

GRID SERVICES AGREEMENT
BETWEEN
PUERTO RICO ELECTRIC POWER AUTHORITY
AND
[•]
DATED AS OF [•]



**Puerto Rico
Electric Power
Authority**

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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. Josué Colón, of legal age, married, engineer and resident of Bayamón, Puerto Rico; and [●] (“**Resource Provider**”), 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 Resource Provider as certified by the Resolution dated [●]. PREPA and Resource Provider 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. 128568, Renewable Energy and Energy Storage Resources, Tranche 2 of 6, on October 15, 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. Resource Provider, 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 Resource Provider’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 Resource Provider 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 Resource Provider 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 Resource Provider.

“80% Guaranteed Capability” means the enrollment by Resource Provider 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 Resource Provider.

“AC” means alternating electrical current.

“Affected Party” has the meaning set forth in Section 14.1 (*General*).

“Affiliate” means, with respect to any specified Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls (*e.g.*, has the status of a parent), is Controlled by (*e.g.*, has the status of a subsidiary company), or is under common Control (*e.g.*, has the status of a sister company) with, such specified 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 Resource Provider Execution Date or thereafter.

“Applicable Standards” means the MTRs, any other applicable PREPA standards that PREPA has made available or identified to Resource Provider as applicable to Resource Provider’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 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 Applicable Law requires or authorizes commercial banks in San Juan, Puerto Rico to close, or (ii) any other Day recognized as a holiday by PREPA as listed in Appendix A (*Holidays*) hereto or notified to Proponent 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 (*Resource Provider 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 Resource Provider 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 Resource Provider 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*).

² Note: To revise if technologies other than photovoltaic solar form part of the proposal.

“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.

“Critical Project” has the meaning set forth in Title V of PROMESA.

“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 in the commencement of the Initial Performance Tests, or interruption of an ongoing Initial Performance Test, 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 Resource Provider to PREPA, co-signed by the Consulting Technical Expert, certifying (A) the occurrence of each of the foregoing events, and (B) the date on which Resource Provider would have achieved Commercial Operation but for the occurrence of a PREPA Risk Event 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 Resource Provider’s inability or failure to make the Grid Services available to PREPA up to the Guaranteed Capacity, 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 Resource Provider, 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

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.

in, imminent significant disruption of service to a significant number of customers or likely endangers life or property.

“**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 Resource Provider 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 Resource Provider’s shareholders or their Affiliates to Resource Provider for shares in Resource Provider or in the form of shareholder loans to Resource Provider, which by their terms are subordinated to any indebtedness for borrowed money incurred by Resource Provider under financing documents with the Project Lenders.

“**Equity Transfer**” has the meaning set forth in Section 19.4 (*Restrictions on Equity Transfers*).

“**Escrow Triggering Condition**” has the meaning set forth in paragraph (c) of Section 4.4 (*Participants and VPP Resources*).

“**Exceptions**” means liability arising from:

- a. a Party’s fraud, willful misconduct or gross negligence;
- b. a Party’s obligation to indemnify the other Party’s Indemnitees 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. Resource Provider’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.

“**Expedited Permitting Process**” has the meaning set forth in Title V of PROMESA.

“**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 Resource Provider can make available to PREPA for Dispatch in the Operational Forecast applicable to such Time Interval, which for any given Time Interval shall not 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 Resource Provider 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 Resource Provider and the Participants, each of which (i) through (iii) Resource Provider 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 Resource Provider (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.

⁵ Note: This represents one (1) month of assumed operating hours.

⁶ Note: The MTRs will provide more clarity around the Ancillary Services.

“Grid Services Period” means each hour of the four (4) consecutive 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.

“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 Resource Provider 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 Resource Provider, (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*).

⁷ Note: The Parties may agree to an earlier date. See Section 3.2.

“Initial Integration” means the first time that Resource Provider has integrated the GSDS and Participant Resources with the Distribution System.

“Initial Integration Date” means the date on which Initial Integration occurs.

“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 Resource Provider or any of its respective properties or creditors, or any action taken by any trustee or receiver of Resource Provider 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 (i) 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, and (ii) avoid, enjoin, rescind, set aside, stay, subordinate, or otherwise alter or impair, this Agreement or any of the transactions contemplated hereby in any way.

“**Liability Cap**” means [●]⁸.

“**Liquidated Damages**” means, collectively, Capability Shortfall Liquidated Damages, Resource Provider 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 Resource Provider 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.

⁸ Note: Insert amount equal to 25% of Resource Provider’s estimated project costs.

“**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%).

“**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 Resource Provider’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 them from time to time after the Closing Date in accordance with Section 4.2 (*Modifications*).

“**MW**” means megawatts AC.

“**Net Energy Metering Program**” or “**NEM**” means [●].

“**NIST**” means National Institute of Standards and Technology.

[“**Non-Refundable Fee**” means a non-refundable fee determined by PREPA and notified to the Resource Provider on or before the Agreement Date, which (i) partially offsets PREPA’s cost to conduct a GSDS Study of all proposals, selected by PREPA for phase III evaluation, including the proposal submitted by the Resource Provider in response to the RFP, and (ii) shall not exceed a maximum amount of \$ [●], equaling the sum of the average of the Guaranteed Capability of the Demand Reduction Service plus the Guaranteed Capability of the Demand Build Service, in each case during the Supply Period, expressed in kW multiplied by \$ [●] per kW;]⁹

“**Non-Scheduled Derating**” means any Derating other than a Scheduled Derating.

⁹ Note: Pending confirmation of application of Non-Refundable Fee to VPP projects

“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, Resource Provider’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 Resource Provider 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 Resource Provider to PREPA and all data provided by PREPA to Resource Provider 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 Resource Provider makes available through the GSDS pursuant to a Participant Service Agreement signed by such Participant, and **“Participant Resource”** means any such resource.¹⁰

“Participant Service Agreement” means an agreement in the Approved Form between a Participant and Resource Provider which sets forth the terms and conditions under which the Participant makes available to Resource Provider 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.

¹⁰ 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 Resource Provider will have meters and monitoring equipment for each Participant Resource.

“Participation Termination Event” means Resource Provider’s failure to achieve 40% Guaranteed Capability or 80% Guaranteed Capability by the corresponding time for completion / occurrence in the Milestone Schedule.

“Payment Guarantee” means a completed version of a guarantee in the form set forth in Appendix EE (*Form of Payment Guarantee*), duly-executed by an authorized representative of the Permitted Guarantor.

“Payment Guarantee Cross-Default” means the occurrence of the following two events: (i) a breach of any of the representations made by the Permitted Guarantor under Section 2.1, or any of the obligations of the Permitted Guarantor arising out of Section 2.1, of the Payment Guarantee, and (ii) the Permitted Guarantor’s failure to rectify such breach within sixty (60) Days of the occurrence of such breach.

“Pending Permit Delay” means, for any Permit for which Resource Provider 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 Resource Provider’s failure to comply with the requirements for the issuance of such Permit) which materially impairs the ability of Resource Provider to achieve Commercial Operation or otherwise perform its obligation under this Agreement.

“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.

“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 Resource Provider or any PREPA Risk Event, GSDS Availability equals zero (0), or (ii) for any period of twenty-four (24) consecutive Months, regardless of whether Resource Provider 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” means [●].¹¹

“Permits” means all permits, licenses, approvals, authorizations, consents, variances, or waivers issued by a Governmental Authority with jurisdiction over Resource Provider and the GSDS which Resource Provider 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 (*Resource Provider Permits*).

¹¹ Definition required only when Resource Provider must deliver a Payment Guarantee as part of the Conditions Precedent.

“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 Resource Provider 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 Resource Provider or its subcontractors in connection with this Agreement.¹²

“Post-Agreement Date Environmental Costs” means all Environmental Costs resulting from measures required to comply with Applicable Law enacted, approved or issued after the Resource Provider Execution Date.

“Post-Agreement Date Taxes” means all Taxes resulting from measures required to comply with Applicable Law enacted, approved, or issued after the Resource Provider Execution 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*).

“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 Resource Provider 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:

¹² Note: This definition aligns with Federal regulation and precedent.

- a. Force Majeure or a Legal Challenge in each case affecting PREPA;
- b. a Grid System Event;
- c. more than ninety (90) Day duration of time, required by PREPA to render a Best Interests Determination for the Project;
- 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 Resource Provider, Force Majeure affecting Resource Provider 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 Resource Provider cannot perform its obligations under this Agreement.

"Priority 2 Level" means a Derating that affects a major element of Resource Provider's ability to operate, while some aspects of Resource Provider'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 Resource Provider or its Affiliate(s) in connection with the GSDS or this Agreement.

"PROMESA" means Public Law No: 114-187 (June 30, 2016), otherwise known as the Puerto Rico Oversight, Management, and Economic Stability Act.

"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 Resource Provider 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 Resource Provider, an Affiliate of Resource Provider, or, if a third party contractor of Resource Provider or its Affiliate, an entity with at least two (2) years’ experience operating facilities of a type similar 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.

“Ramp Rate” has the meaning set forth in Appendix H (*Grid Services*).

“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 a source of “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.

“Resource Provider” has the meaning set forth in the preamble of this Agreement.

“Resource Provider Delay Liquidated Damages” or **“RPDLD”** means the amount per Day of delay set forth in the column captioned “Resource Provider Delay Liquidated Damages”, which corresponds to the Milestone captioned “Commercial Operation”, expressed as \$ per Day, in the Milestone Schedule.

“Resource Provider Execution Date” means the date on which Resource Provider executes and delivers this Agreement as set forth immediately below Resource Provider’s signature line.

“Revitalization Coordinator” has the meaning set forth in Title V of PROMESA.

“**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 Resource Provider in accordance with PREPA requirements.]¹³

“**Scheduled Derating**” means a planned Derating that Resource Provider 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 Resource Provider 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.

“**Shareholder**” means, for any time of determination, any direct holder of capital stock in Resource Provider 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 Code Escrow which, among other matters, names PREPA as beneficiary thereunder, and is otherwise acceptable in form and substance to PREPA.

¹³ 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.

“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, Resource Provider 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.

“Step-In Event” means the occurrence of (i) a Default by Resource Provider or (ii) the GSDS Availability for each of [any six (6) consecutive] Billing Periods falls below [seventy-five percent (75%)].

“Step-In Rights” has the meaning set forth in in paragraph (a) of Section 4.9 (*PREPA Step-In Rights*).

“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.

“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 the 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 Resource Provider 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 definitions of DERMS, Dispatch Notice, Grid System Event and Trademark License Agreement, and in 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 (*PREPA Signing Conditions*) no later than the Agreement Date. Resource Provider recognizes that submittal of the certifications and documents set out in Appendix B (*PREPA 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**”). PREPA shall notify Resource Provider of the Agreement Date within five (5) Business Days after PREPA executes this Agreement. 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 Resource Provider of its intention either not to (A) accept the Best and Final Offer made by Resource Provider, 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 Resource Provider'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 Resource Provider's obligations under this Agreement, Resource Provider shall provide to PREPA as a condition precedent to the Closing Date, at Resource Provider'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. Resource Provider 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. Resource Provider 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. Resource Provider's failure to pay Liquidated Damages when due and after invoiced under Section 10.3 (*Invoice for Liquidated Damages*) of this Agreement;
 4. Resource Provider'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 Resource Provider 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 Resource Provider, and (ii) PREPA shall have the right to draw from the escrow account in accordance with paragraph (d) of this Section 2.5 and Resource Provider 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 Resource Provider;
6. Payment Guarantee Cross-Default; or
7. 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), (4) and (6) 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 Resource Provider.

2.6 Condition Subsequent

- a. As a condition subsequent to the effectiveness of this Agreement on the Closing Date, Resource Provider shall comply with the provisions of this Section 2.6 (the “**Condition Subsequent**”).
- b. No later than sixty (60) Days after the Closing Date, Resource Provider 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 Resource Provider 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 Resource Provider 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 Resource Provider in accordance with the foregoing, then no later than ten (10) Days following Resource Provider’s delivery to PREPA of Resource Provider’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 Resource Provider 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 Resource Provider 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 Resource Provider's submission of the revised draft form Participant Service Agreement, after Resource Provider 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. Resource Provider 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 (such form of agreement, as so approved, the "**PREB Approved Form**").
- f. Resource Provider shall use the PREB Approved Form when contracting with Participants for purposes of the VPP Resources under this Agreement. Resource Provider 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 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 be effective as a waiver of any of PREPA's rights under this Agreement. Resource Provider shall advise each Participant of such limitation.
- h. Resource Provider 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 Resource Provider 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, Resource Provider (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, Resource Provider in accordance with Appendix I (*Progress Review*). Resource Provider 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 manner¹⁴. Any of the foregoing actions undertaken by or on behalf of PREPA shall not relieve Resource Provider from any responsibility it has under this Agreement.

3.2 Resource Provider's Development Obligations

- a. Resource Provider 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.
- b. Resource Provider shall (i) no later than five (5) Business Days following the occurrence of the Closing Date, submit to the Revitalization Coordinator an application for the designation of the Project as a Critical Project with an Expedited Permitting Process, and (ii) exercise its reasonable efforts to obtain such designation as promptly as possible.

3.3 Regular Updates

Resource Provider 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 year¹⁵, commencing after the Closing Date and continuing until the Commercial Operation Date. Resource Provider acknowledges that PREPA may keep PREB and other Governmental Authorities apprised of its progress.

3.4 Extensions of Time

Resource Provider 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 Resource Provider or a PREPA Risk Event directly delays Resource Provider'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) Resource Provider exercises its commercially reasonable efforts to mitigate the effects of such delay, and (iii) Resource Provider 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 Resource Provider to notify PREPA within such ten (10) Business Days will not preclude Resource Provider 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 Resource Provider exercises the foregoing right, then the time for completion or occurrence of such Milestone or deadline shall extend by the number of Days during

¹⁴ Note: If PREPA does not ensure that the expert acts in a timely manner, then that will trigger Section 3.4 (*Extensions of Time*).

¹⁵ Note: PREPA can accept quarterly updates so long as PREB does not require more frequent reporting.

which such event giving rise to such delay prevented Resource Provider 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 (which PREPA shall request upon receipt of a written request from the Resource Provider specifying the nature and extent of the expected delay).¹⁶

3.5 Delay Liquidated Damages

- a. To the extent that (i) a PREPA Risk Event delays Resource Provider's ability to achieve Commercial Operation as determined under Section 3.4 (*Extensions of Time*) and (ii) Resource Provider achieves either Deemed Completion or Commercial Operation, then PREPA shall pay to Resource Provider, as Resource Provider'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 Resource Provider 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 Resource Provider 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, Resource Provider shall pay to PREPA, as liquidated damages, the Resource Provider Delay Liquidated Damages, no later than forty-five (45) Days after receipt of an invoice therefor. The Resource Provider 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 Resource Provider 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 Resource Provider'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

¹⁶ 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.

Resource Provider Delay Liquidated Damages (determined without reference to the Security Amount) exceed, or will likely exceed, the applicable Security Amount, then Resource Provider 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 Resource Provider 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 (which PREPA shall request upon receipt of a written request from the Resource Provider specifying the nature and extent of the expected increase). If Resource Provider desires to increase the Security Amount under this paragraph (c) of this Section 3.5, then such increase shall not become effective until Resource Provider 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, Resource Provider 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, Resource Provider 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. Resource Provider acknowledges and agrees that (i) its compliance with the Operating Procedures or Testing Protocol

does not relieve Resource Provider from any liability that it would otherwise have under this Agreement, and (ii) PREPA shall not be liable to Resource Provider 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 Design¹⁷

- 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 Resource Provider together with the execution of this Agreement.
- b. No later than sixty (60) Days after PREPA provides its comments (or approval) pursuant to paragraph (a) of this Section 4.1, Resource Provider 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. Resource Provider 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 Resource Provider’s delivery to PREPA of the Proposed Design, PREPA shall complete its review of the Proposed Design and deliver to Resource Provider 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 Resource Provider 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 Resource Provider in accordance with the foregoing, then no later than ten (10) Business Days following Resource Provider’s delivery to PREPA of Resource Provider’s revised Proposed Design, which revised Proposed Design Resource Provider shall ensure is consistent with the MTRs and Technical Input, PREPA shall review such revised Proposed Design and notify Resource Provider 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 Resource Provider further Technical Input.
- e. The Parties shall exercise commercially reasonable efforts to agree upon an Approved Design within sixty (60) Days of Resource Provider’s submission of the revised Proposed Design, after Resource Provider has received PREPA’s Technical Input. The Parties’ failure to agree on the Approved Design within one hundred eighty (180) Days after Resource Provider’s submission of a Proposed Design shall constitute grounds for an

¹⁷ 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 see high level design drawings, single lines, interconnection drawings, etc., for Participant Resources, but details of each installation are not necessary.

extension of time for the occurrence of Milestones to the extent otherwise permitted under Section 3.4 (*Extensions of Time*).¹⁸

- f. Resource Provider 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, Resource Provider 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, affect the Protection and Control Equipment, or otherwise affect the integration 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 Resource Provider thereof in writing, which provides the rationale in reasonable detail for such change, and Resource Provider shall implement such change.
- c. If Resource Provider implements any modification or expansion that PREPA requires under this Section 4.2, then Resource Provider 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 Resource Provider 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 Resource Provider's reasonably projected lost revenue under this Agreement arising out of such reduction as a cost of such change.
- d. If Resource Provider's costs attributable to such change (as reasonably determined and evidenced in writing to PREPA), when added to any costs Resource Provider 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 Resource Provider 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, Resource Provider shall assume the total cost (without reimbursement) of implementing modifications to the MTRs or requirements for protection

¹⁸ Note: Paragraph (a) of Section 3.5 entitles Resource Provider 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. Resource Provider 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.

devices resulting from any deviations from the Operating Characteristics or the Approved Design or any changes to Resource Provider's system whatsoever.

- e. Subject to any specific requirements of Applicable Law, modifications or expansions of the MTRs shall not become effective until Resource Provider has had a reasonable period of time to comply with any such modified or expanded requirement.
- f. Resource Provider 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 Resource Provider 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*).
- g. No later than the Commercial Operation Date and on each anniversary thereof during the Supply Period, Resource Provider shall deliver to PREPA a certification, in such format as PREPA shall specify, that confirms that, as of the date of such certification, the GSDS (i) is capable of performing as specified in the Approved Design, and (ii) continues to conform with 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. Resource Provider 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, Resource Provider shall (i) ensure that the Participant has not enrolled its VPP Resource in any Demand Response 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) determine whether the Participant has enrolled in a Net Energy Metering Program or similar program and identify by contract number the interconnection agreement that governs such Participant's participation in such program, (iii) exercise reasonable

efforts to verify that the Participant has complied with PREPA's interconnection requirements for the relevant VPP Resource, and (iv) present PREPA with information regarding such Participant, its VPP Resource and any interconnection agreement such Participant may have in place with PREPA that is reasonably sufficient to enable the Resource Provider and PREPA to assess the Participant's and its VPP Resource's compliance with this Agreement and to ensure that the Participant is not credited under the Net Energy Metering Program or similar program for energy the Participant makes available to the GSDS by means of its VPP Resource in response to a Dispatch Notice.

- 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*), Resource Provider 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 Resource Provider to meet its Performance Guarantees.
- c. Resource Provider 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, and (ii) such increase shall not become effective until PREPA obtains PREB's approval thereof (if required). If the aggregate Guaranteed Capability for the Grid Services in any Quarter of an Agreement Year will exceed 100 MW (the "**Escrow Triggering Condition**"), whether as a result of an increase described in the preceding sentence or otherwise in accordance with the respective tables for Demand Reduction Service and Demand Build Service in Appendix G (*Guaranteed Capability*), then as a condition precedent to the approval and applicability of such increase and no later than five (5) Business Days prior to the start of such Quarter, (1) the Parties shall enter into one or more Source Code Escrow Agreement(s), and (2) Resource Provider shall (A) place the Source Code into escrow, (B) keep such Source Code updated with the latest version, and (C) ensure that the Source Code Owner(s) grant a license to PREPA (or the T&D Operator, if so designated by PREPA) to use the Source Code, in each case to ensure that, if a Step-In Event occurs, then in accordance with Section 4.9 (*PREPA Step-In Rights*), PREPA shall have the right to access promptly and utilize the Source Code for the purposes of ensuring the continued operation of the VPP until the resolution of such event.
- d. If a Participant violates any Applicable Law, Resource Provider shall take all appropriate action against that Participant including if necessary, disenrollment of the Participant and termination of the applicable Participant Service Agreement.

4.5 Co-Branding; Use of PREPA's Trademarks

In connection with Resource Provider's provision of the Grid Services and subject to the terms and conditions related to Resource Provider'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, Resource Provider shall co-brand certain media using the PREPA Trademarks in accordance with the following requirements:

- a. Resource Provider shall co-brand specific marketing material created by Resource Provider 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 Resource Provider makes any changes, modifications or revisions to such approved marketing materials, then Resource Provider shall request additional prior approval from PREPA in accordance with this Section 4.5.

- b. Resource Provider 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, Resource Provider shall ensure that none of its employees' uniforms, equipment, or vehicles use PREPA Trademarks.
- c. Resource Provider 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, Resource Provider shall enter into a separate and substantially similar Trademark License Agreement with a T&D Operator.

4.6 Protection and Control Equipment

- a. Resource Provider 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. Resource Provider shall respond promptly to all requests by Participants, whether communicated directly to Resource Provider 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 related to a Participant Resource at any time during the progress of installation, setting, and testing. PREPA may elect to inform Resource Provider of any problem PREPA observes and any recommendations it has for correcting problems with the Protection and Control Equipment or its settings, and Resource Provider 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 Resource Provider 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 Resource Provider from, the obligation to comply with 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 Resource Provider's receipt of the comments referred to in paragraph (b) of this Section 4.6 or notification by PREPA of problems related to Resource Provider'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 Resource Provider must make the correction as soon as practicable), Resource Provider shall implement PREPA's proposals. If Resource Provider 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, Resource Provider 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 basis of the contemplated Approved Design, in each case without PREPA's prior written consent. The Parties acknowledge that this Section 4.7 does not restrict Resource Provider'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, Resource Provider 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.

4.9 PREPA Step-In Rights

- a. If, following the occurrence of the Escrow Triggering Condition, a Step-In Event occurs, then PREPA, or the T&D Operator if so designated by PREPA, shall have the right, subject to the consent of the PREB and upon not less than twenty four (24) hours' notice to Resource Provider of such Step-In Event, to access the Source Code provided to PREPA or placed into escrow, as applicable, and to utilize such Source Code to take over management of the operation and maintenance of the GSDS (the "**Step-In Rights**") until Resource Provider has (i) cured the conditions or circumstances giving rise to the Step-In Event, and (ii) demonstrated to PREPA's reasonable satisfaction its readiness and ability to resume operation of the GSDS in accordance with this Agreement.
- b. In connection with the exercise of its Step-In Rights, PREPA, or the T&D Operator if so designated by PREPA to exercise the Step-In Rights, shall, amongst others:
 - 1. comply with Prudent Utility Practices; provided that in any case, PREPA's or T&D Operator's, as the case may be, liability to Resource Provider shall be limited to:
 - i. any actual loss or damage to the GSDS resulting from PREPA's or PREPA's nominee's (as applicable) exercise of its Step-In Rights; and
 - ii. any amounts to which Resource Provider has a right under the indemnity provisions under Article 13 (*Indemnification*) resulting from any negligent act or omission of PREPA or T&D Operator, as the case may be, that arises

- out of or is in any manner connected with the exercise by PREPA or PREPA's nominee (as applicable) of its Step-In Rights; and
2. continue to pay the Monthly Payments, provided that PREPA may deduct from the Monthly Payments, as applicable:
 - i. reasonable costs and expenses incurred by PREPA or T&D Operator, as the case may be, in the exercise of its Step-In Rights; and
 - ii. any amounts payable to PREPA under the indemnity provisions under Article 13 (*Indemnification*) resulting from any negligent act or omission of Resource Provider that arises out of or is in any manner connected with the Step-In Event.
 - c. Resource Provider shall cooperate in all respects with PREPA or PREPA's nominee (as applicable) in the exercise of its Step-In Rights, including providing the cooperation of Resource Provider's senior staff to direct any personnel or subcontractors and obtaining any Permits or other consents and approvals required during the exercise of its Step-In Rights. Resource Provider shall provide formal and on-the-job training for an adequate number of PREPA or T&D Operator personnel, as the case may be, in accordance with a training program agreed between the Parties from time to time in order to facilitate PREPA's exercise of its Step-In Rights, provided that such personnel shall not be required to have participated in any such training program as a condition to PREPA exercising its Step-In Rights.
 - d. [Other than any Step-In Rights of the PREB under Resource Provider's license or at law,] Resource Provider shall not provide any other customer or relevant third party the right to:
 1. take over operation of the GSDS or exercise any right analogous to PREPA's or PREPA's nominee's (as applicable) rights as set forth in this Section 4.9; or
 2. nominate, appoint or replace the operator of the GSDS.
 - e. For the avoidance of doubt, if an Insolvency Event occurs with respect to Resource Provider or the Source Code Owner, then PREPA shall, without prejudice to or limitation of any other rights or remedies, have the right to exercise all rights and elections (including all licenses, privileges, remedies and protections) under this Agreement, the Source Code Escrow Agreement, the Bankruptcy Code and all other Applicable Laws with respect to this Agreement, the Source Code Escrow Agreement, and the respective subject matter of each of these agreements, including with respect to the Source Code, the Step-In Rights and all related work product.
 - f. Without limiting the generality of the foregoing, Resource Provider acknowledges and agrees that, if an Insolvency Event occurs with respect to Resource Provider or the Source Code Owner:
 1. all rights and licenses granted to PREPA under this Agreement and the Source Code Escrow Agreement shall continue in full force and effect and shall not be affected, even by Resource Provider's rejection of this Agreement, the Source Code Escrow Agreement, or any license agreement between Resource Provider and Source Code Owner with respect to the Source Code, as applicable, in

accordance with the respective terms and conditions of those agreements and subject to PREPA's rights of election under the Bankruptcy Code;

2. PREPA shall have the right to a complete duplicate of (or complete access to, as appropriate) all Intellectual Property and embodiments of Intellectual Property with respect to the Source Code, if not already in PREPA's possession, Resource Provider shall promptly deliver to PREPA all such Intellectual Property and embodiments of Intellectual Property with respect to the Source Code, unless Resource Provider or the Source Code Owner elects to and does in fact continue to perform all of its obligations under this Agreement and the Source Code Escrow Agreement, as applicable; and
3. the automatic stay under Section 362 of the Bankruptcy Code (11 U.S.C. § 362) shall not apply to any instructions from PREPA to the Source Code Escrow Agent relating to the escrow deposit materials.

5. INTEGRATION, TESTING & COMPLETION

5.1 Scheduling Integration

Resource Provider 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. Resource Provider 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

Resource Provider shall not deploy the GSDS without PREPA's prior approval, which approval PREPA shall not unreasonably withhold or delay. Subject to Resource Provider'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, Resource Provider 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 Resource Provider via the operable communications system, (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. Resource Provider 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, Resource Provider 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 Resource Provider 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 Resource Provider 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, Resource Provider 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 Resource Provider 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, Resource Provider 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

Resource Provider 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 Resource Provider engages for the operation, testing, maintenance, or repair of the GSDS as a whole qualifies as a Qualified Operator; and
- c. during the Supply Period, ensure that the GSDS satisfies the Performance Guarantees.

6.2 Scheduled Maintenance

- a. Resource Provider shall (i) ensure that no more than [●]¹⁹ hours in aggregate of Scheduled Outages or Scheduled Deratings occur per Agreement Year, (ii) plan its Scheduled

¹⁹ Note: Resource specific. To discuss during Phase III.

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. Resource Provider 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. Resource Provider 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, Resource Provider shall submit to PREPA, in writing, by September 1 of each Year, its proposed Scheduled Maintenance Program for the next Year.
- c. Resource Provider shall provide the following information for each proposed Scheduled Outage and Scheduled Derating:
 - 1. description of the work that Resource Provider 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
 - 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 Resource Provider whether it accepts the program or requires a rescheduling (and the period during which Resource Provider can perform such maintenance). If PREPA fails to respond during such period, then the Scheduled Maintenance Program shall be deemed accepted.
- e. Resource Provider shall use reasonable efforts to accommodate any request from PREPA to reschedule the Scheduled Maintenance Program. If Resource Provider cannot accommodate PREPA’s request to reschedule the Scheduled Maintenance Program, then Resource Provider shall provide reasons therefor and alternative dates for the Scheduled Maintenance Program. PREPA shall select between the alternative dates proposed by Resource Provider to finalize the Scheduled Maintenance Program.
- f. Resource Provider 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 Resource Provider 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. Resource Provider 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 Resource Provider determines that it requires a Non-Scheduled Outage or Non-Scheduled Derating, then Resource Provider shall coordinate the timing of such Non-Scheduled Outage or Non-Scheduled Derating, as applicable, with PREPA.
- b. Resource Provider 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, Resource Provider 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, Resource Provider shall, as soon as reasonably practicable, provide PREPA with a written 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 Resource Provider of prompt written notice of the occurrence of all Emergency and follow-up, and (iv) frequent status reports on any ongoing Emergency.
- b. Resource Provider 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 Resource Provider 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 Resource Provider 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, Resource Provider 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 Resource Provider 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 Resource Provider.

6.6 Communication

- a. Resource Provider 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. Resource Provider shall describe such communication facilities in its Proposed Design.
- b. PREPA shall have the right to approve items provided by Resource Provider 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. Resource Provider 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. Resource Provider 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 a 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 Resource Provider 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 Resource Provider to perform a Performance Test following Resource Provider's completion of a Major Updates or to ensure the resolution of a Priority 1 Level or Priority 2 Level problem report.
- b. Resource Provider 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, Resource Provider acknowledges and agrees that PREPA will not accept manufacturers' test reports as evidence of compliance with this requirement.
- c. Resource Provider shall coordinate with, and the Performance Tests shall be witnessed by, PREPA's personnel and the Consulting Technical Expert. Resource Provider 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

Resource Provider 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 Resource Provider'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, Resource Provider'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 Resource Provider to occur and at least two (2) Months prior to the start of each Month thereafter, Resource Provider'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 Resource Provider to occur, and at least on or before 12:00 hours on each Friday prior to the start of each Week thereafter, Resource Provider'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, Resource Provider 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, Resource Provider 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 Resource Provider'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, Resource Provider shall (i) ensure that Participants can contact Resource Provider (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 Resource Provider and the GSDS during or after the Supply Period. PREPA has no obligation to share with Resource Provider any information about the survey, its results or the survey analysis.
- c. Resource Provider 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, Resource Provider shall initiate and diligently pursue reasonable action to rectify such malfunction within three (3) Days of receipt by Resource Provider of a demand from PREPA.

6.13 Information Security

- a. Resource Provider shall maintain and enforce safety and security procedures to safeguard Confidential Information in its possession, including any Confidential Information that Resource Provider provides to any contractors, consultants, and other third parties retained by Resource Provider in connection with its performance of this Agreement. Resource Provider 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 Resource Provider's or PREPA's website, or in Resource Provider'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 Resource Provider 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. Resource Provider 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 Resource Provider in respect of its own Confidential Information.
- b. No later than the Commercial Operation Date and on each anniversary thereof during the Supply Period, Resource Provider shall deliver to PREPA evidence of Resource Provider'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 Resource Provider during previous the Agreement Year. If a report identifies any critical or high-risk findings, Resource Provider 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. Resource Provider 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 Resource Provider to provide the Grid Services, including the information, data and other materials delivered by or on behalf of Resource Provider to PREPA, the customers of PREPA, the Participants or any third party providers (collectively, the "**Environment**"). Throughout the Term, Resource Provider shall implement improvements to, and upgrades of, its Malware prevention and correction programs and processes consistent with the then-current NIST technology industry standards and, in any case, no less robust than the programs and processes implemented by Resource Provider in respect of its own information systems. If Malware enters the Environment, Resource Provider shall notify PREPA as soon as it

becomes aware of such presence and take immediate action, at Resource Provider's cost, to eliminate and remediate the Malware effects. Resource Provider shall regularly, and otherwise at the request of PREPA, provide sufficient evidence of its efforts to continuously monitor and evaluate the effectiveness of Resource Provider's information security safeguards. Resource Provider shall require that its subcontractors also comply with the obligations of Resource Provider under this paragraph (c) of this Section 6.13.

- d. PREPA shall advise Resource Provider of its security procedures with respect to Confidential Information, including information regarding the GSDS, Participant Data and any other Confidential Information provided by Resource Provider 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, Resource Provider shall develop and submit to PREPA a plan detailing Resource Provider'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, Resource Provider 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 [●].²⁰ A duly authorized representative of Resource Provider 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, Resource Provider shall develop and submit to PREPA a plan detailing Resource Provider's procedures for such removal, destruction, and erasure. Notwithstanding the foregoing, Resource Provider may retain system-wide historical archived backups for disaster recovery/business continuity purposes. Resource Provider shall delete any PREPA

²⁰ Note: Include reference to any data retention laws in Puerto Rico.

Data and Participant Data found in the backups following the expiry of Resource Provider's retention period for such backups.

- g. Resource Provider 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. Resource Provider may utilize a Business Continuity Plan it already has in existence prior to the execution of this Agreement. Resource Provider shall provide the Business Continuity Plans to PREPA on or before the Commercial Operation Date. Resource Provider 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 Resource Provider shall make such Business Continuity Plans available to PREPA promptly upon request.
- h. Resource Provider shall cause its employees and any contractors, consultants, and other third parties retained by Resource Provider 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 Resource Provider 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 Resource Provider's receipt of a request from PREPA, Resource Provider shall meet with representatives of PREPA to review the status of the GSDS program, including Participant satisfaction and Resource Provider's compliance with this Agreement. Resource Provider shall also explain the operation of the GSDS 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 GSDS.

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 Resource Provider in accordance with the Operating Procedures, to direct Resource Provider to Dispatch the Capabilities of the GSDS 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 Resource Provider to (i) curtail, reduce or 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 Procedures²¹;

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 Resource Provider with an updated Dispatch Notice. If PREPA cannot issue an electronic notification 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 Resource Provider'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 Resource Provider 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, Resource Provider 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 Resource Provider shall have no right to any Claim for compensation or otherwise, when Resource Provider 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*), Resource Provider has had a reasonable period of time to comply with such modification pursuant to paragraph (e) of Section 4.2 (*Modifications*); or
- b. successfully complete the Resource Provider 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 Resource Provider cures such non-compliance.

²¹ Note: The Operating Procedures and Operating Characteristics will establish limitations on discharge of Energy Storage Resources and similar dispatch restrictions.

8. METERING AND DATA

8.1 Meter Ownership & Installation

- i. Resource Provider 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 Resource Provider-installed meters and equipment conform to the electrical service, metering, and tariff requirements applicable to such Participant Resource. Resource Provider 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 Resource Provider-installed meters and equipment, which approval PREPA shall not unreasonably withhold or delay, and of which decision PREPA shall inform Resource Provider no later than ten (10) Days after Resource Provider'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.
- j. In addition to the requirements set forth in paragraph (i) of this Section 8.1, each Participant shall have and take service through 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 and take service through a meter that meets such requirements, Resource Provider shall supply and install such meter at Resource Provider's or Participant's expense.
- k. Resource Provider shall provide PREPA with any telemetry data for a Participant Resource required by Appendix X (*Metering*) that PREPA's meter does not provide.
- l. The 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 Resource Provider of the foregoing license to PREPA, Resource Provider 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 Resource Provider of the foregoing license to PREPA, Resource Provider 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. Resource Provider 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 Resource Provider makes available to PREPA through the provision of the Grid Services shall transfer from Resource Provider 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 Resource Provider makes available to PREPA through the provision of the Grid Services, and Resource Provider 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 Resource Provider to provide PREPA with the Ancillary Services specified in the MTRs by delivering notice thereof to Resource Provider pursuant to Article 7 (*Dispatching Obligations*). Resource Provider 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, Resource Provider 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, Resource Provider 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 Resource Provider 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 Resource Provider’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, Resource Provider 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 and credits under this Agreement, as of such Billing Period.
- b. PREPA shall use reasonable efforts to promptly review each invoice and notify Resource Provider of any invoicing issues no later than thirty (30) Days after receipt thereof. Upon PREPA’s request, Resource Provider 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. Resource Provider acknowledges and agrees that PREPA may withhold payment (without accruing Interest) beyond such date if and so long as Resource Provider 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 Resource Provider 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 Resource Provider'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 Resource Provider Invoice Certification

Resource Provider 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."

Resource Provider's Signature

Resource Provider 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, Resource Provider 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 Resource Provider to PREPA in accordance with this Agreement, PREPA shall provide Resource Provider with a written invoice for such Liquidated Damages or amounts, showing the basis for the calculation of the amounts payable by Resource Provider thereunder. Resource Provider shall use reasonable efforts to review each invoice and notify Resource Provider of any invoicing issues within thirty (30) Days after receipt thereof. Resource Provider shall remit payment of amounts owed under such invoice no later than thirty (30) Days after Resource Provider's receipt of such invoice (including in the event of a disputed invoice). If Resource Provider 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 Resource Provider fails to dispute an invoice prior to the first anniversary of the date on which Resource Provider 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) Resource Provider 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

Subject to the limitations set forth in Section 11.3 (*No Liability*) and Section 11.5 (*Liability Cap*), and except where a provision of this Agreement expressly entitles PREPA to draw down on the entire undrawn portion of the face amount of the Performance Security, 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.

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 RESOURCE PROVIDER'S LIABILITY UNDER THIS AGREEMENT, THE PARTIES SHALL DEDUCT THE PROCEEDS OF INSURANCE RECEIVED BY RESOURCE PROVIDER (OR THAT RESOURCE PROVIDER WOULD HAVE RECEIVED HAD RESOURCE PROVIDER 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) Resource Provider as an Electric Power Company or Electric Power Generation Company (each, as defined under Act 57-2014), as the case may be. Resource Provider shall give all required notices, shall procure and maintain all Permits, and shall pay all charges and fees required in connection therewith. Once obtained, Resource Provider 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, Resource Provider 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 Resource Provider, 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 Resource Provider 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 Resource Provider Representations & Warranties

Resource Provider represents and warrants to PREPA on the Agreement Date, and again on the Closing Date, as follows:

- a. Resource Provider is a [[●] company], duly organized, validly existing under the Laws of [●]; and Resource Provider 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 Resource Provider of this Agreement have been duly authorized, and do not and will not (i) require any additional internal consent or approval of Resource Provider, the Sponsor or any Affiliate of either of them; or (ii) violate any provision of Resource Provider'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. Resource Provider 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 Resource Provider to perform its obligations under this Agreement;
- d. this Agreement constitutes a legal, valid, and binding obligation of Resource Provider, enforceable against Resource Provider 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 Resource Provider 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 Resource Provider or the ability of Resource Provider 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. Resource Provider 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. Resource Provider 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; and
- h. on the Commercial Operation date, the Facility qualifies as a source of "green energy" under Act 82-2010.

12.4 Resource Provider Covenants

Resource Provider 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 Resource Provider 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 Resource Provider Payments

PREPA shall exercise commercially reasonable efforts to ensure that Monthly Payments under this Agreement constitute necessary operating expenses.

12.7 Resource Provider's Financial Statements

For each of Resource Provider's fiscal years (or part thereof) during the Term, Resource Provider shall deliver to PREPA the audited financial statements of Resource Provider'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 Resource Provider's Officers

If a change or substitution of one or more of Resource Provider's corporate officers occurs, then Resource Provider 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 Content²²

- a. Resource Provider 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 Resource Provider’s performance of the Grid Services pursuant to this Agreement (following the Commercial Operation Date).
- b. Resource Provider 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

²² Note: PREPA will consider applicability to this Agreement.

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 GSDS. To the extent that despite Resource Provider’s reasonable efforts Resource Provider has failed to achieve the goals set forth in paragraphs (a) and (b) of this Section 12.10, Resource Provider 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. Resource Provider 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. Resource Provider shall require equivalent undertakings from its subcontractors.
- d. Nothing contained herein shall be interpreted as obligating Resource Provider to take any action which would violate Applicable Law or any affirmative action program or equal opportunity obligation to which Resource Provider 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

Resource Provider 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 Resource Provider or Resource Provider'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 Resource Provider 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 Resource Provider from PREPA under this Agreement. In the event Resource Provider disputes that Claims are due to the actions of Resource Provider or Resource Provider'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. Resource Provider shall indemnify and hold harmless PREPA, and each of its Indemnitees, against any and all Claims relating to the:
 1. Resource Provider's design, deployment, installation, ownership, operation and/or maintenance of, and recruitment and enrollment of Participants in, the GSDS;
 2. Resource Provider's obligation to the Participant(s) pursuant to any Participant Service Agreement entered into between Resource Provider and a Participant; and
 3. Resource Provider's breach of confidentiality with respect to Participant Data.

In the event Resource Provider 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 Resource Provider from PREPA under this Agreement, provided that if Resource Provider disputes that Claims are due to the actions of Resource Provider or Resource Provider'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 Resource Provider, 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 Resource Provider for such Claims within thirty (30) Days of receipt of written notice from Resource Provider stating that such Claims were incurred (including reasonable documentation of such Claims), Resource Provider 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 Resource Provider 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. Resource Provider 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 Resource Provider'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 Resource Provider 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 Resource Provider from PREPA under this Agreement, provided that if Resource Provider disputes that Claims are due to the actions of Resource Provider or Resource Provider'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 Resource Provider, 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 Resource Provider pursuant to this Agreement, or Resource Provider'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 Resource Provider to the extent the claim of infringement or misappropriation is caused by Resource Provider's unauthorized use or modification of such item or Resource Provider'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 PREPA 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 Resource Provider regarding Resource Provider's preference in such event, either procure the right for Resource Provider 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

Resource Provider shall indemnify and hold harmless PREPA, and each of its Indemnitees, against all Claims relating to any personnel supplied by Resource Provider, 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 Resource Provider, its

Affiliates and/or their subcontractors; and (ii) any claim brought by any personnel supplied by Resource Provider, its Affiliates and/or subcontractors against PREPA based upon the employer-employee relationship. In the event Resource Provider 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 Resource Provider from PREPA under this Agreement. In the event Resource Provider disputes that Claims are due to the actions of Resource Provider or Resource Provider'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 Resource Provider 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. Resource Provider's inability to obtain sufficient power or materials to operate the GSDS, except where an event of Force Majeure causes such inability;
- i. Resource Provider'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 Resource Provider's interest in this Agreement, the GSDS, Resource Provider'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 Resource Provider 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 Resource Provider (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;
- h. termination of the Agreement by PREPA in accordance with Section 15.4 (*PREPA Right to Terminate for Convenience*); or
- i. a Payment Guarantee Cross-Default.

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*), Resource Provider shall pay to PREPA liquidated damages equal to the then applicable Security Amount as of the date of such termination as Resource Provider'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 Resource Provider, PREPA may choose to cancel this Agreement by giving Resource Provider 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 Resource Provider has commenced development activity on the GSDS for this Agreement, immediately upon receipt of such termination notice, Resource Provider shall cease all development activity and proceed to take such steps as may be necessary to mitigate the losses due to such termination. Resource Provider shall use commercially reasonable efforts to salvage the value of any equipment or materials purchased or contracts signed for the GSDS. Resource Provider 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 Resource Provider 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 Resource Provider, 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 Resource Provider as compensation for the termination and Resource Provider 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 Resource Provider as the defaulting Party only, the provision of materially incorrect or misleading information, representation or certification submitted (or made) by Resource Provider in connection with either (i) the submission of Resource Provider's proposal to PREPA in response to the RFP, or (ii) the execution, delivery or performance by Resource Provider of this Agreement, in each case relating to either (a) corruption or bribery matters, or (b) a representation made by Resource Provider 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 Resource Provider as the defaulting Party only, default by Resource Provider 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 Resource Provider 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 Resource Provider as defaulting Party only, a default by Resource Provider 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 Resource Provider 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, Resource Provider fails to maintain at least 5 MW of Participant Resources;

6. Resource Provider fails to cure an adverse physical impact on the Grid System, for which Resource Provider 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. Resource Provider transfers, conveys, loses, or relinquishes its right to own the GSDS to any Person (other than a valid assignee of Resource Provider under this Agreement);
8. Resource Provider modifies its GSDS control schema in a manner that adversely affects its ability to perform its obligations to PREPA under this Agreement; or
9. a Payment Guarantee Cross-Default,

in each case for any reason other than a PREPA Risk Event or Force Majeure affecting Resource Provider.

16.2 Certain Material Breaches

- a. Pursuant to FOMB's contract review policy (FOMB POLICY: REVIEW OF CONTRACTS, as modified on October 30, 2020), Resource Provider represents and warrants to PREPA on the Agreement Date, and again on the Closing Date, (i) the due execution by Resource Provider 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 Resource Provider 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, Resource Provider acknowledges and agrees that its conviction of or guilty plea for any of the crimes enumerated in Article 3.4 of such Act, in addition to any other applicable liability, shall render this Agreement null and void, and Resource Provider 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 a United States Federal Court convicts Resource Provider 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 specified 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. Resource Provider 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 Resource Provider Requirements

- a. Resource Provider 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 Resource Provider 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 Resource Provider 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 Resource Provider 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. Resource Provider 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 Resource Provider 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 Resource Provider or any material interference with the use thereof by Resource Provider, and (ii) Resource Provider 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 (*Resource Provider Requirements*) in a tracking account maintained by PREPA (the “**Tracking Account**”). Resource Provider 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 Resource Provider’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 Resource Provider an amount sufficient to compensate Resource Provider 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**”), Resource Provider shall repay such Termination Balance plus Interest to PREPA within thirty (30) Days of the Termination Date. Notwithstanding the foregoing, Resource Provider 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-Agreement Date Tax or a Post-Agreement 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 Resource Provider 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. **INSURANCE**²³

18.1 Resource Provider Requirements

Resource Provider 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:* Resource Provider shall provide and maintain Worker’s Compensation Insurance as required by the Worker’s Compensation Act of the Commonwealth of Puerto Rico. Resource Provider shall also have responsibility for compliance with said Worker’s Compensation Act by all its subcontractors, agents, and invitees. Resource Provider 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. Resource Provider shall furnish evidence of such exemption and certificate from the insurance carrier covering said personnel.

²³ 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.

- b. *Commercial General Liability Insurance:* Resource Provider 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:* Resource Provider shall provide and maintain Automobile Liability Insurance with limits of \$1,000,000 combined single limit covering all owned, if any, non-owned, and hired automobiles.
- d. *Cyber/Network Security/Privacy Liability Insurance:* Resource Provider 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:* Resource Provider 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.
- f. *Employer’s Liability Insurance:* To the extent that Resource Provider employs employees, Resource Provider 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 the liability imposed by Law upon Resource Provider 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:* Resource Provider shall provide and maintain Business Interruption Insurance, subject to a reasonable deductible (which the Parties shall construe as insurance proceeds actually received by Resource Provider 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 [and contingent business interruption loss income subject to a \$10,000,000 sub-limit], 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. Resource Provider shall place this policy into effect on the Commercial Operation Date.

18.2 Requirements for Resource Provider Policies

Resource Provider 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 (*Resource Provider 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 nonrenewal notice (ten (10) Days for non-payment of premium) to be sent by certified mail to Resource Provider (with a copy to PREPA) with return receipt to the above address sent by Resource Provider;
- 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 Resource Provider shall not prejudice PREPA's rights under this policy.

18.3 Contractor Requirements

The contractors and designers retained by Resource Provider 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 construction engaged in by this Agreement, which shall be formally agreed with insurance companies authorized to do business in Puerto Rico, and to that effect Resource Provider shall provide in the original certificate of insurance and endorsements, as follows:

- a. *Worker's Compensation Insurance:* Resource Provider 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. Resource Provider shall also have responsibility for compliance with said Worker's Compensation Act by all its subcontractors, agents, and invitees. Resource Provider 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. Resource Provider shall furnish evidence of such exemption and certificate from the insurance carrier covering said personnel.
- b. *Employer's Liability Insurance:* Resource Provider 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 Resource Provider 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*: Resource Provider 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*: Resource Provider 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*: Resource Provider 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*: Resource Provider 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*: Resource Provider 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 [except for hurricane and earthquake that may be subject to sub-limits]. 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. Resource Provider shall pay any deductible applicable to the insurance purchased in compliance with this requirement.
 - 3. Waiver of Subrogation. Resource Provider 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

Resource Provider 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

Resource Provider 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 Resource Provider'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 Resource Provider 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 Resource Provider's Right to Assign

Notwithstanding the provisions of Section 19.1 (*Restriction on Assignment*), Resource Provider 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 Resource Provider shall reimburse PREPA for the cost of negotiating and providing such documents, acknowledgments, opinions, certificates, consents, and agreements. In addition, Resource Provider 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 Resource Provider 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 Resource Provider 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 Resource Provider 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 Resource Provider'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 Resource Provider 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 Resource Provider 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))²⁴, and (B) the certifications and documentation required by Appendix B (*PREPA Signing Conditions*), but construing references to Resource Provider 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.

Resource Provider shall not have the right to assign its rights, title, or interest under this Agreement to any Affiliate of Resource Provider 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 Resource Provider hereunder (including Appendix B (*PREPA Signing Conditions*)), (ii) the Sponsor maintains at least the same percentage of the total Equity ownership interest in such Affiliate, whether directly or indirectly, as it owns in Resource Provider at the time of such assignment, and (iii) Resource Provider or the Sponsor owns no less than fifty-one percent (51%) of the total Equity ownership interest in such Affiliate. Resource Provider shall notify PREPA of Resource Provider's intention to assign this Agreement at least thirty (30) Days in advance of any such assignment.

19.4 Restrictions on Equity Transfers²⁵

Resource Provider 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 Resource Provider 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, Resource Provider 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 direct or indirect ownership interest in Resource Provider 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 Resource Provider or the Project being transferred to a third party other than the Sponsor (directly or indirectly) or Resource Provider, as applicable; and (ii) at any time after the Commercial Operation Date, effect an Equity Transfer back to Resource Provider or Sponsor (directly or indirectly), 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;

²⁴ Note: These amounts align with FOMB requirements on prior transactions.

²⁵ Note: Provision reflects requirements from FOMB and other stakeholders. To discuss any specific requirements of publicly traded entities.

- c. at any time after the Commercial Operation Date, effect an Equity Transfer to a Wholly-Owned Affiliate of the Sponsor, provided that such Wholly-Owned Affiliate remains a Wholly-Owned Affiliate of the 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 Resource Provider to any Person other than a Sponsor or a Wholly-Owned Affiliate of a Sponsor.

If Resource Provider 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 Resource Provider 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 Resource Provider, PREPA shall enter into a confidentiality agreement with respect to the same, in a form reasonably acceptable to PREPA, provided that Resource Provider shall reimburse PREPA for the cost of negotiating and executing such agreement. Prior to PREPA's consent to any Equity Transfer, Resource Provider 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 (*PREPA Signing Conditions*), but construing references to Resource Provider therein as references to such new owner. In each case, Resource Provider 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. Resource Provider 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 (*Resource Provider's Right to Assign*).
- b. If Resource Provider 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 Resource Provider 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, Resource Provider 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 (*PREPA Signing Conditions*), but construing references to Resource Provider therein as references to such new owner. In each case, (1) Resource Provider 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) Resource Provider 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 Resource Provider 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 RESOURCE PROVIDER:

[●]

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 Resource Provider Certification Requirement

The Parties acknowledge that Resource Provider 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 Resource Provider’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 Resource Provider 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 Resource Provider 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

Resource Provider 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 the 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 refer such Dispute (a “**Technical Dispute**”) to the Technical Mediator, for a recommended resolution (a “**Technical Recommendation**”) by providing to the

Technical Mediator 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 upon 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 the PREB.

21.12 No Economic Interest

Resource Provider 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

Resource Provider 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

Resource Provider shall be considered as an independent contractor, for all material purposes under this Agreement, and all Persons engaged or contracted by Resource Provider 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 Agreement Date.

**PUERTO RICO ELECTRIC POWER [●]
AUTHORITY**

Josué Colón

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
June 19	Juneteenth National Independence 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

PREPA SIGNING CONDITIONS

1. Together with the signing of this Agreement by PREPA, Resource Provider 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 Resource Provider 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 Resource Provider 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 Resource Provider 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 Resource Provider 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 Resource Provider has requested a review or adjustment of this debt, a certification that Resource Provider 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 Resource Provider accepts that PREPA shall offset the owed amount from the corresponding payments;

- k. evidence of Resource Provider'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 Resource Provider 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.²⁶
2. Prior to the signing of this Agreement by PREPA:
- a. Resource Provider shall have provided the certification set forth in Appendix R (*Form of FOMB Certification*).
 - b. PREB, FOMB and P3A shall have approved the execution version of this Agreement.

²⁶ 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 - RESOURCE PROVIDER CONDITIONS

As conditions precedent to the Closing Date, Resource Provider shall deliver the following documents to PREPA in form and substance satisfactory to PREPA:

- a. the Performance Security;
- b. certified true and correct copy of insurance certificates or cover notes evidencing the insurance coverages required pursuant to Article 18 (*Insurance*), which have entered into 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 Resource Provider, in the form set forth in Appendix Z (*Form of Warranty Compliance Certificate*);
- d. a legal opinion prepared by Resource Provider's external counsel, confirming the warranty made by Resource Provider in paragraph (d) of Section 12.3 (*Resource Provider Representations & Warranties*);
- e. [the Payment Guarantee];²⁷
- f. [appointment of Service of Process Agent];²⁸ and
- g. [a certified true and correct copy, signed by a duly-authorized representative of the Resource Provider, of a wire transfer confirming that the Resource Provider has remitted the Non-Refundable Fee to the following account:

Receiving Bank Address:	Banco Popular of Puerto Rico Ponce de Leon Ave., No. 209 San Juan, PR 00918
ABA No.:	021502011
Beneficiary Name:	Puerto Rico Electric Power Authority
Account Number:	203834253
Payment Details:	Tranche 1 RFP – Non-Refundable Fee] ²⁹

²⁷ Note: Only required where the Resource Provider 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.

²⁸ See previous footnote.

²⁹ Note: Pending confirmation of application of Non-Refundable Fee to VPP projects.

PART 2 - PREPA CONDITIONS

As conditions precedent to the Closing Date, PREPA shall deliver the following documents to Resource Provider in form and substance satisfactory to Resource Provider:

- a. completed reports of the results of the GSDS Study;
- b. the appointment by PREPA of the Consulting Technical Expert in accordance with Section 3.1 (*Consulting Technical Expert*);
- c. evidence of 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 Resource Provider, confirming the warranty made by PREPA in paragraph (b) of Section 12.5 (*PREPA Representations & Warranties*).

PART 3 - OTHER CONDITIONS

As conditions precedent to the Closing Date, the following events shall have occurred or apply:

- a. the execution and delivery of the Trademark License Agreement by the Parties;
- b. the absence of any Legal Challenge; and
- c. the issuance by PREPA of a Best Interests Determination.

APPENDIX D

MILESTONE SCHEDULE

Milestones	Time for Completion / Occurrence*	Resource Provider 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	[●] ³⁰

³⁰ Note: The Parties shall determine Resource Provider Delay Liquidated Damages prior to signing of this Agreement, based on the following formula:

$$\text{RPDLD} = \text{DLD}(\text{DRS}) + \text{DLD}(\text{DBS})$$

where:

RPDLD = Resource Provider Delay Liquidated Damages for such Day, expressed in \$;
DLD (DRS) = Resource Provider Delay Liquidated Damages (Demand Reduction Service) for such Day, expressed in \$; and
DLD (DBS) = Resource Provider 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:

$$\text{DLD}(\text{DBS}) = \left(\text{TOP} - \left(\frac{\text{DB\$}}{\left(30.33 \frac{\text{Days}}{\text{Month}} \times 24 \frac{\text{hours}}{\text{Day}} \right)} \right) \right) \times \text{GC}(\text{DBS}) \times 4 \text{ hours}$$

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:

$$\text{DLD}(\text{DRS}) = \left(\text{RER} - \left(\frac{\text{DR\$}}{\left(30.33 \frac{\text{Days}}{\text{Month}} \times 24 \frac{\text{hours}}{\text{Day}} \right)} \right) \right) \times \text{GC}(\text{DRS}) \times 4 \text{ hours}$$

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

RESOURCE PROVIDER PERMITS

Resource Provider 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 Resource Provider 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 Resource Provider and monitored by PREPA. To derive portfolio level data, Resource Provider shall:

- a. collect Participant Resource data at each Participant Site;
- b. calculate, as to each Participant enrolled in the Net Energy Metering Program or similar program, (i) the amount of energy such Participant shall have delivered from its VPP Resource in response to a Dispatch Notice, (ii) the amount of energy such Participant shall have delivered into the Distribution System other than in response to a Dispatch Notice, and (iii) the value of any net metering credits associated with deliveries of energy other than in response to a Dispatch Notice as described in item (ii); and
- c. aggregate all such data to the portfolio level.

PREPA reserves the right to audit Resource Provider’s data at the Participant Resource and portfolio level and, without limiting the generality of the foregoing, to adjust invoices covering electric service to Participants participating in the Net Energy Metering Program or similar program to ensure that such Participants do not receive net metering credits with respect to energy delivered from such Participant’s VPP Resource in response to a Dispatch Notice.

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.

Resource Provider 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 Resource Provider 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:

$$\mathbf{AC = \sum_{y=1}^z [CC_y \times RA_y]}$$

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;³¹

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;

³¹ 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.

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:

$$\mathbf{DBA_n} = \frac{\sum_{i=1}^k \mathbf{CDB_i}}{k}$$

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:

$$\mathbf{AC} = \sum_{y=1}^z [\mathbf{CC_y} \times \mathbf{RA_y}]$$

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;³²

³² 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.

z = number of Participant Resources comprising the GSDS actually capable of providing Demand Build Service during Time Interval “i”; and

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 Resource Provider refinancing (which Resource Provider may carry out in its sole discretion) following PREPA’s emergence from the PREPA Bankruptcy or otherwise, to account for any savings accruing to Resource Provider from such refinancing in the following proportions: (i) for Resource Provider, 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:

$$PRA_n = \left(\frac{BPHRS_n - (GSEHRS_n + PFMHRS_n + IPHRS_n)}{BPHRS_n} \right)$$

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 Resource Provider may recover insurance proceeds from any insurance policy that Resource Provider 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 (*Resource Provider Requirements*).

Resource Provider 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 Resource Provider may recover insurance proceeds from any insurance policy that Resource Provider 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 (*Resource Provider 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 SERVICES³³

1. Additional Definitions

In this Appendix H:

- a. **“Delivered Capability”** means, for each Grid Service made available by Resource Provider during any Time Interval, the level of Capability of such Grid Service delivered by Resource Provider to PREPA during such Time Interval;
- b. **“Grid Service Event”** or **“GS Event”** means the period of time during which PREPA has directed Resource Provider 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 Resource Provider must include Energy Storage Resources among the VPP Resources that it utilizes. Resource Provider 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”**), Resource Provider 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. Resource Provider 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.

³³ Note: Proponents may make suggestions in their submission.

ii. *Demand Reduction Service*

1. For this service (the “**Demand Reduction Service**”), Resource Provider 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. Resource Provider 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. Resource Provider 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 [fall below] 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, Resource Provider 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, Resource Provider shall return the Participant Resources to their normal operating state at the Ramp Rate specified below.³⁴

- 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. Resource Provider’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, Resource Provider 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.³⁵

³⁴ Note: Proponents to propose ramp rates.

³⁵ Note: To discuss during Phase III.

- 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-four (24)] hours, prior to the start time of the GS Event. Resource Provider'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, Resource Provider 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.³⁶

d. Event Duration

- i. *Demand Build Service*: Resource Provider shall provide Demand Build Service for [four (4)] hours, or such shorter period as PREPA may specify by Dispatch Notice, during specified timeframes.
- ii. *Demand Reduction Service*: Resource Provider shall provide Demand Reduction 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

Resource Provider shall make its Participant Resource portfolio available to provide Grid Services for specified demand build and reduction periods[, and shall prohibit the provision of such services outside of such periods]. Resource Provider shall reflect the following periods in the Operational Forecast.

- i. *Demand Build Service*: [10:00 – 14:00 (Puerto Rico time)]³⁷
- ii. *Demand Reduction Service*: [18:00 – 22:00 (Puerto Rico time)]³⁸

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 Resource Provider 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, Resource Provider shall update its Operational Forecast to identify the period(s) during which Grid Services and/or a Participant Resource will be unavailable.

³⁶ Note: To discuss during Phase III.

³⁷ Note: Under review by PREPA operations.

³⁸ Note: Under review by PREPA operations.

4. Dispatch/Control Requirements

PREPA shall issue and Resource Provider shall receive Dispatch Notices in accordance with Section 7.1 (*Dispatching*).

5. Forecasting Requirements

- a. Resource Provider 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”:

$$PFe = \frac{\sum_{i=1}^n (1 - |1 - \frac{DC_i}{FC_i}|)^2}{n}$$

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.]³⁹

³⁹ 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 Resource Provider 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, Resource Provider shall submit an electronic copy of such document requested by the Consulting Technical Expert. Resource Provider 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, Resource Provider 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 Resource Provider 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, Resource Provider 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 Resource Provider 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. Resource Provider 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 Resource Provider 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 K

MINIMUM TECHNICAL REQUIREMENTS

Resource Provider shall comply, and ensure that the Participant Resources and GSDS comply, with the following minimum technical requirements (the “MTRs”) at all times during the Supply Period.

1. GENERAL, PROCEDURAL AND REPORTING REQUIREMENTS

- a. Each Participant Resource that qualifies as an Energy Storage Resource or Renewable Energy Resource shall comply with the requirements of (i) PREPA Regulation 8915 (REGLAMENTO PARA INTERCONECTAR GENERADORES CON EL SISTEMA DE DISTRIBUCIÓN ELÉCTRICA DE LA AUTORIDAD DE ENERGIA ELÉCTRICA), as such Regulation may be modified or superseded from time to time by direction of the Energy Bureau, (ii) IEEE Standard 1547, as it may be revised and supplemented from time to time, and (iii) such regulations addressing the interconnection of generation and microgrid resources to the Distribution System as the Energy Bureau may adopt from time to time.
- b. Each Participant Resource must be installed in the same location, building or structure according to current established NEC guidelines.
- c. The capacity of each Participant Resource shall not exceed 1 MW-AC, measured at its point of interconnection with the Distribution System. The capacity of a Participant Resource located at individual residences shall not exceed 25 kW-AC.
- d. Each Participant Resource shall interconnect with the Distribution System at 13.2 kV or less.
- e. Each Participant Resource shall interconnect with the Distribution System via an interconnection transformer. A Participant cannot interconnect its Participant Resource directly to the Distribution System.
- f. A Participant Resource cannot participate in or be compensated through any other T&D Operator distributed generation or demand response programs while simultaneously providing capacity, energy or demand response as part of a VPP. Participants which have enrolled in the Net Energy Metering (“NEM”) Program administered by the T&D Operator shall be eligible to receive net metering credits only with respect to energy exported to the Distribution System by a Participant Resource when such Resource is not actively being dispatched as part of a VPP Resource under a Grid Services Agreement. Resource Provider shall (i) monitor and maintain records establishing the extent to which each Participant Resource’s exports of energy to the Distribution System during any period were made at Resource Provider’s direction as part of a VPP Resource and the extent to which such exports were made independent of Resource Provider’s direction and not as part of the VPP Resource, (ii) shall provide such records and such other information as may be required to calculate NEM credit amounts to the T&D Operator in such format and at such times as the T&D Operator shall establish from time to time by notice to Resource Provider, and (iii) shall explain to prospective Participants that they will be ineligible to receive NEM credits while their Participant Resource is actively participating in the VPP.

- g. Resource Provider must comply with either (i) the “*Expedited Process*”, or (ii) the “*Non-Expedited Process*”, in each case as outlined in PREPA Regulation 8915, as such Regulation may be modified or superseded from time to time by direction of the Energy Bureau, when interconnecting a Participant Resource to the Distribution System.
 - h. The Office of Permit Management (“**OGPe**”) and Public Energy Policy Program (“**PEPP**”) shall approve equipment which forms any part of a generation system utilized as part of a Participant Resource.
 - i. For each Participant Resource that qualifies as a Renewable Energy Resource, Resource Provider shall obtain a certificate from PEPP confirming that the point of interconnection of such resource with the Distribution System complies with IEEE 1547, UL 1741, and other Applicable Standards.
 - j. Resource Provider shall submit a list of all equipment and systems utilized as part of a Participant Resource or the GSDS to the T&D Operator for confirmation that such equipment and systems comply with the Applicable Standards. If Resource Provider proposes a system which the T&D Operator has not placed on its list of approved systems, then Resource Provider shall deliver the proposed systems manufacturer’s manual to T&D Operator for evaluation.
 - k. All Participant Resources that qualify as an Energy Storage Resource or a Renewable Energy Resource must have completed the T&D Operator’s interconnection request process for distributed generation and have received a T&D Operator Project Number and CC&B number.
 - l. Resource Provider must provide the T&D Operator Project Number and CC&B number for all Participant Resources that qualify as Energy Storage Resources or Renewable Energy Resources. Resource Provider shall keep a list of all Participant Resources up to date, including the latitude and longitude coordinates, MW-AC rating, type of resource and feeder number of the feeder serving such resources, and shall deliver such list the list to the T&D Operator on a monthly basis.
 - m. Resource Provider shall comply with all requests from the T&D Operator for additional protection systems or upgrades if the T&D Operator determines, as contemplated by PREPA Regulation 8915, Section V.B.10, that a Participant Resource may cause damage to the Distribution System or the Transmission System.
 - n. In the event that either Resource Provider or a Participant becomes aware that a Participant Resource fails to comply with these MTRs, Resource Provider shall promptly notify the T&D Operator and PREPA of such non-compliance and submit a corrective action plan.
- 2. VOLTAGE OPERATING PERFORMANCE (ABNORMAL AND RIDE THROUGH (VRT))**
- a. Each Participant Resource shall comply with the abnormal voltage trip requirements specified in PREPA Regulation 8915 and set forth in Table 1 below. Resource Provider shall ensure that each Participant programs such requirements in the inverter or the protective equipment prior to testing of such resource. The T&D Operator may require

other disconnection times or voltage ranges as established in IEEE 1547.

Table 1. Disconnections Due to Voltage Variations on the Distribution System

Voltage Range (% of Nominal)	Disconnection Time (Hold Time before Disconnecting (seconds))	Disconnection Time Adjustable Up To (in seconds)
$V < 45$	0.16	0.16
$45 \leq V < 60$	1	11
$60 \leq V < 88$	2	21
$110 < V < 120$	1	13
$V \geq 120$	0.16	0.16

- b. Each Participant Resource shall (i) be designed to provide voltage disturbance ride-through functions without exceeding VPP Resource capabilities, and (ii) comply with the requirements for VPP Resources with abnormal operating performance established in IEEE 1547-2018 and set forth in Table 2. The T&D Operator may require other VRT requirements (Cat II or Cat III) as established in IEEE 1547.

Table 2. Voltage Ride-Through Requirements (Category I)

Voltage Range (p.u.)	Operating mode/response	Minimum ride- through time (s)	Maximum response time (s)
$V > 1.20$	Cease to Energize	N/A	0.16
$1.175 < V \leq 1.20$	Permissive Operation	0.2	N/A
$1.15 < V \leq 1.175$	Permissive Operation	0.5	N/A
$1.10 < V \leq 1.15$	Permissive Operation	1	N/A
$0.88 \leq V \leq 1.10$	Continuous Operation	Infinite	N/A
$0.70 \leq V < 0.88$	Mandatory Operation	Linear slope of 4 s/1 p.u. voltage starting at 0.7 s @ 0.7 p.u.: $T_{VRT} = 0.7 \text{ s} + 4 \text{ s/1}$	N/A

Voltage Range (p.u.)	Operating mode/response	Minimum ride-through time (s)	Maximum response time (s)
		p.u. (V-0.7 p.u.)	
$0.50 \leq V < 0.70$	Permissive Operation	0.16	N/A
$V < 0.50$	Cease to Energize	N/A	0.16

3. VOLTAGE REGULATION

- a. Before Resource Provider makes available voltage regulation from a Participant Resource, Resource Provider shall submit to the T&D Operator a complete and detailed description of the voltage regulation strategy for such resource for approval in accordance with IEEE 1547.
- b. Each Participant Resource shall comply with the determined voltage regulation requirements specified in IEEE 1547.
- c. Participant Resources shall not cause other interconnected customers' nominal voltage to fall outside of the requirements specified in ANSI C84.1, Range A.
- d. Resource Provider shall maintain voltage of each Participant Resource at a maximum of 126 V-AC or minimum of 114 V-AC on a 120 V-AC base at the meter or inverter, using a Volt/VAR schedule or, if Resource Provider cannot maintain such voltage in accordance with such schedule, Resource Provider shall utilize a Volt/Watt curtailment schedule. Volt/VAR should not adjust PF below 0.90. If the T&D Operator adjusts the upper operating voltage of the feeder serving any Participant Resource, Resource Provider shall change the voltage management of such resource to comply with such adjustment.

4. REACTIVE POWER CAPABILITY AND MINIMUM POWER FACTOR REQUIREMENTS

- a. Before Resource Provider makes available reactive power capabilities from a Participant Resource, Resource Provider shall submit a complete and detailed description of the reactive power capability strategy for T&D Operator's approval in accordance with IEEE 1547.
- b. Each Participant Resource shall comply with the determined reactive power capability and minimum power factor requirements specified in IEEE 1547.
- c. Each Participant Resource shall provide the capabilities of the following mutually exclusive modes of reactive power control functions and shall be capable of activating each of these modes one at a time:
 - i. Constant power factor mode
 - ii. Voltage-reactive power mode

- iii. Active power-reactive power mode (optional)
- iv. Constant reactive power mode
- d. Resource Provider shall ensure that each Participant Resource operates in constant power factor mode with unity power factor as the default mode unless specified otherwise by the T&D Operator.

5. RAMP RATE CONTROL

- a. Resource Provider shall (i) control the Ramp Rate of each Participant Resource to ensure a smooth transition from one output level to another, and (ii) control the rate of change of power output of each Participant Resource during certain circumstances, each as may be agreed on the basis of interconnection studies the T&D Operator will perform with respect to each VPP that is a party to a Grid Services Agreement, including but not limited to: (A) rate of increase of power; (B) rate of decrease of power; (C) rate of increase of power when the T&D Operator releases a curtailment of power output; and (iv) rate of decrease in power when the T&D Operator curtails power output.
- b. Resource Provider shall ensure that each Participant Resource (i) complies with all the Demand-Build Service and Demand-Reduction Service timeframes and response time periods, and (ii) complies with the ramp rate or rate of change requirements, respectively, as specified in IEEE 1547.

6. POWER QUALITY REQUIREMENTS

As provided in PREPA Regulation 8915:

- a. Resource Provider shall ensure that each Participant Resource meets all electrical signal requirements specified in IEEE 519, IEEE 1453, IEEE 1159, IEEE 1547, UL 1741, and other Applicable Standards.
- b. Resource Provider shall ensure that the integration of Participant Resources into the Distribution System will not cause any power quality degradation including, but not limited to, voltage imbalance and regulation, harmonic distortion, flicker, voltage sags, interruptions, ferro-resonance and transient phenomena. If any such events arise, Resource Provider shall disconnect the Participant Resource from the Distribution System.
- c. If a Participant Resource sources electric power from the Distribution System for start-up, then Resource Provider shall ensure that such sourcing does not cause voltage drops on the primary side of the interconnection greater than three percent (3%) as specified in PREPA Regulation 8915.
- d. Resource Provider shall comply with the T&D Operator's specification for the configuration of the primary and secondary windings of a three-phase interconnection transformer to ensure that a Participant Resource does not degrade the power quality of the Distribution System.
- e. Resource Provider shall make the modifications necessary to rectify, and pay the cost to mitigate, any Participant Resource performance issues that may adversely affect power quality.

- f. In cases where a Participant Resource includes an induction generator, Resource Provider shall provide reactive power compensation at start-up to control abrupt voltage changes. Reactive power compensation must include technologies that guarantee the avoidance of discontinuities and maintain continuous control of reactive power.
- g. For each Participant Resource, Resource Provider shall ensure that (i) the voltage and current injections with harmonics from such resource do not increase the thermal heating in transformers or reactors, or cause any failures, overloading, or equipment malfunctions, resonant voltages, among others, on the Distribution System, and (ii) such resource does not interfere with telecommunication or signal system circuits.
- h. Resource Provider shall supply evidence of effective grounding as described in IEEE 1547.
- i. For Participant Resources using synchronous generators, induction generators and wind turbine generators, Resource Provider shall perform power quality studies (harmonic distortion, voltage imbalance, voltage flicker, etc.) at the point of interconnection of such resources and at the point of interconnection with the Distribution System.

7. FREQUENCY RESPONSE/REGULATION

Each Participant Resource shall comply with all applicable frequency response requirements specified in IEEE 1547.

8. FREQUENCY OPERATING PERFORMANCE (ABNORMAL & RIDE-THROUGH (FRT))

- a. Each Participant Resource shall comply with the abnormal frequency trip requirements specified in PREPA Regulation 8915 and set forth in Table 3 below. Resource Provider shall ensure that such requirements are programmed in the inverter or the protective equipment serving each Participant Resource prior to the testing of such resource. The T&D Operator may require other disconnection times or frequency ranges, as established in IEEE 1547.

Table 3. Disconnections Due to Frequency Variations in the Distribution System

Function	Frequency (Hz)	Clearing Time (s)
Underfrequency 1	$57.5 \leq f < 59.2$	300
Underfrequency 2	$f < 57.5$	10
Over-frequency 1	$60.5 < f \leq 61.5$	300
Over-frequency 2	$f > 61.5$	10

- b. Each Participant Resource shall be designed to provide frequency disturbance ride-through functions without exceeding such resource's capabilities. Table 4 shows the requirements for Participant Resource rate of change of frequency (ROCOF) with abnormal operating performance as established in IEEE 1547. The Category that will be applicable to a specific

VPP Resource shall be established on the basis of interconnection studies the T&D Operator will perform with respect to each VPP that is a party to a Grid Services Agreement, and will be specified in each executed Grid Services Agreement.

Table 4. Frequency Ride-Through Requirements

Category I	Category II	Category III
0.5 Hz/s	2.0 Hz/s	3.0 Hz/s

9. SHORT CIRCUIT STUDIES

- a. For Participant Resources with a capacity of 500 kW-AC or more, Resource Provider shall submit to the T&D Operator a short circuit study in accordance with PREPA Regulation 8915, which as that Regulation requires shall include at a minimum:
 - i. Three-phase and phase-to-ground fault coordination studies at different points of the Participant Resource installation, beginning at the point of interconnection and finishing at the inverter location.
 - ii. Two case study scenarios: (i) the Participant Resource disconnected from (but serviced by) the Distribution System, and (ii) the Participant Resource interconnected with the Distribution System.
 - iii. To facilitate the foregoing study, PREPA shall coordinate with the T&D Operator to provide the Resource Provider with the system's equivalent impedance at the point of interconnection.
- b. As provided in PREPA Regulation 8915, the short-circuit study report shall include, at a minimum, the following:
 - i. Short-circuit current input for each inverter.
 - ii. The total sum of short-circuit current inputs for all the inverters.
 - iii. The short-circuit current input duration for the inverters.
 - iv. Three-phase and phase-to-ground fault current short circuit simulation values for the case of the Participant Resource disconnected with its only input from the Distribution System as well as the case where the Participant Resource interconnects with the Distribution System at the minimum following locations:
 1. Point of interconnection.
 2. Secondary side of the transformer at the customers substation.
 3. Secondary side of the transformer interconnection.
 4. Point of interconnection of the VPP Resource and its inverters.

5. Where there is any change in voltage level within the Participant Resource installation.

10. ANTI-ISLANDING

- a. Resource Provider shall ensure that a Participant Resource does not energize a de-energized Distribution System circuit. If an electric island situation arises, then Resource Provider shall disconnect such resource from the Distribution System in less than two (2) seconds in accordance with PREPA Regulation 8915 and IEEE 1547.
- b. Resource Provider shall ensure that each Participant Resource complies with all other anti-islanding requirements specified in IEEE 1547.
- c. For Participant Resources with capacity of 250 kW-AC or more, Resource Provider shall ensure that all protection and control relaying devices relating to such resource must have the ability to send and receive the Direct Transfer Trip (DTT) function. For Participant Resources with capacity of less than 250 kW-AC, Resource Provider shall have the option to require the capacity to send and receive DTT signals if the required [System Impact Studies] indicate that this functionality is required to maintain the safety and reliability of the Distribution System.

11. POWER MANAGEMENT

- a. Resource Provider shall ensure that each Participant Resource incorporates adequate technology (communicating technology and the corresponding control equipment) and complies with the T&D Operator's power management requirements (ramp rate limits, output limits, curtailment) as established in or pursuant to the applicable Grid Services Agreement.
- b. For Participant Resources with capacity of 250 kW-AC or more connected to the Distribution System at 13.2 kV and for Participant Resources with capacity of 100 kW-AC or more connected to the Distribution System at voltages below 13.2 kV (8.32 kV, 7.2 kV or 4.16 kV), Supervisory Control and Data Acquisition (SCADA) systems must be installed.

12. PROTECTION AND CONTROL EQUIPMENT

As provided in PREPA Regulation 8915:

- a. Protection and control requirements for the interconnection of Participant Resources to the Distribution System shall include, but are not limited to:
 - i. the disconnection of a Participant Resource when not operating in parallel with the Distribution System;
 - ii. the protection of the Distribution System against any adverse effects caused by Participant Resource interconnection that may occasionally occur, including T&D Operator electrical system faults and transient overvoltage;
 - iii. protection of Participant Resources against damage caused by the T&D Operator or the Distribution System, especially operations such as automatic reclose; and

- iv. the integration of general protection practices and security during the design of such resource that safeguards life, the T&D Operator's and VPP Resource's infrastructure and other equipment protection.
- b. Resource Provider shall ensure that each Participant Resource complies with the Applicable Standards, including but not limited to IEEE 1547, IEEE 519, and IEEE/ANSI C37.90. Equipment with inverter-based technology must be certified according to UL 1741.
- c. For Participant Resources with capacity of 500 kW-AC or more, Resource Provider shall (i) install microprocessor-based relay protection technology in such resource, and (ii) ensure that the programable settings comply with the Applicable Standards, including but not limited to IEEE 1547.
- d. For Participant Resources with capacity of 500 kW-AC or more, the circuit design associated with the relay, at a minimum, must include the following:
 - i. Make, model and characteristics of the relay protection.
 - ii. Relay inputs and outputs (I/O) connections.
 - iii. Current and voltage transformer connections associated with the relay protection. This equipment must comply with ANSI/IEEE C57.13 standards.
 - iv. Current transformer (CT) and voltage transformer (VT) classification and turns ratio, which must be classified for used in system protection schemes.
 - v. Interconnection transformer voltages (primary and secondary), minimum and maximum capacity, winding connection configurations (primary and secondary) and impedance (including the capacity at which it was measured).
 - vi. Primary (high side) transformer fuse ratings, to include fuse characteristics and coordination studies.
 - vii. A dedicated Participant Resource interrupter to protect against electrical disturbances. The circuit associated with the interrupter shall include independent electrical system protection.
 - viii. Operating voltage source for the relay that ensures proper protection activation in such electrical disturbances on the system.
- e. For Participant Resources with capacity of 500 kW-AC or more, Resource Provider shall submit a short circuit study and other protection coordination studies with all protection system settings installed and relay input and output control logic equations programmed. A licensed professional electrical engineer shall evaluate, approve and sign the reports for these studies and include any necessary notes to explain the test results and prove they are satisfactory. The report shall also include any as left adjustments and calibration certification.
- f. For Participant Resources with capacity of 500 kW-AC or more, the short circuit study results shall form a base to determine necessary adjustments of the existing different

Protection and Control Equipment to be installed as part of a Participant Resource. The adjustments selected shall provide effective and adequate protection of the Participant Resource installation as well as the Distribution System in accordance with PREPA Regulation 8915 and the Applicable Standards.

- g. For Participant Resources with capacity of 500 kW-AC or more, the protection coordination study shall include two cases: (i) protection against three-phase and phase-to-phase faults, and (ii) protection against phase-to-ground faults. The reports of the protection study shall include the following:
 - i. Adjustments and characteristics of all protection devices installed from the point of interconnection to the Participant Resource inverters. These devices shall include, but not be limited to, the moulded-case circuit breakers, relays, and fuses. In the case of the fuses, manufacturer information and ratings shall be included.
 - ii. Time-current curves of all the relays and fuses studied.
 - iii. Time of operation of each device or protection function.
- h. The minimum functions required for interconnection protection of a Participant Resource with capacity of 500 kW-AC or more which include synchronous generators, induction generators, or wind turbines with the Distribution System are as follows:
 - i. 59 – Overvoltage
 - ii. 27 – Undervoltage
 - iii. For detection of phase-to-ground faults on delta systems, the relay can have the following functions:
 - 1. 59N or 59G – Neutral or ground overvoltage.
 - 2. 27/59 – Phase undervoltage and overvoltage.
 - iv. 81O / 81U – Over-frequency/Underfrequency
 - v. 25 – Synch Check
 - vi. 32 – Watts and VARs directional power.
 - vii. 46 – Negative sequence current.
 - viii. 50/51 – Instantaneous/ Time-delay overcurrent.
- i. The minimum functions required for interconnection protection of a Participant Resource with capacity of 500 kW-AC or more which include inverter-based technologies with the Distribution System are as follows:
 - i. 59 – Overvoltage
 - ii. 27 – Undervoltage

- iii. For detection of phase-to-ground faults on delta systems, the relay can have the following functions:
 - 1. 59N or 59G – Neutral or ground overvoltage.
 - 2. 27/59 – Phase undervoltage and overvoltage.
- iv. 81O/81U – Over-frequency/Underfrequency
- v. 32 – Watts and VARs directional power.
- vi. 50/51 – Instantaneous/ Time-delay overcurrent.
- j. For Participant Resources with capacity of less than 500 kW-AC, the T&D Operator will accept the protection functions integrated with inverters so long as the T&D Operator has approved them before installation and they include the minimum protection functions required for overvoltage, undervoltage, over-frequency, underfrequency, and short circuit current. Resource Provider shall comply with any requirements to install additional equipment the T&D Operator deems necessary.
- k. The Protection and Control Equipment for each Participant Resource shall have the capability to detect electrical disturbances that occur on the Distribution System. A Participant Resource must disconnect from the distribution circuit as soon as the disturbance occurs, before the first reclosing operation on the circuit. Once disconnected from the Distribution System, the Participant Resource shall measure voltage and frequency at the point of interconnection. The VPP Resource may reconnect once the voltage and frequency remain stable for at least five minutes. The inverter must be programmed to disconnect a Participant Resource system according to the variations of voltage and frequency criteria specified above.
- l. Inverter-based Participant Resource systems of up to 300 kW-AC do not require the installation of an external manual switch. All Participant Resource systems shall have the means of disconnecting from the AC voltage side of the inverter. An external manual switch is required on Participant Resources with a capacity greater than 300 kW-AC. See PREPA Regulation 8915 for additional requirements for the manual switch.

13. MODELLING AND VALIDATION

- a. Upon the completion of final adjustments and parameter settings related to commissioning and MTR compliance tests, Resource Provider shall submit a Synergi analytical model and validation report to the T&D Operator.
- b. Resource Provider shall submit specification sheets for all generation sources containing parameters such as equivalent steady-state, transient, and subtransient impedances. Zero- and negative-sequence parameters are required for all three-phase inverters.

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

Resource Provider 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 Resource Provider’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 Resource Provider 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
- GS\$** = 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, Resource Provider 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 Resource Provider 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

Resource Provider 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. Resource Provider'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 Resource Provider nor any of its owners (including any Person or entity with more than a ten percent (10%) ownership interest in Resource Provider), partners, directors, officials or employees, has agreed to share or give a percentage of Resource Provider'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 Resource Provider, beneficial treatment under the contract, or the written or unwritten promise of a gift, favor, or other monetary or non-monetary benefit).
5. Neither Resource Provider, 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 Resource Provider's representative as part of this certification shall cause the nullity of the proposed contract and Resource Provider 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: Puerto Rico Electric Power Authority (“**PREPA**”)

To: [●] (“**Resource Provider**”)

We refer to the Grid Services Agreement dated [●] between PREPA and Resource Provider (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.

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

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: [●] (“**Resource Provider**”)

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

We refer to the Grid Services Agreement between PREPA and Resource Provider 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) Resource Provider 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, Resource Provider 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. Resource Provider 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 Resource Provider

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-/Resource Provider Name] Grid Services Agreement] – Performance Security No. [●]

We understand that *[insert name of Resource Provider]* (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, the laws of the Commonwealth of Puerto Rico shall govern this Letter of Credit and the parties shall construe this Letter of Credit in accordance with such laws. 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 (*Resource Provider’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 (*PREPA Signing Conditions*) of the Assigned Agreement, but construing references to Resource Provider 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 Resource Providers which offer Grid Services to PREPA using Participant Resources. Any metering equipment placed into service or returned to service shall meet the provisions set forth in this Appendix X.

2. Metering Requirements

2.1 Data interval requirement

Resource Provider 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. Resource Provider can install a monitoring device on each enrolled and enabled device, or
2. Resource Provider 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 Participants which do not have interval meters already installed.

For commercial Participants with interval data: if a commercial Participant has a 15-minute interval meter installed, PREPA shall upgrade it to a 5-minute interval meter.

Resource Provider 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), the 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 Resource Provider may interface with PREPA's meters.]

3. Metering accuracy specifications

The performance of Resource Provider's metering equipment shall be deemed acceptable when the percent registration is not less than 98% nor more than 102%. This is effectively an accuracy requirement of $\pm 2\%$.

4. Testing and Test Plan

Metering equipment shall be tested by Resource Provider prior to or during installation. Resource Provider shall provide documentation and self-certification to PREPA showing the accuracy of metering equipment installed by Resource Provider. In addition, Resource Provider 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. Resource Provider shall have flexibility to define the test plan so that it is appropriate for the type of metering equipment used by Resource Provider. The test plan shall document Resource Provider's test, calibration and maintenance procedures of Resource Provider-installed metering equipment. The test plan shall be delivered to PREPA for review and the plan must be approved by PREPA prior to the Commercial Operation Date, which approval PREPA shall not unreasonably withhold.

APPENDIX Y

OPERATIONAL FORECAST

The Operational Forecast represents Resource Provider's total Capability for the given period. Resource Provider 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 Resource Provider is unable to provide Capability for any reason for a period of less than four (4) hours, Resource Provider 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, Resource Provider 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: Puerto Rico Electric Power Authority (“**PREPA**”)

From: [●] (“**Resource Provider**”)

We refer to the Grid Services Agreement dated [●] between PREPA and Resource Provider (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 Resource Provider under Article 12 (*Representations, Warranties, & Covenants*), and, on behalf of Resource Provider, confirm and certify to PREPA the truth and correctness of such representations and warranties on the date hereof.

Very truly yours,

[●]
as Resource Provider

[●]

APPENDIX AA

CUSTOMER SERVICE REQUIREMENTS

Resource Provider 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 Resource Provider, and Resource Provider 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	Resource Provider 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	Resource Provider 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	Resource Provider will manage scheduling/ rescheduling Participant visits.
Service Requests by PREPA or Participant	Resource Provider will respond via phone or email to field service requests initiated by a Participant or by PREPA within 24 hours of request.
Supervision	Resource Provider will provide sufficient supervision of its installer to ensure quality installation performance.
Field Service Personnel	Resource Provider 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	Resource Provider will provide its own tools and equipment for pre- and post-installation testing. Equipment must meet relevant certifications.
Installation completion	Resource Provider will manage the workforce and installation process for all allocated VENs until installation is complete.
Emergency repairs	Resource Provider 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	Resource Provider shall have log records of all Participant transactions during the term of the contract.
Installer workflow supporting data	Resource Provider 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	Resource Provider will be subject to insurance requirements, including automobile liability, general liability, and worker's compensation.

APPENDIX BB

PARTICIPANT SERVICE AGREEMENT REQUIREMENTS

The Participant Service Agreement (“PSA”) between a Resource Provider and a Participant setting forth the terms and conditions by which a Participant may enroll with a Resource Provider 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 Resource Provider; and (b) the term of the Grid Services Agreement between Resource Provider and PREPA.
2. Payment: All estimated payment amounts, including all incentives, due from Resource Provider to the Participant during the term, together with the type and frequency of such payments. [Resource Provider must also indicate that Resource Provider will report incentive payments as Participant income to the [U.S. Internal Revenue Service]. Resource Provider shall note that PREPA or the T&D Operator shall have the right to adjust the electric service invoices of Participants enrolled in the Net Energy Metering Program or similar program to the extent necessary to eliminate net metering credits with respect to energy delivered from such Participant’s VPP Resource as part of Resource Provider’s VPP in response to a Dispatch Notice. Resource Provider shall promptly notify the Participant of any change to such payments.
3. Charges: All recurring and nonrecurring charges due from the Participant to Resource Provider 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 Resource Provider 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 Resource Provider as Participant’s Agent: The legal appointment by the Participant of Resource Provider 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 Resource Provider 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, Resource Provider 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 Resource Provider, how it may use the data, and with whom Resource Provider may share the data, together with all information security and privacy policies enacted by Resource Provider 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 Resource Provider 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 Resource Provider notifying PREPA of the Participant's enrollment.
14. Early Termination by Participant: The process by which the Participant may terminate its enrollment with Resource Provider 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 Resource Provider will provide to the Participant, as well as all warranties that Resource Provider 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 Resource Provider and the Participant.
19. Insurance: The types and levels of insurance that each party must have in place throughout the term.
20. Indemnity: The Resource Provider will indemnify the Participant against all claims flowing from a breach of Resource Provider's representations under the PSA.
21. Damages: Any limitations on Resource Provider'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: Resource Provider's contact information for all purposes related to the PSA and the Participant's enrollment with Resource Provider.

APPENDIX CC

FORM OF TRADEMARK LICENSE AGREEMENT

THIS TRADEMARK LICENSE AGREEMENT (“**Agreement**”) is made and entered into as of [●] (“**Effective Date**”), by and 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. Josué Colón, 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**

Josué Colón

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.⁴⁰ 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.]⁴¹

⁴⁰ Note: PREPA will provide a full list of PREPA Trademarks.

⁴¹ 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, Resource Provider 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.

Resource Provider 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.

Resource Provider 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.

Resource Provider 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

PCR- Grid Service and Event

The Participant Capability Report (PCR) shall be presented in the following format, by Grid Service and by event. All Grid Services should be included in the same file.

Resource Provider 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

PAYMENT GUARANTEE AGREEMENT

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 [●].⁴²

“**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 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 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

⁴² 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.

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 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 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). Subject to Section 3.4 (Unconditional Nature of Obligations; Waivers), 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 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.

[signatures on following page]

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: [●]