NEPR

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

Received: Feb 25, 2022

3:31 PM

**IN RE:** PUERTO RICO TEST FOR DEMAND RESPONSE AND ENERGY EFFICIENCY CASE NO.: NEPR-MI-2021-00094

**SUBJECT:** Motion to Submit Responses to Attachment B of the December 14 Motion

## MOTION TO SUBMIT RESPONSES TO ATTACHMENT B OF THE DECEMBER 14 MOTION

**COMES NOW** the Puerto Rico Electric Power Authority ("PREPA"), through its counsel of record, and respectfully submits and requests as follows:

1. On May 14, 2021, the Honorable Energy Bureau of the Public Service Regulatory Board (the "Energy Bureau") entered a *Resolution and Order* initiating the captioned proceeding ("May 14 Resolution"). In the May 14 Resolution, the Energy Bureau announced that the purpose of the captioned proceeding was to define the PR Benefit Cost Test ("PR Cost Test"), which is applicable to the demand response and energy efficiency programs.<sup>1</sup>

2. After several procedural events, on December 14, 2021, the Energy Bureau entered a *Resolution and Order* ("December 14 Order") by which it, *inter alia*, directed PREPA to submit, on or before January 5, 2022, the responses to the information requests included in Appendix B of the order and to attend a Virtual Technical Conference on February 8, 2022, to discuss the initial results of the Avoided Cost Study.

3. Even though PREPA had been served with initial orders of this captioned matter<sup>2</sup>, this was not the case for the December 14 Order, which wasn't served on PREPA.

<sup>&</sup>lt;sup>1</sup> The PR Cost Test is required by the *Regulation for Energy Efficiency and Demand Response*, no. 9246 (January 19, 2021) and by the *Regulation for Energy Efficiency*, no. 9354 (January 24, 2022).

<sup>&</sup>lt;sup>2</sup> Some orders were served on PREPA's General Counsel, while others were served on the undersigned, who, at the time, had not entered an appearance as counsel for PREPA.

4. On February 3, 2022, PREPA filed a Request For Extension Of Time To Comply With Order That Was Not Notified To PREPA And For Continuance Of The February 8 Technical Conference ("February 3 Motion").

5. In the February 3 Motion, PREPA raised that failing to serve the December 14 Order had the effect of not affording PREPA the opportunity to respond to the requests for information included in the December 14 Order ("RFI") which were due on January 5, 2022. PREPA asked the Energy Bureau to grant until today, February 25, 2022, to respond to the December 14 Order RFI.

6. On February 8, 2022, the Energy Bureau held a Virtual Technical Conference to discuss the status of the Avoided Cost Study. During the Technical Conference, the Energy Bureau entered a bench order granting the extension of time requested by PREPA in the February 3 Motion.

7. In compliance with the December 14 and February 8 orders, PREPA herein submits the responses to Attachment B of the December 14 Order. *See*, Attachment A.

**WHEREFORE**, PREPA respectfully requests the Honorable Energy Bureau to note the filing of the instant motion and to determine that PREPA has complied with the December 14 Order.

#### **RESPECTFULLY SUBMITTED.**

In San Juan Puerto Rico, this 25<sup>th</sup> day of February 2022.

<u>s/ Katiuska Bolaños-Lugo</u> Katiuska Bolaños-Lugo <u>kbolanos@diazvaz.law</u> TSPR No. 18,888

## DÍAZ & VÁZQUEZ LAW FIRM, P.S.C.

290 Jesús T. Piñero Ave. Oriental Tower, Suite 803 San Juan, PR 00918 Tel. (787) 395-7133 Fax. (787) 497-9664

### **CERTIFICATE OF SERVICE**

It is hereby certified that, on this same date, I have filed the above motion with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at <u>https://radicacion.energia.pr.gov/login;</u> and also, that I have served a copy on LUMA Energy, LLC and LUMA Energy ServCo, LLC through their counsel of record at laura.rozas@us.dlapiper.com and margarita.mercado@us.dlapiper.com and to the Independent Consumer Protection Office through its counsel of record hrivera@oipc.pr.gov and contratistas@jrsp.pr.gov.

In San Juan Puerto Rico, this 25<sup>th</sup> day of February 2022.

<u>s/ Katiuska Bolaños-Lugo</u> Katiuska Bolaños-Lugo

## Attachment A

GOVERNMENT OF PUERTO RICO

PUERTO RICO ELECTRIC POWER AUTHORITY

## **Response to Appendix B: Data Requests for PREPA**

## RFI no. 1:

Please provide the following hourly data and discuss the extent to which each could be useful for the Avoided Cost Study. This request includes, but is not limited to, any files that PREPA has in its possession equivalent to those provided by PREPA at the time of its filing of the 2019 Integrated Resource Plan and which reflect the terms of Section VII.C of the September 23rd Final Order in Case No. CEPR-AP-2015-0002 (the first IRP case). For example, the Energy Bureau is aware of the existence of a set of "Hourly Generation Reports" filed in PDF format but generated from Excel files that resided at locations similar apparently to "M:\AREA OPERACIONES\CCE\1GD2019\201906.xls" (with different file names based on the date of the files). The Energy Bureau has also seen a file named "Comportamiento-generacion-3.xlsx" containing hourly generation profiles from July 2020 through September 2021 associated Case No. NEPR-MI-2020-0001 and available with at https://energia.pr.gov/wpcontent/uploads/sites/7/202 1/09/Comportamiento-generacion values-NEPR-MI-2020-000 1.xlsx.

- a. Hourly load shape data for any period from 2017 to the present.
- b. Hourly generation data for any period from 2017 to the present.

## Response to RFI no. 1:

The data requested in RFI no.1 is not available to PREPA but can be obtained from PREPA's agent, LUMA Energy LLC ("LUMA"). The data requested was produced by the Energy Control Center when it was operated by PREPA. On June 22, 2020, PREPA, LUMA and the Puerto Rico Public-Private Partnerships Authority executed the *Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement,* as amended ("OMA"). In accordance with the OMA, LUMA began operating the transmission and distribution system on June 1, 2021 ("Service Commencement Date"). Part of LUMA's responsibilities is managing the Energy Control Center, which is the division of PREPA that used to gather and report the requested data. Further, LUMA is in control of the requested data that dates prior to Service Commencement Date.



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### RFI no. 2:

Referring to the confidential workpapers named "PREPA Fuel Forecast 06032019\_FINAL\_with formulas.xlsx" provided by PREPA in Case no. CEPR-AP-2018-0001, please provide the most updated fuel price forecasts for the AES coal plant between 202 1—2038. Please indicate the units for the fuel price forecasts. If the entire period is not available, please provide data for the years that are available.

### Response to RFI no. 2:

The data is not available. PREPA doesn't do fuel price forecasts for the AES coal plant. On October 11, 1994, PREPA and AES Puerto Rico, LP ("AES") entered into a power purchase and operating agreement ("AES Agreement") for the purchase of dependable capacity and energy produced by AES to PREPA. The AES Agreement is attached as Attach. A-1. The AES Agreement does not include fuel (or coal) purchase and thus, PREPA does not perform fuel price forecasts for the AES coal plant.



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## RFI no. 3(a):

Referring to the confidential workpapers named "PREPA Fuel Forecast 06032019\_FINAL\_with formulas.xlsx" provided by PREPA in Case no. CEPR-AP-2018-0001, please provide the following information regarding fuel prices and fuel price projections:

a. Excluding the New Fortress Energy contract that pertains to the San Juan plants and the renewed Gas Sales and Purchase Agreement (GSPA) that pertains to Costa Sur and EcoEléctrica, please confirm that the forecasting methodology and adders used for delivered fuel prices at all plants are still applicable. If there are any differences, please provide the most recent update to delivered fuel prices, forecasts of delivered fuel prices, and methodologies for developing forecasts of delivered fuel prices.

## Response to RFI no. 3(a):

PREPA would like a clarification of this request for information. After Service Commencement Date, the forecasting of fuel usage (consumption) that was done by PREPA with the PROMOD software is no longer performed by PREPA. The forecasting is now performed by LUMA. Prices and adders for no. 2 and no. 6 are provided in the response to RFI nos. 3(c) and 3(d).



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## RFI no. 3(b):

b. On tab "No.6 Regression" of this spreadsheet, please provide the data source for NY Spot No.
6 0.5% (dollars per gallon). The current data source on this tab links to the NY Harbor Ultra-Low
Sulfur No 2 Diesel Spot Price and does not match the values provided in Column E of this tab.

## Response to RFI no. 3(b):

The requested data is not available to PREPA now and there is no current or future alternative data source of which PREPA is aware. The personnel and advisors that work with the preparation of the referenced spreadsheet do not work at, nor provide services to, PREPA anymore.



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## RFI no. 3(c):

c. Please also indicate if the adders in the referenced fuel forecast workpaper are consistent with the current contractual agreement for No. 6 residual fuel oil purchases, namely, the extended Fuel Oil Purchase Contract with Freepoint, and any other applicable contracts with other suppliers. If not, please provide any updated adders to reflect recent contractual agreements for No.6 fuel oil.

## Response to RFI no. 3(c):

On September 10, 2021, PREPA entered into a fuel oil purchase agreement with Puma Energy Caribe, LLC ("PUMA") for the supply of residual No. 6 fuel oil at the Aguirre, San Juan, Palo Seco and Costa Sur steam plants ("PUMA Agreement"). The Puma Agreement is attached as Attach. A-2. Pursuant to Article IX of the PUMA Agreement, the price to be paid for each barrel of fuel delivered throughout the entire duration of the first year of the contract will consist of an escalator plus a price differential, with 60 -day credit term. The fixed price differential shall be, in US dollars per barrel for all deliveries under the contract, \$ 2.88 for San Juan, Palo Seco, Aguirre and Costa Sur plants, price differentials will be added to the escalator to obtain the final fuel price. On December 31, 2021, PREPA and Puma executed an amendment to the PUMA Agreement ("Amended PUMA Agreement"). The Amended PUMA Agreement is attached as Attach. A-3. Pursuant to the Amended PUMA Agreement at page 2, the Platts data to be published as of January 1<sup>st</sup>, 2022, in relation to the way the price escalator price is calculated. From January 1 onwards, the publications of 0.3% S and 0.7% S, which are used in the calculation, will be eliminated. On that date, the fixed price of 0.5% S will begin to be published for the escalator climber without the need for an intermediate calculation. The new publication will be called "USAC Marine Fuel 0.5% S". The Puma Agreement is in effect for a period of one (1) year and may only be extended to an additional year.



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## RFI no. 3(d):

d. Please also indicate if the adders in the referenced fuel forecast workpaper are consistent with the current contractual agreement for diesel: namely, the Puma Energy Caribe LLC, and/or any other applicable contracts with other suppliers. If not, please provide any updated adders to reflect recent contractual agreements for diesel.

## Response to RFI no. 3(d):

On November 18, 2021, PREPA entered into fuel purchase agreement with Novum Energy Trading, LLC ("Novum Agreement") for the supply of light distillate No. 2 fuel oil (referred to as diesel fuel) at San Juan, Palo Seco, Aguirre, Mayagüez, Cambalache power plants and also gas turbines generating stations. The Novum Agreement is attached as Attach. A-4. Pursuant to Article VIII of the Novum Agreement, the unit price in dollars per barrel (\$/bbl.) has to be computed using a fixed price differential plus an escalator factor, taking as reference the delivery date. The fixed price differential is \$7.70 per barrel for barge/vessel deliveries and \$8.61 for tank truck deliveries. The Novum Agreement is in effect for a period of one (1) year and may only be extended to an additional year.



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## Attachment A-1

### 1995-Al0077

## POWER PURCHASE AND OPERATING AGREEMENT BETWEEN AES PUERTO RICO, L. P. AND PUERTO RICO ELECTRIC POWER AUTHORITY

THIS AGREEMENT, (the "Agreement") entered into and effective as of this <u>11th</u> day of <u>October</u>, 1994 (the "Effective Date"), by and between AES Puerto Rico, L. P., a partnership duly organized and authorized under the laws of the state of Delaware, whose general partner is AES Puerto Rico, Inc., with offices at 46 West Baldorioty Street, Suite A, located at Guayama, Puerto Rico and duly registered to do business in the Commonwealth of Puerto Rico ("Operator") and herein represented by its Vice President, Sarah Slusser, duly authorized to enter into this Agreement as certified by the AES Puerto Rico, Inc. resolution dated August 25, 1994 and the PUERTO RICO ELECTRIC POWER AUTHORITY, a Puerto Rico public corporation and governmental instrumentality of the Commonwealth of Puerto Rico authorized to enter into this Agreement by virtue of Section 6 (f) of Act number 83 of May 2, 1941, as amended (22 LPRA § 196(f)), with offices at 1110 Ponce de León Avenue, Santurce, Puerto Rico ("PREPA") and herein represented by its Executive Director, Miguel A. Cordero, of legal age, married, engineer and resident of Caguas, Puerto Rico. Both Operator and PREPA are herein individually referred to as "Party" and collectively referred to as "Parties".

#### **RECITALS**

WHEREAS, Operator, will be the entity who will own and operate a new cogeneration Facility consisting of two or more circulating fluidized bed (CFB) boilers and one or more steam turbine generators of approximately four hundred thirteen (413) Megawatts electric (MWe), to be located in Guayama, Puerto Rico; and WHEREAS, PREPA is the electric utility engaged in the generation, transmission, distribution and sale of electric power within the Commonwealth of Puerto Rico; and

WHEREAS, the Operator wishes to sell exclusively to PREPA and PREPA is willing to purchase the Dependable Capacity and Energy produced by the Operator according to the Public Utility Regulatory Policies Act of 1978, as amended (PURPA); and

WHEREAS, the Parties hereto are willing to effectuate such sales and purchases of Dependable Capacity and Energy in accordance with the terms and conditions of this Agreement; and

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements set forth herein, the Operator and PREPA, intending to be legally bound, hereby agree to the following:

## **ARTICLE 1 - DEFINITIONS**

3

Whenever the following capitalized terms appear in this Agreement, whether in the singular or in the plural, present or past tense, they shall have the meaning stated below:

1.1 "Additional Interconnection Facilities" - All equipment and facilities located on PREPA's side of the Interconnection Point, constructed and installed for the purpose of interconnecting the Facility with PREPA's electric transmission and distribution system, including but not limited to all metering equipment, transmission and distribution lines and associated equipment, transformers and associated equipment, relay and switching equipment, and protective devices and safety equipment.

1.2 "Agreement Year" - Means the period which begins with the Commercial Operation Date and ends on the first anniversary thereof, and each one (1) Year period thereafter commencing on each such anniversary date.

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

1.4 "Billing Period" - has the meaning set forth in Section 10.4.

1.5 "Calendar Month" - Means such period of time beginning at 12:00 midnight on the last Day of any given month as adjudged in the calendar and ending at 12:00 midnight on the last Day of the following month as adjudged in the calendar.

1.6 "Calendar Year" - Means the twelve (12) Month period beginning 12:00 midnight

on December 31 and ending at 12:00 midnight on the subsequent December 31.

1.7 "Capacity Purchase Price" - Means the sum of the Demand Charge and the Fixed Operation and Maintenance Charge per kilowatt as determined in accordance with Article 11.

1.8 "Commercial Operation Date" - Means the first Day following the date in which Dependable Capacity has been set for the Facility.

1.9 "Construction Cost Index" - has the meaning set forth in Section 11.1 (b) (1) (ii).

1.10 "Court of Competent Jurisdiction" - Means the state courts of the Commonwealth of Puerto Rico, the United States District Courts for the District of Puerto Rico, the United States Court of Appeals for the First Circuit and the United States Supreme Court.

"Day" - Means a period of time consisting of twenty-four (24) hours, computed 1.11 from any given point in time to another twenty-four (24) hours later.

1.12 'Demand Charge'' - has the meaning set forth in Section 11.1 (b) (1).

1.13 **'Dependable Capacity''-** Means the net electric generating capacity for the Facility (gross electric generating capacity less station use) in kilowatts as determined by testing pursuant to Article 12 herein and made available from the Facility to PREPA at the Interconnection Point.

1.14 "Derated Hours" - Means the number of hours; exclusive of Outage Hours, during which the Facility is not capable of operating at 100% of its Dependable Capacity. Economy Shutdown Hours will be deemed to be Derated Hours if the Facility is not capable of operating at 100% of its Dependable Capacity.

1.15 "Design Limits" - Means the operating limits set forth in Sections 7.3 through 7.5.

1.16 "Dispatch" - Means the ability of PREPA's System Operation Center to schedule

and control, directly or indirectly, manually or automatically, the generation of the Facility in order to increase or decrease the electricity delivered to the PREPA system in accordance with Prudent Utility Practices and the provisions set forth herein.

1.17 "Economic Dispatch" - Means the distribution of PREPA's total energy needs among available sources for optimum system economy in accordance with Prudent Utility Practices.

1.18 **'Economy Shutdown Hours''** - Means the hours during which the Facility is available but not in service as a result of Economic Dispatch.

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

1.20 "Energy" - Means the Net Electrical Output of the Facility measured in kilowatthours at the Interconnection Point.

1.21 "Energy Purchase Price" - Means the sum of the Variable Operation and Maintenance Charge and the Fuel Related Charge per kilowatt hour as determined in accordance with Article 11.

1.22 "Equity" - Means Operator's net worth in the Facility after deducting its liabilities from its assets.

1.23 "Equity Capital" - Means the amount invested in the Facility by Operator's direct or indirect parent corporation or other investors as common stock, preferred stock or equivalents, general or limited partnership interest, subordinated debt, or other qualifying contributions.

1.24 "Equivalent Availability Factor or EAF" - Means the Available Hours less the

Equivalent Derated Hours, divided by the Period Hours, expressed as a percentage.  $EAF = \{ (AH - EDH)/PH \} * 100 (\%)$ Where:

EAF = Equivalent Availability Factor

AH = Available Hours

EDH = Equivalent Derated Hours

PH = Period Hours

For purposes of computing the Equivalent Availability Factor, the Equivalent Force Majeure Hours and Major Overhaul Hours will be excluded from the calculation. In this calculation and any other calculation hereunder, all hours shall be rounded to the nearest one tenth (1/10) of an hour and the EAF to the nearest one tenth (1/10) of a percent. Examples of the EAF calculation are included in Exhibit A.

1.25 "Equivalent Derated Hours" - Means the sum of the products of the Derated Hours and the size of the corresponding net reduction in capacity during the Derated Hours, divided by the Dependable Capacity.

1.26 "Equivalent Force Majeure Hours" - Means the sum of the products of the Derated Hours which are attributable to a Force Majeure claimed by either Party and the size of the corresponding net reduction in capacity during such Derated Hours, divided by Dependable Capacity, plus all Outage Hours attributable to a Force Majeure claimed by either Party.

1.27 "Estimated Dependable Capacity" - Means the net electric generating capacity for the Facility that Operator commits to PREPA as designated under the provisions of Section 12.1 herein.

1.28 "Estimated Financial Closing Date" - has the meaning set forth in Section 11.1 (b) (1) (ii).

1.29 "Facility" - Means the Operator's Facility and the Interconnection Facilities.

1.30 "Facility Debt" - Means the outstanding balance at any time of the initial debt incurred for the development, acquisition, construction or permanent financing of the Facility and Additional Interconnection Facilities (excluding subordinated debt), including related Lenders fees and expenses, not to exceed one thousand six hundred dollars per kW (\$1600/kW) times the initial Dependable Capacity, as amortized according to the amortization schedules established at the Financial Closing Date or refunding date, respectively, all as adjusted for the difference in the Construction Cost Index on the Financial Closing Date and that in effect on the Estimated Financial Closing Date.

1.31 "FERC" - Means the Federal Energy Regulatory Commission, or any successor thereto.

1.32 **"Financial Closing Date"** - Means the date on which documents which provide commitments for funding for the construction of the Facility are executed and funds for the first construction drawdown for the Facility become available to Operator.

1.33 "Fiscal Year" - Means the twelve (12) Month period beginning 12:00 midnight on June 30 of any given Year and ending 12:00 midnight on the subsequent June 30.

1.34 "Force Majeure" - has the meaning set in Article 17.

1.35 "Fuel" - Means coal or any other type of fuel as mutually agreed by the Parties.

1.36 "Fuel Cost Determination Factor or FCDF" - Means the factor expressed in British Thermal Units (BTUs) per net kilowatt-hour specified in Section 7.3 for the Facility.

1.37 "Initial Synchronization Date" - Means the first date upon which: (a) Energy is generated by the Facility; and (b) such Energy is metered by the PREPA-owned metering equipment.

1.38 "Interconnection Facilities" - Means all equipment and facilities, on Operator's side of the Interconnection Point, constructed and installed for the purpose of interconnecting the Operator's Facility with PREPA's electric transmission and distribution system including, but not limited to, transmission and distribution lines and associated equipment, relay and switching equipment, and protective devices and safety equipment.

1.39 "Interconnection Point" - Means the physical point where the Net Electrical Output of the Facility is delivered to PREPA's system. This point will be at the planned 230 kV switchyard at the Jobos substation.

1.40 "Interest" - Means the compensation for the accrual of monetary obligations under this Agreement computed monthly and prorated daily from the time each such obligation is past due based on an annual interest rate equal to the lesser of (i) the Prime Commercial Lending Rate as set by Citibank N.A., New York or any other equivalent rate as mutually agreed by the Parties or (ii) the maximum rate allowable under Article 1649 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 Facility Debt.

1.41 "Lender" - Means an individual, bank, corporation or partnership that extends money to the Operator (with the expectation of being repaid with interest) for the development, acquisition, construction, or permanent financing of the Facility (excluding subordinated debt).

1.42 "Licensing Costs" - Means the direct costs incurred by Operator for obtaining

licenses and permits for the Facility including, without limitation, attorney's and consultant's fees, licensing fees and costs charged by permitting agencies, other disbursements directly associated with obtaining licenses and permits, and the normal salary and overhead of Operator's and Operator's affiliate's personnel directly allocated to obtaining licenses and permits.

1.43 "Major Overhaul Hours" - Means the first four hundred thirty-eight (438) hours during the scheduled outage period that Operator informs PREPA, pursuant to Article 8, that it is undertaking a major overhaul of the Facility. A minimum of thirty-six (36) Months must have elapsed from the end of the previous major overhaul period before a new major overhaul period can begin. Operator may not utilize more than a total of two thousand one hundred ninety (2190) hours as Major Overhaul Hours over the initial term of the Agreement. Notwithstanding the foregoing, Operator is not precluded from undertaking a major overhaul of the Facility whose hours may not be eligible for exclusion from the EAF calculation.

1.44 "Maximum Annual Fuel Requirement" - Means Dependable Capacity (or Estimated Dependable Capacity prior to determination of Dependable Capacity) x Fuel Cost Determination Factor at 100% of Dependable Capacity x 8760/1,000,000, expressed in MMBTU(HHV)/yr.

1.45 'Maximum Monthly Fuel Requirement' - Means Maximum Annual Fuel Requirement divided by twelve.

1.46 "Month" - Means, except for what is provided in Section 10.4 with respect to the Billing Period, the period of time computed from any given Day of any of the months as adjudged in the calendar to corresponding Day, if any, in the next Calendar Month or, if not any, to last Day of next Calendar Month.

1.47 'Net Electrical Output" - Means all of the Facility's electrical output made

available for sale at the Interconnection Point. The Net Electrical Output will be delivered at 230 kV.

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

1.49 "Off-Peak Period" - Means the time from 10:00 p.m. to 8:00 a.m. daily from Monday through Friday and all day Saturday and Sunday.

1.50 "Operator's Facility" - Means Operator's generation facility, to be located in Guayama, Puerto Rico, consisting of two or more circulating fluidized bed (CFB) boilers and one or more steam turbines with a total net capacity of approximately 413 MWe, including auxiliary equipment and unit transformers.

1.51 "Outage Hours" - Means the number of hours that are not Available Hours.

1.52 "Period Hours" - Means the sum of the Available Hours and the Outage Hours for any given period of time.

1.53 "Permanently Abandoned" or "Permanent Abandonment" - Means either: (a) an action taken by the Operator, its successors, or assignees, as applicable, to permanently shut down the operations of the Facility, or (b) that the Available Hours equal zero (0) in any period of twenty-four (24) consecutive Months with or without a Force Majeure event claimed by Operator on or after the Commercial Operation Date.

1.54 'Permanent Closing''- Means that the Available Hours equal zero (0) in any period of twelve (12) consecutive Months, excluding periods of outages due to Force Majeure.

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

1.56 "Prudent Utility Practices" - Means the practices generally followed by the electric utility industry in the United States and Puerto Rico, as changed from time to time, which generally include, but are not limited to, engineering and operating considerations.

1.57 "PURPA" - Means the Public Utility Regulatory Policies Act of 1978 and the regulations promulgated thereunder in effect as of the Effective Date or as they are amended in the future from time to time if applicable to this Facility.

1.58 "Qualifying Facility" - Means a cogeneration facility or a small power production facility which is a Qualifying Facility under Subpart B of Subchapter K, Part 292 of Chapter I, Title 18, Code of Federal Regulations, promulgated by the FERC as such regulations are in effect on the Effective Date or as amended from time to time if applicable to this Facility. Such a facility must be "new capacity" pursuant to PURPA, construction of which began on or after November 9, 1978.

1.59 "Quarter" - Means a three (3) Month period beginning 12:00 midnight on December 31, March 31, June 30, or September 30.

1.60 "Scheduled Outage Program" - Means a planned interruption of the Facility's generation that has been coordinated in advance with PREPA with a mutually agreed start and

12

duration pursuant to Article 8.

1.61 "Term" - has the meaning set forth in Article 5.

1.62 'Twelve Month EAF'' - has the meaning set forth in Section 11.2 (b).

1.63 "Year" - Means a twelve (12) Month period, computed from any given Day of any of the months as adjudged in the calendar to the corresponding Day, if any, of the same Calendar Month in the following Calendar Year or, if not any, to last Day of the Month, twelve (12) Months later.

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ARTICLE 2 - SALE AND PURCHASE OF ENERGY AND DEPENDABLE CAPACITY

2.1 Except as otherwise provided in this Article, and subject to the terms and conditions of this Agreement, Operator agrees to sell and PREPA agrees to accept delivery of and purchase Energy and Dependable Capacity as of and following the Commercial Operation Date of the Facility as such Dependable Capacity is determined pursuant to Article 12 herein. However, prior to the Commercial Operation Date, PREPA shall accept delivery of and purchase only the Energy generated by the Facility and made available to PREPA.

2.2 Without limiting any other obligations of Operator in this Agreement, PREPA's obligation to purchase Energy and/or Dependable Capacity from Operator is contingent upon Operator's submittal to PREPA of the following information:

(a) One or more documents evidencing that Operator owns the Facility and has ownership or has the right to use, for the Term of the Agreement, the site on which the Facility is located. Such document or documents may include a deed or a lease agreement.

(b) A report by a qualified independent consultant selected by both Parties certifying (i) that the Facility, if operated and maintained in accordance with Prudent Electrical Practices and Prudent Utility Practices, can be expected to have a useful life at least equal to the Term of the Agreement, and (ii) that the Facility has been designed and constructed in compliance with the terms of the Agreement.

(c) FERC certification issued prior to the Financial Closing Date evidencing that the Facility, including the financial and ownership structure to be established at the Financial Closing Date, is a Qualifying Facility.

13

(d) Originals of certificates of insurance policies for insurance coverage required by Article 21.

(e) Copies of all material permits, licenses, approvals, and other governmental authorizations needed to construct and operate the Facility.

## **ARTICLE 3 - NOTICES**

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

If to the Operator to: AES Puerto Rico, L.P. 20th Floor, 1001 North 19th Street Arlington, Virginia 22209 Attn: Sarah Slusser Fax: (703) 528-4510

If to PREPA: Puerto Rico Electric Power Authority (if by hand) 1110 Ponce de León Avenue Office #601 Santurce, Puerto Rico Attn: Executive Director or Puerto Rico Electric Power Authority (if by mail) P.O. Box 364267 San Juan, Puerto Rico 00936 Attn: Executive Director Fax: 724-1353

3.2 Either Party hereto may change, by notice as above provided, the person and/or address to which all such notices and other communications are to be sent.

## ARTICLE 4 - PRE-OPERATION PERIOD

4.1 Operator shall, at its expense, acquire and maintain in effect from the FERC and from any and all other federal, Commonwealth and local agencies, commissions and authorities with jurisdiction over Operator and/or the Facility, all material permits, licenses, and approvals, and complete or have completed any environmental impact studies necessary: (a) for the construction, operation and maintenance of the Facility, which, if not obtained, would prevent Operator from operating the Facility and (b) for Operator to perform its obligations under this Agreement.

4.2 Operator shall submit to PREPA the following: (i) prior to the Effective Date, Operator's licensing and milestone construction schedules; (ii) within thirty (30) Days of its completion, the Facility's conceptual engineering design, including the relay protection scheme; (iii) within thirty (30) Days of its completion, the specifications of major equipment components of the Facility; (iv) within thirty (30) Days of its completion, the detailed engineering of the Facility; and (v) within thirty (30) Days of its receipt by Operator, the manufacturer's guaranteed performance data. Operator shall submit progress reports in a form satisfactory to PREPA on the first Day of every Month until Commercial Operation Date and notify PREPA of any changes to licensing and milestones construction schedules in a timely manner. PREPA shall have the right to notify Operator of deviations from applicable design and construction standards or from documents previously submitted to PREPA resulting therefrom, and, in such event, PREPA and Operator shall cooperate in good faith to resolve the issues raised by PREPA; if the Parties are

unable to reach agreement in a timely manner, such issues shall be finally resolved by an independent engineer jointly selected and paid for by the Parties (taking into account the construction schedule). During the resolution of these issues Operator may continue to work in a manner not to affect the overall schedule of the project. Operator shall cooperate in such physical inspections of the Facility as may be required by PREPA during and after completion of construction, provided that PREPA shall use its best efforts to ensure that such inspections do not interfere with the normal course of construction or operation of the Facility. PREPA's technical review and inspection of the construction of the Facility, pursuant to this Agreement, regardless of time and manner, shall not be construed as endorsing the design thereof nor as any warranty of the safety, durability, or reliability of the Facility.

4.3 Operator shall notify PREPA in writing of a proposed Initial Synchronization Date ("Proposed Initial Synchronization Date") and the start-up and testing schedule for the Facility not later than one hundred eighty (180) Days prior to such Proposed Synchronization Date. Operator shall have the right to postpone such date with at least two (2) weeks advance notice to PREPA. PREPA and Operator shall agree on the Proposed Initial Synchronization Date for the Facility and PREPA shall have the right to have a representative present during such period.

4.4 Operator shall provide PREPA with relay settings for review and inspection by PREPA no later than one hundred eighty (180) Days prior to the Proposed Initial Synchronization Date. If these are not found to be acceptable to PREPA, Operator agrees to comply with any request made by PREPA within sixty (60) Days of Operator's receipt of PREPA's request to provide acceptable relay types and relay settings. Operator shall also provide PREPA with Facility design heat balance, flow diagrams and major equipment list for review prior to Financial

Closing Date. All information must be submitted in a manner acceptable to PREPA, particularly the turbine generator data, which shall be used for PREPA's inspections and transient stability analysis. Turbine generator data for the Facility must be completely submitted at least one hundred fifty (150) Days prior to the Proposed Initial Synchronization Date. PREPA agrees to give any comments or suggested changes which it is entitled to give to Operator pursuant to this Section 4.4 within sixty (60) Days after Operator submits any required documents or other information to PREPA.

4.5 Operator and PREPA shall mutually develop detailed written operating procedures no later than one hundred twenty (120) Days prior to the Proposed Initial Synchronization Date. The operating procedures will be based on the design of the Facility, design of the interconnection to PREPA's bulk electric system, and PREPA's standard operating procedures. The operating procedures shall include procedures to integrate the Facility and output into PREPA's bulk electric system. Topics covered shall include, but not necessarily be limited to, method of day-to-day communications, key personnel lists for both Operator and utility operating centers, clearances and switching practices, outages scheduling, daily available capacity and Energy reports, Facility operations log, and reactive power support. The operating procedures can only be modified with the written consent of the Parties.

4.6 PREPA shall prepare and submit to Operator a written voltage schedule for the Facility no later than thirty (30) Days prior to the Proposed Initial Synchronization Date. PREPA may change such voltage schedule upon thirty (30) Days prior written notice. Operator shall use such voltage schedule in the operation of its Facility provided that it is in accordance with the Design Limits of the Facility. Operator shall specify that its generator(s) shall be capable of

operating at a 0.85 power factor (lagging) at the maximum kilowatt rating. This voltage schedule shall be based on the normally expected operating conditions for the Facility and the reactive power requirements of PREPA's system.

4.7 PREPA reserves the right to delay the Initial Synchronization Date for the Facility due to problems with the Facility which could adversely affect PREPA's operations. In such event, PREPA shall give Operator notice of such problems and Operator shall promptly remedy any problems with facilities or equipment which Operator installed or maintains.

4.8 Operator shall provide PREPA with certified as-built drawings of the Facility within one hundred twenty (120) Days after Commercial Operation Date.

## ARTICLE 5 - TERM

The term of this Agreement ("the Term") shall begin with the Effective Date and shall continue for a period of twenty-five (25) Agreement Years unless extended under Section 20.1 (c) hereof, or terminated in accordance with Article 18. If the Term is extended under this Agreement, the word Term shall thereafter be deemed to mean the original Term so extended.

# ARTICLE 6 - REPRESENTATIONS AND WARRANTIES

6.1 Operator represents and warrants that, commencing six (6) Months prior to the Commercial Operation Date, Operator shall have at all times a reliable supply of Fuel of quality and in quantity not less than the Maximum Annual Fuel Requirement, which shall consist of any existing Fuel inventory and enforceable contracts for Fuel supply. From time to time, as PREPA may reasonably request, Operator shall provide PREPA evidence of its compliance with this obligation. Operator shall have an on-site Fuel supply of not less than the Maximum Monthly Fuel Requirement.

6.2 Operator warrants that the Facility shall be operated and maintained in accordance with: (a) operating and maintenance standards recommended by the Facility's equipment suppliers; (b) operating procedures developed pursuant to Section 4.5; and (c) Prudent Utility Practices, including without limitation, synchronizing, voltage and reactive power control.

6.3 Operator warrants that the Facility shall be operated in such a manner so as not to have an adverse effect on PREPA's voltage level or voltage waveform.

6.4 Operator warrants that the Facility shall be operated at the voltage levels determined pursuant to Section 4.6 provided such levels are within the Design Limits of the Facility.

6.5 Operator shall, at all times, comply with all applicable laws, ordinances, rules and regulations applicable to it unless, the noncompliance therewith would not have a material adverse effect on the operation or maintenance of the Facility, provided that in the event of any such noncompliance, Operator shall be diligently contesting any such law, ordinance, rule or

21

regulation in good faith. Operator shall give all required notices, shall procure and maintain all material governmental permits, licenses and inspections necessary for the performance of this Agreement, and shall pay all charges and fees in connection therewith unless Operator shall be diligently contesting such payments in good faith.



6.6 Operator warrants that any combustion waste or by-product produced by the operation of the Facility, which cannot be used for beneficial commercial uses, will not be stored anywhere in the Commonwealth of Puerto Rico for a period in excess of one hundred eighty (180) Days and that it will not be disposed anywhere in the Commonwealth of Puerto Rico or its neighboring waters. The process for obtaining the approval for any disposal or use of such combustion waste or by-product shall not adversely affect the milestone schedules set forth in this Agreement.

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

6.8 The Operator hereby warrants:

(a) As of the Effective Date, the Operator is a partnership duly organized, validly existing and in good standing under the laws of Delaware and authorized to do business in the Commonwealth of Puerto Rico. The Operator 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 the Operator of this Agreement have been duly authorized by all necessary corporate or partnership action, and do not and will not (i) require any consent or approval of the Operator's Board of Directors, shareholders, or partners other than that which has been obtained, (evidence of which shall be, if it has not heretofore been delivered, to PREPA), (ii) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect, or (iii) result in a breach of or constitute a default under the Operator's bylaws, other organic documents or other material indentures, contracts, or agreements.

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(c) The Operator is not in default under the corporate bylaws or other organic documents or other material indentures, contracts or agreements to which it is a party or by which it or its property may be bound.

(d) This Agreement is a valid and binding obligation of the Operator.

(e) There is no pending action or proceeding affecting the Operator before any court, governmental agency or arbitrator that could be expected to affect materially and adversely the financial condition or operations of the Operator or the ability of the Operator to perform its obligations under this Agreement, or which purports to affect the legality, validity or enforceability of this Agreement (as in effect on the date hereof).

(f) Operator shall have committed as of the Financial Closing Date, and shall have contributed prior to the Commercial Operation Date of the Facility an amount of not less than ten percent (10%) of the Facility cost in Equity Capital of which not more than 50% of the

Equity Capital shall be in the form of subordinated debt. Such initial amount in Equity Capital shall be maintained throughout the Term of this Agreement. PREPA shall have the right to review the documents establishing the commitment of Equity Capital, to confirm that such commitment has been made to its satisfaction.

(g) Operator agrees to maintain a minimum Working Capital of four million dollars (\$4 million) on the Commercial Operation Date, ten million dollars (\$10 million) by the end of the first Agreement Year, fifteen million dollars (\$15 million) by the end of the second Agreement Year, and twenty-five million dollars (\$25 million) by the end of the third Agreement Year and thereafter. Operator further agrees to maintain the following amounts of Working Capital in cash, including an operating and maintenance reserve cash account, which shall be deposited in a local bank or United States bank if required by the Lenders: by the end of the first Agreement Year, three million dollars (\$3 million); by the end of the second Agreement Year, six million dollars (\$6 million); and by the third Agreement Year and thereafter, ten million dollars (\$10 million).

"Working Capital" shall mean the excess of Current Assets over Current Liabilities. "Current Assets" shall include an operating and maintenance reserve cash account, non-restricted cash and marketable securities available for current operations, inventories, other receivables collectible in one year, accounts receivable, notes receivable, and prepaid expenses. "Current Liabilities" shall include accounts payable, collections received in advance of services, accrued expenses and other liabilities (excluding principal and interest repayment) coming due within one year.

(h) On the Financing Closing Date Operator shall provide, as credit support

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for the Permanent Financing to be incurred by Operator for the Facility, the highest rated letter of credit then available to the Operator which results in the most cost-effective overall financing for the Facility; however, in the event the most cost-effective overall financing for the Facility is obtainable without a letter of credit, Operator shall upon PREPA's approval secure such financing without a letter of credit.

6.9 Operator agrees that upon request of PREPA and at no cost to PREPA, Operator shall cause its counsel to issue and deliver an opinion in a form acceptable to PREPA at the Financial Closing Date affirming the representations in Section 6.8 (a) to (e).

Operator agrees that, within forty-five (45) Days after every other Quarter 6.10 following the Commercial Operation Date it will cause to be delivered to PREPA a report prepared in accordance with Generally Accepted Accounting Principles (GAAP) and signed by the Chief Financial Officer of the Operator setting forth the following:

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

In addition, Operator agrees that each Fiscal Year following the Commercial Operation Date it will cause an audit to be prepared in accordance with GAAP, of its books and accounts pertaining to the Facility by an independent firm of certified public accountants acceptable to PREPA, of suitable experience and responsibility. Such audit shall commence on or before July 31 of the following Fiscal Year and shall be completed within ninety (90) Days after commencement date. On or before the last Day of the first Month following the completion of such audit, reports of such audits shall be delivered to PREPA. Such audit reports shall set forth,

in respect to the preceding Fiscal Year, the same matters as are herein above required for the semiannual reports.

Operator further agrees that it will cause to be delivered to PREPA an annual certification of the names of its directors, officers, accountants, and consulting engineers.

6.11 Operator shall make available to PREPA on a confidential basis copies that Operator receives of any and all maintenance evaluations or similar reports to be provided by the Operator to any third party with a financial security interest in or lien on the Facility, including evaluations or reports generated at the request of such third parties or performed by an engineer employed by third party.

6.12 Operator agrees to preserve and keep in full force and effect during the Term of this Agreement its partnership existence and all material franchises, licenses and permits necessary to the proper conduct of its business, including without limitation the business of constructing, owning and operating the Facility. Operator further agrees that it will not permit or suffer any entity that is a general partner therein as of the Effective Date to cease to be such a general partner, will not permit any entity that is not a general partner therein as of the Effective Date to become such a general partner and will not dissolve and wind-up its affairs, or otherwise dispose of all or substantially all of its assets, without the prior approval of PREPA, which approval shall not be unreasonably withheld or delayed.

6.13 Operator agrees that whenever a technology improvement applicable to the Facility, other than capital improvements not in excess of one million dollars (\$1,000,000) escalated from the Effective Date with changes in the PR-CPI as defined in Article 11, becomes commercially available at a cost that is likely to justify its incorporation into the Facility and known to

Operator, Operator shall provide written notification of said technology improvement to PREPA. Following Operator's decision (or PREPA's request) to investigate the feasibility of incorporating such technology improvement into the Facility, Operator shall submit to PREPA a technical report describing such improvement, a cost estimate and the expected benefits of the incorporation of such technology improvement into the Facility. Operator further agrees that if it decides to incorporate such technology improvement into the Facility, PREPA shall have the option to participate equally with Operator in the costs and benefits of such technology improvement.

PREPA agrees that all information (whether financial, technical, or otherwise) 6.14 obtained from Operator or from PREPA's inspections of the Facility or from any third parties pursuant to Section 6.11 which is not otherwise generally available to the public shall be kept confidential and used solely by PREPA in connection with the performance of its obligations under this Agreement. Disclosure of such information may be made only within PREPA's organization to key personnel, and to third parties serving as PREPA's legal, financial or technical advisors, whose duties justify their need to review and know such material. PREPA shall require each person (and personnel thereof) to agree for the benefit of Operator to maintain the confidentiality of such information. To the extent PREPA is required to disclose such information by any court, governmental agency or to the extent necessary to secure governmental approval or authorization, PREPA shall use its best efforts to seek a confidentiality agreement that assures confidential treatment of the information consistent with the terms of this Section 6.14. In the event PREPA is not successful in seeking a confidentiality agreement, at PREPA's request, Operator shall participate with PREPA in any court action necessary to obtain

27

an appropriate protective order.

6.15 Operator agrees that it will be required to obtain the consent of PREPA, which will not be unreasonably withheld, before establishing the Financial Closing Date if, and only if, the Construction Permit has been issued but is not yet final and nonappealable.

6.16 PREPA hereby agrees that, throughout the Term of this Agreement, all payments by PREPA to Operator under this Agreement shall be treated as current expenses as defined by the terms of the Trust Indenture dated January 1, 1947 as amended between PREPA and The Chase Manhattan Bank (National Association) as successor trustee, the Trust Agreement dated as of January 1, 1974 as amended (the "1974 Agreement") between PREPA and State Street Bank and Trust, Company, as successor trustee, and any successor indentures or agreements, including any amendments, supplements or modifications thereto.

6.17 PREPA shall cause its counsel to issue an opinion in a form reasonably acceptable to Operator or its Lenders at the Financial Closing Date affirming that the Agreement is a valid and binding obligation of PREPA, enforceable according to its terms.

6.18 Operator agrees that (i) in seeking personnel to perform services for the Facility in Puerto Rico, Operator and its subcontractors shall give first preference to individuals who (a) have been residents of Puerto Rico for a continuous period of at least one year immediately prior to starting work on the Facility, (b) at some time prior to starting work on the Facility, but not necessarily including the period of time immediately prior to starting work on the Facility, were residents of Puerto Rico for a period of at least five (5) consecutive years and have relocated to Puerto Rico in order to perform work on the Facility, or (c) were born in Puerto Rico or have at least one parent who was born in Puerto Rico and in the opinion of PREPA sufficient

connection with Puerto Rico to be entitled to the preference established in this paragraph; and (ii) without limitation of the foregoing, not less than thirty percent (30%) of the total personnel hours expended in performance of the services in Puerto Rico under this Agreement prior to the Commercial Operation Date, and not less than fifty percent (50%) of the total personnel hours expended in performance of the services under this Agreement following the Commercial Operation Date, shall be performed by individuals who meet the conditions of (a), (b), or (c) in clause (i) above. Without limitation of the foregoing, not less that thirty percent (30%) of the services performed in Puerto Rico under this Agreement prior to the Commercial Operation Date, and measured by person-hours on an annual basis, shall be performed by business concerns which are owned and controlled by one or more individuals who meet at least one of the three criteria described in clause (i) of the preceding sentence. For purposes of the preceding sentence, owned and controlled means a business (i) which is at least fifty-one percent (51%) owned 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 special partnership such individuals must hold at least fifty-one percent (51%) of the beneficial interests in the partnership); and (ii) whose management and daily business operations are controlled by one or more of such individuals (who need not be owners of the business).

6.19 At all times, as available, Operator agrees to provide at no cost to PREPA copies of all site related data, including without limitation, technical, environmental, geological, seismological, licensing and permitting data in Operator's possession, excluding any proprietary design information relating to the Facility.

6.20 Operator shall cause its contract with its contractor of the Facility to include a

provision that recognizes PREPA's right, but not the obligation, to assume all rights and obligations of Operator under such contract in the event Operator and Lenders abandon the Facility.

6.21 Operator warrants that it will include in its contract for the construction of the Facility a dispute resolution provision providing that in the event the construction contractor suspends construction on account of a dispute with Operator or a default under the construction contract, the construction contractor and Operator shall resolve the dispute or default within sixty (60) Days of the commencement of the suspension of construction, and the construction contractor and Operator agrees to resume construction immediately upon resolution of the dispute or default, but not later than 60 days after the commencement of the suspension of construction.

6.22 Operator warrants that it will require that its contractors guaranty that the Facility will be constructed in a manner that will allow Operator to comply with all the terms and conditions established under this Agreement and that will meet all environmental standards.

#### ARTICLE 7 - DISPATCHING

7.1 PREPA, at its sole discretion, shall have the right to Dispatch, the Facility within its Design Limits. PREPA's Operating Center will determine the appropriate level of Dispatch by means of its Automatic Generation Control (AGC) system and the use of Prudent Utility Practices. The Operator will give the dispatcher a status report every eight (8) hours of the Facility conditions including any Facility restrictions and the hourly integrated net generation. Operator shall notify the dispatcher immediately if there is any significant change in the Facility's status. The Operator shall make available through the Facility's remote terminal unit ("RTU") the actual Facility load limit adjustment.

7.2 By Friday of each week, PREPA shall provide Operator with an estimated schedule of operations for the following week. The actual schedule will be determined by the requirements for operation in accordance with Economic Dispatch or PREPA's automatic generation control system and may be substantially different than the schedule provided in accordance with this Section.

7.3  $\sqrt{}$  The Facility can be dispatched from 100% of its Dependable Capacity (the "Maximum Dispatch Operating Level") to 50% of its Dependable Capacity (the "Minimum Dispatch Operating Level").

The Fuel Cost Determination Factor (FCDF) shall be 9800 BTU per net kWh, subject to adjustment in accordance with Article 22. The FCDF shall be adjusted for dispatch of the Facility below 90% of Dependable Capacity by multiplying the FCDF by the multiplier as follows:

| = | Dependable Capacity requested by PREPA  | Percentage of Multiplier                 |
|---|---|--|
|   | $\begin{array}{l} 90\% \leq \mathbf{x} \\ 80\% \leq \mathbf{x} < 90\% \\ 70\% \leq \mathbf{x} < 80\% \\ 60\% \leq \mathbf{x} < 70\% \\ 50\% \leq \mathbf{x} < 60\% \end{array}$ | 1.00<br>1.016<br>1.031<br>1.063<br>1.094 |

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Within ninety (90) Days after the Commercial Operation Date, Operator shall determine if the Facility can be dispatched below 50% of its Dependable Capacity without adversely affecting the Facility's technical and environmental operating limits. If Operator so determines, Operator shall inform PREPA. In that event, PREPA and Operator shall work together to establish an appropriate Minimum Dispatch Operating Level, and an appropriate adjustment to the FCDF above, based on Operator's testing of the Facility.

7.4 After the Facility has been off line it can achieve the levels of operation specified above within the time periods indicated below:

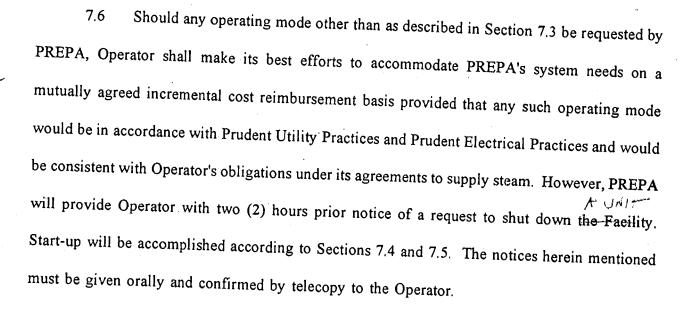
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If the Facility and associated boilers have been out of operation for an extended period of time and cooled to ambient temperature, it can be synchronized within 10 hours and achieve full electrical output within 14 hours following PREPA's notice to start-up.

The Facility may be held in standby condition for up to 12 hours, in which the generating Facility and boiler temperatures are maintained such that the Facility can achieve full electrical output within 4 hours following PREPA's notice to start-up ("Hot Restart Conditions").

7.5 Under Hot Restart Conditions, once the Facility has been synchronized with PREPA's system, its output may be increased at the rate of 2% of Dependable Capacity per minute. If the Facility is operating above fifty percent (50%) of the Dependable Capacity, its

output may be increased at the rate of 5% of actual load per minute up to the Maximum Dispatch Operating Level and may be reduced at the rate of 5% of actual load per minute down to fifty percent (50%) of the Dependable Capacity. These are good faith estimated values that may be adjusted upwards or downwards by mutual agreement of the Parties based on operating experience and testing of Facility capability.



7.7 If during the Term of this Agreement the cost of the Facility's Energy becomes more costly on an incremental basis than other sources then available to PREPA, the Net Electric Output of the Facility may be reduced to zero upon PREPA's request. The duration of each such reduction will be counted as Economy Shutdown Hours and during such period the Dependable Capacity of the Facility/will be utilized as a capacity reserve. PREPA shall be limited to not more than five (5) such requests per Agreement Year and not more than one (1) request per Month. Following each such reduction and subsequent request by PREPA to the Operator to increase the Net Electrical Output from zero to at least the Minimum Dispatch Operating Level, PREPA shall pay to Operator a Start-up Payment as set forth in Article 11 to compensate

Operator for the costs of shutdown and start-up of the Facility. For the first extended period, PREPA shall provide Operator with at least twenty-four (24) Months advance notice of any planned shutdown of the Facility that would exceed thirty (30) consecutive Days or sixty (60) Days in any Calendar Year. PREPA shall provide Operator with sufficient notice to permit Operator to obtain and install an auxiliary boiler, if required, to meet all of the steam requirements of Operator's steam customer during the extended shutdown period and PREPA shall fully reimburse Operator for (1) the incremental capital and operating costs associated with the acquisition and use of the boiler, or (2) the cost to buy out the contract with Operator's steam customers, whichever is lower.

34

# ARTICLE 8 - CONTROL AND OPERATION OF THE FACILITY

8.1 Operator shall, at least thirty (30) Days prior to the Commercial Operation Date, submit to PREPA a proposed Scheduled Outage Program for the first Year of the Facility's operations. Thereafter, Operator shall submit to PREPA by September 1 of each Year, its proposed Scheduled Outage Program for the next Calendar Year. Such proposed Scheduled Outage Program shall be in accordance with Exhibit A to this Agreement.

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8.2 Within sixty (60) Days of the receipt of the proposed Scheduled Outage Program, PREPA shall notify Operator in writing whether the proposed scheduled outage periods are acceptable. If PREPA cannot accept any of the proposed scheduled outage periods, PREPA shall advise Operator of the time period closest to the proposed period when the outage can be scheduled. Operator shall only schedule outages during periods approved by PREPA, and such approval shall not be unreasonably withheld. Operator shall not schedule an outage during the period of April 1st to September 30 of any Year that would decrease the capacity output of the Facility below its Dependable Capacity without the prior written consent of PREPA. Notwithstanding the above, Non-Scheduled Outages may be conducted during Off-Peak Periods.

Operator shall make its best efforts to comply with the Scheduled Outage Program. In the event the Operator has reason to believe that the Facility will exceed the total allowable scheduled outage hours, the Operator shall notify PREPA, as soon as possible, of the cause or causes for such delay and of the additional time required to finalize the outage. In such event, Operator will use its best efforts to return the Facility to Operation in the shortest possible time.

8.3 PREPA shall have the right, upon six (6) Months prior written notice, to revise,

but not lengthen, the period during which Operator shall not schedule an outage. PREPA shall not direct operation of the Facility in such a manner as to deprive Operator of the scheduled outage periods required in accordance with Prudent Utility Practices and Prudent Electrical Practices.

8.4 Operator shall control and operate the Facility consistent with PREPA's Dispatch of the Facility; provided, however, that from time to time PREPA shall not be obligated to purchase or receive, and may require Operator to reduce, Energy deliveries if:

- (a) In PREPA's sole opinion, a condition exists which constitutes an Emergency; or
- (b) It is necessary to construct, install, maintain, repair, replace, remove, investigate, inspect or test any part of the Facility or the Interconnection Facilities, or any other affected part of PREPA's system.

PREPA will use its best efforts to notify and coordinate such reductions with Operator and to minimize the number, length and degree of such reductions. Except with respect to Section 8.4 (a) above, PREPA shall use its best efforts to provide Operator with at least twenty-four (24) hours prior notice; such notice may be given orally and must be confirmed by telecopy to the Facility. Any reduction required of Operator hereunder shall be implemented and completed as soon as possible consistent with Prudent Utility Practices.

8.5 Operator shall employ qualified personnel for monitoring the Facility and for coordinating operations of the Facility with PREPA's system. Operator shall provide PREPA, no less than one hundred eighty (180) Days prior to the Commercial Operation Date with a list and qualifications of the Facility's personnel who will be responsible for supervising the operation and maintenance of the Facility and coordinating operations of the Facility with PREPA's system. Operator shall ensure that such personnel are on duty at all times, twenty-four (24) hours a Day

and seven (7) Days a week.

8.6 If an Emergency is declared by PREPA, PREPA's Operations Center will notify Operator's personnel and, if requested by PREPA, Operator's personnel shall place the Net Electrical Output within the exclusive control of PREPA's Operations Center for the duration of such Emergency. Without limiting the generality of the foregoing, PREPA's Operation Center may require Operator's personnel to raise or lower production of Energy generated by the Facility to maintain safe and reliable load levels and voltages on PREPA's transmission and/or distribution system; provided, however, any changes in the level of the Net Electrical Output required by PREPA hereunder shall be implemented in a manner consistent with Prudent Utility Practices and within the Facility's Design Limits.

8.7 Operator shall cooperate with PREPA in establishing Emergency plans, including without limitation, recovery from a local or widespread electrical blackout; voltage reduction in order to effect load curtailment; and other plans addressing circumstances which may arise. The Operator shall provide to PREPA all pertinent technical references available in relation to start-up times and minimum load-carrying ability.

8.8 If Operator has a scheduled outage, and such scheduled outage occurs or would occur coincident with an Emergency making operation of the Facility necessary or desirable, Operator shall make best efforts to reschedule the outage or, if the outage has begun, to expedite the completion thereof.

8.9 Operator shall provide at its expense the following communication facilities linking the Facility with the PREPA dispatching centers:

(a) For the purpose of telemetering, data acquisition, and automatic generation control by PREPA:

37

- (1) One dual ported RTU for data acquisition and generation control compatible with PREPA's Energy Management System.
- (2) Two voice grade telecommunication circuits for the dual ported RTU. One to Monacillos transmission center ("TC") and the other to Ponce TC.
- (3) One voice grade telecommunication circuit for the Facility for the backup telemetry to Monacillos TC.
- (4) Pro rata cost of installation by PREPA of all equipment needed for this purpose outside of the Facility and attributable to the Facility.
- (b) A voice telephone extension for the purpose of accessing PREPA's dial-up metering equipment and for communicating with the designated PREPA Operations Center.
- (c) Telephone line and equipment to transmit and receive telecopies for purposes of confirming the coordinations.
- (d) Ring down telephone line to Monacillos TC for the communication of the coordinations.
- (e) Telecommunications radio compatible with PREPA's trunking radio system.

Items provided by Operator in accordance with this Section 8.9 shall be subject to the approval of PREPA, which approval shall not be unreasonably withheld or delayed.

8.10 Each Party shall keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement. All such records and data shall be maintained for a minimum of five (5) Years after the creation of such record or data and for any additional length of time required by regulatory agencies with jurisdiction over the Parties; provided, however, that neither Party shall dispose of or destroy any such records or data that are not confidential with respect to the other Party even after the five (5) Years without thirty (30) Days prior notice to the other Party. If notice is given to the notifying

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Party during such thirty (30) Day period, the notifying Party shall promptly deliver such records and data to the Party wishing to retain such records.

Operator shall maintain an accurate and up-to-date operating log at the Facility with records of: (i) real and reactive power production for each clock hour; (ii) changes in operating status and scheduled outages; and (iii) any unusual conditions found during inspections.

Either Party shall have the right from time to time, upon fourteen (14) Days written notice to the other Party, to examine the records and data of the other Party relating to this Agreement at any time during the period the records are required to be maintained.

8.11 PREPA agrees to provide electric service to Operator as requested by Operator at the most advantageous rate available to Operator in accordance with PREPA's applicable rates.

# **ARTICLE 9 - INTERCONNECTION**

9.1 The Operator shall design, construct and install all Interconnection Facilities and Additional Interconnection Facilities. The Operator shall own and be responsible for the safe and adequate\_operation and maintenance of all Interconnection Facilities other than metering equipment. PREPA shall own and be responsible for the safe and adequate operation and maintenance of the Additional Interconnection Facilities. The design of the Interconnection Facilities and the Additional Interconnection Facilities shall be part of the project design to be submitted for approval to the Permits and Regulations Administration of Puerto Rico. In addition, the design of the Interconnection Facilities and the Additional Interconnection Facilities shall be subject to review by PREPA.

9.2 Operator shall provide to PREPA data required in Exhibit C attached hereto by the dates specified therein.

9.3 PREPA shall perform an interconnection study and provide the same to Operator within one hundred twenty (120) Days of Operator's completion of the requirements of Section 9.2 above under conditions agreed upon by the Parties. The interconnection study shall, at a minimum, (a) determine the major interconnection equipment required to complete the Interconnection Facilities and Additional Interconnection Facilities, and (b) designate the PREPA Operations Center that will coordinate the operation of the Facility. The Interconnection Facilities design shall be consistent with Prudent Utility Practices considering the functional oneline diagram and site plan provided to PREPA pursuant to Section 9.2.

The Additional Interconnection Facilities shall include the construction of a 230 kV

switchyard at the site designated in Exhibit D, the construction of 2 transmission lines of approximately 2 miles from the 230 kV switchyard to PREPA's 230 kV network, and the necessary rights of way to construct and utilize the transmission lines.

9.4 If Operator cannot obtain the land rights necessary for the Interconnection-Facilities and the Additional Interconnection Facilities at a fair market value within a reasonable time, Operator shall so notify PREPA, and PREPA, upon request of Operator, shall, within a reasonable time, obtain and maintain title to all the land, or such portion of such land that Operator requests PREPA to obtain, necessary for the Interconnection Facilities and the Additional Interconnection Facilities, and shall provide to Operator sufficient rights to use the land to enable Operator to construct and install the Interconnection Facilities and Additional Interconnection Facilities and to operate and maintain the Interconnection Facilities for the Term of the Agreement.

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9.5 Operator shall notify PREPA and provide the following information which PREPA shall have the right to review and comment on: (i) a detailed list of the equipment required for the Interconnection Facilities and Additional Interconnection Facilities; (ii) the total estimated cost of the Interconnection Facilities and Additional Interconnection Facilities including the estimated cost of construction and/or installation; and (iii) the time required to construct and/or install the Interconnection Facilities and Additional Interconnection Facilities.

9.6 Within one hundred twenty (120) Days of PREPA's receipt of the information submitted by Operator in accordance with Section 9.5 above, PREPA shall either issue Operator a Notice to Proceed or notify Operator of any disagreement with the information provided. In such event Operator and PREPA will use their best efforts to reach an agreement; if the Parties

are unable to reach an agreement in a timely manner such issues shall be finally resolved by an independent engineer jointly selected and paid for by the Parties (taking into account the construction schedule). Operator shall not purchase, construct or install any Interconnection— Facilities or Additional Interconnection Facilities until receipt of a Notice to Proceed from PREPA, which shall constitute acceptance by PREPA of the need to purchase, construct or install such Interconnection—Facilities or Additional Interconnection Facilities and the total estimated cost thereof previously provided by the Operator to PREPA. Once the Notice to Proceed is received by Operator, Operator shall use its best efforts to complete construction and/or installation of the Interconnection Facilities and Additional Interconnection Facilities within the time period Operator previously stated that such construction and/or installation would take.

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9.7 If the total costs incurred by Operator to purchase, construct and install the Interconnection Facilities and the Additional Interconnection Facilities exceed five million dollars (\$5 million), PREPA will pay Operator the difference between such total costs and five million dollars (\$5 million) within forty-seven (47) Days of PREPA's receipt of each of the invoices that, when added to the prior invoices, exceed five million dollars (\$5 million). If the total costs incurred by Operator to purchase, construct and install the Interconnection Facilities and the Additional Interconnection Facilities are less than five million dollars (\$5 million), Operator will pay PREPA the difference between five million dollars (\$5 million) and such total costs within forty-seven (47) Days after the Commercial Operation Date. The total costs incurred by Operator pursuant to this section shall not exceed by more than ten percent (10%) of the estimated cost previously agreed under Sections 9.5 and 9.6, without PREPA's previous written approval.

9.8 PREPA reserves the right to modify or expand its requirements for protective

devices in conformance with Prudent Electrical Practices.

Ú Ar 9.9 Each Party shall notify the other in advance of any changes to its system that will affect the proper coordination of protective devices on the two systems.

9.10 Notwithstanding the foregoing, PREPA will have the option to design, construct and install all or parts of the Interconnection Facilities and Additional Interconnection Facilities. In order to exercise this option, PREPA, after a feasibility study and no later than two hundred forty (240) Days after the Effective Date, shall notify Operator of its decision to construct and install all or part of the Interconnection Facilities and Additional Interconnection Facilities. In such event, Operator will comply with Section 9.4 through Section 9.7 to the extent it applies to that part of the Interconnection Facilities or Additional Interconnection Facilities for which Operator will be responsible.

9.11 In the event PREPA notifies Operator of its decision to construct all or parts of the Interconnection Facilities and Additional Interconnection Facilities, PREPA shall be solely responsible for such construction and all legal requirements for such construction. PREPA shall use best efforts to complete such construction prior to the Proposed Initial Synchronization Date specified pursuant to Section 4.3 herein. In the event PREPA fails to complete such construction prior to the Proposed Initial Synchronization Date, Operator shall have the option to complete such construction in PREPA's place. If Operator exercises its option to complete such construction, PREPA will use its best efforts to assist Operator to complete the construction in a timely manner. If such construction is not completed by the Proposed Initial Synchronization Date the Commercial Operation Date shall be deemed to have occurred sixty (60) Days after the Proposed Initial Synchronization Date, and PREPA shall be responsible to pay Operator the

Capacity Purchase price times the Estimated Dependable Capacity commencing on the sixty-first (61st) Day after the Proposed Initial Synchronization Date. In the event that Operator exercises its right to complete such construction, the Commercial Operation Date shall be deemed to have occurred as set forth in the preceding sentence unless PREPA can demonstrate that the inability to complete such construction was caused by Operator's failure to exercise due diligence.

#### **ARTICLE 10 - METERING**

10.1 PREPA shall own and maintain all meters and metering devices (including RTUs) used to measure the delivery and receipt of Energy, or Energy and Dependable Capacity, for payment purposes. Operator shall install meters and metering devices for backup purposes subject to Section 10.3; provided that such meters and metering devices shall be subject to PREPA's approval.

10.2 All meters and metering equipment including any backup meters used to determine the Energy, or Energy and Dependable Capacity, delivered to PREPA shall be located at the Interconnection Point and sealed, and the seals broken only by PREPA personnel when the meters are to be inspected, tested or adjusted; PREPA shall give Operator two (2) weeks prior written notice thereof and Operator shall have the right to have a representative present during the meter inspection, testing or adjustment.

10.3 At least once a year and, in addition, from time to time upon two (2) weeks prior written notice by Operator, PREPA will test and calibrate the meter(s), including any backup meters, in accordance with the provisions for meter testing as established in American National Standard Code for Electricity Metering (ANSI) Standard C 12.16 for Solid State Electricity Meters, and the Handbook for Electrical Metering, Edison Electric Institute 8th Edition or the updated edition in effect and available to PREPA at the time the test is performed. When, as a result of such a test, a meter is found to be no more than two percent (2%) fast or slow no adjustment will be made in the amount paid to Operator for Energy, or Energy and Dependable Capacity, delivered to PREPA. If the meter is found to be more than two percent (2%) fast or

slow, PREPA will use the backup meter to calculate the correct amount delivered to PREPA for the actual period during which inaccurate measurements were made or, if the actual period cannot be determined to the mutual satisfaction of the Parties, for a period equal to one-half of the time elapsed since the most recent test, but in no case for a period in excess of six (6) Months. If the backup meters are not available, or if the testing of the backup meters demonstrates that those meters are more than two percent (2%) fast or slow, the meter readings for the actual period during which inaccurate measurements were made shall be adjusted based on the corrected meter readings or, if the actual period cannot be determined to the mutual satisfaction of the Parties, for a period equal to one-half of the time elapsed since the most recent test, but in no case for a period in excess of six (6) Months. The previous payments by PREPA for this period shall be subtracted from the amount of payments that are calculated to have been owed under this Agreement. The difference shall be offset against or added to the next payment to either Party as appropriate under this or other agreements between the Parties.

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10.4 Starting with the Initial Synchronization Date, PREPA shall read the meters once a Month, which monthly period shall not exceed thirty-three (33) Days nor be less than twentyeight (28) Days (the "Billing Period"), to determine the amount of Energy delivered to PREPA during the immediately preceding Billing Period. The meters will be read on the dates indicated on the meter reading program prepared by PREPA and submitted to the Operator on or before January 1st of each Calendar Year. PREPA shall notify Operator in advance of any change on the meter reading program. The Operator may be present, at its option, during all meter readings. PREPA shall provide the Operator with a written statement containing the results of such meter readings within fifteen (15) Days following the reading.

## ARTICLE 11 - BILLING AND PAYMENT

11.1 PREPA shall pay Operator for the Energy and Dependable Capacity delivered and billed to PREPA on a monthly basis. Such payment will be equal to an Energy Purchase Price times the Energy delivered, a Capacity Purchase Price times the Dependable Capacity and a Startup Payment.

11.1(a) Energy Purchase Price - PREPA shall pay Operator for the Energy of the Facility (including Energy delivered prior to the Commercial Operation Date) measured by PREPA's meters installed in accordance with Section 10.1 on a cents per kWh basis at a rate equal to the Energy Purchase Price. The Energy Purchase Price shall be equal to the sum of (i) the Fuel Related Charge, plus (ii) the Variable Operation and Maintenance Charge.

11.1 (a)(1) The Fuel Related Charge (FRC) shall be calculated as indicated below:

FRC (cents/kWh) = Cost of Fuel x Fuel Cost Determination Factor 10,000

Where:

The Cost of Fuel shall be that price for Fuel used during the Billing Period for which such calculation is made, under pricing established in Article 13, and shall reflect that all-in price paid by Operator including transportation and all taxes, duties and any other governmental charges or impositions. The price shall be stated in dollars per million BTU's (HHV) (rounded to four decimal places) and calculated assuming Fuel burned on a first-in first-out Fuel inventory method.

The Fuel Cost Determination Factor for each hour shall be determined according to Section 7.3.

11.1(a)(2) The Variable Operation and Maintenance Charge shall be equal to

0.419 cents/kWh as of January 1, 1994, as increased or decreased as appropriate on January 1, 1995 and on each January 1 thereafter by the percentage change between the Puerto Rico Consumer Price Index For All Families corresponding to the Fiscal Year ending on June 30, 1993 (as published by the Puerto Rico Bureau of Labor Statistics, Department of Labor and Human Resources)(the "PR-CPI") and the PR-CPI corresponding to the Fiscal Year ending on the June 30th immediately preceding the date of such adjustment.

11.1(b) Capacity Purchase Price - The Capacity Purchase Price for Dependable Capacity shall be the sum of (i) the Demand Charge and (ii) the Fixed Operation and Maintenance Charge, calculated as indicated below.

11.1(b)(1) Demand Charge - Shall be the Base Demand Charge as in effect for the Agreement Year adjusted by the Force Majeure Delay Adjustment and the Financial Adjustment calculated as indicated below.

11.1(b)(1)(i) Base Demand Charge - Commencing on the Commercial Operation Date, the Base Demand Charge for Dependable Capacity shall be twentyone dollars and seventy-six cents (\$21.76) per kilowatt of Dependable Capacity per Month. The Base Demand Charge shall be changed at the beginning of each Agreement Year to be the Base Demand Charge as set forth below for such Agreement Year (as in effect for each respective Agreement Year, the "Base Demand Charge").

| <b>Base Demand Charge</b>   |  | Base Demand Charge   |  |
|---|--|--|--|
| Agreement Year<br>1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13 | <u>\$/kW_Month</u><br>21.76<br>21.98<br>22.20<br>22.42<br>22.64<br>22.87<br>23.10<br>23.33<br>23.56<br>23.80<br>24.04<br>24.28 | Agreement Year<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23<br>24<br>25 | \$/kW Month<br>24.77<br>25.01<br>25.26<br>25.52<br>25.77<br>26.03<br>26.29<br>13.28<br>13.41<br>13.54<br>13.68<br>13.68<br>13.82 |
| 10  | 24.52  |  |  |

11.1(b)(1)(ii) Force Majeure Delay Adjustment - The Base Demand

Charge for each Agreement Year set forth above through Agreement Year 20 shall be subject to adjustment in the event that the Financial Closing Date for the Facility is not achieved by 30 Months after the Effective Date ("Estimated Financial Closing Date") due to the occurrence of one or more Force Majeure events. The revised Base Demand Charge for each Agreement Year in such event shall be the Base Demand Charge set forth above for each such Year multiplied by a fraction, the numerator of which shall be the Construction Cost Index in effect on the Financial Closing Date and the denominator of which shall be the Construction Cost Index in effect for the Estimated Financial Closing Date. As used herein, the term Construction Cost Index shall mean the average of all regions in United States of the "Total Steam Production Plant (Table E, Line No. 6)" of the Handy-Whitman Index of Public Utility Construction Costs publication. The index value will be interpolated from such published index values assuming the increase or decrease in such index value occurred evenly throughout the six-Months index period. If such publication has been discontinued, a similar index reflecting such cost trends shall be substituted by mutual agreement.

11.1 (b)(1)(iii) Permanent Financing Adjustment

The Base Demand Charge for each Agreement Year (A) set forth above shall be subject to a Permanent Financing Adjustment each Month in the manner set forth below in the event that the Monthly Deemed Total Debt Service for the permanent financing of the Facility Debt is higher or lower than the Monthly Expected Total Debt Service at the Effective Date solely due to changes in (1) the Permanent Financing Interest Rates for each tranche of debt; (2) Fees related to the permanent financing of the Facility; (3) the principal repayment schedule for each tranche of debt for the permanent financing; or (4) the relative proportion each tranche of debt bears to the total of the permanent financing; provided, however, that the Base Demand Charge shall not be adjusted for any changes in the debt component of the Facility Cost, which, for the purposes of this Section, equals \$1,600 per kilowatt. The Permanent Financing Adjustment shall be established for the term of the permanent financing at the Financial Closing Date and shall be subject to further adjustment as a result of changes in the permanent financing due to costs associated with any refinancing approved by PREPA and with the rollover of any Section 936 funds that comprise a tranche of debt in the permanent financing at the Financial Closing Date, provided, however, that the initial Dependable Capacity shall not be determined until the Facility has been tested in accordance with Article 12 of this Agreement. The Permanent Financing Adjustment shall be calculated in accordance with the following formulas:

Permanent Financing Adjustment

Monthly Deemed Total Debt Service - Monthly Expected Total Debt Service

Where:

Monthly Deemed Total Debt Service

Monthly Actual Total Debt Service

Actual Permanent Financing Amount

Permanent Financing Interest

Monthly Expected Total Debt Service

Permanent Financing Interest Rate

- means the actual weighted average rate of interest charged for all tranches of debt for the permanent financing of the Facility to be determined in accordance with the following formula:

$$\frac{(X_1 \times Y_1 \times Z_1) + (X_2 \times Y_2 \times Z_2) + \dots + (X_n \times Y_n \times Z_n)}{(X_1 \times Z_1) + (X_2 \times Z_2) + \dots + (X_n \times Z_n)}$$

Where:

 $X_1$  = tranche 1 debt  $Y_1$  = annual interest rate of tranche 1 Monthly Actual Total Debt Service x \$1600/kW Actual Permanent Financing Amount (\$/kW).

<u>Permanent Financing Interest + Principal</u> initial Dependable Capacity

- <u>actual amount of permanent financing</u> initial Dependable Capacity
- means, commencing with the Month following the Commercial Operation Date, the total interest expense related to the permanent financing debt service for the Facility to be incurred over the pertinent Agreement Year, divided by twelve (12).
- means, commencing with the Month following the Commercial Operation Date, the principal repayment related to the permanent financing debt service for the Facility and fees related to the permanent financing of the Facility such as payments relating to interest rate swaps or other hedging agreements, attorneys' fees, underwriters' fees, accountants' fees, letters of credit fees and other fees that are to be incurred over the pertinent Agreement Year, divided by twelve (12).

means a level payment of \$14.09/kW-Month for a term of 240 Months.

Principal

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 $Z_1$  = average life of tranche 1  $X_2$  = tranche 2 debt  $Y_2$  = annual interest rate of tranche 2  $Z_2$  = average life of tranche 2  $X_n$  = tranche n debt  $Y_n$  = annual interest rate of tranche n  $Z_n$  = average life of tranche n

All years are expressed to the second decimal point. All percentages are expressed to the third decimal point. The permanent financing for the Facility will be obtained in multiple tranches of debt.

For each tranche of Permanent Financing, the average life is calculated in accordance with the following formula:

Sum of the Principal Repayments in each year x Year in which repayment is made Sum of the repayments

Examples of this adjustment are set forth in Exhibit E.

(B) The selection of the underwriter for the construction financing of the Facility shall be made by the Operator in Operator's sole discretion if there is no intention of issuing permanent debt. If the Operator intends to issue permanent debt as part of the construction financing, the conditions for the issuance of permanent debt shall apply.

(C) The selection of the underwriter for each tranche of the permanent financing of the Facility shall be made by PREPA from a list of six (6) qualified underwriters submitted by Operator, of which at least four (4) are authorized to do business in Puerto Rico and have local offices, whose approval shall not be unreasonably withheld.

Operator commits to use its best efforts to obtain the lowest possible financing cost for the permanent financing of the Facility Debt and PREPA and Operator shall mutually agree on the debt structure, issuance date, maturity schedule, interest rates and



issuance cost. Notwithstanding the foregoing, the marketing of the permanent debt is the sole responsibility of the Operator and PREPA is not responsible and does not guarantee the market availability of the total permanent debt or any tranche.

(D) In the event PREPA reasonably determines that refinancing by Operator of any tranche of the permanent financing of the Facility would produce a net present value savings of more than five percent (5%) with respect to that tranche, PREPA may request Operator to refinance that tranche. The total costs and expenses of such refinancing, including but not limited to issuance costs and expenses, underwriting fees and issuance expenses, prepayment charges, fees and expenses related to the debt being refinanced, and refinancing, shall be included in determining the total amount of the tranche of debt being refinanced. The Base Demand Charge shall be adjusted on a prospective basis in accordance with paragraphs (A), (B), and (C) above by the annual savings (specified in dollars per kW-Month) in permanent financing costs produced by such refinancing.

(E) Operator agrees to notify PREPA of the anticipated Permanent Financing Interest Rate at least forty-five (45) Days prior to the anticipated Financial Closing Date. If, at least fifteen (15) Days prior to the anticipated Financial Closing Date, PREPA demonstrates to Operator's satisfaction, by means of an opinion of an independent investment banking firm, that the Permanent Financing Interest Rate exceeds the all-in interest expenses rate (including any underwriting fees and expenses and credit enhancement fees and expenses) that PREPA could have obtained for its own account in the municipal market at or near the time of the Financial Closing Date for a similar Facility for the same amount of funds and for a comparable financing term plus three hundred fifty (350) basis points (such sum expressed as a rate of interest and referred to as the "Maximum Interest Rate"), then PREPA shall have the right, upon written notice to Operator prior to the anticipated Financial Closing Date, to terminate the Agreement upon payment to Operator, within sixty (60) Days of such notice, in an amount equal to (i) all costs accrued by or on behalf of Operator after the Effective Date, including all termination costs or fees, if any, owed by Operator to suppliers or contractors under agreements relating to the Facility, (ii) Interest thereon from the date on which such costs were incurred and (iii) twenty percent (20%) of the Licensing Costs for the Facility incurred by Operator, unless Operator, within fifteen (15) Days of receipt of such written notice, notifies PREPA in writing that Operator agrees to bear the costs in excess of the Maximum Interest Rate. In such event, the Permanent Financing Interest Rate Adjustment shall be determined as if the Permanent Financing Interest Rate equals the Maximum Interest Rate.

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If PREPA exercises its right to terminate, and upon payment to Operator as stated above, PREPA shall have the right to acquire from Operator, its parent company, affiliates, successors, assignees or any other party which may have any interest, right or title to the Facility every and all interests, rights, and titles existing, or which may exist over the Facility in relation to its present and/or future ownership and operation.

11.1(b)(2) Fixed Operations and Maintenance Charge - Commencing with the Commercial Operation Date and continuing for the remainder of the Term, Operator shall be paid a Fixed Operation and Maintenance Charge equal to \$3.84/KW-Month as of January 1, 1994, as increased or decreased as appropriate on January 1, 1995 and on each January 1 thereafter by the percentage change between the PR-CPI corresponding to the Fiscal Year ending on June 30, 1993 (as published by the Puerto Rico Bureau of Labor Statistics, Department of Labor and Human Resources) and the PR-CPI corresponding to the Fiscal Year ending on the June 30th immediately preceding the date of such adjustment.

11.1(c) Start-up Payment - The Start-up payment shall equal the price of Fuel or alternative fuel used after an Economy Shutdown to start-up the Facility until the Facility is synchronized to PREPA's system.

11.2 The amount payable by PREPA to Operator for Dependable Capacity in each Billing Period may be subject to further adjustment in accordance with this Section.

11.2 (a) Force Majeure Event - For each Billing Period, the actual amount to be paid by PREPA to Operator for Dependable Capacity shall be subject to adjustment with respect to outages or deratings due to a Force Majeure event, in which Operator is unable to deliver or PREPA is unable to receive all or part of the electricity, by the application of the formula set forth below computed for each Billing Period for which such payment is being determined (the "Force Majeure Adjusted Capacity Payment").

> $FMACP = \underline{CPP \times (BPH - EFMH) \times DC}$ BPH

Where:

FMACP = Force Majeure Adjusted Capacity Payment

CPP = Capacity Purchase Price

EFMH = Equivalent Force Majeure Hours

DC = Dependable Capacity

BPH = Billing Period Hours

Notwithstanding the above adjustments for Dependable Capacity, if for any such Force

Majeure event the Facility is capable of delivering all or a portion of its Dependable Capacity at the Interconnection Point to PREPA and PREPA is unable to receive such electricity due to a Force Majeure event claimed by PREPA on its side of the Interconnection Point, then the adjustment due to such Force Majeure event shall not be applied to the Facility.

11.2 (b) Equivalent Availability - the monthly capacity payment will be adjusted downward if the Equivalent Availability Factor (EAF) for the period comprising the last twelve Billing Periods ending with the one being billed ("Twelve Month EAF") falls below ninety percent (90%). Such adjustment will be as follows:

| Range                         | Downward Adjustment    |
|-------------------------------|------------------------|
| $EAF \ge 90\%$                | 0                      |
| $90\% > EAF \ge 88\%$         | (90-EAF) x 1.25%       |
| $88\% > EAF \ge 85\%$         | 2.5% + (88-EAF) x 1.5% |
| ởう 85% > EAF ≥ 70%            | 7% + (85-EAF) x 2%     |
| ( ) <b>70% &gt; EAF ≥ 60%</b> | 37% + (70-EAF) x 3%    |
| 60% > EAF                     | 100%                   |

Notwithstanding the foregoing, during the first Agreement Year, monthly capacity payments for each Billing Period included therein will be adjusted if the EAF falls below eightyeight (88%). During the first Agreement Year, the applicable EAF will be calculated for the period beginning on the Commercial Operation Date and ending on the final day of the Billing Period. So long as the EAF for the first Agreement Year equals or exceeds eighty-eight (88%), for purposes of calculating the EAF for each of the next eleven (11) Months following the first Agreement Year, the EAF for each Month of the first Agreement Year shall be deemed to have

been ninety percent (90%). For example, an EAF of seventy-five percent (75%) during the first Agreement Year would reduce the monthly capacity payment by twenty-four and one-half percent (24.5%), and an EAF of seventy-five percent (75%) after the first Agreement Year would reduce the monthly capacity payment by twenty-seven percent (27%). Examples of the Capacity Payment adjustment calculation are included in Exhibit F.

11.3

Payment for the Energy delivered to PREPA, for the Dependable Capacity made available to PREPA, and for the Start-up Payment incurred during the Billing Period, and for all other amounts or reimbursements due to Operator hereunder, shall be made within fortyseven (47) Days after the Billing Period. On the outstanding payments due to Operator, Interest shall accrue commencing on the forty-eighth (48th) Day after the Billing Period. Notwithstanding the payment requirements set forth in this Section 11.3, any amounts billed by PREPA to Operator relating to the Facility that are not paid when due to PREPA may, at PREPA's discretion, be offset against the amounts due to Operator from PREPA under this Agreement.

Payment to PREPA shall be made by wire transfer to an account with a bank to be specified by PREPA in writing at least thirty (30) Days prior to the Commercial Operation Date or with such other banks as may thereafter be specified by PREPA in writing.

Payment to Operator shall be made by wire transfer to an account with a bank to be specified by Operator in writing at least thirty (30) Days prior to the Commercial Operation Date or with such other banks or institutions as may thereafter be specified by Operator in writing.

Either Party may, by written notice to the other, change the address to which such payments are to be sent.

### ARTICLE 12 - TESTING AND CAPACITY RATINGS

12.1 Operator represents that the Estimated Dependable Capacity for the Facility is 413 MW.

12.2 The Dependable Capacity for the Facility shall be determined by testing described in this Article 12. Operator shall give PREPA at least seven (7) Days notice as to when the Facility will be tested. Operator shall perform the test according to Exhibit G and PREPA shall have the right to monitor the test.

12.3 If the test is completed successfully according to Exhibit G, Operator shall set the Dependable Capacity within plus or minus ten percent ( $\pm 10\%$ ) of the Estimated Dependable Capacity as specified in Section 12.1.

12.4 The Operator may request additional tests described herein if Operator is not satisfied with the test and has not set the Dependable Capacity. Requests for additional tests can be made only after five (5) Days have expired since the termination of the most recent previous test. Upon completion of such additional test (s), if any, Operator shall set the Dependable Capacity at any level within plus or minus ten percent ( $\pm 10\%$ ) of the Estimated Dependable Capacity as specified in Section 12.1.

12.5 Upon completion of the first Agreement Year, the Dependable Capacity may be reset by Operator by testing as described in this Article 12. At least fourteen (14) Days prior to completion of that first Agreement Year, Operator shall notify PREPA of its intention to reset the Dependable Capacity. The payments for Dependable Capacity thereafter shall be made based on this new Dependable Capacity. This new Dependable Capacity shall be within plus or minus ten percent ( $\pm 10\%$ ) of the Dependable Capacity set pursuant to Section 12.3, but also must be within plus or minus ten percent ( $\pm 10\%$ ) of the Estimated Dependable Capacity specified in Section 12.1.

12.6 Following the initial setting of the Dependable Capacity as per this Article, Operator shall notify PREPA in writing of the set Dependable Capacity and consequently the Commercial Operation Date.

## ARTICLE 13 - FUEL PROCUREMENT

13.1 (a) Operator shall maintain at all times a list of qualified suppliers for Fuel and for Fuel transportation to the Facility (the "Suppliers List"), which shall be updated and submitted to PREPA at least once a year. Operator agrees to include in the Suppliers List up to five (5) additional suppliers designated by PREPA, provided such suppliers are recognized and creditworthy suppliers. Not less than ninety (90) Days prior to issuing a request for proposal, including Fuel Specifications (the "Fuel RFP"), for the purchase of a supply of Fuel or for Fuel transportation to the Facility, Operator will give to PREPA a copy of the Fuel RFP. Operator agrees to incorporate any revisions to such Fuel RFP submitted by PREPA within thirty (30) Days of PREPA's receipt of the copy of the Fuel RFP, unless the Operator provides PREPA with a written explanation demonstrating that such revisions will have a material adverse effect on the operation of the Facility. The Fuel RFP shall be submitted to all suppliers in the Suppliers List.

(b) The Fuel RFP may include, at the option of Operator, the transportation and disposal of any ash produced after the utilization of Fuel in the Facility from any supplier ("Ash Disposal"). Operator shall request all bidders to state separately (1) the cost for the sale and transportation of Fuel ("Fuel and Transportation Costs") and (2) the total of the Ash Disposal cost and of the Fuel and Transportation Costs, provided that the bidder may elect to bid only on the sale and transportation of Fuel. The Fuel RFP shall also specify that the bidder shall be bound by its bid for the total of the Ash Disposal cost and the Fuel and Transportation Costs, and separately, for the Fuel and Transportation Costs. Operator shall have the right to select either the bid for the sale and transportation of Fuel or the bid to provide both the Ash Disposal and

the sale and transportation of Fuel. In accordance with Section 11.1(a)(1) of this Agreement, the cost of Fuel will be determined using only the Fuel and Transportation Costs of the bid that fully conformed to all material requirements of the Fuel RFP that has the lowest Fuel and Transportation Costs ("Low Bid Fuel Cost"). Operator shall have the right to include in the Fuel RFP an annual minimum take provision, provided that at no time shall the annual minimum take obligations in the aggregate exceed twenty percent (20%) of the Maximum Annual Fuel Requirement for the period of the contract or contracts unless PREPA, in its sole discretion, consents to a greater minimum obligation. Operator shall have the right to cancel the Fuel RFP if fewer than three (3) bids provide for the Ash Disposal.

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13.2 Operator agrees to provide to PREPA copies of all responses to the Fuel RFP within fifteen (15) Days after Operator receives them. Operator further agrees that prior to executing any agreement for the supply of Fuel or for Fuel transportation to the Facility (a "Proposed Fuel Agreement"), it shall submit such agreement to PREPA for review. PREPA may either endorse or object to the terms and provisions of any such Proposed Fuel Agreement by written notice delivered to Operator within thirty (30) Days of receipt of such Proposed Fuel Agreement. If PREPA does not object to the terms and conditions of such Proposed Fuel Agreement by written notice delivered to Operator within the initial thirty (30) Days period, such Proposed Fuel Agreement by written notice delivered to Operator within the initial thirty (30) Days period, such Proposed Fuel Agreement shall be deemed acceptable to PREPA.

13.3 If PREPA objects in writing to the terms and provisions of any such Proposed Fuel Agreement within such thirty (30) Day period, in accordance with the preceding Section 13.2, the Parties shall negotiate in good faith for a period of ten (10) Days following Operator's receipt of such written objection to attempt to modify the terms and provisions of such Proposed Fuel

Agreement to obtain an agreement reasonably acceptable to both Operator and PREPA. If both (i) the Parties shall fail to reach mutual agreement on such terms and provisions within such ten (10) Day period, and (ii) PREPA does not obtain an alternative Fuel supply and Fuel transportation agreement on substantially the same terms as the Fuel RFP from a third party Fuel supplier and transporter, that are both recognized and creditworthy, and does not deliver to Operator a proposed alternative Fuel supply or Fuel transportation agreement, as the case may be, within sixty (60) Days of the expiration of such ten (10) Day period set forth above, Operator shall be permitted to execute the original Proposed Fuel Agreement.

13.4 Operator agrees to obtain all necessary Fuel supply and Fuel transportation agreements in accordance herewith and agrees that such Fuel supply and Fuel transportation agreements shall have initial terms of not less than two Years nor more than the remainder of the Term providing at least eighty percent (80%) of the Maximum Annual Fuel Requirement. Nothing herein shall prohibit Operator from purchasing additional Fuel for use in meeting its obligations to supply steam under steam purchase contracts entered into by Operator. Notwithstanding anything to the contrary in this Article 13, Operator shall be permitted but not required to sign a long term contract or contracts with one or more Fuel suppliers and Fuel transporters, on or before the Financial Closing Date, in accordance with the standards set forth in this Article.

13.5 In order to comply with Section 6.1, Operator shall commence the process for the execution of Fuel supply and transportation agreement no later than twelve (12) Months prior to the proposed Commercial Operation Date as specified in Section 19.1 hereunder and shall seek extensions of existing agreements or new Fuel supply and transportation arrangements

commencing not less than eighteen (18) Months prior to the expiration of the then existing agreements so that such arrangements are in effect not less than twelve (12) Months prior to the expiration of the then existing agreements.

In addition, in the event of any actual or anticipated interruption in the supply or 13.6 transportation of Fuel under any Fuel supply or Fuel transportation agreement approved by Operator and PREPA under the foregoing Section (whether such interruption arises from events of Force Majeure, lack of performance or inability to perform by any third party under any such Fuel supply or Fuel transportation agreement, bankruptcy or insolvency of any such third party, or any other similar reason or circumstance), Operator shall have the right to propose Emergency purchases or transportation arrangements for up to twice the Maximum Monthly Fuel Requirement and submit such proposed agreements to PREPA for review. Unless PREPA, within five (5) working Days of its receipt of the proposed agreement, both (i) objects to the terms and provisions of any such proposed emergency arrangements by telecopied written notice or any other means of written communication delivered to Operator and (ii) includes a comparable counterproposal from a recognized and creditworthy third party on substantially the same terms as the Fuel RFP, Operator shall be permitted to execute the Operator proposed emergency agreements. Payments by Operator for Fuel or transportation thereunder shall be included for purposes of determining the Cost of Fuel under this Agreement. In addition to such emergency purchases, the Parties agree that PREPA may at any time propose to Operator, and Operator agrees to enter into, other spot or short-term purchases of Fuel under this Agreement as long as any such proposed purchase (i) does not violate the terms of any then existing Fuel supply or Fuel transportation contracts entered into by Operator, (ii) will not cause any significant operating

concerns and (iii) shall be included for purposes of determining the Cost of Fuel under this Agreement.

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13.7 The range of Fuel quality specifications and ash analysis for Fuel to be purchased for the Facility shall be in accordance with Exhibit H, provided that the percentage of sulfur may be increased at the option of Operator from the Exhibit H percentage to the maximum permitted under Operator's air permit. However, PREPA will have the opportunity to participate with Operator, if at any time during the Term Operator has the right to do so, in any process before any permitting agencies that could result in any permit requirements which would result in significant changes to the specifications set forth in Exhibit H.

#### ARTICLE 14 - LIABILITY

14.1 Each of the Operator and PREPA shall be responsible for the Energy and facilities, located on its respective side of the Interconnection Point. The Energy made available by the Operator to PREPA under this Agreement shall become the property of PREPA at the Interconnection Point, and, except as provided in Section 14.2 below, the Operator shall not be liable to PREPA for loss or damage to PREPA's generation, transmission, and distribution system, including the Additional Interconnection Facilities, resulting directly or indirectly from the use, misuse or presence of said Energy once it passes the Interconnection Point.

14.2 Each of the Operator and PREPA shall be liable for all foreseeable damages suffered by the other as a necessary consequence of the Operator or PREPA's respective negligent performance or omissions or failure to perform its respective obligations under this Agreement, including during any cure period in accordance with Article 19, as stated under Article 1060 of the Puerto Rico Civil Code, subject to the terms of Section 14.3 below.

14.3 Further notwithstanding anything to the contrary in this Agreement, neither Party nor its officers, directors, agents, employees and representatives shall in any event be liable to the other Party or its officers, directors, agents, employees or representatives for claims for incidental, consequential or indirect damages to persons or property, whether arising in tort, contract or otherwise, connected with or resulting from performance or non-performance under this Agreement.

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# ARTICLE 15 - PREPA'S OPTION TO PURCHASE THE FACILITY

15.1 If a Permanent Abandonment or a Permanent Closing of the Facility occurs, PREPA shall have the option to purchase the Facility at the original cost of the Facility as depreciated on a twenty (20) Year straight-line basis together with the depreciated value of any capital improvements on a twenty (20) Year straight-line basis from the date of such improvements or the appraised value which ever is lower; but in no event lower than the Facility Debt.

15.2(a) If the tracking account balance under Section 20.1 exceeds twice the amount accrued on the letter or letters of credit (or other security acceptable to PREPA) pursuant to Section 19.7(a), PREPA shall have the option to purchase the Facility at the original cost of the Facility as depreciated on a twenty (20) Year straight-line basis together with the depreciated value of any capital improvements on a twenty (20) Year straight-line basis from the date of such improvements or the appraised value which ever is lower; but in no event lower than the Facility Debt plus the initial Equity Capital reduced to zero (0) on a straight-line basis over a period of forty-five (45) Years; provided, however, that PREPA shall give Operator sixty (60) Days notice of its intent to purchase the Facility pursuant to the terms of this Section. Further provided that, if Operator reimburses PREPA within such sixty (60) Day period in an amount sufficient to reduce the tracking account balance below twice the amount accrued on the letters of credit, PREPA's option shall lapse.

15.2 (b) If, after the fifteenth anniversary of the Commercial Operation Date, PREPA obtains an evaluation from an independent consulting firm acceptable to Operator, such

determination of acceptability to be made in a non-arbitrary manner, concluding that the continued dispatch of the Net Electric Output is no longer economic and will not be expected to become economic for the remainder of the Term, PREPA shall have the option to purchase the Facility at a price equal to the Facility Debt plus the initial Equity Capital; provided, however, that PREPA shall give Operator sixty (60) Days notice of its intent to purchase the Facility pursuant to the terms of this Section. Further provided that if, within such sixty (60) Day period, Operator reduces its Capacity Purchase Price or Energy Purchase Price such that said independent consulting firm determines that the continued dispatch of the Facility is expected to be or to become economic for the remainder of the Term, Operator shall have the right to make such pricing adjustment and PREPA's option under this Section 15.2 (b) shall lapse.

15.3 The Parties shall have a period, which will not exceed six (6) Months after PREPA's notification to the Operator of its intent to purchase the Facility, to establish the appraised value for the Facility.

15.4 In determining the appraised value of the Facility the Parties shall consider the price which would be obtained for the Facility in its then-current condition, taking into account its profitability and assuming a sale of the Facility in an arms-length transaction between a willing seller and a willing buyer with the need for the full Dependable Capacity and Energy from the Facility and with an assumed closing date of one hundred twenty (120) Days after the date of determination of the appraised value.

15.5 After the six (6) Month period pursuant to Section 15.3, if the Parties have not agreed on the appraised value of the Facility, the case will be submitted to a voluntary eminent domain process in a Court of Competent Jurisdiction. In this event, the Parties mutually agree

to request the Court of Competent Jurisdiction to appoint a special master pursuant to Rule 41 of the Puerto Rico Rules of Civil Procedure of 1979, 32 L.P.R.A. App.III, R.41, for the purpose of determining the appraised value of the Facility. The Parties further agree to request of the Court that the master to be appointed to determine the appraised value of the Facility consider the factors set forth in Section 15.4.

15.6 The purchase price determined hereunder shall be due and payable on the date of closing, at which time Operator shall transfer title of the Facility to PREPA free and clear of any debts, liens, claims, interests and other encumbrances, other than those approved by PREPA.

15.7 Any amount paid by PREPA to reduce the debt of the Facility and/or any capital improvement made by PREPA on the Facility during PREPA's Operating Period, as defined in Section 19.10 hereunder, shall be subtracted from the purchase price of the Facility in the event PREPA exercises its option to purchase the Facility in accordance with Section 15.1 hereof. In the event PREPA does not exercise its option to purchase, and the Facility is sold to a third party, PREPA shall receive from the proceeds of such sale reimbursement for its payments to reduce the debt and capital improvements made pursuant to this paragraph; provided that PREPA's right to receive such reimbursement shall be subordinate to the rights of the Lenders to receive repayment out of such proceeds.

69

## ARTICLE 16 - INDEMNIFICATION

16.1 Subject to the provisions in Article 14, each Party shall indemnify and hold harmless the other Party and each of its directors, officers, shareholders, employees, agents and representatives and each of their respective heirs, successors and assignees from and against any and all damages, claims, losses, liabilities, actions, causes of action, costs, expenses and obligations (including, without limitation, all reasonable attorneys' fees) whether arising in contract, tort, or otherwise, to third parties for or on account of injury, bodily or otherwise, to or death of persons or for damages to or destruction of property, resulting from, arising out of or in connection with such indemnifying Party's negligent performance or failure to perform under this Agreement or such indemnifying Party's ownership, construction, operation or maintenance of its respective facilities under this Agreement.

16.2 In the event any Party to this Agreement receives notice of any claim or cause of action for which such Party elects to assert a right of indemnification and hold harmless from the other Party, the Party receiving such notice must give prompt written notice to the other Party of the claim. The Party required to give the indemnification and hold harmless under the terms and provisions of this Agreement will have control of the defense of any such claim or cause of action (except to the extent prevented by any legal conflict of interest) including the selection of counsel to handle same. In addition to the counsel so selected, the Party being indemnified and held harmless shall be entitled to be represented by counsel of his or its own choosing but, in such event, the cost and expense of said additional counsel shall be borne by the indemnitee.

16.3 As of the Effective Date and for the Term, Operator shall indemnify and hold

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harmless PREPA for any and all judgments and expenses (including costs and reasonable attorneys' fees) incurred by PREPA as a result of claims of any nature whatsoever resulting from any environmental harm due to the actions of the Operator or Operator's agents, employees, successors or assignees in the construction or operation of the Facility or arising as a result of the presence at the Facility of pollutants, hazardous substances, materials or wastes in excess of amounts and concentrations permitted by applicable Federal or Commonwealth laws, rules or regulations then in effect. In the event Operator fails to reimburse PREPA for such expenses within thirty (30) Days of receipt of written notice from PREPA stating that such expenses were incurred, PREPA may offset the amount of such expenses against amounts due Operator from PREPA under this Agreement.

#### ARTICLE 17 - FORCE MAJEURE

17.1 For purposes of this Agreement, Force Majeure means any cause beyond the reasonable control of and without the fault or negligence of the Party claiming the Force Majeure. A Force Majeure shall excuse the performance of the Party claiming a Force Majeure event if such event causes the non-performance or inability to perform. The burden of proof as to whether a Force Majeure has caused a non-performance or inability to perform shall be on the Party claiming the Force Majeure. The Parties hereto shall be excused from performing hereunder and shall not be liable in damages or otherwise if the non-performance or inability to perform is due to a Force Majeure Event.

17.2 Subject to Section 17.1 above, Force Majeure events include, but are not limited to, the following: acts of God, strikes, industrial disturbances, acts of public enemy, war, blockages, boycotts, riots, insurrections, epidemics, earthquakes, storms, floods, civil disturbances, lockouts, fires, explosions, interruptions of services due to acts or failure to act of any governmental authority, condemnation, and any delay or inability of Operator in obtaining the necessary licenses, permits or governmental approvals.

17.3 Except as otherwise provided in Section 11.2(a), if either Party is rendered wholly or partly unable to perform its obligations under this Agreement because of Force Majeure, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that: (i) the non-performing Party, within ten (10) Days after the occurrence of the Force Majeure, gives the other Party written notice describing the particulars of the occurrence and its estimated duration; (ii) the suspension of performance be of no greater scope

and of no longer duration than is required by the Force Majeure; (iii) no obligations of either Party which arose prior to the Force Majeure be excused as a result of the Force Majeure; and (iv) the non-performing Party use its best efforts to remedy its inability to perform and resume in full its performance under this Agreement, provided that this obligation shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its best interest.

17.4 Neither Party shall be excused by reason of Force Majeure from the obligation to make any payment due to the other Party for more than ten (10) Days after said payment is due.

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

(1) If within sixty (60) Days the dispute is not resolved through negotiations pursued diligently in good faith, the Parties shall attempt to agree on a person with special knowledge and expertise with respect to the claimed Force Majeure to serve as arbitrator. If the Parties cannot agree on an arbitrator within ten (10) Days, each shall then appoint one person to serve as an arbitrator and the two thus appointed shall select a third arbitrator with such special knowledge and expertise to serve as chairman of the panel of arbitrators; and such three arbitrators shall determine all matters by majority vote; provided, however, if the two arbitrators appointed by the Parties are unable to agree upon the appointment of the third arbitrator within five (5) Days after their appointment, both shall give written notice of such failure to agree to the Parties, and, if the Parties fail to agree upon the selection

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of such third arbitrator within five (5) Days thereafter, then either of the Parties upon written notice to the other may require such appointment from and pursuant to the rules of the American Arbitration Association with the selection of arbitrators from the National Academy of Arbitrators. Prior to appointment, each arbitrator shall agree to conduct such arbitration in accordance with the terms of this subsection. The arbitration panel may choose legal counsel to advise it on the remedies it may grant, procedure and such other legal issues as the panel deems appropriate.

(2) The Parties shall have sixty (60) Days to perform discovery and present evidence and argument to the arbitrators. During that period, the arbitrators shall be available to receive and consider all such evidence as is relevant and, within reasonable limits due to the restricted time period, to hear as much argument as is feasible, giving a fair allocation of time to each Party to the arbitration. The arbitrators shall use all reasonable means to expedite discovery and to sanction noncompliance with reasonable discovery requests or any discovery order. The arbitrators shall not consider any evidence or argument not presented during such period and shall not extend such period except by the written consent of both Parties. At the conclusion of such period, the arbitrators shall have forty-five (45) Days to reach a determination. To the extent not in conflict with the procedures set forth herein, which shall govern, such arbitration shall be held in accordance with the prevailing rules of the American Arbitration Association for commercial arbitration.

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- (3) The arbitrators shall have the right only to interpret and apply the terms and conditions of this Agreement and to order any remedy allowed by this Agreement, but may not change any term or condition of this Agreement, deprive either Party of any right or remedy expressly provided hereunder, or provide any right or remedy that has been excluded hereunder.
- (4) The arbitrators shall give a written decision to the Parties stating their findings of fact, conclusions of law and order, and shall furnish to each Party a copy thereof signed by them within five (5) Days from the date of their determination.
- (5) Any actual determination made by the arbitrators shall be conclusive and binding upon the Parties and not subject to judicial review, except on the grounds of fraud or bias and may be presented to any Court of Competent Jurisdiction as a stipulation of the Parties. Any conclusions and any order issued by the arbitrators shall be subject to review in any Court of Competent Jurisdiction, provided however, that any order issued by the arbitrators shall be effective and enforceable unless and until a stay of the order is issued by the arbitrators or by such court under the prevailing standards for issuing stays, or such court enjoins, modifies or reverses the order of the arbitrators.
- (6) The Parties shall each pay fifty percent (50%) of the cost of arbitrator or arbitrators.

### ARTICLE 18 - TERMINATION

18.1 Termination of this Agreement shall occur only upon: (i) expiration of the Term of this Agreement as provided in Article 5; or (ii) mutual written consent of the Parties; or (iii) the Facility being Permanently Abandoned or the Permanent Closing of the Facility; or (iv) the material breach of any of the terms and conditions of this Agreement by either Party, subject to the provisions of Article 19 hereof; or (v) delay by Operator in achieving the Commercial Operation Date as specified in Section 19.1(iii) by eighty-six (86) Months after the Effective Date, whether or not due to a Force Majeure event, in which case the termination right can be only exercised by PREPA; (vi) termination by PREPA pursuant to Section 11.1(b)(1)(iii)(E); or (vii) any other reason as specified in this Article 18.

18.2 The Parties agree that the continued effectiveness of this Agreement is dependent on Operator's determination that the project to be constructed in accordance with this Agreement is financially feasible. If Operator notifies PREPA that the project is not financially feasible on or before ninety (90) Days after the Effective Date, either Party may terminate this Agreement without liability.

18.3 Termination of this Agreement shall not discharge either Party hereto from any obligation it owes to the other Party under this Agreement by reasons of any transaction, loss, cost, damage, expense or liability which shall occur or arise (or the circumstances, events, or basis of which shall occur or arise) prior to termination. It is the intent of the Parties hereby that any such obligation owed (whether the same shall be known or unknown at termination or whether the circumstances, events or basis of the same shall be known or unknown at

termination) shall survive termination. Any indebtedness by either Party to the other shall be considered payable within ninety (90) Days of the termination of this Agreement, subject to Section 11.3 hereof. This Section 18.3 shall survive the termination of the Agreement.

18.4 In the event Operator is unable to obtain a construction permit, despite its due diligence in pursuing its application for approval of such permit, within fifty-four (54) Months after the Effective Date, whether or not due to a Force Majeure event, or in the event the construction permit application is denied, despite Operator's due diligence in pursuing its application for approval of such permit, either Party may terminate the Agreement without liability to either Party, except as provided for in Section 18.3 hereof. In such event, PREPA agrees to return to Operator any amounts remaining in any security provided by Operator.

### ARTICLE 19 - BREACH OF AGREEMENT

19.1 A breach of this Agreement shall be deemed to exist upon the occurrence of any one of the following: (i) construction permit is not obtained by thirty (30) Months after the Effective Date; (ii) commencement of construction does not begin by thirty-two (32) Months after the Effective Date; (iii) Commercial Operation Date is not achieved by sixty-two (62) Months after the Effective Date, subject in the case of all the foregoing dates, to extension for any Force Majeure Event; (iv) the failure by either Party to perform its obligations under this Agreement, subject to the provisions of Section 19.3 below; (v) the Equivalent Availability Factor is less than sixty percent (60%) for any period of twelve (12) consecutive Months, or less than seventy percent (70%) for any period of twenty-four (24) consecutive Months.

19.2 If Operator breaches this Agreement pursuant to Section 19.1 (i), (ii) or (iii) above, PREPA shall have those rights and remedies set forth in Sections 19.5 and 19.6 below as an exclusive remedy. This Section shall not limit PREPA's rights or remedies which may exist under this Agreement or under the law for any other breach by Operator.

19.3 If either Party believes the other Party has breached this Agreement pursuant to Section 19.1 (iv) above or if PREPA believes the Operator has breached this Agreement pursuant to Section 19.1 (v) above, the non-breaching Party shall provide such other Party with written notice thereof. If within fifteen (15) Days of the receipt of such notice, such other Party fails to respond in writing to such notice, the non-breaching Party shall be entitled to invoke its remedies under this Agreement and/or under the law. If such other Party disputes in writing that a breach by it has occurred, the Parties may attempt to resolve the matter by any form of dispute

resolution mutually acceptable. If the matter is not resolved within sixty (60) Days of receipt of the notice of breach, the Party serving the notice of breach may pursue its remedies under this Agreement and/or under the law. In the case the other Party admits in writing that a breach has occurred that Party shall have a minimum of thirty (30) Days from the receipt of written notice to cure the breach or the cause of such breach if the breach is one which by its nature cannot be cured, provided however, that if the breach or such cause cannot be cured within the thirty (30) Day period, the breaching Party shall be given an additional reasonable time period to cure the breach or such cause with the exercise of due diligence. If the breaching Party fails to cure the breach or such cause within such time period, the non-breaching Party may pursue its remedies under this Agreement and/or under the law.

19.4 Within ninety (90) Days after the Effective Date of this Agreement, Operator shall provide to PREPA, at Operator's sole expense, an unconditional and irrevocable direct pay letter or letters of credit issued by a local bank or any other bank, all of which shall be acceptable to PREPA (or other security acceptable to PREPA) in accordance with the following table:

#### Months after Effective Date

### Preconstruction Security Amount

| 3 Months  | \$5.00 per kW of Estimated Dependable Capacity  |
|-----------|---|
| 6 Months  | \$7.50 per kW of Estimated Dependable Capacity  |
| 9 Months  | \$10.00 per kW of Estimated Dependable Capacity |
| 12 Months | \$12.50 per kW of Estimated Dependable Capacity |
| 15 Months | \$15.00 per kW of Estimated Dependable Capacity |
| 18 Months | \$17.50 per kW of Estimated Dependable Capacity |
| 21 Months | \$20.00 per kW of Estimated Dependable Capacity |

This letter or letters of credit (or other security acceptable to PREPA) required herein shall be maintained up to the Commercial Operation Date.

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19.5 (a) The letter or letters of credit (or other security acceptable to PREPA) required under Section 19.4 above, is established to assure PREPA a source of recovery for damages incurred as a result of an Operator breach of the Agreement under Article 19. During the Term of this Agreement the monetary value of the letter or letters of credit (or other security acceptable to PREPA) shall not limit PREPA's right to recover damages from Operator in amounts over and above the amount in the letter of credit, except as set forth in Section 19.5 (b) below.

(b) As to delays in compliance by Operator with the deadlines set forth for obtaining the construction permit, construction commencement, and Commercial Operation Date as set forth in Section 19.1(i), 19.1(ii) and 19.1(iii), respectively, (any such deadline including any extension to such deadline pursuant to Section 19.1 shall be referred to herein as a "Milestone Date") and as long as the Agreement is not terminated by PREPA for Operator's Milestone Date default, the amount of the letter or letters of credit (or other security acceptable to PREPA) shall be considered liquidated damages and Operator shall not be liable for damages arising from such delays in excess of such amount. These liquidated damages shall be paid in accordance with Section 19.6 herein.

19.6 (a) Commencing two (2) Months after the failure to meet any Milestone Date, PREPA may, on the first Day of each Month for up to ten (10) consecutive Months, draw on such letter or letters of credit (or other security acceptable to PREPA) in the amount of two dollars (\$2.00) per kilowatt of Estimated Dependable Capacity per Month as compensation for damages for the detrimental impact of such missed Milestone Date on PREPA's generation planning. Any such monthly compensation payment shall commensurately extend all subsequent Milestones Dates.

(b) If after twelve (12) Months following the default of any such Milestone Date the applicable milestone has not been achieved by Operator, such default shall be considered as a material breach and PREPA may terminate this Agreement as specified in Section 18.1(iv), without Operator being entitled to any curing period. Notwithstanding the previous sentence, before the exercise of PREPA's termination right under Section 18.1(iv), PREPA shall permit and Operator shall be entitled to an extension of a number of additional Months (not to exceed twelve (12) Months in the aggregate) to achieve such Milestone Date, but only to the extent that Operator, at the time of such request for extension: (i) shall demonstrate to PREPA that the Facility is at least sixty percent (60%) complete in the case of an extension of the Commercial Operation Date; and (ii) shall pay PREPA the amount of two dollars (\$2.00) per kilowatt of Estimated Dependable Capacity per each additional Month requested by the Operator (not to exceed twelve (12) Months in the aggregate), as compensation for such delay in achieving the Milestone Dates for the Facility.

(c) If the milestone is achieved by Operator less than twelve (12) Months after the default on the applicable Milestone Date, Operator shall no longer be deemed to be in breach for that particular Milestone Date, and PREPA shall no longer be entitled to further draw by reason of that particular breach on the letter or letters of credit (or other security acceptable to PREPA) provided by Operator under Section 19.4.

(d) PREPA's drawing on the letter or letters of credit (or other security

acceptable to PREPA) due to the failure of Operator to meet the Milestone Dates shall be considered liquidated damages as to delays, but shall not limit any other non-delay damage recovery PREPA may be entitled to pursuant to Section 14.2 of the Agreement in the event that PREPA terminates this Agreement in accordance with Section 18.1(iv), for Operator's Milestone Date default.

19.7 (a) Commencing with the Commercial Operation Date of the Facility, Operator shall increase the amount of the letter or letters of credit (or other security acceptable to PREPA) required under Section 19.4 above to an amount equal to thirty dollars (\$30.00) per kilowatt of Estimated Dependable Capacity, increasing thereafter at a compound annual escalation rate of seven percent (7%) per year throughout the remainder of the Term, provided that if Operator achieves a Twelve Month EAF of seventy percent (70%) or more for every Billing Period during the last twenty-four (24) consecutive Month period ending with the anniversary date of the tenth Agreement Year, no further escalation shall apply. For each subsequent Agreement Year, escalation shall resume for an additional Year at any time Operator fails to achieve a Twelve Month EAF of seventy percent (70%) or more for every Billing Period during the previous twenty-four (24) consecutive Month period.

(b) PREPA may draw on the letter or letters of credit (or other security acceptable to PREPA) required under Section 19.7(a) above, to offset any damages PREPA may be entitled to under this Agreement upon Operator's breach of Agreement under Section 19.1(iv) or 19.1(v) which is not cured within the applicable period set forth in Section 19.3, provided that PREPA either obtains the agreement of Operator to the level of damages or obtains a judgment from a Court of Competent Jurisdiction specifying the level of damages. If PREPA reasonably determines that the letter or letters of credit would otherwise expire or cease to exist prior to such agreement or judgment, PREPA may draw on the outstanding letter or letters of credit in an amount equal to PREPA's claim of damages, provided that PREPA places the drawn amounts in an escrow account in a bank reasonably acceptable to Operator until the appropriate amount of damages is determined. Following such determination, PREPA may draw from the escrow account and retain amounts equal to the amount of damages determined to be due to PREPA and PREPA shall deliver to Operator all amounts remaining in the escrow account, if any. Drawing under such letter or letters of credit (or other security acceptable to PREPA) shall not be the exclusive remedy available to PREPA.

19.8 Any amount drawn by PREPA on the letter or letters of credit (or other security acceptable to PREPA) according to Sections 19.6 (a) above, shall be replenished by Operator within thirty (30) Days, and if drawn according to 19.7 (b) above after the Commercial Operation Date, shall be replenished (in the form of cash escrow, letter of credit or other security acceptable to PREPA) by Operator from the net after-tax cash flow to the Operator that is produced after the date that PREPA draws amounts on the letter or letters of credit, so that the letter or letters of credit (or other security acceptable to PREPA) required under Sections 19.4 and 19.7 (a) above do not decrease in value, including any accrued amount. The net after-tax cash flow shall not be reduced by the debt service owed on subordinated debt to the extent that such subordinated debt is counted toward satisfaction of the Equity Capital requirement as set forth in Section 6.8 (f) hereof. If any letter or letters of credit (or other security acceptable to PREPA) drawn according to Section 19.7 (b) above after the Commercial Operation Date are not replenished within ninety (90) Days of drawdown by PREPA, Operator shall provide PREPA with a monthly

statement from a recognized independent accounting firm, until full replenishment is accomplished, certifying in accordance with GAAP that the net after-tax cash flow from the project is insufficient to replenish the letter or letters of credit (or other security acceptable to PREPA). Any failure of the Operator to replenish the letter or letters of credit (or other security acceptable to PREPA) in the manner specified above shall be considered a material breach of this Agreement, and then PREPA may terminate this Agreement pursuant to Section 18.1 (iv), without Operator being entitled to any cure period.

19.9 Operator shall be entitled to terminate the letter or letters of credit (or other security acceptable to PREPA) required under Sections 19.4 and 19.7(a) above, upon termination of the Agreement and after payment of any and all amounts owed to PREPA.

19.10 Should a Permanent Abandonment of the Facility occur as per Section 1.53 without PREPA being notified sixty (60) Months prior to such occurrence or if there shall be a Permanent Closing, the Operator shall be in a breach of contract under Article 19.1 (iv) hereof. In such case, PREPA shall be entitled to invoke its remedies under this Agreement and/or under the law, provided that PREPA shall also have the right, and the Operator shall permit PREPA, to operate the Facility for a period of sixty (60) Months from the occurrence of a Permanent Abandonment decreased by the actual number of Months between the date of notice to PREPA of such Permanent Abandonment and the date operation of the Facility by Operator actually ceases, or for a period of sixty (60) Months from occurrence of a Permanent Closing, in which case PREPA shall continue paying the debt service of the Facility Debt applicable for that period ("PREPA's Operating Period"), including the corresponding interest amount; further provided, that PREPA shall have and retain an option to purchase the Facility in any moment after the occurrence of

a Permanent Abandonment or Permanent Closing, in accordance with Article 15.1 hereof.

19.11 Upon any termination of this Agreement prior to the end of the Term which is attributable to Operator's breach of the Agreement or Permanent Abandonment or Permanent Closing of the Facility or upon termination under Sections 18.2 and 18.4 hereof, Operator agrees to provide at no cost to PREPA copies of all site related data, including without limitation, technical, environmental, geological, seismological, licensing and permitting data in Operator's possession, excluding any proprietary design information relating to the Facility.

19.12 Either Party may waive breach by the other Party, provided that no waiver by or on behalf of either Party of any breach of this Agreement shall take effect or be binding on that Party unless the waiver is in writing. A waiver of breach shall extend only to the particular breach waived and shall not limit or otherwise affect any rights that either Party may have with respect to any other or future breach.

# ARTICLE 20 - TAXES AND ENVIRONMENTAL COSTS

20.1 For purposes of this Agreement, "Taxes" shall mean any and all taxes, fees or other charges of any nature, excluding income taxes, that are imposed or assessed on the operation of the Facility by federal, commonwealth or municipal agencies responsible for implementing tax laws, regulations or orders. "Environmental Costs" shall mean any and all fixed and variable costs imposed or assessed on the operations of the Facility by federal, commonwealth or municipal agencies responsible for implementing environmental laws or protecting the environment. "Debt Service Coverage Ratio" shall mean the ratio of (i) all Facility revenues minus all Facility operating expenses to (ii) debt service on all indebtedness related to the development, acquisition and construction of the Facility (excluding subordinated debt), including principal, interest and letter of credit fees related to the permanent financing, as such ratio shall be computed by Operator for the Year.

(a) All present or future federal, commonwealth, municipal or other lawful Taxes, income taxes, and Environmental Costs applicable by reason of the sale by Operator to PREPA of Energy or Dependable Capacity shall be paid by Operator, except those taxes exclusively applicable to Fuel used by Operator in connection with this Agreement which shall be paid by Operator but reimbursed by PREPA to Operator; provided, however, if during the first twenty (20) Agreement Years the payment of Taxes or Environmental Costs, exclusively imposed on Operator by laws, regulations or orders passed or issued after the Effective Date ("post-Effective Date Taxes or Environmental Costs") would cause the Debt Service Coverage Ratio in Operator's permanent financing of the Facility to fall below 1.20, or below the Debt Service Coverage Ratio that would have resulted in the absence of the post-Effective Date Taxes or Environmental Cost ("Alternative Ratio"), whichever is lower, PREPA shall pay the necessary amount of such post-Effective Date Taxes or Environmental Costs to permit the maintenance of the Debt Service Coverage Ratio at a minimum of 1.20 or the Alternative Ratio, whichever is lower. Such post-Effective Date Taxes or Environmental Costs payable by PREPA according to the foregoing shall be paid to Operator in equal monthly installments due on the same dates and on the same terms as payments made under Section 11.3 hereof.

(b) All such post-Effective Date Taxes or Environmental Costs paid by PREPA according to the preceding Section, shall be recorded in an unfunded tracking account and shall accrue Interest. If at any time during the first twenty (20) Agreement Years the Operator's current payment obligation of post-Effective Date Taxes and Environmental Costs would enable the Operator to maintain a Debt Service Coverage Ratio in excess of 1.20, Operator shall reimburse PREPA for amounts contained in the tracking account sufficient to reduce the Debt Service Coverage Ratio to 1.20, and the tracking account balance shall be reduced by such reimbursed amounts.

(c) If there remains a balance in the tracking account on the twentieth (20th) anniversary of the Commercial Operation Date of the Facility, Operator agrees to reduce its Demand Charge each Billing Period by fifty percent (50%) which shall reduce the tracking account balance by an equal dollar amount. This monthly Demand Charge reduction shall be eliminated when the tracking account balance equals zero; provided that if any amount has not been repaid at the end of the twenty-fifth (25th) Agreement Year, PREPA shall have the option to extend the Term of this Agreement for up to such additional period as necessary to repay such

balance by applying such monthly credit as set forth above. If the Agreement is so extended, the Demand Charge for the twenty-sixth (26th) Agreement Year and thereafter shall be equal to sixtysix percent (66%) of the Base Demand Charge for the twenty-fifth (25th) Agreement Year, half of which shall be used as a credit to the tracking account. In the event this Agreement is terminated according to Article 18 herein, and there is a balance in the tracking account, such amount shall be paid to PREPA according to Section 18.3. Notwithstanding, during the Term of this Agreement and before any termination of this Agreement takes place, Operator shall have the option to prepay all or any portion of the balance of the tracking account at any time or from time to time.

(d) Notwithstanding the foregoing, if the tracking account balance exceeds twice the amount accrued under the letter or letters of credit (or other security acceptable to PREPA) required under Section 19.7(a), PREPA shall have the option to purchase the Facility at the purchase price specified in Section 15.2 (a).

(e) The Operator agrees that any financial impact attributable to a post-Effective Date Tax or Environmental Cost paid by PREPA will be subject to the end of Fiscal Year audit, as provided in Section 6.10 hereof, and properly adjusted if applicable.

20.2 Operator will promptly pay and discharge all lawful taxes, assessments and governmental charges or levies imposed upon it or in respect of all or any part of its property or business, all trade accounts payable in accordance with usual and customary business terms, and all claims for work, labor or materials which, if unpaid, might become a lien or charge upon any of its property; provided, however, that Operator shall not be required to pay any such tax, assessment, charge, levy, account payable or claim if (a) the validity, applicability or amount

thereof is being contested in good faith by appropriate actions or proceedings which will prevent the forfeiture or sale of any property of Operator or any material interference with the use thereof by Operator and (b) Operator shall set aside on its books reserves deemed by it to be adequate with respect thereto.

#### ARTICLE 21 - INSURANCE

21.1 Operator shall obtain or cause its agent or its affiliate to obtain on or before the later of (i) the Financial Closing Date and (ii) the commencement of construction of the Facility, and shall maintain during the remainder of the Term the following policies of insurance issued by a rated insurance company:

- (a) Workmen's Compensation Insurance which complies with the laws of the Commonwealth of Puerto Rico and Employer's Liability Insurance with limits of at least \$1,000,000; and
- (b) Comprehensive or Commercial General Liability Insurance with bodily injury and property damage combined single limits of at least \$5,000,000 per occurrence. Such insurance shall include, but not necessarily be limited to, specific coverage for contractual liability encompassing the indemnification provision in Article 16, broad form property damage liability, personal injury liability, explosion and collapse hazard coverage, products/completed operations liability, and, where applicable, watercraft protection and indemnity liability; and
- (c) Comprehensive Automobile Liability Insurance with bodily injury and property damage combined single limits of at least \$5,000,000 per occurrence covering vehicles owned, hired or non-owned; and
- (d) Excess Umbrella Liability Insurance with a single limit of at least \$5,000,000 per occurrence in excess of the limits of insurance provided in subparagraphs (a), (b) and (c) above.
- (e) All risk physical damage insurance, including comprehensive boiler and machinery coverages, to cover all real and personal property of Operator (including earthquake and hurricanes occurrence) to a hundred percent (100%) of replacement cost to the extent available on commercially reasonable terms as determined by the Operator and subject to a reasonable deductible which shall be the responsibility of the Operator.

21.2 The amounts of insurance required in Section 21.1 above may be satisfied by the Operator purchasing primary coverage in the amounts specified or by buying a separate excess

Umbrella Liability policy together with lower limit primary underlying coverage. The structure of the coverage is the Operator's option, so long as the total amount of insurance meets the requirements set forth in Section 21.1.

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21.3 The coverages requested in Section 21.1 (b) above and any Umbrella or Excess coverage should be "occurrence" form policies. In the event Operator has "claims-made" form coverage, Operator must obtain prior approval of all "claims-made" policies from PREPA, which approval shall not be unreasonably withheld.

21.4 Operator shall cause its insurers to amend its Comprehensive or Commercial General Liability and, if applicable, Umbrella or Excess Liability policies with the following endorsement items (a) through (e) with respect to the Facility; and to amend Operator's Workmen's Compensation and Auto Liability policies with endorsement item (e):

- (a) PREPA, its board of directors, directors, officers and employees are additional insureds under this policy; and
- (b) This insurance is primary with respect to the interest of PREPA, its directors, officers, and employees and other insurance maintained by them is excess and not contributory with this insurance; and
- (c) The following cross liability clause is made a part of the policy: "In the event of claims being made by reason of (i) personal and/or bodily injuries suffered by any employee or employees of one insured hereunder for which another insured hereunder is or may be liable, or (ii) damage to property belonging to any insured hereunder for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies have been issued to each insured hereunder, except with respect to the limits of insurance and only if such claim pertains to the Agreement"; and
- (d) Insurer hereby waives all rights of subrogation against PREPA, its officers, directors and employees; and
- (e) Notwithstanding any provision of the policy, this policy may not be cancelled, non-renewed or materially changed by the insurer without giving thirty (30) Days (ten (10) Days in the case of non-payment of premiums) prior written notice to PREPA. All other terms and conditions of the

## policy remain unchanged.

21.5 Regarding breach of insurance warranties by Operator, all insurance policies shall be endorsed as follows: "The breach of any of the warranties or conditions in this policy by Operator shall not prejudice PREPA's right under this policy".

91

21.6 Operator shall cause its insurers or agents to provide PREPA within ninety (90) Days after the Financial Closing Date with the originals of the certificates of insurance evidencing the policies and endorsements listed above with respect to the Facility. Failure of PREPA to obtain certificates of insurance does not relieve Operator of the insurance requirements set forth herein. Failure to obtain the insurance coverage required by this Article 21 shall in no way relieve or limit Operator's obligations and liabilities under other provisions of this Agreement.

21.7 Operator will require from its contractor(s) for the construction of the Facility to obtain a payment and performance bond(s) of not less than one hundred fifty million dollars (\$150,000,000), that will guarantee the payment of all subcontractors and suppliers and the satisfactory completion of the project, on time and in a manner that will allow Operator to comply with its obligations established under this Agreement. Under such bond(s) PREPA will be named as a dual obligee. PREPA will have the right but not the obligation to assume all rights and obligations of Operator under the construction contract.

## ARTICLE 22 - STEAM TURBINE GENERATOR (S)

22.1 The rates, terms and conditions of this Agreement are based on the assumption that Operator shall purchase the turbine-generator set designed by Hitachi (the "Hitachi Turbine") currently owned and stored by PREPA at the Aguirre Power Station. PREPA and Operator agree to use best efforts to negotiate a purchase agreement between PREPA and Operator (the "Hitachi Turbine Purchase Agreement") based on the terms and conditions stated in this Article 22 within twelve (12) Months of the Effective Date (the "Negotiation Period"). The Negotiation Period may be extended by mutual agreement of the Parties. In the event Operator purchases the Hitachi Turbine, the terms of such purchase shall be governed by the Hitachi Turbine Purchase Agreement. Operator's obligation to purchase the Hitachi Turbine is contingent on the occurrence of the Financial Closing Date and the execution of the Hitachi Turbine Purchase Agreement by the Parties.

22.2 The Parties understand and agree that the Hitachi Turbine will have to be refurbished or upgraded in order to be utilized in the Facility. Within ninety (90) Days of the Effective Date, Operator will give to PREPA a copy of the request for proposal for refurbishing or upgrading the Hitachi Turbine (the "Upgrade RFP") and a list of proposed bidders (the "Bidders List"). Operator agrees to incorporate any revisions to such Upgrade RFP submitted by PREPA within thirty (30) Days of PREPA's receipt of the copy of the Upgrade RFP, unless the Operator provides PREPA with a written explanation demonstrating that such revisions will have a material adverse effect on the permitting or operation of the Facility; provided, however, PREPA shall not exclude options to increase the capacity or improve the heat rate of the Hitachi

Turbine. The Upgrade RFP shall require an equipment supplier to provide sufficient warranties of performance of the equipment to enable nonrecourse project financing of the Facility (the "Turbine Warranty"). Operator agrees to include in the Bidders List additional bidders designated by PREPA within thirty (30) Days of PREPA's receipt of the copy of the Bidders List, provided such bidders are recognized and creditworthy companies in the business of turbine manufacture, repair, refurbishment, or upgrade. The Upgrade RFP shall be submitted to all bidders on the Bidders List.

22.3 Selection of Upgrade Bid

(a) Operator agrees to provide to PREPA copies of all responses to the Upgrade RFP (such responses, the "Upgrade Bids") within ten (10) Days after Operator receives them.

(b) Within sixty (60) Days of PREPA's receipt of the Upgrade Bids, or longer as extended by mutual agreement of the Parties, PREPA shall provide Operator with a copy of PREPA's evaluation of the Upgrade Bids (the "PREPA Bid Evaluation") and recommend a bidder to upgrade the Hitachi Turbine (the "Recommended Bidder"). The PREPA Bid Evaluation will be based on an evaluation of level of capacity, heat rate, upgrade cost and other evaluation factors. All economic assumptions, including discount rate, financing costs, fuel costs and evaluation time period, shall be stated in the PREPA Bid Evaluation.

(c) Operator shall select the bidder to upgrade the Hitachi Turbine (the "Selected Bidder"), provided that in the event the Selected Bidder is not the Recommended Bidder, the Hitachi Turbine purchase price shall be adjusted to compensate PREPA for differences stated in the PREPA Bid Evaluation between the bids of the Selected Bidder and the Recommended Bidder, such price adjustment the "Evaluated Cost Differential".

22.4 Hitachi Turbine Purchase Price

(a) The purchase price for the Hitachi Turbine (the "Hitachi Turbine Purchase Price") is thirty-six million dollars (\$36 million) as adjusted (i) downward by the cost of the bid selected to refurbish or upgrade the Hitachi Turbine and to provide the Turbine Warranty (the "Upgrade and Warranty Costs"), and (ii) upward by the Evaluated Cost Differential, such adjustments to be calculated pursuant to the following formula:

Hitachi Turbine Purchase Price = \$36 million - Upgrade and Warranty Costs

#### + Evaluated Cost Differential

(b) Payment of the Hitachi Turbine Purchase Price shall be made over the course of the construction period according to a payment schedule comparable to payment schedules for turbine-generator sets in the construction of similar facilities to the Facility.

(c) The unpaid balance of the Hitachi Turbine Purchase Price shall accrue Interest from the Financial Closing Date.

(d) Operator shall retain twenty percent (20%) of the Hitachi Turbine Purchase Price (the "Retainer") until completion of performance testing as described in Section 22.6 below.

22.5 Scope Changes to the Hitachi Turbine Purchase Agreement

(a) As soon as Operator becomes aware of any circumstances that Operator reasonably believes may necessitate a scope change to the Hitachi Turbine Purchase Agreement, Operator shall issue to PREPA a Scope Change Order Notice (SCON). All SCONs shall describe the proposed scope change and include documentation sufficient to enable PREPA to determine
(i) whether such scope change is needed to obtain or maintain the Turbine Warranty, (ii) the impact the scope change will have on the Hitachi Turbine Purchase Price (the "Scope Change

Cost"), (iii) the impact the scope change is likely to have on the Hitachi Turbine capacity and heat rate, and (iv) such other information as PREPA may reasonably request in connection with such SCON.

(b) PREPA shall promptly review any SCON and may, but shall not be obligated to, provide written notice to Operator directing it to proceed with the scope change (the "PREPA Scope Change Order"), in which event the terms of the SCON shall be binding on Operator.

(c) In the event PREPA does not provide a PREPA Scope Change Order within thirty (30) Days of its receipt of a SCON for a scope change that Operator reasonably believes (i) is necessary to obtain or maintain the Turbine Warranty and (ii) it has provided sufficient documentation to PREPA to enable PREPA to determine whether such scope change is needed to obtain or maintain the Turbine Warranty in accordance with Section 22.5(a)(i), Operator may proceed with the scope change and seek reimbursement from PREPA by providing written notice to PREPA of Operator's decision to proceed with such scope change (the "Operator Scope Change Order"). Within thirty (30) Days of PREPA's receipt of such Operator Scope Change Order and pending resolution of any dispute, and subject to subsequent adjustment to conform to any final agreement or judgment regarding any such dispute, the Hitachi Turbine Purchase Price shall be revised by the amount, if any, PREPA reasonably believes it should pay of such scope change (such amount, the "PREPA Scope Change Amount") plus one-half (1/2) the difference between the PREPA Scope Change Amount and the Scope Change Cost. In the event such an Operator Scope Change Order is issued, Operator shall provide PREPA with all purchase orders, invoices, subcontractor quotes and other documents and records as may enable PREPA to verify, to its reasonable satisfaction, the Scope Change Cost.

22.6 Hitachi Turbine Testing and Performance Adjustments

(a) Within one hundred twenty (120) Days after the Commercial Operation Date, the Hitachi Turbine shall be tested in accordance with the latest revision of ASME Performance Test Code 6 on Steam Turbines ("PTC 6") in effect at the time of testing (the "Performance Test"). The Performance Test will determine the capacity in MW (the "As-Tested Capacity") and heat rate in BTU/kWh (the "As-Tested Heat Rate") of the upgraded Hitachi Turbine at test conditions. The As-Tested Capacity shall be adjusted to the operating conditions specified in Exhibit I (the "PREPA Turbine Guarantee Conditions"), such adjusted capacity in MW, the "Adjusted Capacity". The As-Tested Heat Rate shall be adjusted to the PREPA Turbine Guarantee Conditions, such adjusted heat rate in BTU/kWh, the "Adjusted Heat Rate".

(b) Testing shall be conducted by a qualified independent testing company selected by the Parties by mutual agreement. Adjustments to the as-tested data shall be conducted by a qualified independent performance engineering company selected by the Parties by mutual agreement. Test procedures shall be developed by the testing and performance contractors and approved by the Parties. Operator and PREPA shall use best efforts to select the testing and performance engineering companies and approve test procedures prior to the Commercial Operation Date. All additional costs required for conducting the Performance Test and adjusting the data to PREPA Turbine Guarantee Conditions, including the cost of installing special test instrumentation, testing personnel, and the cost of performance engineering shall be paid by PREPA.

(c) The Hitachi Turbine Purchase Price shall be adjusted by adding to the Retainer a Capacity Adjustment in the event the Adjusted Capacity is greater than or less than 450 MW,

such adjustment determined pursuant to the following formula:

Capacity Adjustment =  $[(Adjusted Capacity / 450 MW)^{0.6} -1] \times $36 million$ 

(d) The Fuel Cost Determination Factor (FCDF) in Section 7.3 shall be revised based on the Adjusted Heat Rate pursuant to the following formula:

FCDF = Adjusted Heat Rate x 1.257

Provided, however, that the FCDF set forth in Section 7.3 shall be utilized until the new FCDF is determined after testing for the Adjusted Heat Rate, and the Energy Purchase Price shall be adjusted retroactively to reflect the Adjusted Heat Rate.

22.7 Within one hundred twenty (120) Days of the Effective Date, Operator shall present PREPA with one or more alternative proposals to utilize one or more new main steam generators in the Facility in lieu of Operator's purchase of the Hitachi Turbine, including an alternative proposal for a single, main steam turbine generator with a Capacity Purchase Price and an Energy Purchase Price that is at least as favorable to PREPA as the Energy Purchase Price and the Capacity Purchase Price set forth in Sections 11.1 (a) and 11.1 (b), respectively. PREPA shall have the option to proceed with the Hitachi Turbine Purchase Agreement or to select an alternative proposal by providing written notification to Operator within sixty (60) Days of PREPA's receipt of the Upgrade Bids, or longer as extended by mutual agreement of the Parties. In the event PREPA decides to proceed with the Hitachi Turbine Purchase Agreement, PREPA agrees that it will not sell the Hitachi Turbine during the remainder of the Negotiation Period to any other party without the prior written consent of the Operator.

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## **ARTICLE 23 - ASSIGNMENT**

This Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any attempt to assign this Agreement without the prior written consent of the corresponding Party shall be void.

Notwithstanding the above, the Operator may assign its rights and benefits but not its obligations and duties under this Agreement without PREPA's consent as collateral security, as a means of obtaining financing, provided that the Operator shall not be relieved of its responsibility to carry out its duties and obligations under this Agreement, and further provided that any such assignment is made expressly subject to the terms and conditions of this Agreement between the Operator and PREPA. PREPA agrees to execute the appropriate consenting documents, as required by Lenders, in connection with any assignment made by Operator in accordance with this Article.

# ARTICLE 24 - QUALIFYING FACILITY STATUS

24.1 The Operator hereby agrees that the Facility will achieve qualifying cogeneration facility certification status pursuant to PURPA on or before the Financial Closing Date. Operator shall provide PREPA on or before the Financial Closing Date with a sworn statement duly notarized by a notary public certifying that the Operator has entered into a steam supply agreement with the steam host.

24.2 In the event the Facility loses its status as a qualifying cogeneration facility pursuant to PURPA, the Operator shall vigorously pursue and use reasonable efforts to reobtain Qualifying Facility status, provided that Operator shall not have such obligation if the loss of the Qualifying Facility status results from the buyout of Operator's contract(s) with its steam customers as the result of an extended shutdown requested pursuant to Section 7.7. Notwithstanding the above, should the Operator be unable to obtain recertification of the Facility, this Agreement shall remain in effect and the Operator shall comply, in its relationship with PREPA, with all other provisions of PURPA and the regulations approved under PURPA by FERC or any successor (other than requirements for maintaining Qualifying Facility status) applicable to the relationship between qualifying cogeneration facilities and electric utilities, in particular those provisions which protect, defend, preserve, and/or are propitious to electric utilities, provided, however, that nothing under PURPA or the regulations thereunder shall materially adversely affect in any way the rights, duties, and obligations of the Parties under this Agreement.

# ARTICLE 25 - MISCELLANEOUS PROVISIONS

25.1 This Agreement, including the exhibits, and any document related thereto, can be amended only by agreement between the Parties in writing.

25.2 The failure of either Party to insist in any one or more instances upon strict performance of any provisions of this Agreement, or to take advantage of any of its rights hereunder, shall not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect.

25.3 The headings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties hereto, nor should they be used to aid in any manner in the construction of this Agreement.

25.4 This Agreement is intended solely for the benefit of the Parties hereto. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party to this Agreement.

25.5 No officer, employee, or agent of Operator or PREPA or of the Commonwealth or Municipal Governments shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom that would be in violation of any law, rule, regulation, order, or policy of the Commonwealth of Puerto Rico or PREPA.

25.6 This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative

100

of, or to otherwise bind, the other Party.

25.7 Cancellation, expiration or earlier termination of this Agreement shall not relieve the Parties of obligations incurred prior to, or as a result of, such cancellation, expiration or earlier termination of this Agreement, which by their nature should survive such events, including without limitation warranties, remedies, promises of indemnity and confidentiality.

25.8 (a) The Operator hereby certifies and warrants that at the Effective Date it has filed its income tax return for the last five (5) Years, if required, and does not owe any taxes to the Commonwealth of Puerto Rico.

(b) The Operator certifies and warrants that at the Effective Date it has made all payments and does not owe any monies to the Labor and Human Resources Department of Puerto Rico, required by the Puerto Rico Employment Security Act to cover applicable unemployment, temporary disability or sickness, and social security for chauffeurs.

(c) It is expressly agreed that these conditions are an essential requirement of the present Agreement and if the abovementioned certifications are not correct in whole or in part this will be sufficient cause to cancel this Agreement. If this cancellation takes place the Operator will be obligated to reimburse to PREPA all the payments received under this Agreement.

(d) All subcontractors employed by the Operator shall also comply with the abovementioned certifications.

(e) The Operator shall be responsible for requiring such certification from all subcontractors and notifying PREPA of such compliance.

25.9 Each Party to this Agreement warrants that, except to the extent that a particular

provision of this Agreement expressly creates a different standard, it will be reasonable with respect to the timing and substance of any exercise of its respective rights, obligations, duties and discretion in implementing this Agreement, including, without limitation, the making of and satisfying of requests, the issuance and withholding of consents and findings of acceptability or satisfaction, the incurrance of costs that are the responsibility of the other Party, and the provision of notice to the other Party (and its Lenders if applicable).

25.10 This Agreement shall inure to the benefit of and be binding upon the Operator and PREPA and their respective successors and assigns.

25.11 In the event that a Court of Competent Jurisdiction issues an order prohibiting material performance of either Party under this Agreement, the performance of both Parties shall be excused during the period in which such order is in effect (the "Court Order Period"). Operator's obligations under Sections 19.1(i), 19.1(ii), 19.1(iii) and 19.4 shall be extended by one Day for each Day of the Court Order Period and the Capacity Purchase Price and Facility Debt shall be adjusted as if there were a Force Majeure event as set forth in Section 11.1(b)(1)(ii) and Section 1.31, respectively.

# ARTICLE 26 - CHOICE OF LAW

This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Puerto Rico and, to the extent applicable; the laws of the United States of America. The Parties herein agree to submit themselves to the appropriate administrative body having jurisdiction over the Parties and the Agreement or to a Court of Competent Jurisdiction. 104

# ARTICLE 27 - ENTIRETY

This Agreement is intended by the Parties as the final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement with respect to the Energy and Dependable Capacity sold and purchased hereunder. All prior and contemporaneous written or oral understandings, agreements, offers or other communications of every kind pertaining to the sale of Energy and Dependable Capacity hereunder to PREPA by Operator are hereby superseded. IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

ATTEST:

AES Puerto Rico, L. P.

AES Puerto Rico, Inc., General Partner

By:

Title: Engineer Manager

(Corporate Seal)

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Title:Vice President

ATTEST: PUERTO RICO ELECTRIC POWER AUTHORITY

By

Title: Secretary of the Governing

Title: Executive Director

Board

(Corporate Seal)



#### COMMONWEALTH OF PUERTO RICO Puerto Rico Electric Power Authority

Héctor R. Rosario, M.B.A., C.P.A. Executive Director

March 4, 2003

Mr. Richard Trifonoff President AES Puerto Rico, L.P. PO Box 1890 Guayama, PR 00785

Dear Mr. Trifonoff:

## Re: Declaration of Commercial Operation Date

Reference is made to your letter of November 27, 2002, regarding the declaration of Commercial Operation Date (COD), as of November 29, 2002, at 00:01 hrs in accordance with Article 12.6 of the Power Purchase and Operating Agreement (the PPOA), as amended.

Puerto Rico Electric Power Authority (PREPA) acknowledges the receipt of such COD declaration and will not object the declared Dependable Capacity of 454,300 kW of net output. Said capacity is equivalent to the Estimated Dependable Capacity of 413,000 kW plus 10% increase. As of COD, PREPA shall consider the Facility to be available for Dispatch through our Automatic Generation Control (AGC) system.

Notwithstanding the above, since the Dependable Capacity Test was performed without any steam being delivered to a host due to the programmed outage of the Phillips Core Petroleum facility, PREPA requests that the 13-hour Dependable Capacity Test described in Exhibit G of the PPOA be performed again, as soon as Phillips is back in commercial operation. Moreover, fine-tuning of the AGC system and its features must be completed in a timely manner after COD.

If you have questions regarding this subject, please do not hesitate to give us a call at (787) 289-4902.

Sincerely, tectowR. R dsario Executive Director

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## Attachment A-2

#### 2022-P00020

## FUEL OIL PURCHASE CONTRACT AGUIRRE, COSTA SUR, SAN JUAN AND PALO SECO STEAM PLANTS CONTRACT NUMBER 902-10-21

AS FIRST PARTY: The Puerto Rico Electric Power Authority, hereinafter referred to as "PREPA", a public corporation and government instrumentality of the Commonwealth of Puerto Rico, created by Act of May 2, 1941, No. 83 (Act 83-1941), as amended, represented in this act by its Executive Director, Josué A. Colón Ortiz, of legal age, married, professional engineer, and resident of Caguas, Puerto Rico.

AS SECOND PARTY: Puma Energy-Caribe, LLC, hereinafter referred to as "Seller", a limited liability company organized and existing under the laws of Puerto Rico, authorized to do business in Puerto Rico, duly registered as a supplier to PREPA, represented in this act by its Chairman, Mario Ricardo Sierra Varela of legal age, married, engineer and resident of Guaynabo, Puerto Rico, duly authorized to sign this Contract by virtue of Resolution dated October 12, 2021.

Both PREPA and Seller are herein individuals referred to as a "Party" and collectively referred to as the "Parties".

#### WITNESSETH

WHEREAS, PREPA, by virtue of Act 83-1941, has the authority to engage those professional, technical, and consulting services necessary and convenient to the activities, programs, and operations of PREPA;

WHEREAS, PREPA issued a Request for Proposal (RFP) 117202 for the supply of residual No. 6 fuel oil at the Aguirre, San Juan, Palo Seco and Costa Sur steam plants for the supply of residual No. 6 Fuel Oil.



WHEREAS, in response to the referred RFP, Seller made an offer for the supply of No. 6 Fuel Oil at the Aguirre, San Juan, Palo Seco and Costa Sur steam plants.

THEREFORE, after a negotiation process between the parties and in consideration of the mutual covenants herein stated, PREPA and Seller agree themselves, their representatives, successors and assignees as follows:

ARTICLE I: Scope and Term of Contract

- A. Seller agrees to sell and deliver to PREPA, and PREPA agrees to purchase from Seller, No. 6 Fuel Oil in compliance with the specifications detailed in Exhibit A, Fuel Oil Specifications No. 6 for the Aguirre, Costa Sur, San Juan and Palo Seco steam plants. The monthly rate of delivery for each calendar month of this Contract shall be the amount as requested by PREPA, as long as it does not exceed a limit of one million six hundred fifty thousand (1,650,000) barrels per month for the Aguirre, Costa Sur, San Juan and Palo Seco steam plants combined.
- B. PREPA reserves the right to purchase approximately 25% of the plant fuel requirements from any open market source if PREPA identifies a market price which is lower than that which was agreed upon the execution of the Contract or for a declared emergency situation by PREPA and/or the Seller, causing a shortage on contracted quantities.
- C. This Contract will become effective on the date of its signing by the Parties, and will be in effect for a period of one (1) year, starting from the commencement date as notified by PREPA (the "Initial Term"). The Contract may be extended, for an additional year only by written amendment agreed in writing by both Parties.



D. This Contract may be extended on a monthly basis upon mutual agreement after the end of the contracted term or its renewal; provided, however, that said extensions shall not exceed four (4) consecutive months, except when an emergency is declared by PREPA's Governing Board.

#### ARTICLE II: Termination or Insolvency

- A. Prior to its normal expiration date, and without limiting any rights that the Parties may have under this Contract, law or otherwise, the following events will be an event of default and this Contract may be terminated immediately by written notice upon the happening of any of the following: (i) by Seller, if any invoice remains unpaid by PREPA two (2) calendar days after its due date or (ii) by PREPA, with ten (10) days' advance notice, if Seller fails to deliver the fuel ten (10) days after its committed delivery date without PREPA's consent, except when failure to deliver is a consequence of Force Majeure at nominated loading port, PREPA's nonpayment of due invoices, or noncompliance with the Credit Limit by PREPA.
- B. Prior to its normal expiration date, except where provided elsewhere in this Contract, if either party breaches: (i) any material obligation under this Contract or (ii) any representation or warranty pursuant to Article XII.F., G., I., K., L., M., O. and Q. under this Contract, and such failure continues for a period of seven (7) days following notice of such failure from the performing party, the performing party may terminate this Contract.
- C. The exercise of its right to terminate this Contract shall not be understood as a waiver by the party to any other remedy it may have under this Contract or under the law for

delays or breach incurred by the other party in the performance of its obligations under this Contract.

- D. If (i) either party commences any debt adjustment proceeding, bankruptcy proceeding, insolvency proceeding, dissolution or wind-up proceeding, proceeding under the Public Corporation Debt Enforcement and Recovery Act, Act No. 71, of June 28, 2014 ("Recovery Act"), or any similar proceedings, or (ii) a petition in bankruptcy or insolvency is filed against either party and the relevant proceeding or case shall continue undismissed, unstayed or not sufficiently bonded for a period of 90 or more days, or (iii) a Moratorium Event occurs for PREPA, other than a Moratorium Event referred to in Article XII.M.b (ii) that is solely due to nonpayment of one or more creditors under the Fuel Lines, or (iv) a receiver is appointed for either party without such party's consent, the other party shall have the right to terminate this Contract upon written notice to the insolvent party, without prejudice to any claim or any other right of the terminating party under this Contract at the time of such termination. Notice of termination under this provision shall not create any liability to the terminating party, except that it shall still be responsible for the payment of amounts due and owing to the breaching party not subject to claims.
- E. If PREPA terminates this Contract pursuant to this Article II, Seller shall release the barge delivering under this Contract (subject to barge owner's approval) and use commercially reasonable efforts to not impede PREPA in obtaining the use of the barge.

F. The Parties acknowledge that PREPA is undergoing a transformation process, and therefore, both Parties agree that in the eventuality of the execution of a Partnership Contract, Sale Contract or any other PREPA Transaction (as these terms are defined in Act No. 120-2018, otherwise known as Puerto Rico Electric System Transformation Act, as amended), PREPA may sell, assign, convey, transfer, pledge, mortgage, sublease, delegate, hypothecate, or otherwise dispose (each, a "Transfer") any of its rights, title, or interest (by novation or other instrument) in this Contract as permitted by applicable law and at any time, and without Seller's consent or cost, expense or incremental liability to PREPA, to any future operator of Puerto Rico's Generation system or any of its affiliates, or to any governmental agency, body, public corporation or municipality of Puerto Rico; provided, that PREPA shall notify Seller no later than thirty (30) days before the effective date of any such Transfer.



#### ARTICLE III: Independent Contractor

Seller shall be considered as an independent contractor, for all material purposes under this Contract, and all persons engaged or contracted by Seller for the performance of its obligations herein, shall be considered as its employees or agents or those of its subcontractors, and not as employees or agents of PREPA. In consequence, Seller is not entitled to any fringe benefit, such as, but not limited to: vacation, sick leave, and others. ARTICLE IV: <u>Delivery and Title</u>

A. Delivery shall be, via barge vessel or pipeline transfer, for fuel as specified in Exhibit A or for fuel components, delivered by Seller at Aguirre, Costa Sur, San Juan and

Palo Seco. The pricing period is comprised of three (3) calendar days around the deemed commencement of discharge, considering the deemed date mutually agreed between the parties, and it shall not be modified, except with the parties' mutual agreement.

- B. PREPA shall submit to Seller, no later than the fifteenth (15<sup>th</sup>) calendar day of each month, an estimate of its requirements and proposed dates for delivery of fuel for the following month. Seller shall promptly acknowledge receipt of such estimate and shall, within five (5) days of such receipt, confirm or propose new delivery dates for such following month. PREPA shall accept or make a counter-proposal with respect to such delivery schedule within one (1) business day. Said delivery schedule, if accepted by PREPA, shall be final. Delivery dates shall consist of delivery windows of three (3) days each for actual delivery to occur. If estimates are not submitted within the aforementioned timeframes, delivery will be delayed for as long as required for Seller to obtain availability of the fuel.
- C. Title of product delivered shall pass to PREPA after the fuel passes the pipeline flange at the Aguirre, Costa Sur, San Juan or Palo Seco steam plants. Seller is responsible for cleaning, removing, and disposing of any spill of its product, which might occur before the pipeline interconnection during delivery; and shall be responsible for securing all materials, permits, and personnel required for handling the transfer of fuel.
- D. Deliveries via barge or vessel to the San Juan and Palo Seco Steam Plants through the San Juan Dock A/B, at present, are limited to an arrival draft of 26 feet. Deliveries

via barge or vessel to the Aguirre Steam Plant are limited by a dredged channel with maximum draft of 21.5 feet. Deliveries through the CORCO dock (Costa Sur Plant), at present, are limited as follows:

| DWT   | 82,000 tons |
|-------|-------------|
| LOA   | 840 feet    |
| BCM   | 425 feet    |
| DRAFT | 42 feet sw  |

Seller shall conduct its own investigation relative to navigational information or any natural changes that might occur at the San Juan Dock A/B, Jobos bay or Guayanilla bay, since PREPA does not assume any responsibility for the same. However, if any change to the port restrictions occurs, Seller will have the right to charge PREPA for any and all costs related to the more restricted port conditions.

- E. Considering that a single barge is available at Puerto Rico to transport the product from Seller dock to Aguirre, San Juan, Palo Seco and Costa Sur, any problem related to the barge that prevents delivery of the product, and is not as a consequence of Seller fault or negligence, will be treated as a Force Majeure event.
- F. Maximum temperature of oil entering PREPA's pipeline shall not exceed one hundred and eighty-five degrees Fahrenheit (185° F), nor shall it be less than one hundred and twenty-two degrees Fahrenheit (122° F) for product with viscosity between 65 and 350 SFS and at the pressure of not more than one hundred and fifty (150) psig.

nor less than one hundred and twenty-five (125) psig., measured at PREPA's intake flange.

- G. If Seller, for any reason, solely as a consequence of its own fault and except as provided for in Article XIII (Force Majeure), of this Contract, fails to deliver the fuel required as provided for in this Contract, PREPA may procure the product from any other supplier. In such event, PREPA shall notify Seller of the chosen supplier and applicable price. Seller shall reimburse PREPA, for any difference which PREPA may have paid in excess of contracted price in the same due date of corresponding payment to the other supplier provided that PREPA submits evidence of such payment. In no circumstance will this clause apply if Seller ceased deliveries due to delay or nonpayment by PREPA of invoices already due or to the Credit Limit being exceeded, as set forth in Article IX. Other than as set forth in Article XII F, it shall be understood that PREPA is not waiving any rights available to it under the law, including rights to any claims or actions for damages caused by noncompliance by Seller with the terms of this Contract.
- H. Seller will be responsible for any and all damages to the dock or to any other property caused by the vessel during delivery to the extent cause by Seller negligence. All fuel oil deliveries and transfers should be in compliance with Homeland Security Regulations including, but not limited to, 33 CFR 104 & 105. Also, all fuel oil operations should be in compliance with 33 CFR 154, 155 & 156.
- I. Should PREPA need fuel of the same type and quality as the fuel herein contracted for at any of its other plants, PREPA may request such deliveries as per the rules





outlined in paragraph C of this Article, and Seller shall endeavor within its reasonable efforts to deliver this order to such other plant, up to a maximum of Seller Contractual Commitment under this Contract. Said requested fuel oil to be delivered by Seller shall be at the same delivered price and under the same payment conditions as for the Aguirre, Costa Sur, San Juan and Palo Seco steam plants under this Contract, adjusted to reflect any increased or decreased transportation costs resulting from delivery to such other plant.

- J. Seller is responsible under a predicted Force Majeure event to execute reasonable plans to avoid human hazards or damages to public or private property that may be caused by Seller operation and performance under this Contract.
- K. To the extent caused by Seller negligence, Seller agrees to indemnify PREPA for all expenses and costs of any nature arising out of any claim due to an environmental violation, caused by its agents, employees, subcontractors or assignees during performance or nonperformance of its obligation under this Contract.
- L. To the extent caused by PREPA's negligence, PREPA agrees to indemnify Seller for all expenses and costs of any nature arising out of any claim due to an environmental violation, caused by its agents, employees, subcontractors or assignees during performance or nonperformance of its obligation under this Contract.
- M. Neither party shall be liable to the other pursuant to this Contract, for any punitive, consequential, or exemplary damages.
- N. Every vessel shall be capable of acceptance by the terminal(s), and Seller shall bear the risk of any failure to obtain such acceptance.

O. It is Seller's responsibility to familiarize itself with all the locations referred to in this Contract. Seller will be required to have the proper personnel and equipment to service the locations as specified in this Contract.

## ARTICLE V: Type of Fuel to be Supplied

- A. Seller warrants that the fuel supplied meets the contracted specifications.
- B. In the event that during the term of this Contract, either Federal or Commonwealth of <u>Puerto Rico laws or regulations are modified</u>, requiring the burning of a fuel with different specifications than the fuel contracted for, and if these changes require an adjustment in the price of the fuel to be supplied, then the parties shall meet within five (5) days from the enactment of any such law or regulation to discuss the matter for the purpose of establishing new price terms satisfactory to both parties. If an agreement cannot be reached prior to the effective date of any such law or the enforcement date of any such regulations then PREPA shall have the right to terminate this Contract.
- C. In the event that, during the term of this Contract, PREPA requests a fuel of different specifications than the fuel contracted for, Seller and PREPA shall meet to negotiate in good faith new price terms (lower or higher than the contracted price) for said different fuel oil specifications satisfactory to both parties. If an agreement cannot be reached, the Contract terms and the contracted fuel specification shall prevail.

## ARTICLE VI: Specifications

A. All fuel delivered under this Contract shall be in accordance with the latest corresponding specifications at the moment of delivery, as specified in Exhibit A.

notify Seller of any specification non-compliance that will result in product being rejected or discounts to be applied before discharge commences, and discharge will be suspended until Seller and PREPA can reach an agreement.

- E. General provisions in this Article VI regarding compliance with specifications, discrepancies and laboratory analyses shall apply to Article XI (<u>Guaranteed Calorific</u> <u>Value</u>), whenever required.
- F. Seller will be held responsible for any fines, penalties, direct damages, expenses, costs or claims, actions and causes of actions, which may arise due to the fact that any of the fuel provided by Seller did not comply with the contracted Specifications and warranties for the same. Therefore, should such circumstances take place, Seller will hold and save harmless and will defend PREPA, its officers, agents, and employees, from any claims, actions, causes of actions, damages, costs, fines, penalties and expenses due or attributable to variations or deviations from fuel specifications as contracted and guaranteed by Seller.

### ARTICLE VII: Laytime and Demurrage

A. PREPA assumes no responsibility or liability for demurrage incurred by the vessel(s) delivering fuel pursuant to this Contract, unless such demurrage is attributed to the fault or negligence of PREPA, and except in the situation defined in Article IX (Price), paragraph C. Laytime shall commence six (6) hours: a) after Seller notifies PREPA tendering Notice of Readiness (NOR) or b) upon arrival at berth and cleared by Customs, whichever occurs last.



- B. Notice shall be given to PREPA seventy-two (72), forty-eight (48), and twenty-four (24) hours before the vessel's arrival or as soon as vessel departs from load port, whichever occurs later, by the vessel's master or its agent. In the event the vessel is delayed in getting into berth after giving notice, for any reason over which PREPA has no control or due to docking restrictions, if any, such delay shall not count as used laytime.
- C. It is understood and agreed that it is the practice of CORCO/Proterm to load and unload vessels at the docks in order of their arrival to the CORCO/Proterm buoy, subject to the availability of the docks. PREPA shall not be responsible for demurrages attributable to dock unavailability, unless said unavailability is caused by PREPA's intervention to change CORCO's practice.
- D. Laytime shall commence within the meaning of this Article, whether the vessel arrives during or outside normal business hours. Laytime shall not be increased, nor shall PREPA be held accountable for, any delay in berthing the vessel attributable to the failure of Seller to give the notices set forth in this Article.
- E. Allowed laytime shall be forty-two (42) hours for each and every delivery of No. 6 residual fuel oil under this Contract. PREPA and Seller agree, however, that the allowed laytime of forty-two (42) hours depends upon:
  - 1. Seller vessel being capable of pumping its entire cargo within thirty (30) hours.
  - 2. Seller personnel or agents promptly performing the connection and disconnection of discharging hoses.





- 3. Unloading temperature and pressure as specified in Article IV (<u>Delivery and Title</u>) of this Contract.
- 4. Seller maximum cargo volume of Seller barrels.
- F. Allowed laytime shall be increased by the time a vessel is prevented or delayed from arriving, departing, or discharging cargo due to:
  - 1. Vessel's condition, vessel's facilities, or vessel's failure to comply with US Coast Guard or other governmental agency regulations, which do not permit connection, discharging cargo or disconnecting in the allowed laytime.
  - 2. The failure of the No. 6 residual fuel oil to meet the quantity or specifications by any of the determinations set forth in this Contract.
  - 3. Regulations of port authorities, vessel's owners or vessel's master, which prohibit discharging of the cargo at night.
  - 4. Seller cargo volume exceeding the established maximum volume.
  - 5. Tide conditions, heavy seas, wind or bad weather of any nature.
- G. If the vessel is delayed at any discharging berth for ships purposes or reasons beyond the control of PREPA, laytime shall cease when discharging is completed even though hoses are not disconnected. If regulations of port authorities or vessel's owner prohibit discharging of the cargo at night, time so lost shall increase the allowed laytime. If PREPA prohibits discharging at night, time lost shall count as laytime. In all other cases laytime shall continue to run until cargo hoses or loading arms, as the case may be, have been disconnected.



- H. Subject to Seller full compliance with this Article, PREPA shall pay demurrage per running hours, and pro-rata for a part thereof, for all time that exceeds the allowed laytime at the rate stated in the Voyage Charter Agreement for the vessel if such vessel is contracted under VCP. For TCP vessels or barges, parties shall use current TC3 value plus Wordscale 10 points with minimum flat rate of US\$ 5.50 per metric ton. All demurrage claims must be presented in writing along with substantiation thereof within ninety (90) days after fuel delivery date, after which PREPA will no longer be liable for any demurrage charges for said delivery.
- I. If discharging has ceased because it is completed or if the discharging rate has decreased to a rate, which will not permit discharge of the entire cargo within forty-two (42) hours, or due to any other problem with the vessel, PREPA may order the vessel off the dock at no cost to PREPA. If practical, the vessel shall be allowed to return later and complete discharging. In the event that the discharging rate has decreased to a rate which will not permit discharge of the entire cargo within forty-two (42) hours, PREPA may delay ordering the vessel off the dock and allow pumping to continue, provided Seller pays the dock per hour fee rate and any other associated cost.
- J. Seller shall furnish all appropriate documentation and available evidence in support of any demurrage claim which may be brought against PREPA.

#### ARTICLE VIII: General Liabilities

The parties agree to make, use, provide, and take all proper, necessary precautions, safeguards, and protection against the occurrence or happening of injuries, death,

and/or damages to any person or property during the delivery process. The parties also agree to be responsible for, and indemnify, and save each other harmless from public liability, costs and expenses resulting therefrom, or damages that may happen or occur through the negligence or willful misconduct of the breaching party, its employees, agents, and subcontractors, during the performance of this Contract, or while carrying out any act or action directly or indirectly related to, or in connection with the performance of this Contract, and from loss, liability, and fines incurred for, or by reason of violation by the breaching party of any federal, state, or municipal ordinance, or regulation of law, while said delivery is in progress.

### ARTICLE IX: Price

A. The price for the fuel to be supplied under this Contract includes all taxes, fees or established import tariffs, and will be subject to on the Initial Term ultimately chosen from the options outlined in Article I (<u>Scope and Term of Contract</u>), paragraph B. Such price is to be determined as follows:

The price to be paid for each barrel of fuel delivered throughout the entire duration of the Initial Term will consist of an escalator plus a price differential, with 60-day credit term. The fixed price differential shall be, in US dollars per barrel for all deliveries under this Contract, \$ 2.88 for San Juan, Palo Seco, Aguirre and Costa Sur Plants. Price differentials will be added to the escalator to obtain the final fuel price.

B. Subject to PREPA not defaulting on payment under this contract with Seller, nor otherwise breaching this agreement with the Seller, Seller shall provide PREPA with a Credit Limit of \$200,000,000 for the obligation arising solely under this Contract.

Whenever the Credit Limit is reached, PREPA shall anticipate payments of invoices in chronological order as much as necessary in order to comply with the Credit Limit, provided that PREPA may not owe Seller, at any time any amounts in excess of the Credit Limit (including but not limited to invoices not paid by their due date) and provided that further that upon any payment default by PREPA under this contract with Seller, all amounts owed to Seller shall become immediately due and payable. If at any time, there is payment default by PREPA under this contract with Seller and/or the Credit Limit will be exceeded by a schedule future delivery under this contract with Seller, deliveries might be suspended at Seller's sole discretion until (i) payment is received by Seller for the defaulted amounts; and/or (ii) payment is received by Seller for the amount in excess of the Credit Limit. The performance bond that PREPA needs to provide must incorporate these terms to the satisfaction of Seller. Upon payment default under this contract with Seller, Seller may terminate this Contract as contemplated in Section II of this Contract.

- C. Should PREPA fail to pay any invoice by the end of the 60-day credit term, Seller may, at its own discretion, suspend any and all deliveries to PREPA. Where Seller suspends deliveries pursuant to this Section (C), if PREPA pays such invoice within two (2) calendar days following the due date thereof, Seller shall resume deliveries to PREPA. Any costs including but not limited to demurrage due to this suspension of delivery shall be borne by PREPA.
- D. Should PREPA fail to pay any invoice within 2 calendar days following such invoice's due date (i.e., subject to Article IX (A) and Article XII (M) (ii), the sixty (60) day

following issuance thereof), or if the Credit Limit is exceeded, Seller may, at its own discretion, terminate this Contract as provided in Article II (<u>Termination or Insolvency</u>), paragraph A(i).

E. The escalator that is mentioned in paragraph A of this Article IX shall be increased or decreased according to Platt's Oilgram Price Report, "Estimated New York Spot – (Cargo)" corresponding to the effective date of the posting at the deemed date the

fuel delivery commences, the day before, and the day after the deemed fuel delivery,

each one of these evaluated utilizing the following formula:

Fifty percent (50%) of the zero point three percent (0.3%) sulfur fuel high pour, as published on Platt's Oilgram Price Report, New York/Boston No. 6 Fuel Oil Cargo Columns, rounded to four (4) decimal places; plus fifty percent (50%) of the zero point seven percent (0.7%) sulfur fuel, as published on Platt's Oilgram Price Report, New York/Boston No. 6 Fuel Oil Cargo columns, rounded to four (4) decimal places.

A sample calculation of the escalation factor is shown on Exhibit C, Sample Calculation - Escalation Factor, of this Contract.

Municipal taxes are to be presented as a separate line item on the invoice.

F. The pricing period is defined as three (3) calendar days around the deemed commencement of discharge date, as agreed by the parties. Pricing will be established considering the deemed date agreed between the parties, and this pricing shall not be modified, except by mutual agreement. Should the deemed delivery take place on a Saturday, Sunday or on a Holiday, the effective prices in the last editions of Platt's Oilgram Price Report published before that date will be utilized to readjust the prices.



- G. The date published prices are made effective will govern, holding the price firm until the next publication date. Should the format used by the publishers for the postings be changed, both parties will meet within five (5) days of the occurrence to determine how to interpret the same.
- H. Seller assumes the responsibility of the transportation of the product and all other related responsibilities up to PREPA's flange connecting Seller vessel with the PREPA's pipeline at the dock.
- Should PREPA require volumes of the same type and quality of the fuel herein contracted in excess of Seller contractual commitment, PREPA may request it from Seller. If Seller has such fuel available, then Seller may, at its option, supply it under the same terms and conditions agreed hereupon. Any fuel delivered pursuant to this clause shall be deemed to be fuel delivered pursuant to this Contract. Seller consent to supply the requested fuel shall not be unreasonably withheld.
- J. Should the due date of an invoice fall on a non-business day that is either Sunday or Monday, payment shall be made the following business day. However, if due date falls on a non-business day which not Sunday or Monday, then payment shall be made on the preceding business day. Business days shall be days in which banks are open for business in Puerto Rico.
- K. Unpaid invoices by their due date will incur a six percent (6%) monthly fee on the unpaid amount.
- L. This entire Article IX is applicable to all past and future invoices due by PREPA under this Contract.



M. This Contract will have the approximate cost of \$605,923,692. All Payments under this Contract will be charged to account: 1-2321-23215-000-000 and 01-4042-54713-050-668.

## ARTICLE X: Duties and Taxes

- A. The contracted price includes all Federal and local taxes, fees and established import tariffs for the fuel being supplied. Municipal taxes shall be fully reimbursed by PREPA and are to be presented as a separate line item on the invoice.
- B. Any changes, whether up or down, in these taxes, fees, or tariffs, should they be imposed, will be reflected in the price in its entirety and Seller will adjust the price accordingly. Upon PREPA's request, Seller shall apply for any applicable waivers on taxes, fees or tariffs, and any costs associated with the application to such waivers will be passed in their entirety to PREPA.
- C. PREPA commits to work with Seller, the government of the Commonwealth of Puerto Rico, and any applicable third parties to mitigate any tax and operational issues that may arise under this Contract, including but not limited to making commercially reasonable best efforts to put in place an oil delivery structure that eliminates Seller tax exposure to Puerto Rico.

## ARTICLE XI: Guaranteed Calorific Value

- A. PREPA will not pay any premium for calorific values in excess of the minimum established in Exhibit A.
- B. Any delivery by Seller, in which the fuel fails to meet such guarantee, the deficiency shall be determined in barrels, calculated on the basis of the example attached as

Exhibit B of this Contract. The deficiency thus calculated shall serve as a credit deficiency for an equivalent number of barrels, before computing the fuel billings for such invoice.

C. General provisions in Article VI, <u>Specifications</u>, regarding compliance with specifications and laboratory analyses shall apply to this Article XI whenever required.

## ARTICLE XII: Measurement and Payment

- A. The quantity of fuel delivered to PREPA shall be computed by measurements in \_\_\_\_\_ PREPA's shore tanks, to be conducted by a mutually agreed Independent Inspector accredited by US Customs and Border Protection as per Title 19 CFR 151.13. Inspection cost shall be borne equally between PREPA and Seller. All measurements shall be corrected to sixty degrees Fahrenheit (60° F) using the ASTM Petroleum Measurements Table 6-B. Quantities certified on the independent inspector's report will be binding for both parties absent fraud or manifest error.
  - B. Notwithstanding anything herein to the contrary, PREPA reserves the right to exclusively select and contract inspection services to conduct measurements and produce certifications of quantity at any time during the term of this Contract. If PREPA exercises this right, then this inspection cost shall be borne fully by PREPA, and Seller, at its own expense, may send its own inspector to verify these measurements.
  - C. Seller shall invoice PREPA regularly and promptly after fuel is delivered. For payment purposes, invoices shall be sent from Seller to PREPA via e-mail and shall be deemed received on the same day. Copies of the inspector's certificates of quantity shall be

included with invoices. Such invoices shall be paid by PREPA in immediately

available US dollars, as provided for on Article IX (<u>Price</u>), paragraph A.

D. All invoices submitted by Seller shall include the following Certification in order to

proceed with payment. This is an essential requirement, and those invoices without

this Certification will not be processed for payment:

## No Interest Certification:

Under penalty of absolute nullity, I hereby certify that no employee, official or director of PREPA is a party or has any interest in the profits or benefits to be obtained under this Contract, or if any employee, official or director or PREPA has any interest in the profits or benefits under this Contract, a waiver has been previously obtained. I also certify that the only consideration to deliver the fuel under this Contract is the payment agreed with PREPA's authorized representative. The total amount of this invoice is fair and correct. The fuel has been delivered and no payment has been received previously for said delivery.



E. A paper copy of all invoices will be sent by regular mail to:

Puerto Rico Electric Power Authority Attention: Fuels Office PO Box 364267 San Juan, Puerto Rico 00936-4267

- F. Notwithstanding anything herein or otherwise to the contrary, PREPA covenants and, as of the date hereof and on the date of each delivery, represents and warrants all invoices submitted by Seller shall be paid without reduction, offset or counterclaim of any sort.
- G. PREPA will include in both the Annual Budget (as defined in such Trust Agreement) and PREPA's internal annual budget (together with the Annual Budget, the

"Budgets") the payment in full of all amounts expected to be due under this Contract as "Current Expenses". Without limiting Article XII.I, to the extent PREPA chooses to reflect such amounts in the Budgets at the Agreed Differential, PREPA will include in the Budgets, the following footnote: "This amount reflects PREPA obtaining a contractual Agreed Differential by paying all fuel invoices within 60 days."

- H. Subject to Article XII F, nothing herein shall be interpreted under any circumstances or theory as a waiver from PREPA of any right, claim or counterclaim it may have against Seller.
- I. As of date hereof and on the date of each delivery, PREPA represents and warrants (i) all amounts payable by PREPA pursuant to the term of this Contract constitute and qualify as a "Current Expense", under that certain Trust Agreement between PREPA and U.S. Bank National Association as Successor Trustee, dated as January 1, 1974, as amended and supplemented (the "Trust Agreement"), which amounts are reasonable and necessary with other expenses of PREPA to operate the System (as defined in the Trust Agreement), and constitute expenses that are permitted by standard practices for public utility systems and generally accepted accounting principles, and are reasonable for operating the System in an efficient and economical manner; (ii) the Trust Agreement has not been modified or amended in any way that affects the definition or priority of "Current Expense", including without limitation, that to the extent provided by the Trust Agreement all Revenues (as defined in the Trust Agreement), other than income from investments made under the provisions of the Trust Agreement, will be deposited to the credit of the General

Fund (as defined in the Trust Agreement) and applied in accordance with Article V of the Trust Agreement; and (iii) PREPA has complied with Article XII.G.

- J. RESERVED
- K. As of the date hereof, and at the time of any delivery hereunder, PREPA represents and warrants (i) will pay all outstanding invoices under this Contract by their respective due dates, and (ii) it has reasonably concluded that no event has occurred that will have any adverse impact or delay on PREPA's performance of or compliance with its obligations under this Agreement.
- L. As of the date hereof, and at the time of any delivery hereunder, PREPA represents and warrants (a) that a PREPA Event, as defined below, has not occurred, and (b)
  PREPA does not have current intentions to cause a PREPA Event within the next 72 days.

A "PREPA Event" shall be (a) any act by PREPA or the Commonwealth of Puerto Rico (the "Commonwealth") to (i) avoid or impair or cause to be past due all or any portion of this Contract or the payment of any invoice, or (ii) challenge this Contract or any invoice's validity or enforceability, including challenging the status of any invoice as a "Current Expense" (as defined in the Trust Agreement); or (b) any adverse determination by a court of competent jurisdiction concerning (i) or (ii) above.

M. As of the date hereof, and at the time of any delivery hereunder, PREPA represents and warrants to one of the following: (i) it does not have intentions to cause, or has no actual knowledge that a third party will cause, a PREPA Insolvency Event within 72 days, or (ii) it does not have intentions to cause, or has no actual knowledge that a

third party will cause, a PREPA Insolvency Event within 72 days unless (x) such PREPA Insolvency Event is a Qualified PREPA Insolvency Event and (y) it believes in good faith that any such PREPA Insolvency Event will constitute a Qualified PREPA Insolvency Event.

A "PREPA Insolvency Event" shall be any of the following events:

- a. The commencement of any debt adjustment proceeding, bankruptcy proceeding, insolvency proceeding, dissolution or wind-up proceeding, proceeding under Recovery Act, or any similar proceeding (including the occurrence of a general assignment, arrangement or composition with or for the benefit of PREPA's creditors or the appointment of a receiver, administrator or similar officer for some or all of PREPA's assets).
- b. (i) The announcement, declaration or implementation of a moratorium with respect to PREPA or any portion of its debts, unless such debts are the subject of a consensual forbearance that is in effect and continuing, (ii) PREPA is generally not paying its debts as they become due, it being understood that the phrase "generally not paying" shall include any failure by PREPA to make a principal or interest payment on its power revenue bond debt, a credit agreement or trade finance facility agreement (including the Fuel Lines), and one or more creditors have taken acts (x) to enforce their rights or remedies, including, without limitation, acts taken against PREPA resulting from a default or an event of default under the Trust Agreement, a credit agreement or trade finance facility agreement;

provided, however, that the delivery of a notice of default or notice of an event of default shall not constitute an action by a creditor to enforce its rights or remedies for purposes of this clause, or (y) that seek to adversely impact or delay PREPA's performance of or compliance with its obligations under this Agreement, or (iii) PREPA is unable by virtue of legislation, rule, policy, stay, moratorium, injunction or any other similar act to pay its debts as they become due (clauses (i), (ii), and (iii), each a "Moratorium Event").

c. Any resolution, authorization or steps to implement any of the foregoing by PREPA or the Commonwealth.

A "Qualified PREPA Insolvency Event" shall mean a PREPA Insolvency Event that will not have any impact or delay on PREPA's performance of its obligations under this Agreement and PREPA's obligations under this Agreement, whether because (A) Seller is designated a critical vendor in connection with a PREPA Insolvency Event that is a case under chapter 9 of the United States Bankruptcy Code, (B) Seller is designated as an unaffected creditor in connection with a PREPA Insolvency Event that is in a case commenced under Recovery Act, (C) the obligations under this Agreement are specifically designated to be paid pursuant to an order of a court of competent jurisdiction in connection with a PREPA Insolvency Event that is the appointment of a receiver (under the Trust Agreement, Act No. 83 of 1941, as amended, or otherwise), or (D) Seller and the obligations under this Agreement are otherwise designated pursuant to legislation, court order, or in another binding manner (reasonably satisfactory to Seller), to be unaffected in the same manner as if Seller

were designated as a critical vendor under the United States Bankruptcy Code or unaffected debt under Recovery Act; provided, however, that a PREPA Insolvency Event caused solely by a Moratorium Event shall constitute a Qualified PREPA Insolvency Event so long as PREPA has reasonably concluded that there will not be any adverse impact or delay on PREPA's performance of or compliance with its obligations under this Agreement as a result of or in connection with such Moratorium Event.

- N. PREPA agrees not to take any action in furtherance of commencing a PREPA Insolvency Event that it does not believe in good faith will be a Qualified PREPA Insolvency Event.
- R
- O. As of the date hereof, and at the time of any delivery hereunder, PREPA acknowledges that the invoices generated under this Contract may be sold and/or assigned, and PREPA will pay any amounts owing in respect of such invoices including without limitation amounts due under Section IX.K., without reduction, offset or counterclaim of any kind, to an entity designated by Seller.
  - P. If Seller decides to assign or transfer an amount, due or payable, to which it is entitled for services rendered or goods provided during the term of this Contract, Seller shall notify PREPA of such transfer, in accordance with the provisions of Act 21-2012. Said notice shall clearly indicate the rights granted, including reasonable proof that the assignment has been made, the exact amount of funds to be assigned or transferred, and specific identification information regarding the assignee (full name of the person or company), address and any other contact information. Delivery to PREPA of a

notice of assignment substantially in the form of Exhibit D shall satisfy the requirements of this paragraph.

Seller aforementioned notice of assignment shall be accompanied by a cashier's check or money order payment of two hundred dollars (\$200), payable to "Puerto Rico Electric Power Authority", for administrative costs for processing said assignment.

- Q. As of the date hereof, and at the time of any delivery hereunder, PREPA represents and warrants that (i) the creation of the receivables shall not conflict with any applicable law, (ii) the sale or assignment of such receivables shall not conflict with any law applicable to PREPA, and (iii) no further consents from PREPA or the Commonwealth of Puerto Rico (including any officer or agent thereof) are necessary for the sale or assignment of such receivables by Seller in accordance with this Contract.
- R. Any representation and warranty made by PREPA pursuant to this Contract shall inure to the benefit of the assignee of any invoice under this Contract.
- S. As a condition precedent to any fuel delivery, the representations and warranties in Article XII F., G., I., K. L., M., O. and Q. shall be true and correct and shall be made with certification by an authorized signatory of PREPA prior to the commencement of any fuel delivery, and such certification shall provide that such representations and warranties are true and correct as of the date of such certification through and including the date on which such fuel delivery is completed, unless and until PREPA provides a notice to the contrary. For the avoidance of doubt, PREPA shall specify in



each such certification whether the representation in Article XII (M) is made under (i) or (ii).

T. Without limiting any rights that Seller may have at law, contract or otherwise, in the event any of the representations or warranties contained herein shall at any time become untrue or incorrect, PREPA shall immediately provide Seller with notice of such condition.

### ARTICLE XIII: Force Majeure



The parties hereto shall be excused from performing hereunder (except for any obligation to pay any money provided in this Contract, which shall not be excusable pursuant to this Article XIII under any circumstance) and shall not be liable in damages or otherwise, if and only to the extent that they shall be unable to perform or are prevented from performing by a Force Majeure event. For the purpose of this Contract, Force Majeure means any cause without the fault or negligence, and beyond the reasonable control of, the party claiming the occurrence of a Force Majeure event, whether foreseeable or not. Force Majeure may include, but not be limited to, the following: Acts of God, industrial disturbances, acts of the public enemy, war, blockages, boycotts, riots, insurrections, epidemics, earthquakes, storms, floods, civil disturbances, lockouts, fires, explosions, interruptions of services due to the acts or failure to act of any governmental authority, provided that these events, or any other claimed as Force Majeure, and/or its effects, whether foreseeable or not, are beyond the reasonable control and without the fault or negligence of the party claiming Force Majeure, and that such party, within ten (10) days of the occurrence

of the alleged Force Majeure event, gives the other party written notice describing the particulars of the occurrence and, to the extent possible, its estimated duration. In the event that the Force Majeure claim extends for a period of more than sixty (60) consecutive days, either party shall have the right to terminate this Contract without further obligation, except that either party shall still be responsible for the payment of amounts due and owing under this Contract, on their due date. The burden of proof as to whether a Force Majeure event has occurred shall be on the party claiming Force Majeure. Upon cessation of the Force Majeure event, the party declaring Force Majeure shall notify the other party of the termination of the Force Majeure claim. Performance shall be resumed, but the excuse from performing due to a Force Majeure event shall not operate to extend the term of this Contract nor obligate either party to make up deliveries or receipts, as the case may be.

Operational issues related to the barge or Puerto Rico port and terminals, not as a consequence of Seller fault or negligence, shall be considered Force Majeure events.

### ARTICLE XIV: Performance Bond and Insurance

A. Upon execution of the Contract, Seller will furnish a Performance Bond payable to the order of PREPA issued by a qualified surety company, authorized to do business in Puerto Rico and reasonably acceptable to PREPA's Risk Manager, in the amount of \$30,296,185, equivalent to five percent (5.0%) of the estimated Contract value.

PREPA will accept a Letter of Credit for the same amount in lieu of a Performance Bond, provided that the Letter of Credit shall incorporate the following conditions to be acceptable to PREPA:

- 1. to be issued or notified and confirmed by a local bank in Puerto Rico,
- 2. to be unconditional and irrevocable,
- payments to be made by issuing bank on a business day by wire transfer, immediately after PREPA's instructions,
- 4. to be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico, applicable to contracts being made and performed solely within Puerto Rico, without giving effect to any conflicts or choice of law principles which otherwise might be applicable, except to the extent such laws are inconsistent with the uniform customs and practices for documentary credits,
- 5. final draft of the Letter of Credit shall be subject to approval by PREPA's Treasurer acting in a commercially reasonable manner.

B. Seller shall secure and maintain in full force and effect during the life of this Contract as provided herein, policies of insurance covering all operations engaged in by the Contract as follows:

1. Commonwealth of Puerto Rico Workmen's Compensation Insurance:

Seller shall provide Workmen's Compensation Insurance as required by the Workmen's Compensation Act 45-1935 of the Commonwealth of Puerto Rico. Seller shall also be responsible for compliance with said Workmen's Compensation Act by all its subcontractors, agents, and invitees, if any. Seller shall furnish a certificate from the Puerto Rico's State Insurance Fund showing that all personnel employed in the work are covered by the Workmen's Compensation Insurance, in accordance with this Contract.

2. Employer's Liability Insurance:

Seller shall provide 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 the Seller as 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 Workmen's Compensation Act of the Commonwealth of Puerto Rico.

3. Commercial General Liability Insurance:

Seller shall provide a Commercial General Liability Insurance with limits of \$1,000,000 per occurrence and \$1,000,000 aggregate.

4. Commercial Automobile Liability Insurance:

Seller shall provide a Commercial Automobile Liability Insurance with limits of \$1,000,000 combined single limit covering all owned or scheduled autos, non - owned autos, and hired autos. Under this insurance, the MCS-90 (Motor Carrier Endorsement), must be included.

5. Pollution Liability Insurance:

Seller shall provide a Pollution Liability Insurance with limits of \$10,000,000 per claim and \$10,000,000 per aggregate.

<u>Requirements Under the Policies</u>: The Commercial General Liability and Commercial Automobile Liability Insurance required under this Contract shall be endorsed to include:

a. <u>As Additional Insured</u>:

Puerto Rico Electric Power Authority (PREPA)

**Risk Management Office** 

PO Box 364267

San Juan, PR 00936-4267

b. A thirty (30) day cancellation or nonrenewable notice to be sent to the above address.

c. An endorsement including this Contract under contractual liability coverage and identifying it by number, date, and parties to the contract.

d. Waiver of Subrogation in favor of Puerto Rico Electric Power Authority (PREPA).

e. Breach of Warranties or Conditions:

"The Breach of any of the Warranties or Conditions in this policy by the Insured shall not prejudice PREPA's rights under this policy."

<u>Furnishing of Policies</u>: All required policies of insurance shall be in a form acceptable to PREPA and shall be issued only by insurance companies authorized to do business in Puerto Rico. Seller shall furnish a certificate of insurance in original signed by an authorized representative of the insurer in Puerto Rico, describing the coverage afforded.

### ARTICLE XV: Notices

Any notice to be given hereunder shall be in writing and will be sufficiently served when delivered in person or properly mailed to the following addresses:

- To PREPA: Puerto Rico Electric Power Authority PO Box 364267 San Juan, Puerto Rico 00936-4267 Attention: Fuels Office Manager
  - To Seller: Puma Energy Caribe, LLC Attention: Mario Ricardo Sierra Varela PO Box 11961 San Juan, Puerto Rico 00922

Should a party's address(es) change from those set forth above, that party shall notify the other party in writing, and after such notification the address therein specified shall be deemed the correct address of such party for all future notices.

ARTICLE XVI: <u>Compliance with the Commonwealth of Puerto Rico Contracting</u> <u>Requirements</u>

The Seller and PREPA each represent that will comply with all applicable Law, Regulations, or Executive Orders that regulate the contracting process and requirements of the Commonwealth of Puerto Rico, as applicable to the Seller.

It is agreed that all activities contemplated by the Parties pursuant to this Contract will be performed in conformity with and shall not be prohibited by Sanctions and/or laws if and to the extent applicable. Notwithstanding any other provision of this clause or any other clause or provision to the contrary in this Contract, neither Party shall be required to do anything under this Contract which constitutes a violation of, or would be in contravention of, or would expose it to the risk of designation pursuant to any Sanction applicable to it. A Party shall not be required to do anything under this Contract which constitutes a violation of, or would be in contravention of any Sanction applicable to it.



If, at any time during the term of this Contract any Sanctions are changed, or new Sanctions are imposed or become effective, or there is a change in the interpretation of Sanctions, which would:

(a) expose a Party to the risk of designation or to other punitive measures by a Sanctions authority; or

(b) materially affect a Party's performance of this contract including but not limited to:

(i) its ability to take or make delivery or make or receive any payments as may be required in the performance of this Contract or to insure or transport the goods to be delivered by the seller to the buyer; or



(ii) importing the goods into the country of destination; or

(c) cause either:

(i) a curtailment, reduction in, interference with, failure or cessation of supply of goods from any of the Seller's or Seller's suppliers' sources of supply; or

(ii) a refusal to supply such goods by any such supplier, then notwithstanding any clause or provision to the contrary in this Contract, such Party may, by written notice to the other Party, (i) suspend performance until such time as the notifying Party may lawfully perform this Contract and/or (ii) terminate this Contract, in each event, without any further obligation or liability by either Party, save for any accrued rights

and remedies [including but not limited to Seller's obligation to refund the outstanding balance of any prepayment amount].

C. Obligations to make or receive payment which arose before, or as a consequence of termination shall remain in effect but shall be subject to suspension to the extent required by part A of this clause.

"Sanctions" means economic or financial sanctions or trade embargoes or similar or equivalent restrictive measures imposed, administered, enacted or enforced from time to time by the UN, EU or US or other applicable sanctions authority.



A. Filing of Puerto Rico Income Tax Returns

In compliance with Executive Order Number OE-1991-24 of June 18, 1991, the Seller hereby certifies that it has filed all the necessary and required income tax returns to the Government of Puerto Rico for the last five (5) years. As evidence thereof, Seller has delivered to PREPA an Income Tax Return Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that Seller has filed his Income Tax Return for the last five (5) tax years (Form SC 6088). The Seller accepts and acknowledges its responsibility for requiring and obtaining a similar warranty and certification from each and every Seller and Subcontractor whose service the Seller has secured in connection with the services to be rendered under this Contract and shall forward evidence to PREPA as to its compliance with this requirement.



B. Payment of Puerto Rico Income Taxes

In compliance with Executive Order Number OE-1991-24 of June 18, 1991, the Seller, hereby certifies that it has complied and is current with the payment of all income taxes that are, or were due, to the Government of Puerto Rico. As evidence thereof, Seller has delivered to PREPA a certification issued by the Treasury Department of Puerto Rico indicating that Seller does not owe taxes to the <u>Commonwealth of Puerto Rico</u>; or is paying such taxes by an installment plan in full compliance with its terms (Form SC 6096). During the term of this Contract, the Seller agrees to pay and/or to remain current with any repayment plan agreed to by the Seller with the Government of Puerto Rico. The Seller accepts and acknowledges its responsibility for requiring and obtaining a similar warranty and certification from each Subcontractor whose service the Seller has secured in connection with the services to be rendered under this Contract and shall forward evidence to PREPA as to its compliance with this requirement.

C. Compliance with Requirements of the Department of Labor and Human Resources of the Commonwealth of Puerto Rico.

Pursuant to Executive Order Number 1992-52, dated August 28, 1992 amending OE-1991-24, the Seller certifies and warrants that it has made all payments required for unemployment benefits, workmen's compensation and social security for chauffeurs, whichever is applicable, or that in lieu thereof, has subscribed a

payment plan in connection with any such unpaid items and is in full compliance with the terms thereof. As evidence thereof, Seller has delivered to PREPA:

- A certification issued by the Bureau of Employment Security (Negociado de Seguridad de Empleo) of the Puerto Rico Department of Labor and Human Resources certifying that Seller does not owe taxes regarding Unemployment or Disability Insurance.
- 2. A certification issued by the Program for Social Security for Chauffeurs and Other Employees of the Puerto Rico Department of Labor and Human Resources certifying that Seller has no debt with respect to such program.
- D. Real and Personal Property Taxes



Seller hereby certifies and guarantees that it does not have any current debt regarding property taxes that may be registered with the Government of Puerto Rico's Municipal Tax Collection Center (*Centro de Recaudación de Ingresos Municipales* ("*CRIM*")). The Seller further certifies to be current with the payment of any and all property taxes that are or were due to the Government of Puerto Rico. The Seller shall provide:

1. A certification issued by the Municipal Revenues Collection Center ("MRCC"), assuring that Seller does not owe any tax accruing during the last five (5) years to such governmental agency with respect to personal property; or negative Debt certification issued by the MRCC with respect to personal property taxes and a sworn statement executed by Seller

indicating that (i) its revenues are derived from the rendering of professional services, (ii) during the last five (5) years (or the time in which it has been providing professional services) it has had no taxable business or personal property on the 1st of January of each year, (iii) that for such reasons it has not been required to file personal property tax returns, as required under Article 6.03 of Act 83-1991, as amended and (iv) that for such reason it does not have an electronic tax file in the MRCC's electronic system.

- 2. All Concepts Debt Certification issued by the MRCC assuring that Seller does not owe any taxes to such governmental agency with respect to real and personal property; or Negative certification issued by the MRCC with respect to real property taxes.
- E. Sales and Use Taxes

The Seller has delivered to PREPA:

- A Puerto Rico Sales and Use Tax Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that Seller has filed his Puerto Rico Sales and Use Tax for the last sixty (60) contributory periods.
- 2. A copy of Seller's Certificate of Merchant's Registration issued by the Treasury Department of Puerto Rico.

F. Puerto Rico Child Support Administration (*ASUME*) Seller hereby certifies that it is not duty bound to pay child support, or if so, that

Seller is up to date or has a payment plan to such effects. As evidence thereof, the



Seller has delivered to PREPA a certification issued by the Puerto Rico Child Support Administration (*Administración Para El Sustento de Menores* (*ASUME*)) certifying that the Seller does not have any debt, outstanding debt, or legal procedures to collect child support payments that may be registered with ASUME.

G. Organization Documents

The Seller shall provide:

- 1. A Good Standing Certificate issued by the Department of State of Puerto Rico.
- Q 2
  - A Certification of Incorporation, or Certification of Organization or Certificate of Authorization to do business in Puerto Rico issued by the Department of State of Puerto Rico.
  - H. Compliance with Act 1 of Governmental Ethics

The Seller will certify compliance with Act 1 - 2012, as amended, known as the Ethics Act of the Government of Puerto Rico, which stipulates that no employee or executive of PREPA nor any member of his or her immediate family (spouse, dependent children, or other members of his or her household or any individual whose financial affairs are under the control of the employee) shall have any direct or indirect pecuniary interest in the services to be rendered under this Contract, except as may be expressly authorized by the Governor of Puerto Rico in consultation with the Secretary of Treasury and the Secretary of Justice of the Government. 3 L.P.R.A. § 8611 et seq.

I. Law 168-2000: Law for the Strengthening of the Family Support and Livelihood of Elderly People

The Seller will certify that if there is any Judicial or Administrative Order demanding payment or any economic support regarding Act 168-2000, as amended, the same is current and in all aspects in compliance. Act 168-2000 *"Law for the Strengthening of the Family Support and Livelihood of Elderly People"* in Spanish: *"Ley para el Fortalecimiento del Apoyo Familiar y Sustento de Personas de Edad Avanzada"*, 3 L.P.R.A. §8611 et seq.

J. Law 127 - 2004: Contract Registration in the Comptroller's Office of Puerto Rico Act

Payment for Services under this Contract will not be made until this Contract is properly registered in the Office of the Comptroller of the Government of Puerto Rico pursuant to Law Number 18 of October 30, 1975, as amended.

- K. Prohibition with respect to execution by public officers: (3 L.P.R.A. 8615(c)) No public officer or employee authorized to contract on behalf of the executive agency for which he/she works may execute a contract between the agency for which he/she works and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office.
- L. Prohibition with respect to contracting with officers or employees: (3 L.P.R.A. 8615(d))
   No executive agency may execute a contract in which any of its officers or employees or any member of their family units has or has had direct or indirect

economic interest during the last four (4) years prior to their holding office, unless the Governor gives authorization thereto with the previous recommendation of the Secretary of the Treasury and the Secretary of Justice.

M. Prohibition with respect to contracts with officers and employees of other Government entities: (3 L.P.R.A. 8615(e))

No public officer or employee may be a party to or have any interest in any profits or benefits produced by a contract with any other executive agency or government dependency unless the Governor gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice.

N. Prohibition with respect to evaluation and approval by public officers: (3 L.P.R.A. 8615(f))

No public officer or employee who has the power to approve or authorize contracts shall evaluate, consider, approve, or authorize any contract between an executive agency and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office.

O. Prohibition with respect to execution by public officers contracts with former public officers: (3 L.P.R.A. 8615(h))
 No executive agency shall execute contracts with or for the benefit of persons who have been public officers or employees of said executive agency until after two (2) years have elapsed from the time said person has ceased working as such.



P. Dispensation

Any and all necessary dispensations have been obtained from any government entity and that said dispensations shall become part of the contracting record.

## Q. Rules of Professional Ethics

The Seller acknowledges and accepts that it is knowledgeable of the rules of ethics of his or her profession and assumes responsibility for his or her own actions, to the extent applicable.

R. Anti-Corruption Code for a New Puerto Rico

- Seller agrees to comply with the provisions of Act 2-2018, as the same may be amended from time to time, which establishes the Anti-Corruption Code for a New Puerto Rico.
  - 2. The Seller hereby certifies that it does not represent particular interests in cases or matters that imply a conflict of interest, or of public policy, between the executive agency and the particular interests it represents.
  - 3. Seller shall furnish a sworn statement to the effect that neither Seller nor any president, vice president, executive director or any member of a board of officials or board of directors, or any person performing equivalent functions for Seller has been convicted of or has pled guilty to any of the crimes listed in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico or any of the crimes included in Act 2-2018.



- 4. Seller hereby certifies that it has not been convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3, or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.
- 5. PREPA shall have the right to terminate the Contract in the event Seller is convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3, or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico, or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.

S. Provisions Required under Act 14-2004:

Seller agrees that articles extracted, produced, assembled, packaged, or distributed in Puerto Rico by enterprises with operations in Puerto Rico, or distributed by agents established in Puerto Rico shall be used when the service is rendered, provided that they are available.

T. The Parties acknowledge that the Seller has submitted the certification titled
"Contractor Certification Requirement" required in accordance with the Contract
Review Policy of the Financial Oversight and Management Board for Puerto
Rico, effective as of November 6, 2017, as amended, signed by the Seller's
Executive Director (or another official with an equivalent position or authority to
issue such certifications). A signed copy of the "Contractor Certification Requirement" is included as an annex to this Contract.

The Seller represents and warrants that the information included in the Contractor Certification Requirement is complete, accurate and correct, and that any misrepresentation, inaccuracy of falseness in such Certification will render the Agreement null and void and the Seller will have the obligation to reimburse immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under the Agreement.

U. For this Contract, the transfer of skills and technical knowledge required by the Certified Fiscal Plan is inapplicable given the non-recurring or specialized nature of the contracted services.



V. Consequences of Non-Compliance

The Seller expressly agrees that the conditions outlined throughout this Article are essential requirements of this Contract. Consequently, should any one of these representations, warranties, or certifications be incorrect, inaccurate, or misleading, in whole or in part, there shall be sufficient cause for PREPA to render this Contract null and void. If any of the certifications listed in items A through F of this Article shows a debt, and Seller has requested a review or adjustment of this debt, Seller hereby certifies that it has made such request at the time of the Contract execution. If the requested review or adjustment is denied and such determination is final, Seller will provide, immediately, to PREPA a proof of payment of this debt; otherwise, Seller accepts that the owed amount be offset by PREPA and retained at the origin, deducted from the corresponding payments. The Seller accepts and acknowledges its responsibility for requiring and obtaining a similar warranty and certification from each and every Contractor and Subcontractor whose service the Seller has secured in connection with the services to be rendered under this Contract and shall forward evidence to PREPA as to its compliance with this requirement.

# ARTICLE XVII: Contract Assignment

Except as contemplated under this agreement, this contract, as well as any other of the rights, duties, liabilities, and obligations under it, cannot be assigned, transferred, subcontracted, hypothecated or otherwise disposed of by either party without the prior

written consent of the other party, and such consent shall not be unreasonably withheld. Notwithstanding, Seller may assign this Contract or any rights or obligations arising out of it, without previous consent of PREPA, to one of its affiliates, provided that such affiliate is a U.S. incorporated, substantially capitalized trading entity, and fully owned, directly or indirectly, by Seller. Prior to assignment, Seller shall provide PREPA with all the documentation that certifies that the assignee is a U.S. incorporated, substantially capitalized trading entity, and fully owned, directly capitalized trading entity, and fully owned, directly or indirectly capitalized trading entity, and fully owned, directly or indirectly capitalized trading entity, and fully owned, directly or indirectly, by Seller. Notwithstanding anything herein or otherwise to the contrary, Seller may also assign invoices created under this Contract and any rights related to such invoices, without previous consent of PREPA, to Seller receivable assignee.

ARTICLE XVIII: Financial Reporting

### Intentionally left in blank

### - ARTICLE XIX: <u>Contingent Fees</u>

A. Seller warrants that it has not employed any person to solicit or secure this Contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty will give PREPA the right to immediately terminate this Contract and/or to deduct from payments the amount of such commission, percentage, brokerage, or contingent fee, or to claim said amount by whatever means available under the law. For the avoidance of doubt, such offset will not be against any fuel oil invoice created under this Contract in accordance with Article XII F.

- B. No officer, employee or agent of PREPA or of the Commonwealth of Puerto Rico, or of any Municipal Government shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Contract if made with a well-known oil corporation for its general benefit, although said corporation employs a relative, by reasons of consanguinity or affinity, of a PREPA employee.
- C. Seller represents and warrants that it is authorized to enter into and to perform its obligations under this Contract, and that it is not prohibited from doing business in Puerto Rico or barred from contracting with agencies or instrumentalities of the Commonwealth of Puerto Rico.

# ARTICLE XX: Choice of Law and Venue

This Contract shall be governed, construed, and enforced in accordance with the laws of the Commonwealth of Puerto Rico, without regard to its conflict of laws rules. All actions and proceedings arising out of or relating to this Contract will be heard and determined in the United States District Court for the District of Puerto Rico ("USDCPR"), and the parties hereby irrevocably submit to the jurisdiction of such court in any such action or proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such action or proceeding. In the event that the USDCPR does not have jurisdiction over any action or proceeding, the parties agree that such action or proceeding will be heard and determined in the courts of the Commonwealth of Puerto Rico with jurisdiction.



THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS CONTRACT OR THE ACTIONS OF ANY PARTY OR THEIR RESPECTIVE REPRESENTATIVES IN THE NEGOTIATION OF PERFORMANCE HEREOF.

## ARTICLE XXI: Code of Ethics

Each Party respectively warrants and undertakes to the other that in connection with the Contract:

(a) it has implemented adequate internal procedures designed to ensure it shall not authorize the giving or offering of any financial or other advantage with the intention of inducing or rewarding an individual or entity to improperly perform an activity undertaken in the course of an individual's employment or connected to an entity's business activities (the "Anti-Corruption Controls"); and

(b) it has not authorized and it will not authorize, in connection with the performance of the Contract, any financial or other advantage to or for the benefit of any public official, civil servant, political party, political party official, candidate for office, or any other public or private individual or entity where such authorization would violate the Anti-Corruption Controls.

## ARTICLE XXII: Modification and Novation

No modification, change, renewal, extension, discharge, or waiver of this Contract, or any of the provisions herein contained, shall be valid and binding except by a written, mutual agreement of the parties signed by a duly authorized officer of each party.

PREPA and Seller expressly agree that no amendment which could be made to this Contract, during its term, shall be understood as a contractual novation, unless both parties agree to the contrary specifically and in writing. The previous provision shall be equally applicable in such other cases where PREPA gives Seller a time extension for the compliance of any of its obligations under this Contract, or where PREPA dispenses the claim or demand of any of its credits or rights under this Contract.

# ARTICLE XXIII: Separability

If a court of competent jurisdiction declares any of this Contract's provisions as null or invalid, such holding will not affect the validity and effectiveness of the remaining provisions of this Contract and the parties agree to comply with their respective obligations under such provisions not included by the judicial declaration.

## ARTICLE XXIV: Entire Contract

This Contract constitutes the entire agreement of the parties as to the subject matter, and supersedes any and all prior agreements between PREPA and Seller.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly

executed as of <u>OG</u> 29\_\_\_\_, 2021, in San Juan, Puerto Rico.

Puerto Rico Electric Power Authority

Josue A. Colón Ortiz Executive Director EIN:

Puma Energy Caribe, LLC

Mario Ricardo Sierra Varela Chairman EIN:/ mario.sierra@pumaenergy.com



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Exhibit A

# NO. 6 FUEL OIL SPECIFICATIONS

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| PARAMETER                             | ASTM METHOD            | SAN JUAN / PALO SECO       | AGUIRRE / COSTA SUR        |
|---------------------------------------|------------------------|----------------------------|----------------------------|
| -                                     |                        | MIN - MAX                  | MIN - MAX                  |
| SAMPLING                              | D-4057                 | 3 LEVELS COMPOSITE - (UML) | 3 LEVELS COMPOSITE - (UML) |
| GRAVITY, API DEGREE AT 60F            | D-287                  | 10.5 - 23.0                | 10.5.0 - 23.0              |
| VISCOSITY, SES AT 122F                | D-445, D-88            | 65 -350                    | 65 -350                    |
| WATER & SEDIMENT, % VOLUME            | D-1796, D-473, D-95    | MAX 1.0                    | MAX 1.0                    |
| FLASH POINT, DEGREE F, PMCT           | D-93                   | MIN 150                    | MIN 150                    |
| SULFUR, % WEIGHT                      | D-4294                 | MAX 0.50                   | MAX 0.50                   |
| ASH, % WEIGHT                         | D-482                  | MAX 0.1                    | MAX 0.1                    |
| ASPHALTENES, % WEIGHT                 | D-3279                 | - MAX 8.0                  | MAX 8.0                    |
| POUR POINT, DEGREE F                  | D-97                   | MAX 60                     | MAX 60                     |
| SODIUM + POTASSIUM, PPM               | D-5863                 | MAX 35                     | MAX 35                     |
| VANADIUM, PPM                         | D-1548, D-5708, D-5863 | MAX 150                    | MAX 150                    |
| CALCIUM, PPM                          | D-5863                 | MAX 75                     | MAX 75                     |
| HEATING VALUE, BTU/GAL (GROSS) AT 60F | D-240                  | MIN 150,000                | MIN 150,000                |

Revised August, 2020

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#### Ехнівіт В

# SAMPLE CALCULATION BTU DEFICIENCY ADJUSTMENT

Example of calculation to determine credit due to PREPA if FREEPOINT supplies fuel of lower than the guaranteed Btus per gallon value.

The guaranteed value is 150,000 Btus per gallon of fuel measured at 60° F.

Assume FREEPOINT delivers 5,000 barrels of fuel measured at 60° F.

Assume the inspector's certificate of the fuel delivered indicates an API degree of 15.8 measured at 60° F which is equivalent to 8.0 lbs. Per gallon and assume a heating value of 17,500 Btus per pound, or a fuel that measures 140,000 Btus per gallon measured at 60° F, (8.00 lbs./gallon) (17,500 Btus/lbs.) = 140,000 Btus/gallon.

Therefore:

For each U.S: gallon the guaranteed value is of 150,000 Btus/gallon.

Actual Btus delivered were 140,000 Btus/gallon. Total barrels delivered were 5,000 barrels. To calculate the equivalent barrels deficiency divide the difference of Btus/gallon received by the guaranteed minimum and multiply this fraction by the delivered volume.

Example: (5,000 barrels) x ((150,000 - 140,000) / 150,000) = 333.33 bbl. (deficiency)

EXHIBIT C

# SAMPLE CALCULATION ESCALATION FACTOR

|              | Platt's Oilgram Price Report |               |  |
|--------------|------------------------------|---------------|--|
|              | 0.3% S HiPr                  | 0.7% S        |  |
| Jan 12, 2015 | 53.66 - 53.68                | 44.06 - 44.08 |  |
| Jan 13, 2015 | 53.11 - 53.13                | 43.86 - 43.88 |  |
| Jan 14, 2015 | 54.11 - 54.13                | 45.11 - 45.13 |  |

FIRST-STEP: AVERAGE

Platt's 0,3% S HIPr Average (53,66 + 53,68 + 53,11 + 53,13 + 54,11 + 54,13) = 53,6367 6

Platt's 0.7% S Average <u>(44.06 + 44.08 + 43.86 + 43.88 + 45.11 + 45.13)</u> = 44.3533 6

SECOND STEP; INTERPOLATION AND FINAL CALCULATION

Platt's 0.5% S Interpolation = 0.5 (0.3% S HiPr Average) + 0.5 (0.7% S Average) = 0.5 (53.6367) + 0.5 (44.3633)



Escalation Factor for a delivery Commencing on Jan 13, 2015 = 26.81833 + 22.17667 = 48.9950 (\$/bbl)

### Exhibit D

[Assignee]

[ADDRESS]

Puerto Rico Electric Power Authority

PO Box 364267

San Juan, Puerto Rico 00936-4267

Attention: XXXXXXXX

Email: XXXXXXXX

Dated as of [\_\_\_\_\_], 20[\_\_]

This Assignment of Receivables (this "<u>Assignment</u>") is an exhibit to and is hereby incorporated by reference into a certain Receivables Purchase, Sale and Servicing Agreement (the "<u>Agreement</u>"), dated as of June [\_\_], 2015, between \_\_\_\_\_\_ a \_\_\_\_\_ company, as seller and as servicer (the "<u>Seller</u>"), and [Assignee], a \_\_\_\_\_\_ company, as purchaser (the "<u>Purchaser</u>"). All capitalized terms used herein shall have the meanings set forth in, or referred to In, the Agreement.

On the terms and subject to the conditions set forth in the Agreement, and in consideration of the Purchaser's agreement to pay the Purchase Price (the sufficiency of which the undersigned Seller hereby acknowledges) for the Receivables listed on <u>Schedule A</u> attached hereto, the Seller hereby sells, transfers, conveys and assigns to the Purchaser as of the date written below, without recourse to Seller (except as provided under the Agreement), all of Seller's right, title and interest in and to the Receivables listed on <u>Schedule A</u> attached hereto, together with all Related Security related to such Receivables.

Purchase Date: [\_\_\_\_]

Amount of each Receivable Assigned: \$[\_\_\_\_] [(see Schedule A)]

Assignee Name: [Assignee]

[Address]

[Contact Information]

- B. The fuel supplied shall comply with the contracted specifications and shall be homogeneous. A fuel shipment shall be considered to be homogeneous and within specifications when the maximum difference between any two (2) samples for different strata or compartments is not greater than 0.3 degrees for tested API and 0.02 weight percent in tested sulfur without exceeding the maximum allowable limits in all tests.
- C. To assure fuel compliance with specifications, before discharge of each delivery, the parties will contract a mutually agreed Independent Laboratory Company accredited by US Customs and Border Protection as per Title 19 CFR 151.12 to perform laboratory analyses as per specified methods of the fuel actually being supplied. A laboratory certificate including all the parameters contained in Exhibit A and signed by an authorized chemist in Puerto Rico will be produced and its results shall be considered final and binding for both parties. Acceptance criteria will be based on these laboratory results. The sampling process shall allow for a large enough representative split of the volumetric composite sample such that PREPA can receive a one (1) liter sample for its own use. The sample shall be provided to PREPA by the mutually agreed Independent Laboratory Company within the next twenty-four (24) hours after completion of fuel discharge or transfer. The cost of such additional sampling shall be borne by PREPA.
  - D. If during any delivery Seller fails to meet the specifications and warranties as contracted, PREPA reserves the right: (i) to immediately reject the shipment, (ii) evaluate the deviation, (iii) and/or establish a claim for nonperformance. PREPA shall

The undersigned acknowledge and agree that the Purchaser and its successors and assigns are accepting this Assignment in reliance on the representations, warranties and covenants of the undersigned contained in the Agreement.

THIS ASSIGNMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE GOVERNING LAW SET FORTH IN SECTION 10.05 OF THE AGREEMENT.

A copy of this Assignment has been delivered to Puerto Rico Electric Power Authority to serve as notice of the assignment of the Receivables identified herein. Seller has concurrently delivered to PREPA a cashier's check or money order in the amount required to be paid to PREPA under the PREPA Contract for administrative costs for processing the assignment.

IN WITNESS WHEREOF, the undersigned have caused this Assignment to be duly executed as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

"SUPPLIER"

By:

Name: \_\_\_\_\_\_ Title: \_\_\_\_\_

# **Frances Adames Santiago**

From:Edwin Barbosa VieraSent:Friday, November 5, 2021 3:43 PMTo:Frances Adames SantiagoCc:Sandra L. Gadea Figueroa; Edwin Barbosa VieraSubject:RE: Contrato Puma Energy

Saludos Frances,

La fecha de comienzo del contrato es el 31 de octubre de 2021 de manera que se diera la continuación de los servicios de compra de combustible.

En el pasado no teníamos que enviar una carta de movilización. Favor de confirmar si en este caso tenemos que hacerlo.

Gracias por tu ayuda,

Edwin

From: Frances Adames Santiago Sent: Friday, November 5, 2021 3:32 PM To: Edwin Barbosa Viera <EDWIN.BARBOSA@prepa.com> Cc: Sandra L. Gadea Figueroa <SANDRA.GADEA@prepa.com> Subject: Contrato Puma Energy

Buenas tardes,

Recibimos el contrato de Puma Energy Caribe, LLC para radicarlo en la Oficina del Contralor de Puerto Rico. El contrato indica que tendrá una vigencia de un año a partir de la fecha de comienzo que notifique la Autoridad por lo que necesitamos saber cuándo es el *commencement date*.

Agradeceremos que nos envíen la carta de movilización para incluirla con el contrato que se presentará en la OCPR.

Gracias,

Frances V. Adames Santiago Oficina Subdirectora de Operaciones Autoridad de Energía Eléctrica Tel. (787) 521-1352

# Attachment A-3

## COMMONWEALTH OF PUERTO RICO PUERTO RICO ELECTRIC POWER AUTHORITY

### FIRST AMENDMENT

## FUEL OIL PURCHASE CONTRACT AGUIRRE, COSTA SUR, SAN JUAN AND PALO SECO STEAM PLANTS CONTRACT NUMBER 902-10-21

#### 2022-P00020 A

### APPEAR



PREPA and Seller are herein individually referred to as a "Party" and collectively referred to as the "Parties". -----

First Amendment Contract 2022-P00020 – Puma Energy Caribe, LLC Page 2

### WITNESSETH

In consideration of the mutual covenants and agreements contained in this Amendment, hereinafter stated, the Parties agree themselves, their personal representatives, and successors as follows: ------

## STATE

WHEREAS: PREPA, by virtue of Act 83, has the authority to engage those professional, technical and consulting services necessary and convenient to the activities, programs, and operations of PREPA.

WHEREAS: The appearing Parties executed Contract 2022-P00020 on October 29, 2021 and effective until October 30, 2022 (the "Contract"), with an approximate cost of \$605,923,692 (the "Contract Amount"). Through this Contract, Seller provides the supply of residual No. 6 fuel oil at the Aguirre, San Juan, Palo Seco and Costa Sur steam plants.-----



WHEREAS: As indicated by the Fuels Office Manager, this amendment is necessary to temper the Platts data to be published as of January 1st, 2022 in relation to the way the price escalator price is calculated. From January 1 onwards, the publications of 0.3% S and 0.7% S, which are used in the calculation, will be eliminated. On that date, the fixed price of 0.5% S will begin to be published for the escalator climber without the need for an intermediate calculation. The new publication will be called "USAC Marine Fuel 0.5% S.-----

THEREFORE: The appearing Parties hereby agree to enter into this First Amendment under the following: ------

First Amendment Contract 2022-P00020 – Puma Energy Caribe, LLC Page 3

### TERMS AND CONDITIONS

FIRST: The Parties agree to amend Article IX: Price, E, of the Contract, to read as follows:-----

E. The escalator that is mentioned in paragraph A of this Article IX shall be increased or decreased according to Platt's Oilgram Price Report, "USAC Marine Fuel 0.5% S" corresponding to the effective date of the posting at the deemed date the fuel delivery commences, the day before, and the day after the deemed fuel delivery, each one of these evaluated utilizing the following formula:-----

100 percent (100%) of the fixed zero-point five percent (0.5%) sulfur fuel content, as published on Platt's Oilgram Price Report, USAC Marine Fuel 0.5% S Column (\$/bbl), Atlantic Coast, rounded to three (3) decimal places.

This number will constitute the escalation factor in \$/bbl. Final price per barrel, as also explained in paragraph A of this Article IX, will be calculated by adding the negotiated

differencial in \$/bbl under this Contract to the escalation factor.

Municipal taxes are to be presented as a separate line item on the invoice.

First Amendment Contract 2022-P00020 – Puma Energy Caribe, LLC Page 4

In WITNESS WHEREOF, the Parties hereto have agreed to execute this

First Amendment in San Juan, Puerto Rico, on this 30 day of December 2021.

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Josué A: Colón Ortiz Executive Director Puerto Rico Electric Power Authority Tax ID: 660-43-3747

Mario Ricardo Sierra Varela Chairman Puma Energy Caribe, LLC Tax ID: 660-75-9525 mario.sierra@pumaenergy.com

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# Attachment A-4

#### 2022-P00024

### FUEL PURCHASE CONTRACT SAN JUAN, PALO SECO, AGUIRRE, MAYAGÜEZ, CAMBALACHE, AND GAS TURBINES GENERATING STATIONS

AS FIRST PARTY: The Puerto Rico Electric Power Authority (PREPA), a public corporation and government instrumentality of the Commonwealth of Puerto Rico, created by Act No. 83 of May 2, 1941, as amended, (Act 83-1941) represented in this act by its Executive Director, Josué A. Colón Ortiz, of legal age, married and resident of Caguas, Puerto Rico.

AS SECOND PARTY: Novum Energy Trading Inc. ("Seller"), a corporation organized and existing under the laws of Delaware duly authorized to do business in Puerto Rico, herein represented by its, Chief Financial Officer, Christopher John Scott, of legal age, married, and a resident of Houston, Texas, duly authorized to appear in representation of the Seller by Resolution dated October 11, 2021.

Both PREPA and Seller are herein individuals referred to as a "Party" and collectively referred to as the "Parties".

#### WITNESSETH

WHEREAS, PREPA, by virtue of Act 83-1941, has the authority to engage those professional, technical, and consulting services necessary and convenient to the activities, programs, and operations of PREPA;

WHEREAS, PREPA issued a Request for Proposal No. 117081 (RFP) for the supply of light distillate No. 2 fuel oil at San Juan, Palo Seco, Aguirre, Mayagüez, Cambalache, and Gas Turbines Generating Stations.

WHEREAS, in response to the referred RFP, Seller made an offer to supply said fuel at San Juan, Palo Seco, Aguirre, Mayagüez, Cambalache, and Gas Turbines Generating Stations as requested.

In consideration of the mutual covenants herein stated, the Parties agree themselves, their personal representatives, successors, and assignees, as follows:

#### ARTICLE I. TYPE OF CONTRACT

A. Scope and Term of Contract

1. Seller agrees to sell and deliver to PREPA, a light distillate No. 2 fuel oil in compliance with the specifications in Exhibit A for the San Juan, Palo Seco, Aguirre, Mayagüez, Cambalache, and Gas Turbines Generating Stations. The weekly rate of delivery for each station shall be the amount requested by PREPA each week.

2. PREPA reserves the right to purchase approximately 25% of the plant fuel requirements from any open market source if PREPA identifies a market price which is lower than that which was agreed upon the execution of the Contract or for a declared emergency situation by PREPA and/or the Seller, causing a shortage on contracted quantities.

B. Additional Provisions

1. Any and all changes and/or modifications to the scope of the Contract shall be in writing and must be signed by both Parties.

2. The Seller represents that it has or shall obtain, or cause to be obtained, all personnel necessary to undertake and provide the Services in a manner satisfactory to PREPA.

3. The Seller may not subcontract any of the Services that it has committed to perform or provide pursuant to this Contract without the prior written approval of the Executive Director of PREPA or any of his or her authorized representatives. Such consent to subcontract shall not relieve the Seller of its full responsibilities under this Contract. Consent to the subcontracting of any part of the services shall not be construed to be an approval of said subcontract or of any of its terms, but shall operate only as an approval of the Seller's request for executing a contract with its chosen subcontractor (hereinafter a "Subcontractor"). The Seller shall be responsible for all services performed by the Subcontractor and all such services shall conform to the provisions of this Contract.

#### ARTICLE II. TERM OF CONTRACT; TERMINATION

A. <u>Term</u>

This Contract will become effective on the date of its signing by the Parties and will be in effect for a period of one (1) year. The Contract may be extended, for an additional year only by written amendment agreed upon both parties. The Contract may be extended on a monthly basis upon mutual agreement on the same terms and conditions after the end of the contracted term, provided that, said extension



shall not exceed four (4) consecutive months, except when an emergency is declared by PREPA's Governing Board.

B. <u>Termination for Convenience</u>

PREPA shall have the right to request to terminate this Contract for convenience only if mutually agreed with the Seller.

C. Termination for Cause

PREPA shall have the right to terminate this Contract immediately in the event of negligence, dereliction of duty, noncompliance, or material breach by the Seller, as determined in the sole discretion of PREPA, or for any other reason described elsewhere in this Contract as a basis for termination. In the event the Contract is terminated by PREPA for cause, PREPA shall be obligated to pay all fees and expenses incurred up to the day of effective termination, in accordance with the terms of this Contract. Seller shall have no further right to compensation except for what has been accrued for services rendered under this Contract until said date of effective termination.

D. Termination for Insolvency

If Seller enters into bankruptcy proceedings, or if Seller becomes bankrupt or insolvent, or if a petition in bankruptcy is filed against Seller, or if a receiver is appointed for Seller, PREPA shall have the right to terminate the Contract upon written notice to Seller, without prejudice to any claim or any other right of PREPA





under the Contract at the time of such termination. Notice of termination under this provision shall not create any liability to PREPA, except that PREPA shall still be responsible for the payment of amounts due and owing to Seller not subject to claims by PREPA.

E. Independent Contractor

Seller shall be considered as an independent contractor, for all the material purposes under this Contract, and all persons engaged or contracted by the Seller for the performance of its obligations herein, shall be considered as its employees or agents or those of its subcontractors, and not as employees or agents of PREPA. In consequence, Seller is not entitled to any fringe benefits, such as, but not limited to vacations, sick leave, and other.

F. The Parties acknowledge that PREPA is undergoing a transformation process, and therefore, both Parties agree that in the eventuality of the execution of a Partnership Contract, Sale Contract or any other PREPA Transaction (as these terms are defined in Act No. 120-2018, otherwise known as Puerto Rico Electric System Transformation Act, as amended), PREPA may sell, assign, convey, transfer, pledge, mortgage, sublease, delegate, hypothecate, or otherwise dispose (each, a "Transfer") any of its rights, title, or interest (by novation or other instrument) in this Contract as permitted by applicable law and at any time, and without Seller's consent or cost, expense or incremental liability to PREPA, to any



future operator of Puerto Rico's Generation system or any of its affiliates, or to any governmental agency, body, public corporation or municipality of Puerto Rico; provided, that PREPA shall notify Seller no later than thirty (30) days before the effective date of any such Transfer.

### ARTICLE III. DELIVERY AND TITLE

A. Delivery of the fuel, as specified in Exhibit A, Fuel Specifications, will be by seagoing vessel, barge, tank to tank transfer, or tank truck at San Juan, Palo Seco, Aguirre, Mayagüez, Cambalache, and Gas Turbines Generating Stations as requested by PREPA. The price shall be established on the day the fuel commences transfer into PREPA's facilities.

B. PREPA shall submit Seller a weekly estimate of its requirements and propose dates for delivery of fuel during the following fifteen (15) days. Seller shall promptly acknowledge receipt of such estimate and shall, within two (2) days of such receipt, confirm or propose new delivery dates for the following fifteen (15) days. Said delivery schedule, if accepted by PREPA, shall be final unless operational needs from PREPA changes such schedule. Delivery dates shall consist of delivery windows of two (2) to four (4) days each for actual delivery to occur.

C. Title of product delivered shall pass to PREPA after the fuel passes the pipeline flange. Seller is responsible for cleaning, removing, and disposing of any spill of his product, which might occur before the pipeline interconnection during delivery;



and shall be responsible for securing all materials, permits, and personnel required for handling the transfer of fuel.

D. Deliveries via barge for San Juan / Palo Seco Steam Plants, Aguirre Steam Plant, Mayagüez, and Cambalache are limited by a dredged channel with a draft of 26, 21.5, 22, and 18 feet, respectively. Seller shall conduct its own investigation relative to navigational information or any natural changes that might occur at the San Juan bay, Jobos bay, Mayagüez bay, Arecibo bay, or Guayanilla bay, as PREPA does not assume any responsibility for the same.

E. Maximum temperature of oil entering PREPA's pipeline shall not exceed one hundred degrees Fahrenheit (100°F), and at the pressure of not more than one hundred fifty (150) psig., nor less than one hundred twenty-five (125) psig., measured at PREPA's intake flange.

F. If Seller, for any reason, except as provided for in Article XVI, Force Majeure, of this Contract, fails to deliver the fuel required, as provided for in this Contract, PREPA may procure the product from any other supplier. In such event, PREPA may deduct from the Seller any pending invoices or the Seller shall relmburse PREPA for any difference which PREPA may have paid in excess of the contracted price. It shall be understood that PREPA is not walving any rights available to it under the law, including rights to any claims or actions for damages caused by noncompliance by the Seller with the terms of this Contract.



G. The Seller will be responsible for any and all damages to the dock or to any other property caused by the vessel during delivery. All fuel oil deliveries and transfers should be in compliance with Homeland Security Regulations including, but not limited to, 33 CFR 104 & 105. Also, all fuel oil operations should be in compliance with 33 CFR 154, 155 & 156.

H. Should PREPA need fuel of the same type and quality of the fuel herein contracted for, at any of its other plants, PREPA, at its option, may request deliveries and Seller shall deliver to such other plant up to a maximum of Seller's contractual commitment or inventory capabilities, if any. The fuel oll to be delivered under this condition by the Seller shall be at the same delivered price, or lower, and under the same payment conditions as for other plants, adjusted to reflect any increased or decreased transportation costs resulting from delivery to such other plants.

I. The Seller is responsible under a predicted force majeure event to take immediate action and employ emergency plans to avoid human hazards and protect public and private properties.

J. The Seller agrees to indemnify PREPA for all expenses and costs of any nature arising out of any claim due to an environmental non-compliance violation caused by Seller, its agents, employees, subcontractors, or assignees during the performance, or nonperformance of its obligations under the Contract.

K. PREPA reserves the right to discount or retain any full payment under this Contract until the Seller or subcontractors comply with any debts or liabilities as a result of poor performance or negligence during the product delivery.

L. Every vessel shall be coastal tanker and capable of acceptance by the terminal(s), and the Seller shall bear the risk of any failure to obtain acceptance.

M. It is the Seller's responsibility to familiarize themselves with all the locations in which it provides services under the Contract. The Seller will be required to have the proper personnel and equipment to service the locations they were awarded.



N. Fuel may be delivered to Cambalache, Mayagüez, and Gas Turbines Generating Stations, by tank truck, only upon request by PREPA. Delivery to any of these stations shall be deemed completed and title and risk shall pass to PREPA when the fuel passes the flange connection, adjacent to PREPA storage tanks at said station. All transportation charges by tank trucks needed during the contract will be included on negotiated adder with PREPA by the Seller.

1. Seller shall comply with all applicable local and federal environmental regulations.

2. The fuel shall be supplied by the Seller and shall be delivered and pumped into PREPA storage tanks. The Seller shall have the capability to effect deliveries of the product as requested by PREPA including deliveries on

Saturdays, Sundays, and holidays, if necessary, in order to fulfill PREPA operational requirements.

3. PREPA working hours are Monday thru Friday from 7:30 to 11:30 AM and from 12:30 to 4:00 PM. The Seller shall take all the necessary actions in order to supply the required daily volume during PREPA working hours. Deliveries not made during PREPA normal working hours may be rejected without penalty to PREPA. PREPA reserves the right to modify its working hours schedule in order to accommodate fuel requirements in excess of sixty thousand (60,000) gallons per day for each site.

4. PREPA assumes no responsibility or liability for demurrage incurred by the tank trucks delivering fuel pursuant to this Contract, unless such demurrage is attributable to the fault or negligence of PREPA.

5. The Seller shall furnish all appropriate documentation and available evidence to support of any demurrage claim, which may be brought against PREPA.

#### ARTICLE IV. SPECIFICATIONS

A. Fuel to be supplied shall be in accordance with the latest corresponding specifications, as specified in Exhibit A, Fuel Specifications. The Quality Certificate must include the latest revision to the test method used for each parameter. PREPA requires a fuel with homogeneous hydrocarbons, free of inorganic acids and microorganisms, and free of glycerin, water, solid, or fibrous foreign matter,

which will yield the lowest cost per kW hour produced. Any product offered will be analyzed and evaluated in terms of the ultimate cost. Seller is responsible for the fuel compliance with all applicable Code of Federal Regulations.

B. Gravity and sulfur analysis of upper, middle, and lower samples shall be the appropriate means of establishing tank or vessel homogeneity. It is Seller's responsibility to provide PREPA with a Quality Certificate that ensures, among others, that the fuel intended for delivery complies with the contracted specifications and is homogeneous.

A tank or vessel shall be considered to be homogeneous if the maximum difference in tested gravities between any two (2) samples from different strata is not greater than 0.3 degrees API, and the maximum difference in tested sulfur content between any two (2) samples from different strata is not greater than 0.02 weight percent, further provided that all tested samples shall be within the contracted specifications. For fuel received via barge into PREPA's facilities, which was loaded from a certified tank, a full certification of the barge composite sample is required.

C. In determining compliance with the Specifications, the Seller is required to make a laboratory analysis, as per specified method, to the fuel being supplied to assure that such fuel meets the specifications of this Contract, and shall submit a copy of the analysis results to the respective Power Plant Manager representative or to

PREPA's agent or representative before unloading each delivery. Copies shall also be sent to PREPA's Fuels Office attached to all invoices. The analysis should be certified by an authorized chemist licensed in Puerto Rico and approved by PREPA, and shall include items as per Specifications contained in Exhibit A.

D. If PREPA encounters difficulties in the efficient handling and burning of the fuel, special analysis from the independent inspector's retained sample shall be requested by PREPA and made by an authorized chemist licensed in Puerto Rico to determine if the characteristics of the fuel being delivered compare to the specifications. If it is determined that the difficulties are due to the fuel not complying with the Specifications, Seller will take such immediate measures as necessary to correct the deviation and to prevent further difficulties. PREPA's acceptance of, or agreement to, remedial or preventive measures shall not be interpreted or considered as a waiver of any rights available to it under the law, including, but not limited to, rights of actions or claims for damages caused by Seller's noncompliance with the fuel Specifications or with any other provision of this Contract.

E. If during any delivery Seller fails to meet the Specifications as awarded, PREPA reserves the right to evaluate the deviation and deduct a monetary equivalent from any amounts due to Seller, establish a claim for nonperformance, or terminate the

contractual relationship with Seller. PREPA reserves the right to refuse receiving of materials which fail to comply with specifications.

F. Seller will be held responsible for any fines, penalties, damages, expenses, costs, or claims, actions, and causes of actions, which may arise due to the fact that any of the fuel provided by Seller has deviations or variations from the contracted specification. Therefore, if such circumstance takes place, Seller will hold and save harmless, and will defend PREPA, its officers, agents, and employees from any claims, actions, causes of actions, damages, costs, fines, penalties, and expenses due to the above.

G. The Seller shall be responsible, at its own cost, for certifying that fuel meets the quality specifications required under these terms. The Seller shall provide to PREPA a Certificate of Quality.

H. PREPA might take periodic samples of the fuel oil delivered to its locations from the ship vessel in which delivery is made. PREPA reserves the right to cancel the Contract at Seller's expense for inferior deliveries, or if the fuel is found to contain dirt or sediment, or if it is of a structure that will cause clogging of burners, pipelines, burner nozzles, or prevents proper operation.

#### ARTICLE V. TYPE OF FUEL TO BE SUPPLIED

A. PREPA requires a fuel appropriate for burning without requiring extraordinary maintenance to the gas turbines and their associated equipment, or extraordinary

problems in the plant operations. All fuel delivered shall be analyzed and evaluated in terms of its ultimate cost and consistency with PREPA's applicable environmental regulations.

B. In the event that, during the term of this Contract, Federal or Commonwealth of Puerto Rico laws or regulations are modified, requiring the burning of a fuel of different specifications than the fuel contracted for, or in the event that PREPA obtains permission to burn a fuel with different specifications than the fuel contracted for, and if these changes require an adjustment in the price of the fuel contracted for; then the Parties shall meet within five (5) days from the enactment of any such law or regulations to discuss the matter for the purpose of establishing new price terms satisfactory to both Parties. If an agreement cannot be reached by the parties prior to the enforcement date of the regulations because Seller fuel is not competitive or, for any reason, cannot provide a fuel according to the new specifications, then PREPA shall have the right to terminate the Contract.

C. In the event that, during the term of this Contract, PREPA requests a fuel of different specifications than the fuel contracted for, Seller and PREPA shall meet to establish new price terms for said different fuel oil specifications satisfactory to both parties. If the parties are unable to agree on new price terms, or Seller for any reason, cannot provide the fuel according to the new specifications, PREPA



may exercise the option to continue to purchase fuel oil contracted or to terminate the Contract.

D. In the event, that during the term of this Contract, any of the contracted price postings cease to exist, Seller and PREPA shall meet to establish an alternative mean to determine the contracted price satisfactory to both parties. If the parties are unable to agree on an alternative mean to determine the contracted price within forty-five (45) days after any of the contracted price postings ceases to exist, then the Contract is terminated.

### ARTICLE VI. LAY TIME AND DEMURRAGE



A. PREPA assumes no responsibility or llability for demurrage incurred by the vessel(s) delivering fuel pursuant to this Contract, unless such demurrage is attributable to the fault or negligence of PREPA. Lay time shall commence six (6) hours: a) after Seller notifies PREPA that the vessel is ready to discharge cargo; or b) upon arrival at berth and cleared by Customs, whichever occurs last. B. Notice shall be given to PREPA seventy-two (72), forty-eight (48), and twenty-four (24) hours before the vessel's arrival by the vessel's master or its agent. In the event the vessel is delayed in getting into berth after giving notice, for any reason over which PREPA has no control or due to docking restrictions, if any, such delay shall not count as used lay time.

Notices to be given under this Contract shall be deemed properly served on each other when delivered in writing personally by certified mail, by fax machine, or by electronic mail.

C. Lay time shall commence within the meaning of this Article, whether the vessel arrives during or outside normal business hours. Lay time shall not be increased, nor PREPA held accountable for, any delay in berthing the vessel attributable to the failure of the Seller to give the notices set forth in this Article.

D. Allowed lay time shall be thirty-six (36) hours for each and every delivery of No. 2 light distillate fuel oil under this Contract. PREPA and Seller agree, however, that the allowed lay time of thirty-six (36) hours depends upon:

Seller's vessel being capable of pumping its entire cargo within thirty (30) hours.
 Seller's personnel or agents promptly performing the connection and disconnection of discharging hoses.

 An unloading temperature and pressure as specified in Article IV, <u>Specifications</u>, of this Contract.

E. Allowed lay time shall be increased by the time a vessel is prevented or delayed from arriving, or departing, or discharging cargo due to, but not limited to, the following:

1. Tide conditions, heavy seas, wind, or bad weather of any nature.

2. Vessel's condition, vessel's facilities, or vessel's failure to comply with U.S. Coast Guard or other governmental agency regulations, which do not permit connection, discharging cargo, or disconnecting in the allowed lay time.

3. The failure of the No. 2 light distillate fuel oil to meet the quantity or specifications by any of the determinations set forth in this Contract, or if the No. 2 light distillate fuel oil is otherwise unfit for PREPA's intended use.

4. Regulations of port authorities, vessel's owners, or vessel's master, which prohibit discharging of the cargo at night.

5. Seller's cargo volume exceeds the established maximum cargo volume.

F. If the vessel is delayed at any discharging berth for ship purposes or reasons beyond the control of PREPA, lay time shall cease when discharging is completed, even though hoses are not disconnected. If regulations of port authorities or vessel's owner prohibit discharging of the cargo at night, time so lost shall increase the allowed lay time. If PREPA prohibits discharging at night, time lost shall count as lay time. In all other cases, lay time shall continue to run until cargo hoses or loading arms, as the case may be, have been disconnected.

G. PREPA shall pay demurrage per running hours, and pro rata for a part thereof, for all time that exceeds the allowed lay time at the rate stated in the Voyage Charter Agreement for the vessel.

H. If discharging has ceased because it is completed, or if the discharging rate has decreased to a rate, which will not permit discharge of the entire cargo within thirty-six (36) hours or due to any other problem with the vessel, PREPA may order to move off the vessel from the dock at no cost to PREPA. If practical, the vessel shall be allowed to return later and complete discharging. In the event that the discharging rate has decreased to a rate which will not permit discharge of the entire cargo within thirty-six (36) hours, PREPA may delay ordering to move the vessel from the dock and allow pumping to continue. Provided however, the Seller pays the per hour dock fee rate and any other associated cost.



I. The Seller shall furnish all appropriate documentation and available evidence in support of any demurrage claim, which may be brought against PREPA.

#### ARTICLE VII. GENERAL LIABILITIES

A. The Seller agrees to make, use, provide, and take all proper, necessary precautions, safeguards, and protection against the occurrence or happening of injuries, death, and/or damages to any person or property during the delivery process. It also agrees to be responsible for, and indemnify, and save PREPA harmless from public liability, costs, and expenses resulting there from, or damages that may happen or occur solely through the fault, or negligent acts, or omissions of the Seller, its employees, agents, and subcontractor, during the performance of the supply, or while carrying out any act or action directly or

indirectly related, or in connection with the performance of this Contract, and from loss, llability, and fines incurred for, or by reason of violation by the Seller of any federal, state or municipal ordinance or regulation of law, while said delivery is in progress.

B. The Seller will be held responsible for any fines, penalties, damages, expenses, costs or claims, actions, and causes of actions, which may arise due to the fact that any of the fuel provided by the Seller has deviations or variations from the contracted and guaranteed specifications for the same. Therefore, should such circumstances take place, Seller will hold and save harmless and will defend PREPA, its officers, agents, and employees from any claims, actions, causes of actions, damages, costs, fines, penalties, and expenses due or attributable to variations or deviations from fuel specifications as contracted and guaranteed by the Seller.

C. The appearing parties agree that their responsibilities for damages under this Contract will be governed by the <u>Puerto Rico Civil Code</u> and its case law, as dictated by the Supreme Court of Puerto Rico.

D. The Seller shall not assign nor subcontract its rights and obligations under this Contract, except in the event PREPA gives written authorization for such actions. Provided that, no subcontract shall be considered for PREPA's approval, except when the following requirements are met: (1) the Seller delivers PREPA a copy of

the subcontract, not less than thirty (30) days prior to the effective date of the proposed subcontract; (2) the subcontract includes, as a condition for its legal validity and enforceability, a provision whereby PREPA has the right to substitute, subrogate, or assume Seller's rights under the subcontract, in the event that PREPA declares the Seller in breach or default of any of the Contract terms and conditions; (3) the subcontract includes, as a condition for its validity and enforceability, a provision establishing for the subcontractor the obligation to comply with all Seller's obligations under the Contract (mirror image clause), except for such obligations, term, and conditions which exclusively relate to works or services not included under the subcontract.

E. Seller shall be responsible for the performance of all deliveries and work under this Contract.

F. Seller shall be responsible to PREPA for the acts and omissions of its employees, agents, or subcontractors.

G. The successful seller will maintain adequate insurance coverage for the duration of the contract to cover cost of replacement or repair of any breakage caused by carelessness, negligence, or lack of skill, etc. on the part of the vendor's employees in the performance of required deliveries. This will include bodily and property damage and any such other items.

H. Seller and its parent company shall be jointly and severally liable for all liabilities, warranties and obligations assumed by Seller under this Contract.

# ARTICLE VIII. Price

A. Price contracted for fuel delivered shall be per barrel of 42 U.S. gallons, volume corrected to a temperature of sixty degrees (60°F) Fahrenheit.

B. For each barrel of delivered fuel, the price to be paid will consist of an escalator plus a fixed price differential with a sixty (60) day credit term for barge/vessel deliveries and a thirty (30) day credit term for tank truck deliveries.

C. The unit price in dollars per barrel (<u>\$/bbl.</u>) has to be computed using a fixed price differential plus an escalator factor, taking as reference the delivery date. The fixed price differential is \$7.70 per barrel for barge/vessel deliveries and \$8.61 for tank truck deliveries. The escalator will be calculated using the <u>Platt's Oilgram</u> <u>Price Report</u> and <u>Argus US Products</u>, corresponding to the effective date of the posting at the time the fuel delivery commences, the day before, and the day after the fuel delivery, each one of these evaluated utilizing the following formula:

Fifty percent (50%) of ULSD fuel from the average of quotations for the "New York/Boston" (Barge) and "US Gulf Coast (Waterborne)" as published by the <u>Platt's Oilgram Price Report</u>; rounded to four (4) decimal places.

Plus fifty percent (50%) of ULS Diesel from the average of quotations for the "New York Waterborne" and "US Gulf Coast Waterborne" as published by the <u>Argus US Products</u> rounded to four (4) decimal places; said result must be then multiplied by 0.42 to convert from cents per gallon to dollars per barrel.

Final number is to be rounded to four (4) decimal places. The price for a fuel delivery shall be based on:

- 1. The day the vessel commences the discharge, if the fuel is delivered via barge or vessel; or
- 2. The day when the delivery commences, if the fuel is delivered by tank to tank transfer.

In any of the two cases, should delivery date, the day before, or the day after take place on Saturday, Sunday or on a Holiday, the effective prices appearing in the last editions of <u>Platt's Oilgram Price Report</u> and <u>Argus U.S. Products</u>, published before any of these dates will be utilized to readjust the prices.

PREPA has provided a sample calculation of the escalation factor, which appears as Exhibit C, Sample Calculation Escalation Factor, of this Contract.

D. Excise tax and municipality patent payment are to be presented as separate line items and the same are in addition to the contracted price. PREPA will reimburse Seller the amount corresponding to the payment of the municipality patent, once the Seller presents PREPA evidence, issued by the Municipality, with respect to the percentage established as a basis for the calculation of the amount to be paid as such patent. If, during the term of the Contract, the agreed percent changes, Seller shall immediately present PREPA the corresponding evidence, issued by the Municipality and reflect it in the invoice.

E. Seller shall invoice each delivery with corresponding PREPA's assigned shipment number. Copies of the inspector's certificates of quantity and quality

shall be included with the invoices. Such invoices shall be paid by PREPA in U.S. currency sixty (60) days after completion of delivery of fuel for barge/vessels or thirty (30) days after completion for tank truck deliveries, having in mind that PREPA will pay on the basis of received quality and quantity.

F. The risk and title will be borne by the Seller until fuel oil passes PREPA's intake flange at the respective generating stations.

G. Subject to any payment default by PREPA under any contract with the Seller, Seller shall provide PREPA with a credit cap of forty-five million dollars (\$45,000,000) ("Credit Cap"). PREPA will have sixty (60) days to pay for barge/vessels deliveries or thirty (30) days for tank truck deliveries, after both, completion of deliveries of product and after the receipt of the invoice and all the necessary documents for making payments by PREPA's Fuels Office (including without limitation the documents as required by Articles XII(C) and (E)), provided that PREPA may not owe Seller, at any time, any amount(s) in excess of the Credit Cap (includes invoices not paid by their due date) and provided further that upon any payment default by PREPA under any contract with the Seller, all amounts owed to Seller shall become immediately due and payable.

Past due balances as per contractual terms will accrue interest at the lower of (i) the daily "Prime Rate" as quoted by the Wall Street Journal or (ii) the maximum rate of interest allowed by law.

H. The obligations to Seller shall be entitled to administrative expense status and priority in PREPA's Title III case, and shall not be dischargeable under any plan in PREPA's Title III case. Neither PREPA nor any of its representatives shall assert, nor assist or facilitate any other party in asserting, directly, or indirectly (including through the prosecution or support of any plan), that the obligations to Seller are not entitled to such status and priority or are dischargeable in the Title III case. For the avoidance of doubt, PREPA agrees that this stipulation shall be admissible in PREPA's Title III case. Moreover, and without prejudice to the foregoing, in no event shall the obligations to Seller under this Contract be treated any less favorably than any other post-petition fuel supplier under a plan in PREPA's Title III case.

I. This Contract will have the approximate cost of \$265,500,000. All Payments under this Contract will be charged to accounts:

1-2321-23215-000-000 and 01-4009-50100-010-598.

#### ARTICLE IX. PRICE PROTECTION

The parties will have the right to price protection of the fuel being delivered, except as provided for in the Article XIV, Force Majeure, of this Contract. Price protection is to be applied to those deliveries not made within the agreed delivery window, as mentioned in Article III, Delivery and Title, of this Contract. Price protection is hereby defined for Seller as the highest price between the price for the last day of

the delivery window or actual delivery date as calculated in Article VIII, Price, of this Contract. Conversely, price protection for PREPA will be the lowest price between the price for the last day of the delivery window or actual delivery date as calculated in Article VIII, Price, of this Contract.

### ARTICLE X. DUTIES AND TAXES

The contracted price shall include all taxes, fees or established import tariffs for foreign material with the exception of Puerto Rico's excise tax and municipality patent payment, which are to be presented as separate line items and the same are in addition to the contracted price. In the event that any new or increased taxes, fees, or tariffs, applicable to the product being supplied hereby are levied by Federal and/or Commonwealth of Puerto Rico Government, and as long as these taxes, fees, or tariffs do not discriminate whether the product is domestic or foreign, these will be passed on in their entirety to PREPA; any changes up or down in these taxes, fees, or tariffs, should they be imposed, will be reflected in the price in its entirety and Seller will adjust the price accordingly. However, should said new or increased taxes, fees, or tariffs result in a lower price for domestic fuel, the Seller must supply fuel which results in the lowest cost to PREPA. Should domestic fuel be unavailable, the parties shall meet within five (5) days from Seller's notification to PREPA that the lowest priced fuel is



unavailable, or at PREPA's request, to discuss fuel availability from other sources and negotiate the financial aspect of any taxes, fees, or tariffs applicable to the product. If an agreement cannot be reached, either party shall have the right to terminate the Contract.

#### ARTICLE XI. GUARANTEED CALORIFIC VALUE

A. The Seller guarantees that the minimum calorific values of the fuel supplied hereunder shall be as specified herein, or as quoted by the Seller, whichever is the higher. However, PREPA will not pay any premium for calorific values in excess of the minimum established in Exhibit A, Fuel Specifications.

B. During any delivery by the Seller, in which the fuel fails to meet such guarantee, the deficiency shall be determined in barrels, calculated on the basis of the example attached as Exhibit B, Sample Calculation BTU Deficiency Adjustment, of this Contract. The deficiency, thus calculated, shall serve as a credit deficiency occurred for an equivalent number of barrels before computing the fuel billings for such invoice.

#### ARTICLLE XII. MEASUREMENTS AND PAYMENT

A. The quantity of fuel oil delivered to PREPA shall be computed by measurements in PREPA's on-shore tanks, and such measurements, unless otherwise mutually agreed, are to be conducted by an independent inspector accredited by US Customs and Border Protection as per Title 19 CFR 151.13 and qualified by

PREPA. The inspection cost shall be borne equally between PREPA and the Seller. All measurements shall be corrected to sixty degrees (60°F) Fahrenheit, using ASTM Petroleum measurements Table 6-B. Quantities certified by the independent inspector's report will be binding for both parties.

B. All invoices submitted by the Seller shall be paid by PREPA in U.S. currency within sixty (60) days for barge/vessel deliveries or thirty (30) days for tank truck deliveries, after both, completion of delivery of fuels and after the receipt of the invoice and all the necessary documents for making payments by PREPA's Fuels Office.

C. Invoices must also include a written and signed certification stating that no officer or employee of PREPA, and their respective subsidiaries or affiliates, will personally derive or obtain any benefit or profit of any kind from this Contract, with the acknowledgment that invoices that do not include this certification will not be paid. This certification must read as follows:

paid. This continuation must read as follows.

We certify under penalty of absolute nullity that no public servant of PREPA is a party or has any interest in the benefit or profit product of the Contract which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the Contract. The only consideration to be received in exchange for the delivery of 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 Services have been rendered, and no payment has been received.

Seller's Signature

D. All the billings and requests for payment shall be mailed to:

Puerto Rico Electric Power Authority Attention: Fuels Office PO Box 364267 San Juan, Puerto Rico 00936-4267

E. For tank truck deliveries, fuel shall be measured at the Seller facilities using calibrated meters and corrected to sixty degrees Fahrenheit (60°F) from the average loading temperature obtained from the appropriate measuring devices and using the factors provided by the American Society for Testing Materials (ASTM) Table 6B. Each tank truck delivery will be accompanied by; i) Order confirmation, ii) Bill of Lading (BOL), iii) Seal's report from an independent inspector, iv) Certificate of Analysis (COA). Each invoice for a tank truck delivery shall be accompanied by a copy of the delivery ticket or BOL properly signed by PREPA's duly authorized representative. For the purpose of determining the quantity delivered, the BOL figures at sixty degrees Fahrenheit (60°F) will be used. All the tank trucks shall have all hatches and outlet valves properly locked with metallic seals at the time the delivery is to commence. Otherwise the product will not be accepted by PREPA.

#### ARTICLE XIII. SALES TO OTHERS

If the Seller sells or offers for sale to others in Puerto Rico burnable fuel of a quality comparable or superior to that of fuel to be supplied hereunder for delivery in Puerto Rico or elsewhere, at F.O.B. supplier terminal prices per BTU lower than





those payable for fuel hereunder, Seller shall so notify PREPA immediately and extend to PREPA such lower price as from the date of such sale or offer for sale. The lower price shall apply to a quantity of fuel sold by Seller to PREPA hereunder equivalent to the number of barrels of fuel sold or offered by Seller at such lower price, but in no case shall this lower price be applicable to a quantity less than the average quantity received during a two-week (2) period.

#### ARTICLE XIV. FORCE MAJEURE

The parties hereto shall be excused from performing hereunder, and shall not be liable in damages or otherwise, if and only to the extent that they shall be unable to perform, or are prevented from performing by a force majeure event. For the purpose of this Contract, force majeure means any cause without the fault or negligence, and beyond the reasonable control of, the party claiming the occurrence of a force majeure event. Force majeure may include, but not be limited to, the following: acts of God, industrial disturbances, acts of the public enemy, war, blockages, boycotts, riots, insurrections, epidemics, earthquakes, storms, floods, civil disturbances, lockouts, fires, explosions, interruptions of services due to the acts or failure to act of any governmental authority, provided that these events, or any other claimed as a force majeure event, and/or its effects, are beyond the reasonable control and without the fault or negligence of the party claiming the force majeure, and that such party, within ten (10) days after the





occurrence of the alleged force majeure, gives the other party written notice describing the particulars of the occurrence and its estimated duration. The party claiming the force majeure shall continue the performance of its obligations hereunder immediately after the conclusion of the force majeure. In the event that the force majeure extends for a period of more than sixty (60) consecutive days, the party not claiming the force majeure may terminate this Contract without further obligation. The burden of proof as to whether a force majeure has occurred shall be on the party claiming the force majeure. Notice of termination under this provision shall create no liability to the parties, except that the parties shall still be responsible for the payments of amounts due and owing to the other party not subject to claims.

#### ARTICLE XV. PREFERRED CLIENT

Seller recognizes that PREPA provides an essential service for the Commonwealth of Puerto Rico. Should any force majeure event cause the Seller to suspend or reduce deliveries, the Seller shall give PREPA first priority for supply.

#### ARTICLE XVI. PERFORMANCE BOND AND INSURANCE

A. Upon execution of the Contract, Seller will furnish a Performance Bond payable to the order of PREPA issued by a qualified surety company, authorized to do business in Puerto Rico and acceptable to PREPA, in an amount of \$13,275,000, equivalent to five percent (5%) of the estimated Contract value.

> PREPA will accept a Letter of Credit for the same amount in lieu of a Performance Bond, provided that the Letter of Credit shall incorporate the following conditions to be acceptable to PREPA:

a. To be issued or notified and confirmed by a local bank in Puerto Rico,

b. To be unconditional and irrevocable,

c. Payments to be made by Issuing bank on a business day by wire transfer, immediately after PREPA's instructions,

d. To be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico, applicable to contracts entered and performed solely within Puerto Rico, without giving effect to any conflicts or choice of law principles which otherwise might be applicable, except to the extent such laws are inconsistent with the uniform customs and practices for documentary credits,
e. Final draft of the Letter of Credit shall be subject to approval by PREPA's

Treasurer.

B. Seller shall secure and maintain in full force and effect during the life of this Contract as provided herein, policies of insurance covering all operations engaged in by the Contract as follows:

1. <u>Commonwealth of Puerto Rico Workmen's Compensation Insurance</u>: Seller shall provide Workmen's Compensation Insurance as required by the

Workmen's Compensation Act 45-1935 of the Commonwealth of Puerto Rico.

Seller shall also be responsible for compliance with said Workmen's Compensation Act by all its subcontractors, agents, and invitees, if any.

Seller shall furnish a certificate from the Puerto Rico's State Insurance Fund showing that all personnel employed in the work are covered by the Workmen's Compensation Insurance, in accordance with this Contract.

2. Employer's Liability Insurance:

Seller shall provide 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 the Seller as 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 Workmen's Compensation Act of the Commonwealth of Puerto Rico.

3. Commercial General Liability Insurance:

Seller shall provide a Commercial General Liability Insurance with limits of \$1,000,000 per occurrence and \$1,000,000 aggregate.

4. Commercial Automobile Liability Insurance:

Seller shall provide a Commercial Automobile Liability Insurance with limits of \$1,000,000 combined single limit covering all owned or scheduled autos, nonowned autos, and hired autos. Under this insurance, the MCS-90 (Motor Carrier Endorsement), must be included.



5. Pollution Liability Insurance:

Seller shall provide a Pollution Liability Insurance with limits of \$10,000,000 per

claim and \$10,000,000 per aggregate.

Requirements Under the Policies:

The Commercial General Liability and Commercial Automobile Liability Insurance

required under this Contract shall be endorsed to include:

a. As Additional Insured:

Puerto Rico Electric Power Authority (PREPA) Risk Management Office PO Box 364267 San Juan, PR 00936-4267 b. A thirty (30) day cancellation or nonrenewable notice to be sent to the above

address.

c. An endorsement including this Contract under contractual liability coverage and identifying it by number, date, and parties to the contract.

d. Walver of Subrogation in favor of Puerto Rico Electric Power Authority (PREPA).

e. Breach of Warranties or Conditions:

"The Breach of any of the Warranties or Conditions in this policy by the Insured shall not prejudice PREPA's rights under this policy."

### Furnishing of Policies:

All required policies of insurance shall be in a form acceptable to PREPA and shall

be issued only by insurance companies authorized to do business in Puerto Rico.

Seller shall furnish a certificate of insurance in original signed by an authorized representative of the insurer in Puerto Rico, describing the coverage afforded.

#### ARTICLE XVII. CONTINGENT FEES

A. Seller warrants that it has not employed any person to solicit or secure the Contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty will give PREPA the right to immediately terminate the Contract and/or to deduct from any payment the amount of such commission, percentage, brokerage, or contingent fee or to claim said amount by whatever means available under the law.

B. No officer, employee, or agent of PREPA or of the Commonwealth of Puerto Rico or Municipal Governments shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom.

C. Seller represents and warrants that it is authorized to enter into, and to perform its obligations under this Contract and that it is not prohibited from doing business in Puerto Rico or barred from contracting with agencies or instrumentalities of the Commonwealth of Puerto Rico.

#### ARTICLE XVIII. COMPLIANCE WITH THE COMMONWEALTH OF PUERTO RICO CONTRACTING REQUIREMENTS

The Seller will comply with all applicable Law, Regulations, or Executive Orders that regulate the contracting process and requirements of the Commonwealth of Puerto Rico.

A. Filing of Puerto Rico Income Tax Returns

In compliance with Executive Order Number OE-1991-24 of June 18, 1991, the Seller hereby certifies that it has filed all the necessary and required income tax returns to the Government of Puerto Rico for the last five (5) years. As evidence thereof, Seller has delivered to PREPA an Income Tax Return Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that Seller has filed his Income Tax Return for the last five (5) tax years (Form SC 6088). The Seller accepts and acknowledges its responsibility for requiring and obtaining a similar warranty and certification from each and every Seller and Subcontractor whose service the Seller has secured in connection with the services to be rendered under this Contract and shall forward evidence to PREPA as to its compliance with this requirement.

B. Payment of Puerto Rico Income Taxes

In compliance with Executive Order Number OE-1991-24 of June 18, 1991, the Seller, hereby certifies that it has complied and is current with the payment of all income taxes that are, or were due, to the Government of Puerto Rico. As evidence thereof, Seller has delivered to PREPA a certification issued by the Treasury Department of Puerto Rico indicating that Seller 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 (Form SC 6096). During the term of this Contract, the

Seller agrees to pay and/or to remain current with any repayment plan agreed to by the Seller with the Government of Puerto Rico. The Seller accepts and acknowledges its responsibility for requiring and obtaining a similar warranty and certification from each Subcontractor whose service the Seller has secured in connection with the services to be rendered under this Contract and shall forward evidence to PREPA as to its compliance with this regulrement.

C. Compliance with Requirements of the Department of Labor and Human Resources of the Commonwealth of Puerto Rico.

Pursuant to Executive Order Number 1992-52, dated August 28, 1992 amending OE-1991-24, the Seller certifies and warrants that it has made all payments required for unemployment benefits, workmen's compensation and social security for chauffeurs, whichever is applicable, or that in lieu thereof, has subscribed a payment plan in connection with any such unpaid items and is in full compliance with the terms thereof. As evidence thereof, Seller has delivered to PREPA:

 A certification issued by the Bureau of Employment Security (Negociado de Seguridad de Empleo) of the Puerto Rico Department of Labor and Human Resources certifying that Seller does not owe taxes regarding Unemployment or Disability Insurance.

- 2. A certification issued by the Program for Social Security for Chauffeurs and Other Employees of the Puerto Rico Department of Labor and Human Resources certifying that Seller has no debt with respect to such program.
- D. Real and Personal Property Taxes

Seller hereby certifies and guarantees that it does not have any current debt regarding property taxes that may be registered with the Government of Puerto Rico's Municipal Tax Collection Center (*Centro de Recaudación de Ingresos Municipales* ("*CRIM*")). The Seller further certifies to be current with the payment of any and all property taxes that are or were due to the Government of Puerto Rico. The Seller shall provide:

1. A certification issued by the Municipal Revenues Collection Center ("MRCC"), assuring that Seller does not owe any tax accruing during the last five (5) years to such governmental agency with respect to personal property; or negative Debt certification issued by the MRCC with respect to personal property taxes and a sworn statement executed by Seller indicating that (I) its revenues are derived from the rendering of professional services, (ii) during the last five (5) years (or the time in which it has been providing professional services) it has had no taxable business or personal property on the 1st of January of each year, (iii) that for such reasons it has not been required to file personal property tax returns, as required under

> Article 6.03 of Act 83-1991, as amended and (iv) that for such reason it does not have an electronic tax file in the MRCC's electronic system.

- 2. All Concepts Debt Certification issued by the MRCC assuring that Seller does not owe any taxes to such governmental agency with respect to real and personal property; or Negative certification issued by the MRCC with respect to real property taxes.
- E. Sales and Use Taxes

The Seller has delivered to PREPA:

- A Puerto Rico Sales and Use Tax Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that Seller has filed his Puerto Rico Sales and Use Tax for the last sixty (60) contributory periods.
- 2. A copy of Seller's Certificate of Merchant's Registration issued by the Treasury Department of Puerto Rico.
- F. Puerto Rico Child Support Administration (ASUME)

Seller hereby certifies that it is not duty bound to pay child support, or if so, that Seller is up to date or has a payment plan to such effects. As evidence thereof, the Seller has delivered to PREPA a certification issued by the Puerto Rico Child Support Administration (*Administración Para El Sustento de Menores (ASUME*)) certifying that the Seller does not have any debt, outstanding debt, or legal procedures to collect child support payments that may be registered with ASUME.

G. Organization Documents

The Seller shall provide:

- 1. A Good Standing Certificate issued by the Department of State of Puerto Rico.
- A Certification of Incorporation, or Certification of Organization or Certificate of Authorization to do business in Puerto Rico issued by the Department of State of Puerto Rico.
- H. Compliance with Act 1 of Governmental Ethics

The Seller will certify compliance with Act 1 - 2012, as amended, known as the Ethics Act of the Government of Puerto Rico, which stipulates that no employee or executive of PREPA nor any member of his or her immediate family (spouse, dependent children, or other members of his or her household or any individual whose financial affairs are under the control of the employee) shall have any direct or indirect pecuniary interest in the services to be rendered under this Contract, except as may be expressly authorized by the Governor of Puerto Rico in consultation with the Secretary of Treasury and the Secretary of Justice of the Government. 3 L.P.R.A. § 8611 et seq.

1. Law 168-2000: Law for the Strengthening of the Family Support and Livelihood of Elderly People

The Seller will certify that if there is any Judicial or Administrative Order demanding payment or any economic support regarding Act 168-2000, as



amended, the same is current and in all aspects in compliance. Act 168-2000 "Law for the Strengthening of the Family Support and Livelihood of Elderly People" in Spanish: "Ley para el Fortalecimiento del Apoyo Familiar y Sustento de Personas de Edad Avanzada", 3 L.P.R.A. §8611 et seq.

J. Law 127 - 2004: Contract Registration in the Comptroller's Office of Puerto Rico Act

Payment for Services under this Contract will not be made until this Contract is properly registered in the Office of the Comptroller of the Government of Puerto Rico pursuant to Law Number 18 of October 30, 1975, as amended.

K. Prohibition with respect to execution by public officers: (3 L.P.R.A. 8615(c))

No public officer or employee authorized to contract on behalf of the executive agency for which he/she works may execute a contract between the agency for which he/she works and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office.

L. Prohibition with respect to contracting with officers or employees: (3 L.P.R.A. 8615(d))

No executive agency may execute a contract in which any of its officers or employees or any member of their family units has or has had direct or indirect economic interest during the last four (4) years prior to their holding office, unless the Governor gives authorization thereto with the previous recommendation of the Secretary of the Treasury and the Secretary of Justice.

M. Prohibition with respect to contracts with officers and employees of other Government entities: (3 L.P.R.A. 8615(e))

No public officer or employee may be a party to or have any interest in any profits or benefits produced by a contract with any other executive agency or government dependency unless the Governor gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice.

N. Prohibition with respect to evaluation and approval by public officers: (3 L.P.R.A. 8615(f))

No public officer or employee who has the power to approve or authorize contracts shall evaluate, consider, approve, or authorize any contract between an executive agency and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office.

O. Prohibition with respect to execution by public officers contracts with former public officers: (3 L.P.R.A. 8615(h))

No executive agency shall execute contracts with or for the benefit of persons who have been public officers or employees of said executive agency until after two (2) years have elapsed from the time said person has ceased working as such.

P. Dispensation

Any and all necessary dispensations have been obtained from any government entity and that said dispensations shall become part of the contracting record.

Q. Rules of Professional Ethics

The Seller acknowledges and accepts that it is knowledgeable of the rules of ethics of his or her profession and assumes responsibility for his or her own actions.

- R. Anti-Corruption Code for a New Puerto Rico
  - Seller agrees to comply with the provisions of Act 2-2018, as the same may be amended from time to time, which establishes the Anti-Corruption Code for a New Puerto Rico.
  - 2. The Seller hereby certifies that it does not represent particular interests in cases or matters that imply a conflict of interest, or of public policy, between the executive agency and the particular interests it represents.
  - 3. Seller shall furnish a sworn statement to the effect that neither Seller nor any president, vice president, executive director or any member of a board of officials or board of directors, or any person performing equivalent functions for Seller has been convicted of or has pled guilty to any of the crimes listed in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico or any of the crimes included in Act 2-2018.





- 4. Seller hereby certifies that it has not been convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3, or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.
- 5. PREPA shall have the right to terminate the Contract in the event Seller is convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3, or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico, or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as



amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.

S. Provisions Required under Act 14-2004:

Seller agrees that articles extracted, produced, assembled, packaged, or distributed in Puerto Rico by enterprises with operations in Puerto Rico, or distributed by agents established in Puerto Rico shall be used when the service is rendered, provided that they are available.

T. The Parties acknowledge that the Seller has submitted the certification titled "Contractor Certification Requirement" required in accordance with the Contract Review Policy of the Financial Oversight and Management Board for Puerto Rico, effective as of November 6, 2017, as amended, signed by the Seller's Executive Director (or another official with an equivalent position or authority to issue such certifications). A signed copy of the "Contractor Certification Requirement" is included as an annex to this Contract.

The Seller represents and warrants that the information included in the Contractor Certification Requirement is complete, accurate and correct, and that any misrepresentation, inaccuracy of falseness in such Certification will render the Agreement null and void and the Seller will have the obligation to reimburse immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under the Agreement.



- U. For this Contract, the transfer of skills and technical knowledge required by the Certified Fiscal Plan is inapplicable given the non-recurring or specialized nature of the contracted services.
- V. Consequences of Non-Compliance

The Seller expressly agrees that the conditions outlined throughout this Article are essential requirements of this Contract. Consequently, should any one of these representations, warranties, or certifications be incorrect, inaccurate, or misleading, in whole or in part, there shall be sufficient cause for PREPA to render this Contract null and void, and the Seller shall reimburse PREPA all moneys received under this Contract. If any of the certifications listed in items A through F of this Article shows a debt, and Seller has requested a review or adjustment of this debt, Seller hereby certifies that it has made such request at the time of the Contract execution. If the requested review or adjustment is denied and such determination is final, Seller will provide, immediately, to PREPA a proof of payment of this debt; otherwise, Seller accepts that the owed amount be offset by PREPA and retained at the origin, deducted from the corresponding payments. The Seller accepts and acknowledges its responsibility for requiring and obtaining a similar warranty and certification from each and every Contractor and Subcontractor whose service the Seller has secured in connection with the services to be rendered under this Contract



and shall forward evidence to PREPA as to its compliance with this requirement.

#### ARTICLE XIX. SAVE AND HOLD HARMLESS

Seller agrees to save and hold harmless and to indemnify PREPA for all expenses and costs of any nature (including attorneys' fees) incurred by PREPA arising out damages, caused by Seller, by act or omission, in the performance or nonperformance of its obligations under the Contract.

### ARTICLE XX. CONTRACT ASSIGNMENT

A. This Contract, as well as any of the rights, duties, liabilities, and obligations under it, cannot be assigned, transferred, subcontracted, hypothecated, or otherwise disposed of by the Seller without the previous written consent of PREPA. B. PREPA does not favor requests for assignment, transfers, hypothecation, or other type of disposal of the Contract, and/or duties and obligations under it, and will be reluctant to approve any request to that effect, unless, in the judgment of PREPA, the particular circumstances of the request warrant its approval and the assignment, transfer, hypothecation, or disposal does not operate against PREPA's best interests.

## ARTICLE XXI. TRANSFER OF FUNDS

If Seller decides to assign or transfer an amount, due or payable, to which it is entitled for services rendered or goods provided during the term of this Contract,

Seller shall notify PREPA of such transfer of funds, in accordance to the provisions of Act 21-2012, as amended. Said notice shall clearly indicate the rights granted, including a copy of the contract under which the assignment or transfer of funds is made, the exact amount of funds to be assigned or transferred, and specific identification information regarding the assignee (full name of the person or company), address, and any other contact information.

Seller acknowledges and agrees that PREPA may deduct any amount, due or payable under this Contract, that Seller owes; PREPA may retain any said amount if Seller fails to fulfill its obligations and responsibilities under this Contract, or a claim arises for warranty or defects regarding the services rendered or goods provided under this Contract. Seller also acknowledges and agrees that PREPA's payment obligation under any assignment of funds will cease upon payment of the outstanding amounts under this Contract. PREPA shall not be required to make payments or transfer any funds for an amount that exceeds the payment to which Seller is entitled to under this Contract.

Seller's aforementioned notice of assignment of funds shall be accompanied by a cashier's check or money order payment of two hundred dollars (\$200), payable to "Puerto Rico Electric Power Authority", for administrative costs for processing said assignment.



## ARTICLE XXII. NOTICES

A. Any notice to be given hereunder shall be in writing and will be sufficiently served

when delivered in person or properly mailed to the following addresses:

To PREPA: Puerto Rico Electric Power Authority Attention: Fuels Office Manager PO Box 364267 San Juan, Puerto Rico 00936-4267

To Seller: Novum Energy Trading Inc. Attn. Frank Rexach, Director 3200 Kirby Drive Suite 1000 Houston, Texas 77098

B. Either Seller or PREPA, upon any change of its address as set forth above, shall notify the other party in writing and from and after giving of such notice, the address therein specified shall be deemed the address of such party for the giving of notices.

## ARTICLE XXIII. MODIFICATIONS AND NOVATION

No modification, change, renewal, extension, discharge, or waiver of this Contract, or any of the provisions herein contained, shall be valid and binding except by a written, mutual agreement of the Parties executed by a duly authorized officer of each party.

PREPA and Seller expressly agree that no amendment or change order which could be made to Contract, during its term, shall be understood as a contractual novation, unless both Parties agree to it, specifically and in writing. The previous



provision shall be equally applicable in such other cases where PREPA gives the Seller a time extension for the compliance of any of its obligations under this Contract, or where PREPA dispenses the claim or demand of any of its credits or rights under the Contract.

#### ARTICLE XXIV, CHOICE OF LAW AND VENUE

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico. Also, other than matters relating to PREPA's Title III case, which shall be heard by the District Court, the contracting parties expressly agree that only the commonwealth courts of Puerto Rico will be the courts of competent and exclusive jurisdiction to decide over the judicial controversies that the appearing parties may have among them regarding the terms and conditions of this Contract.

#### ARTICLE XXV. SEPARABILITY

If a court of competent jurisdiction declares any of the Contract provisions as null or invalid, such holding will not affect the validity and effectiveness of the remaining provisions of the Contract and the Parties agree to comply with their respective obligations under such provisions not included by the judicial declaration.

#### ARTICLE XXVI. COURT APPROVAL

PREPA shall not be required to obtain approval of this Contract by the District Court in PREPA's Title III case, and represents and warrants that no such approval

is required, provided, however, that (x) if PREPA (or the Oversight Board on its behalf) seeks Court-approval for any other post-petition contract with a fuel supplier, PREPA shall also do so for this Contract, nunc pro tunc to the Contract's effective date, and (y) the fact that District Court approval may occur does not reflect either party's or the Oversight Board's belief that such court approval is necessary to obtain administrative expense and priority, or any of the other provisions contained in this Contract.

#### ARTICLE XXVII. ENTIRE CONTRACT



This Contract constitutes the entire agreement of the parties as to the subject matter; however, should there be any difficulty or differences in understanding, interpreting, or applying its terms, the parties shall look for guidance and directives within the terms and conditions of the corresponding Request for Proposal, Specifications, Seller's Proposal, and Letter of Award.

IN WITNESSES WHEREOF, the Parties here to have caused this Contract to be duly executed as of <u>November</u> (2, 2) at San Juan, Puerto Rico.

Puerto Rico Electric Power Authority

Josué A. Colón Ortiz Executive Director

Novum Energy Trading Inc.

MARINIM

YON, DEL

Christopher John Scott Chief Financial Officer

Email:cs@novumenerg

## Exhibit A

## **NO. 2 FUEL OIL SPECIFICATIONS**

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| PARAMETER                              | ASTM METHOD    | CAMBALACHE   | SAN JUAN CC  | MAYAGUEŻ     | ALL OTHER UNITS      |
|--|----------------|--------------|--------------|--------------|----------------------|
|  |                | MIN - MAX    | MIN - MAX    | MIN - MAX    | MIN - MAX            |
| SAMPLING                               | D-4057         |              |              |              |                      |
| GRAVITY, API DEGREE AT 60F             | D-287, D-4052  | 30.0 - 42.0  | 30.0 - 42.0  | 30.0 - 42.0  | 30.0 - 42.0          |
| VISCOSITY, KINEMATIC CTS AT 100F       | D-445, D2161   | 2.3 -5.8     | 2.3 -5.8     | 2.3 -5.8     | 2.3 <del>-</del> 5.8 |
| WATER & SEDIMENT, % VOLUME             | D-473          | MAX 0.1      | MAX 0.1      | MAX 0.1      | MAX 0.1              |
| FLASH POINT, DEGREE F, PMCT            | D-93           | MIN 125      | MIN 125      | MIN 125      | MIN 125              |
| SULFUR, % WEIGHT                       | D-4294         | MAX 0.15     | MAX 0.050    | MAX 0.09     | MAX 0.50             |
| ASH, % WEIGHT                          | D-482          | MAX 0.005    | MAX 0.005    | MAX 0.005    | MAX 0.005            |
| POUR POINT, DEGREE F                   | D-97           | MAX 15       | MAX 15       | MAX 15       | MAX 15               |
| SODIUM + POTASSIUM, PPM                | D-5863         | MAX 0.5      | MAX 0.5      | MAX 0.5      | MAX 0.5              |
| VANADIUM, PPM                          | D-3605, D-5863 | MAX 0.5      | MAX 0.5      | MAX 0.5      | MAX 0.5              |
| CALCIUM, PPM                           | D-5863         | MAX 0.2      | MAX 0.2      | MAX 0.2.     | MAX 0.2              |
| HEATING VALUE, BTU/LB (GROSS) AT 60F * | D-240          | MIN 18,600 * | MIN 18,600 * | MIN 18,600 * | MIN 18,600 *         |
| DISTILLATION TEMP 90% POINT F          | D-86           | MAX 650      | MAX 650      | MAX 650.     | MAX 650              |
| CARBON RESIDUE WT. % (10% BOTTOMS)     | D-524          | MAX 1.0      | MAX 1.0      | MAX 1.0      | MAX 1.0              |
| FILTERABLE PARTICULATES MG/100ML       | D-2276         | MAX 4        | MAX 4        | MAX 4        | MAX 4                |
| CETANE INDEX                           | D-4737         | 40 - 56      | 40 - 56      | 40 - 56      | NOT REGULATED        |
| COLOR                                  | VISUAL         | UNDYED       | UNDYED       | UNDYED       | UNDYED               |
| LEAD PPM                               | D-5863         | 0.01 - 1.0   | 0.01 - 1.0   | 0.01 - 1.0   | 0.01 - 1.0           |
| FUEL BOUND NITROGEN, % WEIGHT          | D-4629         | MAX 0,055    | 0.015        | MAX 0.10     | D.015                |

\* = requirement is gross heating value, but net heating value should be also included for our operations calculations

e.

Revised August, 2021

### Exhibit B

# SAMPLE CALCULATION BTU DEFICIENCY ADJUSTMENT

Example of calculation to determine credit due to PREPA if Seller supplies fuel of lower heat content than the guaranteed Btu value. The contracted value is 18,600 Btu per pound of fuel measured at 60 degrees F (Gross).

Assume Seller delivers 50,000 barrels of fuel measured at 60 degrees F.

Assume the quality certificate of the fuel indicates a heat content of 18,500 Btu per pound.

Therefore:

To calculate the equivalent barrels deficiency divide the difference of Btus per pound received by the guaranteed minimum and multiply this fraction by the delivered volume.

Example:

 $(50,000 \text{ barrels}) \times ((18,600 - 18,500) / 18,600) = 268.82 \text{ bbl.} (deficiency})$ 



Exhibit C

#### SAMPLE CALCULATION ESCALATION FACTOR

#### Indexes for Ultra Low Sulfur Diesel

|          | Platts NY |        | Platts USGC |        | Argus NY |        | Argus USGC |        |
|----------|-----------|--------|-------------|--------|----------|--------|------------|--------|
|          | Low       | High   | Low         | High   | Low      | High   | Low        | High   |
| 01/02/17 | 170.52    | 170.62 | 168.92      | 169.02 | 169.53   | 170.13 | 168.17     | 168.57 |
| 01/03/17 | 164.57    | 164.67 | 163.22      | 163.32 | 164.67   | 165.17 | 162.17     | 163.17 |
| 01/04/17 | 166.40    | 166.50 | 164.10      | 164.20 | 166.15   | 166_65 | 163.15     | 164.25 |

## First step: Average

```
Platts New York = (170.52+170.62+164.57+164.67+166.4+166.5)/6 = 167.2133
```

Platts US Gulf Coast = (168.92+169.02+163.22+163.32+164.1+164.2)/6 = 165.4633

Argus New York = (169.53+170.13+164.67+165.17+166.15+166.65)/6 = 167.05

Argus USGC = (168.17+168.57+162.17+163.17+163.15+164.25)/6 = 164.9133

#### Second step: Interpolation

Platt's ULSD = (167,2133+165,4633)/2 = 166,3383

Argus ULSD = (167.05+164.9133)/2 = 165.9817

## Third step: Final calculation

Escalation Factor for a delivery commencing on January 3, 2017

- = [1/2(Platts ULSD) + 1/2(Argus ULSD)] \*0.42
- = 1/2(166.3383) + 1/2(165.9817) x 0.42
- = (83.1692 + 82.9908) x 0.42 = 69.7872

