

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

**NEPR**

**Received:**

**Jan 20, 2023**

**3:35 PM**

IN RE: CERTIFICATE OF ENERGY  
COMPLIANCE

CASE NO.: NEPR-AP-2022-0001

SUBJECT: Amended Request for Issuance  
of Certificate of Energy Compliance in  
Accordance with Act 120-2018.

**PUERTO RICO PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY'S INFORMATIVE  
MOTION IN CONNECTION WITH "RESOLUTION AND ORDER" AND  
CONFIDENTIAL TREATMENT**

COMES NOW the Puerto Rico Public-Private Partnerships Authority (the "P3 Authority")<sup>1</sup> and pursuant to Act 29-2009, 27 P.R. Laws Ann. §2601 *et seq.* ("Act 29"), Act 57-2014, 22 P.R. Laws. Ann. §1051 *et seq.* ("Act 57"), and Act 120-2018, 22 P.R. Laws. Ann. §1111 *et seq.* ("Act 120") (each as amended), respectfully submits:

1. After various procedural events<sup>2</sup>, on January 13, 2023, the P3 Authority filed a document titled *Puerto Rico Public-Private Partnerships Authority's Petition to Withdraw December 22<sup>nd</sup> Filing and to Hold In Abeyance its Request for Issuance of Certificate of Energy*

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<sup>1</sup> The P3 Authority is filing this on behalf of the LGA Partnership Committee, as defined herein.

The P3 Authority's contact information is:

Address: Public-Private Partnerships Authority, Roberto Sánchez Vilella (Minillas) Government Center, De Diego Ave. Stop. 22, San Juan, PR 00907.

Tel: 787-722-2525

Email of the Executive Director: Fermin.Fontanes@p3.pr.gov

<sup>2</sup> See *Puerto Rico Public-Private Partnerships Authority's Request for Issuance of Certificate of Energy Compliance and Request for Confidential Treatment ("Initial Request")*, filed by the P3 Authority on October 21, 2022; *Puerto Rico Public-Private Partnerships Authority's Motion Submitting Documents and Requesting Confidential Treatment ("First Amended Request")*, filed by the P3 Authority on November 17, 2022; *Resolution* issued by this Energy Bureau on November 21, 2022; *Puerto Rico Public-Private Partnerships Authority's Petition to Withdraw November 17<sup>th</sup> Filing and to Hold in Abeyance its Request for Issuance of Certificate of Energy Compliance, as Amended, and Requesting Further Confidential Treatment of Documents Submitted ("Petition to Withdraw")*, filed by the P3 Authority on December 16, 2022; and *Puerto Rico Public-Private Partnership Authority's Motion Submitting Documents, as Amended, and Requesting Confidential Treatment ("Second Amended Request")*, filed by the Authority on December 23, 2022.

*Compliance, as Amended, and Requesting Further Confidential Treatment of Documents Submitted* (“*Second Petition to Withdraw*”). In the *Second Petition to Withdraw*, the P3 Authority explained that it received notice from key stakeholders of their interest in including certain additional amendments to the Preliminary Contract related to a PREPA Transaction<sup>3</sup> for which the P3 Authority petitioned a Certificate of Energy Compliance. Thus, the P3 Authority requested that the PREB deem withdrawn the December 23 filing and hold in abeyance the evaluation of the Preliminary Contract until the P3 Authority submitted a revised Preliminary Contract<sup>4</sup>.

2. Thereafter, on January 14, 2023, the P3 Authority filed a document titled *Puerto Rico Public-Private Partnerships Authority’s Motion Submitting Documents, as Further Amended, and Requesting Confidential Treatment* (“*Third Amended Petition*”). In this *Third Amended Petition*, the P3 Authority requested that the PREB resumed the above-captioned proceeding and take into consideration the amended Preliminary Contract attached therein in issuing the Energy Compliance Certificate required under Act 120. Also, the P3 Authority also requested that all documents submitted theretofore, including the *Third Amended Petition* itself, were treated as confidential and that the previous versions of the Preliminary Contract submitted to the PREB be either withdrawn or stricken from the record to avoid unnecessary confusion.

3. On January 15, 2023, the PREB issued a *Resolution and Order (Energy Compliance Certificate)* (“*Resolution*”) pursuant to which it essentially granted the foregoing motions submitted by the P3 Authority and, thus, took into consideration the version of the amended Preliminary Contract attached to the *Third Amended Petition* and issued the corresponding Energy Compliance Certificate. Through the *Resolution*, the PREB determined that

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<sup>3</sup> As such term is defined by Act 120.

<sup>4</sup> Triggering, once again, the 30-day period provided in Act 120.

the Preliminary Contract complies with the Puerto Rico Energy Public Policy and the applicable regulatory framework.

4. The P3 Authority hereby informs that, following the issuance of the *Resolution*, the P3 Authority's Board held a meeting to discuss and vote on the Preliminary Contract<sup>5</sup>. During the meeting, the P3 Authority's Board effected minor, non-substantive and non-material revisions to the Preliminary Contract submitted to the PREB on January 14<sup>th</sup>. See, Exhibit I, for a copy of the Preliminary Contract incorporating the edits made by the P3 Authority's Board.

5. The changes made by the P3 Authority's Board do not impact the Puerto Rico Energy Public Policy and were only intended to reinforce certain of the Operator's (as defined in the Preliminary Contract) obligations under the Preliminary Contract, including, *inter alia*, (i) reporting obligations and other transparency requirements; (ii) obligations towards the Puerto Rico Electric Power Authority's former employees that are to be hired by the Operator; and (iii) Operator's obligations to employ reasonable efforts to purchase goods and services under the Preliminary Contract from local providers.

6. Specifically, changes were made to the Recitals of the Preliminary Contract, and to Sections 2.3 (b); 3.3 (b); 4.2 (g), (i), (p) and (t); 4.3 (j) and (n); 5.14 (c); 5.22; 7.5; 9.3; 16.2 and 19.3. Also, a new Section 21.19 was added to the Preliminary Contract. See, Exhibit I.

7. The P3 Authority respectfully requests that the PREB take notice of the above and enter appropriate remedy according to law.

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<sup>5</sup> See, Art. 9(g)(iii) of Act 29. Copy of the Preliminary Contract had been previously delivered -on a confidential basis- to the members of the P3 Authority's Board for their review, analysis, and input.

8. As previously stated, the edits made to the Preliminary Contract are minor and non-substantive. More importantly, these edits do not impinge upon the substantive validity of the legal analysis included in the *Resolution* nor do they affect the public policy enshrined by Act 120.

9. In addition, the P3 Authority respectfully renews its request that all documents submitted heretofore continue to be treated as confidential, pursuant to PREB's laws and regulations providing for the protection of information and documents that are privileged or declared confidential pursuant to the provisions of law or regulations. See, e.g., Art. 6.15 of Act 57; see also, as persuasive authority, Art. 1.15 of PREB's Regulation 8701.

10. As explained in previous filings, the documents related to the issuance of Certificate of Energy Compliance as to the Preliminary Contract must be kept confidential until its execution, at which time non-confidential portions of the same will be disclosed. See, Section 9 of Act 29, made applicable to the instant proceeding through Section 4 of Act 120. See also, Articles 5.1(a)(ii)(6), 4.5(n), 4.7(b)(iii)(3) and 11.2 of the Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Partnership Contract and Sale Contracts for the Transformation of the Electric System under Act No. 120-2018.

**WHEREFORE**, the P3 Authority respectfully requests that PREB (1) take notice of the foregoing and grant any appropriate remedy according to law, and (2) treat as confidential this motion and all documents submitted heretofore and any additional document that might be submitted until the execution of the Transformation Contract.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 20th day of January 2023.

**T IS HEREBY CERTIFIED** that on this same date, we electronically filed the foregoing with PREB through its filing system at <http://www.radicacion.energia.pr.gov>.

**PUERTO RICO PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY**

Roberto Sánchez Vilella (Minillas) Government Center

De Diego Ave. Stop 22

San Juan, P.R. 00907

Tel. 787-722-2525



Shylene De Jesus

Interim Executive Director

Email: [Shylene.dejesus@p3.pr.gov](mailto:Shylene.dejesus@p3.pr.gov)



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**PUERTO RICO THERMAL GENERATION FACILITIES  
OPERATION AND MAINTENANCE AGREEMENT**

**dated as of**

**\_\_, 2023**

**by and among**

**[THE PUERTO RICO ELECTRIC POWER AUTHORITY] [PREPA GENCO, LLC]**  
as Owner,

**THE PUERTO RICO PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY**  
as Administrator,

**and**

**GENERA PR LLC**  
as Operator

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**PUERTO RICO THERMAL GENERATION FACILITIES  
OPERATION AND MAINTENANCE AGREEMENT**

This PUERTO RICO THERMAL GENERATION FACILITIES OPERATION AND MAINTENANCE AGREEMENT (this “Agreement”) is made and entered into as of this \_\_\_\_\_ day of [\_\_\_\_], 2022 by and among: (i) the Puerto Rico Electric Power Authority][*PREPA Genco, LLC*] ([“PREPA” or ]“Owner”), [a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by Act No. 83 of the Legislative Assembly of Puerto Rico, enacted on May 2, 1941][a limited liability company and governmental instrumentality of the Commonwealth of Puerto Rico created as a Puerto Rico limited liability company under Act No. 164 of the Legislative Assembly of Puerto Rico, enacted on December 16, 2009, as amended, known as the “Puerto Rico General Corporations Act”]; (ii) the Puerto Rico Public-Private Partnerships Authority (“Administrator”), a public corporation of the Commonwealth of Puerto Rico, created by Act No. 29 of the Legislative Assembly of Puerto Rico, enacted on June 8, 2009; and (iii) Genera PR LLC (“Operator” and, together with Owner and Administrator, the “Parties” and each a “Party”), a limited liability company organized under the laws of Puerto Rico. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in Article 1 (*Definitions; Interpretation*).

**RECITALS**

**WHEREAS**, Owner owns and operates the base-load generation plants and combustion turbine peaking units listed on Annex I (*Legacy Generation Assets*) in which Owner has an ownership interest (the “Legacy Generation Assets”);

**WHEREAS**, in accordance with Act No. 120 of the Legislative Assembly of Puerto Rico, enacted on June 21, 2018 (“Act 120”), known as the “Puerto Rico Electric System Transformation Act,” the Legislative Assembly established a path for a more reliable, efficient and low-cost electric system with the intent of economic development;

**WHEREAS**, pursuant to Act 120, Owner desires to engage Operator to provide the O&M Services for the Legacy Generation Assets in accordance with the terms of this Agreement and has designated Administrator as a Representative of Owner for purposes of this Agreement;

**WHEREAS**, pursuant to, and under the terms and conditions contained in, Act No. 29 of the Legislative Assembly of Puerto Rico, enacted on June 8, 2009 (“Act 29”), known as the “Public-Private Partnership Authority Act,” and Act 120, Owner is authorized to execute and deliver this Agreement, perform its obligations hereunder and enter into the transactions contemplated hereby;

**WHEREAS**, the Government of Puerto Rico is a vital and active participant in the energy transformation and public policy process, and Operator recognizes the responsibility that the Governmental Bodies have in representing the Puerto Rican people and ensuring their continued prosperity and bright future;

**WHEREAS**, in light of the foregoing, Operator seeks to have a positive and constructive relationship with the Legislative Assembly, including transparent communications as a fundamental pillar of the public-private partnership, as it executes the Agreement and works to

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provide a more reliable, efficient and low-cost generation system for the people of the Commonwealth of Puerto Rico and its businesses; and

**WHEREAS**, Operator desires to provide the O&M Services for the Legacy Generation Assets in accordance with the terms of this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants, representations, warranties and agreements contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

**Article 1**  
**DEFINITIONS; INTERPRETATION**

**Section 1.1** Definitions. As used in this Agreement, the following capitalized terms have the respective meanings set forth below.

“AAFAF” means the Puerto Rico Fiscal Agency and Financial Advisory Authority.

“Act 2” means Act No. 2 of the Legislative Assembly of Puerto Rico, enacted on January 4, 2018 (known as the “Anticorruption Code for the New Puerto Rico”).

“Act 3” means Act No. 3 of the Legislative Assembly of Puerto Rico, enacted on January 23, 2017 (known as the “Puerto Rico Financial Emergency and Fiscal Responsibilities Act”).

“Act 17” means Act No. 17 of the Legislative Assembly of Puerto Rico, enacted on April 11, 2019 (known as the “Puerto Rico Energy Public Policy Act”).

“Act 26” means Act No. 26 of the Legislative Assembly of Puerto Rico, enacted on January 27, 2017 (known as the “Fiscal Plan Compliance Act”).

“Act 29” has the meaning set forth in the Recitals.

“Act 38” means Act No. 38 of the Legislative Assembly of Puerto Rico, enacted on June 30, 2017 (known as the “Government of Puerto Rico Uniform Administrative Procedure Act”).

“Act 57” means Act No. 57 of the Legislative Assembly of Puerto Rico, enacted on May 17, 2014 (known as the “Puerto Rico Energy Transformation and RELIEF Act”).

“Act 66” means Act No. 66 of the Legislative Assembly of Puerto Rico, enacted on June 17, 2014 (known as the “Special Law for the Fiscal and Operational Sustainability of the Government of the Commonwealth of Puerto Rico”).

“Act 120” has the meaning set forth in the Recitals.

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“Act 173” has the meaning set forth in Section 9.3(a) (*Commonwealth Requirements – Practice of Engineering, Architecture and Other Professions in the Commonwealth*).

“Act 237” means Act No. 237 of the Legislative Assembly of Puerto Rico, enacted on August 31, 2004, which establishes parameters and procedures for contracting professional or consulting services for government agencies and entities in the Commonwealth of Puerto Rico.

“Actual Fuel Savings” has the meaning set forth in Annex II, Section III.B.6 (*Compensation – O&M Services Categories – Fuel Optimization*).

“Adjusted O&M Fixed Fee” has the meaning set forth in Section I.B of Annex II (*Compensation – O&M Fixed Fee – Adjustments to O&M Fixed Fee upon Decommissioning or Removal from Scope of Services*).

“Adjustment Date” has the meaning set forth in Section I.B of Annex II (*Compensation – O&M Fixed Fee – Adjustments to O&M Fixed Fee upon Decommissioning or Removal from Scope of Services*).

“Administrator” has the meaning set forth in the introductory paragraph.

“Administrator Dispute” has the meaning set forth in Section 6.2(b) (*Rights and Responsibilities of Administrator – Disputes*).

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly, including through one or more intermediaries, Controls, is Controlled by or is under common Control with such Person; provided, that each Equity Participant and its Affiliates shall be deemed “Affiliates” of Operator.

“Agreed Operating Procedures” means the written operating procedures developed in accordance with the PREPA-Genco-Hydroco Operating Agreement, which shall include: (i) a method of day-to-day and real-time communications; (ii) clearances and switching practices; (iii) outage scheduling; (iv) daily available energy reports; (v) economic dispatch of dependable capacity, spinning reserve capacity and excess capacity; (vi) reactive power support; (vii) voltage scheduling; (viii) emergency procedures; and (ix) other necessary reporting procedures.

“Agreement” has the meaning set forth in the introductory paragraph.

“Annual Performance Test” means the performance tests to be conducted each Contract Year to determine the Tested Capacity and Heat Rate for each Legacy Generation Asset in accordance with the requirements and procedures to be agreed upon with T&D Operator in accordance with the PREPA-Genco-Hydroco Operating Agreement.

“Anti-Corruption Laws” has the meaning set forth in Section 9.2(a) (*Anti-Corruption and Sanctions Laws – Anti-Corruption*).

“Applicable Law” means any foreign, national, federal, state, Commonwealth, municipal or local law, constitution, treaty, convention, statute, ordinance, code, rule, regulation,

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common law, case law or other similar requirement enacted, adopted, promulgated or applied by any Governmental Body, including any Environmental Law, or PROMESA, and any order issued by the Title III Court, in each case applicable to the Parties.

“Audit” means a review with respect to any matter relating to the Legacy Generation Assets, the O&M Services or this Agreement, including compliance with the terms of this Agreement, conducted in accordance with applicable United States audit practices customarily accepted in the electric sector and the terms of this Agreement or as required by Applicable Law.

“Authorized Inspector” has the meaning set forth in Section 6.3(a) (*Reporting; Audits – Generally*).

“Bankruptcy Code” means the United States Bankruptcy Code, 11 U.S.C. 101 *et seq.* “Bankruptcy Code” shall also include (i) Title III of PROMESA, (ii) Title VI of PROMESA, (iii) any similar state or Commonwealth law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due and (iv) any similar insolvency or bankruptcy code applicable under the laws of any other jurisdiction.

“Baseline Environmental Study” means the environmental study identifying Pre-Existing Environmental Conditions attached hereto as Annex III (*Baseline Environmental Study*) and to be updated during the Mobilization Period.

“Baseload Unit” means each Legacy Generation Asset designated as a Baseload Unit in Annex I (*Legacy Generation Assets*).

“Bid Security” means a letter of credit or other form of acceptable security to backstop Operator’s commitment to execute this Agreement, the requirements of which are described in the RFP.

“Budgets” means the O&M Budget, the Operating Budget, the Decommissioning Budget, a Default Budget or the Fuel Budget, and “Budget” means any one of the foregoing.

“Budget Allocation Meeting” has the meaning set forth in Section 7.3(a) (*O&M Budgets – Budget Allocation Meeting*).

“Business Day” means any day that is not a Saturday, a Sunday or a day observed as a holiday by either the Commonwealth or the United States federal government.

“Capital Spare Part” means any major, new or refurbished, equipment item the cost of which is equal to or in excess of US\$1,000,000 that is required to ensure the reliability of the Legacy Generation Asset.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 *et seq.*

“Change in Law” means any of the following events or conditions occurring on or after the Proposal Submission Date that has had, or is reasonably expected to have, a material



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adverse effect on the performance or the cost of performance by the Parties of their respective obligations under this Agreement (other than payment obligations), or on the operation or maintenance of the Legacy Generation Assets:

(i) the adoption, promulgation or issuance of a modification or written change in the Applicable Law or the administrative or judicial interpretation thereof, unless such modification or written change was duly adopted, promulgated or issued in final form prior to the Proposal Submission Date and becomes effective without any further action by any Governmental Body or governmental official having jurisdiction;

(ii) any order or judgment of any Governmental Body to the extent such order or judgment is not the result of willful misconduct or negligent action or omission or lack of reasonable diligence of the Party claiming the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful misconduct or negligent action or omission of, or lack of reasonable diligence by, the Party;

(iii) the denial of an application for, the delay in the review, issuance or renewal of, or the suspension, termination, interruption, imposition of a new condition in connection with the issuance, renewal or the failure of issuance or renewal of any Governmental Approval to the extent that such denial, delay, suspension, termination, interruption, imposition of a new condition or failure (A) interferes with the performance of this Agreement and (B) is not the result of willful misconduct or negligent action or omission or a lack of reasonable diligence of the Party claiming the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such denial, delay, suspension, termination, interruption, imposition of a new condition or failure shall not be construed as such a willful misconduct or negligent action or omission of, or lack of reasonable diligence by, the Party; or

(iv) the commencement by or joinder of Operator in any action or contested matter in the Title III Case in order to protect its rights under this Agreement,

provided that “Change in Law” shall not include (x) the imposition of a Tax, or an increase in Taxes, unless (A) the Tax Decree is revoked (unless if due to Operator’s noncompliance with the terms thereof) or amended without Operator’s consent in a manner materially detrimental to Operator or any of its Affiliates or (B) the imposition or increase has a materially disproportionate impact on any of Operator, the Legacy Generation Assets or private operators of generation facilities in the Commonwealth or Contractors (as defined in Act 29) compared to any other entities that operate in the Power and Electricity sector in the Commonwealth; or (y) the delay or denial of any request to approve an O&M Budget or performance relief, except where arising out of the Title III Case.

“Change in Regulatory Law” means any change, amendment or modification to any Commonwealth Applicable Law (and not, for the avoidance of doubt, the Applicable Law of any other jurisdiction) or any adoption of, or change to, any administrative or judicial interpretation (having the force of law) of any Commonwealth Applicable Law or any regulation or regulatory action under any Commonwealth Applicable Law, including the entry of any consent decree to

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resolve any Legal Proceeding arising under any Environmental Law or any Environmental Approval, in each case occurring on or after the Proposal Submission Date, that:

(i) alters the scope of PREB's statutory oversight over Operator or Owner in a manner that materially and adversely affects Operator's ability to perform its obligations under this Agreement;

(ii) renders unenforceable or invalid, in whole or in part, any right or privilege granted to Operator under this Agreement, including by invalidating Operator's selection under the RFP; or

(iii) subjects Operator (or any of its Affiliates or Subcontractors that provides O&M Services hereunder) to other substantive regulation by PREB in a manner that materially and adversely affects Operator's ability to perform its obligations under this Agreement to the extent not otherwise mitigated by the terms of this Agreement, or that constitutes a default by the FOMB under the terms of the FOMB Protocol Agreement, provided, that written notice of such default has been given to FOMB by Operator and such default continues unremedied for a period of thirty (30) days following such written notice, provided, further, that any such default by the FOMB shall constitute a Change in Regulatory Law regardless of whether the conditions in the introductory paragraph of this definition are satisfied.

"Change of Control" means, with respect to Operator, whether accomplished through a single transaction or a series of related transactions and whether accomplished directly or indirectly, (i) a change in ownership resulting in more than 50% of the direct or indirect voting or economic interests in Operator being transferred to another Person or group of Persons acting in concert that did not have such direct or indirect voting or economic interests immediately prior to such transaction or transactions, (ii) the power directly or indirectly to direct or cause the direction of management and policy of Operator, whether through ownership of voting securities, by contract, management agreement or common directors, officers or trustees or otherwise, being transferred to another Person or group of Persons acting in concert that did not have such power immediately prior to such transaction or transactions or (iii) the merger, consolidation, amalgamation, business combination involving Operator or sale of substantially all of the assets of Operator for the purpose of or with the effect contemplated in clauses (i) or (ii) above; provided, however, that, notwithstanding anything to the contrary set forth in this definition, so long as either (x) the Guarantee continues to be provided or (y) Operator is a Controlled direct or indirect subsidiary of Parent Company upon completion of the relevant transaction(s), none of the following shall constitute a "Change of Control" for the purposes of this Agreement:

(A) transfers of direct or indirect ownership, voting or economic interests in Operator between or among Persons that are Affiliates of each other or Persons who are under common Control;

(B) transfers or sales of shares of Operator or the direct or indirect shareholders of Operator pursuant to bona fide open market transactions (including block trades) on the New York Stock Exchange, NASDAQ, London Stock Exchange or comparable United States or foreign securities exchange, including any such transactions involving an initial or "follow on" public offering;

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(C) transfers of direct or indirect ownership interests in Operator by any Equity Participant(s) or its/their beneficial owner(s) to any Person(s) so long as the Equity Participants or their respective beneficial owner(s) having ownership interests in Operator (as of the later of (1) the Effective Date or (2) the date on which Administrator most recently approved a Change of Control pursuant to Section 21.6 (*Assignment and Transfer*) or waived a Change of Control pursuant to Section 14.2(b) (*Termination for Operator Event of Default – Termination for Other Operator Event of Default*)) together retain, in the aggregate, 50% or more of the direct or indirect voting or economic interests in Operator or the power directly or indirectly to direct or cause the direction of management and policy of Operator, through ownership of voting securities or common directors, officers or trustees; or

(D) a transfer of the direct or indirect ownership interest in Operator, including any events contemplated in (i), (ii) and (iii) of this definition above, or in any Affiliates of Operator.

“Claiming Party” has the meaning set forth in Section 18.1(a) (*Notice; Mitigation – Notice*).

“Clean Air Act” means the means the Clean Air Act of 1970, 42 U.S.C. §§ 7401 et seq., and regulations promulgated thereunder.

“Commencement Date Governmental Approvals” has the meaning set forth in Section 4.4 (*Governmental Approvals and Tax Matters*).

“Commonwealth” means the Commonwealth of Puerto Rico.

“Commonwealth Court” means the Commonwealth Court of First Instance, San Juan Part.

“Communications Plan” has the meaning set forth in Section 2.2(b)(xi) (*Effective Date – Conditions to Execution*).

“Confidential Information” means data or information in any form disclosed by one Party to the other Party by any means, if and for so long as the data and information are protectable as trade secrets by the disclosing Party or are otherwise confidential. As a non-exhaustive list of examples, “Confidential Information” includes non-public information regarding a Party’s Intellectual Property, financial condition and financial projections, business and marketing plans, product plans, product and device prototypes, the results of product testing, research data, market intelligence, technical designs and specifications, secret methods, manufacturing processes, source code of proprietary software, the content of unpublished patent applications, customer lists, vendor lists, internal cost data, the terms of contracts with employees and third parties, and information tending to embarrass the disclosing Party or tending to tarnish its reputation or brand. For the avoidance of doubt, information in this list of examples is only considered “Confidential Information” for so long as it has not been made known to the general public by the disclosing Party or through the rightful actions of a third party.

“Consent Decree” means the Consent Decree between PREPA and the United States of America (through the United States Department of Justice and the EPA), as entered by the United States District Court for the District of Puerto Rico on March 19, 1999 in Civil Action

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No. 93-2527(CCC), as modified on September 9, 2004, and as may be further modified in the future, including any successor consent decree thereto.

“Consumables” means consumables of all kinds that are necessary for the operation and maintenance of the Legacy Generation Assets, or any part thereof, including gaskets, parts that are not repairable, oils, grease, chemicals, lubricants, filters, resins and specialty gases but excluding fuel, electricity and water.

“Contract Nullification or Cancellation” has the meaning set forth in Section 14.6(c)(i) (*Remedies Upon Early Termination – Termination Fee*).

“Contract Standards” means the terms, conditions, methods, techniques, practices and standards imposed or required by: (i) Applicable Law; (ii) Prudent Industry Practice; (iii) applicable equipment manufacturer’s specifications and reasonable recommendations set forth in the Facility Contracts; (iv) applicable insurance requirements under any insurance procured pursuant to this Agreement; (v) the Procurement Manual; and (vi) any other standard, term, condition or requirement specifically contracted in this Agreement to be observed by Operator.

“Contract Year” means the period from July 1 through June 30 of the following year during that portion of the Term commencing on the Service Commencement Date; provided, however, that (i) the initial Contract Year shall commence on the Service Commencement Date and end on June 30th of the following calendar year and (ii) the final Contract Year shall end on June 30th of the calendar year after the calendar year in which the tenth (10th) anniversary of the Service Commencement Date occurs. Any computation made on the basis of a Contract Year shall be adjusted on a Pro Rata basis to take into account any Contract Year of more or less than 365 days.

“Control”, “Controlled by” and similar expressions mean the power, directly or indirectly, to direct or cause the direction of the management and policies of an entity, whether through the ownership of outstanding share capital (or equivalent interest), by contract or otherwise. Without limiting the foregoing, a Person shall be deemed to control another Person (i) if such Person has directly or indirectly designated a majority of the board of directors (or equivalent governing body) of such other Person or (ii) if such Person has the direct or indirect power whether through ownership of outstanding share capital (or equivalent interest), by contract or otherwise to designate a majority of the board of directors (or equivalent governing body) of such other Person.

“Copyright” means the exclusive legal rights held by the owner of a copyright including the rights to copy, publicly perform, publicly display, distribute, adapt, translate, modify and create derivative works of copyrighted subject matter, including the rights to any registrations and applications therefor, together with all renewals, extensions, translations, adaptations, derivations and combinations therefor, works of authorship, publications, documentation, website content, rights in fonts and typefaces and database rights.

“COR3” means the Central Office of Recovery, Reconstruction and Resiliency.

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“Covered Contract” means any contract (i) for management, service, or incentive payment arrangements between Owner, Administrator, or Operator and another Person under which such Person provides services involving all, a portion of, or any function of, the Legacy Generation Assets; (ii) for the sale, lease, or use of Legacy Generation Assets and (iii) to sell Power and Electricity or electric capacity if (x) the term of such contract is in excess of three (3) years or (y) any fees under such contract were not based on a negotiated, arm’s length agreement that provides for compensation at fair market value or generally applicable and uniformly applied rates; provided that “Covered Contract” shall not include any (A) Subcontract in which the compensation to the Subcontractor is paid by Operator solely out of the applicable Service Fee, (B) contract for services that are solely incidental to the primary governmental function or functions of the Legacy Generation Assets (such as contracts for janitorial, equipment repair, bookkeeping, physical security, or similar services), (C) contract for services performed exclusively during the Mobilization Period, pursuant to Article 16 (*Decommissioning*) or Article 17 (*Demobilization*) or in accordance with the Shared Services Agreement, (D) contract to design, build, rehabilitate or purchase property, assets, equipment or supplies, (E) contract to procure natural gas, coal or fuel oil, (F) contract for management, service or incentive payment arrangement or for consulting services under which the compensation consists entirely of a fixed fee and/or fees at hourly rates, (G) a negotiated, arm’s length contract with a term of less than fifty (50) days, and (H) sales of assets (other than real property) in the ordinary course of business at the end of their expected useful lives.

“CPI Factor” means, with respect to any Contract Year, the amount equal to (i) CPI Value for the twelve month period immediately prior to the relevant Contract Year *divided by* (ii) the CPI Value for the twelve month period from and including December 2020 to and including November 2021 (subject only to a re-basing of the value for such period during the Term, if applicable), rounded to the fifth decimal place; provided, however, that in no case shall be the CPI Factor for any adjustment period be less than 1.000 or greater than 3.000.

“CPI Value” for any year means the “Annual Value” of such year obtained from “Consumer Price Index—All Urban Consumers—U.S. All Items Less Food and Energy (CUUR0000SA0L1E)” published by the Bureau of Labor Statistics of the United States Department of Labor, which is the calendar year 12-month average rounded to three decimal places; provided, however, that: (i) if such index is changed so that the base year thereof changes, such index shall be converted in accordance with the conversion factor published by the Bureau of Labor Statistics of the United States Department of Labor; (ii) if such index is discontinued or revised during the Term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if such index had not been discontinued or revised; and (iii) any such revision shall not result in the retroactive adjustment of any amounts paid or payable pursuant to this Agreement prior to such revision. For illustrative purposes only, the CPI Value for the calendar year 2020 is 267.693, which can be obtained directly as an annual value or computed using monthly values with data from the official website of the Bureau of Labor Statistics of the United States Department of Labor.

“Critical Employee Positions” has the meaning set forth in Section 4.2(h) (*Operator Responsibilities – Owner Employees in Critical Positions*).

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“Cybersecurity Breach” means any successful act to gain unauthorized access to, disrupt or misuse an Information System or information stored on such Information System.

“Data Room” means the virtual data room containing written documents and information relating to the Owner and the Legacy Generation Assets made available on the Intralinks online datasite under the name “P3 Power System Projects” and to which Operator and its Representatives has had access on and prior to the date of this Agreement.

“Declared Emergency or Major Disaster” means an event declared as an emergency or major disaster in accordance with the provisions of the Stafford Act.

“Decommissioning Account” has the meaning set forth in Section 7.6(c)(i) (*Service Accounts – Decommissioning Account*).

“Decommissioning Budget” has the meaning set forth in Section 16.2(a) (*Decommissioning Compensation – Decommissioning Budget*).

“Decommissioning Budget Dispute” has the meaning set forth in Section 16.2(c) (*Decommissioning Compensation – Decommissioning Budget Disputes*).

“Decommissioning Commencement Date” has the meaning set forth in Section 16.1(b) (*Notice and Approval for Retirement of Legacy Generation Assets and Commencement of Decommissioning Services – Decommissioning Plan*).

“Decommissioning Completion Date” has the meaning set forth in Section 16.1(b) (*Notice and Approval for Retirement of Legacy Generation Assets and Commencement of Decommissioning Services – Decommissioning Plan*).

“Decommissioning Incentive Payment” means one or more incentive payments based on Operator’s performance of the Decommissioning Services, as calculated pursuant to Section III.C.1 of Annex II (*Compensation – Incentives and Penalties – Decommissioning Services Categories – Decommissioning Costs Efficiency*).

“Decommissioning Notification Date” has the meaning set forth in Section 16.1(a) (*Notice and Approval for Retirement of Legacy Generation Assets and Commencement of Decommissioning Services – Generally*).

“Decommissioning Penalty” means one or more liquidated damages penalties based on Operator’s performance of the Decommissioning Services.

“Decommissioning Plan” has the meaning set forth in Section 16.1(b) (*Notice and Approval for Retirement of Legacy Generation Assets and Commencement of Decommissioning Services – Decommissioning Plan*).

“Decommissioning Services” means services provided under this Agreement in order to complete the dismantlement and removal of the structures comprising the Legacy Generation Assets, and all other activities indispensable for the retirement, dismantlement, Decontamination or storage of the Legacy Generation Assets, including the services contemplated

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by the Decommissioning Plan, in each case in compliance with Applicable Law and in accordance with the Integrated Resource Plan; provided that the Decommissioning Services shall not include O&M Services or Demobilization Services.

“Decontamination” means the removal of Hazardous Materials from a specified area in accordance with Prudent Industry Practice and Applicable Law.

“Default Budget” has the meaning set forth in Section 7.3(g) (*O&M Budgets – Default Budget*).

“Delay Liquidated Damages” has the meaning set forth in Section 4.8(a) (*Failure of Service Commencement Date Conditions – Remedy for Delay of Service Commencement Date Conditions*).

“Delay Period Date” has the meaning set forth in Section 4.8(a) (*Failure of Service Commencement Date Conditions – Remedy for Delay of Service Commencement Date Conditions*).

“Demobilization Account” has the meaning set forth in Section 17.3(c)(i) (*Demobilization Period Compensation – Funding*).

“Demobilization Commencement Date” has the meaning set forth in Section 17.1(a) (*Demobilization Services – Generally*).

“Demobilization Period” means the period of time from and including the Demobilization Commencement Date through the last day of the Term.

“Demobilization Plan” has the meaning set forth in Section 17.1(b) (*Demobilization Services – Demobilization Plan*).

“Demobilization Service Fee” has the meaning set forth in Section 17.3(b) (*Demobilization Period Compensation – Demobilization Service Fee*).

“Demobilization Service Fee Dispute” has the meaning set forth in Section 17.3(d)(ii) (*Demobilization Period Compensation – Invoices*).

“Demobilization Service Fee Estimate Dispute” has the meaning set forth in Section 17.3(c)(iii) (*Demobilization Period Compensation – Funding*).

“Demobilization Services” means services provided under this Agreement in order to complete the demobilization and handover of the rights and responsibilities, if any, with respect to the remaining Legacy Generation Assets, back to Owner or to a successor operator upon the early termination or expiration of the Term, including the services contemplated by the Demobilization Plan; provided that the Demobilization Services shall not be O&M Services or Decommissioning Services.

“Designated Person” means each Representative of Operator or Administrator who is designated as such for the purposes of Article 15 (*Dispute Resolution*).

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“DHS” means U.S. Department of Homeland Security.

“Disallowed Costs” has the meaning set forth in Section 7.7(a) (*Disallowed Costs – Generally*).

“Disallowed Costs Dispute” has the meaning set forth in Section 7.7(b) (*Disallowed Costs – Disallowed Costs Disputes*).

“Dispute” has the meaning set forth in Section 15.1 (*Scope*).

“Dispute Resolution Procedure” has the meaning set forth in Section 15.1 (*Scope*).

“Easement” means those certain real property rights vested or to be vested in Owner, whether or not recorded in the Registry of the Property of Puerto Rico, that: (i) encumber land portions or estates for the benefit of the Legacy Generation Assets to permit the ingress to and egress from each Generation Site to the public road; (ii) grant air rights; (iii) constitute restrictive use and construction covenants (*servidumbres en equidad*) for the operation of the Legacy Generation Assets; and (iv) allow for the construction and installation of above- or below-ground improvements and equipment and for the addition to, or maintenance, repair, restoration, replacement or alteration of, the Legacy Generation Assets or any other service for the Legacy Generation Assets.

“Effective Date” has the meaning set forth in Section 2.2(a) (*Effective Date – Execution of the Agreement*).

“Emergency” or “Emergency Event” means (i) any Declared Emergency or Major Disaster and (ii) any other circumstance defined as an Emergency in the Legacy Generation Emergency Response Plan to be prepared pursuant to Section 4.2(e) (*Operator Responsibilities – Legacy Generation Emergency Response Plan*).

“Emergency Unit” means each Legacy Generation Asset designated as an Emergency Unit in Annex I (*Legacy Generation Assets*).

“Energy Compliance Certificate” means the certificate issued by the PREB certifying that this Agreement complies with Act 120 and the regulatory framework, including Act 17.

“Environmental Approval” means any Governmental Approval issued under any Environmental Law.

“Environmental Claim and Cleanup Liability” means: (i) any liabilities, costs or expenses arising from or relating to any claim by a Governmental Body or other third party pursuant to any Environmental Law for personal injury, property damage or damage to natural resources or the environment (whether based on negligent or grossly negligent acts or omissions, statutory liability or strict liability without fault or otherwise) in connection with the Legacy Generation Assets, the O&M Services, the Decommissioning Services, the Mobilization Services or the Demobilization Services; (ii) any liabilities, costs or expenses arising from or relating to any investigation, study, response, remediation or abatement of any Release or threatened Release of



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Hazardous Materials, to the extent required by any Environmental Law or to meet the published cleanup standards of any Governmental Body with jurisdiction over such Release, and in accordance with the Safety and Hazardous Materials Procedures Manual, in connection with the Legacy Generation Assets, the O&M Services or the Decommissioning Services; (iii) any fines or penalties assessed for Environmental Noncompliance in connection with the Legacy Generation Assets, the O&M Services or the Decommissioning Services; or (iv) any liabilities, costs or expenses necessary to restore, achieve or maintain compliance with any Environmental Law.

“Environmental Law” means (i) any law, statute, ordinance, code, rule, regulation, order, writ, injunction, decree, ruling, determination, award, standard, permit or variance of any Governmental Body, or any binding agreement with any Governmental Body or the Consent Decree, and (ii) any other consent order or decree, settlement agreement or other similar agreement between Owner and the Puerto Rico Department of Natural and Environmental Resources, EPA, the United States Department of Justice, or other relevant Governmental Body, in each case having the force of law and applicable from time to time, relating to (A) the conservation, protection, pollution, contamination or remediation of the environment or natural resources, (B) any Hazardous Material, including investigation, study, remediation or abatement of such Hazardous Material, (C) the storage, treatment, disposal, recycling or transportation of any Hazardous Material or (D) human health or safety. For avoidance of doubt, Environmental Law includes the Consent Decree and the State Implementation Plan.

“Environmental Noncompliance” means the ownership or operation of the Legacy Generation Assets or Generation Sites in violation of Environmental Laws or the terms of any Environmental Approval.

“EPA” means the United States Environmental Protection Agency.

“Equity Participant” means any Person who holds any shares of capital stock or securities of, or units, partnership interests, membership interests or other equity interests in, Operator.

“Event of Default” means an Operator Event of Default or an Owner Event of Default, as the case may be.

“Existing Litigation” means any legal claims involving or affecting the Legacy Generation Assets and/or the Generation Sites, or the Owner as they relate to the Legacy Generation Assets and/or the Generation Sites, in each case which are pending or threatened in writing as of the Service Commencement Date.

“Expert Technical Determination” has the meaning set forth in Section 15.4(a) (*Expert Technical Determination Procedure for Technical Disputes – Generally*).

“Extended Event” has the meaning set forth in Section 18.2(c) (*Relief – Extended Event*).

“Extension Term” has the meaning set forth in Section 2.3(b) (*Term – Extension*).

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“Facility Contracts” means (i) the contracts, leases, licenses, permits and other similar arrangements of all types related to the Legacy Generation Assets that have been entered into by Owner (or pursuant to which Owner otherwise has rights), remain in effect as of the Service Commencement Date and (ii) any other contracts, leases, licenses, permits and similar arrangements of all types entered into after the Effective Date by Owner, or by Operator on behalf and as agent of Owner related to the Legacy Generation Assets, O&M Services, Decommissioning Services or the Demobilization Services pursuant to Section 4.3(d) (*Owner and Administrator Responsibilities – Additional Facility Contracts Between Effective Date and Service Commencement Date*) and/or Section 5.2(d) (*Facility Contracts – Additional Facility Contracts or Expired Facility Contracts After Service Commencement Date*), including contracts related to:

(A) the ownership and operation and maintenance of the Legacy Generation Assets (including long-term service agreements with original equipment manufacturers and other related agreements);

(B) the procurement, delivery, quality-testing and storage of fuel, and the maintenance of fuel tanks and pipelines (i.e., Fuel Contracts);

(C) all information technology hardware and software used to operate or administrate the Legacy Generation Assets; or

(D) Legacy Generation Assets operation, decommissioning, or ancillary services.

For the avoidance of doubt, Facility Contracts shall not include the PREPA-Genco-Hydroco Operating Agreement, the Shared Services Agreement, collective bargaining agreements with union labor or, with regard to clause (C) above, any agreement related exclusively to information technology, hardware and software utilized by Operator before the Effective Date and extended thereafter to operate or administer the Legacy Generation Assets.

“Facility Information” means any and all information relating to the Legacy Generation Assets, including: (i) actual and budgeted operating expenses (including actual and budgeted expenses related to maintenance and repair and actual and budgeted fuel-related expenses); (ii) daily operations log for the Legacy Generation Assets, which shall include information known to it customary and appropriate for the operation and maintenance of thermal generation facilities and any significant events related to the operation of the Legacy Generation Assets; (iii) all certificates, correspondence, data (including test data), documents, facts, files, information, investigations, materials, notices, plans, projections, records, reports, requests, samples, schedules, statements, studies, surveys, tests and test results analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by Operator or any of its Representatives in connection with the Legacy Generation Assets, the O&M Services or the Decommissioning Services; and (iv) books, records, accounts and documents relating to the O&M Services or the Decommissioning Services, including any information that is stored electronically or on computer-related media but not including (A) Operator’s Confidential Information or other information that Operator reasonably believes is subject to attorney-client or other legal privilege, confidentiality restrictions or trade secret protections, (B) personally identifiable information protected by Applicable Law, other than

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Owner Personal Information, (C) correspondence between employees or other Representatives of Operator, (D) information and records pertaining to the applicable Service Fee or (E) information or records pertaining to any dispute with Owner or Administrator or their respective Representatives.

“Failure to Pay Penalties” has the meaning set forth in Section 14.1(k) (*Events of Default by Operator – Failure to Pay Penalties*).

“Federally Funded Generation Project Plan” has the meaning set forth in Section 4.2(u) (*Operator Responsibilities – Federally Funded Generation Project Plan*).

“Fees-and-Costs” means reasonable and documented fees and expenses of attorneys, expert witnesses, engineers and consultants with respect to any Legal Proceeding.

“Fiscal Plan” means each of the PREPA Fiscal Plan, certified on June 28, 2022 by the FOMB, and the 2021 Fiscal Plan for Puerto Rico, certified by the FOMB on January 27, 2022, in each case as supplemented and amended from time to time, and any successors thereto.

“FOMB” means the Financial Oversight and Management Board for Puerto Rico.

“FOMB Protocol Agreement” means a protocol agreement among Operator, Administrator, Owner, and the FOMB, which shall include provisions governing the FOMB’s interaction with the Parties with respect to the respective duties of the FOMB and Owner under PROMESA, which shall apply only during the period the FOMB is in existence and Owner is a covered territorial instrumentality pursuant to PROMESA.

“Forced Outage” means, as defined by IEEE 762-2006, an unplanned disconnection or stoppage of a Legacy Generation Asset due to failure or defect of the unit or its equipment, or another such event, including due to the operational or unplanned malfunctioning of equipment on the transmission grid or human error that impacts the operation of the Legacy Generation Asset.

“Force Majeure Event” means any act, event, circumstance or condition (other than lack of finances) whether affecting the Legacy Generation Assets, Owner, Operator or any of Owner’s contractors or Operator’s Subcontractors that (i) is beyond the reasonable control of and unforeseeable by, or which, if foreseeable, could not be avoided in whole or in part by the exercise of due diligence by, the Party relying on such act, event or condition as justification for not performing an obligation or complying with any condition required of such Party under this Agreement, and (ii) materially interferes with or materially increases the cost of performing, such Party’s obligations hereunder, to the extent that such act, event, circumstance or condition is not the result of the willful or negligent act, error or omission or breach of this Agreement by such Party; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as a willful or negligent act, error or omission or breach of this Agreement by such Party.

Subject to the requirements specified in the foregoing paragraph, Force Majeure Event shall include, by way of example, the following acts, events or conditions:

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(A) act of God, lightning, landslide, earthquake, fire, explosion, flood or similar occurrence;

(B) war, armed conflict, invasion, acts of terror, acts of civil or military authority, sabotage or similar occurrence, computer sabotage or virus, acts of a public enemy, acts of a foreign enemy, extortion, blockade, embargo, revolution, interference by military authorities, quarantine, epidemic, pandemic (including COVID-19), insurrection, riot or civil commotion or disturbance or civil disobedience; breakdown or unavailability of port facilities or port services (including the channel, tugs or pilots) or any similar occurrence;

(C) to the extent not covered by (A) or (B) above, any event that causes any federal or Commonwealth Governmental Body to declare the municipality in which the applicable Legacy Generation Asset is located part of a “disaster zone,” “disaster area,” “state of emergency” or any similar pronouncement (for the avoidance of doubt, a “state of emergency” in the context of this provision is not limited to events defined herein as an Emergency Event);

(D) a Change in Law;

(E) refusal or failure to issue, delay in issuing, or amendment, revocation or suspension of, any Governmental Approvals if such refusal or failure, delay, amendment, revocation or suspension results in a delay or curtailment of the performance of any of the O&M Services, the Mobilization Services, the Decommissioning Services or the Demobilization Services;

(F) the failure of any appropriate Governmental Body or private utility having operational jurisdiction in the area in which the respective Legacy Generation Asset is located (including Genco and the T&D Operator) to provide and maintain services to any facility comprising part of the Legacy Generation Assets, which services are required for the performance of this Agreement, if such failure results in a delay or curtailment of the performance of any of the O&M Services, the Mobilization Services, the Decommissioning Services or the Demobilization Services;

(G) any failure of title to any portion of the Generation Sites, any revocation or termination or invalidity or material impairment of any Easement or other access right, or any other failure or restriction of access to or use of the Generation Sites;

(H) any enforcement of any Lien on the Generation Sites or on any improvements thereon not consented to in writing by, or arising out of any action or agreement entered into by, the Party adversely affected thereby;

(I) the preemption of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the Legacy Generation Assets;

(J) the presence of archeological finds, endangered species or Hazardous Materials at the Generation Sites, except to the extent Operator’s negligence directly caused such presence, or the Release of any reportable quantity, as defined under applicable Environmental

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Law, of Hazardous Material or of any other Release that could reasonably be expected to result in material Losses to Owner;

(K) strikes, boycotts, work stoppages, lockouts or other labor or employment disputes or disturbances with respect to the employees of Operator, but only if occurring in the twelve (12) months immediately following the Service Commencement Date;

(L) any significant failure in the transmission grid;

(M) denial of access to the transmission grid or malfunctioning or unavailability of the transmission grid; and

(N) the unavailability in Puerto Rico of a disposal facility for waste produced in connection with Operator's performance of Decommissioning Services if such unavailability is due to a change in Applicable Law or environmental policy during the time the Decommissioning Services are being performed.

It is specifically understood that none of the following acts, events or conditions shall constitute a Force Majeure Event:

(1) to the extent that Operator deviates from Prudent Industry Practice or fails to adequately prepare for and/or mitigate the effects of an act of God, lightning, landslide, earthquake, fire, explosion, flood or similar occurrence on Operator's ability to provide Services hereunder;

(2) general economic conditions, interest or inflation rates, increases in wage rates of Operator's employees and Subcontractors, insurance costs, commodity prices or currency fluctuations, or exchange rates;

(3) the financial condition of Owner, Operator, any of their Affiliates (including Guarantor) or any Subcontractors;

(4) any increase for any reason in premiums charged by Operator's insurers or the insurance markets generally for the required insurance that are compensated as Pass-Through Expenditures;

(5) the failure of Operator to secure Patents or intellectual property licenses in connection with the technology necessary to perform its obligations under this Agreement, if available on commercially reasonable terms;

(6) equipment malfunction or failure due to Operator's failure to provide the Services in accordance with Prudent Industry Practices (unless caused by an event that would otherwise constitute a Force Majeure Event);

(7) interruption in the delivery of fuel or gas to the applicable Legacy Generation Asset or Legacy Generation Assets (unless caused by an event that would otherwise constitute a Force Majeure Event);

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(8) union or labor work rules, requirements or demands relating to Operator's employees which have the effect of increasing the number of employees employed at the Legacy Generation Assets, reducing the operating flexibility of Operator or otherwise increasing the cost to Operator of performing the O&M Services or the Decommissioning Services;

(9) any impact of prevailing wage laws on Operator's operation and maintenance costs with respect to wages and benefits;

(10) the failure of any Subcontractor or supplier to furnish labor, materials, services or equipment for any reason (unless caused by an event or circumstance that constitutes a Force Majeure Event); and

(11) strikes, boycotts, work stoppages, lockouts or other labor or employment disputes or disturbances with respect to the employees of Operator, but only if occurring from and after the date that is twelve (12) months immediately following the Service Commencement Date.

"Force Majeure Event Dispute" has the meaning set forth in Section 18.1(c) (*Notice; Mitigation – Burden of Proof*).

"Fuel" means natural gas, propane, gasoline (vehicles), light distillate no. 2 fuel oil (diesel), residual no. 6 fuel oil bunker fuel, or hydrogen, as applicable.

"Fuel Account" has the meaning set forth in Section 7.6(b)(i) (*Service Accounts – Fuel Account*).

"Fuel Adjustment Clause" means the applicable cost recovery rate provision, as approved by PREB from time to time pursuant to Applicable Law, which is made up of the estimated charges related to the purchase, transportation, testing and delivery of fuel for the Legacy Generation Assets for the next quarterly period, along with any prior period cost reconciliations.

"Fuel Budget" means, for any given Contract Year, the budget of the Fuel Costs for such Contract Year, together with the projected budget of the Fuel Costs for the following two (2) Contract Years, and including monthly forecasts and quarterly budgets of estimated variable Fuel Costs expected to be incurred pursuant to the terms and conditions of any fuel supply agreement for the applicable Legacy Generation Assets, as such budget may be amended or adjusted from time to time in accordance with the terms and conditions of this Agreement and, with respect to the quarterly budgets described above, as adjusted pursuant to Section 7.3(f) (*O&M Budgets – Quarterly Adjustments to Fuel Budget*) in connection with the Fuel Adjustment Clause, the applicable fuel-supply agreements, and the PREPA-Genco-Hydroco Operating Agreement.

"Fuel Contracts" means any contracts, leases, licenses, permits and similar arrangements of all types entered into by Owner, or by Operator on behalf and as agent of Owner, related to the procurement, delivery, quality-testing and storage of fuel, and the maintenance of fuel tanks and pipelines.

"Fuel Cost Savings Initiatives" means any initiatives undertaken by Operator, its Affiliates or Subcontractors in connection with this Agreement, that reduce Fuel Costs, including by (i) improving the fuel efficiency of any Legacy Generation Assets, (ii) converting any Legacy

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Generation Assets to be able to operate on any new alternative fuel(s) (including natural gas and hydrogen), (iii) supplementing Legacy Generation Assets with power generation equipment at or in the vicinity of the relevant Generation Site that is more fuel efficient and/or operates on any new alternative fuel(s) (including natural gas and hydrogen), (iv) reducing transportation, testing, delivery or storage (including tank maintenance) costs or (v) pursuing savings opportunities related to credit and portfolio optimization, in each case whether such initiatives are implemented as Pass-Through Expenditures, at Operator's cost as Operator's own capital improvements pursuant to Section 5.6(b) (*Option to Propose Capital Spare Parts and Capital Improvements – Capital Improvements*), by replacement or renegotiation of Fuel Contracts or Facility Contracts, or otherwise.

"Fuel Costs" has the meaning set forth in Section 7.6(b)(i) (*Service Accounts – Fuel Account*).

"Fuel Optimization Payment" has the meaning set forth in Annex II, Section III.B.6(a) (*Compensation – Incentives and Penalties – O&M Services Categories – Fuel Optimization – Operator shall receive...*).

"Fuel Optimization Plan" has the meaning set forth in Section 4.2(t) (*Operator Responsibilities – Fuel Optimization Plan*).

"Fuel Optimization Report" has the meaning set forth in Annex II, Section III.B.6(b) (*Compensation – Incentives and Penalties – O&M Services Categories – Fuel Optimization – Operator shall prepare...*).

"Generation Sites" means the real property and interests therein (in each case, up to the corresponding Interconnection Point) upon which the components of the Legacy Generation Assets are and shall be located, including any land subject to Easements.

"Governmental Approvals" means all orders of approval, permits, licenses, authorizations, consents, certifications, exemptions, registrations, rulings and entitlements issued by a Governmental Body of whatever kind and however described that are required under Applicable Law to be obtained or maintained by any Person with respect to the performance of the O&M Services, including Environmental Approvals.

"Governmental Body" means any U.S. federal, state, Commonwealth, municipal or local, including but not limited to, legislative, executive, judicial or other governmental board, agency, authority, commission, bureau, administration, court, instrumentality or other duly authorized body, including PREB and the FOMB (if then in existence), other than Owner and, in its capacity as such under this Agreement, Administrator, or any official thereof having jurisdiction with respect to any subject of this Agreement.

"Grant Manager" means the relevant Governmental Body and any third-parties, in either case, authorized by Owner, and reasonably acceptable to Operator, to act as grant manager to administer federal funding.

"Grant Management Services" means recordkeeping and financial management of awards of federal funds, including project monitoring, quarterly reporting, submitting

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reimbursement requests, delivery of technical assistance, audit and appeal support, submitting responses to requests for information, and supporting timely closeout. For the avoidance of doubt, Grant Management Services do not include the submission of application materials to federal agencies, determining the scope of work of projects to be funded by federal grants, or procuring goods and services to complete the scope of work using such grants.

“Guarantee” means the guarantee agreement, dated as of the date hereof, by and between Guarantor and Owner in the form of Exhibit A (*Form of Guarantee Agreement*).

“Guarantor” means Parent Company and, as determined pursuant to the terms and conditions of the Guarantee, its permitted successors and assigns.

“Handover Checklist” means the handover checklist set forth in Annex VII (*Mobilization Plan*), which shall include individual checklists for each Legacy Generation Asset and details all of the requirements for Operator to complete the Mobilization Services by the Target Service Commencement Date.

“Handover Checklist Dispute” has the meaning set forth in Section 4.7(a) (*Closing the Mobilization Period – Notice of Service Commencement Date*).

“Hazardous Material” means: (a) any waste, substance, object or material deemed hazardous under Environmental Law, including “hazardous substances” as defined in CERCLA and “hazardous waste” as defined in RCRA and any local counterpart law; (b) any oil or petroleum product, lead-based paint, per- or poly-fluoroalkyl substances, polychlorinated biphenyl, or asbestos or asbestos-containing materials; and (c) any other pollutant, contaminant, material, substance or waste that has deleterious or hazardous properties and that is listed, defined or is subject to regulation or as to which liability may attach under any Environmental Law.

“Heat Rate” means the thermal efficiency (heat rate) of a respective Legacy Generation Asset’s ability to convert Fuel into Power and Electricity, determined for each Contract Year pursuant to Section 5.22 (*O&M Services – Annual Performance Test*) and Section IV.A of Annex IX (*Scope of Services – Testing, Reports and Records – Annual Performance Test*).

“Hired Former Employees of Owner” has the meaning set forth in Section 4.2(g) (*Operator Responsibilities – Employment Offers*).

“Hydroco” means /PREPA Hydroco LLC/.

“Hydropower Assets” means all of PREPA’s hydroelectric generating units and the public irrigation facilities.

“Hydroco Budget” has the meaning set forth in the PREPA-Genco-Hydroco Operating Agreement.

“ICC” has the meaning set forth in Section 15.4(b)(i) (*Expert Technical Determination Procedure for Technical Disputes – Procedures*).



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“IEEE 762-2006” means the IEEE Standard Definitions for Use in Reporting Electric Generating Unit Reliability, Availability, and Productivity.

“Incentive Payment” means each of the O&M Incentive Payment and Decommissioning Incentive Payment, as described in Section III of Annex II (*Compensation – Incentives and Penalties*).

“Incentives and Penalties” means the incentives and penalties set forth in Section III of Annex II (*Compensation – Incentives and Penalties*).

“Incentives and Penalties Report” has the meaning set forth in Section 7.1(c)(ii) (*Service Fee – Incentives and Penalties*).

“Indemnifying Party” means (i) in the case of a claim for indemnification by Operator Indemnitee, Owner and (ii) in the case of a claim for indemnification by an Owner Indemnitee, Operator.

“Independent Expert” has the meaning set forth in Section 15.4(a) (*Expert Technical Determination Procedure for Technical Disputes – Generally*).

“Information System” means a discrete set of electronic information resources organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information, including, such resources organized as any specialized system such as industrial/process controls systems, telephone switching and private branch exchange systems, and environmental control systems, and “Information Systems” means more than one Information System.

“Initial O&M Budgets” means, collectively, the Operating Budget and the Fuel Budget, in each case, for the initial Contract Year, and the projected budget for the following two (2) Contract Years.

“Initial Term” has the meaning set forth in Section 2.3(a) (*Term – Initial Term*).

“Insurance Proceeds Account” has the meaning set forth in Section 10.3 (*Additional Named Insureds*).

“Integrated Resource Plan” means the latest integrated resource plan contemplated under Act 57, as (i) set forth in the Final Resolution and Order issued by PREB on August 24, 2020, as supplemented and amended from time to time, and (ii) subsequently approved by PREB in accordance with Applicable Law.

“Intellectual Property” means all (i) Patents, (ii) Trademarks, (iii) domain names, URLs and any other addresses for use on the Internet or any other computer network or communication system, (iv) Copyrights, (v) rights of publicity, rights of privacy and moral rights, (vi) Know-How, (vii) other intellectual property or similar corresponding or equivalent right to any of the foregoing or other proprietary or contract right relating to any of the foregoing (including remedies against infringements thereof and rights of protection of interest therein under the laws of all jurisdictions) and (viii) copies and tangible embodiments thereof (including Software), in

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each case whether or not the same are in existence as of the date of this Agreement or developed after such date and in any jurisdiction throughout the world.

“Interconnection Point” means the physical demarcation point(s) where the output of the respective Legacy Generation Asset is delivered to the T&D System, as set forth in the PREPA-Genco-Hydroco Operating Agreement.

“Internal Revenue Code” means the United States Internal Revenue Code of 1986.

“Know-How” means proprietary rights in all, trade secrets, confidential or proprietary information, including confidential or proprietary concepts, ideas, knowledge, rights in research and development, financial, marketing and business data, pricing and cost information, plans (including business and marketing plans), algorithms, formulae, inventions, processes, techniques, technical data, designs, drawings (including engineering and AutoCAD drawings), specifications, databases, blueprints and customer and supplier lists and information, in each case whether patentable or not and whether or not reduced to practice.

“Legacy Generation Assets” has the meaning set forth in the Recitals; provided that the Legacy Generation Assets shall include Out-of-Service Units solely for the purposes of the Decommissioning Services and the O&M Services described in Section 5.19 (*Out-of-Service Units*).

“Legacy Generation Emergency Response Plan” has the meaning set forth in Section 4.2(e) (*Operator Responsibilities – Legacy Generation Emergency Response Plan*).

“Legal Proceeding” means any claim, litigation, action, suit (whether civil, criminal, administrative, judicial or investigative), audit, hearing, investigation, binding arbitration or mediation or proceeding, in each case commenced, brought, conducted, heard before or otherwise involving any Governmental Body, arbitrator or mediator.

“Lien” means any and every lien, pledge, security interest, claim, mortgage, deed of trust, lease, charge, option, right of first refusal, easement or other real estate declaration, covenant, condition, restriction or servitude, transfer restriction under any encumbrance or any other restriction or limitation whatsoever, including mechanics’, materialmen’s, laborers’ and lenders’ liens.

“Losses” means any and all actual out of pocket (i) losses, damages, costs, expenses, liabilities, interest, deficiencies, awards, judgments, fines, assessments, penalties (including Penalties, whether paid or incurred by Operator or set-off or otherwise deducted from any Service Fee or otherwise), forfeitures, obligations, deposits, Taxes, costs, offsets, expenses or other charges of any kind, including Fees-and-Costs, Environmental Claim and Cleanup Liability and costs of enforcing any right to indemnification hereunder or pursuing any insurance providers and (ii) settlements in connection with Section 19.1 (*Indemnification by Operator*) and Section 19.2 (*Indemnification by Owner*), the amount of which either has been agreed by Operator and Administrator or is below a specified amount to be agreed by Operator and Administrator from time to time.

“Management Co” means Genera Management LLC.

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“Material Facility Contract” has the meaning set forth in Section 5.2(d) (*Facility Contracts – Additional Facility Contracts or Expired Facility Contracts After Service Commencement Date*).

“Material Subcontractor” has the meaning set forth in Section 11.1 (*Ability to Subcontract*).

“Mediation Rules” has the meaning set forth in Section 15.5(b) (*Mediation – Procedures*).

“Minimum Performance Threshold” has the meaning set forth in Section III.A of Annex II (*Compensation – Incentives and Penalties*).

“Minimum Performance Threshold Default” has the meaning set forth in Section 14.1(l) (*Events of Default by Operator – Failure to Meet Minimum Performance Threshold*).

“Mobilization Account” has the meaning set forth in Section 4.6(c)(i) (*Mobilization Period Compensation – Funding*).

“Mobilization Period” means the period of time from and including the Effective Date to and excluding the Service Commencement Date.

“Mobilization Plan” has the meaning set forth in Section 4.1(a) (*Mobilization Period Generally – Role of Operator*).

“Mobilization Service Fee” has the meaning set forth in Section 4.6(b) (*Mobilization Period Compensation – Mobilization Service Fee*).

“Mobilization Service Fee Cap” has the meaning set forth in Section 4.6(b) (*Mobilization Period Compensation – Mobilization Service Fee*).

“Mobilization Service Fee Dispute” has the meaning set forth in Section 4.6(d)(ii) (*Mobilization Period Compensation – Invoices*).

“Mobilization Service Fee Estimate Dispute” has the meaning set forth in Section 4.6(c)(ii) (*Mobilization Period Compensation – Funding*).

“Mobilization Services” means services provided by Operator under this Agreement prior to the Service Commencement Date in order to complete the mobilization and handover to Operator of the operation, management and other rights and responsibilities with respect to the Legacy Generation Assets pursuant to this Agreement, including the services contemplated by the Mobilization Plan; provided that the Mobilization Services shall not be O&M Services.

“National Ambient Air Quality Standard” means an ambient air quality standard set by the EPA at 40 C.F.R. Part 50 that includes standards for carbon monoxide, particulate matter, ozone, sulfur dioxide, lead, and nitrogen dioxide.

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“Negotiation Period” has the meaning set forth in Section 15.3(b)(i) (*Negotiation – Negotiation Period*).

“Notice of Dispute” has the meaning set forth in Section 15.2(a) (*Commencement of the Dispute Resolution Procedure – Notice*).

“Notice of Mediation” has the meaning set forth in Section 15.5(a) (*Mediation – Generally*).

“Notice of Violation” means any written directive, notice of violation or infraction, or notice relating to actual or alleged Environmental Noncompliance.

“O&M Budget” means each of the Operating Budget and the Fuel Budget, and “O&M Budgets” means, collectively, both of them.

“O&M Budget Dispute” has the meaning set forth in Section 7.3(h) (*O&M Budgets – Budget Disputes*).

“O&M Fixed Fee” means, for a given Contract Year, the fee specified in Section I.A of Annex II (*Compensation – O&M Fixed Fee – O&M Fixed Fee Amounts*).

“O&M Fixed Fee Adjustment” means a proportional adjustment of the O&M Fixed Fee, in any of Contract Year 6 through Contract Year 10, in the event that (i) Operator has begun or begins to perform Decommissioning Services with respect to a Legacy Generation Asset; or (ii) one or more Legacy Generation Assets has been or is removed from the scope of O&M Services, in each case, in accordance with this Agreement, in each case, calculated in accordance with Annex II, Section I (*Compensation – O&M Fixed Fee*).

“O&M Incentive Payment” means one or more incentive payments based on Operator’s performance of the O&M Services, as determined pursuant to Annex II (*Compensation*).

“O&M Penalty” means one or more liquidated damages penalties based on Operator’s performance of the O&M Services.

“O&M Service Fee” means the O&M Fixed Fee *plus* any O&M Incentive Payment *plus* any Decommissioning Incentive Payment *minus* any O&M Penalty *minus* any Decommissioning Penalty.

“O&M Services” has the meaning set forth in Section 5.1 (*Services Generally*).

“OSHA” means the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*

“Operating Account” has the meaning set forth in Section 7.6(a)(i) (*Service Accounts – Operating Account*).

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“Operating Budget”, for any given Contract Year, (i) means the budget of the Pass-Through Expenditures required to perform the O&M Services (including the reasonably foreseeable costs of Planned Outages, Unplanned Outages and Forced Outages) for such Contract Year, together with the projected budget for the following two (2) Contract Years, in each case including monthly budgets of such expenditures and cash flows, as such budget may be amended or adjusted from time to time in accordance with the terms and conditions of this Agreement and the PREPA-Genco-Hydroco Operating Agreement; and (ii) includes amounts equal to the maximum amounts of the O&M Fixed Fee and the O&M Incentive Payment available in such Contract Year.

“Operations and Maintenance Procedures” has the meaning set forth in Section 4.2(m) (*Operator Responsibilities – Operations and Maintenance Procedures*).

“Operator” has the meaning set forth in the introductory paragraph.

“Operator Benefit Plans” has the meaning set forth in Section 5.5(a) (*Labor and Employment; Employee Benefits – Employee Plans*).

“Operator Employees” has the meaning set forth in Section 4.2(g) (*Operator Responsibilities – Employment Offers*).

“Operator Event of Default” has the meaning set forth in Section 14.1 (*Events of Default By Operator*).

“Operator Indemnitee” has the meaning specified in Section 19.2(a) (*Indemnification by Owner – Generally*).

“Operator Intellectual Property” means any Intellectual Property owned by or licensed to Operator or its Affiliates that is (i) used in the performance of the O&M Services or in connection with the Legacy Generation Assets and (ii) is embedded in or otherwise necessary for the use of the Work Product (as defined herein) or for the operation of the Legacy Generation Assets, but which does not constitute Work Product.

“Operator Overhead” means any amount incurred by Management Co, including for the on-island executive management team and their associated corporate overhead.

“Operator Related Parties” means Operator, Parent Company, Guarantor, their Affiliates and any of their respective employees, directors and officers.

“Operator Service Commencement Date Conditions” has the meaning set forth in Section 4.2 (*Operator Responsibilities*).

“Operator Termination Fee” has the meaning set forth in Section 14.6(c) (*Remedies Upon Early Termination – Termination Fee*).

“Operator Training Program” has the meaning set forth in Section 4.2(o) (*Operator Responsibilities – Operator Training Program*).

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“Organizational Conflict of Interest Policy” has the meaning set forth in Section 2.2(b)(xii) (*Conditions to Execution*).

“Other Employees” has the meaning set forth in Section 4.2(g) (*Operator Responsibilities – Employment Offers*).

“Out-of-Service Unit” means the Legacy Generation Assets identified on Annex I (*Legacy Generation Assets*) that, as of the Service Commencement Date, are out of service and not being repaired, or are decommissioned, and not scheduled to return to service in the future.

“Outside Date” has the meaning set forth in Section 2.2(c) (*Effective Date – Outside Date*).

“Overdue Rate” means the lower of (i) the Prime Rate *plus* two percent (2%) and (ii) the highest rate permitted by Applicable Law.

“Oversight” means, with respect to any matter relating to the Legacy Generation Assets, the O&M Services or this Agreement, the performance of such reviews, investigations, inspections, or examinations relating to such matters as are reasonably necessary in the circumstances, conducted, in each case, in accordance with generally accepted contract administration practices used in the electric utility industry.

“Owner” has the meaning set forth in the introductory paragraph.

“Owner Employees” has the meaning set forth in Section 4.2(f) (*Operator Responsibilities – Employment Evaluations*).

“Owner Event of Default” has the meaning set forth in Section 14.3 (*Events of Default By Owner*).

“Owner Fault” means (i) any breach (including any breach of any representation or warranty set forth in any Transaction Document), (ii) any failure of compliance or nonperformance by Owner or Administrator with its respective obligations under any Transaction Document, (iii) any negligence, tort, willful misconduct or non-compliance by Owner or Administrator with respect to performance of its respective obligations under any Transaction Document (whether or not attributable to any officer, trustee, member, agent, employee, representative, contractor, subcontractor of any tier or independent contractor of Owner or Administrator other than Operator and its Subcontractors), or (iv) any settlement, judgment or other circumstance arising in connection with Existing Litigation, in each case which has had, or is reasonably expected to have, a material adverse effect on Operator’s performance or cost of performance or on Operator’s rights or obligations under this Agreement or on the operation or maintenance of the Legacy Generation Assets.

“Owner Indemnitee” has the meaning specified in Section 19.1 (*Indemnification by Operator*).

“Owner Intellectual Property” means any Work Product and other Intellectual Property owned by Owner or its Affiliates.

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“Owner Licensed Intellectual Property” means any Intellectual Property licensed by Owner from a third-party not a party to this Agreement.

“Owner Payments” means Pass-Through Expenditures, the O&M Service Fee, the Mobilization Service Fee, the Demobilization Service Fee, indemnity obligations under Section 19.2 (*Indemnification by Owner*) or interest payable on any of the foregoing amounts pursuant to this Agreement.

“Owner Personal Information” means any and all personally identifiable information, in any form, collected by or provided to Operator, Operator Related Parties or Subcontractors in connection with the provision of O&M Services or services under this Agreement and that, alone or in combination with other information, uniquely identifies a current, former or prospective director, trustee, officer, employee, elected official, supplier, retiree of Owner, an Owner Related Party or a customer of any Owner Related Party (e.g., names, addresses, telephone numbers, or any other personally identifiable information as otherwise defined under Applicable Law) including (i) copies of such information or materials to the extent containing such information or (ii) such information Owner notifies Operator in advance in writing is subject to a duty of confidentiality that Owner owes to Owner’s customers or pursuant to contracts of Owner or Owner Related Parties.

“Owner Related Parties” means Owner, its Affiliates and any of their respective employees, directors, trustees, elected officials and officers.

“Owner Service Commencement Date Conditions” has the meaning set forth in Section 4.5(b) (*Conditions Precedent to Service Commencement Date – Owner and Administrator Responsibilities*).

“Owner Termination Fee” has the meaning set forth in Section 14.6(c)(ii) (*Remedies Upon Early Termination – Termination Fee*).

“Parent Company” means New Fortress Energy Inc. and its successors and assigns.

“Party” has the meaning set forth in the introductory paragraph.

“Pass-Through Expenditures” has the meaning set forth in Section 7.2 (*Pass-Through Expenditures*).

“Patents” means the exclusive legal rights held by the owner of a patent (including utility and design patents) to exclude others from using, making, having made, selling, offering to sell, and importing patented subject matter and to practice patented methods. Patents include all legal rights in any patent applications, PCT filings, patent disclosures, issued patents and all related extensions, continuations, continuations-in-part, divisions, reissues and reexaminations, utility models, certificates of invention and design patents, and all extensions thereto.

“Peaking Unit” means each Legacy Generation Asset designated as a Peaking Unit in Annex I (*Legacy Generation Assets*).

“Penalty” means each of the O&M Penalty and the Decommissioning Penalty.

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“Permitted Liens” means (i) Liens arising by operation of law that are either contested in good faith and for which Operator or any Subcontractor has established adequate reserves or that are discharged promptly, (ii) Liens existing as of the Effective Date, if any, (iii) Liens that result from any act or omission by any Owner Related Party, Administrator or any other Governmental Body and (iv) purchase money Liens or similar Liens securing rental payments under capital lease arrangements.

“Person” means any individual (including the heirs, beneficiaries, executors, legal representatives or administrators thereof), firm, corporation, company, association, partnership, limited partnership, limited liability company, joint stock company, joint venture, trust, business trust, unincorporated organization or other entity or a Governmental Body.

“Planned Outage” means, as defined by IEEE 762-2006, a planned partial or complete disconnection or stoppage of the generating capability of the applicable Legacy Generation Asset that is for the purpose of inspection, testing, major overhauls, preventive maintenance, corrective maintenance or improvement of such Legacy Generation Asset and for which notice has been previously given to the T&D Operator.

“Power and Electricity” means the electrical energy, capacity and ancillary services available from the Legacy Generation Assets.

“PREB” means the Puerto Rico Energy Bureau, also known as the *Negociado de Energia de Puerto Rico*, an independent body created by Act 57.

“PREB Actions” has the meaning set forth in Section 3.9(c) (*Qualified Management Contract – PREB Actions*).

“PREB Regulatory Charge” means the fee required by Section 4.03 of Regulation 8701 and established annually by PREB; provided that the methods of determining such fee may be subject to change if an amendment to Regulation 8701 or resolution by PREB so provides.

“PREB Successor” has the meaning set forth in Section 3.9(c) (*Qualified Management Contract – PREB Actions*).

[“PREPA” means the Puerto Rico Electric Power Authority, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by Act No. 83 of the Legislative Assembly of Puerto Rico, enacted on May 2, 1941.]

“PREPA-Genco-Hydroco Operating Agreement” means the operating agreement by and among PREPA, Owner, Hydroco, T&D Operator, Administrator and Operator, substantially consistent with the provisions set forth in Annex VIII (*PREPA-Genco-Hydroco Operating Agreement*), and any ancillary documents to the extent attached thereto or expressly incorporated therein by reference, including the respective interconnection agreements and the System Operation Principles and Agreed Operating Procedures, providing for certain rights and responsibilities, including fuel and non-fuel budgeting and account funding, the demarcation of the Legacy Generation Assets, dispatch and shut down procedures and protocols, planned maintenance communications, switching and clearance procedures, access to plant substations and



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other related equipment, and agreed upon requirements and procedures related to Annual Performance Tests.

“PREPA Retirement System” has the meaning set forth in Section 5.5(a) (*Labor and Employment; Employee Benefits*).

“Pre-Existing Contamination” means the presence or Release of Hazardous Materials in environmental media anywhere in, at, from, on or under the Legacy Generation Assets or the Generation Sites, on or before the Service Commencement Date that continues after the Service Commencement Date.

“Pre-Existing Contamination Liability Standard” has the meaning set forth in Section 5.9(a)(iv) (*Environmental, Health and Safety Matters — Pre-Existing Environmental Conditions*).

“Pre-Existing Environmental Condition” means any Pre-Existing Contamination and/or any Pre-Existing Environmental Noncompliance.

“Pre-Existing Environmental Noncompliance” means the ownership or operation of the Legacy Generation Assets or Generation Sites in violation of Environmental Laws or the terms of any Environmental Approval on or before the Service Commencement Date that continues after the Service Commencement Date.

“Pre-Existing Noncompliance Liability Standard” has the meaning set forth in Section 5.9(a)(iv) (*Environmental, Health and Safety Matters – Pre-Existing Environmental Conditions*).

“Prime Rate” means a variable per annum rate equal, as of any date of determination, to the rate as of such date published in the “Money Rates” section of The Wall Street Journal as being the “Prime Rate” (or, if more than one rate is published as the “Prime Rate,” then the highest of such rates), or a mutually agreeable alternative source of the prime rate if it is no longer published in the “Money Rates” section of The Wall Street Journal or the method of computation thereof is substantially modified.

“Prior Obligations” has the meaning set forth in Section 5.5(a) (*Labor and Employment; Employee Benefits – Employee Plans*).

“PRIRC” means the Internal Revenue Code for a New Puerto Rico of 2011.

“Procurement Manual” has the meaning set forth in Section 4.2(p) (*Operator Responsibilities – Procurement Manual*).

“Pro Rata” and similar expressions mean a decrease or increase (as applicable) to a cost, payment, target or other amount applicable to a specific period of time to account for the increase or decrease of the relevant period of time (e.g. a Contract Year that is greater than or less than three hundred and sixty five (365) calendar days).

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“PROMESA” means the Puerto Rico Oversight, Management and Economic Stability Act enacted on June 30, 2016 (P.L. 114-187).

“Proposal” means the proposal submitted by Operator in response to the RFP.

“Proposal Submission Date” means December 22, 2021.

“Prudent Industry Practice” means, at any particular time, the practices, methods, techniques, conduct and acts that, at the time they are employed, are generally recognized and utilized by companies operating gas and/or oil-fired, electric power generation plants in the United States, as such practices (including timely reporting), methods, techniques, conduct and acts relate to the operation, maintenance, repair and replacement of assets, facilities and properties of the type covered by this Agreement. The interpretation of acts (including the practices, methods, techniques, conduct, and acts engaged in or adopted by a significant portion of the electrical generation industry prior thereto) shall consider the facts and the characteristics of the Legacy Generation Assets known at the time the decision was made. Prudent Industry Practice is not intended to be limited to the optimum or minimum practice, method, technique, conduct or act, to the exclusion of all others, but rather to be a spectrum of possible practices, methods, techniques, conduct or acts that a prudent operator would take to accomplish the intended objectives at reasonable cost consistent with Applicable Law, public and employee safety, reliability, and environmental compliance.

“Public Information Disclosure Requirements” means any Applicable Law requiring the disclosure of public documents or information.

“Public-Private Partnerships Authority’s Ethical Guidelines” means the “Public-Private Partnerships Authority’s Guidelines for the Evaluation of Conflicts of Interest and Unfair Advantages in the Procurement of Public-Private Partnership Contracts,” promulgated by the Public-Private Partnerships Authority and dated as of December 19, 2009.

“Rate Order” means any rate order reflecting determinations and directives of, and requirements established by, PREB through its review of an application by T&D Operator requesting a change in customer rates or charges and the subsequent rate review proceeding.

“Rate Order Modification Request” shall have the meaning set forth in Section 7.5 (*PREB Rate Proceedings*).

“RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*

“Release” means any emission, spill, seepage, leak, escape, leaching, discharge, injection, pumping, pouring, emptying, dumping, disposal, migration or release of Hazardous Materials from any source into or upon the environment.

“Reliance Letter” means a letter from tax counsel, substantially in the form set forth in Exhibit B (*Form of Reliance Letter*) that shall accompany a Tax Opinion and shall permit Operator to rely on such Tax Opinion.

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“Remedial Action” means (A) any investigation, clean-up, removal action, remedial action, restoration, repair, abatement, response action, corrective action, monitoring, sampling and analysis, installation, reclamation, closure or post-closure in connection with the suspected, threatened or actual Release of Hazardous Materials, or (B) any changes in operating procedures, actions or equipment including emissions control devices that are, individually or collectively, necessary to install, operate or utilize in order for the operations at one or more Legacy Generation Assets to comply with Environmental Laws or the terms of an Environmental Approval.

“Reporting Obligation Charge” has the meaning set forth in Section III.B.5 of Annex II (*Compensation – Incentives and Penalties – O&M Services Categories – Reporting Obligations*).

“Representative” means, with respect to any Person, any director, officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, contractor, Subcontractor, other Person for whom such Person is responsible at law or other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its “Representative.”

“Required Insurance” has the meaning set forth in Section 10.1 (*Insurance Generally*).

“Reserve Account” has the meaning set forth in Section 7.6(d)(i) (*Service Accounts – Reserve Account*).

“Revenue Procedure 2017-13” means the revenue procedure issued by the United States Internal Revenue Service that provides safe harbor conditions under which a management contract does not result in private business use under § 141(b) of the Internal Revenue Code or subsequent guidance from the United States Internal Revenue Service.

“RFP” means the Puerto Rico Electric Power Thermal Generation Facilities Request for Proposals 2020-1 issued by the Puerto Rico Public-Private Partnerships Authority.

“Safety and Hazardous Materials Procedures Manual” has the meaning set forth in Section 4.2(n) (*Operator Responsibilities – Safety and Hazardous Materials Procedures Manual*).

“Sanctioned Country” has the meaning set forth in Section 20.2(g)(iv) (*Representations and Warranties of Operator – Applicable Law Compliance*).

“Sanctioned Person” has the meaning set forth in Section 20.2(g)(iv) (*Representations and Warranties of Operator – Applicable Law Compliance*).

“Sanctions” has the meaning set forth in Section 20.2(g)(iv) (*Representations and Warranties of Operator – Applicable Law Compliance*).

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“Service Accounts” means the Mobilization Account, the Operating Account, the Fuel Account, the Decommissioning Account, the Demobilization Account and the Reserve Account, each of which is a “Service Account.”

“Service Account Dispute” has the meaning set forth in Section 7.6(e) (*Service Accounts – Service Account Disputes*).

“Service Co” means Genera Services LLC.

“Service Commencement Date” has the meaning set forth in Section 4.7(b) (*Closing the Mobilization Period – Establishment of Service Commencement Date*).

“Service Commencement Date Conditions” has the meaning set forth in Section 4.5 (*Conditions Precedent to Service Commencement Date*).

“Service Fee” means each of the Mobilization Service Fee, the O&M Service Fee and the Demobilization Service Fee.

“Service Fee Dispute” has the meaning set forth in Section 7.1(e) (*Service Fee – Service Fee Disputes*).

“Services” means Mobilization Services, O&M Services, Demobilization Services, Decommissioning Services and Grant Management Services.

“Services Documentation” means, collectively, the Operations and Maintenance Procedures, the Legacy Generation Emergency Response Plan, the Safety and Hazardous Materials Procedures Manual and the Operator Training Program.

“Shared Services Agreement” means the shared services agreement, or similar contractual arrangement, by and among the T&D Operator, PREPA, Owner and the other parties thereto, pursuant to the T&D O&M Agreement, providing the terms and conditions pursuant to which T&D Operator shall provide certain shared services to Owner or its designee or agent.

“Software” means computer programs, proprietary software, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code, operating systems, design documents, website code and specifications, flow-charts, user manuals and training materials relating thereto and any translations thereof.

“Spare Parts” means any new or refurbished replacement parts and tools, equipment and components or combination thereof such maintained or to be maintained by Operator in accordance with this Agreement in connection with the operation, maintenance, repair of the Legacy Generation Assets, excluding any Capital Spare Parts.

“Stafford Act” means the Robert T. Stafford Disaster Relief and Recovery Act, enacted on November 23, 1988.

“State Implementation Plan” means the plan required under the Clean Air Act, and developed by the Puerto Rico Department of Natural and Environmental Resources in

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collaboration with PREPA, to achieve National Ambient Air Quality Standards by reducing sulfur dioxide emissions and any other air pollutants, and as such plan may be modified in the future.

“Subcontract” means an agreement or purchase order by Operator to a Subcontractor or a Subcontractor to Operator, as applicable.

“Subcontractor” means every Person (other than employees of Operator) employed or engaged by Operator or any Person directly or indirectly at any subcontracting tier engaged for the performance of any Operator obligations hereunder (other than Operator Overhead activities), including any portion of the Mobilization Services, the O&M Services, the Decommissioning Services or the Demobilization Services, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise. For the avoidance of doubt: (i) Subcontractors includes any Affiliates of Operator and personnel from any Affiliates of Operator assigned to perform the Mobilization Services, the O&M Services, the Decommissioning Services or the Demobilization Services under this Agreement, (ii) Subcontractors does not include third parties merely providing commercially available “off-the-shelf” Software or Information Systems to Operator (directly or as a service) and (iii) Subcontractors does not include counterparties to any Facility Contract (it being agreed that Operator shall enter into such agreements merely as agent for Owner).

“Subcontractor Intellectual Property” means any Intellectual Property owned by or licensed to a Subcontractor that is (i) used in the performance of the O&M Services or in connection with the Legacy Generation Assets and (ii) is embedded in or otherwise necessary for the use of the Work Product (as defined herein) or for the operation of the Legacy Generation Assets, but which does not constitute Work Product.

“Sworn Statement” means a sworn statement in the form set forth as Exhibit C (*Form of Sworn Statement*).

“System Operation Principles” means the operation principles and procedures conditionally approved by PREB on June 1, 2021, as may be amended from time-to-time in accordance with Section 4.1(h) or Section 5.13(c) of the T&D O&M Agreement.

“T&D O&M Agreement” means the operation and maintenance agreement for the T&D System, entered into on June 22, 2020, by and among PREPA, Administrator, LUMA Energy, LLC and LUMA Energy ServCo, LLC, pursuant to which T&D Operator shall operate, maintain and modernize the T&D System.

“T&D Operator” means LUMA Energy, LLC together with LUMA Energy ServCo, LLC.

“T&D System” means PREPA’s transmission and distribution system and related facilities, equipment and other assets related to the transmission and distribution system in which PREPA has an ownership or leasehold interest.

“Target Service Commencement Date” means the date that is one hundred (100) days following the Effective Date, as such date may be extended pursuant to Section 4.8(c) (*Failure of Service Commencement Date Conditions – Effect of Force Majeure Events or Owner Fault*).

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“Tax” means all U.S. federal, state, Commonwealth, municipal, local and non-U.S. taxes and similar governmental charges, imposts, levies, fees and assessments, however denominated (including income taxes, business asset taxes, franchise taxes, net worth taxes, capital taxes, estimated taxes, withholding taxes, use taxes, value added tax, gross or net receipt taxes, sales taxes, transfer taxes or fees, excise taxes, real and personal property taxes, ad valorem taxes, payroll related taxes, employment taxes, unemployment insurance, social security taxes, minimum taxes and import duties and other obligations of the same or a similar nature), together with any related liabilities, penalties, fines, additions to tax or interest imposed by a Governmental Body.

“Tax Decree” has the meaning set forth in Section 4.2(s) (*Operator Responsibilities – Tax Decree*).

“Tax Opinion” means an opinion of Nixon Peabody LLP as counsel to the FOMB or other tax counsel reasonably acceptable to Administrator, rendered in connection with this Agreement and providing that neither this Agreement nor any provision hereof, nor the performance by each Party of its obligations hereunder (including Operator’s administration of the Facility Contracts), adversely affects the exclusion from gross income of interest on obligations of Owner, its Affiliates or another Governmental Body for federal income tax purposes under the Internal Revenue Code and which, in the case of the opinion delivered on the Effective Date, shall be substantially in the form set forth in Exhibit D (*Form of Tax Opinion – Effective Date*).

“Tax Return” means any report, return, information return, form, declaration, statement or other information (including any amendments thereto and including any schedule or statement thereto) required to be filed or maintained by Applicable Law in connection with the determination, assessment or collection of any Tax.

“Technical Dispute” has the meaning set forth in Section 15.3(b)(i) (*Negotiation – Negotiation Period*).

“Term” means the Initial Term together with the Extension Term, if any.

“Tested Capacity” means, with respect to each Legacy Generation Asset, the capacity of such asset, determined for each Contract Year pursuant to Section 5.22 (*O&M Services – Annual Performance Test*) and Section IV.A of Annex IX (*Scope of Services – Testing, Reports and Records – Annual Performance Test*).

“Third-Party Intellectual Property” means Intellectual Property that is licensed to Operator by a third-party that is not an Affiliate of Operator and is used in the performance of this Agreement.

“Third-Party Payments” has the meaning set forth in Section 19.4(a) (*Insurance and Other Recovery – Generally*).

“Title III Case” means Owner’s case under Title III of PROMESA in the U.S. District Court.

“Title III Court” means the U.S. District Court presiding over the Title III Case.

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“Trademarks” means the exclusive legal rights to use and display any marks, names or symbols in association with businesses, products or services as an indication of ownership, origin, affiliation, or sponsorship, including trademarks, service marks, trade dress, brand names, certification marks, logos, slogans, rights in designs, industrial designs, corporate names, trade names, business names, geographic indications and other designations of source, origin, sponsorship, endorsement or certification, together with the goodwill associated with any of the foregoing, in each case whether registered or unregistered, and all applications and registrations therefor.

“Transaction Documents” means this Agreement, the Guarantee, the FOMB Protocol Agreement and any other agreement entered into by Operator with Owner, Administrator and/or any other ancillary Person from time to time in connection with the transactions contemplated hereby and expressly designated as a “Transaction Document” by the parties thereto (other than Facility Contracts, Fuel Contracts and Subcontracts).

“U.S. District Court” means the United States District Court for the District of Puerto Rico.

“United States” or “U.S.” means the United States of America.

“Unplanned Outage” means, as defined by IEEE 762-2006, a partial or complete disconnection or stoppage of the generating capability of the applicable Legacy Generation Asset that is not a Planned Outage or a Forced Outage.

“Work Product” has the meaning set forth in Section 13.1(c) (*Intellectual Property – Work Product*).

### **Section 1.2** Interpretation; Construction.

(a) Headings. The table of contents, articles, titles and headings to sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. Except as otherwise indicated, all references in this Agreement to “Articles”, “Sections”, “Annexes” and “Exhibits” are intended to refer to Articles and Sections of this Agreement and Annexes and Exhibits to this Agreement.

(b) Annexes and Exhibits. The Annexes and Exhibits referred to herein shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein. In the event of an irreconcilable conflict, discrepancy, error or omission, the following descending order of precedence shall govern: (i) this Agreement, (ii) the Annexes and (iii) the Exhibits.

(c) Construction. For purposes of this Agreement: (i) “include”, “includes” or “including” shall be deemed to be followed by “without limitation”; (ii) “hereof”, “herein”, “hereby”, “hereto” and “hereunder” shall refer to this Agreement as a whole and not to any particular provision of this Agreement; (iii) “extent” in the phrase “to the extent” shall mean the degree to which a subject or other item extends and shall not simply mean “if”; (iv) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the

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word “through” means “to and including”; (v) “dollars” and “US\$” shall mean United States Dollars; (vi) the singular includes the plural and vice versa; (vii) reference to a gender includes the other gender; (viii) “any” shall mean “any and all”; (ix) “or” is used in the inclusive sense of “and/or”; (x) reference to any agreement, document or instrument means such agreement, document or instrument as amended, supplemented and modified in effect from time to time in accordance with its terms; provided, however, that amendments, supplements and modifications to any of the following agreements, documents or instruments shall not be binding on Operator or in any way applicable to this Agreement unless Operator confirms in writing, by reference to this Section 1.2(c)(x), that it accepts the terms of such amendment, supplement or modification: the Shared Services Agreement, the Agreed Operating Procedures, any Facility Contract, any Fuel Contract, the PREPA-Genco-Hydroco Operating Agreement or the FOMB Protocol Agreement; (xi) reference to any Applicable Law means such Applicable Law as amended from time to time and includes any successor legislation thereto and any rules and regulations promulgated thereunder; (xii) whenever this Agreement requires the Administrator’s consent or approval of any matter, unless expressly otherwise provided, such consent or approval shall not be unreasonably withheld, conditioned or delayed and (xiii) reference to any Person at any time refers to such Person’s permitted successors and assigns.

(d) Days and Time. All references to days herein are references to calendar days, unless specified as Business Days, and, unless specified otherwise, all statements of or references to a specific time in this Agreement are to Atlantic Standard Time.

(e) Accounting Principles. All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with then generally accepted accounting principles in the United States, consistently applied.

(f) Negotiated Agreement. The Parties have participated jointly in the negotiation and drafting of this Agreement with the benefit of competent legal representation, and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. In the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions hereof.

(g) References to Generation of Power. The phrases “generate”, “generated”, “generating” and “generation” and any similar phrases herein, when used with respect to Power and Electricity, shall mean and refer to the operation of the Legacy Generation Assets in accordance with this Agreement and the generation of Power and Electricity in accordance with this Agreement and the PREPA-Genco-Hydroco Operating Agreement.

(h) Actions Taken Pursuant to Agreement. The Parties acknowledge that this Agreement sets forth procedures and intended results with respect to various circumstances that may arise during the Term. Such circumstances include the “generation” of Power and Electricity; Changes in Law and Force Majeure Events; the preparation, revision and updating of the O&M Budgets, the Procurement Manual and any other plan, manual, program, schedule or similar document to be prepared or amended under Article 4 (*Mobilization Period*); the provision of the Mobilization Services and the Demobilization Services; the provision of the O&M Services and



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additional services; the provision of the Decommissioning Services; and the assignment and transfer of this Agreement. Unless otherwise agreed to by the Parties, any correspondence, report, submittal, revision update, consent or other document or communication given pursuant to this Agreement on account of such a circumstance shall be considered as among the Parties to be an action taken pursuant to this Agreement and not an amendment hereto.

(i) Unspecified Time Periods; Equitable Adjustment of Timetables. Whenever this Agreement provides that the approval of certain matters shall not be unreasonably withheld, conditioned or delayed, or language to similar effect, and no specific time period is provided for such approval, Owner or Administrator, as the case may be, shall respond no later than ten (10) Business Days after Operator notifies Owner or Administrator, as applicable, in writing of Operator's request for approval. To the extent that a response is not received within ten (10) Business Days, Operator shall have the right to a day-for-day extension of the time for completion or occurrence of any obligation under this Agreement that requires such approval.

### **Article 2** **PURPOSE; EFFECTIVE DATE; TERM**

**Section 2.1** Purpose. Owner hereby contracts with Operator for the provision of (i) O&M Services commencing on the Service Commencement Date, (ii) the Mobilization Services, (iii) the Decommissioning Services and (iv) the Demobilization Services, in each case, subject to the terms and conditions of this Agreement. The Parties acknowledge and agree that (x) this Agreement is a "Partnership Contract" as defined in Act 29, (y) Operator is a "Contractor" as defined in Act 29, entitled to all of the benefits, rights and protections granted to a "Contractor" thereunder and (z) Operator is not a "Contractor" as that term is defined in Title 2, Part 200 of the Code of Federal Regulations, Section 200.23.

#### **Section 2.2** Effective Date.

(a) Execution of the Agreement. This Agreement shall become effective on the date that it is executed by the Parties, by which execution the Parties acknowledge and agree that the conditions in Section 2.2(b) (*Effective Date – Conditions to Execution*) have been satisfied (the "Effective Date").

(b) Conditions to Execution. The following conditions shall have been satisfied prior to the Effective Date:

(i) receipt by the Parties of an Energy Compliance Certificate issued by PREB;

(ii) receipt by the Parties of a resolution adopted by the board of directors of Administrator, in form and substance reasonably acceptable to Administrator and Operator, authorizing the execution, delivery and performance of this Agreement and the transactions contemplated hereby;

(iii) receipt by the Parties of a resolution adopted by the board of directors of Owner, in form and substance reasonably acceptable to Administrator and Operator,

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authorizing the execution, delivery and performance of this Agreement and the transactions contemplated hereby;

(iv) receipt by the Parties of authorization from the FOMB, in form and substance reasonably acceptable to Administrator and Operator, of the execution, delivery and performance of this Agreement and the transactions contemplated hereby;

(v) receipt by the Parties of approval from the Governor of the Commonwealth or his/her delegate, in form and substance reasonably acceptable to Administrator and Operator, for the execution, delivery and performance of this Agreement and the transactions contemplated hereby;

(vi) receipt by Owner of the Guarantee;

(vii) receipt by Owner of a copy of a certificate as to certain matters of Commonwealth law in the form set forth as Exhibit E (*Form of Commonwealth Certifications*), duly executed by Operator;

(viii) receipt by Owner of a Tax Opinion in the form set forth as Exhibit D (*Form of Tax Opinion – Effective Date*) and receipt by Operator of a Reliance Letter;

(ix) receipt by Owner of a Sworn Statement executed by Operator;

(x) Operator's receipt of, and written agreement to be subject to, the obligations under the Consent Decree and the jurisdiction of the United States District Court for the District of Puerto Rico in connection with the Consent Decree. Such written agreement shall contain the acknowledgement required by Section 20.2(i) (*Representations and Warranties of Operator – Ability to Perform Obligations*) and shall be substantially in the form of Exhibit G (*Form of Acknowledgment of Consent Decree*). To the extent required to effectuate this Section 2.2(b)(x) (*Effective Date – Conditions to Execution*), Operator shall assist Owner in taking all necessary steps to make Operator a signatory to the Consent Decree or to obtain any needed U.S. District Court approval;

(xi) receipt by Administrator of a communications plan in a form satisfactory to Administrator in its reasonable discretion, which plan is attached hereto as Annex V (*Communications Plan*), (the "Communications Plan");

(xii) Administrator's receipt of an organizational conflict of interest policy in the final form agreed to by Administrator and Operator, which is attached hereto as Annex VI (*Organizational Conflict of Interest Policy*) (the "Organizational Conflict of Interest Policy");

(xiii) a final plan for the reorganization of PREPA shall have been filed with the applicable Governmental Bodies; and

(xiv) Operator, Administrator, Owner and the FOMB shall have reached agreement on and formally executed the FOMB Protocol Agreement.

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(c) Outside Date. If the Effective Date has not occurred by the latest of (i) the Business Day not later than one hundred twenty (120) days after the partnership committee accepts the Proposal and notifies Operator of its decision, (ii) such later date as the Parties may mutually agree in writing or (iii) upon request of Administrator, subject to an extension for an additional period, not to exceed one hundred twenty (120) days, if the satisfaction of any of the conditions to execution set forth in Section 2.2(b) (*Effective Date – Conditions to Execution*) is delayed by any action or omission of Administrator or any Governmental Body of the Commonwealth occurring prior to the date that is the later of clauses (i) and (ii) (the latest of (i), (ii) and (iii), the “Outside Date”), the Bid Security shall be held, drawn or returned as provided in the RFP.

### **Section 2.3** Term.

(a) Initial Term. This Agreement shall be in full effect from the Effective Date through [June 30 of the calendar year after the calendar year in which] the tenth (10th) anniversary of the Service Commencement Date [occurs] (such period of time, the “Initial Term”), unless extended or earlier terminated, in whole or in part, in accordance with the terms hereof.

(b) Extension. Operator and Administrator (acting on Owner’s behalf) may mutually agree to extend, for all or some of the Legacy Generation Assets, the Initial Term for an additional period to be determined at the time and on terms and conditions to be agreed in good faith (the “Extension Term”); provided that (i) the Extension Term shall not exceed the maximum term permitted under Act 29 at the time of such extension, (ii) a Tax Opinion shall have been delivered to Owner and a Reliance Letter shall have been received by Operator in connection with such Extension Term, (iii) to the extent required by Applicable Law, the conditions precedent to the Effective Date set forth in Section 2.2(b) (*Conditions to Execution*) shall have been satisfied prior to the first date of the Extension Term (iv) to the extent required by Applicable Law, the Extension Term shall not be effective until approved by the PREB, and (v) Administrator’s approval shall be provided only following a decision of the Administrator’s Board of Directors in accordance with Act 29 and Act 120. This Agreement shall be deemed a PREPA Transaction subject to the requirements of Act 120. Notwithstanding the foregoing, in the event that the Initial Term is extended solely for the purpose of Operator completing Decommissioning Services pursuant to Section 17.2 (*Termination Prior to Completion of Decommissioning*) and any remaining Demobilization Services, none of the requirements of clauses (ii) and (iii) of the proviso to the prior sentence shall be applicable.

(c) Reduction. Upon written notice to Operator, Administrator (acting on behalf of Owner) shall have the right to reduce the scope of the O&M Services, the Decommissioning Services and/or the Term, if and to the extent necessary, (1) in accordance with Section 3.9 (*Qualified Management Contract*), to prevent any adverse effect to the exclusion from gross income of interest on obligations of Owner, its Affiliates or another Governmental Body for federal income tax purposes under the Internal Revenue Code or (2) to comply with the Fiscal Plan or any other Applicable Law or contractual requirement, including in connection with the development of new generation capacity as mandated by the Integrated Resource Plan. Notwithstanding any reduction in the scope of the O&M Services, the O&M Fixed Fee shall not be reduced other than pursuant to an O&M Fixed Fee Adjustment in accordance with Annex II (*Compensation*). If (i) Administrator (acting on Owner’s behalf) exercises its rights under this Section 2.3(c) (*Term – Reduction*) and (ii) any such reduction affects Operator’s ability to achieve

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Actual Fuel Savings outlined in a Fuel Optimization Plan approved by PREB, then Operator and Administrator shall negotiate proportional adjustments to the Fuel Optimization Plan and Fuel Optimization Payment, to reasonably assure that Operator has a reasonable opportunity to earn the Fuel Optimization Payment, which adjustments shall be submitted to PREB for its review and approval.

### **Article 3** **OWNERSHIP OF THE LEGACY GENERATION ASSETS**

**Section 3.1** Ownership. The Legacy Generation Assets are and shall be owned by Owner throughout the Term, and Operator shall have no ownership interest in the Legacy Generation Assets.

**Section 3.2** Engagement of Operator. Operator shall perform the O&M Services as an independent contractor and shall not have any legal, equitable, tax, beneficial or other ownership or leasehold interest in the Legacy Generation Assets. Without limiting Operator's right to be reimbursed for all Pass-Through Expenditures, the only compensation payable by Owner to Operator for providing the O&M Services and the Decommissioning Services for the Legacy Generation Assets shall be the O&M Service Fee. The Service Accounts shall be funded in the manner contemplated hereunder for Operator's payment of Pass-Through Expenditures (without limiting Owner's indemnity or other obligations hereunder).

**Section 3.3** Use of Legacy Generation Assets. From the Service Commencement Date and for the remainder of the Term thereafter, Operator and Subcontractors shall have the exclusive right (except as set forth in this Agreement), subject to Section 3.5 (*Right of Access*), to enter upon, occupy and use the Legacy Generation Assets and the Generation Sites for the sole purpose of performing the O&M Services, Mobilization Services, Decommissioning Services, and Demobilization Services, as applicable, in accordance with the terms hereof. Owner shall ensure that Operator and its Subcontractors are provided with all necessary access to exercise such right.

**Section 3.4** Liens. From the Service Commencement Date and for the remainder of the Term thereafter, Operator shall keep the Legacy Generation Assets free and clear of any and all Liens (other than Permitted Liens) arising out of or in connection with any acts, omissions or debts of Operator, Guarantor or their Affiliates. Nothing in this Agreement shall be deemed to create any Lien in favor of Operator on any asset of Owner, including the Legacy Generation Assets, as security for the obligations of Owner hereunder.

**Section 3.5** Right of Access. Upon reasonable notice to Operator, at reasonable times during normal business hours and at their own respective cost and risk, each of Owner, Administrator, PREB and their respective Representatives shall have the right to access the Legacy Generation Assets, Generation Sites and all Facility Information for Oversight of Operator's performance of the O&M Services and to otherwise carry out their obligations under Applicable Law; provided that such access shall not interfere with Operator's performance of the O&M Services and may be provided by read-only access where available, or a reasonably equivalent form of access to such information. Owner, Administrator, PREB and their respective Representatives shall comply with all of Operator's access, security (including cybersecurity) and safety procedures when exercising such right of access. Owner shall be responsible for the security

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of all access credentials provided to, and each access made and use and disclosure of Facility Information by, Owner, Administrator, PREB and their respective Representatives hereunder. At Administrator's request and sole cost and expense, Operator shall provide Administrator with dedicated on-site office space and access to and use of office facilities and equipment located at Operator's facilities in the Commonwealth or another suitable site mutually agreed upon; provided that such space is reasonable and adequate to enable Administrator to exercise its Oversight rights and responsibilities under this Agreement.

**Section 3.6** Exclusivity. The Parties covenant and agree that Operator, acting directly or through Subcontractors, together with their respective Representatives, shall be the sole and exclusive providers of O&M Services with respect to the Legacy Generation Assets and that Operator shall not (i) generate Power and Electricity using the Legacy Generation Assets other than on behalf of Owner, or with the approval of PREB (or Administrator, if applicable), pursuant to the terms and conditions of this Agreement and in accordance with Applicable Law or (ii) use the Legacy Generation Assets (A) for any purpose other than the purposes contemplated hereby or (B) to serve or benefit any person other than Owner.

**Section 3.7** Essential Public Service. The Parties acknowledge that Owner's provision of the Power and Electricity requirements of the Commonwealth constitutes an essential public service; it being understood that such acknowledgement shall not impose any obligation on the Parties other than those set forth in this Agreement. Owner acknowledges that Operator shall rely on (i) the certifications, resolutions, authorizations and approvals referred to in Section 2.2 (*Effective Date*) and (ii) the funding of the Service Accounts caused by Owner in the manner contemplated hereunder, in each case in order for Operator to (A) perform the O&M Services and Decommissioning Services under this Agreement and (B) have the opportunity to earn the applicable Service Fee in full.

**Section 3.8** Reporting Obligations. In accordance with Sections IV and V of Annex IX (*Scope of Services – Testing, Reports and Records; Finance and Accounting Services*) Operator shall provide (i) Facility Information (both financial and operational), as reasonably available (and in any event on a monthly basis), to support Owner's financing activities, including Owner's administration of debt service and Owner's required disclosure and tax requirements, (ii) upon the request of Owner and/or Administrator, assistance to Owner and Administrator in connection with Owner's preparation of reports and other documents to satisfy Owner's reporting requirements and (iii) upon the request of Administrator, any Facility Information, information regarding the Hired Former Employees of Owner, or other information that it reasonably requires to comply with its obligations under this Agreement, including as described in Section 6.2 (*Rights and Responsibilities of Administrator*).

### **Section 3.9** Qualified Management Contract.

(a) Generally. The Legacy Generation Assets have been financed with obligations the interest on which is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code. The Parties intend for this Agreement to constitute a "qualified management contract" under Revenue Procedure 2017-13, such that the provision of O&M Services by Operator under this Agreement does not adversely affect the exclusion from gross income for federal income tax purposes under the Internal Revenue Code of

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the interest on such obligations. The Tax Opinion and the Reliance Letter delivered as of the Effective Date or thereafter have been and will be delivered on such basis.

(b) Covenants.

(i) Operator covenants and agrees that: (A) neither it nor any direct or indirect owner of an equity interest in it is entitled to any U.S. federal income tax benefits relating to the Legacy Generation Assets that are available to an owner or lessor of the Legacy Generation Assets covered by this Agreement; (B) it shall not take any tax position inconsistent with it being a service provider with respect to such Legacy Generation Assets; and (C) it shall not, and shall not permit or enable any direct or indirect owner of any equity interest in it to, claim any depreciation or amortization deduction, investment tax credit or deduction for any payment as rent, with respect to the Legacy Generation Assets.

(ii) Owner, Administrator and Operator each covenant and agree that the terms of this Agreement shall be construed so as to comply with the requirements of Revenue Procedure 2017-13. To the extent that this Agreement is determined to fail to comply with Revenue Procedure 2017-13 for any reason or otherwise is determined to result in private business use of the Legacy Generation Assets within the meaning of Section 141 of the Internal Revenue Code, the Parties agree that they shall use reasonable efforts to amend the terms of this Agreement in order to comply with Revenue Procedure 2017-13 and Section 141 of the Internal Revenue Code to prevent any adverse effect to the exclusion from gross income of the interest on obligations of Owner, its Affiliate or another Governmental Body for federal income tax purposes under the Internal Revenue Code.

(c) PREB Actions. The Parties hereby acknowledge and agree that to the extent PREB (i) is not permitted under Applicable Law to carry out its rights, duties and obligations under this Agreement (“PREB Actions”), all of which PREB is deemed to have acknowledged by delivery of the Energy Compliance Certificate, or (ii) ceases to be an entity of the government of the Commonwealth, the related PREB Actions shall automatically become the rights, duties and obligations of the Governmental Body of the Commonwealth designated under Applicable Law to assume and succeed to the interest of PREB hereunder or, absent such designation, Administrator (the “PREB Successor”). In the event that such PREB Actions become the rights, duties and obligations of the PREB Successor, it shall exercise such rights, duties and obligations (x) taking into account the standards, processes and procedures previously used by PREB with respect to the PREB Actions, (y) in a manner that does not adversely affect the exclusion from gross income of interest on obligations of Owner, its Affiliates or another Governmental Body for federal income tax purposes under the Internal Revenue Code and (z) taking into account any obligations under Section 10.1 of Act 120, to the extent applicable.

## Article 4 MOBILIZATION PERIOD

### Section 4.1 Mobilization Period Generally.

(a) Role of Operator. Throughout the Mobilization Period, Operator shall not provide the O&M Services or otherwise be responsible for the Legacy Generation Assets, but shall,

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subject to and conditioned upon Owner providing funding pursuant to Section 4.6(b) (*Mobilization Period Compensation – Mobilization Service Fee*), solely provide the Mobilization Services as described in the Mobilization Plan set forth in Annex VII (*Mobilization Plan*) (the “Mobilization Plan”). The Mobilization Services are intended to ensure an orderly transfer of the care, custody and control of the Legacy Generation Assets to Operator by the Target Service Commencement Date without disruption of business continuity, in a manner consistent with the Mobilization Plan and Applicable Law.

(b) Owner and Administrator Cooperation. Each of Owner and Administrator shall take all such actions as may be reasonably necessary to enable or assist Operator in providing the Mobilization Services, including (i) providing Operator’s Representatives with a designated space and facilities at Owner’s principal offices and each of the Generation Sites for their use throughout the Mobilization Period, (ii) allowing access, during normal business or operational hours (as may be applicable and relevant) and at such other times as are required, to Owner’s premises for the purpose of providing the Mobilization Services, (iii) cooperating with and assisting, and causing its Representatives to cooperate with and assist, Operator in its performance of the Mobilization Services and its efforts to timely satisfy the Operator Service Commencement Date Conditions, and (iv) encouraging and facilitating a positive and cooperative working relationship with respect to the implementation and completion of the Mobilization Plan and the performance of the Mobilization Services.

(c) Administrative Expense Treatment.

(i) No later than ten (10) Business Days after the Effective Date, Owner shall file a motion with the Title III Court seeking administrative expense treatment for any accrued and unpaid amounts required to be paid by Owner under this Agreement during the Mobilization Period, including the Mobilization Service Fee.

(ii) Operator shall have the right to terminate this Agreement upon not less than thirty (30) days’ prior written notice to Administrator (with a copy to PREB) (A) if such motion is denied by the Title III Court, or (B) if such motion has not been approved by the Title III Court on or before the date that is ninety (90) days following the date on which such motion is filed, which ninety (90) day period may be extended for an additional forty-five (45) days by Administrator at its sole discretion, or such later date as Administrator and Operator may agree or (C) if the Title III Court approval is ultimately reversed on appeal.

(iii) In the event of the termination of this Agreement pursuant to this Section 4.1(c) (*Mobilization Period Generally – Administrative Expense Treatment*), Operator shall retain any Mobilization Service Fee earned as of the effective date of such termination, and, within five (5) Business Days of the effective date of such termination, shall return to Administrator any amounts held in the Mobilization Account in excess of any earned Mobilization Service Fee. This Agreement (other than with respect to the aforementioned payment obligations and any limitations on liability set out elsewhere in this Agreement, each of which shall continue in effect) shall thereafter become void and have no effect, without any liability on the part of any Party or its Affiliates or Representatives in respect thereof, except that nothing herein shall relieve any party from liability that cannot be waived as a matter of Applicable Law, claims of fraud or intentional breach or misrepresentation; provided that, in any such event, the limitations of liability

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specified in this Agreement (including Section 14.6(d) (*Remedies Upon Early Termination – Additional Remedies*) and Section 19.3 (*Limitation on Liability*)) shall, notwithstanding the foregoing, continue to apply. Furthermore, the remedies provided in this Section 4.1(c) (*Mobilization Period Generally – Administrative Expense Treatment*) shall be the sole and exclusive remedies of the Parties for any termination of this Agreement pursuant to this Section 4.1(c) (*Mobilization Period Generally – Administrative Expense Treatment*).

**Section 4.2 Operator Responsibilities.** As soon as practicable after the Effective Date, but in any event prior to the Target Service Commencement Date (subject to Owner and Administrator complying with their obligations set forth in Section 4.3 (*Owner and Administrator Responsibilities*) and elsewhere in the Agreement to the extent relevant), Operator shall be required to satisfy the following conditions precedent to (i) Owner's obligations to handover to Operator the O&M Services and other rights and responsibilities with respect to the Legacy Generation Assets pursuant to Section 4.7(b) (*Closing the Mobilization Period – Establishment of Service Commencement Date*) and (ii) the occurrence of the Service Commencement Date (collectively, the "Operator Service Commencement Date Conditions"):

(a) Mobilization Plan. Operator shall carry out and complete the Mobilization Plan, and shall provide for management, technical, administrative, engineering, labor relations and other personnel necessary in connection therewith.

(b) Handover Checklist. On or prior to the tenth (10th) day and the twenty-fifth day (25th) of each month during the Mobilization Period, Operator shall provide Administrator written monthly reports with respect to Operator's performance of the Mobilization Services for each Legacy Generation Asset, including a copy of the Handover Checklist updated to reflect (i) the progress of each item, (ii) the percentage completion for each item, (iii) the dollars expended for each item, and (iv) the identification of any risks to the completion of the Handover Checklist tasks, listed therein. From time to time during the Mobilization Period, in light of experience developed up to such point in the Mobilization Period, the Handover Checklist shall be adjusted, updated or otherwise modified by Operator and Administrator, each acting reasonably, as necessary to reflect such experience.

(c) Confirmation of Guarantee. Operator shall execute and deliver a confirmation to Administrator that the Guarantee remains in full force and effect.

(d) Required Insurance. Subject to Article 10 (*Insurance*), Operator shall submit to Administrator certificates of insurance for all Required Insurance to be effective as of the Service Commencement Date.

(e) Legacy Generation Emergency Response Plan. As soon as reasonably practicable, but not less than ninety (90) days, following the Effective Date, Operator shall develop in consultation with T&D Operator and submit to Administrator and PREB, for their information and approval, a plan of action that takes effect from the Service Commencement Date and outlines the procedures and actions necessary for responding to any Emergency affecting or reasonably likely emergency that could affect the Legacy Generation Assets after the Service Commencement Date (the "Legacy Generation Emergency Response Plan"), including fire, weather, environmental, health, safety and other potential emergency conditions, which Legacy Generation



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Emergency Response Plan shall become effective on the Service Commencement Date. The Legacy Generation Emergency Response Plan shall (i) provide for appropriate notice of any such emergency to T&D Operator, Administrator, PREB and all other Governmental Bodies that Operator is notified in writing have jurisdiction over the Legacy Generation Assets, (ii) establish measures that facilitate coordinated emergency response actions by all appropriate Governmental Bodies, (iii) specifically include outage minimization and response measures and (iv) include measures designed to assure the timely availability of all personnel required to respond to any emergency in accordance with the Contract Standards. In the event of a Declared Emergency or Major Disaster, such Legacy Generation Emergency Response Plan shall be updated by Operator as necessary or appropriate.

(f) Employment Evaluations. As soon as reasonably practicable, but not less than thirty (30) Business Days, following the Effective Date, Operator shall, in accordance with the Owner Employee Interview Plan set forth in Schedule 1 to Annex X (*Operator Employment Requirements – Owner Employee Interview Plan*), interview and evaluate as candidates for employment at Operator, effective as of the Service Commencement Date, the regular employees of Owner and its Affiliates (other than Owner's transmission and distribution employees who have been hired by T&D Operator) who were, as of June 30, 2022, and currently remain employed by Owner and its Affiliates or are hired by Owner or its Affiliates on or after the Effective Date in the ordinary course of business consistent with the past practices of Owner and its Affiliates to replace any existing employee of Owner (collectively, the "Owner Employees"). For the avoidance of doubt, Operator shall not be liable for severance or other pay or benefits for Owner Employees who are not hired by Operator, including those to whom an offer of employment is made but who do not accept such offer. Owner and its Affiliates shall waive any non-competition, confidentiality or other obligation arising under any employment contract between Owner or Affiliate and any Owner Employee that may otherwise restrict any of Owner Employee's rights to be employed by Operator or an Affiliate. Owner shall provide Operator with the following information regarding Owner Employees promptly on request and to the extent permitted by Applicable Law: (v) job description for current and any prior positions occupied by such Owner Employee, (w) date of employment, (x) current salary and/or regular hourly wage, (y) any appraisals and accolades, as well as any reprimands or disciplinary actions, contained in the potential employees' personnel files, and (z) any other such information regarding Owner Employees that may be reasonably requested.

(g) Employment Offers. Operator, the Authority and Owner acknowledge that Applicable Law establishes that no Owner Employee shall be left unemployed nor lose benefits as a result of the transactions contemplated hereby. Operator shall offer employment to fulltime plant Owner Employees who were employed and in good standing as of June 30, 2022; provided that such employees complete and satisfy customary background checks. Operator shall give priority in hiring to any other Owner Employee who meets Operator's stated requirements for employment as set forth in Annex X (*Operator Employment Requirements*) over other equally qualified applicants for the same job category that are not Owner Employees, it being understood that the determination of which Owner Employees, who are not plant Owner Employees, to hire shall be made by Operator in Operator's sole discretion, acting in good faith. Each Owner Employee who accepts an offer of employment with Operator pursuant to this Section 4.2(g) (*Operator Responsibilities – Employment Offers*) and commences such employment with Operator shall be referred to as a "Hired Former Employees of Owner." On the Service Commencement Date and

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during the Term, Operator shall employ such other employees, including any employees of Operator or any of its Affiliates as of the Effective Date hired for the operation of the Legacy Generation Assets (“Other Employees” and, together with the Hired Former Employees of Owner, the “Operator Employees”), as are necessary to provide the O&M Services. Upon Administrator’s or Owner’s reasonable request, Operator shall provide to Owner and Administrator information regarding the total employment offers made and accepted, including a breakdown between Hired Former Employees of Owner and Other Employees. The following initial terms and conditions of employment shall apply to the Hired Former Employees of Owner, but not to any Other Employees:

(i) Offers of employment shall remain open for a period of thirty (30) Business Days. Any such offer that is accepted within such thirty (30) Business Day period shall thereafter be irrevocable until the Service Commencement Date.

(ii) Offers of employment shall provide for employment with Operator on terms and conditions that are set at Operator’s sole discretion, but shall in all cases provide for (A) a base salary or regular hourly wage rate at least equal to the base salary or wage rate provided by Owner or its Affiliates (as applicable) to the Owner Employee immediately prior to the Service Commencement Date, (B) the employee fringe benefits established in Act 26 and (C) any other benefits required to be offered to Owner Employees pursuant to Act 120, as any such benefits may have been restricted, conditioned, modified or annulled by Act 3, Act 26 and Act 66.

(iii) Pursuant to Section 21.19(b), Operator agrees that any Hired Former Employees of Owner that receive and accept offers of employment from Operator shall enjoy the following additional protections: (A) his or her job will be guaranteed for a minimum period of two (2) years, and (B) Hired Former Employees of Owner may only be separated from the position during such period of two (2) years if he or she engages in behavior that warrants dismissal or constitutes just cause under Act 80 of May 30, 1970, as amended.

(h) Owner Employees in Critical Employee Positions. Notwithstanding the foregoing, Operator shall prioritize filling positions that are critical to the reliable operation and maintenance of the respective Legacy Generation Assets and are filled by highly skilled employees, as agreed by Administrator (in consultation with Owner) and Operator and listed in Annex X (*Operator Employment Requirements*) (“Critical Employee Positions”). For such purpose, as soon as reasonably practicable, but not less than ten (10) Business Days following the Effective Date, Operator shall interview each of the Owner Employees employed at such time in a Critical Employee Position. If Operator deems such employee qualified to fill such position, Operator shall offer such employee employment. If such employee rejects the offer of employment, or Operator deems that an Owner Employee occupying a Critical Employee Position is not qualified to do so, Operator shall use its commercially reasonable efforts to hire as promptly as possible a replacement for such employee, with a view towards ensuring that such replacement is trained in the relevant Critical Employee Position by the date that is thirty (30) days prior to the Target Service Commencement Date. Offers of employment to Owner Employees in Critical Employee Positions shall remain open for a period of thirty (30) Business Days, and such employees may accept Operator’s offer of employment on the terms and conditions set forth therein. Any such offer that is accepted within such thirty (30) Business Day period shall thereafter be irrevocable.

(i) Periodic Reports.

(i) Operator shall provide Administrator with detailed reports every two weeks and as Administrator may reasonably request from time to time with respect to Operator's performance of the Mobilization Services, including the progress against the Handover Checklist and any other completion schedules and milestones included in the Mobilization Plan, and including total actual dollar expenditures and any request for information submitted by Operator to Owner. In addition, Administrator may request any other periodic reports from time to time. In connection therewith, Operator shall provide Administrator (with copy to PREB) with any other information that (A) Administrator may reasonably request, including performance reports related to any of the Mobilization Services, and (B) may be reasonably produced from records maintained by Operator in the normal course of business consistent with the provisions of this Agreement relating to document retention.

(ii) Operator shall promptly advise Administrator of any actual or potential failure or inability to achieve milestones by the dates set forth in the Mobilization Plan, and shall promptly report to Administrator any problems encountered in performing the Mobilization Services that Operator has been unable to promptly and adequately resolve.

(j) Consumables, Spare Parts and Capital Spare Parts. Promptly (and in any event within sixty (60) days) following the Effective Date, and in accordance with the Mobilization Plan, Operator shall review the inventory of Consumables, Spare Parts and Capital Spare Parts for each Legacy Generation Asset and submit to Administrator and PREB (with copy to Owner), for their review and approval, a recommendation in consultation with the original equipment manufacturers of any additional Consumables, Spare Parts and Capital Spare Parts necessary to provide Operator with a supply of such Consumables, Spare Parts and Capital Spare Parts to allow Operator to comply with its obligations under this Agreement for twelve (12) months following the Service Commencement Date (with any modifications deemed to be appropriate by Administrator). During the twelve (12) months following the Service Commencement Date, in the event that, following review of the inventory of Consumables, Spare Parts and Capital Spare Parts for a Legacy Generation Asset, Operator determines that additional Consumables, Spare Parts and Capital Spare Parts are necessary to allow Operator to comply with its obligations under this Agreement for the remainder of such twelve (12) month period, Operator may submit to Administrator and PREB (with copy to Owner), for their review and approval, a revision to the initial approved recommendation. After such twelve (12) month period, it shall be Operator's responsibility to procure any additional, necessary Consumables and Spare Parts, and any additional, necessary Capital Spare Parts in accordance with Section 5.6 (*Option to Propose Capital Spare Parts and Capital Improvements*), in each case in accordance with the then-approved Operating Budget.

(k) Representations. The representations of Operator set forth in Section 20.2 (*Representations and Warranties of Operator*) and Guarantor set forth in its Guarantee shall be true and correct in all material respects as of the Service Commencement Date (other than any representations that are expressly made as of an earlier date), as if made on and as of the Service Commencement Date, and both Operator and Guarantor shall deliver to Administrator a certificate of an authorized officer of such entity to that effect.

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(l) Notice of Default. Operator shall provide to Administrator, promptly following the receipt thereof, copies of any notice of default, breach or noncompliance received under or in connection with any Governmental Approvals, if any, or Subcontract pertaining to the Mobilization Period.

(m) Operations and Maintenance Procedures. As soon as practicable (and in any event within ninety (90) days) after the Effective Date and at such time and in such manner as to permit Operator to perform its obligations under Section 4.2 (*Operator Responsibilities*), Operator shall prepare and submit to Administrator (with copy to Owner) procedures related to the operation and maintenance and fuel supply of each Legacy Generation Asset (such procedures, the “Operations and Maintenance Procedures”), which procedures shall be developed in accordance with Prudent Industry Practice and Applicable Law. Within thirty (30) days following its receipt of such proposed Operations and Maintenance Procedures, Administrator shall provide Operator comments on the appropriateness of the proposed Operations and Maintenance Procedures and recommend any changes or modifications it believes are necessary or appropriate. Within thirty (30) days following receipt of Administrator’s comments, if any, or the end of forty-five (45) days following Administrator’s receipt of the proposed Operations and Maintenance Procedures, if Administrator has no comments, Operator shall submit to Administrator for its review and approval the revised Operations and Maintenance Procedures incorporating or rejecting any of the modifications or changes suggested by Administrator, together with an explanation of any of Administrator’s comments, as Operator shall reasonably deem appropriate in its sole discretion. Such Operations and Maintenance Procedures shall be updated by Operator, subject to review by Administrator, on an annual basis as necessary or appropriate. Until the Operations and Maintenance Procedures have been approved pursuant to this Section 4.2(m) (*Operator Responsibilities – Operations and Maintenance Procedures*), Operator shall perform the Services in accordance with the Consent Decree and corresponding PREPA operations and maintenance procedures.

(n) Safety and Hazardous Materials Procedures Manual. Promptly (and in any event within ninety (90) days) following the Effective Date, Operator shall prepare and submit to Administrator (with copy to Owner), for its information and approval, a manual, for each applicable Legacy Generation Asset and consistent with the Safety and Hazardous Materials Procedures Manual outline set forth in Schedule 1 to Annex IX (*Scope of Services – Safety and Hazardous Materials Procedures Manual Outline*), that sets forth an illness and injury prevention program, a description of Operator’s participation in workplace safety and health management programs and a risk management plan that meets the latest requirements of Applicable Law (the “Safety and Hazardous Materials Procedures Manual”). Within thirty (30) days following its receipt of such proposed Safety and Hazardous Materials Procedures Manual, Administrator, acting reasonably, shall provide Operator comments on the appropriateness of the proposed Safety and Hazardous Materials Procedures Manual and recommend any changes or modifications it believes are necessary or appropriate. Within thirty (30) days following receipt of Administrator’s comments, if any, or the end of forty-five (45) days following Administrator’s receipt of the proposed Safety and Hazardous Materials Procedures Manual if Administrator has no comments, Operator shall submit to Administrator for its review and approval the revised Safety and Hazardous Materials Procedures Manual incorporating or rejecting any of the modifications or changes suggested by Administrator, together with an explanation of any of Administrator’s comments, as Operator shall reasonably deem appropriate in its sole discretion. Such Safety and

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Hazardous Materials Procedures Manual shall be updated by Operator, subject to review by Administrator, on an annual basis as necessary or appropriate.

(o) Operator Training Program. Promptly (and in any event within one hundred twenty (120) days) following the Effective Date, Operator shall prepare and submit to Administrator (with copy to Owner), for its information and approval, a written program, for each applicable Legacy Generation Asset, that ensures all personnel involved in providing the O&M Services have the required knowledge, training and experience for their respective assigned duties, including special training required for meeting all requirements under the Consent Decree and for the handling Hazardous Materials (the “Operator Training Program”). Within thirty (30) days following its receipt of such proposed Operator Training Program, Administrator, acting reasonably and in consultation with Owner, shall provide Operator comments, on the appropriateness of the proposed Operator Training Program and recommend any changes or modifications it believes are necessary or appropriate. Within thirty (30) days following receipt of Administrator’s comments, if any, or the end of forty-five (45) days following Administrator’s receipt of the proposed Operator Training Program, if Administrator has no comments, Operator shall submit to Administrator for its review and approval the revised Operator Training Program incorporating or rejecting any of the modifications or changes suggested by Administrator, together with an explanation of any of Administrator’s comments, as Operator shall reasonably deem appropriate in its sole discretion. Such Operator Training Program shall be updated by Operator, subject to review by Administrator, on an annual basis as necessary or appropriate.

(p) Procurement Manual.

(i) Promptly (and in any event within ninety (90) days) following the Effective Date, Operator shall prepare and submit to Administrator and COR3 for review and approval (with copy to the Federal Emergency Management Agency, the Department of Homeland Security Office of the Inspector General and PREB) a manual that (A) includes the agreed Organizational Conflict of Interest Policy, which shall require the use of a third-party procurement office to be retained by the Administrator through an independent procurement process, whom shall be tasked with conducting all procurement processes where there is a possible organizational conflict of interest and of administering any and all contracts where there is an organizational conflict of interest (for the avoidance of doubt, Operator shall not participate in the procurement of the third-party procurement office) and (B) describes (i) the procurement guidelines to be applied to the procurement of any new or replacement, or modifications, amendments, renewals and extensions of any Subcontract or Facility Contract (including Capital Spare Parts and Spare Parts, but excluding Operator-funded capital improvements that do not involve the installation of equipment that becomes a part of the system at a Legacy Generation Asset), which guidelines shall aim to ensure that such procurement processes remain competitive, fair and transparent, (ii) the contractual provisions to be included in any new or replacement Facility Contract, including any contract relating to Owner-funded capital improvements (whether federally or non-federally funded), or any other Facility Contract involving federal funding and (iii) procedures for contract administration and oversight, including standards and methods for (1) avoiding acquisition of unnecessary or duplicative items, (2) granting awards to responsible contractors, (3) maintaining records of procurement history, (4) managing time-and-materials contracts, (5) resolving disputes, (6) selecting transactions for procurement, (7) conducting technical evaluations, (8) providing for oversight by Owner and Administrator and (9) Operator’s reporting requirements thereunder (such

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manual, the “Procurement Manual”). Except as otherwise provided herein, the Procurement Manual shall comply with Prudent Industry Practice and Applicable Law in all respects, including, to the extent applicable, federal regulations and any applicable procurement rules set forth in 2 C.F.R. Part 200. For the avoidance of doubt procurement requirements that would otherwise apply to Owner under Act No. 83 of May 2, 1941 (including any rules or regulations issued thereunder) or Act 38 (including those relating to approval process and judicial review) shall not be applicable.

(ii) Upon receipt of the Procurement Manual prepared in accordance with clause (i), Administrator, acting reasonably and in consultation with COR3 and PREB (each of which shall provide comments no later than thirty (30) days following receipt of a copy of the Procurement Manual), shall provide Operator comments on the proposed Procurement Manual including any changes or modifications it believes are necessary or appropriate.

(iii) Within thirty (30) days following receipt of Administrator’s consolidated comments, if any, Operator shall submit to Administrator and COR3 (with copy to PREB) the revised Procurement Manual, incorporating the feedback from Administrator, COR3 and PREB. If Operator disagrees with any comment from either Administrator, COR3 or PREB, Operator will deliver with the revised Procurement Manual a written statement describing such disagreement, and the parties will meet within five (5) Business Days to seek to resolve any such disagreement and obtain Administrator and COR3’s approval of a Procurement Manual that is acceptable to Operator; provided that Operator must accept any comments from Administrator or COR3 that require measures to comply with applicable federal grant regulations.

(iv) Operator shall not procure, amend and/or enter into any new Facility Contract until (A) Administrator and COR3 approve the Procurement Manual and (B) the Service Commencement Date has occurred.

(v) Operator shall update the Procurement Manual (A) on an annual basis, (B) as necessary to reflect any changes in Applicable Law that affect any procurement and (C) upon any reasonable request from Administrator; provided that if such request may prohibit the avoidance, mitigation, or resolution of any conflict of interest identified in the Procurement Manual through the processes and procedures set forth in the Organizational Conflict of Interest Policy, then Operator shall promptly deliver to Administrator a written statement describing the possible impact on such processes and procedures, and Administrator and Operator shall meet within five (5) Business Days to discuss and agree upon a mutually acceptable update to the Procurement Manual. Such updates and other substantial changes to the Procurement Manual must be submitted to Administrator in writing no later than forty-five (45) days prior to the expected date of implementation of the revised Procurement Manual or thirty (30) days from the date of Administrator’s request (or thirty (30) days from the date of any meeting between Administrator and Operator under clause (C) above), whichever occurs first.

(q) Communications Plan. No later than thirty (30) days after the Effective Date, Operator shall prepare and submit to Administrator an updated Communications Plan, such plan in a form satisfactory to Administrator in its reasonable discretion, that (i) demonstrates a thorough understanding of the Commonwealth’s communications landscape, (ii) describes systems to ensure that communication to Governmental Bodies, public officials, regulators, local municipalities and counties, employees, the media, the general public, and other such Persons as

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appropriate, is timely, effective, efficient and consistent, (iii) has been developed and will be implemented by the services of a communications team, which services may be contracted from a communications firm or consultant with expertise and experience in the areas of communications strategies, media relations, crisis management, relations with different public entities and stakeholders, public affairs and government relations, advertising, digital platforms, and community relation, and (iv) identifies the key personnel that will oversee and implement such plan, provided that such personnel must include spokesperson(s) fluent in Spanish to manage the Operator's communications. Operator shall coordinate with Administrator on all such communications and shall update the Communications Plan (x) on an annual basis and (y) upon reasonable request from Administrator. Such updates and other substantial changes to the Communications Plan must be submitted to Administrator in writing no later than forty-five (45) days prior to the expected date of implementation of the revised Communications Plan. The Parties agree that the Communications Plan will include a requirement that Owner's and Administrator's senior representatives attend, and Administrator shall request that senior representatives of the FOMB, the PREB and the T&D Operator attend, an in-person bimonthly (*i.e.*, every other month) meeting, it being the intent of the Parties to communicate and coordinate effectively on a regular basis with a view towards optimizing performance, operation and maintenance of the Legacy Generation Assets.

(r) Invoice Review and Approval Procedures Manual. As soon as reasonably practicable, but no less than thirty (30) days following the Effective Date, Operator and Administrator shall coordinate and develop together in good faith a manual that sets forth procedures related to the review and approval of all invoices under this Agreement.

(s) Tax Decree. Either (i) Operator shall have received a decree under Act 60, Section 2071.01, 13 L.P.R.A., Section 45651, with respect to all payments for services received pursuant to this Agreement on terms reasonably acceptable to Operator (the "Tax Decree"), to the extent that Operator and its Affiliates, as applicable, meet the requirements and are eligible for the matters requested in the Tax Decree or (ii) the Parties have amended this Agreement to provide that, on an after-tax basis, the amounts Operator will receive for services performed pursuant to this Agreement are at least equal to the amounts Operator would have been entitled to receive on an after-tax basis for services performed pursuant to this Agreement had the Tax Decree been granted.

(t) Fuel Optimization Plan. As soon as reasonably practicable, but not less than ninety (90) days following the Effective Date, Operator shall develop and submit to Administrator a plan intended to take effect from the Service Commencement Date and describing the Fuel Cost Savings Initiatives and outlining the expected methods and estimated fuel savings to be achieved during the Term of the Agreement (the "Fuel Optimization Plan"). Administrator, acting reasonably, shall provide Operator comments on the appropriateness of the proposed Fuel Optimization Plan and recommend any changes or modifications it believes are necessary or appropriate. Within thirty (30) days following receipt of Administrator's comments, if any, or the end of forty-five (45) days following Administrator's receipt of the proposed Fuel Optimization Plan, if Administrator has no comments, Operator shall submit to PREB for its review and approval the revised Fuel Optimization Plan, incorporating the feedback from Administrator. If Operator disagrees with any comment from Administrator, Operator will deliver with the revised Fuel Optimization Plan a written statement describing such disagreement, and the parties will meet

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within five (5) Business Days to seek to resolve any such disagreement and obtain Administrator's approval of a Fuel Optimization Plan that is acceptable to Operator. Operator shall update the Fuel Optimization Plan (A) on an annual basis, (B) as necessary pursuant to Section 2.3(c) (*Term – Reduction*) and (C) upon any order from PREB or reasonable request from Administrator. Notwithstanding anything to the contrary herein, Operator's submission of the Fuel Optimization Plan to the Administrator shall be sufficient to satisfy this Operator Service Commencement Date Condition; provided that, for the avoidance of doubt, the Fuel Optimization Plan shall not be effective until approved by Administrator and PREB pursuant to this Section 4.2(t) (*Operator Responsibilities – Fuel Optimization Plan*).

(u) Federally Funded Generation Project Plan. As soon as reasonably practicable, but not less than ninety (90) days following the Effective Date, Operator shall develop and submit to Administrator and COR3 a plan of action intended to take effect from the Service Commencement Date and, taking into account the Integrated Resource Plan, listing and describing those projects proposed by Operator for priority in the receipt of any funding for the Legacy Generation Assets received or to be received by or for the benefit of Owner from any U.S. federal agency (the "Federally Funded Generation Project Plan"). Within thirty (30) days following its receipt of such proposed Federally Funded Generation Project Plan, Administrator, acting reasonably and in consultation with COR3 (which shall provide comments no later than thirty (30) days following its receipt of such proposed Federally Funded Generation Project Plan), shall provide Operator comments on the appropriateness of the proposed Federally Funded Generation Project Plan including any changes or modifications it believes are necessary or appropriate. Within thirty (30) days following receipt of Administrator's comments, if any, or the end of forty-five (45) days following Administrator's receipt of the proposed Federally Funded Generation Project Plan, if Administrator has no comments, Operator shall submit to PREB and COR3 (with copy to the Federal Emergency Management Agency and the Department of Homeland Security Office of the Inspector General) the revised Federally Funded Generation Project Plan, incorporating the feedback from Administrator and COR3. If Operator disagrees with any comment from either Administrator or COR3, Operator will deliver with the revised Federally Funded Generation Project Plan a written statement describing such disagreement, and the parties will meet within five (5) Business Days to seek to resolve any such disagreement and obtain Administrator and COR3's approval of a Federally Funded Generation Project Plan that is acceptable to Operator. Such Federally Funded Generation Project Plan shall be updated by Operator, subject to review by Administrator and COR3, on an annual basis as necessary or appropriate. Notwithstanding anything to the contrary herein, Operator's submission of the Federally Funded Generation Project Plan to the Administrator shall be sufficient to satisfy this Operator Service Commencement Date Condition; provided that, for the avoidance of doubt, the Federally Funded Generation Project Plan shall not be effective until approved by Administrator and COR3 pursuant to this Section 4.2(u) (*Operator Responsibilities – Federally Funded Generation Project Plan*).

(v) Annual Performance Test. No later than sixty (60) days prior to the Target Service Commencement Date, and in accordance with the Gridco-Genco-Hydroco Operating Agreement, Operator shall coordinate with T&D Operator to submit to PREB, for its review and approval, the procedures for the Annual Performance Test developed pursuant to the PREPA-Genco-Hydroco Operating Agreement. Within thirty (30) days following its receipt of such procedures, PREB, acting reasonably, shall provide Operator and T&D Operator comments on the



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appropriateness of the proposed procedures and recommend any changes or modifications it believes are necessary or appropriate. If PREB does not deliver such comments during such thirty (30) day period, it shall be deemed to have agreed with the procedures for the Annual Performance Test.

**Section 4.3** Owner and Administrator Responsibilities. As soon as practicable after the Effective Date but in any event prior to the Target Service Commencement Date and at such time and in such manner as to permit Operator to perform its obligations under Section 4.2 (*Operator Responsibilities*), Owner and Administrator shall, at Owner's sole cost, satisfy the following conditions precedent (i) to Operator's obligations to take over the O&M Services and other rights and responsibilities with respect to the Legacy Generation Assets pursuant to Section 4.7(b) (*Closing the Mobilization Period – Establishment of Service Commencement Date*) and (ii) to the occurrence of the Service Commencement Date:

(a) Representations. The representations of Owner set forth in Section 20.1 (*Representations and Warranties of Owner*) shall be true and correct in all material respects as of the Service Commencement Date as if made on and as of the Service Commencement Date (other than any representations that are expressly made as of an earlier date), and Owner shall deliver to Operator a certificate of an authorized officer to that effect.

(b) Access. Owner shall provide Operator, its Subcontractors, if any, and their Representatives with access to the Legacy Generation Assets and the Generation Sites for the sole purpose of performing the Mobilization Services in accordance with the terms hereof.

(c) Initial O&M Budget. Administrator shall provide Operator with the Initial O&M Budgets as soon as practicable following the Effective Date, which Initial O&M Budgets shall have been prepared in accordance with the PREPA-Genco-Hydroco Operating Agreement, approved by PREB and shall reflect the then applicable Rate Order, in the case of the Operating Budget, and the then-current Fuel Adjustment Clause, in the case of the Fuel Budget.

(d) Additional Facility Contracts Between Effective Date and Service Commencement Date. During the Mobilization Period, the Parties agree that it is the intent that Owner and Administrator shall not amend or enter into any new Facility Contracts; provided, however, that:

(i) if Owner and Administrator identify a need to do so, then Administrator shall notify Operator of such need and coordinate with Operator to implement any such amendment or new Facility Contract; provided that as part of such consultation process the Parties shall review the impact of any such amendment or new Facility Contract on the Initial O&M Budgets; and

(ii) following such consultation process, Administrator shall ultimately determine if such amendment or new Facility Contract is required; provided that such amendment or new Facility Contract shall not be entered into if it causes Operator to exceed the Initial O&M Budgets.

(e) Notices with respect to Facility Contracts. Owner shall (i) notify each counterparty to a Facility Contract in writing of Owner's delegation of authority to Operator with

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respect to such Facility Contract in the manner contemplated by Section 5.2(a) (*Facility Contracts – Generally*) and (ii) have obtained all required consents from such counterparties as may be required thereby in connection with such delegation of authority and (iii) take all such other actions as may be necessary for Operator to be able to comply with its obligations under Section 5.2(a) (*Facility Contracts – Generally*).

(f) Mobilization Plan. Owner and Administrator shall perform all obligations of Owner and Administrator agreed in the Mobilization Plan.

(g) Labor.

(i) Owner and Administrator shall use commercially reasonable efforts to provide Operator the opportunity to hire Owner Employees in a manner consistent with the Proposal submitted by Operator or its Affiliate.

(ii) Owner shall make good faith efforts to make Owner Employees available to support the Mobilization Plan upon Operator's reasonable request, including for training and consultation in connection with the Operations and Maintenance Procedures and the Safety and Hazardous Materials Procedures Manual.

(h) Service Accounts. Owner shall provide evidence satisfactory to Operator that it has opened the Service Accounts and that each Service Account shall have been funded by such date and in an amount not less than the amount required to be funded in accordance with Section 7.6 (*Service Accounts*).

(i) Consumables, Spare Parts and Capital Spare Parts.

(i) Subject to Administrator's and PREB's approval of the initial recommendation and any revised recommendation provided by Operator pursuant to Section 4.2(j) (*Operator Responsibilities – Consumables, Spare Parts and Capital Spare Parts*), Owner shall procure and deliver to the applicable Generation Site the additional Consumables, Spare Parts and Capital Spare Parts, if any, in accordance with such recommendation, to allow Operator to comply with its obligations under this Agreement for twelve (12) months following the Service Commencement Date. After such twelve (12) month period, it shall be Operator's responsibility to procure any additional, necessary Consumables and Spare Parts, and any additional, necessary Capital Spare Parts in accordance with Section 5.6 (*Option to Propose Capital Spare Parts and Capital Improvements*), in each case in accordance with the then-approved Operating Budget.

(ii) For the avoidance of doubt, title to the Consumables, Spare Parts and Capital Spare Parts shall remain vested in, or be vested in, Owner at all times.

(j) Delivery of Fuel.

(i) Subject to Operator recommending quantities in accordance with the Operations and Maintenance Procedures, which shall specifically detail the manner in which necessary quantities of Fuel shall be determined and delivered, Owner shall procure and supply the initial delivery of Fuel to each Legacy Generation Asset sufficient to allow Operator to comply

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with its obligations under this Agreement for two (2) months after the Service Commencement Date.

(ii) For the avoidance of doubt, title to Fuel shall remain vested in, or be vested in, Owner at all times.

(k) [Reserved].

(l) Procurement Manual. No later than thirty (30) days following Administrator's and COR3's approval of the Procurement Manual prepared by Operator in accordance with Section 4.2(p) (*Operator Responsibilities – Procurement Manual*), Owner shall acknowledge in writing that, after the Service Commencement Date, such approved and agreed Procurement Manual shall govern any procurement of any new or replacement, or modifications, amendments, renewals and extensions of any, Facility Contract (including contracts for Capital Spare Parts, Spare Parts, certain specified Subcontractor services, and any contract relating to Owner-funded capital improvements (whether federally or non-federally funded)), or any other Facility Contract involving federal funding.

(m) Identification of Facility Contracts. From and after the Effective Date, but in any event by the date that is one hundred twenty (120) days following the Effective Date, Operator, Administrator and Owner shall together identify all material existing Facility Contracts and provide Operator and Administrator with copies thereof.

(n) Approval of Fuel Contracts. During the Mobilization Period, each (i) procurement process related to the renewal of existing, or entry into new Fuel Contracts, (ii) nominations or similar actions under existing Fuel Contracts, (iii) decisions or actions to terminate, issue penalties, amend or otherwise modify or extend the term related to existing Fuel Contracts shall require the prior written consent of the Operator, not to be unreasonably withheld, conditioned, or delayed, in a manner consistent with the Mobilization Plan; provided that, in each of clauses (i), (ii) and (iii), Operator shall only have such consent right over a Fuel Contract that (x) has a term of twelve (12) months or longer and (y) the termination of which would result in a material termination payment by Owner or result in a material loss of volume in Owner's fuel supply.

**Section 4.4** Governmental Approvals and Tax Matters. Except as otherwise provided herein, the Parties intend that all Governmental Approvals shall continue to name Owner as the permittee or applicant and that Operator shall only be a permittee, applicant, co-permittee or co-applicant if and to the extent required by Applicable Law or the terms of such Governmental Approval. Promptly following the Effective Date, Administrator and Owner shall coordinate to identify the Governmental Approvals required for the commencement on the Service Commencement Date of the O&M Services (the "Commencement Date Governmental Approvals"). Once the Parties have identified the Commencement Date Governmental Approvals: (i) (A) Operator shall coordinate with Owner and Administrator to prepare for and support Owner's efforts related to the transfer or assignment, to the extent required by Applicable Law, or the reissuance or assistance with the issuance of the Commencement Date Governmental Approvals, (B) Owner, with Operator's assistance, shall submit complete applications and take all other steps necessary under Applicable Law to obtain and maintain all required Commencement

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Date Governmental Approvals and (C) Owner shall provide Operator and Administrator with copies of any such Commencement Date Governmental Approvals; and (ii) Operator and Administrator shall cooperate with Owner in good faith in identifying, preparing, applying for, obtaining and maintaining the Commencement Date Governmental Approvals.

**Section 4.5** Conditions Precedent to Service Commencement Date. The Service Commencement Date shall not occur, and the obligations of the Parties to proceed with their respective obligations hereunder on, and after, the Service Commencement Date shall not commence, until all of the following conditions precedent (the “Service Commencement Date Conditions”) are, unless otherwise mutually agreed between the Parties in writing, either satisfied as determined, or waived in writing, by (i) Administrator, in the case of Section 4.5(a) (*Conditions Precedent to Service Commencement Date – Operator Responsibilities*), except for Section 4.2(s) (*Operator Responsibilities – Tax Decree*), (ii) Operator, in the case of (x) Section 4.2(s) (*Operator Responsibilities – Tax Decree*) and (y) Section 4.5(b) (*Conditions Precedent to Service Commencement Date – Owner and Administrator Responsibilities*) or (iii) both Administrator and Operator, in the case of Section 4.5(c) (*Conditions Precedent to Service Commencement Date – Governmental Approvals*), Section 4.5(d) (*Conditions Precedent to Service Commencement Date – Acceptability and Effectiveness of Documents*), Section 4.5(e) (*Conditions Precedent to Service Commencement Date – No Governmental Prohibitions or Injunctions*), Section 4.5(f) (*Conditions Precedent to Service Commencement Date – Initial O&M Budgets*), and Section 4.5(g) (*Conditions Precedent to Service Commencement Date – Delivery of Fuel*).

(a) Operator Responsibilities.

(i) Operator shall have fulfilled the Operator Service Commencement Date Conditions with respect to the Mobilization Period;

(ii) Operator shall have executed the joinder agreement to the PREPA-Genco-Hydroco Operating Agreement, and executed or agreed to, as applicable, the System Operation Principles and the Agreed Operating Procedures attached thereto; and

(iii) As of the date of satisfaction of all Service Commencement Date Conditions, the Critical Employee Positions have been filled in a manner consistent with the Mobilization Plan.

(b) Owner and Administrator Responsibilities.

(i) Owner and Administrator shall have fulfilled all of their respective obligations with respect to the Mobilization Period under this Agreement, including Section 4.3 (*Owner and Administrator Responsibilities*) (the “Owner Service Commencement Date Conditions”).

(ii) Administrator and COR3 shall have approved a Procurement Manual acceptable to Operator in accordance with Section 4.2(p) (*Operator Responsibilities – Procurement Manual*) and Owner has submitted to Operator a written acknowledgement that such Procurement Manual shall apply as contemplated by Section 4.3(l) (*Owner and Administrator Responsibilities – Procurement Manual*).

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(iii) Administrator and any other applicable Governmental Bodies shall have approved the Operations and Maintenance Procedures developed by Operator pursuant to Section 4.2(m) (*Operator Responsibilities – Operations and Maintenance Procedures*).

(iv) Evidence reasonably satisfactory to Operator that an amount equal to at least the applicable amount set forth in Section 7.6 (*Service Accounts*) has been deposited by Owner in each Service Account has been provided.

(v) An update of the Baseline Environmental Study, reasonably identifying Pre-Existing Environmental Conditions that present a risk of material liability as of the date set forth in such updated study, shall have been completed and provided to Operator in final form.

(c) Governmental Approvals. All Commencement Date Governmental Approvals shall have been issued or obtained by the Parties and shall be in full force and effect.

(d) Acceptability and Effectiveness of Documents. All of the documents and instruments identified in this Article 4 (*Mobilization Period*) shall be in form and substance reasonably satisfactory to Administrator and Operator and shall be valid, in full force and effect and enforceable against each party thereto on the Service Commencement Date. No such document, instrument or agreement shall be subject to the satisfaction of any outstanding condition precedent except those expressly waived in writing or to be satisfied after the Service Commencement Date. No party to any such document, instrument or agreement shall have repudiated or be in default thereunder, and each Party shall have received such certificates or other evidence reasonably satisfactory to it of such facts as such Party shall have reasonably requested.

(e) No Governmental Prohibitions or Injunctions. No Governmental Body shall have enacted, issued, promulgated or enforced any Applicable Law that shall be in effect, and no injunction shall be in effect, which, in each case, would make it illegal for, or otherwise prohibit or enjoin, any Party's performance of its obligations hereunder in accordance with the terms of this Agreement from and after the Service Commencement Date.

(f) Initial O&M Budgets. The Initial O&M Budgets (including any amendment thereto pursuant to Section 4.3(d) (*Owner and Administrator Responsibilities – Additional Facility Contracts Between Effective Date and Service Commencement Date*)) shall have been finalized for purposes of this Agreement in accordance with Section 4.3(c) (*Owner and Administrator Responsibilities – Initial O&M Budget*).

(g) Delivery of Fuel. Owner shall have procured and delivered the Fuel in accordance with Section 4.3(j) (*Owner Responsibilities – Delivery of Fuel*).

**Section 4.6 Mobilization Period Compensation.**

(a) Generally. As compensation for the Mobilization Services provided by Operator, Owner shall pay Operator the Mobilization Service Fee. The Mobilization Service Fee shall not be subject to any abatement, deduction, counterclaim or set-off of any kind or nature.

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(b) Mobilization Service Fee. The “Mobilization Service Fee” shall be an aggregate amount equal to: (i) (A) the hourly fully allocated cost rate for each category of Operator employee, Affiliate personnel providing Mobilization Services, as set out in Annex XI (*Mobilization Hourly Fully Allocated Rates*); *multiplied by* (B) the number of hours worked by each Operator employee or Affiliate personnel in such category providing Mobilization Services; *plus* (ii) all other reasonably necessary and documented costs and expenses incurred by Operator (without markup for Operator profit) in the course of providing the Mobilization Services and satisfying the Service Commencement Date Conditions, including the cost of any Subcontractors and/or consultants providing Mobilization Services; provided, however, that the aggregate Mobilization Service Fee shall not exceed \$15 million (the “Mobilization Service Fee Cap”). If the aggregate Mobilization Service Fee paid to Operator reaches 70% of the Mobilization Service Fee Cap, Operator shall provide notice to Administrator, and within five (5) Business Days of such notice, Operator shall meet with Administrator to discuss and review the pending Mobilization Services required to complete the Mobilization Plan and the cost thereof.

(c) Funding.

(i) Owner shall establish one or more dedicated accounts from which Owner shall draw funds from time to time to pay Operator the Mobilization Service Fee (collectively, the “Mobilization Account”). Promptly after the Effective Date (and in any event within five (5) Business Days), Operator shall deliver to Administrator, for its review and approval, an estimate of the anticipated Mobilization Service Fee for the lesser of (A) the following four and a half (4.5) months of the Mobilization Period and (B) the entirety of the Mobilization Period (such fee, the “Mobilization Period Deposit”). Within ten (10) days of delivery of such estimate, and prior to and as a condition to the commencement of any Mobilization Services, Administrator shall provide Operator evidence reasonably satisfactory to Operator that an amount equal to the Mobilization Period Deposit has been funded in the Mobilization Account by Owner. Prior to the end of each month during the Mobilization Period, Operator shall deliver to Administrator an estimate of the anticipated Mobilization Period Deposit for the applicable duration of such period. Such estimate shall include any updates to the estimated aggregate Mobilization Service Fee for the entirety of the Mobilization Period. No later than the eleventh (11th) Business Day of the following month during the Mobilization Period, the Mobilization Account shall be replenished so as to maintain a balance in the Mobilization Account at the end of each calendar month equal to such anticipated Mobilization Period Deposit (excluding from the Mobilization Period Deposit any disputed amounts with respect to the Mobilization Service Fee that remain in the Mobilization Account), and so on subsequently until the Mobilization Services conclude.

(ii) In the event a Dispute arises between Operator and Administrator in connection with Operator’s estimate of the anticipated Mobilization Service Fee, the matter shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, a “Mobilization Service Fee Estimate Dispute”).

(d) Invoices.

(i) On or prior to the tenth (10th) day of each month from the Effective Date until completion of the Mobilization Services, Operator shall submit to Administrator for its review and approval a monthly invoice describing in reasonable detail the prior calendar month’s

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Mobilization Services and the corresponding Mobilization Service Fee for such prior calendar month. All invoices shall comply with the requirements set forth in Section 9.2(c) (*Anti-Corruption and Sanctions Laws – Policies and Procedures*) and shall include evidence of the certifications required by Commonwealth contractor requirements, among others.

(ii) Operator shall provide promptly to Administrator such additional supporting documentation evidencing the provision of the Mobilization Services, if any, including evidence of the payment of any Subcontractor whose fees are included in the Mobilization Service Fee, and the calculation of the Mobilization Service Fee related thereto, and a copy of the agreements with any Subcontractor, as Administrator may reasonably request and as may be required by Applicable Law. To the extent reasonably necessary for Administrator to complete its review of the applicable invoice, upon Administrator's request such additional supporting documentation shall include any relevant Confidential Information. Administrator shall promptly, but under no circumstance in excess of twenty (20) days after receipt of the invoice, advise Operator of any disputed invoice amounts, and all such disputes which Operator and Administrator are unable to resolve shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, a "Mobilization Service Fee Dispute").

(iii) Payments of undisputed amounts under any invoice for Mobilization Service Fees shall be due within thirty (30) days of Administrator's receipt of such invoice. Owner's sole responsibility with respect to all invoices shall be payment of undisputed amounts and shall not include review of any invoice.

(iv) All invoices and supporting documentation shall be provided by electronic transmission upon Administrator's request.

(e) Audits. At any time and from time to time during and until the expiration of six (6) years following the end of the Mobilization Period, Administrator may, upon reasonable prior notice, Audit (or cause to be Audited) the books and records of Operator or any Subcontractor in connection with any requests for payment of the Mobilization Service Fee, together with the supporting vouchers and statements, and the calculation of the Mobilization Service Fee. Subject to the dispute resolution provisions in Article 15 (*Dispute Resolution*), each payment made by Owner hereunder shall be subject to subsequent adjustment. Following the determination that any such payment adjustment is required, the Party required to make payment shall do so within thirty (30) days of the date of such determination.

### **Section 4.7** Closing the Mobilization Period.

(a) Notice of Service Commencement Date. Operator shall provide Administrator with prompt written notice (with a copy to PREB), including a completed Handover Checklist, at such time as Operator determines it has satisfactorily completed all items on the Handover Checklist and is therefore ready to perform all O&M Services under this Agreement. Such notice shall include the total number of Operator Employees, together with a breakdown between Hired Former Employees of Owner and Other Employees. Administrator shall respond within ten (10) Business Days whether Administrator confirms or disputes the completion of any item on the Handover Checklist, together with a written statement providing reasonable detail and supporting evidence for the basis of any dispute. In the event Administrator disputes completion

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of any item(s) on the Handover Checklist, Operator may advise Owner of its disagreement with Administrator's decision. The Parties shall attempt to resolve in good faith any disputed item(s) and, in the event the Parties are unable to resolve such disputed item(s) within thirty (30) days, such disputed item(s) only shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, a "Handover Checklist Dispute").

(b) Establishment of Service Commencement Date. The "Service Commencement Date" shall be the date on which a handover to Operator of the O&M Services occurs, which shall be (i) the first (1st) Business Day of a calendar month that is at least three (3) Business Days following the date on which Administrator delivers a certificate to Operator confirming that all Service Commencement Date Conditions have been met or (ii) such other date as the Parties may agree. The satisfaction or waiver by Owner, Operator, or Administrator of all the Service Commencement Date Conditions applicable to each of them is required for the achievement of the Service Commencement Date.

### **Section 4.8** Failure of Service Commencement Date Conditions.

(a) Remedy for Delay of Service Commencement Date Conditions. If any of the Operator Service Commencement Date Conditions are not satisfied or waived by Administrator on or before the date that is ninety (90) days following the Target Service Commencement Date or such other later date as Administrator and Operator may agree (such date, the "Delay Period Date"), and the failure to satisfy any outstanding Operator Service Commencement Date Condition(s) is not caused by any Force Majeure Event or Owner Fault, and the other Service Commencement Date Conditions have been or are immediately capable of being satisfied or waived by the Delay Period Date, Operator shall pay to Owner, as Owner's sole and exclusive remedy for all monetary damages, costs, Losses and expenses of whatever type or nature arising from or related to such failure of Operator Service Commencement Date Conditions to occur by the Delay Period Date, liquidated damages (the "Delay Liquidated Damages"), calculated from the first Business Day immediately following the Delay Period Date, in the amount of US\$1 million per week for each week (or for any portion of a week on a Pro Rata basis) the Target Service Commencement Date is delayed beyond the Delay Period Date, up to a maximum of US\$15 million. Operator shall not be required to pay Delay Liquidated Damages after the earlier of (i) the date on which the Operator Service Commencement Date Conditions are satisfied by Operator or waived by Administrator or (ii) the date of termination of this Agreement pursuant to Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*); provided that Operator shall pay any accrued and unpaid Delay Liquidated Damages as of such earlier date. It is understood and agreed by the Parties that if any of the Operator Service Commencement Date Conditions are not satisfied or waived by the Delay Period Date, Owner's damages would be difficult or impossible to quantify with reasonable certainty, and accordingly, the payment provided for in this Section 4.8(a) (*Failure of Service Commencement Date Conditions – Remedy for Delay of Service Commencement Date Conditions*) is a payment of liquidated damages (and not penalties), which is based on the Parties' estimate of damages Owner would suffer or incur. Operator hereby irrevocably waives any right it may have to raise as a defense that the Delay Liquidated Damages are excessive or punitive.

(b) Termination for Failure of Service Commencement Date Conditions.



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(i) Administrator shall have the right, subject to approval by PREB, to terminate this Agreement upon not less than thirty (30) days' prior written notice to Operator if all of the Owner Service Commencement Date Conditions are satisfied but any of the Operator Service Commencement Date Conditions are not satisfied by Operator or waived by Administrator (unless such failure to satisfy the Operator Service Commencement Date Conditions is the result of the acts, omissions or breach of Owner) by the date that is six (6) months following the Target Service Commencement Date or such later date as Administrator and Operator may agree.

(ii) Operator shall have the right to terminate this Agreement upon not less than thirty (30) days' prior written notice to Administrator (with copy to PREB) if all of the Operator Service Commencement Date Conditions are satisfied but any of the Owner Service Commencement Date Conditions are not satisfied by Owner or waived by Operator (unless such failure to satisfy the Owner Service Commencement Date Conditions is the result of the acts, omissions or breach of Operator) by the date that is six (6) months following the Target Service Commencement Date or such later date as Administrator and Operator may agree.

(iii) Each of Administrator and Operator shall have the right to terminate this Agreement upon not less than thirty (30) days' prior written notice to Operator or Administrator (with copy to PREB), respectively, if any of the Service Commencement Date Conditions (other than those referred to in Section 4.8(b)(i) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*) and Section 4.8(b)(ii) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*)) are not satisfied or waived by each of Administrator and Operator by the date that is nine (9) months following the Target Service Commencement Date or such later date as Administrator and Operator may agree.

(iv) Notwithstanding anything to the contrary in this Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*), if the Service Commencement Date Conditions are satisfied or waived prior to any such termination right being exercised, then neither Administrator nor Operator shall have the right to terminate this Agreement pursuant to this Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*).

(v) In the event of the termination of this Agreement pursuant to this Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*), (A) Operator shall retain any Mobilization Service Fee earned as of the effective date of such termination, and shall within five (5) Business Days of the effective date of such termination, return to Administrator any amounts held in the Mobilization Account in excess of any earned Mobilization Service Fee and (B) Operator shall pay any accrued and unpaid Delay Liquidated Damages as of the effective date of such termination. This Agreement (other than with respect to the aforementioned payment obligations and any limitations on liability set out elsewhere in this Agreement, each of which shall continue in effect) shall thereafter become void and have no effect, without any liability on the part of any Party or its Affiliates or Representatives in respect thereof, except that nothing herein shall relieve any party from liability that cannot be waived as a matter of Applicable Law, claims of fraud or intentional breach or misrepresentation; provided that, in any such event, the limitations of liability specified

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in this Agreement (including Section 14.6(d) (*Remedies Upon Early Termination – Additional Remedies*) and Section 19.3 (*Limitation on Liability*)), Article 15 (*Dispute Resolution*), and Article 21 (*Miscellaneous*) shall, notwithstanding the foregoing, continue to apply. Furthermore, the remedies provided in this Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*) shall be the sole and exclusive remedies of the Parties for any termination of this Agreement pursuant to Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*).

(vi) In addition to and notwithstanding anything to the contrary in this Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*), in the event this Agreement is terminated prior to the Service Commencement Date other than as a result of the acts, omissions or breach of Operator, Operator shall be reimbursed for any reasonable and documented costs and expenses incurred by Operator (without markup for Operator profit) that are necessary and reasonable in the course of terminating the activities undertaken in connection with the Mobilization Services, including reasonable and documented breakage fees for any Subcontractors providing Mobilization Services.

(c) Effect of Force Majeure Events or Owner Fault. The dates in Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*) shall each be extended on a day-for-day basis for the period of any Force Majeure Event or any Owner Fault (except in the case of clauses (ii) and (iii) of Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*), in which case Owner shall not receive any such extension where the delay is caused by any Owner Fault).

## Article 5 O&M SERVICES

**Section 5.1** Services Generally. Commencing on the Service Commencement Date, and in exchange for Owner's payment to Operator of all amounts owing to Operator under this Agreement, Operator shall (i) provide management, operation, maintenance, repair, restoration, replacement and other related services for the Legacy Generation Assets, as well as any optimization (including fuel and efficiency) approved by PREB, in each case that are customary and appropriate, or as required by Applicable Law, including the services set forth in this Article 5 (*O&M Services*) and Annex IX (*Scope of Services*), and (ii) establish policies, programs and procedures with respect thereto, to the extent not already established in the Services Documentation (all such services, the "O&M Services"), in each case, in accordance with the Contract Standards and Applicable Law. It is the Parties' intent that except for the rights and responsibilities reserved to Owner and Administrator as set forth in Article 6 (*Rights and Responsibilities of Owner and Administrator*) or as may otherwise be expressly provided in this Agreement, Operator shall (A) be entitled to exercise all of the rights and perform the responsibilities of Owner in providing the O&M Services, and (B) have the autonomy and responsibility to operate and maintain the Legacy Generation Assets and establish the related plans, policies, procedures and programs with respect thereto as provided in this Agreement. In

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providing such O&M Services, Operator must comply with all requirements of Applicable Law, including the requirements of the Consent Decree.

### **Section 5.2** Facility Contracts.

(a) Generally. Operator, as agent for and on behalf of Owner, shall administer and perform Facility Contracts, if any, and Owner's payment obligations thereunder, which shall be an expense that is paid by Operator as a Pass-Through Expenditure in accordance with Section 7.6(g) (*Service Accounts – Use of Funds by Operator*). Notwithstanding the foregoing but subject to the Contract Standards, (i) Operator shall administer and perform Owner's rights and obligations under such Facility Contracts in such a manner so as not to expand or increase the liabilities assumed by Owner thereunder, other than with respect to an amendment, renewal or expansion of existing Facility Contracts as required to provide the O&M Services or Decommissioning Services hereunder and (ii) Owner shall administer and perform any rights and obligations under such Facility Contracts to the extent that Applicable Law requires Owner's performance of such functions or Applicable Law or such Facility Contract prohibits Owner from delegating such functions. Owner hereby authorizes Operator to enforce Owner's rights under any such Facility Contracts. In the event that the cost of administering and performing Owner's rights and obligations, including enforcement, for any Facility Contract exceeds \$1,000,000, then such costs shall be subject to approval by Administrator, such approval not to be unreasonably withheld, delayed or conditioned.

(b) Agent Designation. Owner hereby designates and appoints Operator as its agent, and Operator hereby accepts such designation and appointment, for the purpose of entering into Facility Contracts on behalf of and for the account of Owner, as may be necessary or appropriate to operate, maintain and/or decommission the Legacy Generation Assets and to make such additions and extensions thereto in accordance with the terms of this Agreement.

(c) Powers. In such capacity as Owner's designated agent pursuant to Section 5.2(b) (*Facility Contracts – Agent Designation*), Operator shall have full power and authority to act on Owner's behalf and to legally bind Owner, subject, in each case, to (i) Operator's action in such regard being consistent with Prudent Industry Practice and (ii) Owner's rights and responsibilities provided in Section 6.1 (*Rights and Responsibilities of Owner*) and the other terms of this Agreement. Operator and Owner shall promptly implement such policies and procedures as may be necessary or appropriate to effect the activities contemplated by this Section 5.2 (*Facility Contracts*) and to separately identify and segregate the equipment, material, supplies and services that Operator is purchasing as agent of Owner from those Operator (or its Affiliates) may be purchasing for its own or another Person's account. Where necessary or required by a Governmental Body or other Person, Operator and Owner shall execute and deliver such instruments, agreements, certificates or other evidence confirming Operator's designation, appointment and authority to act as Owner's agent as provided in this Section 5.2 (*Facility Contracts*) and confirming that the Facility Contracts are entered into on Owner's account.

(d) Additional Facility Contracts or Expired Facility Contracts After Service Commencement Date. After the Service Commencement Date, if any Facility Contracts are required: (i) for the operation, maintenance and/or decommissioning of the Legacy Generation Assets or to comply with the provisions of this Agreement or Contract Standards or (ii) to replace

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any existing Facility Contract that has expired or has been terminated, then, in each case, Operator shall be responsible for obtaining such Facility Contract in Owner's name, on Owner's behalf and for Owner's account; provided that (x) any new or replacement Facility Contract shall be procured in accordance with the Procurement Manual, (y) any new or replacement Facility Contract that provides for payments in excess of US\$1,000,000 in any Contract Year or US\$3,000,000 in the aggregate (each a "Material Facility Contract") shall be subject to approval by Administrator, such approval not to be unreasonably withheld, delayed or conditioned, following which such proposed Facility Contract shall be executed by Owner and (z) a Tax Opinion and a Reliance Letter shall have been obtained, at the expense of Owner, with respect to any new, extended, amended or replacement Facility Contract that is a Covered Contract. For the avoidance of doubt, Operator, as agent for Owner, may procure new or replacement Facility Contracts in a manner consistent with the Procurement Manual, provided that procurement requirements that would otherwise apply to Owner under Act No. 83 of May 2, 1941 (including any rules or regulations issued thereunder) or Act 38 (including those relating to approval process and judicial review) shall not be applicable. Administrator shall not withhold approval of any Material Facility Contract based on a conflict of interest that Operator has mitigated, avoided or otherwise resolved in accordance with the Procurement Manual.

(e) Reporting Obligations. Operator shall on or about the tenth (10th) Business Day of each Contract Year provide to Administrator a report documenting each Material Facility Contract and Material Subcontractor, which report shall include the name of the third party, the term, if applicable, of the Facility Contract or Subcontract, a description of the services or goods to be procured and the estimated amount payable thereunder.

(f) Conditions on Term. Any Facility Contract entered into by Operator on behalf of Owner in connection with the O&M Services and/or the Decommissioning Services, and contracts with Subcontractors, shall, unless otherwise approved in writing by Administrator, such approval not to be unreasonably withheld, delayed or conditioned, either (i) be for a term that is no longer than the Term or (ii) provide that such contract is terminable at will (subject to any notice requirements) from and after the end of the Term, without cost or penalty. As permitted by Section 6(d)(ii) of Act 120, Facility Contracts for the provision of professional or consulting services (as defined in Act 237) entered into by Operator on behalf of Owner shall not be subject to the limitations on term established in Article 3(F.) of Act 237.

### **Section 5.3** Facility Regulatory Matters.

(a) Generally. From the Service Commencement Date and during the duration of the Term thereafter, solely with respect to the Legacy Generation Assets, Operator shall function as agent of Owner, and Owner may request Operator to (i) represent Owner before PREB with respect to any matter related to the performance of any of the O&M Services provided by Operator under this Agreement, (ii) prepare all related filings and other submissions before PREB and (iii) represent Owner before any Governmental Body and any other similar industry or regulatory institutions or organizations having regulatory jurisdiction, in each case in consultation with T&D Operator, if deemed necessary by Operator. For the avoidance of doubt, Operator's responsibilities under this Section 5.3 (*Facility Regulatory Matters*) shall not include any matters related to PREPA's debt obligations, including any obligations pursuant to federal tax or securities laws.

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(b) Applications and Submittals. Operator, as agent of Owner, shall cooperate with T&D Operator, as necessary, to make all filings and applications and submit all reports necessary to (i) comply with Applicable Law and Governmental Approvals, and (ii) obtain and maintain all Governmental Approvals in the name of Owner or, if required by Applicable Law, Operator. Owner and Administrator shall cooperate with Operator and, as necessary, T&D Operator, in fulfilling all such obligations under this Agreement including in this Section 5.3 (*Facility Regulatory Matters*), including by promptly (and in any event within fifteen (15) Business Days or such shorter time as may be required by Applicable Law, a Governmental Approval or a Governmental Body) providing any necessary information to Operator, executing, signing or endorsing such applications, reports, submissions, or other related documents as Operator may reasonably request, and making all such filings and applications and submitting such reports requested by Operator in cases where Applicable Law does not permit Operator to do so. With respect to Governmental Approvals that are obtained or maintained in the name of Owner, Operator shall: (i) prepare the application and develop and furnish all necessary supporting material, data and information that may be required; (ii) familiarize itself with the terms and conditions of such Governmental Approvals; (iii) attend all meetings and hearings required to obtain such approvals; and (iv) take all other action necessary or otherwise reasonably requested by Administrator in order to assist and support Owner in obtaining, maintaining, renewing, extending and complying, as may be relevant, with the terms of such Governmental Approvals. Operator shall agree to be named as a co-permittee on any Governmental Approval if so required by the issuing Governmental Body.

(c) Data and Information. All data and information required to be supplied and actions required to be taken in connection with the Governmental Approvals required for the O&M Services shall be supplied and taken by Operator on a timely basis considering the requirements of Applicable Law and the responsibilities of Owner as the legal and beneficial owner of the Legacy Generation Assets. The data and information supplied by Operator (as agent for Owner) to Owner, T&D Operator, Administrator and all regulatory agencies in connection therewith shall be correct and complete in all material respects; provided, however, that Operator shall be entitled to rely upon, and shall not be liable for, any such data and information derived from or comprising data and information supplied by or on behalf of Owner, T&D Operator or Administrator.

(d) Non-Compliance and Enforcement. Operator shall report to Administrator and PREB, in writing, as soon as possible upon obtaining knowledge thereof (but in no event more than forty-eight (48) hours (or such shorter period within which notice is required to be given to a Governmental Body under Applicable Law) after obtaining such knowledge), all violations of the terms and conditions of any Governmental Approval.

(e) Reports to Governmental Bodies. Operator, as agent for Owner, shall prepare all periodic and annual reports, make all information submittals and provide, on a timely basis, all notices to all Governmental Bodies required by all Governmental Approvals and under Applicable Law with respect to the Legacy Generation Assets; provided, however, that Operator shall be entitled to rely upon, and shall not be liable for, any such data and information derived from or comprising data and information supplied by or on behalf of Owner, T&D Operator or Administrator or from errors or omissions in such information. Such reports shall contain all information required by the Governmental Body and under Applicable Law and may be

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substantially similar or identical to comparable reports previously prepared for Administrator if such are acceptable to the Governmental Body.

(f) Opportunity for Comment. In connection with applications, reports, or submissions made to a Governmental Body under this Section 5.3 (*Facility Regulatory Matters*), Operator shall: (i) provide Administrator with a reasonable opportunity (and in any event within thirty (30) days) to comment in advance upon material written communications, filings, reports, or other writings given to any Governmental Body and consider accurate and timely provided comments in good faith, and (ii) to the extent practical, provide Administrator with a reasonable opportunity to participate in any meetings with any Governmental Body.

### **Section 5.4** Safety and Security.

(a) Safety. Consistent with the Contract Standards, Operator shall: (i) take all reasonable precautions and actions for the health and safety of, and provide all reasonable protection to prevent physical damage, bodily injury or loss as a result of the operation of the Legacy Generation Assets to, (A) all members of the public, including Persons involved in providing the O&M Services, (B) all materials and equipment used in the provision of the O&M Services and under the care, custody or control of Operator and (C) other property constituting part of the Legacy Generation Assets and under the care, custody or control of Operator; (ii) establish and enforce all reasonable applicable safeguards for health and safety and protection, including posting danger signs and other warnings against hazards and promulgating health and safety regulations; (iii) provide all notices and comply with all Applicable Law relating to the health and safety of Persons or property or their protection from physical damage, bodily injury or loss; (iv) designate qualified and responsible employees, in such numbers as Operator shall determine at its sole discretion in accordance with Prudent Industry Practice, whose duty shall be the supervision of health and safety at the Legacy Generation Assets; (v) operate all equipment in a manner consistent with the manufacturer's safety recommendations; (vi) provide for safe and orderly equipment and vehicular movement; and (vii) develop and carry out a site-specific health and safety program, including OSHA required and other employee training and periodic inspections, designed to implement the requirements of this Section 5.4(a) (*Safety and Security – Safety*). Administrator agrees that Operator may withdraw funds necessary for taking such reasonable precautions and actions in the first instance out of the Reserve Account. In the event that there are no funds on deposit in the Reserve Account, Operator shall provide written notice to Administrator of such shortfall. Until the Reserve Account is replenished, to the extent that Operator determines reasonable precautions and actions are necessary to comply with its obligations under this Section 5.4(a) (*Safety and Security – Safety*), Operator may withdraw the necessary funds from any Service Account (other than the Fuel Account); provided that, prior to any withdrawal, Operator shall provide written notice of the intended withdrawal to Administrator for its review and approval. Operator may withdraw such funds only upon either (x) receipt of Administrator's written approval or (y) Administrator's failure to provide a response within ten (10) Business Days. Such withdrawal notice shall include the amount of the withdrawal and describe the precautions and actions to be funded by such withdrawal.

(b) Security. From and after the Service Commencement Date Operator shall guard against and be responsible for as agent of Owner all physical damage to the Legacy Generation Assets in accordance with the Contract Standards, and DHS to the extent DHS has

jurisdiction, caused by trespass, theft, negligence, vandalism, malicious mischief or cyber-attacks of third parties. Operator shall guard against, and be responsible for as agent of Owner, in each case to the extent of Operator's negligence or willful misconduct, all physical damage to the Legacy Generation Assets caused by trespass, theft, vandalism or malicious mischief of third parties. Any reasonable and documented costs and expenses arising therefrom shall be treated as Pass-Through Expenditures hereunder, except to the extent such costs are Disallowed Costs.

**Section 5.5 Labor and Employment; Employee Benefits.**

(a) Employee Plans. Operator shall provide employee benefits to Operator Employees pursuant to the plans created by Operator to provide benefits to Operator Employees (collectively, the "Operator Benefit Plans"). Operator shall not assume nor shall it be responsible at any time during the term of the Agreement as provided for in Section 2.3 (*Term*) or after its termination for any obligations or debts to employees or independent contractors for any Legacy Generation Assets or Generation Sites (including of Owner under Owner's retirement plans or any benefit accruals under Owner's retirement plans) accrued or accruing with respect to any time prior to the term of the Agreement (collectively referred to as "Prior Obligations") and Owner shall protect, defend, indemnify and hold harmless Operator and its Affiliates from and against any and all Losses arising in connection with such Prior Obligations. These Prior Obligations include, but are not limited to, any amount owed or to be owed to cover benefits, accruals, and/or expenses of the Electric Power Authority Employees Retirement System approved by the Board of Directors of the Puerto Rico Electric Power Authority through the approval of Resolution 200 of June 25, 1945 in effect as of the Effective Date or any other system that replaces it in any way or form (the "PREPA Retirement System") related to all past, current and future participants, beneficiaries, employees, contractors or any other persons that are or could be entitled to the receipt or allocation of funds by any reason since the inception of the PREPA Retirement System until its termination and the extinction of all its obligations. Operator shall, pursuant to Act 29, make any employer contributions (other than Prior Obligations) required under Applicable Law to the PREPA Retirement System with respect to any Hired Former Employee of Owner who has ten (10) years or more of service accumulated prior to the Hired Former Employee's hiring date by Operator and who elects to continue participating in and making his/her individual contributions to the PREPA Retirement System. To the extent permitted by the PREPA Retirement System, any such Hired Former Employee of Owner may continue to make his/her individual contributions to the PREPA Retirement System. The payment of these employer contributions, which are considered Pass-Through Expenditures as described in Annex XII (*Pass-Through Expenditures*), shall be the only ongoing obligation of Operator as it relates to the PREPA Retirement System. This obligation shall be limited only to current amounts allocable to any Hired Former Employee of Owner participating in and contributing to such system corresponding only to their period of participation while employed by Operator during the term of the Agreement as provided for in Section 2.3 (*Term*).

(i) Hired Former Employees of Owner shall not receive credit for their service prior to the Service Commencement Date for purposes of benefit accrual except as otherwise required by Act 120.

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(ii) Operator shall exercise commercially reasonable efforts to cause the Operator Benefit Plans to waive all limitations as to pre-existing conditions, actively-at-work exclusions and waiting periods for transitioned employees (and their eligible dependents).

(b) Exclusivity. Operator shall not, without the prior written approval of Administrator (such approval not to be unreasonably withheld, delayed or conditioned), utilize Operator or its employees for any purpose other than providing the O&M Services or Decommissioning Services under this Agreement. In addition, Operator shall not hire, for any other business of Operator or an Affiliate, any existing Operator Employees without Owner's prior written consent (such consent not to be unreasonably withheld, delayed or conditioned). Owner acknowledges and agrees that this Section 5.5(b) (*Labor and Employment; Employee Benefits – Exclusivity*) applies solely to Genera PR LLC and not to any other Person (including any Affiliates or Subcontractors of Operator).

(c) Other. Other than what it is expressly provided for in Section 5.5(a) (*Labor and Employment; Employee Benefits – Employee Plans*) above (or what is necessary to effectuate what is expressly provided in Section 5.5(a) (*Labor and Employment; Employee Benefits – Employee Plans*)), nothing in this Agreement is intended to amend any employee benefit plan or affect the applicable plan sponsor's right to amend or terminate any employee benefit plan pursuant to the terms of such plan.

**Section 5.6 Capital Spare Parts and Capital Improvements.**

(a) Capital Spare Parts. From the Service Commencement Date and for the remainder of the Term thereafter, Operator shall procure, store, maintain and administer the Consumables, Spare Parts and any Capital Spare Parts, in accordance with the applicable O&M Budget then in effect; provided that during the twelve (12) months following the Service Commencement Date, Owner shall be responsible for the procurement of any additional Consumables, Spare Parts and Capital Spare Parts approved in accordance with Section 4.2(j) (*Operator Responsibilities – Consumables, Spare Parts and Capital Spare Parts*). In connection with such maintenance and administration, Operator shall conduct a physical inventory and review of all Capital Spare Parts in accordance with the Contract Standards on an annual basis. Operator shall promptly provide the results of such review to Administrator and PREB (with copy to Owner) following the completion of such review. If, pursuant to such review, Operator determines that the procurement and future installation of any replacement Capital Spare Parts (a) is necessary to allow Operator to continue to operate the respective Legacy Generation Asset to comply with its obligations under this Agreement, in accordance with the Integrated Resource Plan and the anticipated duration of the O&M Services for such Legacy Generation Asset, or (b) would improve unit availability and/or reduce fuel costs, which improvement and/or reduction would be realized within the anticipated duration of the O&M Services for such Legacy Generation Asset, then Operator shall submit a detailed recommendation of such procurement (including anticipated costs (taking into account the then-applicable Operating Budget), schedules and risk assessments in connection therewith) to Administrator and PREB (with copy to Owner) for their review and approval. Within thirty (30) days following its receipt of such recommendation, Administrator and PREB shall each provide Operator with its written approval or rejection of the recommendation. To the extent such approval is granted, Operator shall be entitled to withdraw funds from the Reserve Account to fund payment for costs in connection with such procurement and installation



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in accordance with Section 7.6(d) (*Service Accounts – Reserve Account*) and the approved recommendation. Any such procurement and installation shall be performed in accordance with Applicable Law and in a manner consistent with the Procurement Manual, provided that procurement requirements that would otherwise apply to Owner under Act No. 83 of May 2, 1941 (including any rules or regulations issued thereunder) or Act 38 (including those relating to approval process and judicial review) shall not be applicable.

(b) Capital Improvements.

(i) Operator may from time to time during the Term propose to PREB certain capital improvements, taking into account the Integrated Resource Plan and the Federally Funded Generation Project Plan, that would be (x) federally funded and owned by Owner, (y) made, owned and funded by Owner or (z) made, owned and funded by Operator or its designated Affiliate; provided, however, that no such capital improvements shall be made that would in any manner jeopardize the exclusion from gross income of interest on Owner's or its Affiliates' obligations under the Internal Revenue Code. Operator shall provide PREB, with copy to Administrator and Owner, with a description of the capital improvement in sufficient detail to enable PREB to make a fully informed assessment and analysis thereof; provided that any such proposal pertaining to Operator-owned capital improvements shall contemplate Operator having the opportunity to earn a reasonable rate of return thereon consistent with the returns permitted to be earned by companies operating in the United States generation business on similar investments. Any such proposed federally funded or Owner-owned capital improvement shall be subject to review, and approval or rejection, by PREB in accordance with Applicable Law and shall be accompanied by an opinion of tax counsel to Administrator providing that such capital improvement shall not adversely affect the exclusion from gross income of interest on obligations of Owner, its Affiliates or another Governmental Body for federal income tax purposes under the Internal Revenue Code. In reviewing any such proposed capital improvement, PREB may request additional information or reports from Operator, and may require that any such proposed capital improvement be presented as part of a rate review proceeding.

(ii) Owner shall notify Operator in writing of any Capital Improvements that may be eligible for federal funding. In such case, Owner and Operator shall cooperate with each other to address and comply with federal agency requirements, so as not to jeopardize the relevant Legacy Generation Asset's eligibility to receive federal funding. Such cooperation shall include Owner (i) providing Operator with such documents and information it requests with respect to all applicable federal funding requirements, (ii) sharing with Operator any specific requirements imposed by the relevant funding agency to maintain eligibility to receive federal funding and (iii) making requests to such federal agencies to review Owner and Operator's systems and plans to comply with federal funding requirements.

(iii) The inclusion of the provisions of this Section 5.6(b) (*Option to Propose Capital Spare Parts – Capital Improvements*) shall in no way constitute an obligation by any of PREB, Owner or Administrator to agree to or pursue any Operator-owned capital improvement or require Owner or Administrator to pay for or reimburse the cost or expenses of pursuing any proposed Operator-owned capital improvement or an obligation of Operator to propose or pursue any Operator-owned capital improvement.

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**Section 5.7** Management of Fuel and Fuel Contracts. From the Service Commencement Date and for the remainder of the Term thereafter, Operator shall source, procure and manage the nomination, transportation, delivery, supply, quality-testing, storage and handling of Fuel, manage and maintain fuel tanks, perform any required environmental reporting, and maintain and administer the Fuel Contracts, in accordance with the Contract Standards and the applicable Fuel Budget then in effect. Any renewal of an existing Fuel Contract and any procurement of a new Fuel Contract shall be subject to approval by Administrator and performed in accordance with Applicable Law and in a manner consistent with the Procurement Manual, provided that procurement requirements that would otherwise apply to Owner under Act No. 83 of May 2, 1941 (including any rules or regulations issued thereunder) or Act 38 (including those relating to approval process and judicial review) shall not be applicable. Administrator shall not withhold approval of any Fuel Contract based on a conflict of interest that Operator has mitigated, avoided or otherwise resolved in accordance with the Procurement Manual.

### **Section 5.8** Federal Funding.

(a) Generally. As among the Parties, Owner shall retain the exclusive right to any federal funds received or to be received by or for the benefit of Owner, for the repair, improvement, resiliency, construction or hazard mitigation of the applicable Legacy Generation Assets, from any U.S. federal agency, including the U.S. Federal Emergency Management Agency and the U.S. Department of Housing and Urban Development. Owner shall also own any equipment and improvements purchased using federal funds, including any funds collected from the disposition thereof.

(b) Cooperation and Participation. Owner shall cooperate, participate in and complete any and all necessary actions, and execute any and all necessary documents, to maximize the receipt of federal funds for which the Legacy Generation Assets are eligible. The Parties shall cooperate and participate with any relevant Governmental Body and any third parties, including those authorized to act as Grant Manager, to maximize, maintain, and appropriately use federal funds. The Parties shall cooperate and participate in any audits or investigations performed by Commonwealth or federal authorities in connection with federal funding.

(c) Agent Designation. Owner hereby designates and appoints Operator as Owner's agent for the purpose of requesting and expending federal funds for the repair, improvement, resiliency, construction or hazard mitigation of the applicable Legacy Generation Assets, thereby delegating Owner's rights and responsibilities with respect to communicating with agencies awarding federal funds as necessary to obtain and maintain grants of federal funds, submitting application materials to federal agencies, determining the scope of work of projects to be funded by grants of federal funds, and procuring goods and services to complete the scope of work using such grants, all in compliance with all Applicable Law and the terms of any applicable grant agreements, and subject to the oversight provisions throughout this Agreement. Operator hereby accepts such designation, appointment and delegation. Owner and Administrator shall inform applicable U.S. federal agencies of such designation, appointment and delegation, by means of a written letter substantially in the form set forth in Exhibit H (*Form of Consent to Federal Funding*). For the avoidance of doubt, Owner's designation, appointment and delegation of Operator, and Operator's entry into this Agreement, shall not be construed as authorization for Operator or any of its Subcontractors or Affiliates to act as Grant Manager. Under no

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circumstances shall Operator or any of its Subcontractors or Affiliates act as Grant Manager, except as the result of a separate and express procurement process for such services by Owner or Administrator. The Parties hereby acknowledge that the procurement process leading to the execution of this Agreement was not intended to engage a Grant Manager, and that Grant Management Services are outside of the scope of the O&M Services covered hereunder.

### **Section 5.9** Environmental, Health and Safety Matters.

Generally. Operator shall perform the following environmental, health and safety activities related to the generation of Power and Electricity: (i) managing an environmental, health and safety program for each of the applicable Legacy Generation Assets in accordance with the Safety and Hazardous Materials Procedures Manual, Environmental Law, and the Prudent Industry Practices; (ii) coordinate, oversee and maintain compliance of the Legacy Generation Assets with applicable Environmental Law, the requirements of Environmental Approvals issued and the Consent Decree, including documentation thereof; (iii) monitor emerging federal, state, Commonwealth, municipal and local Environmental Law to manage future and ongoing compliance and operational efficiencies; (iv) perform analyses of proposed Environmental Law to prepare for future compliance thereunder; and (v) provide environmental permitting services to support operations. Notwithstanding the foregoing, Operator shall not be responsible for any of the foregoing activities with respect to any Pre-Existing Contamination, all of which shall be the sole obligation of Owner, except (x) Operator shall be responsible for the foregoing activities to the extent that Operator materially exacerbates Pre-Existing Contamination, and such exacerbation is attributable to Operator's gross negligence or willful misconduct and in that event, only to the extent of such exacerbation; (y) to the extent Owner and Operator agree in writing that Operator shall assume responsibility for any of the foregoing and (z) Operator shall undertake, at Owner's expense, all required Remedial Actions with respect to Pre-Existing Contamination to the extent such Pre-Existing Contamination would reasonably be expected to result in an imminent threat to human health or the environment.

#### (a) Pre-Existing Environmental Conditions.

(i) Operator shall perform the O&M Services so as not to exacerbate any Pre-Existing Environmental Condition that is either disclosed with reasonable specificity by Owner in the Data Room, including in the Baseline Environmental Study, or is encountered or discovered by Operator after the Effective Date. Discovery of a Pre-Existing Environmental Condition not reflected in the Baseline Environmental Study, and, as may be required, its reporting to the appropriate Governmental Body by Operator shall not be deemed an exacerbation of such condition or noncompliance.

(ii) Except with respect to Pre-Existing Contamination, which Operator is required to address under the first paragraph of this Section 5.9 (*Environmental, Health and Safety Matters – Generally*), if Operator at any time identifies a Pre-Existing Environmental Condition that (A) requires Remedial Action under Applicable Law, (B) materially interferes with the performance of the O&M Services, (C) materially increases the cost of performing the O&M Services, or (D) constitutes Environmental Noncompliance, or, alternatively, receives written notice from any Governmental Body or third party asserting or claiming any such Pre-Existing Environmental Condition requires Remedial Action or constitutes Environmental Noncompliance,

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Operator shall notify Administrator and Owner of this finding by written notice and Owner shall then, as soon as reasonably practicable given the condition in question, commence and diligently prosecute such Remedial Actions as are required by Applicable Law or to prevent future material interference with the performance of the O&M Services or material increases in costs of performing the O&M Services. Operator and Owner may agree that Operator shall assume responsibility for developing and implementing any required Remedial Actions, subject to reimbursement from Owner.

(iii) Administrator shall have the right to contest any claim of a Pre-Existing Environmental Condition and shall not be required to take any action under this Section 5.9 (*Environmental, Health and Safety Matters*) so long as (A) it is contesting any determination of a Pre-Existing Environmental Condition in good faith by appropriate proceedings conducted with due diligence and (B) Applicable Law permits continued operation of the area in question for the applicable Legacy Generation Asset(s) pending resolution of the contest. In any contest regarding whether the Release of Hazardous Materials on, under, at or from the Legacy Generation Assets or Generation Sites that is discovered on or after the Effective Date is a Pre-Existing Environmental Condition, where Operator submits a sworn certification that, after due inquiry (which inquiry shall not require any further environmental studies), and to the best of its knowledge, the alleged Pre-Existing Environmental Condition did not arise from facts, circumstances, conditions, actions or omissions first occurring after the Service Commencement Date, then Owner shall bear the burden of proof by a preponderance of the evidence that the Release of such Hazardous Material is not a Pre-Existing Environmental Condition.

(iv) Operator shall not be responsible for any Losses resulting from or related to any Pre-Existing Contamination, including the failure to pursue those O&M Services impeded by the existence of Pre-Existing Contamination, except to the extent such Losses (A) are caused in whole or in part by Operator's material exacerbation of Pre-Existing Contamination that is attributable to Operator's gross negligence or willful misconduct and, in that event, only to the extent of such exacerbation (the "Pre-Existing Contamination Liability Standard"), or (B) result from Operator's negligent failure to take Remedial Action necessary to address an imminent threat to human health or the environment. Operator shall not be responsible for any Losses resulting from or related to any Pre-Existing Environmental Noncompliance, except to the extent such Losses are caused by Operator's negligence or willful misconduct ("Pre-Existing Noncompliance Liability Standard"); provided, however, that any Losses related to any Environmental Noncompliance, including Pre-Existing Environmental Noncompliance, that are incurred or sustained within the first (1st) full fiscal year after the Service Commencement Date and that arise out of the condition of or defects in the equipment and systems at any Legacy Generation Asset with respect to such equipment or systems that were in place on or prior to the Service Commencement Date shall not be the responsibility of Operator, except where the Operator failed to repair, maintain, or replace such equipment or systems in conformance with an approved O&M Budget; provided, further, however, that any Losses related to any Environmental Noncompliance, including Pre-Existing Environmental Noncompliance, that arise out of or relate to the storage tanks or the associated piping at any Legacy Generation Asset shall not be the responsibility of the Operator until the earlier of (x) the first (1st) full fiscal year after the Service Commencement Date or (y) such time as Operator has completed an inspection pursuant to American Petroleum Institute (API) Standard 653 (or a comparable standard addressing out-of-service tank inspection) and has implemented any remedial or repair measures as may be required to restore such tank to

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compliance with Environmental Laws or any Governmental Approval issued pursuant to any Environmental Law.

(v) Operator shall not be required to conduct O&M Services to the extent they are impeded by Owner's implementation of Remedial Actions to address the Pre-Existing Environmental Condition pursuant to Section 5.9(a)(ii) (*Environmental, Health and Safety Matters—Pre-Existing Environmental Conditions*) above. Owner shall coordinate with Operator to prevent any such implementation of Remedial Actions that could impede or prevent Operator's performance of the O&M Services and any of its obligations under this Agreement.

(b) Notice and Remedial Action Requirements.

(i) Operator shall, promptly upon obtaining knowledge thereof, and in accordance with the Safety and Hazardous Materials Procedures Manual, report to Administrator and Owner, on a per occurrence basis, the Release of any reportable quantity, as defined under applicable Environmental Law, of Hazardous Material or of any other Release that could reasonably be expected to result in material Losses to Owner or Operator. Such report shall include details regarding the location at which the Release has occurred, the time, the agencies involved, the damage that has occurred and the Remedial Action alternatives to be considered for decision-making by Owner. Notice of any such Release, if initially delivered orally, shall be delivered to Administrator in writing promptly following Operator's knowledge of such Release. This reporting obligation shall be in addition to any other reporting obligation under Environmental Laws.

(ii) Following delivery of the notification described in Section 5.9(b)(i) (*Environmental, Health and Safety Matters – Notice and Remedial Action Requirements*), Operator shall promptly propose to Administrator and Owner the Remedial Action to be taken to address the Release, which Remedial Action shall (A) comply with Environmental Law and (B) not unreasonably interfere with Operator's performance of its obligations under this Agreement. Operator, Owner and Administrator shall work in good faith to reach a prompt, written agreement for the pursuit of the Remedial Action, including terms assuring the pre-funding of Operator's reasonable and documented costs and expenses in effectuating the Remedial Action as a Pass-Through Expenditure, except to the extent such costs are Disallowed Costs. If such an agreement cannot be reached within ten (10) Business Days, or such other time as Administrator, Owner and Operator may agree, Owner may proceed with the Remedial Action at its cost, including at such times and in a manner so as to not materially interfere with the performance of the O&M Services. In the event of a Pre-Existing Environmental Condition, Owner and Operator may also reach an agreement whereby Operator is prepaid for effectuating the Remedial Action proposed by Owner after the presentation of Remedial Action alternatives by Operator for such condition. Operator shall cause such Hazardous Material to be handled, transported, manifested, and disposed of in Owner's name and in accordance with Environmental Law and the Safety and Hazardous Materials Procedures Manual. Administrator and Owner agree to promptly execute all such applications, submissions and related documents as required in connection with any such Remedial Action.

(iii) With respect to any Release caused by the gross negligence or willful misconduct of Operator or Operator's employees, contractors, guests or invitees in

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connection with the O&M Services or the Decommissioning Services, Operator shall promptly obtain the necessary Environmental Approvals for, and then commence and diligently pursue to completion all Remedial Action necessary to comply with Environmental Law to address such Release. Operator shall keep Administrator and Owner reasonably informed of the progress of such Remedial Action and the schedule for completing it. In addition, in connection with such Remedial Action, Operator shall: (A) provide Administrator and Owner with a reasonable opportunity to comment in advance upon any material written communications, filings, reports, correspondence or other writings given to any Governmental Body and consider accurate and timely provided comments in good faith; (B) to the extent practical, provide Administrator and Owner with a reasonable opportunity to participate in any meetings with any Governmental Body regarding the Remedial Action; (C) comply with Applicable Law; and (D) within five (5) Business Days of sending or receipt, use commercially reasonable efforts to provide to Administrator and Owner copies of all non-privileged material written communications, filings, reports, correspondence or other writings, photographs or materials sent by Operator to or received by Operator from any Person (including any Governmental Body) in connection with any such Remedial Action. Operator shall be deemed the owner of Hazardous Materials subject to Remedial Actions under this Section 5.9(b)(iii) (*Environmental, Health, and Safety Matters – Notice and Remedial Action Requirements*) and identified as the “generator” on any manifest or bill of lading.

(iv) Operator shall promptly notify Administrator and Owner, and any other Governmental Body as may be required by Environmental Law, in writing of its intention to handle, transport or dispose of Hazardous Material as part of a Remedial Action under this Section. Operator shall cause such Hazardous Material to be handled, transported, manifested, and disposed of in accordance with Environmental Law and the Safety and Hazardous Materials Procedures Manual.

### (c) Consent Decree.

(i) This Agreement is conditioned on Operator’s agreement to be subject to the obligations under the Consent Decree and the jurisdiction of the United States District Court for the District of Puerto Rico in connection with the Consent Decree. To the extent required to effectuate this Section 5.9(c) (*Environmental, Health and Safety Matters – Consent Decree*), Operator shall assist Owner in taking all necessary steps to make Operator a signatory to the Consent Decree or to obtain any needed U.S. District Court approval.

(ii) During the term of this Agreement, neither Owner nor Administrator may enter into a consent decree or other form of settlement in resolution of any Legal Proceeding that may be brought or asserted under any Environmental Law by a Governmental Body or third party that imposes, or has the potential to impose, any injunctive relief or other prospective restrictions on operations at any Legacy Generation Asset without notifying Operator.

**Section 5.10** Accounting and Financial Services. Operator shall provide accounting and financial services in respect of the Legacy Generation Assets, including those services listed in Annex IX (*Scope of Services*).

**Section 5.11** Legal Matters. Operator shall manage Owner’s legal matters in respect of the O&M Services including in consultation with Administrator and Owner, the selection of

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outside counsel, other than with respect to any dispute with, or other legal matters involving, Operator and Owner pursuant to this Agreement (including for those services listed in Annex IX (*Scope of Services*)), and Owner's related reporting obligations. In performing this Agreement, nothing shall require, or shall be construed as requiring, Operator to act as legal counsel to, or to provide legal advice or representation to, Owner.

### **Section 5.12** Coordination with T&D Operator.

(a) PREPA-Genco-Hydroco Operating Agreement. Commencing on the Service Commencement Date, Operator, as agent for Owner, shall perform its obligations, covenants and undertakings under the PREPA-Genco-Hydroco Operating Agreement and shall coordinate with T&D Operator, as agent for PREPA, as required thereunder.

(b) System Operation Principles and Agreed Operating Procedures. Operator, as agent for Owner and in accordance with the PREPA-Genco-Hydroco Operating Agreement, the Agreed Operating Procedures developed thereunder and the System Operation Principles, shall: (i) coordinate the dispatch of Power and Electricity from available Legacy Generation Assets to the respective Interconnection Point and provide related services; (ii) coordinate the scheduling of load requirements with T&D Operator; (iii) develop inputs to T&D Operator with respect to scheduling requirements and capacity requirements taking into consideration unit outages, including, but not limited to, maintenance of program outages, and other operational constraints; (iv) provide information with respect to operational constraints, including air permit constraints; and (v) provide any other related ancillary services.

(c) Generation Information. At the request of T&D Operator, Operator shall grant reasonable access to information consistent with Prudent Industry Practice required to perform the dispatch and scheduling of Power and Electricity, inclusive of Heat Rate, fuel inventory, unit availability, unit marginal cost, unit outage schedules and any other information reasonably requested by T&D Operator consistent with Prudent Industry Practice required to perform the dispatch, scheduling and coordination of Power and Electricity and any related ancillary services.

(d) PREB Submittals. At the reasonable request of T&D Operator, Operator shall coordinate with T&D Operator and grant reasonable access to information and documents consistent with Prudent Industry Practice required to prepare all filings and other submissions before PREB with respect to any matter related to the performance of any of the O&M Services provided by Operator under this Agreement, including in connection with the Fuel Adjustment Clause. Operator shall further cooperate in good faith with T&D Operator in anticipation of and throughout the course of any Rate Order modification proceedings before PREB, pursuant to Section 7.5 (*PREB Rate Proceedings*). With respect to PREB rate filing requirements, Operator shall provide such documents and information to T&D Operator at such times as such parties may mutually agree, but no later than seven (7) Business Days prior to the time T&D Operator is required to file such documents or information with PREB.

### **Section 5.13** Notification of Incidents and Emergencies.

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(a) Incidents. Operator shall promptly notify Administrator and any other required authority, pursuant to Applicable Law, including OSHA and PREB, in writing of any material accident or incident involving injuries to person or property related to the Legacy Generation Assets within twenty-four (24) hours of receiving knowledge of the occurrence thereof, promptly notify Administrator in writing of all material claims made by or against Operator of which Operator has knowledge, and provide any information reasonably requested by Administrator to identify and assess potential material claims that may reasonably be expected to arise as a result of or in connection with such accident or incident.

(b) Emergencies. Operator shall promptly notify Administrator, PREB and any other person listed under the Legacy Generation Emergency Response Plan in writing of all Emergencies related to the Legacy Generation Assets upon receiving knowledge thereof. To the extent that any such Emergency materially precludes or impairs, in whole or in part, the dispatch of Power and Electricity, Operator shall also notify T&D Operator and any other person listed under the Legacy Generation Emergency Response Plan of such Emergency within twenty-four (24) hours. Notwithstanding anything to the contrary in this Agreement, if at any time Operator determines in good faith that an Emergency Event exists with respect to the Legacy Generation Assets such that immediate action must be taken to (i) protect the safety of the public, Owner's employees and Operator's employees, (ii) protect the safety or integrity of the Legacy Generation Assets or prevent or limit environmental harm or (iii) mitigate the immediate consequences of such Emergency Event, Operator shall take all such action that it deems in good faith to be reasonable and appropriate under the circumstances in accordance with the Legacy Generation Emergency Response Plan. As promptly thereafter as is reasonable, Operator shall notify Administrator, PREB and any other person listed under the Legacy Generation Emergency Response Plan in writing of Operator's response to such Emergency Event. For so long as the Emergency Event continues, Operator shall provide a weekly written update to Administrator, PREB and any other person listed under the Legacy Generation Emergency Response Plan (provided that PREB may otherwise request more frequent updates in accordance with Applicable Law) specifying the nature of the Emergency Event, the remediation measures being taken by Operator, the expected duration of the Emergency Event and an estimate of any increases in costs resulting therefrom. Operator shall notify Administrator, PREB and any other person listed under the Legacy Generation Emergency Response Plan in writing as soon as the Emergency Event has ended. All necessary and documented costs related to the remediation of the Emergency Event shall be Pass-Through Expenditures and Operator shall be entitled to draw upon any Service Account to pay for such costs. As soon as practicable following the end of such Emergency Event, all such costs incurred shall be reflected in a proposed amendment to the approved Operating Budget, subject to the provisions of Section 7.3(e) (*O&M Budgets – Amendments to the Operating Budget*).

### **Section 5.14** Information.

(a) Facility Information and Computer Databases. Operator shall, subject to the applicable Services Documentation, administer and maintain an Information System to record, and to the extent practicable, provide retrieval for Administrator's review and copying of Facility Information.



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(b) Ownership of Owner Personal Information. Any Owner Personal Information in existence as of the Service Commencement Date of this Agreement shall be considered Confidential Information of Owner and, as among the Parties, shall at all times remain the Intellectual Property of Owner.

(c) Information Access.

(i) Operator shall provide Owner with timely read-only access where available, or a reasonably equivalent form of access, to all information necessary to (A) maintain, protect and preserve the Legacy Generation Assets or (B) carry out any of Owner's responsibilities related to the Legacy Generation Assets under Applicable Law. For the avoidance of doubt, the access to information provided under this Section 5.14(c)(i) (*Information – Information Access*) shall be on the same basis as set out in Section 5.14(c)(ii) (*Information – Information Access*).

(ii) To the extent necessary for Owner and Administrator, as applicable, to carry out its responsibilities under this Agreement, Operator shall provide Administrator and its Representatives with (A) unrestricted read-only access where available, or a reasonably equivalent form of access to such information, to all Facility Information, all Owner Personal Information, and all information regarding Hired Former Employees of Owner, in each case contained in any database or system created or managed by Operator hereunder, and (B) to the extent that Operator has developed, compiled, collected, prepared or archived such information in the conduct of its services under this Agreement, full and complete access to such information, subject to confidentiality obligations applicable to Operator's Confidential Information and provided that Administrator and its Representatives shall comply with all of Operator's access, security (including cybersecurity) and safety procedures when exercising such right of access. Administrator shall be responsible for the security of all access credentials provided to and each access made and use and disclosure of Facility Information by Administrator or its Representatives hereunder.

(iii) Pursuant to Section 21.19(e), at the reasonable request of Administrator, by electronic transmission, Operator shall timely provide to Administrator all information related to this Agreement or the Legacy Generation Assets as may be specified in such request and as shall be in the possession or control of Operator or its Representatives. In the event that Operator fails to timely provide such information, Operator shall be subject to the Reporting Obligation Charge described in Section III of Annex II (*Compensation – Incentives and Penalties*). Operator acknowledges that (i) it is the public policy of the Commonwealth to promote transparency and citizen participation in every process related to the electric power service in the Commonwealth and (ii) in furtherance of this, the Administrator shall request information under this Section 5.14 (c)(iii) for other Governmental Bodies.

(d) Restrictions. Operator may not share or use any Facility Information or Owner Personal Information for any purpose unrelated to the O&M Services without the prior written consent of Administrator, such approval not to be unreasonably withheld, delayed or conditioned; provided that Operator may share or use such information with employees of Operator and Subcontractors. To the extent such consent is granted, Operator shall comply with all Applicable Law, and otherwise obtain any necessary consents, prior to any such permitted use.

**Section 5.15 Bill Payments.** Subject to Section 7.6 (*Service Accounts*) and Section 7.8 (*Unfunded Amounts*) and to the extent not prevented from doing so by Owner Fault, Operator shall (i) timely pay all Subcontractor bills and other Pass-Through Expenditures related to the Legacy Generation Assets, that are proper, appropriate and not otherwise disputed, and (ii) assure that, to the extent within Operator's control and not otherwise caused by Owner Fault (including non-payment or insufficiency of funding), no mechanics' or similar Liens (other than those arising automatically by operation of law) are filed by Subcontractors against any component of the Legacy Generation Assets. In the event that Operator fails to timely pay any such bill with funds that are available in the relevant Service Account, Administrator shall have the right to instruct Owner to pay such bill and deduct an administrative fee in an amount of US\$500 from the Incentive Payment otherwise due to Operator.

**Section 5.16 Compliance with Obligations.** Each Party shall use reasonable efforts to provide all representations, certifications, records and other documents necessary or appropriate for it and other Parties to comply with any obligations under Applicable Law (including obligations (i) with respect to PREB, (ii) with respect to the FOMB under PROMESA, (iii) related to the federal securities laws and (iv) related to maintaining the exclusion from gross income of interest on Owner's or its Affiliates' obligations for federal income tax purposes) or any of the agreements that Owner or its Affiliates may be party to from time to time that relate to the O&M Services.

**Section 5.17 Energy Policy.** As further detailed in Annex IX (*Scope of Services*), in accordance with the O&M Budget then in effect, Operator shall coordinate and assist with the services and operations required under Act 17 and any other Applicable Law, including Environmental Law, including services and operations related to the purchase and storage of fuel for Power and Electricity generation, the provision and maintenance of information regarding the Legacy Generation Assets, and decommissioning the Legacy Generation Assets in accordance with (a) the Integrated Resource Plan and (b) any order by PREB consistent with the intent of Act 17, and any other Applicable Law, including Environmental Law and the Integrated Resource Plan.

**Section 5.18 Enforcement of Easements.** Owner hereby authorizes Operator to enforce Owner's rights under the Easements. Operator, to the extent permitted by Applicable Law, may remove any obstruction of any kind or form hindering the area encumbered by an Easement.

**Section 5.19 Out-of-Service Units.** Operator shall provide O&M Services for the Out-of-Service Units, consisting of management, maintenance, and other related services, in each case that are customary and appropriate, or as required by Applicable Law, to maintain the Out-of-Service Units for the period of time from and including the Service Commencement Date to and excluding the Decommissioning Commencement Date for the applicable Out-of-Service Unit. In the event Applicable Law requires that any of the Out-of-Service Units become operational, Operator shall provide the O&M Services as provided in this Agreement. Operator shall take all necessary measures to ensure the safety of authorized personnel and visitors that may access the surroundings or interior of the Out-of-Service Units.

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**Section 5.20** Communications Plan. Operator shall make all communications on all matters related to the Legacy Generation Assets and this Agreement in accordance with the Communications Plan set forth in Annex V (*Communications Plan*).

### **Section 5.21** Other Services.

(a) Implied Services. If any services, functions or responsibilities not specifically described in this Agreement are reasonably required for the proper performance and provision of the O&M Services in accordance with Contract Standards, as mutually determined and agreed by Administrator and Operator, they shall be deemed to be implied by and included within the O&M Services, except to the extent they are obligations, rights or responsibilities reserved to Owner or Administrator as set forth in Article 6 (*Rights and Responsibilities of Owner and Administrator*) or as otherwise expressly provided in this Agreement.

(b) Additional Services. If requested by Administrator, Operator may perform such additional services reasonably related to the Legacy Generation Assets not included within O&M Services, based upon terms and conditions, including price and additional reasonable and documented fees payable to Operator, as agreed to by Operator and Administrator.

(c) Exclusivity. Without the prior approval of Administrator, Operator may not engage in any other business or activity other than to employ Operator employees and Subcontractors and to provide the Mobilization Services, the O&M Services, the Decommissioning Services and the Demobilization Services, and otherwise perform its obligations, pursuant to this Agreement. Owner acknowledges and agrees that this Section 5.21(c) (*Other Services – Exclusivity*) applies solely to Genera PR LLC and not to any other Person (including any Affiliates or Subcontractors of Operator).

**Section 5.22** Annual Performance Test. No later than ninety (90) days following the Service Commencement Date, Operator shall conduct the first Annual Performance Test for each Legacy Generation Asset with reasonable assistance from Administrator, (as requested by Operator) and PREB's right to observe (upon PREB's election to observe), and in a manner consistent with the PREPA-Genco-Hydroco Operating Agreement and procedures developed pursuant to the PREPA-Genco-Hydroco Operating Agreement and reviewed by PREB in accordance with Section 4.2(u) (*Annual Performance Test*). Operator shall promptly submit the results of such test, the proposed Equivalent Availability Factor targets and Minimum Performance Thresholds, and all supporting calculations and documentation, to PREB for its review.

## **Article 6**

### **RIGHTS AND RESPONSIBILITIES OF OWNER AND ADMINISTRATOR**

#### **Section 6.1** Rights and Responsibilities of Owner.

(a) Generally. From and after the Service Commencement Date, Owner shall have the following rights and responsibilities with respect to the operation, management and maintenance of the Legacy Generation Assets:

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(i) grant and assure Operator unrestricted access to and use of the Legacy Generation Assets and the Generation Sites for the performance of Operator's obligations hereunder;

(ii) pay the applicable Service Fee and any other amounts due Operator, and fund the Service Accounts, all in accordance with the terms and conditions of this Agreement;

(iii) ensure that, to the extent PROMESA requires Owner to submit any Budget to the FOMB for approval, such Budget provides that Owner is authorized to pay amounts due to Operator under this Agreement and fund the Service Accounts in accordance with Section 7.6 (*Service Accounts*);

(iv) cooperate with Operator such that the Budgets and funds in support of O&M Services are sufficient in amount to enable Operator to meet the Contract Standards and provide a reasonable opportunity for Operator to achieve the Incentive Payment;

(v) (A) respond promptly (and in any event within thirty (30) days or shorter period required by this Agreement) to all requests of Operator confirming its position or decision (as applicable) with respect to all matters requiring the approval, review or consent of Owner (and in each such case, unless otherwise specifically stated in this Agreement, Owner shall not unreasonably withhold, delay or condition any such approval, review or consent) and as to such other matters relating to the obligations of Operator hereunder in respect of which Operator shall reasonably request the response of Owner in accordance with the provisions of this Agreement, (B) provide Operator with such information, data and assistance as may be reasonably necessary or appropriate for Operator to perform its obligations (including with respect to any PREB rate or other proceeding or requirement) hereunder, and (C) from time to time, as and when requested by Operator, execute and deliver, or cause to be executed and delivered, all such documents and instruments and take, or cause to be taken, all such reasonable actions, as may be reasonably necessary for Operator to perform its obligations under this Agreement;

(vi) except as otherwise contemplated by Section 5.11 (*Legal Matters*), manage Owner's legal matters, including Owner's reporting and related legal compliance;

(vii) cooperate with Operator and Administrator in obtaining and maintaining all Governmental Approvals;

(viii) take all other actions, and cause its employees and other Representatives to take all other actions, reasonably required or reasonably requested by Operator to permit Operator to perform the O&M Services in compliance with the Contract Standards and this Agreement, including the enforcement of existing Easements and, to the extent necessary, the constitution of new Easements;

(ix) exercise its statutory powers pertaining to any and all rights and remedies granted to it under Applicable Law, including doing so promptly when requested by Operator;

(x) comply with all Applicable Law; and

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(xi) coordinate any Audits that Owner is entitled to perform hereunder with any Audits being undertaken by Administrator and any other Governmental Body that has the right under Applicable Law to perform an Audit.

(b) Authorization of Administrator. On behalf of the Government of Puerto Rico, Owner hereby assigns and delegates to Administrator the rights and responsibilities under this Agreement necessary for Administrator to administer this Agreement and act as Owner's liaison with Operator in connection with the O&M Services; provided that such assignment and delegation shall not release Owner from any of its obligations set forth herein; and provided, further, that Owner, on behalf of the Government of Puerto Rico, shall be responsible for all acts and omissions of Administrator in connection with this Agreement and the other Transaction Documents, and the transactions contemplated hereby and thereby, in the same manner as if such acts and omissions were those of Owner. For the avoidance of doubt, Owner's delegation of rights and responsibilities under this Agreement includes Owner's submission to applicable oversight by, and obligations to, PREB.

**Section 6.2** Rights and Responsibilities of Administrator.

(a) Generally. Operator shall be entitled to rely on the written directions of Administrator. Administrator shall be responsible for overseeing, in the manner provided for and subject to the terms and conditions of this Agreement, Operator's compliance with its obligations under this Agreement. Without limiting the generality of the foregoing, from and after the Service Commencement Date, Administrator shall have the following rights and responsibilities with respect to the operation, management and maintenance of the Legacy Generation Assets:

(i) as set forth in Section 7.3 (*O&M Budgets*), review and approve O&M Budgets, including modifications thereto, to ensure compliance with the then applicable Rate Order;

(ii) review and approve the Incentive Payment payable to Operator for a given Contract Year, including based on Administrator's evaluation of Operator's performance with respect to the Incentives and Penalties;

(iii) cooperate with Operator such that the Budgets and funds in support of O&M Services are sufficient in amount to enable Operator to meet the Contract Standards and provide a reasonable opportunity for Operator to achieve the Incentive Payment;

(iv) exercise Oversight in relation to Operator's compliance with O&M Budgets, including Pass-Through Expenditures, in accordance with the procedures set forth in this Agreement; provided that, Administrator shall (i) reasonably coordinate with Owner to avoid duplicative Oversight and (ii) except to the extent provided under this Agreement, avoid exercising Oversight with respect to items that fall within the scope of PREB's statutory oversight;

(v) exercise Oversight in relation to Operator's compliance with its obligations hereunder;

(vi) respond promptly (and in any event within thirty (30) days or shorter period required by this Agreement) to all requests of Operator with respect to matters requiring

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the approval, review or consent of Administrator (and in each such case, unless otherwise specifically stated in this Agreement, Administrator shall not unreasonably withhold, delay or condition any such approval, review or consent) and as to such other matters relating to the obligations of Operator hereunder in respect of which Operator shall reasonably request the response of Administrator in accordance with the provisions of this Agreement;

(vii) (A) cooperate with Operator by providing Operator such information, data and assistance as may be reasonably necessary for Operator to perform its obligations hereunder and (B) from time to time, as and when requested by Owner, execute and deliver, or cause to be executed and delivered, all such documents and instruments and take, or cause to be taken, all such reasonable actions, as necessary for Operator to perform its obligations under this Agreement;

(viii) declare an Event of Default and exercise remedies under this Agreement, including termination of this Agreement upon the occurrence of an Operator Event of Default in accordance with Section 14.1 (*Events of Default By Operator*);

(ix) exercise Oversight, as agent of Owner, in relation to Operator's compliance with federal funding requirements; and

(x) coordinate any Audits that Administrator is entitled to perform hereunder with any Audits being undertaken by Owner and any other Governmental Body that has the right under Applicable Law to perform an Audit.

For the avoidance of doubt, the Parties acknowledge that Owner delegates unto Administrator all rights, responsibilities and obligations pertaining to the Oversight of Operator's compliance with its obligations under this Agreement. The Parties acknowledge that PREB is the entity responsible for overseeing all technical and operational aspects of Operator's performance under this Agreement.

(b) Disputes. In the event of a Dispute among the Parties with respect to clauses (ii) through (x) of Section 6.2(a) (*Rights and Responsibilities of Administrator – Generally*), such Dispute shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, an "Administrator Dispute").

(c) Approvals and Consents. When any approval or consent by Owner to an Operator submission, request or report is required pursuant to the terms of this Agreement, the approval or consent shall be given by Administrator in writing, and such writing shall be conclusive evidence of such approval or consent and shall be binding on Owner.

### **Section 6.3** Reporting; Audits.

(a) Generally. At the reasonable request of Administrator or its relevant consultant (each, an "Authorized Inspector"), at Administrator's sole cost and expense, at reasonable times during normal business hours, Operator shall: (i) make available or cause to be made available to such Authorized Inspector all information related to this Agreement or the Legacy Generation Assets as may be specified in such request and as shall be in the possession or control of Operator or its Representatives; (ii) permit such Authorized Inspector, upon ten

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(10) Business Days' prior notice to Operator, which notice shall identify the persons such Authorized Inspector requests to be present for an interview and describe with reasonable specificity the subject matter to be raised in the interview, to discuss the obligations of Operator under this Agreement with any of the directors, chief executive officer and chief financial officer of Operator and its Representatives, for the purpose of enabling such Authorized Inspector to determine whether Operator is in compliance with this Agreement; and (iii) otherwise provide such cooperation as may reasonably be required by such Authorized Inspector in connection with any such Audit of the information required to be maintained or delivered by Operator under this Agreement or required by Applicable Law. Such Authorized Inspector shall be entitled to make copies of the information related to the conduct of such Audit and to take extracts therefrom at such Authorized Inspector's sole cost and expense. Absent good cause or as may be required by Applicable Law, audits shall occur no more than once every Contract Year. In the course of performing its Audits hereunder, each Authorized Inspector and its Representatives shall avoid any disruption to Operator's performance of the O&M Services or Operator's rights or responsibilities under this Agreement, having regard to the nature of the Audits being performed, and when accessing the Legacy Generation Assets, each Authorized Inspector and its Representatives shall do so at its own risk and shall comply with all of Operator's safety procedures.

(b) No Other Audit Rights. This Agreement does not provide any Governmental Body any rights to undertake any Audit other than those stated herein, and, without restricting the foregoing, this Agreement does not provide any regional, municipal or local body with any rights to perform any Audit in addition to those permitted by Applicable Law. For the avoidance of doubt, nothing in this Section 6.3 (*Reporting; Audits*) shall be construed as a limitation on the right of PREB to conduct audits as needed in the performance of its statutory duties.

**Section 6.4** Staffing Levels. From and after the Service Commencement Date and at all times during the Term, Owner and Administrator, including any of their subcontractors, shall maintain staffing in connection with the O&M Services only at those levels strictly necessary for Owner and Administrator to timely and efficiently perform their obligations under this Agreement. At all times before the Service Commencement Date, Owner shall maintain staffing necessary to continue to perform its obligations at the same or higher level than it performed such obligations as of the Proposal Submission Date.

## Article 7 COMPENSATION; O&M BUDGETS

### **Section 7.1** Service Fee.

#### (a) Generally.

(i) In addition to Owner's funding or payment of Pass-Through Expenditures, in accordance with the then-currently approved Operating Budget, and any other amounts that become due and owing to Operator hereunder, from and after the Service Commencement Date, Owner shall pay Operator, in accordance with this Agreement, the O&M Fixed Fee.

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(ii) In addition to the fees described in the foregoing paragraph, with respect to each Contract Year from and after the Service Commencement Date and as described in Section III of Annex II (*Compensation – Incentives and Penalties*) of this Agreement, Operator may (A) be eligible to receive an O&M Incentive Payment and a Decommissioning Incentive Payment, and (B) be subject to an O&M Penalty or a Decommissioning Penalty.

(iii) For the avoidance of doubt, the applicable Service Fee shall constitute payment for Operator Overhead, none of which shall be subject to reimbursement as a Pass-Through Expenditure. Except as otherwise expressly provided for in this Agreement, the applicable Service Fee shall not be subject to any abatement, deduction, counterclaim or set-off of any kind or nature.

(b) O&M Fixed Fee.

(i) The O&M Fixed Fee payable to Operator for each Contract Year as compensation for the performance of the O&M Services shall be as set forth in Section I of Annex II (*Compensation – O&M Fixed Fee*). Owner and Administrator agree that an amount equal to the maximum amount of the O&M Fixed Fee available in any given Contract Year shall be included in the Operating Budget for such Contract Year.

(ii) Owner shall pay the O&M Fixed Fee in monthly installments equal to (i) one-twelfth (1/12) of the O&M Fixed Fee for a Contract Year of twelve (12) months or (ii) in the case of any Contract Year that includes more or less than twelve (12) months, an amount equal to one (1) divided by the number of months in such Contract Year. In the event of a partial month, the monthly installment shall be adjusted on a Pro Rata basis.

(iii) On or prior to the tenth (10th) Business Day of each month of any Contract Year, Operator shall submit to Administrator for its review and approval an invoice for the O&M Fixed Fee payable in respect of the prior month. The invoice shall specify the monthly portion of the O&M Fixed Fee for the relevant month, together with (A) the aggregate portion of the annual O&M Fixed Fee paid through such month and (B) the accumulated payments to the date of such invoice. Owner shall pay the invoice by the last Business Day of the month on which the invoice was submitted. Owner's sole responsibility with respect to all invoices shall be payment of such invoices and shall not include review of any invoice. All invoices shall comply with the requirements set forth in Section 9.2(c) (*Anti-Corruption and Sanctions Laws – Policies and Procedures*) hereto.

(iv) The O&M Fixed Fee shall not be subject to the O&M Fixed Fee Adjustment during the first five (5) Contract Years. Beginning on the sixth (6th) Contract Year and for any Contract Year thereafter, the O&M Fixed Fee shall be subject to the O&M Fixed Fee Adjustment at any time and from time to time upon (i) the commencement of Decommissioning Services with respect to a Legacy Generation Asset or (ii) the removal, permanently or indefinitely, of a Legacy Generation Asset from the scope of the O&M Services by Administrator pursuant to Section 2.3(c) (*Term – Reduction*), as set forth in Section I of Annex II (*Compensation – O&M Fixed Fee*).



(c) Incentives and Penalties.

(i) Based on Operator's performance with respect to the Incentives and Penalties described in Section III of Annex II (*Compensation – Incentives and Penalties*), Operator shall be eligible to receive Incentive Payments or be subject to Penalties as a deduction from the applicable Service Fee in any given Contract Year. For the avoidance of doubt, no Incentive Payments or Penalties shall be earned or incurred during the Mobilization Period or the Demobilization Period. The Incentive Payments or Penalties to be earned or incurred on any given Contract Year shall be calculated as set forth in Section III of Annex II (*Compensation – Incentives and Penalties*), as adjusted on a Pro Rata basis for a Contract Year that is more or less than three hundred and sixty-five (365) days. Owner and Administrator agree that an amount equal to the maximum amount of the Incentive Payments available in any given Contract Year shall be included in the Operating Budget or the Decommissioning Budgets, as applicable, for such Contract Year.

(ii) No later than thirty (30) days following the end of a Contract Year or the date of termination of this Agreement, Operator shall submit a report in a form substantially consistent with the form attached to the Mobilization Plan (the "Incentives and Penalties Report"), which report shall include the separate Fuel Optimization Report, to Administrator and PREB with (A) supporting performance data, information and reports evidencing its performance with respect to one or more of the categories of Incentives and Penalties and (B) based thereon, its good faith calculation of the proposed Incentive Payment and/or Penalties, in each case for the relevant Contract Year(s). The Incentives and Penalties Report shall comply with the requirements set forth in Section 9.2(c) (*Anti-Corruption and Sanctions Laws – Policies and Procedures*).

(iii) Administrator shall have a period of one hundred twenty (120) days after receipt of the Incentives and Penalties Report to review such report and during such period, Administrator and Operator shall meet weekly to discuss the Incentives and Penalties Report until an agreement is reached. During this period, Operator shall grant to Administrator reasonable access during normal business hours to all relevant personnel, Representatives of Operator, books and records of Operator and other items reasonably requested by Administrator in connection with the review of the Incentives and Penalties Report.

(iv) If Administrator delivers to Operator a written statement describing any disagreements with the Incentives and Penalties Report during such one hundred twenty (120) day review period, then Operator and Administrator shall attempt to resolve in good faith any such disagreements; provided that any unresolved disagreements shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*). If (A) Administrator does not deliver such statement during such one hundred twenty (120) day review period (in which case it shall be deemed to have agreed with the Incentives and Penalties Report), (B) Operator and Administrator reach a resolution with respect to such matters or (C) Administrator has no disagreements with the Incentives and Penalties Report, then Owner shall pay the Incentive Payment in accordance with Section 7.1(c)(v) (*Service Fee – Incentives and Penalties*) based on Operator's Incentives and Penalties Report or in the case of sub-clause (B) the terms of the relevant resolution.

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(v) Owner shall pay the undisputed portion of the Incentive Payment for a given Contract Year within one hundred twenty (120) days of the date of receipt of the Incentives and Penalties Report. If any Penalties are determined to be due in accordance with Section 7.1(c)(iv) (*Service Fee – Incentives and Penalties*), Owner shall deduct the Penalty, or any portion thereof that is not subject to a Dispute, from the next payment of the applicable Service Fee due to Operator following such determination (or in the event the Penalty is higher than such payment, from the next series of payments). In the event that due to an early termination of this Agreement or the end of the Term, the Service Fee payments due to Operator after such determination are not sufficient to deduct the full amount of the Penalty, Operator shall pay to Owner the amount of the Penalty that has not been deducted from the Service Fee within six (6) months following the date of such termination or end of the Term.

(vi) If any Force Majeure Event (other than a Force Majeure Event that is a Forced Outage) occurs, Operator and Administrator shall negotiate proportional adjustments to the relevant categories of Incentives and Penalties, as applicable, which shall apply during the duration of the Force Majeure Event to reasonably assure that Operator has a reasonable opportunity to earn the Incentive Payment.

(vii) Each Penalty shall be Owner's sole and exclusive remedy and Operator's sole and exclusive liability with respect to the circumstances to which the relevant Penalty applies and any breach or other act or omission attributable Operator that directly or indirectly caused or contributed to such circumstances, except to the extent that such circumstances resulted from a violation of Applicable Law; provided that if such violation of Applicable Law results in the imposition of a fine or other penalty for which Operator is liable or otherwise responsible under this Agreement, then such fine or other penalty shall be in lieu of (and not in addition to) the Penalty under this Agreement.

(viii) If there is any material error or inaccuracy in any information provided by Owner or any of its Affiliates to Operator or any of its Affiliates in connection with the Legacy Generation Assets or the Generation Sites, Operator and Administrator shall negotiate proportional adjustments to the relevant categories of Incentives and Penalties, to reasonably assure that Operator has a reasonable opportunity to earn the Incentive Payment.

(d) Reporting Obligation Charge. Any Reporting Obligation Charge incurred by Operator as a result of its failure to provide required reporting under this Agreement, as provided in Section III of Annex II (*Compensation – Incentives and Penalties*), may be automatically deducted from the Service Fee payable to Operator.

(e) Service Fee Disputes. The Parties hereby agree that, in the event that a Dispute arises between Operator and Administrator in connection with the applicable Service Fee (including any Incentives, Penalties or other adjustments thereto as permitted by this Agreement), the matter shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, a "Service Fee Dispute").

**Section 7.2** Pass-Through Expenditures. For purposes of this Agreement, "Pass-Through Expenditures" shall be any reasonable and documented costs and expenses incurred by Operator in connection with the performance of its obligations (including O&M

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Services and the Decommissioning Services) pursuant to this Agreement (without markup for Operator profit), including as set forth in Annex XII (*Pass-Through Expenditures*); provided that Pass-Through Expenditures shall not include any (i) Disallowed Costs or (ii) Operator Overhead which is included in the applicable Service Fee; provided, further that such costs and expenses subject to reimbursement shall comply with Applicable Law, including the applicable federal guidelines. Operator shall pay Pass-Through Expenditures in accordance with Section 7.6 (*Service Accounts*). Operator shall provide promptly such additional supporting documentation evidencing the provision of the O&M Services and Decommissioning Services, if any, including evidence of the payment of any Subcontractor whose fees or allocated expenditures (in the case of Subcontractors that are Affiliates of Operator, charging any amounts to Operator on an allocation basis) are included in the applicable Pass-Through Expenditures, and the calculation of the Pass-Through Expenditures related thereto, as Administrator may request and as may be required by Applicable Law. To the extent necessary for Administrator to complete its review of the applicable invoice, upon Administrator's reasonable request such additional supporting documentation shall include any relevant Confidential Information. Owner's sole responsibility with respect to all invoices shall be payment of undisputed amounts and shall not include review of any invoice.

### **Section 7.3 O&M Budgets.**

(a) Budget Allocation Meeting. For any Contract Year in which there is a single base rate covering each of the T&D System and related assets, Owner's Hydropower Assets, and the Legacy Generation Assets (other than the initial Contract Year, for which the procedures for the Initial O&M Budget set forth in Section 4.3(c) (*Owner and Administrator Responsibilities – Initial O&M Budget*) shall apply, or a year in which a rate adjustment approved by PREB enters into effect, in which case the O&M Budget used in connection with obtaining such rate adjustment shall be used), in accordance with the PREPA-Genco-Hydroco Operating Agreement, Operator shall, no later than one hundred twenty-five (125) days prior to the commencement of such Contract Year, meet with T&D Operator, Administrator and other relevant parties to determine the allocation of such base rate and the resulting revenues among the non-generation budgets T&D Operator must prepare, the Hydroco Budget, the budgets for PREPA and its subsidiaries other than Genco and Hydroco, and the generation budgets Operator must prepare, which allocation shall be proportionate to, and consistent with, the cost allocation among such budgets in the then applicable Rate Order (the "Budget Allocation Meeting"); provided that if, (i) during the Budget Allocation Meeting for a Contract Year, T&D Operator, Operator, Hydroco and PREPA are unable to reach agreement on the allocation of the base rate among such budgets for such Contract Year and/or (ii) after the Budget Allocation Meeting is held for a Contract Year but before the start of such Contract Year, the load forecast, on which the allocation of the base rate was based, changes, then, in each case, the final allocation shall be determined in accordance with the applicable procedures set forth in the PREPA-Genco-Hydroco Operating Agreement.

(b) O&M Budget Preparation. Subject to the requirements of Section 7.3(a) (*O&M Budgets – Budget Allocation Meeting*), Operator shall prepare the proposed O&M Budgets for such Contract Year, consolidate such budgets with the proposed Hydroco Budget (which Hydroco shall submit to Operator no later than one hundred fifteen (115) days prior to the commencement of the relevant Contract Year), and, no later than one hundred five (105) days prior to the commencement of the relevant Contract Year, submit to T&D Operator the proposed O&M Budgets for such Contract Year. In the event that Operator receives a Genco Budget Notice or a

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Hydroco Budget Notice (as such terms are defined in the PREPA-Genco-Hydroco Operating Agreement), Operator shall follow the resolution procedures set forth in the PREPA-Genco-Hydroco Operating Agreement.

(c) Administrator Review of O&M Budgets. Once Administrator has received the proposed O&M Budgets submitted by T&D Operator in accordance with the PREPA-Genco-Hydroco Operating Agreement, Administrator shall review the O&M Budgets to ensure compliance with the then applicable Rate Order and Section 7.4 of the T&D O&M Agreement. Within forty-five (45) days following its receipt of such budgets, Administrator shall notify T&D Operator, Operator and Hydroco whether the proposed budgets are compliant with the then applicable Rate Order and Section 7.4 of the T&D O&M Agreement, and shall request, acting reasonably, any changes or modifications to the proposed budgets to conform the proposed budgets with the then applicable Rate Order and Section 7.4 of the T&D O&M Agreement.

(d) Compliance with Existing Rate Order. Without limiting Operator's rights under Section 7.6(d) (*Service Accounts – Reserve Account*), Section 7.8 (*Unfunded Amounts*) and Article 14 (*Events of Default; Remedies*), (i) Operator acknowledges that the Initial O&M Budget represents the maximum expenditure budget (excluding expenditures related to Fuel Costs, which shall be subject to rates determined pursuant to the Fuel Adjustment Clause as described in Section 7.3(f) (*O&M Budgets – Quarterly Adjustments to Fuel Budget*)) allocated to the Legacy Generation Assets under the then applicable Rate Order approved by PREB as of the Effective Date, (ii) in no event shall the Operating Budget for any subsequent Contract Year exceed the maximum expenditure budget allocated to the Legacy Generation Assets under the then applicable Rate Order and (iii) Owner and Administrator acknowledge that the O&M Budgets shall be compliant with the then-applicable Rate Order.

(e) Amendments to the Operating Budget.

(i) Operator may, from time to time, propose to Administrator to amend the approved Operating Budget for a given Contract Year; provided that any such amendment shall be compliant with the then applicable Rate Order and subject to approval by PREB. If, during a Contract Year, Operator becomes aware that the Pass-Through Expenditures for such Contract Year are expected to exceed the relevant Budget for such Contract Year, then (A) Operator shall promptly notify Administrator and T&D Operator of the expected shortfall, (B) T&D Operator shall notify PREB of the expected shortfall and, (C) as promptly as practicable, Operator shall prepare and submit to PREB proposed amendments to the relevant Budget for such Contract Year, which amendments must be consistent with the then applicable Rate Order and shall require and be subject to approval by PREB.

(ii) Notwithstanding anything to the contrary contained in this Section 7.3(e) (*O&M Budgets – Amendments to the Operating Budget*), in the event that PREB takes any action or issues any order that could result in a change in the portion of rates that relate to the Legacy Generation Assets, then Operator shall, as promptly as practicable, prepare and submit to PREB, with copy to T&D Operator, Administrator and Hydroco, the proposed amendments to the Operating Budget, which amendments must be consistent with the then applicable Rate Order and shall require and be subject to approval by PREB.

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(iii) In the event Decommissioning Services for one or more of the Legacy Generation Assets occur during any given Contract Year and the applicable Decommissioning Budgets for such Legacy Generation Assets has been approved pursuant to Section 16.2(a) (*Decommissioning Compensation – Decommissioning Budget*), as of the month such Decommissioning Services commence, the approved Operating Budget for such Contract Year shall be amended to reflect the transition of all costs related to such Legacy Generation Assets, including the O&M Fixed Fee Adjustment as set forth in Section I of Annex II (*Compensation – O&M Fixed Fee*), from the relevant operation line items to separate line items for the decommissioning of such Legacy Generation Asset.

(f) Quarterly Adjustments to Fuel Budget. No later than fourteen (14) days prior to the end of a quarter, Operator shall prepare and submit to PREB for approval (with copy to Administrator and the T&D Operator), as necessary, (i) a record of actual Fuel Costs spent in the current quarter, with all applicable invoices and necessary supporting information for auditing purposes, and (ii) revised quarterly budgets describing the estimated variable Fuel Costs for the following quarter for the purpose of resetting the Fuel Costs to be recovered for that quarter. In the event PREB does not timely approve a proposed revised quarterly Fuel Budget prior to the start of the applicable quarter, the proposed quarterly Fuel Budget shall be adjusted to reflect the maximum amount of Fuel Costs to be recovered through the rates set forth in the applicable Fuel Adjustment Clause then in effect.

(g) Default Budget. In the event any O&M Budget for a given Contract Year has not been finalized in accordance with Section 7.3(c) (*O&M Budgets – Administrator Review of O&M Budgets*) by July 1 of such Contract Year, the applicable approved O&M Budget for the immediately preceding Contract Year (as the same may have been amended) (such O&M Budget as it relates to the given Contract Year, a “Default Budget”) shall remain in effect until such time as the applicable O&M Budget for such Contract Year is so finalized; provided that any such Default Budget shall be compliant with the then applicable Rate Order.

(h) O&M Budget Disputes. The Parties hereby agree that, in the event that a dispute arises between Operator, Owner and Administrator in connection with an O&M Budget or the relevant Default Budget (including proposed amendments thereto or the need for amendments thereto), the matter shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, an “O&M Budget Dispute”).

**Section 7.4 O&M Budget Policy.** The O&M Budgets and the related Operator staffing levels for each Contract Year shall be designed to be adequate in both scope and amounts to reasonably assure that Operator is able to carry out the related O&M Services in accordance with the Contract Standards to reasonably assure that Operator has a reasonable opportunity to earn the Incentive Payment. The O&M Budgets for each Contract Year shall comply with (a) the then applicable Rate Order, (b) any PREB-approved directive or requirement applicable to Hydroco, Owner or PREPA, (c) Applicable Law and (d) amounts allocated to the generation budget as agreed in the Budget Allocation Meeting for such Contract Year and any follow up to such meeting. The Parties further acknowledge and agree that, from time to time, it may be necessary or appropriate to amend or otherwise adjust the relevant categories of Incentives and Penalties or the O&M Budgets as a result of (i) Force Majeure Events, (ii) Owner Fault, (iii) Forced Outages or (iv) additional requirements imposed by Owner, Administrator, PREB or any other

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Governmental Body after approval of the O&M Budgets, in the case of each of clauses (i) to (iv), which (A) have resulted (or are reasonably likely to result) in schedule delays or increased work scope or costs and (B) are not be attributable to Operator's gross negligence or willful misconduct. Operator shall provide notice to Administrator promptly following the occurrence of an event contemplated above and the Parties shall, acting in good faith and acting reasonably, consider necessary adjustments to the Incentives and Penalties or the O&M Budgets that are based on rates that are reasonable and necessary and shall submit such to PREB for approval.

**Section 7.5** PREB Rate Proceedings. Operator acknowledges that from time to time, or as otherwise required by Applicable Law or ordered by PREB, T&D Operator may apply to PREB to request a change in the then applicable Rate Order (a "Rate Order Modification Request"). In accordance with the terms of the PREPA-Genco-Hydroco Operating Agreement, upon receipt of notice from T&D Operator that it plans to submit a Rate Order Modification Request which contemplates modifications to the O&M Budgets, Operator shall cooperate in good faith with T&D Operator and Administrator to prepare proposed O&M Budgets to be included in or otherwise form the basis of such Rate Order Modification Request. Operator shall provide reasonable further support to the T&D Operator through any applicable proceedings arising in connection with the Rate Order modification request to ensure that adequate amounts are available for inclusion in any O&M Budget. In the event that Operator wishes to propose capital improvements to the Legacy Generation Assets, or unforeseen circumstances require increases to the O&M Budgets, Operator shall discuss such proposal or requirements with Administrator and, with Administrator's approval, may coordinate with T&D Operator to prepare an application to PREB to request a change in the then applicable Rate Order. For the avoidance of doubt, nothing in this Agreement shall be construed to prohibit Operator from soliciting an audience with PREB at any applicable proceedings arising in connection with the Rate Order Modification Request or otherwise in order to advocate for any positions it may have with respect to the O&M Budgets. Operator, T&D Operator, Administrator and PREPA shall appear before PREB as may be requested by PREB in any proceedings arising in connection with a Rate Order Modification Request.

(a) Operator, the Authority and Owner acknowledge that the Rate Order and the resulting customer rates may be subject to adjustment (including decreases) by PREB in accordance with the provisions set forth in Applicable Law, including the requirement that all rates be just and reasonable, and consistent with sound fiscal and operational practices that provide for a reliable and adequate service at the lowest reasonable cost including reflecting any saving incentives for Puerto Rico rate payers per Section 7.1.

### **Section 7.6** Service Accounts.

#### (a) Operating Account.

(i) No later than ten (10) Business Days prior to the Service Commencement Date, Owner shall establish one or more operating accounts from which Operator shall draw funds from time to time to pay for Pass-Through Expenditures actually incurred by Operator in performing the O&M Services and from which Owner shall pay the O&M Service Fee (collectively, the "Operating Account"). Owner shall pay Operator the O&M Service Fee in accordance with the terms of Section 7.1 (*Service Fee*) from funds available in the Operating Account.

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(ii) No later than ten (10) Business Days prior to the Service Commencement Date, the Operating Account shall be funded with an amount equal to the sum of (A) anticipated Pass-Through Expenditures for the following two (2) months *plus* (B) the anticipated O&M Service Fee for the following two (2) months, in each case based on the then-currently approved Operating Budget or the relevant Default Budget then in effect. Thereafter, beginning in the month in which the Service Commencement Date occurs, the Operating Account shall be replenished monthly in accordance with the procedures set forth in the PREPA-Genco-Hydroco Operating Agreement to maintain a minimum balance of the amount that is equal to the sum of (A) anticipated Pass-Through Expenditures for the following two (2) months *plus* (B) the anticipated O&M Service Fee for the following two (2) months.

(iii) In each Contract Year, Operator shall be entitled to withdraw funds from the Operating Account for Pass-Through Expenditures actually incurred under the approved Operating Budget or the relevant Default Budget then in effect without Administrator approval. Operator shall not withdraw funds from the Operating Account for Pass-Through Expenditures that are not covered by the then-currently approved Operating Budget or the relevant Default Budget then in effect without prior Administrator approval; provided that no such approval shall be required in case of: (A) a Force Majeure Event, Owner Fault or Forced Outage; or (B) any circumstance, event or condition unforeseeable by Operator or which, if foreseeable, could not be avoided in whole or in part by the exercise of due diligence by Operator, requiring funding in excess of the amounts available for such matter in the then-currently approved Operating Budget or the relevant Default Budget then in effect and for which a prudent Person in the business of operating and managing the Legacy Generation Assets would expend funds prior to the time that the applicable O&M Budget could reasonably be expected to be amended; provided further, however, that Operator shall (x) notify Administrator in writing promptly upon Operator becoming aware of the occurrence of such circumstance, event or condition, (y) provide a description of the details of such circumstance, event or condition and the amount of any withdrawal related thereto that Operator intends to make from the Operating Account and (z) withdraw such amount from the Operating Account.

(iv) Simultaneous with each withdrawal of funds from the Operating Account, Operator shall provide Administrator (with copy to T&D Operator) with written notice of such withdrawal, including a summary of Pass-Through Expenditures being paid. Not later than nine (9) Business Days following each month end, Operator shall provide Administrator, with a copy to T&D Operator, with (A) a full accounting setting forth in reasonable detail the Pass-Through Expenditures actually incurred and paid during the prior month and (B) a written certification that all such withdrawals are Pass-Through Expenditures.

(b) Fuel Account.

(i) No later than the Service Commencement Date, Owner shall have established one or more fuel accounts from which Operator shall draw funds from time to time to pay for costs and expenses related to the purchase, transportation, testing, delivery and storage (including tank maintenance) of fuel for the Legacy Generation Assets actually incurred by Operator (the "Fuel Costs") in performing the O&M Services (collectively, the "Fuel Account").

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(ii) No later than ten (10) Business Days prior to the Service Commencement Date, the Fuel Account shall be funded with an amount equal to at least an average of two (2) months of Fuel Costs, based on the average monthly Fuel Costs set forth in the then-currently approved Fuel Budget for the current quarter. Thereafter, beginning in the month in which the Service Commencement Date occurs, the Fuel Account shall be replenished monthly in accordance with the procedures set forth in the PREPA-Genco-Hydroco Operating Agreement. The required funding of the Fuel Account may be increased in accordance with any special stipulations in the approved and in-force fuel supply agreements for the applicable Legacy Generation Assets.

(iii) In each Contract Year, Operator shall be entitled to withdraw funds from the Fuel Account for Fuel Costs actually incurred under the approved Fuel Budget without Administrator approval. Operator shall withdraw funds from the Fuel Account only for Fuel Costs that are incurred pursuant to approved and in-effect fuel supply agreements for the Legacy Generation Assets. Operator shall not withdraw funds from the Fuel Account for any non-fuel costs or Fuel Costs that are not incurred pursuant to approved and executed fuel supply agreements for the Legacy Generation Assets without Administrator approval.

(iv) Simultaneous with each withdrawal of funds from the Fuel Account, Operator shall provide Administrator (with copy to T&D Operator) with written notice of such withdrawal, including a summary of Fuel Costs being paid. Not later than nine (9) Business Days following each month end, Operator shall provide Administrator, with a copy to T&D Operator, with (A) a full accounting setting forth in reasonable detail the Fuel Costs actually incurred and paid during the prior month and (B) a written certification that all such withdrawals are Pass-Through Expenditures.

(c) Decommissioning Account.

(i) No later than ten (10) Business Days prior to the Service Commencement Date, Owner shall establish one or more operating accounts from which Operator shall draw funds from time to time to pay for Pass-Through Expenditures actually incurred by Operator in performing the Decommissioning Services (collectively, the "Decommissioning Account").

(ii) No later than ten (10) Business Days prior to the Decommissioning Commencement Date for the applicable Legacy Generation Asset, the Decommissioning Account shall be funded with an amount equal to the sum of all anticipated Pass-Through Expenditures for the following one (1) month, based on the then-currently approved Decommissioning Budget. Thereafter, beginning in the month in which the Decommissioning Commencement Date for the applicable Legacy Generation Asset occurs, the Decommissioning Account shall be replenished monthly in accordance with procedures set forth in the PREPA-Genco-Hydroco Operating Agreement until all payments for the Decommissioning Services contemplated by this Agreement have been made.

(iii) During the performance of the Decommissioning Services for the applicable Legacy Generation Asset, Operator shall be entitled to withdraw funds from the Decommissioning Account for Pass-Through Expenditures actually incurred under the approved



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Decommissioning Budget. Operator shall not withdraw funds from the Decommissioning Account for Pass-Through Expenditures that are not included in the then-currently approved Decommissioning Budget; provided that such approval shall not be required in case of: (A) a Force Majeure Event, Owner Fault or Forced Outage; and/or (B) any circumstance, event or condition unforeseeable by Operator or which, if foreseeable, could not be avoided in whole or in part by the exercise of due diligence by Operator, requiring funding in excess of the amounts available for such matter in the then-currently approved Decommissioning Budget and for which a prudent Person in the business of decommissioning the Legacy Generation Assets would expend funds prior to the time that such Decommissioning Budget could reasonably be expected to be amended. Operator shall (x) notify Administrator in writing promptly upon Operator becoming aware of the occurrence of such circumstance, event or condition and (y) provide the details of such circumstance, event or condition and the amount of any withdrawal related thereto that Operator intends to make from the Decommissioning Account.

(iv) Simultaneous with each withdrawal of funds from the Decommissioning Account, Operator shall provide Administrator (with copy to T&D Operator) with written notice of such withdrawal, including a summary of Pass-Through Expenditures being paid. Not later than nine (9) Business Days following each month end, Operator shall furnish Administrator, with a copy to T&D Operator, with (A) a full accounting setting forth in reasonable detail the Pass-Through Expenditures actually incurred and paid during the prior month and (B) a written certification that all such withdrawals are Pass-Through Expenditures.

### (d) Reserve Account.

(i) No later than ten (10) Business Days prior to the Service Commencement Date, Owner shall establish one or more reserve accounts (each, a “Reserve Account”) from which Operator (A) shall draw funds from time to time to pay for costs in connection with Forced Outages, Force Majeure Events or Owner Fault, and costs in connection with the procurement and installation of any Capital Spare Parts approved by Administrator and PREB in accordance with Section 5.6 (*Option to Propose Capital Spare Parts and Capital Improvements*) and (B) may draw funds from time to time to pay for any shortfalls in the required funding of any other Service Account. In the event there are no funds on deposit in the Reserve Account, Operator shall provide written notice to Administrator of such shortfall. Until the Reserve Account is replenished, to the extent costs are incurred under clause (A) of this Section 7.6(d)(i) (*Service Accounts – Reserve Account*), Operator may withdraw the necessary funds from any Service Account (other than the Fuel Account) provided that, prior to any withdrawal, Operator shall provide written notice of the intended withdrawal to Administrator for its review and approval. Operator may withdraw such funds only upon either (x) receipt of Administrator’s written approval or (y) Administrator’s failure to provide a response within a reasonable period. Such withdrawal notice shall include the amount of the withdrawal and describe the Forced Outage, Force Majeure Event or Owner Fault, or procurement and installation of any Capital Spare Parts approved by Administrator and PREB pursuant to which such costs were incurred.

(ii) No later than ten (10) Business Days prior to the Service Commencement Date, the Reserve Account shall be funded with an amount equal to US\$30 million. Following a withdrawal from the Reserve Account, the Reserve Account shall be replenished no later than the eleventh (11th) Business Day of the month immediately succeeding

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the month in which the withdrawal occurred, with an amount equal to the aggregate amount withdrawn from the Reserve Account during the previous month; provided that if in any given month, Owner does not have sufficient funds to fund the Reserve Account in the required amount, the failure to so fund shall not constitute a default hereunder so long as the Reserve Account is topped up to the level at which it should be in at any given point as soon as Owner has sufficient funds to do so.

(iii) Subject to the terms of this Section 7.6(d) (*Service Accounts – Reserve Account*), Operator shall be entitled to withdraw funds from the Reserve Account from time to time only as necessary to pay for (A) costs in connection with Forced Outages, Force Majeure Events or Owner Fault, (B) any shortfalls in the required funding of any other Service Account or (C) costs in connection with the procurement and installation of any Capital Spare Parts approved by Administrator and PREB in accordance with Section 5.6 (*Option to Propose Capital Spare Parts and Capital Improvements*). Simultaneous with each such withdrawal, Operator shall provide Administrator with written notice of such withdrawal, including a summary of costs being paid. Not later than ten (10) Business Days following each month end during which funds were withdrawn from the Reserve Account, Operator shall furnish Administrator with a full accounting setting forth in reasonable detail the costs related to the applicable event or circumstance actually incurred and paid during the prior month, the transfer of funds to other Service Account(s) or the costs related to the approved procurement and installation of such Capital Spare Part.

(e) Service Account Disputes. The Parties hereby agree that, in the event that a dispute arises in connection with a Service Account, the matter shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, a “Service Account Dispute”).

(f) Withdrawals by Owner. Owner shall not withdraw funds held in any Service Account (other than from (i) the Operating Account for payment of the O&M Service Fee due to Operator, (ii) the Mobilization Account for payment of the Mobilization Service Fee due to Operator and (iii) the Demobilization Account for payment of the Demobilization Service Fee due to Operator), without the prior written approval of each of Administrator and Operator.

(g) Use of Funds by Operator. Notwithstanding any other provision of this Agreement (i) Operator shall under no circumstances be required to pay for or incur any Pass-Through Expenditure, liabilities under Facility Contracts, or Fuel Costs on its own account and (ii) Operator is hereby authorized by Owner to process direct payments from the Service Accounts to any Person to which payments are owed under any Facility Contract, Subcontract or under any other arrangement with respect to Pass-Through Expenditures, Facility Contracts, Fuel Costs, or employment, in each case in accordance with the applicable Budget(s).

### **Section 7.7** Disallowed Costs.

(a) Generally. Subject to the limitations on liability in Section 19.3 (*Limitation on Liability*), none of the following shall be treated as Pass-Through Expenditures for purposes of payment from Owner to Operator, and each shall be the sole responsibility of Operator (collectively, “Disallowed Costs”):

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(i) any and all Pass-Through Expenditures incurred as a result of Operator's gross negligence or willful misconduct, except as otherwise provided in Section 5.9(a)(iv) (*Environmental, Health and Safety Matters – Pre-Existing Environmental Conditions*) where the applicable standard shall be either the Pre-Existing Contamination Liability Standard or the Pre-Existing Noncompliance Liability Standard, or are otherwise subject to an indemnity from Owner to Operator under this Agreement;

(ii) any and all fines, penalties or other similar payments or charges imposed by PREB, Puerto Rico Department of Natural and Environmental Resources, the EPA, the United States Department of Justice, OSHA or any other Governmental Body on Operator, except to the extent that such fines, penalties or other similar payments or charges arise out of violations or circumstances that arose prior to the Effective Date, or are otherwise subject to an indemnity from Owner to Operator under this Agreement; and

(iii) any and all expenditures in excess of the then-currently approved Operating Budget or the relevant Default Budget, or the then-currently approved Decommissioning Budget(s) that are incurred by Operator other than as a result of Owner Fault, Operator's compliance with the Consent Decree or other Applicable Law, or a Force Majeure Event.

(b) Disallowed Costs Disputes. The Parties hereby agree that, in the event that a dispute arises in connection with Disallowed Costs, the matter shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, a "Disallowed Costs Dispute"). In such event, Operator may continue to withdraw such Pass-Through Expenditures from the applicable Service Account; provided Operator shall be responsible to reimburse Owner promptly (and in any event within five (5) Business Days) any Pass-Through Expenditures that are determined to be Disallowed Costs pursuant to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*).

**Section 7.8** Unfunded Amounts. Notwithstanding anything contained in this Agreement to the contrary, the Parties acknowledge and agree that Operator shall have no obligation or responsibility to incur or pay any costs or make expenditures in providing Services (other than Disallowed Costs) to the extent any of the Service Accounts do not contain sufficient funds to pay such costs and expenditures. Without limiting the foregoing or Operator's termination rights hereunder, and except to the extent Operator exercises its rights to cease providing the Services pursuant to Section 14.4 (*Termination for Owner Event of Default*), to the extent sufficient funds for the performance of all of Operator's obligations hereunder are not available for withdrawal by Operator from the Service Accounts, the Mobilization Account or the Demobilization Account, as applicable, (a) Operator shall take reasonable measures (to the extent practicable utilizing only the funding available in the Service Accounts) to maintain the continuity of the Services in accordance with the Contract Standards to the extent possible in the absence of its receipt of such sufficient funding (b) Owner shall protect, defend, indemnify and hold harmless Operator and its Affiliates from and against any and all Losses arising in connection with the discontinuation of any Services that occurs notwithstanding Operator's efforts pursuant to this Section 7.8(b) (*Unfunded Amounts*), and (c) Operator shall not be liable for, and Owner hereby waives and releases Operator from any claims for, Penalties (other than the Safety Compliance and the Environmental Compliance Penalties pursuant to Annex II, Section III.B (*Compensation – Incentives and Penalties – O&M*

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*Services Categories*)), and Operator shall not be liable for any failure to perform its obligations in accordance with the terms of this Agreement, until sufficient funds are made available.

**Section 7.9** Owner Payment of Administrator Costs. Owner shall be solely responsible for all costs and expenses of Administrator in connection with the performance of Administrator's obligations under this Agreement, and shall pay or reimburse Administrator promptly for any out-of-pocket or third-party costs and expenses.

**Section 7.10** Payment Disputes. Except as otherwise provided in Section 7.1(c) (*Service Fee – Incentives and Penalties*), if Owner or Administrator disagrees in good faith with any invoice submitted under this Agreement, then such Person shall promptly notify Operator of such dispute (and in any event no later than the due date for the applicable invoice) and the reasons for the disagreement. Any amounts set forth in an invoice that are not paid as of the due date for such invoice shall be deemed disputed by the owing Person.

## Article 8 CREDIT SUPPORT

**Section 8.1** Guarantee. Operator shall cause the Guarantee to be provided on or prior to the Effective Date and maintained thereafter throughout the Term.

**Section 8.2** Guarantor Reports. While the Guarantee is outstanding, Operator shall deliver to Administrator (with copy to PREB): (i) within sixty (60) days after the end of the second quarter of Guarantor's fiscal year, a copy of the unaudited balance sheets of Guarantor at the end of each such period and the related unaudited statements of income, changes in equity and cash flows for each such period, in a manner and containing information consistent with Guarantor's current practices; and (ii) within one hundred twenty (120) days after the end of Guarantor's fiscal year, a copy of the audited balance sheets of Guarantor at the end of each such fiscal year, and the related audited statements of income, changes in equity and cash flows for such fiscal year, including, in each case, the notes thereto, in each case prepared in accordance with generally accepted accounting principles consistently applied in the United States (or the equivalent jurisdiction of Guarantor), together with a certificate from Guarantor's chief financial officer that such financial statements fairly present, in all material respects, the financial condition and the results of operations, changes in equity and cash flows of Guarantor as at the respective dates of and for the periods referred to in such financial statements, all in accordance with generally accepted accounting principles in the United States (or the equivalent jurisdiction of Guarantor) consistently applied. Such financial statements shall reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such financial statements. In addition to the foregoing, Operator shall provide an opinion thereon of an independent public accountant of national stature in the United States (or the equivalent jurisdiction of Guarantor) engaged by Guarantor. Notwithstanding the foregoing, if the Guarantor is a publicly traded company in the United States, then the delivery by Operator of the quarterly and annual reports of Guarantor filed with the U.S. Securities and Exchange Commission shall be deemed to satisfy the financial information delivery requirements of Operator as otherwise described above.

## Article 9 COMPLIANCE WITH APPLICABLE LAW

**Section 9.1** Compliance Obligations. Operator shall perform, and shall cause all Subcontractors to perform, the Services in accordance with Contract Standards, including the Consent Decree and the payment of the PREB Regulatory Charge.

**Section 9.2** Anti-Corruption and Sanctions Laws.

(a) Anti-Corruption. Neither Operator, its subsidiaries or Parent Company, nor, when acting on behalf of Operator or its subsidiaries, any director or officer or employee of Operator or its subsidiaries, nor, in connection with this Agreement or the O&M Services, any Affiliates of Operator shall violate, conspire to violate, aid and abet the violation of any anti-bribery, anti-corruption or anti-money laundering law or regulation, including Act 2 and any other laws or regulation related to political activity, conflicts of interest, embezzlement, the misuse of public funds, or property or bidding on or otherwise seeking government contracts (collectively, the “Anti-Corruption Laws”). No funds transferred by Owner to Operator shall be transferred by Operator, directly or indirectly, in violation of any Anti-Corruption Laws. Operator acknowledges and agrees that, it shall be subject to Title III of Act 2, known as the Code of Ethics for Subcontractors, Suppliers and Applicants for Economic Incentives of the Government of Puerto Rico.

(b) Sanctions. Neither Operator, its subsidiaries, Parent Company or Affiliates, nor any director or officer of Operator, its subsidiaries, Parent Company or Affiliates are Sanctioned Persons or are located, organized or resident in a Sanctioned Country. Neither Operator nor its subsidiaries, nor any director, or officer or employee of Operator, its subsidiaries (when acting on behalf of Operator or its subsidiaries), shall directly or, knowingly, indirectly, engage in any transactions or business activity of any kind with a Sanctioned Person or a Person located, organized or resident in a Sanctioned Country. No funds transferred by Owner to Operator or its subsidiaries shall be transferred by Operator or its subsidiaries, directly or indirectly, to a Sanctioned Person, a Person located, organized or resident in a Sanctioned Country, or in violation of Sanctions.

(c) Policies and Procedures. Operator and its subsidiaries, Parent Company and Affiliates shall maintain and implement policies, procedures and controls reasonably designed to ensure compliance by Operator and its subsidiaries with the Anti-Corruption Laws and Sanctions. Operator shall include in all invoices to Administrator a written certification substantially in the form of Exhibit F (*Form of Anti-Corruption Certification*), and Operator acknowledges that any invoice not including such certification shall not be accepted by Administrator. Operator shall require any Subcontractors engaged by Operator to execute at the commencement of the Subcontract (i) a Sworn Statement and (ii) a certification substantially in the form of Exhibit F (*Form of Anti-Corruption Certification*).

(d) Notice. Operator shall within five (5) Business Days notify Administrator in writing in accordance with Section 21.2 (*Notices*) if, to Operator’s knowledge, Operator, its subsidiaries, any director, officer or employee of Operator or its subsidiaries or Parent Company, or, in connection with this Agreement or the O&M Services, any Affiliates of Operator becomes

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subject to any investigation by law enforcement or regulatory authorities in connection with the Anti-Corruption Laws or Sanctions.

### **Section 9.3** Commonwealth Requirements.

(a) Subcontractor and Supplier Contracts. To the extent permitted by Applicable Law, Operator shall include the provisions of this Article 9 (*Compliance with Applicable Law*) in every Subcontract and supply contract in order for such provisions to be binding on each Subcontractor or supplier. Operator shall require any Subcontractors engaged by Operator to execute at the commencement of such Subcontract a certification substantially in the form of Exhibit E (*Form of Commonwealth Certifications*). Operator shall use commercially reasonable efforts to select a company established under the Commonwealth of Puerto Rico or a company that has a significant presence in the Commonwealth of Puerto Rico as its Material Subcontractors.

(b) Practice of Engineering, Architecture and Other Professions in the Commonwealth. To the extent that performance of the O&M Services involves performance of architectural, engineering, land surveying and landscape architecture services governed by Act No. 173 of the Legislative Assembly of Puerto Rico, enacted on August 12, 1988 (“Act 173”), known as the “Architects, Surveyor and Landscape Architects of Puerto Rico Act”, then (i) Operator shall comply (and shall require Subcontractors or agents, if any, to comply) with Act 173 and (ii) Operator shall require that its Subcontractors and agents comply with Act 173.

(c) Local Goods and Services. As required by Article 10 of Act No. 14 of the Legislative Assembly of Puerto Rico, enacted on January 8, 2004, Act No. 42 of January 21, 2018 of the Legislative Assembly, enacted on February 10, 2018, and any other Applicable Law, Operator shall not excuse by specification and shall use commercially reasonable efforts to use, goods and services extracted, produced, assembled, packaged, bottled, distributed, as applicable, in the Commonwealth by businesses, municipalities and consortiums operating in the Commonwealth or distributed by agents established in the Commonwealth.

**Section 9.4** Non-Discrimination Laws. Operator shall comply with all Applicable Law regarding non-discrimination.

**Section 9.5** Non-Collusion and Acceptance. Operator attests, subject to the penalties for perjury, that no Representative of Operator, directly or indirectly, to Operator’s knowledge, entered into or offered to enter into any combination, conspiracy, collusion or agreement to receive or pay any sum of money or other consideration for the execution of this Agreement other than that which is expressly set forth in this Agreement.

**Section 9.6** Commonwealth Tax Liabilities. Operator shall inform Administrator if, at any time during the Term, there are any material tax disputes with any Governmental Body of the Commonwealth (other than Commonwealth Tax liabilities for which Operator is not responsible under this Agreement, if any).

**Section 9.7** Certifications Required by Commonwealth Contractor Requirements. Operator has (i) certified that it has complied and is in compliance with the provisions of the

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Public-Private Partnerships Authority's Ethical Guidelines and (ii) delivered the Sworn Statement in accordance with Section 2.2(b)(ix) (*Effective Date – Conditions to Execution*).

**Section 9.8** Duty to Inform of Criminal Investigations. Operator shall inform Administrator and PREB if, at any time during the Term, it becomes aware that it is subject to investigation in connection with criminal charges related to acts of corruption, the public treasury, the public trust, a public function or charges involving public funds or property.

**Section 9.9** Act 120. Pursuant to Section 5(f) of Act 120 and subject to the provisions of this Agreement, Operator shall at all times comply with the public policy and regulatory framework applicable to the Legacy Generation Assets.

## Article 10 INSURANCE

**Section 10.1** Insurance Generally. From the Service Commencement Date and for the remainder of the Term thereafter, Operator shall maintain in effect, and cause any Subcontractor performing any of the O&M Services or the Decommissioning Services to maintain in effect, for the benefit of Owner and Operator, as applicable, the insurance policies and limits of coverage specified in Annex XIII (*Insurance Specifications*), and such additional coverage (i) as may be required by Applicable Law and (ii) as may be required by Prudent Industry Practice (the "Required Insurance"), and shall provide insurance management services, including placing insurance with carriers, and claims management and processing, as more fully described in Annex IX (*Scope of Services*). All Required Insurance shall be in a form reasonably acceptable to Administrator and shall only be issued by generally recognized financially responsible insurers that (x) are authorized to do business in the Commonwealth or are otherwise authorized or permitted by the Office of the Commissioner of Insurance of Puerto Rico and (y) at a minimum have a rating of A-(VIII) or better by A.M. Best Company or an equivalent rating by another similarly recognized insurance rating agency (unless Administrator consents to waive this requirement). All premiums, deductibles, and other reasonable fees, costs and expenses (including uninsured Losses that are not Disallowed Costs and losses in excess of insurance) shall be Pass-Through Expenditures.

**Section 10.2** Commercial Availability. Notwithstanding anything to the contrary herein, if any Required Insurance policy shall not be available on commercially reasonable Terms, Operator shall promptly notify Administrator, in writing, but in no event less than sixty (60) days prior to the expiration of any Required Insurance. In the event that any Required Insurance policy is not available on commercially reasonable Terms, as reasonably determined by Operator, the requirement that Operator obtain and maintain such Required Insurance under this Article 10 (*Insurance*) shall be waived, provided that such waiver shall be effective only for so long as such insurance shall not be available on commercially reasonable Terms; provided, further, that during the period of such waiver, (i) Operator shall maintain the maximum amount of such insurance otherwise available on commercially reasonable Terms and (ii) Administrator shall have the right to seek alternative coverage acceptable to Administrator. During the period of any such waiver, any loss that would otherwise have been insured shall be treated as a Pass-Through Expenditure, and the Parties shall consider appropriate adjustments to the O&M Budgets in accordance with Section 7.4 (*O&M Budget Policy*). If Administrator elects to purchase alternative coverage for the

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period of such waiver (x) Operator shall use its commercially reasonable efforts to ensure that Administrator is able to timely obtain such coverage and (y) any reasonable excess cost of such alternative coverage shall be treated as a Pass-Through Expenditure. For the purposes of this Article 10 (*Insurance*), “Terms” shall include rates, conditions, self insured retentions such as deductibles or excesses and other terms of any of the Required Insurances.

**Section 10.3** Additional Named Insureds. Operator, Operator Indemnitees and Owner shall be included as additional named insureds, where commercially applicable and pertinent to the coverage, including as provided in Annex XIII (*Insurance Specifications*), along with waivers of subrogation, breach of warranties or separation of insureds and contractual liability endorsements on any Required Insurance policies, as applicable, which policies shall require thirty (30) days prior written notice to Administrator by Operator prior to the effective date of any change in or non-renewal or cancellation of such policies. Insurance coverage required pursuant to this Section 10.3 (*Additional Named Insureds*) shall be maintained with generally recognized financially responsible insurers that (i) are authorized to do business in the Commonwealth or are otherwise authorized or permitted by the Office of the Commissioner of Insurance of Puerto Rico and (ii) at a minimum have a rating of A(VIII) or better by A.M. Best Company or an equivalent rating by another similarly recognized insurance rating agency (unless Administrator consents to waive this requirement). In addition, Operator shall be named as a “loss payee” for each of the policies of insurance contemplated herein and shall be entitled to receive all proceeds of the Required Insurance. In the event of a Loss relating to the O&M Services, the Legacy Generation Assets or any Generation Site, Owner shall open an account in which to deposit any proceeds of insurance for any such Losses (the “Insurance Proceeds Account”). If Operator receives any proceeds of insurance for any Losses relating to the O&M Services, the Legacy Generation Assets or any Generation Site, Operator shall deposit such amounts into the Insurance Proceeds Account within three (3) Business Days of receipt of such proceeds. If Owner receives any proceeds of insurance for any Losses relating to the O&M Services, the Legacy Generation Assets or any Generation Site, Owner shall hold such amounts in trust, for the benefit of Operator, and Owner shall deposit such amounts in the Insurance Proceeds Account within three (3) Business Days following the request of Operator. Funds in the Insurance Proceeds Account shall be used either to remediate or decommission the Legacy Generation Assets in a manner consistent with Prudent Industry Practice and reasonably approved by Administrator. In consultation with and subject to the approval of Administrator (not to be unreasonably withheld, conditioned or delayed, with notice to PREB), Operator shall determine whether to use such funds to remediate or decommission the Legacy Generation Assets, taking into account the Integrated Resource Plan and the other generation resources available to the T&D System (including load and energy forecasts and long and short range system plans prepared by T&D Operator), each to the extent applicable.

**Section 10.4** Warranties. Operator shall maintain and enforce any warranties or guarantees on any facilities, vehicles, equipment or other items owned or leased by Owner (to the extent made known to Operator), or purchased or leased on behalf of Owner and used by Operator in performing O&M Services under this Agreement. Operator shall not, by act or omission, negligently or knowingly invalidate in whole or part such warranties or guarantees without the prior approval of Administrator, such approval not to be unreasonably withheld, delayed or conditioned.



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**Section 10.5** Certificates of Insurance, Policies and Notice. Operator shall supply Administrator with copies of certificates of insurance promptly following issuance by the insurers. Not later than sixty (60) days prior to the beginning of each Contract Year following the Service Commencement Date, Operator shall furnish certificates of insurance to Administrator to confirm the continued effectiveness of the Required Insurance. Whenever a Subcontractor is utilized, Operator shall either obtain and maintain on behalf of the Subcontractor, or require the Subcontractor to obtain and maintain, insurance in accordance with the applicable requirements of Annex XIII (*Insurance Specifications*). Administrator's receipt of certificates that do not comply with the requirements stated herein, or Operator's failure to provide certificates, shall not limit or relieve Operator of the duties and responsibility of maintaining insurance in compliance with the requirements in this Article 10 (*Insurance*) and shall not constitute a waiver of any of the requirements in this Article 10 (*Insurance*).

## Article 11 SUBCONTRACTORS

**Section 11.1** Ability to Subcontract. Operator shall have the right, but not the obligation, to engage Subcontractors to perform Operator's obligations under this Agreement, including the Mobilization Services, the O&M Services, the Demobilization Services or the Decommissioning Services. Operator's payment obligations under any Subcontract shall be a Pass-Through Expenditure. Operator shall provide Administrator (with copy to PREB) with a list of any and all Subcontractors that Operator has engaged or intends to engage for the performance of any of the O&M Services or the Decommissioning Services. If the cost of any Subcontractor is expected to exceed US\$5,000,000 per year or US\$15,000,000 in the aggregate (each a "Material Subcontractor"), the list provided to Administrator and PREB shall include the expected costs for each Material Subcontractor. Administrator shall have the right to approve any Material Subcontractor engaged by Operator to perform any O&M Services or Decommissioning Services, which approval shall not be unreasonably withheld, delayed or conditioned. Operator shall be required to update such list on or about the fifth (5th) Business Day of each Contract Year. Operator shall ensure that: (i) any Subcontractor engaged by it exercises due diligence in the performance of the services subcontracted to such Subcontractor; (ii) any Subcontractor performing O&M Services shall be a licensed professional with experience in the performance of the work subcontracted to it; (iii) Administrator receives any information that it reasonably requests in respect of any Subcontractor; and (iv) the costs incurred with respect to any Subcontractor shall be consistent with the applicable O&M Budget or Decommissioning Budget and Operator shall use reasonable efforts to ensure such costs are reasonable and consistent with market terms, as applicable.

### **Section 11.2** Subcontract Terms.

(a) Generally. A Tax Opinion and a Reliance Letter shall be obtained, at the expense of Owner or Administrator, with respect to any Subcontract that is entered into, extended, replaced or amended and is a Covered Contract. Operator shall use commercially reasonable efforts to ensure that all agreements with third parties entered into after the Service Commencement Date in its own name or as agent for Owner that are material to Operator's performance of its obligations hereunder grant Owner or a Person designated by Administrator the right to own or license the goods and services to be provided thereunder. All contracts entered into

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with Subcontractors by Operator as agent for Owner, and all warranties and other rights related thereto, with respect to the Legacy Generation Assets (a) shall be assignable to Administrator or a Person designated by Administrator, solely at Administrator's election and without cost or penalty, upon early termination of this Agreement, and each Subcontractor shall acknowledge in writing the rights of Administrator to take such assignments and (b) shall terminate at the end of the Term. Operator shall be responsible for settling and resolving with all Subcontractors all claims arising out of delay, disruption, interference, hindrance or schedule extension caused by Operator or inflicted on Operator or a Subcontractor by the actions of another Subcontractor.

(b) Terms Related to Consent Decree. Operator shall provide to each person, firm, corporation, contractor, or subcontractor hired to perform any requirement of the Consent Decree (including its attachments or appendices) a copy of all sections of the Consent Decree (including its attachments and appendices) relevant to the employment of the person, firm, corporation, contractor, or subcontractor, and shall condition all contracts or subcontracts entered into upon performance of the requirement(s) in conformity with the terms of the Consent Decree (including its attachments and appendices). Operator shall further require that each such person, firm, corporation, contractor, or subcontractor provide written notice of the Consent Decree to all subcontractors hired to perform any portion of any requirement of the Consent Decree.

**Section 11.3** Indemnity for Subcontractor Claims. Operator shall retain full responsibility to Owner and Administrator under this Agreement for all matters related to the O&M Services and Decommissioning Services notwithstanding the execution or terms and conditions of any Subcontract. Subject to the limitations on liability set forth in Section 19.3 (*Limitation on Liability*), no failure of any Subcontractor used by Operator in connection with the provision of the O&M Services or Decommissioning Services shall relieve Operator from its respective obligations hereunder to perform the O&M Services and Decommissioning Services. Subject to Section 7.7 (*Disallowed Costs*) and Section 7.8 (*Unfunded Amounts*), Operator shall pay when due all undisputed claims and demands of Subcontractors, mechanics, materialmen, laborers and others for any work performed on, or materials delivered for incorporation into any part of, the Legacy Generation Assets by or on behalf of Operator, and shall promptly discharge all mechanics', materialmen's and other construction Liens registered against the Legacy Generation Assets. All such reasonable and documented costs and expenses (other than Disallowed Costs) shall be treated as Pass-Through Expenditures. No Subcontractor shall have any right against Owner or Administrator for labor, services, materials or equipment furnished after the Service Commencement Date for the O&M Services or the Decommissioning Services. Operator acknowledges that its indemnity obligations under Section 19.1 (*Indemnification by Operator*) shall extend to all claims for payment or damages by any Subcontractor that furnishes or claims to have furnished any labor, services, materials or equipment in connection with the O&M Services after the Service Commencement Date or in connection with the Decommissioning Services.

**Section 11.4** Disclosure Related to Operator Affiliates. In the event that any Affiliate of Operator proposes to participate in any procurement relating to subcontracting of services to be provided under this Agreement, Operator shall provide Administrator with information regarding the identity of the Affiliate, the services to be provided and any other reasonable information as Administrator may reasonably request prior to such Affiliate participating in any such procurement process or receiving any information in connection therewith.

## Article 12 TAXATION

**Section 12.1** Withholding Tax. Owner shall be entitled to (i) deduct and withhold (or cause to be deducted or withheld) from any consideration payable or otherwise deliverable pursuant to this Agreement, such amounts as may be required to be deducted or withheld therefrom under any provision of the U.S. federal, state, Commonwealth, municipal, local or non-U.S. Tax law or under any applicable legal requirement and (ii) request any necessary Tax forms or information, from Operator or any other Person to whom a payment is required to be made pursuant to this Agreement. To the extent such amounts are so deducted or withheld and paid to the applicable taxing authority, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid. The Parties agree to cooperate in good faith to reduce or eliminate the amount of any applicable withholding Taxes. In the event any withholding Taxes are paid by Owner in respect of amounts payable to Operator, Owner shall use commercially reasonable efforts to provide Operator (x) receipts or other evidence of payment of such withholding taxes and (y) all informative statements required by Applicable Law.

### **Section 12.2** Tax Obligations.

(a) Payment of Taxes. Operator and each of its subsidiaries shall prepare and timely file, or cause to be prepared and filed at its cost, all Tax Returns required to be filed by it under any Applicable Law and shall pay any Taxes required to be paid by it under Applicable Law (whether or not shown as due on such Tax Returns). Such Tax Returns shall be true, correct and complete in all material respects.

(b) Exemption from Taxes. During the Term, Operator shall not be responsible for, and Operator and the Legacy Generation Assets shall not be subject to, (i) any real property Tax imposed on or measured by the value of the Legacy Generation Assets (including any real property constituting part of the Legacy Generation Assets) that is imposed by any Governmental Body of the Commonwealth or that is imposed on the “owner” of the Legacy Generation Assets (including relating to future expenditures for real property) or (ii) any personal property tax that is imposed by any Governmental Body of the Commonwealth on property owned by Owner and used by Operator exclusively for the Legacy Generation Assets or for the services or functions subject to this Agreement, all of which shall be obligations of Owner, if and to the extent any such Taxes are payable.

(c) Tax Deductions. Operator and each of its subsidiaries shall comply with all applicable withholding, employment, social security and similar provisions of applicable U.S. federal, state, Commonwealth, municipal, local and foreign laws, and timely withhold and pay all Taxes that it is required to withhold and pay from any Person, including its employees and independent contractors. Owner shall not make any such withholdings or deductions on behalf of Operator.

**Article 13**  
**INTELLECTUAL PROPERTY; PROPRIETARY INFORMATION**

**Section 13.1 Intellectual Property.**

(a) Operator Intellectual Property and Subcontractor Intellectual Property. Operator hereby grants to Owner, and shall cause its Affiliates and Subcontractors to grant to Owner, a perpetual, non-exclusive, fully paid-up, royalty-free license and sublicense, under all of such party's rights in, to and under the Operator Intellectual Property and Subcontractor Intellectual Property solely in connection with the Legacy Generation Assets and related facilities of Owner and their related operations (including the O&M Services or the Decommissioning Services) by or on behalf of Owner or any successors or operators thereto to (i) make, have made, use, sell, offer for sale, export or import any product, service or apparatus and practice any method, and (ii) use, reproduce, distribute, perform, display, execute and create derivative works in any medium or format, whether now known or later developed, in connection with any of the foregoing. Owner shall not and shall ensure that its Affiliates do not sublicense, rent, lease, distribute or otherwise authorize the use of Operator Intellectual Property or Subcontractor Intellectual Property to, by or on behalf of anyone other than Owner and its Affiliates, any successors or operators thereto or any other third-party with whom Owner, its Affiliates or any successors or operators thereto contract solely for purposes of operating the Legacy Generation Assets and related facilities. Operator Intellectual Property and Subcontractor Intellectual Property are Operator's Confidential Information to the extent disclosed to Owner and for so long as they are protectable as trade secrets or are otherwise confidential, and for the avoidance of doubt shall remain the Intellectual Property of the owner thereof.

(b) Third-Party Intellectual Property. Operator shall use commercially reasonable efforts to ensure that any Third-Party Intellectual Property is (i) licensed to Operator on the substantially same terms as are set forth in Section 13.1(a) (*Intellectual Property – Operator Intellectual Property and Subcontractor Intellectual Property*), subject to appropriate modifications relative to the scope of the particular third-party relationship and (ii) sublicensable to Owner under terms substantially similar to those obtained by Operator for the use thereof in connection with the Legacy Generation Assets and related facilities and their related operations. The use of Third-Party Intellectual Property shall be subject to the license terms governing the use of such Intellectual Property. To the extent Operator wishes to use any non-commercially available Intellectual Property of any third-party in the provision of the O&M Services or the Decommissioning Services, Operator shall identify to Administrator, in writing in advance of any use of any such Intellectual Property, whether or not Operator has a right to sublicense same to Owner under the same terms as those of the foregoing license requirements. If, despite using commercially reasonable efforts, Operator cannot secure such license or sublicense rights, then Operator shall (i) assist Owner in obtaining any necessary license directly from such third-party or (ii) pursue licensing of a non-infringing alternative capable of accomplishing the same purpose in substantially the same manner, and, in the case of clauses (i) and (ii), Operator shall not use such Third-Party Intellectual Property or such alternative prior to Owner obtaining a sufficient license thereto.

(c) Work Product. The Parties hereby acknowledge and agree that, as between them, Owner shall own all right, title and interest in and to all Intellectual Property, regardless of

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format, created or produced in the performance of the O&M Services or the Decommissioning Services by Operator and its Affiliates if the cost of such creation or development is a Pass-Through Expenditure (collectively, “Work Product”), all of which shall, to the fullest extent under Copyright law, be considered works made for hire. For the avoidance of doubt, Work Product shall not include any Intellectual Property created or produced (A) prior to the Effective Date or (B) outside the performance of the O&M Services or the Decommissioning Services. To the extent that ownership in any Work Product does not automatically vest in Owner, Operator does hereby transfer and assign, and shall cause its Affiliates to transfer and assign, and shall use commercially reasonable efforts to cause any of its or their Subcontractors to transfer and assign, all right, title and interest in, to and under such Work Product and any Intellectual Property therein to Owner, and to execute all documents and take all actions requested by Administrator to transfer and record such ownership. Notwithstanding the foregoing, Owner acknowledges that nothing in this Agreement is intended to prevent Operator from independently developing, researching, or distributing any products or offerings similar to but separate from and not based on, nor constituting, Work Product, and Operator acknowledges that nothing in this Agreement is intended to prevent Owner from developing, researching, or distributing any products or offerings similar to but separate from and not based on, nor constituting, any such items developed, researched or distributed by Operator.

(d) License of Owner Intellectual Property. Subject to the terms and conditions of this Agreement, Owner hereby grants, and shall cause its Affiliates to grant, to Operator and its Affiliates a fully paid-up, royalty-free, non-exclusive, non-transferable, sub-licensable (only to Subcontractors), limited license and sublicense under the Owner Intellectual Property and, to the extent sub-licensable without the need to obtain third-party consent or pay any fees, Owner Licensed Intellectual Property, during the Term, to: (i) use, sell, offer for sale, export or import any product, service or apparatus and practice any method, and (ii) use, reproduce, distribute, perform, display, execute and create derivative works, in the case of each of clause (i) and (ii), solely as necessary for Operator and its Affiliates to perform their obligations pursuant to this Agreement. The use of Owner Licensed Intellectual Property shall be subject to the applicable license terms governing the use of such Intellectual Property. To the extent any Owner Licensed Intellectual Property cannot be licensed to Operator or its Affiliates (or can only be licensed subject to third-party consent or the payment of fees), their Subcontractors for any reason, and where such Owner Licensed Intellectual Property is reasonably required for the performance of this Agreement, then Operator or its Affiliates, their Subcontractors shall promptly obtain their own third-party license for the relevant Intellectual Property or any reasonably equivalent Intellectual Property, and, provided that Owner approved in writing the procurement of such required replacement license (including the cost and expense associated therewith), Owner shall bear the cost and expense of such required replacement licenses.

### **Section 13.2** Proprietary Information.

#### (a) Confidentiality Obligation.

(i) Subject to the remainder of this Section 13.2 (*Proprietary Information*), any and all written, recorded or oral Facility Information furnished or made available in connection with this Agreement, or that constitutes Work Product, shall be deemed Owner’s Confidential Information, with respect to which Operator shall be deemed to be the receiving Party

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and Owner shall be deemed to be the disclosing Party. Operator's Confidential Information includes Confidential Information pertaining to Operator Intellectual Property or Subcontractor Intellectual Property, or to Operator's policies and strategies. Confidential Information shall not include any of the foregoing that: (A) is when furnished, or thereafter becomes, available to the public other than as a result of a disclosure by the receiving Party or its Representatives; (B) is already in the possession of or become available to the receiving Party or its Representatives on a non-confidential basis from a source other than the disclosing Party or its Representatives; provided, that to the knowledge of the receiving Party or its Representatives, as the case may be, such source is not and was not bound by an obligation of confidentiality to the disclosing Party or its Representatives; or (C) the receiving Party or its Representatives can demonstrate has been independently developed without a violation of this Agreement.

(ii) Subject to the remainder of this Section 13.2 (*Proprietary Information*), each receiving Party shall, and shall cause its Representatives to, (A) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information of the disclosing Party, and (B) use all Confidential Information of the disclosing Party solely for the purposes of performing its obligations under the Transaction Documents and not for any other purpose; provided, that:

(A) a receiving Party may disclose Confidential Information of the disclosing Party to those of its Representatives who need to know such information for the purposes of performing the receiving Party's obligations under this Agreement if, to (i) counterparties and prospective counterparties to Subcontracts, Fuel Contracts and Facility Contracts and their respective Representatives who need to know such information in connection with an existing or proposed Subcontract, Fuel Contract or Facility Contract, (ii) any lender or prospective lenders and its Representatives, and (iii) any insurer in connection with a policy of insurance required pursuant to this Agreement, in each case of the foregoing (i) through (iii) solely to the extent required and for the purposes of the receiving Party's obligations under this Agreement, and only if, prior to being given access to such Confidential Information, such Representatives are informed of the confidentiality thereof and the requirements of this Agreement and are obligated to comply with the requirements of this Agreement;

(B) the foregoing shall not limit any rights or licenses granted under Article 13 (*Intellectual Property; Proprietary Information*); provided that the licensee shall treat any Confidential Information included in such license in a manner consistent with this Section 13.2 (*Proprietary Information*) and in any event with the same care as it would treat its own comparable information, acting reasonably; and

(C) each Party shall be responsible for any breach of this Agreement by its Representatives.

(b) Permitted Disclosures.

(i) Subject to the terms of this Section 13.2 (*Proprietary Information*), each receiving Party may disclose Confidential Information of the disclosing Party to a duly authorized Governmental Body where required to do so by Applicable Law. None of the Parties shall have any liability whatsoever to the other Party in the event of any unauthorized use or

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disclosure by a Governmental Body of any Confidential Information of another Party to the extent such disclosure was required by Applicable Law and was in accordance with the requirements of this Section 13.2 (*Proprietary Information*).

(ii) Subject to the terms of this Section 13.2 (*Proprietary Information*), each Party may disclose Confidential Information of the other Party to the extent necessary to comply with any subpoena or order of any Commonwealth Court or other judicial entity having jurisdiction over the receiving Party, or in connection with a discovery or data request of a party to any proceeding before any of the foregoing.

(c) Ownership and Return of Information. Subject to the remainder of this Section 13.2 (*Proprietary Information*), Confidential Information shall be and remain the property of the Party disclosing it. Nothing in this Agreement shall be construed as granting any rights in or to Confidential Information to the Party or Representatives receiving it, except the right to use it in accordance with the terms of this Agreement. Notwithstanding the foregoing, the Parties and Administrator shall have the right to retain copies of Confidential Information, subject to the confidentiality obligations in this Section 13.2 (*Proprietary Information*).

(d) Public Information Disclosure Requirements-Related Obligations.

(i) Operator acknowledges and agrees that any documents or other materials relating to this Agreement in Owner's or Administrator's possession may be considered public information subject to disclosure in accordance with applicable Public Information Disclosure Requirements. Operator shall then have the opportunity to either consent to the disclosure or assert its basis for non-disclosure and claimed exception under Applicable Law to Owner or Administrator within the time period specified in the notice issued by Owner or Administrator, which such time period shall be no less than two (2) Business Days unless otherwise required by Applicable Law. Notwithstanding the foregoing, Operator shall monitor requests for disclosure issued by Owner or Administrator and related proceedings, make any filings or submit any applicable responses in connection thereto on a timely basis, and notify Owner and Administrator of any documents or portions of documents that may be exempted from disclosure (including by marking as "CONFIDENTIAL"). Owner or Administrator may make filings or submit responses of its own concerning possible disclosure; provided, however, that if Operator provides notice that certain documents or portions of documents may be exempted from disclosure, then Owner and Administrator shall reasonably cooperate with Operator in such contest solely to the extent, in Owner's or Administrator's respective counsel's reasonable opinion, such cooperation would not cause Owner or Administrator to violate Applicable Law.

(A) Subject to Section 13.2(d)(i) (*Proprietary Information -- Public Information Disclosure Requirements-Related Obligations*) above, by entering this Agreement, Operator consents to, and expressly waives any right to contest, the provision by Owner or Administrator to Owner's or Administrator's counsel of all or any part of any documents or materials in Owner's or Administrator's possession in accordance with the Public Information Disclosure Requirements. Owner or Administrator shall have no responsibility or obligation for Operator's failure to respond or to respond timely to any request for disclosure in accordance with the Public Information Disclosure Requirements, and other than the obligations of Owner or Administrator expressly stated hereunder and subject to Section 13.2(d)(i) (*Proprietary*

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*Information -- Public Information Disclosure Requirements-Related Obligations*) above, Owner or Administrator shall not be required, except where required under Applicable Law, to wait for a response before making a disclosure or otherwise taking action under the Public Information Disclosure Requirements.

(B) Under no other circumstances shall Owner or Administrator be responsible or liable to Operator or any other party as a result of disclosing any such documents or materials, including materials marked “CONFIDENTIAL”, where the disclosure is required by Applicable Law or by an order of court.

(ii) Nothing contained in this Section 13.2(d) (*Proprietary Information – Public Information Disclosure Requirements-Related Obligations*) shall modify or amend requirements and obligations imposed on Owner or Administrator by the Public Information Disclosure Requirements, and the provisions of the Public Information Disclosure Requirements shall control to the extent of a conflict with the procedures under this Agreement or Owner’s or Administrator’s obligations with respect to Confidential Information. Owner or Administrator shall not advise a submitting party or Operator as to the nature or content of documents or materials that may be entitled to protection from disclosure under the Public Information Disclosure Requirements, as to the interpretation thereof, or as to relevant definition (e.g., “trade secret”).

(iii) In the event of any proceeding or litigation concerning the disclosure of any documents or other materials in accordance with the Public Information Disclosure Requirements to third-parties, subject to the other provisions of this Section 13.2(d) (*Proprietary Information – Public Information Disclosure Requirements-Related Obligations*), Owner’s or Administrator’s sole involvement shall be as a stakeholder retaining the material until otherwise ordered by a Commonwealth Court or other court or authority having jurisdiction. Operator shall be responsible for prosecuting or defending any action, acting on its own behalf, concerning such documents or materials at its sole expense and risk; provided, however, that Owner or Administrator may intervene or participate in the litigation in such manner as it deems necessary or desirable.

### Section 13.3 Data Security.

(a) Cybersecurity Breaches. Operator shall comply with, and shall use commercially reasonable efforts to ensure that all Operator Related Parties and all Subcontractors comply with all Contract Standards and all requirements of Applicable Law regarding data security, cyber security and information security in respect of the Facility Information and related Information Systems. Operator shall promptly notify, and shall use commercially reasonable measures to ensure that all Operator Related Parties and Subcontractors promptly notify, Administrator and PREB (in writing) of any material Cybersecurity Breaches or any other material losses or theft of any data of which it has knowledge. At Administrator’s direction, Operator shall (i) perform an analysis of the cause, (ii) remedy any Cybersecurity Breach including notification of consumers or government entities when required by Applicable Law, and (iii) cooperate fully with any civil or criminal authority in any investigation or action relating to such breach or attempted breach.



(b) Cybersecurity Program. Without limiting the foregoing, Operator shall: (A) establish and maintain reasonable and appropriate organizational, administrative, physical and technical measures in place to maintain the security of and to protect the internal and external integrity of the Facility Information and related Information Systems against any unlawful or unauthorized use, processing, destruction, loss, alteration, disclosure, theft or access (including to any data or information contained in or stored on such systems); (B) establish and maintain backup, security and disaster recovery measures to safeguard the Facility Information and related Information Systems; (C) limit the risk of introducing or knowingly permitting the introduction of any virus, worm, bomb, Trojan horse, trap door, stop code or other harmful code, timer, clock, counter or other limiting design, instruction or routine, device, feature or function into the Facility Information and related Information Systems; and (D) require security audits, at a frequency consistent with industry standards, to assess and confirm compliance with this Section 13.3 (*Data Security*), (including using reputable third-party vendors to perform, penetration testing, cybersecurity audits and vulnerability assessments) and requires taking prompt measures to remedy any gaps that may be identified. Operator shall provide a summary of the security program as well as a copy of any written audit reports and remedial measures to Administrator and PREB, for their information to the extent not prohibited by Applicable Law. Any security audit information is Confidential Information of Owner, and neither Party shall disclose such security audit information without the consent of the other Party.

#### **Article 14** **EVENTS OF DEFAULT; REMEDIES**

**Section 14.1** Events of Default by Operator. Each of the following shall constitute an event of default by Operator (an “Operator Event of Default”):

(a) Involuntary Bankruptcy. An involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of Operator or Guarantor or its debts, or of a substantial portion of its respective assets, under the Bankruptcy Code or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Operator or Guarantor or for a substantial portion of its assets, and, in any such case, such proceeding or petition shall continue undismissed for a period of sixty (60) or more days or an order or decree approving or ordering any of the foregoing shall be entered;

(b) Voluntary Bankruptcy. Operator or Guarantor shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under the Bankruptcy Code, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in Section 14.1(a) (*Events of Default by Operator – Involuntary Bankruptcy*), (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Operator or Guarantor or for a substantial portion of its respective assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(c) Failure to Provide or Maintain the Guarantee. Operator shall fail to provide or maintain in full force and effect the Guarantee, which failure shall not be cured in a manner

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acceptable to Administrator within five (5) Business Days following receipt of written notice thereof;

(d) Failure to Perform a Material Obligation. Operator shall fail to perform any material obligation, covenant, term or condition under this Agreement or Guarantor shall fail to perform any material obligation, covenant, term or condition under the Guarantee (in each case other than a payment obligation as provided in Section 14.1(e) (*Events of Default By Operator – Failure to Pay*)), which failure shall not be cured within sixty (60) days following receipt of written notice thereof by Administrator detailing the relevant failure and proposed cure; provided, however, that as long as Operator or Guarantor, as the case may be, is diligently attempting in good faith to cure such failure and it is reasonably expected that such failure is curable, then Operator or Guarantor, as the case may be, shall have an additional thirty (30) days to cure such default; provided, further, that any failure to perform which is not curable shall not be deemed an Operator Event of Default if (i) within sixty (60) days following receipt of written notice thereof, Operator or Guarantor shall have diligently and in good faith taken measures to prevent such failure to perform from recurring and (ii) such failure to perform which is not curable is not a recurring failure for the same issue as a prior failure to perform that has previously (A) occurred and (B) not been deemed an Operator Event of Default;

(e) Failure to Pay. Except with respect to Failure to Pay Penalties (which are addressed in clause (k) below), Operator or Guarantor shall fail to pay any undisputed amount required to be paid by Operator under this Agreement or by Guarantor under the Guarantee, which failure shall not be cured within sixty (60) days following written notice thereof by Administrator; provided that if such payment relates to a Pass-Through Expenditure, an Operator Event of Default shall not be deemed to have occurred if sufficient funds for such payment are not available in the relevant Service Account;

(f) False or Inaccurate Representation or Warranty. Any representation or warranty of Operator under this Agreement or any other document delivered in connection herewith or of Guarantor under the Guarantee shall prove to have been false, inaccurate or misleading in any material respect when made, and the legality of this Agreement or the Guarantee or the ability of Operator or Guarantor to carry out its obligations hereunder or thereunder shall thereby be materially and adversely affected, which condition shall not be cured within thirty (30) days following written notice thereof by Administrator;

(g) Failure to Obtain or Maintain Insurance. Operator shall fail to obtain or maintain the Required Insurance specified in Section II of Annex XIII (*Insurance Specifications*), unless such failure is due to carrier insolvency or the fact that the Required Insurance is not available on commercially reasonable Terms (as defined in Section 10.2 (*Commercial Availability*)) but only for such period of time and to the extent specified in Section 10.2 (*Commercial Availability*) (in which case no failure shall be understood to have occurred), which failure shall not be cured within ten (10) Business Days following written notice thereof by Administrator;

(h) Change of Control. A Change of Control of Operator that is not permitted by this Agreement or otherwise approved by Administrator in accordance with Section 21.6(c) (*Assignment and Transfer – Change of Control*) shall occur on or after the Effective Date;

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(i) Illegal Transfer. Operator shall enter into an agreement to, or shall assign, transfer, convey, lease, encumber or otherwise dispose of all or any portion of its rights or obligations under this Agreement other than (i) in accordance with the express terms of this Agreement and Applicable Law or (ii) with the consent of Administrator and PREB;

(j) Violation of Law. Either (A) a court of competent jurisdiction shall have determined that Operator shall have violated any of the provisions of Article 3.2 of Act 2, (B) Operator shall be convicted by a court of competent jurisdiction, or (C) Operator shall enter a plea of *nolo contendere* with such court, in each case, resulting in a final, non-appealable judgment with respect to any of the crimes listed in Section 20.2(g)(i)(B) (*Representations and Warranties of Operator – Applicable Law Compliance*);

(k) Failure to Pay Penalties. Operator or Guarantor shall fail to pay any one or more undisputed Penalties in the aggregate in excess of US\$100,000 that are required to be paid by Operator under this Agreement or by Guarantor under the Guarantee, which failure shall not be cured within thirty (30) days following written notice thereof by Administrator (a “Failure to Pay Penalties”); or

(l) Failure to Meet Minimum Performance Threshold. Following the Service Commencement Date, if Operator fails to meet the Minimum Performance Thresholds for two (2) consecutive Contract Years with respect to any of the following Incentives and Penalties standards: (i) availability and reliability, (ii) safety compliance, (iii) environmental compliance and (iv) decommissioning; provided that such failure to meet the Minimum Performance Thresholds shall not have been excused by a Force Majeure Event, a Forced Outage or Owner Fault (a “Minimum Performance Threshold Default”).

### **Section 14.2 Termination for Operator Event of Default.**

(a) Termination for Involuntary Bankruptcy, Voluntary Bankruptcy or Violation of Law. Upon the occurrence of an Operator Event of Default under Section 14.1(a) (*Events of Default By Operator – Involuntary Bankruptcy*), Section 14.1(b) (*Events of Default By Operator – Voluntary Bankruptcy*) or Section 14.1(j) (*Events of Default By Operator – Violation of Law*), this Agreement shall immediately terminate without further action by Administrator, without need for a court decision or arbitral award confirming Administrator’s right to terminate.

(b) Termination for Other Operator Event of Default. Upon the occurrence of any other Operator Event of Default (and for so long as the same is continuing), Administrator may terminate this Agreement upon not less than one hundred twenty (120) days prior written notice to Operator, subject, to the extent required by Applicable Law, to the prior approval of PREB or the FOMB (if then in existence), without need for a court decision or arbitral award confirming Administrator’s right to terminate; provided, however, that any such notice of termination with respect to an Operator Event of Default under Section 14.1(h) (*Events of Default By Operator – Change of Control*) must be given no later than thirty (30) days following Administrator’s receipt of written notice from Operator of the occurrence of such Change of Control. If Administrator fails to give such notice to Operator within such thirty (30) day period, Administrator shall be deemed to have waived the Operator Event of Default with respect to such Change of Control and its termination rights with respect thereto (but not with respect to any

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subsequent Change of Control) shall expire and be of no further force or effect. For the avoidance of doubt, nothing in this Section 14.2 (*Termination for Operator Event of Default*) shall limit Operator's right to contest, pursuant to Article 15 (*Dispute Resolution*), whether an Operator Event of Default has occurred, or any of its other rights herein.

**Section 14.3** Events of Default By Owner. Each of the following shall constitute an event of default by Owner (an "Owner Event of Default"):

(a) Involuntary Bankruptcy. An involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of Owner or its debts, or of a substantial portion of its respective assets, under the Bankruptcy Code or other applicable insolvency statute or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Owner or for a substantial portion of its assets, and, in any such case, such proceeding or petition shall continue undismissed for a period of sixty (60) or more days or an order or decree approving or ordering any of the foregoing shall be entered; provided, however, that the pursuit by creditors of Owner of relief from the automatic stay extant pursuant to section 362(a) of the Bankruptcy Code in the current Title III Case for the purpose of seeking appointment of a receiver under applicable law shall not constitute an Owner Event of Default unless and until any such receiver is duly appointed;

(b) Voluntary Bankruptcy. Owner shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under the Bankruptcy Code or other applicable insolvency statute (other than the current Title III Case), (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in Section 14.3(a) (*Events of Default By Owner – Involuntary Bankruptcy*), (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Owner or for a substantial portion of its respective assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(c) Failure to Perform a Material Obligation. Owner shall fail to perform any material obligation, covenant, term or condition under this Agreement (other than a payment obligation as provided in Section 14.3(d) (*Events of Default By Owner – Failure to Pay Service Fee*) or Section 14.3(e) (*Events of Default By Owner – Failure to Pay Other Undisputed Amount*) or a failure to fund the Mobilization Account or Service Account, or as provided in Section 14.3(f) (*Events of Default By Owner – Failure to Fund Mobilization Account or Service Account*)), which failure shall not be cured within sixty (60) days following written notice thereof by Operator; provided, however, that as long as Owner is diligently attempting in good faith to cure such failure and it is reasonably expected that such failure is curable, then Owner shall have an additional thirty (30) days to cure such default; provided, further, that any failure to perform which is not curable shall not be deemed an Owner Event of Default if (i) within sixty (60) days following receipt of written notice thereof, Owner shall have diligently and in good faith taken measures to prevent such failure to perform from recurring and (ii) such failure to perform which is not curable is not a recurring failure for the same issue as a prior failure to perform that has previously (A) occurred and (B) not been deemed an Owner Event of Default;

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(d) Failure to Pay Service Fee. Owner shall fail to pay any undisputed Service Fees to be paid to Operator under this Agreement, which failure shall continue for thirty (30) days following written notice thereof by Operator;

(e) Failure to Pay Other Undisputed Amount. Owner shall fail to pay any other undisputed amount required to be paid by Owner to Operator under this Agreement (other than as provided in Section 14.3(d) (*Events of Default By Owner – Failure to Pay Service Fee*)), which failure shall not be cured within sixty (60) days following written notice thereof by Operator;

(f) Failure to Fund any Service Account. Owner shall fail (i) to initially fund any Service Account in an amount equal to the requisite funding for such Service Account pursuant to the then current applicable Budget(s) and in accordance with the other terms of this Agreement (including Section 7.6 (*Service Accounts*)) or (ii) to replenish any Service Account (other than the Reserve Account which is addressed in clause (iii) below) in an amount equal to at least one half (1/2) of the requisite funding for such Service Account pursuant to the then current applicable Budget(s) and in accordance with the other terms of this Agreement (including Section 7.6 (*Service Accounts*)) or (iii) to replenish the Reserve Account in accordance with the other terms of this Agreement (including Section 7.6(d)(ii) (*Service Accounts – Reserve Account*)), in each case of clauses (i), (ii) and (iii), which failure shall not be cured within five (5) Business Days following written notice thereof by Operator; or

(g) False or Inaccurate Representation or Warranty. Any representation or warranty of Owner under this Agreement or any other document delivered in connection herewith shall prove to have been false, inaccurate or misleading in any material respect when made, and the legality of this Agreement or the ability of Operator to carry out its obligations hereunder shall thereby be materially and adversely affected, which condition shall not be cured within thirty (30) days following written notice thereof by Operator.

**Section 14.4** Termination for Owner Event of Default. Upon the occurrence of an Owner Event of Default under Section 14.3 (*Events of Default By Owner*), Operator may terminate this Agreement upon not less than one hundred twenty (120) days prior written notice to Administrator, without need for a court decision or arbitral award confirming Operator's right to terminate; provided that upon the occurrence of an Owner Event of Default under Section 14.3(f) (*Events of Default By Owner – Failure to Fund any Service Account*) relating to funding of a Service Account, upon written notice from Operator, the Agreement shall terminate and, subject to Article 17 (*Demobilization*), Operator's obligation to perform the Mobilization Services, the O&M Services, the Decommissioning Services or the Demobilization Services, as applicable, shall cease, upon the earlier of (i) the date that is one hundred twenty (120) days following the date on which Administrator receives written notice from Operator, (ii) the date that is sixty (60) days following the date on which Administrator receives written notice from Operator that there is no funding in the Mobilization Account, or (iii) the date that is sixty (60) days following the date on which Administrator receives written notice from Operator that there is no funding in any Service Account other than the Mobilization Account, in each case without need for a court decision or arbitral award confirming Operator's right to terminate. For the avoidance of doubt, nothing in this Section 14.4 (*Termination for Owner Event of Default*) shall limit Owner's right to contest, pursuant to Article 15 (*Dispute Resolution*), whether an Owner Event of Default has occurred, or any of its other rights herein. Owner agrees the automatic stay extant in the Title III Case pursuant

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to section 362(a) of the Bankruptcy Code shall not apply to the exercise by Operator of its termination rights or other remedies under this Section 14.4 (*Termination for Owner Event of Default*), Section 14.5 (*Additional Termination Rights*) or Section 14.6 (*Remedies Upon Early Termination*).

### **Section 14.5 Additional Termination Rights.**

(a) Failure of Service Commencement Date Conditions. As set forth in Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*), each of Administrator and Operator shall have the right to terminate this Agreement for failure to satisfy the Service Commencement Date Conditions, in accordance with and subject to the terms set forth in Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*) in all respects.

(b) Extended Force Majeure Event. Each of Administrator and Operator shall have the right to terminate this Agreement upon not less than one hundred twenty (120) days' prior written notice to Operator or Administrator, respectively, in the event that a Force Majeure Event continues for a period in excess of eighteen (18) consecutive months and materially interferes with, delays or increases the cost of the Mobilization Services, the O&M Services, the Decommissioning Services or the Demobilization Services.

(c) Change in Regulatory Law. Operator shall have the right to terminate this Agreement upon not less than one hundred twenty (120) days' prior written notice to Administrator in the event of a Change in Regulatory Law.

(d) Revocation of Procurement Manual. Operator shall have the right to terminate this Agreement upon not less than two hundred seventy (270) days' prior written notice to Administrator in the event that the Procurement Manual is revoked and not replaced within such period by a procurement manual that is mutually agreed by the Parties.

### **Section 14.6 Remedies Upon Early Termination.**

(a) Accrued and Unpaid Amounts. In the event of an early termination of this Agreement for any reason, as of the effective date of such termination (i) Owner shall pay Operator any accrued and unpaid amounts required to be paid by Owner under this Agreement, including the Mobilization Service Fee, the Pass-Through Expenditures, the O&M Fixed Fee, and the Incentive Payment, in each case, as of the effective date of such termination and (ii) Operator shall pay Owner (A) any accrued and unpaid Penalties and (B) any penalties, fines or moneys incurred by Operator and owed to Governmental Bodies for violations of Applicable Law, including Environmental Law.

(b) Pass-Through Expenditure; Demobilization Service Fee. In the event of an early termination of this Agreement for any reason (including pursuant to Section 14.2, (*Termination for Operator Event of Default*), Section 14.4 (*Termination for Owner Event of Default*) or Section 14.5 (*Additional Termination Rights*)), (i) Owner shall pay or reimburse Operator all Pass-Through Expenditure accruing after the date of such early termination that cannot reasonably be avoided by Operator and (ii) subject to all terms of Article 7 (*Compensation*;

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*O&M Budgets*), notwithstanding the termination of this Agreement for all other purposes, Operator shall complete the Demobilization Services for each Legacy Generation Asset promptly following such termination, and Owner shall pay Operator all amounts required to be made hereunder with respect to such Demobilization Services.

(c) Termination Fee.

(i) In the event this Agreement is (A) terminated, revoked, nullified, cancelled or otherwise rendered invalid by any duly enacted law of the Commonwealth, as determined by a final non-appealable judgment by a court of competent jurisdiction (a “Contract Nullification or Cancellation”) or (B) terminated by Operator pursuant to Section 14.5(c) (*Additional Termination Rights – Change in Regulatory Law*), but only if such termination is as a result of the circumstances described in clauses (ii) or (iii) of the definition of “Change in Regulatory Law”, Owner shall pay Operator the Operator Termination Fee set forth in Section I of Annex XIV (*Termination Fees – Operator Termination Fee*) (the “Operator Termination Fee”). For the avoidance of doubt, (x) Owner shall have no obligation to pay the Operator Termination Fee other than in the circumstances described in clauses (A) and (B) of the preceding sentence and (y) the “resolution” of this Agreement pursuant to Act 2 as described under Section 14.1(j) (*Events of Default by Operator - Violation of Law*) shall not be considered a Contract Nullification or Cancellation.

(ii) In the event of an early termination of this Agreement by Administrator due to a Failure to Pay Penalties or a Minimum Performance Threshold Default, Operator shall pay Owner the amount set forth in Section II of Annex XIV (*Termination Fees – Owner Termination Fee*) (the “Owner Termination Fee”). For the avoidance of doubt, Operator shall have no obligation to pay the Owner Termination Fee other than in the event of an early termination of this Agreement by Administrator due to a Failure to Pay Penalties or a Minimum Performance Threshold Default.

(iii) The Parties hereby acknowledge and agree that, notwithstanding anything to the contrary in this Agreement:

(A) if this Agreement is (1) terminated due to a Contract Nullification or Cancellation, (2) terminated by Operator pursuant to Section 14.5(c) (*Additional Termination Rights – Change in Regulatory Law*) (but only if such termination is as a result of the circumstances described in clauses (ii) or (iii) of the definition of “Change in Regulatory Law”), Operator’s damages would be difficult or impossible to quantify with reasonable certainty, and accordingly, the payment to Operator of the Operator Termination Fee (x) is a payment of liquidated damages (and not penalties), which is based on the Parties’ estimate of damages Operator would suffer or incur, and (y) shall constitute Operator’s sole and exclusive remedy for all monetary damages, costs, losses and expenses of whatever type or nature arising from or related to this Agreement due to the events described in clauses (1) and (2) of this sentence; provided, however, that the foregoing shall not limit Operator’s right to receive any payments or reimbursements required to be made under any other provision of this Agreement with respect to any period prior to or after the termination of this Agreement; and

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(B) if this Agreement is terminated by Administrator due to a Failure to Pay Penalties or a Minimum Performance Threshold Default, Owner's damages would be difficult or impossible to quantify with reasonable certainty, and accordingly, the payment to Owner of the Owner Termination Fee (x) is a payment of liquidated damages (and not penalties), which is based on the Parties' estimate of damages Owner would suffer or incur, and (y) shall constitute Owner's sole and exclusive remedy for all monetary damages, costs, losses and expenses of whatever type or nature arising from or related to termination of this Agreement due to a Failure to Pay Penalties or a Minimum Performance Threshold Default.

(iv) Each of Operator and Owner hereby irrevocably waives any right it may have to raise as a defense that the Owner Termination Fee and Operator Termination Fee, respectively, are excessive or punitive.

(d) Additional Remedies. The Parties agree that (i) except as otherwise provided in this Agreement (including the sole and exclusive remedies set forth in Section 4.1(c) (*Mobilization Period Generally – Administrative Expense Treatment*), Section 4.8 (*Failure of Service Commencement Date Conditions*) and Section 14.6(c) (*Remedies Upon Early Termination – Termination Fee*)) in which cases the remedy specified in such provision shall be the sole remedy available and (ii) subject to the limitations set forth in Section 19.3 (Limitation on Liability), in the event that the Agreement is terminated early due to an Event of Default in accordance with the terms hereof, any Party may exercise any rights it has under this Agreement and under Applicable Law to recover damages, secure specific performance or obtain injunctive relief.

(e) Debarment. Upon the termination of this Agreement pursuant to Section 14.2 (*Termination for Operator Event of Default*), Operator shall be disqualified from contracting with any Commonwealth Governmental Body for ten (10) years in accordance with Section 10(a)(15)(c) of Act 29.

## Article 15 DISPUTE RESOLUTION

**Section 15.1** Scope. Except as otherwise expressly provided in this Agreement, any dispute among the Parties arising out of, relating to or in connection with this Agreement or the existence, interpretation, breach, termination or validity thereof (a "Dispute") shall be resolved in accordance with the procedures set forth in this Article 15 (*Dispute Resolution*), which shall constitute the sole and exclusive procedures for the resolution of such Disputes (the "Dispute Resolution Procedure"), including as to the validity of any termination or effective date of any termination. Operator acknowledges and agrees that Administrator (or any Designated Person appointed by Administrator) shall be authorized to participate in or act for and on behalf of Owner in any Dispute Resolution Procedure contemplated by this Article 15 (*Dispute Resolution*). For the avoidance of doubt, the Dispute Resolution Procedures set forth in this Agreement shall not apply to any dispute between a Party and PREB, which disputes shall be subject to resolution in accordance with Applicable Law. Notwithstanding anything to the contrary herein, in the event that Operator disagrees with a decision of PREB, nothing shall prejudice, limit or otherwise impair Operator's right to exercise its rights pursuant to Act No. 38 of June 30, 2017 and Section 6.5(c) of Act 57.



**Section 15.2** Commencement of the Dispute Resolution Procedure.

(a) Notice. If a Dispute arises, any Party may initiate the Dispute Resolution Procedure by giving a written notice of the Dispute to the other Party (a “Notice of Dispute”). The Notice of Dispute shall contain a brief statement of the nature of the Dispute, set out the relief requested and request that the Dispute Resolution Procedure of this Article 15 (*Dispute Resolution*) be commenced. Notwithstanding the foregoing, if either Party elects to proceed to litigation of a Technical Dispute pursuant to Section 15.4(e) (*Expert Technical Determination Procedure for Technical Disputes – Election*), then only the provisions of Section 15.6 (*Litigation as a Final Resort*) shall apply to any such dispute.

(b) Tolling. Any limitation period imposed by this Agreement or by Applicable Law in respect of a Dispute shall be tolled upon the delivery of a Notice of Dispute pursuant to this Section 15.2 (*Commencement of the Dispute Resolution Procedure*) for the duration of any Dispute Resolution Procedure pursuant to this Article 15 (*Dispute Resolution*).

**Section 15.3** Negotiation.

(a) Generally. Upon receipt of a Notice of Dispute from a Party, the Parties shall refer the Dispute to the Designated Person of each Party. The Designated Persons shall negotiate in good faith and attempt to resolve the Dispute within thirty (30) days after the date on which the Notice of Dispute was issued, or such longer period as the Designated Persons may otherwise agree. All communications, negotiations and discussions pursuant to this Section 15.3 (*Negotiation*) shall be (i) confidential, (ii) without prejudice privileged, (iii) treated as compromise settlement discussions and negotiations and (iv) not used, offered or admissible as evidence in any subsequent proceeding without the mutual consent of the Parties. If the Dispute is an O&M Budget Dispute or Decommissioning Budget Dispute, then during the Negotiation Period the Designated Persons may agree to refer such Dispute to an Independent Expert appointed in accordance with the procedures set forth in Section 15.4(b)(i) (*Expert Technical Determination Procedure for Technical Disputes – Procedures*) for a non-final, non-binding determination.

(b) Negotiation Period.

(i) If the Dispute remains unresolved thirty (30) days after the Notice of Dispute is issued (or such longer period as Operator and Administrator may mutually agree in writing) (the “Negotiation Period”), then any Mobilization Service Fee Estimate Dispute, Mobilization Service Fee Dispute, Demobilization Service Fee Estimate Dispute, Demobilization Service Fee Dispute, Handover Checklist Dispute, Administrator Dispute, Service Fee Dispute, O&M Budget Dispute, Decommissioning Budget Dispute, Service Account Dispute, Disallowed Costs Dispute or Force Majeure Event Dispute (each a “Technical Dispute”), or any engineering or technical dispute Operator and Administrator mutually agree in writing is a Technical Dispute shall be referred to the Expert Technical Determination procedure set forth in Section 15.4 (*Expert Technical Determination Procedure for Technical Disputes*) for a final and binding determination.

(ii) If the Dispute, other than a Technical Dispute, remains unresolved after the end of the Negotiation Period, then the Dispute shall proceed to mediation pursuant to

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Section 15.5 (*Mediation*), and if necessary, litigation pursuant to Section 15.6 (*Litigation as a Final Resort*), for a final and binding determination.

**Section 15.4** Expert Technical Determination Procedure for Technical Disputes.

(a) Generally. Any Technical Disputes unresolved within the Negotiation Period shall, subject to Section 15.4(e) (*Expert Technical Determination Procedure for Technical Disputes – Election*), be referred to an independent expert (the “Independent Expert”) for a final and binding expert determination (“Expert Technical Determination”); provided that if an O&M Budget Dispute or Decommissioning Budget Dispute was referred to an Independent Expert pursuant to Section 15.3(a) (*Negotiation – Generally*), then the parties may agree to retain such Independent Expert or to appoint a new Independent Expert in accordance with the procedure set forth in Section 15.4(b)(i) (*Expert Technical Determination Procedure for Technical Disputes – Procedures*) to perform the Expert Technical Determination.

(b) Procedures.

(i) For the purposes of this Section 15.4 (*Expert Technical Determination Procedure for Technical Disputes*), the Independent Expert shall be a reputable Person or Persons possessing expert knowledge and experience for the Expert Technical Determination of the Technical Dispute in question and shall be independent of and impartial as among the Parties. Operator and Administrator shall, in the first instance, attempt to agree on an Independent Expert through their respective Designated Persons. If Operator and Administrator cannot so agree within ten (10) days after the end of the Negotiation Period, the Parties shall promptly (and in any event within five (5) Business Days) apply to the ICC International Centre for ADR (the “ICC”) for the appointment of an Independent Expert in accordance with the ICC Rules for the Appointment of Experts and Neutrals.

(ii) Once selected by Operator and Administrator, neither Party shall communicate independently with the expert, and all communications the Parties make with the Independent Expert must be simultaneously copied to all other Parties.

(iii) The Independent Expert shall, in consultation with the parties, determine the procedure to be undertaken in the Expert Technical Determination. The Independent Expert shall determine the Technical Dispute within sixty (60) days after his or her appointment or as otherwise agreed by the Parties. This sixty (60) day time period may be extended by the Independent Expert or by the agreement of the Parties. A failure to determine the matter within sixty (60) days shall not be a ground to challenge any award or determination by the Independent Expert.

(iv) The determination by the Independent Expert on any Technical Dispute shall be final and binding on the Parties hereto, and Owner or Operator, as applicable, shall pay any amounts due to the other Party pursuant to such determination, together with interest pursuant to Section 21.7 (*Interest on Overdue Obligations*) (as applicable), within five (5) Business Days of the Independent Expert’s determination. The costs of the Independent Expert shall be borne by Operator (and, for the avoidance of doubt, shall not be a Pass-Through Expenditure), to the extent that the Independent Expert resolves any dispute in Owner’s favor, and

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by Owner, to the extent that the Independent Expert resolves any dispute in Operator's favor, or as determined by the Independent Expert if the dispute is not resolved entirely in favor of Owner or Operator. Notwithstanding any other provisions of this Article 15 (*Dispute Resolution*), enforcement of any determination of an Independent Expert may be sought by either of the Parties before any court of competent jurisdiction. To the extent permitted by law, any rights to appeal from or cause a review of any such determination by any Independent Expert are hereby waived by the Parties.

(c) Not an Arbitrator. The Independent Expert is not an arbitrator and shall not be deemed to be acting in an arbitral capacity.

(d) Confidentiality. The Parties agree that any Expert Technical Determination carried out pursuant to this Section 15.4 (*Expert Technical Determination Procedure for Technical Disputes*) shall be kept private and confidential, and that the existence of the Expert Technical Determination and any element of it (including the identity of the Parties, the identity of all witnesses and experts who may be called upon in the Expert Technical Determination, all materials created for the purposes of the Expert Technical Determination, all testimony or other oral submissions in the Expert Technical Determination, and all documents produced by a Party in connection with an Expert Technical Determination that were not already in the possession of the other Party) shall be kept confidential, except (i) with the consent of the Parties, (ii) to the extent disclosure may be lawfully required in *bona fide* judicial proceedings relating to the Expert Technical Determination, (iii) where disclosure is lawfully required by a legal duty; provided, however, that where a Party is required to produce confidential information pursuant to a legal duty it shall provide the other Party prompt written notice of such requirement and not object to any effort by the other party to intervene in any applicable legal proceedings to seek to prevent the confidential information from being produced and (iv) where such information is already in the public domain other than as a result of a breach of this clause. The Parties also agree not to use any information disclosed to them during the Technical Dispute for any purpose other than in connection with the Expert Technical Determination.

(e) Election. Any Technical Dispute with a disputed value equal to or in excess of US\$10 million will proceed to litigation pursuant to Section 15.6 (*Litigation as a Final Resort*) at the election of either Party at the time the Technical Dispute is initiated.

### **Section 15.5** Mediation.

(a) Generally. If a Dispute, other than a Technical Dispute, remains unresolved after the Negotiation Period, either Operator or Administrator may refer the Dispute to mediation through a written notice of mediation (the "Notice of Mediation"). Each Party to this Agreement agrees that it may not initiate a civil action as provided in Section 15.6 (*Litigation as a Final Resort*) (other than provisional relief sought on an expedited basis) unless (i) the matter in question has first been submitted to mediation in accordance with the provisions of this Section 15.5(a) (*Mediation – Generally*) or (ii) such Party would be barred from asserting its claim in a civil action if it were required to submit to mediation pursuant to Section 15.3 (*Negotiation*).

(b) Procedures.

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(i) The Parties shall, in the first instance, attempt to agree on a mediator through their respective Designated Persons. If the Parties cannot so agree within thirty (30) days after the Notice of Mediation is sent, either of the Parties may promptly apply to the ICC for appointment of a single mediator in accordance with the Mediation Rules of the International Chamber of Commerce (the “Mediation Rules”). Absent any written agreement to the contrary by the Parties, the mediator shall be an attorney or mediator authorized to practice law in the United States or the Commonwealth of Puerto Rico and shall be independent of and impartial as among the Parties. The mediator shall be paid for the mediation services, and shall be reimbursed for all reasonable and documented out-of-pocket costs incurred in carrying out the mediation duties hereunder, including the costs of consultants. All Fees-and-Costs of the mediation shall be shared equally by the Parties (and, for the avoidance of doubt, shall not be a Pass-Through Expenditure). The Parties shall request that the mediator schedule the mediation within thirty (30) days of the mediator’s appointment, and shall comply with all procedures the mediator establishes for the conduct of the mediation. Absent any written agreement to the contrary by the Parties, if the Dispute is not resolved within ninety (90) days of the Notice of Mediation, the mediation shall be terminated.

(ii) For the avoidance of doubt, absent the written agreement of the Parties, the Mediation Rules shall not apply to any mediation carried out pursuant to this Section 15.5(b) (*Mediation – Procedures*). Rather, the reference to the ICC and the Mediation Rules above should be understood as referring solely to the designation of the ICC as an appointing authority to appoint a mediator pursuant to the procedures set forth in the Mediation Rules in the event the Parties are unable to agree on a mediator within the timeframe specified.

(c) Confidentiality. The Parties agree that any mediation carried out pursuant to this Section 15.5(b) (*Mediation – Procedures*) shall be kept private and confidential, and that the existence of the mediation and any element of it (including the identity of the Parties, the identity of all witnesses and experts who may be called upon at the mediation, all materials created for the purposes of the mediation, all testimony or other oral submissions at the mediation, and all documents produced by a Party in connection with a mediation that were not already in the possession of the other Party) shall be kept confidential, except (i) with the consent of the Parties, (ii) to the extent disclosure may be lawfully required in *bona fide* judicial proceedings relating to the mediation, (iii) where disclosure is lawfully required by a legal duty; provided, however, that where a Party is required to produce confidential information pursuant to a legal duty, it shall provide the other Party prompt written notice of such requirement and not object to any effort by the other Party to intervene in any applicable legal proceedings to seek to prevent the confidential information from being produced, and (iv) where such information is already in the public domain other than as a result of a breach of this clause. The Parties also agree not to use any information disclosed to them during the mediation for any purpose other than in connection with the mediation.

### **Section 15.6** Litigation as a Final Resort.

(a) Civil Action. In the event that the Parties fail to resolve any Dispute, other than a Technical Dispute, within ninety (90) days after the date the mediator is selected pursuant to the procedures set forth in Section 15.5(b) (*Mediation – Procedures*) (or such longer period as the Parties may mutually agree), either Party may initiate a civil action in the Commonwealth

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Court and in accordance with all applicable rules of civil procedure. In the event that either Party elects to immediately proceed to litigation of a Technical Dispute pursuant to Section 15.4(e) (*Expert Technical Determination Procedure for Technical Disputes – Election*), either Party may initiate a civil action in the Commonwealth Court and in accordance with all applicable rules of civil procedure. The Parties acknowledge and understand that, to resolve any and all claims arising out of this Agreement, they may file a civil action, including actions in equity, in the Commonwealth Court. Owner and Operator each irrevocably consents to the exclusive jurisdiction of such court in any such actions or proceedings, waives any objection it may have to the jurisdiction of any such action or proceeding, as well as objections or defenses based on sovereign immunity. The Parties acknowledge and agree that the terms and conditions of this Agreement have been freely, fairly and thoroughly negotiated.

(b) Costs and Expenses. Except as required by Operator's indemnity obligations under Section 19.1 (*Indemnification by Operator*), each Party shall bear its own costs and expenses in any Legal Proceeding where it is the named defendant or in any Legal Proceeding among the Parties (and, for the avoidance of doubt, such costs and expenses shall not be a Pass-Through Expenditure). Notwithstanding the foregoing, each Party retains its rights to bring any Legal Proceeding or to implead the other Party as to any matter arising hereunder.

**Section 15.7** Waiver of Jury Trial. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING BROUGHT UNDER THIS AGREEMENT. Each Party (i) certifies that no representative of any other Party has represented, expressly or otherwise, that such other Party would not, in the event of litigation, seek to enforce the foregoing waiver, and (ii) acknowledges that it and each other Party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Agreement.

**Section 15.8** Provisional Relief. Notwithstanding any other provision in this Agreement, no Party shall be precluded from initiating a proceeding in the Commonwealth Court for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement, including temporary and preliminary injunctive relief, restraining orders and other remedies to avoid imminent and irreparable harm to provide uninterrupted electrical and other services or preserve the status quo pending the conclusion of such negotiation, mediation or litigation. The commencement of or participation in an action for provisional relief with regard to Technical Disputes shall not constitute a waiver of the requirements or procedures of Section 15.5 (*Mediation*).

**Section 15.9** Continuing Obligations. The Parties agree that during the resolution of a Dispute pursuant to the Dispute Resolution Procedure, the Parties shall continue to perform their obligations under this Agreement; provided that such performance shall (i) be without prejudice to the rights and remedies of any of the Parties and (ii) not be read or construed as a waiver of a Party's right to claim for recovery of any loss, costs, expenses or damages suffered as a result of the continued performance of this Agreement.

## Article 16 DECOMMISSIONING

**Section 16.1** Notice and Approval for Retirement of Legacy Generation Assets and Commencement of Decommissioning Services.

(a) Generally. After the Service Commencement Date (i) Administrator (acting on behalf of Owner and taking into account the Integrated Resource Plan, and in consultation with PREB and T&D Operator) may deliver to Operator a decommissioning notice to commence Decommissioning Services for one or more of the Legacy Generation Assets or (ii) in the event that Operator determines in accordance with Prudent Industry Practice and taking into account the Integrated Resource Plan, and in consultation with PREB and T&D Operator that, due to an Emergency Event, Extended Event or other critical developments at the applicable Legacy Generation Asset, all or a portion of the Legacy Generation Asset cannot continue to be safely operated and maintained, Operator may deliver to Administrator and PREB (with copy to Owner and T&D Operator) a request to commence Decommissioning Services for the applicable Legacy Generation Asset, which request Administrator and PREB shall approve or deny within thirty (30) days of receipt. The date on which Operator receives the notice referenced in clause (i) above or the date on which Operator receives the approval from Administrator and PREB referenced in clause (ii) above shall be the “Decommissioning Notification Date” for the respective Legacy Generation Asset. Operator shall not commence any Decommissioning Services under clause (ii) above until it has provided T&D Operator at least two (2) years advance written notice of the commencement of such Decommissioning Services, unless mandated by PREB to commence such Decommissioning Services on a specific earlier date.

(b) Decommissioning Plan. No later than one hundred twenty (120) days after the Decommissioning Notification Date for a Legacy Generation Asset, Operator shall prepare and submit to Administrator and PREB (with copy to Owner and T&D Operator), for their review and approval, a decommissioning plan for such Legacy Generation Asset (the “Decommissioning Plan”) consistent with the Decommissioning Plan outline set forth in Annex XV (*Decommissioning Plan*). The Decommissioning Plan shall provide for (i) the permitting, demolition, Decontamination, waste disposal and dismantling/or preparation for conversion to such other future use as Administrator and PREB may designate, as applicable, of the Legacy Generation Asset, and waste disposal, for achievement of end-state conditions within a prescribed time (provided that Operator does not have any obligation to perform Decommissioning Services after the expiration of the Term unless the Agreement is extended by Owner and Administrator to allow Operator to complete such services), (ii) the development of the Decommissioning Budget, as set forth in Section 16.2 (*Decommissioning Compensation*) below, (iii) reasonably acceptable arrangements to facilitate the transition of Operator Employees, who meet certain qualifications at such Legacy Generation Asset and whose positions will be eliminated after the completion of the Decommissioning Services, into new jobs or industries, including a training and/or severance plan (to be funded by Owner) for any Operator Employees not hired into a successor job or industry, which arrangements Operator, Owner and Administrator shall cooperate as needed to implement, and (iv) a timeline setting forth when Decommissioning Services shall be provided, including the date on which the Decommissioning Services shall commence (the “Decommissioning Commencement Date”) and the date on which the Decommissioning Services for such Legacy Generation Asset shall be completed (the “Decommissioning Completion Date”).

(c) Out-of-Service Units. On or after the Service Commencement Date, Administrator (acting on behalf of Owner) may deliver to Operator a decommissioning notice to proceed regarding one or more of the Out-of-Service Units. Operator shall prepare the Decommissioning Plan for such Out-of-Service Unit in accordance with Section 16.1(b) (*Notice and Approval for Retirement of Legacy Generation Assets and Commencement of Decommissioning Services – Decommissioning Plan*).

**Section 16.2 Decommissioning Compensation.**

(a) Decommissioning Budget. As part of Operator's Decommissioning Plan, Operator shall create a budget of the Pass-Through Expenditures required to perform the Decommissioning Services for the applicable Legacy Generation Asset, including monthly budgets of such expenditures and cash flows for each applicable Contract Year during which the Decommissioning Services are expected to be provided (such budget, as amended or adjusted from time to time, the "Decommissioning Budget"). Unless otherwise approved by PREB, such Decommissioning Budget shall not exceed the sum of all costs related to the performance of the O&M Services for such Legacy Generation Asset, including the O&M Fixed Fee Adjustment as set forth in Section I of Annex II (*Compensation – O&M Fixed Fee*), which shall be reflected in the amended Operating Budget as described in Section 7.3(e)(ii) (*O&M Budgets – Amendments to the Operating Budget*). Operator shall submit the Decommissioning Budget to Administrator and PREB (with copy to Owner) as part of the Decommissioning Plan, which Decommissioning Budget shall propose the basis and methodology to determine cost savings, including the Incentive and Penalty for Decommissioning Costs Efficiency set forth in Section III.C.1 of Annex II (*Compensation – Incentives and Penalties*). Within thirty (30) days following its receipt of the Decommissioning Budget, Administrator shall notify Operator whether the proposed Decommissioning Budget is compliant with Section 16.2(b) (*Decommissioning Compensation – Decommissioning Budget Policy*), and shall request, acting reasonably, any changes or modifications to the proposed Decommissioning Budget to conform the proposed Decommissioning Budget with Section 16.2(b) (*Decommissioning Compensation – Decommissioning Budget Policy*). Within ten (10) days following receipt of Administrator's request for changes or modifications, if applicable, Operator shall submit to Administrator a revised Decommissioning Budget including such changes or modifications requested by Administrator.

(b) Decommissioning Budget Policy. The Decommissioning Budget shall be designed to be adequate in both scope and amounts to reasonably assure that Operator is able to carry out the related Decommissioning Services in accordance with the parameters promulgated by PREB for such Legacy Generation Asset, if applicable, and the Contract Standards. The Parties further acknowledge and agree that, from time to time, it may be necessary or appropriate to amend or otherwise adjust the Decommissioning Budget or the related Incentives and Penalties as a result of (i) Force Majeure Events, (ii) Owner Fault or (iii) additional requirements imposed by Owner, Administrator or any other Governmental Body after approval of the Decommissioning Budget, in the case of each of clauses (i) to (iii) which (A) have resulted (or are reasonably likely to result) in schedule delays or increased work scope or costs and (B) are not be attributable to Operator's gross negligence or willful misconduct. Operator shall provide notice to Administrator promptly following the occurrence of an event contemplated above and the Parties shall, in good faith and acting reasonably, consider necessary adjustments to the Decommissioning Budget or the related

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Incentives and Penalties. Notwithstanding the foregoing, any such adjustments shall be compliant with the then-applicable Rate Order.

(c) Decommissioning Budget Disputes. The Parties hereby agree that, in the event that a dispute arises between Operator, Owner and Administrator in connection with a Decommissioning Budget submitted with the respective Decommissioning Plan (including proposed amendments thereto or the need for amendments thereto), the matter shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, a “Decommissioning Budget Dispute”).

(d) Decommissioning Payments. Owner shall pay Operator all Pass-Through Expenditures required to perform the Decommissioning Services and shall continue to pay the O&M Fixed Fee in full (subject to any applicable O&M Fixed Fee Adjustment) for the duration of the Term, notwithstanding the commencement of Decommissioning Services with respect to any Legacy Generation Assets prior to the end of the Term. Operator shall be entitled to earn an Incentive Payment or shall incur a Penalty based on Operator’s performance of the Decommissioning Services in accordance with the Incentives and Penalties, as set forth in Section 7.1(c) (*Service Fee – Incentive and Penalties*).

(e) Funding. Owner shall establish the Decommissioning Account in accordance with Section 7.6(c) (*Service Accounts – Decommissioning Account*).

## Article 17 DEMobilIZATION

### Section 17.1 Demobilization Services.

(a) Generally. Subject to Section 17.1(d) (*Demobilization Services – Demobilization Expiry Date*) and Section 17.3(c)(ii) (*Demobilization Period Compensation – Funding*), upon (i) Operator’s receipt of a termination notice from Owner or Administrator’s receipt of a termination notice from Operator, in each case under Article 14 (*Events of Default; Remedies*) or (ii) six (6) months prior to the expiry of the later of (A) the Initial Term or (B) the Extension Term (such date, the “Demobilization Commencement Date”), Operator, in addition to providing any remaining O&M Services and/or Decommissioning Services, as applicable, shall (1) perform the Demobilization Services specified in the Demobilization Plan, and (2) commence preparations for an orderly surrender of the Generation Sites and any remaining Legacy Generation Assets to Owner or Administrator (or their designee). In the event of an early termination of this Agreement pursuant to Article 14 (*Events of Default; Remedies*), Operator shall reasonably cooperate with Administrator during any procurement process to identify a successor operator.

(b) Demobilization Plan. No later than thirty (30) days after the Demobilization Commencement Date, Operator shall prepare and submit to Administrator (with copy to Owner and PREB), for its information and approval, a detailed demobilization plan consistent with the Demobilization Plan outline set forth in Annex XVI (*Demobilization Plan*), which plan shall (i) in the event of the early termination of this Agreement, include reasonably acceptable arrangements to facilitate the transition of Operator Employees, who meet certain qualifications at such Legacy Generation Asset and whose positions will be eliminated after the completion of the



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Demobilization Services, into new jobs or industries, including (A) the possible hiring of Operator Employees by a successor operator and (B) a training and/or severance plan (to be funded by Owner) for any Operator Employees not hired into a successor job or industry, which arrangements Operator, Owner and Administrator shall cooperate as needed to implement, and (ii) provide for the transfer and handover of the rights and responsibilities with respect to the Generation Sites and any remaining Legacy Generation Assets back to Owner or to a successor operator upon the expiration or early termination of the Term (the “Demobilization Plan”). Regardless of whether the Demobilization Plan is prepared pursuant to clause (i) or (ii), the Demobilization Plan shall include a decommissioning report detailing (1) the status of each of the Legacy Generation Assets for which Decommissioning Services were or are being performed, (2) the condition of each of the Legacy Generation Assets in operation and (3) all notifications given pursuant to, and retirements of, applicable permits with respect to each Legacy Generation Asset.

(c) Successor Operator. In the event that the Demobilization Commencement Date occurs pursuant to clause 17.1(a) (*Demobilization Services – Generally*), Administrator, on behalf of Owner, shall initiate efforts, including such procurement process as may be required, to identify and select a successor operator as promptly as practicable. Operator shall have the right to submit a proposal in such procurement on the same basis as other proponents. For the avoidance of doubt, if this Agreement is terminated prior to the Service Commencement Date, the Demobilization Commencement Date shall not occur.

(d) Demobilization Expiry Date. Operator shall have no obligation to continue performing any Demobilization Services as of the earlier of (i) the date which is twelve (12) months following the expiration or early termination of the Term and (ii) the date on which there are no funds available in the Demobilization Account, without a need for a court decision or arbitral award confirming Operator’s right to terminate.

(e) Surrender of the Legacy Generation Assets. Upon completion or the earlier expiration of the obligation to provide the Demobilization Services in accordance with this Article 17 (*Demobilization*), Operator and, if and to the extent Administrator requests, its Subcontractors shall peaceably leave and surrender any remaining Legacy Generation Assets to Owner or its designee in a condition consistent with Operator’s responsibilities hereunder. For the avoidance of doubt, if the early termination of this Agreement pursuant to Article 14 (*Events of Default; Remedies*) occurs prior to the decommissioning of each and every Legacy Generation Asset, Operator shall surrender each remaining Legacy Generation Asset with a sufficient supply of Fuel to allow Owner or its designee to operate the applicable Legacy Generation Asset for one (1) month after the date of surrender.

**Section 17.2** Termination Prior to Completion of Decommissioning. The Parties shall, immediately upon the early termination of this Agreement pursuant to Article 14 (*Events of Default; Remedies*) that occurs prior to the decommissioning of each and every Legacy Generation Asset, implement any arrangements contemplated by the Demobilization Plan, including arrangements relating to (i) the completion of any remaining Decommissioning Services currently being performed for a Legacy Generation Asset and that will not be completed by Operator; (ii) the possible hiring of Operator Employees by a successor operator; and (iii) the treatment of severance costs associated with any Operator Employees not hired by a successor operator. For the avoidance of doubt, any reasonable, properly incurred and ordinary course costs and expenses

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related to Operator Employees that are incurred pursuant to this Section 17.2 (*Termination Prior to Completion of Demobilization*) and covered by the then currently approved O&M Budget shall be Pass-Through Expenditures in accordance with Section 7.2 (*Pass-Through Expenditures*) and Section 7.3 (*O&M Budgets*).

### **Section 17.3 Demobilization Period Compensation.**

(a) Generally. As compensation for the Demobilization Services provided by Operator, Owner shall pay Operator the Demobilization Service Fee. The Demobilization Service Fee shall not be subject to any abatement, deduction, counterclaim or set-off of any kind or nature.

(b) Demobilization Service Fee. The “Demobilization Service Fee” shall be an aggregate amount equal to (i) the hourly fully allocated cost rate for each category of Operator employee or Affiliate personnel providing Demobilization Services *multiplied by* (ii) the number of hours worked by each Operator employee or Affiliate personnel in such category providing Demobilization Services *plus* (iii) ten percent (10%) of the product of (i) and (ii), *plus* (iv) all other reasonable and documented costs and expenses incurred by Operator (without markup for Operator profit) that are necessary and reasonable in the course of providing the Demobilization Services and/or implementing the Demobilization Plan, including the cost of any Subcontractors providing Demobilization Services.

(c) Funding.

(i) Owner shall establish one or more accounts from which Owner shall draw funds from time to time to pay Operator the Demobilization Service Fee (collectively, the “Demobilization Account”).

(ii) Promptly after the Demobilization Commencement Date (and in any event within five (5) Business Days), Operator shall deliver to Administrator an estimate of the anticipated Demobilization Service Fee for the following two (2) months. Within ten (10) days of delivery of such estimate, and prior to and as a condition to the commencement of any Demobilization Services, Administrator shall provide Operator evidence reasonably satisfactory to Operator that an amount equal to the sum of the anticipated Demobilization Service Fee for the following two (2) months, has been funded in the Demobilization Account. Prior to the end of each month during the period in which Operator performs the Demobilization Services, Operator shall deliver to Administrator an estimate of the anticipated Demobilization Service Fee for the two (2) months. No later than the eleventh (11th) Business Day of each month during the period in which Operator performs the Demobilization Services, the Demobilization Account shall be replenished so as to maintain a balance in the Demobilization Account at the end of each calendar month equal to the sum of the anticipated Demobilization Service Fee for the subsequent two (2) months, and so on subsequently until the Demobilization Services conclude.

(iii) In the event a Dispute arises between Operator and Administrator in connection with Operator’s estimate of the anticipated Demobilization Service Fee, the matter shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, a “Demobilization Service Fee Estimate Dispute”).

(d) Invoices.

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(i) On or prior to the tenth (10th) day of each month during which Operator is performing the Demobilization Services, Operator shall submit to Administrator for its review and approval a monthly invoice describing in detail the prior calendar month's Demobilization Services and the corresponding Demobilization Service Fee for such prior calendar month. All invoices shall comply with the requirements set forth in Section 9.2(c) (*Anti-Corruption and Sanctions Laws – Policies and Procedures*).

(ii) Operator shall provide promptly to Administrator such additional supporting documentation evidencing the provision of the Demobilization Services, if any, including evidence of the payment of any Subcontractor whose fees are included in the Demobilization Service Fee, and the calculation of the Demobilization Service Fee related thereto, as Administrator may reasonably request and as may be required by Applicable Law. To the extent necessary for Administrator to complete its review of the applicable invoice, upon Administrator's reasonable request such additional supporting documentation shall include any relevant Confidential Information. Administrator shall promptly advise Operator of any disputed invoice amounts, and all such disputes which Operator and Administrator are unable to resolve shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, a "Demobilization Service Fee Dispute").

(iii) Payments of undisputed amounts under any invoice shall be due within thirty (30) days of Administrator's receipt of such invoice. Owner's sole responsibility with respect to all invoices shall be payment of undisputed amounts and shall not include review of any invoice.

(e) Audits. At any time and from time to time during and until the expiration of six (6) years following the end of the period during which Operator performs the Demobilization Services, Administrator may, upon reasonable prior notice, Audit (or cause to be Audited) the books and records of Operator or any Subcontractor in connection with any requests for payment of the Demobilization Service Fee, together with the supporting vouchers and statements, and the calculation of the Demobilization Service Fee. Subject to the dispute resolution provisions in Article 15 (*Dispute Resolution*), each payment made by Owner hereunder shall be subject to subsequent adjustment. Following the determination that any such payment adjustment is required, the Party required to make payment shall do so within thirty (30) days of the date of such determination.

## Article 18 FORCE MAJEURE EVENTS

### Section 18.1 Notice; Mitigation.

(a) Notice. The Party claiming a Force Majeure Event (the "Claiming Party") shall notify the other Party in writing (with copy to Administrator and PREB), on or promptly after the date it first becomes aware of such Force Majeure Event, followed within five (5) Business Days by a written description of (i) the Force Majeure Event and the cause thereof (to the extent known), (ii) the date the Force Majeure Event began and its estimated duration, (iii) the manner in which and the estimated time during which the performance of the Claiming Party's obligations hereunder shall be affected and (iv) mitigating actions that the Claiming Party plans to take in

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order to reduce the impact of the Force Majeure Event; provided that the Claiming Party's failure to promptly notify the other Party shall not preclude the Claiming Party from obtaining relief with respect to the Force Majeure Event to the extent the other Party has not been prejudiced by the Claiming Party's delay to provide prompt notice.

(b) Mitigation. Whenever a Force Majeure Event shall occur, the Claiming Party shall, as promptly as reasonably possible, use commercially reasonable efforts to mitigate or eliminate the cause therefor, reduce costs resulting therefrom, mitigate and limit damage to the other Party and resume full performance under this Agreement.

(c) Burden of Proof. The Claiming Party shall bear the burden of proof as to the existence and impact of the Force Majeure Event, and shall furnish promptly in writing (if and to the extent available to it) any additional documents or other information relating to the Force Majeure Event reasonably requested by the other Party. While the Force Majeure Event continues, the Claiming Party shall give notice to the other Party before the first day of each succeeding month updating the information previously submitted with respect to the nature, cause, impact and potential duration of the Force Majeure Event pursuant to this Section 18.1 (*Notice; Mitigation*). The Parties hereby agree that, in the event that a Dispute arises between the Parties in connection with whether and to the extent an event, circumstance or condition constitutes a Force Majeure Event, or whether such Force Majeure Event continues, the matter shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, a "Force Majeure Event Dispute").

(d) Notice of Cessation of Force Majeure Event. Upon the cessation of a Force Majeure Event, including a determination by the Independent Expert that a Force Majeure Event no longer exists, the Claiming Party shall (i) promptly (but in any event within five (5) Business Days) provide notice to the other Party and (ii) promptly thereafter resume compliance with this Agreement.

### **Section 18.2** Relief.

(a) Generally. If and to the extent a Force Majeure Event interferes with, delays or increases the cost of, a Party's performance of its obligations under this Agreement, and such Party has given timely notice and description as required by Section 18.1 (*Notice; Mitigation*), such Party shall be excused from performance and any associated Events of Default, except to the extent contemplated in Section 18.2(c) (*Relief- Extended Event*). In the event Operator is the party claiming the Force Majeure Event, Operator shall be entitled to request appropriate adjustments to the O&M Budgets or the Incentives and Penalties in accordance with Section 7.4 (*O&M Budget Policy*).

(b) Limitations. The occurrence of a Force Majeure Event shall not excuse or delay the performance of (i) a Party's obligation to pay amounts previously accrued and owing under this Agreement, including any earned but unpaid Service Fees, (ii) Owner's obligation to continue to pay all Owner Payments and to deposit and make funds available for Operator's use in the Service Accounts and the Insurance Proceeds Account in accordance with Article 7 (*Compensation; O&M Budgets*) and/or other applicable terms of this Agreement and (iii) any obligation hereunder not affected by the occurrence of the Force Majeure Event.

(c) Extended Event. In addition to all other relief pursuant to this Agreement, including under Section 4.8(c) (*Failure of Service Commencement Conditions – Effect of Force Majeure Events or Owner Fault*) and Section 7.4 (*O&M Budget Policy*), if and to the extent a Force Majeure Event continues for a period in excess of one hundred twenty (120) consecutive days and materially interferes with, delays or increases the cost of the O&M Services in accordance herewith (an “Extended Event”), without limiting the rights of either Party under Section 14.5(b) (*Additional Termination Rights – Extended Force Majeure Event*), and a Party has given timely notice and detailed and documented description as required by Section 18.1 (*Notice; Mitigation*), Administrator and Operator shall negotiate in good faith to determine whether modifications to the Incentive Payment, in accordance with Section III of Annex II (*Compensation – Incentives and Penalties*) or other provisions of this Agreement are appropriate under the circumstances; provided any such modification (i) shall not be effective until Administrator has obtained, at the cost of Owner or Administrator, a Tax Opinion and a Reliance Letter with respect to any such modification and (ii) shall be subject to approval by PREB in accordance with Applicable Law.

## **Article 19**

### **INDEMNIFICATION**

#### **Section 19.1** Indemnification by Operator.

(a) Generally. Subject to the limitations on liability set forth in this Section 19.1 (*Indemnification by Operator*), Section 19.3 (*Limitation on Liability*), Section 19.4 (*Insurance and Other Recovery*), Section 19.5 (*Liability Limitation for Certain Damages*) and Section 19.6 (*Additional Liability Limitation for Certain Damages*), Operator shall indemnify, defend and hold harmless Owner, Administrator and their respective Affiliates and Representatives (each, including Owner, an “Owner Indemnitee”), from and against (and pay the full amount of) any and all Losses incurred by an Owner Indemnitee to the extent arising or resulting from, in each case, as determined by a final and non-appealable judgment by a court of competent jurisdiction: (i) any breach by Operator of any representation or warranty of Operator in this Agreement that has a material adverse effect on (x) Operator’s ability to perform its obligations under this Agreement in respect of the Legacy Generation Assets or (y) the performance or the cost of performance by any Party of its obligations under this Agreement or (ii) the gross negligence or willful misconduct of Operator Indemnitees in connection with the performance of Operator’s obligations under this Agreement, except, in each case of the foregoing, as otherwise provided in Section 5.9(a)(iv) (*Environmental, Health and Safety Matters – Pre-Existing Environmental Conditions*), where the applicable standard shall be either the Pre-Existing Contamination Liability Standard or the Pre-Existing Noncompliance Liability Standard. Operator’s indemnification obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by Operator which is intended to respond to such events. In the event that any Losses are incurred by an Owner Indemnitee in connection with Section 5.9(a)(iv) (*Environmental, Health and Safety Matters – Pre-Existing Environmental Conditions*), then Operator’s liability for such Owner Indemnitee’s Losses shall be reduced by the amount of the Penalty paid or owed, if any, with respect to the environmental compliance category in Section III of Annex II (*Compensation – Incentives and Penalties*), if such Penalties arose as a result of the same conduct that led to Owner Indemnitee’s Losses.

(b) Limitations. Notwithstanding the foregoing, Operator shall not be required to reimburse or indemnify any Owner Indemnitee for any Losses to the extent caused by or due to (i) Owner Fault, (ii) a Force Majeure Event, other than to the extent caused by the gross negligence or willful misconduct of any Operator Indemnitee in responding to such Force Majeure Event, (iii) gross negligence or willful misconduct of any Owner Indemnitee, (iv) any matter for which Owner expressly indemnifies Operator pursuant to Section 19.2 (*Indemnification by Owner*), (v) events or circumstances arising prior to the Service Commencement Date, in each case as determined by a final and non-appealable judgment by a court of competent jurisdiction or (vi) any Pre-Existing Environmental Condition (except as set forth in Section 5.9(a)(iv) (*Environmental, Health and Safety Matters – Pre-Existing Environmental Conditions*)).

(c) Notice, Defense and Survival. An Owner Indemnitee shall promptly notify Operator in writing pursuant to Section 21.2 (*Notices*) of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and Operator shall have the right to assume the defense of the claim in any Legal Proceeding and to approve any settlement of the claim, such approval not to be unreasonably withheld, delayed or conditioned. For the avoidance of doubt, any Fees-and-Costs associated with Operator defending Owner Indemnitees pursuant to this Section 19.1 (*Indemnification by Operator*) shall be Pass-Through Expenditures, except to the extent Operator's liability to pay such Fees-and-Costs is determined by a final and non-appealable judgment by a court of competent jurisdiction. The indemnification provisions in this Section 19.1 (*Indemnification by Operator*) are (i) for the protection of Owner Indemnitees only and shall not establish, of themselves, any liability to any Person not party to this Agreement and (ii) shall survive termination of this Agreement.

## **Section 19.2 Indemnification by Owner.**

(a) Generally. Subject to the limitations on liability set forth in this Section 19.2 (*Indemnification by Owner*), Section 19.3 (*Limitation on Liability*), Section 19.4 (*Insurance and Other Recovery*), Section 19.5 (*Liability Limitation for Certain Damages*) and Section 19.6 (*Additional Liability Limitation for Certain Damages*), Owner shall indemnify, defend and hold harmless Operator and the Equity Participants and its and their respective Affiliates and Representatives (each, including Operator, an "Operator Indemnitee"), from and against (and pay the full amount of) any and all Losses incurred by an Operator Indemnitee to the extent arising or resulting from, in each case, as determined by a final and non-appealable judgment by a court of competent jurisdiction: (i) any breach by Owner or Administrator of any of its respective representations or warranties in this Agreement that has a material adverse effect on the Legacy Generation Assets or on the performance or the cost of performance by any Party of its respective obligations under this Agreement; (ii) any failure by Owner or Administrator to perform its obligations under this Agreement or resulting from any Owner Fault; (iii) claims of any nature relating to the Legacy Generation Assets, Owner's operation thereof or any matter in the nature of the services to be provided by, or any other obligations imposed on, Operator hereunder, in each case based on events or circumstances to the extent arising prior to the Service Commencement Date; (iv) the gross negligence or willful misconduct of Owner Indemnitees in connection with this Agreement; (v) other than as expressly set forth in Section 5.5 (*Labor and Employment; Employee Benefits*), claims brought by Owner's or its Affiliates' former, current or future employees with respect to the non-payment or underfunding of benefits under Owner's pension plans, the PREPA Retirement System or any other employee benefit plans of Owner; (vi) claims

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brought against Operator by a Person not party to this Agreement in connection with the Legacy Generation Assets or Operator's performance of the O&M Services, including (A) for loss of profits or revenues or special, exemplary, punitive, indirect or consequential damages (except to the extent arising out of fraud or intentional misrepresentation of any Operator Indemnitee), or (B) to the extent such claims are for Losses that would cause Operator's total liability to all Persons (including Owner Indemnitees) under or in connection with this Agreement in aggregate to exceed the amount of any applicable limitation of liability set forth in Section 19.3 (*Indemnification – Limitation on Liability*); (vii) claims brought against Operator in connection with the T&D System or the performance by the T&D Operator of its obligations under the T&D O&M Agreement; (viii) Pre-Existing Environmental Conditions, except to the extent of an exacerbation of such Pre-Existing Environmental Conditions to the extent caused by the gross negligence or willful misconduct of any Operator Indemnitee; or (ix) all claims brought against Operator after the Effective Date by any creditor or other Person in connection with or related to the Title III Case.

(b) Limitations. Owner's indemnification obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by Owner which is intended to respond to such events. Notwithstanding the foregoing, other than with respect clauses (vi), (vii), (viii) and (ix) of Section 19.2(a) (*Indemnification by Owner – Generally*), to which the following statement shall not apply, Owner shall not be required to reimburse or indemnify any Operator Indemnitee for any Losses to the extent caused by or due to: (i) a Force Majeure Event, other than to the extent caused by the gross negligence or willful misconduct of any Owner Indemnitee in responding to such Force Majeure Event, (ii) any matter for which Operator expressly indemnifies Owner pursuant to Section 19.1 (*Indemnification by Operator*), in each case as determined by a final and non-appealable judgment by a court of competent jurisdiction or (iii) any Delay Liquidated Damages payable by Operator under Section 4.8(a) (*Failure of Service Commencement Date Conditions – Remedy for Delay of Service Commencement Date Conditions*) of this Agreement. Other than with respect to clause (vi) of Section 19.2(a) (*Indemnification by Owner – Generally*), Owner shall not be required to reimburse or indemnify any Operator Indemnitee for any Losses to the extent caused by or due to the gross negligence or willful misconduct of any Operator Indemnitee.

(c) Notice, Defense and Survival. An Operator Indemnitee shall promptly notify Owner in writing pursuant to Section 21.2 (*Notices*) of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and Owner shall have the right to assume the defense of the claim in any Legal Proceeding and to approve any settlement of the claim, such approval not to be unreasonably withheld, delayed or conditioned. Any amount payable by Owner to any Operator Indemnitee pursuant to this Section 19.2 (*Indemnification by Owner*) that remains unsatisfied for a period of sixty (60) days shall be treated as a Pass-Through Expenditure; provided, however, that the foregoing shall not limit Owner's ability to contest whether such payment is due. The provisions in this Section 19.2 (*Indemnification by Owner*) (i) are for the protection of Operator Indemnitees only and shall not establish, of themselves, any liability to any Person not party to this Agreement and (ii) shall survive termination of this Agreement.

**Section 19.3** Limitation on Liability. Notwithstanding anything contained in this Agreement to the contrary:

(a) Operator General Limitations.

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(i) Except as set forth in Section 19.3(b) (*Limitation on Liability – Gross Negligence; Willful Misconduct*), Operator’s liability to Owner Indemnitees or any other Person under or in connection with this Agreement, including under Section 19.1 (*Indemnification by Operator*) and including for Disallowed Costs, shall be limited to US\$5 million in the aggregate for Losses occurring in any Contract Year; and US\$20 million in the aggregate for all Losses during the Term.

(ii) From the Effective Date until the end of the second (2nd) Contract Year, Operator shall not be liable for any Loss for which an Owner Indemnitee is entitled to be indemnified pursuant to Section 19.1 (*Indemnification by Operator*) unless and until the aggregate amount of such Losses in such Contract Year exceeds US\$1 million (as adjusted on a Pro Rata basis for a partial Contract Year), in which event Operator shall then be liable for all Losses in excess of US\$1 million (as adjusted on a Pro Rata basis for a partial Contract Year), subject to the limitation on liability set forth in Section 19.3(a) (*Limitations on Liability – Operator General Limitations*).

(iii) From the beginning of the third (3rd) Contract Year until the end of the Term, Operator shall not be liable for any Loss for which an Owner Indemnitee is entitled to be indemnified pursuant to Section 19.1 (*Indemnification by Operator*) unless and until the aggregate amount of such Losses in such Contract Year exceeds US\$500,000 (as adjusted on a Pro Rata basis for a partial Contract Year), in which event Operator shall then be liable for all Losses in excess of US\$500,000 (as adjusted on a Pro Rata basis for a partial Contract Year), subject to the limitation on liability set forth in Section 19.3(a) (*Limitations on Liability – Operator General Limitations*).

(iv) For the avoidance of doubt, Operator shall not be liable to Owner Indemnitees to the extent Owner is determined, by a final and non-appealable judgment by a court of competent jurisdiction, to have acted or refrained from acting in accordance with the terms of this Agreement.

(v) The limitations on liability set forth in this Section 19.3(a) shall not apply to Operator’s obligation to pay Delay Liquidated Damages (if any).

(b) Gross Negligence; Willful Misconduct.

(i) Notwithstanding anything to the contrary in this Agreement, Operator’s liability to Owner Indemnitees or any other Person for any Losses attributable to any Operator Indemnitee’s gross negligence or willful misconduct as set forth in this Agreement, including under Section 19.1 (*Indemnification by Operator*) or with respect to any Disallowed Costs attributable to Operator Indemnitee’s gross negligence or willful misconduct, shall be limited to:

(A) US\$15 million for all Losses occurring in each Contract Year for each of the first five (5) Contract Years;

(B) US\$20 million for all Losses occurring in each Contract Year for each subsequent Contract Year, and



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(C) a total maximum of US\$20 million in the aggregate for all Losses during the Term.

(D) The limitations on liability set forth in this Section 19.3(b)(i) shall not apply to Operator's obligation to pay Delay Liquidated Damages (if any).

(ii) If any liability for Losses is attributable in part to gross negligence and in part to negligence, then such liability shall be apportioned such that the portion of the Loss attributable to negligence shall be subject to the limitation on liability set forth in set forth in Section 19.3(a)(i) (*Limitations on Liability – Operator General Limitations*).

(c) No Administrator Liability. Administrator shall not be liable to Operator Indemnitees under this Agreement.

**Section 19.4 Insurance and Other Recovery.**

(a) Generally. The amount of any Losses that are subject to indemnification, compensation or reimbursement under this Agreement shall be reduced by the amount of any insurance proceeds and any indemnity, contribution or other similar payment actually received by Owner Indemnatee or Operator Indemnatee, as applicable, in respect of such Losses or any of the events, conditions, facts or circumstances resulting in or relating to such Losses ("Third-Party Payments"). If an Owner Indemnatee or Operator Indemnatee, as applicable, receives any Third-Party Payment with respect to any Losses for which it has previously been indemnified (directly or indirectly) by an Indemnifying Party, Owner Indemnatee or Operator Indemnatee, as applicable, shall promptly (and in any event within five (5) Business Days after receiving such Third-Party Payment) pay to the Indemnifying Party an amount equal to such Third-Party Payment or, if it is a lesser amount, the amount of such previously indemnified Losses. Owner Indemnatee or Operator Indemnatee, as applicable, shall use commercially reasonable efforts to recover under insurance policies or indemnity, contribution or other similar agreements other than this Agreement for any Losses to the same extent such Party would if such Losses were not subject to indemnification, compensation or reimbursement hereunder.

(b) Subrogation of Claims. If a Party makes any indemnity payment for any Losses suffered or incurred by an Owner Indemnatee or Operator Indemnatee, as applicable, pursuant to the provisions of this Article 19 (*Indemnification*), such indemnifying Party shall be subrogated, to the extent of such payment, to all rights and remedies of the Owner Indemnatee or Operator Indemnatee, as applicable, to any insurance benefits or other claims of the Owner Indemnatee or Operator Indemnatee, as applicable, with respect to such Losses and with respect to the matter giving rise to such Losses.

**Section 19.5 Liability Limitation for Certain Damages.** TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER OPERATOR INDEMNITEES NOR OWNER INDEMNITEES SHALL BE LIABLE, WHETHER IN CONTRACT, INDEMNITY, TORT (INCLUDING NEGLIGENCE, GROSS NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, FOR ANY LOSS OF PROFITS OR REVENUES (OTHER THAN COMPENSATION DUE BY OWNER TO OPERATOR UNDER THIS AGREEMENT), OR ANY SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL OR

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CONSEQUENTIAL DAMAGES WHICH ARISE FROM, RELATE TO OR ARE CONNECTED WITH THIS AGREEMENT OR THE PERFORMANCE OF OR FAILURE TO PERFORM THEIR RESPECTIVE OBLIGATIONS HEREUNDER EXCEPT FOR CLAIMS OF FRAUD OR INTENTIONAL MISREPRESENTATION OR CLAIMS BROUGHT AGAINST OPERATOR BY A PERSON NOT PARTY TO THIS AGREEMENT IN CONNECTION WITH THE LEGACY GENERATION ASSETS OR OPERATOR'S PERFORMANCE OF THE O&M SERVICES.

### **Section 19.6** Additional Liability Limitation for Certain Damages.

(a) OWNER AND ADMINISTRATOR UNDERSTAND THAT OPERATOR MAY BE PROVIDING O&M SERVICES THAT:

(i) AS OF THE SERVICE COMMENCEMENT DATE, INCORPORATE OR ARE RELIANT UPON ASSETS (INCLUDING THE LEGACY GENERATION ASSETS) THAT ARE IN A CONDITION REQUIRING REPAIRS OR IMPROVEMENTS; AND

(ii) INCORPORATE OR ARE RELIANT UPON INFORMATION, SYSTEMS, DATA OR INSTRUCTIONS THAT HAVE BEEN, ARE OR ARE TO BE PROVIDED BY OWNER OR THIRD PARTIES.

(b) AS SUCH, OWNER AND ADMINISTRATOR ACKNOWLEDGE AND AGREE THAT, EXCEPT TO THE EXTENT ARISING OR RESULTING FROM THE NEGLIGENCE (INCLUDING GROSS NEGLIGENCE) OR WILLFUL MISCONDUCT OF OPERATOR INDEMNITEES IN CONNECTION WITH THIS AGREEMENT, OPERATOR INDEMNITEES SHALL HAVE NO LIABILITY HEREUNDER FOR ANY DATA PROCESSING DEFECT, ERROR, DEFAULT, DELAY OR LOSSES ARISING AS A RESULT OF ANY PROCESSING DEFICIENCY, INACCURACY, ERROR OR OMISSION TO THE EXTENT CAUSED BY A THIRD PARTY OR BY INFORMATION, SYSTEMS, DATA OR INSTRUCTIONS PROVIDED BY A THIRD PARTY, OWNER, ADMINISTRATOR OR THEIR RESPECTIVE REPRESENTATIVES.

## **Article 20** **REPRESENTATIONS AND WARRANTIES**

**Section 20.1** Representations and Warranties of Owner. Owner hereby represents and warrants to Operator that:

(a) Existence and Powers. Owner is a limited liability company and a governmental instrumentality of the Commonwealth duly organized, validly existing and in good standing under the laws of the Commonwealth. Owner has the required corporate power and authority to enter into this Agreement, carry out its obligations hereunder and consummate the transactions contemplated hereby. Administrator has the required corporate power and authority to carry out its obligations under this Agreement and on behalf of Owner, including the power and authority to bind Owner with respect to any matter contemplated under this Agreement.

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(b) Due Authorization and Binding Obligation. The execution and delivery by Owner of this Agreement, the performance by Owner of its obligations hereunder and the consummation by Owner of the transactions contemplated hereby have been duly and validly authorized and approved by the required corporate or other similar action on the part of Owner. This Agreement has been duly and validly executed and delivered by Owner, and (assuming due authorization, execution and delivery by Operator) this Agreement constitutes a legal, valid and binding obligation of Owner enforceable against Owner in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or similar Applicable Law affecting creditors' rights generally and by general equity principles.

(c) No Conflicts. Neither the execution, delivery or performance by Owner of this Agreement, nor the consummation of the transactions contemplated hereby shall: (i) result in a material violation or breach of, or material default under, any provision of the organizational documents of Owner; (ii) result in a violation of, or give any Governmental Body the right to challenge any of the transactions contemplated hereby under, any Applicable Law applicable to Owner; (iii) (A) result in a violation or breach of, (B) constitute a default under, (C) result in the acceleration of or create in any party the right to accelerate, terminate or cancel or (D) require the consent of any other Person under, any material contract to which Owner is a party; or (iv) result in the creation or imposition of any Lien on any properties or assets of Owner.

(d) No Consents. No consent, declaration or filing with, or notice to, any Governmental Body is required by or with respect to Owner in connection with (i) the execution and delivery of this Agreement or (ii) the performance by Owner of its obligations hereunder, except (A) such as have been duly obtained or made and (B) in the case of clause (ii), for those Governmental Approvals to be obtained after the Effective Date but before the Service Commencement Date.

(e) No Litigation. There is no action, suit or other proceeding, at law or in equity, before or by any court or Governmental Body pending against Owner or, to Owner's knowledge, threatened against Owner, which if determined adversely against Owner would reasonably be expected to materially and adversely affect (i) the validity or enforceability of this Agreement or (ii) the performance by Owner or Operator of their respective obligations hereunder.

(f) No Legal Prohibition. There is no Applicable Law in effect on the date hereof that would prohibit the execution, delivery or performance by Owner of this Agreement and the transactions contemplated hereby.

(g) Title III Approval. No approval of the Title III Court is required for Owner to enter into this Agreement. Owner's entry into, and the Parties' performance of, this Agreement, constitutes use or enjoyment by Owner of its revenue-producing property within the meaning of section 305(3) of PROMESA.

(h) Facility Contracts. To Owner's knowledge and except as otherwise disclosed to Operator, (i) each material Facility Contract is in full force and effect and was procured in accordance with applicable Commonwealth law, (ii) there are no pending claims by or against any counterparty to a material Facility Contract, (iii) neither Owner nor any counterparty to a material Facility Contract is in default of its obligations under any material Facility Contract

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and (iv) Operator is permitted to administer and perform Owner's obligations under each material Facility Contract on Owner's behalf.

(i) Operation of Legacy Generation Assets. Without limiting any other representations or warranties set out herein, from the Effective Date to the Service Commencement Date, Owner has, except as otherwise permitted by this Agreement or required by Applicable Law (including requirements related to the Title III Case), operated the Legacy Generation Assets in the ordinary course.

(j) Pre-Existing Environmental Conditions. As of the Service Commencement Date, after commercially reasonable inquiry, Owner is not aware of material Pre-Existing Environmental Conditions on or at the Generation Sites which have not been disclosed to Operator pursuant to the Baseline Environmental Study.

(k) Accuracy of Fuel Contracts. As of the Effective Date, to the best of Owner's knowledge, each of the Fuel Contracts listed on Annex XVII, including (a) all executed versions, amendments or other material documents that modify or waive any party's rights or obligations thereunder, and (b) all written instructions, notifications, and nominations issued thereunder that relate to the current fiscal year and any subsequent fiscal years, in ease case, have been provided to Operator.

**Section 20.2** Representations and Warranties of Operator. Operator hereby represents and warrants to Owner that:

(a) Existence and Powers. Operator is a limited liability company duly organized, validly existing and in good standing under the laws of Puerto Rico, and is qualified to do business and in good standing in the Commonwealth. Operator has the required corporate power and authority to enter into this Agreement, carry out its obligations hereunder and consummate the transactions contemplated hereby.

(b) Due Authorization and Binding Obligation. The execution and delivery by Operator of this Agreement, the performance by Operator of its obligations hereunder and the consummation by Operator of the transactions contemplated hereby have been duly and validly authorized and approved by the required corporate or other similar action on the part of Operator. This Agreement has been duly and validly executed and delivered by Operator, and (assuming due authorization, execution and delivery by Owner) this Agreement constitutes a legal, valid and binding obligation of Operator enforceable against Operator in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or similar Applicable Law affecting creditors' rights generally and by general equity principles.

(c) No Conflicts. Neither the execution, delivery or performance by Operator of this Agreement, nor the consummation of the transactions contemplated hereby shall: (i) result in a material violation or breach of, or material default under, any provision of the organizational documents of Operator; (ii) result in a violation of, or give any Governmental Body the right to challenge any of the transactions contemplated hereby under, any Applicable Law applicable to Operator; (iii) (A) result in a violation or breach of, (B) constitute a default under, (C) result in the acceleration of or create in any party the right to accelerate, terminate or cancel or (D) require the

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consent of any other Person under, any material contract to which Operator is a party; or (iv) result in the creation or imposition of any Lien on any properties or assets of Operator.

(d) No Consents. No consent, declaration or filing with, or notice to, any Governmental Body is required by or with respect to Operator in connection with (i) the execution and delivery of this Agreement or (ii) the performance by Operator of its obligations hereunder, except (A) such as have been duly obtained or made and (B) in the case of clause (ii), for those Governmental Approvals to be obtained after the Effective Date but before the Service Commencement Date.

(e) No Litigation. There is no action, suit or other proceeding, at law or in equity, before or by any court or Governmental Body pending against Operator or, to Operator's knowledge, threatened against Operator, which if determined adversely against Operator would reasonably be expected to materially and adversely affect (i) the validity or enforceability of this Agreement or (ii) the performance by Operator or Owner of their respective obligations hereunder.

(f) No Legal Prohibition. There is no Applicable Law in effect on the date hereof that would prohibit the execution, delivery or performance by Operator of this Agreement and the transactions contemplated hereby.

(g) Applicable Law Compliance.

(i) None of Operator or its subsidiaries or, when acting on behalf of Operator or its subsidiaries, any director, officer, manager, administrator or employee of Operator or its subsidiaries or, in connection with this Agreement or the O&M Services or the Decommissioning Services, any Affiliates of Operator has:

(A) violated, conspired to violate, aided and abetted the violation of any Anti-Corruption Laws or committed any felonies or misdemeanors under Articles 4.2, 4.3 or 5.7 of Act No. 1-2012, 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, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2, or any other felony that involves misuse of public funds or property, including the crimes mentioned in Article 6.8 of Act 8-2017, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico;

(B) failed to comply at any time with the Anti-Corruption Laws and any other Applicable Law that prohibit corruption and regulate criminal acts involving public functions or public funds applicable to Operator under state, Commonwealth or federal law, or solely with respect to Operator, failed to furnish a Sworn Statement; or

(C) been convicted of offenses against public integrity, as defined in the Puerto Rico Penal Code, or of embezzlement of public funds, or has been found guilty of any such type of offense in the courts of the Commonwealth, the courts of the United States or any court of any jurisdiction.

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(ii) Operator has not, directly or indirectly, made or received, and shall not make or receive, any payments in connection with this Agreement or the O&M Services or the Decommissioning Services in order to illegally or improperly to obtain business or other rights.

(iii) Operator is not aware that it is being investigated as part of a criminal or civil process by any law enforcement or regulatory authority in connection in any way with the Anti-Corruption Laws or any criminal laws or regulations.

(iv) None of Operator, its subsidiaries, Parent Company or any directors, officers or employees of any thereof is (A) a Person, or is a Person owned or controlled by a Person (a "Sanctioned Person"), with whom dealings are restricted or prohibited by, or are sanctionable under, any economic sanctions or trade restrictions administered or enforced by the U.S. government (including the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State or the Bureau of Industry and Security of the U.S. Department of Commerce), the United Nations Security Council, the European Union or Her Majesty's Treasury or any other authority with jurisdiction over Operator, its subsidiaries or its Affiliates (collectively, "Sanctions") or (B) located, organized or resident in a country or territory with which dealings are broadly restricted, prohibited or made sanctionable under any Sanctions (currently, the Crimea, Cuba, Iran, North Korea and Syria) (each, a "Sanctioned Country"). Operator and its subsidiaries have not violated and have not engaged in any conduct sanctionable under Sanctions. There are not now, nor have there been within the past five (5) years, any formal or informal proceedings, allegations, investigations or inquiries pending, expected or, to the knowledge of the Parent Company, threatened against the Parent Company, Operator, its subsidiaries, or any of their respective officers or directors concerning violations or potential violations of, or conduct sanctionable under, any Sanctions.

(v) No official or employee of Owner has a direct or indirect economic interest in Operator's rights under this Agreement in accordance with the provisions of Act 2, which Operator herein certifies it has received a copy of, read, understood and complied with at all times prior to the execution of this Agreement and shall subsequently comply with it in its entirety.

(vi) Operator does not represent particular interests in cases or matters that imply conflicts of interest, or of public policy, between Owner and the particular interests it represents.

(h) Accuracy of Information. All of the information relating to Operator or any of its Affiliates delivered by or on behalf of Operator to Owner and Administrator in connection with the execution of this Agreement was true, accurate and complete in all material respects when delivered.

(i) Ability to Perform Obligations. Except as contemplated elsewhere in this Agreement, including in Article 2 (*Purpose; Effective Date; Term*), Article 4 (*Mobilization Period*) and Article 7 (*Compensation; O&M Budgets*), Operator has the required authority, ability, skills, access to funds, technical support and capacity to perform all its obligations with respect to the O&M Services and the Decommissioning Services and all of its other obligations under this Agreement, all in accordance with the Transaction Documents and assuming each of Owner's and

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Administrator's performance of its obligations in accordance with the terms of this Agreement and the Transaction Documents. Operator acknowledges that it has been provided with a complete copy of the Consent Decree (including its appendices and attachments) at least thirty (30) days prior to the Effective Date, and has the required authority, ability, skills, access to funds, technical support and capacity to meet the requirements of the Consent Decree relating to its obligations under this Agreement.

(j) Knowledge of Requirements. Operator has knowledge in all material respects of all legal requirements, Applicable Law, and business and engineering practices that must be followed in performing its obligations under this Agreement.

(k) No Litigation with Owner. Neither Operator nor any of its shareholders or its or their Affiliates are involved in any litigation, arbitration or claim against Owner, Administrator, AAFAF or the FOMB.

(l) Representation in FOMB Certification. The information included in the Contractor Certification Requirement, as included in Appendix C of the FOMB's Contract Submission Questionnaire dated November 16, 2022 (the "Certification"), completed by Operator, is complete, accurate and correct as of the date thereof. Without limiting the foregoing in any way, Operator acknowledges and agrees that Administrator, in consultation with the FOMB, shall have the right to declare this Agreement null and void in the event of any misrepresentation, or inaccuracy of falseness with respect to a material fact in the Certification. In addition, Administrator, after disclosure to and consultation with the FOMB, may provide in its discretion an opportunity to the Operator to attempt to cure any such misrepresentation, or inaccuracy of falseness in the Certification and Administrator, after disclosure to and consultation with the FOMB, shall have the discretion to determine whether any such cure is acceptable. In the event that Administrator declares this Agreement null and void in the event of any misrepresentation, or inaccuracy of falseness with respect to a material fact in the Certification, Operator shall have the obligation to reimburse immediately to Owner or the Commonwealth, as applicable, any amounts, payments or benefits received from Owner or the Commonwealth under this Agreement.

## Article 21 MISCELLANEOUS

**Section 21.1** Fees and Expenses. Except as otherwise expressly provided in this Agreement, all costs and expenses incurred, including fees and disbursements of counsel, financial advisors and accountants, in connection with the negotiation and execution of this Agreement shall be borne by the Party incurring such costs and expenses; provided, however, that, in the event this Agreement is terminated in accordance with its terms, the obligation of each Party to bear its own costs and expenses shall be subject to any rights of such Party arising from a breach of this Agreement by the other Party prior to such termination.

**Section 21.2** Notices. All notices or other communications to be delivered in connection with this Agreement shall be in writing and shall be deemed to have been properly delivered, given and received (a) on the date of delivery if delivered by hand during normal business hours of the recipient during a Business Day, otherwise on the next Business Day, (b) on the date of successful transmission if sent via email (with return receipt) during normal business hours of the recipient

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during a Business Day, otherwise on the next Business Day, or (c) on the date of receipt by the addressee if sent by a nationally recognized overnight courier or by registered or certified mail, return receipt requested, if received on a Business Day, otherwise on the next Business Day. Such notices or other communications must be sent to each respective Party at the address, email address set forth below (or at such other address, email address as shall be specified by a Party in a notice given in accordance with this Section 21.2 (*Notices*)):

If to Owner:

Puerto Rico Electric Power Authority  
PO BOX 364267  
San Juan, Puerto Rico 00936-4267  
Attention: Chief Executive Officer – [Josué Colón]  
Telephone: (787) 521-[\_\_\_\_]  
Email: [josue.colon]@prepa.com

with copies to:

Administrator  
PO BOX 42001  
San Juan, Puerto Rico 00940-2001  
Attention: Executive Director – Fermín E. Fontanés Gómez  
Telephone: (787) 722-2525 Ext. 15330  
Email: Fermin.Fontanes@p3.pr.gov and  
Administrator@p3.pr.gov

*And*

PREB  
268 Avenida Muñoz Rivera  
Edificio World Plaza  
Piso 7, Suite 704  
Hato Rey, Puerto Rico 00918  
Attention: President - Edison Avilés Deliz  
Telephone: (787) 523-6262  
Email: eavilesdeliz@energia.pr.gov

If to Administrator:

Administrator  
PO BOX 42001  
San Juan, Puerto Rico 00940-2001  
Attention: Executive Director – Fermín E. Fontanés Gómez  
Telephone: (787) 722-2525 Ext. 15330  
Email: Fermin.Fontanes@p3.pr.gov and  
Administrator@p3.pr.gov  
[Operator Name]  
[Address]



**CONFIDENTIAL**

Attention:

Email:

with copies to:

[Operator Name]

[Address]

Attention:

If to Operator:

[Operator Name]

[Address]

Attention:

Email:

with copies to:

[Operator Name]

[Address]

Attention:

**Section 21.3** Amendments. Neither this Agreement nor any provision hereof may be changed, modified, amended or waived, except by written agreement duly executed by the Parties. Any such amendment shall not be effective until (i) to the extent required by Applicable Law, approved by PREB and the FOMB (if then in existence) and (ii) Administrator has obtained a Tax Opinion and a Reliance Letter, at the cost of Owner or Administrator, with respect to any such amendment. Wherever this Agreement requires the Parties to use good faith, reasonable, commercially reasonable or other efforts to amend the terms of this Agreement, Operator shall not be deemed to be in breach of such requirement as a result of its insistence that such amendment not adversely affect Operator's compensation under, or its return on investment or other economic interests with respect to, this Agreement, except to the extent such adverse effect results solely from inflation or the imposition of a Tax or an increase in Taxes of general application.

**Section 21.4** Entire Agreement. This Agreement, together with the Annexes and Exhibits attached hereto, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior oral or written agreements, understandings, proposals, representations or warranties relating to this Agreement. Without limiting the generality of the foregoing, this Agreement shall completely and fully supersede all other understandings and agreements among the Parties with respect to such transactions, including those contained in the RFP, the Proposal by Operator or its Affiliate and any amendments or supplements to the RFP or the Proposal.

**Section 21.5** Relationship of the Parties. Nothing in this Agreement is intended to create, or shall be deemed or construed as creating, any partnership, joint venture or other legal entity, or give rise to any fiduciary duty, among the Parties. Except as otherwise expressly provided in this Agreement, no Party shall have the authority or right, or hold itself out as having the authority or

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right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of any other Party, except as expressly provided herein. No provision in this Agreement shall result in Operator or any of its employees, Subcontractors, agents or Representatives being considered an employee, contractor or Representative of Owner. Operator shall be an independent contractor and shall be responsible for and have control over the performance of the O&M Services hereunder, subject to the standards set forth in this Agreement. Nothing in this Agreement shall be interpreted to create a relationship of co-employer between Owner and Operator or Administrator and Operator as to the employees of Operator or any of its respective subcontractors, nor to make Operator an alter ego or a successor employer of Owner.

### **Section 21.6** Assignment and Transfer.

(a) By Operator. Operator shall not assign, transfer, convey, lease, encumber or otherwise dispose of its rights or obligations under this Agreement or related to the O&M Services or the Decommissioning Services without the prior written consent of Administrator, which consent shall not be unreasonably withheld, delayed or conditioned, and to the extent required by Applicable Law, PREB or other Governmental Bodies; provided, however, that Operator may, without the prior written consent of Administrator:

(i) assign or otherwise dispose of any of its rights and obligations hereunder to an Affiliate of Operator so long as: (A) such Affiliate is (1) a Controlled direct or indirect subsidiary of the Parent Company, (2) reasonably capable of discharging the duties and obligations of Operator hereunder and (3) assumes in writing all of Operator's obligations hereunder; and (B) such assignment is otherwise permitted under, and in compliance with, Applicable Law; and

(ii) assign solely its rights to payment under this Agreement to one, and only one, trust, trustee, bank, paying agent, financial entity or other Person or company for the purposes of any bona fide financing or in order to facilitate the making of any such payment.

Any such consent given in one instance shall not relieve Operator of its obligation to obtain the prior written consent of Administrator to any further assignment. Any assignment of this Agreement that is approved by Administrator shall require the assignee of Operator to assume the performance of and observe all obligations, representations and warranties of Operator under this Agreement, and no such assignment shall relieve Guarantor of any of its obligations under the Guarantee. The consent to any assignment, transfer or conveyance shall not operate to release Operator in any way from any of its obligations under this Agreement unless such consent specifically provides otherwise. Any amendments to this Agreement requested by a potential assignee or transferee of Operator shall be submitted to and approved by the board of directors of Administrator pursuant to Section 10(a)(19) of Act 29.

(b) By Owner. Owner shall not assign, transfer, convey, lease, encumber or otherwise dispose of its rights or obligations under this Agreement without the prior written consent of Operator; provided, however, that Owner may, without the prior written consent of Operator, assign or otherwise dispose of any of its rights and obligations hereunder: (i) to Administrator; (ii) with prior approval of Administrator, to a newly-created subsidiary of PREPA to which the Legacy Generation Assets are contributed or otherwise transferred; or (iii) with prior

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approval of the FOMB (if then in existence and to the extent such approval is required by Applicable Law), to another Governmental Body if such assignee assumes, and is reasonably and legally, operationally and financially capable of discharging, the duties and obligations of Owner hereunder.

(c) Change of Control. Nothing contained in the foregoing shall be deemed to prohibit or limit, whether accomplished through a single transaction or a series of related or unrelated transactions and whether accomplished directly or indirectly, transfers of direct or indirect ownership interests in Operator by any Equity Participant or its beneficial owner(s) to any Person; provided that if any such transfer results in a Change of Control of Operator, the approval of Administrator (not to be unreasonably withheld, conditioned or delayed) shall be required for any such transfer.

**Section 21.7** Interest on Overdue Obligations. Except as otherwise provided herein, all amounts due hereunder, whether as fees, damages, credits, revenue, charges or reimbursements, that are not paid when due shall bear interest at the Overdue Rate, on the amount outstanding from time to time, and all such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due, as accrued.

**Section 21.8** Waivers. Either Operator or Administrator may, at any time, (i) extend the time for the performance of any of the obligations or other acts of the other Party, (ii) waive any inaccuracies in the representations and warranties of the other Party contained herein or (iii) waive compliance by the other Party with any of the agreements or conditions contained herein to the extent consistent with Applicable Law. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in a written instrument executed and delivered by the Party so waiving. No waiver by any Party of any breach of this Agreement shall operate or be construed as a waiver of any preceding or subsequent breach, whether of a similar or different character, unless expressly set forth in such written waiver. Neither any course of conduct or failure or delay of any Party in exercising or enforcing any right, remedy or power hereunder shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy or power hereunder, or any abandonment or discontinuance of steps to enforce such right, remedy or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right, remedy or power.

**Section 21.9** Severability. If any term or provision of this Agreement is invalid, illegal or incapable of being enforced in any situation or in any jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other term or provision hereof or the offending term or provision in any other situation or any other jurisdiction, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon any such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible, in a mutually acceptable manner, in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

**Section 21.10** Survival. The rights and obligations of the Parties pursuant to this Section 21.10 (*Survival*), Article 13 (*Intellectual Property; Proprietary Information*), Article 15 (*Dispute*

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*Resolution*), Article 17 (*Demobilization*), Article 19 (*Indemnification*), Section 21.2 (*Notices*) and Section 21.15 (*Governing Law*) shall survive the expiration or termination of this Agreement. No expiration or early termination of this Agreement shall (i) limit or otherwise affect the respective rights and obligations of the Parties accrued prior to the date of such termination (including Owner's obligation to pay Operator for Pass-Through Expenditures accruing prior to such termination pursuant to Section 7.2 (*Pass-Through Expenditures*) and Section 7.6 (*Service Accounts*)) or (ii) preclude any Party from impleading any other Party in any Legal Proceeding originated by a third party as to any matter occurring during the Term.

**Section 21.11** No Third-Party Beneficiaries. Unless specifically set forth herein, this Agreement is exclusively for the benefit of the Parties and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other rights.

### **Section 21.12** Remedies.

(a) Cumulative and Non-Exclusive Remedies. Except as otherwise provided in this Agreement, any and all remedies herein expressly conferred upon a Party shall be deemed cumulative with and not exclusive of any other remedy expressly conferred hereby, and the exercise by a Party of any one such remedy shall not preclude the exercise of any other such remedy.

(b) Irreparable Damage and Harm. Except where sole and exclusive remedy(ies) are identified herein with respect to any provision, act or omission that do not include specific performance or injunctive relief: The Parties agree that irreparable damage and harm would occur in the event that any provision of this Agreement were not performed in accordance with its terms and that, although monetary damages may be available for such a breach, monetary damages would be an inadequate remedy therefor. Accordingly, each of the Parties agrees that, in the event of any breach or threatened breach of any provision of this Agreement by such Party, the other Party shall be entitled to an injunction or injunctions, specific performance and other equitable relief to prevent or restrain breaches or threatened breaches hereof and to specifically enforce the terms and provisions hereof. A Party seeking an order or injunction to prevent breaches of this Agreement or to enforce specifically the terms and provisions hereof shall not be required to provide, furnish or post any bond or other security in connection with or as a condition to obtaining any such order or injunction, and each Party hereby irrevocably waives any right it may have to require the provision, furnishing or posting of any such bond or other security. In the event that any Legal Proceeding should be brought in equity to enforce the provisions of this Agreement, each Party agrees that it shall not allege, and each Party hereby waives the defense, that there is an adequate remedy available at law.

**Section 21.13** Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same agreement or document. A signed copy of this Agreement transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes.

**Section 21.14** Office of the Comptroller. Owner agrees to file this Agreement with the Comptroller of the Commonwealth promptly after its execution and to provide Operator with

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evidence of its filing within fifteen (15) days following the Effective Date. The Parties acknowledge and agree that the obligations and considerations under this Agreement shall not be enforceable until this Agreement shall have been registered with the Office of the Comptroller of the Commonwealth as provided by Act No. 18 of the Legislative Assembly of Puerto Rico, enacted on October 30, 1975.

**Section 21.15 Governing Law.** This Agreement and all matters, claims, controversies, disputes, suits, actions or proceedings arising out of or relating to this Agreement and the negotiation, execution or performance of this Agreement or any of the transactions contemplated hereby, including all rights of the Parties (whether sounding in contract, tort, common or statutory law, equity or otherwise) in connection therewith, shall be interpreted, construed and governed by and in accordance with, and enforced pursuant to, the internal laws of the Commonwealth (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction), except where the federal supremacy clause requires otherwise.

**Section 21.16 Commonwealth Obligations.** THE OBLIGATIONS OF OWNER AND ADMINISTRATOR UNDER THIS AGREEMENT SHALL NOT BE DEEMED OBLIGATIONS OF THE COMMONWEALTH OR ANY INSTRUMENTALITY OF THE COMMONWEALTH OTHER THAN OWNER AND ADMINISTRATOR.

**Section 21.17 PREB Authority.** Notwithstanding anything to the contrary herein, but without affecting Operator's remedies in the event of a Change in Regulatory Law, no provision of this Agreement shall be interpreted, construed or deemed to limit, restrict, supersede, supplant or otherwise affect, in each case in any way, the rights, responsibilities or authority granted to PREB under Applicable Law with respect to the Legacy Generation Assets, Owner or Operator.

**Section 21.18 Non-Recourse.** Notwithstanding anything that may be expressed or implied in this Agreement or any document, agreement, or instrument delivered contemporaneously herewith except for the Guarantee, each Party, by its acceptance of the benefits of this Agreement, covenants, agrees and acknowledges that no Persons other than the Parties shall have any obligation hereunder and that it has no rights of recovery hereunder against, and no recourse hereunder or under any documents, agreements, or instruments delivered in connection with this Agreement (unless and to the extent such Person is expressly a party to such other agreement, document or instrument) or in respect of any oral representations made or alleged to be made in connection herewith or therewith shall be had against, any former, current or future director, officer, agent, Affiliate, manager, assignee, incorporator, controlling Person, fiduciary, Representative or employee of any former, current, or future general or limited partner, manager, stockholder or member of any Party (or any of their successors or permitted assignees) or any Affiliate thereof or against any former, current or future director, officer, agent, employee, Affiliate, manager, assignee, incorporator, controlling Person, fiduciary, Representative, general or limited partner, stockholder, manager or member of any of the foregoing, whether by or through attempted piercing of the corporate veil, by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any statute, regulation or other Applicable Law, or otherwise.

**Section 21.19 Commonwealth Support Provisions.** With a view toward fostering a positive and constructive relationship between Operator and the applicable Government Bodies, Operator shall:

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(a) Ratepayer Savings. No later than 90 days after the end of each Contract Year, provide a summary (derived from the periodic reports otherwise provided to Administrator by this Agreement) to T&D Operator of Operator's calculation of the fuel and operational savings, which summary shall clearly show Operator's calculations of the savings created by Operator activities in the prior Contract Year. This summary shall provide T&D Operator with the information necessary to take such savings into account when proposing applicable electricity rates for PREB approval. Operator shall assist T&D Operator in developing strategies to use such savings to lower the applicable electricity rates. Operator will make copies of such summary available to the Administrator, PREB, and FOMB.

(b) Employee Benefits and Protections. Offer employment to fulltime plant Owner Employees in the manner set forth in Section 4.2(g) (*Operator Responsibilities – Employment Offers*) of this Agreement, and provide such Hired Former Employees of Owner with the following additional protections: (i) his or her job will be guaranteed for a minimum period of two (2) years, and (ii) Hired Former Employees of Owner may only be separated from the position during such period of two (2) years if he or she engages in behavior that warrants dismissal or constitutes just cause under Act 80 of May 30, 1970, as amended.

(c) Limits on Subcontracts. Disclose to Administrator information related to any Affiliate of Operator that proposes to participate in any procurement relating to subcontracting of services to be provided under this Agreement in a manner consistent with Section 11.4 (*Disclosure Related to Operator Affiliates*) of this Agreement. Operator shall make commercially reasonable efforts to ensure that a company established under the Commonwealth of Puerto Rico or a company that has a significant presence in the Commonwealth of Puerto Rico are included in the procurement process for materials and services under this Agreement.

(d) Local Workforce Prioritization. Use commercially reasonable efforts to select a company established under the Commonwealth of Puerto Rico or a company that has a significant presence in the Commonwealth of Puerto Rico as its Material Subcontractors.

(e) Enhanced Transparency. No later than ninety (90) days following each Contract Year, provide to Administrator an annual report for the Administrator to make available to the Legislative Assembly, which report shall include a summary of the Operator's operational performance for such prior Contract Year and expectations for the upcoming Contract Year. From time to time, Operator shall provide such information as Administrator may reasonably request pursuant to Section 21.19(e), which requests Operator acknowledges and accepts, shall also include those on behalf of another Governmental Body.

(f) Agreement. Parties may seek to extend this Agreement only in conformity with the terms of Section 2.3(b) (*Term – Extension*) of this Agreement. For the avoidance of doubt, Administrator's approval of such extension pursuant to Section 2.3(b) (*Term – Extension*) of this Agreement shall be provided only following a decision of the Administrator's Board of Directors in accordance with Act 29 and Act 120. This Agreement shall be deemed a PREPA Transaction subject to the requirements of Act 120.

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*[Signature page follows]*

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**IN WITNESS WHEREOF**, Owner, Administrator and Operator each has caused this Agreement to be duly executed as of the day and year first above written.

**PUERTO RICO ELECTRIC POWER  
AUTHORITY, solely in its capacity as OWNER**

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

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

**PUERTO RICO PUBLIC-PRIVATE  
PARTNERSHIPS AUTHORITY, solely in its  
capacity as ADMINISTRATOR**

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



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**GENERA PR LLC, solely in its capacity as  
OPERATOR**

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

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

**Acknowledged for purpose of the references to Management Co in this Agreement:**

**GENERA MANAGEMENT LLC, solely in its  
capacity as MANAGEMENT CO**

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

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

## Annex I

## Legacy Generation Assets

Legacy Generation Asset	Operational Classification	Out-of-Service Unit
Aguirre Steam Unit 1	Baseload Unit	
Aguirre Steam Unit 2	Baseload Unit	
Aguirre GT Unit 1	Peaking Unit	Yes
Aguirre GT Unit 2	Peaking Unit	
Aguirre CC 1 – Steam	Baseload Unit	
Aguirre CC 1 – Combustion	Baseload Units	
Aguirre CC 2 – Steam	Baseload Unit	Yes
Aguirre CC 2 – Combustion	Baseload Units	Yes
Cambalache Unit 1	Peaking Unit	Yes
Cambalache Unit 2	Peaking Unit	
Cambalache Unit 3	Peaking Unit	
Costa Sur Unit 1	Baseload Unit	Yes
Costa Sur Unit 2	Baseload Unit	Yes
Costa Sur Unit 3	Baseload Unit	Yes
Costa Sur Unit 4	Baseload Unit	Yes
Costa Sur Unit 5	Baseload Unit	
Costa Sur Unit 6	Baseload Unit	
Costa Sur GT Unit 1	Peaking Unit	Yes
Costa Sur GT Unit 2	Peaking Unit	Yes
Culebra Unit 1	Emergency Unit	
Culebra Unit 2	Emergency Unit	
Culebra Unit 3	Emergency Unit	
Mayaguez Unit 1	Peaking Unit	
Mayaguez Unit 2	Peaking Unit	
Mayaguez Unit 3	Peaking Unit	
Mayaguez Unit 4	Peaking Unit	
Palo Seco Unit 1	Baseload Unit	
Palo Seco Unit 2	Baseload Unit	Yes
Palo Seco Unit 3	Baseload Unit	
Palo Seco Unit 4	Baseload Unit	
Palo Seco CT Unit 1-1	Peaking Unit	
Palo Seco CT Unit 1-2	Peaking Unit	
Palo Seco CT Unit 2-1	Peaking Unit	
Palo Seco CT Unit 2-2	Peaking Unit	
Palo Seco CT Unit 3-1	Peaking Unit	
Palo Seco CT Unit 3-2	Peaking Unit	
Palo Seco MobilePacs	Peaking Unit	
San Juan Unit 1 – Steam	Baseload Unit	Yes
San Juan Unit 2 – Steam	Baseload Unit	Yes

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<b>Legacy Generation Asset</b>	<b>Operational Classification</b>	<b>Out-of-Service Unit</b>
San Juan Unit 3 – Steam	Baseload Unit	Yes
San Juan Unit 4 – Steam	Baseload Unit	Yes
San Juan CC 5 - Gas	Baseload Unit	
San Juan CC 5 - Steam	Baseload Unit	
San Juan CC 6 - Gas	Baseload Unit	
San Juan CC 6 – Steam	Baseload Unit	
San Juan Unit 7 - Steam	Baseload Unit	
San Juan Unit 8 – Steam	Baseload Unit	
San Juan Unit 9 – Steam	Baseload Unit	
San Juan Unit 10 – Steam	Baseload Unit	Yes
Daguao CT Unit 1	Peaking Unit	
Daguao CT Unit 2	Peaking Unit	
Yabucoa CT Unit 1	Peaking Unit	
Yabucoa CT Unit 2	Peaking Unit	
Jobos CT Unit 1	Peaking Unit	
Jobos CT Unit 2	Peaking Unit	
Vega Baja CT Unit 1	Peaking Unit	
Vega Baja CT Unit 2	Peaking Unit	
Vieques Unit 1	Emergency Unit	
Vieques Unit 2	Emergency Unit	

## Annex II

## Compensation

I. **O&M Fixed Fee**A. **O&M Fixed Fee Amounts**

Subject to the O&M Fixed Fee Adjustment (as defined below), the O&M Fixed Fee payable to Operator in each Contract Year as compensation for the performance of the O&M Services pursuant to Article 7 (*Compensation; O&M Budgets*) shall be as follows:

Contract Year	O&M Fixed Fee*
1	US\$22.5 million x CPI Factor
2	US\$22.5 million x CPI Factor
3	US\$22.5 million x CPI Factor
4	US\$22.5 million x CPI Factor
5	US\$22.5 million x CPI Factor
6	US\$22.5 million x CPI Factor**
7	US\$22.5 million x CPI Factor**
8	US\$22.5 million x CPI Factor**
9	US\$22.5 million x CPI Factor**
10	US\$22.5 million x CPI Factor**

\* The O&M Fixed Fee for any Contract Year containing more or less than three hundred and sixty-five (365) calendar days shall be automatically increased or decreased (as applicable) on a Pro Rata basis.

\*\* The O&M Fixed Fee for specified years is subject to adjustment in accordance with the below.

B. **Adjustments to O&M Fixed Fee upon Decommissioning or Removal from Scope of Services**

Commencing in Contract Year 6, the O&M Fixed Fee for any of Contract Year 6 through Contract Year 10 shall be subject to an O&M Fixed Fee Adjustment in the event that (i) Operator has begun or begins to perform Decommissioning Services with respect to a Legacy Generation Asset; or (ii) one or more Legacy Generation Assets has been or is removed from the scope of O&M Services, permanently or indefinitely, in each case, pursuant to Section 2.3 (*Term*); provided, however, that notwithstanding anything in this Agreement to the contrary, the O&M Fixed Fee shall not be reduced below US\$5 million. For the avoidance of doubt, there shall be no O&M Fixed Fee Adjustment in Contract Year 1 through Contract Year 5 as a result of Operator beginning to provide Decommissioning Services with respect to a Legacy Generation Asset or a Legacy Generation Asset being removed from the scope of O&M Services.

Any O&M Fixed Fee Adjustment shall be effective as of the date (such date, an “Adjustment Date”) on which (i) Operator commences Decommissioning Services with respect to a Legacy Generation Asset, or (ii) a Legacy Generation Asset is removed from the scope of the O&M Services pursuant to Section 2.3 (*Term*); provided, however, that if the event described in clause (i) or (ii) occurs prior to the first day of Contract Year 6, then the Adjustment Date with respect to such event shall be the first day of Contract Year 6.

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Following an Adjustment Date, the O&M Fixed Fee payable for a given Contract Year shall be the Adjusted O&M Fixed Fee.

The “Adjusted O&M Fixed Fee” shall be calculated in accordance with the following formula:

**Adjusted O&M Fixed Fee = OFF – the aggregate of all O&M Fixed Fee Adjustments for Legacy Generation Assets which are permanently out of service, are being or have been decommissioned, or are indefinitely out of service without an active full remediation plan,**

where:

- *OFF* = The applicable O&M Fixed Fee for a given Contract Year, as set forth in Section I.A. (O&M Fixed Fee Amounts) above;
- *O&M Fixed Fee Adjustment* = OFF x AR; and
- *AR* = The applicable ratio corresponding to the percentage of the O&M Fixed Fee allocated to each Legacy Generation Asset which are being or have been decommissioned, as set forth in the tables below:

<b>Legacy Generation Asset</b>	<b>Applicable Ratio (AR)</b>
Aguirre Steam Unit 1	11.27%
Aguirre Steam Unit 2	11.27%
Aguirre GT Unit 1	0.05%
Aguirre GT Unit 2	0.53%
Aguirre CC 1 – Steam	2.40%
Aguirre CC 1 – Gas	5.01%
Aguirre CC 2 – Steam	0.05%
Aguirre CC 2 – Gas	0.05%
Cambalache Unit 1	0.05%
Cambalache Unit 2	2.07%
Cambalache Unit 3	2.07%
Costa Sur Unit 1	0.05%
Costa Sur Unit 2	0.05%
Costa Sur Unit 3	0.05%
Costa Sur Unit 4	0.05%
Costa Sur Unit 5	10.27%
Costa Sur Unit 6	10.27%
Costa Sur GT Unit 1	0.05%
Costa Sur GT Unit 2	0.05%
Mayaguez Unit 1	1.38%
Mayaguez Unit 2	1.38%
Mayaguez Unit 3	1.38%

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Mayaguez Unit 4	1.38%
Palo Seco Unit 1	2.13%
Palo Seco Unit 2	0.05%
Palo Seco Unit 3	5.41%
Palo Seco Unit 4	5.41%
Palo Seco GT Unit 1-1	0.53%
Palo Seco GT Unit 1-2	0.53%
Palo Seco GT Unit 2-1	0.53%
Palo Seco GT Unit 2-2	0.53%
Palo Seco GT Unit 3-1	0.53%
Palo Seco GT Unit 3-2	0.53%
Palo Seco MobilePac 1	0.68%
Palo Seco MobilePac 2	0.68%
Palo Seco MobilePac 3	0.68%
San Juan Unit 1 – Steam	0.05%
San Juan Unit 2 – Steam	0.05%
San Juan Unit 3 – Steam	0.05%
San Juan Unit 4 – Steam	0.05%
San Juan CC 5 – Gas	4.01%
San Juan CC 5 – Steam	1.50%
San Juan CC 6 – Gas	4.01%
San Juan CC 6 – Steam	1.50%
San Juan Unit 7 – Steam	2.50%
San Juan Unit 8 – Steam	2.50%
San Juan Unit 9 - Steam	0.05%
San Juan Unit 10 - Steam	0.05%
Daguao GT Unit 1	0.53%
Daguao GT Unit 2	0.53%
Yabucoa GT Unit 1	0.53%
Yabucoa GT Unit 2	0.53%
Jobos GT Unit 1	0.53%
Jobos GT Unit 2	0.53%
Vega Baja GT Unit 1	0.53%
Vega Baja GT Unit 2	0.53%
Total	100.00%

**II. Not used****III. Incentives and Penalties****A. General.**

In each Contract Year, Operator shall be (i) eligible to receive financial incentive compensation in the form of an Incentive Payment or (ii) subject to potential Penalty, in each case, based on Operator's performance in providing the O&M Services and/or the Decommissioning

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Services, as applicable, with respect to the performance categories described in this Section III of Annex II (*Compensation – Incentives and Penalties*); provided that no Incentive Payment shall be paid to, and no Penalty shall be incurred by, Operator during the Mobilization Period or the Demobilization Period. Following any O&M Fixed Fee Adjustment, the maximum Incentive Payment that Operator is entitled to earn for such Contract Year(s) shall be correspondingly subject to Pro Rata reduction.

Upon the occurrence and continuation of any Force Majeure Event (other than a Force Majeure Event that is a *Forced Outage*), Operator and Administrator shall negotiate in good faith adjustments or modifications to the relevant categories of Incentives and Penalties, as applicable, which shall apply during the duration of such Force Majeure Event.

Certain categories of *Incentives* and *Penalties* include minimum standards of performance that Operator must meet, as set forth in Section III.B of Annex II (*Compensation – Incentives and Penalties – O&M Services Categories*) (each, a “Minimum Performance Threshold”). Failure to meet one or more Minimum Performance Thresholds may trigger a “Minimum Performance Threshold Default” pursuant to Section 14.1(l) (*Events of Default by Operator – Failure to Meet Minimum Performance Threshold*).

All *Incentives* and *Penalties* for any Contract Year containing more or less than three hundred and sixty-five (365) calendar days shall be automatically increased or decreased (as applicable) on a Pro Rata basis.

### **B. O&M Services Categories**

To incentivize Operator to meet certain targets in performing the O&M Services, Operator shall be evaluated in six (6) categories: (i) Operation Cost Efficiency, (ii) Equivalent Availability Factor (EAF), (iii) Safety Compliance, (iv) Environmental Compliance, (v) Reporting Obligations and (vi) Fuel Savings, as described in this Section III.B of Annex II (*Compensation – Incentives and Penalties – O&M Services Categories*). For each Contract Year, the maximum amount payable by Owner to Operator based on the aggregate sum of (a) the amounts payable to Operator with respect to the following five (5) incentive categories described below, (i) Operation Cost Efficiency, (ii) Equivalent Availability Factor (EAF), (iii) Safety Compliance, (iv) Environmental Compliance and (v) Fuel Savings, for all applicable Legacy Generation Assets *minus* (b) the amount of any Penalties (the sum of (a) and (b), the “Aggregate I&P Amount”), shall be an amount equal to US\$100 million (the “Annual Incentive Cap”); provided, however, that to the extent that the Aggregate I&P Amount accrued for any Contract Year exceeds the Annual Incentive Cap, the amount of such accrued excess shall be carried over into subsequent Contract Years and shall be payable by Owner to Operator to the extent that the accrued Aggregate I&P Amount in any subsequent Contract Year is less than the Annual Incentive Cap for such Contract Year.

#### **1. Operation Cost Efficiency**

The applicable Operating Budget for each Contract Year shall be the benchmarks for determining Operator’s cost efficiency in such Contract Year, subject to adjustments for Force Majeure Events and Owner Fault. Operator shall receive an O&M Incentive Payment based on a

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percentage of the total amount of cost savings achieved by Operator in the delivery of the O&M Services as compared to the approved Operating Budget.

Measurement Parameter: Actual expenditures as a percentage (%) of the approved Operating Budget, where actual savings equal the Operating Budget minus actual expenditures.

Criteria:	
>95% but <99%	Operator receives 50% of the actual savings
>90% but ≤95%	Operator receives 50% of the actual savings
>85% but ≤90%	Operator receives 50% of the actual savings
≤85%	Operator receives 50% of the actual savings

For each Contract Year, the maximum O&M Incentive Payment payable to Operator under the Operation Cost Efficiency category shall be subject to the Annual Incentive Cap, which shall be subject to Pro Rata reduction following any O&M Fixed Fee Adjustment.

### 2. Equivalent Availability Factor (EAF)

The overall annual Equivalent Availability Factor (as defined below) targets and Minimum Performance Threshold (Capacity and Heat Rate) value for Baseload Units and for Peaking Units shall be established pursuant to Section 5.22 (*O&M Services – Annual Performance Test*). The Annual Performance Test shall be performed within ninety (90) days from the Service Commencement Date and during the first thirty (30) days of each Contract Year thereafter. The agreed to Annual Performance Test will provide a baseline for Capacity and Heat Rate, which results Operator shall consider when proposing Equivalent Availability Factor targets, including factoring in planned maintenance. Operator shall submit proposed Equivalent Availability Factor targets and Minimum Performance Thresholds to PREB for its review and approval; provided that if PREB does not respond within thirty (30) days following its receipt of such results and proposed targets, PREB shall be deemed to have no objection to such results and proposed targets. Operator shall provide to Administrator a monthly report and an annual report of the Equivalent Availability Factors in accordance with the North American Electric Reliability Corporation' Generation Availability Data System protocols.

To the extent Operator's overall annual Equivalent Availability Factor for a Contract Year exceeds the Equivalent Availability Factor referenced above, Operator shall receive a graduated O&M Incentive Payment, and to the extent it falls below the targets referenced above, Operator shall be subject to an O&M Penalty, in each case, subject to a maximum cap as described below. The Equivalent Availability Factor shall be automatically adjusted for excusable events including Force Majeure Events and Owner Fault.

As used in this Section III of Annex II (*Compensation – Incentives and Penalties*), "Equivalent Availability Factor" shall be defined in accordance with IEEE 762-2006, *IEEE Standard Definitions for Use in Reporting Electric Generating Unit Reliability, Availability, and Productivity* ("IEEE 762-2006") as:



$$EAF = \frac{(AH-EPDH-EUDH)}{PH} \times 100 \%$$

where:

- AH = Available Hours
- EPDH= Equivalent Planned Derated Hours
- EUDH = Equivalent Unplanned Derated Hours
- PH = Period Hours or number of hours that the Legacy Generation Asset was in active state

As used in this Section III of Annex II (*Compensation – Incentives and Penalties*), the aforementioned terms have the meanings ascribed to them in IEEE 762-2006.

The actual calculated Equivalent Availability Factor percent for each asset for a Contract Year in a category (Baseload Units and Peaking Units) shall be weighted that Contract Year by the ratio of its Tested Capacity to the total Tested Capacity for the category for that Contract Year to arrive at the overall Equivalent Availability Percent for that category of generation units for purposes of the Incentives and Penalties.

Measurement Parameter: Equivalent Availability Factor for Baseload Units

Criteria:	
>5% above Performance Target	Operator receives an Incentive Payment of US\$ <b>15 million</b>
>2.5% but ≤5% above Performance Target	Operator receives an Incentive Payment of US\$ <b>10 million</b>
>0% but ≤2.5% above Performance Target	Operator receives an Incentive Payment of US\$ <b>5 million</b>
≤Performance Target	Operator pays a Penalty of US\$ <b>5 million</b>

Measurement Parameter: Equivalent Availability Factor for Peaking Units

Criteria:	
>10% above Performance Target	Operator receives an Incentive Payment of US\$ <b>15 million</b>
>5% but ≤10% above Performance Target	Operator receives an Incentive Payment of US\$ <b>10 million</b>
>0% but ≤5% above Performance Target	Operator receives an Incentive Payment of US\$ <b>5 million</b>
≤ Performance Target	Operator pays a Penalty of US\$ <b>5 million</b>

For each Contract Year, the maximum aggregate O&M Incentive Payment payable to Operator with respect to the parameters of the Equivalent Availability Factor category shall be

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subject to the Annual Incentive Cap, which shall be subject to Pro Rata reduction following any O&M Fixed Fee Adjustment.

Minimum Performance Threshold for Equivalent Availability Factor Category: The Minimum Performance Threshold for the annual Equivalent Availability Factor for the applicable Legacy Generation Assets for the Baseload Units and for the Peaking Units shall be established pursuant to Section 5.22 (*O&M Services – Annual Performance Test*), subject to adjustments for Force Majeure Events and Owner Fault. Failure by Operator to achieve either Minimum Performance Threshold in two (2) consecutive Contract Years shall trigger a Minimum Performance Threshold Default pursuant to Section 14.1(l) (*Events of Default by Operator – Failure to Meet Minimum Performance Threshold*).

### 3. Safety Compliance

Operator shall receive an O&M Incentive Payment based on its performance for each Contract Year with respect to the safety compliance targets described below, which, for the avoidance of doubt, shall also include the performance of O&M Services by Operator's subcontractors. If, during any Contract Year, Operator performs below the relevant targets, Operator shall be subject to an O&M Penalty, as described below.

Measurement Parameter: OSHA Lost Time Incidents (LTI)

Number of LTI Incidents:	
<b>3 or less</b>	Operator receives an Incentive Payment of US\$ <b>10,000</b>
<b>Between 3 and 5</b>	Operator receives an Incentive Payment of US\$ <b>5,000</b>
<b>&gt;5</b>	Operator pays a Penalty of US\$ <b>100,000</b>

Measurement Parameter: OSHA Recordable Injury or Illness (I&I)

Number of I&I Incidents:	
<b>0</b>	Operator receives an Incentive Payment of US\$ <b>10,000</b>
<b>Between 1 and 3</b>	Operator receives an Incentive Payment of US\$ <b>5,000</b>
<b>&gt;3</b>	Operator pays a Penalty of US\$ <b>100,000</b>

Measurement Parameter: OSHA Fatality or Severe Injury

Number of Fatalities or Severe Injuries:	
<b>0</b>	Operator receives an Incentive Payment of US\$ <b>10,000</b>
<b>≥1</b>	Operator pays a Penalty of US\$ <b>100,000</b>

For each Contract Year, the maximum aggregate O&M Incentive Payment payable to Operator shall be subject to the Annual Incentive Cap and the maximum aggregate O&M Penalty

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that Operator may incur shall be US\$100,000, in each case with respect to parameters of the Safety Compliance category described herein, and in each case which shall be subject to Pro Rata reduction following any O&M Fixed Fee Adjustment.

Minimum Performance Threshold for Safety Compliance Category: The payment of penalties by Operator on any of the safety compliance measurement parameters in two (2) consecutive Contract Years shall trigger a Minimum Performance Threshold Default pursuant to Section 14.1(l) (*Events of Default by Operator – Failure to Meet Minimum Performance Threshold*).

### 4. Environmental Compliance

Operator shall receive an O&M Incentive Payment based on its performance with respect to the environmental target described below. If, during any Contract Year, Operator performs below the relevant target, Operator shall be subject to an O&M Penalty, as described below.

Measurement Parameter: Violation of Consent Decrees and/or Notice of Violations (NOVs)

Number of Violations or NOVs:	
0	Operator receives an Incentive Payment of US\$10,000
>1	Operator pays a Penalty of US\$25,000 (for each violation or NOV)

For each Contract Year, the maximum aggregate O&M Incentive Payment payable to Operator shall be US\$100,000 and the maximum aggregate O&M Penalty that Operator may incur shall be US\$100,000, in each case with respect to parameters of the Environmental Compliance category described herein, and in each case which shall be subject to Pro Rata reduction following any O&M Fixed Fee Adjustment.

Minimum Performance Threshold for Environmental Compliance Category: The payment of an O&M Penalty by Operator under the Environmental Compliance category for two (2) consecutive Contract Years shall trigger a Minimum Performance Threshold Default pursuant to Section 14.1(l) (*Events of Default by Operator – Failure to Meet Minimum Performance Threshold*).

### 5. Reporting Obligations

In accordance with Section 5.14(c)(iii) (*Information – Information Access*) and Section 7.1(d) (*Service Fee – Reporting Obligation Charge*), Operator shall be subject to a charge based on its timeliness in responding to a reasonable request for information from Administrator. For every fifteen (15) sequential days during which Operator fails to provide a response to Administrator, Operator shall pay a penalty of US\$100,000 (the “Reporting Obligation Charge”).

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For each Contract Year, the maximum aggregate Reporting Obligation Charge that Operator may incur shall be US\$1 million, and in each case which shall be subject to Pro Rata reduction following any O&M Fixed Fee Adjustment, and in each case which shall be subject to Pro Rata reduction following any O&M Fixed Fee Adjustment.

### **6. Fuel Optimization**

(a) Operator shall receive a “Fuel Optimization Payment” of fifty percent (50%) of any Actual Fuel Savings achieved during the relevant Contract Year.

(b) Operator shall prepare, and shall include in the Incentives and Penalties Report submitted pursuant to Section 7.1(c)(ii) (*Service Fee – Incentives and Penalties*), a detailed report (the “Fuel Optimization Report”) (A) demonstrating actual realized savings in Fuel Costs achieved during such Contract Year for each Legacy Generation Asset as a result of any Fuel Cost Savings Initiatives pursued or implemented by Operator (“Actual Fuel Savings”), which shall be calculated pursuant to the Fuel Optimization Plan and based on the applicable assumptions in the then current approved budget (e.g., output, dispatch, Heat Rate, fuel costs, etc.), and be an amount equal to the difference between the budgeted cost and the actual cost of the relevant budget items and (B) setting out Operator’s calculation of the Fuel Optimization Payment. The Fuel Optimization Report shall comply with, and all Fuel Cost Savings Initiatives shall be implemented in compliance with, the requirements set forth in Section 9.2(c) (*Anti-Corruption and Sanctions Laws – Policies and Procedures*).

(c) For the purpose of being able to determine Actual Fuel Savings and the corresponding Fuel Optimization Payment for any Contract Year that commences after one or more Fuel Cost Savings Initiatives have been implemented or are otherwise already accounted for in the relevant Budget, the Budgets for such Contract Year(s) shall include an addendum setting forth hypothetical budget allocations for the Fuel Costs that would be incurred in the absence of the Fuel Cost Savings Initiatives (for example (A) the cost of operation on diesel or heavy fuel oil of all Legacy Generation Assets that operated on diesel or heavy fuel oil as of the Effective Date and (B) the cost of transportation, testing and storage based on the fuel sources and transportation and storage methods utilized by Owner as of the Effective Date), and the Actual Fuel Savings shall be calculated by reference to such hypothetical budget allocations. The detailed methodologies for calculating Actual Fuel Savings and the Fuel Optimization Payment pursuant to this Section III.B.6(c) of Annex II (*Compensation – Incentives and Penalties – Fuel Optimization*) shall be included in the Fuel Optimization Plan. If the Parties have not agreed on the foregoing addendum within thirty (30) days of the commencement of any applicable Contract Year, either Party may submit such disagreement for resolution by an Independent Expert for an Expert Technical Determination in accordance with Section 15.4 (*Expert Technical Determination Procedure for Technical Disputes*).

### **C. Decommissioning Services Categories**

To incentivize Operator to meet certain targets in performing the Decommissioning Services with respect to a Legacy Generation Asset, Operator shall be evaluated in accordance with the Decommissioning Costs Efficiency category, as described in this Section III.C of Annex II (*Compensation – Incentives and Penalties – Decommissioning Services Categories*).

## 1. Decommissioning Costs Efficiency

Prior to the commencement of Decommissioning Services for any Legacy Generation Asset, Operator shall propose a Decommissioning Budget and a timeline as part of its proposed Decommissioning Plan, in accordance with Section 16.1 (*Notice and Approval for Retirement of Legacy Generation Assets and Commencement of Decommissioning Services*). Upon completion of such Decommissioning Services, as agreed by Operator, Administrator and PREB:

- If (i) Operator's actual expenditures are consistent with or exceed the estimates included in the applicable Decommissioning Budget and (ii) Operator successfully completes the applicable Decommissioning Services on or before relevant Decommissioning Completion Date, no Incentive Payment shall be applicable.
- If (i) Operator's actual expenditures are below the estimates included in the applicable Decommissioning Budget and (ii) Operator successfully completes the applicable Decommissioning Services on or before relevant Decommissioning Completion Date, Operator shall be eligible to receive a Decommissioning Incentive Payment consisting of a percentage of the actual cost reduction as compared to the estimates included in the applicable Decommissioning Budget (subject to a maximum cap).
- Operator shall use reasonable efforts to perform the Decommissioning Services within the applicable Decommissioning Budget.

Measurement Parameter: Actual expenditures as a percentage (%) of the approved Decommissioning Budget, where actual savings equal the Decommissioning Budget minus actual expenditures.

Criteria:	
>95% but <99%	Operator receives 50% of the actual savings
>90% but ≤95%	Operator receives 50% of the actual savings
>85% but ≤90%	Operator receives 50% of the actual savings
≤85%	Operator receives 50% of the actual savings

For each Contract Year, the aggregate Decommissioning Incentive Payment payable to Operator under the Decommissioning Costs Efficiency category for all applicable Legacy Generation Assets shall be subject to the Annual Incentive Cap.

If the Decommissioning Services with respect to a Legacy Generation Asset are not completed by the applicable Decommissioning Completion Date, then Operator shall be subject to a Decommissioning Penalty consisting of one million dollars (\$1,000,000) for each week, or for any portion of a week on a Pro Rata basis, by which the completion of the Decommissioning Services is delayed past the applicable Decommissioning Completion Date, up to a maximum of fifteen million dollars (\$15,000,000) in the aggregate across all Legacy Generation Assets and Generation Sites.

Minimum Performance Threshold: In the event Operator (i) exceeds the costs and expenses included in the applicable Decommissioning Budget and/or (ii) fails to complete the Decommissioning Services before the Decommissioning Completion Date for any two (2) Legacy Generation Assets, Administrator (on behalf of Owner) may, in its sole discretion, engage an independent third party to perform any future Decommissioning Services with respect to any Legacy Generation Assets without either Party incurring, or becoming liable for, the payment of any penalty, premium or termination fee.

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**Annex III**

**Baseline Environmental Study**

[Reserved]

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**Annex IV**

**Contracts**

[Reserved]



## Annex V<sup>1</sup>

### Communications Plan

#### 5.1 Communications Guiding Principles

The Operator will ensure that its communications plan covers four key principles.

- Transparent, Open, and Consistent Communications.
  - Operator shall create and sustain an open dialogue with members of the public, stakeholders, government officials and relevant elected leaders and the media.
  - The Operator will share facts, data, and updates in real-time with fact-based communications.
- Teamwork and Collaboration.
  - Operator shall work closely with stakeholders including P3A, PREB, PREPA, T&D Operator, FEMA, PR State Agency for Emergency and Disaster Management, OSHA, EPA and others to communicate openly and completely regarding status updates, improvements, and challenges facing Legacy Generation Assets operations and decommissioning.
- Building Strong Community Partnerships with a Good Neighbor Program.
  - Operator shall reflect its commitment to serving Puerto Rico's energy needs via its actions and through teamwork to deliver its results and facts to the stakeholders. The Communication Plan shall also include providing opportunities to hear direct feedback from the community which are vital to building trust and strengthening relationships with T&D Operator customers and the general public.
- Local Talent and Local Resources.
  - Operator shall partner with a trusted local public affairs agency for surge support and engage local talent and local resources. This shall include a local, respected, and credible Spanish speaking spokesperson that will always be available and will convey messages in a truthful and complete manner. Local resources should also include contracting local technical, video production, graphic design, and other consultants as needed to support communications requirements.

#### 5.2 Communications Team

Operator shall assemble a well-structured, unified corporate affairs department. The corporate affairs department shall handle day-to-day operations, as well as manage crisis situations. This team must be available during normal business hours – and importantly be ready on a 24/7/365 basis during an issue or crisis to provide rapid response communications and services. This will ensure transparent, accurate, and timely communications during normal operations and during crises.

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<sup>1</sup> **Note to draft:** This plan remains subject to further review by the P3A.

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Members of the corporate affairs team shall frequently and proactively engage with members of the community, media, and local legislators, as well as P3A, PREB, PREPA and T&D Operator and other key stakeholders.

Operator shall ensure that it has a team of five or more full time employees that will also include two executive Vice President positions:

- VP, Communications
  - Serving as an on-the-record spokesperson for the company growing relationships with reporters, both local and (if necessary) mainland, in Spanish and English. This individual shall oversee the messaging for all public-facing materials and engagements, media relations, digital and social media and employee communications.
- VP, External Affairs
  - Shall oversee government relations, stakeholder engagement, and community outreach. Additionally, the External Affairs VP and team will oversee the Operator's island-wide Employee Ambassador Program and philanthropic partnerships.

Both individuals will have fluency in Spanish and English and be full-time residents of Puerto Rico. Each position shall hold FEMA NIMS certification and disaster relief training to ensure they are prepared for any potential adverse incidents on the island. These positions will report directly to senior management of Operator to ensure streamlined and real-time communications.

Operator shall be well-positioned in Washington DC to support P3A's and the Operator's federal engagement when necessary. The Operator will engage a national public affairs firm with offices in DC and New York that has strong national media and political relationships and extensive crisis management experience.

Operator will also partner with a trusted local public affairs and advertising agency for surge support and engage local talent and local resources as needed.

### **5.3 Communications Services**

Operator needs to develop a plant specific and portfolio communications playbook. It will apply to all possible scenarios and challenges and will have sections that are included in the Generation Emergency Response Plan. The Operator shall develop key communications metrics that will be shared with management, P3A and other relevant stakeholders on a quarterly basis that will include a) government relations scorecard, b) positive traditional and social media reports, c) corporate reputation surveys and d) annual community and social responsibility reports.

Operator's communications program shall focus on two audiences:

#### ***External***

- LUMA – T&D Operator
- PREPA – Generation Owner

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- Puerto Rico Public-Private Partnerships Authority – Agreement Administrator
- Media (local and international)
- Puerto Rican Government
- Federal Government, including FOMB, FEMA and COR3
- Regulators – PREB, OSHA, EPA, Puerto Rico Department of Natural and Environmental Resources
- Independent Power Producers, including AES and EcoElectrica
- Local Community Organizations

### *Internal*

- Management and employees
- Labor unions
- System Contractors, Sub-Contractors and Vendors
- Suppliers

## **5.4 Key Components of Communications Plan**

The communications plan needs to incorporate the following key components:

### **1. *Communications Coordination Center***

Operator shall establish a Communication Coordination Center (“CCC”), which shall serve as the hub for all incoming and outgoing communications. The CCC will monitor the landscape, develop tactics, and execute communications plans daily. The CCC shall handle message development, research, content creation, digital communications, and rapid response. This structure will be particularly effective in the event of an operational crisis or weather emergency, in which the Center could be activated by the Generation Incident Commander to serve as a the “nerve center” to manage rapid response. Operator shall house its communications team – including Operator staff and communications contractors – at or nearby the CCC for accessibility and constant communication. This must include housing, lavatories, connectivity, and food services.

### **2. *Facts-Based, Strategy-Based, Day-to-Day & Proactive Communications***

These communications shall focus on day-to-day updates regarding the Legacy Generation plants and associated systems, details on scheduled maintenance, and information regarding operational upgrades and system modifications.

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Operator shall develop appropriate public information campaigns about the company, its mission, and how it will effectively operate Puerto Rico's Legacy Generation plants and systems.

In addition to operational updates, internal components of these communications shall be made to its workforce – such as effectively communicating benefits programs to employees and internal channels.

Communications will be through a series of public-facing, easily digestible materials and services that may include press releases, fact sheets, press conferences, interactive content, and social media-based communications- both in English and Spanish.

### 3. *Crisis and Emergency Communications*

These communications shall respond to and position Operator in the event of an adverse event – ranging from weather incidents such as a hurricane or earthquake, to an operational, worst-case scenario, such as an explosion, leak, or cybersecurity threat in accordance with the Generation Emergency Response Plan. These communications shall be:

Factual, succinct, and transparent to help educate and inform the public in times of crisis.

Operator's CCC shall be activated in accordance with the Generation Emergency Response Plan to function as a rapid response "nerve center" for all of Operator's incoming and outgoing communications in the event of a crisis.

### 4. *Transitional Communications*

The intent of these communications will be to announce the decommissioning of Legacy Generation Assets and/or the use of temporary power units during a transition.

Communications must explain the rationale to decommission the asset (operational challenges, lower efficiency, etc.), the use of temporary power units if needed as well as timing.

These communications will also be important for the internal audience, including organized labor, as the decommissioning and commissioning of assets will likely impact certain jobs while creating others.

### 5. *Individual Generation Units*

In addition to a detailed system-wide road map, the communications team will develop customized communications plans for each individual Legacy Generation Asset division, tailoring it to local dynamics and its unique features and challenges.

- San Juan Power Plant Division
- Costa Sur Power Plant Division
- Palo Seco Power Plant Division
- Cambalache Power Plant Division
- Aguirre Power Plant Division

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To help facilitate community-based external communications and relations in each division, Operator shall establish an Employee Ambassador Program, in which the Operator will identify and train one or more employees in each division to serve as a representative for the public and local community.

Ambassadors shall coordinate directly with the Operator's External Affairs team, leading local engagement, attending local government meetings and other public-facing events. This role shall also oversee small community forums each month to hear directly from customers and stakeholders.

The Employee Ambassador Program should be used to deliver communications to the community on retirement, maintenance, and other challenges with each of the legacy generation units.

### **6. *Employee Communications***

Employee communications is complex, labor intensive and requires complete integration with Human Resources.

Engaging with and constant communication with employees shall be a foundational aspect of this approach. The Operator has an obligation to keep employees informed and to ensure that employees feel part of the new team.

Operator shall create and maintain an internal platform utilizing all available communications channels to ensure streamlined communication with all team members, available in both Spanish and English.

There will also be a channel for employees to directly communicate with management and coworkers. The internal platform should also include all relevant corporate communications and operational-related updates.

### **7. *Workforce Communications***

Communications with the workforce, particularly regarding organized labor and contract negotiations, are highly complex and contain both internal and external components. Transparent communications with all parties, including the union, are essential.

All workforce communications shall be crafted in adherence with federal, commonwealth, and local labor regulations, and must highlight the key facts regarding proposed contracts, including economic benefits, healthcare, retirement savings and so forth.

Transitional communications around retiring assets shall also require close coordination with organized labor.

### **8. *Stakeholder Communications***

Regular communication with all stakeholders is critical. Everyone involved should receive consistent messaging that aligns with the overall strategy and operational goals.

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The Employee Ambassador Program explained above as well as the Good Neighbor Program are both key to local community engagement, including stakeholders. All stakeholders shall be invited to participate in the regularly held roundtables to hear updates directly from the company and provide real-time feedback, ask questions, raise concerns, etc.

Stakeholders shall also receive detailed newsletter updates and frequent communications regarding operational updates, and any investments being made to strengthen legacy assets.

### 9. *Customer & General Public Communications*

Operator shall develop a user-friendly digital platform/Operator website that must allow customers and the general public access to real-time information and ensure widespread awareness. Operator shall keep the P3A informed of any and all significant communications prior to being sent or posted. The platform shall be a “one-stop-shop” to communicate with all key constituencies, including the following:

- It shall serve as the clearinghouse for all news and updates regarding the Legacy Generation Assets, including updates on maintenance, the retirement schedule, and outages.
- In the case of an adverse or Generation Emergency event, the CCC shall be equipped as the go-to source for media, stakeholders, and members of the public to get the latest updates on outages, receive Operator’s statements, and learn more about what may have caused the incident and its expected impact.

In addition to this platform, Operator shall also utilize both traditional and social media channels to rapidly deploy information to consumers and stakeholders. This includes:

- Statements to media and public
- Regular update columns in local news sources
- Frequent interviews with local radio stations to provide updates on the state of the power generation system, answer questions
- Engaging regularly on social media, pushing out information via Twitter, Facebook, YouTube, Reddit, and other platforms, as well as responding to consumer and media inquiries through these channels
- Publishing a regular newsletter, either bimonthly or monthly, to provide all the updates in one centralized location, in addition to the digital platform/Operator website

### 5.5 **Operator Website**

Operator’s public website shall be equipped as the go-to source for media, stakeholders, and members of the public to get the latest updates on power plant outages, receive Operator’s statements, and learn more about what may have caused the incident and its expected impact.

To help convey key messages and educate both members of the public and stakeholders, Operator must create and publish detailed, yet easily digestible public-facing communications materials.

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Materials will be developed and modified for day-to-day and proactive, crisis, and transitional communications. This includes, but must not be limited to:

- Fact Sheets
- Frequently Asked Questions (FAQs)
- Myth v. Fact Sheets
- Informational One Pagers
- Digital Infographics & Share Graphics (for social media, digital advertisements)

For example, when the time comes for a legacy asset to be decommissioned, a brief Fact Sheet or FAQ document could be used to explain why Operator is taking said action and how it could affect or benefit consumers. Alternatively, during a weather-related emergency and in accordance with the Generation Emergency Response Plan, the use of Infographics and Share Graphics could convey key points through social media and other digital channels to quickly and succinctly, inform members of the public and stakeholders.

**Annex VI**  
**Organizational Conflict of Interest Policy**

[Reserved]<sup>2</sup>

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<sup>2</sup> **Note to Draft:** The form of the Organizational Conflict of Interest Policy agreed as a Condition to Execution in Section 2.2(b)(xii) is attached hereto. The attached is the draft prepared by Operator, which remains subject to further review.





Puerto Rico Public-Private Partnerships Authority

# **ORGANIZATIONAL CONFLICT OF INTEREST POLICY**

**16 May 2022**



**PROPRIETARY AND CONFIDENTIAL**



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## **Organizational Conflict of Interest Policy**

### **Genera PR LLC**

It is the policy of Genera PR LLC (“Genera PR” or “Operator”) to comply fully with all laws and regulations governing its operations and to conduct its business affairs in a highly ethical manner. Further, it is the policy of Genera PR to avoid organizational conflicts of interest (“OCIs”) in the conduct of its business and to mitigate any such conflicts that might arise to the satisfaction of the Puerto Rico Public- Private Partnerships Authority (“P3” or “Administrator”) and the Puerto Rico Central Office for Recovery, Reconstruction and Resiliency (“COR3”). Given this commitment, Genera PR is sensitive to the possibility that an actual, potential, or apparent OCI could arise, either in connection with, or as a result of, its performance of the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement (the “O&M Agreement”), specifically in connection with procurement and contract administration activities where Genera PR is acting as the agent of PREPA Genco, LLC (“Owner”). Consistent with our corporate policies and our commitment to ethical business conduct, Genera PR has developed the following plan to avoid, mitigate, and/or neutralize apparent, potential or actual OCIs during its performance of the O&M Agreement.

#### **I. PURPOSE AND SCOPE**

The purpose of this OCI Policy (“Policy”) is to set forth the policies and procedures by which Genera PR will identify and mitigate potential, apparent and actual OCIs that arise in connection with Genera PR’s performance of the O&M Agreement. In this Policy, Genera PR will describe how it will endeavor to: (a) identify and evaluate potential OCIs as early in the procurement process as possible; (b) prevent the existence or appearance of conflicting roles that might bias Genera’s judgment; (c) avoid, neutralize, or mitigate significant potential conflicts before contract award; (d) provide unbiased, impartial and objective advice and assistance; (e) prevent the existence of conflicting roles that could result in impaired objectivity; and (f) prevent unfair competition and advantage.

Genera PR’s Policy is intended to ensure compliance with all applicable laws and regulations, including but not limited to Act No. 2 of the Legislative Assembly of Puerto Rico (enacted January 4, 2018) and the applicable provisions of the U.S. Office of Management and Budget Uniform Guidance at 2 C.F.R. Part 200 (the “Uniform Guidance”). It is also intended to ensure compliance with the P3’s Guidelines for the Evaluation of Conflicts of Interest and Unfair Advantages in the Procurement of Public-Private Partnership Contracts, dated December 19, 2009. Finally, this Policy is guided by the standards and concepts set forth at Subpart 9.5 of the Federal Acquisition Regulation (“FAR”), 48 C.F.R. Chapter 1.

This Policy shall be incorporated by reference into the Genera PR Procurement Manual, described at Section 4.2(q) of the O&M Agreement. In addition, capitalized terms in this Policy shall have the meaning set forth in the O&M Agreement, unless otherwise indicated.

## **II. ROLES AND RESPONSIBILITIES FOR IMPLEMENTING AND MONITORING POLICY**

As stated in the Uniform Guidance, “[o]rganizational conflict of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, [an] entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.” As such, this Policy describes the policies and procedures that Genera PR will implement (1) when it is aware that an Affiliate is likely to participate as a competitor in a procurement, and (2) when it is required to administer (on behalf of Owner) a contract in which an Affiliate is the contractor. Genera is committed to conducting procurements and administering contracts in a manner designed to identify actual, potential or apparent conflicts as early as possible. When an actual, potential or apparent OCI is identified, Genera PR will act to diligently protect the transparency and fairness of the procurement and contract administration processes. As set forth below, this will most often be accomplished through the retention of an independent third party.

An Affiliate of Genera PR currently owns and operates a micro fuel handling facility in San Juan that provides natural gas to Owner pursuant to a Fuel Sale and Purchase Agreement. Moreover, there are other potential procurements for the sale and delivery of Liquefied Natural Gas (“LNG”) that Affiliates of Genera PR may decide to pursue. Therefore, prior to the Service Commencement Date, Genera PR will designate a specific group of employees who will be responsible for all procurement activities for LNG sale and delivery (“LNG Procurements”), as well as all contract administration activities in which Genera PR is required, under the O&M Agreement, to administer a contract as the agent of the Owner in which a Genera PR Affiliate is the performing contractor. This group will be known as the “Procurement and Contracting Group” or the “P&C Group.” The P&C Group, working in Genera office space in San Juan, Puerto Rico, will be physically separated from all employees of Genera PR’s Affiliates, and will report directly to the Genera PR Management Team. The P&C Group will be subject to Genera’s Procurement Ethics and Corporate Compliance Guidelines. Furthermore, each employee in the P&C Group will be required to sign a Non-Disclosure Agreement (“NDA”) prohibiting the sharing of non-public information relating to the LNG Procurements to be conducted by Genera PR on behalf of the Owner. This includes, but is not limited to, non-public information regarding the expected timing of such procurements. The P&C Group will also be required to store such information in physical and electronic locations that are inaccessible to other Genera PR employees and the employees of Genera PR’s Affiliates. These physical and electronic files will be made available for inspection at any time by P3 and COR3 upon their request.<sup>3</sup>

Genera PR’s Chief Compliance Officer (“CCO”) will be responsible for administering, monitoring, reporting and ensuring compliance with this Policy, among other responsibilities. The CCO will not directly participate in procurement or contract administration functions but will have access to, and be aware of, all relevant procurement and contract administration plans and actions. This will allow the CCO to adequately monitor the P&C Group’s compliance with the policies and

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<sup>3</sup> For the avoidance of doubt, the Genera PR Management Team will be permitted to access the office space of the P&C Group and interact with the P&C Group employees. Moreover, the information-sharing restrictions imposed on the P&C Group shall not apply to the sharing of information with the Genera PR Management Team. However, the Genera PR Management Team, like the P&C Group, will be required to execute NDAs prohibiting the sharing of non- public information relating to the LNG Procurements to be conducted by Genera PR on behalf of the Owner, and will be required to store such information in physical and electronic locations that are inaccessible to other Genera PR and Affiliate employees.

procedures set forth in this Policy. The CCO will provide a quarterly update to P3 and COR3 regarding Genera PR's compliance with the Policy, to include identifying any violations (with corrective actions taken) and areas for improvement.

### **III. APPLICABILITY**

This OCI Policy shall apply to all Genera PR employees, officers, agents, and consultants assigned to work under the O&M Agreement, with particular application to the employees within the P&C Group. The Policy will become effective on the Service Commencement Date and shall continue to apply for the entire duration of the O&M Agreement as may be updated from time to time. As discussed above, this Policy describes OCI mitigation policies and procedures for two specific activities: procurement of LNG sale and delivery contracts and administration of contracts held by Genera PR Affiliates.

In the event that Genera PR becomes aware that its Affiliates may be interested in competing for procurements other than those for LNG sale and delivery, Genera PR will modify this Policy accordingly.

#### **A. Types of OCIs**

FAR Subpart 9.5, Organizational and Consultant Conflicts of Interest, describes how OCIs may occur in the following circumstances:

- **Unequal Access to Information:** This type of OCI issue arises in situations when a firm, in connection with its performance of a contract, has access to non-public information that may provide the firm or its affiliates with a competitive advantage in a later competition. As described in FAR 9.505-4, the concern is avoiding an unfair competitive advantage.
- **Impaired Objectivity:** This type of OCI arises in cases in which a company's work under one contract could entail it evaluating itself (or an affiliate or competitor), either through an assessment of performance under another contract or an evaluation of proposals for another contract. As referenced in FAR 9.505-3, in these impaired objectivity cases, the concern is that the firm's ability to render impartial advice could appear to be undermined by its relationship with the entity whose work or proposal is being evaluated.
- **Biased Ground Rules:** This type of OCI issue arises in situations when a firm, as part of its performance of a contract, has in some sense set the ground rules for a separate procurement (for example, by preparing the statement of work or the specifications). As referenced in FAR 9.505-1 and 9.505-2, the primary concern is to avoid a situation in which the contractor could skew the competition, whether intentionally or not, in favor of itself or its affiliates.

As discussed in more detail below, Genera PR will mitigate any potential, apparent or actual OCIs falling into the above categories through (1) the establishment of the P&C Group, which will be physically separated from Genera PR's Affiliates and subject to NDAs and other restrictions on information sharing, and (2) the retention of independent third parties in connection with the conduct of certain LNG Procurements and the administration of certain contracts.



## **B. Personal Conflicts of Interest**

A personal conflict of interest arises when an employee has a non-de minimis financial interest, personal activity, or relationship that could impair the employee's ability to act impartially and in the best interest of the Government when performing under the contract. Genera PR will require all employees to follow the company's personal conflicts of interest policy. Under this policy, no Genera PR employee may participate in the development, procurement, award, or administration of any contract in which he or she has a personal stake in the outcome of the activity based on personal financial interests, activities, or relationships, unless such interests, activities or relationships have been disclosed to the CCO and have been determined to not present a conflict in accordance with the company's personal conflicts of interest policy. In addition, no Genera PR employee is permitted to, directly or indirectly, solicit or accept any gratuity, favor, gift, or thing of value from persons employed by potential or actual participants in procurements to be conducted by Genera PR, existing contractors or subcontractors on contracts administered by Genera PR, or government officials.

In the event a Genera PR employee or agent believes he or she may have a potential personal conflict of interest, he or she shall report such potential conflict to the CCO immediately upon discovery, and consent to any necessary recusal actions necessary to avoid the appearance of any conflict in the performance of the O&M Agreement.

## **IV. PLAN FOR AVOIDING, NEUTRALIZING, AND MITIGATING OCIs**

Genera PR has reviewed the scope of the requirements under the O&M Agreement to evaluate apparent, potential, or actual OCIs that could arise during Genera PR's performance. As a result of that evaluation, Genera PR has identified the following two overarching performance requirements that could result in a potential, apparent, or actual OCI.

### **A. Conducting Procurements Potentially Involving Genera PR Affiliates**

Under the O&M Agreement, Genera PR will be responsible for developing and conducting procurements as Owner's agent for Fuel Contracts, including for LNG sale and delivery. In certain circumstances, an Affiliate of Genera PR may be interested in competing in such LNG Procurements.

If no Genera PR Affiliate elects to compete in a LNG Procurement, there is no possible OCI, and thus, no mitigation is necessary. Genera PR will be able to conduct all steps of such a procurement itself. However, in order to avoid, neutralize, and mitigate the potential conflicts of interest described above, Genera PR will implement the following mitigation plan to ensure all LNG Procurements are conducted fairly and impartially.

#### **1. Mitigation Plan**

To provide full and effective avoidance, neutralization, and mitigation of potential OCIs, Genera PR will implement the following layered approach that addresses each of the potential conflicts at all steps in an LNG Procurement.

As described above, Genera PR will establish a P&C Group that will be responsible for all LNG Procurement activities. To ensure the confidentiality of any potentially competitively useful

information, as discussed above, the P&C Group will work in office space physically separated from all employees of Genera PR's Affiliates, and will report directly to the Genera PR Management Team. The P&C Group will store any information relating to LNG Procurements in physical and electronic locations that are inaccessible to other Genera PR employees and the employees of Genera PR's Affiliates. The P&C Group will be subject to the Genera's Procurement Ethics and Corporate Compliance Guidelines, and each employee in the P&C Group will be required to sign an NDA prohibiting the sharing of non-public information relating to LNG Procurements with any individuals outside of the P&C Group, which necessarily would include any employees of Genera PR's Affiliates.<sup>4</sup>

Within its protected locations, the P&C Group will maintain a database of all proposed and active procurement actions for LNG Procurements, and it will provide P3 and COR3 access to this database. The P&C Group will presume that a Genera PR Affiliate may have a potential interest in competing for such LNG Procurements.

For every LNG Procurement, Genera PR will engage an independent third party from a pre-approved pool of companies—discussed in more detail below at Section IV.C—before any substantive work is performed on the proposed procurement. In other words, Genera PR will engage the independent third party after P3 and the Puerto Rico Energy Bureau (“PREB”) have approved the proposed LNG Procurement, but before the preparation of the solicitation materials has begun. The independent third party will then be directly involved in all aspects of the procurement planning process, including the development of the solicitation materials (including all specifications and requirements), from the moment of its engagement. This independent third party, while working with the P&C Group, will report progress directly to P3, and will submit the final solicitation documents to P3 for approval (when such approval is required under the O&M Agreement).

If at any point during the procurement process—whether the procurement is still in the preparation phase or if the solicitation has been developed and released—a Genera PR Affiliate expresses its interest in competing under that procurement to the P&C Group or the independent third party, the CCO will notify P3 and COR3 within one business day, and Genera PR will immediately recuse itself from any further activities relating to that particular procurement and/or resulting competition. In order to ensure that such an expression of interest from a Genera PR Affiliate is received prior to the receipt of proposals, every solicitation for an LNG Procurement will include a requirement that all interested parties must submit an expression of interest in submitting a proposal. Such expression of interest shall be due shortly after the solicitation is released, and shall be a mandatory requirement for consideration for award. The independent third party will then evaluate the submitted expressions of interest, and, if a Genera PR Affiliate submits such an expression of interest, the independent third party shall inform the P&C Group, P3, and COR3 of such notice, thereby triggering Genera PR's recusal.

Once Genera PR recuses itself from a procurement, Genera PR shall be screened off from all matters relating to the procurement, and shall not have access to any non-public solicitation or proposal documents. From that point, the independent third party that Genera PR previously engaged and that will already have been involved in the procurement will assume full

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<sup>4</sup> As noted in footnote 3, the Genera PR Management Team will be permitted to access the office space of the P&C Group and interact with the P&C Group employees, and the information-sharing restrictions imposed on the P&C Group shall not apply to the sharing of information with the Genera PR Management Team.

responsibility for the procurement and conducting the resulting competition, will report on the on the status of such procurement directly to P3, and will make the ultimate award decision (subject to P3's approval, when required) on the basis of the received proposals and quotes.

In the event that Genera PR is required to recuse itself from preparing the solicitation materials for an LNG Procurement and/or conducting the resulting competition in connection with the above procedures, the independent third party will still have the ability to ask technical questions or request technical information from Genera PR.

In addition, in the event that Genera PR is required to recuse itself from conducting the competition for an LNG Procurement because of the participation of one of its Affiliates, Genera PR shall still have the opportunity to submit to P3 an "Operator Report," relating to any practical details relevant to the performance of the opportunity of which P3 should be aware. Such Operator Report shall focus solely on operational issues, concerns, and considerations of the contract to be performed, and will be delivered to P3 directly from the P&C Group. Such Operator Report shall not be based on any information contained in any proposals received in response to a solicitation (as Genera PR will have no access to such materials), and shall not be provided to the independent third party, but solely to P3 for consideration in assessing whether to approve the independent third party's award decision (when such approval is required under the O&M Agreement).

## **B. Administering Contracts Performed By Genera PR Affiliates**

Genera PR will also be responsible for managing and administering certain contracts on behalf of Owner under the O&M Agreement. This can present a potential, apparent, or actual OCI if the contract is being performed by one of Genera PR's Affiliates. In such instance, there exists the possibility or appearance of an impaired objectivity OCI, in that Genera PR's exercise of judgment may appear to be influenced by its corporate affiliation with the performing entity.

If the managed contract is not performed by a Genera PR Affiliate, there is no possible OCI, and thus, no mitigation is necessary. Genera PR will be able to perform all administrative and contract management functions itself. However, in order to avoid, neutralize, and mitigate this potential conflict of interest in which the managed contract is performed by a Genera PR Affiliate, Genera PR will implement the following mitigation plan to ensure that the contracts are managed and administered fairly, impartially and in Owner's best interests.

### **2. Mitigation Plan**

To provide effective avoidance, neutralization, and mitigation of this potential OCI, Genera PR will engage an independent third party from the pre-approved pool of companies—discussed in more detail below at Section IV.C—to monitor and audit the administration of every contract that Genera PR is required to administer on behalf of the Owner and that is performed by one of Genera PR's Affiliates. Specifically, the independent third party will monitor the P&C Group's administrative actions most involving the use of subjective judgment to ensure that such judgment is exercised fairly, impartially, and in Owner's best interests. These areas of monitoring and auditing will include, but are not limited to, contractual actions relating to:

- Compliance with contract requirements and deliverables beyond those with objective measurements;



- Responding to relief event and supervening event claims;
- Responding to change requests (technical, schedule, or costs);
- Devising performance ~~improvement plans; and~~
- Imposing damages or penalties of any kind for performance issues.

In order to facilitate this monitoring and auditing, the independent third party shall:

- Have access to any and all contract files for the contract being administered at all times for review throughout performance;
- Report status directly to P3 on all aspects of its monitoring and activities;
- Perform an annual audit of the P&C Group's administration of the contract and prepare a written summary detailing its audit findings to be delivered to Genera PR, P3, and COR3.

In addition, the P&C Group will:

- Inform the independent third party of the receipt of any significant performance-related requests submitted by contractor;
- Inform the independent third party of any performance issues and any imposed penalties or damages;
- Schedule a monthly meeting between the independent third party lead contact and the P&C Group designee to discuss any topics or issues identified by the independent third party; and
- Include the independent third party as an active participant in the resolution of any dispute between Genera PR and the contractor likely to result in the payment by or to Genera PR of more than \$[1,000,000].

In the event that P3 or COR3 believe a different contractual action must be taken as a result of the input from the independent third party, the P&C Group shall implement such direction from P3 or COR3 to the maximum extent permitted by the terms of the underlying managed contract.

Because Genera PR's Affiliate NFEnergía LLC currently performs the Fuel Sale and Purchase Agreement by and between NFEnergía LLC, as Seller, and the Puerto Rico Electric Power Authority, as Buyer, dated March 5, 2019 ("FSPA"), which will be administered by Genera PR under the O&M Agreement, these mitigation procedures will be immediately implemented upon the Service Commencement Date and applied with respect to that contract. In other words, Genera PR will engage one of the pre-approved independent third parties no later than the Service Commencement Date to monitor the P&C Group's administration of the FSPA. Subsequent engagement of independent third parties will be made immediately upon the award of a contract to a Genera PR Affiliate that will be administered by Genera PR under the O&M Agreement. Such

independent third party shall be engaged for the entire duration of either the O&M Agreement or the underlying managed contract, whichever expires first.

### **C. Pre-Approved Independent Third Parties**

As discussed above, Genera PR's Policy relies on the use of independent third parties to ensure that Genera PR avoids, neutralizes, or mitigates any actual, potential or apparent OCIs. Thus, Genera PR will work with P3 to develop a pre-approved list of third parties that Genera PR can quickly engage should mitigation procedures be required. These third parties shall all have relevant technical and industry knowledge, experience preparing solicitations (including requirements documents) and conducting procurements, and experience monitoring contract performance and compliance with contract requirements. With such qualifications, P3 and COR3 can be assured that the engaged independent third party can adequately perform the roles proposed in this Policy.

The initial list of [approved]<sup>5</sup> independent third parties is as follows:

- Black & Veatch (<https://www.bv.com/>)
- Poten & Partners (<https://www.poten.com/what-we-do/lng-natural-gas/>)
- Wood MacKenzie (<https://www.woodmac.com/>)
- London Economics (<https://www.londoneconomics.com/>)
- FTI Consulting, Inc. (<https://www.fticonsulting.com/>)
- Siemens Energy Inc. (<https://www.siemens-energy.com/us>)
- Filsinger Energy Partners (<https://www.filsingerenergy.com/>)

This list is subject to change based on market developments. Companies may be added or removed from this list as agreed by Genera PR and P3. If the engagement of such an independent third party is required by this Policy, Genera PR and P3 agree that Genera PR may engage any of these listed, pre-approved companies at its discretion.

### **D. Additional OCI Arising During Performance**

Should an additional actual, apparent, or potential OCI arise during Genera PR's performance, Genera PR shall immediately notify P3 and COR3 of the additional OCI concern. In addition, Genera PR will work with P3 and COR3 to develop suitable safeguards to avoid, neutralize, or mitigate the concern. Once Genera PR, P3 and COR3 have agreed on the appropriate mitigation processes and procedures, Genera PR shall amend this Policy to incorporate the additional OCI safeguards.

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<sup>5</sup> NTD: List of potential service providers to be revised upon review and comment.

## **V. PROCEDURES FOR REPORTING AN ACTUAL, APPARENT, OR POTENTIAL OCI**

As discussed above, the procurement database maintained by the P&C Group will list all LNG Procurements, as those are the procurements in which Genera PR Affiliates may have an interest. This system will allow for early detection of potential OCIs. The CCO will closely monitor such procurements, and will notify P3 and COR3 of the potential OCI within one business day after a Genera PR Affiliate expresses interest in a specific procurement. The CCO will also notify P3 and COR3 upon the award of any Fuel Contract to a Genera PR Affiliate.

In addition, Genera PR will implement a policy requiring all employees, including but not limited to the P&C Group, to immediately notify the CCO of any suspected OCI. The CCO is responsible for investigating and assessing any such reports. If the CCO confirms the existence of an actual, apparent, or potential OCI, the CCO shall immediately notify P3 and COR3 and work with P3 and COR3 to implement a suitable avoidance or mitigation procedure.

## **VI. MONITORING AND COMPLIANCE**

As discussed above, the CCO is responsible for monitoring Genera PR's compliance with this Policy. At the inception of contract performance, the CCO will provide OCI training to all Genera PR employees, and will provide refresher training to all employees on an annual basis. At the conclusion of each training session, each employee shall document in writing that he or she:

- Received OCI training for the calendar year regarding the Policy and understands his/her responsibilities related to OCI while working on the O&M Agreement.
- Reviewed the current version of the Policy and understands his/her responsibilities relating to OCIs as detailed in the Policy.
- Read, understands, and signed the NDA (if applicable).
- Understands the requirement to receive OCI training annually and to review and recertify his/her understanding annually or any time the Policy is updated.

Non-compliance by a Genera PR employee with either the provisions of the Policy or a signed NDA will result in appropriate disciplinary action, up to and including removal from the program or potential termination of employment. All disciplinary action will be graduated and commensurate with the situation and the severity of the offense and will be documented in the employee's personnel file.

All incidents of non-compliance with the Policy will be reported to P3 and COR3 by the CCO in a timely manner. Such notifications will include a description of any disciplinary actions taken as well as steps to avoid any potential reoccurrence.

The CCO will retain an independent third party to review and audit Genera PR's compliance with the Policy not less than annually. The results of this audit/review shall be provided to P3 and COR3 and incorporated into this Policy as necessary. Moreover, any changes or updates to the Policy shall be provided to P3 and COR3 for approval.

## **VII. RECORD KEEPING**

Genera PR will maintain all records associated with this Policy for the duration of the O&M Agreement and for a period not less than three years after the expiration or termination of the O&M Agreement. This record-keeping obligation includes, but is not limited to, copies of NDAs, briefing acknowledgements, training records, and OCI notification e-mails.

Genera PR will also require any independent third party retained in connection with the OCI avoidance and mitigation procedures of this Policy to retain any and all records relating to the performance of its duties for the duration of the O&M Agreement and for a period not less than three years after the expiration or termination of the O&M Agreement.

## **Annex VII**

### **Mobilization Plan**

Operator shall complete the Mobilization Services in a timely manner and as soon as practical. To achieve an efficient and orderly mobilization of Operator's capabilities and to allow the commencement of the Operation Phase, Operator must pursue the following elements as part of its Mobilization Plan:

- Engage in stakeholder outreach in accordance with the Communications Plan
- Recruit and hire personnel in accordance with the Recruitment and Hiring Plan
- Identify and onboard subcontractors
- Plan and implement information technology systems and tools
- Review applicable permits and compliance obligations
- Evaluate and maintain inventory and coordinate with T&D Operator
- Develop plans/procedures for various aspects of operation (including O&M Plans, Emergency Response Plans, O&M Procedures, Operator Training Programs, among others)
- Identify and complete items listed on the Handover Checklist and report on status every two (2) weeks to the P3A
- Plan for and achieve key milestones
- Develop a Communications Plan that works to create a well-orchestrated and consistent message to Operator's employees regarding expectations
- Develop a fuel savings strategy related to Fuel Contracts, including management of Fuel Contract related decisions during the Mobilization Period

#### **7.1 Mobilization Process**

Upon commencement of the Mobilization Phase, the Operator's transition teams shall begin working towards completing the critical path activities identified in this Mobilization Plan. Team leaders will be drawn from Operator's pool of experienced managers. A number of these professionals will also be designated to serve as senior leadership for the Operator after the Service Commencement Date and will need to move to Puerto Rico on a permanent basis, to the extent that they are not already residents.

The overall Mobilization Plan has been divided into four primary workstreams.

General Mobilization Management  
Operational Takeover  
Functional Takeover  
Staffing Approach

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These are not distinct workstreams with clear separation between them, but rather they indicate the general focus of activities that will gradually evolve as Operator arrives on site in Puerto Rico and begins their initial Mobilization Services.

### 7.1.5 ***Stakeholder Outreach***

#### *1. Meet with PREPA Area Leads*

During the first month of the Mobilization Period, functional leads from Operator shall meet with their counterparts within PREPA to discuss and review all existing processes, contracts, and systems. The Operator functional leads, along with Operator's global partners, will then analyze the existing financial management infrastructure by referencing industry norms and practices. The outcome of these analyses will determine what aspects of the existing financial management plan can be retained or extended, and what new infrastructure or systems need to be put in place.

#### *Meet with officials from applicable unions, including UTIER and UEPI*

Operator shall establish professional relationships with the unions that represent employees to ensure long-term success. Building and maintaining such relationships at all levels of the organization must begin during the early Mobilization Period. Operator should schedule regular and recurring meetings with officials from the unions and the Operator operational management teams early and often to build trust and enhance transparency and communication. Additionally, Operator should hold regular and recurring meetings between site management and site union stewards as part of the initial outreach process and on an ongoing basis.

### 7.1.6 ***Personnel & Training***

Operator's recruitment, staffing, and training plan is critical to the success of the Legacy Generation Assets and is vital for generation reliability and ultimately customer satisfaction. To this end, Operator must perform the following:

#### *1. Recruit and Screen Existing PREPA Employees*

The Operator shall interview and recruit all Operators and Maintenance Technicians from the existing PREPA workforce to the extent they wish to continue to work in the power plants. Recruitment should focus on these skilled employees and must involve thorough communication of the multi-skilling philosophy and its advantages, trying to recruit and retain as much expertise from the PREPA staff as possible.

#### *Staffing Philosophy, Goals, and Training and Development*

If the operator recruitment and staffing plan is based on a multi-skilled workforce strategy, the plan is dependent upon training employees to achieve cross-functional skills. Training and employee development is a key building block to the success of this strategy and thus, investment in time and resources will be made to execute the strategy. Plant Training Coordinators ("PTCs") shall be recruited and staffed in each plant organization,

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along with additional training resources staffed on the power Plant Technical Services team. The PTCs should coordinate all the needed training for their respective power plant(s) while the training staff from the technical services team should serve as both instructors and as coordinators of Subcontractors who can offer some of the required training classes.

### *Maintenance Philosophy and Working with Puerto Rico-Based Subcontractors for Corrective Maintenance*

Maintenance Technician positions shall be filled in by recruiting existing PREPA technicians and communicating the operations and maintenance philosophies including multi-skilling.

### *Positions in Revised Organization*

The operations staffing plan shall include interviewing existing PREPA operations employees primarily (and filling in any voids with hires outside of PREPA) for the following job classifications:

- Leadership positions include Plant Manager, Operations Manager, Maintenance Manager, Operations Team Supervisor, Maintenance Supervisor, Manager of Outage and Projects, Engineering Manager, Technical Support Services Manager
- Plant Operator
- Auxiliary Operator
- Combustion Turbine Technician
- Maintenance Technician
- Contract Resource Coordinator
- Planner
- Engineer
- Project Manager
- Implementation Manager

Additionally, staffing shall be substantially completed prior to Commencement of Operations. The last day of PREPA operations will be simultaneous with shifts of Operator employees to ensure a seamless turnover of duties with a goal of no disruptions in service. During the two weeks prior to commencement of services, overlap of rotating shift workers will take place on multiple occasions to support orientation for selected employees.

#### **7.1.7 Subcontractor Identification & Onboarding**

During the Mobilization Period, representatives from Operator's Supply Chain team shall evaluate existing procedures and systems to evaluate the subcontractor base and to determine opportunities

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for consolidation and/or cross-over with Operator existing Subcontractors; benchmark pricing and other relevant commercial terms against industry standards to identify potential areas of cost savings; perform in-depth contract review for compliance with existing Operator policies; meet with critical Subcontractors to establish relationships; and ensure they have the correct level of local support for continuity of operations. Various Subcontractors may be used across multiple work streams to assist with the mobilization Period activities.

- *Meet with potential O&M Subcontractors who could perform corrective maintenance activities for the Legacy Generation Assets*

Operator may work with several on-island Subcontractors to perform much of the corrective maintenance at the Legacy Generation Assets. This work must be contracted via the approved Procurement Manual procedures.

### 7.1.8 *Information Technology*

The scope and schedule of Operator's IT group shall be driven by new systems and processes and may represent a degree of change that requires a structured, well-defined multi-year time frame for implementation. The primary critical path activities that determine the schedule for the IT transition program are as follows:

1. *Plan and integrate for implementation a fleet-wide Computerized Maintenance Management System ("CMMS").*

The CMMS will drive and manage disciplined work management processes across all Legacy Generation Assets for preventive and corrective maintenance.

2. *Begin implementation with Operator's IT partners to establish the necessary enterprise-wide workflow IT tools to enable operation, maintenance, inventory control, event reporting and tracking, employee development/training and human performance improvement/safety.*

As part of the IT Mobilization Period, Operator's IT's team, with the support of global partners, must assess PREPA's IT function and environments to understand people, processes, and technologies.

### 7.1.9 *Permit and Compliance Reviews*

Operator shall review permitting and other relevant documentation provided to it, including information regarding the Consent Decree and State Implementation Plan. Based on this information, Operator will prepare an initial compliance matrix which will include permit requirements, timelines, reporting elements, and priorities. As part of the Mobilization Services, Operator shall assess the current level of compliance and structure in place to adhere to the requirements set forth by the Consent Decree and SIP, with focus in key areas such as air compliance, Clean Water Act, SPCC, EPCRA/CERCLA, and general program administration. Any gaps identified will be addressed.



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Operator has an existing compliance management system which may be utilized to manage and track the actions associated with compliance requirements. Staffing requirements shall be identified and aligned with the expectations of the Consent Decree and the SIP and with the expertise needed to ensure proper compliance with all regulatory matters identified. Operator may seek to engage with a third-party specialist to aid in this aspect of the mobilization effort and to assist in training and transitioning the management of compliance matters to the various HSSEQ staff.

### **7.1.10 *Inventory***

Operator shall evaluate existing processes and solutions for materials management, inventory, and warehousing with the goal to develop a streamlined best-in-class solution for the existing operations. Evaluations should consider existing infrastructure suitability, current inventory levels and industry stocking and storage recommendations. This includes identifying necessary consumables, spare parts, Capital Spares and equipment needed for the first 12 months of operation. Further, during the Mobilization Period, an inventory of temporary on-site office space, trailers and storage containers shall be conducted.

Operator shall also have a fuels team in place, with shadowing/overlap with the PREPA fuels office intentionally performed to assure no issues with fuel inventories, orders, or deliveries. The fuel inventory will adequately match a dispatch schedule and long-term dispatch projections provided by the T&D System Operator.

### **7.1.11 *Coordination with T&D System Operator***

Operator shall understand its relationship to the T&D System Operator. Operator shall:

- Participate in any and all system planning meetings with the T&D System Operator during the Mobilization Period to ensure Operator is in proper position to support the T&D System Operator;
- Engage in strategic outreach with the T&D System Operator to identify opportunities for greater efficiencies potentially in fuel for vehicles (by Generation Operator to T&D System Operator), vehicles and equipment usage and to address such opportunities in the Shared Services Agreement, should the parties agree on the value of such;
- Establish a robust outage planning schedule with the T&D System Operator and other relevant organizations; and
- Coordinate with the T&D System Operator and PREPA and any other relevant organization to develop analyses on and registrars of historical expenditures of Legacy Generation Assets.

### **7.1.12 *Review and Evaluate Applicable Plans and Procedures***

As part of its operational take-over plan, Operator shall review and evaluate the existing Emergency Response Plan including disaster recovery, business continuity and any related plans

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for consistency with applicable laws and best management standards and conduct a gap assessment. Where any gaps are identified, Operator shall develop an action plan to address such deficiencies and present its Legacy Generation Emergency Response Plan for review and approval to Administrator and PREB.

Operator shall establish training programs and develop a drill schedule to test the efficacy of the programs and ensure all personnel are informed and prepared to respond to situations described under such plans. Additionally, Operator shall form site or team-level safety teams and train them on the Safety and Hazardous Materials Procedures Manual.

### 7.2 Approach to Interacting with Spanish-Speaking Workforce

The organizational charts in Exhibit 2 of the Proposal include designations for those key personnel that are Spanish speakers.

### 7.3 Handover Checklist

Operator shall maintain and manage the Handover Checklist continually based on the following form but revised as applicable for the unique characteristics of each Legacy Generation Asset. These updates shall include reporting checklist items that have been completed, as well as identify any checklist items that might have emergent issues or problems that need to be escalated for resolution. In addition, if any new emergent items are identified that are not currently known, they must be proposed to be added to the Handover Checklist to be reviewed with Administrator.

	PRELIMINARY HANDOVER CHECKLIST ITEM	REQUIRED FOR [OPERATIONS PHASE]? (Y/N)	COMPLETED? (Y/N)
<input type="checkbox"/>	Staffing completed		
<input type="checkbox"/>	Orientation to Genera PR completed (includes detailed role and responsibility training)		
<input type="checkbox"/>	Skill assessment completed		
<input type="checkbox"/>	Training and development plans created		
<input type="checkbox"/>	Training commenced (program in place)		
<input type="checkbox"/>	Site/department procedures exist and are in use, including applicable Emergency Response Plans and fuel supply operations and maintenance procedures applicable to the site		
<input type="checkbox"/>	New procedures created (if applicable)		

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	<b>PRELIMINARY HANDOVER CHECKLIST ITEM</b>	<b>REQUIRED FOR [OPERATIONS PHASE]? (Y/N)</b>	<b>COMPLETED? (Y/N)</b>
<input type="checkbox"/>	New personnel trained on site/department procedures		
<input type="checkbox"/>	Review of applicable contracts		
<input type="checkbox"/>	Existing contracts either remain in place, renewed, or new contracts are entered		
<input type="checkbox"/>	Meet with contractor partners and prepare to support operation and maintenance		
<input type="checkbox"/>	Work management system in place		
<input type="checkbox"/>	Project teams in place, planning items 4+ weeks out		
<input type="checkbox"/>	Work plans in place for first 4 weeks		
<input type="checkbox"/>	Introductory meeting with Plant Technical Services lead and the Pod Manager supporting the specific plant		
<input type="checkbox"/>	Plant Manager and Pod Manager agreed on and formed project teams		
<input type="checkbox"/>	Permits reviewed with PREPA functional area leads		
<input type="checkbox"/>	Risk assessments reviewed with PREPA functional area leads and updated		
<input type="checkbox"/>	Permits reviewed and deconstructed with HSSEQ support		
<input type="checkbox"/>	Current compliance status reviewed with HSSEQ support		
<input type="checkbox"/>	Permits reviewed with regulators		
<input type="checkbox"/>	Established DOA from PREPA to Genera PR and reassign account access where applicable		
<input type="checkbox"/>	Filed authorized signatory filings		

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	<b>PRELIMINARY HANDOVER CHECKLIST ITEM</b>	<b>REQUIRED FOR [OPERATIONS PHASE]? (Y/N)</b>	<b>COMPLETED? (Y/N)</b>
<input type="checkbox"/>	Communication established with LUMA dispatch (agree to initial Agreed Operating Procedures set in the Gridco-Genco Operating Agreement)		
<input type="checkbox"/>	Jointly, with LUMA, agree to the requirements and procedures for the Annual Performance Test and heat rate testing for each unit and provide such to PREB for review		
<input type="checkbox"/>	Review and agree with LUMA the dispatch schedule for first 4 weeks and ready to support		
<input type="checkbox"/>	Fuel inventory adequate for dispatch schedule		
<input type="checkbox"/>	Fuel delivery schedule adequate to match long-term dispatch projection		
<input type="checkbox"/>	Site/team spare parts/inventory reviewed with PREPA counterpart		
<input type="checkbox"/>	Inventory is understood and support continued operation		
	Begin the process for transitioning FCC licences for all radios		
<input type="checkbox"/>	Identified all necessary consumables, spare parts and capital spares needed for first 12 months of operation and communicated them to Owner and to PREB		
<input type="checkbox"/>	Established communication with potential site-level union officials		
<input type="checkbox"/>	Site or team level safety team formed and trained on Safety and Hazardous Materials Procedures Manual		
<input type="checkbox"/>	Genera PR and PREPA functional area leaders agreed handover is ready		

#### **7.4 Key Milestones**

The mobilization process is expected to start immediately on the Effective Date and is expected to continue for 22 weeks. The following Gantt chart or similar document shall provide the key milestones for each scope of work (“week(s)” signifies the number of weeks or the applicable milestone activity displayed).

Within the first week, Operator’s functional area leads shall meet with PREPA counterparts in Puerto Rico, consisting of virtual and multi-day, face-to-face meetings. During this time, Operator shall ensure that required insurance coverage is in place; review, revise, and send O&M and fuel procedures to the Administrator and PREB for approval; and update as needed the Safety Hazardous Procedures Manuals for each asset. Additionally, Operator shall begin working with the T&D System Operator, to ensure integration of the applicable Generation Emergency Response Procedures with the System Emergency Response Procedures.

Operator shall then begin recruiting existing PREPA employees, communicate Operator information and philosophies, and establish a recruiting team. Operator must schedule meetings with applicable unions and potential O&M Subcontractors who could perform some of the corrective maintenance activities for the Legacy Generation Assets.

Operator shall commence detailed planning for projects included in the initial work plan. This phase will consist of project and outage teams and determining unit outage requirements and any outage/derate work in coordination with the T&D System Operator.

Operator shall commence planning and integration for implementation of a fleet-wide CMMS, issue RFPs for power plant corrective maintenance and negotiate maintenance service agreements and make offers for positions in the Operator’s organization.

Operator shall initiate a targeted training and qualification process on applicable topics and skills, utilizing Subcontractors when necessary.

In the last seven weeks, Operator shall begin implementation with IT Subcontractors to establish the necessary enterprise-wide workflow IT tools to enable operation, maintenance, inventory control, event reporting and tracking, employee development/training, and human performance improvement/safety.

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		2022																							
		Week 0	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14	Week 15	Week 16	Week 17	Week 18	Week 19	Week 20	Week 21	Week 22	
1- Meet with PREPA Counterparts	1-A																								
	1-B																								
	1-C																								
	1-D																								
	1-E																								
2- Recruitment & Screening of PREPA Existing Employee	2-A																								
	2-B																								
	2-C																								
3- Meeting with Union Officers	3-A																								
4- Meet with Potential O&M Subcontractors	4-A																								
5- Commence Detailed Planning	5-A																								
	5-B																								
	5-C																								
	5-D																								
6- Kick off Planning and Integration	6-A																								
7- Issue RFPs	7-A																								
8- Hire Employees	8-A																								
9- Assessment of Abilities and Skills	9-A																								
10- Initiate Targeted Training	10-A																								
11- Begin Implementation of IT Subcontractors	11-A																								
12 - Establish recurring meetings with Grid Operator (LUMA)	12-A																								
	12-B																								
	12-C																								
13 - Update Communication Plan	13-A																								
14 - Review and Revise as needed the Invoice Review and Approval Process Manual	14-A																								

This time frame will further involve work with the T&D System Operator to revise the two-year major maintenance schedule; an update to the Communications Plan, and revisions of the Invoice Review and Approval Process Manual, as needed and in accordance with the approved SOP's.

In addition, Operator must focus on three additional key items that are important to a successful Mobilization Period, which are:

- Build capacity for outage and project planning teams on site who are prepared to execute various plans;

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- Plan for and implement a day one acknowledgment, providing information to employees and the public on the mobilization, thanking employees for their work leading up to the mobilization, and celebrating the path forward for the people of Puerto Rico.

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**Annex VIII**

**PREPA-Genco-Hydroco Operating Agreement**



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**PUERTO RICO PREPA-GENCO-HYDROCO OPERATING AGREEMENT**

**dated as of**  
**\_\_\_\_\_, 202[●]**

**THE PUERTO RICO ELECTRIC POWER AUTHORITY**  
as Owner of the T&D System,

**[PREPA GENCO, LLC]**  
as Owner of the Legacy Generation Assets,

**[PREPA HYDROCO, LLC]**  
as Owner of the Hydropower Assets,

**LUMA ENERGY SERVCO, LLC**  
as T&D Operator,

**and**

**THE PUERTO RICO PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY**  
as Administrator

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Annex III –	Form of Joinder Agreement

## PUERTO RICO PREPA-GENCO-HYDROCO OPERATING AGREEMENT

This PUERTO RICO PREPA-GENCO-HYDROCO OPERATING AGREEMENT (this “Agreement”) is made and entered into as of [●], 2022 by and among: (i) the Puerto Rico Electric Power Authority (“PREPA”), a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico (the “Commonwealth”), created under Act No. 83 of the Legislative Assembly of Puerto Rico, enacted on May 2, 1941, as amended, known as the “Puerto Rico Electric Power Authority Act”; (ii) [*PREPA Genco LLC*] (“Genco”), a public limited liability company and governmental instrumentality of the Commonwealth, created under Act No. 164 of the Legislative Assembly of Puerto Rico, enacted on December 16, 2009, as amended, known as the “Puerto Rico General Corporations Act” (“Act 164”); (iii) [*PREPA Hydroco LLC*] (“Hydroco”), a public limited liability company and governmental instrumentality of the Commonwealth, created under Act 164; (iv) LUMA Energy ServCo, LLC, in its capacity as “Operator” pursuant to the T&D O&M Agreement (as defined below) (“T&D Operator”), a limited liability company organized under the laws of the Commonwealth; and (v) the Puerto Rico Public-Private Partnerships Authority (“Administrator” and, together with PREPA, Genco, Hydroco and T&D Operator, the “Parties” and each, a “Party”), a public corporation of the Commonwealth, created under Act No. 29 of the Legislative Assembly of Puerto Rico, enacted on June 8, 2009, as amended, known as the “Public-Private Partnership Authority Act” (“Act 29”). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in Article 1.

### RECITALS

**WHEREAS**, PREPA owns and leases the transmission and distribution system and related facilities, equipment and other assets related to the transmission and distribution system in which PREPA has an ownership or leasehold interest (the “T&D System”);

**WHEREAS**, PREPA underwent a reorganization pursuant to which PREPA: (a) (i) created Genco, a wholly-owned subsidiary of PREPA; and (ii) transferred to Genco all of its thermal generation plants and the fuel contracts, assets and personnel related thereto (the “Legacy Generation Assets”), including those transferred to Genco pursuant to the Genco Capital Contribution Agreement; (b) (i) created Hydroco, a wholly-owned subsidiary of PREPA; and (ii) transferred to Hydroco all of its hydroelectric generating units, the public irrigation facilities and the assets related thereto (the “Hydropower Assets”), including those transferred to Hydroco pursuant to the Hydroco Capital Contribution Agreement; and (c) transferred out of PREPA to a wholly-owned subsidiary of PREPA certain other assets unrelated to the T&D System, the Legacy Generation Assets or the Hydropower Assets;

**WHEREAS**, as a result of such reorganization and associated transfers, (a) Genco owns the Legacy Generation Assets and (b) Hydroco owns the Hydropower Assets;

**WHEREAS**, PREPA, Administrator and T&D Operator have entered into that certain Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement, dated as of June 22, 2020 (as amended, modified or supplemented from time to time in accordance with its terms, the “T&D O&M Agreement”), pursuant to which T&D Operator (a) took over the operation and management of the T&D System, including certain administrative, managerial and

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operational services, on June 1, 2021 and (b) assumed the role as T&D System operator, including (i) managing control center operations, including generation scheduling and economic/reliable T&D System dispatch; (ii) balancing the supply and demand of electricity, including reacting to changes in demand in real time, adjusting generation dispatch to be in balance with demand and maintaining the T&D System at safe operating levels in accordance with Prudent Utility Practices (as defined in the T&D O&M Agreement) and the System Operation Principles; (iii) conduct T&D System planning activities; (iv) develop and implement reliability standards appropriate for the conditions in the Commonwealth; and (v) manage a transparent, equitable and open generator interconnection process;

**WHEREAS**, Genco, Administrator and the Person selected by the partnership committee established by Administrator (as defined below) on July 13, 2020 pursuant to Section 5 of Act No. 120 of the Legislative Assembly of Puerto Rico, enacted on June 21, 2018, as amended, known as the “Puerto Rico Electric System Transformation Act” and the provisions of Act 29 (“Genco Operator”) expect to enter into that certain Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement (as amended, modified or supplemented from time to time in accordance with its terms, the (“Generation O&M Agreement”), pursuant to which Genco Operator would take over the operation and maintenance of the Legacy Generation Assets, including certain administrative, managerial and operational services;

**WHEREAS**, prior to Genco Operator taking over the operation and maintenance of the Legacy Generation Assets pursuant to the Generation O&M Agreement, Genco will continue to be responsible for the operation and maintenance of the Legacy Generation Assets;

**WHEREAS**, Hydroco will be responsible for the operation and maintenance of the Hydropower Assets; and

**WHEREAS**, given that the Legacy Generation Assets and the Hydropower Assets have been split from the T&D System such that (a) each of the T&D System, the Legacy Generation Assets and the Hydropower Assets are owned by separate corporate entities and (b) each of the T&D System, the Legacy Generation Assets and the Hydropower Assets are operated and maintained by separate corporate entities, the Parties wish to coordinate certain matters with respect to the Legacy Generation Assets and the Hydropower Assets.

**NOW THEREFORE**, in consideration of the mutual covenants, representations, warranties and agreements contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

**Article 1**

**DEFINITIONS; INTERPRETATION**

**Section 1.1 Definitions.** As used in this Agreement, the following capitalized terms have the respective meanings set forth below.

“Act 164” has the meaning set forth in the introductory paragraph.

“Act 29” has the meaning set forth in the introductory paragraph.

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“Administrator” has the meaning set forth in the introductory paragraph.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly, including through one or more intermediaries, Controls, is Controlled by or is under common Control with such Person.

“Agreed Operating Procedures” has the meaning set forth in Section 4.7, and includes any Agreed Operating Procedures entered into on or before the Effective Date between T&D Operator and PREPA, as the case may be, with respect to the Legacy Generation Assets or the Hydropower Assets, respectively, as may be updated or amended from time to time.

“Agreement” has the meaning set forth in the introductory paragraph.

“Ancillary Services” has the meaning set forth in Section 4.5.

“Applicable Law” means any foreign, national, federal, state, Commonwealth, municipal or local law, constitution, treaty, convention, statute, ordinance, code, rule, regulation, common law, case law or other similar requirement enacted, adopted, promulgated or applied by any Governmental Body, including any Environmental Law, PROMESA and any order issued by the Title III Court, in each case applicable to the Parties.

“Budget Allocation Meeting” has the meaning set forth in Section 3.1(b)(i).

“Budgets” has the meaning set forth in Section 3.1(b)(i).

“Business Day” means any day that is not a Saturday, a Sunday or a day observed as a holiday by either the Commonwealth or the United States federal government.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq.

“Commonwealth” has the meaning set forth in the introductory paragraph.

“Consent Decree” means the Consent Decree between PREPA and the United States of America (through the United States Department of Justice and the EPA), as entered by the United States District Court for the District of Puerto Rico on March 19, 1999 in Civil Action No. 93-2527(CCC), as modified on September 9, 2004, and as may be further modified in the future, including any successor consent decree thereto.

“Control”, “Controlled by” and similar expressions mean the power, directly or indirectly, to direct or cause the direction of the management and policies of a Person (other than an individual), whether through the ownership of outstanding share capital (or equivalent interest), by contract or otherwise. Without limiting the foregoing, a Person shall be deemed to Control another Person (a) if such Person has directly or indirectly designated a majority of the board of directors (or equivalent governing body) of such other Person or (b) if such Person has the direct or indirect power, whether through ownership of outstanding share capital (or equivalent interest), by contract or otherwise, to designate a majority of the board of directors (or equivalent governing body) of such other Person.

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“Dispatch” means the scheduling and control, directly or indirectly, manually or automatically, by T&D Operator of the generation of the Generation Units at each Legacy Generation Asset or Hydropower Asset in order to increase or decrease the electrical energy delivered to the T&D System in accordance with the System Operation Principles and the applicable Agreed Operating Procedures.

“Effective Date” has the meaning set forth in Section 2.1.

“Electricity” means the electrical energy, capacity and Ancillary Services available from one or more of the Legacy Generation Assets or one or more of the Hydropower Assets.

“Environmental Law” means (a) any law, statute, ordinance, code, rule, regulation, order, writ, injunction, decree, ruling, determination, award, standard, permit or variance of any Governmental Body, or any binding agreement with any Governmental Body, and (b) any consent order or decree, settlement agreement or other similar agreement between PREPA, Genco and/or Hydroco and the Puerto Rico Department of Natural and Environmental Resources, EPA, the United States Department of Justice, or other relevant Governmental Body, in each case having the force of law and applicable from time to time, relating to (i) the conservation, protection, pollution, contamination or remediation of the environment or natural resources, (ii) any Hazardous Material, including investigation, study, remediation or abatement of such Hazardous Material, (iii) the storage, treatment, disposal, recycling or transportation of any Hazardous Material or (iv) human health or safety. For the avoidance of doubt, Environmental Law includes the Consent Decree.

“EPA” means the United States Environmental Protection Agency.

“Fiscal Year” means the period from July 1 through June 30 of the following year. Any computation made on the basis of a Fiscal Year shall be adjusted on a Pro Rata basis to take into account any Fiscal Year of less than 365/366 days.

“FOMB” means the Financial Oversight and Management Board for Puerto Rico.

“Fuel Charge Adjustment” means the applicable cost recovery rate provision, as approved by PREB from time to time pursuant to Applicable Law.

“Fuel Costs” means the costs and expenses related to fuel incurred by Genco which PREB approves for recovery from monies collected through the Fuel Charge Adjustment, net of any proceeds received by or on behalf of Genco from the sale of fuel.

“Genco” has the meaning set forth in the introductory paragraph and is subject to Section 1.2(d).

“Genco Accounts Funding Notice” has the meaning set forth in Section 3.3(a).

“Genco Budget” means, for any given Fiscal Year, the budget of (a) the non-fuel expenditures required to operate and maintain the Legacy Generation Assets and to provide the Genco Decommissioning Services for such Fiscal Year, together with the projected budget for the following two (2) Fiscal Years, in each case including monthly budgets of such expenditures and

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cash flows, and (b) any Genco Operator Fees, as such budget may be amended or adjusted from time to time with the approval of PREB; provided that in the event the amounts in clauses (a) and (b) for a given Fiscal Year have not been finalized in accordance with Section 3.1(d)(iii) by July 1 of such Fiscal Year, the applicable approved Genco Budget for the immediately preceding Fiscal Year (as the same may have been amended) shall remain in effect as a default budget until such time as the applicable Genco Budget for such Fiscal Year is so finalized; provided, further, that any such default budget shall be compliant with the then-applicable Rate Order.

“Genco Budget Notice” has the meaning set forth in Section 3.1(d)(ii).

“Genco Capital Contribution Agreement” means [that certain capital contribution agreement entered into on or prior to the Effective Date between PREPA and Genco pursuant to which PREPA transferred to Genco the Legacy Generation Assets].

“Genco Decommissioning Services” means the permitting, demolition, decontamination and dismantling or preparation for conversion, as applicable, of any of the Legacy Generation Assets, for waste disposal and for achievement of end-state conditions within a prescribed time, all of which, including costs, has been approved by PREB.

“Genco Fuel Account” has the meaning set forth in Section 3.5(b)(i).

“Genco Fuel Account Deposit” means, as of a given day (not more than two (2) Business Days before the date of the applicable Genco Accounts Funding Notice) in any given month, the amount required to replenish the Genco Fuel Account so as to maintain on such day an aggregate funding level in the Genco Fuel Account and the Other Genco Fuel Accounts equal to the sum of the forecasted Fuel Costs as approved by PREB for the subsequent two (2) months (which amount shall be the minimum working capital level that is required for purposes of this Agreement), taking into account all funds on deposit in the Genco Fuel Account and the Other Genco Fuel Accounts as of such day. For the avoidance of doubt, if at any time during the Term the forecasted Fuel Costs as approved by PREB for one (1) or more of the subsequent two (2) months do not exist, then the forecasted Fuel Costs as approved by PREB for the most recent prior one (1) month shall be used.

“Genco Interconnection Facilities” means all assets, equipment and facilities located on Genco’s side of each Interconnection Point, installed, operated and maintained by or on behalf of Genco for the purpose of interconnecting each Legacy Generation Asset to the T&D System, as further described in the LGA Interconnection Agreement.

“Genco Operating Account” has the meaning set forth in Section 3.4(b)(i).

“Genco Operating Account Deposit” means, as of a given day (not more than two (2) Business Days before the date of the applicable Genco Accounts Funding Notice) in any given month, the amount required to replenish the Genco Operating Account so as to maintain on such day an aggregate funding level in the Genco Operating Account, the Other Genco Operating Accounts, the Hydroco Operating Account and the Other Hydroco Operating Accounts equal to the sum of the then-approved Genco Budget and Hydroco Budget for the subsequent two (2) months, taking into account all funds on deposit in the Genco Operating Account, the Other Genco



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Operating Accounts, the Hydroco Operating Account and the Other Hydroco Operating Accounts as of such day.

“Genco Operator” has the meaning set forth in the Recitals and is subject to Section 1.2(d).

“Genco Operator Effective Date” has the meaning set forth in Section 1.2(d).

“Genco Operator Fees” means the maximum amounts for fixed and incentive compensation available to Genco Operator in a given Fiscal Year pursuant to the Generation O&M Agreement.

“Generation Budget” means, for any given Fiscal Year, the combination of the Genco Budget and the Hydroco Budget for such Fiscal Year.

“Generation O&M Agreement” has the meaning set forth in the Recitals.

“Generation Pass-Through Expenditures” means the costs and expenses (without markup for profit) incurred by or on behalf of Genco or Hydroco in the course of providing Electricity, including the costs and expenses incurred under this Agreement.

“Generation Unit” means each of the individual combustion or gas turbine generator units, steam turbine generator units and hydropower or irrigation generator units of each Legacy Generation Asset or each Hydropower Asset.

“Governmental Body” means any U.S. federal, state, Commonwealth, regional, municipal or local legislative, executive, judicial or other governmental board, agency, authority, commission, bureau, administration, court, instrumentality or other duly authorized body, including PREB and the FOMB (if then in existence), other than PREPA, Genco and Hydroco, and, in its capacity as such under this Agreement, Administrator, or any official thereof having jurisdiction with respect to any subject of this Agreement.

“Hazardous Material” means: (a) any waste, substance, object or material deemed hazardous under Environmental Law, including “hazardous substances” as defined in CERCLA and “hazardous waste” as defined in RCRA and any local counterpart law; (b) any oil or petroleum product, lead-based paint, per- or polyfluoroalkyl substances or polychlorinated biphenyl; and (c) any other pollutant, contaminant, material, substance or waste that has deleterious or hazardous properties and that is listed, defined or is subject to regulation under any Environmental Law.

“Hydroco” has the meaning set forth in the introductory paragraph.

“Hydroco Account Funding Notice” has the meaning set forth in Section 3.3(b).

“Hydroco Budget” means, for any given Fiscal Year, the budget of the non-fuel expenditures required to operate and maintain the Hydropower Assets and to provide the Hydroco Decommissioning Services for such Fiscal Year, together with the projected budget for the following two (2) Fiscal Years, in each case including monthly budgets of such expenditures and cash flows, as such budget may be amended or adjusted from time to time with the approval of

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PREB; provided that in the event the amounts above for a given Fiscal Year have not been finalized in accordance with Section 3.1(d)(iii) by July 1 of such Fiscal Year, the applicable approved Hydroco Budget for the immediately preceding Fiscal Year (as the same may have been amended in accordance with this Agreement) shall remain in effect as a default budget until such time as the applicable Hydroco Budget for such Fiscal Year is so finalized; provided, further, that any such default budget shall be compliant with the then-applicable Rate Order and to the extent it is not so compliant such default budget shall be reduced so as to be compliant with the then-applicable Rate Order.

“Hydroco Budget Notice” has the meaning set forth in Section 3.1(c)(ii).

“Hydroco Capital Contribution Agreement” means [that certain capital contribution agreement entered into on or prior to the Effective Date between PREPA and Hydroco pursuant to which PREPA transferred to Hydroco the Hydropower Assets].

“Hydroco Decommissioning Services” means the permitting, demolition, decontamination and dismantling or preparation for conversion, as applicable, of any of the Hydropower Assets, for waste disposal and for achievement of end-state conditions within a prescribed time, all of which, including costs, has been approved by PREB.

“Hydroco Interconnection Facilities” means all assets, equipment and facilities located on Hydroco’s side of each Interconnection Point, installed, operated and maintained by or on behalf of Hydroco for the purpose of interconnecting each Hydropower Asset to the T&D System, as further described in the Hydropower Interconnection Agreement.

“Hydroco Operating Account” has the meaning set forth in Section 3.6(b)(i).

“Hydroco Operating Account Deposit” means, as of a given day (not more than two (2) Business Days before the date of the applicable Hydroco Account Funding Notice) in any given month, the amount required to replenish the Hydroco Operating Account so as to maintain on such day an aggregate funding level in the Hydroco Operating Account and the Other Hydroco Operating Accounts equal to the then-approved Hydroco Budget for the subsequent two (2) months, taking into account all funds on deposit in the Hydroco Operating Account and the Other Hydroco Operating Accounts as of such day.

“Hydropower Assets” has the meaning set forth in the Recitals.

“Hydropower Cost” has the meaning set forth in Section 3.6(a).

“Hydropower Interconnection Agreement” means that certain interconnection agreement to be entered into on or about the Effective Date between PREPA and Hydroco with respect to the interconnection of the T&D System and the Hydropower Assets substantially and in all material respects in the form of Annex I.

“Initial Generation Budget” means the Generation Budget approved by PREB or certified by the FOMB and effective from July 1, 2022, through June 30, 2023, which Initial Generation Budget is consistent with the applicable Rate Order then in effect.

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“Interconnection Agreements” means the LGA Interconnection Agreement and the Hydropower Interconnection Agreement.

“Interconnection Facilities” means the Genco Interconnection Facilities, the Hydroco Interconnection Facilities and the T&D Interconnection Facilities, as the case may be.

“Interconnection Point” means, (a) with respect to each Legacy Generation Asset, the physical demarcation point between the applicable Genco Interconnection Facilities, on the one hand, and the applicable T&D Interconnection Facilities, on the other hand, where Electricity from such Legacy Generation Asset is delivered or made available to the T&D System, and (b) with respect to each Hydropower Asset, the physical demarcation point between the applicable Hydroco Interconnection Facilities, on the one hand, and the applicable T&D Interconnection Facilities, on the other hand, where Electricity from such Hydropower Asset is delivered or made available to the T&D System. The Interconnection Points are further described in the LGA Interconnection Agreement and the Hydropower Interconnection Agreement.

“Joinder Agreement” has the meaning set forth in Section 8.11.

“Legacy Generation Assets” has the meaning set forth in the Recitals.

“LGA Interconnection Agreement” means that certain interconnection agreement to be entered into on or about the Effective Date between PREPA and Genco with respect to the interconnection of the T&D System and the Legacy Generation Assets substantially and in all material respects in the form of Annex I.

“Lien” means any and every lien, pledge, security interest, claim, mortgage, deed of trust, lease, charge, option, right of first refusal, easement or other real estate declaration, covenant, condition, restriction or servitude, transfer restriction under any encumbrance or any other restriction or limitation whatsoever, including mechanics’, materialmen’s, laborers’ and lenders’ liens.

“Losses” has the meaning set forth in Section 5.1(a).

“O&M Charge” has the meaning set forth in Section 3.4(a).

“Other Genco Fuel Accounts” has the meaning set forth in Section 3.5(b)(i).

“Other Genco Operating Accounts” has the meaning set forth in Section 3.4(b)(i).

“Other Hydroco Operating Accounts” has the meaning set forth in Section 3.6(b)(i).

“Other PREPA Budgets” has the meaning set forth in Section 3.1(b)(i).

“Party” or “Parties” has the meaning set forth in the introductory paragraph.

“Person” means any individual (including the heirs, beneficiaries, executors, legal representatives or administrators thereof), firm, corporation, company, association, partnership,

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limited partnership, limited liability company, joint stock company, joint venture, trust, business trust, unincorporated organization or other entity or a Governmental Body.

“PREB” means the Puerto Rico Energy Bureau, also known as the *Negociado de Energia de Puerto Rico*, an independent body created under Act No. 57 of the Legislative Assembly of Puerto Rico, enacted on May 27, 2014, as amended, known as the “Puerto Rico Energy Transformation and RELIEF Act”.

“PREB Actions” has the meaning set forth in Section 8.9.

“PREPA” has the meaning set forth in the introductory paragraph.

“PREPA Fuel Account” means the fuel account established by PREPA pursuant to Section 7.5(e)(i)(B) of the T&D O&M Agreement.

“PREPA Generation Expenditures Account” means the account established by PREPA pursuant to Section 7.5(e)(i) of the T&D O&M Agreement solely for purposes of funding O&M Charges and Hydropower Costs pursuant to this Agreement.

“Pro Rata” and similar expressions mean an adjustment to a cost, payment or other amount due over a period of time to account for it accruing over only a portion of such period.

“PROMESA” means the Puerto Rico Oversight, Management and Economic Stability Act enacted on June 30, 2016 (P.L. 114-187).

“Rate Order” means any rate order reflecting determinations and directives of, and requirements established by, PREB through its review of a Rate Order Modification Request and the subsequent rate review proceeding.

“Rate Order Modification Request” means any application submitted from time to time, or as otherwise required by Applicable Law or ordered by PREB, by T&D Operator to PREB requesting a change in customer rates or charges.

“RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.

“System Operation Principles” means the operation principles conditionally approved by PREB on June 1, 2021, and available on T&D Operator’s website at <https://lumapr.com/>, as may be amended from time to time in accordance with Applicable Law, including any operation procedures established in connection therewith, as may be amended from time to time.

“T&D Budget” has the meaning set forth in Section 3.1(b)(i).

“T&D Interconnection Facilities” means all assets, equipment and facilities located on PREPA’s side of each Interconnection Point, installed, operated and maintained by or on behalf of PREPA for the purpose of interconnecting each Legacy Generation Asset or each Hydropower Asset to the T&D System, as further described in the applicable Interconnection Agreement.

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“T&D O&M Agreement” has the meaning set forth in the Recitals.

“T&D Operator” has the meaning set forth in the introductory paragraph.

“T&D System” has the meaning set forth in the Recitals.

“Term” has the meaning set forth in Section 2.2.

“Title III Case” means PREPA’s case under Title III of PROMESA in the U.S. District Court.

“Title III Court” means the U.S. District Court presiding over the Title III Case.

“United States” or “U.S.” means the United States of America.

### **Section 1.2 Interpretation; Construction.**

(a) Headings. The table of contents and titles and headings to articles and sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. Except as otherwise indicated, all references in this Agreement to “Articles”, “Sections” and “Annexes” are intended to refer to Articles and Sections of this Agreement and Annexes to this Agreement.

(b) Annexes. The Annexes referred to herein shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein. In the event of an irreconcilable conflict, discrepancy, error or omission, the following descending order of precedence will govern: (i) this Agreement, (ii) the System Operation Principles, (iii) the applicable Agreed Operating Procedure, and (iv) the applicable Interconnection Agreement, unless, and then only to the extent that, PREB specifically provides otherwise.

(c) Construction. For purposes of this Agreement: (i) “include”, “includes” or “including” shall be deemed to be followed by “without limitation”; (ii) “hereof”, “herein”, “hereby”, “hereto” and “hereunder” shall refer to this Agreement as a whole and not to any particular provision of this Agreement; (iii) “extent” in the phrase “to the extent” shall mean the degree to which a subject or other item extends and shall not simply mean “if”; (iv) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including”; (v) “dollars” and “\$” shall mean United States Dollars; (vi) the singular includes the plural and vice versa; (vii) reference to a gender includes the other gender; (viii) “any” shall mean “any and all”; (ix) “or” is used in the inclusive sense of “and/or”; (x) reference to any agreement, document or instrument means such agreement, document or instrument as amended, supplemented and modified in effect from time to time in accordance with its terms; (xi) reference to any Applicable Law means such Applicable Law as amended from time to time and includes any successor legislation thereto and any rules and regulations promulgated thereunder; and (xii) reference to any Person at any time refers to such Person’s permitted successors and assigns.

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(d) Genco and Genco Operator. Notwithstanding anything to the contrary contained in this Agreement: (i) all references to Genco Operator in Articles 1 through 8 (other than Section 8.11 which shall be effective as of the Effective Date) shall not be effective until the date (“Genco Operator Effective Date”) on which (A) Genco Operator and the Parties have executed and delivered the Joinder Agreement pursuant to Section 8.11 and (B) Genco Operator is authorized to begin providing operation, maintenance and related services for the Legacy Generation Assets pursuant to the Generation O&M Agreement; and (ii) where there is a reference in this Agreement to “Genco and Genco Operator” or “Genco or Genco Operator” such reference (other than such reference in Section 2.2) shall be deemed to be a reference only to “Genco Operator” effective as of the Genco Operator Effective Date.

(e) Days, Months and Years. In this Agreement, (i) all references to days herein are references to calendar days, unless specified as Business Days, (ii) all references to months herein are references to calendar months, unless specified otherwise, and (iii) all references to years herein are references to calendar years, unless specified otherwise.

(f) Accounting Principles. All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with then generally accepted accounting principles in the United States, consistently applied.

## **Article 2**

### **EFFECTIVE DATE; TERM; AGENT DESIGNATION**

**Section 2.1 Effective Date.** This Agreement shall become effective on the date that it is executed by the Parties (the “Effective Date”), by which execution the Parties acknowledge and agree that the following conditions have been satisfied:

(a) receipt by the Parties of a resolution adopted by the board of directors of Administrator, in form and substance reasonably acceptable to PREPA, Genco, Hydroco and T&D Operator, authorizing the execution, delivery and performance by Administrator of this Agreement and the transactions contemplated hereby;

(b) receipt by the Parties of approval from PREB, in form and substance reasonably acceptable to Administrator, PREPA, Genco, Hydroco and T&D Operator, approving the form and substance of this Agreement, the Agreed Operating Procedures and the Interconnection Agreements; and

(c) receipt by the Parties of approval from the relevant Governmental Body(ies), in form and substance reasonably acceptable to Administrator, PREPA, Genco, Hydroco and T&D Operator, approving the reorganization of PREPA, including the formation of Genco and Hydroco.

### **Section 2.2 Term.**

(a) This Agreement shall remain in full force and effect from the Effective Date through the date on which all the Legacy Generation Assets and Hydropower Assets have been decommissioned, unless earlier terminated in accordance with the terms hereof (such period of time, the “Term”).

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(b) If all of the Legacy Generation Assets have been decommissioned and one or more of the Hydropower Assets remains operational, then this Agreement shall continue in effect and the Parties shall amend this Agreement to reflect the removal of Genco and Genco Operator as parties to this Agreement and such other changes as may be necessary and mutually acceptable to the Parties. If all of the Hydropower Assets have been decommissioned and one or more of the Legacy Generation Assets remains operational, then this Agreement shall continue in effect and the Parties shall amend this Agreement to reflect the removal of Hydroco as a party to this Agreement and such other changes as may be necessary and mutually acceptable to the Parties.

(c) If the T&D O&M Agreement is terminated, then unless T&D Operator assigns all of its rights and obligations under this Agreement to a Person other than PREPA and is relieved of all such obligations and liabilities, PREPA shall assume all of the rights and obligations of T&D Operator under this Agreement and T&D Operator shall be relieved of all such obligations and liabilities. If the Generation O&M Agreement is terminated, then unless Genco Operator assigns all of its rights and obligations under this Agreement to a Person other than Genco and is relieved of all such obligations and liabilities, Genco shall assume all of the rights and obligations of Genco Operator under this Agreement and Genco Operator shall be relieved of all such obligations and liabilities.

**Section 2.3 Agent Designation.** T&D Operator will act as agent for PREPA under this Agreement in accordance with the T&D O&M Agreement. At such time as the Generation O&M Agreement is executed and becomes effective, Genco Operator will act as agent for Genco under this Agreement in accordance with the Generation O&M Agreement. If at any time (a) more than one Person is operating and maintaining the Legacy Generation Assets, or (b) more than one Person is operating and maintaining the Hydropower Assets, then, in each case, the Parties shall amend this Agreement to reflect such changes as may be necessary and mutually acceptable to the Parties.

## Article 3 BUDGETS AND ACCOUNTS

### Section 3.1 Generation Budget Preparation.

(a) Generally.

(i) If the Effective Date occurs in Fiscal Year 2023, then the Initial Generation Budget shall be used. If the Effective Date occurs after Fiscal Year 2023, then the then-approved Generation Budget shall be used. Thereafter, for any Fiscal Year in which a rate adjustment approved by PREB pursuant to a Rate Order Modification Request enters into effect, the Generation Budget used in connection with obtaining such rate adjustment shall be used.

(ii) Except as provided in Section 3.1(a)(i), the Generation Budget shall be prepared in accordance with the budget preparation process described in Section 3.1(b), Section 3.1(c) and Section 3.1(d).

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(b) Budget Allocation Meeting.

(i) Except as provided in Section 3.1(a)(i), for any Fiscal Year in which there is a single base rate covering each of the T&D System and related assets, the Legacy Generation Assets and the Hydropower Assets, Administrator, T&D Operator, Hydroco, PREPA, Genco and Genco Operator, shall no later than one hundred twenty-five (125) days prior to the commencement of the relevant Fiscal Year meet, to determine the allocation of such base rate and the resulting revenues among the non-generation budgets T&D Operator must prepare pursuant to the T&D O&M Agreement (collectively, the “T&D Budget”), the Genco Budget, the Hydroco Budget and the budgets for PREPA and its subsidiaries other than Genco and Hydroco (the “Other PREPA Budgets” and, together with the Genco Budget, Hydroco Budget and T&D Budget, the “Budgets”), which allocation shall be proportionate to, and consistent with, the cost allocation among the Budgets in the applicable Rate Order (such meeting, the “Budget Allocation Meeting”). For the avoidance of doubt, for any Fiscal Year in which there is a Budget Allocation Meeting, T&D Operator, Hydroco, PREPA, Genco and Genco Operator shall prepare and propose Budgets that are consistent with, and based on, the amount of funds allocated to each of the Budgets consistent with the terms of this Section 3.1(b).

(ii) If, during the Budget Allocation Meeting for a Fiscal Year, T&D Operator, Hydroco, PREPA, Genco and Genco Operator are unable to reach agreement on the allocation of the base rate among the Budgets for such Fiscal Year, then Administrator shall, within five (5) days of the Budget Allocation Meeting, determine the final allocation of the base rate among the Budgets for such Fiscal Year; provided that such determination shall be proportionate to, and consistent with, the cost allocation among the Budgets in the applicable Rate Order.

(iii) If after the Budget Allocation Meeting is held for a Fiscal Year pursuant to this Section 3.1(b) but before the start of such Fiscal Year the load forecast on which the allocation of the base rate was based changes, then Administrator, T&D Operator, Hydroco, PREPA, Genco and Genco Operator shall, as promptly as practicable, meet to determine the allocation of the base rate based on the new load forecasts among the Budgets, which allocation shall be proportionate to, and consistent with, the cost allocation among the Budgets in the applicable Rate Order.

(c) Hydroco Budget Preparation.

(i) Except as provided in Section 3.1(a)(i) and subject to the requirements of Section 3.1(b), for any Fiscal Year, Hydroco shall prepare the proposed Hydroco Budget for such Fiscal Year and, no later than one hundred fifteen (115) days prior to the commencement of the relevant Fiscal Year, submit to Genco and Genco Operator the proposed Hydroco Budget for such Fiscal Year. Upon receipt by Genco and the Genco Operator of the proposed Hydroco Budget, Genco and Genco Operator shall, acting reasonably, review the proposed Hydroco Budget to ensure compliance with the budget allocation of the base rate determined pursuant to Section 3.1(b) for such Fiscal Year.

(ii) If Genco or Genco Operator reasonably believes the proposed Hydroco Budget does not comply with the budget allocation of the base rate determined pursuant to Section 3.1(b) for such Fiscal Year, then Genco and Genco Operator shall notify Administrator,



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with copy to Hydroco, in writing of such potential non-compliance (“Hydroco Budget Notice”), which potential non-compliance shall be addressed as set forth in Section 3.1(d)(iii).

(d) Genco Budget Preparation.

(i) Except as provided in Section 3.1(a)(i) and subject to the requirements of Section 3.1(b), for any Fiscal Year, Genco and Genco Operator shall prepare the proposed Genco Budget for such Fiscal Year, consolidate such proposed Genco Budget with the proposed Hydroco Budget prepared in accordance with Section 3.1(c) and, no later than one hundred five (105) days prior to the commencement of the relevant Fiscal Year, submit to T&D Operator the proposed Generation Budget for such Fiscal Year.

(ii) No later than ninety (90) days prior to the commencement of the Fiscal Year, T&D Operator shall submit to Administrator (A) the Generation Budget provided by Genco and Genco Operator pursuant to Section 3.1(d)(i) and (B) the T&D Budget, which proposed budgets T&D Operator shall have consolidated prior to their delivery to Administrator pursuant to Section 7.3(a) of the T&D O&M Agreement. If T&D Operator believes the proposed Generation Budget provided by Genco and Genco Operator to T&D Operator for consolidation with the T&D Budget does not comply with: (I) the applicable Rate Order, (II) any PREB-approved directive or requirement applicable to Hydroco, Genco or PREPA, (III) Applicable Law or (IV) the budget allocation of the base rate determined pursuant to Section 3.1(b) for such Fiscal Year, then T&D Operator, acting reasonably, may deliver to Administrator, with copy to Hydroco, Genco and Genco Operator, a written explanation of the potential issues with the proposed Generation Budget (“Genco Budget Notice”), which potential non-compliance shall be addressed as set forth in Section 3.1(d)(iii).

(iii) Once Administrator has received the proposed Generation Budget and the proposed T&D Budget, Administrator shall review the budgets to ensure compliance with the applicable Rate Order. Within forty-five (45) days following its receipt of such budgets, Administrator shall notify T&D Operator, Hydroco, Genco and Genco Operator whether the proposed budgets are compliant with the applicable Rate Order, and shall request, acting reasonably, any changes or modifications to the proposed budgets to conform the proposed budgets with the applicable Rate Order. In the event that a Hydroco Budget Notice or a Genco Budget Notice was delivered to Administrator, then Genco and Genco Operator, T&D Operator and, if applicable, Hydroco shall, as promptly as practicable, and, in any event, within the thirty (30) day period following receipt by Administrator of the proposed budgets, meet with Administrator and collaborate in good faith to resolve any differences with respect to the proposed budgets to ensure compliance with the applicable Rate Order, provided that if Administrator, Genco and Genco Operator, T&D Operator and, if applicable, Hydroco, collaborating in good faith cannot resolve any such differences with respect to the proposed budgets to ensure compliance with the applicable Rate Order, then any of Genco and Genco Operator, T&D Operator and, if applicable, Hydroco can seek resolution before PREB of any such differences with respect to the proposed budgets. For the avoidance of doubt, unless otherwise directed by PREB, in no event shall T&D Operator, Genco and Genco Operator or Hydroco seek resolution before PREB of any differences with

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respect to the proposed Generation Budget prior to meeting with Administrator as required by Section 3.1(d)(iii).

(e) PREB Rate Proceedings.

(i) Notwithstanding anything to the contrary contained in Section 3.1(c) or Section 3.1(d), for any Fiscal Year in which the proposed Generation Budget or the proposed T&D Budget requires a rate adjustment to be approved by PREB, T&D Operator shall have the right, at its sole discretion, to submit the proposed Generation Budget or the proposed T&D Budget for such Fiscal Year, together with a Rate Order Modification Request, directly to PREB rather than to Administrator.

(ii) If T&D Operator plans to submit to PREB a Rate Order Modification Request which contemplates modifications to the Generation Budget, then T&D Operator shall provide written notice to Genco and Genco Operator at least sixty (60) days prior to the date on which it plans to submit such Rate Order Modification Request and, upon receipt of such notice, Genco and Genco Operator shall cooperate in good faith with T&D Operator and Administrator to prepare a proposed Generation Budget to be included in or otherwise form the basis of such Rate Order Modification Request. Genco and Genco Operator shall provide reasonable further support to T&D Operator through any applicable proceedings arising in connection with the Rate Order Modification Request, including providing any information requested by PREB that is within its possession or control.

(iii) In the event that the Rate Order Modification Request that T&D Operator plans to submit to PREB pursuant to Section 3.1(e)(ii) contemplates modifications to the Hydroco Budget portion of the Generation Budget, Genco and Genco Operator shall (A) notify Hydroco as soon as practicable upon receipt of notice from T&D Operator of the contemplated Rate Order Modification Request and (B) collaborate with Hydroco in the preparation of the Hydroco Budget portion of the proposed Generation Budget to be included in or otherwise form the basis of such Rate Order Modification Request. Hydroco shall further support T&D Operator (and Genco and Genco Operator in supporting T&D Operator) through any applicable proceedings arising in connection with the Rate Order Modification Request.

(iv) For the avoidance of doubt, any such Rate Order Modification Request shall be prepared and undertaken in accordance with the relevant requirements set forth under Applicable Law.

(v) For the avoidance of doubt, nothing in this Agreement shall be construed to prohibit Genco and Genco Operator or Hydroco from soliciting an audience with PREB at any applicable proceedings arising in connection with the Rate Order Modification Request or otherwise in order to advocate for any positions it may have with respect to the Genco Budget or Hydroco Budget portion of the Generation Budget, as applicable. The Parties shall appear before PREB as may be requested by PREB in any proceedings arising in connection with a Rate Order Modification Request.

### **Section 3.2 Generation Budget Amendments.**

(a) Genco Budget Amendments.

(i) If in any Fiscal Year, Genco or Genco Operator becomes aware that Genco's expenditures for such Fiscal Year are expected to exceed the Genco Budget for such Fiscal Year, then (A) Genco and Genco Operator shall notify T&D Operator and Administrator of the expected shortfall, (B) T&D Operator shall notify PREB of the expected shortfall and (C) as promptly as practicable, Genco and Genco Operator shall prepare and submit to PREB, with copy to T&D Operator and Administrator, the proposed amendments to the Genco Budget and Generation Budget, which amendments must be consistent with the applicable Rate Order and shall require and be subject to approval by PREB.

(ii) Notwithstanding anything to the contrary contained in this Section 3.2(a), in the event that PREB takes any action or issues any order that could result in a change in the portion of rates that relate to the Legacy Generation Assets, then Genco and Genco Operator shall, as promptly as practicable, prepare and submit to PREB, with copy to T&D Operator and Administrator, the proposed amendments to the Genco Budget, which amendments must be consistent with the applicable Rate Order and shall require and be subject to approval by PREB.

(b) Hydroco Budget Amendments.

(i) If in any Fiscal Year, Hydroco becomes aware that Hydroco's expenditures for such Fiscal Year are expected to exceed the Hydroco Budget for such Fiscal Year, then (A) Hydroco shall notify T&D Operator, Administrator, Genco and Genco Operator of the expected shortfall, (B) T&D Operator shall notify PREB of the expected shortfall, (C) as promptly as practicable, Hydroco shall prepare and submit to Genco and Genco Operator, with copy to T&D Operator and Administrator, the proposed amendments to the Hydroco Budget, which amendments must be consistent with the applicable Rate Order, and (D) as promptly as practicable, Genco and Genco Operator shall prepare and Genco and Genco Operator and Hydroco shall submit to PREB, with copy to T&D Operator and Administrator, the proposed amendments to the Genco Budget (which shall be based solely on incorporating the proposed amendments to the Hydroco Budget submitted by Hydroco to Genco and Genco Operator pursuant to Section 3.2(b)(i)(C)), which amendments must be consistent with the applicable Rate Order and shall require and be subject to approval by PREB.

(ii) Notwithstanding anything to the contrary contained in this Section 3.2(b), in the event that PREB takes any action or issues any order that could result in a change to the portion of rates that relate to the Hydropower Assets, then Hydroco shall, as promptly as practicable, prepare and submit to PREB, with copy to T&D Operator and Administrator, the proposed amendments to the Hydroco Budget, which amendments must be consistent with the applicable Rate Order and shall require and be subject to approval by PREB.

### **Section 3.3 Funding of Accounts and Payment of Expenditures Generally.**

(a) Genco Accounts. Beginning in the month in which the Effective Date occurs and for each month thereafter, (i) no later than the fifth (5th) Business Day of each month,

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Genco and Genco Operator shall provide T&D Operator with written notice (the “Genco Accounts Funding Notice”) of the Genco Operating Account Deposit and the Genco Fuel Account Deposit for the relevant month, together with (A) supporting calculations showing the individual components of the Genco Operating Account Deposit and the Genco Fuel Account Deposit and (B) a certification that the calculation of the Genco Operating Account Deposit and the Genco Fuel Account Deposit is complete and accurate and (ii) no later than the eleventh (11th) Business Day of each month, T&D Operator shall deposit into (A) the Genco Operating Account an amount equal to the Genco Operating Account Deposit for the relevant month and (B) the Genco Fuel Account an amount equal to the Genco Fuel Account Deposit for the relevant month; provided that if, in any given month, Genco or Genco Operator has failed to deliver to T&D Operator the Genco Accounts Funding Notice required by clause (i) of this Section 3.3(a), then T&D Operator shall have no obligation to deposit all or any portion of (1) the Genco Operating Account Deposit into the Genco Operating Account for such month and (2) the Genco Fuel Account Deposit into the Genco Fuel Account for such month. Notwithstanding anything to the contrary contained in this Agreement, (I) in no event shall T&D Operator be required to transfer into: (x) the Genco Operating Account more than the aggregate amount of funds deposited into the PREPA Generation Expenditures Account available for reimbursement of Generation Pass-Through Expenditures under the T&D O&M Agreement and O&M Charges and Hydropower Costs under the then-approved Genco Budget and Hydroco Budget, respectively; and (y) the Genco Fuel Account more than the aggregate amount of funds deposited into the PREPA Fuel Account and available for reimbursement of fuel supply expenses under the T&D O&M Agreement and the forecasted Fuel Costs as approved by PREB, and (II) in no event shall T&D Operator be obligated to make up or fund any underage.

(b) Hydroco Account. Beginning in the month in which the Effective Date occurs and for each month thereafter, (i) no later than the fourth (4th) Business Day of each month, Hydroco shall provide Genco and Genco Operator with written notice (the “Hydroco Account Funding Notice”) of the Hydroco Operating Account Deposit for the relevant month, together with (A) supporting calculations showing the individual components of the Hydroco Operating Account Deposit and (B) a certification that the calculation of the Hydroco Operating Account Deposit is complete and accurate, and (ii) no later than the twelfth (12th) Business Day of each month, Genco and Genco Operator shall deposit into the Hydroco Operating Account an amount equal to the Hydroco Operating Account Deposit for the relevant month; provided that if, in any given month, Hydroco has failed to deliver to Genco and Genco Operator the Hydroco Account Funding Notice required by clause (i) of this Section 3.3(b), then Genco and Genco Operator shall have no obligation to deposit all or any portion of the Hydroco Operating Account Deposit into the Hydroco Operating Account for such month. Notwithstanding anything to the contrary contained in this Agreement, in no event shall Genco and Genco Operator be required to transfer into the Hydroco Operating Account more than the aggregate amount of funds deposited into the Genco Operating Account, and in no event shall Genco or T&D Operator be obligated to make up or fund any underage.

### **Section 3.4 Genco O&M Charges.**

(a) Payment of O&M Charges. Genco shall pay all of its non-fuel costs and expenses, including any Genco Operator Fees payable to the Genco Operator under the Generation O&M Agreement, to the extent the Generation O&M Agreement has been executed, incurred in

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the course of operating and maintaining the Legacy Generation Assets (irrespective of Dispatch or the Electricity delivered or made available by Genco) and performing the Genco Decommissioning Services that are consistent with the then-approved Genco Budget (each such cost or expense, an “O&M Charge”).

(b) Genco Operating Account.

(i) On or prior to the Effective Date, Genco shall establish an operating account relating to the Legacy Generation Assets and the Hydropower Assets (the “Genco Operating Account”) into which T&D Operator shall deposit anticipated O&M Charges and Hydropower Costs from time to time in accordance with Section 3.3(a) and this Section 3.4(b) and from which Genco and Genco Operator shall withdraw funds from time to time only to (A) pay O&M Charges, (B) fund one or more operating accounts established by Genco which Genco and Genco Operator shall use only to pay O&M Charges (“Other Genco Operating Accounts”), and/or (C) fund the Hydroco Operating Account in accordance with Section 3.6(b)(ii).

(ii) As of the Effective Date, T&D Operator shall deposit into the Genco Operating Account an amount equal to the anticipated O&M Charges and Hydropower Costs for the following month, based on the then-approved Generation Budget.

(iii) Neither Genco nor Genco Operator shall withdraw funds from the Genco Operating Account or the Other Genco Operating Accounts other than for Genco or Genco Operator to pay O&M Charges or, in the case of the Genco Operating Account, to fund the Hydroco Operating Account or one or more of the Other Genco Operating Accounts. Neither Genco nor Genco Operator shall withdraw funds from the Genco Operating Account or the Other Genco Operating Accounts to pay O&M Charges other than for Genco or Genco Operator to pay O&M Charges that are Generation Pass-Through Expenditures.

(c) Reporting Requirements.

(i) Simultaneous with each withdrawal of funds from the Genco Operating Account or the Other Genco Operating Accounts, Genco or Genco Operator shall provide Administrator, with copy to T&D Operator, with written notice of such withdrawal, including a summary of the O&M Charges being paid.

(ii) Not later than nine (9) Business Days following the end of each month, Genco or Genco Operator shall provide Administrator, with copy to T&D Operator, with (A) a full accounting setting forth in reasonable detail the O&M Charges and Hydropower Costs actually incurred and paid using the funds transferred into the Genco Operating Account or the Other Genco Operating Accounts during the prior month and (B) a written certification that all such O&M Charges are Generation Pass-Through Expenditures.

**Section 3.5 Genco Fuel Costs.**

(a) Payment of Fuel Costs. Genco shall pay all of its Fuel Costs.

(b) Genco Fuel Account.

(i) On or prior to the Effective Date, Genco shall establish a fuel account (the “Genco Fuel Account”) into which T&D Operator shall deposit anticipated Fuel Costs from time to time in accordance with Section 3.3(a) and this Section 3.5(b) and from which Genco or Genco Operator shall withdraw funds from time to time only to (A) pay Fuel Costs and/or (B) fund one or more fuel accounts established by Genco which Genco and Genco Operator shall use only to pay Fuel Costs (“Other Genco Fuel Accounts”).

(ii) As of the Effective Date, T&D Operator shall deposit into the Genco Fuel Account an amount equal to the anticipated Fuel Costs for the following month, based on the forecasted Fuel Costs as approved by PREB, which amount shall be the minimum working capital level contemplated by Section 7.5(e)(ii) of the T&D O&M Agreement.

(iii) Neither Genco nor Genco Operator shall withdraw funds from the Genco Fuel Account or the Other Genco Fuel Accounts other than for Genco or Genco Operator to pay Fuel Costs or, in the case of the Genco Fuel Account, to fund one or more of the Other Genco Fuel Accounts. Neither Genco nor Genco Operator shall withdraw funds from the Genco Fuel Account or the Other Genco Fuel Accounts to pay Fuel Costs other than for Genco or Genco Operator to pay Fuel Costs that are Generation Pass-Through Expenditures.

(c) Reporting Requirements.

(i) Simultaneous with each withdrawal of funds from the Genco Fuel Account or the Other Genco Fuel Accounts, Genco or Genco Operator shall provide Administrator, with copy to T&D Operator, with written notice of such withdrawal, including a summary of the Fuel Costs being paid.

(ii) Not later than nine (9) Business Days following the end of each month, Genco or Genco Operator shall provide Administrator, with copy to T&D Operator, with (A) a full accounting setting forth in reasonable detail the Fuel Costs actually incurred and paid using the funds transferred into the Genco Fuel Account or the Other Genco Fuel Accounts during the prior month and (B) a written certification that all such Fuel Costs are Generation Pass-Through Expenditures.

(iii) Genco and Genco Operator shall prepare and submit to T&D Operator such information and documents as T&D Operator may reasonably request in order for T&D Operator to comply with PREB rate filing requirements, including pricing information and fuel inventory. Genco and Genco Operator shall provide such documents and information to T&D Operator at such times as such Parties may mutually agree, but in no event later than seven (7) Business Days prior to the time T&D Operator is required to file such documents or information with PREB.

### **Section 3.6    Hydropower Costs.**

(a)    Payment of Hydropower Costs. Hydroco shall pay all of its non-fuel costs and expenses incurred in the course of operating and maintaining the Hydropower Assets (irrespective of Dispatch or the Electricity delivered or made available by Hydroco) and performing the Hydroco Decommissioning Services that are consistent with the then-approved Hydroco Budget (each such cost or expense, a “Hydropower Cost”).

(b)    Hydroco Operating Account.

(i)    On or prior to the Effective Date, Hydroco shall establish an operating account relating to the Hydropower Assets (the “Hydroco Operating Account”) into which Genco and Genco Operator shall deposit anticipated Hydropower Costs from time to time in accordance with Section 3.3(b) and this Section 3.6(b) and from which Hydroco shall withdraw funds from time to time only to (A) pay Hydropower Costs and/or (B) fund one or more operating accounts established by Hydroco which Hydroco shall use only to pay Hydropower Costs (“Other Hydroco Operating Accounts”).

(ii)    On the day immediately following the Effective Date, Genco and Genco Operator shall deposit into the Hydroco Operating Account an amount equal to the anticipated Hydropower Costs for the following month, based on the then-approved Hydroco Budget.

(iii)    Hydroco shall not withdraw funds from the Hydroco Operating Account or the Other Hydroco Operating Accounts other than to pay Hydropower Costs or, in the case of the Hydroco Operating Account, to fund one or more of the Other Hydroco Operating Accounts. Hydroco shall not withdraw funds from the Hydroco Operating Account or the Other Hydroco Operating Accounts to pay Hydropower Costs unless such Hydropower Costs are Generation Pass-Through Expenditures.

(c)    Reporting Requirements.

(i)    Simultaneous with each withdrawal of funds from the Hydroco Operating Account or the Other Hydroco Operating Accounts, Hydroco shall provide Administrator, with copy to T&D Operator, with written notice of such withdrawal, including a summary of the Hydropower Costs being paid.

(ii)    Not later than eight (8) Business Days following the end of each month, Hydroco shall provide Administrator, with copy to T&D Operator, with (A) a full accounting setting forth in reasonable detail the Hydropower Costs actually incurred and paid using the funds transferred into the Hydroco Operating Account or the Other Hydroco Operating Accounts during the prior month and (B) a written certification that all such Hydropower Costs are Generation Pass-Through Expenditures.

## **Article 4**

### **DISPATCH; OWNERSHIP, OPERATION AND MAINTENANCE OF**

## **INTERCONNECTION FACILITIES; RECORDS; METERING; ANCILLARY SERVICES; DECOMMISSIONING; AGREED OPERATING PROCEDURES**

### **Section 4.1 Dispatch.**

(a) Legacy Generation Assets. T&D Operator is authorized to Dispatch, and Genco and Genco Operator shall comply with T&D Operator's Dispatch of, the Generation Units at the Legacy Generation Assets in accordance with the System Operation Principles and the applicable Agreed Operating Procedures.

(b) Hydropower Assets. T&D Operator is authorized to Dispatch, and Hydroco shall comply with T&D Operator's Dispatch of, the Generation Units at the Hydropower Assets in accordance with the System Operation Principles and the applicable Agreed Operating Procedures.

### **Section 4.2 Ownership, Operation and Maintenance of Interconnection Facilities.**

(a) Genco Interconnection Facilities. Genco shall own and Genco and Genco Operator shall operate and maintain the Genco Interconnection Facilities in accordance with the LGA Interconnection Agreement, the System Operation Principles and the applicable Agreed Operating Procedures. Neither Genco nor Genco Operator shall make any changes to the Genco Interconnection Facilities other than Genco or Genco Operator making changes in accordance with the LGA Interconnection Agreement.

(b) Hydroco Interconnection Facilities. Hydroco shall own, operate and maintain the Hydroco Interconnection Facilities in accordance with the Hydropower Interconnection Agreement, the System Operation Principles and the applicable Agreed Operating Procedures. Hydroco shall not make any changes to the Hydroco Interconnection Facilities other than in accordance with the Hydropower Interconnection Agreement.

(c) T&D Interconnection Facilities. PREPA shall own and T&D Operator shall operate and maintain the T&D Interconnection Facilities in accordance with the System Operation Principles and the applicable Interconnection Agreement and Agreed Operating Procedures. PREPA shall not make any changes to the T&D Interconnection Facilities other than in accordance with the applicable Interconnection Agreement.

### **Section 4.3 Records and Information.**

(a) Records. Each Party shall create, maintain and make available for examination by the other Party all records and other data with respect to the operation and maintenance of the Legacy Generation Assets, the Hydropower Assets and the Interconnection Facilities, as the case may be, or as otherwise may be required for the administration and performance of this Agreement, in each case, in accordance with the applicable Agreed Operating Procedures.

(b) Information. Genco and Genco Operator shall: (i) provide T&D Operator with such information, data and assistance as may be reasonably necessary or appropriate for T&D Operator to perform its obligations (including with respect to any PREB rate or other proceeding



or requirement) under this Agreement; and (ii) from time to time, as and when requested by T&D Operator, execute and deliver, or cause to be executed and delivered, all such documents and instruments and take, or cause to be taken, all such reasonable actions, as may be reasonably necessary for T&D Operator to perform its obligations under this Agreement.

#### **Section 4.4 Metering.**

(a) Legacy Generation Assets. All Electricity from the Legacy Generation Assets delivered or made available by Genco or Genco Operator at the applicable Interconnection Point shall be measured by meters and metering devices operated, maintained, tested and read in accordance with the LGA Interconnection Agreement and the applicable Agreed Operating Procedures.

(b) Hydropower Assets. All Electricity from the Hydropower Assets delivered or made available by Hydroco at the applicable Interconnection Point shall be measured by meters and metering devices operated, maintained, tested and read in accordance with the Hydropower Interconnection Agreement and the applicable Agreed Operating Procedures.

**Section 4.5 Ancillary Services.** Genco, Genco Operator and Hydroco shall, in accordance with the System Operation Principles and the applicable Agreed Operating Procedures, provide such ancillary services as T&D Operator may request from time to time pursuant to the applicable Agreed Operating Procedures (the “Ancillary Services”).

#### **Section 4.6 Decommissioning.**

(a) Legacy Generation Assets. Genco and Genco Operator, shall be responsible for all Genco Decommissioning Services. Genco or Genco Operator shall, in accordance with the System Operation Principles, notify T&D Operator of the expected commencement of any Genco Decommissioning Services.

(b) Hydropower Assets. Hydroco shall be responsible for all Hydroco Decommissioning Services. Hydroco shall, in accordance with the System Operation Principles, notify T&D Operator of the expected commencement of any Hydroco Decommissioning Services.

**Section 4.7 Agreed Operating Procedures.** Hydroco, T&D Operator, Genco and Genco Operator shall use commercially reasonable efforts to negotiate, finalize and execute individual operating procedures for each Legacy Generation Asset and each Hydropower Asset that is not subject to Agreed Operating Procedures as of the Effective Date substantially and in all material respects in the form of Annex II or otherwise as the applicable Parties may otherwise mutually agree (the “Agreed Operating Procedures”) as promptly as practicable and, in any event, within thirty (30) days after the Effective Date.

## **Article 5 INDEMNIFICATION**

### **Section 5.1 Indemnification.**

(a) Generally. No Party shall be responsible for any direct or indirect losses, damages, costs, expenses, liabilities, interest, deficiencies, awards, judgments, fines, assessments, penalties, forfeitures, obligations, deposits, taxes, costs, expenses, or other charges of any kind incurred (“Losses”) by another Party in connection with their obligations pursuant to the terms of this Agreement, except to the extent such Losses are a direct result of (i) the gross negligence or willful misconduct of a Party or any of such Party’s Affiliates or any of their respective directors, officers, employees, representatives, agents, contractors, subcontractors or suppliers or (ii) any failure to comply with the terms of this Agreement.

(b) Waiver of Consequential Damages. In no event shall any Party or any Affiliate thereof or any of their respective directors, officers, employees, agents, contractors, subcontractors or suppliers be liable to any other Party or any Affiliate thereof or any of their respective directors, officers, employees, agents, contractors, subcontractors or suppliers for any indirect, consequential, punitive, special, incidental or exemplary losses or damages (including for lost profits or lost business opportunity), whether such liability arises in contract, tort or otherwise.

## **Article 6 TERMINATION**

### **Section 6.1 Termination.**

(a) Generally. Termination of this Agreement shall occur only upon: (i) expiration of the Term of this Agreement as provided in Section 2.2; or (ii) mutual written agreement of the Parties.

(b) Discharge of Obligations. Termination of this Agreement shall not discharge any Party from any obligation it owes to the other Parties 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 one Party to another Party pursuant to this Agreement shall be considered payable within ninety (90) days of the termination of this Agreement.

## **Article 7 REPRESENTATIONS AND WARRANTIES**

**Section 7.1 Representations and Warranties.** Each Party represents and warrants to each other Party as of the Effective Date as follows:

(a) Existence and Powers. Such Party (i) is qualified to do business and is in good standing in the Commonwealth and (ii) has the required corporate power and authority to

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enter into this Agreement, carry out its obligations hereunder and consummate the transactions contemplated hereby.

(b) Due Authorization and Binding Obligation. The execution and delivery of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated hereby have been duly and validly authorized and approved by the required corporate or other similar action on its part. This Agreement has been duly and validly executed and delivered by such Party, and (assuming due authorization, execution and delivery by the other Parties) this Agreement constitutes a legal, valid and binding obligation of such Party enforceable against such Party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or similar Applicable Law affecting creditors' rights generally and by general equity principles.

(c) No Conflicts. Neither the execution, delivery or performance of this Agreement, nor the consummation of the transactions contemplated hereby will: (i) result in a material violation or breach of, or material default under, any provision of the organizational documents of such Party; (ii) result in a violation of, or give any Governmental Body the right to challenge any of the transactions contemplated hereby under, any Applicable Law applicable to such Party; (iii) (A) result in a violation or breach of, (B) constitute a default under, (C) result in the acceleration of or create in any party the right to accelerate, terminate or cancel or (D) require the consent of any other Person under, any material contract to which such Party is a party; or (iv) result in the creation or imposition of any Lien on any properties or assets of such Party.

(d) No Consents. No consent, declaration or filing with, or notice to, any Governmental Body is required by or with respect to such Party in connection with (i) the execution and delivery of this Agreement or (ii) the performance of its obligations hereunder, except as have been duly obtained or made.

(e) No Legal Prohibition. There is no Applicable Law in effect on the date hereof that would prohibit the execution, delivery or performance by such Party of this Agreement and the consummation of the transactions contemplated hereby.

**Section 7.2 Compliance with Applicable Law.** Each Party agrees that in the performance of its obligations under this Agreement it shall comply with all Applicable Laws.

## Article 8 MISCELLANEOUS

**Section 8.1 Notices.** All notices or other communications to be delivered in connection with this Agreement shall be in writing and shall be deemed to have been properly delivered, given and received (a) on the date of delivery if delivered by hand during normal business hours of the recipient during a Business Day, otherwise on the next Business Day, (b) on the date of successful transmission if sent via email (with return receipt) during normal business hours of the recipient during a Business Day, otherwise on the next Business Day, or (c) on the date of receipt by the addressee if sent by a nationally recognized overnight courier or by registered or certified mail, return receipt requested, if received on a Business Day, otherwise on the next Business Day. Such notices or other communications must be sent to each respective Party at the address or email

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address set forth below (or at such other address or email address as shall be specified by a Party in a notice given in accordance with this Section 8.1).

If to PREPA:

[\_\_\_\_\_]
[\_\_\_\_\_]
Attention: [\_\_\_\_\_]
Telephone: [\_\_\_\_\_]
Email: [\_\_\_\_\_]

If to Genco:

[\_\_\_\_\_]
[\_\_\_\_\_]
Attention: [\_\_\_\_\_]
Telephone: [\_\_\_\_\_]
Email: [\_\_\_\_\_]

If to Hydroco:

[\_\_\_\_\_]
[\_\_\_\_\_]
Attention: [\_\_\_\_\_]
Telephone: [\_\_\_\_\_]
Email: [\_\_\_\_\_]

If to T&D Operator:

LUMA Energy ServCo, LLC
PO Box 364267
San Juan, PR 00936-4267
Attention: [\_\_\_\_\_]
Telephone: [\_\_\_\_\_]
Email: [\_\_\_\_\_]

If to PREB:

[Puerto Rico Energy Bureau
World Plaza Building
268 Munoz Rivera Avenue
San Juan, Puerto Rico 00918
Attention: Edison Aviles Deliz
Telephone: (787) 523-6262
Email: eavilesdeliz@jrsp.pr.gov]

If to Administrator:

Administrator
PO Box 42001
San Juan, Puerto Rico 00940-2001
Attention: Executive Director – Fermín E. Fontanés Gómez
Telephone: (787) 722-2525 Ext. 15330
Email: Fermin.Fontanes@p3.pr.gov and
Administrator@p3.pr.gov

**Section 8.2 Amendments.** This Agreement may be amended or modified from time to time only by the written agreement of all the Parties. Each such instrument shall be reduced to writing and shall be designated on its face an “Amendment” or an “Addendum” to this Agreement.

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Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that nothing in this Agreement shall (a) be or be deemed to be an amendment to the T&D O&M Agreement or once executed, the Generation O&M Agreement, or (b) result in Genco, Genco Operator or Hydroco being or being deemed to be third-party beneficiaries under the T&D O&M Agreement.

**Section 8.3 Entire Agreement.** This Agreement, together with the Annexes attached hereto, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior oral or written agreements, understandings, proposals, representations or warranties relating to this Agreement, other than the T&D O&M Agreement and the Generation O&M Agreement. Without limiting the generality of the foregoing, this Agreement shall completely and fully supersede all other understandings and agreements among the Parties with respect to such transactions. The Parties agree that nothing in this Agreement shall amend or modify in any respect (a) the T&D O&M Agreement or the rights and obligations of Administrator, T&D Operator and PREPA thereunder or (b) the Generation O&M Agreement or the rights and obligations of Administrator, Genco Operator and Genco thereunder.

**Section 8.4 Assignment and Transfer.** No Party shall assign, transfer, convey, lease, encumber or otherwise dispose of its rights or obligations under this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, delayed or conditioned, and to the extent required by Applicable Law, PREB. Any attempt by a Party to assign, transfer, convey, lease, encumber or otherwise dispose of its rights or obligations under this Agreement without the prior written consent of Administrator and, to the extent required by Applicable Law, PREB, shall be void. If as part of the reorganization of PREPA ownership of the T&D System is assigned by PREPA to a Person, then the Parties shall amend this Agreement to recognize the rights and obligations of such Person under this Agreement and such other changes, in each case, as may be necessary and mutually acceptable to the Parties. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns.

**Section 8.5 Severability.** If any term or provision of this Agreement is invalid, illegal or incapable of being enforced in any situation or in any jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other term or provision hereof or the offending term or provision in any other situation or any other jurisdiction, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon any such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible, in a mutually acceptable manner, in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

**Section 8.6 Survival.** The rights and obligations of the Parties pursuant to this Section 8.6, Section 8.1 and Section 8.8 shall survive the expiration or termination of this Agreement. No expiration or termination of this Agreement shall (a) limit or otherwise affect the respective rights and obligations of the Parties accrued prior to the date of such termination or (b) preclude any Party from impleading any other Party in any legal proceeding originated by a third party as to any matter occurring during the Term. The rights and obligations of the Parties

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pursuant to Article 5 shall survive the expiration or termination of this Agreement for a period of twelve (12) months following the expiration or termination of this Agreement.

**Section 8.7 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same agreement or document. A signed copy of this Agreement transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes.

**Section 8.8 Governing Law.** This Agreement and all matters, claims, controversies, disputes, suits, actions or proceedings arising out of or relating to this Agreement and the negotiation, execution or performance of this Agreement or any of the transactions contemplated hereby, including all rights of the Parties (whether sounding in contract, tort, common or statutory law, equity or otherwise) in connection therewith, shall be interpreted, construed and governed by and in accordance with, and enforced pursuant to, the internal laws of the Commonwealth (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction), except where the federal supremacy clause requires otherwise.

**Section 8.9 PREB Actions.** The Parties hereby acknowledge and agree that to the extent PREB (a) is not permitted under Applicable Law to carry out its rights, duties and obligations under this Agreement (“PREB Actions”), or (b) ceases to be an entity of the government of the Commonwealth, the related PREB Actions shall automatically become the rights, duties and obligations of Administrator, unless otherwise provided by Applicable Law.

**Section 8.10 FOMB Powers.** For the avoidance of doubt, nothing in this Agreement shall constitute a limitation on, or waiver by, the FOMB (if then in existence) of any of the FOMB’s rights or powers, including those rights or powers relating to the preparation and approval of budgets under PROMESA.

**Section 8.11 Joinder.** On the date that the Generation O&M Agreement is executed, [Genco/Administrator] shall cause Genco Operator to execute and deliver to the Parties the joinder agreement to this Agreement in the form attached hereto as Annex III (the “Joinder Agreement”). Within [three (3) Business Days] following receipt of the Joinder Agreement executed and delivered by Genco Operator, each of the Parties shall execute and deliver to the other Parties the Joinder Agreement. Effective upon the execution and delivery of the Joinder Agreement by Genco Operator and all of the Parties, Genco Operator shall become a “Party” to this Agreement and will have all of the rights and will be subject to all of the obligations of Genco Operator under and in accordance with the terms and conditions of this Agreement.

*[Signature page follows]*

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**IN WITNESS WHEREOF**, PREPA, Genco, Hydroco, T&D Operator and Administrator each has caused this Agreement to be duly executed as of the day and year first above written.

**PREPA**

By: \_\_\_\_\_

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

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

**GENCO**

By: \_\_\_\_\_

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

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

**HYDROCO**

By: \_\_\_\_\_

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

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

**T&D OPERATOR**

By: \_\_\_\_\_

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

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

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**PUERTO RICO PUBLIC-PRIVATE  
PARTNERSHIPS AUTHORITY,  
solely in its capacity as ADMINISTRATOR**

By: \_\_\_\_\_

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

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



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**Annex I**  
**Form of Interconnection Agreement**

**Annex II**  
**Form of Agreed Operating Procedure**

## Annex III

### Form of Joinder Agreement

[●], [●]

This Joinder Agreement (the “Joinder Agreement”) is entered into as of the date first written above by the undersigned (the “Joining Party”) in accordance with Section 8.11 of the Puerto Rico PREPA-Genco-Hydroco Operating Agreement, dated as of [●], 2022 (as amended, restated or supplemented from time to time, the “Agreement”) among PREPA, Genco, Hydroco, T&D Operator and Administrator. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

1. Joinder. By executing and delivering this Joinder Agreement, the Joining Party hereby: (i) acknowledges that it has read and understands the terms of the Agreement and has been afforded the opportunity to ask questions concerning the Agreement; (ii) ratifies and agrees to be bound by all of the terms, provisions and conditions contained in the Agreement, as if the Joining Party were an original party thereto; and (iii) makes, as of the date of this Joinder Agreement, all of the representations and warranties set forth in Article 7 (*Representations and Warranties*) of the Agreement (all such representations and warranties being incorporated herein by reference). Upon the execution of this Joinder Agreement by Joining Party and the acceptance of this Joinder Agreement by PREPA, Genco, Hydroco, T&D Operator and Administrator by execution and delivery of the signature page hereto, the Joining Party will become and be treated for all purposes of the Agreement as Genco Operator, and will have all of the rights and be subject to all of the obligations of Genco Operator under the Agreement.
2. Supplemental Notice Information. The information in this paragraph 2 of the Joinder Agreement shall be deemed to amend and supplement Section 8.1 of the Agreement to add the following notice information for Genco Operator:

If to Genco:

[\_\_\_\_\_]
[\_\_\_\_\_]
Attention: [\_\_\_\_\_]
Telephone: [\_\_\_\_\_]
Email: [\_\_\_\_\_]

with copy to:

Genco Operator:

[\_\_\_\_\_]
[\_\_\_\_\_]
Attention: [\_\_\_\_\_]
Telephone: [\_\_\_\_\_]
Email: [\_\_\_\_\_]

If to Genco Operator:

[\_\_\_\_\_]
[\_\_\_\_\_]
Attention: [\_\_\_\_\_]

Telephone: [ ]  
Email: [ ]

3. Counterparts. This Joinder Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same agreement or document. A signed copy of this Joinder Agreement transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Joinder Agreement for all purposes.
4. Governing Law. This Joinder Agreement and all matters, claims, controversies, disputes, suits, actions or proceedings arising out of or relating to this Joinder Agreement and the negotiation, execution or performance of this Joinder Agreement or any of the transactions contemplated hereby, including all rights of the Parties (whether sounding in contract, tort, common or statutory law, equity or otherwise) in connection therewith, shall be interpreted, construed and governed by and in accordance with, and enforced pursuant to, the internal laws of the Commonwealth (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction), except where the federal supremacy clause requires otherwise.

*[Signature page follows]*

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**IN WITNESS WHEREOF**, each of the undersigned has caused this Joinder Agreement to be duly executed as of the day and year first above written.

[●], as Genco Operator

By: \_\_\_\_\_

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

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

Accepted: As of the day and year first above written

**PUERTO RICO PUBLIC-PRIVATE  
PARTNERSHIPS AUTHORITY,  
solely in its capacity as ADMINISTRATOR**

By: \_\_\_\_\_

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

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

**PREPA**

By: \_\_\_\_\_

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

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

**GENCO**

By: \_\_\_\_\_

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

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

**HYDROCO**

By: \_\_\_\_\_

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

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

**T&D OPERATOR**

By: \_\_\_\_\_

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

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

## Annex IX

### Scope of Services

*This Annex IX (Scope of Services) is designed to set forth certain O&M Services in addition to those contained in Article 5 (O&M Services) of the main body of the Agreement, certain of which O&M Services shall also apply to the performance of the Decommissioning Services, Mobilization Services and Demobilization Services. This Annex IX (Scope of Services) is not intended, nor should it be deemed, to be an exclusive list of O&M Services. However, the Agreement, including this Annex IX (Scope of Services), absent subsequent changes agreed to by the Parties, sets forth the entire scope of O&M Services to be provided pursuant to the Agreement, with the exception of the services provided pursuant to the Shared Services Agreement until such time as Operator begins to provide such services. Capitalized terms used but not defined in this Annex IX (Scope of Services) have the respective meanings set forth in the Agreement. All obligations of Operator set forth herein shall be performed in accordance with and are subject to the requirements of the main body of the Agreement.*

#### I. Legacy Generation Assets Operation and Maintenance Services.

A. General. Operator shall be responsible for all management, operation, maintenance, repair and other related services with respect to the Legacy Generation Assets, subject to the terms and conditions of the Agreement, including (1) day-to-day operation and maintenance (including any major maintenance) services, including operation of the Legacy Generation Assets to generate electricity and deliver it into the T&D System; (2) identifying, justifying and managing any required maintenance capital expenditures; (3) providing routine inspections of the Legacy Generation Assets; (4) providing annual operating tests (the Annual Performance Test) of the Legacy Generation Assets in coordination with T&D Operator; (5) establishing appropriate and customary safety work rules and practices; (6) developing an operation and maintenance training program; (7) provisioning, storing and maintaining the inventory of spare and consumable parts, including Capital Spare Parts, for the Legacy Generation Assets; (8) establishing and maintaining a computerized maintenance management system for the Legacy Generation Assets; (9) performing scheduled and emergency maintenance, repair and replacement of equipment, including any balance of plant equipment, painting, and cleaning, among others; (10) managing Planned Outages, Unplanned Outages and Forced Outages and restoration of power supply to the transmission grid; (11) coordinating business continuity and emergency planning and storm restoration and recovery in coordination with T&D Operator; (12) procuring and managing water or auxiliary power supply, as applicable; (13) maintaining and repairing fuel and water systems, including tanks, pumps, filters, and piping, as required; (14) procuring and managing the delivery and quality testing of fuel; (15) liaising with the T&D Operator or any of their assignees or successors regarding dispatch, dispatch planning and related T&D system matters and providing required information; (16) interfacing with and providing reports to regulators including PREB and with environmental compliance agencies such as the EPA, the Puerto Rico Department of Natural and Environmental Resources, the Occupational Safety and Health Administration and others, as may be required; (17) obtaining, complying with and maintaining licenses, permits, consents and the Consent Decree, as necessary; (18) providing periodic reports regarding programmed and non-programmed operations, maintenance, repairs, services and modifications performed and to be performed; (19) preparing for and assisting in, or subcontracting for and

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overseeing, the decommissioning of the relevant plants as outlined in the Integrated Resource Plan (including any future integrated resource plans) in coordination with PREPA/the T&D Operator, Owner and PREB; (20) participating in emergency planning and drills led by the T&D Operator, as needed; (21) conducting emergency planning and drills independent of T&D Operator; (22) assisting with the transition of the plants to third parties or to new uses (synchronous condensers, etc.) to the extent certain of the plants are removed from the O&M Agreement and (23) developing and maintaining a good neighbor program.

B. Day-to-Day Operation. Operator shall be responsible for the day-to-day safe operation of the Legacy Generation Assets, including start-up, load adjustments, active follow-up of operating parameters and alarms, and shut-down of the plants or units thereof as directed by the T&D Operator and in accordance with Operator's Operations and Maintenance Procedures.

C. Compliance with PREPA-Genco-Hydroco Operating Agreement. As agent for Owner, Operator shall perform its obligations under the PREPA-Genco-Hydroco Operating Agreement, including the System Operation Principles and the Agreed Operating Procedures included therein, and shall coordinate with T&D Operator, as agent for PREPA, as required thereunder, including by fulfilling the T&D Operator's instructions with regards to generation dispatch and other obligations set forth in the System Operation Principles and the Agreed Operating Procedures, in order to effectively and safely supply the T&D System with requested electric generation and other services.

D. Engineering Activities. Operator shall be responsible for engineering activities related to the safe operation and reliability of the Legacy Generation Assets, including: (1) analyses related to, and maintenance of records and standards for design and engineering, design standards, construction standards and related information, plant performance, reliability analysis, root cause analysis, equipment ratings and needs assessment; (2) managing an effective environmental, health and safety program; and (3) maintenance of an environmental, health, safety, regulatory compliance program and the documentation thereof.

E. Maintenance of Technical Documentation. Operator shall be responsible for maintenance of revisions to all drawings, specifications, construction manuals, equipment diagrams and other technical documentation related to the Legacy Generation Assets.

F. Fuel. Operator shall be responsible for procuring, transporting and managing the delivery and quality testing of Fuel, including natural gas, diesel (number 2 fuel oil) and number 6 fuel oil (including logistics, fuel testing and storage tank management), and approving invoices, as applicable and in accordance with existing and future fuel contract requirements, as an agent for Owner.

G. Planning, Environmental and Regulatory. Operator shall be responsible for (1) compliance with Environmental Law (including the Consent Decree), including emissions monitoring, recordkeeping, and reporting; (2) maintenance of documentation, timely submission of applications for permits and approvals, and acquisition of permits, approvals, and Easements as required for the Legacy Generation Assets operations; and (3) compliance with applicable regulatory and legislative requirements subject to operating constraints and Prudent Industry Practice. In performing these services and any other services under the Agreement, nothing shall



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require, or shall be construed as requiring, Operator to act as legal counsel to, or to provide legal advice or representation to, Owner.

H. Legal Services. Operator shall be responsible for (1) day-to-day legal responsibilities relating to the O&M Services, Decommissioning Services and Demobilization Services, in coordination with Owner and Administrator in accordance with processes set forth in this Annex IX (*Scope of Services*); (2) management of the Existing Litigation and any claims, lawsuits, litigation or similar proceedings arising from and after the Service Commencement Date, (3) collaborating with the T&D Operator to prepare, present, and defend current or future rate cases or other regulatory or legal matters as they relate to the Agreement, as well as preparing, presenting, and defending any non-compliance with local legislative requirements. In performing these services and any other services under this Agreement, nothing shall require, or shall be construed as requiring, Operator to act as legal counsel to, or to provide legal advice or representation to, Owner. For the avoidance of doubt, the responsibility for tax and securities law related advice as it relates to the Legacy Generation Assets will remain with Owner and Owner will continue to retain its own advisors to provide such services.

I. Insurance and Claims. Operator shall maintain the appropriate level of insurance as to cover claims that arise after executing the Agreement and following the Service Commencement Date, consistent with Prudent Industry Practices and with the requirements of the Agreement. As part of the Mobilization Plan, Operator shall develop a comprehensive insurance program, to be reviewed and approved by Administrator, which approval shall not be unreasonably withheld, delayed or conditioned. The insurance program shall be provided to PREB for its knowledge. Operator shall be responsible for preparing and submitting insurance claims (including claims that may have arisen prior to the Effective Date and/or the Service Commencement Date) on behalf of Owner as well as keeping Administrator timely informed of such claims processes.

J. Subcontracting. Operator shall evaluate opportunities for the subcontracting of any specific activities associated with this Annex IX (*Scope of Services*) that shall provide greater efficiencies and value to the operation of the Legacy Generation Assets and seek to implement such activities within budget and regulatory constraints and in accordance with the Agreement.

K. Good Neighbor. Operator shall conduct community outreach events (e.g., volunteer events, charitable contribution events, etc.) by region on a quarterly basis. All complaints received by PREB that are attributable to the Legacy Generation Assets shall be promptly resolved to PREB's reasonable satisfaction no later than thirty (30) Business Days after Operator receives notification of such complaint from PREB. Operator shall provide Administrator written quarterly reports with respect to any complaints received and Operator's resolution of such complaints.

L. Other. Operator shall be responsible for other activities necessary, appropriate or advisable to operate and maintain the Legacy Generation Assets in accordance with the Contract Standards, including cooperation, as specified in the Agreement, during Operator's performance of the O&M Services, Decommissioning Services, Mobilization Services and Demobilization Services under the Agreement, with third parties providing services to Owner with respect to Owner's provision of electric generation services, provided Owner shall impose similar obligations on such third parties to also cooperate with Operator.

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### II. Asset Management and Maintenance Services.

A. General. Operator shall be responsible for managing and maintaining all assets of the Legacy Generation Assets, including machinery, equipment, structures, improvements and condition assessment of the components of the Legacy Generation Assets, including the following: (1) development and implementation of asset management strategies and risk management and mitigation for combined technical performance, life cycle cost, safety and regulatory compliance; (2) real estate management, including of Easements, leases and agreements; (3) fleet and equipment management; (4) materials and services procurement in accordance with the process required by Applicable Law and inventory management; (5) Legacy Generation Assets security in accordance with Applicable Law and to protect the Legacy Generation Assets from vandalism, terrorism or other acts; (6) business continuity and emergency preparedness and planning; (7) warehousing of on and off-island capital and other spare parts and consumables; (8) fuel procurement, management and testing services; and (9) training and licensing, as applicable, of operators and maintenance technicians.

B. Inventory Control. Operator shall, consistent with the Contract Standards, the Agreement and this Annex IX (*Scope of Services*): (1) maintain an inventory of fuel, equipment, spare parts, capital spare parts, materials and supplies (appropriate for day-to-day operations and Emergencies), and shall maintain and document an inventory control program; (2) purchase, maintain and store inventory in a manner also consistent with the Legacy Generation Assets policies and procedures adopted from time to time by Operator and provided in writing to Owner and Administrator and the Legacy Generation Emergency Response Plan; and (3) complete, on an agreed-upon cycle count basis, a physical inventory and a condition assessment of the equipment, spare parts, materials and supplies.

C. Necessary Equipment and Systems. Operator shall, consistent with the Contract Standards, the Agreement and this Annex IX (*Scope of Services*), determine, acquire, deploy and maintain tools, equipment and Information Systems necessary to perform all O&M Services, Decommissioning Services, Mobilization Services and Demobilization Services under the Agreement.

D. Information Technology. Operator shall, consistent with the Contract Standards, the Agreement and this Annex IX (*Scope of Services*), be responsible for (1) providing information technology systems maintenance support and improvements in accordance with cybersecurity requirements that support network and day-to-day activities; and (2) developing and maintaining a business continuity plan in the event of natural, man-made or cyber-attack incidents. Operator shall periodically provide Administrator (with copy to PREB) and the T&D Operator managed Energy Control Center the most current versions of the business continuity plan.

### III. Government, Community and Media Relations.

A. General. Operator shall be responsible for (1) conducting government, community and media relations with respect to the management, operation and maintenance of the Legacy Generation Assets in accordance with the Communications Plan set forth in Annex V (*Communications Plan*) to the Agreement; and (2) staffing public events and presenting

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workshops, seminars and similar activities during normal business hours, evenings, weekends and holidays.

B. Communications. It is the Parties' intention that, to enable Operator to effectively communicate with the government officials regarding Legacy Generation Assets matters, Operator shall have direct responsibility for media and other public communications on all matters related to the Legacy Generation Assets, including communications with public officials, regulators and local municipalities and counties regarding storm preparation, management, coordination and response, programs and complaints and related matters. Accordingly, Operator shall determine all communications policies and procedures relating to its provision of O&M Services, Decommissioning Services, Mobilization Services and Demobilization Services under the Agreement in accordance with the Communications Plan set forth in Annex V (*Communications Plan*) to the Agreement. Nevertheless, Operator agrees that (1) during Emergency Operating Conditions as defined and described in the Operations and Maintenance Procedures inclusive of major events (e.g., Forced Outages and Declared Emergency or Major Disaster) or (2) if it takes actions in Operator's capacity as Operator, that could be reasonably be expected to have broader impacts on public safety and/or public health, Operator shall endeavor to keep Owner, Administrator and T&D Operator, and, as appropriate, other local, state, and federal government entities, informed and act in consultation with Owner, Administrator and T&D Operator. These communications shall be made in accordance with the Operations and Maintenance Procedures and the Communications Plan set forth in Annex V (*Communications Plan*) to the Agreement. Furthermore, Operator agrees that during a Declared Emergency or Major Disaster, Operator shall have certain responsibilities under the T&D Operator's incident command system.

C. Government Relations. Operator shall be responsible for coordinating, conducting and formulating communications with municipal, local, state and federal representatives and organizations relating to operation and maintenance of the Legacy Generation Assets and provision of generation-related services by Operator, including PREB, in accordance with the Communications Plan set forth in Annex V (*Communications Plan*) to the Agreement. For the avoidance of doubt, Operator's responsibilities hereunder shall not include any matters related to PREPA's debt obligations, including any obligations pursuant to federal tax or securities laws.

## IV. Testing, Reports and Records.

A. Annual Performance Test. Operator shall be responsible for conducting the Annual Performance Test for each Legacy Generation Asset, in coordination with the T&D Operator, Administrator and PREB, in accordance with the PREPA-Genco-Hydroco Operating Agreement. Each Annual Performance Test shall determine the Tested Capacity and Heat Rate for each Legacy Generation Asset for the current Contract Year. Operator shall document the results of such Annual Performance Test in accordance with Section IV.B(c) below, and shall promptly submit such results to Administrator, T&D Operator and PREB.

B. Other Reports and Records as Requested by Administrator. Operator shall be responsible for (1) preparing a monthly operations report; (2) producing and delivering to Administrator information as Administrator may reasonably request to determine Operator's performance under the Agreement; and (3) developing and maintaining a comprehensive document management program with records storage, retention and destruction guidelines and

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procedures, in accordance with applicable Commonwealth and federal guidelines and regulations, and as otherwise provided for under the Agreement.

**V. Finance and Accounting Services.**

A. General. Operator shall be responsible for all finance, accounting, budgeting, longer-term financial forecasting and treasury operations related to the Legacy Generation Assets, including the implementation of the activities set forth in Sections V.A through V.E of this Annex IX (*Scope of Services*). In the exercise of the responsibilities described in this Annex IX Section V (*Scope of Services—Finance and Accounting Services*), Operator may utilize Owner's existing accounting system.

B. Accounting and Reporting. Operator shall be responsible for accounting and reporting operations including the following activities:

1. Maintenance of a complete and separate set of financial and accounting records relating to the O&M Services, Decommissioning Services, Mobilization Services and Demobilization Services, in accordance with GAAP and other applicable standards (including with FERC's Uniformed System of Accounts, the 1974 Puerto Rico Electric Power Authority Trust Agreement and other accounting best practices);

2. Maintenance of a general ledger and all subledgers in accordance with Applicable Law regarding accounts necessary to support the preparation of monthly financial statements and management reports for Operator;

3. On a monthly basis until the expiration or earlier termination of the Mobilization Period, provision of budget to actuals analyses to explain the month's results with explanations;

4. Analysis of all accounts within the Operating Budget, Fuel Budget and Decommissioning Budget, on a plant by plant and monthly basis, providing variance analysis of and explanations for both actual period-to-period variances (on a quarterly basis) and budget versus actual variances (on a monthly basis) to the extent reasonably requested by Administrator;

5. (i) Performance of all accounting and reporting functions necessary to support the Legacy Generation Assets operations; (ii) the maintenance of the fixed assets records in accordance with PREB and other applicable regulatory or accounting requirements and (iii) performance of all reporting and recordkeeping functions necessary in connection with the performance and completion of the Decommissioning Services for the Legacy Generation Assets, including Operator's recommendations to commence Decommissioning Services for a Legacy Generation Asset, if any;

6. Separate accounting and reporting that may be required from time to time for any federal and Commonwealth grants received by Owner to the extent reasonable prior notice of any such grants obtained is provided to Operator;

7. Provision of accounting memorandum documenting procedures used in creating journal entries related to the Legacy Generation Assets;

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8. Accounting for and documenting the costs and revenues resulting from Operator's performance under the Agreement in accordance with GAAP and any other applicable accounting requirements as determined necessary by Administrator (including in accordance with FERC's Uniformed System of Accounts, the 1974 Puerto Rico Electric Power Authority Trust Agreement, and other accounting best practices, as applicable) in compliance with Section 6.3 (*Reporting: Audits*) of the main body of the Agreement;

9. Reconciliations (including bank account reconciliations), which shall be performed monthly, quarterly or annually based on the risk associated with the account being reconciled, in each case (i) if the month in which the reconciliation is being performed is a quarter-ending month (other than December), by the end of the subsequent month or (ii) if the month in which the reconciliation is being performed is a non-quarter ending month or December, within forty-five (45) days after the end of such month; and

10. Beginning in the first year of the Agreement, preparation from time to time as requested by PREB, but no less frequently than every three (3) years, of a depreciation study, the goal of which is to determine consolidated annual depreciation accrual rates for preparation of financial statements and factors that relate to the fair and timely recovery of capital invested in the Legacy Generation Assets.

C. Budgeting and Financial Forecasting. Operator shall be responsible for budgeting and longer-term financial forecasting operations, including the following activities:

1. Preparing and monthly monitoring of budgets necessary for operating expenses for the services provided by Operator under the Agreement;

2. Update the Fuel Budget on a quarterly basis to comply with Section 7.3(f) (*O&M Budgets – Quarterly Adjustments to Fuel Budget*) of the main body of the Agreement;

3. Analyzing monthly and year-to-date budget to actual variances, and explanations thereof and formulating financial projections based on the variance analyses;

4. Analyzing expenditure projections for the annual or multi-year period beyond the period of actual results;

5. Preparing and delivering costs budget input data for the annual budgeting processes, the Integrated Resource Plan and Owner's and Administrator's other long-range financial planning processes; and

6. Risk management operations consistent with enterprise risk management practices covering the potential risks involved in the conduct of the O&M Services, Decommissioning Services, Mobilization Services and Demobilization Services including the following activities: (i) managing counterparty credit risk, (ii) managing commodity market risk, and (iii) conducting a risk management program.

D. Auditing. Operator shall be responsible for auditing operations, including the following activities:

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1. Internal audit function to perform annual risk assessment related to the Legacy Generation Assets for the purpose of developing the appropriate risk-based annual audit plan as well as performing financial, regulatory and third-party contract compliance and operational audits and reviews, including review of the associated internal controls, based on the results of the annual risk assessment and associated annual audit plan;

2. Provision of all necessary information and assistance to Owner's external auditors in connection with their audit of the financial statements and underlying financial records maintained by Operator related to the services provided under the Agreement; and

3. Provision of copies of, and reasonable access to, the risk based annual audit plan referenced in Section V.D.1 of this Annex IX (*Scope of Services – Finance and Accounting Services – Auditing*); and the right of Administrator to inspect, during normal business hours and upon reasonable prior notice, internal audit reports and recommendations of Operator and management responses thereto; it being agreed, however, that the foregoing information shall be deemed to be confidential and shall therefore not be used by Owner or Administrator except with respect to any fraudulent conduct or willful misconduct identified in such reports and recommendations.

E. Other. Any other accounting and finance related activities necessary or advisable to support the operation and maintenance of the Legacy Generation Assets as Administrator may request from time to time, including:

1. Provision of information and data (both financial and operational) to support Owner's financing activities and the administration of Owner's and its Affiliates' debt service and required disclosure requirements;

2. Provision of assistance (including provision of information and data (both financial and operational)) to Owner and Administrator in connection with the preparation of reports and other documents to satisfy Owner's reporting requirements including: quarterly and annual (year-end) financial reporting; monthly and annual federal agency reporting requirements; PREB reporting requirements, Budget Reconciliation Act of 2017 and other federal and Commonwealth stimulus or funding program reporting requirements; Department of Energy reporting requirements; and filings relating to the O&M Services, Decommissioning Services, Mobilization Services and Demobilization Services in compliance with Applicable Law, and in accordance with Section 6.3 (*Reporting: Audits*) of the main body of the Agreement; and

3. Record keeping in compliance with Applicable Law.

## VI. Emergency Response.

A. Curtailments and Shutdowns. If the generation of electricity through the Legacy Generation Assets is temporarily reduced, curtailed or shut down for any reason (except to the extent such reduction, curtailment or shut down is directed by T&D Operator pursuant to a T&D or load reduction directive), Operator shall, with due consideration of its responsibility for safety and plant reliability, as promptly as possible, advise Owner, Administrator and T&D Operator (and other Stakeholders as defined in the Legacy Generation Emergency Response Plan) as to the nature, reason and probable duration thereof and the expected effect thereof on the operation of

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the Legacy Generation Assets. Such notices shall be given as provided in this Annex IX (*Scope of Services*). Any announcement concerning such events made to the public or the media shall be made by Operator in accordance with the provisions of the Legacy Generation Emergency Response Plan and Section III of this Annex IX (*Scope of Services*).

B. Implementation of the Legacy Generation Emergency Response Plan. Operator shall jointly develop with T&D Operator (in consultation with Administrator and subject to PREB approval), and implement, a Legacy Generation Emergency Response Plan that addresses, disaster recovery and emergency response and restoration, and all necessary emergency response, business continuity, reporting and communication functions relating to the Legacy Generation Assets, and coordinating such plans with any applicable plans of Owner, Administrator, T&D Operator and other service providers for business continuity and disaster recovery, including response, reporting and public communications relating to storms, other unusual weather occurrences and other Emergencies as follows, including the following activities:

1. (i) Timely reporting to such Governmental Bodies as may be necessary, appropriate or advisable of such emergency conditions including timely regular updates as to the courses of action taken in response thereto or in anticipation thereof and progress made in responding to such emergency conditions and (ii) periodic reporting to Administrator of such emergency conditions as necessary or appropriate to permit Administrator to exercise proper Oversight of Operator's response to emergency conditions;

2. Weather monitoring and mobilization of Operator or Subcontractor's workforce in connection with anticipated storms and other electric generation emergencies;

3. Media, fire, police and government coordination (municipal, state and federal);

4. Facility condition monitoring;

5. Reporting to Administrator of the condition of each Legacy Generation Asset after a Forced Outage, Declared Emergency or Major Disaster, and the repairs and replacements, if any, needed to restore each such Legacy Generation Assets to pre-emergency conditions;

6. Repair and replacement of damaged components of the Legacy Generation Assets, including due to Forced Outages or Declared Emergencies or Major Disasters; provided that to the extent the reasonable and documented costs and expenses required to perform such repairs or replacements would result in the Pass-Through Expenditures with respect to O&M Services for any Contract Year to exceed the O&M Budget for such Contract Year, such repairs or replacements shall require Administrator approval;

7. Employee and public safety activities;

8. At the request of Administrator, restoration of the Legacy Generation Assets to pre-emergency conditions; and

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9. Conducting periodic drills, including as required by Applicable Law and in accordance with the PREPA-Genco-Hydroco Operating Agreement.

**VII. Maintenance.**

A. Generally. Operator shall perform all normal and ordinary maintenance (including any major maintenance) of all property constituting the Legacy Generation Assets, including machinery, structures, and electrical system components, keep the Legacy Generation Assets in operational condition and repair, in a neat and orderly condition and in accordance with the Contract Standards. This provision includes the machinery/tools used for the daily operation of the Legacy Generation Assets. Operator shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, consumables and services that are necessary for the normal and ordinary maintenance (including any major maintenance) of the Legacy Generation Assets consistent with Contract Standards and their vehicle/machinery assets and conduct predictive, preventive and corrective maintenance of the Legacy Generation Assets as required by the Contract Standards.

B. Maintenance Logs. Operator shall keep maintenance logs in accordance with the Contract Standards, which shall be available for review by Administrator.

C. Safety and Security. Operator shall maintain the Legacy Generation Assets with due regard for employee and public health and safety at least consistent with Contract Standards, including the following:

1. Establishing and prioritizing workplace safety initiatives, including systematically evaluating all Legacy Generation Assets sites to identify and address any immediate safety issues;

2. Taking reasonable precautions in the performance of the O&M Services, Decommissioning Services, Mobilization Services and Demobilization Services for the health and safety of all persons working at the Legacy Generation Assets, to prevent employee injury, damage, injury or loss to the Legacy Generation Assets and to other Legacy Generation Assets property;

3. Establishing and enforcing all reasonable safeguards for health and safety and protection, including fencing, posting danger signs and other warnings against hazards and applicable safety laws and regulations;

4. Giving all notices and complying with all Applicable Law relating to the health and safety of persons or property or their protection from damage, injury or loss;

5. Designating qualified and responsible employees whose duty shall be the supervision of health and safety, the prevention of fires, accidents spills, explosions and high energy piping failures and the coordination of such activities as shall be necessary with federal and local officials;



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6. Designing and implementing cybersecurity measures in accordance with Contract Standards and in the manner specified and subject to the provisions set forth in the main body of the Agreement; and

7. Developing and maintaining a physical security program in accordance with application regulations/law for the protection of the Legacy Generation Assets critical infrastructure, other assets and persons.

**Schedule 1 to Annex IX**

**Safety and Hazardous Materials Procedures Manual Outline**

**GENERA PR LLC: Outline of Safety HAZMAT Procedures Manual**

- Genera PR Safety and Environmental Commitment
- Assignment of Roles and Responsibilities
- Coordination with Other Service Providers
- Community Awareness and Engagement
- Engagement with Regulatory Agencies
- Regulations and Consensus Standards
  - OSHA
  - NFPA
  - EPA
  - DOT
  - Puerto Rico Territory
  - Local
- Definitions
- Hazard Identification and Management/Mitigation
- Work Permits
- Incident Reporting, Investigation, and Recordkeeping
- Health, Safety, and Environmental Training
- Audits and Inspections
- Hearing Conservation
- Hazard Communication
- Contractor Safety
- Emergency Response and Business Continuity
- Fire Protection, Prevention, and Response / NFPA59A
- Hearing Conservation
- Respiratory Protection
- Electrical and Arc Flash Safety / NFPA70E
- Hazardous Materials
  - List of Materials (including Quantities)
  - Reporting Requirements
  - Storage and Handling
  - Containment / Spill Control
  - Security
  - Fire Protection
  - Transport
  - Accidental Release
    - Emergency Contacts
    - Response
    - Recovery
  - Threats

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- Natural Disasters
  - Terrorism
  - Disposal / Waste Characterization / Waste Management
- Lead & Asbestos
- Personal Protective Equipment
- Machinery and Machine Guarding
- Safety Signs & Tags
- Control of Hazardous Energy (lock-out-tag-out)
- Confined Space Entry
- Walking and Working Surfaces
- Working at Heights / Fall Protection
- Powered Industrial Trucks
- Management of Change
- Document Control
- Appendix
  - Forms
  - Checklists
  - Templates
  - Drawings
  - Area Studies

## Annex X

### Operator Employment Requirements

Prior to commencing employment with Operator (or any affiliate thereof), all prospective employees will be expected to comply with the following requirements:

- 1) Prospective employees will be required to apply for candidacy in accordance with Operator's applicant processes, including applying to job requisitions within Operator's applicant tracking system and participating in any associated screening/assessment or interview processes.
- 2) Candidates shall be evaluated for prospective employment with Operator based on their prior experience, education and/or training in conjunction with the requirements for the role as posted in the applicable job description. Candidates may also be asked to participate in associated interview conversations with the Operator's Talent Acquisition team or affiliated 3rd-party HR as part of their selection process.
- 3) Prospective employees who are selected for employment will be required to undergo a criminal background check, which may also include verifications of education and prior employment and pre-employment drug testing.
- 4) Prospective employees of Operator will be required to comply with the company's policies regarding vaccination against COVID-19 and will be required to provide proof of COVID vaccination prior to commencement of employment.
- 5) Prospective employees who are selected for employment will also be required to provide documentary evidence of their authorization to work in Puerto Rico, and their continued employment with Operator will remain contingent upon maintaining such work authorization (in accordance with applicable laws).
- 6) Prospective employees who are selected for employment will be required to enter into an employment agreement with Operator (or its affiliate). Such agreement will set forth the individual employment terms for such prospective employee, including without limitation, title, employment commencement date, probationary period, location of employment, and compensation details (including base salary, additional discretionary bonus eligibility, etc.). Such employment agreement will also contain other terms and conditions of employment that apply to all Operator employees, including affirmations to comply with all Operator policies and procedures, acknowledgement of "at will" employment relationship, and agreement to comply with Operator's policies regarding providing notice, confidentiality, protective covenants, arbitration, and other miscellaneous terms.
- 7) Prospective employees who are selected for employment will also be required to complete all associated tax forms and other associated payroll and benefit information to ensure they can commence employment and be paid by Operator in accordance with all applicable laws (including being subject to reporting of income and tax withholding as applicable).

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- 8) As part of their onboarding process, prospective employees will also be required to acknowledge receipt of all other Operator policies and procedures, including without limitation, Operator's Code of Conduct and Employee Handbook, anti-bribery & anti-corruption policies, policies regarding the protection of confidential information, insider trading policies, gifts & entertainment policies, social media policies and conflict of interest policies. In addition, their continued employment with Operator will be contingent upon continued adherence to such policies and procedures.
- 9) Certain employees of Operator, depending on their role, may also be required to submit to and/or participate in specific training, certification courses, and/or other related processes in compliance with applicable laws or regulations. Such employees will be notified of such requirements, if applicable, as part of Operator's application and candidate selection process. Operator has identified 98 critical plant-level positions; a listing of Operator's current Critical Employee Positions is listed in the table below. The critical position counts shown by plant include:

<b>Operator's Critical Employee Positions</b>		
<b>Site</b>	<b>Headcount</b>	<b>Critical Positions</b>
<b>San Juan Plant</b>		
	2	Electrician /Instrument and Controls Technician
	4	Shift Supervisor
	8	Control Room Operator
	1	Work Control Center Supervisor
	2	Laboratory Workers
<b>Total Critical Employee Positions for San Juan Plant</b>	<b>17</b>	
<b>Palo Seco Plant</b>		
	2	Electrician /Instrument and Controls Technician
	4	Shift Supervisor
	4	Control Room Operator
	2	Work Control Center Supervisor
	1	Laboratory Workers
	4	Peaker Operator
<b>Total Critical Employee Positions for Palo Seco Plant</b>	<b>17</b>	
<b>Aguirre Plant</b>		
	2	Electrician /Instrument and Controls Technician
	4	Shift Supervisor
	8	Control Room Operator

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Operator's Critical Employee Positions		
Site	Headcount	Critical Positions
	2	Work Control Center Supervisor
	4	Laboratory Workers
<b>Total Critical Employee Positions for Aguirre Plant</b>	20	
<b>Costa Sur Plant</b>		
	2	Electrician /Instrument and Controls Technician
	4	Shift Supervisor
	4	Control Room Operator
	2	Laboratory Workers
	1	Work Control Center Supervisor
<b>Total Critical Employee Positions for Costa Sur Plant</b>	13	
<b>Cambalache Plant</b>		
	2	Shift Supervisor
	8	Combustion Turbine Technician
	1	Work Control Center Supervisor
<b>Total Critical Employee Positions for Cambalache Plant</b>	11	
<b>Mayaguez Plant</b>		
	2	Shift Supervisor
	8	Combustion Turbine Technician
<b>Total Critical Employee Positions for Mayaguez Plant</b>	10	
<b>Peakers</b>		
	2	Operations Supervisor
	8	Combustion Turbine Technician
<b>Total Critical Employee Positions for Mayaguez Plant</b>	10	
<b>Grand Total</b>	98	

**Schedule 1 to Annex X**

**Owner Employee Interview Plan**

It is expected that the vast majority of plant Operators and Maintenance Technicians will come from the existing Owner workforce. Recruitment will focus on plant skilled employees and will involve the multi-skilling philosophy, trying to recruit and retain as much expertise from the Owner's current staff as possible.

Operator shall offer employment to existing fulltime plant Owner Employees who were employed and in good standing as of June 30, 2022; provided that such employees complete and satisfy customary background checks.

Operator shall give priority in hiring to any other Owner Employee who meets Operator's stated requirements for employment.

Existing employees will not be required to apply on-line. Employees may not be guaranteed a position to remain in their existing role.

Offers of employment shall remain open for a period of thirty (30) Business Days. Any such offer that is accepted within such thirty (30) Business Day period shall thereafter be irrevocable until the Service Commencement Date.

The Operator shall provide a detailed schedule for the interview plan upon Service Commencement.

**Annex XI**

**Mobilization Hourly Fully Allocated Rates**

The amounts of the Mobilization Hourly Fully Allocated Rates are shown in the chart below.

<b>Employee Category</b>	<b>Hourly Rates (US\$)</b>
Information & Technology	430
Human Resources – Systems	370
Human Resources – Human Capital	440
Human Resources – FTEs	405
Contractor Project Management	420
Finance – Operations	420
Regulatory	440
Permitting	477
Legal	712
Communications	375



## Annex XII

### Pass-Through Expenditures

Pass-Through Expenditures shall be the types of reasonable and documented costs and expenses incurred and documented by Operator in the course of providing O&M Services, Decommissioning Services, Mobilization Services and Demobilization Services (without markup for Operator profit) or otherwise performing its obligations hereunder, except to the extent any such reasonable and documented costs and expenses are determined to be Disallowed Costs in the manner set forth in Section 7.7 (*Disallowed Costs*) of the main body of the Agreement. For purposes of the Agreement, including this Annex XII (*Pass-Through Expenditures*), any reference to “incurred under” a Budget, “covered by” a Budget, “included in” a Budget or similar phrases shall include any costs and expenses related to a line item set forth in such Budget and any materials or services procured in connection therewith. For the avoidance of doubt, costs and expenses incurred by Operator prior to the Effective Date shall not be deemed to be Pass-Through Expenditures. Capitalized terms used but not defined in this Annex XII (*Pass-Through Expenditures*) have the respective meanings set forth in the Agreement.

Except as otherwise provided in the Agreement, Pass-Through Expenditures shall include the following items:

1. wages, salaries, bonuses, employer contributions and premium payments relating to pension, retirement and employee medical plans (including employer contributions for Hired Former Employees of Owner that elect to continue participating in Owner’s defined benefit retirement plan), employer contributions and premium payments relating to workmen’s compensation, non-occupational disability and other mandatory employment related insurance and taxes, vacation, sick leaves and other mandatory leaves with pay, overtime and meal period compensation and associated benefits, severance and other post-employment benefits incurred by Operator in performing the O&M Services, the Decommissioning Services, Mobilization Services and Demobilization Services, excluding any such costs resulting from noncompliance by Operator with wage and hour, discrimination, wrongful dismissal or with any other applicable labor or employment related legislation, as well as the costs of defending such claims if such claims are found to be true by a final non-appealable judgment or administrative determination by a court of competent jurisdiction or other Governmental Body (including costs arising out of or related to additional compensation, damages, penalties, court costs and attorney’s fees but excluding, for the avoidance of doubt, any costs incurred by Operator, including defense related costs, which are incurred at the direction or with the consent of Administrator);
2. costs incurred and documented by Operator in performing the O&M Services, Decommissioning Services, Mobilization Services and Demobilization Services, including costs of all subcontracted and seconded employees, costs and expenses of all goods and services (including all materials, supplies, spare parts, vehicles, equipment rental, other transportation, freight, purchased services, training, Subcontractor costs, employee per diems, administrative costs such as dues, subscriptions, meals, office supplies, postage, rent, utilities and other costs), repair and maintenance costs, and the costs (including fees)

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- incurred or payable with respect to banking services and accounts, cash management, leases, equipment rentals, easements, licenses, permits, consents and similar instruments;
3. costs incurred with respect to professional services, including legal, engineering, accounting, financial, auditing, information technology, telecommunication and other contracted services;
  4. costs incurred with respect to the security of physical assets, information technology, operational technology and processes;
  5. claims, lawsuits, litigations, Losses, fines, penalties, reasonable and documented costs and expenses, judgments, liens, settlements, appeals, disbursements and similar expense (including reasonable and documented fees of external counsel; provided that Operator shall not be required to provide documentation that would waive any privilege between Operator and its external counsel), incurred in connection with the performance of the O&M Services and the Decommissioning Services, to the extent such fines, penalties, or other similar payments or charges have not been imposed as a result of Operator's violation of Applicable Law other than circumstances that arise out of violations or circumstances that arose prior to the Effective Date, or are otherwise subject to an indemnity from Owner to Operator under this Agreement;
  6. costs related to Forced Outages, Force Majeure Events and Owner Fault;
  7. costs associated with the Legacy Generation Emergency Response Plan, and the other Services Documentation required under the Agreement;
  8. any Tax related to Owner-owned, leased or licensed assets or revenues, and costs incurred in connection with any tax audits of Owner;
  9. any Commonwealth sales or use taxes (including the additional taxes of Sections 4210.01 and 4210.02 of the Puerto Rico Internal Revenue Code of 2011 (PRIRC)), municipal sales or use taxes, Commonwealth excise taxes, municipal license taxes, municipal excise taxes, and any other Taxes imposed by the Commonwealth, a municipality or any other Governmental Body on Owner or Operator, if Operator is acting on behalf of Owner pursuant to the Agreement, to the extent that Owner becomes subject to the payment of such taxes; provided that any (i) income taxes imposed on Operator by the PRIRC or Act 29, or (ii) other taxes imposed on Operator as a result of the establishment of its operations in the Commonwealth or the continuation thereof (including sales and use taxes and excise taxes on goods or services that are not required to be acquired by Operator on behalf of Owner for the performance of the O&M Services and the Decommissioning Services under the Agreement) shall not be Pass-Through Expenditures;
  10. any municipal construction excise taxes related to construction work performed by Operator in connection with the O&M Services and the Decommissioning Services;
  11. costs to obtain and maintain in effect Required Insurance, including premium, claims and deductible payments;

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12. costs incurred in connection with Intellectual Property, including licensing of Intellectual Property for use in connection with this Agreement;
13. costs incurred in connection with data security, including the implementation, operation and maintenance of a cybersecurity program;
14. costs incurred in connection with Operator's performance serving in the role of the operator of the Legacy Generation Assets, including the services set forth in Section I.C of Annex IX (*Scope of Services*) to the Agreement;
15. costs of compliance with PREB or other applicable regulatory requirements to which Owner or Operator is subject;
16. costs incurred in connection with branding and customer and public communications;
17. costs incurred in connection with Owner's community service programs and community engagement, including the services and resolution of complaints pursuant to Section I.K of Annex IX (*Scope of Services*) to the Agreement;
18. costs incurred in connection with the administration and performance of the Facility Contracts including as required by Section 5.2 (*Facility Contracts*) in the main body of the Agreement;
19. Fuel Costs incurred pursuant to approved and executed fuel supply agreements for the Legacy Generation Assets; and,
20. stipulated penalties under the Consent Decree or any similar arrangement that may be entered into in the future.

## Annex XIII

### Insurance Specifications

- I. Operator shall purchase and maintain, on Owner's behalf, the following insurance coverage for the benefit of Owner from the Service Commencement Date and for the remainder of the Term thereafter, without limitation:
- A. property damage, business interruption coverage and extra expense coverage for the all Legacy Generation Assets covering direct damage from all perils (subject to standard and reasonable exclusions imposed by insurers), which shall, among other things, (i) comply with any requirements resulting from a Legacy Generation Asset's receipt of federal funding and (ii) provide at least US\$550 million in coverage or the minimum amount of property insurance required in connection with the Legacy Generation Asset's receipt of federal funding, whichever is greater; provided that coverage shall have no more than a US\$2 million per occurrence deductible;
  - B. primary and excess general liability insurance of not less than US\$75 million per occurrence and in the aggregate with a primary general liability deductible or self-insured retention of no more than US\$ 1 million;
  - C. cyber insurance with limits of not less than US\$20 million, and a deductible or self-insured retention of no more than US\$1 million, for first and third-party losses, liabilities, judgments, settlements, lawsuits, regulatory actions, remediation and other costs or damages arising out of or resulting from any Cybersecurity Breach relating to the operation of the Legacy Generation Assets or non-compliance with Applicable Law relating to privacy or data protection, including coverage for breach response costs, PCI-DDS assessments, ransomware and denial of service, property damage and business interruption, and extra expense, as well as third-party claims and investigations arising out cyber incidents, including any negligent or otherwise wrongful acts or omissions by Operator or any employee or agent thereof;
  - D. pollution legal liability insurance covering third-party bodily injury, property damage and other losses caused by pollution during the Term with limits of not less than US\$5 million per occurrence and US\$25 million in aggregate; provided that coverage shall include environmental cleanup, remediation, transportation and disposal;
  - E. boiler and machinery insurance with at least US\$200 million in limits per accident, with repair and/or replacement included; at least US\$10 million in debris removal limits; and at least US\$5 million in additional extra expense limits; provided that coverage shall (i) be comprehensive and (ii) cover boilers, pressure vessels, electrical machines including air conditioning, refrigeration equipment, electrical apparatus and electronic data processing equipment including production machines;
  - F. commercial auto insurance, providing at least US\$10 million in coverage per accident for liability, medical payments, and physical damage;

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G. crime insurance providing limits of at least US\$10 million in coverage per incident and in the aggregate, and covering employee dishonesty, forgery or alteration, dissolution of assets, computer fraud fund transfer, theft of client property, and credit card coverage;

H. builder's risk/installation floater insurance covering losses arising out of Operator's and or Operator's subcontractors' construction, maintenance or repairs to the infrastructure of any Legacy Generation Asset, including capital expenditures pursuant to the Agreement; provided that limits for such coverage for each project shall be in amounts consistent with market practice and the magnitude of each construction project;

I. to the extent not duplicative of other insurance coverage obtained in accordance with this Annex XIII (*Insurance Specifications*), protective liability insurance for Owner's contractors with a limit of not less than US\$2 million per occurrence, including coverage for bodily injury and/or property damage claims arising out of negligent acts or omissions of independent contractors or subcontractors of Operator;

J. management liability/Employment Practices Liability ("EPL")/fiduciary liability coverage, initially including at least US\$25 million in wrongful acts coverage for Owner and directors and officers of Owner, and US\$5 million in fiduciary liability and EPL coverage; the requirement for \$25 million in wrongful acts coverage will only be in place until Administrator determines that \$65 million in coverage becomes available on commercially reasonable terms; and

K. business travel accident insurance, providing at least US\$150,000 in coverage per accident and at least US\$3 million in aggregate limits.

Operator shall be listed as an additional named insured on all aforementioned coverages, and Operator shall provide evidence of coverage through additional insured endorsements on or before the Service Commencement Date. Moreover, all the aforementioned coverages shall apply on a primary and non-contributory basis.

II. In addition to and separate from the foregoing, Operator shall maintain, on its own behalf, the following insurance coverage from the Service Commencement Date and for the remainder of the Term thereafter, without limitation:

A. Commonwealth of Puerto Rico's Workmen's Compensation Insurance (as required by the Workmen's Compensation Act 45-1935 of the Commonwealth of Puerto Rico), employer's liability insurance and all other employee required insurance; and

B. fiduciary liability insurance, providing limits not less than US\$1 million per claim and in the aggregate; the \$1 million limit shall only apply until such time as Operator's plan asset values increase and support a higher coverage amount; Operator shall continue to increase the coverage amount from the \$1 million as plan asset values increase until such time as plan asset values support a coverage amount of \$5 million; and

C. professional liability insurance, with limits of not less than US\$5 million per occurrence and US\$5 million in the aggregate, covering work performed by any architects, engineers, project managers, construction managers or other professional consultants

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pursuant to the Agreement. In addition, any architects, engineers or other consultants engaged by Operator with respect to any construction project undertaken by Operator pursuant to the Agreement shall maintain separate coverage with limits of not less than the completion cost of the construction project undertaken. When any policies purchased pursuant to this paragraph are renewed or replaced, the retroactive date in any new or replacement policy shall coincide with or precede the start of work in connection with the Agreement and any claims-made policy that is not renewed shall have an extended reporting period of at least six years.

**Annex XIV**

**Termination Fees**

**I. Operator Termination Fee**

<b>Contract Year</b>	<b>Operator Termination Fee</b>
<b>1</b>	US\$45,000,000
<b>2</b>	US\$45,000,000
<b>3</b>	US\$45,000,000
<b>4</b>	US\$45,000,000
<b>5</b>	US\$45,000,000
<b>6</b>	US\$45,000,000
<b>7</b>	US\$45,000,000
<b>8</b>	US\$45,000,000
<b>9</b>	US\$45,000,000
<b>10</b>	US\$45,000,000

**II. Owner Termination Fee**

<b>Contract Year</b>	<b>Owner Termination Fee</b>
<b>1</b>	US\$45,000,000
<b>2</b>	US\$45,000,000
<b>3</b>	US\$45,000,000
<b>4</b>	US\$45,000,000
<b>5</b>	US\$45,000,000
<b>6</b>	US\$45,000,000
<b>7</b>	US\$45,000,000
<b>8</b>	US\$45,000,000
<b>9</b>	US\$45,000,000
<b>10</b>	US\$45,000,000

## Annex XV

### Decommissioning Plan

The Decommissioning Services shall include Mobilization, Stabilization, Staffing Support, and Demolition. Plants to be decommissioned will be determined in accordance with the Generation O&M Agreement. PREB will approve the final decommissioning plan proposed by the Operator, as well as the budget and timeline. Post PREB approval the Operator will implement and execute the PREB approved plan.

Preparing for successful decommissioning includes planning for transition of the associated human resources. The PREB approved decommissioning plan will allow for targeted personnel training and communication that will facilitate optimal employment transition opportunities.

Post plan approval decommissioning services will generally consist of:

- Asset Assessment
- Mobilization of resources
- Engagement with local communities and other government agencies, and the media
- Stabilization: Determine which Legacy Generation Assets require stabilization before other activities proceed; identify, negotiate and modify environmental permits as needed for stabilization and as relevant; demolition stages; identify waste remediation activities; negotiate terms with agencies and assign consultant and existing personnel to first-year activities
  - Create a safe work environment at the Legacy Generation Assets
  - Identify key areas around the Legacy Generation Assets, that may need to be placed in a safe shutdown condition
  - Develop HSSEQ management plans for stabilization and monitoring the plansStabilization may include the beginning of longer-term remediation activities that may extend to demolition and operations
- Staffing Support: Contract for staffing support for HSSEQ activities during the stabilization phase to ensure that adequate resources will be available during Demolition activities
  - The majority of personnel supporting the Decommissioning Services will be Operator's employees and contract personnel.
- Demolition: Develop HSSEQ management plans for activities, monitoring the activities, and following HSSEQ processes activities for safe work
  - Currently Operator understands that the PREB will approve the standards to which decommissioning will be done to.



## Annex XVI

### Demobilization Plan

#### 1 Development of a Demobilization Plan

Operator shall develop a Demobilization Plan. The Demobilization Plan shall enable the seamless, safe, and effective transfer of the Legacy Generation Assets to Owner, Administrator, or their successor operator, or custody of a decommissioned Legacy Generation Asset for future use. The Operator's principal objective shall be to complete any demobilization activities in the time frame and on the terms that are most suitable to Owner and Administrator in a way that will achieve an orderly handover or return of the Legacy Generation Assets. The Demobilization Plan shall address:

- Preparation of required reports
- Transition of operating employees
- Transfer of operations and maintenance knowledge
- Coordination for transfer of environmental approvals
- Review of applicable contracts

##### 1.1 *Demobilization Process*

Operator shall formulate an approach to demobilization that will transfer either operation of the Legacy Generation Assets to Owner, Administrator or their successor operator, or the custody of a site that has been decommissioned and is ready for further use consistent with the long-term objectives of Owner and Administrator. The approach and scope of work for the demobilization shall vary depending on the nature of the activity at the assets at the time of demobilization.

##### 1.2 *Required Reports*

Upon receiving the notice of Demobilization, Operator shall arrange for meetings between its management and permitting teams and those for the Owner, Administrator and the successor operator to agree upon and make arrangements to share and transfer any operating procedures and important documentation. The steps shall include familiarizing the successor operator with all of the inventory and related records that are necessary to realize an orderly transition, or a summary of the decommissioned site, particularly including any areas of the property that may be subject to long-term restrictions on use or other similar covenants that run with the land as a result of the remediation aspects of the decommissioning process.

Prior to meetings with Administrator, Owner or any projected successor, Operator shall prepare reports detailing the status of all Generation Assets and Legacy Generation Sites, their condition and all notifications related to the transfer or, or notices required by Governmental Approvals required for the operation of the Legacy Generation Sites.

### 1.3 *Transition of Operator Employees*

The Demobilization Plan shall include a process for assisting employees with either transitioning to a new position elsewhere in the workforce or retraining for those employees whose jobs will be eliminated by the Operator demobilization. This plan shall also provide options for qualifying employees to sign on with any successor operator or to receive severance and training upon termination. Specifically, Operator, throughout the term of the O&M Agreement, shall establish an approach to multi-skilling of the workforce in order to maximize the potential for transition to the successor operator, to other power plants, or other industry opportunities. Operator shall work with union representation and adhere to local labor laws throughout the transition process. Operator shall place heavy emphasis on communication, focusing on timing, messaging, and respecting the various elements of the transition process, including, among others, benefits coordination, severance planning, and placement services.

Operator shall have a Labor Relations team as part of a larger demobilization team to focus on reviewing workforce background and facilitating employee transition. Along with the Operations team, the Labor Relations team shall be involved in any needed orientation of employees of the Owner, Administrator or the successor operator with respect to the operation of the equipment to ensure a smooth and efficient handover of responsibilities. This team shall also explore and be knowledgeable about opportunities for re-training of employees who will lose their jobs as a result of the termination and the demobilization.

### 1.4 *Transfer of Operations and Maintenance Know-How*

Operator shall transfer operations and maintenance know-how of the Legacy Generation Sites to any new operator or to Owner. This process shall entail meetings to review and confer about important topics such as maintenance philosophy, the roles and uses of subcontractors in the operation and maintenance of the plants. Operator shall seek to facilitate the continued operation of the Legacy Generation Assets in an orderly manner that minimizes impacts to the efficient operation of the units from the transition. To the extent that the Legacy Generation Assets are no longer in operation and have been decommissioned already, Operator shall assist Owner and Administrator in realizing the maximum value from the sale of any equipment, assets or supplies remaining at the site that are no longer needed for the Legacy Generation Assets. Operator shall be guided by an understanding of the remaining useful lifetime of other Legacy Generation Assets and use such information to determine whether employees, equipment and supplies can be efficiently transitioned to those other sites. The functional area leads from Operator shall review the information with the functional area leads of the successor operator, assigning and completing action items as necessary to assure a smooth and thorough transition.

### 1.5 *Coordinate Transfer of Environmental Approvals*

Functional leads from Operator shall meet with representatives of Administrator, Owner or the designee to identify and review all Governmental Approvals and set out a course of action to transfer the Governmental Approvals to Administrator, Owner, or the designee as the permittee or co-permittee on the permits. This effort shall entail joint meetings with the regulators to discuss the transition. Where the demobilization involves a Legacy Generation Asset for which operation and decommissioning has been completed, Operator shall review with Owner, Administrator or

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their successor operator the nature and extent of any obligations that the remaining permits or regulations require and how to achieve closure under these permits or regulatory programs. Operator may engage a subcontractor and/or legal support team to assist with the process of transferring such responsibilities and all related documentation to the Owner, Administrator or their successor operator.

### **1.6 *Review of Applicable Contracts***

The Operator shall meet with their counterparts from Administrator, Owner or the designee to review the key contracts and discuss their assignment or termination. To the extent that the Administrator, Owner or the designee may want to maintain any of these contracts, then Operator shall work to obtain agreement for the transfer of such contract to the new counterparty. Operator shall work with the Owner, Administrator or successor operator to ensure that the key responsibilities under the transferrable contracts have been identified and will be fulfilled after the transfer as well as an orderly closing out and transferring over of invoicing responsibilities, and transferring of all electronic and paper records. The Operator and all parties involved shall be aware of and work towards a set date for transfer so that all third parties can be aware of the appropriate points of contact moving forward and to ensure that settlement of all outstanding balances has occurred before such date.

## **2 *Scope and Estimated Costs***

Demobilization costs and durations are dependent upon the size of the site, number of units, technology of the units and the remediation needs of the site. Operator shall submit its estimate for all sites to be demobilized, whether they are smaller sites that may take just a few months to larger sites that may take longer, after taking into account any environmental remediation needed and transfer of any permits.

### **2.1 *Handover and Relocation of Equipment, Vehicles, or Other Materials***

Prior to any handover, Operator shall verify that all equipment has undergone the required inspections and/or maintenance procedures and shall inventory and locate all spare parts existing at the time of demobilization. Operator shall consolidate and prepare the transfer of all documentation for the equipment, including operating manuals (OEM and Operator produced O&M procedures), inspection records, certifications, maintenance history, compliance records, permits, and registrations, among others. Operator shall ensure the smooth transition of any existing warranties, warranty claims, and service agreements to Owner, Administrator or its successor operator. For equipment, vehicles, or other materials existing at a Legacy Generation Asset that was, or was in the process of being decommissioned, Operator shall work with the Owner, Administrator, or successor operator to transfer them for repurposing at other Legacy Generation Assets in order to preserve the best value for the customer, or to work with the Owner, Administrator, or successor operator to arrange for the liquidation of these items in a manner that would help Owner to realize the greatest amount of proceeds from their sale. For situations where such equipment or associated activities are in use at Legacy Generation Assets that remain in operation at the time of demobilization, Operator shall ensure that they are part of the operations to be transferred to Owner, Administrator or its successor operator.

## 2.2 *Waste Disposal and Site Remediation*

Operator shall assess all Legacy Generation Assets for signs of contamination during initial inspections to determine the need for stabilization. Where evidence of contamination is found, environmental subcontractors shall be engaged to formally investigate the type and extent of contamination, propose remediation activities and to work with the relevant agencies to execute those activities, resulting in closure of the issues to the extent appropriate for the area remediated. Operator shall make efforts such that many of these activities would at least be underway and, in some cases, completed by the time of demobilization. In the event that these tasks have not been completed by the time of demobilization, the demobilization efforts shall focus on the transfer of these responsibilities to the successor operator. Operator shall ensure that the successor operator is aware of the status and nature of the remediation and the associated requirements so that the successor operator can continue the remediation activities. During the demobilization process, Operator shall take an inventory of existing fuels, liquids, tanks, chemicals and hazardous materials at the site, ensure proper labeling and storage, and coordinate with the successor operator for the safe transfer of all such materials. For any regulated substances that are not part of the materials to be transferred, they shall be reused if possible and, if not, arrangements for their disposal or treatment shall be made at authorized locations. All transfers of fuel and disposal of hazardous material shall be carried out in compliance with applicable federal and Puerto Rico regulations, at a minimum. Management and disposition of asbestos, PCB or other potentially dangerous materials shall be addressed during either the stabilization or the decommissioning phases for any Legacy Generation Assets that are no longer in operation at the time of demobilization.

## 2.3 *Communications and Engagement*

Operator shall use its corporate affairs department to frequently and proactively engage with members of the community, media, and local legislators, as well as PREPA and T&D Operator and other key stakeholders ahead of and during the Demobilization Period.

Operator shall regularly engage with the public regarding its plans for the Legacy Generation Assets and progress of those plans once launched. Operator shall execute this work through a local firm with connections to the affected communities and their leaders.

**Annex XVII**

**Fuel Contracts**

<b>Counterparty Name</b>	<b>Products To Be Supplied</b>	<b>Contract Expiration Date</b>	<b>Extension Option</b>
Puma Energy Caribe, LLC	Residual No. 6 Fuel Oil	October 30, 2022	Yes
Novum Energy Trading Inc.	Light Distillate No. 2 Fuel Oil	November 17, 2022	Yes
Naturgy	LNG	September 30, 2032	Yes
NFEnergia LLC	LNG	June 2024	Yes

## Exhibit A

### Form of Guarantee Agreement

THIS GUARANTEE AGREEMENT (the “Guarantee”) is made and entered into as of this [•] day of [•], 20[22] by and among: (i) [•] (“Guarantor”), a [•] organized under the laws of [•]; and (ii) the Puerto Rico Electric Power Authority (“Owner” and, together with Guarantor, the “Parties” and each a “Party”), a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by Act No. 83 of the Legislative Assembly of Puerto Rico, enacted on May 2, 1941.

### RECITALS

**WHEREAS**, Owner, the Puerto Rico Public-Private Partnerships Authority (“Administrator”), a public corporation of the Commonwealth of Puerto Rico, created by Act No. 29 of the Legislative Assembly of Puerto Rico, enacted on June 8, 2009 and [•] (“Operator”), a [•] organized under the laws of [•], have entered into the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement (as amended, modified or supplemented from time to time in accordance with its terms, the “O&M Agreement”), whereby Operator has agreed to provide the O&M Services and the Decommissioning Services for the Legacy Generation Assets in accordance with the terms of the O&M Agreement;

**WHEREAS**, Guarantor [indirectly] owns [•]% of the equity interests of Operator; and

**WHEREAS**, Owner and Administrator shall enter into the O&M Agreement only if Guarantor guarantees the performance by Operator of all of Operator’s responsibilities and obligations, including amounts payable by, and the covenants and agreements of, Operator under the O&M Agreement, but in all cases subject to the limitations set forth herein, including Section 3.10 (*Limitation on Liability*) (all such obligations and responsibilities, the “Obligations”) as set forth in this Guarantee.

**NOW THEREFORE**, in order to induce the execution and delivery of the O&M Agreement by Owner and Administrator and in consideration thereof, Guarantor agrees as follows:

### ARTICLE 1

#### DEFINITIONS; INTERPRETATION

##### **Section 1.1 Definitions**

Capitalized terms used but not defined herein shall have the respective meanings set forth in the O&M Agreement.

##### **Section 1.2 Interpretation; Construction**

(a) Headings. Articles, titles and headings to sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Guarantee. Except as otherwise indicated, all references in this Guarantee to “Articles” and “Sections” are intended to refer to Articles and Sections of this Guarantee.

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(b) Construction. For purposes of this Guarantee: (i) “include”, “includes” or “including” shall be deemed to be followed by “without limitation”; (ii) “hereof”, “herein”, “hereby”, “hereto” and “hereunder” shall refer to this Guarantee as a whole and not to any particular provision of this Guarantee; (iii) “extent” in the phrase “to the extent” shall mean the degree to which a subject or other item extends and shall not simply mean “if”; (iv) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including”; (v) “dollars” and “US\$” shall mean United States Dollars; (vi) the singular includes the plural and vice versa; (vii) reference to a gender includes the other gender; (viii) “any” shall mean “any and all”; (ix) “or” is used in the inclusive sense of “and/or”; (x) reference to any agreement, document or instrument means such agreement, document or instrument as amended, supplemented and modified in effect from time to time in accordance with its terms; (xi) reference to any Applicable Law means such Applicable Law as amended from time to time and includes any successor legislation thereto and any rules and regulations promulgated thereunder; and (xii) reference to any Person at any time refers to such Person’s permitted successors and assigns.

(c) Days and Time. All references to days herein are references to calendar days, unless specified as Business Days, and, unless specified otherwise, all statements of or references to a specific time in this Guarantee are to Atlantic Standard Time.

(d) Accounting Principles. All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with then generally accepted accounting principles in the United States, consistently applied.

(e) Negotiated Agreement. The Parties have participated jointly in the negotiation and drafting of this Guarantee with the benefit of competent legal representation, and the language used in this Guarantee shall be deemed to be the language chosen by the Parties to express their mutual intent. In the event that an ambiguity or question of intent or interpretation arises, this Guarantee shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions hereof.

(f) Payments. All payments required to be made by Guarantor hereunder shall be made in dollars.

## ARTICLE 2 REPRESENTATIONS AND WARRANTIES

**Section 2.1 Representations and Warranties of Guarantor.** Guarantor hereby represents and warrants that:

(a) Existence and Powers. Guarantor is a [•] duly organized, validly existing and in good standing under the laws of [•]. Guarantor has the required corporate power and authority to enter into this Guarantee, carry out its obligations hereunder and consummate the transactions contemplated hereby.

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(b) Due Authorization and Binding Obligation. The execution and delivery by Guarantor of this Guarantee, the performance by Guarantor of its obligations hereunder and the consummation by Guarantor of the transactions contemplated hereby have been duly and validly authorized and approved by the required corporate or other similar action on the part of Guarantor. This Agreement has been duly and validly executed and delivered by Guarantor, and (assuming due authorization, execution and delivery by Owner) this Guarantee constitutes a legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or similar Applicable Law affecting creditors' rights generally and by general equity principles.

(c) No Conflicts. Neither the execution, delivery or performance by Guarantor of this Guarantee, nor the consummation of the transactions contemplated hereby shall: (i) result in a material violation or breach of, or material default under, any provision of the organizational documents of Guarantor; (ii) result in a violation of, or give any Governmental Body the right to challenge any of the transactions contemplated hereby under, any Applicable Law applicable to Guarantor; (iii) (A) result in a violation or breach of, (B) constitute a default under, (C) result in the acceleration of or create in any party the right to accelerate, terminate or cancel or (D) require the consent of any other Person under, any material contract to which Guarantor is a party; or (iv) result in the creation or imposition of any Lien on any properties or assets of Guarantor.

(d) No Consents. No consent, declaration or filing with, or notice to, any Governmental Body is required by or with respect to Guarantor in connection with (i) the execution and delivery of this Guarantee or (ii) the performance by Guarantor of its payment or other obligations hereunder, except such as have been duly obtained or made.

(e) No Litigation. There is no action, suit or other proceeding, at law or in equity, before or by any court or Governmental Body pending against Guarantor or, to Guarantor's knowledge, threatened against Guarantor, which if determined adversely against Guarantor would reasonably be expected to materially and adversely affect (i) the validity or enforceability of this Guarantee or (ii) the performance by Guarantor of its respective obligations hereunder.

(f) No Legal Prohibition. There is no Applicable Law in effect on the date hereof that would prohibit the execution, delivery or performance by Guarantor of this Guarantee and the transactions contemplated hereby.

(g) Consent to Agreements. Guarantor is fully aware of the terms and conditions of the O&M Agreement.

(h) Consideration. The Guarantee is made in furtherance of the purposes for which Guarantor has been organized, and the assumption by Guarantor of its obligations hereunder shall result in a material benefit to Guarantor.

## ARTICLE 3 GUARANTEE COVENANTS

**Section 3.1 Guarantee to Owner.** Subject to Section 3.10 (*Limitation on Liability*), Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to Owner the full and prompt payment and performance when due of the Obligations, including each and all of



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the payments required to be credited or made by Operator under the O&M Agreement to, or for the account of, Owner, as the case may be, when the same shall become due and payable pursuant to this Guarantee. Notwithstanding the unconditional nature of Guarantor's obligations as set forth herein, Guarantor shall have the right to assert the defenses provided in Section 3.4 (*Defenses, Set-Offs and Counterclaims*) against claims made under this Guarantee.

### **Section 3.2 Right of Owner to Proceed Against Guarantor.**

(a) Generally. This Guarantee shall constitute a guarantee of payment and performance and not of collection, and Guarantor specifically agrees that in the event of a failure by Operator to pay or perform any Obligation guaranteed hereunder, subject to any notice and cure periods under the O&M Agreement, Owner shall have the right to proceed firstly and directly against Guarantor under this Guarantee and without proceeding against Operator or exhausting any other remedies against Operator which Owner may have.

(b) No Conditions for Enforcement. Without limiting the foregoing, Guarantor agrees that it shall not be necessary, and that Guarantor shall not be entitled to require, as a condition of enforcing the liability of Guarantor hereunder, that Owner:

(i) file suit or proceed to obtain a personal judgment against Operator or any other person that may be liable for the Obligations or any part of the Obligations;

(ii) make any other effort to obtain payment or performance of the Obligations from Operator other than providing Operator with any notice of such payment or performance as may be required by the terms of the O&M Agreement or required to be given to Operator under Applicable Law;

(iii) foreclose against or seek to realize upon any security for the Obligations; or

(iv) exercise any other right or remedy to which Owner or Administrator is or may be entitled in connection with the Obligations or any security therefor or any other guarantee thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of Operator or to the enforcement of remedies under the O&M Agreement.

(c) Unexcused Failure; Single Full Performance. Upon any unexcused failure by Operator in the payment or performance of any Obligation and the giving of such notice or demand, if any, to Operator and Guarantor as may be required in connection with such Obligation and this Guarantee, the liability of Guarantor shall be effective and shall immediately be paid or performed. Notwithstanding Owner's right to proceed directly against Guarantor and subject to Section 3.10 (*Limitation on Liability*), Owner (or any successor) shall not be entitled to more than a single full payment from Guarantor or Operator or performance of the Obligations in regard to any breach or non-performance thereof.

**Section 3.3 Guarantee Absolute and Unconditional.**

(a) Generally. The obligations of Guarantor hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect until Operator shall have fully discharged the Obligations in accordance with their respective terms and conditions and, except as provided in Section 3.4 (*Defenses, Set-Offs and Counterclaims*), shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such Obligations) based on any claim that Guarantor may have against Operator, Owner, Administrator or any other person. Without limiting the foregoing, the obligations of Guarantor hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by, or further consent of, Guarantor):

(i) the extension or renewal of this Guarantee or the O&M Agreement up to the specified term of each agreement;

(ii) any exercise or failure, omission or delay by Owner or Administrator in the exercise of any right, power or remedy conferred on Owner or Administrator, as the case may be, with respect to this Guarantee or the O&M Agreement except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim;

(iii) any permitted transfer or assignment of rights or obligations under the O&M Agreement or under any other Transaction Document by any party thereto, or any permitted assignment, conveyance or other transfer of any of their respective interests in the O&M Agreement or in, to or under any of the Transaction Documents;

(iv) any permitted assignment for the purpose of creating a security interest or mortgage of all or any part of the respective interests of Owner or any other person in any Transaction Document or in any of the Legacy Generation Assets;

(v) any renewal, amendment, change or modification in respect of any of the Obligations or terms or conditions of any Transaction Document;

(vi) any failure of title with respect to all or any part of the respective interests of any person in any of the Legacy Generation Assets;

(vii) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshaling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceedings against or affecting Operator or Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guarantee or the O&M Agreement in any such proceeding (it being specifically understood, consented and agreed to that, to the extent permitted by Applicable Law, this Guarantee shall remain and continue in full force and effect and shall be enforceable against Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred

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as a result thereof, it being the intent and purpose of this Guarantee that Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);

(viii) except as permitted by Section 4.1 (*Maintenance Of Corporate Existence*), Section 4.2 (*Guarantor Reports*) or the O&M Agreement, any sale or other transfer by Guarantor or any Affiliate of any of the capital stock or other interest of Guarantor or any Affiliate in Operator now or hereafter owned, directly or indirectly, by Guarantor or any Affiliate, or any change in composition of the interests in Operator;

(ix) any unexcused failure on the part of Operator for any reason to perform or comply with any agreement with Guarantor;

(x) the failure on the part of Owner to provide any notice to Guarantor which is not required to be given to Guarantor pursuant to this Guarantee and to Operator as a condition to the enforcement of Obligations pursuant to the O&M Agreement;

(xi) any failure of any party to the O&M Agreement to mitigate damages resulting from any default by Operator or Guarantor under the O&M Agreement;

(xii) the merger, consolidation or amalgamation of any party to the O&M Agreement into or with any other person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any person;

(xiii) any legal disability or incapacity of Operator or Guarantor with respect to the O&M Agreement; or

(xiv) the fact that entering into the O&M Agreement by Operator or Guarantor was invalid or in excess of the powers of such party.

(b) Recovery of Money Due or Owed. Should any money due or owing under this Guarantee not be recoverable from Guarantor due to any of the matters specified in Section 3.3(a) (*Guarantee Absolute and Unconditional - Generally*), then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from Guarantor as though Guarantor were principal obligor in place of Operator pursuant to the terms of the O&M Agreement and not merely a guarantor and shall be paid by Guarantor forthwith subject to the terms of this Guarantee.

(c) Scope. Notwithstanding anything to the contrary expressed in this Guarantee, nothing in this Guarantee shall be deemed to amend, modify, clarify, expand or reduce Operator's rights, benefits, duties or obligations under the O&M Agreement.

**Section 3.4 Defenses, Set-Offs and Counterclaims.** Notwithstanding any provision contained herein to the contrary, Guarantor shall be entitled to exercise or assert any and all legal or equitable rights or defenses which Operator may have under the O&M Agreement or under Applicable Law (other than bankruptcy or insolvency of Operator and other than any defense which Operator has expressly waived in the O&M Agreement or Guarantor has expressly waived in Section 3.5 (*Waivers by Guarantor*) or elsewhere hereunder), and the obligations of Guarantor

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hereunder are subject to such rights, defenses, counterclaims, set-offs or deductions which Operator is permitted to assert pursuant to the O&M Agreement, if any.

**Section 3.5 Waivers by Guarantor.** Guarantor hereby unconditionally and irrevocably waives:

- (a) notice from Owner of its acceptance of this Guarantee;
- (b) notice of any of the events referred to in Section 3.3 (*Guarantee Absolute and Unconditional*), except to the extent that notice is required to be given as a condition to the Obligations or the enforcement of remedies under the O&M Agreement;
- (c) to the fullest extent lawfully possible, all notices that may be required by statute, rule of law or otherwise to preserve intact any rights against Guarantor, except any notice to Operator required pursuant to the O&M Agreement or Applicable Law as a condition to any Obligation or the enforcement of remedies under the O&M Agreement;
- (d) to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period which may be applicable to guarantors (or parties in similar relationships) which would be shorter than the applicable statute of limitations period for the underlying claim;
- (e) any right to require a proceeding first against Operator;
- (f) any right to require a proceeding first against any person or the security provided by or under the O&M Agreement, except to the extent the O&M Agreement specifically requires a proceeding first against any person (except Operator) or security;
- (g) any requirement that Operator be joined as a party to any proceeding for the enforcement of any term of the O&M Agreement;
- (h) the requirement of, or the notice of, the filing of claims by Owner or Administrator in the event of the receivership or bankruptcy of Operator; and
- (i) all demands upon Operator or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this Section 3.5 (*Waivers by Guarantor*), by rule of law or otherwise, constitute grounds for relieving or discharging Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.

**Section 3.6 Payment of Costs and Expenses.** Guarantor agrees to pay Owner and Administrator on demand all Fees-and-Costs incurred by or on behalf of Owner in successfully enforcing by Legal Proceeding observance of the covenants, agreements and obligations contained in this Guarantee against Guarantor, other than the Fees-and-Costs that Owner or Administrator incurs in performing any of its obligations under the O&M Agreement where such obligations are a condition to performance by Operator of its Obligations.

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**Section 3.7 Subordination of Rights.** Guarantor agrees that any right of subrogation or contribution which it may have against Operator as a result of any payment or performance hereunder is hereby fully subordinated to the rights of Owner and Administrator hereunder and under the O&M Agreement and that Guarantor shall not recover or seek to recover any payment made by it hereunder from Operator until Operator and Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guarantee.

### **Section 3.8 Separate Obligations; Reinstatement.**

(a) Separate Obligations. The obligations of Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall: (i) to the extent permitted by Applicable Law, constitute separate and independent obligations of Guarantor from its other obligations under this Guarantee; (ii) give rise to separate and independent causes of action against Guarantor; and (iii) apply irrespective of any indulgence granted from time to time by Owner.

(b) Reinstatement. Guarantor agrees that this Guarantee shall be automatically reinstated if and to the extent that for any reason any payment or performance by or on behalf of Operator is rescinded or must be otherwise restored by Owner, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding, unless such rescission or restoration is pursuant to the terms of the O&M Agreement or Operator's enforcement of such terms under Applicable Law.

**Section 3.9 Term.** Subject to Section 3.10 (*Limitation of Liability*) this Guarantee shall remain in full force and effect from the date of execution and delivery hereof until all of the Obligations of Operator have been fully paid and performed.

**Section 3.10 Limitation on Liability.** Notwithstanding anything herein or otherwise to the contrary, the aggregate liability of Guarantor under or with respect to this Guarantee with respect to all matters whatsoever or howsoever arising, including where arising from gross negligence and willful misconduct of Operator, any Operator Indemnitee or Guarantor, and regardless of any other rights and remedies that Owner or Administrator may have against Operator under the O&M Agreement, under Applicable Law or otherwise, shall in no event exceed US\$45,000,000.00 in respect of the payment and performance by Guarantor of the Obligations, collectively. Without limiting the foregoing, to the fullest extent permitted by law, in no event shall Guarantor be liable, whether in contract, indemnity, tort (including negligence, gross negligence and strict liability) or otherwise, for any loss of profits or revenues, special, exemplary, punitive, indirect, incidental or consequential damages which arise from, relate to or are connected with this Guarantee or the performance of or failure to perform the Obligations except for claims of fraud or intentional misrepresentation.

## **ARTICLE 4**

### **GENERAL COVENANTS**

### **Section 4.1 Maintenance Of Corporate Existence**

(a) Consolidation, Amalgamation, Merger, Sale or Transfer. Guarantor covenants that during the term of this Guarantee it shall maintain its corporate existence, shall not

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dissolve or otherwise dispose of all or substantially all of its assets and shall not consolidate or amalgamate with or merge into another entity or permit one or more other entities to consolidate or amalgamate with or merge into it unless the successor is Guarantor; provided, however, that Guarantor may consolidate or amalgamate with or merge into another entity, or permit one or more other entities to consolidate or amalgamate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if the successor entity (if other than Guarantor) (i) is acceptable to Owner, acting reasonably, (ii) assumes in writing all the obligations of Guarantor hereunder and (iii) delivers to Owner an opinion of counsel to the effect that its obligations under the Guarantee are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws.

(b) Continuance of Obligations. If a consolidation, amalgamation, merger or sale or other transfer is made as permitted by this Section 4.1 (*Maintenance Of Corporate Existence*), the provisions of this Section 4.1 (*Maintenance Of Corporate Existence*) shall continue in full force and effect and no further consolidation, amalgamation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section 4.1 (*Maintenance Of Corporate Existence*). No such consolidation, amalgamation, merger or sale or other transfer shall have the effect of releasing the initial Guarantor from its liability hereunder unless a successor entity has assumed responsibility for this Guarantee in accordance with this Section 4.1 (*Maintenance Of Corporate Existence*).

**Section 4.2 Guarantor Reports.** While this Guarantee is outstanding, Guarantor shall assist Operator in delivering to Administrator the reports required pursuant to Section 8.2 (*Guarantor Reports*) of the O&M Agreement.

**Section 4.3 Assignment.** Except as permitted pursuant to Section 4.1 (*Maintenance Of Corporate Existence*), Guarantor shall not assign, transfer, convey, lease, encumber or otherwise dispose of its rights or obligations under this Guarantee without the prior written consent of Administrator, which consent shall not be unreasonably withheld, delayed or conditioned.

## ARTICLE 5 MISCELLANEOUS

**Section 5.1 Consent to Jurisdiction.** Any dispute between the Parties arising out of, relating to or in connection with this Guarantee or the existence, interpretation, breach, termination or validity thereof shall be resolved in accordance with the procedures set forth in Article 15 (*Dispute Resolution*) of the O&M Agreement as if it were a Dispute, *mutatis mutandis*; provided that, for the avoidance of doubt, Guarantor hereby irrevocably: (i) agrees that any Legal Proceeding related to this Guarantee or to any rights or relationship between the Parties arising therefrom (other than any negotiation between the Parties in accordance with Section 15.3 (*Negotiation*) of the O&M Agreement) shall be solely and exclusively initiated and maintained in the Commonwealth Court; (ii) consents to the jurisdiction of the Commonwealth Court in any such Legal Proceeding; (iii) waives any objection which it may have to the laying of the jurisdiction of any such Legal Proceeding in the Commonwealth Court; and (iv) waives its right to a trial by jury in any Legal Proceeding in the Commonwealth Court.

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**Section 5.2 Notices.** All notices or other communications to be delivered in connection with the Guarantee shall be in writing and shall be deemed to have been properly delivered, given and received (i) on the date of delivery if delivered by hand during normal business hours of the recipient during a Business Day, otherwise on the next Business Day, (ii) on the date of successful transmission if sent via email (with return receipt) during normal business hours of the recipient during a Business Day, otherwise on the next Business Day, or (iii) on the date of receipt by the addressee if sent by a nationally recognized overnight courier or by registered or certified mail, return receipt requested, if received on a Business Day, otherwise on the next Business Day. Such notices or other communications must be sent to each respective Party at the address, email address set forth below (or at such other address, email address as shall be specified by a Party in a notice given in accordance with this Section 5.2 (*Notices*)):

If to Owner:

Puerto Rico Electric Power Authority

[•]

[•]

Attention: [•]

Telephone: [•]

Email: [•]

with a copy to:

Administrator

[•]

[•]

Attention: [•]

Telephone: [•]

Email: [•]

If to Guarantor:

[•]

[•]

[•]

Attention: [•]

Telephone: [•]

Email: [•]

**Section 5.3 Amendments.** Neither this Guarantee nor any provision hereof may be changed, modified, amended or waived except by written agreement duly executed by the Parties. To the extent required by Applicable Law, any such amendment shall not be effective until approved by the FOMB (if then in existence) and PREB.

**Section 5.4 Entire Agreement.** This Guarantee constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior oral or written agreements, understandings, proposals, representations or warranties relating to this Guarantee. Without limiting the generality of the foregoing, this Guarantee shall completely and fully supersede all other understandings and agreements among the Parties with respect to such

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transactions, including those contained in the RFP, the Proposal by Operator or its Affiliate and any amendments or supplements to the RFP or the Proposal.

**Section 5.5 Interest on Overdue Obligations.** Except as otherwise provided herein, all amounts due hereunder, whether as fees, damages, credits, revenue, charges or reimbursements, that are not paid when due shall bear interest at the Overdue Rate, on the amount outstanding from time to time, and all such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due, as accrued.

**Section 5.6 Waivers.** Either Guarantor or Owner may, at any time, (a) extend the time for the performance of any of the obligations or other acts of the other Party, (b) waive any inaccuracies in the representations and warranties of the other Party contained herein or (c) waive compliance by the other Party with any of the agreements or conditions contained herein. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in a written instrument executed and delivered by the Party so waiving. No waiver by any Party of any breach of this Guarantee shall operate or be construed as a waiver of any preceding or subsequent breach, whether of a similar or different character, unless expressly set forth in such written waiver. Neither any course of conduct or failure or delay of any Party in exercising or enforcing any right, remedy or power hereunder shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy or power hereunder, or any abandonment or discontinuance of steps to enforce such right, remedy or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right, remedy or power.

**Section 5.7 Survival.** The rights and obligations of the Parties pursuant to Section 5.1 (*Consent to Jurisdiction*), Section 5.2 (*Notices*) and Section 5.12 (*Governing Law*) shall survive the expiration or termination of this Guarantee. No expiration or early termination of this Guarantee shall (i) limit or otherwise affect the respective rights and obligations of the Parties accrued prior to the date of such termination or (ii) preclude any Party from impleading any other Party in any Legal Proceeding originated by a third-party as to any matter occurring during the term of this Guarantee.

**Section 5.8 Severability.** If any term or provision of this Guarantee is invalid, illegal or incapable of being enforced in any situation or in any jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other term or provision hereof or the offending term or provision in any other situation or any other jurisdiction, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon any such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Guarantee so as to effect the original intent of the Parties as closely as possible, in a mutually acceptable manner, in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

### **Section 5.9 Remedies**

(a) Cumulative and Non-Exclusive Remedies. Except as otherwise provided in this Guarantee, any and all remedies herein expressly conferred upon a Party shall be deemed



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cumulative with and not exclusive of any other remedy expressly conferred hereby, and the exercise by a Party of any one such remedy shall not preclude the exercise of any other such remedy.

(b) **Irreparable Damage and Harm.** The Parties agree that irreparable damage and harm would occur in the event that any provision of this Guarantee were not performed in accordance with its terms and that, although monetary damages may be available for such a breach, monetary damages would be an inadequate remedy therefor. Accordingly, each of the Parties agrees that, in the event of any breach or threatened breach of any provision of this Guarantee by such Party, the other Party shall be entitled to an injunction or injunctions, specific performance and other equitable relief to prevent or restrain breaches or threatened breaches hereof and to specifically enforce the terms and provisions hereof. A Party seeking an order or injunction to prevent breaches of this Guarantee or to enforce specifically the terms and provisions hereof shall not be required to provide, furnish or post any bond or other security in connection with or as a condition to obtaining any such order or injunction, and each Party hereby irrevocably waives any right it may have to require the provision, furnishing or posting of any such bond or other security. In the event that any Legal Proceeding should be brought in equity to enforce the provisions of this Guarantee, each Party agrees that it shall not allege, and each Party hereby waives the defense, that there is an adequate remedy available at law.

**Section 5.10 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same agreement or document. A signed copy of this Guarantee transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Guarantee for all purposes.

**Section 5.11 Office of the Comptroller.** Owner agrees to file this Guarantee with the Comptroller of the Commonwealth promptly after its execution and to provide Guarantor with evidence of its filing within fifteen (15) days following the execution of this Guarantee. The Parties acknowledge and agree that the obligations and considerations under this Guarantee shall not be enforceable until this Guarantee shall have been registered with the Office of the Comptroller of the Commonwealth as provided by Act No. 18 of the Legislative Assembly of Puerto Rico, enacted on October 30, 1975.

**Section 5.12 Governing Law.** This Agreement and all matters, claims, controversies, disputes, suits, actions or proceedings arising out of or relating to this Guarantee and the negotiation, execution or performance of this Guarantee or any of the transactions contemplated hereby, including all rights of the Parties (whether sounding in contract, tort, common or statutory law, equity or otherwise) in connection therewith, shall be interpreted, construed and governed by and in accordance with, and enforced pursuant to, the internal laws of the Commonwealth (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction), except where the federal supremacy clause requires otherwise.

**Section 5.13 COMMONWEALTH OBLIGATIONS.** THE OBLIGATIONS OF OWNER UNDER THIS AGREEMENT SHALL NOT BE DEEMED OBLIGATIONS OF THE COMMONWEALTH OR ANY INSTRUMENTALITY OF THE COMMONWEALTH OTHER THAN OWNER.

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**IN WITNESS WHEREOF**, Guarantor has caused this Guarantee to be duly executed as of the day and year first above written.

**[GUARANTOR]**

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

Accepted and agreed by:

**PUERTO RICO ELECTRIC POWER  
AUTHORITY**

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

**Exhibit B**

**Form of Reliance Letter**

\_\_\_\_\_, 2022

Puerto Rico Thermal Generation Facilities Operation and Maintenance  
Agreement dated as of \_\_\_\_\_, 2022

Ladies and Gentlemen:

In connection with the execution of the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement dated as of \_\_\_\_\_, 2022 by and among the Puerto Rico Electric Power Authority, the Puerto Rico Public-Private Partnerships Authority, and \_\_\_\_\_ (the “Agreement”) we have delivered our legal opinion relating to the impact of the Agreement on the federal income tax status of interest on bonds issued by the Authority, its Affiliates, and other Governmental Bodies (the “Bonds”), dated the date hereof and addressed to the Financial Oversight and Management Board. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Agreement.

You may rely on said opinion as though the same were addressed to you. No attorney-client relationship has existed or exists between any addressee of this letter and our firm in connection with the Agreement or the Bonds or by virtue of this letter.

Very truly yours,

**Exhibit C**

**Form of Sworn Statement**

**SWORN STATEMENT**

**ACT 2-2018**

I, \_\_\_\_\_, of legal age, single/married, \_\_\_\_\_ and resident of the \_\_\_\_\_, hereby solemnly swear:

1. That my personal status is the one stated above.
2. That I hold the position of \_\_\_\_\_ (hereinafter referred to as the “Company”) organized as a \_\_\_\_\_ under the laws of \_\_\_\_\_ with the Federal Identification No \_\_\_\_\_.
3. That I am authorized to represent the Company and all of its partners and owners for purposes of this affidavit.
4. That neither the Company nor any of its presidents, vice-presidents, directors, managers, executive directors or members of its Board of Directors, or persons that fulfill similar tasks, have been convicted of, nor have they pleaded guilty to, any of the crimes in Article 6.8 of Puerto Rico Act No. 8-2017, as amended, known as the “Act for the Management and Transformation of the Human Resources of the Government of Puerto Rico” or for any of the crimes listed in Puerto Rico Act No. 2-2018, known as the “Anti-Corruption Code for a New Puerto Rico”.
5. No commissions or bonuses have been paid, in cash or in kind, and there is not commitment for the future payment of any such commissions or bonuses to any public official, employee or any former public official that participated in the negotiations and transactions contemplated by the Company’s agreement with \_\_\_\_\_ while working for the Government of Puerto Rico.
6. That neither the Company nor any of its presidents, vice-presidents, directors, managers, executive directors or members of its Board of Directors, or persons that fulfill similar tasks have any conflicts of interest in acting as the Operator of the Legacy Generation Assets.
7. That everything stated above is true to the best of my knowledge, information and belief and thus, to make it public I sign this declaration in \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By: \_\_\_\_\_

Name:

Title:

Affidavit No. \_\_\_\_\_

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Sworn and subscribed before me by \_\_\_\_\_, of the personal circumstances stated above, in his/her capacity as \_\_\_\_\_ of \_\_\_\_\_; who is personally known to me or whom I have identified pursuant the following form of identification: \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Exhibit D**

**Form of Tax Opinion – Effective Date**

\_\_\_\_\_, 202\_\_

Ladies and Gentlemen:

We have served as tax counsel to the Federal Oversight and Management Board for Puerto Rico (“FOMB”) with respect to the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement dated as of \_\_\_, 2022 (the “Agreement”) by and among the Puerto Rico Electric Power Authority (the “Authority”), as owner, the Puerto Rico Public-Private Partnerships Authority, as administrator (the “Administrator”), and [•] (“Operator” and, together with Authority and Administrator, the “Parties”). Pursuant to the terms of the Agreement, Operator shall provide management, operation, maintenance, repair and other related services for the Authority’s base-load generation plants and combustion turbine peaking plants (the “Legacy Generation Assets”). The Authority, its Affiliates, and other Governmental Bodies currently have outstanding obligations the interest on which is excluded from gross income for federal income tax purposes (the “Existing Bonds”). On the date of issuance of each of the bond issues comprising the Existing Bonds, the respective bond counsel for each such issuance delivered an opinion (each an “Approving Opinion”) that interest on the related Existing Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code (the “Code”). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Agreement.

This opinion is being delivered in accordance with Section 2.2(b)(viii) (*Effective Date – Conditions to Execution*) of the Agreement.

In rendering the opinion set forth herein, we have reviewed (i) the Agreement, including the exhibits thereto, (ii) the Facility Contracts in effect as of the date hereof, (iii) the opinion of Sargent and Lundy or another nationally recognized engineering firm acceptable to the Parties, dated \_\_\_, 202\_\_, which sets forth, among other things, the reasonably expected weighted average economic life of the Legacy Generation Assets, and (iv) such other opinions, certificates and documents as have been provided to us by the Authority and others in connection with the Agreement. We have also relied upon the facts set forth in the representations made by the Parties to the Agreement and such other documents and opinions to the extent we deemed necessary to render the opinions set forth herein. Sections 4.4 (*Governmental Approvals and Tax Matters*) and 4.5 (*Conditions Precedent to Service Commencement Date*) of the Agreement contain Service Date Conditions and Commencement Date Government Approvals (collectively, the “Conditions”) that must be satisfied or obtained in order for the Service Commencement Date to occur. In rendering the opinion set forth herein, we have assumed that the Conditions are either mere formalities or that the likelihood that the Conditions will not be satisfied or obtained is remote. We have also assumed that the Service Commencement Date will occur on or before [•]. We have not undertaken an independent audit or investigation of the matters set forth in any of the foregoing and our opinion assumes the accuracy of the information and any conclusions set forth therein and compliance with any covenants and directions set forth in said documents, including the Agreement.

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In addition, the Code and the Revenue Procedure (as defined below), impose certain requirements that must be met subsequent to the issuance and delivery of the Existing Bonds and subsequent to the execution of the Agreement for interest on the Existing Bonds thereon to be and remain excluded from gross income for federal income tax purposes. Noncompliance with such requirements could cause the interest on the Existing Bonds to be included in gross income for federal income tax purposes retroactive to the date of issue of each issue of the Existing Bonds.

Section 103 of the Code provides generally that interest on a “private activity bond” is not excluded from gross income. Section 141 of the Code, in part, provides that a private activity bond is an obligation issued as part of an issue that meets the private business tests. Under the private business tests, bonds are treated as private activity bonds if the issue of which those bonds are a part satisfy both the private business use test and the private security or payment test. The private business use test is met if more than 10 percent of the proceeds of an issue are used in the trade or business of a nongovernmental person (“private business use”). Under Treasury regulation section 1.141-3, private business use can result from the use of the facilities financed by the issue, including as a result of a lease of such property to a nongovernmental person or a management contract with respect to such property. The private security or payment test is generally met if the payment of the principal of, or the interest on, more than 10 percent of the proceeds of an issue is (under the terms of such issue or any underlying arrangement) directly or indirectly: (A) secured by any interest in property used or to be used for a private business use, or payments in respect of such property, or (B) to be derived from payments (whether or not to the issuer) in respect of property, or borrowed money, used or to be used for a private business use.

Under Treasury regulation section 1.141-3(b)(4), a management contract with respect to financed property may result in private business use of that property, based on all of the facts and circumstances. The regulations provide that a management contract with respect to financed property generally results in private business use of that property if the contract provides for compensation for services rendered with compensation based, in whole or in part, on a share of net profits from the operation of the facility, or if the service provider is treated as the lessee or owner of financed property for federal income tax purposes.

Treasury regulation section 1.141-3 defines a management contract as a management, service, or incentive payment contract between a governmental person and a service provider under which the service provider provides services involving all, a portion of, or any function of, a facility. For example, a contract for the provision of management services for an entire hospital, a contract for management services for a specific department of a hospital, and an incentive payment contract for physician services to patients of a hospital are each treated as a management contract.

In Revenue Procedure 2017-13 (the “Revenue Procedure”) the Internal Revenue Service provided a safe harbor under which a management contract can be treated as not resulting in private business use. The Revenue Procedure refers to the governmental owner of the related facilities as the “qualified user” and the manager or operator as the “service provider.” Under the Revenue Procedure, a management contract that satisfies the following conditions shall not be treated as resulting in private business use:

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- (1) The payments to the service provider under the contract must be reasonable compensation for services rendered during the term of the contract. “Compensation” includes payments to reimburse actual and direct expenses paid by the service provider and related administrative overhead expenses of the service provider.
- (2) The contract must not provide to the service provider a share of net profits from the operation of the managed property. Compensation to the service provider shall not be treated as providing a share of net profits if no element of the compensation takes into account, or is contingent upon, either the managed property’s net profits or both the managed property’s revenues and expenses (other than any reimbursements of direct and actual expenses paid by the service provider to unrelated third parties) for any fiscal period. For this purpose, the elements of the compensation are the eligibility for, the amount of, and the timing of the payment of the compensation. Incentive compensation is not treated as providing a share of net profits if eligibility is determined by the service provider’s performance in meeting one or more standards that measure quality of services, performance or productivity.
- (3) The contract must not, in substance, impose upon the service provider the burden of bearing any share of net losses from the operation of the managed property.
- (4) The term of the contract, including all renewal options must not be greater than the lesser of 30 years or 80 percent of the weighted average reasonably expected economic life of the managed property.
- (5) The qualified user must exercise a significant degree of control over the use of the managed property. This control requirement is met if the contract requires the qualified user to approve the annual budget of the managed property, capital expenditures with respect to the managed property, each disposition of property that is part of the managed property, rates charged for the use of the managed property, and the general nature and type of use of the managed property (for example, the type of services).
- (6) The qualified user must bear the risk of loss upon damage or destruction of the managed property (for example, due to force majeure).
- (7) The service provider must agree that it is not entitled to and shall not take any tax position that is inconsistent with being a service provider to the qualified user with respect to the managed property. For example, the service provider must agree not to claim any depreciation or amortization deduction, investment tax credit, or deduction for any payment as rent with respect to the managed property.
- (8) The service provider must not have any role or relationship with the qualified user that, in effect, substantially limits the qualified user’s ability to exercise its rights under the contract, based on all the facts and circumstances. A service provider shall not be treated as having a role or relationship prohibited by this provision if: (a) no more than 20 percent of the voting power of the governing body of the qualified user is vested in the directors, officers, shareholders, partners, members, and employees of the service provider, in the aggregate; (b) the governing body of the qualified user does not include the chief executive



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officer of the service provider or the chairperson (or equivalent executive) of the service provider's governing body; and (c) the chief executive officer of the service provider is not the chief executive officer of the qualified user or any of the qualified user's related parties.

Based upon our review of the foregoing documents, and assuming the accuracy of the information and certifications, and compliance with the covenants, representations, and directions set forth therein, and assuming compliance with the terms of the Agreement, we are of the opinion that neither the Agreement nor any provision thereof, nor the performance by each Party to the Agreement of its respective obligations thereunder (including Operator's administration of the Facility Contracts), adversely affects the exclusion from gross income of interest on the Existing Bonds of the Authority, its Affiliates or another Governmental Body for federal income tax purposes under Section 103 of the Code. In the event that the Service Commencement Date does not occur on or before [•], this opinion shall be redelivered in final form as of the Service Commencement Date, subject to any necessary adjustments taking into account the later date.

This opinion is limited to the specific matter addressed herein and shall not be construed as confirming or restating the Approving Opinions. We have not been engaged to, nor have we undertaken to, determine whether the interest on the Existing Bonds continues to qualify as of this date for exclusion from gross income for federal income tax purposes. Accordingly, we express no opinion on such matter.

This opinion is delivered as of the date hereof and relates solely to the Internal Revenue Code and Treasury regulations as in effect on the date hereof. We disclaim any obligation to advise you or any other person of developments of law or fact covered by this opinion that may occur after the date hereof, including any amendments made subsequent to the date hereof to the documents described above. Furthermore, we express no opinion as to any federal, state or local tax law consequences with respect to the Existing Bonds, or the interest thereon, if any action is taken with respect to the Agreement or the proceeds thereof upon the advice or approval of other counsel.

This opinion is being delivered by us as tax counsel to the FOMB in connection with the Agreement and may not be relied upon by any other person, or used or reproduced for any other purpose, without our prior written consent.

Sincerely,

Nixon Peabody LLP

**Exhibit E**

**Form of Commonwealth Certifications**

Operator, for itself and Parent Company (if Operator is a partnership under the Puerto Rico Internal Revenue Code), represents that as of the Effective Date (i) neither it nor Parent Company has any outstanding debts for unemployment insurance, temporary disability (workmen's compensation), or chauffeur's social security with the Department of Labor and Human Resources of the Commonwealth, income taxes with the Department of Treasury of the Commonwealth or real or personal property taxes with the Municipal Revenues Collection Center ("CRIM") or (ii) it or Parent Company have a payment plan in place with respect to any outstanding debt for the foregoing items and have complied therewith.

Operator shall deliver to Owner prior to the Effective Date a copy of its Certificate of Incorporation, Certificate of Organization and Certificate of Authorization to do Business in Puerto Rico issued by the Puerto Rico Department of State, as applicable.

Operator shall also obtain and deliver to Owner, in each case dated no earlier than sixty (60) days prior to the Effective Date, the following:

- (i) a copy of Operator's Merchant's Registration Certificate (Form SC 2918);
- (ii) a Certificate of Good Standing issued by the Puerto Rico Department of State;
- (iii) a certification issued by the Puerto Rico Treasury Department indicating that Operator and Parent Company (if Operator is a Partnership under the Puerto Rico Internal Revenue Code) do not have any debts under any concept, including income tax, with the Commonwealth (Form SC 6096);
- (iv) a Puerto Rico Sales and Use Tax Filing Certification issued by the Puerto Rico Treasury Department reflecting that Operator has filed its Puerto Rico Sales and Use Tax returns for the last sixty (60) tax periods (Form SC 2942);
- (v) an all concepts debt certification issued by CRIM reflecting that Operator does not owe any taxes to CRIM with respect to real or personal property; and
- (vi) a certification issued by the Puerto Rico Child Support Administration for Operator reflecting that Operator is in compliance with the withholdings required to be made by employers under Applicable Law.

Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Puerto Rico Thermal Generation Operation and Maintenance Agreement dated \_\_\_\_\_.

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

**Exhibit F**

**Form of Anti-Corruption Certifications**

We certify under penalty of nullity that no public servant of Owner shall derive or obtain any benefit or profit of any kind from the contractual relationship which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the Agreement. The only consideration to be received in exchange for the delivery of goods or for the O&M Services provided is the agreed-upon price that has been negotiated with Owner or its Representatives. The total amount shown on this invoice is true and correct. The O&M Services have been rendered, and no payment has been received.

Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Puerto Rico Thermal Generation Operation and Maintenance Agreement dated \_\_\_\_\_.

By: \_\_\_\_\_

Name:

Title:

**Exhibit G**

**Form of Acknowledgement of Consent Decree**

Operator represents and acknowledges that (i) transfer of the operations subject to the Consent Decree, which operations include provision of the O&M Services and Decommissioning Services for the relevant Legacy Generation Assets, is conditioned upon agreement by Operator to be subject to the obligations under the Consent Decree and the jurisdiction of the United States District Court for the District of Puerto Rico; (ii) at least thirty (30) days prior to the Effective Date, it has been provided with a complete copy of the Consent Decree (including its appendices and attachments) and (iii) it has the required authority, ability, skills, access to funds, technical support and capacity to meet the requirements of the Consent Decree relating to its obligations under the Puerto Rico Thermal Generation Operation and Maintenance Agreement dated \_\_\_\_\_ (the "Agreement").

Operator represents, acknowledges and agrees that:

(i) it shall be subject to the obligations under, and become a signatory to, the Consent Decree;

(ii) it shall be subject to the jurisdiction of the United States District Court for the District of Puerto Rico in connection with the Consent Decree;

(iii) to assist Owner in taking all necessary steps to make Operator a signatory to the Consent Decree or to obtain any needed U.S. District Court approval;

(iv) to provide to each person, firm, corporation, contractor, or subcontractor hired to perform any requirement of the Consent Decree (including its attachments or appendices) a copy of all sections of the Consent Decree (including its attachments and appendices) relevant to the employment of the person, firm, corporation, contractor, or subcontractor;

(v) to condition all contracts or subcontracts entered into upon performance of the requirement(s) in conformity with the terms of the Consent Decree (including its attachments and appendices); and

(vi) to require that each such person, firm, corporation, contractor, or subcontractor provide written notice of the Consent Decree to all subcontractors hired to perform any portion of any requirement of the Consent Decree.

By: \_\_\_\_\_

Name:

Title:

**Exhibit H**

**Form of Consent to Federal Funding**

[•], 2022

[Name of Government Official]  
[Government Official's Position]  
[Name of Federal Agency]

**Re: Consent to Federal Funding**

To whom it may concern,

Reference is made to that certain Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement dated as of [•] (as amended, modified or supplemented from time to time in accordance with its terms, the "O&M Agreement") among (i) [PREPA Genco LLC] ("Owner"), a [public limited liability company and governmental instrumentality of the Commonwealth of Puerto Rico, created under Act No. 83 of the Legislative Assembly of Puerto Rico, enacted on May 2, 1941], (ii) the Puerto Rico Public-Private Partnerships Authority ("Administrator"), a public corporation of the Commonwealth of Puerto Rico, created by Act No. 29 of the Legislative Assembly of Puerto Rico, enacted on June 8, 2009 ("Act 29") and (iii) [•] ("Operator"), a [•] organized under the laws of [•]. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the O&M Agreement.

Reference is also made to the faculties and rights vested upon the Administrator by virtue of: (i) Section 10(d) of Act 29, which provides that "the [Administrator], with the assistance of the Partnering Government Entity [(as defined thereunder)] and the [Puerto Rico Fiscal Agency and Financial Advisory Authority], shall oversee the performance and compliance of the Contractor under the Partnership Contract"; (ii) (a) Section 5(b) of Act No. 120 of the Legislative Assembly of Puerto Rico, enacted on June 21, 2018 ("Act 120"), which provides that the Administrator "is hereby designated as the sole Governmental Entity authorized to and responsible for (1) implementing the public policy on PREPA Transactions [(as defined thereunder)] conducted in accordance with this Act..." and (b) Section 5(d) of Act 120, which provides that "[u]pon the consummation of any PREPA Transaction, the [Energy] Commission shall assist the [Administrator] in supervising the performance and compliance of the Contractor with the Partnership or Sales Contract, in accordance with Section 10(d) of [Act 29]"; and (iii) Section 6.2(a)(v) (*Rights and Responsibilities of the Administrator – Generally*) of the O&M Agreement, which provides that Administrator shall "exercise Oversight in relation to Operator's performance of its obligations [thereunder], including performance of the O&M Services [(as defined thereunder)]."

Puerto Rico's Legacy Generation Assets (as defined in the O&M Agreement) are owned by Owner, who shall retain the exclusive right to receive amounts from all Federal Funding for the same, and pursuant to the terms of the O&M Agreement, Operator shall provide the O&M Services for the Legacy Generation Assets. Pursuant to Section 5.8(c) (*Federal Funding – Agent Designation*) of the O&M Agreement, Administrator and Owner hereby consent that Operator

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shall act as agent of Owner (and any permitted transferee thereto) in connection with any requests for federal funds for, or actions related to the federal funding of, the Legacy Generation Assets submitted to **[Name of Federal Agency]**.

Sincerely,

PUERTO RICO ELECTRIC POWER  
AUTHORITY

PUERTO RICO PUBLIC PRIVATE  
PARTNERSHIPS AUTHORITY

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Name  
Title:

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Name  
Title: