the Request for Clarification Submittal Deadline, each Proponent may identify such question or request and make a statement regarding the same in its proposal(s).

2.7 Contract Exceptions

Following its delivery of a Notice of Intent to Respond and Non-Disclosure Agreement, each Proponent should (i) review the relevant preliminary template version of the Contracts set forth in Appendix F (*Form of Solar PPOA*), Appendix G (*Form of ESSA for Standalone Energy Storage Resources*), Appendix Q (*Form of Grid Services Agreement*) and Appendix R (*Form of ESSA for Co-Located ITC Compliant Resources*), and (ii) submit to PREPA no later than the relevant Contract Exceptions Deadline a revised version of such form of Contract that shows all of the material changes, requested by such Proponent to the relevant Contract template, in blackline form together with a brief explanation of the rationale for such change as a comment linked to the relevant provision containing such change (the “**Contract Exceptions**”) through the “**Messaging**”

tab of Event No. 112658 on PowerAdvocate® by no later than 8:00 pm Atlantic Standard Time on or before the deadline for submission set forth in the Milestone Schedule. To the extent that a Proponent intends to submit a proposal for a non-solar PV Renewable Energy Source, such Proponent should propose alternative provisions that will replace the solar PV-specific provisions of the Contract. The Contract Exceptions need not include changes related to the contextualization of the Contract for such Proponent's specific project proposal(s), which PREPA will allow during the finalization of the Contract with the Proponents of selected proposals.

2.8 Final Proposal Version of Contracts

Upon the expiration of the relevant Contract Exceptions Deadline, PREPA will review and assess all of the Contract Exceptions submitted by Proponents, and prepare and issue to all Proponents (i) a final proposal version of Solar PPOA, (ii) to the extent that Proponents intend to submit proposals for a Renewable Energy Resource other than a solar PV facility, a final form PPOA for such resource, (iii) a final proposal version of ESSA for Standalone Energy Storage Resources, (iv) a final proposal version of ESSA for ITC Compliant Energy Storage Resources, and (v) a final proposal version of Grid Services Agreement, in each case that takes into account the Contract Exceptions but only to the extent that PREPA deems this necessary in its sole discretion (each, a ***“Final Proposal Version of Contract”***). Each Proponent should submit its proposal(s) to PREPA on the assumption that the relevant Final Proposal Version of Contract shall govern the terms and conditions under which it will design, construct, install, own, operate and maintain its proposed project(s) as well as make available the Energy Resource(s) to PREPA.

2.9 Designation of Resource Provider

As part of its proposal, Proponents shall designate itself or any third party as the counter-party (each, a **“Resource Provider”**), which will execute and deliver a Contract with PREPA in the event that PREPA selects such Proponent's proposal for Phase III evaluation; provided that:

- a. for a Proponent consortium that designates a third party as the Resource Provider, each consortium member that submitted information to demonstrate compliance with the requirements of Section 3 (*PROPOSER QUALIFICATION REQUIREMENTS*) must maintain a direct or indirect ownership interest in the designated Resource Provider of at least twenty-five percent (25%) through the COD;
- b. for single member Proponents that designates a third party as the Resource Provider, the designated Resource Provider must qualify as an Affiliate of the Proponent through the COD;
- c. for all third party designations, Proponents shall also submit a detailed schematic showing the ownership structure above the Resource Provider; and
- d. designated Resource Provider shall otherwise satisfy the requirements for Proponents set forth in Section 3.1 (*Qualification Requirements*) and the no disbarment criteria set forth in Table 3-1 (*Minimum Eligibility Requirements*) (i) for existing Resource Providers, at the time of proposal submission, and (ii) for Resource Providers to be established after proposal submission, prior to Contract signing.

Proponents that designate a newly-established special purpose vehicle or any other third party as the Resource Provider, which does not satisfy the financial capability requirements set forth in Section 4.5 (*Section Four: Financial Capability*) shall arrange for a Permitted Guarantor to guarantee the payment obligations of such Resource Provider, arising out of a Contract as further described in Section 1.6 (*Contract Terms and Conditions*).

2.10 Deadline and Method for Submitting Proposals

Each Proponent shall submit its proposal to PREPA in accordance with Section 5 (*PROPOSAL SUBMISSION REQUIREMENTS*). A duly-authorized representative of the Proponent or Proponent consortium with the authority to bind such Proponent / Proponent consortium shall execute such proposal. Proponents must submit their proposals in response to this RFP through the “**Upload Documents**” tab of the Event No. 112648 on PowerAdvocate® on or before 8:00 pm Atlantic Standard Time on or prior to the Proposal Submission Deadline. PREPA will not accept proposals (i) received after the specified date and time, or (ii) submitted through the “**Messaging**” tab (which is exclusive for communications), and such proposals will be disqualified from further evaluation. Proponents shall include with all such submissions a contact name, email address, and company name.

In addition to the above, Proponents must provide:

- a. a redacted copy of the proposal as required in Section 2.11 (*Confidentiality of Responses and Proprietary Information*), through the “**Upload Documents**” tab of Event No. 112648 on PowerAdvocate®;
- b. a copy of each of the following sections of the proposal through the tab of Event No. 112648 on PowerAdvocate® indicated below. Proponents must upload all applicable supporting documents or attachments of each section in the corresponding tab; and

Table 2-2 - PowerAdvocate® Tabs

Proposal Section	PowerAdvocate® Tab
Section One: Executive Summary	Commercial
Section Two: Corporate Structure	Commercial
Section Three: Technical and Operational Capability	Technical
Section Four: Financial Capability	Commercial
Section Five: Other Criteria and Additional Capability	Technical
Section Six: Timeline	Technical

Section Seven: Safety Performance	Technical
Section Eight: Project Development Summary	Technical
Proposal Completeness Checklist	Commercial
Proposal Data Forms	Pricing
Interconnection Data Request Forms	Technical
Ownership / Control of Site	Technical
10-Year O&M Cost Breakdown	Technical
Business Continuity Plan	Technical
Legal Proceedings	Commercial
VPP Specific Requirements	Technical

- c. (i) a proposal hard copy and (ii) a redacted proposal hard copy, both certified as exact copies of the proposal and the redacted proposal uploaded to Event No. 112648 on PowerAdvocate®. PREPA's Supplier Registry Office must receive the hard copies after the Proposal Submission Deadline, on or before 3:00 pm Atlantic Standard Time by the deadline for submission set forth in the Milestone Schedule, at the following address:

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

PREPA encourages Proponents to allow themselves enough time to upload their proposals and to confirm that the files are available for PREPA's review.

2.11 Confidentiality of Responses & Proprietary Information

Upon completion of the RFP process, PREPA will make its report on the procurement and selection process public. This report will contain information related to this RFP process, except for confidential and proprietary information of the proponents. Confidential, proprietary and privileged information and trade secrets ("**Confidential Information**") shall be classified as such by the Proponents. In order to ensure that PREPA will not disclose Confidential Information, Proponents must request that PREPA treats such information as confidential and must submit a redacted copy of their proposal. The redacted copy of the proposal must include an explanation of the reasons why such documents are labeled as confidential, including references to any applicable legal protections, a description of the commercially harmful effects of a disclosure and the reasons why the disclosure of such information is not necessary for the protection of the public interest.

PREPA reserves the right to make public the redacted copies of the proposals at the conclusion of the RFP process. If a Proponent does not submit a redacted copy of its proposal, PREPA will assume that the entirety of the proposal can be made public. Proposals containing substantial contents marked as confidential may be rejected by PREPA. The provision of information marked as confidential will not prevent PREPA from disclosing such information if required by law. The executed Contract(s), if any, and all prices set forth therein shall not be considered confidential and such information may become publicly available.

3. PROPONENT QUALIFICATION REQUIREMENTS

As part of a proposal, each Proponent must submit a detailed SOQ by the Proposal Submission Deadline. The SOQ will help PREPA identify those Proponents that meet the minimum requirements necessary to carry out the development, construction, commissioning and operation of an Energy Resource in compliance with Act 82-2010, Act 120 and Act 17. PREPA expects to select proposals advanced only by Proponents that demonstrate:

- a. capability and experience in developing, constructing, installing, testing, and operating Renewable Energy Resources and Energy Storage Resources or, in the case of Proponents proposing a VPP as an Energy Resource, experience in aggregating, contracting for and managing resources aggregated into and dispatched as a VPP (as applicable);
- b. capability and experience managing renewable energy and energy storage technology or, if applicable, VPP aggregation arrangements;
- c. financial strength and capital resources adequate to support required project funding;
- d. strong technical expertise, with a track record of high-quality operations; and
- e. experience complying with regulatory and permitting requirements in Puerto Rico.

In evaluating Proponents, PREPA may disqualify a Proponent for any of the reasons stated in Section 5.3 (*Disqualification of Proposals*) and the PPP Regulation, or if a Proponent:

- a. is ineligible to submit a proposal on one or more grounds specified in Act 120, the PPP Act, or the PPP Regulation;
- b. fails to satisfy the standards established by PREPA with respect to the Proponent's required technical / professional ability and experience or financial condition set forth in Section 4.4 (*Section Three: Technical and Operational Capability*) and Section 4.5 (*Section Four: Financial Capability*), respectively; or
- c. fails to comply with the requirements of Sections 9(a) (*Applicable Requirements and Conditions for those who wish to be considered as Proponents*) and/or 9(d) (*Consortia*) of the PPP Act, as applicable.

3.1 Qualification Requirements

Each Proponent (or, for a Proponent consortium, each consortium member) must be a business organization existing and duly registered in good standing under the laws of its jurisdiction of incorporation. A consortium shall not contain a member that is a member or has an Affiliate which has registered as a member of more than one Proponent consortium responding to this RFP or as another Proponent. Proponents should note that this provision shall not restrict (i) suppliers of equipment and services from supporting more than one Proponent, or (ii) a member of a Proponent consortium or such member's Affiliate to participate in two (2) or more separate Proponent consortia, as long as each Proponent consortium submits proposals in different technology groups. Proponents should describe their industry experience in detail, providing at a minimum the following:

- a. overview of the Proponent's company (or, in the case of a Proponent which is a consortium, each consortium company), including the company's or consortium members' financial condition, and the products/services offered;
- b. specific instances in which the Proponent or members of the Proponent's consortium has performed industry-specific work similar in nature to the work required to develop, construct and operate the resources sought through this RFP; and
- c. a detailed list of the portfolio of energy resource projects, which the Proponent or members of the Proponent's consortium, has / have developed and an indication of the year that each project achieved COD (or if they have not achieved COD, the estimated COD), the location, technology type and installed capacity.

3.2 Minimum Eligibility Requirements

PREPA will evaluate the SOQ submitted by each Proponent based on the minimum eligibility requirements set forth in Table 3-1 (*Minimum Eligibility Requirements*) (the "**MER**"). Each Proponent (i) should indicate its technical and operational capabilities, and (ii) must demonstrate that it satisfies each of the financial and no disbarment criteria (the "**Financial and No Disbarment Criteria**"), to develop the relevant Energy Resource.

Table 3-1 - Minimum Eligibility Requirements

Type	Description
Technical and Operational Capabilities Criteria	<ol style="list-style-type: none">1. Ownership / establishment by Proponent (or, for a Proponent consortium, at least one member of such consortium) of one (1) or more existing Energy Resource projects, including VPPs, (each, a "Reference Project"), with each Reference Project satisfying the following requirements:<ol style="list-style-type: none">a. For Energy Resources other than VPPs:

Type	Description
	<ul style="list-style-type: none"> i. experience developing, financing, constructing and operating such project; ii. compliance with the initial development timeline for such project; iii. utilization of cost-effective technology; iv. installed capacity of at least 20 MW; v. utilization of technology similar to that which the Proponent intends to submit in its proposal under this RFP; and vi. direct or indirect ownership by the Proponent or its Affiliate of at least thirty-five percent (35%) of the legal entity which directly owns such Reference Project. <p>b. For Energy Storage Resources, experience developing and assembling the proposed system for such resource in at least one (1) commercial (non-demonstration) grid-connected installation.</p> <p>c. For VPPs:</p> <ul style="list-style-type: none"> i. experience aggregating multiple generation, demand response and/or storage resources; and ii. contracted VPP capacity either (i) currently in commercial operation, supplying some combination of capacity, energy and Demand Response to one (1) or more purchasers, or (ii) contractually committed to supply a combination of capacity, energy and Demand Response to at least one (1) unaffiliated purchaser prior to the second (2nd) anniversary of the issuance of this RFP. <p>2. For each existing Energy Resource designated as a Reference Project, a certification confirming no material or sustained violation of Applicable Law, relating to any environmental matter involving the development, construction or operation of such project during the past three (3) years.</p> <p>3. For each Reference Project, a certification confirming such project's compliance with energy-related policies, practices, and regulations and all other Applicable Law during the past three (3) years.</p>

Type	Description
	<p>4. For each Reference Project, a certification confirming no record of Unsatisfactory Performance.</p> <p>5. For each Reference Project:</p> <ul style="list-style-type: none"> a. facility or project name; b. facility or project location; c. technology configuration and capacity; d. major equipment manufacturers; e. engineering, procurement, and construction contractor; and f. commercial operation year.
Financial Criteria	Evidence that a Proponent (or, for a Proponent consortium, at least one (1) member of such consortium) satisfies the requirements set forth in Section 4.5 (<i>Section Four: Financial Capability</i>).
No Disbarment Criteria	<p>Certification by a Proponent (or, for a Proponent consortium, the Lead Member and each of the Other Members) that neither it, nor any of its Affiliates nor any executive officer or member of the board of any of the foregoing parties has been the subject of any of the following adverse findings within the past five (5) years:</p> <ul style="list-style-type: none"> 1. pending litigation with the Government of Puerto Rico or any state; 2. arson conviction or pending case; 3. harassment conviction or pending case; 4. sale tax lien or substantial tax arrears; 5. fair housing violations or current litigation; 6. a record of substantial building code violations or litigation against properties owned and/or managed by the Proponent or by any entity or individual that comprises the Proponent; 7. past or pending voluntary or involuntary bankruptcy proceeding; and 8. conviction for fraud, bribery, or grand larceny, <p>(the “No Disbarment Certification”).</p>

Appendix O (*Form of Certifications for Minimum Eligibility Requirements*) sets forth a form of each of the certificates requested in Table 3-1 (Minimum Eligibility Requirements).

4. SOQ SUBMISSION REQUIREMENTS

4.1 Introduction

Together with its proposal(s), each Proponent shall prepare and submit a SOQ in English and in the format outlined in Table 4-1 (*SOQ Format*).

Table 4-1 - SOQ Format

Sections	Content
Section One	Executive Summary
Section Two	Corporate Structure
Section Three	Technical and Operational Capability
Section Four	Financial Capability
Section Five	Other Criteria and Additional Capability
Section Six	Timeline
Section Seven	Safety Performance
Section Eight	Project Development Summary

4.2 Section One: Executive Summary

The Executive Summary section of the SOQ should include a brief description of:

- a. the Proponent's qualifications for the implementation of the project, which it intends to propose in its response to this RFP, as described in Section 3 (*PROPONENT QUALIFICATION REQUIREMENTS*); and
- b. envisaged use (if any) of any contractors and sub-contractors.

4.3 Section Two: Corporate Structure

The Corporate Structure section of the SOQ should include the information mentioned below:

- a. For the Proponent (or, for a Proponent consortium, each member of such consortium) and, where applicable, each Resource Provider, (i) contact person, (ii) registered address, (iii) telephone number, and (iv) email address.

- b. The Proponent's and Resource Provider's corporate structure and history, or, for a Proponent consortium, the identification of all members of such consortium, levels of participation therein and the identity of the Lead Member and Other Members, together with summaries of their corporate structures and histories.
- c. For the Proponent's (or, for a Proponent consortium, each member of such consortium's) ultimate parent company, the following information: (i) contact person, (ii) registered address, (iii) telephone number, and (iv) e-mail address.
- d. The following information should be provided for the Proponent (or, for a Proponent consortium, each member of such consortium):
 - i. year established; and
 - ii. company profile (summary description) along with role of the company, i.e., Lead Member or Other Member.
- e. To the extent that a Permitted Guarantor will guarantee the financial obligations of a Proponent or a Proponent consortium member, the Proponent shall provide the following key financial information:
 - i. current market capitalization (if listed);
 - ii. current long-term unsecured credit rating (S&P, Moody's and Fitch) of such parent company; and
 - iii. identity of company auditor(s).
- f. A description and/or organizational chart depicting the organizational and corporate structure(s) of the Proponent (e.g., identity of intermediate shareholders, levels of shareholding and ultimate parent company) and, in the case of a Proponent consortium, each member of such consortium (including, for example, distribution of shareholdings, apportionment of roles and responsibilities within the consortium, envisaged intra-member agreements and the degree to which a formal relationship exists among the entities within the consortium as of the date of the submission of the Proponent's proposal(s) in response to this RFP).
- g. A description of the technical, operational and managerial resources available to the Proponent in the relevant organizational chart in the period up to the date on which the Proponent intends achieve COD for the proposed project.
- h. A description of the level of commitment by envisaged O&M contractors and/or EPC contractors and/or equipment suppliers.
- i. A list of key individuals participating in the Proponent's team and their roles.
- j. A list of technical, financial, legal, accounting, or other advisors that the Proponent has engaged or intends to engage in connection with the proposed project.

- k. Resumes (indicating overall experience and any specific relevant experience) of each of the key individuals participating in the Proponent’s team that will manage the development, construction, financing, ownership and operation of the proposed project with each such individual having at least ten (10) years of relevant experience for all executive-level positions (each, a “**Team Member**”).

4.4 Section Three: Technical and Operational Capability

The Technical Capability section of the SOQ shall present all of the documentation and other evidence relating to the Reference Projects set forth in the Technical and Operational Capabilities criterion of Table 3-1 (*Minimum Eligibility Requirements*).

4.5 Section Four: Financial Capability

The Financial Capability section of the SOQ shall present evidence that the Proponent has the financial capability to fulfill its obligations arising out of a Contract for the proposed project.

- a. (**Unrestricted Net Worth**) Each Proponent shall produce copies of audited financial statements, Form 10-Ks or similar types of audited annual reports for the last three (3) financial years evidencing that either (i) the Resource Provider, or (ii) a Permitted Guarantor, which will guarantee the payment obligations of the Resource Provider arising under a Contract, in each case has an Unrestricted Net Worth that exceeds the Minimum Amount.
- b. (**Ability to Raise Debt Financing**) Each Proponent shall provide specific evidence demonstrating its ability to raise debt financing. PREPA will give preference to proposals which include a detailed proposed financing plan for the proposed project, supported as appropriate by letters confirming plan specifics from anticipated providers of debt in support of the project proposal. Specific factors that will be assessed include:
 - i. capability of raising significant quantities of debt in the current project finance markets;
 - ii. evidence of experience raising project debt to support the development of Energy Resources, in particular in Puerto Rico;
 - iii. the number and size of past relevant transactions;
 - iv. specific experience in managing past relevant transactions;
 - v. experience with Investment Tax Credits (ITC) or Production Tax Credits (PTC) for utility-scale renewable energy projects; and
 - vi. letters from prospective lenders confirming their commitment to support and fund the project.

Each Proponent shall present the foregoing financial information in the form sheets attached in Appendix D (*Proposal Data Forms*).

4.6 Section Five: Other Criteria & Additional Capability

Proponents shall submit the following certifications and additional information relating to other criteria for the Proponent's eligibility:

- a. No Disbarment Certification;
- b. certification confirming that the Proponent (or, for a Proponent consortium, the Lead Member) (i) has the legal authority to participate in the RFP process and enter into a Contract following the selection of the Proponent by PREPA, (ii) validly exists, and for a Proponent consortium only, has the legal authority to bind all of the Other Members of such consortium for purposes of the RFP process and the finalization, execution, delivery and performance of such Contract, and (iii) has no conflict of interest with PREPA and, for a Proponent consortium only, the Other Members have no conflict of interest with PREPA, as of the date of such certification; and
- c. any other information which the Proponent believes would be useful for PREPA in respect of its evaluation of its corporate structure, organizational technical or financial capability and experience.

4.7 Section Six: Timeline

Each Proponent shall provide (i) a detailed plan to achieve COD within twenty-four (24) months from the Contract's execution date, and (ii) a monthly milestone schedule showing the most important tasks to be completed from Contract execution to COD along with a development plan description. As described in Section 1.8 (*General Requirements*), PREPA seeks project proposals that can achieve COD within twenty-four (24) months from the Contract's execution date. PREPA may consider proposals with forecasted COD not to exceed thirty (30) months from the Contract's execution date, but to a lesser extent. PREPA will attribute a higher score in the RFP evaluation process to shorter project development period.

4.8 Section Seven: Safety Performance

Each Proponent and its Team Member(s) must demonstrate (i) their ability to address and resolve safety issues, and (ii) their knowledge of safety strategies and methodologies. Any Proponent and its Team Member(s) claiming experience in utility or power project development and management must submit copies of Occupational Safety and Health Administration (OSHA) 300 forms for the past three (3) years, only as related to electric utility operations or project development and construction activities. If not applicable, a Proponent and its Team Member(s) must present a document explaining the reasons for not submitting such form.

4.9 Section Eight: Project Development Summary

If a Proponent has begun developing an Energy Resource in Puerto Rico, then such Proponent should provide a high-level description and summary of such project in the form set forth in Schedule A (*Project Description*) of Appendix D (*Proposal Data Forms*) data form. PREPA shall consider any submission provided in response to this requirement as non-binding on such Proponent and for information purposes only.

5. PROPOSAL SUBMISSION REQUIREMENTS

Each Proponent shall submit their proposal in response to this RFP in English prior to 8:00 pm Atlantic Standard Time on the Proposal Submission Deadline. PREPA shall not reimburse a Proponent, and each Proponent shall remain responsible, for any cost incurred as part of the preparation or submission of a proposal, the finalization, execution and delivery of any Contract and/or any other activity contemplated by a proposal or this RFP. PREPA has provided the information in this RFP, on PREPA's RFP website and on the event No. 112648 on PowerAdvocate® to assist Proponents in evaluating this RFP. This RFP does not purport to contain all information, required by Proponents to satisfy their due diligence requirements.

5.1 Proposal Organization

By submitting a proposal pursuant to this RFP, each Proponent acknowledges and agrees that (i) PREPA will rely on the representations contained in such proposal during its evaluation and consideration of such proposal, and (ii) such Proponent's inability to substantiate and verify any such representations may result in the termination of further consideration and/or evaluation of its proposal(s) and the right of PREPA to claim the entire face amount of the Proposal Security. Each Proponent shall ensure the truth, accuracy and completeness of all such representations to the best of such Proponent's knowledge and belief after due inquiry into the subject of such representations.

All proposals shall include the following minimum components in the order provided:

- a. Proposal Completeness Checklist (see Appendix C (*Form of Proposal Completeness Checklist*));
- b. Project Description (see Schedule A (*Project Description*) of Appendix D (*Proposal Data Forms*));
- c. Qualitative Assessment (see Schedule B (*Qualitative Assessment*) of Appendix D (*Proposal Data Forms*));
- d. Pricing Proposal (see Schedule C (*Price Proposal*) of Appendix D (*Proposal Data Forms*));
- e. Energy Production Forecast (see Schedule D (*Energy Production Forecast*) of Appendix D (*Proposal Data Forms*));
- f. Guaranteed Performance (see Schedule E (*Guaranteed Performance*) of Appendix D (*Proposal Data Forms*));
- g. Suppliers for Major Plant Equipment (see Schedule F (*Supplier for Major Plant Equipment*) of Appendix D (*Proposal Data Forms*)); and
- h. Interconnection Data (see Appendix D (*Interconnection Request Data Forms*)).

5.2 Proposal Content

For consideration in the evaluation process, proposals must contain the information outlined in the following sections:

- a. **(Project Description)** Proponents shall provide a description of their proposed project, using the forms in Schedule A (*Project Description*) of Appendix D (*Proposal Data Forms*), covering the following categories to the extent applicable to such project:
 - i. basic project description, including (a) project name; (b) site location (including map and site layout); (c) technology; (d) generating or discharge capacity; (e) MTR compliance strategy; (f) grid connection point and electrical one-line diagrams; (g) ancillary service capabilities; (h) forecasted COD; and (i) ownership structure;
 - ii. site ownership, usage, and development status;
 - iii. current status of issuance of all permits, licenses and other authorizations required for the implementation of the project;
 - iv. a detailed operation and maintenance plan, covering the proposed supply term;
 - v. environmental permitting plan addressing all potentially applicable environmental permits (federal and local) including the following, as applicable:
 1. list of potentially applicable permits evaluated or to be evaluated;
 2. result of applicability analysis for each potentially applicable permit or status of evaluation; and
 3. planned approach to obtain applicable permits including the following:
 - A. list of key activities necessary to obtain each applicable permit(s) and associated timing;
 - B. identification of key individuals or consultants; and
 - C. experience of those individuals in specific jurisdictions of project;
 - vi. transmission or distribution upgrade plans, as applicable, demonstrating compliance with the requirements of Regulation 8915 or Regulation 8916, as applicable, status of interconnection or transmission service requests, and status of related agreements and approvals;
 - vii. a detailed description and drawings of transmission or distribution and substation facilities associated with the proposed project, and descriptions of any special protection schemes associated with the resource and their use. PREPA requires Energy Resources that offer operational flexibility. Proponents must provide a detailed description of the scheduling or dispatch process, ramp rates, automatic

generation control, existing or planned Inter-Control Center Protocol ties to PREPA and any energy magnitude and duration limitations. Proponents must also describe the capability, if any, of the resource to provide reactive support ancillary service and dynamic reactive reserve;

- viii. Proponent's design and development experience with the proposed technology or, in the case of Proponents of VPPs, with the aggregation of multiple energy supply, storage or controllable load resources into a VPP;
- ix. Proponent's operating experience with the proposed technology or, in the case of Proponents of VPPs, with the aggregation of resources into a VPP and the management of such resources effectively to provide capacity and energy in response to utility dispatch instructions;
- x. financing plan, including (a) sources of debt and equity; (b) equity percentage by sponsor; (c) financing rates and other terms; (d) level of commitment by potential lenders for construction financing and permanent financing; and (e) tax credit qualifications;
- xi. Proponent's management team and key individuals responsible for permitting, financing, design, construction, and operation; and
- xii. major milestone schedule, including provisions for (a) site acquisition, control, and development; (b) permitting and licensing; (c) transmission or distribution upgrades and interconnection, if applicable and as relevant to the project location; (d) financing; (e) engineering, procurement, and construction; and (f) testing.

For each of the above categories, each Proponent shall provide references to any supporting documents or attachments.

- b. **(Initial Scoring Criteria)** Proponents shall complete the initial scoring criteria form in Schedule B (*Qualitative Assessment*) of Appendix D (*Proposal Data Forms*).
- c. **(Price Proposal)** Proponents shall complete the forms in Schedule C (*Price Proposal*) of Appendix D (*Proposal Data Forms*). Each Proponent shall submit price proposals for each category of price below that relates to its proposal:
 - i. For Renewable Energy Resource proposals, the “*Peak Base Rate*” and “*Off-Peak Base Rate*,” each as defined in the relevant Final Proposal Version of Contract, representing the unit price of electricity, expressed in dollars per kWh, for the corresponding hours of a day.
 - ii. For Energy Storage Resource proposals,
 - A. the “*Capability Payment Price*” or “*CPP*” as defined in the relevant Final Proposal Version of Contract, representing the monthly price of Energy Storage Resource capacity, expressed in dollars per MW-Month of discharge capacity; and

- B. the “*Variable O&M Price*” or “*VOMP*” as defined in the relevant Final Proposal Version of Contract, representing additional compensation for variable usage of the Facility, expressed in dollars per MWh of discharge energy.
- iii. For VPP proposals,
 - A. the “*Demand Build Price*” or “*DB\$*” as defined in the relevant Final Proposal Version of Contract, representing the monthly price of Demand Build Services, expressed in dollars per kW-Month; and
 - B. the “*Demand Reduction Price*” or “*DR\$*” as defined in the relevant Final Proposal Version of Contract, representing the monthly price of Demand Reduction Services, expressed in dollars per kW-Month.

Each Proponent shall also submit the estimated all-in cost (the “**Proponent’s Estimated Interconnection Costs**”) to (A) for Renewable Energy Resources and Energy Storage Resources, design, supply, install, test and commission the interconnection infrastructure required for the delivery of the project’s energy or energy storage capacity (as applicable) to the T&D System, and (B) for VPPs, install communication and metering systems that will enable the T&D Operator to issue dispatch instructions to the VPP aggregator or its agent.

- d. **(Performance)** Proponents shall specify performance for the project using the forms in Schedule D (*Energy Production Forecast*) and Schedule E (*Guaranteed Performance*) of Appendix D (*Proposal Data Forms*), as applicable.
 - i. **(Renewable Energy Resources)** For Renewable Energy Resource proposals, the Energy Production Forecast in Schedule D (*Energy Production Forecast*) of Appendix D (*Proposal Data Forms*), shall indicate, as applicable given the nature of the proposed resource (i.e., solar PV, wind or hydro), the forecasted P10, P50, and P90 annual energy forecast in MWh for each day and hour (8,760 entries). The forecasted values shall account for long-term performance degradation where applicable.
 - ii. **(Energy Storage Resources)** For Energy Storage Resource proposals, the guaranteed performance in Schedule E (*Guaranteed Performance*) of Appendix D (*Proposal Data Forms*) shall indicate:
 - A. Guaranteed Capacity (MW/ MWh);
 - B. Peak Charging Time (hours);
 - C. Peak Discharging Time (hours);
 - D. AC-AC Round Trip Efficiency (%); and
 - E. Equivalent Availability Factor (%).

The guaranteed values shall account for long-term performance degradation.

- e. **(Suppliers of Major Plant Equipment)** Proponents shall indicate the anticipated suppliers, models, and countries of manufacture for major plant equipment using the forms in Schedule F (*Supplier for Major Plant Equipment*) of Appendix D (*Proposal Data Forms*).
- f. **(Financing)** Proponents must provide specific evidence demonstrating their ability to raise financing.
- g. **(Ownership/Control of Site)** To the extent that a Proponent or its designated Resource Owner currently owns, or holds leasehold rights in, each parcel of land forming part of the site of the proposed project, such Proponent shall submit a certified true and correct copy of the deed of title or lease agreement, evidencing such ownership over, or leasehold interest in, such parcels of land. To the extent that a Proponent or its designated Resource Owner does not yet own or exercise control over a parcel of land that will form part of the proposed project site, the Proponent shall submit either:
 - i. the original version of a letter from the registered title holder of such parcel (A) confirming such owner's intention to transfer ownership of, or grant a lease over, such parcel to such Resource Owner for the purpose of implementing the proposed project upon the award of a Contract by PREPA to the Proponent, and (B) attaching a certified true and correct copy of the deed of title for such parcel; or
 - ii. a certified true and correct copy of a legally-binding agreement evidencing that the registered title holder of such parcel has granted the Proponent or such Resource Owner an option to purchase or lease such parcel upon the award by PREPA of a Contract for the implementation of the proposed project in form and substance reasonably satisfactory to PREPA (each, a "**Land Option Agreement**").
- h. **(10-Year O&M Cost Breakdowns)** For Energy Resource proposals other than a Demand Resource proposal, the Proponent shall submit a detailed breakdown of the fixed and variable costs to operate and maintain the proposed resource in ten (10) year increments during the supply period.
- i. **(Business Continuity Plan)** Each Proponent shall submit a business continuity plan, detailed by scenario, with the aim of ensuring service continuity during all identified potential threats to the operation of the proposed resource, including the occurrence of bomb threats, war, hurricanes, tornadoes (including waterspouts), earthquakes, tsunamis, active shooters, pandemics and other threats to public health and plane crashes.
- j. **(Legal Proceedings)** Each Proponent must submit a summary of all legal proceedings, claims, actions, or suits against the Proponent, the Resource Provider, the guarantor, or involving the facility or site.

5.3 Disqualification of Proposals

Notwithstanding any other provision of this RFP, PREPA reserves the right without qualification and in its sole discretion, to reject any and/or all proposals for any reason whatsoever and to consider alternatives outside of the RFP process. PREPA may disqualify or reject a Proponent's proposal(s) for any reason, at PREPA's sole discretion, including but not limited to the following:

- a. failure to comply with any of the requirements of this RFP, including timelines, form sheets, the communication protocol set forth in Section 2.1 (*Communications*) or any other requirements;
- b. any misrepresentation, intentional non-disclosure or withholding of information in the SOQ;
- c. any effort towards influencing the process of qualification or in relation to decision concerning the qualifications of a Proponent or its designated Resource Provider;
- d. failure to disclose additional information relating to the Proponent's experience, even upon reasonable request and such information being deemed necessary to properly evaluate the Proponent's qualifications;
- e. failure in reporting any material changes in information provided in the SOQ following submission thereof;
- f. if PREPA determines that public policy, the national interest or any other grounds prohibit a Proponent or its designated Resource Provider from doing business with PREPA;
- g. if the Proponent or Resource Provider, as applicable, has overdue debts (in a material amount) or significant contingent liabilities;
- h. if the Proponent or Resource Provider, as applicable, has entered into bankruptcy or a court-ordered administration or has entered into an arrangement with its creditors or has suspended business activities;
- i. if the Proponent or Resource Provider, as applicable, is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court, or an arrangement with creditors or has suffered any other analogous event;
- j. if the Proponent or Resource Provider, as applicable, has been convicted of an offence that concerns its professional misconduct in the course of its business or profession;
- k. if the Proponent or Resource Provider, as applicable, holds an ownership interest in any member of the advisors or consultants supporting P3A, PREPA, the Energy Bureau or FOMB; or
- l. non-declaration of a conflict of interest or potential conflict of interest resulting from previous or existing contracts or relationships, which affects, or may affect, its potential participation.

Where one or more Person(s) have established a new company specifically incorporated for participating in the RFP process as a Proponent, any disqualification shall apply to such Person(s) as well as the Proponent. PREPA may disqualify a proposal at any point in the evaluation process if PREPA determines, at its discretion, that the Proponent or its designated Resource Provider has attempted to gain an advantage through conduct deemed as unethical, a conflict of interest, by interference, or any such means. By submitting a proposal in response to this RFP, each Proponent certifies that (i) it has not divulged, discussed, or compared its proposal with any other Proponent, and (ii) has not colluded whatsoever with any other Proponent or parties with respect to this or other proposals, in each case directly or indirectly through one or more intermediaries. PREPA may reject any proposal if it is perceived that any of these criteria have been violated.

5.4 Restricted Parties

As part of this RFP, the following entities will be deemed “**Restricted Parties**” and neither they nor their respective directors, officers, partners, employees and persons, or legal entities related to them are eligible to participate as team members or to otherwise assist any Proponent, Resource Provider or other team member, directly or indirectly, or participate in any way as a director, officer, employee, advisor, counsel, accountant or other consultant or otherwise in connection with any Proponent. Each Proponent will ensure that each team member does not use, consult, include, or seek advice from any Restricted Party. The following have been identified as Restricted Parties:

- a. Ankura Consulting Group, LLC
- b. ATCO Ltd.
- c. Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
- d. Citigroup Global Markets Inc.
- e. Cleary Gottlieb Steen & Hamilton LLP
- f. Díaz & Vázquez PSC
- g. Ernst & Young LLP
- h. Filsinger Energy Partners
- i. Greenberg Traurig, LLP
- j. Guidehouse, Inc.
- k. Hogan Lovells US, LLP
- l. Innovative Emergency Management, Inc.
- m. King & Spalding, LLP
- n. LUMA Energy, LLC

- o. McKinsey & Company, Inc.
- p. Navigant Consulting, Inc.
- q. Nixon Peabody LLP
- r. O'Melveny & Myers LLP
- s. O'Neill & Borges LLC
- t. Proskauer Rose LLP
- u. Quanta Services, Inc.
- v. Sargent & Lundy, LLC
- w. Sargent & Lundy Puerto Rico, LLC
- x. Siemens Industry, Inc.

Proponents should be aware that the list of Restricted Parties is not exhaustive and that a person that is not included as a Restricted Party may still be prohibited from participating in the proposal and project. Finally, except as to any Restricted Party, the fact that a person provides or has provided services to P3A, PREPA, the Energy Bureau or FOMB in matters not related to the proposal and project may not automatically prohibit such person from participating in the proposal and project. To the extent any question exists as to whether such a person is a Restricted Party, the Proponent should consult with PREPA.

6. PROPOSED PROJECT EVALUATION

PREPA shall evaluate a Proponent's proposal(s) in the following three (3) phases:

- a. Phase I: Quality Control Review;
- b. Phase II: Project Committee Review and Recommendation; and
- c. Phase III: Interconnection Evaluation and Contract Negotiation.

The following sections further describe the proposal evaluation process.

6.1 Phase I: Quality Control Review

PREPA's quality control review will use the information supplied by the Proponents in the SOQ and each proposal. Each Proponent shall provide the information listed in the Proposal Completeness Checklist by the Proposal Submission Deadline to be included in the evaluation.

During the quality control review, PREPA will determine which proposals satisfy the minimum requirements outlined in Section 3 (*PROPONENT QUALIFICATION REQUIREMENTS*) and Section 4 (*SOQ SUBMISSION REQUIREMENTS*) of this RFP. PREPA (i) will reject any proposal

that fails to comply with the Financial and No Disbarment Criteria, and (ii) reserves the right to reject any proposal for any reason whatsoever regardless of whether such proposal complies with such requirements in accordance with Section 5.3 (*Disqualification of Proposals*), in each case without scoring, and any such proposal will not advance to the next phase. PREPA will notify each Proponent whether its proposal(s) passed the quality control review and whether such Proponent will advance to Phase II.

Following such notification (i) PREPA will publish a list of median price proposals for each technology group that will advance to Phase II on its website, and (ii) each selected Proponent shall deliver to PREPA the Proposal Security within seven (7) business days of such Proponent's receipt of notification of such selection.

6.2 Phase II: Project Committee Review and Recommendation

PREPA will divide Phase II into qualitative and pricing evaluation sub-phases, as follows:

- a. **(Qualitative Evaluation)** In connection with its qualitative evaluation, PREPA will conduct Feasibility Studies and independently model interconnection and system upgrade costs, where possible analyzing clusters of potential projects, based on an initial selection of RFP responses that PREPA ranks high on its list of projects eligible for contracting. In addition, PREPA will evaluate the extent to which multiple projects have proposed or can be made to share the same interconnecting facility, if reasonable and applicable for any given set of proposals. PREPA shall give priority to those proposals that provide resource installations at or technically close to the indicated priority locations. PREPA will evaluate the impact of each proposed resource on the T&D System and will endeavor to notify Proponents whose proposals will require additional network upgrades. The Proponents' proposal should include the Proponent's Estimated Interconnection Costs.
- i. **(Process)** PREPA and its advisors shall perform the initial screening and shortlisting of proposals in Phase II, according to a qualitative evaluation. This evaluation will consist of the following steps:
 - A. verification that a Proponent has provided all information listed in the Proposal Completeness Checklist;
 - B. organization of the proposals into groups according to (i) the proposed technology, and (ii) groups that will allow for distributed generation benefits to be recognized, for resiliency and for avoided T&D System cost purposes (each, a **"Resource and Technology Group"**);
 - C. review of information supplied by the Proponents in the forms set forth in Schedules A - H of Appendix D (*Proposal Data Forms*);
 - D. development of a qualitative score according to the information supplied by each Proponent in Schedule B (*Qualitative Assessment*) of Appendix D (*Proposal Data Forms*) for the proposed type of Energy Resource and technology, based on the qualitative evaluation criteria specified below;

- E. development of an initial qualitative score according to the information supplied by the Proponent for the proposed technology. The qualitative score will be based on technical viability, development status, developer experience, and financing plan and qualifications. PREPA will prefer projects with faster installation timelines, and those with better technical locations for interconnection purposes;
 - F. calculation of the composite Phase II score from the weighted qualitative score; and
 - G. development of a list of preferred proposals from the highest scoring proposals within each technology category.
- ii. **(Evaluation Criteria)** The Phase II qualitative evaluation will assess the information supplied by the Proponent in the proposal data forms contained in the RFP. PREPA will consider the following criteria during the qualitative evaluation:
- A. **Technical Viability:** The evaluation team will review each proposal for conformance to the applicable MTR.
 - B. **Development and Schedule Risk:** The evaluation team will assess the completeness and feasibility of the proposed project implementation and evaluate the likelihood of meeting the milestone dates and expected performance.
 - C. **Permitting Risk:** The evaluation team will examine each Proponent's permitting plan and schedule and the likelihood that such Proponent can obtain the required permits. This examination will include an assessment as to whether Proponents have identified the relevant permits and approvals necessary for construction and operation of the proposed project.
 - D. **Environmental Impacts:** The evaluation team will assess the proposed project's overall impact on the environment, whether the project will likely result in potentially significant environmental impacts, and the degree to which potential impacts can be satisfactorily mitigated. This will include an examination of any known sensitive environmental features on or adjacent to the site such as waterways, wetlands, floodplains, archaeological and architectural resources, historic properties, degraded ambient air quality, contamination, ongoing hazardous materials remediation, threatened and endangered species, airports, residences or other sensitive noise receptors, and a discussion of storm-resistant features and other reliability features to determine the suitability of the project at the proposed site location.
 - E. **Experience:** The evaluation team will evaluate the Proponent's experience and success in developing projects of a similar design and size to the proposed project.

- F. **Debt Financing Plan and Qualifications:** The evaluation team will evaluate the Proponent's proposed debt financing plan and experience in successfully financing projects of a similar size and complexity. The evaluation team will also assess whether a Proponent has obtained debt financing commitments for the project from one or more creditworthy lenders, reasonably acceptable to PREPA.
- G. **T&D System Integration:** The evaluation team will assess each project's technical characteristics and identify those projects that address the T&D System's needs as defined in this RFP and IRP. The evaluation team will evaluate the degree to which the project proposal appears to comply with the requirements of Regulation 8915 or Regulation 8916, as applicable, as well as the risk associated with the interconnection of the proposed project to grid reliability (voltage control, reactive capability, protection coordination, frequency response, etc.) and deliverability to the T&D System.
- H. **Site Control:** The evaluation team will assess whether a Proponent owns or leases the project site (and, in the case of a lease, will consider the alignment of the term of such lease with the term of the applicable Contract) or otherwise has the ability to obtain control over, and access to, such site prior to the occurrence of the "*Guaranteed Construction Start Date*" set forth in the template Contract. This evaluation criteria does not apply to proposals for VPPs.
- I. **Community Impacts and Acceptance:** The evaluation team will review a Proponent's proposal(s) for potential socioeconomic benefits and harm to the community. The evaluation team will assess known community support for or opposition to a proposed project, as well as such Proponent's plan to manage community relations.
- J. **Operations and Maintenance Plan:** The evaluation team will assess information about a Proponent's operations and maintenance plan for the proposed project set forth in Schedule A (*Project Description*) of Appendix D (*Proposal Data Forms*), including contract term, scope, experience, and pricing. Proponents proposing a VPP as a resource should provide detailed information concerning their plans to identify, aggregate and contract for individual generation and storage resources that will be dedicated to such resource.
- K. **Additional Benefit of VPPs:** The evaluation team will consider and evaluate the additional benefits that distributed resources procured as part of a VPP may provide, including (i) the potential to avoid transmission and distribution costs (including T&D System losses), (ii) the possible enhancement of local resiliency by serving critical or priority loads, and (iii) the potential for completion of any required installation in shorter periods,

or more immediate availability as a capacity resource based on an existing installation, than would be true of a new-build project.

PREPA will evaluate the impact of the following categories on a Proponent's ability to deliver the proposed project on a timely basis:

Table 6-1 - Qualitative Evaluation

Item	Category / Criteria
A	Technical Viability
B	Development and Schedule Risk
C	Permitting Risk
D	Environmental Impacts
E	Contractor Experience
F	Financing Plan and Qualifications
G	T&D System Integration
H	Site Control
I	Community Impacts and Acceptance
J	Operations and Maintenance Plan
K	Additional Benefit of VPP
L	Contract Exceptions (if applicable)

As it performs its qualitative evaluation, PREPA may request additional information or clarifications from Proponents. These requests, and any communications with a Proponent during the qualitative evaluation process, shall not be construed as contract negotiations. PREPA shall request for additional information or clarification in writing via email and a Proponent shall have five (5) business days from the transmission of each request to respond. Proposals with outstanding requests beyond the response period may be removed from consideration and further evaluation.

- b. **(Pricing Evaluation)** The Phase II evaluation will determine the cost effectiveness of the shortlisted proposals. This detailed pricing evaluation will include and reflect information received in response to any clarifying questions, interviews, site visits, and other due diligence, and will consider the all-in costs that each proposal will likely impose on

Ratepayers, to the extent that the evaluation team can quantify such costs. Such all-in costs include:

- i. contract charges, including pass through costs;
- ii. costs for required transmission reinforcements;
- iii. costs for required distribution reinforcement;
- iv. system impacts including, but not limited to, impact on transmission transfer capability, and PREPA capacity requirements and deliverability; and
- v. LCOE or, in the case of Energy Storage Resources, LCOS.

The lowest LCOE / LCOS (as applicable) within each Resource and Technology Group will receive one hundred percent (100%) of the LCOE / LCOS points available (450 points). Each of the remaining proposals within such Resource and Technology Group will receive a fraction of such points available with such fraction determined by dividing the lowest LCOE / LCOS (as applicable) by the LCOE / LCOS of each remaining proposal.

PREPA will also give preference in its evaluation to Proponents whose proposals consider the future emergence of PREPA from protection under PROMESA and contain a downward price adjustment mechanism that would reflect PREPA's improved credit quality at such time.

The pricing evaluation will consider the following criteria:

Table 6-2 - Pricing Evaluation Scoring

Category	Points Available
LCOE / LCOS	450
Technical Viability	130
Development Status	180
Proponent's Experience	130
Financing Plan and Qualifications	110
Total	1,000

Following completion of the pricing evaluation, the evaluation team will recommend proposals for evaluation, during Phase III. Proponents shall not construe the selection of a proposal for Phase III as a commitment by PREPA to execute a Contract.

6.3 Phase III: Interconnection Evaluation & Contract Finalization

Following PREPA's selection of proposals for Phase III, PREPA will, for each selected proposal, (i) enter into negotiations during a thirty (30) day period with the Proponent of such proposal for the finalization, execution and delivery of a Contract governing the terms and conditions under which such Proponent will develop, finance, construct (or, in the case of a VPP, aggregate), own and operate Energy Resources, and sell capacity and Energy made available by the proposed project, and (ii) conduct a System Impact Study and a Facility Study to evaluate whether the proposed project may be interconnected with the T&D System at an acceptable cost and with acceptable impacts on the system, in each case in two parallel work streams. As part of completing the System Impact Study and Facility Study, PREPA may also conduct additional diligence, which may include management interviews, environmental legal and regulatory due diligence, detailed engineering assessments and facility dispatch modelling.

Upon the completion of the Feasibility Study, System Impact Study and Facility Study by PREPA for all proposed projects in a Resource and Technology Group, PREPA will determine whether each project will serve the best interests of Ratepayers as evidenced by the findings of such studies and inform each Proponent thereof. For each proposed project for which PREPA renders a positive determination (each, a "**Best Interest Determination**"), PREPA will inform all Proponents of such projects of such determination and invite each such Proponent to make its best and final price proposal offer under its Contract; provided that such price proposal shall never exceed the initial price proposal submitted by such Proponent as part of its initial proposal (the "**Best and Final Offer**"). PREPA will make its final decision whether to proceed with a proposed project by announcing its acceptance of the Best and Final Offer made by the Proponent of such project.

Notwithstanding the execution and delivery by a Proponent of a Contract with PREPA, the main provisions of such Contract will not enter into full force and effect until the satisfaction of a number of conditions precedent, including:

- a. the issuance by PREPA of a Best Interest Determination for such Proponent's project;
- b. the acceptance by PREPA of such Proponent's Best and Final Offer; and
- c. the execution and delivery of an amendment to the Contract between PREPA and the Proponent, incorporating the terms of the Best and Final Offer.

6.4 Proposal Data Forms

The evaluation will use the information supplied by the Proponents in the proposal data forms and template Contracts contained in the Appendices of this RFP:

Appendix D – Proposal Data Forms

Schedule A – Project Description

Schedule B – Qualitative Assessment

Schedule C – Price Proposal

Schedule D – Energy Production Forecast

Schedule E – Guaranteed Performance

Schedule F – Suppliers for Major Plant Equipment

Appendix F – Form of Solar PPOA

Appendix G – Form of ESSA for Standalone Energy Storage Resources

Appendix J – Interconnection Data Request Forms

Appendix Q – Form of Grid Services Agreement

Appendix R – Form of ESSA for ITC Compliant Energy Storage Resources

6.5 [Intentionally Omitted]

6.6 Proposal Security

Upon its receipt of a notice confirming that PREPA has selected a Proponent's proposal for evaluation during Phase II, each selected Proponent shall deliver the Proposal Security with a face amount equal to the product of \$10,000 per MW multiplied by the aggregate maximum generating capacity or discharge capacity of the proposed Energy Resource(s) (as applicable) to PREPA within seven (7) business days of the date of such receipt and maintain such Proposal Security in full force and effect through the Bid Expiration Date (as defined below). The following guidelines shall apply to the delivery of Proposal Security under this RFP:

- a. To the extent that a Proponent desires to submit an irrevocable stand-by letter of credit or a bid bond as the Proposal Security in a form that departs in any material way from the form set forth in Appendix H (Form of Irrevocable Stand-By Letter of Credit) or Appendix P (*Form of Bid Bond*), such Proponent shall obtain PREPA's approval for such departure prior to the Proposal Submission Deadline.
- b. To the extent that a Proponent proposes Co-Located Standalone Resources, Co-Located ITC Compliant Resources or two (2) or more non-co-located, standalone Energy Resources, in either case, in the proposal, the Proponent shall deliver a separate Proposal Security for each proposed Energy Resource.
- c. To the extent that a Proponent proposes Co-Located Integrated Resources, the Proponent shall deliver one (1) Proposal Security with a face amount determined on the basis of the proposed generating capacity of the Renewable Energy Resource component of such proposal, measured at the point of electrical interconnection with the T&D System.
- d. In the event that a Proponent proposes to deliver just one (1) Energy Resource from a number of alternative resource options, the Proponent should deliver one (1) Proposal Security with a face amount, determined on the basis of the proposed resource with the highest generating capacity or discharge capacity.

PREPA shall reject as non-responsive any proposal selected for Phase II not accompanied by an acceptable Proposal Security. PREPA will return each Proponent's Proposal Security as promptly as possible upon the earliest to occur of the date (the "**Bid Expiration Date**") of (i) PREPA's determination not to select Proponent's proposal for evaluation during Phase III, (ii) PREPA's determination not to issue a Best Interest Determination for such Proponent's proposal, (iii) PREPA's determination not to accept such Proponent's Best and Final Offer, (iv) the satisfaction and/or waiver of all conditions precedent required for the full effectiveness of the Contract with such Proponent, and (v) the discontinuation by PREPA of the RFP process. For each Proposal Security submitted by a Proponent, PREPA shall have the right to draw down on / recover the entire face amount of such security upon the occurrence of any of the following events:

- aa. such Proponent withdraws (or carries out any act or omission that evidences its intent to withdraw) any part, or all, of its proposal prior to the Bid Expiration Date;
- bb. PREPA determines, in its sole discretion, that the proposal submitted by such Proponent contains a false statement or material misrepresentation;
- cc. in the event that PREPA selects the proposal of such Proponent for evaluation, during Phase III, such Proponent fails to execute a Contract with PREPA in respect of such proposal within thirty (30) days from the date of such selection for any reason whatsoever; and
- dd. a Proponent, which has executed a Contract with PREPA, breaches its obligation to satisfy conditions precedent thereunder.

6.7 Ownership / Control of Site

Upon its receipt of a notice confirming that PREPA has selected a Proponent's proposal relating to an Energy Resource other than a VPP, for evaluation, during Phase II, such selected Proponent shall deliver to PREPA within seven (7) business days of the receipt date, for each parcel of land that will form part of the proposed project site, either:

- a. a certified true and correct copy of the deed of title or lease agreement evidencing that such Proponent holds the registered title over, or leasehold rights in, such parcel of land; or
- b. a Land Option Agreement relating to such parcel of land.

6.8 Reservation of Rights

Nothing contained in this RFP shall be construed to require or obligate PREPA to select any proposals or limit PREPA's ability to reject all proposals in its sole and exclusive discretion. PREPA further reserves the right to amend, or withdraw and terminate, this RFP at any time prior to the Proposal Submission Deadline, selection of proposals or execution of any Contract. PREPA also reserves the right to solicit additional proposals it deems necessary and the right to submit additional information requests to Proponents during the proposal evaluation process. The effectiveness of each Contract signed by a Proponent will be contingent on regulatory approvals, including the approval of the Energy Bureau and the FOMB.

All proposals submitted to PREPA pursuant to this RFP shall become the exclusive property of PREPA and may be used by PREPA for any reasonable purpose. PREPA shall consider materials provided by Proponents in response to this RFP to be confidential only if such materials are clearly designated as *confidential*. Proponents should be aware that their proposal, even if marked confidential, may be subject to discovery and disclosure in regulatory or judicial proceedings that may or may not be initiated by PREPA. A Proponent may be required to justify the requested confidential treatment under the provisions of a protective order issued in such proceedings. If required by an order of an agency or court of competent jurisdiction, PREPA may produce the material in response to such order without prior consultation with the relevant Proponent.

This RFP shall not, by itself, give any right to any party for any claim against PREPA. Furthermore, by submitting a proposal, each Proponent shall be deemed to have acknowledged that PREPA assumes no liability with respect to this RFP or any matters related thereto. Each Proponent acknowledges and agrees that PREPA may terminate this RFP at any time and for its convenience without liability to such Proponent, its advisors, consultants, and agents. By submission of a proposal, each Proponent, for itself as well as for its successors and assignees (if any), agrees that, as between such Proponent and PREPA, such Proponent shall have sole responsibility for all claims, demands, accounts, damages, costs, losses, and expenses of whatsoever kind in law or equity, known or unknown, foreseeable or unforeseeable, arising from or out of this RFP or its proposal(s).

PREPA reserves the right to modify this RFP for any reason and at any time prior to the Proposal Submission Deadline. PREPA will notify Proponents of any such modifications.

6.9 Disclosure of Proposals

As part of the process of obtaining regulatory approval, PREPA may disclose proposals submitted by Proponents to third parties for the purpose of obtaining such approval.

Appendix A. Form of Notice of Intent to Respond

PROPONENT	
Company Name	
Company Mailing Address	
Primary Contact Information	
Name	
Title	
Phone	
Email	

Proponent's Signature:

Date:

Appendix B. Form of Request for Clarification

Issue #	Items Requiring Clarification	Reference	Clarification Request
1.			
2.			
3.			
4.			
5.			
6.			
7.			

Proponent's Name:

Date:

Appendix C. Form of Proposal Completeness Checklist

Each Proponent should (i) check the following boxes to indicate the completeness of its proposal and ensure that such proposal meets the minimum requirements for this RFP, and (ii) submit the completed checklist with such proposal. Proponents have the sole responsibility to review the RFP and ensure that their proposals satisfy all the requirements. PREPA provides this checklist for guidance only and does not guarantee its completeness or accuracy.

No.	Proposal	Check	Reference RFP Provisions
1.	SOQ	-	§3, §4
1.1.	Section One: Executive Summary	-	§4.2, §3, §3.1
1.1.1.	Proponent qualifications in accordance with Section 3	<input type="checkbox"/>	§3, §3.1
1.1.2.	Envisaged use (if any) of contractors and Subcontractors	<input type="checkbox"/>	§4.2
1.2.	Section Two: Corporate Structure	-	§4.3
1.2.1.	Proponent contact information	<input type="checkbox"/>	§4.3(a)
1.2.2.	Proponent corporate structure and history	<input type="checkbox"/>	§4.3(b)
1.2.3.	Proponent parent company contact information	<input type="checkbox"/>	§4.3(c)
1.2.4.	Proponent information	<input type="checkbox"/>	§4.3(d)
1.2.5.	Proponent guarantor key information	<input type="checkbox"/>	§4.3(e)
1.2.6.	Proponent organizational chart	<input type="checkbox"/>	§4.3(f)
1.2.7.	Resource Provider contact information	<input type="checkbox"/>	§2.9
1.2.8.	Resource Provider ownership schematic	<input type="checkbox"/>	§2.9
1.2.9.	Description of technical operational and managerial resources	<input type="checkbox"/>	§4.3(g)

1.2.10.	Description of level of commitment by O&M and EPC contractors	<input type="checkbox"/>	§4.3(h)
1.2.11.	Key individuals and roles	<input type="checkbox"/>	§4.3(i)
1.2.12.	List of advisors	<input type="checkbox"/>	§4.3(j)
1.2.13.	Team Member resumes	<input type="checkbox"/>	§4.3(k)
1.3.	Section Three: Technical and Operational Capability	-	§4.4, Table 3-1
1.3.1.	Reference Project(s)	<input type="checkbox"/>	Table 3-1, 1
1.3.2.	For each Reference Project, a Reference Project Certification in the form of Appendix O (<i>Forms of Certificate for Minimum Eligibility Requirements</i>)	<input type="checkbox"/>	Table 3-1, 2, 3 and 4
1.3.3.	For each Reference Project, general information	<input type="checkbox"/>	Table 3-1, 5
1.4.	Section Four: Financial Capability	-	§4.5
1.5.	Unrestricted Net Worth	<input type="checkbox"/>	§4.5(a)
1.6.	Ability to raise financing	<input type="checkbox"/>	§4.5(b), Schedule [G] of Appendix D
1.7.	Section Five: Other Criteria and Additional Capability	-	§4.6
1.7.1.	No Disbarment Certification in the form of Appendix O (<i>Forms of Certificate for Minimum Eligibility Requirements</i>)	<input type="checkbox"/>	§4.6(a), Table 3-1
1.7.2.	Proponent certification	<input type="checkbox"/>	§4.6(b)
1.7.3.	Any other information Proponent believes would be useful	<input type="checkbox"/>	§4.6(c)
1.8.	Section Six: Timeline	-	§4.7
1.8.1.	Detailed plan to achieve COD within 24 months	<input type="checkbox"/>	§4.7(i)
1.8.2.	Monthly milestone schedule and development plan description	<input type="checkbox"/>	§4.7(ii)
1.9.	Section Seven: Safety Performance	-	§4.8

1.10.	Demonstrate ability to address and resolve safety issues and knowledge of safety strategies and methodologies	<input type="checkbox"/>	§4.8
1.11.	Copies of OSHA 300 forms for the past 3 years	<input type="checkbox"/>	§4.8
1.12.	Section Eight: Project Development Summary	<input type="checkbox"/>	§4.9, Schedule A of Appendix D
2.	Proposal	-	§2.9, §5, §5.1
2.1.	Proposal Completeness Checklist	<input type="checkbox"/>	§5.1
2.2.	Proposal Data Forms	-	§5.1
2.2.1.	Project Description	<input type="checkbox"/>	§5.1, Schedule A of Appendix D
2.2.2.	Qualitative Assessment	<input type="checkbox"/>	§5.1, Schedule B of Appendix D
2.2.3.	Pricing Proposal	<input type="checkbox"/>	§5.1, Schedule C of Appendix D
2.2.4.	Energy Production Forecast	<input type="checkbox"/>	§5.1, Schedule D of Appendix D
2.2.5.	Guaranteed Performance	<input type="checkbox"/>	§5.1, Schedule E of Appendix D
2.2.6.	Suppliers for Major Plan Equipment	<input type="checkbox"/>	§5.1, Schedule F of Appendix D
2.3.	Interconnection Request Data Form	<input type="checkbox"/>	§5.1, Appendix J
2.4.	Ownership / Control of Site	<input type="checkbox"/>	§5.2 (g)
2.5.	10-year O&M Cost Breakdown	<input type="checkbox"/>	§5.2 (h)
2.6.	Business Continuing Plan	<input type="checkbox"/>	§5.2 (i)

2.7.	Legal Proceedings	<input type="checkbox"/>	§5.9 (j)
2.8.	VPP Specific Requirements	<input type="checkbox"/>	§1.9

Appendix D. Proposal Data Forms

(see technology specific file *Appendix D. Proposal Data Forms.xlsx*)

- Schedule A – Project Description
- Schedule B – Qualitative Assessment
- Schedule C – Price Proposal
- Schedule D – Energy Production Forecast
- Schedule E – Guaranteed Performance
- Schedule F – Suppliers for Major Plant Equipment

Appendix E. Form of Non-Disclosure Agreement

This Non-Disclosure Agreement (“**Agreement**”) is made this [●] day of [●] 2021, by and between [●], a [●], hereinafter referred to as “**Proponent**”, and the Puerto Rico Electric Power Authority, hereinafter referred to as “**PREPA**”, a public corporation and government instrumentality of the Commonwealth of Puerto Rico, created by Act 83 of May 2, 1941, as amended. Proponent and PREPA jointly referred to as the “**Parties**”.

1. In connection with communications between Proponent and PREPA, relating to (i) the Request For Proposals for Renewable Energy Generation and Energy Storage Resources, Tranche 2 of 6 (as amended, the “**RFP**”) issued by PREPA on June 30, 2021, and (ii) the submission of a proposal by Proponent to make available one or more renewable energy, energy storage or virtual power plant resources in response to the RFP (the “**Proposed Transaction**”), each party (as to information disclosed by it, “**Disclosing Party**” intends to furnish the other party (as to information received by it, “**Receiving Party**”) with certain confidential and proprietary information concerning the Proposed Transaction. “**Confidential Information**”, as used in this Agreement, shall mean (a) the proposed or final terms of the Proposed Transaction, (b) all information that is disclosed in writing or by e-mail or other tangible electronic storage medium and is clearly marked “Confidential” or “Proprietary”, or (c) all information identified by the Disclosing Party as confidential, initially disclosed orally or visually and at the time of disclosure. All other information shall be deemed non-confidential, in each case subject to paragraph (9) below.
2. The Receiving Party shall, except as required by law, (a) protect the confidentiality of the Disclosing Party’s Confidential Information; (b) use the Confidential Information only for the purposes of evaluating a Proposed Transaction and the terms thereof; (c) use the same degree of care as with its own confidential information to prevent disclosure of the Confidential Information; and (d) not disclose to persons that the Confidential Information has been made available, that the Receiving Party is considering a Proposed Transaction, that the Parties have had or are having discussions or negotiations with respect thereto, or the terms and conditions thereof except to its affiliates, advisors, potential financing sources, representatives, key personnel, and any legal, financial, or technical advisors, whose duties justify their need to review and know such material (collectively, “**Representatives**”), to the extent necessary to permit them to assist the Receiving Party in the evaluation of the Proposed Transaction.
3. Notwithstanding anything to the contrary in this Agreement, PREPA shall have the right to disclose Confidential Information to: (a) the Financial Management and Oversight Board, the Puerto Rico Energy Bureau, the United States District Court for the District of Puerto Rico, and any governmental Authority for the purposes of obtaining the consents and approvals of the Proposed Transaction, together with such additional information as may be required to obtain such consents and approvals, (b) the Puerto Rico Public Private Partnerships Authority and any owner or operator, or potential owner or operator, of the transmission and distribution system, and their respective advisors and lenders, and (c) the Puerto Rico Comptroller’s Office through the filings required by applicable law.

4. The Receiving Party shall be responsible at all times for enforcing the confidentiality of the Confidential Information and shall take any commercially reasonable action, of a legal nature or otherwise, to the extent necessary, to prevent any disclosure of the Confidential Information by any of its Representatives, other than as permitted hereby. To the extent known, the Receiving Party agrees to exercise reasonable efforts to notify the Disclosing Party immediately of the date and circumstances of any loss or unauthorized use or disclosure of the Confidential Information of which it receives notice.
5. Except as otherwise provided herein, the Receiving Party or its Representatives shall not disclose any Confidential Information to any third party whatsoever without the prior written consent of the Disclosing Party and subject to such terms and conditions as may be required by the Disclosing Party, such consent not be unreasonably withheld. If the Disclosing Party issues a written consent for the disclosure of information to a third party in accordance with this paragraph, the Receiving Party shall:
 - a. inform to such third party of the provisions of this Agreement;
 - b. ensure that such third party first undertakes in writing to comply with the provisions of this Agreement, before any disclosure; and
 - c. take all reasonable steps to ensure that such third party complies with the provisions thereof.
6. The Receiving Party shall, at the written request of the Disclosing Party, use commercially reasonable efforts to ensure that the third parties mentioned in the preceding paragraph to whom the Confidential Information is disclosed immediately return any such Confidential Information which is then in existence and provided to that Receiving Party in a written or other permanent form together with any copies thereof.
7. Only those representations and warranties that are made in a final written definitive agreement in connection with a Proposed Transaction, when, as and if executed by the Parties (or one or more affiliates thereof), and subject to such limitations and restrictions as may be specified therein, will have any legal effect with respect to the Disclosing Party or its Representatives.
8. Each party acknowledges that money damages would not be a sufficient remedy for any breach of this Agreement. Accordingly, in the event of any such breach, in addition to any other remedies at law or in equity that a party may have, it shall be entitled to equitable relief, including injunctive relief or specific performance, or both (although neither party shall be entitled to any special, consequential, indirect, punitive or exemplary damages as a result of a breach of this Agreement, whether a claim is asserted in contract, tort, or otherwise). No failure or delay on the part of either party in exercising any right, power or remedy hereunder shall be construed as a waiver by either party of any such right, power or remedy; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

9. This Agreement shall be inoperative as to particular portions of the Confidential Information disclosed by the Disclosing Party if such information: (a) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party or its Representatives in breach of this Agreement; (b) was available on a non-confidential basis prior to its disclosure to the Receiving Party; (c) is or becomes available to the Receiving Party or its Representatives on a non-confidential basis from a source other than the Disclosing Party when such source is not, to the best of the Receiving Party's knowledge, breaching a confidentiality obligation to the Disclosing Party; or (d) was independently developed by the Receiving Party or its Representatives, without reference to the Confidential Information.
10. The Disclosing Party may elect at any time by notice to the Receiving Party to terminate further access to and such party's review of the Confidential Information. In any such case, or upon the expiration of this Agreement, the Receiving Party will promptly return or destroy all Confidential Information disclosed to it. The Receiving Party may nevertheless maintain a single confidential copy in the office of its general counsel of the Confidential Information as a record of the material provided hereunder (provided that such material shall remain subject to the terms of this Agreement), and the Receiving Party shall not be deemed to have retained or failed to destroy any Confidential Information which is in electronic form if such information is deleted from local hard drives so long as no attempt is made to recover such information from servers or back-up sources.
11. Each party shall retain ownership of all Confidential Information and intellectual property it had prior to commencement of the discussions and RFP process referred to in this Agreement. Nothing in this Agreement shall be deemed to grant a license directly or by implication, estoppel, or otherwise, although the Parties may provide for such a license in an express written agreement.
12. If either party or any of their respective Representatives is requested or required (by interrogatories, subpoena, or similar legal process, binding on the Receiving Party or a binding request of any governmental entity or regulatory agency) to disclose any Confidential Information, such party agrees to provide the Disclosing Party with prompt notice of each such request, to the extent practicable prior to disclosure, so that the Disclosing Party may seek an appropriate protective order or waive compliance by the Receiving Party with the provisions of this Agreement, or both. If, absent the entry of a protective order or receipt of a waiver, the Receiving Party is, in the opinion of its counsel, legally compelled to disclose such Confidential Information or otherwise permitted to disclose such information under this Agreement, the Receiving Party may disclose such Confidential Information to the persons and to the extent required without liability under this Agreement.
13. Notwithstanding any provision of this Agreement to the contrary, the legal obligations of confidentiality hereunder do not extend to the U.S. federal or state tax structure or the U.S. federal or state tax treatment of the Proposed Transaction. If any U.S. federal or state tax analyses or materials are provided to any party, such party is free to disclose any such

analyses or materials without limitation.

14. This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico.
15. This Agreement is not intended to be, nor shall it be construed as constituting an offer by or creating any obligation on either party to enter into any other agreement. No provision herein included shall be interpreted as to create an agency or partnership relationship between the Parties to this Agreement.
16. PREPA reserves the right, in its sole discretion, to reject any and all proposals and nothing in this Agreement prohibits PREPA from negotiating, discussing or entering into any Proposed Transaction with any third party. Except with respect to this Agreement and the Proposal Security provided in accordance with Section 6.6 of the RFP, no party shall have any obligation of any kind whatsoever with respect to a Proposed Transaction or to any matters discussed or negotiated unless and until a formal written definitive agreement with respect thereto has been executed and delivered by each party, and no party shall have any liability to the other party in the event of or as a result of the failure of the Parties to execute such a formal written agreement, except with respect to any breach of this Agreement or a call on the Proposal Security.
17. Neither party shall assign, in whole nor in part, any of its rights or obligations hereunder, except to an affiliate or successor in interest, without the prior written consent of the other party, which consent shall not be unreasonably withheld. The benefits arising under this Agreement shall inure to the benefit of each of the Parties hereto and their respective successors and permitted assigns. The obligations arising under this Agreement shall be enforceable against each of the Parties hereto and its successors and permitted assigns.
18. Unless otherwise specified herein, the rights and obligations of the Parties hereunder shall terminate three (3) years from the date of this Agreement. Notwithstanding anything to the contrary contained herein, if the Parties enter into a substantive written agreement relating to the Proposed Transaction that contains confidentiality obligations, the confidentiality provisions in such definitive agreement shall govern the Confidential Information exchanged by the Parties under this Agreement and this Agreement shall have no further force and effect as of the effective date of such substantive agreement.
19. All notices and other communications given under this Agreement shall be given in writing and shall be effective upon receipt by the addressee as provided below, as provided below:

To PREPA: Puerto Rico Electric Power Authority
PO Box 364267
San Juan, Puerto Rico 00936-4267
Attention: Efran Paredes
Chief Executive Officer

To Proponent: *[Proponent Name]*

[*Address Line 1*]

[*Address Line 2*]

Attention: [_____]

[*Title*]

20. This Agreement sets forth the entire agreement and understanding between the Parties hereto as to the subject matter hereof and merges all prior discussions and negotiations between them. This Agreement may not be modified except in writing executed by duly authorized representatives of both Parties.

[*SIGNATURES APPEAR ON THE FOLLOWING PAGE.*]

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Agreement as of the date first above written.

[*Proponent Name*]

By:
Title: Authorized Representative

PUERTO RICO ELECTRIC POWER AUTHORITY

By: Efran Paredes
Title: Chief Executive Officer

Appendix F. Form of Solar PPOA

[Attached]

Appendix G. Form of ESSA for Standalone Energy Storage Resources

[Attached]

IRREVOCABLE STANDBY LETTER OF CREDIT

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

Beneficiary: PUERTO RICO ELECTRIC POWER AUTHORITY

Address: [●]

Attn:[●]

Reference No.: [●]

Date of Issuance: [●]

[PREPA-[*PROPONENT* Name] Request for Proposals for Renewable Energy Generation and Energy Storage Systems – Tranche 2] – Proposal Security No. [●]

We understand that [*insert name of PROPONENT*] (the “*Applicant*”) has submitted a proposal to you, Beneficiary, dated [●] (as amended, the “*Proposal*”) in the context of the Request for Proposals for Renewable Energy Generation and Energy Storage Systems – Tranche 2 (“**RFP-T2**”) issued by Beneficiary on [*date*], which requires a Proposal Security in the form and amount of this irrevocable standby letter of credit (“*Letter of Credit*”).

At the request of Applicant, we [*name of Bank*], hereby issue this Letter of Credit and irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [●] United States Dollars (USD [●]) in each case upon receipt by us of your first demand in writing at the Place of Presentation listed below in person, by registered or certified mail, or by international overnight courier service, substantially in the form attached as Annex A hereto (signed by your authorized representative and appropriately completed) (“*Demand*”), without your needing to prove or to show grounds for your Demand or the sum specified therein. We shall remit all payment(s) under this Letter of Credit into a bank account of your choice and discretion as specified in your Demand. You may make one or more Demands under this Letter of Credit. Partial drawings are permitted.

Any Demand made by Beneficiary in accordance herewith shall be conclusive evidence that the sum stated in such Demand is properly due and payable to Beneficiary under this Letter of Credit. We shall have no right and shall not be under any duty or responsibility to enquire into the reason or circumstances of any Demand made by Beneficiary or the respective rights and/or obligations and/or liabilities of Beneficiary and Applicant in respect to the Proposal. Any discrepancy between the explicit terms hereof and the Rules (defined below) shall be read in favor of the terms set forth in this Letter of Credit.

Place of Presentation: [*insert address of Bank branch where Beneficiary presents a Demand*].

We shall, within five (5) business days after receipt of any Demand served from time to time by Beneficiary, pay to Beneficiary in immediately available funds the lesser of: (a) the amount specified in the Demand; and (b) the then applicable amount remaining on the Letter of Credit. If a Demand made by Beneficiary hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, then we shall give Beneficiary, within two (2) business days after receipt of such Demand, notice that such Demand was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reason therefore. Upon being notified that a Demand was not made in conformity with this Letter of Credit, Beneficiary may attempt to correct such non-conforming Demand. Our obligations under this Letter of Credit are primary and not by way of surety or guarantee.

[This Letter of Credit shall enter into force and effect upon expiry of Proposal Security No. [●], dated [●] and issued by [●].] [NTD: *Insert this language if this is a replacement Letter of Credit.*]

This Letter of Credit shall expire on [date] but such expiration date shall be automatically extended for a period of one (1) year on [one year anniversary of prior date] (“**Expiry Date**”), and on each successive expiration date thereafter, unless at least one hundred twenty (120) calendar days before the then current Expiry Date we notify both Beneficiary and Applicant, by certified mail, that we have decided not to extend this Letter of Credit beyond the then current Expiry Date. Any such notice shall be delivered by registered or certified mail, or by FedEx, both to:

Beneficiary at:

[●]

And to Applicant at:

[●]

In the event Beneficiary and Applicant are so notified by us pursuant to the immediately preceding sentence, Beneficiary may draw any amount or the entire amount available under this Letter of Credit by Beneficiary’s presentment, at the Place of Presentation, of a drawing certificate duly signed in substantially the form of Annex A attached hereto appropriately completed. In no event shall the Expiry Date of this Letter of Credit be subject to automatic extension beyond sixty (60) calendar days after the Bid Expiration Date, and any pending automatic one-year extension shall be ineffective beyond such date. The Expiry Date does not affect our liability to make payment of any demand received prior to the Expiry Date.

This Letter of Credit is subject to ICC International Standby Practices 1998 (ISP 98), International Chamber of Commerce Publication No. 590 (the “**Rules**”). For matters not addressed by the Rules, this Letter of Credit is governed by and to be construed in accordance with the laws of [jurisdiction of the **Qualified Bank**]. In the event of a conflict between the terms of this Letter of Credit and the Rules, the terms of this Letter of Credit shall prevail.

The courts of the [United States federal courts in the Commonwealth of Puerto Rico] shall have exclusive jurisdiction in respect of all disputes arising out of this Letter of Credit (including, without limitation, the enforceability of this Letter of Credit).

By:
Authorized Signatory

ANNEX A - FORM OF DRAWING CERTIFICATE

[Letterhead of Beneficiary]

[Name of Issuing Bank]

Attention: [Standby Letter of Credit Department]

[Address of Issuing Bank]

Date: [●]

RFP-T2 – Proposal Security No. [●]

We refer to the above-captioned irrevocable standby letter of credit, with reference number [●] (the “**Letter of Credit**”). Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to them in this Letter of Credit or the RFP-T2. We hereby inform you that:

1. Applicant withdrew (or carried out an act or omission that evidenced its intent to withdraw) any part, or all, of the Proposal prior to the Bid Expiration Date;
2. Beneficiary determines that the Proposal contains a false statement or material misrepresentation;
3. in the event that Beneficiary selects the Proposal, Applicant has failed to execute a Contract with Beneficiary in respect of the Proposal within thirty (30) days from the date of such selection for any reason;
4. if Applicant has executed a Contract with Beneficiary, Applicant has breached its obligation to satisfy conditions precedent thereunder and failed to cure such breach within sixty (60) days of the date of such Contract;
5. the RFP-T2 or an executed Contract provide that Beneficiary may draw on the Guarantee, entitling us to call upon the Guarantee;
6. you no longer meet the requirements of a Qualified Bank (as defined below) and twenty-one (21) calendar days or more have elapsed since the date on which you no longer met such requirements, and Applicant has not delivered to Beneficiary a replacement guarantee that is substantially identical to the Letter of Credit, meeting the requirements of the RFP-T2. “Qualified Bank” means a national bank, national association, commercial bank or other financial institution registered in the United States, having a branch located within Puerto Rico or the contiguous United States, and otherwise acceptable to Beneficiary that has a long-term issuer rating of at least (i) if headquartered within Puerto Rico, then “B+” by Standard & Poor’s Ratings Services, “B1” by Moody’s Investors Services Inc., or “B+” by Fitch Ratings Inc. or (ii) if headquartered outside of Puerto Rico, then “A-” by Standard & Poor’s Ratings Services, “A3” by Moody’s Investors Services Inc., or “A-” by Fitch Ratings Inc., or in each case if the relevant rating agencies cease to engage in business or rate the obligations in question, then an equivalent rating from another internationally

recognized rating agency selected by Applicant with the written consent of Beneficiary; provided that, if such financial institution's ratings satisfy such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications; or

7. twenty-one (21) or less calendar days remain before the current Expiry Date, Applicant's obligation to maintain the Letter of Credit under the RFP-T2 extends beyond such Expiry Date, and Applicant has not delivered to Beneficiary a replacement letter of credit substantially identical to the Letter of Credit and meeting the requirements of the RFP-T2.

This letter serves as our demand for payment under the Letter of Credit. 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,

[*The Puerto Rico Electric Power Authority*]

By:

Authorized Signatory

This Appendix I includes the MTRs for solar-based Renewable Energy Resources (Section I) and Energy Storage Resources (Section II).

I. SOLAR PPOA

Capitalized terms used throughout this Appendix I have the meaning set forth in the Agreement, unless otherwise defined herein.

SELLER shall comply with the following MTRs:

1. Voltage Ride-Through:

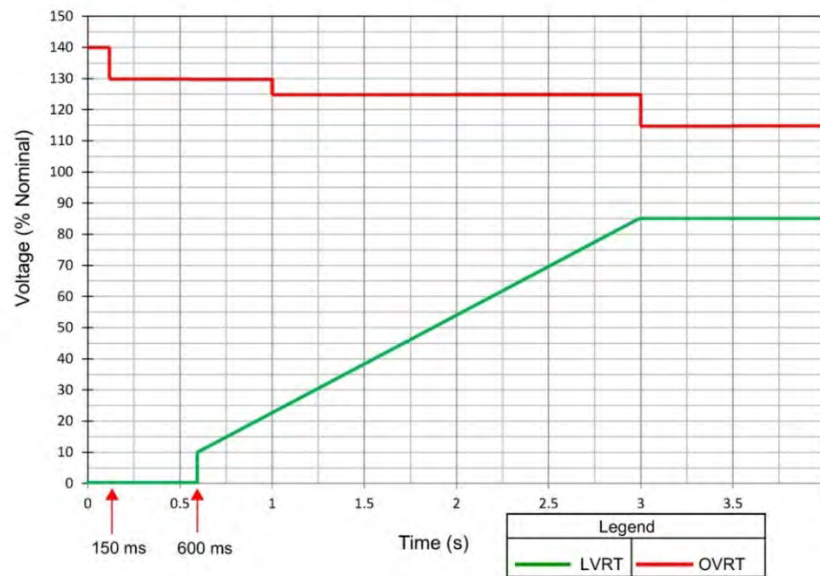


Figure 1 Voltage Ride-Through Requirements

- a. PREPA's Low Voltage Ride-Through (LVRT) Requirements:
 - i. From Figure 1, all generation shall remain online and able to ride-through three phase and single-phase faults down to 0.0 per-unit (measured at the point of interconnection), for up to 600 ms.
 - ii. All generation shall remain online and operating during and after normally cleared faults on the point of interconnection.

- iii. All generation shall remain online and operating during backup-cleared faults on the point of interconnection.
 - iv. During low voltage fault conditions, the Facility shall operate on reactive current injection mode. This mode of operation shall be implemented with a reactive current droop characteristic, which shall have an adjustable slope from 1 to 5%. A dead band of 15% is required.
- b. PREPA's Overvoltage Ride-Through (OVRT) Requirements:
- i. All generation shall remain online and able to ride-through symmetrical and asymmetrical overvoltage conditions specified in the following values (illustrated in Figure 1 above):

Overvoltage (pu)	Minimum time to remain online
1.4 – 1.3	150 ms
1.3 – 1.25	1 s
1.25 – 1.15	3 s
1.15 or lower	indefinitely

2. Voltage Regulation System (VRS):

PREPA requires constant voltage control. Photovoltaic System technologies in combination with Static Var Controls, such as Static Var Compensators (SVCs) and STATCOMs are acceptable options to comply with this requirement. SELLER shall submit a complete and detailed description of the VRS control strategy for PREPA's evaluation.

- a. The Facility must have a continuously-variable, continuously-acting, closed loop control VRS; i.e. an equivalent to the Automatic Voltage Regulator in conventional machines.
- b. The VRS set-point shall be adjustable between 95% to 105% of rated voltage at the Interconnection Facilities (connection to PREPA TC, sectionalizer). PREPA's Energy Control Center (via SCADA) must have the ability to adjust the VRS set point.
- c. The voltage regulation at the Interconnection Facilities (connection to PREPA TC or sectionalizer) shall be based in direct measurement of the Interconnection Facilities (connection to PREPA TC or sectionalizer) voltage. Line drop compensation or similar strategies shall not be permitted.
- d. The VRS shall only operate in a voltage set point control mode. Controllers such as Power Factor or constant VAR are not permitted.

- e. The VRS controller regulation strategy shall be based on proportional plus integral (PI) control actions with parallel reactive droop compensation. The VRS Droop shall be adjustable from 0 to 10%.
- f. At zero percent (0%) droop, the VRS shall achieve a steady-state voltage regulation accuracy of $\pm 0.5\%$ of the controlled voltage at the Interconnection Facilities (connection to PREPA TC or sectionalizer).
- g. The VRS shall be calibrated such that a change in reactive power will achieve 95% of its final value no later than one (1) second following a step change in voltage. The change in reactive power should not cause excessive voltage excursions or overshoot. If a voltage overshoot is generated during a change in reactive power its value shall be less than 1%.
- h. The VRS must be in service at any time the Facility is electrically connected to the grid regardless of the Facility MW output.
- i. The VRS dead band shall not exceed 0.1%.

3. Reactive Power Capability and Minimum Power Factor Requirements:

- a. The total power factor range shall be from 0.85 lagging to 0.85 leading at the Interconnection Facilities (connection to PREPA TC or sectionalizer). The reactive power requirements are necessary to provide support to the system operation based on the voltage profile and reactive power needs. The Facility shall ramp the reactive power from 0.85 lagging to 0.85 leading in a smooth continuous fashion at the Interconnection Facilities (connection to PREPA TC or sectionalizer).
- b. The ± 0.85 power factor range should be dynamic and continuous at the Interconnection Facilities (connection to PREPA TC or sectionalizer). The Facility shall respond to power system voltage fluctuations by continuously varying the reactive output within the specified limits. The power factor dynamic range herein specified could be expanded if studies indicate that additional continuous, dynamic compensation is required. The Facility must have a reactive capability that meets ± 0.85 Power Factor (PF) range based on the Facility Aggregated MW Output, which is the maximum MVar capability corresponding to maximum MW Output. Positive (+) PF means the Facility is producing MVar, and negative (-) PF means the Facility is absorbing MVar.
- c. The MVar capability at maximum output shall be sustained throughout the complete range of operation of the Facility as established in Figure 2. The MVar capability shall also be sustained throughout the complete Interconnection Facilities (connection to PREPA TC or sectionalizer) voltage regulation range (95% to 105% of rated voltage at the Interconnection Facilities).

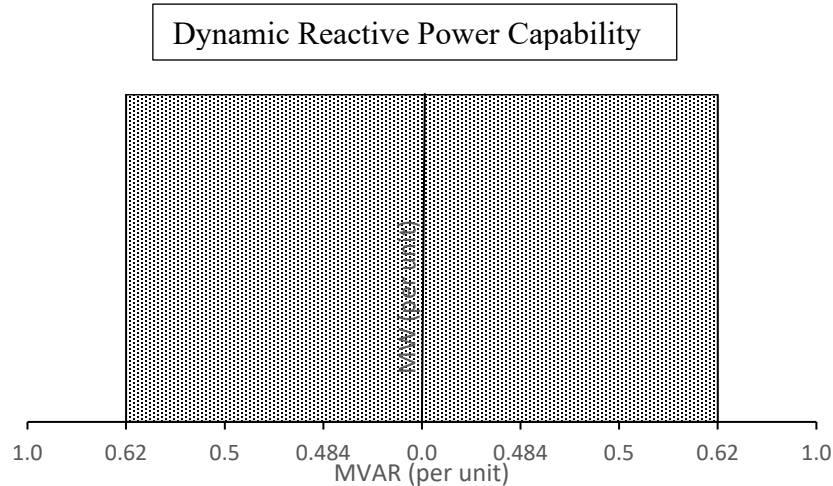


Figure 2 Reactive Power Capability Curve

4. Short Circuit Ratio (SCR) Requirements:

PREPA does not permit Short Circuit Ratio values (System Short Circuit MVA at POI/PV Facility MVA Capacity) under 5. SELLER shall be responsible for the installation of additional equipment, such as synchronous condensers and controls, necessary to comply with PREPA's minimum short circuit requirements.

5. Frequency Ride Through (FRT):

57.5 - 61.5 Hz	No tripping (continuous)
61.5 - 62.5 Hz	30 sec
56.5 - 57.5 Hz	10 sec
< 56.5 or > 62.5 Hz	Instantaneous trip

6. Frequency Response/Regulation:

- a. The Facility shall provide an immediate real power primary frequency response, proportional to frequency deviations from scheduled frequency, similar to governor response. The rate of real power response to frequency deviations shall be similar to or more responsive than the conventional generators' droop characteristic of 3-5% range. The Facility shall have controls that provide both for down-regulation and up-regulation. PV technologies, in combination with energy storage systems such as, but not limited to battery energy storage systems (BESS), and flywheels are acceptable options to comply with PREPA's frequency response and regulation requirements.
- b. The Facility response shall be proportional to the frequency deviation, based on the specified 3-5% range droop characteristic. The droop shall be configurable from

3% to 5% in steps of 0.5% (e.g. 3.0%, 3.5%, 4.0%, 4.5%, 5%). The frequency response dead band shall not exceed 0.02%. For large frequency deviations (i.e. in excess of 0.3 Hz), the Facility shall provide an immediate real power primary frequency response of at least 10% of the maximum AC active power capacity (established in the Agreement). The time response (full 10% frequency response) shall be less than one (1) second. Frequency response shall not be limited by, and shall be decoupled from, the ramp rate control. The frequency response of the Facility shall be continuously in operation, even during ramp rate events. After the two (2) decoupled functions are added together, the Facility shall be able to simultaneously comply with both requirements.

- c. If energy storage systems are utilized to comply with the frequency regulation requirements, and during a disturbance the system frequency stays below 59.7 Hz, the Facility frequency response shall be maintained for at least nine (9) minutes. After the ninth (9th) minute the real power primary frequency response shall not decrease at a ramp rate higher than 10% of the maximum AC active power capacity per minute. The energy storage systems utilized to comply with the frequency regulation requirement shall be designed based on a storage capacity equivalent to at least nine and a half (9.5) minutes of the 10% AC contracted capacity measured at the Interconnection Facilities (connection to PREPA TC or sectionalizer) for downward and for upward frequency events. This represents an equivalent of nine (9) minutes full participation, plus one (1)-minute ramp down complying with the ramp rate requirement. This energy will be used on a continuous basis for regulation against frequency deviations. During periods of time where the energy storage system utilized to comply with the frequency regulation requirement is completely charged (i.e. cannot absorb more power), the PV inverters will assume the responsibility of the upward frequency events. If the energy available for frequency regulation is drained, the function shall be restored in a time period less than ten (10) minutes and with at least 95% of the energy capacity restored. The energy charging process shall not affect the ramp rate control requirement or the frequency regulation of the grid.
- d. The operational range of the frequency response and regulation system shall be 10% to 110% of the maximum AC active power capacity (established in the Agreement). The Facility power output at the Interconnection Facilities (connection to PREPA TC or sectionalizer) shall not exceed the maximum AC active power (established in the Agreement) except to comply with the frequency response requirement.

7. Ramp Rate Control:

- a. Ramp Rate Control is required to smoothly transition from one output level to another. The Facility shall control the rate of change of power output during certain circumstances, including but not limited to: (i) rate of increase of power; (ii) rate of decrease of power; (iii) rate of increase of power when a curtailment of power output is released; and (iv) rate of decrease in power when curtailment limit is engaged. PREPA requires a limitation of 10% per minute (0.1667% per second)

rate based on AC contracted capacity. This ramp rate limit applies both to the increase and decrease of power output and is independent of meteorological conditions. The ramp rate control tolerance shall be +10%.

- b. The energy storage system utilized to comply with the ramp rate control requirement shall be designed based on a minimum storage capacity equivalent to twenty-five (25) minutes of the thirty percent (30%) AC contracted capacity measured at the Interconnection Facilities (connection to PREPA TC or sectionalizer). The minimum nominal power output capacity of the energy storage system utilized to comply with the ramp rate control requirement shall be thirty percent (30%) of AC contracted capacity measured at Interconnection Facilities (connection to PREPA TC or sectionalizer); and for at least one (1) minute, a minimum effective power output capacity of 45% of AC contracted capacity measured at the Interconnection Facilities (connection to PREPA TC or sectionalizer). The transition from effective power output capacity to nominal power output capacity shall not exceed the ramp rate requirement of 10% per minute.
- c. The Frequency Response/Regulation and Ramp Rate Control functions shall be decoupled, continuously in operation. The Facility shall be able to comply simultaneously with both requirements while generating and injecting power to the grid. For this reason, the energy storage system shall include, as a minimum: 10% of the contracted capacity for Frequency Response/Regulation for at least nine and a half (9.5) minutes (see Section 6 herein for details) and 30% of contracted capacity for Ramp Rate Control for at least twenty five (25) minutes. The energy storage system shall also be able to provide a minimum effective capacity of 45% of the contracted capacity for at least one (1) minute at the Interconnection Facilities (connection to PREPA TC or sectionalizer). Therefore, the minimum acceptable capacity for the energy storage system is a total combined size of 40% of the contracted capacity, and for at least one (1) minute, the system has to have an effective capacity of 45% of the contracted capacity.
- d. If the energy storage system cannot control the ramp rate as required herein because it does not perform according to the minimum required capabilities herein specified, the Facility will be considered in non-compliance. However, (i) rates of change in active power at the Interconnection Facilities (connection to PREPA TC or sectionalizer) in excess of the 10% per minute rate requirement caused by the loss of generating resource (solar irradiance) that require more than the minimum storage capacity herein defined will not be considered non-compliant with the ramp rate control requirement, and (ii) if the ramp rate is controlled within the limits specified in the ramp rate control requirement, or if the storage system cannot control the ramp rate because it is outside of its minimum required capabilities, but performs as specified, the Facility will not be considered in non-compliance.

8. Auto-Curtailment:

SELLER shall implement an auto-curtailment strategy for the Facility to address and compensate deficiencies that can affect the Facility compliance with the MTRs. The conditions to apply auto-curtailment include but are not limited to the following:

- a. A reduction on the reactive power capacity of the Facility (e.g. due to inverters out of service, or any other condition that can reduce the required reactive power capacity of the Facility).
- b. A reduction in the active power capacity of the energy storage system (e.g. loss of some of the battery strings, a BESS inverter out of service, or any other condition that can reduce the required active power capacity of the energy storage system).
- c. Loss of the Interconnection Facilities (connection to PREPA TC or sectionalizer) readings used for the different controls (voltage, frequency, ramp, etc.) of the Facility. This can happen due to a malfunction of the equipment used for the Interconnection Facilities (connection to PREPA TC or sectionalizer) readings. In this case the Facility should be curtailed to zero (0) output.
- d. A fault in the Voltage Control, Frequency Response Control, Ramp Rate Control. In this case the Facility should be curtailed to zero (0) output.
- e. Any other condition based in the Facility design that can cause a non-compliance with the MTRs.

SELLER must submit to PREPA a complete and detailed description of the auto-curtailment strategy for PREPA's evaluation.

9. Power Quality Requirements:

SELLER shall address in the design of the Facility potential sources and mitigation of power quality degradation prior to interconnection. Design considerations should include Applicable Standards including, but not limited to IEEE Standards 142, 519, 1100, 1159, and ANSI C84.1. Typical forms of power quality degradation include, but are not limited to voltage regulation, voltage unbalance, harmonic distortion, flicker, voltage sags/interruptions and transients

10. Power Management:

The Facility shall provide adequate technology (communicating technology and the corresponding control equipment) and implement PREPA's power management requirements (ramp rate limits, output limits, curtailment).

11. Special Protection Schemes:

The Facility shall provide adequate technology and implement PREPA's special protection schemes, in coordination with power management requirements.

12. General Interconnection Substation Configuration:

An interconnecting generation producer must interconnect at an existing PREPA switchyard, unless PREPA agrees otherwise in the Agreement. The configuration requirements of the interconnection depend on where the physical interconnection is to occur and the performance of the system with the proposed interconnection. The interconnection must conform, at a minimum, to the original designed configuration of the switchyard. PREPA, at its sole discretion, may consider different configurations due to physical limitations at the site.

13. Modeling and Validation

- a. Once final adjustments and parameter settings related with commissioning and MTR compliance tests are completed, SELLER shall submit a PSS/e Siemens – PTI Certified mathematical model and validation report.
- b. The mathematical model shall include but is not limited to PV inverters, transformers, collector systems, plant controllers, control systems and any other equipment necessary to properly model the Facility for both steady-state and dynamic simulation modules.
- c. SELLER must submit user manuals for both the PV inverter and the Facility models including a complete and detailed description of the voltage regulation system (VRS) and frequency regulation system model implementation. The mathematical models shall be fully compatible with the latest and future versions of PSS/E. SELLER shall use PSS/E standard models. In case that SELLER submits user written models, SELLER shall be required to keep such models current with the future versions of the PSS/E program until such time that PSS/E has implemented a standard model. SELLER shall submit to PREPA an official report from Siemens – PTI that validates and certifies the required mathematical models, including subsequent revisions. The SELLER shall be responsible of submitting the official reports and certifications from Siemens – PTI, otherwise the mathematical model shall not be considered valid.
- d. SELLER shall be responsible to submit Siemens – PTI certified PSS/E mathematical models of any kind of compensation devices (e.g. SVC, STATCOMs, BESS, etc.) used on the Facility. SELLER shall use standard models provided with PSS/E. In the case that SELLER submits user written models, SELLER shall keep these models current with the future versions of the PSS/E program until such time that PSS/E has implemented a standard model. In its final form, the mathematical model shall be able to simulate each of the required control and operational modes available for the compensation device and shall be compatible with the latest and future versions of PSS/E. The model shall reflect final adjustments and parameters settings related with the control system commissioning process and shall be incorporated to the PSS/E mathematical model and tested accordingly by the PV facility SELLER and PREPA system study groups. SELLER shall be responsible

of submitting the official reports and certifications from Siemens – PTI, otherwise the mathematical models shall not be considered valid.

- e. If SELLER provides user written model(s), it shall provide compiled code of the model and maintain the user written model compatible with current and new releases of PSS/E until such time a standard model is provided. SELLER must permit PREPA to make available the Facility models to external consultants with a non-disclosure agreement in place.
- f. SELLER shall submit a PSS/E model validation report. This report shall demonstrate PSS/E simulation results that show the model MTR compliance and performance, based on final adjustment and parameter settings of MTR and commissioning field tests. SELLER shall be responsible of submitting the official reports and certifications from Siemens – PTI, otherwise the mathematical models shall not be considered valid.
- g. Additional details for the adequate PSS/E modelling and the contents of the PSS/E validation report can be found in PREPA’s “Guidelines on PSS/E Mathematical Models” document.

14. Transient Mathematical Model:

SELLER shall be responsible of providing a detailed transient model of the PFV and to demonstrate that it is capable of complying with PREPA’s transient MTRs.

15. Dynamic System Monitoring Equipment:

SELLER shall be required to provide, install and commission a dynamic system monitoring equipment that conforms to PREPA’s specifications.

II. ESSA

Capitalized terms used throughout this Appendix I have the meaning set forth in the Agreement, unless otherwise defined herein.

SELLER shall comply with the following MTRs.

1. Frequency Control and Regulation:

- a. Fast active power (P) source capable of continuously injecting or absorbing energy from the grid as a function of system frequency deviations to help manage and maintain frequency at 60 Hz.
- b. Instantaneous and immediate active power (P) response of battery energy storage system (“BESS”) proportional to frequency deviations from scheduled frequency.
- c. The rate of active power (P) response of BESS to frequency deviations shall be established based on configurable PREPA selected droop characteristic (*i.e.* 5% droop characteristic or more responsive as PREPA requires SCADA). PREPA shall be able to program and configure the droop via SCADA from 1% to 5% in steps of 0.5% (*i.e.* 3.0%, 3.5%, 4.0%, 4.5%, 5%).
- d. Frequency regulation deadband shall be available. PREPA shall be able to configure and program the deadband via SCADA. The configurable deadband range shall be at least from 0.02% to 0.5%.
- e. BESS frequency control and regulation mode time response (full frequency response) shall be less than 1.0 second.
- f. PREPA shall be able to configure and select frequency regulation range (upper injection/lower absorption limits) via SCADA up to a maximum of its nominal capacity (*i.e.* +/- 15 MW, +/- 20 MW). Asymmetrical frequency regulation ranges should be allowed (*i.e.* +15 MW/-5 MW, +10 MW/-20 MW).
- g. Capability to operate in the frequency control and regulation mode and simultaneously control the voltage by the injection or absorption of up to the required nominal reactive power at the Interconnection Point: (i) the frequency regulation control shall operate decoupled from the voltage regulation control mode and shall not limit the required reactive power capability of the Facility at the Interconnection Point, and (ii) the voltage regulation control shall not limit the required active power capability of the Facility at the Point if Interconnection.

2. Rapid Spinning Reserve and Fast Frequency Response

- a. Instantaneous injection of reserve energy as a function of the rate of change and/or deviations of the system frequency in the event of a sudden loss of generation or unexpected ramp-up in demand.

- b. Energy capability and power capacity to inject nominal active power output (at the Interconnection Point) in a range from two (2) to six (6) hours of discharge.
- c. Injection of active power (P) within the first three (3) cycles of a specific frequency deviation trigger and/or a frequency rate of change trigger (PREPA shall be able to configure and select triggers).
 - i. Total configurability for PREPA selection of the active power output, response time and response slope.
 - ii. Total configurability for PREPA selection of triggers: frequency, rate of change of frequency and instantaneous/time delay combinations.
 - iii. For example, the rapid reserve might be selected to trigger if frequency decays to 59.6 Hz at a rate > 0.25 Hz/sec or drops and stays between 59.0 Hz and 59.2 Hz for $>$ thirty (30) seconds or drops below 59 Hz.
 - iv. Total configurability for multiple sets of triggering combinations capable of being simultaneously active. The rapid reserve mode might be selected to trigger with Boolean or logical operators that combine active power output, response time, response slope, frequency limits, frequency rate of change and time delay.
- d. The rapid spinning reserve mode shall provide a full output response time (95% of its final output value) of 100 milliseconds or faster. PREPA shall also have the flexibility of selecting a limited rapid spinning reserve sub-mode from SCADA. In limited rapid spinning reserve sub-mode, the active power output, response time and response slope shall be configurable and programmable from SCADA in accordance with the triggering combinations and options previously discussed.
- e. Capability to ramp down active power output at PREPA's pre-selected and configurable slope (MW/min or% of active power output/min) after system frequency is normalized and triggers pre-selected and configurable frequency window for a certain amount of time. BESS shall ramp down to PREPA's pre-selected and configurable active power output (10 MW, 5 MW, 0 MW, *etc.*) and be able to automatically make the transition and continue operating in frequency control and regulation mode in accordance with previously selected and configurable parameters. The active power automatic ramp down should have the capability of being manually interrupted and ramped down from SCADA.
 - i. Total configurability of ramp down slope in MW/minute or% of active power output/minute.
 - ii. Total configurability of active power output target to which BESS shall ramp down before making the transition to operate in frequency control and regulation mode.

- iii. Total configurability for PREPA selection of frequency triggers that initiate rapid reserve ramp down process: frequency limits of window range and time delay combinations that initiate ramp down.
 - iv. For example, rapid reserve ramp down might be triggered if frequency returns to 60 Hz +/- 0.1 Hz and stays in this range for at least twenty (20) seconds or returns to 60 Hz +/- 0.2 Hz and stays in this range for at least thirty (30) seconds.
- f. Capability to ramp down active power output at PREPA's pre-selected and configurable slope (MW/min or% of active power output/min) after SCADA command is received from PREPA's Energy Control Center System Operator to automatically make the transition and continue operating in frequency control and regulation mode in accordance with previously selected and configurable parameters.
 - i. Total configurability of ramp down slope in MW/minute or% of active power output/minute.
 - ii. Total configurability of active power output target to which BESS shall ramp down before making the transition to operate in frequency control and regulation mode.
- g. Capability to inject nominal active power output for 1.0 hour and simultaneously inject or absorb nominal reactive power at the Interconnection Point.

3. Dispatchable Generation Source:

- a. Injection of active power at the Interconnection Point for a limited period of time to cover temporary generation deficits or start-up fast generating units.
- b. PREPA shall be able to select from SCADA the constant power output mode, active power (P) magnitude and time period.
- c. Capability to automatically make the transition from dispatchable mode to frequency control and regulation mode in accordance with previously selected and configurable parameters after SCADA command is received from PREPA's Energy Control Center System Operator.
- d. Capability to ramp down active power output at PREPA's pre-selected and configurable slope (MW/min or% of active power output/min) after SCADA command is received from PREPA's Energy Control Center System Operator to automatically make the transition from dispatchable mode to frequency control and regulation mode in accordance with previously selected and configurable parameters.
 - i. Total configurability of ramp down slope in MW/minute or% of active power output/minute

- ii. Total configurability of active power output target to which BESS shall ramp down before making the transition to operate in frequency control and regulation mode
- e. Capability to operate in the dispatchable generation source mode and simultaneously control the voltage by the injection or absorption of up to nominal reactive power at the Interconnection Point.

4. Voltage Regulation and Control:

- a. Dynamic reactive power compensation source capable of continuously injecting or absorbing reactive power (up to +/- nominal MVAR at Interconnection Point) as a function of system voltage deviations.
- b. Voltage regulation strategy based 100% on power electronics technology (no passive components like capacitors or reactors, neither thyristor controlled or switched capacitors or reactors allowed to complement reactive power capability).
- c. Constant voltage control is required (voltage set point control mode).
- d. PREPA shall be able to adjust from SCADA the voltage regulation set points shall between 95% and 105% rated voltage at the Interconnection Point. Because the previous voltage regulation range could be expanded (for example up to 106%) if PREPA's internal analyses indicate that additional dynamic compensation is required for specific multi-contingency scenarios, the upper voltage set point limits should be totally configurable and adjusted from SCADA beyond the typical voltage regulation range.
- e. The voltage regulation shall be based on direct measurement by means of new BESS dedicated potential transformers (that SELLER shall install) at the Interconnection Point.
- f. The voltage regulation system strategy shall be based on proportional plus integral (PI) control actions with parallel reactive droop compensation. The voltage regulation droop shall be adjustable from 0 to 10% in steps not greater than 0.5%.
- g. At zero percent (0%) droop, the voltage regulation system shall achieve a steady-state voltage accuracy of +/- 0.3% of the controlled voltage at the Interconnection Point. For voltage regulation droops between 0 and 2.5%, the voltage regulation system shall be calibrated such that a change in reactive power will achieve 95% of its final value no later than one (1) second following a step change in voltage. The change in reactive power should not cause excessive voltage excursions or overshoot. If a voltage overshoot is generated, it should be less than 1%.
- h. For voltage regulation droops between 2.5% and 5.0%, the voltage regulation system shall be calibrated such that a change in reactive power will achieve 95% of its final value no later than 500 msec following a step change in voltage. The change

in reactive power should not cause excessive voltage excursions or overshoot. If a voltage overshoot is generated, it should be less than 1%.

- i. For voltage regulation droops between 5% and 10%, the voltage regulation system shall be calibrated such that a change in reactive power will achieve 95% of its final value no later than 100 msec following a step change in voltage. The change in reactive power should not cause excessive voltage excursions or overshoot. If a voltage overshoot is generated, it should be less than 1%.
- j. The voltage regulation system dead band shall not exceed 0.1%.
- k. The voltage regulation system shall be programmed to control and coordinate with local power transformers tap changers and local reactive power sources physically located in the switchyard.

5. Fast Dynamic Reactive Power Reserve and Voltage Support:

- a. Instantaneous or slope controlled (MVAR/sec) injection or absorption of reactive power triggered by and as a function of the rate of change and/or deviations of the system voltage.
- b. Injection of reactive power (Q) within the first three (3) cycles of a specific voltage deviation trigger and/or a voltage rate of change trigger. PREPA shall be able to configure and select triggers.
 - i. PREPA shall be able to configure and select from SCADA the maximum final reactive power output value for fast dynamic reactive power reserve up to the nominal reactive power capacity.
 - ii. Total configurability for PREPA selection of triggers: voltage magnitude, rate of change of voltage and instantaneous/time delay combinations.
 - iii. For example, fast dynamic reactive power reserve might be selected to trigger if voltage decays to 0.95pu kV at a rate > 2.0 kV/sec or drops below 0.9pu.
 - iv. For example, a different value of fast dynamic reactive power reserve might be selected to trigger if voltage decays to 0.95pu at a rate > 1.0 kV/sec or drops below 0.93pu.
- c. A full output response time (95% of its final output value) of 100 msec. or faster is required. The maximum overshoot should not exceed 5% of the ordered change and the settling time should not exceed 150 msec.
 - i. Capability to inject 120% of nominal reactive power output for three (3) seconds at required 100 msec. response time.

- ii. Absorption of reactive power (Q) within the first three (3) cycles of a specific voltage deviation trigger and/or a voltage rate of change. PREPA shall be able to configure and select triggers.
- iii. PREPA shall be able to configure and select from SCADA the minimum final reactive power output value for fast dynamic reactive power absorption, up to the nominal reactive power capacity of BESS.
- iv. Total configurability for PREPA selection of triggers: voltage magnitude, rate of change of voltage and instantaneous/time delay combinations.
- v. For example, fast dynamic reactive power might be selected to trigger if voltage increases to 1.1pu of the nominal voltage at a rate > 3.0 kV/sec or increases above 1.2pu of the nominal voltage.
- d. A different fast dynamic reactive power might be selected to trigger if voltage increases to 1.1pu of nominal voltage at a rate > 2.0 kV/sec or increases above 1.15pu of nominal voltage.
- e. Capability to inject nominal fast dynamic reactive power reserve or operate in voltage regulation mode depending on the system voltage conditions, and simultaneously inject nominal active power output for 1.0 hour at the Interconnection Point.

6. Black Start Capability:

- a. The Facility shall provide for BESS start-up capability and full functionality during system blackouts.
- b. The Facility shall provide for BESS start-up capability and full functionality during unavailability of external system generation sources.

7. **BESS Full Functional Voltage and Frequency Operational Range and Ride-Through Capability:**

a. Low Voltage Operation Range:

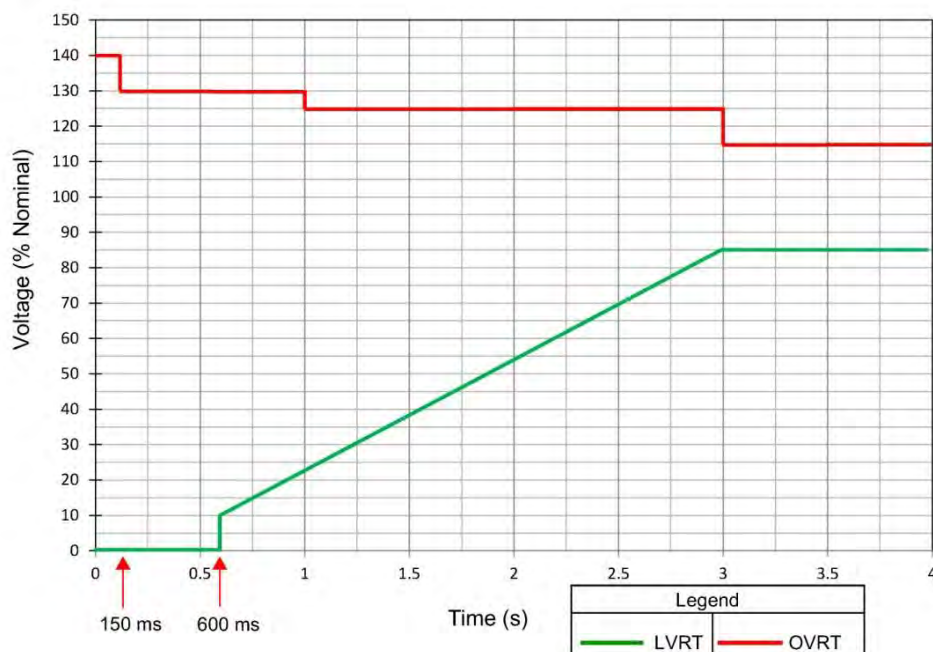


Figure 1 BESS Voltage Operational Range and Ride-Through Requirements

- i. From Figure 1 (above), PREPA requires BESS to remain totally functional and online during three (3) phase and single phase faults down to 0.0 per-unit (measured at the Interconnection Point), for up to 600 msec.
 - ii. BESS shall remain online and continue operating during and after normally cleared faults on the Interconnection Point.
 - iii. BESS shall remain online and continue operating during and after backup-cleared faults.
- b. High Voltage Operational Range:
- i. PREPA requires BESS to remain totally functional and online during symmetrical and asymmetrical overvoltage conditions as specified by the following values (illustrated in Figure 1 above):

Overvoltage (pu)	Minimum time
1.4 – 1.3	150 ms

1.3 – 1.25	1 s
1.25 – 1.15	3 s
1.15 or lower	indefinitely

c. Frequency Ride Through (FRT)

56.0 – 63.0 Hz	No tripping (continuous)
55.5 – 56.0 Hz	20 sec time delay
< 55.5 or > 63.0 Hz	Instantaneous trip

8. Dynamic System Monitoring Equipment (DSM)

SELLER is required to provide, install, commission and maintain a dynamic system monitoring equipment that conforms to PREPA's specifications and signals list.

9. Modeling and Validation

- a. Once final adjustments and parameter settings related with commissioning and MTR compliance tests are completed, SELLER shall submit a PSS/E Siemens – PTI Certified mathematical model and validation report. When referred to the mathematical model, this shall include but is not limited to inverters, transformers, collector systems, plant controllers, control systems and any other equipment necessary to properly model BESS facility for both steady-state and dynamic simulation modules.
- b. SELLER shall submit user manuals for both BESS unit and BESS Facility models including a complete and detailed description of the voltage regulation system (VRS) and frequency regulation system model implementation. The mathematical models shall be fully compatible with the latest and future versions of PSS/E. SELLER shall use PSS/E standard models. In the case that SELLER submits user written models, SELLER shall keep these models current with the future versions of the PSS/E program until such time that PSS/E has implemented a standard model. SELLER shall submit to PREPA an official report from Siemens – PTI that validates and certifies the required mathematical models, including subsequent revisions. SELLER shall submit the official reports and certifications from Siemens – PTI, otherwise the mathematical model shall not be considered valid.
- c. SELLER shall submit Siemens – PTI certified PSS/E mathematical models of any kind of compensation devices (*i.e.* SVC, STATCOMs, BESS, *etc.*) used on BESS facility. SELLER shall use standard models provided with PSS/E. In the case that SELLER submits user written models, SELLER shall keep these models current with the future versions of the PSS/E program until such time that PSS/E has implemented a standard model. In its final form, the mathematical model shall be

able to simulate each of the required control and operational modes available for the compensation device and shall be compatible with the latest and future versions of PSS/E. The model shall reflect final adjustments and parameters settings related with the control system commissioning process and shall be incorporated to the PSS/E mathematical model and tested accordingly by SELLER and PREPA system study groups. SELLER shall submit the official reports and certifications from Siemens – PTI, otherwise the mathematical models shall not be considered valid.

- d. If SELLER provides user written model(s), then it shall provide compiled code of the model and maintain the user written model compatible with current and new releases of PSS/E until such time a standard model is provided. SELLER shall permit PREPA to make available Facility models to external consultants with a non-disclosure agreement in place.
- e. SELLER shall submit a PSS/E model validation report. This report shall demonstrate PSS/E simulation results that show the model MTR compliance and performance, based on final adjustment and parameter settings of MTR and commissioning field tests. SELLER shall submit the official reports and certifications from Siemens – PTI, otherwise the mathematical models shall not be considered valid.
- f. Additional details for the adequate PSS/E modeling and the contents of the PSS/E validation report can be found in PREPA’s “Guidelines on PSS/E Mathematical Models” document.

10. Power Management

The Facility shall provide adequate technology (communicating technology and the corresponding control equipment) and implement PREPA’s power management requirements (ramp rate limits, output limits, curtailment).

11. Short Circuit Ratio (SCR) Requirements

Short Circuit Ratio values (System Short Circuit MVA at POI/BESS Facility MVA Capacity) under 5 shall not be permitted. SELLER shall install additional equipment, such as synchronous condensers, and controls as necessary to comply with PREPA’s minimum short circuit requirements.

12. General

- a. For batteries, replacement of individual cells or cell modules shall not interrupt BESS availability to the grid.
- b. BESS shall have dedicated auxiliary electric power systems to serve BESS ancillary loads (HVAC, lighting, *etc.*) and be able to be auto-transferred to a reliable backup source.
- c. BESS shall have a minimum round trip energy efficiency of 90%.

- d. PREPA shall define the BESS voltage level at the Interconnection Point. The Project shall include appropriate step-up transformers and required interconnection equipment, including any necessary augmentation or modification to existing substation or transmission facilities.
- e. BESS control system shall integrate the following operational requirements:
 - i. BESS controllers shall be compatible with the systems used in PREPA's System Operations Control Center and Energy Management System.
 - ii. BESS shall be completely dispatchable.
 - iii. BESS control system shall provide available energy forecasting.
 - iv. Any operating function shall be capable of being remotely and dynamically selected and prioritized.
 - v. Function parameters (*i.e.* droop setting) of any operating function shall be capable of being remotely modified.
 - vi. SELLER shall fully describe and demonstrate how the proposed BESS control system(s) will operate.

The control system shall have the necessary hardware and software (*i.e.* firewalls & malware detection) such that it is compliant with the latest NERC CIP reliability standards for control system security requirements.

Appendix J. Interconnection Data Request Forms

This Appendix J includes the Interconnection Data Request Forms for solar-based Renewable Energy Resources (Section I), wind-based Renewable Energy Resources (Section II) and Energy Storage Resources (Section III).

I. PV GENERATION INFORMATION REQUEST FORM

Please fill out all fields. If field is not applicable, fill with “N/A.”

PART A: Interconnection Feasibility Study Data

With the information provided in this section, *Steady-State Thermal Study* and *Steady-State Voltage Analysis* will be performed to evaluate the impact of the PV project interconnection.

1. OVERALL GENERATING FACILITY DATA

Item	Value	Unit
Point of interconnection (POI) ² :	—	—
Transmission Center (TC) ³ (Name)		—
Sectionalizer ⁴		latitude/longitude
POI voltage level		kV
Maximum Facility net output at the POI		MW*
Generating Facility Location		latitude/longitude

*Power factor range to be evaluated: 0.85 lagging to 0.85 leading at the point of interconnection (POI) per MTR requirements

² PREPA may support the selection of the POI with an optional scoping meeting that may be requested by the developer at no cost.

³ PREPA facility that has high voltage transmission lines connecting to it and is similar to a substation.

⁴ New facility that will be built to allow the interconnection of the Generating Facility to the selected transmission line where the generated power will be injected.

2. Interconnection Facilities – Tie Line Data

Item	Value	Unit
Nominal voltage		kV
Line length to POI		miles
Conductor type/size		kcmil
Phase configuration (Vertical/Horizontal)		—
Rating		Amps

PART B: Full Interconnection System Impact Study Data

With the information provided in this section, *Short Circuit Study & Breaker Duty Review*, and *Dynamic & Transient Stability Analysis* will be performed to evaluate the full impact of the PV project interconnection to the grid.

3. Main Power Transformer Data

Item	Value	Unit
Number of Transformers		—
Rating (ONAN/ONAF/OFAF)		MVA
Winding Type (2W, 3W)		—
Winding Nominal Voltages (Primary/secondary/tertiary)		kV
Winding Connection types: Delta or Wye (Primary/secondary/tertiary)		—
Fixed Taps available		Number of Taps /%V
Impedance on MVA base		Z1%
		X/R Z1

Item	Value	Unit
		Z0%
		X/R Z0

4. Inverter Data and Inverter Step-Up Transformer Data⁵

Go to section 4.1 if the Solar PV and BESS are DC connected. Go to section 4.1.2. if the Solar PV and BESS are ac connected.

4.1 If Solar PV and Battery Energy Storage System (BESS) are DC connected, fill out the following tables:

4.1.1 Solar PV and Battery Energy Storage System (BESS) Inverter step-up Transformer Data

Item	Value	Unit
Number of Transformers		—
Rating (ONAN/ONAF/OFAF)		MVA
Winding Nominal Voltages (Primary/secondary)		kV
Winding Connection types: Delta or Wye (Primary/secondary)		—
Fixed Taps available		Number of Taps /%V
Impedance on MVA base		Z1%
		X/R Z1
		Z0%
		X/R Z0

⁵ PREPA Minimum Technical Requirements are applicable to the Generating Facility for connection of the facility to the power grid. These requirements indicate that an energy storage system is necessary for the integration of the Generating Facility to the power grid.

4.1.2 Solar PV and Battery Energy Storage System (BESS) Inverter Data

Item	Value	Unit
Number of Inverters to Be Interconnected		—
Inverter Manufacturer		—
Inverter Model		—
Inverters MVA rating		MVA
Number of Inverters		—
Maximum design fault contribution current from inverter (based on IEC 60909)		
Initial symmetrical short-circuit current (I_k)		Amps
First Peak of short circuit current (i_p)		Amps
Steady-state short circuit current (I_k)		Amps
Time to reach steady-state current		ms

4.2 If Solar PV and Battery Energy Storage System (BESS) are AC connected, fill out the following tables below

4.2.1 Solar PV Inverter step-up Transformer Data

Item	Value	Unit
Number of Transformers		—
Rating (ONAN/ONAF/OFAF)		MVA
Winding Nominal Voltages (Primary/secondary)		kV
Winding Connection types: Delta or Wye (Primary/secondary)		—
Fixed Taps available		Number of Taps /%V

Item	Value	Unit
Impedance on MVA base		Z1%
		Z0%
		X/R

4.2.2 Solar PV Inverter Data

Item	Value	Unit
Number of Inverters to be Interconnected		—
Inverter Manufacturer		—
Inverter Model		—
Inverters MVA rating		MVA
Maximum design fault contribution current from inverter (based on IEC 60909)		
Initial symmetrical short-circuit current (Ik")		Amps
First Peak of short circuit current (ip)		Amps
Steady-state short circuit current (Ik)		Amps
Time to reach steady-state current		ms

4.2.3 Battery Energy Storage System (BESS) Inverter step-up Transformer Data

Item	Value	Unit
Number of Transformers		—
Rating (ONAN/ONAF/OFAF)		MVA
Winding Nominal Voltages (Primary/secondary)		kV

Item	Value	Unit
Winding Connection types: Delta or Wye (Primary/secondary)		—
Fixed Taps available		Number of Taps /%V
Impedance on MVA base		Z1%
		Z0%
		X/R

4.2.4 BESS Inverter Data

Item	Value	Unit
Number of Inverters to Be Interconnected		—
Inverter Manufacturer		—
Inverter Model		—
Inverters MVA rating		MVA
Number of inverters		—
Maximum design fault contribution current from inverter (based on IEC 60909)		
Initial symmetrical short-circuit current (Ik")		Amps
First Peak of short circuit current (ip)		Amps
Steady-state short circuit current (Ik)		Amps
Time to reach steady-state current		ms

5. Interconnection Facilities – Tie Line Data (complement to the line data in Part A)

Item	Value	Unit
Positive sequence resistance (R) for entire length		p.u.*
Positive sequence reactance (X) for entire length		p.u.*
Zero sequence resistance (R0) for entire length		p.u.*
Zero sequence reactance (X0) for entire length		p.u.*
Line charging (B/2)		p.u.*

*On 100-MVA and nominal line voltage (kV) Base

6. Equivalent Collector System Impedance Data

Item	Value	Unit
Nominal voltage		kV
Rating		Amps
Positive sequence resistance (R)		p.u.*
Positive sequence reactance (X)		p.u.*
Zero sequence resistance (R0)		p.u.*
Zero sequence reactance (X0)		p.u.*
Line charging (B/2)		p.u.*

*On 100-MVA and nominal line voltage (kV) Base

7. Additional Reactive Compensation Devices (if applicable)

Item	Value	Unit
Type of Device		-
Total Reactive Capability		-

Q max		MVAr
Q min		MVAr

8. Dynamic Models

The solar PV and BESS aggregate dynamic mathematical models are required in PSS/E v33 format (.dyr file). If the solar PV and BESS are connected on the dc side, only a single inverter aggregate model is needed. If the solar PV and BESS are connected on the ac side, each inverter type requires a separate aggregate model.

PSS/E generic PV Solar Dynamic Models
REGCAU1
REECAU1
REPCTAU1
VTGTPAT
FRQTPAT

PSS/E generic BESS Dynamic Models
REGCAU1
REECCU1
REPCTAU1
VTGTPAT
FRQTPAT

PSS/E library Static Var Systems and FACTS
SVSMO3U2*
SVSMO2U2*
SVSMO3U2*

PSS/E library Static Var Systems and FACTS
CSVGN1
CSVGN3
CSVGN4
CSVGN5
SWSHNT
CDSMS1
CSTAT
CSTCNT
ABBSVC1
CHSVCT
CSSCST

*WECC, “Generic Static Var System Models for the Western Electricity Coordinating Council” April 18, 2011.

II. WIND GENERATION INFORMATION REQUEST FORM

Please fill out all fields. If field is not applicable, fill with “N/A.”

PART A: Interconnection Feasibility Study Data

With the information provided in this section, *Steady-State Thermal Study* and *Steady-State Voltage Analysis* will be performed to evaluate the impact of the Wind project interconnection.

1. OVERALL GENERATING FACILITY DATA

Item	Value	Unit
Point of interconnection (POI) ⁶ :	—	—
Transmission Center (TC) ⁷ (Name)		—
Sectionalizer ⁸		latitude/longitude
POI voltage level		kV
Maximum Facility net output at the POI		MW*
Generating Facility Location		latitude/longitude

*Power factor range to be evaluated: 0.85 lagging to 0.85 leading at the point of interconnection (POI) per MTR requirements

2. Interconnection Facilities – Tie Line Data

Item	Value	Unit
Nominal voltage		kV
Line length to POI		miles
Conductor type/size		kcmil
Phase configuration		—

⁶ PREPA may support the selection of the POI with an optional scoping meeting that may be requested by the developer at no cost.

⁷ PREPA facility that has high voltage transmission lines connecting to it and is similar to a substation.

⁸ New facility that will be built to allow the interconnection of the Generating Facility to the selected transmission line where the generated power will be injected.

Item	Value	Unit
(Vertical/Horizontal)		
Rating		Amps

PART B: Full Interconnection System Impact Study Data

With the information provided in this section, *Short Circuit Study & Breaker Duty Review*, and *Dynamic & Transient Stability Analysis* will be performed to evaluate the full impact of the Wind project interconnection to the grid.

3. Wind Turbine Generator (WTG) Data

3.1 WTG Data for Type 2 or 3

Item	Value	Unit
Turbine Type		
Turbine manufacturer / model		-
Turbine nominal rating		MW
Number of wind turbines generators of the selected type		
MVA base		MVA
Terminal voltage		kV
Nominal power factor		
Rotor Resistance		Ohm
Stator Resistance		Ohm
Rotor Reactance		Ohm
Stator Reactance		Ohm
Magnetizing Reactance		Ohm
Short Circuit Reactance		Ohm
Saturated sub-transient reactance, $X''_d(v)$		p.u.

Item	Value	Unit
Control mode for the turbine		
Total Rotating Inertial I		p.u. on 100MVA base
X''1 – positive sequence subtransient reactance (saturated)		p.u. on 100MVA and nominal line voltage (kV) base
X'1 – positive sequence subtransient reactance (unsaturated)		p.u. on 100MVA and nominal line voltage (kV) base
X2 – negative sequence reactance		p.u. on 100MVA and nominal line voltage (kV) base
X0 – zero sequence reactance		P.U. on 100MVA and nominal line voltage (kV) base

*If the site will be using more than one model/type of WTG, please add an additional Tables as necessary.

3.2 WTG Data for Type 4

Item	Value	Unit
Inverter Manufacturer		—
Inverter Model		—
Inverters MVA rating		MVA
Number of Inverters		—
Maximum design fault contribution current from inverter (based on IEC 60909)		
Initial symmetrical short-circuit current (Ik'')		Amps
First Peak of short circuit current (ip)		Amps
Steady-state short circuit current (Ik)		Amps
Time to reach steady-state current		ms

4. Main Power Transformer Data

Item	Value	Unit
Number of Transformers		—
Rating (ONAN/ONAF/OFAF)		MVA
Winding Type (2W, 3W)		—
Winding Nominal Voltages (Primary/secondary/tertiary)		kV
Winding Connection types: Delta or Wye (Primary/secondary/tertiary)		—
Fixed Taps available		Number of Taps /%V
Impedance on MVA base		Z1%
		X/R Z1
		Z0%
		X/R Z0

5. Wind Turbine Generator Step-Up Transformer Data (GSU)

Item	Value	Unit
Rating (ONAN/ONAF/OFAF)		MVA
Winding Nominal Voltages (Primary/secondary)		kV
Winding Connection types: Delta or Wye (Primary/secondary)		—
Fixed Taps available		Number of Taps /%V
Impedance on MVA base		Z1%
		X/R Z1

Item	Value	Unit
		Z0%
		X/R Z0

6. Inverter Data and Inverter Step-Up Transformer Data for Battery Energy Storage System (BESS)⁹

6.1 Battery Energy Storage System (BESS) Inverter step-up Transformer Data

Item	Value	Unit
Number of Transformers		—
Rating (ONAN/ONAF/OFAF)		MVA
Winding Nominal Voltages (Primary/secondary)		kV
Winding Connection types: Delta or Wye (Primary/secondary)		—
Fixed Taps available		Number of Taps /%V
Impedance on MVA base		Z1%
		X/R Z1
		Z0%
		X/R Z0

6.2 Battery Energy Storage System (BESS) Inverter Data

Item	Value	Unit
Number of Inverters to be Interconnected		—
Inverter Manufacturer		—
Inverter Model		—

⁹ PREPA Minimum Technical Requirements are applicable to the Generating Facility for connection of the facility to the power grid. These requirements indicate that an energy storage system is necessary for the integration of the Generating Facility to the power grid.

Inverters MVA rating		MVA
Maximum design fault contribution current from inverter (based on IEC 60909)		
Initial symmetrical short-circuit current (I_k'')		Amps
First Peak of short circuit current (i_p)		Amps
Steady-state short circuit current (I_k)		Amps
Time to reach steady-state current		ms

7. Interconnection Facilities – Tie Line Data (complement to the line data in Part A)

Item	Value	Unit
Positive sequence resistance (R) for entire length		p.u.*
Positive sequence reactance (X) for entire length		p.u.*
Zero sequence resistance (R0) for entire length		p.u.*
Zero sequence reactance (X0) for entire length		p.u.*
Line charging (B/2)		p.u.*

*On 100-MVA and nominal line voltage (kV) Base

8. Equivalent Collector System Impedance Data

Item	Value	Unit
Nominal voltage		kV
Rating		Amps
Positive sequence resistance (R)		p.u.*
Positive sequence reactance (X)		p.u.*

Item	Value	Unit
Zero sequence resistance (R0)		p.u.*
Zero sequence reactance (X0)		p.u.*
Line charging (B/2)		p.u.*

*On 100-MVA and nominal line voltage (kV) Base

9. Additional Reactive Compensation Devices (if applicable)

Item	Value	Unit
Type of Device		-
Total Reactive Capability		-
Q max		MVAr
Q min		MVAr

10. Dynamic Models

The Wind Generation Turbines and BESS aggregate dynamic mathematical models are required in PSS/E v33 format (.dyr file). Since the Wind Generation Turbines and BESS are connected on the ac side, each inverter type requires a separate aggregate model. Dynamic mathematical model for additional reactive compensation devices shall be included if applicable.

PSS/E generic WPP Dynamic Models (Type 2)
WT2G1
WT2E1
WT12T1
WT12A1
VTGTPAT
FRQTPAT

PSS/E generic WPP Dynamic Models (Type 3)
REGCAU1
REECAU1
REPCTAU1
WTDTAU1
WTPTAU1
WTARAU1
WTTQAU1
VTGTPAT
FRQTPAT

PSS/E generic WPP Dynamic Models (Type 4)
REGCAU1
REECAU1
REPCTAU1
VTGTPAT
FRQTPAT

PSS/E generic BESS Dynamic Models
REGCAU1
REECCU1
REPCTAU1
VTGTPAT
FRQTPAT

PSS/E library Static Var Systems and FACTS
SVSMO3U2*
SVSMO2U2*
SVSMO3U2*
CSVGN1
CSVGN3
CSVGN4
CSVGN5
SWSHNT
CDSMS1
CSTATT
CSTCNT
ABBSVC1
CHSVCT
CSSCST

*WECC, “Generic Static Var System Models for the Western Electricity Coordinating Council” April 18, 2011.

III. BATTERY ENERGY STORAGE RESOURCE INFORMATION REQUEST FORM

Please fill out all fields. If field is not applicable, fill with “N/A.”

PART A: Interconnection Feasibility Study Data

With the information provided in this section, *Steady-State Thermal Study* and *Steady-State Voltage Analysis* will be performed to evaluate the impact of the BESS project interconnection.

1. OVERALL GENERATING FACILITY DATA

Item	Value	Unit
Point of interconnection (POI) ¹⁰ :	—	—
Transmission Center (TC) ¹¹ (Name)		—
Sectionalizer ¹²		latitude/longitude
POI voltage level		kV
Maximum Facility net output at the POI		MW*
Generating Facility Location		latitude/longitude

*Power factor range to be evaluated: 0.85 lagging to 0.85 leading at the point of interconnection (POI)

2. Interconnection Facilities – Tie Line Data

Item	Value	Unit
Nominal voltage		kV
Line length to POI		miles
Conductor type/size		kcmil
Phase configuration		—

¹⁰ PREPA may support the selection of the POI with an optional scoping meeting that may be requested by the developer at no cost.

¹¹ PREPA facility that has high voltage transmission lines connecting to it and is similar to a substation.

¹² New facility that will be built to allow the interconnection of the Generating Facility to the selected transmission line where the generated power will be injected.

Item	Value	Unit
(Vertical/Horizontal)		
Rating		Amps

PART B: Full Interconnection System Impact Study Data

With the information provided in this section, *Short Circuit Study & Breaker Duty Review*, and *Dynamic & Transient Stability Analysis* will be performed to evaluate the full impact of the BESS project interconnection to the grid.

3. Main Power Transformer Data

Item	Value	Unit
Number of Transformers		—
Rating (ONAN/ONAF/OFAF)		MVA
Winding Type (2W, 3W)		—
Winding Nominal Voltages (Primary/secondary/tertiary)		kV
Winding Connection types: Delta or Wye (Primary/secondary/tertiary)		—
Fixed Taps available		Number of Taps /%V
Impedance on MVA base		Z1%
		X/R Z1
		Z0%
		X/R Z0

4. BESS – Electrical Source Function Data

Item	Value	Unit
Total Storage Capability		MWh
Charge/Discharge Cycle Efficiency		%
Rated Storage Discharging Power		MW
Discharge Duration under Rated Power		Hours
Maximum Storage Discharging Power		MW
Discharge Duration under Maximum Power		Hours
Rated Storage Charging Power		MW
Charge Duration under Rated Power		Hours
Maximum Storage Charging Power		MW
Charge Duration under Maximum Power		Hours
Grid Interface Device (Type of Converter)		-
Minimum State of Charge		%
Maximum State of Charge		%
Maximum Grid Overload Capability of Interface Device		MW
Reactive Capability (Qmax and Qmin)		MVar
Maximum Fault Contribution Current of BESS		p.u.
Life Span		cycles

5. Inverter Data and Inverter Step-Up Transformer Data

5.1 Battery Energy Storage System (BESS) Inverter step-up Transformer Data

Item	Value	Unit
Number of Transformers		—
Rating (ONAN/ONAF/OFAF)		MVA
Winding Nominal Voltages (Primary/secondary)		kV
Winding Connection types: Delta or Wye (Primary/secondary)		—
Fixed Taps available		Number of Taps /%V
Impedance on MVA base		Z1%
		X/R Z1
		Z0%
		X/R Z0

5.2 Battery Energy Storage System (BESS) Inverter Data

Item	Value	Unit
Number of Inverters to be Interconnected		—
Inverter Manufacturer		—
Inverter Model		—
Nominal Terminal Voltage		kV
Expected average high ambient temperature for the site		°C
Individual generator rated MVA at the temperature above		MVA
Individual generator rated MW at the temperature above		MW

Item	Value	Unit
Individual generator power factor at rated MW		—
Individual generator power factor regulation range at rated MW output (Leading (-))		—
Individual generator power factor regulation range at rated MW output (Lagging (+))		—
Generator Voltage Regulation Range (+/-)		%
Phase (Single Phase / Three Phase)		
Connection (Delta, Grounded WYE, Ungrounded WYE, Impedance Grounded)		
Maximum design fault contribution current from inverter (based on IEC 60909)		
Initial symmetrical short-circuit current (I_k)		Amps
First Peak of short circuit current (i_p)		Amps
Steady-state short circuit current (I_k)		Amps
Time to reach steady-state current		ms

6. Interconnection Facilities – Tie Line Data (complement to the line data in Part A)

Item	Value	Unit
Positive sequence resistance (R)		p.u.*
Positive sequence reactance (X)		p.u.*
Zero sequence resistance (R0)		p.u.*
Zero sequence reactance (X0)		p.u.*
Line charging (B/2)		p.u.*

*On 100-MVA and nominal line voltage (kV) Base

7. Equivalent Collector System Impedance Data

Item	Value	Unit
Nominal voltage		kV
Rating		Amps
Positive sequence resistance (R) for entire length		p.u.*
Positive sequence reactance (X) for entire length		p.u.*
Zero sequence resistance (R0) for entire length		p.u.*
Zero sequence reactance (X0) for entire length		p.u.*
Line charging (B/2)		p.u.*

*On 100-MVA and nominal line voltage (kV) Base

8. Additional Reactive Compensation Devices (if applicable)

Item	Value	Unit
Type of Device		-
Total Reactive Capability		-
Q max		MVAr
Q min		MVAr

9. Dynamic Models

The BESS aggregate dynamic mathematical models are required in PSS/E v33 format (.dyr file).

PSS/E generic BESS Dynamic Models
REGCAU1
REECCU1

PSS/E generic BESS Dynamic Models
REPCTAU1
VTGTPAT
FRQTPAT

PSS/E library Static Var Systems and FACTS
SVSMO3U2*
SVSMO2U2*
SVSMO3U2*
CSVGN1
CSVGN3
CSVGN4
CSVGN5
SWSHNT
CDSMS1
CSTATT
CSTCNT
ABBSVC1
CHSVCT
CSSCST

*WECC, “Generic Static Var System Models for the Western Electricity Coordinating Council” April 18, 2011.

[REDACTED]

¹³ Note: Addendum No. 9 to the RFP updated Appendix K to (i) delete interconnection points with estimated overall MW limit under 20 MW, and (ii) include GPS coordinates and municipality which identify each interconnection point.

[illegible]



Sourcing Intelligence® Quick Start for Suppliers

PowerAdvocate Sourcing Intelligence enables suppliers to access buyer documents and submit documents over a web-based sourcing platform.

Logging In

1. Launch a web browser and go to www.poweradvocate.com.
2. Click the orange Login button.
3. Enter your account User Name and Password (both are case-sensitive) and click Login.
4. Click the Events tab if it is not already displayed.

Dashboard

Your Dashboard lists the events you have been invited to. A line divides currently accessible events from others.

The screenshot shows the PowerAdvocate Sourcing Intelligence Dashboard. Annotations include:

- Click to view Supplier Intelligence Dashboard**: Points to the 'Events' tab.
- Click to view Contract Intelligence Dashboard**: Points to the 'Contracts' tab.
- Buyer filter**: Points to the 'Company Filter' dropdown menu.
- Navigation bar**: Points to the top navigation bar with links: Dashboard, Profile, Company, Help, Logout.
- Dashboard**: The main title of the page.
- Company Filter**: A dropdown menu set to 'All Companies'.
- Fill-In Data Sheets**: A link to fill in data sheets.
- Event / Buyer**: The first column of the event table.
- Mag**: The second column of the event table.
- Open**: The third column of the event table.
- Close**: The fourth column of the event table.
- Download Documents**: The fifth column of the event table.
- Upload Documents**: The sixth column of the event table.
- Commercial**: The seventh column of the event table.
- Technical**: The eighth column of the event table.
- Pricing**: The ninth column of the event table.
- Buying entity**: Points to the 'Event / Buyer' column.
- Click to view the event's Status tab**: Points to the '1' button in the 'Download Documents' column.
- Number of unread/total messages**: Points to the '1' button in the 'Mag' column.
- Click to view the event's Messaging tab**: Points to the '1' button in the 'Open' column.
- Click numbers to view event tabs**: Points to the '1', '2', '3', '4', and '5' buttons in the 'Download Documents' column.
- Datasheet available**: Points to the '2' button in the 'Download Documents' column.
- No datasheet available**: Points to the '3' button in the 'Download Documents' column.
- Open & Pending Pre-Bid events**: Points to the top section of the event table.
- Pending (no Pre-bid) and Closed events**: Points to the bottom section of the event table.

Event / Buyer	Mag	Open	Close	Download Documents	Upload Documents	Commercial	Technical	Pricing
190-cl-1: 190 First St. Cable/Wiring Electric Power Utility		05/18/10 8:00 AM EDT	06/08/10 4:00 PM EDT	1	2	3	4	5
T42g: Colorado River Sluice Gates Great Western Utilities	1/1	04/04/10 10:00 AM EDT	06/30/10 4:00 PM EDT	1	2	3	4	5
1998-01: Grid Expansion Electric Power Utility		09/01/10 8:00 AM EDT	12/20/10 4:00 PM EDT	1	2	3	4	5

- Click an event name to view its Status tab, which displays a summary of your activity and key event dates. To view specific details of an event, click the buttons 1 2 3 4 5 to view the corresponding tab.
- To return to the Dashboard, click Dashboard in the navigation bar at the top of the window.
- An event will not appear on your Dashboard until the Bid Event Coordinator has added you as a participant.

In addition to the Events tab, you may also see:

- An Opportunities tab, if a buyer opens an event to all PowerAdvocate suppliers; you can review a high-level event description, and may request full access to the event.
- A Portals tab, if a buyer subscribes to PowerAdvocate Supplier Intelligence
- A Contracts tab, if a buyer subscribes to PowerAdvocate Contract Intelligence.

Downloading Bid Packages

All of the buyer's bid package documents, including specifications and engineering drawings, are centrally stored on the PowerAdvocate platform. To view bid documents, click **1** on your Dashboard or on the **1. Download Documents** tab from within the event.



- You can access the Bid sub-tab after the bid opens. You can access Buyer documents before the event from a Pre-Bid sub-tab if the buyer requires a Pre-Bid submittal; the buyer must approve your submittal before you can access the Bid sub-tab. Likewise, you will see a Post Bid sub-tab if the buyer invites you to participate in post-bid negotiations.
- To view or download a document, click the file name; you may be prompted to open or save the file.
- To download multiple documents:
 1. Select the checkbox in the **Download** column for each document you wish to download, or click **Select All**.
 2. Click **Download Selected Files**.
 3. Click **Start** to download a .zip file containing the selected documents.

Uploading Documents

To upload your documents, click **2** on your Dashboard, or on the **2. Upload Documents** tab from within the event.



- As with the **1. Download Documents** tab, you may be able to access and upload documents to Pre-Bid, Bid, and Post Bid sub-tabs as appropriate.
- To upload a document:
 1. Specify a **Document Type**, and edit the **Issue Date** and **Reference ID** if necessary.
 2. Click **Browse**, navigate to and select the document, and then click **Open**; multiple files can also be compressed into one .zip file for upload.
 3. Click **Submit Document**.
- Late documents are accepted at the Buyer's option, but are flagged in red text.

Completing Datasheets

To view the event datasheets, click **3**, **4**, or **5** on your Dashboard or on the 3. Commercial, 4. Technical, or 5. Pricing tabs from within the event. Buttons/tabs are grayed out (e.g., **3**) if the buyer did not create a particular type of datasheet.

- Complete the datasheets over the course of the Bid Open period; datasheets may have multiple sub-tabs.
- Click **Save Data** often to avoid data loss. Once the bid closes, saved data is automatically submitted to the buyer.
- Once the bid closes, you are normally unable to modify datasheets. However, at the buyer's option, you may upload additional documents on the 2. Upload Documents tab (which are flagged as being late).
- To view a printer-friendly version of a datasheet, click **Printable**.

Communicating with the Bid Event Coordinator

Buyer companies use one of two communication options in Sourcing Intelligence: Email or PowerAdvocate Messaging.

Email

Click the icon next to the Buyer Contact's name to contact them through your default email application (e.g., Outlook).

PowerAdvocate Messaging

To send a message to the Bid Event Coordinator (BEC), go to the **Messaging** tab and click **Create New Message**. To read or reply to a message from the BEC, click the message subject.

Status	Date	From	Company	Subject
	9/29/07 2:58 PM EDT	Peter Holm	Elsbeth International	engineering specialist
	9/29/07 2:53 PM EDT	Cindy Walsh	Electric Power Utility	are you non-technical
	9/29/07 2:52 PM EDT (3)	Cindy Walsh	Electric Power Utility	technical specialist

- You can send messages to the BEC and Buyer Team; replies are sent your Supplier Team and the Buyer Team.
- BECs can message the Buyer Team and all Supplier Teams at once; Supplier Teams can respond but not see other Supplier Teams' responses.
- Supplier Teams cannot message each other, or see other Supplier Teams' correspondence with the Buyer Team.
- You can receive external email notification of new PowerAdvocate messages.

Getting More Information

- Click **Help** on the navigation bar to display the online help.



- Supplier documentation can be downloaded from the online help system.
- Call PowerAdvocate support at 857-453-5800 (Mon-Fri, 8 a.m. to 8 p.m. Eastern Time) or email support@poweradvocate.com.

May 2016

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PowerAdvocate
179 Lincoln Street
Boston, MA 02111 USA

Support: 857.453.5800
Fax: 857.453.5656
Email: support@poweradvocate.com

Appendix N. Kick-off Meeting Presentation

Appendix O. Forms of Certificate for Minimum Eligibility Requirements

FORM OF REFERENCE PROJECT COMPLIANCE CERTIFICATE

Dated as of **[Month/Date/Year]**

To: The Puerto Rico Electric Power Authority

Attn: Chief Executive Officer

Re: Reference Project for [Name of Proponent]

We refer to (i) the Request for Proposals No. 112648 that the Puerto Rico Electric Power Authority (“**PREPA**”) issued on February 22, 2021 (as amended, the “**RFP**”), and to (ii) the *[name and description of project]* (the “**Reference Project**”). Unless the context otherwise requires, capitalized terms have the meanings ascribed to them in the RFP.

In accordance with paragraphs 2-4 of Table 3-1 (*Minimum Eligibility Requirements*) of the RFP, we, *[Name of Proponent]*, as a Proponent under the RFP process, hereby declare and certify to PREPA that, as of the date of this Certification and during the past three (3) years:

1. no material or sustained violation of Applicable Law has occurred with respect to any environmental matter involving the development, construction or operation of the Reference Project;
2. the Reference Project has complied with all energy related policies, practices and regulations and all Applicable Law; and
3. the Reference Project has not engaged in, nor is there been any record of, Unsatisfactory Performance with respect to the Reference Project.

Signed by

[Printed Name of Authorized Representative]

Authorised Representative

[NAME OF PROPONENT]

FORM OF NO DISBARMENT CERTIFICATION

Dated as of [Month/Date/Year]

To: The Puerto Rico Electric Power Authority

Attn: Chief Executive Officer

Re: [Name of Proponent] – No Disbarment

We refer to the Request for Proposals No. 112648 that the Puerto Rico Electric Power Authority (“PREPA”) issued on February 22, 2021 (as amended, the “RFP”). Unless the context otherwise requires, capitalized terms have the meanings ascribed to them in the RFP.

In accordance with the requirements of the No Disbarment Criteria section of Table 3-1 (*Minimum Eligibility Requirements*) of the RFP, we, [Name of Proponent]¹⁴, as a Proponent under the RFP process, hereby declare and certify to PREPA that, as of the date of this Certification, neither we, nor any of our Affiliates, nor any executive officer or member of the board of any of the foregoing parties has been the subject of any of the following adverse findings within the past five (5) years:

1. pending litigation with the Government of Puerto Rico or any state;
2. arson conviction or pending case;
3. harassment conviction or pending case;
4. sale tax lien or substantial tax arrears;
5. fair housing violations or current litigation;
6. a record of substantial building code violations or litigation against properties owned and/or managed by the Proponent or by any entity or individual that comprises the Proponent;
7. past or pending voluntary or involuntary bankruptcy proceeding; or
8. conviction for fraud, bribery, or grand larceny.

¹⁴ Note: For a Proponent consortium, the Lead Member and each of the Other Members must provide this certification.

Signed by

[*Printed Name of Authorized Representative*]
Authorised Representative

[***NAME OF PROPONENT***]¹⁵

¹⁵ Note: For a Proponent consortium, the Lead Member and each of the Other Members must sign a certification.

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we [●], (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 (the “**Surety**”) undertake to pay the PUERTO RICO PUBLIC-PRIVATE PARTNERSHIP’S AUTHORITY, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico (the “**Obligee**”), of [●] United States Dollars (\$[●]) (the “**Penal Sum**”), lawful money of the United States of America, for the payment of which sum well and truly to be made, the Principal and the Surety, bind ourselves, our heirs, executors, administrators, and successors, jointly and severally firmly by these presents;

WHEREAS:

- A. on June 30, 2021, Obligee issued the Request for Proposals for Renewable Energy Generation and Energy Storage Resources, Tranche 2 of 6 (as amended, the “**T2 RFP**”);
- B. Principal has submitted a proposal to make available one or more renewable energy, energy storage or virtual power plant resources in response to the T2 RFP (the “**Proposal**”); and
- C. Principal desires to issue this Bid Bond as “*Proposal Security*” contemplated by Section 6.6 (*Proposal Security*) of the T2 RFP for the benefit of Obligee as good and sufficient surety for the faithful compliance by Principal with the requirements of the T2 RFP;

NOW, THEREFORE, if (i) the Obligee selects the Proposal of the Principal for Phase III evaluation under the T2 RFP, (ii) any one of the four events set forth in paragraphs (aa) – (dd) of Section 6.6 (*Proposal Security*) of the T2 RFP occurs with respect to the Principal acting as a “*Proponent*” as defined in the RFP, and (iii) the Principal pays to the Obligee the Penal Sum in full, 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 from the date hereof until June 30, 2022, 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

Appendix Q. Form of Grid Services Agreement

[Attached.]

Appendix R. Form of ESSA for ITC Compliant Energy Storage Resources

[Attached.]

Appendix 3. Solar PPOA

DRAFT

POWER PURCHASE AND OPERATING AGREEMENT
BETWEEN
PUERTO RICO ELECTRIC POWER AUTHORITY
AND
[•]
DATED [•]



Puerto Rico
Electric Power
Authority

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THIS POWER PURCHASE AND OPERATING AGREEMENT (the “**Agreement**”) is entered into as of this [●] day of [●] (the “**Agreement Date**”) between the **PUERTO RICO ELECTRIC POWER AUTHORITY** (including any successor thereto, “**PREPA**”), a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by Act of May 2, 1941, No. 83, as amended, employer identification number [●], represented in this act by its Executive Director, Mr. Efran Paredes Maisonet, of legal age, married, engineer and resident of Bayamón, Puerto Rico; and [●] (“**SELLER**”), a [●] company, authorized to do business in Puerto Rico, employer identification number [●], with its principal office at [●], and represented in this act by its [●], [Mr./Ms.] [●], of legal age, [married], and a resident of [●], authorized to sign this Agreement on behalf of SELLER as certified by the Resolution dated [●]. PREPA and SELLER are herein individually referred to as a “**Party**” and collectively referred to as “**Parties**”:

RECITALS

WHEREAS,

- A. To procure renewable energy generation and energy storage services at sites across the island of Puerto Rico in accordance with the requirements of the Puerto Rico Energy Public Policy Act (Act 17-2019), the Puerto Rico Energy Diversification Policy through Sustainable and Alternative Renewable Energy Act (Act 82-2010), PREB’s Final Resolution and Order on PREPA’s Integrated Resource Plan in Case No. CEPR-AP-2018-0001 issued on August 24, 2020, and PREB’s Resolution and Order on PREPA’s Draft Procurement Plan in Case No. NEPR-MI-2020-012 issued on December 8, 2020, PREPA has conducted a competitive procurement process based upon its issuance of Request for Proposals No. 112648, Renewable Energy and Energy Storage Resources, Tranche 1 of 6, on February [●], 2021 (as amended, the “**RFP**”) to select one or more developers to (i) design, construct, install, interconnect, test, commission, operate and maintain renewable energy generation, virtual power plants, and/or energy storage resources, and (ii) enter into agreement(s) with PREPA for the same;
- B. SELLER, among other bidders, (i) submitted a proposal in response to the RFP on [●] and separately submitted an [on-demand letter of credit]¹ as security for SELLER’s satisfaction of the requirements of the RFP (the “**Bid Security**”) and (ii) desires to (a) develop, finance, construct, own, operate and maintain a [●] MW AC [photovoltaic solar energy generation facility]² (the “**Project**”), and (b) sell and make available exclusively to PREPA all of the capacity, Net Electrical Output, Ancillary Services and Green Credits of/from such facility exclusively to PREPA in accordance with this Agreement; and
- C. PREPA (i) selected SELLER as one of the preferred bidders following the submission and evaluation of all proposals, and (ii) desires to purchase all of the capacity, Net Electrical Output, Ancillary Services and Green Credits of/from such facility in accordance with this Agreement;

NOW THEREFORE, in consideration of these premises and of the mutual covenants and agreements set forth herein, the Parties, intending to be legally bound, hereby agree to the following:

¹ Note: Align with form of actual Bid Security.

² Note: Add description of BESS if applicable.

1. DEFINITIONS & INTERPRETATION

1.1 Definitions

In this Agreement:

“**AC**” means alternating electrical current.

“**Affected Party**” has the meaning set forth in Section 14.1 (*General*).

“**Affiliate**” means, with respect to a Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls (*e.g.*, a parent or grandparent company), is Controlled by (*e.g.*, a subsidiary company), or is under common Control (*e.g.*, a sister company) with, such Person.

“**Agreement**” has the meaning set forth in the preamble of this Agreement.

“**Agreement Date**” has the meaning set forth in the preamble of this Agreement.

“**Agreement Date Obligations**” has the meaning set forth in Section 2.3 (*Initial Effectiveness & Closing Date*).

“**Agreement Year**” means each period of twelve (12) consecutive Months, provided that (i) the first such period shall begin on the Commercial Operation Date, (ii) each such subsequent year shall begin on the corresponding anniversary of such earlier date, and (iii) the last such period shall expire at the end of the Supply Period.

“**Ambient Conditions**” has the meaning set forth in paragraph (a), Section 2 of Appendix G (*Determination of Expected & Deemed NEO*).

“**Ancillary Services**” means any services required by the MTRs or otherwise capable of being made available to the Grid System by the Facility (other than the delivery of Net Electrical Output) from time to time, including automatic generation control, energy storage or spinning reserve, synchronous condenser mode, reactive power support, operating reserve, frequency control, ramp rate control, voltage control, black start capability, voltage support, emergency stand-by support, or others, as applicable.³

“**Annual Shortfall Credit**” or “**ASC**” has the meaning set forth in Appendix Q (*Performance Guarantee*).

“**Applicable Law**” or “**Law**” means, with respect to any Person, any constitution, bilateral or multilateral treaty, statute, law, rule, regulation, ordinance, judgment, order, decree, governmental consent, or approval or any published directive, guideline, requirement or other governmental restriction, which has the force of law, or any determination, or interpretation of any of the foregoing, by any judicial authority, which legally binds such Person or its property whether in effect as of the Agreement Date or thereafter.

“**Applicable Standards**” means the MTRs, the DCDs, any other applicable PREPA standards that PREPA has made available or identified to SELLER as applicable to SELLER’s performance of its obligations under this Agreement, and any other codes, standards or requirements set forth in

³ Note: This Agreement limits dispatchable Ancillary Services to those specified in the MTRs.

any Applicable Law, including any applicable federal, state or local code, the latest standards of the Institute of Electrical and Electronic Engineers (IEEE), National Electrical Manufacturer's Association (NEMA), American Concrete Institute (ACI), American National Standards Institute (ANSI), International Code Council Code (ICC), National Fire Protection Association and the North American Electric Reliability Corporation (NERC), as well as the latest editions of the National Electrical Code and the National Electrical Safety Code (NESC), to the extent not inconsistent with the foregoing, in each case as modified from time to time.

"Approved Design" has the meaning set forth in paragraph (c) of Section 4.1 (*Proposed Design*).

"Balance" has the meaning set forth in paragraph (b) of Section 17.2 (*Tracking Account*).

"Base Rate" or **"BR"** has the meaning set forth in Section 3 of Appendix F (*Compensation*).

"Best and Final Offer" has the meaning given in the RFP.

"Best Interests Determination" means a determination by PREPA that the Project will serve the best interests of its ratepayers as evidenced by the findings of the Feasibility Study, System Impact Study and Facility Study, following the completion of the phase III evaluation of the Project by PREPA as contemplated by the RFP.

"Bid Security" has the meaning set forth in Recital B in the preamble of this Agreement.

"Billing Period" means a Month, provided that (i) the first such period shall begin on the Initial Synchronization Date and end on the final Day of the Month in which the Initial Synchronization Date occurs, and (ii) the last such period shall begin on the first Day of the Month in which the Supply Period will expire and end on final Day of the Supply Period.

"Bulk-Power System EO" means E.O. 13920 of May 1, 2020, as supplemented by and including the rules and regulations published by the U.S. Department of Energy in connection therewith, as such may be modified from time to time.

"Business Day" means a Day other than (i) a Saturday, a Sunday or a Day on which commercial banks in San Juan, Puerto Rico are required or authorized to close, or (ii) any other Day recognized as a holiday by PREPA as listed on Appendix A (*Holidays*) hereto or notified to SELLER from time to time.

"Capacity Shortfall Liquidated Damages" has the meaning set forth in item (2), paragraph (b) of Section 5.3 (*Initial Performance Tests*).

"CGL" has the meaning set forth in paragraph (c) of Section 18.3 (*Contractor Requirements*).

"Changes" has the meaning set forth in paragraph (a) of Section 17.1 (*SELLER Requirements*).

"Claims" means all claims, actions, suits, demands, or proceedings brought by any Person for liabilities, judgments, losses, costs (including court costs, reasonable attorneys' fees, and costs of investigation), fines, penalties, expenses, and damages of whatsoever kind or nature, arising in contract, tort, or otherwise.

"Closing Date" has the meaning set forth in Section 2.3 (*Initial Effectiveness & Closing Date*).

"COD Termination Event" means the occurrence of the Long-Stop Date prior to the Commercial Operation Date.

“Commercial Operation” means satisfaction of the requirements set forth in a certificate issued by SELLER in accordance with paragraph (e) of Section 5.3 (*Initial Performance Tests*) in the form set forth in Appendix V (*Form of Commercial Operation Date Certificate*).

“Commercial Operation Date” means the date when SELLER first achieves Commercial Operation.

“Conditions Precedent” has the meaning set forth in Section 2.3 (*Initial Effectiveness & Closing Date*).

“Construction Start” means satisfaction of all requirements set forth in a certificate issued by SELLER in the form set forth in Appendix U (*Form of Construction Start Date Certificate*).

“Construction Start Date” means the date on which SELLER achieves Construction Start, as evidenced by a certificate issued by SELLER to PREPA in a form set forth in Appendix U (*Form of Construction Start Date Certificate*).

“Construction Start Termination Event” means SELLER’s failure to achieve the Construction Start Date by the Guaranteed Construction Start Date.

“Consulting Technical Expert” has the meaning set forth in Section 3.1 (*Consulting Technical Expert*).

“Contract Capacity” means, at any given time, the lower of (i) the Maximum Dispatch Limit, and (ii) the Generating Capacity.

“Contract Rate” has the meaning set forth in Appendix F (*Compensation*).

“Control” means (i) the ownership (whether directly or indirectly) of more than fifty percent (>50%) of the total issued voting share capital or other voting interest of that company or corporation, or (ii) the ability to unilaterally appoint a majority of the board directors or equivalent body of that company or corporation through the ownership of securities with voting power or otherwise, without the need of the vote or approval of another, or (iii) the ability to unilaterally direct the business affairs and/or operations of that company or corporation, without the need of the vote or approval of another; and the terms **“Controls,” “Controlled,”** and **“Controlling”** shall have a corresponding meaning, provided that if two (2) shareholders each own fifty percent (50%) of the total issued and outstanding shares of a corporation, then neither shareholder controls such corporation.

“COR3” means the Central Recovery and Reconstruction Office of Puerto Rico.

“Day” means a period of twenty-four (24) consecutive hours, beginning at 00:00 hours on any Gregorian calendar day and ending at 24:00 hours on such day, Puerto Rico time.

“DC” means direct electrical current.

“Deemed Completion” means the occurrence of each of the following events: (i) the completion of the installation of the Facility in all material respects (other than punch list items), and (ii) a delay of the commencement of the Initial Performance Tests, or interruption of an ongoing Initial Performance Tests, for a period of at least fifteen (15) consecutive Days as determined under Section 3.4 (*Extensions of Time*), arising out of a PREPA Risk Event, in each case as evidenced by

the delivery of a certificate by SELLER to PREPA, co-signed by the Consulting Technical Expert, certifying (A) the truth and correctness of each of the foregoing events, and (B) the date on which SELLER would have achieved Commercial Operation but for the occurrence of all PREPA Risk Event(s), which formed the basis for an extension of time of the Guaranteed Commercial Operation Date under Section 3.4 (*Extensions of Time*); provided that Deemed Completion shall never occur earlier than the Guaranteed Commercial Operation Date.

“Deemed NEO” means, for any Deemed NEO Period, the quantity of energy deemed available at the Interconnection Point (up to the Expected NEO for such period), but not taken by PREPA as a result of a PREPA Risk Event, in each case as determined in accordance with Appendix G (*Determination of Expected & Deemed NEO*).

“Deemed NEO Period” has the meaning set forth in Appendix G (*Determination of Expected & Deemed NEO*).

“Default” has the meaning set forth in Section 16.1 (*Definition*).

“Defects Liability Period” has the meaning set forth in paragraph (b) of Section 5.4 (*Interconnection Facilities*).

“Derated Quantity” means, for each Event Interval, the quantity of energy by which the Expected NEO for such interval exceeds the Net Electrical Output during such interval, provided that if the Net Electrical Output equals or exceeds the Expected NEO for such interval, then the Derated Quantity for such interval shall equal zero (0).

“Derating” means, for any Time Interval, SELLER’s inability or failure to make any and all Net Electrical Output available at the Interconnection Point in a quantity corresponding to the Expected NEO for such interval, but excluding any period of Outage.

“Development Abandonment” means the permanent cessation by SELLER of the development and construction of the Facility or the PREPA Interconnection Facilities being installed by SELLER after the Closing Date and prior to the Commercial Operation Date, as evidenced by SELLER’s or its construction contractors’ personnel having withdrawn from the Site (unless SELLER demonstrates otherwise) and SELLER having otherwise ceased development and construction activities related to the Facility for more than one hundred twenty (120) consecutive Days for any reason other than as a result of Force Majeure affecting SELLER or a PREPA Risk Event.

“Disclosing Party” has the meaning set forth in paragraph (a) of Section 12.9 (*Confidentiality*).

“Dispatch Notice” means the operating instruction and any subsequent updates given by PREPA (directly or through the SCADA system) to SELLER, directing the Facility to make available at a specified quantity of Net Electrical Output.

“Dispute” has the meaning set forth in paragraph (a) of Section 21.11 (*Dispute Resolution*).

“Dispute Notice” has the meaning set forth in paragraph (a) of Section 21.11 (*Dispute Resolution*).

“dollars” and **“\$”** means United States dollars.

“Emergency” means an operational condition or situation affecting the Grid System (including system security and reliability or a declaration of an emergency event under Applicable Law or by any Governmental Authority) or the Facility, which has resulted in, or will likely result in, imminent

significant disruption of service to a significant number of customers or likely endangers life or property.

“Energy Yield Assessment Report” means a report, prepared by SELLER, that sets out an estimate of the energy (kWh) expected to be delivered by the Facility (daily, monthly, and annually) to the Interconnection Point and specifically defines the Facility’s P50 Energy Yield applicable to each Agreement Year during the Term.

“Environmental Costs” means any and all fixed and variable costs incurred by SELLER resulting from the imposition or assessment on, or as a result of the ownership or operations of, the Facility by Applicable Law relating to the environment, issued by a Governmental Authority.

“Equity” means any capital paid or caused to be paid by or on behalf of SELLER’s shareholders or their Affiliates to SELLER for shares in SELLER or in the form of shareholder loans to SELLER, which by their terms are subordinated to any indebtedness for borrowed money incurred by SELLER under financing documents with the Project Lenders.

“Equity Transfer” has the meaning set forth in Section 19.4 (*Restrictions on Equity Transfers*).

“Equivalent Force Majeure Derated Hours” means, for any Agreement Year, the number of hours equal to (i) the sum of the fractions obtained by dividing the Derated Quantity for each Force Majeure Event Interval to date during such Agreement Year by the Expected NEO applicable to such Force Majeure Event Interval *divided by* (ii) six (6).

“Equivalent Grid System Derated Hours” means, for any Agreement Year, the number of hours equal to (i) the sum of the fractions obtained by dividing the Derated Quantity for each Grid System Event Interval to date during such Agreement Year by the Expected NEO applicable to such Grid System Event Interval *divided by* (ii) six (6).

“Event Day” has the meaning set forth in Appendix G (*Determination of Expected & Deemed NEO*).

“Event Interval” means any Time Interval (without double counting) in which (i) the Facility has the capability (including technically, subject to any Derating or Outage, and with sufficient solar irradiation) to make Expected NEO for such Time Interval available for delivery at the Interconnection Point, (ii) SELLER has provided PREPA with written notice of such capability in accordance with Section 6.2 (*Availability Estimates*), and (iii) a PREPA Risk Event results in the inability or failure of PREPA to take a quantity of net electrical energy made available by SELLER at, but not delivered to, the Interconnection Point, up to the Expected NEO for such Time Interval.

“Expected Losses” means (i) incidence angle irradiance losses, (ii) irradiance losses due to module soiling, (iii) conversion losses due to irradiance level, (iv) conversion losses due to cell temperature above STP efficiency, (v) conversion losses due to module quality, (vi) conversion losses due to light induced module degradation, (vii) conversion losses due to mismatched modules and strings, (viii) DC ohmic wiring and combiner losses, (ix) DC to AC inverter conversion losses, (x) step-up field transformer losses, (xi) inverter nighttime power consumption, (xii) AC ohmic wiring field collection losses, (xiii) collector substation losses, (xiv) battery in charger losses, (xv) battery global losses, (xvi) battery out inverter losses, (xvii) Facility and auxiliaries power consumption, and (xviii) Interconnection Facilities and main step-up transformer losses.

“Expected NEO” has the meaning set forth in Appendix G (*Determination of Expected & Deemed NEO*).

“Exceptions” means liability arising from:

- a. SELLER’s fraud, willful misconduct or gross negligence;
- b. SELLER’s indemnity obligation under Section 13.1 (*General*) for personal injury or death of a third party;
- c. SELLER’s indemnity obligation under Section 13.3 (*Claims Arising from Environmental Harm*); or
- d. SELLER’s obligation to pay/provide a credit for Liquidated Damages under this Agreement.

“Facility” means the energy production facility known as [●], located at the Site and capable of making Generating Capacity up to the Maximum Dispatch Limit available at the Interconnection Point, including the Seller Interconnection Facilities and any energy storage system, capacity expansion or other upgrades to such energy system from time to time.⁴

“Facility Availability” has the meaning set forth in Section 3 (*Facility Availability*) of Appendix G (*Determination of Expected & Deemed NEO*).

“Facility Construction Contract” means the primary contract for the construction of the Facility entered into between SELLER and one or more contractors.

“Facility Performance Model” has the meaning set forth in Appendix G (*Determination of Expected & Deemed NEO*).

“Facility Study” means, for each proposal selected by PREPA for phase III evaluation and contract negotiation of proposals under the RFP, an engineering study to determine required additions or modifications to the Grid System, including the cost and scheduled completion date for such additions or modifications, required to provide grid support services needed to integrate the Facility into the Grid System.

“Feasibility Study” means, for each proposal selected by PREPA for phase II project committee review and recommendation under the RFP, a study of the feasibility of such proposal, including the interconnection of the Project with the Grid System.

“FOMB” means the Financial Oversight and Management Board for Puerto Rico, or any successor thereto.

“FOMB Certification” has the meaning set forth paragraph (a) of Section 16.2 (*Certain Material Breaches*)

“Force Majeure” has the meaning set forth in Article 14 (*Force Majeure*).

⁴ Note: Add description of BESS if applicable.

“Force Majeure Event Interval” means, for any Agreement Year, an Event Interval in which a PREPA Risk Event occurs pursuant to paragraph (a) of such definition.

“Force Majeure Waiting Period” means, for each Agreement Year, three hundred sixty (360) hours.⁵

“GAAP” means Generally Accepted Accounting Principles, as promulgated by the Financial Accounting Standards Board or its predecessors or successors.

“Generating Capacity” means, at any given time, the instantaneous net AC electrical generating power output of the photovoltaic solar field (expressed in kW and exclusive of battery power output), which the Facility can make available at the Interconnection Point as forecasted by the Facility Performance Model (and verified by the Performance Tests), based upon the prevailing Ambient Conditions at such time net of Expected Losses.

“GK” has the meaning set forth in section (3) of paragraph (b) of Section 2 (*Facility Performance Model*) of Appendix G (*Determination of Expected & Deemed NEO*).

“Governmental Authority” means any court, tribunal or governmental or quasi-governmental body, regulatory body, agency, authority, office, department, commission, board, bureau, public corporation, municipality or instrumentality, in each case at any federal, state, Commonwealth of Puerto Rico, county, municipal, or local level, having jurisdiction over a Party, the Facility or the Site, including FOMB and PREB, but excluding PREPA.

“Green Credits” means “renewable energy certificates” and “environmental and social attributes,” as defined in the Green Energy Incentives Act of Puerto Rico (Act No. 83 of July 19, 2010), renewable energy credits, environmental attributes, emissions reductions, offsets, allowances or benefits, however entitled (or payments in lieu thereof), whether monetary, fiscal or in the form of physical property, which are now or in the future may be available to the Facility, as a facility that generates or produces electricity by means of “green energy” (as defined in Act No. 83 of July 19, 2010), or from renewable or non-polluting resources, granted or available to SELLER as the owner or operator of the Facility or otherwise, in each case, from any Governmental Authority or third party, including renewable energy credits established pursuant to Act No. 83 of July 19, 2010, but shall exclude (i) any Tax Credits and grants in lieu thereof, (ii) other tax incentives, benefits or credits, including those available under Puerto Rico Act 60-2019, (iii) any accelerated depreciation, and (iv) proceeds from (i) through (iii), in each case, associated with the Facility or otherwise available to SELLER, each of which (i) through (iii) SELLER expressly reserves.

“Grid System” means the interconnected network of high voltage transmission lines, low voltage distribution lines, and associated electric substations owned by PREPA (including the PREPA Interconnection Facilities after handover on the Commercial Operation Date in accordance with Article 12 (*Representations, Warranties, & Covenants*)), located on PREPA’s side of the Interconnection Point, which transmit and distribute electricity to customers in the Commonwealth of Puerto Rico.

“Grid System Event” means any condition in the Grid System or act or omission of PREPA that prevents or impairs PREPA from receiving and taking delivery of a quantity of energy made available by SELLER at the Interconnection Point, including (a) any curtailment, reduction, or

⁵ Note: This represents one (1) month of assumed operating hours but remains under review. PREPA will update the Proponents of any further amendments prior to bid submission.

disconnection instructions issued by PREPA in a Dispatch Notice issued by PREPA (or otherwise) for any reason, including as a result of low demand for electricity in the Commonwealth of Puerto Rico, or (b) any condition in the Grid System (including an Emergency affecting such system) that causes or may cause physical damage to the Facility or life endangerment, and any damage to or the tripping of protection relays installed in the Facility with settings as instructed by PREPA, but in each case excluding any such event resulting from Force Majeure affecting SELLER or a PREPA Risk Event pursuant to paragraphs (a), (c), (d) and (e) of such definition.

“Grid System Event Interval” means, for any Agreement Year, an Event Interval in which a PREPA Risk Event occurs pursuant to paragraph (b) of such definition.

“Grid System Waiting Period” means, for each Agreement Year, eighty (80) hours.

“Guaranteed Commercial Operation Date” means the second (2nd) anniversary of the Agreement Date, as adjusted in accordance with Section 3.4 (*Extensions of Time*).⁶

“Guaranteed Construction Start Date” means the date for Construction Start that corresponds to the time for completion/occurrence in the Milestone Schedule, as adjusted in accordance with Section 3.4 (*Extensions of Time*).⁷

“hour” means each period of sixty (60) minutes, with the first such period for any Day beginning at 00:00 (Puerto Rico Time) and including each sixty (60)-minute interval thereafter.

“IF Completion Notice” has the meaning set forth in paragraph (c) of Section 4.4 (*Pre-Synchronization Testing*).

“Indemnitees” means, with respect to either PREPA or SELLER, (i) permitted successors and assigns, and (ii) as to both the Party and its permitted successors and assigns, their respective lenders, Affiliates, directors, officers, equity-holders, partners, employees, representatives, agents and contractors, and each of their respective heirs, successors and assigns.

“Indemnifying Party” has the meaning set forth in Section 13.1 (*General*).

“Initial Performance Tests” has the meaning set forth in paragraph (a) of Section 5.3 (*Initial Performance Tests*).

“Initial Synchronization” means the first time that SELLER synchronizes the Facility with the Grid System.

“Initial Synchronization Date” means the date on which Initial Synchronization occurs.

“Insolvency Event” means any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding with respect to SELLER or any of its respective properties or creditors, or any action taken by any trustee or receiver of SELLER or by any court in any such proceeding.

⁶ Note: PREB has ordered the 2-year timeline.

⁷ Note: PREB has ordered the 8-month timeline.

“Interconnection Agreement” means the interconnection agreement entered into between SELLER and PREPA, which sets out the terms upon which the Facility will connect and remain connected to the Grid System, as amended from time to time.

“Interconnection Construction Contract” means the primary contract for the construction of the PREPA Interconnection Facilities to be installed or constructed by SELLER, to be entered into between SELLER and one or more contractors, which shall include provisions with respect to the requirements set forth in Section 3 (*Select Requirements for the Interconnection Construction Contract*) of Appendix I (*Interconnection Description and Specifications*).

“Interconnection Facilities” means the PREPA Interconnection Facilities and the Seller Interconnection Facilities.

“Interconnection Point” means the physical point at which the Facility connects to the Grid System, as specified in Section 1 (*Description of the Interconnection Facilities*) of Appendix I (*Interconnection Description and Specifications*).

“Interest” means the compensation for the accrual of monetary obligations under this Agreement computed Monthly and prorated daily from the time each such obligation becomes past due based on an annual interest rate equal to the lesser of: (i) (a) for payments due during the first five (5) Days after such a payment becomes due, in each case, the Prime Commercial Lending Rate as set by Citibank NA., 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 (for the purposes of this definition, the **“Prime Rate”**), and (b) for payments due beginning on the sixth (6th) Day after such a payment is due, the Prime Rate plus five percent (5%); and (ii) the maximum rate allowable under Article 1169 of the Puerto Rico Civil Code or successor statute applicable to past due amounts. The provisions of this definition shall not be construed to limit the applicable rate of interest on the project debt.

“kW” means kilowatt.

“kWh” means kilowatt hour.

“Legal Challenge” means any action, suit or proceeding brought or commenced by a third party (excluding any Affiliate of a Party) seeking to contest the validity of this Agreement, any Permits or the development, construction, or operation of the Facility or PREPA Interconnection Facilities which materially impairs the ability of the Parties to perform their respective obligations hereunder or delays the development, financing, construction or operation of the Facility or PREPA Interconnection Facilities.

“Liquidated Damages” means, collectively, Capacity Shortfall Liquidated Damages and SELLER Delay Liquidated Damages.

“Long-Stop Date” means the earlier to occur of (i) the first date on which accrued SELLER Delay Liquidated Damages (determined without reference to the operation of paragraph (c) of Section 3.5 (*Delay Liquidated Damages*)) exceed the Security Amount, and (ii) the one hundred eightieth (180th) Day after the Guaranteed Commercial Operation Date.

“m²” means square meter.

“Main Meters” has the meaning set forth in Section 8.1 (*Meter Ownership & Maintenance*).

“**Malware**” means computer software, code or instructions that: (i) intentionally, and with malice intent by a third party, adversely affect the operation, security or integrity of a computing, telecommunications or other digital operating or processing system or environment, including without limitation, other programs, data, databases, computer libraries and computer and communications equipment, by altering, destroying, disrupting or inhibiting such operation, security or integrity; (ii) without functional purpose, self-replicate written manual intervention; (iii) purport to perform a useful function but which actually performs either a destructive or harmful function, or perform no useful function other than utilize substantial computer, telecommunications or memory resources with the intent of causing harm; or (iv) without authorization collect and/or transmit to third parties any information or data, including such software, code or instructions commonly known as viruses, trojans, logic bombs, worms, adware and spyware.

“**Maximum Dispatch Limit**” means [●] kW.

“**Milestone**” means any of the milestone events set out in the column captioned “*Milestone*” in the table set forth in the Milestone Schedule.

“**Milestone Schedule**” means the schedule set out in Appendix D (*Milestone Schedule*).

“**Minimum Acceptance Capacity**” has the meaning set forth in item (2), paragraph (b) of Section 5.3 (*Initial Performance Tests*).

“**Modification Limit**” means \$[●], representing one percent (1.0%) of SELLER’s total estimated cost for the construction, testing, and commissioning of the Facility as of the Agreement Date.

“**Month**” means a calendar month, which shall begin at 00:00 on the first Day of such calendar month and end at 00:00 on the first Day of the next calendar month.

“**Monthly Payment**” has the meaning set forth in Section 1 (*Monthly Payment*) of Appendix F (*Compensation*).

“**MTRs**” means the minimum technical requirements applicable to the Facility for connection of the Facility to the Grid System set forth in Appendix L (*Minimum Technical Requirements*), as PREPA may modify or replace from time to time after the Closing Date in accordance with Section 4.2 (*Modifications*).

“**MW**” means megawatts.

“**Nameplate Capacity**” means the rated AC electrical generating capacity of the photovoltaic solar field (expressed in kW and exclusive of battery power output).

“**Net Electrical Output**” or “**NEO**” means, for any period of time, all of the net electrical energy output of the Facility (expressed in kWh) during such period, as measured at the Interconnection Point in accordance with Section 8.2 (*Meter Inspection*).

“**Net Power Output**” means, at any given time, the instantaneous net AC electrical power output (expressed in kW) made available from the Facility at the Interconnection Point.

“**Non-Affected Party**” has the meaning set forth in paragraph (d) of Section 14.1 (*General*).

“**Non-Scheduled Derating**” means any Derating other than a Scheduled Derating.

“Non-Scheduled Outage” means any Outage other than a Scheduled Outage.

“Operating Characteristics” has the meaning set forth in Appendix K (*Operating Characteristics*).

“Operating Procedures” means the procedures for the Facility’s operation and integration into the Grid System, as set out in Appendix M (*Operating Procedures*), as amended from time to time.

“Other Minimum Acceptance Criteria” means, collectively, the MTRs, Operating Characteristics, and any other criteria set out in the Testing Protocol and Operating Procedures.

“Outage” means, for any Time Interval, SELLER’s failure or inability to make Net Electrical Output available at the Interconnection Point for any reason.

“P3A” means the Public-Private Partnership Authority of Puerto Rico or any successor thereto.

“P50 Energy Yield” means, for each Agreement Year, an estimate of the Net Electrical Output, expressed as kWh, that the Facility can deliver to the Interconnection Point with a probability of occurrence of fifty percent (50%) for such year, as set out in the Energy Yield Assessment Report, based on forecasted Ambient Conditions and the assumption that the Facility (i) after the first (1st) Agreement Year, degrades at a rate [●] percent ([●]%) and (ii) will make the Contract Capacity fully available at the Interconnection Point during such year.

“Party” and **“Parties”** has the meaning set forth in the preamble of this Agreement.

“Pending Permit Delay” means, for any Permit for which SELLER has duly and properly applied and has exercised / continues to exercise diligent efforts to obtain, the denial of or delay in granting such Permit by the relevant Governmental Authority for any reason, other than SELLER’s failure to comply with the requirements for the issuance of such Permit, which materially impairs the ability of SELLER to achieve Commercial Operation.

“Performance Guarantee” means the guarantee set forth in Appendix Q (*Performance Guarantee*).

“Performance Security” has the meaning set forth in paragraph (a) of Section 2.5 (*Performance Security*).

“Performance Tests” means tests which (i) establish the Contract Capacity and confirm that the Generating Capacity can meet the Maximum Dispatch Limit under appropriate Ambient Conditions and otherwise complies with this Agreement, (ii) verify the relation between the Facility Performance Model and the initial power curves established upon Commercial Operation, including whether the actual NEO for Ambient Conditions during such tests equals the Expected NEO within an applicable margin of error, assuming full Facility Availability, and (iii) verify that the Facility complies with each of the Other Minimum Acceptance Criteria, in each case in accordance with the Testing Protocol.

“Permanent Closing” means, after the Commercial Operation Date, the occurrence of any of the following events: (i) for any period of eighteen (18) consecutive Months, excluding periods of Outages due to Force Majeure affecting SELLER or any PREPA Risk Event, Facility Availability equals zero (0), or (ii) for any period of thirty-six (36) consecutive Months, regardless of whether

SELLER claims Force Majeure during such period, Facility Availability equals zero (0), in each case excluding periods of Outages due to any PREPA Risk Event.

“Permits” means all permits, licenses, approvals, authorizations, consents, variances or waivers issued by a Governmental Authority with jurisdiction over SELLER and the Facility which SELLER or its contractors will require for the development, construction, ownership, start-up, operation, maintenance, or financing of the Facility and/or the Interconnection Facilities, including those set out in Appendix E (*Seller Permits*).

“Permitted Guarantor” has the meaning set forth in the RFP.

“Permitted Derating” means, for any Time Interval, a Derating that occurs as a result of a Scheduled Derating, Force Majeure affecting SELLER or a PREPA Risk Event.

“Permitted Outage” means, for any Time Interval, an Outage that occurs as a result of a Scheduled Outage, Force Majeure affecting SELLER or a PREPA Risk Event.

“Person” means an individual, partnership, corporation, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, or a government or agency or political subdivision thereof.

“Post-Agreement Date Environmental Costs” means all Environmental Costs resulting from measures required to comply with Applicable Law enacted, approved, or issued after the Agreement Date.

“Post-Agreement Date Taxes” means all Taxes resulting from measures required to comply with Applicable Law enacted, approved or issued after the Agreement Date.

“Pre-Operation Period” means the period of time from (and including) the Closing Date up to (but excluding) the Commercial Operation Date.

“PREB” means the Puerto Rico Energy Bureau, or any successor thereto.

“PREPA” has the meaning set forth in the preamble of this Agreement.

“PREPA Bankruptcy” means the proceeding commenced pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), pending as of the Agreement Date in the PROMESA Court, Case No. 17-4780.

“PREPA Delay Liquidated Damages” has the meaning set forth in paragraph (a) of Section 3.5 (*Delay Liquidated Damages*).

“PREPA Design Criteria Documents” or **“DCDs”** has the meaning set forth in section (1) of paragraph (b) of Section 2 (*Interconnection Point Specifications*) of Appendix I (*Interconnection Description and Specifications*).

“PREPA Interconnection Facilities” means all equipment and facilities (including the Main Meters) located on PREPA’s side of the Interconnection Point, constructed and installed or upgraded for the purpose of interconnecting the Facility with the remainder of the Grid System, as further described in Appendix I (*Interconnection Description and Specifications*) and not including

communication, control, or protection equipment for which this Agreement assigns responsibility to SELLER.

“PREPA Interconnection Facilities Work” has the meaning set forth in paragraph (b) of Section 3.2 (*SELLER’s Development Obligations*).

“PREPA Risk Event” means any of the following events:

- a. Force Majeure or a Legal Challenge in each case affecting PREPA;
- b. a Grid System Event;
- c. the duration of time required by PREPA to render a Best Interests Determination for the Project exceeds ninety (90) Days;
- d. a breach, delay or failure by PREPA in performing any material obligation under this Agreement or the Interconnection Agreement; or
- e. following any modifications to the MTRs under Section 4.2 (*Modifications*), the duration of the Facility’s unavailability as reasonably required to carry out changes to the Facility to comply with such modifications;

which, in each case, did not result from an act or omission of SELLER, Force Majeure affecting SELLER or the circumstances described in Section 7.2 (*Curtailment for Breach*).

“Product” means all Net Electrical Output, Ancillary Services and Green Credits made available from or otherwise derived in connection with the operation of the Facility.

“Project” has the meaning set forth in Recital B of the preamble of this Agreement.

“Project Lenders” means any Person providing, arranging, insuring or guaranteeing all or part of the construction or permanent financing or other funding, including any tax equity financing, for the Facility, the PREPA Interconnection Facilities or any portion thereof, or any agent, trustee or other Person representing or acting on behalf of any such Person.

“PROMESA Court” means the United States District Court for the District of Puerto Rico.

“Proposed Design” has the meaning set forth in paragraph (b) of Section 4.1 (*Proposed Design*).

“Proposed Initial Synchronization Date” has the meaning set forth in Section 5.1 (*Scheduling Synchronization*).

“Prudent Utility Practices” means the spectrum of possible practices, methods, conduct, and actions (including the practices, methods, conduct, and actions engaged in or approved by a significant portion of the power industry in the United States) that, at a particular time, in the exercise of reasonable discretion at the time a decision was made, could have been expected to accomplish the desired result in a manner consistent with Applicable Laws and Applicable Standards for reliability, safety and economy.

“PSS/E” means power system simulation for engineering, a commercial software product developed by Siemens PTI Inc.

“Puerto Rico Controller” means the Office of the Controller for the Commonwealth of Puerto Rico.

“Qualified Bank” means a national bank, national association, commercial bank or other financial institution registered in the United States, having a branch located within Puerto Rico or the contiguous United States, and otherwise acceptable to PREPA that has a long-term issuer rating of at least (i) if headquartered within Puerto Rico, then “B+” by Standard & Poor’s Ratings Services, “B1” by Moody’s Investors Services Inc., or “B+” by Fitch Ratings Inc. or (ii) if headquartered outside of Puerto Rico, then “A-” by Standard & Poor’s Ratings Services, “A3” by Moody’s Investors Services Inc., or “A-” by Fitch Ratings Inc., or in each case if the relevant rating agencies cease to engage in business or rate the obligations in question, then an equivalent rating from another internationally recognized rating agency selected by SELLER with the written consent of PREPA; provided that, if such financial institution’s ratings satisfy such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications.

“Qualified Operator” means SELLER, an Affiliate of SELLER, or, if a third-party contractor of SELLER or its Affiliate, an entity with at least two (2) years’ experience operating facilities of a similar type and size as the Facility or another qualified and experienced operator reasonably acceptable to PREPA.

“Receiving Party” has the meaning set forth in paragraph (a) of Section 12.9 (*Confidentiality*).

“Reference Pyranometers” has the meaning set forth in section (3) of paragraph (b) of Section 2 (*Facility Performance Model*) of Appendix G (*Determination of Expected & Deemed NEO*).

“Registry” has the meaning set forth in paragraph (a) of Section 9.5 (*Green Credits*).

“RFP” has the meaning set forth in Recital A in the preamble of this Agreement.

“RTU” has the meaning set forth in paragraph (a) of Section 6.7 (*Communication*).

“SCADA” means the Facility’s supervisory control and data acquisition system, which may include equipment installed by SELLER in accordance with PREPA requirements.

“Scheduled Expiration Date” has the meaning set forth in paragraph (b) of Section 2.5 (*Performance Security*).

“Scheduled Derating” means a planned Derating that SELLER has coordinated in advance with PREPA with a mutually agreed commencement date, time, and duration, and set out in the Scheduled Maintenance Program pursuant to Article 6 (*Operation Of The Facility*).

“Scheduled Maintenance Program” has the meaning set forth in paragraph (b) of Section 6.3 (*Scheduled Maintenance*).

“Scheduled Outage” means a planned Outage that SELLER has coordinated in advance with PREPA with a mutually agreed commencement and duration, and set out in the Scheduled Maintenance Program pursuant to Article 6 (*Operation Of The Facility*).

“Security Amount” means (i) prior to the Commercial Operation Date, fifty United States Dollars (\$50) per kW *multiplied by* the Nameplate Capacity, or such higher amount as agreed in accordance

with paragraph (c) of Section 3.5 (*Delay Liquidated Damages*); and (ii) on or after the Commercial Operation Date, seventy United States Dollars (\$70) per kW *multiplied by* the Nameplate Capacity.

“**SELLER**” has the meaning set forth in the preamble of this Agreement.

“**SELLER Delay Liquidated Damages**” or “**SDLD**” means the amount per Day of delay set forth in the column captioned “*SELLER Delay Liquidated Damages*”, which corresponds to the Milestone captioned “*Commercial Operation*”, expressed as \$ per Day, in the Milestone Schedule.

“**Seller Interconnection Facilities**” means all equipment and facilities (including SELLER’s meters and metering equipment), located on SELLER’s side of the Interconnection Point, constructed and installed for the purpose of interconnecting the Facility with the Grid System, as further described in Appendix I (*Interconnection Description and Specifications*).

“**Seller Liability Cap**” means [●]⁸.

“**Shareholder**” means, for any time of determination, any direct holder of capital stock in SELLER at such time.

“**Site**” means the approximately [●] acres of land located in [●], Puerto Rico, as further described in Appendix H (*Facility Site*).

“**Sponsor**” means, for each Shareholder of, or a Person holding a partnership or membership interest in, SELLER on the Agreement Date, the ultimate parent company of such shareholder or Person.

“**Substantial Completion Notice**” has the meaning set forth in paragraph (f) of Section 4.4 (*Pre-Synchronization Testing*).

“**Supply Period**” means the period that commences on the Commercial Operation Date and expires on the twenty-fifth (25th) anniversary thereof.

“**System Impact Study**” means, for each proposal selected by PREPA for the phase III evaluation and contract negotiation of proposals under the RFP, a study that will, at a minimum, (i) determine the power capabilities of the major interconnection equipment required to complete the Interconnection Facilities, (ii) specify the maximum fault currents necessary to specify short circuit duty and interrupting ratings for the electrical equipment, (iii) approve or disapprove generator step-up (GSU) transformer impedance and reactive compensation equipment for proper control of voltage and reactive power flow, (iv) quantify the impact to the Grid System and the actions required to mitigate such impact, and (v) specify the Proposed Design requirements for the Facility and the PREPA Interconnection Facilities.

“**T&D Operator**” means LUMA Energy, LLC, or any future operator of Puerto Rico’s electric power transmission and distribution system or any of such operator’s Affiliates, including PREPA’s assignee under the circumstances described in Section 19.2 (*PREPA’s Right to Assign*).

“**Tax Credits**” means the production or investment tax credits (including any grants or payment in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or other Applicable Law available as a result of the ownership and operation of the Facility or the output

⁸ Note: Insert amount equal to 25% of SELLER’s estimated project costs.

generated by the Facility (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation).

“**Taxes**” means any and all taxes, fees or other charges of any nature whatsoever, including income taxes and repatriation (tollgate) taxes, imposed or assessed by a Governmental Authority responsible for implementing Applicable Law relating to tax on or as a result of the ownership or operations of the Facility.

“**Technical Dispute**” has the meaning set forth in paragraph (b) of Section 21.11 (*Dispute Resolution*).

“**Technical Input**” has the meaning set forth in paragraph (c) of Section 4.1 (*Proposed Design*).

“**Technical Recommendation**” has the meaning set forth in paragraph (b) of Section 21.11 (*Dispute Resolution*).

“**Term**” has the meaning set forth in Section 2.2 (*Initial Term*).

“**Termination Balance**” has the meaning set forth in paragraph (b) of Section 17.2 (*Tracking Account*).

“**Termination Date**” means the date of the earliest to occur of any of the events set forth in Section 15.1 (*Termination Date*).

“**Testing Protocol**” means PREPA’s standard protocols for testing and commissioning of projects similar to the Facility set forth in Appendix N (*Testing Protocol*), as amended from time to time.

“**Time Interval**” means, with respect to the six (6) consecutive, ten (10) minute periods during each of the twelve (12) hours [between 7:00 and 19:00] of each Day during an Agreement Year, any one (1) of such periods.

“**Tracking Account**” has the meaning set forth in paragraph (a) of Section 17.2 (*Tracking Account*).

“**Transfer**” has the meaning set forth in Section 19.2 (*PREPA’s Right to Assign*).

“**Wholly-Owned Affiliate**” means, with respect to a Shareholder, any Person that:

- a. owns directly or indirectly one hundred percent (100%) of the issued share capital and voting rights of such Shareholder;
- b. has one hundred percent (100%) of its issued share capital and voting rights owned directly or indirectly by such Shareholder; or
- c. has one hundred percent (100%) of its issued share capital and voting rights owned directly or indirectly by another Person which owns directly or indirectly one hundred percent (100%) of the issued share capital and voting rights of such Shareholder.

“**Year**” means a calendar year, which shall be the twelve (12) Month period beginning 00:00 on January 1 and ending at 00:00 on the subsequent January 1.

1.2 Rules of Interpretation

The rules of interpretation listed below shall apply when interpreting this Agreement:

- a. Words importing the singular also include the plural and vice versa.
- b. References to natural persons or parties include any person having legal capacity.
- c. References to a Person include such Person's successors and assigns; provided that with respect to a Party and its rights and obligations under this Agreement, references to a Party shall only include such Party's successors and assigns if this Agreement permits such successors and assigns.
- d. Words importing one gender include the other gender.
- e. The words "include" and "including" mean "including, but not limited to" and corresponding grammatical variants.
- f. Except as otherwise expressly stated herein, all references in this Agreement to this Agreement (including the Appendices hereto) or to contracts, agreements, or other documents shall be deemed to mean this Agreement (including the Appendices hereto) and such contracts, agreements or other documents, as the same may be modified, supplemented, or amended from time to time.
- g. Except as otherwise expressly stated herein, all references to Sections, Articles, and Appendices in this Agreement are references to the Sections, Articles, and Appendices of this Agreement.
- h. Words and abbreviations not defined in this Agreement which have generally accepted technical or design, engineering, or construction industry meanings are used in this Agreement in accordance with such recognized meanings.
- i. The terms "hereof," "herein," "hereto," "hereunder" and words of similar or like import, refer to this entire Agreement, together with its Appendices, and not any one particular Article, Section, Appendix, or other subdivision of this Agreement.
- j. The headings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties hereto, nor should they be used to aid in any manner in the construction of this Agreement.
- k. References to PREPA in the definition of Dispatch Notice and Grid System Event and Section 6.2 (*Availability Estimates*), Section 6.6 (*Restoration of the Facility*), Article 7 (*Dispatching*), Section 8.5 (*Data*), Section 9.1 (*General*), and Section 9.4 (*Ancillary Services*) include its dispatching center(s) and the T&D Operator, as applicable.
- l. Terms used in the present tense may be interpreted as referring to the past tense and vice versa.
- m. Nothing contained in this Agreement shall be construed or interpreted to limit in any way PREB's power and authority under the Laws of the Commonwealth of Puerto Rico.

2. TERM, EFFECTIVENESS & PERFORMANCE SECURITY

2.1 Signing Conditions

The Parties shall complete their respective obligations set out in Appendix B (*Signing Conditions*) no later than the Agreement Date. SELLER recognizes that submittal of the certifications and documents set out in Appendix B (*Signing Conditions*) constitute an essential condition of this Agreement.

2.2 Initial Term

The term of this Agreement (the “**Term**”) shall begin with the Agreement Date and continue until the expiration of the Supply Period, unless extended or earlier terminated in accordance with the terms hereof. If the Parties extend the Term, then the word “Term” shall thereafter be deemed to mean the original Term as so extended.

2.3 Initial Effectiveness & Closing Date

The rights and obligations of the Parties under Article 1 (*Definitions & Interpretation*), this Article 2, Section 3.6 (*Exchange of Information*), Section 3.7 (*Cooperation*), Article 12 (*Representations, Warranties, & Covenants*), Article 14 (*Force Majeure*), Article 15 (*Termination*), Article 19 (*Assignment & Transfer*), Article 20 (*Notices*) and Article 21 (*Miscellaneous Provisions*), shall enter into full force and effect on the Agreement Date (collectively, the “**Agreement Date Obligations**”). Subject to the foregoing rights and obligations that become effective on the Agreement Date, the remaining provisions of this Agreement shall become effective on the date (the “**Closing Date**”) as of which the Parties jointly sign a certificate, in the form set forth in Appendix T (*Form of Conditions Precedent Certificate*), confirming the satisfaction or waiver of each of the conditions precedent set out in Appendix C (*Conditions Precedent*) (the “**Conditions Precedent**”). The Parties shall issue such certificate within five (5) Business Days after the occurrence of such satisfaction or waiver. Each Party shall use its commercially reasonable efforts to satisfy their respective Conditions Precedent (other than the Condition Precedent set forth in paragraph (c) of Part 3 of Appendix C (*Conditions Precedent*)) and cause the Closing Date to occur no later than sixty (60) Days after the Agreement Date. If either (i) the Closing Date does not occur for any reason within one hundred eighty (180) Days after the Agreement Date, or (ii) PREPA notifies SELLER of its intention either not to (A) accept the Best and Final Offer made by SELLER, or (B) issue a Best Interests Determination for the Project, in each case for any reason whatsoever, then this Agreement shall automatically terminate at midnight on such Day without either Party incurring any liability to the other Party, provided that, if SELLER breaches any of the Agreement Date Obligations, then PREPA shall have the right to draw on the full face amount of the Bid Security.

2.4 Extension

The Parties may agree to extend the Term of this Agreement, with approval from PREB, for up to two (2) consecutive periods of five (5) Agreement Years each, following the expiration of the initial Supply Period. Either Party may notify the other of its desire to extend the Term in writing as provided for under this Section 2.4 not less than eighteen (18) Months prior to the expiration of the initial Supply Period or extended Supply Period, as the case may be. During any extension, all provisions contained herein shall remain in effect unless otherwise agreed in writing.

2.5 Performance Security

- a. To secure the due, proper, timely and full performance of SELLER's obligations under this Agreement, SELLER shall provide to PREPA as a condition precedent to the Closing Date, at SELLER's sole expense, one or more on-first-demand, irrevocable standby letters of credit issued by a Qualified Bank substantially in the form set forth in Appendix W (*Form of Performance Security*) and otherwise acceptable to PREPA (or cash collateral or other on-first-demand, irrevocable security acceptable to PREPA in its sole discretion) in an amount equal to the Security Amount (the "**Performance Security**").
- b. SELLER shall (i) maintain the Performance Security in full force and effect and in accordance with this Agreement until the date that occurs sixty (60) Days after the expiration of the Term (the "**Scheduled Expiration Date**"), and (ii) together with the delivery of each Performance Security or replacement thereof, deliver a written statement dated as of the delivery date duly signed by its authorized representative certifying that the issuer of such Performance Security meets the requirements of a Qualified Bank.
- c. SELLER shall cause a Qualified Bank to issue, reissue or replace any Performance Security (in compliance with this Section 2.5) in accordance with the following:
 1. to the extent that the Performance Security will expire or cease to exist prior to the Scheduled Expiration Date, then no later than twenty-one (21) Days prior to the date of such expiration or cessation;
 2. in the event that the issuer of the Performance Security ceases to meet the requirements of a Qualified Bank, then no later than twenty-eight (28) Days after the date of such cessation; and
 3. if the Parties agree to increase the Maximum Dispatch Limit, then promptly upon the date of such agreement.
- d. PREPA shall have the right to draw down on the Performance Security (via a full or one or more partial drawings) to satisfy any outstanding, unpaid amounts hereunder or as otherwise specifically provided herein, upon the occurrence of any of the following events:
 1. Construction Start Termination Event;
 2. COD Termination Event;
 3. SELLER's failure to pay Liquidated Damages when due under this Agreement;
 4. SELLER's failure to provide replacement Performance Security in accordance with paragraph (c) of this Section 2.5; provided that (i) PREPA deposits the amount so drawn in an escrow account in a bank selected by PREPA until SELLER delivers the replacement Performance Security to PREPA and upon such delivery, PREPA shall cause the release of the undrawn amounts on deposit in such account to SELLER, and (ii) PREPA shall have the right to draw from the escrow account in accordance with paragraph (d) of this Section 2.5 and SELLER shall bear the costs of opening and maintaining such escrow account;

5. except as otherwise covered by items (1) to (4) of this paragraph (d) of this Section 2.5, a Default by SELLER; or
6. any other event that expressly entitles PREPA to draw down or claim on the Performance Security under this Agreement.

PREPA shall have the right to draw down on the entire undrawn portion of the face amount of the Performance Security upon the occurrence of (i) the events described in items (1), (2) and (4) of this paragraph (d) of this Section 2.5 and (ii) PREPA's termination of this Agreement following the occurrence of a Default by SELLER.

3. PRE-OPERATION PERIOD

3.1 Consulting Technical Expert

No later than the Closing Date, PREPA shall consult with SELLER and appoint an engineer (the "**Consulting Technical Expert**") to review technical matters, assist in the resolution of technical issues, issue non-binding technical recommendations in connection with Technical Disputes in accordance with this Agreement and monitor the works undertaken by, or on behalf of, SELLER (i) for the design, construction and commissioning of the Facility and the PREPA Interconnection Facilities, and (ii) the operation of the Facility during the Supply Period. PREPA may designate different Consulting Technical Experts for different purposes under this Agreement. The Consulting Technical Expert's staff shall include suitably qualified engineers and other professionals who possess the competence to carry out such duty. The Consulting Technical Expert shall verify that SELLER complies with this Agreement and conduct reviews of works performed by, or on behalf of, SELLER in accordance with Appendix J (*Progress Review*). SELLER shall consider all non-binding technical recommendations issued by the Consulting Technical Expert in order to comply with the requirements of this Agreement during the Pre-Operation Period. Whenever carrying out its duties in accordance with this Agreement, the Consulting Technical Expert shall act on behalf of PREPA. Any action undertaken by PREPA shall not relieve SELLER from any responsibility it has under this Agreement.

3.2 SELLER's Development Obligations

- a. SELLER shall develop, design, finance, permit, construct, install, test, and commission the Facility as well as the PREPA Interconnection Facilities (subject to paragraph (b) of this Section 3.2) and achieve Commercial Operation no later than the Guaranteed Commercial Operation Date, at its own cost, in accordance with the Milestone Schedule, the requirements of all Permits, the MTRs, the Approved Design, the Interconnection Agreement, Prudent Utility Practices, the other provisions of this Agreement, Applicable Law and Applicable Standards.
- b. SELLER agrees that the works required as part of the Interconnection Facilities that will be performed within PREPA's active system (including, for example, works conducted at a PREPA substation or to interconnect such facilities) may, at PREPA's election, be executed by PREPA and its contractor or by SELLER (in any case, at SELLER's expense if described in the Facility Study). If PREPA elects to perform, or have its contractor perform, such work inside PREPA's active system, then (i) the Parties shall agree in writing on the scope, reasonably expected timeline and costs for such work (the "**PREPA Interconnection Facilities Work**"), (ii) SELLER shall reimburse PREPA for all amounts actually incurred by PREPA (without markup), or directly fund all amounts invoiced by its

contractors, in each case, for the cost to complete such work up to the pre-agreed cost amount, and (iii) PREPA shall bear sole responsibility for the quality and timeliness of the PREPA Interconnection Facilities Work, and delays in the completion of such work beyond the agreed timeline shall constitute grounds for an extension of time for the occurrence of the Milestone for Commercial Operation to the extent permitted under Section 3.4 (*Extensions of Time*).

- c. SELLER shall acquire (or lease) all land parcels, easements, rights-of-way, and other real property rights required to construct, test, commission, own, operate, and repair the Facility in its own name and at its own cost, and maintain such rights until the expiration of the Term.

3.3 Regular Updates

SELLER shall submit progress reports to PREPA on the development, construction, permitting, third-party contracting, and financing of the Facility no later than the fifth (5th) Business Day of every Month, commencing on the first Month following the Closing Date and continuing until the Commercial Operation Date. SELLER acknowledges that PREPA may keep PREB and other Governmental Authorities apprised of its progress.

3.4 Extensions of Time

SELLER shall have the right to an extension of the time for the completion or occurrence of any Milestone or deadline expressly stated herein where a Force Majeure affecting SELLER or a PREPA Risk Event directly delays SELLER's ability to achieve such Milestone or deadline, but only to the extent that (i) such delay would not have occurred but for the occurrence of such event, (ii) SELLER exercises its commercially reasonable efforts to mitigate the effects of such delay, and (iii) SELLER has notified PREPA of such delay, and provided PREPA with a detailed explanation of the circumstances leading to such delay, as promptly as possible, but no later than ten (10) Business Days of the occurrence of such event. If SELLER exercises the foregoing right, then the time for completion or occurrence of such Milestone or deadline shall extend by the number of Days during which such event giving rise to such delay prevented SELLER from achieving such Milestone or deadline; provided that, notwithstanding any other provision of this Agreement to the contrary, with respect to any extension of the Milestone for Commercial Operation, such extensions shall not exceed, in the aggregate ten percent (10%) of the period allocated for the time for completion or occurrence on the Agreement Date without the prior written approval of PREB.⁹

3.5 Delay Liquidated Damages

- a. To the extent that (i) a PREPA Risk Event delays SELLER's ability to achieve Commercial Operation as determined under Section 3.4 (*Extensions of Time*) and (ii) SELLER achieves either Deemed Completion or Commercial Operation, then PREPA shall pay to SELLER, as SELLER's sole and exclusive remedy in respect of such delay, an amount per Day of such delay equal to the product of (A) the Base Rate *multiplied by* (B) the P50 Energy Yield for the first Agreement Year *divided by* three hundred sixty-five (365) as liquidated damages (the "**PREPA Delay Liquidated Damages**") no later than forty-five (45) Days after receipt of an invoice therefor; provided that (A) if, upon the occurrence of Commercial Operation Date, the Contract Capacity established by the Initial Performance

⁹ Note: PREB prohibits PREPA from granting an aggregate time extension under this Agreement that exceeds 10% of the contractually agreed period for achieving the Commercial Operation Date.

Tests falls below the Maximum Dispatch Limit, then the Parties shall reduce the PREPA Delay Liquidated Damages, and SELLER shall credit PREPA's account for any overpayment, according to the ratio that such Contract Capacity bears to the Maximum Dispatch Limit; and (B) the Supply Period shall reduce for each Day in respect of which PREPA has paid PREPA Delay Liquidated Damages. The Parties acknowledge and agree that the PREPA Delay Liquidated Damages represent a fair and reasonable estimate of the losses which SELLER will suffer if Commercial Operation does not occur by the Guaranteed Commercial Operation Date, and accordingly the Parties hereby waive their right to dispute the validity of this paragraph (a) of Section 3.5.

- b. For each Day of delay in achieving Commercial Operation after the Guaranteed Commercial Operation Date until the earlier of (i) the Commercial Operation Date, and (ii) the Long-Stop Date, other than any Day in respect of which PREPA has an obligation to pay PREPA Delay Liquidated Damages in accordance with paragraph (a) above, SELLER shall pay to PREPA as liquidated damages the SELLER Delay Liquidated Damages, no later than forty-five (45) Days after receipt of an invoice therefor. The SELLER Delay Liquidated Damages shall constitute PREPA's sole and exclusive remedy in respect of such delay, other than those remedies arising out of the termination by PREPA for delay under Section 15.1 (*Termination Date*). The Parties acknowledge and agree that the SELLER Delay Liquidated Damages represent a fair and reasonable estimate of the losses which PREPA will suffer if Commercial Operation does not occur by the Guaranteed Commercial Operation Date, and accordingly the Parties hereby waive their right to dispute the validity of this paragraph (b) of Section 3.5.
- c. The Parties acknowledge and agree that SELLER's maximum aggregate liability arising out of this Agreement for delays in achieving Commercial Operation shall not exceed the Security Amount. If, prior to the Commercial Operation Date, the accrued SELLER Delay Liquidated Damages (determined without reference to the Seller Liability Cap) exceed, or will likely exceed, the applicable Security Amount, then SELLER shall have the right to increase the Security Amount by an amount specified in a written notice to PREPA; provided that, if the amount of such increase exceeds the amount (expressed in USD) corresponding to the product of the per Day SELLER Delay Liquidated Damages amount *multiplied by* the number of Days corresponding to a ten percent (10%) increase, in the aggregate with all of the extensions of time to achieve Commercial Operation, then such increase shall not become effective until PREPA obtains PREB's approval of such increase. If SELLER desires to increase the Security Amount under this paragraph (c) of this Section 3.5, then such increase shall not become effective until SELLER has delivered a replacement Performance Security with a total face amount to cover the increased Security Amount.

3.6 Exchange of Information

For purposes of conducting any investigations and evaluations as the Parties may deem reasonable and necessary to determine the feasibility of the Facility, the PREPA Interconnection Facilities and the technical aspects related to the sale of Net Electric Output of the Facility, the Parties agree to cooperate reasonably and in good faith and provide each other and their respective representatives reasonable and timely access to relevant personnel, advisors (including environmental consultants), properties, and books and records, provided the information is not privileged, confidential or protected under other agreements with third parties or by Law. Subject to the conditions stated in the previous sentence, each Party hereby agrees to cooperate and exchange information necessary to permit, finance, construct and operate the Facility. Notwithstanding anything in this Agreement

to the contrary, SELLER shall remain solely responsible for permitting, financing, constructing and operating the Facility.

3.7 Cooperation

To the extent legally permitted, the Parties agree to cooperate reasonably and in good faith in the mutually beneficial endeavor to obtain (i) control of, or other required access and rights to, the real property upon which the Facility will be located, (ii) financing for the Facility and the PREPA Interconnection Facilities, and (iii) all necessary Permits, endorsements and approvals for siting and construction of the Facility and the PREPA Interconnection Facilities. Notwithstanding anything in this Agreement to the contrary, SELLER shall remain solely responsible for obtaining the items set out in subparagraphs (i) through (iii) of this Section 3.7.

3.8 Interconnection Agreement

SELLER shall comply with all terms and conditions contained in the Interconnection Agreement. PREPA shall bear no liability or cost under this Agreement related to interconnection or electric distribution or transmission service for the Facility.

3.9 Protocols & Procedures

No later than one hundred eighty (180) Days after the Closing Date, the Parties, in consultation with the Consulting Technical Expert, shall agree upon any adjustments or additions to the Testing Protocol (including in respect of the Performance Tests) and Operating Procedures applicable to the Facility, taking into consideration Prudent Utility Practices, the MTRs, the Approved Design, the Operating Characteristics, equipment supplier and manufacturer recommendations set forth in their operating manuals, and the terms and conditions of this Agreement. The Testing Protocol and Operating Procedures shall only be modified with the written consent of the Parties. In the event of any conflict between the terms and conditions of this Agreement and the Testing Protocol or Operating Procedures, the terms and conditions of this Agreement shall prevail. SELLER acknowledges and agrees that (i) its compliance with the Operating Procedures or Testing Protocol does not relieve SELLER from any liability that it would otherwise have under this Agreement, and (ii) PREPA shall not be liable to SELLER or any other Person by reason of its review or approval of the Operating Procedures or Testing Protocol.

3.10 SELLER Utilities

SELLER shall procure at its own cost its own electricity prior to the Initial Synchronization Date, which it may obtain from PREPA through a separate agreement, and shall procure all of its other water, fuel, and other utilities during the Term. From and after the Initial Synchronization Date, PREPA agrees to provide backfeed electricity to SELLER as requested by SELLER at the most advantageous published rate available to SELLER, based on PREPA's approved rate and shall conform with rates PREPA charges to similar customers.

4. FACILITY DESIGN REQUIREMENTS

4.1 Proposed Design

- a. No later than sixty (60) Days after the Closing Date, SELLER shall submit to PREPA a thirty percent (30%) engineering design for the Facility and the PREPA Interconnection

Facilities. PREPA shall review and comment on such design within fifteen (15) Business Days.

- b. No later than sixty (60) Days after PREPA provides its comments (or approval) pursuant to paragraph (a) of this Section 4.1, SELLER shall submit to PREPA the issued-for-construction design of the Facility and the PREPA Interconnection Facilities (the “**Proposed Design**”). SELLER agrees to ensure that the Proposed Design will (i) comply with Prudent Utility Practices, the requirements of the Interconnection Agreement, the Operating Characteristics, Permits, Applicable Laws, Applicable Standards, and the MTRs, and (ii) incorporate all equipment required for the Facility to comply with the MTRs.
- c. No later than thirty (30) Days following SELLER’s delivery to PREPA of the Proposed Design, PREPA shall complete its review of the Proposed Design and deliver to SELLER written notice that PREPA either (i) accepts the Proposed Design (the “**Approved Design**”) and confirms that (a) the Interconnection Facilities, if constructed in accordance with such design, will comply with PREPA’s interconnection requirements and (b) subject to the results of the Feasibility Study, System Impact Study and Facility Study and compliance with the requirements identified in such studies, PREPA will allow the Facility to interconnect with the Grid System in accordance with this Agreement, or (ii) does not accept such design based on its review, in which case PREPA shall simultaneously deliver to SELLER a written and detailed description of PREPA’s objections to such design and PREPA’s required modifications thereto, which modifications PREPA shall reasonably propose in good faith and consistent with Prudent Utility Practices (the “**Technical Input**”). To the extent the Technical Input involves a change in MTRs, the provisions of Section 4.2 (*Modifications*) shall apply.
- d. If PREPA provides Technical Input to SELLER in accordance with the foregoing, then no later than ten (10) Business Days following SELLER’s delivery to PREPA of SELLER’s revised Proposed Design, which revised Proposed Design SELLER shall ensure is consistent with the MTRs and Technical Input, PREPA shall review such revised Proposed Design and notify SELLER in writing either that (i) such revised design constitutes the Approved Design, or (ii) PREPA does not accept such design, in which case PREPA shall simultaneously deliver to SELLER further Technical Input. The Parties shall repeat the foregoing process until PREPA accepts an Approved Design, which approval PREPA shall not unreasonably withhold or delay.
- e. The Parties shall exercise commercially reasonable efforts to agree upon an Approved Design within sixty (60) Days of SELLER’s submission of the revised Proposed Design, after SELLER has received PREPA’s Technical Input. The Parties’ failure to agree on the Approved Design within one hundred eighty (180) Days after SELLER’s submission of a Proposed Design shall constitute grounds for an extension of time for the occurrence of Milestones to the extent otherwise permitted under Section 3.4 (*Extensions of Time*).
- f. SELLER shall not, without PREPA’s written consent, commence construction of the Facility or the PREPA Interconnection Facilities being installed or constructed by it until the Parties have agreed on an Approved Design; provided that, SELLER may, at its risk, order long-lead equipment prior to the achievement of the Approved Design.

4.2 Modifications

- a. Each Party shall notify the other in advance of any changes to its system, and the reasons for those changes, that would reasonably require modification or expansion of the MTRs after the Closing Date, affect the coordination of protective devices between SELLER and PREPA interconnected systems or otherwise affect either Party's Interconnection Facilities.
- b. PREPA reserves the right to modify or expand the MTRs, DCDs, or its requirements for protective devices in the Interconnection Facilities, in each case from time to time in accordance with Prudent Utility Practices. If PREPA desires to modify or expand the MTRs, DCDs or its requirements for protective devices in the Interconnection Facilities in consideration of the risk of imminent and substantial harm to human life, property, or the Grid System (including degradation of service) but for the adoption of such change, specifically as it relates to reliability and safety margins, then it shall notify SELLER thereof in writing, which provides the rationale in reasonable detail for such change, and SELLER shall implement such change.
- c. If SELLER implements any modification or expansion that PREPA requires under this Section 4.2, then SELLER shall assume the cost of such implementation, up to a total cost which, when added to any costs that PREPA previously required and incurred by SELLER pursuant to this Section 4.2 or Section 4.3 (*Modeling*) during the Term, does not exceed the Modification Limit. If such modification or expansion reduces the Facility's ability to make available Net Electrical Output, then the Parties shall treat that portion of SELLER's reasonably projected lost revenue under this Agreement arising out of such reduction as a cost of such change.
- d. If SELLER's costs attributable to such change (as reasonably determined and evidenced in writing to PREPA), when added to any costs SELLER previously incurred pursuant to PREPA's request for modification or expansion in accordance with this Section 4.2 or Section 4.3 (*Modeling*) during the Term, exceed the Modification Limit, then PREPA shall increase the Monthly Payment to allow SELLER to recover that portion of the cost in excess of the Modification Limit in Monthly installments (i) in respect of modifications to the Facility, over a term of eighteen (18) Months, or (ii) for a reduction of NEO, over the remaining Supply Period or so long as the reduction in NEO exists. Notwithstanding the foregoing, and only if not the result of changes required by PREPA, SELLER shall assume the total cost (without reimbursement) of implementing modifications to the MTRs or requirements for protective devices resulting from any deviations from the Operating Characteristics or the Approved Design or any changes to SELLER's system whatsoever.
- e. Modifications or expansions of the MTRs shall not become effective until SELLER has had a reasonable period of time to comply with any such modified or expanded requirement.

4.3 Modeling

- a. SELLER shall provide PREPA with (i) a PSS/E model for the Facility, for PREPA's approval, no later than the Agreement Date, and (ii) an initial Facility Performance Model, for PREPA's approval, no later than the Initial Synchronization Date.

- b. Following the Initial Synchronization Date and prior to the Commercial Operation Date, the Parties shall validate the Facility Performance Model over a minimum period of thirty (30) Days. SELLER shall otherwise ensure that the Facility Performance Model complies with, and keep such model calibrated and up to date in accordance with, Appendix G (*Determination of Expected & Deemed NEO*).
- c. SELLER agrees to keep the PSS/E mathematical models current with the future versions of the PSS/E program and the Facility Performance Model up to date, and shall provide updated PSS/E mathematical models to PREPA not later than [ninety (90)] Days after a PSS/E version upgrade if such upgrade results in software incompatibility with PREPA's system. SELLER shall submit to PREPA a report from Siemens PTI or another third-party engineering consultant that validates and certifies the PSS/E mathematical model as accurate, including the subsequent revisions performed to keep the mathematical model current with the future version of the PSS/E program. PREPA shall bear all costs incurred by SELLER in excess of the Modification Limit in connection with changes to the PSS/E mathematical model that result from modification or expansion of the MTRs or PREPA's requirements for protective devices in the Interconnection Facilities as per Section 4.2 (*Modifications*).

4.4 Pre-Synchronization Testing

- a. Prior to the Initial Synchronization Date, SELLER shall retain a contractor, approved in writing by PREPA (which approval PREPA shall not unreasonably withhold or delay after SELLER has submitted to PREPA information about the experience of such contractor), to perform the acceptance testing of the Interconnection Facilities, in accordance with the Testing Protocol. SELLER shall provide to PREPA no less than ten (10) Days' written notice of such testing and PREPA shall have a representative witness and evaluate the testing.
- b. No later than fifteen (15) Business Days following completion of such testing and submission to PREPA of the testing book prepared by the testing contractor, PREPA shall review such testing book and notify SELLER in writing whether PREPA (i) accepts such testing book, or (ii) declines to accept such testing book, in which case PREPA shall simultaneously deliver to SELLER a written and detailed description of PREPA's objections to such testing book and PREPA's required modifications thereto which SELLER shall jointly work with the testing contractor to incorporate in good faith. If PREPA has provided required modifications to the testing book, then no later than five (5) Business Days following SELLER's delivery to PREPA of a revised testing book consistent with such modifications, PREPA shall review such revised testing book and notify SELLER in writing either of PREPA's approval or that PREPA continues to require modifications thereto. The Parties shall repeat the foregoing process until PREPA approves the testing book, which approval PREPA shall not unreasonably withhold. PREPA shall have the right to finally determine, acting reasonably in accordance with Prudent Utility Practice, whether SELLER has adequately designed, constructed and tested the Interconnection Facilities and whether such facilities comply with the Approved Design and PREPA's other requirements. PREPA shall use reasonable efforts to accept SELLER's testing book within fifteen (15) Business Days after SELLER's delivery to PREPA of a revised testing book, after SELLER has received PREPA's objections to the testing book for the first time.

- c. Upon completion of the pre-synchronization testing of the Interconnection Facilities, SELLER shall provide written notice (which shall include a copy of the red line drawing used for the construction of the Interconnection Facilities) to PREPA that SELLER has substantially completed and tested the Interconnection Facilities in accordance with paragraphs (a) and (b) of this Section 4.4 (“**IF Completion Notice**”), in the form set forth in Appendix Y (*Form of IF Completion Notice*).
- d. Following receipt of the IF Completion Notice, PREPA shall inspect (or the Parties shall appoint a Consulting Technical Expert to inspect) such Interconnection Facilities and the remainder of the Facility to confirm that SELLER has constructed the Interconnection Facilities in accordance with the Approved Design, which inspection and confirmation PREPA shall complete promptly, but in any case within five (5) Business Days following PREPA’s receipt of the IF Completion Notice.
- e. If PREPA (or the Consulting Technical Expert, as applicable) determines in good faith that SELLER has not constructed the Interconnection Facilities or remainder of the Facility in accordance with the Approved Design and that such deviation would, if PREPA synchronized the Facility with the Grid System, adversely affect the operations of the Grid System, PREPA shall so advise SELLER in writing within five (5) Business Days following PREPA’s inspection of the Interconnection Facilities or Facility, as applicable, and SELLER shall correct or mitigate any such deviation prior to interconnecting the Facility to the Grid System and resubmit the IF Completion Notice (in which case paragraph (d) of this Section 4.4 shall again apply). If the Parties cannot reach an agreement on whether SELLER has constructed the Interconnection Facilities or Facility in accordance with the Approved Design after SELLER has submitted two (2) IF Completion Notices that PREPA has found to be deficient, then either Party may refer the matter to dispute resolution pursuant to Section 21.11 (*Dispute Resolution*).
- f. If PREPA, in consultation with the Consulting Technical Expert, determines that the Interconnection Facilities and the Facility have been constructed in accordance with this Agreement, then PREPA shall notify SELLER thereof (such notification, the “**Substantial Completion Notice**”), in the form set forth in Appendix Z (*Form of Substantial Completion Notice*), and the Parties shall proceed with Initial Synchronization and testing pursuant to Article 5 (*Synchronization, Testing & Completion*).

4.5 Protection Relays & Control

- a. SELLER shall provide PREPA with the proposed design of the complete protection systems (including relay devices and relay settings), in accordance with Appendix P (*Technical Requirements for Operation, Protection, & Control*), for PREPA’s review and inspection not later than sixty (60) Days prior to the Proposed Initial Synchronization Date. SELLER shall submit the protection requirements in three stages: (i) design; (ii) protection report (*i.e.* the settings to be implemented according to the Approved Design); and (iii) the tests that SELLER shall perform with the approved settings.
- b. If PREPA declines to accept such protection requirements for any reason, SELLER agrees to comply with any reasonable request made by PREPA to provide the protection scheme requirements, including acceptable relay settings, prior to the Initial Synchronization Date. PREPA agrees to give any comments or suggested changes pursuant to this Section 4.5 within thirty (30) Days after SELLER submits the protection requirements at each stage to PREPA, provided that PREPA shall have at least ten (10) Days to evaluate each individual

submission after receipt. If the Parties cannot reach an agreement within thirty (30) Days after PREPA's receipt of the complete set of protection requirements, including relay settings, then the Parties shall resolve such Dispute in accordance with Section 21.11 (*Dispute Resolution*).

- c. SELLER further agrees that control and protection scheme parameters such as ramp rates, frequency fluctuations, overvoltage or low voltage ride-through, voltage support, and dynamic power factor will align in all material respects with the MTRs. SELLER shall procure equipment with electrical capabilities to comply with the MTRs.

4.6 Voltage Schedule

PREPA shall prepare and submit to SELLER a written voltage schedule for the Facility no later than thirty (30) Days prior to the Proposed Initial Synchronization Date. From and after the Commercial Operation Date, PREPA may change such voltage schedule upon thirty (30) Days' prior written notice, or in accordance with, the Operating Procedures, provided that such voltage schedule complies with the MTRs. SELLER shall use such voltage schedule in the operation of its Facility. PREPA shall base the voltage schedule on the normally expected operating conditions for the Facility and the reactive power requirements of the Grid System.

4.7 Facility Upgrades

From and after the Initial Synchronization Date, SELLER shall not carry out any upgrades or modifications to the Facility that will, or may reasonably be expected to, impair or limit the Facility's compliance with the MTRs, alter its Operating Characteristics or expand or limit its ability to make available Net Electrical Output or Net Power Output at the Interconnection Point, including the addition of energy storage systems, capacity expansions or other upgrades not contemplated by the Approved Design, in each case without PREPA's prior written consent, which PREPA may withhold in its sole discretion. The Parties acknowledge that this Section 4.7 does not restrict SELLER's performance of routine maintenance or technology upgrades required to ensure safe and reliable operation, or regular replacement of equipment to maintain the performance of the Facility in accordance with this Agreement and the Approved Design.

5. **SYNCHRONIZATION, TESTING & COMPLETION**

5.1 Scheduling Synchronization

SELLER shall notify PREPA in writing of the proposed Initial Synchronization Date (the "**Proposed Initial Synchronization Date**") and the start-up and testing schedule for the Facility and the PREPA Interconnection Facilities no later than ninety (90) Days prior to the Proposed Initial Synchronization Date. SELLER shall have the right to postpone or accelerate such date with at least fourteen (14) Days' advance written notice to PREPA. Upon the issuance of the Substantial Completion Notice, the Parties shall agree on the actual Initial Synchronization Date at least seven (7) Days in advance of such date.

5.2 Initial Synchronization

SELLER shall not energize, back-feed, or synchronize the Facility or Interconnection Facilities without PREPA's prior approval, which approval PREPA shall not unreasonably withhold or delay. Subject to SELLER's compliance with the Interconnection Agreement and this Agreement, PREPA agrees to allow the Facility to interconnect to the Grid System at the Interconnection Point in

accordance with the terms of this Agreement from the Initial Synchronization Date. PREPA shall have the right to have a representative present at the Facility to witness the synchronization process from and after the Initial Synchronization Date.

5.3 Initial Performance Tests

- a. On or promptly after the Initial Synchronization Date, SELLER shall conduct the initial Performance Tests on the Facility to, among other things, (i) establish the initial power curves of the Facility under various Ambient Conditions, (ii) verify the Facility Performance Model under paragraph (b) of Section 4.3 (*Modeling*), and (iii) confirm satisfaction of the requirements for Commercial Operation. The provisions of paragraphs (b) and (c) of Section 6.9 (*Supply Period Performance Tests*) shall apply *mutatis mutandis* to such tests (the “**Initial Performance Tests**”).
- b. SELLER warrants that the Initial Performance Tests shall establish that the maximum Generating Capacity of the Facility (as adjusted for Ambient Conditions at the time of testing in accordance with the Testing Protocol and without exceeding the Operating Characteristics and limits of the Approved Design) will meet or exceed the Maximum Dispatch Limit. If the Initial Performance Tests establish that the Generating Capacity falls below the Maximum Dispatch Limit, then prior to the Long-Stop Date, SELLER may, at its election:
 1. take corrective actions to increase the Generating Capacity prior to the Long-Stop Date until the Initial Performance Tests demonstrate that the Facility can achieve the Maximum Dispatch Limit; or
 2. if the Generating Capacity meets or exceeds at least ninety-five percent (95%) of the Maximum Dispatch Limit (the “**Minimum Acceptance Capacity**”), then credit PREPA’s account in the amount of \$200 per kW for each kW of difference between the Maximum Dispatch Limit and the greater of such Generating Capacity and the Minimum Acceptance Capacity, as liquidated damages (the “**Capacity Shortfall Liquidated Damages**”),provided that if, by the Long-Stop Date, such corrective actions result in the Generating Capacity meeting or exceeding the Minimum Acceptance Capacity but not the Maximum Dispatch Limit, then SELLER shall credit PREPA’s account for the Capacity Shortfall Liquidated Damages. SELLER acknowledges and agrees that the Capacity Shortfall Liquidated Damages represent a fair and reasonable estimate of the loss which PREPA will suffer if such a Generating Capacity shortfall occurs, and accordingly, SELLER hereby waives its right to dispute the enforceability of this paragraph (b) of this Section 5.3.
- c. If the Initial Performance Tests establish that the Facility fails to comply with the Other Minimum Acceptance Criteria, then SELLER may, at its election:
 1. take corrective actions to improve the performance of the Facility; and
 2. repeat the Initial Performance Tests to establish that the Facility satisfies the MTRs, Operating Characteristics and any other criteria set out in the Testing Protocol and Operating Procedures,

in each case, prior to the Long-Stop Date.

- d. Subject to paragraphs (b) and (c) of this Section 5.3, if the Initial Performance Tests do not establish that the Facility meets both the Minimum Acceptance Capacity and Other Minimum Acceptance Criteria, then PREPA shall have the right to reject the results of such tests.
- e. Following the successful completion of the Initial Performance Tests (or crediting of Capacity Shortfall Liquidated Damages, as applicable) and satisfaction of all other criteria to achieve Commercial Operation:
 - 1. SELLER shall notify PREPA in writing of the test results and the Commercial Operation Date by issuing a certificate thereof, in the form set forth in Appendix V (*Form of Commercial Operation Date Certificate*). PREPA shall confirm and countersign such notification, which confirmation PREPA shall not unreasonably withhold or delay, and if the demonstrated Generating Capacity (as adjusted for Ambient Conditions) falls below the Maximum Dispatch Limit, then subject to paragraphs (b) and (c) of this Section 5.3, the Parties shall amend this Agreement to reduce the Maximum Dispatch Limit accordingly.
 - 2. SELLER shall submit to PREPA a revised PSS/E mathematical model that represents the as-built Facility. This PSS/E model shall include all necessary functionality to properly model the Facility for both steady-state and dynamic simulations. SELLER shall also submit a PSS/E validation report for the Facility, which describes how the PSS/E simulation results demonstrate the model MTR compliance and performance, based on the final adjustment and parameter settings of MTR and the Initial Performance Tests as required in this Agreement.

5.4 Interconnection Facilities

- a. On the Commercial Operation Date:
 - 1. SELLER shall: (i) transfer good and valid legal title to the PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work) to PREPA free and clear of all liens and any other Claims by third parties, and to the fullest extent allowed by Applicable Law, assign all of the underlying equipment supply contracts, the Interconnection Construction Contract and other contracts, and all remaining equipment-supplier warranties in respect of PREPA Interconnection Facilities, to PREPA, (ii) release and forever discharge PREPA and its respective officers, directors, agents, and employees, and all property connected with or a part of the site of the PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work), from any and all contractual liens and any other liens arising by operation of Applicable Law or otherwise in connection with, or arising out of, the performance of SELLER's obligations under this Agreement, and (iii) specifically waive and release any lien, right, security interest or encumbrance of any kind in connection with this Agreement, the Interconnection Construction Contract or Applicable Law, established by SELLER, its contractors at any tier, material suppliers, laborers and all other Persons or entities furnishing services, labor or materials in connection with SELLER's obligations under this Agreement and all other interests therein and all improvements and materials placed on such site or machinery furnished in connection with such work; and

2. SELLER hereby represents and warrants to PREPA that (i) the design, engineering, procurement, construction and completion of the PREPA Interconnection Facilities (other than PREPA Interconnection Facilities Work) conform in all material respects with this Agreement, the Approved Design and all Applicable Law, (ii) the PREPA Interconnection Facilities are fit for their intended purpose and free from material defects and deficiencies of any kind, and designed, engineered and constructed (other than PREPA Interconnection Facilities Work) in accordance with those practices, methods, techniques, standards and procedures which prudent, diligent, skilled and experienced contractors generally accept for the procurement, erection and installation of equipment, and the engineering, design and construction of, electrical transmission facilities of a similar nature and magnitude, and (iii) PREPA possesses good and valid title to the entirety of the PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work) free and clear of any lien or Claim and SELLER has not received, nor has SELLER become aware of, any notice of intention to assert a lien, or proceeding to establish a lien, arising out of or in connection with such facilities or SELLER's work related thereto.
- b. From the Commercial Operation Date until three hundred sixty-five (365) Days thereafter (the "**Defects Liability Period**"), SELLER shall promptly repair or replace any defect in design, workmanship, or a component of any part of the PREPA Interconnection Facilities (other than PREPA Interconnection Facilities Work), and any physical damage to any other part caused thereby, which may appear during the Defects Liability Period[, except for defects caused by PREPA's failure to safely and adequately operate and maintain the affected equipment or component]. For any portion of such facilities which SELLER repairs or replaces during the Defects Liability Period, the Defects Liability Period for such portion shall extend for a period of three hundred sixty-five (365) Days after the date on which SELLER completes such repair or replacement. If any defect or damage appears during the Defects Liability Period, PREPA shall, promptly after becoming aware thereof, notify SELLER thereof. As soon as reasonably practicable after receiving notice of such defect or damage from PREPA, SELLER shall commence all repair or replacement work required to rectify such defect and/or damage. In the event that SELLER fails to commence or carry out such repair or replacement work within a reasonable period of time, PREPA shall have the right to engage and pay other Persons to carry out the same, and PREPA may, at its election, deduct all reasonable, documented costs incurred by it in connection therewith from monies due to SELLER or that become due to SELLER under this Agreement, or draw on the Performance Security. SELLER shall procure that the contractor under the Interconnection Construction Contract obtains warranties for equipment used in such construction works from the respective manufacturers. Unless agreed with PREPA, SELLER shall ensure that such warranties extend for at least the Defects Liability Period with respect thereto and shall obligate any such manufacturer to rebuild, remove and replace any equipment supplied by such manufacturer which has a defect or deficiency, in each case in a manner and on terms and conditions substantially similar to those contained herein. The installation of all materials used in the construction of the PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work) shall strictly comply with any relevant manufacturer's requirements. In the event that a manufacturer fails to honor its warranty based in whole or in part on a claim of defective installation, SELLER shall be liable for the cost of the associated removal, replacement, rebuilding, and repair. SELLER shall perform all work contemplated by this paragraph (b) of this Section 5.4 at its own cost.

- c. SELLER shall provide PREPA with as-built drawings of the Interconnection Facilities and the Facility within ninety (90) Days after the Commercial Operation Date and within ninety (90) Days after any material modification of the Interconnection Facilities or remainder of the Facility to the extent that such modification affects such as-built drawings.
- d. SELLER shall at all times own and have responsibility for (at its own cost and expense) the safe and adequate operation and maintenance of all Seller Interconnection Facilities. After transfer from SELLER, PREPA shall own and have responsibility for the safe and adequate operation and maintenance of the PREPA Interconnection Facilities. If PREPA implements any change in the protection system relay settings, equipment, or studies due to any improvement at the Interconnection Facilities required by SELLER or as a result of the Facility, then SELLER shall bear all reasonable costs and expenses incurred by PREPA.

6. OPERATION OF THE FACILITY

6.1 General

SELLER shall:

- a. for each Billing Period during the Supply Period, make available, during each Time Interval of such Billing Period, a quantity of Net Electrical Output that corresponds to the Expected NEO for such Time Interval, other than during the occurrence of any Permitted Outage or Permitted Derating, provided that, during any Permitted Derating, SELLER shall make available a quantity of Net Electrical Output that corresponds to the Generating Capacity not limited by such Derating;
- b. for each Agreement Year during the Supply Period, ensure that the Facility satisfies the Performance Guarantee; and
- c. from the Initial Synchronization Date until the expiry of the Supply Period:
 - 1. operate, test, maintain, repair and, if necessary, replace the Facility (or any portion thereof) in accordance with (i) the Operating Procedures, (ii) the Testing Protocol, (iii) the MTRs, (iv) Dispatch Notices, (v) Prudent Utility Practices, (vi) this Agreement, and (vii) Applicable Law and Applicable Standards, and subject to the Operating Characteristics;
 - 2. ensure that (i) personnel remain on duty at the Facility at the times required to meet SELLER's obligations under this Agreement, and (ii) any contractor that SELLER engages for the operation, testing, maintenance, or repair of the Facility qualifies as a Qualified Operator; and
 - 3. operate the Facility and associated inverters and protection schemes such that at no time shall the Net Power Output exceed the Maximum Dispatch Limit unless required by the MTRs or a Dispatch Notice.

6.2 Availability Estimates

For each Day during the Supply Period, SELLER shall provide to PREPA written, best estimates in good faith of next Day and next week Expected NEO and expected average and peak Net Power Output for each Time Interval of expected operating hours (expressed in kW over each such hour

of each Day), based on (i) the previous Day NEO and average and maximum Net Power Output for expected operating hours, (ii) the estimated strength of the solar irradiation and other expected Ambient Conditions for the next Day and week according to the meteorological forecast for the region and site, and (iii) the results of the Facility Performance Model.

6.3 Scheduled Maintenance

- a. SELLER shall (i) ensure that no more than [●] hours of Scheduled Outage or Scheduled Deratings occur per Agreement Year, (ii) plan its Scheduled Maintenance Program so as to minimize interruptions or reductions to the supply of Net Electrical Output, and (iii) cooperate with PREPA to coordinate the Scheduled Outages and Scheduled Deratings with Grid System needs.
- b. SELLER shall, at least sixty (60) Days prior to the Commercial Operation Date, submit a written schedule of Scheduled Outages and Scheduled Deratings (“**Scheduled Maintenance Program**”) for the remaining portion of the first Year of the Facility’s operations and, if the Commercial Operation Date occurs after September 1, for the following Year, setting forth the proposed Scheduled Outages and Scheduled Deratings periods. Thereafter, SELLER shall submit to PREPA, in writing, by September 1 of each Year, its proposed Scheduled Maintenance Program for the next Year.
- c. SELLER shall provide the following information for each proposed Scheduled Outage and Scheduled Derating:
 1. description of the work that SELLER will perform during such event;
 2. approximate start date and time;
 3. approximate end date and time;
 4. approximate time to restore the Facility to full operation; and
 5. for Scheduled Deratings, the Net Electrical Output and Net Power Output available during such event.
- d. PREPA shall have thirty (30) Days from receipt of the proposed Scheduled Maintenance Program to notify SELLER whether it accepts the program or requires a rescheduling (and the period during which SELLER can perform such maintenance). If PREPA fails to respond during such period, then the Scheduled Maintenance Program shall be deemed accepted.
- e. SELLER shall use reasonable efforts to accommodate any request from PREPA to reschedule the Scheduled Maintenance Program. If SELLER cannot accommodate PREPA’s request to reschedule the Scheduled Maintenance Program, then SELLER shall provide reasons therefor and alternative dates for the Scheduled Maintenance Program. PREPA shall select between the alternative dates proposed by SELLER to finalize the Scheduled Maintenance Program.
- f. SELLER shall notify PREPA at least seven (7) Days prior to the start of any Scheduled Outage or Scheduled Derating and shall maintain close coordination with PREPA as such event approaches.

- g. If a condition occurs that impacts the Scheduled Maintenance Program, then SELLER shall promptly, on becoming aware of such condition, notify PREPA of such change (including an estimate of the length of such Scheduled Outage or Scheduled Derating) and request PREPA's approval to revise the Scheduled Maintenance Program, which approval PREPA shall not unreasonably withhold or delay. SELLER shall bear any costs incurred by PREPA for revisions made less than sixty (60) Days before the start date of a Scheduled Outage or Scheduled Derating or that results in such event being scheduled less than sixty (60) Days before the start of the revised Scheduled Outage or Scheduled Derating, other than in cases of Force Majeure or a PREPA Risk Event.
- h. Only those Outages or Deratings that (i) meet the submittal timelines in paragraph (b) of this Section 6.3, and (ii) PREPA approves in accordance with this Section 6.3 shall constitute a Scheduled Outage or Scheduled Derating, respectively.

6.4 Non-Scheduled Outages & Deratings

- a. If SELLER determines that it requires a Non-Scheduled Outage or Non-Scheduled Derating, then SELLER shall coordinate the timing of such Non-Scheduled Outage or Non-Scheduled Derating, as applicable, with PREPA.
- b. SELLER shall use commercially reasonable efforts to notify PREPA of any Non-Scheduled Outage or Non-Scheduled Derating no later than 17:00 hours (Puerto Rico time) on the third (3rd) Business Day prior to the Day that such Non-Scheduled Outage or Non-Scheduled Derating will occur. In the event of an unexpected Non-Scheduled Outage or Non-Scheduled Derating, SELLER shall provide notice to PREPA by telephone or email as soon as reasonably practicable and, in all cases other than Force Majeure, no more than fifteen (15) minutes following the occurrence of such Non-Scheduled Outage or Non-Scheduled Derating. Thereafter, SELLER shall, as soon as reasonably practicable, provide PREPA with a notice that includes (i) the event or condition, (ii) the date and time of such event or condition, (iii) the expected end date and time of such event or condition, (iv) for Non-Scheduled Deratings, the Net Electrical Output and Net Power Output available during such event or condition, and (v) any other information reasonably requested by PREPA.
- c. Notwithstanding the delivery of a notice of a Non-Scheduled Outage or coordination with PREPA to resolve such event, the Facility shall be deemed unavailable for the duration of a Non-Scheduled Outage.

6.5 Emergencies

- a. No later than the Initial Synchronization Date, each Party shall cooperate with the other in establishing written Emergency plans, including (i) recovery from a local or widespread electrical blackout, (ii) voltage reduction to effect load curtailment, (iii) policies for the delivery by PREPA to SELLER of prompt written notice of the occurrence of all Emergency and follow-up, and (iv) frequent status reports on any ongoing Emergency.
- b. SELLER shall (i) make technical information and data available to PREPA concerning start-up times and black-start capabilities, (ii) promptly inform PREPA of any Emergency at or other material issues with the Facility or the Site, and (iii) if requested by PREPA, submit a remediation program setting out the actions SELLER shall take to mitigate the Emergency or other material issues at the Facility, and (iv) abide by such program.

- c. If the Facility has a Scheduled Outage, Non-Scheduled Outage, Scheduled Derating or Non-Scheduled Derating and such event occurs or would occur coincident with an Emergency, then PREPA may request that SELLER makes commercially reasonable efforts, consistent with Prudent Utility Practices, to reschedule the Scheduled Outage, Non-Scheduled Outage, Scheduled Derating or Non-Scheduled Derating, as applicable, or if such event has begun, to expedite the completion thereof.

6.6 Restoration of the Facility

Following any Emergency, Outage, or Derating, SELLER shall provide as much advance notice as reasonably practicable to PREPA of the date and time that it will bring the Facility back online, provided that SELLER shall furnish at least two (2) Days' prior notice for restoration from a Scheduled Outage or Scheduled Derating and at least two (2) hours' notice for restoration from a Non-Scheduled Outage, Non-Scheduled Derating or Emergency, in each case, in accordance with the Operating Procedures. PREPA shall have the right to rely on such notice for purposes of delivering Dispatch Notices to SELLER.

6.7 Communication

SELLER shall provide, install, commission, maintain, repair, and replace (as necessary), at its own cost and expense, the following communication facilities linking the Facility with PREPA:

- a. one (1) Remote Terminal Unit ("RTU"), including setup installation and configuration reasonably specified by PREPA;
- b. two (2) independent telecommunication circuits, including one (1) voice grade to link the SCADA system to the Facility's RTU using [distributed network] 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 reasonably specified by PREPA;
- c. a voice telephone extension to communicate with PREPA's Monacillos Transmission Center and Ponce Transmission Center;
- d. a telephone line and equipment to transmit and receive e-mail messages to confirm oral communication between PREPA and SELLER; and
- e. for recording the power disturbance caused by electro-mechanic swings and to measure the system response to the swing disturbance, dynamic system monitor equipment, components, and system which comply with the requirements of Appendix O (*Technical Specifications for the Dynamic System Monitor*).

PREPA shall have the right to approve items provided by SELLER in accordance with this Section 6.7, which approval PREPA shall not unreasonably withhold or delay.

6.8 Record Keeping

- a. Each Party shall keep complete and accurate books, accounts, records, and other data required for the proper administration of all transactions with respect to all matters relating to this Agreement.

- b. SELLER shall maintain such records and data for a minimum of [five (5)] Years after the preparation of such records or data and for any additional length of time required by regulatory agencies with jurisdiction over each of the Parties; provided that neither Party shall dispose of or destroy any records without thirty (30) Days' prior written notice to the other Party. Within ten (10) Days after receipt of the notice of intention to destroy or dispose, the other Party shall have the right to require the notifying Party in writing to deliver to it certain records at the requesting Party's sole cost and expense. No more than ten (10) Days from receipt of such notice, the Party proposing to dispose of or destroy such records shall deliver any records requested by the requesting Party.
- c. SELLER shall maintain, in [physical and] electronic copy, (i) as-built drawings, operation and maintenance manuals and other detailed technical documentation for design, engineering, construction, testing, commissioning, operation, maintenance, and repair of the Facility and Interconnection Facilities (other than the PREPA Interconnection Facilities Work), and (ii) an accurate and up-to-date operating log at the Facility with records of (1) real and reactive power for each hour, (2) changes in operating status, Outages, Deratings or Emergencies, (3) any unusual conditions found during inspections, (4) any safety incident, accident or other occurrence at the Site that results in injury to persons or damage to property, (5) data and other inputs for, and outputs from, the Facility Performance Model, (6) electrical characteristics of the Facility and settings or adjustments of the Facility's control equipment and protective devices, (7) maintenance performance, (8) all material data in relation to Performance Tests and other testing, Performance Guarantee, metering, invoicing, payments, Claims, reimbursements, credits and any other charges to PREPA, and (9) any other significant events related to the operation of the Facility.
- d. 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 books, accounts, records, and other data of the other Party relating to the proper administration of this Agreement any time during the period that this Agreement requires the records to be maintained.
- e. SELLER shall deliver to PREPA a Monthly operations and maintenance report by the tenth (10th) Day of each Month describing operations and maintenance activities performed in respect of the Facility during the previous Month.

6.9 Supply Period Performance Tests

- a. PREPA shall have the right to request Performance Tests no more than once per Year, and SELLER shall comply with such request at its own cost and expense. PREPA's decision to forgo any such test shall not constitute a waiver of PREPA's right to require any subsequent Performance Tests. At PREPA's request, SELLER shall provide certifications of all Performance Tests and inspections of the electric and protection equipment, which may impact the Grid System.
- b. SELLER shall submit to PREPA, for evaluation and approval, all Performance Tests reports certified by an experienced and duly qualified independent laboratory or company with specialized expertise in acceptance and other relevant tests of renewable power generating facilities evidencing that the Facility satisfies each of the MTRs and the Performance Guarantee. PREPA shall have the right to approve such laboratory or company, which approval PREPA shall not unreasonably withhold or delay. For the avoidance of doubt, SELLER acknowledges and agrees that PREPA will not accept manufacturers' test reports as evidence of compliance with this requirement.

- c. SELLER shall coordinate with, and the Performance Tests shall be witnessed by, PREPA's personnel and the Consulting Technical Expert. SELLER shall provide PREPA with at least thirty (30) Days' advance written notice of all Performance Tests, field tests or other matters that PREPA may witness hereunder. The Parties shall cooperate in good faith to determine mutually acceptable dates for such testing of all Performance Tests.

6.10 Network Security

SELLER shall use commercially reasonable efforts to prevent Malware from accessing any aspect of the Facility or any other information systems, operating environments and processes used or relied upon by SELLER to provide the Net Electrical Output, including the information, data and other materials delivered by or on behalf of SELLER to PREPA, the customers of PREPA, or any third party providers (collectively, the "**Environment**"). Throughout the Term, SELLER shall implement improvements to, and upgrades of, its Malware prevention and correction programs and processes consistent with the then-current National Institute of Standards and Technology industry standards and, in any case, no less robust than the programs and processes implemented by SELLER in respect of its own information systems. If Malware enters the Environment, SELLER shall notify PREPA as soon as it becomes aware of such presence and take immediate action, at SELLER's cost, to eliminate and remediate the Malware effects. SELLER shall regularly, and otherwise at the request of PREPA, provide sufficient evidence of its efforts to continuously monitor and evaluate the effectiveness of SELLER's information security safeguards. SELLER shall require that its subcontractors also comply with the obligations of SELLER under this Section 6.10.

7. **DISPATCHING**

7.1 General

- a. Without prejudice to the requirements of Appendix F (*Compensation*) and Appendix G (*Determination of Deemed NEO*), PREPA shall have the right, exclusively by providing Dispatch Notices to SELLER in accordance with the Operating Procedures, to direct SELLER to dispatch the Facility in respect of any Time Interval (subject to availability of irradiation and Facility equipment limitations) from the Initial Synchronization Date until the expiry of the Supply Period, and such right shall include the right to require SELLER to curtail, reduce or increase the Net Power Output, disconnect or connect the Facility, or to provide Ancillary Services specified in the MTRs, in accordance with:

1. Prudent Utility Practices (such as reasons affecting safety margins or reliability levels in the Grid System, power quality problems as well as Outages and disconnections ("vías libres") of the transmission center or line due to disturbances, maintenance, improvements, and Emergencies);
2. the requirements of Applicable Law and Permits;
3. the Operating Procedures; and
4. the Facility's ability to generate or produce Net Electrical Output when the primary resource is available,

in each case subject to the Operating Characteristics, the Scheduled Maintenance Program, and SELLER's availability estimates under Section 6.2 (*Availability Estimates*). SELLER

acknowledges and agrees that, for any Time Interval, PREPA's failure to take a quantity of Net Electrical Output up to the Expected NEO during such period does not constitute a breach of this Agreement.

- b. Subject to paragraph (c) of this Section 7.1, each Dispatch Notice shall remain effective for the duration of the dispatch period specified therein unless and until PREPA modifies such Dispatch Notice by providing SELLER with an updated Dispatch Notice. If PREPA cannot issue an electronic submittal for reasons beyond PREPA's control, PREPA may provide Dispatch Notices by (in order of preference, unless the Parties agree to a different order) electronic mail, facsimile transmission or telephonically to SELLER's personnel designated in the Operating Procedures to receive such communications.
- c. If PREPA submits a Dispatch Notice that directs action which does not conform with the Operating Characteristics, then SELLER shall promptly notify PREPA of the non-conformity and PREPA shall modify its Dispatch Notice to conform to the Operating Characteristics. Until PREPA submits a modified Dispatch Notice, SELLER shall, as applicable, dispatch the Facility in accordance with the Operating Characteristics, and the Facility will not be deemed unavailable, but only to the extent the Facility was otherwise available but could not be dispatched because of its inability to operate outside of the Operating Characteristics.

7.2 Curtailment for Breach

Notwithstanding Section 7.1 (*General*), PREPA shall have the additional right to curtail or reduce the Net Power Output, or disconnect the Facility, during the Supply Period, and SELLER shall have no right to any Claim for compensation or otherwise, when SELLER fails to:

- a. operate the Facility in accordance with this Agreement or the MTRs, provided that for any modifications to the MTRs under Section 4.2 (*Modifications*), SELLER has had a reasonable period of time to comply with such modification pursuant to sub-paragraph (e) of Section 4.2 (*Modifications*);
- b. maintain the Net Power Output under the Maximum Dispatch Limit at any time under Ambient Conditions, unless required by the MTRs or PREPA's Dispatch Notice;
- c. successfully complete the Performance Tests requested by PREPA under paragraph (a) of Section 6.9 (*Supply Period Performance Tests*) with reasonable prior notice; or
- d. maintain the Facility Performance Model or Facility PSS/E mathematical models in accordance with this Agreement, provided that (i) PREPA has given SELLER thirty (30) Days' notice of SELLER's failure to comply with the foregoing, and (ii) SELLER may reasonably perform such upgrade within that time period.

For the avoidance of doubt, any curtailment, reduction or disconnection shall end at the instruction of PREPA, which PREPA shall give promptly after SELLER cures such non-compliance.

8. METERING

8.1 Meter Ownership & Maintenance

PREPA shall own and maintain the meters and metering equipment used to measure the delivery and receipt of Net Electrical Output and Ancillary Services for payment purposes (the “**Main Meters**”). SELLER shall install the Main Meters and all other meters and metering equipment at the Interconnection Point, as well as SELLER’s back-up meters and metering equipment at the Facility in accordance with Appendix I (*Interconnection Description and Specifications*). The Main Meters and the back-up meters and metering equipment shall meet PREPA’s specifications¹⁰ and be subject to PREPA’s approval, which approval PREPA shall not unreasonably withhold, and which decision PREPA shall inform SELLER of no later than ten (10) Business Days after SELLER’s notice to PREPA regarding the installation of the proposed meters.

8.2 Meter Inspection

PREPA shall seal the Main Meters. PREPA personnel may only break the seals for inspection, testing or adjustment of the meters performed in accordance with this Agreement. PREPA shall give SELLER ten (10) Business Days’ prior written notice thereof and SELLER shall have the right to have a representative present during the meter inspection, testing, or adjustment. If either Party believes that there has been a meter failure or stoppage, it shall immediately notify the other Party to coordinate an inspection or test at the earliest convenient date.

8.3 Meter Testing & Calibration

- a. At least annually, at PREPA’s cost and, in addition from time to time upon ten (10) Business Days’ prior written notice by either Party at its cost (unless the results demonstrate that meters for which PREPA has operation and maintenance responsibility fall outside of the limits established in American National Standard Institute Code for Electricity Metering (ANSI C12.16, latest version: “ANSI C12.16”), in which case PREPA shall bear the cost of such additional tests), PREPA will test and verify the calibration of the Main Meters and backup meters, in accordance with the provisions for meter testing as established by ANSI C12.16. When, as a result of such a test, PREPA finds the Main Meters within the range specified by the standard, PREPA shall not adjust the amount paid to SELLER for Net Electrical Output delivered to PREPA. If PREPA finds a Main Meter or backup meter outside the range specified by the standard, then the Party owning such defective or inaccurate device shall adjust, repair, replace, and/or recalibrate such device as near as practicable to a condition of zero (0) error (subject to Section 5.4 (*Interconnection Facilities*)) at that Party’s expense. If PREPA finds the Main Meters outside the range specified by the standard, and the backup meters within such range, then the Parties shall use the backup meters to calculate the correct amount of Net Electrical Output delivered (reasonably adjusted for line losses) to PREPA for the actual period during which the Main Meters experience inaccurate measurements.
- b. If the Parties cannot determine the actual period during which inaccurate measurements were made, they shall use a period equal to the time elapsed since the most recent test, but in no case for a period in excess of six (6) Months. If PREPA finds the Main Meters outside the range specified by the standard, and either the backup meters are not available, or testing demonstrates the backup meters are also out of calibration, each Party shall adjust

¹⁰ Note: Parties to agree to specifications prior to signing.

its meters, and the Parties shall use the corrected meter readings of the most accurate meter for the actual period during which inaccurate measurements were made (reasonably adjusted for line losses where appropriate). If the Parties cannot determine the actual period during which inaccurate measurements were made, the Parties shall use 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 six (6) Months.

- c. To the extent that the adjustment period covers a period of deliveries for which PREPA has already remitted payment, PREPA shall use the corrected measurements as determined in accordance with this Section 8.3 to recalculate the amount due for the period of the inaccuracy and shall subtract the previous payments by PREPA for this period from such recomputed amount. If the difference is a positive number, PREPA shall pay the difference to SELLER. If the difference is a negative number, SELLER shall pay the difference to PREPA, or PREPA may offset such amounts against payments due to SELLER by PREPA hereunder. The owing Party shall make the payment or credit of such difference no later than thirty (30) Days after the owing Party receives written notice of the amount due, unless PREPA elects (via written notice to SELLER) payment via an offset. 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 there are broken seals or the other Party is performing tests, and other matters affecting the accuracy of the measurement of electricity delivered from the Facility.

8.4 Meter Reading

During each one (1) Year period from and after the Initial Synchronization Date, PREPA shall read the meters on a Monthly basis (prior to the last Day in each Month and, in any event, at least twelve (12) times per Year (prorated for any partial Year)) to determine the amount of Net Electrical Output delivered to PREPA from the Facility for each Billing Period. At PREPA's option, PREPA may choose to read the meters more frequently and total such readings in accordance with the applicable Billing Periods. PREPA shall provide SELLER with a written statement containing the reading details and totals within ten (10) Days following the end of each Billing Period. PREPA shall notify SELLER of any site meter readings and SELLER may, at its option, be present for such reading.

8.5 Data

From the Initial Synchronization Date until the expiration of the Supply Period, SELLER shall own all data and information recorded from operation, scheduling, dispatch, testing, and maintenance of the Facility, and SELLER shall be deemed to have granted to PREPA a non-terminable, transferable, non-exclusive, royalty free and cost free license to copy and use such data and information for the purpose of modeling the Grid System and assessing the operation, scheduling, dispatch, metering and testing of the Facility during the Supply Period.

9. **SALE & PURCHASE**

9.1 General

PREPA shall pay for and SELLER shall sell Product through Monthly Payments determined in accordance with Appendix F (*Compensation*), from the Initial Synchronization Date until the expiration of the Supply Period, subject to the terms of this Agreement, provided that PREPA shall have no obligation to pay for a quantity of Net Electrical Output delivered for any period of time

in excess of a quantity corresponding to the Maximum Dispatch Limit, unless provided in accordance with a Dispatch Notice or the MTRs.

9.2 Title & Risk of Loss

The Net Electrical Output that SELLER makes available to PREPA under this Agreement shall become the property of PREPA at the Interconnection Point, at which point title to the Net Electrical Output and all risk of loss associated with such output shall transfer to PREPA. PREPA reserves the right to retain all rights, title, benefits, and other interest in, arising out of or related to, the generation, transmission, distribution, or supply of such energy that it or any of its Affiliates may realize through its existing or future power generation sources (including the Facility), customer agreements or other projects or improvements to the Grid System.

9.3 Right of Resale

PREPA shall have the right to resell all or any portion of the Product purchased under this Agreement, and SELLER shall, at no cost to PREPA, take all other reasonable actions from and after the Initial Synchronization Date to assist PREPA in receiving, and otherwise ensure that PREPA can receive and resell the Product, including submission of any reports or filings with applicable Governmental Authorities.

9.4 Ancillary Services

The Parties acknowledge and agree that PREPA may, from time to time after the Commercial Operation Date, request SELLER to provide PREPA with the Ancillary Services specified in the MTRs by delivering notice thereof to SELLER pursuant to Article 7 (*Dispatching*). SELLER shall provide such services in accordance with such request, in partial consideration of the Monthly Payments (including payments for Deemed NEO, as applicable) and for no additional cost. For the purposes of determining a SELLER Default under item (7), paragraph (g) of Section 16.1 (*Definition*), the Parties shall deem the Facility as available during any Time Interval during which the Facility provides Ancillary Services in accordance with such a request.

9.5 Green Credits

- a. Contemporaneously with the sale of Net Electrical Output hereunder and in partial consideration for the Monthly Payments, SELLER shall convey to PREPA, at no additional cost, all of the Green Credits associated with the provision of such Net Electrical Output of, or otherwise generated in connection with, operation of the Facility. SELLER and PREPA shall execute all documentation required to confirm the registration of such Green Credits with the North American Renewables Registry or another similar registry acceptable to SELLER and PREPA (the “**Registry**”) and the transfer of such Green Credits as reasonably requested by PREPA in accordance with the rules of the Registry, in each case, at SELLER’s expense. PREPA shall have the sole right to own, market, trade, sell or otherwise transfer such Green Credits available to or in respect of the Facility to any Person, and any Green Credits that are now available or in the future might become available in respect of the Facility during the Supply Period shall inure to the benefit of, and remain the property of, PREPA.
- b. The Parties shall not construe any part of this Agreement to require SELLER to transfer to PREPA or any other Person any Tax Credits or any other Tax benefit provided by any Governmental Authority.

10. PAYMENT & BILLINGS

10.1 Invoicing for Monthly Payments

- a. On or before the fifteenth (15th) Day following the end of each Billing Period (or if later, within five (5) Days after SELLER receives the meter reading data pursuant to Section 8.4 (*Meter Reading*)), SELLER shall provide PREPA with a written invoice for the Monthly Payment relating to such Billing Period. Each invoice shall include, as applicable, the details of the Net Electrical Output, Deemed NEO, Expected NEO, Ancillary Services, Green Credits, the Balance, Base Rate and Contract Rate for such Billing Period, the P50 Energy Yield, and other information necessary to determine Facility performance (including the sum of each of the Expected NEO and NEO for each Time Interval to date in the relevant Agreement Year, as well as projections of Expected NEO and NEO based on forecasted Ambient Conditions through the end of such year), insurance payments, credits or payments owing to PREPA, and an itemized statement of all other charges under this Agreement, as of such Billing Period.
- b. PREPA shall use reasonable efforts to review each invoice and notify SELLER of any invoicing issues within thirty (30) Days after receipt thereof. Upon PREPA's request, SELLER shall furnish, within seven (7) Days, such further information as PREPA may reasonably request in support of the invoice.
- c. To the extent that an invoice complies with the requirements set forth in this Agreement, and subject to any direct agreement with Project Lenders, PREPA shall remit payment of undisputed amounts owed under such invoice no later than forty-five (45) Days after PREPA's receipt of such invoice and all required supporting documentation and certifications. SELLER acknowledges and agrees that PREPA may withhold payment (without accruing Interest) beyond such date if and so long as SELLER has failed to provide evidence that it has maintained the insurance policies required by this Agreement and in accordance with Section 17.2 (*Tracking Account*).
- d. PREPA will charge all payments that it owes under this Agreement to PREPA's budget account number [●] and estimates that its costs under this Agreement will not exceed [●]. For the avoidance of doubt, the Parties have set out the expected account number and estimate of costs for informational purposes to satisfy the requirements of the Puerto Rico Controller. This paragraph does not bind the Parties or modify any other provision of this Agreement.
- e. If agreed or determined that PREPA has underpaid an invoice, then Interest shall accrue on the payments due to SELLER commencing on the Day after the date on which PREPA had the obligation to remit such payment pursuant to paragraph (c) of this Section 10.1, and continue until, but excluding, the relevant payment date.
- f. If agreed or determined that PREPA has overpaid an invoice, then PREPA shall have the right to deduct the amount of such overpayment (plus Interest, calculated from the date of such overpayment to its repayment, in cases where the overpayment resulted from amounts stated in SELLER's invoices) from future payments in the immediately following Billing Period(s) until PREPA has received full credit for such overpayment.

10.2 SELLER Invoice Certification

SELLER shall submit all invoices in the form acceptable to PREPA and shall include in each such invoice the following certification:

No Interest Certification:

“We certify under penalty of nullity that no public servant of PREPA will derive or obtain any benefit or profit of any kind from the contractual relationship which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the Agreement. The only consideration to be received in exchange for the performance of the services and the sale of the energy to be provided is the agreed-upon price that has been negotiated with an authorized representative of PREPA. The total amount shown on this invoice is true and correct. The energy has been provided, services have been rendered, and no payment has been received.”

SELLER's Signature

SELLER acknowledges that the above certification constitutes an essential requirement of this Agreement and that PREPA will not process for payment invoices provided without this certification. In order to comply with the certification requirements set forth above, SELLER shall require that its subcontractors also include the certification set forth above in any invoices submitted in connection with energy or services provided under this Agreement.

10.3 Invoice for Liquidated Damages

If Liquidated Damages accrue under this Agreement or moneys are otherwise due from SELLER to PREPA in accordance with this Agreement, PREPA shall provide SELLER with a written invoice for such Liquidated Damages or amounts, showing the basis for the calculation of the amounts payable by SELLER thereunder. SELLER shall use reasonable efforts to review each invoice and notify SELLER of any invoicing issues within ten (10) Business Days after receipt thereof. SELLER shall remit payment of amounts owed under such invoice no later than thirty (30) Days after SELLER's receipt of such invoice (including in the event of a disputed invoice). If SELLER does not pay the full amount of any such invoice when due, any unpaid amount thereof shall bear Interest, from the Day following the due date until, but excluding the relevant payment date.

10.4 Payment Set-Off

Notwithstanding the payment requirements set forth in this Article 10, PREPA shall have the right to set off any amounts due and owing to PREPA by SELLER pursuant to this Agreement, but which remain unpaid, against the amounts due and owing to SELLER by PREPA, provided that (i) such amounts are undisputed, have been determined to be owed to PREPA by a final determination pursuant to Section 21.11 (*Dispute Resolution*) or are explicitly described in this Agreement, and (ii) PREPA has provided SELLER with five (5) Business Days' advance written notice describing in reasonable detail the amounts that PREPA will set off before effecting any such set off.

10.5 Payment Method

A Party shall make payments to the other Party by wire transfer to an account with a bank specified by such Party in writing, which such Party shall notify to the other Party prior to the Closing Date,

or with such other banks as may thereafter be specified by a Party in writing at least ten (10) Days prior to the date in which payment becomes due. Either Party may, by written notice to the other Party, change the address to which the notifying Party remits such payments.

10.6 Disputed Invoices

The Parties shall use their reasonable efforts to resolve any Dispute regarding payment of any invoice issued under this Article 10 by amicable negotiation, provided that if the Parties fail to resolve such Dispute by the payment due date, then either Party may refer the Dispute for resolution in accordance with Section 21.11 (*Dispute Resolution*).

11. LIABILITY

11.1 General

From and after the Initial Synchronization Date, each Party shall have responsibility for the energy and facilities located on its respective side of the Interconnection Point. Except as provided in Section 11.2 (*Foreseeable Damages*), SELLER shall have no liability to PREPA for loss or damage to PREPA's generation, transmission, and distribution system, resulting directly or indirectly from the use, misuse or presence of said energy once it passes the Interconnection Point.

11.2 Foreseeable Damages

Each Party shall have liability for all foreseeable damages suffered by the other Party as a necessary consequence of the first Party's negligent performance or omissions or failure to perform its respective obligations under this Agreement, including during any cure period in accordance with Article 15 (*Termination*), and as stated under Article 1168 of the Puerto Rico Civil Code, subject to the terms of Section 11.3 (*No Liability*).

11.3 No Liability

Neither Party nor its officers, directors, shareholders, agents, employees and representatives shall, in any event, be liable to the other Party or its officers, directors, shareholders, agents, employees or representatives for Claims for incidental, consequential, special, punitive 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, Claims made by third parties, Claims made by either Party for lost profits (other than payments expressly contemplated by any provision of this Agreement) or Claims arising from Force Majeure; provided that nothing contained in this Section 11.3 shall exclude or limit a Party's liability for fraud, willful misconduct or gross negligence.

11.4 Obligation to Pay

Nothing in this Article 11 shall relieve either Party of its obligation to make payments that become due pursuant to Article 10 (*Payment & Billings*).

11.5 Seller Liability Cap

SELLER's liability to PREPA under this Agreement, whether based on contract, warranty or tort, including errors or omissions, negligence, strict liability or otherwise, or any other claim or cause of action, with respect to any and all Claims shall not exceed the amount equal to the Seller Liability

Cap; provided that (i) nothing contained in this Section 11.5 shall exclude or limit SELLER's liability for the Exceptions, and (ii) for purposes of determining SELLER's liability under this Agreement, the Parties shall deduct the proceeds of insurance received by SELLER (or would have received had SELLER complied with the terms of this Agreement), relating to the event or circumstances which resulted in such liability.

12. REPRESENTATIONS, WARRANTIES, & COVENANTS

12.1 Compliance with Law

The Parties shall, at all times and in all material respects, comply with Applicable Law, including the Bulk-Power System EO (if in effect), and such other Laws applicable to (i) the use, occupancy, and operation of the Facility, and (ii) SELLER as an Electric Power Company or Electric Power Generation Company (each, as defined under Act 57-2014), as the case may be. SELLER shall give all required notices, shall procure and maintain all Permits and other permits for the development and construction of the PREPA Interconnection Facilities, and shall pay all charges and fees required in connection therewith. SELLER shall complete all environmental impact studies necessary for the design, construction, operation, and maintenance of the Facility and the PREPA Interconnection Facilities. Once obtained, SELLER shall comply with, and promptly submit to PREPA copies of, all material Permits and other permits contemplated by this Section 12.1. Furthermore, pursuant to Section 5(f) of Act 120-2018 and subject to the provisions of this Agreement, SELLER shall at all times comply with the public policy and regulatory framework applicable to the Facility.

12.2 Fines & Penalties

Each Party shall have sole responsibility for the payment of any and all fines or other penalties incurred by or imposed upon such Party or its agents, suppliers, employees, or subcontractors for noncompliance by such Party, its agents, employees, suppliers, or subcontractors with Applicable Law to or in connection with, (i) in the case of SELLER, the development and construction of the Interconnection Facilities (other than PREPA Interconnection Facilities Work), and the development, construction, ownership and operation, maintenance or repair of the Facility, except to the extent that any act or omission of PREPA caused such noncompliance, and (ii) in the case of PREPA, the proper operation of the Grid System, except to the extent that any act or omission of SELLER caused such noncompliance, in each case as determined by applicable Governmental Authority having jurisdiction over the Facility, subject to the indemnification provisions of Article 13 (*Indemnification*).

12.3 SELLER Representations & Warranties

SELLER represents and warrants to PREPA on the Agreement Date, and again on the Closing Date, as follows:

- a. SELLER is a [[●] company], duly organized, validly existing under the Laws of [●]; and SELLER has all requisite power and authority to conduct its business, to own its properties, and to execute, to deliver, and to perform its obligations under this Agreement;
- b. the execution, delivery, and performance by SELLER of this Agreement have been duly authorized, and do not and will not (i) require any additional internal consent or approval of SELLER, the Sponsor or any Affiliate of either of them; or (ii) violate any provision of SELLER's certificate of formation or operating agreement, or any material indenture,

contract or agreement to which it is a party or by which it or its properties may be bound, or any Applicable Law, determination or award presently in effect;

- c. SELLER is not in default under any document or instrument referred to in clause (ii) of paragraph (b) of this Section 12.3, which default could reasonably be expected to have a material adverse effect on the ability of SELLER to perform its obligations under this Agreement;
- d. this Agreement constitutes a legal, valid and binding obligation of SELLER, enforceable against SELLER in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency or similar Laws affecting the enforcement of rights generally; and
- e. except as previously disclosed in writing, there is no pending action or proceeding in which SELLER is a party before any court, governmental agency or arbitrator that could reasonably be expected to affect materially and adversely the financial condition or operations of SELLER or the ability of SELLER to perform its obligations under, or which purports to affect the legality, validity or enforceability of, this Agreement as in effect on the date hereof.

12.4 PREPA Representations & Warranties

PREPA represents and warrants to SELLER on the Closing Date as follows:

- a. pursuant to Act No. 83 of May 2, 1941, as amended, PREPA is a public corporation duly organized and validly existing under the Laws of the Commonwealth of Puerto Rico and has all requisite power and authority to conduct its business as now conducted, to own its properties, and to execute, to deliver, and to perform its obligations under this Agreement;
- b. the execution, delivery, and performance by PREPA of this Agreement (i) has been duly authorized by PREPA's governing board in accordance with Applicable Law, (ii) does not and will not require any additional internal consent or approval of PREPA, (iii) does not require any approval from the PROMESA Court or any other additional external consent or approval, other than those approvals expressly identified in this Agreement, and (iv) does not and will not violate any Applicable Law, including any provision of Act No. 83 of May 2, 1941, as amended, or its regulations, or any material indenture, contract or agreement to which it is a party or by which its properties may be bound; and
- c. this Agreement is a legal, valid, and binding obligation of PREPA, enforceable against PREPA in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency or similar Laws affecting the enforcement of rights generally.

12.5 SELLER Payments

PREPA shall exercise commercially reasonable efforts to ensure that Monthly Payments under this Agreement constitute necessary operating expenses.

12.6 SELLER's Financial Statements

For each of SELLER's fiscal years (or part thereof) during the Term, SELLER shall deliver to PREPA its audited financial statements for such fiscal year, prepared in accordance with GAAP, no later than one hundred twenty (120) Days following the completion of such fiscal year.

12.7 SELLER's Officers

If a change or substitution of one or more of SELLER's corporate officers occurs, then SELLER shall deliver to PREPA a certification of the names of its corporate officers.

12.8 Other Business

SELLER shall not (i) engage in any business activity other than as reasonably required to perform its obligations under this Agreement and the Interconnection Agreement, (ii) enter into any merger, consolidation or amalgamation with any entity, or (iii) demerge, separate or split into one or more entities, in each case, without PREPA's prior written consent.

12.9 Confidentiality

- a. Each Party (the "**Receiving Party**") shall keep all Agreement terms and information obtained from the other Party (the "**Disclosing Party**"), and not otherwise generally available to the public (but without limitation of any liability the Receiving Party may have to the Disclosing Party for information that becomes generally available to the public through the negligence or willful misconduct of any of the Receiving Party, its Affiliates or their respective employees, agents and representatives), confidential and use such information solely in connection with the performance of its obligations under this Agreement. Disclosure of such information may be made only within the Receiving Party's organization to key personnel, to third parties serving as the Receiving Party's legal, financial or technical advisors whose duties justify their need to review and know such material, and to lenders, prospective lenders, investors and prospective investors. The Receiving Party shall require each Person (and personnel thereof) to agree in writing for the benefit of the Disclosing Party to maintain the confidentiality of such information.
- b. To the extent any Governmental Authority requires a Receiving Party to disclose such information or requires such information to secure a governmental approval or authorization, such Receiving Party shall promptly notify the Disclosing Party and use its commercially reasonable efforts to seek a confidentiality agreement that assures confidential treatment of the information consistent with the terms of this paragraph (b) of this Section 12.9. In the event the Receiving Party cannot obtain a confidentiality agreement, such Receiving Party shall use commercially reasonable efforts to obtain through court action the appropriate protective order. Notwithstanding the foregoing and paragraph (a) of this Section 12.9, PREPA may disclose the terms and conditions of this Agreement to (i) FOMB, PREB, COR3, P3A, the PROMESA Court, and any Governmental Authority for the purpose of obtaining the consents and approvals, together with such additional information as may be required to obtain such consents and approvals, (ii) COR3, P3A, any owner of the Grid System, and any potential or then-existing T&D Operator and their respective advisors and lenders, and (iii) the Puerto Rico Controller through the filings required by Applicable Law, which will make this Agreement subject to the open records requirement.

12.10 Local Content

- a. SELLER agrees to use its reasonable efforts when soliciting and obtaining personnel to perform services for the Facility in Puerto Rico, to ensure that individuals who are *bona fide* residents of Puerto Rico as defined in paragraph (c) of this Section 12.10 perform not less than thirty percent (30%) of the total personnel hours expended in the construction of

the Facility (prior to the Commercial Operation Date) and not less than thirty percent (30%) of the total personnel hours expended in SELLER's performance of the services pursuant to this Agreement (following the Commercial Operation Date).

- b. SELLER agrees to use its reasonable efforts, when soliciting and selecting subcontractors and vendors to perform services for the Facility in Puerto Rico, to ensure that business concerns owned and controlled by one or more individuals, who are *bona fide* residents of Puerto Rico as defined in paragraph (c) of this Section 12.10, perform not less than thirty percent (30%) of the total personnel hours expended in the construction of the Facility (prior to the Commercial Operation Date), as measured by person-hours on an annual basis. For purposes of the preceding sentence, "**owned and controlled**" means a business: (i) owned at least fifty-one percent (51%) by one or more of such individuals (*e.g.*, in the case of a corporate form of organization such individuals must hold at least fifty-one percent (51%) of all voting stock of the corporation; in the case of a partnership or other form of business concern such individuals must hold at least fifty-one percent (51%) of the beneficial interests in the partnership or business concern); and (ii) one or more of such Persons (who need not be owners of the business) control the management and daily business operations.
- c. For purposes of this paragraph (c), a bona fide resident of Puerto Rico means an individual who has been a resident of Puerto Rico immediately prior to commencing work on the Facility. To the extent that despite SELLER's reasonable efforts SELLER has failed to achieve the goals set forth in paragraphs (a) and (b) of this Section 12.10, SELLER may, for purposes of calculating satisfaction of such percentages of local content, include the services of individuals who at some time prior to commencing work on the Facility, but not necessarily including the period of time immediately prior to commencing work on the Facility, were residents of Puerto Rico for at least five (5) consecutive Years and who relocated to Puerto Rico in order to perform work on the Facility. SELLER shall, in good faith, be entitled to rely on the representation of each individual applicant and of each subcontractor or vendor as to whether such individual, subcontractor or vendor meets the criteria set forth herein. SELLER shall require equivalent undertakings from its subcontractors.
- d. Nothing contained herein shall be interpreted as obligating SELLER to take any action which would violate Applicable Law or any affirmative action program or equal opportunity obligation to which SELLER or its Affiliates are or may be bound under Applicable Law.

12.11 Subcontracting

Neither Party shall be relieved of its obligations under this Agreement as a result of subcontracting any of its obligations to a third party.

13. **INDEMNIFICATION**

13.1 General

Subject to the other provisions of this Article 13, each Party (the "**Indemnifying Party**") shall indemnify and hold harmless the other Party and each of its Indemnitees from and against any and all Claims by third parties for or on account of injury, bodily or otherwise, or death of persons or for damage to or destruction of third-party property, in each case to the extent resulting from or

arising out of the Indemnifying Party's violation of Law, negligence, willful misconduct or failure to perform under this Agreement.

13.2 Notice of Claim

In the event any Party to this Agreement receives notice of any Claim for which such Party elects to assert a right of indemnification under this Article 13 the Party receiving such notice shall give prompt written notice to the other Party of such 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 (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 her choosing, but in such event, such Party shall bear the cost and expense of said additional counsel.

13.3 Claims Arising from Environmental Harm

SELLER shall indemnify and hold harmless PREPA, and each of its Indemnitees, against any and all Claims arising directly or indirectly out of any environmental harm due to the actions of SELLER or SELLER's agents or employees during (i) the design, development or construction of the PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work) as a result of the introduction by SELLER or SELLER's agents or employees of, or (ii) during the design, development, construction or operation of the Facility, in each case as a result of the presence at the Facility of pollutants, hazardous substances, materials or wastes in excess of amounts and concentrations permitted by Applicable Law then in effect. In the event SELLER fails to reimburse PREPA for such Claims within thirty (30) Days of receipt of written notice from PREPA stating that such Claims were incurred (including reasonable documentation of such Claims), PREPA may offset the amount of such Claims against amounts due to SELLER from PREPA under this Agreement. In the event SELLER disputes that Claims are due to the actions of SELLER or SELLER's agents, the Parties shall resolve such Dispute pursuant to Section 21.11 (*Dispute Resolution*), and PREPA shall not offset any such disputed amounts until final settlement under Section 21.11 (*Dispute Resolution*).

14. **FORCE MAJEURE**

14.1 General

"Force Majeure" means, subject to Section 14.2 (*Instances of Force Majeure*), any event or circumstance beyond the reasonable control of the affected Party (the **"Affected Party"**) and not resulting from the fault or negligence of the Affected Party claiming the Force Majeure, which wholly or partially prevents the Affected Party from performing any of its obligations under this Agreement, but only if and to the extent that:

- a. the Affected Party could not have prevented, avoided, or removed such circumstance, despite the exercise of reasonable diligence in accordance with consistent with Prudent Utility Practices;
- b. the Affected Party has taken all reasonable precautions, due care, and reasonable alternative measures in order to (i) avoid the effect of such event or circumstance on the Affected Party's ability to perform such obligation under this Contract, and (ii) mitigate the consequences thereof;

- c. such 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 such event or circumstance in accordance with Section 14.3 (*Notice*).

Except as provided in Section 14.4 (*Consequences*), Force Majeure shall excuse the Affected Party claiming the Force Majeure from performing the obligation affected by such Force Majeure and the Affected Party shall have no liability for damages or otherwise to the extent caused by such non-performance. The Affected Party shall bear the burden of proving whether Force Majeure has occurred.

14.2 Instances of Force Majeure

Provided that a claim of Force Majeure satisfies the requirements of Section 14.1 (*General*), Force Majeure may include the following events: (i) acts of God, strikes (national and other general strikes), industrial disturbances, acts of public or foreign enemy, war, blockades, boycotts, riots, insurrections, epidemics, pandemics, earthquakes, storms, tornado, drought, hail, sabotage, works to rule, go-slows and other public agitation; (ii) invasion, terrorism, rebellion, plague, lightning, hurricane, natural calamity, floods, civil disturbances, lockouts, fires, explosions, interruptions of services due to the act or failure to act of any Governmental Authority, including quarantine and lock-downs; (iii) any Pending Permit Delay; and (iv) failure of any subcontractor or supplier of the Affected Party to perform as a result of an event that would constitute Force Majeure hereunder. Notwithstanding the foregoing, Force Majeure shall expressly not include:

- a. the bankruptcy of a Party or any of its subcontractors or suppliers at any tier;
- b. breakdown or defect of temporary works or the Contractor’s equipment or any subcontractor’s equipment, other than breakdown caused by a separate Force Majeure;
- c. any changes in prevailing market prices for goods, fuel, or labor;
- d. strikes, lockouts, works to rule, go-slows, and other industrial disturbances by personnel of SELLER or any of its contractors and subcontractors at any tier;
- e. any failure by a Party to obtain and/or maintain a Permit, other than in the case of a Pending Permit Delay;
- f. any Pending Permit Delays in excess of eighteen (18) Months; or
- g. any promulgation by the U.S. Department of Energy of implementation rules for the Bulk-Power System EO after the Agreement Date that causes delay in excess of twelve (12) Months.

14.3 Notice

A Party claiming Force Majeure shall, within ten (10) Days after the occurrence of the event(s) which forms the basis for such claim, give the Non-Affected Party written notice thereof, describing (i) the particulars of such occurrence, (ii) an estimate of the duration of the impact of such event on the Affected Party’s ability to perform its obligations, and (iii) how such claim otherwise satisfies the requirements of Section 14.1 (*General*).

14.4 Consequences

Subject to Appendix G (*Determination of Expected & Deemed NEO*), neither Party shall be excused by reason of Force Majeure from the obligation to make any payments when due to the other Party.

14.5 Disputes

If a Party Disputes the other Party's claim of Force Majeure, such Dispute shall be resolved pursuant to Section 21.11 (*Dispute Resolution*).

15. TERMINATION

15.1 Termination Date

Subject to Section 15.2 (*No Discharge of Obligations*), this Agreement shall automatically terminate on the earlier to occur of:

- a. expiration of the Term;
- b. mutual consent of the Parties in writing;
- c. termination of the Agreement identified in a written notice delivered by the non-defaulting Party following the occurrence of a Default, provided that the termination date occurs no earlier than thirty (30) Days after the issuance of such notice, and if the defaulting Party can cure such Default, such Party fails to cure such Default within such thirty (30) Day period;
- d. the inability of the Parties to achieve the Closing Date by the date required under Section 2.3 (*Initial Effectiveness & Closing Date*);
- e. prior to the Initial Synchronization Date only, the determination by SELLER (as notified to PREPA in writing) to terminate this Agreement and the Interconnection Agreement upon the continuance of a Pending Permit Delay in excess of eighteen (18) Months;
- f. a Construction Start Termination Event; or
- g. a COD Termination Event.

15.2 No Discharge of 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 Articles 11 (*Liability*), 13 (*Indemnification*), 14 (*Force Majeure*), 15 (*Termination*), and 21 (*Miscellaneous Provisions*), Sections 2.5 (*Performance Security*), 3.5 (*Delay Liquidated Damages*), 6.8 (*Record Keeping*), 12.9 (*Confidentiality*), 16.2 (*Certain Material Breaches*), and 17.2 (*Tracking Account*), and Appendix Q (*Performance Guarantee*). The Articles, Sections, and Appendices designated in the preceding sentence shall survive the Termination Date, provided that Section 12.9 (*Confidentiality*) and Article 13 (*Indemnification*) shall expire on the first (1st) and second (2nd) anniversary of the Termination Date, respectively. Without limiting the foregoing, termination of this Agreement shall not discharge either Party from any Claim or obligation it owes to the other Party under this Agreement by reason of any transaction, loss, cost, damage, expense, or liability

which shall occur or arise (or the circumstances, events, or basis of which shall occur or arise) prior to the Termination Date. Any such Claim or obligation owed (whether the same shall be known or unknown at termination or whether the circumstances, events, or basis of the same shall be known or unknown at termination) shall survive the Termination Date. Except as otherwise expressly contemplated by this Agreement, any indebtedness by either Party to the other shall be considered payable within ninety (90) Days after the Termination Date.

15.3 Removal of Facility & Related Equipment

Following the Termination Date, SELLER shall be entirely responsible (at its sole cost, risk, and expense) for owning, operating, maintaining, and ultimately removing the Facility and related equipment at the end of their useful lives in accordance with all Applicable Laws.

16. **DEFAULT**

16.1 Definition

The following events shall constitute a “**Default**” under this Agreement:

- a. for SELLER as the defaulting Party only, the provision of materially incorrect or misleading information, representation or certification submitted (or made) by SELLER in connection with either (i) the submission of SELLER’s proposal to PREPA in response to the RFP, or (ii) the execution, delivery or performance by SELLER of this Agreement, in each case relating to either (a) corruption or bribery matters, or (b) a representation made by SELLER under Section 16.2 (*Certain Material Breaches*);
- b. except as otherwise covered in paragraph (a) of this Section 16.1, a materially incorrect or misleading representation or warranty made by a Party under this Agreement or any certification submitted by a Party in connection with the execution, delivery or performance of this Agreement, which in either case remains uncured for a period of at least sixty (60) Days after receipt by such Party of notice thereof from the other Party;
- c. for SELLER as the defaulting Party only, default by SELLER in the observance or performance of any covenant contained in Section 2.5 (*Performance Security*) where such default continues uncured for a period of at least thirty (30) Days after the date on which SELLER receives written notice from PREPA of such failure;
- d. a Party’s failure to remit in full any amount due and payable under this Agreement to the other Party, which the first Party fails to cure within sixty (60) Days after the date on which the first Party receives written notice from the other Party of such failure (other than disputed amounts, which the Parties shall resolve in accordance with Section 21.11 (*Dispute Resolution*));
- e. for SELLER as defaulting Party, a default by SELLER under paragraphs (a) or (b) of Section 16.2 (*Certain Material Breaches*);
- f. except as otherwise covered in paragraphs (c) or (d) of this Section 16.1, default by a Party in the observance or performance of any of the material terms, covenants, or conditions contained in this Agreement, which remains uncured for a period of one hundred twenty (120) Days after the date on which the first Party receives written notice from the other Party of such failure, or such longer period (not to exceed an additional cure period of one

hundred fifty (150) Days if the first Party can cure such default and diligently pursues such cure); and

g. for SELLER only as the defaulting Party:

1. a Construction Start Termination Event;
2. a COD Termination Event;
3. a termination of the Interconnection Agreement due to default by SELLER;
4. an Insolvency Event;
5. a Development Abandonment;
6. a Permanent Closing; or
7. during any two (2) consecutive Agreement Years, SELLER's failure to deliver an aggregate quantity of Net Electrical Output in excess of seventy percent (70%) of the P50 Energy Yield for such years;

in each case for any reason other than a PREPA Risk Event or Force Majeure affecting SELLER.

16.2 Certain Material Breaches

- a. Pursuant to FOMB's contract review policy (FOMB POLICY: REVIEW OF CONTRACTS, as modified on October 30, 2020), SELLER represents and warrants to PREPA on the Agreement Date, and again on the Closing Date, (i) the due execution by SELLER and delivery to PREPA of a certification (the "**FOMB Certification**") in the form set out in Appendix S (*Form of FOMB Certification*), and (ii) the completeness, accuracy, and correctness of all information included in such FOMB Certification. As acknowledged, certified, and agreed in the FOMB Certification, any misrepresentation, inaccuracy, or falseness in such FOMB Certification shall render this Agreement null and void, and SELLER shall reimburse PREPA immediately for any amounts, payments or benefits received from PREPA under this Agreement.
- b. In accordance with Article 3.4 of Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico of the Commonwealth of Puerto Rico, as amended, SELLER acknowledges and agrees that its conviction or guilty plea for any of the crimes as enumerated in Article 3.4 of such Act, in addition to any other applicable liability, shall render this Agreement null and void, and SELLER shall reimburse PREPA immediately for any amounts, payments or benefits received from PREPA under this Agreement that directly resulted from the committed crime, but only to the extent required by Act 2-2018.
- c. PREPA shall have the right to terminate this Agreement if Puerto Rico or United States Federal Court convicts SELLER 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, of 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 the

misuse of public funds or property, including 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.

- d. SELLER acknowledges and agrees that the conditions outlined throughout this Section 16.2 constitute essential requirements of this Agreement.

16.3 Remedies & Disputes

Upon the occurrence of a Default, the non-defaulting Party shall have the right to invoke its remedies under this Agreement and/or under Applicable Law. Any Disputes in connection with the existence of a Default shall be resolved in the manner prescribed in Section 21.11 (*Dispute Resolution*).

17. TAXES & FEES

17.1 SELLER Requirements

- a. SELLER shall bear all Taxes and Environmental Costs applicable to the construction and operation of the Facility, provided that, subject to Section 17.2 (*Tracking Account*), PREPA shall reimburse SELLER for fifty percent (50%) of the additional costs (net of cost reductions) resulting from Post-Agreement Date Taxes or from Post-Agreement Date Environmental Costs applicable to SELLER by reason of the ownership or operation of the Facility for the purpose of providing the Net Electrical Output to PREPA (collectively, the “**Changes**”). PREPA shall reimburse SELLER for such Changes through an equitable adjustment to the Base Rate and subject to Section 17.2 (*Tracking Account*).
- b. SELLER will promptly pay and discharge all other 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 that SELLER shall not be required to pay any such Taxes, assessment, charge, levy, account payable or Claim if: (i) the validity, applicability or amount thereof remains contested in good faith by appropriate actions or proceedings which will prevent the forfeiture or sale of any property of SELLER or any material interference with the use thereof by SELLER, and (ii) SELLER shall set aside on its books reserves deemed by it to be adequate with respect thereto.

17.2 Tracking Account

- a. The Parties shall record all Changes paid by PREPA according to Section 17.1 (*SELLER Requirements*) in an unfunded tracking account maintained by PREPA (the “**Tracking Account**”). SELLER shall have the right, upon reasonable notice and during business hours, to audit PREPA’s records reflecting the balance in the Tracking Account and to identify and object to any error in such calculations. If the Parties cannot agree on an adjustment to the balance in the Tracking Account within thirty (30) Days of PREPA’s receipt of SELLER’s objection, then a Party may refer such matter to dispute resolution by either Party pursuant to Section 21.11 (*Dispute Resolution*).
- b. If the Tracking Account has a balance at the end of the twenty-second (22nd) Agreement Year (“**Balance**”), then PREPA shall have the right to withhold and retain up to fifty

percent (50%) of the amounts due in each Billing Period of the remaining Term. The Parties shall subtract the retained amount from the Balance until the Balance equals zero (0). If any portion of the Balance remains outstanding at the expiration of the Term under Section 2.2 (*Initial Term*), then PREPA shall have the option to extend the Term up to an additional two (2) Agreement Years as necessary to repay the Balance plus Interest by applying such monthly retention as set forth above. If, at the expiration of the initial Term under Section 2.2 (*Initial Term*), an undisputed deficit exists in the Tracking Account, then PREPA shall pay SELLER an amount sufficient to compensate SELLER for such deficit within thirty (30) Days after the expiration of the Term. If a Party terminates this Agreement early pursuant to Article 15 (*Termination*), and an undisputed balance remains in the Tracking Account (the “**Termination Balance**”), SELLER shall repay such Termination Balance plus Interest to PREPA within thirty (30) Days of the Termination Date. Notwithstanding the foregoing, SELLER shall have the option to prepay all or any portion of the Balance or the anticipated Termination Balance, if applicable, at any time or from time to time.

- c. The Parties agree that PREPA shall have the right to an annual audit of payments or credits for Changes as a result of a Post-Effective Date Tax or a Post-Effective Date Environmental Cost and to adjust such payments if necessary, as a result of the findings of such audit. Both Parties shall have the right to participate in such audit.

17.3 PREPA Requirements

PREPA shall pay or cause to be paid all Taxes on or with respect to (i) the purchase and sale Net Electrical Output at the Interconnection Point (including sales tax, excise tax, municipal license tax, and value-added tax), and (ii) the purchase, use and disposition of the Ancillary Services and the Green Credits.

18. **INSURANCE**¹¹

18.1 SELLER Requirements

SELLER shall obtain and maintain in full force and effect from the Construction Start Date and during the Term of this Agreement and thereafter as provided herein policies of insurance covering all operations engaged in by this Agreement, which shall be formally agreed with an insurance company authorized to do business in Puerto Rico, and to that effect, it shall provide in original certificates of insurance and endorsements as follows:

- a. *Worker’s Compensation Insurance*: SELLER shall provide and maintain Worker’s Compensation Insurance as required by the Worker’s Compensation Act of the Commonwealth of Puerto Rico. SELLER shall also have responsibility for compliance with said Worker’s Compensation Act by all its subcontractors, agents, and invitees. SELLER shall furnish PREPA a certificate from the State Insurance Fund, in a form acceptable to PREPA, showing that all personnel employed in the work are covered by the Worker’s Compensation Insurance, in accordance with this Agreement. Imported technical personnel are exempted, as per Act of May 16, 1958 No 16. SELLER shall furnish evidence of such exemption and certificate from the insurance carrier covering said personnel.

¹¹ Note: PREPA will consider the insurance requirements set forth in this Article 18 with Proponents upon selection of their proposal for RFP Phase III evaluation and adjust such requirements to the extent not available / achievable with prevailing market conditions.

- b. *Commercial General Liability Insurance:* SELLER shall provide and maintain Commercial General Liability Insurance with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. Such insurance shall include specific coverage for contractual liability, “XCU” explosion, collapse and underground damages coverage, products, and completed operations liability.
- c. *Automobile Liability Insurance:* SELLER shall provide and maintain Automobile Liability Insurance with limits of \$1,000,000 combined single limit covering all owned, non-owned, and hired automobiles.
- d. *Excess Umbrella Liability Insurance:* SELLER shall provide and maintain Excess Umbrella Liability Insurance with limits of \$4,000,000 per occurrence in excess of the limits of insurance provided in paragraph (b) of this Section 18.1.
- e. *All Risk Physical Damage Property Insurance:* SELLER shall provide and maintain All Risk Physical Damage Property Insurance, including machinery coverage to cover all real and personal property of SELLER (including earthquake and hurricane occurrence) to [one hundred percent (100%)] of replacement cost. SELLER shall place this insurance policy in effect on the Commercial Operation Date. The insurance, as required in this paragraph (e) of this Section 18.1, 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.
- f. *Equipment Breakdown Policy:* Unless included in the All Risk Physical Damage Insurance required in paragraph (e) of this Section 18.1, SELLER shall provide and maintain an Equipment Breakdown Policy to cover all equipment and machinery of SELLER. This insurance shall name PREPA as an additional insured under this policy.
- g. *Employer’s Liability Insurance:* To the extent that SELLER employs employees, SELLER shall provide and maintain Employer’s Liability Insurance with minimum bodily injury limits of \$1,000,000 for each employee and \$1,000,000 for each accident, covering against the liability imposed by Law upon SELLER as a result of bodily injury, by accident or disease, including death arising out of and in the course of employment, outside of and in the course of employment, and outside of and distinct from any claim under the Worker’s Compensation Act of the Commonwealth of Puerto Rico.
- h. *Business Interruption Insurance:* SELLER shall provide and maintain Business Interruption Insurance[, subject to a reasonable deductible (which the Parties shall construe as insurance proceeds actually received by SELLER for the purposes of this Agreement)] with respect to the Facility to include business interruption/contingent business interruption/loss of income for at least six (6) Months, with a waiting period not exceeding thirty (30) Days, an extended period of indemnity of an additional ninety (90) Days, and coverage for extra expense/contingent extra expense incurred during any period of interruption based on actual loss sustained. SELLER shall place this policy into effect on the Commercial Operation Date.

18.2 Requirements for SELLER Policies

SELLER shall ensure that the provider of the Commercial General Liability Insurance and Automobile Liability Insurance, as required under Section 18.1 (*SELLER Requirements*), endorses such insurance to include:

- a. as Additional Insured:

Puerto Rico Electric Power Authority
Risk Management Office
PO Box 364267
San Juan, PR 00936-4267;
- b. a thirty (30) Days' cancellation or nonrenewable notice (ten (10) Days for non-payment of premium) to be sent by certified mail to SELLER (with a copy to PREPA) with return receipt to the above address sent by SELLER;
- c. an endorsement including this Agreement under contractual liability coverage and identifying it by number, date and the Parties;
- d. a waiver of Subrogation in favor of PREPA; and
- e. the breach of any of the Warranties or Conditions in these policies by SELLER shall not prejudice PREPA's rights under this policy.

18.3 Contractor Requirements

The contractors and designers retained by SELLER to construct the Facility and the PREPA Interconnection Facilities shall obtain and maintain in full force and effect before the Construction Start Date, policies of insurance covering all constructions engaged in by this Agreement, which shall be formally agreed with insurance companies authorized to do business in Puerto Rico, and to that effect SELLER shall provide in the original certificate of insurance and endorsements, as follows:

- a. Worker's Compensation Insurance: SELLER shall cause its contractors to provide and maintain Worker's Compensation Insurance as required by the Worker's Compensation Act of the Commonwealth of Puerto Rico. SELLER shall also have responsibility for compliance with said Worker's Compensation Act by all its subcontractors, agents, and invitees. SELLER shall furnish PREPA a certificate from the State Insurance Fund showing that all personnel employed in the work are covered by the Worker's Compensation Insurance, in accordance with this Agreement. Imported technical personnel are exempted, as per Act of May 16, 1958, No. 16. SELLER shall furnish evidence of such exemption and certificate from the insurance carrier covering said personnel.
- b. Employer's Liability Insurance: SELLER shall cause its contractors to provide and maintain Employer's Liability Insurance with minimum bodily injury limits of \$1,000,000 for each employee and \$1,000,000 for each accident, covering against the liability imposed by Law upon SELLER as a result of bodily injury, by accident or disease, including death arising out of and in the course of employment and outside of and distinct from any claim under the Worker's Compensation Act of the Commonwealth of Puerto Rico.
- c. Commercial General Liability Insurance: SELLER shall cause its contractors to provide and maintain Commercial General Liability Insurance ("CGL") with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage. Continuing CGL insurance shall cover liability

arising from products completed operations and liability assumed under an insured contract for at least three (3) Years following substantial completion of the work.

- d. Automobile Liability Insurance: SELLER shall cause its contractors to provide and maintain Automobile Liability Insurance with limits of \$1,000,000 combined single limit covering all owned, non-owned, and hired automobiles.
- e. Excess Umbrella Liability Insurance: SELLER shall cause its contractors to provide and maintain Excess Umbrella Liability Insurance with limits of \$4,000,000 per occurrence in excess of the limits of insurance provided in paragraph (c) of this Section 18.3.
- f. Builder's Risk Insurance: SELLER shall provide or cause its contractors to provide and maintain in force Builder's Risk Insurance for the entire work. Such insurance shall be written in an amount equal to the total contract sum as well as subsequent modifications of that sum. The insurance shall apply on a replacement cost basis and coverage shall be written on a completed value form as follows:
 - 1. The insurance as required above shall be written to cover all risks of physical loss except those specifically excluded in the policy and shall insure at least against the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, riot, civil commotion, theft, vandalism, malicious mischief, earthquake, and collapse.
 - 2. SELLER shall pay any deductible applicable to the insurance purchased in compliance with this requirement.
 - 3. Waiver of Subrogation. SELLER shall waive all rights against PREPA and its officers, directors, agents, and employees for recovery for damages caused by fire and other perils to the extent covered by builder's risk or property insurance purchased pursuant to the requirements of this Agreement or any other property insurance applicable to the work.

18.4 Requirements for the Contractor Policies

SELLER shall ensure that the provider of the Commercial General Liability Insurance and Automobile Liability Insurance, as required under Section 18.3 (*Contractor Requirements*), endorses such insurance to include:

- a. as Additional Insured:

Puerto Rico Electric Power Authority
Risk Management Office
PO Box 364267
San Juan, PR 00926-4267;
- 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 this Agreement under contractual liability coverage and identifying it by number, date, and the Parties;
- d. a waiver of Subrogation in favor of PREPA; and

- e. the breach of any of the Warranties or Conditions in these policies by the relevant Contractor or designer shall not prejudice PREPA's rights under this policy.

18.5 Application of Proceeds

SELLER shall apply any and all insurance proceeds received in connection with the damage or loss of the Facility, or (prior to their transfer) the PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work), toward the repair, reconstruction, or replacement of the Facility or the PREPA Interconnection Facilities, as applicable.

19. ASSIGNMENT & TRANSFER

19.1 Restriction on Assignment

Except as otherwise provided in this Article 19, neither Party shall assign or transfer this Agreement without the prior written consent of the other Party, which consent such Party shall not unreasonably withhold or delay. Any attempt to assign this Agreement without the prior written consent of the corresponding Party shall be void. Any failure of a Party to respond to any request by the other Party for consent to assignment pursuant to this Section 19.1 shall not be deemed or construed as an acceptance or consent to such proposed assignment.

19.2 PREPA's Right to Assign

Notwithstanding the provisions of Section 19.1 (*Restriction on Assignment*), the Parties acknowledge that PREPA is undergoing a transformation process, and therefore agree that, after the front-end transition period of a Partnership Contract, Sale Contract, or any other PREPA Transaction (as these terms are defined in Act 120-2018), PREPA may sell, assign, convey, transfer, pledge, mortgage, sublease, delegate, hypothecate, or otherwise dispose (each, a "**Transfer**") any of its rights, title, or interest in this Agreement as permitted by Applicable Law and at any time, without SELLER's consent, and without cost, expense, or incremental liability to PREPA, to a T&D Operator, an Affiliate of PREPA or any Governmental Authority of Puerto Rico; provided that PREPA shall notify SELLER no later than thirty (30) Days before the effective date of any such Transfer. Unless otherwise agreed by PREPA, following the Transfer, PREPA shall be released from all obligations under this Agreement to the extent such transferee assumes such obligations in writing, provided that, for any Transfer to an Affiliate of PREPA, PREPA shall guarantee the payment obligations of such Affiliate arising out of this Agreement following such assignment.

19.3 SELLER's Right to Assign

Notwithstanding the provisions of Section 19.1 (*Restriction on Assignment*), SELLER shall have the right to assign, pledge or encumber this Agreement in its entirety or in part without PREPA's consent to the Project Lenders as collateral security in order to obtain financing or other funding. PREPA agrees to execute and deliver an agreement consenting to any assignment as collateral security in favor of the Project Lenders containing terms and conditions that are customary for transactions of this kind. PREPA agrees to cooperate in good faith in this regard and to provide other customary and reasonable documents and acknowledgments as the Project Lenders may reasonably request in connection with the financing of the Facility, including estoppel certificates and direct agreement or consent to an assignment in accordance with this Section 19.3 and substantially in the form of Appendix X (*Form of Direct Agreement*) and a legal opinion addressed to the Project Lenders with respect to due authorization and capacity of PREPA to enter into such

agreement or consent, and enforceability thereof, in each case as reasonably acceptable to PREPA, provided that SELLER shall reimburse PREPA for the cost of negotiating and providing such documents, acknowledgments, opinions, certificates, consents, and agreements. In addition, SELLER shall have the right to assign this Agreement as collateral security to any agent, trustee, or other Person (including any corporation or partnership) representing the Project Lenders under the financing documents. If SELLER shall assign this Agreement as collateral security pursuant to this Section 19.3, then so long as the secured obligations, or any consolidation, modification, or extension of such obligation shall remain outstanding, the following provisions shall apply:

- a. The making of an assignment pursuant to the preceding provisions of this Section 19.3 shall not be deemed to constitute an assignment or transfer of this Agreement, nor shall any assignee referred to above, as such, be deemed to be an assignee or transferee of this Agreement so as to require such assignee, as such, to assume the performance of any of the terms and conditions of SELLER to be performed hereunder; provided that the purchaser at any sale of this Agreement in any proceeding for the foreclosure of any assignment, or the assignee or transferee of this Agreement in any proceedings for the foreclosure of any assignment, or the assignee or transferee of this Agreement under any instrument of assignment or transfer in lieu of the foreclosure of any assignment, shall be deemed to be an assignee or transferee within the meaning of this paragraph (a) of this Section 19.3 and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of SELLER to be performed hereunder from and after the date of such purchase and assignment.
- b. Notwithstanding any other provision of this Agreement, any sale of SELLER's rights in this Agreement in any secured creditor's sale, any proceeding for the foreclosure of any assignment, or the assignment or transfer of this Agreement in lieu of the foreclosure of any assignment, shall be deemed to be a permitted sale, transfer or assignment of this Agreement, and this Agreement shall continue in full force and effect following any such sale, transfer or assignment.
- c. If PREPA terminates this Agreement prior to the expiration of the Term due to a Default by SELLER or rejects or disaffirms this Agreement pursuant to any bankruptcy Law or proceeding or other similar Applicable Law or proceedings affecting creditors' rights generally with respect to a bankruptcy proceeding relating to SELLER or otherwise, PREPA agrees, if outstanding obligations to a Project Lender exist, and subject to the receipt of all necessary approvals, to enter into a new power purchase and operating agreement with the Project Lender (or its designee or nominee) on substantially similar terms to this Agreement; provided that such designee or nominee (x) is Controlled by the Project Lender, (y) is approved by PREPA (which approval PREPA shall not unreasonably withhold) and has provided to PREPA (i) its audited financial statements as per GAAP, demonstrating that such new designee or nominee has a tangible net worth of at least twenty-five million dollars (\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least seventy-five million dollars (\$75,000,000))¹², (ii) evidence reasonably acceptable to PREPA that such new designee or nominee is or has engaged a Qualified Operator, and (iii) the certifications and documentation required by Appendix B (*Signing Conditions*), but construing references to SELLER therein as references to such new designee or nominee, and (z) has accepted all terms, provisions and limitations of this Agreement, effective as of the date of such termination.

¹² Note: These amounts align with FOMB requirements on prior transactions.

SELLER shall not have the right to assign its rights, title, or interest under this Agreement to any Affiliate of SELLER without the prior express written consent of PREPA, unless (i) such Affiliate agrees to be bound by the terms of this Agreement and to fully perform the obligations of SELLER hereunder (including Appendix B (*Signing Conditions*)), (ii) each Sponsor maintains the same percentage of the total Equity ownership interest in such Affiliate, whether directly or indirectly, as it owns in SELLER at the time of such assignment, and (iii) SELLER owns no less than fifty-one percent (51%) of the total Equity ownership interest in such Affiliate. SELLER shall notify PREPA of SELLER's intention to assign this Agreement at least thirty (30) Days in advance of any such assignment.

19.4 Restrictions on Equity Transfers

SELLER shall ensure that each Sponsor does not assign, sell or transfer (whether directly or indirectly) to any other Person any part of its ownership interests in SELLER or renounce any preferential subscription rights for ownership interests in connection with a capital increase (each, a “**Equity Transfer**”) at any time prior to the Commercial Operation Date. On or after the Commercial Operation Date, SELLER shall ensure that each Sponsor does not affect an Equity Transfer at any time without the prior express written consent of PREPA. Notwithstanding the foregoing, a Sponsor may, without PREPA's consent:

- a. create a security interest in its ownership interest in SELLER in favor of the Project Lenders, and PREPA hereby approves any Equity Transfer thereof resulting from the enforcement of such security interests in accordance with the financing documents of the Project Lenders;
- b. (i) prior to the Commercial Operation Date, effect an Equity Transfer solely in connection with a financing transaction involving Tax Credits under Section 48 of the U.S. Internal Revenue Code, provided that such transfer does not result in the Control of SELLER or the Project being transferred to a third party other than the Sponsor or SELLER, as applicable; and (ii) at any time after the Commercial Operation Date, effect an Equity Transfer back to SELLER or Sponsor, as applicable, pursuant to the terms of such financing transaction entered into prior to the Commercial Operation Date involving Tax Credits under Section 48 of the U.S. Internal Revenue Code;
- c. at any time after the Commercial Operation Date, effect an Equity Transfer to a Wholly-Owned Affiliate of a Sponsor, provided that such Wholly-Owned Affiliate remains a Wholly-Owned Affiliate of such Sponsor at all times after such Equity Transfer; or
- d. from and after the second anniversary of the Commercial Operation Date, effect an Equity Transfer to a Person, including a Wholly-Owned Affiliate, provided that such Equity Transfer, when aggregated with all previous Equity Transfers, does not result in a transfer of more than forty-nine percent (49%) of the issued and outstanding shares and voting rights in SELLER to any Person other than a Sponsor or a Wholly-Owned Affiliate of a Sponsor.

If SELLER intends to effect an Equity Transfer, then it shall notify PREPA of such intention at least thirty (30) Days in advance of the intended date of such transfer. The failure of PREPA to respond to any request by SELLER for consent to transfer pursuant to this Section 19.4, shall not be deemed or construed as an acceptance or consent to such proposed transfer. PREPA acknowledges and agrees that the identity and existence of such third party, and the potential transfer, shall be kept confidential in accordance with Section 12.9 (*Confidentiality*); and if

requested by SELLER, PREPA shall enter into a confidentiality agreement with respect to the same, in a form reasonably acceptable to PREPA, provided that SELLER shall reimburse PREPA for the cost of negotiating and executing such agreement. Prior to PREPA's consent to any Equity Transfer, SELLER shall cause the proposed new owner of such equity to provide to PREPA (i) its audited financial statements as per GAAP, demonstrating that such new owner has a tangible net worth of at least twenty-five million dollars (\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least seventy-five million dollars (\$75,000,000)), (ii) evidence reasonably acceptable to PREPA that such new owner is or has engaged a Qualified Operator, and (iii) the certifications and documentation required by Appendix B (*Signing Conditions*), but construing references to SELLER therein as references to such new owner. In each case, SELLER shall obtain any regulatory approvals required in respect of such transfer and ensure such transfer otherwise complies with Applicable Law.

19.5 Restrictions on Asset Transfers

- a. SELLER shall not sell or transfer, directly or indirectly, the Facility, any portion of the Facility or substantially all of its assets either (i) at any time prior to the Commercial Operation Date, or (ii) for any such sale or transfer occurring on or after the Commercial Operation Date, without PREPA's prior express written consent. The foregoing prohibition shall not apply to any such transfer that (1) forms part of a foreclosure on any mortgage, lien, pledge, charge or other encumbrance granted to the Project Lenders under any non-recourse project financing related exclusively to such assets and such lenders or their agent have entered into a direct agreement with PREPA in respect of the collateral assignment of this Agreement and the Interconnection Agreement, or (2) constitutes a permitted assignment under Section 19.3 (*SELLER's Right to Assign*).
- b. If SELLER intends to sell the Facility, or any portion of the Facility, or substantially all of its assets, pursuant to PREPA's consent under the first sentence of paragraph (a) of this Section 19.5, then it shall notify PREPA of its intention to sell at least sixty (60) Days in advance of the intended date of such sale. PREPA shall not unreasonably withhold or delay its consent to any such sale or transfer, provided that the failure of PREPA to respond to any request by SELLER for consent to such a sale or transfer shall not be deemed or construed as an acceptance or consent to such proposed sale or transfer. Prior to PREPA's consent to any such asset transfer, SELLER shall cause the proposed new owner to provide PREPA with (i) its audited financial statements as per GAAP, demonstrating that such new owner has a tangible net worth of at least twenty-five million dollars (\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least seventy-five million dollars (\$75,000,000)), (ii) evidence reasonably acceptable to PREPA that such new owner is or has engaged a Qualified Operator, and (iii) the certifications and documentation required by Appendix B (*Signing Conditions*), but construing references to SELLER therein as references to such new owner. In each case, (1) SELLER shall obtain any regulatory approvals required in respect of such transfer and ensure such transfer otherwise complies with Applicable Law, and (2) if requested by PREPA, the Parties and such new owner shall enter into an agreement under which (A) SELLER assigns and transfers all of its rights and obligations under this Agreement to such new owner, and (B) such new owner expressly assumes all liabilities of SELLER arising under this Agreement prior to the date of such assignment.

20. NOTICES

20.1 General.

All notices and other communications hereunder shall be in writing, other than Dispatch Notices, curtailment or disconnect orders, which may be oral and immediately confirmed via e-mail, and shall be deemed duly given upon receipt after being delivered by hand or sent by e-mail with read receipt confirmation, registered or certified mail, return receipt requested, postage prepaid or by recognized overnight courier service, addressed as follows:

IF TO SELLER:

[●]
Attention: [●]
E-mail: [●]

*For Dispatch Notices
(Operational Personnel)*

[●]
Attention: [●]
E-mail: [●]

IF TO PREPA:

Puerto Rico Electric Power Authority
1110 Ponce de León Avenue, Office #808
San Juan, Puerto Rico
Attention: Director of Planning and Environmental Protection
E-mail: [●]

20.2 Change of Address or Persons.

Either Party hereto may change, by notice as above provided, the Persons or addresses to which such notices are sent.

21. MISCELLANEOUS PROVISIONS

21.1 Waiver & Amendment

This Agreement, including the appendices hereto, may be amended or waived only by written agreement between the Parties. A waiver of any Default shall extend only to the particular Default waived and shall not limit or otherwise affect any rights that either Party may have with respect to any other or future Default. The Parties acknowledge and agree that any amendments to the economic or technical terms of this Agreement, or the scope of the Facility, require PREB approval.

21.2 Strict Performance

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, unless agreed in writing between the Parties.

21.3 No Third-Party Beneficiaries

The Parties intend this Agreement solely for the benefit of themselves and, solely to the extent rights thereto are provided in this Agreement, for the benefit of the Project Lenders as third-party beneficiaries. 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.

21.4 Seller Certification Requirement

The Parties acknowledge that SELLER has submitted the certification titled “Contractor Certification Requirement” required in accordance with the Contract Review Policy of the FOMB, effective as of November 6, 2017 and amended on October 30, 2020, signed by SELLER’s Executive Director (or another official with an equivalent position or authority to issue such certifications). The Parties have attached a signed copy of the “Contractor Certification Requirement” as Appendix S (*Form of FOMB Certification*) to this Agreement.

21.5 No Sharing of Benefit

No officer, employee, or agent of SELLER or PREPA 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 Applicable Law of the Commonwealth of Puerto Rico or policy of PREPA.

21.6 No Association, Joint Venture, or Partnership

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.

21.7 Successors

This Agreement shall inure to the benefit of and be binding upon SELLER and PREPA and their respective successors and assigns.

21.8 Complete Agreement & Conflicts

The Parties intend this Agreement as the final expression of their agreement and also as a complete and exclusive statement of the terms of their agreement with respect to the subject matter hereof that supersedes all prior written and oral understandings between the Parties with respect thereto. In the event of any conflict between this Agreement and the Interconnection Agreement or any other Project documents, this Agreement shall prevail.

21.9 Severability

If any provision hereof shall be held invalid, illegal, or unenforceable by the holding of an arbitral authority convened pursuant to Section 21.11 (*Dispute Resolution*), such holding shall not invalidate or render unenforceable any other provision hereof.

21.10 Anticorruption & Antibribery

SELLER certifies as of the Closing Date that, to its actual knowledge, it does not receive payment or benefit of any nature for services rendered regularly through an appointment to a Governmental Authority of Puerto Rico.

21.11 Dispute Resolution

- a. If a dispute arises between the Parties regarding the application, interpretation, enforceability, validity, performance, or breach of this Agreement or matters arising therefrom or relating thereto, whether sounding in contract, tort, unfair competition, Law, equity or any other legal form (a “**Dispute**”), then such Dispute shall be resolved solely by either the agreement of the Parties, with or without a Technical Recommendation (as defined and subject to the terms set forth in paragraph (b) of this Section 21.11), or in a proceeding before PREB in accordance with this Section 21.11. In the event of a Dispute under this Agreement, the disputing Party may promptly provide written notice of the Dispute (a “**Dispute Notice**”) to the other Party. Following the delivery of the Dispute Notice, the Parties shall either (i) agree in writing to submit such Dispute for a Technical Recommendation as provided in paragraph (b) of this Section 21.11, or (ii) absent such agreement, nominate a member of its respective senior management, who shall have decision-making authority on behalf of such Party, and such senior management members shall promptly meet and seek to achieve a settlement, if possible, by negotiation and mutual agreement. If the Dispute is not resolved or submitted for Technical Recommendation within forty-five (45) Days after the Dispute Notice is received by the recipient Party (or such longer period of time as may be mutually agreed by the Parties in writing), then either Party may submit the Dispute for final determination to PREB.¹³
- b. If the Parties agree that a Dispute primarily involves technical subject matter that they should attempt to resolve through a technical review in proceedings before a Consulting Technical Expert, then the Parties shall jointly submit such Dispute (a “**Technical Dispute**”) to the Consulting Technical Expert, mutually appointed for such purpose, for a recommended resolution (a “**Technical Recommendation**”) by providing to the Consulting Technical Expert with a written notice, specifying the matter to be determined. Proceedings before the Consulting Technical Expert shall be held in San Juan, Puerto Rico, unless otherwise agreed in writing by the Parties. Within thirty (30) Days of the engagement of the Consulting Technical Expert for a Technical Dispute (or such longer period of time as the Parties may mutually agree in writing), the Parties shall require that the Consulting Technical Expert conduct a hearing; provided that the Parties may agree in writing to waive the hearing and have the Consulting Technical Expert issue the Technical Recommendation on the basis of written submissions alone. The Parties shall require that the Consulting Technical Expert render a written recommendation on the Technical Dispute as soon as practicable after the close of the hearing but, in any case, no later than fifteen (15) Days after the close of the hearing. The Parties may resolve the Technical

¹³ Note: Puerto Rico law mandates dispute resolution by PREB.

Dispute based on the Technical Recommendation or any mutually agreed modification thereof. If the Technical Dispute is not resolved in this fashion, the Parties may submit the matter for final determination to PREB.

21.12 No Economic Interest

SELLER represents, warrants, and certifies as of the Closing Date, to its actual knowledge, that no public employee has any personal or economic interest in this Agreement.

21.13 Code of Ethics

SELLER agrees to comply with the provisions of Act of June 18, 2002, No. 84, as amended, which establishes a Code of Ethics for the Contractors, Suppliers and Economic Incentive Applicants of the Executive Agencies of the Commonwealth of Puerto Rico.

21.14 Independent Contractor

SELLER shall be considered as an independent contractor, for all material purposes under this Agreement, and all Persons engaged or contracted by SELLER for the performance of its obligations herein, shall be considered as its employees or agents or those of its subcontractors, and not as employees or agents of PREPA.

21.15 Counterparts

This Agreement may be executed in any number of counterparts with the same effect as if both Parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one instrument.

21.16 Governing Law

This Agreement shall be governed by, construed, and enforced in accordance with the Laws of the Commonwealth of Puerto Rico without regard to any contrary result required under applicable conflicts of laws rules. The Parties herein agree that all Disputes arising hereunder shall be resolved pursuant to Section 21.11 (*Dispute Resolution*).

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the Parties hereto have agreed to execute this Agreement in San Juan, Puerto Rico, as of the date first written above.

**PUERTO RICO ELECTRIC POWER [●]
AUTHORITY**

Efran Paredes Maisonet

Executive Director

Tax ID Number: 660433747

[●]

[●]

Tax ID Number: [●]

APPENDIX A

HOLIDAYS

PREPA recognizes the following holidays and observes all holidays that fall on a Sunday on the following Business Day:

<u>DAY</u>	<u>CELEBRATION</u>
January 1	New Year's Day
January 6	Three Kings Day/Epiphany
3 rd Monday in January	Martin Luther King
3 rd Monday in February	Presidents and Illustrious Puerto Ricans Day
March 2	American Citizenship Day
March 22	Emancipation Day
Friday of Holy Week	Good Friday
Sunday of Holy Week	Easter Sunday
2 nd Sunday in May	Mothers' Day
Last Monday in May	Memorial Day
3 rd Sunday in June	Fathers' Day
July 4	Independence Day
July 25	Puerto Rico Constitution Day
1 st Monday in September	Labor Day
2 nd Monday in October	Columbus Day
November 19	Discovery of Puerto Rico
November 11	Veterans Day
4 th Thursday in November	Thanksgiving Day
December 24	Christmas Eve
December 25	Christmas Day

APPENDIX B

SIGNING CONDITIONS

1. Together with the signing of this Agreement, SELLER shall provide:

- a. an original certificate of tax status and compliance from the Commonwealth of Puerto Rico for the five (5) previous years, confirming that it does not owe Taxes to the Commonwealth of Puerto Rico or is paying such Taxes by an installment plan in full compliance with its terms;
- b. an income tax return filing certificate issued by the Treasury Department of Puerto Rico, Area of Internal Revenues assuring that SELLER has filed its Income Tax Return for the last five (5) years (obtained by using the Request for Copy and/or Certification of Income Tax Returns Form issued by the Treasury Department of Puerto Rico);
- c. a certificate of debt issued by the Treasury Department of Puerto Rico, Area of Internal Revenues;
- d. a certificate issued by the Municipal Revenues Collection Center assuring that SELLER does not owe any Taxes to such governmental agency;
- e. a certificate issued by the Department of Labor and Human Resources of Puerto Rico, evidencing that SELLER has paid to the Department of Labor and Human Resources of Puerto Rico, if applicable, its employees' contributions, in accordance with the Puerto Rico Employment Security Act (unemployment, temporary disability or sickness or social security for chauffeurs) or is paying such contributions by an installment plan in full compliance with its terms;
- f. a certificate issued by the Child Support Administration (ASUME) evidencing that SELLER has complied with the retention, if applicable, that an employer must do;
- g. a sworn and notarized statement, as of the Agreement Date, evidencing compliance with Article 3.3 Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico of the Commonwealth of Puerto Rico, as amended, in the form set forth in Appendix R (*Form of Sworn Statement*);
- h. a certification, as of the Agreement Date, that, to its actual knowledge, no public employee has any personal or economic interest in this Agreement, under Section 21.12 (*No Economic Interest*);
- i. a certification, as of the Agreement Date, that, to its actual knowledge, it does not receive payment or benefit of any nature for services rendered regularly through an appointment to a Governmental Authority of Puerto Rico, under Section 21.10 (*Anticorruption & Antibribery*);
- j. if any of the previously required certifications show a debt, and SELLER has requested a review or adjustment of this debt, a certification that SELLER has made such request at the Agreement Date; and if PREPA denies the requested review or adjustment and such determination is final, proof of payment of this debt to PREPA or confirmation that

SELLER accepts that PREPA shall offset the owed amount from the corresponding payments;

- k. evidence of SELLER's ability to provide Equity at least equal to the sum of (i) thirty percent (30%) of the forecasted costs to develop the Facility and (ii) the forecasted cost to construct the PREPA Interconnection Facilities by the forecasted date on which SELLER will first draw down on funds for such development under the financing documents with the Project Lenders; and
- l. the following technical documents:
 - i. the Energy Yield Assessment Report;
 - ii. a preliminary engineering design of the Facility and the PREPA Interconnection Facilities, consistent with Prudent Electrical Practices, the Interconnection Agreement and the MTRs;
 - iii. a proposed relay protection scheme (to include the PREPA Interconnection Facilities and the Seller Interconnection Facilities); and
 - iv. a certified PSS/E mathematical model of the specific facility, the manufacturer's performance data and expected output curve.

2. Prior to the signing of this Agreement:

- a. SELLER shall have provided the certification set forth in Appendix S (*Form of FOMB Certification*).
- b. FOMB shall have approved the execution version of this Agreement.
- c. SELLER shall have presented PREPA with documents evidencing SELLER's ownership and/or control of the Site for the purposes of implementing the Project.

APPENDIX C

CONDITIONS PRECEDENT

PART 1 - SELLER CONDITIONS

SELLER shall deliver the following as conditions precedent to the Closing Date:

- a. the Performance Security;
- b. insurance certificates or cover notes evidencing the insurance coverages required pursuant to Article 18 (*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, which approval PREPA shall not unreasonably withhold or delay;
- c. a certificate, signed by a duly-authorized representative of SELLER, in the form set forth in Appendix AA (*Form of Warranty Compliance Certificate*);
- d. a legal opinion prepared by its external counsel in a form reasonably acceptable to PREPA, confirming the warranty made by SELLER in paragraph (d) of Section 12.3 (*SELLER Representations & Warranties*); and
- e. [a guarantee issued by a Permitted Guarantor in the form set forth in Appendix BB (*Form of Payment Guarantee*).]¹⁴

PART 2- PREPA CONDITIONS

PREPA shall satisfy the following as conditions precedent to the Closing Date:

- a. completion of the Feasibility Study, System Impact Study and Facility Study;
- b. filing of this Agreement with the Puerto Rico Controller; and
- c. delivery of a legal opinion prepared by its external counsel in a form reasonably acceptable to SELLER, confirming the warranty made by PREPA in paragraph (b) of Section 12.4 (*PREPA Representations & Warranties*).

PART 3 - OTHER CONDITIONS

The following constitute other conditions precedent to the Closing Date:

- a. the execution and delivery of the Interconnection Agreement by the Parties;
- b. the absence of any 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 SELLER has executed this Agreement;

¹⁴ Note: Only required where the SELLER/Proponent could not satisfy the Unrestricted Net Worth requirement under Section 4.5(a) of the RFP, requiring a Permitted Guarantor to guarantee its obligations arising out of this Agreement.

- c. the issuance of a Best Interests Determination; and
- d. PREB and P3A shall have approved the executed version of this Agreement.

APPENDIX D

MILESTONE SCHEDULE

Milestones	Time for Completion / Occurrence*	SELLER Delay Liquidated Damages (USD Per Day of Delay)
Construction Start	240 Days after Closing Date	N/A
Initial Synchronization	540 Days after Closing Date	N/A
Commercial Operation	Guaranteed Commercial Operation Date	[●] ¹⁵

¹⁵ Note: The Parties shall determine SELLER Delay Liquidated Damages prior to signing of this Agreement, based on the following formula:

$$\text{SDLD} = (\text{RER} - \text{BR}) \times \text{MDL} \times \text{CF} \times 24 \text{ hours}$$

where:

SDLD = SELLER Delay Liquidated Damages, expressed in \$/Day;

RER = replacement energy rate equal to \$ 0.170/kWh;

BR = Base Rate, expressed in \$/kWh;

CF = capacity factor of 0.22 (as assumed in the IRP for solar installations); and

MDL = Maximum Dispatch Limit, expressed in kW

APPENDIX E

SELLER PERMITS

SELLER shall obtain the following licenses, permits and authorizations and any other licenses, permits and authorizations required by the Agreement.

Issuing Agency	Permit Description	Date Required or Received
Federal		
Commonwealth		
Other Applicable Governmental Authorities		

APPENDIX F

COMPENSATION

1. Monthly Payment

For each Billing Period, PREPA shall pay to SELLER a payment for Product in arrears (the “**Monthly Payment**”) that comprises (a) a payment in respect of any Net Electrical Output, and (b) during the Supply Period, a payment in respect of any Deemed NEO. The Parties shall calculate the Monthly Payment for Billing Period “n” as follows:

$$MP_n = ((NEO_n + DNEO_n) * CR_n) - OC_n$$

where:

- MP_n** = Monthly Payment for Billing Period “n”, expressed in dollars;
- NEO_n** = Net Electrical Output as metered in accordance with Article 8 (*Metering*) during Billing Period “n”, expressed in kWh;
- DNEO_n** = Deemed NEO for Billing Period “n”, as determined in accordance with Appendix G (*Determination of Expected & Deemed NEO*), expressed in kWh;
- CR_n** = Contract Rate for Billing Period “n”, as determined in accordance with Section 2 (*Contract Rate*) of this Appendix G, expressed in \$/kWh;
- OC_n** = other credits or amounts to which PREPA has a right under this Agreement; and
- n** = such Billing Period.

If the Commercial Operation Date occurs during a Billing Period, then (a) the Parties shall perform the calculation set out above in respect of the periods (i) prior to the Commercial Operation Date, and (ii) on and after the Commercial Operation Date, and (b) the Monthly Payment for such Billing Period shall comprise the sum of such amounts. SELLER acknowledges and agrees that the Monthly Payment, and through it the Contract Rate, represents the all-in payment for the Product of the Facility, including all Ancillary Services, Green Credits and costs to SELLER of complying with this Agreement.

2. Contract Rate

For each Billing Period, PREPA shall pay a price (the “**Contract Rate**”) for the Net Electrical Output and Deemed NEO (if any) applicable to such Billing Period as follows:

- a. from the Initial Synchronization Date until the Day before the Commercial Operation Date, the Contract Rate for Net Electrical Output shall equal fifty percent (50%) of the Base Rate, and PREPA shall have no obligation to pay for Deemed NEO; and
- b. during the Supply Period, the Contract Rate shall equal:
 - i. [for the Net Electrical Output and Deemed NEO (if any) during the Agreement Year in which such Billing Period occurs, up to an aggregate quantity equal to the P50 Energy Yield, the Base Rate; and

- ii. for the incremental Net Electrical Output and Deemed NEO (if any) during such Agreement Year in excess of the P50 Energy Yield, eighty percent (80%) of the Base Rate.]

3. Base Rate

During the Term, the tariff (the “**Base Rate**”) shall equal \$[●]/kWh, escalated by [●] percent ([●]%) on July 1 of each Agreement Year (other than the first Agreement Year), provided that the rate (expressed in \$/kWh) payable in any Agreement Year shall:

- a. never exceed a maximum of \$[●]/kWh; and
- b. in the event of any SELLER refinancing (which SELLER may carry out in its sole discretion) following PREPA’s emergence from the PREPA Bankruptcy or otherwise, be reduced to account for any savings accruing to SELLER from such refinancing in the following proportions: (i) for SELLER, sixty percent (60%), and (ii) for PREPA, forty percent (40%), calculated as percentages of the amount which equals the sum of (A) the difference between (1) the net present value of debt service obligations before the refinancing, and (2) the net present value of debt service obligations immediately upon the occurrence of the refinancing, in each case at a discount rate equal to the interest rate on outstanding senior debt owed to Project Lenders at the time of such refinancing, and (B) any net proceeds of such refinancing.

APPENDIX G

DETERMINATION OF EXPECTED & DEEMED NEO

Notwithstanding Section 7.1 (*General*), PREPA shall have no liability to SELLER in connection with any disconnection, curtailment or other reduction in, or failure by PREPA to take, net electrical output at the Interconnection Point, during any Billing Period, for any reason whatsoever, other than payment for Deemed NEO during the Supply Period in accordance with this Appendix G. The Parties shall determine the Deemed NEO for each Billing Period (or part thereof) during the Supply Period by calculating the sum of the Deemed NEO for each Deemed NEO Period, as well as the Expected NEO for any Time Interval, as follows:

1. Deemed NEO Periods

PREPA shall only pay for Deemed NEO during the Supply Period in respect of the following Event Intervals (each such interval, a “**Deemed NEO Period**”):

- a. any Force Majeure Event Interval that occurs during an Agreement Year if and only if, at the start of such interval, the Equivalent Force Majeure Derated Hours accumulated to date in such year exceed the Force Majeure Waiting Period applicable to such year;
- b. any Grid System Event Interval that occurs during an Agreement Year if and only if, at the start of such interval, the Equivalent Grid System Derated Hours accumulated to date in such year exceed the Grid System Waiting Period applicable to such year; and
- c. any Event Interval in which a PREPA Risk Event occurs pursuant to paragraph (c), (d) or (e) of such definition,

provided that, in respect of paragraphs (a) and (b) above, Deemed NEO Periods, and PREPA’s liability for Deemed NEO for any single disconnection, curtailment or other reduction, shall not include any Event Interval in respect of which SELLER may recover insurance proceeds from any insurance policy that SELLER obtains (or would have obtained had it complied with this Agreement) in respect of PREPA Risk Events, including business interruption insurance in accordance with paragraph (h) of Section 18.1 (*SELLER Requirements*).

2. Facility Performance Model

SELLER shall use a commercially available computer program, or other computer program mutually agreed for such use by the Parties, for calculating the output of utility-scale photovoltaic projects (the “**Facility Performance Model**”) to determine the Expected NEO and Deemed NEO for any Time Interval, and for recording, monitoring and forecasting purposes, in accordance with the following:

- a. SELLER shall ensure that the Facility Performance Model (i) accounts for and records (A) the global solar irradiation available on the plane of array of solar photovoltaic modules (expressed in kW/m²) (including global horizontal irradiation, direct normal irradiation and diffuse irradiation), in determination of incidence angle irradiance losses, (B) ambient conditions including air temperature, humidity, wind speed and module temperature (expressed in °C), and other data as deemed appropriate for calculating solar panel output including inverter efficiency, transformer efficiency and other Expected Losses (collectively, the “**Ambient Conditions**”), (C) the status of modules, inverters, MV

transformers, and MV/HV step-up transformer(s) as available from the SCADA system of the Facility; and (D) NEO, Generating Capacity, power factor and other data, as applicable, and (ii) communicates such data and the Expected NEO and Deemed NEO, in each case for each Time Interval of each Day. SELLER shall automatically collect and communicate the data in this paragraph (a) to PREPA via its SCADA system.

b. In collecting the required data, SELLER shall:

1. record average values over Time Intervals;
2. utilize a data logger on the Site and date-stamped collected data;
3. measure global solar irradiation on the plane of array of solar photovoltaic modules (“**GK**”) using pyranometers mounted in the plane of array of photovoltaic modules (the “**Reference Pyranometers**”), with a number of sensors adequate to provide reliable measurements; not change the location of such Reference Pyranometers without the prior written agreement of PREPA; and group global solar irradiation data into bins of fifty watts per square meter (50 W/m^2) or other such increments as recommended by the Consulting Technical Expert;
4. measure the ambient temperature, humidity and wind speed using sensors mounted at appropriate locations within the Facility (the “**Reference Ambient Sensors**”), adequate to provide reliable measurements of the Ambient Conditions; and not change the location of such Reference Ambient Sensors without the prior written agreement of PREPA;
5. calculate module temperature including inverter efficiency, transformer efficiency and other Expected Losses using Prudent Utility Practices, module characteristics, heat transfer coefficients and measured Ambient Conditions; and group such data into bins of five degrees Celsius (5°C) or other such increments as recommended by the Consulting Technical Expert; and
6. calibrate Reference Pyranometers and Reference Ambient Sensors based on manufacturer’s recommendations.

provided that, for any projection or forecast of Ambient Conditions that will occur in the future, the Parties shall determine Ambient Conditions based on the meteorological forecast for the region and site of the Facility during the relevant Time Intervals.

- c. The Facility Performance Model shall store and analyze the Ambient Conditions and other data required in paragraphs (a) or (b) above for each Time Interval in order to determine the relationship between the Expected NEO and Net Electrical Output. SELLER shall ensure that the Facility Performance Model uses this suite of relationships, each a power curve corrected for cell temperature and Expected Losses to calculate the Expected NEO for each Time Interval within plus or minus [five percent (5%)] of the actual Net Electrical Output of the Facility for any Billing Period.
- d. The Facility Performance Model shall provide a mathematical representation of the Facility, including its technical configuration, and provide the following outputs:
1. Actual and projected performance ratios;

2. Comparison of Expected NEO versus actual Net Electrical Output;
 3. Comparison of expected and actual average Generating Capacity;
 4. Expected and actual Ambient Conditions; and
 5. Forecasted values for Expected NEO over time periods required by this Agreement.
- e. At PREPA's request, SELLER shall report the status and outputs of the Facility Performance Model to PREPA or its designee in the following formats:
1. A hard copy of power curves showing binned values only;
 2. A hard copy scatter plot showing the individual average Time Interval values of underlying data and the model outputs calculated in subparagraph (c) above; and
 3. All raw data obtained from the SCADA system, Reference Pyranometers and Reference Ambient Sensors, in electronic format, to enable comparison of the raw data to the binned data.
- f. SELLER shall keep such model up-to-date and accurate as regards the Facility's performance and ensure that the NEO for any hour does not deviate from the Expected NEO applicable to such hour by more than [five percent (5%)], or such other accuracy as deemed reasonable in writing by the Parties. To improve the accuracy of the Expected NEO and reflect actual conditions of the Facility's equipment, including but not limited to panel degradation and other Expected Losses, SELLER shall calibrate the Facility Performance Model (i) on a quarterly basis, including at least thirty (30) Days prior to the start of each Agreement Year, and (ii) if the Expected NEO for any hour deviates from the actual NEO in such hour by more than five percent (5%), or other such accuracy as deemed reasonable in writing by the Parties, for any reason other than a PREPA Risk Event, then within three (3) Business Days of a Party becoming aware of such deviation.
- g. PREPA shall have the right to approve the Facility Performance Model and all changes to model parameters, which approval PREPA shall not unreasonably withhold or delay. The Parties shall validate all changes to such model of no less than thirty (30) Days. In each case, within ten (10) Business Days after receipt of each such proposed revisions, PREPA shall either approve such revisions or notify SELLER of further required revisions. SELLER shall submit its revised Facility Performance Model to PREPA within seven (7) Days after such notification, and PREPA shall notify SELLER of its approval or disapproval no later than seven (7) Days after such submittal. The failure of PREPA to respond within the applicable period, unless extended by mutual agreement, shall be deemed as approval by PREPA of SELLER's proposed Facility Performance Model for use in the determination of Expected NEO.
- h. The Parties acknowledge and agree that Disputes relating to the Facility Performance Model or determination of Generating Capacity, Expected NEO or Deemed NEO under this Appendix G shall constitute Technical Disputes.

3. Facility Availability

SELLER shall ensure that the Facility Performance Model, unless otherwise agreed in writing, determines the “**Facility Availability**” for any Time Interval of a given Day by using the following formula (subject to revisions agreed in writing between the Parties):

$$FA = \frac{\sum_{j=1}^k [WA]_j}{k}$$

where:

FA = Facility Availability calculated after “k” Time Intervals have elapsed;

j = the relevant Time Interval;

k = number of Time Intervals that have elapsed over the lesser of (i) the total number of Days since the Commercial Operation Date as of the date of such determination and (ii) thirty (30) Days; and

WA = weighted average of the availability of the Facility (considering that inverters may be of different capacities and contribute proportionately to the overall Generating Capacity), calculated for every Time Interval by using the following formula and capped at 1.0:

$$WA = \frac{\sum_{i=1}^n [UA_i \times UC_i]}{MDL}$$

where:

MDL = Maximum Dispatch Limit, expressed in kW;

UC_i = maximum rated AC capacity of inverter “i”, expressed in kW;

n = number of inverters in the Facility;

i = the relevant inverter; and

UA_i = availability of inverter “i”, determined for each Time Interval by recording and analyzing the AC power output at the inverter terminal using the following formula:

$$UA_i = \frac{T - U_E - U_I}{T - U_E}$$

where:

T = number of “k” Time Intervals with array irradiance at or above 100 W/m²;

U_E = number of Time Intervals from the “T” Time Intervals that constitute Event Intervals; and

U_I = number of Time Intervals from the “T” Time Intervals affected by failure or unavailability of inverter “i”, other than Event Intervals,

provided that, for any Time Interval, if the failure or unavailability of inverter “i” commences (i) during the first five (5) minutes of such Time Interval, then such Time Interval shall be taken into account in the calculation of U_E or U_I above, as applicable, and (ii) during the last five (5) minutes of such Time Interval, then such Time Interval shall not be taken into account in the calculation above.

4. Expected NEO

The Parties shall determine, and ensure that the Facility Performance Model determines, a projection of Net Electrical Output of the Facility for each Time Interval based on the actual Ambient Conditions during such interval, Facility Availability during such interval, Facility performance and Expected Losses (the “**Expected NEO**”) as follows (subject to revisions agreed in writing between the Parties):

- a. For the first Agreement Year, the Facility’s Expected NEO for any Time Interval “i” of a given Day “i” shall be based on the readings from the Reference Pyranometers, Ambient Sensors and the average performance of the Facility, corrected for cell temperature if significant, during the most recent seven (7) Days prior to such Day “i” in which no PREPA Risk Event occurred, as calculated in accordance with the following formula (subject to revisions agreed in writing between the Parties):

$$ENE_O_i = \frac{\sum_{j=1}^7 \left(\frac{NEO_j}{GK_j} \right)_j}{7} \times GK_i \times FA$$

where:

ENE_O_i = Expected NEO for Time Interval “i”, expressed in kWh;

NEO_j = NEO of the Facility for each Day “j”, expressed in kWh;

GK_j = global solar irradiance in the plane of array for each Day “j”, expressed in kWh, and determined by taking the product of (a) the solar irradiance measured by the Reference Pyranometer during such Day “j”, expressed in kWh/m², *multiplied by* (b) the area of the plane of array, expressed in m²;

j = the most recent seven (7) Days prior to Day “i” in which no PREPA Risk Event occurred, numbered from one (1) to seven (7);

FA = the average of the Facility Availability for the lesser of (i) the total number of Time Intervals since the Commercial Operation Date or (ii) the most recent thirty (30) Days of Time Intervals, in either case, prior to Time Interval “i” in which no PREPA Risk Event occurred; and

GK_i = global solar irradiance in the plane of array for Time Interval “i”, expressed in kWh, and determined by taking the product of (a) the solar irradiance measured by the Reference Pyranometer during Time Interval “i”, expressed in kWh/m², *multiplied by* (b) the area of the plane of array, expressed in m²; but capped for such Day “i” at [●].

- b. After the end of the first Agreement Year, the Facility’s Expected NEO for any Time Interval “i” shall be based on the Facility Performance Model and calculated using the following formula (subject to revisions agreed in writing between the Parties):

$$ENEO_i = \left(FA \times CC \times \frac{1 \text{ hour}}{6} \right)$$

where:

$ENEO_i$ = Expected NEO for Time Interval “i”, expressed in kWh;

FA = the average of the Facility Availability for the most recent thirty (30) Days of Time Intervals prior to Time Interval “i” in which no PREPA Risk Event occurred; and

CC = estimated Contract Capacity of the Facility during Time Interval “i”, as determined by the Facility Performance Model, expressed in kW.

5. Deemed NEO

The Parties shall determine the Deemed NEO for each Deemed NEO Period as follows:

- a. No later than five (5) Business Days after the Day in which such Deemed NEO Period occurs (the “**Event Day**”), SELLER shall notify PREPA of such Deemed NEO Period, and PREPA shall confirm the occurrence of the relevant PREPA Risk Event.
- b. The Parties shall compare the Expected NEO for such Deemed NEO Period, using the Facility Performance Model and data communicated through the SCADA system, with the actual Net Electrical Output of the Facility, if any, during such Deemed NEO Period, and determine the Deemed NEO for such Deemed NEO Period “n” as follows (subject to revisions agreed in writing between the Parties):

$$DNEO_n = (ENEO_n - NEO_n)$$

where:

$DNEO_n$ = Deemed NEO for Deemed NEO Period “n”;

$ENEO_n$ = Expected NEO for Deemed NEO Period “n”, expressed in kWh; and

NEO_n = NEO of the Facility for Deemed NEO Period “n”, expressed in kWh.

- c. Notwithstanding the foregoing, Deemed NEO shall equal zero (0) for any Deemed NEO Period in respect of which:

1. SELLER has not provided a Facility Performance Model approved by PREPA, which approval PREPA shall not unreasonably withhold;
2. SELLER fails to provide, or any interruption occurs to, the input data or outputs of the Facility Performance Model required in Section 2 (*Facility Performance Model*) to this Appendix G for such hour; or
3. $NEO_n \geq ENEO_n$, each as defined in paragraph (b) of this Section 5 of this Appendix G.

Where the Expected NEO and Deemed NEO have been determined, PREPA or SELLER may dispute the Deemed NEO calculated in terms of this Appendix G retrospectively, as a Technical Dispute, if the Deemed NEO calculated based on the Facility Performance Model proves to be different from the Deemed NEO calculated in terms of this Appendix G. Overpayments made by PREPA may be set-off against payment due by PREPA, and underpayments may be included in the invoice for the Billing Period after such underpayment was determined. The amount of the overpayment or underpayment determined in this paragraph shall bear Interest from the date of such overpayment or underpayment to, but excluding, the date of repayment or set-off, as the case may be.

APPENDIX H
FACILITY SITE

[●]¹⁶

¹⁶ Note: SELLER to provide schematic of Site

APPENDIX I

INTERCONNECTION DESCRIPTION AND SPECIFICATIONS

1. Description of the Interconnection Facilities

The electrical interconnection single line attached as Appendix I-1 (*Electrical Interconnection Single Line*) identifies the Interconnection Point, PREPA Interconnection Facilities, the Seller Interconnection Facilities, and metering locations.

2. Interconnection Point Specifications

SELLER shall perform and comply with the following interconnection specifications for the PREPA Interconnection Facilities. These specifications and standards do not constitute an all-inclusive scope of work. The Parties will require a Facility Study and a System Impact Study to determine the design as described in Article 3 (*Pre-Operation Period*).

a. Preliminary Scope of Work:

[PREPA to provide]

b. Codes and Standards Requirements:

All designs should be in accordance with the latest PREPA Design Criteria Documents , applicable ANSI/IEEE and NESC standards, and building codes. This includes:

1. the following design criteria documents (the “**PREPA Design Criteria Documents**” or “**DCDs**”):
 - i. PREPA Civil Design Criteria;
 - ii. PREPA Protection and Control Design Criteria;
 - iii. PREPA Substation Design Criteria;
 - iv. PREPA Transmission Design Criteria;
 - v. PREPA Distribution Design Criteria;
 - vi. PREPA Drawings and Specifications Design Criteria; and
 - vii. PREPA Telecommunication Design Criteria;
2. NECA/BICSI 607, Standard for Telecommunications Bonding and Grounding Planning and Installation Methods for Commercial Buildings;
3. American Concrete Institute (ACI) Design Codes and Construction Specifications;
4. American Institute of Steel Construction (AISC);
5. American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE);

6. American Welding Society (AWS);
7. American Wood Protection Association (AWPA);
8. Association of Edison Illuminating Companies (AEIC);
9. Building Industry Consulting Services International (BICSI);
10. Code of Federal Regulations (CFR);
11. Construction Specifications Institute (CSI);
12. Electric Power Research Institute (EPRI);
13. Federal Aviation Administration (FAA);
14. Federal Communications Commission (FCC);
15. Illuminating Engineering Society (IES);
16. Institute of Electrical and Electronics Engineers (IEEE);
17. Insulated Cable Engineers Association (ICEA);
18. International Electrotechnical Commission (IEC);
19. ITSIMM 6th Edition - Information Transport Systems Installation Methods Manual;
20. National Electrical Code (NEC);
21. National Electrical Manufacturers Association (NEMA);
22. National Electrical Safety Code (NESC);
23. National Fire Protection Association (NFPA);
24. NECA/BICSI 568, Standard for Installing Commercial Building Telecommunications Cabling;
25. North American Electric Reliability Corporation (NERC);
26. OSPDRM 5th Edition - Outside Plant Design Reference Manual;
27. Puerto Rico Building Code 2018;
28. Regulations per the Commonwealth of Puerto Rico;
29. Rural Utilities Service (RUS), United States Department of Agriculture;
30. RUS 1724E-300, U.S. Dept. of Agriculture Design Guide for Rural Substations;

31. TDMM 14th Edition - Telecommunications Distribution Methods Manual;
 32. Telecommunications Industry Association (TIA);
 33. ANSI/TIA 568.0-D, Generic Telecommunications Cabling for Customer Premises;
 34. ANSI/TIA 569-E, Telecommunications Pathways and Spaces;
 35. ANSI/TIA 606-C, Administration Standard for Telecommunications Infrastructure;
 36. ANSI/TIA 607-D, Generic Telecommunications Bonding and Grounding (Earthing) for Customer Premises;
 37. ANSI/TIA-1005-A, Telecommunications Infrastructure Standard for Industrial Premises; and
 38. ANSI/TIA-758-B, Customer-Owned Outside Plant Telecommunications Infrastructure Standard.
- c. Transmission Line Requirements:
1. SELLER shall perform the following tasks:
 - i. all ROW/Easement acquisition, including any studies, environmental permitting, real estate acquisitions, *etc.* required as per the Agreement;
 - ii. geotechnical soil borings, grounding tests, and studies along the transmission corridor and right of way;
 - iii. all applicable transmission designs and calculations typically found in typical transmission line design;
 - iv. stringing charts, engineered steel drawings, calculations, and PLS-CADD models of the transmission structures, including the applicable conductor size and OPGW (with 48 Fibers);
 - v. ampacity, shielding, and conductor sizing calculations for the transmission structure for the Interconnection Facilities;
 - vi. design and construction of foundations for transmission structures for the Interconnection Facilities;
 - vii. all transmission and distribution line design required for project completion; and
 - viii. evaluation of existing transmission and distribution poles that may be modified due to new conductors or equipment additions.
 2. PREPA shall review and provide comments on all SELLER's drawings, submittals and design inputs for SELLER's transmission line design.

d. Transmission Center, Substation, and Sectionalizer Requirements:

1. SELLER shall perform the following tasks:

- i. all real estate acquisitions, including land surveys, land segregation, acquisition of land title/deeds, *etc.*, studies (species, wetlands), and environmental permitting, *etc.* as required per the Agreement;
- ii. all required upgrades resulting from calculations and studies;
- iii. short circuit study, coordination studies, and settings;
- iv. geotechnical soil borings, grounding tests, and studies at the Interconnection Facilities;
- v. protection and control electrical design, following latest industry standards, *e.g.*, IEEE Standards and PREPA standards;
- vi. clearing, preparing the site, and civil design for the Interconnection Facilities, including vegetation removal and grading;
- vii. removal and disposal of the topsoil layer at the site for Interconnection Facilities (if required);
- viii. filling the site with adequate material (crushed stone) to bring to level and all adequate drainage of Interconnection Facilities;
- ix. connect the equipment grounds with the grounding mat;
- x. fill the site with six inches of gravel as per the grounding standard;
- xi. construction of retaining walls and/or fence around the site as required for a complete and secure site;
- xii. construction of new driveway / access road to the Interconnection Facilities as applicable;
- xiii. construction of the grounding mat on the site and connection to existing grounding mat;
- xiv. construction of foundations for the structures of the Interconnection Facilities;
- xv. installation of structures for the Interconnection Facilities;
- xvi. installation of equipment and auxiliaries for the Interconnection Facilities;
- xvii. installation of the meter sockets and metering equipment for billing of Net Electrical Output;

- xviii. provide all materials required to interconnect the new protection and control system with the existing one (if applicable), including, but not limited to, relay panel, breaker control panels, DC upgrades, *etc.*;
- xix. installation of equipment and auxiliaries in the control house for the Interconnection Facilities;
- xx. design of the new control house (if applicable) layout at Interconnection Facilities, including location, civil design, internal layout, electrical design for lightning, convenience outlets, battery bank, and 125Vac supply panels, disconnects, and other associated materials and localization areas for control and protection panels;
- xxi. install and wire the Dynamic System Monitor (DSM);
- xxii. install the control cables from the equipment to the control house;
- xxiii. install and wire the AC and DC distribution panels;
- xxiv. install and wire the 125 VDC battery bank and related auxiliaries as applicable;
- xxv. all applicable AC and DC sizing calculations and verifications;
- xxvi. install the wiring for the Transient Recorder as required by PREPA. For security reasons, PREPA's relay personnel will wire these signals from the terminal block to the Transient Recorder. In addition, SELLER shall provide the following signals for the Transient Recorder:
 - A. analog signals - Phase A, B, and C voltage signals;
 - B. analog signals - Phase A, B, and C current signals from each line CT;
 - C. digital 87L output - Output TRIP signals associated with the primary protection of each line;
 - D. digital BU output - Output TRIP signal associated with the secondary protection (21/50/51) of each line;
 - E. digital - Output TRIP signal associated with the breaker failure protection of each line;
 - F. digital - TRIP signal from bus differential protection; and
 - G. digital - Status signal from each breaker;
- xxvii. programming the settings on the protection equipment for the Interconnection Facilities;
- xxviii. cleaning, removal, and disposal of construction debris;

- xxix. label the high voltage and auxiliary electrical equipment according to PREPA's practices; and
 - xxx. provide all spare parts as specified by PREPA.
2. PREPA shall perform the following tasks:
- i. project oversight, schedule evaluation, monitoring, and authorizing scope of work modifications and deviations;
 - ii. evaluate submittals and design input for all design phases for the following packages:
 - A. civil and physical design for above and below grade for the new or modification to transmission center, substation or sectionalizer;
 - B. protection and control, telecommunications, electrical design, and programming;
 - C. transmission and distribution line design; and
 - D. shop drawings, technical data of equipment and materials, bill of material;
 - iii. evaluate all temporary and permanent modifications to the Interconnection Facility; and
 - iv. evaluate the proposed construction work outage sequence for the entire project coordination.
- e. Transmission Center/ Substation Remote End Requirements (Only applicable to a PREPA Interconnection Facilities that sectionalize an existing transmission line). The details of these remote end upgrades will be identified during the Facility Study and the System Impact Study but will primarily include relaying upgrades/replacements to match the new sectionalizer relaying. All Outages and construction work sequence plans will be coordinated with and approved by PREPA.
1. SELLER shall perform the following tasks:
- i. all required upgrades resulting from calculations and studies;
 - ii. protection and control electrical design, following industry standards, *e.g.*, IEEE Standards and PREPA standards;
 - iii. installation of equipment and auxiliaries for the Interconnection Facilities;
 - iv. provide all materials required to interconnect the new protection and control system with the existing one (if applicable), including, but not limited to, relay panel, breaker control panels, DC upgrades, *etc.*;
 - v. installation of equipment and auxiliaries in the control house for the Interconnection Facilities;

- vi. all applicable AC and DC sizing calculations and verifications;
- vii. programming the settings on the protection equipment for the Interconnection Facilities;
- viii. cleaning, removal, and disposal of construction debris;
- ix. install and wire the telecommunication equipment for the Interconnection Facilities;
- x. programming the communication settings for the relays, meters, and all miscellaneous equipment;
- xi. installation of conduits for control cables from the equipment to the control house;
- xii. installation of telecommunications pathways for the Interconnection Facilities, including conduits, cable trays, racks, among others;
- xiii. install telecommunications facilities and equipment, including all necessary jumper cables and peripherals, with telecommunications equipment labeling and color-coding in compliance with ANSI/TIA 606 Standard;
- xiv. install communications copper cable, including jumpers, and cross-connects and miscellaneous materials;
- xv. programming the telecommunications equipment (routers, firewalls, and network equipment);
- xvi. install the fiber optic terminations for protection relays at the Interconnection Facilities;
- xvii. install the wiring for the Transient Recorder as required by PREPA. For security reasons, PREPA's relay personnel will wire these signals from the terminal block to the Transient Recorder. In addition, SELLER shall provide the following signals for the Transient Recorder:
 - A. analog signals - Phase A, B, and C voltage signals;
 - B. analog signals - Phase A, B, and C current signals from each line CT;
 - C. digital 87L output - Output TRIP signals associated with the primary protection of each line;
 - D. digital BU output - Output TRIP signal associated with the secondary protection (21/50/51) of each line;
 - E. digital - Output TRIP signal associated with the breaker failure protection of each line;

- F. digital - TRIP signal from bus differential protection; and
 - G. digital - Status signal from each breaker;
 - xviii. provide a PREPA's site representative and the required technical resources from PREPA to comply with the construction milestone schedule.
- 2. PREPA shall perform the following tasks:
 - i. evaluate all drawings, submittals and design inputs for SELLER's remote end design;
 - ii. project oversight, schedule evaluation, monitoring, and authorizing scope of work modifications and deviations;
 - iii. evaluate submittals and design input for all design phases for the following packages:
 - A. protection and control, telecommunications, electrical design, and programming; and
 - B. shop drawings, technical data of equipment and materials, bill of material;
 - iv. evaluate all temporary and permanent modifications to the Interconnection Facilities; and
 - v. evaluate the proposed construction work outage sequence for the entire project coordination.
- f. Telecommunication Requirements (in addition to the requirements as identified in Section b):
 - 1. SELLER shall perform the following tasks:
 - i. install, wire, and program the SCADA Remote Terminal Units (RTUs) at the Interconnection Facilities and the Site;
 - ii. install and wire the telecommunication equipment for the Interconnection Facilities;
 - iii. programming the communication settings for the relays, meters, and all miscellaneous equipment connected to the RTU;
 - iv. installation of conduits for control cables from the equipment to the control house;
 - v. installation of telecommunications pathways at the Interconnection Facilities, including conduits, cable trays, racks, among others;

- vi. provide and install telecommunications equipment power systems, with telecommunications equipment labeling and color-coding to comply with ANSI/TIA 606 Standard;
 - vii. program the DSM with the signal list provided by PREPA;
 - viii. design of the control house layout at the Interconnection Facilities and collector Site includes location, civil design, internal layout, electrical design for lightning, convenience outlets, battery bank, and 125Vac supply panels, disconnects, and other associated materials and localization areas for SCADA, DSM, and telecommunications equipment;
 - ix. programming the telecommunications equipment (routers, firewalls, and network equipment); and
 - x. install the fiber optic connections, including 48-fiber OPGW, pathways, and terminations for the protection relays to allow the PREPA Interconnection Facilities to be fully operational.
2. PREPA shall perform the following tasks:
- i. review and comment on all submittals and design input for all design phases for the telecommunications packages; and
 - ii. support the integration of the new equipment into the overall PREPA Network.
- g. Commissioning and Testing Requirements:
1. SELLER shall perform the following tasks:
- i. all Outages and construction work sequence plans will be coordinated with and approved by PREPA;
 - ii. provide any revisions to the Testing Protocol and plans for PREPA's approval prior to performing any acceptance test and energization of any equipment;
 - iii. perform the acceptance and commissioning tests on the equipment and auxiliaries according to PREPA's practices and Applicable Standards at SELLER's collector site only, including voltage signals, current signals, relay outputs, breaker status, and cable continuity;
 - iv. perform grounding tests at all sites, including the transmission corridor;
 - v. perform testing on the interconnection of the transmission line;
 - vi. perform impedance testing to validate the proper installation of all transmission and high voltage conductors and bus;

- vii. perform tests for the wiring of protection and control systems, RTU, DSM, Transient Recorder, and others associated services for the Interconnection Facility;
- viii. perform adjustments and operation tests for the protection and control systems;
- ix. submit all test reports signed and sealed by a PR licensed electrical engineer for PREPA's review;
- x. perform preliminary testing of the protection, control and telecommunication system and the integration into SELLER's SCADA system. Depending on the type of alarm or signal into SELLER's SCADA system, PREPA personnel may act as a witness to validate the input. PREPA will perform final validation and acceptance of the SCADA integration;
- xi. perform operation tests for the telecommunication systems;
- xii. perform operation tests for the DSM;
- xiii. perform operation tests on the equipment and auxiliaries;
- xiv. perform operation tests for the transient recorder;
- xv. verification of the OTDR tests for fiber optic cable performed by SELLER for the following cables:
 - A. fiber cable between Interconnection Facilities and the Facility;
 - B. fiber cable for interconnection to PREPA's network;
 - C. fiber cable between new control room at Interconnection Facilities and meter cabinet located at the Interconnection Facilities; and
 - D. verification of Telecommunications facilities and equipment installations performed by SELLER at the Interconnection Facilities;

This work includes verification, testing, configuration, and inspection of equipment specified by PREPA and materials, cable installation, and testing by SELLER;

- xvi. provide a PREPA's site representative and the required technical resources from PREPA to comply with the Construction Milestone Schedule;
- xvii. witness all tests and commissioning of the electrical equipment installed at the Interconnection Facilities and the Site;
- xviii. submit all test protocols for PREPA approval; and
- xix. submit all test results in a test book for PREPA approval.

2. PREPA shall perform the following tasks:
 - i. evaluate the test results and settings of the protection relays for Interconnection Facilities;
 - ii. evaluate the test results and settings of the communication equipment at the Interconnection Facilities;
 - iii. witness all tests and commissioning of the electrical equipment installed in PREPA Interconnection Facilities;
 - iv. at existing PREPA sites where protection and control components are being updated, modified, or interconnected with, the tests should be done exclusively by PREPA;
 - v. perform final SCADA tests by PREPA acceptance test personnel from the point where SELLER consolidates SCADA data and transmits it to the PREPA SCADA system;
 - vi. perform the acceptance and commissioning tests on the equipment and auxiliaries according to PREPA's practices and Applicable Standards at the Interconnection Facility and remote ends; and
 - vii. perform end to end testing of all trips and controls by PREPA's Acceptance Tests Department personnel.
- h. Transfer of PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work): PREPA will provide the detailed requirements for the transfer of the PREPA Interconnection Facilities (including the transmission and distribution equipment, the real estate and ROW easements and environmental permitting and protection) no later than the Approved Design timeline as identified in paragraph (c) of Section 4.1 (*Proposed Design*). To initiate the transfer process, SELLER shall submit to PREPA:
 1. company name;
 2. contact person information;
 3. the physical address of the Site and PREPA Interconnection Facilities;
 4. segregation plan;
 5. schematic plan;
 6. previous due diligence for the acquisition of the property; if the land was financed by a bank, this document is required as part of the purchase and sale;
 7. copy and proof of submission of all required Permits, including the environmental Permits;
 8. this Agreement; and
 9. relevant deeds and leases.

3. Select Requirements for the Interconnection Construction Contract

SELLER shall ensure that it and the contractor under the Interconnection Construction Contract:

- a. disposes of all garbage generated because of the work, in accordance with the all Applicable Law;
- b. upon completion of the work, hands over the PREPA Interconnection Facilities work area free of contaminants;
- c. disposes of non-hazardous waste material generated by the PREPA Interconnection Facilities at an authorized landfill;
- d. complies with all environmental Laws, during and after construction, including:
 1. submission of the Project Environmental Assessment to and receipt of approval from the Department of Natural and Environmental Resources of Puerto Rico and any other environmental, state and municipality Permits for the Interconnection Facilities;
 2. all the terms and conditions established in the approvals of the submitted plans, Permits, and endorsement from Governmental Authorities; and
 3. upon the completion of the Interconnection Facilities, the closing of any of the acquired Permits that require closure.
- e. mitigates any environmental concerns and deficiencies found by PREPA's personnel or any regulatory agencies caused by them at any time.

APPENDIX I-1

ELECTRICAL INTERCONNECTION SINGLE LINE

[●]

APPENDIX J

PROGRESS REVIEW

1. Scope

The Consulting Technical Expert shall make comments and recommendations to SELLER in respect of:

- a. any aspect of the design (including surveys and drawings) of the Facility or PREPA Interconnection Facilities;
- b. any works performed pursuant to the Facility Construction Contract or the Interconnection Construction Contract, or other contracts related to the design or engineering of the Facility or the PREPA Interconnection Facilities; and
- c. the operation of the Facility.

2. Reviews and Inspections

- a. For the design of the Facility, the Interconnection Facilities or any other required report, SELLER shall submit an electronic copy of such document requested by the Consulting Technical Expert. SELLER shall deliver all electronic copies requested for review by email to the address specified in such request in a readily accessible format agreed with the Consulting Technical Expert. The Consulting Technical Expert may provide comments on selected documents and shall designate comments in accordance with Section 3 (*Designations and Subsequent Actions*) of this Appendix J.
- b. For works under paragraph (b) of Section 1 (*Scope*) of this Appendix J, SELLER shall take all reasonable measures to allow the Consulting Technical Expert to undertake inspections as required. The Consulting Technical Expert shall submit a report to SELLER within forty-eight (48) hours after completion of an inspection activity. This report shall contain comments designated in accordance with Section 3 (*Designations and Subsequent Actions*) of this Appendix J.
- c. For the operation of the Facility, SELLER shall take all reasonable measures to allow the Consulting Technical Expert to undertake inspections as required. The Consulting Technical Expert shall submit a report within twenty-one (21) Days after completion of an inspection. This report shall contain comments designated in accordance with Section 3 (*Designations and Subsequent Actions*) of this Appendix J.

3. Designations and Subsequent Actions

The designations of the relevant documents shall fall into one of the following categories:

- a. “*Reviewed/Inspected and accepted*”, meaning that the document, particular works or operation of the relevant component conform to the requirements of this Agreement. Such designation shall not relieve SELLER from any of its obligations or responsibilities under this Agreement or bind PREPA in respect of such document, particular works or operation of the relevant project component. If Consulting Technical Expert makes any comments under this designation, such comments shall take the form of suggestions for alternative

design, construction or operational procedures which may result in reduced cost, enhanced construction progress or contribute to ease of operation. SELLER shall have no obligation to adopt or respond to any such comments made under this designation.

- b. “*Reviewed/Inspected with comments*”, meaning the comments constitute a form of requests for further details or clarifications on the basis that the relevant document, works, or operation of the relevant component does not appear to conform with the requirements of this Agreement. Such identified issues shall be deemed to have been considered non-compliant by PREPA’s Consulting Technical Expert on that basis until such time as SELLER provides the required details and clarifications in a sufficiently satisfactory manner for the Consulting Technical Expert to reach a final decision. Following receipt and review of the requested details and clarifications, the Consulting Technical Expert shall then designate such matter as either “Reviewed/Inspected and accepted” or “Reviewed/Inspected and rejected as non-compliant” as may be appropriate.
- c. “*Reviewed/Inspected and rejected as non-compliant*”, meaning the comments constitute the rejection by the Consulting Technical Expert of the documents, works, or operation of the relevant component of the Facility or Interconnection Facilities on the basis that it does not comply with this Agreement, in which event the Consulting Technical Expert shall provide a statement setting out in adequate detail the reasons for such designation.

APPENDIX K

OPERATING CHARACTERISTICS

I. FACILITY DESCRIPTION

Facility name: [●]

Site name: [●]

Facility physical address: [●]

Total number of modules at the Facility: [●]

Project elevation: [●] (feet above sea level)

Project latitude: [●] (decimal form)

Project longitude: [●] (decimal form)

Technology type: [●]

Specific module description: [●]

[Provide detailed description, including the nameplate sizing of key equipment.]

Interconnection Point for the Facility will have characteristics as follows:

Distribution area: [●]

Existing zone: [●]

Load zone: [●]

Substation: [●]

Additional information: [●]

II. OPERATIONAL CHARACTERISTICS

[●]

APPENDIX L

MINIMUM TECHNICAL REQUIREMENTS

Capitalized terms used throughout this Appendix L have the meaning set forth in the Agreement, unless otherwise defined herein.

SELLER shall comply with the following MTRs:

1. Voltage Ride-Through

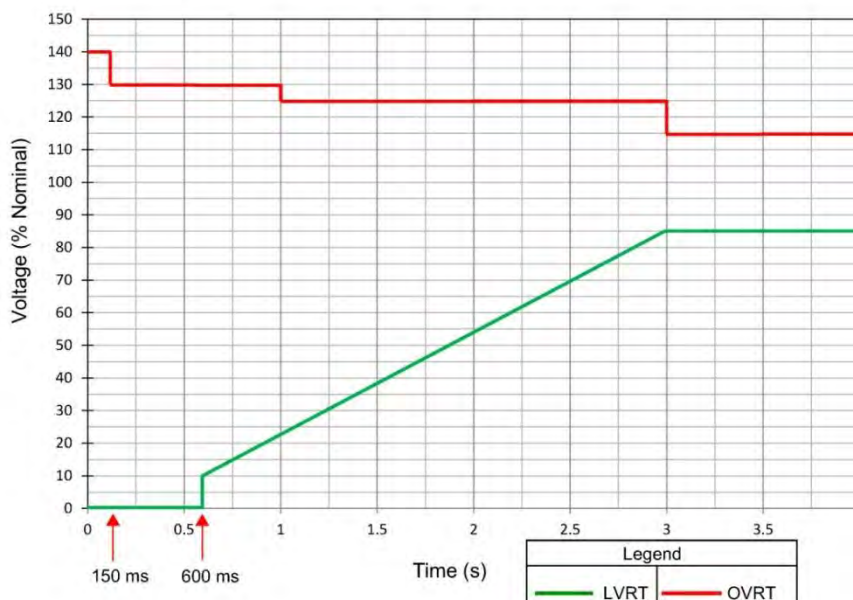


Figure 1 Voltage Ride-Through Requirements

- a. PREPA's Low Voltage Ride-Through (LVRT) Requirements:
 - i. From Figure 1, all generation shall remain online and able to ride-through three phase and single-phase faults down to 0.0 per-unit (measured at the point of interconnection), for up to 600 ms.
 - ii. All generation shall remain online and operating during and after normally cleared faults on the point of interconnection.
 - iii. All generation shall remain online and operating during backup-cleared faults on the point of interconnection.
 - iv. During low voltage fault conditions, the Facility shall operate on reactive current injection mode. This mode of operation shall be implemented with a reactive current droop characteristic, which shall have an adjustable slope from 1 to 5%. A dead band of 15 % is required.

b. PREPA's Overvoltage Ride-Through (OVRT) Requirements:

- i. All generation shall remain online and able to ride-through symmetrical and asymmetrical overvoltage conditions specified in the following values (illustrated in Figure 1 above):

Overvoltage (pu)	Minimum time to remain online
1.4 – 1.3	150 ms
1.3 – 1.25	1 s
1.25 – 1.15	3 s
1.15 or lower	indefinitely

2. **Voltage Regulation System (VRS)**

PREPA requires constant voltage control. Photovoltaic System technologies in combination with Static Var Controls, such as Static Var Compensators (SVCs) and STATCOMs are acceptable options to comply with this requirement. SELLER shall submit a complete and detailed description of the VRS control strategy for PREPA's evaluation.

- a. The Facility must have a continuously-variable, continuously-acting, closed loop control VRS; i.e. an equivalent to the Automatic Voltage Regulator in conventional machines.
- b. The VRS set-point shall be adjustable between 95% to 105% of rated voltage at the Interconnection Facilities (connection to PREPA TC, sectionalizer). PREPA's Energy Control Center (via SCADA) must have the ability to adjust the VRS set point.
- c. The voltage regulation at the Interconnection Facilities (connection to PREPA TC or sectionalizer) shall be based in direct measurement of the Interconnection Facilities (connection to PREPA TC or sectionalizer) voltage. Line drop compensation or similar strategies shall not be permitted.
- d. The VRS shall only operate in a voltage set point control mode. Controllers such as Power Factor or constant VAR are not permitted.
- e. The VRS controller regulation strategy shall be based on proportional plus integral (PI) control actions with parallel reactive droop compensation. The VRS Droop shall be adjustable from 0 to 10%.
- f. At zero percent (0%) droop, the VRS shall achieve a steady-state voltage regulation accuracy of +/- 0.5% of the controlled voltage at the Interconnection Facilities (connection to PREPA TC or sectionalizer).
- g. The VRS shall be calibrated such that a change in reactive power will achieve 95% of its final value no later than one (1) second following a step change in voltage. The change in reactive power should not cause excessive voltage excursions or overshoot. If a voltage overshoot is generated during a change in reactive power its value shall be less than 1%.

- h. The VRS must be in service at any time the Facility is electrically connected to the grid regardless of the Facility MW output.
- i. The VRS dead band shall not exceed 0.1%.

3. Reactive Power Capability and Minimum Power Factor Requirements

- a. The total power factor range shall be from 0.85 lagging to 0.85 leading at the Interconnection Facilities (connection to PREPA TC or sectionalizer). The reactive power requirements are necessary to provide support to the system operation based on the voltage profile and reactive power needs. The Facility shall ramp the reactive power from 0.85 lagging to 0.85 leading in a smooth continuous fashion at the Interconnection Facilities (connection to PREPA TC or sectionalizer).
- b. The +/- 0.85 power factor range should be dynamic and continuous at the Interconnection Facilities (connection to PREPA TC or sectionalizer). The Facility shall respond to power system voltage fluctuations by continuously varying the reactive output within the specified limits. The power factor dynamic range herein specified could be expanded if studies indicate that additional continuous, dynamic compensation is required. The Facility must have a reactive capability that meets +/- 0.85 Power Factor (PF) range based on the Facility Aggregated MW Output, which is the maximum MVar capability corresponding to maximum MW Output. Positive (+) PF means the Facility is producing MVar, and negative (-) PF means the Facility is absorbing MVar.
- c. The MVar capability at maximum output shall be sustained throughout the complete range of operation of the Facility as established in Figure 2. The MVar capability shall also be sustained throughout the complete Interconnection Facilities (connection to PREPA TC or sectionalizer) voltage regulation range (95% to 105% of rated voltage at the Interconnection Facilities).

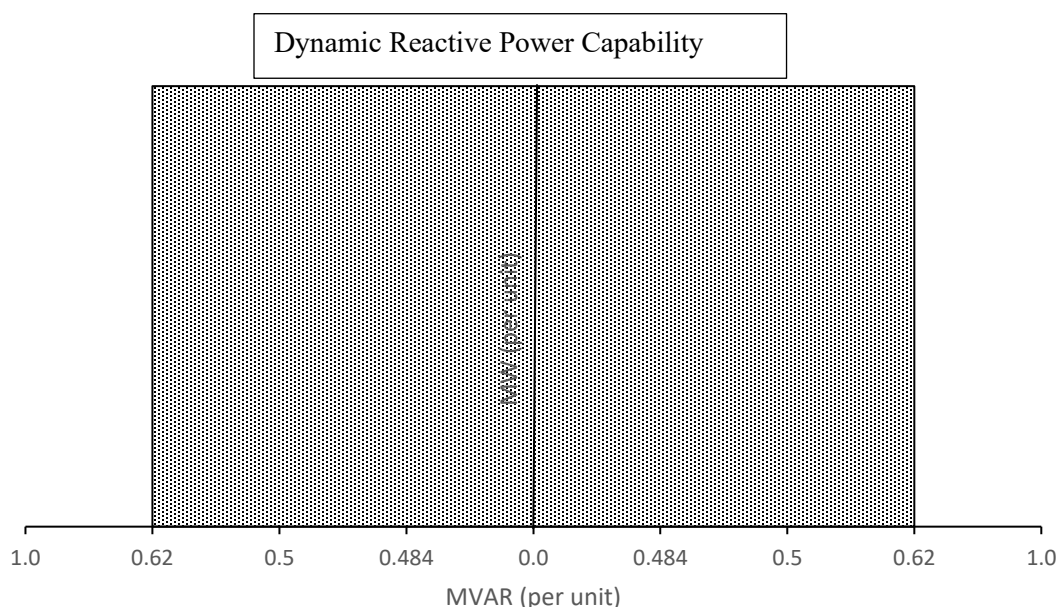


Figure 2 Reactive Power Capability Curve

4. Short Circuit Ratio (SCR) Requirements

PREPA does not permit Short Circuit Ratio values (System Short Circuit MVA at POI/PV Facility MVA Capacity) under 5. SELLER shall be responsible for the installation of additional equipment, such as synchronous condensers and controls, necessary to comply with PREPA's minimum short circuit requirements.

5. Frequency Ride Through (FRT)

57.5 - 61.5 Hz	No tripping (continuous)
61.5 - 62.5 Hz	30 sec
56.5 - 57.5 Hz	10 sec
< 56.5 or > 62.5 Hz	Instantaneous trip

6. Frequency Response/Regulation

- a. The Facility shall provide an immediate real power primary frequency response, proportional to frequency deviations from scheduled frequency, similar to governor response. The rate of real power response to frequency deviations shall be similar to or more responsive than the conventional generators' droop characteristic of 3-5% range. The Facility shall have controls that provide both for down-regulation and up-regulation. PV technologies, in combination with energy storage systems such as, but not limited to battery energy storage systems (BESS), and flywheels are acceptable options to comply with PREPA's frequency response and regulation requirements.
- b. The Facility response shall be proportional to the frequency deviation, based on the specified 3-5% range droop characteristic. The droop shall be configurable from 3% to 5% in steps of 0.5% (e.g. 3.0%, 3.5%, 4.0%, 4.5%, 5%). The frequency response dead band shall not exceed 0.02%. For large frequency deviations (i.e. in excess of 0.3 Hz), the Facility shall provide an immediate real power primary frequency response of at least 10% of the maximum AC active power capacity (established in the Agreement). The time response (full 10% frequency response) shall be less than one (1) second. Frequency response shall not be limited by, and shall be decoupled from, the ramp rate control. The frequency response of the Facility shall be continuously in operation, even during ramp rate events. After the two (2) decoupled functions are added together, the Facility shall be able to simultaneously comply with both requirements.
- c. If energy storage systems are utilized to comply with the frequency regulation requirements, and during a disturbance the system frequency stays below 59.7 Hz, the Facility frequency response shall be maintained for at least nine (9) minutes. After the ninth (9th) minute the real power primary frequency response shall not decrease at a ramp rate higher than 10% of the maximum AC active power capacity per minute. The energy storage systems utilized to comply with the frequency regulation requirement shall be designed based on a storage capacity equivalent to at least nine and a half (9.5) minutes of the 10 % AC contracted capacity measured at the Interconnection Facilities (connection to PREPA TC or sectionalizer) for downward and for upward frequency events. This represents an equivalent of nine (9) minutes full participation, plus one (1)-minute ramp down complying

with the ramp rate requirement. This energy will be used on a continuous basis for regulation against frequency deviations. During periods of time where the energy storage system utilized to comply with the frequency regulation requirement is completely charged (i.e. cannot absorb more power), the PV inverters will assume the responsibility of the upward frequency events. If the energy available for frequency regulation is drained, the function shall be restored in a time period less than ten (10) minutes and with at least 95% of the energy capacity restored. The energy charging process shall not affect the ramp rate control requirement or the frequency regulation of the grid.

- d. The operational range of the frequency response and regulation system shall be 10% to 110% of the maximum AC active power capacity (established in the Agreement). The Facility power output at the Interconnection Facilities (connection to PREPA TC or sectionalizer) shall not exceed the maximum AC active power (established in the Agreement) except to comply with the frequency response requirement.

7. Ramp Rate Control

- a. Ramp Rate Control is required to smoothly transition from one output level to another. The Facility shall control the rate of change of power output during certain circumstances, including but not limited to: (i) rate of increase of power; (ii) rate of decrease of power; (iii) rate of increase of power when a curtailment of power output is released; and (iv) rate of decrease in power when curtailment limit is engaged. PREPA requires a limitation of 10 % per minute (0.1667 % per second) rate based on AC contracted capacity. This ramp rate limit applies both to the increase and decrease of power output and is independent of meteorological conditions. The ramp rate control tolerance shall be +10%.
- b. The energy storage system utilized to comply with the ramp rate control requirement shall be designed based on a minimum storage capacity equivalent to twenty-five (25) minutes of the thirty percent (30%) AC contracted capacity measured at the Interconnection Facilities (connection to PREPA TC or sectionalizer). The minimum nominal power output capacity of the energy storage system utilized to comply with the ramp rate control requirement shall be thirty percent (30%) of AC contracted capacity measured at Interconnection Facilities (connection to PREPA TC or sectionalizer); and for at least one (1) minute, a minimum effective power output capacity of 45% of AC contracted capacity measured at the Interconnection Facilities (connection to PREPA TC or sectionalizer). The transition from effective power output capacity to nominal power output capacity shall not exceed the ramp rate requirement of 10% per minute.
- c. The Frequency Response/Regulation and Ramp Rate Control functions shall be decoupled, continuously in operation. The Facility shall be able to comply simultaneously with both requirements while generating and injecting power to the grid. For this reason, the energy storage system shall include, as a minimum: 10% of the contracted capacity for Frequency Response/Regulation for at least nine and a half (9.5) minutes (see Section 6 herein for details) and 30% of contracted capacity for Ramp Rate Control for at least twenty five (25) minutes. The energy storage system shall also be able to provide a minimum effective capacity of 45% of the contracted capacity for at least one (1) minute at the Interconnection Facilities (connection to PREPA TC or sectionalizer). Therefore, the minimum acceptable capacity for the energy storage system is a total combined size of 40% of the contracted capacity, and for at least one (1) minute, the system has to have an effective capacity of 45% of the contracted capacity.

- d. If the energy storage system cannot control the ramp rate as required herein because it does not perform according to the minimum required capabilities herein specified, the Facility will be considered in non-compliance. However, (i) rates of change in active power at the Interconnection Facilities (connection to PREPA TC or sectionalizer) in excess of the 10 % per minute rate requirement caused by the loss of generating resource (solar irradiance) that require more than the minimum storage capacity herein defined will not be considered non-compliant with the ramp rate control requirement, and (ii) if the ramp rate is controlled within the limits specified in the ramp rate control requirement, or if the storage system cannot control the ramp rate because it is outside of its minimum required capabilities, but performs as specified, the Facility will not be considered in non-compliance.

8. Auto-Curtailment

SELLER shall implement an auto-curtailment strategy for the Facility to address and compensate deficiencies that can affect the Facility compliance with the MTRs. The conditions to apply auto-curtailment include but are not limited to the following:

- a. A reduction on the reactive power capacity of the Facility (e.g. due to inverters out of service, or any other condition that can reduce the required reactive power capacity of the Facility).
- b. A reduction in the active power capacity of the energy storage system (e.g. loss of some of the battery strings, a BESS inverter out of service, or any other condition that can reduce the required active power capacity of the energy storage system).
- c. Loss of the Interconnection Facilities (connection to PREPA TC or sectionalizer) readings used for the different controls (voltage, frequency, ramp, etc.) of the Facility. This can happen due to a malfunction of the equipment used for the Interconnection Facilities (connection to PREPA TC or sectionalizer) readings. In this case the Facility should be curtailed to zero (0) output.
- d. A fault in the Voltage Control, Frequency Response Control, Ramp Rate Control. In this case the Facility should be curtailed to zero (0) output.
- e. Any other condition based in the Facility design that can cause a non-compliance with the MTRs.

SELLER must submit to PREPA a complete and detailed description of the auto-curtailment strategy for PREPA's evaluation.

9. Power Quality Requirements

SELLER shall address in the design of the Facility potential sources and mitigation of power quality degradation prior to interconnection. Design considerations should include Applicable Standards including, but not limited to IEEE Standards 142, 519, 1100, 1159, and ANSI C84.1. Typical forms of power quality degradation include, but are not limited to voltage regulation, voltage unbalance, harmonic distortion, flicker, voltage sags/interruptions and transients

10. Power Management

The Facility shall provide adequate technology (communicating technology and the corresponding control equipment) and implement PREPA's power management requirements (ramp rate limits, output limits, curtailment).

11. Special Protection Schemes

The Facility shall provide adequate technology and implement PREPA's special protection schemes, in coordination with power management requirements.

12. General Interconnection Substation Configuration

An interconnecting generation producer must interconnect at an existing PREPA switchyard, unless PREPA agrees otherwise in the Agreement. The configuration requirements of the interconnection depend on where the physical interconnection is to occur and the performance of the system with the proposed interconnection. The interconnection must conform, at a minimum, to the original designed configuration of the switchyard. PREPA, at its sole discretion, may consider different configurations due to physical limitations at the site.

13. Modeling and Validation

- a. Once final adjustments and parameter settings related with commissioning and MTR compliance tests are completed, SELLER shall submit a PSS/e Siemens – PTI Certified mathematical model and validation report.
- b. The mathematical model shall include but is not limited to PV inverters, transformers, collector systems, plant controllers, control systems and any other equipment necessary to properly model the Facility for both steady-state and dynamic simulation modules.
- c. SELLER must submit user manuals for both the PV inverter and the Facility models including a complete and detailed description of the voltage regulation system (VRS) and frequency regulation system model implementation. The mathematical models shall be fully compatible with the latest and future versions of PSS/E. SELLER shall use PSS/E standard models. In case that SELLER submits user written models, SELLER shall be required to keep such models current with the future versions of the PSS/E program until such time that PSS/E has implemented a standard model. SELLER shall submit to PREPA an official report from Siemens – PTI that validates and certifies the required mathematical models, including subsequent revisions. The SELLER shall be responsible of submitting the official reports and certifications from Siemens – PTI, otherwise the mathematical model shall not be considered valid.
- d. SELLER shall be responsible to submit Siemens – PTI certified PSS/E mathematical models of any kind of compensation devices (e.g. SVC, STATCOMs, BESS, etc.) used on the Facility. SELLER shall use standard models provided with PSS/E. In the case that SELLER submits user written models, SELLER shall keep these models current with the future versions of the PSS/E program until such time that PSS/E has implemented a standard model. In its final form, the mathematical model shall be able to simulate each of the required control and operational modes available for the compensation device and shall be compatible with the latest and future versions of PSS/E. The model shall reflect final adjustments and parameters settings related with the control system commissioning process

and shall be incorporated to the PSS/E mathematical model and tested accordingly by the PV facility SELLER and PREPA system study groups. SELLER shall be responsible of submitting the official reports and certifications from Siemens – PTI, otherwise the mathematical models shall not be considered valid.

- e. If SELLER provides user written model(s), it shall provide compiled code of the model and maintain the user written model compatible with current and new releases of PSS/E until such time a standard model is provided. SELLER must permit PREPA to make available the Facility models to external consultants with a non-disclosure agreement in place.
- f. SELLER shall submit a PSS/E model validation report. This report shall demonstrate PSS/E simulation results that show the model MTR compliance and performance, based on final adjustment and parameter settings of MTR and commissioning field tests. SELLER shall be responsible of submitting the official reports and certifications from Siemens – PTI, otherwise the mathematical models shall not be considered valid.
- g. Additional details for the adequate PSS/E modelling and the contents of the PSS/E validation report can be found in PREPA’s “Guidelines on PSS/E Mathematical Models” document.

14. Transient Mathematical Model

SELLER shall be responsible of providing a detailed transient model of the PFV and to demonstrate that it is capable of complying with PREPA’s transient MTRs.

15. Dynamic System Monitoring Equipment

SELLER shall be required to provide, install and commission a dynamic system monitoring equipment that conforms to PREPA’s specifications.

APPENDIX M
OPERATING PROCEDURES

[●]

APPENDIX N
TESTING PROTOCOL
[●]

APPENDIX O

TECHNICAL SPECIFICATIONS FOR THE DYNAMIC SYSTEM MONITOR

I. Introduction

The following specification defines the minimum requirements for an instrument used in the monitoring and registration of dynamic disturbances on electric power systems and the supervision of source performance according to Grid Codes.

II. Hardware

a. Inputs:

1. The equipment shall have at least 32 analog inputs with the capacity to increase them to a minimum of 96 inputs depending on the application required analog signals. The minimum resolution for the A/D converter shall be 16 bit. The sampling rate shall be programmable up to a minimum of 250 samples per cycle (15000 samples per second). The analog inputs shall permit at least the following types of signals:
 - i. PT voltage (150 V rms minimum, Accuracy better or equal to 0.3%);
 - ii. CT currents (5 A rms minimum, Accuracy better or equal to 0.3%);
 - iii. DC voltages of at least 800 V (Accuracy better or equal to 0.3%);
 - iv. Small Analog Signals (Accuracy better or equal to 0.3%);
 - A. Current: 4 – 20 mA; and
 - B. Voltage: 0 – 200 mV, 1V, 10 V;
2. The equipment shall have at least 16 digital inputs with the capacity to increase them to a minimum of 48 inputs depending on the application required digital signals. The minimum input voltage range of the digital inputs should be 0 – 150 V. The digital inputs should be included as a user defined software triggering input.
3. The equipment shall be able to record power system frequency with a resolution of at least 0.001Hz.

- b. The equipment shall have a built-in micro-processing unit with color monitor, keyboard and mouse from which all commands, controls and setup parameters may be entered. All setup parameters shall be store in a non-volatile medium, to prevent loss of setup data if power is interrupted. This micro-processing unit shall be of industrial grade to insure long life in a typical substation or generation plant environment.

c. Memory and storage capacity:

The equipment shall have a nonvolatile solid state memory (ex. SSD, flash, *etc.*) with the required capacity to stores at least one (1) Year of continuous data based in typical recording periods and typical recording rates. Also, the memory shall have a minimum

storage capacity of 1,000 RMS trigger events and 1,000 Instantaneous trigger events based in typical recording rates and recording periods. Typical recording periods and recording rates are:

- i. RMS Trigger Recording Function (Recording rate of 1 sample per cycle on all the signals)
 - A. Pre-Trigger: 60 seconds
 - B. Post –trigger: 300 seconds
- ii. Instantaneous Values Trigger Recording Function (recording rate of 250 samples per cycle on all instantaneous signals)
 - A. Pre-Trigger: 1 second
 - B. Post-Trigger: 2 seconds
- iii. Continuous Recording Function -The recording rate is one (1) sample per second on all the signals. This recording function is continuous, but saved in twenty-four (24) hour periods.

All the recording functions mentioned above shall work simultaneously. The equipment shall maintain the date and time in an internal battery-backed clock.

d. Communication:

The equipment shall have at least two Ethernet 10/100/1000 Mbps port (LAN interface, TCP/IP Protocol) for local and remote network communication.

e. Power Source:

The equipment shall have a redundant power supply. Two separate inputs (one AC and one DC) 100 – 240 VAC, 60 Hz and 100 – 150 DC. Some applications could require DC supply of 48 VDC + 10%, verify before the equipment acquisition.

f. Measurement accuracy:

1. Voltage measurement error shall be less than + 0.3 % of reading.
2. Current measurement error shall be less than + 0.3% of reading.

III. Software

- a. The software platform of the equipment shall be compatible with the latest version of Microsoft Windows operating system.
- b. The equipment remote communication shall be thru TCP/IP network connectivity (LAN). The remote communication should permit at least the set up and data retrieval of the equipment. The equipment should have the capability to perform at least the following functions remotely:

1. Modification of the configuration;
 2. Retrieval of captured events; and
 3. Remote event triggering.
- c. The equipment shall have the capacity of time synchronization with GPS system. A GPS receiver and GPS antenna shall be included.
- d. Triggers:
1. The equipment shall support user defined programmable triggers. Triggering shall be initiated based upon primary quantities (voltage, current, and frequency), calculated quantities (watts, Var, power factor, apparent power, *etc.*), digital signals or small analog signals.
 2. The trigger thresholds shall be based on limits, gradients, equations and status. Examples of trigger conditions that shall be available are:
 - i. Level threshold (high level, low level, in-band, out-band, *etc.*);
 - ii. Rate of change (ex. frequency variation (df/dt));
 - iii. Manual input (keyboard trigger);
 - iv. Request from remote computer; and
 - v. Event input status (digital signal status).
 3. A re-trigger function shall be available which permits the equipment to generate a new event register if a second disturbance is detected while the recording of the first disturbance is still in process. This process should continue if more disturbances occur in the new registers.
- e. The acquisition software shall include a user defined pre-trigger interval option as well as a user defined post trigger interval for the information captured in the case of triggered events. The minimum range of the pre-trigger interval should be from 0 to 60 seconds and the minimum range for the post trigger interval should be 0 to 300 seconds. In addition, the date, time, and type of trigger that initiated the event shall be included as part of the disturbance record.
- f. The acquisition software shall have the following capabilities:
1. Time displays (ex. Oscilloscope);
 2. Digital Status display (ex. High/Low, 1/0);
 3. Multiple displays and multiple signals in displays in real time and off-line;
 4. Display resizing;
 5. Programmable conversion of range and units of signals; and

6. Independent range for signals.
- g. The acquired data shall be available in a format directly compatible with Siemens Power Technologies International (Siemens PTI) PSS/E plotting software.
- h. The software shall support data export in ASCII, CSV and PSS/E formats.
- i. The software shall support image export in JPG, BMP or WMF formats.
- j. The software shall have the following analysis capabilities for the data and signals (primary and calculated):
 1. Fast Fourier Transform (FFT);
 2. Peak analysis;
 3. Filter functions; and
 4. Series and scalar mathematic (square root, inversion, square, sum, gain, offset, *etc.*).
- k. The software shall perform the following power engineering calculations (on-line and off-line) and measurements:
 1. Three phase and single phase Power (Real, reactive, apparent);
 2. Power Factor;
 3. Power angle;
 4. rms line and phase voltage;
 5. rms current;
 6. Power system frequency;
 7. DC voltage and currents; and
 8. AC voltage and currents.

IV. General

- a. Environmental Conditions:
 1. Operating temperature: 0° C to 50° C; and
 2. Operating humidity: 95 %, non-condensing.
- b. Equipment cabinet and corresponding accessories:
 1. The cabinet should have test switches at the front of the panel for the three phase voltages and currents. The test switches should have a minimum rating of 600 V

rms and 30 A rms; semi flush mounted, rear connected, equal or similar to ABB FT-1, style no. 129A514G01. The test switches should be assembled horizontally in groups of three FT-1 switches per row, mounted on a 19 inches wide, three-rack unit (3RU) high panel suitable for rack mounting, similar to ABB FR3J014014014.

2. The signals (analog and digital) should terminate on terminal blocks inside the cabinet, before the connection to the Dynamic System Monitor. The AC, DC, digital, exciter voltage and exciter current signals should be in different terminal blocks. The terminal blocks should have a minimum rating of 600 V rms and 30 A rms (except the exciter voltages signals, see below). Examples of terminal blocks are: GE CR151B2 and Marathon 1512 STD. The current signals should terminate on shorting type heavy duty terminal blocks equal or similar to Marathon, catalog number 1506SC. The terminal blocks used for the excitation voltage of the generators must have a nominal voltage capacity greater than 800 V DC. A switch or breaker for isolation purposes is also required for the excitation voltage and current signals.

c. Documentation:

1. The equipment shall include a documentation package that contains the user, operation and maintenance manuals and the mechanical and electrical equipment drawings. The documentation should be in hard copy and in digital format.
2. The equipment documentation shall include a copy of the software.

d. Spare parts recommended by the equipment manufacturer shall be included in the dynamic system monitor purchase order.

e. Warranty:

1. The equipment warranty shall include part and service for a period not less than sixty (60) Months from the delivery day.
2. Equipment Training, Installation Support and Commissioning:
 - i. An on-site equipment operation and configuration training should be included; and
 - ii. The dynamic system monitor manufacturer shall perform the equipment commissioning and offer installation support.

APPENDIX P

TECHNICAL REQUIREMENTS FOR OPERATION, PROTECTION, & CONTROL

- I. SELLER shall provide general protection practices, which comply with PREPA's written protection system practices and DCDs, in all the electrical equipment related to the Interconnection Facilities according to the standards and PREPA requirements in order to ensure personnel safety and secure operation and interconnection with PREPA's systems. SELLER has responsibility for the design, accurate relay settings (in accordance with the Approved Design) and testing of the protection that shall contain the evaluated Seller Interconnection Facilities' settings. PREPA will evaluate and approve only the protection design, settings and tests of the Seller Interconnection Facilities related to PREPA's system stability, security and optimal performance. Those protection designs, settings and tests of the Seller Interconnection Facilities not related to PREPA's system stability, security and optimal performance will not be evaluated by PREPA.
- II. As further defined in Article 3 (*Pre-Operation Period*) and Appendix I (*Interconnection Description and Specifications*), SELLER shall have responsibility for any protection related equipment, relays, scheme design, coordination and short circuit studies, and relay settings of all the protection equipment within PREPA's installation and remote terminals necessary to safely synchronize the Interconnection Facilities according to the latest technology and standards. For the avoidance of doubt, this includes the protection from (a) the PREPA Interconnection Facilities breaker to the Seller Interconnection Facilities and (b) the differential protection relay from the Seller Interconnection Facilities to PREPA's Interconnection Facilities.
- III. SELLER shall submit a complete Seller Interconnection Facilities protection report with all relay settings, including all calculations and considerations for the relay settings in addition to coordination and short circuit studies. In addition to the foregoing, the report shall also provide, including but not limited to, the following:
 - a. The approved Seller Interconnection Facilities design single line drawings shall have all the equipment information and all the relay's input and output descriptions;
 - b. The Seller Interconnection Facilities relay settings shall include the logic, inputs, and outputs according to the Approved Design;
 - c. The backup overcurrent protection units of the Seller Interconnection Facilities relay shall be set so that PREPA does not provide short circuit current for more than one second;
 - d. The transformer from the Seller Interconnection Facilities to PREPA shall have Delta – WYE configuration to avoid zero sequence current contribution from the Facility during faults at the electrical system;
 - e. The Seller Interconnection Facilities transformer protection shall be set so that the Seller Interconnection Facilities does not provide short circuit current to PREPA or disconnects instantly;
 - f. The Seller Interconnection Facilities transformer protection shall provide an overvoltage protection unit on the delta side of the transformer to disconnect the Seller Interconnection Facilities during ground faults on the delta side of the transformer; and

- g. SELLER shall provide all the equipment data of the Seller Interconnection Facilities for PREPA's protection studies such as capacity, transformer and line impedances, current and voltage transformer ratios and information and short circuit duty, among others.

For the avoidance of doubt, PREPA does not assume, calculate or interpret any required item from manuals, graphs or relay curves, and SELLER shall ensure that it includes all the required data in the report upon first submittal.

APPENDIX Q

PERFORMANCE GUARANTEE

SELLER hereby guarantees to PREPA that, for each Agreement Year, the Facility will make available no less than one hundred percent (100%) of the P50 Energy Yield at the Interconnection Point. If for any Agreement Year, the aggregate Net Electrical Output of such Agreement Year falls below one hundred percent (100%) of the P50 Energy Yield for such Agreement Year, then SELLER shall grant PREPA a credit (the “**Annual Shortfall Credit**”) determined in accordance with the following formula:

$$ASC = (RER - BR) \times EQS$$

where:

ASC	=	Annual Shortfall Credit, expressed in \$;
RER	=	replacement energy rate of \$0.170/kWh;
BR	=	Base Rate, expressed in \$/kWh; and
EQS	=	the energy quantity shortfall equal to the difference between the applicable P50 Energy Yield and the aggregate Net Electrical Output for such Agreement Year, expressed in kWh.

PREPA shall have the right to use the Annual Shortfall Credit to offset its payment obligations hereunder to SELLER beginning with the first invoice of the subsequent Agreement Year, and continuing until PREPA has received full value for such Annual Shortfall Credit. In the event that any such unapplied Annual Shortfall Credit exists as of the end of the Supply Period, SELLER shall pay PREPA an amount equal to such unapplied credit no later than ninety (90) Days after the Termination Date.

APPENDIX R

FORM OF SWORN STATEMENT

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 the 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 the 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 complies 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____.

Affidavit No. _____

Representative's Signature

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

APPENDIX S

FORM OF FOMB CERTIFICATION

CONTRACTOR CERTIFICATION REQUIREMENT

SELLER shall provide the following certification to FOMB and the Commonwealth's Contracting Government Entity, signed by its Chief Executive Officer (or equivalent highest rank officer):

Unless the context otherwise requires, capitalized terms have the meanings defined in the Power Purchase and Operating Agreement dated [●] (the "**Agreement**").

1. SELLER's subcontractor(s) in connection with the Agreement (including any amendments, modifications or extensions) is (are) the following:

(Name of individual or firm, including names of principals or owners of the latter)

(Principal terms and conditions of the contractual relation and role of the subcontractor)

(Amount of proposed contract payable to each subcontractor)

2. Neither SELLER nor any of its owners (including any Person or entity with more than a ten percent (10%) ownership interest in SELLER), partners, directors, officials or employees, has agreed to share or give a percentage of SELLER's compensation under the Agreement to, or otherwise compensate, any third party, whether directly or indirectly, in connection with the procurement, negotiation, execution or performance of the contract, except as follows:

(Name of individual or firm, including names of principals or owners of the latter)

(Principal terms and conditions of the compensation sharing arrangement and consideration for such benefit)

3. To the best knowledge of the signatory (after due investigation), no Person has unduly intervened in the procurement, negotiation or execution of the contract, for its own benefit or that of a third Person, in contravention of Applicable Law.
4. To the best knowledge of the signatory (after due investigation), no Person has: (i) offered, paid, or promised to pay money to; (ii) offered, given or promised to give anything of value to; or (iii) otherwise influenced any public official or employee with the purpose of securing any advantages, privileges or favors for the benefit of such Person in connection with the Agreement (such as the execution of a subcontract with SELLER, beneficial treatment under the contract, or the written or unwritten promise of a gift, favor, or other monetary or non-monetary benefit).
5. Neither SELLER, nor any of its owners, partners, directors, officials or employees or, to the best of its knowledge (after due investigation), its representatives or sub-contractors, has required, directly or indirectly, from third Persons to take any action with the purpose of influencing any public official or employee in connection with the procurement, negotiation or execution of the contract, in contravention of Applicable Law.
6. Any incorrect, incomplete or false statement made by SELLER's representative as part of this certification shall cause the nullity of the proposed contract and SELLER must reimburse

immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under the Agreement.

The above certifications are hereby signed under penalty of perjury by the [Chief Executive Officer (or equivalent highest rank officer)] in the following form:

“I hereby certify under penalty of perjury that the foregoing is complete, true and correct.”

By:

Date:

Signature:

APPENDIX T

FORM OF CONDITIONS PRECEDENT CERTIFICATE

CONDITIONS PRECEDENT CERTIFICATE

Date: [●]

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

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

To: [●] (“**SELLER**”)

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

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

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

Very truly yours,

Acknowledged and agreed,

[●]
as SELLER

Puerto Rico Electric Power Authority
as PREPA

[●]

[●]

APPENDIX U

FORM OF CONSTRUCTION START DATE CERTIFICATE

CONSTRUCTION START DATE CERTIFICATE

Date: [●]

From: [●]

To: [●]

We refer to the Power Purchase and Operating Agreement between PREPA and SELLER dated [●] (the “PPOA”). Unless the context otherwise requires, capitalized terms used in this Construction Start Date Certificate shall have the meanings ascribed to them in the PPOA.

We hereby certify that SELLER has:

- a. obtained all Permits, authorizations and real property rights needed to start construction of the Facility [and the PREPA Interconnection Facilities];
- b. secured the necessary financing and Equity (which Shareholders have contributed) for the construction of the Facility and the PREPA Interconnection Facilities (including the execution of documents between SELLER and the Project Lenders that include binding commitments which, together with Equity, provide for one hundred percent (100%) of the total capital cost of the Facility and PREPA Interconnection Facilities, other than the amount to be funded by Equity) and satisfied all conditions associated with, and made, the initial draw of funds for such construction under the financing documents with the Project Lenders, except to the extent that the capital has not yet been expended and such use constitutes a condition to the initial draw;
- c. entered into the Facility Construction Contract, the Interconnection Construction Contract and any other agreements necessary to make the Product available to PREPA in accordance with the PPOA;
- d. received PREPA’s confirmation of the Approved Design;
- e. maintains the Performance Security required by the PPOA in full force and effect; and
- f. given each of its primary contractor(s) under the Facility Construction Contract [and the Interconnection Construction Contract] a full, unconditional notice to proceed with construction of the Facility [and PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work)], respectively.

The Construction Start Date occurred on [●].

Very truly yours,
[●]
as SELLER

Acknowledged and agreed,
Puerto Rico Electric Power Authority
as PREPA

[●]

[●]

APPENDIX V

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

COMMERCIAL OPERATION DATE CERTIFICATE

Date: [●]

From: [●] (“SELLER”)

To: Puerto Rico Electric Power Authority

We refer to the Power Purchase and Operating Agreement between PREPA and SELLER dated [●] (the “PPOA”). Unless the context otherwise requires, capitalized terms used in this certificate shall have the meanings ascribed to them in the PPOA.

We hereby certify that:

- a. as demonstrated by the Initial Performances Tests, (i) SELLER has completed the installation, testing and commissioning of the Facility and the PREPA Interconnection Facilities in accordance with this Agreement, (ii) the Facility can make available a Generating Capacity (as adjusted for Ambient Conditions at the time of testing in accordance with the Testing Protocol and without exceeding the limits of the Approved Design) that meets or exceeds the Maximum Dispatch Limit (or, to the extent that the Maximum Dispatch Limit exceeds such Generating Capacity, (1) SELLER has credited PREPA for all Liquidated Damages required by the PPOA in respect thereof, and (2) such Generating Capacity meets or exceeds the Minimum Acceptance Capacity) and satisfies the Other Minimum Acceptance Criteria, and (iii) the Facility can make available Net Electrical Output that corresponds to such Generating Capacity at the Interconnection Point on a continuous basis, in each case, in accordance with Prudent Utility Practices and the PPOA;
- b. SELLER has obtained, and maintains in force, all material Permits required for the operation of the Facility; and
- c. the Facility and the PREPA Interconnection Facilities comply in all material respects with Applicable Law.

The Commercial Operation Date occurred on [●].

Very truly yours,

[●]
as SELLER

Acknowledged and agreed,

Puerto Rico Electric Power Authority
as PREPA

[●]

[●]

APPENDIX W

FORM OF PERFORMANCE SECURITY

IRREVOCABLE STANDBY LETTER OF CREDIT

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

Beneficiary: PUERTO RICO ELECTRIC POWER AUTHORITY

Reference No.: [●]

Address: [●]

Attn:[●]

Date of Issuance: [●]

[PREPA-/SELLER Name/ Power Purchase and Operating Agreement] – Performance Security No.

[●]

We understand that *[insert name of SELLER]* (the “*Applicant*”) has entered into a contract with you, Beneficiary, dated [●] (as amended, the “*Agreement*”), which requires a Performance Security in the form and amount of this irrevocable standby letter of credit (“*Letter of Credit*”).

At the request of the Applicant, we *[name of Bank]*, hereby issue this Letter of Credit and irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [●] United States Dollars (USD [●]) in each case upon receipt by us of your first demand in writing at the Place of Presentation listed below in person, by registered or certified mail or by international overnight courier service, substantially in the form attached as Annex A hereto (signed by your authorized representative and appropriately completed) (“*Demand*”), without your needing to prove or to show grounds for your Demand or the sum specified therein. We shall remit all payment(s) under this Letter of Credit into a bank account of your choice and discretion as specified in your Demand. You may make one or more Demands under this Letter of Credit. Partial drawings are permitted.

Any Demand made by Beneficiary in accordance herewith shall be conclusive evidence that the sum stated in such Demand is properly due and payable to Beneficiary under this Letter of Credit. We shall have no right and shall not be under any duty or responsibility to enquire into the reason or circumstances of any Demand made by Beneficiary or the respective rights and/or obligations and/or liabilities of Beneficiary and the Applicant under the Agreement. Any discrepancy between the explicit terms hereof and the Rules (defined below) shall be read in favor of the terms set forth in this Letter of Credit.

Place of Presentation: *[insert address of Bank branch where Beneficiary presents a Demand]*.

We shall, within five (5) business days after receipt of any Demand served from time to time by Beneficiary, pay to Beneficiary in immediately available funds the lesser of: (a) the amount specified in the Demand; and (b) the then applicable amount remaining on the Letter of Credit. If a Demand made by Beneficiary hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, then we shall give Beneficiary, within two (2) business days after receipt of such Demand, notice that such Demand was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reason therefore. Upon being notified that a Demand was not made in conformity with this Letter of Credit, Beneficiary may attempt to correct such non-conforming Demand. Our obligations under this Letter of Credit are primary and not by way of surety or guarantee.

[This Letter of Credit shall enter into force and effect upon expiry of Performance Security No. [●], dated [●] and issued by [●].] [NTD: *Insert this language if this is a replacement Letter of Credit.*]

This Letter of Credit shall expire on [date] but such expiration date shall be automatically extended for a period of one (1) year on [one year anniversary of prior date] (“**Expiry Date**”), and on each successive expiration date thereafter, unless at least one hundred twenty (120) calendar days before the then current Expiry Date we notify both Beneficiary and Applicant that we have decided not to extend this Letter of Credit beyond the then current Expiry Date. Any such notice shall be delivered by registered or certified mail, or by FedEx, both to:

Beneficiary at:

[●]

And to Applicant at:

[●]

In the event Beneficiary and Applicant are so notified by us pursuant to the immediately preceding sentence, Beneficiary may draw any amount or the entire amount available under this Letter of Credit by Beneficiary’s presentment, at the Place of Presentation, of a drawing certificate duly signed in substantially the form of Annex A attached hereto appropriately completed. In no event shall the Expiry Date of this Letter of Credit be subject to automatic extension beyond sixty (60) calendar days after the expiration of the Agreement term, and any pending automatic one-year extension shall be ineffective beyond such date. The Expiry Date does not affect our liability to make payment of any demand received prior to the Expiry Date.

This Letter of Credit is subject to ICC International Standby Practices 1998 (ISP 98), International Chamber of Commerce Publication No. 590 (the “**Rules**”). For matters not addressed by the Rules, this Letter of Credit is governed by and to be construed in accordance with the laws of [*jurisdiction of the Qualified Bank*]. In the event of a conflict between the terms of this Letter of Credit and the Rules, ICC Publication No. 758, the terms of this Letter of Credit shall prevail.

The courts of the [*United States federal courts in the Commonwealth of Puerto Rico*] shall have exclusive jurisdiction in respect of all disputes arising out of this Letter of Credit (including, without limitation, the enforceability of this Letter of Credit).

By:
Authorized Signatory

ANNEX A - FORM OF DRAWING CERTIFICATE

[Letterhead of Beneficiary]

[Name of Issuing Bank]

Date: [●]

[Insert Work Description] – Performance Security No. [●]

We refer to the above-captioned irrevocable standby letter of credit, with reference number [●] (“**Letter of Credit**”). Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to them in the Letter of Credit or the Agreement. We hereby inform you that:

1. a Construction Start Termination Event, a COD Termination Event, or a Default (as defined in the Agreement) by Applicant or the owing by Applicant to Beneficiary has occurred under the Agreement for penalties or any other liabilities, damages, losses, costs or expenses arising out of or relating to a breach of any obligation under the Agreement by Applicant, such as Default or otherwise, or the Agreement provides that Beneficiary may draw on the Letter of Credit, entitling us to call upon the Letter of Credit; or
2. Applicant failed to commence or carry out work required to rectify any defect and/or damage during the Defects Liability Period in accordance with the Agreement; or
3. applicant owes Beneficiary Liquidated Damages under and in accordance with the Agreement; or
4. you no longer meet the requirements of a Qualified Bank (as defined below) and twenty-one (21) calendar days or more have elapsed since the date on which you no longer met such requirements, and the Applicant has not delivered to Beneficiary a replacement letter of credit that is substantially identical to the Letter of Credit, meeting the requirements of the Agreement. “Qualified Bank” means a national bank, national association, commercial bank or other financial institution registered in the United States, having a branch located within Puerto Rico or the contiguous United States, and otherwise acceptable to Beneficiary that has a long-term issuer rating of at least (i) if headquartered within Puerto Rico, then “B+” by Standard & Poor’s Ratings Services, “B1” by Moody’s Investors Services Inc., or “B+” by Fitch Ratings Inc. or (ii) if headquartered outside of Puerto Rico, then “A-” by Standard & Poor’s Ratings Services, “A3” by Moody’s Investors Services Inc., or “A-” by Fitch Ratings Inc., or in each case if the relevant rating agencies cease to engage in business or rate the obligations in question, then an equivalent rating from another internationally recognized rating agency selected by Applicant with the written consent of Beneficiary; provided that, if such financial institution’s ratings satisfy such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications; or
5. twenty-one (21) or less calendar days remain before the current Expiry Date, the Applicant’s obligation to maintain the Letter of Credit under the Agreement extends beyond such Expiry Date, and the Applicant has not delivered to Beneficiary a replacement Letter of Credit substantially identical to the Letter of Credit and meeting the requirements of the Agreement.

This letter serves as our demand for payment under the Letter of Credit. 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,

[*The Puerto Rico Electric Power Authority*]

By:
Authorized Signatory

APPENDIX X

FORM OF DIRECT AGREEMENT

DIRECT AGREEMENT

THIS DIRECT AGREEMENT (“**Direct Agreement**”) dated [●], 2021, is entered into among: (i) the Puerto Rico Electric Power Authority, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by an Act of 23 May 1941, No. 83, as amended (the “**Consenting Party**”), (ii) [●] (together with its successors, designees and permitted assigns in such capacity, the “**Administrative Agent**”) and (iii) [●] (the “**Assignor**”). All capitalized terms used herein and not otherwise defined in this Direct Agreement shall have the respective meanings set forth in the Assigned Agreement (as defined below). The principles of interpretation and construction set forth in the Assigned Agreement shall apply to, and are hereby incorporated by reference as if fully set out in, this Direct Agreement, *mutatis mutandis* and as if any references to “this Agreement” and “Party” in such provisions were references to, respectively, “this Direct Agreement” and “the parties hereto”.

RECITALS

WHEREAS:

- (A) the Assignor (as seller) and Consenting Party (as buyer) have entered into that certain Power Purchase and Operating Agreement, dated as of [●] (as amended, restated or supplemented, the “**Assigned Agreement**”), pursuant to which the Assignor will develop a [●] MW Facility at the Site, (ii) interconnect the Facility with the Grid System, and (iii) sell the Net Electrical Output of the Facility exclusively to the Consenting Party, and the Consenting Party will purchase energy from the Facility built by the Assignor;
- (B) Pursuant to Section 19.3 (*SELLER’s Right to Assign*) of the Assigned Agreement, the Consenting Party has agreed to use commercially reasonable efforts to cooperate with any financing efforts of the Assignor, and the Assignor may assign its rights to payment under the Assigned Agreement to Project Lenders as security for its obligations to any such lender in connection with any financing of the development and construction of the Facility;
- (C) [The Assignor has entered into that certain [Credit Agreement], dated as of [●] (as amended, restated or supplemented, the “**Credit Agreement**”), among Project Lenders from time to time party thereto (together with the Administrative Agent, each, a “**Secured Party**”, and, collectively, the “**Secured Parties**”) and the Administrative Agent, pursuant to which such Project Lenders will make loans to the Assignor to, among other things, finance the construction of the Facility; and
- (D) The Assignor has entered into that certain Security Agreement, dated as of [●] (as amended, restated or supplemented, the “**Security Agreement**”), among the Assignor, the other subsidiary guarantors from time to time party thereto and the Administrative Agent, pursuant to which each of the Assignor and such subsidiary guarantors have granted to the Administrative Agent, for the ratable benefit of the Secured Parties, a security interest in certain property as collateral security for the prompt and complete payment and performance when due of such entities’ obligations under the Credit Agreement.]

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. NOTICE OF ASSIGNMENT

The Assignor hereby gives notice to the Consenting Party that pursuant to the Security Agreement, the Assignor has pledged and assigned to the Administrative Agent, for the benefit of the Secured Parties, and granted to the Administrative Agent a security interest in, all of the Assignor's right, title and interest in, to and under the Assigned Agreement pursuant to the Security Agreement (the "**Assigned Interest**"), as collateral security for the obligations of the Assignor under the Credit Agreement.

2. PAYMENTS UNDER THE ASSIGNED AGREEMENT

2.1 Billing Arrangements

The Consenting Party agrees that, unless and until it has been notified in writing by the Administrative Agent that the Security Agreement has been terminated, the Consenting Party will pay all amounts payable by it under the Assigned Agreement directly to the Assignor at such account as may be specified in a written notice delivered by the Administrative Agent and the Assignor to the Consenting Party. The Assignor authorizes and acknowledges the foregoing and agrees that any payment made consistent with this Section 2.1 shall be treated for all purposes as a payment made directly to the Assignor under the terms of the Assigned Agreement.

2.2 No Set-Off Except as Provided Under Assigned Agreement

The Consenting Party agrees that in making payments in respect of the Assigned Agreement, it will not offset any amounts owed to it by the Assignor except as provided under the Assigned Agreement.

3. RIGHTS OF ADMINISTRATIVE AGENT

3.1 Exercise of the Assignor's Rights and Remedies

If the Administrative Agent provides written notice to the Consenting Party that an event of default has occurred under the Credit Agreement and that the Administrative Agent desires to exercise its rights and remedies pursuant to the Security Agreement, the Administrative Agent or any Substitute Provider (as defined below) shall be entitled to exercise any and all rights of the Assignor under the Assigned Agreement in accordance with the terms of this Direct Agreement and the Assigned Agreement. The Consenting Party agrees to accept such exercise by the Administrative Agent or any Substitute Provider and continue its performance under the Assigned Agreement in accordance with the terms thereof.

3.2 Right to Cure

Upon the occurrence of an event of default by the Assignor under the Assigned Agreement, or upon the occurrence or non-occurrence of any other event or condition which would enable the Consenting Party to terminate its obligations under the Assigned Agreement (herein called a "**default**"), the Consenting Party will not terminate its obligations under the Assigned Agreement until it first gives to the Administrative Agent (i) the written notice required to be given to Assignor by the Assigned Agreement specifying the nature of the default giving rise to such right (and in the case of a payment default, specifying the amount thereof); and (ii) the opportunity to cure such default for a period of ten (10) days,

in the case of a payment default, and thirty (30) days, in the case of a non-payment default, which may be coincident with the applicable cure period, if any, set forth in the Assigned Agreement for the Assignor to cure such default, so long as the Administrative Agent has commenced and is diligently pursuing appropriate action to cure such default and continues to perform all other obligations under the Assigned Agreement (unless performed by the Assignor).

3.3 No Liability

Except during any period in which the Administrative Agent or any Secured Party (or any of their respective designees or assignees) constitutes a Substitute Provider, the Consenting Party acknowledges and agrees that neither the Administrative Agent nor any Secured Party (or any of their respective designees or assignees) shall have any liability or obligation under the Assigned Agreement as a result of this Direct Agreement except to the extent of their respective interest in the Assigned Agreement, the Credit Agreement or the Security Agreement, nor shall the Administrative Agent or any Secured Party (or any of their respective designees or assignees) be obligated or required to perform any of the Assignor's obligations under the Assigned Agreement or to take any action to collect or enforce any claim for payment assigned under the Security Agreement. No curing of any defaults under the Assigned Agreement shall be construed as an assumption by the Administrative Agent or any Secured Party (or any of their respective designees or assignees) of any of the obligations, covenants or agreements of the Assignor under the Assigned Agreement.

3.4 Substitution: Transfer

- (a) The Consenting Party agrees that, notwithstanding anything to the contrary in the Assigned Agreement, if the Administrative Agent shall notify the Consenting Party in writing that an Event of Default (as defined in the Credit Agreement) has occurred and is continuing under the Credit Agreement and that the Administrative Agent desires to exercise its rights and remedies pursuant to the Security Agreement, then a Substitute Provider may be substituted for the Assignor under the Assigned Agreement. In such event, the Consenting Party will continue to perform its obligations under the Assigned Agreement in favor of the Substitute Provider, subject, in any event, to all of the Consenting Party's rights and remedies thereunder, but recognizing that the Substitute Provider's obligations under the Assigned Agreement shall be limited to the Substitute Provider's interest in the Facility and all revenues and proceeds derived therefrom. In the event that the Substitute Provider succeeds to the Assignor's interest under the Assigned Agreement, whether by foreclosure or otherwise, the Substitute Provider shall not be liable for curing or performing or be required to perform or cause to be performed any of the defaults under the Assigned Agreement that were, by their nature, incapable of being cured or performed.
- (b) If the Assigned Agreement is rejected or terminated by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding involving the Assignor, and if within ninety (90) days after such rejection or termination the Administrative Agent shall so request, a Substitute Provider and the Consenting Party will promptly execute a new agreement that shall be for the balance of the remaining term under the Assigned Agreement (before giving effect to such rejection or termination) and shall contain the same agreements, terms and conditions as the Assigned Agreement. If the approval of any such trustee or debtor in possession or any regulatory approval is necessary in order for the Consenting Party to enter into or perform under any such new agreement, the Consenting Party shall cooperate with the Administrative Agent or Substitute Provider in obtaining such approvals.

“**Substitute Provider**” means, in respect of any assignment, transfer or sale permitted hereunder (each a “**transfer**”) any person, including the Administrative Agent, any Secured Party, or the Administrative Agent’s or any Secured Party’s designee or assignee, if the transfer is made to the Administrative Agent or a Secured Party, or any purchaser of the Assigned Interest in a foreclosure sale or otherwise, who: (i) is at least as creditworthy (taking into account any credit support provided by such person) as the Assignor on the date of such transfer, (ii) is properly licensed or otherwise authorized to perform the Assignor’s obligations under the Assigned Agreement, is a counterparty with whom the Consenting Party is not prohibited from transacting under the regulatory regime then-applicable to the Assigned Agreement, and has provided the certifications and documentation required by Appendix B (*Signing Conditions*) of the Assigned Agreement, but construing references to SELLER therein as references to such new provided; (iii) meets the Consenting Party’s internal credit policies as reasonably and consistently applied solely with respect to the maximum potential credit exposure of the Consenting Party to such person (it being understood that the determination of the amount of such credit exposure shall take into account the then current creditworthiness of such person and any collateral or guaranties posted for the benefit of such person), and otherwise has a tangible net worth of at least twenty-five million dollars (\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least seventy-five million dollars (\$75,000,000)); (iv) has provided, to the extent requested, all documentation and other information required by bank regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations (including, without limitation, the Patriot Act, rules and regulations of the Office of Foreign Assets Control and other similar client identification policies and procedures) as well as all documentation required by the Assigned Agreement (including as signing conditions) and Puerto Rico law; (v) has not formally threatened in writing or commenced any litigation proceeding against the Consenting Party and is not subject of any formal written threat of litigation issued or of any litigation proceeding initiated by the Consenting Party; (vi) is or has engaged, in the Consenting Party’s sole discretion, a Qualified Operator to develop, construct, test, commission, operate, maintain and repair a project similar to the one contemplated by the Assigned Agreement, to deliver energy to the Consenting Party from such a project and otherwise fulfil the Assignor’s obligations under the Assigned Agreement.

4. REPRESENTATIONS

The Consenting Party represents that:

- 4.1 The Consenting Party 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 conduct its business, to own its properties, and to execute and deliver, and to perform its obligations under, this Direct Agreement.
- 4.2 The execution, delivery and performance by the Consenting Party of this Direct Agreement have been duly authorized by all necessary corporate action and do not and will not (i) require any consent or approval of any Governmental Authority or the board of directors, members or partners (or equivalent persons), as the case may be, of the Consenting Party which has not been obtained, (ii) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Consenting Party, or (iii) violate or result in a breach of or constitute a default under, or require a consent that has not been obtained under or result in the creation of a lien under, its certificate of incorporation or by-laws or any indenture or loan or credit

agreement or any other material agreement, lease or instrument to which the Consenting Party is a party or by which it or its properties may be bound or affected.

- 4.3 This Direct Agreement has been duly executed and delivered by the Consenting Party and constitutes the legal, valid and binding obligation of the Consenting Party enforceable against it in accordance with its terms, except as enforceability may be limited by general principles of equity and by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally. This Direct Agreement is in full force and effect.
- 4.4 No authorization, approval, consent, permit or other action by, or registration or filing with, any governmental authority or any other entity is necessary for or in connection with the execution or delivery by the Consenting Party of, or the performance by the Consenting Party of any of its obligations under this Direct Agreement, other than those which have been duly obtained or made and are final and non-appealable and in full force and effect as of the date hereof.
- 4.5 No litigation, action, suit, adverse proceeding or investigation before or by any arbitrator or government authority is pending or, to the best knowledge of the Consenting Party, threatened in writing against the Consenting Party or against any of its properties or revenues (i) with respect to this Direct Agreement or any of the transactions contemplated hereby or thereby; or (ii) which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the ability of the Consenting Party to perform its obligations under this Direct Agreement.

5. RESERVATION OF RIGHTS

The parties hereto agree that notwithstanding the terms of Sections 1 and 2 above, each of the Consenting Party and the Assignor reserves any and all rights and remedies (including those relating to set-off, counterclaim, deduction or retention) it may have under the Assigned Agreement or applicable law. The rights reserved by each of the Consenting Party and the Assignor under the Assigned Agreement and applicable law are cumulative and not exclusive of any rights it may have under the Assigned Agreement and/or applicable law.

6. MISCELLANEOUS

6.1 Notices

All notices and other communications hereunder shall be in writing and delivered to the applicable recipient pursuant to this Section 6.1: (i) if to the Consenting Party or to the Assignor, in accordance with the Assigned Agreement; (ii) if to the Administrative Agent, [●] or (iii) to such other address or facsimile number as any party may designate by notice given to all parties hereto pursuant to this Section 6.1. Delivery of notices and communications sent pursuant to this Section 6.1 shall be effective upon receipt.

6.2 Governing Law

THIS DIRECT AGREEMENT AND ALL QUESTIONS REGARDING ITS VALIDITY, INTERPRETATION, PERFORMANCE AND/OR ENFORCEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE COMMONWEALTH OF PUERTO RICO WITHOUT REGARD TO ANY CONFLICT-OF-LAW PRINCIPLES OF SUCH COMMONWEALTH OR OTHER

JURISDICTION TO THE CONTRARY. JURISDICTION AND VENUE OF ANY SUIT OR ACTION TO ENFORCE THIS DIRECT AGREEMENT SHALL REST SOLELY IN [THE UNITED STATES FEDERAL COURTS IN THE COMMONWEALTH OF PUERTO RICO] AND EACH OF THE PARTIES HERETO HEREBY SUBMITS TO THE PERSONAL JURISDICTION OF SUCH COURTS FOR THE PURPOSE OF RESOLVING ANY AND ALL MATTERS ARISING UNDER OR IN RESPECT OF THIS DIRECT AGREEMENT AND AGREES THAT PERSONAL SERVICE UPON EACH SUCH PARTY MAY BE MADE BY DELIVERY THEREOF TO SUCH PARTY AT THE ADDRESS SPECIFIED HEREIN.

6.3 Waiver of Jury Trial

EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS DIRECT AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

6.4 Counterparts

This Direct Agreement may be executed by any number of, and on separate, counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. A facsimile or .pdf copy of a counterpart signature page shall serve as the functional equivalent of a manually executed copy for all purposes.

6.5 Headings Descriptive

The headings of the several sections and subsections of this Direct Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Direct Agreement.

6.6 Severability

In case any provision in or obligation under this Direct Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.7 Amendment

Neither this Direct Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by each party hereto.

6.8 Successors and Assigns

This Direct Agreement shall be binding upon the successors and assigns of the Consenting Party and inure, together with the rights and remedies of the Assignor and the Administrative Agent, to the benefit of the Assignor and the Administrative Agent.

/SIGNATURES APPEAR ON THE FOLLOWING PAGE./

IN WITNESS WHEREOF, the parties hereto have caused this Direct Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year above written.

PUERTO RICO ELECTRIC POWER AUTHORITY

by

Name:

Title:

[●] as Administrative Agent

by

Name:

Title:

APPENDIX Y

FORM OF IF COMPLETION NOTICE

IF COMPLETION CERTIFICATE

Date: [●]

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

From: [●] (“SELLER”)

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

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

We hereby certify that, on [date], SELLER has substantially completed and tested the Interconnection Facilities in accordance with paragraphs (a) and (b) of Section 4.4 (*Pre-Synchronization Testing*) of the PPOA.

As required by paragraph (c) of Section 4.4 (*Pre-Synchronization Testing*) of the PPOA, a copy of the red line drawing used for the construction of the Interconnection Facilities is attached to this document.

Very truly yours,

Acknowledged and agreed,

[●]
as SELLER

Puerto Rico Electric Power Authority
as PREPA

[●]

[●]

APPENDIX Z

FORM OF SUBSTANTIAL COMPLETION NOTICE

SUBSTANTIAL COMPLETION NOTICE

Date: [●]

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

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

To: [●] (“**SELLER**”)

We refer to the Power Purchase and Operating Agreement dated [●] between PREPA and SELLER (the “**PPOA**”). Unless the context otherwise requires, capitalized terms used in this Substantial Completion Notice shall have the meanings ascribed to them in the PPOA.

PREPA, in consultation with the Consulting Technical Expert, has determined that SELLER has constructed the Interconnection Facilities and the Facility in accordance with the Approved Design. Nothing in this certificate relieves or waives any obligation that SELLER might have under the Agreement.

The Parties shall proceed with Initial Synchronization and testing pursuant to Article 5 (*Synchronization, Testing & Completion*).

Very truly yours,

Acknowledged and agreed,

[●]
as SELLER

Puerto Rico Electric Power Authority
as PREPA

[●]

[●]

APPENDIX AA

FORM OF WARRANTY COMPLIANCE CERTIFICATE

WARRANTY COMPLIANCE CERTIFICATE

Date: [●]

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

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

From: [●] (“**SELLER**”)

We refer to the Power Purchase and Operating Agreement dated [●] between PREPA and SELLER (the “**PPOA**”). Unless the context otherwise requires, capitalized terms used in this Warranty Compliance Certificate shall have the meanings ascribed to them in the PPOA.

I have reviewed the representations and warranties made by SELLER under Article 12 (*Representations, Warranties, & Covenants*), and, on behalf of SELLER, confirm and certify to PREPA the truth and correctness of such representations and warranties on the date hereof.

Very truly yours,

[●]
as SELLER

[●]

APPENDIX BB

FORM OF PAYMENT GUARANTEE

THIS PAYMENT GUARANTEE AGREEMENT (the “**Payment Guarantee**”), is entered into as of [●] day of [●], by [●], a [type of entity] organized and existing under the laws of [jurisdiction] with its principal office at [●] (the “**Guarantor**”), in favor of **PUERTO RICO ELECTRIC POWER AUTHORITY**, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by Act of May 2, 1941, No. 83, as amended, with its principal office at 1110 Ponce de León Avenue, Office #808, San Juan, Puerto Rico (together with any successor or permitted assign under the PPOA (as defined below), the “**Beneficiary**”);

WHEREAS:

- A. [●], a [type of entity] organized and existing under the laws of [jurisdiction] (the “**Company**”) has entered into the Power Purchase and Operating Agreement, dated [●], with the Beneficiary (as amended, the “**PPOA**”);
- B. (i) the PPOA obligates the Company to deliver this Payment Guarantee to the Beneficiary as one of the conditions precedent for its effectiveness, and (ii) the Guarantor has agreed to execute and deliver this Payment Guarantee; and
- C. the Guarantor (i) holds a direct or indirect ownership interest of [●] percent ([●] %) of the Company on the date hereof, and (ii) expects as an affiliate of the Company to derive commercial benefits from the PPOA as a result of such ownership interest;

NOW, THEREFORE, in consideration of the premises and mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the Guarantor hereby acknowledges, the Guarantor and the Beneficiary (each, a “**Party**” and collectively, the “**Parties**”) hereby agree as follows:

1. DEFINITIONS

1.1. General.

In this Payment Guarantee:

“**Banking Day**” means any day other than a Saturday, a Sunday or any other day on which Applicable Law authorizes, or requires, commercial banks in New York City to be closed.

“**Beneficiary**” has the meaning set out in the preamble of this Payment Guarantee.

“**Company**” has the meaning set out in the Recital (A) of this Payment Guarantee.

“**Guaranteed Obligations**” has the meaning set forth in Section 3.1 (*Guaranty*).

“**Guarantor**” has the meaning set out in the preamble of this Payment Guarantee.

“**Payment Guarantee**” has the meaning set forth in the preamble of this Payment Guarantee.

“PPOA” has the meaning set forth in Recital (A) of this Payment Guarantee.

“Term” has the meaning set forth in Section 4.7 (*Term*);

“Unrestricted Net Worth” means, with respect to the Guarantor, the sum of (i) the subscribed and paid-up equity (including additional paid-in capital), and (ii) the Unrestricted Retained Earnings, in each case of the Guarantor.

“Unrestricted Net Worth Requirement” means an Unrestricted Net Worth of at least [●].¹⁷

“Unrestricted Retained Earnings” means, with respect to the Guarantor, the amount of accumulated profits and gains realized out of the normal and continuous operations of the Guarantor after deducting distributions to stockholders and transfers to capital stock or other accounts, and which is (i) not appropriated by its board of the Guarantor for corporate expansion projects or programs; (ii) not covered by a restriction for dividend declaration under a loan agreement; (iii) not required to be retained under special circumstances binding on the Guarantor such as when there is a need for a special reserve for probable contingencies; and (iv) not otherwise covered by any other legal restriction (which refers to any injunction, judgement, or order issued by any judicial authority) on the ability of the Guarantor to distribute or otherwise apply its equity.

1.2. Other Defined Terms.

The capitalized terms “Applicable Law”, “Closing Date”, “Commercial Operation Date”, “Default”, “Insolvency Event”, “Person” and “PREB” shall have the meanings set forth in the PPOA.

2. **GUARANTOR’S REPRESENTATIONS & COVENANTS**

2.1 Representations.

The Guarantor makes the following representations to the Beneficiary as of the date hereof:

- a. the Guarantor has been duly organized and is validly existing and in good standing under the Applicable Laws of [*jurisdiction*], has full legal right, power and authority to enter into, and carry out the terms and provisions of, this Payment Guarantee, and by proper corporate action has duly authorized the execution, delivery and performance of this Payment Guarantee;
- b. the execution and delivery of, and performance of its obligations under, this Payment Guarantee by the Guarantor will not conflict with, or constitute on the part of the Guarantor a breach of or default under, its relevant organizational documents or any indenture or other material agreement or instrument to which the Guarantor is a party or by which it or its properties are bound or any order, law, rule or regulation of any court or governmental agency or body having jurisdiction over the Guarantor or any of its activities or properties;
- c. this Payment Guarantee has been duly authorized, executed and delivered by the Guarantor and constitutes the valid and legally binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except to the extent that applicable

¹⁷ Insert amount equal to the greater of (A) thirty percent (30%) of the estimated costs of the Company’s proposed project, and (B) \$75 million.

bankruptcy, insolvency, reorganization, moratorium or other Applicable Laws affecting the enforcement of creditors' rights generally and general equitable principles may limit enforceability of this Payment Guarantee;

- d. the Guarantor does not require a notice to, authorization, approval, consent or order of, or registration or filing with, any court or governmental agency or body having jurisdiction over the Guarantor or any of its activities or properties for the execution, delivery and performance of this Payment Guarantee; and
- e. the Guarantor (i) holds a direct or indirect ownership interest of [●] percent ([●] %) of the Company, and (ii) satisfies the Unrestricted Net Worth Requirement.

2.2 Covenants

During the Term, the Guarantor undertakes to:

- a. (i) satisfy the Unrestricted Net Worth Requirement on a continuous basis at all times, and (ii) prior to the expiration of the first quarter of each calendar year during the Term, deliver to Beneficiary a certified true and correct copy of audited financial statements, Form 10-Ks or similar types of audited annual reports for the previous calendar year, evidencing that the Guarantor satisfied the Unrestricted Net Worth Requirement for such previous calendar year;
- b. hold and maintain a direct or indirect ownership interest of at least [●] percent ([●] %) of the Company; and
- c. maintain its existence, and not dissolve, sell or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or permit one or more other corporations to consolidate with or merge into it.

3. **PAYMENT GUARANTY**

3.1. General

The Guarantor absolutely, unconditionally and irrevocably guarantees to the Beneficiary, as primary obligor and not merely as surety, the full and prompt payment by the Company of all of the Company's payment obligations under the PPOA to the Beneficiary when and as due (whether by required prepayment, declaration, acceleration, demand or otherwise) arising during the period that commences on the Closing Date and expires on the Commercial Operation Date, including, without limitation, payment obligations in respect of any Default under the PPOA by the Company, and including all fees, costs, and expenses. (collectively, the "**Guaranteed Obligations**"). This Payment Guaranty constitutes a continuing guaranty of payment and not of collection.

3.2. Indemnity

As an independent and primary obligation, the Guarantor shall indemnify, defend and hold harmless the Beneficiary against any and all losses, damages, costs, expenses and liabilities (including legal fees and expenses) suffered by the Beneficiary or which the Beneficiary may incur, to the extent that a judicial authority declares any of the Guaranteed Obligations as illegal, invalid, void or unenforceable by reason of an Insolvency Event or any other reason.

3.3 Maximum Liability

Notwithstanding any other provision of this Payment Guarantee, the maximum aggregate liability of the Guarantor arising under this Payment Guarantee shall never exceed the maximum aggregate liability of the Company under the PPOA plus costs, fees and expenses, including without limitation all attorneys' fees, which may be incurred by the Beneficiary in enforcing or attempting to enforce this Payment Guarantee as provided in Section 3.7 (*Costs*). The Guarantor shall be entitled to all contractual defenses, limitations and exclusions available to the Company under the PPOA but not any defenses that may arise in the event that the Company suffers an Insolvency Event.

3.4 Unconditional Nature of Obligations; Waivers.

Subject to Section 3.3 (*Maximum Liability*), the obligations of the Guarantor under this Payment Guarantee shall be absolute, irrevocable and unconditional and shall remain in full force and effect until the date on which this Payment Guarantee terminates in accordance with Section 4.7 (*Term*), and such obligations shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation any of the following events, whether or not with notice to, or the consent of, the Guarantor:

- a. The waiver, surrender, compromise, settlement, release or termination of any or all of the obligations, covenants or agreements of the Company under the PPOA;
- b. The failure to give notice to the Guarantor of the occurrence of a Default under the PPOA;
- c. The waiver, compromise or release of the payment, performance or observance by the Company or by the Guarantor, respectively, of any or all of the obligations, covenants or agreements of either of them contained in the PPOA or this Payment Guarantee, as the case may be;
- d. The extension of the time for payment of any Guaranteed Obligations under the PPOA or of the time for performance of any other of the Company's obligations arising out of the PPOA;
- e. The modification, amendment, waiver or alteration (whether material or otherwise) of any obligation or representation set forth in the PPOA;
- f. the taking, or the omission, of any of the actions referred to in the PPOA;
- g. any failure, omission, delay or lack on the part of the Beneficiary to enforce, assert or exercise any right, power or remedy conferred on it in the PPOA;
- h. the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings affecting the Guarantor or the Company or any of the respective assets of either of them, or any allegation or contest of the validity of this Payment Guarantee in any such proceeding;
- i. any defense based upon any legal disability of the Company or, to the extent permitted by law, any release, discharge, reduction or limitation of or with respect to any sums owing by the Company or any other liability of the Company to the Beneficiary;

- j. to the extent permitted by Applicable Law, the release or discharge by operation of law of the Guarantor from the performance or observance of any obligation contained in this Payment Guarantee;
- k. the default or failure of the Guarantor fully to perform any of its obligations set forth in this Payment Guarantee; or
- l. the invalidity or unenforceability of the PPOA or any part thereof.

This Payment Guaranty is in no way conditional or contingent upon any attempt to collect from or bring action against the Company or its assets or upon any other action, occurrence or circumstance whatsoever. The liability of the Guarantor hereunder is independent of and not in consideration of or contingent upon the liability of any other person under this or any similar instrument and the release of, or cancellation by, any party to this or a similar instrument shall not act to release or otherwise affect the liability of the Guarantor hereunder. The Guarantor hereby agrees that it shall not be necessary for the Beneficiary, and the Guarantor hereby waives any rights which the Guarantor may have to require the Beneficiary, in order to enforce the obligations of the Guarantor hereunder, first to (i) institute suit or exhaust its remedies against any the Company or any other person, (ii) enforce the Beneficiary's rights or exhaust any remedies available to the Beneficiary against any assets of the Company or (iii) resort to any other means of obtaining payment of the obligations of the Company hereunder.

The Guarantor waives and agrees not to assert

- (i) the defense of the statute of limitations in any action hereunder or for the collection of the Guaranteed Obligations;
- (ii) any defense arising by reason of any lack of corporate or other authority or any other defense of the Company or any other person;
- (iii) any rights to set-offs and counterclaims;
- (iv) without limiting the generality of the foregoing, to the fullest extent permitted by laws, any defenses or benefits that may be derived from or afforded by applicable laws limiting the liability of or exonerating guarantors or sureties, or that may conflict with the terms of this Payment Guaranty; and
- (v) any and all notice of the acceptance of this Guaranty, and any and all notice of the creation, renewal, modification, extension or accrual of the Guaranteed Obligations, or the reliance by Beneficiary upon this Guaranty, or the exercise of any right, power or privilege hereunder. The Guaranteed Obligations shall conclusively be deemed to have been created, contracted, incurred and permitted to exist in reliance upon this Payment Guaranty. The Guarantor waives promptness, diligence, presentment, protest, demand for payment, notice of default, dishonor or nonpayment and all other notices to or upon the Company, the Guarantor or any other person with respect to the Guaranteed Obligations.

If any payment by the Company to the Beneficiary is rescinded or must be returned by the Beneficiary, the obligations of the Guarantor hereunder shall be reinstated with respect to such payment. The Guarantor shall have no right to (i) raise a defense previously raised by the Company arising out of or in connection with a Guaranteed Obligation claimed hereunder and which a judicial authority has settled in the Beneficiary's favor by the dispute resolution procedures of Section 21.11

(*Dispute Resolution*) of the PPOA, or (ii) to use a cure period previously used by the Company. The Guarantor assumes responsibility for being and remaining informed of the financial condition of the Company and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations which diligent inquiry would reveal and agrees that the Beneficiary shall not have a duty to advise the Guarantor of information known to it regarding such condition or any such circumstances.

3.5. Proceedings Against the Guarantor.

In the event of a Default in the payment of the Guaranteed Obligations when and as the same shall become due, the Beneficiary shall have the right to proceed first and directly against the Guarantor under this Payment Guarantee without proceeding against the Company or exhausting any other remedies which it may have and the Guarantor shall pay all Guaranteed Obligations on demand.

3.6. Subrogation.

Upon payment of any Guaranteed Obligation, the Guarantor shall be subrogated to the rights of the Beneficiary against the Company with respect to such Guaranteed Obligation, and the Beneficiary agrees to take at the Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation; provided that the Beneficiary shall have no obligation to take any such steps and the Guarantor shall not enforce any right arising by way of subrogation or exercise any other right or remedy arising by reason of any performance by it of this Payment Guarantee, including, but not limited to, any contractual, statutory or common law rights of reimbursement, contribution or indemnity, whether against the Company or any other Person, until the date on which this Payment Guarantee terminates in accordance with Section 4.7 (*Term*).

3.7. Costs.

The Guarantor agrees to pay all costs, expenses and fees, including without limitation all attorneys' fees, which may be incurred by the Beneficiary in enforcing or attempting to enforce this Payment Guarantee following any default on the part of the Guarantor hereunder, whether the same shall be enforced by suit or otherwise.

3.8. Financial Condition of the Company.

The Guarantor shall not have any right to require the Beneficiary to obtain or disclose any information with respect to: the financial condition or character of the Company or the ability of the Company to pay and perform the Guaranteed Obligations, any action or inaction on the part of the Beneficiary or any other Person; or any other matter, fact or occurrence whatsoever. The Guarantor hereby acknowledges that it has undertaken its own independent investigation of the financial condition of the Company and all other matters pertaining to this Payment Guaranty and further acknowledges that it is not relying in any manner upon any representation or statement of the Beneficiary with respect thereto, and that it is now and at all times will be completely familiar with, the business, condition (financial or otherwise), operations, performance, properties, and prospects of the Company.

4. MISCELLANEOUS

4.1. Governing Law

This Payment Guarantee shall be governed by, and construed in accordance with, the Applicable Laws of the Commonwealth of Puerto Rico including those processes before PREB whereby PREB renders a final determination of any Dispute submitted pursuant to paragraph (a) of Section 4.2 (*Dispute Resolution*), without regard to any contrary result required under applicable conflicts of laws rules.

4.2. Dispute Resolution

If a dispute arises between the Parties regarding the application, interpretation, enforceability, validity, performance or breach of this Payment Guaranty (a “**Dispute**”), then the disputing Party may promptly provide written notice of the Dispute to the other Party and the Parties shall resolve such Dispute as follows:

- a. The Parties shall submit such Dispute to PREB for final determination.
- b. Each Party agrees that (i) a final determination of a Dispute rendered by PREB shall have a conclusive and binding effect on it, and (ii) a Party may enforce such final determination in the courts of any competent jurisdiction following completion of any recognition and enforcement process required in such jurisdiction, subject to the grounds for non-enforcement under the laws of the jurisdiction in which such Party seeks such enforcement.
- c. For the exclusive benefit of the Beneficiary, the Guarantor irrevocably agrees that the Beneficiary shall have the right to (i) resolve such Dispute but only to the extent that PREB declines to resolve such Dispute, submitted pursuant to paragraph (a) above, for any reason, and (ii) enforce a final determination by PREB in its favor, in each case in the courts of the Court of First Instance for the Commonwealth of Puerto Rico, San Juan Part. By the execution of this Agreement, the Guarantor irrevocably submits to the jurisdiction of any such court in any action, suit or proceeding relating to such Dispute or final determination. Final judgment against the Guarantor in any such action, suit or proceeding shall be conclusive and may be enforced in any other jurisdiction, by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the judgment, or in any other manner provided by Applicable Law.
- d. The Guarantor hereby irrevocably designates, appoints and empowers [*name of service of process agent*], with offices currently located at [*address within Commonwealth of Puerto Rico*], as its authorized agent solely to receive for and on its behalf service of any summons, complaint or other legal process in any action, suit or proceeding the Beneficiary may bring in the Commonwealth of Puerto Rico in respect of this Payment Guarantee.
- e. As long as this Payment Guarantee remains in force, the Guarantor shall maintain a duly-appointed and authorized agent to receive for and on its behalf service of any summons, complaint or other legal process in any action, suit or proceeding that the Beneficiary may bring in the Commonwealth of Puerto Rico, United States of America, with respect to this Payment Guarantee. The Guarantor shall keep the Beneficiary advised of the identity and location of such agent.

- f. The Guarantor also irrevocably consents, if for any reason its authorized agent for service of process of summons, complaint and other legal process in any action, suit or proceeding is not present in the Commonwealth of Puerto Rico, to the service of such process being made out of the courts of the Commonwealth of Puerto Rico located in the of the Court of First Instance for the Commonwealth of Puerto Rico, San Juan Part by mailing copies of the papers by registered mail, to the Guarantor, at its address specified pursuant to Section 4.3 (*Communications*). In such a case, the Beneficiary shall also send a copy of the process papers to the Guarantor via email.
- g. Service in the manner provided in paragraphs (d), (e) and (f) above in any action, suit or proceeding will be deemed personal service, will be accepted by the Guarantor as such and will be valid and binding upon the Guarantor for all purposes of any such action, suit or proceeding.
- h. *THE GUARANTOR IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW:*
 - 1. *ANY OBJECTION THAT IT MAY HAVE NOW OR IN THE FUTURE TO THE LAYING OF THE VENUE OF ANY ACTION, SUIT OR PROCEEDING IN ANY COURT REFERRED TO IN THIS SECTION;*
 - 2. *ANY CLAIM THAT ANY SUCH ACTION, SUIT OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM;*
 - 3. *ITS RIGHT OF REMOVAL OF ANY MATTER COMMENCED BY THE BENEFICIARY IN THE COURT OF FIRST INSTANCE FOR THE COMMONWEALTH OF PUERTO RICO, SAN JUAN PART; AND*
 - 4. *ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY IN ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT AGAINST THE GUARANTOR BY THE BENEFICIARY.*
- i. Where (i) a dispute, claim or controversy arises out of, or in connection with, the PPOA, and (ii) such dispute, claim or controversy also forms a basis for the Beneficiary to assert a claim under this Payment Guarantee, the Guarantor shall consent to any request by the Beneficiary to join such dispute as a party.

4.3 Communications.

Each Party shall deliver all notices and other communications relating to this Payment Guarantee in writing to the other Party, which shall be deemed duly given upon receipt after delivery by hand or sent by e-mail with read receipt confirmation, registered or certified mail, return receipt requested, postage prepaid or by recognized overnight courier service to the following addresses:

FOR COMMUNICATIONS DELIVERED TO GUARANTOR:

[●]

Attention: [●]

E-mail: [●]

FOR COMMUNICATIONS DELIVERED TO BENEFICIARY:

Puerto Rico Electric Power Authority
1110 Ponce de León Avenue, Office #808
San Juan, Puerto Rico
Attention: Director of Planning and Environmental Protection
E-mail: [●]

Any Party may change its address for notices by giving written notice to the other Party as set forth above.

4.4. Banking Days.

Except as otherwise provided in this Payment Guarantee, if any date on which a payment is to be made, notice is to be given or other action taken hereunder is not a Banking Day, then such payment, notice or other action shall be made, given or taken on the next succeeding Banking Day in such place, and in the case of any payment, no interest shall accrue for the delay.

4.5. Successors and Assigns.

This Payment Guarantee shall bind the Guarantor and its successors and permitted assigns and inure to the benefit of the Beneficiary and its successors and permitted assigns. The Guarantor may not assign its obligations hereunder without the prior written consent of the Beneficiary. The Beneficiary may not assign its rights and obligations hereunder without the prior written consent of the Guarantor, except that the Beneficiary may, without any prior consent of the Guarantor, assign its right and obligations hereunder to any permitted assignee of the PPOA.

4.6. Guaranty for Benefit of the Beneficiary; No Third-Party Beneficiaries.

The Guarantor has entered into this Payment Guarantee for the benefit of the Beneficiary. Nothing contained herein shall be intended or deemed to create any right in, or to be in whole or in part for the benefit of, any Person other than the Guarantor and the Beneficiary and their respective permitted successors and assigns.

4.7. Term.

This Payment Guarantee shall enter into full force and effect on the Closing Date and terminate with no further force and effect on the date on which the Company has discharged all of the Guaranteed Obligations in full (the “**Term**”). Termination of this Guaranty shall not affect the Guarantor’s liability hereunder as to any Guaranteed Obligations existing or arising under the PPOA prior to the effective date of such termination.

4.8. Amendments and Waivers.

Any provision of this Payment Guarantee may be amended or waived if, but only if, the Parties execute and deliver such amendment or waiver in writing.

4.9. Headings.

The article and section headings of this Payment Guarantee are for convenience only and shall not affect the construction hereof.

4.10. Partial Invalidity.

The invalidity of any one or more phrases, sentences, clauses or sections in this Payment Guarantee shall not affect the validity or enforceability of the remaining portions of this Payment Guarantee or any part thereof.

4.11. No Waiver, Remedies.

No failure or delay by the Beneficiary in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by Applicable Law.

4.12. Execution in Several Counterparts.

This Payment Guarantee may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original; but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Guarantor has caused this Payment Guarantee to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

[●]

as Guarantor

By: _____

Name: [●]

Title: [●]

ACCEPTED AND AGREED BY:

PUERTO RICO ELECTRIC POWER AUTHORITY

as Beneficiary

By: _____

Name: [●]

Title: [●]

Appendix 4. ITC Compliant ESSA

DRAFT

June 15, 2021

ENERGY STORAGE SERVICES AGREEMENT
BETWEEN
PUERTO RICO ELECTRIC POWER AUTHORITY
AND
[•]
DATED [•]



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THIS ENERGY STORAGE SERVICES AGREEMENT (the “**Agreement**”) is entered into as of this [●] day of [●] (the “**Agreement Date**”) between the **PUERTO RICO ELECTRIC POWER AUTHORITY** (including any successor thereto, “**PREPA**”), a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by Act of May 2, 1941, No. 83, as amended, employer identification number [●], represented in this act by its Executive Director, Mr. Efran Paredes Maisonet, of legal age, married, engineer and resident of Bayamón, Puerto Rico; and [●] (“**SELLER**”), a [●] company, authorized to do business in Puerto Rico, employer identification number [●], with its principal office at [●], and represented in this act by its [●], [Mr./Ms.] [●], of legal age, [married], and a resident of [●], authorized to sign this Agreement on behalf of SELLER as certified by the Resolution dated [●]. PREPA and SELLER are herein individually referred to as a “**Party**” and collectively referred to as “**Parties**”:

RECITALS

WHEREAS,

- A. To procure renewable energy generation and energy storage services at sites across the island of Puerto Rico in accordance with the requirements of the Puerto Rico Energy Public Policy Act (Act 17-2019), the Puerto Rico Energy Diversification Policy through Sustainable and Alternative Renewable Energy Act (Act 82-2010), PREB’s Final Resolution and Order on PREPA’s Integrated Resource Plan in Case No. CEPR-AP-2018-0001 issued on August 24, 2020, and PREB’s Resolution and Order on PREPA’s Draft Procurement Plan in Case No. NEPR-MI-2020-012 issued on December 8, 2020, PREPA has conducted a competitive procurement process based upon its issuance of Request for Proposals No. 112648, Renewable Energy and Energy Storage Resources, Tranche 1 of 6, on February [●], 2021 (as amended, the “**RFP**”) to select one or more developers to (i) design, construct, install, interconnect, test, commission, operate and maintain renewable energy generation, virtual power plants, and/or energy storage resources, and (ii) enter into agreement(s) with PREPA for the same;
- B. SELLER, among other bidders, (i) submitted a proposal in response to the RFP on [●] and separately submitted an [on-demand letter of credit]¹ as security for SELLER’s satisfaction of the requirements of the RFP (the “**Bid Security**”) and (ii) desires to (a) develop, finance, construct, own, operate and maintain a [●] MW ([●] MWh or equivalent) energy storage facility (the “**Project**”), (b) charge such facility from a renewable energy resource that qualifies as “green energy” under Puerto Rico Act 82-2010, co-located with such facility at the Site (as defined below) (the “**Co-Located Renewable Energy Resource**”), and (c) sell and make available Energy Storage Services produced thereby exclusively to PREPA in accordance with this Agreement; and
- C. PREPA (i) selected SELLER as one of the preferred bidders following the submission and evaluation of all proposals, and (ii) desires to purchase Energy Storage Services in accordance with this Agreement;

NOW THEREFORE, in consideration of these premises and of the mutual covenants and agreements set forth herein, the Parties, intending to be legally bound, hereby agree to the following:

¹ Note: Align with form of actual Bid Security.

1. DEFINITIONS & INTERPRETATION

1.1 Definitions

In this Agreement:

“**AC**” means alternating electrical current.

“**Actual Efficiency**” has the meaning set forth in paragraph (b) of Section 3 (*Efficiency*) of Appendix P (*Performance Guarantees*).

“**Adjusted Duration Energy**” means the lower of the latest Tested Duration Energy and the applicable Degraded Duration Energy.

“**Affected Party**” has the meaning set forth in Section 14.1 (*General*).

“**Affiliate**” means, with respect to a Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls (*e.g.*, a parent or grandparent company), is Controlled by (*e.g.*, a subsidiary company), or is under common Control (*e.g.*, a sister company) with, such Person.

“**Agreement**” has the meaning set forth in the preamble of this Agreement.

“**Agreement Date**” has the meaning set forth in the preamble of this Agreement.

“**Agreement Date Obligations**” has the meaning set forth in Section 2.3 (*Initial Effectiveness & Closing Date*).

“**Agreement Year**” means each period of twelve (12) consecutive Months, provided that (i) the first such period shall begin on the Commercial Operation Date, (ii) each such subsequent year shall begin on the corresponding anniversary of such earlier date, and (iii) the last such period shall expire at the end of the Supply Period.

“**Ancillary Services**” means any services required by the MTRs or otherwise capable of being made available to the Grid System by the Facility (other than the delivery of Net Electrical Output) from time to time, including automatic generation control, synchronous condenser mode, reactive power support, operating reserve, frequency control, ramp rate control, voltage control, black start capability, voltage support, emergency stand-by support, or others, as applicable.²

“**Annual C^{max} Degradation Rate**” means the Annual C^{max} Degradation Rate set forth in Appendix J (*Operating Characteristics*).

“**Annual Degradation Rates**” means the Annual C^{max} Degradation Rate, the Annual D^{max} Degradation Rate, the Annual Duration Energy Degradation Rate, and the Annual Storage Degradation Rate.

“**Annual D^{max} Degradation Rate**” means the Annual D^{max} Degradation Rate set forth in Appendix J (*Operating Characteristics*).

² Note: This Agreement limits dispatchable Ancillary Services to those specified in the MTRs.

“Annual Duration Energy Degradation Rate” or **“ADDR”** means the rate (expressed as a percentage) on an annual basis at which the quantity of Design Duration Energy will decline as a result of degradation during each Agreement Year as set forth in Appendix J (*Operating Characteristics*).

“Annual Storage Degradation Rate” has the meaning set forth in Appendix J (*Operating Characteristics*).

“Applicable Law” or **“Law”** means, with respect to any Person, any constitution, bilateral or multilateral treaty, statute, law, rule, regulation, ordinance, judgment, order, decree, governmental consent, or approval or any published directive, guideline, requirement or other governmental restriction, which has the force of law, or any determination, or interpretation of any of the foregoing, by any judicial authority, which legally binds such Person or its property whether in effect as of the Agreement Date or thereafter.

“Applicable Standards” means the MTRs, the DCDs, any other applicable PREPA standards that PREPA has made available or identified to SELLER as applicable to SELLER’s performance of its obligations under this Agreement, and any other codes, standards, or requirements set forth in any Applicable Law, including any applicable federal, state or local code, the latest standards of the Institute of Electrical and Electronic Engineers (IEEE), National Electrical Manufacturer’s Association (NEMA), American Concrete Institute (ACI), American National Standards Institute (ANSI), International Code Council Code (ICC), National Fire Protection Association and the North American Electric Reliability Corporation (NERC), as well as the latest editions of the National Electrical Code and the National Electrical Safety Code (NESC), to the extent not inconsistent with the foregoing, in each case as modified from time to time.

“Approved Design” has the meaning set forth in paragraph (c) of Section 4.1 (*Proposed Design*).

“Availability Liquidated Damages” or **“ALD”** has the meaning set forth in paragraph (b) of Section 1 (*Facility Availability*) of Appendix P (*Performance Guarantees*).

“Balance” has the meaning set forth in paragraph (b) of Section 17.2 (*Tracking Account*).

“Best and Final Offer” has the meaning given in the RFP.

“Best Interests Determination” means a determination by PREPA that the Project will serve the best interests of its ratepayers as evidenced by the findings of the Feasibility Study, System Impact Study and Facility Study, following the completion of the phase III evaluation of the Project by PREPA as contemplated by the RFP.

“Bid Security” has the meaning set forth in Recital B in the preamble of this Agreement.

“Billing Period” means a Month, provided that (i) the first such period shall begin on the Commercial Operation Date and end on the final Day of the Month in which the Commercial Operation Date occurs, and (ii) the last such period shall begin on the first Day of the Month in which the Supply Period will expire and end on final Day of the Supply Period.

“Bulk-Power System EO” means E.O. 13920 of May 1, 2020, as supplemented by and including the rules and regulations published by the U.S. Department of Energy in connection therewith, as such may be modified from time to time.

“Business Day” means a Day other than (i) a Saturday, a Sunday or a Day on which commercial banks in San Juan, Puerto Rico are required or authorized to close, or (ii) any other Day recognized

as a holiday by PREPA as listed on Appendix A (*Holidays*) hereto or notified to SELLER from time to time.

“**Capability**” means the D^{\max} , C^{\max} , and the Maximum Storage Energy which the Facility can achieve or make available.

“**Capability Liquidated Damages**” or “**CLD**” has the meaning set forth in paragraph (b) of Section 2 (*Capability*) of Appendix P (*Performance Guarantees*).

“**Capability Payment Price**” or “**CPP**” has the meaning set forth in of Section 2 (*Monthly Fixed Payment*) of Appendix F (*Compensation*).

“**Capability Shortfall Liquidated Damages**” has the meaning set forth in item (2), paragraph (b) of Section 5.3 (*Initial Performance Tests*).

“**Changes**” has the meaning set forth in paragraph (a) of Section 17.1 (*SELLER Requirements*).

“**Charge Duration**” means the period of time required for the Facility to increase the State of Charge from zero percent (0%) to one hundred percent (100%) when charging at C^{\max} as evidenced by Performance Tests.

“**Charge Energy**” or “**CE**” means, for any period of time, the Energy drawn by the Facility from a Charge Source for storage and discharge at a later time while operating in Charge Mode (expressed in MWh during such period) as measured by the Main Meters, net of Station Use.

“**Charge Mode**” means the mode of operation whereby the Facility increases the State of Charge by accepting Charge Energy at the applicable Charge Point.

“**Charge Notice**” means the operating instruction and any subsequent updates given by PREPA to SELLER, directing the Facility to charge from an applicable Charge Source at a specific rate to a specified Stored Energy Level.

“**Charge Point**” means (i) for each Charge Notice that identifies a Co-Located Renewable Energy Resource as the Charge Source, the Co-Located Resource Connection Point and (ii) for each Charge Notice that identifies the Grid System as the Charge Source, the Interconnection Point.

“**Charge Source**” means (i) during the ITC Period, a Co-Located Renewable Energy Resource, and (ii) for each Charge Notice issued thereafter, either a Co-Located Renewable Energy Resource or the Grid System, as PREPA may elect in such Charge Notice at its sole discretion.

“**Claims**” means all claims, actions, suits, demands, or proceedings brought by any Person for liabilities, judgments, losses, costs (including court costs, reasonable attorneys’ fees, and costs of investigation), fines, penalties, expenses, and damages of whatsoever kind or nature, arising in contract, tort, or otherwise.

“**Closing Date**” has the meaning set forth in Section 2.3 (*Initial Effectiveness & Closing Date*).

“ **C^{\max}** ” means the maximum steady-state power capacity (expressed in MW) that the Facility can continuously take in to increase the State of Charge from zero percent (0%) to one hundred percent (100%), measured by the Main Meters at the applicable Charge Point.

“ **C^{\max} Duration**” means the amount of time the Facility is able to charge at C^{\max} .

“**C^{min}**” means the minimum steady-state power capacity (expressed in MW) that the Facility can continuously take in to increase the State of Charge, below which the Facility cannot charge on a sustained basis as measured by the Main Meters at the applicable Charge Point.

“**COD Termination Event**” means the occurrence of the Long-Stop Date prior to the Commercial Operation Date.

“**Co-Located Renewable Energy Resource**” has the meaning set forth in Recital B of the preamble of this Agreement.

“**Co-Located Resource Connection Point**” means, for any Co-Located Renewable Energy Resource, the point at which such resource interconnects with the Facility.

“**Commercial Operation**” means satisfaction of the requirements set forth in a certificate issued by SELLER in accordance with paragraph (e) of Section 5.3 (*Initial Performance Tests*) in the form set forth in Appendix U (*Form of Commercial Operation Date Certificate*).

“**Commercial Operation Date**” means the date when SELLER first achieves Commercial Operation.

“**Conditions Precedent**” has the meaning set forth in Section 2.3 (*Initial Effectiveness & Closing Date*).

“**Construction Start**” means satisfaction of all requirements set forth in a certificate issued by SELLER in the form set forth in Appendix T (*Form of Construction Start Date Certificate*).

“**Construction Start Date**” means the date on which SELLER achieves Construction Start, as evidenced by a certificate issued by SELLER to PREPA in a form set forth in Appendix T (*Form of Construction Start Date Certificate*).

“**Construction Start Termination Event**” means SELLER’s failure to achieve the Construction Start Date by the Guaranteed Construction Start Date.

“**Consulting Technical Expert**” has the meaning set forth in Section 3.1 (*Consulting Technical Expert*).

“**Control**” means (i) the ownership (whether directly or indirectly) of more than fifty percent (>50%) of the total issued voting share capital or other voting interest of that company or corporation, or (ii) the ability to unilaterally appoint a majority of the board directors or equivalent body of that company or corporation through the ownership of securities with voting power or otherwise, without the need of the vote or approval of another, or (iii) the ability to unilaterally direct the business affairs and/or operations of that company or corporation, without the need of the vote or approval of another; and the terms “**Controls**,” “**Controlled**,” and “**Controlling**” shall have a corresponding meaning, provided that if two (2) shareholders each own fifty percent (50%) of the total issued and outstanding shares of a corporation, then neither shareholder controls such corporation.

“**COR3**” means the Central Recovery and Reconstruction Office of Puerto Rico.

“**Day**” means a period of twenty-four (24) consecutive hours, beginning at 00:00 hours on any Gregorian calendar day and ending at 24:00 hours on such day Puerto Rico time.

“**DC**” means direct electrical current.

“**Deemed Completion**” means the occurrence of each of the following events: (i) the completion of the installation of the Facility in all material respects (other than punch list items), and (ii) a delay of the commencement of the Initial Performance Tests, or interruption of an ongoing Initial Performance Tests, for a period of at least fifteen (15) consecutive Days as determined under Section 3.4 (*Extensions of Time*), arising out of a PREPA Risk Event, in each case as evidenced by the delivery of a certificate by SELLER to PREPA, co-signed by the Consulting Technical Expert, certifying (A) the truth and correctness of each of the foregoing events, and (B) the date on which SELLER would have achieved Commercial Operation but for the occurrence of all PREPA Risk Event(s), which formed the basis for an extension of time of the Guaranteed Commercial Operation Date under Section 3.4 (*Extensions of Time*); provided that Deemed Completion shall never occur earlier than the Guaranteed Commercial Operation Date.

“**Default**” has the meaning set forth in Section 16.1 (*Definition*).

“**Defects Liability Period**” has the meaning set forth in paragraph (b) of Section 5.4 (*Interconnection Facilities*).

“**Degraded Duration Energy**” or “**DDE**” means, for each Agreement Year, the Design Duration Energy (expressed in MWh) (i) adjusted downward by the applicable Energy Degradation Factor for such year, and (ii) adjusted upward as demonstrated by the Performance Tests following maintenance or technology upgrades contemplated by the final sentence of Section 4.7 (*Facility Upgrades*), but not to exceed the Design Duration Energy.

“**Derating**” means SELLER’s inability or failure to (i) make Discharge Energy at D^{\max} available at the Interconnection Point, or (ii) accept Charge Energy at C^{\max} at the applicable Charge Point, in each case for any reason (including SELLER’s failure to deliver Charge Energy as required by this Agreement) other than in the case of an Outage.

“**Design Capability**” means Design D^{\max} , Design C^{\max} , and Design Storage Energy.

“**Design Charge Duration**” has the meaning set forth in Appendix J (*Operating Characteristics*).

“**Design Charge Energy**” has the meaning set forth in Appendix J (*Operating Characteristics*).

“**Design C^{\max}** ” has the meaning set forth in Appendix J (*Operating Characteristics*).

“**Design C^{\max} Duration**” has the meaning set forth in Appendix J (*Operating Characteristics*).

“**Design C^{\min}** ” has the meaning set forth in Appendix J (*Operating Characteristics*).

“**Design D^{\max}** ” has the meaning set forth in Appendix J (*Operating Characteristics*).

“**Design D^{\max} Duration**” has the meaning set forth in Appendix J (*Operating Characteristics*).

“**Design Discharge Duration**” has the meaning set forth in Appendix J (*Operating Characteristics*).

“**Design D^{\min}** ” has the meaning set forth in Appendix J (*Operating Characteristics*).

“Design Duration Energy” means the Discharge Energy that the Facility can deliver when discharging at the Design D^{\max} during the Design D^{\max} Duration following charging from zero percent (0%) State of Charge to one hundred percent (100%) State of Charge during the Design Charge Duration, as set forth in Appendix J (*Operating Characteristics*).

“Design Storage Energy” has the meaning set forth in Appendix J (*Operating Characteristics*).

“Development Abandonment” means the permanent cessation by SELLER of the development and construction of the Facility or the PREPA Interconnection Facilities being installed by SELLER after the Closing Date and prior to the Commercial Operation Date, as evidenced by SELLER’s or its construction contractors’ personnel having withdrawn from the Site (unless SELLER demonstrates otherwise) and SELLER having otherwise ceased development and construction activities related to the Facility for more than one hundred twenty (120) consecutive Days for any reason other than as a result of Force Majeure affecting SELLER or a PREPA Risk Event.

“Discharge Duration” means the shortest period of time required by the Facility to reduce the State of Charge from one hundred percent (100%) to zero percent (0%) when discharging at D^{\max} as evidenced by the Performance Tests.

“Discharge Energy” or **“DE”** means, for any period of time, the Energy delivered by the Facility at the Interconnection Point, while operating in Discharge Mode (expressed in MWh) during such period, as measured in accordance with Section 8.4 (*Meter Reading*).

“Discharge Mode” means the mode of operation whereby the Facility decreases the State of Charge by delivering Discharge Energy to, or making available Ancillary Services at, the Interconnection Point.

“Disclosing Party” has the meaning set forth in paragraph (a) of Section 12.9 (*Confidentiality*).

“Dispatch Notice” means the operating instruction and any subsequent updates given by PREPA (directly or through the SCADA system) to SELLER, directing the Facility to operate in Discharge Mode at a specified megawatt output.

“Dispute” has the meaning set forth in paragraph (a) of Section 21.11 (*Dispute Resolution*).

“Dispute Notice” has the meaning set forth in paragraph (a) of Section 21.11 (*Dispute Resolution*).

“ D^{\max} ” means the maximum quantity of steady-state power capacity (expressed in MW) that the Facility can continuously deliver as Discharge Energy at the Interconnection Point to reduce the State of Charge from one hundred percent (100%) to zero percent (0%), as evidenced by the Performance Tests.

“ D^{\max} Duration” means the duration of time during which the Facility can continuously deliver Discharge Energy at D^{\max} on a sustained basis to the Interconnection Point.

“ D^{\min} ” means the minimum steady-state power capacity (expressed in MW) that the Facility can continuously deliver below which the Facility cannot discharge on a sustained basis, measured by the Main Meters at the Interconnection Point.

“dollars” and **“\$”** means United States dollars.

“**Efficiency Liquidated Damages**” or “**ELD**” has the meaning set forth in paragraph (c) of Section 3 (*Efficiency*) of Appendix P (*Performance Guarantees*).

“**Emergency**” means an operational condition or situation affecting the Grid System (including system security and reliability or a declaration of an emergency event under Applicable Law or by any Governmental Authority) or the Facility, which has resulted in, or will likely result in, imminent significant disruption of service to a significant number of customers or likely endangers life or property.

“**Energy**” means three-phase, 60-cycle AC electric energy, measured in MWh.

“**Energy Degradation Factor**” means the amount equal to: $[(1 - \text{Annual Duration Energy Degradation Rate})^{\text{number of Agreement Years completed}}]$.³

“**Energy Storage Services**” means, collectively or individually, the acceptance of Charge Energy at the Facility, the storing of Energy in the Facility, and the delivery of Discharge Energy from the Facility at the Interconnection Point, all in accordance with the terms of this Agreement.

“**Environmental Costs**” means any and all fixed and variable costs incurred by SELLER resulting from the imposition or assessment on, or as a result of the ownership or operations of, the Facility by Applicable Law relating to the environment, issued by a Governmental Authority.

“**Equity**” means any capital paid or caused to be paid by or on behalf of SELLER’s shareholders or their Affiliates to SELLER for shares in SELLER or in the form of shareholder loans to SELLER, which by their terms are subordinated to any indebtedness for borrowed money incurred by SELLER under financing documents with the Project Lenders.

“**Exceptions**” means liability arising from:

- a. SELLER’s fraud, willful misconduct or gross negligence;
- b. SELLER’s indemnity obligation under Section 13.1 (*General*) for personal injury or death of a third party;
- c. SELLER’s indemnity obligation under Section 13.3 (*Claims Arising from Environmental Harm*); or
- d. SELLER’s obligation to pay/provide credit for Liquidated Damages under this Agreement.

“**Facility**” means the energy storage facility known as [●], located at the Site and capable of accepting Charge Energy at the applicable Charge Point and delivering Discharge Energy and Ancillary Services at the Interconnection Point, including the Seller Interconnection Facilities and any generation system, capacity expansion, or other upgrades to such energy storage facility from time to time, as further described in Appendix J (*Operating Characteristics*).

“**Facility Availability**” or “**FA**” has the meaning set forth in paragraph (b) of Section 6 (*Facility Availability*) of Appendix F (*Compensation*).

³ Note: Modify if SELLER proposes a degradation table in Appendix J (*Operating Characteristics*).

“Facility Availability Adjustment” or **“FAA”** has the meaning set forth in paragraph (a) of Section 6 (*Facility Availability*) of Appendix F (*Compensation*).

“Facility Construction Contract” means the primary contract for the construction of the Facility entered into between SELLER and one or more contractors.

“Facility Study” means, for each proposal selected by PREPA for phase III evaluation and contract negotiation of proposals under the RFP, an engineering study to determine required additions or modifications to the Grid System, including the cost and scheduled completion date for such additions or modifications, required to provide grid support services needed to integrate the Facility into the Grid System.

“Feasibility Study” means, for each proposal selected by PREPA for phase II project committee review and recommendation under the RFP, a study of the feasibility of such proposal, including the interconnection of the Project with the Grid System.

“FOMB” means the Financial Oversight and Management Board for Puerto Rico or any successor thereto.

“Force Majeure” has the meaning set forth in Article 14 (*Force Majeure*).

“Force Majeure Waiting Period” means, for each Agreement Year, seven hundred twenty (720) hours.⁴

“Full Duty Cycle” means the operation of the Facility in Discharge Mode during the Discharge Duration immediately followed by the operation of the Facility in Charge Mode for the Charging Duration.

“GAAP” means Generally Accepted Accounting Principles, as promulgated by the Financial Accounting Standards Board or its predecessors or successors.

“Governmental Authority” means any court, tribunal or governmental or quasi-governmental body, regulatory body, agency, authority, office, department, commission, board, bureau, public corporation, municipality or instrumentality, in each case at any federal, state, Commonwealth of Puerto Rico, county, municipal, or local level, having jurisdiction over a Party, the Facility or the Site, including FOMB and PREB, but excluding PREPA.

“Green Credits” means “renewable energy certificates” and “environmental and social attributes,” as defined in the Green Energy Incentives Act of Puerto Rico (Act No. 83 of July 19, 2010), renewable energy credits, environmental attributes, emissions reductions, offsets, allowances or benefits however entitled (or payments in lieu thereof), whether monetary, fiscal or in the form of physical property, which are now or in the future may be available to the Facility, as a facility that generates or produces electricity by means of “green energy” (as defined in Act No. 83 of July 19, 2010), or from renewable or non-polluting resources, granted or available to SELLER as the owner or operator of the Facility or otherwise, in each case, from any Governmental Authority or third party, including renewable energy credits established pursuant to Act No. 83 of July 19, 2010, but shall exclude (i) any Tax Credits and grants in lieu thereof, (ii) other tax incentives, benefits or credits, including those available under Puerto Rico Act 60-2019, (iii) any accelerated depreciation,

⁴ Note: This represents one (1) month of assumed operating hours.

and (iv) proceeds from (i) through (iii), in each case, associated with the Facility or otherwise available to SELLER, each of which (i) through (iii) SELLER expressly reserves.

“Grid System” means the interconnected network of high voltage transmission lines, low voltage distribution lines, and associated electric substations owned by PREPA (including the PREPA Interconnection Facilities, after handover on the Commercial Operation Date in accordance with Article 12 (*Representations, Warranties, & Covenants*)), located on PREPA’s side of the Interconnection Point, which transmit and distribute electricity to customers in the Commonwealth of Puerto Rico.

“Grid System Event” means any condition in the Grid System or act or omission of PREPA that prevents or impairs PREPA from (i) other than during the ITC Period, making Charge Energy available at the Interconnection Point while the Facility operates in Charge Mode, or (ii) taking delivery of Discharge Energy or Ancillary Services made available by SELLER at the Interconnection Point while the Facility operates in Discharge Mode, including (a) any curtailment, reduction, or disconnection instructions issued by PREPA in a Dispatch Notice or Charge Notice issued by PREPA (or otherwise) for any reason, including as a result of low demand for electricity in the Commonwealth of Puerto Rico, or (b) any condition in the Grid System (including an Emergency affecting such system) that causes or may cause physical damage to the Facility or life endangerment, and any damage to or the tripping of protection relays installed in the Facility with settings as instructed by PREPA, but in each case excluding any such event resulting from Force Majeure affecting SELLER or a PREPA Risk Event pursuant to paragraphs (a), (c), (d) and (e) of such definition.

“Grid System Waiting Period” means, for each Agreement Year, eighty (80) hours.

“Guaranteed Capability” or **“GC”** has the meaning set forth in paragraph (a) of Section 2 (*Capability*) of Appendix P (*Performance Guarantees*).

“Guaranteed Commercial Operation Date” means the second (2nd) anniversary of the Agreement Date, as adjusted in accordance with Section 3.4 (*Extensions of Time*).⁵

“Guaranteed Construction Start Date” means the date for Construction Start that corresponds to the time for completion/occurrence in the Milestone Schedule, as adjusted in accordance with Section 3.4 (*Extensions of Time*).⁶

“Guaranteed Efficiency” or **“GE”** means a guaranteed measure stated as the ratio of the Discharge Energy to Charge Energy of the Facility (expressed as a percentage) during a Billing Period, as set forth in Appendix J (*Operating Characteristics*).

“hour” means each period of sixty (60) minutes, with the first such period for any Day beginning at 00:00 (Puerto Rico Time) and including each sixty (60)-minute interval thereafter.

“IF Completion Notice” has the meaning set forth in paragraph (c) of Section 4.4 (*Pre-Synchronization Testing*).

“Indemnitees” means, with respect to either PREPA or SELLER, (i) permitted successors and assigns, and (ii) as to both the Party and its permitted successors and assigns, their respective

⁵ Note: PREB has ordered the 2-year timeline.

⁶ Note: PREB has ordered the 8-month timeline.

lenders, Affiliates, directors, officers, equity-holders, partners, employees, representatives, agents and contractors, and each of their respective heirs, successors and assigns.

“**Indemnifying Party**” has the meaning set forth in Section 13.1 (*General*).

“**Initial Performance Tests**” has the meaning set forth in paragraph (a) of Section 5.3 (*Initial Performance Tests*).

“**Initial Synchronization**” means the first time that SELLER synchronizes the Facility with the Grid System.

“**Initial Synchronization Date**” means the date on which Initial Synchronization occurs.

“**Insolvency Event**” means any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding with respect to SELLER or any of its respective properties or creditors, or any action taken by any trustee or receiver of SELLER or by any court in any such proceeding.

“**Interconnection Agreement**” means the interconnection agreement entered into between SELLER and PREPA, which sets out the terms upon which the Facility will connect and remain connected to the Grid System, as amended from time to time.

“**Interconnection Construction Contract**” means the primary contract for the construction of the PREPA Interconnection Facilities to be installed or constructed by SELLER, to be entered into between SELLER and one or more contractors, which shall include provisions with respect to the requirements set forth in Section 3 (*Select Requirements for the Interconnection Construction Contract*) of Appendix H (*Interconnection Description and Specifications*).

“**Interconnection Facilities**” means the PREPA Interconnection Facilities and the Seller Interconnection Facilities.

“**Interconnection Point**” means the physical point at which the Facility connects to the Grid System, as specified in Section 1 (*Description of the Interconnection Facilities*) of Appendix H (*Interconnection Description and Specifications*).

“**Interest**” means the compensation for the accrual of monetary obligations under this Agreement computed Monthly and prorated daily from the time each such obligation becomes past due based on an annual interest rate equal to the lesser of: (i) (a) for payments due during the first five (5) Days after such a payment becomes due, in each case, the Prime Commercial Lending Rate as set by Citibank NA., 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 (for the purposes of this definition, the “**Prime Rate**”), and (b) for payments due beginning on the sixth (6th) Day after such a payment is due, the Prime Rate plus five percent (5%); and (ii) the maximum rate allowable under Article 1169 of the Puerto Rico Civil Code or successor statute applicable to past due amounts. The provisions of this definition shall not be construed to limit the applicable rate of interest on the project debt.

“**ITC Period**” means the period that commences on the Commercial Operation Date and expires on the date as of which the ITC Renewable Energy Charging Requirement is eliminated, terminates or expires under Applicable Law; provided that, if such elimination, termination or expiration occurs before the Commercial Operation Date, the Parties shall treat the “**ITC Period**” as having expired.

“ITC Renewable Energy Charging Requirement” means the requirement under Treasury Regulations § 1.48-9(d)(6) that a storage device derive not more than a specified percentage of its charging energy from sources other than solar energy to qualify for (or to avoid recapture of) the investment tax credit available for “energy property” under Internal Revenue Code § 48(a)(3)(i).

“kW” means kilowatt.

“kWh” means kilowatt-hours.

“Legal Challenge” means any action, suit or proceeding brought or commenced by a third party (excluding any Affiliate of a Party) seeking to contest the validity of this Agreement, any Permits or the development, construction, or operation of the Facility or PREPA Interconnection Facilities which materially impairs the ability of the Parties to perform their respective obligations hereunder or delays the development, financing, construction or operation of the Facility or PREPA Interconnection Facilities.

“Liquidated Damages” means, collectively, Capability Shortfall Liquidated Damages, SELLER Delay Liquidated Damages, Availability Liquidated Damages, Capability Liquidated Damages, and Efficiency Liquidated Damages.

“Long-Stop Date” means the earlier to occur of (i) the first date on which accrued SELLER Delay Liquidated Damages (determined without reference to the operation of paragraph (**Error! Reference source not found.**) of Section 3.5 (*Delay Liquidated Damages*)) exceed the Security Amount, and (ii) the one hundred eightieth (180th) Day after the Guaranteed Commercial Operation Date.

“Main Meters” has the meaning set forth in paragraph (a) of Section 8.1 (*Meter Ownership & Maintenance*).

“Malware” means computer software, code or instructions that: (i) intentionally, and with malice intent by a third party, adversely affect the operation, security or integrity of a computing, telecommunications or other digital operating or processing system or environment, including without limitation, other programs, data, databases, computer libraries and computer and communications equipment, by altering, destroying, disrupting or inhibiting such operation, security or integrity; (ii) without functional purpose, self-replicate without manual intervention; (iii) purport to perform a useful function but which actually performs either a destructive or harmful function, or perform no useful function other than utilize substantial computer, telecommunications or memory resources with the intent of causing harm; or (iv) without authorization collect and/or transmit to third parties any information or data, including such software, code or instructions commonly known as viruses, trojans, logic bombs, worms, adware and spyware.

“Maximum Storage Energy” means the quantity (expressed in MWh) of Energy which the Facility makes available at the Interconnection Point while operating in Discharge Mode from one hundred percent (100%) State of Charge to zero percent (0%) State of Charge.

“Milestone” means any of the milestone events set out in the column captioned “*Milestone*” in the table set forth in the Milestone Schedule.

“Milestone Schedule” means the schedule set out in Appendix D (*Milestone Schedule*).

“**Minimum Acceptance Capability**” has the meaning set forth in item (2), paragraph (b) of Section 5.3 (*Initial Performance Tests*).

“**Minimum Down Time**” means the amount of time that the Facility must stay off-line after a shutdown prior to the next Start-Up, as further described in Appendix J (*Operating Characteristics*).

“**Minimum Run Time**” means the amount of time that the Facility must stay synchronizing with the Grid System after a Start-Up prior to a subsequent shutdown, as further described in Appendix J (*Operating Characteristics*).

“**Modification Limit**” means \$[●], representing one percent (1.0%) of SELLER’s total estimated cost for the construction, testing, and commissioning of the Facility as of the Agreement Date.

“**Month**” means a calendar month, which shall begin at 00:00 on the first Day of such calendar month and end at 00:00 on the first Day of the next calendar month.

“**Monthly Contract Capability**” or “**MCC**” has the meaning set forth in Section 5 (*Monthly Contract Capability*) of Appendix F (*Compensation*).

“**Monthly Fixed Payment**” or “**MFP**” has the meaning set forth in Section 2 (*Monthly Fixed Payment*) of Appendix F (*Compensation*).

“**Monthly Payment**” has the meaning set forth in Section 1 (*Monthly Payment*) of Appendix F (*Compensation*).

“**Monthly Variable Payment**” or “**MVP**” has the meaning set forth in Section 3 (*Monthly Variable Payment*) of Appendix F (*Compensation*).

“**MTRs**” means the minimum technical requirements applicable to the Facility for connection of the Facility to the Grid System set forth in Appendix K (*Minimum Technical Requirements*), as PREPA may modify or replace from time to time after the Closing Date in accordance with Section 4.2 (*Modifications*).

“**MW**” means megawatts.

“**MWh**” means megawatt-hours.

“**Non-Affected Party**” has the meaning set forth in paragraph (d) of Section 14.1 (*General*).

“**Non-Scheduled Derating**” means any Derating other than a Scheduled Derating.

“**Non-Scheduled Outage**” means any Outage other than a Scheduled Outage.

“**Operating Characteristics**” has the meaning set forth in Appendix J (*Operating Characteristics*).

“**Operating Day**” means a Day within the Supply Period on which the Facility operates.

“**Operating Procedures**” means the procedures for the Facility’s operation and integration into the Grid System, as set out in Appendix L (*Operating Procedures*), as amended from time to time.

“Other Minimum Acceptance Criteria” means, collectively, the MTRs, Operating Characteristics, and any other criteria set out in the Testing Protocol and Operating Procedures.

“Outage” means, for any period of time, SELLER’s failure or inability to make available Energy Storage Services at the Interconnection Point for any reason (including SELLER’s failure to deliver Charge Energy as required by this Agreement).

“P3A” means the Public-Private Partnership Authority of Puerto Rico or any successor thereto.

“Party” and **“Parties”** has the meaning set forth in the preamble of this Agreement.

“Pending Permit Delay” means, for any Permit for which SELLER has duly and properly applied and has exercised / continues to exercise diligent efforts to obtain, the denial of or delay in granting such Permit by the relevant Governmental Authority for any reason, other than SELLER’s failure to comply with the requirements for the issuance of such Permit, which materially impairs the ability of SELLER to achieve Commercial Operation.

“Performance Guarantees” has the meaning set forth in Appendix P (*Performance Guarantees*).

“Performance Security” has the meaning set forth in paragraph (a) of Section 2.5 (*Performance Security*).

“Performance Tests” means tests which verify that (i) the Facility can accept Charge Energy at the applicable Charge Point and deliver Discharge Energy and Ancillary Services at the Interconnection Point in accordance with the Operating Characteristics, (ii) the Facility meets the Performance Guarantees, and (iii) the Facility complies with each of the Other Minimum Acceptance Criteria, in each case in accordance with the Testing Protocol.

“Permanent Closing” means, after the Commercial Operation Date, the occurrence of any of the following events: (i) for any period of eighteen (18) consecutive Months, excluding periods of Outages due to Force Majeure affecting SELLER or any PREPA Risk Event, Facility Availability equals zero (0), or (ii) for any period of thirty-six (36) consecutive Months, regardless of whether SELLER claims Force Majeure during such period, Facility Availability equals zero (0), in each case excluding periods of Outages due to any PREPA Risk Event.

“Permits” means all permits, licenses, approvals, authorizations, consents, variances, or waivers issued by a Governmental Authority with jurisdiction over SELLER and the Facility which SELLER or its contractors will require for the development, construction, ownership, start-up, operation, maintenance, or financing of the Facility and/or the Interconnection Facilities, including those set out in Appendix E (*Seller Permits*).

“Permitted Guarantor” has the meaning set forth in the RFP.

“Permitted Outage Hour” means any hour during the Supply Period in which an Outage or Derating occurs as a result of a Scheduled Outage, Scheduled Derating, Force Majeure affecting SELLER or a PREPA Risk Event.

“Person” means an individual, partnership, corporation, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, or a government or agency or political subdivision thereof.

“Post-Agreement Date Environmental Costs” means all Environmental Costs resulting from measures required to comply with Applicable Law enacted, approved, or issued after the Agreement Date.

“Post-Agreement Date Taxes” means all Taxes resulting from measures required to comply with Applicable Law enacted, approved, or issued after the Agreement Date.

“Pre-Operation Period” means the period of time from (and including) the Closing Date up to (but excluding) the Commercial Operation Date.

“PREB” means the Puerto Rico Energy Bureau or any successor thereto.

“PREPA” has the meaning set forth in the preamble of this Agreement.

“PREPA Bankruptcy” means the proceeding commenced pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), pending as of the Agreement Date in the PROMESA Court, Case No. 17-4780.

“PREPA Delay Liquidated Damages” has the meaning set forth in paragraph (a) of Section 3.5 (*Delay Liquidated Damages*).

“PREPA Design Criteria Documents” or **“DCDs”** has the meaning set forth in section (1) of paragraph (b) of Section 2 (*Interconnection Point Specifications*) of Appendix H (*Interconnection Description and Specifications*).

“PREPA Interconnection Facilities” means all equipment and facilities (including the Main Meters) located on PREPA’s side of the Interconnection Point, constructed and installed or upgraded for the purpose of interconnecting the Facility with the remainder of the Grid System, as further described in Appendix H (*Interconnection Description and Specifications*) and not including communication, control, or protection equipment for which this Agreement assigns responsibility to SELLER.

“PREPA Interconnection Facilities Work” has the meaning set forth in paragraph (b) of Section 3.2 (*SELLER’s Development Obligations*).

“PREPA Performance Test” means a Performance Test that SELLER shall conduct at PREPA’s request in accordance with Section 6.9 (*Supply Period Performance Tests*).

“PREPA Risk Event” means any of the following events:

- a. Force Majeure or a Legal Challenge in each case affecting PREPA;
- b. a Grid System Event;
- c. other than during the ITC Period, PREPA’s failure to make Charge Energy available to SELLER at the Interconnection Point;
- d. the duration of time required by PREPA to render a Best Interests Determination for the Project exceeds ninety (90) Days;
- e. a breach, delay, or failure by PREPA in performing any material obligation under this Agreement or the Interconnection Agreement; or

- f. following any modifications to the MTRs under Section 4.2 (*Modifications*), the duration of the Facility's unavailability as reasonably required to carry out changes to the Facility to comply with such modifications;

which, in each case, did not result from an act or omission of SELLER, Force Majeure affecting SELLER or the circumstances described in Section 7.2 (*Curtailment for Breach*).

"Product" means all Discharge Energy, Ancillary Services, and Green Credits made available from or otherwise derived in connection with the operation of the Facility.

"Project" has the meaning set forth in Recital B of the preamble of this Agreement.

"Project Lenders" means any Person providing, arranging, insuring or guaranteeing all or part of the construction or permanent financing or other funding, including any tax equity financing, for the Facility, the PREPA Interconnection Facilities or any portion thereof, or any agent, trustee or other Person representing or acting on behalf of any such Person.

"PROMESA Court" means the United States District Court for the District of Puerto Rico.

"Proposed Design" has the meaning set forth in paragraph (b) of Section 4.1 (*Proposed Design*).

"Proposed Initial Synchronization Date" has the meaning set forth in Section 5.1 (*Scheduling Synchronization*).

"Prudent Utility Practices" means the spectrum of possible practices, methods, conduct, and actions (including the practices, methods, conduct, and actions engaged in or approved by a significant portion of the power industry in the United States) that, at a particular time, in the exercise of reasonable discretion at the time a decision was made, could have been expected to accomplish the desired result in a manner consistent with Applicable Laws and Applicable Standards for reliability, safety and economy.

"PSS/E" means power system simulation for engineering, a commercial software product developed by Siemens PTI Inc.

"Puerto Rico Controller" means the Office of the Controller for the Commonwealth of Puerto Rico.

"Qualified Bank" means a national bank, national association, commercial bank or other financial institution registered in the United States, having a branch located within Puerto Rico or the contiguous United States, and otherwise acceptable to PREPA that has a long-term issuer rating of at least (i) if headquartered within Puerto Rico, then "B+" by Standard & Poor's Ratings Services, "B1" by Moody's Investors Services Inc., or "B+" by Fitch Ratings Inc. or (ii) if headquartered outside of Puerto Rico, then "A-" by Standard & Poor's Ratings Services, "A3" by Moody's Investors Services Inc., or "A-" by Fitch Ratings Inc., or in each case if the relevant rating agencies cease to engage in business or rate the obligations in question, then an equivalent rating from another internationally recognized rating agency selected by SELLER with the written consent of PREPA; provided that, if such financial institution's ratings satisfy such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications.

“Qualified Operator” means SELLER, an Affiliate of SELLER, or, if a third party contractor of SELLER or its Affiliate, an entity with at least two (2) years’ experience operating facilities of a similar type and size as the Facility or another qualified and experienced operator reasonably acceptable to PREPA.

“Receiving Party” has the meaning set forth in paragraph (a) of Section 12.9 (*Confidentiality*).

“Registry” has the meaning set forth in Section 9.5 (*Green Credits*).

“Renewable Energy Charge” has the meaning set forth in paragraph (b) of Section 7.6 (*Unauthorized Charge and Renewable Energy Charge*).

“RFP” has the meaning set forth in Recital A in the preamble of this Agreement.

“SCADA” means the Facility’s supervisory control and data acquisition system, which may include equipment installed by SELLER in accordance with PREPA requirements.

“Scheduled Derating” means a planned Derating that SELLER has coordinated in advance with PREPA with a mutually agreed commencement date, time, and duration, and set out in the Scheduled Maintenance Program pursuant to Article 6 (*Operation Of The Facility*).

“Scheduled Discharge Energy” means, for any Billing Period, the aggregate quantity of Discharge Energy scheduled for delivery by the Facility to the Interconnection Point during such period, as set out in any and all Dispatch Notices issued by PREPA in respect of such period in accordance with Section 7.1 (*Dispatching*).

“Scheduled Maintenance Program” has the meaning set forth in paragraph (b) of Section 6.3 (*Scheduled Maintenance*).

“Scheduled Outage” means a planned Outage that SELLER has coordinated in advance with PREPA with a mutually agreed commencement and duration, and set out in the Scheduled Maintenance Program pursuant to Article 6 (*Operation Of The Facility*).

“Security Amount” means (i) prior to the Commercial Operation Date, twelve and one-half United States Dollars (\$12.5) per kWh *multiplied by* Design D^{\max} (expressed as kW) *multiplied by* the Design D^{\max} Duration or such higher amount as agreed in accordance with paragraph (c) of Section 3.5 (*Delay Liquidated Damages*), and (ii) on and after the Commercial Operation Date, seventeen and one-half United States Dollars (\$17.5) per kWh *multiplied by* Design D^{\max} (expressed as kW) *multiplied by* the Design D^{\max} Duration.

“SELLER” has the meaning set forth in the preamble of this Agreement.

“SELLER Delay Liquidated Damages” or **“SDLD”** means the amount per Day of delay set forth in the column captioned “SELLER Delay Liquidated Damages”, which corresponds to the Milestone captioned “Commercial Operation”, expressed as \$ per Day, in the Milestone Schedule.

“Seller Interconnection Facilities” means all equipment and facilities (including SELLER’s meters and metering equipment), located on SELLER’s side of the Interconnection Point, constructed and installed for the purpose of interconnecting the Facility with the Grid System, as further described in Appendix H (*Interconnection Description and Specifications*).

“Seller Liability Cap” means [●].⁷

“Seller Performance Test” has the meaning set forth in paragraph (b) of Section 6.9 (*Supply Period Performance Tests*).

“Shareholder” means, for any time of determination, any direct holder of capital stock in SELLER at such time.

“Site” means the approximately [●] acres of land located in [●], Puerto Rico, as further described in Appendix G (*Facility Site*).

“Sponsor” means, for each Shareholder of, or a Person holding a partnership or membership interest in, SELLER on the Agreement Date, the ultimate parent company of such shareholder or Person.

“Stand-by Energy Consumption” means the average hourly consumption of Energy by the Facility, measured over twenty-four (24) consecutive hours while the Facility operates in Storage Mode.

“Stand-by Self Discharge” means the difference between a starting SOC at seventy-five percent (75%) and the ending SOC at the conclusion of a twenty-four (24) hour period while the Facility stands idle but ready for immediate operation, as set forth in Appendix J (*Operating Characteristics*).

“Start-Up” means the action of bringing [a Unit / the Facility] from non-operation to operation at the Facility’s D^{\min} , as specified in Appendix J (*Operating Characteristics*), and the Facility operates at steady state mode for a minimum of the lesser of one (1) hour or the Minimum Run Time (per Appendix J (*Operating Characteristics*)).

“State of Charge” or **“SOC”** means for any time of determination the amount of Stored Energy at such time expressed as a percent of the Maximum Stored Energy.

“Station Use” means the electrical load of the Facility’s auxiliary equipment that is necessary for the operation of the Facility as set forth in Appendix J (*Operating Characteristics*). The auxiliary equipment includes, but is not limited to, forced and induced draft fans, air conditioner systems, heating systems, cooling towers, plant lighting and control systems, any heating or cooling equipment necessary to keep energy storage componentry within their normal operating temperatures, any motors or pumps required for moving material within the energy storage system, and any other electrical loads required in order for the Facility to provide Energy Storage Services.

“Station Use Meters” has the meaning set forth in paragraph (b) of Section 8.1 (*Meter Ownership & Maintenance*).

“Storage Mode” means a mode of operation whereby the Facility stands idle but ready for immediate operation as set forth in Appendix J (*Operating Characteristics*).

“Stored Energy Level” or **“SEL”** means, at a particular time, the quantity of Energy stored in the Facility at such time, expressed in MWh.

⁷ Note: Insert amount equal to 25% of SELLER’s estimated project costs.

“Substantial Completion Notice” has the meaning set forth in paragraph (f) of Section 4.4 (*Pre-Synchronization Testing*).

“Supply Period” means the period that commences on the Commercial Operation Date and expires on the twenty-fifth (25th) anniversary thereof.

“System Impact Study” means, for each proposal selected by PREPA for the phase III evaluation and contract negotiation of proposals under the RFP, a study that will, at a minimum, (i) determine the power capabilities of the major interconnection equipment required to complete the Interconnection Facilities, (ii) specify the maximum fault currents necessary to specify short circuit duty and interrupting ratings for the electrical equipment, (iii) approve or disapprove generator step-up (GSU) transformer impedance and reactive compensation equipment for proper control of voltage and reactive power flow, (iv) quantify the impact to the Grid System and the actions required to mitigate such impact, and (v) specify the Proposed Design requirements for the Facility and the PREPA Interconnection Facilities.

“T&D Operator” means LUMA Energy, LLC, or any future operator of Puerto Rico’s electric power transmission and distribution system or any of such operator’s Affiliates, including PREPA’s assignee under the circumstances described in Section 19.2 (*PREPA’s Right to Assign*).

“Tax Credits” means the production or investment tax credits (including any grants or payment in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or other Applicable Law available as a result of the ownership and operation of the Facility or the output generated by the Facility (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation).

“Taxes” means any and all taxes, fees or other charges of any nature whatsoever, including income taxes and repatriation (tollgate) taxes, imposed or assessed by a Governmental Authority responsible for implementing Applicable Law relating to tax on or as a result of the ownership or operations of the Facility.

“Technical Dispute” has the meaning set forth in paragraph (b) of Section 21.11 (*Dispute Resolution*).

“Technical Input” has the meaning set forth in paragraph (c) of Section 4.1 (*Proposed Design*).

“Technical Recommendation” has the meaning set forth in paragraph (b) of Section 21.11 (*Dispute Resolution*).

“Term” has the meaning set forth in Section 2.2 (*Initial Term*).

“Termination Balance” has the meaning set forth in paragraph (b) of Section 17.2 (*Tracking Account*).

“Termination Date” means the date of the earliest to occur of any of the events set forth in Section 15.1 (*Termination Date*).

“Tested Duration Energy” or **“TDE”** means the quantity (expressed in MWh) of Discharge Energy which the Facility makes available when discharging at D^{\max} over the Design D^{\max} Duration following charging starting at zero percent (0%) State of Charge over the Design Charge Duration, as demonstrated in the most recent Performance Test.

“**Testing Protocol**” means PREPA’s standard protocols for testing and commissioning of energy storage facilities set forth in Appendix M (*Testing Protocol*), as amended from time to time.

“**Threshold Availability**” or “**TA**” has the meaning set forth in paragraph (a) of Section 1 (*Facility Availability*) of Appendix P (*Performance Guarantees*).

“**Tracking Account**” has the meaning set forth in paragraph (a) of Section 17.2 (*Tracking Account*).

“**Transfer**” has the meaning set forth in Section 19.2 (*PREPA’s Right to Assign*).

“**Unauthorized Charge**” has the meaning set forth in paragraph (b) of Section 7.6 (*Unauthorized Charge and Renewable Energy Charge*).

“**Unit**” means a [segregable component of the Facility which may be operated independently of other components of the Facility to provide Energy Storage Services], as more particularly described in Appendix J (*Operating Characteristics*), and all appurtenant facilities and equipment, from which SELLER has agreed to provide the Energy Storage Services to PREPA pursuant to this Agreement, as further described in Appendix J (*Operating Characteristics*).

“**Variable O&M Price Inflation**” or “**VOMPI**” has the meaning set forth in Section 4 (*Variable O&M Price Inflation*) of Appendix F (*Compensation*).

“**Wholly-Owned Affiliate**” means, with respect to a Shareholder, any Person that:

- a. owns directly or indirectly one hundred percent (100%) of the issued share capital and voting rights of such Shareholder;
- b. has one hundred percent (100%) of its issued share capital and voting rights owned directly or indirectly by such Shareholder; or
- c. has one hundred percent (100%) of its issued share capital and voting rights owned directly or indirectly by another Person which owns directly or indirectly one hundred percent (100%) of the issued share capital and voting rights of such Shareholder.

“**Year**” means a calendar year, which shall be the twelve (12) Month period beginning 00:00 on January 1 and ending at 00:00 on the subsequent January 1.

1.2 Rules of Interpretation

The rules of interpretation listed below shall apply when interpreting this Agreement:

- a. Words importing the singular also include the plural and vice versa.
- b. References to natural persons or parties include any person having legal capacity.
- c. References to a Person include such Person’s successors and assigns; provided that with respect to a Party and its rights and obligations under this Agreement, references to a Party shall only include such Party’s successors and assigns if this Agreement permits such successors and assigns.
- d. Words importing one gender include the other gender.

- e. The words “include” and “including” mean “including, but not limited to” and corresponding grammatical variants.
- f. Except as otherwise expressly stated herein, all references in this Agreement to this Agreement (including the Appendices hereto) or to contracts, agreements, or other documents shall be deemed to mean this Agreement (including the Appendices hereto) and such contracts, agreements, or other documents, as the same may be modified, supplemented, or amended from time to time.
- g. Except as otherwise expressly stated herein, all references to Sections, Articles, and Appendices in this Agreement are references to the Sections, Articles, and Appendices of this Agreement.
- h. Words and abbreviations not defined in this Agreement which have generally accepted technical or design, engineering, or construction industry meanings are used in this Agreement in accordance with such recognized meanings.
- i. The terms “hereof,” “herein,” “hereto,” “hereunder” and words of similar or like import, refer to this entire Agreement, together with its Appendices, and not any one particular Article, Section, Appendix, or other subdivision of this Agreement.
- j. The headings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties hereto, nor should they be used to aid in any manner in the construction of this Agreement.
- k. References to PREPA in the definition of Dispatch Notice, Charge Notice and Grid System Event and Section 6.6 (*Restoration of the Facility*), Article 7 (*Dispatching & Charging Obligations*), Section 8.5 (*Data*), Section 9.1 (*General*), and Section 9.4 (*Ancillary Services*) include its dispatching center(s) and the T&D Operator, as applicable.
- l. Terms used in the present tense may be interpreted as referring to the past tense and vice versa.
- m. Nothing contained in this Agreement shall be construed or interpreted to limit in any way PREB’s power and authority under the Laws of the Commonwealth of Puerto Rico.

2. TERM, EFFECTIVENESS & PERFORMANCE SECURITY

2.1 Signing Conditions

The Parties shall complete their respective obligations set out in Appendix B (*Signing Conditions*) no later than the Agreement Date. SELLER recognizes that submittal of the certifications and documents set out in Appendix B (*Signing Conditions*) constitute an essential condition of this Agreement.

2.2 Initial Term

The term of this Agreement (the “**Term**”) shall begin with the Agreement Date and continue until the expiration of the Supply Period, unless extended or earlier terminated in accordance with the terms hereof. If the Parties extend the Term, then the word “Term” shall thereafter be deemed to mean the original Term as so extended.

2.3 Initial Effectiveness & Closing Date

The rights and obligations of the Parties under Article 1 (*Definitions & Interpretation*), this Article 2, Section 3.6 (*Exchange of Information*), Section 3.7 (*Cooperation*), Article 12 (*Representations, Warranties, & Covenants*), Article 14 (*Force Majeure*), Article 15 (*Termination*), Article 19 (*Assignment & Transfer*), Article 20 (*Notices*) and Article 21 (*Miscellaneous Provisions*), shall enter into full force and effect on the Agreement Date (collectively, the “**Agreement Date Obligations**”). Subject to the foregoing rights and obligations that become effective on the Agreement Date, the remaining provisions of this Agreement shall become effective on the date (the “**Closing Date**”) as of which the Parties jointly sign a certificate, in the form set forth in Appendix S (*Form of Conditions Precedent Certificate*), confirming the satisfaction or waiver of each of the conditions precedent set out in Appendix C (*Conditions Precedent*) (the “**Conditions Precedent**”). The Parties shall issue such certificate within five (5) Business Days after the occurrence of such satisfaction or waiver. Each Party shall use its commercially reasonable efforts to satisfy their respective Conditions Precedent (other than the Condition Precedent set forth in paragraph (c) of Part 3 of Appendix C (*Conditions Precedent*)) and cause the Closing Date to occur no later than sixty (60) Days after the Agreement Date. If either (i) the Closing Date does not occur for any reason within one hundred eighty (180) Days after the Agreement Date, or (ii) PREPA notifies SELLER of its intention either not to (A) accept the Best and Final Offer made by SELLER, or (B) issue a Best Interests Determination for the Project, in each case for any reason whatsoever, then this Agreement shall automatically terminate at midnight on such Day without either Party incurring any liability to the other Party, provided that, if SELLER breaches any of the Agreement Date Obligations, then PREPA shall have the right to draw on the full face amount of the Bid Security.

2.4 Extension

The Parties may agree to extend the Term of this Agreement, with approval from PREB, for up to two (2) consecutive periods of five (5) Agreement Years each, following the expiration of the initial Supply Period. Either Party may notify the other of its desire to extend the Term in writing as provided for under this Section 2.4 not less than eighteen (18) Months prior to the expiration of the initial Supply Period or extended Supply Period, as the case may be. During any extension, all provisions contained herein shall remain in effect unless otherwise agreed in writing.

2.5 Performance Security

- a. To secure the due, proper, timely, and full performance of SELLER’s obligations under this Agreement, SELLER shall provide to PREPA as a condition precedent to the Closing Date, at SELLER’s sole expense, one or more on-first-demand, irrevocable standby letters of credit issued by a Qualified Bank substantially in the form set forth in Appendix V (*Form of Performance Security*) and otherwise acceptable to PREPA (or cash collateral or other on-first demand, irrevocable security acceptable to PREPA in its sole discretion) in an amount equal to the Security Amount (the “**Performance Security**”).
- b. SELLER shall (i) maintain the Performance Security in full force and effect and in accordance with this Agreement until the date that occurs sixty (60) Days after the expiration of the Term (the “**Scheduled Expiration Date**”), and (ii) together with the delivery of each Performance Security or replacement thereof, deliver a written statement dated as of the delivery date duly signed by its authorized representative certifying that the issuer of such Performance Security meets the requirements of a Qualified Bank.

- c. SELLER shall cause a Qualified Bank to issue, reissue or replace any Performance Security (in compliance with this Section 2.5) in accordance with the following:
 - 1. to the extent that the Performance Security will expire or cease to exist prior to the Scheduled Expiration Date, then no later than twenty-one (21) Days prior to the date of such expiration or cessation;
 - 2. in the event that the issuer of the Performance Security ceases to meet the requirements of a Qualified Bank, then no later than twenty-eight (28) Days after the date of such cessation; and
 - 3. if the Parties agree to increase the Design Storage Energy, then promptly upon the date of such agreement.
- d. PREPA shall have the right to draw down on the Performance Security (via a full or one or more partial drawings) to satisfy any outstanding, unpaid amounts hereunder or as otherwise specifically provided herein, upon the occurrence of any of the following events:
 - 1. Construction Start Termination Event;
 - 2. COD Termination Event;
 - 3. SELLER's failure to pay Liquidated Damages when due under this Agreement;
 - 4. SELLER's failure to provide replacement Performance Security in accordance with paragraph (c) of this Section 2.5; provided that (i) PREPA deposits the amount so drawn in an escrow account in a bank selected by PREPA until SELLER delivers the replacement Performance Security to PREPA and upon such delivery, PREPA shall cause the release of the undrawn amounts on deposit in such account to SELLER, and (ii) PREPA shall have the right to draw from the escrow account in accordance with paragraph (d) of this Section 2.5 and SELLER shall bear the costs of opening and maintaining such escrow account;
 - 5. except as otherwise covered by items (1) to (4) of this paragraph (d) of this Section 2.5, a Default by SELLER; or
 - 6. any other event that expressly entitles PREPA to draw down or claim on the Performance Security under this Agreement.

PREPA shall have the right to draw down on the entire undrawn portion of the face amount of the Performance Security upon the occurrence of (i) the events described in items (1), (2) or (4) of this paragraph (d) of this Section 2.5, and (ii) PREPA's termination of this Agreement following the occurrence of a Default by SELLER.

3. PRE-OPERATION PERIOD

3.1 Consulting Technical Expert

No later than the Closing Date, PREPA shall consult with SELLER and appoint an engineer (the "**Consulting Technical Expert**") to review technical matters, assist in the resolution of technical issues, issue non-binding technical recommendations in connection with Technical Disputes in

accordance with this Agreement and monitor the works undertaken by, or on behalf of, SELLER (i) for the design, construction and commissioning of the Facility and the PREPA Interconnection Facilities, and (ii) the operation of the Facility during the Supply Period. PREPA may designate different Consulting Technical Experts for different purposes under this Agreement. The Consulting Technical Expert's staff shall include suitably qualified engineers and other professionals who possess the competence to carry out such duty. The Consulting Technical Expert shall verify that SELLER complies with this Agreement and conduct reviews of works performed by, or on behalf of, SELLER in accordance with Appendix I (*Progress Review*). SELLER shall consider all non-binding technical recommendations issued by the Consulting Technical Expert in order to comply with the requirements of this Agreement during the Pre-Operation Period. Whenever carrying out its duties in accordance with this Agreement, the Consulting Technical Expert shall act on behalf of PREPA. Any action undertaken by PREPA shall not relieve SELLER from any responsibility it has under this Agreement.

3.2 SELLER's Development Obligations

- a. SELLER shall develop, design, finance, permit, construct, install, test, and commission the Facility as well as the PREPA Interconnection Facilities (subject to paragraph (b) of this Section 3.2) and achieve Commercial Operation no later than the Guaranteed Commercial Operation Date, at its own cost, in accordance with the Milestone Schedule, the requirements of all Permits, the MTRs, the Approved Design, the Interconnection Agreement, Prudent Utility Practices, the other provisions of this Agreement, Applicable Law and Applicable Standards.
- b. SELLER agrees that the works required as part of the Interconnection Facilities that will be performed within PREPA's active system (including, for example, works conducted at a PREPA substation or to interconnect such facilities) may, at PREPA's election, be executed by PREPA and its contractor or by SELLER (in any case, at SELLER's expense if described in the Facility Study). If PREPA elects to perform, or have its contractor perform, such work inside PREPA's active system, then (i) the Parties shall agree in writing on the scope, reasonably expected timeline and costs for such work (the "**PREPA Interconnection Facilities Work**"), (ii) SELLER shall reimburse PREPA for all amounts actually incurred by PREPA (without markup), or directly fund all amounts invoiced by its contractors, in each case, for the cost to complete such work up to the pre-agreed cost amount, and (iii) PREPA shall bear sole responsibility for the quality and timeliness of the PREPA Interconnection Facilities Work, and delays in the completion of such work beyond the agreed timeline shall constitute grounds for an extension of time for the occurrence of the Milestone for Commercial Operation to the extent permitted under Section 3.4 (*Extensions of Time*).
- c. SELLER shall acquire (or lease) all land parcels, easements, rights-of-way, and other real property rights required to construct, test, commission, own, operate, and repair the Facility in its own name and at its own cost, and maintain such rights until the expiration of the Term.

3.3 Regular Updates

SELLER shall submit progress reports to PREPA on the development, construction, permitting, third-party contracting, and financing of the Facility no later than the fifth (5th) Business Day of every Month, commencing on the first Month following the Closing Date and continuing until the

Commercial Operation Date. SELLER acknowledges that PREPA may keep PREB and other Governmental Authorities apprised of its progress.

3.4 Extensions of Time

SELLER shall have the right to an extension of the time for the completion or occurrence of any Milestone or deadline expressly stated herein where a Force Majeure affecting SELLER or a PREPA Risk Event directly delays SELLER's ability to achieve such Milestone or deadline, but only to the extent that (i) such delay would not have occurred but for the occurrence of such event, (ii) SELLER exercises its commercially reasonable efforts to mitigate the effects of such delay, and (iii) SELLER has notified PREPA of such delay, and provided PREPA with a detailed explanation of the circumstances leading to such delay, as promptly as possible, but no later than ten (10) Business Days of the occurrence of such event. If SELLER exercises the foregoing right, then the time for completion or occurrence of such Milestone or deadline shall extend by the number of Days during which such event giving rise to such delay prevented SELLER from achieving such Milestone or deadline; provided that, notwithstanding any other provision of this Agreement to the contrary, with respect to any extension of the Milestone for Commercial Operation, such extensions shall not exceed, in the aggregate ten percent (10%) of the period allocated for the time for completion or occurrence on the Agreement Date without the prior written approval of PREB.⁸

3.5 Delay Liquidated Damages

- a. To the extent that (i) a PREPA Risk Event delays SELLER's ability to achieve Commercial Operation as determined under Section 3.4 (*Extensions of Time*) and (ii) SELLER achieves either Deemed Completion or Commercial Operation, then PREPA shall pay to SELLER, as SELLER's sole and exclusive remedy in respect of such delay, an amount per Day of such delay equal to one thirtieth (1/30) of the Capability Payment Price applicable to the first Agreement Year as liquidated damages (the "**PREPA Delay Liquidated Damages**") no later than forty-five (45) Days after receipt of an invoice therefor; provided that (A) if, upon the occurrence of Commercial Operation Date, the Monthly Contract Capability established by the Initial Performance Tests falls below the Design D^{\max} , then the Parties shall reduce the PREPA Delay Liquidated Damages and SELLER shall credit PREPA's account for any overpayment according to the ratio that such Monthly Contract Capability bears to the Design D^{\max} ; and (B) the Term shall reduce for each Day in respect of which PREPA has paid PREPA Delay Liquidated Damages. The Parties acknowledge and agree that the PREPA Delay Liquidated Damages represent a fair and reasonable estimate of the losses which SELLER will suffer if Commercial Operation does not occur by the Guaranteed Commercial Operation Date, and accordingly the Parties hereby waive their right to dispute the validity of this paragraph (a) of Section 3.5.
- b. For each Day of delay in achieving Commercial Operation after the Guaranteed Commercial Operation Date until the earlier of (i) the Commercial Operation Date, and (ii) the Long-Stop Date, other than any Day in respect of which PREPA has an obligation to pay PREPA Delay Liquidated Damages in accordance with paragraph (a) above, SELLER shall pay to PREPA as liquidated damages the SELLER Delay Liquidated Damages, no later than forty-five (45) Days after receipt of an invoice therefor. The SELLER Delay Liquidated Damages shall constitute PREPA's sole and exclusive remedy in respect of such delay, other than those remedies arising out of the termination by PREPA for delay

⁸ Note: PREB prohibits PREPA from granting an aggregate time extension under this Agreement that exceeds 10% of the contractually agreed period for achieving the Commercial Operation Date.

under Section 15.1 (*Termination Date*). The Parties acknowledge and agree that the SELLER Delay Liquidated Damages represent a fair and reasonable estimate of the losses which PREPA will suffer if Commercial Operation does not occur by the Guaranteed Commercial Operation Date, and accordingly the Parties hereby waive their right to dispute the validity of this paragraph (b) of Section 3.5.

- c. The Parties acknowledge and agree that SELLER's maximum aggregate liability arising out of this Agreement for delays in achieving Commercial Operation shall not exceed the Security Amount. If, prior to the Commercial Operation Date, the accrued SELLER Delay Liquidated Damages (determined without reference to the Security Amount) exceed, or will likely exceed, the applicable Security Amount, then SELLER shall have the right to increase the Security Amount by an amount specified in a written notice to PREPA; provided that, if the amount of such increase exceeds the amount (expressed in USD) corresponding to the product of the per Day SELLER Delay Liquidated Damages amount *multiplied by* the number of Days corresponding to a ten percent (10%) increase, in the aggregate with all of the extensions of time to achieve Commercial Operation, then such increase shall not become effective until PREPA obtains PREB's approval of such increase. If SELLER desires to increase the Security Amount under this paragraph (c) of this Section 3.5, then such increase shall not become effective until SELLER has delivered a replacement Performance Security with a total face amount to cover the increased Security Amount.

3.6 Exchange of Information

For purposes of conducting any investigations and evaluations as the Parties may deem reasonable and necessary to determine the feasibility of the Facility, the PREPA Interconnection Facilities, and the technical aspects related to the provision of Energy Storage Services, the Parties agree to cooperate reasonably and in good faith and provide each other and their respective representatives reasonable and timely access to relevant personnel, advisors (including environmental consultants), properties, and books and records, provided the information is not privileged, confidential or protected under other agreements with third parties or by Law. Subject to the conditions stated in the previous sentence, each Party hereby agrees to cooperate and exchange information necessary to permit, finance, construct and operate the Facility. Notwithstanding anything in this Agreement to the contrary, SELLER shall remain solely responsible for permitting, financing, constructing, and operating the Facility.

3.7 Cooperation

To the extent legally permitted, the Parties agree to cooperate reasonably and in good faith in the mutually beneficial endeavor to obtain (i) control of, or other required access and rights to, the real property upon which the Facility will be located, (ii) financing for the Facility and the PREPA Interconnection Facilities, and (iii) all necessary Permits, endorsements and approvals for siting and construction of the Facility and the PREPA Interconnection Facilities. Notwithstanding anything in this Agreement to the contrary, SELLER shall remain solely responsible for obtaining the items set out in subparagraphs (i) through (iii) of this Section 3.7.

3.8 Interconnection Agreement

SELLER shall comply with all terms and conditions contained in the Interconnection Agreement. PREPA shall bear no liability or cost under this Agreement related to interconnection or electric distribution or transmission service for the Facility.

3.9 Protocols & Procedures

No later than one hundred eighty (180) Days after the Closing Date, the Parties, in consultation with the Consulting Technical Expert, shall agree upon any adjustments or additions to the Testing Protocol (including in respect of the Performance Tests) and Operating Procedures applicable to the Facility, taking into consideration Prudent Utility Practices, the MTRs, the Approved Design, the Operating Characteristics, equipment supplier and manufacturer recommendations set forth in their operating manuals, and the terms and conditions of this Agreement. The Testing Protocol and Operating Procedures shall only be modified with the written consent of the Parties. In the event of any conflict between the terms and conditions of this Agreement and the Testing Protocol or Operating Procedures, the terms and conditions of this Agreement shall prevail. SELLER acknowledges and agrees that (i) its compliance with the Operating Procedures or Testing Protocol does not relieve SELLER from any liability that it would otherwise have under this Agreement, and (ii) PREPA shall not be liable to SELLER or any other Person by reason of its review or approval of the Operating Procedures or Testing Protocol.

3.10 SELLER Utilities

SELLER shall procure at its own cost its own electricity prior to the Initial Synchronization Date, which it may obtain from PREPA through a separate agreement, and shall procure all of its other water, fuel, and other utilities during the Term. From and after the Initial Synchronization Date until the Commercial Operation Date, PREPA agrees to provide backfeed electricity to SELLER as requested by SELLER at the most advantageous published rate available to SELLER, based on PREPA's approved tariff, which shall conform with rates PREPA charges to similar customers. From and after expiration of the ITC Period, and subject to paragraph (b) of Section 7.4 (*Charge Energy Obligations*), PREPA shall have responsibility for delivery to the Facility at the Interconnection Point of such quantities of Charge Energy as may be specified in a Charge Notice for SELLER to draw from the Grid System, in accordance with Section 7.4 (*Charge Energy Obligations*), at no cost to SELLER.

4. **FACILITY DESIGN REQUIREMENTS**

4.1 Proposed Design

- a. No later than sixty (60) Days after the Closing Date, SELLER shall submit to PREPA a thirty percent (30%) engineering design for the Facility and the PREPA Interconnection Facilities. PREPA shall review and comment on such design within fifteen (15) Business Days.
- b. No later than sixty (60) Days after PREPA provides its comments (or approval) pursuant to paragraph (a) of this Section 4.1, SELLER shall submit to PREPA the issued-for-construction design of the Facility and the PREPA Interconnection Facilities (the "**Proposed Design**"). SELLER agrees to ensure that the Proposed Design will (i) comply with Prudent Utility Practices, the requirements of the Interconnection Agreement, the Operating Characteristics, Permits, Applicable Laws, Applicable Standards, and the MTRs, and (ii) incorporate all equipment required for the Facility to comply with the MTRs.
- c. No later than thirty (30) Days following SELLER's delivery to PREPA of the Proposed Design, PREPA shall complete its review of the Proposed Design and deliver to SELLER written notice that PREPA either (i) accepts the Proposed Design (the "**Approved**

Design”) and confirms that (a) the Interconnection Facilities, if constructed in accordance with such design, will comply with PREPA’s interconnection requirements and (b) subject to the results of the Feasibility Study, System Impact Study and Facility Study and compliance with the requirements identified in such studies, PREPA will allow the Facility to interconnect with the Grid System in accordance with this Agreement, or (ii) does not accept such design based on its review, in which case PREPA shall simultaneously deliver to SELLER a written and detailed description of PREPA’s objections to such design and PREPA’s required modifications thereto, which modifications PREPA shall reasonably propose in good faith and consistent with Prudent Utility Practices (the “**Technical Input**”). To the extent the Technical Input involves a change in MTRs, the provisions of Section 4.2 (*Modifications*) shall apply.

- d. If PREPA provides Technical Input to SELLER in accordance with the foregoing, then no later than ten (10) Business Days following SELLER’s delivery to PREPA of SELLER’s revised Proposed Design, which revised Proposed Design SELLER shall ensure is consistent with the MTRs and Technical Input, PREPA shall review such revised Proposed Design and notify SELLER in writing either that (i) such revised design constitutes the Approved Design, or (ii) PREPA does not accept such design, in which case PREPA shall simultaneously deliver to SELLER further Technical Input. The Parties shall repeat the foregoing process until PREPA accepts an Approved Design, which approval PREPA shall not unreasonably withhold or delay.
- e. The Parties shall exercise commercially reasonable efforts to agree upon an Approved Design within sixty (60) Days of SELLER’s submission of the revised Proposed Design, after SELLER has received PREPA’s Technical Input. The Parties’ failure to agree on the Approved Design within one hundred eighty (180) Days after SELLER’s submission of a Proposed Design shall constitute grounds for an extension of time for the occurrence of Milestones to the extent otherwise permitted under Section 3.4 (*Extensions of Time*).
- f. SELLER shall not, without PREPA’s written consent, commence construction of the Facility or the PREPA Interconnection Facilities being installed or constructed by it until the Parties have agreed on an Approved Design; provided that, SELLER may, at its risk, order long-lead equipment prior to the achievement of the Approved Design.

4.2 Modifications

- a. Each Party shall notify the other in advance of any changes to its system, and the reasons for those changes, that would reasonably require modification or expansion of the MTRs after the Closing Date, affect the coordination of protective devices between SELLER and PREPA interconnected systems or otherwise affect either Party’s Interconnection Facilities.
- b. PREPA reserves the right to modify or expand the MTRs, DCDs, or its requirements for protective devices in the Interconnection Facilities, in each case from time to time in accordance with Prudent Utility Practices. If PREPA desires to modify or expand the MTRs, DCDs or its requirements for protective devices in the Interconnection Facilities in consideration of the risk of imminent and substantial harm to human life, property, or the Grid System (including degradation of service) but for the adoption of such change, specifically as it relates to reliability and safety margins, then it shall notify SELLER thereof in writing, which provides the rationale in reasonable detail for such change, and SELLER shall implement such change.

- c. If SELLER implements any modification or expansion that PREPA requires under this Section 4.2, then SELLER shall assume the cost of such implementation, up to a total cost which, when added to any costs that PREPA previously required and incurred by SELLER pursuant to this Section 4.2 or Section 4.3 (*Modeling*) during the Term, does not exceed the Modification Limit. If such modification or expansion reduces the Facility's ability to provide Energy Storage Services, then the Parties shall treat that portion of SELLER's reasonably projected lost revenue under this Agreement arising out of such reduction as a cost of such change.
- d. If SELLER's costs attributable to such change (as reasonably determined and evidenced in writing to PREPA), when added to any costs SELLER previously incurred pursuant to PREPA's request for modification or expansion in accordance with this Section 4.2 or Section 4.3 (*Modeling*) during the Term, exceed the Modification Limit, then PREPA shall increase the Monthly Payment to allow SELLER to recover that portion of the cost in excess of the Modification Limit in Monthly installments (i) in respect of modifications to the Facility, over a term of eighteen (18) Months, or (ii) for a reduction to the Facility's ability to provide Energy Storage Services, over the remaining Supply Period or so long as the reduction exists. Notwithstanding the foregoing, and only if not the result of changes required by PREPA, SELLER shall assume the total cost (without reimbursement) of implementing modifications to the MTRs or requirements for protective devices resulting from any deviations from the Operating Characteristics or the Approved Design or any changes to SELLER's system whatsoever.
- e. Modifications or expansions of the MTRs shall not become effective until SELLER has had a reasonable period of time to comply with any such modified or expanded requirement.

4.3 Modeling

- a. SELLER shall provide PREPA with a PSS/E model for the Facility for approval no later than the Agreement Date.
- b. SELLER agrees to keep the PSS/E mathematical models current with the future versions of the PSS/E program, and shall provide updated PSS/E mathematical models to PREPA not later than [ninety (90)] Days after a PSS/E version upgrade if such upgrade results in software incompatibility with PREPA's system. SELLER shall submit to PREPA a report from Siemens PTI or another third-party engineering consultant that validates and certifies the PSS/E mathematical model as accurate, including the subsequent revisions performed to keep the mathematical model current with the future version of the PSS/E program. PREPA shall bear all costs incurred by SELLER in excess of the Modification Limit in connection with changes to the PSS/E mathematical model that result from modification or expansion of the MTRs or PREPA's requirements for protective devices in the Interconnection Facilities as per Section 4.2 (*Modifications*).

4.4 Pre-Synchronization Testing

- a. Prior to the Initial Synchronization Date, SELLER shall retain a contractor, approved in writing by PREPA (which approval PREPA shall not unreasonably withhold or delay after SELLER has submitted to PREPA information about the experience of such contractor), to perform the acceptance testing of the Interconnection Facilities, in accordance with the Testing Protocol. SELLER shall provide to PREPA no less than ten (10) Days' written

notice of such testing and PREPA shall have a representative witness and evaluate the testing.

- b. No later than fifteen (15) Business Days following completion of such testing and submission to PREPA of the testing book prepared by the testing contractor, PREPA shall review such testing book and notify SELLER in writing whether PREPA (i) accepts such testing book, or (ii) declines to accept such testing book, in which case PREPA shall simultaneously deliver to SELLER a written and detailed description of PREPA's objections to such testing book and PREPA's required modifications thereto which SELLER shall jointly work with the testing contractor to incorporate in good faith. If PREPA has provided required modifications to the testing book, then no later than five (5) Business Days following SELLER's delivery to PREPA of a revised testing book consistent with such modifications, PREPA shall review such revised testing book and notify SELLER in writing either of PREPA's approval or that PREPA continues to require modifications thereto. The Parties shall repeat the foregoing process until PREPA approves the testing book, which approval PREPA shall not unreasonably withhold. PREPA shall have the right to finally determine, acting reasonably in accordance with Prudent Utility Practice, whether SELLER has adequately designed, constructed and tested the Interconnection Facilities and whether such facilities comply with the Approved Design and PREPA's other requirements. PREPA shall use reasonable efforts to accept SELLER's testing book within fifteen (15) Business Days after SELLER's delivery to PREPA of a revised testing book, after SELLER has received PREPA's objections to the testing book for the first time.
- c. Upon completion of the pre-synchronization testing of the Interconnection Facilities, SELLER shall provide written notice (which shall include a copy of the red line drawing used for the construction of the Interconnection Facilities) to PREPA that SELLER has substantially completed and tested the Interconnection Facilities in accordance with paragraphs (a) and (b) of this Section 4.4 ("**IF Completion Notice**"), in the form set forth in Appendix X (*Form of IF Completion Notice*).
- d. Following receipt of the IF Completion Notice, PREPA shall inspect (or the Parties shall appoint a Consulting Technical Expert to inspect) such Interconnection Facilities and the remainder of the Facility to confirm that SELLER has constructed the Interconnection Facilities in accordance with the Approved Design, which inspection and confirmation PREPA shall complete promptly, but in any case within five (5) Business Days following PREPA's receipt of the IF Completion Notice.
- e. If PREPA (or the Consulting Technical Expert, as applicable) determines in good faith that SELLER has not constructed the Interconnection Facilities or remainder of the Facility in accordance with the Approved Design and that such deviation would, if PREPA synchronized the Facility with the Grid System, adversely affect the operations of the Grid System, PREPA shall so advise SELLER in writing within five (5) Business Days following PREPA's inspection of the Interconnection Facilities or Facility, as applicable, and SELLER shall correct or mitigate any such deviation prior to interconnecting the Facility to the Grid System and resubmit the IF Completion Notice (in which case paragraph (d) of this Section 4.4 shall again apply). If the Parties cannot reach an agreement on whether SELLER has constructed the Interconnection Facilities or Facility in accordance with the Approved Design after SELLER has submitted two (2) IF Completion Notices that PREPA has found to be deficient, then either Party may refer the matter to dispute resolution pursuant to Section 21.11 (*Dispute Resolution*).

- f. If PREPA, in consultation with the Consulting Technical Expert, determines that the Interconnection Facilities and the Facility have been constructed in accordance with this Agreement, then PREPA shall notify SELLER thereof (such notification, the “**Substantial Completion Notice**”), in the form set forth in Appendix Y (*Form of Substantial Completion Notice*), and the Parties shall proceed with Initial Synchronization and testing pursuant to Article 5 (*Synchronization, Testing & Completion*).

4.5 Protection Relays & Control

- a. SELLER shall provide PREPA with the proposed design of the complete protection systems (including relay devices and relay settings), in accordance with Appendix O (*Technical Requirements for Operation, Protection, & Control*), for PREPA’s review and inspection not later than sixty (60) Days prior to the Proposed Initial Synchronization Date. SELLER shall submit the protection requirements in three stages: (i) design; (ii) protection report (*i.e.* the settings to be implemented according to the Approved Design); and (iii) the tests that SELLER shall perform with the approved settings.
- b. If PREPA declines to accept such protection requirements for any reason, SELLER agrees to comply with any reasonable request made by PREPA to provide the protection scheme requirements, including acceptable relay settings, prior to the Initial Synchronization Date. PREPA agrees to give any comments or suggested changes pursuant to this Section 4.5 within thirty (30) Days after SELLER submits the protection requirements at each stage to PREPA, provided that PREPA shall have at least ten (10) Days to evaluate each individual submission after receipt. If the Parties cannot reach an agreement within thirty (30) Days after PREPA’s receipt of the complete set of protection requirements, including relay settings, then the Parties shall resolve such Dispute in accordance with Section 21.11 (*Dispute Resolution*).
- c. SELLER further agrees that control and protection scheme parameters such as ramp rates, frequency fluctuations, overvoltage or low voltage ride-through, voltage support, and dynamic power factor will align in all material respects with the MTRs. SELLER shall procure equipment with electrical capabilities to comply with the MTRs.

4.6 Voltage Schedule

PREPA shall prepare and submit to SELLER a written voltage schedule for the Facility no later than thirty (30) Days prior to the Proposed Initial Synchronization Date. From and after the Commercial Operation Date, PREPA may change such voltage schedule upon thirty (30) Days’ prior written notice, or in accordance with, the Operating Procedures, provided that such voltage schedule complies with the MTRs. SELLER shall use such voltage schedule in the operation of its Facility. PREPA shall base the voltage schedule on the normally expected operating conditions for the Facility and the reactive power requirements of the Grid System.

4.7 Facility Upgrades

From and after the Initial Synchronization Date, SELLER shall not carry out any upgrades or modifications to the Facility that will, or may reasonably be expected to, impair or limit the Facility’s compliance with the MTRs, alter its Operating Characteristics or expand or limit its ability to provide the Energy Storage Services to PREPA, including the addition of energy discharge capacity expansions or other upgrades not contemplated by the Approved Design, in each case without PREPA’s prior written consent, which PREPA may withhold in its sole discretion.

The Parties acknowledge that this Section 4.7 does not restrict SELLER's performance of routine maintenance or technology upgrades required to ensure safe and reliable operation or regular replacement of equipment to maintain the performance of the Facility in accordance with this Agreement and the Approved Design.

5. SYNCHRONIZATION, TESTING & COMPLETION

5.1 Scheduling Synchronization

SELLER shall notify PREPA in writing of the proposed Initial Synchronization Date (the "**Proposed Initial Synchronization Date**") and the start-up and testing schedule for the Facility and the PREPA Interconnection Facilities no later than ninety (90) Days prior to the Proposed Initial Synchronization Date. SELLER shall have the right to postpone or accelerate such date with at least fourteen (14) Days' advance written notice to PREPA. Upon the issuance of the Substantial Completion Notice, the Parties shall agree on the actual Initial Synchronization Date at least seven (7) Days in advance of such date.

5.2 Initial Synchronization

SELLER shall not energize, back-feed, or synchronize the Facility or Interconnection Facilities without PREPA's prior approval, which approval PREPA shall not unreasonably withhold or delay. Subject to SELLER's compliance with the Interconnection Agreement and this Agreement, PREPA agrees to allow the Facility to interconnect to the Grid System at the Interconnection Point in accordance with the terms of this Agreement from the Initial Synchronization Date. PREPA shall have the right to have a representative present at the Facility to witness the synchronization process from and after the Initial Synchronization Date.

5.3 Initial Performance Tests

- a. On or promptly after the Initial Synchronization Date, SELLER shall conduct the initial Performance Tests on the Facility to, among other things, verify that each Capability of the Facility will meet or exceed the corresponding Design Capability, and the provisions of paragraphs (a), (b), and (c) of Section 6.9 (*Supply Period Performance Tests*) shall apply *mutatis mutandis* to such tests (the "**Initial Performance Tests**").
- b. SELLER warrants that the Initial Performance Tests shall establish that each Capability of the Facility will meet or exceed the corresponding Design Capability. If the Initial Performance Tests establish that a Capability of the Facility falls below the corresponding Design Capability, then prior to the Long-Stop Date, SELLER may, at its election:
 1. take corrective actions to increase such Capability of the Facility prior to the Long-Stop Date until the Initial Performance Tests demonstrate that a Capability of the Facility meets or exceed the corresponding Design Capability; or
 2. if, for D^{\max} or C^{\max} only, such Capability meets or exceeds at least ninety-five percent (95%) of the corresponding Design Capability on a sustained basis (the "**Minimum Acceptance Capability**"), then credit PREPA's account in the amount of \$200 per kW for each kW of difference between such Design Capability and the corresponding Capability of the Facility as liquidated damages (the "**Capability Shortfall Liquidated Damages**"),

provided that if, by the Long-Stop Date, such corrective actions result in such Capability meeting or exceeding the Minimum Acceptance Capability but not the corresponding Design Capability, then SELLER shall credit PREPA's account for the Capability Shortfall Liquidated Damages. SELLER acknowledges and agrees that the Capability Shortfall Liquidated Damages represent a fair and reasonable estimate of the loss that PREPA will suffer if such a Capability shortfall occurs, and accordingly, SELLER hereby waives its right to dispute the enforceability of this paragraph (b) of this Section 5.3.

c. If the Initial Performance Tests establish that the Facility fails to comply with the Other Minimum Acceptance Criteria, then SELLER may, at its election:

1. take corrective actions to improve the performance of the Facility; and
2. repeat the Initial Performance Tests to establish that the Facility satisfies the MTRs and criteria set out in the Testing Protocol,

in each case, prior to the Long-Stop Date.

d. Subject to paragraphs (b) and (c) of this Section 5.3, if the Initial Performance Tests do not establish that the Facility meets both the Minimum Acceptance Capability and Other Minimum Acceptance Criteria, then PREPA shall have the right to reject the results of such tests.

e. Following the successful completion of the Initial Performance Tests (or crediting of Capability Shortfall Liquidated Damages, as applicable) and satisfaction of all other criteria to achieve Commercial Operation:

1. SELLER shall notify PREPA in writing of the test results and the Commercial Operation Date by issuing a certificate thereof, in the form set forth in Appendix U (*Form of Commercial Operation Date Certificate*). PREPA shall confirm and countersign such notification, which confirmation PREPA shall not unreasonably withhold or delay, and if a demonstrated Capability falls below the corresponding Design Capability, then subject to paragraphs (b) and (c) of this Section 5.3, the Parties shall amend this Agreement to reduce the corresponding Design Capability accordingly.
2. SELLER shall submit to PREPA a revised PSS/E mathematical model that represents the as-built Facility. This PSS/E model shall include all necessary functionality to properly model the Facility for both steady-state and dynamic simulations. SELLER shall also submit a PSS/E validation report for the Facility, which describes how the PSS/E simulation results demonstrate the model MTR compliance and performance, based on the final adjustment and parameter settings of MTR and the Initial Performance Tests as required in this Agreement.

5.4 Interconnection Facilities

a. On the Commercial Operation Date:

1. SELLER shall: (i) transfer good and valid legal title to the PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work) to PREPA free and clear of all liens and any other Claims by third parties, and to the fullest extent

allowed by Applicable Law, assign all of the underlying equipment supply contracts, the Interconnection Construction Contract and other contracts, and all remaining equipment-supplier warranties in respect of PREPA Interconnection Facilities, to PREPA, (ii) release and forever discharge PREPA and its respective officers, directors, agents, and employees, and all property connected with or a part of the site of the PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work), from any and all contractual liens and any other liens arising by operation of Applicable Law or otherwise in connection with, or arising out of, the performance of SELLER's obligations under this Agreement, and (iii) specifically waive and release any lien, right, security interest or encumbrance of any kind in connection with this Agreement, the Interconnection Construction Contract or Applicable Law, established by SELLER, its contractors at any tier, material suppliers, laborers and all other Persons or entities furnishing services, labor or materials in connection with SELLER's obligations under this Agreement and all other interests therein and all improvements and materials placed on such site or machinery furnished in connection with such work; and

2. SELLER hereby represents and warrants to PREPA that (i) the design, engineering, procurement, construction and completion of the PREPA Interconnection Facilities (other than PREPA Interconnection Facilities Work) conform in all material respects with this Agreement, the Approved Design and all Applicable Law, (ii) the PREPA Interconnection Facilities are fit for their intended purpose and free from material defects and deficiencies of any kind, and designed, engineered and constructed (other than PREPA Interconnection Facilities Work) in accordance with those practices, methods, techniques, standards and procedures which prudent, diligent, skilled and experienced contractors generally accept for the procurement, erection and installation of equipment, and the engineering, design and construction of, electrical transmission facilities of a similar nature and magnitude, and (iii) PREPA possesses good and valid title to the entirety of the PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work) free and clear of any lien or Claim and SELLER has not received, nor has SELLER become aware of, any notice of intention to assert a lien, or proceeding to establish a lien, arising out of or in connection with such facilities or SELLER's work related thereto.
- b. From the Commercial Operation Date until three hundred sixty-five (365) Days thereafter (the "**Defects Liability Period**"), SELLER shall promptly repair or replace any defect in design, workmanship, or a component of any part of the PREPA Interconnection Facilities (other than PREPA Interconnection Facilities Work), and any physical damage to any other part caused thereby, which may appear during the Defects Liability Period[, except for defects caused by PREPA's failure to safely and adequately operate and maintain the affected equipment or component]. For any portion of such facilities which SELLER repairs or replaces during the Defects Liability Period, the Defects Liability Period for such portion shall extend for a period of three hundred sixty-five (365) Days after the date on which SELLER completes such repair or replacement. If any defect or damage appears during the Defects Liability Period, PREPA shall, promptly after becoming aware thereof, notify SELLER thereof. As soon as reasonably practicable after receiving notice of such defect or damage from PREPA, SELLER shall commence all repair or replacement work required to rectify such defect and/or damage. In the event that SELLER fails to commence or carry out such repair or replacement work within a reasonable period of time, PREPA shall have the right to engage and pay other Persons to carry out the same, and PREPA

may, at its election, deduct all reasonable, documented costs incurred by it in connection therewith from monies due to SELLER or that become due to SELLER under this Agreement, or draw on the Performance Security. SELLER shall procure that the contractor under the Interconnection Construction Contract obtains warranties for equipment used in such construction works from the respective manufacturers. Unless agreed with PREPA, SELLER shall ensure that such warranties extend for at least the Defects Liability Period with respect thereto and shall obligate any such manufacturer to rebuild, remove and replace any equipment supplied by such manufacturer which has a defect or deficiency, in each case in a manner and on terms and conditions substantially similar to those contained herein. The installation of all materials used in the construction of the PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work) shall strictly comply with any relevant manufacturer's requirements. In the event that a manufacturer fails to honor its warranty based in whole or in part on a claim of defective installation, SELLER shall be liable for the cost of the associated removal, replacement, rebuilding, and repair. SELLER shall perform all work contemplated by this paragraph (b) of this Section 5.4 at its own cost.

- c. SELLER shall provide PREPA with as-built drawings of the Interconnection Facilities and the Facility within ninety (90) Days after the Commercial Operation Date and within ninety (90) Days after any material modification of the Interconnection Facilities or remainder of the Facility to the extent that such modification affects such as-built drawings.
- d. SELLER shall at all times own and have responsibility for (at its own cost and expense) the safe and adequate operation and maintenance of all Seller Interconnection Facilities. After transfer from SELLER, PREPA shall own and have responsibility for the safe and adequate operation and maintenance of the PREPA Interconnection Facilities. If PREPA implements any change in the protection system relay settings, equipment, or studies due to any improvement at the Interconnection Facilities required by SELLER or as a result of the Facility, then SELLER shall bear all reasonable costs and expenses incurred by PREPA.

6. OPERATION OF THE FACILITY

6.1 General

SELLER shall:

- a. during each hour of each Day of each Billing Period:
 - 1. continuously operate the Facility in Discharge Mode, Charge Mode or Storage Mode without interruption as required by a Dispatch Notice or a Charge Notice;
 - 2. while operating in Discharge Mode, make the Facility available for dispatch by PREPA of (A) a quantity of Energy that corresponds to the Design Duration Energy during the Design Discharge Duration, and (B) Ancillary Services specified in the MTRs, as applicable, at the Interconnection Point;
 - 3. while operating in Storage Mode, make the Facility available for storage of quantities of Energy that correspond to the Design Storage Energy; and

4. while operating in Charge Mode, make the Facility available to accept at the applicable Charge Point a quantity of Energy that corresponds to the Design Charge Energy during the Design Charge Duration,

in each case (as applicable to such hour) other than during the occurrence of any Permitted Outage Hour and subject to the applicable Annual Degradation Rates;
- b. from the Initial Synchronization Date until the expiry of the Supply Period:
 1. operate, test, maintain, repair and, if necessary, replace the Facility (or any portion thereof) in accordance with (i) the Operating Procedures, (ii) the Testing Protocol, (iii) the MTRs, (iv) Dispatch Notices and Charge Notices, (v) Prudent Utility Practices, (vi) this Agreement, and (vii) Applicable Law and Applicable Standards, and subject to the Operating Characteristics; and
 2. ensure that (i) personnel remain on duty at the Facility at the times required to meet SELLER's obligations under this Agreement, and (ii) any contractor that SELLER engages for the operation, testing, maintenance, or repair of the Facility qualifies as a Qualified Operator; and
- c. ensure that the Facility satisfies the Performance Guarantees.

6.2 Electricity Supply to the Facility

From and after the Commercial Operation Date until the expiry of the Supply Period, SELLER shall procure at its own cost such Energy as it requires:

- a. to return the Facility at the end of Outage or Derating (unless a PREPA Risk Event directly caused such Outage or Derating) to a Stored Energy Level equal to the Stored Energy Level immediately prior to such Outage or Derating, as applicable, in accordance with Section 6.6 (*Restoration of the Facility*);
- b. for Station Use in accordance with Section 7.5 (*Station Use*); and
- c. in respect of an Unauthorized Charge or a Renewable Energy Charge, in accordance with Section 7.6 (*Unauthorized Charge and Renewable Energy Charge*).

If SELLER procures such Energy from PREPA, then PREPA shall, for the purposes of paragraphs (a) or (b) of this Section 6.2, supply such Energy at the most advantageous published rate available to SELLER based on PREPA's approved tariff, conforming to the rates PREPA charges to similar customers.

6.3 Scheduled Maintenance

- a. SELLER shall (i) ensure that no more than [●] hours of Scheduled Outages or Scheduled Deratings occur per Agreement Year, (ii) plan its Scheduled Maintenance Program so as to minimize interruptions or reductions to the provision of Energy Storage Services, and (iii) cooperate with PREPA to coordinate the Scheduled Outages and Scheduled Deratings with Grid System needs.

- b. SELLER shall, at least sixty (60) Days prior to the Commercial Operation Date, submit a written schedule of Scheduled Outages and Scheduled Deratings (“**Scheduled Maintenance Program**”) for the remaining portion of the first Year of the Facility’s operations and, if the Commercial Operation Date occurs after September 1, for the following Year, setting forth the proposed Scheduled Outages and Scheduled Deratings periods. Thereafter, SELLER shall submit to PREPA, in writing, by September 1 of each Year, its proposed Scheduled Maintenance Program for the next Year.
- c. SELLER shall provide the following information for each proposed Scheduled Outage and Scheduled Derating:
 - 1. description of the work that SELLER will perform during such event;
 - 2. approximate start date and time;
 - 3. approximate end date and time;
 - 4. approximate time to restore the Facility to full operation; and
 - 5. for Scheduled Deratings, Energy Storage Services available during such event.
- d. PREPA shall have thirty (30) Days from receipt of the proposed Scheduled Maintenance Program to notify SELLER whether it accepts the program or requires a rescheduling (and the period during which SELLER can perform such maintenance). If PREPA fails to respond during such period, then the Scheduled Maintenance Program shall be deemed accepted.
- e. SELLER shall use reasonable efforts to accommodate any request from PREPA to reschedule the Scheduled Maintenance Program. If SELLER cannot accommodate PREPA’s request to reschedule the Scheduled Maintenance Program, then SELLER shall provide reasons therefor and alternative dates for the Scheduled Maintenance Program. PREPA shall select between the alternative dates proposed by SELLER to finalize the Scheduled Maintenance Program.
- f. SELLER shall notify PREPA at least seven (7) Days prior to the start of any Scheduled Outage or Scheduled Derating and shall maintain close coordination with PREPA as such event approaches.
- g. If a condition occurs that impacts the Scheduled Maintenance Program, then SELLER shall promptly, on becoming aware of such condition, notify PREPA of such change (including an estimate of the length of such Scheduled Outage or Scheduled Derating) and request PREPA’s approval to revise the Scheduled Maintenance Program, which approval PREPA shall not unreasonably withhold or delay. SELLER shall bear any costs incurred by PREPA for revisions made less than sixty (60) Days before the start date of a Scheduled Outage or Scheduled Derating or that results in such event being scheduled less than sixty (60) Days before the start of the revised Scheduled Outage or Scheduled Derating, other than in cases of Force Majeure or a PREPA Risk Event.
- h. Only those Outages or Deratings that (i) meet the submittal timelines in paragraph (b) of this Section 6.3, and (ii) PREPA approves in accordance with this Section 6.3 shall constitute a Scheduled Outage or Scheduled Derating, respectively.

6.4 Non-Scheduled Outages & Deratings

- a. If SELLER determines that it requires a Non-Scheduled Outage or Non-Scheduled Derating, then SELLER shall coordinate the timing of such Non-Scheduled Outage or Non-Scheduled Derating, as applicable, with PREPA.
- b. SELLER shall use commercially reasonable efforts to notify PREPA of any Non-Scheduled Outage or Non-Scheduled Derating no later than 17:00 hours (Puerto Rico time) on the third (3rd) Business Day prior to the Day that such Non-Scheduled Outage or Non-Scheduled Derating will occur. In the event of an unexpected Non-Scheduled Outage or Non-Scheduled Derating, SELLER shall provide notice to PREPA by telephone or email as soon as reasonably practicable and, in all cases other than Force Majeure, no more than fifteen (15) minutes following the occurrence of such Non-Scheduled Outage or Non-Scheduled Derating. Thereafter, SELLER shall, as soon as reasonably practicable, provide PREPA with a notice that includes (i) the event or condition, (ii) the date and time of such event or condition, (iii) the expected end date and time of such event or condition, (iv) for Non-Scheduled Deratings, the Energy Storage Services available during such event or condition, and (v) any other information reasonably requested by PREPA.
- c. Notwithstanding the delivery of a notice of a Non-Scheduled Outage or coordination with PREPA to resolve such event, the Facility shall be deemed unavailable for the duration of a Non-Scheduled Outage as applicable to the calculation of Facility Availability.

6.5 Emergencies

- a. No later than the Initial Synchronization Date, each Party shall cooperate with the other in establishing written Emergency plans, including (i) recovery from a local or widespread electrical blackout, (ii) voltage reduction to effect load curtailment, (iii) policies for the delivery by PREPA to SELLER of prompt written notice of the occurrence of all Emergency and follow-up, and (iv) frequent status reports on any ongoing Emergency.
- b. SELLER shall (i) make technical information and data available to PREPA concerning start-up times and black-start capabilities, (ii) promptly inform PREPA of any Emergency at or other material issues with the Facility or the Site, and (iii) if requested by PREPA, submit a remediation program setting out the actions SELLER shall take to mitigate the Emergency or other material issues at the Facility, and (iv) abide by such program.
- c. If the Facility has a Scheduled Outage, Non-Scheduled Outage, Scheduled Derating or Non-Scheduled Derating and such event occurs or would occur coincident with an Emergency, then PREPA may request that SELLER makes commercially reasonable efforts, consistent with Prudent Utility Practices, to reschedule the Scheduled Outage, Non-Scheduled Outage, Scheduled Derating or Non-Scheduled Derating, as applicable, or if such event has begun, to expedite the completion thereof.

6.6 Restoration of the Facility

- a. Following any Emergency, Outage, or Derating, SELLER shall provide as much advance notice as reasonably practicable to PREPA of the date and time that it will bring the Facility back online, provided that SELLER shall furnish at least two (2) Days' prior notice for restoration from a Scheduled Outage or Scheduled Derating and at least two (2) hours' notice for restoration from a Non-Scheduled Outage, Non-Scheduled Derating or

Emergency, in each case, in accordance with the Operating Procedures. PREPA shall have the right to rely on such notice for purposes of delivering Dispatch Notices and Charge Notices to SELLER.

- b. SELLER shall return the Facility at the end of an Outage or Derating to a Stored Energy Level equal to the Stored Energy Level immediately prior to such Outage or Derating, and the Outage or Derating shall not end until such amount of Energy has been restored. SELLER shall bear the costs of Energy required to charge and discharge the Facility during the Outage or Derating (unless a PREPA Risk Event directly causes such Outage or Derating), including those costs needed to restore the Energy stored in the Facility to the Stored Energy Level immediately prior to the start of the Outage or Derating. If a PREPA Risk Event causes an Outage or Derating, then PREPA shall have responsibility for managing, purchasing, scheduling and delivering the Charge Energy required to restore the Energy stored in the Facility to the Stored Energy Level immediately prior to the start of the Outage or Derating in accordance with Section 7.4 (*Charge Energy Obligations*).

6.7 Communication

SELLER shall provide, install, commission, maintain, repair, and replace (as necessary), at its own cost and expense, the following communication facilities linking the Facility with PREPA:

- a. one (1) Remote Terminal Unit (“RTU”), including setup installation and configuration reasonably specified by PREPA;
- b. two (2) independent telecommunication circuits, including one (1) voice grade to link the SCADA system to the Facility’s RTU using [distributed network] 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 reasonably specified by PREPA;
- c. a voice telephone extension to communicate with PREPA’s Monacillos Transmission Center and Ponce Transmission Center;
- d. a telephone line and equipment to transmit and receive e-mail messages to confirm oral communication between PREPA and SELLER; and
- e. for recording the power disturbance caused by electro-mechanic swings and to measure the system response to the swing disturbance, dynamic system monitor equipment, components, and system which comply with the requirements of Appendix N (*Technical Specifications for the Dynamic System Monitor*).

PREPA shall have the right to approve items provided by SELLER in accordance with this Section 6.7, which approval PREPA shall not unreasonably withhold or delay.

6.8 Record Keeping

- a. Each Party shall keep complete and accurate books, accounts, records, and other data required for the proper administration of all transactions with respect to all matters relating to this Agreement.

- b. SELLER shall maintain such records and data for a minimum of [five (5)] Years after the preparation of such records or data and for any additional length of time required by regulatory agencies with jurisdiction over each of the Parties; provided that neither Party shall dispose of or destroy any records without thirty (30) Days' prior written notice to the other Party. Within ten (10) Days after receipt of the notice of intention to destroy or dispose, the other Party shall have the right to require the notifying Party in writing to deliver to it certain records at the requesting Party's sole cost and expense. No more than ten (10) Days from receipt of such notice, the Party proposing to dispose of or destroy such records shall deliver any records requested by the requesting Party.
- c. SELLER shall maintain, in [physical and] electronic copy, (i) as-built drawings, operation and maintenance manuals and other detailed technical documentation for design, engineering, construction, testing, commissioning, operation, maintenance, and repair of the Facility and Interconnection Facilities (other than the PREPA Interconnection Facilities Work), and (ii) an accurate and up-to-date operating log at the Facility with records of (1) real and reactive power for each hour, (2) changes in operating status, Outages, Deratings or Emergencies, charging and discharging (including charging and discharging efficiency), Station Use consumption and efficiency, Stored Energy Level, and Facility Availability (including availability to charge and discharge and State of Charge), (3) any unusual conditions found during inspections, (4) any safety incident, accident or other occurrence at the Site that results in injury to persons or damage to property, (5) electrical characteristics of the Facility and settings or adjustments of the Facility's control equipment and protective devices, (6) maintenance performance, (7) all material data in relation to Performance Tests and other testing, Performance Guarantees, metering, invoicing, payments, Claims, reimbursements, credits and any other charges to PREPA, and (8) any other significant events related to the operation of the Facility.
- d. 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 books, accounts, records, and other data of the other Party relating to the proper administration of this Agreement any time during the period that this Agreement requires the records to be maintained.
- e. SELLER shall deliver to PREPA a Monthly operations and maintenance report by the tenth (10th) Day of each Month describing operations and maintenance activities performed in respect of the Facility during the previous Month.

6.9 Supply Period Performance Tests

- a. During each Agreement Year of the Supply Period, PREPA shall have the right to request SELLER to perform up to [six (6)] PREPA Performance Tests in accordance with the Testing Protocol. PREPA's decision to forgo any such test is not a waiver of PREPA's right to require any subsequent Performance Tests.
- b. SELLER shall submit to PREPA, for evaluation and approval, all Performance Tests reports certified by an experienced and duly qualified independent laboratory or company with specialized expertise in acceptance and other relevant tests of renewable power generating facilities evidencing that the Facility satisfies each of the MTRs and the Performance Guarantees. PREPA shall have the right to approve such laboratory or company, which approval PREPA shall not unreasonably withhold or delay. For the

avoidance of doubt, SELLER acknowledges and agrees that PREPA will not accept manufacturers' test reports as evidence of compliance with this requirement.

- c. SELLER shall coordinate with, and the Performance Tests shall be witnessed by, PREPA's personnel and the Consulting Technical Expert. SELLER shall provide PREPA with at least thirty (30) Days' advance written notice of all Performance Tests, field tests or other matters that PREPA may witness hereunder. The Parties shall cooperate in good faith to determine mutually acceptable dates for such testing of all Performance Tests.
- d. SELLER may request to perform an additional Performance Test ("**Seller Performance Test**") (i) if, as a result of a Performance Test, the Monthly Contract Capability is adjusted downward pursuant to Appendix F (*Compensation*), (ii) upon the completion of Scheduled Outage, or (iii) if the results of a PREPA Performance Test are outside the standards specified in the Test Protocol. A Seller Performance Test shall commence no later than ten (10) Business Days after completion of the PREPA Performance Test showing the low test results, or the completion of the Scheduled Outage, and SELLER shall perform such Seller Performance Test in accordance with the Test Protocol, except that (A) SELLER shall provide PREPA with notice of its request to test and the proposed starting and end times of the Seller Performance Test no later than three (3) Business Days before it commences, and (B) PREPA shall evaluate SELLER's proposal and, in its sole discretion, either grant such request or identify two (2) alternative start and stop times from which SELLER may elect, and to which PREPA will consent. The Tested Duration Energy, as determined through the Seller Performance Test, will be used to determine the Monthly Contract Capability in the same manner as the Tested Duration Energy determined through a PREPA Performance Test.

6.10 Network Security

SELLER shall use commercially reasonable efforts to prevent Malware from accessing any aspect of the Energy Storage Services, the Facility, or any other information systems, operating environments and processes used or relied upon by SELLER to provide the Energy Storage Services, including the information, data and other materials delivered by or on behalf of SELLER to PREPA, the customers of PREPA, or any third party providers (collectively, the "**Environment**"). Throughout the Term, SELLER shall implement improvements to, and upgrades of, its Malware prevention and correction programs and processes consistent with the then-current National Institute of Standards and Technology industry standards and, in any case, no less robust than the programs and processes implemented by SELLER in respect of its own information systems. If Malware enters the Environment, SELLER shall notify PREPA as soon as it becomes aware of such presence and take immediate action, at SELLER's cost, to eliminate and remediate the Malware effects. SELLER shall regularly, and otherwise at the request of PREPA, provide sufficient evidence of its efforts to continuously monitor and evaluate the effectiveness of SELLER's information security safeguards. SELLER shall require that its subcontractors also comply with the obligations of SELLER under this Section 6.10.

7. **DISPATCHING & CHARGING OBLIGATIONS**

7.1 Dispatching

- a. Without prejudice to the requirements of Appendix F (*Compensation*), PREPA shall have the right, exclusively by providing Dispatch Notices to SELLER in accordance with the

Operating Procedures, to direct SELLER to dispatch the Facility seven (7) Days per week and twenty-four (24) hours per Day (including holidays) from the Initial Synchronization Date until the expiry of the Supply Period, and such right shall include the right to require SELLER to (i) curtail, reduce or increase the Energy Storage Services, and (ii) disconnect or connect the Facility, in each case in accordance with:

1. Prudent Utility Practices (such as reasons affecting safety margins or reliability levels in the Grid System, power quality problems as well as outages and disconnections (“vías libres”) of the transmission center or line due to disturbances, maintenance, improvements, and Emergencies);
2. the requirements of Applicable Law and Permits; and
3. the Operating Procedures,

in each case subject to the Operating Characteristics and the Scheduled Maintenance Program.

- b. Subject to paragraph (c) of this Section 7.1, each Dispatch Notice shall remain effective for the duration of the dispatch period specified therein unless and until PREPA modifies such Dispatch Notice by providing SELLER with an updated Dispatch Notice. If PREPA cannot issue an electronic submittal for reasons beyond PREPA’s control, PREPA may provide Dispatch Notices by (in order of preference, unless the Parties agree to a different order) electronic mail, facsimile transmission or telephonically to SELLER’s personnel designated in the Operating Procedures to receive such communications.
- c. If PREPA submits a Dispatch Notice that directs action which does not conform with the Operating Characteristics, then SELLER shall promptly notify PREPA of the non-conformity and PREPA shall modify its Dispatch Notice to conform to the Operating Characteristics. Until PREPA submits a modified Dispatch Notice, SELLER shall, as applicable, dispatch the Facility in accordance with the Operating Characteristics, and the Facility will not be deemed unavailable, but only to the extent the Facility was otherwise available but could not be dispatched because of its inability to operate outside of the Operating Characteristics.

7.2 Curtailment for Breach

Notwithstanding Section 7.1 (*Dispatching*), PREPA shall have the additional right to curtail or reduce the Dispatch Notices, or disconnect the Facility, during the Supply Period, and SELLER shall have no right to any Claim for compensation or otherwise, when SELLER fails to:

- a. operate the Facility in accordance with this Agreement or the MTRs, provided that for any modifications to the MTRs under Section 4.2 (*Modifications*), SELLER has had a reasonable period of time to comply with such modification pursuant to sub-paragraph (e) of Section 4.2 (*Modifications*);
- b. successfully complete the Seller Performance Tests requested by PREPA under paragraph (a) of Section 6.9 (*Supply Period Performance Tests*) with reasonable prior notice; or
- c. maintain the Facility PSS/E mathematical models in accordance with this Agreement, provided that (i) PREPA has given SELLER thirty (30) Days’ notice of SELLER’s failure

to comply with the foregoing, and (ii) SELLER may reasonably perform such upgrade within that time period.

For the avoidance of doubt, any curtailment, reduction or disconnection shall end at the instruction of PREPA, which PREPA shall give promptly after SELLER cures such non-compliance.

7.3 Charging

Following the Commercial Operation Date:

- a. PREPA shall have the right, by providing Charge Notices to SELLER in accordance with the Operating Procedures, to direct SELLER to charge the Facility from an applicable Charge Source (which, for the ITC Period, shall only include the Co-Located Renewable Energy Resource, and after the ITC Period, may include either such resource or the Grid System) seven (7) Days per week and twenty-four (24) hours per Day (including holidays), from the Initial Synchronization Date until the expiry of the Supply Period in accordance with:
 1. Prudent Utility Practices (such as reasons affecting safety margins or reliability levels in the Grid System, power quality problems as well as outages and disconnections (“vías libres”) of the transmission center or line due to disturbances, maintenance, improvements, and Emergencies);
 2. the requirements of Applicable Law and Permits; and
 3. the Operating Procedures,in each case subject to the Operating Characteristics, the Scheduled Maintenance Program and paragraph (b) of Section 7.4 (*Charge Energy Obligations*);
- b. subject to paragraph (c) of this Section 7.3, each Charge Notice shall remain effective for the duration of the charge specified therein unless and until PREPA modifies such Charge Notice by providing SELLER with an updated Charge Notice. If PREPA cannot issue an electronic submittal for reasons beyond PREPA’s control, PREPA may provide Charge Notices by (in order or preference, unless the Parties agree to a different order) electronic mail, telephonically or by facsimile transmission to SELLER’s personnel designated in the Operating Procedures to receive such communications;
- c. if PREPA submits a Charge Notice that does not conform with the Operating Characteristics, then SELLER shall promptly notify PREPA of the non-conformity and PREPA shall modify its Charge Notice to conform to the Operating Characteristics. Until such time as PREPA submits a modified Charge Notice, SELLER shall, as applicable, charge the Facility in accordance with the Operating Characteristics, and the Facility will not be deemed unavailable, but only to the extent the Facility was otherwise available but could not be charging because of its inability to operate outside of the Operating Characteristics; and
- d. SELLER shall draw Energy in connection with a Charge Notice only from the Charge Source identified in such notice.

7.4 Charge Energy Obligations

- a. Except as set forth in this Section 7.4, Sections 6.6 (*Restoration of the Facility*), 7.5 (*Station Use*) and 7.6 (*Unauthorized Charge and Renewable Energy Charge*), or as expressly set forth in this Agreement, if, during the Supply Period (other than the ITC Period), PREPA designates the Grid System as the applicable Charge Source under a Charge Notice in accordance with paragraph (a) of Section 7.3 (*Charging*), then the following provisions shall apply:
 1. PREPA shall have responsibility for managing, purchasing, scheduling and delivering all of the Charge Energy for the Facility to the Interconnection Point in respect of such notice;
 2. SELLER shall take all actions necessary to accept the Charge Energy at and from the Interconnection Point as part of providing the Energy Storage Services, including maintenance, repair or replacement of equipment in SELLER's possession or control used to deliver the Charge Energy to the Facility, in all cases in accordance with the terms of this Agreement; and
 3. PREPA shall hold title to, possession of, and risk of loss of the Charge Energy up to the Interconnection Point, and SELLER shall take title to, possession of, and risk of loss of the Charge Energy at and from the Interconnection Point.
- b. If, during the Supply Period, PREPA designates a Co-Located Renewable Energy Resource as the applicable Charge Source under a Charge Notice in accordance with paragraph (d) of Section 7.3 (*Charging*), then SELLER shall:
 1. have responsibility for managing, purchasing, scheduling and delivering all of the Charge Energy for the Facility to the Co-Located Resource Connection Point in respect of such notice; and
 2. hold title to, possession of, and risk of loss of the Charge Energy at all times, until delivered to the Interconnection Point pursuant to a Dispatch Notice.
- c. SELLER shall only use Charge Energy for PREPA's benefit, regardless of the Charge Source, in accordance with the terms of this Agreement.

7.5 Station Use

SELLER shall have sole responsibility for the purchase and delivery of Energy to satisfy Station Use requirements, it being understood that the Facility will not supply Energy for Station Use.

7.6 Unauthorized Charge and Renewable Energy Charge

During the Supply Period:

- a. SELLER shall not charge the Facility other than pursuant to and as directed in a Charge Notice, or in connection with a PREPA Performance Test.
- b. If SELLER charges the Facility (i) to a Stored Energy Level greater than the Stored Energy Level provided for in the Charge Notice or in any other manner contrary to a Charge

Notice, (ii) without a Charge Notice (other than in connection with a PREPA Performance Test) (the circumstances described in (i) and (ii) each, an “**Unauthorized Charge**”), or (iii) from a Co-Located Renewable Energy Resource (a “**Renewable Energy Charge**”), then (a) SELLER shall bear the cost of all Energy associated with such charging, and (b) PREPA shall have the right to discharge such Energy without notice or additional cost and to retain all of the benefits associated with such discharge, without credit to SELLER; and

- c. SELLER shall bear any charges, sanction, or penalties associated with an Unauthorized Charge or a Renewable Energy Charge.

8. METERING

8.1 Meter Ownership & Maintenance

- a. PREPA shall own and maintain the meters and metering equipment used to measure the delivery and receipt of Charge Energy, Discharge Energy and Ancillary Services (the “**Main Meters**”). SELLER shall install the Main Meters and all other meters and metering equipment at the Co-Located Resource Connection Point and the Interconnection Point, as well as SELLER’s back-up meters and metering equipment at the Facility to measure Discharge Energy, Ancillary Services and Charge Energy (at each Charge Point), in accordance with Appendix H (*Interconnection Description and Specifications*). The Main Meters must not measure Station Use, which SELLER shall meter separately in accordance with paragraph (b) of this Section 8.1.
- b. SELLER shall separately install and meter Station Use with a revenue quality meter or meters, installed in accordance with Appendix H (*Interconnection Description and Specifications*) and conforming to the electrical service requirements, metering, and applicable tariffs applicable to Station Use (“**Station Use Meters**”). PREPA shall own and maintain the Station Use Meters. The Station Use Meters must not measure Discharge Energy and Ancillary Services, which SELLER shall meter separately in accordance with paragraph (a) of this Section 8.1.
- c. The Main Meters, Station Use Meters and the back-up meters and metering equipment shall meet PREPA’s specifications⁹ and be subject to PREPA’s approval, which approval PREPA shall not unreasonably withhold, and which decision PREPA shall inform SELLER of no later than ten (10) Business Days after SELLER’s notice to PREPA regarding the installation of the proposed meters.

8.2 Meter Inspection

PREPA shall seal the Main Meters and the Station Use Meters. PREPA personnel may only break the seals for inspection, testing or adjustment of the meters performed in accordance with this Agreement. PREPA shall give SELLER ten (10) Business Days’ prior written notice thereof and SELLER shall have the right to have a representative present during the meter inspection, testing, or adjustment. If either Party believes that there has been a meter failure or stoppage, it shall immediately notify the other Party to coordinate an inspection or test at the earliest convenient date.

⁹ Note: Parties to agree to specifications prior to signing.

8.3 Meter Testing & Calibration

- a. At least annually, at PREPA's cost and, in addition from time to time upon ten (10) Business Days' prior written notice by either Party at its cost (unless the results demonstrate that meters for which PREPA has operation and maintenance responsibility fall outside of the limits established in American National Standard Institute Code for Electricity Metering (ANSI C12.16, latest version: "ANSI C12.16"), in which case PREPA shall bear the cost of such additional tests), PREPA will test and verify the calibration of the Main Meters and backup meters, in accordance with the provisions for meter testing as established by ANSI C12.16. When, as a result of such a test, PREPA finds the Main Meters within the range specified by the standard, PREPA shall not adjust the amount paid to SELLER for the Energy Storage Services provided to PREPA. If PREPA finds a Main Meter or backup meter outside the range specified by the standard, then the Party owning such defective or inaccurate device shall adjust, repair, replace, and/or recalibrate such device as near as practicable to a condition of zero (0) error (subject to Section 5.4 (*Interconnection Facilities*)) at that Party's expense. If PREPA finds the Main Meters outside the range specified by the standard, and the backup meters within such range, then the Parties shall use the backup meters to calculate the correct amount of Energy Storage Services delivered (reasonably adjusted for line losses) to PREPA for the actual period during which the Main Meters experience inaccurate measurements.
- b. If the Parties cannot determine the actual period during which inaccurate measurements were made, they shall use a period equal to the time elapsed since the most recent test, but in no case for a period in excess of six (6) Months. If PREPA finds the Main Meters outside the range specified by the standard, and either the backup meters are not available, or testing demonstrates the backup meters are also out of calibration, each Party shall adjust its meters, and the Parties shall use the corrected meter readings of the most accurate meter for the actual period during which inaccurate measurements were made (reasonably adjusted for line losses where appropriate). If the Parties cannot determine the actual period during which inaccurate measurements were made, the Parties shall use 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 six (6) Months.
- c. To the extent that the adjustment period covers a period of deliveries for which PREPA has already remitted payment, PREPA shall use the corrected measurements as determined in accordance with this Section 8.3 to recalculate the amount due for the period of the inaccuracy and shall subtract the previous payments by PREPA for this period from such recomputed amount. If the difference is a positive number, PREPA shall pay the difference to SELLER. If the difference is a negative number, SELLER shall pay the difference to PREPA, or PREPA may offset such amounts against payments due to SELLER by PREPA hereunder. The owing Party shall make the payment or credit of such difference no later than thirty (30) Days after the owing Party receives written notice of the amount due, unless PREPA elects (via written notice to SELLER) payment via an offset. 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 there are broken seals or the other Party is performing tests, and other matters affecting the accuracy of the measurement of electricity delivered from the Facility.

8.4 Meter Reading

During each one (1) Year period from and after the Initial Synchronization Date, PREPA shall read the meters on a Monthly basis (prior to the last Day in each Month and, in any event, at least twelve (12) times per Year (prorated for any partial Year)) to determine the amount of Energy Storage Services provided to PREPA from the Facility for each Billing Period. At PREPA's option, PREPA may choose to read the meters more frequently and total such readings in accordance with the applicable Billing Periods. PREPA shall provide SELLER with a written statement containing the reading details and totals within ten (10) Days following the end of each Billing Period. PREPA shall notify SELLER of any site meter readings and SELLER may, at its option, be present for such reading.

8.5 Data

From the Initial Synchronization Date until the expiration of the Supply Period, SELLER shall own all data and information recorded from operation, scheduling, charging, dispatch, testing, and maintenance of the Facility, and SELLER shall be deemed to have granted to PREPA a non-terminable, transferable, non-exclusive, royalty free and cost free license to copy and use such data and information for the purpose of modeling the Grid System and assessing the operation, scheduling, charging, dispatch, metering and testing of the Facility during the Supply Period.

9. **SALE & PURCHASE**

9.1 General

- a. SELLER agrees to provide and sell Energy Storage Services, including all of the Product produced by the Facility, exclusively to PREPA in accordance with this Agreement.
- b. PREPA agrees to pay for the Energy Storage Services, including all of the Product produced by the Facility, through Monthly Payments determined in accordance with Appendix F (*Compensation*), from the Initial Synchronization Date until the expiration of the Supply Period, subject to the terms of this Agreement.

9.2 Title & Risk of Loss

The Discharge Energy that SELLER makes available to PREPA under this Agreement shall become the property of PREPA at the Interconnection Point, at which point title to the Discharge Energy and all risk of loss associated with the Discharge Energy shall transfer to PREPA. PREPA reserves the right to retain all rights, title, benefits, and other interest in, arising out of or related to, the generation, transmission, distribution, or supply of such Discharge Energy that it or any of its Affiliates may realize through its existing or future power generation sources (including the Facility), customer agreements or other projects or improvements to the Grid System.

9.3 Right of Resale

PREPA shall have the right to resell all or any portion of the Product purchased under this Agreement, and SELLER shall, at no cost to PREPA, take all other reasonable actions from and after the Initial Synchronization Date to assist PREPA in receiving, and otherwise ensure that PREPA can receive and resell the Product, including submission of any reports or filings with applicable Governmental Authorities.

9.4 Ancillary Services

The Parties acknowledge and agree that PREPA may, from time to time after the Commercial Operation Date, request SELLER to provide PREPA with the Ancillary Services specified in the MTRs by delivering notice thereof to SELLER pursuant to Article 7 (*Dispatching & Charging Obligations*). SELLER shall provide such services in accordance with such request, in partial consideration of the Monthly Payments and for no additional cost.

9.5 Green Credits

If, at any time during the Term, SELLER accrues a right to Green Credits associated with the provision of the Energy Storage Services, or otherwise generated in connection with the operation of the Facility, then contemporaneously with the provision of such Energy Storage Services or Facility operation, as applicable, and in partial consideration for the Monthly Payments, SELLER shall convey to PREPA, at no additional cost, all such Green Credits. The Parties shall execute all documentation required to confirm the registration of such Green Credits with the North American Renewables Registry or another similar registry acceptable to SELLER and PREPA (the “**Registry**”) and the transfer of such Green Credits as reasonably requested by PREPA in accordance with the rules of the Registry, in each case, at SELLER’s expense. PREPA shall have the sole right to own, market, trade, sell or otherwise transfer such Green Credits available to or in respect of the Facility to any Person, and any Green Credits that are now available or in the future might become available in respect of the Facility during the Supply Period shall inure to the benefit of, and remain the property of, PREPA.

10. PAYMENT & BILLINGS

10.1 Invoice for Monthly Payment

- a. On or before the fifteenth (15th) Day following the end of each Billing Period (or if later, within five (5) Days after SELLER receives the meter reading data pursuant to Section 8.4 (*Meter Reading*)), SELLER shall provide PREPA with a written invoice for the Monthly Payment relating to such Billing Period. Each invoice shall include, as applicable, the Monthly Fixed Payment, Monthly Variable Payment, Other Payment Adjustments, Discharge Energy, Charge Energy, Ancillary Services, Green Credits, the Balance, information necessary to determine Facility performance, insurance payments, credits or payments owing to PREPA, and an itemized statement of all other charges under this Agreement, as of such Billing Period.
- b. PREPA shall use reasonable efforts to review each invoice and notify SELLER of any invoicing issues within thirty (30) Days after receipt thereof. Upon PREPA’s request, SELLER shall furnish, within seven (7) Days, such further information as PREPA may reasonably request in support of the invoice.
- c. To the extent that an invoice complies with the requirements set forth in this Agreement, and subject to any direct agreement with Project Lenders, PREPA shall remit payment of undisputed amounts owed under such invoice no later than forty-five (45) Days after PREPA’s receipt of such invoice and all required supporting documentation and certifications. SELLER acknowledges and agrees that PREPA may withhold payment (without accruing Interest) beyond such date if and so long as SELLER has failed to provide evidence that it has maintained the insurance policies required by this Agreement and in accordance with Section 17.2 (*Tracking Account*).

- d. PREPA will charge all payments that it owes under this Agreement to PREPA's budget account number [●] and estimates that its costs under this Agreement will not exceed [●]. For the avoidance of doubt, the Parties have set out the expected account number and estimate of costs for informational purposes to satisfy the requirements of the Puerto Rico Controller. This paragraph does not bind the Parties or modify any other provision of this Agreement.
- e. If agreed or determined that PREPA has underpaid an invoice, then Interest shall accrue on the payments due to SELLER commencing on the Day after the date on which PREPA had the obligation to remit such payment pursuant to paragraph (c) of this Section 10.1, and continue until, but excluding, the relevant payment date.
- f. If agreed or determined that PREPA has overpaid an invoice, then PREPA shall have the right to deduct the amount of such overpayment (plus Interest, calculated from the date of such overpayment to its repayment, in cases where the overpayment resulted from amounts stated in SELLER's invoices) from future payments in the immediately following Billing Period(s) until PREPA has received full credit for such overpayment.

10.2 SELLER Invoice Certification

SELLER shall submit all invoices in the form acceptable to PREPA and shall include in each such invoice the following certification:

No Interest Certification:

"We certify under penalty of nullity that no public servant of PREPA will derive or obtain any benefit or profit of any kind from the contractual relationship, which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the Agreement. The only consideration to be received in exchange for the performance of the energy storage services provided is the agreed-upon price that has been negotiated with an authorized representative of PREPA. The total amount shown on this invoice is true and correct. The energy storage services have been rendered, and no payment has been received."

SELLER's Signature

SELLER acknowledges that the above certification constitutes an essential requirement of this Agreement and that PREPA will not process for payment invoices provided without this certification. In order to comply with the certification requirements set forth above, SELLER shall require that its subcontractors also include the certification set forth above in any invoices submitted in connection with energy or services provided under this Agreement.

10.3 Invoice for Liquidated Damages

If Liquidated Damages accrue under this Agreement or moneys are otherwise due from SELLER to PREPA in accordance with this Agreement, PREPA shall provide SELLER with a written invoice for such Liquidated Damages or amounts, showing the basis for the calculation of the amounts payable by SELLER thereunder. SELLER shall use reasonable efforts to review each invoice and notify SELLER of any invoicing issues within ten (10) Business Days after receipt thereof. SELLER shall remit payment of amounts owed under such invoice no later than thirty (30) Days after SELLER's receipt of such invoice (including in the event of a disputed invoice). If

SELLER does not pay the full amount of any such invoice when due, any unpaid amount thereof shall bear Interest, from the Day following the due date until, but excluding the relevant payment date.

10.4 Payment Set-Off

Notwithstanding the payment requirements set forth in this Article 10, PREPA shall have the right to set off any amounts due and owing to PREPA by SELLER pursuant to this Agreement, but which remain unpaid, against the amounts due and owing to SELLER by PREPA, provided that (i) such amounts are undisputed, have been determined to be owed to PREPA by a final determination pursuant to Section 21.11 (*Dispute Resolution*), or are explicitly described in this Agreement, and (ii) PREPA has provided SELLER with five (5) Business Days' advance written notice describing in reasonable detail the amounts that PREPA will set off before effecting any such set off.

10.5 Payment Method

A Party shall make payments to the other Party by wire transfer to an account with a bank specified by such Party in writing, which such Party shall notify to the other Party prior to the Closing Date, or with such other banks as may thereafter be specified by a Party in writing at least ten (10) Days prior to the date in which payment becomes due. Either Party may, by written notice to the other Party, change the address to which the notifying Party remits such payments.

10.6 Disputed Invoices

The Parties shall use their reasonable efforts to resolve any Dispute regarding payment of any invoice issued under this Article 10 by amicable negotiation, provided that if the Parties fail to resolve such Dispute by the payment due date, then either Party may refer the Dispute for resolution in accordance with Section 21.11 (*Dispute Resolution*).

11. LIABILITY

11.1 General

From and after the Initial Synchronization Date, each Party shall have responsibility for the Energy and facilities located on its respective side of the Interconnection Point. Except as provided in Section 11.2 (*Foreseeable Damages*), SELLER shall have no liability to PREPA for loss or damage to PREPA's generation, transmission, and distribution system, resulting directly or indirectly from the use, misuse or presence of said energy once it passes the Interconnection Point.

11.2 Foreseeable Damages

Each Party shall have liability for all foreseeable damages suffered by the other Party as a necessary consequence of the first Party's negligent performance or omissions or failure to perform its respective obligations under this Agreement, including during any cure period in accordance with Article 15 (*Termination*), and as stated under Article 1168 of the Puerto Rico Civil Code, subject to the terms of Section 11.3 (*No Liability*).

11.3 No Liability

Neither Party nor its officers, directors, shareholders, agents, employees, and representatives shall, in any event, be liable to the other Party or its officers, directors, shareholders, agents, employees

or representatives for Claims for incidental, consequential, special, punitive, 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, Claims made by third parties, Claims made by either Party for lost profits (other than payments expressly contemplated by any provision of this Agreement) or Claims arising from Force Majeure; provided that nothing contained in this Section 11.3 shall exclude or limit a Party's liability for fraud, willful misconduct or gross negligence.

11.4 Obligation to Pay

Nothing in this Article 11 shall relieve either Party of its obligation to make payments that become due pursuant to Article 10 (*Payment & Billings*).

11.5 Seller Liability Cap

SELLER's liability to PREPA under this Agreement, whether based on contract, warranty or tort, including errors or omissions, negligence, strict liability or otherwise, or any other claim or cause of action, with respect to any and all Claims shall not exceed the amount equal to the Seller Liability Cap; provided that (i) nothing contained in this Section 11.5 shall exclude or limit SELLER's liability for the Exceptions, and (ii) for purposes of determining SELLER's liability under this Agreement, the Parties shall deduct the proceeds of insurance received by SELLER (or would have received had SELLER complied with the terms of this Agreement), relating to the event or circumstances which resulted in such liability.

12. REPRESENTATIONS, WARRANTIES, & COVENANTS

12.1 Compliance with Law

The Parties shall, at all times and in all material respects, comply with Applicable Law, including the Bulk-Power System EO (if in effect), and such other Laws applicable to (i) the use, occupancy, and operation of the Facility, and (ii) SELLER as an Electric Power Company or Electric Power Generation Company (each, as defined under Act 57-2014), as the case may be. SELLER shall give all required notices, shall procure and maintain all Permits and other permits for the development and construction of the PREPA Interconnection Facilities, and shall pay all charges and fees required in connection therewith. SELLER shall complete all environmental impact studies necessary for the design, construction, operation, and maintenance of the Facility and the PREPA Interconnection Facilities. Once obtained, SELLER shall comply with, and promptly submit to PREPA copies of, all material Permits and other permits contemplated by this Section 12.1. Furthermore, pursuant to Section 5(f) of Act 120-2018 and subject to the provisions of this Agreement, SELLER shall at all times comply with the public policy and regulatory framework applicable to the Facility.

12.2 Fines & Penalties

Each Party shall have sole responsibility for the payment of any and all fines or other penalties incurred by or imposed upon such Party or its agents, suppliers, employees, or subcontractors for noncompliance by such Party, its agents, employees, suppliers, or subcontractors with Applicable Law to or in connection with, (i) in the case of SELLER, the development and construction of the Interconnection Facilities (other than PREPA Interconnection Facilities Work), and the development, construction, ownership and operation, maintenance or repair of the Facility, except to the extent that any act or omission of PREPA caused such noncompliance, and (ii) in the case of

PREPA, the proper operation of the Grid System, except to the extent that any act or omission of SELLER caused such noncompliance, in each case as determined by applicable Governmental Authority having jurisdiction over the Facility, subject to the indemnification provisions of Article 13 (*Indemnification*).

12.3 SELLER Representations & Warranties

SELLER represents and warrants to PREPA on the Agreement Date, and again on the Closing Date, as follows:

- a. SELLER is a [[●] company], duly organized, validly existing under the Laws of [●]; and SELLER has all requisite power and authority to conduct its business, to own its properties, and to execute, to deliver, and to perform its obligations under this Agreement;
- b. the execution, delivery, and performance by SELLER of this Agreement have been duly authorized, and do not and will not (i) require any additional internal consent or approval of SELLER, the Sponsor or any Affiliate of either of them; or (ii) violate any provision of SELLER's certificate of formation or operating agreement, or any material indenture, contract or agreement to which it is a party or by which it or its properties may be bound, or any Applicable Law, determination or award presently in effect;
- c. SELLER is not in default under any document or instrument referred to in clause (ii) of paragraph (b) of this Section 12.3, which default could reasonably be expected to have a material adverse effect on the ability of SELLER to perform its obligations under this Agreement;
- d. this Agreement constitutes a legal, valid, and binding obligation of SELLER, enforceable against SELLER in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency or similar Laws affecting the enforcement of rights generally; and
- e. except as previously disclosed in writing, there is no pending action or proceeding in which SELLER is a party before any court, governmental agency or arbitrator that could reasonably be expected to affect materially and adversely the financial condition or operations of SELLER or the ability of SELLER to perform its obligations under, or which purports to affect the legality, validity or enforceability of, this Agreement as in effect on the date hereof.

12.4 PREPA Representations & Warranties

PREPA represents and warrants to SELLER on the Closing Date as follows:

- a. pursuant to Act No. 83 of May 2, 1941, as amended, PREPA is a public corporation duly organized and validly existing under the Laws of the Commonwealth of Puerto Rico and has all requisite power and authority to conduct its business as now conducted, to own its properties, and to execute, to deliver, and to perform its obligations under this Agreement;
- b. the execution, delivery, and performance by PREPA of this Agreement (i) has been duly authorized by PREPA's governing board in accordance with Applicable Law, (ii) does not and will not require any additional internal consent or approval of PREPA, (iii) does not require any approval from the PROMESA Court or any other additional external consent or approval, other than those approvals expressly identified in this Agreement, and (iv)

does not and will not violate any Applicable Law, including any provision of Act No. 83 of May 2, 1941, as amended, or its regulations, or any material indenture, contract or agreement to which it is a party or by which its properties may be bound; and

- c. this Agreement is a legal, valid, and binding obligation of PREPA, enforceable against PREPA in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency or similar Laws affecting the enforcement of rights generally.

12.5 SELLER Payments

PREPA shall exercise commercially reasonable efforts to ensure that Monthly Payments under this Agreement constitute necessary operating expenses.

12.6 SELLER's Financial Statements

For each of SELLER's fiscal years (or part thereof) during the Term, SELLER shall deliver to PREPA its audited financial statements for such fiscal year, prepared in accordance with GAAP, no later than one hundred twenty (120) Days following the completion of such fiscal year.

12.7 SELLER's Officers

If a change or substitution of one or more of SELLER's corporate officers occurs, then SELLER shall deliver to PREPA a certification of the names of its corporate officers.

12.8 Other Business

SELLER shall not (i) engage in any business activity other than as reasonably required to perform its obligations under this Agreement and the Interconnection Agreement, (ii) enter into any merger, consolidation or amalgamation with any entity, or (iii) demerge, separate or split into one or more entities, in each case, without PREPA's prior written consent.

12.9 Confidentiality

- a. Each Party (the "**Receiving Party**") shall keep all Agreement terms and information obtained from the other Party (the "**Disclosing Party**"), and not otherwise generally available to the public (but without limitation of any liability the Receiving Party may have to the Disclosing Party for information that becomes generally available to the public through the negligence or willful misconduct of any of the Receiving Party, its Affiliates or their respective employees, agents and representatives), confidential and use such information solely in connection with the performance of its obligations under this Agreement. Disclosure of such information may be made only within the Receiving Party's organization to key personnel, to third parties serving as the Receiving Party's legal, financial or technical advisors whose duties justify their need to review and know such material, and to lenders, prospective lenders, investors and prospective investors. The Receiving Party shall require each Person (and personnel thereof) to agree in writing for the benefit of the Disclosing Party to maintain the confidentiality of such information.
- b. To the extent any Governmental Authority requires a Receiving Party to disclose such information or requires such information to secure a governmental approval or authorization, such Receiving Party shall promptly notify the Disclosing Party and use its commercially reasonable efforts to seek a confidentiality agreement that assures

confidential treatment of the information consistent with the terms of this paragraph (b) of this Section 12.9. In the event the Receiving Party cannot obtain a confidentiality agreement, such Receiving Party shall use commercially reasonable efforts to obtain through court action the appropriate protective order. Notwithstanding the foregoing and paragraph (a) of this Section 12.9, PREPA may disclose the terms and conditions of this Agreement to (i) FOMB, PREB, COR3, P3A, the PROMESA Court, and any Governmental Authority for the purpose of obtaining the consents and approvals, together with such additional information as may be required to obtain such consents and approvals, (ii) COR3, P3A, any owner of the Grid System, and any potential or then-existing T&D Operator and their respective advisors and lenders, and (iii) the Puerto Rico Controller through the filings required by Applicable Law, which will make this Agreement subject to the open records requirement.

12.10 Local Content

- a. SELLER agrees to use its reasonable efforts when soliciting and obtaining personnel to perform services for the Facility in Puerto Rico, to ensure that individuals who are *bona fide* residents of Puerto Rico as defined in paragraph (c) of this Section 12.10 perform not less than thirty percent (30%) of the total personnel hours expended in the construction of the Facility (prior to the Commercial Operation Date) and not less than thirty percent (30%) of the total personnel hours expended in SELLER's performance of the Energy Storage Services pursuant to this Agreement (following the Commercial Operation Date).
- b. SELLER agrees to use its reasonable efforts when soliciting and selecting subcontractors and vendors to perform services for the Facility in Puerto Rico, to ensure that business concerns owned and controlled by one or more individuals, who are *bona fide* residents of Puerto Rico as defined in paragraph (c) of this Section 12.10, perform not less than thirty percent (30%) of the total personnel hours expended in the construction of the Facility (prior to the Commercial Operation Date), as measured by person-hours on an annual basis. For purposes of the preceding sentence, "**owned and controlled**" means a business: (i) owned at least fifty-one percent (51%) by one or more of such individuals (*e.g.*, in the case of a corporate form of organization such individuals must hold at least fifty-one percent (51%) of all voting stock of the corporation; in the case of a partnership or other form of business concern such individuals must hold at least fifty-one percent (51%) of the beneficial interests in the partnership or business concern); and (ii) one or more of such Persons (who need not be owners of the business) control the management and daily business operations.
- c. For purposes of this paragraph (c), a *bona fide* resident of Puerto Rico means an individual who has been a resident of Puerto Rico immediately prior to commencing work on the Facility. To the extent that despite SELLER's reasonable efforts SELLER has failed to achieve the goals set forth in paragraphs (a) and (b) of this Section 12.10, SELLER may, for purposes of calculating satisfaction of such percentages of local content, include the services of individuals who at some time prior to commencing work on the Facility, but not necessarily including the period of time immediately prior to commencing work on the Facility, were residents of Puerto Rico for at least five (5) consecutive Years and who relocated to Puerto Rico in order to perform work on the Facility. SELLER shall, in good faith, be entitled to rely on the representation of each individual applicant and of each subcontractor or vendor as to whether such individual, subcontractor or vendor meets the criteria set forth herein. SELLER shall require equivalent undertakings from its subcontractors.

- d. Nothing contained herein shall be interpreted as obligating SELLER to take any action which would violate Applicable Law or any affirmative action program or equal opportunity obligation to which SELLER or its Affiliates are or may be bound under Applicable Law.

12.11 Subcontracting

Neither Party shall be relieved of its obligations under this Agreement as a result of subcontracting any of its obligations to a third party.

13. INDEMNIFICATION

13.1 General

Subject to the other provisions of this Article 13, each Party (the “**Indemnifying Party**”) shall indemnify and hold harmless the other Party and each of its Indemnitees from and against any and all Claims by third parties for or on account of injury, bodily or otherwise, or death of persons or for damage to or destruction of third-party property, in each case to the extent resulting from or arising out of the Indemnifying Party’s violation of Law, negligence, willful misconduct or failure to perform under this Agreement.

13.2 Notice of Claim

In the event any Party to this Agreement receives notice of any Claim for which such Party elects to assert a right of indemnification under this Article 13 the Party receiving such notice shall give prompt written notice to the other Party of such 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 (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 her choosing, but in such event, such Party shall bear the cost and expense of said additional counsel.

13.3 Claims Arising from Environmental Harm

SELLER shall indemnify and hold harmless PREPA, and each of its Indemnitees, against any and all Claims arising directly or indirectly out of any environmental harm due to the actions of SELLER or SELLER’s agents or employees during (i) the design, development or construction of the PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work) as a result of the introduction by SELLER or SELLER’s agents or employees of, or (ii) during the design, development, construction or operation of the Facility, in each case as a result of the presence at the Facility of pollutants, hazardous substances, materials or wastes in excess of amounts and concentrations permitted by Applicable Law then in effect. In the event SELLER fails to reimburse PREPA for such Claims within thirty (30) Days of receipt of written notice from PREPA stating that such Claims were incurred (including reasonable documentation of such Claims), PREPA may offset the amount of such Claims against amounts due to SELLER from PREPA under this Agreement. In the event SELLER disputes that Claims are due to the actions of SELLER or SELLER’s agents, the Parties shall resolve such Dispute pursuant to Section 21.11 (*Dispute Resolution*), and PREPA shall not offset any such disputed amounts until final settlement under Section 21.11 (*Dispute Resolution*).

14. FORCE MAJEURE

14.1 General

“**Force Majeure**” means, subject to Section 14.2 (*Instances of Force Majeure*), any event or circumstance beyond the reasonable control of the affected Party (the “**Affected Party**”) and not resulting from the fault or negligence of the Affected Party claiming the Force Majeure, which wholly or partially prevents the Affected Party from performing any of its obligations under this Agreement, but only if and to the extent that:

- a. the Affected Party could not have prevented, avoided, or removed such circumstance, despite the exercise of reasonable diligence in accordance with consistent with Prudent Utility Practices;
- b. the Affected Party has taken all reasonable precautions, due care, and reasonable alternative measures in order to (i) avoid the effect of such event or circumstance on the Affected Party’s ability to perform such obligation under this Contract, and (ii) mitigate the consequences thereof;
- c. such 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 such event or circumstance in accordance with Section 14.3 (*Notice*).

Except as provided in Section 14.4 (*Consequences*), Force Majeure shall excuse the Affected Party claiming the Force Majeure from performing the obligation affected by such Force Majeure and the Affected Party shall have no liability for damages or otherwise to the extent caused by such non-performance. The Affected Party shall bear the burden of proving whether Force Majeure has occurred.

14.2 Instances of Force Majeure

Provided that a claim of Force Majeure satisfies the requirements of Section 14.1 (*General*), Force Majeure may include the following events: (i) acts of God, strikes (national and other general strikes), industrial disturbances, acts of public or foreign enemy, war, blockades, boycotts, riots, insurrections, epidemics, pandemics, earthquakes, storms, tornado, drought, hail, sabotage, works to rule, go-slows and other public agitation; (ii) invasion, terrorism, rebellion, plague, lightning, hurricane, natural calamity, floods, civil disturbances, lockouts, fires, explosions, interruptions of services due to the act or failure to act of any Governmental Authority, including quarantine and lock-downs; (iii) any Pending Permit Delay; and (iv) failure of any subcontractor or supplier of the Affected Party to perform as a result of an event that would constitute Force Majeure hereunder. Notwithstanding the foregoing, Force Majeure shall expressly not include:

- a. the bankruptcy of a Party or any of its subcontractors or suppliers at any tier;
- b. breakdown or defect of temporary works or the Contractor’s equipment or any subcontractor’s equipment, other than breakdown caused by a separate Force Majeure;
- c. any changes in prevailing market prices for goods, fuel, or labor;

- d. strikes, lockouts, works to rule, go-slows, and other industrial disturbances by personnel of SELLER or any of its contractors and subcontractors at any tier;
- e. any failure by a Party to obtain and/or maintain a Permit, other than in the case of a Pending Permit Delay;
- f. any Pending Permit Delays in excess of eighteen (18) Months; or
- g. any promulgation by the U.S. Department of Energy of implementation rules for the Bulk-Power System EO after the Agreement Date that causes delay in excess of twelve (12) Months.

14.3 Notice

A Party claiming Force Majeure shall, within ten (10) Days after the occurrence of the event(s) which forms the basis for such claim, give the Non-Affected Party written notice thereof, describing (i) the particulars of such occurrence, (ii) an estimate of the duration of the impact of such event on the Affected Party's ability to perform its obligations, and (iii) how such claim otherwise satisfies the requirements of Section 14.1 (*General*).

14.4 Consequences

Subject to Appendix F (*Compensation*), neither Party shall be excused by reason of Force Majeure from the obligation to make any payments when due to the other Party.

14.5 Disputes

If a Party Disputes the other Party's claim of Force Majeure, such Dispute shall be resolved pursuant to Section 21.11 (*Dispute Resolution*).

15. **TERMINATION**

15.1 Termination Date

Subject to Section 15.2 (*No Discharge of Obligations*), this Agreement shall automatically terminate on the earlier to occur of:

- a. expiration of the Term;
- b. mutual consent of the Parties in writing;
- c. termination of the Agreement identified in a written notice delivered by the non-defaulting Party following the occurrence of a Default, provided that the termination date occurs no earlier than thirty (30) Days after the issuance of such notice, and if the defaulting Party can cure such Default, such Party fails to cure such Default within such thirty (30) Day period;
- d. the inability of the Parties to achieve the Closing Date by the date required under Section 2.3 (*Initial Effectiveness & Closing Date*);
- e. prior to the Initial Synchronization Date only, the determination by SELLER (as notified to PREPA in writing) to terminate this Agreement and the Interconnection Agreement upon the continuance of a Pending Permit Delay in excess of eighteen (18) Months;

- f. a Construction Start Termination Event; or
- g. a COD Termination Event.

15.2 No Discharge of 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 Articles 11 (*Liability*), 13 (*Indemnification*), 14 (*Force Majeure*), 15 (*Termination*), and 21 (*Miscellaneous Provisions*), Sections 2.5 (*Performance Security*), 3.5 (*Delay Liquidated Damages*), 6.8 (*Record Keeping*), 12.9 (*Confidentiality*), 16.2 (*Certain Material Breaches*), and 17.2 (*Tracking Account*), and Appendix P (*Performance Guarantees*). The Articles, Sections, and Appendices designated in the preceding sentence shall survive the Termination Date, provided that Section 12.9 (*Confidentiality*) and Article 13 (*Indemnification*) shall expire on the first (1st) and second (2nd) anniversary of the Termination Date, respectively. Without limiting the foregoing, termination of this Agreement shall not discharge either Party from any Claim or obligation it owes to the other Party under this Agreement by reason of any transaction, loss, cost, damage, expense, or liability which shall occur or arise (or the circumstances, events, or basis of which shall occur or arise) prior to the Termination Date. Any such Claim or obligation owed (whether the same shall be known or unknown at termination or whether the circumstances, events, or basis of the same shall be known or unknown at termination) shall survive the Termination Date. Except as otherwise expressly contemplated by this Agreement, any indebtedness by either Party to the other shall be considered payable within ninety (90) Days after the Termination Date.

15.3 Removal of Facility & Related Equipment

Following the Termination Date, SELLER shall be entirely responsible (at its sole cost, risk, and expense) for owning, operating, maintaining, and ultimately removing the Facility and related equipment at the end of their useful lives in accordance with all Applicable Laws.

16. DEFAULT

16.1 Definition

The following events shall constitute a “**Default**” under this Agreement:

- a. for SELLER as the defaulting Party only, the provision of materially incorrect or misleading information, representation or certification submitted (or made) by SELLER in connection with either (i) the submission of SELLER’s proposal to PREPA in response to the RFP, or (ii) the execution, delivery or performance by SELLER of this Agreement, in each case relating to either (a) corruption or bribery matters, or (b) a representation made by SELLER under Section 16.2 (*Certain Material Breaches*);
- b. except as otherwise covered in paragraph (a) of this Section 16.1, a materially incorrect or misleading representation or warranty made by a Party under this Agreement or any certification submitted by a Party in connection with the execution, delivery or performance of this Agreement, which in either case remains uncured for a period of at least sixty (60) Days after receipt by such Party of notice thereof from the other Party;

- c. for SELLER as the defaulting Party only, default by SELLER in the observance or performance of any covenant contained in Section 2.5 (*Performance Security*) where such default continues uncured for a period of at least thirty (30) Days after the date on which SELLER receives written notice from PREPA of such failure;
- d. a Party's failure to remit in full any amount due and payable under this Agreement to the other Party, which the first Party fails to cure within sixty (60) Days after the date on which the first Party receives written notice from the other Party of such failure (other than disputed amounts, which the Parties shall resolve in accordance with Section 21.11 (*Dispute Resolution*));
- e. for SELLER as defaulting Party, a default by SELLER under paragraphs (a) or (b) of Section 16.2 (*Certain Material Breaches*);
- f. except as otherwise covered in paragraphs (c) or (d) of this Section 16.1, default by a Party in the observance or performance of any of the material terms, covenants, or conditions contained in this Agreement, which remains uncured for a period of one hundred twenty (120) Days after the date on which the first Party receives written notice from the other Party of such failure, or such longer period (not to exceed an additional cure period of one hundred fifty (150) Days if the first Party can cure such default and diligently pursues such cure); and
- g. for SELLER only as the defaulting Party:
 - 1. a Construction Start Termination Event;
 - 2. a COD Termination Event;
 - 3. a termination of the Interconnection Agreement due to default by SELLER;
 - 4. an Insolvency Event;
 - 5. a Development Abandonment;
 - 6. a Permanent Closing;
 - 7. the rolling average of Facility Availability falls below seventy percent (70%) in any three (3) consecutive Billing Periods, or such longer period of time not to exceed eighteen (18) months so long as SELLER continues to exercise its best efforts to restore full Facility Availability; or
 - 8. the Actual Efficiency of the Facility falls below the Guaranteed Capacity by three percent (3%) or more,

in each case for any reason other than a PREPA Risk Event or Force Majeure affecting SELLER.

16.2 Certain Material Breaches

- a. Pursuant to FOMB's contract review policy (FOMB POLICY: REVIEW OF CONTRACTS, as modified on October 30, 2020), SELLER represents and warrants to

PREPA on the Agreement Date, and again on the Closing Date, (i) the due execution by SELLER and delivery to PREPA of a certification (the “**FOMB Certification**”) in the form set out in Appendix R (*Form of FOMB Certification*), and (ii) the completeness, accuracy, and correctness of all information included in such FOMB Certification. As acknowledged, certified, and agreed in the FOMB Certification, any misrepresentation, inaccuracy, or falseness in such FOMB Certification shall render this Agreement null and void, and SELLER shall reimburse PREPA immediately for any amounts, payments or benefits received from PREPA under this Agreement.

- b. In accordance with Article 3.4 of Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico of the Commonwealth of Puerto Rico, as amended, SELLER acknowledges and agrees that its conviction or guilty plea for any of the crimes as enumerated in Article 3.4 of such Act, in addition to any other applicable liability, shall render this Agreement null and void, and SELLER shall reimburse PREPA immediately for any amounts, payments or benefits received from PREPA under this Agreement that directly resulted from the committed crime, but only to the extent required by Act 2-2018.
- c. PREPA shall have the right to terminate this Agreement if Puerto Rico or United States Federal Court convicts SELLER 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, of 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 the misuse of public funds or property, including 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.
- d. SELLER acknowledges and agrees that the conditions outlined throughout this Section 16.2 constitute essential requirements of this Agreement.

16.3 Remedies & Disputes

Upon the occurrence of a Default, the non-defaulting Party shall have the right to invoke its remedies under this Agreement and/or under Applicable Law. Any Disputes in connection with the existence of a Default shall be resolved in the manner prescribed in Section 21.11 (*Dispute Resolution*).

17. TAXES & FEES

17.1 SELLER Requirements

- a. SELLER shall bear all Taxes and Environmental Costs applicable to the construction and operation of the Facility, provided that, subject to Section 17.2 (*Tracking Account*), PREPA shall reimburse SELLER for fifty percent (50%) of the additional costs (net of cost reductions) resulting from Post-Agreement Date Taxes or from Post-Agreement Date Environmental Costs applicable to SELLER by reason of the ownership or operation of the Facility for the purpose of providing the Energy Storage Services to PREPA (collectively, the “**Changes**”). PREPA shall reimburse SELLER for such Changes through an equitable adjustment to the Capability Payment Price and subject to Section 17.2 (*Tracking Account*).

- b. SELLER will promptly pay and discharge all other 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 that SELLER shall not be required to pay any such Taxes, assessment, charge, levy, account payable or Claim if: (i) the validity, applicability or amount thereof remains contested in good faith by appropriate actions or proceedings which will prevent the forfeiture or sale of any property of SELLER or any material interference with the use thereof by SELLER, and (ii) SELLER shall set aside on its books reserves deemed by it to be adequate with respect thereto.

17.2 Tracking Account

- a. The Parties shall record all Changes paid by PREPA according to Section 17.1 (*SELLER Requirements*) in an unfunded tracking account maintained by PREPA (the “**Tracking Account**”). SELLER shall have the right, upon reasonable notice and during business hours, to audit PREPA’s records reflecting the balance in the Tracking Account and to identify and object to any error in such calculations. If the Parties cannot agree on an adjustment to the balance in the Tracking Account within thirty (30) Days of PREPA’s receipt of SELLER’s objection, then a Party may refer such matter to dispute resolution by either Party pursuant to Section 21.11 (*Dispute Resolution*).
- b. If the Tracking Account has a balance at the end of the twenty-second (22nd) Agreement Year (“**Balance**”), then PREPA shall have the right to withhold and retain up to fifty percent (50%) of the amounts due in each Billing Period of the remaining Term. The Parties shall subtract the retained amount from the Balance until the Balance equals zero (0). If any portion of the Balance remains outstanding at the expiration of the Term under Section 2.2 (*Initial Term*), then PREPA shall have the option to extend the Term up to an additional two (2) Agreement Years as necessary to repay the Balance plus Interest by applying such monthly retention as set forth above. If, at the expiration of the initial Term under Section 2.2 (*Initial Term*), an undisputed deficit exists in the Tracking Account, then PREPA shall pay SELLER an amount sufficient to compensate SELLER for such deficit within thirty (30) Days after the expiration of the Term. If a Party terminates this Agreement early pursuant to Article 15 (*Termination*), and an undisputed balance remains in the Tracking Account (the “**Termination Balance**”), SELLER shall repay such Termination Balance plus Interest to PREPA within thirty (30) Days of the Termination Date. Notwithstanding the foregoing, SELLER shall have the option to prepay all or any portion of the Balance or the anticipated Termination Balance, if applicable, at any time or from time to time.
- c. The Parties agree that PREPA shall have the right to an annual audit of payments or credits for Changes as a result of a Post-Effective Date Tax or a Post-Effective Date Environmental Cost and to adjust such payments if necessary, as a result of the findings of such audit. Both Parties shall have the right to participate in such audit.

17.3 PREPA Requirements

PREPA shall pay or cause to be paid all Taxes on or with respect to (i) the purchase of Energy Storage Services and the sale of Discharge Energy at the Interconnection Point (including sales tax, excise tax, municipal license tax, and value-added tax), and (ii) the purchase, use and disposition of the Ancillary Services and the Green Credits.

18. INSURANCE¹⁰

18.1 SELLER Requirements

SELLER shall obtain and maintain in full force and effect from the Construction Start Date and during the Term of this Agreement and thereafter as provided herein policies of insurance covering all operations engaged in by this Agreement, which shall be formally agreed with an insurance company authorized to do business in Puerto Rico, and to that effect, it shall provide in original certificates of insurance and endorsements as follows:

- a. *Worker's Compensation Insurance:* SELLER shall provide and maintain Worker's Compensation Insurance as required by the Worker's Compensation Act of the Commonwealth of Puerto Rico. SELLER shall also have responsibility for compliance with said Worker's Compensation Act by all its subcontractors, agents, and invitees. SELLER shall furnish PREPA a certificate from the State Insurance Fund, in a form acceptable to PREPA, showing that all personnel employed in the work are covered by the Worker's Compensation Insurance, in accordance with this Agreement. Imported technical personnel are exempted, as per Act of May 16, 1958 No 16. SELLER shall furnish evidence of such exemption and certificate from the insurance carrier covering said personnel.
- b. *Commercial General Liability Insurance:* SELLER shall provide and maintain Commercial General Liability Insurance with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. Such insurance shall include specific coverage for contractual liability, "XCU" explosion, collapse and underground damages coverage, products, and completed operations liability.
- c. *Automobile Liability Insurance:* SELLER shall provide and maintain Automobile Liability Insurance with limits of \$1,000,000 combined single limit covering all owned, non-owned, and hired automobiles.
- d. *Excess Umbrella Liability Insurance:* SELLER shall provide and maintain Excess Umbrella Liability Insurance with limits of \$4,000,000 per occurrence in excess of the limits of insurance provided in paragraph (b) of this Section 18.1.
- e. *All Risk Physical Damage Property Insurance:* SELLER shall provide and maintain All Risk Physical Damage Property Insurance, including machinery coverage to cover all real and personal property of SELLER (including earthquake and hurricane occurrence) to [one hundred percent (100%)] of replacement cost. SELLER shall place this insurance policy in effect on the Commercial Operation Date. The insurance, as required in this paragraph (e) of this Section 18.1, 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.
- f. *Equipment Breakdown Policy:* Unless included in the All Risk Physical Damage Insurance required in paragraph (e) of this Section 18.1, SELLER shall provide and maintain an

¹⁰ Note: PREPA will consider the insurance requirements set forth in this Article 18 with Proponents upon selection of their proposal for RFP Phase III evaluation and adjust such requirements to the extent not available / achievable with prevailing market conditions.

Equipment Breakdown Policy to cover all equipment and machinery of SELLER. This insurance shall name PREPA as an additional insured under this policy.

- g. *Employer's Liability Insurance:* To the extent that SELLER employs employees, SELLER shall provide and maintain Employer's Liability Insurance with minimum bodily injury limits of \$1,000,000 for each employee and \$1,000,000 for each accident, covering against the liability imposed by Law upon SELLER as a result of bodily injury, by accident or disease, including death arising out of and in the course of employment, outside of and in the course of employment, and outside of and distinct from any claim under the Worker's Compensation Act of the Commonwealth of Puerto Rico.
- h. *Business Interruption Insurance:* SELLER shall provide and maintain Business Interruption Insurance[, subject to a reasonable deductible (which the Parties shall construe as insurance proceeds actually received by SELLER for the purposes of this Agreement)] with respect to the Facility to include business interruption/contingent business interruption/loss of income for at least six (6) Months, with a waiting period not exceeding thirty (30) Days, an extended period of indemnity of an additional ninety (90) Days, and coverage for extra expense/contingent extra expense incurred during any period of interruption based on actual loss sustained. SELLER shall place this policy into effect on the Commercial Operation Date.

18.2 Requirements for SELLER Policies

SELLER shall ensure that the provider of the Commercial General Liability Insurance and Automobile Liability Insurance, as required under Section 18.1 (*SELLER Requirements*), endorses such insurance to include:

- a. as Additional Insured:

Puerto Rico Electric Power Authority
Risk Management Office
PO Box 364267
San Juan, PR 00936-4267;
- b. a thirty (30) Days' cancellation or nonrenewable notice (ten (10) Days for non-payment of premium) to be sent by certified mail to SELLER (with a copy to PREPA) with return receipt to the above address sent by SELLER;
- c. an endorsement including this Agreement under contractual liability coverage and identifying it by number, date and the Parties;
- d. a waiver of Subrogation in favor of PREPA; and
- e. the breach of any of the Warranties or Conditions in these policies by SELLER shall not prejudice PREPA's rights under this policy.

18.3 Contractor Requirements

The contractors and designers retained by SELLER to construct the Facility and the PREPA Interconnection Facilities shall obtain and maintain in full force and effect before the Construction Start Date, policies of insurance covering all constructions engaged in by this Agreement, which

shall be formally agreed with insurance companies authorized to do business in Puerto Rico, and to that effect SELLER shall provide in the original certificate of insurance and endorsements, as follows:

- a. *Worker's Compensation Insurance:* SELLER shall cause its contractors to provide and maintain Worker's Compensation Insurance as required by the Worker's Compensation Act of the Commonwealth of Puerto Rico. SELLER shall also have responsibility for compliance with said Worker's Compensation Act by all its subcontractors, agents, and invitees. SELLER shall furnish PREPA a certificate from the State Insurance Fund showing that all personnel employed in the work are covered by the Worker's Compensation Insurance, in accordance with this Agreement. Imported technical personnel are exempted, as per Act of May 16, 1958, No. 16. SELLER shall furnish evidence of such exemption and certificate from the insurance carrier covering said personnel.
- b. *Employer's Liability Insurance:* SELLER shall cause its contractors to provide and maintain Employer's Liability Insurance with minimum bodily injury limits of \$1,000,000 for each employee and \$1,000,000 for each accident, covering against the liability imposed by Law upon SELLER as a result of bodily injury, by accident or disease, including death arising out of and in the course of employment and outside of and distinct from any claim under the Worker's Compensation Act of the Commonwealth of Puerto Rico.
- c. *Commercial General Liability Insurance:* SELLER shall cause its contractors to provide and maintain Commercial General Liability Insurance ("CGL") with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage. Continuing CGL insurance shall cover liability arising from products completed operations and liability assumed under an insured contract for at least three (3) Years following substantial completion of the work.
- d. *Automobile Liability Insurance:* SELLER shall cause its contractors to provide and maintain Automobile Liability Insurance with limits of \$1,000,000 combined single limit covering all owned, non-owned, and hired automobiles.
- e. *Excess Umbrella Liability Insurance:* SELLER shall cause its contractors to provide and maintain Excess Umbrella Liability Insurance with limits of \$4,000,000 per occurrence in excess of the limits of insurance provided in paragraph (c) of this Section 18.3.
- f. *Builder's Risk Insurance:* SELLER shall provide or cause its contractors to provide and maintain in force Builder's Risk Insurance for the entire work. Such insurance shall be written in an amount equal to the total contract sum as well as subsequent modifications of that sum. The insurance shall apply on a replacement cost basis and coverage shall be written on a completed value form as follows:
 1. The insurance as required above shall be written to cover all risks of physical loss except those specifically excluded in the policy and shall insure at least against the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, riot, civil commotion, theft, vandalism, malicious mischief, earthquake, and collapse.
 2. SELLER shall pay any deductible applicable to the insurance purchased in compliance with this requirement.

3. Waiver of Subrogation. SELLER shall waive all rights against PREPA and its officers, directors, agents, and employees for recovery for damages caused by fire and other perils to the extent covered by builder's risk or property insurance purchased pursuant to the requirements of this Agreement or any other property insurance applicable to the work.

18.4 Requirements for the Contractor Policies

SELLER shall ensure that the provider of the Commercial General Liability Insurance and Automobile Liability Insurance, as required under Section 18.3 (*Contractor Requirements*), endorses such insurance to include:

- a. as Additional Insured:

Puerto Rico Electric Power Authority
Risk Management Office
PO Box 364267
San Juan, PR 00926-4267;
- 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 this Agreement under contractual liability coverage and identifying it by number, date, and the Parties;
- d. a waiver of Subrogation in favor of PREPA; and
- e. the breach of any of the Warranties or Conditions in these policies by the relevant Contractor or designer shall not prejudice PREPA's rights under this policy.

18.5 Application of Proceeds

SELLER shall apply any and all insurance proceeds received in connection with the damage or loss of the Facility, or (prior to their transfer) the PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work), toward the repair, reconstruction, or replacement of the Facility or the PREPA Interconnection Facilities, as applicable.

19. **ASSIGNMENT & TRANSFER**

19.1 Restriction on Assignment

Except as otherwise provided in this Article 19, neither Party shall assign or transfer this Agreement without the prior written consent of the other Party, which consent such Party shall not unreasonably withhold or delay. Any attempt to assign this Agreement without the prior written consent of the corresponding Party shall be void. Any failure of a Party to respond to any request by the other Party for consent to assignment pursuant to this Section 19.1 shall not be deemed or construed as an acceptance or consent to such proposed assignment.

19.2 PREPA's Right to Assign

Notwithstanding the provisions of Section 19.1 (*Restriction on Assignment*), the Parties acknowledge that PREPA is undergoing a transformation process, and therefore agree that, after the front-end transition period of a Partnership Contract, Sale Contract, or any other PREPA Transaction (as these terms are defined in Act 120-2018), PREPA may sell, assign, convey, transfer, pledge, mortgage, sublease, delegate, hypothecate, or otherwise dispose (each, a “**Transfer**”) any of its rights, title, or interest in this Agreement as permitted by Applicable Law and at any time, without SELLER's consent, and without cost, expense, or incremental liability to PREPA, to a T&D Operator, an Affiliate of PREPA or any Governmental Authority of Puerto Rico; provided that PREPA shall notify SELLER no later than thirty (30) Days before the effective date of any such Transfer. Unless otherwise agreed by PREPA, following the Transfer, PREPA shall be released from all obligations under this Agreement to the extent such transferee assumes such obligations in writing, provided that, for any Transfer to an Affiliate of PREPA, PREPA shall guarantee the payment obligations of such Affiliate arising out of this Agreement following such assignment.

19.3 SELLER's Right to Assign

Notwithstanding the provisions of Section 19.1 (*Restriction on Assignment*), SELLER shall have the right to assign, pledge or encumber this Agreement in its entirety or in part without PREPA's consent to the Project Lenders as collateral security in order to obtain financing or other funding. PREPA agrees to execute and deliver an agreement consenting to any assignment as collateral security in favor of the Project Lenders containing terms and conditions that are customary for transactions of this kind. PREPA agrees to cooperate in good faith in this regard and to provide other customary and reasonable documents and acknowledgments as the Project Lenders may reasonably request in connection with the financing of the Facility, including estoppel certificates and direct agreement or consent to an assignment in accordance with this Section 19.3 and substantially in the form of Appendix W (*Form of Direct Agreement*) and a legal opinion addressed to the Project Lenders with respect to due authorization and capacity of PREPA to enter into such agreement or consent, and enforceability thereof, in each case as reasonably acceptable to PREPA, provided that SELLER shall reimburse PREPA for the cost of negotiating and providing such documents, acknowledgments, opinions, certificates, consents, and agreements. In addition, SELLER shall have the right to assign this Agreement as collateral security to any agent, trustee, or other Person (including any corporation or partnership) representing the Project Lenders under the financing documents. If SELLER shall assign this Agreement as collateral security pursuant to this Section 19.3, then so long as the secured obligations, or any consolidation, modification, or extension of such obligation shall remain outstanding, the following provisions shall apply:

- a. The making of an assignment pursuant to the preceding provisions of this Section 19.3 shall not be deemed to constitute an assignment or transfer of this Agreement, nor shall any assignee referred to above, as such, be deemed to be an assignee or transferee of this Agreement so as to require such assignee, as such, to assume the performance of any of the terms and conditions of SELLER to be performed hereunder; provided that the purchaser at any sale of this Agreement in any proceeding for the foreclosure of any assignment, or the assignee or transferee of this Agreement in any proceedings for the foreclosure of any assignment, or the assignee or transferee of this Agreement under any instrument of assignment or transfer in lieu of the foreclosure of any assignment, shall be deemed to be an assignee or transferee within the meaning of this paragraph (a) of this Section 19.3 and shall be deemed to have agreed to perform all of the terms, covenants and conditions on

the part of SELLER to be performed hereunder from and after the date of such purchase and assignment.

- b. Notwithstanding any other provision of this Agreement, any sale of SELLER's rights in this Agreement in any secured creditor's sale, any proceeding for the foreclosure of any assignment, or the assignment or transfer of this Agreement in lieu of the foreclosure of any assignment, shall be deemed to be a permitted sale, transfer or assignment of this Agreement, and this Agreement shall continue in full force and effect following any such sale, transfer or assignment.
- c. If PREPA terminates this Agreement prior to the expiration of the Term due to a Default by SELLER or rejects or disaffirms this Agreement pursuant to any bankruptcy Law or proceeding or other similar Applicable Law or proceedings affecting creditors' rights generally with respect to a bankruptcy proceeding relating to SELLER or otherwise, PREPA agrees, if outstanding obligations to a Project Lender exist, and subject to the receipt of all necessary approvals, to enter into a new energy storage services agreement with the Project Lender (or its designee or nominee) on substantially similar terms to this Agreement; provided that such designee or nominee (x) is Controlled by the Project Lender, (y) is approved by PREPA (which approval PREPA shall not unreasonably withhold) and has provided to PREPA (i) its audited financial statements as per GAAP, demonstrating that such new designee or nominee has a tangible net worth of at least twenty-five million dollars (\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least seventy-five million dollars (\$75,000,000))¹¹, (ii) evidence reasonably acceptable to PREPA that such new designee or nominee is or has engaged a Qualified Operator, and (iii) the certifications and documentation required by Appendix B (*Signing Conditions*), but construing references to SELLER therein as references to such new designee or nominee, and (z) has accepted all terms, provisions and limitations of this Agreement, effective as of the date of such termination.

SELLER shall not have the right to assign its rights, title, or interest under this Agreement to any Affiliate of SELLER without the prior express written consent of PREPA, unless (i) such Affiliate agrees to be bound by the terms of this Agreement and to fully perform the obligations of SELLER hereunder (including Appendix B (*Signing Conditions*)), (ii) each Sponsor maintains the same percentage of the total Equity ownership interest in such Affiliate, whether directly or indirectly, as it owns in SELLER at the time of such assignment, and (iii) SELLER owns no less than fifty-one percent (51%) of the total Equity ownership interest in such Affiliate. SELLER shall notify PREPA of SELLER's intention to assign this Agreement at least thirty (30) Days in advance of any such assignment.

19.4 Restrictions on Equity Transfers

SELLER shall ensure that each Sponsor does not assign, sell or transfer (whether directly or indirectly) to any other Person any part of its ownership interests in SELLER or renounce any preferential subscription rights for ownership interests in connection with a capital increase (each, a "**Equity Transfer**") at any time prior to the Commercial Operation Date. On or after the Commercial Operation Date, SELLER shall ensure that each Sponsor does not affect an Equity Transfer at any time without the prior express written consent of PREPA. Notwithstanding the foregoing, a Sponsor may, without PREPA's consent:

¹¹ Note: These amounts align with FOMB requirements on prior transactions.

- a. create a security interest in its ownership interest in SELLER in favor of the Project Lenders, and PREPA hereby approves any Equity Transfer thereof resulting from the enforcement of such security interests in accordance with the financing documents of the Project Lenders;
- b. (i) prior to the Commercial Operation Date, effect an Equity Transfer solely in connection with a financing transaction involving Tax Credits under Section 48 of the U.S. Internal Revenue Code, provided that such transfer does not result in the Control of SELLER or the Project being transferred to a third party other than the Sponsor or SELLER, as applicable; and (ii) at any time after the Commercial Operation Date, effect an Equity Transfer back to SELLER or Sponsor, as applicable, pursuant to the terms of such financing transaction entered into prior to the Commercial Operation Date involving Tax Credits under Section 48 of the U.S. Internal Revenue Code;
- c. at any time after the Commercial Operation Date, effect an Equity Transfer to a Wholly-Owned Affiliate of a Sponsor, provided that such Wholly-Owned Affiliate remains a Wholly-Owned Affiliate of such Sponsor at all times after such Equity Transfer; or
- d. from and after the second anniversary of the Commercial Operation Date, effect an Equity Transfer to a Person, including a Wholly-Owned Affiliate, provided that such Equity Transfer, when aggregated with all previous Equity Transfers, does not result in a transfer of more than forty-nine percent (49%) of the issued and outstanding shares and voting rights in SELLER to any Person other than a Sponsor or a Wholly-Owned Affiliate of a Sponsor.

If SELLER intends to effect an Equity Transfer, then it shall notify PREPA of such intention at least thirty (30) Days in advance of the intended date of such transfer. The failure of PREPA to respond to any request by SELLER for consent to transfer pursuant to this Section 19.4, shall not be deemed or construed as an acceptance or consent to such proposed transfer. PREPA acknowledges and agrees that the identity and existence of such third party, and the potential transfer, shall be kept confidential in accordance with Section 12.9 (*Confidentiality*); and if requested by SELLER, PREPA shall enter into a confidentiality agreement with respect to the same, in a form reasonably acceptable to PREPA, provided that SELLER shall reimburse PREPA for the cost of negotiating and executing such agreement. Prior to PREPA's consent to any Equity Transfer, SELLER shall cause the proposed new owner of such equity to provide to PREPA (i) its audited financial statements as per GAAP, demonstrating that such new owner has a tangible net worth of at least twenty-five million dollars (\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least seventy-five million dollars (\$75,000,000)), (ii) evidence reasonably acceptable to PREPA that such new owner is or has engaged a Qualified Operator, and (iii) the certifications and documentation required by Appendix B (*Signing Conditions*), but construing references to SELLER therein as references to such new owner. In each case, SELLER shall obtain any regulatory approvals required in respect of such transfer and ensure such transfer otherwise complies with Applicable Law.

19.5 Restrictions on Asset Transfers

- a. SELLER shall not sell or transfer, directly or indirectly, the Facility, any portion of the Facility or substantially all of its assets either (i) at any time prior to the Commercial Operation Date, or (ii) for any such sale or transfer occurring on or after the Commercial Operation Date, without PREPA's prior express written consent. The foregoing prohibition shall not apply to any such transfer that (1) forms part of a foreclosure on any mortgage,

lien, pledge, charge or other encumbrance granted to the Project Lenders under any non-recourse project financing related exclusively to such assets and such lenders or their agent have entered into a direct agreement with PREPA in respect of the collateral assignment of this Agreement and the Interconnection Agreement, or (2) constitutes a permitted assignment under Section 19.3 (*SELLER's Right to Assign*).

- b. If SELLER intends to sell the Facility, or any portion of the Facility, or substantially all of its assets, pursuant to PREPA's consent under the first sentence of paragraph (a) of this Section 19.5, then it shall notify PREPA of its intention to sell at least sixty (60) Days in advance of the intended date of such sale. PREPA shall not unreasonably withhold or delay its consent to any such sale or transfer, provided that the failure of PREPA to respond to any request by SELLER for consent to such a sale or transfer shall not be deemed or construed as an acceptance or consent to such proposed sale or transfer. Prior to PREPA's consent to any such asset transfer, SELLER shall cause the proposed new owner to provide PREPA with (i) its audited financial statements as per GAAP, demonstrating that such new owner has a tangible net worth of at least twenty-five million dollars (\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least seventy-five million dollars (\$75,000,000)), (ii) evidence reasonably acceptable to PREPA that such new owner is or has engaged a Qualified Operator, and (iii) the certifications and documentation required by Appendix B (*Signing Conditions*), but construing references to SELLER therein as references to such new owner. In each case, (1) SELLER shall obtain any regulatory approvals required in respect of such transfer and ensure such transfer otherwise complies with Applicable Law, and (2) if requested by PREPA, the Parties and such new owner shall enter into an agreement under which (A) SELLER assigns and transfers all of its rights and obligations under this Agreement to such new owner, and (B) such new owner expressly assumes all liabilities of SELLER arising under this Agreement prior to the date of such assignment.

20. NOTICES

20.1 General.

All notices and other communications hereunder shall be in writing, other than Dispatch Notices, curtailment or disconnect orders, which may be oral and immediately confirmed via e-mail, and shall be deemed duly given upon receipt after being delivered by hand or sent by e-mail with read receipt confirmation, registered or certified mail, return receipt requested, postage prepaid or by recognized overnight courier service, addressed as follows:

IF TO SELLER:

[●]
Attention: [●]
E-mail: [●]

*For Dispatch Notices
(Operational Personnel)*

[●]
Attention: [●]
E-mail: [●]

IF TO PREPA:

Puerto Rico Electric Power Authority
1110 Ponce de León Avenue,
Office #808
San Juan, Puerto Rico

Attention: Director of Planning and
Environmental Protection

E-mail: [●]

20.2 Change of Address or Persons.

Either Party hereto may change, by notice as above provided, the Persons or addresses to which such notices are sent.

21. MISCELLANEOUS PROVISIONS

21.1 Waiver & Amendment

This Agreement, including the appendices hereto, may be amended or waived only by written agreement between the Parties. A waiver of any Default shall extend only to the particular Default waived and shall not limit or otherwise affect any rights that either Party may have with respect to any other or future Default. The Parties acknowledge and agree that any amendments to the economic or technical terms of this Agreement, or the scope of the Facility, require PREB approval.

21.2 Strict Performance

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, unless agreed in writing between the Parties.

21.3 No Third-Party Beneficiaries

The Parties intend this Agreement solely for the benefit of themselves and, solely to the extent rights thereto are provided in this Agreement, for the benefit of the Project Lenders as third-party beneficiaries. 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.

21.4 Seller Certification Requirement

The Parties acknowledge that SELLER has submitted the certification titled “Contractor Certification Requirement” required in accordance with the Contract Review Policy of the FOMB, effective as of November 6, 2017 and amended on October 30, 2020, signed by SELLER’s Executive Director (or another official with an equivalent position or authority to issue such certifications). The Parties have attached a signed copy of the “Contractor Certification Requirement” as Appendix R (*Form of FOMB Certification*) to this Agreement.

21.5 No Sharing of Benefit

No officer, employee, or agent of SELLER or PREPA 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 Applicable Law of the Commonwealth of Puerto Rico or policy of PREPA.

21.6 No Association, Joint Venture, or Partnership

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.

21.7 Successors

This Agreement shall inure to the benefit of and be binding upon SELLER and PREPA and their respective successors and assigns.

21.8 Complete Agreement & Conflicts

The Parties intend this Agreement as the final expression of their agreement and also as a complete and exclusive statement of the terms of their agreement with respect to the subject matter hereof that supersedes all prior written and oral understandings between the Parties with respect thereto. In the event of any conflict between this Agreement and the Interconnection Agreement or any other Project documents, this Agreement shall prevail.

21.9 Severability

If any provision hereof shall be held invalid, illegal, or unenforceable by the holding of an arbitral authority convened pursuant to Section 21.11 (*Dispute Resolution*), such holding shall not invalidate or render unenforceable any other provision hereof.

21.10 Anticorruption & Antibribery

SELLER certifies as of the Closing Date that, to its actual knowledge, it does not receive payment or benefit of any nature for services rendered regularly through an appointment to a Governmental Authority of Puerto Rico.

21.11 Dispute Resolution

- a. If a dispute arises between the Parties regarding the application, interpretation, enforceability, validity, performance, or breach of this Agreement or matters arising therefrom or relating thereto, whether sounding in contract, tort, unfair competition, Law, equity or any other legal form (a “**Dispute**”), then such Dispute shall be resolved solely by either the agreement of the Parties, with or without a Technical Recommendation (as defined and subject to the terms set forth in paragraph (b) of this Section 21.11), or in a proceeding before PREB in accordance with this Section 21.11. In the event of a Dispute under this Agreement, the disputing Party may promptly provide written notice of the Dispute (a “**Dispute Notice**”) to the other Party. Following the delivery of the Dispute Notice, the Parties shall either (i) agree in writing to submit such Dispute for a Technical

Recommendation as provided in paragraph (b) of this Section 21.11, or (ii) absent such agreement, nominate a member of its respective senior management, who shall have decision-making authority on behalf of such Party, and such senior management members shall promptly meet and seek to achieve a settlement, if possible, by negotiation and mutual agreement. If the Dispute is not resolved or submitted for Technical Recommendation within forty-five (45) Days after the Dispute Notice is received by the recipient Party (or such longer period of time as may be mutually agreed by the Parties in writing), then either Party may submit the Dispute for final determination to PREB.¹²

- b. If the Parties agree that a Dispute primarily involves technical subject matter that they should attempt to resolve through a technical review in proceedings before a Consulting Technical Expert, then the Parties shall jointly submit such Dispute (a “**Technical Dispute**”) to the Consulting Technical Expert, mutually appointed for such purpose, for a recommended resolution (a “**Technical Recommendation**”) by providing to the Consulting Technical Expert with a written notice, specifying the matter to be determined. Proceedings before the Consulting Technical Expert shall be held in San Juan, Puerto Rico, unless otherwise agreed in writing by the Parties. Within thirty (30) Days of the engagement of the Consulting Technical Expert for a Technical Dispute (or such longer period of time as the Parties may mutually agree in writing), the Parties shall require that the Consulting Technical Expert conduct a hearing; provided that the Parties may agree in writing to waive the hearing and have the Consulting Technical Expert issue the Technical Recommendation on the basis of written submissions alone. The Parties shall require that the Consulting Technical Expert render a written recommendation on the Technical Dispute as soon as practicable after the close of the hearing but, in any case, no later than fifteen (15) Days after the close of the hearing. The Parties may resolve the Technical Dispute based on the Technical Recommendation or any mutually agreed modification thereof. If the Technical Dispute is not resolved in this fashion, the Parties may submit the matter for final determination to PREB.

21.12 No Economic Interest

SELLER represents, warrants, and certifies as of the Closing Date, to its actual knowledge, that no public employee has any personal or economic interest in this Agreement.

21.13 Code of Ethics

SELLER agrees to comply with the provisions of Act of June 18, 2002, No. 84, as amended, which establishes a Code of Ethics for the Contractors, Suppliers and Economic Incentive Applicants of the Executive Agencies of the Commonwealth of Puerto Rico.

21.14 Independent Contractor

SELLER shall be considered as an independent contractor, for all material purposes under this Agreement, and all Persons engaged or contracted by SELLER for the performance of its obligations herein, shall be considered as its employees or agents or those of its subcontractors, and not as employees or agents of PREPA.

¹² Note: Puerto Rico law mandates dispute resolution by PREB.

21.15 Counterparts

This Agreement may be executed in any number of counterparts with the same effect as if both Parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one instrument.

21.16 Governing Law

This Agreement shall be governed by, construed, and enforced in accordance with the Laws of the Commonwealth of Puerto Rico without regard to any contrary result required under applicable conflicts of laws rules. The Parties herein agree that all Disputes arising hereunder shall be resolved pursuant to Section 21.11 (*Dispute Resolution*).

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the Parties hereto have agreed to execute this Agreement in San Juan, Puerto Rico, as of the date first written above.

**PUERTO RICO ELECTRIC POWER [●]
AUTHORITY**

Efran Paredes Maisonet

Executive Director

Tax ID Number: 660433747

[●]

[●]

Tax ID Number: [●]

APPENDIX A

HOLIDAYS

PREPA recognizes the following holidays and observes all holidays that fall on a Sunday on the following Business Day:

<u>DAY</u>	<u>CELEBRATION</u>
January 1	New Year's Day
January 6	Three Kings Day/Epiphany
3 rd Monday in January	Martin Luther King
3 rd Monday in February	Presidents and Illustrious Puerto Ricans Day
March 2	American Citizenship Day
March 22	Emancipation Day
Friday of Holy Week	Good Friday
Sunday of Holy Week	Easter Sunday
2 nd Sunday in May	Mothers' Day
Last Monday in May	Memorial Day
3 rd Sunday in June	Fathers' Day
July 4	Independence Day
July 25	Puerto Rico Constitution Day
1 st Monday in September	Labor Day
2 nd Monday in October	Columbus Day
November 19	Discovery of Puerto Rico
November 11	Veterans Day
4 th Thursday in November	Thanksgiving Day
December 24	Christmas Eve
December 25	Christmas Day

APPENDIX B

SIGNING CONDITIONS

1. Together with the signing of this Agreement, SELLER shall provide:
 - a. an original certificate of tax status and compliance from the Commonwealth of Puerto Rico for the five (5) previous years, confirming that it does not owe Taxes to the Commonwealth of Puerto Rico or is paying such Taxes by an installment plan in full compliance with its terms;
 - b. an income tax return filing certificate issued by the Treasury Department of Puerto Rico, Area of Internal Revenues assuring that SELLER has filed its Income Tax Return for the last five (5) years (obtained by using the Request for Copy and/or Certification of Income Tax Returns Form issued by the Treasury Department of Puerto Rico);
 - c. a certificate of debt issued by the Treasury Department of Puerto Rico, Area of Internal Revenues;
 - d. a certificate issued by the Municipal Revenues Collection Center assuring that SELLER does not owe any Taxes to such governmental agency;
 - e. a certificate issued by the Department of Labor and Human Resources of Puerto Rico, evidencing that SELLER has paid to the Department of Labor and Human Resources of Puerto Rico, if applicable, its employees' contributions, in accordance with the Puerto Rico Employment Security Act (unemployment, temporary disability or sickness or social security for chauffeurs) or is paying such contributions by an installment plan in full compliance with its terms;
 - f. a certificate issued by the Child Support Administration (ASUME) evidencing that SELLER has complied with the retention, if applicable, that an employer must do;
 - g. a sworn and notarized statement, as of the Agreement Date, evidencing compliance with Article 3.3 Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico of the Commonwealth of Puerto Rico, as amended, in the form set forth in Appendix Q (*Form of Sworn Statement*);
 - h. a certification, as of the Agreement Date, that, to its actual knowledge, no public employee has any personal or economic interest in this Agreement, under Section 21.12 (*No Economic Interest*);
 - i. a certification, as of the Agreement Date, that, to its actual knowledge, it does not receive payment or benefit of any nature for services rendered regularly through an appointment to a Governmental Authority of Puerto Rico, under Section 21.10 (*Anticorruption & Antibribery*);
 - j. if any of the previously required certifications show a debt, and SELLER has requested a review or adjustment of this debt, a certification that SELLER has made such request at the Agreement Date; and if PREPA denies the requested review or adjustment and such determination is final, proof of payment of this debt to PREPA or confirmation that

SELLER accepts that PREPA shall offset the owed amount from the corresponding payments;

- k. evidence of SELLER's ability to provide Equity at least equal to the sum of (i) thirty percent (30%) of the forecasted costs to develop the Facility and (ii) the forecasted cost to construct the PREPA Interconnection Facilities, by the forecasted date on which SELLER will first draw down on funds for such development under the financing documents with the Project Lenders; and
- l. the following technical documents:
 - i. a preliminary engineering design of the Facility and the PREPA Interconnection Facilities, consistent with Prudent Electrical Practices, the Interconnection Agreement, and the MTRs;
 - ii. a proposed relay protection scheme (to include the PREPA Interconnection Facilities and the Seller Interconnection Facilities); and
 - iii. a certified PSS/E mathematical model of the specific facility, the manufacturer's performance data and expected output curve.
- 2. Prior to the signing of this Agreement:
 - a. SELLER shall have provided the certification set forth in Appendix R (*Form of FOMB Certification*).
 - b. FOMB shall have approved the execution version of this Agreement.
 - c. SELLER shall have presented PREPA with documents evidencing SELLER's ownership and/or control of the Site for the purposes of implementing the Project.

APPENDIX C

CONDITIONS PRECEDENT

PART 1 - SELLER CONDITIONS

SELLER shall deliver the following as conditions precedent to the Closing Date:

- a. the Performance Security;
- b. insurance certificates or cover notes evidencing the insurance coverages required pursuant to Article 18 (*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, which approval PREPA shall not unreasonably withhold or delay;
- c. a certificate, signed by a duly-authorized representative of SELLER, in the form set forth in Appendix Z (*Form of Warranty Compliance Certificate*);
- d. a legal opinion prepared by its external counsel in a form reasonably acceptable to PREPA, confirming the warranty made by SELLER in paragraph (d) of Section 12.3 (*SELLER Representations & Warranties*); and
- e. [a guarantee issued by a Permitted Guarantor in the form set forth in Appendix AA (*Form of Payment Guarantee*).]¹³

PART 2- PREPA CONDITIONS

PREPA shall satisfy the following as conditions precedent to the Closing Date:

- a. completion of the Feasibility Study, System Impact Study and Facility Study;
- b. filing of this Agreement with the Puerto Rico Controller; and
- c. delivery of a legal opinion prepared by its external counsel in a form reasonably acceptable to SELLER, confirming the warranty made by PREPA in paragraph (b) of Section 12.4 (*PREPA Representations & Warranties*).

PART 3 - OTHER CONDITIONS

The following constitute other conditions precedent to the Closing Date:

- a. the execution and delivery of the Interconnection Agreement by the Parties;
- b. the absence of any 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 SELLER has executed this Agreement;

¹³ Note: Only required where the SELLER/Proponent could not satisfy the Unrestricted Net Worth requirement under Section 4.5(a) of the RFP, requiring a Permitted Guarantor to guarantee its obligations arising out of this Agreement.

- c. the issuance of a Best Interests Determination; and
- d. PREB and P3A shall have approved the executed version of this Agreement.

APPENDIX D

MILESTONE SCHEDULE

Milestones	Time for Completion / Occurrence*	SELLER Delay Liquidated Damages (USD Per Day of Delay)
Construction Start	240 Days after Closing Date	N/A
Initial Synchronization	540 Days after Closing Date	N/A
Commercial Operation	Guaranteed Commercial Operation Date	[●] ¹⁴

¹⁴ Note: The Parties shall determine the actual SELLER Delay Liquidated Damages prior to signing this Agreement, based on the following formula:

$$SDLD = \left(RER - \left(\frac{CPP}{\left(30.33 \frac{\text{Days}}{\text{Month}} \times 24 \frac{\text{hours}}{\text{Day}} \right)} \right) \right) \times DD^{\max} \times DD^{\max}D$$

where:

SDLD = SELLER Delay Liquidated Damages for such Day, expressed in \$;

RER = replacement Energy rate of \$170/MWh;

CPP = Capability Payment Price applicable to Agreement Year 1, expressed in \$/MW-Month;

DD^{max} = Design D^{max}, expressed in MW; and

DD^{max}D = Design D^{max} Duration, expressed in hours.

APPENDIX E

SELLER PERMITS

SELLER shall obtain the following licenses, permits and authorizations and any other licenses, permits and authorizations required by the Agreement.

Issuing Agency	Permit Description	Date Required or Received
Federal		
Commonwealth		
Other Applicable Governmental Authorities		

APPENDIX F

COMPENSATION

1. Monthly Payment

For each Billing Period, PREPA shall pay to SELLER a payment for Energy Storage Services provided to PREPA, in arrears (the “**Monthly Payment**”). The Parties shall calculate the Monthly Payment for Billing Period “n” as follows:

$$\mathbf{MP_n = MFP_n + MVP_n - ADJ_n}$$

where:

MP_n = Monthly Payment for Billing Period “n”, expressed in dollars;

MFP_n = Monthly Fixed Payment for Billing Period “n”, as determined in accordance with Section 2 (*Monthly Fixed Payment*) of this Appendix F;

MVP_n = Monthly Variable Payment for Billing Period “n”, as determined in accordance with Section 3 (*Monthly Variable Payment*) of this Appendix F;

ADJ_n = other credits or amounts to which PREPA has a right under this Agreement; and

n = such Billing Period.

SELLER acknowledges and agrees that the Monthly Payment, and through it the Capability Payment Price, represents the all-in payment for the Energy Storage Services, including all Ancillary Services whatsoever, as well as all Green Credits and costs to SELLER of complying with this Agreement.

2. Monthly Fixed Payment

For each Billing Period “n”, the Parties shall calculate the monthly fixed payment for such Billing Period (the “**Monthly Fixed Payment**” or “**MFP_n**”) as follows:

$$\mathbf{MFP_n = CPP \times MCC_n \times FAA_n \times PRA_n}$$

where:

CPP = Capability Payment Price for such Billing Period, which in each Agreement Year shall equal the amount set out in the column captioned “CPP (\$/MW-Month of MCC)” that corresponds to such year:

Agreement Year	CPP (\$/MW-Month of MCC)
[●]	[●]
[●]	[●]

provided that the values set out in the column captioned “CPP (\$/MW-Month of MCC)” shall be reduced, in the event of any SELLER refinancing (which SELLER may carry out in its sole discretion) following PREPA’s emergence from the PREPA Bankruptcy or otherwise, to account for any savings accruing to SELLER from such refinancing in the following proportions: (i) for SELLER, sixty percent (60%), and (ii) for PREPA, forty percent (40%), calculated as percentages of the amount which equals the sum of (A) the difference between (1) the net present value of debt service obligations before the refinancing, and (2) the net present value of debt service obligations immediately upon the occurrence of the refinancing, in each case at a discount rate equal to the interest rate on outstanding senior debt owed to Project Lenders at the time of such refinancing, and (B) any net proceeds of such refinancing;

MCC_n = Monthly Contract Capability for such Billing Period as adjusted in accordance with Section 5 (*Monthly Contract Capability*) of this Appendix F;

FAA_n = Facility Availability Adjustment for such Billing Period, determined pursuant to Section 6 (*Facility Availability*) of this Appendix F; and

PRA_n = PREPA Risk Adjustment for such Billing Period, determined pursuant to Section 7 (*PREPA Risk Adjustment*) of this Appendix F.

3. Monthly Variable Payment

For each Billing Period “n”, the Parties shall calculate the monthly variable payment for such Billing Period (the “**Monthly Variable Payment**” or “**MVP_n**”) as follows:

$$\text{MVP}_n = \min [\text{DE}_n, \text{SDE}_n] \times \text{VOMP}_n \times (1 + \text{VOMPI}_y)$$

where:

DE_n = the Discharge Energy for Billing Period “n”, as measured for such period in accordance with Section 8.4 (*Meter Reading*);

SDE_n = the quantity of Scheduled Discharge Energy for Billing Period “n”;

VOMP_n = the variable O&M price applicable to Billing Period “n”, which in each Billing Period in any Agreement Year shall equal \$[●]/MWh; and

VOMPI_y = the Variable O&M Price Inflation applicable for the Agreement Year, determined pursuant to Section 4 (*Variable O&M Price Inflation*) of this Appendix F.

4. Variable O&M Price Inflation

For each Agreement Year “y”, the Parties shall calculate the increase or decrease to VOMP to reflect inflation in such Agreement Year (the “**Variable O&M Price Inflation**” or “**VOMPI**”) as a blended rate of the Puerto Rico Labor Index and the St. Louis Federal Reserve PPI, as follows:

$$\text{VOMPI}_y = \frac{\left(\left(\frac{\text{LBRI}_y - \text{LBRI}_1}{\text{LBRI}_1} \right) \times 100 \right) + \left(\left(\frac{\text{MNFTI}_y - \text{MNFTI}_1}{\text{MNFTI}_1} \right) \times 100 \right)}{2}$$

where:

LBRI_y = the Puerto Rico Labor Index for Trade, Transportation, and Utilities (available here: <https://www.bls.gov/eag/eag.pr.htm>) for July of the applicable Agreement Year;

LBRI₁ = the Puerto Rico Labor Index for Trade, Transportation, and Utilities (available here: <https://www.bls.gov/eag/eag.pr.htm>) for the Month in which the Agreement Date occurs;

MNFTI_y = the St. Louis Federal Reserve Producer Price Index – Storage Battery Manufacturing (PCU335911335911) (available here: fred.stlouisfed.org/series/PCU335911335911) for July of the applicable Agreement Year;

MNFTI₁ = the St. Louis Federal Reserve Producer Price Index – Storage Battery Manufacturing (PCU335911335911) (available here: fred.stlouisfed.org/series/PCU335911335911) for the Month in which the Agreement Date occurs; and

y = such Agreement Year.

5. Monthly Contract Capability

- a. At the Commercial Operation Date, the Monthly Contract Capability shall equal the Design D^{\max} . After the Commercial Operation Date, the Monthly Contract Capability will be adjusted as described in paragraphs (b) and (c) of this Section 5 of this Appendix F.
- b. At the end of each Agreement Year, the Monthly Contract Capability for the following Agreement Year will be reduced to the lesser of (i) Degraded Duration Energy divided by the Design D^{\max} Duration, or (ii) the Tested Result, as follows:

$$MCC_y = \min [DDE/DDD, TR]$$

where:

MCC_y = Adjusted MCC for the Agreement Year;

DDE = Degraded Duration Energy for the Agreement Year;

DDD = the Design D^{\max} Duration;

TR = the Tested Result, i.e., the MCC as adjusted pursuant to the most recent Performance Test in accordance with Section 6.9 (*Supply Period Performance Tests*); and

y = Agreement Year.

- c. The Monthly Contract Capability will be adjusted based on the results of Performance Tests as follows:

1. The adjustment to the Monthly Contract Capability will take effect on the first Day of the Billing Period following the Billing Period in which the Performance Test occurred and will continue in effect until either (A) another Performance Test is completed, or (B) an annual adjustment pursuant to paragraph (b) of this Section 5 of this Appendix F is made.
2. If the Tested Duration Energy of the Facility falls below ninety-nine percent (99%) of the Degraded Duration Energy, the Monthly Contract Capability will equal the Tested Duration Energy divided by the Design D^{\max} Duration.
3. If the Tested Duration Energy of the Facility equals or exceeds ninety-nine percent (99%) of the Degraded Duration Energy, the Monthly Contract Capability will equal the Degraded Duration Energy divided by the Design D^{\max} Duration.

6. Facility Availability

a. Facility Availability Adjustment

The Facility Availability Adjustment will be applied in calculating the Monthly Payment in accordance with Section 1 (*Monthly Payment*) of this Appendix F. Paragraph (b) of this Section 6 of this Appendix F contains the formula to calculate Facility Availability. For each Billing Period the Facility Availability Adjustment is:

FA (%)	FAA
Greater than or equal to ninety-eight percent (98%)	One hundred percent (100%)
Less than ninety-eight percent (98%) but greater than seventy percent (70%)	One hundred percent (100%) - [(ninety-eight percent (98%) – FA)] x two (2)
Less than seventy percent (70%)	Zero percent (0%)

b. Calculation of Facility Availability

1. SELLER shall calculate the availability of the Facility in a Billing Period “n” using the formula set forth below (the “**Facility Availability**”):

$$FA_n = \left(\frac{BPHRS_n - (POHRS_n + UNAVHRS_n + UNAVPRODHS_n)}{BPHRS_n - POHRS_n} \right)$$

where:

FA_n = Facility Availability for Billing Period “n”;

BPHRS_n = total number of hours for Billing Period “n”;

POHRS_n = total number of Permitted Outage Hours where the Facility was unavailable to deliver Adjusted Duration Energy or unable to accept Charge Energy in the Billing Period, provided that the number of POHRS in a Billing Period due to Scheduled Outages and Scheduled Deratings may not exceed the maximum number of hours per Year permitted

for such events pursuant to paragraph (a) of Section 6.3 (*Scheduled Maintenance*);

A Scheduled Outage or Force Majeure (declared by SELLER) that occurs for less than a full hour, or any Scheduled Derating will count as an equivalent percentage of the applicable hour(s) for this calculation. For example, if SELLER Notifies PREPA of a change in the Facility's D^{\max} that results in a reduction in Adjusted Duration Energy by ten percent (10%) for twenty (20) hours due to a Scheduled Derating, then the Facility would be deemed unavailable for two (2) full hours;

UNAVHRS_n = total number of hours in which the Facility was unavailable to deliver Adjusted Duration Energy or unable to accept Charge Energy during the Billing Period due to (A) a Non-Scheduled Outage or Non-Scheduled Derating; (B) an extension of a Scheduled Outage or Scheduled Derating from its original schedule that was not notified to and approved by PREPA in accordance with Section 6.3 (*Scheduled Maintenance*); or (C) SELLER declaring the Facility unavailable, in whole or in part, for any hour or part of an hour, for any reason other than an event that counts toward POHRS_n, provided that an event described in (A) through (C) above that results in an Unscheduled Derating of the Facility or occurs for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation;

UNAVPRODHS_n= total number of hours in which the Facility (A) was unable to provide Product other than Energy due to an event that inhibits the Facility's ability to provide such other Products but not its ability to deliver Energy; (B) inability of SELLER to maintain certification of any such other Product; or (C) SELLER declaring the Facility unable to provide such other Product, in whole or in part, for any hour or part of an hour, for any reason other than an event that counts toward POHRS_n, provided that (i) an event described in (A) through (C) above that results in a Derating or occurs for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation, and (ii) any hour or partial hour considered unavailable for the purposes of UNAVHRS_n will not also be considered UNAVPRODHS_n and

n = relevant Billing Period "n" in which Facility Availability is calculated.

2. If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour of any Day of the Supply Period, and SELLER provides a revised notice indicating the Facility is available for that hour or part of an hour by

5:00 a.m. of the morning PREPA schedules the Dispatch Notice or Charge Notice for such Day, the Facility will be deemed available to the extent set forth in the revised notice.

7. PREPA Risk Adjustment

The Parties shall calculate the PREPA Risk Adjustment (“**PRA**”) for Billing Period “n” as follows:

$$\mathbf{PRA}_n = \left(\frac{\mathbf{BPHRS}_n - (\mathbf{GSEHRS}_n + \mathbf{PFMHRS}_n + \mathbf{IPHRS}_n)}{\mathbf{BPHRS}_n} \right)$$

where:

PRA_n = PREPA Risk Adjustment for the Billing Period;

BPHRS_n = total number of hours for the Billing Period;

GSEHRS_n = the duration (in hours) of any Grid System Event (other than a Force Majeure affecting PREPA) occurring in the Billing Period, provided that the number of GSEHRS in the Billing Period when added to the number of GSEHRS in the preceding Billing Periods for the Year, shall not exceed the Grid System Waiting Period, and any such excess GSEHRS shall not be included in the calculation of GSEHRS_n;

PFMHRS_n = duration (in hours) of any Force Majeure affecting PREPA occurring in the Billing Period, provided that the number of PFMHRS in the Billing Period when added to the number of PFMHRS in the preceding Billing Periods for the Year, shall not exceed the Force Majeure Waiting Period, and any such excess PFMHRS shall not be included in the calculation of PFMHRS_n; and

IPHRS_n = duration (in hours) of any event during the Billing Period in respect of which SELLER may recover insurance proceeds from any insurance policy that SELLER obtains (or would have obtained had it complied with this Agreement) in respect of PREPA Risk Events, including business interruption insurance in accordance with paragraph (h) of Section 18.1 (*SELLER Requirements*).

SELLER acknowledges and agrees that the Monthly Fixed Payment shall not apply in respect of an hour Billing Period in respect of which SELLER may recover insurance proceeds from any insurance policy that SELLER obtains (or would recover or have obtained had it complied with this Agreement) in respect of PREPA Risk Events, including business interruption insurance in accordance with paragraph (h) of Section 18.1 (*SELLER Requirements*).

8. Worked Examples

[●]

APPENDIX G
FACILITY SITE

[●]¹⁵

¹⁵ Note: SELLER to provide schematic of Site.

APPENDIX H

INTERCONNECTION DESCRIPTION AND SPECIFICATIONS

1. Description of the Interconnection Facilities

The electrical interconnection single line attached as Appendix H-1 (*Electrical Interconnection Single Line*) identifies the Interconnection Point, Charge Point(s), PREPA Interconnection Facilities, the Seller Interconnection Facilities, and metering locations.

2. Interconnection Point Specifications

SELLER shall perform and comply with the following interconnection specifications for the PREPA Interconnection Facilities. These specifications and standards do not constitute an all-inclusive scope of work. The Parties will require a Facility Study and a System Impact Study to determine the design as described in Article 3 (*Pre-Operation Period*).

a. Preliminary Scope of Work:

[PREPA to provide]

b. Codes and Standards Requirements:

All designs should be in accordance with the latest PREPA Design Criteria Documents, applicable ANSI/IEEE and NESC standards, and building codes. This includes:

1. the following design criteria documents (the “**PREPA Design Criteria Documents**” or “**DCDs**”):
 - i. PREPA Civil Design Criteria;
 - ii. PREPA Protection and Control Design Criteria;
 - iii. PREPA Substation Design Criteria;
 - iv. PREPA Transmission Design Criteria;
 - v. PREPA Distribution Design Criteria;
 - vi. PREPA Drawings and Specifications Design Criteria; and
 - vii. PREPA Telecommunication Design Criteria;
2. NECA/BICSI 607, Standard for Telecommunications Bonding and Grounding Planning and Installation Methods for Commercial Buildings;
3. American Concrete Institute (ACI) Design Codes and Construction Specifications;
4. American Institute of Steel Construction (AISC);
5. American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE);

6. American Welding Society (AWS);
7. American Wood Protection Association (AWPA);
8. Association of Edison Illuminating Companies (AEIC);
9. Building Industry Consulting Services International (BICSI);
10. Code of Federal Regulations (CFR);
11. Construction Specifications Institute (CSI);
12. Electric Power Research Institute (EPRI);
13. Federal Aviation Administration (FAA);
14. Federal Communications Commission (FCC);
15. Illuminating Engineering Society (IES);
16. Institute of Electrical and Electronics Engineers (IEEE);
17. Insulated Cable Engineers Association (ICEA);
18. International Electrotechnical Commission (IEC);
19. ITSIMM 6th Edition - Information Transport Systems Installation Methods Manual;
20. National Electrical Code (NEC);
21. National Electrical Manufacturers Association (NEMA);
22. National Electrical Safety Code (NESC);
23. National Fire Protection Association (NFPA);
24. NECA/BICSI 568, Standard for Installing Commercial Building Telecommunications Cabling;
25. North American Electric Reliability Corporation (NERC);
26. OSPDRM 5th Edition - Outside Plant Design Reference Manual;
27. Puerto Rico Building Code 2018;
28. Regulations per the Commonwealth of Puerto Rico;
29. Rural Utilities Service (RUS), United States Department of Agriculture;
30. RUS 1724E-300, U.S. Dept. of Agriculture Design Guide for Rural Substations;

31. TDMM 14th Edition - Telecommunications Distribution Methods Manual;
 32. Telecommunications Industry Association (TIA);
 33. ANSI/TIA 568.0-D, Generic Telecommunications Cabling for Customer Premises;
 34. ANSI/TIA 569-E, Telecommunications Pathways and Spaces;
 35. ANSI/TIA 606-C, Administration Standard for Telecommunications Infrastructure;
 36. ANSI/TIA 607-D, Generic Telecommunications Bonding and Grounding (Earthing) for Customer Premises;
 37. ANSI/TIA-1005-A, Telecommunications Infrastructure Standard for Industrial Premises; and
 38. ANSI/TIA-758-B, Customer-Owned Outside Plant Telecommunications Infrastructure Standard.
- c. Transmission Line Requirements:
1. SELLER shall perform the following tasks:
 - i. all ROW/Easement acquisition, including any studies, environmental permitting, real estate acquisitions, *etc.* required as per the Agreement;
 - ii. geotechnical soil borings, grounding tests, and studies along the transmission corridor and right of way;
 - iii. all applicable transmission designs and calculations typically found in typical transmission line design;
 - iv. stringing charts, engineered steel drawings, calculations, and PLS-CADD models of the transmission structures, including the applicable conductor size and OPGW (with 48 Fibers);
 - v. ampacity, shielding, and conductor sizing calculations for the transmission structure for the Interconnection Facilities;
 - vi. design and construction of foundations for transmission structures for the Interconnection Facilities;
 - vii. all transmission and distribution line design required for project completion; and
 - viii. evaluation of existing transmission and distribution poles that may be modified due to new conductors or equipment additions.
 2. PREPA shall review and provide comments on all SELLER's drawings, submittals and design inputs for SELLER's transmission line design.

d. Transmission Center, Substation, and Sectionalizer Requirements:

1. SELLER shall perform the following tasks:

- i. all real estate acquisitions, including land surveys, land segregation, acquisition of land title/deeds, *etc.*, studies (species, wetlands), and environmental permitting, *etc.* as required per the Agreement;
- ii. all required upgrades resulting from calculations and studies;
- iii. short circuit study, coordination studies, and settings;
- iv. geotechnical soil borings, grounding tests, and studies at the Interconnection Facilities;
- v. protection and control electrical design, following latest industry standards, *e.g.*, IEEE Standards and PREPA standards;
- vi. clearing, preparing the site, and civil design for the Interconnection Facilities, including vegetation removal and grading;
- vii. removal and disposal of the topsoil layer at the site for Interconnection Facilities (if required);
- viii. filling the site with adequate material (crushed stone) to bring to level and all adequate drainage of Interconnection Facilities;
- ix. connect the equipment grounds with the grounding mat;
- x. fill the site with six inches of gravel as per the grounding standard;
- xi. construction of retaining walls and/or fence around the site as required for a complete and secure site;
- xii. construction of new driveway / access road to the Interconnection Facilities as applicable;
- xiii. construction of the grounding mat on the site and connection to existing grounding mat;
- xiv. construction of foundations for the structures of the Interconnection Facilities;
- xv. installation of structures for the Interconnection Facilities;
- xvi. installation of equipment and auxiliaries for the Interconnection Facilities;
- xvii. installation of the meter sockets and metering equipment for billing of Discharge Energy and Ancillary Services;

- xviii. provide all materials required to interconnect the new protection and control system with the existing one (if applicable), including, but not limited to, relay panel, breaker control panels, DC upgrades, *etc.*;
- xix. installation of equipment and auxiliaries in the control house for the Interconnection Facilities;
- xx. design of the new control house (if applicable) layout at Interconnection Facilities, including location, civil design, internal layout, electrical design for lightning, convenience outlets, battery bank, and 125Vac supply panels, disconnects, and other associated materials and localization areas for control and protection panels;
- xxi. install and wire the Dynamic System Monitor (DSM);
- xxii. install the control cables from the equipment to the control house;
- xxiii. install and wire the AC and DC distribution panels;
- xxiv. install and wire the 125 VDC battery bank and related auxiliaries as applicable;
- xxv. all applicable AC and DC sizing calculations and verifications;
- xxvi. install the wiring for the Transient Recorder as required by PREPA. For security reasons, PREPA's relay personnel will wire these signals from the terminal block to the Transient Recorder. In addition, SELLER shall provide the following signals for the Transient Recorder:
 - A. analog signals - Phase A, B, and C voltage signals;
 - B. analog signals - Phase A, B, and C current signals from each line CT;
 - C. digital 87L output - Output TRIP signals associated with the primary protection of each line;
 - D. digital BU output - Output TRIP signal associated with the secondary protection (21/50/51) of each line;
 - E. digital - Output TRIP signal associated with the breaker failure protection of each line;
 - F. digital - TRIP signal from bus differential protection; and
 - G. digital - Status signal from each breaker;
- xxvii. programming the settings on the protection equipment for the Interconnection Facilities;
- xxviii. cleaning, removal, and disposal of construction debris;

- xxix. label the high voltage and auxiliary electrical equipment according to PREPA's practices; and
 - xxx. provide all spare parts as specified by PREPA.
2. PREPA shall perform the following tasks:
- i. project oversight, schedule evaluation, monitoring, and authorizing scope of work modifications and deviations;
 - ii. evaluate submittals and design input for all design phases for the following packages:
 - A. civil and physical design for above and below grade for the new or modification to transmission center, substation or sectionalizer;
 - B. protection and control, telecommunications, electrical design, and programming;
 - C. transmission and distribution line design; and
 - D. shop drawings, technical data of equipment and materials, bill of material;
 - iii. evaluate all temporary and permanent modifications to the Interconnection Facility; and
 - iv. evaluate the proposed construction work outage sequence for the entire project coordination.
- e. Transmission Center/ Substation Remote End Requirements (Only applicable to a PREPA Interconnection Facilities that sectionalize an existing transmission line). The details of these remote end upgrades will be identified during the Facility Study and the System Impact Study but will primarily include relaying upgrades/replacements to match the new sectionalizer relaying. All Outages and construction work sequence plans will be coordinated with and approved by PREPA.
1. SELLER shall perform the following tasks:
- i. all required upgrades resulting from calculations and studies;
 - ii. protection and control electrical design, following industry standards, *e.g.*, IEEE Standards and PREPA standards;
 - iii. installation of equipment and auxiliaries for the Interconnection Facilities;
 - iv. provide all materials required to interconnect the new protection and control system with the existing one (if applicable), including, but not limited to, relay panel, breaker control panels, DC upgrades, *etc.*;
 - v. installation of equipment and auxiliaries in the control house for the Interconnection Facilities;

- vi. all applicable AC and DC sizing calculations and verifications;
- vii. programming the settings on the protection equipment for the Interconnection Facilities;
- viii. cleaning, removal, and disposal of construction debris;
- ix. install and wire the telecommunication equipment for the Interconnection Facilities;
- x. programming the communication settings for the relays, meters, and all miscellaneous equipment;
- xi. installation of conduits for control cables from the equipment to the control house;
- xii. installation of telecommunications pathways for the Interconnection Facilities, including conduits, cable trays, racks, among others;
- xiii. install telecommunications facilities and equipment, including all necessary jumper cables and peripherals, with telecommunications equipment labeling and color-coding in compliance with ANSI/TIA 606 Standard;
- xiv. install communications copper cable, including jumpers, and cross-connects and miscellaneous materials;
- xv. programming the telecommunications equipment (routers, firewalls, and network equipment);
- xvi. install the fiber optic terminations for protection relays at the Interconnection Facilities;
- xvii. install the wiring for the Transient Recorder as required by PREPA. For security reasons, PREPA's relay personnel will wire these signals from the terminal block to the Transient Recorder. In addition, SELLER shall provide the following signals for the Transient Recorder:
 - A. analog signals - Phase A, B, and C voltage signals;
 - B. analog signals - Phase A, B, and C current signals from each line CT;
 - C. digital 87L output - Output TRIP signals associated with the primary protection of each line;
 - D. digital BU output - Output TRIP signal associated with the secondary protection (21/50/51) of each line;
 - E. digital - Output TRIP signal associated with the breaker failure protection of each line;

- F. digital - TRIP signal from bus differential protection; and
 - G. digital - Status signal from each breaker;
 - xviii. provide a PREPA's site representative and the required technical resources from PREPA to comply with the construction milestone schedule.
- 2. PREPA shall perform the following tasks:
 - i. evaluate all drawings, submittals, and design inputs for SELLER's remote end design;
 - ii. project oversight, schedule evaluation, monitoring, and authorizing scope of work modifications and deviations;
 - iii. evaluate submittals and design input for all design phases for the following packages:
 - A. protection and control, telecommunications, electrical design, and programming; and
 - B. shop drawings, technical data of equipment and materials, bill of material;
 - iv. evaluate all temporary and permanent modifications to the Interconnection Facilities; and
 - v. evaluate the proposed construction work outage sequence for the entire project coordination.
- f. Telecommunication Requirements (in addition to the requirements as identified in Section b):
 - 1. SELLER shall perform the following tasks:
 - i. install, wire, and program the SCADA Remote Terminal Units (RTUs) at the Interconnection Facilities and the Site;
 - ii. install and wire the telecommunication equipment for the Interconnection Facilities;
 - iii. programming the communication settings for the relays, meters, and all miscellaneous equipment connected to the RTU;
 - iv. installation of conduits for control cables from the equipment to the control house;
 - v. installation of telecommunications pathways at the Interconnection Facilities, including conduits, cable trays, racks, among others;

- vi. provide and install telecommunications equipment power systems, with telecommunications equipment labeling and color-coding to comply with ANSI/TIA 606 Standard;
 - vii. program the DSM with the signal list provided by PREPA;
 - viii. design of the control house layout at the Interconnection Facilities and collector Site includes location, civil design, internal layout, electrical design for lightning, convenience outlets, battery bank, and 125Vac supply panels, disconnects, and other associated materials and localization areas for SCADA, DSM, and telecommunications equipment;
 - ix. programming the telecommunications equipment (routers, firewalls, and network equipment); and
 - x. install the fiber optic connections, including 48-fiber OPGW, pathways, and terminations for the protection relays to allow the PREPA Interconnection Facilities to be fully operational.
2. PREPA shall perform the following tasks:
- i. review and comment on all submittals and design input for all design phases for the telecommunications packages; and
 - ii. support the integration of the new equipment into the overall PREPA Network.
- g. Commissioning and Testing Requirements:
1. SELLER shall perform the following tasks:
- i. all Outages and construction work sequence plans will be coordinated with and approved by PREPA;
 - ii. provide any revisions to the Testing Protocol and plans for PREPA's approval prior to performing any acceptance test and energization of any equipment;
 - iii. perform the acceptance and commissioning tests on the equipment and auxiliaries according to PREPA's practices and Applicable Standards at SELLER's collector site only, including voltage signals, current signals, relay outputs, breaker status, and cable continuity;
 - iv. perform grounding tests at all sites, including the transmission corridor;
 - v. perform testing on the interconnection of the transmission line;
 - vi. perform impedance testing to validate the proper installation of all transmission and high voltage conductors and bus;

- vii. perform tests for the wiring of protection and control systems, RTU, DSM, Transient Recorder, and others associated services for the Interconnection Facility;
- viii. perform adjustments and operation tests for the protection and control systems;
- ix. submit all test reports signed and sealed by a PR licensed electrical engineer for PREPA's review;
- x. perform preliminary testing of the protection, control and telecommunication system and the integration into SELLER's SCADA system. Depending on the type of alarm or signal into SELLER's SCADA system, PREPA personnel may act as a witness to validate the input. PREPA will perform final validation and acceptance of the SCADA integration;
- xi. perform operation tests for the telecommunication systems;
- xii. perform operation tests for the DSM;
- xiii. perform operation tests on the equipment and auxiliaries;
- xiv. perform operation tests for the transient recorder;
- xv. verification of the OTDR tests for fiber optic cable performed by SELLER for the following cables:
 - A. fiber cable between Interconnection Facilities and the Facility;
 - B. fiber cable for interconnection to PREPA's network;
 - C. fiber cable between new control room at Interconnection Facilities and meter cabinet located at the Interconnection Facilities; and
 - D. verification of Telecommunications facilities and equipment installations performed by SELLER at the Interconnection Facilities;

This work includes verification, testing, configuration, and inspection of equipment specified by PREPA and materials, cable installation, and testing by SELLER;

- xvi. provide a PREPA's site representative and the required technical resources from PREPA to comply with the Construction Milestone Schedule;
- xvii. witness all tests and commissioning of the electrical equipment installed at the Interconnection Facilities and the Site;
- xviii. submit all test protocols for PREPA approval; and
- xix. submit all test results in a test book for PREPA approval.

2. PREPA shall perform the following tasks:
 - i. evaluate the test results and settings of the protection relays for Interconnection Facilities;
 - ii. evaluate the test results and settings of the communication equipment at the Interconnection Facilities;
 - iii. witness all tests and commissioning of the electrical equipment installed in PREPA Interconnection Facilities;
 - iv. at existing PREPA sites where protection and control components are being updated, modified, or interconnected with, the tests should be done exclusively by PREPA;
 - v. perform final SCADA tests by PREPA acceptance test personnel from the point where SELLER consolidates SCADA data and transmits it to the PREPA SCADA system;
 - vi. perform the acceptance and commissioning tests on the equipment and auxiliaries according to PREPA's practices and Applicable Standards at the Interconnection Facility and remote ends; and
 - vii. perform end to end testing of all trips and controls by PREPA's Acceptance Tests Department personnel.
- h. Transfer of PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work): PREPA will provide the detailed requirements for the transfer of the PREPA Interconnection Facilities (including the transmission and distribution equipment, the real estate and ROW easements and environmental permitting and protection) no later than the Approved Design timeline as identified in paragraph (c) of Section 4.1 (*Proposed Design*). To initiate the transfer process, SELLER shall submit to PREPA:
 1. company name;
 2. contact person information;
 3. the physical address of the Site and PREPA Interconnection Facilities;
 4. segregation plan;
 5. schematic plan;
 6. previous due diligence for the acquisition of the property; if the land was financed by a bank, this document is required as part of the purchase and sale;
 7. copy and proof of submission of all required Permits, including the environmental Permits;
 8. this Agreement; and
 9. relevant deeds and leases.

3. Select Requirements for the Interconnection Construction Contract

SELLER shall ensure that it and the contractor under the Interconnection Construction Contract:

- a. disposes of all garbage generated because of the work, in accordance with the all Applicable Law;
- b. upon completion of the work, hands over the PREPA Interconnection Facilities work area free of contaminants;
- c. disposes of non-hazardous waste material generated by the PREPA Interconnection Facilities at an authorized landfill;
- d. complies with all environmental Laws, during and after construction, including:
 1. submission of the Project Environmental Assessment to and receipt of approval from the Department of Natural and Environmental Resources of Puerto Rico and any other environmental, state and municipality Permits for the Interconnection Facilities;
 2. all the terms and conditions established in the approvals of the submitted plans, Permits, and endorsement from Governmental Authorities; and
 3. upon the completion of the Interconnection Facilities, the closing of any of the acquired Permits that require closure.
- e. mitigates any environmental concerns and deficiencies found by PREPA's personnel or any regulatory agencies caused by them at any time.

APPENDIX H-1

ELECTRICAL INTERCONNECTION SINGLE LINE
[●]

APPENDIX I

PROGRESS REVIEW

1. Scope

The Consulting Technical Expert shall make comments and recommendations to SELLER in respect of:

- a. any aspect of the design (including surveys and drawings) of the Facility or PREPA Interconnection Facilities;
- b. any works performed pursuant to the Facility Construction Contract or the Interconnection Construction Contract, or other contracts related to the design or engineering of the Facility or the PREPA Interconnection Facilities; and
- c. the operation of the Facility.

2. Reviews and Inspections

- a. For the design of the Facility, the Interconnection Facilities or any other required report, SELLER shall submit an electronic copy of such document requested by the Consulting Technical Expert. SELLER shall deliver all electronic copies requested for review by email to the address specified in such request in a readily accessible format agreed with the Consulting Technical Expert. The Consulting Technical Expert may provide comments on selected documents and shall designate comments in accordance with Section 3 (*Designations and Subsequent Actions*) of this Appendix I.
- b. For works under paragraph (b) of Section 1 (*Scope*) of this Appendix I, SELLER shall take all reasonable measures to allow the Consulting Technical Expert to undertake inspections as required. The Consulting Technical Expert shall submit a report to SELLER within forty-eight (48) hours after completion of an inspection activity. This report shall contain comments designated in accordance with Section 3 (*Designations and Subsequent Actions*) of this Appendix I.
- c. For the operation of the Facility, SELLER shall take all reasonable measures to allow the Consulting Technical Expert to undertake inspections as required. The Consulting Technical Expert shall submit a report within twenty-one (21) Days after completion of an inspection. This report shall contain comments designated in accordance with Section 3 (*Designations and Subsequent Actions*) of this Appendix I.

3. Designations and Subsequent Actions

The designations of the relevant documents shall fall into one of the following categories:

- a. “*Reviewed/Inspected and accepted*”, meaning that the document, particular works or operation of the relevant component conform to the requirements of this Agreement. Such designation shall not relieve SELLER from any of its obligations or responsibilities under this Agreement or bind PREPA in respect of such document, particular works, or operation of the relevant project component. If Consulting Technical Expert makes any comments under this designation, such comments shall take the form of suggestions for alternative

design, construction, or operational procedures which may result in reduced cost, enhanced construction progress, or contribute to ease of operation. SELLER shall have no obligation to adopt or respond to any such comments made under this designation.

- b. *“Reviewed/Inspected with comments”*, meaning the comments constitute a form of requests for further details or clarifications on the basis that the relevant document, works, or operation of the relevant component does not appear to conform with the requirements of this Agreement. Such identified issues shall be deemed to have been considered non-compliant by PREPA’s Consulting Technical Expert on that basis until such time as SELLER provides the required details and clarifications in a sufficiently satisfactory manner for the Consulting Technical Expert to reach a final decision. Following receipt and review of the requested details and clarifications, the Consulting Technical Expert shall then designate such matter as either “Reviewed/Inspected and accepted” or “Reviewed/Inspected and rejected as non-compliant” as may be appropriate.
- c. *“Reviewed/Inspected and rejected as non-compliant”*, meaning the comments constitute the rejection by the Consulting Technical Expert of the documents, works, or operation of the relevant component of the Facility or Interconnection Facilities on the basis that it does not comply with this Agreement, in which event the Consulting Technical Expert shall provide a statement setting out in adequate detail the reasons for such designation.

APPENDIX J

OPERATING CHARACTERISTICS¹⁶

I. FACILITY DESCRIPTION

Facility name: [●]

Site name: [●]

Facility physical address: [●]

Total number of modules at the Facility: [●]

Project elevation: [●] (feet above sea level)

Project latitude: [●] (decimal form)

Project longitude: [●] (decimal form)

II. [UNIT(S) DESCRIPTION

Units: [●]

Unit name: [●]

Technology type: [●]

Specific module description: [●]

[Provide detailed description, including the nameplate sizing of key equipment.]

Interconnection Point for the Facility will have characteristics as follows:

Distribution area: [●]

Existing zone: [●]

Load zone: [●]

Substation: [●]

Additional information: [●]]

Other Charge Point(s) for the Facility will have characteristics as follows:

¹⁶ Note: PREPA will provide more information on expected usage and operational profile during Phase III. For bid submission, Proponents may (i) assume one full charge/discharge cycle per day and (ii) provide expected ramp rates.

Distribution area: [●]

Existing zone: [●]

Load zone: [●]

Substation: [●]

Additional information: [●]

III. OPERATIONAL CHARACTERISTICS

Discharging and Charging

[One hundred percent (100%) State of Charge (SOC) is defined as the highest state of charge to which the Facility can be consistently charged without damage beyond expected degradation from normal use. Zero percent (0%) SOC means the lowest state of charge to which the Facility can be consistently discharged without damage beyond expected degradation from normal use. If SELLER normally specifies highest and lowest SOC values differently, SELLER should normalize minimum and maximum SOC to zero percent (0%) SOC and one hundred percent (100%) SOC, respectively. SELLER should also normalize reporting of energy stored such that the amount of energy stored at zero percent (0%) SOC is 0 MWh and that the energy stored at one hundred percent (100%) SOC is fully available for discharge. SELLER will provide details on how the State of Charge is measured and physically indicated. For each characteristic, list the value that the facility will be designed to have at the Commercial Operation Date.]

Design D^{\max} : [●] MW

Design D^{\min} : [●] MW

Design Discharge Duration: [●] (hours)

Design D^{\max} Duration: (hours) [●]

Design Storage Energy: MWh [●]

Design Duration Energy: [●] MWh *[Equals the product of the Design D^{\max} and Design D^{\max} Duration]*

Design C^{\max} : [●] MW

Design C^{\min} : [●] MW

Design Charge Duration: [●] (hours)

Design C^{\max} Duration: [●] (hours)

Design Charge Energy [●] MWh

[Provide a power profile of the Facility across a full duty cycle.]

System Efficiency

Guaranteed Efficiency: [●]% *[This discharge/charge ratio should be exclusive of Station Use.]*

Full Duty Cycle Efficiency: [●]% *[Discharge Energy divided by Charge Energy, over a Full Duty Cycle.]*

Stand-by Self Discharge: [●]% *[Specify in tenths of one percent (1%).]*

Stand-by Energy Consumption: [●] MW

Ramp Rates

[e.g. Describe ramp rates for the Facility. If Facility ramp rates vary based on Facility loading level, please provide a ramp rate for each segment within the operational range in which it differs. If Facility ramp rates vary based on the product (e.g. Regulation), please provide separately.]

D^{\min} to D^{\max} : [●] MW/min

C^{\min} to C^{\max} : [●] MW/min

D^{\max} to D^{\min} : [●] MW/min

C^{\max} to C^{\min} : [●] MW/min

System Response Time

[Timing should commence with system at a steady-state starting value and end when system has reached a steady-state ending value. Idle means that the Facility is neither charging nor discharging, but is online and available for immediate operation. Time should include time from notification.]

Idle to D^{\max} : [●] seconds

Idle to C^{\max} : [●] seconds

D^{\max} to C^{\max} : [●] seconds

C^{\max} to D^{\max} : [●] seconds

D^{\min} to C^{\min} : [●] seconds

C^{\min} to D^{\min} : [●] seconds

[For the purpose of filling out this Appendix, Discharge (Charge) Start-up time means the amount of time needed to bring the Facility from non-operation to D^{\min} (C^{\min}). (The state of non-operation includes but is not limited to being unsynchronized to the grid.) If applicable, provide Start-Up time for each Unit. Provide in seconds if appropriate.]

Discharge Start-Up time (from notification to D^{\min}): [●] minutes

Energy Storage Services Agreement - PREPA and [●]

Charge Start-Up time (from notification to C^{\min}): [●] minutes

Discharge Start-Up fuel: [●] MMBtu

Starts and other Run Time Limitations

[Describe start limitations for the Facility. Include any daily and/or annual start limitations. Insert constraints, if any, on run hours and a brief description of the reason for such constraint(s). If possible, SELLER shall provide a formula for annual dispatch purposes that provides PREPA more flexibility to operate the Facility.]

Start limitations: [●]

Run hour limitations: [●]

[Describe minimum times for each Unit operating independently and for all Units operating simultaneously.]

The Minimum Run Time after a Discharge start is [●] minutes for each independent Unit

The Minimum Run Time after a Discharge start is [●] minutes for all Units operating simultaneously

The Minimum Run Time after a Charge start is [●] minutes

The Minimum Run Time after a Charge start is [●] minutes for all Units operating simultaneously

The Minimum Down Time after a shutdown is [●] minutes of an individual Unit

The Minimum Down Time after a shutdown is [●] minutes of all Units operating simultaneously

Ancillary Services

Spinning Reserves: [●] MWs; Range: [●]

Non Spinning Reserves: [●] MWs; Range: [●]

Regulation up: [●] MWs; Range: [●]

Regulation down: [●] MWs; Range: [●]

Black start capability (if applicable): [●]

Other: [●]

Other Restrictions:

[Provide a description of any other operational limitations not covered above, including forbidden operating regions]

Cycle Limitations:

[Insert applicable cycle limitations per hour, Day, Month or cumulative total by Year that are applicable to the Unit during the Supply Period.]

[Insert preferred definition and measure of “cycle”.]

Degradation:

Annual D^{\max} Degradation Rate: [●]% per Agreement Year

Annual C^{\max} Degradation Rate: [●]% per Agreement Year

Annual Storage Degradation Rate: [●]% per Agreement Year *[Applies to Maximum Storage Energy.]*

Annual Duration Energy Degradation Rate: [●]% per Agreement Year *[Applies to Degraded Duration Energy.]*

[SELLER can also specify percentage degradation tied to MWh delivered. If degradation is not a fixed percentage per Year, SELLER should include a table of degraded D^{\max} , Storage, and/or Degraded Duration Energy, and terms relating to degradation will have to be modified accordingly.]

APPENDIX K

MINIMUM TECHNICAL REQUIREMENTS

Capitalized terms used throughout this Appendix K have the meaning set forth in the Agreement, unless otherwise defined herein.

SELLER shall comply with the following MTRs:

1. Frequency Control and Regulation

- a. Fast active power (P) source capable of continuously injecting or absorbing energy from the grid as a function of system frequency deviations to help manage and maintain frequency at 60 Hz.
- b. Instantaneous and immediate active power (P) response of battery energy storage system (“BESS”) proportional to frequency deviations from scheduled frequency.
- c. The rate of active power (P) response of BESS to frequency deviations shall be established based on configurable PREPA selected droop characteristic (*i.e.* 5% droop characteristic or more responsive as PREPA requires SCADA). PREPA shall be able to program and configure the droop via SCADA from 1% to 5% in steps of 0.5% (*i.e.* 3.0%, 3.5%, 4.0%, 4.5%, 5%).
- d. Frequency regulation deadband shall be available. PREPA shall be able to configure and program the deadband via SCADA. The configurable deadband range shall be at least from 0.02% to 0.5%.
- e. BESS frequency control and regulation mode time response (full frequency response) shall be less than 1.0 second.
- f. PREPA shall be able to configure and select frequency regulation range (upper injection/lower absorption limits) via SCADA up to a maximum of its nominal capacity (*i.e.* +/- 15 MW, +/- 20 MW). Asymmetrical frequency regulation ranges should be allowed (*i.e.* +15 MW/-5 MW, +10 MW/-20 MW).
- g. Capability to operate in the frequency control and regulation mode and simultaneously control the voltage by the injection or absorption of up to the required nominal reactive power at the Interconnection Point: (i) the frequency regulation control shall operate decoupled from the voltage regulation control mode and shall not limit the required reactive power capability of the Facility at the Interconnection Point, and (ii) the voltage regulation control shall not limit the required active power capability of the Facility at the Point if Interconnection.

2. Rapid Spinning Reserve and Fast Frequency Response

- a. Instantaneous injection of reserve energy as a function of the rate of change and/or deviations of the system frequency in the event of a sudden loss of generation or unexpected ramp-up in demand.

- b. Energy capability and power capacity to inject nominal active power output (at the Interconnection Point) in a range from two (2) to six (6) hours of discharge.
- c. Injection of active power (P) within the first three (3) cycles of a specific frequency deviation trigger and/or a frequency rate of change trigger (PREPA shall be able to configure and select triggers).
 - i. Total configurability for PREPA selection of the active power output, response time and response slope.
 - ii. Total configurability for PREPA selection of triggers: frequency, rate of change of frequency and instantaneous/time delay combinations.
 - iii. For example, the rapid reserve might be selected to trigger if frequency decays to 59.6 Hz at a rate > 0.25 Hz/sec or drops and stays between 59.0 Hz and 59.2 Hz for $>$ thirty (30) seconds or drops below 59 Hz.
 - iv. Total configurability for multiple sets of triggering combinations capable of being simultaneously active. The rapid reserve mode might be selected to trigger with Boolean or logical operators that combine active power output, response time, response slope, frequency limits, frequency rate of change and time delay.
- d. The rapid spinning reserve mode shall provide a full output response time (95% of its final output value) of 100 milliseconds or faster. PREPA shall also have the flexibility of selecting a limited rapid spinning reserve sub-mode from SCADA. In limited rapid spinning reserve sub-mode, the active power output, response time and response slope shall be configurable and programmable from SCADA in accordance with the triggering combinations and options previously discussed.
- e. Capability to ramp down active power output at PREPA's pre-selected and configurable slope (MW/min or % of active power output/min) after system frequency is normalized and triggers pre-selected and configurable frequency window for a certain amount of time. BESS shall ramp down to PREPA's pre-selected and configurable active power output (10 MW, 5 MW, 0 MW, *etc.*) and be able to automatically make the transition and continue operating in frequency control and regulation mode in accordance with previously selected and configurable parameters. The active power automatic ramp down should have the capability of being manually interrupted and ramped down from SCADA.
 - i. Total configurability of ramp down slope in MW/minute or % of active power output/minute.
 - ii. Total configurability of active power output target to which BESS shall ramp down before making the transition to operate in frequency control and regulation mode.
 - iii. Total configurability for PREPA selection of frequency triggers that initiate rapid reserve ramp down process: frequency limits of window range and time delay combinations that initiate ramp down.
 - iv. For example, rapid reserve ramp down might be triggered if frequency returns to 60 Hz \pm 0.1 Hz and stays in this range for at least twenty (20) seconds or returns to 60 Hz \pm 0.2 Hz and stays in this range for at least thirty (30) seconds.

- f. Capability to ramp down active power output at PREPA's pre-selected and configurable slope (MW/min or % of active power output/min) after SCADA command is received from PREPA's Energy Control Center System Operator to automatically make the transition and continue operating in frequency control and regulation mode in accordance with previously selected and configurable parameters.
 - i. Total configurability of ramp down slope in MW/minute or % of active power output/minute.
 - ii. Total configurability of active power output target to which BESS shall ramp down before making the transition to operate in frequency control and regulation mode.
- g. Capability to inject nominal active power output for 1.0 hour and simultaneously inject or absorb nominal reactive power at the Interconnection Point.

3. Dispatchable Generation Source

- a. Injection of active power at the Interconnection Point for a limited period of time to cover temporary generation deficits or start-up fast generating units.
- b. PREPA shall be able to select from SCADA the constant power output mode, active power (P) magnitude and time period.
- c. Capability to automatically make the transition from dispatchable mode to frequency control and regulation mode in accordance with previously selected and configurable parameters after SCADA command is received from PREPA's Energy Control Center System Operator.
- d. Capability to ramp down active power output at PREPA's pre-selected and configurable slope (MW/min or % of active power output/min) after SCADA command is received from PREPA's Energy Control Center System Operator to automatically make the transition from dispatchable mode to frequency control and regulation mode in accordance with previously selected and configurable parameters.
 - i. Total configurability of ramp down slope in MW/minute or % of active power output/minute
 - ii. Total configurability of active power output target to which BESS shall ramp down before making the transition to operate in frequency control and regulation mode
- e. Capability to operate in the dispatchable generation source mode and simultaneously control the voltage by the injection or absorption of up to nominal reactive power at the Interconnection Point.

4. Voltage Regulation and Control

- a. Dynamic reactive power compensation source capable of continuously injecting or absorbing reactive power (up to +/- nominal MVAR at Interconnection Point) as a function of system voltage deviations.

- b. Voltage regulation strategy based 100% on power electronics technology (no passive components like capacitors or reactors, neither thyristor controlled or switched capacitors or reactors allowed to complement reactive power capability).
- c. Constant voltage control is required (voltage set point control mode).
- d. PREPA shall be able to adjust from SCADA the voltage regulation set points shall between 95% and 105% rated voltage at the Interconnection Point. Because the previous voltage regulation range could be expanded (for example up to 106%) if PREPA's internal analyses indicate that additional dynamic compensation is required for specific multi-contingency scenarios, the upper voltage set point limits should be totally configurable and adjusted from SCADA beyond the typical voltage regulation range.
- e. The voltage regulation shall be based on direct measurement by means of new BESS dedicated potential transformers (that SELLER shall install) at the Interconnection Point.
- f. The voltage regulation system strategy shall be based on proportional plus integral (PI) control actions with parallel reactive droop compensation. The voltage regulation droop shall be adjustable from 0 to 10% in steps not greater than 0.5%.
- g. At zero percent (0%) droop, the voltage regulation system shall achieve a steady-state voltage accuracy of +/- 0.3% of the controlled voltage at the Interconnection Point. For voltage regulation droops between 0 and 2.5%, the voltage regulation system shall be calibrated such that a change in reactive power will achieve 95% of its final value no later than one (1) second following a step change in voltage. The change in reactive power should not cause excessive voltage excursions or overshoot. If a voltage overshoot is generated, it should be less than 1%.
- h. For voltage regulation droops between 2.5% and 5.0%, the voltage regulation system shall be calibrated such that a change in reactive power will achieve 95% of its final value no later than 500 msec following a step change in voltage. The change in reactive power should not cause excessive voltage excursions or overshoot. If a voltage overshoot is generated, it should be less than 1%.
- i. For voltage regulation droops between 5% and 10%, the voltage regulation system shall be calibrated such that a change in reactive power will achieve 95% of its final value no later than 100 msec following a step change in voltage. The change in reactive power should not cause excessive voltage excursions or overshoot. If a voltage overshoot is generated, it should be less than 1%.
- j. The voltage regulation system dead band shall not exceed 0.1%.
- k. The voltage regulation system shall be programmed to control and coordinate with local power transformers tap changers and local reactive power sources physically located in the switchyard.

5. Fast Dynamic Reactive Power Reserve and Voltage Support

- a. Instantaneous or slope controlled (MVAR/sec) injection or absorption of reactive power triggered by and as a function of the rate of change and/or deviations of the system voltage.

- b. Injection of reactive power (Q) within the first three (3) cycles of a specific voltage deviation trigger and/or a voltage rate of change trigger. PREPA shall be able to configure and select triggers.
 - i. PREPA shall be able to configure and select from SCADA the maximum final reactive power output value for fast dynamic reactive power reserve up to the nominal reactive power capacity.
 - ii. Total configurability for PREPA selection of triggers: voltage magnitude, rate of change of voltage and instantaneous/time delay combinations.
 - iii. For example, fast dynamic reactive power reserve might be selected to trigger if voltage decays to 0.95pu kV at a rate > 2.0 kV/sec or drops below 0.9pu.
 - iv. For example, a different value of fast dynamic reactive power reserve might be selected to trigger if voltage decays to 0.95pu at a rate > 1.0 kV/sec or drops below 0.93pu.
- c. A full output response time (95% of its final output value) of 100 msec. or faster is required. The maximum overshoot should not exceed 5% of the ordered change and the settling time should not exceed 150 msec.
 - i. Capability to inject 120% of nominal reactive power output for three (3) seconds at required 100 msec. response time.
 - ii. Absorption of reactive power (Q) within the first three (3) cycles of a specific voltage deviation trigger and/or a voltage rate of change. PREPA shall be able to configure and select triggers.
 - iii. PREPA shall be able to configure and select from SCADA the minimum final reactive power output value for fast dynamic reactive power absorption, up to the nominal reactive power capacity of BESS.
 - iv. Total configurability for PREPA selection of triggers: voltage magnitude, rate of change of voltage and instantaneous/time delay combinations.
 - v. For example, fast dynamic reactive power might be selected to trigger if voltage increases to 1.1pu of the nominal voltage at a rate > 3.0 kV/sec or increases above 1.2pu of the nominal voltage.
- d. A different fast dynamic reactive power might be selected to trigger if voltage increases to 1.1pu of nominal voltage at a rate > 2.0 kV/sec or increases above 1.15pu of nominal voltage.
- e. Capability to inject nominal fast dynamic reactive power reserve or operate in voltage regulation mode depending on the system voltage conditions, and simultaneously inject nominal active power output for 1.0 hour at the Interconnection Point.

6. Black Start Capability

- a. The Facility shall provide for BESS start-up capability and full functionality during system blackouts.
- b. The Facility shall provide for BESS start-up capability and full functionality during unavailability of external system generation sources.

7. BESS Full Functional Voltage and Frequency Operational Range and Ride-Through Capability

- a. Low Voltage Operation Range:

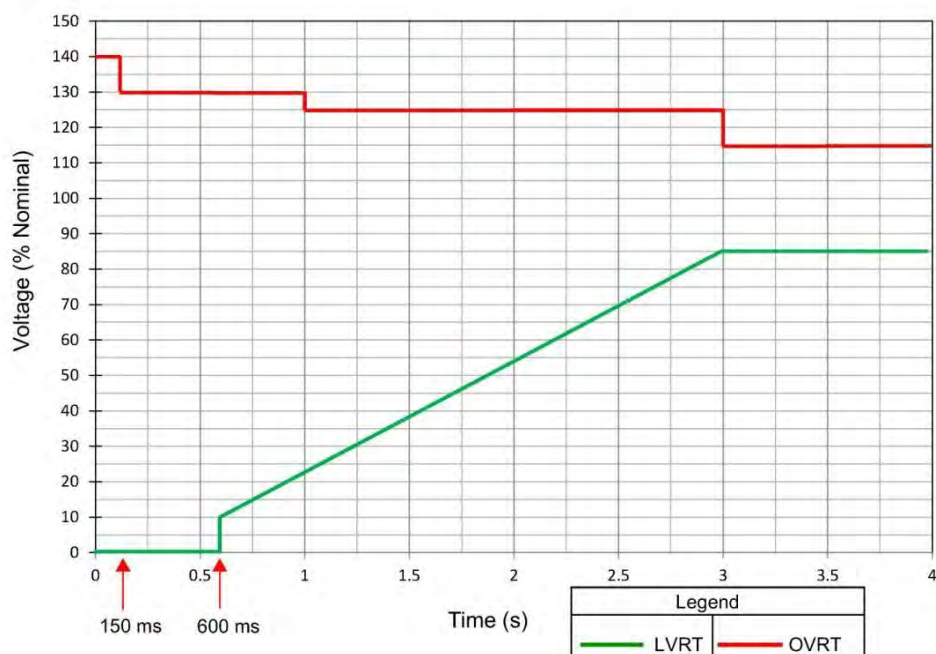


Figure 1 BESS Voltage Operational Range and Ride-Through Requirements

- i. From Figure 1 (above), PREPA requires BESS to remain totally functional and online during three (3) phase and single phase faults down to 0.0 per-unit (measured at the Interconnection Point), for up to 600 msec.
 - ii. BESS shall remain online and continue operating during and after normally cleared faults on the Interconnection Point.
 - iii. BESS shall remain online and continue operating during and after backup-cleared faults.
- b. High Voltage Operational Range:

- i. PREPA requires BESS to remain totally functional and online during symmetrical and asymmetrical overvoltage conditions as specified by the following values (illustrated in Figure 1 above):

Overvoltage (pu)	Minimum time
1.4 – 1.3	150 ms
1.3 – 1.25	1 s
1.25 – 1.15	3 s
1.15 or lower	indefinitely

- c. Frequency Ride Through (FRT)

56.0 – 63.0 Hz	No tripping (continuous)
55.5 – 56.0 Hz	20 sec time delay
< 55.5 or > 63.0 Hz	Instantaneous trip

8. Dynamic System Monitoring Equipment (DSM)

SELLER is required to provide, install, commission and maintain a dynamic system monitoring equipment that conforms to PREPA's specifications and signals list.

9. Modeling and Validation

- a. Once final adjustments and parameter settings related with commissioning and MTR compliance tests are completed, SELLER shall submit a PSS/E Siemens – PTI Certified mathematical model and validation report. When referred to the mathematical model, this shall include but is not limited to inverters, transformers, collector systems, plant controllers, control systems and any other equipment necessary to properly model BESS facility for both steady-state and dynamic simulation modules.
- b. SELLER shall submit user manuals for both BESS unit and BESS Facility models including a complete and detailed description of the voltage regulation system (VRS) and frequency regulation system model implementation. The mathematical models shall be fully compatible with the latest and future versions of PSS/E. SELLER shall use PSS/E standard models. In the case that SELLER submits user written models, SELLER shall keep these models current with the future versions of the PSS/E program until such time that PSS/E has implemented a standard model. SELLER shall submit to PREPA an official report from Siemens – PTI that validates and certifies the required mathematical models, including subsequent revisions. SELLER shall submit the official reports and certifications from Siemens – PTI, otherwise the mathematical model shall not be considered valid.
- c. SELLER shall submit Siemens – PTI certified PSS/E mathematical models of any kind of compensation devices (*i.e.* SVC, STATCOMs, BESS, *etc.*) used on BESS facility. SELLER shall use standard models provided with PSS/E. In the case that SELLER submits user written models, SELLER shall keep these models current with the future versions of

the PSS/E program until such time that PSS/E has implemented a standard model. In its final form, the mathematical model shall be able to simulate each of the required control and operational modes available for the compensation device and shall be compatible with the latest and future versions of PSS/E. The model shall reflect final adjustments and parameters settings related with the control system commissioning process and shall be incorporated to the PSS/E mathematical model and tested accordingly by SELLER and PREPA system study groups. SELLER shall submit the official reports and certifications from Siemens – PTI, otherwise the mathematical models shall not be considered valid.

- d. If SELLER provides user written model(s), then it shall provide compiled code of the model and maintain the user written model compatible with current and new releases of PSS/E until such time a standard model is provided. SELLER shall permit PREPA to make available Facility models to external consultants with a non-disclosure agreement in place.
- e. SELLER shall submit a PSS/E model validation report. This report shall demonstrate PSS/E simulation results that show the model MTR compliance and performance, based on final adjustment and parameter settings of MTR and commissioning field tests. SELLER shall submit the official reports and certifications from Siemens – PTI, otherwise the mathematical models shall not be considered valid.
- f. Additional details for the adequate PSS/E modeling and the contents of the PSS/E validation report can be found in PREPA’s “Guidelines on PSS/E Mathematical Models” document.

10. Power Management

The Facility shall provide adequate technology (communicating technology and the corresponding control equipment) and implement PREPA’s power management requirements (ramp rate limits, output limits, curtailment).

11. Short Circuit Ratio (SCR) Requirements

Short Circuit Ratio values (System Short Circuit MVA at POI/BESS Facility MVA Capacity) under 5 shall not be permitted. SELLER shall install additional equipment, such as synchronous condensers, and controls as necessary to comply with PREPA’s minimum short circuit requirements.

12. General

- a. For batteries, replacement of individual cells or cell modules shall not interrupt BESS availability to the grid.
- b. BESS shall have dedicated auxiliary electric power systems to serve BESS ancillary loads (HVAC, lighting, *etc.*) and be able to be auto-transferred to a reliable backup source.
- c. BESS shall have a minimum round trip energy efficiency of 90%.
- d. PREPA shall define the BESS voltage level at the Interconnection Point. The Project shall include appropriate step-up transformers and required interconnection equipment, including any necessary augmentation or modification to existing substation or transmission facilities.

- e. BESS control system shall integrate the following operational requirements:
 - i. BESS controllers shall be compatible with the systems used in PREPA's System Operations Control Center and Energy Management System.
 - ii. BESS shall be completely dispatchable.
 - iii. BESS control system shall provide available energy forecasting.
 - iv. Any operating function shall be capable of being remotely and dynamically selected and prioritized.
 - v. Function parameters (*i.e.* droop setting) of any operating function shall be capable of being remotely modified.
 - vi. SELLER shall fully describe and demonstrate how the proposed BESS control system(s) will operate.

The control system shall have the necessary hardware and software (*i.e.* firewalls & malware detection) such that it is compliant with the latest NERC CIP reliability standards for control system security requirements.

APPENDIX L
OPERATING PROCEDURES
[●]

APPENDIX M
TESTING PROTOCOL

[●]

APPENDIX N

TECHNICAL SPECIFICATIONS FOR THE DYNAMIC SYSTEM MONITOR

I. Introduction

The following specification defines the minimum requirements for an instrument used in the monitoring and registration of dynamic disturbances on electric power systems and the supervision of source performance according to Grid Codes.

II. Hardware

a. Inputs:

1. The equipment shall have at least 32 analog inputs with the capacity to increase them to a minimum of 96 inputs depending on the application required analog signals. The minimum resolution for the A/D converter shall be 16 bit. The sampling rate shall be programmable up to a minimum of 250 samples per cycle (15000 samples per second). The analog inputs shall permit at least the following types of signals:
 - i. PT voltage (150 V rms minimum, Accuracy better or equal to 0.3%);
 - ii. CT currents (5 A rms minimum, Accuracy better or equal to 0.3%);
 - iii. DC voltages of at least 800 V (Accuracy better or equal to 0.3%);
 - iv. Small Analog Signals (Accuracy better or equal to 0.3%);
 - A. Current: 4 – 20 mA; and
 - B. Voltage: 0 – 200 mV, 1V, 10 V;
2. The equipment shall have at least 16 digital inputs with the capacity to increase them to a minimum of 48 inputs depending on the application required digital signals. The minimum input voltage range of the digital inputs should be 0 – 150 V. The digital inputs should be included as a user defined software triggering input.
3. The equipment shall be able to record power system frequency with a resolution of at least 0.001Hz.

- b. The equipment shall have a built-in microprocessing unit with color monitor, keyboard and mouse from which all commands, controls and setup parameters may be entered. All setup parameters shall be store in a non-volatile medium, to prevent loss of setup data if power is interrupted. This microprocessing unit shall be of industrial grade to insure long life in a typical substation or generation plant environment.

c. Memory and storage capacity:

The equipment shall have a nonvolatile solid state memory (ex. SSD, flash, *etc.*) with the required capacity to stores at least one (1) Year of continuous data based in typical recording periods and typical recording rates. Also, the memory shall have a minimum

storage capacity of 1,000 RMS trigger events and 1,000 Instantaneous trigger events based in typical recording rates and recording periods. Typical recording periods and recording rates are:

- i. RMS Trigger Recording Function (Recording rate of 1 sample per cycle on all the signals)
 - A. Pre-Trigger: 60 seconds
 - B. Post –trigger: 300 seconds
- ii. Instantaneous Values Trigger Recording Function (recording rate of 250 samples per cycle on all instantaneous signals)
 - A. Pre-Trigger: 1 second
 - B. Post-Trigger: 2 seconds
- iii. Continuous Recording Function - The recording rate is one (1) sample per second on all the signals. This recording function is continuous, but saved in twenty-four (24) hour periods.

All the recording functions mentioned above shall work simultaneously. The equipment shall maintain the date and time in an internal battery-backed clock.

d. Communication:

The equipment shall have at least two Ethernet 10/100/1000 Mbps port (LAN interface, TCP/IP Protocol) for local and remote network communication.

e. Power Source:

The equipment shall have a redundant power supply. Two separate inputs (one AC and one DC) 100 – 240 VAC, 60 Hz and 100 – 150 DC. Some applications could require DC supply of 48 VDC + 10%, verify before the equipment acquisition.

f. Measurement accuracy:

- 1. Voltage measurement error shall be less than + 0.3% of reading.
- 2. Current measurement error shall be less than + 0.3% of reading.

III. Software

- a. The software platform of the equipment shall be compatible with the latest version of Microsoft Windows operating system.
- b. The equipment remote communication shall be thru TCP/IP network connectivity (LAN). The remote communication should permit at least the set up and data retrieval of the equipment. The equipment should have the capability to perform at least the following functions remotely:

1. Modification of the configuration;
 2. Retrieval of captured events; and
 3. Remote event triggering.
- c. The equipment shall have the capacity of time synchronization with GPS system. A GPS receiver and GPS antenna shall be included.
- d. Triggers:
1. The equipment shall support user defined programmable triggers. Triggering shall be initiated based upon primary quantities (voltage, current, and frequency), calculated quantities (watts, Var, power factor, apparent power, *etc.*), digital signals or small analog signals.
 2. The trigger thresholds shall be based on limits, gradients, equations and status. Examples of trigger conditions that shall be available are:
 - i. Level threshold (high level, low level, in-band, out-band, *etc.*);
 - ii. Rate of change (ex. frequency variation (df/dt));
 - iii. Manual input (keyboard trigger);
 - iv. Request from remote computer; and
 - v. Event input status (digital signal status).
 3. A re-trigger function shall be available which permits the equipment to generate a new event register if a second disturbance is detected while the recording of the first disturbance is still in process. This process should continue if more disturbances occur in the new registers.
- e. The acquisition software shall include a user defined pre-trigger interval option as well as a user defined post trigger interval for the information captured in the case of triggered events. The minimum range of the pre-trigger interval should be from 0 to 60 seconds and the minimum range for the post trigger interval should be 0 to 300 seconds. In addition, the date, time, and type of trigger that initiated the event shall be included as part of the disturbance record.
- f. The acquisition software shall have the following capabilities:
1. Time displays (ex. Oscilloscope);
 2. Digital Status display (ex. High/Low, 1/0);
 3. Multiple displays and multiple signals in displays in real time and off-line;
 4. Display resizing;
 5. Programmable conversion of range and units of signals; and

6. Independent range for signals.
- g. The acquired data shall be available in a format directly compatible with Siemens Power Technologies International (Siemens PTI) PSS/E plotting software.
- h. The software shall support data export in ASCII, CSV and PSS/E formats.
- i. The software shall support image export in JPG, BMP or WMF formats.
- j. The software shall have the following analysis capabilities for the data and signals (primary and calculated):
 1. Fast Fourier Transform (FFT);
 2. Peak analysis;
 3. Filter functions; and
 4. Series and scalar mathematic (square root, inversion, square, sum, gain, offset, *etc.*).
- k. The software shall perform the following power engineering calculations (on-line and off-line) and measurements:
 1. Three phase and single phase Power (Real, reactive, apparent);
 2. Power Factor;
 3. Power angle;
 4. rms line and phase voltage;
 5. rms current;
 6. Power system frequency;
 7. DC voltage and currents; and
 8. AC voltage and currents.

IV. General

- a. Environmental Conditions:
 1. Operating temperature: 0° C to 50° C; and
 2. Operating humidity: 95%, non-condensing.
- b. Equipment cabinet and corresponding accessories:
 1. The cabinet should have test switches at the front of the panel for the three phase voltages and currents. The test switches should have a minimum rating of 600 V

rms and 30 A rms; semi flush mounted, rear connected, equal or similar to ABB FT-1, style no. 129A514G01. The test switches should be assembled horizontally in groups of three FT-1 switches per row, mounted on a 19 inches wide, three-rack unit (3RU) high panel suitable for rack mounting, similar to ABB FR3J014014014.

2. The signals (analog and digital) should terminate on terminal blocks inside the cabinet, before the connection to the Dynamic System Monitor. The AC, DC, digital, exciter voltage and exciter current signals should be in different terminal blocks. The terminal blocks should have a minimum rating of 600 V rms and 30 A rms (except the exciter voltages signals, see below). Examples of terminal blocks are: GE CR151B2 and Marathon 1512 STD. The current signals should terminate on shorting type heavy duty terminal blocks equal or similar to Marathon, catalog number 1506SC. The terminal blocks used for the excitation voltage of the generators must have a nominal voltage capacity greater than 800 V DC. A switch or breaker for isolation purposes is also required for the excitation voltage and current signals.

c. Documentation:

1. The equipment shall include a documentation package that contains the user, operation and maintenance manuals and the mechanical and electrical equipment drawings. The documentation should be in hard copy and in digital format.
2. The equipment documentation shall include a copy of the software.

d. Spare parts recommended by the equipment manufacturer shall be included in the dynamic system monitor purchase order.

e. Warranty:

1. The equipment warranty shall include part and service for a period not less than sixty (60) Months from the delivery day.
2. Equipment Training, Installation Support and Commissioning:
 - i. An on-site equipment operation and configuration training should be included; and
 - ii. The dynamic system monitor manufacturer shall perform the equipment commissioning and offer installation support.

APPENDIX O

TECHNICAL REQUIREMENTS FOR OPERATION, PROTECTION, & CONTROL

1. SELLER shall provide general protection practices, which comply with PREPA's written protection system practices and DCDs, in all the electrical equipment related to the Interconnection Facilities according to the standards and PREPA requirements in order to ensure personnel safety and secure operation and interconnection with PREPA's systems. SELLER has responsibility for the design, accurate relay settings (in accordance with the Approved Design) and testing of the protection that shall contain the evaluated Seller Interconnection Facilities' settings. PREPA will evaluate and approve only the protection design, settings, and tests of the Seller Interconnection Facilities related to PREPA's system stability, security, and optimal performance. Those protection designs, settings and tests of the Seller Interconnection Facilities not related to PREPA's system stability, security and optimal performance will not be evaluated by PREPA.
2. As further defined in Article 3 (*Pre-Operation Period*) and Appendix H (*Interconnection Description and Specifications*), SELLER shall have responsibility for any protection related equipment, relays, scheme design, coordination and short circuit studies, and relay settings of all the protection equipment within PREPA's installation and remote terminals necessary to safely synchronize the Interconnection Facilities according to the latest technology and standards. For the avoidance of doubt, this includes the protection from (a) the PREPA Interconnection Facilities breaker to the Seller Interconnection Facilities and (b) the differential protection relay from the Seller Interconnection Facilities to PREPA's Interconnection Facilities.
3. SELLER shall submit a complete Seller Interconnection Facilities protection report with all relay settings, including all calculations and considerations for the relay settings in addition to coordination and short circuit studies. In addition to the foregoing, the report shall also provide, including but not limited to, the following:
 - a. The approved Seller Interconnection Facilities design single line drawings shall have all the equipment information and all the relay's input and output descriptions;
 - b. The Seller Interconnection Facilities relay settings shall include the logic, inputs, and outputs according to the Approved Design;
 - c. The backup overcurrent protection units of the Seller Interconnection Facilities relay shall be set so that PREPA does not provide short circuit current for more than one second;
 - d. The transformer from the Seller Interconnection Facilities to PREPA shall have Delta – WYE configuration to avoid zero sequence current contribution from the Facility during faults at the electrical system;
 - e. The Seller Interconnection Facilities transformer protection shall be set so that the Seller Interconnection Facilities does not provide short circuit current to PREPA or disconnects instantly;
 - f. The Seller Interconnection Facilities transformer protection shall provide an overvoltage protection unit on the delta side of the transformer to disconnect the Seller Interconnection Facilities during ground faults on the delta side of the transformer; and

- g. SELLER shall provide all the equipment data of the Seller Interconnection Facilities for PREPA's protection studies such as capacity, transformer and line impedances, current and voltage transformer ratios and information and short circuit duty, among others.

For the avoidance of doubt, PREPA does not assume, calculate or interpret any required item from manuals, graphs, or relay curves, and SELLER shall ensure that it includes all the required data in the report upon first submittal.

APPENDIX P

PERFORMANCE GUARANTEES

1. Facility Availability

a. Threshold Availability

SELLER guarantees the Facility will be available for use by PREPA for at least seventy percent (70%) of the hours in each Billing Period during the Supply Period (“**Threshold Availability**”). For each Billing Period, Facility Availability shall be calculated in accordance with paragraph (b) of Section 6 (*Facility Availability*) of Appendix F (*Compensation*).

b. Availability Liquidated Damages

If the Facility Availability falls below the Threshold Availability during any Billing Period of an Agreement Year, then SELLER shall pay PREPA liquidated damages for each hour of such Billing Period (the “**Availability Liquidated Damages**”) equal to:

$$ALD = (TA - FA) \times DDE \times \left(RER - \frac{CPP}{\left(30.33 \frac{\text{Days}}{\text{Month}} \times 24 \frac{\text{hours}}{\text{Day}} \right)} \right)$$

where:

ALD	=	Availability Liquidated Damages for such hour, expressed in \$;
TA	=	Threshold Availability, expressed as a percentage;
FA	=	Facility Availability for such Billing Period, expressed as a percentage;
DDE	=	Degraded Duration Energy applicable to such Agreement Year, expressed in MWh;
RER	=	replacement Energy rate of \$170/ MWh; and
CPP	=	Capability Payment Price applicable to such Agreement Year, expressed in \$/MW-Month.

2. Capability

a. Guaranteed Capability

SELLER guarantees that the Facility will maintain an Adjusted Duration Energy not less than the Degraded Duration Energy (“**Guaranteed Capability**”) for the Supply Period, as measured by the Performance Tests conducted in accordance with Section 6.9 (*Supply Period Performance Tests*).

b. Capability Liquidated Damages

If a Performance Test shows the Adjusted Duration Energy below the Guaranteed Capability, then SELLER shall pay PREPA, for each Day from the Day on which such Performance Test occurred until the Day on which SELLER demonstrates a Tested Duration Energy equal to or greater than the Degraded Duration Energy, liquidated damages (“**Capability Liquidated Damages**”) equal to:

$$CLD = (GC - TDE) \times \left(RER - \frac{CPP}{\left(30.33 \frac{\text{Days}}{\text{Month}} \times 24 \frac{\text{hours}}{\text{Day}} \right)} \right)$$

where:

- CLD** = Capability Liquidated Damages, expressed in \$;
- GC** = Guaranteed Capability, expressed in MWh;
- TDE** = Tested Duration Energy, expressed in MWh;
- RER** = replacement Energy rate of \$170/MWh; and
- CPP** = Capability Payment Price applicable to such Agreement Year, expressed in \$/MW-Month.

3. **Efficiency**

a. Guaranteed Efficiency

SELLER guarantees that the Facility will maintain Actual Efficiency for each Billing Period during the Supply Period not less than Guaranteed Efficiency. The Parties shall calculate Actual Efficiency in accordance with paragraph (b) of this Section 3 of this Appendix P.

b. Calculation of Actual Efficiency

SELLER shall calculate the actual efficiency of the Facility for each Billing Period “n” as a percentage measurement using the formula set forth below (“**Actual Efficiency**”):

$$\text{Actual Efficiency}_n = \frac{(DE_n + (AE_{\text{end}} - AE_{\text{beg}}))}{CE_n}$$

- DE_n** = the total Discharge Energy for Billing Period “n”, as measured for such period in accordance with Section 8.4 (*Meter Reading*);
- CE_n** = the total Charge Energy for Billing Period “n”, as measured for such period in accordance with Section 8.4 (*Meter Reading*);
- AE_{end}** = Stored Energy Level at 23:59 on the last Day of Billing Period “n”;

AE_{beg} = Stored Energy Level at 23:59 on the last Day of the Billing Period preceding the current Billing Period “n”; and

n = relevant Billing Period “n” for which Actual Efficiency is calculated.

c. Efficiency Liquidated Damages

If the Actual Efficiency for a Billing Period “n” in an Agreement Year falls below the Guaranteed Efficiency, then SELLER shall pay PREPA liquidated damages for such Billing Period (the “**Efficiency Liquidated Damages**”) equal to:

$$ELD = \left(RER - \frac{CPP}{\left(30.33 \frac{\text{Days}}{\text{Month}} \times 24 \frac{\text{hours}}{\text{Day}} \right)} \right) \times ((CE \times GE) - DE)$$

where:

ELD = Efficiency Liquidated Damages for such hour, expressed in \$;

RER = replacement Energy rate of \$170/MWh;

CPP = Capability Payment Price applicable to such Agreement Year, expressed in \$/MW-Month;

CE = the total Charge Energy for Billing Period “n”, as measured for such period in accordance with Section 8.4 (*Meter Reading*);

GE = Guaranteed Efficiency, expressed as its decimal equivalent; and

DE = the total Discharge Energy for Billing Period “n”, as measured for such period in accordance with Section 8.4 (*Meter Reading*).

4. Ramp Rate

a. Guaranteed Ramp Rate

SELLER guarantees a minimum response rate of [ten percent (10%)] of the Facility’s Degraded Duration Energy per minute (“**Guaranteed Ramp Rate**”).

b. Non-Scheduled Outage

The Ramp Rate will be measured in accordance with Section 6.9 (*Supply Period Performance Tests*). If the Facility is unable to demonstrate the Guaranteed Ramp Rate, SELLER shall place the Facility into a Non-Scheduled Outage immediately and resolve any issues so that the Facility can achieve the Guaranteed Ramp Rate.

APPENDIX Q

FORM OF SWORN STATEMENT

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 the 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 the 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 complies 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____.

Affidavit No. _____

Representative's Signature

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

APPENDIX R

FORM OF FOMB CERTIFICATION

CONTRACTOR CERTIFICATION REQUIREMENT

SELLER shall provide the following certification to FOMB and the Commonwealth's Contracting Government Entity, signed by its Chief Executive Officer (or equivalent highest rank officer):

Unless the context otherwise requires, capitalized terms have the meanings defined in the Energy Storage Services Agreement dated [●] (the "**Agreement**").

1. SELLER's subcontractor(s) in connection with the Agreement (including any amendments, modifications, or extensions) is (are) the following:

(Name of individual or firm, including names of principals or owners of the latter)

(Principal terms and conditions of the contractual relation and role of the subcontractor)

(Amount of proposed contract payable to each subcontractor)

2. Neither SELLER nor any of its owners (including any Person or entity with more than a ten percent (10%) ownership interest in SELLER), partners, directors, officials, or employees, has agreed to share or give a percentage of SELLER's compensation under the Agreement to, or otherwise compensate, any third party, whether directly or indirectly, in connection with the procurement, negotiation, execution or performance of the contract, except as follows:

(Name of individual or firm, including names of principals or owners of the latter)

(Principal terms and conditions of the compensation sharing arrangement and consideration for such benefit)

3. To the best knowledge of the signatory (after due investigation), no Person has unduly intervened in the procurement, negotiation, or execution of the contract, for its own benefit or that of a third Person, in contravention of Applicable Law.
4. To the best knowledge of the signatory (after due investigation), no Person has: (i) offered, paid, or promised to pay money to; (ii) offered, given, or promised to give anything of value to; or (iii) otherwise influenced any public official or employee with the purpose of securing any advantages, privileges or favors for the benefit of such Person in connection with the Agreement (such as the execution of a subcontract with SELLER, beneficial treatment under the contract, or the written or unwritten promise of a gift, favor, or other monetary or non-monetary benefit).
5. Neither SELLER, nor any of its owners, partners, directors, officials or employees or, to the best of its knowledge (after due investigation), its representatives or sub-contractors, has required, directly or indirectly, from third Persons to take any action with the purpose of influencing any public official or employee in connection with the procurement, negotiation or execution of the contract, in contravention of Applicable Law.
6. Any incorrect, incomplete or false statement made by SELLER's representative as part of this certification shall cause the nullity of the proposed contract and SELLER must reimburse

immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under the Agreement.

The above certifications are hereby signed under penalty of perjury by the [Chief Executive Officer (or equivalent highest rank officer)] in the following form:

“I hereby certify under penalty of perjury that the foregoing is complete, true and correct.”

By:

Date:

Signature:

APPENDIX S

FORM OF CONDITIONS PRECEDENT CERTIFICATE

CONDITIONS PRECEDENT CERTIFICATE

Date: [●]

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

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

To: [●] (“**SELLER**”)

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

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

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

Very truly yours,

Acknowledged and agreed,

[●]
as SELLER

Puerto Rico Electric Power Authority
as PREPA

[●]

[●]

APPENDIX T

FORM OF CONSTRUCTION START DATE CERTIFICATE

CONSTRUCTION START DATE CERTIFICATE

Date: [●]

From: [●]

To: [●]

We refer to the Energy Storage Services Agreement between PREPA and SELLER dated [●] (the “ESSA”). Unless the context otherwise requires, capitalized terms used in this Construction Start Date Certificate shall have the meanings ascribed to them in the ESSA.

We hereby certify that SELLER has:

- a. obtained all Permits, authorizations and real property rights needed to start construction of the Facility [and the PREPA Interconnection Facilities];
- b. secured the necessary financing and Equity (which Shareholders have contributed) for the construction of the Facility and the PREPA Interconnection Facilities (including the execution of documents between SELLER and the Project Lenders that include binding commitments which, together with Equity, provide for one hundred percent (100%) of the total capital cost of the Facility and PREPA Interconnection Facilities, other than the amount to be funded by Equity) and satisfied all conditions associated with, and made, the initial draw of funds for such construction under the financing documents with the Project Lenders, except to the extent that the capital has not yet been expended and such use constitutes a condition to the initial draw;
- c. entered into the Facility Construction Contract, the Interconnection Construction Contract and any other agreements necessary to make the Energy Storage Services available to PREPA in accordance with the ESSA;
- d. received PREPA’s confirmation of the Approved Design;
- e. maintains the Performance Security required by the ESSA in full force and effect; and
- f. given each of its primary contractor(s) under the Facility Construction Contract [and the Interconnection Construction Contract] a full, unconditional notice to proceed with construction of the Facility [and PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work)], respectively.

The Construction Start Date occurred on [●].

Very truly yours,
[●]
as SELLER

Acknowledged and agreed,
Puerto Rico Electric Power Authority
as PREPA

[●]

[●]

APPENDIX U

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

COMMERCIAL OPERATION DATE CERTIFICATE

Date: [●]

From: [●] (“SELLER”)

To: Puerto Rico Electric Power Authority

We refer to the Energy Storage Services Agreement between PREPA and SELLER dated [●] (the “ESSA”). Unless the context otherwise requires, capitalized terms used in this certificate shall have the meanings ascribed to them in the ESSA.

We hereby certify that:

- a. as demonstrated by the Initial Performance Tests, (i) SELLER has completed the installation, testing and commissioning of the Facility and the PREPA Interconnection Facilities in accordance with this Agreement, (ii) the Facility can make available Capability on a sustained basis that meets or exceeds the Design Capability (or, to the extent that a Design Capability exceeds the corresponding Capability, (1) SELLER has credited PREPA for all Liquidated Damages required by the ESSA in respect thereof, and (2) such Capability of the Facility meets or exceeds the Minimum Acceptance Capability and satisfies the Other Minimum Acceptance Criteria, and (iii) the Facility can make available Discharge Energy that corresponds to such Capability at the Interconnection Point and receive Charge Energy at each Charge Point on a continuous basis, in each case, in accordance with Prudent Utility Practices and the ESSA;
- b. SELLER has obtained, and maintains in force, all material Permits required for the operation of the Facility; and
- c. the Facility and the PREPA Interconnection Facilities comply in all material respects with Applicable Law.

The Commercial Operation Date occurred on [●].

Very truly yours,

Acknowledged and agreed,

[●]
as SELLER

Puerto Rico Electric Power Authority
as PREPA

[●]

[●]

APPENDIX V

FORM OF PERFORMANCE SECURITY

IRREVOCABLE, STANDBY LETTER OF CREDIT

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

Beneficiary: PUERTO RICO ELECTRIC POWER AUTHORITY
Address: [●]
Attn:[●]

Reference No.: [●]

Date of Issuance: [●]

[PREPA-/SELLER Name] Energy Storage Services Agreement] – Performance Security No. [●]

We understand that *[insert name of SELLER]* (the “*Applicant*”) has entered into a contract with you, Beneficiary, dated [●] (as amended, the “*Agreement*”), which requires a Performance Security in the form and amount of this irrevocable standby letter of credit (“*Letter of Credit*”).

At the request of the Applicant, we *[name of Bank]*, hereby issue this Letter of Credit and irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [●] United States Dollars (USD [●]) in each case upon receipt by us of your first demand in writing at the Place of Presentation listed below in person, by registered or certified mail or by international overnight courier service, substantially in the form attached as Annex A hereto (signed by your authorized representative and appropriately completed) (“*Demand*”), without your needing to prove or to show grounds for your Demand or the sum specified therein. We shall remit all payment(s) under this Letter of Credit into a bank account of your choice and discretion as specified in your Demand. You may make one or more Demands under this Letter of Credit. Partial drawings are permitted.

Any Demand made by Beneficiary in accordance herewith shall be conclusive evidence that the sum stated in such Demand is properly due and payable to Beneficiary under this Letter of Credit. We shall have no right and shall not be under any duty or responsibility to enquire into the reason or circumstances of any Demand made by Beneficiary or the respective rights and/or obligations and/or liabilities of Beneficiary and the Applicant under the Agreement. Any discrepancy between the explicit terms hereof and the Rules (defined below) shall be read in favor of the terms set forth in this Letter of Credit.

Place of Presentation: *[insert address of Bank branch where Beneficiary presents a Demand]*.

We shall, within five (5) business days after receipt of any Demand served from time to time by Beneficiary, pay to Beneficiary in immediately available funds the lesser of: (a) the amount specified in the Demand; and (b) the then applicable amount remaining on the Letter of Credit. If a Demand made by Beneficiary hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, then we shall give Beneficiary, within two (2) business days after receipt of such Demand, notice that such Demand was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reason therefore. Upon being notified that a Demand was not made in conformity with this Letter of Credit, Beneficiary may attempt to correct such non-conforming Demand. Our obligations under this Letter of Credit are primary and not by way of surety or guarantee.

[This Letter of Credit shall enter into force and effect upon expiry of Performance Security No. [●], dated [●] and issued by [●].] [NTD: *Insert this language if this is a replacement Letter of Credit.*]

This Letter of Credit shall expire on [date] but such expiration date shall be automatically extended for a period of one (1) year on [one year anniversary of prior date] (“**Expiry Date**”), and on each successive expiration date thereafter, unless at least one hundred twenty (120) calendar days before the then current Expiry Date we notify both Beneficiary and Applicant that we have decided not to extend this Letter of Credit beyond the then current Expiry Date. Any such notice shall be delivered by registered or certified mail, or by FedEx, both to:

Beneficiary at:

[●]

And to Applicant at:

[●]

In the event Beneficiary and Applicant are so notified by us pursuant to the immediately preceding sentence, Beneficiary may draw any amount or the entire amount available under this Letter of Credit by Beneficiary’s presentment, at the Place of Presentation, of a drawing certificate duly signed in substantially the form of Annex A attached hereto appropriately completed. In no event shall the Expiry Date of this Letter of Credit be subject to automatic extension beyond sixty (60) calendar days after the expiration of the Agreement term, and any pending automatic one-year extension shall be ineffective beyond such date. The Expiry Date does not affect our liability to make payment of any demand received prior to the Expiry Date.

This Letter of Credit is subject to ICC International Standby Practices 1998 (ISP 98), International Chamber of Commerce Publication No. 590 (the “**Rules**”). For matters not addressed by the Rules, this Letter of Credit is governed by and to be construed in accordance with the laws of [*jurisdiction of the Qualified Bank*]. In the event of a conflict between the terms of this Letter of Credit and the Rules, ICC Publication No. 758, the terms of this Letter of Credit shall prevail.

The courts of the [*United States federal courts in the Commonwealth of Puerto Rico*] shall have exclusive jurisdiction in respect of all disputes arising out of this Letter of Credit (including, without limitation, the enforceability of this Letter of Credit).

By:
Authorized Signatory

ANNEX A - FORM OF DRAWING CERTIFICATE

[*Letterhead of Beneficiary*]

[*Name of Issuing Bank*]

Date: [●]

[Insert Work Description] – Performance Security No. [●]

We refer to the above-captioned irrevocable standby letter of credit, with reference number [●] (“**Letter of Credit**”). Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to them in the Letter of Credit or the Agreement. We hereby inform you that:

1. a Construction Start Termination Event, a COD Termination Event, or a Default (as defined in the Agreement) by Applicant or the owing by Applicant to Beneficiary has occurred under the Agreement for penalties or any other liabilities, damages, losses, costs or expenses arising out of or relating to a breach of any obligation under the Agreement by Applicant, such as Default or otherwise, or the Agreement provides that Beneficiary may draw on the Letter of Credit, entitling us to call upon the Letter of Credit; or
2. Applicant failed to commence or carry out work required to rectify any defect and/or damage during the Defects Liability Period in accordance with the Agreement; or
3. applicant owes Beneficiary Liquidated Damages under and in accordance with the Agreement; or
4. you no longer meet the requirements of a Qualified Bank (as defined below) and twenty-one (21) calendar days or more have elapsed since the date on which you no longer met such requirements, and the Applicant has not delivered to Beneficiary a replacement letter of credit that is substantially identical to the Letter of Credit, meeting the requirements of the Agreement. “Qualified Bank” means a national bank, national association, commercial bank or other financial institution registered in the United States, having a branch located within Puerto Rico or the contiguous United States, and otherwise acceptable to Beneficiary that has a long-term issuer rating of at least (i) if headquartered within Puerto Rico, then “B+” by Standard & Poor’s Ratings Services, “B1” by Moody’s Investors Services Inc., or “B+” by Fitch Ratings Inc. or (ii) if headquartered outside of Puerto Rico, then “A-” by Standard & Poor’s Ratings Services, “A3” by Moody’s Investors Services Inc., or “A-” by Fitch Ratings Inc., or in each case if the relevant rating agencies cease to engage in business or rate the obligations in question, then an equivalent rating from another internationally recognized rating agency selected by Applicant with the written consent of Beneficiary; provided that, if such financial institution’s ratings satisfy such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications; or
5. twenty-one (21) or less calendar days remain before the current Expiry Date, the Applicant’s obligation to maintain the Letter of Credit under the Agreement extends beyond such Expiry Date, and the Applicant has not delivered to Beneficiary a replacement Letter of Credit substantially identical to the Letter of Credit and meeting the requirements of the Agreement.

This letter serves as our demand for payment under the Letter of Credit. 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,

[*The Puerto Rico Electric Power Authority*]

By:
Authorized Signatory

APPENDIX W

FORM OF DIRECT AGREEMENT

DIRECT AGREEMENT

THIS DIRECT AGREEMENT (“**Direct Agreement**”) dated [●], 2021, is entered into among: (i) the Puerto Rico Electric Power Authority, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by an Act of 23 May 1941, No. 83, as amended (the “**Consenting Party**”), (ii) [●] (together with its successors, designees and permitted assigns in such capacity, the “**Administrative Agent**”) and (iii) [●] (the “**Assignor**”). All capitalized terms used herein and not otherwise defined in this Direct Agreement shall have the respective meanings set forth in the Assigned Agreement (as defined below). The principles of interpretation and construction set forth in the Assigned Agreement shall apply to, and are hereby incorporated by reference as if fully set out in, this Direct Agreement, *mutatis mutandis* and as if any references to “this Agreement” and “Party” in such provisions were references to, respectively, “this Direct Agreement” and “the parties hereto”.

RECITALS

WHEREAS:

- (A) the Assignor (as seller) and Consenting Party (as buyer) have entered into that certain Energy Storage Services Agreement, dated as of [●] (as amended, restated or supplemented, the “**Assigned Agreement**”), pursuant to which the Assignor will develop a [●] MW Facility at the Site, (ii) interconnect the Facility with the Grid System, and (iii) provide energy storage services exclusively to the Consenting Party, and the Consenting Party will pay for the energy storage services from the Facility built by the Assignor;
- (B) Pursuant to Section 19.3 (*SELLER’s Right to Assign*) of the Assigned Agreement, the Consenting Party has agreed to use commercially reasonable efforts to cooperate with any financing efforts of the Assignor, and the Assignor may assign its rights to payment under the Assigned Agreement to Project Lenders as security for its obligations to any such lender in connection with any financing of the development and construction of the Facility;
- (C) [The Assignor has entered into that certain [Credit Agreement], dated as of [●] (as amended, restated or supplemented, the “Credit Agreement”), among Project Lenders from time to time party thereto (together with the Administrative Agent, each, a “**Secured Party**”, and, collectively, the “**Secured Parties**”) and the Administrative Agent, pursuant to which such Project Lenders will make loans to the Assignor to, among other things, finance the construction of the Facility; and
- (D) The Assignor has entered into that certain Security Agreement, dated as of [●] (as amended, restated or supplemented, the “Security Agreement”), among the Assignor, the other subsidiary guarantors from time to time party thereto and the Administrative Agent, pursuant to which each of the Assignor and such subsidiary guarantors have granted to the Administrative Agent, for the ratable benefit of the Secured Parties, a security interest in certain property as collateral security for the prompt and complete payment and performance when due of such entities’ obligations under the Credit Agreement.]

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. NOTICE OF ASSIGNMENT

The Assignor hereby gives notice to the Consenting Party that pursuant to the Security Agreement, the Assignor has pledged and assigned to the Administrative Agent, for the benefit of the Secured Parties, and granted to the Administrative Agent a security interest in, all of the Assignor's right, title and interest in, to and under the Assigned Agreement pursuant to the Security Agreement (the "**Assigned Interest**"), as collateral security for the obligations of the Assignor under the Credit Agreement.

2. PAYMENTS UNDER THE ASSIGNED AGREEMENT

2.1 Billing Arrangements

The Consenting Party agrees that, unless and until it has been notified in writing by the Administrative Agent that the Security Agreement has been terminated, the Consenting Party will pay all amounts payable by it under the Assigned Agreement directly to the Assignor at such account as may be specified in a written notice delivered by the Administrative Agent and the Assignor to the Consenting Party. The Assignor authorizes and acknowledges the foregoing and agrees that any payment made consistent with this Section 2.1 shall be treated for all purposes as a payment made directly to the Assignor under the terms of the Assigned Agreement.

2.2 No Set-Off Except as Provided Under Assigned Agreement

The Consenting Party agrees that in making payments in respect of the Assigned Agreement, it will not offset any amounts owed to it by the Assignor except as provided under the Assigned Agreement.

3. RIGHTS OF ADMINISTRATIVE AGENT

3.1 Exercise of the Assignor's Rights and Remedies

If the Administrative Agent provides written notice to the Consenting Party that an event of default has occurred under the Credit Agreement and that the Administrative Agent desires to exercise its rights and remedies pursuant to the Security Agreement, the Administrative Agent or any Substitute Provider (as defined below) shall be entitled to exercise any and all rights of the Assignor under the Assigned Agreement in accordance with the terms of this Direct Agreement and the Assigned Agreement. The Consenting Party agrees to accept such exercise by the Administrative Agent or any Substitute Provider and continue its performance under the Assigned Agreement in accordance with the terms thereof.

3.2 Right to Cure

Upon the occurrence of an event of default by the Assignor under the Assigned Agreement, or upon the occurrence or non-occurrence of any other event or condition which would enable the Consenting Party to terminate its obligations under the Assigned Agreement (herein called a "**default**"), the Consenting Party will not terminate its obligations under the Assigned Agreement until it first gives to the Administrative Agent (i) the written notice required to be given to Assignor by the Assigned Agreement specifying the nature of the default giving rise to such right (and in the case of a payment default, specifying the amount thereof); and (ii) the opportunity to cure such default for a period of ten (10) days, in the case of a payment default, and thirty (30) days, in the case of a non-payment default, which may be coincident with the applicable cure period, if any, set forth in the Assigned Agreement for the Assignor to cure such default, so long as the Administrative Agent has commenced and is diligently pursuing appropriate action to cure such default and continues to perform all other obligations under the Assigned Agreement (unless performed by the Assignor).

3.3 No Liability

Except during any period in which the Administrative Agent or any Secured Party (or any of their respective designees or assignees) constitutes a Substitute Provider, the Consenting Party acknowledges and agrees that neither the Administrative Agent nor any Secured Party (or any of their respective designees or assignees) shall have any liability or obligation under the Assigned Agreement as a result of this Direct Agreement except to the extent of their respective interest in the Assigned Agreement, the Credit Agreement or the Security Agreement, nor shall the Administrative Agent or any Secured Party (or any of their respective designees or assignees) be obligated or required to perform any of the Assignor's obligations under the Assigned Agreement or to take any action to collect or enforce any claim for payment assigned under the Security Agreement. No curing of any defaults under the Assigned Agreement shall be construed as an assumption by the Administrative Agent or any Secured Party (or any of their respective designees or assignees) of any of the obligations, covenants or agreements of the Assignor under the Assigned Agreement.

3.4 Substitution: Transfer

- (a) The Consenting Party agrees that, notwithstanding anything to the contrary in the Assigned Agreement, if the Administrative Agent shall notify the Consenting Party in writing that an Event of Default (as defined in the Credit Agreement) has occurred and is continuing under the Credit Agreement and that the Administrative Agent desires to exercise its rights and remedies pursuant to the Security Agreement, then a Substitute Provider may be substituted for the Assignor under the Assigned Agreement. In such event, the Consenting Party will continue to perform its obligations under the Assigned Agreement in favor of the Substitute Provider, subject, in any event, to all of the Consenting Party's rights and remedies thereunder, but recognizing that the Substitute Provider's obligations under the Assigned Agreement shall be limited to the Substitute Provider's interest in the Facility and all revenues and proceeds derived therefrom. In the event that the Substitute Provider succeeds to the Assignor's interest under the Assigned Agreement, whether by foreclosure or otherwise, the Substitute Provider shall not be liable for curing or performing or be required to perform or cause to be performed any of the defaults under the Assigned Agreement that were, by their nature, incapable of being cured or performed.
- (b) If the Assigned Agreement is rejected or terminated by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding involving the Assignor, and if within ninety (90) days after such rejection or termination the Administrative Agent shall so request, a Substitute Provider and the Consenting Party will promptly execute a new agreement that shall be for the balance of the remaining term under the Assigned Agreement (before giving effect to such rejection or termination) and shall contain the same agreements, terms and conditions as the Assigned Agreement. If the approval of any such trustee or debtor in possession or any regulatory approval is necessary in order for the Consenting Party to enter into or perform under any such new agreement, the Consenting Party shall cooperate with the Administrative Agent or Substitute Provider in obtaining such approvals.

"Substitute Provider" means, in respect of any assignment, transfer or sale permitted hereunder (each a **"transfer"**) any person, including the Administrative Agent, any Secured Party, or the Administrative Agent's or any Secured Party's designee or assignee, if the transfer is made to the Administrative Agent or a Secured Party, or any purchaser of the Assigned Interest in a foreclosure sale or otherwise, who: (i) is at least as creditworthy (taking into account any credit support provided by such person) as the Assignor on the date of such transfer, (ii) is properly licensed or otherwise authorized to perform the Assignor's obligations under the Assigned Agreement, is a counterparty with whom the

Consenting Party is not prohibited from transacting under the regulatory regime then-applicable to the Assigned Agreement, and has provided the certifications and documentation required by Appendix B (*Signing Conditions*) of the Assigned Agreement, but construing references to SELLER therein as references to such new provided; (iii) meets the Consenting Party's internal credit policies as reasonably and consistently applied solely with respect to the maximum potential credit exposure of the Consenting Party to such person (it being understood that the determination of the amount of such credit exposure shall take into account the then current creditworthiness of such person and any collateral or guaranties posted for the benefit of such person), and otherwise has a tangible net worth of at least twenty-five million dollars (\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least seventy-five million dollars (\$75,000,000)); (iv) has provided, to the extent requested, all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations (including, without limitation, the Patriot Act, rules and regulations of the Office of Foreign Assets Control and other similar client identification policies and procedures) as well as all documentation required by the Assigned Agreement (including as signing conditions) and Puerto Rico law; (v) has not formally threatened in writing or commenced any litigation proceeding against the Consenting Party and is not subject of any formal written threat of litigation issued or of any litigation proceeding initiated by the Consenting Party; (vi) is or has engaged, in the Consenting Party's sole discretion, a Qualified Operator to develop, construct, test, commission, operate, maintain and repair a project similar to the one contemplated by the Assigned Agreement, to deliver energy to the Consenting Party from such a project and otherwise fulfil the Assignor's obligations under the Assigned Agreement.

4. REPRESENTATIONS

The Consenting Party represents that:

4.1 The Consenting Party 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 conduct its business, to own its properties, and to execute and deliver, and to perform its obligations under, this Direct Agreement.

4.2 The execution, delivery and performance by the Consenting Party of this Direct Agreement have been duly authorized by all necessary corporate action and do not and will not (i) require any consent or approval of any Governmental Authority or the board of directors, members or partners (or equivalent persons), as the case may be, of the Consenting Party which has not been obtained, (ii) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Consenting Party, or (iii) violate or result in a breach of or constitute a default under, or require a consent that has not been obtained under or result in the creation of a lien under, its certificate of incorporation or by-laws or any indenture or loan or credit agreement or any other material agreement, lease or instrument to which the Consenting Party is a party or by which it or its properties may be bound or affected.

4.3 This Direct Agreement has been duly executed and delivered by the Consenting Party and constitutes the legal, valid and binding obligation of the Consenting Party enforceable against it in accordance with its terms, except as enforceability may be limited by general principles of equity and by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally. This Direct Agreement is in full force and effect.

4.4 No authorization, approval, consent, permit or other action by, or registration or filing with, any governmental authority or any other entity is necessary for or in connection with the execution or delivery by the Consenting Party of, or the performance by the Consenting Party of any of its obligations under this Direct Agreement, other than those which have been duly obtained or made and are final and non-appealable and in full force and effect as of the date hereof.

4.5 No litigation, action, suit, adverse proceeding or investigation before or by any arbitrator or government authority is pending or, to the best knowledge of the Consenting Party, threatened in writing against the Consenting Party or against any of its properties or revenues (i) with respect to this Direct Agreement or any of the transactions contemplated hereby or thereby; or (ii) which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the ability of the Consenting Party to perform its obligations under this Direct Agreement.

5. RESERVATION OF RIGHTS

The parties hereto agree that notwithstanding the terms of Sections 1 and 2 above, each of the Consenting Party and the Assignor reserves any and all rights and remedies (including those relating to set-off, counterclaim, deduction or retention) it may have under the Assigned Agreement or applicable law. The rights reserved by each of the Consenting Party and the Assignor under the Assigned Agreement and applicable law are cumulative and not exclusive of any rights it may have under the Assigned Agreement and/or applicable law.

6. MISCELLANEOUS

6.1 Notices

All notices and other communications hereunder shall be in writing and delivered to the applicable recipient pursuant to this Section 6.1: (i) if to the Consenting Party or to the Assignor, in accordance with the Assigned Agreement; (ii) if to the Administrative Agent, [●] or (iii) to such other address or facsimile number as any party may designate by notice given to all parties hereto pursuant to this Section 6.1. Delivery of notices and communications sent pursuant to this Section 6.1 shall be effective upon receipt.

6.2 Governing Law

THIS DIRECT AGREEMENT AND ALL QUESTIONS REGARDING ITS VALIDITY, INTERPRETATION, PERFORMANCE AND/OR ENFORCEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE COMMONWEALTH OF PUERTO RICO WITHOUT REGARD TO ANY CONFLICT-OF-LAW PRINCIPLES OF SUCH COMMONWEALTH OR OTHER JURISDICTION TO THE CONTRARY. JURISDICTION AND VENUE OF ANY SUIT OR ACTION TO ENFORCE THIS DIRECT AGREEMENT SHALL REST SOLELY IN [THE UNITED STATES FEDERAL COURTS IN THE COMMONWEALTH OF PUERTO RICO] AND EACH OF THE PARTIES HERETO HEREBY SUBMITS TO THE PERSONAL JURISDICTION OF SUCH COURTS FOR THE PURPOSE OF RESOLVING ANY AND ALL MATTERS ARISING UNDER OR IN RESPECT OF THIS DIRECT AGREEMENT AND AGREES THAT PERSONAL SERVICE UPON EACH SUCH PARTY MAY BE MADE BY DELIVERY THEREOF TO SUCH PARTY AT THE ADDRESS SPECIFIED HEREIN.

6.3 Waiver of Jury Trial

EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL

PROCEEDING ARISING OUT OF OR RELATING TO THIS DIRECT AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

6.4 Counterparts

This Direct Agreement may be executed by any number of, and on separate, counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. A facsimile or .pdf copy of a counterpart signature page shall serve as the functional equivalent of a manually executed copy for all purposes.

6.5 Headings Descriptive

The headings of the several sections and subsections of this Direct Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Direct Agreement.

6.6 Severability

In case any provision in or obligation under this Direct Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.7 Amendment

Neither this Direct Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by each party hereto.

6.8 Successors and Assigns

This Direct Agreement shall be binding upon the successors and assigns of the Consenting Party and inure, together with the rights and remedies of the Assignor and the Administrative Agent, to the benefit of the Assignor and the Administrative Agent.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties hereto have caused this Direct Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year above written.

PUERTO RICO ELECTRIC POWER AUTHORITY

by

Name:

Title:

[●] as Administrative Agent

by

Name:

Title:

APPENDIX X

FORM OF IF COMPLETION NOTICE

IF COMPLETION CERTIFICATE

Date: [●]

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

From: [●] (“SELLER”)

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

We refer to the Energy Storage Services Agreement dated [●] between PREPA and SELLER (the “ESSA”). Unless the context otherwise requires, capitalized terms used in this IF Completion Certificate shall have the meanings ascribed to them in the ESSA.

We hereby certify that, on [date], SELLER has substantially completed and tested the Interconnection Facilities in accordance with paragraphs (a) and (b) of Section 4.4 (*Pre-Synchronization Testing*) of the ESSA.

As required by paragraph (c) of Section 4.4 (*Pre-Synchronization Testing*) of the ESSA, a copy of the red line drawing used for the construction of the Interconnection Facilities is attached to this document.

Very truly yours,

Acknowledged and agreed,

[●]
as SELLER

Puerto Rico Electric Power Authority
as PREPA

[●]

[●]

APPENDIX Y

FORM OF SUBSTANTIAL COMPLETION NOTICE

SUBSTANTIAL COMPLETION NOTICE

Date: [●]

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

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

To: [●] (“**SELLER**”)

We refer to the Energy Storage Services Agreement dated [●] between PREPA and SELLER (the “**ESSA**”). Unless the context otherwise requires, capitalized terms used in this Substantial Completion Notice shall have the meanings ascribed to them in the ESSA.

PREPA, in consultation with the Consulting Technical Expert, has determined that SELLER has constructed the Interconnection Facilities and the Facility in accordance with the Approved Design. Nothing in this certificate relieves or waives any obligation that SELLER might have under the Agreement.

The Parties shall proceed with Initial Synchronization and testing pursuant to Article 5 (*Synchronization, Testing & Completion*).

Very truly yours,

Acknowledged and agreed,

[●]
as SELLER

Puerto Rico Electric Power Authority
as PREPA

[●]

[●]

APPENDIX Z

FORM OF WARRANTY COMPLIANCE CERTIFICATE

WARRANTY COMPLIANCE CERTIFICATE

Date: [●]

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

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

From: [●] (“**SELLER**”)

We refer to the Energy Storage Services Agreement dated [●] between PREPA and SELLER (the “**ESSA**”). Unless the context otherwise requires, capitalized terms used in this Warranty Compliance Certificate shall have the meanings ascribed to them in the ESSA.

I have reviewed the representations and warranties made by SELLER under Article 12 (*Representations, Warranties, & Covenants*), and, on behalf of SELLER, confirm and certify to PREPA the truth and correctness of such representations and warranties on the date hereof.

Very truly yours,

[●]
as SELLER

[●]

APPENDIX AA

FORM OF PAYMENT GUARANTEE

THIS PAYMENT GUARANTEE AGREEMENT (the “**Payment Guarantee**”), is entered into as of [●] day of [●], by [●], a [type of entity] organized and existing under the laws of [jurisdiction] with its principal office at [●] (the “**Guarantor**”), in favor of **PUERTO RICO ELECTRIC POWER AUTHORITY**, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by Act of May 2, 1941, No. 83, as amended, with its principal office at 1110 Ponce de León Avenue, Office #808, San Juan, Puerto Rico (together with any successor or permitted assign under the ESSA (as defined below), the “**Beneficiary**”);

WHEREAS:

- A. [●], a [type of entity] organized and existing under the laws of [jurisdiction] (the “**Company**”) has entered into the Energy Storage Services Agreement, dated [●], with the Beneficiary (as amended, the “**ESSA**”);
- B. (i) the ESSA obligates the Company to deliver this Payment Guarantee to the Beneficiary as one of the conditions precedent for its effectiveness, and (ii) the Guarantor has agreed to execute and deliver this Payment Guarantee; and
- C. the Guarantor (i) holds a direct or indirect ownership interest of [●] percent ([●] %) of the Company on the date hereof, and (ii) expects as an affiliate of the Company to derive commercial benefits from the ESSA as a result of such ownership interest;

NOW, THEREFORE, in consideration of the premises and mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the Guarantor hereby acknowledges, the Guarantor and the Beneficiary (each, a “**Party**” and collectively, the “**Parties**”) hereby agree as follows:

1. DEFINITIONS

1.1. General.

In this Payment Guarantee:

“**Banking Day**” means any day other than a Saturday, a Sunday or any other day on which Applicable Law authorizes, or requires, commercial banks in New York City to be closed.

“**Beneficiary**” has the meaning set out in the preamble of this Payment Guarantee.

“**Company**” has the meaning set out in the Recital (A) of this Payment Guarantee.

“**ESSA**” has the meaning set forth in Recital (A) of this Payment Guarantee.

“**Guaranteed Obligations**” has the meaning set forth in Section 3.1 (*Guaranty*).

“**Guarantor**” has the meaning set out in the preamble of this Payment Guarantee.

“**Payment Guarantee**” has the meaning set forth in the preamble of this Payment Guarantee.

“**Term**” has the meaning set forth in Section 4.7 (*Term*);

“**Unrestricted Net Worth**” means, with respect to the Guarantor, the sum of (i) the subscribed and paid-up equity (including additional paid-in capital), and (ii) the Unrestricted Retained Earnings, in each case of the Guarantor.

“**Unrestricted Net Worth Requirement**” means an Unrestricted Net Worth of at least [●].¹⁷

“**Unrestricted Retained Earnings**” means, with respect to the Guarantor, the amount of accumulated profits and gains realized out of the normal and continuous operations of the Guarantor after deducting distributions to stockholders and transfers to capital stock or other accounts, and which is (i) not appropriated by its board of the Guarantor for corporate expansion projects or programs; (ii) not covered by a restriction for dividend declaration under a loan agreement; (iii) not required to be retained under special circumstances binding on the Guarantor such as when there is a need for a special reserve for probable contingencies; and (iv) not otherwise covered by any other legal restriction (which refers to any injunction, judgement, or order issued by any judicial authority) on the ability of the Guarantor to distribute or otherwise apply its equity.

1.2. Other Defined Terms.

The capitalized terms “**Applicable Law**”, “**Closing Date**”, “**Commercial Operation Date**”, “**Default**”, “**Insolvency Event**”, “**Person**” and “**PREB**” shall have the meanings set forth in the ESSA.

2. **GUARANTOR’S REPRESENTATIONS & COVENANTS**

2.1 Representations.

The Guarantor makes the following representations to the Beneficiary as of the date hereof:

- a. the Guarantor has been duly organized and is validly existing and in good standing under the Applicable Laws of [*jurisdiction*], has full legal right, power and authority to enter into, and carry out the terms and provisions of, this Payment Guarantee, and by proper corporate action has duly authorized the execution, delivery and performance of this Payment Guarantee;
- b. the execution and delivery of, and performance of its obligations under, this Payment Guarantee by the Guarantor will not conflict with, or constitute on the part of the Guarantor a breach of or default under, its relevant organizational documents or any indenture or other material agreement or instrument to which the Guarantor is a party or by which it or its properties are bound or any order, law, rule or regulation of any court or governmental agency or body having jurisdiction over the Guarantor or any of its activities or properties;
- c. this Payment Guarantee has been duly authorized, executed and delivered by the Guarantor and constitutes the valid and legally binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except to the extent that applicable bankruptcy, insolvency, reorganization, moratorium or other Applicable Laws affecting the

¹⁷ Insert amount equal to the greater of (A) thirty percent (30%) of the estimated costs of the Company’s proposed project, and (B) \$75 million.

enforcement of creditors' rights generally and general equitable principles may limit enforceability of this Payment Guarantee;

- d. the Guarantor does not require a notice to, authorization, approval, consent or order of, or registration or filing with, any court or governmental agency or body having jurisdiction over the Guarantor or any of its activities or properties for the execution, delivery and performance of this Payment Guarantee; and
- e. the Guarantor (i) holds a direct or indirect ownership interest of [●] percent ([●] %) of the Company, and (ii) satisfies the Unrestricted Net Worth Requirement.

2.2 Covenants

During the Term, the Guarantor undertakes to:

- a. (i) satisfy the Unrestricted Net Worth Requirement on a continuous basis at all times, and (ii) prior to the expiration of the first quarter of each calendar year during the Term, deliver to Beneficiary a certified true and correct copy of audited financial statements, Form 10-Ks or similar types of audited annual reports for the previous calendar year, evidencing that the Guarantor satisfied the Unrestricted Net Worth Requirement for such previous calendar year;
- b. hold and maintain a direct or indirect ownership interest of at least [●] percent ([●] %) of the Company; and
- c. maintain its existence, and not dissolve, sell or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or permit one or more other corporations to consolidate with or merge into it.

3. **PAYMENT GUARANTY**

3.1. General

The Guarantor absolutely, unconditionally and irrevocably guarantees to the Beneficiary, as primary obligor and not merely as surety, the full and prompt payment by the Company of all of the Company's payment obligations under the ESSA to the Beneficiary when and as due (whether by required prepayment, declaration, acceleration, demand or otherwise) arising during the period that commences on the Closing Date and expires on the Commercial Operation Date, including, without limitation, payment obligations in respect of any Default under the ESSA by the Company, and including all fees, costs, and expenses. (collectively, the "**Guaranteed Obligations**"). This Payment Guaranty constitutes a continuing guaranty of payment and not of collection.

3.2. Indemnity

As an independent and primary obligation, the Guarantor shall indemnify, defend and hold harmless the Beneficiary against any and all losses, damages, costs, expenses and liabilities (including legal fees and expenses) suffered by the Beneficiary or which the Beneficiary may incur, to the extent that a judicial authority declares any of the Guaranteed Obligations as illegal, invalid, void or unenforceable by reason of an Insolvency Event or any other reason.

3.3 Maximum Liability

Notwithstanding any other provision of this Payment Guarantee, the maximum aggregate liability of the Guarantor arising under this Payment Guarantee shall never exceed the maximum aggregate liability of the Company under the ESSA plus costs, fees and expenses, including without limitation all attorneys' fees, which may be incurred by the Beneficiary in enforcing or attempting to enforce this Payment Guarantee as provided in Section 3.7 (*Costs*). The Guarantor shall be entitled to all contractual defenses, limitations and exclusions available to the Company under the ESSA but not any defenses that may arise in the event that the Company suffers an Insolvency Event.

3.4 Unconditional Nature of Obligations; Waivers.

Subject to Section 3.3 (*Maximum Liability*), the obligations of the Guarantor under this Payment Guarantee shall be absolute, irrevocable and unconditional and shall remain in full force and effect until the date on which this Payment Guarantee terminates in accordance with Section 4.7 (*Term*), and such obligations shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation any of the following events, whether or not with notice to, or the consent of, the Guarantor:

- a. The waiver, surrender, compromise, settlement, release or termination of any or all of the obligations, covenants or agreements of the Company under the ESSA;
- b. The failure to give notice to the Guarantor of the occurrence of a Default under the ESSA;
- c. The waiver, compromise or release of the payment, performance or observance by the Company or by the Guarantor, respectively, of any or all of the obligations, covenants or agreements of either of them contained in the ESSA or this Payment Guarantee, as the case may be;
- d. The extension of the time for payment of any Guaranteed Obligations under the ESSA or of the time for performance of any other of the Company's obligations arising out of the ESSA;
- e. The modification, amendment, waiver or alteration (whether material or otherwise) of any obligation or representation set forth in the ESSA;
- f. the taking, or the omission, of any of the actions referred to in the ESSA;
- g. any failure, omission, delay or lack on the part of the Beneficiary to enforce, assert or exercise any right, power or remedy conferred on it in the ESSA;
- h. the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings affecting the Guarantor or the Company or any of the respective assets of either of them, or any allegation or contest of the validity of this Payment Guarantee in any such proceeding;
- i. any defense based upon any legal disability of the Company or, to the extent permitted by law, any release, discharge, reduction or limitation of or with respect to any sums owing by the Company or any other liability of the Company to the Beneficiary;

- j. to the extent permitted by Applicable Law, the release or discharge by operation of law of the Guarantor from the performance or observance of any obligation contained in this Payment Guarantee;
- k. the default or failure of the Guarantor fully to perform any of its obligations set forth in this Payment Guarantee; or
- l. the invalidity or unenforceability of the ESSA or any part thereof.

This Payment Guaranty is in no way conditional or contingent upon any attempt to collect from or bring action against the Company or its assets or upon any other action, occurrence or circumstance whatsoever. The liability of the Guarantor hereunder is independent of and not in consideration of or contingent upon the liability of any other person under this or any similar instrument and the release of, or cancellation by, any party to this or a similar instrument shall not act to release or otherwise affect the liability of the Guarantor hereunder. The Guarantor hereby agrees that it shall not be necessary for the Beneficiary, and the Guarantor hereby waives any rights which the Guarantor may have to require the Beneficiary, in order to enforce the obligations of the Guarantor hereunder, first to (i) institute suit or exhaust its remedies against any the Company or any other person, (ii) enforce the Beneficiary's rights or exhaust any remedies available to the Beneficiary against any assets of the Company or (iii) resort to any other means of obtaining payment of the obligations of the Company hereunder.

The Guarantor waives and agrees not to assert

- (i) the defense of the statute of limitations in any action hereunder or for the collection of the Guaranteed Obligations;
- (ii) any defense arising by reason of any lack of corporate or other authority or any other defense of the Company or any other person;
- (iii) any rights to set-offs and counterclaims;
- (iv) without limiting the generality of the foregoing, to the fullest extent permitted by laws, any defenses or benefits that may be derived from or afforded by applicable laws limiting the liability of or exonerating guarantors or sureties, or that may conflict with the terms of this Payment Guaranty; and
- (v) any and all notice of the acceptance of this Guaranty, and any and all notice of the creation, renewal, modification, extension or accrual of the Guaranteed Obligations, or the reliance by Beneficiary upon this Guaranty, or the exercise of any right, power or privilege hereunder. The Guaranteed Obligations shall conclusively be deemed to have been created, contracted, incurred and permitted to exist in reliance upon this Payment Guaranty. The Guarantor waives promptness, diligence, presentment, protest, demand for payment, notice of default, dishonor or nonpayment and all other notices to or upon the Company, the Guarantor or any other person with respect to the Guaranteed Obligations.

If any payment by the Company to the Beneficiary is rescinded or must be returned by the Beneficiary, the obligations of the Guarantor hereunder shall be reinstated with respect to such payment. The Guarantor shall have no right to (i) raise a defense previously raised by the Company arising out of or in connection with a Guaranteed Obligation claimed hereunder and which a judicial authority has settled in the Beneficiary's favor by the dispute resolution procedures of Section 21.11

(*Dispute Resolution*) of the ESSA, or (ii) to use a cure period previously used by the Company. The Guarantor assumes responsibility for being and remaining informed of the financial condition of the Company and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations which diligent inquiry would reveal and agrees that the Beneficiary shall not have a duty to advise the Guarantor of information known to it regarding such condition or any such circumstances.

3.5. Proceedings Against the Guarantor.

In the event of a Default in the payment of the Guaranteed Obligations when and as the same shall become due, the Beneficiary shall have the right to proceed first and directly against the Guarantor under this Payment Guarantee without proceeding against the Company or exhausting any other remedies which it may have and the Guarantor shall pay all Guaranteed Obligations on demand.

3.6. Subrogation.

Upon payment of any Guaranteed Obligation, the Guarantor shall be subrogated to the rights of the Beneficiary against the Company with respect to such Guaranteed Obligation, and the Beneficiary agrees to take at the Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation; provided that the Beneficiary shall have no obligation to take any such steps and the Guarantor shall not enforce any right arising by way of subrogation or exercise any other right or remedy arising by reason of any performance by it of this Payment Guarantee, including, but not limited to, any contractual, statutory or common law rights of reimbursement, contribution or indemnity, whether against the Company or any other Person, until the date on which this Payment Guarantee terminates in accordance with Section 4.7 (*Term*).

3.7. Costs.

The Guarantor agrees to pay all costs, expenses and fees, including without limitation all attorneys' fees, which may be incurred by the Beneficiary in enforcing or attempting to enforce this Payment Guarantee following any default on the part of the Guarantor hereunder, whether the same shall be enforced by suit or otherwise.

3.8. Financial Condition of the Company.

The Guarantor shall not have any right to require the Beneficiary to obtain or disclose any information with respect to: the financial condition or character of the Company or the ability of the Company to pay and perform the Guaranteed Obligations, any action or inaction on the part of the Beneficiary or any other Person; or any other matter, fact or occurrence whatsoever. The Guarantor hereby acknowledges that it has undertaken its own independent investigation of the financial condition of the Company and all other matters pertaining to this Payment Guaranty and further acknowledges that it is not relying in any manner upon any representation or statement of the Beneficiary with respect thereto, and that it is now and at all times will be completely familiar with, the business, condition (financial or otherwise), operations, performance, properties, and prospects of the Company.

4. MISCELLANEOUS

4.1. Governing Law

This Payment Guarantee shall be governed by, and construed in accordance with, the Applicable Laws of the Commonwealth of Puerto Rico including those processes before PREB whereby PREB renders a final determination of any Dispute submitted pursuant to paragraph (a) of Section 4.2 (*Dispute Resolution*), without regard to any contrary result required under applicable conflicts of laws rules.

4.2. Dispute Resolution

If a dispute arises between the Parties regarding the application, interpretation, enforceability, validity, performance or breach of this Payment Guaranty (a “**Dispute**”), then the disputing Party may promptly provide written notice of the Dispute to the other Party and the Parties shall resolve such Dispute as follows:

- a. The Parties shall submit such Dispute to PREB for final determination.
- b. Each Party agrees that (i) a final determination of a Dispute rendered by PREB shall have a conclusive and binding effect on it, and (ii) a Party may enforce such final determination in the courts of any competent jurisdiction following completion of any recognition and enforcement process required in such jurisdiction, subject to the grounds for non-enforcement under the laws of the jurisdiction in which such Party seeks such enforcement.
- c. For the exclusive benefit of the Beneficiary, the Guarantor irrevocably agrees that the Beneficiary shall have the right to (i) resolve such Dispute but only to the extent that PREB declines to resolve such Dispute, submitted pursuant to paragraph (a) above, for any reason, and (ii) enforce a final determination by PREB in its favor, in each case in the courts of the Court of First Instance for the Commonwealth of Puerto Rico, San Juan Part. By the execution of this Agreement, the Guarantor irrevocably submits to the jurisdiction of any such court in any action, suit or proceeding relating to such Dispute or final determination. Final judgment against the Guarantor in any such action, suit or proceeding shall be conclusive and may be enforced in any other jurisdiction, by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the judgment, or in any other manner provided by Applicable Law.
- d. The Guarantor hereby irrevocably designates, appoints and empowers [*name of service of process agent*], with offices currently located at [*address within Commonwealth of Puerto Rico*], as its authorized agent solely to receive for and on its behalf service of any summons, complaint or other legal process in any action, suit or proceeding the Beneficiary may bring in the Commonwealth of Puerto Rico in respect of this Payment Guarantee.
- e. As long as this Payment Guarantee remains in force, the Guarantor shall maintain a duly-appointed and authorized agent to receive for and on its behalf service of any summons, complaint or other legal process in any action, suit or proceeding that the Beneficiary may bring in the Commonwealth of Puerto Rico, United States of America, with respect to this Payment Guarantee. The Guarantor shall keep the Beneficiary advised of the identity and location of such agent.

- f. The Guarantor also irrevocably consents, if for any reason its authorized agent for service of process of summons, complaint and other legal process in any action, suit or proceeding is not present in the Commonwealth of Puerto Rico, to the service of such process being made out of the courts of the Commonwealth of Puerto Rico located in the of the Court of First Instance for the Commonwealth of Puerto Rico, San Juan Part by mailing copies of the papers by registered mail, to the Guarantor, at its address specified pursuant to Section 4.3 (*Communications*). In such a case, the Beneficiary shall also send a copy of the process papers to the Guarantor via email.
- g. Service in the manner provided in paragraphs (d), (e) and (f) above in any action, suit or proceeding will be deemed personal service, will be accepted by the Guarantor as such and will be valid and binding upon the Guarantor for all purposes of any such action, suit or proceeding.
- h. *THE GUARANTOR IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW:*
 - 1. *ANY OBJECTION THAT IT MAY HAVE NOW OR IN THE FUTURE TO THE LAYING OF THE VENUE OF ANY ACTION, SUIT OR PROCEEDING IN ANY COURT REFERRED TO IN THIS SECTION;*
 - 2. *ANY CLAIM THAT ANY SUCH ACTION, SUIT OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM;*
 - 3. *ITS RIGHT OF REMOVAL OF ANY MATTER COMMENCED BY THE BENEFICIARY IN THE COURT OF FIRST INSTANCE FOR THE COMMONWEALTH OF PUERTO RICO, SAN JUAN PART; AND*
 - 4. *ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY IN ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT AGAINST THE GUARANTOR BY THE BENEFICIARY.*
- i. Where (i) a dispute, claim or controversy arises out of, or in connection with, the ESSA, and (ii) such dispute, claim or controversy also forms a basis for the Beneficiary to assert a claim under this Payment Guarantee, the Guarantor shall consent to any request by the Beneficiary to join such dispute as a party.

4.3 Communications.

Each Party shall deliver all notices and other communications relating to this Payment Guarantee in writing to the other Party, which shall be deemed duly given upon receipt after delivery by hand or sent by e-mail with read receipt confirmation, registered or certified mail, return receipt requested, postage prepaid or by recognized overnight courier service to the following addresses:

FOR COMMUNICATIONS DELIVERED TO GUARANTOR:

[●]

Attention: [●]

E-mail: [●]

FOR COMMUNICATIONS DELIVERED TO BENEFICIARY:

Puerto Rico Electric Power Authority
1110 Ponce de León Avenue, Office #808
San Juan, Puerto Rico
Attention: Director of Planning and Environmental Protection
E-mail: [●]

Any Party may change its address for notices by giving written notice to the other Party as set forth above.

4.4. Banking Days.

Except as otherwise provided in this Payment Guarantee, if any date on which a payment is to be made, notice is to be given or other action taken hereunder is not a Banking Day, then such payment, notice or other action shall be made, given or taken on the next succeeding Banking Day in such place, and in the case of any payment, no interest shall accrue for the delay.

4.5. Successors and Assigns.

This Payment Guarantee shall bind the Guarantor and its successors and permitted assigns and inure to the benefit of the Beneficiary and its successors and permitted assigns. The Guarantor may not assign its obligations hereunder without the prior written consent of the Beneficiary. The Beneficiary may not assign its rights and obligations hereunder without the prior written consent of the Guarantor, except that the Beneficiary may, without any prior consent of the Guarantor, assign its right and obligations hereunder to any permitted assignee of the ESSA.

4.6. Guaranty for Benefit of the Beneficiary; No Third-Party Beneficiaries.

The Guarantor has entered into this Payment Guarantee for the benefit of the Beneficiary. Nothing contained herein shall be intended or deemed to create any right in, or to be in whole or in part for the benefit of, any Person other than the Guarantor and the Beneficiary and their respective permitted successors and assigns.

4.7. Term.

This Payment Guarantee shall enter into full force and effect on the Closing Date and terminate with no further force and effect on the date on which the Company has discharged all of the Guaranteed Obligations in full (the “**Term**”). Termination of this Guaranty shall not affect the Guarantor’s liability hereunder as to any Guaranteed Obligations existing or arising under the ESSA prior to the effective date of such termination.

4.8. Amendments and Waivers.

Any provision of this Payment Guarantee may be amended or waived if, but only if, the Parties execute and deliver such amendment or waiver in writing.

4.9. Headings.

The article and section headings of this Payment Guarantee are for convenience only and shall not affect the construction hereof.

4.10. Partial Invalidity.

The invalidity of any one or more phrases, sentences, clauses or sections in this Payment Guarantee shall not affect the validity or enforceability of the remaining portions of this Payment Guarantee or any part thereof.

4.11. No Waiver, Remedies.

No failure or delay by the Beneficiary in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by Applicable Law.

4.12. Execution in Several Counterparts.

This Payment Guarantee may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original; but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Guarantor has caused this Payment Guarantee to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

[●]

as Guarantor

By: _____

Name: [●]

Title: [●]

ACCEPTED AND AGREED BY:

PUERTO RICO ELECTRIC POWER AUTHORITY

as Beneficiary

By: _____

Name: [●]

Title: [●]

Appendix 5. Standalone ESSA

DRAFT

June 15, 2021

ENERGY STORAGE SERVICES AGREEMENT
BETWEEN
PUERTO RICO ELECTRIC POWER AUTHORITY
AND
[•]
DATED [•]



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THIS ENERGY STORAGE SERVICES AGREEMENT (the “**Agreement**”) is entered into as of this [●] day of [●] (the “**Agreement Date**”) between the **PUERTO RICO ELECTRIC POWER AUTHORITY** (including any successor thereto, “**PREPA**”), a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by Act of May 2, 1941, No. 83, as amended, employer identification number [●], represented in this act by its Executive Director, Mr. Efran Paredes Maisonet, of legal age, married, engineer and resident of Bayamón, Puerto Rico; and [●] (“**SELLER**”), a [●] company, authorized to do business in Puerto Rico, employer identification number [●], with its principal office at [●], and represented in this act by its [●], [Mr./Ms.] [●], of legal age, [married], and a resident of [●], authorized to sign this Agreement on behalf of SELLER as certified by the Resolution dated [●]. PREPA and SELLER are herein individually referred to as a “**Party**” and collectively referred to as “**Parties**”:

RECITALS

WHEREAS,

- A. To procure renewable energy generation and energy storage services at sites across the island of Puerto Rico in accordance with the requirements of the Puerto Rico Energy Public Policy Act (Act 17-2019), the Puerto Rico Energy Diversification Policy through Sustainable and Alternative Renewable Energy Act (Act 82-2010), PREB’s Final Resolution and Order on PREPA’s Integrated Resource Plan in Case No. CEPR-AP-2018-0001 issued on August 24, 2020, and PREB’s Resolution and Order on PREPA’s Draft Procurement Plan in Case No. NEPR-MI-2020-012 issued on December 8, 2020, PREPA has conducted a competitive procurement process based upon its issuance of Request for Proposals No. 112648, Renewable Energy and Energy Storage Resources, Tranche 1 of 6, on February [●], 2021 (as amended, the “**RFP**”) to select one or more developers to (i) design, construct, install, interconnect, test, commission, operate and maintain renewable energy generation, virtual power plants, and/or energy storage resources, and (ii) enter into agreement(s) with PREPA for the same;
- B. SELLER, among other bidders, (i) submitted a proposal in response to the RFP on [●] and separately submitted an [on-demand letter of credit]¹ as security for SELLER’s satisfaction of the requirements of the RFP (the “**Bid Security**”) and (ii) desires to (a) develop, finance, construct, own, operate and maintain a [●] MW ([●] MWh or equivalent) energy storage facility (the “**Project**”), (b) charge such facility exclusively from the Grid System (as defined below), and (c) sell and make available Energy Storage Services produced thereby exclusively to PREPA in accordance with this Agreement; and
- C. PREPA (i) selected SELLER as one of the preferred bidders following the submission and evaluation of all proposals, and (ii) desires to purchase Energy Storage Services in accordance with this Agreement;

NOW THEREFORE, in consideration of these premises and of the mutual covenants and agreements set forth herein, the Parties, intending to be legally bound, hereby agree to the following:

¹ Note: Align with form of actual Bid Security.

1. DEFINITIONS & INTERPRETATION

1.1 Definitions

In this Agreement:

“**AC**” means alternating electrical current.

“**Actual Efficiency**” has the meaning set forth in paragraph (b) of Section 3 (*Efficiency*) of Appendix P (*Performance Guarantees*).

“**Adjusted Duration Energy**” means the lower of the latest Tested Duration Energy and the applicable Degraded Duration Energy.

“**Affected Party**” has the meaning set forth in Section 14.1 (*General*).

“**Affiliate**” means, with respect to a Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls (*e.g.*, a parent or grandparent company), is Controlled by (*e.g.*, a subsidiary company), or is under common Control (*e.g.*, a sister company) with, such Person.

“**Agreement**” has the meaning set forth in the preamble of this Agreement.

“**Agreement Date**” has the meaning set forth in the preamble of this Agreement.

“**Agreement Date Obligations**” has the meaning set forth in Section 2.3 (*Initial Effectiveness & Closing Date*).

“**Agreement Year**” means each period of twelve (12) consecutive Months, provided that (i) the first such period shall begin on the Commercial Operation Date, (ii) each such subsequent year shall begin on the corresponding anniversary of such earlier date, and (iii) the last such period shall expire at the end of the Supply Period.

“**Ancillary Services**” means any services required by the MTRs or otherwise capable of being made available to the Grid System by the Facility (other than the delivery of Net Electrical Output) from time to time, including automatic generation control, synchronous condenser mode, reactive power support, operating reserve, frequency control, ramp rate control, voltage control, black start capability, voltage support, emergency stand-by support, or others, as applicable.²

“**Annual C^{max} Degradation Rate**” means the Annual C^{max} Degradation Rate set forth in Appendix J (*Operating Characteristics*).

“**Annual Degradation Rates**” means the Annual C^{max} Degradation Rate, the Annual D^{max} Degradation Rate, the Annual Duration Energy Degradation Rate, and the Annual Storage Degradation Rate.

“**Annual D^{max} Degradation Rate**” means the Annual D^{max} Degradation Rate set forth in Appendix J (*Operating Characteristics*).

“**Annual Duration Energy Degradation Rate**” or “**ADDR**” means the rate (expressed as a percentage) on an annual basis at which the quantity of Design Duration Energy will decline as a

² Note: This Agreement limits dispatchable Ancillary Services to those specified in the MTRs.

result of degradation during each Agreement Year as set forth in Appendix J (*Operating Characteristics*).

“Annual Storage Degradation Rate” has the meaning set forth in Appendix J (*Operating Characteristics*).

“Applicable Law” or **“Law”** means, with respect to any Person, any constitution, bilateral or multilateral treaty, statute, law, rule, regulation, ordinance, judgment, order, decree, governmental consent, or approval or any published directive, guideline, requirement or other governmental restriction, which has the force of law, or any determination, or interpretation of any of the foregoing, by any judicial authority, which legally binds such Person or its property whether in effect as of the Agreement Date or thereafter.

“Applicable Standards” means the MTRs, the DCDs, any other applicable PREPA standards that PREPA has made available or identified to SELLER as applicable to SELLER’s performance of its obligations under this Agreement, and any other codes, standards, or requirements set forth in any Applicable Law, including any applicable federal, state or local code, the latest standards of the Institute of Electrical and Electronic Engineers (IEEE), National Electrical Manufacturer’s Association (NEMA), American Concrete Institute (ACI), American National Standards Institute (ANSI), International Code Council Code (ICC), National Fire Protection Association and the North American Electric Reliability Corporation (NERC), as well as the latest editions of the National Electrical Code and the National Electrical Safety Code (NESC), to the extent not inconsistent with the foregoing, in each case as modified from time to time.

“Approved Design” has the meaning set forth in paragraph (c) of Section 4.1 (*Proposed Design*).

“Availability Liquidated Damages” or **“ALD”** has the meaning set forth in paragraph (b) of Section 1 (*Facility Availability*) of Appendix P (*Performance Guarantees*).

“Balance” has the meaning set forth in paragraph (b) of Section 17.2 (*Tracking Account*).

“Best and Final Offer” has the meaning given in the RFP.

“Best Interests Determination” means a determination by PREPA that the Project will serve the best interests of its ratepayers as evidenced by the findings of the Feasibility Study, System Impact Study and Facility Study, following the completion of the phase III evaluation of the Project by PREPA as contemplated by the RFP.

“Bid Security” has the meaning set forth in Recital B in the preamble of this Agreement.

“Billing Period” means a Month, provided that (i) the first such period shall begin on the Commercial Operation Date and end on the final Day of the Month in which the Commercial Operation Date occurs, and (ii) the last such period shall begin on the first Day of the Month in which the Supply Period will expire and end on final Day of the Supply Period.

“Bulk-Power System EO” means E.O. 13920 of May 1, 2020, as supplemented by and including the rules and regulations published by the U.S. Department of Energy in connection therewith, as such may be modified from time to time.

“Business Day” means a Day other than (i) a Saturday, a Sunday or a Day on which commercial banks in San Juan, Puerto Rico are required or authorized to close, or (ii) any other Day recognized as a holiday by PREPA as listed on Appendix A (*Holidays*) hereto or notified to SELLER from time to time.

“**Capability**” means the D^{\max} , C^{\max} , and the Maximum Storage Energy which the Facility can achieve or make available.

“**Capability Liquidated Damages**” or “**CLD**” has the meaning set forth in paragraph (b) of Section 2 (*Capability*) of Appendix P (*Performance Guarantees*).

“**Capability Payment Price**” or “**CPP**” has the meaning set forth in of Section 2 (*Monthly Fixed Payment*) of Appendix F (*Compensation*).

“**Capability Shortfall Liquidated Damages**” has the meaning set forth in item (2), paragraph (b) of Section 5.3 (*Initial Performance Tests*).

“**Changes**” has the meaning set forth in paragraph (a) of Section 17.1 (*SELLER Requirements*).

“**Charge Duration**” means the period of time required for the Facility to increase the State of Charge from zero percent (0%) to one hundred percent (100%) when charging at C^{\max} as evidenced by Performance Tests.

“**Charge Energy**” or “**CE**” means, for any period of time, the Energy drawn by the Facility from the Grid System for storage and discharge at a later time while operating in Charge Mode (expressed in MWh during such period) as measured by the Main Meters, net of Station Use.

“**Charge Mode**” means the mode of operation whereby the Facility increases the State of Charge by accepting Charge Energy at the Interconnection Point.

“**Charge Notice**” means the operating instruction and any subsequent updates given by PREPA to SELLER, directing the Facility to charge from the Grid System at a specific rate to a specified Stored Energy Level.

“**Claims**” means all claims, actions, suits, demands, or proceedings brought by any Person for liabilities, judgments, losses, costs (including court costs, reasonable attorneys’ fees, and costs of investigation), fines, penalties, expenses, and damages of whatsoever kind or nature, arising in contract, tort, or otherwise.

“**Closing Date**” has the meaning set forth in Section 2.3 (*Initial Effectiveness & Closing Date*).

“ **C^{\max}** ” means the maximum steady-state power capacity (expressed in MW) that the Facility can continuously take in to increase the State of Charge from zero percent (0%) to one hundred percent (100%), measured by the Main Meters at the Interconnection Point.

“ **C^{\max} Duration**” means the amount of time the Facility is able to charge at C^{\max} .

“ **C^{\min}** ” means the minimum steady-state power capacity (expressed in MW) that the Facility can continuously take in to increase the State of Charge, below which the Facility cannot charge on a sustained basis as measured by the Main Meters at the Interconnection Point.

“**COD Termination Event**” means the occurrence of the Long-Stop Date prior to the Commercial Operation Date.

“**Commercial Operation**” means satisfaction of the requirements set forth in a certificate issued by SELLER in accordance with paragraph (e) of Section 5.3 (*Initial Performance Tests*) in the form set forth in Appendix U (*Form of Commercial Operation Date Certificate*).

“**Commercial Operation Date**” means the date when SELLER first achieves Commercial Operation.

“Conditions Precedent” has the meaning set forth in Section 2.3 (*Initial Effectiveness & Closing Date*).

“Construction Start” means satisfaction of all requirements set forth in a certificate issued by SELLER in the form set forth in Appendix T (*Form of Construction Start Date Certificate*).

“Construction Start Date” means the date on which SELLER achieves Construction Start, as evidenced by a certificate issued by SELLER to PREPA in a form set forth in Appendix T (*Form of Construction Start Date Certificate*).

“Construction Start Termination Event” means SELLER’s failure to achieve the Construction Start Date by the Guaranteed Construction Start Date.

“Consulting Technical Expert” has the meaning set forth in Section 3.1 (*Consulting Technical Expert*).

“Control” means (i) the ownership (whether directly or indirectly) of more than fifty percent (>50%) of the total issued voting share capital or other voting interest of that company or corporation, or (ii) the ability to unilaterally appoint a majority of the board directors or equivalent body of that company or corporation through the ownership of securities with voting power or otherwise, without the need of the vote or approval of another, or (iii) the ability to unilaterally direct the business affairs and/or operations of that company or corporation, without the need of the vote or approval of another; and the terms **“Controls,” “Controlled,”** and **“Controlling”** shall have a corresponding meaning, provided that if two (2) shareholders each own fifty percent (50%) of the total issued and outstanding shares of a corporation, then neither shareholder controls such corporation.

“COR3” means the Central Recovery and Reconstruction Office of Puerto Rico.

“Day” means a period of twenty-four (24) consecutive hours, beginning at 00:00 hours on any Gregorian calendar day and ending at 24:00 hours on such day Puerto Rico time.

“DC” means direct electrical current.

“Deemed Completion” means the occurrence of each of the following events: (i) the completion of the installation of the Facility in all material respects (other than punch list items), and (ii) a delay of the commencement of the Initial Performance Tests, or interruption of an ongoing Initial Performance Tests, for a period of at least fifteen (15) consecutive Days as determined under Section 3.4 (*Extensions of Time*), arising out of a PREPA Risk Event, in each case as evidenced by the delivery of a certificate by SELLER to PREPA, co-signed by the Consulting Technical Expert, certifying (A) the truth and correctness of each of the foregoing events, and (B) the date on which SELLER would have achieved Commercial Operation but for the occurrence of all PREPA Risk Event(s), which formed the basis for an extension of time of the Guaranteed Commercial Operation Date under Section 3.4 (*Extensions of Time*); provided that Deemed Completion shall never occur earlier than the Guaranteed Commercial Operation Date.

“Default” has the meaning set forth in Section 16.1 (*Definition*).

“Defects Liability Period” has the meaning set forth in paragraph (b) of Section 5.4 (*Interconnection Facilities*).

“Degraded Duration Energy” or **“DDE”** means, for each Agreement Year, the Design Duration Energy (expressed in MWh) (i) adjusted downward by the applicable Energy Degradation Factor for such year, and (ii) adjusted upward as demonstrated by the Performance Tests following maintenance or technology upgrades contemplated by the final sentence of Section 4.7 (*Facility Upgrades*), but not to exceed the Design Duration Energy.

“Derating” means SELLER’s inability or failure to (i) make Discharge Energy at D^{\max} available at the Interconnection Point, or (ii) accept Charge Energy at C^{\max} at the Interconnection Point, in each case for any reason other than in the case of an Outage.

“Design Capability” means Design D^{\max} , Design C^{\max} , and Design Storage Energy.

“Design Charge Duration” has the meaning set forth in Appendix J (*Operating Characteristics*).

“Design Charge Energy” has the meaning set forth in Appendix J (*Operating Characteristics*).

“Design C^{\max} ” has the meaning set forth in Appendix J (*Operating Characteristics*).

“Design C^{\max} Duration” has the meaning set forth in Appendix J (*Operating Characteristics*).

“Design C^{\min} ” has the meaning set forth in Appendix J (*Operating Characteristics*).

“Design D^{\max} ” has the meaning set forth in Appendix J (*Operating Characteristics*).

“Design D^{\max} Duration” has the meaning set forth in Appendix J (*Operating Characteristics*).

“Design Discharge Duration” has the meaning set forth in Appendix J (*Operating Characteristics*).

“Design D^{\min} ” has the meaning set forth in Appendix J (*Operating Characteristics*).

“Design Duration Energy” means the Discharge Energy that the Facility can deliver when discharging at the Design D^{\max} during the Design D^{\max} Duration following charging from zero percent (0%) State of Charge to one hundred percent (100%) State of Charge during the Design Charge Duration, as set forth in Appendix J (*Operating Characteristics*).

“Design Storage Energy” has the meaning set forth in Appendix J (*Operating Characteristics*).

“Development Abandonment” means the permanent cessation by SELLER of the development and construction of the Facility or the PREPA Interconnection Facilities being installed by SELLER after the Closing Date and prior to the Commercial Operation Date, as evidenced by SELLER’s or its construction contractors’ personnel having withdrawn from the Site (unless SELLER demonstrates otherwise) and SELLER having otherwise ceased development and construction activities related to the Facility for more than one hundred twenty (120) consecutive Days for any reason other than as a result of Force Majeure affecting SELLER or a PREPA Risk Event.

“Discharge Duration” means the shortest period of time required by the Facility to reduce the State of Charge from one hundred percent (100%) to zero percent (0%) when discharging at D^{\max} as evidenced by the Performance Tests.

“Discharge Energy” or **“DE”** means, for any period of time, the Energy delivered by the Facility at the Interconnection Point, while operating in Discharge Mode (expressed in MWh) during such period, as measured in accordance with Section 8.4 (*Meter Reading*).

“Discharge Mode” means the mode of operation whereby the Facility decreases the State of Charge by delivering Discharge Energy to, or making available Ancillary Services at, the Interconnection Point.

“Disclosing Party” has the meaning set forth in paragraph (a) of Section 12.9 (*Confidentiality*).

“Dispatch Notice” means the operating instruction and any subsequent updates given by PREPA (directly or through the SCADA system) to SELLER, directing the Facility to operate in Discharge Mode at a specified megawatt output.

“Dispute” has the meaning set forth in paragraph (a) of Section 21.11 (*Dispute Resolution*).

“Dispute Notice” has the meaning set forth in paragraph (a) of Section 21.11 (*Dispute Resolution*).

“D^{max}” means the maximum quantity of steady-state power capacity (expressed in MW) that the Facility can continuously deliver as Discharge Energy at the Interconnection Point to reduce the State of Charge from one hundred percent (100%) to zero percent (0%), as evidenced by the Performance Tests.

“D^{max} Duration” means the duration of time during which the Facility can continuously deliver Discharge Energy at D^{max} on a sustained basis to the Interconnection Point.

“D^{min}” means the minimum steady-state power capacity (expressed in MW) that the Facility can continuously deliver below which the Facility cannot discharge on a sustained basis, measured by the Main Meters at the Interconnection Point.

“dollars” and **“\$”** means United States dollars.

“Efficiency Liquidated Damages” or **“ELD”** has the meaning set forth in paragraph (c) of Section 3 (*Efficiency*) of Appendix P (*Performance Guarantees*).

“Emergency” means an operational condition or situation affecting the Grid System (including system security and reliability or a declaration of an emergency event under Applicable Law or by any Governmental Authority) or the Facility, which has resulted in, or will likely result in, imminent significant disruption of service to a significant number of customers or likely endangers life or property.

“Energy” means three-phase, 60-cycle AC electric energy, measured in MWh.

“Energy Degradation Factor” means the amount equal to: $[(1 - \text{Annual Duration Energy Degradation Rate})^{\text{number of Agreement Years completed}}]$.³

³ Note: Modify if SELLER proposes a degradation table in Appendix J (*Error! Reference source not found.*).

“Energy Storage Services” means, collectively or individually, the acceptance of Charge Energy at the Facility, the storing of Energy in the Facility, and the delivery of Discharge Energy from the Facility at the Interconnection Point, all in accordance with the terms of this Agreement.

“Environmental Costs” means any and all fixed and variable costs incurred by SELLER resulting from the imposition or assessment on, or as a result of the ownership or operations of, the Facility by Applicable Law relating to the environment, issued by a Governmental Authority.

“Equity” means any capital paid or caused to be paid by or on behalf of SELLER’s shareholders or their Affiliates to SELLER for shares in SELLER or in the form of shareholder loans to SELLER, which by their terms are subordinated to any indebtedness for borrowed money incurred by SELLER under financing documents with the Project Lenders.

“Exceptions” means liability arising from:

- a. SELLER’s fraud, willful misconduct or gross negligence;
- b. SELLER’s indemnity obligation under Section 13.1 (*General*) for personal injury or death of a third party;
- c. SELLER’s indemnity obligation under Section 13.3 (*Claims Arising from Environmental Harm*); or
- d. SELLER’s obligation to pay/provide credit for Liquidated Damages under this Agreement.

“Facility” means the energy storage facility known as [●], located at the Site and capable of accepting Charge Energy and delivering Discharge Energy and Ancillary Services at the Interconnection Point, including the Seller Interconnection Facilities and any generation system, capacity expansion, or other upgrades to such energy storage facility from time to time, as further described in Appendix J (*Operating Characteristics*).

“Facility Availability” of “FA” has the meaning set forth in paragraph (b) of Section 6 (*Facility Availability*) of Appendix F (*Compensation*).

“Facility Availability Adjustment” or “FAA” has the meaning set forth in paragraph (a) of Section 6 (*Facility Availability*) of Appendix F (*Compensation*).

“Facility Construction Contract” means the primary contract for the construction of the Facility entered into between SELLER and one or more contractors.

“Facility Study” means, for each proposal selected by PREPA for phase III evaluation and contract negotiation of proposals under the RFP, an engineering study to determine required additions or modifications to the Grid System, including the cost and scheduled completion date for such additions or modifications, required to provide grid support services needed to integrate the Facility into the Grid System.

“Feasibility Study” means, for each proposal selected by PREPA for phase II project committee review and recommendation under the RFP, a study of the feasibility of such proposal, including the interconnection of the Project with the Grid System.

“FOMB” means the Financial Oversight and Management Board for Puerto Rico or any successor thereto.

“**Force Majeure**” has the meaning set forth in Article 14 (*Force Majeure*).

“**Force Majeure Waiting Period**” means, for each Agreement Year, seven hundred twenty (720) hours.⁴

“**Full Duty Cycle**” means the operation of the Facility in Discharge Mode during the Discharge Duration immediately followed by the operation of the Facility in Charge Mode for the Charging Duration.

“**GAAP**” means Generally Accepted Accounting Principles, as promulgated by the Financial Accounting Standards Board or its predecessors or successors.

“**Governmental Authority**” means any court, tribunal or governmental or quasi-governmental body, regulatory body, agency, authority, office, department, commission, board, bureau, public corporation, municipality or instrumentality, in each case at any federal, state, Commonwealth of Puerto Rico, county, municipal, or local level, having jurisdiction over a Party, the Facility or the Site, including FOMB and PREB, but excluding PREPA.

“**Green Credits**” means “renewable energy certificates” and “environmental and social attributes,” as defined in the Green Energy Incentives Act of Puerto Rico (Act No. 83 of July 19, 2010), renewable energy credits, environmental attributes, emissions reductions, offsets, allowances or benefits however entitled (or payments in lieu thereof), whether monetary, fiscal or in the form of physical property, which are now or in the future may be available to the Facility, as a facility that generates or produces electricity by means of “green energy” (as defined in Act No. 83 of July 19, 2010), or from renewable or non-polluting resources, granted or available to SELLER as the owner or operator of the Facility or otherwise, in each case, from any Governmental Authority or third party, including renewable energy credits established pursuant to Act No. 83 of July 19, 2010, but shall exclude (i) any Tax Credits and grants in lieu thereof, (ii) other tax incentives, benefits or credits, including those available under Puerto Rico Act 60-2019, (iii) any accelerated depreciation, and (iv) proceeds from (i) through (iii), in each case, associated with the Facility or otherwise available to SELLER, each of which (i) through (iii) SELLER expressly reserves.

“**Grid System**” means the interconnected network of high voltage transmission lines, low voltage distribution lines, and associated electric substations owned by PREPA (including the PREPA Interconnection Facilities, after handover on the Commercial Operation Date in accordance with Article 12 (*Representations, Warranties, & Covenants*)), located on PREPA’s side of the Interconnection Point, which transmit and distribute electricity to customers in the Commonwealth of Puerto Rico.

“**Grid System Event**” means any condition in the Grid System or act or omission of PREPA that prevents or impairs PREPA from (i) making Charge Energy available at the Interconnection Point while the Facility operates in Charge Mode, or (ii) taking delivery of Discharge Energy or Ancillary Services made available by SELLER at the Interconnection Point while the Facility operates in Discharge Mode, including (a) any curtailment, reduction, or disconnection instructions issued by PREPA in a Dispatch Notice or Charge Notice issued by PREPA (or otherwise) for any reason, including as a result of low demand for electricity in the Commonwealth of Puerto Rico, or (b) any condition in the Grid System (including an Emergency affecting such system) that causes or may cause physical damage to the Facility or life endangerment, and any damage to or the tripping of protection relays installed in the Facility with settings as instructed by PREPA, but in each case

⁴ Note: This represents one (1) month of assumed operating hours.

excluding any such event resulting from Force Majeure affecting SELLER or a PREPA Risk Event pursuant to paragraphs (a), (c), (d) and (e) of such definition.

“Grid System Waiting Period” means, for each Agreement Year, eighty (80) hours.

“Guaranteed Capability” or **“GC”** has the meaning set forth in paragraph (a) of Section 2 (*Capability*) of Appendix P (*Performance Guarantees*).

“Guaranteed Commercial Operation Date” means the second (2nd) anniversary of the Agreement Date, as adjusted in accordance with Section 3.4 (*Extensions of Time*).⁵

“Guaranteed Construction Start Date” means the date for Construction Start that corresponds to the time for completion/occurrence in the Milestone Schedule, as adjusted in accordance with Section 3.4 (*Extensions of Time*).⁶

“Guaranteed Efficiency” or **“GE”** means a guaranteed measure stated as the ratio of the Discharge Energy to Charge Energy of the Facility (expressed as a percentage) during a Billing Period, as set forth in Appendix J (*Operating Characteristics*).

“hour” means each period of sixty (60) minutes, with the first such period for any Day beginning at 00:00 (Puerto Rico Time) and including each sixty (60)-minute interval thereafter.

“IF Completion Notice” has the meaning set forth in paragraph (c) of Section 4.4 (*Pre-Synchronization Testing*).

“Indemnitees” means, with respect to either PREPA or SELLER, (i) permitted successors and assigns, and (ii) as to both the Party and its permitted successors and assigns, their respective lenders, Affiliates, directors, officers, equity-holders, partners, employees, representatives, agents and contractors, and each of their respective heirs, successors and assigns.

“Indemnifying Party” has the meaning set forth in Section 13.1 (*General*).

“Initial Performance Tests” has the meaning set forth in paragraph (a) of Section 5.3 (*Initial Performance Tests*).

“Initial Synchronization” means the first time that SELLER synchronizes the Facility with the Grid System.

“Initial Synchronization Date” means the date on which Initial Synchronization occurs.

“Insolvency Event” means any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding with respect to SELLER or any of its respective properties or creditors, or any action taken by any trustee or receiver of SELLER or by any court in any such proceeding.

“Interconnection Agreement” means the interconnection agreement entered into between SELLER and PREPA, which sets out the terms upon which the Facility will connect and remain connected to the Grid System, as amended from time to time.

⁵ Note: PREB has ordered the 2-year timeline.

⁶ Note: PREB has ordered the 8-month timeline.

“Interconnection Construction Contract” means the primary contract for the construction of the PREPA Interconnection Facilities to be installed or constructed by SELLER, to be entered into between SELLER and one or more contractors, which shall include provisions with respect to the requirements set forth in Section 3 (*Select Requirements for the Interconnection Construction Contract*) of Appendix H (*Interconnection Description and Specifications*).

“Interconnection Facilities” means the PREPA Interconnection Facilities and the Seller Interconnection Facilities.

“Interconnection Point” means the physical point at which the Facility connects to the Grid System, as specified in Section 1 (*Description of the Interconnection Facilities*) of Appendix H (*Interconnection Description and Specifications*).

“Interest” means the compensation for the accrual of monetary obligations under this Agreement computed Monthly and prorated daily from the time each such obligation becomes past due based on an annual interest rate equal to the lesser of: (i) (a) for payments due during the first five (5) Days after such a payment becomes due, in each case, the Prime Commercial Lending Rate as set by Citibank NA., 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 (for the purposes of this definition, the **“Prime Rate”**), and (b) for payments due beginning on the sixth (6th) Day after such a payment is due, the Prime Rate plus five percent (5%); and (ii) the maximum rate allowable under Article 1169 of the Puerto Rico Civil Code or successor statute applicable to past due amounts. The provisions of this definition shall not be construed to limit the applicable rate of interest on the project debt.

“kW” means kilowatt.

“kWh” means kilowatt-hours.

“Legal Challenge” means any action, suit or proceeding brought or commenced by a third party (excluding any Affiliate of a Party) seeking to contest the validity of this Agreement, any Permits or the development, construction, or operation of the Facility or PREPA Interconnection Facilities which materially impairs the ability of the Parties to perform their respective obligations hereunder or delays the development, financing, construction or operation of the Facility or PREPA Interconnection Facilities.

“Liquidated Damages” means, collectively, Capability Shortfall Liquidated Damages, SELLER Delay Liquidated Damages, Availability Liquidated Damages, Capability Liquidated Damages, and Efficiency Liquidated Damages.

“Long-Stop Date” means the earlier to occur of (i) the first date on which accrued SELLER Delay Liquidated Damages (determined without reference to the operation of paragraph (c) of Section 3.5 (*Delay Liquidated Damages*)) exceed the Security Amount, and (ii) the one hundred eightieth (180th) Day after the Guaranteed Commercial Operation Date.

“Main Meters” has the meaning set forth in paragraph (a) of Section 8.1 (*Meter Ownership & Maintenance*).

“Malware” means computer software, code or instructions that: (i) intentionally, and with malice intent by a third party, adversely affect the operation, security or integrity of a computing, telecommunications or other digital operating or processing system or environment, including without limitation, other programs, data, databases, computer libraries and computer and communications equipment, by altering, destroying, disrupting or inhibiting such operation,

security or integrity; (ii) without functional purpose, self-replicate written manual intervention; (iii) purport to perform a useful function but which actually performs either a destructive or harmful function, or perform no useful function other than utilize substantial computer, telecommunications or memory resources with the intent of causing harm; or (iv) without authorization collect and/or transmit to third parties any information or data, including such software, code or instructions commonly known as viruses, trojans, logic bombs, worms, adware and spyware.

“Maximum Storage Energy” means the quantity (expressed in MWh) of Energy which the Facility makes available at the Interconnection Point while operating in Discharge Mode from one hundred percent (100%) State of Charge to zero percent (0%) State of Charge.

“Milestone” means any of the milestone events set out in the column captioned “*Milestone*” in the table set forth in the Milestone Schedule.

“Milestone Schedule” means the schedule set out in Appendix D (*Milestone Schedule*).

“Minimum Acceptance Capability” has the meaning set forth in item (2), paragraph (b) of Section 5.3 (*Initial Performance Tests*).

“Minimum Down Time” means the amount of time that the Facility must stay off-line after a shutdown prior to the next Start-Up, as further described in Appendix J (*Operating Characteristics*).

“Minimum Run Time” means the amount of time that the Facility must stay synchronizing with the Grid System after a Start-Up prior to a subsequent shutdown, as further described in Appendix J (*Operating Characteristics*).

“Modification Limit” means \$[●], representing one percent (1.0%) of SELLER’s total estimated cost for the construction, testing, and commissioning of the Facility as of the Agreement Date.

“Month” means a calendar month, which shall begin at 00:00 on the first Day of such calendar month and end at 00:00 on the first Day of the next calendar month.

“Monthly Contract Capability” or **“MCC”** has the meaning set forth in Section 5 (*Monthly Contract Capability*) of Appendix F (*Compensation*).

“Monthly Fixed Payment” or **“MFP”** has the meaning set forth in Section 2 (*Monthly Fixed Payment*) of Appendix F (*Compensation*).

“Monthly Payment” has the meaning set forth in Section 1 (*Monthly Payment*) of Appendix F (*Compensation*).

“Monthly Variable Payment” or **“MVP”** has the meaning set forth in Section 3 (*Monthly Variable Payment*) of Appendix F (*Compensation*).

“MTRs” means the minimum technical requirements applicable to the Facility for connection of the Facility to the Grid System set forth in Appendix K (*Minimum Technical Requirements*), as PREPA may modify or replace from time to time after the Closing Date in accordance with Section 4.2 (*Modifications*).

“MW” means megawatts.

“**MWh**” means megawatt-hours.

“**Non-Affected Party**” has the meaning set forth in paragraph (d) of Section 14.1 (*General*).

“**Non-Scheduled Derating**” means any Derating other than a Scheduled Derating.

“**Non-Scheduled Outage**” means any Outage other than a Scheduled Outage.

“**Operating Characteristics**” has the meaning set forth in Appendix J (*Operating Characteristics*).

“**Operating Day**” means a Day within the Supply Period on which the Facility operates.

“**Operating Procedures**” means the procedures for the Facility’s operation and integration into the Grid System, as set out in Appendix L (*Operating Procedures*), as amended from time to time.

“**Other Minimum Acceptance Criteria**” means, collectively, the MTRs, Operating Characteristics, and any other criteria set out in the Testing Protocol and Operating Procedures.

“**Outage**” means, for any period of time, SELLER’s failure or inability to make available Energy Storage Services at the Interconnection Point for any reason.

“**P3A**” means the Public-Private Partnership Authority of Puerto Rico or any successor thereto.

“**Party**” and “**Parties**” has the meaning set forth in the preamble of this Agreement.

“**Pending Permit Delay**” means, for any Permit for which SELLER has duly and properly applied and has exercised / continues to exercise diligent efforts to obtain, the denial of or delay in granting such Permit by the relevant Governmental Authority for any reason, other than SELLER’s failure to comply with the requirements for the issuance of such Permit, which materially impairs the ability of SELLER to achieve Commercial Operation.

“**Performance Guarantees**” has the meaning set forth in Appendix P (*Performance Guarantees*).

“**Performance Security**” has the meaning set forth in paragraph (a) of Section 2.5 (*Performance Security*).

“**Performance Tests**” means tests which verify that (i) the Facility can accept Charge Energy and deliver Discharge Energy and Ancillary Services at the Interconnection Point in accordance with the Operating Characteristics, (ii) the Facility meets the Performance Guarantees, and (iii) the Facility complies with each of the Other Minimum Acceptance Criteria, in each case in accordance with the Testing Protocol.

“**Permanent Closing**” means, after the Commercial Operation Date, the occurrence of any of the following events: (i) for any period of eighteen (18) consecutive Months, excluding periods of Outages due to Force Majeure affecting SELLER or any PREPA Risk Event, Facility Availability equals zero (0), or (ii) for any period of thirty-six (36) consecutive Months, regardless of whether SELLER claims Force Majeure during such period, Facility Availability equals zero (0), in each case excluding periods of Outages due to any PREPA Risk Event.

“**Permits**” means all permits, licenses, approvals, authorizations, consents, variances, or waivers issued by a Governmental Authority with jurisdiction over SELLER and the Facility which SELLER or its contractors will require for the development, construction, ownership, start-up,

operation, maintenance, or financing of the Facility and/or the Interconnection Facilities, including those set out in Appendix E (*Seller Permits*).

“**Permitted Guarantor**” has the meaning set forth in the RFP.

“**Permitted Outage Hour**” means any hour during the Supply Period in which an Outage or Derating occurs as a result of a Scheduled Outage, Scheduled Derating, Force Majeure affecting SELLER or a PREPA Risk Event.

“**Person**” means an individual, partnership, corporation, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, or a government or agency or political subdivision thereof.

“**Post-Agreement Date Environmental Costs**” means all Environmental Costs resulting from measures required to comply with Applicable Law enacted, approved, or issued after the Agreement Date.

“**Post-Agreement Date Taxes**” means all Taxes resulting from measures required to comply with Applicable Law enacted, approved, or issued after the Agreement Date.

“**Pre-Operation Period**” means the period of time from (and including) the Closing Date up to (but excluding) the Commercial Operation Date.

“**PREB**” means the Puerto Rico Energy Bureau or any successor thereto.

“**PREPA**” has the meaning set forth in the preamble of this Agreement.

“**PREPA Bankruptcy**” means the proceeding commenced pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), pending as of the Agreement Date in the PROMESA Court, Case No. 17-4780.

“**PREPA Delay Liquidated Damages**” has the meaning set forth in paragraph (a) of Section 3.5 (*Delay Liquidated Damages*).

“**PREPA Design Criteria Documents**” or “**DCDs**” has the meaning set forth in section (1) of paragraph (b) of Section 2 (*Interconnection Point Specifications*) of Appendix H (*Interconnection Description and Specifications*).

“**PREPA Interconnection Facilities**” means all equipment and facilities (including the Main Meters) located on PREPA’s side of the Interconnection Point, constructed and installed or upgraded for the purpose of interconnecting the Facility with the remainder of the Grid System, as further described in Appendix H (*Interconnection Description and Specifications*) and not including communication, control, or protection equipment for which this Agreement assigns responsibility to SELLER.

“**PREPA Interconnection Facilities Work**” has the meaning set forth in paragraph (b) of Section 3.2 (*SELLER’s Development Obligations*).

“**PREPA Performance Test**” means a Performance Test that SELLER shall conduct at PREPA’s request in accordance with Section 6.9 (*Supply Period Performance Tests*).

“**PREPA Risk Event**” means any of the following events:

- a. Force Majeure or a Legal Challenge in each case affecting PREPA;
- b. a Grid System Event;
- c. PREPA's failure to make Charge Energy available to SELLER at the Interconnection Point;
- d. the duration of time required by PREPA to render a Best Interests Determination for the Project exceeds ninety (90) Days;
- e. a breach, delay, or failure by PREPA in performing any material obligation under this Agreement or the Interconnection Agreement; or
- f. following any modifications to the MTRs under Section 4.2 (*Modifications*), the duration of the Facility's unavailability as reasonably required to carry out changes to the Facility to comply with such modifications;

which, in each case, did not result from an act or omission of SELLER, Force Majeure affecting SELLER or the circumstances described in Section 7.2 (*Curtailment for Breach*).

"Product" means all Discharge Energy, Ancillary Services, and Green Credits made available from or otherwise derived in connection with the operation of the Facility.

"Project" has the meaning set forth in Recital B of the preamble of this Agreement.

"Project Lenders" means any Person providing, arranging, insuring or guaranteeing all or part of the construction or permanent financing or other funding, including any tax equity financing, for the Facility, the PREPA Interconnection Facilities or any portion thereof, or any agent, trustee or other Person representing or acting on behalf of any such Person.

"PROMESA Court" means the United States District Court for the District of Puerto Rico.

"Proposed Design" has the meaning set forth in paragraph (b) of Section 4.1 (*Proposed Design*).

"Proposed Initial Synchronization Date" has the meaning set forth in Section 5.1 (*Scheduling Synchronization*).

"Prudent Utility Practices" means the spectrum of possible practices, methods, conduct, and actions (including the practices, methods, conduct, and actions engaged in or approved by a significant portion of the power industry in the United States) that, at a particular time, in the exercise of reasonable discretion at the time a decision was made, could have been expected to accomplish the desired result in a manner consistent with Applicable Laws and Applicable Standards for reliability, safety and economy.

"PSS/E" means power system simulation for engineering, a commercial software product developed by Siemens PTI Inc.

"Puerto Rico Controller" means the Office of the Controller for the Commonwealth of Puerto Rico.

"Qualified Bank" means a national bank, national association, commercial bank or other financial institution registered in the United States, having a branch located within Puerto Rico or the

contiguous United States, and otherwise acceptable to PREPA that has a long-term issuer rating of at least (i) if headquartered within Puerto Rico, then “B+” by Standard & Poor’s Ratings Services, “B1” by Moody’s Investors Services Inc., or “B+” by Fitch Ratings Inc. or (ii) if headquartered outside of Puerto Rico, then “A-” by Standard & Poor’s Ratings Services, “A3” by Moody’s Investors Services Inc., or “A-” by Fitch Ratings Inc., or in each case if the relevant rating agencies cease to engage in business or rate the obligations in question, then an equivalent rating from another internationally recognized rating agency selected by SELLER with the written consent of PREPA; provided that, if such financial institution’s ratings satisfy such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications.

“**Qualified Operator**” means SELLER, an Affiliate of SELLER, or, if a third party contractor of SELLER or its Affiliate, an entity with at least two (2) years’ experience operating facilities of a similar type and size as the Facility or another qualified and experienced operator reasonably acceptable to PREPA.

“**Receiving Party**” has the meaning set forth in paragraph (a) of Section 12.9 (*Confidentiality*).

“**Registry**” has the meaning set forth in Section 9.5 (*Green Credits*).

“**RFP**” has the meaning set forth in Recital A in the preamble of this Agreement.

“**SCADA**” means the Facility’s supervisory control and data acquisition system, which may include equipment installed by SELLER in accordance with PREPA requirements.

“**Scheduled Derating**” means a planned Derating that SELLER has coordinated in advance with PREPA with a mutually agreed commencement date, time, and duration, and set out in the Scheduled Maintenance Program pursuant to Article 6 (*Operation Of The Facility*).

“**Scheduled Discharge Energy**” means, for any Billing Period, the aggregate quantity of Discharge Energy scheduled for delivery by the Facility to the Interconnection Point during such period, as set out in any and all Dispatch Notices issued by PREPA in respect of such period in accordance with Section 7.1 (*Dispatching*).

“**Scheduled Maintenance Program**” has the meaning set forth in paragraph (b) of Section 6.3 (*Scheduled Maintenance*).

“**Scheduled Outage**” means a planned Outage that SELLER has coordinated in advance with PREPA with a mutually agreed commencement and duration, and set out in the Scheduled Maintenance Program pursuant to Article 6 (*Operation Of The Facility*).

“**Security Amount**” means (i) prior to the Commercial Operation Date, twelve and one-half United States Dollars (\$12.5) per kWh *multiplied by* Design D^{\max} (expressed as kW) *multiplied by* the Design D^{\max} Duration or such higher amount as agreed in accordance with paragraph (c) of Section 3.5 (*Delay Liquidated Damages*), and (ii) on and after the Commercial Operation Date, seventeen and one-half United States Dollars (\$17.5) per kWh *multiplied by* Design D^{\max} (expressed as kW) *multiplied by* the Design D^{\max} Duration.

“**SELLER**” has the meaning set forth in the preamble of this Agreement.

“**SELLER Delay Liquidated Damages**” or “**SDLD**” means the amount per Day of delay set forth in the column captioned “SELLER Delay Liquidated Damages”, which corresponds to the Milestone captioned “Commercial Operation”, expressed as \$ per Day, in the Milestone Schedule.

“**Seller Interconnection Facilities**” means all equipment and facilities (including SELLER’s meters and metering equipment), located on SELLER’s side of the Interconnection Point, constructed and installed for the purpose of interconnecting the Facility with the Grid System, as further described in Appendix H (*Interconnection Description and Specifications*).

“**Seller Liability Cap**” means [●].⁷

“**Seller Performance Test**” has the meaning set forth in paragraph (b) of Section 6.9 (*Supply Period Performance Tests*).

“**Shareholder**” means, for any time of determination, any direct holder of capital stock in SELLER at such time.

“**Site**” means the approximately [●] acres of land located in [●], Puerto Rico, as further described in Appendix G (*Facility Site*).

“**Sponsor**” means, for each Shareholder of, or a Person holding a partnership or membership interest in, SELLER on the Agreement Date, the ultimate parent company of such shareholder or Person.

“**Stand-by Energy Consumption**” means the average hourly consumption of Energy by the Facility, measured over twenty-four (24) consecutive hours while the Facility operates in Storage Mode.

“**Stand-by Self Discharge**” means the difference between a starting SOC at seventy-five percent (75%) and the ending SOC at the conclusion of a twenty-four (24) hour period while the Facility stands idle but ready for immediate operation, as set forth in Appendix J (*Operating Characteristics*).

“**Start-Up**” means the action of bringing [a Unit / the Facility] from non-operation to operation at the Facility’s D^{\min} , as specified in Appendix J (*Operating Characteristics*), and the Facility operates at steady state mode for a minimum of the lesser of one (1) hour or the Minimum Run Time (per Appendix J (*Operating Characteristics*)).

“**State of Charge**” or “**SOC**” means for any time of determination the amount of Stored Energy at such time expressed as a percent of the Maximum Stored Energy.

“**Station Use**” means the electrical load of the Facility’s auxiliary equipment that is necessary for the operation of the Facility as set forth in Appendix J (*Operating Characteristics*). The auxiliary equipment includes, but is not limited to, forced and induced draft fans, air conditioner systems, heating systems, cooling towers, plant lighting and control systems, any heating or cooling equipment necessary to keep energy storage componentry within their normal operating temperatures, any motors or pumps required for moving material within the energy storage system, and any other electrical loads required in order for the Facility to provide Energy Storage Services.

⁷ Note: Insert amount equal to 25% of SELLER’s estimated project costs.

“**Station Use Meters**” has the meaning set forth in paragraph (b) of Section 8.1 (*Meter Ownership & Maintenance*).

“**Storage Mode**” means a mode of operation whereby the Facility stands idle but ready for immediate operation as set forth in Appendix J (*Operating Characteristics*).

“**Stored Energy Level**” or “**SEL**” means, at a particular time, the quantity of Energy stored in the Facility at such time, expressed in MWh.

“**Substantial Completion Notice**” has the meaning set forth in paragraph (f) of Section 4.4 (*Pre-Synchronization Testing*).

“**Supply Period**” means the period that commences on the Commercial Operation Date and expires on the twenty-fifth (25th) anniversary thereof.

“**System Impact Study**” means, for each proposal selected by PREPA for the phase III evaluation and contract negotiation of proposals under the RFP, a study that will, at a minimum, (i) determine the power capabilities of the major interconnection equipment required to complete the Interconnection Facilities, (ii) specify the maximum fault currents necessary to specify short circuit duty and interrupting ratings for the electrical equipment, (iii) approve or disapprove generator step-up (GSU) transformer impedance and reactive compensation equipment for proper control of voltage and reactive power flow, (iv) quantify the impact to the Grid System and the actions required to mitigate such impact, and (v) specify the Proposed Design requirements for the Facility and the PREPA Interconnection Facilities.

“**T&D Operator**” means LUMA Energy, LLC, or any future operator of Puerto Rico’s electric power transmission and distribution system or any of such operator’s Affiliates, including PREPA’s assignee under the circumstances described in Section 19.2 (*PREPA’s Right to Assign*).

“**Tax Credits**” means the production or investment tax credits (including any grants or payment in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or other Applicable Law available as a result of the ownership and operation of the Facility or the output generated by the Facility (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation).

“**Taxes**” means any and all taxes, fees or other charges of any nature whatsoever, including income taxes and repatriation (tollgate) taxes, imposed or assessed by a Governmental Authority responsible for implementing Applicable Law relating to tax on or as a result of the ownership or operations of the Facility.

“**Technical Dispute**” has the meaning set forth in paragraph (b) of Section 21.11 (*Dispute Resolution*).

“**Technical Input**” has the meaning set forth in paragraph (c) of Section 4.1 (*Proposed Design*).

“**Technical Recommendation**” has the meaning set forth in paragraph (b) of Section 21.11 (*Dispute Resolution*).

“**Term**” has the meaning set forth in Section 2.2 (*Initial Term*).

“**Termination Balance**” has the meaning set forth in paragraph (b) of Section 17.2 (*Tracking Account*).

“Termination Date” means the date of the earliest to occur of any of the events set forth in Section 15.1 (*Termination Date*).

“Tested Duration Energy” or **“TDE”** means the quantity (expressed in MWh) of Discharge Energy which the Facility makes available when discharging at D^{\max} over the Design D^{\max} Duration following charging starting at zero percent (0%) State of Charge over the Design Charge Duration, as demonstrated in the most recent Performance Test.

“Testing Protocol” means PREPA’s standard protocols for testing and commissioning of energy storage facilities set forth in Appendix M (*Testing Protocol*), as amended from time to time.

“Threshold Availability” or **“TA”** has the meaning set forth in paragraph (a) of Section 1 (*Facility Availability*) of Appendix P (*Performance Guarantees*).

“Tracking Account” has the meaning set forth in paragraph (a) of Section 17.2 (*Tracking Account*).

“Transfer” has the meaning set forth in Section 19.2 (*PREPA’s Right to Assign*).

“Unauthorized Charge” has the meaning set forth in paragraph (b) of Section 7.6 (*Unauthorized Charge*).

“Unit” means a [segregable component of the Facility which may be operated independently of other components of the Facility to provide Energy Storage Services], as more particularly described in Appendix J (*Operating Characteristics*), and all appurtenant facilities and equipment, from which SELLER has agreed to provide the Energy Storage Services to PREPA pursuant to this Agreement, as further described in Appendix J (*Operating Characteristics*).

“Variable O&M Price Inflation” or **“VOMPI”** has the meaning set forth in Section 4 (*Variable O&M Price Inflation*) of Appendix F (*Compensation*).

“Wholly-Owned Affiliate” means, with respect to a Shareholder, any Person that:

- a. owns directly or indirectly one hundred percent (100%) of the issued share capital and voting rights of such Shareholder;
- b. has one hundred percent (100%) of its issued share capital and voting rights owned directly or indirectly by such Shareholder; or
- c. has one hundred percent (100%) of its issued share capital and voting rights owned directly or indirectly by another Person which owns directly or indirectly one hundred percent (100%) of the issued share capital and voting rights of such Shareholder.

“Year” means a calendar year, which shall be the twelve (12) Month period beginning 00:00 on January 1 and ending at 00:00 on the subsequent January 1.

1.2 Rules of Interpretation

The rules of interpretation listed below shall apply when interpreting this Agreement:

- a. Words importing the singular also include the plural and vice versa.

- b. References to natural persons or parties include any person having legal capacity.
- c. References to a Person include such Person's successors and assigns; provided that with respect to a Party and its rights and obligations under this Agreement, references to a Party shall only include such Party's successors and assigns if this Agreement permits such successors and assigns.
- d. Words importing one gender include the other gender.
- e. The words "include" and "including" mean "including, but not limited to" and corresponding grammatical variants.
- f. Except as otherwise expressly stated herein, all references in this Agreement to this Agreement (including the Appendices hereto) or to contracts, agreements, or other documents shall be deemed to mean this Agreement (including the Appendices hereto) and such contracts, agreements, or other documents, as the same may be modified, supplemented, or amended from time to time.
- g. Except as otherwise expressly stated herein, all references to Sections, Articles, and Appendices in this Agreement are references to the Sections, Articles, and Appendices of this Agreement.
- h. Words and abbreviations not defined in this Agreement which have generally accepted technical or design, engineering, or construction industry meanings are used in this Agreement in accordance with such recognized meanings.
- i. The terms "hereof," "herein," "hereto," "hereunder" and words of similar or like import, refer to this entire Agreement, together with its Appendices, and not any one particular Article, Section, Appendix, or other subdivision of this Agreement.
- j. The headings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties hereto, nor should they be used to aid in any manner in the construction of this Agreement.
- k. References to PREPA in the definition of Dispatch Notice, Charge Notice and Grid System Event and Section 6.6 (*Restoration of the Facility*), Article 7 (*Dispatching & Charging Obligations*), Section 8.5 (*Data*), Section 9.1 (*General*), and Section 9.4 (*Ancillary Services*) include its dispatching center(s) and the T&D Operator, as applicable.
- l. Terms used in the present tense may be interpreted as referring to the past tense and vice versa.
- m. Nothing contained in this Agreement shall be construed or interpreted to limit in any way PREB's power and authority under the Laws of the Commonwealth of Puerto Rico.

2. TERM, EFFECTIVENESS & PERFORMANCE SECURITY

2.1 Signing Conditions

The Parties shall complete their respective obligations set out in Appendix B (*Signing Conditions*) no later than the Agreement Date. SELLER recognizes that submittal of the certifications and

documents set out in Appendix B (*Signing Conditions*) constitute an essential condition of this Agreement.

2.2 Initial Term

The term of this Agreement (the “**Term**”) shall begin with the Agreement Date and continue until the expiration of the Supply Period, unless extended or earlier terminated in accordance with the terms hereof. If the Parties extend the Term, then the word “Term” shall thereafter be deemed to mean the original Term as so extended.

2.3 Initial Effectiveness & Closing Date

The rights and obligations of the Parties under Article 1 (*Definitions & Interpretation*), this Article 2, Section 3.6 (*Exchange of Information*), Section 3.7 (*Cooperation*), Article 12 (*Representations, Warranties, & Covenants*), Article 14 (*Force Majeure*), Article 15 (*Termination*), Article 19 (*Assignment & Transfer*), Article 20 (*Notices*) and Article 21 (*Miscellaneous Provisions*), shall enter into full force and effect on the Agreement Date (collectively, the “**Agreement Date Obligations**”). Subject to the foregoing rights and obligations that become effective on the Agreement Date, the remaining provisions of this Agreement shall become effective on the date (the “**Closing Date**”) as of which the Parties jointly sign a certificate, in the form set forth in Appendix S (*Form of Conditions Precedent Certificate*), confirming the satisfaction or waiver of each of the conditions precedent set out in Appendix C (*Conditions Precedent*) (the “**Conditions Precedent**”). The Parties shall issue such certificate within five (5) Business Days after the occurrence of such satisfaction or waiver. Each Party shall use its commercially reasonable efforts to satisfy their respective Conditions Precedent (other than the Condition Precedent set forth in paragraph (c) of Part 3 of Appendix C (*Conditions Precedent*)) and cause the Closing Date to occur no later than sixty (60) Days after the Agreement Date. If either (i) the Closing Date does not occur for any reason within one hundred eighty (180) Days after the Agreement Date, or (ii) PREPA notifies SELLER of its intention either not to (A) accept the Best and Final Offer made by SELLER, or (B) issue a Best Interests Determination for the Project, in each case for any reason whatsoever, then this Agreement shall automatically terminate at midnight on such Day without either Party incurring any liability to the other Party, provided that, if SELLER breaches any of the Agreement Date Obligations, then PREPA shall have the right to draw on the full face amount of the Bid Security.

2.4 Extension

The Parties may agree to extend the Term of this Agreement, with approval from PREB, for up to two (2) consecutive periods of five (5) Agreement Years each, following the expiration of the initial Supply Period. Either Party may notify the other of its desire to extend the Term in writing as provided for under this Section 2.4 not less than eighteen (18) Months prior to the expiration of the initial Supply Period or extended Supply Period, as the case may be. During any extension, all provisions contained herein shall remain in effect unless otherwise agreed in writing.

2.5 Performance Security

- a. To secure the due, proper, timely, and full performance of SELLER’s obligations under this Agreement, SELLER shall provide to PREPA as a condition precedent to the Closing Date, at SELLER’s sole expense, one or more on-first-demand, irrevocable standby letters of credit issued by a Qualified Bank substantially in the form set forth in Appendix V (*Form of Performance Security*) and otherwise acceptable to PREPA (or cash collateral or

other on-first demand, irrevocable security acceptable to PREPA in its sole discretion) in an amount equal to the Security Amount (the “**Performance Security**”).

- b. SELLER shall (i) maintain the Performance Security in full force and effect and in accordance with this Agreement until the date that occurs sixty (60) Days after the expiration of the Term (the “**Scheduled Expiration Date**”), and (ii) together with the delivery of each Performance Security or replacement thereof, deliver a written statement dated as of the delivery date duly signed by its authorized representative certifying that the issuer of such Performance Security meets the requirements of a Qualified Bank.
- c. SELLER shall cause a Qualified Bank to issue, reissue or replace any Performance Security (in compliance with this Section 2.5) in accordance with the following:
 - 1. to the extent that the Performance Security will expire or cease to exist prior to the Scheduled Expiration Date, then no later than twenty-one (21) Days prior to the date of such expiration or cessation;
 - 2. in the event that the issuer of the Performance Security ceases to meet the requirements of a Qualified Bank, then no later than twenty-eight (28) Days after the date of such cessation; and
 - 3. if the Parties agree to increase the Design Storage Energy, then promptly upon the date of such agreement.
- d. PREPA shall have the right to draw down on the Performance Security (via a full or one or more partial drawings) to satisfy any outstanding, unpaid amounts hereunder or as otherwise specifically provided herein, upon the occurrence of any of the following events:
 - 1. Construction Start Termination Event;
 - 2. COD Termination Event;
 - 3. SELLER’s failure to pay Liquidated Damages when due under this Agreement;
 - 4. SELLER’s failure to provide replacement Performance Security in accordance with paragraph (c) of this Section 2.5; provided that (i) PREPA deposits the amount so drawn in an escrow account in a bank selected by PREPA until SELLER delivers the replacement Performance Security to PREPA and upon such delivery, PREPA shall cause the release of the undrawn amounts on deposit in such account to SELLER, and (ii) PREPA shall have the right to draw from the escrow account in accordance with paragraph (d) of this Section 2.5 and SELLER shall bear the costs of opening and maintaining such escrow account;
 - 5. except as otherwise covered by items (1) to (4) of this paragraph (d) of this Section 2.5, a Default by SELLER; or
 - 6. any other event that expressly entitles PREPA to draw down or claim on the Performance Security under this Agreement.

PREPA shall have the right to draw down on the entire undrawn portion of the face amount of the Performance Security upon the occurrence of (i) the events described in items (1),

(2) or (4) of this paragraph (d) of this Section 2.5, and (ii) PREPA's termination of this Agreement following the occurrence of a Default by SELLER.

3. PRE-OPERATION PERIOD

3.1 Consulting Technical Expert

No later than the Closing Date, PREPA shall consult with SELLER and appoint an engineer (the "**Consulting Technical Expert**") to review technical matters, assist in the resolution of technical issues, issue non-binding technical recommendations in connection with Technical Disputes in accordance with this Agreement and monitor the works undertaken by, or on behalf of, SELLER (i) for the design, construction and commissioning of the Facility and the PREPA Interconnection Facilities, and (ii) the operation of the Facility during the Supply Period. PREPA may designate different Consulting Technical Experts for different purposes under this Agreement. The Consulting Technical Expert's staff shall include suitably qualified engineers and other professionals who possess the competence to carry out such duty. The Consulting Technical Expert shall verify that SELLER complies with this Agreement and conduct reviews of works performed by, or on behalf of, SELLER in accordance with Appendix I (*Progress Review*). SELLER shall consider all non-binding technical recommendations issued by the Consulting Technical Expert in order to comply with the requirements of this Agreement during the Pre-Operation Period. Whenever carrying out its duties in accordance with this Agreement, the Consulting Technical Expert shall act on behalf of PREPA. Any action undertaken by PREPA shall not relieve SELLER from any responsibility it has under this Agreement.

3.2 SELLER's Development Obligations

- a. SELLER shall develop, design, finance, permit, construct, install, test, and commission the Facility as well as the PREPA Interconnection Facilities (subject to paragraph (b) of this Section 3.2) and achieve Commercial Operation no later than the Guaranteed Commercial Operation Date, at its own cost, in accordance with the Milestone Schedule, the requirements of all Permits, the MTRs, the Approved Design, the Interconnection Agreement, Prudent Utility Practices, the other provisions of this Agreement, Applicable Law and Applicable Standards.
- b. SELLER agrees that the works required as part of the Interconnection Facilities that will be performed within PREPA's active system (including, for example, works conducted at a PREPA substation or to interconnect such facilities) may, at PREPA's election, be executed by PREPA and its contractor or by SELLER (in any case, at SELLER's expense if described in the Facility Study). If PREPA elects to perform, or have its contractor perform, such work inside PREPA's active system, then (i) the Parties shall agree in writing on the scope, reasonably expected timeline and costs for such work (the "**PREPA Interconnection Facilities Work**"), (ii) SELLER shall reimburse PREPA for all amounts actually incurred by PREPA (without markup), or directly fund all amounts invoiced by its contractors, in each case, for the cost to complete such work up to the pre-agreed cost amount, and (iii) PREPA shall bear sole responsibility for the quality and timeliness of the PREPA Interconnection Facilities Work, and delays in the completion of such work beyond the agreed timeline shall constitute grounds for an extension of time for the occurrence of the Milestone for Commercial Operation to the extent permitted under Section 3.4 (*Extensions of Time*).

- c. SELLER shall acquire (or lease) all land parcels, easements, rights-of-way, and other real property rights required to construct, test, commission, own, operate, and repair the Facility in its own name and at its own cost, and maintain such rights until the expiration of the Term.

3.3 Regular Updates

SELLER shall submit progress reports to PREPA on the development, construction, permitting, third-party contracting, and financing of the Facility no later than the fifth (5th) Business Day of every Month, commencing on the first Month following the Closing Date and continuing until the Commercial Operation Date. SELLER acknowledges that PREPA may keep PREB and other Governmental Authorities apprised of its progress.

3.4 Extensions of Time

SELLER shall have the right to an extension of the time for the completion or occurrence of any Milestone or deadline expressly stated herein where a Force Majeure affecting SELLER or a PREPA Risk Event directly delays SELLER's ability to achieve such Milestone or deadline, but only to the extent that (i) such delay would not have occurred but for the occurrence of such event, (ii) SELLER exercises its commercially reasonable efforts to mitigate the effects of such delay, and (iii) SELLER has notified PREPA of such delay, and provided PREPA with a detailed explanation of the circumstances leading to such delay, as promptly as possible, but no later than ten (10) Business Days of the occurrence of such event. If SELLER exercises the foregoing right, then the time for completion or occurrence of such Milestone or deadline shall extend by the number of Days during which such event giving rise to such delay prevented SELLER from achieving such Milestone or deadline; provided that, notwithstanding any other provision of this Agreement to the contrary, with respect to any extension of the Milestone for Commercial Operation, such extensions shall not exceed, in the aggregate ten percent (10%) of the period allocated for the time for completion or occurrence on the Agreement Date without the prior written approval of PREB.⁸

3.5 Delay Liquidated Damages

- a. To the extent that (i) a PREPA Risk Event delays SELLER's ability to achieve Commercial Operation as determined under Section 3.4 (*Extensions of Time*) and (ii) SELLER achieves either Deemed Completion or Commercial Operation, then PREPA shall pay to SELLER, as SELLER's sole and exclusive remedy in respect of such delay, an amount per Day of such delay equal to one thirtieth (1/30) of the Capability Payment Price applicable to the first Agreement Year as liquidated damages (the "**PREPA Delay Liquidated Damages**") no later than forty-five (45) Days after receipt of an invoice therefor; provided that (A) if, upon the occurrence of Commercial Operation Date, the Monthly Contract Capability established by the Initial Performance Tests falls below the Design D^{\max} , then the Parties shall reduce the PREPA Delay Liquidated Damages and SELLER shall credit PREPA's account for any overpayment according to the ratio that such Monthly Contract Capability bears to the Design D^{\max} ; and (B) the Term shall reduce for each Day in respect of which PREPA has paid PREPA Delay Liquidated Damages. The Parties acknowledge and agree that the PREPA Delay Liquidated Damages represent a fair and reasonable estimate of the losses which SELLER will suffer if Commercial Operation does not occur by the

⁸ Note: PREB prohibits PREPA from granting an aggregate time extension under this Agreement that exceeds 10% of the contractually agreed period for achieving the Commercial Operation Date.

Guaranteed Commercial Operation Date, and accordingly the Parties hereby waive their right to dispute the validity of this paragraph (a) of Section 3.5.

- b. For each Day of delay in achieving Commercial Operation after the Guaranteed Commercial Operation Date until the earlier of (i) the Commercial Operation Date, and (ii) the Long-Stop Date, other than any Day in respect of which PREPA has an obligation to pay PREPA Delay Liquidated Damages in accordance with paragraph (a) above, SELLER shall pay to PREPA as liquidated damages the SELLER Delay Liquidated Damages, no later than forty-five (45) Days after receipt of an invoice therefor. The SELLER Delay Liquidated Damages shall constitute PREPA's sole and exclusive remedy in respect of such delay, other than those remedies arising out of the termination by PREPA for delay under Section 15.1 (*Termination Date*). The Parties acknowledge and agree that the SELLER Delay Liquidated Damages represent a fair and reasonable estimate of the losses which PREPA will suffer if Commercial Operation does not occur by the Guaranteed Commercial Operation Date, and accordingly the Parties hereby waive their right to dispute the validity of this paragraph (b) of Section 3.5.
- c. The Parties acknowledge and agree that SELLER's maximum aggregate liability arising out of this Agreement for delays in achieving Commercial Operation shall not exceed the Security Amount. If, prior to the Commercial Operation Date, the accrued SELLER Delay Liquidated Damages (determined without reference to the Security Amount) exceed, or will likely exceed, the applicable Security Amount, then SELLER shall have the right to increase the Security Amount by an amount specified in a written notice to PREPA; provided that, if the amount of such increase exceeds the amount (expressed in USD) corresponding to the product of the per Day SELLER Delay Liquidated Damages amount *multiplied by* the number of Days corresponding to a ten percent (10%) increase, in the aggregate with all of the extensions of time to achieve Commercial Operation, then such increase shall not become effective until PREPA obtains PREB's approval of such increase. If SELLER desires to increase the Security Amount under this paragraph (c) of this Section 3.5, then such increase shall not become effective until SELLER has delivered a replacement Performance Security with a total face amount to cover the increased Security Amount.

3.6 Exchange of Information

For purposes of conducting any investigations and evaluations as the Parties may deem reasonable and necessary to determine the feasibility of the Facility, the PREPA Interconnection Facilities, and the technical aspects related to the provision of Energy Storage Services, the Parties agree to cooperate reasonably and in good faith and provide each other and their respective representatives reasonable and timely access to relevant personnel, advisors (including environmental consultants), properties, and books and records, provided the information is not privileged, confidential or protected under other agreements with third parties or by Law. Subject to the conditions stated in the previous sentence, each Party hereby agrees to cooperate and exchange information necessary to permit, finance, construct and operate the Facility. Notwithstanding anything in this Agreement to the contrary, SELLER shall remain solely responsible for permitting, financing, constructing, and operating the Facility.

3.7 Cooperation

To the extent legally permitted, the Parties agree to cooperate reasonably and in good faith in the mutually beneficial endeavor to obtain (i) control of, or other required access and rights to, the real

property upon which the Facility will be located, (ii) financing for the Facility and the PREPA Interconnection Facilities, and (iii) all necessary Permits, endorsements and approvals for siting and construction of the Facility and the PREPA Interconnection Facilities. Notwithstanding anything in this Agreement to the contrary, SELLER shall remain solely responsible for obtaining the items set out in subparagraphs (i) through (iii) of this Section 3.7.

3.8 Interconnection Agreement

SELLER shall comply with all terms and conditions contained in the Interconnection Agreement. PREPA shall bear no liability or cost under this Agreement related to interconnection or electric distribution or transmission service for the Facility.

3.9 Protocols & Procedures

No later than one hundred eighty (180) Days after the Closing Date, the Parties, in consultation with the Consulting Technical Expert, shall agree upon any adjustments or additions to the Testing Protocol (including in respect of the Performance Tests) and Operating Procedures applicable to the Facility, taking into consideration Prudent Utility Practices, the MTRs, the Approved Design, the Operating Characteristics, equipment supplier and manufacturer recommendations set forth in their operating manuals, and the terms and conditions of this Agreement. The Testing Protocol and Operating Procedures shall only be modified with the written consent of the Parties. In the event of any conflict between the terms and conditions of this Agreement and the Testing Protocol or Operating Procedures, the terms and conditions of this Agreement shall prevail. SELLER acknowledges and agrees that (i) its compliance with the Operating Procedures or Testing Protocol does not relieve SELLER from any liability that it would otherwise have under this Agreement, and (ii) PREPA shall not be liable to SELLER or any other Person by reason of its review or approval of the Operating Procedures or Testing Protocol.

3.10 SELLER Utilities

SELLER shall procure at its own cost its own electricity prior to the Initial Synchronization Date, which it may obtain from PREPA through a separate agreement, and shall procure all of its other water, fuel, and other utilities during the Term. From and after the Initial Synchronization Date until the Commercial Operation Date, PREPA agrees to provide backfeed electricity to SELLER as requested by SELLER at the most advantageous published rate available to SELLER, based on PREPA's approved tariff, which shall conform with rates PREPA charges to similar customers. PREPA shall have responsibility for delivery to the Facility at the Interconnection Point of such quantities of Charge Energy as may be specified in a Charge Notice for SELLER to draw from the Grid System, in accordance with Section 7.4 (*Charge Energy Obligations*), at no cost to SELLER.

4. FACILITY DESIGN REQUIREMENTS

4.1 Proposed Design

- a. No later than sixty (60) Days after the Closing Date, SELLER shall submit to PREPA a thirty percent (30%) engineering design for the Facility and the PREPA Interconnection Facilities. PREPA shall review and comment on such design within fifteen (15) Business Days.
- b. No later than sixty (60) Days after PREPA provides its comments (or approval) pursuant to paragraph (a) of this Section 4.1, SELLER shall submit to PREPA the issued-for-construction design of the Facility and the PREPA Interconnection Facilities (the

“Proposed Design”). SELLER agrees to ensure that the Proposed Design will (i) comply with Prudent Utility Practices, the requirements of the Interconnection Agreement, the Operating Characteristics, Permits, Applicable Laws, Applicable Standards, and the MTRs, and (ii) incorporate all equipment required for the Facility to comply with the MTRs.

- c. No later than thirty (30) Days following SELLER’s delivery to PREPA of the Proposed Design, PREPA shall complete its review of the Proposed Design and deliver to SELLER written notice that PREPA either (i) accepts the Proposed Design (the **“Approved Design”**) and confirms that (a) the Interconnection Facilities, if constructed in accordance with such design, will comply with PREPA’s interconnection requirements and (b) subject to the results of the Feasibility Study, System Impact Study and Facility Study and compliance with the requirements identified in such studies, PREPA will allow the Facility to interconnect with the Grid System in accordance with this Agreement, or (ii) does not accept such design based on its review, in which case PREPA shall simultaneously deliver to SELLER a written and detailed description of PREPA’s objections to such design and PREPA’s required modifications thereto, which modifications PREPA shall reasonably propose in good faith and consistent with Prudent Utility Practices (the **“Technical Input”**). To the extent the Technical Input involves a change in MTRs, the provisions of Section 4.2 (*Modifications*) shall apply.
- d. If PREPA provides Technical Input to SELLER in accordance with the foregoing, then no later than ten (10) Business Days following SELLER’s delivery to PREPA of SELLER’s revised Proposed Design, which revised Proposed Design SELLER shall ensure is consistent with the MTRs and Technical Input, PREPA shall review such revised Proposed Design and notify SELLER in writing either that (i) such revised design constitutes the Approved Design, or (ii) PREPA does not accept such design, in which case PREPA shall simultaneously deliver to SELLER further Technical Input. The Parties shall repeat the foregoing process until PREPA accepts an Approved Design, which approval PREPA shall not unreasonably withhold or delay.
- e. The Parties shall exercise commercially reasonable efforts to agree upon an Approved Design within sixty (60) Days of SELLER’s submission of the revised Proposed Design, after SELLER has received PREPA’s Technical Input. The Parties’ failure to agree on the Approved Design within one hundred eighty (180) Days after SELLER’s submission of a Proposed Design shall constitute grounds for an extension of time for the occurrence of Milestones to the extent otherwise permitted under Section 3.4 (*Extensions of Time*).
- f. SELLER shall not, without PREPA’s written consent, commence construction of the Facility or the PREPA Interconnection Facilities being installed or constructed by it until the Parties have agreed on an Approved Design; provided that, SELLER may, at its risk, order long-lead equipment prior to the achievement of the Approved Design.

4.2 Modifications

- a. Each Party shall notify the other in advance of any changes to its system, and the reasons for those changes, that would reasonably require modification or expansion of the MTRs after the Closing Date, affect the coordination of protective devices between SELLER and PREPA interconnected systems or otherwise affect either Party’s Interconnection Facilities.

- b. PREPA reserves the right to modify or expand the MTRs, DCDs, or its requirements for protective devices in the Interconnection Facilities, in each case from time to time in accordance with Prudent Utility Practices. If PREPA desires to modify or expand the MTRs, DCDs or its requirements for protective devices in the Interconnection Facilities in consideration of the risk of imminent and substantial harm to human life, property, or the Grid System (including degradation of service) but for the adoption of such change, specifically as it relates to reliability and safety margins, then it shall notify SELLER thereof in writing, which provides the rationale in reasonable detail for such change, and SELLER shall implement such change.
- c. If SELLER implements any modification or expansion that PREPA requires under this Section 4.2, then SELLER shall assume the cost of such implementation, up to a total cost which, when added to any costs that PREPA previously required and incurred by SELLER pursuant to this Section 4.2 or Section 4.3 (*Modeling*) during the Term, does not exceed the Modification Limit. If such modification or expansion reduces the Facility's ability to provide Energy Storage Services, then the Parties shall treat that portion of SELLER's reasonably projected lost revenue under this Agreement arising out of such reduction as a cost of such change.
- d. If SELLER's costs attributable to such change (as reasonably determined and evidenced in writing to PREPA), when added to any costs SELLER previously incurred pursuant to PREPA's request for modification or expansion in accordance with this Section 4.2 or Section 4.3 (*Modeling*) during the Term, exceed the Modification Limit, then PREPA shall increase the Monthly Payment to allow SELLER to recover that portion of the cost in excess of the Modification Limit in Monthly installments (i) in respect of modifications to the Facility, over a term of eighteen (18) Months, or (ii) for a reduction to the Facility's ability to provide Energy Storage Services, over the remaining Supply Period or so long as the reduction exists. Notwithstanding the foregoing, and only if not the result of changes required by PREPA, SELLER shall assume the total cost (without reimbursement) of implementing modifications to the MTRs or requirements for protective devices resulting from any deviations from the Operating Characteristics or the Approved Design or any changes to SELLER's system whatsoever.
- e. Modifications or expansions of the MTRs shall not become effective until SELLER has had a reasonable period of time to comply with any such modified or expanded requirement.

4.3 Modeling

- a. SELLER shall provide PREPA with a PSS/E model for the Facility for approval no later than the Agreement Date.
- b. SELLER agrees to keep the PSS/E mathematical models current with the future versions of the PSS/E program, and shall provide updated PSS/E mathematical models to PREPA not later than [ninety (90)] Days after a PSS/E version upgrade if such upgrade results in software incompatibility with PREPA's system. SELLER shall submit to PREPA a report from Siemens PTI or another third-party engineering consultant that validates and certifies the PSS/E mathematical model as accurate, including the subsequent revisions performed to keep the mathematical model current with the future version of the PSS/E program. PREPA shall bear all costs incurred by SELLER in excess of the Modification Limit in connection with changes to the PSS/E mathematical model that result from modification

or expansion of the MTRs or PREPA's requirements for protective devices in the Interconnection Facilities as per Section 4.2 (*Modifications*).

4.4 Pre-Synchronization Testing

- a. Prior to the Initial Synchronization Date, SELLER shall retain a contractor, approved in writing by PREPA (which approval PREPA shall not unreasonably withhold or delay after SELLER has submitted to PREPA information about the experience of such contractor), to perform the acceptance testing of the Interconnection Facilities, in accordance with the Testing Protocol. SELLER shall provide to PREPA no less than ten (10) Days' written notice of such testing and PREPA shall have a representative witness and evaluate the testing.
- b. No later than fifteen (15) Business Days following completion of such testing and submission to PREPA of the testing book prepared by the testing contractor, PREPA shall review such testing book and notify SELLER in writing whether PREPA (i) accepts such testing book, or (ii) declines to accept such testing book, in which case PREPA shall simultaneously deliver to SELLER a written and detailed description of PREPA's objections to such testing book and PREPA's required modifications thereto which SELLER shall jointly work with the testing contractor to incorporate in good faith. If PREPA has provided required modifications to the testing book, then no later than five (5) Business Days following SELLER's delivery to PREPA of a revised testing book consistent with such modifications, PREPA shall review such revised testing book and notify SELLER in writing either of PREPA's approval or that PREPA continues to require modifications thereto. The Parties shall repeat the foregoing process until PREPA approves the testing book, which approval PREPA shall not unreasonably withhold. PREPA shall have the right to finally determine, acting reasonably in accordance with Prudent Utility Practice, whether SELLER has adequately designed, constructed and tested the Interconnection Facilities and whether such facilities comply with the Approved Design and PREPA's other requirements. PREPA shall use reasonable efforts to accept SELLER's testing book within fifteen (15) Business Days after SELLER's delivery to PREPA of a revised testing book, after SELLER has received PREPA's objections to the testing book for the first time.
- c. Upon completion of the pre-synchronization testing of the Interconnection Facilities, SELLER shall provide written notice (which shall include a copy of the red line drawing used for the construction of the Interconnection Facilities) to PREPA that SELLER has substantially completed and tested the Interconnection Facilities in accordance with paragraphs (a) and (b) of this Section 4.4 ("**IF Completion Notice**"), in the form set forth in Appendix X (*Form of IF Completion Notice*).
- d. Following receipt of the IF Completion Notice, PREPA shall inspect (or the Parties shall appoint a Consulting Technical Expert to inspect) such Interconnection Facilities and the remainder of the Facility to confirm that SELLER has constructed the Interconnection Facilities in accordance with the Approved Design, which inspection and confirmation PREPA shall complete promptly, but in any case within five (5) Business Days following PREPA's receipt of the IF Completion Notice.
- e. If PREPA (or the Consulting Technical Expert, as applicable) determines in good faith that SELLER has not constructed the Interconnection Facilities or remainder of the Facility in accordance with the Approved Design and that such deviation would, if PREPA

synchronized the Facility with the Grid System, adversely affect the operations of the Grid System, PREPA shall so advise SELLER in writing within five (5) Business Days following PREPA's inspection of the Interconnection Facilities or Facility, as applicable, and SELLER shall correct or mitigate any such deviation prior to interconnecting the Facility to the Grid System and resubmit the IF Completion Notice (in which case paragraph (d) of this Section 4.4 shall again apply). If the Parties cannot reach an agreement on whether SELLER has constructed the Interconnection Facilities or Facility in accordance with the Approved Design after SELLER has submitted two (2) IF Completion Notices that PREPA has found to be deficient, then either Party may refer the matter to dispute resolution pursuant to Section 21.11 (*Dispute Resolution*).

- f. If PREPA, in consultation with the Consulting Technical Expert, determines that the Interconnection Facilities and the Facility have been constructed in accordance with this Agreement, then PREPA shall notify SELLER thereof (such notification, the “**Substantial Completion Notice**”), in the form set forth in Appendix Y (*Form of Substantial Completion Notice*), and the Parties shall proceed with Initial Synchronization and testing pursuant to Article 5 (*Synchronization, Testing & Completion*).

4.5 Protection Relays & Control

- a. SELLER shall provide PREPA with the proposed design of the complete protection systems (including relay devices and relay settings), in accordance with Appendix O (*Technical Requirements for Operation, Protection, & Control*), for PREPA's review and inspection not later than sixty (60) Days prior to the Proposed Initial Synchronization Date. SELLER shall submit the protection requirements in three stages: (i) design; (ii) protection report (*i.e.* the settings to be implemented according to the Approved Design); and (iii) the tests that SELLER shall perform with the approved settings.
- b. If PREPA declines to accept such protection requirements for any reason, SELLER agrees to comply with any reasonable request made by PREPA to provide the protection scheme requirements, including acceptable relay settings, prior to the Initial Synchronization Date. PREPA agrees to give any comments or suggested changes pursuant to this Section 4.5 within thirty (30) Days after SELLER submits the protection requirements at each stage to PREPA, provided that PREPA shall have at least ten (10) Days to evaluate each individual submission after receipt. If the Parties cannot reach an agreement within thirty (30) Days after PREPA's receipt of the complete set of protection requirements, including relay settings, then the Parties shall resolve such Dispute in accordance with Section 21.11 (*Dispute Resolution*).
- c. SELLER further agrees that control and protection scheme parameters such as ramp rates, frequency fluctuations, overvoltage or low voltage ride-through, voltage support, and dynamic power factor will align in all material respects with the MTRs. SELLER shall procure equipment with electrical capabilities to comply with the MTRs.

4.6 Voltage Schedule

PREPA shall prepare and submit to SELLER a written voltage schedule for the Facility no later than thirty (30) Days prior to the Proposed Initial Synchronization Date. From and after the Commercial Operation Date, PREPA may change such voltage schedule upon thirty (30) Days' prior written notice, or in accordance with, the Operating Procedures, provided that such voltage schedule complies with the MTRs. SELLER shall use such voltage schedule in the operation of its

Facility. PREPA shall base the voltage schedule on the normally expected operating conditions for the Facility and the reactive power requirements of the Grid System.

4.7 Facility Upgrades

From and after the Initial Synchronization Date, SELLER shall not carry out any upgrades or modifications to the Facility that will, or may reasonably be expected to, impair or limit the Facility's compliance with the MTRs, alter its Operating Characteristics or expand or limit its ability to provide the Energy Storage Services to PREPA, including the addition of energy discharge capacity expansions or other upgrades not contemplated by the Approved Design, in each case without PREPA's prior written consent, which PREPA may withhold in its sole discretion. The Parties acknowledge that this Section 4.7 does not restrict SELLER's performance of routine maintenance or technology upgrades required to ensure safe and reliable operation or regular replacement of equipment to maintain the performance of the Facility in accordance with this Agreement and the Approved Design.

5. **SYNCHRONIZATION, TESTING & COMPLETION**

5.1 Scheduling Synchronization

SELLER shall notify PREPA in writing of the proposed Initial Synchronization Date (the "**Proposed Initial Synchronization Date**") and the start-up and testing schedule for the Facility and the PREPA Interconnection Facilities no later than ninety (90) Days prior to the Proposed Initial Synchronization Date. SELLER shall have the right to postpone or accelerate such date with at least fourteen (14) Days' advance written notice to PREPA. Upon the issuance of the Substantial Completion Notice, the Parties shall agree on the actual Initial Synchronization Date at least seven (7) Days in advance of such date.

5.2 Initial Synchronization

SELLER shall not energize, back-feed, or synchronize the Facility or Interconnection Facilities without PREPA's prior approval, which approval PREPA shall not unreasonably withhold or delay. Subject to SELLER's compliance with the Interconnection Agreement and this Agreement, PREPA agrees to allow the Facility to interconnect to the Grid System at the Interconnection Point in accordance with the terms of this Agreement from the Initial Synchronization Date. PREPA shall have the right to have a representative present at the Facility to witness the synchronization process from and after the Initial Synchronization Date.

5.3 Initial Performance Tests

- a. On or promptly after the Initial Synchronization Date, SELLER shall conduct the initial Performance Tests on the Facility to, among other things, verify that each Capability of the Facility will meet or exceed the corresponding Design Capability, and the provisions of paragraphs (a), (b), and (c) of Section 6.9 (*Supply Period Performance Tests*) shall apply *mutatis mutandis* to such tests (the "**Initial Performance Tests**").
- b. SELLER warrants that the Initial Performance Tests shall establish that each Capability of the Facility will meet or exceed the corresponding Design Capability. If the Initial Performance Tests establish that a Capability of the Facility falls below the corresponding Design Capability, then prior to the Long-Stop Date, SELLER may, at its election:

1. take corrective actions to increase such Capability of the Facility prior to the Long-Stop Date until the Initial Performance Tests demonstrate that a Capability of the Facility meets or exceeds the corresponding Design Capability; or
2. if, for D^{\max} or C^{\max} only, such Capability meets or exceeds at least ninety-five percent (95%) of the corresponding Design Capability on a sustained basis (the “**Minimum Acceptance Capability**”), then credit PREPA’s account in the amount of \$200 per kW for each kW of difference between such Design Capability and the corresponding Capability of the Facility as liquidated damages (the “**Capability Shortfall Liquidated Damages**”),

provided that if, by the Long-Stop Date, such corrective actions result in such Capability meeting or exceeding the Minimum Acceptance Capability but not the corresponding Design Capability, then SELLER shall credit PREPA’s account for the Capability Shortfall Liquidated Damages. SELLER acknowledges and agrees that the Capability Shortfall Liquidated Damages represent a fair and reasonable estimate of the loss that PREPA will suffer if such a Capability shortfall occurs, and accordingly, SELLER hereby waives its right to dispute the enforceability of this paragraph (b) of this Section 5.3.

- c. If the Initial Performance Tests establish that the Facility fails to comply with the Other Minimum Acceptance Criteria, then SELLER may, at its election:

1. take corrective actions to improve the performance of the Facility; and
2. repeat the Initial Performance Tests to establish that the Facility satisfies the MTRs and criteria set out in the Testing Protocol,

in each case, prior to the Long-Stop Date.

- d. Subject to paragraphs (b) and (c) of this Section 5.3, if the Initial Performance Tests do not establish that the Facility meets both the Minimum Acceptance Capability and Other Minimum Acceptance Criteria, then PREPA shall have the right to reject the results of such tests.

- e. Following the successful completion of the Initial Performance Tests (or crediting of Capability Shortfall Liquidated Damages, as applicable) and satisfaction of all other criteria to achieve Commercial Operation:

1. SELLER shall notify PREPA in writing of the test results and the Commercial Operation Date by issuing a certificate thereof, in the form set forth in Appendix U (*Form of Commercial Operation Date Certificate*). PREPA shall confirm and countersign such notification, which confirmation PREPA shall not unreasonably withhold or delay, and if a demonstrated Capability falls below the corresponding Design Capability, then subject to paragraphs (b) and (c) of this Section 5.3, the Parties shall amend this Agreement to reduce the corresponding Design Capability accordingly.
2. SELLER shall submit to PREPA a revised PSS/E mathematical model that represents the as-built Facility. This PSS/E model shall include all necessary functionality to properly model the Facility for both steady-state and dynamic simulations. SELLER shall also submit a PSS/E validation report for the Facility, which describes how the PSS/E simulation results demonstrate the model MTR

compliance and performance, based on the final adjustment and parameter settings of MTR and the Initial Performance Tests as required in this Agreement.

5.4 Interconnection Facilities

- a. On the Commercial Operation Date:
1. SELLER shall: (i) transfer good and valid legal title to the PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work) to PREPA free and clear of all liens and any other Claims by third parties, and to the fullest extent allowed by Applicable Law, assign all of the underlying equipment supply contracts, the Interconnection Construction Contract and other contracts, and all remaining equipment-supplier warranties in respect of PREPA Interconnection Facilities, to PREPA, (ii) release and forever discharge PREPA and its respective officers, directors, agents, and employees, and all property connected with or a part of the site of the PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work), from any and all contractual liens and any other liens arising by operation of Applicable Law or otherwise in connection with, or arising out of, the performance of SELLER's obligations under this Agreement, and (iii) specifically waive and release any lien, right, security interest or encumbrance of any kind in connection with this Agreement, the Interconnection Construction Contract or Applicable Law, established by SELLER, its contractors at any tier, material suppliers, laborers and all other Persons or entities furnishing services, labor or materials in connection with SELLER's obligations under this Agreement and all other interests therein and all improvements and materials placed on such site or machinery furnished in connection with such work; and
 2. SELLER hereby represents and warrants to PREPA that (i) the design, engineering, procurement, construction and completion of the PREPA Interconnection Facilities (other than PREPA Interconnection Facilities Work) conform in all material respects with this Agreement, the Approved Design and all Applicable Law, (ii) the PREPA Interconnection Facilities are fit for their intended purpose and free from material defects and deficiencies of any kind, and designed, engineered and constructed (other than PREPA Interconnection Facilities Work) in accordance with those practices, methods, techniques, standards and procedures which prudent, diligent, skilled and experienced contractors generally accept for the procurement, erection and installation of equipment, and the engineering, design and construction of, electrical transmission facilities of a similar nature and magnitude, and (iii) PREPA possesses good and valid title to the entirety of the PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work) free and clear of any lien or Claim and SELLER has not received, nor has SELLER become aware of, any notice of intention to assert a lien, or proceeding to establish a lien, arising out of or in connection with such facilities or SELLER's work related thereto.
- b. From the Commercial Operation Date until three hundred sixty-five (365) Days thereafter (the "**Defects Liability Period**"), SELLER shall promptly repair or replace any defect in design, workmanship, or a component of any part of the PREPA Interconnection Facilities (other than PREPA Interconnection Facilities Work), and any physical damage to any other part caused thereby, which may appear during the Defects Liability Period[, except for defects caused by PREPA's failure to safely and adequately operate and maintain the

affected equipment or component]. For any portion of such facilities which SELLER repairs or replaces during the Defects Liability Period, the Defects Liability Period for such portion shall extend for a period of three hundred sixty-five (365) Days after the date on which SELLER completes such repair or replacement. If any defect or damage appears during the Defects Liability Period, PREPA shall, promptly after becoming aware thereof, notify SELLER thereof. As soon as reasonably practicable after receiving notice of such defect or damage from PREPA, SELLER shall commence all repair or replacement work required to rectify such defect and/or damage. In the event that SELLER fails to commence or carry out such repair or replacement work within a reasonable period of time, PREPA shall have the right to engage and pay other Persons to carry out the same, and PREPA may, at its election, deduct all reasonable, documented costs incurred by it in connection therewith from monies due to SELLER or that become due to SELLER under this Agreement, or draw on the Performance Security. SELLER shall procure that the contractor under the Interconnection Construction Contract obtains warranties for equipment used in such construction works from the respective manufacturers. Unless agreed with PREPA, SELLER shall ensure that such warranties extend for at least the Defects Liability Period with respect thereto and shall obligate any such manufacturer to rebuild, remove and replace any equipment supplied by such manufacturer which has a defect or deficiency, in each case in a manner and on terms and conditions substantially similar to those contained herein. The installation of all materials used in the construction of the PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work) shall strictly comply with any relevant manufacturer's requirements. In the event that a manufacturer fails to honor its warranty based in whole or in part on a claim of defective installation, SELLER shall be liable for the cost of the associated removal, replacement, rebuilding, and repair. SELLER shall perform all work contemplated by this paragraph (b) of this Section 5.4 at its own cost.

- c. SELLER shall provide PREPA with as-built drawings of the Interconnection Facilities and the Facility within ninety (90) Days after the Commercial Operation Date and within ninety (90) Days after any material modification of the Interconnection Facilities or remainder of the Facility to the extent that such modification affects such as-built drawings.
- d. SELLER shall at all times own and have responsibility for (at its own cost and expense) the safe and adequate operation and maintenance of all Seller Interconnection Facilities. After transfer from SELLER, PREPA shall own and have responsibility for the safe and adequate operation and maintenance of the PREPA Interconnection Facilities. If PREPA implements any change in the protection system relay settings, equipment, or studies due to any improvement at the Interconnection Facilities required by SELLER or as a result of the Facility, then SELLER shall bear all reasonable costs and expenses incurred by PREPA.

6. OPERATION OF THE FACILITY

6.1 General

SELLER shall:

- a. during each hour of each Day of each Billing Period:
 - 1. continuously operate the Facility in Discharge Mode, Charge Mode or Storage Mode without interruption as required by a Dispatch Notice or a Charge Notice;

2. while operating in Discharge Mode, make the Facility available for dispatch by PREPA of (A) a quantity of Energy that corresponds to the Design Duration Energy during the Design Discharge Duration, and (B) Ancillary Services specified in the MTRs, as applicable, at the Interconnection Point;
3. while operating in Storage Mode, make the Facility available for storage of quantities of Energy that correspond to the Design Storage Energy; and
4. while operating in Charge Mode, make the Facility available to accept at the Interconnection Point a quantity of Energy that corresponds to the Design Charge Energy during the Design Charge Duration,

in each case (as applicable to such hour) other than during the occurrence of any Permitted Outage Hour and subject to the applicable Annual Degradation Rates;

b. from the Initial Synchronization Date until the expiry of the Supply Period:

1. operate, test, maintain, repair and, if necessary, replace the Facility (or any portion thereof) in accordance with (i) the Operating Procedures, (ii) the Testing Protocol, (iii) the MTRs, (iv) Dispatch Notices and Charge Notices, (v) Prudent Utility Practices, (vi) this Agreement, and (vii) Applicable Law and Applicable Standards, and subject to the Operating Characteristics; and
2. ensure that (i) personnel remain on duty at the Facility at the times required to meet SELLER's obligations under this Agreement, and (ii) any contractor that SELLER engages for the operation, testing, maintenance, or repair of the Facility qualifies as a Qualified Operator; and

c. ensure that the Facility satisfies the Performance Guarantees.

6.2 Electricity Supply to the Facility

From and after the Commercial Operation Date until the expiry of the Supply Period, SELLER shall procure at its own cost such Energy as it requires:

- a. to return the Facility at the end of Outage or Derating (unless a PREPA Risk Event directly caused such Outage or Derating) to a Stored Energy Level equal to the Stored Energy Level immediately prior to such Outage or Derating, as applicable, in accordance with Section 6.6 (*Restoration of the Facility*);
- b. for Station Use in accordance with Section 7.5 (*Station Use*); and
- c. in respect of an Unauthorized Charge, in accordance with Section 7.6 (*Unauthorized Charge*).

PREPA shall, for the purposes of paragraphs (a) or (b) of this Section 6.2, supply such Energy at the most advantageous published rate available to SELLER based on PREPA's approved tariff, conforming to the rates PREPA charges to similar customers.

6.3 Scheduled Maintenance

- a. SELLER shall (i) ensure that no more than [●] hours of Scheduled Outages or Scheduled Deratings occur per Agreement Year, (ii) plan its Scheduled Maintenance Program so as to minimize interruptions or reductions to the provision of Energy Storage Services, and (iii) cooperate with PREPA to coordinate the Scheduled Outages and Scheduled Deratings with Grid System needs.
- b. SELLER shall, at least sixty (60) Days prior to the Commercial Operation Date, submit a written schedule of Scheduled Outages and Scheduled Deratings (“**Scheduled Maintenance Program**”) for the remaining portion of the first Year of the Facility’s operations and, if the Commercial Operation Date occurs after September 1, for the following Year, setting forth the proposed Scheduled Outages and Scheduled Deratings periods. Thereafter, SELLER shall submit to PREPA, in writing, by September 1 of each Year, its proposed Scheduled Maintenance Program for the next Year.
- c. SELLER shall provide the following information for each proposed Scheduled Outage and Scheduled Derating:
 - 1. description of the work that SELLER will perform during such event;
 - 2. approximate start date and time;
 - 3. approximate end date and time;
 - 4. approximate time to restore the Facility to full operation; and
 - 5. for Scheduled Deratings, Energy Storage Services available during such event.
- d. PREPA shall have thirty (30) Days from receipt of the proposed Scheduled Maintenance Program to notify SELLER whether it accepts the program or requires a rescheduling (and the period during which SELLER can perform such maintenance). If PREPA fails to respond during such period, then the Scheduled Maintenance Program shall be deemed accepted.
- e. SELLER shall use reasonable efforts to accommodate any request from PREPA to reschedule the Scheduled Maintenance Program. If SELLER cannot accommodate PREPA’s request to reschedule the Scheduled Maintenance Program, then SELLER shall provide reasons therefor and alternative dates for the Scheduled Maintenance Program. PREPA shall select between the alternative dates proposed by SELLER to finalize the Scheduled Maintenance Program.
- f. SELLER shall notify PREPA at least seven (7) Days prior to the start of any Scheduled Outage or Scheduled Derating and shall maintain close coordination with PREPA as such event approaches.
- g. If a condition occurs that impacts the Scheduled Maintenance Program, then SELLER shall promptly, on becoming aware of such condition, notify PREPA of such change (including an estimate of the length of such Scheduled Outage or Scheduled Derating) and request PREPA’s approval to revise the Scheduled Maintenance Program, which approval PREPA shall not unreasonably withhold or delay. SELLER shall bear any costs incurred by PREPA for revisions made less than sixty (60) Days before the start date of a Scheduled Outage or

Scheduled Derating or that results in such event being scheduled less than sixty (60) Days before the start of the revised Scheduled Outage or Scheduled Derating, other than in cases of Force Majeure or a PREPA Risk Event.

- h. Only those Outages or Deratings that (i) meet the submittal timelines in paragraph (b) of this Section 6.3, and (ii) PREPA approves in accordance with this Section 6.3 shall constitute a Scheduled Outage or Scheduled Derating, respectively.

6.4 Non-Scheduled Outages & Deratings

- a. If SELLER determines that it requires a Non-Scheduled Outage or Non-Scheduled Derating, then SELLER shall coordinate the timing of such Non-Scheduled Outage or Non-Scheduled Derating, as applicable, with PREPA.
- b. SELLER shall use commercially reasonable efforts to notify PREPA of any Non-Scheduled Outage or Non-Scheduled Derating no later than 17:00 hours (Puerto Rico time) on the third (3rd) Business Day prior to the Day that such Non-Scheduled Outage or Non-Scheduled Derating will occur. In the event of an unexpected Non-Scheduled Outage or Non-Scheduled Derating, SELLER shall provide notice to PREPA by telephone or email as soon as reasonably practicable and, in all cases other than Force Majeure, no more than fifteen (15) minutes following the occurrence of such Non-Scheduled Outage or Non-Scheduled Derating. Thereafter, SELLER shall, as soon as reasonably practicable, provide PREPA with a notice that includes (i) the event or condition, (ii) the date and time of such event or condition, (iii) the expected end date and time of such event or condition, (iv) for Non-Scheduled Deratings, the Energy Storage Services available during such event or condition, and (v) any other information reasonably requested by PREPA.
- c. Notwithstanding the delivery of a notice of a Non-Scheduled Outage or coordination with PREPA to resolve such event, the Facility shall be deemed unavailable for the duration of a Non-Scheduled Outage as applicable to the calculation of Facility Availability.

6.5 Emergencies

- a. No later than the Initial Synchronization Date, each Party shall cooperate with the other in establishing written Emergency plans, including (i) recovery from a local or widespread electrical blackout, (ii) voltage reduction to effect load curtailment, (iii) policies for the delivery by PREPA to SELLER of prompt written notice of the occurrence of all Emergency and follow-up, and (iv) frequent status reports on any ongoing Emergency.
- b. SELLER shall (i) make technical information and data available to PREPA concerning start-up times and black-start capabilities, (ii) promptly inform PREPA of any Emergency at or other material issues with the Facility or the Site, and (iii) if requested by PREPA, submit a remediation program setting out the actions SELLER shall take to mitigate the Emergency or other material issues at the Facility, and (iv) abide by such program.
- c. If the Facility has a Scheduled Outage, Non-Scheduled Outage, Scheduled Derating or Non-Scheduled Derating and such event occurs or would occur coincident with an Emergency, then PREPA may request that SELLER makes commercially reasonable efforts, consistent with Prudent Utility Practices, to reschedule the Scheduled Outage, Non-Scheduled Outage, Scheduled Derating or Non-Scheduled Derating, as applicable, or if such event has begun, to expedite the completion thereof.

6.6 Restoration of the Facility

- a. Following any Emergency, Outage, or Derating, SELLER shall provide as much advance notice as reasonably practicable to PREPA of the date and time that it will bring the Facility back online, provided that SELLER shall furnish at least two (2) Days' prior notice for restoration from a Scheduled Outage or Scheduled Derating and at least two (2) hours' notice for restoration from a Non-Scheduled Outage, Non-Scheduled Derating or Emergency, in each case, in accordance with the Operating Procedures. PREPA shall have the right to rely on such notice for purposes of delivering Dispatch Notices and Charge Notices to SELLER.
- b. SELLER shall return the Facility at the end of an Outage or Derating to a Stored Energy Level equal to the Stored Energy Level immediately prior to such Outage or Derating, and the Outage or Derating shall not end until such amount of Energy has been restored. SELLER shall bear the costs of Energy required to charge and discharge the Facility during the Outage or Derating (unless a PREPA Risk Event directly causes such Outage or Derating), including those costs needed to restore the Energy stored in the Facility to the Stored Energy Level immediately prior to the start of the Outage or Derating. If a PREPA Risk Event causes an Outage or Derating, then PREPA shall have responsibility for managing, purchasing, scheduling and delivering the Charge Energy required to restore the Energy stored in the Facility to the Stored Energy Level immediately prior to the start of the Outage or Derating in accordance with Section 7.4 (*Charge Energy Obligations*).

6.7 Communication

SELLER shall provide, install, commission, maintain, repair, and replace (as necessary), at its own cost and expense, the following communication facilities linking the Facility with PREPA:

- a. one (1) Remote Terminal Unit ("RTU"), including setup installation and configuration reasonably specified by PREPA;
- b. two (2) independent telecommunication circuits, including one (1) voice grade to link the SCADA system to the Facility's RTU using [distributed network] 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 reasonably specified by PREPA;
- c. a voice telephone extension to communicate with PREPA's Monacillos Transmission Center and Ponce Transmission Center;
- d. a telephone line and equipment to transmit and receive e-mail messages to confirm oral communication between PREPA and SELLER; and
- e. for recording the power disturbance caused by electro-mechanic swings and to measure the system response to the swing disturbance, dynamic system monitor equipment, components, and system which comply with the requirements of Appendix N (*Technical Specifications for the Dynamic System Monitor*).

PREPA shall have the right to approve items provided by SELLER in accordance with this Section 6.7, which approval PREPA shall not unreasonably withhold or delay.

6.8 Record Keeping

- a. Each Party shall keep complete and accurate books, accounts, records, and other data required for the proper administration of all transactions with respect to all matters relating to this Agreement.
- b. SELLER shall maintain such records and data for a minimum of [five (5)] Years after the preparation of such records or data and for any additional length of time required by regulatory agencies with jurisdiction over each of the Parties; provided that neither Party shall dispose of or destroy any records without thirty (30) Days' prior written notice to the other Party. Within ten (10) Days after receipt of the notice of intention to destroy or dispose, the other Party shall have the right to require the notifying Party in writing to deliver to it certain records at the requesting Party's sole cost and expense. No more than ten (10) Days from receipt of such notice, the Party proposing to dispose of or destroy such records shall deliver any records requested by the requesting Party.
- c. SELLER shall maintain, in [physical and] electronic copy, (i) as-built drawings, operation and maintenance manuals and other detailed technical documentation for design, engineering, construction, testing, commissioning, operation, maintenance, and repair of the Facility and Interconnection Facilities (other than the PREPA Interconnection Facilities Work), and (ii) an accurate and up-to-date operating log at the Facility with records of (1) real and reactive power for each hour, (2) changes in operating status, Outages, Deratings or Emergencies, charging and discharging (including charging and discharging efficiency), Station Use consumption and efficiency, Stored Energy Level, and Facility Availability (including availability to charge and discharge and State of Charge), (3) any unusual conditions found during inspections, (4) any safety incident, accident or other occurrence at the Site that results in injury to persons or damage to property, (5) electrical characteristics of the Facility and settings or adjustments of the Facility's control equipment and protective devices, (6) maintenance performance, (7) all material data in relation to Performance Tests and other testing, Performance Guarantees, metering, invoicing, payments, Claims, reimbursements, credits and any other charges to PREPA, and (8) any other significant events related to the operation of the Facility.
- d. 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 books, accounts, records, and other data of the other Party relating to the proper administration of this Agreement any time during the period that this Agreement requires the records to be maintained.
- e. SELLER shall deliver to PREPA a Monthly operations and maintenance report by the tenth (10th) Day of each Month describing operations and maintenance activities performed in respect of the Facility during the previous Month.

6.9 Supply Period Performance Tests

- a. During each Agreement Year of the Supply Period, PREPA shall have the right to request SELLER to perform up to [six (6)] PREPA Performance Tests in accordance with the Testing Protocol. PREPA's decision to forgo any such test is not a waiver of PREPA's right to require any subsequent Performance Tests.

- b. SELLER shall submit to PREPA, for evaluation and approval, all Performance Tests reports certified by an experienced and duly qualified independent laboratory or company with specialized expertise in acceptance and other relevant tests of renewable power generating facilities evidencing that the Facility satisfies each of the MTRs and the Performance Guarantees. PREPA shall have the right to approve such laboratory or company, which approval PREPA shall not unreasonably withhold or delay. For the avoidance of doubt, SELLER acknowledges and agrees that PREPA will not accept manufacturers' test reports as evidence of compliance with this requirement.
- c. SELLER shall coordinate with, and the Performance Tests shall be witnessed by, PREPA's personnel and the Consulting Technical Expert. SELLER shall provide PREPA with at least thirty (30) Days' advance written notice of all Performance Tests, field tests or other matters that PREPA may witness hereunder. The Parties shall cooperate in good faith to determine mutually acceptable dates for such testing of all Performance Tests.
- d. SELLER may request to perform an additional Performance Test ("**Seller Performance Test**") (i) if, as a result of a Performance Test, the Monthly Contract Capability is adjusted downward pursuant to Appendix F (*Compensation*), (ii) upon the completion of Scheduled Outage, or (iii) if the results of a PREPA Performance Test are outside the standards specified in the Test Protocol. A Seller Performance Test shall commence no later than ten (10) Business Days after completion of the PREPA Performance Test showing the low test results, or the completion of the Scheduled Outage, and SELLER shall perform such Seller Performance Test in accordance with the Test Protocol, except that (A) SELLER shall provide PREPA with notice of its request to test and the proposed starting and end times of the Seller Performance Test no later than three (3) Business Days before it commences, and (B) PREPA shall evaluate SELLER's proposal and, in its sole discretion, either grant such request or identify two (2) alternative start and stop times from which SELLER may elect, and to which PREPA will consent. The Tested Duration Energy, as determined through the Seller Performance Test, will be used to determine the Monthly Contract Capability in the same manner as the Tested Duration Energy determined through a PREPA Performance Test.

6.10 Network Security

SELLER shall use commercially reasonable efforts to prevent Malware from accessing any aspect of the Energy Storage Services, the Facility, or any other information systems, operating environments and processes used or relied upon by SELLER to provide the Energy Storage Services, including the information, data and other materials delivered by or on behalf of SELLER to PREPA, the customers of PREPA, or any third party providers (collectively, the "**Environment**"). Throughout the Term, SELLER shall implement improvements to, and upgrades of, its Malware prevention and correction programs and processes consistent with the then-current National Institute of Standards and Technology industry standards and, in any case, no less robust than the programs and processes implemented by SELLER in respect of its own information systems. If Malware enters the Environment, SELLER shall notify PREPA as soon as it becomes aware of such presence and take immediate action, at SELLER's cost, to eliminate and remediate the Malware effects. SELLER shall regularly, and otherwise at the request of PREPA, provide sufficient evidence of its efforts to continuously monitor and evaluate the effectiveness of SELLER's information security safeguards. SELLER shall require that its subcontractors also comply with the obligations of SELLER under this Section 6.10.

7. DISPATCHING & CHARGING OBLIGATIONS

7.1 Dispatching

- a. Without prejudice to the requirements of Appendix F (*Compensation*), PREPA shall have the right, exclusively by providing Dispatch Notices to SELLER in accordance with the Operating Procedures, to direct SELLER to dispatch the Facility seven (7) Days per week and twenty-four (24) hours per Day (including holidays) from the Initial Synchronization Date until the expiry of the Supply Period, and such right shall include the right to require SELLER to (i) curtail, reduce or increase the Energy Storage Services, and (ii) disconnect or connect the Facility, in each case in accordance with:
 1. Prudent Utility Practices (such as reasons affecting safety margins or reliability levels in the Grid System, power quality problems as well as outages and disconnections (“vías libres”) of the transmission center or line due to disturbances, maintenance, improvements, and Emergencies);
 2. the requirements of Applicable Law and Permits; and
 3. the Operating Procedures,in each case subject to the Operating Characteristics and the Scheduled Maintenance Program.
- b. Subject to paragraph (c) of this Section 7.1, each Dispatch Notice shall remain effective for the duration of the dispatch period specified therein unless and until PREPA modifies such Dispatch Notice by providing SELLER with an updated Dispatch Notice. If PREPA cannot issue an electronic submittal for reasons beyond PREPA’s control, PREPA may provide Dispatch Notices by (in order of preference, unless the Parties agree to a different order) electronic mail, facsimile transmission or telephonically to SELLER’s personnel designated in the Operating Procedures to receive such communications.
- c. If PREPA submits a Dispatch Notice that directs action which does not conform with the Operating Characteristics, then SELLER shall promptly notify PREPA of the non-conformity and PREPA shall modify its Dispatch Notice to conform to the Operating Characteristics. Until PREPA submits a modified Dispatch Notice, SELLER shall, as applicable, dispatch the Facility in accordance with the Operating Characteristics, and the Facility will not be deemed unavailable, but only to the extent the Facility was otherwise available but could not be dispatched because of its inability to operate outside of the Operating Characteristics.

7.2 Curtailment for Breach

Notwithstanding Section 7.1 (*Dispatching*), PREPA shall have the additional right to curtail or reduce the Dispatch Notices, or disconnect the Facility, during the Supply Period, and SELLER shall have no right to any Claim for compensation or otherwise, when SELLER fails to:

- a. operate the Facility in accordance with this Agreement or the MTRs, provided that for any modifications to the MTRs under Section 4.2 (*Modifications*), SELLER has had a reasonable period of time to comply with such modification pursuant to sub-paragraph (e) of Section 4.2 (*Modifications*);

- b. successfully complete the Seller Performance Tests requested by PREPA under paragraph (a) of Section 6.9 (*Supply Period Performance Tests*) with reasonable prior notice; or
- c. maintain the Facility PSS/E mathematical models in accordance with this Agreement, provided that (i) PREPA has given SELLER thirty (30) Days' notice of SELLER's failure to comply with the foregoing, and (ii) SELLER may reasonably perform such upgrade within that time period.

For the avoidance of doubt, any curtailment, reduction or disconnection shall end at the instruction of PREPA, which PREPA shall give promptly after SELLER cures such non-compliance.

7.3 Charging

Following the Commercial Operation Date:

- a. PREPA shall have the right, by providing Charge Notices to SELLER in accordance with the Operating Procedures, to direct SELLER to charge the Facility from the Grid System seven (7) Days per week and twenty-four (24) hours per Day (including holidays), from the Initial Synchronization Date until the expiry of the Supply Period in accordance with:
 - 1. Prudent Utility Practices (such as reasons affecting safety margins or reliability levels in the Grid System, power quality problems as well as outages and disconnections ("vías libres") of the transmission center or line due to disturbances, maintenance, improvements, and Emergencies);
 - 2. the requirements of Applicable Law and Permits; and
 - 3. the Operating Procedures,in each case subject to the Operating Characteristics and the Scheduled Maintenance Program;
- b. subject to paragraph (c) of this Section 7.3, each Charge Notice shall remain effective for the duration of the charge specified therein unless and until PREPA modifies such Charge Notice by providing SELLER with an updated Charge Notice. If PREPA cannot issue an electronic submittal for reasons beyond PREPA's control, PREPA may provide Charge Notices by (in order or preference, unless the Parties agree to a different order) electronic mail, telephonically or by facsimile transmission to SELLER's personnel designated in the Operating Procedures to receive such communications;
- c. if PREPA submits a Charge Notice that does not conform with the Operating Characteristics, then SELLER shall promptly notify PREPA of the non-conformity and PREPA shall modify its Charge Notice to conform to the Operating Characteristics. Until such time as PREPA submits a modified Charge Notice, SELLER shall, as applicable, charge the Facility in accordance with the Operating Characteristics, and the Facility will not be deemed unavailable, but only to the extent the Facility was otherwise available but could not be charging because of its inability to operate outside of the Operating Characteristics; and
- d. SELLER shall draw Energy in connection with a Charge Notice only from the Grid System.

7.4 Charge Energy Obligations

- a. Except as set forth in this Section 7.4, Sections 6.6 (*Restoration of the Facility*), 7.5 (*Station Use*) and 7.6 (*Unauthorized Charge*), or as expressly set forth in this Agreement, PREPA shall have responsibility for managing, purchasing, scheduling and making available at the Interconnection Point from the Grid System all of the Charge Energy for the Facility in respect of such notice.
- b. SELLER shall take all actions necessary to accept the Charge Energy at and from the Interconnection Point as part of providing the Energy Storage Services, including maintenance, repair or replacement of equipment in SELLER's possession or control used to deliver the Charge Energy to the Facility, in all cases in accordance with the terms of this Agreement.
- c. PREPA shall hold title to, possession of, and risk of loss of the Charge Energy up to the Interconnection Point, and SELLER shall take title to, possession of, and risk of loss of the Charge Energy at and from the Interconnection Point.
- d. SELLER shall only use Charge Energy for PREPA's benefit in accordance with the terms of this Agreement.

7.5 Station Use

SELLER shall have sole responsibility for the purchase and delivery of Energy to satisfy Station Use requirements, it being understood that the Facility will not supply Energy for Station Use.

7.6 Unauthorized Charge

During the Supply Period:

- a. SELLER shall not charge the Facility other than pursuant to and as directed in a Charge Notice, or in connection with a PREPA Performance Test.
- b. If SELLER charges the Facility (i) to a Stored Energy Level greater than the Stored Energy Level provided for in the Charge Notice or in any other manner contrary to a Charge Notice, or (ii) without a Charge Notice (other than in connection with a PREPA Performance Test) (the circumstances described in (i) and (ii) each, an "**Unauthorized Charge**"), then (a) SELLER shall bear the cost of all Energy associated with such charging, and (b) PREPA shall have the right to discharge such Energy without notice or additional cost and to retain all of the benefits associated with such discharge, without credit to SELLER; and
- c. SELLER shall bear any charges, sanction, or penalties associated with an Unauthorized Charge.

8. **METERING**

8.1 Meter Ownership & Maintenance

- a. PREPA shall own and maintain the meters and metering equipment used to measure the delivery and receipt of Charge Energy, Discharge Energy and Ancillary Services (the "**Main Meters**"). SELLER shall install the Main Meters and all other meters and metering

equipment at the Interconnection Point, as well as SELLER's back-up meters and metering equipment at the Facility to measure Discharge Energy, Ancillary Services and Charge Energy, in accordance with Appendix H (*Interconnection Description and Specifications*). The Main Meters must not measure Station Use, which SELLER shall meter separately in accordance with paragraph (b) of this Section 8.1.

- b. SELLER shall separately install and meter Station Use with a revenue quality meter or meters, installed in accordance with Appendix H (*Interconnection Description and Specifications*) and conforming to the electrical service requirements, metering, and applicable tariffs applicable to Station Use ("**Station Use Meters**"). PREPA shall own and maintain the Station Use Meters. The Station Use Meters must not measure Discharge Energy and Ancillary Services, which SELLER shall meter separately in accordance with paragraph (a) of this Section 8.1.
- c. The Main Meters, Station Use Meters and the back-up meters and metering equipment shall meet PREPA's specifications⁹ and be subject to PREPA's approval, which approval PREPA shall not unreasonably withhold, and which decision PREPA shall inform SELLER of no later than ten (10) Business Days after SELLER's notice to PREPA regarding the installation of the proposed meters.

8.2 Meter Inspection

PREPA shall seal the Main Meters and the Station Use Meters. PREPA personnel may only break the seals for inspection, testing or adjustment of the meters performed in accordance with this Agreement. PREPA shall give SELLER ten (10) Business Days' prior written notice thereof and SELLER shall have the right to have a representative present during the meter inspection, testing, or adjustment. If either Party believes that there has been a meter failure or stoppage, it shall immediately notify the other Party to coordinate an inspection or test at the earliest convenient date.

8.3 Meter Testing & Calibration

- a. At least annually, at PREPA's cost and, in addition from time to time upon ten (10) Business Days' prior written notice by either Party at its cost (unless the results demonstrate that meters for which PREPA has operation and maintenance responsibility fall outside of the limits established in American National Standard Institute Code for Electricity Metering (ANSI C12.16, latest version: "ANSI C12.16"), in which case PREPA shall bear the cost of such additional tests), PREPA will test and verify the calibration of the Main Meters and backup meters, in accordance with the provisions for meter testing as established by ANSI C12.16. When, as a result of such a test, PREPA finds the Main Meters within the range specified by the standard, PREPA shall not adjust the amount paid to SELLER for the Energy Storage Services provided to PREPA. If PREPA finds a Main Meter or backup meter outside the range specified by the standard, then the Party owning such defective or inaccurate device shall adjust, repair, replace, and/or recalibrate such device as near as practicable to a condition of zero (0) error (subject to Section 5.4 (*Interconnection Facilities*)) at that Party's expense. If PREPA finds the Main Meters outside the range specified by the standard, and the backup meters within such range, then the Parties shall use the backup meters to calculate the correct amount of Energy Storage

⁹ Note: Parties to agree to specifications prior to signing.

Services delivered (reasonably adjusted for line losses) to PREPA for the actual period during which the Main Meters experience inaccurate measurements.

- b. If the Parties cannot determine the actual period during which inaccurate measurements were made, they shall use a period equal to the time elapsed since the most recent test, but in no case for a period in excess of six (6) Months. If PREPA finds the Main Meters outside the range specified by the standard, and either the backup meters are not available, or testing demonstrates the backup meters are also out of calibration, each Party shall adjust its meters, and the Parties shall use the corrected meter readings of the most accurate meter for the actual period during which inaccurate measurements were made (reasonably adjusted for line losses where appropriate). If the Parties cannot determine the actual period during which inaccurate measurements were made, the Parties shall use 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 six (6) Months.
- c. To the extent that the adjustment period covers a period of deliveries for which PREPA has already remitted payment, PREPA shall use the corrected measurements as determined in accordance with this Section 8.3 to recalculate the amount due for the period of the inaccuracy and shall subtract the previous payments by PREPA for this period from such recomputed amount. If the difference is a positive number, PREPA shall pay the difference to SELLER. If the difference is a negative number, SELLER shall pay the difference to PREPA, or PREPA may offset such amounts against payments due to SELLER by PREPA hereunder. The owing Party shall make the payment or credit of such difference no later than thirty (30) Days after the owing Party receives written notice of the amount due, unless PREPA elects (via written notice to SELLER) payment via an offset. 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 there are broken seals or the other Party is performing tests, and other matters affecting the accuracy of the measurement of electricity delivered from the Facility.

8.4 Meter Reading

During each one (1) Year period from and after the Initial Synchronization Date, PREPA shall read the meters on a Monthly basis (prior to the last Day in each Month and, in any event, at least twelve (12) times per Year (prorated for any partial Year)) to determine the amount of Energy Storage Services provided to PREPA from the Facility for each Billing Period. At PREPA's option, PREPA may choose to read the meters more frequently and total such readings in accordance with the applicable Billing Periods. PREPA shall provide SELLER with a written statement containing the reading details and totals within ten (10) Days following the end of each Billing Period. PREPA shall notify SELLER of any site meter readings and SELLER may, at its option, be present for such reading.

8.5 Data

From the Initial Synchronization Date until the expiration of the Supply Period, SELLER shall own all data and information recorded from operation, scheduling, charging, dispatch, testing, and maintenance of the Facility, and SELLER shall be deemed to have granted to PREPA a non-terminable, transferable, non-exclusive, royalty free and cost free license to copy and use such data and information for the purpose of modeling the Grid System and assessing the operation, scheduling, charging, dispatch, metering and testing of the Facility during the Supply Period.

9. SALE & PURCHASE

9.1 General

- a. SELLER agrees to provide and sell Energy Storage Services, including all of the Product produced by the Facility, exclusively to PREPA in accordance with this Agreement.
- b. PREPA agrees to pay for the Energy Storage Services, including all of the Product produced by the Facility, through Monthly Payments determined in accordance with Appendix F (*Compensation*), from the Initial Synchronization Date until the expiration of the Supply Period, subject to the terms of this Agreement.

9.2 Title & Risk of Loss

The Discharge Energy that SELLER makes available to PREPA under this Agreement shall become the property of PREPA at the Interconnection Point, at which point title to the Discharge Energy and all risk of loss associated with the Discharge Energy shall transfer to PREPA. PREPA reserves the right to retain all rights, title, benefits, and other interest in, arising out of or related to, the generation, transmission, distribution, or supply of such Discharge Energy that it or any of its Affiliates may realize through its existing or future power generation sources (including the Facility), customer agreements or other projects or improvements to the Grid System.

9.3 Right of Resale

PREPA shall have the right to resell all or any portion of the Product purchased under this Agreement, and SELLER shall, at no cost to PREPA, take all other reasonable actions from and after the Initial Synchronization Date to assist PREPA in receiving, and otherwise ensure that PREPA can receive and resell the Product, including submission of any reports or filings with applicable Governmental Authorities.

9.4 Ancillary Services

The Parties acknowledge and agree that PREPA may, from time to time after the Commercial Operation Date, request SELLER to provide PREPA with the Ancillary Services specified in the MTRs by delivering notice thereof to SELLER pursuant to Article 7 (*Dispatching & Charging Obligations*). SELLER shall provide such services in accordance with such request, in partial consideration of the Monthly Payments and for no additional cost.

9.5 Green Credits

If, at any time during the Term, SELLER accrues a right to Green Credits associated with the provision of the Energy Storage Services, or otherwise generated in connection with the operation of the Facility, then contemporaneously with the provision of such Energy Storage Services or Facility operation, as applicable, and in partial consideration for the Monthly Payments, SELLER shall convey to PREPA, at no additional cost, all such Green Credits. The Parties shall execute all documentation required to confirm the registration of such Green Credits with the North American Renewables Registry or another similar registry acceptable to SELLER and PREPA (the “**Registry**”) and the transfer of such Green Credits as reasonably requested by PREPA in accordance with the rules of the Registry, in each case, at SELLER’s expense. PREPA shall have the sole right to own, market, trade, sell or otherwise transfer such Green Credits available to or in respect of the Facility to any Person, and any Green Credits that are now available or in the future

might become available in respect of the Facility during the Supply Period shall inure to the benefit of, and remain the property of, PREPA.

10. PAYMENT & BILLINGS

10.1 Invoice for Monthly Payment

- a. On or before the fifteenth (15th) Day following the end of each Billing Period (or if later, within five (5) Days after SELLER receives the meter reading data pursuant to Section 8.4 (*Meter Reading*)), SELLER shall provide PREPA with a written invoice for the Monthly Payment relating to such Billing Period. Each invoice shall include, as applicable, the Monthly Fixed Payment, Monthly Variable Payment, Other Payment Adjustments, Discharge Energy, Charge Energy, Ancillary Services, Green Credits, the Balance, information necessary to determine Facility performance, insurance payments, credits or payments owing to PREPA, and an itemized statement of all other charges under this Agreement, as of such Billing Period.
- b. PREPA shall use reasonable efforts to review each invoice and notify SELLER of any invoicing issues within thirty (30) Days after receipt thereof. Upon PREPA's request, SELLER shall furnish, within seven (7) Days, such further information as PREPA may reasonably request in support of the invoice.
- c. To the extent that an invoice complies with the requirements set forth in this Agreement, and subject to any direct agreement with Project Lenders, PREPA shall remit payment of undisputed amounts owed under such invoice no later than forty-five (45) Days after PREPA's receipt of such invoice and all required supporting documentation and certifications. SELLER acknowledges and agrees that PREPA may withhold payment (without accruing Interest) beyond such date if and so long as SELLER has failed to provide evidence that it has maintained the insurance policies required by this Agreement and in accordance with Section 17.2 (*Tracking Account*).
- d. PREPA will charge all payments that it owes under this Agreement to PREPA's budget account number [●] and estimates that its costs under this Agreement will not exceed [●]. For the avoidance of doubt, the Parties have set out the expected account number and estimate of costs for informational purposes to satisfy the requirements of the Puerto Rico Controller. This paragraph does not bind the Parties or modify any other provision of this Agreement.
- e. If agreed or determined that PREPA has underpaid an invoice, then Interest shall accrue on the payments due to SELLER commencing on the Day after the date on which PREPA had the obligation to remit such payment pursuant to paragraph (c) of this Section 10.1, and continue until, but excluding, the relevant payment date.
- f. If agreed or determined that PREPA has overpaid an invoice, then PREPA shall have the right to deduct the amount of such overpayment (plus Interest, calculated from the date of such overpayment to its repayment, in cases where the overpayment resulted from amounts stated in SELLER's invoices) from future payments in the immediately following Billing Period(s) until PREPA has received full credit for such overpayment.

10.2 SELLER Invoice Certification

SELLER shall submit all invoices in the form acceptable to PREPA and shall include in each such invoice the following certification:

No Interest Certification:

“We certify under penalty of nullity that no public servant of PREPA will derive or obtain any benefit or profit of any kind from the contractual relationship, which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the Agreement. The only consideration to be received in exchange for the performance of the energy storage services provided is the agreed-upon price that has been negotiated with an authorized representative of PREPA. The total amount shown on this invoice is true and correct. The energy storage services have been rendered, and no payment has been received.”

SELLER's Signature

SELLER acknowledges that the above certification constitutes an essential requirement of this Agreement and that PREPA will not process for payment invoices provided without this certification. In order to comply with the certification requirements set forth above, SELLER shall require that its subcontractors also include the certification set forth above in any invoices submitted in connection with energy or services provided under this Agreement.

10.3 Invoice for Liquidated Damages

If Liquidated Damages accrue under this Agreement or moneys are otherwise due from SELLER to PREPA in accordance with this Agreement, PREPA shall provide SELLER with a written invoice for such Liquidated Damages or amounts, showing the basis for the calculation of the amounts payable by SELLER thereunder. SELLER shall use reasonable efforts to review each invoice and notify SELLER of any invoicing issues within ten (10) Business Days after receipt thereof. SELLER shall remit payment of amounts owed under such invoice no later than thirty (30) Days after SELLER's receipt of such invoice (including in the event of a disputed invoice). If SELLER does not pay the full amount of any such invoice when due, any unpaid amount thereof shall bear Interest, from the Day following the due date until, but excluding the relevant payment date.

10.4 Payment Set-Off

Notwithstanding the payment requirements set forth in this Article 10, PREPA shall have the right to set off any amounts due and owing to PREPA by SELLER pursuant to this Agreement, but which remain unpaid, against the amounts due and owing to SELLER by PREPA, provided that (i) such amounts are undisputed, have been determined to be owed to PREPA by a final determination pursuant to Section 21.11 (*Dispute Resolution*), or are explicitly described in this Agreement, and (ii) PREPA has provided SELLER with five (5) Business Days' advance written notice describing in reasonable detail the amounts that PREPA will set off before effecting any such set off.

10.5 Payment Method

A Party shall make payments to the other Party by wire transfer to an account with a bank specified by such Party in writing, which such Party shall notify to the other Party prior to the Closing Date, or with such other banks as may thereafter be specified by a Party in writing at least ten (10) Days

prior to the date in which payment becomes due. Either Party may, by written notice to the other Party, change the address to which the notifying Party remits such payments.

10.6 Disputed Invoices

The Parties shall use their reasonable efforts to resolve any Dispute regarding payment of any invoice issued under this Article 10 by amicable negotiation, provided that if the Parties fail to resolve such Dispute by the payment due date, then either Party may refer the Dispute for resolution in accordance with Section 21.11 (*Dispute Resolution*).

11. LIABILITY

11.1 General

From and after the Initial Synchronization Date, each Party shall have responsibility for the Energy and facilities located on its respective side of the Interconnection Point. Except as provided in Section 11.2 (*Foreseeable Damages*), SELLER shall have no liability to PREPA for loss or damage to PREPA's generation, transmission, and distribution system, resulting directly or indirectly from the use, misuse or presence of said energy once it passes the Interconnection Point.

11.2 Foreseeable Damages

Each Party shall have liability for all foreseeable damages suffered by the other Party as a necessary consequence of the first Party's negligent performance or omissions or failure to perform its respective obligations under this Agreement, including during any cure period in accordance with Article 15 (*Termination*), and as stated under Article 1168 of the Puerto Rico Civil Code, subject to the terms of Section 11.3 (*No Liability*).

11.3 No Liability

Neither Party nor its officers, directors, shareholders, agents, employees, and representatives shall, in any event, be liable to the other Party or its officers, directors, shareholders, agents, employees or representatives for Claims for incidental, consequential, special, punitive, 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, Claims made by third parties, Claims made by either Party for lost profits (other than payments expressly contemplated by any provision of this Agreement) or Claims arising from Force Majeure; provided that nothing contained in this Section 11.3 shall exclude or limit a Party's liability for fraud, willful misconduct or gross negligence.

11.4 Obligation to Pay

Nothing in this Article 11 shall relieve either Party of its obligation to make payments that become due pursuant to Article 10 (*Payment & Billings*).

11.5 Seller Liability Cap

SELLER's liability to PREPA under this Agreement, whether based on contract, warranty or tort, including errors or omissions, negligence, strict liability or otherwise, or any other claim or cause of action, with respect to any and all Claims shall not exceed the amount equal to the Seller Liability Cap; provided that (i) nothing contained in this Section 11.5 shall exclude or limit SELLER's liability for the Exceptions, and (ii) for purposes of determining SELLER's liability under this

Agreement, the Parties shall deduct the proceeds of insurance received by SELLER (or would have received had SELLER complied with the terms of this Agreement), relating to the event or circumstances which resulted in such liability.

12. REPRESENTATIONS, WARRANTIES, & COVENANTS

12.1 Compliance with Law

The Parties shall, at all times and in all material respects, comply with Applicable Law, including the Bulk-Power System EO (if in effect), and such other Laws applicable to (i) the use, occupancy, and operation of the Facility, and (ii) SELLER as an Electric Power Company or Electric Power Generation Company (each, as defined under Act 57-2014), as the case may be. SELLER shall give all required notices, shall procure and maintain all Permits and other permits for the development and construction of the PREPA Interconnection Facilities, and shall pay all charges and fees required in connection therewith. SELLER shall complete all environmental impact studies necessary for the design, construction, operation, and maintenance of the Facility and the PREPA Interconnection Facilities. Once obtained, SELLER shall comply with, and promptly submit to PREPA copies of, all material Permits and other permits contemplated by this Section 12.1. Furthermore, pursuant to Section 5(f) of Act 120-2018 and subject to the provisions of this Agreement, SELLER shall at all times comply with the public policy and regulatory framework applicable to the Facility.

12.2 Fines & Penalties

Each Party shall have sole responsibility for the payment of any and all fines or other penalties incurred by or imposed upon such Party or its agents, suppliers, employees, or subcontractors for noncompliance by such Party, its agents, employees, suppliers, or subcontractors with Applicable Law to or in connection with, (i) in the case of SELLER, the development and construction of the Interconnection Facilities (other than PREPA Interconnection Facilities Work), and the development, construction, ownership and operation, maintenance or repair of the Facility, except to the extent that any act or omission of PREPA caused such noncompliance, and (ii) in the case of PREPA, the proper operation of the Grid System, except to the extent that any act or omission of SELLER caused such noncompliance, in each case as determined by applicable Governmental Authority having jurisdiction over the Facility, subject to the indemnification provisions of Article 13 (*Indemnification*).

12.3 SELLER Representations & Warranties

SELLER represents and warrants to PREPA on the Agreement Date, and again on the Closing Date, as follows:

- a. SELLER is a [[●] company], duly organized, validly existing under the Laws of [●]; and SELLER has all requisite power and authority to conduct its business, to own its properties, and to execute, to deliver, and to perform its obligations under this Agreement;
- b. the execution, delivery, and performance by SELLER of this Agreement have been duly authorized, and do not and will not (i) require any additional internal consent or approval of SELLER, the Sponsor or any Affiliate of either of them; or (ii) violate any provision of SELLER's certificate of formation or operating agreement, or any material indenture, contract or agreement to which it is a party or by which it or its properties may be bound, or any Applicable Law, determination or award presently in effect;

- c. SELLER is not in default under any document or instrument referred to in clause (ii) of paragraph (b) of this Section 12.3, which default could reasonably be expected to have a material adverse effect on the ability of SELLER to perform its obligations under this Agreement;
- d. this Agreement constitutes a legal, valid, and binding obligation of SELLER, enforceable against SELLER in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency or similar Laws affecting the enforcement of rights generally; and
- e. except as previously disclosed in writing, there is no pending action or proceeding in which SELLER is a party before any court, governmental agency or arbitrator that could reasonably be expected to affect materially and adversely the financial condition or operations of SELLER or the ability of SELLER to perform its obligations under, or which purports to affect the legality, validity or enforceability of, this Agreement as in effect on the date hereof.

12.4 PREPA Representations & Warranties

PREPA represents and warrants to SELLER on the Closing Date as follows:

- a. pursuant to Act No. 83 of May 2, 1941, as amended, PREPA is a public corporation duly organized and validly existing under the Laws of the Commonwealth of Puerto Rico and has all requisite power and authority to conduct its business as now conducted, to own its properties, and to execute, to deliver, and to perform its obligations under this Agreement;
- b. the execution, delivery, and performance by PREPA of this Agreement (i) has been duly authorized by PREPA's governing board in accordance with Applicable Law, (ii) does not and will not require any additional internal consent or approval of PREPA, (iii) does not require any approval from the PROMESA Court or any other additional external consent or approval, other than those approvals expressly identified in this Agreement, and (iv) does not and will not violate any Applicable Law, including any provision of Act No. 83 of May 2, 1941, as amended, or its regulations, or any material indenture, contract or agreement to which it is a party or by which its properties may be bound; and
- c. this Agreement is a legal, valid, and binding obligation of PREPA, enforceable against PREPA in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency or similar Laws affecting the enforcement of rights generally.

12.5 SELLER Payments

PREPA shall exercise commercially reasonable efforts to ensure that Monthly Payments under this Agreement constitute necessary operating expenses.

12.6 SELLER's Financial Statements

For each of SELLER's fiscal years (or part thereof) during the Term, SELLER shall deliver to PREPA its audited financial statements for such fiscal year, prepared in accordance with GAAP, no later than one hundred twenty (120) Days following the completion of such fiscal year.

12.7 SELLER's Officers

If a change or substitution of one or more of SELLER's corporate officers occurs, then SELLER shall deliver to PREPA a certification of the names of its corporate officers.

12.8 Other Business

SELLER shall not (i) engage in any business activity other than as reasonably required to perform its obligations under this Agreement and the Interconnection Agreement, (ii) enter into any merger, consolidation or amalgamation with any entity, or (iii) demerge, separate or split into one or more entities, in each case, without PREPA's prior written consent.

12.9 Confidentiality

- a. Each Party (the "**Receiving Party**") shall keep all Agreement terms and information obtained from the other Party (the "**Disclosing Party**"), and not otherwise generally available to the public (but without limitation of any liability the Receiving Party may have to the Disclosing Party for information that becomes generally available to the public through the negligence or willful misconduct of any of the Receiving Party, its Affiliates or their respective employees, agents and representatives), confidential and use such information solely in connection with the performance of its obligations under this Agreement. Disclosure of such information may be made only within the Receiving Party's organization to key personnel, to third parties serving as the Receiving Party's legal, financial or technical advisors whose duties justify their need to review and know such material, and to lenders, prospective lenders, investors and prospective investors. The Receiving Party shall require each Person (and personnel thereof) to agree in writing for the benefit of the Disclosing Party to maintain the confidentiality of such information.
- b. To the extent any Governmental Authority requires a Receiving Party to disclose such information or requires such information to secure a governmental approval or authorization, such Receiving Party shall promptly notify the Disclosing Party and use its commercially reasonable efforts to seek a confidentiality agreement that assures confidential treatment of the information consistent with the terms of this paragraph (b) of this Section 12.9. In the event the Receiving Party cannot obtain a confidentiality agreement, such Receiving Party shall use commercially reasonable efforts to obtain through court action the appropriate protective order. Notwithstanding the foregoing and paragraph (a) of this Section 12.9, PREPA may disclose the terms and conditions of this Agreement to (i) FOMB, PREB, COR3, P3A, the PROMESA Court, and any Governmental Authority for the purpose of obtaining the consents and approvals, together with such additional information as may be required to obtain such consents and approvals, (ii) COR3, P3A, any owner of the Grid System, and any potential or then-existing T&D Operator and their respective advisors and lenders, and (iii) the Puerto Rico Controller through the filings required by Applicable Law, which will make this Agreement subject to the open records requirement.

12.10 Local Content

- a. SELLER agrees to use its reasonable efforts when soliciting and obtaining personnel to perform services for the Facility in Puerto Rico, to ensure that individuals who are *bona fide* residents of Puerto Rico as defined in paragraph (c) of this Section 12.10 perform not less than thirty percent (30%) of the total personnel hours expended in the construction of

the Facility (prior to the Commercial Operation Date) and not less than thirty percent (30%) of the total personnel hours expended in SELLER's performance of the Energy Storage Services pursuant to this Agreement (following the Commercial Operation Date).

- b. SELLER agrees to use its reasonable efforts when soliciting and selecting subcontractors and vendors to perform services for the Facility in Puerto Rico, to ensure that business concerns owned and controlled by one or more individuals, who are *bona fide* residents of Puerto Rico as defined in paragraph (c) of this Section 12.10, perform not less than thirty percent (30%) of the total personnel hours expended in the construction of the Facility (prior to the Commercial Operation Date), as measured by person-hours on an annual basis. For purposes of the preceding sentence, "**owned and controlled**" means a business: (i) owned at least fifty-one percent (51%) by one or more of such individuals (*e.g.*, in the case of a corporate form of organization such individuals must hold at least fifty-one percent (51%) of all voting stock of the corporation; in the case of a partnership or other form of business concern such individuals must hold at least fifty-one percent (51%) of the beneficial interests in the partnership or business concern); and (ii) one or more of such Persons (who need not be owners of the business) control the management and daily business operations.
- c. For purposes of this paragraph (c), a *bona fide* resident of Puerto Rico means an individual who has been a resident of Puerto Rico immediately prior to commencing work on the Facility. To the extent that despite SELLER's reasonable efforts SELLER has failed to achieve the goals set forth in paragraphs (a) and (b) of this Section 12.10, SELLER may, for purposes of calculating satisfaction of such percentages of local content, include the services of individuals who at some time prior to commencing work on the Facility, but not necessarily including the period of time immediately prior to commencing work on the Facility, were residents of Puerto Rico for at least five (5) consecutive Years and who relocated to Puerto Rico in order to perform work on the Facility. SELLER shall, in good faith, be entitled to rely on the representation of each individual applicant and of each subcontractor or vendor as to whether such individual, subcontractor or vendor meets the criteria set forth herein. SELLER shall require equivalent undertakings from its subcontractors.
- d. Nothing contained herein shall be interpreted as obligating SELLER to take any action which would violate Applicable Law or any affirmative action program or equal opportunity obligation to which SELLER or its Affiliates are or may be bound under Applicable Law.

12.11 Subcontracting

Neither Party shall be relieved of its obligations under this Agreement as a result of subcontracting any of its obligations to a third party.

13. **INDEMNIFICATION**

13.1 General

Subject to the other provisions of this Article 13, each Party (the "**Indemnifying Party**") shall indemnify and hold harmless the other Party and each of its Indemnitees from and against any and all Claims by third parties for or on account of injury, bodily or otherwise, or death of persons or for damage to or destruction of third-party property, in each case to the extent resulting from or

arising out of the Indemnifying Party's violation of Law, negligence, willful misconduct or failure to perform under this Agreement.

13.2 Notice of Claim

In the event any Party to this Agreement receives notice of any Claim for which such Party elects to assert a right of indemnification under this Article 13 the Party receiving such notice shall give prompt written notice to the other Party of such 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 (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 her choosing, but in such event, such Party shall bear the cost and expense of said additional counsel.

13.3 Claims Arising from Environmental Harm

SELLER shall indemnify and hold harmless PREPA, and each of its Indemnitees, against any and all Claims arising directly or indirectly out of any environmental harm due to the actions of SELLER or SELLER's agents or employees during (i) the design, development or construction of the PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work) as a result of the introduction by SELLER or SELLER's agents or employees of, or (ii) during the design, development, construction or operation of the Facility, in each case as a result of the presence at the Facility of pollutants, hazardous substances, materials or wastes in excess of amounts and concentrations permitted by Applicable Law then in effect. In the event SELLER fails to reimburse PREPA for such Claims within thirty (30) Days of receipt of written notice from PREPA stating that such Claims were incurred (including reasonable documentation of such Claims), PREPA may offset the amount of such Claims against amounts due to SELLER from PREPA under this Agreement. In the event SELLER disputes that Claims are due to the actions of SELLER or SELLER's agents, the Parties shall resolve such Dispute pursuant to Section 21.11 (*Dispute Resolution*), and PREPA shall not offset any such disputed amounts until final settlement under Section 21.11 (*Dispute Resolution*).

14. **FORCE MAJEURE**

14.1 General

"Force Majeure" means, subject to Section 14.2 (*Instances of Force Majeure*), any event or circumstance beyond the reasonable control of the affected Party (the **"Affected Party"**) and not resulting from the fault or negligence of the Affected Party claiming the Force Majeure, which wholly or partially prevents the Affected Party from performing any of its obligations under this Agreement, but only if and to the extent that:

- a. the Affected Party could not have prevented, avoided, or removed such circumstance, despite the exercise of reasonable diligence in accordance with consistent with Prudent Utility Practices;
- b. the Affected Party has taken all reasonable precautions, due care, and reasonable alternative measures in order to (i) avoid the effect of such event or circumstance on the Affected Party's ability to perform such obligation under this Contract, and (ii) mitigate the consequences thereof;

- c. such 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 such event or circumstance in accordance with Section 14.3 (*Notice*).

Except as provided in Section 14.4 (*Consequences*), Force Majeure shall excuse the Affected Party claiming the Force Majeure from performing the obligation affected by such Force Majeure and the Affected Party shall have no liability for damages or otherwise to the extent caused by such non-performance. The Affected Party shall bear the burden of proving whether Force Majeure has occurred.

14.2 Instances of Force Majeure

Provided that a claim of Force Majeure satisfies the requirements of Section 14.1 (*General*), Force Majeure may include the following events: (i) acts of God, strikes (national and other general strikes), industrial disturbances, acts of public or foreign enemy, war, blockades, boycotts, riots, insurrections, epidemics, pandemics, earthquakes, storms, tornado, drought, hail, sabotage, works to rule, go-slows and other public agitation; (ii) invasion, terrorism, rebellion, plague, lightning, hurricane, natural calamity, floods, civil disturbances, lockouts, fires, explosions, interruptions of services due to the act or failure to act of any Governmental Authority, including quarantine and lock-downs; (iii) any Pending Permit Delay; and (iv) failure of any subcontractor or supplier of the Affected Party to perform as a result of an event that would constitute Force Majeure hereunder. Notwithstanding the foregoing, Force Majeure shall expressly not include:

- a. the bankruptcy of a Party or any of its subcontractors or suppliers at any tier;
- b. breakdown or defect of temporary works or the Contractor’s equipment or any subcontractor’s equipment, other than breakdown caused by a separate Force Majeure;
- c. any changes in prevailing market prices for goods, fuel, or labor;
- d. strikes, lockouts, works to rule, go-slows, and other industrial disturbances by personnel of SELLER or any of its contractors and subcontractors at any tier;
- e. any failure by a Party to obtain and/or maintain a Permit, other than in the case of a Pending Permit Delay;
- f. any Pending Permit Delays in excess of eighteen (18) Months; or
- g. any promulgation by the U.S. Department of Energy of implementation rules for the Bulk-Power System EO after the Agreement Date that causes delay in excess of twelve (12) Months.

14.3 Notice

A Party claiming Force Majeure shall, within ten (10) Days after the occurrence of the event(s) which forms the basis for such claim, give the Non-Affected Party written notice thereof, describing (i) the particulars of such occurrence, (ii) an estimate of the duration of the impact of such event on the Affected Party’s ability to perform its obligations, and (iii) how such claim otherwise satisfies the requirements of Section 14.1 (*General*).

14.4 Consequences

Subject to Appendix F (*Compensation*), neither Party shall be excused by reason of Force Majeure from the obligation to make any payments when due to the other Party.

14.5 Disputes

If a Party Disputes the other Party's claim of Force Majeure, such Dispute shall be resolved pursuant to Section 21.11 (*Dispute Resolution*).

15. TERMINATION

15.1 Termination Date

Subject to Section 15.2 (*No Discharge of Obligations*), this Agreement shall automatically terminate on the earlier to occur of:

- a. expiration of the Term;
- b. mutual consent of the Parties in writing;
- c. termination of the Agreement identified in a written notice delivered by the non-defaulting Party following the occurrence of a Default, provided that the termination date occurs no earlier than thirty (30) Days after the issuance of such notice, and if the defaulting Party can cure such Default, such Party fails to cure such Default within such thirty (30) Day period;
- d. the inability of the Parties to achieve the Closing Date by the date required under Section 2.3 (*Initial Effectiveness & Closing Date*);
- e. prior to the Initial Synchronization Date only, the determination by SELLER (as notified to PREPA in writing) to terminate this Agreement and the Interconnection Agreement upon the continuance of a Pending Permit Delay in excess of eighteen (18) Months;
- f. a Construction Start Termination Event; or
- g. a COD Termination Event.

15.2 No Discharge of 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 Articles 11 (*Liability*), 13 (*Indemnification*), 14 (*Force Majeure*), 15 (*Termination*), and 21 (*Miscellaneous Provisions*), Sections 2.5 (*Performance Security*), 3.5 (*Delay Liquidated Damages*), 6.8 (*Record Keeping*), 12.9 (*Confidentiality*), 16.2 (*Certain Material Breaches*), and 17.2 (*Tracking Account*), and Appendix P (*Performance Guarantees*). The Articles, Sections, and Appendices designated in the preceding sentence shall survive the Termination Date, provided that Section 12.9 (*Confidentiality*) and Article 13 (*Indemnification*) shall expire on the first (1st) and second (2nd) anniversary of the Termination Date, respectively. Without limiting the foregoing, termination of this Agreement shall not discharge either Party from any Claim or obligation it owes to the other Party under this Agreement by reason of any transaction, loss, cost, damage, expense, or liability

which shall occur or arise (or the circumstances, events, or basis of which shall occur or arise) prior to the Termination Date. Any such Claim or obligation owed (whether the same shall be known or unknown at termination or whether the circumstances, events, or basis of the same shall be known or unknown at termination) shall survive the Termination Date. Except as otherwise expressly contemplated by this Agreement, any indebtedness by either Party to the other shall be considered payable within ninety (90) Days after the Termination Date.

15.3 Removal of Facility & Related Equipment

Following the Termination Date, SELLER shall be entirely responsible (at its sole cost, risk, and expense) for owning, operating, maintaining, and ultimately removing the Facility and related equipment at the end of their useful lives in accordance with all Applicable Laws.

16. **DEFAULT**

16.1 Definition

The following events shall constitute a “**Default**” under this Agreement:

- a. for SELLER as the defaulting Party only, the provision of materially incorrect or misleading information, representation or certification submitted (or made) by SELLER in connection with either (i) the submission of SELLER’s proposal to PREPA in response to the RFP, or (ii) the execution, delivery or performance by SELLER of this Agreement, in each case relating to either (a) corruption or bribery matters, or (b) a representation made by SELLER under Section 16.2 (*Certain Material Breaches*);
- b. except as otherwise covered in paragraph (a) of this Section 16.1, a materially incorrect or misleading representation or warranty made by a Party under this Agreement or any certification submitted by a Party in connection with the execution, delivery or performance of this Agreement, which in either case remains uncured for a period of at least sixty (60) Days after receipt by such Party of notice thereof from the other Party;
- c. for SELLER as the defaulting Party only, default by SELLER in the observance or performance of any covenant contained in Section 2.5 (*Performance Security*) where such default continues uncured for a period of at least thirty (30) Days after the date on which SELLER receives written notice from PREPA of such failure;
- d. a Party’s failure to remit in full any amount due and payable under this Agreement to the other Party, which the first Party fails to cure within sixty (60) Days after the date on which the first Party receives written notice from the other Party of such failure (other than disputed amounts, which the Parties shall resolve in accordance with Section 21.11 (*Dispute Resolution*));
- e. for SELLER as defaulting Party, a default by SELLER under paragraphs (a) or (b) of Section 16.2 (*Certain Material Breaches*);
- f. except as otherwise covered in paragraphs (c) or (d) of this Section 16.1, default by a Party in the observance or performance of any of the material terms, covenants, or conditions contained in this Agreement, which remains uncured for a period of one hundred twenty (120) Days after the date on which the first Party receives written notice from the other Party of such failure, or such longer period (not to exceed an additional cure period of one

hundred fifty (150) Days if the first Party can cure such default and diligently pursues such cure); and

g. for SELLER only as the defaulting Party:

1. a Construction Start Termination Event;
2. a COD Termination Event;
3. a termination of the Interconnection Agreement due to default by SELLER;
4. an Insolvency Event;
5. a Development Abandonment;
6. a Permanent Closing;
7. the rolling average of Facility Availability falls below seventy percent (70%) in any three (3) consecutive Billing Periods, or such longer period of time not to exceed eighteen (18) months so long as SELLER continues to exercise its best efforts to restore full Facility Availability; or
8. the Actual Efficiency of the Facility falls below the Guaranteed Capacity by three percent (3%) or more,

in each case for any reason other than a PREPA Risk Event or Force Majeure affecting SELLER.

16.2 Certain Material Breaches

- a. Pursuant to FOMB's contract review policy (FOMB POLICY: REVIEW OF CONTRACTS, as modified on October 30, 2020), SELLER represents and warrants to PREPA on the Agreement Date, and again on the Closing Date, (i) the due execution by SELLER and delivery to PREPA of a certification (the "**FOMB Certification**") in the form set out in Appendix R (*Form of FOMB Certification*), and (ii) the completeness, accuracy, and correctness of all information included in such FOMB Certification. As acknowledged, certified, and agreed in the FOMB Certification, any misrepresentation, inaccuracy, or falseness in such FOMB Certification shall render this Agreement null and void, and SELLER shall reimburse PREPA immediately for any amounts, payments or benefits received from PREPA under this Agreement.
- b. In accordance with Article 3.4 of Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico of the Commonwealth of Puerto Rico, as amended, SELLER acknowledges and agrees that its conviction or guilty plea for any of the crimes as enumerated in Article 3.4 of such Act, in addition to any other applicable liability, shall render this Agreement null and void, and SELLER shall reimburse PREPA immediately for any amounts, payments or benefits received from PREPA under this Agreement that directly resulted from the committed crime, but only to the extent required by Act 2-2018.
- c. PREPA shall have the right to terminate this Agreement if Puerto Rico or United States Federal Court convicts SELLER 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, of 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 the misuse of public funds or property, including 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.

- d. SELLER acknowledges and agrees that the conditions outlined throughout this Section 16.2 constitute essential requirements of this Agreement.

16.3 Remedies & Disputes

Upon the occurrence of a Default, the non-defaulting Party shall have the right to invoke its remedies under this Agreement and/or under Applicable Law. Any Disputes in connection with the existence of a Default shall be resolved in the manner prescribed in Section 21.11 (*Dispute Resolution*).

17. TAXES & FEES

17.1 SELLER Requirements

- a. SELLER shall bear all Taxes and Environmental Costs applicable to the construction and operation of the Facility, provided that, subject to Section 17.2 (*Tracking Account*), PREPA shall reimburse SELLER for fifty percent (50%) of the additional costs (net of cost reductions) resulting from Post-Agreement Date Taxes or from Post-Agreement Date Environmental Costs applicable to SELLER by reason of the ownership or operation of the Facility for the purpose of providing the Energy Storage Services to PREPA (collectively, the “**Changes**”). PREPA shall reimburse SELLER for such Changes through an equitable adjustment to the Capability Payment Price and subject to Section 17.2 (*Tracking Account*).
- b. SELLER will promptly pay and discharge all other 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 that SELLER shall not be required to pay any such Taxes, assessment, charge, levy, account payable or Claim if: (i) the validity, applicability or amount thereof remains contested in good faith by appropriate actions or proceedings which will prevent the forfeiture or sale of any property of SELLER or any material interference with the use thereof by SELLER, and (ii) SELLER shall set aside on its books reserves deemed by it to be adequate with respect thereto.

17.2 Tracking Account

- a. The Parties shall record all Changes paid by PREPA according to Section 17.1 (*SELLER Requirements*) in an unfunded tracking account maintained by PREPA (the “**Tracking Account**”). SELLER shall have the right, upon reasonable notice and during business hours, to audit PREPA’s records reflecting the balance in the Tracking Account and to identify and object to any error in such calculations. If the Parties cannot agree on an adjustment to the balance in the Tracking Account within thirty (30) Days of PREPA’s receipt of SELLER’s objection, then a Party may refer such matter to dispute resolution by either Party pursuant to Section 21.11 (*Dispute Resolution*).

- b. If the Tracking Account has a balance at the end of the twenty-second (22nd) Agreement Year (“**Balance**”), then PREPA shall have the right to withhold and retain up to fifty percent (50%) of the amounts due in each Billing Period of the remaining Term. The Parties shall subtract the retained amount from the Balance until the Balance equals zero (0). If any portion of the Balance remains outstanding at the expiration of the Term under Section 2.2 (*Initial Term*), then PREPA shall have the option to extend the Term up to an additional two (2) Agreement Years as necessary to repay the Balance plus Interest by applying such monthly retention as set forth above. If, at the expiration of the initial Term under Section 2.2 (*Initial Term*), an undisputed deficit exists in the Tracking Account, then PREPA shall pay SELLER an amount sufficient to compensate SELLER for such deficit within thirty (30) Days after the expiration of the Term. If a Party terminates this Agreement early pursuant to Article 15 (*Termination*), and an undisputed balance remains in the Tracking Account (the “**Termination Balance**”), SELLER shall repay such Termination Balance plus Interest to PREPA within thirty (30) Days of the Termination Date. Notwithstanding the foregoing, SELLER shall have the option to prepay all or any portion of the Balance or the anticipated Termination Balance, if applicable, at any time or from time to time.
- c. The Parties agree that PREPA shall have the right to an annual audit of payments or credits for Changes as a result of a Post-Effective Date Tax or a Post-Effective Date Environmental Cost and to adjust such payments if necessary, as a result of the findings of such audit. Both Parties shall have the right to participate in such audit.

17.3 PREPA Requirements

PREPA shall pay or cause to be paid all Taxes on or with respect to (i) the purchase of Energy Storage Services and the sale of Discharge Energy at the Interconnection Point (including sales tax, excise tax, municipal license tax, and value-added tax), and (ii) the purchase, use and disposition of the Ancillary Services and the Green Credits.

18. **INSURANCE**¹⁰

18.1 SELLER Requirements

SELLER shall obtain and maintain in full force and effect from the Construction Start Date and during the Term of this Agreement and thereafter as provided herein policies of insurance covering all operations engaged in by this Agreement, which shall be formally agreed with an insurance company authorized to do business in Puerto Rico, and to that effect, it shall provide in original certificates of insurance and endorsements as follows:

- a. *Worker’s Compensation Insurance*: SELLER shall provide and maintain Worker’s Compensation Insurance as required by the Worker’s Compensation Act of the Commonwealth of Puerto Rico. SELLER shall also have responsibility for compliance with said Worker’s Compensation Act by all its subcontractors, agents, and invitees. SELLER shall furnish PREPA a certificate from the State Insurance Fund, in a form acceptable to PREPA, showing that all personnel employed in the work are covered by the Worker’s Compensation Insurance, in accordance with this Agreement. Imported technical

¹⁰ Note: PREPA will consider the insurance requirements set forth in this Article 18 with Proponents upon selection of their proposal for RFP Phase III evaluation and adjust such requirements to the extent not available / achievable with prevailing market conditions.

personnel are exempted, as per Act of May 16, 1958 No 16. SELLER shall furnish evidence of such exemption and certificate from the insurance carrier covering said personnel.

- b. *Commercial General Liability Insurance:* SELLER shall provide and maintain Commercial General Liability Insurance with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. Such insurance shall include specific coverage for contractual liability, “XCU” explosion, collapse and underground damages coverage, products, and completed operations liability.
- c. *Automobile Liability Insurance:* SELLER shall provide and maintain Automobile Liability Insurance with limits of \$1,000,000 combined single limit covering all owned, non-owned, and hired automobiles.
- d. *Excess Umbrella Liability Insurance:* SELLER shall provide and maintain Excess Umbrella Liability Insurance with limits of \$4,000,000 per occurrence in excess of the limits of insurance provided in paragraph (b) of this Section 18.1.
- e. *All Risk Physical Damage Property Insurance:* SELLER shall provide and maintain All Risk Physical Damage Property Insurance, including machinery coverage to cover all real and personal property of SELLER (including earthquake and hurricane occurrence) to [one hundred percent (100%)] of replacement cost. SELLER shall place this insurance policy in effect on the Commercial Operation Date. The insurance, as required in this paragraph (e) of this Section 18.1, 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.
- f. *Equipment Breakdown Policy:* Unless included in the All Risk Physical Damage Insurance required in paragraph (e) of this Section 18.1, SELLER shall provide and maintain an Equipment Breakdown Policy to cover all equipment and machinery of SELLER. This insurance shall name PREPA as an additional insured under this policy.
- g. *Employer’s Liability Insurance:* To the extent that SELLER employs employees, SELLER shall provide and maintain Employer’s Liability Insurance with minimum bodily injury limits of \$1,000,000 for each employee and \$1,000,000 for each accident, covering against the liability imposed by Law upon SELLER as a result of bodily injury, by accident or disease, including death arising out of and in the course of employment, outside of and in the course of employment, and outside of and distinct from any claim under the Worker’s Compensation Act of the Commonwealth of Puerto Rico.
- h. *Business Interruption Insurance:* SELLER shall provide and maintain Business Interruption Insurance[, subject to a reasonable deductible (which the Parties shall construe as insurance proceeds actually received by SELLER for the purposes of this Agreement)] with respect to the Facility to include business interruption/contingent business interruption/loss of income for at least six (6) Months, with a waiting period not exceeding thirty (30) Days, an extended period of indemnity of an additional ninety (90) Days, and coverage for extra expense/contingent extra expense incurred during any period of interruption based on actual loss sustained. SELLER shall place this policy into effect on the Commercial Operation Date.

18.2 Requirements for SELLER Policies

SELLER shall ensure that the provider of the Commercial General Liability Insurance and Automobile Liability Insurance, as required under Section 18.1 (*SELLER Requirements*), endorses such insurance to include:

- a. as Additional Insured:

Puerto Rico Electric Power Authority
Risk Management Office
PO Box 364267
San Juan, PR 00936-4267;
- b. a thirty (30) Days' cancellation or nonrenewable notice (ten (10) Days for non-payment of premium) to be sent by certified mail to SELLER (with a copy to PREPA) with return receipt to the above address sent by SELLER;
- c. an endorsement including this Agreement under contractual liability coverage and identifying it by number, date and the Parties;
- d. a waiver of Subrogation in favor of PREPA; and
- e. the breach of any of the Warranties or Conditions in these policies by SELLER shall not prejudice PREPA's rights under this policy.

18.3 Contractor Requirements

The contractors and designers retained by SELLER to construct the Facility and the PREPA Interconnection Facilities shall obtain and maintain in full force and effect before the Construction Start Date, policies of insurance covering all constructions engaged in by this Agreement, which shall be formally agreed with insurance companies authorized to do business in Puerto Rico, and to that effect SELLER shall provide in the original certificate of insurance and endorsements, as follows:

- a. *Worker's Compensation Insurance:* SELLER shall cause its contractors to provide and maintain Worker's Compensation Insurance as required by the Worker's Compensation Act of the Commonwealth of Puerto Rico. SELLER shall also have responsibility for compliance with said Worker's Compensation Act by all its subcontractors, agents, and invitees. SELLER shall furnish PREPA a certificate from the State Insurance Fund showing that all personnel employed in the work are covered by the Worker's Compensation Insurance, in accordance with this Agreement. Imported technical personnel are exempted, as per Act of May 16, 1958, No. 16. SELLER shall furnish evidence of such exemption and certificate from the insurance carrier covering said personnel.
- b. *Employer's Liability Insurance:* SELLER shall cause its contractors to provide and maintain Employer's Liability Insurance with minimum bodily injury limits of \$1,000,000 for each employee and \$1,000,000 for each accident, covering against the liability imposed by Law upon SELLER as a result of bodily injury, by accident or disease, including death arising out of and in the course of employment and outside of and distinct from any claim under the Worker's Compensation Act of the Commonwealth of Puerto Rico.

- c. *Commercial General Liability Insurance*: SELLER shall cause its contractors to provide and maintain Commercial General Liability Insurance (“CGL”) with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage. Continuing CGL insurance shall cover liability arising from products completed operations and liability assumed under an insured contract for at least three (3) Years following substantial completion of the work.
- d. *Automobile Liability Insurance*: SELLER shall cause its contractors to provide and maintain Automobile Liability Insurance with limits of \$1,000,000 combined single limit covering all owned, non-owned, and hired automobiles.
- e. *Excess Umbrella Liability Insurance*: SELLER shall cause its contractors to provide and maintain Excess Umbrella Liability Insurance with limits of \$4,000,000 per occurrence in excess of the limits of insurance provided in paragraph (c) of this Section 18.3.
- f. *Builder’s Risk Insurance*: SELLER shall provide or cause its contractors to provide and maintain in force Builder’s Risk Insurance for the entire work. Such insurance shall be written in an amount equal to the total contract sum as well as subsequent modifications of that sum. The insurance shall apply on a replacement cost basis and coverage shall be written on a completed value form as follows:
 - 1. The insurance as required above shall be written to cover all risks of physical loss except those specifically excluded in the policy and shall insure at least against the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, riot, civil commotion, theft, vandalism, malicious mischief, earthquake, and collapse.
 - 2. SELLER shall pay any deductible applicable to the insurance purchased in compliance with this requirement.
 - 3. Waiver of Subrogation. SELLER shall waive all rights against PREPA and its officers, directors, agents, and employees for recovery for damages caused by fire and other perils to the extent covered by builder’s risk or property insurance purchased pursuant to the requirements of this Agreement or any other property insurance applicable to the work.

18.4 Requirements for the Contractor Policies

SELLER shall ensure that the provider of the Commercial General Liability Insurance and Automobile Liability Insurance, as required under Section 18.3 (*Contractor Requirements*), endorses such insurance to include:

- a. as Additional Insured:

Puerto Rico Electric Power Authority
Risk Management Office
PO Box 364267
San Juan, PR 00926-4267;
- 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 this Agreement under contractual liability coverage and identifying it by number, date, and the Parties;
- d. a waiver of Subrogation in favor of PREPA; and
- e. the breach of any of the Warranties or Conditions in these policies by the relevant Contractor or designer shall not prejudice PREPA's rights under this policy.

18.5 Application of Proceeds

SELLER shall apply any and all insurance proceeds received in connection with the damage or loss of the Facility, or (prior to their transfer) the PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work), toward the repair, reconstruction, or replacement of the Facility or the PREPA Interconnection Facilities, as applicable.

19. ASSIGNMENT & TRANSFER

19.1 Restriction on Assignment

Except as otherwise provided in this Article 19, neither Party shall assign or transfer this Agreement without the prior written consent of the other Party, which consent such Party shall not unreasonably withhold or delay. Any attempt to assign this Agreement without the prior written consent of the corresponding Party shall be void. Any failure of a Party to respond to any request by the other Party for consent to assignment pursuant to this Section 19.1 shall not be deemed or construed as an acceptance or consent to such proposed assignment.

19.2 PREPA's Right to Assign

Notwithstanding the provisions of Section 19.1 (*Restriction on Assignment*), the Parties acknowledge that PREPA is undergoing a transformation process, and therefore agree that, after the front-end transition period of a Partnership Contract, Sale Contract, or any other PREPA Transaction (as these terms are defined in Act 120-2018), PREPA may sell, assign, convey, transfer, pledge, mortgage, sublease, delegate, hypothecate, or otherwise dispose (each, a "**Transfer**") any of its rights, title, or interest in this Agreement as permitted by Applicable Law and at any time, without SELLER's consent, and without cost, expense, or incremental liability to PREPA, to a T&D Operator, an Affiliate of PREPA or any Governmental Authority of Puerto Rico; provided that PREPA shall notify SELLER no later than thirty (30) Days before the effective date of any such Transfer. Unless otherwise agreed by PREPA, following the Transfer, PREPA shall be released from all obligations under this Agreement to the extent such transferee assumes such obligations in writing, provided that, for any Transfer to an Affiliate of PREPA, PREPA shall guarantee the payment obligations of such Affiliate arising out of this Agreement following such assignment.

19.3 SELLER's Right to Assign

Notwithstanding the provisions of Section 19.1 (*Restriction on Assignment*), SELLER shall have the right to assign, pledge or encumber this Agreement in its entirety or in part without PREPA's consent to the Project Lenders as collateral security in order to obtain financing or other funding. PREPA agrees to execute and deliver an agreement consenting to any assignment as collateral security in favor of the Project Lenders containing terms and conditions that are customary for transactions of this kind. PREPA agrees to cooperate in good faith in this regard and to provide other customary and reasonable documents and acknowledgments as the Project Lenders may

reasonably request in connection with the financing of the Facility, including estoppel certificates and direct agreement or consent to an assignment in accordance with this Section 19.3 and substantially in the form of Appendix W (*Form of Direct Agreement*) and a legal opinion addressed to the Project Lenders with respect to due authorization and capacity of PREPA to enter into such agreement or consent, and enforceability thereof, in each case as reasonably acceptable to PREPA, provided that SELLER shall reimburse PREPA for the cost of negotiating and providing such documents, acknowledgments, opinions, certificates, consents, and agreements. In addition, SELLER shall have the right to assign this Agreement as collateral security to any agent, trustee, or other Person (including any corporation or partnership) representing the Project Lenders under the financing documents. If SELLER shall assign this Agreement as collateral security pursuant to this Section 19.3, then so long as the secured obligations, or any consolidation, modification, or extension of such obligation shall remain outstanding, the following provisions shall apply:

- a. The making of an assignment pursuant to the preceding provisions of this Section 19.3 shall not be deemed to constitute an assignment or transfer of this Agreement, nor shall any assignee referred to above, as such, be deemed to be an assignee or transferee of this Agreement so as to require such assignee, as such, to assume the performance of any of the terms and conditions of SELLER to be performed hereunder; provided that the purchaser at any sale of this Agreement in any proceeding for the foreclosure of any assignment, or the assignee or transferee of this Agreement in any proceedings for the foreclosure of any assignment, or the assignee or transferee of this Agreement under any instrument of assignment or transfer in lieu of the foreclosure of any assignment, shall be deemed to be an assignee or transferee within the meaning of this paragraph (a) of this Section 19.3 and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of SELLER to be performed hereunder from and after the date of such purchase and assignment.
- b. Notwithstanding any other provision of this Agreement, any sale of SELLER's rights in this Agreement in any secured creditor's sale, any proceeding for the foreclosure of any assignment, or the assignment or transfer of this Agreement in lieu of the foreclosure of any assignment, shall be deemed to be a permitted sale, transfer or assignment of this Agreement, and this Agreement shall continue in full force and effect following any such sale, transfer or assignment.
- c. If PREPA terminates this Agreement prior to the expiration of the Term due to a Default by SELLER or rejects or disaffirms this Agreement pursuant to any bankruptcy Law or proceeding or other similar Applicable Law or proceedings affecting creditors' rights generally with respect to a bankruptcy proceeding relating to SELLER or otherwise, PREPA agrees, if outstanding obligations to a Project Lender exist, and subject to the receipt of all necessary approvals, to enter into a new energy storage services agreement with the Project Lender (or its designee or nominee) on substantially similar terms to this Agreement; provided that such designee or nominee (x) is Controlled by the Project Lender, (y) is approved by PREPA (which approval PREPA shall not unreasonably withhold) and has provided to PREPA (i) its audited financial statements as per GAAP, demonstrating that such new designee or nominee has a tangible net worth of at least twenty-five million dollars (\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least seventy-five million dollars (\$75,000,000))¹¹, (ii) evidence reasonably acceptable to PREPA that such new designee or nominee is or has engaged a Qualified Operator, and (iii) the certifications and documentation required by Appendix B (*Signing*

¹¹ Note: These amounts align with FOMB requirements on prior transactions.

Conditions), but construing references to SELLER therein as references to such new designee or nominee, and (z) has accepted all terms, provisions and limitations of this Agreement, effective as of the date of such termination.

SELLER shall not have the right to assign its rights, title, or interest under this Agreement to any Affiliate of SELLER without the prior express written consent of PREPA, unless (i) such Affiliate agrees to be bound by the terms of this Agreement and to fully perform the obligations of SELLER hereunder (including Appendix B (*Signing Conditions*)), (ii) each Sponsor maintains the same percentage of the total Equity ownership interest in such Affiliate, whether directly or indirectly, as it owns in SELLER at the time of such assignment, and (iii) SELLER owns no less than fifty-one percent (51%) of the total Equity ownership interest in such Affiliate. SELLER shall notify PREPA of SELLER's intention to assign this Agreement at least thirty (30) Days in advance of any such assignment.

19.4 Restrictions on Equity Transfers

SELLER shall ensure that each Sponsor does not assign, sell or transfer (whether directly or indirectly) to any other Person any part of its ownership interests in SELLER or renounce any preferential subscription rights for ownership interests in connection with a capital increase (each, a “**Equity Transfer**”) at any time prior to the Commercial Operation Date. On or after the Commercial Operation Date, SELLER shall ensure that each Sponsor does not affect an Equity Transfer at any time without the prior express written consent of PREPA. Notwithstanding the foregoing, a Sponsor may, without PREPA's consent:

- a. create a security interest in its ownership interest in SELLER in favor of the Project Lenders, and PREPA hereby approves any Equity Transfer thereof resulting from the enforcement of such security interests in accordance with the financing documents of the Project Lenders;
- b. (i) prior to the Commercial Operation Date, effect an Equity Transfer solely in connection with a financing transaction involving Tax Credits under Section 48 of the U.S. Internal Revenue Code, provided that such transfer does not result in the Control of SELLER or the Project being transferred to a third party other than the Sponsor or SELLER, as applicable; and (ii) at any time after the Commercial Operation Date, effect an Equity Transfer back to SELLER or Sponsor, as applicable, pursuant to the terms of such financing transaction entered into prior to the Commercial Operation Date involving Tax Credits under Section 48 of the U.S. Internal Revenue Code;
- c. at any time after the Commercial Operation Date, effect an Equity Transfer to a Wholly-Owned Affiliate of a Sponsor, provided that such Wholly-Owned Affiliate remains a Wholly-Owned Affiliate of such Sponsor at all times after such Equity Transfer; or
- d. from and after the second anniversary of the Commercial Operation Date, effect an Equity Transfer to a Person, including a Wholly-Owned Affiliate, provided that such Equity Transfer, when aggregated with all previous Equity Transfers, does not result in a transfer of more than forty-nine percent (49%) of the issued and outstanding shares and voting rights in SELLER to any Person other than a Sponsor or a Wholly-Owned Affiliate of a Sponsor.

If SELLER intends to effect an Equity Transfer, then it shall notify PREPA of such intention at least thirty (30) Days in advance of the intended date of such transfer. The failure of PREPA to

respond to any request by SELLER for consent to transfer pursuant to this Section 19.4, shall not be deemed or construed as an acceptance or consent to such proposed transfer. PREPA acknowledges and agrees that the identity and existence of such third party, and the potential transfer, shall be kept confidential in accordance with Section 12.9 (*Confidentiality*); and if requested by SELLER, PREPA shall enter into a confidentiality agreement with respect to the same, in a form reasonably acceptable to PREPA, provided that SELLER shall reimburse PREPA for the cost of negotiating and executing such agreement. Prior to PREPA's consent to any Equity Transfer, SELLER shall cause the proposed new owner of such equity to provide to PREPA (i) its audited financial statements as per GAAP, demonstrating that such new owner has a tangible net worth of at least twenty-five million dollars (\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least seventy-five million dollars (\$75,000,000)), (ii) evidence reasonably acceptable to PREPA that such new owner is or has engaged a Qualified Operator, and (iii) the certifications and documentation required by Appendix B (*Signing Conditions*), but construing references to SELLER therein as references to such new owner. In each case, SELLER shall obtain any regulatory approvals required in respect of such transfer and ensure such transfer otherwise complies with Applicable Law.

19.5 Restrictions on Asset Transfers

- a. SELLER shall not sell or transfer, directly or indirectly, the Facility, any portion of the Facility or substantially all of its assets either (i) at any time prior to the Commercial Operation Date, or (ii) for any such sale or transfer occurring on or after the Commercial Operation Date, without PREPA's prior express written consent. The foregoing prohibition shall not apply to any such transfer that (1) forms part of a foreclosure on any mortgage, lien, pledge, charge or other encumbrance granted to the Project Lenders under any non-recourse project financing related exclusively to such assets and such lenders or their agent have entered into a direct agreement with PREPA in respect of the collateral assignment of this Agreement and the Interconnection Agreement, or (2) constitutes a permitted assignment under Section 19.3 (*SELLER's Right to Assign*).
- b. If SELLER intends to sell the Facility, or any portion of the Facility, or substantially all of its assets, pursuant to PREPA's consent under the first sentence of paragraph (a) of this Section 19.5, then it shall notify PREPA of its intention to sell at least sixty (60) Days in advance of the intended date of such sale. PREPA shall not unreasonably withhold or delay its consent to any such sale or transfer, provided that the failure of PREPA to respond to any request by SELLER for consent to such a sale or transfer shall not be deemed or construed as an acceptance or consent to such proposed sale or transfer. Prior to PREPA's consent to any such asset transfer, SELLER shall cause the proposed new owner to provide PREPA with (i) its audited financial statements as per GAAP, demonstrating that such new owner has a tangible net worth of at least twenty-five million dollars (\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least seventy-five million dollars (\$75,000,000)), (ii) evidence reasonably acceptable to PREPA that such new owner is or has engaged a Qualified Operator, and (iii) the certifications and documentation required by Appendix B (*Signing Conditions*), but construing references to SELLER therein as references to such new owner. In each case, (1) SELLER shall obtain any regulatory approvals required in respect of such transfer and ensure such transfer otherwise complies with Applicable Law, and (2) if requested by PREPA, the Parties and such new owner shall enter into an agreement under which (A) SELLER assigns and transfers all of its rights and obligations under this Agreement to such new owner, and (B) such new owner expressly assumes all liabilities of SELLER arising under this Agreement prior to the date of such assignment.

20. NOTICES

20.1 General.

All notices and other communications hereunder shall be in writing, other than Dispatch Notices, curtailment or disconnect orders, which may be oral and immediately confirmed via e-mail, and shall be deemed duly given upon receipt after being delivered by hand or sent by e-mail with read receipt confirmation, registered or certified mail, return receipt requested, postage prepaid or by recognized overnight courier service, addressed as follows:

IF TO SELLER:

[●]
Attention: [●]
E-mail: [●]

*For Dispatch Notices
(Operational Personnel)*

[●]
Attention: [●]
E-mail: [●]

IF TO PREPA:

Puerto Rico Electric Power Authority
1110 Ponce de León Avenue,
Office #808
San Juan, Puerto Rico

Attention: Director of Planning and
Environmental Protection

E-mail: [●]

20.2 Change of Address or Persons.

Either Party hereto may change, by notice as above provided, the Persons or addresses to which such notices are sent.

21. MISCELLANEOUS PROVISIONS

21.1 Waiver & Amendment

This Agreement, including the appendices hereto, may be amended or waived only by written agreement between the Parties. A waiver of any Default shall extend only to the particular Default waived and shall not limit or otherwise affect any rights that either Party may have with respect to any other or future Default. The Parties acknowledge and agree that any amendments to the economic or technical terms of this Agreement, or the scope of the Facility, require PREB approval.

21.2 Strict Performance

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, unless agreed in writing between the Parties.

21.3 No Third-Party Beneficiaries

The Parties intend this Agreement solely for the benefit of themselves and, solely to the extent rights thereto are provided in this Agreement, for the benefit of the Project Lenders as third-party beneficiaries. 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.

21.4 Seller Certification Requirement

The Parties acknowledge that SELLER has submitted the certification titled “Contractor Certification Requirement” required in accordance with the Contract Review Policy of the FOMB, effective as of November 6, 2017 and amended on October 30, 2020, signed by SELLER’s Executive Director (or another official with an equivalent position or authority to issue such certifications). The Parties have attached a signed copy of the “Contractor Certification Requirement” as Appendix R (*Form of FOMB Certification*) to this Agreement.

21.5 No Sharing of Benefit

No officer, employee, or agent of SELLER or PREPA 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 Applicable Law of the Commonwealth of Puerto Rico or policy of PREPA.

21.6 No Association, Joint Venture, or Partnership

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.

21.7 Successors

This Agreement shall inure to the benefit of and be binding upon SELLER and PREPA and their respective successors and assigns.

21.8 Complete Agreement & Conflicts

The Parties intend this Agreement as the final expression of their agreement and also as a complete and exclusive statement of the terms of their agreement with respect to the subject matter hereof that supersedes all prior written and oral understandings between the Parties with respect thereto. In the event of any conflict between this Agreement and the Interconnection Agreement or any other Project documents, this Agreement shall prevail.

21.9 Severability

If any provision hereof shall be held invalid, illegal, or unenforceable by the holding of an arbitral authority convened pursuant to Section 21.11 (*Dispute Resolution*), such holding shall not invalidate or render unenforceable any other provision hereof.

21.10 Anticorruption & Antibribery

SELLER certifies as of the Closing Date that, to its actual knowledge, it does not receive payment or benefit of any nature for services rendered regularly through an appointment to a Governmental Authority of Puerto Rico.

21.11 Dispute Resolution

- a. If a dispute arises between the Parties regarding the application, interpretation, enforceability, validity, performance, or breach of this Agreement or matters arising therefrom or relating thereto, whether sounding in contract, tort, unfair competition, Law, equity or any other legal form (a “**Dispute**”), then such Dispute shall be resolved solely by either the agreement of the Parties, with or without a Technical Recommendation (as defined and subject to the terms set forth in paragraph (b) of this Section 21.11), or in a proceeding before PREB in accordance with this Section 21.11. In the event of a Dispute under this Agreement, the disputing Party may promptly provide written notice of the Dispute (a “**Dispute Notice**”) to the other Party. Following the delivery of the Dispute Notice, the Parties shall either (i) agree in writing to submit such Dispute for a Technical Recommendation as provided in paragraph (b) of this Section 21.11, or (ii) absent such agreement, nominate a member of its respective senior management, who shall have decision-making authority on behalf of such Party, and such senior management members shall promptly meet and seek to achieve a settlement, if possible, by negotiation and mutual agreement. If the Dispute is not resolved or submitted for Technical Recommendation within forty-five (45) Days after the Dispute Notice is received by the recipient Party (or such longer period of time as may be mutually agreed by the Parties in writing), then either Party may submit the Dispute for final determination to PREB.¹²
- b. If the Parties agree that a Dispute primarily involves technical subject matter that they should attempt to resolve through a technical review in proceedings before a Consulting Technical Expert, then the Parties shall jointly submit such Dispute (a “**Technical Dispute**”) to the Consulting Technical Expert, mutually appointed for such purpose, for a recommended resolution (a “**Technical Recommendation**”) by providing to the Consulting Technical Expert with a written notice, specifying the matter to be determined. Proceedings before the Consulting Technical Expert shall be held in San Juan, Puerto Rico, unless otherwise agreed in writing by the Parties. Within thirty (30) Days of the engagement of the Consulting Technical Expert for a Technical Dispute (or such longer period of time as the Parties may mutually agree in writing), the Parties shall require that the Consulting Technical Expert conduct a hearing; provided that the Parties may agree in writing to waive the hearing and have the Consulting Technical Expert issue the Technical Recommendation on the basis of written submissions alone. The Parties shall require that the Consulting Technical Expert render a written recommendation on the Technical Dispute as soon as practicable after the close of the hearing but, in any case, no later than fifteen (15) Days after the close of the hearing. The Parties may resolve the Technical

¹² Note: Puerto Rico law mandates dispute resolution by PREB.

Dispute based on the Technical Recommendation or any mutually agreed modification thereof. If the Technical Dispute is not resolved in this fashion, the Parties may submit the matter for final determination to PREB.

21.12 No Economic Interest

SELLER represents, warrants, and certifies as of the Closing Date, to its actual knowledge, that no public employee has any personal or economic interest in this Agreement.

21.13 Code of Ethics

SELLER agrees to comply with the provisions of Act of June 18, 2002, No. 84, as amended, which establishes a Code of Ethics for the Contractors, Suppliers and Economic Incentive Applicants of the Executive Agencies of the Commonwealth of Puerto Rico.

21.14 Independent Contractor

SELLER shall be considered as an independent contractor, for all material purposes under this Agreement, and all Persons engaged or contracted by SELLER for the performance of its obligations herein, shall be considered as its employees or agents or those of its subcontractors, and not as employees or agents of PREPA.

21.15 Counterparts

This Agreement may be executed in any number of counterparts with the same effect as if both Parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one instrument.

21.16 Governing Law

This Agreement shall be governed by, construed, and enforced in accordance with the Laws of the Commonwealth of Puerto Rico without regard to any contrary result required under applicable conflicts of laws rules. The Parties herein agree that all Disputes arising hereunder shall be resolved pursuant to Section 21.11 (*Dispute Resolution*).

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the Parties hereto have agreed to execute this Agreement in San Juan, Puerto Rico, as of the date first written above.

**PUERTO RICO ELECTRIC POWER [●]
AUTHORITY**

Efran Paredes Maisonet

Executive Director

Tax ID Number: 660433747

[●]

[●]

Tax ID Number: [●]

APPENDIX A

HOLIDAYS

PREPA recognizes the following holidays and observes all holidays that fall on a Sunday on the following Business Day:

<u>DAY</u>	<u>CELEBRATION</u>
January 1	New Year's Day
January 6	Three Kings Day/Epiphany
3 rd Monday in January	Martin Luther King
3 rd Monday in February	Presidents and Illustrious Puerto Ricans Day
March 2	American Citizenship Day
March 22	Emancipation Day
Friday of Holy Week	Good Friday
Sunday of Holy Week	Easter Sunday
2 nd Sunday in May	Mothers' Day
Last Monday in May	Memorial Day
3 rd Sunday in June	Fathers' Day
July 4	Independence Day
July 25	Puerto Rico Constitution Day
1 st Monday in September	Labor Day
2 nd Monday in October	Columbus Day
November 19	Discovery of Puerto Rico
November 11	Veterans Day
4 th Thursday in November	Thanksgiving Day
December 24	Christmas Eve
December 25	Christmas Day

APPENDIX B

SIGNING CONDITIONS

1. Together with the signing of this Agreement, SELLER shall provide:
 - a. an original certificate of tax status and compliance from the Commonwealth of Puerto Rico for the five (5) previous years, confirming that it does not owe Taxes to the Commonwealth of Puerto Rico or is paying such Taxes by an installment plan in full compliance with its terms;
 - b. an income tax return filing certificate issued by the Treasury Department of Puerto Rico, Area of Internal Revenues assuring that SELLER has filed its Income Tax Return for the last five (5) years (obtained by using the Request for Copy and/or Certification of Income Tax Returns Form issued by the Treasury Department of Puerto Rico);
 - c. a certificate of debt issued by the Treasury Department of Puerto Rico, Area of Internal Revenues;
 - d. a certificate issued by the Municipal Revenues Collection Center assuring that SELLER does not owe any Taxes to such governmental agency;
 - e. a certificate issued by the Department of Labor and Human Resources of Puerto Rico, evidencing that SELLER has paid to the Department of Labor and Human Resources of Puerto Rico, if applicable, its employees' contributions, in accordance with the Puerto Rico Employment Security Act (unemployment, temporary disability or sickness or social security for chauffeurs) or is paying such contributions by an installment plan in full compliance with its terms;
 - f. a certificate issued by the Child Support Administration (ASUME) evidencing that SELLER has complied with the retention, if applicable, that an employer must do;
 - g. a sworn and notarized statement, as of the Agreement Date, evidencing compliance with Article 3.3 Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico of the Commonwealth of Puerto Rico, as amended, in the form set forth in Appendix Q (*Form of Sworn Statement*);
 - h. a certification, as of the Agreement Date, that, to its actual knowledge, no public employee has any personal or economic interest in this Agreement, under Section 21.12 (*No Economic Interest*);
 - i. a certification, as of the Agreement Date, that, to its actual knowledge, it does not receive payment or benefit of any nature for services rendered regularly through an appointment to a Governmental Authority of Puerto Rico, under Section 21.10 (*Anticorruption & Antibribery*);
 - j. if any of the previously required certifications show a debt, and SELLER has requested a review or adjustment of this debt, a certification that SELLER has made such request at the Agreement Date; and if PREPA denies the requested review or adjustment and such determination is final, proof of payment of this debt to PREPA or confirmation that

SELLER accepts that PREPA shall offset the owed amount from the corresponding payments;

- k. evidence of SELLER's ability to provide Equity at least equal to the sum of (i) thirty percent (30%) of the forecasted costs to develop the Facility and (ii) the forecasted cost to construct the PREPA Interconnection Facilities, by the forecasted date on which SELLER will first draw down on funds for such development under the financing documents with the Project Lenders; and
- l. the following technical documents:
 - i. a preliminary engineering design of the Facility and the PREPA Interconnection Facilities, consistent with Prudent Electrical Practices, the Interconnection Agreement, and the MTRs;
 - ii. a proposed relay protection scheme (to include the PREPA Interconnection Facilities and the Seller Interconnection Facilities); and
 - iii. a certified PSS/E mathematical model of the specific facility, the manufacturer's performance data and expected output curve.
- 2. Prior to the signing of this Agreement:
 - a. SELLER shall have provided the certification set forth in Appendix R (*Form of FOMB Certification*).
 - b. FOMB shall have approved the execution version of this Agreement.
 - c. SELLER shall have presented PREPA with documents evidencing SELLER's ownership and/or control of the Site for the purposes of implementing the Project.

APPENDIX C

CONDITIONS PRECEDENT

PART 1 - SELLER CONDITIONS

SELLER shall deliver the following as conditions precedent to the Closing Date:

- a. the Performance Security;
- b. insurance certificates or cover notes evidencing the insurance coverages required pursuant to Article 18 (*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, which approval PREPA shall not unreasonably withhold or delay;
- c. a certificate, signed by a duly-authorized representative of SELLER, in the form set forth in Appendix Z (*Form of Warranty Compliance Certificate*);
- d. a legal opinion prepared by its external counsel in a form reasonably acceptable to PREPA, confirming the warranty made by SELLER in paragraph (d) of Section 12.3 (*SELLER Representations & Warranties*); and
- e. [a guarantee issued by a Permitted Guarantor in the form set forth in Appendix AA (*Form of Payment Guarantee*).]¹³

PART 2- PREPA CONDITIONS

PREPA shall satisfy the following as conditions precedent to the Closing Date:

- a. completion of the Feasibility Study, System Impact Study and Facility Study;
- b. filing of this Agreement with the Puerto Rico Controller; and
- c. delivery of a legal opinion prepared by its external counsel in a form reasonably acceptable to SELLER, confirming the warranty made by PREPA in paragraph (b) of Section 12.4 (*PREPA Representations & Warranties*).

PART 3 - OTHER CONDITIONS

The following constitute other conditions precedent to the Closing Date:

- a. the execution and delivery of the Interconnection Agreement by the Parties;
- b. the absence of any 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 SELLER has executed this Agreement;

¹³ Note: Only required where the SELLER/Proponent could not satisfy the Unrestricted Net Worth requirement under Section 4.5(a) of the RFP, requiring a Permitted Guarantor to guarantee its obligations arising out of this Agreement.

- c. the issuance of a Best Interests Determination; and
- d. PREB and P3A shall have approved the executed version of this Agreement.

APPENDIX D

MILESTONE SCHEDULE

Milestones	Time for Completion / Occurrence*	SELLER Delay Liquidated Damages (USD Per Day of Delay)
Construction Start	240 Days after Closing Date	N/A
Initial Synchronization	540 Days after Closing Date	N/A
Commercial Operation	Guaranteed Commercial Operation Date	[●] ¹⁴

¹⁴ Note: The Parties shall determine the actual SELLER Delay Liquidated Damages prior to signing this Agreement, based on the following formula:

$$SDLD = \left(RER - \left(\frac{CPP}{\left(30.33 \frac{\text{Days}}{\text{Month}} \times 24 \frac{\text{hours}}{\text{Day}} \right)} \right) \right) \times DD^{\max} \times DD^{\max}D$$

where:

SDLD = SELLER Delay Liquidated Damages for such Day, expressed in \$;

RER = replacement Energy rate of \$170/MWh;

CPP = Capability Payment Price applicable to Agreement Year 1, expressed in \$/MW-Month;

DD^{max} = Design D^{max}, expressed in MW; and

DD^{max}D = Design D^{max} Duration, expressed in hours.

APPENDIX E

SELLER PERMITS

SELLER shall obtain the following licenses, permits and authorizations and any other licenses, permits and authorizations required by the Agreement.

Issuing Agency	Permit Description	Date Required or Received
Federal		
Commonwealth		
Other Applicable Governmental Authorities		

APPENDIX F

COMPENSATION

1. Monthly Payment

For each Billing Period, PREPA shall pay to SELLER a payment for Energy Storage Services provided to PREPA, in arrears (the “**Monthly Payment**”). The Parties shall calculate the Monthly Payment for Billing Period “n” as follows:

$$\mathbf{MP_n = MFP_n + MVP_n - ADJ_n}$$

where:

MP_n = Monthly Payment for Billing Period “n”, expressed in dollars;

MFP_n = Monthly Fixed Payment for Billing Period “n”, as determined in accordance with Section 2 (*Monthly Fixed Payment*) of this Appendix F;

MVP_n = Monthly Variable Payment for Billing Period “n”, as determined in accordance with Section 3 (*Monthly Variable Payment*) of this Appendix F;

ADJ_n = other credits or amounts to which PREPA has a right under this Agreement; and

n = such Billing Period.

SELLER acknowledges and agrees that the Monthly Payment, and through it the Capability Payment Price, represents the all-in payment for the Energy Storage Services, including all Ancillary Services whatsoever, as well as all Green Credits and costs to SELLER of complying with this Agreement.

2. Monthly Fixed Payment

For each Billing Period “n”, the Parties shall calculate the monthly fixed payment for such Billing Period (the “**Monthly Fixed Payment**” or “**MFP_n**”) as follows:

$$\mathbf{MFP_n = CPP \times MCC_n \times FAA_n \times PRA_n}$$

where:

CPP = Capability Payment Price for such Billing Period, which in each Agreement Year shall equal the amount set out in the column captioned “CPP (\$/MW-Month of MCC)” that corresponds to such year:

Agreement Year	CPP (\$/MW-Month of MCC)
[●]	[●]
[●]	[●]

provided that the values set out in the column captioned “CPP (\$/MW-Month of MCC)” shall be reduced, in the event of any SELLER refinancing (which SELLER may carry out in its sole discretion) following PREPA’s emergence from the PREPA Bankruptcy or otherwise, to account for any savings accruing to SELLER from such refinancing in the following proportions: (i) for SELLER, sixty percent (60%), and (ii) for PREPA, forty percent (40%), calculated as percentages of the amount which equals the sum of (A) the difference between (1) the net present value of debt service obligations before the refinancing, and (2) the net present value of debt service obligations immediately upon the occurrence of the refinancing, in each case at a discount rate equal to the interest rate on outstanding senior debt owed to Project Lenders at the time of such refinancing, and (B) any net proceeds of such refinancing;

MCC_n = Monthly Contract Capability for such Billing Period as adjusted in accordance with Section 5 (*Monthly Contract Capability*) of this Appendix F;

FAA_n = Facility Availability Adjustment for such Billing Period, determined pursuant to Section 6 (*Facility Availability*) of this Appendix F; and

PRA_n = PREPA Risk Adjustment for such Billing Period, determined pursuant to Section 7 (*PREPA Risk Adjustment*) of this Appendix F.

3. Monthly Variable Payment

For each Billing Period “n”, the Parties shall calculate the monthly variable payment for such Billing Period (the “**Monthly Variable Payment**” or “**MVP_n**”) as follows:

$$\mathbf{MVP_n = \min [DE_n, SDE_n] \times VOMP_n \times (1 + VOMPI_y)}$$

where:

DE_n = the Discharge Energy for Billing Period “n”, as measured for such period in accordance with Section 8.4 (*Meter Reading*);

SDE_n = the quantity of Scheduled Discharge Energy for Billing Period “n”;

VOMP_n = the variable O&M price applicable to Billing Period “n”, which in each Billing Period in any Agreement Year shall equal \$[●]/MWh; and

VOMPI_y = the Variable O&M Price Inflation applicable for the Agreement Year, determined pursuant to Section 4 (*Variable O&M Price Inflation*) of this Appendix F.

4. Variable O&M Price Inflation

For each Agreement Year “y”, the Parties shall calculate the increase or decrease to VOMP to reflect inflation in such Agreement Year (the “**Variable O&M Price Inflation**” or “**VOMPI**”) as a blended rate of the Puerto Rico Labor Index and the St. Louis Federal Reserve PPI, as follows:

$$\mathbf{VOMPI_y = \frac{\left(\left(\frac{LBRI_y - LBRI_1}{LBRI_1}\right) \times 100\right) + \left(\left(\frac{MNFTI_y - MNFTI_1}{MNFTI_1}\right) \times 100\right)}{2}}$$

where:

LBRI_y = the Puerto Rico Labor Index for Trade, Transportation, and Utilities (available here: <https://www.bls.gov/eag/eag.pr.htm>) for July of the applicable Agreement Year;

LBRI₁ = the Puerto Rico Labor Index for Trade, Transportation, and Utilities (available here: <https://www.bls.gov/eag/eag.pr.htm>) for the Month in which the Agreement Date occurs;

MNFTI_y = the St. Louis Federal Reserve Producer Price Index – Storage Battery Manufacturing (PCU335911335911) (available here: fred.stlouisfed.org/series/PCU335911335911) for July of the applicable Agreement Year;

MNFTI₁ = the St. Louis Federal Reserve Producer Price Index – Storage Battery Manufacturing (PCU335911335911) (available here: fred.stlouisfed.org/series/PCU335911335911) for the Month in which the Agreement Date occurs; and

y = such Agreement Year.

5. Monthly Contract Capability

- a. At the Commercial Operation Date, the Monthly Contract Capability shall equal the Design D^{\max} . After the Commercial Operation Date, the Monthly Contract Capability will be adjusted as described in paragraphs (b) and (c) of this Section 5 of this Appendix F.
- b. At the end of each Agreement Year, the Monthly Contract Capability for the following Agreement Year will be reduced to the lesser of (i) Degraded Duration Energy divided by the Design D^{\max} Duration, or (ii) the Tested Result, as follows:

$$MCC_y = \min [DDE / DDD, TR]$$

where:

MCC_y = Adjusted MCC for the Agreement Year;

DDE = Degraded Duration Energy for the Agreement Year;

DDD = the Design D^{\max} Duration;

TR = the Tested Result, i.e., the MCC as adjusted pursuant to the most recent Performance Test in accordance with Section 6.9 (*Supply Period Performance Tests*); and

y = Agreement Year.

- c. The Monthly Contract Capability will be adjusted based on the results of Performance Tests as follows:

1. The adjustment to the Monthly Contract Capability will take effect on the first Day of the Billing Period following the Billing Period in which the Performance Test occurred and will continue in effect until either (A) another Performance Test is completed, or (B) an annual adjustment pursuant to paragraph (b) of this Section 5 of this Appendix F is made.
2. If the Tested Duration Energy of the Facility falls below ninety-nine percent (99%) of the Degraded Duration Energy, the Monthly Contract Capability will equal the Tested Duration Energy divided by the Design D^{\max} Duration.
3. If the Tested Duration Energy of the Facility equals or exceeds ninety-nine percent (99%) of the Degraded Duration Energy, the Monthly Contract Capability will equal the Degraded Duration Energy divided by the Design D^{\max} Duration.

6. Facility Availability

a. Facility Availability Adjustment

The Facility Availability Adjustment will be applied in calculating the Monthly Payment in accordance with Section 1 (*Monthly Payment*) of this Appendix F. Paragraph (b) of this Section 6 of this Appendix F contains the formula to calculate Facility Availability. For each Billing Period the Facility Availability Adjustment is:

FA (%)	FAA
Greater than or equal to ninety-eight percent (98%)	One hundred percent (100%)
Less than ninety-eight percent (98%) but greater than seventy percent (70%)	One hundred percent (100%) - [(ninety-eight percent (98%) – FA)] x two (2)
Less than seventy percent (70%)	Zero percent (0%)

b. Calculation of Facility Availability

1. SELLER shall calculate the availability of the Facility in a Billing Period “n” using the formula set forth below (the “**Facility Availability**”):

$$FA_n = \left(\frac{BPHRS_n - (POHRS_n + UNAVHRS_n + UNAVPRODHS_n)}{BPHRS_n - POHRS_n} \right)$$

where:

FA_n = Facility Availability for Billing Period “n”;

BPHRS_n = total number of hours for Billing Period “n”;

POHRS_n = total number of Permitted Outage Hours where the Facility was unavailable to deliver Adjusted Duration Energy or unable to accept Charge Energy in the Billing Period, provided that the number of POHRS in a Billing Period due to Scheduled Outages and Scheduled Deratings may not exceed the maximum number of hours per Year permitted

for such events pursuant to paragraph (a) of Section 6.3 (*Scheduled Maintenance*);

A Scheduled Outage or Force Majeure (declared by SELLER) that occurs for less than a full hour, or any Scheduled Derating will count as an equivalent percentage of the applicable hour(s) for this calculation. For example, if SELLER Notifies PREPA of a change in the Facility's D^{\max} that results in a reduction in Adjusted Duration Energy by ten percent (10%) for twenty (20) hours due to a Scheduled Derating, then the Facility would be deemed unavailable for two (2) full hours;

UNAVHRS_n = total number of hours in which the Facility was unavailable to deliver Adjusted Duration Energy or unable to accept Charge Energy during the Billing Period due to (A) a Non-Scheduled Outage or Non-Scheduled Derating; (B) an extension of a Scheduled Outage or Scheduled Derating from its original schedule that was not notified to and approved by PREPA in accordance with Section 6.3 (*Scheduled Maintenance*); or (C) SELLER declaring the Facility unavailable, in whole or in part, for any hour or part of an hour, for any reason other than an event that counts toward POHRS_n, provided that an event described in (A) through (C) above that results in an Unscheduled Derating of the Facility or occurs for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation;

UNAVPRODHS_n= total number of hours in which the Facility (A) was unable to provide Product other than Energy due to an event that inhibits the Facility's ability to provide such other Products but not its ability to deliver Energy; (B) inability of SELLER to maintain certification of any such other Product; or (C) SELLER declaring the Facility unable to provide such other Product, in whole or in part, for any hour or part of an hour, for any reason other than an event that counts toward POHRS_n, provided that (i) an event described in (A) through (C) above that results in a Derating or occurs for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation, and (ii) any hour or partial hour considered unavailable for the purposes of UNAVHRS_n will not also be considered UNAVPRODHS_n and

n = relevant Billing Period "n" in which Facility Availability is calculated.

2. If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour of any Day of the Supply Period, and SELLER provides a revised notice indicating the Facility is available for that hour or part of an hour by

5:00 a.m. of the morning PREPA schedules the Dispatch Notice or Charge Notice for such Day, the Facility will be deemed available to the extent set forth in the revised notice.

7. PREPA Risk Adjustment

The Parties shall calculate the PREPA Risk Adjustment (“**PRA**”) for Billing Period “n” as follows:

$$\text{PRA}_n = \left(\frac{\text{BPHRS}_n - (\text{GSEHRS}_n + \text{PFMHRS}_n + \text{IPHRS}_n)}{\text{BPHRS}_n} \right)$$

where:

PRA_n = PREPA Risk Adjustment for the Billing Period;

BPHRS_n = total number of hours for the Billing Period;

GSEHRS_n = the duration (in hours) of any Grid System Event (other than a Force Majeure affecting PREPA) occurring in the Billing Period, provided that the number of GSEHRS in the Billing Period when added to the number of GSEHRS in the preceding Billing Periods for the Year, shall not exceed the Grid System Waiting Period, and any such excess GSEHRS shall not be included in the calculation of GSEHRS_n;

PFMHRS_n = duration (in hours) of any Force Majeure affecting PREPA occurring in the Billing Period, provided that the number of PFMHRS in the Billing Period when added to the number of PFMHRS in the preceding Billing Periods for the Year, shall not exceed the Force Majeure Waiting Period, and any such excess PFMHRS shall not be included in the calculation of PFMHRS_n; and

IPHRS_n = duration (in hours) of any event during the Billing Period in respect of which SELLER may recover insurance proceeds from any insurance policy that SELLER obtains (or would have obtained had it complied with this Agreement) in respect of PREPA Risk Events, including business interruption insurance in accordance with paragraph (h) of Section 18.1 (*SELLER Requirements*).

SELLER acknowledges and agrees that the Monthly Fixed Payment shall not apply in respect of an hour Billing Period in respect of which SELLER may recover insurance proceeds from any insurance policy that SELLER obtains (or would recover or have obtained had it complied with this Agreement) in respect of PREPA Risk Events, including business interruption insurance in accordance with paragraph (h) of Section 18.1 (*SELLER Requirements*).

8. Worked Examples

[●]

APPENDIX G
FACILITY SITE

[●]¹⁵

¹⁵ Note: SELLER to provide schematic of Site.

APPENDIX H

INTERCONNECTION DESCRIPTION AND SPECIFICATIONS

1. Description of the Interconnection Facilities

The electrical interconnection single line attached as Appendix H-1 (*Electrical Interconnection Single Line*) identifies the Interconnection Point, PREPA Interconnection Facilities, the Seller Interconnection Facilities, and metering locations.

2. Interconnection Point Specifications

SELLER shall perform and comply with the following interconnection specifications for the PREPA Interconnection Facilities. These specifications and standards do not constitute an all-inclusive scope of work. The Parties will require a Facility Study and a System Impact Study to determine the design as described in Article 3 (*Pre-Operation Period*).

a. Preliminary Scope of Work:

[PREPA to provide]

b. Codes and Standards Requirements:

All designs should be in accordance with the latest PREPA Design Criteria Documents, applicable ANSI/IEEE and NESC standards, and building codes. This includes:

1. the following design criteria documents (the “**PREPA Design Criteria Documents**” or “**DCDs**”):
 - i. PREPA Civil Design Criteria;
 - ii. PREPA Protection and Control Design Criteria;
 - iii. PREPA Substation Design Criteria;
 - iv. PREPA Transmission Design Criteria;
 - v. PREPA Distribution Design Criteria;
 - vi. PREPA Drawings and Specifications Design Criteria; and
 - vii. PREPA Telecommunication Design Criteria;
2. NECA/BICSI 607, Standard for Telecommunications Bonding and Grounding Planning and Installation Methods for Commercial Buildings;
3. American Concrete Institute (ACI) Design Codes and Construction Specifications;
4. American Institute of Steel Construction (AISC);
5. American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE);

6. American Welding Society (AWS);
7. American Wood Protection Association (AWPA);
8. Association of Edison Illuminating Companies (AEIC);
9. Building Industry Consulting Services International (BICSI);
10. Code of Federal Regulations (CFR);
11. Construction Specifications Institute (CSI);
12. Electric Power Research Institute (EPRI);
13. Federal Aviation Administration (FAA);
14. Federal Communications Commission (FCC);
15. Illuminating Engineering Society (IES);
16. Institute of Electrical and Electronics Engineers (IEEE);
17. Insulated Cable Engineers Association (ICEA);
18. International Electrotechnical Commission (IEC);
19. ITSIMM 6th Edition - Information Transport Systems Installation Methods Manual;
20. National Electrical Code (NEC);
21. National Electrical Manufacturers Association (NEMA);
22. National Electrical Safety Code (NESC);
23. National Fire Protection Association (NFPA);
24. NECA/BICSI 568, Standard for Installing Commercial Building Telecommunications Cabling;
25. North American Electric Reliability Corporation (NERC);
26. OSPDRM 5th Edition - Outside Plant Design Reference Manual;
27. Puerto Rico Building Code 2018;
28. Regulations per the Commonwealth of Puerto Rico;
29. Rural Utilities Service (RUS), United States Department of Agriculture;
30. RUS 1724E-300, U.S. Dept. of Agriculture Design Guide for Rural Substations;

31. TDMM 14th Edition - Telecommunications Distribution Methods Manual;
 32. Telecommunications Industry Association (TIA);
 33. ANSI/TIA 568.0-D, Generic Telecommunications Cabling for Customer Premises;
 34. ANSI/TIA 569-E, Telecommunications Pathways and Spaces;
 35. ANSI/TIA 606-C, Administration Standard for Telecommunications Infrastructure;
 36. ANSI/TIA 607-D, Generic Telecommunications Bonding and Grounding (Earthing) for Customer Premises;
 37. ANSI/TIA-1005-A, Telecommunications Infrastructure Standard for Industrial Premises; and
 38. ANSI/TIA-758-B, Customer-Owned Outside Plant Telecommunications Infrastructure Standard.
- c. Transmission Line Requirements:
1. SELLER shall perform the following tasks:
 - i. all ROW/Easement acquisition, including any studies, environmental permitting, real estate acquisitions, *etc.* required as per the Agreement;
 - ii. geotechnical soil borings, grounding tests, and studies along the transmission corridor and right of way;
 - iii. all applicable transmission designs and calculations typically found in typical transmission line design;
 - iv. stringing charts, engineered steel drawings, calculations, and PLS-CADD models of the transmission structures, including the applicable conductor size and OPGW (with 48 Fibers);
 - v. ampacity, shielding, and conductor sizing calculations for the transmission structure for the Interconnection Facilities;
 - vi. design and construction of foundations for transmission structures for the Interconnection Facilities;
 - vii. all transmission and distribution line design required for project completion; and
 - viii. evaluation of existing transmission and distribution poles that may be modified due to new conductors or equipment additions.
 2. PREPA shall review and provide comments on all SELLER's drawings, submittals and design inputs for SELLER's transmission line design.

d. Transmission Center, Substation, and Sectionalizer Requirements:

1. SELLER shall perform the following tasks:

- i. all real estate acquisitions, including land surveys, land segregation, acquisition of land title/deeds, *etc.*, studies (species, wetlands), and environmental permitting, *etc.* as required per the Agreement;
- ii. all required upgrades resulting from calculations and studies;
- iii. short circuit study, coordination studies, and settings;
- iv. geotechnical soil borings, grounding tests, and studies at the Interconnection Facilities;
- v. protection and control electrical design, following latest industry standards, *e.g.*, IEEE Standards and PREPA standards;
- vi. clearing, preparing the site, and civil design for the Interconnection Facilities, including vegetation removal and grading;
- vii. removal and disposal of the topsoil layer at the site for Interconnection Facilities (if required);
- viii. filling the site with adequate material (crushed stone) to bring to level and all adequate drainage of Interconnection Facilities;
- ix. connect the equipment grounds with the grounding mat;
- x. fill the site with six inches of gravel as per the grounding standard;
- xi. construction of retaining walls and/or fence around the site as required for a complete and secure site;
- xii. construction of new driveway / access road to the Interconnection Facilities as applicable;
- xiii. construction of the grounding mat on the site and connection to existing grounding mat;
- xiv. construction of foundations for the structures of the Interconnection Facilities;
- xv. installation of structures for the Interconnection Facilities;
- xvi. installation of equipment and auxiliaries for the Interconnection Facilities;
- xvii. installation of the meter sockets and metering equipment for billing of Discharge Energy and Ancillary Services;

- xviii. provide all materials required to interconnect the new protection and control system with the existing one (if applicable), including, but not limited to, relay panel, breaker control panels, DC upgrades, *etc.*;
- xix. installation of equipment and auxiliaries in the control house for the Interconnection Facilities;
- xx. design of the new control house (if applicable) layout at Interconnection Facilities, including location, civil design, internal layout, electrical design for lightning, convenience outlets, battery bank, and 125Vac supply panels, disconnects, and other associated materials and localization areas for control and protection panels;
- xxi. install and wire the Dynamic System Monitor (DSM);
- xxii. install the control cables from the equipment to the control house;
- xxiii. install and wire the AC and DC distribution panels;
- xxiv. install and wire the 125 VDC battery bank and related auxiliaries as applicable;
- xxv. all applicable AC and DC sizing calculations and verifications;
- xxvi. install the wiring for the Transient Recorder as required by PREPA. For security reasons, PREPA's relay personnel will wire these signals from the terminal block to the Transient Recorder. In addition, SELLER shall provide the following signals for the Transient Recorder:
 - A. analog signals - Phase A, B, and C voltage signals;
 - B. analog signals - Phase A, B, and C current signals from each line CT;
 - C. digital 87L output - Output TRIP signals associated with the primary protection of each line;
 - D. digital BU output - Output TRIP signal associated with the secondary protection (21/50/51) of each line;
 - E. digital - Output TRIP signal associated with the breaker failure protection of each line;
 - F. digital - TRIP signal from bus differential protection; and
 - G. digital - Status signal from each breaker;
- xxvii. programming the settings on the protection equipment for the Interconnection Facilities;
- xxviii. cleaning, removal, and disposal of construction debris;

- xxix. label the high voltage and auxiliary electrical equipment according to PREPA's practices; and
 - xxx. provide all spare parts as specified by PREPA.
2. PREPA shall perform the following tasks:
- i. project oversight, schedule evaluation, monitoring, and authorizing scope of work modifications and deviations;
 - ii. evaluate submittals and design input for all design phases for the following packages:
 - A. civil and physical design for above and below grade for the new or modification to transmission center, substation or sectionalizer;
 - B. protection and control, telecommunications, electrical design, and programming;
 - C. transmission and distribution line design; and
 - D. shop drawings, technical data of equipment and materials, bill of material;
 - iii. evaluate all temporary and permanent modifications to the Interconnection Facility; and
 - iv. evaluate the proposed construction work outage sequence for the entire project coordination.
- e. Transmission Center/ Substation Remote End Requirements (Only applicable to a PREPA Interconnection Facilities that sectionalize an existing transmission line). The details of these remote end upgrades will be identified during the Facility Study and the System Impact Study but will primarily include relaying upgrades/replacements to match the new sectionalizer relaying. All Outages and construction work sequence plans will be coordinated with and approved by PREPA.
1. SELLER shall perform the following tasks:
- i. all required upgrades resulting from calculations and studies;
 - ii. protection and control electrical design, following industry standards, *e.g.*, IEEE Standards and PREPA standards;
 - iii. installation of equipment and auxiliaries for the Interconnection Facilities;
 - iv. provide all materials required to interconnect the new protection and control system with the existing one (if applicable), including, but not limited to, relay panel, breaker control panels, DC upgrades, *etc.*;
 - v. installation of equipment and auxiliaries in the control house for the Interconnection Facilities;

- vi. all applicable AC and DC sizing calculations and verifications;
- vii. programming the settings on the protection equipment for the Interconnection Facilities;
- viii. cleaning, removal, and disposal of construction debris;
- ix. install and wire the telecommunication equipment for the Interconnection Facilities;
- x. programming the communication settings for the relays, meters, and all miscellaneous equipment;
- xi. installation of conduits for control cables from the equipment to the control house;
- xii. installation of telecommunications pathways for the Interconnection Facilities, including conduits, cable trays, racks, among others;
- xiii. install telecommunications facilities and equipment, including all necessary jumper cables and peripherals, with telecommunications equipment labeling and color-coding in compliance with ANSI/TIA 606 Standard;
- xiv. install communications copper cable, including jumpers, and cross-connects and miscellaneous materials;
- xv. programming the telecommunications equipment (routers, firewalls, and network equipment);
- xvi. install the fiber optic terminations for protection relays at the Interconnection Facilities;
- xvii. install the wiring for the Transient Recorder as required by PREPA. For security reasons, PREPA's relay personnel will wire these signals from the terminal block to the Transient Recorder. In addition, SELLER shall provide the following signals for the Transient Recorder:
 - A. analog signals - Phase A, B, and C voltage signals;
 - B. analog signals - Phase A, B, and C current signals from each line CT;
 - C. digital 87L output - Output TRIP signals associated with the primary protection of each line;
 - D. digital BU output - Output TRIP signal associated with the secondary protection (21/50/51) of each line;
 - E. digital - Output TRIP signal associated with the breaker failure protection of each line;

- F. digital - TRIP signal from bus differential protection; and
 - G. digital - Status signal from each breaker;
 - xviii. provide a PREPA's site representative and the required technical resources from PREPA to comply with the construction milestone schedule.
2. PREPA shall perform the following tasks:
- i. evaluate all drawings, submittals, and design inputs for SELLER's remote end design;
 - ii. project oversight, schedule evaluation, monitoring, and authorizing scope of work modifications and deviations;
 - iii. evaluate submittals and design input for all design phases for the following packages:
 - A. protection and control, telecommunications, electrical design, and programming; and
 - B. shop drawings, technical data of equipment and materials, bill of material;
 - iv. evaluate all temporary and permanent modifications to the Interconnection Facilities; and
 - v. evaluate the proposed construction work outage sequence for the entire project coordination.
- f. Telecommunication Requirements (in addition to the requirements as identified in Section b):
1. SELLER shall perform the following tasks:
- i. install, wire, and program the SCADA Remote Terminal Units (RTUs) at the Interconnection Facilities and the Site;
 - ii. install and wire the telecommunication equipment for the Interconnection Facilities;
 - iii. programming the communication settings for the relays, meters, and all miscellaneous equipment connected to the RTU;
 - iv. installation of conduits for control cables from the equipment to the control house;
 - v. installation of telecommunications pathways at the Interconnection Facilities, including conduits, cable trays, racks, among others;

- vi. provide and install telecommunications equipment power systems, with telecommunications equipment labeling and color-coding to comply with ANSI/TIA 606 Standard;
 - vii. program the DSM with the signal list provided by PREPA;
 - viii. design of the control house layout at the Interconnection Facilities and collector Site includes location, civil design, internal layout, electrical design for lightning, convenience outlets, battery bank, and 125Vac supply panels, disconnects, and other associated materials and localization areas for SCADA, DSM, and telecommunications equipment;
 - ix. programming the telecommunications equipment (routers, firewalls, and network equipment); and
 - x. install the fiber optic connections, including 48-fiber OPGW, pathways, and terminations for the protection relays to allow the PREPA Interconnection Facilities to be fully operational.
2. PREPA shall perform the following tasks:
- i. review and comment on all submittals and design input for all design phases for the telecommunications packages; and
 - ii. support the integration of the new equipment into the overall PREPA Network.
- g. Commissioning and Testing Requirements:
1. SELLER shall perform the following tasks:
- i. all Outages and construction work sequence plans will be coordinated with and approved by PREPA;
 - ii. provide any revisions to the Testing Protocol and plans for PREPA's approval prior to performing any acceptance test and energization of any equipment;
 - iii. perform the acceptance and commissioning tests on the equipment and auxiliaries according to PREPA's practices and Applicable Standards at SELLER's collector site only, including voltage signals, current signals, relay outputs, breaker status, and cable continuity;
 - iv. perform grounding tests at all sites, including the transmission corridor;
 - v. perform testing on the interconnection of the transmission line;
 - vi. perform impedance testing to validate the proper installation of all transmission and high voltage conductors and bus;

- vii. perform tests for the wiring of protection and control systems, RTU, DSM, Transient Recorder, and others associated services for the Interconnection Facility;
- viii. perform adjustments and operation tests for the protection and control systems;
- ix. submit all test reports signed and sealed by a PR licensed electrical engineer for PREPA's review;
- x. perform preliminary testing of the protection, control and telecommunication system and the integration into SELLER's SCADA system. Depending on the type of alarm or signal into SELLER's SCADA system, PREPA personnel may act as a witness to validate the input. PREPA will perform final validation and acceptance of the SCADA integration;
- xi. perform operation tests for the telecommunication systems;
- xii. perform operation tests for the DSM;
- xiii. perform operation tests on the equipment and auxiliaries;
- xiv. perform operation tests for the transient recorder;
- xv. verification of the OTDR tests for fiber optic cable performed by SELLER for the following cables:
 - A. fiber cable between Interconnection Facilities and the Facility;
 - B. fiber cable for interconnection to PREPA's network;
 - C. fiber cable between new control room at Interconnection Facilities and meter cabinet located at the Interconnection Facilities; and
 - D. verification of Telecommunications facilities and equipment installations performed by SELLER at the Interconnection Facilities;

This work includes verification, testing, configuration, and inspection of equipment specified by PREPA and materials, cable installation, and testing by SELLER;

- xvi. provide a PREPA's site representative and the required technical resources from PREPA to comply with the Construction Milestone Schedule;
- xvii. witness all tests and commissioning of the electrical equipment installed at the Interconnection Facilities and the Site;
- xviii. submit all test protocols for PREPA approval; and
- xix. submit all test results in a test book for PREPA approval.

2. PREPA shall perform the following tasks:
 - i. evaluate the test results and settings of the protection relays for Interconnection Facilities;
 - ii. evaluate the test results and settings of the communication equipment at the Interconnection Facilities;
 - iii. witness all tests and commissioning of the electrical equipment installed in PREPA Interconnection Facilities;
 - iv. at existing PREPA sites where protection and control components are being updated, modified, or interconnected with, the tests should be done exclusively by PREPA;
 - v. perform final SCADA tests by PREPA acceptance test personnel from the point where SELLER consolidates SCADA data and transmits it to the PREPA SCADA system;
 - vi. perform the acceptance and commissioning tests on the equipment and auxiliaries according to PREPA's practices and Applicable Standards at the Interconnection Facility and remote ends; and
 - vii. perform end to end testing of all trips and controls by PREPA's Acceptance Tests Department personnel.
- h. Transfer of PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work): PREPA will provide the detailed requirements for the transfer of the PREPA Interconnection Facilities (including the transmission and distribution equipment, the real estate and ROW easements and environmental permitting and protection) no later than the Approved Design timeline as identified in paragraph (c) of Section 4.1 (*Proposed Design*). To initiate the transfer process, SELLER shall submit to PREPA:
 1. company name;
 2. contact person information;
 3. the physical address of the Site and PREPA Interconnection Facilities;
 4. segregation plan;
 5. schematic plan;
 6. previous due diligence for the acquisition of the property; if the land was financed by a bank, this document is required as part of the purchase and sale;
 7. copy and proof of submission of all required Permits, including the environmental Permits;
 8. this Agreement; and
 9. relevant deeds and leases.

3. Select Requirements for the Interconnection Construction Contract

SELLER shall ensure that it and the contractor under the Interconnection Construction Contract:

- a. disposes of all garbage generated because of the work, in accordance with the all Applicable Law;
- b. upon completion of the work, hands over the PREPA Interconnection Facilities work area free of contaminants;
- c. disposes of non-hazardous waste material generated by the PREPA Interconnection Facilities at an authorized landfill;
- d. complies with all environmental Laws, during and after construction, including:
 1. submission of the Project Environmental Assessment to and receipt of approval from the Department of Natural and Environmental Resources of Puerto Rico and any other environmental, state and municipality Permits for the Interconnection Facilities;
 2. all the terms and conditions established in the approvals of the submitted plans, Permits, and endorsement from Governmental Authorities; and
 3. upon the completion of the Interconnection Facilities, the closing of any of the acquired Permits that require closure.
- e. mitigates any environmental concerns and deficiencies found by PREPA's personnel or any regulatory agencies caused by them at any time.

APPENDIX H-1

ELECTRICAL INTERCONNECTION SINGLE LINE
[●]

APPENDIX I

PROGRESS REVIEW

1. Scope

The Consulting Technical Expert shall make comments and recommendations to SELLER in respect of:

- a. any aspect of the design (including surveys and drawings) of the Facility or PREPA Interconnection Facilities;
- b. any works performed pursuant to the Facility Construction Contract or the Interconnection Construction Contract, or other contracts related to the design or engineering of the Facility or the PREPA Interconnection Facilities; and
- c. the operation of the Facility.

2. Reviews and Inspections

- a. For the design of the Facility, the Interconnection Facilities or any other required report, SELLER shall submit an electronic copy of such document requested by the Consulting Technical Expert. SELLER shall deliver all electronic copies requested for review by email to the address specified in such request in a readily accessible format agreed with the Consulting Technical Expert. The Consulting Technical Expert may provide comments on selected documents and shall designate comments in accordance with Section 3 (*Designations and Subsequent Actions*) of this Appendix I.
- b. For works under paragraph (b) of Section 1 (*Scope*) of this Appendix I, SELLER shall take all reasonable measures to allow the Consulting Technical Expert to undertake inspections as required. The Consulting Technical Expert shall submit a report to SELLER within forty-eight (48) hours after completion of an inspection activity. This report shall contain comments designated in accordance with Section 3 (*Designations and Subsequent Actions*) of this Appendix I.
- c. For the operation of the Facility, SELLER shall take all reasonable measures to allow the Consulting Technical Expert to undertake inspections as required. The Consulting Technical Expert shall submit a report within twenty-one (21) Days after completion of an inspection. This report shall contain comments designated in accordance with Section 3 (*Designations and Subsequent Actions*) of this Appendix I.

3. Designations and Subsequent Actions

The designations of the relevant documents shall fall into one of the following categories:

- a. “*Reviewed/Inspected and accepted*”, meaning that the document, particular works or operation of the relevant component conform to the requirements of this Agreement. Such designation shall not relieve SELLER from any of its obligations or responsibilities under this Agreement or bind PREPA in respect of such document, particular works, or operation of the relevant project component. If Consulting Technical Expert makes any comments under this designation, such comments shall take the form of suggestions for alternative

design, construction, or operational procedures which may result in reduced cost, enhanced construction progress, or contribute to ease of operation. SELLER shall have no obligation to adopt or respond to any such comments made under this designation.

- b. *“Reviewed/Inspected with comments”*, meaning the comments constitute a form of requests for further details or clarifications on the basis that the relevant document, works, or operation of the relevant component does not appear to conform with the requirements of this Agreement. Such identified issues shall be deemed to have been considered non-compliant by PREPA’s Consulting Technical Expert on that basis until such time as SELLER provides the required details and clarifications in a sufficiently satisfactory manner for the Consulting Technical Expert to reach a final decision. Following receipt and review of the requested details and clarifications, the Consulting Technical Expert shall then designate such matter as either *“Reviewed/Inspected and accepted”* or *“Reviewed/Inspected and rejected as non-compliant”* as may be appropriate.
- c. *“Reviewed/Inspected and rejected as non-compliant”*, meaning the comments constitute the rejection by the Consulting Technical Expert of the documents, works, or operation of the relevant component of the Facility or Interconnection Facilities on the basis that it does not comply with this Agreement, in which event the Consulting Technical Expert shall provide a statement setting out in adequate detail the reasons for such designation.

APPENDIX J

OPERATING CHARACTERISTICS¹⁶

I. FACILITY DESCRIPTION

Facility name: [●]

Site name: [●]

Facility physical address: [●]

Total number of modules at the Facility: [●]

Project elevation: [●] (feet above sea level)

Project latitude: [●] (decimal form)

Project longitude: [●] (decimal form)

II. [UNIT(S) DESCRIPTION

Units: [●]

Unit name: [●]

Technology type: [●]

Specific module description: [●]

[Provide detailed description, including the nameplate sizing of key equipment.]

Interconnection Point for the Facility will have characteristics as follows:

Distribution area: [●]

Existing zone: [●]

Load zone: [●]

Substation: [●]

Additional information: [●]]

¹⁶ Note: PREPA will provide more information on expected usage and operational profile during Phase III. For bid submission, Proponents may (i) assume one full charge/discharge cycle per day and (ii) provide expected ramp rates.

III. OPERATIONAL CHARACTERISTICS

Discharging and Charging

[One hundred percent (100%) State of Charge (SOC) is defined as the highest state of charge to which the Facility can be consistently charged without damage beyond expected degradation from normal use. Zero percent (0%) SOC means the lowest state of charge to which the Facility can be consistently discharged without damage beyond expected degradation from normal use. If SELLER normally specifies highest and lowest SOC values differently, SELLER should normalize minimum and maximum SOC to zero percent (0%) SOC and one hundred percent (100%) SOC, respectively. SELLER should also normalize reporting of energy stored such that the amount of energy stored at zero percent (0%) SOC is 0 MWh and that the energy stored at one hundred percent (100%) SOC is fully available for discharge. SELLER will provide details on how the State of Charge is measured and physically indicated. For each characteristic, list the value that the facility will be designed to have at the Commercial Operation Date.]

Design D^{\max} : [●] MW

Design D^{\min} : [●] MW

Design Discharge Duration: [●] (hours)

Design D^{\max} Duration: (hours) [●]

Design Storage Energy: MWh [●]

Design Duration Energy: [●] MWh *[Equals the product of the Design D^{\max} and Design D^{\max} Duration]*

Design C^{\max} : [●] MW

Design C^{\min} : [●] MW

Design Charge Duration: [●] (hours)

Design C^{\max} Duration: [●] (hours)

Design Charge Energy [●] MWh

[Provide a power profile of the Facility across a full duty cycle.]

System Efficiency

Guaranteed Efficiency: [●]% *[This discharge/charge ratio should be exclusive of Station Use.]*

Full Duty Cycle Efficiency: [●]% *[Discharge Energy divided by Charge Energy, over a Full Duty Cycle.]*

Stand-by Self Discharge: [●]% *[Specify in tenths of one percent (1%).]*

Stand-by Energy Consumption: [●] MW

Ramp Rates

[e.g. Describe ramp rates for the Facility. If Facility ramp rates vary based on Facility loading level, please provide a ramp rate for each segment within the operational range in which it differs. If Facility ramp rates vary based on the product (e.g. Regulation), please provide separately.]

D^{min} to D^{max}: [●] MW/min

C^{min} to C^{max}: [●] MW/min

D^{max} to D^{min}: [●] MW/min

C^{max} to C^{min}: [●] MW/min

System Response Time

[Timing should commence with system at a steady-state starting value and end when system has reached a steady-state ending value. Idle means that the Facility is neither charging nor discharging, but is online and available for immediate operation. Time should include time from notification.]

Idle to D^{max}: [●] seconds

Idle to C^{max}: [●] seconds

D^{max} to C^{max}: [●] seconds

C^{max} to D^{max}: [●] seconds

D^{min} to C^{min}: [●] seconds

C^{min} to D^{min}: [●] seconds

[For the purpose of filling out this Appendix, Discharge (Charge) Start-up time means the amount of time needed to bring the Facility from non-operation to D^{min} (C^{min}). (The state of non-operation includes but is not limited to being unsynchronized to the grid.) If applicable, provide Start-Up time for each Unit. Provide in seconds if appropriate.]

Discharge Start-Up time (from notification to D^{min}): [●] minutes

Charge Start-Up time (from notification to C^{min}): [●] minutes

Discharge Start-Up fuel: [●] MMBtu

Starts and other Run Time Limitations

[Describe start limitations for the Facility. Include any daily and/or annual start limitations. Insert constraints, if any, on run hours and a brief description of the reason for such constraint(s). If possible, SELLER shall provide a formula for annual dispatch purposes that provides PREPA more flexibility to operate the Facility.]

Energy Storage Services Agreement - PREPA and [●]

Start limitations: [●]

Run hour limitations: [●]

[Describe minimum times for each Unit operating independently and for all Units operating simultaneously.]

The Minimum Run Time after a Discharge start is [●] minutes for each independent Unit

The Minimum Run Time after a Discharge start is [●] minutes for all Units operating simultaneously

The Minimum Run Time after a Charge start is [●] minutes

The Minimum Run Time after a Charge start is [●] minutes for all Units operating simultaneously

The Minimum Down Time after a shutdown is [●] minutes of an individual Unit

The Minimum Down Time after a shutdown is [●] minutes of all Units operating simultaneously

Ancillary Services

Spinning Reserves: [●] MWs; Range: [●]

Non Spinning Reserves: [●] MWs; Range: [●]

Regulation up: [●] MWs; Range: [●]

Regulation down: [●] MWs; Range: [●]

Black start capability (if applicable): [●]

Other: [●]

Other Restrictions:

[Provide a description of any other operational limitations not covered above, including forbidden operating regions]

Cycle Limitations:

[Insert applicable cycle limitations per hour, Day, Month or cumulative total by Year that are applicable to the Unit during the Supply Period.]

[Insert preferred definition and measure of “cycle”.]

Degradation:

Annual D^{\max} Degradation Rate: [●]% per Agreement Year

Annual C^{\max} Degradation Rate: [●]% per Agreement Year

Annual Storage Degradation Rate: [●]% per Agreement Year [*Applies to Maximum Storage Energy.*]

Annual Duration Energy Degradation Rate: [●]% per Agreement Year [*Applies to Degraded Duration Energy.*]

[SELLER can also specify percentage degradation tied to MWh delivered. If degradation is not a fixed percentage per Year, SELLER should include a table of degraded D^{\max} , Storage, and/or Degraded Duration Energy, and terms relating to degradation will have to be modified accordingly.]

APPENDIX K

MINIMUM TECHNICAL REQUIREMENTS

Capitalized terms used throughout this Appendix K have the meaning set forth in the Agreement, unless otherwise defined herein.

SELLER shall comply with the following MTRs:

1. Frequency Control and Regulation

- a. Fast active power (P) source capable of continuously injecting or absorbing energy from the grid as a function of system frequency deviations to help manage and maintain frequency at 60 Hz.
- b. Instantaneous and immediate active power (P) response of battery energy storage system (“BESS”) proportional to frequency deviations from scheduled frequency.
- c. The rate of active power (P) response of BESS to frequency deviations shall be established based on configurable PREPA selected droop characteristic (*i.e.* 5% droop characteristic or more responsive as PREPA requires SCADA). PREPA shall be able to program and configure the droop via SCADA from 1% to 5% in steps of 0.5% (*i.e.* 3.0%, 3.5%, 4.0%, 4.5%, 5%).
- d. Frequency regulation deadband shall be available. PREPA shall be able to configure and program the deadband via SCADA. The configurable deadband range shall be at least from 0.02% to 0.5%.
- e. BESS frequency control and regulation mode time response (full frequency response) shall be less than 1.0 second.
- f. PREPA shall be able to configure and select frequency regulation range (upper injection/lower absorption limits) via SCADA up to a maximum of its nominal capacity (*i.e.* +/- 15 MW, +/- 20 MW). Asymmetrical frequency regulation ranges should be allowed (*i.e.* +15 MW/-5 MW, +10 MW/-20 MW).
- g. Capability to operate in the frequency control and regulation mode and simultaneously control the voltage by the injection or absorption of up to the required nominal reactive power at the Interconnection Point: (i) the frequency regulation control shall operate decoupled from the voltage regulation control mode and shall not limit the required reactive power capability of the Facility at the Interconnection Point, and (ii) the voltage regulation control shall not limit the required active power capability of the Facility at the Point if Interconnection.

2. Rapid Spinning Reserve and Fast Frequency Response

- a. Instantaneous injection of reserve energy as a function of the rate of change and/or deviations of the system frequency in the event of a sudden loss of generation or unexpected ramp-up in demand.

- b. Energy capability and power capacity to inject nominal active power output (at the Interconnection Point) in a range from two (2) to six (6) hours of discharge.
- c. Injection of active power (P) within the first three (3) cycles of a specific frequency deviation trigger and/or a frequency rate of change trigger (PREPA shall be able to configure and select triggers).
 - i. Total configurability for PREPA selection of the active power output, response time and response slope.
 - ii. Total configurability for PREPA selection of triggers: frequency, rate of change of frequency and instantaneous/time delay combinations.
 - iii. For example, the rapid reserve might be selected to trigger if frequency decays to 59.6 Hz at a rate > 0.25 Hz/sec or drops and stays between 59.0 Hz and 59.2 Hz for $>$ thirty (30) seconds or drops below 59 Hz.
 - iv. Total configurability for multiple sets of triggering combinations capable of being simultaneously active. The rapid reserve mode might be selected to trigger with Boolean or logical operators that combine active power output, response time, response slope, frequency limits, frequency rate of change and time delay.
- d. The rapid spinning reserve mode shall provide a full output response time (95% of its final output value) of 100 milliseconds or faster. PREPA shall also have the flexibility of selecting a limited rapid spinning reserve sub-mode from SCADA. In limited rapid spinning reserve sub-mode, the active power output, response time and response slope shall be configurable and programmable from SCADA in accordance with the triggering combinations and options previously discussed.
- e. Capability to ramp down active power output at PREPA's pre-selected and configurable slope (MW/min or % of active power output/min) after system frequency is normalized and triggers pre-selected and configurable frequency window for a certain amount of time. BESS shall ramp down to PREPA's pre-selected and configurable active power output (10 MW, 5 MW, 0 MW, *etc.*) and be able to automatically make the transition and continue operating in frequency control and regulation mode in accordance with previously selected and configurable parameters. The active power automatic ramp down should have the capability of being manually interrupted and ramped down from SCADA.
 - i. Total configurability of ramp down slope in MW/minute or % of active power output/minute.
 - ii. Total configurability of active power output target to which BESS shall ramp down before making the transition to operate in frequency control and regulation mode.
 - iii. Total configurability for PREPA selection of frequency triggers that initiate rapid reserve ramp down process: frequency limits of window range and time delay combinations that initiate ramp down.
 - iv. For example, rapid reserve ramp down might be triggered if frequency returns to 60 Hz \pm 0.1 Hz and stays in this range for at least twenty (20) seconds or returns to 60 Hz \pm 0.2 Hz and stays in this range for at least thirty (30) seconds.

- f. Capability to ramp down active power output at PREPA's pre-selected and configurable slope (MW/min or % of active power output/min) after SCADA command is received from PREPA's Energy Control Center System Operator to automatically make the transition and continue operating in frequency control and regulation mode in accordance with previously selected and configurable parameters.
 - i. Total configurability of ramp down slope in MW/minute or % of active power output/minute.
 - ii. Total configurability of active power output target to which BESS shall ramp down before making the transition to operate in frequency control and regulation mode.
- g. Capability to inject nominal active power output for 1.0 hour and simultaneously inject or absorb nominal reactive power at the Interconnection Point.

3. Dispatchable Generation Source

- a. Injection of active power at the Interconnection Point for a limited period of time to cover temporary generation deficits or start-up fast generating units.
- b. PREPA shall be able to select from SCADA the constant power output mode, active power (P) magnitude and time period.
- c. Capability to automatically make the transition from dispatchable mode to frequency control and regulation mode in accordance with previously selected and configurable parameters after SCADA command is received from PREPA's Energy Control Center System Operator.
- d. Capability to ramp down active power output at PREPA's pre-selected and configurable slope (MW/min or % of active power output/min) after SCADA command is received from PREPA's Energy Control Center System Operator to automatically make the transition from dispatchable mode to frequency control and regulation mode in accordance with previously selected and configurable parameters.
 - i. Total configurability of ramp down slope in MW/minute or % of active power output/minute
 - ii. Total configurability of active power output target to which BESS shall ramp down before making the transition to operate in frequency control and regulation mode
- e. Capability to operate in the dispatchable generation source mode and simultaneously control the voltage by the injection or absorption of up to nominal reactive power at the Interconnection Point.

4. Voltage Regulation and Control

- a. Dynamic reactive power compensation source capable of continuously injecting or absorbing reactive power (up to +/- nominal MVAR at Interconnection Point) as a function of system voltage deviations.

- b. Voltage regulation strategy based 100% on power electronics technology (no passive components like capacitors or reactors, neither thyristor controlled or switched capacitors or reactors allowed to complement reactive power capability).
- c. Constant voltage control is required (voltage set point control mode).
- d. PREPA shall be able to adjust from SCADA the voltage regulation set points shall between 95% and 105% rated voltage at the Interconnection Point. Because the previous voltage regulation range could be expanded (for example up to 106%) if PREPA's internal analyses indicate that additional dynamic compensation is required for specific multi-contingency scenarios, the upper voltage set point limits should be totally configurable and adjusted from SCADA beyond the typical voltage regulation range.
- e. The voltage regulation shall be based on direct measurement by means of new BESS dedicated potential transformers (that SELLER shall install) at the Interconnection Point.
- f. The voltage regulation system strategy shall be based on proportional plus integral (PI) control actions with parallel reactive droop compensation. The voltage regulation droop shall be adjustable from 0 to 10% in steps not greater than 0.5%.
- g. At zero percent (0%) droop, the voltage regulation system shall achieve a steady-state voltage accuracy of +/- 0.3% of the controlled voltage at the Interconnection Point. For voltage regulation droops between 0 and 2.5%, the voltage regulation system shall be calibrated such that a change in reactive power will achieve 95% of its final value no later than one (1) second following a step change in voltage. The change in reactive power should not cause excessive voltage excursions or overshoot. If a voltage overshoot is generated, it should be less than 1%.
- h. For voltage regulation droops between 2.5% and 5.0%, the voltage regulation system shall be calibrated such that a change in reactive power will achieve 95% of its final value no later than 500 msec following a step change in voltage. The change in reactive power should not cause excessive voltage excursions or overshoot. If a voltage overshoot is generated, it should be less than 1%.
- i. For voltage regulation droops between 5% and 10%, the voltage regulation system shall be calibrated such that a change in reactive power will achieve 95% of its final value no later than 100 msec following a step change in voltage. The change in reactive power should not cause excessive voltage excursions or overshoot. If a voltage overshoot is generated, it should be less than 1%.
- j. The voltage regulation system dead band shall not exceed 0.1%.
- k. The voltage regulation system shall be programmed to control and coordinate with local power transformers tap changers and local reactive power sources physically located in the switchyard.

5. Fast Dynamic Reactive Power Reserve and Voltage Support

- a. Instantaneous or slope controlled (MVAR/sec) injection or absorption of reactive power triggered by and as a function of the rate of change and/or deviations of the system voltage.

- b. Injection of reactive power (Q) within the first three (3) cycles of a specific voltage deviation trigger and/or a voltage rate of change trigger. PREPA shall be able to configure and select triggers.
 - i. PREPA shall be able to configure and select from SCADA the maximum final reactive power output value for fast dynamic reactive power reserve up to the nominal reactive power capacity.
 - ii. Total configurability for PREPA selection of triggers: voltage magnitude, rate of change of voltage and instantaneous/time delay combinations.
 - iii. For example, fast dynamic reactive power reserve might be selected to trigger if voltage decays to 0.95pu kV at a rate > 2.0 kV/sec or drops below 0.9pu.
 - iv. For example, a different value of fast dynamic reactive power reserve might be selected to trigger if voltage decays to 0.95pu at a rate > 1.0 kV/sec or drops below 0.93pu.
- c. A full output response time (95% of its final output value) of 100 msec. or faster is required. The maximum overshoot should not exceed 5% of the ordered change and the settling time should not exceed 150 msec.
 - i. Capability to inject 120% of nominal reactive power output for three (3) seconds at required 100 msec. response time.
 - ii. Absorption of reactive power (Q) within the first three (3) cycles of a specific voltage deviation trigger and/or a voltage rate of change. PREPA shall be able to configure and select triggers.
 - iii. PREPA shall be able to configure and select from SCADA the minimum final reactive power output value for fast dynamic reactive power absorption, up to the nominal reactive power capacity of BESS.
 - iv. Total configurability for PREPA selection of triggers: voltage magnitude, rate of change of voltage and instantaneous/time delay combinations.
 - v. For example, fast dynamic reactive power might be selected to trigger if voltage increases to 1.1pu of the nominal voltage at a rate > 3.0 kV/sec or increases above 1.2pu of the nominal voltage.
- d. A different fast dynamic reactive power might be selected to trigger if voltage increases to 1.1pu of nominal voltage at a rate > 2.0 kV/sec or increases above 1.15pu of nominal voltage.
- e. Capability to inject nominal fast dynamic reactive power reserve or operate in voltage regulation mode depending on the system voltage conditions, and simultaneously inject nominal active power output for 1.0 hour at the Interconnection Point.

6. Black Start Capability

- a. The Facility shall provide for BESS start-up capability and full functionality during system blackouts.
- b. The Facility shall provide for BESS start-up capability and full functionality during unavailability of external system generation sources.

7. BESS Full Functional Voltage and Frequency Operational Range and Ride-Through Capability

- a. Low Voltage Operation Range:

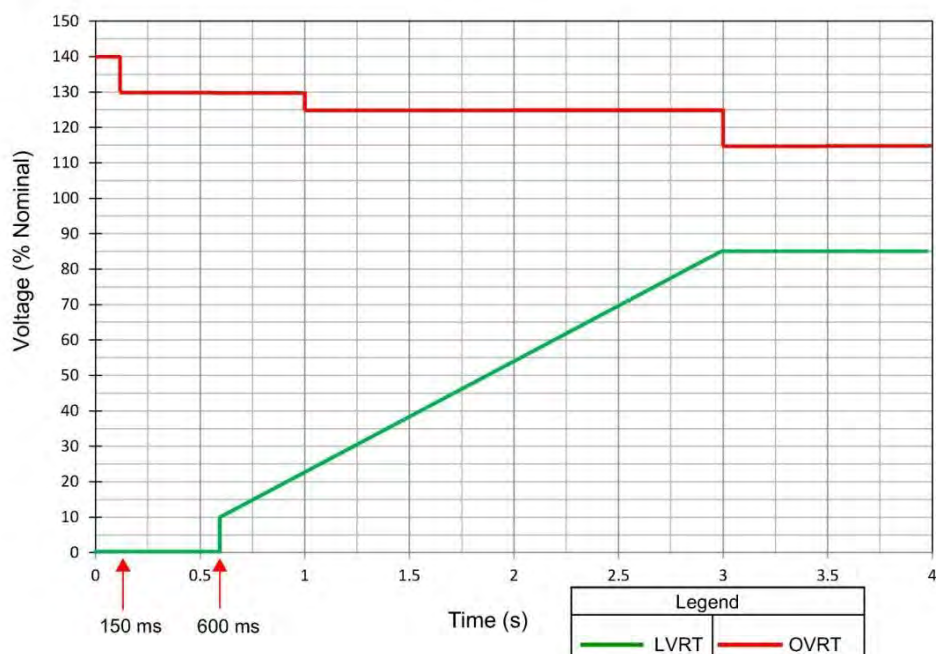


Figure 1 BESS Voltage Operational Range and Ride-Through Requirements

- i. From Figure 1 (above), PREPA requires BESS to remain totally functional and online during three (3) phase and single phase faults down to 0.0 per-unit (measured at the Interconnection Point), for up to 600 msec.
 - ii. BESS shall remain online and continue operating during and after normally cleared faults on the Interconnection Point.
 - iii. BESS shall remain online and continue operating during and after backup-cleared faults.
- b. High Voltage Operational Range:

- i. PREPA requires BESS to remain totally functional and online during symmetrical and asymmetrical overvoltage conditions as specified by the following values (illustrated in Figure 1 above):

Overvoltage (pu)	Minimum time
1.4 – 1.3	150 ms
1.3 – 1.25	1 s
1.25 – 1.15	3 s
1.15 or lower	indefinitely

- c. Frequency Ride Through (FRT)

56.0 – 63.0 Hz	No tripping (continuous)
55.5 – 56.0 Hz	20 sec time delay
< 55.5 or > 63.0 Hz	Instantaneous trip

8. Dynamic System Monitoring Equipment (DSM)

SELLER is required to provide, install, commission and maintain a dynamic system monitoring equipment that conforms to PREPA's specifications and signals list.

9. Modeling and Validation

- a. Once final adjustments and parameter settings related with commissioning and MTR compliance tests are completed, SELLER shall submit a PSS/E Siemens – PTI Certified mathematical model and validation report. When referred to the mathematical model, this shall include but is not limited to inverters, transformers, collector systems, plant controllers, control systems and any other equipment necessary to properly model BESS facility for both steady-state and dynamic simulation modules.
- b. SELLER shall submit user manuals for both BESS unit and BESS Facility models including a complete and detailed description of the voltage regulation system (VRS) and frequency regulation system model implementation. The mathematical models shall be fully compatible with the latest and future versions of PSS/E. SELLER shall use PSS/E standard models. In the case that SELLER submits user written models, SELLER shall keep these models current with the future versions of the PSS/E program until such time that PSS/E has implemented a standard model. SELLER shall submit to PREPA an official report from Siemens – PTI that validates and certifies the required mathematical models, including subsequent revisions. SELLER shall submit the official reports and certifications from Siemens – PTI, otherwise the mathematical model shall not be considered valid.
- c. SELLER shall submit Siemens – PTI certified PSS/E mathematical models of any kind of compensation devices (*i.e.* SVC, STATCOMs, BESS, *etc.*) used on BESS facility. SELLER shall use standard models provided with PSS/E. In the case that SELLER submits user written models, SELLER shall keep these models current with the future versions of

the PSS/E program until such time that PSS/E has implemented a standard model. In its final form, the mathematical model shall be able to simulate each of the required control and operational modes available for the compensation device and shall be compatible with the latest and future versions of PSS/E. The model shall reflect final adjustments and parameters settings related with the control system commissioning process and shall be incorporated to the PSS/E mathematical model and tested accordingly by SELLER and PREPA system study groups. SELLER shall submit the official reports and certifications from Siemens – PTI, otherwise the mathematical models shall not be considered valid.

- d. If SELLER provides user written model(s), then it shall provide compiled code of the model and maintain the user written model compatible with current and new releases of PSS/E until such time a standard model is provided. SELLER shall permit PREPA to make available Facility models to external consultants with a non-disclosure agreement in place.
- e. SELLER shall submit a PSS/E model validation report. This report shall demonstrate PSS/E simulation results that show the model MTR compliance and performance, based on final adjustment and parameter settings of MTR and commissioning field tests. SELLER shall submit the official reports and certifications from Siemens – PTI, otherwise the mathematical models shall not be considered valid.
- f. Additional details for the adequate PSS/E modeling and the contents of the PSS/E validation report can be found in PREPA’s “Guidelines on PSS/E Mathematical Models” document.

10. Power Management

The Facility shall provide adequate technology (communicating technology and the corresponding control equipment) and implement PREPA’s power management requirements (ramp rate limits, output limits, curtailment).

11. Short Circuit Ratio (SCR) Requirements

Short Circuit Ratio values (System Short Circuit MVA at POI/BESS Facility MVA Capacity) under 5 shall not be permitted. SELLER shall install additional equipment, such as synchronous condensers, and controls as necessary to comply with PREPA’s minimum short circuit requirements.

12. General

- a. For batteries, replacement of individual cells or cell modules shall not interrupt BESS availability to the grid.
- b. BESS shall have dedicated auxiliary electric power systems to serve BESS ancillary loads (HVAC, lighting, *etc.*) and be able to be auto-transferred to a reliable backup source.
- c. BESS shall have a minimum round trip energy efficiency of 90%.
- d. PREPA shall define the BESS voltage level at the Interconnection Point. The Project shall include appropriate step-up transformers and required interconnection equipment, including any necessary augmentation or modification to existing substation or transmission facilities.

- e. BESS control system shall integrate the following operational requirements:
 - i. BESS controllers shall be compatible with the systems used in PREPA's System Operations Control Center and Energy Management System.
 - ii. BESS shall be completely dispatchable.
 - iii. BESS control system shall provide available energy forecasting.
 - iv. Any operating function shall be capable of being remotely and dynamically selected and prioritized.
 - v. Function parameters (*i.e.* droop setting) of any operating function shall be capable of being remotely modified.
 - vi. SELLER shall fully describe and demonstrate how the proposed BESS control system(s) will operate.

The control system shall have the necessary hardware and software (*i.e.* firewalls & malware detection) such that it is compliant with the latest NERC CIP reliability standards for control system security requirements.

APPENDIX L
OPERATING PROCEDURES
[●]

APPENDIX M
TESTING PROTOCOL
[●]

APPENDIX N

TECHNICAL SPECIFICATIONS FOR THE DYNAMIC SYSTEM MONITOR

I. Introduction

The following specification defines the minimum requirements for an instrument used in the monitoring and registration of dynamic disturbances on electric power systems and the supervision of source performance according to Grid Codes.

II. Hardware

a. Inputs:

1. The equipment shall have at least 32 analog inputs with the capacity to increase them to a minimum of 96 inputs depending on the application required analog signals. The minimum resolution for the A/D converter shall be 16 bit. The sampling rate shall be programmable up to a minimum of 250 samples per cycle (15000 samples per second). The analog inputs shall permit at least the following types of signals:
 - i. PT voltage (150 V rms minimum, Accuracy better or equal to 0.3%);
 - ii. CT currents (5 A rms minimum, Accuracy better or equal to 0.3%);
 - iii. DC voltages of at least 800 V (Accuracy better or equal to 0.3%);
 - iv. Small Analog Signals (Accuracy better or equal to 0.3%);
 - A. Current: 4 – 20 mA; and
 - B. Voltage: 0 – 200 mV, 1V, 10 V;
2. The equipment shall have at least 16 digital inputs with the capacity to increase them to a minimum of 48 inputs depending on the application required digital signals. The minimum input voltage range of the digital inputs should be 0 – 150 V. The digital inputs should be included as a user defined software triggering input.
3. The equipment shall be able to record power system frequency with a resolution of at least 0.001Hz.

- b. The equipment shall have a built-in microprocessing unit with color monitor, keyboard and mouse from which all commands, controls and setup parameters may be entered. All setup parameters shall be store in a non-volatile medium, to prevent loss of setup data if power is interrupted. This microprocessing unit shall be of industrial grade to insure long life in a typical substation or generation plant environment.

c. Memory and storage capacity:

The equipment shall have a nonvolatile solid state memory (ex. SSD, flash, *etc.*) with the required capacity to stores at least one (1) Year of continuous data based in typical recording periods and typical recording rates. Also, the memory shall have a minimum

storage capacity of 1,000 RMS trigger events and 1,000 Instantaneous trigger events based in typical recording rates and recording periods. Typical recording periods and recording rates are:

- i. RMS Trigger Recording Function (Recording rate of 1 sample per cycle on all the signals)
 - A. Pre-Trigger: 60 seconds
 - B. Post –trigger: 300 seconds
- ii. Instantaneous Values Trigger Recording Function (recording rate of 250 samples per cycle on all instantaneous signals)
 - A. Pre-Trigger: 1 second
 - B. Post-Trigger: 2 seconds
- iii. Continuous Recording Function - The recording rate is one (1) sample per second on all the signals. This recording function is continuous, but saved in twenty-four (24) hour periods.

All the recording functions mentioned above shall work simultaneously. The equipment shall maintain the date and time in an internal battery-backed clock.

d. Communication:

The equipment shall have at least two Ethernet 10/100/1000 Mbps port (LAN interface, TCP/IP Protocol) for local and remote network communication.

e. Power Source:

The equipment shall have a redundant power supply. Two separate inputs (one AC and one DC) 100 – 240 VAC, 60 Hz and 100 – 150 DC. Some applications could require DC supply of 48 VDC + 10%, verify before the equipment acquisition.

f. Measurement accuracy:

- 1. Voltage measurement error shall be less than + 0.3% of reading.
- 2. Current measurement error shall be less than + 0.3% of reading.

III. Software

- a. The software platform of the equipment shall be compatible with the latest version of Microsoft Windows operating system.
- b. The equipment remote communication shall be thru TCP/IP network connectivity (LAN). The remote communication should permit at least the set up and data retrieval of the equipment. The equipment should have the capability to perform at least the following functions remotely:

1. Modification of the configuration;
 2. Retrieval of captured events; and
 3. Remote event triggering.
- c. The equipment shall have the capacity of time synchronization with GPS system. A GPS receiver and GPS antenna shall be included.
- d. Triggers:
1. The equipment shall support user defined programmable triggers. Triggering shall be initiated based upon primary quantities (voltage, current, and frequency), calculated quantities (watts, Var, power factor, apparent power, *etc.*), digital signals or small analog signals.
 2. The trigger thresholds shall be based on limits, gradients, equations and status. Examples of trigger conditions that shall be available are:
 - i. Level threshold (high level, low level, in-band, out-band, *etc.*);
 - ii. Rate of change (ex. frequency variation (df/dt));
 - iii. Manual input (keyboard trigger);
 - iv. Request from remote computer; and
 - v. Event input status (digital signal status).
 3. A re-trigger function shall be available which permits the equipment to generate a new event register if a second disturbance is detected while the recording of the first disturbance is still in process. This process should continue if more disturbances occur in the new registers.
- e. The acquisition software shall include a user defined pre-trigger interval option as well as a user defined post trigger interval for the information captured in the case of triggered events. The minimum range of the pre-trigger interval should be from 0 to 60 seconds and the minimum range for the post trigger interval should be 0 to 300 seconds. In addition, the date, time, and type of trigger that initiated the event shall be included as part of the disturbance record.
- f. The acquisition software shall have the following capabilities:
1. Time displays (ex. Oscilloscope);
 2. Digital Status display (ex. High/Low, 1/0);
 3. Multiple displays and multiple signals in displays in real time and off-line;
 4. Display resizing;
 5. Programmable conversion of range and units of signals; and

6. Independent range for signals.
- g. The acquired data shall be available in a format directly compatible with Siemens Power Technologies International (Siemens PTI) PSS/E plotting software.
- h. The software shall support data export in ASCII, CSV and PSS/E formats.
- i. The software shall support image export in JPG, BMP or WMF formats.
- j. The software shall have the following analysis capabilities for the data and signals (primary and calculated):
 1. Fast Fourier Transform (FFT);
 2. Peak analysis;
 3. Filter functions; and
 4. Series and scalar mathematic (square root, inversion, square, sum, gain, offset, *etc.*).
- k. The software shall perform the following power engineering calculations (on-line and off-line) and measurements:
 1. Three phase and single phase Power (Real, reactive, apparent);
 2. Power Factor;
 3. Power angle;
 4. rms line and phase voltage;
 5. rms current;
 6. Power system frequency;
 7. DC voltage and currents; and
 8. AC voltage and currents.

IV. General

- a. Environmental Conditions:
 1. Operating temperature: 0° C to 50° C; and
 2. Operating humidity: 95%, non-condensing.
- b. Equipment cabinet and corresponding accessories:
 1. The cabinet should have test switches at the front of the panel for the three phase voltages and currents. The test switches should have a minimum rating of 600 V

rms and 30 A rms; semi flush mounted, rear connected, equal or similar to ABB FT-1, style no. 129A514G01. The test switches should be assembled horizontally in groups of three FT-1 switches per row, mounted on a 19 inches wide, three-rack unit (3RU) high panel suitable for rack mounting, similar to ABB FR3J014014014.

2. The signals (analog and digital) should terminate on terminal blocks inside the cabinet, before the connection to the Dynamic System Monitor. The AC, DC, digital, exciter voltage and exciter current signals should be in different terminal blocks. The terminal blocks should have a minimum rating of 600 V rms and 30 A rms (except the exciter voltages signals, see below). Examples of terminal blocks are: GE CR151B2 and Marathon 1512 STD. The current signals should terminate on shorting type heavy duty terminal blocks equal or similar to Marathon, catalog number 1506SC. The terminal blocks used for the excitation voltage of the generators must have a nominal voltage capacity greater than 800 V DC. A switch or breaker for isolation purposes is also required for the excitation voltage and current signals.

c. Documentation:

1. The equipment shall include a documentation package that contains the user, operation and maintenance manuals and the mechanical and electrical equipment drawings. The documentation should be in hard copy and in digital format.
2. The equipment documentation shall include a copy of the software.

d. Spare parts recommended by the equipment manufacturer shall be included in the dynamic system monitor purchase order.

e. Warranty:

1. The equipment warranty shall include part and service for a period not less than sixty (60) Months from the delivery day.
2. Equipment Training, Installation Support and Commissioning:
 - i. An on-site equipment operation and configuration training should be included; and
 - ii. The dynamic system monitor manufacturer shall perform the equipment commissioning and offer installation support.

APPENDIX O

TECHNICAL REQUIREMENTS FOR OPERATION, PROTECTION, & CONTROL

1. SELLER shall provide general protection practices, which comply with PREPA's written protection system practices and DCDs, in all the electrical equipment related to the Interconnection Facilities according to the standards and PREPA requirements in order to ensure personnel safety and secure operation and interconnection with PREPA's systems. SELLER has responsibility for the design, accurate relay settings (in accordance with the Approved Design) and testing of the protection that shall contain the evaluated Seller Interconnection Facilities' settings. PREPA will evaluate and approve only the protection design, settings, and tests of the Seller Interconnection Facilities related to PREPA's system stability, security, and optimal performance. Those protection designs, settings and tests of the Seller Interconnection Facilities not related to PREPA's system stability, security and optimal performance will not be evaluated by PREPA.
2. As further defined in Article 3 (*Pre-Operation Period*) and Appendix H (*Interconnection Description and Specifications*), SELLER shall have responsibility for any protection related equipment, relays, scheme design, coordination and short circuit studies, and relay settings of all the protection equipment within PREPA's installation and remote terminals necessary to safely synchronize the Interconnection Facilities according to the latest technology and standards. For the avoidance of doubt, this includes the protection from (a) the PREPA Interconnection Facilities breaker to the Seller Interconnection Facilities and (b) the differential protection relay from the Seller Interconnection Facilities to PREPA's Interconnection Facilities.
3. SELLER shall submit a complete Seller Interconnection Facilities protection report with all relay settings, including all calculations and considerations for the relay settings in addition to coordination and short circuit studies. In addition to the foregoing, the report shall also provide, including but not limited to, the following:
 - a. The approved Seller Interconnection Facilities design single line drawings shall have all the equipment information and all the relay's input and output descriptions;
 - b. The Seller Interconnection Facilities relay settings shall include the logic, inputs, and outputs according to the Approved Design;
 - c. The backup overcurrent protection units of the Seller Interconnection Facilities relay shall be set so that PREPA does not provide short circuit current for more than one second;
 - d. The transformer from the Seller Interconnection Facilities to PREPA shall have Delta – WYE configuration to avoid zero sequence current contribution from the Facility during faults at the electrical system;
 - e. The Seller Interconnection Facilities transformer protection shall be set so that the Seller Interconnection Facilities does not provide short circuit current to PREPA or disconnects instantly;
 - f. The Seller Interconnection Facilities transformer protection shall provide an overvoltage protection unit on the delta side of the transformer to disconnect the Seller Interconnection Facilities during ground faults on the delta side of the transformer; and

- g. SELLER shall provide all the equipment data of the Seller Interconnection Facilities for PREPA's protection studies such as capacity, transformer and line impedances, current and voltage transformer ratios and information and short circuit duty, among others.

For the avoidance of doubt, PREPA does not assume, calculate or interpret any required item from manuals, graphs, or relay curves, and SELLER shall ensure that it includes all the required data in the report upon first submittal.

APPENDIX P

PERFORMANCE GUARANTEES

1. Facility Availability

a. Threshold Availability

SELLER guarantees the Facility will be available for use by PREPA for at least seventy percent (70%) of the hours in each Billing Period during the Supply Period (“**Threshold Availability**”). For each Billing Period, Facility Availability shall be calculated in accordance with paragraph (b) of Section 6 (*Facility Availability*) of Appendix F (*Compensation*).

b. Availability Liquidated Damages

If the Facility Availability falls below the Threshold Availability during any Billing Period of an Agreement Year, then SELLER shall pay PREPA liquidated damages for each hour of such Billing Period (the “**Availability Liquidated Damages**”) equal to:

$$ALD = (TA - FA) \times DDE \times \left(RER - \frac{CPP}{\left(30.33 \frac{\text{Days}}{\text{Month}} \times 24 \frac{\text{hours}}{\text{Day}} \right)} \right)$$

where:

ALD	=	Availability Liquidated Damages for such hour, expressed in \$;
TA	=	Threshold Availability, expressed as a percentage;
FA	=	Facility Availability for such Billing Period, expressed as a percentage;
DDE	=	Degraded Duration Energy applicable to such Agreement Year, expressed in MWh;
RER	=	replacement Energy rate of \$170/MWh; and
CPP	=	Capability Payment Price applicable to such Agreement Year, expressed in \$/MW-Month.

2. Capability

a. Guaranteed Capability

SELLER guarantees that the Facility will maintain an Adjusted Duration Energy not less than the Degraded Duration Energy (“**Guaranteed Capability**”) for the Supply Period, as measured by the Performance Tests conducted in accordance with Section 6.9 (*Supply Period Performance Tests*).

b. Capability Liquidated Damages

If a Performance Test shows the Adjusted Duration Energy below the Guaranteed Capability, then SELLER shall pay PREPA, for each Day from the Day on which such Performance Test occurred until the Day on which SELLER demonstrates a Tested Duration Energy equal to or greater than the Degraded Duration Energy, liquidated damages (“**Capability Liquidated Damages**”) equal to:

$$CLD = (GC - TDE) \times \left(RER - \frac{CPP}{\left(30.33 \frac{\text{Days}}{\text{Month}} \times 24 \frac{\text{hours}}{\text{Day}}\right)} \right)$$

where:

- CLD** = Capability Liquidated Damages, expressed in \$;
- GC** = Guaranteed Capability, expressed in MWh;
- TDE** = Tested Duration Energy, expressed in MWh;
- RER** = replacement Energy rate of \$170/MWh; and
- CPP** = Capability Payment Price applicable to such Agreement Year, expressed in \$/MW-Month.

3. Efficiency

a. Guaranteed Efficiency

SELLER guarantees that the Facility will maintain Actual Efficiency for each Billing Period during the Supply Period not less than Guaranteed Efficiency. The Parties shall calculate Actual Efficiency in accordance with paragraph (b) of this Section 3 of this Appendix P.

b. Calculation of Actual Efficiency

SELLER shall calculate the actual efficiency of the Facility for each Billing Period “n” as a percentage measurement using the formula set forth below (“**Actual Efficiency**”):

$$\text{Actual Efficiency}_n = \frac{(DE_n + (AE_{\text{end}} - AE_{\text{beg}}))}{CE_n}$$

- DE_n** = the total Discharge Energy for Billing Period “n”, as measured for such period in accordance with Section 8.4 (*Meter Reading*);
- CE_n** = the total Charge Energy for Billing Period “n”, as measured for such period in accordance with Section 8.4 (*Meter Reading*);
- AE_{end}** = Stored Energy Level at 23:59 on the last Day of Billing Period “n”;
- AE_{beg}** = Stored Energy Level at 23:59 on the last Day of the Billing Period preceding the current Billing Period “n”; and

n = relevant Billing Period “n” for which Actual Efficiency is calculated.

c. Efficiency Liquidated Damages

If the Actual Efficiency for a Billing Period “n” in an Agreement Year falls below the Guaranteed Efficiency, then SELLER shall pay PREPA liquidated damages for such Billing Period (the “**Efficiency Liquidated Damages**”) equal to:

$$ELD = \left(RER - \frac{CPP}{\left(30.33 \frac{\text{Days}}{\text{Month}} \times 24 \frac{\text{hours}}{\text{Day}} \right)} \right) \times ((CE \times GE) - DE)$$

where:

ELD = Efficiency Liquidated Damages for such hour, expressed in \$;

RER = replacement Energy rate of \$170/MWh;

CPP = Capability Payment Price applicable to such Agreement Year, expressed in \$/MW-Month;

CE = the total Charge Energy for Billing Period “n”, as measured for such period in accordance with Section 8.4 (*Meter Reading*);

GE = Guaranteed Efficiency, expressed as its decimal equivalent; and

DE = the total Discharge Energy for Billing Period “n”, as measured for such period in accordance with Section 8.4 (*Meter Reading*).

4. **Ramp Rate**

a. Guaranteed Ramp Rate

SELLER guarantees a minimum response rate of [ten percent (10%)] of the Facility’s Degraded Duration Energy per minute (“**Guaranteed Ramp Rate**”).

b. Non-Scheduled Outage

The Ramp Rate will be measured in accordance with Section 6.9 (*Supply Period Performance Tests*). If the Facility is unable to demonstrate the Guaranteed Ramp Rate, SELLER shall place the Facility into a Non-Scheduled Outage immediately and resolve any issues so that the Facility can achieve the Guaranteed Ramp Rate.

APPENDIX Q

FORM OF SWORN STATEMENT

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 the 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 the 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 complies 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____.

Affidavit No. _____

Representative's Signature

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

APPENDIX R

FORM OF FOMB CERTIFICATION

CONTRACTOR CERTIFICATION REQUIREMENT

SELLER shall provide the following certification to FOMB and the Commonwealth's Contracting Government Entity, signed by its Chief Executive Officer (or equivalent highest rank officer):

Unless the context otherwise requires, capitalized terms have the meanings defined in the Energy Storage Services Agreement dated [●] (the "**Agreement**").

1. SELLER's subcontractor(s) in connection with the Agreement (including any amendments, modifications, or extensions) is (are) the following:

(Name of individual or firm, including names of principals or owners of the latter)

(Principal terms and conditions of the contractual relation and role of the subcontractor)

(Amount of proposed contract payable to each subcontractor)

2. Neither SELLER nor any of its owners (including any Person or entity with more than a ten percent (10%) ownership interest in SELLER), partners, directors, officials, or employees, has agreed to share or give a percentage of SELLER's compensation under the Agreement to, or otherwise compensate, any third party, whether directly or indirectly, in connection with the procurement, negotiation, execution or performance of the contract, except as follows:

(Name of individual or firm, including names of principals or owners of the latter)

(Principal terms and conditions of the compensation sharing arrangement and consideration for such benefit)

3. To the best knowledge of the signatory (after due investigation), no Person has unduly intervened in the procurement, negotiation, or execution of the contract, for its own benefit or that of a third Person, in contravention of Applicable Law.
4. To the best knowledge of the signatory (after due investigation), no Person has: (i) offered, paid, or promised to pay money to; (ii) offered, given, or promised to give anything of value to; or (iii) otherwise influenced any public official or employee with the purpose of securing any advantages, privileges or favors for the benefit of such Person in connection with the Agreement (such as the execution of a subcontract with SELLER, beneficial treatment under the contract, or the written or unwritten promise of a gift, favor, or other monetary or non-monetary benefit).
5. Neither SELLER, nor any of its owners, partners, directors, officials or employees or, to the best of its knowledge (after due investigation), its representatives or sub-contractors, has required, directly or indirectly, from third Persons to take any action with the purpose of influencing any public official or employee in connection with the procurement, negotiation or execution of the contract, in contravention of Applicable Law.
6. Any incorrect, incomplete or false statement made by SELLER's representative as part of this certification shall cause the nullity of the proposed contract and SELLER must reimburse

immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under the Agreement.

The above certifications are hereby signed under penalty of perjury by the [Chief Executive Officer (or equivalent highest rank officer)] in the following form:

“I hereby certify under penalty of perjury that the foregoing is complete, true and correct.”

By:

Date:

Signature:

APPENDIX S

FORM OF CONDITIONS PRECEDENT CERTIFICATE

CONDITIONS PRECEDENT CERTIFICATE

Date: [●]

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

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

To: [●] (“**SELLER**”)

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

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

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

Very truly yours,

Acknowledged and agreed,

[●]
as SELLER

Puerto Rico Electric Power Authority
as PREPA

[●]

[●]

APPENDIX T

FORM OF CONSTRUCTION START DATE CERTIFICATE

CONSTRUCTION START DATE CERTIFICATE

Date: [●]

From: [●]

To: [●]

We refer to the Energy Storage Services Agreement between PREPA and SELLER dated [●] (the “ESSA”). Unless the context otherwise requires, capitalized terms used in this Construction Start Date Certificate shall have the meanings ascribed to them in the ESSA.

We hereby certify that SELLER has:

- a. obtained all Permits, authorizations and real property rights needed to start construction of the Facility [and the PREPA Interconnection Facilities];
- b. secured the necessary financing and Equity (which Shareholders have contributed) for the construction of the Facility and the PREPA Interconnection Facilities (including the execution of documents between SELLER and the Project Lenders that include binding commitments which, together with Equity, provide for one hundred percent (100%) of the total capital cost of the Facility and PREPA Interconnection Facilities, other than the amount to be funded by Equity) and satisfied all conditions associated with, and made, the initial draw of funds for such construction under the financing documents with the Project Lenders, except to the extent that the capital has not yet been expended and such use constitutes a condition to the initial draw;
- c. entered into the Facility Construction Contract, the Interconnection Construction Contract and any other agreements necessary to make the Energy Storage Services available to PREPA in accordance with the ESSA;
- d. received PREPA’s confirmation of the Approved Design;
- e. maintains the Performance Security required by the ESSA in full force and effect; and
- f. given each of its primary contractor(s) under the Facility Construction Contract [and the Interconnection Construction Contract] a full, unconditional notice to proceed with construction of the Facility [and PREPA Interconnection Facilities (other than the PREPA Interconnection Facilities Work)], respectively.

The Construction Start Date occurred on [●].

Very truly yours,
[●]
as SELLER

Acknowledged and agreed,
Puerto Rico Electric Power Authority
as PREPA

[●]

[●]

APPENDIX U

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

COMMERCIAL OPERATION DATE CERTIFICATE

Date: [●]

From: [●] (“SELLER”)

To: Puerto Rico Electric Power Authority

We refer to the Energy Storage Services Agreement between PREPA and SELLER dated [●] (the “ESSA”). Unless the context otherwise requires, capitalized terms used in this certificate shall have the meanings ascribed to them in the ESSA.

We hereby certify that:

- a. as demonstrated by the Initial Performance Tests, (i) SELLER has completed the installation, testing and commissioning of the Facility and the PREPA Interconnection Facilities in accordance with this Agreement, (ii) the Facility can make available Capability on a sustained basis that meets or exceeds the Design Capability (or, to the extent that a Design Capability exceeds the corresponding Capability, (1) SELLER has credited PREPA for all Liquidated Damages required by the ESSA in respect thereof, and (2) such Capability of the Facility meets or exceeds the Minimum Acceptance Capability and satisfies the Other Minimum Acceptance Criteria, and (iii) the Facility can make available Discharge Energy that corresponds to such Capability at the Interconnection Point and receive Charge Energy at such point, on a continuous basis, in each case, in accordance with Prudent Utility Practices and the ESSA;
- b. SELLER has obtained, and maintains in force, all material Permits required for the operation of the Facility; and
- c. the Facility and the PREPA Interconnection Facilities comply in all material respects with Applicable Law.

The Commercial Operation Date occurred on [●].

Very truly yours,

Acknowledged and agreed,

[●]
as SELLER

Puerto Rico Electric Power Authority
as PREPA

[●]

[●]

APPENDIX V

FORM OF PERFORMANCE SECURITY

IRREVOCABLE, STANDBY LETTER OF CREDIT

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

Beneficiary: PUERTO RICO ELECTRIC POWER AUTHORITY
Address: [●]
Attn:[●]

Reference No.: [●]

Date of Issuance: [●]

[PREPA-/SELLER Name] Energy Storage Services Agreement] – Performance Security No. [●]

We understand that *[insert name of SELLER]* (the “*Applicant*”) has entered into a contract with you, Beneficiary, dated [●] (as amended, the “*Agreement*”), which requires a Performance Security in the form and amount of this irrevocable standby letter of credit (“*Letter of Credit*”).

At the request of the Applicant, we *[name of Bank]*, hereby issue this Letter of Credit and irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [●] United States Dollars (USD [●]) in each case upon receipt by us of your first demand in writing at the Place of Presentation listed below in person, by registered or certified mail or by international overnight courier service, substantially in the form attached as Annex A hereto (signed by your authorized representative and appropriately completed) (“*Demand*”), without your needing to prove or to show grounds for your Demand or the sum specified therein. We shall remit all payment(s) under this Letter of Credit into a bank account of your choice and discretion as specified in your Demand. You may make one or more Demands under this Letter of Credit. Partial drawings are permitted.

Any Demand made by Beneficiary in accordance herewith shall be conclusive evidence that the sum stated in such Demand is properly due and payable to Beneficiary under this Letter of Credit. We shall have no right and shall not be under any duty or responsibility to enquire into the reason or circumstances of any Demand made by Beneficiary or the respective rights and/or obligations and/or liabilities of Beneficiary and the Applicant under the Agreement. Any discrepancy between the explicit terms hereof and the Rules (defined below) shall be read in favor of the terms set forth in this Letter of Credit.

Place of Presentation: *[insert address of Bank branch where Beneficiary presents a Demand]*.

We shall, within five (5) business days after receipt of any Demand served from time to time by Beneficiary, pay to Beneficiary in immediately available funds the lesser of: (a) the amount specified in the Demand; and (b) the then applicable amount remaining on the Letter of Credit. If a Demand made by Beneficiary hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, then we shall give Beneficiary, within two (2) business days after receipt of such Demand, notice that such Demand was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reason therefore. Upon being notified that a Demand was not made in conformity with this Letter of Credit, Beneficiary may attempt to correct such non-conforming Demand. Our obligations under this Letter of Credit are primary and not by way of surety or guarantee.

[This Letter of Credit shall enter into force and effect upon expiry of Performance Security No. [●], dated [●] and issued by [●].] [NTD: Insert this language if this is a replacement Letter of Credit.]

This Letter of Credit shall expire on [date] but such expiration date shall be automatically extended for a period of one (1) year on [one year anniversary of prior date] (“**Expiry Date**”), and on each successive expiration date thereafter, unless at least one hundred twenty (120) calendar days before the then current Expiry Date we notify both Beneficiary and Applicant that we have decided not to extend this Letter of Credit beyond the then current Expiry Date. Any such notice shall be delivered by registered or certified mail, or by FedEx, both to:

Beneficiary at:

[●]

And to Applicant at:

[●]

In the event Beneficiary and Applicant are so notified by us pursuant to the immediately preceding sentence, Beneficiary may draw any amount or the entire amount available under this Letter of Credit by Beneficiary’s presentment, at the Place of Presentation, of a drawing certificate duly signed in substantially the form of Annex A attached hereto appropriately completed. In no event shall the Expiry Date of this Letter of Credit be subject to automatic extension beyond sixty (60) calendar days after the expiration of the Agreement term, and any pending automatic one-year extension shall be ineffective beyond such date. The Expiry Date does not affect our liability to make payment of any demand received prior to the Expiry Date.

This Letter of Credit is subject to ICC International Standby Practices 1998 (ISP 98), International Chamber of Commerce Publication No. 590 (the “**Rules**”). For matters not addressed by the Rules, this Letter of Credit is governed by and to be construed in accordance with the laws of [*jurisdiction of the Qualified Bank*]. In the event of a conflict between the terms of this Letter of Credit and the Rules, ICC Publication No. 758, the terms of this Letter of Credit shall prevail.

The courts of the [*United States federal courts in the Commonwealth of Puerto Rico*] shall have exclusive jurisdiction in respect of all disputes arising out of this Letter of Credit (including, without limitation, the enforceability of this Letter of Credit).

By:
Authorized Signatory

ANNEX A - FORM OF DRAWING CERTIFICATE

[Letterhead of Beneficiary]

[Name of Issuing Bank]

Date: [●]

[Insert Work Description] – Performance Security No. [●]

We refer to the above-captioned irrevocable standby letter of credit, with reference number [●] (“**Letter of Credit**”). Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to them in the Letter of Credit or the Agreement. We hereby inform you that:

1. a Construction Start Termination Event, a COD Termination Event, or a Default (as defined in the Agreement) by Applicant or the owing by Applicant to Beneficiary has occurred under the Agreement for penalties or any other liabilities, damages, losses, costs or expenses arising out of or relating to a breach of any obligation under the Agreement by Applicant, such as Default or otherwise, or the Agreement provides that Beneficiary may draw on the Letter of Credit, entitling us to call upon the Letter of Credit; or
2. Applicant failed to commence or carry out work required to rectify any defect and/or damage during the Defects Liability Period in accordance with the Agreement; or
3. applicant owes Beneficiary Liquidated Damages under and in accordance with the Agreement; or
4. you no longer meet the requirements of a Qualified Bank (as defined below) and twenty-one (21) calendar days or more have elapsed since the date on which you no longer met such requirements, and the Applicant has not delivered to Beneficiary a replacement letter of credit that is substantially identical to the Letter of Credit, meeting the requirements of the Agreement. “Qualified Bank” means a national bank, national association, commercial bank or other financial institution registered in the United States, having a branch located within Puerto Rico or the contiguous United States, and otherwise acceptable to Beneficiary that has a long-term issuer rating of at least (i) if headquartered within Puerto Rico, then “B+” by Standard & Poor’s Ratings Services, “B1” by Moody’s Investors Services Inc., or “B+” by Fitch Ratings Inc. or (ii) if headquartered outside of Puerto Rico, then “A-” by Standard & Poor’s Ratings Services, “A3” by Moody’s Investors Services Inc., or “A-” by Fitch Ratings Inc., or in each case if the relevant rating agencies cease to engage in business or rate the obligations in question, then an equivalent rating from another internationally recognized rating agency selected by Applicant with the written consent of Beneficiary; provided that, if such financial institution’s ratings satisfy such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications; or
5. twenty-one (21) or less calendar days remain before the current Expiry Date, the Applicant’s obligation to maintain the Letter of Credit under the Agreement extends beyond such Expiry Date, and the Applicant has not delivered to Beneficiary a replacement Letter of Credit substantially identical to the Letter of Credit and meeting the requirements of the Agreement.

This letter serves as our demand for payment under the Letter of Credit. 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,

[*The Puerto Rico Electric Power Authority*]

By:
Authorized Signatory

APPENDIX W

FORM OF DIRECT AGREEMENT

DIRECT AGREEMENT

THIS DIRECT AGREEMENT (“**Direct Agreement**”) dated [●], 2021, is entered into among: (i) the Puerto Rico Electric Power Authority, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by an Act of 23 May 1941, No. 83, as amended (the “**Consenting Party**”), (ii) [●] (together with its successors, designees and permitted assigns in such capacity, the “**Administrative Agent**”) and (iii) [●] (the “**Assignor**”). All capitalized terms used herein and not otherwise defined in this Direct Agreement shall have the respective meanings set forth in the Assigned Agreement (as defined below). The principles of interpretation and construction set forth in the Assigned Agreement shall apply to, and are hereby incorporated by reference as if fully set out in, this Direct Agreement, *mutatis mutandis* and as if any references to “this Agreement” and “Party” in such provisions were references to, respectively, “this Direct Agreement” and “the parties hereto”.

RECITALS

WHEREAS:

- (A) the Assignor (as seller) and Consenting Party (as buyer) have entered into that certain Energy Storage Services Agreement, dated as of [●] (as amended, restated or supplemented, the “**Assigned Agreement**”), pursuant to which the Assignor will develop a [●] MW Facility at the Site, (ii) interconnect the Facility with the Grid System, and (iii) provide energy storage services exclusively to the Consenting Party, and the Consenting Party will pay for the energy storage services from the Facility built by the Assignor;
- (B) Pursuant to Section 19.3 (*SELLER’s Right to Assign*) of the Assigned Agreement, the Consenting Party has agreed to use commercially reasonable efforts to cooperate with any financing efforts of the Assignor, and the Assignor may assign its rights to payment under the Assigned Agreement to Project Lenders as security for its obligations to any such lender in connection with any financing of the development and construction of the Facility;
- (C) [The Assignor has entered into that certain [Credit Agreement], dated as of [●] (as amended, restated or supplemented, the “Credit Agreement”), among Project Lenders from time to time party thereto (together with the Administrative Agent, each, a “**Secured Party**”, and, collectively, the “**Secured Parties**”) and the Administrative Agent, pursuant to which such Project Lenders will make loans to the Assignor to, among other things, finance the construction of the Facility; and
- (D) The Assignor has entered into that certain Security Agreement, dated as of [●] (as amended, restated or supplemented, the “Security Agreement”), among the Assignor, the other subsidiary guarantors from time to time party thereto and the Administrative Agent, pursuant to which each of the Assignor and such subsidiary guarantors have granted to the Administrative Agent, for the ratable benefit of the Secured Parties, a security interest in certain property as collateral security for the prompt and complete payment and performance when due of such entities’ obligations under the Credit Agreement.]

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. NOTICE OF ASSIGNMENT

The Assignor hereby gives notice to the Consenting Party that pursuant to the Security Agreement, the Assignor has pledged and assigned to the Administrative Agent, for the benefit of the Secured Parties, and granted to the Administrative Agent a security interest in, all of the Assignor's right, title and interest in, to and under the Assigned Agreement pursuant to the Security Agreement (the "**Assigned Interest**"), as collateral security for the obligations of the Assignor under the Credit Agreement.

2. PAYMENTS UNDER THE ASSIGNED AGREEMENT

2.1 Billing Arrangements

The Consenting Party agrees that, unless and until it has been notified in writing by the Administrative Agent that the Security Agreement has been terminated, the Consenting Party will pay all amounts payable by it under the Assigned Agreement directly to the Assignor at such account as may be specified in a written notice delivered by the Administrative Agent and the Assignor to the Consenting Party. The Assignor authorizes and acknowledges the foregoing and agrees that any payment made consistent with this Section 2.1 shall be treated for all purposes as a payment made directly to the Assignor under the terms of the Assigned Agreement.

2.2 No Set-Off Except as Provided Under Assigned Agreement

The Consenting Party agrees that in making payments in respect of the Assigned Agreement, it will not offset any amounts owed to it by the Assignor except as provided under the Assigned Agreement.

3. RIGHTS OF ADMINISTRATIVE AGENT

3.1 Exercise of the Assignor's Rights and Remedies

If the Administrative Agent provides written notice to the Consenting Party that an event of default has occurred under the Credit Agreement and that the Administrative Agent desires to exercise its rights and remedies pursuant to the Security Agreement, the Administrative Agent or any Substitute Provider (as defined below) shall be entitled to exercise any and all rights of the Assignor under the Assigned Agreement in accordance with the terms of this Direct Agreement and the Assigned Agreement. The Consenting Party agrees to accept such exercise by the Administrative Agent or any Substitute Provider and continue its performance under the Assigned Agreement in accordance with the terms thereof.

3.2 Right to Cure

Upon the occurrence of an event of default by the Assignor under the Assigned Agreement, or upon the occurrence or non-occurrence of any other event or condition which would enable the Consenting Party to terminate its obligations under the Assigned Agreement (herein called a "**default**"), the Consenting Party will not terminate its obligations under the Assigned Agreement until it first gives to the Administrative Agent (i) the written notice required to be given to Assignor by the Assigned Agreement specifying the nature of the default giving rise to such right (and in the case of a payment default, specifying the amount thereof); and (ii) the opportunity to cure such default for a period of ten (10) days, in the case of a payment default, and thirty (30) days, in the case of a non-payment default, which may be coincident with the applicable cure period, if any, set forth in the Assigned Agreement for the Assignor to cure such default, so long as the Administrative Agent has commenced and is diligently pursuing appropriate action to cure such default and continues to perform all other obligations under the Assigned Agreement (unless performed by the Assignor).

3.3 No Liability

Except during any period in which the Administrative Agent or any Secured Party (or any of their respective designees or assignees) constitutes a Substitute Provider, the Consenting Party acknowledges and agrees that neither the Administrative Agent nor any Secured Party (or any of their respective designees or assignees) shall have any liability or obligation under the Assigned Agreement as a result of this Direct Agreement except to the extent of their respective interest in the Assigned Agreement, the Credit Agreement or the Security Agreement, nor shall the Administrative Agent or any Secured Party (or any of their respective designees or assignees) be obligated or required to perform any of the Assignor's obligations under the Assigned Agreement or to take any action to collect or enforce any claim for payment assigned under the Security Agreement. No curing of any defaults under the Assigned Agreement shall be construed as an assumption by the Administrative Agent or any Secured Party (or any of their respective designees or assignees) of any of the obligations, covenants or agreements of the Assignor under the Assigned Agreement.

3.4 Substitution: Transfer

- (a) The Consenting Party agrees that, notwithstanding anything to the contrary in the Assigned Agreement, if the Administrative Agent shall notify the Consenting Party in writing that an Event of Default (as defined in the Credit Agreement) has occurred and is continuing under the Credit Agreement and that the Administrative Agent desires to exercise its rights and remedies pursuant to the Security Agreement, then a Substitute Provider may be substituted for the Assignor under the Assigned Agreement. In such event, the Consenting Party will continue to perform its obligations under the Assigned Agreement in favor of the Substitute Provider, subject, in any event, to all of the Consenting Party's rights and remedies thereunder, but recognizing that the Substitute Provider's obligations under the Assigned Agreement shall be limited to the Substitute Provider's interest in the Facility and all revenues and proceeds derived therefrom. In the event that the Substitute Provider succeeds to the Assignor's interest under the Assigned Agreement, whether by foreclosure or otherwise, the Substitute Provider shall not be liable for curing or performing or be required to perform or cause to be performed any of the defaults under the Assigned Agreement that were, by their nature, incapable of being cured or performed.
- (b) If the Assigned Agreement is rejected or terminated by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding involving the Assignor, and if within ninety (90) days after such rejection or termination the Administrative Agent shall so request, a Substitute Provider and the Consenting Party will promptly execute a new agreement that shall be for the balance of the remaining term under the Assigned Agreement (before giving effect to such rejection or termination) and shall contain the same agreements, terms and conditions as the Assigned Agreement. If the approval of any such trustee or debtor in possession or any regulatory approval is necessary in order for the Consenting Party to enter into or perform under any such new agreement, the Consenting Party shall cooperate with the Administrative Agent or Substitute Provider in obtaining such approvals.

"Substitute Provider" means, in respect of any assignment, transfer or sale permitted hereunder (each a **"transfer"**) any person, including the Administrative Agent, any Secured Party, or the Administrative Agent's or any Secured Party's designee or assignee, if the transfer is made to the Administrative Agent or a Secured Party, or any purchaser of the Assigned Interest in a foreclosure sale or otherwise, who: (i) is at least as creditworthy (taking into account any credit support provided by such person) as the Assignor on the date of such transfer, (ii) is properly licensed or otherwise authorized to perform the Assignor's obligations under the Assigned Agreement, is a counterparty with whom the

Consenting Party is not prohibited from transacting under the regulatory regime then-applicable to the Assigned Agreement, and has provided the certifications and documentation required by Appendix B (*Signing Conditions*) of the Assigned Agreement, but construing references to SELLER therein as references to such new provided; (iii) meets the Consenting Party's internal credit policies as reasonably and consistently applied solely with respect to the maximum potential credit exposure of the Consenting Party to such person (it being understood that the determination of the amount of such credit exposure shall take into account the then current creditworthiness of such person and any collateral or guaranties posted for the benefit of such person), and otherwise has a tangible net worth of at least twenty-five million dollars (\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least seventy-five million dollars (\$75,000,000)); (iv) has provided, to the extent requested, all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations (including, without limitation, the Patriot Act, rules and regulations of the Office of Foreign Assets Control and other similar client identification policies and procedures) as well as all documentation required by the Assigned Agreement (including as signing conditions) and Puerto Rico law; (v) has not formally threatened in writing or commenced any litigation proceeding against the Consenting Party and is not subject of any formal written threat of litigation issued or of any litigation proceeding initiated by the Consenting Party; (vi) is or has engaged, in the Consenting Party's sole discretion, a Qualified Operator to develop, construct, test, commission, operate, maintain and repair a project similar to the one contemplated by the Assigned Agreement, to deliver energy to the Consenting Party from such a project and otherwise fulfil the Assignor's obligations under the Assigned Agreement.

4. REPRESENTATIONS

The Consenting Party represents that:

4.1 The Consenting Party 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 conduct its business, to own its properties, and to execute and deliver, and to perform its obligations under, this Direct Agreement.

4.2 The execution, delivery and performance by the Consenting Party of this Direct Agreement have been duly authorized by all necessary corporate action and do not and will not (i) require any consent or approval of any Governmental Authority or the board of directors, members or partners (or equivalent persons), as the case may be, of the Consenting Party which has not been obtained, (ii) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Consenting Party, or (iii) violate or result in a breach of or constitute a default under, or require a consent that has not been obtained under or result in the creation of a lien under, its certificate of incorporation or by-laws or any indenture or loan or credit agreement or any other material agreement, lease or instrument to which the Consenting Party is a party or by which it or its properties may be bound or affected.

4.3 This Direct Agreement has been duly executed and delivered by the Consenting Party and constitutes the legal, valid and binding obligation of the Consenting Party enforceable against it in accordance with its terms, except as enforceability may be limited by general principles of equity and by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally. This Direct Agreement is in full force and effect.

4.4 No authorization, approval, consent, permit or other action by, or registration or filing with, any governmental authority or any other entity is necessary for or in connection with the execution or delivery by the Consenting Party of, or the performance by the Consenting Party of any of its obligations under this Direct Agreement, other than those which have been duly obtained or made and are final and non-appealable and in full force and effect as of the date hereof.

4.5 No litigation, action, suit, adverse proceeding or investigation before or by any arbitrator or government authority is pending or, to the best knowledge of the Consenting Party, threatened in writing against the Consenting Party or against any of its properties or revenues (i) with respect to this Direct Agreement or any of the transactions contemplated hereby or thereby; or (ii) which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the ability of the Consenting Party to perform its obligations under this Direct Agreement.

5. RESERVATION OF RIGHTS

The parties hereto agree that notwithstanding the terms of Sections 1 and 2 above, each of the Consenting Party and the Assignor reserves any and all rights and remedies (including those relating to set-off, counterclaim, deduction or retention) it may have under the Assigned Agreement or applicable law. The rights reserved by each of the Consenting Party and the Assignor under the Assigned Agreement and applicable law are cumulative and not exclusive of any rights it may have under the Assigned Agreement and/or applicable law.

6. MISCELLANEOUS

6.1 Notices

All notices and other communications hereunder shall be in writing and delivered to the applicable recipient pursuant to this Section 6.1: (i) if to the Consenting Party or to the Assignor, in accordance with the Assigned Agreement; (ii) if to the Administrative Agent, [●] or (iii) to such other address or facsimile number as any party may designate by notice given to all parties hereto pursuant to this Section 6.1. Delivery of notices and communications sent pursuant to this Section 6.1 shall be effective upon receipt.

6.2 Governing Law

THIS DIRECT AGREEMENT AND ALL QUESTIONS REGARDING ITS VALIDITY, INTERPRETATION, PERFORMANCE AND/OR ENFORCEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE COMMONWEALTH OF PUERTO RICO WITHOUT REGARD TO ANY CONFLICT-OF-LAW PRINCIPLES OF SUCH COMMONWEALTH OR OTHER JURISDICTION TO THE CONTRARY. JURISDICTION AND VENUE OF ANY SUIT OR ACTION TO ENFORCE THIS DIRECT AGREEMENT SHALL REST SOLELY IN [THE UNITED STATES FEDERAL COURTS IN THE COMMONWEALTH OF PUERTO RICO] AND EACH OF THE PARTIES HERETO HEREBY SUBMITS TO THE PERSONAL JURISDICTION OF SUCH COURTS FOR THE PURPOSE OF RESOLVING ANY AND ALL MATTERS ARISING UNDER OR IN RESPECT OF THIS DIRECT AGREEMENT AND AGREES THAT PERSONAL SERVICE UPON EACH SUCH PARTY MAY BE MADE BY DELIVERY THEREOF TO SUCH PARTY AT THE ADDRESS SPECIFIED HEREIN.

6.3 Waiver of Jury Trial

EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL

PROCEEDING ARISING OUT OF OR RELATING TO THIS DIRECT AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

6.4 Counterparts

This Direct Agreement may be executed by any number of, and on separate, counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. A facsimile or .pdf copy of a counterpart signature page shall serve as the functional equivalent of a manually executed copy for all purposes.

6.5 Headings Descriptive

The headings of the several sections and subsections of this Direct Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Direct Agreement.

6.6 Severability

In case any provision in or obligation under this Direct Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.7 Amendment

Neither this Direct Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by each party hereto.

6.8 Successors and Assigns

This Direct Agreement shall be binding upon the successors and assigns of the Consenting Party and inure, together with the rights and remedies of the Assignor and the Administrative Agent, to the benefit of the Assignor and the Administrative Agent.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties hereto have caused this Direct Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year above written.

PUERTO RICO ELECTRIC POWER AUTHORITY

by

Name:

Title:

[●] as Administrative Agent

by

Name:

Title:

APPENDIX X

FORM OF IF COMPLETION NOTICE

IF COMPLETION CERTIFICATE

Date: [●]

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

From: [●] (“SELLER”)

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

We refer to the Energy Storage Services Agreement dated [●] between PREPA and SELLER (the “ESSA”). Unless the context otherwise requires, capitalized terms used in this IF Completion Certificate shall have the meanings ascribed to them in the ESSA.

We hereby certify that, on [date], SELLER has substantially completed and tested the Interconnection Facilities in accordance with paragraphs (a) and (b) of Section 4.4 (*Pre-Synchronization Testing*) of the ESSA.

As required by paragraph (c) of Section 4.4 (*Pre-Synchronization Testing*) of the ESSA, a copy of the red line drawing used for the construction of the Interconnection Facilities is attached to this document.

Very truly yours,

Acknowledged and agreed,

[●]
as SELLER

Puerto Rico Electric Power Authority
as PREPA

[●]

[●]

APPENDIX Y

FORM OF SUBSTANTIAL COMPLETION NOTICE

SUBSTANTIAL COMPLETION NOTICE

Date: [●]

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

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

To: [●] (“**SELLER**”)

We refer to the Energy Storage Services Agreement dated [●] between PREPA and SELLER (the “**ESSA**”). Unless the context otherwise requires, capitalized terms used in this Substantial Completion Notice shall have the meanings ascribed to them in the ESSA.

PREPA, in consultation with the Consulting Technical Expert, has determined that SELLER has constructed the Interconnection Facilities and the Facility in accordance with the Approved Design. Nothing in this certificate relieves or waives any obligation that SELLER might have under the Agreement.

The Parties shall proceed with Initial Synchronization and testing pursuant to Article 5 (*Synchronization, Testing & Completion*).

Very truly yours,

Acknowledged and agreed,

[●]
as SELLER

Puerto Rico Electric Power Authority
as PREPA

[●]

[●]

APPENDIX Z

FORM OF WARRANTY COMPLIANCE CERTIFICATE

WARRANTY COMPLIANCE CERTIFICATE

Date: [●]

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

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

From: [●] (“**SELLER**”)

We refer to the Energy Storage Services Agreement dated [●] between PREPA and SELLER (the “**ESSA**”). Unless the context otherwise requires, capitalized terms used in this Warranty Compliance Certificate shall have the meanings ascribed to them in the ESSA.

I have reviewed the representations and warranties made by SELLER under Article 12 (*Representations, Warranties, & Covenants*), and, on behalf of SELLER, confirm and certify to PREPA the truth and correctness of such representations and warranties on the date hereof.

Very truly yours,

[●]
as SELLER

[●]

APPENDIX AA

FORM OF PAYMENT GUARANTEE

THIS PAYMENT GUARANTEE AGREEMENT (the “**Payment Guarantee**”), is entered into as of [●] day of [●], by [●], a [type of entity] organized and existing under the laws of [jurisdiction] with its principal office at [●] (the “**Guarantor**”), in favor of **PUERTO RICO ELECTRIC POWER AUTHORITY**, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by Act of May 2, 1941, No. 83, as amended, with its principal office at 1110 Ponce de León Avenue, Office #808, San Juan, Puerto Rico (together with any successor or permitted assign under the ESSA (as defined below), the “**Beneficiary**”);

WHEREAS:

- A. [●], a [type of entity] organized and existing under the laws of [jurisdiction] (the “**Company**”) has entered into the Energy Storage Services Agreement, dated [●], with the Beneficiary (as amended, the “**ESSA**”);
- B. (i) the ESSA obligates the Company to deliver this Payment Guarantee to the Beneficiary as one of the conditions precedent for its effectiveness, and (ii) the Guarantor has agreed to execute and deliver this Payment Guarantee; and
- C. the Guarantor (i) holds a direct or indirect ownership interest of [●] percent ([●] %) of the Company on the date hereof, and (ii) expects as an affiliate of the Company to derive commercial benefits from the ESSA as a result of such ownership interest;

NOW, THEREFORE, in consideration of the premises and mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the Guarantor hereby acknowledges, the Guarantor and the Beneficiary (each, a “**Party**” and collectively, the “**Parties**”) hereby agree as follows:

1. DEFINITIONS

1.1. General.

In this Payment Guarantee:

“**Banking Day**” means any day other than a Saturday, a Sunday or any other day on which Applicable Law authorizes, or requires, commercial banks in New York City to be closed.

“**Beneficiary**” has the meaning set out in the preamble of this Payment Guarantee.

“**Company**” has the meaning set out in the Recital (A) of this Payment Guarantee.

“**ESSA**” has the meaning set forth in Recital (A) of this Payment Guarantee.

“**Guaranteed Obligations**” has the meaning set forth in Section 3.1 (*Guaranty*).

“**Guarantor**” has the meaning set out in the preamble of this Payment Guarantee.

“**Payment Guarantee**” has the meaning set forth in the preamble of this Payment Guarantee.

“**Term**” has the meaning set forth in Section 4.7 (*Term*);

“**Unrestricted Net Worth**” means, with respect to the Guarantor, the sum of (i) the subscribed and paid-up equity (including additional paid-in capital), and (ii) the Unrestricted Retained Earnings, in each case of the Guarantor.

“**Unrestricted Net Worth Requirement**” means an Unrestricted Net Worth of at least [●].¹⁷

“**Unrestricted Retained Earnings**” means, with respect to the Guarantor, the amount of accumulated profits and gains realized out of the normal and continuous operations of the Guarantor after deducting distributions to stockholders and transfers to capital stock or other accounts, and which is (i) not appropriated by its board of the Guarantor for corporate expansion projects or programs; (ii) not covered by a restriction for dividend declaration under a loan agreement; (iii) not required to be retained under special circumstances binding on the Guarantor such as when there is a need for a special reserve for probable contingencies; and (iv) not otherwise covered by any other legal restriction (which refers to any injunction, judgement, or order issued by any judicial authority) on the ability of the Guarantor to distribute or otherwise apply its equity.

1.2. Other Defined Terms.

The capitalized terms “**Applicable Law**”, “**Closing Date**”, “**Commercial Operation Date**”, “**Default**”, “**Insolvency Event**”, “**Person**” and “**PREB**” shall have the meanings set forth in the ESSA.

2. **GUARANTOR’S REPRESENTATIONS & COVENANTS**

2.1 Representations.

The Guarantor makes the following representations to the Beneficiary as of the date hereof:

- a. the Guarantor has been duly organized and is validly existing and in good standing under the Applicable Laws of [*jurisdiction*], has full legal right, power and authority to enter into, and carry out the terms and provisions of, this Payment Guarantee, and by proper corporate action has duly authorized the execution, delivery and performance of this Payment Guarantee;
- b. the execution and delivery of, and performance of its obligations under, this Payment Guarantee by the Guarantor will not conflict with, or constitute on the part of the Guarantor a breach of or default under, its relevant organizational documents or any indenture or other material agreement or instrument to which the Guarantor is a party or by which it or its properties are bound or any order, law, rule or regulation of any court or governmental agency or body having jurisdiction over the Guarantor or any of its activities or properties;
- c. this Payment Guarantee has been duly authorized, executed and delivered by the Guarantor and constitutes the valid and legally binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except to the extent that applicable bankruptcy, insolvency, reorganization, moratorium or other Applicable Laws affecting the

¹⁷ Insert amount equal to the greater of (A) thirty percent (30%) of the estimated costs of the Company’s proposed project, and (B) \$75 million.

enforcement of creditors' rights generally and general equitable principles may limit enforceability of this Payment Guarantee;

- d. the Guarantor does not require a notice to, authorization, approval, consent or order of, or registration or filing with, any court or governmental agency or body having jurisdiction over the Guarantor or any of its activities or properties for the execution, delivery and performance of this Payment Guarantee; and
- e. the Guarantor (i) holds a direct or indirect ownership interest of [●] percent ([●] %) of the Company, and (ii) satisfies the Unrestricted Net Worth Requirement.

2.2 Covenants

During the Term, the Guarantor undertakes to:

- a. (i) satisfy the Unrestricted Net Worth Requirement on a continuous basis at all times, and (ii) prior to the expiration of the first quarter of each calendar year during the Term, deliver to Beneficiary a certified true and correct copy of audited financial statements, Form 10-Ks or similar types of audited annual reports for the previous calendar year, evidencing that the Guarantor satisfied the Unrestricted Net Worth Requirement for such previous calendar year;
- b. hold and maintain a direct or indirect ownership interest of at least [●] percent ([●] %) of the Company; and
- c. maintain its existence, and not dissolve, sell or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or permit one or more other corporations to consolidate with or merge into it.

3. **PAYMENT GUARANTY**

3.1. General

The Guarantor absolutely, unconditionally and irrevocably guarantees to the Beneficiary, as primary obligor and not merely as surety, the full and prompt payment by the Company of all of the Company's payment obligations under the ESSA to the Beneficiary when and as due (whether by required prepayment, declaration, acceleration, demand or otherwise) arising during the period that commences on the Closing Date and expires on the Commercial Operation Date, including, without limitation, payment obligations in respect of any Default under the ESSA by the Company, and including all fees, costs, and expenses. (collectively, the "**Guaranteed Obligations**"). This Payment Guaranty constitutes a continuing guaranty of payment and not of collection.

3.2. Indemnity

As an independent and primary obligation, the Guarantor shall indemnify, defend and hold harmless the Beneficiary against any and all losses, damages, costs, expenses and liabilities (including legal fees and expenses) suffered by the Beneficiary or which the Beneficiary may incur, to the extent that a judicial authority declares any of the Guaranteed Obligations as illegal, invalid, void or unenforceable by reason of an Insolvency Event or any other reason.

3.3 Maximum Liability

Notwithstanding any other provision of this Payment Guarantee, the maximum aggregate liability of the Guarantor arising under this Payment Guarantee shall never exceed the maximum aggregate liability of the Company under the ESSA plus costs, fees and expenses, including without limitation all attorneys' fees, which may be incurred by the Beneficiary in enforcing or attempting to enforce this Payment Guarantee as provided in Section 3.7 (*Costs*). The Guarantor shall be entitled to all contractual defenses, limitations and exclusions available to the Company under the ESSA but not any defenses that may arise in the event that the Company suffers an Insolvency Event.

3.4 Unconditional Nature of Obligations; Waivers.

Subject to Section 3.3 (*Maximum Liability*), the obligations of the Guarantor under this Payment Guarantee shall be absolute, irrevocable and unconditional and shall remain in full force and effect until the date on which this Payment Guarantee terminates in accordance with Section 4.7 (*Term*), and such obligations shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation any of the following events, whether or not with notice to, or the consent of, the Guarantor:

- a. The waiver, surrender, compromise, settlement, release or termination of any or all of the obligations, covenants or agreements of the Company under the ESSA;
- b. The failure to give notice to the Guarantor of the occurrence of a Default under the ESSA;
- c. The waiver, compromise or release of the payment, performance or observance by the Company or by the Guarantor, respectively, of any or all of the obligations, covenants or agreements of either of them contained in the ESSA or this Payment Guarantee, as the case may be;
- d. The extension of the time for payment of any Guaranteed Obligations under the ESSA or of the time for performance of any other of the Company's obligations arising out of the ESSA;
- e. The modification, amendment, waiver or alteration (whether material or otherwise) of any obligation or representation set forth in the ESSA;
- f. the taking, or the omission, of any of the actions referred to in the ESSA;
- g. any failure, omission, delay or lack on the part of the Beneficiary to enforce, assert or exercise any right, power or remedy conferred on it in the ESSA;
- h. the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings affecting the Guarantor or the Company or any of the respective assets of either of them, or any allegation or contest of the validity of this Payment Guarantee in any such proceeding;
- i. any defense based upon any legal disability of the Company or, to the extent permitted by law, any release, discharge, reduction or limitation of or with respect to any sums owing by the Company or any other liability of the Company to the Beneficiary;

- j. to the extent permitted by Applicable Law, the release or discharge by operation of law of the Guarantor from the performance or observance of any obligation contained in this Payment Guarantee;
- k. the default or failure of the Guarantor fully to perform any of its obligations set forth in this Payment Guarantee; or
- l. the invalidity or unenforceability of the ESSA or any part thereof.

This Payment Guaranty is in no way conditional or contingent upon any attempt to collect from or bring action against the Company or its assets or upon any other action, occurrence or circumstance whatsoever. The liability of the Guarantor hereunder is independent of and not in consideration of or contingent upon the liability of any other person under this or any similar instrument and the release of, or cancellation by, any party to this or a similar instrument shall not act to release or otherwise affect the liability of the Guarantor hereunder. The Guarantor hereby agrees that it shall not be necessary for the Beneficiary, and the Guarantor hereby waives any rights which the Guarantor may have to require the Beneficiary, in order to enforce the obligations of the Guarantor hereunder, first to (i) institute suit or exhaust its remedies against any the Company or any other person, (ii) enforce the Beneficiary's rights or exhaust any remedies available to the Beneficiary against any assets of the Company or (iii) resort to any other means of obtaining payment of the obligations of the Company hereunder.

The Guarantor waives and agrees not to assert

- (i) the defense of the statute of limitations in any action hereunder or for the collection of the Guaranteed Obligations;
- (ii) any defense arising by reason of any lack of corporate or other authority or any other defense of the Company or any other person;
- (iii) any rights to set-offs and counterclaims;
- (iv) without limiting the generality of the foregoing, to the fullest extent permitted by laws, any defenses or benefits that may be derived from or afforded by applicable laws limiting the liability of or exonerating guarantors or sureties, or that may conflict with the terms of this Payment Guaranty; and
- (v) any and all notice of the acceptance of this Guaranty, and any and all notice of the creation, renewal, modification, extension or accrual of the Guaranteed Obligations, or the reliance by Beneficiary upon this Guaranty, or the exercise of any right, power or privilege hereunder. The Guaranteed Obligations shall conclusively be deemed to have been created, contracted, incurred and permitted to exist in reliance upon this Payment Guaranty. The Guarantor waives promptness, diligence, presentment, protest, demand for payment, notice of default, dishonor or nonpayment and all other notices to or upon the Company, the Guarantor or any other person with respect to the Guaranteed Obligations.

If any payment by the Company to the Beneficiary is rescinded or must be returned by the Beneficiary, the obligations of the Guarantor hereunder shall be reinstated with respect to such payment. The Guarantor shall have no right to (i) raise a defense previously raised by the Company arising out of or in connection with a Guaranteed Obligation claimed hereunder and which a judicial authority has settled in the Beneficiary's favor by the dispute resolution procedures of Section 21.11

(*Dispute Resolution*) of the ESSA, or (ii) to use a cure period previously used by the Company. The Guarantor assumes responsibility for being and remaining informed of the financial condition of the Company and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations which diligent inquiry would reveal and agrees that the Beneficiary shall not have a duty to advise the Guarantor of information known to it regarding such condition or any such circumstances.

3.5. Proceedings Against the Guarantor.

In the event of a Default in the payment of the Guaranteed Obligations when and as the same shall become due, the Beneficiary shall have the right to proceed first and directly against the Guarantor under this Payment Guarantee without proceeding against the Company or exhausting any other remedies which it may have and the Guarantor shall pay all Guaranteed Obligations on demand.

3.6. Subrogation.

Upon payment of any Guaranteed Obligation, the Guarantor shall be subrogated to the rights of the Beneficiary against the Company with respect to such Guaranteed Obligation, and the Beneficiary agrees to take at the Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation; provided that the Beneficiary shall have no obligation to take any such steps and the Guarantor shall not enforce any right arising by way of subrogation or exercise any other right or remedy arising by reason of any performance by it of this Payment Guarantee, including, but not limited to, any contractual, statutory or common law rights of reimbursement, contribution or indemnity, whether against the Company or any other Person, until the date on which this Payment Guarantee terminates in accordance with Section 4.7 (*Term*).

3.7. Costs.

The Guarantor agrees to pay all costs, expenses and fees, including without limitation all attorneys' fees, which may be incurred by the Beneficiary in enforcing or attempting to enforce this Payment Guarantee following any default on the part of the Guarantor hereunder, whether the same shall be enforced by suit or otherwise.

3.8. Financial Condition of the Company.

The Guarantor shall not have any right to require the Beneficiary to obtain or disclose any information with respect to: the financial condition or character of the Company or the ability of the Company to pay and perform the Guaranteed Obligations, any action or inaction on the part of the Beneficiary or any other Person; or any other matter, fact or occurrence whatsoever. The Guarantor hereby acknowledges that it has undertaken its own independent investigation of the financial condition of the Company and all other matters pertaining to this Payment Guaranty and further acknowledges that it is not relying in any manner upon any representation or statement of the Beneficiary with respect thereto, and that it is now and at all times will be completely familiar with, the business, condition (financial or otherwise), operations, performance, properties, and prospects of the Company.

4. MISCELLANEOUS

4.1. Governing Law

This Payment Guarantee shall be governed by, and construed in accordance with, the Applicable Laws of the Commonwealth of Puerto Rico including those processes before PREB whereby PREB renders a final determination of any Dispute submitted pursuant to paragraph (a) of Section 4.2 (*Dispute Resolution*), without regard to any contrary result required under applicable conflicts of laws rules.

4.2. Dispute Resolution

If a dispute arises between the Parties regarding the application, interpretation, enforceability, validity, performance or breach of this Payment Guaranty (a “**Dispute**”), then the disputing Party may promptly provide written notice of the Dispute to the other Party and the Parties shall resolve such Dispute as follows:

- a. The Parties shall submit such Dispute to PREB for final determination.
- b. Each Party agrees that (i) a final determination of a Dispute rendered by PREB shall have a conclusive and binding effect on it, and (ii) a Party may enforce such final determination in the courts of any competent jurisdiction following completion of any recognition and enforcement process required in such jurisdiction, subject to the grounds for non-enforcement under the laws of the jurisdiction in which such Party seeks such enforcement.
- c. For the exclusive benefit of the Beneficiary, the Guarantor irrevocably agrees that the Beneficiary shall have the right to (i) resolve such Dispute but only to the extent that PREB declines to resolve such Dispute, submitted pursuant to paragraph (a) above, for any reason, and (ii) enforce a final determination by PREB in its favor, in each case in the courts of the Court of First Instance for the Commonwealth of Puerto Rico, San Juan Part. By the execution of this Agreement, the Guarantor irrevocably submits to the jurisdiction of any such court in any action, suit or proceeding relating to such Dispute or final determination. Final judgment against the Guarantor in any such action, suit or proceeding shall be conclusive and may be enforced in any other jurisdiction, by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the judgment, or in any other manner provided by Applicable Law.
- d. The Guarantor hereby irrevocably designates, appoints and empowers [*name of service of process agent*], with offices currently located at [*address within Commonwealth of Puerto Rico*], as its authorized agent solely to receive for and on its behalf service of any summons, complaint or other legal process in any action, suit or proceeding the Beneficiary may bring in the Commonwealth of Puerto Rico in respect of this Payment Guarantee.
- e. As long as this Payment Guarantee remains in force, the Guarantor shall maintain a duly-appointed and authorized agent to receive for and on its behalf service of any summons, complaint or other legal process in any action, suit or proceeding that the Beneficiary may bring in the Commonwealth of Puerto Rico, United States of America, with respect to this Payment Guarantee. The Guarantor shall keep the Beneficiary advised of the identity and location of such agent.

- f. The Guarantor also irrevocably consents, if for any reason its authorized agent for service of process of summons, complaint and other legal process in any action, suit or proceeding is not present in the Commonwealth of Puerto Rico, to the service of such process being made out of the courts of the Commonwealth of Puerto Rico located in the of the Court of First Instance for the Commonwealth of Puerto Rico, San Juan Part by mailing copies of the papers by registered mail, to the Guarantor, at its address specified pursuant to Section 4.3 (*Communications*). In such a case, the Beneficiary shall also send a copy of the process papers to the Guarantor via email.
- g. Service in the manner provided in paragraphs (d), (e) and (f) above in any action, suit or proceeding will be deemed personal service, will be accepted by the Guarantor as such and will be valid and binding upon the Guarantor for all purposes of any such action, suit or proceeding.
- h. *THE GUARANTOR IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW:*
 - 1. *ANY OBJECTION THAT IT MAY HAVE NOW OR IN THE FUTURE TO THE LAYING OF THE VENUE OF ANY ACTION, SUIT OR PROCEEDING IN ANY COURT REFERRED TO IN THIS SECTION;*
 - 2. *ANY CLAIM THAT ANY SUCH ACTION, SUIT OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM;*
 - 3. *ITS RIGHT OF REMOVAL OF ANY MATTER COMMENCED BY THE BENEFICIARY IN THE COURT OF FIRST INSTANCE FOR THE COMMONWEALTH OF PUERTO RICO, SAN JUAN PART; AND*
 - 4. *ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY IN ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT AGAINST THE GUARANTOR BY THE BENEFICIARY.*
- i. Where (i) a dispute, claim or controversy arises out of, or in connection with, the ESSA, and (ii) such dispute, claim or controversy also forms a basis for the Beneficiary to assert a claim under this Payment Guarantee, the Guarantor shall consent to any request by the Beneficiary to join such dispute as a party.

4.3 Communications.

Each Party shall deliver all notices and other communications relating to this Payment Guarantee in writing to the other Party, which shall be deemed duly given upon receipt after delivery by hand or sent by e-mail with read receipt confirmation, registered or certified mail, return receipt requested, postage prepaid or by recognized overnight courier service to the following addresses:

FOR COMMUNICATIONS DELIVERED TO GUARANTOR:

[●]

Attention: [●]

E-mail: [●]

FOR COMMUNICATIONS DELIVERED TO BENEFICIARY:

Puerto Rico Electric Power Authority
1110 Ponce de León Avenue, Office #808
San Juan, Puerto Rico
Attention: Director of Planning and Environmental Protection
E-mail: [●]

Any Party may change its address for notices by giving written notice to the other Party as set forth above.

4.4. Banking Days.

Except as otherwise provided in this Payment Guarantee, if any date on which a payment is to be made, notice is to be given or other action taken hereunder is not a Banking Day, then such payment, notice or other action shall be made, given or taken on the next succeeding Banking Day in such place, and in the case of any payment, no interest shall accrue for the delay.

4.5. Successors and Assigns.

This Payment Guarantee shall bind the Guarantor and its successors and permitted assigns and inure to the benefit of the Beneficiary and its successors and permitted assigns. The Guarantor may not assign its obligations hereunder without the prior written consent of the Beneficiary. The Beneficiary may not assign its rights and obligations hereunder without the prior written consent of the Guarantor, except that the Beneficiary may, without any prior consent of the Guarantor, assign its right and obligations hereunder to any permitted assignee of the ESSA.

4.6. Guaranty for Benefit of the Beneficiary; No Third-Party Beneficiaries.

The Guarantor has entered into this Payment Guarantee for the benefit of the Beneficiary. Nothing contained herein shall be intended or deemed to create any right in, or to be in whole or in part for the benefit of, any Person other than the Guarantor and the Beneficiary and their respective permitted successors and assigns.

4.7. Term.

This Payment Guarantee shall enter into full force and effect on the Closing Date and terminate with no further force and effect on the date on which the Company has discharged all of the Guaranteed Obligations in full (the “**Term**”). Termination of this Guaranty shall not affect the Guarantor’s liability hereunder as to any Guaranteed Obligations existing or arising under the ESSA prior to the effective date of such termination.

4.8. Amendments and Waivers.

Any provision of this Payment Guarantee may be amended or waived if, but only if, the Parties execute and deliver such amendment or waiver in writing.

4.9. Headings.

The article and section headings of this Payment Guarantee are for convenience only and shall not affect the construction hereof.

4.10. Partial Invalidity.

The invalidity of any one or more phrases, sentences, clauses or sections in this Payment Guarantee shall not affect the validity or enforceability of the remaining portions of this Payment Guarantee or any part thereof.

4.11. No Waiver, Remedies.

No failure or delay by the Beneficiary in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by Applicable Law.

4.12. Execution in Several Counterparts.

This Payment Guarantee may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original; but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Guarantor has caused this Payment Guarantee to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

[●]

as Guarantor

By: _____

Name: [●]

Title: [●]

ACCEPTED AND AGREED BY:

PUERTO RICO ELECTRIC POWER AUTHORITY

as Beneficiary

By: _____

Name: [●]

Title: [●]

Appendix 6. GSA

DRAFT

June 15, 2021

GRID SERVICES AGREEMENT
BETWEEN
PUERTO RICO ELECTRIC POWER AUTHORITY
AND
[•]
DATED [•]



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THIS GRID SERVICES AGREEMENT (the “**Agreement**”) is entered into as of this [●] day of [●] (the “**Agreement Date**”) between the **PUERTO RICO ELECTRIC POWER AUTHORITY** (including any successor thereto, “**PREPA**”), a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by Act of May 2, 1941, No. 83, as amended, employer identification number [●], represented in this act by its Executive Director, Mr. Efran Paredes Maisonet, of legal age, married, engineer and resident of Bayamón, Puerto Rico; and [●] (“**SELLER**”), a [●] company, authorized to do business in Puerto Rico, employer identification number [●], with its principal office at [●], and represented in this act by its [●], authorized to sign this Agreement on behalf of SELLER as certified by the Resolution dated [●]. PREPA and SELLER are herein individually referred to as a “**Party**” and collectively referred to as “**Parties**”:

RECITALS

WHEREAS,

- A. to procure renewable energy generation and energy storage services at sites across the island of Puerto Rico in accordance with the requirements of the Puerto Rico Energy Public Policy Act (Act 17-2019), the Puerto Rico Energy Diversification Policy through Sustainable and Alternative Renewable Energy Act (Act 82-2010), PREB’s Final Resolution and Order on PREPA’s Integrated Resource Plan in Case No. CEPR-AP-2018-0001 issued on August 24, 2020, and PREB’s Resolution and Order on PREPA’s Draft Procurement Plan in Case No. NEPR-MI-2020-012 issued on December 8, 2020, PREPA has conducted a competitive procurement process based upon its issuance of Request for Proposals No. 112648, Renewable Energy and Energy Storage Resources, Tranche 1 of 6, on February [●], 2021 (as amended, the “**RFP**”) to select one or more developers to (i) design, construct, install, interconnect, test, commission, operate and maintain renewable energy generation, virtual power plants, and/or energy storage resources, and (ii) enter into agreement(s) with PREPA for the same;
- B. SELLER, among other bidders, (i) submitted a proposal in response to the RFP on [●] and separately submitted an [on-demand letter of credit]¹ as security for SELLER’s satisfaction of the requirements of the RFP (the “**Bid Security**”) and (ii) desires to (a) design, permit, deploy, install, operate and maintain a Grid Service Delivery System, which aggregates a network of [●] kW distributed energy resources collectively capable of functioning as a virtual power plant (the “**Project**”), and (b) sell and make available Grid Services produced thereby exclusively to PREPA in accordance with this Agreement; and
- C. PREPA (i) selected SELLER as one of the preferred bidders following the submission and evaluation of all proposals, and (ii) desires to purchase Grid Services in accordance with this Agreement;

NOW THEREFORE, in consideration of these premises and of the mutual covenants and agreements set forth herein, the Parties, intending to be legally bound, hereby agree to the following:

1. DEFINITIONS & INTERPRETATION

1.1 Definitions

In this Agreement:

¹ Note: Align with form of actual Bid Security.

“40% Guaranteed Capability” means the enrollment by SELLER of Participant Resources with an aggregate capacity of at least forty percent (40%) of the Guaranteed Capability as evidenced by duly-executed and delivered Participant Service Agreements under which Participants have committed to make such capacity available to SELLER.

“80% Guaranteed Capability” means the enrollment by SELLER of Participant Resources with an aggregate capacity of at least eighty percent (80%) of the Guaranteed Capability as evidenced by duly-executed and delivered Participant Service Agreements under which Participants have committed to make such capacity available to SELLER.

“AC” means alternating electrical current.

“Affected Party” has the meaning set forth in Section 14.1 (*General*).

“Affiliate” means, with respect to a Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls (*e.g.*, a parent or grandparent company), is Controlled by (*e.g.*, a subsidiary company), or is under common Control (*e.g.*, a sister company) with, such Person.

“Agreement” has the meaning set forth in the preamble of this Agreement.

“Agreement Date” has the meaning set forth in the preamble of this Agreement.

“Agreement Date Obligations” has the meaning set forth in Section 2.3 (*Initial Effectiveness & Closing Date*).

“Agreement Year” means each period of twelve (12) consecutive Months, provided that (i) the first such period shall begin on the Commercial Operation Date, (ii) each such subsequent year shall begin on the corresponding anniversary of such earlier date, and (iii) the last such period shall expire at the end of the Supply Period.

“Ancillary Services” means any services required by the MTRs or otherwise capable of being made available to the Grid System by the GSDS from the Participant Resources.

“Applicable Law” or **“Law”** means, with respect to any Person, any constitution, bilateral or multilateral treaty, statute, law, rule, regulation, ordinance, judgment, order, decree, governmental consent or approval, or any published directive, guideline, requirement or other governmental restriction, which has the force of law, or any determination, or interpretation of any of the foregoing, by any judicial authority, which legally binds such Person or its property whether in effect as of the Agreement Date or thereafter.

“Applicable Standards” means the MTRs, any other applicable PREPA standards that PREPA has made available or identified to SELLER as applicable to SELLER’s performance of its obligations under this Agreement, and any other codes, standards, or requirements set forth in any Applicable Law, including any applicable federal, state or local code, the latest standards of the Institute of Electrical and Electronic Engineers (IEEE), National Electrical Manufacturer’s Association (NEMA), American Concrete Institute (ACI), American National Standards Institute (ANSI), International Code Council Code (ICC), National Fire Protection Association and the North American Electric Reliability Corporation (NERC), as well as the latest editions of the National Electrical Code and the National Electrical Safety Code (NESC), to the extent not inconsistent with the foregoing, in each case as modified from time to time.

“**Approved Design**” has the meaning set forth in paragraph (c) of Section 4.1 (*Proposed Design*).

“**Approved Form**” has the meaning set forth in paragraph (b) of Section 2.6 (*Condition Subsequent*).

“**Availability Liquidated Damages**” or “**ALD**” has the meaning set forth in paragraph (b) (*Availability Liquidated Damages*) of Section 1 (*GSDS Availability*) of Appendix P (*Performance Guarantees*).

“**Balance**” has the meaning set forth in paragraph (b) of Section 17.2 (*Tracking Account*).

“**Best and Final Offer**” has the meaning given in the RFP.

“**Best Interests Determination**” means a determination by PREPA that the Project will serve the best interests of its ratepayers as evidenced by the findings of the Feasibility Study, System Impact Study and GSDS Study, following the completion of the phase III evaluation of the Project by PREPA as contemplated by the RFP.

“**Bid Security**” has the meaning set forth in Recital B in the preamble of this Agreement.

“**Billing Period**” means a Month, provided that (i) the first such period shall begin on the Commercial Operation Date and end on the final Day of the Month in which the Commercial Operation Date occurs, and (ii) the last such period shall begin on the first Day of the Month in which the Supply Period will expire and end on final Day of the Supply Period.

“**Bulk-Power System EO**” means E.O. 13920 of May 1, 2020 as supplemented by and including the rules and regulations published by the U.S. Department of Energy in connection therewith, as such may be modified from time to time.

“**Business Continuity Plans**” has the meaning set forth in paragraph (g) of Section 6.13 (*Information Security*).

“**Business Day**” means a Day other than (i) a Saturday, a Sunday or a Day on which commercial banks in San Juan, Puerto Rico are required or authorized to close, or (ii) any other Day recognized as a holiday by PREPA as listed on Appendix A (*Holidays*) hereto or notified to SELLER from time to time.

“**Capability**” means, for any time of determination, the aggregate Committed Capacity of all Participant Resources (expressed in kW), made available by the GSDS for Demand Reduction Service or Demand Build Service, as applicable, at such time in accordance with the requirements of Appendix H (*Grid Services*).

“**Capability Liquidated Damages**” or “**CLD**” has the meaning set forth in paragraph (b) (*Capability Liquidated Damages*) of Section 2 (*Capability*) of Appendix P (*Performance Guarantees*).

“**Capability Shortfall Liquidated Damages**” has the meaning set forth in item (2), paragraph (b) of Section 5.3 (*Initial Performance Tests*).

“**CGL**” has the meaning set forth in paragraph (c) of Section 18.3 (*Contractor Requirements*).

“**Changes**” has the meaning set forth in paragraph (a) of Section 17.1 (*SELLER Requirements*).

“**Claims**” means all claims, actions, suits, demands, or proceedings brought by any Person for liabilities, judgments, losses, costs (including court costs, reasonable attorneys’ fees and costs of

investigation), fines, penalties, expenses and damages of whatsoever kind or nature, arising in contract, tort, or otherwise.

“**Closing Date**” has the meaning set forth in Section 2.3 (*Initial Effectiveness & Closing Date*).

“**COD Termination Event**” means the occurrence of the Long-Stop Date prior to the Commercial Operation Date.

“**Commercial Operation**” means satisfaction of the requirements set forth in a certificate issued by SELLER in accordance with paragraph (e) of Section 5.3 (*Initial Performance Tests*) in the form set forth in Appendix U (*Form of Commercial Operation Date Certificate*).

“**Commercial Operation Date**” means the date when SELLER first achieves Commercial Operation.

“**Committed Capacity**” means, for any Participant Resource, the maximum rated AC output or load (as applicable), expressed in kW, for such resource [based on the Operating Characteristics], subject to a maximum of one (1) MW, provided that:

- a. for Renewable Energy Resources, such term refers to the sum of the rated peak AC output for the inverters installed as part of such resource;²
- b. for Energy Storage Resources, such term refers to the rated [quantity of dispatchable power capacity available to operate in charge mode for Demand Build Service and discharge mode for Demand Reduction Service, in each case on a sustained basis for a period of four (4) hours], less the quantity of such capacity designated as unavailable under item (3) of paragraph (a) of Section 7.1 (*Dispatching*); and
- c. for Demand Response Resources, such term refers to the quantity of load under GSDS control for Grid Services.

“**Conditions Precedent**” has the meaning set forth in Section 2.3 (*Initial Effectiveness & Closing Date*).

“**Condition Subsequent**” has the meaning set forth in paragraph (a) of Section 2.6 (*Condition Subsequent*).

“**Confidential Information**” means all Agreement terms and information provided or work performed in connection with the negotiation and performance of this Agreement, including in respect of PREPA, all information relating to PREPA’s customers, customer and Participant lists, Participant Data, PREPA Data, any other data and testing results produced under this Agreement and any other information identified by PREPA as confidential.

“**Consulting Technical Expert**” has the meaning set forth in Section 3.1 (*Consulting Technical Expert*).

“**Control**” means (i) the ownership (whether directly or indirectly) of more than fifty percent (>50%) of the total issued voting share capital or other voting interest of that company or corporation, or (ii) the ability to unilaterally appoint a majority of the board directors or equivalent

² Note: To revise if technologies other than photovoltaic solar form part of the proposal.

body of that company or corporation through the ownership of securities with voting power or otherwise, without the need of the vote or approval of another, or (iii) the ability to unilaterally direct the business affairs and/or operations of that company or corporation, without the need of the vote or approval of another; and the terms “**Controls**,” “**Controlled**,” and “**Controlling**” shall have a corresponding meaning, provided that if two (2) shareholders each own fifty percent (50%) of the total issued and outstanding shares of a corporation, then neither shareholder controls such corporation.

“**COR3**” means the Central Recovery and Reconstruction Office of Puerto Rico.

“**Day**” means a period of twenty-four (24) consecutive hours, beginning at 00:00 hours on any Gregorian calendar day and ending at 24:00 hours on such day Puerto Rico time.

“**Deemed Completion**” means the occurrence of each of the following events: (i) the completion of the integration of the GSDS with the Grid System in all material respects, including the recruitment and enrollment of Participants, and (ii) a delay of the commencement of the Initial Performance Tests, or interruption of an ongoing Initial Performance Tests, for a period of at least fifteen (15) consecutive Days as determined under Section 3.4 (*Extensions of Time*), arising out of a PREPA Risk Event, in each case as evidenced by the delivery of a certificate by SELLER to PREPA, co-signed by the Consulting Technical Expert, certifying (A) the truth and correctness of each of the foregoing events, and (B) the date on which SELLER would have achieved Commercial Operation but for the occurrence of all PREPA Risk Event(s), which formed the basis for an extension of time of the Guaranteed Commercial Operation Date under Section 3.4 (*Extensions of Time*); provided that Deemed Completion shall never occur earlier than the Guaranteed Commercial Operation Date.

“**Default**” has the meaning set forth in Section 16.1 (*Definition*).

“**Demand Build Price**” or “**DB\$**” has the meaning set forth in Section 6 (*Demand Build Price*) of Appendix F (*Compensation*).

“**Demand Build Service**” has the meaning set forth in subsection (1), item (i) (*Participant Resource*), paragraph (a) (*Participant Resource*) of Section 3 (*Service Requirements*) of Appendix H (*Grid Services*).

“**Demand Reduction Price**” or “**DR\$**” has the meaning set forth in Section 4 (*Demand Reduction Price*) of Appendix F (*Compensation*).

“**Demand Reduction Service**” has the meaning set forth in subsection (1), item (ii) (*Demand Reduction Service*), paragraph (a) (*Participant Resource*) of Section 3 (*Service Requirements*) of Appendix H (*Grid Services*).

“**Demand Response**” means the ability to change utility-supplied electric usage by end-use customers from their normal consumption patterns in response to changes in the price of electricity during a Day and/or season or other economic compensation designed to induce change in the use of utility-supplied electricity, facilitating the balance by PREPA of supply and demand for Energy.

“**Demand Response Regulation**” means the Energy Bureau Regulation for Energy Efficiency and Demand Response issued under Case No. NEPR-MI-2019-0015 on December 10, 2020.

“Demand Response Resource” means an aggregation of end-use customers, connected to the Distribution System, that collectively participate in a Demand Response program of at least 50 kW, established by a DR Aggregator.

“Derating” means SELLER’s inability or failure to make the Grid Services available to PREPA up to the Guaranteed Capability, other than in the case of an Outage.³

“DERMS Unavailability Event” means the unavailability of the DERMS due to scheduled maintenance or downtime such that the GSDS cannot perform or support critical functions or otherwise provide Grid Services.

“Disclosing Party” has the meaning set forth in paragraph (a) of Section 12.9 (*Confidentiality*).

“Dispatch” means an instruction issued by PREPA, through supervisory equipment or otherwise, to schedule and direct the supply of Grid Services in accordance with this Agreement.

“Dispatch Notice” means the operating instruction and any subsequent updates given by PREPA to SELLER, directing the GSDS to Dispatch the Grid Services.

“Dispute” has the meaning set forth in paragraph (a) of Section 21.11 (*Dispute Resolution*).

“Dispute Notice” has the meaning set forth in paragraph (a) of Section 21.11 (*Dispute Resolution*).

“Distributed Energy Resources Management System” or **“DERMS”** means a system of assets [owned and operated by PREPA or a T&D Operator] consisting of servers and network communications equipment that enable (i) the exchange of data as described in Appendix M (*Data, Integration and Testing Protocol*)⁴ and Appendix Y (*Operational Forecast*) and (ii) control functions required for the Dispatch of Grid Services.

“Distribution System” means the network of distribution lines interconnected at voltages below 38 kV and associated electric substations owned by PREPA, which distribute electricity to end-users in the Commonwealth of Puerto Rico.

“dollars” and **“\$”** means United States dollars.

“DR Aggregator” has the meaning given to the term “Demand Response Aggregator” in the Demand Response Regulation.

“Drafting Input” has the meaning set forth in paragraph (b) of Section 2.6 (*Condition Subsequent*).

“Emergency” means an operational condition or situation affecting the Grid System (including system security and reliability or a declaration of an emergency event under Applicable Law or by any Governmental Authority), the DERMS, or the GSDS, which has resulted in, or will likely result in, imminent significant disruption of service to a significant number of customers or likely endangers life or property.

³ Note: PREPA seeks a firm, rather than intermittent, capacity. Proponents should enroll a mix of Participant Resources to meet this requirement.

⁴ Note: This will get developed later based on specifics of a proposal.

“**Energy**” means 60-cycle AC electric energy, measured in kWh.

“**Energy Storage Resource**” means a battery energy storage system or any other form of energy storage system connected to the Distribution System that satisfies the requirements of the applicable MTR.

“**Environmental Costs**” means any and all fixed and variable costs incurred by SELLER resulting from the imposition or assessment on, or as a result of the ownership or operations of, the GSDS by Applicable Law relating to the environment, issued by a Governmental Authority.

“**Equity**” means any capital paid or caused to be paid by or on behalf of SELLER’s shareholders or their Affiliates to SELLER for shares in SELLER or in the form of shareholder loans to SELLER, which by their terms are subordinated to any indebtedness for borrowed money incurred by SELLER under financing documents with the Project Lenders.

“**Equity Transfer**” has the meaning set forth in Section 19.4 (*Restrictions on Equity Transfers*).

“**Exceptions**” means liability arising from:

- a. a Party’s fraud, willful misconduct or gross negligence;
- b. a Party’s indemnity obligation under Section 13.1 (*General*) for personal injury or death of a third party and Section 13.5 (*Claims Arising from Infringement of Intellectual Property Rights*);
- c. SELLER’s indemnity obligation under Section 13.3 (*Claims Arising from Environmental Harm*); or
- d. a Party’s obligation to pay Liquidated Damages under this Agreement.

“**Feasibility Study**” means, for each proposal selected by PREPA for phase II project committee review and recommendation under the RFP, a study of the feasibility of such proposal, including the integration of the GSDS with the Grid System.

“**FOMB**” means the Financial Oversight and Management Board for Puerto Rico, or any successor thereto.

“**FOMB Certification**” has the meaning set forth in paragraph (a) of Section 16.2 (*Certain Material Breaches*).

“**Force Majeure**” has the meaning set forth in Section 14.1 (*General*).

“**Force Majeure Waiting Period**” means, for each Agreement Year, seven hundred twenty (720) hours.⁵

“**Forecasted Capability**” means, with respect to each Grid Service for a given Time Interval, the forecasted Capability which SELLER can make available to PREPA for Dispatch in the Operational Forecast applicable to such Time Interval, which for any given Time Interval shall not

⁵ Note: This represents one (1) month of assumed operating hours.

exceed the lesser of the Guaranteed Capability and the Committed Capacity of all the Participant Resources (expressed in kW).

“**GAAP**” means Generally Accepted Accounting Principles, as promulgated by the Financial Accounting Standards Board or its predecessors or successors.

“**Governmental Authority**” means any court, tribunal or governmental or quasi-governmental body, regulatory body, agency, authority, office, department, commission, board, bureau, public corporation, municipality or instrumentality, in each case at any federal, state, Commonwealth of Puerto Rico, county, municipal, or local level, having jurisdiction over a Party, the GSDS or the Participant Site, including FOMB and PREB, but excluding PREPA.

“**Green Credits**” means “renewable energy certificates” and “environmental and social attributes,” as defined in the Green Energy Incentives Act of Puerto Rico (Act No. 83 of July 19, 2010), renewable energy credits, environmental attributes, emissions reductions, offsets, allowances or benefits however entitled (or payments in lieu thereof), whether monetary, fiscal or in the form of physical property, which are now or in the future may be available to the GSDS or the Participant Resources, as a facility that generates or produces electricity by means of “green energy” (as defined in Act No. 83 of July 19, 2010), or from renewable or non-polluting resources, granted or available to SELLER as the owner or operator of the GSDS or aggregator of the Participant Resources or otherwise, in each case, from any Governmental Authority or third party, including renewable energy credits established pursuant to Act No. 83 of July 19, 2010, but shall exclude (i) any Tax Credits and grants in lieu thereof, (ii) other tax incentives, benefits or credits, including those available under Puerto Rico Act 60-2019, (iii) any accelerated depreciation, and (iv) proceeds from (i) through (iii), in each case, associated with the GSDS, the Participant Resources, or otherwise available to SELLER and the Participants, each of which (i) through (iii) SELLER expressly reserves.

“**Grid Services**” means, collectively, the (i) Demand Reduction Service, (ii) the Demand Build Service, and (iii) Ancillary Services⁶, Operating Characteristics or other performance required by the MTRs, a Dispatch Notice or this Agreement, and “**Grid Service**” means any one of the foregoing services.

“**Grid Services Delivery System**” or “**GSDS**” means the system of assets owned and/or operated by or obligated to SELLER (but excluding Participant Resources) necessary to deliver Grid Services to PREPA in accordance with this Agreement.

“**Grid Services Event**” means the delivery of a Grid Service pursuant to a Dispatch Notice, or in the case of a Grid Service which requires autonomous delivery, the appropriate autonomous delivery of the relevant service.

“**Grid Services Period**” means each of the four (4) hour periods for the generation peak and demand peak specified in paragraph (e) (*Availability Requirement*) of Section 3 (*Service Requirements*) of Appendix H (*Grid Services*), as adjusted from time to time in accordance with such paragraph.

⁶ Note: The MTRs will provide more clarity around the Ancillary Services.

“Grid System” means the interconnected network of high voltage transmission lines, low voltage distribution lines, and associated electric substations owned by PREPA, which transmit and distribute electricity to customers in the Commonwealth of Puerto Rico.

“Grid System Event” means any condition in the Grid System that prevents or impairs PREPA from (i) accepting delivery of a Grid Service, including (a) any curtailment, reduction, or disconnection instructions issued by PREPA in a Dispatch Notice (or otherwise) for any reason, (b) any condition in the Grid System (including an Emergency affecting such system) that causes or may cause physical damage to the GSDS, the Participant Resource or life endangerment, (c) any damage to or the tripping of protection relays, or (d) a DERMS Unavailability Event, but in each case excluding any such event resulting from Force Majeure affecting SELLER or a PREPA Risk Event pursuant to paragraphs (a), (c), (d) and (e) of such definition.

“Grid System Waiting Period” means, for each Agreement Year, eighty (80) hours.

“GSDS Availability” or **“GA”** has the meaning set forth paragraph (a) (*Guaranteed Availability*) of Section 1 (*GSDS Availability*) in Appendix P (*Performance Guarantees*).

“GSDS Study” means, for each proposal selected by PREPA for phase III evaluation under the RFP, an engineering study to determine required additions or modifications to the Grid System, including the cost and scheduled completion date for such additions or modifications, required to provide grid support services needed to integrate the GSDS into the Grid System.

“Guaranteed Availability” has the meaning set forth in paragraph (a) (*Guaranteed Availability*) of Section 1 (*GSDS Availability*) of Appendix P (*Performance Guarantees*).

“Guaranteed Capability” or **“GC”** means, for each Quarter of each Agreement Year during the Supply Period, the capacity set forth in the column captioned “Guaranteed Capability” of the respective tables for Demand Reduction Service and Demand Build Service in Appendix G (*Guaranteed Capability*), which corresponds to such Quarter.

“Guaranteed Commercial Operation Date” means the [second (2nd)]⁷ anniversary of the Agreement Date, as adjusted in accordance with Section 3.4 (*Extensions of Time*).

“hour” means each period of sixty (60) minutes, with the first such period for any Day beginning at 00:00 (Puerto Rico Time) and including each sixty (60)-minute interval thereafter.

“Indemnitees” means, with respect to either PREPA or SELLER, (i) permitted successors and assigns, and (ii) as to both the Party and its permitted successors and assigns, their respective lenders, Affiliates, directors, officers, equity-holders, partners, employees, representatives, agents and contractors, and each of their respective heirs, successors and assigns.

“Indemnifying Party” has the meaning set forth in Section 13.1 (*General*).

“Initial Integration” means the first time that SELLER has integrated the GSDS [and synchronized] Participant Resources with the Distribution System.

“Initial Integration Date” means the date on which Initial Integration occurs.

⁷ Note: The Parties may agree to an earlier date. See Section 3.2.

“Initial Performance Tests” has the meaning set forth in paragraph (a) of Section 5.3 (*Initial Performance Tests*).

“Insolvency Event” means any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding with respect to SELLER or any of its respective properties or creditors, or any action taken by any trustee or receiver of SELLER or by any court in any such proceeding.

“Intellectual Property” means, collectively, on a worldwide basis, all of the following: (i) all inventions and discoveries (whether patentable or unpatentable and whether or not reduced to practice) and all improvements thereto, and all patents (including continuations, continuations-in-part, renewals, reissues, and extensions thereof), patent applications and patent disclosures; (ii) all trademarks, service marks, certification marks, trade dress, logos, domain names, URLs, trade names, brand names, model names, corporate names and other source indicators (whether registered or unregistered), including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith; (iii) all moral rights and copyrights (whether registered or unregistered) in any content or work of authorship (including charts, documentation and forms), and all applications, registrations and renewals in connection therewith; (iv) all mask works and all applications, registrations, and renewals in connection therewith; (v) all trade secrets and confidential information (including confidential ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer, sales prospect, distributor and supplier lists, pricing and cost information, and marketing plans and proposals); (vi) all computer software, (including all source code, object code, firmware, development tools, files, records and data, and all media on which any of the foregoing is recorded); (vii) all industrial designs and any registrations and applications therefor; (viii) databases and data collections and all rights therein; (ix) any similar, corresponding or equivalent rights to any of the foregoing; and (x) any documents or other tangible media containing any of the foregoing, and all rights to prosecute and perfect the foregoing through administrative prosecution, registration, recordation, or other proceeding, and all causes of action and rights to sue or seek other remedies arising from or relating to the foregoing (including for any past or on-going infringement, violation or misappropriation).

“Intellectual Property Rights” means all rights to Intellectual Property existing under (i) trademark Law; (ii) copyright Law and database rights; (iii) design patent or industrial design Law; (iv) patent Law; (v) semi-conductor chip or mask work Law; or (vi) any other statutory provision or common law principle relating to such subject matter (including Laws governing know-how, including trade secret Law) including: (a) all grants and registrations worldwide in connection with the foregoing and all other rights with respect thereto existing other than pursuant to grants and registrations; and (b) all applications for any such grant or registration, all rights to make such applications and the right to control their prosecution, rights or priority under international conventions, and all amendments, continuations, divisions and continuations-in-part of such applications, and all corrections, reissues, patents of addition, extensions and renewals of any such grant, registration or right.

“Interest” means the compensation for the accrual of monetary obligations under this Agreement computed Monthly and prorated daily from the time each such obligation becomes past due based on an annual interest rate equal to the lesser of: (i) (a) for payments due during the first five (5) Days after such a payment becomes due, in each case, the Prime Commercial Lending Rate as set by Citibank NA., 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 (for the purposes of this definition, the **“Prime Rate”**), and (b) for payments due beginning on the sixth (6th) Day after such a payment is

due, the Prime Rate plus five percent (5%); and (ii) the maximum rate allowable under Article 1169 of the Puerto Rico Civil Code or successor statute applicable to past due amounts. The provisions of this definition shall not be construed to limit the applicable rate of interest on the project debt.

“**kW**” means kilowatt-AC.

“**kWh**” means kilowatt hour.

“**Legal Challenge**” means any action, suit or proceeding brought or commenced by a third party (excluding any Affiliate of a Party) seeking to contest the validity of this Agreement, any Permits, design, deployment, installation, operation, or maintenance of the GSDS which materially impairs the ability of the Parties to perform their respective obligations hereunder or delays the deployment, installation or operation of the GSDS.

“**Liability Cap**” means [●]⁸.

“**Liquidated Damages**” means, collectively, Capability Shortfall Liquidated Damages, SELLER Delay Liquidated Damages, PREPA Delay Liquidated Damages, Availability Liquidated Damages, Capability Liquidated Damages, and Termination Liquidated Damages.

“**Long-Stop Date**” means the earlier to occur of (i) the first date on which accrued SELLER Delay Liquidated Damages (determined without reference to the operation of paragraph (c) of Section 3.5 (*Delay Liquidated Damages*)) exceeds the Security Amount, and (ii) the one hundred eightieth (180th) Day after the Guaranteed Commercial Operation Date.

“**LUMA**” means LUMA Energy, LLC.

“**Major Updates**” has the meaning set forth in paragraph (a) of Section 6.2 (*Scheduled Maintenance*).

“**Malware**” means computer software, code or instructions that: (i) intentionally, and with malice intent by a third party, adversely affect the operation, security or integrity of a computing, telecommunications or other digital operating or processing system or environment, including without limitation, other programs, data, databases, computer libraries and computer and communications equipment, by altering, destroying, disrupting or inhibiting such operation, security or integrity; (ii) without functional purpose, self-replicate without manual intervention; (iii) purport to perform a useful function but which actually performs either a destructive or harmful function, or perform no useful function other than utilize substantial computer, telecommunications or memory resources with the intent of causing harm; or (iv) without authorization collect and/or transmit to third parties any information or data, including such software, code or instructions commonly known as viruses, Trojans, logic bombs, worms, adware and spyware.

“**Materials**” has the meaning set forth in paragraph (b) of Section 8.2 (*Data and Materials*).

“**Maximum Storage Energy**” means, for any Participant Energy Storage Resource and any time of determination, the quantity of Energy (expressed in MWh), which such resource makes available at the relevant Participant Connection Point at such time while reducing the State-of-Charge from one hundred percent (100%) to zero percent (0%).

⁸ Note: Insert amount equal to 25% of SELLER’s estimated project costs.

“**Milestone**” means any of the milestone events set out in the column captioned “*Milestone*” in the table set forth in the Milestone Schedule.

“**Milestone Schedule**” means the schedule set out in Appendix D (*Milestone Schedule*).

“**Minimum Acceptance Capability**” has the meaning set forth in item (2), paragraph (b) of Section 5.3 (*Initial Performance Tests*).

“**Minor Updates**” has the meaning set forth in paragraph (a) of Section 6.2 (*Scheduled Maintenance*).

“**Modification Limit**” means \$[●], representing one percent (1.0%) of SELLER’s total estimated cost for the design, deployment, installation, testing, and commissioning of the GSDS as of the Agreement Date.

“**Month**” means a calendar month, which shall begin at 00:00 on the first Day of such calendar month and end at 00:00 on the first Day of the next calendar month.

“**Monthly Payment**” or “**MP**” has the meaning set forth in Section 1 (*Data Collection*) of Appendix F (*Compensation*).

“**MTRs**” means the minimum technical requirements applicable to the GSDS for integration with the DERMS and the Grid System set forth in Appendix K (*Minimum Technical Requirements*), as PREPA may modify or replace from time to time after the Closing Date in accordance with Section 4.2 (*Modifications*).

“**MW**” means megawatts AC.

“**NIST**” means National Institute of Standards and Technology.

“**Non-Scheduled Derating**” means any Derating other than a Scheduled Derating.

“**Non-Scheduled Outage**” means any Outage other than a Scheduled Outage.

“**Operating Characteristics**” has the meaning set forth in Appendix J (*Operating Characteristics*).

“**Operating Procedures**” means the procedures for the GSDS’ operation and integration with the DERMS and the Grid System, as set out in Appendix L (*Operating Procedures*), as amended from time to time.

“**Operational Forecast**” means the information set forth in Appendix Y (*Operational Forecast*).

“**Other Minimum Acceptance Criteria**” means, collectively, the MTRs, Operating Characteristics, and any other criteria set out in the Testing Protocol and Operating Procedures.

“**Outage**” means, for any period of time, SELLER’s failure or inability to make Grid Services available to PREPA for any reason.

“**P3A**” means the Public-Private Partnership Authority of Puerto Rico or any successor thereto.

“**Party**” and “**Parties**” has the meaning set forth in the preamble of this Agreement.

“Participant” means a customer of PREPA that commits one or more VPP Resources to SELLER pursuant to a Participant Service Agreement for utilization in the GSDS.

“Participant Connection Point” means, for each Participant Resource, the point where such resource connects to the Distribution System.

“Participant Data” means all data provided by SELLER to PREPA and all data provided by PREPA to SELLER regarding Participants pursuant to this Agreement.

“Participant Energy Storage Resource” means a Participant Resource that also qualifies as an Energy Storage Resource.

“Participant Resources” means, collectively and for each Participant, each of the VPP Resources with Protection and Control Equipment that SELLER makes available through the GSDS pursuant to a Participant Service Agreement signed by such Participant, and **“Participant Resource”** means any such resource.⁹

“Participant Service Agreement” means an agreement in the Approved Form between a Participant and SELLER which sets forth the terms and conditions under which the Participant makes available to SELLER a VPP Resource for use in the provision of Grid Services under this Agreement.

“Participant Site” means, for each Participant, each site on which such Participant has located a VPP Resource.

“Participation Termination Event” means SELLER’s failure to achieve 40% Guaranteed Capability or 80% Guaranteed Capability by the corresponding time for completion / occurrence in the Milestone Schedule.

“Pending Permit Delay” means, for any Permit for which SELLER has duly and properly applied and has exercised / continues to exercise diligent efforts to obtain, the denial of or delay in granting such Permit by the relevant Governmental Authority for any reason (other than SELLER’s failure to comply with the requirements for the issuance of such Permit) which materially impairs the ability of SELLER to achieve Commercial Operation.

“Performance Guarantees” means the Guaranteed Availability and Guaranteed Capability, as set forth in Appendix P (*Performance Guarantees*).

“Performance Security” has the meaning set forth in paragraph (a) of Section 2.5 (*Performance Security*).

“Performance Tests” means tests which verify that the GSDS (i) Dispatches the Grid Services in accordance with the Operating Characteristics, (ii) meets the Performance Guarantees, and (iii) complies with each of the Other Minimum Acceptance Criteria, in each case in accordance with the Testing Protocol.

⁹ Note: PREPA understands that some definitions may need adjustment to contextualize the template agreement for actual proposals and financing needs. PREPA currently expects, however, that SELLER will have meters and monitoring equipment for each Participant Resource.

“Permanent Closing” means, after the Commercial Operation Date, the occurrence of any of the following events: (i) for any period of twelve (12) consecutive Months, excluding periods of Outages due to Force Majeure affecting SELLER or any PREPA Risk Event, GSDS Availability equals zero (0), or (ii) for any period of twenty-four (24) consecutive Months, regardless of whether SELLER claims Force Majeure during such period, GSDS Availability equals zero (0), in each case excluding periods of Outages due to any PREPA Risk Event.

“Permitted Guarantor” has the meaning set forth in the RFP.

“Permits” means all permits, licenses, approvals, authorizations, consents, variances, or waivers issued by a Governmental Authority with jurisdiction over SELLER and the GSDS which SELLER or its contractors will require for the design, deployment, installation, ownership, operation, maintenance, or financing of the GSDS, including those set out in Appendix E (*Seller Permits*).

“Permitted Outage Hour” means any hour during the Supply Period in which an Outage or Derating occurs as a result of a Scheduled Outage, Scheduled Derating, Force Majeure affecting SELLER or a PREPA Risk Event.

“Person” means an individual, partnership, corporation, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, or a government or agency or political subdivision thereof.

“Personally Identifiable Information” means an individual’s identifiable information and any other information that may be used to track, locate or identify such individual (or which is otherwise protected by privacy Laws), including any automatically generated information (such as IP addresses and other customer identifiers) that identifies or is unique or traceable to a particular individual or computer or other electronic devices capable of accessing the internet, including without limitation, name, address, telephone number, social security number, credit card account numbers, email addresses, user identification numbers or names and passwords, which PREPA employees and individuals who have obtained products or services from PREPA for personal, family or household purposes, disclose to SELLER or its subcontractors in connection with this Agreement.¹⁰

“Post-Agreement Date Taxes” means all Taxes resulting from measures required to comply with Applicable Law enacted, approved, or issued after the Agreement Date.

“Post-Agreement Date Environmental Costs” means all Environmental Costs resulting from measures required to comply with Applicable Law enacted, approved or issued after the Agreement Date.

“Pre-Operation Period” means the period of time from (and including) the Closing Date up to (but excluding) the Commercial Operation Date.

“PREB” means the Puerto Rico Energy Bureau or any successor thereto.

“PREB Approved Form” has the meaning set forth in paragraph (e) of Section 2.6 (*Condition Subsequent*).

¹⁰ Note: This definition aligns with Federal regulation and precedent.

“**PREPA**” has the meaning set forth in the preamble of this Agreement.

“**PREPA Bankruptcy**” means the proceeding commenced pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), pending as of the Agreement Date in the PROMESA Court, Case No. 17-4780.

“**PREPA Data**” means the data and other information prepared or collected by PREPA and delivered to SELLER in accordance with this Agreement.

“**PREPA Delay Liquidated Damages**” has the meaning set forth in paragraph (a) of Section 3.5 (*Delay Liquidated Damages*).

“**PREPA Risk Event**” means any of the following events:

- a. Force Majeure or a Legal Challenge in each case affecting PREPA;
- b. a Grid System Event;
- c. the duration of time required by PREPA to render a Best Interests Determination for the Project exceeds ninety (90) Days;
- d. a breach, delay, or failure by PREPA in performing any material obligation under this Agreement; or
- e. following any modifications to the MTRs under Section 4.2 (*Modifications*), the duration of the GSDS’ unavailability as reasonably required to carry out changes to the GSDS to comply with such modifications,

which, in each case, did not result from an act or omission of SELLER, Force Majeure affecting SELLER or the circumstances described in Section 7.2 (*Curtailment for Breach*).

“**PREPA Trademarks**” has the meaning set forth in Section 4.5 (*Co-Branding; Use of PREPA’s Trademarks*).

“**Priority 1 Level**” means an Outage or complete business shutdown, where SELLER cannot perform its obligations under this Agreement.

“**Priority 2 Level**” means a Derating that affects a major element of SELLER’s ability to operate, while some aspects of SELLER’s business can continue.

“**Project**” has the meaning set forth in Recital B of the preamble of this Agreement.

“**Project Lenders**” means any Person (or any agent, trustee or other Person representing or acting on behalf of any such Person) providing, arranging, insuring or guaranteeing all or part of any financing or other funding, including any tax equity financing, obtained by or for the benefit of SELLER or its Affiliate(s) in connection with the GSDS or this Agreement.

“**PROMESA Court**” means the United States District Court for the District of Puerto Rico.

“**Proposed Design**” has the meaning set forth in paragraph (b) of Section 4.1 (*Proposed Design*).

“Proposed Initial Integration Date” has the meaning set forth in Section 5.1 (*Scheduling Integration*).

“Protection and Control Equipment” has the meaning set forth in Section 4.6 (*Protection and Control Equipment*).

“Prudent Utility Practices” means the spectrum of possible practices, methods, conduct and actions (including the practices, methods, conduct, and actions engaged in or approved by a significant portion of the power industry in the United States) that, at a particular time, in the exercise of reasonable discretion at the time a decision was made, could have been expected to accomplish the desired result in a manner consistent with Applicable Laws and Applicable Standards for reliability, safety and economy.

“Puerto Rico Controller” means the Office of the Controller for the Commonwealth of Puerto Rico.

“Qualified Bank” means a national bank, national association, commercial bank or other financial institution registered in the United States, having a branch located within Puerto Rico or the contiguous United States, and otherwise acceptable to PREPA that has a long-term issuer rating of at least (i) if headquartered within Puerto Rico, then “B+” by Standard & Poor’s Ratings Services, “B1” by Moody’s Investors Services Inc., or “B+” by Fitch Ratings Inc. or (ii) if headquartered outside of Puerto Rico, then “A-” by Standard & Poor’s Ratings Services, “A3” by Moody’s Investors Services Inc., or “A-” by Fitch Ratings Inc., or in each case if the relevant rating agencies cease to engage in business or rate the obligations in question, then an equivalent rating from another internationally recognized rating agency selected by SELLER with the written consent of PREPA; provided that, if such financial institution’s ratings satisfy such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications.

“Qualified Operator” means SELLER, an Affiliate of SELLER, or, if a third party contractor of SELLER or its Affiliate, an entity with at least two (2) years’ experience operating facilities of a similar type to the GSDS or another qualified and experienced operator reasonably acceptable to PREPA.

“Quarter” means, for each calendar year (or part thereof) during the Term, each period of three (3) consecutive Months beginning on the first of January, April, July and October during such year.

“Receiving Party” has the meaning set forth in paragraph (a) of Section 12.9 (*Confidentiality*).

“Registry” has the meaning set forth in Section 9.5 (*Green Credits*).

“Renewable Energy Resource” means any renewable energy resource, connected to the Distribution System, that qualifies as “green energy” under the Law for Diversification through Sustainable and Alternative Energy in Puerto Rico, Act No. 82-2010, as amended, including, but not limited to, solar PV generating facilities, wind generating facilities, hydroelectric generating facilities or any combination of these technologies.

“RFP” has the meaning set forth in Recital A in the preamble of this Agreement.

["SCADA" means the GSDS' supervisory control and data acquisition system, which may include equipment installed by SELLER in accordance with PREPA requirements.]¹¹

"Scheduled Derating" means a planned Derating that SELLER has coordinated in advance with PREPA with a mutually agreed commencement date, time, and duration, and set out in the Scheduled Maintenance Program pursuant to Article 6 (*Operation Of The GSDS*).

"Scheduled Expiration Date" has the meaning set forth in paragraph (b) of Section 2.5 (*Performance Security*).

"Scheduled Maintenance Program" has the meaning set forth in paragraph (b) of Section 6.2 (*Scheduled Maintenance*).

"Scheduled Outage" means a planned Outage that SELLER has coordinated in advance with PREPA with a mutually agreed commencement and duration, and set out in the Scheduled Maintenance Program pursuant to Article 6 (*Operation Of The GSDS*).

"Security Amount" means (i) prior to the Commercial Operation Date, fifty United States Dollars (\$50) per kW multiplied by the sum of the Guaranteed Capability for the Demand Reduction Service plus the Guaranteed Capability of the Demand Build Service, in each case for Agreement Year 1, or such higher amount as agreed in accordance with paragraph (c) of Section 3.5 (*Delay Liquidated Damages*), and (ii) thereafter, seventy United States Dollars (\$70) per kW multiplied by the sum of the Guaranteed Capability for the Demand Reduction Service plus the Guaranteed Capability of the Demand Build Service.

"SELLER" has the meaning set forth in the preamble of this Agreement.

"SELLER Delay Liquidated Damages" or **"SDLD"** means the amount per Day of delay set forth in the column captioned "SELLER Delay Liquidated Damages", which corresponds to the Milestone captioned "Commercial Operation", expressed as \$ per Day, in the Milestone Schedule.

"Shareholder" means, for any time of determination, any direct holder of capital stock in SELLER at such time.

"Source Code" means (i) the human readable source code of the GSDS that consists of narrated documentation related to the compilation, linking, packaging and platform requirements of the GSDS and any other materials or software sufficient to enable a reasonably skilled programmer to build, modify and use the code within a commercially reasonable period of time for the purpose of establishing, operating, and/or maintaining the GSDS and diagnosing errors and that can reasonably be compiled by a computer for execution, (ii) all internal proprietary tools used by Source Code Owner to develop or test the platform, (iii) instructions to enable hosting the platform, and (iv) and a list of any third party tools, applications and services used to develop, test or support the GSDS.

"Source Code Escrow Agent" means an escrow agent approved by PREPA.

"Source Code Escrow Agreement" means a multi-party escrow agreement among PREPA, the Source Code Escrow Agent and all Source Code Owners depositing Source Code into the Source

¹¹ Note: Discuss whether the GSDS will have a supervisory control and data acquisition system, as distinct from the software used to monitor and control Participant equipment.

Code Escrow which, among other matters, names PREPA as beneficiary thereunder, and is otherwise acceptable in form and substance to PREPA.

“**Source Code Owner**” means the developer and/or owner of the Source Code authorized to deposit the Source Code with the Source Code Escrow Agent upon the terms of the Source Code Escrow Agreement.

“**Sponsor**” means, for each Shareholder of, or a Person holding a partnership or membership interest in, SELLER on the Agreement Date, the ultimate parent company of such shareholder or Person.

“**State-of-Charge**” means, for any Participant Energy Storage Resource and any time of determination, the quantity of Stored Energy at such time, expressed as a percentage of the Maximum Storage Energy of such resource.

“**Stored Energy**” means, for any Participant Energy Storage Resource and any time of determination, the quantity of Energy stored in such resource at such time.

“**Supply Period**” means the period that commences on the Commercial Operation Date and expires on the [ten (10th)] anniversary thereof.

“**System Impact Study**” means, for each proposal selected by PREPA for the phase III evaluation and contract negotiation of proposals under the RFP, a study that will, at a minimum, (i) quantify the impact to the Grid System of integrating the GSDS and the actions required to mitigate such impact, (ii) evaluate the proposed communications system and protocols for integration into the DERMS, and (iii) specify the Proposed Design requirements for the GSDS.

“**T&D Operator**” means LUMA, or any future operator of Puerto Rico’s electric power transmission and Distribution System or any of such operator’s Affiliates, including PREPA’s assignee under the circumstances described in Section 19.2 (*PREPA’s Right to Assign*).

“**Tax Credits**” means the production or investment tax credits (including any grants or payment in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or other Applicable Law available as a result of the ownership and operation of the GSDS, the aggregation of the Participant Resources or the Dispatch of Grid Services (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation).

“**Taxes**” means any and all taxes, fees or other charges of any nature whatsoever, including income taxes and repatriation (tollgate) taxes, imposed or assessed by a Governmental Authority responsible for implementing Applicable Law relating to tax on or as a result of the ownership or operations of the GSDS.

“**Technical Mediator**” has the meaning set forth in in paragraph (b) of Section 21.11 (*Dispute Resolution*).

“**Technical Dispute**” has the meaning set forth in paragraph (b) of Section 21.11 (*Dispute Resolution*).

“**Technical Input**” has the meaning set forth in paragraph (c) of Section 4.1 (*Proposed Design*).

“Technical Recommendation” has the meaning set forth in paragraph (b) of Section 21.11 (*Dispute Resolution*).

“Term” has the meaning set forth in Section 2.2 (*Initial Term*).

“Termination Balance” has the meaning set forth in paragraph (b) of Section 17.2 (*Tracking Account*).

“Termination Date” means the date of the earliest to occur of any of the events set forth in Section 15.1 (*Termination Date*).

“Termination Liquidated Damages” means the liquidated damages contemplated by Section 15.3 (*Termination Damages*).

“Testing Protocol” means PREPA’s standard protocols for testing and commissioning the GSDS set forth in Appendix M (*Data, Integration and Testing Protocol*), as amended from time to time.

“Time Interval” means, with respect to the twenty-four (24) consecutive, ten (10) minute periods during each Grid Service Period of each Day during an Agreement Year, any one (1) of such periods.

“Tracking Account” has the meaning set forth in paragraph (a) of Section 17.2 (*Tracking Account*).

“Trademark License Agreement” means the trademark license agreement entered into between PREPA and the SELLER substantially in the form set forth in Appendix CC (*Form of Trademark License Agreement*).

“Transfer” has the meaning set forth in Section 19.2 (*PREPA’s Right to Assign*).

“VPP Resource” means an Energy Storage Resource, Renewable Energy Resource or Demand Response Resource integrated into a resource that collectively does not exceed 1 MW-AC at its point of interconnection with the Distribution System and can provide Grid Services to PREPA in accordance with the terms of this Agreement, including Appendix H (*Grid Services*).

“Week” means a seven (7) Day period beginning at 00:00 (Puerto Rico Time) on Monday and finishing immediately prior to 00:00 on the immediately following Monday, and **“Weekly”** has a corresponding meaning.

“Wholly-Owned Affiliate” means, with respect to a Shareholder, any Person that:

- a. owns directly or indirectly one hundred percent (100%) of the issued share capital and voting rights of such Shareholder;
- b. has one hundred percent (100%) of its issued share capital and voting rights owned directly or indirectly by such Shareholder; or
- c. has one hundred percent (100%) of its issued share capital and voting rights owned directly or indirectly by another Person which owns directly or indirectly one hundred percent (100%) of the issued share capital and voting rights of such Shareholder.

“Year” means a calendar year, which shall be the twelve (12) Month period beginning 00:00 on January 1 and ending at 00:00 on the subsequent January 1.

1.2 Rules of Interpretation

The rules of interpretation listed below shall apply when interpreting this Agreement:

- a. Words importing the singular also include the plural and vice versa.
- b. References to natural persons or parties include any person having legal capacity.
- c. References to a Person include such Person’s successors and assigns; provided that with respect to a Party and its rights and obligations under this Agreement, references to a Party shall only include such Party’s successors and assigns if this Agreement permits such successors and assigns.
- d. Words importing one gender include the other gender.
- e. The words “include” and “including” mean “including, but not limited to” and corresponding grammatical variants.
- f. Except as otherwise expressly stated herein, all references in this Agreement to this Agreement (including the Appendices hereto) or to contracts, agreements, or other documents shall be deemed to mean this Agreement (including the Appendices hereto) and such contracts, agreements or other documents, as the same may be modified, supplemented, or amended from time to time.
- g. Except as otherwise expressly stated herein, all references to Sections, Articles, and Appendices in this Agreement are references to the Sections, Articles, and Appendices of this Agreement.
- h. Words and abbreviations not defined in this Agreement which have generally accepted technical or design, engineering, or construction industry meanings are used in this Agreement in accordance with such recognized meanings.
- i. The terms “hereof,” “herein,” “hereto,” “hereunder” and words of similar or like import, refer to this entire Agreement, together with its Appendices, and not any one particular Article, Section, Appendix, or other subdivision of this Agreement.
- j. The headings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties hereto, nor should they be used to aid in any manner in the construction of this Agreement.
- k. References to PREPA in the definition of DERMS, Dispatch Notice, Grid System Event and Trademark License Agreement, and Section 4.5 (*Co-Branding; Use of PREPA’s Trademarks*), Section 6.5 (*Restoration of the GSDS*), Article 7 (*Dispatching Obligations*), Section 8.2 (*Data and Materials*), Section 9.1 (*General*), Section 9.4 (*Ancillary Services*), and Section 11.1 (*General*), include its dispatching center(s) and the T&D Operator, as applicable.

- l. Terms used in the present tense may be interpreted as referring to the past tense and vice versa.
- m. Nothing contained in this Agreement shall be construed or interpreted to limit in any way PREB's power and authority under the Laws of the Commonwealth of Puerto Rico.

2. TERM, EFFECTIVENESS & PERFORMANCE SECURITY

2.1 Signing Conditions

The Parties shall complete their respective obligations set out in Appendix B (*Signing Conditions*) no later than the Agreement Date. SELLER recognizes that submittal of the certifications and documents set out in Appendix B (*Signing Conditions*) constitute an essential condition of this Agreement.

2.2 Initial Term

The term of this Agreement (the “**Term**”) shall begin with the Agreement Date and continue until the expiration of the Supply Period, unless extended or earlier terminated in accordance with the terms hereof. If the Parties extend the Term, then the word “Term” shall thereafter be deemed to mean the original Term as so extended.

2.3 Initial Effectiveness & Closing Date

The rights and obligations of the Parties under Article 1 (*Definitions & Interpretation*), this Article 2, Section 3.6 (*Exchange of Information*), Section 3.7 (*Cooperation*), Article 12 (*Representations, Warranties, & Covenants*), Article 14 (*Force Majeure*), Article 15 (*Termination*), Article 19 (*Assignment & Transfer*), Article 20 (*Notices*) and Article 21 (*Miscellaneous Provisions*), shall enter into full force and effect on the Agreement Date (collectively, the “**Agreement Date Obligations**”). Subject to the foregoing rights and obligations that become effective on the Agreement Date, the remaining provisions of this Agreement shall become effective on the date (the “**Closing Date**”) as of which the Parties jointly sign a certificate, in the form set forth in Appendix S (*Form of Conditions Precedent Certificate*), confirming the satisfaction or waiver of each of the conditions precedent set out in Appendix C (*Conditions Precedent*) (the “**Conditions Precedent**”). The Parties shall issue such certificate within five (5) Business Days after the occurrence of such satisfaction or waiver. Each Party shall use its commercially reasonable efforts to satisfy their respective Conditions Precedent (other than the Condition Precedent set forth in paragraph (c) of Part 3 (*Other Conditions*) of Appendix C (*Conditions Precedent*)) and cause the Closing Date to occur no later than sixty (60) Days after the Agreement Date. If either (i) the Closing Date does not occur for any reason within one hundred twenty (120) Days after the Agreement Date, or (ii) PREPA notifies SELLER of its intention either not to (A) accept the Best and Final Offer made by SELLER, or (B) issue a Best Interests Determination for the Project, in each case for any reason whatsoever, then this Agreement shall automatically terminate at midnight on such Day without either Party incurring any liability to the other Party, provided that, if the automatic termination of this Agreement occurs as a result of SELLER's breach of any of the Agreement Date Obligations (unless excused by Article 14 (*Force Majeure*)), then PREPA shall have the right to draw on the full face amount of the Bid Security.

2.4 Extension

The Parties may agree to extend the Term of this Agreement, with approval from PREB, for up to two (2) consecutive periods of five (5) Agreement Years each, following the expiration of the initial Supply Period. Either Party may notify the other of its desire to extend the Term in writing as provided for under this Section 2.4 not less than eighteen (18) Months prior to the expiration of the initial Supply Period or extended Supply Period, as the case may be. During any extension, all provisions contained herein shall remain in effect unless otherwise agreed in writing.

2.5 Performance Security

- a. To secure the due, proper, timely, and full performance of SELLER's obligations under this Agreement, SELLER shall provide to PREPA as a condition precedent to the Closing Date, at SELLER's sole expense, one or more on first demand, irrevocable standby letters of credit issued by a Qualified Bank substantially in the form set forth in Appendix V (*Form of Performance Security*) and otherwise acceptable to PREPA (or cash collateral or other on-first demand, irrevocable security acceptable to PREPA in its sole discretion) in an amount equal to the Security Amount (the "**Performance Security**").
- b. SELLER shall (i) maintain the Performance Security in full force and effect and in accordance with this Agreement until the date that occurs sixty (60) Days after the expiration of the Term (the "**Scheduled Expiration Date**"), and (ii) together with the delivery of each Performance Security or replacement thereof, deliver a written statement dated as of the delivery date duly signed by its authorized representative certifying that the issuer of such Performance Security meets the requirements of a Qualified Bank.
- c. SELLER shall cause a Qualified Bank to issue, reissue or replace any Performance Security (in compliance with this Section 2.5) in accordance with the following:
 1. to the extent that the Performance Security will expire or cease to exist prior to the Scheduled Expiration Date, then no later than twenty-one (21) Days prior to the date of such expiration or cessation;
 2. in the event that the issuer of the Performance Security ceases to meet the requirements of a Qualified Bank, then no later than twenty-eight (28) Days after the date of such cessation; and
 3. if the Parties agree to increase the Guaranteed Capability, then promptly upon the date of such agreement.
- d. PREPA shall have the right to draw down on the Performance Security (via a full or one or more partial drawings) to satisfy any outstanding, unpaid amounts hereunder or as otherwise specifically provided herein, upon the occurrence of any of the following events:
 1. a COD Termination Event;
 2. a Participation Termination Event;
 3. SELLER's failure to pay Liquidated Damages when due and after invoiced under Section 10.3 (*Invoice for Liquidated Damages*) of this Agreement;

4. SELLER's failure to provide replacement Performance Security in accordance with paragraph (c) of this Section 2.5; provided that (i) PREPA deposits the amount so drawn in an escrow account in a bank selected by PREPA until SELLER delivers the replacement Performance Security to PREPA and upon such delivery, PREPA shall cause the release of the undrawn amounts on deposit in such account to SELLER, and (ii) PREPA shall have the right to draw from the escrow account in accordance with paragraph (d) of this Section 2.5 and SELLER shall bear the costs of opening and maintaining such escrow account;
5. except as otherwise covered by items (1) to (4) of this paragraph (d) of this Section 2.5, a Default by SELLER; or
6. any other event that expressly entitles PREPA to draw down or claim on the Performance Security under this Agreement.

PREPA shall have the right to draw down on the entire undrawn portion of the face amount of the Performance Security upon the occurrence of (i) the events described in items (1), (2) or (4) of this paragraph (d) of this Section 2.5, and (ii) a termination by PREPA of this Agreement following the occurrence of a Default by SELLER.

2.6 Condition Subsequent

- a. As a condition subsequent to the effectiveness of this Agreement on the Closing Date, SELLER shall comply with the provisions of this Section 2.6 (the "**Condition Subsequent**").
- b. No later than sixty (60) Days after the Closing Date, SELLER shall submit to PREPA a draft form Participant Service Agreement that shall comply with the requirements set forth in this Agreement, including Appendix BB (*Participant Service Agreement Requirements*). PREPA shall review and comment on such draft within twenty (20) Business Days to confirm compliance with the requirements set forth in this Agreement, including Appendix BB (*Participant Service Agreement Requirements*), and deliver to SELLER written notice that PREPA either (i) accepts the draft form Participant Service Agreement (the "**Approved Form**"), or (ii) does not accept such draft form Participant Service Agreement, in which case PREPA shall simultaneously deliver to SELLER a written and detailed description of PREPA's objections to such draft form Participant Service Agreement and PREPA's required amendments thereto, which amendments PREPA shall reasonably propose in good faith and align with Prudent Utility Practices and the requirements of Appendix BB (*Participant Service Agreement Requirements*) (the "**Drafting Input**").
- c. If PREPA has provided Drafting Input to SELLER in accordance with the foregoing, then no later than ten (10) Days following SELLER's delivery to PREPA of SELLER's revised form Participant Service Agreement, which revised form Participant Service Agreement shall be consistent with the Drafting Input, PREPA shall review such revised form Participant Service Agreement and notify SELLER in writing either that (i) such revised design constitutes the Approved Form, or (ii) PREPA does not accept such revised form Participant Service Agreement, in which case PREPA shall simultaneously deliver to SELLER further Drafting Input. The Parties shall repeat the foregoing process until PREPA accepts the draft form Participant Service Agreement as an Approved Form, which approval PREPA shall not unreasonably withhold.

- d. The Parties shall use good faith efforts to agree upon an Approved Form of the Participant Service Agreement within ninety (90) Days of SELLER's submission of the revised draft form Participant Service Agreement, after SELLER has received PREPA's Drafting Input for the first time.
- e. PREPA shall submit the Approved Form of the Participant Service Agreement to PREB for approval. SELLER shall not contract with any Participants using the Participant Service Agreement in connection with their VPP Resources until PREB has approved the Approved Form of the Participant Service Agreement (the "**PREB Approved Form**").
- f. SELLER shall use the PREB Approved Form when contracting with Participants for purposes of the VPP Resources under this Agreement. SELLER shall not amend the PREB Approved Form in any material respect without PREPA's and PREB's prior approval. PREPA reserves the right to review any executed Participant Service Agreement.
- g. Notwithstanding this Section 2.6, PREPA's and PREB's approval of the PREB Approved Form and PREB Approved Form respectively, and PREPA's review of any executed Participant Service Agreement shall not constitute an approval or endorsement of such agreement, or as a waiver of any of PREPA's rights under this Agreement and SELLER shall advise each Participant of such limitation.
- h. SELLER shall achieve 40% Guaranteed Capability and 80% Guaranteed Capability by the corresponding time for completion / occurrence set forth in the Milestone Schedule.

3. PRE-OPERATION PERIOD

3.1 Consulting Technical Expert

No later than the Closing Date, PREPA shall consult with SELLER and appoint a technical consultant (the "**Consulting Technical Expert**") to review technical matters, assist in the resolution of technical issues, issue non-binding technical recommendations in connection with Technical Disputes in accordance with this Agreement and monitor the works undertaken by, or on behalf of, SELLER (i) for the design, deployment and installation of the GSDS, (ii) the identification and aggregation of VPP Resources, and (iii) the operation and maintenance of the GSDS and delivery of Grid Services, during the Supply Period. PREPA may designate different Consulting Technical Experts for different purposes under this Agreement. The Consulting Technical Expert's staff shall include suitably qualified professionals who possess the competence to carry out such duty. The Consulting Technical Expert shall conduct reviews of works performed by, or on behalf of, SELLER in accordance with Appendix I (*Progress Review*). SELLER shall consider all non-binding technical recommendations issued by the Consulting Technical Expert during the Pre-Operation Period. Whenever carrying out its duties in accordance with this Agreement, the Consulting Technical Expert shall act on behalf of PREPA, and PREPA shall ensure that such expert acts in a timely manner¹². Any action undertaken by PREPA shall not relieve SELLER from any responsibility it has under this Agreement.

¹² Note: If PREPA does not ensure that the expert acts in a timely manner, then that will trigger Section 3.4 (*Extensions of Time*).

3.2 SELLER's Development Obligations

SELLER shall (i) recruit and enroll Participants, (ii) design, deploy, finance, install, test, and commission, and use commercially reasonable efforts to permit, the GSDS, and (iii) achieve Commercial Operation no later than the Guaranteed Commercial Operation Date, at its own cost, in accordance with the Milestone Schedule, the requirements of all Permits, the MTRs, the Approved Design, Prudent Utility Practices, the other provisions of this Agreement, Applicable Law and Applicable Standards. The Commercial Operation Date may occur earlier than the Guaranteed Commercial Operation Date by mutual agreement of the Parties in accordance with the notification and integration process described in this Agreement.

3.3 Regular Updates

SELLER shall submit progress reports to PREPA on (i) the design, deployment, permitting, third-party contracting, financing, installation, recruitment and enrollment of Participants for the GSDS; and (ii) identification of VPP Resources (including their resource classification), enrollment of Participants and execution of Participant Service Agreements, no later than the fifth (5th) Business Day of each Quarter of each calendar year¹³, commencing after the Closing Date and continuing until the Commercial Operation Date. SELLER acknowledges that PREPA may keep PREB and other Governmental Authorities apprised of its progress.

3.4 Extensions of Time

SELLER shall have the right to an extension of the time for the completion or occurrence of any Milestone or deadline expressly stated herein where a Force Majeure affecting SELLER or a PREPA Risk Event directly delays SELLER's ability to achieve such Milestone or deadline, but only to the extent that (i) such delay would not have occurred but for the occurrence of such event, (ii) SELLER exercises its commercially reasonable efforts to mitigate the effects of such delay, and (iii) SELLER has notified PREPA of such delay, and provided PREPA with a detailed explanation of the circumstances leading to such delay, as promptly as possible, but no later than ten (10) Business Days of the occurrence of such event, provided that the failure of SELLER to notify PREPA within such ten (10) Business Days will not preclude SELLER from receiving an extension of time hereunder, except that such delay will be deemed to have commenced ten (10) Business Days prior to the date on which PREPA gives such notice. If SELLER exercises the foregoing right, then the time for completion or occurrence of such Milestone or deadline shall extend by the number of Days during which such event giving rise to such delay prevented SELLER from achieving such Milestone or deadline; provided that, notwithstanding any other provision of this Agreement to the contrary, with respect to any extension of the Milestone for Commercial Operation, such extensions shall not exceed, in the aggregate ten percent (10%) of the period allocated for the time for completion or occurrence on the Agreement Date without the prior written approval of PREB.¹⁴

3.5 Delay Liquidated Damages

- a. To the extent that (i) a PREPA Risk Event delays SELLER's ability to achieve Commercial Operation as determined under Section 3.4 (*Extensions of Time*) and (ii) SELLER achieves

¹³ Note: PREPA can accept quarterly updates so long as PREB does not require more frequent reporting.

¹⁴ Note: On past projects, PREB has prohibited PREPA from granting an aggregate time extension under this Agreement that exceeds 10% of the contractually agreed period for achieving the Commercial Operation Date. More recently, PREB has required approval of all extensions.

either Deemed Completion or Commercial Operation, then PREPA shall pay to SELLER, as SELLER's sole and exclusive remedy in respect of such delay, an amount per Day of such delay equal to one thirtieth (1/30) of the product of the aggregate Guaranteed Capability for the first Agreement Year *multiplied by* the sum of the Demand Reduction Price *plus* the Demand Build Price applicable to the first Agreement Year as liquidated damages (the "**PREPA Delay Liquidated Damages**") no later than forty-five (45) Days after receipt of an invoice therefor; provided that (A) if, upon the occurrence of Commercial Operation Date, the Capability established by the Initial Performance Tests falls below the aggregate Guaranteed Capability for the first Agreement Year, then the Parties shall reduce the PREPA Delay Liquidated Damages and SELLER shall credit PREPA's account for any overpayment according to the ratio that such Capability bears to Guaranteed Capability; and (B) the Term shall reduce for each Day in respect of which PREPA has paid PREPA Delay Liquidated Damages. The Parties acknowledge and agree that the PREPA Delay Liquidated Damages represent a fair and reasonable estimate of the losses which SELLER will suffer if Commercial Operation does not occur by the Guaranteed Commercial Operation Date, and accordingly the Parties hereby waive their right to dispute the validity of this Section 3.5.

- b. For each Day of delay in achieving Commercial Operation after the Guaranteed Commercial Operation Date until the earlier of (i) the Commercial Operation Date, and (ii) the Long-Stop Date, other than any Day in respect of which PREPA has an obligation to pay PREPA Delay Liquidated Damages in accordance with paragraph (a) of this Section 3.5, SELLER shall pay to PREPA as liquidated damages the SELLER Delay Liquidated Damages, no later than forty-five (45) Days after receipt of an invoice therefor. The SELLER Delay Liquidated Damages shall constitute PREPA's sole and exclusive remedy in respect of such delay, other than those remedies arising out of the termination by PREPA for delay under Section 15.1 (*Termination Date*). The Parties acknowledge and agree that SELLER Delay Liquidated Damages represent a fair and reasonable estimate of the losses which PREPA will suffer if Commercial Operation does not occur by the Guaranteed Commercial Operation Date, and accordingly the Parties hereby waive their right to dispute the validity of this Section 3.5.
- c. The Parties acknowledge and agree that SELLER's maximum aggregate liability arising out of this Agreement for delays in achieving Commercial Operation shall not exceed the Security Amount. If, prior to the Commercial Operation Date, the accrued SELLER Delay Liquidated Damages (determined without reference to the Security Amount) exceed, or will likely exceed, the applicable Security Amount, then SELLER shall have the right to increase the Security Amount by an amount specified in a written notice to PREPA; provided that, if the amount of such increase exceeds the amount (expressed in USD) corresponding to the product of the per Day SELLER Delay Liquidated Damages amount *multiplied by* the number of Days corresponding to a ten percent (10%) increase, in the aggregate with all of the extensions of time to achieve Commercial Operation, then such increase shall not become effective until PREPA obtains PREB's approval of such increase. If SELLER desires to increase the Security Amount under this paragraph (c) of this Section 3.5, then such increase shall not become effective until SELLER has delivered a replacement Performance Security with a total face amount to cover the increased Security Amount.

3.6 Exchange of Information

For purposes of conducting any investigations and evaluations as the Parties may deem reasonable and necessary to determine the feasibility of the GSDS, the identification and aggregation of VPP Resources and the technical aspects related to the provision of Grid Services, the Parties agree to cooperate reasonably and in good faith and provide each other and their respective representatives reasonable and timely access to relevant personnel, advisors, properties, and books and records including Participant Data, provided the information is not privileged, confidential or protected under other agreements with third parties or by Law. Subject to the conditions stated in the previous sentence, each Party hereby agrees to cooperate and exchange information necessary to design, deploy, permit, finance, install and operate the GSDS. Notwithstanding anything in this Agreement to the contrary, SELLER shall remain solely responsible for designing, deploying, permitting, financing, installing and operating the GSDS.

3.7 Cooperation

To the extent legally permitted, the Parties agree to cooperate reasonably and in good faith in the mutually beneficial endeavor to (i) identify VPP Resources, enroll Participants and execute Participant Service Agreements, (ii) obtain financing for the GSDS, and (iii) obtain all necessary Permits, endorsements and approvals for design, deployment, installation, testing and operation of the GSDS. Notwithstanding anything in this Agreement to the contrary, SELLER shall remain solely responsible for obtaining the items set out in subparagraphs (i) through (iii) of this Section 3.7.

3.8 Protocols & Procedures

No later than one hundred eighty (180) Days after the Closing Date, the Parties, in consultation with the Consulting Technical Expert, shall agree upon any adjustments or additions to the Testing Protocol (including in respect of the Performance Tests) and Operating Procedures applicable to the GSDS, taking into consideration Prudent Utility Practices, the MTRs, the Approved Design, the Operating Characteristics, equipment supplier and manufacturer recommendations set forth in their operating manuals, and the terms and conditions of this Agreement. The Testing Protocol and Operating Procedures shall only be modified with the written consent of the Parties. In the event of any conflict between the terms and conditions of this Agreement and the Testing Protocol or Operating Procedures, the terms and conditions of this Agreement shall prevail. SELLER acknowledges and agrees that (i) its compliance with the Operating Procedures or Testing Protocol does not relieve SELLER from any liability that it would otherwise have under this Agreement, and (ii) PREPA shall not be liable to SELLER or any other Person by reason of its review or approval of the Operating Procedures or Testing Protocol.

4. **GSDS, VPP RESOURCE AND PARTICIPANT REQUIREMENTS**

4.1 Proposed Design¹⁵

- a. No later than ninety (90) Days after the Closing Date, PREPA shall review and comment on the preliminary design of the GSDS provided by SELLER together with the execution of this Agreement.

¹⁵ Note: This provision describes a high level process for review and adjustment of the overall GSDS design and Participant Resource mix, and not a house-by-house approval process. PREPA will need to

- b. No later than sixty (60) Days after PREPA provides its comments (or approval) pursuant to paragraph (a) of this Section 4.1, SELLER shall submit to PREPA the general design of the GSDS (the “**Proposed Design**”), including a typical system design for and expected allocation of anticipated VPP Resources, high level design drawings, single lines, and interconnection drawings and design of the GSDS itself. SELLER agrees to ensure that the Proposed Design will (i) comply with Prudent Utility Practices, the Operating Characteristics, Permits, Applicable Laws, Applicable Standards, and the MTRs, and (ii) incorporate all equipment required for the GSDS to comply with the MTRs.
- c. No later than thirty (30) Days following SELLER’s delivery to PREPA of the Proposed Design, PREPA shall complete its review of the Proposed Design and deliver to SELLER written notice that PREPA either (i) accepts the Proposed Design (the “**Approved Design**”), or (ii) does not accept such design based on its review, in which case PREPA shall simultaneously deliver to SELLER a written and detailed description of PREPA’s objections to such design and PREPA’s required modifications thereto, which modifications PREPA shall reasonably propose in good faith and consistent with Prudent Utility Practices (the “**Technical Input**”). To the extent the Technical Input involves a change in MTRs for the GSDS, the provisions of Section 4.2 (*Modifications*) of this Agreement shall apply.
- d. If PREPA provides Technical Input to SELLER in accordance with the foregoing, then no later than ten (10) Business Days following SELLER’s delivery to PREPA of SELLER’s revised Proposed Design, which revised Proposed Design SELLER shall ensure is consistent with the MTRs and Technical Input, PREPA shall review such revised Proposed Design and notify SELLER in writing either that (i) such revised design constitutes the Approved Design, or (ii) PREPA does not accept such design, in which case PREPA shall simultaneously deliver to SELLER further Technical Input.
- e. The Parties shall exercise commercially reasonable efforts to agree upon an Approved Design within sixty (60) Days of SELLER’s submission of the revised Proposed Design, after SELLER has received PREPA’s Technical Input. The Parties’ failure to agree on the Approved Design within one hundred eighty (180) Days after SELLER’s submission of a Proposed Design shall constitute grounds for an extension of time for the occurrence of Milestones to the extent otherwise permitted under Section 3.4 (*Extensions of Time*).¹⁶
- f. SELLER shall not, without PREPA’s written consent (which PREPA shall not unreasonably withhold), commence the development or deployment of the GSDS until the Parties have agreed on an Approved Design; provided that, SELLER may, at its risk, order long-lead equipment prior to the achievement of the Approved Design.

see high level design drawings, single lines, interconnection drawings, etc., for Participant Resources, but details of each installation are not necessary.

¹⁶ Note: Paragraph (a) of Section 3.5 entitles SELLER to receive PREPA Delay Liquidated Damages for each Day that the Parties fail to agree on the Approved Design after the expiration of 180 Days. SELLER also already has recourse to the Technical Mediator in accordance with paragraph (b) of Section 21.11 (*Dispute Resolution*) to the extent any dispute arises.

4.2 Modifications

- a. Each Party shall notify the other in advance of any changes to its system, and the reasons for those changes, that would reasonably require modification or expansion of the MTRs, affect the Protection and Control Equipment, or otherwise affects the intergration of the GSDS with the DERMS.
- b. PREPA reserves the right to modify or expand the MTRs in each case from time to time in accordance with Prudent Utility Practices. If PREPA desires to modify or expand the MTRs in consideration of the risk of imminent and substantial harm to human life, property, or the Grid System (including degradation of service) but for the adoption of such change, specifically as it relates to reliability and safety margins, then it shall notify SELLER thereof in writing, which provides the rationale in reasonable detail for such change, and SELLER shall implement such change.
- c. If SELLER implements any modification or expansion that PREPA requires under this Section 4.2, then SELLER shall assume the cost of such implementation, up to a total cost which, when added to any costs that PREPA previously required and incurred by SELLER pursuant to this Section 4.2 during the Term, does not exceed the Modification Limit. If such modification or expansion reduces the GSDS' ability to provide Grid Services, then the Parties shall treat that portion of SELLER's reasonably projected lost revenue under this Agreement arising out of such reduction as a cost of such change.
- d. If SELLER's costs attributable to such change (as reasonably determined and evidenced in writing to PREPA), when added to any costs SELLER previously incurred pursuant to PREPA's request for modification or expansion in accordance with this Section 4.2 during the Term, exceed the Modification Limit, then PREPA shall increase the Monthly Payment to allow SELLER to recover that portion of the cost in excess of the Modification Limit in Monthly installments (i) in respect of modifications to the GSDS, over a term of eighteen (18) Months, or (ii) for a reduction to the GSDS' ability to provide Grid Services, over the remaining Supply Period or so long as the reduction exists. Notwithstanding the foregoing, and only if not the result of changes required by PREPA, SELLER shall assume the total cost (without reimbursement) of implementing modifications to the MTRs or requirements for protection devices resulting from any deviations from the Operating Characteristics or the Approved Design or any changes to SELLER's system whatsoever.
- e. Modifications or expansions of the MTRs shall not become effective until SELLER has had a reasonable period of time to comply with any such modified or expanded requirement.
- f. SELLER shall not make any modifications to the GSDS after the Commercial Operation Date without PREPA's prior approval, which approval PREPA shall not unreasonably withhold. In no event will SELLER make any modifications to the GSDS that cause the GSDS to fall below the information technology and information assurance standards set forth in Section 6.13 (*Information Security*).

4.3 Project Manager

- a. Each Party shall appoint a project manager with suitable training and skills to manage and oversee such Party's performance, and serve as such Party's primary representative, under this Agreement.

- b. The project manager shall have the authority to act for and on behalf of such Party with respect to all matters relating to this Agreement; provided that the project manager shall not have authority to make amendments to, or grant waivers under, this Agreement. Each Party shall make its project manager available during business hours or make arrangements for back-up outside of normal working hours.
- c. Each Party shall provide the other Party with any changes in contact information for the project manager as soon as reasonably possible.
- d. If a Party's project manager position becomes vacant for any reason, such Party shall, no later than twenty (20) Business Days after becoming aware of such vacancy, notify the other Party and, as soon as reasonably practicable thereafter, fill the position in accordance with paragraph (a) of this Section 4.3.

4.4 Participants and VPP Resources

- a. SELLER shall ensure that only one (1) Participant Resource connects at a Participant Connection Point to a meter utilized by the GSDS. Prior to entering into a Participant Service Agreement, SELLER shall (i) ensure that the Participant has not enrolled its VPP Resource in any Demand Response or net metering program, or entered into a participant service agreement with another supplier of grid services or any other contract to supply Energy or make capacity available from its VPP Resource, whether to PREPA or otherwise, (ii) exercise reasonable efforts to verify that the Participant has complied with PREPA's interconnection requirements for the relevant VPP Resource, and (iii) present PREPA with reasonably sufficient information on such Participant for PREPA to assess compliance with this Agreement.
- b. If PREPA rejects a proposed VPP Resource or a Participant Resource as a result of PREPA's supplemental screening and review in accordance with Appendix H (*Grid Services*), SELLER may reduce the Guaranteed Capability for the remainder of the Supply Period, but only to the extent that such reduction arises from rejection of such Participant Resource under PREPA's supplementary screening and review. A reduction of the Guaranteed Capability pursuant to this paragraph (b) of this Section 4.4 shall not be considered a failure by SELLER to meet its Performance Guarantees.
- c. SELLER shall have the right to increase the Guaranteed Capability of the Participant Resources during any Agreement Year with PREPA's prior approval; provided that (i) such increase shall not exceed twenty percent (20%) of the applicable Guaranteed Capability during the immediately preceding Agreement Year, (ii) such increase shall not become effective until PREPA obtains PREB's approval thereof (if required), and (iii) to the extent that such increase will result in a Guaranteed Capability of at least 100 MW, as a condition precedent to the grant of approval by PREPA either:
 - 1. SELLER shall provide the Source Code to PREPA in a form and method reasonably satisfactory to PREPA; or
 - 2. the Parties shall enter into one or more Source Code Escrow Agreement(s), and SELLER shall place the Source Code into escrow, to ensure that, if an Insolvency Event or Default by SELLER occurs, then PREPA shall have the right to obtain promptly from the Source Code Escrow Agent a copy of the Source Code and any updates thereto for the purposes of ensuring the continued operation of the VPP.

- d. If a Participant violates any Applicable Law, SELLER shall take all appropriate action against a Participant, including if necessary, disenrollment of a Participant and termination of the applicable Participant Service Agreement.

4.5 Co-Branding; Use of PREPA's Trademarks

In connection with SELLER's provision of the Grid Services and subject to the terms and conditions related to SELLER's use of PREPA's (and any T&D Operator's) name(s), trademarks, and logos (collectively "**PREPA Trademarks**") set forth in the Trademark License Agreement, SELLER shall co-brand certain media using the PREPA Trademarks in accordance with the following requirements:

- a. SELLER shall co-brand specific marketing material created by SELLER in relation to this Agreement and each Participant Service Agreement with a PREPA Trademark that PREPA as approved by PREPA in writing which approval PREPA shall not unreasonably withhold. If SELLER makes any changes, modifications or revisions to such approved marketing materials, then SELLER shall request additional prior approval from PREPA in accordance with this Section 4.5.
- b. SELLER shall not use PREPA Trademarks either as a standalone or as part of a co-branding effort on any materials other than as described in this Section 4.5. Without limiting the generality of the foregoing sentence, SELLER shall ensure that none of its employees' uniforms, equipment, or vehicles use PREPA Trademarks.
- c. SELLER shall not change any co-branded materials in paragraph (a) of this Section 4.5 (i) in a way that would degrade, detract from or interfere with PREPA's branding, or (ii) to introduce any new third party branding on such materials.

If requested by PREPA, SELLER shall enter into a separate and substantially similar Trademark License Agreement with a T&D Operator.

4.6 Protection and Control Equipment

- a. SELLER shall, at no cost to PREPA, ensure the proper construction, configuration, securitization, operation, and maintenance of all equipment related to the GSDS, including protection and control equipment, internal breakers, relays, switches, sensors, meters and other monitoring devices and synchronizing equipment installed by or for each Participant (collectively, the "**Protection and Control Equipment**") to ensure the standard of reliability, quality, and safety as required by this Agreement, Prudent Utility Practices, the Operating Characteristics, Permits, Applicable Laws, Applicable Standards, and the MTRs.
- b. SELLER shall respond promptly to all requests by Participants, whether communicated directly to SELLER or whether communicated to PREPA, for repairs and maintenance.
- c. PREPA shall have the right, but not the obligation, to inspect and approve the installation and setting of Protection and Control Equipment at any time during the progress of installation, setting, and testing. PREPA may elect to inform SELLER of any problem PREPA observes and any recommendations it has for correcting problems with the Protection and Control Equipment or its settings, and SELLER shall address such problems to the reasonable satisfaction of PREPA.

- d. PREPA's inspection and approval of any Protection and Control Equipment and its settings, or PREPA's reporting and recommendations to SELLER regarding such inspections shall not be considered as an endorsement by PREPA of the design of any Protection and Control Equipment or device settings, as a warranty of the safety, durability, or reliability of said Protection and Control Equipment or device settings, or as a waiver of any of PREPA's rights under this Agreement. PREPA's failure to exercise its rights under paragraph (c) of this Section 4.6 shall not constitute a waiver by PREPA of, or otherwise release SELLER from, any provision of this Agreement.
- e. The Parties shall cooperate in good faith in agreeing to the general design standards for any Protection and Control Equipment and device settings.
- f. Within a reasonable period of time after SELLER's receipt of the comments referred to in paragraph (b) of this Section 4.6 or notification by PREPA of problems related to SELLER's performance of its obligations under paragraph (c) of this Section 4.6, but no later than ninety (90) Days after such receipt or notification (unless such condition is causing a safety hazard or damage to the Grid System or the facilities of any of PREPA's customers, in which event the correction must be made as soon as practicable by SELLER), SELLER shall implement PREPA's proposals. If SELLER disagrees with PREPA's proposals, the Parties shall resolve such Dispute in accordance with Section 21.11 (*Dispute Resolution*).

4.7 GSDS Modifications

From and after the Initial Integration Date, SELLER shall not carry out any modifications to the GSDS that will, or may reasonably be expected to, impair the GSDS' compliance with the MTRs, alter its Operating Characteristics or expand or limit its ability to provide the Grid Services to PREPA on the contemplated Approved Design, in each case without PREPA's prior written consent. The Parties acknowledge that this Section 4.7 does not restrict SELLER's performance of routine maintenance or technology upgrades required to ensure safe and reliable operation or regular replacement of equipment to maintain the performance of the GSDS in accordance with this Agreement and the Approved Design.

4.8 Intellectual Property Rights

During the performance of its obligations under this Agreement, SELLER undertakes not to use or cause others to use any process, program, software, design, device, or material that infringes on the Intellectual Property Rights of a third party.

5. **INTEGRATION, TESTING & COMPLETION**

5.1 Scheduling Integration

SELLER shall notify PREPA in writing of the proposed Initial Integration Date (the "**Proposed Initial Integration Date**") and the start-up and testing schedule for the GSDS no later than ninety (90) Days prior to the forecasted Commercial Operation Date. SELLER shall have the right to postpone or accelerate such date with at least fourteen (14) Days' advance written notice to PREPA.

5.2 Initial Integration

SELLER shall not deploy the GSDS without PREPA's prior approval, which approval PREPA shall not unreasonably withhold or delay. Subject to SELLER's compliance with this Agreement, PREPA agrees to allow the GSDS to connect with the DERMS and for data exchanges between the GSDS and the DERMS to occur in accordance with the terms of this Agreement from the Initial Integration Date. PREPA shall have the right to have a representative present to witness the integration process from and after the Initial Integration Date.

5.3 Initial Performance Tests

- a. On or promptly after the Initial Integration Date, SELLER shall conduct the initial Performance Tests on the GSDS to, among other things, (i) verify and validate that the exchange of data occurs reliably and consistently and that the GSDS and the DERMS properly produce and consume the data and data files, (ii) demonstrate the controllability of the Capability by SELLER via the operable communications, (iii) verify that the Capability of the GSDS to make available each of the Grid Services that meet or exceed the Guaranteed Capability for such service in respect of the first Agreement Year and (iv) verify that the GSDS complies with the MTRS and criteria set out in the Testing Protocol, and the provisions of paragraphs (b) and (c) of Section 6.8 (*Supply Period Performance Tests*) shall apply *mutatis mutandis* to such tests (the “**Initial Performance Tests**”).
- b. SELLER warrants that the Initial Performance Tests shall establish that the Capability of the GSDS to make available the Grid Services in the first Agreement Year will meet or exceed the Guaranteed Capability for such year in respect of each such service. If the Initial Performance Tests establish that the Capability of the GSDS to make available the Grid Services falls below the Guaranteed Capability, then prior to the Long-Stop Date, SELLER may, at its election:
 1. take corrective actions to increase the Capability of the GSDS to make available the Grid Services prior to the Long-Stop Date until the Initial Performance Tests demonstrate that the Capability of the Grid Services meets or exceeds the Guaranteed Capability; or
 2. if the Capability of the Grid Services for the first Agreement Year does not meet or exceed at least eighty percent (80%) of the Guaranteed Capability for such year (the “**Minimum Acceptance Capability**”), then credit PREPA's account in the amount of (i) for Demand Build Service, \$200 per kW for each kW of difference between the Guaranteed Capability and actual Capability of the Demand Build Service, and (ii) for Demand Reduction Service, \$200 per kW for each kW of difference between the Guaranteed Capability and actual Capability of the Demand Reduction Service, in each case for such Agreement Year as liquidated damages and a payment credit that PREPA can use to offset future payments under this Agreement (the “**Capability Shortfall Liquidated Damages**”), which Capability Shortfall Liquidated Damages shall be PREPA's sole and exclusive remedy for a failure of SELLER to achieve the Minimum Acceptance Capability; provided that if, by the Long-Stop Date, such corrective actions result in the Capability meeting or exceeding the Minimum Acceptance Capability but not the Guaranteed Capability for the first Agreement Year, then SELLER shall credit PREPA's account for the Capability Shortfall Liquidated Damages. The Parties acknowledge and agree that the Capability Shortfall Liquidated Damages represent a fair and

reasonable estimate of the loss that PREPA will suffer if such a Capability shortfall occurs, and accordingly, SELLER hereby waives its right to dispute the enforceability of this paragraph (b) of this Section 5.3.

- c. If the Initial Performance Tests establish that the GSDS fails to comply with the Other Minimum Acceptance Criteria, then SELLER may, at its election:
 - 1. take corrective actions to improve the performance of the GSDS; and
 - 2. repeat the Initial Performance Tests to establish that the GSDS satisfies the MTRs and criteria set out in the Testing Protocol,in each case, prior to the Long-Stop Date.
- d. Subject to paragraphs (b) and (c) of this Section 5.3, if the Initial Performance Tests do not establish that the GSDS meets both the Minimum Acceptance Capability and Other Minimum Acceptance Criteria, then PREPA shall have the right to reject the results of such tests.
- e. Following the successful completion of the Initial Performance Tests (or crediting of Capability Shortfall Liquidated Damages, as applicable) and satisfaction of all other criteria to achieve Commercial Operation, SELLER shall notify PREPA in writing of the test results and the Commercial Operation Date by issuing a certificate thereof in the form set forth in Appendix U (*Form of Commercial Operation Date Certificate*). PREPA shall confirm and countersign such notification, which confirmation PREPA shall not unreasonably withhold or delay, and if the demonstrated Capability falls below the Guaranteed Capability, then subject to paragraphs (b) and (c) of this Section 5.3, the Parties shall amend this Agreement to reduce the Guaranteed Capability accordingly.

6. OPERATION OF THE GSDS

6.1 General

SELLER shall:

- a. during each hour of each Day of each Billing Period:
 - 1. continuously operate the GSDS for Dispatch of the Grid Services without interruption as required by a Dispatch Notice;
 - 2. make Demand Reduction Service available to PREPA up to the applicable Guaranteed Capability for such service; and
 - 3. make Demand Build Service available to PREPA up to the applicable Guaranteed Capability for such service,in each case (as applicable to such hour) other than during the occurrence of any Permitted Outage Hour;
- b. from the Initial Integration Date until the expiry of the Supply Period:

1. operate, test, maintain, repair and, if necessary, replace the GSDS (or any portion thereof) in accordance with (i) the Operating Procedures, (ii) the Testing Protocol, (iii) the MTRs, (iv) Dispatch Notices, (v) Prudent Utility Practices, (vi) this Agreement, and (vii) Applicable Law and Applicable Standards, and subject to the Operating Characteristics;
 2. manage the enrollment and disenrollment of Participants and enablement and disablement of Participant Resources in accordance with (i) the Operating Procedures, (ii) the Testing Protocol, (iii) the MTRs, (iv) Prudent Utility Practices, (v) this Agreement, and (vi) Applicable Law and Applicable Standards, and subject to the Operating Characteristics; and
 3. ensure that any contractor that SELLER engages for the operation, testing, maintenance, or repair of the GSDS qualifies as a Qualified Operator; and
- c. during the Supply Period, ensure that the GSDS satisfies the Performance Guarantees.

6.2 Scheduled Maintenance

- a. SELLER shall (i) ensure that no more than [●]¹⁷ hours of Scheduled Outages or Scheduled Deratings occur per Agreement Year, (ii) plan its Scheduled Maintenance Program to occur during the hours of 23:00 – 4:00 (Puerto Rico time), as practicable, to minimize interruptions or reductions to the provision of Grid Services, and (iii) cooperate with PREPA to coordinate the Scheduled Outages and Scheduled Deratings with Grid System needs. SELLER shall utilize Scheduled Outages and Scheduled Deratings to implement updates to the GSDS, including, for example, bug fixes, patches, error corrections, and minor enhancements (collectively, “**Minor Updates**”) or new versions of the GSDS that include significant hardware changes or enhancements in the features, performance or functionality of the GSDS (collectively, “**Major Updates**”).
- b. SELLER shall, at least sixty (60) Days prior to the Commercial Operation Date, submit a written schedule of Scheduled Outages and Scheduled Deratings (“**Scheduled Maintenance Program**”) for the remaining portion of the first Year of the GSDS’ operations and, if the Commercial Operation Date occurs after September 1, for the following Year, setting forth the proposed Scheduled Outages and Scheduled Deratings periods. Thereafter, SELLER shall submit to PREPA, in writing, by September 1 of each Year, its proposed Scheduled Maintenance Program for the next Year.
- c. SELLER shall provide the following information for each proposed Scheduled Outage and Scheduled Derating:
 1. description of the work that SELLER will perform during such event;
 2. approximate start date and time;
 3. approximate end date and time;
 4. approximate time to restore the GSDS to full operation; and

¹⁷ Note: Resource specific. To discuss during Phase III.

5. for Scheduled Deratings, Grid Services available during such event.
- d. PREPA shall have thirty (30) Days from receipt of the proposed Scheduled Maintenance Program to notify SELLER whether it accepts the program or requires a rescheduling (and the period during which SELLER can perform such maintenance). If PREPA fails to respond during such period, then the Scheduled Maintenance Program shall be deemed accepted.
- e. SELLER shall use reasonable efforts to accommodate any request from PREPA to reschedule the Scheduled Maintenance Program. If SELLER cannot accommodate PREPA's request to reschedule the Scheduled Maintenance Program, then SELLER shall provide reasons therefor and alternative dates for the Scheduled Maintenance Program. PREPA shall select between the alternative dates proposed by SELLER to finalize the Scheduled Maintenance Program.
- f. SELLER shall notify PREPA at least seven (7) Days prior to the start of any Scheduled Outage or Scheduled Derating and shall maintain close coordination with PREPA as such event approaches.
- g. If a condition occurs that impacts the Scheduled Maintenance Program, then SELLER shall promptly, on becoming aware of such condition, notify PREPA of such change (including an estimate of the length of such Scheduled Outage or Scheduled Derating) and request PREPA's approval to revise the Scheduled Maintenance Program, which approval PREPA shall not unreasonably withhold or delay. SELLER shall bear any costs incurred by PREPA for revisions made less than sixty (60) Days before the start date of a Scheduled Outage or Scheduled Derating or that results in such event being scheduled less than sixty (60) Days before the start of the revised Scheduled Outage or Scheduled Derating, other than in cases of Force Majeure or a PREPA Risk Event.
- h. Only those Outages or Deratings that (i) meet the submittal timelines in paragraph (b) of this Section 6.2 and (ii) PREPA approves in accordance with this Section 6.2 shall constitute a Scheduled Outage or Scheduled Derating, respectively.

6.3 Non-Scheduled Outages & Deratings

- a. If SELLER determines that it requires a Non-Scheduled Outage or Non-Scheduled Derating, then SELLER shall coordinate the timing of such Non-Scheduled Outage or Non-Scheduled Derating, as applicable, with PREPA.
- b. SELLER shall use commercially reasonable efforts to notify PREPA of any Non-Scheduled Outage or Non-Scheduled Derating no later than 17:00 hours (Puerto Rico time) on the third (3rd) Business Day prior to the Day that such Non-Scheduled Outage or Non-Scheduled Derating will occur. In the event of an unexpected Non-Scheduled Outage or Non-Scheduled Derating, SELLER shall provide notice to PREPA by telephone or email as soon as reasonably practicable and, in all cases other than Force Majeure, no more than fifteen (15) minutes following the occurrence of such Non-Scheduled Outage or Non-Scheduled Derating. Thereafter, SELLER shall, as soon as reasonably practicable, provide PREPA with a notice that includes (i) the event or condition, (ii) the date and time of such event or condition, (iii) the expected end date and time of such event or condition, (iv) for Non-Scheduled Deratings, the Grid Services available during such event or condition, and (v) any other information reasonably requested by PREPA.

- c. Notwithstanding the delivery of a notice of a Non-Scheduled Outage or coordination with PREPA to resolve such event, the GSDS shall be deemed unavailable for the duration of a Non-Scheduled Outage as applicable to the calculation of GSDS Availability.

6.4 Emergencies

- a. No later than the Initial Integration Date, each Party shall cooperate with the other in establishing written Emergency plans, including (i) recovery from a local or widespread electrical blackout, (ii) voltage reduction to effect load curtailment, (iii) policies for the delivery by PREPA to SELLER of prompt written notice of the occurrence of all Emergency and follow-up, and (iv) frequent status reports on any ongoing Emergency.
- b. SELLER shall (i) make technical information and data available to PREPA concerning start-up times and black-start capabilities, (ii) promptly inform PREPA of any Emergency at or other material issues with the GSDS, and (iii) if requested by PREPA, submit a remediation program setting out the actions SELLER shall take to mitigate the Emergency or other material issues to the GSDS, and (iv) abide by such program.
- c. If the GSDS has a Scheduled Outage, Non-Scheduled Outage, Scheduled Derating or Non-Scheduled Derating and such event occurs or would occur coincident with an Emergency, then PREPA may request that SELLER makes commercially reasonable efforts, consistent with Prudent Utility Practices, to reschedule the Scheduled Outage, Non-Scheduled Outage, Scheduled Derating or Non-Scheduled Derating, as applicable, or if such event has begun, to expedite the completion thereof.

6.5 Restoration of the GSDS

Following any Emergency, Outage, or Derating, SELLER shall provide as much advance notice as reasonably practicable to PREPA of the date and time that it will bring the GSDS, or any part thereof, back online, provided that SELLER shall furnish at least two (2) Days' prior notice for restoration from a Scheduled Outage or Scheduled Derating and at least two (2) hours' notice for restoration from a Non-Scheduled Outage, Non-Scheduled Derating or Emergency, in each case, in accordance with the Operating Procedures. PREPA shall have the right to rely on such notice for purposes of delivering Dispatch Notices to SELLER.

6.6 Communication

- a. SELLER shall provide, install, commission, maintain, repair, and replace (as necessary), at its own cost and expense, such communication facilities as required to integrate the GSDS with the DERMS. [SELLER shall describe such communication facilities in its Proposed Design.]
- b. PREPA shall have the right to approve items provided by SELLER in accordance with this Section 6.6, which approval PREPA shall not unreasonably withhold or delay.

6.7 Record Keeping

- a. Each Party shall keep complete and accurate books, accounts, records, and other data required for the proper administration of all transactions with respect to all matters relating to this Agreement.

- b. SELLER shall maintain such records and data for a minimum of [five (5)] Years after the preparation of such records or data and for any additional length of time required by regulatory agencies with jurisdiction over each of the Parties; provided that neither Party shall dispose of or destroy any records without thirty (30) Days' prior written notice to the other Party. Within ten (10) Days after receipt of the notice of intention to destroy or dispose, the other Party shall have the right to require the notifying Party in writing to deliver to it certain records at the requesting Party's sole cost and expense. No more than ten (10) Days from receipt of such notice, the Party proposing to dispose of or destroy such records shall deliver any records requested by the requesting Party.
- c. SELLER shall maintain, in electronic copy, (i) operation and maintenance manuals and other detailed technical documentation for design, engineering, deployment, testing, commissioning, operation, maintenance, and repair of the GSDS, and (ii) an accurate and up-to-date operating log with records of (1) real power available for each hour, (2) Outages, Deratings or Emergencies, and GSDS Availability, (3) any unusual conditions found during inspections, (4) any safety incident, accident or other occurrence at the Participant Site that results in injury to persons or damage to property, (5) electrical characteristics of the GSDS and settings or adjustments thereof, (6) maintenance performance, (7) all material data in relation to Performance Tests and other testing, Performance Guarantees, metering, invoicing, payments, Claims, reimbursements, credits and any other charges to PREPA, and (8) any other significant events related to the operation of the GSDS.
- d. 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 books, accounts, records, and other data of the other Party for the purpose of confirming the proper administration of this Agreement any time during the period that this Agreement requires the records to be maintained.

6.8 Supply Period Performance Tests

- a. During each Agreement Year of the Supply Period, PREPA shall have the right to request SELLER to perform up to [two (2)] Performance Tests in accordance with the Testing Protocol. PREPA's decision to forgo any such Performance Test is not a waiver of PREPA's right to require any subsequent Performance Tests. PREPA may also request SELLER to perform a Performance Test following SELLER's completion of a Major Updates or to ensure the resolution of a Priority 1 Level or Priority 2 Level problem report.
- b. SELLER shall submit to PREPA, for evaluation and approval, all Performance Tests reports certified by an experienced and duly qualified independent company with specialized expertise in [network communications equipment and software] evidencing that the GSDS satisfies each of the MTRs and the Performance Guarantees. PREPA shall have the right to approve such company, which approval PREPA shall not unreasonably withhold or delay. For the avoidance of doubt, SELLER acknowledges and agrees that PREPA will not accept manufacturers' test reports as evidence of compliance with this requirement.
- c. SELLER shall coordinate with, and the Performance Tests shall be witnessed by, PREPA's personnel and the Consulting Technical Expert. SELLER shall provide PREPA with at least thirty (30) Days' advance written notice of all Performance Tests, field tests, or other matters that PREPA may witness hereunder. The Parties shall cooperate in good faith to determine mutually acceptable dates for all Performance Tests.

6.9 Operational Forecast

SELLER shall provide to PREPA, in good faith but solely for PREPA's information, the Operational Forecast which, at the time they are notified, shall be SELLER's estimate of the Grid Services it expects to make available to PREPA under this Agreement for the relevant period:

- a. at least three (3) Months prior to the start of each Agreement Year, SELLER's Operational Forecast of its expected Capability for each Month of the following Agreement Year;
- b. at least two (2) Months prior to the start of the Month in which the Commercial Operation Date is then expected by SELLER to occur and at least two (2) Months prior to the start of each Month thereafter, SELLER's Operational Forecast of its expected daily Capability for each Day of the Month in question; and
- c. on or before 12:00 hours on the Friday prior to the start of the Week in which the Commercial Operation Date is then expected by Seller to occur, and at least on or before 12:00 hours on each Friday prior to the start of each Week thereafter, SELLER's Operational Forecast of its expected daily Capability for each remaining Day of the Month in question.

6.10 Quarterly Reports

- a. During the Supply Period, SELLER shall prepare and deliver to PREPA a report by the tenth (10th) Day of the first Month of each Quarter, describing the operation and maintenance activities performed in respect of the GSDS during the previous Quarter, including the occurrence of any:

1. Scheduled Outages or Scheduled Deratings;
2. Non-Scheduled Outage or Non-Scheduled Derating; and
3. Emergencies;

which complies with the requirements set forth in Appendix DD (*Reporting*).

- b. In addition, during the Supply Period, SELLER shall track and report each Quarter on the following items:

1. All problem resolution requests submitted by PREPA and their resolution.
2. Modifications to the GSDS, such as Major Updates, Minor Updates, and other modifications that did not require downtime but resulted in changes to the GSDS, including software, firmware, hardware, and communication protocols.
3. Errors or inconsistencies in measurements and SELLER's corrective actions to resolve such errors to metering equipment, as specified in Appendix X (*Metering*).

6.11 Customer Service

- a. Throughout the Supply Period, SELLER shall (i) ensure that Participants can contact SELLER (or its representative(s)) during [regular business hours] to direct questions and

report complaints or emergencies and (ii) provide customer service to its Participants in accordance with Appendix AA (*Customer Service Requirements*).

- b. PREPA may, but has no obligation to, conduct surveys of Participants regarding engagement, use, or satisfaction with SELLER and the GSDS during or after the Supply Period. PREPA has no obligation to share with SELLER any information about the survey, its results or the survey analysis.
- c. SELLER shall inform PREPA of any survey of Participants that it conducts, including the terms and content of each survey, distribution information, and complete survey results together with any analysis thereof.

6.12 Adverse Physical Impact

If malfunction arises in relation to the operation of the GSDS that has an adverse physical impact on the Grid System, the equipment of PREPA's customers or other suppliers, or which PREPA reasonably determines presents an immediate danger to such personnel or equipment, SELLER shall initiate and diligently pursue reasonable action to rectify such malfunction within three (3) Days of receipt by SELLER of a demand from PREPA.

6.13 Information Security

- a. SELLER shall maintain and enforce safety and security procedures to safeguard Confidential Information in its possession, including any Confidential Information that SELLER provides to any contractors, consultants, and other third parties retained by SELLER in connection with its performance of this Agreement. SELLER warrants that it shall (i) use NIST industry best practices for physical and systems security measures to prevent destruction, loss, alteration or unauthorized access to, use of, or tampering with, the GSDS, the DERMS, software, and Confidential Information, including to protect the confidentiality and integrity of any of Confidential Information, operation of PREPA's systems, and to prevent viruses and Malware from being placed in any software provided to PREPA, on SELLER's or PREPA's website, or in SELLER's or PREPA's programming; and (ii) use NIST industry best practices for physical security and precautionary measures to prevent unauthorized access or damage to facilities, equipment, meters, sensors and other monitoring devices under its control or the control of its contractors, consultants, and other third parties retained by SELLER in connection with its performance of this Agreement, including to protect the confidentiality and integrity of any Confidential Information as well as the operation of PREPA's systems. SELLER shall, at a minimum, protect Confidential Information and provide the standard of care consistent with the then-current NIST cybersecurity requirements and, in any case, no less robust than the standard of care implemented by SELLER in respect of its own Confidential Information.
- b. No later than the Commercial Operation Date and on each anniversary thereof during the Supply Period, SELLER shall deliver to PREPA evidence of SELLER's information security safeguards, including current ISO27001 reports, SSAE 16 SOC2 Type 2 reports, annual third-party penetration tests, and any other reports of a similar nature, prepared by SELLER during previous the Agreement Year. If a report identifies any critical or high-risk findings, SELLER shall, within ten (10) Days of each such report's completion and at no cost to PREPA, mitigate all critical and high-risk findings and provide supporting evidence of such mitigation to PREPA.

- c. SELLER shall use commercially reasonable efforts to prevent Malware from accessing any aspect of the Grid Services, the GSDS, the DERMS or any other information systems, operating environments and processes used or relied upon by SELLER to provide the Grid Services, including the information, data and other materials delivered by or on behalf of SELLER to PREPA, the customers of PREPA, the Participants or any third party providers (collectively, the “**Environment**”). Throughout the Term, SELLER shall implement improvements to, and upgrades of, its Malware prevention and correction programs and processes consistent with the then-current NIST technology industry’s standards and, in any case, no less robust than the programs and processes implemented by SELLER in respect of its own information systems. If Malware enters the Environment, SELLER shall notify PREPA as soon as it becomes aware of such presence and take immediate action, at SELLER’s cost, to eliminate and remediate the Malware effects. SELLER shall regularly, and otherwise at the request of PREPA, provide sufficient evidence of its efforts to continuously monitor and evaluate the effectiveness of SELLER’s information security safeguards. SELLER shall require that its subcontractors also comply with the obligations of SELLER under this paragraph (c) of this Section 6.13.
- d. PREPA shall advise SELLER of its security procedures with respect to Confidential Information, including information regarding the GSDS, Participant Data and any other Confidential Information provided by SELLER to PREPA. The Parties shall remove all Confidential Information from any media taken out of service and shall destroy or securely erase such media in accordance with PREPA’s security requirements and otherwise in a manner designed to protect against unauthorized access to or use of any Confidential Information. Prior to the Commercial Operation Date, SELLER shall develop and submit to PREPA a plan detailing SELLER’s procedures for such removal, destruction, and erasure.
- e. If either Party discovers or becomes aware of a breach or potential breach of security related to PREPA Data, Participant Data or Confidential Information in its possession or under its control, such Party (the “**Breached Party**”) shall promptly (i) notify the other Party of such potential, suspected, or actual security breach, regardless of whether such breach has compromised any Confidential Information, (ii) investigate and promptly remediate the effects of the breach, regardless of whether the Breached Party caused the breach, (iii) cooperate with the other Party with respect to any such breach or unauthorized access or use, (iv) comply with all applicable privacy and data protection Laws governing PREPA’s or any other individual’s or entity’s data, and (v) to the extent that the Breached Party caused such breach, provide the other Party with reasonable assurances satisfactory to that such breach or potential breach shall not reoccur. Each Party shall preserve and provide to the other Party any forensic evidence obtained as a result of its investigation and remediation of such a breach. The Breached Party shall fund all costs associated with the remediation of any such breach. If such breach relates to any Personally Identifiable Information, notification of individuals affected will be at the Parties’ discretion and in discussion in accordance with Applicable Law and at the sole expense of the Breached Party.
- f. Except as otherwise provided in this Agreement, within ten (10) Business Days after any request by PREPA during the Term and upon the termination of this Agreement, SELLER shall destroy, delete, and erase all PREPA Data and Participant Data in its possession by using industry-standard data elimination methods used to prevent unauthorized disclosure of information, and for Personally Identifiable Information, such methods shall be

consistent with [●].¹⁸ A duly authorized representative of SELLER shall certify in writing that all PREPA Data and Participant Data has been destroyed, deleted, and erased upon completion of such data elimination and immediately forward such certification to PREPA for its records. Prior to the Commercial Operation Date, SELLER shall develop and submit to PREPA a plan detailing SELLER's procedures for such removal, destruction, and erasure. Notwithstanding the foregoing, SELLER may retain system-wide historical archived backups for disaster recovery/business continuity purposes. SELLER shall delete any PREPA Data and Participant Data found in the backups following the expiry of SELLER's retention period for such backups.

- g. SELLER agrees to implement (to the extent not already implemented) and maintain during the Supply Period a business continuity plan, a disaster recovery plan, and an incident response plan (collectively the "**Business Continuity Plans**") consistent with the level of risk associated with the work under this Agreement. SELLER may utilize a Business Continuity Plan it already has in existence prior to the execution of this Agreement. SELLER shall provide the Business Continuity Plans to PREPA on or before the Commercial Operation Date. SELLER may, at its own election, update the Business Continuity Plans during the Supply Period to reflect lessons learned from actual recovery events and as required due to significant changes in risk or business or regulatory environment. PREPA may review the Business Continuity Plans at any time during the Supply Period, and SELLER shall make such Business Continuity Plans available to PREPA promptly upon request.
- h. SELLER shall cause its employees and any contractors, consultants, and other third parties retained by SELLER in connection with its performance of this Agreement, to comply, at no cost to PREPA, with all Applicable Laws related to the obligations assumed by SELLER under this Agreement, including those related to data privacy, data security, and the transmission of technical or personal data.

6.14 Status Meeting

At least once every Year and no later than thirty (30) Days' from SELLER's receipt of a request from PREPA, SELLER shall meet with representatives of PREPA to review the status of the GSIDS program, including Participant satisfaction and SELLER's compliance with this Agreement. SELLER shall also explain the operation of the GSIDS and provide such training and documentation as PREPA may require to understand and operate the Grid System efficiently and safely with the incorporation of the GSIDS.

7. **DISPATCHING OBLIGATIONS**

7.1 Dispatching

- a. Without prejudice to the requirements of Appendix F (*Compensation*), PREPA shall have the right, exclusively by providing Dispatch Notices to SELLER in accordance with the Operating Procedures, to direct SELLER to Dispatch the Capabilities of the GSIDS seven (7) Days per Week and twenty-four (24) hours per Day (including holidays) other than during any Permitted Outage Hours and in accordance with paragraph (e) of Section 3 of Appendix H (*Grid Services*), from the Initial Integration Date until the expiry of the Supply Period, and such right shall include the right to require SELLER to (i) curtail, reduce or

¹⁸ Note: Include reference to any data retention laws in Puerto Rico.

increase the Grid Services, and (ii) disconnect or connect the GSDS, in each case in accordance with:

1. Prudent Utility Practices (such as reasons affecting safety margins or reliability levels in the Grid System, power quality problems as well as outages and disconnections (“vías libres”) of the transmission center or line due to disturbances, maintenance, improvements, and Emergencies);
2. the requirements of Applicable Law and Permits;
3. the requirement of maintaining a State of Charge in each Participant Energy Storage Resource as set out in the [Operating Procedures][Operating Characteristics]; and
4. the Operating Procedures¹⁹;

in each case subject to the Operating Characteristics and the Scheduled Maintenance Program.

- b. Subject to paragraph (c) of this Section 7.1, each Dispatch Notice shall remain effective for the duration of the Dispatch period specified therein unless and until PREPA modifies such Dispatch Notice by providing SELLER with an updated Dispatch Notice. If PREPA cannot issue an electronic submittal for reasons beyond PREPA’s control, PREPA may provide Dispatch Notices by (in order of preference, unless the Parties agree to a different order) electronic mail, or telephonically to SELLER’s personnel designated in the Operating Procedures to receive such communications.
- c. If PREPA submits a Dispatch Notice that directs action which does not conform with the Operating Characteristics, then SELLER shall promptly notify PREPA of the non-conformity and PREPA shall modify its Dispatch Notice to conform to the Operating Characteristics. Until PREPA submits a modified Dispatch Notice, SELLER shall, as applicable, Dispatch the GSDS in accordance with the Operational Forecast, and the GSDS will not be deemed unavailable, but only to the extent the GSDS was otherwise available but could not be dispatched because of its inability to operate outside of the Operating Characteristics.

7.2 Curtailment for Breach

Notwithstanding Section 7.1 (*Dispatching*), PREPA shall have the additional right during the Supply Period to curtail or modify the Dispatch of or disconnect the GSDS, and SELLER shall have no right to any Claim for compensation or otherwise, when SELLER fails to:

- a. operate the GSDS in accordance with this Agreement or the MTRs; provided that (i) for any modifications to the MTRs under Section 4.2 (*Modifications*), SELLER has had a reasonable period of time to comply with such modification pursuant to paragraph (e) of Section 4.2 (*Modifications*); or

¹⁹ Note: The Operating Procedures and Operating Characteristics will establish limitations on discharge of Energy Storage Resources and similar dispatch restrictions.

- b. successfully complete the Seller Performance Tests requested by PREPA under paragraph (a) of Section 6.8 (*Supply Period Performance Tests*) with reasonable prior notice.

For the avoidance of doubt, any curtailment, reduction, or disconnection shall end at the instruction of PREPA, which PREPA shall give promptly, and in any event no later than forty-eight (48) hours, after SELLER cures such non-compliance.

8. METERING AND DATA

8.1 Meter Ownership & Installation

- a. SELLER shall:
 - 1. own or lease, install and maintain any meters and metering equipment located at the Participant Connection Point for each Participant Resource (other than those revenue or demand meters installed or required by PREPA) in accordance with Appendix X (*Metering*) and ensure that such SELLER-installed meters and equipment conform to the electrical service, metering, and tariff requirements applicable to such Participant Resource. SELLER shall also (i) ensure that the meters and metering equipment for each Participant Resource meet PREPA's specifications, (ii) locate such meter and metering equipment behind and as reasonably close as practicable to any PREPA-owned meter previously or to be installed, and (iii) obtain PREPA's approval of such SELLER-installed meters and equipment, which approval PREPA shall not unreasonably withhold, and which decision PREPA shall inform SELLER of no later than ten (10) Days after SELLER's notice to PREPA regarding the installation of the proposed meters; and
 - 2. ensure that each Participant has an installed and operational meter compliant with Appendix X (*Metering*) with appropriate meter communication equipment prior to the inclusion of the Participant Resource in the GSDS.
- b. In addition to the requirements set forth in paragraph (a) of this Section 8.1, each Participant shall have a PREPA-approved meter, capable of recording usage in 5-minute intervals and being read remotely by a remote meter reading system approved by PREPA. If a Participant does not have a meter that meets such requirements, SELLER shall supply and install such meter at SELLER's or Participant's expense.
- c. SELLER shall provide PREPA with any telemetry data for a Participant Resource required by Appendix X (*Metering*) that PREPA's meter does not provide.
- d. Parties shall comply with the provisions of Appendix X (*Metering*).

8.2 Data and Materials

- a. Each Party (i) shall own all data prepared or collected by such Party, which such Party delivers to the other Party in connection with the Grid System or its operations, and (ii) grants to the other Party a limited, non-exclusive, non-transferable, non-sublicensable, royalty-free, irrevocable license to use such Party's data for purposes of administering, and performing under, this Agreement; provided, however, that, together with the grant by SELLER of the foregoing license to PREPA, SELLER also grants an identical license to LUMA. The Party licensee shall not, and PREPA shall ensure that LUMA does not (i) use

such data other than in accordance with its performance under this Agreement, (ii) disclose, sell, assign, lease, or otherwise provide to third parties such data, or (iii) commercially exploit such data. The Parties acknowledge and agree that the availability of financial compensation shall not preclude injunctive relief to prevent disclosure of such data.

- b. Unless otherwise provided in this Agreement, each Party (i) shall own all drawings, specifications, technical information, reports, studies, documents, materials, and business information of any type whatsoever (the “**Materials**”) provided by it to the other Party, or prepared or developed by it for use by the other Party, in the performance of this Agreement, and (ii) grants to the other Party a limited, non-exclusive, non-transferable, royalty-free, irrevocable license to use such Materials in the performance of this Agreement provided, however, that, together with the grant by SELLER of the foregoing license to PREPA, SELLER also grants an identical license to LUMA. Any restrictions or claims to ownership or rights included on or within the Materials delivered by a Party to the other Party that conflict or are inconsistent with this paragraph (b) of this Section 8.2 are null and void.

9. SALE & PURCHASE

9.1 General

- a. SELLER agrees to aggregate, provide and sell Grid Services exclusively to PREPA in accordance with this Agreement.
- b. PREPA agrees to pay for the Grid Services through Monthly Payments determined in accordance with Appendix F (*Compensation*), from the Initial Integration Date until the expiration of the Supply Period, subject to the terms of this Agreement.

9.2 Title & Risk of Loss

For each applicable Participant Resource, good and valid legal title to, and the risk of loss of, the Energy that SELLER makes available to PREPA through the provision of the Grid Services shall transfer from SELLER to PREPA at the Participant Connection Point for such resource. PREPA reserves the right to retain all rights, title, benefits, and other interest in, arising out of or related to, the generation, transmission, distribution, or supply of such Energy that it or any of its Affiliates may realize through its existing or future power generation sources, customer agreements or other projects or improvements to the Grid System.

9.3 Right of Resale

PREPA shall have the right to resell all or any portion of the Energy that SELLER makes available to PREPA through the provision of the Grid Services, and SELLER shall, at no cost to PREPA, take all other reasonable actions from and after the Initial Integration Date to assist PREPA in receiving and reselling the Energy, including submission of any reports or filings with applicable Governmental Authorities.

9.4 Ancillary Services

The Parties acknowledge and agree that PREPA may, from time to time after the Commercial Operation Date, request SELLER to provide PREPA with the Ancillary Services specified in the MTRs by delivering notice thereof to SELLER pursuant to Article 7 (*Dispatching Obligations*).

SELLER shall provide such services in accordance with such request, in partial consideration of the Monthly Payments and for no additional cost.

9.5 Green Credits

If, from and after the Commercial Operation Date, SELLER accrues a right to Green Credits associated with the provision of the Grid Services, or otherwise generated in connection with the operation of the GSDS or aggregation of the Participant Resources, then contemporaneously with the provision of such Grid Services or GSDS operation or aggregation of the Participant Resources, as applicable, and in partial consideration for the Monthly Payments, SELLER shall convey to PREPA, at no additional cost, all such Green Credits. The Parties shall execute all documentation required to confirm the registration of such Green Credits with the North American Renewables Registry or another similar registry acceptable to SELLER and PREPA (the “**Registry**”) and the transfer of such Green Credits as reasonably requested by PREPA in accordance with the rules of the Registry, in each case, at SELLER’s expense. PREPA shall have the sole right to own, market, trade, sell or otherwise transfer such Green Credits available to or in respect of the GSDS to any Person, and any Green Credits that are now available or in the future might become available in respect of the GSDS during the Supply Period shall inure to the benefit of, and remain the property of, PREPA.

10. PAYMENT & BILLINGS

10.1 Invoice for Monthly Payment

- a. On or before the fifteenth (15th) Day following the end of each Billing Period, SELLER shall provide PREPA with a written invoice for the Monthly Payment relating to such Billing Period. Each invoice shall include, as applicable, the Monthly Payment, Green Credits, the Balance, information necessary to determine GSDS’ performance, insurance payments, credits or payments owing to PREPA, and an itemized statement of all other charges under this Agreement, as of such Billing Period.
- b. PREPA shall use reasonable efforts to promptly review each invoice and notify SELLER of any invoicing issues no later than thirty (30) Days after receipt thereof. Upon PREPA’s request, SELLER shall furnish, within seven (7) Days, such further information as PREPA may reasonably request in support of the invoice.
- c. To the extent that an invoice complies with the requirements set forth in this Agreement, PREPA shall remit payment of undisputed amounts owed under such invoice no later than forty-five (45) Days after PREPA’s receipt of such invoice and all required supporting documentation and certifications. SELLER acknowledges and agrees that PREPA may withhold payment (without accruing Interest) beyond such date if and so long as SELLER has failed to provide evidence that it has maintained the insurance policies required by this Agreement.
- d. PREPA will charge all payments that it owes under this Agreement to PREPA’s budget account number [●] and estimates that its costs under this Agreement will not exceed [●]. For the avoidance of doubt, the Parties have set out the expected account number and estimate of costs for informational purposes to satisfy the requirements of the Puerto Rico Controller. This paragraph (d) of this Section 10.1 does not bind the Parties or modify any other provision of this Agreement and in accordance with Section 17.2 (*Tracking Account*).

- e. If agreed or determined that PREPA has underpaid an invoice, then Interest shall accrue on the payments due to SELLER commencing on the Day after the date on which PREPA had the obligation to remit such payment pursuant to paragraph (c) of this Section 10.1 and continue until, but excluding the relevant payment date.
- f. If agreed or determined that PREPA has overpaid an invoice, then PREPA shall have the right to deduct the amount of such overpayment (plus Interest, calculated from the date of such overpayment to its repayment, in cases where the overpayment resulted from amounts stated in SELLER's invoices) from future payments in the immediately following Billing Period(s) until PREPA has received full credit for such overpayment.
- g. If PREPA fails to dispute an invoice prior to the first anniversary of the date on which PREPA received such invoice, then it shall be deemed to have waived its right to later dispute such invoice.

10.2 SELLER Invoice Certification

SELLER shall submit all invoices in the form acceptable to PREPA and shall include in each such invoice the following certification:

No Interest Certification:

"We certify under penalty of nullity that no public servant of PREPA will derive or obtain any benefit or profit of any kind from the contractual relationship, which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the Agreement. The only consideration to be received in exchange for the performance of the grid services provided is the agreed-upon price that has been negotiated with an authorized representative of PREPA. The total amount shown on this invoice is true and correct. The grid services have been rendered, and no payment has been received."

SELLER's Signature

SELLER acknowledges that the above certification constitutes an essential requirement of this Agreement and that PREPA will not process for payment invoices provided without this certification. In order to comply with the certification requirements set forth above, SELLER shall require that its subcontractors also include the certification set forth above in any invoices submitted in connection with Energy or services provided under this Agreement.

10.3 Invoice for Liquidated Damages

- a. If Liquidated Damages accrue under this Agreement or moneys are otherwise due from SELLER to PREPA in accordance with this Agreement, PREPA shall provide SELLER with a written invoice for such Liquidated Damages or amounts, showing the basis for the calculation of the amounts payable by SELLER thereunder. SELLER shall use reasonable efforts to review each invoice and notify SELLER of any invoicing issues within thirty (30) Days after receipt thereof. SELLER shall remit payment of amounts owed under such invoice no later than thirty (30) Days after SELLER's receipt of such invoice (including in the event of a disputed invoice). If SELLER does not pay the full amount of any such invoice when due, any unpaid amount thereof shall bear Interest, from the Day following the due date until, but excluding the relevant payment date.

- b. If SELLER fails to dispute an invoice prior to the first anniversary of the date on which SELLER received such invoice, then it shall be deemed to have waived its right to later dispute such invoice.

10.4 Payment Set-Off

Notwithstanding the payment requirements set forth in this Article 10, either Party shall have the right to set off any amounts due and owing to the other Party pursuant to this Agreement, but which remain unpaid, provided that (i) such amounts are undisputed, have been determined to be owed by a final determination pursuant to Section 21.11 (*Dispute Resolution*), or are explicitly described in this Agreement, and (ii) the Party seeking to exercise the right of set-off has provided the other Party with five (5) Business Days' advance written notice describing in reasonable detail the amounts that it will set off before effecting any such set off.

10.5 Payment Method

A Party shall make payments to the other Party by wire transfer to an account with a bank specified by such Party in writing, which such Party shall notify to the other Party prior to the Closing Date, or with such other banks as may thereafter be specified by a Party in writing at least ten (10) Days prior to the date in which payment becomes due. Either Party may, by written notice to the other Party, change the address to which the notifying Party remits such payments.

10.6 Disputed Invoices

The Parties shall use their reasonable efforts to resolve any Dispute regarding payment of any invoice issued under this Article 10 by amicable negotiation, provided that if the Parties fail to resolve such Dispute by the payment due date, then either Party may refer the Dispute for resolution in accordance with Section 21.11 (*Dispute Resolution*).

11. **LIABILITY**

11.1 General

From and after Initial Integration Date, (i) SELLER shall have responsibility for the GSDS, the Participant Resources, and the Participants, and (ii) PREPA shall have responsibility for the DERMS and the Grid System.

11.2 Foreseeable Damages

Each Party shall have liability for all foreseeable damages suffered by the other Party as a necessary consequence of the first Party's negligent performance or omissions or failure to perform its respective obligations under this Agreement, including during any cure period in accordance with Article 15 (*Termination*), and as stated under Article 1168 of the Puerto Rico Civil Code, subject to the terms of Section 11.3 (*No Liability*).

11.3 No Liability

Neither Party nor its officers, directors, shareholders, agents, employees, and representatives shall, in any event, be liable to the other Party or its officers, directors, shareholders, agents, employees or representatives for Claims for incidental, consequential, special, punitive 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, Claims made by third parties, Claims made by either Party for lost profits (other than payments expressly contemplated by any provision of this Agreement) or Claims arising from Force Majeure; provided that nothing contained in this Section 11.3 shall exclude or limit a Party's liability for a Party's fraud, willful misconduct or gross negligence.

11.4 Obligation to Pay

Nothing in this Article 11 shall relieve either Party of its obligation to make payments that become due pursuant to Article 10 (*Payment & Billings*).

11.5 Liability Cap

A Party's liability to the other Party under this Agreement, whether based on contract, warranty or tort, including errors or omissions, negligence, strict liability or otherwise, or any other claim or cause of action, with respect to any and all Claims shall not exceed the amount equal to the Liability Cap, provided that (i) nothing contained in this Section 11.5 shall exclude or limit a Party's liability for the Exceptions, and (ii) for purposes of determining SELLER's liability under this Agreement, the Parties shall deduct the proceeds of insurance received by SELLER (or would have received had SELLER complied with the terms of this Agreement), relating to the event or circumstances which resulted in such liability.

12. REPRESENTATIONS, WARRANTIES, & COVENANTS

12.1 Compliance with Law

The Parties shall, at all times and in all material respects, comply with Applicable Law, including the Bulk-Power System EO (if in effect), and such other Laws applicable to (i) the design, deployment, installation, recruitment and enrollment of Participants, testing, operation, and maintenance of the GSDS, and (ii) SELLER as an Electric Power Company or Electric Power Generation Company (each, as defined under Act 57-2014), as the case may be. SELLER shall give all required notices, shall procure and maintain all Permits, and shall pay all charges and fees required in connection therewith. Once obtained, SELLER shall comply with and promptly submit to PREPA copies of all material Permits. Furthermore, pursuant to Section 5(f) of Act 120-2018 and subject to the provisions of this Agreement, SELLER shall at all times comply with the public policy and regulatory framework applicable to the GSDS.

12.2 Fines & Penalties

Each Party shall have sole responsibility for the payment of any and all fines or other penalties incurred by or imposed upon such Party or its agents, suppliers, employees or subcontractors for noncompliance by such Party, its agents, employees, suppliers, or subcontractors with Applicable Law to or in connection with, (i) in the case of SELLER, the design, deployment, installation, testing, recruitment and enrollment of Participants, operation or maintenance of the GSDS, except to the extent that any act or omission of PREPA caused such noncompliance, and (ii) in the case of PREPA, the proper operation of the Grid System, except to the extent that any act or omission of SELLER caused such noncompliance, in each case as determined by applicable Governmental Authority having jurisdiction over the GSDS and/or the Grid System, subject to the indemnification provisions of Article 13 (*Indemnification*).

12.3 SELLER Representations & Warranties

SELLER represents and warrants to PREPA on the Agreement Date, and again on the Closing Date, as follows:

- a. SELLER is a [[●] company], duly organized, validly existing under the Laws of [●]; and SELLER has all requisite power and authority to conduct its business, to own its properties, and to execute, to deliver, and to perform its obligations under this Agreement;
- b. the execution, delivery, and performance by SELLER of this Agreement have been duly authorized, and do not and will not (i) require any additional internal consent or approval of SELLER, the Sponsor or any Affiliate of either of them; or (ii) violate any provision of SELLER's certificate of formation or operating agreement, or any material indenture, contract or agreement to which it is a party or by which it or its properties may be bound, or any Applicable Law, determination or award presently in effect;
- c. SELLER is not in default under any document or instrument referred to in item (ii) of paragraph (b) of this Section 12.3, which default could reasonably be expected to have a material adverse effect on the ability of SELLER to perform its obligations under this Agreement;
- d. this Agreement constitutes a legal, valid, and binding obligation of SELLER, enforceable against SELLER in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, or similar Laws affecting the enforcement of rights generally;
- e. except as previously disclosed in writing, there is no pending action or proceeding in which SELLER is a party before any court, governmental agency, or arbitrator that could reasonably be expected to affect materially and adversely the financial condition or operations of SELLER or the ability of SELLER to perform its obligations under, or which purports to affect the legality, validity or enforceability of, this Agreement as in effect on the date hereof;
- f. SELLER has the experience, qualifications, and financial resources necessary to design, deploy, install, recruit and enroll Participants, and operate and maintain the GSDS in accordance with the terms and conditions of this Agreement; and
- g. SELLER has not used, granted, pledged, assigned, or otherwise committed any of the Grid Services to be supplied to PREPA under this Agreement to any entity other than PREPA.

12.4 SELLER Covenants

SELLER covenants that, throughout the term of this Agreement, it shall:

- a. deliver the Grid Services to PREPA free and clear of all liens, security interests, Claims, and encumbrances or any interest therein or thereto by any Person;
- b. obtain and maintain written authorization from each Participant to act as an aggregator on behalf of such Participant and its contracted Participant Resource(s); and
- c. not use, grant, pledge, assign, or otherwise commit any Grid Service or portion thereof to any entity other than PREPA during the term of this Agreement.

12.5 PREPA Representations & Warranties

PREPA represents and warrants to SELLER on the Closing Date as follows:

- a. pursuant to Act No. 83 of May 2, 1941, as amended, PREPA is a public corporation duly organized and validly existing under the Laws of the Commonwealth of Puerto Rico and has all requisite power and authority to conduct its business as now conducted, to own its properties, and to execute, to deliver, and to perform its obligations under this Agreement;
- b. the execution, delivery, and performance by PREPA of this Agreement (i) has been duly authorized by PREPA's governing board in accordance with Applicable Law, (ii) does not and will not require any additional internal consent or approval of PREPA, (iii) does not require any approval from the PROMESA Court or any other additional external consent or approval, other than those approvals expressly identified in this Agreement, and (iv) does not and will not violate any Applicable Law, including any provision of Act No. 83 of May 2, 1941, as amended, or its regulations, or any material indenture, contract or agreement to which it is a party or by which its properties may be bound; and
- c. this Agreement is a legal, valid, and binding obligation of PREPA, enforceable against PREPA in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency or similar Laws affecting the enforcement of rights generally.

12.6 SELLER Payments

PREPA shall exercise commercially reasonable efforts to ensure that Monthly Payments under this Agreement constitute necessary operating expenses.

12.7 SELLER's Financial Statements

For each of SELLER's fiscal years (or part thereof) during the Term, SELLER shall deliver to PREPA the audited financial statements of SELLER's parent company for such fiscal year, prepared in accordance with GAAP, no later than one hundred twenty (120) Days following the completion of such fiscal year.

12.8 SELLER's Officers

If a change or substitution of one or more of SELLER's corporate officers occurs, then SELLER shall deliver to PREPA a certification of the names of its corporate officers.

12.9 Confidentiality

- a. Each Party (the "**Receiving Party**") shall keep all Confidential Information obtained from the other Party (the "**Disclosing Party**"), and not otherwise generally available to the public (but without limitation of any liability the Receiving Party may have to the Disclosing Party for information that becomes generally available to the public through the negligence or willful misconduct of any of the Receiving Party, its Affiliates or their respective employees, agents and representatives), confidential and use such information solely in connection with the performance of its obligations under this Agreement. Disclosure of such Confidential Information may be made only within the Receiving Party's organization to key personnel, to third parties serving as the Receiving Party's legal, financial or technical advisors, whose duties justify their need to review and know

such material, and to lenders, prospective lenders, investors and prospective investors. The Receiving Party shall require each Person (and personnel thereof) to agree in writing for the benefit of the Disclosing Party to maintain the confidentiality of such Confidential Information.

- b. To the extent, any Governmental Authority requires a Receiving Party to disclose such Confidential Information or requires such information to secure a governmental approval or authorization, such Receiving Party shall promptly notify the Disclosing Party and use its commercially reasonable efforts to seek a confidentiality agreement that assures confidential treatment of the Confidential Information consistent with the terms of this paragraph (b) of this Section 12.9. In the event the Receiving Party cannot obtain a confidentiality agreement, such Receiving Party shall use commercially reasonable efforts to obtain through court action the appropriate protection order. Notwithstanding the foregoing and paragraph (a) of this Section 12.9, PREPA may disclose the terms and conditions of this Agreement to (i) FOMB, PREB, COR3, P3A, the PROMESA Court, and any Governmental Authority for the purpose of obtaining the consents and approvals, together with such additional information as may be required to obtain such consents and approvals, (ii) COR3, P3A, any owner of the Grid System, and any potential or then-existing T&D Operator and their respective advisors and lenders, and (iii) the Puerto Rico Controller through the filings required by Applicable Law, which will make this Agreement subject to the open records requirement.

12.10 Local Content²⁰

- a. SELLER agrees to use its reasonable efforts when soliciting and obtaining personnel to perform services for the GSDS in Puerto Rico, to ensure that individuals who are *bona fide* residents of Puerto Rico as defined in paragraph (c) of this Section 12.10 perform not less than thirty percent (30%) of the total personnel hours expended in the design, deployment and installation of the GSDS (prior to the Commercial Operation Date) and not less than thirty percent (30%) of the total personnel hours expended in SELLER's performance of the Grid Services pursuant to this Agreement (following the Commercial Operation Date).
- b. SELLER agrees to use its reasonable efforts when soliciting and selecting subcontractors and vendors to perform services for the GSDS in Puerto Rico, to ensure that business concerns owned and controlled by one or more individuals, who are *bona fide* residents of Puerto Rico as defined in paragraph (c) of this Section 12.10, perform not less than thirty percent (30%) of the total personnel hours expended in the design, deployment and installation of, and recruitment and enrollment of Participants in, the GSDS (prior to the Commercial Operation Date), as measured by person-hours on an annual basis. For purposes of the preceding sentence, "**owned and controlled**" means a business: (i) owned at least fifty-one percent (51%) by one or more of such individuals (e.g., in the case of a corporate form of organization such individuals must hold at least fifty-one percent (51%) of all voting stock of the corporation; in the case of a partnership or other form of business concern such individuals must hold at least fifty-one percent (51%) of the beneficial interests in the partnership or business concern); and (ii) one or more of such Persons (who need not be owners of the business) control the management and daily business operations.
- c. For purposes of this paragraph (c), a *bona fide* resident of Puerto Rico, means an individual who has been a resident of Puerto Rico immediately prior to commencing work on the

²⁰ Note: PREPA will consider applicability to this Agreement.

GSDS. To the extent that despite SELLER's reasonable efforts SELLER has failed to achieve the goals set forth in paragraphs (a) and (b) of this Section 12.10, SELLER may, for purposes of calculating satisfaction of such percentages of local content, include the services of individuals who at some time prior to commencing work on the GSDS, but not necessarily including the period of time immediately prior to commencing work on the GSDS, were residents of Puerto Rico for at least five (5) consecutive Years and who relocated to Puerto Rico in order to perform work on the GSDS. SELLER shall, in good faith, be entitled to rely on the representation of each individual applicant and of each subcontractor or vendor as to whether such individual, subcontractor or vendor meets the criteria set forth herein. SELLER shall require equivalent undertakings from its subcontractors.

- d. Nothing contained herein shall be interpreted as obligating SELLER to take any action which would violate Applicable Law or any affirmative action program or equal opportunity obligation to which SELLER or its Affiliates are or may be bound under Applicable Law.

12.11 Subcontracting

Neither Party shall be relieved of its obligations under this Agreement as a result of subcontracting any of its obligations to a third party.

13. **INDEMNIFICATION**

13.1 General

Subject to the other provisions of this Article 13, each Party (the “**Indemnifying Party**”) shall indemnify and hold harmless the other Party and each of its Indemnitees from and against any and all Claims by third parties for or on account of injury, bodily or otherwise, or death of persons or for damage to or destruction of third party property, in each case to the extent resulting from or arising out of the Indemnifying Party's violation of Law, negligence, willful misconduct or failure to perform under this Agreement.

13.2 Notice of Claim

In the event any Party to this Agreement receives notice of any Claim for which such Party elects to assert a right of indemnification under this Article 13 the Party receiving such notice shall give prompt written notice to the other Party of such 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 (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 her choosing, but in such event, such Party shall bear the cost and expense of said additional counsel.

13.3 Claims Arising from Environmental Harm

SELLER shall indemnify and hold harmless PREPA, and each of its Indemnitees, against any and all Claims arising directly or indirectly out of any environmental harm due to the actions of SELLER or SELLER's agents or employees during the design, development, installation, operation of, and recruitment and enrollment of Participants in, the GSDS, as a result of the presence at the

GSDS of pollutants, hazardous substances, materials or wastes in excess of amounts and concentrations permitted by Applicable Law then in effect. In the event SELLER fails to reimburse PREPA for such Claims within thirty (30) Days of receipt of written notice from PREPA stating that such Claims were incurred (including reasonable documentation of such Claims), PREPA may offset the amount of such Claims against amounts due to SELLER from PREPA under this Agreement. In the event SELLER disputes that Claims are due to the actions of SELLER or SELLER's agents, the Parties shall resolve such Dispute pursuant to Section 21.11 (*Dispute Resolution*), and PREPA shall not offset any such disputed amounts until final settlement under such Section 21.11 (*Dispute Resolution*).

13.4 Claims Arising from GSDS and Participant Service Agreements

- a. SELLER shall indemnify and hold harmless PREPA, and each of its Indemnitees, against any and all Claims relating to the:
 1. SELLER's design, deployment, installation, ownership, operation and/or maintenance of, and recruitment and enrollment of Participants in, the GSDS;
 2. SELLER's obligation to the Participant(s) pursuant to any Participant Service Agreement entered into between SELLER and a Participant; and
 3. SELLER's breach of confidentiality with respect to Participant Data.

In the event SELLER fails to reimburse PREPA for such Claims within thirty (30) Days of receipt of written notice from PREPA stating that such Claims were incurred (including reasonable documentation of such Claims), PREPA may offset the amount of such Claims against amounts due to SELLER from PREPA under this Agreement, provided that if SELLER disputes that Claims are due to the actions of SELLER or SELLER's agents, the Parties shall resolve such Dispute pursuant to Section 21.11 (*Dispute Resolution*), and PREPA shall not offset any such disputed amounts until final settlement under such Section 21.11 (*Dispute Resolution*).

- b. PREPA shall indemnify and hold harmless SELLER, and each of its Indemnitees, against any and all Claims relating to PREPA's breach of confidentiality with respect to Participant Data. In the event PREPA fails to reimburse SELLER for such Claims within thirty (30) Days of receipt of written notice from SELLER stating that such Claims were incurred (including reasonable documentation of such Claims), SELLER may the amount of such Claims in the Monthly Invoice; provided that if PREPA disputes that Claims are due to the actions of PREPA or PREPA's agents, the Parties shall resolve such Dispute pursuant to Section 21.11 (*Dispute Resolution*), and SELLER shall not invoice any such disputed amounts until final settlement under such Section 21.11 (*Dispute Resolution*).

13.5 Claims Arising from Infringement of Intellectual Property Rights

- a. SELLER shall indemnify and hold harmless PREPA, and each of its Indemnitees, against any and all Claims arising directly or indirectly out of the infringement of third party Intellectual Property Rights, as a result of SELLER's performance under this Agreement, including patent infringement due to the use of technical features of the GSDS to perform under this Agreement. In the event SELLER fails to reimburse PREPA for such Claims within thirty (30) Days of receipt of written notice from PREPA stating that such Claims were incurred (including reasonable documentation of such Claims), PREPA may offset

the amount of such Claims against amounts due to SELLER from PREPA under this Agreement, provided that if SELLER disputes that Claims are due to the actions of SELLER or SELLER's agents, the Parties shall resolve such Dispute pursuant to Section 21.11 (*Dispute Resolution*), and PREPA shall not offset any such disputed amounts until final settlement under such Section 21.11 (*Dispute Resolution*).

- b. PREPA shall indemnify and hold harmless SELLER, and each of its Indemnitees from and against any and all Claims relating to any item, information, system, deliverable, software or service provided or used in relation to the Grid Services provided by PREPA to SELLER pursuant to this Agreement, or SELLER's use thereof (or access or other rights thereto) authorized by PREPA in any circumstance, that infringes or misappropriates a third party Intellectual Property Rights; provided, however, PREPA shall have no liability or obligation to SELLER to the extent the claim of infringement or misappropriation is caused by SELLER's unauthorized use or modification of such item or SELLER's use of such item in combination with any product or equipment not owned, developed, contemplated or authorized by PREPA or with respect to any item provided by PREPA. If any deliverable or item provided by PREPS hereunder is held to constitute, or in PREPA's reasonable judgment is likely to constitute, an infringement or misappropriation of third party Intellectual Property Rights, PREPA will in addition to its indemnity obligations, at its expense and option, and after consultation with SELLER regarding SELLER's preference in such event, either procure the right for SELLER to continue using such deliverable or item, replace such deliverable or item with a non-infringing equivalent, provided that such replacement does not result in a degradation of the functionality, performance or quality of the deliverable or item, modify such deliverable or item, or have such deliverable or item modified, to make it non-infringing, provided that such modification does not result in a degradation of the functionality, performance or quality of the deliverable or item, or create a feasible workaround that would not have any adverse impact on PREPA.

13.6 Claims Arising from Joint Employment

SELLER shall indemnify and hold harmless PREPA, and each of its Indemnitees, against all Claims relating to any personnel supplied by SELLER, its Affiliates and/or their subcontractors pursuant to this Agreement being alleged or found to be an employee or agent of PREPA, including (i) the cost of any additional compensation or employee benefits PREPA is required to provide to or pay for on behalf of any personnel supplied by SELLER, its Affiliates and/or their subcontractors; and (ii) any claim brought by any personnel supplied by SELLER, its Affiliates and/or subcontractors against PREPA based upon the employer-employee relationship. In the event SELLER fails to reimburse PREPA for such Claims within thirty (30) Days of receipt of written notice from PREPA stating that such Claims were incurred (including reasonable documentation of such Claims), PREPA may offset the amount of such Claims against amounts due to SELLER from PREPA under this Agreement. In the event SELLER disputes that Claims are due to the actions of SELLER or SELLER's Affiliates, the Parties shall resolve such Dispute pursuant to Section 21.11 (*Dispute Resolution*), and PREPA shall not offset any such disputed amounts until final settlement under such Section 21.11 (*Dispute Resolution*).

14. **FORCE MAJEURE**

14.1 General

“**Force Majeure**” means, subject to Section 14.2 (*Instances of Force Majeure*), any event or circumstance beyond the reasonable control of the affected Party (the “**Affected Party**”) and not

resulting from the fault or negligence of the Affected Party claiming the Force Majeure, which wholly or partially prevents the Affected Party from performing any of its obligations under this Agreement, but only if and to the extent that:

- a. the Affected Party could not have prevented, avoided, or removed such circumstance, despite the exercise of reasonable diligence in accordance with consistent with Prudent Utility Practices;
- b. the Affected Party has taken all reasonable precautions, due care, and reasonable alternative measures in order to (i) avoid the effect of such event or circumstance on the Affected Party's ability to perform such obligation under this Contract, and (ii) mitigate the consequences thereof;
- c. such 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 notice of such event or circumstance in accordance with Section 14.3 (*Notice*).

Except as provided in Section 14.4 (*Consequences*), Force Majeure shall excuse the Affected Party claiming the Force Majeure from performing the obligation affected by such Force Majeure and the Affected Party shall have no liability for damages or otherwise to the extent caused by such non-performance. The Affected Party shall bear the burden of proving whether Force Majeure has occurred.

14.2 Instances of Force Majeure

Provided that a claim of Force Majeure satisfies the requirements of Section 14.1 (*General*), Force Majeure may include the following events: (i) acts of God, strikes (national and other general strikes), industrial disturbances, acts of public or foreign enemy, war, blockades, boycotts, riots, insurrections, epidemics, pandemics, earthquakes, storms, tornado, drought, hail, sabotage, works to rule, go-slows and other public agitation; (ii) invasion, terrorism, rebellion, plague, lightning, hurricane, natural calamity, floods, civil disturbances, lockouts, fires, explosions, interruptions of services due to the act or failure to act of any Governmental Authority, including quarantine and lock-downs; (iii) any Pending Permit Delay; and (iv) failure of any subcontractor or supplier of the Affected Party to perform as a result of an event that would constitute Force Majeure hereunder. Notwithstanding the foregoing, Force Majeure shall expressly not include:

- a. an Insolvency Event suffered by a Party or any of its subcontractors or suppliers at any tier;
- b. any full or partial reduction in the provision of Grid Services caused by or arising from a mechanical or equipment breakdown, software defect, or defect or other conditions attributable to normal wear and tear, and not damage caused by a separate Force Majeure;
- c. any changes in prevailing market prices for goods, fuel or labor;
- d. strikes, lockouts, works to rule, go-slows, and other industrial disturbances by personnel of SELLER or any of its contractors and subcontractors at any tier;
- e. any failure by a Party to obtain and/or maintain a Permit, other than in the case of a Pending Permit Delay;

- f. any promulgation by the U.S. Department of Energy of implementation rules for the Bulk-Power System EO after the Agreement Date that causes delay in excess of twelve (12) Months;
- g. the lack of wind, sun, or any other resource of an inherently intermittent nature;
- h. SELLER's inability to obtain sufficient power or materials to operate the GSDS, except where an event of Force Majeure causes such inability;
- i. SELLER's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by PREPA pursuant to this Agreement;
- j. a forced Outage of the GSDS, except where a Force Majeure causes such forced Outage;
- k. litigation or administrative or judicial action pertaining to SELLER's interest in this Agreement, the GSDS, SELLER's relationship to its Participants, any Permits, or the design, development, installation, ownership, maintenance or operation of the GSDS; or
- l. any full or partial reduction in either the ability of the GSDS to deliver the Grid Services or in the ability of PREPA to accept the Grid Services, caused by any action or inaction of a third party, including any vendor or supplier of SELLER or PREPA, except where an event of Force Majeure causes such reduction.

14.3 Notice

A Party claiming Force Majeure shall, within fourteen (14) Days after the occurrence of the event(s) which forms the basis for such claim, give the other Party written notice thereof, describing (i) the particulars of such occurrence, (ii) an estimate of the duration of the impact of such event on the Affected Party's ability to perform its obligations, and (iii) how such claim otherwise satisfies the requirements of Section 14.1 (*General*).

14.4 Consequences

Subject to Appendix F (*Compensation*), neither Party shall be excused by reason of Force Majeure from the obligation to make any payments when due to the other Party.

14.5 Disputes

If a Party Disputes the other Party's claim of Force Majeure, such Dispute shall be resolved pursuant to Section 21.11 (*Dispute Resolution*).

15. **TERMINATION**

15.1 Termination Date

Subject to Section 15.2 (*No Discharge of Obligations*), this Agreement shall automatically terminate on the earlier to occur of:

- a. expiration of the Term;
- b. mutual consent of the Parties in writing;

- c. termination of the Agreement identified in a written notice delivered by the non-defaulting Party following the occurrence of a Default, provided that the termination date occurs no earlier than thirty (30) Days after the issuance of such notice, and if the defaulting Party can cure such Default, such Party fails to cure such Default within such thirty (30) Day period;
- d. the inability of the Parties to achieve the Closing Date by the date required under Section 2.3 (*Initial Effectiveness & Closing Date*);
- e. prior to the Initial Integration Date only, the determination by SELLER (as notified to PREPA in writing) to terminate this Agreement upon the continuance of a Pending Permit Delay in excess of eighteen (18) Months);
- f. a COD Termination Event;
- g. a Participation Termination Event; and
- h. termination of the Agreement by PREPA in accordance with Section 15.4 (*PREPA Right to Terminate for Convenience*).

15.2 No Discharge of 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 Articles 11 (*Liability*), 13 (*Indemnification*), 14 (*Force Majeure*), 15 (*Termination*), and 21 (*Miscellaneous Provisions*), Sections 2.5 (*Performance Security*), Section 3.5 (*Delay Liquidated Damages*), 6.7 (*Record Keeping*), 12.9 (*Confidentiality*), 16.2 (*Certain Material Breaches*), and 17.2 (*Tracking Account*), and Appendix P (*Performance Guarantees*). The Articles, Sections, and Appendices designated in the preceding sentence shall survive the Termination Date, provided that Section 12.9 (*Confidentiality*) and Article 13 (*Indemnification*) shall expire on the third (3rd) anniversary of the Termination Date. Without limiting the foregoing, termination of this Agreement shall not discharge either Party from any Claim or obligation it owes to the other Party under this Agreement by reason of any transaction, loss, cost, damage, expense, or liability which shall occur or arise (or the circumstances, events, or basis of which shall occur or arise) prior to the Termination Date. Any such Claim or obligation owed (whether the same shall be known or unknown at termination or whether the circumstances, events or basis of the same shall be known or unknown at termination) shall survive the Termination Date. Except as otherwise expressly contemplated by this Agreement, any indebtedness by either Party to the other shall be considered payable within ninety (90) Days after the Termination Date.

15.3 Termination Damages

If PREPA terminates this Agreement under paragraphs (c), (f) or (g) of Section 15.1 (*Termination Date*), SELLER shall pay to PREPA liquidated damages equal to the then applicable Security Amount as of the date of such termination as SELLER's sole liability and PREPA's sole and exclusive remedy for such termination (the "**Termination Liquidated Damages**"). The Parties acknowledge and agree that the Termination Liquidated Damages represent a fair and reasonable estimate of the losses which PREPA will suffer as a result of such termination, and accordingly hereby waive their right to dispute the validity of this Section 15.3.

15.4 PREPA Right to Terminate for Convenience

At any time up until the Commercial Operation Date, if PREPA determines that it no longer needs the Grid Services to be provided by SELLER, PREPA may choose to cancel this Agreement by giving SELLER written notice of its decision to cancel. No cause need be cited or demonstrated by PREPA. If PREPA exercises its right to terminate this Agreement pursuant to this Section 15.4 after SELLER has commenced development activity on the GSDS for this Agreement, immediately upon receipt of such termination notice, SELLER shall cease all development activity and proceed to take such steps as may be necessary to mitigate the losses due to such termination. SELLER shall use commercially reasonable efforts to salvage the value of any equipment or materials purchased or contracts signed for the GSDS. SELLER shall consult PREPA in respect of all such mitigation efforts. After the completion of all such mitigation efforts, PREPA shall pay the costs incurred by SELLER in connection with its performance of this Agreement, including administrative and general overhead costs and demobilization costs, determined in accordance with GAAP principles consistently applied, plus an amount equal to eight (8) percent of those costs to account for loss of profit, plus the costs incurred as a direct result of the termination, less the value of any salvaged materials or equipment retained by SELLER, all of which costs and valuations are subject to PREPA's prior approval, which PREPA shall not unreasonably withhold or delay. Payment will be made by PREPA within [thirty (30)] Days after such approval. If PREPA does not approve all amounts requested by SELLER as compensation for the termination and SELLER disagrees with that decision, such Dispute shall be resolved pursuant to Section 21.11 (*Dispute Resolution*).

16. **DEFAULT**

16.1 Definition

The following events shall constitute a “**Default**” under this Agreement:

- a. for SELLER as the defaulting Party only, the provision of materially incorrect or misleading information, representation or certification submitted (or made) by SELLER in connection with either (i) the submission of SELLER's proposal to PREPA in response to the RFP, or (ii) the execution, delivery or performance by SELLER of this Agreement, in each case relating to either (a) corruption or bribery matters, or (b) a representation made by SELLER under Section 16.2 (*Certain Material Breaches*);
- b. except as otherwise covered in paragraph (a) of this Section 16.1, a materially incorrect or misleading representation or warranty made by a Party under this Agreement or any certification submitted by a Party in connection with the execution, delivery of performance of this Agreement, which in either case remains uncured for a period of at least sixty (60) Days after receipt by such Party of notice thereof from the other Party;
- c. for SELLER as the defaulting Party only, default by SELLER in the observance or performance of any covenant contained in Section 2.5 (*Performance Security*) where such default continues uncured for a period of at least thirty (30) Days after the date on which SELLER receives written notice from PREPA of such failure;
- d. a Party's failure to remit in full any amount due and payable under this Agreement to the other Party, which the first Party fails to cure within sixty (60) Days after the date on which the first Party receives written notice from the other Party of such failure (other than

disputed amounts, which the Parties shall resolve in accordance with Section 21.11 (*Dispute Resolution*));

- e. for SELLER as defaulting Party only, a default by SELLER under paragraphs (a) or (b) of Section 16.2 (*Certain Material Breaches*);
- f. except as otherwise covered in paragraphs (c) or (d) of this Section 16.1, default by a Party in the observance or performance of any of the material terms, covenants, or conditions contained in this Agreement, which remains uncured for a period of ninety (90) Days after the date on which the first Party receives written notice from the other Party of such failure, or such longer period (not to exceed an additional cure period of ninety (90) Days if the first Party can cure such default and diligently pursues such cure); and
- g. for SELLER only as the defaulting Party:
 - 1. a COD Termination Event;
 - 2. an Insolvency Event;
 - 3. a Permanent Closing;
 - 4. after the Commercial Operation Date, the GSDS Availability falls below [eighty percent (80%)] in any Quarter;
 - 5. after the Commercial Operation Date, SELLER fails to maintain at least 5 MW of Participant Resources;
 - 6. SELLER fails to cure an adverse physical impact on the Grid System, for which SELLER has responsibility, or the equipment of PREPA's customers or other suppliers or which PREPA reasonably determines presents an immediate danger to such personnel or equipment in accordance with Section 6.9 (*Operational Forecast*);
 - 7. SELLER transfers, conveys, loses, or relinquishes its right to own the GSDS to any Person (other than a valid assignee of SELLER under this Agreement); or
 - 8. SELLER modifies its GSDS control schema in a manner that adversely affects its ability to perform its obligations to PREPA under this Agreement,

in each case for any reason other than a PREPA Risk Event or Force Majeure affecting SELLER.

16.2 Certain Material Breaches

- a. Pursuant to FOMB's contract review policy (FOMB POLICY: REVIEW OF CONTRACTS, as modified on October 30, 2020), SELLER represents and warrants to PREPA on the Agreement Date, and again on the Closing Date, (i) the due execution by SELLER and delivery to PREPA of a certification (the "**FOMB Certification**") in the form set out in Appendix R (*Form of FOMB Certification*), and (ii) the completeness, accuracy, and correctness of all information included in such FOMB Certification. As acknowledged, certified, and agreed in the FOMB Certification, any misrepresentation, inaccuracy, or falseness in such FOMB Certification shall render this Agreement null and

void, and SELLER shall reimburse PREPA immediately for any amounts, payments or benefits received from PREPA under this Agreement.

- b. In accordance with Article 3.4 of Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico of the Commonwealth of Puerto Rico, as amended, SELLER acknowledges and agrees that its conviction or guilty plea for any of the crimes as enumerated in Article 3.4 of such Act, in addition to any other applicable liability, shall render this Agreement null and void, and SELLER shall reimburse PREPA immediately for any amounts, payments or benefits received from PREPA under this Agreement that directly resulted from the committed crime, but only to the extent required by Act 2-2018.
- c. PREPA shall have the right to terminate this Agreement if Puerto Rico or United States Federal Court convicts SELLER 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, of 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 the misuse of public funds or property, including 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.
- d. SELLER acknowledges and agrees that the conditions outlined throughout this Section 16.2 constitute essential requirements of this Agreement.

16.3 Remedies & Disputes

Upon the occurrence of a Default, the non-defaulting Party shall have the right to invoke its remedies under this Agreement and/or under Applicable Law. Any Disputes in connection with the existence of a Default shall be resolved in the manner prescribed in Section 21.11 (*Dispute Resolution*).

17. **TAXES & FEES**

17.1 SELLER Requirements

- a. SELLER shall bear all Taxes and Environmental Costs applicable to the deployment and operation of the GSDS, provided that, subject to 17.2 (*Tracking Account*), PREPA shall reimburse SELLER for fifty percent (50%) of the additional costs (net of cost reductions) resulting from Post-Agreement Date Taxes or from Post-Agreement Date Environmental Costs applicable to SELLER by reason of the ownership or operation of the Facility for the purpose of providing the Grid Services to PREPA (collectively, the “**Changes**”). PREPA shall reimburse SELLER for such Changes through an equitable adjustment to the Demand Reduction Price and the Demand Build Price and subject to 17.2 (*Tracking Account*).
- b. SELLER will promptly pay and discharge all other 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 that SELLER shall not be required to pay any such Taxes, assessment, charge, levy, account payable or Claim if: (i) the validity, applicability or amount thereof remains contested in good faith by appropriate actions or proceedings

which will prevent the forfeiture or sale of any property of SELLER or any material interference with the use thereof by SELLER, and (ii) SELLER shall set aside on its books reserves deemed by it to be adequate with respect thereto.

17.2 Tracking Account

- a. The Parties shall record all Changes paid by PREPA according to Section 17.1 (*SELLER Requirements*) in a tracking account maintained by PREPA (the “**Tracking Account**”). SELLER shall have the right, upon reasonable notice and during business hours, to audit PREPA’s records reflecting the balance in the Tracking Account and to identify and object to any error in such calculations. If the Parties cannot agree on an adjustment to the balance in the Tracking Account within thirty (30) Days of PREPA’s receipt of SELLER’s objection, then a Party may refer such matter to dispute resolution by either Party pursuant to Section 21.11 (*Dispute Resolution*).
- b. If the Tracking Account has a balance at the end of the [final] Agreement Year (“**Balance**”), then PREPA shall have the right to withhold and retain up to fifty percent (50%) of the amounts due in each Billing Period of the remaining Term. The Parties shall subtract the retained amount from the Balance until the Balance equals zero (0). If any portion of the Balance remains outstanding at the expiration of the Term under Section 2.2 (*Initial Term*), then PREPA shall have the option to extend the Term up to an additional two (2) Agreement Years as necessary to repay the Balance plus Interest by applying such monthly retention as set forth above. If, at the expiration of the initial Term under Section 2.2 (*Initial Term*), an undisputed deficit exists in the Tracking Account, then PREPA shall pay SELLER an amount sufficient to compensate SELLER for such deficit within thirty (30) Days after the expiration of the Term. If a Party terminates this Agreement early pursuant to Article 15 (*Termination*), and an undisputed balance remains in the Tracking Account (the “**Termination Balance**”), SELLER shall repay such Termination Balance plus Interest to PREPA within thirty (30) Days of the Termination Date. Notwithstanding the foregoing, SELLER shall have the option to prepay all or any portion of the Balance or the anticipated Termination Balance, if applicable, at any time or from time to time.
- c. The Parties agree that PREPA shall have the right to an annual audit of payments or credits for Changes as a result of a Post-Effective Date Tax or a Post-Effective Date Environmental Cost and to adjust such payments if necessary, as a result of the findings of such audit. Both Parties shall have the right to participate in such audit.

17.3 PREPA Requirements

PREPA shall pay or cause to be paid all Taxes on or with respect to (i) the purchase of Grid Services and the sale of Energy that SELLER makes available to PREPA through the provision of the Grid Services (including sales tax, excise tax, municipal license tax, and value-added tax), and (ii) the purchase, use and disposition of the Green Credits.

18. INSURANCE²¹

18.1 SELLER Requirements

SELLER shall obtain and maintain in full force and effect from the Commercial Operation Date and during the Term of this Agreement and thereafter as provided herein policies of insurance covering all operations engaged in by this Agreement, which shall be formally agreed with an insurance company authorized to do business in Puerto Rico, and to that effect, it shall provide in original certificates of insurance and endorsements as follows:

- a. *Worker's Compensation Insurance:* SELLER shall provide and maintain Worker's Compensation Insurance as required by the Worker's Compensation Act of the Commonwealth of Puerto Rico. SELLER shall also have responsibility for compliance with said Worker's Compensation Act by all its subcontractors, agents, and invitees. SELLER shall furnish PREPA a certificate from the State Insurance Fund, in a form acceptable to PREPA, showing that all personnel employed in the work are covered by the Worker's Compensation Insurance, in accordance with this Agreement. Imported technical personnel are exempted, as per Act of May 16, 1958 No 16. SELLER shall furnish evidence of such exemption and certificate from the insurance carrier covering said personnel.
- b. *Commercial General Liability Insurance:* SELLER shall provide and maintain Commercial General Liability Insurance with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. Such insurance shall include specific coverage for contractual liability, "XCU" explosion, collapse and underground damages coverage, products, and completed operations liability.
- c. *Automobile Liability Insurance:* SELLER shall provide and maintain Automobile Liability Insurance with limits of \$1,000,000 combined single limit covering all owned, non-owned, and hired automobiles.
- d. *Cyber/Network Security/Privacy Liability Insurance:* SELLER shall provide and maintain Cyber/Network Security/Privacy Liability insurance with minimum limits of \$5,000,000 per occurrence and per policy aggregate. Such insurance shall include cyber and network risks such as security breaches, data theft or loss, unauthorized access/use, the negligent transmission of a computer virus, identity theft, and any invasion, violation, breach, or infringement of any right to privacy resulting from both electronic and non-electronic events with respect to any confidential or non-public personal information. The retroactive coverage date of the insurance policy shall be no later than the Agreement Date. Such insurance shall remain in effect after the termination of this Agreement in order to respond to any Claims or losses subsequently made. Insurance required by this subsection shall be maintained in full effect at all times during the term of this Agreement and for three (3) Years after the Termination Date.
- e. *Excess Umbrella Liability Insurance:* SELLER shall provide and maintain Excess Umbrella Liability Insurance with limits of \$4,000,000 per occurrence in excess of the limits of insurance provided in paragraph (b) of this Section 18.1.

²¹ Note: PREPA will consider the insurance requirements set forth in this Article 18 (*Insurance*) with Proponents upon selection of their proposal for RFP Phase III evaluation and adjust such requirements to the extent not available / achievable with prevailing market conditions.

- f. *Employer's Liability Insurance:* To the extent that SELLER employs employees, SELLER shall provide and maintain Employer's Liability Insurance with minimum bodily injury limits of \$1,000,000 for each employee and \$1,000,000 for each accident, covering against the liability imposed by Law upon SELLER as a result of bodily injury, by accident or disease, including death arising out of and in the course of employment, outside of and in the course of employment, and outside of and distinct from any claim under the Worker's Compensation Act of the Commonwealth of Puerto Rico.
- g. *Business Interruption Insurance:* SELLER shall provide and maintain Business Interruption Insurance, subject to a reasonable deductible (which the Parties shall construe as insurance proceeds actually received by SELLER for the purposes of this Agreement) with respect to the GSDS to include business interruption/contingent business interruption/loss of income for at least six (6) Months, with a waiting period not exceeding thirty (30) Days, an extended period of indemnity of an additional ninety (90) Days, and coverage for extra expense/contingent extra expense incurred during any period of interruption based on actual loss sustained. SELLER shall place this policy into effect on the Commercial Operation Date.

18.2 Requirements for SELLER Policies

SELLER shall ensure that the provider of the Commercial General Liability Insurance, Automobile Liability Insurance and Cyber/Network Security/Privacy Liability Insurance, as required under Section 18.1 (*SELLER Requirements*), endorses such insurance to include:

- a. as Additional Insured:

Puerto Rico Electric Power Authority
Risk Management Office
PO Box 364267
San Juan, PR 00936-4267;
- b. a thirty (30) Days' cancellation or nonrenewable notice (ten (10) Days for non-payment of premium) to be sent by certified mail to SELLER (with a copy to PREPA) with return receipt to the above address sent by SELLER;
- c. an endorsement including this Agreement under contractual liability coverage and identifying it by number, date, and the Parties;
- d. a waiver of subrogation for Claims arising under this Agreement in favor of PREPA; and
- e. the breach of any of the Warranties or Conditions in these policies by SELLER shall not prejudice PREPA's rights under this policy.

18.3 Contractor Requirements

The contractors and designers retained by SELLER to design, deploy, operate and maintain the GSDS shall obtain and maintain in full force and effect before the Commercial Operation Date, policies of insurance covering all constructions engaged in by this Agreement, which shall be formally agreed with insurance companies authorized to do business in Puerto Rico, and to that effect SELLER shall provide in the original certificate of insurance and endorsements, as follows:

- a. *Worker's Compensation Insurance:* SELLER shall cause its contractors to provide and maintain Worker's Compensation Insurance as required by the Worker's Compensation Act of the Commonwealth of Puerto Rico. SELLER shall also have responsibility for compliance with said Worker's Compensation Act by all its subcontractors, agents, and invitees. SELLER shall furnish PREPA a certificate from the State Insurance Fund showing that all personnel employed in the work are covered by the Worker's Compensation Insurance, in accordance with this Agreement. Imported technical personnel are exempted, as per Act of May 16, 1958, No. 16. SELLER shall furnish evidence of such exemption and certificate from the insurance carrier covering said personnel.
- b. *Employer's Liability Insurance:* SELLER shall cause its contractors to provide and maintain Employer's Liability Insurance with minimum bodily injury limits of \$1,000,000 for each employee and \$1,000,000 for each accident, covering against the liability imposed by Law upon SELLER as a result of bodily injury, by accident or disease, including death arising out of and in the course of employment and outside of and distinct from any claim under the Worker's Compensation Act of the Commonwealth of Puerto Rico.
- c. *Commercial General Liability Insurance:* SELLER shall cause its contractors to provide and maintain Commercial General Liability Insurance ("CGL") with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage. Continuing CGL insurance shall cover liability arising from products completed operations and liability assumed under an insured contract for at least three (3) Years following substantial completion of the work.
- d. *Automobile Liability Insurance:* SELLER shall cause its contractors to provide and maintain Automobile Liability Insurance with limits of \$1,000,000 combined single limit covering all owned, non-owned, and hired automobiles.
- e. *Cyber/Network Security/Privacy Liability Insurance:* SELLER shall cause its contractors to provide and maintain Cyber/Network Security/Privacy Liability insurance with minimum limits of \$5,000,000 per occurrence and per policy aggregate.
- f. *Excess Umbrella Liability Insurance:* SELLER shall cause its contractors to provide and maintain Excess Umbrella Liability Insurance with limits of \$4,000,000 per occurrence in excess of the limits of insurance provided in paragraph (c) of this Section 18.3.
- g. *Builder's Risk Insurance:* SELLER shall provide or cause its contractors to provide and maintain in force Builder's Risk Insurance for the entire work. Such insurance shall be written in an amount equal to the total contract sum as well as subsequent modifications of that sum. The insurance shall apply on a replacement cost basis, and coverage shall be written on a completed value form as follows:
 - 1. The insurance as required above shall be written to cover all risks of physical loss except those specifically excluded in the policy and shall insure at least against the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, riot, civil commotion, theft, vandalism, malicious mischief, earthquake, and collapse.
 - 2. SELLER shall pay any deductible applicable to the insurance purchased in compliance with this requirement.

3. Waiver of Subrogation. SELLER shall waive all rights against PREPA and its officers, directors, agents, and employees for recovery for damages caused by fire and other perils to the extent covered by builder's risk or property insurance purchased pursuant to the requirements of this Agreement or any other property insurance applicable to the work.

18.4 Requirements for the Contractor Policies

SELLER shall ensure that the provider of the Commercial General Liability Insurance, Automobile Liability Insurance, and Cyber/Network Security/Privacy Liability Insurance, as required under Section 18.3 (*Contractor Requirements*), endorses such insurance to include:

- a. as Additional Insured for Claims arising under this Agreement only:

Puerto Rico Electric Power Authority
Risk Management Office
PO Box 364267
San Juan, PR 00926-4267;

- 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 this Agreement under contractual liability coverage and identifying it by number, date, and the Parties;
- d. a waiver of Subrogation in favor of PREPA; and
- e. the breach of any of the Warranties or Conditions in these policies by the relevant Contractor or designer shall not prejudice PREPA's rights under this policy.

18.5 Application of Proceeds

SELLER shall apply any and all insurance proceeds received in connection with the damage or loss of the GSDS, toward the repair, reconstruction, or replacement of the GSDS.

19. **ASSIGNMENT & TRANSFER**

19.1 Restriction on Assignment

Except as otherwise provided in this Article 19, neither Party shall assign or transfer this Agreement without the prior written consent of the other Party, which consent such Party shall not unreasonably withhold or delay. Any attempt to assign this Agreement without the prior written consent of the corresponding Party shall be void. Any failure of a Party to respond to any request by the other Party for consent to assignment pursuant to this Section 19.1 shall not be deemed or construed as an acceptance or consent to such proposed assignment.

19.2 PREPA's Right to Assign

Notwithstanding the provisions of Section 19.1 (*Restriction on Assignment*), the Parties acknowledge that PREPA is undergoing a transformation process, and therefore agree that, after the front-end transition period of a Partnership Contract, Sale Contract, or any other PREPA

Transaction (as these terms are defined in Act 120-2018), PREPA may sell, assign, convey, transfer, pledge, mortgage, sublease, delegate, hypothecate, or otherwise dispose (each, a “**Transfer**”) any of its rights, title, or interest in this Agreement as permitted by Applicable Law and at any time, without SELLER’s consent, and without cost, expense, or incremental liability to PREPA, to a T&D Operator, an Affiliate of PREPA, or any Governmental Authority of Puerto Rico; provided that PREPA shall notify SELLER no later than thirty (30) Days before the effective date of any such Transfer. Unless otherwise agreed by PREPA, following the Transfer, PREPA shall be released from all obligations under this Agreement to the extent such transferee assumes such obligations in writing, provided that, for any Transfer to an Affiliate of PREPA, PREPA shall guarantee the payment obligations of such Affiliate arising out of this Agreement following such assignment.

19.3 SELLER’s Right to Assign

Notwithstanding the provisions of Section 19.1 (*Restriction on Assignment*), SELLER shall have the right to assign, pledge or encumber this Agreement in its entirety or in part without PREPA’s consent to the Project Lenders as collateral security in order to obtain financing or other funding. PREPA agrees to execute and deliver an agreement consenting to any assignment as collateral security in favor of the Project Lenders containing terms and conditions that are customary for transactions of this kind. PREPA agrees to cooperate in good faith in this regard and to provide other customary and reasonable documents and acknowledgments as the Project Lenders may reasonably request in connection with the financing in connection with this Agreement, including estoppel certificates and direct agreement or consent to an assignment in accordance with this Section 19.3 and substantially in the form of Appendix W (*Form of Direct Agreement*) (or such other customary form reasonably acceptable to PREPA and the Project Lenders) and a legal opinion addressed to the Project Lenders with respect to due authorization and capacity of PREPA to enter into such agreement or consent, enforceability thereof, and any other matter reasonably requested by the Project Lenders, in each case as reasonably acceptable to PREPA, provided that SELLER shall reimburse PREPA for the cost of negotiating and providing such documents, acknowledgments, opinions, certificates, consents, and agreements. In addition, SELLER shall have the right to assign this Agreement as collateral security to any agent, trustee, or other Person (including any corporation or partnership) representing the Project Lenders under the financing documents. If SELLER shall assign this Agreement as collateral security pursuant to this Section 19.3, then so long as the secured obligations, or any consolidation, modification, or extension of such obligation shall remain outstanding, the following provisions shall apply:

- a. The making of an assignment pursuant to the preceding provisions of this Section 19.3 shall not be deemed to constitute an assignment or transfer of this Agreement, nor shall any assignee referred to above, as such, be deemed to be an assignee or transferee of this Agreement so as to require such assignee, as such, to assume the performance of any of the terms and conditions of SELLER to be performed hereunder; provided that the purchaser at any sale of this Agreement in any proceeding for the foreclosure of any assignment, or the assignee or transferee of this Agreement in any proceedings for the foreclosure of any assignment, or the assignee or transferee of this Agreement under any instrument of assignment or transfer in lieu of the foreclosure of any assignment, shall be deemed to be an assignee or transferee within the meaning of this paragraph (a) of this Section 19.3 and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of SELLER to be performed hereunder from and after the date of such purchase and assignment.

- b. Notwithstanding any other provision of this Agreement, any sale of SELLER's rights in this Agreement in any secured creditor's sale, any proceeding for the foreclosure of any assignment, or the assignment or transfer of this Agreement in lieu of the foreclosure of any assignment, shall be deemed to be a permitted sale, transfer or assignment of this Agreement, and this Agreement shall continue in full force and effect following any such sale, transfer or assignment.
- c. If PREPA terminates this Agreement prior to the expiration of the Term due to a Default by SELLER or rejects or disaffirms this Agreement pursuant to any bankruptcy Law or proceeding or other similar Applicable Law or proceedings affecting creditors' rights generally with respect to a bankruptcy proceeding relating to SELLER or otherwise, PREPA agrees, if outstanding obligations to a Project Lender exist, and subject to the receipt of all necessary approvals, to enter into a new grid services agreement with the Project Lender (or its designee or nominee) on substantially similar terms to this Agreement; provided that such designee or nominee (i) has provided to PREPA (A) its audited financial statements as per GAAP, demonstrating that such new designee or nominee has a tangible net worth of at least twenty-five million dollars (\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least seventy-five million dollars (\$75,000,000))²², and (B) the certifications and documentation required by Appendix B (*Signing Conditions*), but construing references to SELLER therein as references to such new designee or nominee, and (ii) has accepted all terms, provisions and limitations of this Agreement, effective as of the date of such termination.

SELLER shall not have the right to assign its rights, title, or interest under this Agreement to any Affiliate of SELLER without the prior express written consent of PREPA, unless (i) such Affiliate agrees to be bound by the terms of this Agreement and to fully perform the obligations of SELLER hereunder (including Appendix B (*Signing Conditions*)), (ii) each Sponsor maintains the same percentage of the total Equity ownership interest in such Affiliate, whether directly or indirectly, as it owns in SELLER at the time of such assignment, and (iii) SELLER owns no less than fifty-one percent (51%) of the total Equity ownership interest in such Affiliate. SELLER shall notify PREPA of SELLER's intention to assign this Agreement at least thirty (30) Days in advance of any such assignment.

19.4 Restrictions on Equity Transfers²³

SELLER shall ensure that each Sponsor does not assign, sell or transfer (whether directly or indirectly) to any other Person any part of its ownership interests in SELLER or renounce any preferential subscription rights for ownership interests in connection with a capital increase (each, a "**Equity Transfer**") at any time prior to the Commercial Operation Date. On or after the Commercial Operation Date, SELLER shall ensure that each Sponsor does not affect an Equity Transfer at any time without the prior express written consent of PREPA. Notwithstanding the foregoing, a Sponsor may, without PREPA's consent:

- a. create a security interest in its ownership interest in SELLER in favor of the Project Lenders, and PREPA hereby approves any Equity Transfer thereof resulting from the

²² Note: These amounts align with FOMB requirements on prior transactions.

²³ Note: Provision reflects requirements from FOMB and other stakeholders. To discuss any specific requirements of publicly traded entities.

enforcement of such security interests in accordance with the financing documents of the Project Lenders;

- b. (i) prior to the Commercial Operation Date, effect an Equity Transfer solely in connection with a financing transaction involving Tax Credits under Section 48 of the U.S. Internal Revenue Code, provided that such transfer does not result in the Control of SELLER or the Project being transferred to a third party other than the Sponsor or SELLER, as applicable; and (ii) at any time after the Commercial Operation Date, effect an Equity Transfer back to SELLER or Sponsor, as applicable, pursuant to the terms of such financing transaction entered into prior to the Commercial Operation Date involving Tax Credits under Section 48 of the U.S. Internal Revenue Code;
- c. at any time after the Commercial Operation Date, effect an Equity Transfer to a Wholly-Owned Affiliate of a Sponsor, provided that such Wholly-Owned Affiliate remains a Wholly-Owned Affiliate of such Sponsor at all times after such Equity Transfer; or
- d. from and after the second anniversary of the Commercial Operation Date, effect an Equity Transfer to a Person, including a Wholly-Owned Affiliate, provided that such Equity Transfer, when aggregated with all previous Equity Transfers, does not result in a transfer of more than forty-nine percent (49%) of the issued and outstanding shares and voting rights in SELLER to any Person other than a Sponsor or a Wholly-Owned Affiliate of a Sponsor.

If SELLER intends to effect an Equity Transfer, then it shall notify PREPA of such intention at least thirty (30) Days in advance of the intended date of such transfer. The failure of PREPA to respond to any request by SELLER for consent to transfer pursuant to this Section 19.4, shall not be deemed or construed as an acceptance or consent to such proposed transfer. PREPA acknowledges and agrees that the identity and existence of such third party, and the potential transfer, shall be kept confidential in accordance with Section 12.9 (*Confidentiality*); and if requested by SELLER, PREPA shall enter into a confidentiality agreement with respect to the same, in a form reasonably acceptable to PREPA, provided that SELLER shall reimburse PREPA for the cost of negotiating and executing such agreement. Prior to PREPA's consent to any Equity Transfer, SELLER shall cause the proposed new owner of such equity to provide to PREPA (i) its audited financial statements as per GAAP, demonstrating that such new owner has a tangible net worth of at least twenty-five million dollars (\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least seventy-five million dollars (\$75,000,000)), (ii) evidence reasonably acceptable to PREPA that such new owner is or has engaged a Qualified Operator, and (iii) the certifications and documentation required by Appendix B (*Signing Conditions*), but construing references to SELLER therein as references to such new owner. In each case, SELLER shall obtain any regulatory approvals required in respect of such transfer and ensure such transfer otherwise complies with Applicable Law.

19.5 Restrictions on Asset Transfers

- a. SELLER shall not sell or transfer the GSDS, any portion of the GSDS or substantially all of its assets either (i) at any time prior to the Commercial Operation Date, or (ii) for any such sale or transfer occurring on or after the Commercial Operation Date, without PREPA's prior express written consent. The foregoing prohibition shall not apply to any such transfer that (1) forms part of a foreclosure on any mortgage, lien, pledge, charge or other encumbrance granted to the Project Lenders under any non-recourse project financing related exclusively to such assets and such lenders or their agent have entered into a direct

agreement with PREPA in respect of the collateral assignment of this Agreement, or (2) constitutes a permitted assignment under Section 19.3 (*SELLER's Right to Assign*).

- b. If SELLER intends to sell the GSDS, or any portion of the GSDS, or substantially all of its assets, pursuant to PREPA's consent under the first sentence of paragraph (a) of this Section 19.5, then it shall notify PREPA of its intention to sell at least sixty (60) Days in advance of the intended date of such sale. PREPA shall not unreasonably withhold or delay its consent to any such sale or transfer, provided that the failure of PREPA to respond to any request by SELLER for consent to such a sale or transfer shall not be deemed or construed as an acceptance or consent to such proposed sale or transfer. Prior to PREPA's consent to any such asset transfer, SELLER shall cause the proposed new owner to provide PREPA with (i) its audited financial statements as per GAAP, or such other evidence as may be reasonably acceptable to PREPA, demonstrating that such new owner has a tangible net worth of at least twenty-five million dollars (\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least seventy-five million dollars (\$75,000,000)), (ii) evidence reasonably acceptable to PREPA that such new owner is or has engaged a Qualified Operator, and (iii) the certifications and documentation required by Appendix B (*Signing Conditions*), but construing references to SELLER therein as references to such new owner. In each case, (1) SELLER shall obtain any regulatory approvals required in respect of such transfer and ensure such transfer otherwise complies with Applicable Law, and (2) if requested by PREPA, the Parties and such new owner shall enter into an agreement under which (A) SELLER assigns and transfers all of its rights and obligations under this Agreement to such new owner, and (B) such new owner expressly assumes all liabilities of SELLER arising under this Agreement prior to the date of such assignment.

20. NOTICES

20.1 General.

All notices and other communications hereunder shall be in writing, other than Dispatch Notices, curtailment or disconnect orders, which may be oral and immediately confirmed via e-mail, and shall be deemed duly given upon receipt after being delivered by hand or sent by e-mail with read receipt confirmation, registered or certified mail, return receipt requested, postage prepaid or by recognized overnight courier service, addressed as follows:

IF TO SELLER:

[●]
Attention: [●]
E-mail: [●]

*For Dispatch Notices
(Operational Personnel)*

[●]
Attention: [●]
E-mail: [●]

IF TO PREPA:

Puerto Rico Electric Power Authority
1110 Ponce de León Avenue,
Office #808
San Juan, Puerto Rico

Attention: Director of Planning and
Environmental Protection

E-mail: [●]

20.2 Change of Address or Persons.

Either Party hereto may change, by notice as above provided, the Persons or addresses to which such notices are sent.

21. MISCELLANEOUS PROVISIONS

21.1 Waiver & Amendment

This Agreement, including the appendices hereto, may be amended or waived only by written agreement between the Parties. A waiver of any Default shall extend only to the particular Default waived and shall not limit or otherwise affect any rights that either Party may have with respect to any other or future Default. The Parties acknowledge and agree that any amendments to the economic or technical terms of this Agreement, or the scope of the GSDS, require PREB approval.

21.2 Strict Performance

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, unless agreed in writing between the Parties.

21.3 No Third-Party Beneficiaries

The Parties intend this Agreement solely for the benefit of themselves and, solely to the extent rights thereto are provided in this Agreement, for the benefit of the Project Lenders as third-party beneficiaries. 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.

21.4 Seller Certification Requirement

The Parties acknowledge that SELLER has submitted the certification titled “Contractor Certification Requirement” required in accordance with the Contract Review Policy of the FOMB, effective as of November 6, 2017 and amended on October 30, 2020, signed by SELLER’s Executive Director (or another official with an equivalent position or authority to issue such certifications). The Parties have attached a signed copy of the “Contractor Certification Requirement” as Appendix R (*Form of FOMB Certification*) to this Agreement.

21.5 No Sharing of Benefit

No officer, employee, or agent of SELLER or PREPA 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 Applicable Law of the Commonwealth of Puerto Rico or policy of PREPA.

21.6 No Association, Joint Venture, or Partnership

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.

21.7 Successors

This Agreement shall inure to the benefit of and be binding upon SELLER and PREPA and their respective successors and assigns.

21.8 Complete Agreement & Conflicts

The Parties intend this Agreement as the final expression of their agreement and also as a complete and exclusive statement of the terms of their agreement with respect to the subject matter hereof that supersedes all prior written and oral understandings between the Parties with respect thereto. In the event of any conflict between this Agreement and any other Project documents, this Agreement shall prevail.

21.9 Severability

If any provision hereof shall be held invalid, illegal, or unenforceable by the holding of an arbitral authority convened pursuant to Section 21.11 (*Dispute Resolution*), such holding shall not invalidate or render unenforceable any other provision hereof.

21.10 Anticorruption & Antibribery

SELLER certifies as of the Closing Date that, to its actual knowledge, it does not receive payment or benefit of any nature for services rendered regularly through an appointment to a Governmental Authority of Puerto Rico.

21.11 Dispute Resolution

- a. If a dispute arises between the Parties regarding the application, interpretation, enforceability, validity, performance, or breach of this Agreement or matters arising therefrom or relating thereto, whether sounding in contract, tort, unfair competition, Law, equity or any other legal form (a “**Dispute**”), then such Dispute shall be resolved solely by either the agreement of the Parties, with or without a Technical Recommendation (as defined and subject to the terms set forth in paragraph (b) of this Section 21.11), or in a proceeding before PREB in accordance with this Section 21.11. In the event of a Dispute under this Agreement, the disputing Party may promptly provide written notice of the Dispute (a “**Dispute Notice**”) to the other Party. Following delivery of the Dispute Notice, the Parties shall either (i) agree in writing to submit such Dispute for a Technical

Recommendation as provided in paragraph (b) of this Section 21.11, or (ii) absent such agreement, nominate a member of its respective senior management, who shall have decision-making authority on behalf of such Party, and such senior management members shall promptly meet and seek to achieve a settlement, if possible, by negotiation and mutual agreement. If the Dispute is not resolved or submitted for Technical Recommendation within forty-five (45) Days after the Dispute Notice is received by the recipient Party (or such longer period of time as may be mutually agreed by the Parties in writing), then either Party may submit the Dispute for final determination to PREB.

- b. If the Parties agree that a Dispute primarily involves technical subject matter that they should attempt to resolve through a technical review in proceedings before a technical expert, mutually appointed for such purpose by the Parties (**“Technical Mediator”**), then the Parties shall jointly submit such Dispute (a **“Technical Dispute”**) to the Technical Mediator, for a recommended resolution (a **“Technical Recommendation”**) by providing to the Technical Mediator with a written notice, specifying the matter to be determined. Proceedings before the Technical Mediator shall be held in San Juan, Puerto Rico, unless otherwise agreed in writing by the Parties. Within thirty (30) Days of the engagement of the Technical Mediator for a Technical Dispute (or such longer period of time as the Parties may mutually agree in writing), the Parties shall require that the Technical Mediator conduct a hearing; provided that the Parties may agree in writing to waive the hearing and have the Technical Mediator issue the Technical Recommendation on the basis of written submissions alone. The Parties shall require that the Technical Mediator render a written recommendation on the Technical Dispute as soon as practicable after the close of the hearing but, in any case, no later than fifteen (15) Days after the close of the hearing. The Parties may resolve the Technical Dispute based on the Technical Recommendation or any mutually agreed modification thereof. If the Technical Dispute is not resolved in this fashion, the Parties may submit the matter for final determination to PREB.

21.12 No Economic Interest

SELLER represents, warrants and certifies as of the Closing Date, to its actual knowledge, that no public employee has any personal or economic interest in this Agreement.

21.13 Code of Ethics

SELLER agrees to comply with the provisions of Act of June 18, 2002, No. 84, as amended, which establishes a Code of Ethics for the Contractors, Suppliers and Economic Incentive Applicants of the Executive Agencies of the Commonwealth of Puerto Rico.

21.14 Independent Contractor

SELLER shall be considered as an independent contractor, for all material purposes under this Agreement, and all Persons engaged or contracted by SELLER for the performance of its obligations herein, shall be considered as its employees or agents or those of its subcontractors, and not as employees or agents of PREPA.

21.15 Counterparts

This Agreement may be executed in any number of counterparts with the same effect as if both Parties hereto had signed the same document. All counterparts shall be construed together and constitute one instrument.

21.16 Governing Law

This Agreement shall be governed by, construed and enforced in accordance with the Laws of the Commonwealth of Puerto Rico without regard to any contrary result required under applicable conflicts of laws rules. The Parties herein agree that all Disputes arising hereunder shall be resolved pursuant to Section 21.11 (*Dispute Resolution*).

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the Parties hereto have agreed to execute this Agreement in San Juan, Puerto Rico, as of the date first written above.

**PUERTO RICO ELECTRIC POWER [●]
AUTHORITY**

Efran Paredes Maisonet

Executive Director

Tax ID Number: 660433747

[●]

[●]

Tax ID Number: [●]

APPENDIX A

HOLIDAYS

PREPA recognizes the following holidays and observes all holidays that fall on a Sunday on the following Business Day:

<u>DAY</u>	<u>CELEBRATION</u>
January 1	New Year's Day
January 6	Three Kings Day/Epiphany
3 rd Monday in January	Martin Luther King
3 rd Monday in February	Presidents and Illustrious Puerto Ricans Day
March 2	American Citizenship Day
March 22	Emancipation Day
Friday of Holy Week	Good Friday
Sunday of Holy Week	Easter Sunday
2 nd Sunday in May	Mothers' Day
Last Monday in May	Memorial Day
3 rd Sunday in June	Fathers' Day
July 4	Independence Day
July 25	Puerto Rico Constitution Day
1 st Monday in September	Labor Day
2 nd Monday in October	Columbus Day
November 19	Discovery of Puerto Rico
November 11	Veterans Day
4 th Thursday in November	Thanksgiving Day
December 24	Christmas Eve
December 25	Christmas Day

APPENDIX B

SIGNING CONDITIONS

1. Together with the signing of this Agreement, SELLER shall provide:
 - a. an original certificate of tax status and compliance from the Commonwealth of Puerto Rico for the five (5) previous years, confirming that it does not owe Taxes to the Commonwealth of Puerto Rico or is paying such Taxes by an installment plan in full compliance with its terms;
 - b. an income tax return filing certificate issued by the Treasury Department of Puerto Rico, Area of Internal Revenues assuring that SELLER has filed its Income Tax Return for the last five (5) years (obtained by using the Request for Copy and/or Certification of Income Tax Returns Form issued by the Treasury Department of Puerto Rico);
 - c. a certificate of debt issued by the Treasury Department of Puerto Rico, Area of Internal Revenues;
 - d. a certificate issued by the Municipal Revenues Collection Center assuring that SELLER does not owe any Taxes to such governmental agency;
 - e. a certificate issued by the Department of Labor and Human Resources of Puerto Rico, evidencing that SELLER has paid to the Department of Labor and Human Resources of Puerto Rico, if applicable, its employees' contributions, in accordance with the Puerto Rico Employment Security Act (unemployment, temporary disability or sickness or social security for chauffeurs) or is paying such contributions by an installment plan in full compliance with its terms;
 - f. a certificate issued by the Child Support Administration (ASUME) evidencing that SELLER has complied with the retention, if applicable, that an employer must do;
 - g. a sworn and notarized statement, as of the Agreement Date, evidencing compliance with Article 3.3 Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico of the Commonwealth of Puerto Rico, as amended, in the form set forth in Appendix Q (*Form of Sworn Statement*);
 - h. a certification, as of the Agreement Date, that, to its actual knowledge, no public employee has any personal or economic interest in this Agreement, under Section 21.12 (*No Economic Interest*);
 - i. a certification, as of the Agreement Date, that, to its actual knowledge, it does not receive payment or benefit of any nature for services rendered regularly through an appointment to a Governmental Authority of Puerto Rico, under Section 21.10 (*Anticorruption & Antibribery*);
 - j. if any of the previously required certifications show a debt, and SELLER has requested a review or adjustment of this debt, a certification that SELLER has made such request at the Agreement Date; and if PREPA denies the requested review or adjustment and such determination is final, proof of payment of this debt to PREPA or confirmation that

SELLER accepts that PREPA shall offset the owed amount from the corresponding payments;

- k. evidence of SELLER's ability to provide Equity at least equal to thirty percent (30%) of the forecasted costs to develop the GSDS, by the forecasted date on which SELLER will first draw down on funds for such development under the financing documents with the Project Lenders; and
 - l. a preliminary design of the GSDS consistent with Prudent Electrical Practices and the MTRs.²⁴
2. Prior to the signing of this Agreement:
- a. SELLER shall have provided the certification set forth in Appendix R (*Form of FOMB Certification*).
 - b. FOMB shall have approved the execution version of this Agreement.

²⁴ Note: Parties to discuss design requirements and communication protocol during RFP Phase III. PREPA cannot provide definitive guidance on the communication protocol at this point since it does not have a DERMS or automated dispatch.

APPENDIX C

CONDITIONS PRECEDENT

PART 1 - SELLER CONDITIONS

SELLER shall deliver the following as conditions precedent to the Closing Date:

- a. the Performance Security;
- b. insurance certificates or cover notes evidencing the insurance coverages required pursuant to Article 18 (*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, which approval PREPA shall not unreasonably withhold or delay;
- c. a certificate, signed by a duly-authorized representative of SELLER, in the form set forth in Appendix Z (*Form of Warranty Compliance Certificate*);
- d. a legal opinion prepared by its external counsel in a form reasonably acceptable to PREPA, confirming the warranty made by SELLER in paragraph (d) of Section 12.3 (*SELLER Representations & Warranties*); and
- e. [a guarantee issued by a Permitted Guarantor in the form set forth in Appendix EE (*Form of Payment Guarantee*).]²⁵

PART 2- PREPA CONDITIONS

PREPA shall satisfy the following as conditions precedent to the Closing Date:

- a. completion of the Feasibility Study, System Impact Study and GSIDS Study;
- b. the appointment by PREPA of the Consulting Technical Expert in accordance with Section 3.1 (*Consulting Technical Expert*);
- c. filing of this Agreement with the Puerto Rico Controller; and
- d. delivery of a legal opinion prepared by its external counsel in a form reasonably acceptable to SELLER, confirming the warranty made by PREPA in paragraph (b) of Section 12.5 (*PREPA Representations & Warranties*).

²⁵ Note: Only required where the SELLER/Proponent could not satisfy the Unrestricted Net Worth requirement under Section 4.5(a) of the RFP, requiring a Permitted Guarantor to guarantee its obligations arising out of this Agreement.

PART 3 - OTHER CONDITIONS

The following constitute other conditions precedent to the Closing Date:

- a. the execution and delivery of the Trademark License Agreement by the Parties;
- b. the absence of any 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 SELLER has executed this Agreement;
- c. the issuance of a Best Interests Determination; and
- d. approval by PREB and P3A of the executed version of this Agreement.

APPENDIX D

MILESTONE SCHEDULE

Milestones	Time for Completion / Occurrence*	SELLER Delay Liquidated Damages (USD Per Day of Delay)
40% Guaranteed Capability	The later of (i) 240 days after Closing Date and (ii) 90 Days after the date on which PREB issues a resolution approving the Approved Form	N/A
80% Guaranteed Capability	480 Days after Closing Date	N/A
Initial Integration	540 Days after Closing Date	N/A
Commercial Operation	Guaranteed Commercial Operation Date	[●] ²⁶

²⁶ Note: The Parties shall determine SELLER Delay Liquidated Damages prior to signing of this Agreement, based on the following formula:

$$SDLD = DLD(DRS) + DLD(DBS)$$

where:

SDLD = SELLER Delay Liquidated Damages for such Day, expressed in \$;

DLD (DRS) = SELLER Delay Liquidated Damages (Demand Reduction Service) for such Day, expressed in \$; and

DLD (DBS) = SELLER Delay Liquidated Damages (Demand Build Service) for such Day, expressed in \$.

“DLD(DB)” means, for any Day of delay under paragraph (b) of Section 3.5 (*Delay Liquidated Damages*), an amount (expressed in \$) equal to:

$$DLD(DBS) = (TOP - \left(\frac{DB\$}{\left(30.33 \frac{\text{Days}}{\text{Month}} \times 24 \frac{\text{hours}}{\text{Day}} \right)} \right)) \times GC(DBS) \times 4 \text{ hours}$$

where:

TOP = PREPA’s average take-or-pay liability under existing renewable PPOAs equal to \$0.168/kWh;

DB\$ = Demand Build Price applicable to Agreement Year 1, expressed in \$/kW-Month; and

GC(DBS) = Guaranteed Capability for Demand Build Service applicable to such Day, expressed in kW.

“DLD(DRS)” for any Day of delay under paragraph (b) of Section 3.5 (*Delay Liquidated Damages*), an amount (expressed in \$) equal to:

$$DLD(DRS) = (RER - \left(\frac{DR\$}{\left(30.33 \frac{\text{Days}}{\text{Month}} \times 24 \frac{\text{hours}}{\text{Day}} \right)} \right)) \times GC(DRS) \times 4 \text{ hours}$$

where:

RER = replacement energy rate of \$0.170/kWh;

DR\$ = Demand Reduction Price applicable to Agreement Year 1, expressed in \$/kW-Month; and

GC(DRS) = Guaranteed Capability for Demand Reduction Service applicable to such Day, expressed in kW.

APPENDIX E

SELLER PERMITS

SELLER shall obtain the following licenses, permits and authorizations and any other licenses, permits and authorizations required by the Agreement.

Issuing Agency	Permit Description	Date Required or Received
Federal		
Commonwealth		
Other Applicable Governmental Authorities		

APPENDIX F

COMPENSATION

1. Data Collection

For each Billing Period “n”, PREPA shall remit to SELLER a payment for Grid Services provided to PREPA, in arrears calculated in accordance with Section 2 (*Monthly Payment*) of this Appendix F; (the “**Monthly Payment**” or “**MP**”). The Parties shall calculate the Demand Reduction Payment and the Demand Build Payment forming part of the Monthly Payment on a portfolio level basis using data collected by SELLER and monitored by PREPA. To derive portfolio level data, SELLER shall:

- a. collect Participant Resource data at each Participant Site; and
- b. aggregate all data to the portfolio level.

PREPA reserves the right to audit SELLER’s data at the Participant Resource and portfolio level.

2. Monthly Payment

The Parties shall calculate the Monthly Payment for Billing Period “n” as follows:

$$\mathbf{MP_n = (DRP_n + DBP_n) \times PRA_n - ADJ_n}$$

where:

- MP_n** = Monthly Payment for Billing Period “n”, expressed in dollars;
- DRP_n** = Demand Reduction Payment for Billing Period “n”, as determined in accordance with Section 3 (*Demand Reduction Payment*) of this Appendix F;
- DBP_n** = Demand Build Payment for Billing Period “n”, as determined in accordance with Section 5 (*Demand Build Payment*) of this Appendix F;
- PRA_n** = PREPA Risk Adjustment for Billing Period “n”, determined pursuant Section 8 (*PREPA Risk Adjustment*) of this Appendix F;
- ADJ_n** = other credits or amounts to which PREPA has a right under this Agreement; and
- n** = such Billing Period.

SELLER acknowledges and agrees that the Monthly Payment represents the all-in payment for the Grid Services of the GSDS, including all Ancillary Services, Green Credits and costs to SELLER of complying with this Agreement.

3. Demand Reduction Payment

For each Billing Period, the Parties shall calculate the Demand Reduction Payment (the “**DRP**”) as follows:

$$\mathbf{DRP_n = DR\$_n \times DRA_n}$$

where:

DRP_n = Demand Reduction Payment for Billing Period “n”, expressed in dollars;

DR\$_n = Demand Reduction Price for Billing Period “n”, as determined in accordance with Section 4 (*Demand Reduction Price*) of this Appendix F; and

DRA_n = Average Capability for Demand Reduction Service during Billing Period “n”, expressed in kW, and calculated as follows:

$$\mathbf{DRA_n = \frac{\sum_{i=1}^k CDR_i}{k}}$$

where:

i = the relevant Time Interval;

k = number of Time Intervals that elapsed during Billing Period “n”;
and

CDR_i = min [FC_i, AC_i]

where:

FC_i = the Forecasted Capability for Demand Reduction Service during Time Interval “i”; and

AC_i = the actual Capability for Demand Reduction Service during Time Interval “i”, calculated by using the following formula:

$$AC = \sum_{y=1}^z [CC_y \times RA_y]$$

where:

CC_y = the Committed Capacity of Participant Resource “y”, based upon the Operating Characteristics, made available by the GSDS for Demand Reduction Service during Time

Interval “i” in accordance with Appendix H (*Grid Services*);

RA_y = availability of Participant Resource “y” during Time Interval “i”, expressed as a decimal not to exceed 1.0;²⁷

z = number of Participant Resources comprising the GSDS actually capable of providing Demand Reduction Service during Time Interval “i”; and

y = the relevant Participant Resource.

4. Demand Reduction Price

For each Billing Period during an Agreement Year, the “**Demand Reduction Price**” or “**DR\$**” for such Billing Period shall equal the amount set out in the column captioned “DR\$ (\$/kW-Month)” that corresponds to such year in the table below:

Agreement Year	DR\$ (\$/kW-Month)
[●]	[●]
[●]	[●]

5. Demand Build Payment

For each Billing Period, the Parties shall calculate the Demand Build Payment (the “**DBP**”) as follows:

$$DBP_n = DB\$ \times DBA_n$$

where:

DBP_n = Demand Build Payment for Billing Period “n”, expressed in dollars;

DB\$ = Demand Build Price for Billing Period “n”, as determined in accordance with Section 6 (*Demand Build Price*) of this Appendix F; and

DBA_n = Average Capability for Demand Build Service during Billing Period “n”, expressed in kW, and calculated as follows:

$$DBA_n = \frac{\sum_{i=1}^k CDB_i}{k}$$

²⁷ Note: A fully operational Participant Resource would receive the value of “1.0.” An inoperable Participant Resource would receive the value of “0.0.” Proponents to ensure that PREPA does not pay for full Committed Capacity on partially available resources.

where:

i = the relevant Time Interval;

k = number of Time Intervals that elapsed during Billing Period “n”;
and

CDB_i = $\min [FC_i, AC_i]$

where:

FC_i = the Forecasted Capability for Demand Build Service during Time Interval “i”; and

AC_i = the actual Capability for Demand Build Service during Time Interval “i”, calculated by using the following formula:

$$AC = \sum_{y=1}^z [CC_y \times RA_y]$$

where:

CC_y = the Committed Capacity of Participant Resource “y”, based upon the Operating Characteristics, made available by the GSDS for Demand Build Service during Time Interval “i” in accordance with Appendix H (*Grid Services*);

RA_y = availability of Participant Resource “y” during Time Interval “i”, expressed as a decimal not to exceed 1.0;²⁸

z = number of Participant Resources comprising the GSDS actually capable of providing Demand Build Service during Time Interval “i”; and

²⁸ Note: A fully operational Participant Resource would receive the value of “1.0.” An inoperable Participant Resource would receive the value of “0.0.” Proponents to ensure that PREPA does not pay for full Committed Capacity on partially available resources.

y = the relevant Participant Resource.

6. Demand Build Price

For each Billing Period during an Agreement Year, the “**Demand Build Price**” or “**DB\$**” for such Billing Period shall equal the amount set out in the column captioned “**DB\$ (\$/kW-Month)**” that corresponds to such year in the table below:

Agreement Year	DB\$ (\$/kW-Month)
[●]	[●]
[●]	[●]

7. Certain Events

The values set out in the columns captioned (i) “**DR\$ (\$/kW-Month)**” of the table set out in Section 4 (*Demand Reduction Price*) of this Appendix F, and (ii) “**DB\$ (\$/kW-Month)**” of the table set out in Section 6 (*Demand Build Price*) of this Appendix F, shall be reduced, in the event of any SELLER refinancing (which SELLER may carry out in its sole discretion) following PREPA’s emergence from the PREPA Bankruptcy or otherwise, to account for any savings accruing to SELLER from such refinancing in the following proportions: (i) for SELLER, sixty percent (60%), and (ii) for PREPA, forty percent (40%), calculated as percentages of the amount which equals the sum of (A) the difference between (1) the net present value of debt service obligations before the refinancing, and (2) the net present value of debt service obligations immediately upon the occurrence of the refinancing, in each case at a discount rate equal to the interest rate on outstanding senior debt owed to Project Lenders at the time of such refinancing, and (B) any net proceeds of such refinancing.

8. PREPA Risk Adjustment

The Parties shall calculate the PREPA Risk Adjustment (“**PRA**”) for Billing Period “n” as follows:

$$\text{PRA}_n = \left(\frac{\text{BPHRS}_n - (\text{GSEHRS}_n + \text{PFMHRS}_n + \text{IPHRS}_n)}{\text{BPHRS}_n} \right)$$

PRA_n = PREPA Risk Adjustment for the Billing Period;

BPHRS_n = total number of hours for the Billing Period;

GSEHRS_n = the duration (in hours) of any Grid System Event (other than a Force Majeure affecting PREPA) occurring in the Billing Period, provided that the number of GSEHRS in the Billing Period, when added to the number of GSEHRS in the preceding Billing Periods for the Year, shall not exceed the Grid System Waiting Period, and any such excess GSEHRS shall not be included in the calculation of GSEHRS_n;

PFMHRS_n = duration (in hours) of any Force Majeure affecting PREPA occurring in the Billing Period provided that the number of PFMHRS in the Billing Period, when added to the number of PFMHRS in the preceding Billing Periods for the Year, shall not exceed the Force Majeure Waiting Period, and any such excess PFMHRS shall not be included in the calculation of PFMHRS_n; and

IPHRS_n = duration (in hours) of any event during the Billing Period in respect of which SELLER may recover insurance proceeds from any insurance policy that SELLER obtains (or would have obtained had it complied with this Agreement) in respect of PREPA Risk Events, including business interruption insurance in accordance with paragraph (g) of Section 18.1 (*SELLER Requirements*).

SELLER acknowledges and agrees that the Demand Reduction Payments and Demand Build Payments shall not apply in respect of an hour Billing Period in respect of which SELLER may recover insurance proceeds from any insurance policy that SELLER obtains (or would recover or have obtained had it complied with this Agreement) in respect of PREPA Risk Events, including business interruption insurance in accordance with paragraph (g) of Section 18.1 (*SELLER Requirements*).

APPENDIX G

GUARANTEED CAPABILITY

Guaranteed Capability		
		[Area]
		Demand Reduction Service
	Quarter	Guaranteed Capability (kW)
Agreement Year 1	1	
	2	
	3	
	4	
Agreement Year [X]	1	
	2	
	3	
	4	
Agreement Year [10]	1	
	2	
	3	
	4	

		[Area]
		Demand Build Service
	Quarter	Guaranteed Capability (kW)
Agreement Year 1	1	
	2	
	3	
	4	
Agreement Year [X]	1	
	2	
	3	
	4	
Agreement Year [10]	1	
	2	
	3	
	4	

APPENDIX H

GRID SERVICES²⁹

1. Additional Definitions

In this Appendix H:

- a. **“Delivered Capability”** means, for each Grid Service made available by SELLER during any Time Interval, the level of Capability of such Grid Service delivered by SELLER to PREPA during such Time Interval;
- b. **“Grid Service Event”** or **“GS Event”** means the period of time during which PREPA has directed SELLER to Dispatch the Grid Services; and
- c. **“Ramp Rate”** means, for each Grid Service, the ramp rate specified in paragraph (b) (*Participant Resource Ramp Rate*) of Section 3 (*Service Requirements*) of this Appendix H.

2. Capability

Each VPP Resource may comprise any combination of Renewable Energy Resources, Energy Storage Resources, and Demand Response Resources, provided that SELLER must include Energy Storage Resources among the VPP Resources that it utilizes. SELLER shall ensure that each Participant Resource limits the net AC power output at the Participant Connection Point to 1 MW.

3. Service Requirements

- a. Participant Resource

A Participant Resource must have the following operating characteristics and technical capabilities:

- i. *Demand Build Service*

- 1. For this service (the **“Demand Build Service”**), SELLER shall provide the Capability to increase load presented to the Grid System or reduce the quantity of Energy delivered by the GSDS into the Grid System from one or more Participant Resources, all in accordance with this Appendix H and the MTRs.
 - 2. SELLER shall provide Demand Build Service for a four (4) hour block during the system mid-day renewable generation peak, as specified under paragraph (e) (*Availability Requirement*) of this Section 3 of this Appendix H.

²⁹ Note: Proponents may make suggestions in their submission.

ii. *Demand Reduction Service*

1. For this service (the “**Demand Reduction Service**”), SELLER shall provide the Capability to reduce load presented to the Grid System or increase the quantity of Energy delivered by the GSDS into the Grid System from one or more Participant Resources, in accordance with this Appendix H and the MTRs.
2. SELLER shall provide Demand Reduction Service for a four (4) hour block during evening peaking periods, as specified under paragraph (e) (*Availability Requirement*) of this Section 3 of this Appendix H.

iii. SELLER must ensure that the equipment that controls and monitors Participant Resources remains operational throughout the time period during which PREPA requires Grid Services. The polling rate of monitored equipment may not [exceed] the rate specified in paragraph (b) (*Participant Resource Ramp Rate*) of this Section 3 of this Appendix H.

b. Participant Resource Ramp Rate

For a Dispatch Notice and in advance of the anticipated start of the GS Event, SELLER shall ramp the Participant Resources to the applicable Forecasted Capability at the Ramp Rate (increase and decrease in MW/minute) specified below. Immediately following a GS Event, SELLER shall return the Participant Resources to their normal operating state at the Ramp Rate specified below.³⁰

- i. The Participant Resource shall ramp to the Forecasted Capability for each Time Interval during the GS Event at a rate not to exceed [●] ([●]) kW per minute.
- ii. After the GS Event, the Participant Resource shall return to its normal operating state at a rate not to exceed [●] (●) per minute.

c. Response Timeline

The Participant Resources shall act in response to a Dispatch Notice as specified below.

- i. *Demand Build Service*: PREPA will issue a Dispatch Notice in respect of a Demand Build Service at least [eight (8)] hours, but no earlier than [twenty-four (24)] hours prior to the anticipated start of the GS Event. SELLER’s Participant Resource portfolio shall ramp up to the Forecasted Capability for the Demand Build Service in the [thirty (30)] minutes preceding the start of the GS Event at the Ramp Rate, and must achieve the Forecasted Capability by the start of the GS Event. Following the GS Event, SELLER may return to its normal operating state in the [thirty (30)] minutes after the end of GS Event or after receiving a command from PREPA’s system operations department, in each case, at the Ramp Rate.³¹
- ii. *Demand Reduction Service*: PREPA will issue a Dispatch Notice in respect of a Demand Reduction Service at least [ten (10)] minutes, but no earlier than [twenty-

³⁰ Note: Proponents to propose ramp rates.

³¹ Note: To discuss during Phase III.

four (24)] hours, prior to the start time of the GS Event. SELLER's Participant Resource portfolio must include the Forecasted Capability for the Demand Reduction Service within [two (2)] minutes from the start time of the GS Event. Following the GS Event, SELLER may return to its normal operating state in the [thirty (30)] minutes after the end of GS Event or after receiving a command from PREPA's system operations department, in each case, at the Ramp Rate.³²

d. Event Duration

- i. *Demand Build Service*: SELLER shall provide Demand Reduction Service for [four (4)] hours, or such shorter period as PREPA may specify by Dispatch Notice, during specified timeframes.
- ii. *Demand Reduction Service*: SELLER shall provide Demand Build Service for up to [four (4)] hours, or such shorter period as PREPA may specify by Dispatch Notice, during specified timeframes. Duration will be at the discretion of PREPA's system operations department at the time of the Dispatch.

e. Availability Requirement

SELLER shall make its Participant Resource portfolio available to provide Grid Services for specified build and reduction periods[, and shall prohibit the provision of such services outside of such periods]. SELLER shall reflect the following periods in the Operational Forecast.

- i. *Demand Build Service*: [10:00 – 14:00 (Puerto Rico time)]³³
- ii. *Demand Reduction Service*: [18:00 – 22:00 (Puerto Rico time)]³⁴

Once per Quarter, PREPA shall have the right to shift the [four (4)] hour build and reduction periods by up to one (1) hour earlier or later to account for seasonal variations. PREPA shall notify SELLER in writing of such shift no later than ten (10) Business Days prior to its effectiveness.

f. Periods of No Availability

If a Scheduled Outage, Scheduled Derating, Non-Scheduled Outage, Non-Scheduled Derating or Emergency occurs, SELLER shall update its Operational Forecast to identify the period(s) during which Grid Services and/or a Participant Resource will be unavailable.

4. Dispatch/Control Requirements

PREPA shall issue and SELLER shall receive Dispatch Notices in accordance with Section 7.1 (*Dispatching*).

³² Note: To discuss during Phase III.

³³ Note: Under review by PREPA operations.

³⁴ Note: Under review by PREPA operations.

5. Forecasting Requirements

- a. SELLER shall separately forecast Demand Reduction Service and Demand Build Service in the Operational Forecast.
- b. Refer to Appendix Y (*Operational Forecast*), for information regarding forecasting requirements.

6. Performance Factor Calculation

- a. The Parties will base the Performance Factor for each GS Event on the percentage of Delivered Capability compared to the Forecasted Capability.
- b. The Parties will average data used for Delivered Capability and Forecasted Capability for the purpose of establishing the performance factor over one Time Interval.
- c. The ramp-in and ramp-out periods of any GS Event will not affect the Performance Factor calculation for the GS Event.
- d. Performance Factor Calculation during GS Event “e”:

$$PFe = \frac{\sum_{i=1}^n (1 - |1 - \frac{DCi}{FCi}|)^2}{n}$$

where:

- PFe** = Performance Factor during GS Event “e” (*i.e.*, Demand Reduction Service/Demand Build Service);
- DC_i** = Delivered Capability, expressed in kW, for Time Interval “i”;
- FC_i** = Forecasted Capability, expressed in kW, for Time Interval “i”;
- i** = the relevant Time Interval; and
- n** = number of Time Intervals in GS Event “e”.

7. Communications and Control

- a. Protocol/Specification
[●]
- b. Data
[●]
- c. Signal
[●]

8. Testing

Refer to Appendix M (*Data, Integration and Testing Protocol*), for information regarding testing requirements.

9. [Maximum Number of Dispatches Called per Agreement Year

	202[●]	202[●]	202[●]	202[●]	202[●]
Demand Reduction Service					
Demand Build Service					
	202[●]	202[●]	202[●]	202[●]	202[●]
Demand Reduction Service					
Demand Build Service					

In the event that the first and last Agreement Years of the Supply Period are for less than twelve (12) Months, the maximum events called for such Agreement Years may be prorated based on Commercial Operation Date and the Termination Date, at PREPA's discretion.]³⁵

³⁵ Note: Parties shall discuss maximum Dispatch during Phase III evaluation.

APPENDIX I

PROGRESS REVIEW

1. Scope

The Consulting Technical Expert shall make comments and recommendations to SELLER in respect of:

- a. any aspect of the design of the GSDS;
- b. the procurement and aggregation of VPP Resources;
- c. installation and maintenance of Protection and Control Equipment, meters and metering equipment at each Participant Site; and
- d. the operation of the GSDS.

2. Reviews and Inspections

- a. For the design of any GSDS or any required report, SELLER shall submit an electronic copy of such document requested by the Consulting Technical Expert. SELLER shall deliver all electronic copies requested for review by email to the address specified in such request in a readily accessible format agreed with the Consulting Technical Expert. The Consulting Technical Expert may provide comments on selected documents and shall designate comments in accordance with Section 3 (*Designations and Subsequent Actions*) of this Appendix I.
- b. For works under paragraph (c) of Section 1 (*Scope*) of this Appendix I, SELLER shall take all reasonable measures to allow the Consulting Technical Expert to undertake inspections as required. The Consulting Technical Expert shall submit a report to SELLER within forty-eight (48) hours after completion of an inspection activity. This report shall contain comments designated in accordance with Section 3 (*Designations and Subsequent Actions*) of this Appendix I.
- c. For the operation of the GSDS, SELLER shall take all reasonable measures to allow the Consulting Technical Expert to undertake inspections as required. The Consulting Technical Expert shall submit a report within twenty-one (21) Days after completion of an inspection. This report shall contain comments designated in accordance with Section 3 (*Designations and Subsequent Actions*) of this Appendix I.

3. Designations and Subsequent Actions

The designations of the relevant documents shall fall into one of the following categories:

- a. “*Reviewed/Inspected and accepted*”, meaning that the document, particular works or operation of the relevant component conform to the requirements of this Agreement. Such designation shall not relieve SELLER from any of its obligations or responsibilities under this Agreement or bind PREPA in respect of such document, particular works or operation of the relevant project component. If Consulting Technical Expert makes any comments under this designation, such comments shall take the form of suggestions for alternative

design or operational procedures which may result in reduced cost or contribute to ease of operation. SELLER shall have no obligation to adopt or respond to any such comments made under this designation.

- b. *“Reviewed/Inspected with comments”*, meaning the comments constitute a form of requests for further details or clarifications on the basis that the relevant document, works or operation of the relevant component does not appear to conform with the requirements of this Agreement. Such identified issues shall be deemed to have been considered non-compliant by PREPA’s Consulting Technical Expert on that basis until such time as SELLER provides the required details and clarifications in a sufficiently satisfactory manner for the Consulting Technical Expert to reach a final decision. Following receipt and review of the requested details and clarifications, the Consulting Technical Expert shall then designate such matter as either “Reviewed/Inspected and accepted” or “Reviewed/Inspected and rejected as non-compliant” as may be appropriate.
- c. *“Reviewed/Inspected and rejected as non-compliant”*, meaning the comments constitute the rejection by the Consulting Technical Expert of the documents, works or operation of the relevant component of the GSDS or the Participant Resources on the basis that it does not comply with this Agreement, in which event the Consulting Technical Expert shall provide a statement setting out in adequate detail the reasons for such designation.

APPENDIX J

OPERATING CHARACTERISTICS

1. GSDS

- a. The design, development, deployment, maintenance, and operation of the [GSDS][Participant Resources] shall be certified to meet applicable Underwriters Laboratory Applicable Standards and shall meet the information technology and information assurance standards, based on the NIST Cybersecurity Framework and 800-53 standards, set forth in Section 6.13 (*Information Security*) and the Operating Procedures.
- b. The GSDS shall have an operational life equal to at least the Term of this Agreement.
- c. The GSDS shall comply with the network and communication requirements set forth in Appendix X (*Metering*) and Appendix M (*Data, Integration and Testing Protocol*). The GSDS shall be capable of sending telemetry data to the Grid System, receiving dispatch signals from the Grid System, and responding with appropriate Grid Services within the response requirements set forth in this Agreement.

2. [●]

[●]

APPENDIX K³⁶
MINIMUM TECHNICAL REQUIREMENTS

[●]

³⁶ Note: PREPA has asked Proponents to propose the MTR for review. Please refer to PREPA's Response No. 83 in RFC Responses No. 006, PREPA's Responses No. 15, 23 and 37 in RFC Responses No. 009

APPENDIX L
OPERATING PROCEDURES

[●]

APPENDIX M

DATA, INTEGRATION AND TESTING PROTOCOL

[●]

APPENDIX N

NOT USED

APPENDIX O

NOT USED

APPENDIX P

PERFORMANCE GUARANTEES

1. GSDS Availability

a. Guaranteed Availability

SELLER guarantees to make the GSDS available for dispatch by PREPA for at least [ninety-five (95%)] of the minutes in each Billing Period during the Supply Period (“**Guaranteed Availability**”). The Parties shall calculate the availability of the GSDS during a Billing Period (the “**GSDS Availability**”) as follows:

$$GSA = \frac{AGS}{TBP}$$

where:

GSA = GSDS Availability for such Billing Period, expressed as a decimal;

AGS = number of minutes in such Billing Period that the GSDS remains available for Dispatch and scheduling of Grid Services (i.e., operational with no component or element that makes up the GSDS either individually or collectively preventing or hindering PREPA’s ability to schedule or dispatch Grid Services) determined by tracking online and offline status of SELLER’s GSDS as represented by their virtual end node in PREPA’s DERMS; and

TBP = the total number of minutes in such Billing Period (other than during a Scheduled Outage or Scheduled Derating).

GSDS Availability calculation shall begin on the Commercial Operation Date.

b. Availability Liquidated Damages

If the GSDS Availability falls below the Guaranteed Availability during a Billing Period, then SELLER shall pay PREPA liquidated damages for such Billing Period (the “**Availability Liquidated Damages**”) equal to:

$$ALD = (GA - GSDS Av) \times GC \times \left(RER - \frac{GS\$}{\left(30.33 \frac{\text{Days}}{\text{Month}} \times 24 \frac{\text{hours}}{\text{Day}} \right)} \right) \times 121.32 \text{ hours}$$

where:

ALD = Availability Liquidated Damages, expressed in \$;

GA = Guaranteed Availability, expressed as its decimal equivalent;

GSDS Av = GSDS Availability, expressed as a decimal;

- GC** = aggregate Guaranteed Capability for Demand Reduction Service and Demand Build Service applicable to such Billing Period, expressed in kW;
- RER** = replacement energy rate of \$0.170/kWh; and
- GSS** = the quotient of (i) the sum of the Demand Reduction Price and the Demand Build Price applicable to such Billing Period *divided by* (ii) two (2), expressed in \$/kW-Month.

2. Capability

a. Guaranteed Capability

For each Billing Period of each Agreement Year of the Supply Period, SELLER guarantees to make available to PREPA a Capability for each Grid Service equal to the Guaranteed Capability for such Grid Service during each Billing Period of such Agreement Year.

b. Capability Liquidated Damages

If, for any Billing Period “n” during an Agreement Year, the Capability of the Demand Reduction Service or the Demand Build Service, as determined in accordance with the factors DRA_n and DBA_n in paragraph 3 (*Demand Reduction Payment*) of Appendix F (*Compensation*) and paragraph 5 (*Demand Build Payment*) of Appendix F (*Compensation*) respectively, falls below the respective Guaranteed Capability applicable to the relevant Quarter of such Agreement Year, then SELLER shall pay PREPA liquidated damages (the “**Capability Liquidated Damages**”) equal to:

For Demand Build Service:

$$CLD(DBS) = \left(TOP - \left(\frac{DB\$}{\left(30.33 \frac{\text{Days}}{\text{Month}} \times 24 \frac{\text{hours}}{\text{Day}} \right)} \right) \right) \times (GC(DBS) - DBA) \times 121.32 \text{ hours}$$

where:

- TOP** = PREPA’s average take-or-pay liability under existing renewable PPOAs equal to \$0.168/kWh;
- DB\$** = Demand Build Price applicable to Agreement Year 1, expressed in \$/kW-Month;
- GC(DBS)** = Guaranteed Capability for Demand Build Service applicable to the Quarter in which such Billing Period occurred, expressed in kW; and
- DBA** = DBA_n applicable to Billing Period “n”, as determined under paragraph 5 (*Demand Build Payment*) of Appendix F (*Compensation*); and

For Demand Reduction Service:

$$CLD(DRS) = (RER - \left(\frac{DR\$}{\left(30.33 \frac{\text{Days}}{\text{Month}} \times 24 \frac{\text{hours}}{\text{Day}} \right)} \right)) \times (GC(DRS) - DRA) \times 121.32 \text{ hours}$$

where:

RER = replacement energy rate of \$0.170/kWh;

DR\$ = Demand Reduction Price applicable to Agreement Year 1, expressed in \$/kW-Month;

GC(DRS) = Guaranteed Capability for Demand Reduction Service applicable to the Quarter in which such Billing Period occurred, expressed in kW; and

DRA = DRA_n applicable to Billing Period “n”, as determined under paragraph 3 (*Demand Reduction Payment*) of Appendix F (*Compensation*).

APPENDIX Q

FORM OF SWORN STATEMENT

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 the 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 the 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 complies 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____.

Affidavit No. _____

Representative's Signature

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

APPENDIX R

FORM OF FOMB CERTIFICATION

CONTRACTOR CERTIFICATION REQUIREMENT

SELLER shall provide the following certification to FOMB and the Commonwealth's Contracting Government Entity, signed by its Chief Executive Officer (or equivalent highest rank officer):

Unless the context otherwise requires, capitalized terms have the meanings defined in the Grid Services Agreement dated [●] (the "**Agreement**").

1. SELLER's subcontractor(s) in connection with the Agreement (including any amendments, modifications or extensions) is (are) the following:

(Name of individual or firm, including names of principals or owners of the latter)

(Principal terms and conditions of the contractual relation and role of the subcontractor)

(Amount of proposed contract payable to each subcontractor)

2. Neither SELLER nor any of its owners (including any Person or entity with more than a ten percent (10%) ownership interest in SELLER), partners, directors, officials or employees, has agreed to share or give a percentage of SELLER's compensation under the Agreement to, or otherwise compensate, any third party, whether directly or indirectly, in connection with the procurement, negotiation, execution or performance of the contract, except as follows:

(Name of individual or firm, including names of principals or owners of the latter)

(Principal terms and conditions of the compensation sharing arrangement and consideration for such benefit)

3. To the best knowledge of the signatory (after due investigation), no Person has unduly intervened in the procurement, negotiation or execution of the contract, for its own benefit or that of a third Person, in contravention of Applicable Law.
4. To the best knowledge of the signatory (after due investigation), no Person has: (i) offered, paid, or promised to pay money to; (ii) offered, given or promised to give anything of value to; or (iii) otherwise influenced any public official or employee with the purpose of securing any advantages, privileges or favors for the benefit of such Person in connection with the Agreement (such as the execution of a subcontract with SELLER, beneficial treatment under the contract, or the written or unwritten promise of a gift, favor, or other monetary or non-monetary benefit).
5. Neither SELLER, nor any of its owners, partners, directors, officials or employees or, to the best of its knowledge (after due investigation), its representatives or sub-contractors, has required, directly or indirectly, from third Persons to take any action with the purpose of influencing any public official or employee in connection with the procurement, negotiation or execution of the contract, in contravention of Applicable Law.
6. Any incorrect, incomplete or false statement made by SELLER's representative as part of this certification shall cause the nullity of the proposed contract and SELLER must reimburse

immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under the Agreement.

The above certifications are hereby signed under penalty of perjury by the [Chief Executive Officer (or equivalent highest rank officer)] in the following form:

“I hereby certify under penalty of perjury that the foregoing is complete, true and correct.”

By:

Date:

Signature:

APPENDIX S

FORM OF CONDITIONS PRECEDENT CERTIFICATE

CONDITIONS PRECEDENT CERTIFICATE

Date: [●]

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

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

To: [●] (“**SELLER**”)

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

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

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

Very truly yours,

Acknowledged and agreed,

[●]
as SELLER

Puerto Rico Electric Power Authority
as PREPA

[●]

[●]

APPENDIX T

NOT USED

APPENDIX U

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

COMMERCIAL OPERATION DATE CERTIFICATE

Date: [●]

From: [●] (“SELLER”)

To: Puerto Rico Electric Power Authority

We refer to the Grid Services Agreement between PREPA and SELLER dated [●] (the “GSA”). Unless the context otherwise requires, capitalized terms used in this certificate shall have the meanings ascribed to them in the GSA.

We hereby certify that:

- a. as demonstrated by the Initial Performance Tests, (i) SELLER has completed the installation and testing of the GSDS in accordance with this Agreement, (ii) the GSDS can make available Capability on a sustained basis that meets or exceeds the Guaranteed Capability for Grid Services (or, to the extent that the Guaranteed Capability exceeds such Capability, SELLER has credited PREPA for all Liquidated Damages required by the GSA in respect thereof), (iii) such Capability of the GSDS meets or exceeds the Minimum Acceptance Capability and satisfies the Other Minimum Acceptance Criteria, and (iv) the GSDS can Dispatch and schedule Grid Services required by the GSA on a continuous basis, in each case, in accordance with Prudent Utility Practices and the GSA;
- b. SELLER has obtained, and maintains in force, all material Permits required for the deployment and operation of the GSDS and Participant Resources; and
- c. the GSDS complies in all material respects with Applicable Law.

The Commercial Operation Date occurred on [●].

Very truly yours,

Acknowledged and agreed,

[●]
as SELLER

Puerto Rico Electric Power Authority
as PREPA

[●]

[●]

APPENDIX V

FORM OF PERFORMANCE SECURITY

IRREVOCABLE STANDBY LETTER OF CREDIT

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

Beneficiary: PUERTO RICO ELECTRIC POWER AUTHORITY
Address: [●]
Attn:[●]

Reference No.: [●]

Date of Issuance: [●]

[PREPA-/SELLER Name/ Grid Services Agreement] – Performance Security No. [●]

We understand that **[insert name of SELLER]** (the “**Applicant**”) has entered into a contract with you, Beneficiary, dated [●] (as amended, the “**Agreement**”), which requires a Performance Security in the form and amount of this irrevocable standby letter of credit (“**Letter of Credit**”).

At the request of the Applicant, we **[name of Bank]**, hereby issue this Letter of Credit and irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [●] United States Dollars (USD [●]) in each case upon receipt by us of your first demand in writing at the Place of Presentation listed below in person, by registered or certified mail or by international overnight courier service, substantially in the form attached as Annex A hereto (signed by your authorized representative and appropriately completed) (“**Demand**”), without your needing to prove or to show grounds for your Demand or the sum specified therein. We shall remit all payment(s) under this Letter of Credit into a bank account of your choice and discretion as specified in your Demand. You may make one or more Demands under this Letter of Credit. Partial drawings are permitted.

Any Demand made by Beneficiary in accordance herewith shall be conclusive evidence that the sum stated in such Demand is properly due and payable to Beneficiary under this Letter of Credit. We shall have no right and shall not be under any duty or responsibility to enquire into the reason or circumstances of any Demand made by Beneficiary or the respective rights and/or obligations and/or liabilities of Beneficiary and the Applicant under the Agreement. Any discrepancy between the explicit terms hereof and the Rules (defined below) shall be read in favor of the terms set forth in this Letter of Credit.

Place of Presentation *[insert address of Bank branch where Beneficiary presents a Demand]*.

We shall, within five (5) business days after receipt of any Demand served from time to time by Beneficiary, pay to Beneficiary in immediately available funds the lesser of: (a) the amount specified in the Demand; and (b) the then applicable amount remaining on the Letter of Credit. If a Demand made by Beneficiary hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, then we shall give Beneficiary, within two (2) business days after receipt of such Demand, notice that such Demand was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reason therefore. Upon being notified that a Demand was not made in conformity with this Letter of Credit, Beneficiary may attempt to correct such non-conforming Demand. Our obligations under this Letter of Credit are primary and not by way of surety or guarantee.

[This Letter of Credit shall enter into force and effect upon expiry of Performance Security No. [●], dated [●] and issued by [●].] **[NTD: Insert this language if this is a replacement Letter of Credit.]**

This Letter of Credit shall expire on [date] but such expiration date shall be automatically extended for a period of one (1) year on [one year anniversary of prior date] (“**Expiry Date**”), and on each successive expiration date thereafter, unless at least one hundred twenty (120) calendar days before the then current Expiry Date we notify both Beneficiary and Applicant that we have decided not to extend this Letter of Credit beyond the then current Expiry Date. Any such notice shall be delivered by registered or certified mail, or by FedEx, both to:

Beneficiary at:

[●]

And to Applicant at:

[●]

In the event Beneficiary and Applicant are so notified by us pursuant to the immediately preceding sentence, Beneficiary may draw any amount or the entire amount available under this Letter of Credit by Beneficiary’s presentment, at the Place of Presentation, of a drawing certificate duly signed in substantially the form of Annex A attached hereto appropriately completed. In no event shall the Expiry Date of this Letter of Credit be subject to automatic extension beyond sixty (60) calendar days after the expiration of the Agreement term, and any pending automatic one-year extension shall be ineffective beyond such date. The Expiry Date does not affect our liability to make payment of any demand received prior to the Expiry Date.

This Letter of Credit is subject to ICC International Standby Practices 1998 (ISP 98), International Chamber of Commerce Publication No. 590 (the “**Rules**”). For matters not addressed by the Rules, this Letter of Credit is governed by and to be construed in accordance with the laws of [**jurisdiction of the Qualified Bank**]. In the event of a conflict between the terms of this Letter of Credit and the Rules, ICC Publication No. 758, the terms of this Letter of Credit shall prevail.

The courts of the [**United States federal courts in the Commonwealth of Puerto Rico**] shall have exclusive jurisdiction in respect of all disputes arising out of this Letter of Credit (including, without limitation, the enforceability of this Letter of Credit).

By:
Authorized Signatory

ANNEX A - FORM OF DRAWING CERTIFICATE

[Letterhead of Beneficiary]

[Name of Issuing Bank]

Date: [●]

[Insert Work Description] – Performance Security No. [●]

We refer to the above-captioned irrevocable standby letter of credit, with reference number [●] (“**Letter of Credit**”). Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to them in the Letter of Credit or the Agreement. We hereby inform you that:

1. there is a COD Termination Event, or a Default (as defined in the Agreement) by Applicant or the owing by Applicant to Beneficiary has occurred under the Agreement for penalties or any other liabilities, damages, losses, costs or expenses arising out of or relating to a breach of any obligation under the Agreement by Applicant, such as Default or otherwise, or the Agreement provides that Beneficiary may draw on the Letter of Credit, entitling us to call upon the Letter of Credit; or
2. Applicant failed to commence or carry out work required to rectify any defect and/or damage during the Defects Liability Period in accordance with the Agreement; or
3. applicant owes Beneficiary Liquidated Damages under and in accordance with the Agreement; or
4. you no longer meet the requirements of a Qualified Bank (as defined below) and twenty-one (21) calendar days or more have elapsed since the date on which you no longer met such requirements, and the Applicant has not delivered to Beneficiary a replacement letter of credit that is substantially identical to the Letter of Credit, meeting the requirements of the Agreement. “Qualified Bank” means a national bank, national association, commercial bank or other financial institution registered in the United States, having a branch located within Puerto Rico or the contiguous United States, and otherwise acceptable to Beneficiary that has a long-term issuer rating of at least (i) if headquartered within Puerto Rico, then “B+” by Standard & Poor’s Ratings Services, “B1” by Moody’s Investors Services Inc., or “B+” by Fitch Ratings Inc. or (ii) if headquartered outside of Puerto Rico, then “A-” by Standard & Poor’s Ratings Services, “A3” by Moody’s Investors Services Inc., or “A-” by Fitch Ratings Inc., or in each case if the relevant rating agencies cease to engage in business or rate the obligations in question, then an equivalent rating from another internationally recognized rating agency selected by Applicant with the written consent of Beneficiary; provided that, if such financial institution’s ratings satisfy such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications; or
5. twenty-one (21) or less calendar days remain before the current Expiry Date, the Applicant’s obligation to maintain the Letter of Credit under the Agreement extends beyond such Expiry Date, and the Applicant has not delivered to Beneficiary a replacement Letter of Credit substantially identical to the Letter of Credit and meeting the requirements of the Agreement.

This letter serves as our demand for payment under the Letter of Credit. 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,

[*The Puerto Rico Electric Power Authority*]

By:
Authorized Signatory

APPENDIX W

FORM OF DIRECT AGREEMENT

DIRECT AGREEMENT

THIS DIRECT AGREEMENT (“**Direct Agreement**”) dated [●], 2021, is entered into among: (i) the Puerto Rico Electric Power Authority, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by an Act of 23 May 1941, No. 83, as amended (the “**Consenting Party**”), (ii) [●] (together with its successors, designees and permitted assigns in such capacity, the “**Administrative Agent**”) and (iii) [●] (the “**Assignor**”). All capitalized terms used herein and not otherwise defined in this Direct Agreement shall have the respective meanings set forth in the Assigned Agreement (as defined below). The principles of interpretation and construction set forth in the Assigned Agreement shall apply to, and are hereby incorporated by reference as if fully set out in, this Direct Agreement, *mutatis mutandis* and as if any references to “this Agreement” and “Party” in such provisions were references to, respectively, “this Direct Agreement” and “the parties hereto”.

RECITALS

WHEREAS:

- (A) the Assignor (as seller) and Consenting Party (as buyer) have entered into that certain Grid Services Agreement, dated as of [●] (as amended, restated or supplemented, the “**Assigned Agreement**”), pursuant to which the Assignor will (i) design, development, permit, deploy, operate and maintain a Grid Service Delivery System, which aggregates a network of [●] kW distributed energy resources, and (ii) provide grid services exclusively to the Consenting Party, and the Consenting Party will pay for the grid services from the Grid Service Delivery System designed and operated by the Assignor;
- (B) Pursuant to Section 19.3 (*SELLER’s Right to Assign*) of the Assigned Agreement, the Consenting Party has agreed to use commercially reasonable efforts to cooperate with any financing efforts of the Assignor, and the Assignor may assign its rights to payment under the Assigned Agreement to Project Lenders as security for its obligations to any such lender in connection with any financing of the development and construction of the Facility;
- (C) [The Assignor has entered into that certain [Credit Agreement], dated as of [●] (as amended, restated or supplemented, the “Credit Agreement”), among Project Lenders from time to time party thereto (together with the Administrative Agent, each, a “**Secured Party**”, and, collectively, the “**Secured Parties**”) and the Administrative Agent, pursuant to which such Project Lenders will make loans to the Assignor to, among other things, finance the construction of the Facility; and
- (D) The Assignor has entered into that certain Security Agreement, dated as of [●] (as amended, restated or supplemented, the “Security Agreement”), among the Assignor, the other subsidiary guarantors from time to time party thereto and the Administrative Agent, pursuant to which each of the Assignor and such subsidiary guarantors have granted to the Administrative Agent, for the ratable benefit of the Secured Parties, a security interest in certain property as collateral security for the prompt and complete payment and performance when due of such entities’ obligations under the Credit Agreement.]

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. NOTICE OF ASSIGNMENT

The Assignor hereby gives notice to the Consenting Party that pursuant to the Security Agreement, the Assignor has pledged and assigned to the Administrative Agent, for the benefit of the Secured Parties, and granted to the Administrative Agent a security interest in, all of the Assignor's right, title and interest in, to and under the Assigned Agreement pursuant to the Security Agreement (the "**Assigned Interest**"), as collateral security for the obligations of the Assignor under the Credit Agreement.

2. PAYMENTS UNDER THE ASSIGNED AGREEMENT

2.1 Billing Arrangements

The Consenting Party agrees that, unless and until it has been notified in writing by the Administrative Agent that the Security Agreement has been terminated, the Consenting Party will pay all amounts payable by it under the Assigned Agreement directly to the Assignor at such account as may be specified in a written notice delivered by the Administrative Agent and the Assignor to the Consenting Party. The Assignor authorizes and acknowledges the foregoing and agrees that any payment made consistent with this Section 2.1 shall be treated for all purposes as a payment made directly to the Assignor under the terms of the Assigned Agreement.

2.2 No Set-Off Except as Provided Under Assigned Agreement

The Consenting Party agrees that in making payments in respect of the Assigned Agreement, it will not offset any amounts owed to it by the Assignor except as provided under the Assigned Agreement.

3. RIGHTS OF ADMINISTRATIVE AGENT

3.1 Exercise of the Assignor's Rights and Remedies

If the Administrative Agent provides written notice to the Consenting Party that an event of default has occurred under the Credit Agreement and that the Administrative Agent desires to exercise its rights and remedies pursuant to the Security Agreement, the Administrative Agent or any Substitute Provider (as defined below) shall be entitled to exercise any and all rights of the Assignor under the Assigned Agreement in accordance with the terms of this Direct Agreement and the Assigned Agreement. The Consenting Party agrees to accept such exercise by the Administrative Agent or any Substitute Provider and continue its performance under the Assigned Agreement in accordance with the terms thereof.

3.2 Right to Cure

Upon the occurrence of an event of default by the Assignor under the Assigned Agreement, or upon the occurrence or non-occurrence of any other event or condition which would enable the Consenting Party to terminate its obligations under the Assigned Agreement (herein called a "**default**"), the Consenting Party will not terminate its obligations under the Assigned Agreement until it first gives to the Administrative Agent (i) the written notice required to be given to Assignor by the Assigned Agreement specifying the nature of the default giving rise to such right (and in the case of a payment default, specifying the amount thereof); and (ii) the opportunity to cure such default for a period of ten (10) days, in the case of a payment default, and thirty (30) days, in the case of a non-payment default, which may be coincident with the applicable cure period, if any, set forth in the Assigned Agreement for the Assignor to cure such default, so long as the Administrative Agent has commenced and is diligently pursuing appropriate action to cure such

default and continues to perform all other obligations under the Assigned Agreement (unless performed by the Assignor).

3.3 No Liability

Except during any period in which the Administrative Agent or any Secured Party (or any of their respective designees or assignees) constitutes a Substitute Provider, the Consenting Party acknowledges and agrees that neither the Administrative Agent nor any Secured Party (or any of their respective designees or assignees) shall have any liability or obligation under the Assigned Agreement as a result of this Direct Agreement except to the extent of their respective interest in the Assigned Agreement, the Credit Agreement or the Security Agreement, nor shall the Administrative Agent or any Secured Party (or any of their respective designees or assignees) be obligated or required to perform any of the Assignor's obligations under the Assigned Agreement or to take any action to collect or enforce any claim for payment assigned under the Security Agreement. No curing of any defaults under the Assigned Agreement shall be construed as an assumption by the Administrative Agent or any Secured Party (or any of their respective designees or assignees) of any of the obligations, covenants or agreements of the Assignor under the Assigned Agreement.

3.4 Substitution: Transfer

- (a) The Consenting Party agrees that, notwithstanding anything to the contrary in the Assigned Agreement, if the Administrative Agent shall notify the Consenting Party in writing that an Event of Default (as defined in the Credit Agreement) has occurred and is continuing under the Credit Agreement and that the Administrative Agent desires to exercise its rights and remedies pursuant to the Security Agreement, then a Substitute Provider may be substituted for the Assignor under the Assigned Agreement. In such event, the Consenting Party will continue to perform its obligations under the Assigned Agreement in favor of the Substitute Provider, subject, in any event, to all of the Consenting Party's rights and remedies thereunder, but recognizing that the Substitute Provider's obligations under the Assigned Agreement shall be limited to the Substitute Provider's interest in the Facility and all revenues and proceeds derived therefrom. In the event that the Substitute Provider succeeds to the Assignor's interest under the Assigned Agreement, whether by foreclosure or otherwise, the Substitute Provider shall not be liable for curing or performing or be required to perform or cause to be performed any of the defaults under the Assigned Agreement that were, by their nature, incapable of being cured or performed.
- (b) If the Assigned Agreement is rejected or terminated by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding involving the Assignor, and if within ninety (90) days after such rejection or termination the Administrative Agent shall so request, a Substitute Provider and the Consenting Party will promptly execute a new agreement that shall be for the balance of the remaining term under the Assigned Agreement (before giving effect to such rejection or termination) and shall contain the same agreements, terms and conditions as the Assigned Agreement. If the approval of any such trustee or debtor in possession or any regulatory approval is necessary in order for the Consenting Party to enter into or perform under any such new agreement, the Consenting Party shall cooperate with the Administrative Agent or Substitute Provider in obtaining such approvals.

"Substitute Provider" means, in respect of any assignment, transfer or sale permitted hereunder (each a **"transfer"**) any person, including the Administrative Agent, any Secured Party, or the Administrative Agent's or any Secured Party's designee or assignee, if the transfer is made to the Administrative Agent or a Secured Party, or any purchaser of the Assigned Interest in a foreclosure sale or otherwise, who: (i) is at least as creditworthy

(taking into account any credit support provided by such person) as the Assignor on the date of such transfer, (ii) is properly licensed or otherwise authorized to perform the Assignor's obligations under the Assigned Agreement, is a counterparty with whom the Consenting Party is not prohibited from transacting under the regulatory regime then-applicable to the Assigned Agreement, and has provided the certifications and documentation required by Appendix B (*Signing Conditions*) of the Assigned Agreement, but construing references to SELLER therein as references to such new provided; (iii) meets the Consenting Party's internal credit policies as reasonably and consistently applied solely with respect to the maximum potential credit exposure of the Consenting Party to such person (it being understood that the determination of the amount of such credit exposure shall take into account the then current creditworthiness of such person and any collateral or guaranties posted for the benefit of such person), and otherwise has a tangible net worth of at least twenty-five million dollars (\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least seventy-five million dollars (\$75,000,000)); (iv) has provided, to the extent requested, all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations (including, without limitation, the Patriot Act, rules and regulations of the Office of Foreign Assets Control and other similar client identification policies and procedures) as well as all documentation required by the Assigned Agreement (including as signing conditions) and Puerto Rico law; (v) has not formally threatened in writing or commenced any litigation proceeding against the Consenting Party and is not subject of any formal written threat of litigation issued or of any litigation proceeding initiated by the Consenting Party; (vi) is or has engaged, in the Consenting Party's sole discretion, a Qualified Operator to develop, construct, test, commission, operate, maintain and repair a project similar to the one contemplated by the Assigned Agreement, to deliver energy to the Consenting Party from such a project and otherwise fulfil the Assignor's obligations under the Assigned Agreement.

4. REPRESENTATIONS

The Consenting Party represents that:

4.1 The Consenting Party 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 conduct its business, to own its properties, and to execute and deliver, and to perform its obligations under, this Direct Agreement.

4.2 The execution, delivery and performance by the Consenting Party of this Direct Agreement have been duly authorized by all necessary corporate action and do not and will not (i) require any consent or approval of any Governmental Authority or the board of directors, members or partners (or equivalent persons), as the case may be, of the Consenting Party which has not been obtained, (ii) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Consenting Party, or (iii) violate or result in a breach of or constitute a default under, or require a consent that has not been obtained under or result in the creation of a lien under, its certificate of incorporation or by-laws or any indenture or loan or credit agreement or any other material agreement, lease or instrument to which the Consenting Party is a party or by which it or its properties may be bound or affected.

4.3 This Direct Agreement has been duly executed and delivered by the Consenting Party and constitutes the legal, valid and binding obligation of the Consenting Party enforceable against it in accordance with its terms, except as enforceability may be limited by general principles of equity and by

applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally. This Direct Agreement is in full force and effect.

4.4 No authorization, approval, consent, permit or other action by, or registration or filing with, any governmental authority or any other entity is necessary for or in connection with the execution or delivery by the Consenting Party of, or the performance by the Consenting Party of any of its obligations under this Direct Agreement, other than those which have been duly obtained or made and are final and non-appealable and in full force and effect as of the date hereof.

4.5 No litigation, action, suit, adverse proceeding or investigation before or by any arbitrator or government authority is pending or, to the best knowledge of the Consenting Party, threatened in writing against the Consenting Party or against any of its properties or revenues (i) with respect to this Direct Agreement or any of the transactions contemplated hereby or thereby; or (ii) which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the ability of the Consenting Party to perform its obligations under this Direct Agreement.

5. RESERVATION OF RIGHTS

The parties hereto agree that notwithstanding the terms of Sections 1 and 2 above, each of the Consenting Party and the Assignor reserves any and all rights and remedies (including those relating to set-off, counterclaim, deduction or retention) it may have under the Assigned Agreement or applicable law. The rights reserved by each of the Consenting Party and the Assignor under the Assigned Agreement and applicable law are cumulative and not exclusive of any rights it may have under the Assigned Agreement and/or applicable law.

6. MISCELLANEOUS

6.1 Notices

All notices and other communications hereunder shall be in writing and delivered to the applicable recipient pursuant to this Section 6.1: (i) if to the Consenting Party or to the Assignor, in accordance with the Assigned Agreement; (ii) if to the Administrative Agent, [●] or (iii) to such other address or facsimile number as any party may designate by notice given to all parties hereto pursuant to this Section 6.1. Delivery of notices and communications sent pursuant to this Section 6.1 shall be effective upon receipt.

6.2 Governing Law

THIS DIRECT AGREEMENT AND ALL QUESTIONS REGARDING ITS VALIDITY, INTERPRETATION, PERFORMANCE AND/OR ENFORCEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE COMMONWEALTH OF PUERTO RICO WITHOUT REGARD TO ANY CONFLICT-OF-LAW PRINCIPLES OF SUCH COMMONWEALTH OR OTHER JURISDICTION TO THE CONTRARY. JURISDICTION AND VENUE OF ANY SUIT OR ACTION TO ENFORCE THIS DIRECT AGREEMENT SHALL REST SOLELY IN [THE UNITED STATES FEDERAL COURTS IN THE COMMONWEALTH OF PUERTO RICO] AND EACH OF THE PARTIES HERETO HEREBY SUBMITS TO THE PERSONAL JURISDICTION OF SUCH COURTS FOR THE PURPOSE OF RESOLVING ANY AND ALL MATTERS ARISING UNDER OR IN RESPECT OF THIS DIRECT AGREEMENT AND AGREES THAT PERSONAL SERVICE UPON EACH SUCH PARTY MAY BE MADE BY DELIVERY THEREOF TO SUCH PARTY AT THE ADDRESS SPECIFIED HEREIN.

6.3 Waiver of Jury Trial

EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS DIRECT AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

6.4 Counterparts

This Direct Agreement may be executed by any number of, and on separate, counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. A facsimile or .pdf copy of a counterpart signature page shall serve as the functional equivalent of a manually executed copy for all purposes.

6.5 Headings Descriptive

The headings of the several sections and subsections of this Direct Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Direct Agreement.

6.6 Severability

In case any provision in or obligation under this Direct Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.7 Amendment

Neither this Direct Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by each party hereto.

6.8 Successors and Assigns

This Direct Agreement shall be binding upon the successors and assigns of the Consenting Party and inure, together with the rights and remedies of the Assignor and the Administrative Agent, to the benefit of the Assignor and the Administrative Agent.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties hereto have caused this Direct Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year above written.

PUERTO RICO ELECTRIC POWER AUTHORITY

by

Name:

Title:

[●] as Administrative Agent

by

Name:

Title:

APPENDIX X

METERING

1. Purpose

The purpose of this Appendix X is to establish metering requirements for SELLER who offer Grid Services to PREPA using Participant resources. Any metering equipment placed into service or returned to service shall meet the provisions as set forth in this Appendix X.

2. Metering Requirements

2.1 Data interval requirement

SELLER shall monitor, collect, and report each Month during the Supply Period 5-minute interval data. This may be accomplished in one of two (2) ways:

1. SELLER can install a monitoring device on each enrolled and enabled device, or
2. SELLER can install a whole house/whole building monitoring device for each Participant Site.

2.2 Applicability

[These requirements apply to all residential Participants and any commercial Participant who do not have interval meters already installed.

For commercial Participant with interval data: if a commercial Participant has a 15-minute interval meter installed, PREPA shall upgrade it to a 5-minute interval meter.

SELLER must conform to Applicable Laws (including tariff requirements).]

2.3 Validity

[Upon PREPA's implementation of a next generation metering system, including installation or upgrade of a Participant meter, a telecommunications network and a corresponding Meter Data Management System (MDMS), these metering requirements described herein will no longer be applicable. Upon that event, PREPA will install and operate advanced meters for all Participants. PREPA will assume responsibility for the calibration of the advanced meters and assume responsibility for meter data management. At that time, a SELLER may interface with PREPA's meters.]

3. Metering accuracy specifications

The performance of SELLER's metering equipment shall be deemed acceptable when the percent registration is not less than 98% or more than 102%. This is effectively an accuracy requirement of $\pm 2\%$.

4. Testing and Test Plan

Metering equipment shall be tested by SELLER prior to or during installation. SELLER shall provide documentation and self-certification to PREPA showing the accuracy of metering equipment installed by SELLER. In addition, SELLER shall define a test plan, designed to test metering equipment at or prior to installation, and monitor a reasonable percentage of the installed metering equipment to verify the metering equipment's accuracy and performance during the Term. SELLER shall have flexibility to define the test plan so that it is appropriate for the type of metering equipment used by SELLER. The test plan shall document SELLER's test, calibration and maintenance procedures of SELLER-installed metering equipment. The test plan shall be delivered to PREPA for review and the plan must be approved by PREPA prior to the start of Grid Service delivery by SELLER, which approval PREPA shall not unreasonably withhold.

APPENDIX Y

OPERATIONAL FORECAST

The Operational Forecast represents SELLER's total Capability for the given period. SELLER shall provide an Operational Forecast for each Grid Service provided pursuant to this Agreement. The Operational Forecast shall be made available to the DERMS via CSV files in accordance with the following attributes:

Attributes	Demand Build Service	Demand Reduction Service
Forecasted Capability	kW/kWh	kW/kWh
Forecast Term	Min 4 Days	Min 4 Days
Data Resolution (Interval)	15 Minute	15 Minute
Update Timing	1am/1pm	1am/1pm
Update Frequency	12 hours	12 hours

Table 1 - Operational Forecast Attributes

PREPA may change the values in Table 1 periodically in its sole discretion.

The table below shows the fields included in the file to be transferred from the Aggregator to DERMS with the aggregated Forecasted Capability. The format will be a CSV file. The values/columns will be in the order described in the following table.

[•]

Table 2 – Operational Forecast Import File Fields

File Pattern = *.csv

Suggested pattern: <AggregatorName><GridService><FileCreateDateTime>.csv

One Operational Forecast file will be submitted per grid service (Demand Build Service, Demand Reduction Service) at the intervals specified in Table 1.

The Operational Forecast shall be updated within fifteen (15) minutes to reflect the activation or reservation of Capability and the impact of the activation or reservation on any other Capability.

Any change to the Participant Resource(s) that results in a change to the Capability that PREPA may activate or reserve that was provided in the previous update of the Operational Forecast shall result in an updated Operational Forecast that shall be updated to PREPA within fifteen (15) minutes of the change.

If SELLER is unable to provide Capability for any reason for a period of less than four (4) hours, SELLER shall update its Operational Forecast within fifteen (15) minutes to identify the period(s) during which Capability will be unavailable.

Demand Build Service shall be forecasted for the period, e.g. 10:00 – 14:00 (Puerto Rico Time) intervals outside such period shall be zero.

Demand Reduction Service shall be forecasted for the period, e.g. 17:00 – 21:00 (Puerto Rico Time). Intervals outside such period shall be zero.

If the failure to make the Operational Forecast available to PREPA is the result of Force Majeure, SELLER shall notify PREPA as soon as practicable via telephone.]

APPENDIX Z

FORM OF WARRANTY COMPLIANCE CERTIFICATE

WARRANTY COMPLIANCE CERTIFICATE

Date: [●]

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

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

From: [●] (“**SELLER**”)

We refer to the Grid Services Agreement dated [●] between PREPA and SELLER (the “**GSA**”). Unless the context otherwise requires, capitalized terms used in this Warranty Compliance Certificate shall have the meanings ascribed to them in the GSA.

I have reviewed the representations and warranties made by SELLER under Article 12 (*Representations, Warranties, & Covenants*), and, on behalf of SELLER, confirm and certify to PREPA the truth and correctness of such representations and warranties on the date hereof.

Very truly yours,

[●]
as SELLER

[●]

APPENDIX AA

CUSTOMER SERVICE REQUIREMENTS

SELLER must provide customer service related to Participant and/or PREPA initiated trouble calls, repairs and other field services related to installed devices. PREPA may transfer Participant calls and/or requests to SELLER, and SELLER must respond accordingly.

Call Center Requirements	<ul style="list-style-type: none"> • Service Level: >78% of calls answered within 30 seconds • Average Speed of Answer: <60 seconds • Force Busy: <1% of total inbound calls • First call resolution: >70% of calls are resolved on the first call
Virtual Enterprise Network (“VEN”)/ Participant Gateway Installation	SELLER will provide all labor, materials, transportation and other services necessary to install and provision Participant premise devices. Provisioning will include verification of VTN-to-VEN communication and successful operation of the VEN during a test.
Field Device Support	SELLER will maintain an in-state, dispatchable, on-site support capability to manage maintenance and repair issues related to Participant premise devices.
Scheduling Participant site visit	SELLER will manage scheduling/ rescheduling Participant visits.
Service Requests by PREPA or Participant	SELLER will respond via phone or email to field service requests initiated by a Participant or by PREPA within 24 hours of request.
Supervision	SELLER will provide sufficient supervision of its installer to ensure quality installation performance.
Field Service Personnel	SELLER will provide training, safety and background check, and drug screen requirements for field service personnel. Installers will, at a minimum, be a journeyman electrician working under the supervision of a licensed electrical contractor. (Installers licensed in Puerto Rico are preferred.)
Testing equipment	SELLER will provide its own tools and equipment for pre- and post-installation testing. Equipment must meet relevant certifications.
Installation completion	SELLER will manage the workforce and installation process for all allocated VENs until installation is complete.
Emergency repairs	SELLER will handle any Emergency repairs encountered during the installation process as soon as practicable and in any event within 24 hours of repairs being required.
Quality control	SELLER shall have log records of all Participant transactions during the term of the contract.
Installer workflow supporting data	SELLER will provide each installer with only the Participant data associated with a single Day’s work for that installer, and to ensure that Participant data is not retained by the installer after the end of that Day.

Insurance Requirements	SELLER will be subject to insurance requirements, including automobile liability, general liability, and worker's compensation.
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APPENDIX BB

PARTICIPANT SERVICE AGREEMENT REQUIREMENTS

The Participant Service Agreement (“PSA”) between a SELLER and a Participant setting forth the terms and conditions by which a Participant may enroll with a SELLER to participate in the provision of Grid Services to PREPA shall, at a minimum, include the following:

1. Term: (a) The term of the PSA, including the start and end dates of the Participant’s enrollment with SELLER; and (b) the term of the Grid Services Agreement between SELLER and PREPA.
2. Payment: All estimated payment amounts, including all incentives, due from SELLER to the Participant during the term, together with the type and frequency of such payments. [SELLER must also indicate that SELLER will report incentive payments as Participant income to the [U.S. Internal Revenue Service]. SELLER shall promptly notify the Participant of any change to such payments.
3. Charges: All recurring and nonrecurring charges due from the Participant to SELLER during the term, including the types, frequency and amounts of such charges.
4. Grid Services Event Notification: The frequency, duration, and criteria under which the Participant’s VPP Resource(s) may be engaged in response to a Grid Services Event.
5. Equipment: The equipment that SELLER will site at the Participant’s service location in order to engage the Participant’s VPP Resource(s), together with the ownership status of all such equipment.
6. Appointment of SELLER as Participant’s Agent: The legal appointment by the Participant of SELLER as the agent of the Participant for the purpose of delivering the Grid Services from the Participant’s VPP Resource(s) to PREPA pursuant to the terms of the Grid Services Agreement between SELLER and PREPA.
7. Access by PREPA: PREPA may access the equipment for any purpose in furtherance of PREPA’s rights under the Grid Services Agreement.
8. Service Address: The physical residence or business address serviced by PREPA where the Participant’s VPP Resource(s) is/are located and the Participant is a primary account holder of record.
9. Participant E-mail Address: If available, SELLER shall collect and pass on to PREPA the Participant’s e-mail address.
10. Data: The types of Participant data that will be accessed by SELLER, how it may use the data, and with whom SELLER may share the data, together with all information security and privacy policies enacted by SELLER that apply to such data.
11. Consent and Release: A separate consent and release, to be duly executed by the Participant, granting PREPA the right, without restriction, to use all Participant data produced as a result of the Participant’s enrollment with SELLER for all legal purposes.

12. Penalties for Non-performance: Any penalties for non-performance, underperformance, or overperformance and a description of how penalties will be calculated.
13. Cancellation: A grace period during which the Participant may cancel its enrollment without any penalties. The grace period must terminate prior to SELLER notifying PREPA of the Participant's enrollment.
14. Early Termination by Participant: The process by which the Participant may terminate its enrollment with SELLER prior to the end of the term, and any penalties that may apply against the Participant for such early termination.
15. Events of Termination: Any specific event by a party that may result in a termination of the PSA by the other party.
16. Warranties: All warranties that SELLER will provide to the Participant, as well as all warranties that SELLER explicitly disclaims and will not provide to the Participant.
17. Force Majeure: The conditions under which a party's performance may be excused due to the existence of a force majeure.
18. Dispute Resolution: The Participant's options should a dispute arise between SELLER and the Participant.
19. Insurance: The types and levels of insurance that each party must have in place throughout the term.
20. Indemnity: The SELLER will indemnify the Participant against all claims flowing from a breach of SELLER's representations under the PSA.
21. Damages: Any limitations on SELLER's liability for damages that may arise under the PSA.
22. Authority to Sign: The Participant's affirmative representation that it possesses the full right and authority to execute the PSA on behalf of the Participant and that it is the rightful account holder of the underlying electricity account with PREPA.
23. Notices: SELLER's contact information for all purposes related to the PSA and the Participant's enrollment with SELLER.

APPENDIX CC

FORM OF TRADEMARK LICENSE AGREEMENT

THIS TRADEMARK LICENSE AGREEMENT (“**Agreement**”) is made and entered into as of [●] (“**Effective Date**”), by and between **PUERTO RICO ELECTRIC POWER AUTHORITY** (including any successor thereto, “**PREPA**”), a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by Act of May 2, 1941, No. 83, as amended, employer identification number [●], represented in this act by its Executive Director, Mr. Efran Paredes Maisonet, of legal age, married, engineer and resident of Bayamón, Puerto Rico; and [●] (“**Licensee**”), a [●] company, authorized to do business in Puerto Rico, employer identification number [●], with its principal office at [●], and represented in this act by its [●], [Mr./Ms.] [●], of legal age, [married], and a resident of [●], is authorized to sign this Agreement on behalf of the Licensee as certified by the Resolution dated [●]. PREPA and Licensee are herein individually referred to as a “**Party**” and collectively referred to as “**Parties**.”

WHEREAS, Licensee provides certain grid services to PREPA pursuant to the Grid Services Agreement between PREPA and Licensee dated [●] (the “**GSA**”). Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings ascribed to them in the GSA.

WHEREAS, PREPA is an operating electric public utility, and owns and/or controls certain trademarks and other intellectual property related thereto.

WHEREAS, Licensee wishes to use certain trademarks and other intellectual property of PREPA as identified herein for the purpose of marketing and administering certain grid services for use by PREPA.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereby agree as follows:

1. Grant. PREPA hereby grants, and Licensee hereby accepts, a limited, non-exclusive, non-transferable, non-sublicensable, royalty-free, revocable license to use during the Term the PREPA owned names, trademarks and logos set forth on Attachment A (*PREPA Trademarks*) to this Agreement (the “**PREPA Trademarks**”) solely in direct connection with the production and distribution of marketing material, Participant enrollment forms, and Participant engagement portals related to the Grid Services provided by Licensee to PREPA in Puerto Rico pursuant to the GSA. Licensee shall co-brand certain media using the PREPA Trademarks in accordance with the following requirements:

(a) Licensee shall co-brand all marketing material of any form created by Licensee in relation to this Agreement and each Participant Service Agreement with PREPA Trademarks as approved in writing by PREPA, which approval PREPA shall not unreasonably withhold. If Licensee makes any changes, modifications or revisions to such approved marketing materials, then Licensee shall request additional approval from PREPA in accordance with this Section 1.

(b) Licensee shall co-brand the online Participant engagement portal developed by Licensee in relation to this Agreement and each Participant Service Agreement with PREPA Trademarks as approved in writing by PREPA, which approval PREPA shall not unreasonably withhold. If Licensee makes any changes, modifications or revisions to such to the online Participant engagement portal, then Licensee shall request additional approval from PREPA in accordance with this Section 1.

(c) Licensee shall not use PREPA Trademarks either as a standalone or as part of a co-branding effort on any materials other than as described in this Section 1. Without limiting the generality

of the foregoing sentence, Licensee shall ensure that none of its employees' uniforms, equipment, or vehicles use PREPA Trademarks.

(d) Licensee shall not change any co-branded materials in paragraphs (a) or (b) of this Section 1 (i) in a way that would degrade, detract from or interfere with PREPA's branding, or (ii) to introduce any new third party branding on such materials,

2. Restriction of Use/Ownership. Licensee agrees that (a) it shall use the PREPA Trademarks solely in direct connection with the production and distribution of marketing material, Participant enrollment forms, and Participant engagement portals related to the Grid Services provided by Licensee to PREPA in Puerto Rico pursuant to the GSA and in accordance with all of the terms and conditions set forth herein and (b) the PREPA Trademarks shall be exhibited and displayed in the exact form provided by PREPA and attached as Attachment A (*PREPA Trademarks*) to this Agreement. All right, title and interest in and to the PREPA Trademarks, including all associated goodwill, or in any copyright or other proprietary right now existing or hereinafter created pursuant to this Agreement, shall remain vested in PREPA subject only to the rights of use granted in this Agreement. Notwithstanding the foregoing, in the event that a Licensee is deemed to own any rights in the PREPA Trademarks, Licensee hereby assigns, such rights to PREPA. Consistent with the terms of this Agreement, Licensee shall perform all lawful acts and execute such instruments as PREPA may reasonably request to confirm, evidence, maintain or protect PREPA's rights in, to and under the PREPA Trademarks.

3. Quality Control.

(e) Licensee agrees to maintain and preserve the quality of the PREPA Trademarks and to use the PREPA Trademarks only in good faith and in a dignified manner consistent with such use of the PREPA Trademarks prior to the Effective Date and in accordance with the terms of this Agreement. In addition, Licensee shall ensure that all products and services provided by Licensee under the PREPA Trademarks will be of sufficiently high quality to protect the PREPA Trademarks and the goodwill symbolized thereby. Licensee shall not by any act or omission use or permit use of the PREPA Trademarks in any manner that tarnishes, degrades, disparages, or reflects adversely on PREPA or its business or reputation or that would be detrimental to the PREPA Trademarks or their associated goodwill.

(f) Each Licensee agrees to use the PREPA Trademarks only in accordance with such quality standards as may be reasonably established by PREPA and communicated to such Licensee from time to time in writing, or as may be agreed to by PREPA and Licensee from time to time in writing. Licensee shall obtain PREPA's prior written approval of any material change in the style and manner in which any PREPA Trademark is proposed to be used by such Licensee and shall use the PREPA Trademarks only in a style and manner commensurate with the standards and reputation for quality associated with the PREPA Trademarks. Licensee agrees not to register or attempt to register in any jurisdiction any trademark or service mark that is confusingly similar to any of the PREPA Trademarks or which would reasonably be expected to result in dilution of any of the PREPA Trademarks.

(g) Licensee shall permit PREPA or its duly authorized representative, upon reasonable notice, to inspect and review all business locations and materials of Licensee and any and all uses of the PREPA Trademarks by Licensee for the purposes of assuring use of the PREPA Trademarks in a manner consistent with this Agreement and that the products and services associated with the PREPA Trademarks meet PREPA's quality standards as contemplated hereby. Upon request by PREPA, a Licensee will furnish to PREPA representative samples of all advertising and promotional materials in any media that are used in connection with the PREPA Trademarks. Licensee will make all changes to such materials that PREPA reasonably requests to comply with this Section 3 or to preserve the validity of, or PREPA's rights in, the PREPA Trademarks.

4. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Puerto Rico without regard to any contrary result required under applicable conflicts of laws rules. The Parties herein agree that all Disputes arising hereunder shall be resolved pursuant to Section 5 (*Dispute Resolution*).

5. Dispute Resolution. If a dispute arises between the Parties regarding the application, interpretation, enforceability, validity, performance, or breach of this Agreement or matters arising therefrom or relating thereto, whether sounding in contract, tort, unfair competition, law, equity or any other legal form (a “**Dispute**”), then such Dispute shall be resolved solely by either the agreement of the Parties, or in a proceeding before PREB. In the event of a Dispute under this Agreement, the disputing Party may promptly provide written notice of the Dispute (a “**Dispute Notice**”) to the other Party. Following delivery of the Dispute Notice, the Parties shall nominate a member of its respective senior management, who shall have decision-making authority on behalf of such Party, and such senior management members shall promptly meet and seek to achieve settlement, if possible, by negotiation and mutual agreement. If the Dispute is not resolved within forty-five (45) Days after the Dispute Notice is received by the recipient Party (or such longer period of time as may be mutually agreed by the Parties in writing), then either Party may submit the Dispute for final determination to PREB.

6. Disclaimer. The PREPA Trademarks and the license granted hereunder are provided on an “as is” basis, without warranty of any kind, express or implied, including without limitation, warranties of merchantability, fitness for a particular purpose, non-infringement or other warranties, conditions, guarantees or representations, whether express or implied.

7. Assignment. Licensee may not assign this Agreement, in whole or in part, without the prior written consent of PREPA. Any assignment in contravention of this Section 7 (*Assignment*) shall be deemed null and void.

8. Infringement; Prosecution.

(a) Licensee agrees to notify PREPA promptly after it becomes aware of any actual or threatened infringement, imitation, dilution, misappropriation or other unauthorized use or conduct in derogation (“**Infringement**”) of any of the PREPA Trademarks. PREPA shall have the sole and exclusive right to bring any action to remedy or seek redress in respect of any Infringement (or to refrain from taking any action in its sole discretion), and Licensee shall cooperate with PREPA in same. All damages or other compensation of any kind recovered in such action shall be for the account of PREPA.

(b) PREPA shall have sole and exclusive control and discretion over all matters relating to the prosecution and maintenance of the PREPA Trademarks. Licensee shall cooperate in good faith with PREPA for the purpose of securing, preserving and protecting PREPA’s rights in and to the PREPA Trademarks. At the request of PREPA, Licensee shall execute and deliver to PREPA any and all documents and do all other acts and things which are reasonably requested by PREPA to make fully effective or to implement the provisions of this Agreement relating to the prosecution and maintenance of the PREPA Trademarks.

9. Indemnification. Licensee shall jointly and severally, indemnify and hold harmless PREPA and each of its Indemnitees from and against any and all Claims arising out of: (a) any breach by Licensee of any term or condition of this Agreement or the use of the PREPA Trademarks, and (b) any allegation by a third party arising from, relating to, or resulting from, the use of the PREPA Trademarks or the

manufacture, marketing, sale or use of any products or services bearing the PREPA Trademarks sold or serviced by, or on behalf of, Licensee.

10. Term and Termination. This Agreement shall commence on the date hereof and shall remain in effect for the Term, unless earlier terminated pursuant to this Section 10. PREPA shall have the right to terminate this Agreement at any time, with or without cause, immediately upon notice to Licensee. Upon termination of this Agreement, Licensee shall immediately cease using or displaying the PREPA Trademarks.

11. Publicity. Except as otherwise expressly set forth in this Agreement, neither Party shall use any name, trademark or logo of the other Party or its Affiliates, or otherwise refer to, the other Party or any of its Affiliates, in any press releases, publicity, marketing or promotional materials, unless specifically authorized in advance and in writing by such Party, in its sole and absolute discretion.

12. Waiver & Amendment. This Agreement, including the attachments hereto, may be amended or waived only by written agreement between the Parties. A waiver of any default or breach of this Agreement shall extend only to the particular default or breached waived and shall not limit or otherwise affect any rights that either Party may have with respect to any other or future default or breach.

13. Strict Performance. 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, unless such waiver is in a written agreement between the Parties.

14. No Third-Party Beneficiaries. 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.

15. No Sharing of Benefit. No officer, employee, or agent of Licensee or PREPA 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 Applicable Law of the Commonwealth of Puerto Rico or policy of PREPA.

16. No Association, Joint Venture, or Partnership. 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.

17. Successors. This Agreement shall inure to the benefit of and be binding upon Licensee and PREPA and their respective successors and assigns.

17. Complete Agreement. The Parties intend this Agreement 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 subject matter hereof and supersedes all prior written and oral understandings between the Parties with respect thereto.

18. Severability. If any provision hereof shall be held invalid, illegal or unenforceable pursuant to Section 5 (*Dispute Resolution*), such holding shall not invalidate or render unenforceable any other provision hereof.

19. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if both Parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first written above.

**PUERTO RICO ELECTRIC POWER [LICENSEE NAME]
AUTHORITY**

Efran Paredes Maisonet

Executive Director

Tax ID Number: 660433747

By: _____
Name:

Title:

ATTACHMENT A

PREPA Trademarks

Attached is the initial list of PREPA owned names, trademarks and logos that comprise the “PREPA Trademarks” licensed to Licensee pursuant to the Agreement.³⁷ PREPA will provide to Licensee a copy of the PREPA Trademarks in USB format. PREPA, in its sole discretion, may update this Attachment A (*PREPA Trademarks*) at any time, upon notice to Licensee, by removing or adding additional PREPA owned names, trademarks and logos to the list of “PREPA Trademarks” for the purposes of this Agreement.

1. Puerto Rico Electric Power Authority: See attached logos and trademark guidelines.
2. *[[Insert other entity names (if applicable)]]*: See attached logos and trademark guidelines.]³⁸

³⁷ Note: PREPA will provide a full list of PREPA Trademarks.

³⁸ Note: May include a T&D Operator.

APPENDIX DD

REPORTING

Monthly Invoice Report (“MIR”)

The MIR shall be submitted per Grid Service and shall consist of multiple *.CSV files containing the following information in a format prescribed by PREPA.

- a. Monthly Operational Forecast in Time Intervals
- b. Guaranteed Capability for Billing Period
- c. Event Performance Factors for each event in the Billing Period
- d. Monthly Performance Factor (Average of performance factors in the Billing Period)
- e. Number of GS Events per Billing Period

Upon request from PREPA, SELLER may also be required to deliver the following data:

- a. all data (on an aggregated level) used for the calculation of performance factors for the Billing Period, including demand values preceding events (as applicable); and
- b. end device data and associated baseline calculations from all Participant Resources used for the calculation of any performance factors.

Participant Capability Report (PCR)

The PCR is submitted as a *.CSV file and reports the following information on a per Participant basis:

- a. Account number
- b. Contract number
- c. Meter number
- d. Participant schedule
- e. Enabled capability [kW] (per Grid Service)
- f. Energy delivered (kWh) (for Capability)
- g. End-use

Data Formats

Data-End Use

End Use Data shall be presented in the following format. All Participants should be included in the same file.

SELLER ID	Assigned by PREPA
Contract account	From Participant bill
Meter ID	From Participant bill
Date	Date of read, MM/DD/YYYY
Time	Time of read, military time
Type	Type of end use:
Value	kW or kWh
Actual read	real

MIR-Forecast

For the Monthly Invoice Report (MIR) – forecast shall be presented in the following format. All Grid Services should be included in the same file.

SELLER ID	Assigned by PREPA
Grid Service	Cap-Build, Cap-Red, Ancillary
Date	MM/DD/YYYY
Time	Military time
Value	kW or kWh
Forecast	

MIR-Event Performance Factor

The Monthly Invoice Report (MIR) – Event Performance Factor shall be presented in the following format. All Grid Services should be included in the same file.

SELLER ID	Assigned by PREPA
Grid Service	Cap-Build, Cap-Red, Ancillary
Event date	MM/DD/YYYY
Event start time	Military time
Event end time	Military time
Performance Factor	

MIR- Event Date and Time

The Monthly Invoice Report (MIR) – Event Date and Time shall be presented in the following format. All Grid Services should be included in the same file.

Grid Service	Cap-Build, Cap-Red, Ancillary
Event date	MM/DD/YYYY
Event start time	Military time
Event end time	Military time

PIC- Grid Service and Event

The Participant Capability Report (PRC) shall be presented in the following format, by Grid Service and by event. All Grid Services should be included in the same file.

SELLER ID	Assigned by PREPA
Contract account	From Participant bill
Meter number	From Participant bill
Participant schedule	R,G,J,P,DS
Grid Service	Cap-Build, Cap-Red, Ancillary
Value	kW or kWh
Enabled capability	Es

APPENDIX EE

FORM OF PAYMENT GUARANTEE

THIS PAYMENT GUARANTEE AGREEMENT (the “**Payment Guarantee**”), is entered into as of [●] day of [●], by [●], a [type of entity] organized and existing under the laws of [jurisdiction] with its principal office at [●] (the “**Guarantor**”), in favor of **PUERTO RICO ELECTRIC POWER AUTHORITY**, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by Act of May 2, 1941, No. 83, as amended, with its principal office at 1110 Ponce de León Avenue, Office #808, San Juan, Puerto Rico (together with any successor or permitted assign under the GSA (as defined below), the “**Beneficiary**”);

WHEREAS:

- A. [●], a [type of entity] organized and existing under the laws of [jurisdiction] (the “**Company**”) has entered into the Grid Services Agreement, dated [●], with the Beneficiary (as amended, the “**GSA**”);
- B. (i) the GSA obligates the Company to deliver this Payment Guarantee to the Beneficiary as one of the conditions precedent for its effectiveness, and (ii) the Guarantor has agreed to execute and deliver this Payment Guarantee; and
- C. the Guarantor (i) holds a direct or indirect ownership interest of [●] percent ([●] %) of the Company on the date hereof, and (ii) expects as an affiliate of the Company to derive commercial benefits from the GSA as a result of such ownership interest;

NOW, THEREFORE, in consideration of the premises and mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the Guarantor hereby acknowledges, the Guarantor and the Beneficiary (each, a “**Party**” and collectively, the “**Parties**”) hereby agree as follows:

1. DEFINITIONS

1.1. General.

In this Payment Guarantee:

“**Banking Day**” means any day other than a Saturday, a Sunday or any other day on which Applicable Law authorizes, or requires, commercial banks in New York City to be closed.

“**Beneficiary**” has the meaning set out in the preamble of this Payment Guarantee.

“**Company**” has the meaning set out in the Recital (A) of this Payment Guarantee.

“**GSA**” has the meaning set forth in Recital (A) of this Payment Guarantee.

“**Guaranteed Obligations**” has the meaning set forth in Section 3.1 (*Guaranty*).

“**Guarantor**” has the meaning set out in the preamble of this Payment Guarantee.

“**Payment Guarantee**” has the meaning set forth in the preamble of this Payment Guarantee.

“**Term**” has the meaning set forth in Section 4.7 (*Term*);

“**Unrestricted Net Worth**” means, with respect to the Guarantor, the sum of (i) the subscribed and paid-up equity (including additional paid-in capital), and (ii) the Unrestricted Retained Earnings, in each case of the Guarantor.

“**Unrestricted Net Worth Requirement**” means an Unrestricted Net Worth of at least [●].³⁹

“**Unrestricted Retained Earnings**” means, with respect to the Guarantor, the amount of accumulated profits and gains realized out of the normal and continuous operations of the Guarantor after deducting distributions to stockholders and transfers to capital stock or other accounts, and which is (i) not appropriated by its board of the Guarantor for corporate expansion projects or programs; (ii) not covered by a restriction for dividend declaration under a loan agreement; (iii) not required to be retained under special circumstances binding on the Guarantor such as when there is a need for a special reserve for probable contingencies; and (iv) not otherwise covered by any other legal restriction (which refers to any injunction, judgement, or order issued by any judicial authority) on the ability of the Guarantor to distribute or otherwise apply its equity.

1.2. Other Defined Terms.

The capitalized terms “**Applicable Law**”, “**Closing Date**”, “**Commercial Operation Date**”, “**Default**”, “**Insolvency Event**”, “**Person**” and “**PREB**” shall have the meanings set forth in the GSA.

2. **GUARANTOR’S REPRESENTATIONS & COVENANTS**

2.1 Representations.

The Guarantor makes the following representations to the Beneficiary as of the date hereof:

- a. the Guarantor has been duly organized and is validly existing and in good standing under the Applicable Laws of [*jurisdiction*], has full legal right, power and authority to enter into, and carry out the terms and provisions of, this Payment Guarantee, and by proper corporate action has duly authorized the execution, delivery and performance of this Payment Guarantee;
- b. the execution and delivery of, and performance of its obligations under, this Payment Guarantee by the Guarantor will not conflict with, or constitute on the part of the Guarantor a breach of or default under, its relevant organizational documents or any indenture or other material agreement or instrument to which the Guarantor is a party or by which it or its properties are bound or any order, law, rule or regulation of any court or governmental agency or body having jurisdiction over the Guarantor or any of its activities or properties;
- c. this Payment Guarantee has been duly authorized, executed and delivered by the Guarantor and constitutes the valid and legally binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except to the extent that applicable

³⁹ Insert amount equal to the greater of (A) thirty percent (30%) of the estimated costs of the Company’s proposed project, and (B) \$75 million.

bankruptcy, insolvency, reorganization, moratorium or other Applicable Laws affecting the enforcement of creditors' rights generally and general equitable principles may limit enforceability of this Payment Guarantee;

- d. the Guarantor does not require a notice to, authorization, approval, consent or order of, or registration or filing with, any court or governmental agency or body having jurisdiction over the Guarantor or any of its activities or properties for the execution, delivery and performance of this Payment Guarantee; and
- e. the Guarantor (i) holds a direct or indirect ownership interest of [●] percent ([●] %) of the Company, and (ii) satisfies the Unrestricted Net Worth Requirement.

2.2 Covenants

During the Term, the Guarantor undertakes to:

- a. (i) satisfy the Unrestricted Net Worth Requirement on a continuous basis at all times, and (ii) prior to the expiration of the first quarter of each calendar year during the Term, deliver to Beneficiary a certified true and correct copy of audited financial statements, Form 10-Ks or similar types of audited annual reports for the previous calendar year, evidencing that the Guarantor satisfied the Unrestricted Net Worth Requirement for such previous calendar year;
- b. hold and maintain a direct or indirect ownership interest of at least [●] percent ([●] %) of the Company; and
- c. maintain its existence, and not dissolve, sell or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or permit one or more other corporations to consolidate with or merge into it.

3. **PAYMENT GUARANTY**

3.1. General

The Guarantor absolutely, unconditionally and irrevocably guarantees to the Beneficiary, as primary obligor and not merely as surety, the full and prompt payment by the Company of all of the Company's payment obligations under the GSA to the Beneficiary when and as due (whether by required prepayment, declaration, acceleration, demand or otherwise) arising during the period that commences on the Closing Date and expires on the Commercial Operation Date, including, without limitation, payment obligations in respect of any Default under the GSA by the Company, and including all fees, costs, and expenses. (collectively, the "**Guaranteed Obligations**"). This Payment Guaranty constitutes a continuing guaranty of payment and not of collection.

3.2. Indemnity

As an independent and primary obligation, the Guarantor shall indemnify, defend and hold harmless the Beneficiary against any and all losses, damages, costs, expenses and liabilities (including legal fees and expenses) suffered by the Beneficiary or which the Beneficiary may incur, to the extent that a judicial authority declares any of the Guaranteed Obligations as illegal, invalid, void or unenforceable by reason of an Insolvency Event or any other reason.

3.3 Maximum Liability

Notwithstanding any other provision of this Payment Guarantee, the maximum aggregate liability of the Guarantor arising under this Payment Guarantee shall never exceed the maximum aggregate liability of the Company under the GSA plus costs, fees and expenses, including without limitation all attorneys' fees, which may be incurred by the Beneficiary in enforcing or attempting to enforce this Payment Guarantee as provided in Section 3.7 (*Costs*). The Guarantor shall be entitled to all contractual defenses, limitations and exclusions available to the Company under the GSA but not any defenses that may arise in the event that the Company suffers an Insolvency Event.

3.4 Unconditional Nature of Obligations; Waivers.

Subject to Section 3.3 (*Maximum Liability*), the obligations of the Guarantor under this Payment Guarantee shall be absolute, irrevocable and unconditional and shall remain in full force and effect until the date on which this Payment Guarantee terminates in accordance with Section 4.7 (*Term*), and such obligations shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation any of the following events, whether or not with notice to, or the consent of, the Guarantor:

- a. The waiver, surrender, compromise, settlement, release or termination of any or all of the obligations, covenants or agreements of the Company under the GSA;
- b. The failure to give notice to the Guarantor of the occurrence of a Default under the GSA;
- c. The waiver, compromise or release of the payment, performance or observance by the Company or by the Guarantor, respectively, of any or all of the obligations, covenants or agreements of either of them contained in the GSA or this Payment Guarantee, as the case may be;
- d. The extension of the time for payment of any Guaranteed Obligations under the GSA or of the time for performance of any other of the Company's obligations arising out of the GSA;
- e. The modification, amendment, waiver or alteration (whether material or otherwise) of any obligation or representation set forth in the GSA;
- f. the taking, or the omission, of any of the actions referred to in the GSA;
- g. any failure, omission, delay or lack on the part of the Beneficiary to enforce, assert or exercise any right, power or remedy conferred on it in the GSA;
- h. the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings affecting the Guarantor or the Company or any of the respective assets of either of them, or any allegation or contest of the validity of this Payment Guarantee in any such proceeding;
- i. any defense based upon any legal disability of the Company or, to the extent permitted by law, any release, discharge, reduction or limitation of or with respect to any sums owing by the Company or any other liability of the Company to the Beneficiary;

- j. to the extent permitted by Applicable Law, the release or discharge by operation of law of the Guarantor from the performance or observance of any obligation contained in this Payment Guarantee;
- k. the default or failure of the Guarantor fully to perform any of its obligations set forth in this Payment Guarantee; or
- l. the invalidity or unenforceability of the GSA or any part thereof.

This Payment Guaranty is in no way conditional or contingent upon any attempt to collect from or bring action against the Company or its assets or upon any other action, occurrence or circumstance whatsoever. The liability of the Guarantor hereunder is independent of and not in consideration of or contingent upon the liability of any other person under this or any similar instrument and the release of, or cancellation by, any party to this or a similar instrument shall not act to release or otherwise affect the liability of the Guarantor hereunder. The Guarantor hereby agrees that it shall not be necessary for the Beneficiary, and the Guarantor hereby waives any rights which the Guarantor may have to require the Beneficiary, in order to enforce the obligations of the Guarantor hereunder, first to (i) institute suit or exhaust its remedies against any the Company or any other person, (ii) enforce the Beneficiary's rights or exhaust any remedies available to the Beneficiary against any assets of the Company or (iii) resort to any other means of obtaining payment of the obligations of the Company hereunder.

The Guarantor waives and agrees not to assert

- (i) the defense of the statute of limitations in any action hereunder or for the collection of the Guaranteed Obligations;
- (ii) any defense arising by reason of any lack of corporate or other authority or any other defense of the Company or any other person;
- (iii) any rights to set-offs and counterclaims;
- (iv) without limiting the generality of the foregoing, to the fullest extent permitted by laws, any defenses or benefits that may be derived from or afforded by applicable laws limiting the liability of or exonerating guarantors or sureties, or that may conflict with the terms of this Payment Guaranty; and
- (v) any and all notice of the acceptance of this Guaranty, and any and all notice of the creation, renewal, modification, extension or accrual of the Guaranteed Obligations, or the reliance by Beneficiary upon this Guaranty, or the exercise of any right, power or privilege hereunder. The Guaranteed Obligations shall conclusively be deemed to have been created, contracted, incurred and permitted to exist in reliance upon this Payment Guaranty. The Guarantor waives promptness, diligence, presentment, protest, demand for payment, notice of default, dishonor or nonpayment and all other notices to or upon the Company, the Guarantor or any other person with respect to the Guaranteed Obligations.

If any payment by the Company to the Beneficiary is rescinded or must be returned by the Beneficiary, the obligations of the Guarantor hereunder shall be reinstated with respect to such payment. The Guarantor shall have no right to (i) raise a defense previously raised by the Company arising out of or in connection with a Guaranteed Obligation claimed hereunder and which a judicial authority has settled in the Beneficiary's favor by the dispute resolution procedures of Section 21.11

(*Dispute Resolution*) of the GSA, or (ii) to use a cure period previously used by the Company. The Guarantor assumes responsibility for being and remaining informed of the financial condition of the Company and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations which diligent inquiry would reveal and agrees that the Beneficiary shall not have a duty to advise the Guarantor of information known to it regarding such condition or any such circumstances.

3.5. Proceedings Against the Guarantor.

In the event of a Default in the payment of the Guaranteed Obligations when and as the same shall become due, the Beneficiary shall have the right to proceed first and directly against the Guarantor under this Payment Guarantee without proceeding against the Company or exhausting any other remedies which it may have and the Guarantor shall pay all Guaranteed Obligations on demand.

3.6. Subrogation.

Upon payment of any Guaranteed Obligation, the Guarantor shall be subrogated to the rights of the Beneficiary against the Company with respect to such Guaranteed Obligation, and the Beneficiary agrees to take at the Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation; provided that the Beneficiary shall have no obligation to take any such steps and the Guarantor shall not enforce any right arising by way of subrogation or exercise any other right or remedy arising by reason of any performance by it of this Payment Guarantee, including, but not limited to, any contractual, statutory or common law rights of reimbursement, contribution or indemnity, whether against the Company or any other Person, until the date on which this Payment Guarantee terminates in accordance with Section 4.7 (*Term*).

3.7. Costs.

The Guarantor agrees to pay all costs, expenses and fees, including without limitation all attorneys' fees, which may be incurred by the Beneficiary in enforcing or attempting to enforce this Payment Guarantee following any default on the part of the Guarantor hereunder, whether the same shall be enforced by suit or otherwise.

3.8. Financial Condition of the Company.

The Guarantor shall not have any right to require the Beneficiary to obtain or disclose any information with respect to: the financial condition or character of the Company or the ability of the Company to pay and perform the Guaranteed Obligations, any action or inaction on the part of the Beneficiary or any other Person; or any other matter, fact or occurrence whatsoever. The Guarantor hereby acknowledges that it has undertaken its own independent investigation of the financial condition of the Company and all other matters pertaining to this Payment Guaranty and further acknowledges that it is not relying in any manner upon any representation or statement of the Beneficiary with respect thereto, and that it is now and at all times will be completely familiar with, the business, condition (financial or otherwise), operations, performance, properties, and prospects of the Company.

4. MISCELLANEOUS

4.1. Governing Law

This Payment Guarantee shall be governed by, and construed in accordance with, the Applicable Laws of the Commonwealth of Puerto Rico including those processes before PREB whereby PREB renders a final determination of any Dispute submitted pursuant to paragraph (a) of Section 4.2 (*Dispute Resolution*), without regard to any contrary result required under applicable conflicts of laws rules.

4.2. Dispute Resolution

If a dispute arises between the Parties regarding the application, interpretation, enforceability, validity, performance or breach of this Payment Guaranty (a “**Dispute**”), then the disputing Party may promptly provide written notice of the Dispute to the other Party and the Parties shall resolve such Dispute as follows:

- a. The Parties shall submit such Dispute to PREB for final determination.
- b. Each Party agrees that (i) a final determination of a Dispute rendered by PREB shall have a conclusive and binding effect on it, and (ii) a Party may enforce such final determination in the courts of any competent jurisdiction following completion of any recognition and enforcement process required in such jurisdiction, subject to the grounds for non-enforcement under the laws of the jurisdiction in which such Party seeks such enforcement.
- c. For the exclusive benefit of the Beneficiary, the Guarantor irrevocably agrees that the Beneficiary shall have the right to (i) resolve such Dispute but only to the extent that PREB declines to resolve such Dispute, submitted pursuant to paragraph (a) above, for any reason, and (ii) enforce a final determination by PREB in its favor, in each case in the courts of the Court of First Instance for the Commonwealth of Puerto Rico, San Juan Part. By the execution of this Agreement, the Guarantor irrevocably submits to the jurisdiction of any such court in any action, suit or proceeding relating to such Dispute or final determination. Final judgment against the Guarantor in any such action, suit or proceeding shall be conclusive and may be enforced in any other jurisdiction, by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the judgment, or in any other manner provided by Applicable Law.
- d. The Guarantor hereby irrevocably designates, appoints and empowers [*name of service of process agent*], with offices currently located at [*address within Commonwealth of Puerto Rico*], as its authorized agent solely to receive for and on its behalf service of any summons, complaint or other legal process in any action, suit or proceeding the Beneficiary may bring in the Commonwealth of Puerto Rico in respect of this Payment Guarantee.
- e. As long as this Payment Guarantee remains in force, the Guarantor shall maintain a duly-appointed and authorized agent to receive for and on its behalf service of any summons, complaint or other legal process in any action, suit or proceeding that the Beneficiary may bring in the Commonwealth of Puerto Rico, United States of America, with respect to this Payment Guarantee. The Guarantor shall keep the Beneficiary advised of the identity and location of such agent.

- f. The Guarantor also irrevocably consents, if for any reason its authorized agent for service of process of summons, complaint and other legal process in any action, suit or proceeding is not present in the Commonwealth of Puerto Rico, to the service of such process being made out of the courts of the Commonwealth of Puerto Rico located in the of the Court of First Instance for the Commonwealth of Puerto Rico, San Juan Part by mailing copies of the papers by registered mail, to the Guarantor, at its address specified pursuant to Section 4.3 (*Communications*). In such a case, the Beneficiary shall also send a copy of the process papers to the Guarantor via email.
- g. Service in the manner provided in paragraphs (d), (e) and (f) above in any action, suit or proceeding will be deemed personal service, will be accepted by the Guarantor as such and will be valid and binding upon the Guarantor for all purposes of any such action, suit or proceeding.
- h. *THE GUARANTOR IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW:*
 - 1. *ANY OBJECTION THAT IT MAY HAVE NOW OR IN THE FUTURE TO THE LAYING OF THE VENUE OF ANY ACTION, SUIT OR PROCEEDING IN ANY COURT REFERRED TO IN THIS SECTION;*
 - 2. *ANY CLAIM THAT ANY SUCH ACTION, SUIT OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM;*
 - 3. *ITS RIGHT OF REMOVAL OF ANY MATTER COMMENCED BY THE BENEFICIARY IN THE COURT OF FIRST INSTANCE FOR THE COMMONWEALTH OF PUERTO RICO, SAN JUAN PART; AND*
 - 4. *ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY IN ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT AGAINST THE GUARANTOR BY THE BENEFICIARY.*
- i. Where (i) a dispute, claim or controversy arises out of, or in connection with, the GSA, and (ii) such dispute, claim or controversy also forms a basis for the Beneficiary to assert a claim under this Payment Guarantee, the Guarantor shall consent to any request by the Beneficiary to join such dispute as a party.

4.3 Communications.

Each Party shall deliver all notices and other communications relating to this Payment Guarantee in writing to the other Party, which shall be deemed duly given upon receipt after delivery by hand or sent by e-mail with read receipt confirmation, registered or certified mail, return receipt requested, postage prepaid or by recognized overnight courier service to the following addresses:

FOR COMMUNICATIONS DELIVERED TO GUARANTOR:

[●]

Attention: [●]

E-mail: [●]

FOR COMMUNICATIONS DELIVERED TO BENEFICIARY:

Puerto Rico Electric Power Authority
1110 Ponce de León Avenue, Office #808
San Juan, Puerto Rico
Attention: Director of Planning and Environmental Protection
E-mail: [●]

Any Party may change its address for notices by giving written notice to the other Party as set forth above.

4.4. Banking Days.

Except as otherwise provided in this Payment Guarantee, if any date on which a payment is to be made, notice is to be given or other action taken hereunder is not a Banking Day, then such payment, notice or other action shall be made, given or taken on the next succeeding Banking Day in such place, and in the case of any payment, no interest shall accrue for the delay.

4.5. Successors and Assigns.

This Payment Guarantee shall bind the Guarantor and its successors and permitted assigns and inure to the benefit of the Beneficiary and its successors and permitted assigns. The Guarantor may not assign its obligations hereunder without the prior written consent of the Beneficiary. The Beneficiary may not assign its rights and obligations hereunder without the prior written consent of the Guarantor, except that the Beneficiary may, without any prior consent of the Guarantor, assign its right and obligations hereunder to any permitted assignee of the GSA.

4.6. Guaranty for Benefit of the Beneficiary; No Third-Party Beneficiaries.

The Guarantor has entered into this Payment Guarantee for the benefit of the Beneficiary. Nothing contained herein shall be intended or deemed to create any right in, or to be in whole or in part for the benefit of, any Person other than the Guarantor and the Beneficiary and their respective permitted successors and assigns.

4.7. Term.

This Payment Guarantee shall enter into full force and effect on the Closing Date and terminate with no further force and effect on the date on which the Company has discharged all of the Guaranteed Obligations in full (the “**Term**”). Termination of this Guaranty shall not affect the Guarantor’s liability hereunder as to any Guaranteed Obligations existing or arising under the GSA prior to the effective date of such termination.

4.8. Amendments and Waivers.

Any provision of this Payment Guarantee may be amended or waived if, but only if, the Parties execute and deliver such amendment or waiver in writing.

4.9. Headings.

The article and section headings of this Payment Guarantee are for convenience only and shall not affect the construction hereof.

4.10. Partial Invalidity.

The invalidity of any one or more phrases, sentences, clauses or sections in this Payment Guarantee shall not affect the validity or enforceability of the remaining portions of this Payment Guarantee or any part thereof.

4.11. No Waiver, Remedies.

No failure or delay by the Beneficiary in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by Applicable Law.

4.12. Execution in Several Counterparts.

This Payment Guarantee may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original; but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Guarantor has caused this Payment Guarantee to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

[●]

as Guarantor

By: _____

Name: [●]

Title: [●]

ACCEPTED AND AGREED BY:

PUERTO RICO ELECTRIC POWER AUTHORITY

as Beneficiary

By: _____

Name: [●]

Title: [●]

Exhibit B

~~SECOND AMENDED & RESTATED~~

REQUEST FOR PROPOSALS

No. ~~112648~~ [●]

**Renewable Energy Generation and Energy
Storage Resources**

Tranche ~~1~~2 of 6

Puerto Rico Electric Power Authority

DATE ISSUED: ~~February 22~~June 30, 2021

RESPONSES DUE DATE: ~~June 18~~September 9, 2021^{1 2}

¹ ~~RFP Addendum No. 9~~

² ~~RFP Addendum No. 16~~

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1. INTRODUCTION

1.1 Glossary

Unless the context otherwise requires, [in this RFP](#):

“**2019 RSA**” has the meaning given ~~to it~~ in paragraph (c) of Section 1.11 (*Title III Status*);

“**9019 Motion**” has the meaning given ~~to it~~ in paragraph (c) of Section 1.11 (*Title III Status*);

“**Act 17**” has the meaning given in Section 1.5 (*Relevant Information and Regulations*);

“**Act 57-2014**” has the meaning given in Section 1.5 (*Relevant Information and Regulations*);

“**Act 82-2010**” has the meaning given in Section 1.5 (*Relevant Information and Regulations*);

“**Act 120**” has the meaning given in Section 1.5 (*Relevant Information and Regulations*);

“**Act 211-2018**” means the Act for the Execution of the Reorganization Plan of the Puerto Rico Public Service Regulatory Board, Act No. 211-2018;

“**AAFAF**” means the Autoridad de Asesoría Financiera y Agencia Fiscal de Puerto Rico;

“**Affiliate**” means, with respect to a specified entity, an entity that directly or indirectly, through one or more intermediaries, Controls (e.g., is a parent or grandparent company), is Controlled by (e.g., is a subsidiary) or is under common Control (e.g., is a sister company) with ~~the~~[such](#) specified entity;

“**Applicable Law**” means any law (including statutory and common law), statute, constitution, decree, judgment, treaty, regulation, rule, by-law, order, other legislative measure, directive, requirement or guideline of, or made by, any Authority;

“**Authority**” means any national, regional or local government or governmental, administrative, fiscal, judicial, or government-owned body, department, commission, authority, tribunal, agency or entity;

“**Bankruptcy Code**” [the United States Bankruptcy Code, 11 U.S.C. 101 et seq., as amended.](#)

“**Best and Final Offer**” has the meaning given in Section 6.3 (*Phase III: Interconnection Evaluation & Contract ~~Negotiation~~*);

“**Best Interest Determination**” has the meaning given in Section 6.3 (*Phase III: Interconnection Evaluation & Contract ~~Negotiation~~*);

“**Bid Expiration Date**” has the meaning given in Section 6.6 (*Proposal Security*);

“**Charging Energy**” means the Energy received into, and stored in, an Energy Storage Resource for later discharge into the T&D System;

“**COD**” means, for any Energy Resource, the date on which such resource commences commercial operation;³

“**Co-Located Integrated Resources**” means a Renewable Energy Resource co-located with an Energy Storage Resource which collectively makes available Energy for dispatch by ~~PREPA~~the T&D Operator on a fully-integrated basis through a single electric interconnection with the Transmission System;^{4 5}

“**Co-Located Standalone Resources**” means a Renewable Energy Resource co-located with an Energy Storage Resource which (i) makes available energy storage services and Energy for dispatch by ~~PREPA~~the T&D Operator independently through two (2) separate electrical interconnections with the Transmission System, and (ii) sources charging Energy for the Energy Storage Resource exclusively from the Transmission System;^{6 7}

“**Co-Located ITC Compliant Resources**” means an Energy Storage Resource co-located with a Renewable Energy Resource which (i) makes available energy storage services and Energy for dispatch by ~~PREPA~~the T&D Operator independently through two (2) separate electrical interconnections with the Transmission System, and (ii) sources charging Energy for the Energy Storage Resource from (A) for purposes of complying with the ITC Renewable Energy Charging Requirement during the ITC Period, the Renewable Energy Resource, and (B) the Transmission System;⁸

“**Confidential Information**” has the meaning given in Section 2.11 (*Confidentiality of Responses & Proprietary Information*).

“**Contract**” means a PPOA, an ESSA for Standalone Energy Storage Resources, an ESSA for ITC Compliant Energy Storage Resources or a Grid Services Agreement (as applicable);⁹

“**Contract Exceptions**” has the meaning given in Section 2.7 (*Contract Exceptions*);

“**Contract Exceptions Deadline**” means the date that corresponds to the same term set forth in Table 2-1 (*Milestone Schedule*);

“**Control**” means (i) the ownership (whether directly or indirectly) of more than fifty percent (50%) of the total issued voting share capital or other voting interest of that company or corporation, or (ii) the ability to unilaterally appoint a majority of the board directors or equivalent body of that company or corporation through the ownership of securities with voting

³ ~~RFP Addendum No. 9~~

⁴ ~~RFP Addendum No. 9~~

⁵ ~~RFP Addendum No. 4~~

⁶ ~~RFP Addendum No. 9~~

⁷ ~~RFP Addendum No. 4~~

⁸ ~~RFP Addendum No. 9~~

⁹ ~~RFP Addendum No. 9~~

power or otherwise, without the need of the vote or approval of another, or (iii) the ability to otherwise unilaterally direct the business affairs and/or operations of that company or corporation, without the need of the vote or approval of another and the terms “**Controls**”, “**Controlled**” and “**Controlling**” shall have correlative meanings. For the avoidance of doubt, a company or corporation owned by two (2) shareholders each holding exactly fifty percent (50%) of the total issued and outstanding shares shall not be considered under the control of each shareholder;

“**December 8 Energy Bureau Order**” means Resolution and Order of the Energy Bureau in Case No. NEPR-MI-2020-0012, dated December 8, 2020;

“**Demand Response**” means the ability to change utility-supplied electric usage by end-use customers from their normal consumption patterns in response to changes in the price of electricity during a day and/or season or other economic compensation designed to induce change in the use of utility-supplied electricity, facilitating the balance by ~~PREPA~~the T&D Operator of supply and demand for Energy;

“**Demand Response Regulation**” means the Energy Bureau Regulation for Energy Efficiency and Demand Response issued under Case No. NEPR-MI-2019-0015 on December 10, 2020;

“**Demand Response Resource**” means an aggregation of end-use customers, connected to the Distribution System, that collectively participate in a Demand Response program of at least 50 kW, established by a DR Aggregator;

“**Distributed Energy Storage VPP**” means any VPP which (i) makes available Energy Storage Resource(s) with an aggregate power discharge capacity of at least ~~five (5)~~ MW continuously over a period of four (4) hours, and (ii) sources Charging Energy from Renewable Energy Resource(s), located (together with such Energy Storage Resources) within a geographical area that forms, or may eventually form, part of a microgrid or part of a single-site distributed resiliency solution, as contemplated by Section II(6) of Appendix A of the December 8 Energy Bureau Order;

“**Distribution System**” means the network of distribution lines interconnected at voltages below 38 kV and associated electric substations owned by PREPA, which distribute electricity to end-users in the Commonwealth of Puerto Rico;

“**dollars**” and “**\$**” means United States dollars.

“**DR Aggregator**” has the meaning given to the term “Demand Response Aggregator” in the Demand Response Regulation;

“**Energy**” means three-phase, 60-cycle AC electric energy;

“**Energy Bureau**” means the Puerto Rico Energy Bureau of the Puerto Rico Public Service Regulatory Board, a specialized independent entity in charge of regulating, supervising, and enforcing the energy public policy of the Government of Puerto Rico, created by Act 57-2014, as amended and renamed and reorganized by virtue of the Reorganization Plan of the Puerto Rico

Public Service Regulatory Board and Act 211-2018, formerly known as the Puerto Rico Energy Commission;

“Energy Resource” means a Renewable Energy Resource, Energy Storage Resource, Distributed Energy Storage VPP or other VPP, as applicable;

“Energy Storage Resource” means a battery energy storage system or any other form of energy storage system that satisfy the requirements of the applicable MTR;

“Energy Storage Services Agreement” or **“ESSA”** means an agreement, which sets forth the terms and conditions under which a Proponent sells, and PREPA purchases, Energy Storage Resource capacity and related attributes;

“Facility Study” means for each proposal selected by PREPA for Phase III, an engineering study to determine required modifications to the T&D System, including the cost and scheduled completion date for such modifications, required to provide grid support services needed to integrate the proposed project into the T&D System;

“Feasibility Study” means, for each proposal selected by PREPA for Phase II, a study of the feasibility of such proposal, including the interconnection of the proposed project with the T&D System;

“Final Proposal Version of Contract” has the meaning given in Section 2.8 (*Final Proposal Version of Contracts*);

“Final Resolution” has the meaning given in Section 1.2 (*Purpose of RFP*);

“Financial and No Disbarment Criteria” has the meaning given to it in Section 3.2 (*Minimum Eligibility Requirements*).

“GENCO Operator” has the meaning given in Section 1.3 (*PREPA and the Transformation of the Electric System*);

“Grid Services Agreement” or **“GSA”** means an agreement with a Proponent of a VPP that establishes the terms and conditions under which the Proponent sells, and PREPA purchases, Energy Resource capacity and related attributes and services furnished by such VPP;¹⁰ ~~11~~ ¹²

“FOMB” means the Financial Oversight & Management Board for Puerto Rico;

“~~IPP~~IPPs” has the meaning given to it in paragraph (e) of Section 1.11 (*Title III Status*);

“IRP” has the meaning given in Section 1.2 (*Purpose of RFP*);

¹⁰ ~~RFP Addendum No. 9~~

“**ITC Period**” means, for any Co-Located ITC Compliant Resource, the period that commences on the COD for such resource and expires on the date when the ITC Renewable Energy Charging Requirement terminates or expires under Applicable Law;⁺³

“**ITC Renewable Energy Charging Requirement**” means the requirement under Treasury Regulations § 1.48-9(d)(6) that a storage device derive not more than a specified percentage of its charging energy from sources other than solar energy to qualify for (or to avoid recapture of) the investment tax credit available for “energy property” under Internal Revenue Code § 48(a)(3)(i);⁺⁴

“**kV**” means kilovolts;

“**kWh**” means kilowatt-hours;

“**Land Option Agreement**” has the meaning given in paragraph (eg) of Section 5.2 (*Proposal Content*);

“**LCOE**” means, for a Renewable Energy Resource or VPP, the levelized cost of energy, which equals the present value of the estimated annual payments, or payment component, to be made in respect of a Renewable Energy Resource or VPP (as applicable) over the supply period arising out of a Contract, divided by the volume of energy which such resource will produce over the same period, ~~based~~ (which, for Renewable Energy Resources, PREPA shall base on the P50 Energy Yield, ~~for such supply period and)~~ expressed in ~~US-Dollars~~dollars per MWh;

“**LCOS**” means, for an Energy Storage Resource, the levelized cost of energy storage capacity, which equals the present value of the estimated annual payments, or payment component, to be made in respect of an Energy Storage Resource over the supply period arising out of a Contract, divided by the power rating capacity, which such resource will likely make available over the same period, expressed in ~~U.S. Dollars~~dollars per MWh;

“**Lead Member**” means, for any Proponent consortium, the lead member of such consortium; ~~which that~~ which has the power to act for and on behalf, and legally bind, each of the Other Members, of such consortium on all matters related to this RFP, including the execution and delivery of a Contract;

“**LUMA**” has the meaning given in Section 1.3 (*PREPA and the Transformation of the Electric System*);

“**MER**” has the meaning given in Section 3.2 (*Minimum Eligibility Requirements*);

“**Milestone Schedule**” has the meaning given in Section 2.3 (*Milestone Schedule*);

⁺¹ RFP Addendum No. 4

⁺² RFP Addendum No. 6

⁺³ RFP Addendum No. 9

⁺⁴ RFP Addendum No. 9

“Minimum Amount” means, for any Proponent, an amount equal to the greater of (i) thirty percent (30%) of the estimated costs of such Proponent’s proposed project, and (ii) seventy-five million dollars (\$75,000,000);

“MTR” has the meaning given in Section 1.2 (*Purpose of RFP*);

“MW” means megawatts;

“MWh” means megawatt-hours;

“Net Capacity” means the contracted capacity measured at the point of interconnection;

“No Disbarment Certification” has the meaning given in Table 3-1 (*Minimum Eligibility Requirements*);

“Non-Disclosure Agreement” or “NDA” means, for each Proponent, a completed version of an agreement in the form set forth in Appendix E (Form of Non-Disclosure Agreement), duly-executed by an authorized representative of such Proponent or each member of a Proponent consortium.

“Notice of Intent to Respond” means, for each Proponent, a completed version of the form set forth in Appendix A (Form of Notice of Intent to Respond), duly-executed by an authorized representative of such Proponent or Proponent consortium;

“Operating Procedures” means the procedures to be followed in order to integrate the Energy Resource into the T&D System;

“Other Members” means, for any Proponent consortium, all of the members of such consortium other than the Lead Member;

“P3A” means the Puerto Rico Public-Private Partnerships Authority, or any successor thereto;

“P50 Energy Yield” means, for any period of time, an estimate of the net electrical output, expressed as kWh, that the proposed facility can deliver to the T&D System with a probability of occurrence of fifty percent (50%) for such period, other than during any period of scheduled outages, based on the forecasted ambient conditions at the site during such period;

“Performance Security” has the meaning given in the relevant Final Proposal Version of Contract;

“Permitted Guarantor” means, for any ~~Proponent~~Resource Provider, any Person that (i) directly or indirectly holds an ownership interest of at least twenty-five percent (25 %) in ~~(i) such Proponent, or (ii) where such Proponent establishes a special purpose vehicle to enter into a Contract, such special purpose vehicle, in each case which~~Resource Provider and (ii) satisfies

the financial capability requirement set forth in paragraph (a) of Section 4.5 (*Section Four: Financial Capability*);^{+5 +6}

“**Person**” means an individual, a corporation, a partnership, a limited liability company, a joint venture or other form of legal entity ~~capable under the laws of Puerto Rico of suing and being sued~~;

“**Phase I**” means the first phase of the proposal evaluation process, as further described in Section 6.1 (*Phase I: Quality Control Review*);

“**Phase II**” means the second phase of the proposal evaluation process, as further described in Section 6.2 (*Phase II: Project Committee Review and Recommendation*);

“**Phase III**” means the third phase of the proposal evaluation process, as further described in Section 6.3 (*Phase III: Interconnection Evaluation & Contract ~~Negotiation~~*);

“**Power Purchase and Operating Agreement**” or “**PPOA**” means an agreement, ~~which~~ that sets forth the terms and conditions under which a Proponent sells, and PREPA purchases, Energy produced by one or more Renewable Energy Resources;

“**PPP Act**” has the meaning given in Section 1.5 (*Relevant Information and Regulations*);

“**PPP Regulation**” has the meaning given in Section 1.5 (*Relevant Information and Regulations*);

“**PREPA**” means the Puerto Rico Electric Power Authority, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created pursuant to Act 83 of May 2, 1941, as amended;

“**PREPA’s Estimated Costs**” has the meaning given in Section 1.10 (*Interconnection Requirements*);

“**PROMESA**” has the meaning given in Section 1.11 (*Title III Status*);

“**Proponent’s Estimated Interconnection Costs**” has the meaning given in paragraph (c) of Section 5.2 (*Proposal Content*);

“**Proponent**” means ~~a~~ (i) any Person, or (ii) a consortium of ~~individuals, and/or partnerships, and/or companies or other entities~~ Persons, in each case that submit (s) a ~~proposal in response to this RFP~~ Notice of Intent to Respond and NDA to PREPA in accordance with Section 2.5 (*Notice of Intent to Respond & Non-Disclosure Agreement*);

“**Proposal Completeness Checklist**” means the form set forth in Appendix C (*Form of Proposal Completeness Checklist*);

⁺⁵ ~~RFP Addendum No. 10~~

⁺⁶ ~~RFP Addendum No. 17~~

“**Proposal Security**” means either (i) an irrevocable stand-by letter of credit, substantially in the form set forth in Appendix H (*Form of Irrevocable Stand-By Letter of Credit*), issued by a Qualified Bank, or (ii) a bid bond substantially in the form set forth in Appendix P (*Form of Bid Bond*), issued by an insurance company, authorized to do business in Puerto Rico;⁺⁷

“**Proposal Submission Deadline**” means the date that corresponds to the same term set forth in Table 2-1 (*Milestone Schedule*);

“**Purchased Fuel Payments**” or “**PFP**” has the meaning given in paragraph (e) of Section 1.11 (*Title III Status*);

“**Purchased Power Payments**” or “**PPP**” has the meaning given in paragraph (e) of Section 1.11 (*Title III Status*);

“**Qualified Bank**” means a national bank, national association, commercial bank or other financial institution registered in the United States, having a branch located within Puerto Rico or the contiguous United States, and otherwise acceptable to PREPA that has a long-term issuer rating of at least (i) if headquartered within Puerto Rico, then “B+” by Standard & Poor’s Ratings Services, “B1” by Moody’s Investors Services Inc., or “B+” by Fitch Ratings Inc. or (ii) if headquartered outside of Puerto Rico, then “A-” by Standard & Poor’s Ratings Services, “A3” by Moody’s Investors Services Inc., or “A-” by Fitch Ratings Inc., or in each case if the relevant rating agencies cease to engage in business or rate the obligations in question, then an equivalent rating from another internationally recognized rating agency selected by Proponent with the written consent of PREPA; provided that, if such financial institution’s ratings satisfy such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications;⁺⁸

“**Rate payer**” has the meaning given in paragraph (e) of Section 1.11 (*Title III Status*);

“**Rate payer Tariff**” has the meaning given in paragraph (e) of Section 1.11 (*Title III Status*);

“**Reference Project**” has the meaning given in Table 3-1 (*Minimum Eligibility Requirements*);

“**Regulation 8915**” means PREPA Regulation 8915 – Reglamento para Interconectar Generadores con el Sistema de Distribución Eléctrica de la Autoridad y Participar en los Programas de Medición Neta (*Regulation for Interconnecting Generators with the Authority’s Electrical Distribution System and Participate in the Net Metering Programs*) approved by the Secretary of State on February 6, 2017;

“**Regulation 8916**” means PREPA Regulation 8916 – Reglamento para Interconectar Generadores con el Sistema de Transmisión o Subtransmisión Eléctrica de la Autoridad de Energía Eléctrica y Participar en los Programas de Medición Neta (*Regulation for Interconnecting Generators with the Authority’s Electric Transmission or Subtransmission*

⁺⁷ ~~RFP Addendum No. 9~~

⁺⁸ ~~RFP Addendum No. 9~~

System and Participate in the Net Metering Programs) approved by the Secretary of State on February 6, 2017;

“Release Date” means, for any Contract, the earlier to occur of (i) the date on which the Resource Provider has discharged all of its payment obligations arising under such Contract prior to COD in full, and (ii) the date on which such Resource Provider demonstrates to PREPA’s reasonable satisfaction that the direct shareholders of such Resource Provider have contributed an aggregate amount of equity in cash to such Resource Provider in exchange for the issuance of shares in such Resource Provider of at least the Minimum Amount;

“Renewable Energy Resource” means any renewable energy resource that qualifies as “green energy” under Act 82-2010, including, but not limited to, solar PV generating facilities, wind generating facilities, hydroelectric generating facilities or any combination of these technologies;

“Request for Clarification Submittal Deadline” means the date that corresponds to the same term set forth in Table 2-1 (*Milestone Schedule*);

“Request for Proposals” or **“RFP”** means this Request for Proposals No. [●], Renewable Energy Generation and Energy Storage Systems – Tranche ~~1 and 2~~ as amended by all addenda ~~and amendments~~ issued by PREPA, relating to ~~obtains such request for~~ proposals ~~from Proponents pursuant to this RFP~~;

“Resource and Technology Group” has the meaning given in paragraph (a) of Section 6.2 (*Phase II: Project Committee Review and Recommendation*);

“Resource Provider” has the meaning given set forth in ~~paragraph (e) of~~ Section ~~1.112.9~~ (*~~Title III Status~~ Designation of Resource Provider*);

“Restricted Parties” has the meaning given in Section 5.4 (*Restricted Parties*);

“SOQ” ~~has the meaning given in Section 1.8 (General Requirements);~~

“System Impact Study” means for each proposal selected by PREPA for advancement to Phase III, a study that will, at a minimum, (i) determine the power capabilities of the major interconnection equipment required to complete the interconnection facilities, (ii) specify the maximum fault currents necessary to specify short circuit duty and interrupting ratings, (iii) approve or disapprove generator step-up (GSU) transformer impedance and transformer tap ranges necessary for proper control of voltage and reactive power flow, (iv) quantify impact to the T&D System and the actions and costs required to mitigate such impact, (v) designate the ~~PREPA~~ T&D Operator dispatching centers that will coordinate the operation of the facility, and (vi) specify the proposed design requirements for the facility and the interconnection facilities;

“SOQ” ~~has the meaning given in Section 1.8 (General Requirements);~~

“T&D Operator” has the meaning given in Section 1.3 (*PREPA and the Transformation of the Electric System*);

“**T&D System**” means the Transmission System and the Distribution System;

“**Team Member**” has the meaning given in paragraph (k) of Section 4.3 (*Section Two: Corporate Structure*);

“**Testing Protocols**” means PREPA’s standard protocols for testing and commissioning the applicable Energy Resource, comprising steps for establishing (i) an indication of the date, time and duration of the tests; (ii) the procedure for specific tests, including tests related to the applicable MTR compliance and reliable operation; (iii) the success or failure criteria for the tests; and (iv) the system for documenting the results of the tests;

“**Title III Court**” has the meaning given in paragraph (b) of Section 1.11 (*Title III Status*);

“**Tranche**” has the meaning given in Section 1.2 (*Purpose of RFP*);

“**Transmission System**” means the network of transmission lines interconnected at 38 kV or above and associated electric substations owned by PREPA, which transmit electricity to the Distribution System;

“**Unrestricted Net Worth**” means, for any Person, the sum of (i) the subscribed and paid-up equity (including additional paid-in capital), and (ii) the Unrestricted Retained Earnings, in each case of such Person;

“**Unrestricted Retained Earnings**” means, for any Person, the amount of accumulated profits and gains realized out of the normal and continuous operations of such Person after deducting distributions to stockholders and transfers to capital stock or other accounts, and which is (i) not appropriated by its board of such Person for corporate expansion projects or programs; (ii) not covered by a restriction for dividend declaration under a loan agreement; (iii) not required to be retained under special circumstances obtaining in such Person such as when there is a need for a special reserve for probable contingences; and (iv) not otherwise covered by any other legal restriction (which refers to any injunction, judgement, or order issued by any judicial ~~authority~~Authority) on the ability of such Person to distribute or otherwise apply its equity;

“**Unsatisfactory Performance**” means (i) for each Energy Resource, designated as a Reference Project for which a Proponent or its Affiliate has commenced the development or commercial operation; and (ii) for each VPP designated as a Reference Project for which a Proponent or its Affiliate has commenced performance under its power or grid services agreement, in each case within the past three (3) years, the failure by such Proponent or Affiliate to (A) perform a material obligation arising out of a contract, or (B) satisfy a material condition of an authorization or license, in each case relating to such Reference Project;

“**VPP**” means a combination of (i) an Energy Storage Resource, and (ii) one or more Energy Storage Resources, Renewable Energy Resources or Demand Response Resources with an aggregated net capacity of at least ~~five (5)~~ MW, measured at each of the five or more points of interconnection (limited to 1 MW each) with⁺⁹ the Distribution System, which a Proponent aggregator or its agent assembles, registers, contracts to call upon and control, monitors, controls

⁺⁹ ~~RFP Addendum No. 6~~

and makes available for direct or indirect dispatch by ~~PREPA~~the T&D Operator or its successor through a software-based central control system in accordance with the terms of a Grid Services Agreement.^{20 24}

1.2 Purpose of RFP

~~PREPA hereby issues this~~This RFP ~~to developers to solicit~~solicits proposals for (i) the design, construction, installation, ownership, operation and maintenance of Energy Resources, installed at sites across the island of Puerto Rico, and (ii) the sale and purchase of Energy or capacity, made available by such resources, during a supply period of up to twenty-five (25) years. Energy Resources ~~will~~must comply with the applicable minimum technical requirements set forth in Appendix I (*Minimum Technical Requirements (MTR)*) (the “**MTR**”),~~as adjusted for site-level MTRs.~~

This RFP represents the second of six (6) tranches (each, a “**Tranche**”) of request for proposals that PREPA intends to issue in accordance with the IRP, the Final Resolution and the December 8 Energy Bureau Order, which requires the procurement by PREPA of a cumulative total of 3,750 MW of Renewable Energy Resources and 1,500 MW of Energy Storage Resources during a three (3) year period. PREPA issued the Request for Proposals, Renewable Energy Generation and Energy Storage Systems – Tranche 1 on February 22, 2021 and will continue to administer such request for proposals. PREPA has issued, and will administer, this RFP as well as the ~~T&D System evolves~~requests for proposals covering Tranche 3 through Tranche 6.

Act 82-2010, as amended by Act 17, directs PREPA to procure Renewable Energy Resources in accordance with the following milestones relative to the aggregate percentage of generation supplying its system: twenty percent (20%) by 2022, forty percent (40%) by 2025, sixty percent (60%) by 2040, and one hundred percent (100%) by 2050. In order to achieve the established targets, PREPA seeks Energy Resources that can achieve commercial operation in no more than twenty-four (24) months from the date on which a selected Proponent executes a Contract, with preference given to those proposals that can achieve commercial operation within a shorter timeframe.

The Energy Bureau issued its final Resolution and Order on PREPA’s Integrated Resource Plan (“**IRP**”) in Case No. CEPR-AP-2018-0001 on August 24, 2020 (the “**Final Resolution**”). In the Final Resolution, the Energy Bureau approved a modified preferred resource plan and a modified action plan, which PREPA will follow over the next five (5) years for the procurement of new Energy Resources and the retirement of many of its fossil-fueled generating units. In addition, on December 8, 2020, the Energy Bureau issued the December 8 Energy Bureau Order in which it directed PREPA to use every effort to comply with the IRP, modified preferred resource plan and modified action plan approved in the Final Resolution and to achieve the forty percent (40%) renewable energy generation target for 2025 as required by Act 82-2010, as amended by Act 17. The Energy Bureau also ordered PREPA to implement a Procurement Plan and develop ~~an RFP~~a request for proposals template in accordance with the December 8 Energy Bureau Order. ~~This RFP represents the first of six (6) tranches of request for proposals, which PREPA~~

²⁰ ~~RFP Addendum No. 4.~~

²⁴ ~~RFP Addendum No. 4~~

~~intends to issue in accordance with the IRP, the Final Resolution and the December 8 Energy Bureau Order, which requires the procurement by PREPA of a cumulative total of 3,750 MW of Renewable Energy Resources and 1500 MW of Energy Storage Resources during a three (3) year period.~~

1.3 PREPA and the Transformation of the Electric System

PREPA, which will serve as the initial contracting party in connection with this RFP, has 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 provides electricity to approximately 1.5 million customers, making it one of the largest public utilities in the United States by customers served. With nearly 6,000 employees, PREPA generates approximately \$ 3.5 billion in annual revenues.

On January 22, 2018, the Governor of Puerto Rico announced his intent to transform and modernize PREPA's electric system through private ownership or operation of PREPA's assets. On June 20, 2018, the Governor of Puerto Rico signed into the law Act 120, with the stated goal of transforming Puerto Rico's energy system into a modern, sustainable, reliable, efficient, cost-effective, and resilient one. On June 22, 2020, P3A announced the selection of LUMA Energy, LLC ("LUMA" ~~or "T&D Operator"~~) to operate, maintain and modernize the T&D System for fifteen (15) years through a public-private partnership. ~~Following the effectiveness of this transaction with LUMA and assumed the related restructuring of PREPA~~ role of "T&D Operator" of the T&D System on June 1, 2021. As part of the transformation process, PREPA will assign all Contracts awarded pursuant to this RFP to an Affiliate of PREPA. P3A separately issued a request for qualifications in August 2020 from potential bidders to operate and maintain PREPA's legacy thermal generation assets. The selected bidder or bidders (the "**GENCO Operator**") will provide these services upon closing of the ~~LUMA~~ transaction. Appendix L (*Puerto Rico Electricity Sector Transformation*) depicts the structural changes of the electric system upon the closing of the transformation transactions with the T&D Operator and the GENCO Operator.

1.4 Historical Context

In September 2017, Hurricane Irma and Hurricane ~~Maria~~María made landfall in Puerto Rico. Irma made landfall as a Category 5 storm, followed two (2) weeks later by ~~Maria~~María which made landfall as a Category 4 storm. The hurricanes caused massive infrastructure damage, private property damage and loss of life.

On September 5 and 17, 2017, the Governor of Puerto Rico requested separate federal declarations of emergency and disaster for Puerto Rico, which were approved by the President of the United States. On October 26, 2017, the President of the United States signed the Additional Supplemental Appropriations for Disaster Relief Requirements Act 2017, which provided \$ 36.5 billion in FY 2018 of emergency supplemental appropriations for Puerto Rico in connection with Irma and ~~Maria~~María disaster recovery efforts.

Prior to the impact of Irma and ~~Maria~~María, Puerto Rico already had an inherently deficient energy infrastructure. In particular, the planning, design, and operation of an isolated

- i. Puerto Rico Energy Public Policy Act, Act No. 17-2019 (“**Act 17**”);
- j. Regulation 8915; and
- k. Regulation 8916.

Proponents should carefully review Act 120, the PPP Act and the PPP Regulation (each available at: <http://www.p3.pr.gov> or <https://energia.pr.gov/en/laws>), as well as Act 17 (available at: <https://energia.pr.gov/wp-content/uploads/sites/7/2019/05/Act-17-2019.pdf>), and should ensure that, in addition to the terms and conditions of this RFP, they comply with all applicable provisions set out therein.

1.6 Contract Terms and Conditions

~~Each~~The Resource Provider designated by a Proponent of a proposal for the development of a Renewable Energy Resource, if selected by PREPA, will enter into a PPOA with PREPA, which will govern the terms and conditions under which such ~~Proponent~~Resource Provider shall sell, and PREPA shall purchase, Energy for the supply term under the PPOA. Appendix F (*Form of Solar PPOA*) sets forth a preliminary template version ~~of a PPOA,~~ designed for solar PV generation resource proposals. To the extent that a Proponent intends to submit a proposal for a Renewable Energy Resource other than solar PV technology, PREPA will develop and issue a PPOA template that accommodates such other resource as part of the package of documents representing the Final Proposal Version of Contracts.

~~Each~~The Resource Provider designated by a Proponent of a proposal for the development of Co-Located Integrated Resources selected by PREPA shall enter into a PPOA for the sale and purchase of Energy, ~~Ancillary Services~~ancillary services and related attributes. ~~Each~~The Resource Provider designated by a Proponent of a proposal for the development of Co-Located Standalone Resources, selected by PREPA, shall enter into (i) a PPOA for the sale and purchase of Energy, ~~Ancillary Services~~ancillary services and related attributes made available by the Renewable Energy Resource component, and (ii) an ESSA for the sale and purchase of energy storage services and related attributes, made available independently by the Energy Storage Resource component, in each case as set forth in such proposal.²²

~~Each~~The Resource Provider designated by a Proponent of a proposal for the development of Co-Located ITC Compliant Resources selected by PREPA shall enter into (i) a PPOA for the sale and purchase of Energy, ~~Ancillary Services~~ancillary services and related attributes made available by the Renewable Energy Resource component, and (ii) an ESSA for the sale and purchase of energy storage services and related attributes, made available independently by the Energy Storage Resource component, in each case as set forth in such proposal.²³ Appendix R (*Form of ESSA for ITC Compliant Energy Storage Resources*) sets forth a preliminary template version.²⁴

²² ~~RFP Addendum No. 4~~

²³ ~~RFP Addendum No. 9~~

²⁴ ~~RFP Addendum No. 11~~

~~Each~~The Resource Provider designated by a Proponent of a proposal for the development of an Energy Storage Resource on a purely standalone basis (i.e., without co-location or integration with another Energy Resource) selected by PREPA will enter into an ESSA with PREPA, which will govern the terms and conditions under which such ~~Proponent~~Resource Provider sells, and PREPA purchases, energy storage services and related attributes for the supply period of the Contract. Appendix G (*Form of ESSA for Standalone Energy Storage Resources*) sets forth a preliminary template version ~~of an ESSA.~~^{25 26}.

~~Each~~The Resource Provider designated by a Proponent of a proposal for the development of a VPP selected by PREPA will enter into a Grid Services Agreement with PREPA, which will govern the terms and conditions under which such ~~Proponent~~Resource Provider shall sell, and PREPA shall purchase, Energy Resource capacity and related attributes for the supply period. Appendix Q (*Form of Grid Services Agreement*) sets forth a preliminary template version.²⁷

In addition to the execution and delivery by a Resource Provider of a Contract with PREPA; ~~Proponents that either (i) do and to the extent that such Resource Provider does~~ not meet the financial capability requirement set forth in paragraph (a) of Section 4.5 (*Section Four: Financial Capability*), ~~or (ii) establish a special purpose vehicle to enter into such Contract, must~~the Proponent that designated such Resource Provider shall arrange for a Permitted Guarantor to deliver a guarantee of the punctual payment by such ~~Proponent or special purpose vehicle~~Resource Provider of its obligations arising out of the Contract up to ~~CO~~the Release Date in favor of PREPA in form and substance satisfactory to PREPA.²⁸

1.7 Tranche ~~1~~2 RFP Scope of Supply

For this Tranche 2, PREPA ~~desires~~intends to procure at least ~~1,000~~500 MW of Renewable Energy Resource capacity and at least ~~500~~250 MW (~~2,000~~1,000 MWh) of Energy Storage Resource capacity with an effective duration of four (4) hours, ~~including at least 150 MW of Distributed Energy Storage VPPs,~~ as well as all of their associated environmental credits ~~from Renewable Energy Resources~~ under the terms and conditions set forth in the Contract. PREPA will accept proposals for all, or a portion, of such capacity. Renewable Energy Resources offered in response to this RFP on a stand-alone basis (i.e., other than those aggregated into a VPP) must have generating capacity of at least 20 MW. Proponents may propose supply durations of up to twenty-five (25) years. Proponents may propose either new or existing Energy Resources, provided that any existing Energy Resource so proposed may not be covered by an existing PPOA, net metering arrangement or other contract with PREPA.²⁹1 All proposed Energy Resources shall comply with the relevant part(s) of the corresponding MTR for the specific technology, as adjusted for site-level MTRs as the T&D System evolves.

PREPA will give a preference to Energy Storage Resources with 4-hour discharge durations but will also consider two (2) hour and six (6) hour discharge durations. Energy Storage Resources

²⁵ ~~RFP Addendum No. 9~~

²⁶ ~~RFP Addendum No. 11~~

²⁷ ~~RFP Addendum No. 11~~

²⁸ ~~RFP Addendum No. 17~~

²⁹ ~~NOTE~~1 Note: Proponents of non-operating, utility-scale solar projects with PPOAs that were subject to renegotiation in 2019-2020, but which ultimately did not receive stakeholder approval, may participate in this RFP.

shall provide delivered Energy during PREPA's evening peak periods, which normally extend from 6 pm through 10 pm but may also provide ancillary service capability such as frequency response, regulating capacity or operating reserves.

1.8 General Requirements

Each Proponent shall (i) submit a duly-completed version of a statement of qualifications in the form set forth in Section 4 (~~SOQ~~ ~~Submission Requirements~~ SUBMISSION REQUIREMENTS) (the "SOQ"), (ii) submit its proposal(s) in the format required by Section 5 (~~Proposal~~ ~~Submission Requirements~~ PROPOSAL SUBMISSION REQUIREMENTS) and in accordance with the other requirements of this RFP, (iii) clearly label and organize all attachments, documents, schedules, etc. submitted as a part of a proposal in a fashion that facilitates easy location and review, and (iv) submit a certification confirming that the proposal complies with, and the proposed Energy Resource(s), if selected and constructed, would fully comply with, Applicable Law.

Each Proponent shall satisfy the following requirements:

- a. Each Proponent may submit more than one (1) proposal if each proposal separately complies with Section 6 (~~Proposed Project Evaluation~~ PROPOSED PROJECT EVALUATION) on a standalone basis.
- b. The price submission set forth in each proposal to develop and construct an Energy Resource shall cover all of the Proponent's costs to (i) install, test and commission the transmission or distribution infrastructure required to connect such resource to the T&D System, and (ii) ensure that such resource complies with all Applicable Law currently in effect.
- c. Each Proponent shall identify all property and local taxes and tax abatements, related to its proposed project and Contract prices shall cover all such taxes.
- d. Proposals should demonstrate an ability to achieve commercial operation in a timeframe not to exceed twenty-four (24) months from the signing of the Contract. Consideration may be given to proposals with a COD not to exceed thirty (30) months from signing of the Contract, but such proposals will be disfavored relative to those proposing shorter development times, which will be given a higher score in the RFP evaluation process.
- e. For Renewable Energy Resource proposals, Proponents shall report project capacity and P50 Energy Yield for such resources during the proposed supply period.
- f. Prior to the date on which PREPA will sign a Contract, each Proponent shall provide evidence of its ability to provide equity funding at least equal to thirty percent (30%) of the forecasted costs to develop the proposed project by the forecasted date on which the Proponent will first draw down on loan facilities made available by lenders to the project.³⁰

³⁰ ~~RFP Addendum No. 17~~

- iii. VPPs shall comply with applicable MTRs and PREPA's standards for interconnection with the T&D System;
- iv. VPPs shall be capable of supplying a minimum of ~~five (5)~~ MW of dependable capacity, which the Proponent must³⁺ aggregate from multiple sites;
- v. VPPs shall use existing, proven technology;
- vi. all VPPs other than VPPs consisting exclusively of Demand Response Resources shall satisfy the same performance requirements as this RFP requires for a utility-scale Energy Resource;
- vii. the supply period for a VPP shall extend for a period of ten (10) to twenty-five (25) years from COD;
- viii. the Proponent selected by PREPA shall fund the cost of all upgrades to and new installations added to the T&D System required to accommodate such VPP;
- ix. the Proponent shall demonstrate that each Energy Resource and Demand Response Resource forming part of a proposed VPP can effect capacity responses / load reductions within the response time required when ~~PREPA~~the T&D Operator curtails generation or sheds load on the T&D System throughout the entire supply period. PREPA will favor VPPs incorporating Energy Resources that can provide a rapid response and/or ramp up or down in response to specific control signals. VPP Proponents should detail the full, demonstrated capability of the proposed resource;
- x. the Proponent shall contractually undertake to, and demonstrate its capability to, manage all capacity dispatch and load reduction instructions, including all notices, resource participation registration and deregistration, communications, controls, equipment, and other processes required to satisfy PREPA's dispatch instructions; and
- xi. Contract prices for VPP proposals shall cover all property and local taxes and tax abatements related to such VPP.

During the evaluation stage, PREPA will give preference to Distributed Energy Storage VPPs.

1.10 Interconnection Requirements

Proponents' T&D System interconnection plan will be a crucial factor in evaluating the delivery risk associated with any proposal. Proposals contemplating interconnection with the Distribution System must demonstrate that the proposed interconnection will satisfy the applicable requirements of Regulation 8915. Proposals contemplating interconnection with the

³⁺ ~~RFP Addendum No. 6~~

Transmission System must demonstrate that the proposed interconnection will satisfy the applicable requirements of Regulation 8916.

Proponents must consider the following factors in any proposal submitted pursuant to this RFP:

- a. The physical limitations on the delivery of Energy to the T&D System:
 - i. utility-scale Energy Resources (i.e., Energy Resources other than VPPs) can interconnect to either PREPA's 38 kV system or the 115 kV system;
 - ii. the resource capacity of a project connecting to the 38 kV system cannot exceed 25 MW;
 - iii. the power generation/discharge capacity at each point of interconnection to the T&D System of a Renewable Energy Resource and/or Energy Storage Resource that will form part of a VPP cannot exceed ~~one~~(1) MW and shall comply with the applicable interconnection regulations; and
 - iv. for Distribution System-connected, Energy Resource proposals, PREPA will give a preference to those resources connected to 13.2 kV feeders, the highest distribution voltage in Puerto Rico.³²
- b. Rights-of-way required to construct the transmission or distribution lines and interconnection facilities needed to connect the proposed resource to the T&D System, as the case may be.
- c. Substations where interconnection is considered most preferable for utility scale installations, as specified in Appendix K (*Interconnection Locations with Conditionally Available Capacity*).^{33 34}

Proponents (other than Proponents proposing a VPP resource) shall (i) provide a detailed T&D System interconnection plan with their proposals, and (ii) ensure that the proposed transmission system or distribution system interconnection plan satisfies all applicable MTR requirements, as well as relevant requirements of Regulation 8915 or Regulation 8916, as applicable.

Each Proponent should exercise its best efforts to provide an accurate estimate of the Proponent's Estimated Interconnection Costs. Following PREPA's selection of proposals for Phase II, PREPA will conduct a Feasibility Study on such projects to assess order-of-magnitude interconnection and required T&D System upgrade costs ("**PREPA's Estimated Costs**"). PREPA will cluster such proposals for interconnection studies. In such studies PREPA will analyze the impacts of integrating a group or cluster of Energy Resources at specific locations when ranking or selecting proposals for further consideration, in particular with regard to assessing any required network upgrades or the potential to utilize shared interconnection facilities across multiple projects. Following PREPA's selection of proposals for Phase III,

³² ~~RFP Addendum No. 4~~

³³ ~~RFP Addendum No. 9~~

³⁴ ~~RFP Addendum No. 10~~

PREPA will conduct a System Impact Study followed by a Facility Study for final short-listed projects.

While each ~~Proponent~~Resource Provider shall have the responsibility to fund all of the T&D System interconnection ³⁵costs under the Contract, PREPA will permit a Proponent to adjust its price proposal in the Contract to the extent that PREPA's Estimated Costs exceed the Proponent's Estimated Interconnection Costs for purposes of allowing a Proponent to recover such excess costs through the tariff mechanism. Where the Proponent's Estimated Interconnection Costs exceed PREPA's Estimated Costs, PREPA will correspondingly require a downward adjustment of the proposed price to reflect a Proponent's need to recover the lower level of interconnection costs than the Proponent's Estimated Interconnection Costs.

PREPA has identified, and set forth in Appendix K (*Interconnection Locations with Conditionally Available Capacity*), a list of the preliminary locations to allow for reliable interconnection of Energy Resource capacity.³⁶ In several instances, this list also sets forth particular conditions or caveats as required by technical uncertainties associated with a specific location.

1.11 Title III Status

This ~~section~~Section provides an update of the ongoing debt restructuring efforts of PREPA under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (“**PROMESA**”).

- a. **(PREPA's Financial Liabilities)** As of the bankruptcy filing date, PREPA's financial obligations principally consisted of (i) approximately \$ 8.3 billion in principal amount of power revenue bonds, (ii) approximately \$ 700 million in principal amount under two (2) matured fuel line loans, and (iii) approximately \$ 52.2 million notional amount under two (2) interest rate swaps.
- b. **(PREPA Title III Case)** On July 2, 2017, at the request of the Governor of Puerto Rico, the FOMB filed a petition for relief for PREPA pursuant to PROMESA section 304(a), thereby commencing a case under Title III of PROMESA in the United States District Court for the District of Puerto Rico (the “**Title III Court**”). Pursuant to PROMESA section 315 (48 U.S.C. § 2175), the FOMB serves as PREPA's representative in its Title III case, Case No. 17 BK 4780-LTS (D.P.R. 2017). Upon commencement of PREPA's Title III case, an automatic stay of litigation related to the financial indebtedness and other obligations of PREPA immediately went into effect, which affords PREPA protection while PREPA continues efforts to negotiate with its creditors to adjust its debts.

³⁵ ~~RFP Addendum No. 4~~

³⁶ ~~RFP Addendum No. 10~~

c. **(Restructuring Support Agreement)**

- i. On May 3, 2019, FOMB, AAFAF, PREPA, the Ad Hoc PREPA Bondholder Group, Assured Guaranty Corp., and Assured Guaranty Municipal Corp. executed the Definitive Restructuring Support Agreement (together with the annexes, exhibits, and schedules attached thereto, as each may be amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms of the 2019 RSA, the “**2019 RSA**”). The 2019 RSA contemplates the issuance of new securitization bonds in a plan of adjustment for PREPA, which securitization bonds would be payable from a transition charge imposed on PREPA’s customers and certain other electricity users, through a special purpose issuer in order to restructure at a discount PREPA’s outstanding long-term debt. Under the 2019 RSA, the bondholders would exchange their existing Authority bonds for two (2) types of new securitization bonds. The Series A bonds would be exchanged for approximately sixty-seven decimal five percent (67.5%) of the face amount of the existing bonds. The Series B bonds would be exchanged for ten percent (10%) of the face amount of the existing bonds. The repayment of the Series B bonds is contingent to the demand for electricity and the repayment of the Series A bonds. The issuance of securitization contemplated under the 2019 RSA only becomes effective after confirmation of a plan of adjustment for PREPA and passage of any required legislation. As of this date, the FOMB has not filed a plan of adjustment for PREPA and neither the Governor of Puerto Rico, nor any Puerto Rico legislator, has presented to the Puerto Rico legislature a bill to approve the transactions contemplated by the 2019 RSA.
- ii. On May 10, 2019, the FOMB and AAFAF filed a joint motion to approve the and settlements embodied in the 2019 RSA (the “**9019 Motion**”). Numerous parties objected to the 9019 Motion and discovery was conducted, resulting in several adjournments of the motion. In response to the spread of COVID-19 and its effects on the people and economy of Puerto Rico, on March 27, 2020, the FOMB and AAFAF asked the Title III Court to adjourn all hearing and briefing deadlines in connection with the 9019 Motion. The request was granted, and all the deadlines related to the consideration of the 2019 RSA are currently stayed. Pursuant to the District Court orders, the FOMB and AAFAF file periodic reports providing an update on PREPA’s financial condition and proposing next steps with respect to the 2019 Motion and the settlements subject to the approval of the Title III Court. ~~The next status report of due to be filed by March 10, 2021.~~ There is no current timeline for proceeding with the 9019 Motion or associated with the filing of a plan of adjustment and disclosure statement for PREPA.

- d. **(Lack of Incorporation of Bankruptcy Code 363 into PROMESA)** PROMESA did not incorporate the provisions of [section 363 of the](#) Bankruptcy Code ~~363~~ that [otherwise](#) would limit a debtor’s ability to use of funds and assets outside of the ordinary course of business. As a result, PROMESA does not prevent PREPA from using its cash, including cash that is part of a secured lender’s collateral. Specifically, section 363(b) of [the](#) Bankruptcy Code ~~363~~, which, absent court approval, restricts a debtor’s use, sale, or lease of property outside the ordinary course of business, does not apply in Chapter 9 or under

PROMESA. Accordingly, PREPA does not require Title III Court approval prior to entering into any contracts regarding any use, sale, or lease of its property.

- e. **(Title III Impact on PREPA’s Ability to Remit Fuel / Power Purchase Payments)**
The process under Title III of PROMESA has not had a material impact on PREPA’s ability to remit payments for fuel and energy to fuel suppliers and independent power producers in Puerto Rico (“**IPPs**”), respectively. PREPA has remitted payments under its fuel supply contracts and power purchase agreements with IPPs in full and generally on time on all undisputed invoices during the past two (2) years largely due to a regulatory structure that ensures sufficient liquidity for these payments. As background, the regulatory framework for the determination by the Energy Bureau of tariff rates for the sale of power by PREPA (the “**Rate-Payer Tariff**”) to end-users (the “**Rate-Payers**”) requires the Energy Bureau to consider four (4) primary components: (i) the base rate, (ii) the provisional rate, (iii) an adjustment for purchased fuel payments, remitted to fuel suppliers pursuant to fuel supply contracts with PREPA (“**Purchased Fuel Payments**” or “**PFP**”), and (iv) an adjustment for purchased power payments, remitted to IPPs pursuant to PPOAs with PREPA (“**Purchased Power Payments**” or “**PPP**”). To ensure PREPA has sufficient revenue to fund the Purchased Fuel Payments and Purchased Power Payments, the Energy Bureau reviews and resets the adjustment clauses of the Rate-Payer Tariff every three (3) months based on the Purchased Fuel Payments and Purchased Power Payments, projected expenses and a reconciliation with actual expenses each quarter. The schematic captioned “*Today*” on the left side of Appendix L (*Puerto Rico Electricity Sector Transformation*) shows the current structure of the electricity sector in Puerto Rico as well as the revenue streams running from Ratepayers to PREPA and from PREPA to IPPs and fuel suppliers. As the projects selected by PREPA for implementation under this RFP will likely achieve commercial operation after closing of the transactions with the T&D Operator and the GENCO Operator, described in Section 1.3 (*PREPA and the Transformation of the Electric System*), the schematic depicted as “*Upon Closing of T&D and GENCO Transactions*” on the right side of Appendix L (*Puerto Rico Electricity Sector Transformation*) shows the transformed electricity sector structure, including ~~those Proponents selected by PREPA to make available Energy Resources (the “Resource Providers”) under this RFP~~, as well as the revenue streams running from Rate-Payers to PREPA and from PREPA to Resource Providers. Importantly, amounts remitted by PREPA to Resource Providers under a Contract will qualify as “*Purchased Power Payments*” under the regulatory framework for purposes of setting the Rate-Payer Tariff.

1.12 Local Participation

PREPA will encourage Proponents to engage local subcontractors, professionals, relevant service providers and other local parties headquartered in Puerto Rico to the greatest extent possible and provide descriptions of their current and/or anticipated business arrangements with such local parties.

1.13 Capacity Assessment of Co-Located Energy Resources^{37 38 39}

~~Co~~PREPA will apply the following guidelines when assessing the capacity of co-located Energy Resources~~Resource proposals~~ (other than Energy Resources forming part of ~~VPPs~~a VPP):

- a. Co-located Energy Resources must meet the minimum capacity requirement of at least 20 MW at each point of electrical interconnection ~~with the Transmission System~~.
- b. PREPA's assessment of the capacity of any proposal to install a Renewable Energy Resource paired together with an Energy Storage Resource will depend whether ~~PREPA~~the T&D Operator can dispatch these co-located Energy Resources independently. If a Proponent proposes to install Co-Located Standalone Resources or Co-Located ITC Compliant Resources, then PREPA would effectively view each co-located Energy Resource as a separate proposal for purposes of assessing compliance with the minimum capacity requirement. Thus, PREPA would disqualify hypothetical Co-Located Standalone Resources or Co-Located ITC Compliant Resources proposal which proposed the installation of a 10 MW Renewable Energy Resource co-located with a 10 MW Energy Storage Resource, since the 10 MW capacity at the electrical interconnection of each proposed Energy Resource falls below the 20 MW minimum capacity requirement.
- c. If a Proponent proposes to install Co-Located Integrated Resources, then PREPA will count only the proposed ~~generating~~generation capacity for purposes of assessing compliance with the minimum capacity requirement and would not factor the discharge capacity of the Energy Storage Resource component of such proposal into this assessment. Thus, PREPA would similarly disqualify a hypothetical Co-Located Integrated Resources proposal which proposed the installation of a 10 MW Renewable Energy Resource co-located with a 10 MW Energy Storage Resource, since the 10 MW generating capacity falls below the 20 MW minimum capacity requirement.
- d. When ~~determining~~assessing the capacity of a Renewable Energy Resource proposal, PREPA will disregard the storage capacity, required by the MTRs.

2. INSTRUCTIONS TO PROPONENTS

2.1 Communications

Except as otherwise expressly set forth in this RFP, each Proponent shall communicate with PREPA regarding all RFP matters via the ~~event~~Event No. 112648 on PowerAdvocate® through the following link prior to the selection or rejection by PREPA of such Proponent's proposal(s):

<https://www.poweradvocate.com/pR.do?okey=112648&pubEvent=true>

³⁷ ~~RFP Addendum No. 4~~

³⁸ ~~RFP Addendum No. 9~~

³⁹ ~~RFP Addendum No. 17~~

Each Proponent shall use the “**Messaging**” tab of the event No. 112648 on PowerAdvocate® for all communications with PREPA, and address all such communications to PREPA’s designated point of contact for this RFP:

~~Yadira Lugo-Cordero~~⁴⁰



PREPA will not accept oral questions and will respond to all questions and requests for clarification in writing via the aforementioned link, duly-submitted in accordance with Section 2.6 (*Request for Clarification*).

Except as set forth above, Proponents shall not communicate, and shall ensure that each of their advisors and Affiliates do not communicate, with (A) representatives of PREPA or any other instrumentality of the Government of Puerto Rico (including any member of the evaluation committee, any advisor of PREPA in the RFP process, any PREPA employee or representative, any directors, officers or consultants of PREPA), or relevant entities of federal government, or any other entities involved in the administration of the RFP process, and (B) other Proponents, such as directors, officials, employees, consultants, advisors, agents or representatives regarding any matter related to the preparation, contents and presentation of this RFP during the submission and selection processes. Failure to comply with these communications restrictions will result in immediate disqualification of the Proponent initiating such communication from further participation in the RFP process.

Appendix M (*PowerAdvocate® Guide*) sets forth the PowerAdvocate® guide. For technical assistance with the sourcing platform application, please contact PowerAdvocate®’s technical support at (857) 453-5800, or by email at: support@PowerAdvocate.com. Each Proponent shall ensure that it has fully-uploaded its proposal documents before the time and date of the Proposal Submission Deadline.

2.2 Addenda

PREPA reserves the right to modify the RFP documents up to three (3) days prior to the Proposal Submission Deadline. Any changes or modifications to this RFP’s terms, conditions, or specifications will be made through addenda posted on the ~~event~~[Event](#) No. 112648 on PowerAdvocate®. It is the sole responsibility of the Proponent to monitor the ~~event~~[Event](#) No. 112648 on PowerAdvocate® for additional information, updates, amendments or addenda concerning this RFP that may be uploaded on an ongoing basis, without notice to the Proponents.

2.3 Milestone Schedule

Table 2-1 (*Milestone Schedule*) below summarizes the key timeline milestones of this RFP (as amended, the “**Milestone Schedule**”).

⁴⁰ ~~RFP Addendum No. 17~~

Table 2-1 - Milestone Schedule^{41 42 43 44 45 46 47}

No	Milestone	Date
1	RFP Released to Public	22 February ³⁰ June 2021
2	Kick-Off Presentation Made Available	25 February ⁰⁶ July 2021
3	Kick-Off Presentation	3 March ⁰⁹ July 2021
4	Notice of Intent to Respond and signed NDA Deadline	12 April ³⁰ July 2021
5	Contract Exceptions Deadline for PPOA & ESSA	29 March ⁰⁶ August 2021
6	Release of (i) Final Proposal Versions of PPOA & ESSA, and (ii) Preliminary Template GSA	22 April 2021
7	Contract Exceptions Deadline for GSA	12 May 2021
86	Release of Final Proposal Version of GSA ^{Contracts}	19 May ²⁰ August 2021
97	Request for Clarification Submittal Deadline for All Proposals	11 June ²⁵ August 2021
108	Proposal Submission Deadline & Commencement of Phase I Evaluation	18 June ⁰⁹ ^{September} 2021
119	Proposal Hard Copy Submission Deadline	24 June ¹⁶ ^{September} 2021
1210	Selection of Proposals for Phase II Evaluation	15 July ³⁰ ^{September} 2021
1311	Selection of Proposals for Phase III Evaluation	19 August ²³ ^{November} 2021

⁴¹ ~~RFP Addendum No. 1~~

⁴² ~~RFP Addendum No. 4~~

⁴³ ~~RFP Addendum No. 8~~

⁴⁴ ~~RFP Addendum No. 9~~

⁴⁵ ~~RFP Addendum No. 10~~

⁴⁶ ~~RFP Addendum No. 16~~

⁴⁷ ~~RFP Addendum No. 17~~

No	Milestone	Date
14 <u>12</u>	FOMB Approval of Execution Version of Contract <u>Contracts</u>	7-September <u>22</u> <u>December</u> 2021
15 <u>13</u>	Execution of Contracts with Proponent(s) selected <u>Selected</u> for Phase III Evaluation	10-September <u>06</u> <u>January</u> 2021
16 <u>14</u>	Energy Bureau Approval of Contracts executed <u>Executed</u> in Milestone No. 15 <u>13</u>	15-October <u>16</u> <u>February</u> 2021

This RFP includes the Milestone Schedule for illustrative purposes only. Target dates and deadlines remain subject to modification, including with respect to additional requirements and approvals. Each Proponent shall periodically review ~~the event~~Event No. 112648 on PowerAdvocate® (as described in Section 2.1 (*Communications*)) for regular updates to the Milestone Schedule and other important information.

2.4 Kick-Off Presentation

PREPA will make available a recorded kick-off presentation of this RFP via the “**Tab No. 1 – Download Documents**” of ~~event~~Event No. 112648 on PowerAdvocate® after 10:00 am Atlantic Standard Time on ~~March 3~~July 10, 2021, due to the current global pandemic caused by COVID-19 and social distancing restrictions. For the convenience of ~~proponents~~potential Proponents, PREPA will make available a draft version of the ~~slides of the presentation of the~~ kick-off presentation via the “**Messaging**” Tab of ~~event~~Event No. 112648 on PowerAdvocate® on ~~February 25~~July 05, 2021. Proponents may submit Requests for Clarifications about the draft version up to three (3) days prior to the kick-off presentation through the “Messaging” tab of the ~~event~~Event No. 112648 on PowerAdvocate®, which ~~will be evaluated by~~ PREPA will evaluate and may ~~be addressed~~address in its sole discretion in the final version of the kick-off presentation.⁴⁸

~~The~~PREPA will make the final version of the recorded ~~Kick-Off~~kick-off presentation for this RFP ~~is~~ available as Appendix N in the “**Tab No. 1 – Download Documents**” of ~~event~~Event No. 112648 on PowerAdvocate®. ~~The following the~~ presentation ~~is included in PowerPoint format and each slide has an individual audio of the recorded kick-off meeting on July 10th~~. To view the draft and final versions of the kick-off presentation, select the option of Slide Show in PowerPoint and at each slide press play in the audio icon located in the right of the slide.⁴⁹

2.5 Notice of Intent to Respond & Non-Disclosure Agreement

Proponents shall confirm their intent to submit a proposal in response to this RFP by submitting to PREPA (i) a ~~completed version of the form set forth in Appendix A (Form of~~ Notice of Intent

⁴⁸ ~~RFP Addendum No. 1~~

⁴⁹ ~~RFP Addendum No. 2~~

to Respond), and (ii) a ~~signed version of the~~ Non-Disclosure Agreement ~~set forth~~, in ~~Appendix E (Form of Non-Disclosure Agreement)~~ each case through the “Messaging” tab of ~~event~~ Event No. 112648⁵⁰ on PowerAdvocate® by no later than 8:00 pm Atlantic Standard Time on or before the deadline for submission set forth in the Milestone Schedule.

2.6 Request for Clarification

Proponents shall submit all questions relating to, and requests for an interpretation of, this RFP and a Contract in accordance with Section 2.1 (*Communications*) no later than 8:00 pm Atlantic Standard Time on or before the Request for Clarification Submittal Deadline through the “Messaging” tab of the ~~event~~ Event No. 112648 on PowerAdvocate®. PREPA will have no responsibility for answers to questions or responses to requests for interpretation of this RFP or a Contract other than those questions and requests submitted as set forth herein. PREPA will only accept such questions and requests for interpretation up to the Request for Clarification Submittal Deadline.

Proponents must submit their questions in the Form of Request for Clarification included as Appendix B (*Form of Request for Clarifications*). This document must be submitted in PDF and Word format and each question must reference the page number and section of the RFP ~~document, Appendices~~ (including appendices) or Contract, as applicable. If responses to the request for clarifications constitute a modification or generate additional information, PREPA will provide such clarification through an addendum posted on the event No. 112648 on PowerAdvocate®. Questions should not contain proprietary information, because the answers will be published in the public domain. PREPA does not guarantee answers to all questions or comments received. Again, Proponents should check the ~~event~~ Event No. 112648 on PowerAdvocate® periodically for updates and postings.

Each Proponent has the responsibility to inform PREPA of any conflicting statements, need for clarification, or omissions of pertinent data from this RFP prior to the Request for Clarification Submittal Deadline. In the event that PREPA has not responded by the Proposal Submission Deadline to a question or request for interpretation submitted by a Proponent prior to the Request for Clarification Submittal Deadline, each Proponent may identify such question or request and make a statement regarding the same in its proposal(s).

2.7 Contract Exceptions

Following its delivery of a Notice of Intent to Respond and Non-Disclosure Agreement, each Proponent should (i) review the relevant preliminary template version of the Contracts set forth in Appendix F (*Form of Solar PPOA*), Appendix G (*Form of ESSA for Standalone Energy Storage Resources*), Appendix Q (*Form of Grid Services Agreement*) and Appendix R (*Form of ESSA for Co-Located ITC Compliant Resources*), and (ii) submit to PREPA no later than the relevant Contract Exceptions Deadline a revised version of such form of Contract that shows all of the material changes, requested by such Proponent to the relevant Contract template, in blackline form together with a brief explanation of the rationale for such change as a comment linked to the relevant provision containing such change (the “**Contract Exceptions**”) through the “Messaging” tab of ~~event~~ Event No. 112658 on PowerAdvocate® by no later than 8:00 pm

⁵⁰ ~~RFP Addendum No. 4~~

Atlantic Standard Time on or before the deadline for submission set forth in the Milestone Schedule. To the extent that a Proponent intends to submit a proposal for a non-solar PV Renewable Energy Source, such Proponent should propose alternative provisions that will replace the solar PV-specific provisions of the Contract. The Contract Exceptions need not include changes related to the contextualization of the Contract for such Proponent's specific project proposal(s), which PREPA will allow during the finalization of the Contract with the Proponents of selected proposals.⁵¹

2.8 Final Proposal Version of Contracts

Upon the expiration of the relevant Contract Exceptions Deadline, PREPA will review and assess all of the Contract Exceptions submitted by Proponents, and prepare and issue to all Proponents (i) a final proposal version of Solar PPOA, (ii) to the extent that Proponents intend to submit proposals for a Renewable Energy Resource other than a solar PV facility, a final form PPOA for such resource, (iii) a final proposal version of ESSA for Standalone Energy Storage Resources, (iv) a final proposal version of ESSA for ITC Compliant Energy Storage Resources, and (v) a final proposal version of Grid Services Agreement, in each case that takes into account the Contract Exceptions but only to the extent that PREPA deems this necessary in its sole discretion (each, a "***Final Proposal Version of Contract***"). Each Proponent should submit its proposal(s) to PREPA on the assumption that the relevant Final Proposal Version of Contract shall govern the terms and conditions under which it will design, construct, install, own, operate and maintain its proposed project(s) as well as make available the Energy Resource(s) to PREPA.⁵²

2.9 Designation of Resource Provider

As part of its proposal, Proponents shall designate itself or any third party as the counter-party (each, a "**Resource Provider**"), which will execute and deliver a Contract with PREPA in the event that PREPA selects such Proponent's proposal for Phase III evaluation; provided that:

- a. for a Proponent consortium that designates a third party as the Resource Provider, each consortium member that submitted information to demonstrate compliance with the requirements of Section 3 (***PROPOSER QUALIFICATION REQUIREMENTS***) must maintain a direct or indirect ownership interest in the designated Resource Provider of at least twenty-five percent (25%) through the COD;
- b. for single member Proponents that designates a third party as the Resource Provider, the designated Resource Provider must qualify as an Affiliate of the Proponent through the COD;
- c. for all third party designations, Proponents shall also submit a detailed schematic showing the ownership structure above the Resource Provider; and
- d. designated Resource Provider shall otherwise satisfy the requirements for Proponents set forth in Section 3.1 (***Qualification Requirements***) and the no disbarment criteria set forth

⁵¹ RFP Addendum No. 9

⁵² RFP Addendum No. 9

in Table 3-1 (*Minimum Eligibility Requirements*) (i) for existing Resource Providers, at the time of proposal submission, and (ii) for Resource Providers to be established after proposal submission, prior to Contract signing.

Proponents that designate a newly-established special purpose vehicle or any other third party as the Resource Provider, which does not satisfy the financial capability requirements set forth in Section 4.5 (*Section Four: Financial Capability*) shall arrange for a Permitted Guarantor to guarantee the payment obligations of such Resource Provider, arising out of a Contract as further described in Section 1.6 (*Contract Terms and Conditions*).

2.10 ~~2.9~~ Deadline and Method for Submitting Proposals

~~Proposals must be submitted in the complete name of the party expecting to execute any resulting definitive documentation with~~ Each Proponent shall submit its proposal to PREPA in accordance with Section 5 (~~*Proposal Submission Requirements*~~). ~~Each proposal must be executed by a person who is duly authorized to bind each Proponent, this includes an~~ PROPOSAL SUBMISSION REQUIREMENTS). ~~A duly-~~authorized representative ~~(natural person or legal entity) or the authorized person whose name appears in PREPA's Supplier Registry Office of the Proponent or Proponent consortium with the authority to bind such Proponent / Proponent consortium shall execute such proposal.~~ Proponents must submit their proposals in response to this RFP through the “**Upload Documents**” tab of the ~~event~~Event No. 112648 on PowerAdvocate® on or before 8:00 pm Atlantic Standard Time on or prior to the Proposal Submission Deadline. PREPA will not accept proposals (i) received after the specified date and time, or (ii) submitted through the “**Messaging**” tab (which is exclusive for communications), and such proposals will be disqualified from further evaluation. Proponents shall include with all such submissions a contact name, email address, and company name.

In addition to the above, Proponents must provide:

- a. a redacted copy of the proposal as required in Section ~~2.10~~2.11 (*Confidentiality of Responses and Proprietary Information*), through the “**Upload Documents**” tab of ~~the event~~Event No. 112648 on PowerAdvocate®;
- b. a copy of each of the following sections of the proposal through the tab of ~~the event~~Event No. 112648 on PowerAdvocate® indicated below. Proponents must upload all applicable supporting documents or attachments of each section in the corresponding tab; and

Table 2-2 - PowerAdvocate® Tabs⁵³

Proposal Section	PowerAdvocate® Tab
Section One: Executive Summary	Commercial

⁵³ ~~RFP Addendum No. 11~~

Section Two: Corporate Structure	Commercial
Section Three: Technical and Operational Capability	Technical
Section Four: Financial Capability	Commercial
Section Five: Other Criteria and Additional Capability	Technical
Section Six: Timeline	Technical
Section Seven: Safety Performance	Technical
Section Eight: Project Development Summary	Technical
Proposal Completeness Checklist	Commercial
Proposal Data Forms	Pricing
Interconnection Data Request Forms	Technical
Ownership / Control of Site	Technical
10-Year O&M Cost Breakdown	Technical
Business Continuity Plan	Technical
Legal Proceedings	Commercial
VPP Specific Requirements	Technical

- c. (i) a proposal hard copy and (ii) a redacted proposal hard copy, both certified as exact copies of the proposal and the redacted proposal uploaded to ~~the event~~ [Event](#) No. 112648 on PowerAdvocate®. PREPA's Supplier Registry Office must receive the hard copies after the Proposal Submission Deadline, on or before 3:00 pm Atlantic Standard Time by the deadline for submission set forth in the Milestone Schedule, at the following address:

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

PREPA encourages Proponents to allow themselves enough time to upload their proposals and to confirm that the files are available for PREPA's review.

2.11 ~~2.10~~ Confidentiality of Responses & Proprietary Information

Upon completion of the RFP process, PREPA will make its report on the procurement and selection process public. This report will contain information related to this RFP process, except for confidential and proprietary information of the proponents. Confidential, proprietary and privileged information and trade secrets (“**Confidential Information**”) shall be classified as such by the Proponents. In order to ensure that PREPA will not disclose Confidential Information, Proponents must request that PREPA treats such information as confidential and must submit a redacted copy of their proposal. The redacted copy of the proposal must include an explanation of the reasons why such documents are labeled as confidential, including references to any applicable legal protections, a description of the commercially harmful effects of a disclosure and the reasons why the disclosure of such information is not necessary for the protection of the public interest. PREPA reserves the right to make public the redacted copies of the proposals at the conclusion of the RFP process. If a Proponent does not submit a redacted copy of its proposal, PREPA will assume that the entirety of the proposal can be made public. Proposals containing substantial contents marked as confidential may be rejected by PREPA. The provision of information marked as confidential will not prevent PREPA from disclosing such information if required by law. The executed Contract(s), if any, and all prices set forth therein shall not be considered confidential and such information may become publicly available.

3. PROPONENT QUALIFICATION REQUIREMENTS

As part of a proposal, each Proponent must submit a detailed SOQ by the Proposal Submission Deadline. The SOQ will help PREPA identify those Proponents that meet the minimum requirements necessary to carry out the development, construction, commissioning and operation of an Energy Resource in compliance with Act 82-2010, Act 120 and Act 17. PREPA expects to select proposals advanced only by Proponents that demonstrate:

- a. capability and experience in developing, constructing, installing, testing, and operating Renewable Energy Resources and Energy Storage Resources or, in the case of Proponents proposing a VPP as an Energy Resource, experience in aggregating, contracting for and managing resources aggregated into and dispatched as a VPP (as applicable);
- b. capability and experience managing renewable energy and energy storage technology or, if applicable, VPP aggregation arrangements;
- c. financial strength and capital resources adequate to support required project funding;
- d. strong technical expertise, with a track record of high-quality operations; and
- e. experience complying with regulatory and permitting requirements in Puerto Rico.

In evaluating Proponents, PREPA may disqualify a Proponent for any of the reasons stated in Section 5.3 (*Disqualification of Proposals*) and the PPP Regulation, or if a Proponent:

- a. is ineligible to submit a proposal on one or more grounds specified in Act 120, the PPP Act, or the PPP Regulation;
- b. fails to satisfy the standards established by PREPA with respect to the Proponent's required technical / professional ability and experience or financial condition set forth in Section 4.4 (*Section Three: Technical and Operational Capability*) and Section 4.5 (*Section Four: Financial Capability*), respectively; or
- c. fails to comply with the requirements of Sections 9(a) (*Applicable Requirements and Conditions for those who wish to be considered as Proponents*) and/or 9(d) (*Consortia*) of the PPP Act, as applicable.

3.1 Qualification Requirements

Each Proponent (or, for a Proponent consortium, each consortium member) must be a business organization existing and duly registered in good standing under the laws of its jurisdiction of incorporation. A consortium shall not contain a member that is a member or has an Affiliate which has registered as a member of more than one Proponent consortium responding to this RFP or as another Proponent. Proponents should note that this provision shall not restrict (i) suppliers of equipment and services from supporting more than one Proponent, or (ii) a member of a Proponent consortium or such member's Affiliate to participate in two (2) or more separate Proponent consortia, as long as each Proponent consortium submits proposals in different technology groups.⁵⁴ Proponents should describe their industry experience in detail, providing at a minimum the following:

- a. overview of the Proponent's company (or, in the case of a Proponent which is a consortium, each consortium company), including the company's or consortium members' financial condition, and the products/services offered;
- b. specific instances in which the Proponent or members of the Proponent's consortium has performed industry-specific work similar in nature to the work required to develop, construct and operate the resources sought through this RFP; and
- c. a detailed list of the portfolio of energy resource projects, which the Proponent or members of the Proponent's consortium, has / have developed and an indication of the year that each project achieved COD (or if they have not achieved COD, the estimated COD), the location, technology type and installed capacity.

3.2 Minimum Eligibility Requirements

PREPA will evaluate the SOQ submitted by each Proponent based on the minimum eligibility requirements set forth in Table 3-1 (*Minimum Eligibility Requirements*) (the "**MER**"). Each Proponent (i) should indicate its technical and operational capabilities, and (ii) must demonstrate that it satisfies each of the financial and no disbarment criteria (the "**Financial and No Disbarment Criteria**"), to develop the relevant Energy Resource.

⁵⁴ ~~RFP Addendum No. 6~~

Type	Description
	7. past or pending voluntary or involuntary bankruptcy proceeding; and 8. conviction for fraud, bribery, or grand larceny, (the “ No Disbarment Certification ”).

Appendix O (*Form of Certifications for Minimum Eligibility Requirements*) sets forth a form of each of the certificates requested in Table 3-1 (Minimum Eligibility Requirements).⁵⁵

4. SOQ SUBMISSION REQUIREMENTS

4.1 Introduction

Together with its proposal(s), each Proponent shall prepare and submit a SOQ in English and in the format outlined in Table 4-1 (*SOQ Format*).

Table 4-1 - SOQ Format

Sections	Content
Section One	Executive Summary
Section Two	Corporate Structure
Section Three	Technical and Operational Capability
Section Four	Financial Capability
Section Five	Other Criteria and Additional Capability
Section Six	Timeline
Section Seven	Safety Performance
Section Eight	Project Development Summary

4.2 Section One: Executive Summary

The Executive Summary section of the SOQ should include a brief description of:

⁵⁵ ~~REP Addendum No. 8~~

- a. the Proponent's qualifications for the implementation of the project, which it intends to propose in its response to this RFP, as described in Section 3 (~~Proponent Qualification Requirements~~ PROPOSER QUALIFICATION REQUIREMENTS); and
- b. envisaged use (if any) of any contractors and sub-contractors.

4.3 Section Two: Corporate Structure

The Corporate Structure section of the SOQ should include the information mentioned below:

- a. For the Proponent (or, for a Proponent consortium, each member of such consortium) and, where applicable, each Resource Provider, (i) contact person, (ii) registered address, (iii) telephone number, and (iv) email address.
- b. The Proponent's and Resource Provider's corporate structure and history, or, for a Proponent consortium, the identification of all members of such consortium, levels of participation therein and the identity of the Lead Member and Other Members, together with summaries of their corporate structures and histories.
- c. For the Proponent's (or, for a Proponent consortium, each member of such consortium's) ultimate parent company, the following information: (i) contact person, (ii) registered address, (iii) telephone number, and (iv) e-mail address.
- d. The following information should be provided for the Proponent (or, for a Proponent consortium, each member of such consortium):
 - i. year established; and
 - ii. company profile (summary description) along with role of the company, i.e., Lead Member or Other Member.
- e. To the extent that a Permitted Guarantor will guarantee the financial obligations of a Proponent or a Proponent consortium member, the Proponent shall provide the following key financial information:⁵⁶
 - i. current market capitalization (if listed);
 - ii. current long-term unsecured credit rating (S&P, Moody's and Fitch) of such parent company; and
 - iii. identity of company auditor(s).
- f. A description and/or organizational chart depicting the organizational and corporate structure(s) of the Proponent (e.g., identity of intermediate shareholders, levels of shareholding and ultimate parent company) and, in the case of a Proponent consortium, each member of such consortium (including, for example, distribution of shareholdings, apportionment of roles and responsibilities within the consortium, envisaged

⁵⁶ ~~RFP Addendum No. 11~~

intra-member agreements and the degree to which a formal relationship exists among the entities within the consortium as of the date of the submission of the Proponent's proposal(s) in response to this RFP).

- g. A description of the technical, operational and managerial resources available to the Proponent in the relevant organizational chart in the period up to the date on which the Proponent intends achieve COD for the proposed project.
- h. A description of the level of commitment by envisaged O&M contractors and/or EPC contractors and/or equipment suppliers.
- i. A list of key individuals participating in the Proponent's team and their roles.
- j. A list of technical, financial, legal, accounting, or other advisors that the Proponent has engaged or intends to engage in connection with the proposed project.
- k. Resumes (indicating overall experience and any specific relevant experience) of each of the key individuals participating in the Proponent's team that will manage the development, construction, financing, ownership and operation of the proposed project with each such individual having at least ten (10) years of relevant experience for all executive-level positions (each, a "**Team Member**").

4.4 Section Three: Technical and Operational Capability

The Technical Capability section of the SOQ shall present all of the documentation and other evidence relating to the Reference Projects set forth in the Technical and Operational Capabilities criterion of Table 3-1 (*Minimum Eligibility Requirements*).

4.5 Section Four: Financial Capability

The Financial Capability section of the SOQ shall present evidence that the Proponent has the financial capability to fulfill its obligations arising out of a Contract for the proposed project.

- a. **(Unrestricted Net Worth)** Each Proponent shall produce copies of audited financial statements, Form 10-Ks or similar types of audited annual reports for the last three (3) financial years evidencing that either (i) the ~~Proponent (or, for a Proponent consortium, any member)~~ Resource Provider, or (ii) ~~to the extent that~~ a Permitted Guarantor, which will guarantee the ~~financial~~ payment obligations of the ~~Proponent / Lead Member~~ Resource Provider arising ~~out of~~ under a Contract, ~~such Permitted Guarantor,~~ in each case has an Unrestricted Net Worth that exceeds the ~~greater of (A) thirty percent (30%) of the estimated costs of the proposed project during each year, and (B) \$75 million.~~⁵⁷ ⁵⁸ Minimum Amount.
- b. **(Ability to Raise Debt Financing)** Each Proponent shall provide specific evidence demonstrating its ability to raise debt financing. PREPA will give preference to

⁵⁷ ~~RFP Addendum No. 10~~

⁵⁸ ~~RFP Addendum No. 11~~

- a. Proposal Completeness Checklist (see Appendix C (*Form of Proposal Completeness Checklist*));
- b. Project Description (see Schedule A (*Project Description*) of Appendix D (*Proposal Data Forms*));
- c. Qualitative Assessment (see Schedule B (*Qualitative Assessment*) of Appendix D (*Proposal Data Forms*));
- d. Pricing Proposal (see Schedule C (*Price Proposal*) of Appendix D (*Proposal Data Forms*));
- e. Energy Production Forecast (see Schedule D (*Energy Production Forecast*) of Appendix D (*Proposal Data Forms*));
- f. Guaranteed Performance (see Schedule E (*Guaranteed Performance*) of Appendix D (*Proposal Data Forms*));
- g. Suppliers for Major Plant Equipment (see Schedule F (*Supplier for Major Plant Equipment*) of Appendix D (*Proposal Data Forms*)); and
- h. Interconnection Data (see Appendix D (*Interconnection Request Data Forms*)).⁵⁹

5.2 Proposal Content

For consideration in the evaluation process, proposals must contain the information outlined in the following sections:

- a. **(Project Description)** Proponents shall provide a description of their proposed project, using the forms in Schedule A (*Project Description*) of Appendix D (*Proposal Data Forms*), covering the following categories to the extent applicable to such project:
 - i. basic project description, including (a) project name; (b) site location (including map and site layout); (c) technology; (d) generating or discharge capacity;⁶⁰ (e) MTR compliance strategy; (f) grid connection point and electrical one-line diagrams; (g) ancillary service capabilities; (h) forecasted COD; and (i) ownership structure;
 - ii. site ownership, usage, and development status;
 - iii. current status of issuance of all permits, licenses and other authorizations required for the implementation of the project;
 - iv. a detailed operation and maintenance plan, covering the proposed supply term;

⁵⁹ ~~RFP Addendum No. 11~~

⁶⁰ ~~RFP Addendum No. 4~~

- xi. Proponent’s management team and key individuals responsible for permitting, financing, design, construction, and operation; and
- xii. major milestone schedule, including provisions for (a) site acquisition, control, and development; (b) permitting and licensing; (c) transmission or distribution upgrades and interconnection, if applicable and as relevant to the project location; (d) financing; (e) engineering, procurement, and construction; and (f) testing.

For each of the above categories, each Proponent shall provide references to any supporting documents or attachments.

- b. **(Initial Scoring Criteria)** Proponents shall complete the initial scoring criteria form in Schedule B (*Qualitative Assessment*) of Appendix D (*Proposal Data Forms*).
- c. **(Price Proposal)** Proponents shall complete the forms in Schedule C (*Price Proposal*) of Appendix D (*Proposal Data Forms*). Each Proponent shall submit price proposals for each category of price below that relates to its proposal:
 - i. For Renewable Energy Resource proposals, the “Peak Base Rate” and “Off-Peak Base Rate,” each as defined in the relevant Final Proposal Version of Contract, representing the unit price of electricity, expressed in ~~U.S. Dollars~~dollars per kWh, for the corresponding hours of a day.
 - ii. For Energy Storage Resource proposals,⁶⁴
 - A. the “*Capability Payment Price*” or “*CPP*” as defined in the relevant Final Proposal Version of Contract, representing the monthly price of Energy Storage Resource capacity, expressed in ~~U.S. Dollars~~dollars per MW-Month of discharge capacity; and⁶²
 - B. the “*Variable O&M Price*” or “*VOMP*” as defined in the relevant Final Proposal Version of Contract, representing additional compensation for variable usage of the Facility, expressed in ~~U.S. Dollars~~dollars per MWh of discharge energy.
 - iii. For VPP proposals,^{63 64}
 - A. the “*Demand Build Price*” or “*DB\$*” as defined in the relevant Final Proposal Version of Contract, representing the monthly price of Demand Build Services, expressed in ~~U.S. Dollars~~dollars per kW-Month; and

⁶⁴ ~~RFP Addendum No. 9~~

⁶² ~~RFP Addendum No. 4~~

⁶³ ~~RFP Addendum No. 9~~

- B. the “*Demand Reduction Price*” or “*DR\$*” as defined in the relevant Final Proposal Version of Contract, representing the monthly price of Demand Reduction Services, expressed in ~~U.S. Dollars~~dollars per kW-Month. ⁶⁵

Each Proponent shall also submit the estimated all-in cost (the “**Proponent’s Estimated Interconnection Costs**”) to (A) for Renewable Energy Resources and Energy Storage Resources, design, supply, install, test and commission the interconnection infrastructure required for the delivery of the project’s energy or energy storage capacity (as applicable) to the T&D System, and (B) for VPPs, install communication and metering systems that will enable ~~PREPA~~the T&D Operator to issue dispatch instructions to the VPP aggregator or its agent.

- d. **(Performance)** Proponents shall specify performance for the project using the forms in Schedule D (*Energy Production Forecast*) and Schedule E (*Guaranteed Performance*) of Appendix D (*Proposal Data Forms*), as applicable.
- i. **(Renewable Energy Resources)** For Renewable Energy Resource proposals, the Energy Production Forecast in Schedule D (*Energy Production Forecast*) of Appendix D (*Proposal Data Forms*), shall indicate, as applicable given the nature of the proposed resource (i.e., solar PV, wind or hydro), the forecasted P10, P50, and P90 annual energy forecast in MWh for each day and hour (8,760 entries). The forecasted values shall account for long-term performance degradation where applicable.
- ii. **(Energy Storage Resources)** For Energy Storage Resource proposals, the guaranteed performance in Schedule E (*Guaranteed Performance*) of Appendix D (*Proposal Data Forms*) shall indicate:
- A. Guaranteed Capacity (MW/ MWh)~~;~~:
 - B. Peak Charging Time (hours)~~;~~:
 - C. Peak Discharging Time (hours)~~;~~:
 - D. AC-AC Round Trip Efficiency (%)~~;~~: and
 - E. Equivalent Availability Factor (%).

The guaranteed values shall account for long-term performance degradation.

- e. **(Suppliers of Major Plant Equipment)** Proponents shall indicate the anticipated suppliers, models, and countries of manufacture for major plant equipment using the forms in Schedule F (*Supplier for Major Plant Equipment*) of Appendix D (*Proposal Data Forms*).

⁶⁴ ~~RFP Addendum No. 17~~

⁶⁵ ~~RFP Addendum No. 4~~

- f. **(Financing)** Proponents must provide specific evidence demonstrating their ability to raise financing.
- g. **(Ownership/Control of Site)** To the extent that a Proponent or its designated Resource Owner currently owns, or holds leasehold rights in, each parcel of land forming part of the site of the proposed project, such Proponent shall submit a certified true and correct copy of the deed of title or lease agreement, evidencing such ownership over, or leasehold interest in, such parcels of land. To the extent that a Proponent or its designated Resource Owner does not yet own or exercise control over a parcel of land that will form part of the proposed project site, the Proponent shall submit either:
 - i. the original version of a letter from the registered title holder of such parcel (A) confirming such owner's intention to transfer ownership of, or grant a lease over, such parcel to ~~Proponent~~such Resource Owner for the purpose of implementing the proposed project upon the award of a Contract by PREPA to the Proponent, and (B) attaching a certified true and correct copy of the deed of title for such parcel; or
 - ii. a certified true and correct copy of a legally-binding agreement evidencing that the registered title holder of such parcel has granted the Proponent or such Resource Owner an option to purchase or lease such parcel upon the award by PREPA of a Contract for the implementation of the proposed project in form and substance reasonably satisfactory to PREPA (each, a **"Land Option Agreement"**).
- h. **(10-Year O&M Cost Breakdowns)** For Energy Resource proposals other than a Demand Resource proposal, the Proponent shall submit a detailed breakdown of the fixed and variable costs to operate and maintain the proposed resource in ten (10) year increments during the supply period.
- i. **(Business Continuity Plan)** Each Proponent shall submit a business continuity plan, detailed by scenario, with the aim of ensuring service continuity during all identified potential threats to the operation of the proposed resource, including the occurrence of bomb threats, war, hurricanes, tornadoes (including ~~water—spouts~~waterspouts), earthquakes, tsunamis, active shooters, pandemics and other threats to public health and plane crashes.
- j. **(Legal Proceedings)** Each Proponent must submit a summary of all legal proceedings, claims, actions, or suits against the Proponent, the Resource Provider, the guarantor, or involving the facility or site.

5.3 Disqualification of Proposals

Notwithstanding any other provision of this RFP, PREPA reserves the right without qualification and in its sole discretion, to reject any and/or all proposals for any reason whatsoever and to consider alternatives outside of the RFP process. PREPA may disqualify or reject a Proponent's

proposal(s) for any reason, at PREPA's sole discretion, including but not limited to the following:

- a. ~~Failure~~failure to comply with any of the requirements of this RFP, including timelines, form sheets, the communication protocol set forth in Section 2.1 (Communications) or any other requirements~~;~~;
- b. ~~Any~~any misrepresentation, intentional non-disclosure or withholding of information in the SOQ~~;~~;
- c. ~~Any~~any effort towards influencing the process of qualification or in relation to decision concerning the qualifications of a Proponent~~;~~ or its designated Resource Provider;
- d. ~~Failure~~failure to disclose additional information relating to the Proponent's experience, even upon reasonable request and such information being deemed necessary to properly evaluate the Proponent's qualifications~~;~~;
- e. ~~Failure~~failure in reporting any material changes in information provided in the SOQ following submission thereof~~;~~;
- f. ~~If~~If PREPA determines that public policy, the national interest or any other grounds prohibit a Proponent ~~is prohibited~~or its designated Resource Provider from doing business ~~on grounds which may include, but are not limited to, public policy or national interest~~with PREPA;
- g. ~~If~~If the Proponent or Resource Provider, as applicable, has overdue debts (in a material amount) or significant contingent liabilities~~;~~;
- h. ~~If~~If the Proponent ~~has gone bankrupt or is being wound up or its affairs are being administered by the~~or Resource Provider, as applicable, has entered into bankruptcy or a court-ordered administration or ~~it~~ has entered into an arrangement with its creditors or has suspended business activities~~;~~;
- i. ~~If~~If the Proponent or Resource Provider, as applicable, is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court, or an arrangement with creditors or has suffered any other analogous event~~;~~;
- j. ~~If~~If the Proponent or Resource Provider, as applicable, has been convicted of an offence that concerns its professional misconduct in the course of its business or profession~~;~~;
- k. ~~If~~If the Proponent ~~has a stake~~or Resource Provider, as applicable, holds an ownership interest in any member of the advisors or consultants supporting P3A, PREPA, or the Energy Bureau or FOMB; or
- l. ~~Non~~non-declaration of a conflict of interest or potential conflict of interest resulting from previous or existing contracts or relationships, which affects, or may affect, its potential participation.

Where ~~shareholders~~one or more Person(s) have established a ~~Proponent as a~~ new company specifically incorporated for participating in the RFP process, ~~the basis for~~ as a Proponent, any disqualification shall ~~be applicable~~apply to such ~~shareholders rather than to~~Person(s) as well as the Proponent ~~itself~~. PREPA may disqualify a proposal at any point in the evaluation process if PREPA determines, at its discretion, that the Proponent or its designated Resource Provider has attempted to gain an advantage through conduct deemed as unethical, a conflict of interest, by interference, or any such means. By submitting a proposal in response to this RFP, each Proponent certifies that (i) it has not divulged, discussed, or compared its proposal with any other Proponent, and (ii) has not colluded whatsoever with any other Proponent or parties with respect to this or other proposals, in each case directly or indirectly through one or more intermediaries. PREPA may reject any proposal if it is perceived that any of these criteria have been violated.

5.4 Restricted Parties

As part of this RFP, the following entities will be deemed “**Restricted Parties**” and neither they nor their respective directors, officers, partners, employees and persons, or legal entities related to them are eligible to participate as team members or to otherwise assist any Proponent, Resource Provider or other team member, directly or indirectly, or participate in any way as a director, officer, employee, advisor, counsel, accountant or other consultant or otherwise in connection with any Proponent. Each Proponent will ensure that each team member does not use, consult, include, or seek advice from any Restricted Party. The following have been identified as Restricted Parties:

- a. Ankura Consulting Group, LLC
- b. ATCO Ltd.
- c. Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
- d. Citigroup Global Markets Inc.
- e. Cleary Gottlieb Steen & Hamilton LLP
- f. Díaz & Vázquez PSC
- g. Ernst & Young LLP
- h. Filsinger Energy Partners
- i. Greenberg Traurig, LLP
- j. Guidehouse, Inc.
- k. Hogan Lovells US, LLP
- l. Innovative Emergency Management, Inc.

- m. King & Spalding, LLP
- n. LUMA Energy, LLC
- o. McKinsey & Company, Inc.
- p. Navigant Consulting, Inc.
- q. Nixon Peabody LLP
- r. O'Melveny & Myers LLP
- s. O'Neill & Borges LLC
- t. Proskauer Rose LLP
- u. Quanta Services, Inc.
- v. Sargent & Lundy, LLC
- w. Sargent & Lundy Puerto Rico, LLC
- x. Siemens Industry, Inc.

Proponents should be aware that the list of Restricted Parties is not exhaustive and that a person that is not included as a Restricted Party may still be prohibited from participating in the proposal and project. Finally, except as to any Restricted Party, the fact that a person provides or has provided services to [P3A](#), PREPA, ~~PREB~~[the Energy Bureau](#) or FOMB in matters not related to the proposal and project may not automatically prohibit such person from participating in the proposal and project. To the extent any question exists as to whether such a person is a Restricted Party, the Proponent should consult with PREPA.

6. PROPOSED PROJECT EVALUATION

PREPA shall evaluate a Proponent's proposal(s) in the following three (3) phases:

- a. Phase I: Quality Control Review;
- b. Phase II: Project Committee Review and Recommendation; [and](#)
- c. Phase III: Interconnection Evaluation and Contract Negotiation.

The following sections further describe the proposal evaluation process.

6.1 Phase I: Quality Control Review

PREPA's quality control review will use the information supplied by the Proponents in the SOQ and each proposal. Each Proponent shall provide the information listed in the Proposal Completeness Checklist by the Proposal Submission Deadline to be included in the evaluation.

During the quality control review, PREPA will determine which proposals satisfy the minimum requirements outlined in Section 3 (~~Proponent Qualification Requirements~~PROPONENT QUALIFICATION REQUIREMENTS) and Section 4 (~~SOQ Submission Requirements~~SUBMISSION REQUIREMENTS) of this RFP. PREPA (i) will reject any proposal that fails to comply with the Financial and No Disbarment Criteria, and (ii) reserves the right to reject any proposal for any reason whatsoever regardless of whether such proposal complies with such requirements in accordance with Section 5.3 (*Disqualification of Proposals*), in each case without scoring, and any such proposal will not advance to the next phase. PREPA will notify each Proponent whether its proposal(s) passed the quality control review and whether such Proponent will advance to Phase II.

Following such notification (i) PREPA will publish a list of median price proposals for each technology group that will advance to Phase II on its website, and (ii) each selected Proponent shall deliver to PREPA the Proposal Security within seven (7) business days of such Proponent's receipt of notification of such selection.⁶⁶

6.2 Phase II: Project Committee Review and Recommendation

PREPA will divide Phase II into qualitative and pricing evaluation sub-phases, as follows:

- a. **(Qualitative Evaluation)** In connection with its qualitative evaluation, PREPA will conduct Feasibility Studies and independently model interconnection and system upgrade costs, where possible analyzing clusters of potential projects, based on an initial selection of RFP responses that PREPA ranks high on its list of projects eligible for contracting. In addition, PREPA will evaluate the extent to which multiple projects have proposed or can be made to share the same interconnecting facility, if reasonable and applicable for any given set of proposals. PREPA shall give priority to those proposals that provide resource installations at or technically close to the indicated priority locations. PREPA will evaluate the impact of each proposed resource on the T&D System and will endeavor to notify Proponents whose proposals will require additional network upgrades. The Proponents' proposal should include the Proponent's Estimated Interconnection Costs.
 - i. **(Process)** PREPA and its advisors shall perform the initial screening and shortlisting of proposals in Phase II, according to a qualitative evaluation. This evaluation will consist of the following steps:
 - A. verification that a Proponent has provided all information listed in the Proposal Completeness Checklist;

⁶⁶ ~~RFP Addendum No. 1~~

Table 6-2 - Pricing Evaluation Scoring

Category	Points Available
LCOE / LCOS	450
Technical Viability	130
Development Status	180
Proponent's Experience	130
Financing Plan and Qualifications	110
Total	1,000

Following completion of the pricing evaluation, the evaluation team will recommend proposals for evaluation, during Phase III. Proponents shall not construe the selection of a proposal for Phase III as a commitment by PREPA to execute a Contract.

6.3 Phase III: Interconnection Evaluation & Contract ~~Negotiation~~Finalization

Following PREPA's selection of proposals for Phase III, PREPA will, for each selected proposal, (i) enter into negotiations during a thirty (30) day period with the Proponent of such proposal for the finalization, execution and delivery of a Contract governing the terms and conditions under which such Proponent will develop, finance, construct (or, in the case of a VPP, aggregate), own and operate Energy Resources, and sell capacity and Energy made available by the proposed project, and (ii) conduct a System Impact Study and a Facility Study to evaluate whether the proposed project may be interconnected with the T&D System at an acceptable cost and with acceptable impacts on the system, in each case in two parallel work streams. As part of completing the System Impact Study and Facility Study, PREPA may also conduct additional diligence, which may include management interviews, environmental legal and regulatory due diligence, detailed engineering assessments and facility dispatch modelling.

Upon the completion of the Feasibility Study, System Impact Study and Facility Study by PREPA for all proposed projects in a Resource and Technology Group, PREPA will determine whether each project will serve the best interests of Ratepayers as evidenced by the findings of such studies and inform each Proponent thereof. For each proposed project for which PREPA renders a positive determination (each, a "**Best Interest Determination**"), PREPA will inform all Proponents of such projects of such determination and invite each such Proponent to make its best and final price proposal offer under its Contract; provided that such price proposal shall never exceed the initial price proposal submitted by such Proponent as part of its initial proposal (the "**Best and Final Offer**"). PREPA will make its final decision whether to proceed with a proposed project by announcing its acceptance of the Best and Final Offer made by the Proponent of such project.

Notwithstanding the execution and delivery by a Proponent of a Contract with PREPA, the main provisions of such Contract will not enter into full force and effect until the satisfaction of a number of conditions precedent, including:

- a. the issuance by PREPA of a Best Interest Determination for such Proponent's project;
- b. the acceptance by PREPA of such Proponent's Best and Final Offer; and
- c. the execution and delivery of an amendment to the Contract between PREPA and the Proponent, incorporating the terms of the Best and Final Offer.

6.4 Proposal Data Forms

The evaluation will use the information supplied by the Proponents in the proposal data forms and template Contracts contained in the Appendices of this RFP:

Appendix D – Proposal Data Forms

Schedule A – Project Description

Schedule B – Qualitative Assessment

Schedule C – Price Proposal

Schedule D – Energy Production Forecast

Schedule E – Guaranteed Performance

Schedule F – Suppliers for Major Plant Equipment

Appendix F – Form of Solar PPOA

Appendix G – Form of ESSA for Standalone Energy Storage Resources⁶⁷

Appendix J – Interconnection Data Request Forms⁶⁸

Appendix Q – Form of Grid Services Agreement⁶⁹

Appendix R – Form of ESSA for ITC Compliant Energy Storage Resources⁷⁰

⁶⁷ ~~RFP Addendum No. 9~~

⁶⁸ ~~RFP Addendum No. 11~~

⁶⁹ ~~RFP Addendum No. 9~~

⁷⁰ ~~RFP Addendum No. 9~~

6.5 ~~[Not used]~~⁷¹[Intentionally Omitted]

6.6 Proposal Security

Upon its receipt of a notice confirming that PREPA has selected a Proponent's proposal for evaluation during Phase II, each selected Proponent shall deliver the Proposal Security with a face amount equal to the product of \$ 10,000 per MW multiplied by the aggregate maximum generating capacity or discharge capacity of the proposed Energy Resource(s) (as applicable) to PREPA within seven (7) business days of the date of such receipt and maintain such Proposal Security in full force and effect through the Bid Expiration Date (as defined below). The following guidelines shall apply to the delivery of Proposal Security under this RFP:

- a. To the extent that a Proponent desires to submit an irrevocable stand-by letter of credit or a bid bond⁷² as the Proposal Security in a form that departs in any material way from the form set forth in Appendix H (Form of Irrevocable Stand-By Letter of Credit) or Appendix P (*Form of Bid Bond*), such Proponent shall⁷³ obtain PREPA's approval for such departure prior to the Proposal Submission Deadline.
- b. To the extent that a Proponent proposes Co-Located Standalone Resources, Co-Located ITC Compliant Resources or two (2) or more non-co-located, standalone Energy Resources, in either case, in the proposal, the Proponent shall deliver a separate Proposal Security for each proposed Energy Resource.⁷⁴
- c. To the extent that a Proponent proposes Co-Located Integrated Resources, the Proponent shall deliver one (1) Proposal Security with a face amount determined on the basis of the proposed generating capacity of the Renewable Energy Resource component of such proposal, measured at the point of electrical interconnection with the T&D System.⁷⁵
- d. In the event that a Proponent proposes to deliver just one (1) Energy Resource from a number of alternative resource options, the Proponent should deliver one (1) Proposal Security with a face amount, determined on the basis of the proposed resource with the highest generating capacity or discharge capacity.⁷⁶

PREPA shall reject as non-responsive any proposal selected for Phase II not accompanied by an acceptable Proposal Security. PREPA will return each Proponent's Proposal Security as promptly as possible upon the earliest to occur of the date (the "**Bid Expiration Date**") of (i) PREPA's determination not to select Proponent's proposal for evaluation during Phase III, (ii) PREPA's determination not to issue a Best Interest Determination for such Proponent's proposal, (iii) PREPA's determination not to accept such Proponent's Best and Final Offer, (iv) the satisfaction and/or waiver of all conditions precedent required for the full effectiveness of the

⁷¹~~RFP Addendum No. 6~~

⁷²~~RFP Addendum No. 9~~

⁷³~~RFP Addendum No. 9~~

⁷⁴~~RFP Addendum No. 9~~

⁷⁵~~RFP Addendum No. 9~~

⁷⁶~~RFP Addendum No. 4.~~

Contract with such Proponent, and (v) the discontinuation by PREPA of the RFP process.⁷⁷ For each Proposal Security submitted by a Proponent, PREPA shall have the right to draw down on / recover the entire face amount of such security upon the occurrence of any of the following events:

- aa. such Proponent withdraws (or carries out any act or omission that evidences its intent to withdraw) any part, or all, of its proposal prior to the Bid Expiration Date;
- bb. PREPA determines, in its sole discretion, that the proposal submitted by such Proponent contains a false statement or material misrepresentation;
- cc. in the event that PREPA selects the proposal of such Proponent for evaluation, during Phase III, such Proponent fails to execute a Contract with PREPA in respect of such proposal within thirty (30) days from the date of such selection for any reason whatsoever; and
- dd. a Proponent, which has executed a Contract with PREPA, breaches its obligation to satisfy conditions precedent thereunder.

6.7 Ownership / Control of Site

Upon its receipt of a notice confirming that PREPA has selected a Proponent's proposal relating to an Energy Resource other than a VPP, for evaluation, during Phase II, such selected Proponent shall deliver to PREPA within seven (7) business days of the receipt date, for each parcel of land that will form part of the proposed project site, either:

- a. a certified true and correct copy of the deed of title or lease agreement evidencing that such Proponent holds the registered title over, or leasehold rights in, such parcel of land; or
- b. a Land Option Agreement⁷⁷ relating to such parcel of land.

6.8 Reservation of Rights

Nothing contained in this RFP shall be construed to require or obligate PREPA to select any proposals or limit PREPA's ability to reject all proposals in its sole and exclusive discretion. PREPA further reserves the right to amend, or withdraw and terminate, this RFP at any time prior to the Proposal Submission Deadline, selection of proposals or execution of any Contract. PREPA also reserves the right to solicit additional proposals it deems necessary and the right to submit additional information requests to Proponents during the proposal evaluation process. The effectiveness of each Contract signed by a Proponent will be contingent on regulatory approvals, including the approval of the Energy Bureau and the FOMB.

All proposals submitted to PREPA pursuant to this RFP shall become the exclusive property of PREPA and may be used by PREPA for any reasonable purpose. PREPA shall consider materials provided by Proponents in response to this RFP to be confidential only if such

⁷⁷ ~~RFP Addendum No. 9~~

materials are clearly designated as *confidential*. Proponents should be aware that their proposal, even if marked confidential, may be subject to discovery and disclosure in regulatory or judicial proceedings that may or may not be initiated by PREPA. A Proponent may be required to justify the requested confidential treatment under the provisions of a protective order issued in such proceedings. If required by an order of an agency or court of competent jurisdiction, PREPA may produce the material in response to such order without prior consultation with the relevant Proponent.

This RFP shall not, by itself, give any right to any party for any claim against PREPA. Furthermore, by submitting a proposal, each Proponent shall be deemed to have acknowledged that PREPA assumes no liability with respect to this RFP or any matters related thereto. Each Proponent acknowledges and agrees that PREPA may terminate this RFP at any time and for its convenience without liability to such Proponent, its advisors, consultants, and agents. By submission of a proposal, each Proponent, for itself as well as for its successors and assignees (if any), agrees that, as between such Proponent and PREPA, such Proponent shall have sole responsibility for all claims, demands, accounts, damages, costs, losses, and expenses of whatsoever kind in law or equity, known or unknown, foreseeable or unforeseeable, arising from or out of this RFP or its proposal(s).

PREPA reserves the right to modify this RFP for any reason and at any time prior to the Proposal Submission Deadline. PREPA will notify Proponents ~~who submit a valid Notice of Intent to Respond~~ of any such modifications.

6.9 Disclosure of Proposals

As part of the process of obtaining regulatory approval, PREPA may disclose proposals submitted by Proponents to third parties for the purpose of obtaining such approval.

Appendix A. Form of Notice of Intent to Respond

<u>PROPONENT</u>	
Company Name	
Company Mailing Address	
Primary Contact Information	
Name	
Title	
Phone	
Email	

Proponent's Signature:

Date:

Appendix C. Form of Proposal Completeness Checklist

Each Proponent should (i) check the following boxes to indicate the completeness of its proposal and ensure that the minimum requirements for this RFP, and (ii) submit the completed checklist with such proposal. Proponent has the responsibility to review the RFP and ensure that their proposals satisfy all the requirements. PREPA provides guidance only and does not guarantee its completeness or accuracy.⁷⁸

No.	Proposal	Check	Reference
1.	SOQ	-	§3, §4
1.1.	Section One: Executive Summary	-	§4.2, §3.1
1.1.1.	Proponent qualifications in accordance with Section 3	<input type="checkbox"/>	§3, §3.1
1.1.2.	Envisaged use (if any) of contractors and Subcontractors	<input type="checkbox"/>	§4.2
1.2.	Section Two: Corporate Structure	-	§4.3
1.2.1.	Proponent contact information	<input type="checkbox"/>	§4.3(a)
1.2.2.	Proponent corporate structure and history	<input type="checkbox"/>	§4.3(b)
1.2.3.	Proponent parent company contact information	<input type="checkbox"/>	§4.3(c)
1.2.4.	Proponent information	<input type="checkbox"/>	§4.3(d)
1.2.5.	Proponent guarantor key information	<input type="checkbox"/>	§4.3(e)
1.2.6.	Proponent organizational chart	<input type="checkbox"/>	§4.3(f)
1.2.7.	<u>Resource Provider contact information</u>	<input type="checkbox"/>	<u>§2.9</u>
1.2.8.	<u>Resource Provider ownership schematic</u>	<input type="checkbox"/>	<u>§2.9</u>

⁷⁸ ~~RFP Addendum No. 8~~

<u>1.2.9.</u>	Description of technical operational and managerial resources	<input type="checkbox"/>	§4.3(g)
<u>1.2.10.</u>	Description of level of commitment by O&M and EPC contractors	<input type="checkbox"/>	§4.3(h)
<u>1.2.11.</u>	Key individuals and roles	<input type="checkbox"/>	§4.3(i)
<u>1.2.12.</u>	List of advisors	<input type="checkbox"/>	§4.3(j)
<u>1.2.13.</u>	Team Member resumes	<input type="checkbox"/>	§4.3(k)

1.3.	Section Three: Technical and Operational Capability	-	§4.4, Table 3-1
1.3.1.	Reference Project(s)	<input type="checkbox"/>	Table 3-1, 1
1.3.2.	For each Reference Project, a Reference Project Certification in the form of Appendix O (<i>Forms of Certificate for Minimum Eligibility Requirements</i>) ⁷⁹	<input type="checkbox"/>	Table 3-1, 2, 3 and 4
1.3.3.	For each Reference Project, general information	<input type="checkbox"/>	Table 3-1, 5
1.4.	Section Four: Financial Capability	-	§4.5
1.5.	Unrestricted Net Worth	<input type="checkbox"/>	§4.5(a)
1.6.	Ability to raise financing	<input type="checkbox"/>	§4.5(b), Schedule [G] of Appendix D
1.7.	Section Five: Other Criteria and Additional Capability	-	§4.6
1.7.1.	No Disbarment Certification in the form of Appendix O (<i>Forms of Certificate for Minimum Eligibility Requirements</i>) ⁸⁰	<input type="checkbox"/>	§4.6(a), Table 3-1
1.7.2.	Proponent certification	<input type="checkbox"/>	§4.6(b)
1.7.3.	Any other information Proponent believes would be useful	<input type="checkbox"/>	§4.6(c)
1.8.	Section Six: Timeline	-	§4.7
1.8.1.	Detailed plan to achieve COD within 24 months	<input type="checkbox"/>	§4.7(i)

⁷⁹ ~~RFP Addendum No. 8~~

⁸⁰ ~~RFP Addendum No. 8~~

1.8.2.	Monthly milestone schedule and development plan description	<input type="checkbox"/>	§4.7(ii)
1.9.	Section Seven: Safety Performance	-	§4.8
1.10.	Demonstrate ability to address and resolve safety issues and knowledge of safety strategies and methodologies	<input type="checkbox"/>	§4.8
1.11.	Copies of OSHA 300 forms for the past 3 years	<input type="checkbox"/>	§4.8
1.12.	Section Eight: Project Development Summary	<input type="checkbox"/>	§4.9, Schedule A of Appendix D
2.	Proposal	-	§2.9, §5, §5.1
2.1.	Proposal Completeness Checklist	<input type="checkbox"/>	§5.1
2.2.	Proposal Data Forms	-	§5.1
2.2.1.	Project Description	<input type="checkbox"/>	§5.1, Schedule A of Appendix D
2.2.2.	Qualitative Assessment	<input type="checkbox"/>	§5.1, Schedule B of Appendix D
2.2.3.	Pricing Proposal	<input type="checkbox"/>	§5.1, Schedule C of Appendix D
2.2.4.	Energy Production Forecast	<input type="checkbox"/>	§5.1, Schedule D of Appendix D
2.2.5.	Guaranteed Performance	<input type="checkbox"/>	§5.1, Schedule E of Appendix D
2.2.6.	Suppliers for Major Plan Equipment	<input type="checkbox"/>	§5.1, Schedule F of Appendix D
2.3.	Interconnection Request Data Form ⁸⁺	<input type="checkbox"/>	§5.1, Appendix J
2.4.	Ownership / Control of Site	<input type="checkbox"/>	§5.2 (g)
2.5.	10-year O&M Cost Breakdown	<input type="checkbox"/>	§5.2 (h)

⁸⁺ RFP Addendum No. 11

Appendix D. Proposal Data Forms^{82 83 84}

(see technology specific file *Appendix D. Proposal Data Forms.xlsx*)

- Schedule A – Project Description
- Schedule B – Qualitative Assessment
- Schedule C – Price Proposal
- Schedule D – Energy Production Forecast
- Schedule E – Guaranteed Performance
- Schedule F – Suppliers for Major Plant Equipment

Appendix E. Form of Non-Disclosure Agreement⁸⁵

This Non-Disclosure Agreement (“**Agreement**”) is made this [●] day of [●] ~~2011~~2021, by and between [●], a [●], hereinafter referred to as “**Proponent**”, and the Puerto Rico Electric Power Authority, hereinafter referred to as “**PREPA**”, a public corporation and government instrumentality of the Commonwealth of Puerto Rico, created by Act 83 of May 2, 1941, as amended. Proponent and PREPA jointly referred to as the “**Parties**”.

1. In connection with communications between Proponent and PREPA, relating to (i) the Request For Proposals for Renewable Energy Generation and Energy Storage Resources, Tranche ~~4~~2 of 6 (as amended, the “**RFP**”) issued by PREPA on ~~February 22~~June 30, 2021, and (ii) the submission of a proposal by Proponent to make available one or more renewable energy, energy storage or virtual power plant resources in response to the RFP (the “**Proposed Transaction**”), each party (as to information disclosed by it, “**Disclosing Party**” intends to furnish the other party (as to information received by it, “**Receiving Party**”) with certain confidential and proprietary information concerning the Proposed Transaction. “**Confidential Information**”, as used in this Agreement, shall mean (a) the proposed or final terms of the Proposed Transaction, (b) all information that is disclosed in writing or by e-mail or other tangible electronic storage medium and is clearly marked “Confidential” or “Proprietary”, or (c) all information identified by the Disclosing Party as confidential, initially disclosed orally or visually and at the time of disclosure. All other information shall be deemed non-confidential, in each case subject to paragraph (9) below.
2. The Receiving Party shall, except as required by law, (a) protect the confidentiality of the Disclosing Party’s Confidential Information; (b) use the Confidential Information only for the purposes of evaluating a Proposed Transaction and the terms thereof; (c) use the same degree of care as with its own confidential information to prevent disclosure of the Confidential Information; and (d) not disclose to persons that the Confidential Information has been made available, that the Receiving Party is considering a Proposed Transaction, that the Parties have had or are having discussions or negotiations with respect thereto, or the terms and conditions thereof except to its affiliates, advisors, potential financing sources, representatives, key personnel, and any legal, financial, or technical advisors, whose duties justify their need to review and know such material (collectively, “**Representatives**”), to the extent necessary to permit them to assist the Receiving Party in the evaluation of the Proposed Transaction.
3. Notwithstanding anything to the contrary in this Agreement, PREPA shall have the right to disclose Confidential Information to: (a) the Financial Management and Oversight Board, the Puerto Rico Energy Bureau, the United States District Court for the District of Puerto Rico, and any governmental ~~authority~~Authority for the purposes of obtaining the consents and approvals of the Proposed Transaction, together with such additional

⁸⁵ ~~RFP Addendum No. 6~~

| Appendix G. Form of ESSA for Standalone Energy Storage Resources⁸⁶

[*Attached*]

| ⁸⁶ ~~REP Addendum No. 9~~

IRREVOCABLE STANDBY LETTER OF CREDIT

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

Beneficiary: PUERTO RICO ELECTRIC POWER AUTHORITY

Address: [●]

Attn:[●]

Reference No.: [●]

Date of Issuance: [●]

[PREPA-[PROPONENT Name] Request ~~For~~for Proposals for Renewable Energy Generation and Energy Storage Systems – Tranche ~~12~~ – Proposal Security No. [●]

We understand that *[insert name of PROPONENT]* (the “*Applicant*”) has submitted a proposal to you, Beneficiary, dated [●] (as amended, the “*Proposal*”) in the context of the Request ~~For~~for Proposals for Renewable Energy Generation and Energy Storage Systems – Tranche ~~12~~ (“*RFP-T12*”) issued by Beneficiary on *[date]*, which requires a Proposal Security in the form and amount of this irrevocable standby letter of credit (“*Letter of Credit*”).

At the request of Applicant, we *[name of Bank]*, hereby issue this Letter of Credit and irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [●] United States Dollars (USD [●]) in each case upon receipt by us of your first demand in writing at the Place of Presentation listed below in person, by registered or certified mail, or by international overnight courier service, substantially in the form attached as Annex A hereto (signed by your authorized representative and appropriately completed) (“*Demand*”), without your needing to prove or to show grounds for your Demand or the sum specified therein. We shall remit all payment(s) under this Letter of Credit into a bank account of your choice and discretion as specified in your Demand. You may make one or more Demands under this Letter of Credit. Partial drawings are permitted.

Any Demand made by Beneficiary in accordance herewith shall be conclusive evidence that the sum stated in such Demand is properly due and payable to Beneficiary under this Letter of Credit. We shall have no right and shall not be under any duty or responsibility to enquire into the reason or circumstances of any Demand made by Beneficiary or the respective rights and/or obligations and/or liabilities of Beneficiary and Applicant in respect to the Proposal. Any discrepancy between the explicit terms hereof and the Rules (defined below) shall be read in favor of the terms set forth in this Letter of Credit.

⁸⁷ ~~RFP Addendum No. 9~~

ANNEX A - FORM OF DRAWING CERTIFICATE

[Letterhead of Beneficiary]

[Name of Issuing Bank]

Attention: [Standby Letter of Credit Department]

[Address of Issuing Bank]

Date: [●]

RFP-T~~1~~2 – Proposal Security No. [●]

We refer to the above-captioned irrevocable standby letter of credit, with reference number [●] (the “**Letter of Credit**”). Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to them in this Letter of Credit or the RFP-T~~1~~2. We hereby inform you that:

1. Applicant withdrew (or carried out an act or omission that evidenced its intent to withdraw) any part, or all, of the Proposal prior to the Bid Expiration Date;
2. Beneficiary determines that the Proposal contains a false statement or material misrepresentation;
3. in the event that Beneficiary selects the Proposal, Applicant has failed to execute a Contract with Beneficiary in respect of the Proposal within thirty (30) days from the date of such selection for any reason;
4. if Applicant has executed a Contract with Beneficiary, Applicant has breached its obligation to satisfy conditions precedent thereunder and failed to cure such breach within sixty (60) days of the date of such Contract;
5. the RFP-T~~1~~2 or an executed Contract provide that Beneficiary may draw on the Guarantee, entitling us to call upon the Guarantee;
6. you no longer meet the requirements of a Qualified Bank (as defined below) and twenty-one (21) calendar days or more have elapsed since the date on which you no longer met such requirements, and Applicant has not delivered to Beneficiary a replacement guarantee that is substantially identical to the Letter of Credit, meeting the requirements of the RFP-T~~1~~2. “Qualified Bank” means a national bank, national association, commercial bank or other financial institution registered in the United States, having a branch located within Puerto Rico or the contiguous United States, and otherwise acceptable to Beneficiary that has a long-term issuer rating of at least (i) if headquartered within Puerto Rico, then “B+” by Standard & Poor’s Ratings Services, “B1” by Moody’s Investors Services Inc., or “B+” by Fitch Ratings Inc. or (ii) if

headquartered outside of Puerto Rico, then “A-” by Standard & Poor’s Ratings Services, “A3” by Moody’s Investors Services Inc., or “A-” by Fitch Ratings Inc., or in each case

if the relevant rating agencies cease to engage in business or rate the obligations in question, then an equivalent rating from another internationally recognized rating agency

selected by Applicant with the written consent of Beneficiary; provided that, if such financial institution’s ratings satisfy such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications; or

7. twenty-one (21) or less calendar days remain before the current Expiry Date, Applicant’s obligation to maintain the Letter of Credit under the RFP-T~~1~~2 extends beyond such Expiry Date, and Applicant has not delivered to Beneficiary a replacement letter of credit substantially identical to the Letter of Credit and meeting the requirements of the RFP-T~~1~~2.

This letter serves as our demand for payment under the Letter of Credit. 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,

[The Puerto Rico Electric Power Authority]

By:

Authorized Signatory

II. ESSA⁸⁸

Capitalized terms used throughout this Appendix I have the meaning set forth in the Agreement, unless otherwise defined herein.

SELLER shall comply with the following MTRs.

1. Frequency Control and Regulation:

- a. Fast active power (P) source capable of continuously injecting or absorbing energy from the grid as a function of system frequency deviations to help manage and maintain frequency at 60 Hz.
- b. Instantaneous and immediate active power (P) response of battery energy storage system (“BESS”) proportional to frequency deviations from scheduled frequency.
- c. The rate of active power (P) response of BESS to frequency deviations shall be established based on configurable PREPA selected droop characteristic (*i.e.* 5% droop characteristic or more responsive as PREPA requires SCADA). PREPA shall be able to program and configure the droop via SCADA from 1% to 5% in steps of 0.5% (*i.e.* 3.0%, 3.5%, 4.0%, 4.5%, 5%).
- d. Frequency regulation deadband shall be available. PREPA shall be able to configure and program the deadband via SCADA. The configurable deadband range shall be at least from 0.02% to 0.5%.
- e. BESS frequency control and regulation mode time response (full frequency response) shall be less than 1.0 second.
- f. PREPA shall be able to configure and select frequency regulation range (upper injection/lower absorption limits) via SCADA up to a maximum of its nominal capacity (*i.e.* +/- 15 MW, +/- 20 MW). Asymmetrical frequency regulation ranges should be allowed (*i.e.* +15 MW/-5 MW, +10 MW/-20 MW).
- g. Capability to operate in the frequency control and regulation mode and simultaneously control the voltage by the injection or absorption of up to the required nominal reactive power at the Interconnection Point: (i) the frequency regulation control shall operate decoupled from the voltage regulation control mode and shall not limit the required reactive power capability of the Facility at the Interconnection Point, and (ii) the voltage regulation control shall not limit the required active power capability of the Facility at the Point if Interconnection.

⁸⁸ REP Addendum No. 17

2. Rapid Spinning Reserve and Fast Frequency Response

- a. Instantaneous injection of reserve energy as a function of the rate of change and/or deviations of the system frequency in the event of a sudden loss of generation or unexpected ramp-up in demand.
- b. Energy capability and power capacity to inject nominal active power output (at the Interconnection Point) in a range from two (2) to six (6) hours of discharge.
- c. Injection of active power (P) within the first three (3) cycles of a specific frequency deviation trigger and/or a frequency rate of change trigger (PREPA shall be able to configure and select triggers).
 - i. Total configurability for PREPA selection of the active power output, response time and response slope.
 - ii. Total configurability for PREPA selection of triggers: frequency, rate of change of frequency and instantaneous/time delay combinations.
 - iii. For example, the rapid reserve might be selected to trigger if frequency decays to 59.6 Hz at a rate > 0.25 Hz/sec or drops and stays between 59.0 Hz and 59.2 Hz for $>$ thirty (30) seconds or drops below 59 Hz.
 - iv. Total configurability for multiple sets of triggering combinations capable of being simultaneously active. The rapid reserve mode might be selected to trigger with Boolean or logical operators that combine active power output, response time, response slope, frequency limits, frequency rate of change and time delay.
- d. The rapid spinning reserve mode shall provide a full output response time (95% of its final output value) of 100 milliseconds or faster. PREPA shall also have the flexibility of selecting a limited rapid spinning reserve sub-mode from SCADA. In limited rapid spinning reserve sub-mode, the active power output, response time and response slope shall be configurable and programmable from SCADA in accordance with the triggering combinations and options previously discussed.
- e. ⁸⁹Capability to ramp down active power output at PREPA's pre-selected and configurable slope (MW/min or % of active power output/min) after system frequency is normalized and triggers pre-selected and configurable frequency window for a certain amount of time. BESS shall ramp down to PREPA's pre-selected and configurable active power output (10 MW, 5 MW, 0 MW, *etc.*) and be able to automatically make the transition and continue operating in frequency control and regulation mode in accordance with previously selected

⁸⁹ RFP Addendum No. 17

Appendix J. Interconnection Data Request Forms

This Appendix J includes the Interconnection Data Request Forms for solar-based Renewable Energy Resources (Section I), wind-based Renewable Energy Resources (Section II) and Energy Storage Resources (Section III).

I. PV GENERATION INFORMATION REQUEST FORM

Please fill out all fields. If field is not applicable, fill with “N/A.”

PART A: Interconnection Feasibility Study Data

With the information provided in this section, *Steady-State Thermal Study* and *Steady-State Voltage Analysis* will be performed to evaluate the impact of the PV project interconnection.

1. OVERALL GENERATING FACILITY DATA

Item	Value	Unit
Point of interconnection (POI) ⁹⁰²	—	—
Transmission Center (TC) ⁹⁴³ (Name)		—
Sectionalizer ⁹²⁴		latitude/longitude
POI voltage level		kV
Maximum Facility net output at the POI		MW*
Generating Facility Location		latitude/longitude

⁹⁰² PREPA may support the selection of the POI with an optional scoping meeting that may be requested by the developer at no cost.

⁹⁴³ PREPA facility that has high voltage transmission lines connecting to it and is similar to a substation.

⁹²⁴ New facility that will be built to allow the interconnection of the Generating Facility to the selected transmission line where the generated power will be injected.

Item	Value	Unit
Fixed Taps available		Number of Taps / % V
Impedance on MVA base		Z1 %
		X/R Z1
		<u>Z0%</u>
		Z0 %
		X/R Z0

4. Inverter Data and Inverter Step-Up Transformer Data⁹³⁵

Go to section ~~4.a~~4.1 if the Solar PV and BESS are DC connected. Go to section ~~4.b~~4.1.2 if the Solar PV and BESS are ac connected.

4.1 If Solar PV and Battery Energy Storage System (BESS) are DC connected, fill out the following tables:

4.1.1 Solar PV and Battery Energy Storage System (BESS) Inverter step-up Transformer Data

Item	Value	Unit
Number of Transformers		—
Rating (ONAN/ONAF/OFAF)		MVA
Winding Nominal Voltages (Primary/secondary)		kV
Winding Connection types: Delta or Wye (Primary/secondary)		—
Fixed Taps available		Number of Taps / % V
Impedance on MVA base		Z1 %
		X/R Z1

⁹³⁵ PREPA Minimum Technical Requirements are applicable to the Generating Facility for connection of the facility to the power grid. These requirements indicate that an energy storage system is necessary for the integration of the Generating Facility to the power grid.

		<u>Z0%</u>
		Z0%
		X/R Z0

4.1.2 Solar PV and Battery Energy Storage System (BESS) Inverter Data

Item	Value	Unit
Number of Inverters to Be Interconnected		—
Inverter Manufacturer		—
Inverter Model		—
Inverters MVA rating		MVA
Number of Inverters		—
Maximum design fault contribution current from inverter (based on IEC 60909)		
Initial symmetrical short-circuit current (Ik")		Amps
First Peak of short circuit current (ip)		Amps
Steady-state short circuit current (Ik)		Amps
Time to reach steady-state current		ms

4.2 If Solar PV and Battery Energy Storage System (BESS) are AC connected, fill out the following tables below

4.2.1 Solar PV Inverter step-up Transformer Data

Item	Value	Unit
Number of Transformers		—

Item	Value	Unit
Rating (ONAN/ONAF/OFAF)		MVA
Winding Nominal Voltages (Primary/secondary)		kV
Winding Connection types: Delta or Wye (Primary/secondary)		—
Fixed Taps available		Number of Taps / % V
Impedance on MVA base		Z1 %
		<u>Z0%</u>
		Z0%
		X/R

4.2.2 Solar PV Inverter Data

Item	Value	Unit
Number of Inverters to be Interconnected		—
Inverter Manufacturer		—
Inverter Model		—
Inverters MVA rating		MVA
Maximum design fault contribution current from inverter (based on IEC 60909)		
Initial symmetrical short-circuit current (Ik")		Amps
First Peak of short circuit current (ip)		Amps
Steady-state short circuit current (Ik)		Amps
Time to reach steady-state current		ms

4.2.3 Battery Energy Storage System (BESS) Inverter step-up Transformer Data

Item	Value	Unit
Number of Transformers		—
Rating (ONAN/ONAF/OFAF)		MVA
Winding Nominal Voltages (Primary/secondary)		kV
Winding Connection types: Delta or Wye (Primary/secondary)		—
Fixed Taps available		Number of Taps / % V
Impedance on MVA base		Z1 %
		<u>Z0%</u>
		Z0 %
		X/R

4.2.4 BESS Inverter Data

Item	Value	Unit
Number of Inverters to Be Interconnected		—
Inverter Manufacturer		—
Inverter Model		—
Inverters MVA rating		MVA
Number of inverters		—
Maximum design fault contribution current from inverter (based on IEC 60909)		
Initial symmetrical short-circuit current (Ik")		Amps
First Peak of short circuit current (ip)		Amps

VTGTPAT
FRQTPAT

PSS/E library Static Var Systems and FACTS
SVSMO3U2*
SVSMO2U2*
SVSMO3U2*
CSVGN1
CSVGN3
CSVGN4
CSVGN5
SWSHNT
CDSMS1
CSTAT
CSTCNT
ABBSVC1
CHSVCT
CSSCST

*WECC, "Generic Static Var System Models for the Western Electricity Coordinating Council" April 18, 2011.

II. WIND GENERATION INFORMATION REQUEST FORM

Please fill out all fields. If field is not applicable, fill with “N/A.”

PART A: Interconnection Feasibility Study Data

With the information provided in this section, *Steady-State Thermal Study* and *Steady-State Voltage Analysis* will be performed to evaluate the impact of the Wind project interconnection.

1. OVERALL GENERATING FACILITY DATA

Item	Value	Unit
Point of interconnection (POI) ⁹⁴⁶	—	—
Transmission Center (TC) ⁹⁵⁷ (Name)		—
Sectionalizer ⁹⁶⁸		latitude/longitude
POI voltage level		kV
Maximum Facility net output at the POI		MW*
Generating Facility Location		latitude/longitude

*Power factor range to be evaluated: 0.85 lagging to 0.85 leading at the point of interconnection (POI) per MTR requirements

2. Interconnection Facilities – Tie Line Data

Item	Value	Unit
Nominal voltage		kV

⁹⁴⁶ PREPA may support the selection of the POI with an optional scoping meeting that may be requested by the developer at no cost.

⁹⁵⁷ PREPA facility that has high voltage transmission lines connecting to it and is similar to a substation.

⁹⁶⁸ New facility that will be built to allow the interconnection of the Generating Facility to the selected transmission line where the generated power will be injected.

Item	Value	Unit
Magnetizing Reactance		Ohm
Short Circuit Reactance		Ohm
Saturated sub-transient reactance, $X''_d(v)$		p.u.
Control mode for the turbine		
Total Rotating Inertial I		p.u. on 100MVA base
X''_1 – positive sequence subtransient reactance (saturated)		p.u. on 100MVA and nominal line voltage (kV) base
X''_1 – positive sequence subtransient reactance (unsaturated)		p.u. on 100MVA and nominal line voltage (kV) base
X_2 – negative sequence reactance		p.u. on 100MVA and nominal line voltage (kV) base
X_0 – zero sequence reactance		P.U. on 100MVA and nominal line voltage (kV) base

*If the site will be using more than one model/type of WTG, please add an additional Tables as necessary.

3.2 WTG Data for Type 4

Item	Value	Unit
Inverter Manufacturer		—
Inverter Model		—
Inverters MVA rating		MVA
Number of Inverters		—
Maximum design fault contribution current from inverter (based on IEC 60909)		
Initial symmetrical short-circuit current (I_k'')		Amps
First Peak of short circuit current (i_p)		Amps

Item	Value	Unit
Steady-state short circuit current (Ik)		Amps
Time to reach steady-state current		ms

4. Main Power Transformer Data

Item	Value	Unit
Number of Transformers		—
Rating (ONAN/ONAF/OFAF)		MVA
Winding Type (2W, 3W)		—
Winding Nominal Voltages (Primary/secondary/tertiary)		kV
Winding Connection types: Delta or Wye (Primary/secondary/tertiary)		—
Fixed Taps available		Number of Taps / % V
Impedance on MVA base		Z1 %
		X/R Z1
		<u>Z0%</u>
		Z0%
		X/R Z0

5. Wind Turbine Generator Step-Up Transformer Data (GSU)

Item	Value	Unit
Rating (ONAN/ONAF/OFAF)		MVA
Winding Nominal Voltages		kV

Item	Value	Unit
(Primary/secondary)		
Winding Connection types: Delta or Wye (Primary/secondary)		—
Fixed Taps available		Number of Taps / % V
Impedance on MVA base		Z1 %
		X/R Z1
		<u>Z0%</u>
		Z0%
		X/R Z0

6. Inverter Data and Inverter Step-Up Transformer Data for Battery Energy Storage System (BESS)⁹⁷⁹ =

6.1 Battery Energy Storage System (BESS) Inverter step-up Transformer Data

Item	Value	Unit
Number of Transformers		—
Rating (ONAN/ONAF/OFAF)		MVA
Winding Nominal Voltages (Primary/secondary)		kV
Winding Connection types: Delta or Wye (Primary/secondary)		—
Fixed Taps available		Number of Taps / % V
Impedance on MVA base		Z1 %
		X/R Z1

⁹⁷⁹ PREPA Minimum Technical Requirements are applicable to the Generating Facility for connection of the facility to the power grid. These requirements indicate that an energy storage system is necessary for the integration of the Generating Facility to the power grid.

Item	Value	Unit
		<u>Z0%</u>
		Z0 %
		X/R Z0

6.2 Battery Energy Storage System (BESS) Inverter Data

Item	Value	Unit
Number of Inverters to be Interconnected		—
Inverter Manufacturer		—
Inverter Model		—
Inverters MVA rating		MVA
Maximum design fault contribution current from inverter (based on IEC 60909)		
Initial symmetrical short-circuit current (Ik")		Amps
First Peak of short circuit current (ip)		Amps
Steady-state short circuit current (Ik)		Amps
Time to reach steady-state current		ms

7. Interconnection Facilities – Tie Line Data (complement to the line data in Part A)

Item	Value	Unit
Positive sequence resistance (R) for entire length		p.u.*
Positive sequence reactance (X) for entire length		p.u.*
Zero sequence resistance (R0) for entire length		p.u.*

*WECC, "Generic Static Var System Models for the Western Electricity Coordinating Council" April 18, 2011.

III. BATTERY ENERGY STORAGE RESOURCE INFORMATION REQUEST FORM

Please fill out all fields. If field is not applicable, fill with “N/A.”

PART A: Interconnection Feasibility Study Data

With the information provided in this section, *Steady-State Thermal Study* and *Steady-State Voltage Analysis* will be performed to evaluate the impact of the BESS project interconnection.

1. OVERALL GENERATING FACILITY DATA

Item	Value	Unit
Point of interconnection (POI) ⁹⁸¹⁰ :	—	—
Transmission Center (TC) ⁹⁹¹¹ (Name)		—
Sectionalizer ¹⁰⁰¹²		latitude/longitude
POI voltage level		kV
Maximum Facility net output at the POI		MW*
Generating Facility Location		latitude/longitude

*Power factor range to be evaluated: 0.85 lagging to 0.85 leading at the point of interconnection (POI)

2. Interconnection Facilities – Tie Line Data

Item	Value	Unit
Nominal voltage		kV

⁹⁸¹⁰ PREPA may support the selection of the POI with an optional scoping meeting that may be requested by the developer at no cost.

⁹⁹¹¹ PREPA facility that has high voltage transmission lines connecting to it and is similar to a substation.

¹⁰⁰¹² New facility that will be built to allow the interconnection of the Generating Facility to the selected transmission line where the generated power will be injected.

Item	Value	Unit
Line length to POI		miles
Conductor type/size		kcmil
Phase configuration (Vertical/Horizontal)		—
Rating		Amps

PART B: Full Interconnection System Impact Study Data

With the information provided in this section, *Short Circuit Study & Breaker Duty Review*, and *Dynamic & Transient Stability Analysis* will be performed to evaluate the full impact of the BESS project interconnection to the grid.

3. Main Power Transformer Data

Item	Value	Unit
Number of Transformers		—
Rating (ONAN/ONAF/OFAF)		MVA
Winding Type (2W, 3W)		—
Winding Nominal Voltages (Primary/secondary/tertiary)		kV
Winding Connection types: Delta or Wye (Primary/secondary/tertiary)		—
Fixed Taps available		Number of Taps / % V
Impedance on MVA base		Z1 %
		X/R Z1
		<u>Z0%</u>
		Z0 %

5. Inverter Data and Inverter Step-Up Transformer Data

5.1 Battery Energy Storage System (BESS) Inverter step-up Transformer Data

Item	Value	Unit
Number of Transformers		—
Rating (ONAN/ONAF/OFAF)		MVA
Winding Nominal Voltages (Primary/secondary)		kV
Winding Connection types: Delta or Wye (Primary/secondary)		—
Fixed Taps available		Number of Taps / %V
Impedance on MVA base		Z1 %
		X/R Z1
		<u>Z0%</u>
		Z0 %
		X/R Z0

5.2 Battery Energy Storage System (BESS) Inverter Data

Item	Value	Unit
Number of Inverters to be Interconnected		—
Inverter Manufacturer		—
Inverter Model		—
Nominal Terminal Voltage		kV
Expected average high ambient temperature for the site		°C
Individual generator rated MVA at the		MVA

PSS/E generic BESS Dynamic Models
REGCAU1
REECCU1
REPCTAU1
VTGTPAT
FRQTPAT

PSS/E library Static Var Systems and FACTS
SVSMO3U2*
SVSMO2U2*
SVSMO3U2*
CSVGN1
CSVGN3
CSVGN4
CSVGN5
SWSHNT
CDSMS1
CSTAT
CSTCNT
ABBSVC1
CHSVCT
CSSCST

*WECC, "Generic Static Var System Models for the Western Electricity Coordinating Council," April 18, 2011.

[REDACTED]

| ¹⁰⁺~~NOTE~~¹³ Note: Addendum No. 9 to the RFP updated Appendix K to (i) delete interconnection points with estimated overall MW limit under 20 MW, and (ii) include GPS coordinates and municipality which identify each interconnection point.

|

Appendix N. Kick-off Meeting Presentation¹⁰²

FORM OF REFERENCE PROJECT COMPLIANCE CERTIFICATE

Dated as of [Month/Date/Year]

To: The Puerto Rico Electric Power Authority

Attn: Chief Executive Officer

Re: Reference Project for [Name of Proponent]

We refer to (i) the Request for Proposals No. 112648 that the Puerto Rico Electric Power Authority (“**PREPA**”) issued on February 22, 2021 (as amended, the “**RFP**”), and to (ii) the [name and description of project] (the “**Reference Project**”). Unless the context otherwise requires, capitalized terms have the meanings ascribed to them in the RFP.

In accordance with paragraphs 2-4 of Table 3-1 (*Minimum Eligibility Requirements*) of the RFP, we, [Name of Proponent], as a Proponent under the RFP process, hereby declare and certify to PREPA that, as of the date of this Certification and during the past three (3) years:

1. no material or sustained violation of Applicable Law has occurred with respect to any environmental matter involving the development, construction or operation of the Reference Project;
2. the Reference Project has complied with all energy related policies, practices and regulations and all Applicable Law; and
3. the Reference Project has not engaged in, nor is there been any record of, Unsatisfactory Performance with respect to the Reference Project.

Signed by

FORM OF NO DISBARMENT CERTIFICATION

Dated as of [Month/Date/Year]

To: The Puerto Rico Electric Power Authority

Attn: Chief Executive Officer

Re: [Name of Proponent] – No Disbarment

We refer to the Request for Proposals No. 112648 that the Puerto Rico Electric Power Authority (“PREPA”) issued on February 22, 2021 (as amended, the “RFP”). Unless the context otherwise requires, capitalized terms have the meanings ascribed to them in the RFP.

In accordance with the requirements of the No Disbarment Criteria section of Table 3-1 (*Minimum Eligibility Requirements*) of the RFP, we, [Name of Proponent]⁺⁰⁴¹⁴, as a Proponent under the RFP process, hereby declare and certify to PREPA that, as of the date of this Certification, neither we, nor any of our Affiliates, nor any executive officer or member of the board of any of the foregoing parties has been the subject of any of the following adverse findings within the past five (5) years:

1. pending litigation with the Government of Puerto Rico or any state;
2. arson conviction or pending case;
3. harassment conviction or pending case;
4. sale tax lien or substantial tax arrears;
5. fair housing violations or current litigation;
6. a record of substantial building code violations or litigation against properties owned and/or managed by the Proponent or by any entity or individual that comprises the Proponent;
7. past or pending voluntary or involuntary bankruptcy proceeding; or
8. conviction for fraud, bribery, or grand larceny.

⁺⁰⁴¹⁴ Note: For a Proponent consortium, the Lead Member and each of the Other Members must provide this certification.

Signed by

[*Printed Name of Authorized Representative*]
Authorised Representative

| [NAME OF PROPONENT] ~~405~~15

| ~~405~~15 Note: For a Proponent consortium, the Lead Member and each of the Other Members must sign a certification.

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we [●], (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 (the “**Surety**”) undertake to pay the PUERTO RICO ~~ELECTRIC POWER~~PUBLIC-PRIVATE PARTNERSHIP’S AUTHORITY, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico (the “**Obligee**”), of [●] United States Dollars (\$ [●]) (the “**Penal Sum**”), lawful money of the United States of America, for the payment of which sum well and truly to be made, the Principal and the Surety, bind ourselves, our heirs, executors, administrators, and successors, jointly and severally firmly by these presents;

WHEREAS:

- A. on ~~February 22~~June 30, 2021, Obligee issued the Request for Proposals for Renewable Energy Generation and Energy Storage Resources, Tranche ~~1~~2 of 6 (as amended, the “~~T1~~T2 RFP”);
- B. Principal has submitted a proposal to make available one or more renewable energy, energy storage or virtual power plant resources in response to the ~~T1~~T2 RFP (the “**Proposal**”); and
- C. Principal desires to issue this Bid Bond as “*Proposal Security*” contemplated by Section 6.6 (*Proposal Security*) of the ~~T1~~T2 RFP for the benefit of Obligee as good and sufficient surety for the faithful compliance by Principal with the requirements of the ~~T1~~T2 RFP;

NOW, THEREFORE, if (i) the Obligee selects the Proposal of the Principal for Phase III evaluation under the ~~T1~~T2 RFP, (ii) any one of the four events set forth in paragraphs (aa) – (dd) of Section 6.6 (*Proposal Security*) of the ~~T1~~T2 RFP occurs with respect to the Principal acting as a “*Proponent*” as defined in the RFP, and (iii) the Principal pays to the Obligee the Penal Sum in full, 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 from the date hereof until ~~December 31~~June 30, 20212022, 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.

¹⁰⁶
~~-RFP Addendum No. 9~~

¹⁰⁷
~~-RFP Addendum No. 17~~

Appendix Q. Form of Grid Services Agreement^{108 109}

[Attached.]

¹⁰⁸ ~~RFP Addendum No. 9~~
¹⁰⁹ ~~RFP Addendum No. 11~~

Appendix R. Form of ESSA for ITC Compliant Energy Storage Resources¹¹⁰

[Attached.]