

**GOBIERNO DE PUERTO RICO  
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO  
NEGOCIADO DE ENERGÍA DE PUERTO RICO**

**NEPR**

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**IN RE:** ENMIENDA A CONTRATO DE COMPRAVENTA DE ENERGÍA OTORGADO POR LA AUTORIDAD DE ENERGÍA ELÉCTRICA Y PUNTA LIMA WIND FARM LLC.

**CASO NÚM.:** NEPR-AP-2021-0003

**ASUNTO:** Moción Para Presentar Acuerdo Enmendado en Cumplimiento con órdenes del 10 de Septiembre de 2021 y de 18 de Noviembre de 2022 y Memorando de Derecho en Solicitud de Trato Confidencial

**MOCIÓN PARA PRESENTAR EL ACUERDO ENMENDADO EN CUMPLIMIENTO  
CON ORDENES DEL 10 DE SEPTIEMBRE DE 2021 Y 18 DE NOVIEMBRE DE 2022 Y  
MEMORANDO DE DERECHO EN SOLICITUD DE TRATO CONFIDENCIAL**

AL HONORABLE NEGOCIADO DE ENERGÍA:

COMPARECE la Autoridad de Energía Eléctrica de Puerto Rico (la “Autoridad”), a través de la representación legal que suscribe, y muy respetuosamente expone y solicita:

1. El 16 de julio de 2021, la Autoridad presentó la *Petición de Aprobación de Enmiendas a Contrato de Compraventa de Energía Renovable Otorgado por la Autoridad de Energía Eléctrica de Puerto Rico y Punta Lima Wind Farm, LLC* (“Petición”) ante el Negociado de Energía de la Junta Reglamentadora de Servicio Público (“Negociado de Energía” o “Negociado”).

2. En la Petición, la Autoridad solicitó la aprobación de la enmienda a un contrato de compraventa de energía (“Acuerdo Enmendado”) que habían suscrito la Autoridad y Punta Lima Wind Farm, LLC (“Punta Lima”) en el 2009, y que posteriormente sufrió varias enmiendas. Además, la Autoridad solicitó al Negociado que aprobara el borrador de Contrato de Compraventa de Activos entre las Partes que contempla la compraventa de una Línea de Transmisión (según definida en la Petición). Dicho contrato es un anejo del Acuerdo Enmendado.

3. El 10 de septiembre de 2021, el Negociado emitió una *Resolución y Orden* (“Orden del 10 de septiembre”), mediante la cual aprobó el Acuerdo Enmendado sujeto a varias condiciones. Las condiciones de aprobación son las siguientes:

1. Se debe modificar el Acuerdo Propuesto para establecer y/o fijar parámetros concretos que permitan determinar la fecha de comienzo y terminación de la reconstrucción del Proyecto, así como la Fecha de Operación Comercial. La fecha de comienzo de la reconstrucción no debe exceder de ocho (8) meses, contados a partir de la fecha en que el Tribunal de Quiebras, en el caso que se sigue en bajo el Título III de la Ley Federal PROMESA, apruebe la aceptación (assumption) del Acuerdo Propuesto y, la Fecha de Operación Comercial no debe exceder de veinticuatro (24) meses, contados a partir de la fecha de comienzo de la reconstrucción del Proyecto.
2. Una vez se modifique el Acuerdo Propuesto para establecer la fecha de comienzo y terminación de la construcción del Proyecto, así como la Fecha de Operación Comercial, la Autoridad no podrá conceder extensiones a dichas fechas sin la previa autorización del Negociado de Energía. Toda solicitud de extensión a dichos términos debe ser justificada por la Autoridad e incluir toda la información y documentación pertinente.
4. La Autoridad y Punta Lima presentarán ante el Negociado de Energía informes de progreso mensuales sobre el estatus del Proyecto, a partir de treinta (30) días de la firma del Acuerdo Propuesto. Dichos informes deberán incluir información sobre el estatus de la asunción del Acuerdo Propuesto en el Caso bajo el Título III, permisos, interconexión del Proyecto, disponibilidad de fondos para la reconstrucción del Proyecto y la contratación de terceros para construcción del Proyecto, entre otros.
5. La Autoridad deberá comisionar la preparación de un estimado de costo de la Línea de Transmisión utilizando la metodología establecida estimados de costo Clase 1, según las clasificaciones de la AACE, o una utilizando una metodología equivalente que provea razonable certeza en cuanto al costo real de la Línea de Transmisión. De resultar dicho costo en uno sustancialmente menor al Precio de Compra, la Autoridad deberá renegociar el mismo con Punta Lima.
6. La Autoridad modificará las disposiciones pertinentes del Contrato de Compraventa de Activos y el Acuerdo Propuesto, de manera que el mismo incluya una descripción detallada de los componentes de la Línea de Transmisión objeto de adquisición y, en la medida en que están disponibles, se deberán incluir los planos y especificaciones técnicas de los componentes de la Línea de Transmisión como anejo a dicho contrato.
7. Añadir una disposición al Acuerdo Propuesto que reconozca expresamente que ninguna disposición de este pueda ser interpretada de manera que atente de forma alguna, con la jurisdicción y autoridad del Negociado de Energía.

8. Previo a la firma del Acuerdo Propuesto, entre cuyos anejos está el Contrato de Compraventa de Activos, la Autoridad deberá someter al Negociado de Energía la versión final para su revisión y aprobación.

Orden del 10 de septiembre en pp. 26-28.

7. Luego de varios tramites procesales, el 18 de noviembre de 2022, el Negociado notificó una *Resolución y Orden* (“Orden del 18 de noviembre”) mediante la cual aprobó el Acuerdo Enmendado y el contrato de compraventa de la línea de transmisión. Asimismo, estableció que la aprobación otorgada estaba sujeta al cumplimiento de las condiciones de aprobación establecidas en la Orden del 10 de septiembre y ordenó a la Autoridad a, entre otras cosas, modificar el Acuerdo Enmendado, incluyendo lo siguiente:

El Negociado de Energía ORDENA a la Autoridad a modificar la Sección 2.2 de) Contrato de Compraventa de Activos para conformarlo a las disposiciones de la Resolución de 10 de septiembre. La compraventa de la Línea de Transmisión se concretará, mediante transferencia electrónica, cinco (5) días de haber entrado en operación comercial y será por un costo que no exceda \$3,700,000.00.

El Negociado de Energía DETERMINA que es en beneficio del interés público que Punta Lima CUMPLA con los MTRs como se establece en el Apéndice D-1 del Acuerdo Propuesto. El Negociado de Energía ORDENA a la Autoridad y a Punta Lima a modificar el Acuerdo Propuesto para que incluir un término de tiempo razonable, pactado entre las partes, para lograr cumplimiento con el Apéndice D del Acuerdo Propuesto y poder entrar en la Fase 2 de Operación Comercial lo antes posible.

Orden del 18 de noviembre en p. 11.

8. El 9 de febrero de 2023, LUMA Energy, LLC y LUMA Energy ServCo, LLC (colectivamente, “LUMA”) presentó un documento titulado *Informative Motion Regarding Interconnection Studies for Punta Lima Project and Request for Confidentiality and Supporting Memorandum of Law*. En dicha moción, LUMA informó que había completado los estudios de interconexión del proyecto y que había compartido su análisis y resultados, incluyendo lo relativo al punto y modo de interconexión, con Punta Lima y con la Autoridad.

9. El 21 de febrero de 2023, el Negociado emitió otra *Resolución y Orden* en la que ordenó a Punta Lima a (1) indicar si el Proyecto podría operar conforme a los “Minimum Technical Requirements” de 2012 y en qué condiciones podría operar, sin que para ello sea necesario que la Autoridad adquiriera la línea de transmisión; y (2) expresar su postura en torno a los comentarios de LUMA contenidos en la comunicación de 6 de febrero de 2023 incluidos en la *Informative Motion Regarding Interconnection Studies for Punta Lima Project and Request for Confidentiality and Supporting Memorandum of Law*. Además, el Negociado ordenó la celebración de una Reunión Técnica el 6 de marzo de 2023 a la que deben comparecer representantes de LUMA, la Autoridad y de Punta Lima para discutir las discrepancias surgidas en relación con el PPOA.

10. El 24 de febrero de 2023, la Autoridad y Punta Lima<sup>1</sup> presentaron de manera conjunta ante este Negociado de Energía un escrito titulado *Moción Informativa Conjunta, Escrito en Cumplimiento con Resolución Y Orden de 21 de Febrero de 2023 y Solicitud de Trato Confidencial* (“Moción del 24 de febrero”).

11. En la Moción del 24 de febrero, las Partes informaron al Negociado, entre otras cosas, que sujeto a la aprobación del Negociado, se proponen proceder con la firma del Acuerdo Enmendado según modificado.

12. En atención a lo anterior, y en cumplimiento con las condiciones de la Orden del 10 de septiembre y del 18 de noviembre de 2022 la Autoridad presenta el Acuerdo Enmendado modificado para la revisión y aprobación del Negociado de Energía. Anejo A. Así como el *redline* del mismo para fácil referencia a los cambios realizados al Acuerdo Emendado. Anejo B.

#### **i. SOLICITUD DE TRATO CONFIDENCIAL A DOCUMENTACIÓN PRESENTADA**

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<sup>1</sup> La Autoridad y Punta Lima, en Adelante “las Partes”.

Los Anejos A y B de esta moción contiene el Acuerdo Enmendado, debidamente modificados según requerido. Los anejos A y B se presentan editados (*redacted*) ya que los documentos contienen información sobre los términos de la contratación con Punta Lima que podrían variar. Revelar esta información cuando el proceso de aprobación aun no es final colocaría a la Autoridad en una desventaja competitiva con la consecuencia de afectar a sus clientes. Por lo tanto, según las leyes y regulaciones aplicables, esta información debe permanecer editada, por ser confidencial.

La norma constitucional es que los documentos preparados por una entidad gubernamental, como la Autoridad, son públicos. Sin embargo, según ya decidido por nuestro Tribunal Supremo, esta norma, como muchas otras, tiene sus excepciones. Por ejemplo, en el caso *Pueblo v. Tribunal Superior*, 96 DPR 746 (1968), el Tribunal Supremo de Puerto Rico tuvo ante sí una controversia sobre la naturaleza especial de aquellos documentos que son preparados y circulados en el curso del cargo de un funcionario para fines internos de la entidad gubernamental. Allí resolvió el Tribunal Supremo, a la luz del antiguo Art. 1170 del Código Civil, 32 LPRA sec. 3271 (derogado), que

un informe, memorando o escrito preparado por un empleado o funcionario en el ejercicio de su cargo o empleo para su superior o para fines internos de las decisiones y actuaciones departamentales no son documentos públicos (énfasis nuestro) que, conforme al Art. 47 de la Ley de Evidencia, todo ciudadano tiene derecho a inspeccionar.

*Pueblo v. Tribunal Superior, supra*, págs. 755-756.

La determinación en ese caso se basó en motivos de orden público y en las implicaciones que resolver lo contrario podría tener en el funcionamiento efectivo del Gobierno. Específicamente, se indicó que

[p]or razones de orden público; porque ello afectaría el efectivo funcionamiento del gobierno e impediría que los funcionarios actuaran con

entera libertad y entereza, sin temor o inhibición alguna en la preparación de informes, memorandos u otras expresiones o comunicaciones en el curso de sus cargos, para fines departamentales, debemos concluir que el Informe que aquí se interesa, como tal, no está sujeto a inspección bajo la Regla 95 como un “documento” o “papel” obtenido por El Pueblo, de otra persona”.

*Id.*, pág. 757.

Por otra parte, el artículo 6.15 de la Ley 57-2014<sup>2</sup>, 9 LPRA sec. 1054n, provee que

Si alguna persona que tenga la obligación de someter información a la [Negociado] de Energía entiende que la información a someterse goza de algún privilegio de confidencialidad, podrá pedirle a dicha [Negociado] que le dé dicho tratamiento sujeto a lo siguiente: (a) Si la [Negociado] de Energía, luego de la evaluación de rigor, entiende que la información debe ser protegida, buscará la manera de conceder esta protección en la forma que menos impacte al público, a la transparencia y el derecho de las partes envueltas en el procedimiento administrativo en el cual se somete el documento alegadamente confidencial.

Así mismo, el legislador en la Ley Habilitadora de la Autoridad Ley 83-1941<sup>3</sup>, estableció como parte de los poderes y deberes de la Autoridad el deber de proveer documentos que sean solicitado por los clientes, a excepción de

(i) información que sea privilegiada a tenor con lo dispuesto en las Reglas de Evidencia de Puerto Rico; (ii) información relacionada con la negociación de convenios colectivos, con disputas laborales o con asuntos de personal, tales como nombramientos, evaluaciones, disciplina y despido; (iii) **ideas en relación con la negociación de potenciales contratos de la Autoridad o con la determinación de resolver o rescindir contratos vigentes**; (iv) información sobre estrategias en asuntos litigiosos de la Autoridad; (v) información sobre investigaciones internas de la Autoridad mientras estas estén en curso; (vi) aspectos sobre la propiedad intelectual de terceras personas; (vii) secretos de negocios de terceras personas; (viii) asuntos que la Autoridad deba mantener en confidencia al amparo de algún acuerdo de confidencialidad, siempre y cuando dicho acuerdo no sea contrario al interés público; o (ix) asuntos de seguridad pública relacionados con amenazas contra la Autoridad, sus bienes o sus empleados.

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<sup>2</sup> *Ley de Transformación y ALIVIO Energético* Ley Núm. 57 de 27 de mayo de 2014, según enmendada (“Ley 57-2014”).

<sup>3</sup> *Ley de la Autoridad de Energía Eléctrica de Puerto Rico*, Ley Núm. 83 de 2 de mayo de 1941, según enmendada (Ley 83-1941).

(énfasis suplido).

En el ejercicio de sus facultades y poderes otorgados por la Ley 57-2014, el Negociado de Energía aprobó el *Reglamento De Procedimientos Adjudicativos, Avisos de Incumplimiento, Revisión De Tarifas e Investigaciones*, Reglamento Núm. 8543, Negociado de Energía de Puerto Rico, 18 de diciembre de 2014 (el “Reglamento 8543”). Este reglamento incluye también una disposición en relación con las salvaguardas que el Negociado de Energía da a la información confidencial. El reglamento provee que

[s]i en cumplimiento con lo dispuesto en [el Reglamento 8543] o en alguna orden [del Negociado de Energía], una persona tuviese el deber de presentar [al Negociado de Energía] información que, a su juicio es privilegiada a tenor con lo dispuesto en las Reglas de Evidencia, dicha compañía identificará la información alegadamente privilegiada, solicitará [al Negociado de Energía] la protección de dicha información, y expondrá por escrito los argumentos en apoyo a su planteamiento sobre la naturaleza privilegiada de la información. [El Negociado] evaluará la petición y, de entender que la información amerita protección, procederá de conformidad con lo dispuesto en el Artículo 6.15 de la Ley 57-2014, según enmendada.

*Id.*, Sección 1.15.

De igual forma el *Reglamento Para el Programa de Administración de Documentos de la Autoridad de Energía Eléctrica*, Reglamento Núm. 6285 del 9 de febrero de 2001 (“Reglamento 6285”), que tiene fuerza de ley, regula la administración de documentos de la Autoridad e indica en su sección V las categorías de documentos que se pueden designar como confidenciales. Según el Reglamento, y en relación con este caso, es confidencial:

[La] [i]nformación revelada o generada por la Autoridad, como parte de una transacción comercial, cuya divulgación podría ser utilizada por terceras personas para proveer bienes o servicios a la Autoridad, a un precio más alto del que regularmente se ofrecerán tales bienes o servicios, en detrimento de los propósitos contenidos con la ley habilitadora de la Autoridad, de hacer asequible el servicio de energía eléctrica en la forma económica más amplia.

Por disposición de ley, entonces, la Autoridad puede reclamar como privilegiados y confidenciales aquellos documentos e información transacciones comerciales que están en curso. En esta categoría de documentos se encuentran los documentos de los anejos A y B. La información de los anejos A y B no puede ser revelada hasta que las transacciones sean finales. La divulgación prematura de esta información colocaría a la Autoridad en una posición de desventaja en la competencia para las negociaciones y, además, se pondría en juego la ejecución final del contrato.

POR TODO LO CUAL, la Autoridad solicita respetuosamente al Negociado de Energía que determine que la Autoridad ha cumplido con las órdenes del 10 de septiembre de 2021 y del 18 de noviembre de 2022 y apruebe el Acuerdo Enmendado según modificado.

**RESPETUOSAMENTE SOMETIDO.**

En San Juan, Puerto Rico, este 5 de marzo de 2023.

*/s Joannely Marrero Cruz*  
Joannely Marrero Cruz  
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## CERTIFICADO DE NOTIFICACIÓN

Certifico que este escrito ha sido presentado a la Secretaria del Negociado de Energía a través del sistema electrónico de radicación <https://radicacion.energia.pr.gov/> y, además, copia del mismo ha sido notificado a LUMA Energy ServCo, LLC y LUMA Energy, LLC por conducto de la Lcda. Ana Margarita Rodríguez Rivera a [ana.rodriguezrivera@us.dlapiper.com](mailto:ana.rodriguezrivera@us.dlapiper.com) y a la Lcda. Laura T. Rozas a [laura.rozas@usdlapiper.com](mailto:laura.rozas@usdlapiper.com).

En San Juan, Puerto Rico, hoy 5 de marzo de 2023.

/s Joannely Marrero Cruz  
Joannely Marrero Cruz

## Anejo A

**AMENDED AND RESTATED  
POWER PURCHASE AND OPERATING AGREEMENT  
BETWEEN  
PUERTO RICO ELECTRIC POWER AUTHORITY  
AND  
PUNTA LIMA WIND FARM, LLC  
DATED [•]**

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**AMENDED AND RESTATED**  
**POWER PURCHASE AND OPERATING AGREEMENT**  
**BETWEEN**  
**PUERTO RICO ELECTRIC POWER AUTHORITY**  
**AND**  
**PUNTA LIMA WIND FARM, LLC**

This **AMENDED AND RESTATED POWER PURCHASE AND OPERATING AGREEMENT** (the “**Agreement**”) is entered into and effective as of this [●] day of 2022 (the “**Effective Date**”) by and between the **PUERTO RICO ELECTRIC POWER AUTHORITY** (including any successor thereto, “**PREPA**”), a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by Act of May 2, 1941, No. 83, as amended, employer identification number [●], represented in this act by its Executive Director, Mr. [●], of legal age, [married], [engineer] and resident of [●], Puerto Rico<sup>1</sup>; and **PUNTA LIMA WIND FARM, LLC** (“**SELLER**”), a limited liability company organized under the laws of Delaware, authorized to do business in Puerto Rico (as successor-in-interest to Go Green Puerto Rico Alternative Energy Corp.), employer identification number [●], with its principal office at [●], and represented in this act by [INSERT AUTHORIZED REPRESENTATIVE], of legal age, [married], and a resident of [●], who is authorized to sign this Agreement on behalf of SELLER as certified by the Resolution dated [●]<sup>2</sup>.

**RECITALS**

WHEREAS, PREPA and SELLER are parties to that certain Power Purchase and Operating Agreement, dated as of July 3, 2009, as amended, supplemented, and modified from time to time (the “**Pre-Restatement PPOA**”);

WHEREAS, pursuant to the Pre-Restatement PPOA, SELLER completed construction and commenced commercial operation on December 17, 2012 of an approximately 26-megawatt Qualifying Facility, capable of operating on wind power, in the vicinity of Naguabo, Puerto Rico (“**SELLER’s Original Complex**”);

WHEREAS, on September 20, 2017, Hurricane María made landfall in Puerto Rico as a Category 4 storm, causing significant damage to PREPA’s energy transmission and distribution infrastructure and SELLER’s Original Complex;

WHEREAS, on July 2, 2017, PREPA commenced proceedings under Title III of the Puerto Rico Oversight, Management and Economic Stability Act before the District Court for the District of Puerto Rico (the “**PROMESA Court**”), which is being administered under Case No. 17-4780 (LTS);

WHEREAS, SELLER proposes to reconstruct, own, operate and maintain an approximately 26-megawatt Qualifying Facility, capable of operating on wind power (“**SELLER’s Complex**”), on the site of SELLER’s Original Complex and sell electricity generated by SELLER’s Complex to PREPA;

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<sup>1</sup> Update PREPA signatory.

<sup>2</sup> Update Punta Lima signatory.

WHEREAS, SELLER will sell exclusively to PREPA and PREPA will purchase the electric energy produced by SELLER in compliance with PURPA (as defined below); and

WHEREAS, the Parties desire to amend and restate the Pre-Restatement PPOA in its entirety, to effectuate such sale and purchase of energy in accordance with the terms and conditions of this Agreement, and acknowledge that this Agreement contains substantially similar terms to the Pre-Restatement PPOA and that the modifications to the Pre-Restatement PPOA as set forth in this Agreement do not render this Agreement a new agreement between the Parties.

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

## ARTICLE 1. DEFINITIONS

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

**“2012 MTRs”** – The Minimum Technical Requirements for Interconnection of Wind Turbine Generation (WTG) Projects included in Amendment No. 3 to the Power Purchase and Operating Agreement between Punta Lima Wind Farm LLC and the Puerto Rico Electric Power Authority, dated as of December 18, 2012 and attached hereto as Appendix G-1.

**“Agreed Operating Procedures”** - As set forth in Section 4.4.

**“Agreement”** - As set forth in the first paragraph of this Agreement.

**“Agreement Year”** - The period which begins on the Commercial Operation Date of SELLER’s Complex and ends on the first anniversary thereof, and each one (1) year period thereafter commencing on each anniversary date.

**“Assumption Order”** – An order of the PROMESA Court that approves of and authorizes the assumption by PREPA of this Agreement.

**“Assumption Order Date”** – The date that the PROMESA Court has issued the Assumption Order.

**“Authorized Officer”** – The Chief Executive Officer or President, any Vice-President, the Treasurer, the Secretary or the Assistant Secretary of SELLER or any of SELLER’s general partners.

**“Available Hours”** – The number of hours in which SELLER’s Complex is capable of delivering Net Electrical Output to PREPA.

**“Billing Period”** – As set forth in Section 10.4.

**“Business Day”** – Monday through Friday excluding holidays recognized by PREPA, which are set forth on Appendix B; PREPA will notify SELLER in writing of any changes to the holidays recognized by PREPA.

**“Changes”** – As set forth in Section 18.2.

**“Commencement of Construction”** – The first day following the date on which SELLER notifies PREPA of the action taken by SELLER or one or more contractors or subcontractors retained by SELLER, initiating reconstruction of SELLER’s Complex consistent with construction industry standards.

**“Commercial Operation Date”** – The first day following the date on which SELLER has satisfied the conditions set forth on Appendix D-1.

**“Consulting Technical Expert”** – A Person or Persons mutually agreed by the Parties assist in the resolution of technical issues, and/or issue a technical recommendation in connection with Technical Disputes, as specified at the time of such Consulting Technical Expert’s appointment, which Person shall be selected within thirty (30) Days of the notice of Technical Dispute under Article 22.24, or, if not so selected, shall be selected by the American Arbitration Association upon the request of either Party. The fees of the Consulting Technical Expert shall be equally shared by the Parties.

**“Design Limits”** – The operational limitations of the Facility based on the Facility’s design (including its operational limitations after the Commercial Operation Date), as identified in the Agreed Operating Procedures.

**“Development Abandonment”** – Prior to the Commercial Operation Date, an affirmative action taken by SELLER to permanently cease the development of SELLER’s Complex.

**“Dispute”** – As set forth in Section 22.24.

**“Dispute Notice”** – As set forth in Section 22.24.

**“Effective Date”** – As set forth in the first paragraph of this Agreement.

**“Emergency”** – A condition or situation which in the judgment of PREPA is likely to result in imminent significant disruption of service to a significant number of customers or is imminently likely to endanger life or property; provided, however, that such condition or situation is likely to provide such results according to Prudent Utility Practices and following Agreed Operating Procedures.

**“Energy Payment”** – The product of the applicable Energy Purchase Price (\$/kWh) and the Net Electrical Output for a given Billing Period.

**“Energy Purchase Price”** – The amount set forth in the column “Energy Purchase Price” in Appendix A for the applicable Agreement Year. Appendix A sets out the Energy Purchase Price for each Agreement Year during the Term.

**“Environmental Costs”** – As set forth in Article 18.

**“Estimated Generating Capacity”** – As declared by SELLER in Section 12.1.

**“Facility”** – SELLER’s reconstructed Small Power Production Facility as defined in section 201 of PURPA, consisting of up to 13 Wind Turbines, including auxiliary equipment and unit transformer and switching equipment. The Facility will be located in the municipality of Naguabo, Puerto Rico.

**“FERC”** – The Federal Energy Regulatory Commission, or any successor thereto.



**“Financial Closing Date”** – The date on which documents that provide binding commitments for funding for the reconstruction of SELLER’s Complex have been executed and funds for the reconstruction become available to SELLER.

**“Force Majeure”** – As set forth in Article 15.

**“GAAP”** – Generally Accepted Accounting Principles, as promulgated by the Financial Accounting Standards Board or its predecessors or successors.

**“Governmental Authority”** – Any court, tribunal or governmental or quasi-governmental body, regulatory body, agency, authority, office, department, commission, board, bureau, public corporation, municipality or instrumentality, in each case at any federal, state, Commonwealth of Puerto Rico, county, municipal, or local level, having jurisdiction over a Party, the Facility or the Site, and includes the Financial Oversight and Management Board of Puerto Rico, the Puerto Rico Central Office for Reconstruction, Recovery and Resiliency, the Public-Private Partnership Authority of Puerto Rico and the Puerto Rico Energy Bureau, or any successor to any of the foregoing.

**“Green Credits”** – “Renewable energy certificates” and “environmental and social attributes”, as such terms are defined in the Puerto Rico Green Energy Incentives Act (Act No. 83 of July 19, 2010), renewable energy credits, environmental attributes, emissions reductions, offsets, allowances or benefits, however entitled (or payments in lieu thereof), whether monetary, fiscal or in the form of physical property, now or in the future available to the Facility, as a facility that generates or produces electricity by means of “green energy” (as such term is defined in the Puerto Rico Green Energy Incentives Act), or from renewable or non-polluting resources, granted or available to SELLER as the owner or operator of the Facility or otherwise, in each case, from any Governmental Authority or third party, including renewable energy credits established pursuant to the Green Energy Incentives Act of Puerto Rico, but shall exclude (i) any federal or Puerto Rico tax credits and grants in lieu thereof, (ii) other tax benefits or credits, (iii) any accelerated depreciation, and (iv) proceeds from (i) through (iii), in each case, associated with the Facility or otherwise available to SELLER, each of which (i) through (iii) are expressly reserved to SELLER.

**“Initial Synchronization Date”** – The first date when all or a portion of SELLER’s electricity generating equipment is synchronized with PREPA’s electrical generating equipment and able to deliver electrical energy generated by the Facility to PREPA at the Interconnection Point.

**“Interconnection Facilities”** – SELLER’s Interconnection Facilities and PREPA’s Interconnection Facilities.

**“Interconnection Point”** – The physical point where Net Electrical Output is delivered to PREPA’s system, as set forth in Appendix C-1.

**“Interconnection Study”** – A study conducted by PREPA in accordance with Section 9.2 to evaluate the integration of the Facility’s anticipated Net Electrical Output into PREPA’s electric transmission or distribution system.

**“Interest”** – The compensation for the accrual of monetary obligations under this Agreement computed monthly and prorated daily from the time each such obligation is past due based on an annual interest rate equal to the lesser of (i) the Prime Commercial Lending Rate as set by Citibank N.A., New York, New York or any other bank as mutually agreed by the Parties or any other equivalent rate as mutually agreed by the Parties and (ii) the maximum rate allowable under Article 1649 of the Puerto Rico Civil Code or successor statute applicable to past due amounts. The provisions of this definition shall not be construed to limit the applicable rate of interest on the project debt.

**“Legal Challenge”** – Means any action, suit or proceeding brought or commenced by a third party seeking to contest the validity of this Agreement, any Permit, or the development, construction or operation of the Facility which materially impairs the ability of the Parties to perform their respective obligations hereunder.

**“Lessor(s)”** – Any party or parties that lease any equipment, structures or other facilities that are part of SELLER’s Complex to SELLER, or any agent, trustee or other person representing or acting on behalf of any such part(ies).

**“Maintenance Outage”** – A planned interruption of all or a portion of the net electrical output of SELLER’s Complex that has been informed to PREPA and is required for any purpose including inspection, preventive maintenance, or corrective maintenance and which has not been included in the Planned Outage Program.

**“Modifications”** – As set forth in Section 24.3.

**“Month”** – A Month shall begin at 12:00 midnight on the last day of the preceding calendar month and end at 12:00 midnight on the last day of the current calendar month.

**“Net Electrical Output”** – The net electrical energy output (expressed in kWh) delivered to PREPA from the Facility, as measured in accordance with Article 10.

**“Net Power Output”** means, at any given time, the instantaneous net electrical power output (expressed in kW) made available from the Facility at the Interconnection Point.

**“Notice of Breach”** – A written notice delivered by a Party to the other Party upon belief that a breach under Section 17.1 has occurred and is continuing.

**“Operation Security”** – As set forth in Section 17.4.

**“Party”** or **“Parties”** – Both SELLER and PREPA are herein individually referred to as a Party and collectively referred to as the Parties.

**“Permanent Abandonment”** – At any time after Commercial Operation Date, the affirmative action taken by SELLER, its successors, or assignees, as applicable, to permanently shut down the operation of SELLER’s Complex.

**“Permanent Closing”** – At any time after the Commercial Operation Date, the Available Hours for the Facility equal zero (0) for: (a) any period of twelve (12) consecutive Months, excluding periods of outages described in the following subclause (b); and (b) in respect of any outage due to an event of Force Majeure, a period of thirty (30) consecutive Months, whether or not a Force Majeure event has been claimed by SELLER.

**“Permits”** – All permits, licenses, approvals, authorizations, consents, variances or waivers issued by federal, Commonwealth and local agencies, commissions, authorities and regulatory bodies with jurisdiction over SELLER and SELLER’s Complex which are necessary or required for the development, construction, operation or maintenance of SELLER’s Complex.

**“Phase 2 Commercial Operation Date”** – The first day following the date on which SELLER has satisfied the conditions set forth on Appendix D.

**“Planned Outage”** – A planned interruption of all or a portion of the Net Electrical Output that has been informed in advance to PREPA and included in the Planned Outage Program.

**“Planned Outage Program”** – A written scheduled outage program submitted to PREPA by SELLER setting forth the Planned Outage periods for the Facility, as modified from time to time by SELLER as provided for in Article 8, Control and Operation of the Facility.

**“Post-Effective Date Environmental Costs”** – As set forth in Section 18.1.

**“Post-Effective Date Taxes”** – As set forth in Section 18.1.

**“Pre-Operation Period”** – The period beginning on the Initial Synchronization Date and ending on the Commercial Operation Date.

**“PREPA’s Interconnection Facilities”** – All equipment and facilities located on PREPA’s side of the Interconnection Point, as set forth in Appendix C-1, constructed and installed for the purpose of interconnecting the Facility with PREPA’s electric transmission or distribution system.

**“Project Lender”** – Any party providing construction or permanent financing for SELLER’s Complex or any portion thereof (excluding subordinated debt) or any agent, indenture trustee or other person representing or acting on behalf of any such party.

**“PROMESA Court”** – As set forth in the recitals.

**“Proposed Initial Synchronization Date”** – As set forth in Section 4.2.

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

**“Prudent Utility Practices”** – Those practices, methods, standards and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, would have been generally followed by the electric utility industry in the United States and Puerto Rico, as changed from time to time, which generally include, but are not limited to, engineering and operating considerations.

**“PURPA”** – The Public Utility Regulatory Policies Act of 1978 and the regulations promulgated there under in effect as of the date this Agreement is executed or as they are amended in the future from time to time.

**“Qualified Bank”** means Santander Bank, N.A., a commercial bank or other financial institution located within Puerto Rico, the United States or a country (or other jurisdiction) reasonably acceptable to PREPA, or which has, as of the date of issuance or renewal of such guarantee, a long-term counterparty credit rating of at least “A” by Standard & Poor’s Ratings Services, a long-term foreign currency deposit rating of “A2” by Moody’s Investors Services Inc., or, if either such rating agency is no longer in business or no longer rating the obligations in question, an equivalent rating from another internationally recognized rating agency selected by SELLER with the written consent of PREPA; provided that, if such financial institution’s ratings match such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications.

**“Qualified Operator” or “Operator”** – SELLER or another qualified and experienced operator acceptable to PREPA.

**“Qualifying Facility”** – A Small Power Production facility under Section 201 of PURPA.

**“RTU”** – As set forth in Section 7.3.

**“SELLER”** – As set forth in the first paragraph of this Agreement.

**“SELLER’s Complex”** – As set forth in the recitals. SELLER’s Complex shall include the premises, facilities and infrastructure comprising the Facility and SELLER’s Interconnection Facilities, and other ancillary equipment owned or leased by SELLER and installed for the purpose of performing its obligations under this Agreement; as such premises, facilities and infrastructure shall be constructed or reconstructed by SELLER in accordance herewith.

**“SELLER’s Complex Generating Capacity”** – The sum of the capacities in megawatts for all the generators of SELLER’s Complex, as determined pursuant to Article 12.

**“SELLER’s Interconnection Facilities”** – All equipment and facilities, located on the Facility side of the Interconnection Point, as set forth in Appendix C-1, constructed or reconstructed and installed for the purpose of interconnecting the Facility with PREPA’s Interconnection Facilities and PREPA’s electric transmission or distribution system.

**“SELLER’s Original Complex”** – As set forth in the recitals.

**“Taxes”** – As set forth in Section 18.1.

**“Technical Dispute”** – As set forth in Section 22.24.

**“Technical Recommendation”** – As set forth in Section 22.24.

**“Term”** – The initial term of this Agreement as specified in Article 5, plus any renewal Term determined pursuant to this Agreement.

**“Transfer”** – As set forth in Section 20.4.

**“Year”** – A Year shall be the twelve (12) Month period beginning 12:00 midnight on December 31 and ending at 12:00 midnight on the subsequent December 31.

1.2 The rules of interpretation listed below shall be followed when interpreting this Agreement:

- (a) Words importing the singular also include the plural and vice versa.
- (b) References to natural persons or parties include any person having legal capacity.
- (c) References to a Party include such Party’s successors and permitted assigns.
- (d) Words importing one gender include the other gender.
- (e) The words “include” and “including” mean “including, but not limited to” and corresponding grammatical variants.

- (f) Except as otherwise expressly stated herein, all references in this Agreement to this Agreement (including the Appendices hereto) or to contracts, agreements, or other documents shall be deemed to mean this Agreement (including the Appendices hereto) and such contracts, agreements or other documents, as the same may be modified, supplemented, or amended from time to time.
- (g) Except as otherwise expressly stated herein, all references to recitals, Sections, Articles, and Appendices in this Agreement are references to the recitals, Sections, Articles, and Appendices of this Agreement.
- (h) Words and abbreviations not defined in this Agreement which have generally accepted technical or design, engineering, or construction industry meanings are used in this Agreement in accordance with such recognized meanings.
- (i) The terms “hereof,” “herein,” “hereto,” “hereunder” and words of similar or like import, refer to this entire Agreement, together with its Appendices, and not any one particular Article, Section, Appendix, or other subdivision of this Agreement.
- (j) The headings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties hereto, nor should they be used to aid in any manner in the construction of this Agreement.
- (k) Terms used in the present tense may be interpreted as referring to the past tense and vice versa.
- (l) Unless otherwise stated herein, (i) references to the construction of any portion of SELLER’s Complex shall include reconstruction of such portion, and (ii) any obligation of a Party in respect of the construction of SELLER’s Complex shall be applicable to, and performed by, such Party in respect to the reconstruction of SELLER’s Complex.
- (m) Nothing contained in this Agreement shall be construed or interpreted to limit in any way PREB’s power and authority under the Laws of the Commonwealth of Puerto Rico.

## ARTICLE 2. SALE AND PURCHASE OF ENERGY

- 2.1 SELLER agrees to sell and PREPA agrees to accept delivery of and purchase the Net Electrical Output as of and following the Initial Synchronization Date, subject to the terms and conditions of this Agreement.
- 2.2 SELLER agrees to reimburse PREPA, subject to the provision of evidence reasonably satisfactory to SELLER, for the actual costs incurred by PREPA in performing the Interconnection Study in accordance with Section 9.2. SELLER shall make such payment within thirty (30) days of PREPA providing the evidence referenced in the preceding sentence.

## ARTICLE 3. NOTICES

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

If to SELLER:  
Punta Lima Wind Farm, LLC  
c/o Santander Bank, N.A.  
45 East 53<sup>rd</sup> Street  
New York, NY 10022  
Attention: Nuno Andrade, Managing Director

With a copy, which shall not constitute notice, to:

McConnell Valdés LLC  
Attention : Carlos J. Fernández Lugo  
270 Muñoz Rivera Avenue, Suite 900  
San Juan, Puerto Rico 00918  
email: [cfl@mcvpr.com](mailto:cfl@mcvpr.com)

If to PREPA:  
Puerto Rico Electric Power Authority  
1110 Ponce de Leon Avenue  
Santurce, Puerto Rico  
Attention: Director of Planning and Environmental

With a copy to:  
Puerto Rico Electric Power Authority  
G.P.O. Box 364267  
San Juan, Puerto Rico 00936-4267  
Attention: Director of Planning and Environmental

Either Party hereto may change, by notice as above provided; the persons and/or addresses to which all such notices are to be sent.

#### ARTICLE 4. PRE-COMMERCIAL OPERATION PERIOD

4.1 SELLER shall submit to PREPA the following:

- (a) SELLER's Complex preliminary and non-binding licensing and milestone construction schedules within thirty (30) days after the Assumption Order Date (and, thereafter, promptly notify PREPA of any material changes to SELLER's licensing and milestone construction schedules);
- (b) the conceptual engineering design of SELLER's Complex, including the relay protection scheme, within ninety (90) days following the Assumption Order Date;
- (c) the wind turbine manufacturer's guaranteed performance data required to perform the Interconnection Study within sixty (60) days following the execution hereof;
- (d) an official Siemens – PTI certified PSS/E mathematical model of the Facility within ninety (90) days following the Assumption Order Date; and
- (e) progress reports in a form satisfactory to PREPA by the fifth (5<sup>th</sup>) Business Day of every Month until the Commercial Operation Date.

- 4.2 SELLER shall notify PREPA in writing of the proposed Initial Synchronization Date (the “**Proposed Initial Synchronization Date**”) and the start-up and testing schedule for the Facility on or before such Proposed Initial Synchronization Date no later than sixty (60) days in advance thereof. SELLER shall have the right to postpone such date with advance notice to PREPA. PREPA and SELLER shall agree on the actual Initial Synchronization Date for the Facility and PREPA shall have the right to have a representative present during such period.
- 4.3 SELLER shall provide PREPA with relay settings for review and inspection by PREPA no later than sixty (60) days in advance of the Proposed Initial Synchronization Date. If these are found not to be acceptable to PREPA, SELLER agrees to comply with any request made by PREPA to provide acceptable relay settings prior to the Initial Synchronization Date. PREPA agrees to give any comments or suggested changes which it is entitled to give to SELLER pursuant to this Section 4.3 within thirty (30) days after SELLER submits any required documents or information to PREPA. SELLER agrees to comply with any request made by PREPA to provide acceptable relay settings prior to Initial Synchronization Date. Notwithstanding the above, PREPA may modify the control and protection schemes regarding, without limitation, the following parameters: ramp rates, higher frequency fluctuations, low voltage ride-through, low frequency ride-through, voltage support and dynamic power factor support; provided that any such modifications are in compliance with Prudent Electrical Practices, Prudent Utility Practices, and the Design Limits and the Minimum Technical Requirements for Wind Turbine Generation Projects set forth in Appendix G. SELLER shall procure equipment with electrical capabilities to comply with the above-mentioned parameters.
- 4.4 Unless otherwise agreed to by the Parties, SELLER and PREPA shall use commercially reasonable efforts to mutually develop detailed written operating procedures (the “**Agreed Operating Procedures**”) on or before sixty (60) days before the Initial Synchronization Date. The Agreed Operating Procedures will be mutually agreed based on PREPA’s standard operating procedures, taking into consideration the design of the Facility, its operational limitations after the Commercial Operation Date, and its interconnection to PREPA’s electric system. The Agreed Operating Procedures shall describe the procedures to integrate the Net Electrical Output from SELLER’s Complex into PREPA’s electric system. Topics covered shall include, but not necessarily be limited to, method of day-to-day communications, key personnel lists for both SELLER and PREPA’s dispatching centers, clearances and switching practices, outage scheduling, daily available capacity and energy reports, SELLER’s Complex operations log, reactive power support and Emergency procedures. The Agreed Operating Procedures may only be modified with the written consent of the Parties.
- 4.5 PREPA shall prepare and submit to SELLER a written voltage schedule for the Facility no later than thirty (30) days prior to the Proposed Initial Synchronization Date. PREPA may change such voltage schedule upon thirty (30) days prior written notice. SELLER shall use such voltage schedule in the operation of its Facility; provided that it is in accordance with the Design Limits of the Facility. This voltage schedule shall be based on the normally expected operating conditions for the Facility and the reactive power requirements of PREPA’s system. These thirty (30) day terms may be waived by SELLER.
- 4.6 PREPA reserves the right to delay the actual Initial Synchronization Date due to problems in which the synchronization of SELLER’s Complex could adversely affect the operations of PREPA’s electrical system, subject to Prudent Utility and Electrical Practices. In such event, PREPA shall promptly give SELLER notice of such problems with PREPA’s electrical system. SELLER shall promptly remedy any problems with facilities or equipment installed or maintained by SELLER.

- 4.7 SELLER shall provide PREPA with as-built drawings of the Interconnection Facilities (one line diagram and protection scheme) within one hundred twenty (120) days after the Phase 2 Commercial Operation Date and within one hundred twenty (120) days after any material modification of SELLER's Interconnection Facilities.

#### ARTICLE 5. TERM

- 5.1 The term of this Agreement shall begin with the Effective Date and shall continue for a period of twenty (20) Agreement Years from the Commercial Operation Date, unless extended, terminated, or canceled in accordance with the terms hereof. If the Term is extended, the word "Term" shall thereafter be deemed to mean the original Term so extended.
- 5.2 The Term of this Agreement may be extended by mutual agreement of the Parties for up to two (2) consecutive periods of five (5) Agreement Years following the expiration of the initial twenty (20) year term. Written notice of intent to extend the Term of this Agreement shall be sent by overnight courier, certified or registered mail to the other Party not less than eighteen (18) Months prior to the expiration of the term, unless either Party shall give written notice by certified or registered mail to the other of its intent not to extend the term of this Agreement not less than eighteen (18) Months prior to the expiration of the term, and if the other Party fails to respond in writing to such written notice of intent to extend prior to the expiration of the Term, the Term shall be deemed extended for five (5) Agreement Years. During any extension term, all provisions contained herein remain in effect.

#### ARTICLE 6. REPRESENTATIONS, WARRANTIES AND COVENANTS

- 6.1 SELLER covenants and warrants that SELLER's Complex shall be operated and maintained by a Qualified Operator in accordance with (a) the Agreed Operating Procedures, (b) Prudent Electrical Practices and (c) Prudent Utility Practices, including without limitation, synchronizing, voltage and reactive power control.
- 6.2 SELLER shall exercise commercially reasonable efforts to achieve the Phase 2 Commercial Operation Date within eighteen (18) months after the Commercial Operation Date. SELLER covenants and warrants that, from and after the Phase 2 Commercial Operation Date, SELLER's Complex shall generate its own reactive power (kVAR) such that the Facility shall be capable of operating with a power factor consistent with the Minimum Technical Requirements for Wind Turbine Generation Projects set forth in Appendix G and that the Facility shall be operated at the voltage levels determined pursuant to Section 4.5. SELLER further covenants and warrants that, from and after the Phase 2 Commercial Operation Date, its generator(s) shall be capable of operating at the maximum MVA consistent with the Minimum Technical Requirements for Wind Turbine Generation Projects set forth in Appendix G. SELLER warrants that it will promptly correct any SELLER's Complex design or construction defect that causes SELLER's Complex to have a material adverse effect on PREPA's voltage level or voltage waveform.
- 6.3 SELLER shall, at all times, comply with all applicable laws, ordinances, rules and regulations applicable to it and the use, occupancy and operation of SELLER's Complex, unless the non-compliance therewith would not have a materially adverse effect on the operation of SELLER's Complex, provided that in the event of any such noncompliance, SELLER shall be diligently contesting in good faith any such law, ordinance, rule or regulation. SELLER shall give all required notices, shall procure and maintain all Permits and shall pay all charges and fees in connection therewith unless SELLER shall be diligently contesting any such payments in good faith. SELLER



shall give all required notices, shall procure and maintain all Permits and shall pay all charges and fees in connection therewith.

- 6.4 As between the Parties, SELLER shall have the sole responsibility for the payment of any and all fines or other penalties incurred by or imposed upon SELLER or its agents, suppliers, employees or subcontractors for noncompliance by SELLER, its agents, employees, suppliers, or subcontractors with laws, rules, regulations or ordinances applicable to or in connection with the development, construction, ownership and/or the proper operation of SELLER's Complex as determined by those having jurisdiction over SELLER's Complex, and PREPA shall be held harmless from any such fines or penalties and expenses related to these (including without limitation all reasonable attorneys' fees).
- 6.5 SELLER hereby represents and warrants:
- (a) On the Effective Date, SELLER is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware. SELLER has all requisite power and authority to conduct its business, to own its properties, and to execute, to deliver, and to perform its obligations under this Agreement.
  - (b) The execution, delivery and performance by SELLER of this Agreement have been duly authorized, and do not and will not (i) require any additional internal consent or approval of SELLER, or (ii) violate any provision of SELLER's certificate of formation or operating agreement, or any material indenture, contract or agreement to which it is a party or by which it or its properties may be bound, or any law, ordinance, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect.
  - (c) On the Effective Date, SELLER is not in default under any document or instrument referred to in clause (ii) of the preceding paragraph (b), which default could reasonably be expected to have a material adverse effect on the ability of SELLER to perform its obligations under this Agreement.
  - (d) This Agreement is a legal, valid and binding obligation of SELLER, enforceable against SELLER in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights generally.
  - (e) On the Effective Date, except as previously disclosed in writing, there is no pending action or proceeding in which SELLER is a party before any Governmental Authority or arbitrator that could reasonably be expected to affect materially and adversely the financial condition or operations of SELLER or the ability of SELLER to perform its obligations under, or which purports to affect the legality, validity or enforceability, of this Agreement as in effect on the date hereof.
- 6.6 SELLER shall not be relieved of its obligations under this Agreement as a result of subcontracting any of its obligations to a third party.
- 6.7 SELLER further agrees that it will cause to be delivered to PREPA an annual certification of the names of its Authorized Officers, accountants, and consulting engineers. SELLER shall make available to PREPA all copies that SELLER receives of any maintenance evaluations or reports to be provided by SELLER to any third party with a financial security interest in or lien on SELLER's Complex, including evaluations or reports generated at the request of such third parties or performed by an engineering firm employed by such third party.

- 6.8 PREPA agrees that all information (whether financial, technical, or otherwise) obtained from SELLER, or from PREPA's inspections of SELLER's Complex, which is not otherwise generally available to the public shall be kept confidential and used solely by PREPA in connection with the performance of its obligations under this Agreement. Disclosure of such information may be made only within PREPA's organization to key personnel, and to third parties serving as PREPA's legal, financial or technical advisors, whose duties justify their need to review and know such material. PREPA shall require each person (and personnel thereof) to agree for the benefit of SELLER to maintain the confidentiality of such information. To the extent PREPA is required to disclose such information by any Governmental Authority or to the extent necessary to secure governmental approval or authorization, PREPA shall use its best efforts to seek a confidentiality agreement that assures confidential treatment of the information consistent with the terms of this Section 6.8. In the event PREPA is not successful in obtaining a confidentiality agreement, PREPA and SELLER shall use reasonable efforts to obtain through court action the appropriate protective order.
- 6.9 PREPA hereby agrees that, throughout the Term for so long as (i) the Trust Indenture dated January 1, 1974, as amended, between PREPA and The Chase Manhattan Bank (National Association) as successor trustee remains in effect, or (ii) in any agreements subsequently entered into by PREPA for similar purposes in connection with or related to the restructuring of PREPA's debts, all payments by PREPA to SELLER under this Agreement shall be treated as current expenses as defined by the terms of the Trust Agreement dated as of January 1, 1974 as amended, between PREPA and State Street Bank and Trust Company, as successor trustee, and any successor indentures or agreements, including any amendments, supplements or modifications thereto, or will be afforded no less beneficial treatment than current expenses in any such new agreements.
- 6.10 PREPA agrees to cause its external counsel (at SELLER's cost) or its internal counsel to issue an opinion in a form reasonably acceptable to SELLER and the Project Lenders on the Financial Closing Date affirming the representations in Section 6.11.
- 6.11 PREPA hereby represents and warrants:
- (a) Pursuant to Act No. 83 of May 2, 1941, as amended, PREPA is a public corporation duly organized and validly existing under the laws of the Commonwealth of Puerto Rico and has all requisite power and authority to conduct its business, to own its properties, and to execute, to deliver, and to perform its obligations under this Agreement.
  - (b) The execution, delivery and performance by PREPA of this Agreement have been duly authorized by PREPA's Governing Board in accordance with applicable law, and (i) do not and will not require any additional internal consent or approval of PREPA; and (ii) do not and will not violate any provision of Act No. 83 of May 2, 1941, as amended, or its regulations, or any material indenture, contract or agreement to which it is a party or by which its properties may be bound.
  - (c) PREPA is not in default under any document or instrument referred to in clause (ii) of the preceding paragraph (b), which default could reasonably be expected to have a material adverse effect on the ability of PREPA to perform its obligations under this Agreement.
  - (d) This Agreement is a legal, valid and binding obligation of PREPA, enforceable against PREPA in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights generally.

- (e) Except for the proceedings before the PROMESA Court, there is no pending, or to the best of its knowledge, threatened action or proceeding against PREPA before any Governmental Authority or arbitrator that could reasonably be expected to affect materially and adversely the financial condition or operations of PREPA or the ability of PREPA to perform its obligations under, or which purports to affect the legality, validity or enforceability, of this Agreement as in effect on the date hereof.
- 6.12 PREPA shall not be relieved of its obligations under this Agreement as a result of subcontracting any of its obligations to a third party.
- 6.13 PREPA acknowledges that under this Agreement SELLER is only committing and PREPA is only paying for the Net Electrical Output as available from time to time from SELLER's Complex. PREPA also acknowledges that there is no explicit or implied guarantee about the Net Electrical Output reliability, and that SELLER is not committing and PREPA is not paying for dependable capacity, and that the Facility production is intermittent and subject to wind availability, and that PREPA is not relying and will not rely on SELLER's Complex Generating Capacity for the expansion of its system, and that the only remedy available to PREPA for the failure of SELLER to achieve the Commercial Operation Date or for the failure to achieve any particular number of Available Hours is the termination of the Agreement as provided for in Article 16.
- 6.14 SELLER shall sell and deliver to, and PREPA shall receive and pay for all Green Credits produced by the Facility in accordance with Article 11.1.
- 6.15 SELLER shall provide to PREPA, for the Term of the Agreement, audited financial statements prepared in accordance with GAAP.

#### ARTICLE 7. DISPATCH

- 7.1 The Facility production is intermittent and subject to wind availability. PREPA agrees to accept all the Net Electrical Output produced by the Facility according to the terms of this Agreement and will not disconnect or curtail the Facility unless due to an Emergency as specified in Article 8.
- 7.2 Notwithstanding Section 7.1 and as further specified in Article 8, PREPA may require SELLER to disconnect or curtail the Facility or reduce the amount of Net Electrical Output due to situations that may affect safety margins or reliability levels in PREPA's system; provided, however, that any disconnection or reduction in the level of Net Electrical Output required by PREPA hereunder shall be based upon and implemented in a manner consistent with Prudent Utility Practices and within the Design Limits; provided further, however, that PREPA shall not disconnect the Facility or reduce the level of Net Electrical Output for purposes of economic dispatch.
- 7.3 SELLER will give PREPA's dispatcher a status report every eight (8) hours of SELLER's Complex conditions, including any SELLER's Complex restrictions, and the hourly integrated net generation during that period. SELLER shall notify the dispatcher right away if there is any pertinent change in SELLER's Complex status. SELLER shall make available through the Facility's remote terminal unit ("RTU") the actual Facility load limit adjustment.
- 7.4 The Facility will provide to PREPA an estimate of next day and next week production, based on the previous day production, estimated strength of the winds the next day and week and based on the meteorological forecast for the region and site.

## ARTICLE 8. CONTROL AND OPERATION OF THE FACILITY

- 8.1 SELLER shall use reasonable efforts to (a) submit to PREPA the Planned Outage Program for (i) the balance of the Year during which the Commercial Operation Date occurs no later than the Commercial Operation Date and (ii) each subsequent Years before the beginning of such Year and (b) notify PREPA at least twenty-four (24) hours in advance of all Planned and Maintenance Outages.
- 8.2 If an Emergency is declared by PREPA, PREPA's dispatching centers may partially curtail the Facility or disconnect the Facility from PREPA's system and the Facility will remain curtailed or disconnected from PREPA's system until SELLER has received permission to increase output or reconnect from PREPA's dispatching center. At its sole discretion, during an Emergency PREPA may elect to lower the output of the Facility. Without limiting the generality of the foregoing, PREPA may require the Facility to be curtailed or disconnected without prior notice and remain curtailed or disconnected until permission to reconnect has been received from PREPA (i) if a failure to curtail or disconnect would create or contribute to an Emergency; (ii) if immediate maintenance operations are required or; (iii) whenever PREPA deems it necessary to do so in the interest of the safety and integrity of PREPA's system; provided, however, that any such requests, curtailment, disconnections or lowering the output of the Facility by PREPA hereunder shall be of no greater scope and of no longer duration than is required due to the Emergency or other operating problem, and is based upon and implemented in a manner consistent with Prudent Utility Practices and within the Design Limits.
- 8.3 SELLER shall cooperate with PREPA in establishing Emergency plans, including without limitation, recovery from a local or widespread electrical blackout; voltage reduction in order to effect load curtailment; and other plans which may arise. SELLER shall make technical information and data available to PREPA concerning start-up times and black-start capabilities.
- 8.4 If SELLER has a Planned Outage or a Maintenance Outage, and such Planned Outage or Maintenance Outage occurs or would occur coincident with an Emergency, SELLER shall make reasonable efforts, consistent with Prudent Utility Practices and with PREPA's approval, to reschedule the Planned Outage or Maintenance Outage or if the Planned Outage or Maintenance Outage has begun, to expedite the completion thereof.
- 8.5 SELLER recognizes that, subject to Section 7.2 and Section 8.2, PREPA may require that the Facility's Net Power Output be reduced (or capped) or the Facility may be curtailed or disconnected due to situations that may affect safety margins or reliability levels in PREPA's system. Some of these situations may include, but are not limited to, voltage stability problems, security driven dispatch, transmission lines contingencies, generating units contingencies, power transfer levels in some circuits, and disconnection ("vias libres") of some transmission circuits due to maintenance and improvement.
- 8.6 SELLER shall provide as a minimum at its expense the following communication facilities linking SELLER's Complex with PREPA's dispatching centers:
- (a) One dual ported RTU, including setup installation and configuration, which shall be specified by PREPA.
  - (b) Two independent telecommunication circuits, including one voice grade to link the SCADA system to the Facility's RTU using DNP protocol through a designated PREPA communication node, and a second fiber optic circuit to link PREPA's network to the

Facility in order to access protection equipment, revenue meters and the dynamic system monitor through the ruggedcom security device as specified by PREPA;

- (c) A voice telephone extension for the purpose of communicating with the Monacillos Transmission Center and Ponce Transmission Center;
- (d) A telephone line and equipment to transmit and receive e-mail messages to confirm the oral communication between PREPA and SELLER; and
- (e) Dynamic system monitor equipment, components, and system in accordance with Appendix H, for recording the power disturbance caused by electro-mechanic swings and to measure the system response to the swing disturbance.

Items provided by SELLER in accordance with this Section 8.5 shall be subject to the approval of PREPA, which approval shall not be unreasonably withheld or delayed.

8.7 Each Party shall keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement.

- (a) All such records shall be maintained for a minimum of five (5) years after the creation of such record or data and for any additional length of time required by regulatory agencies with jurisdiction over the Parties; provided, however, that neither Party shall dispose of or destroy any such records that are specifically designated by the other Party even after five (5) years without thirty (30) days prior notice to the other Party. If notice is given to the notifying Party during such thirty (30) day period, the notifying Party shall promptly deliver such records and data to the Party wishing to retain such records.
- (b) SELLER shall maintain an accurate and up-to-date operating log at the Facility with records of: (i) real and reactive power for each hour; (ii) changes in operating status and outages; (iii) any unusual conditions found during inspections; (iv) SELLER's Complex Generating Capacity for each Available Hour as determined consistent with Prudent Utility Practices. Either Party shall have the right from time to time, upon fourteen (14) days written notice to the other Party and during regular business hours, to examine the records and data of the other Party relating to the proper administration of this Agreement any time during the period the records are required to be maintained. At PREPA's request, SELLER shall provide certifications of tests and inspections of the electric and protection equipment, which may impact PREPA's electrical system. PREPA shall have the right to visit and visually monitor SELLER's Complex during operation and testing.

## ARTICLE 9. INTERCONNECTION

9.1 Subject to the requirements of this Agreement (but without waiving any rights under applicable law), SELLER shall have the right to interconnect SELLER's Complex to PREPA's electrical system at, and deliver the Net Electrical Output to, the Interconnection Point. Appendix C sets forth the information required for the Interconnection Study needed to assess the interconnection of SELLER's Complex to PREPA's system.

9.2 PREPA shall perform the Interconnection Study and provide a report summarizing the results to SELLER within sixty (60) days of SELLER's provision of the information and data required by Section 4.1. The Interconnection Study shall, at a minimum, determine what modifications need to be made to the Interconnection Facilities in light of the reconstruction of SELLER's Complex, if

any, such as (a) a determination of the power capabilities of the major interconnection equipment required for the Interconnection Facilities, (b) the maximum fault currents necessary to specify short circuit duty and interrupting ratings, (c) confirm generator step up (GSU) transformer impedance and determine transformer tap ranges necessary for proper control of voltage and reactive power flow, and (d) verify the PREPA dispatching centers that will coordinate the operation of SELLER's Complex. SELLER is not prohibited from commencing construction of or modifications to its Facility or the Interconnection Facilities, if applicable, prior to the completion of the Interconnection Study to the extent that the Parties agree that such construction of or modification to the Facility or the Interconnection Facilities will not be materially affected by the results of the Interconnection Study. Any modifications to the Interconnection Facilities shall be consistent with Prudent Utility Practices considering the functional one-line interconnection diagram and approved specifications contained in Appendix C-1 and subject to the provisions of Article 24.2.

- 9.3 Within one hundred twenty (120) days of PREPA's receipt of the information submitted by SELLER in accordance with Section 4.1, PREPA shall either issue SELLER a notice to proceed or notify SELLER of any disagreement with the information provided. SELLER shall not purchase equipment or repair or modify the Interconnection Facilities until receipt of a notice to proceed from PREPA, which shall constitute acceptance by PREPA of the design and specifications of the Interconnection Facilities and of the need to purchase equipment or repair or modify the Interconnection Facilities, if applicable. Once the notice to proceed is received by SELLER, SELLER shall use its best efforts to complete work, if any, on PREPA's Interconnection Facilities within the time period specified in the schedule submitted as per Section 4.2.
- 9.4 Subject to Section 9.3, SELLER shall, to the extent required, at its own cost (a) design, acquire all necessary materials and equipment, and repair or modify SELLER's Interconnection Facilities, and (b) design, acquire all necessary materials and equipment, and repair or modify PREPA's Interconnection Facilities, in each case, contemporaneously with the reconstruction of SELLER's Complex. SELLER agrees that the cost of repairing or modifying PREPA's Interconnection Facilities, if required, shall include the control, protection and communication infrastructure required for implementing the aforementioned improvements.
- 9.5 SELLER agrees that SELLER's Complex interconnection and its achievement of the Commercial Operation Date is conditioned upon the installation, at SELLER's cost, of the equipment required to comply with all of the Minimum Technical Requirements for Wind Turbine Generation Projects set forth in Appendix G except for the requirements of Articles 3, 6 and 7 thereof. SELLER further agrees that, from and after the Phase 2 Commercial Operation Date, SELLER's Complex interconnection is conditioned upon the installation, at SELLER's cost, of (a) the frequency regulation, voltage and dynamic reactive power support equipment consistent with the entirety of the Minimum Technical Requirements for Wind Turbine Generation Projects set forth in Appendix G and (b) dynamic system monitoring equipment as specified in Appendix H. The Parties agree to comply with the Minimum Technical Requirements for Wind Projects attached hereto as Appendix G. SELLER's compliance with the Minimum Technical Requirements for Wind Projects shall be measured at the location set forth in Appendix C-1.
- 9.6 Prior to the Initial Synchronization Date, PREPA shall perform, or supervise SELLER in the performance of, the acceptance testing of the Interconnection Facilities. The acceptance testing requirements for the Interconnection Facilities will be set forth in the Agreed Operating Procedures.
- 9.7 Reserved.

- 9.8 At all times, SELLER shall own and be responsible for the safe and adequate operation and maintenance of all SELLER's Interconnection Facilities. At all times, PREPA shall own and be responsible for the safe and adequate operation and maintenance of PREPA's Interconnection Facilities.
- 9.9 PREPA reserves the right to modify or expand its requirements for protective devices in the Interconnection Facilities in conformance with Prudent Electrical Practices and subject to the Design Limits.
- 9.10 Each Party shall notify the other in advance of any changes to its system that will affect the proper coordination of protective devices on the two systems.

#### ARTICLE 10. METERING

- 10.1 PREPA shall own and maintain the primary and backup meters and metering devices (including RTUs) used to measure the delivery and receipt of Net Electrical Output for payment purposes, located at the point identified in Appendix C-1. SELLER shall calibrate and test the primary and backup meters and metering devices subject to Section 10.3, provided that such meters and metering devices shall be subject to PREPA's approval.
- 10.2 All meters and metering equipment used to determine the Net Electrical Output delivered to PREPA shall be sealed, and the seals broken only by PREPA personnel when the meters are to be inspected, tested or adjusted. PREPA shall give SELLER two (2) weeks prior written notice thereof and SELLER shall have the right to have a representative present during the meter inspection, testing or adjustment. If either Party believes that there has been a meter failure or stoppage, it shall immediately notify the other Party.
- 10.3 At least once a Year at PREPA's cost and, in addition, from time to time upon two (2) weeks prior written notice by SELLER, at SELLER's cost, PREPA will test and calibrate the meter(s), including backup meter, in accordance with the provisions for meter testing as established in American National Standard Code for Electricity Metering (ANSI) Standard C 12.16 for Solid State Electricity Meters, and the Handbook for Electrical Metering, Edison Electric Institute 8th Edition or the updated edition in effect and available to PREPA at the time the test is performed. When, as a result of such a test, a meter is found to be inaccurate by no more than two percent (2%), no adjustment will be made in the amount paid to SELLER for Net Electrical Output delivered to PREPA. If the meter is found to be inaccurate by more than two percent (2%), PREPA will use the backup meter to calculate the correct amount delivered to PREPA for the actual period during which inaccurate measurements were made or, if the actual period cannot be determined to the mutual satisfaction of the Parties, for a period equal to the time elapsed since the most recent test, but in no case for a period in excess of six (6) Months. If the backup meter is not available, or if the testing of the backup meter demonstrates that said meter is inaccurate by more than two percent (2%), the meter readings shall be adjusted based on the corrected meter readings of the most accurate meter for the actual period during which inaccurate measurements were made, or, if the actual period cannot be determined to the mutual satisfaction of the Parties, for a period equal to one-half of the time elapsed since the most recent test, but in no case for a period in excess of six (6) Months. The previous payments by PREPA for this period shall be subtracted from the amount of payments that are calculated to have been owed under this Agreement. The difference shall be offset against or added to the next payment to either Party as appropriate under this or other agreements between the Parties. Each Party shall comply with any reasonable request of the other Party concerning the sealing of meters, the presence of a representative of the other Party when the

seals are broken and the test is made, and other matters affecting the accuracy of the measurement of electricity delivered from SELLER's Complex.

- 10.4 During each one (1) year period, following the Initial Synchronization Date, PREPA shall read the meters twelve (12) times to determine the amount of Net Electrical Output delivered to PREPA between any such two (2) consecutive meter readings (the "**Billing Period**"). The Billing Period shall not exceed thirty-three (33) days nor be less than twenty-eight (28) days. Except that the first Billing Period, from the Initial Synchronization Date might be less than twenty-eight (28) days to adjust the ensuing Billing Periods to the desired schedule. The meters will be read on the dates indicated on the meter-reading program prepared by PREPA and submitted to SELLER on or before January 1<sup>st</sup> of each Year. PREPA shall notify SELLER in advance of any change on the meter-reading program. SELLER may be present, at its option, during all meter readings. PREPA shall provide SELLER with a written statement containing the results of such meter readings within ten (10) days following the reading.

#### ARTICLE 11. COMPENSATION, PAYMENT AND BILLINGS

- 11.1 For each Billing Period (or part thereof), PREPA shall pay to SELLER the Energy Payment in consideration for both the Net Electrical Output delivered to PREPA and the Green Credits generated by the Facility during such Billing Period (or part thereof). For the avoidance of doubt, all Green Credits generated by the Facility shall be conveyed to PREPA at no additional charge (as the consideration therefor is included in the Energy Payment). An example of the Energy Payment is included in Appendix A.
- 11.2 PREPA will buy all the energy delivered by SELLER for each Month (or part thereof) from the Initial Synchronization Date to the Commercial Operation Date in an amount equal to the product of [REDACTED] / kWh and the energy produced during such Month (or part thereof).
- 11.3 On or before the fifteenth (15<sup>th</sup>) day following the end of each Billing Period, SELLER shall provide PREPA with a written invoice for the Net Electrical Output delivered to PREPA and for other amounts or reimbursement due to SELLER by PREPA hereunder, and such invoice shall be paid by PREPA within forty-seven (47) days after the end of the Billing Period. Interest shall accrue on the outstanding payments due to SELLER commencing on the forty-eighth (48) day after the Billing Period. Notwithstanding the payment requirements set forth in this Section, any amounts owed to PREPA by SELLER relating to SELLER's Complex that are not paid when due to PREPA, at PREPA's discretion, may be offset against the amounts due to SELLER from PREPA under this Agreement, subject to PREPA providing SELLER with ten (10) business days' advance written notice describing in reasonable detail the amounts to be set off before effecting any such set off. Payment to PREPA shall be made by wire transfer to an account with a bank to be specified by PREPA in writing at least thirty (30) days prior to the Initial Synchronization Date or with such other banks as may thereafter be specified by PREPA in writing. Payment to SELLER shall be made by wire transfer to an account with a bank to be specified by SELLER in writing at least thirty (30) days prior to the Initial Synchronization Date or with such other banks or institutions as may thereafter be, specified by SELLER in writing. Either Party may, by written notice to the other, change the address to which such payments are to be sent.
- 11.4 PREPA will charge all payments that it owes under this Agreement to PREPA's budget account number [●] and estimates that its costs under this Agreement will not exceed [●]. For the avoidance of doubt, the Parties have set out the expected account number and estimate of costs for informational purposes to satisfy the requirements of the Puerto Rico Controller. This paragraph does not bind the Parties or modify any other provision of this Agreement.



## ARTICLE 12. SELLER'S COMPLEX GENERATING CAPACITY

- 12.1 SELLER declares (but does not represent, warrant or covenant) that the Estimated Generating Capacity for the Facility at commencement of commercial operations is expected to be approximately 26 MW. SELLER acknowledges and agrees that, to remain interconnected to the PREPA's generation, transmission, and distribution system, the Net Power Output of the Facility at the Interconnection Point shall not exceed the Estimated Generating Capacity at any time, unless required by the Minimum Technical Requirements for Wind Turbine Generation Projects set forth in Appendix G.
- 12.2 Following the performance of the tests detailed in Appendix D-1, SELLER shall notify PREPA in writing of SELLER's Complex Generating Capacity and the Commercial Operation Date. PREPA at its option may have an eyewitness during the performance of the tests.
- 12.3 Following the performance of the tests detailed in Appendix D, SELLER shall notify PREPA in writing of SELLER's Complex Generating Capacity and the Phase 2 Commercial Operation Date. PREPA at its option may have an eyewitness during the performance of the tests.

## ARTICLE 13. LIABILITY

- 13.1 Each Party shall be responsible for the energy and facilities, including Interconnection Facilities, located on its respective side of the Interconnection Point. The Net Electrical Output made available by SELLER to PREPA under this Agreement shall become the property of PREPA at the Interconnection Point. Except as provided in Section 13.2, SELLER shall not be liable to PREPA for loss or damage to PREPA's generation, transmission, and distribution system, including PREPA's Interconnection Facilities, resulting directly or indirectly from the use, misuse or presence of said energy once it passes the Interconnection Point. PREPA shall not be liable to SELLER for loss or damage to SELLER's Complex, resulting directly or indirectly from the use, misuse or presence of said energy before it passes the Interconnection Point.
- 13.2 The Parties agree that their responsibility under this Agreement will be governed by the Puerto Rico Civil Code and its case law, as dictated by the Supreme Court of Puerto Rico. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico.
- 13.3 Notwithstanding anything to the contrary contained in this Agreement, neither Party nor any of its affiliates nor any of their respective directors, officers, shareholders, partners, employees, agents and representatives nor any of their respective heirs, successors and assigns shall in any event be liable to the other Party or its officers, directors, agents, employees or representatives for claims for incidental, consequential or indirect damages, whether arising in tort, contract or otherwise, connected with or resulting from performance or nonperformance under this Agreement, including without limitation, claims made by either Party's customers or suppliers, or claims made by third parties, or claims made by either Party for lost profits.
- 13.4 Nothing in this Article 13 shall relieve either Party of its obligation to make payments that become or have become due pursuant to Article 11 and Article 18.

## ARTICLE 14. INDEMNIFICATION

- 14.1 Each Party shall indemnify and hold harmless the other Party and each of its affiliates and each of their respective directors, officers, shareholders, partners, employees, agents and representatives

and each of their respective heirs, successors and assigns from and against any and all damages, claims, losses, liabilities, actions, causes of action, costs, expenses and obligations (including, without limitation, all reasonable attorneys' fees) whether arising in contract, tort or otherwise to third parties for or on account of injury, bodily or otherwise, to or death of persons or for damage to or destruction of property, in each case resulting from, arising out of or in connection with such indemnifying Party's negligent performance or failure to perform under this Agreement.

- 14.2 In the event any Party to this Agreement receives notice of any claim or cause of action for which such Party elects to assert a right of indemnification and hold harmless from the other Party, the Party receiving such notice must give prompt written notice to the other Party of the claim. The Party required to give the indemnification and hold harmless under the terms and provisions of this Agreement will have control of the defense of any such claim or cause of action (except to the extent prevented by any legal conflict of interest) including the selection of counsel to handle same. In addition to the counsel so selected, the Party being indemnified and held harmless shall be entitled to be represented by counsel of his or its own choosing but, in such event, the cost and expense of said additional counsel shall be borne by the Party being indemnified.
- 14.3 SELLER shall indemnify and hold harmless PREPA for any and all judgments and expenses (including reasonable costs and attorneys' fees) required to be incurred by PREPA as a result of claims of any nature whatsoever resulting from any environmental harm due to the actions of SELLER or SELLER's agents or employees in the design, planning, construction or operation of either or both of SELLER's Original Complex or SELLER's Complex or any of its Facilities or arising as a result of the presence at either or both of SELLER's Original Complex or SELLER's Complex or any of its Facilities of pollutants, hazardous substances, materials or wastes. In the event SELLER fails to reimburse PREPA for such expenses within thirty (30) days of receipt of written notice from PREPA stating that such expenses were incurred, subject to the provisions of Article 11.3, PREPA may offset the amount of such expenses against amounts due SELLER from PREPA under this Agreement.

#### ARTICLE 15. FORCE MAJEURE

- 15.1 The Parties shall be excused from performing hereunder and shall not be liable or otherwise if and only to the extent that they shall be unable to perform or are prevented from performing due to a Force Majeure event. For purposes of this Agreement, Force Majeure means any cause beyond the reasonable control of and not the result of the fault or negligence of the Party claiming the Force Majeure event. The burden of proof as to whether a Force Majeure event has occurred and caused a non-performance or inability to perform shall be on the Party claiming the Force Majeure. Except as provided in Section 15.4, the Parties hereto shall be excused from performing hereunder and shall not be liable in damages or otherwise to the extent the non-performance or inability to perform is due to a Force Majeure event.
- 15.2 Provided that the provisions of Section 15.1 above are met, Force Majeure events may include, but are not limited to, the following: Acts of God, strikes, acts of public enemy, war, blockades, boycotts, riots, insurrections, epidemics, earthquakes, storms, floods, civil disturbances, lockouts, fires, explosions, Legal Challenges, interruptions of services due to the act or failure to act of any Governmental Authority, except that PREPA cannot claim Force Majeure for acts or failures to act by PREPA.
- 15.3 Except as otherwise provided in Section 15.4, if either Party is rendered wholly or partly unable to perform its obligations under this Agreement because of Force Majeure, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided

that: (i) the non-performing Party, within ten (10) days after the occurrence of the Force Majeure, gives the other Party written notice describing the particulars of the occurrence and its estimated duration; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure consistent with Prudent Utility Practices; (iii) no obligations of either Party which arose prior to the Force Majeure be excused as a result of the Force Majeure; and (iv) the non-performing Party uses its best efforts, consistent with Prudent Utility Practices, to remedy its inability to perform and resume in full its performance under this Agreement, provided that this obligation shall not require the settlement of any strike, walkout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its best interest.

- 15.4 Neither Party shall be excused by reason of Force Majeure from the obligation to make any payments, when due, to the other Party.
- 15.5 For purposes of this Article 15, if a Party disputes the other Party's claim of Force Majeure such dispute shall be resolved through the Dispute Resolution process provided for in Section 22.24.
- 15.6 A Party claiming a Force Majeure shall use its best efforts, diligently and continuously, to mitigate and remedy the causes of the Force Majeure. These efforts shall continue during any Dispute Resolution process.

#### ARTICLE 16. TERMINATION

- 16.1 Termination of this Agreement shall occur only upon:
- (a) expiration of the Term of this Agreement as provided in Article 5; or
  - (b) mutual written consent of the Parties; or
  - (c) the date identified by PREPA in a written notice to SELLER following the occurrence of a Development Abandonment, Permanent Abandonment or Permanent Closing, subject to the provisions of Article 17; or
  - (d) the date identified by a Party in a written notice to the other Party following the material, uncured breach of any of the terms and conditions of this Agreement by such other Party, subject to the provisions of Article 17; or
  - (e) the date identified by PREPA in a written notice to SELLER following any delay by SELLER in achieving (i) the Commencement of Construction of the Facility by the date that is eight (8) Months after the Assumption Order Date (ii) the Commercial Operation Date of the Facility by the date that is twenty-four (24) Months after the Commencement of Construction, or (iii) the Phase 2 Commercial Operation Date by the date that is twenty-four (24) Months after the Commercial Operation Date, unless the delay is due to one or more events of Force Majeure or the act or omission of PREPA, in which case, the eight (8) or each of the twenty-four (24) Month periods, as the case may be, shall be extended on a day for day basis for the duration of such Force Majeure event or act or omission of PREPA and the termination right may only be exercised if the Commencement of Construction, Commercial Operation Date, or Phase 2 Commercial Operation Date has not occurred by the expiration of such extended period, subject to the provisions of Article 17.

- 16.2 Termination of this Agreement shall not discharge either Party hereto from any obligation it owes to the other Party under this Agreement by reasons of any transaction, loss, cost, damage, expense or liability, which shall occur or arise (or the circumstances, events, or basis of which shall occur or arise) prior to termination. It is the intent of the Parties hereby that any such obligation owed (whether the same shall be known or unknown at termination or whether the circumstances, events or basis of the same shall be known or unknown at termination) shall survive termination. Any indebtedness by either Party to the other shall be considered payable within ninety (90) days of the termination of this Agreement. This Section 16.2, together with Article 13, Article 14, Section 22.4 and Section 22.7 shall survive termination of this Agreement.

#### ARTICLE 17. BREACH OF AGREEMENT, DELAYS AND SECURITY

- 17.1 A breach of this Agreement shall be deemed to exist upon the occurrence of any one of the following:
- (a) the Commencement of Construction, Commercial Operation Date, or Phase 2 Commercial Operation Date for the Facility is not achieved within the time frames specified in Section 16.1(e);
  - (b) the failure by either Party to perform in any material respect its obligations under this Agreement, subject to the provisions of Section 17.3, or
  - (c) the occurrence of a Development Abandonment, Permanent Abandonment or Permanent Closing of SELLER's Complex.
- 17.2 If PREPA believes SELLER has breached this Agreement pursuant to Section 17.1(a), PREPA shall provide SELLER a Notice of Breach thereof. If within fifteen (15) days of the receipt of such Notice of Breach, SELLER fails to respond in writing to the Notice of Breach, PREPA may terminate this Agreement as provided under Article 16 as the only remedy for such a breach.
- 17.3 If either Party believes the other Party has breached this Agreement pursuant to Section 17.1(b) or Section 17.1(c), the non-breaching Party shall provide the other Party with a Notice of Breach thereof. If within thirty (30) days of the receipt of such Notice of Breach, such other Party fails to respond in writing to the Notice of Breach, the non-breaching Party shall be entitled to invoke its remedies under this Agreement and/or under applicable law. If such other Party disputes in writing that a breach by it has occurred, the Parties may pursue a resolution by the Dispute Resolution process provided for in Section 22.24. In case the other Party admits in writing, or the Dispute Resolution process contemplated above results in a determination that a breach (other than a payment breach) has occurred, the breaching Party shall have a minimum of thirty (30) days from the latest of (i) receipt of the Notice of Breach, (ii) its admission of breach, or (iii) when the resolution contemplated above determines that a breach has occurred, to cure the breach or the cause of such breach, if the breach is one which by its nature cannot be cured, provided however, that if the breach or such cause cannot be cured within the thirty (30) day period, the breaching Party shall be given an additional ninety (90) day period to cure the breach or such cause with the exercise of due diligence. If the breaching Party fails to cure the breach or such cause or to be actively pursuing to cure with the exercise of due diligence within such time period, the non-breaching Party may pursue its remedies under this Agreement and/or under the law.
- 17.4 No later than the Commencement of Construction, SELLER shall provide to PREPA, at SELLER's sole expense, a surety bond issued by a surety company duly licensed in the Commonwealth of Puerto Rico, an irrevocable direct pay letter or letters of credit issued by a Qualified Bank, or a

guaranty provided by a guarantor with an investment grade credit rating as determined by Moody's or Standard and Poor's (provided, however, that the requirement that such guarantor have an investment grade credit rating shall not apply so long as such guarantor and SELLER are, directly or indirectly, wholly owned by Santander), which such issuing bank or guarantor and forms of surety bond, letter of credit or guaranty shall be subject to PREPA's approval (such approval not to be unreasonably withheld, conditioned or delayed), in each case, in the aggregate amount of [REDACTED] per kilowatt of Estimated Generating Capacity (the "**Operation Security**"). The Operation Security required herein shall be maintained for the remainder of the Term.

- 17.5 PREPA may draw from the Operation Security required under Section 17.4 to offset any damages PREPA may be entitled to under this Agreement, provided that PREPA either obtains the agreement of SELLER to the level of damages or obtains a final determination through the Dispute Resolution process specifying the level of damages. If PREPA reasonably determines that the Operation Security would otherwise expire or cease to exist prior to such agreement or judgment, PREPA may draw from the Operation Security an amount equal to PREPA's claim of damages; provided that PREPA places the drawn amounts in an escrow account in a bank reasonably acceptable to SELLER until the appropriate amount of damages is determined. Following such agreement or determination, PREPA may draw from the escrow account and retain amounts equal to the amount of damages, if any, determined to be due to PREPA and PREPA shall deliver to SELLER all amounts remaining in the escrow account, if any. Drawing under the Operation Security shall not be the exclusive remedy available to PREPA.

#### ARTICLE 18. TAXES AND ENVIRONMENTAL COSTS

- 18.1 For purposes of this Agreement, "**Taxes**" shall mean any and all taxes, fees or other charges of any nature, excluding income taxes and repatriation (tollgate) taxes, that are imposed or assessed on or as a result of the ownership or operations of SELLER's Complex by federal, Commonwealth or municipal governmental bodies or agencies responsible for implementing tax laws, rules, regulations or orders. "**Environmental Costs**" shall mean any and all fixed and variable costs incurred by SELLER resulting from the imposition or assessment on or as a result of the ownership or operations of SELLER's Complex by laws, rules, regulations or orders relating to the environment issued by federal, Commonwealth or municipal governmental bodies or agencies. "**Post-Effective Date Taxes**" shall mean all Taxes resulting from tax laws, rules, regulations or orders enacted, approved or issued after the Effective Date. "**Post-Effective Date Environmental Costs**" shall mean all Environmental Costs resulting from laws, rules, regulations or orders enacted, approved or issued after the Effective Date.
- 18.2 SELLER shall be responsible for all income taxes, repatriation (tollgate) taxes, Taxes and Environmental Costs; provided that PREPA shall reimburse SELLER for (a) all changes in the payments of Taxes by SELLER that are the result of the enactment of Post-Effective Date Taxes and (b) all changes in SELLER's Environmental Costs that are the result of the enactment of Post-Effective Date Environmental Costs, in each case, applicable to SELLER by reason of the ownership or operation of SELLER's Complex for the purpose of the sale by SELLER to PREPA of Net Electrical Output (collectively, "**Changes**"). Such Changes payable by PREPA according to the foregoing shall be paid to SELLER by an equitable adjustment to the Energy Purchase Price on a per kWh basis over the remainder of the Term.
- 18.3 SELLER will promptly pay and discharge all lawful taxes, assessments and governmental charges or levies imposed upon it or in respect of all or any part of its property or business, all trade accounts payable in accordance with usual and customary business terms, and all claims for work, labor or materials which, if unpaid, might become a lien or charge upon any of its property; provided,

however, that SELLER shall not be required to pay any such tax, assessment, charge, levy, account payable or claim if (a) the validity, applicability or amount thereof is being contested in good faith by appropriate actions or proceedings which will prevent the forfeiture or sale of any property of SELLER or any material interference with the use thereof by SELLER and (b) SELLER has set aside on its books reserves deemed by it to be adequate with respect thereto. PREPA shall pay or cause to be paid all taxes, fees and other charges of any nature on or with respect to the Net Electrical Output at and from the PREPA's Interconnection Facilities, including, without limitation, taxes, fees or other charges of any nature assessed on or with respect to the purchase and sale of the Net Electrical Output at the Interconnection Point (including, without limitation, sales tax, excise tax, municipal license tax and value-added tax).

## ARTICLE 19. INSURANCE

- 19.1 SELLER shall obtain or cause its agent or its affiliate to obtain on or before the later of (i) the Financial Closing Date, and (ii) the Commencement of Construction of SELLER's Complex, and shall maintain during the remainder of the Term of the Agreement the following policies of insurance issued by an A. M. Best rated insurance company authorized to do business in Puerto Rico, or any other insurance providers reasonably acceptable to PREPA, such as Lloyds of London:
- (a) Workmen's Compensation Insurance: (i) SELLER shall provide Workmen's Compensation Insurance as required by the Workmen's Compensation Act of the Commonwealth of Puerto Rico. SELLER shall also be responsible for compliance with said Workmen's Compensation Act by all its subcontractors, agents or affiliates; (ii) SELLER shall furnish PREPA with a certificate from the State Insurance Fund showing that all personnel employed in the works under this Agreement are covered. If imported technical personnel is exempted, SELLER shall furnish evidence of such exemption and a certificate from the insurance carrier covering said personnel and; (iii) for imported technical personnel eligible for exemption, SELLER shall refer to Appendix E, enclosed;
  - (b) Employer's Liability Insurance: SELLER shall provide Employer's Liability Insurance with minimum bodily injury limits of \$1,000,000 for each employee and \$1,000,000 for each accident covering against the liability imposed by Law upon SELLER as a result of bodily injury, by accident or disease, including death arising out of and in the course of employment outside of and distinct from any claim under the Workmen's Compensation Act of the Commonwealth of Puerto Rico;
  - (c) Commercial General Liability Insurance: SELLER shall provide and maintain during the Term of the Agreement a Commercial General Liability Insurance with bodily injury and property damage combined single limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Such insurance shall include specific coverage for contractual liability encompassing the indemnification provisions in Article 14, broad form property damage liability, personal injury liability, explosion, collapse and undergrounds damages coverage, products/completed operations liability; and where applicable, watercraft indemnity liability which may be covered on a separate policy;
  - (d) Automobile Liability Insurance: SELLER shall provide a Comprehensive Automobile Liability Insurance with bodily injury and property damage combined single limits of at least \$1,000,000 per accident covering all owned, non-owned or hired vehicles;

- (e) Excess Umbrella Liability Insurance: SELLER shall maintain an Excess Umbrella Liability Insurance with a limit of not less than \$3,000,000 per occurrence in excess of the limits of insurance provided in subsections (b) through d) above;
- 19.2 The amounts of insurance required in Section 19.1 above may be satisfied by SELLER purchasing primary coverage in the amounts specified or by buying a separate Excess Umbrella Liability Policy together with lower limit primary underlying coverage. The structure of the coverage is SELLER's option, so long as the total amount of insurance meets PREPA's requirements set forth in Section 19.1.
- 19.3 The coverage's requested in Section (b) above and any required Umbrella or Excess coverage could be "occurrence" form policies.
- 19.4 SELLER shall cause its insurers to endorse its Commercial General Liability and, if applicable, Excess Umbrella Liability policies with the following endorsement (a) through (d); and its Automobile Liability policies with endorsement item (d):
  - (a) PREPA, its board of directors, its directors, officers and employees are additional insureds under this policy to the extent of SELLER's indemnity obligations elsewhere in this Agreement; and
  - (b) This insurance is primary, but only for liability arising out of the operation of SELLER's Complex or other matters arising in relation to this Agreement; with respect to the interest of PREPA, its directors, officers, and employees, and other insurance maintained by them is excess and not contributory with this insurance; and
  - (c) Insurer hereby waives all rights of subrogation against PREPA, its officers, directors and employees; and
  - (d) Notwithstanding any provision of the policy, this policy may not be cancelled, non-renewed or materially changed by the insurer without giving thirty (30) days (ten (10) days in the case of non-payment of premiums) prior written notice to PREPA. All other terms and conditions of the policy remain unchanged.
- 19.5 Regarding breach of insurance warranties by SELLER, all insurance policies under Subsections (c) through (d) of Section 19.1 shall be endorsed, to the extent available on commercially reasonable terms, as follows or with substantially similar language agreeable to the Parties: "The breach of any of the warranties or conditions in this policy by SELLER shall not prejudice PREPA's right under this policy."
- 19.6 SELLER shall cause its insurers or agents to provide PREPA not later than seven (7) days prior to Commencement of Construction, with the originals of the certificates of insurance evidencing the policies and endorsements listed above with respect to SELLER's Complex. Failure of PREPA to obtain certificates of insurance does not relieve SELLER of the insurance requirements set forth herein. Failure to obtain the insurance coverage required by this Article 19 shall in no way relieve SELLER's obligations and liabilities under other provisions of this Agreement.

## ARTICLE 20. ASSIGNMENT

- 20.1 Except as otherwise provided in Section 20.5, this Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party, which consent shall not be

unreasonably withheld. Any attempt to assign this Agreement without the prior written consent of the corresponding Party shall be void. For avoidance of doubt, in no case shall the transfer of this Agreement to an affiliate of SELLER be Subject to PREPA's approval.

- 20.2 Notwithstanding the above, SELLER may assign its rights and benefits but not its obligations and duties under this Agreement without PREPA's consent (a) to a Project Lender as collateral security in connection with a financing and/or (b) to a Lessor as collateral security in connection with a lease arrangement; provided that SELLER shall not be relieved of its responsibility to carry out its duties and obligations under this Agreement, and further provided that any such assignment is made expressly subject to the terms and conditions of this Agreement between SELLER and PREPA. PREPA agrees to execute the appropriate consenting documents, estoppels certificates and acknowledgments (including agreements to provide copies of notices of defaults and agreements to pay funds directly to the Project Lender or Lessor (or its lenders or its lenders' representatives)), as reasonably required by the Project Lender or Lessor, in connection with any assignment made by SELLER, Project Lender, or Lessor in accordance with this Article 20.
- 20.3 PREPA acknowledges that as a result of an assignment of SELLER's rights and interests under this Agreement to a Project Lender or Lessor: (a) the Project Lender or Lessor, as applicable, will have the right, upon the occurrence of a default under its corresponding agreements with SELLER, to assume or cause a nominee to assume, all of the rights and obligations of SELLER (or Project Lender or Lessor) under this Agreement, and (b) the Project Lender or Lessor, or its lenders or its lenders' representatives, as applicable, will have the right to cure defaults by SELLER under this Agreement on the same terms and during the same periods available to SELLER.
- 20.4 The Parties acknowledge that PREPA is undergoing a transformation process, and therefore, both Parties agree that PREPA may assign, convey or transfer (each, a "**Transfer**") any of its rights, title, or interest in this Agreement as permitted by applicable law and at any time, without SELLER's consent and without cost, expense or incremental liability to PREPA or SELLER, to any Governmental Authority of Puerto Rico which becomes the owner of all or substantially all of Puerto Rico's electric power transmission and distribution system; provided that PREPA shall not be released from liability hereunder unless and until this Agreement shall be expressly accepted by the transferee in any such Transfer as binding upon said transferee, including an acknowledgment by said transferee of Project Lenders' rights with respect to this Agreement and the consent to collateral assignment, and provided further that PREPA shall notify SELLER no later than thirty (30) Days before the effective date of any such Transfer.
- 20.5 In the event the Facility or any portion thereof, SELLER, or substantially all of SELLER's assets are intended to be sold, directly or indirectly, SELLER shall notify PREPA of such intention to sell thirty (30) Days in advance of the intended date of such sale. PREPA shall have the right to approve the new owner, which approval shall not be unreasonably withheld, conditioned or delayed, and which decision PREPA shall inform SELLER no later than thirty (30) Days after SELLER's notice under the preceding sentence; provided, however, that no such approval shall be required if (a) the sale or transfer of SELLER's assets is part of any foreclosure on any mortgage, lien, pledge, charge or other encumbrance granted to the Project Lenders under any non-recourse project financing related exclusively to such assets and such lenders or their agent has entered into a direct agreement with PREPA in respect of the collateral assignment of this Agreement, (b) such new owner constitutes a permitted assignee under Article 20.3, or (c) the new owner provides to PREPA (i) its audited financial statements as per GAAP, demonstrating that such new owner has a tangible net worth of at least twenty-five million dollars (\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least fifty million dollars (\$50,000,000)), (ii) evidence that such new owner is or has engaged a Qualified Operator, and (iii) the certifications and documentation required by



Article 22.9, but construing references to SELLER therein as references to such new owner; provided, however, that, in each case, SELLER has ensured that any regulatory approvals required have been obtained in respect of such transfer and such transfer otherwise complies with applicable law. In all of the preceding authorized transactions, this Agreement shall be transferred and assigned to the new owner as of the date of the PREPA approval, or as of the date of the notice to PREPA under subclauses (a), (b) or (c) above, and from such date onward all references to SELLER herein shall be deemed to refer to the new owner.

#### ARTICLE 21. QUALIFYING FACILITY STATUS

- 21.1 SELLER shall certify that the Facility has achieved status as a Qualifying Facility pursuant to PURPA on or before the Commercial Operation Date.
- 21.2 In the event the Facility loses its status as a Qualifying Facility pursuant to PURPA, SELLER shall vigorously pursue and use reasonable efforts to re-obtain Qualifying Facility status. Notwithstanding the above, should SELLER be unable to obtain such status, this Agreement shall remain in full force and effect and SELLER shall comply, in its relationship with PREPA, with all other provisions of PURPA and the regulations approved under PURPA by FERC or any successor applicable to the relationship between Qualifying Facilities and electric utilities, in particular those provisions which protect, defend, preserve, and/or are propitious to electric utilities, provided, however, that nothing under PURPA or the regulations hereunder shall materially adversely affect in any way the rights, duties, and obligations of the Parties under this Agreement.

#### ARTICLE 22. MISCELLANEOUS PROVISIONS

- 22.1 This Agreement, including the appendices thereto, can be amended only by agreement between the Parties in writing.
- 22.2 The failure of either Party to insist in any one or more instances upon strict performance of any provisions of this Agreement, or to take advantage of any of its rights hereunder, shall not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect.
- 22.3 SELLER represents and warrants that the information included in the Contractor Certification Requirement, as included in Appendix C of the Contract Submission Questionnaire required by the Financial Oversight & Management Board for Puerto Rico, is complete, accurate and correct, and that any misrepresentation, inaccuracy or falseness in such Contractor Certification Requirement will render this Agreement null and void and SELLER will have the obligation to reimburse immediately to PREPA any amounts, payments or benefits received from PREPA hereunder.
- 22.4 This Agreement is intended solely for the benefit of the Parties hereto. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party to this Agreement.
- 22.5 No officer, employee, or agent of SELLER or PREPA or of the Commonwealth or municipal governments shall be entitled to any share or part of this Agreement or to any benefit that may arise therefore that would be in violation of any law, rule, regulation, order, or policy of the Commonwealth of Puerto Rico or PREPA.
- 22.6 This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either

Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

- 22.7 Cancellation, expiration or earlier termination of this Agreement shall not relieve the Parties of obligations incurred prior to, or as a result of, such cancellation, expiration or earlier termination of this Agreement, which by their nature should survive such events, including without limitation warranties, remedies, promises of indemnity and confidentiality.
- 22.8 PREPA agrees to provide electric service to SELLER, as requested by SELLER, at the most advantageous rate available to SELLER in accordance with PREPA's applicable rates.
- 22.9 Previous to the signing of this Agreement, SELLER will have to submit the following documents or certifications:
- (a) Certification by SELLER, which indicates that it has filed its Income Tax Returns during the five (5) previous years, if required, and that it does not owe taxes to the Commonwealth of Puerto Rico; or is paying such taxes by an installment plan in full compliance with its terms.
  - (b) An Income Tax Return Filing Certificate, issued by the Treasury Department of Puerto Rico, Area of Internal Revenues, assuring that SELLER has filed his Income Tax Return for the last five (5) years, if required. To acquire such Certificate, SELLER will use the Request for Copy and/or Certification of Income Tax Returns Form issued by the Treasury Department of Puerto Rico. In addition, SELLER shall submit a Certification of Debt issued by the Area of Internal Revenues.
  - (c) Certification issued by the Municipal Revenues Collection Center, assuring that SELLER does not owe any tax to such governmental agency. To acquire such Certificate, SELLER Will use the form issued by the Municipal Revenues Collection Center.
  - (d) Certificate issued by the Department of Labor and Human Resources of Puerto Rico assuring that SELLER has paid to the Department of Labor and Human Resources of Puerto Rico his employees' contributions, in accordance with the Puerto Rico Employment Security Act (unemployment, temporary disability or sickness or social security for chauffeurs); or is paying such contributions by an installment plan in full compliance with its terms. To acquire such Certificate, SELLER will use the form issued by the Department of Labor and Human Resources of Puerto Rico.
  - (e) A sworn statement that SELLER, to its actual knowledge, does not receive payment or benefit of any nature for services rendered regularly through an appointment to a Governmental Authority of Puerto Rico.
- 22.10 If any of the previously required Certifications shows a debt, and SELLER has requested a review or adjustment this debt, SELLER will certify that it has made such request at the Effective Date. If the requested review or adjustment is denied and such determination is final, SELLER will provide, immediately, proof of payment of this debt to PREPA; otherwise, SELLER accepts that the owed amount be offset by PREPA and retained at the origin, deducted from the corresponding payments.
- 22.11 Specifically, SELLER recognizes that submittal of the aforementioned certifications and documents is an essential condition of this Agreement; and even in the case that they are partially

incorrect, there will be sufficient cause for PREPA to terminate, cancel or rescind this Agreement and SELLER have to refund all payments received under this Agreement. Prior to exercising any rights that PREPA might have pursuant to this Section 22.11, PREPA will notify SELLER of the nature of the deficiency and will afford SELLER a reasonable time to prepare or cause to prepare the documents and certifications to comply with the aforementioned requirements. SELLER will not have the preceding cure rights if SELLER had knowingly submitted false documents.

- 22.12 Each Party to this Agreement warrants that, except to the extent that a particular provision of this Agreement expressly creates a different standard, it will be reasonable with respect to the substance and timing of any exercise of its respective rights, obligations, duties and discretions in implementing this Agreement, including, without limitation, the making of and satisfying of requests, the issuance and withholding of consents and findings of acceptability or satisfaction, the incurrence of costs that are the responsibility of the other Party, and the provision of notice to the other Party and the Project Lenders if applicable.
- 22.13 This Agreement shall inure to the benefit of and be binding upon SELLER and PREPA and their respective successors and assigns.
- 22.14 Either Party may waive breach by the other Party; provided that no waiver by or on behalf of either Party of any breach of this Agreement shall take effect or be binding on that Party unless the waiver is in writing. A waiver of breach shall extend only to the particular breach waived and shall not limit or otherwise affect any rights that either Party may have with respect to any other or future breach.
- 22.15 If any provision hereof shall be held invalid, illegal or unenforceable by in accordance with Section 22.24, such holding shall not invalidate or render unenforceable any other provision hereof.
- 22.16 PREPA and SELLER agree that no amendment, which could be made to the Agreement, during its Term, shall be understood as a contractual novation, unless both Parties agree to the contrary specifically and in writing. The preceding sentence shall be equally applicable in such other cases where PREPA gives SELLER a time extension for the compliance of any of its obligations under the Agreement (provided, however, that any extensions to the Commencement of Construction or the Commercial Operation Date shall require the prior written approval of the PREB), or where PREPA dispenses the claim or demand of any of its credits or rights under the Agreement.
- 22.17 Under no circumstances, except in such one where PREPA agrees to the contrary specifically and in writing, shall PREPA's rights under the Agreement be understood as waived by any amendment, change order, time extension to SELLER, or by reason of dispensation given by PREPA as to a claim or demand of any of its credits or contractual rights.
- 22.18 SELLER certifies that it does not receive payment or benefit of any nature for services rendered regularly through an appointment to a governmental agency, body, public corporation or municipality of Puerto Rico. SELLER also certifies that it may have contracts with other governmental agencies or bodies, but such contracts do not constitute a conflict of interest for SELLER.
- 22.19 SELLER certifies that, on the Effective Date, it does not have any contractual relation that could cause a conflict of interest with this Agreement. SELLER also certifies that no public employee has any personal or economic interest in this Agreement.

- 22.20 SELLER agrees to comply with the provisions of Act of June 18, 2002, No. 84, which establishes a Code of Ethics for the Contractors, Suppliers and Economic incentive Applicants of the Executive Agencies of the Commonwealth of Puerto Rico.
- 22.21 Except as provided under Article 18, Taxes and Environmental Costs, during the Term of this Agreement, any Change in Law, including, but not limited to changes in applicable tax law, which causes an increase in SELLER costs when supplying the products or services to be acquired by PREPA, shall be SELLER's responsibility. PREPA shall not be obliged to pay more for Net Electrical Output than as defined in this Agreement.
- 22.22 SELLER shall be considered as an independent contractor, for all purposes under this Agreement, and all persons engaged or contracted by SELLER for the performance of its obligations herein, shall be considered as its employees or agents or those of its subcontractors, and not as employees or agents of PREPA.
- 22.23 All invoices submitted by SELLER shall include the following Certification, signed by SELLER, in order to be processed for payment by PREPA:

***No Interest Certification:***

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

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***SELLER's Signature***

- 22.24 If a dispute arises between the Parties regarding the application, interpretation, enforceability, validity, performance, or breach of this Agreement or matters arising therefrom or relating thereto, (a "**Dispute**"), then such Dispute shall be resolved solely by either the agreement of the Parties, with or without a Technical Recommendation (as defined and subject to the terms set forth in clause (b) below) or in a proceeding before the Puerto Rico Energy Bureau in accordance with this Section 22.24.
- (a) In the event of a Dispute under this Agreement, the disputing Party may promptly provide written notice of the Dispute (a "**Dispute Notice**") to the other Party setting forth in reasonable detail the scope and nature of such Dispute, including without limitation an identification of the provisions of this Agreement under which such Dispute arises. Following delivery of the Dispute Notice, the Parties shall either (i) agree in writing to submit such Dispute for a Technical Recommendation as provided in clause (b) below or (ii) absent such agreement, nominate a member of its respective senior management, who shall have decision-making authority on behalf of such Party, and such senior management members shall promptly meet and seek to achieve settlement, if possible, by negotiation and mutual agreement. If the Dispute is not resolved or submitted for Technical Recommendation within forty-five (45) Days after the Dispute Notice is received by the recipient Party (or such longer period of time as may be mutually agreed by the Parties in

writing), then either Party may submit the Dispute to the consideration of the Puerto Rico Energy Bureau.

- (b) If a Dispute hereunder is one that the Parties agree is of a technical nature that they should attempt to resolve through a technical review in proceedings before the Consulting Technical Expert, either Party may submit such Dispute (a “**Technical Dispute**”) for a recommended resolution by the Consulting Technical Expert (a “**Technical Recommendation**”) by providing to the other Party and the Consulting Technical Expert a written notice, specifying the matter to be determined. Proceedings before the Consulting Technical Expert shall be held in San Juan, Puerto Rico, unless otherwise agreed in writing by the Parties. Within thirty (30) Days or the engagement of the Consulting Technical Expert for a Technical Dispute (or such longer period of time as the Parties may mutually agree in writing), the Consulting Technical Expert shall conduct a hearing; provided that the Parties may agree in writing to waive the hearing and have the Consulting Technical Expert issue the Technical Recommendation on the basis of written submissions alone. The Consulting Technical Expert shall render a written recommendation on the Technical Dispute as soon as practicable after the close of the hearing but, in any case, no later than fifteen (15) Days after the close of the hearing. The Parties may resolve the Technical Dispute based on the Technical Recommendation or any mutually agreed modification thereof. If the Technical Dispute is not resolved in this fashion, the Parties may submit the matter for a final determination before the Puerto Rico Energy Bureau.

22.25 This Agreement amends and restates the Pre-Restatement PPOA in its entirety. Each Party acknowledges and agrees that the execution and delivery of this Agreement does not constitute a novation of the Pre-Restatement PPOA. Each Party acknowledges and agrees that (a) it hereby waives its rights relating to any breach or default of, or claim against, any other Party, as well as any right to any time extension for achieving any milestone or performing any other obligation under the Pre-Restatement PPOA or arising prior to the Effective Date, and (b) it will not pursue any claim, or request any refund, reimbursement or extension of time, in each case for any event that has occurred prior to the Effective Date.

22.26 Promptly after the execution hereof, PREPA shall move for and use reasonable efforts to obtain the issuance of the Assumption Order. PREPA shall keep SELLER abreast of any proceedings before the PROMESA Court related to the Assumption Order and this Agreement.

22.27 PREPA and SELLER stipulate that this Agreement is a post-petition agreement executed after the petition date and entitled to administrative expense treatment under PROMESA and the Bankruptcy Code. Further, PREPA stipulates that all of SELLER’s costs and obligations owed to SELLER under this Agreement will be treated as administrative expenses and will support such recovery in any proceeding before any relevant court.

## ARTICLE 23. CHOICE OF LAW AND VENUE

23.1 This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Puerto Rico and, to the extent applicable, the laws of the United States of America.

23.2 PREPA hereby irrevocably and unconditionally, for itself and for any Person claiming by or through PREPA: (a) agrees that the execution, delivery and performance by it of this Agreement does and will constitute private and commercial acts done and performed for private and commercial purposes; (b) waives any and all rights, claims, defenses and immunities it or any of

its assets has or may in the future have in any jurisdiction based on sovereign immunity or any similar rights, claims or defenses, in each case in respect of any claims or proceedings, the receipt of notice, service of process, compliance with judgments or orders or the enforcement of any such judgment, award or order in each case arising in respect of this Agreement or transactions contemplated in this Agreement; and (c) consents generally in respect of the enforcement of any judgment, award or order against it or its assets in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such claims or proceedings.

ARTICLE 24. THIRD-PARTY ACCESS TO INTERCONNECTION FACILITIES

- 24.1 The Parties acknowledge and agree that PREPA may, at any time, connect, or permit third parties to connect, additional generation or energy storage capacity to PREPA's Interconnection Facilities.
- 24.2 Any costs necessary for the connection of additional generation or energy storage resources to any part of PREPA's Interconnection Facilities, including without limitation the cost of any required studies, equipment or structures, shall be borne by such additional generation or energy storage resource, provided (a) their primary and backup meters, metering devices and protective devices shall be installed by such additional generation or energy storage resource or resources, at no cost to SELLER or PREPA, at a location that ensures separate metering of any generation from the SELLER's Complex and any generation from such additional capacity, and (b) prior to the installation of such meters, metering devices and protective devices, the Parties shall amend Appendix C-1 to reflect any changes necessitated by such installation.

***[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]***

IN WITNESS WHEREOF, the Parties hereto have agreed to execute this Agreement in San Juan, Puerto Rico, as of the date first written above.

**Puerto Rico Electric Power Authority**

**Punta Lima Wind Farm, LLC**

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**Appendix A - ENERGY PAYMENT**

<b>Agreement Year</b>	<b>Energy Purchase Price (\$/kWh)</b>
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**Appendix B - HOLIDAYS**

The following holidays are recognized by PREPA. All holidays which fall on a Sunday are observed the following Monday.

<u>DAY</u>	<u>CELEBRATION</u>
January 1	New Year's Day
January 6	Three Kings Day
2 <sup>nd</sup> Monday in January	Eugenio Maria de Hostos
3 <sup>rd</sup> Monday in January	Martin Luther King
3 <sup>rd</sup> Monday in February	George Washington
March 22	Abolition of Slavery
Friday of Holy Week	Good Friday
3 <sup>rd</sup> Monday in April	Jose de Diego
Last Monday in May	Memorial Day
July 4	Independence Day
3 <sup>rd</sup> Monday in July	Luis Munoz Rivera
4 <sup>th</sup> Monday in July	Jose Celso Barbosa
July 25	Commonwealth Constitution
1 <sup>st</sup> Monday in September	Labor Day
October 12	Columbus Day
November 11	Veterans Day
4 <sup>th</sup> Thursday in November	Thanksgiving Day
December 25	Christmas Day

## **Appendix C - INTERCONNECTION**

The following are the description of the Interconnection Facilities existing as of the Effective Date, the scope of work for the modification to the Interconnection Facilities and the specifications needed to be performed by SELLER for modifications to PREPA's Interconnection Facility. The following is not intended to be an all-inclusive scope of work, as an Interconnection Study will be required to determine the design as described in the Article 4. The attached electrical interconnection single line at Appendix C-1 identifies the Interconnection Point, PREPA's Interconnection Facilities, SELLER's Interconnection Facilities, and the location for the primary meter used for measuring the Net Electrical Output.

### **1. Description of the Existing Interconnection Facilities:**

- 1.1.** PREPA's Interconnection Facilities existing as of the Effective Date and located at the Dagua Transmission Center (TC) include:
  - 1.1.1. the revenue metering equipment; and
  - 1.1.2. the 115kV Breaker 42070 and associated structures, disconnect switches and lightning arrestors.
- 1.2.** SELLER's Interconnection Facilities existing as of the Effective Date include the 115 kV Line and associated Assets (as each term is defined in Appendix F). The 115 kV Line includes 39 structures, a 556.4kCMIL ACSS conductor and a 3#6 optical ground wire (OPGW).

### **2. Scope of Work for the Interconnection Facilities:**

- 2.1.** The Interconnection Facilities existing as of the Effective Date shall be modified or upgraded, as necessary, in accordance with the following; provided that, if the existing equipment described below (other than the Dynamic System Monitor (DSM)) is operational or otherwise repairable to the level of compliance it achieved prior to the passage of Hurricane María on September 20, 2017, then SELLER shall not be obligated to replace the equipment to meet the standards set forth in Article 3 below, and will only be required to cause such equipment to be put in a condition of good operation and repair (subject to normal wear and tear, consistent with its age) and, in all material respects, sufficient for its routine operation.
  - 2.1.1. protection and control relaying and equipment per PREPA's Design Criteria Documents (as applicable to SELLER's Complex);
  - 2.1.2. telecommunications equipment per PREPA's Telecommunication Design Criteria (as applicable to the SELLER's Complex);
  - 2.1.3. the Dynamic System Monitor (DSM), transient recorder, SCADA system and communications in accordance with the requirements of this Agreement; and
  - 2.1.4. other work as identified below in Articles 3 through 7 below.

### **3. Codes and Standards Requirements:**

All new or replacement designs should be in accordance with PREPA's latest Design Criteria Documents (DCDs) listed below, practices and applicable standards, applicable ANSI/IEEE & NESC standards, and building codes. This includes but is not limited to the below requirements.

- 3.1. PREPA's Protection and Control Design Criteria (as applicable to the SELLER's Complex)
- 3.2. PREPA's Telecommunication Design Criteria (as applicable to the SELLER's Complex)
- 3.3. American National Standards Institute (ANSI)
- 3.4. NECA/BICSI 607, Standard for Telecommunications Bonding and Grounding Planning and Installation Methods for Commercial Buildings
- 3.5. ALCOA (Formerly the Aluminum Company of America)
- 3.6. American Concrete Institute (ACI)
- 3.7. American Institute of Steel Construction (AISC)
- 3.8. American National Standards Institute (ANSI)
- 3.9. American Society for Testing and Materials International (ASTM)
- 3.10. American Society of Civil Engineers (ASCE)
- 3.11. American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)
- 3.12. American Welding Society (AWS)
- 3.13. American Wood Protection Association (AWPA)
- 3.14. Association of Edison Illuminating Companies (AEIC)
- 3.15. ASTM International (ASTM)
- 3.16. Avian Power Line Interaction Committee (APLIC)
- 3.17. Building Industry Consulting Services International (BICSI)
- 3.18. Code of Federal Regulations (CFR)
- 3.19. Construction Specifications Institute (CSI)
- 3.20. Electric Power Research Institute (EPRI)
- 3.21. Federal Aviation Administration (FAA)
- 3.22. Federal Communications Commission (FCC)
- 3.23. General Owner Standard References
- 3.24. Illuminating Engineering Society (IES)
- 3.25. Institute of Electrical and Electronics Engineers (IEEE)
- 3.26. Insulated Cable Engineers Association (ICEA)

- 3.27. International Electrotechnical Commission (IEC)
- 3.28. ITSIMM 6th Edition - Information Transport Systems Installation Methods Manual.
- 3.29. National Electrical Code (NEC)
- 3.30. National Electrical Manufacturers Association (NEMA)
- 3.31. National Electrical Safety Code (NESC)
- 3.32. National Fire Protection Association (NFPA)
- 3.33. NECA/BICSI 568, Standard for Installing Commercial Building Telecommunications cabling.
- 3.34. North American Electric Reliability Corporation (NERC)
- 3.35. OSPDRM 5th Edition - Outside Plant Design Reference Manual
- 3.36. Puerto Rico Building Code 2018
- 3.37. Puerto Rico Electric Power Authority (PREPA)
- 3.38. Regulations per the Commonwealth of Puerto Rico
- 3.39. Rural Utilities Service (RUS), United States Department of Agriculture
- 3.40. RUS 1724E-300, U.S. Dept. of Agriculture Design Guide for Rural Substations
- 3.41. TDMM 14th Edition - Telecommunications Distribution Methods Manual.
- 3.42. Telecommunications Industry Association (TIA)
- 3.43. TIA 568-D, Generic Telecommunications Cabling for Customer Premises.
- 3.44. TIA 569-E, Telecommunication Provide the testing protocols Pathways and Spaces.
- 3.45. TIA 606-C, Administration Standard for Telecommunications Infrastructure.
- 3.46. TIA 607-D, Commercial Building Grounding (Earthing) and Bonding Requirements for Telecommunications.
- 3.47. TIA-1005-A, Telecommunications Infrastructure Standard for Industrial Premises
- 3.48. TIA-758-B, Customer-Owned Outside Plant Telecommunications Infrastructure Standard

**4. Transmission Line Requirements:**

**4.1. Tasks to be performed by SELLER:**

- 4.1.1. Inspect and remediate any deficiencies in the structures, insulators, jumpers or conductor. For example, deficiencies would include, but not limited to:

- 4.1.1.1. soil erosion around the structures at the ground line;
- 4.1.1.2. vegetation management (i.e., any right of way should be cleared of vegetation growth above four feet in height and cleared to the extents of the easement and/or permitting documents);
- 4.1.1.3. broken insulators and hardware shall be replaced; and
- 4.1.1.4. any damaged conductors or jumpers shall be replaced or repaired.

**4.2.** Tasks to be performed by PREPA, at PREPA's sole cost and expense:

- 4.2.1. Inspect, review and provide comments to SELLER's inspection reports.

**5. Transmission Center Requirements:**

**5.1.** Tasks to be performed by SELLER:

- 5.1.1. All required repairs, upgrades or modifications resulting from calculations and studies are the responsibility of SELLER.
- 5.1.2. Short circuit study, protection system coordination studies, and settings.
- 5.1.3. New or replacement protection and control electrical designs shall follow the latest industry standards, e.g., IEEE Standards and PREPA's practices and applicable standards.
- 5.1.4. Provide all materials required to interconnect the new, existing or repaired protection and control system for the Interconnection Facilities, with the existing Daguao TC system, unless existing or repaired materials otherwise complying with the requirements herein have been provided.
- 5.1.5. Install and wire the new Dynamic System Monitor (DSM), unless the existing or repaired DSM otherwise complies with the requirements in Appendix H.
- 5.1.6. Install the control cables from the equipment to the control house, if required per PREPA's Design Criteria Documents (DCDs), unless the existing or repaired control cables otherwise comply with the requirements herein.
- 5.1.7. Install the wiring for the new transient recorder as required by PREPA, unless the existing or repaired transient recorder otherwise complies with the requirements herein. For security reasons, PREPA's relay personnel will wire these signals from the terminal block to the transient recorder. In addition, the following signals are required for the transient recorder:
  - 5.1.7.1. Analog signals - Phase A, B, and C voltage signals;
  - 5.1.7.2. Analog signals - Phase A, B, and C current signals from each line CT;
  - 5.1.7.3. Digital 87L output - Output TRIP signals associated with the primary protection of each line;
  - 5.1.7.4. Digital BU output - Output TRIP signal associated with the secondary protection (21/50/51) of each line;

- 5.1.7.5. Digital - Output TRIP signal associated with the breaker failure protection of each line;
  - 5.1.7.6. Digital - TRIP signal from bus differential protection; and
  - 5.1.7.7. Digital - Status signal from each breaker.
  - 5.1.8. Programming the settings on the protection equipment for the Interconnection Facilities. SELLER shall work with PREPA to evaluate and update the existing PLWF point list in PREPA's database.
  - 5.1.9. Cleaning, removal, and disposal of construction debris.
  - 5.1.10. Implementation of a protection scheme that will automatically coordinate the curtailment, if necessary, of the total generation connected to the Daguao TC when any of the following N-2 contingency occurs:
    - transmission line from Daguao TC to Rio Blanco TC (L-36200) and transmission line from Daguao TC to Fajardo TC (L-36200), or
    - transmission line from Canovanas TC to Palmer TC (L-36800) and transmission line from Sabana Llana TC to Canovanas TC (L-41200), or
    - transmission line from Palmer TC to Fajardo TC (L-36800) and transmission line from Sabana Llana TC to Canovanas TC (L-41200).
  - 5.1.10.1. The protection scheme shall avoid the overloading of any equipment at Daguao TC and the 38 kV system.
  - 5.1.10.2. The protection scheme shall integrate with the existing relay protection and controls settings, and communication settings.
- 5.2. Tasks to be performed by PREPA, at PREPA's sole cost and expense:**
- 5.2.1. Project oversight, schedule evaluation, monitoring, and authorizing scope of work modifications and deviations.
  - 5.2.2. Evaluate submittals and design input for all design phases for the following packages: protection and control, telecommunications, electrical design, and programming.
  - 5.2.3. Evaluate all temporary and permanent modifications to the Interconnection Facilities.
  - 5.2.4. Evaluate the proposed construction work outage sequence for entire project coordination.

**6. Telecommunication Requirements:**

In addition to the requirements as identified in Section 8.6 of the Agreement:

- 6.1. Tasks to be performed by SELLER:**

- 6.1.1. Install, wire and program the SCADA Remote Terminal Units (RTU)s at the Interconnection Facilities, unless the existing or repaired SCADA RTUs otherwise comply with the requirements herein.
- 6.1.2. Install and wire the telecommunication equipment for the Interconnection Facilities, unless the existing or repaired telecommunication equipment otherwise complies with the requirements herein.
- 6.1.3. Programming the communication settings for the relays, meters, and all miscellaneous equipment connected to the RTU.
- 6.1.4. If required for the new or existing RTU, DSM, relaying, etc., installation of conduits for control cables, conduits, etc. from the equipment to the control house.
- 6.1.5. Program the DSM with the signal list provided by PREPA.
- 6.1.6. The telecommunications equipment labeling, and color-coding should comply with ANSI/TIA 606 Standard.

**6.2.** Tasks to be performed by PREPA, at PREPA's sole cost and expense:

- 6.2.1. Programming the telecommunications equipment (routers, firewalls, and network equipment).
- 6.2.2. Review and comment on all submittals and design input for all design phases for the telecommunications packages.
- 6.2.3. Support the integration of the new equipment into the overall PREPA network

**7. Commissioning and Testing Requirements**

**7.1.** Tasks to be performed by SELLER:

- 7.1.1. All outages and construction work sequence plans will be coordinated with and approved by PREPA.
- 7.1.2. Provide communication loss budget calculation and design prior to work being performed, and also as an as-built prior to testing.
- 7.1.3. Provide the testing protocols and plans for PREPA's approval prior to performing any acceptance test and energization of any equipment.
- 7.1.4. Perform the acceptance and commissioning tests on the equipment and auxiliaries according to PREPA's practices and applicable standards at the SELLER's collector Site only, including but not limited to voltage signals, current signals, relay outputs, breaker status and cable continuity.
- 7.1.5. Perform grounding tests at all sites including the transmission corridor.
- 7.1.6. Perform testing on the interconnection of the transmission line.

- 7.1.7. Perform impedance testing to validate the proper installation of all transmission and high voltage conductors and bus.
- 7.1.8. Perform tests for the wiring of protection and control systems, RTU, DSM, transient recorder, and others associated services for the Interconnection Facilities.
- 7.1.9. Perform adjustments and operation tests for the protection and control systems. Submit all test reports signed and sealed by an electrical engineer licensed in Puerto Rico for PREPA's review.
- 7.1.10. Perform preliminary testing of the protection, control and telecommunication system and the integration into SELLER's SCADA system. Depending on the type of alarm or signal into SELLER's SCADA system, PREPA personnel may act as a witness to validate the input. Final validation and acceptance of the SCADA integration will be performed by PREPA.
- 7.1.11. Perform operation tests for the telecommunication systems. The tests shall be standards compliant, the testing equipment shall be calibrated, and certification of calibration provided to PREPA prior to performing tests.
- 7.1.12. Perform operation tests for the DSM.
- 7.1.13. Perform the operation tests on the equipment and auxiliaries.
- 7.1.14. Perform operation tests for the transient recorder.
- 7.1.15. Verification of the Optical Time Domain Reflectometer (OTDR) tests for Fiber optic cable performed by SELLER for the following cables:
  - 7.1.15.1. fiber cable between the Interconnection Facilities;
  - 7.1.15.2. fiber cable for interconnection to PREPA's network;
  - 7.1.15.3. fiber cable between the control room at the Interconnection Facilities and meter cabinet located at the Interconnection Facilities; and
  - 7.1.15.4. verification of telecommunications facilities and equipment installations performed by SELLER at the Interconnection Facilities. This work includes verification, testing, configuration, and inspection of equipment specified by PREPA.
  - 7.1.15.5. All tests shall be standards compliant, and the testing equipment shall be calibrated, and certification of calibration provided to PREPA prior to performing tests.
- 7.1.16. Witness all tests and commissioning of the electrical equipment installed the Interconnection Facilities.
- 7.1.17. SELLER must submit all test protocols for PREPA review.
- 7.1.18. SELLER must submit all test results in a test book in electronic format for PREPA review.



**7.2.** Tasks to be performed by PREPA, at PREPA's sole cost and expense:

- 7.2.1. Configuration of telecommunication or security equipment.
- 7.2.2. Evaluate the test results and settings of the protection relays for Interconnection Facilities.
- 7.2.3. Evaluate the test results and settings of the communication equipment at the Interconnection Facilities.
- 7.2.4. Witness all tests and commissioning of the electrical equipment installed in PREPA's Interconnection Facilities.
- 7.2.5. At the Daguao TC, where protection and control components are being repaired, updated, modified, or interconnected with, the tests should be done exclusively by PREPA.
- 7.2.6. Perform final SCADA tests by PREPA acceptance test personnel from the point where the SELLER consolidates SCADA data and transmits it to PREPA's SCADA system.
- 7.2.7. Perform the acceptance and commissioning tests on the equipment and auxiliaries according to PREPA's practices and applicable standards at the Interconnection Facilities.
- 7.2.8. Perform end to end testing of all trips and controls by PREPA's Acceptance Tests Department personnel.

**Appendix C-1 - Functional One-Line Interconnection Diagram**

*(attached separately)*

**Appendix D – CONDITIONS TO PHASE 2 COMMERCIAL OPERATION DATE**

1. An officer of SELLER, authorized to bind SELLER and who is familiar with the Facility, has provided written confirmation that (a) all necessary and material Permits have been obtained and are in full force and effect, (b) SELLER is in compliance with the Agreement in all material respects (including the satisfactory completion of the acceptance testing and inspection referenced in Section 9.6 thereof), (c) SELLER's Complex is in material compliance with applicable environmental laws and regulations, and (d) the Facility is available to commence normal operations in accordance with the Agreement, SELLER's construction and operation and maintenance contracts, and applicable manufacturers' warranties.
2. SELLER has obtained and provided to PREPA an independent registered professional engineer's certification stating the following:
  - (a) The Facility has achieved mechanical completion and the date on which it was achieved;
  - (b) All of the wind turbines at the Facility have been successfully commissioned as per SELLER's wind turbine supply agreement;
  - (c) The Facility has achieved substantial completion and the date on which it was achieved; and
  - (d) The Facility has been completed in all material respects, except for "punch list" items that do not have a material effect on the ability of the Facility to operate for its intended purpose.
  - (e) Wind turbines comprising at least 23.4 MW, which is 90% of the expected Estimated Generating Capacity of the Facility, and associated equipment sufficient to allow such wind turbines to generate and deliver energy to the Interconnection Point, have been installed and become operable.
  - (f) All arrangements for the supply of required electric services to the Facility, including the supply of wind turbine unit start-up and shutdown power and energy, house power and maintenance power have been completed by SELLER separate from the Agreement, are in effect, and are available for the supply of such electric services to the Facility.
  - (g) The Facility's communications systems and interface with PREPA's system, and the capability of the Facility to receive and respond to signals from PREPA's SCADA System, have been tested and confirmed to be operational.
  - (h) PREPA's Interconnection Facilities are operational and capable of delivering the Net Electrical Output to the Daguaos Transmission Center.
  - (i) The Facility has been tested and confirmed to comply with the Minimum Technical Requirements for Interconnection of Wind Turbine Generation (WTG) Projects set forth in Appendix G.

**Appendix D-1 – CONDITIONS TO COMMERCIAL OPERATION DATE<sup>3</sup>**

1. An officer of SELLER, authorized to bind SELLER and who is familiar with the Facility, has provided written confirmation that (a) all necessary and material Permits have been obtained and are in full force and effect, (b) SELLER is in compliance with the Agreement in all material respects (including the satisfactory completion of the acceptance testing and inspection referenced in Section 9.6 thereof), (c) SELLER's Complex is in material compliance with applicable environmental laws and regulations, and (d) the Facility is available to commence normal operations in accordance with the Agreement, SELLER's construction and operation and maintenance contracts, and applicable manufacturers' warranties.
2. SELLER has obtained and provided to PREPA an independent registered professional engineer's certification stating the following:
  - (a) The Facility has achieved mechanical completion and the date on which it was achieved;
  - (b) All of the wind turbines at the Facility have been successfully commissioned as per SELLER's wind turbine supply agreement;
  - (c) The Facility has achieved substantial completion and the date on which it was achieved; and
  - (d) The Facility has been completed in all material respects, except for "punch list" items that do not have a material effect on the ability of the Facility to operate for its intended purpose.
  - (e) Wind turbines comprising at least 23.4 MW, which is 90% of the expected Estimated Generating Capacity of the Facility, and associated equipment sufficient to allow such wind turbines to generate and deliver energy to the Interconnection Point, have been installed and become operable.
  - (f) All arrangements for the supply of required electric services to the Facility, including the supply of wind turbine unit start-up and shutdown power and energy, house power and maintenance power have been completed by SELLER separate from the Agreement, are in effect, and are available for the supply of such electric services to the Facility.
  - (g) The Facility's communications systems and interface with PREPA's system, and the capability of the Facility to receive and respond to signals from PREPA's SCADA System, have been tested and confirmed to be operational.
  - (h) PREPA's Interconnection Facilities are operational and capable of delivering the Net Electrical Output to the Daguao Transmission Center.
  - (i) The Facility has been tested and confirmed to comply with the Minimum Technical Requirements for Interconnection of Wind Turbine Generation (WTG) Projects set forth in Appendix G, except for:
    - i. paragraph three (3) thereof, regarding Reactive Power Capability and Minimum Power Factor requirements, which the Facility will not be required to meet to

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<sup>3</sup> Appendix D-1 is identical to Appendix D except for item (i), which sets forth the MTRs which require the installation of the BESS in order for the Facility to meet the requirements enumerated therein.

achieve the Commercial Operation Date. Instead, the Facility will be tested and confirmed to comply with paragraph three (3) of the 2012 MTRs;

- ii. paragraph six (6) thereof, regarding Frequency Response/Regulation, which the Facility will not be required to meet to achieve the Commercial Operation Date. Instead, the Facility will be tested and confirmed to comply with paragraph six (6) of the 2012 MTRs; and
- iii. paragraph seven (7) regarding Ramp Rate Control, which the Facility will not be required to meet to achieve the Commercial Operation Date. Instead, the Facility will be tested and confirmed to comply with items (1), (3) and (4) of paragraph seven (7) of the 2012 MTRs.

**Appendix E – WORKMEN’S COMPENSATION INSURANCE  
REQUIREMENTS FOR IMPORTED TECHNICAL SERVICES**

A. Introduction

Act No. 16, approved on May 16, 1958, authorizes the Commonwealth State Insurance Fund Administrator to exempt employers from payment of premium for salaries paid to imported technical personnel.

The basic requirements for the exemption are:

1. Said technical personnel must be hired because the same special skills required for the job are not readily available in Puerto Rico.
2. Exemption cannot exceed two (2) years per employee.
3. Technical personnel must be covered for workmen’s Compensation benefits equal or greater to those provided under the Puerto Rico Workmen’s Compensation Act.

B. Requirements Exemption request must be filed with the Commonwealth State Insurance Fund for each case. Therefore, every firm entering a contract with PREPA for the furnishing of services to be rendered by imported technical personnel must submit, prior to contract execution or purchase order issuance the following information:

1. A list containing the following information:
  - a. Name, residence and usual place of employment of all such technical personnel temporarily transferred to Puerto Rico.
  - b. Effective date of employment in Puerto Rico for each technical employee so transferred to Puerto Rico and expected duration of their stay in the island.
  - c. Technical qualifications of each employee transferred to Puerto Rico and their job descriptions while in the island.
2. If such technical personnel is covered by an insurance policy, a complete copy of each workmen’s compensation insurance policy, including the endorsement pertaining to such coverage, covering such technical personnel while working in Puerto Rico.
3. If item 2 above is applicable, a certified statement by the Secretary of the Insurer or insurer’s issuing said policies stating that:
  - a. The copy of each policy is a true and complete copy of the policy issued by the insurer.
  - b. Each policy so certified will be in full force and effect during the entire policy period shown in the declarations of the policy.
  - c. Each policy so certified will provide workmen’s compensation insurance coverage for all technical personnel of the insured while working in Puerto Rico. As part of this statement there must be indicated the name of the state under whose workmen’s compensation law benefits will be provided for all technical personnel of the insured while working in Puerto Rico.

4. If Item 2 is not applicable, a certificate issued by the appropriate governmental agency having jurisdiction over workmen's compensation insurance coverage stating that their coverage is extended to such technical personnel during their entire stay in Puerto Rico. The certificate must include the effective date of approval and the conditions, if any, attached to such approval.
5. The exact location in Puerto Rico of the construction project where such technical personnel will be or is employed.

**Appendix F – RESERVED**



**Appendix G - MINIMUM TECHNICAL REQUIREMENTS FOR WIND PROJECTS**

*(attached separately)*

**Appendix G-1 – 2012 MINIMUM TECHNICAL REQUIREMENTS FOR  
WIND TURBINE GENERATION (WTG) PROJECTS**

*(attached separately)*

## Appendix H - TECHNICAL SPECIFICATIONS FOR THE DYNAMIC SYSTEM MONITOR (DSM)

### I. Introduction

The following specification defines the minimum requirements for an instrument used in the monitoring and register of dynamic disturbances on electric power systems and the supervision of generator performance according to Grid Codes.

### II. Hardware

#### (a) Inputs:

1. The equipment shall have at least 32 analog inputs with the capacity to increase them to a minimum of 96 inputs depending in the application required analog signals. The minimum resolution for the A/D converter shall be of 16 bit. The sampling rate shall be programmable up to a minimum of 250 samples per cycle (15000 samples per second). The analog inputs shall permit at least the following types of signals:

- i. PT voltage (150 V rms minimum, Accuracy better or equal to 0.3%);
- ii. CT currents (5 A rms minimum, Accuracy better or equal to 0.3%);
- iii. DC voltages of at least 800 V (Accuracy better or equal to 0.3%);
- iv. Small Analog Signals (Accuracy better or equal to 0.3%);
  - A. Current: 4 – 20 mA; and
  - B. Voltage: 0 – 200 mV, 1V, 10 V;

2. The equipment shall have at least 16 digital inputs with the capacity to increase them to a minimum of 48 inputs depending in the application required digital signals. The minimum input voltage range of the digital inputs should be 0 – 150 V. The digital inputs should be included as a user defined software triggering input.

3. The equipment shall be able to record power system frequency with a resolution of at least 0.001Hz.

(b) The equipment shall have a built-in microprocessing unit with color monitor, keyboard and mouse from which all commands, controls and setup parameters may be entered. All setup parameters shall be store in a non-volatile media, to prevent loss of setup data if power is interrupted. This microprocessing unit shall be of industrial grade to insure long life in a typical substation or generation plant environment.

#### (c) Memory and storage capacity:

The equipment shall have a nonvolatile solid state memory (ex. SSD, flash, etc.) with the required capacity to stores at least one (1) year of continuous data based in typical recording periods and typical recording rates. Also the memory shall have a minimum storage capacity of 1,000 RMS Trigger events and 1,000

Instantaneous trigger events based in typical recording rates and recording periods. Typical recording periods and recording rates are:

- i. RMS Trigger Recording Function (Recording rate of 1 sample per cycle on all the signals)
  - A. Pre-Trigger: 60 seconds
  - B. Post-trigger: 300 seconds
- ii. Instantaneous Values Trigger Recording Function (recording rate of 250 samples per cycle on all instantaneous signals)
  - A. Pre-Trigger: 1 second
  - B. Post-Trigger: 2 seconds
- iii. Continuous Recording Function—The recording rate is 1 sample per second on all the signals. This recording function is continuous, but saved in 24 hours period.

All the recording functions mentioned above shall work simultaneously. The equipment shall maintain the date and time in an internal battery-backed clock.

(d) Communication:

The equipment shall have at least two Ethernet 10/100/1000 Mbps port (LAN interface, TCP/IP Protocol) for local and remote network communication.

(e) Power Source:

The equipment shall have a redundant power supply. Two separate inputs (one AC and one DC) 100 – 240 VAC, 60 Hz and 100 – 150 DC. Some applications could require DC supply of 48 VDC +/- 10%, verify before the equipment acquisition.

(f) Measurement accuracy:

- 1. Voltage measurement error shall be less than +/- 0.3 % of reading.
- 2. Current measurement error shall be less than +/- 0.3% of reading.

(g) The DSM equipment to be installed and integrated to the grid shall be compatible with the existing PREPA's DSMs network and approved by PREPA.

**III. Software**

- (a) The software platform of the equipment shall be compatible with the latest version of windows operating system.
- (b) The equipment remote communication shall be thru TCP/IP network connectivity (LAN). The remote communication should permit at least the set up and data retrieval of the

equipment. The equipment should have the capability to perform at least the following functions remotely:

1. Modification of the configuration
  2. Retrieval of captured events
  3. Remote event triggering
- (c) The equipment shall have the capacity of time synchronization with GPS system. A GPS receiver and GPS antenna shall be included.
- (d) Triggers:
1. The equipment shall support user defined programmable triggers. Triggering shall be initiated based upon primary quantities (voltage, current, and frequency), calculated quantities (watts, Var, power factor, apparent power, etc.), digital signals or small analog signals.
  2. The trigger thresholds shall be based on limits, gradients, equations and status. Examples of trigger conditions that shall be available are:
    - i. Level threshold (high level, low level, in-band, out-band, etc.)
    - ii. Rate of change (ex. frequency variation (df/dt))
    - iii. Manual input (keyboard trigger)
    - iv. Request from remote computer
    - v. Event input status (digital signal status)
  3. A re-trigger function shall be available which permits the equipment to generate a new event register if a second disturbance is detected while the recording of the first disturbance is still in process. This process should continue if more disturbances occur in the new registers.
- (e) The acquisition software shall include a user defined pre-trigger interval option as well as a user defined post trigger interval for the information captured in the case of triggered events. The minimum range of the pre-trigger interval should be from 0 to 60 seconds and the minimum range for the post trigger interval should be 0 to 300 seconds. In addition, the date, time, and type of trigger that initiated the event shall be included as part of the disturbance record.
- (f) The acquisition software shall have the following capabilities:
1. Time displays (ex. Oscilloscope)
  2. Digital Status display (ex. High/Low, 1/0)
  3. Multiple displays and multiple signals in displays in real time and off-line

4. Display resizing
  5. Programmable conversion of range and units of signals
  6. Independent range for signals
- (g) The acquired data shall be available in a format directly compatible with Siemens Power Technologies International (Siemens PTI) PSS/E plotting software.
- (h) The software shall support data export in ASCII, CSV and PSS/E formats.
- (i) The software shall support image export in JPG, BMP or WMF formats.
- (j) The software shall have the following analysis capabilities for the data and signals (primary and calculated):
1. Fast Fourier Transform (FFT)
  2. Peak analysis
  3. Filter functions
  4. Series and scalar mathematic (square root, inversion, square, sum, gain, offset, etc.)
- (k) The software shall perform the following power engineering calculations (on-line and off-line) and measurements:
1. Three phase and single phase Power (Real, reactive, apparent)
  2. Power Factor
  3. Power angle
  4. rms line and phase voltage
  5. rms current
  6. Power system frequency
  7. DC voltage and currents
  8. AC voltage and currents

#### **IV. General**

- (a) Environmental Conditions:
1. Operating temperature: 0° C to 50° C
  2. Operating humidity: 95 %, non-condensing

(b) Equipment cabinet and corresponding accessories:

1. The cabinet should have test switches at the front of the panel for the three phase voltages and currents. The test switches should have a minimum rating of 600 V rms and 30 A rms; semi flush mounted, rear connected, equal or similar to ABB FT-1, style no. 129A514G01. The test switches should be assembled horizontally in groups of three FT-1 switches per row, mounted on a 19 inches wide, three-rack unit (3RU) high panel suitable for rack mounting, similar to ABB FR3J014014014.
2. The signals (analog and digital) should terminate on terminal blocks inside the cabinet, before the connection to the Dynamic System Monitor. The AC, DC, digital, exciter voltage and exciter current signals should be in different terminal blocks. The terminal blocks should have a minimum rating of 600 V rms and 30 A rms (except the exciter voltages signals, see below). Examples of terminal blocks are: GE CR151B2 and Marathon 1512 STD. The current signals should terminate on shorting type heavy duty terminal blocks equal or similar to Marathon, catalog number 1506SC. The terminal blocks used for the excitation voltage of the generators must have a nominal voltage capacity greater than 800 V DC. A switch or breaker for isolation purposes is also required for the excitation voltage and current signals.

(c) Documentation:

1. The equipment shall include a documentation package that contains the user, operation and maintenance manuals and the mechanical and electrical equipment drawings. The documentation should be in hard copy and in digital format.
2. The equipment documentation shall include a copy of the software.

(d) Spare parts recommended by the equipment manufacturer shall be included in the dynamic system monitor (DSM) purchase order.

(e) Warranty:

The equipment warranty shall include part and service for a period not less than 60 months from the delivery day.

(f) Equipment Training, Installation Support and Commissioning:

1. An on-site equipment operation and configuration training should be included.
2. The dynamic system monitor (DSM) manufacturer shall perform the equipment commissioning and offer installation support.

## Anejo B



**AMENDED AND RESTATED  
POWER PURCHASE AND OPERATING AGREEMENT  
BETWEEN  
PUERTO RICO ELECTRIC POWER AUTHORITY  
AND  
PUNTA LIMA WIND FARM, LLC  
DATED [•]**

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**AMENDED AND RESTATED**  
**POWER PURCHASE AND OPERATING AGREEMENT**  
**BETWEEN**  
**PUERTO RICO ELECTRIC POWER AUTHORITY**  
**AND**  
**PUNTA LIMA WIND FARM, LLC**

This **AMENDED AND RESTATED POWER PURCHASE AND OPERATING AGREEMENT** (the “**Agreement**”) is entered into and effective as of this \_\_\_\_\_ [●] day of 2023<sup>2</sup> (the “**Effective Date**”) by and between the **PUERTO RICO ELECTRIC POWER AUTHORITY** (including any successor thereto, “**PREPA**”), a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by Act of May 2, 1941, No. 83, as amended, **employer identification number [●]**; represented in this act by its Executive Director, Mr. **Josué A. Colón Ortiz**[●], of legal age, [married], [engineer] and resident of **Caguas**[●], Puerto Rico<sup>1</sup>; and **PUNTA LIMA WIND FARM, LLC** (“**SELLER**”), a limited liability company organized under the laws of Delaware, authorized to do business in Puerto Rico (as successor-in-interest to Go Green Puerto Rico Alternative Energy Corp.), **employer identification number [●]**, with its principal office at \_\_\_\_\_ [●], and represented in this act by **[INSERT AUTHORIZED REPRESENTATIVE]**, of legal age, [married], and a resident of \_\_\_\_\_ [●], who is authorized to sign this Agreement on behalf of SELLER as certified by the Resolution dated \_\_\_\_\_ [●].

**RECITALS**

WHEREAS, PREPA and SELLER are parties to that certain Power Purchase and Operating Agreement, dated as of July 3, 2009, as amended, supplemented, and modified from time to time (the “**Pre-Restatement PPOA**”);

WHEREAS, pursuant to the Pre-Restatement PPOA, SELLER completed construction and commenced commercial operation on December 17, 2012 of an approximately 26-megawatt Qualifying Facility, capable of operating on wind power, in the vicinity of Naguabo, Puerto Rico (“**SELLER’s Original Complex**”);

WHEREAS, on September 20, 2017, Hurricane María made landfall in Puerto Rico as a Category 4 storm, causing significant damage to PREPA’s energy transmission and distribution infrastructure and SELLER’s Original Complex;

WHEREAS, on July 2, 2017, PREPA commenced proceedings under Title III of the Puerto Rico Oversight, Management and Economic Stability Act before the District Court for the District of Puerto Rico (the “**PROMESA Court**”), which is being administered under Case No. 17-4780 (LTS);

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<sup>1</sup> Update PREPA signatory.

<sup>2</sup> Update Punta Lima signatory.

WHEREAS, SELLER proposes to reconstruct, own, operate and maintain an approximately 26-megawatt Qualifying Facility, capable of operating on wind power (“**SELLER’s Complex**”), on the site of SELLER’s Original Complex and sell electricity generated by SELLER’s Complex to PREPA;

WHEREAS, SELLER will sell exclusively to PREPA and PREPA will purchase the electric energy produced by SELLER in compliance with PURPA (as defined below); and

WHEREAS, the Parties desire to amend and restate the Pre-Restatement PPOA in its entirety, to effectuate such sale and purchase of energy in accordance with the terms and conditions of this Agreement, and acknowledge that this Agreement contains substantially similar terms to the Pre-Restatement PPOA and that the modifications to the Pre-Restatement PPOA as set forth in this Agreement do not render this Agreement a new agreement between the Parties.

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

## ARTICLE 1. DEFINITIONS

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

~~“**115 kV Line**” – The 115 kV electric power service transmission line of approximately three point five (3.5) miles of length connecting SELLER’s Interconnection Facilities with the remaining portions of PREPA’s Interconnection Facilities, a functional one line interconnection diagram of which is contained in Appendix C-1.~~

“**2012 MTRs**” – The Minimum Technical Requirements for Interconnection of Wind Turbine Generation (WTG) Projects included in Amendment No. 3 to the Power Purchase and Operating Agreement between Punta Lima Wind Farm LLC and the Puerto Rico Electric Power Authority, dated as of December 18, 2012 and attached hereto as Appendix G-1.

“**Agreed Operating Procedures**” - As set forth in Section 4.4.

“**Agreement**” - As set forth in the first paragraph of this Agreement.

“**Agreement Year**” - The period which begins on the Commercial Operation Date of SELLER’s Complex and ends on the first anniversary thereof, and each one (1) year period thereafter commencing on each anniversary date.

“**Assumption Order**” – An order of the PROMESA Court that approves of and authorizes the assumption by PREPA of this Agreement.

“**Assumption Order Date**” – The date that the PROMESA Court has issued the Assumption Order.

“**Authorized Officer**” – The Chief Executive Officer or President, any Vice-President, the Treasurer, the Secretary or the Assistant Secretary of SELLER or any of SELLER’s general partners.

“**Available Hours**” – The number of hours in which SELLER’s Complex is capable of delivering Net Electrical Output to PREPA.

“**Billing Period**” – As set forth in Section 10.4.

**“Business Day”** – Monday through Friday excluding holidays recognized by PREPA, which are set forth on Appendix B; PREPA will notify SELLER in writing of any changes to the holidays recognized by PREPA.

**“Changes”** – As set forth in Section 18.2.

**“Commencement of Construction”** – The first day following the date on which SELLER notifies PREPA of the action taken by SELLER or one or more contractors or subcontractors retained by SELLER, initiating reconstruction of SELLER’s Complex consistent with construction industry standards.

**“Commercial Operation Date”** – The first day following the date on which SELLER has satisfied the conditions set forth on Appendix D-1.

**“Consulting Technical Expert”** – A Person or Persons mutually agreed by the Parties assist in the resolution of technical issues, and/or issue a technical recommendation in connection with Technical Disputes, as specified at the time of such Consulting Technical Expert’s appointment, which Person shall be selected within thirty (30) Days of the notice of Technical Dispute under Article 22.24, or, if not so selected, shall be selected by the American Arbitration Association upon the request of either Party. The fees of the Consulting Technical Expert shall be equally shared by the Parties.

**“Design Limits”** – The operational limitations of the Facility based on the Facility’s design (including its operational limitations after the Commercial Operation Date), as identified in the Agreed Operating Procedures.

**“Development Abandonment”** – Prior to the Commercial Operation Date, an affirmative action taken by SELLER to permanently cease the development of SELLER’s Complex.

**“Dispute”** – As set forth in Section 22.24.

**“Dispute Notice”** – As set forth in Section 22.24.

**“Effective Date”** – As set forth in the first paragraph of this Agreement.

**“Emergency”** – A condition or situation which in the judgment of PREPA is likely to result in imminent significant disruption of service to a significant number of customers or is imminently likely to endanger life or property; provided, however, that such condition or situation is likely to provide such results according to Prudent Utility Practices and following Agreed Operating Procedures.

**“Energy Payment”** – The product of the applicable Energy Purchase Price (\$/kWh) and the Net Electrical Output for a given Billing Period.

**“Energy Purchase Price”** – The amount set forth in the column “Energy Purchase Price” in Appendix A for the applicable Agreement Year. Appendix A sets out the Energy Purchase Price for each Agreement Year during the Term.

**“Environmental Costs”** – As set forth in Article 18.

**“Estimated Generating Capacity”** – As declared by SELLER in Section 12.1.

**“Facility”** – SELLER’s reconstructed Small Power Production Facility as defined in section 201 of PURPA, consisting of up to 13 Wind Turbines, including auxiliary equipment and unit transformer and switching equipment. The Facility will be located in the municipality of Naguabo, Puerto Rico.

**“FERC”** – The Federal Energy Regulatory Commission, or any successor thereto.

**“Financial Closing Date”** – The date on which documents that provide binding commitments for funding for the reconstruction of SELLER’s Complex have been executed and funds for the reconstruction become available to SELLER.

**“Force Majeure”** – As set forth in Article 15.

**“GAAP”** – Generally Accepted Accounting Principles, as promulgated by the Financial Accounting Standards Board or its predecessors or successors.

**“Governmental Authority”** – Any court, tribunal or governmental or quasi-governmental body, regulatory body, agency, authority, office, department, commission, board, bureau, public corporation, municipality or instrumentality, in each case at any federal, state, Commonwealth of Puerto Rico, county, municipal, or local level, having jurisdiction over a Party, the Facility or the Site, and includes the Financial Oversight and Management Board of Puerto Rico, the Puerto Rico Central Office for Reconstruction, Recovery and Resiliency, the Public-Private Partnership Authority of Puerto Rico and the Puerto Rico Energy Bureau, or any successor to any of the foregoing.

**“Green Credits”** – “Renewable energy certificates” and “environmental and social attributes”, as such terms are defined in the Puerto Rico Green Energy Incentives Act (Act No. 83 of July 19, 2010), renewable energy credits, environmental attributes, emissions reductions, offsets, allowances or benefits, however entitled (or payments in lieu thereof), whether monetary, fiscal or in the form of physical property, now or in the future available to the Facility, as a facility that generates or produces electricity by means of “green energy” (as such term is defined in the Puerto Rico Green Energy Incentives Act), or from renewable or non-polluting resources, granted or available to SELLER as the owner or operator of the Facility or otherwise, in each case, from any Governmental Authority or third party, including renewable energy credits established pursuant to the Green Energy Incentives Act of Puerto Rico, but shall exclude (i) any federal or Puerto Rico tax credits and grants in lieu thereof, (ii) other tax benefits or credits, (iii) any accelerated depreciation, and (iv) proceeds from (i) through (iii), in each case, associated with the Facility or otherwise available to SELLER, each of which (i) through (iii) are expressly reserved to SELLER.

**“Initial Synchronization Date”** – The first date when all or a portion of SELLER’s electricity generating equipment is synchronized with PREPA’s electrical generating equipment and able to deliver electrical energy generated by the Facility to PREPA at the Interconnection Point.

**“Interconnection Facilities”** – SELLER’s Interconnection Facilities and PREPA’s Interconnection Facilities.

**“Interconnection Point”** – The physical point where Net Electrical Output is delivered to PREPA’s system, as set forth in [Appendix C-1](#).

**“Interconnection Study”** – A study conducted by PREPA in accordance with Section 9.2 to evaluate the integration of the Facility’s anticipated Net Electrical Output into PREPA’s electric transmission or distribution system.

**“Interest”** – The compensation for the accrual of monetary obligations under this Agreement computed monthly and prorated daily from the time each such obligation is past due based on an annual interest rate equal to the lesser of (i) the Prime Commercial Lending Rate as set by Citibank N.A., New York, New York or any other bank as mutually agreed by the Parties or any other equivalent rate as mutually agreed by the Parties and (ii) the maximum rate allowable under Article 1649 of the Puerto Rico Civil Code or successor statute applicable to past due amounts. The provisions of this definition shall not be construed to limit the applicable rate of interest on the project debt.

**“Legal Challenge”** – Means any action, suit or proceeding brought or commenced by a third party seeking to contest the validity of this Agreement, any Permit, or the development, construction or operation of the Facility which materially impairs the ability of the Parties to perform their respective obligations hereunder.

**“Lessor(s)”** – Any party or parties that lease any equipment, structures or other facilities that are part of SELLER’s Complex to SELLER, or any agent, trustee or other person representing or acting on behalf of any such part(ies).

**“Maintenance Outage”** – A planned interruption of all or a portion of the net electrical output of SELLER’s Complex that has been informed to PREPA and is required for any purpose including inspection, preventive maintenance, or corrective maintenance and which has not been included in the Planned Outage Program.

**“Modifications”** – As set forth in Section [1.124.3](#).

**“Month”** – A Month shall begin at 12:00 midnight on the last day of the preceding calendar month and end at 12:00 midnight on the last day of the current calendar month.

**“Net Electrical Output”** – The net electrical energy output (expressed in kWh) delivered to PREPA from the Facility, as measured in accordance with Article 10.

**“Net Power Output”** means, at any given time, the instantaneous net electrical power output (expressed in kW) made available from the Facility at the Interconnection Point.

**“Notice of Breach”** – A written notice delivered by a Party to the other Party upon belief that a breach under Section 17.1 has occurred and is continuing.

**“Operation Security”** – As set forth in Section 17.4.

**“Party”** or **“Parties”** – Both SELLER and PREPA are herein individually referred to as a Party and collectively referred to as the Parties.

**“Permanent Abandonment”** – At any time after Commercial Operation Date, the affirmative action taken by SELLER, its successors, or assignees, as applicable, to permanently shut down the operation of SELLER’s Complex.

**“Permanent Closing”** – At any time after the Commercial Operation Date, the Available Hours for the Facility equal zero (0) for: (a) any period of twelve (12) consecutive Months, excluding periods of outages described in the following subclause (b); and (b) in respect of any outage due to an event of Force Majeure, a period of thirty (30) consecutive Months, whether or not a Force Majeure event has been claimed by SELLER.



**“Permits”** – All permits, licenses, approvals, authorizations, consents, variances or waivers issued by federal, Commonwealth and local agencies, commissions, authorities and regulatory bodies with jurisdiction over SELLER and SELLER’s Complex which are necessary or required for the development, construction, operation or maintenance of SELLER’s Complex.

**“Phase 2 Commercial Operation Date”** – The first day following the date on which SELLER has satisfied the conditions set forth on Appendix D.

**“Planned Outage”** – A planned interruption of all or a portion of the Net Electrical Output that has been informed in advance to PREPA and included in the Planned Outage Program.

**“Planned Outage Program”** – A written scheduled outage program submitted to PREPA by SELLER setting forth the Planned Outage periods for the Facility, as modified from time to time by SELLER as provided for in Article 8, Control and Operation of the Facility.

**“Post-Effective Date Environmental Costs”** – As set forth in Section 18.1.

**“Post-Effective Date Taxes”** – As set forth in Section 18.1.

**“Pre-Operation Period”** – The period beginning on the Initial Synchronization Date and ending on the Commercial Operation Date.

**“PREPA’s Interconnection Facilities”** – All equipment and facilities located on PREPA’s side of the Interconnection Point, as set forth in Appendix C-1, constructed and installed for the purpose of interconnecting the Facility with PREPA’s electric transmission or distribution system, ~~including without limitation the 115 kV Line once it is acquired by PREPA pursuant to the Transmission Line PSA.~~

**“Project Lender”** – Any party providing construction or permanent financing for SELLER’s Complex or any portion thereof (excluding subordinated debt) or any agent, indenture trustee or other person representing or acting on behalf of any such party.

**“PROMESA Court”** – As set forth in the recitals.

**“Proposed Initial Synchronization Date”** – As set forth in Section 4.2.

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

**“Prudent Utility Practices”** – Those practices, methods, standards and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, would have been generally followed by the electric utility industry in the United States and Puerto Rico, as changed from time to time, which generally include, but are not limited to, engineering and operating considerations.

“**PURPA**” – The Public Utility Regulatory Policies Act of 1978 and the regulations promulgated there under in effect as of the date this Agreement is executed or as they are amended in the future from time to time.

“**Qualified Bank**” means Santander Bank, N.A., a commercial bank or other financial institution located within Puerto Rico, the United States or a country (or other jurisdiction) reasonably acceptable to PREPA, or which has, as of the date of issuance or renewal of such guarantee, a long-term counterparty credit rating of at least “A” by Standard & Poor’s Ratings Services, a long-term foreign currency deposit rating of “A2” by Moody’s Investors Services Inc., or, if either such rating agency is no longer in business or no longer rating the obligations in question, an equivalent rating from another internationally recognized rating agency selected by SELLER with the written consent of PREPA; provided that, if such financial institution’s ratings match such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications.

“**Qualified Operator**” or “**Operator**” – SELLER or another qualified and experienced operator acceptable to PREPA.

“**Qualifying Facility**” – A Small Power Production facility under Section 201 of PURPA.

“**RTU**” – As set forth in Section 7.3.

“**SELLER**” – As set forth in the first paragraph of this Agreement.

“**SELLER’s Complex**” – As set forth in the recitals. SELLER’s Complex shall include the premises, facilities and infrastructure comprising the Facility and SELLER’s Interconnection Facilities, and other ancillary equipment owned or leased by SELLER and installed for the purpose of performing its obligations under this Agreement; as such premises, facilities and infrastructure shall be constructed or reconstructed by SELLER in accordance herewith.

“**SELLER’s Complex Generating Capacity**” – The sum of the capacities in megawatts for all the generators of SELLER’s Complex, as determined pursuant to Article 12.

“**SELLER’s Interconnection Facilities**” – All equipment and facilities, located on the Facility side of the Interconnection Point, as set forth in [Appendix C-1](#), constructed or reconstructed and installed for the purpose of interconnecting the Facility with PREPA’s Interconnection Facilities and PREPA’s electric transmission or distribution system.

“**SELLER’s Original Complex**” – As set forth in the recitals.

“**Taxes**” – As set forth in Section 18.1.

“**Technical Dispute**” – As set forth in Section 22.24.

“**Technical Recommendation**” – As set forth in Section 22.24.

“**Term**” – The initial term of this Agreement as specified in Article 5, plus any renewal Term determined pursuant to this Agreement.

“**Transfer**” – As set forth in Section 20.4.

~~“Transmission Line PSA” The asset purchase and sale agreement materially in the form attached hereto as Appendix F to be executed by SELLER (as seller) and PREPA (as buyer) on the Effective Date.~~

“Year” – A Year shall be the twelve (12) Month period beginning 12:00 midnight on December 31 and ending at 12:00 midnight on the subsequent December 31.

1.2 The rules of interpretation listed below shall be followed when interpreting this Agreement:

- (a) Words importing the singular also include the plural and vice versa.
- (b) References to natural persons or parties include any person having legal capacity.
- (c) References to a Party include such Party’s successors and permitted assigns.
- (d) Words importing one gender include the other gender.
- (e) The words “include” and “including” mean “including, but not limited to” and corresponding grammatical variants.
- (f) Except as otherwise expressly stated herein, all references in this Agreement to this Agreement (including the Appendices hereto) or to contracts, agreements, or other documents shall be deemed to mean this Agreement (including the Appendices hereto) and such contracts, agreements or other documents, as the same may be modified, supplemented, or amended from time to time.
- (g) Except as otherwise expressly stated herein, all references to recitals, Sections, Articles, and Appendices in this Agreement are references to the recitals, Sections, Articles, and Appendices of this Agreement.
- (h) Words and abbreviations not defined in this Agreement which have generally accepted technical or design, engineering, or construction industry meanings are used in this Agreement in accordance with such recognized meanings.
- (i) The terms “hereof,” “herein,” “hereto,” “hereunder” and words of similar or like import, refer to this entire Agreement, together with its Appendices, and not any one particular Article, Section, Appendix, or other subdivision of this Agreement.
- (j) The headings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties hereto, nor should they be used to aid in any manner in the construction of this Agreement.
- (k) Terms used in the present tense may be interpreted as referring to the past tense and vice versa.
- (l) Unless otherwise stated herein, (i) references to the construction of any portion of SELLER’s Complex shall include reconstruction of such portion, and (ii) any obligation of a Party in respect of the construction of SELLER’s Complex shall be applicable to, and performed by, such Party in respect to the reconstruction of SELLER’s Complex.
- (m) Nothing contained in this Agreement shall be construed or interpreted to limit in any way PREB’s power and authority under the Laws of the Commonwealth of Puerto Rico.

ARTICLE 2. SALE AND PURCHASE OF ENERGY

- 2.1 SELLER agrees to sell and PREPA agrees to accept delivery of and purchase the Net Electrical Output as of and following the Initial Synchronization Date, subject to the terms and conditions of this Agreement.
- 2.2 SELLER agrees to reimburse PREPA, subject to the provision of evidence reasonably satisfactory to SELLER, for the actual costs incurred by PREPA in performing the Interconnection Study in accordance with Section 9.2. SELLER shall make such payment within thirty (30) days of PREPA providing the evidence referenced in the preceding sentence.

ARTICLE 3. NOTICES

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

If to SELLER:  
Punta Lima Wind Farm, LLC  
[redacted]  
[redacted]  
c/o Santander Bank, N.A.  
45 East 53<sup>rd</sup> Street  
New York, NY 10022  
Attention: [redacted] Nuno Andrade, Managing Director

With a copy, which shall not constitute notice, to:

McConnell ~~Valdes, Valdés~~ LLC  
Attention : Carlos J. Fernández Lugo  
270 Muñoz Rivera Avenue, Suite 900  
San Juan, Puerto Rico 00918  
email: [cfl@mcvpr.com](mailto:cfl@mcvpr.com)

If to PREPA:  
Puerto Rico Electric Power Authority  
1110 Ponce de Leon Avenue  
Santurce, Puerto Rico  
Attention: ~~Executive Director~~ Director of Planning and Environmental

With a copy to:  
Puerto Rico Electric Power Authority  
G.P.O. Box 364267  
San Juan, Puerto Rico 00936-4267  
Attention: ~~Executive Director~~ Director of Planning and Environmental

Either Party hereto may change, by notice as above provided; the persons and/or addresses to which all such notices are to be sent.

#### ARTICLE 4. PRE-COMMERCIAL OPERATION PERIOD

4.1 SELLER shall submit to PREPA the following:

- (a) SELLER's Complex preliminary and non-binding licensing and milestone construction schedules within thirty (30) days after the Assumption Order Date (and, thereafter, promptly notify PREPA of any material changes to SELLER's licensing and milestone construction schedules);
- (b) the conceptual engineering design of SELLER's Complex, including the relay protection scheme, within ninety (90) days following the Assumption Order Date;
- (c) the wind turbine manufacturer's guaranteed performance data required to perform the Interconnection Study within sixty (60) days following the execution hereof;
- (d) an official Siemens – PTI certified PSS/E mathematical model of the Facility within ninety (90) days following the Assumption Order Date; and
- (e) progress reports in a form satisfactory to PREPA by the fifth (5<sup>th</sup>) Business Day of every Month until the Commercial Operation Date.

4.2 SELLER shall notify PREPA in writing of the proposed Initial Synchronization Date (the “**Proposed Initial Synchronization Date**”) and the start-up and testing schedule for the Facility on or before such Proposed Initial Synchronization Date no later than sixty (60) days in advance thereof. SELLER shall have the right to postpone such date with advance notice to PREPA. PREPA and SELLER shall agree on the actual Initial Synchronization Date for the Facility and PREPA shall have the right to have a representative present during such period.

4.3 SELLER shall provide PREPA with relay settings for review and inspection by PREPA no later than sixty (60) days in advance of the Proposed Initial Synchronization Date. If these are found not to be acceptable to PREPA, SELLER agrees to comply with any request made by PREPA to provide acceptable relay settings prior to the Initial Synchronization Date. PREPA agrees to give any comments or suggested changes which it is entitled to give to SELLER pursuant to this Section 4.3 within thirty (30) days after SELLER submits any required documents or information to PREPA. SELLER agrees to comply with any request made by PREPA to provide acceptable relay settings prior to Initial Synchronization Date. Notwithstanding the above, PREPA may modify the control and protection schemes regarding, without limitation, the following parameters: ramp rates, higher frequency fluctuations, low voltage ride-through, low frequency ride-through, voltage support and dynamic power factor support; provided that any such modifications are in compliance with Prudent Electrical Practices, Prudent Utility Practices, and the Design Limits and the Minimum Technical Requirements for Wind Turbine Generation Projects set forth in Appendix G. SELLER shall procure equipment with electrical capabilities to comply with the above-mentioned parameters.

4.4 Unless otherwise agreed to by the Parties, SELLER and PREPA shall use commercially reasonable efforts to mutually develop detailed written operating procedures (the “**Agreed Operating Procedures**”) on or before sixty (60) days before the Initial Synchronization Date. The Agreed Operating Procedures will be mutually agreed based on PREPA's standard operating procedures, taking into consideration the design of the Facility, its operational limitations after the Commercial Operation Date, and its interconnection to PREPA's electric system. The Agreed Operating Procedures shall describe the procedures to integrate the Net Electrical Output from SELLER's

Complex into PREPA's electric system. Topics covered shall include, but not necessarily be limited to, method of day-to-day communications, key personnel lists for both SELLER and PREPA's dispatching centers, clearances and switching practices, outage scheduling, daily available capacity and energy reports, SELLER's Complex operations log, reactive power support and Emergency procedures. The Agreed Operating Procedures may only be modified with the written consent of the Parties.

- 4.5 PREPA shall prepare and submit to SELLER a written voltage schedule for the Facility no later than thirty (30) days prior to the Proposed Initial Synchronization Date. PREPA may change such voltage schedule upon thirty (30) days prior written notice. SELLER shall use such voltage schedule in the operation of its Facility; provided that it is in accordance with the Design Limits of the Facility. This voltage schedule shall be based on the normally expected operating conditions for the Facility and the reactive power requirements of PREPA's system. These thirty (30) day terms may be waived by SELLER.
- 4.6 PREPA reserves the right to delay the actual Initial Synchronization Date due to problems in which the synchronization of SELLER's Complex could adversely affect the operations of PREPA's electrical system, subject to Prudent Utility and Electrical Practices. In such event, PREPA shall promptly give SELLER notice of such problems with PREPA's electrical system. SELLER shall promptly remedy any problems with facilities or equipment installed or maintained by SELLER.
- 4.7 SELLER shall provide PREPA with as-built drawings of the Interconnection Facilities (one line diagram and protection scheme) within one hundred twenty (120) days after the Phase 2 Commercial Operation Date and within one hundred twenty (120) days after any material modification of SELLER's Interconnection Facilities.

## ARTICLE 5. TERM

- 5.1 The term of this Agreement shall begin with the Effective Date and shall continue for a period of twenty (20) Agreement Years from the Commercial Operation Date, unless extended, terminated, or canceled in accordance with the terms hereof. If the Term is extended, the word "Term" shall thereafter be deemed to mean the original Term so extended.
- 5.2 The Term of this Agreement may be extended by mutual agreement of the Parties for up to two (2) consecutive periods of five (5) Agreement Years following the expiration of the initial twenty (20) year term. Written notice of intent to extend the Term of this Agreement shall be sent by overnight courier, certified or registered mail to the other Party not less than eighteen (18) Months prior to the expiration of the term, unless either Party shall give written notice by certified or registered mail to the other of its intent not to extend the term of this Agreement not less than eighteen (18) Months prior to the expiration of the term, and if the other Party fails to respond in writing to such written notice of intent to extend prior to the expiration of the Term, the Term shall be deemed extended for five (5) Agreement Years. During any extension term, all provisions contained herein remain in effect.

## ARTICLE 6. REPRESENTATIONS, WARRANTIES AND COVENANTS

- 6.1 SELLER covenants and warrants that SELLER's Complex shall be operated and maintained by a Qualified Operator in accordance with (a) the Agreed Operating Procedures, (b) Prudent Electrical Practices and (c) Prudent Utility Practices, including without limitation, synchronizing, voltage and reactive power control.

- 6.2 SELLER shall exercise commercially reasonable efforts to achieve the Phase 2 Commercial Operation Date within eighteen (18) months after the Commercial Operation Date. SELLER covenants and warrants that, from and after the Phase 2 Commercial Operation Date, SELLER's Complex shall generate its own reactive power (kVAR) such that the Facility shall be capable of operating with a power factor consistent with the Minimum Technical Requirements for Wind Turbine Generation Projects set forth in Appendix G and that the Facility shall be operated at the voltage levels determined pursuant to Section 4.5. SELLER further covenants and warrants that, from and after the Phase 2 Commercial Operation Date, its generator(s) shall be capable of operating at the maximum MVA consistent with the Minimum Technical Requirements for Wind Turbine Generation Projects set forth in Appendix G. SELLER warrants that it will promptly correct any SELLER's Complex design or construction defect that causes SELLER's Complex to have a material adverse effect on PREPA's voltage level or voltage waveform.
- 6.3 SELLER shall, at all times, comply with all applicable laws, ordinances, rules and regulations applicable to it and the use, occupancy and operation of SELLER's Complex, unless the non-compliance therewith would not have a materially adverse effect on the operation of SELLER's Complex, provided that in the event of any such noncompliance, SELLER shall be diligently contesting in good faith any such law, ordinance, rule or regulation. SELLER shall give all required notices, shall procure and maintain all Permits and shall pay all charges and fees in connection therewith unless SELLER shall be diligently contesting any such payments in good faith. SELLER shall give all required notices, shall procure and maintain all Permits and shall pay all charges and fees in connection therewith.
- 6.4 As between the Parties, SELLER shall have the sole responsibility for the payment of any and all fines or other penalties incurred by or imposed upon SELLER or its agents, suppliers, employees or subcontractors for noncompliance by SELLER, its agents, employees, suppliers, or subcontractors with laws, rules, regulations or ordinances applicable to or in connection with the development, construction, ownership and/or the proper operation of SELLER's Complex as determined by those having jurisdiction over SELLER's Complex, and PREPA shall be held harmless from any such fines or penalties and expenses related to these (including without limitation all reasonable attorneys' fees).
- 6.5 SELLER hereby represents and warrants:
- (a) On the Effective Date, SELLER is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware. SELLER has all requisite power and authority to conduct its business, to own its properties, and to execute, to deliver, and to perform its obligations under this Agreement.
  - (b) The execution, delivery and performance by SELLER of this Agreement have been duly authorized, and do not and will not (i) require any additional internal consent or approval of SELLER, or (ii) violate any provision of SELLER's certificate of formation or operating agreement, or any material indenture, contract or agreement to which it is a party or by which it or its properties may be bound, or any law, ordinance, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect.
  - (c) On the Effective Date, SELLER is not in default under any document or instrument referred to in clause (ii) of the preceding paragraph (b), which default could reasonably be expected to have a material adverse effect on the ability of SELLER to perform its obligations under this Agreement.

- (d) This Agreement is a legal, valid and binding obligation of SELLER, enforceable against SELLER in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights generally.
  - (e) On the Effective Date, except as previously disclosed in writing, there is no pending action or proceeding in which SELLER is a party before any Governmental Authority or arbitrator that could reasonably be expected to affect materially and adversely the financial condition or operations of SELLER or the ability of SELLER to perform its obligations under, or which purports to affect the legality, validity or enforceability, of this Agreement as in effect on the date hereof.
- 6.6 SELLER shall not be relieved of its obligations under this Agreement as a result of subcontracting any of its obligations to a third party.
- 6.7 SELLER further agrees that it will cause to be delivered to PREPA an annual certification of the names of its Authorized Officers, accountants, and consulting engineers. SELLER shall make available to PREPA all copies that SELLER receives of any maintenance evaluations or reports to be provided by SELLER to any third party with a financial security interest in or lien on SELLER's Complex, including evaluations or reports generated at the request of such third parties or performed by an engineering firm employed by such third party.
- 6.8 PREPA agrees that all information (whether financial, technical, or otherwise) obtained from SELLER, or from PREPA's inspections of SELLER's Complex, which is not otherwise generally available to the public shall be kept confidential and used solely by PREPA in connection with the performance of its obligations under this Agreement. Disclosure of such information may be made only within PREPA's organization to key personnel, and to third parties serving as PREPA's legal, financial or technical advisors, whose duties justify their need to review and know such material. PREPA shall require each person (and personnel thereof) to agree for the benefit of SELLER to maintain the confidentiality of such information. To the extent PREPA is required to disclose such information by any Governmental Authority or to the extent necessary to secure governmental approval or authorization, PREPA shall use its best efforts to seek a confidentiality agreement that assures confidential treatment of the information consistent with the terms of this Section 6.8. In the event PREPA is not successful in obtaining a confidentiality agreement, PREPA and SELLER shall use reasonable efforts to obtain through court action the appropriate protective order.
- 6.9 PREPA hereby agrees that, throughout the Term for so long as (i) the Trust Indenture dated January 1, 1974, as amended, between PREPA and The Chase Manhattan Bank (National Association) as successor trustee remains in effect, or (ii) in any agreements subsequently entered into by PREPA for similar purposes in connection with or related to the restructuring of PREPA's debts, all payments by PREPA to SELLER under this Agreement shall be treated as current expenses as defined by the terms of the Trust Agreement dated as of January 1, 1974 as amended, between PREPA and State Street Bank and Trust Company, as successor trustee, and any successor indentures or agreements, including any amendments, supplements or modifications thereto, or will be afforded no less beneficial treatment than current expenses in any such new agreements.
- 6.10 PREPA agrees to cause its external counsel (at SELLER's cost) or its internal counsel to issue an opinion in a form reasonably acceptable to SELLER and the Project Lenders on the Financial Closing Date affirming the representations in Section 6.11.
- 6.11 PREPA hereby represents and warrants:



- (a) Pursuant to Act No. 83 of May 2, 1941, as amended, PREPA is a public corporation duly organized and validly existing under the laws of the Commonwealth of Puerto Rico and has all requisite power and authority to conduct its business, to own its properties, and to execute, to deliver, and to perform its obligations under this Agreement.
  - (b) The execution, delivery and performance by PREPA of this Agreement have been duly authorized by PREPA's Governing Board in accordance with applicable law, and (i) do not and will not require any additional internal consent or approval of PREPA; and (ii) do not and will not violate any provision of Act No. 83 of May 2, 1941, as amended, or its regulations, or any material indenture, contract or agreement to which it is a party or by which its properties may be bound.
  - (c) PREPA is not in default under any document or instrument referred to in clause (ii) of the preceding paragraph (b), which default could reasonably be expected to have a material adverse effect on the ability of PREPA to perform its obligations under this Agreement.
  - (d) This Agreement is a legal, valid and binding obligation of PREPA, enforceable against PREPA in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights generally.
  - (e) Except for the proceedings before the PROMESA Court, there is no pending, or to the best of its knowledge, threatened action or proceeding against PREPA before any Governmental Authority or arbitrator that could reasonably be expected to affect materially and adversely the financial condition or operations of PREPA or the ability of PREPA to perform its obligations under, or which purports to affect the legality, validity or enforceability, of this Agreement as in effect on the date hereof.
- 6.12 PREPA shall not be relieved of its obligations under this Agreement as a result of subcontracting any of its obligations to a third party.
- 6.13 PREPA acknowledges that under this Agreement SELLER is only committing and PREPA is only paying for the Net Electrical Output as available from time to time from SELLER's Complex. PREPA also acknowledges that there is no explicit or implied guarantee about the Net Electrical Output reliability, and that SELLER is not committing and PREPA is not paying for dependable capacity, and that the Facility production is intermittent and subject to wind availability, and that PREPA is not relying and will not rely on SELLER's Complex Generating Capacity for the expansion of its system, and that the only remedy available to PREPA for the failure of SELLER to achieve the Commercial Operation Date or for the failure to achieve any particular number of Available Hours is the termination of the Agreement as provided for in Article 16.
- 6.14 SELLER shall sell and deliver to, and PREPA shall receive and pay for all Green Credits produced by the Facility in accordance with Article 11.1.
- 6.15 SELLER shall provide to PREPA, for the Term of the Agreement, audited financial statements prepared in accordance with GAAP.

## ARTICLE 7. DISPATCH

- 7.1 The Facility production is intermittent and subject to wind availability. PREPA agrees to accept all the Net Electrical Output produced by the Facility according to the terms of this Agreement and will not disconnect or curtail the Facility unless due to an Emergency as specified in Article 8.

- 7.2 Notwithstanding Section 7.1 and as further specified in Article 8, PREPA may require SELLER to disconnect or curtail the Facility or reduce the amount of Net Electrical Output due to situations that may affect safety margins or reliability levels in PREPA's system; provided, however, that any disconnection or reduction in the level of Net Electrical Output required by PREPA hereunder shall be based upon and implemented in a manner consistent with Prudent Utility Practices and within the Design Limits; provided further, however, that PREPA shall not disconnect the Facility or reduce the level of Net Electrical Output for purposes of economic dispatch.
- 7.3 SELLER will give PREPA's dispatcher a status report every eight (8) hours of SELLER's Complex conditions, including any SELLER's Complex restrictions, and the hourly integrated net generation during that period. SELLER shall notify the dispatcher right away if there is any pertinent change in SELLER's Complex status. SELLER shall make available through the Facility's remote terminal unit ("RTU") the actual Facility load limit adjustment.
- 7.4 The Facility will provide to PREPA an estimate of next day and next week production, based on the previous day production, estimated strength of the winds the next day and week and based on the meteorological forecast for the region and site.

#### ARTICLE 8. CONTROL AND OPERATION OF THE FACILITY

- 8.1 SELLER shall use reasonable efforts to (a) submit to PREPA the Planned Outage Program for (i) the balance of the Year during which the Commercial Operation Date occurs no later than the Commercial Operation Date and (ii) each subsequent Years before the beginning of such Year and (b) notify PREPA at least twenty-four (24) hours in advance of all Planned and Maintenance Outages.
- 8.2 If an Emergency is declared by PREPA, PREPA's dispatching centers may partially curtail the Facility or disconnect the Facility from PREPA's system and the Facility will remain curtailed or disconnected from PREPA's system until SELLER has received permission to increase output or reconnect from PREPA's dispatching center. At its sole discretion, during an Emergency PREPA may elect to lower the output of the Facility. Without limiting the generality of the foregoing, PREPA may require the Facility to be curtailed or disconnected without prior notice and remain curtailed or disconnected until permission to reconnect has been received from PREPA (i) if a failure to curtail or disconnect would create or contribute to an Emergency; (ii) if immediate maintenance operations are required or; (iii) whenever PREPA deems it necessary to do so in the interest of the safety and integrity of PREPA's system; provided, however, that any such requests, curtailment, disconnections or lowering the output of the Facility by PREPA hereunder shall be of no greater scope and of no longer duration than is required due to the Emergency or other operating problem, and is based upon and implemented in a manner consistent with Prudent Utility Practices and within the Design Limits.
- 8.3 SELLER shall cooperate with PREPA in establishing Emergency plans, including without limitation, recovery from a local or widespread electrical blackout; voltage reduction in order to effect load curtailment; and other plans which may arise. SELLER shall make technical information and data available to PREPA concerning start-up times and black-start capabilities.
- 8.4 If SELLER has a Planned Outage or a Maintenance Outage, and such Planned Outage or Maintenance Outage occurs or would occur coincident with an Emergency, SELLER shall make reasonable efforts, consistent with Prudent Utility Practices and with PREPA's approval, to reschedule the Planned Outage or Maintenance Outage or if the Planned Outage or Maintenance Outage has begun, to expedite the completion thereof.

- 8.5 SELLER recognizes that, subject to Section 7.2 and Section 8.2, PREPA may require that the Facility's Net Power Output be reduced (or capped) or the Facility may be curtailed or disconnected due to situations that may affect safety margins or reliability levels in PREPA's system. Some of these situations may include, but are not limited to, voltage stability problems, security driven dispatch, transmission lines contingencies, generating units contingencies, power transfer levels in some circuits, and disconnection ("vias libres") of some transmission circuits due to maintenance and improvement.
- 8.6 SELLER shall provide as a minimum at its expense the following communication facilities linking SELLER's Complex with PREPA's dispatching centers:
- (a) One dual ported RTU, including setup installation and configuration, which shall be specified by PREPA.
  - (b) Two independent telecommunication circuits, including one voice grade to link the SCADA system to the Facility's RTU using DNP protocol through a designated PREPA communication node, and a second fiber optic circuit to link PREPA's network to the Facility in order to access protection equipment, revenue meters and the dynamic system monitor through the ruggedcom security device as specified by PREPA;
  - (c) A voice telephone extension for the purpose of communicating with the Monacillos Transmission Center and Ponce Transmission Center;
  - (d) A telephone line and equipment to transmit and receive e-mail messages to confirm the oral communication between PREPA and SELLER; and
  - (e) Dynamic system monitor equipment, components, and system in accordance with Appendix H, for recording the power disturbance caused by electro-mechanic swings and to measure the system response to the swing disturbance.

Items provided by SELLER in accordance with this Section 8.5 shall be subject to the approval of PREPA, which approval shall not be unreasonably withheld or delayed.

- 8.7 Each Party shall keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement.
- (a) All such records shall be maintained for a minimum of five (5) years after the creation of such record or data and for any additional length of time required by regulatory agencies with jurisdiction over the Parties; provided, however, that neither Party shall dispose of or destroy any such records that are specifically designated by the other Party even after five (5) years without thirty (30) days prior notice to the other Party. If notice is given to the notifying Party during such thirty (30) day period, the notifying Party shall promptly deliver such records and data to the Party wishing to retain such records.
  - (b) SELLER shall maintain an accurate and up-to-date operating log at the Facility with records of: (i) real and reactive power for each hour; (ii) changes in operating status and outages; (iii) any unusual conditions found during inspections; (iv) SELLER's Complex Generating Capacity for each Available Hour as determined consistent with Prudent Utility Practices. Either Party shall have the right from time to time, upon fourteen (14) days written notice to the other Party and during regular business hours, to examine the records and data of the other Party relating to the proper administration of this Agreement any time

during the period the records are required to be maintained. At PREPA's request, SELLER shall provide certifications of tests and inspections of the electric and protection equipment, which may impact PREPA's electrical system. PREPA shall have the right to visit and visually monitor SELLER's Complex during operation and testing.

## ARTICLE 9. INTERCONNECTION

- 9.1 Subject to the requirements of this Agreement (but without waiving any rights under applicable law), SELLER shall have the right to interconnect SELLER's Complex to PREPA's electrical system at, and deliver the Net Electrical Output to, the Interconnection Point. Appendix C sets forth the information required for the Interconnection Study needed to assess the interconnection of SELLER's Complex to PREPA's system.
- 9.2 PREPA shall perform the Interconnection Study and provide a report summarizing the results to SELLER within sixty (60) days of SELLER's provision of the information and data required by Section 4.1. The Interconnection Study shall, at a minimum, determine what modifications need to be made to the Interconnection Facilities in light of the reconstruction of SELLER's Complex, if any, such as (a) a determination of the power capabilities of the major interconnection equipment required for the Interconnection Facilities, (b) the maximum fault currents necessary to specify short circuit duty and interrupting ratings, (c) confirm generator step up (GSU) transformer impedance and determine transformer tap ranges necessary for proper control of voltage and reactive power flow, and (d) verify the PREPA dispatching centers that will coordinate the operation of SELLER's Complex. SELLER is not prohibited from commencing construction of or modifications to its Facility or the Interconnection Facilities, if applicable, prior to the completion of the Interconnection Study to the extent that the Parties agree that such construction of or modification to the Facility or the Interconnection Facilities will not be materially affected by the results of the Interconnection Study. Any modifications to the Interconnection Facilities shall be consistent with Prudent Utility Practices considering the functional one-line interconnection diagram and approved specifications contained in Appendix C-1 and subject to the provisions of Article 24.2.
- 9.3 Within one hundred twenty (120) days of PREPA's receipt of the information submitted by SELLER in accordance with Section 4.1, PREPA shall either issue SELLER a notice to proceed or notify SELLER of any disagreement with the information provided. SELLER shall not purchase equipment or repair or modify the Interconnection Facilities until receipt of a notice to proceed from PREPA, which shall constitute acceptance by PREPA of the design and specifications of the Interconnection Facilities and of the need to purchase equipment or repair or modify the Interconnection Facilities, if applicable. Once the notice to proceed is received by SELLER, SELLER shall use its best efforts to complete work, if any, on PREPA's Interconnection Facilities within the time period specified in the schedule submitted as per Section 4.2.
- 9.4 Subject to Section 9.3, SELLER shall, to the extent required, at its own cost (a) design, acquire all necessary materials and equipment, and repair or modify SELLER's Interconnection Facilities, and (b) design, acquire all necessary materials and equipment, and repair or modify PREPA's Interconnection Facilities, in each case, contemporaneously with the reconstruction of SELLER's Complex. SELLER agrees that the cost of repairing or modifying PREPA's Interconnection Facilities, if required, shall include the control, protection and communication infrastructure required for implementing the aforementioned improvements.
- 9.5 SELLER agrees that SELLER's Complex interconnection and its achievement of the Commercial Operation Date is conditioned upon the installation, at SELLER's cost, of the equipment required

to comply with all of the Minimum Technical Requirements for Wind Turbine Generation Projects set forth in Appendix G except for the requirements of Articles 3, 6 and 7 thereof. SELLER further agrees that, from and after the Phase 2 Commercial Operation Date, SELLER's Complex interconnection is conditioned upon the installation, at SELLER's cost, of (a) the frequency regulation, voltage and dynamic reactive power support equipment consistent with the entirety of the Minimum Technical Requirements for Wind Turbine Generation Projects set forth in Appendix G and (b) dynamic system monitoring equipment as specified in Appendix H. The Parties agree to comply with the Minimum Technical Requirements for Wind Projects attached hereto as Appendix G. SELLER's compliance with the Minimum Technical Requirements for Wind Projects shall be measured at the location set forth in Appendix C-1.

- 9.6 Prior to the Initial Synchronization Date, PREPA shall perform, or supervise SELLER in the performance of, the acceptance testing of the Interconnection Facilities, ~~which shall include an inspection of the 115 kV Line~~. The acceptance testing requirements for the Interconnection Facilities will be set forth in the Agreed Operating Procedures.
- 9.7 ~~On the Effective Date, SELLER and PREPA shall enter into the Transmission Line PSA, pursuant to which SELLER shall assign, transfer and sell, and PREPA shall purchase and accept assignment of, the 115 kV Line and the other assets described therein, subject to the terms and conditions of the Transmission Line PSA Reserved.~~
- 9.8 At all times, SELLER shall own and be responsible for the safe and adequate operation and maintenance of all SELLER's Interconnection Facilities. ~~From and after the date that the transactions contemplated in the Transmission Line PSA are consummated,~~ At all times, PREPA shall own and be responsible for the safe and adequate operation and maintenance of PREPA's Interconnection Facilities.
- 9.9 PREPA reserves the right to modify or expand its requirements for protective devices in the Interconnection Facilities in conformance with Prudent Electrical Practices and subject to the Design Limits.
- 9.10 Each Party shall notify the other in advance of any changes to its system that will affect the proper coordination of protective devices on the two systems.

## ARTICLE 10. METERING

- 10.1 PREPA shall own and maintain the primary and backup meters and metering devices (including RTUs) used to measure the delivery and receipt of Net Electrical Output for payment purposes, located at the point identified in Appendix C-1. SELLER shall calibrate and test the primary and backup meters and metering devices subject to Section 10.3, provided that such meters and metering devices shall be subject to PREPA's approval.
- 10.2 All meters and metering equipment used to determine the Net Electrical Output delivered to PREPA shall be sealed, and the seals broken only by PREPA personnel when the meters are to be inspected, tested or adjusted. PREPA shall give SELLER two (2) weeks prior written notice thereof and SELLER shall have the right to have a representative present during the meter inspection, testing or adjustment. If either Party believes that there has been a meter failure or stoppage, it shall immediately notify the other Party.
- 10.3 At least once a Year at PREPA's cost and, in addition, from time to time upon two (2) weeks prior written notice by SELLER, at SELLER's cost, PREPA will test and calibrate the meter(s),

including backup meter, in accordance with the provisions for meter testing as established in American National Standard Code for Electricity Metering (ANSI) Standard C 12.16 for Solid State Electricity Meters, and the Handbook for Electrical Metering, Edison Electric Institute 8th Edition or the updated edition in effect and available to PREPA at the time the test is performed. When, as a result of such a test, a meter is found to be inaccurate by no more than two percent (2%), no adjustment will be made in the amount paid to SELLER for Net Electrical Output delivered to PREPA. If the meter is found to be inaccurate by more than two percent (2%), PREPA will use the backup meter to calculate the correct amount delivered to PREPA for the actual period during which inaccurate measurements were made or, if the actual period cannot be determined to the mutual satisfaction of the Parties, for a period equal to the time elapsed since the most recent test, but in no case for a period in excess of six (6) Months. If the backup meter is not available, or if the testing of the backup meter demonstrates that said meter is inaccurate by more than two percent (2%), the meter readings shall be adjusted based on the corrected meter readings of the most accurate meter for the actual period during which inaccurate measurements were made, or, if the actual period cannot be determined to the mutual satisfaction of the Parties, for a period equal to one-half of the time elapsed since the most recent test, but in no case for a period in excess of six (6) Months. The previous payments by PREPA for this period shall be subtracted from the amount of payments that are calculated to have been owed under this Agreement. The difference shall be offset against or added to the next payment to either Party as appropriate under this or other agreements between the Parties. Each Party shall comply with any reasonable request of the other Party concerning the sealing of meters, the presence of a representative of the other Party when the seals are broken and the test is made, and other matters affecting the accuracy of the measurement of electricity delivered from SELLER's Complex.

- 10.4 During each one (1) year period, following the Initial Synchronization Date, PREPA shall read the meters twelve (12) times to determine the amount of Net Electrical Output delivered to PREPA between any such two (2) consecutive meter readings (the "**Billing Period**"). The Billing Period shall not exceed thirty-three (33) days nor be less than twenty-eight (28) days. Except that the first Billing Period, from the Initial Synchronization Date might be less than twenty-eight (28) days to adjust the ensuing Billing Periods to the desired schedule. The meters will be read on the dates indicated on the meter-reading program prepared by PREPA and submitted to SELLER on or before January 1<sup>st</sup> of each Year. PREPA shall notify SELLER in advance of any change on the meter-reading program. SELLER may be present, at its option, during all meter readings. PREPA shall provide SELLER with a written statement containing the results of such meter readings within ten (10) days following the reading.

#### ARTICLE 11. COMPENSATION, PAYMENT AND BILLINGS

- 11.1 For each Billing Period (or part thereof), PREPA shall pay to SELLER the Energy Payment in consideration for both the Net Electrical Output delivered to PREPA and the Green Credits generated by the Facility during such Billing Period (or part thereof). For the avoidance of doubt, all Green Credits generated by the Facility shall be conveyed to PREPA at no additional charge (as the consideration therefor is included in the Energy Payment). An example of the Energy Payment is included in Appendix A.
- 11.2 PREPA will buy all the energy delivered by SELLER for each Month (or part thereof) from the Initial Synchronization Date to the Commercial Operation Date in an amount equal to the product [REDACTED] / kWh and the energy produced during such Month (or part thereof).
- 11.3 On or before the fifteenth (15<sup>th</sup>) day following the end of each Billing Period, SELLER shall provide PREPA with a written invoice for the Net Electrical Output delivered to PREPA and for

other amounts or reimbursement due to SELLER by PREPA hereunder, and such invoice shall be paid by PREPA within forty-seven (47) days after the end of the Billing Period. Interest shall accrue on the outstanding payments due to SELLER commencing on the forty-eighth (48) day after the Billing Period. Notwithstanding the payment requirements set forth in this Section, any amounts owed to PREPA by SELLER relating to SELLER's Complex that are not paid when due to PREPA, at PREPA's discretion, may be offset against the amounts due to SELLER from PREPA under this Agreement, subject to PREPA providing SELLER with ten (10) business days' advance written notice describing in reasonable detail the amounts to be set off before effecting any such set off. Payment to PREPA shall be made by wire transfer to an account with a bank to be specified by PREPA in writing at least thirty (30) days prior to the Initial Synchronization Date or with such other banks as may thereafter be specified by PREPA in writing. Payment to SELLER shall be made by wire transfer to an account with a bank to be specified by SELLER in writing at least thirty (30) days prior to the Initial Synchronization Date or with such other banks or institutions as may thereafter be, specified by SELLER in writing. Either Party may, by written notice to the other, change the address to which such payments are to be sent.

- 11.4 PREPA will charge all payments that it owes under this Agreement to PREPA's budget account number [REDACTED] and estimates that its costs under this Agreement will not exceed [REDACTED]. For the avoidance of doubt, the Parties have set out the expected account number and estimate of costs for informational purposes to satisfy the requirements of the Puerto Rico Controller. This paragraph does not bind the Parties or modify any other provision of this Agreement.

#### ARTICLE 12. SELLER'S COMPLEX GENERATING CAPACITY

- 12.1 SELLER declares (but does not represent, warrant or covenant) that the Estimated Generating Capacity for the Facility at commencement of commercial operations is expected to be approximately 26 MW. SELLER acknowledges and agrees that, to remain interconnected to the PREPA's generation, transmission, and distribution system, the Net Power Output of the Facility at the Interconnection Point shall not exceed the Estimated Generating Capacity at any time, unless required by the Minimum Technical Requirements for Wind Turbine Generation Projects set forth in Appendix G.
- 12.2 Following the performance of the tests detailed in Appendix D-1, SELLER shall notify PREPA in writing of SELLER's Complex Generating Capacity and the Commercial Operation Date. PREPA at its option may have an eyewitness during the performance of the tests.
- 12.3 Following the performance of the tests detailed in Appendix D, SELLER shall notify PREPA in writing of SELLER's Complex Generating Capacity and the Phase 2 Commercial Operation Date. PREPA at its option may have an eyewitness during the performance of the tests.

#### ARTICLE 13. LIABILITY

- 13.1 Each Party shall be responsible for the energy and facilities, including Interconnection Facilities, located on its respective side of the Interconnection Point. The Net Electrical Output made available by SELLER to PREPA under this Agreement shall become the property of PREPA at the Interconnection Point. Except as provided in Section 13.2, SELLER shall not be liable to PREPA for loss or damage to PREPA's generation, transmission, and distribution system, including PREPA's Interconnection Facilities, resulting directly or indirectly from the use, misuse or presence of said energy once it passes the Interconnection Point. PREPA shall not be liable to

SELLER for loss or damage to SELLER's Complex, resulting directly or indirectly from the use, misuse or presence of said energy before it passes the Interconnection Point.

- 13.2 The Parties agree that their responsibility under this Agreement will be governed by the Puerto Rico Civil Code and its case law, as dictated by the Supreme Court of Puerto Rico. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico.
- 13.3 Notwithstanding anything to the contrary contained in this Agreement, neither Party nor any of its affiliates nor any of their respective directors, officers, shareholders, partners, employees, agents and representatives nor any of their respective heirs, successors and assigns shall in any event be liable to the other Party or its officers, directors, agents, employees or representatives for claims for incidental, consequential or indirect damages, whether arising in tort, contract or otherwise, connected with or resulting from performance or nonperformance under this Agreement, including without limitation, claims made by either Party's customers or suppliers, or claims made by third parties, or claims made by either Party for lost profits.
- 13.4 Nothing in this Article 13 shall relieve either Party of its obligation to make payments that become or have become due pursuant to Article 11 and Article 18.

#### ARTICLE 14. INDEMNIFICATION

- 14.1 Each Party shall indemnify and hold harmless the other Party and each of its affiliates and each of their respective directors, officers, shareholders, partners, employees, agents and representatives and each of their respective heirs, successors and assigns from and against any and all damages, claims, losses, liabilities, actions, causes of action, costs, expenses and obligations (including, without limitation, all reasonable attorneys' fees) whether arising in contract, tort or otherwise to third parties for or on account of injury, bodily or otherwise, to or death of persons or for damage to or destruction of property, in each case resulting from, arising out of or in connection with such indemnifying Party's negligent performance or failure to perform under this Agreement.
- 14.2 In the event any Party to this Agreement receives notice of any claim or cause of action for which such Party elects to assert a right of indemnification and hold harmless from the other Party, the Party receiving such notice must give prompt written notice to the other Party of the claim. The Party required to give the indemnification and hold harmless under the terms and provisions of this Agreement will have control of the defense of any such claim or cause of action (except to the extent prevented by any legal conflict of interest) including the selection of counsel to handle same. In addition to the counsel so selected, the Party being indemnified and held harmless shall be entitled to be represented by counsel of his or its own choosing but, in such event, the cost and expense of said additional counsel shall be borne by the Party being indemnified.
- 14.3 SELLER shall indemnify and hold harmless PREPA for any and all judgments and expenses (including reasonable costs and attorneys' fees) required to be incurred by PREPA as a result of claims of any nature whatsoever resulting from any environmental harm due to the actions of SELLER or SELLER's agents or employees in the design, planning, construction or operation of either or both of SELLER's Original Complex or SELLER's Complex or any of its Facilities or arising as a result of the presence at either or both of SELLER's Original Complex or SELLER's Complex or any of its Facilities of pollutants, hazardous substances, materials or wastes. In the event SELLER fails to reimburse PREPA for such expenses within thirty (30) days of receipt of written notice from PREPA stating that such expenses were incurred, subject to the provisions of



Article 11.3, PREPA may offset the amount of such expenses against amounts due SELLER from PREPA under this Agreement.

#### ARTICLE 15. FORCE MAJEURE

- 15.1 The Parties shall be excused from performing hereunder and shall not be liable or otherwise if and only to the extent that they shall be unable to perform or are prevented from performing due to a Force Majeure event. For purposes of this Agreement, Force Majeure means any cause beyond the reasonable control of and not the result of the fault or negligence of the Party claiming the Force Majeure event. The burden of proof as to whether a Force Majeure event has occurred and caused a non-performance or inability to perform shall be on the Party claiming the Force Majeure. Except as provided in Section 15.4, the Parties hereto shall be excused from performing hereunder and shall not be liable in damages or otherwise to the extent the non-performance or inability to perform is due to a Force Majeure event.
- 15.2 Provided that the provisions of Section 15.1 above are met, Force Majeure events may include, but are not limited to, the following: Acts of God, strikes, acts of public enemy, war, blockades, boycotts, riots, insurrections, epidemics, earthquakes, storms, floods, civil disturbances, lockouts, fires, explosions, Legal Challenges, interruptions of services due to the act or failure to act of any Governmental Authority, except that PREPA cannot claim Force Majeure for acts or failures to act by PREPA.
- 15.3 Except as otherwise provided in Section 15.4, if either Party is rendered wholly or partly unable to perform its obligations under this Agreement because of Force Majeure, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that: (i) the non-performing Party, within ten (10) days after the occurrence of the Force Majeure, gives the other Party written notice describing the particulars of the occurrence and its estimated duration; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure consistent with Prudent Utility Practices; (iii) no obligations of either Party which arose prior to the Force Majeure be excused as a result of the Force Majeure; and (iv) the non-performing Party uses its best efforts, consistent with Prudent Utility Practices, to remedy its inability to perform and resume in full its performance under this Agreement, provided that this obligation shall not require the settlement of any strike, walkout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its best interest.
- 15.4 Neither Party shall be excused by reason of Force Majeure from the obligation to make any payments, when due, to the other Party.
- 15.5 For purposes of this Article 15, if a Party disputes the other Party's claim of Force Majeure such dispute shall be resolved through the Dispute Resolution process provided for in Section 22.24.
- 15.6 A Party claiming a Force Majeure shall use its best efforts, diligently and continuously, to mitigate and remedy the causes of the Force Majeure. These efforts shall continue during any Dispute Resolution process.

#### ARTICLE 16. TERMINATION

- 16.1 Termination of this Agreement shall occur only upon:
- (a) expiration of the Term of this Agreement as provided in Article 5; or

- (b) mutual written consent of the Parties; or
- (c) the date identified by PREPA in a written notice to SELLER following the occurrence of a Development Abandonment, Permanent Abandonment or Permanent Closing, subject to the provisions of Article 17; or
- (d) the date identified by a Party in a written notice to the other Party following the material, uncured breach of any of the terms and conditions of this Agreement by such other Party, subject to the provisions of Article 17; or
- (e) the date identified by PREPA in a written notice to SELLER following any delay by SELLER in achieving (i) the Commencement of Construction of the Facility by the date that is eight (8) Months after the Assumption Order Date (ii) the Commercial Operation Date of the Facility by the date that is twenty-four (24) Months after the Commencement of Construction, or (iii) the Phase 2 Commercial Operation Date by the date that is twenty-four (24) Months after the Commercial Operation Date, unless the delay is due to one or more events of Force Majeure or the act or omission of PREPA, in which case, the eight (8) or each of the twenty-four (24) Month periods, as the case may be, shall be extended on a day for day basis for the duration of such Force Majeure event or act or omission of PREPA and the termination right may only be exercised if the Commencement of Construction, Commercial Operation Date, or Phase 2 Commercial Operation Date has not occurred by the expiration of such extended period, subject to the provisions of Article 17.

16.2 Termination of this Agreement shall not discharge either Party hereto from any obligation it owes to the other Party under this Agreement by reasons of any transaction, loss, cost, damage, expense or liability, which shall occur or arise (or the circumstances, events, or basis of which shall occur or arise) prior to termination. It is the intent of the Parties hereby that any such obligation owed (whether the same shall be known or unknown at termination or whether the circumstances, events or basis of the same shall be known or unknown at termination) shall survive termination. Any indebtedness by either Party to the other shall be considered payable within ninety (90) days of the termination of this Agreement. This Section 16.2, together with Article 13, Article 14, Section 22.4 and Section 22.7 shall survive termination of this Agreement.

#### ARTICLE 17. BREACH OF AGREEMENT, DELAYS AND SECURITY

- 17.1 A breach of this Agreement shall be deemed to exist upon the occurrence of any one of the following:
- (a) the Commencement of Construction, Commercial Operation Date, or Phase 2 Commercial Operation Date for the Facility is not achieved within the time frames specified in Section 16.1(e);
  - (b) the failure by either Party to perform in any material respect its obligations under this Agreement, subject to the provisions of Section 17.3, or
  - (c) the occurrence of a Development Abandonment, Permanent Abandonment or Permanent Closing of SELLER's Complex.
- 17.2 If PREPA believes SELLER has breached this Agreement pursuant to Section 17.1(a), PREPA shall provide SELLER a Notice of Breach thereof. If within fifteen (15) days of the receipt of such

Notice of Breach, SELLER fails to respond in writing to the Notice of Breach, PREPA may terminate this Agreement as provided under Article 16 as the only remedy for such a breach.

- 17.3 If either Party believes the other Party has breached this Agreement pursuant to Section 17.1(b) or Section 17.1(c), the non-breaching Party shall provide the other Party with a Notice of Breach thereof. If within thirty (30) days of the receipt of such Notice of Breach, such other Party fails to respond in writing to the Notice of Breach, the non-breaching Party shall be entitled to invoke its remedies under this Agreement and/or under applicable law. If such other Party disputes in writing that a breach by it has occurred, the Parties may pursue a resolution by the Dispute Resolution process provided for in Section 22.24. In case the other Party admits in writing, or the Dispute Resolution process contemplated above results in a determination that a breach (other than a payment breach) has occurred, the breaching Party shall have a minimum of thirty (30) days from the latest of (i) receipt of the Notice of Breach, (ii) its admission of breach, or (iii) when the resolution contemplated above determines that a breach has occurred, to cure the breach or the cause of such breach, if the breach is one which by its nature cannot be cured, provided however, that if the breach or such cause cannot be cured within the thirty (30) day period, the breaching Party shall be given an additional ninety (90) day period to cure the breach or such cause with the exercise of due diligence. If the breaching Party fails to cure the breach or such cause or to be actively pursuing to cure with the exercise of due diligence within such time period, the non-breaching Party may pursue its remedies under this Agreement and/or under the law.
- 17.4 No later than the Commencement of Construction, SELLER shall provide to PREPA, at SELLER's sole expense, a surety bond issued by a surety company duly licensed in the Commonwealth of Puerto Rico, an irrevocable direct pay letter or letters of credit issued by a Qualified Bank, or a guaranty provided by a guarantor with an investment grade credit rating as determined by Moody's or Standard and Poor's (provided, however, that the requirement that such guarantor have an investment grade credit rating shall not apply so long as such guarantor and SELLER are, directly or indirectly, wholly owned by Santander), which such issuing bank or guarantor and forms of surety bond, letter of credit or guaranty shall be subject to PREPA's approval (such approval not to be unreasonably withheld, conditioned or delayed), in each case, in the aggregate amount of [REDACTED] per kilowatt of Estimated Generating Capacity (the "**Operation Security**"). The Operation Security required herein shall be maintained for the remainder of the Term.
- 17.5 PREPA may draw from the Operation Security required under Section 17.4 to offset any damages PREPA may be entitled to under this Agreement, provided that PREPA either obtains the agreement of SELLER to the level of damages or obtains a final determination through the Dispute Resolution process specifying the level of damages. If PREPA reasonably determines that the Operation Security would otherwise expire or cease to exist prior to such agreement or judgment, PREPA may draw from the Operation Security an amount equal to PREPA's claim of damages; provided that PREPA places the drawn amounts in an escrow account in a bank reasonably acceptable to SELLER until the appropriate amount of damages is determined. Following such agreement or determination, PREPA may draw from the escrow account and retain amounts equal to the amount of damages, if any, determined to be due to PREPA and PREPA shall deliver to SELLER all amounts remaining in the escrow account, if any. Drawing under the Operation Security shall not be the exclusive remedy available to PREPA.

## ARTICLE 18. TAXES AND ENVIRONMENTAL COSTS

- 18.1 For purposes of this Agreement, "**Taxes**" shall mean any and all taxes, fees or other charges of any nature, excluding income taxes and repatriation (tollgate) taxes, that are imposed or assessed on or as a result of the ownership or operations of SELLER's Complex by federal, Commonwealth or

municipal governmental bodies or agencies responsible for implementing tax laws, rules, regulations or orders. “**Environmental Costs**” shall mean any and all fixed and variable costs incurred by SELLER resulting from the imposition or assessment on or as a result of the ownership or operations of SELLER’s Complex by laws, rules, regulations or orders relating to the environment issued by federal, Commonwealth or municipal governmental bodies or agencies. “**Post-Effective Date Taxes**” shall mean all Taxes resulting from tax laws, rules, regulations or orders enacted, approved or issued after the Effective Date. “**Post-Effective Date Environmental Costs**” shall mean all Environmental Costs resulting from laws, rules, regulations or orders enacted, approved or issued after the Effective Date.

- 18.2 SELLER shall be responsible for all income taxes, repatriation (tollgate) taxes, Taxes and Environmental Costs; provided that PREPA shall reimburse SELLER for (a) all changes in the payments of Taxes by SELLER that are the result of the enactment of Post-Effective Date Taxes and (b) all changes in SELLER’s Environmental Costs that are the result of the enactment of Post-Effective Date Environmental Costs, in each case, applicable to SELLER by reason of the ownership or operation of SELLER’s Complex for the purpose of the sale by SELLER to PREPA of Net Electrical Output (collectively, “**Changes**”). Such Changes payable by PREPA according to the foregoing shall be paid to SELLER by an equitable adjustment to the Energy Purchase Price on a per kWh basis over the remainder of the Term.
- 18.3 SELLER will promptly pay and discharge all lawful taxes, assessments and governmental charges or levies imposed upon it or in respect of all or any part of its property or business, all trade accounts payable in accordance with usual and customary business terms, and all claims for work, labor or materials which, if unpaid, might become a lien or charge upon any of its property; provided, however, that SELLER shall not be required to pay any such tax, assessment, charge, levy, account payable or claim if (a) the validity, applicability or amount thereof is being contested in good faith by appropriate actions or proceedings which will prevent the forfeiture or sale of any property of SELLER or any material interference with the use thereof by SELLER and (b) SELLER has set aside on its books reserves deemed by it to be adequate with respect thereto. PREPA shall pay or cause to be paid all taxes, fees and other charges of any nature on or with respect to the Net Electrical Output at and from the PREPA’s Interconnection Facilities, including, without limitation, taxes, fees or other charges of any nature assessed on or with respect to the purchase and sale of the Net Electrical Output at the Interconnection Point (including, without limitation, sales tax, excise tax, municipal license tax and value-added tax).

## ARTICLE 19. INSURANCE

- 19.1 SELLER shall obtain or cause its agent or its affiliate to obtain on or before the later of (i) the Financial Closing Date, and (ii) the Commencement of Construction of SELLER’s Complex, and shall maintain during the remainder of the Term of the Agreement the following policies of insurance issued by an A. M. Best rated insurance company authorized to do business in Puerto Rico, or any other insurance providers reasonably acceptable to PREPA, such as Lloyds of London:
- (a) Workmen’s Compensation Insurance: (i) SELLER shall provide Workmen’s Compensation Insurance as required by the Workmen’s Compensation Act of the Commonwealth of Puerto Rico. SELLER shall also be responsible for compliance with said Workmen’s Compensation Act by all its subcontractors, agents or affiliates; (ii) SELLER shall furnish PREPA with a certificate from the State Insurance Fund showing that all personnel employed in the works under this Agreement are covered. If imported technical personnel is exempted, SELLER shall furnish evidence of such exemption and a

certificate from the insurance carrier covering said personnel and; (iii) for imported technical personnel eligible for exemption, SELLER shall refer to Appendix E, enclosed;

- (b) Employer's Liability Insurance: SELLER shall provide Employer's Liability Insurance with minimum bodily injury limits of \$1,000,000 for each employee and \$1,000,000 for each accident covering against the liability imposed by Law upon SELLER as a result of bodily injury, by accident or disease, including death arising out of and in the course of employment outside of and distinct from any claim under the Workmen's Compensation Act of the Commonwealth of Puerto Rico;
- (c) Commercial General Liability Insurance: SELLER shall provide and maintain during the Term of the Agreement a Commercial General Liability Insurance with bodily injury and property damage combined single limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Such insurance shall include specific coverage for contractual liability encompassing the indemnification provisions in Article 14, broad form property damage liability, personal injury liability, explosion, collapse and undergrounds damages coverage, products/completed operations liability; and where applicable, watercraft indemnity liability which may be covered on a separate policy;
- (d) Automobile Liability Insurance: SELLER shall provide a Comprehensive Automobile Liability Insurance with bodily injury and property damage combined single limits of at least \$1,000,000 per accident covering all owned, non-owned or hired vehicles;
- (e) Excess Umbrella Liability Insurance: SELLER shall maintain an Excess Umbrella Liability Insurance with a limit of not less than \$3,000,000 per occurrence in excess of the limits of insurance provided in subsections (b) through ~~(d)~~ above;

19.2 The amounts of insurance required in Section 19.1 above may be satisfied by SELLER purchasing primary coverage in the amounts specified or by buying a separate Excess Umbrella Liability Policy together with lower limit primary underlying coverage. The structure of the coverage is SELLER's option, so long as the total amount of insurance meets PREPA's requirements set forth in Section 19.1.

19.3 The coverage's requested in Section (b) above and any required Umbrella or Excess coverage could be "occurrence" form policies.

19.4 SELLER shall cause its insurers to endorse its Commercial General Liability and, if applicable, Excess Umbrella Liability policies with the following endorsement (a) through (d); and its Automobile Liability policies with endorsement item (d):

- (a) PREPA, its board of directors, its directors, officers and employees are additional insureds under this policy to the extent of SELLER's indemnity obligations elsewhere in this Agreement; and
- (b) This insurance is primary, but only for liability arising out of the operation of SELLER's Complex or other matters arising in relation to this Agreement; with respect to the interest of PREPA, its directors, officers, and employees, and other insurance maintained by them is excess and not contributory with this insurance; and
- (c) Insurer hereby waives all rights of subrogation against PREPA, its officers, directors and employees; and

- (d) Notwithstanding any provision of the policy, this policy may not be cancelled, non-renewed or materially changed by the insurer without giving thirty (30) days (ten (10) days in the case of non-payment of premiums) prior written notice to PREPA. All other terms and conditions of the policy remain unchanged.
- 19.5 Regarding breach of insurance warranties by SELLER, all insurance policies under Subsections (c) through (d) of Section 19.1 shall be endorsed, to the extent available on commercially reasonable terms, as follows or with substantially similar language agreeable to the Parties: “The breach of any of the warranties or conditions in this policy by SELLER shall not prejudice PREPA’s right under this policy.”
- 19.6 SELLER shall cause its insurers or agents to provide PREPA not later than seven (7) days prior to Commencement of Construction, with the originals of the certificates of insurance evidencing the policies and endorsements listed above with respect to SELLER’s Complex. Failure of PREPA to obtain certificates of insurance does not relieve SELLER of the insurance requirements set forth herein. Failure to obtain the insurance coverage required by this Article 19 shall in no way relieve SELLER’s obligations and liabilities under other provisions of this Agreement.

## ARTICLE 20. ASSIGNMENT

- 20.1 Except as otherwise provided in Section 20.5, this Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any attempt to assign this Agreement without the prior written consent of the corresponding Party shall be void. For avoidance of doubt, in no case shall the transfer of this Agreement to an affiliate of SELLER be Subject to PREPA’s approval.
- 20.2 Notwithstanding the above, SELLER may assign its rights and benefits but not its obligations and duties under this Agreement without PREPA’s consent (a) to a Project Lender as collateral security in connection with a financing and/or (b) to a Lessor as collateral security in connection with a lease arrangement; provided that SELLER shall not be relieved of its responsibility to carry out its duties and obligations under this Agreement, and further provided that any such assignment is made expressly subject to the terms and conditions of this Agreement between SELLER and PREPA. PREPA agrees to execute the appropriate consenting documents, estoppels certificates and acknowledgments (including agreements to provide copies of notices of defaults and agreements to pay funds directly to the Project Lender or Lessor (or its lenders or its lenders’ representatives)), as reasonably required by the Project Lender or Lessor, in connection with any assignment made by SELLER, Project Lender, or Lessor in accordance with this Article 20.
- 20.3 PREPA acknowledges that as a result of an assignment of SELLER’s rights and interests under this Agreement to a Project Lender or Lessor: (a) the Project Lender or Lessor, as applicable, will have the right, upon the occurrence of a default under its corresponding agreements with SELLER, to assume or cause a nominee to assume, all of the rights and obligations of SELLER (or Project Lender or Lessor) under this Agreement, and (b) the Project Lender or Lessor, or its lenders or its lenders’ representatives, as applicable, will have the right to cure defaults by SELLER under this Agreement on the same terms and during the same periods available to SELLER.
- 20.4 The Parties acknowledge that PREPA is undergoing a transformation process, and therefore, both Parties agree that PREPA may assign, convey or transfer (each, a “**Transfer**”) any of its rights, title, or interest in this Agreement as permitted by applicable law and at any time, without SELLER’s consent and without cost, expense or incremental liability to PREPA or SELLER, to any Governmental Authority of Puerto Rico which becomes the owner of all or substantially all of

Puerto Rico's electric power transmission and distribution system; provided that PREPA shall not be released from liability hereunder unless and until this Agreement shall be expressly accepted by the transferee in any such Transfer as binding upon said transferee, including an acknowledgment by said transferee of Project Lenders' rights with respect to this Agreement and the consent to collateral assignment, and provided further that PREPA shall notify SELLER no later than thirty (30) Days before the effective date of any such Transfer.

- 20.5 In the event the Facility or any portion thereof, SELLER, or substantially all of SELLER's assets are intended to be sold, directly or indirectly, SELLER shall notify PREPA of such intention to sell thirty (30) Days in advance of the intended date of such sale. PREPA shall have the right to approve the new owner, which approval shall not be unreasonably withheld, conditioned or delayed, and which decision PREPA shall inform SELLER no later than thirty (30) Days after SELLER's notice under the preceding sentence; provided, however, that no such approval shall be required if (a) the sale or transfer of SELLER's assets is part of any foreclosure on any mortgage, lien, pledge, charge or other encumbrance granted to the Project Lenders under any non-recourse project financing related exclusively to such assets and such lenders or their agent has entered into a direct agreement with PREPA in respect of the collateral assignment of this Agreement, (b) such new owner constitutes a permitted assignee under Article 20.3, or (c) the new owner provides to PREPA (i) its audited financial statements as per GAAP, demonstrating that such new owner has a tangible net worth of at least twenty-five million dollars (\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least fifty million dollars (\$50,000,000)), (ii) evidence that such new owner is or has engaged a Qualified Operator, and (iii) the certifications and documentation required by Article 22.9, but construing references to SELLER therein as references to such new owner; provided, however, that, in each case, SELLER has ensured that any regulatory approvals required have been obtained in respect of such transfer and such transfer otherwise complies with applicable law. In all of the preceding authorized transactions, this Agreement shall be transferred and assigned to the new owner as of the date of the PREPA approval, or as of the date of the notice to PREPA under subclauses (a), (b) or (c) above, and from such date onward all references to SELLER herein shall be deemed to refer to the new owner.

## ARTICLE 21. QUALIFYING FACILITY STATUS

- 21.1 SELLER shall certify that the Facility has achieved status as a Qualifying Facility pursuant to PURPA on or before the Commercial Operation Date.
- 21.2 In the event the Facility loses its status as a Qualifying Facility pursuant to PURPA, SELLER shall vigorously pursue and use reasonable efforts to re-obtain Qualifying Facility status. Notwithstanding the above, should SELLER be unable to obtain such status, this Agreement shall remain in full force and effect and SELLER shall comply, in its relationship with PREPA, with all other provisions of PURPA and the regulations approved under PURPA by FERC or any successor applicable to the relationship between Qualifying Facilities and electric utilities, in particular those provisions which protect, defend, preserve, and/or are propitious to electric utilities, provided, however, that nothing under PURPA or the regulations hereunder shall materially adversely affect in any way the rights, duties, and obligations of the Parties under this Agreement.

## ARTICLE 22. MISCELLANEOUS PROVISIONS

- 22.1 This Agreement, including the appendices thereto, can be amended only by agreement between the Parties in writing.

- 22.2 The failure of either Party to insist in any one or more instances upon strict performance of any provisions of this Agreement, or to take advantage of any of its rights hereunder, shall not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect.
- 22.3 SELLER represents and warrants that the information included in the Contractor Certification Requirement, as included in Appendix C of the Contract Submission Questionnaire required by the Financial Oversight & Management Board for Puerto Rico, is complete, accurate and correct, and that any misrepresentation, inaccuracy or falseness in such Contractor Certification Requirement will render this Agreement null and void and SELLER will have the obligation to reimburse immediately to PREPA any amounts, payments or benefits received from PREPA hereunder.
- 22.4 This Agreement is intended solely for the benefit of the Parties hereto. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party to this Agreement.
- 22.5 No officer, employee, or agent of SELLER or PREPA or of the Commonwealth or municipal governments shall be entitled to any share or part of this Agreement or to any benefit that may arise therefore that would be in violation of any law, rule, regulation, order, or policy of the Commonwealth of Puerto Rico or PREPA.
- 22.6 This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
- 22.7 Cancellation, expiration or earlier termination of this Agreement shall not relieve the Parties of obligations incurred prior to, or as a result of, such cancellation, expiration or earlier termination of this Agreement, which by their nature should survive such events, including without limitation warranties, remedies, promises of indemnity and confidentiality.
- 22.8 PREPA agrees to provide electric service to SELLER, as requested by SELLER, at the most advantageous rate available to SELLER in accordance with PREPA's applicable rates.
- 22.9 Previous to the signing of this Agreement, SELLER will have to submit the following documents or certifications:
- (a) Certification by SELLER, which indicates that it has filed its Income Tax Returns during the five (5) previous years, if required, and that it does not owe taxes to the Commonwealth of Puerto Rico; or is paying such taxes by an installment plan in full compliance with its terms.
  - (b) An Income Tax Return Filing Certificate, issued by the Treasury Department of Puerto Rico, Area of Internal Revenues, assuring that SELLER has filed his Income Tax Return for the last five (5) years, if required. To acquire such Certificate, SELLER will use the Request for Copy and/or Certification of Income Tax Returns Form issued by the Treasury Department of Puerto Rico. In addition, SELLER shall submit a Certification of Debt issued by the Area of Internal Revenues.



- (c) Certification issued by the Municipal Revenues Collection Center, assuring that SELLER does not owe any tax to such governmental agency. To acquire such Certificate, SELLER Will use the form issued by the Municipal Revenues Collection Center.
  - (d) Certificate issued by the Department of Labor and Human Resources of Puerto Rico assuring that SELLER has paid to the Department of Labor and Human Resources of Puerto Rico his employees' contributions, in accordance with the Puerto Rico Employment Security Act (unemployment, temporary disability or sickness or social security for chauffeurs); or is paying such contributions by an installment plan in full compliance with its terms. To acquire such Certificate, SELLER will use the form issued by the Department of Labor and Human Resources of Puerto Rico.
  - (e) A sworn statement that SELLER, to its actual knowledge, does not receive payment or benefit of any nature for services rendered regularly through an appointment to a Governmental Authority of Puerto Rico.
- 22.10 If any of the previously required Certifications shows a debt, and SELLER has requested a review or adjustment this debt, SELLER will certify that it has made such request at the Effective Date. If the requested review or adjustment is denied and such determination is final, SELLER will provide, immediately, proof of payment of this debt to PREPA; otherwise, SELLER accepts that the owed amount be offset by PREPA and retained at the origin, deducted from the corresponding payments.
- 22.11 Specifically, SELLER recognizes that submittal of the aforementioned certifications and documents is an essential condition of this Agreement; and even in the case that they are partially incorrect, there will be sufficient cause for PREPA to terminate, cancel or rescind this Agreement and SELLER have to refund all payments received under this Agreement. Prior to exercising any rights that PREPA might have pursuant to this Section 22.11, PREPA will notify SELLER of the nature of the deficiency and will afford SELLER a reasonable time to prepare or cause to prepare the documents and certifications to comply with the aforementioned requirements. SELLER will not have the preceding cure rights if SELLER had knowingly submitted false documents.
- 22.12 Each Party to this Agreement warrants that, except to the extent that a particular provision of this Agreement expressly creates a different standard, it will be reasonable with respect to the substance and timing of any exercise of its respective rights, obligations, duties and discretions in implementing this Agreement, including, without limitation, the making of and satisfying of requests, the issuance and withholding of consents and findings of acceptability or satisfaction, the incurrence of costs that are the responsibility of the other Party, and the provision of notice to the other Party and the Project Lenders if applicable.
- 22.13 This Agreement shall inure to the benefit of and be binding upon SELLER and PREPA and their respective successors and assigns.
- 22.14 Either Party may waive breach by the other Party; provided that no waiver by or on behalf of either Party of any breach of this Agreement shall take effect or be binding on that Party unless the waiver is in writing. A waiver of breach shall extend only to the particular breach waived and shall not limit or otherwise affect any rights that either Party may have with respect to any other or future breach.
- 22.15 If any provision hereof shall be held invalid, illegal or unenforceable by in accordance with Section 22.24, such holding shall not invalidate or render unenforceable any other provision hereof.

- 22.16 PREPA and SELLER agree that no amendment, which could be made to the Agreement, during its Term, shall be understood as a contractual novation, unless both Parties agree to the contrary specifically and in writing. The preceding sentence shall be equally applicable in such other cases where PREPA gives SELLER a time extension for the compliance of any of its obligations under the Agreement (provided, however, that any extensions to the Commencement of Construction or the Commercial Operation Date shall require the prior written approval of the PREB), or where PREPA dispenses the claim or demand of any of its credits or rights under the Agreement.
- 22.17 Under no circumstances, except in such one where PREPA agrees to the contrary specifically and in writing, shall PREPA's rights under the Agreement be understood as waived by any amendment, change order, time extension to SELLER, or by reason of dispensation given by PREPA as to a claim or demand of any of its credits or contractual rights.
- 22.18 SELLER certifies that it does not receive payment or benefit of any nature for services rendered regularly through an appointment to a governmental agency, body, public corporation or municipality of Puerto Rico. SELLER also certifies that it may have contracts with other governmental agencies or bodies, but such contracts do not constitute a conflict of interest for SELLER.
- 22.19 SELLER certifies that, on the Effective Date, it does not have any contractual relation that could cause a conflict of interest with this Agreement. SELLER also certifies that no public employee has any personal or economic interest in this Agreement.
- 22.20 SELLER agrees to comply with the provisions of Act of June 18, 2002, No. 84, which establishes a Code of Ethics for the Contractors, Suppliers and Economic incentive Applicants of the Executive Agencies of the Commonwealth of Puerto Rico.
- 22.21 Except as provided under Article 18, Taxes and Environmental Costs, during the Term of this Agreement, any Change in Law, including, but not limited to changes in applicable tax law, which causes an increase in SELLER costs when supplying the products or services to be acquired by PREPA, shall be SELLER's responsibility. PREPA shall not be obliged to pay more for Net Electrical Output than as defined in this Agreement.
- 22.22 SELLER shall be considered as an independent contractor, for all purposes under this Agreement, and all persons engaged or contracted by SELLER for the performance of its obligations herein, shall be considered as its employees or agents or those of its subcontractors, and not as employees or agents of PREPA.
- 22.23 All invoices submitted by SELLER shall include the following Certification, signed by SELLER, in order to be processed for payment by PREPA:

***No Interest Certification:***

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

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***SELLER's Signature***

22.24 If a dispute arises between the Parties regarding the application, interpretation, enforceability, validity, performance, or breach of this Agreement or matters arising therefrom or relating thereto, (a **“Dispute”**), then such Dispute shall be resolved solely by either the agreement of the Parties, with or without a Technical Recommendation (as defined and subject to the terms set forth in clause (b) below) or in a proceeding before the Puerto Rico Energy Bureau in accordance with this Section 22.24.

(a) In the event of a Dispute under this Agreement, the disputing Party may promptly provide written notice of the Dispute (a **“Dispute Notice”**) to the other Party setting forth in reasonable detail the scope and nature of such Dispute, including without limitation an identification of the provisions of this Agreement under which such Dispute arises. Following delivery of the Dispute Notice, the Parties shall either (i) agree in writing to submit such Dispute for a Technical Recommendation as provided in clause (b) below or (ii) absent such agreement, nominate a member of its respective senior management, who shall have decision-making authority on behalf of such Party, and such senior management members shall promptly meet and seek to achieve settlement, if possible, by negotiation and mutual agreement. If the Dispute is not resolved or submitted for Technical Recommendation within forty-five (45) Days after the Dispute Notice is received by the recipient Party (or such longer period of time as may be mutually agreed by the Parties in writing), then either Party may submit the Dispute to the consideration of the Puerto Rico Energy Bureau.

(b) If a Dispute hereunder is one that the Parties agree is of a technical nature that they should attempt to resolve through a technical review in proceedings before the Consulting Technical Expert, either Party may submit such Dispute (a **“Technical Dispute”**) for a recommended resolution by the Consulting Technical Expert (a **“Technical Recommendation”**) by providing to the other Party and the Consulting Technical Expert a written notice, specifying the matter to be determined. Proceedings before the Consulting Technical Expert shall be held in San Juan, Puerto Rico, unless otherwise agreed in writing by the Parties. Within thirty (30) Days or the engagement of the Consulting Technical Expert for a Technical Dispute (or such longer period of time as the Parties may mutually agree in writing), the Consulting Technical Expert shall conduct a hearing; provided that the Parties may agree in writing to waive the hearing and have the Consulting Technical Expert issue the Technical Recommendation on the basis of written submissions alone. The Consulting Technical Expert shall render a written recommendation on the Technical Dispute as soon as practicable after the close of the hearing but, in any case, no later than fifteen (15) Days after the close of the hearing. The Parties may resolve the Technical Dispute based on the Technical Recommendation or any mutually agreed modification thereof. If the Technical Dispute is not resolved in this fashion, the Parties may submit the matter for a final determination before the Puerto Rico Energy Bureau.

22.25 This Agreement amends and restates the Pre-Restatement PPOA in its entirety. Each Party acknowledges and agrees that the execution and delivery of this Agreement does not constitute a novation of the Pre-Restatement PPOA. Each Party acknowledges and agrees that (a) it hereby waives its rights relating to any breach or default of, or claim against, any other Party, as well as any right to any time extension for achieving any milestone or performing any other obligation under the Pre-Restatement PPOA or arising prior to the Effective Date, and (b) it will not pursue

any claim, or request any refund, reimbursement or extension of time, in each case for any event that has occurred prior to the Effective Date.

- 22.26 Promptly after the execution hereof, PREPA shall move for and use reasonable efforts to obtain the issuance of the Assumption Order. PREPA shall keep SELLER abreast of any proceedings before the PROMESA Court related to the Assumption Order and this Agreement.
- 22.27 PREPA and SELLER stipulate that this Agreement is a post-petition agreement executed after the petition date and entitled to administrative expense treatment under PROMESA and the Bankruptcy Code. Further, PREPA stipulates that all of SELLER's costs and obligations owed to SELLER under this Agreement will be treated as administrative expenses and will support such recovery in any proceeding before any relevant court.

#### ARTICLE 23. CHOICE OF LAW AND VENUE

- 23.1 This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Puerto Rico and, to the extent applicable, the laws of the United States of America.
- 23.2 PREPA hereby irrevocably and unconditionally, for itself and for any Person claiming by or through PREPA: (a) agrees that the execution, delivery and performance by it of this Agreement does and will constitute private and commercial acts done and performed for private and commercial purposes; (b) waives any and all rights, claims, defenses and immunities it or any of its assets has or may in the future have in any jurisdiction based on sovereign immunity or any similar rights, claims or defenses, in each case in respect of any claims or proceedings, the receipt of notice, service of process, compliance with judgments or orders or the enforcement of any such judgment, award or order in each case arising in respect of this Agreement or transactions contemplated in this Agreement; and (c) consents generally in respect of the enforcement of any judgment, award or order against it or its assets in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such claims or proceedings.

#### ARTICLE 24. THIRD-PARTY ACCESS TO INTERCONNECTION FACILITIES

- 24.1 The Parties acknowledge and agree that PREPA may, at any time, connect, or permit third parties to connect, additional generation or energy storage capacity to PREPA's Interconnection Facilities.
- 24.2 ~~If Any costs~~ necessary for the connection of additional generation or energy storage resources to any part of PREPA's Interconnection Facilities, including without limitation the cost of any required studies, equipment or structures, shall be borne by such additional generation or energy storage resource, provided (a) ~~PREPA shall relocate, at no cost to SELLER for such relocation,~~ their primary and backup meters, metering devices and protective devices shall be installed by such additional generation or energy storage resource or resources, at no cost to SELLER or PREPA, to ~~at~~ a location that ensures separate metering of any generation from the SELLER's Complex and any generation from such additional capacity, and (b) prior to ~~relocating the installation of~~ such meters, metering devices and protective devices, the Parties shall amend Appendix C-1 to reflect any changes necessitated by such ~~relocation~~installation.
- ~~24.3 In order to facilitate the connection of additional generation or energy storage to PREPA's Interconnection Facilities, SELLER hereby grants PREPA access, at reasonable times and upon prior notice, to that part of SELLER's site where the Interconnection Facilities are situated, for the purposes of monitoring and maintaining any meters or metering devices relocated to such facilities~~

~~pursuant to Section 24.2, and performing modifications and upgrades to the SELLER's Interconnection Facilities (including expansion of the busbar and addition of breakers or other switching devices, as well as related protective devices), expanding PREPA's Interconnection Facilities or constructing other facilities at such site (the "Modifications") at no cost to SELLER for such Modifications. The following provisions shall apply to any such Modifications:~~

- ~~(a) No later than ninety (90) Days prior to the expected commencement of such Modifications, PREPA shall present to SELLER a proposed scope of work for such Modifications and a schedule for completing the work, provided that the scope of such Modifications shall be subject to the prior written agreement of SELLER, which agreement SELLER shall not unreasonably withhold, condition or delay.~~
- ~~(b) Without limiting PREPA's rights under the first sentence of this Section 24.3, the Parties shall, acting reasonably, negotiate in good faith the terms and conditions of shared facilities agreement related to such Modifications, including if necessary any third party connecting into PREPA's Interconnection Facilities or other PREPA facilities within such site.~~
- ~~(c) PREPA shall cause its contractors or subcontractors to comply with applicable laws and, to the extent not inconsistent with this Agreement, any applicable safety rules and protocols prescribed by SELLER for SELLER's Interconnection Facilities, as in effect from time to time, including the provision of necessary insurance policies.~~
- ~~(d) PREPA shall ensure that, once implemented, such Modifications shall not adversely affect the generation of Net Electrical Output or the operation of SELLER's Complex. To the extent that, during any Modifications, the Facility is not capable of delivering Net Electrical Output to PREPA that would have been deliverable from the Facility but for the performance of such Modifications, PREPA shall pay SELLER an Energy Payment for such Net Electrical Output that SELLER would have otherwise delivered, based on actual availability and a reasonable calculation of deemed output considering historical deliveries and the ambient conditions at the time.~~

***[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]***

IN WITNESS WHEREOF, the Parties hereto have agreed to execute this Agreement in San Juan, Puerto Rico, as of the date first written above.

**Puerto Rico Electric Power Authority**

**Punta Lima Wind Farm, LLC**

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Josué A. Colón Ortiz [\_\_\_\_\_] }  
Executive Director [\_\_\_\_\_] }

[\_\_\_\_\_] }  
[\_\_\_\_\_] }

Tax ID Number: 660-43-3747 [●]

Tax ID Number: [●]

Email:

**Appendix A - ENERGY PAYMENT**

<b>Agreement Year</b>	<b>Energy Purchase Price (\$/kWh)</b>
1	██████
2	██████
3	██████
4	██████
5	██████
6	██████
7	██████
8	██████
9	██████
10	██████
11	██████
12	██████
13	██████
14	██████
15	██████
16	██████
17	██████
18	██████
19	██████
20	██████

### **Appendix B - HOLIDAYS**

The following holidays are recognized by PREPA. All holidays which fall on a Sunday are observed the following Monday.

<u>DAY</u>	<u>CELEBRATION</u>
January 1	New Year's Day
January 6	Three Kings Day
2 <sup>nd</sup> Monday in January	Eugenio Maria de Hostos
3 <sup>rd</sup> Monday in January	Martin Luther King
3 <sup>rd</sup> Monday in February	George Washington
March 22	Abolition of Slavery
Friday of Holy Week	Good Friday
3 <sup>rd</sup> Monday in April	Jose de Diego
Last Monday in May	Memorial Day
July 4	Independence Day
3 <sup>rd</sup> Monday in July	Luis Munoz Rivera
4 <sup>th</sup> Monday in July	Jose Celso Barbosa
July 25	Commonwealth Constitution
1 <sup>st</sup> Monday in September	Labor Day
October 12	Columbus Day
November 11	Veterans Day
4 <sup>th</sup> Thursday in November	Thanksgiving Day
December 25	Christmas Day



## Appendix C - INTERCONNECTION

The following are the description of the Interconnection Facilities existing as of the Effective Date, the scope of work for the modification to the Interconnection Facilities and the specifications needed to be performed by SELLER for modifications to PREPA's Interconnection Facility. The following is not intended to be an all-inclusive scope of work, as an Interconnection Study will be required to determine the design as described in the Article 4. The attached electrical interconnection single line at Appendix C-1 identifies the Interconnection Point, PREPA's Interconnection Facilities, SELLER's Interconnection Facilities, and the location for the primary meter used for measuring the Net Electrical Output.

### 1. Description of the Existing Interconnection Facilities:

- 1.1. PREPA's Interconnection Facilities existing as of the Effective Date and located at the Daguao Transmission Center (TC) include:
  - 1.1.1. the revenue metering equipment; and
  - 1.1.2. the 115kV Breaker 42070 and associated structures, disconnect switches and lightning arrestors.
- 1.2. SELLER's Interconnection Facilities existing as of the Effective Date ~~that will be transferred to PREPA in accordance with Section 9.7 of the Agreement~~ include the 115 kV Line and associated Assets (as each term is defined in Appendix F). The 115 kV Line includes 39 structures, a 556.4kCMIL ACSS conductor and a 3#6 optical ground wire (OPGW).

### 2. Scope of Work for the Interconnection Facilities:

- 2.1. The Interconnection Facilities existing as of the Effective Date shall be modified or upgraded, as necessary, in accordance with the following; provided that, if the existing equipment described below (other than the Dynamic System Monitor (DSM)) is operational or otherwise repairable to the level of compliance it achieved prior to the passage of Hurricane María on September 20, 2017, then SELLER shall not be obligated to replace the equipment to meet the standards set forth in Article 3 below, and will only be required to cause such equipment to be put in a condition of good operation and repair (subject to normal wear and tear, consistent with its age) and, in all material respects, sufficient for its routine operation.
  - 2.1.1. protection and control relaying and equipment per PREPA's Design Criteria Documents (as applicable to SELLER's Complex);
  - 2.1.2. telecommunications equipment per PREPA's Telecommunication Design Criteria (as applicable to the SELLER's Complex);
  - 2.1.3. the Dynamic System Monitor (DSM), transient recorder, SCADA system and communications in accordance with the requirements of this Agreement; and
  - 2.1.4. other work as identified below in Articles 3 through 7 below.

### **3. Codes and Standards Requirements:**

All new or replacement designs should be in accordance with PREPA's latest Design Criteria Documents (DCDs) listed below, practices and applicable standards, applicable ANSI/IEEE & NESC standards, and building codes. This includes but is not limited to the below requirements.

- 3.1.** PREPA's Protection and Control Design Criteria (as applicable to the SELLER's Complex)
- 3.2.** PREPA's Telecommunication Design Criteria (as applicable to the SELLER's Complex)
- 3.3.** American National Standards Institute (ANSI)
- 3.4.** NECA/BICSI 607, Standard for Telecommunications Bonding and Grounding Planning and Installation Methods for Commercial Buildings
- 3.5.** ALCOA (Formerly the Aluminum Company of America)
- 3.6.** American Concrete Institute (ACI)
- 3.7.** American Institute of Steel Construction (AISC)
- 3.8.** American National Standards Institute (ANSI)
- 3.9.** American Society for Testing and Materials International (ASTM)
- 3.10.** American Society of Civil Engineers (ASCE)
- 3.11.** American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)
- 3.12.** American Welding Society (AWS)
- 3.13.** American Wood Protection Association (AWPA)
- 3.14.** Association of Edison Illuminating Companies (AEIC)
- 3.15.** ASTM International (ASTM)
- 3.16.** Avian Power Line Interaction Committee (APLIC)
- 3.17.** Building Industry Consulting Services International (BICSI)
- 3.18.** Code of Federal Regulations (CFR)
- 3.19.** Construction Specifications Institute (CSI)
- 3.20.** Electric Power Research Institute (EPRI)
- 3.21.** Federal Aviation Administration (FAA)
- 3.22.** Federal Communications Commission (FCC)
- 3.23.** General Owner Standard References

- 3.24.** Illuminating Engineering Society (IES)
- 3.25.** Institute of Electrical and Electronics Engineers (IEEE)
- 3.26.** Insulated Cable Engineers Association (ICEA)
- 3.27.** International Electrotechnical Commission (IEC)
- 3.28.** ITSIMM 6th Edition - Information Transport Systems Installation Methods Manual.
- 3.29.** National Electrical Code (NEC)
- 3.30.** National Electrical Manufacturers Association (NEMA)
- 3.31.** National Electrical Safety Code (NESC)
- 3.32.** National Fire Protection Association (NFPA)
- 3.33.** NECA/BICSI 568, Standard for Installing Commercial Building Telecommunications cabling.
- 3.34.** North American Electric Reliability Corporation (NERC)
- 3.35.** OSPDRM 5th Edition - Outside Plant Design Reference Manual
- 3.36.** Puerto Rico Building Code 2018
- 3.37.** Puerto Rico Electric Power Authority (PREPA)
- 3.38.** Regulations per the Commonwealth of Puerto Rico
- 3.39.** Rural Utilities Service (RUS), United States Department of Agriculture
- 3.40.** RUS 1724E-300, U.S. Dept. of Agriculture Design Guide for Rural Substations
- 3.41.** TDMM 14th Edition - Telecommunications Distribution Methods Manual.
- 3.42.** Telecommunications Industry Association (TIA)
- 3.43.** TIA 568-D, Generic Telecommunications Cabling for Customer Premises.
- 3.44.** TIA 569-E, Telecommunication Provide the testing protocols Pathways and Spaces.
- 3.45.** TIA 606-C, Administration Standard for Telecommunications Infrastructure.
- 3.46.** TIA 607-D, Commercial Building Grounding (Earthing) and Bonding Requirements for Telecommunications.
- 3.47.** TIA-1005-A, Telecommunications Infrastructure Standard for Industrial Premises
- 3.48.** TIA-758-B, Customer-Owned Outside Plant Telecommunications Infrastructure Standard

#### **4. Transmission Line Requirements:**

##### **4.1. Tasks to be performed by SELLER:**

4.1.1. Inspect and remediate any deficiencies in the structures, insulators, jumpers or conductor. For example, deficiencies would include, but not limited to:

4.1.1.1. soil erosion around the structures at the ground line;

4.1.1.2. vegetation management (i.e., any right of way should be cleared of vegetation growth above four feet in height and cleared to the extents of the easement and/or permitting documents);

4.1.1.3. broken insulators and hardware shall be replaced; and

4.1.1.4. any damaged conductors or jumpers shall be replaced or repaired.

~~4.1.2. Any obligation of SELLER under the Transmission Line PSA necessary to prepare the Third Party Report and complete the Repair Work (as each term is defined in the Transmission Line PSA).~~

##### **4.2. Tasks to be performed by PREPA, at PREPA's sole cost and expense:**

4.2.1. Inspect, review and provide comments to SELLER's inspection reports.

#### **5. Transmission Center Requirements:**

##### **5.1. Tasks to be performed by SELLER:**

5.1.1. All required repairs, upgrades or modifications resulting from calculations and studies are the responsibility of SELLER.

5.1.2. Short circuit study, protection system coordination studies, and settings.

5.1.3. New or replacement protection and control electrical designs shall follow the latest industry standards, e.g., IEEE Standards and PREPA's practices and applicable standards.

5.1.4. Provide all materials required to interconnect the new, existing or repaired protection and control system for the Interconnection Facilities, with the existing Daguao TC system, unless existing or repaired materials otherwise complying with the requirements herein have been provided.

5.1.5. Install and wire the new Dynamic System Monitor (DSM), unless the existing or repaired DSM otherwise complies with the requirements in Appendix H.

5.1.6. Install the control cables from the equipment to the control house, if required per PREPA's Design Criteria Documents (DCDs), unless the existing or repaired control cables otherwise comply with the requirements herein.

5.1.7. Install the wiring for the new transient recorder as required by PREPA, unless the existing or repaired transient recorder otherwise complies with the requirements herein. For security

reasons, PREPA's relay personnel will wire these signals from the terminal block to the transient recorder. In addition, the following signals are required for the transient recorder:

- 5.1.7.1. Analog signals - Phase A, B, and C voltage signals;
  - 5.1.7.2. Analog signals - Phase A, B, and C current signals from each line CT;
  - 5.1.7.3. Digital 87L output - Output TRIP signals associated with the primary protection of each line;
  - 5.1.7.4. Digital BU output - Output TRIP signal associated with the secondary protection (21/50/51) of each line;
  - 5.1.7.5. Digital - Output TRIP signal associated with the breaker failure protection of each line;
  - 5.1.7.6. Digital - TRIP signal from bus differential protection; and
  - 5.1.7.7. Digital - Status signal from each breaker.
  - 5.1.8. Programming the settings on the protection equipment for the Interconnection Facilities. SELLER shall work with PREPA to evaluate and update the existing PLWF point list in PREPA's database.
  - 5.1.9. Cleaning, removal, and disposal of construction debris.
  - 5.1.10. Implementation of a protection scheme that will automatically coordinate the curtailment, if necessary, of the total generation connected to the Daguao TC when any of the following N-2 contingency occurs:
    - transmission line from Daguao TC to Rio Blanco TC (L-36200) and transmission line from Daguao TC to Fajardo TC (L-36200), or
    - transmission line from Canovanas TC to Palmer TC (L-36800) and transmission line from Sabana Llana TC to Canovanas TC (L-41200), or
    - transmission line from Palmer TC to Fajardo TC (L-36800) and transmission line from Sabana Llana TC to Canovanas TC (L-41200).
  - 5.1.10.1. The protection scheme shall avoid the overloading of any equipment at Daguao TC and the 38 kV system.
  - 5.1.10.2. The protection scheme shall integrate with the existing relay protection and controls settings, and communication settings.
- 5.2.** Tasks to be performed by PREPA, at PREPA's sole cost and expense:
- 5.2.1. Project oversight, schedule evaluation, monitoring, and authorizing scope of work modifications and deviations.

- 5.2.2. Evaluate submittals and design input for all design phases for the following packages: protection and control, telecommunications, electrical design, and programming.
- 5.2.3. Evaluate all temporary and permanent modifications to the Interconnection Facilities.
- 5.2.4. Evaluate the proposed construction work outage sequence for entire project coordination.

## **6. Telecommunication Requirements:**

In addition to the requirements as identified in Section 8.6 of the Agreement:

### **6.1. Tasks to be performed by SELLER:**

- 6.1.1. Install, wire and program the SCADA Remote Terminal Units (RTU)s at the Interconnection Facilities, unless the existing or repaired SCADA RTUs otherwise comply with the requirements herein.
- 6.1.2. Install and wire the telecommunication equipment for the Interconnection Facilities, unless the existing or repaired telecommunication equipment otherwise complies with the requirements herein.
- 6.1.3. Programming the communication settings for the relays, meters, and all miscellaneous equipment connected to the RTU.
- 6.1.4. If required for the new or existing RTU, DSM, relaying, etc., installation of conduits for control cables, conduits, etc. from the equipment to the control house.
- 6.1.5. Program the DSM with the signal list provided by PREPA.
- 6.1.6. The telecommunications equipment labeling, and color-coding should comply with ANSI/TIA 606 Standard.

### **6.2. Tasks to be performed by PREPA, at PREPA's sole cost and expense:**

- 6.2.1. Programming the telecommunications equipment (routers, firewalls, and network equipment).
- 6.2.2. Review and comment on all submittals and design input for all design phases for the telecommunications packages.
- 6.2.3. Support the integration of the new equipment into the overall PREPA network

## **7. Commissioning and Testing Requirements**

### **7.1. Tasks to be performed by SELLER:**

- 7.1.1. All outages and construction work sequence plans will be coordinated with and approved by PREPA.
- 7.1.2. Provide communication loss budget calculation and design prior to work being performed, and also as an as-built prior to testing.

- 7.1.3. Provide the testing protocols and plans for PREPA's approval prior to performing any acceptance test and energization of any equipment.
- 7.1.4. Perform the acceptance and commissioning tests on the equipment and auxiliaries according to PREPA's practices and applicable standards at the SELLER's collector Site only, including but not limited to voltage signals, current signals, relay outputs, breaker status and cable continuity.
- 7.1.5. Perform grounding tests at all sites including the transmission corridor.
- 7.1.6. Perform testing on the interconnection of the transmission line.
- 7.1.7. Perform impedance testing to validate the proper installation of all transmission and high voltage conductors and bus.
- 7.1.8. Perform tests for the wiring of protection and control systems, RTU, DSM, transient recorder, and others associated services for the Interconnection Facilities.
- 7.1.9. Perform adjustments and operation tests for the protection and control systems. Submit all test reports signed and sealed by an electrical engineer licensed in Puerto Rico for PREPA's review.
- 7.1.10. Perform preliminary testing of the protection, control and telecommunication system and the integration into SELLER's SCADA system. Depending on the type of alarm or signal into SELLER's SCADA system, PREPA personnel may act as a witness to validate the input. Final validation and acceptance of the SCADA integration will be performed by PREPA.
- 7.1.11. Perform operation tests for the telecommunication systems. The tests shall be standards compliant, the testing equipment shall be calibrated, and certification of calibration provided to PREPA prior to performing tests.
- 7.1.12. Perform operation tests for the DSM.
- 7.1.13. Perform the operation tests on the equipment and auxiliaries.
- 7.1.14. Perform operation tests for the transient recorder.
- 7.1.15. Verification of the Optical Time Domain Reflectometer (OTDR) tests for Fiber optic cable performed by SELLER for the following cables:
  - 7.1.15.1. fiber cable between the Interconnection Facilities;
  - 7.1.15.2. fiber cable for interconnection to PREPA's network;
  - 7.1.15.3. fiber cable between the control room at the Interconnection Facilities and meter cabinet located at the Interconnection Facilities; and
  - 7.1.15.4. verification of telecommunications facilities and equipment installations performed by SELLER at the Interconnection Facilities. This work includes verification, testing, configuration, and inspection of equipment specified by PREPA.

- 7.1.15.5. All tests shall be standards compliant, and the testing equipment shall be calibrated, and certification of calibration provided to PREPA prior to performing tests.
- 7.1.16. Witness all tests and commissioning of the electrical equipment installed the Interconnection Facilities.
- 7.1.17. SELLER must submit all test protocols for PREPA review.
- 7.1.18. SELLER must submit all test results in a test book in electronic format for PREPA review.
- 7.2. Tasks to be performed by PREPA, at PREPA's sole cost and expense:**
  - 7.2.1. Configuration of telecommunication or security equipment.
  - 7.2.2. Evaluate the test results and settings of the protection relays for Interconnection Facilities.
  - 7.2.3. Evaluate the test results and settings of the communication equipment at the Interconnection Facilities.
  - 7.2.4. Witness all tests and commissioning of the electrical equipment installed in PREPA's Interconnection Facilities.
  - 7.2.5. At the Daguao TC, where protection and control components are being repaired, updated, modified, or interconnected with, the tests should be done exclusively by PREPA.
  - 7.2.6. Perform final SCADA tests by PREPA acceptance test personnel from the point where the SELLER consolidates SCADA data and transmits it to PREPA's SCADA system.
  - 7.2.7. Perform the acceptance and commissioning tests on the equipment and auxiliaries according to PREPA's practices and applicable standards at the Interconnection Facilities.
  - 7.2.8. Perform end to end testing of all trips and controls by PREPA's Acceptance Tests Department personnel.



**Appendix C-1 - Functional One-Line Interconnection Diagram**

*(attached separately)*

**Appendix D – CONDITIONS TO PHASE 2 COMMERCIAL OPERATION DATE**

1. An officer of SELLER, authorized to bind SELLER and who is familiar with the Facility, has provided written confirmation that (a) all necessary and material Permits have been obtained and are in full force and effect, (b) SELLER is in compliance with the Agreement in all material respects (including the satisfactory completion of the acceptance testing and inspection referenced in Section 9.6 thereof), (c) SELLER's Complex is in material compliance with applicable environmental laws and regulations, and (d) the Facility is available to commence normal operations in accordance with the Agreement, SELLER's construction and operation and maintenance contracts, and applicable manufacturers' warranties.
2. SELLER has obtained and provided to PREPA an independent registered professional engineer's certification stating the following:
  - (a) The Facility has achieved mechanical completion and the date on which it was achieved;
  - (b) All of the wind turbines at the Facility have been successfully commissioned as per SELLER's wind turbine supply agreement;
  - (c) The Facility has achieved substantial completion and the date on which it was achieved; and
  - (d) The Facility has been completed in all material respects, except for "punch list" items that do not have a material effect on the ability of the Facility to operate for its intended purpose.
  - (e) Wind turbines comprising at least 23.4 MW, which is 90% of the expected Estimated Generating Capacity of the Facility, and associated equipment sufficient to allow such wind turbines to generate and deliver energy to the Interconnection Point, have been installed and become operable.
  - (f) All arrangements for the supply of required electric services to the Facility, including the supply of wind turbine unit start-up and shutdown power and energy, house power and maintenance power have been completed by SELLER separate from the Agreement, are in effect, and are available for the supply of such electric services to the Facility.
  - (g) The Facility's communications systems and interface with PREPA's system, and the capability of the Facility to receive and respond to signals from PREPA's SCADA System, have been tested and confirmed to be operational.
  - (h) PREPA's Interconnection Facilities are operational and capable of delivering the Net Electrical Output to the Daguaos Transmission Center.
  - (i) The Facility has been tested and confirmed to comply with the Minimum Technical Requirements for Interconnection of Wind Turbine Generation (WTG) Projects set forth in Appendix G.

**Appendix D-1 – CONDITIONS TO COMMERCIAL OPERATION DATE<sup>3</sup>**

1. An officer of SELLER, authorized to bind SELLER and who is familiar with the Facility, has provided written confirmation that (a) all necessary and material Permits have been obtained and are in full force and effect, (b) SELLER is in compliance with the Agreement in all material respects (including the satisfactory completion of the acceptance testing and inspection referenced in Section 9.6 thereof), (c) SELLER's Complex is in material compliance with applicable environmental laws and regulations, and (d) the Facility is available to commence normal operations in accordance with the Agreement, SELLER's construction and operation and maintenance contracts, and applicable manufacturers' warranties.
2. SELLER has obtained and provided to PREPA an independent registered professional engineer's certification stating the following:
  - (a) The Facility has achieved mechanical completion and the date on which it was achieved;
  - (b) All of the wind turbines at the Facility have been successfully commissioned as per SELLER's wind turbine supply agreement;
  - (c) The Facility has achieved substantial completion and the date on which it was achieved; and
  - (d) The Facility has been completed in all material respects, except for "punch list" items that do not have a material effect on the ability of the Facility to operate for its intended purpose.
  - (e) Wind turbines comprising at least 23.4 MW, which is 90% of the expected Estimated Generating Capacity of the Facility, and associated equipment sufficient to allow such wind turbines to generate and deliver energy to the Interconnection Point, have been installed and become operable.
  - (f) All arrangements for the supply of required electric services to the Facility, including the supply of wind turbine unit start-up and shutdown power and energy, house power and maintenance power have been completed by SELLER separate from the Agreement, are in effect, and are available for the supply of such electric services to the Facility.
  - (g) The Facility's communications systems and interface with PREPA's system, and the capability of the Facility to receive and respond to signals from PREPA's SCADA System, have been tested and confirmed to be operational.
  - (h) PREPA's Interconnection Facilities are operational and capable of delivering the Net Electrical Output to the Daguao Transmission Center.
  - (i) The Facility has been tested and confirmed to comply with the Minimum Technical Requirements for Interconnection of Wind Turbine Generation (WTG) Projects set forth in Appendix G, except for:
    - i. paragraph three (3) thereof, regarding Reactive Power Capability and Minimum Power Factor requirements, which the Facility will not be required to meet to

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<sup>3</sup> Appendix D-1 is identical to Appendix D except for item (i), which sets forth the MTRs which require the installation of the BESS in order for the Facility to meet the requirements enumerated therein.

achieve the Commercial Operation Date. Instead, the Facility will be tested and confirmed to comply with paragraph three (3) of the 2012 MTRs;

- ii. paragraph six (6) thereof, regarding Frequency Response/Regulation, which the Facility will not be required to meet to achieve the Commercial Operation Date. Instead, the Facility will be tested and confirmed to comply with paragraph six (6) of the 2012 MTRs; and
- iii. paragraph seven (7) regarding Ramp Rate Control, which the Facility will not be required to meet to achieve the Commercial Operation Date. Instead, the Facility will be tested and confirmed to comply with items (1), (3) and (4) of paragraph seven (7) of the 2012 MTRs.

**Appendix E – WORKMEN’S COMPENSATION INSURANCE  
REQUIREMENTS FOR IMPORTED TECHNICAL SERVICES**

A. Introduction

Act No. 16, approved on May 16, 1958, authorizes the Commonwealth State Insurance Fund Administrator to exempt employers from payment of premium for salaries paid to imported technical personnel.

The basic requirements for the exemption are:

1. Said technical personnel must be hired because the same special skills required for the job are not readily available in Puerto Rico.
2. Exemption cannot exceed two (2) years per employee.
3. Technical personnel must be covered for workmen’s Compensation benefits equal or greater to those provided under the Puerto Rico Workmen’s Compensation Act.

B. Requirements Exemption request must be filed with the Commonwealth State Insurance Fund for each case. Therefore, every firm entering a contract with PREPA for the furnishing of services to be rendered by imported technical personnel must submit, prior to contract execution or purchase order issuance the following information:

1. A list containing the following information:
  - a. Name, residence and usual place of employment of all such technical personnel temporarily transferred to Puerto Rico.
  - b. Effective date of employment in Puerto Rico for each technical employee so transferred to Puerto Rico and expected duration of their stay in the island.
  - c. Technical qualifications of each employee transferred to Puerto Rico and their job descriptions while in the island.
2. If such technical personnel is covered by an insurance policy, a complete copy of each workmen’s compensation insurance policy, including the endorsement pertaining to such coverage, covering such technical personnel while working in Puerto Rico.
3. If item 2 above is applicable, a certified statement by the Secretary of the Insurer or insurer’s issuing said policies stating that:
  - a. The copy of each policy is a true and complete copy of the policy issued by the insurer.
  - b. Each policy so certified will be in full force and effect during the entire policy period shown in the declarations of the policy.
  - c. Each policy so certified will provide workmen’s compensation insurance coverage for all technical personnel of the insured while working in Puerto Rico. As part of this statement there must be indicated the name of the state under whose workmen’s compensation law benefits will be provided for all technical personnel of the insured while working in Puerto Rico.

4. If Item 2 is not applicable, a certificate issued by the appropriate governmental agency having jurisdiction over workmen's compensation insurance coverage stating that their coverage is extended to such technical personnel during their entire stay in Puerto Rico. The certificate must include the effective date of approval and the conditions, if any, attached to such approval.
5. The exact location in Puerto Rico of the construction project where such technical personnel will be or is employed.

**Appendix F — RESERVED FORM OF ASSET PURCHASE AND SALE AGREEMENT**

*(attached separately)*

**Appendix G - MINIMUM TECHNICAL REQUIREMENTS FOR WIND PROJECTS**

*(attached separately)*



**Appendix G-1 – 2012 MINIMUM TECHNICAL REQUIREMENTS FOR  
WIND TURBINE GENERATION (WTG) PROJECTS**

*(attached separately)*

## Appendix H - TECHNICAL SPECIFICATIONS FOR THE DYNAMIC SYSTEM MONITOR (DSM)

### I. Introduction

The following specification defines the minimum requirements for an instrument used in the monitoring and register of dynamic disturbances on electric power systems and the supervision of generator performance according to Grid Codes.

### II. Hardware

#### (a) Inputs:

1. The equipment shall have at least 32 analog inputs with the capacity to increase them to a minimum of 96 inputs depending in the application required analog signals. The minimum resolution for the A/D converter shall be of 16 bit. The sampling rate shall be programmable up to a minimum of 250 samples per cycle (15000 samples per second). The analog inputs shall permit at least the following types of signals:
  - i. PT voltage (150 V rms minimum, Accuracy better or equal to 0.3%);
  - ii. CT currents (5 A rms minimum, Accuracy better or equal to 0.3%);
  - iii. DC voltages of at least 800 V (Accuracy better or equal to 0.3%);
  - iv. Small Analog Signals (Accuracy better or equal to 0.3%);
    - A. Current: 4 – 20 mA; and
    - B. Voltage: 0 – 200 mV, 1V, 10 V;
2. The equipment shall have at least 16 digital inputs with the capacity to increase them to a minimum of 48 inputs depending in the application required digital signals. The minimum input voltage range of the digital inputs should be 0 – 150 V. The digital inputs should be included as a user defined software triggering input.
3. The equipment shall be able to record power system frequency with a resolution of at least 0.001Hz.

(b) The equipment shall have a built-in microprocessing unit with color monitor, keyboard and mouse from which all commands, controls and setup parameters may be entered. All setup parameters shall be store in a non-volatile media, to prevent loss of setup data if power is interrupted. This microprocessing unit shall be of industrial grade to insure long life in a typical substation or generation plant environment.

#### (c) Memory and storage capacity:

The equipment shall have a nonvolatile solid state memory (ex. SSD, flash, etc.) with the required capacity to stores at least one (1) year of continuous data based in typical recording periods and typical recording rates. Also the memory shall have a minimum storage capacity of 1,000 RMS Trigger events and 1,000

Instantaneous trigger events based in typical recording rates and recording periods. Typical recording periods and recording rates are:

- i. RMS Trigger Recording Function (Recording rate of 1 sample per cycle on all the signals)
  - A. Pre-Trigger: 60 seconds
  - B. Post-trigger: 300 seconds
- ii. Instantaneous Values Trigger Recording Function (recording rate of 250 samples per cycle on all instantaneous signals)
  - A. Pre-Trigger: 1 second
  - B. Post-Trigger: 2 seconds
- iii. Continuous Recording Function—The recording rate is 1 sample per second on all the signals. This recording function is continuous, but saved in 24 hours period.

All the recording functions mentioned above shall work simultaneously. The equipment shall maintain the date and time in an internal battery-backed clock.

(d) Communication:

The equipment shall have at least two Ethernet 10/100/1000 Mbps port (LAN interface, TCP/IP Protocol) for local and remote network communication.

(e) Power Source:

The equipment shall have a redundant power supply. Two separate inputs (one AC and one DC) 100 – 240 VAC, 60 Hz and 100 – 150 DC. Some applications could require DC supply of 48 VDC +/- 10%, verify before the equipment acquisition.

(f) Measurement accuracy:

1. Voltage measurement error shall be less than +/- 0.3 % of reading.
2. Current measurement error shall be less than +/- 0.3% of reading.

(g) The DSM equipment to be installed and integrated to the grid shall be compatible with the existing PREPA's DSMs network and approved by PREPA.

**III. Software**

- (a) The software platform of the equipment shall be compatible with the latest version of windows operating system.
- (b) The equipment remote communication shall be thru TCP/IP network connectivity (LAN). The remote communication should permit at least the set up and data retrieval of the

equipment. The equipment should have the capability to perform at least the following functions remotely:

1. Modification of the configuration
  2. Retrieval of captured events
  3. Remote event triggering
- (c) The equipment shall have the capacity of time synchronization with GPS system. A GPS receiver and GPS antenna shall be included.
- (d) Triggers:
1. The equipment shall support user defined programmable triggers. Triggering shall be initiated based upon primary quantities (voltage, current, and frequency), calculated quantities (watts, Var, power factor, apparent power, etc.), digital signals or small analog signals.
  2. The trigger thresholds shall be based on limits, gradients, equations and status. Examples of trigger conditions that shall be available are:
    - i. Level threshold (high level, low level, in-band, out-band, etc.)
    - ii. Rate of change (ex. frequency variation (df/dt))
    - iii. Manual input (keyboard trigger)
    - iv. Request from remote computer
    - v. Event input status (digital signal status)
  3. A re-trigger function shall be available which permits the equipment to generate a new event register if a second disturbance is detected while the recording of the first disturbance is still in process. This process should continue if more disturbances occur in the new registers.
- (e) The acquisition software shall include a user defined pre-trigger interval option as well as a user defined post trigger interval for the information captured in the case of triggered events. The minimum range of the pre-trigger interval should be from 0 to 60 seconds and the minimum range for the post trigger interval should be 0 to 300 seconds. In addition, the date, time, and type of trigger that initiated the event shall be included as part of the disturbance record.
- (f) The acquisition software shall have the following capabilities:
1. Time displays (ex. Oscilloscope)
  2. Digital Status display (ex. High/Low, 1/0)
  3. Multiple displays and multiple signals in displays in real time and off-line

4. Display resizing
  5. Programmable conversion of range and units of signals
  6. Independent range for signals
- (g) The acquired data shall be available in a format directly compatible with Siemens Power Technologies International (Siemens PTI) PSS/E plotting software.
- (h) The software shall support data export in ASCII, CSV and PSS/E formats.
- (i) The software shall support image export in JPG, BMP or WMF formats.
- (j) The software shall have the following analysis capabilities for the data and signals (primary and calculated):
1. Fast Fourier Transform (FFT)
  2. Peak analysis
  3. Filter functions
  4. Series and scalar mathematic (square root, inversion, square, sum, gain, offset, etc.)
- (k) The software shall perform the following power engineering calculations (on-line and off-line) and measurements:
1. Three phase and single phase Power (Real, reactive, apparent)
  2. Power Factor
  3. Power angle
  4. rms line and phase voltage
  5. rms current
  6. Power system frequency
  7. DC voltage and currents
  8. AC voltage and currents

#### **IV. General**

- (a) Environmental Conditions:
1. Operating temperature: 0° C to 50° C
  2. Operating humidity: 95 %, non-condensing

- (b) Equipment cabinet and corresponding accessories:
1. The cabinet should have test switches at the front of the panel for the three phase voltages and currents. The test switches should have a minimum rating of 600 V rms and 30 A rms; semi flush mounted, rear connected, equal or similar to ABB FT-1, style no. 129A514G01. The test switches should be assembled horizontally in groups of three FT-1 switches per row, mounted on a 19 inches wide, three-rack unit (3RU) high panel suitable for rack mounting, similar to ABB FR3J014014014.
  2. The signals (analog and digital) should terminate on terminal blocks inside the cabinet, before the connection to the Dynamic System Monitor. The AC, DC, digital, exciter voltage and exciter current signals should be in different terminal blocks. The terminal blocks should have a minimum rating of 600 V rms and 30 A rms (except the exciter voltages signals, see below). Examples of terminal blocks are: GE CR151B2 and Marathon 1512 STD. The current signals should terminate on shorting type heavy duty terminal blocks equal or similar to Marathon, catalog number 1506SC. The terminal blocks used for the excitation voltage of the generators must have a nominal voltage capacity greater than 800 V DC. A switch or breaker for isolation purposes is also required for the excitation voltage and current signals.
- (c) Documentation:
1. The equipment shall include a documentation package that contains the user, operation and maintenance manuals and the mechanical and electrical equipment drawings. The documentation should be in hard copy and in digital format.
  2. The equipment documentation shall include a copy of the software.
- (d) Spare parts recommended by the equipment manufacturer shall be included in the dynamic system monitor (DSM) purchase order.
- (e) Warranty:
- The equipment warranty shall include part and service for a period not less than 60 months from the delivery day.
- (f) Equipment Training, Installation Support and Commissioning:
1. An on-site equipment operation and configuration training should be included.
  2. The dynamic system monitor (DSM) manufacturer shall perform the equipment commissioning and offer installation support.