

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

NEPR Received: Nov 15, 2023 6:26 PM
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IN RE:

GENERA PR LLC FUEL OPTIMIZATION
PLAN

CASE NO.: NEPR-MI-2023-0004

SUBJECT: Motion to Submit Requests for
Certification of Initiatives for Contracts
Awarded by Genera PR LLC

**MOTION TO SUBMIT REQUESTS FOR CERTIFICATION OF INITIATIVES FOR
CONTRACTS AWARDED BY GENERA PR LLC**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW GENERA PR LLC (“Genera”), as agent of the Puerto Rico Electric Power Authority (“PREPA”),¹ through its counsels of record, and respectfully submits and prays as follows:

1. On July 18, 2023, the Energy Bureau issued a Resolution and Order titled *Commencing Procedure to Evaluate GENERA PR LLC Fuel Optimization Plan* (“July 18th Order”), whereby, among other things, the Energy Bureau commenced Case No. NEPR-MI-2023-0004 to review the Fuel Optimization Plan required by the LGA OMA. In the July 18th Order, the Energy Bureau ordered Genera to file a final version of the Fuel Optimization Plan agreed upon with P3 Authority and emphasized that the Fuel Optimization Plan must be fully compliant with PREPA’s approved Integrated Resource Plan.

2. After addressing several procedural matters, on September 15, 2023, Genera submitted a document titled *“Motion to Submit Genera’s Revised Fuel Optimization Plan in*

¹ Pursuant to the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* (“LGA OMA”), dated January 24, 2023, executed by and among PREPA, Genera, and the Puerto Rico Public-Private Partnerships Authority (“P3 Authority”), Genera is the sole operator and administrator of the Legacy Generation Assets (as defined in the LGA OMA) and the sole entity authorized to represent PREPA before PREB with respect to any matter related to the performance of any of the O&M Services provided by Genera under the LGA OMA.

Compliance with Resolution and Order Dated July 18, 2023". This included its revised Fuel Optimization Plan ("Fuel Optimization Plan"), developed in agreement with the P3 Authority and submitted for approval to the Energy Bureau. The Fuel Optimization Plan outlines the Fuel Cost Savings initiatives and expected methods for achieving estimated fuel savings. This submission aligns with Article 4, Section 4.2(t) of the LGA OMA, which requires Genera to develop a Fuel Optimization Plan that describes "the Fuel Cost Savings Initiatives and outlining the expected methods and estimated fuel savings to be achieved during the Term of the Agreement". *See*, Article 4, Section 4.2(t) of the LGA OMA.

3. In relation to this motion's request, Genera respectfully informs the Energy Bureau that on August 28, 2023, after a competitive procurement process (RFP no. 00003665), Genera PR, LLC (Genera or Operator), as agent on behalf of and for the account of the Puerto Rico Electric Power Authority (PREPA), awarded Puerto Rico Energy, LLC, (Puma) a contract for the supply of Ultra Low Sulfur Diesel (ULSD) for the San Juan, Aguirre, Mayaguez and Cambalache power generation plants as well as the Vega Baja, Guayama, Ceiba and Yabucoa gas turbines. Thereafter, on October 11, 2023, the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board") reviewed and approved a contract between Genera, acting as PREPA's agent, and Puerto Rico Energy LLC (PUMA), for the supply of Ultra Low Sulfur Diesel ("ULSD") to the San Juan, Aguirre, Mayaguez, and Cambalache power generation plants, as well as the Vega Baja, Guayama, Ceiba, and Yabucoa gas turbines (the "USLD Contract"). *See, Request for Certification of Initiatives - Genera PR contract award of Ultra-Low Sulfur Diesel to Puerto Rico Energy LLC*, attached as Exhibit A to this Motion. The USLD Contract term starts on November 18, 2023, or the date of execution, and spans one year, with an option for a one-year extension. The USLD Contract provides that Genera has the right to purchase ULSD from any alternative source for use

if (i) Genera identifies a price for ULSD that is lower than the Contract price, provided that Genera may not purchase more than 25% of its ULSD from such alternate source; (ii) either party has declared a force majeure or other emergency situation that has resulted, or could reasonably result, in a shortage of requested quantities of ULSD; or (iii) Puma has failed, or could fail with the passage of time, to deliver requested quantities of fuel, in which case Genera would have the right to purchase from alternate sources any quantities reasonably expected to cover shortages resulting from such failure or expected failure. . Genera identifies the following initiatives as applicable to the ULSD contract:

- (i) Initiatives 1: Reduce the Fixed Premium for ULSD
- (ii) Initiative 2: Fuel Reliability Enhancements for ULSD
- (iii) Initiative 5: Spot Purchase Option for Fuel Oil and ULSD

4. Genera further reports that, following a competitive procurement process (RFP no. 00003962), on October 20, 2023, Genera, acting as PREPA's agent, awarded Novum Energy Trading Inc. ("Novum") a contract for the supply of No. 6 Fuel Oil ("HFO") for the San Juan, Aguirre, Costa Sur, and Palo Seco steam power generation plants (the "HFO Contract"). Thereafter, on October 28, 2023, the Oversight Board reviewed and approved the HFO Contract, which was executed on October 30, 2023. *See, Request for Certification of Initiatives - Genera PR contract award of No. 6 Fuel Oil Contract to Novum Energy Trading Inc*, attached as Exhibit B to this Motion. From October 30, 2023, (the Effective Date) the HFO Contract has a one-year term, with an option to extend for an additional year. The HFO Contract grants Genera the right to source HFO from alternative suppliers under specific conditions: (i) if the Operator identifies a lower price for HFO than the contract price, with the stipulation that no more than 25% of HFO may be purchased from such alternate sources; (ii) in the event of a force majeure or other emergency situation that results, or could reasonably result, in a shortage of requested HFO

quantities; or (iii) if Novum fails, or is likely to fail over time, to deliver the required fuel quantities, in which case Genera has the right to source from alternate suppliers as necessary to cover any shortages. Additionally, the contract allows for a change in the fixed price differential and escalator upon mutual agreement and with thirty-day advance notice to Novum. Genera identifies the following initiatives as applicable to the HFO contract:

- (i) Initiatives 3: Change of Fuel Oil Escalator and Reduction of Fuel Oil Adder
- (ii) Initiative 5: Spot Purchase Option for Fuel Oil and ULSD, and
- (iii) Initiative 7: Payment Terms Management of the Fuel Optimization Plan are applicable to the new HFO Contract.

5. Taking into consideration the above, and pursuant to Genera's Fuel Optimization Plan, Genera respectfully requests the Energy Bureau that it certifies the USDL Contract and the HFO Contract under the Initiatives outlined in this motion and the Requests for Certification of Initiatives, attached herein as Exhibit A - *Genera PR contract award of Ultra-Low Sulfur Diesel to Puerto Rico Energy LLC*; and Exhibit B - *Genera PR contract award of No. 6 Fuel Oil Contract to Novum Energy Trading Inc.*

WHEREFORE, Genera respectfully requests that the Energy Bureau **take notice** of the above for all purposes and **grants** Genera's requests for certifications of initiatives, as outlined in *Exhibit A* and *Exhibit B*.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 15th day of November 2023.

ECIJA SBGB
PO Box 363068
San Juan, Puerto Rico 00920
Tel. (787) 300.3200
Fax (787) 300.3208

/s/ Jorge Fernández-Reboredo
Jorge Fernández-Reboredo

jfr@sbgblaw.com

TSPR 9,669

/s/ Alejandro López-Rodríguez

Alejandro López-Rodríguez

alopez@sbgblaw.com

TSPR 22,996

/s/ Joaquín M. Lago González

Joaquín M. Lago González

jlago@sbgblaw.com

TSPR 20,678

CERTIFICATE OF SERVICE

We hereby certify that a true and accurate copy of this motion was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System.

In San Juan, Puerto Rico, this 15th day of November 2023

/s/ Alejandro López-Rodríguez
Alejandro López-Rodríguez

Exhibit A

Genera PR contract award of Ultra-Low Sulfur Diesel to Puerto Rico Energy LLC

Docket Number: NEPR-MI-2023-0004

In Re: Genera PR LLC Fuel Optimization Plan

Re: Request for Certification of Initiatives – Genera PR contract award of Ultra-Low Sulfur Diesel to Puerto Rico Energy LLC

On August 28, 2023, after a competitive procurement process (RFP no. 00003665), Genera PR, LLC (Genera or Operator), as agent on behalf of and for the account of the Puerto Rico Electric Power Authority (PREPA), awarded Puerto Rico Energy, LLC, (Puma) a contract for the supply of Ultra Low Sulfur Diesel (ULSD) for the San Juan, Aguirre, Mayaguez and Cambalache power generation plants as well as the Vega Baja, Guayama, Ceiba and Yabucoa gas turbines.

The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”) reviewed and approved, on October 11, 2023, the subject contract between Genera PR, LLC (“Genera”), as agent to the Puerto Rico Electric Power Authority (“PREPA”), and Puerto Rico Energy LLC, (Puma) for the supply of Ultra Low Sulfur Diesel (ULSD). The Contract term is one year from November 18, 2023, or the date of execution, with the option to extend for an additional year. The fuel specified quantities, as nominated by Genera, shall be delivered to the San Juan, Aguirre, Mayagüez, and Cambalache power generation plants, as well as the Vega Baja, Guayama, Ceiba, and Yabucoa gas turbines.

The Contract provides that Genera has the right to purchase ULSD from any alternative source for use if (i) Genera identifies a price for ULSD that is lower than the Proposed Contract’s price, provided that Genera may not purchase more than 25% of its ULSD from such alternate source; (ii) either party has declared a force majeure or other emergency situation that has resulted, or could reasonably result, in a shortage of requested quantities of ULSD; or (iii) the Supplier has failed, or could fail with the passage of time, to deliver requested quantities of fuel, in which case PREPA would have the right to purchase from alternate sources any quantities reasonably expected to cover shortages resulting from such failure or expected failure.

The price to be paid for each barrel of ULSD is consisting of an escalator (fuel market price) plus a fixed price differential, known as an “adder.”

The adder rates vary depending on how diesel fuel is delivered as set forth in the contract:

- adders at a cost of \$7.75 per barrel when delivery is made via pipeline, seagoing vessel and barge,
- adder at a cost of \$8.75 per barrel when ULSD is supplied via tank trucks.

As stated by the Oversight Board, this represents a substantial reduction compared to the adder price of \$10.60 under the current contract with Novum and lower than PUMA’s prior diesel adder prices of \$10.00, \$9.50 and \$9.002 under its diesel supply contract which expired in November 2021.

Applicable Initiatives for Ultra Low Sulfur Diesel (ULSD)

- Initiative 1, Reduce the Fixed Premium for ULSD
- Initiative 2, Fuel Reliability Enhancements for ULSD
- Initiative 5, Spot Purchase Option for Fuel Oil and ULSD

**DIESEL FUEL PURCHASE CONTRACT
SAN JUAN, PALO SECO, AGUIRRE, MAYAGÜEZ, CAMBALACHE,
AND VARIOUS GAS TURBINE GENERATING STATIONS**

CONTRACT NUMBER 101333

AS FIRST PARTY: The Puerto Rico Electric Power Authority ("PREPA"), a public corporation and government instrumentality of the Commonwealth of Puerto Rico, created by Act of May 2, 1941, No. 83 (Act 83-1941), as amended, represented in this act by Genera PR LLC exclusively as agent on behalf of and for the account of PREPA, represented by Brannen McElmurray, of legal age, married and authorized signatory of Genera PR LLC, a limited liability company organized and existing under the laws of Puerto Rico ("Genera").

AS SECOND PARTY: Puerto Rico Energy, LLC ("Seller"), a limited liability company organized and existing under the laws of Puerto Rico, duly registered as a supplier to PREPA, represented in this act by its Authorized Representative, Mario Ricardo Sierra Varela of legal age, married, and authorized to sign this Contract by the corporate resolution dated as of October 23, 2023.

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

WITNESSETH

A. WHEREAS, on January 24, 2023, (i) PREPA, (ii) the Puerto Rico Public-Private Partnership Authority, a public corporation of the Commonwealth of Puerto Rico, created by Act No. 29 of the Legislative Assembly of Puerto Rico, enacted June 8, 2009 ("Administrator") and (iii) Genera entered into the Puerto Rico

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Thermal Generation Facilities Operation and Maintenance Agreement (the "Generation O&M Agreement"), whereby PREPA, the Administrator, and Genera agreed that as of the "Service Commencement Date" as defined therein, which occurred on or about July 1, 2023, Genera would become the operator of the "Legacy Generation Assets" as defined therein, as an agent of PREPA;

- B. WHEREAS, PREPA, by virtue of Act No. 83 of May 2, 1941, as amended ("Act 83"), has the authority to engage professional, technical, and consulting services and such other services necessary and convenient to pursue the activities, programs, and operations of PREPA;
- C. WHEREAS, pursuant to section 5.2(b) of the Generation O&M Agreement, Agent Designation, PREPA designated and appointed Genera as its agent, and Genera accepted such designation and appointment, for the purpose of entering into Facility Contracts on behalf of and for the account of PREPA, as may be necessary or appropriate to operate, maintain the Legacy Generation Assets and to make such additions and extensions thereto in accordance with the terms of the Generation O&M Agreement;
- D. WHEREAS, PREPA issued a Request for Proposal ("RFP") for the supply of Ultra-Low Sulfur Diesel ("ULSD") to meet the diesel fuel requirements of the San Juan, Palo Seco, Aguirre, Mayagüez, and Cambalache power generation plants, as well as the diesel fuel requirements of the gas turbines located at Vega Baja, Ceiba, Guayama and Yabucoa (collectively with the power

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generation plants, the "Generating Stations");

E. WHEREAS, in response to such RFP, Seller made an offer for the supply of ULSD to meet the diesel fuel requirements of the Generating Stations; and

F. WHEREAS, PREPA wishes to accept Seller's offer as and to the extent provided below, and Seller is willing to supply ULSD to the Generating Stations in accordance with the terms set out below;

THEREFORE, after a negotiation process between the Parties and in consideration of the mutual covenants herein stated, PREPA and Seller agree as follows:

ARTICLE I. Scope of Supply

A. Seller agrees to sell and deliver to PREPA all of PREPA's requirements for, and PREPA agrees to purchase from Seller, ULSD for use in the Generating Stations that complies with Article V (Specifications), Exhibit A (Specifications) attached and made a part hereof (the criteria set out therein, the "Specifications"), and applicable law, including regulations administered by the Environmental Protection Agency ("EPA") and the Environmental Quality Board ("EQB") for Puerto Rico (the "Fuel"), as reflected in the Specifications. The weekly rate of Fuel delivery for each calendar week of this Contract shall be the amount of Fuel requested by PREPA in accordance with the nomination process set out in paragraph (B) of Article IV (Delivery and Title). Seller shall deliver such Fuel to the Generating Stations in quantities and at times requested by PREPA in accordance with this Contract.

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- B. Notwithstanding any contrary provision of paragraph (A) of this Article, PREPA has the right to purchase ULSD from any source for use in the Generating Stations if (i) PREPA identifies a price for ULSD from such source that is lower than the price which has been agreed in this Contract, provided that PREPA may not purchase more than twenty-five percent (25%) of its requirements for ULSD for the Generating Stations from such alternate sources under this subparagraph (B)(i), (ii) either Party has declared a Force Majeure or other emergency situation that has resulted, or could reasonably result with the passage of time, in a shortage of requested quantities of Fuel, or a shortage has occurred as described in paragraph (H) of Article IV (Delivery and Title), in which cases PREPA may purchase from alternate sources any quantities of Fuel reasonably expected to cover such shortages, or (iii) Seller has failed, or could fail with the passage of time, to deliver requested quantities of Fuel, in which case PREPA has the right to purchase from alternate sources any quantities reasonably expected to cover shortages resulting from such failure or expected failure.
- C. Seller acknowledges that, in accordance with the terms and conditions of the Generation O&M Agreement, Genera is acting as PREPA's agent in the administration of this Contract. As such, all references to PREPA taking any action, receiving any notice or disclosure, making any declaration or determination, scheduling deliveries or otherwise directing Seller, without limitation to any provision or administration act related to this Contract, shall be

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**DIESEL FUEL PURCHASE CONTRACT
SAN JUAN, PALO SECO, AGUIRRE, MAYAGÜEZ, CAMBALACHE,
AND VARIOUS GAS TURBINE GENERATING STATIONS**

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AS SECOND PARTY: Puerto Rico Energy, LLC ("Seller"), a limited liability company organized and existing under the laws of Puerto Rico, duly registered as a supplier to PREPA, represented in this act by its Authorized Representative, Mario Ricardo Sierra Varela of legal age, married, and authorized to sign this Contract by the corporate resolution dated as of October 23, 2023.

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WITNESSETH

A. WHEREAS, on January 24, 2023, (i) PREPA, (ii) the Puerto Rico Public-Private Partnership Authority, a public corporation of the Commonwealth of Puerto Rico, created by Act No. 29 of the Legislative Assembly of Puerto Rico, enacted June 8, 2009 ("Administrator") and (iii) Genera entered into the Puerto Rico

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- Thermal Generation Facilities Operation and Maintenance Agreement (the "**Generation O&M Agreement**"), whereby PREPA, the Administrator, and Genera agreed that as of the "Service Commencement Date" as defined therein, which occurred on or about July 1, 2023, Genera would become the operator of the "**Legacy Generation Assets**" as defined therein, as an agent of PREPA;
- B. WHEREAS, PREPA, by virtue of Act No. 83 of May 2, 1941, as amended ("Act 83"), has the authority to engage professional, technical, and consulting services and such other services necessary and convenient to pursue the activities, programs, and operations of PREPA;
- C. WHEREAS, pursuant to section 5.2(b) of the Generation O&M Agreement, Agent Designation, PREPA designated and appointed Genera as its agent, and Genera accepted such designation and appointment, for the purpose of entering into Facility Contracts on behalf of and for the account of PREPA, as may be necessary or appropriate to operate, maintain the Legacy Generation Assets and to make such additions and extensions thereto in accordance with the terms of the Generation O&M Agreement;
- D. WHEREAS, PREPA issued a Request for Proposal ("**RFP**") for the supply of Ultra-Low Sulfur Diesel ("**ULSD**") to meet the diesel fuel requirements of the San Juan, Palo Seco, Aguirre, Mayagüez, and Cambalache power generation plants, as well as the diesel fuel requirements of the gas turbines located at Vega Baja, Ceiba, Guayama and Yabucoa (collectively with the power

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generation plants, the "**Generating Stations**");

- E. WHEREAS, in response to such RFP, Seller made an offer for the supply of ULSD to meet the diesel fuel requirements of the Generating Stations; and
- F. WHEREAS, PREPA wishes to accept Seller's offer as and to the extent provided below, and Seller is willing to supply ULSD to the Generating Stations in accordance with the terms set out below;

THEREFORE, after a negotiation process between the Parties and in consideration of the mutual covenants herein stated, PREPA and Seller agree as follows:

ARTICLE I. Scope of Supply

- A. Seller agrees to sell and deliver to PREPA all of PREPA's requirements for, and PREPA agrees to purchase from Seller, ULSD for use in the Generating Stations that complies with Article V (Specifications), Exhibit A (Specifications) attached and made a part hereof (the criteria set out therein, the "**Specifications**"), and applicable law, including regulations administered by the Environmental Protection Agency ("**EPA**") and the Environmental Quality Board ("**EQB**") for Puerto Rico (the "**Fuel**"), as reflected in the Specifications. The weekly rate of Fuel delivery for each calendar week of this Contract shall be the amount of Fuel requested by PREPA in accordance with the nomination process set out in paragraph (B) of Article IV (Delivery and Title). Seller shall deliver such Fuel to the Generating Stations in quantities and at times requested by PREPA in accordance with this Contract.



- B. Notwithstanding any contrary provision of paragraph (A) of this Article, PREPA has the right to purchase ULSD from any source for use in the Generating Stations if (i) PREPA identifies a price for ULSD from such source that is lower than the price which has been agreed in this Contract, provided that PREPA may not purchase more than twenty-five percent (25%) of its requirements for ULSD for the Generating Stations from such alternate sources under this subparagraph (B)(i), (ii) either Party has declared a Force Majeure or other emergency situation that has resulted, or could reasonably result with the passage of time, in a shortage of requested quantities of Fuel, or a shortage has occurred as described in paragraph (H) of Article IV (Delivery and Title), in which cases PREPA may purchase from alternate sources any quantities of Fuel reasonably expected to cover such shortages, or (iii) Seller has failed, or could fail with the passage of time, to deliver requested quantities of Fuel, in which case PREPA has the right to purchase from alternate sources any quantities reasonably expected to cover shortages resulting from such failure or expected failure.
- C. Seller acknowledges that, in accordance with the terms and conditions of the Generation O&M Agreement, Genera is acting as PREPA's agent in the administration of this Contract. As such, all references to PREPA taking any action, receiving any notice or disclosure, making any declaration or determination, scheduling deliveries or otherwise directing Seller, without limitation to any provision or administration act related to this Contract, shall be

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understood to refer to Genera, acting on PREPA's behalf.

ARTICLE II. Term and Termination

- A. This Contract shall become effective on the date of its execution by the Parties and remain in effect for a period of one (1) year (the "Initial Term") starting on November 17, 2023 (the "Commencement Date"). This Contract may be extended for an additional year only by written amendment agreed upon by the Parties made ninety (90) days prior to the expiration of the Initial Term, subject to Seller's satisfactory performance, the authorizations required according to PREPA's rules and regulations, and an amount for Fuel approved in PREPA's certified budget sufficient to cover the extension of this Contract.
- B. This Contract may be extended on a monthly basis beyond the Initial Term, or any extension under paragraph (A) of this Article, by mutual agreement after the end of the Initial Term or its extended term, as applicable; provided, however, that said extensions shall not exceed four (4) consecutive months, except when an emergency is declared by PREPA.
- C. This Contract shall terminate upon the earliest to occur of the following events:
1. the expiration of the term in accordance with paragraphs (A) and (B) of this Article;
 2. the Parties' mutual agreement in writing to terminate this Contract;
 3. a Party's election in a written notice to the other Party to terminate this Contract following a Force Majeure claim that extends for a period of more than ninety (90) consecutive days, in accordance with paragraph

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(C) of Article XI (Force Majeure);

4. PREPA's election in a written notice to Seller to terminate this Contract under any of the following circumstances:
 - a. in accordance with paragraphs (E), (H), (J) or (K) of Article V (Specifications), paragraph (H) of Article VII (Price), paragraph (B) of Article VIII (Duties and Taxes), paragraphs (S)(5) or (U)(4) of Article XV (Compliance with Commonwealth of Puerto Rico Contracting Requirements), or paragraph (A) of Article XVIII (Contingent Fees);
 - b. for convenience on a date for termination identified in such notice, which shall be no earlier than thirty (30) days from the date of such notice, provided that, for the avoidance of doubt, the rights, duties, and responsibilities of the Parties shall continue in full force and effect during the notice period;
 - c. immediately in the event of Seller's negligence, dereliction of duty, noncompliance, or material breach of this Contract, as determined in the sole discretion of PREPA; or

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- d. upon (i) commencement by Seller of any debt adjustment proceeding, bankruptcy proceeding, insolvency proceeding, dissolution or wind-up proceeding, proceeding under the Public Corporation Debt Enforcement and Recovery Act, Act No. 71, of June 28, 2014, or any similar proceedings, (ii) the filing of a petition in bankruptcy or insolvency against Seller, or (iii) appointment of a receiver for Seller without PREPA's consent.
- D. Termination under this provision, or as otherwise permitted under this Contract, shall not create any liability to the terminating Party, provided that it shall continue to be responsible for the payment of amounts due and owing to the non-terminating Party prior to the date of such termination.
- E. A Party's exercise of its right to terminate this Contract shall not be understood as a waiver by the Party of any claim, right or other remedy it may have under this Contract or under the law for delays or breaches incurred by the other Party in the performance of its obligations under this Contract.
- F. Upon termination of this Contract, Seller shall (i) release the vessel delivering under this Contract (subject to vessel owner's approval) and use commercially reasonable efforts to not impede PREPA in obtaining the use of the vessel, and (ii) have no further right to compensation except for what has been accrued for Fuel supplied and services rendered under this Contract until said date of effective termination.

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ARTICLE III. Independent Contractor

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

ARTICLE IV. Delivery and Title

- A. Seller shall deliver Fuel to PREPA at the Generating Stations via vessel (which includes, for purposes of this Contract, any barge, ship or other waterborne vessel), tank-to-tank, or tank truck transfers into PREPA storage tanks. The title to and risk of loss of the product shall pass from Seller to PREPA after the Fuel passes (i) for waterborne deliveries to San Juan, Palo Seco, Aguirre, Mayagüez and Cambalache, the pipeline flange connecting Seller's vessel at the dock to PREPA's pipeline to the storage tank for the respective plants, and (ii) for tank or truck transfers to any of the Generating Stations, the flange connection adjacent to the PREPA storage tanks at said station (each such flange, a "Delivery Point").
- B. From the Commencement Date, PREPA shall submit to Seller a non-binding weekly estimate of its requirements and propose dates for delivery of fuel during the following fifteen (15) days. Seller shall promptly acknowledge receipt of such estimate and shall, within two (2) days of such receipt, (i) confirm or propose

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new delivery dates for the following fifteen (15) days, and (ii) certify that Seller maintains the applicable Minimum Stock Reserve (as such term is defined in paragraph (C) below). Said delivery schedule, if accepted by PREPA, shall be final unless operational needs from PREPA changes such schedule. Delivery dates shall consist of delivery windows of two (2) to four (4) days each for actual delivery to occur.

- C. During the term of this Contract, Seller shall maintain a minimum stock reserve of 96,000 barrels available at Seller's designated storage terminal(s) in Puerto Rico, as identified in Exhibit D (Designated Storage Terminals) attached and made a part hereof, for prompt delivery upon request by PREPA to cover changes in operational needs (the "**Minimum Stock Reserve**"). PREPA shall have the right to increase the Minimum Stock Reserve requirement to 146,000 barrels (and, thereafter, to reduce such requirement back to 96,000 barrels) by giving Seller fifteen (15) days' prior notice of such increase (or reduction).
- D. Seller shall be responsible for cleaning, removing, and disposing of any spill of any product that might occur before the Delivery Point during delivery. Seller shall secure and provide all materials, permits, and personnel required for fuel handling and transfer.
- E. Seller acknowledges that deliveries via vessel are limited by dredged channels with drafts of (i) for San Juan and Palo Seco, 26 feet, (ii) for Aguirre, 21.5 feet, (iii) for Mayagüez, 22 feet, and (iv) for Cambalache, 18 feet. Seller shall conduct its own investigation relative to navigational information or any natural changes

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that might occur at the San Juan Dock C, Jobos Bay, Mayagüez Bay, Arecibo Bay, or Guayanilla Bay, and shall bear responsibility for all risk of loss prior to delivery of Fuel to PREPA in accordance with paragraph (A) above, as PREPA does not assume any responsibility for the same.

- F. Seller shall also limit deliveries via vessel to a maximum of 50,000 barrels per delivery, unless otherwise approved by PREPA for a specific delivery. Seller shall maintain at least one barge with a minimum capacity of 45,000 barrels available at all times for deliveries in accordance with this Contract.
- G. Seller shall ensure that all product delivered to PREPA enters PREPA's pipelines and tanks at a temperature below one hundred degrees Fahrenheit (100° F), and at a pressure below one hundred fifty (150) psig and above one hundred twenty-five (125) psig, in each case as measured at the Delivery Point.
- H. If Seller, for any reason, except as provided in Article XI (Force Majeure) of this Contract, fails to deliver the Fuel required under this Contract, PREPA may procure replacement fuel from any other supplier. In such event, PREPA shall notify Seller of the chosen supplier and applicable price, and Seller shall reimburse PREPA for any difference which PREPA may have paid in excess of the contracted price by a credit to the next invoice sent to PREPA after PREPA submits evidence of such payment. Seller acknowledges and agrees that, by accepting such credit, PREPA does not waive any rights or remedies available to PREPA under the law, including rights to any claims or actions for damages caused by noncompliance by Seller with the terms of this Contract.

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FUEL PURCHASE CONTRACT
SAN JUAN, PALO SECO, AGUIRRE, MAYAGÜEZ, CAMBALACHE,
AND VARIOUS GAS TURBINE GENERATING STATIONS
Page 11

- I. Seller shall bear responsibility for any and all damages to the dock or to any other property caused by the vessel during delivery. Seller shall ensure that all Fuel or other product deliveries, transfers and operations comply with Homeland Security Regulations including 33 CFR §§ 104 & 105, as well as 33 CFR §§ 154, 155 & 156.
- J. Should PREPA need fuel of the same type and quality as the Fuel herein contracted for at any of its other plants, PREPA may request such deliveries as per the process outlined in paragraph (B) of this Article, and Seller shall deliver the requested quantities of Fuel to such other plant as agreed in accordance with such process. The Fuel to be delivered under this paragraph (J) by Seller shall be at the same delivered price, or lower, and under the same payment conditions as apply to Fuel delivered for the Generating Stations under this Contract, adjusted to reflect any increased or decreased transportation costs resulting from delivery to such other plant.
- K. Seller shall at all times execute reasonable plans to avoid human hazards or damage to public or private property that may be caused by Seller's operation and performance under this Contract, including under extreme weather conditions or other foreseeable Force Majeure events.
- L. Seller shall ensure that every vessel used in deliveries of Fuel to PREPA complies with applicable law and can be accepted by the delivery terminal(s). Seller shall bear the risk of any failure to obtain such acceptance.



FUEL PURCHASE CONTRACT
SAN JUAN, PALO SECO, AGUIRRE, MAYAGÜEZ, CAMBALACHE,
AND VARIOUS GAS TURBINE GENERATING STATIONS
Page 12

- M. Seller shall familiarize itself with each Generating Station location and the corresponding Delivery Point referred to in this Contract. Seller shall ensure that it has the proper personnel and equipment to service such locations and Delivery Points in accordance with this Contract.
- N. Seller shall only deliver Fuel by tank truck upon request by PREPA.
- O. Seller shall bear all transportation charges in connection with delivery of Fuel to the Delivery Points by any means during the term of this Contract.
- P. Seller represents and warrants to PREPA that it has all personnel necessary to obtain and deliver Fuel in accordance with this Contract and in a manner otherwise satisfactory to PREPA, and shall maintain the capability to effect deliveries of the product as requested by PREPA, including deliveries on Saturdays, Sundays, and holidays, if necessary, to fulfill PREPA operational requirements. Seller acknowledges that PREPA working hours are currently Monday thru Friday from 7:30 to 11:30 AM and from 12:30 to 4:00 PM. Seller shall take all the necessary actions to supply the required daily volume during PREPA working hours. PREPA shall have the right to reject deliveries not made during PREPA normal working hours, and Seller shall bear any costs related to such rejection. PREPA reserves the right to modify its working hours schedule in order to accommodate fuel requirements in excess of sixty thousand (60,000) gallons per day for each site.

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ARTICLE V. Specifications

- A. Upon each delivery, Seller (i) hereby represents and warrants to PREPA that all Fuel supplied meets all of the specifications and requirements set out in Exhibit A (Specifications) and this Article, and (ii) shall deliver to PREPA, at Seller's cost, a certificate of analysis (the "COA") in which Seller shall certify the qualities of the Fuel delivered for each of the specifications and the requirements of this Article (including homogeneity), based on the latest revision to the test method used for each specification parameter.
- B. Seller shall ensure that the delivered Fuel (i) is appropriate for burning without requiring extraordinary maintenance to the gas turbines and their associated equipment, or causing other extraordinary problems in the operation of a Generating Station, (ii) complies with all applicable Federal and local rules and regulations, including applicable provisions of the Code of Federal Regulations, (iii) contains homogeneous hydrocarbons, and (iv) is free of inorganic acids and microorganisms, with no glycerin, water, solid, or fibrous foreign matter, in each case so as to yield the lowest cost per kWh produced. Seller acknowledges and agrees that any product offered will be analyzed and evaluated in terms of the ultimate cost and consistency with environmental regulations.
- C. The Parties agree that gravity and sulfur analysis of upper, middle, and lower samples shall be the appropriate means of establishing tank or vessel homogeneity. A Fuel shipment shall be considered to be homogeneous when the maximum difference in tested gravities between any two (2) samples from

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- different strata is not greater than 0.3 degrees for tested API, and the maximum difference in tested sulfur content between any two (2) samples for different strata is not greater than 0.02 weight percent in tested sulfur, provided that the qualities of all tested samples are within all contracted specifications. For fuel received via vessel into PREPA's facilities, which was loaded from a certified tank, Seller shall provide a full certification of the vessel's composite sample.
- D. In determining compliance with the specifications and requirements of this Contract, Seller shall conduct an analysis, as per each ASTM method specified in Exhibit A (Specifications) and at its own cost, to the fuel being supplied to assure that such fuel meets the specifications and requirements of this Contract. Seller shall submit a copy of the analysis results to the respective Generating Station Manager representative or to PREPA's agent or representative before unloading each delivery. Seller shall send copies of the COA to PREPA's Fuels Office attached to the corresponding invoices. Seller shall procure an authorized chemist licensed in Puerto Rico and approved by PREPA to review and certify the results of the Fuel analysis for each of the specifications set out in Exhibit A (Specifications) and the applicable requirements of this Article.
- E. PREPA shall have the right to take samples of the fuel delivered to each Delivery Point from the vessel, tank or truck from which such delivery is made. PREPA reserves the right to terminate this Contract at Seller's expense for non-compliant deliveries, so that the fuel is found to contain dirt or sediment, or if it

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is of a consistency that will cause clogging of burners, pipelines, or burner nozzles or prevents proper operation other than due to PREPA's fault.

- F. Should PREPA encounter difficulties in the efficient handling and burning of the fuel actually delivered, special analysis of the retained independent inspector's sample shall be requested by PREPA and made by an authorized laboratory licensed in Puerto Rico (or if such laboratory is not available in Puerto Rico to run the required tests, a laboratory in the U.S. can be used as a substitute), so as to determine whether such difficulties are attributable to the fuel delivered not being in compliance with the specifications and Seller warranties under this Contract.
- G. If it is determined that the difficulties are attributable to the fuel not being in compliance with the specifications or Seller warranties under this Contract, then Seller shall take such immediate measures as necessary to correct the deviation and to prevent further difficulties. PREPA's acceptance of, or agreement to, remedial or preventive measures shall not constitute a waiver of any rights available to it under the law, including rights of actions or claims for damages caused by Seller's noncompliance with the Fuel specifications or with any other provision of this Contract.
- H. If during any delivery Seller fails to meet the specifications and warranties as contracted, PREPA reserves the right to any combination of the following: (i) immediately reject the delivery, (ii) evaluate the deviation, propose to Seller the remediation of such failure through a deduction of a dollar amount from the

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amounts due to Seller for nonconforming fuel, and deduct such amount, (iii) establish a claim for nonperformance, or (iv) terminate this Contract for cause. PREPA shall notify Seller of any specification non-compliance that will result in product being rejected or discounts to be applied before discharge commences, and discharge will be suspended until Seller and PREPA can reach an agreement as to the appropriate remedy for failure of fuel to meet the specifications and warranties as contracted.

- I. Seller shall be responsible for any fines, penalties, damages, expenses, costs, or claims, actions, and causes of actions, which may arise as a consequence of any deviations or variations of the fuel provided by Seller from the contracted or guaranteed Specifications for Fuel to be delivered. Without limiting the foregoing sentence, if any deviations or variations from the Fuel Specifications exist when such fuel is delivered to PREPA, Seller shall indemnify PREPA against, and hold and save PREPA harmless from, and will defend PREPA, its officers, agents, and employees, from any claims, actions, causes of actions, damages, costs, fines, penalties and expenses due or attributable to variations or deviations from Fuel Specifications as contracted and guaranteed by Seller.
- J. In the event that, during the term of this Contract, Federal or Commonwealth of Puerto Rico laws or regulations are modified to require the burning of a fuel of different specifications than the Fuel contracted for, or in the event that PREPA obtains permission to burn a fuel with different specifications than the Fuel contracted for, and if these changes require an adjustment in the price of the

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Fuel contracted for; then the Parties shall meet within five (5) days from the enactment of any such law or regulations to discuss the matter for the purpose of establishing new price terms satisfactory to both Parties. If an agreement cannot be reached by the Parties prior to the enforcement date of the regulations because Seller cannot provide fuel at a price that is competitive or, for any reason, cannot provide a fuel according to the new specifications, then PREPA shall have the right to terminate this Contract.

- K. In the event that, during the term of this Contract, PREPA requests a fuel of different specifications than the Fuel contracted for, Seller and PREPA shall meet to establish new price terms for said different fuel specifications satisfactory to both Parties. If the Parties are unable to agree on new price terms, or Seller for any reason, cannot provide the fuel according to the new specifications, PREPA shall have the right either to continue to purchase Fuel contracted or to terminate this Contract.

ARTICLE VI. Laytime and Demurrage

- A. Seller shall bear all demurrage incurred in connection with the vessel(s) or tank trucks delivering product pursuant to this Contract, and PREPA shall assume no responsibility or liability for the same, unless such demurrage is attributable to the willful misconduct or gross negligence of PREPA.
- B. For vessel delivery, Seller shall deliver, or ensure the delivery by the vessel's master or its agent of, a notice of the impending arrival of each vessel to PREPA seventy-two (72), forty-eight (48), and twenty-four (24) hours before the vessel's



arrival. In the event the vessel is delayed in getting into berth after giving notice, due to docking restrictions or for any reason over which PREPA has no control, such delay shall not count as used laytime.

- C. For vessels, laytime shall commence six (6) hours after the later to occur of (i) Seller tendering a Notice of Readiness to PREPA or (ii) arrival at berth and clearance by Customs. Laytime shall commence within the meaning of this Article regardless of whether the vessel arrives during or outside normal business hours. Laytime shall not be increased as a result of, nor shall PREPA be held accountable for, any delay in berthing the vessel attributable to the failure of Seller to give the notices set forth in this Article.
- D. Allowed laytime shall be thirty-six (36) hours for each delivery of Fuel under this Contract, provided that the allowed laytime shall be increased by the time a vessel (or truck) is prevented or delayed from arriving, discharging cargo, disconnecting or departing due to:
1. such vessel's (or truck's) condition, capabilities or facilities, or failure to comply with U.S. Coast Guard or other governmental agency regulations, which prevent or impair Seller from connecting, discharging its entire cargo within thirty (30) hours, disconnecting and departing within the allowed laytime;
 2. Seller's failure to deliver Fuel in compliance with the specifications, warranties or requirements of this Contract, including the unloading temperature and pressure specified in paragraph (G) of Article IV

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- G. If discharging has ceased because it is completed or if the discharging rate has decreased to a rate which will not permit discharge of the entire cargo within thirty-six (36) hours, or due to any other problem with the vessel, PREPA may order the vessel off the dock at no cost to PREPA. If practical, the vessel shall be allowed to return later and complete discharging. In the event that the discharging rate has decreased to a rate which will not permit discharge of the entire cargo within thirty-six (36) hours, PREPA may delay ordering the vessel off the dock and allow pumping to continue, provided Seller pays the dock per hour fee rate and any other associated cost.
- H. Prior to making any claim for demurrage, Seller shall provide to PREPA written notice, and all available and appropriate documentation and evidence in support, of any demurrage claim which Seller may bring against PREPA, including evidence of Seller's compliance with this Article.

ARTICLE VII. Price

- A. The price to be paid for each barrel of Fuel delivered throughout the entire duration of this Contract will consist of a fixed price differential plus an escalator. Such pricing assumes barrels of forty-two (42) U.S. gallons, volume corrected to a temperature of sixty degrees (60° F) Fahrenheit.
- B. The fixed price differential (in U.S. dollars per barrel) for all deliveries of Fuel to all Generating Stations under this Contract shall be (i) if made by vessel, \$7.7500 per barrel, and (ii) if made by truck, \$8.7500 per barrel.



- C. The escalator shall be increased or decreased according to Platt's Oilgram Price Report and Argus US Products, corresponding to the effective date of the posting for the day the Fuel delivery commences, the day before, and the day after the Fuel delivery, each one of these evaluated utilizing the following formula:

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

Fifty percent (50%) of ULSD fuel from the average of quotations for the "New York Waterborne ULSD" and "US Gulf Coast Waterborne ULSD62" as published by the Argus US Products rounded to four (4) decimal places.

Said result must be then *multiplied by 0.42* to convert from cents per gallon to dollars per barrel.

The Parties shall round the final number to four (4) decimal places. For each delivery, the Parties shall establish the price for Fuel based on the day the Fuel commences transfer into PREPA facilities, which, for vessels, is the date such vessel commences discharge, and, for trucks, the date delivery commences. Should a delivery date, the day before, or the day after take place on Saturday, Sunday or on a holiday, the effective prices appearing in the last editions of Platt's Oilgram Price Report and Argus U.S. Products, published before any of these dates will be utilized to readjust the prices. The Parties may mutually agree to deem the day of commencement of delivery for pricing purposes for any particular delivery by written notice prior to actual day of commencement of

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- delivery. A sample calculation of the escalator is shown in Exhibit C (Sample Calculation (Escalator)) attached and made a part hereof.
- D. Seller shall provide PREPA with a credit limit of seventy-five million dollars (\$75,000,000) for the obligation arising solely under this Contract (the "Credit Limit"). Whenever the Credit Limit is reached, Seller shall notify PREPA thereof in writing, and PREPA shall accelerate payments of invoices in chronological order as much as necessary to comply with the Credit Limit, provided that PREPA may not owe Seller, at any time, any amount(s) in excess of the Credit Limit (including the undisputed portion of invoices not paid by their due date).
- E. Any past due balances for invoices under this Contract shall accrue interest at the lower of (i) the daily "Prime Rate" as quoted by The Wall Street Journal or (ii) the maximum rate of interest allowed by law. Additionally, if PREPA fails to pay an undisputed portion of an invoice in accordance with paragraph (F) of Article X (Measurement and Payment), then Seller may, at its own discretion, suspend any and all deliveries to PREPA. Where Seller suspends deliveries in accordance with this paragraph (E), Seller shall resume deliveries to PREPA upon payment of all undisputed amounts past due and payable under the Contract. Any costs including but not limited to demurrage due to this suspension of delivery shall be borne by PREPA.
- F. The Parties will have the right to price protection of Fuel deliveries not made within the agreed delivery window required under Article IV (Delivery and Title) of this Contract. If PREPA delays delivery outside of such window, Seller shall

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receive the highest price between the price for the last day of the delivery window or actual delivery date as calculated in accordance with this Article. Conversely, if Seller delays delivery outside of such window, PREPA shall receive the lowest price between the price for the last day of the delivery window or actual delivery date as calculated in accordance with this Article.

- G. If Seller sells or offers for sale to others in Puerto Rico burnable fuel of a quality comparable or superior to that of Fuel to be supplied hereunder for delivery in Puerto Rico or elsewhere, at F.O.B. supplier terminal prices per BTU lower than those payable for fuel hereunder, Seller shall so notify PREPA immediately and extend to PREPA such lower price as from the date of such sale or offer for sale. The lower price shall apply to a quantity of Fuel sold by Seller to PREPA hereunder equivalent to the number of barrels of Fuel sold or offered by Seller at such lower price, but in no case shall this lower price be applicable to a quantity less than the average quantity received during a two-week (2) period.
- H. In the event, that during the term of this Contract, Platt's Oilgram Price Report, Argus U.S. Products or any other contracted price postings cease to exist, the Parties shall meet to establish an alternative mean to determine the contracted price satisfactory to both Parties. If the Parties are unable to agree on an alternative mean to determine the contracted price within forty-five (45) days after any of the contracted price postings ceases to exist, then PREPA shall have the right to terminate this Contract.

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ARTICLE VIII. Duties and Taxes

- A. The contracted price for Fuel includes all Federal, Commonwealth of Puerto Rico and local taxes, fees and established import tariffs for the Fuel being supplied. Puerto Rico's excise tax and municipal patent payment shall be fully reimbursed by PREPA and are to be presented as a separate line item on the invoice in addition to the contracted price. PREPA shall reimburse Seller the amount corresponding to the payment of the municipal patent, once Seller presents PREPA evidence, issued by the corresponding municipality, with respect to the percentage established as a basis for the calculation of the amount to be paid as such patent. If, during the term of this Contract, the agreed percent changes, Seller shall immediately present PREPA the corresponding evidence, issued by the corresponding municipality and reflect it in the invoice.

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- B. Any changes, whether up or down, in the applicable taxes, fees, or tariffs, should they be imposed, will be reflected in the price for Fuel in its entirety as long as these taxes, fees or tariffs do not discriminate whether the product is domestic or foreign, and Seller will adjust the price accordingly. However, should said new or increased taxes, fees or tariffs discriminate on the basis of whether the product is domestic or foreign and said new or increased taxes, fees or tariffs result in a lower price for domestic fuel, Seller shall supply Fuel which results in the lowest cost to PREPA. Should domestic Fuel be unavailable, the Parties shall meet within five (5) days from Seller's notification of same to discuss Fuel availability from other sources and negotiate the financial aspect of any taxes, fees or tariffs applicable to that product. If an agreement cannot be reached, PREPA shall have the right to terminate this Contract without Seller being entitled to any further compensation, except for Fuel already delivered and due by PREPA.
- C. Upon PREPA's request and Seller's consent which consent shall not be unreasonably withheld, delayed or conditioned, Seller shall apply for any applicable waivers of taxes, fees or tariffs, and any costs associated with the application to such waivers will be passed in their entirety to PREPA.

ARTICLE IX. Guaranteed Calorific Value

- A. Seller guarantees delivery of Fuel with a minimum calorific value (Btu/gal) as established in Exhibit A (Specifications) or as quoted by Seller, whichever is higher, provided that PREPA shall have no obligation to pay a premium for

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- calorific values over the minimum established in Exhibit A (Specifications).
- B. For any delivery by Seller in which the fuel fails to meet the guarantee set out in paragraph (A) above, PREPA shall receive a credit for a number of barrels equivalent to such deficiency, calculated on the basis of the example set out in Exhibit B (Sample Calculation (Btu Deficiency Adjustment)) attached and made a part hereof. PREPA shall receive such credit before computing the Fuel billings for the invoice applicable to such delivery.
- C. The provisions of Article V (Specifications) regarding compliance with specifications and laboratory analyses shall apply to this Article whenever required.

ARTICLE X. Measurement and Payment

- A. The quantity of Fuel delivered to PREPA shall be computed by measurements in PREPA's on-shore tanks, to be conducted by a mutually agreed independent inspector accredited by U.S. Customs and Border Protection as per 19 CFR § 151.13 and qualified by PREPA. Inspection costs shall be borne by Seller. All measurements shall be corrected to sixty degrees Fahrenheit (60° F) using the ASTM Petroleum Measurements Table 6-B. Quantities certified on the independent inspector's report will be binding for both Parties absent fraud or manifest error.



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- B. For deliveries by tank truck, Seller will accompany each tank truck delivery with (i) an order confirmation, (ii) bill of lading ("**BOL**"), (iii) seal's report from an independent inspector, and (iv) a COA, each prepared at Seller's cost. Each invoice for a tank truck delivery shall be accompanied by a copy of the delivery ticket or BOL properly signed by PREPA's duly authorized representative. For the purpose of determining the quantity of Fuel delivered, the BOL figures at sixty degrees Fahrenheit (60°F) will be used. Seller shall ensure that all the tank trucks have all hatches and outlet valves properly locked with metallic seals at the time the delivery is to commence, failing which the product will not be accepted by PREPA.
- C. Notwithstanding anything herein to the contrary, PREPA reserves the right to exclusively select and contract inspection services to conduct measurements and produce certifications of quantity at any time during the term of this Contract. If PREPA exercises this right, then this inspection cost shall be borne fully by PREPA, and Seller, at its own expense, may send its own inspector to verify these measurements.



- D. Seller shall invoice PREPA regularly and promptly after Fuel is delivered. For payment purposes, Seller shall send invoices to PREPA via e-mail in accordance with Article XIV (Notices). Copies of the inspector's certificates of quantity shall be included with each respective invoice. Invoices shall include, for each delivery, the corresponding PREPA-assigned shipment number, copies of the inspector's certificates of quantity, BOL, COA, and other documentation required by this Contract.
- E. All invoices submitted by Seller shall include the following Certification in order to enable PREPA to proceed with its payment. This is an essential requirement, and those invoices without this Certification will not be processed for payment:

No Interest Certification:

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

Authorized Representative Signature

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- F. PREPA shall pay the undisputed portion of each invoice submitted by Seller in immediately available U.S. dollars, as provided for in Article VII (Price), within sixty (60) days after completion of discharge for the corresponding delivery. Should the due date of an invoice fall on a non-business day, payment shall be made the following business day.
- G. PREPA estimates the maximum value of this Contract not to exceed \$452,000,000.00, and will make payments under this Contract from account #01-2321-23215.
- H. PREPA represents and warrants to Seller on the date of this Contract that, as regards the proceeding commenced in respect of PREPA pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), pending as of the signing of this Contract in the PROMESA Court, Case No. 17-4780 (the "**PREPA Bankruptcy**"):
1. (i) Seller's right to payment for charges validly incurred in accordance with this Contract or owed by PREPA under this Contract arise from a post-petition transaction with PREPA, (ii) the consideration made available by Seller benefits PREPA and its affiliate subject to the PREPA Bankruptcy, and supports PREPA's obligations under this Contract, and (iii) as a result of the foregoing, Seller's right to payment for charges validly incurred in accordance with this Contract or owed by PREPA under this Contract during the PREPA Bankruptcy constitute reasonable and necessary expenses of preserving PREPA and an administrative

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expense; and

2. other than the PREPA Bankruptcy, except as previously disclosed in writing, there is no pending action or proceeding in which PREPA is a party before any court, governmental agency or arbitrator that could reasonably be expected to affect materially and adversely the financial condition or operations of PREPA or the ability of PREPA to perform its obligations under, or which purports to affect the legality, validity or enforceability of, this Contract as in effect on the date of this Contract.

If PREPA becomes aware that any of the representations or warranties set out above in this paragraph have become untrue or incorrect, then PREPA shall notify Seller of such event as soon as reasonably practicable.

- I. In respect of the PREPA Bankruptcy, PREPA and Seller stipulate that this Contract is a post-petition agreement executed after the petition date of the PREPA Bankruptcy and, if subject to such proceeding, then entitled to administrative expense treatment under Public Law No: 114-187 (June 30, 2016), otherwise known as PROMESA, and the Bankruptcy Code. Further, PREPA stipulates that all of Seller's costs and obligations owed to Seller under this Contract shall be treated as administrative expenses and will support such recovery in any proceeding before any relevant court.
- J. Following the resolution of the PREPA Bankruptcy, the Parties shall cooperate and discuss in good faith a reduction to the pricing and an increase to the Credit Limit under this Contract to reflect the improved credit profile of PREPA.



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- K. PREPA shall invoice Seller for any claims or other amounts due to PREPA in connection with this Contract. Seller shall pay the undisputed portion of each invoice submitted by PREPA in immediately available U.S. dollars within sixty (60) days. PREPA reserves the right to discount or retain any full payment under this Contract for any undisputed debt or undisputed claim (or portion thereof) of Seller until satisfied in full.
- L. The Parties shall use their reasonable efforts to resolve any dispute regarding payment of any invoice issued under this Article by amicable negotiation, provided that if the Parties fail to resolve such dispute by the payment due date, then either Party may seek to resolve such dispute in accordance with Article XIX (Choice of Law and Venue).

ARTICLE XI. Force Majeure

- A. Each Party shall be excused from performing, and shall not be liable in damages or otherwise for failure to perform, an obligation under this Contract (other than a payment obligation) to the extent that it is unable to perform or is prevented from performing by a Force Majeure event. For the purpose of this Contract, "**Force Majeure**" means any cause without the fault or negligence, and beyond the reasonable control, of the Party claiming the occurrence of such event, whether foreseeable or not, which prevents the claiming Party from performing an obligation under this Contract, provided that the Party claiming such event as Force Majeure notifies the other Party in writing of the alleged Force Majeure event within ten (10) days of its occurrence. Such notice shall include the

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particulars of the occurrence and, to the extent possible, its estimated duration.

- B. Force Majeure may include the following: acts of God, industrial disturbances, acts of the public enemy, war, blockages, boycotts, riots, insurrections, epidemics (including quarantine and lockdown related to such epidemics), earthquakes, storms, floods, civil disturbances, lockouts, fires, explosions, and acts or failure to act of any governmental authority, provided that such events, or any other claimed as Force Majeure, otherwise meet the requirements and Force Majeure definition set out in paragraph (A) of this Article. The burden of proof as to whether a Force Majeure event has occurred shall be on the Party claiming Force Majeure.
- C. In the event that the Force Majeure claim extends for a period of more than ninety (90) consecutive days, either Party shall have the right to terminate this Contract without further obligation, except that such Party shall still be responsible for the payment of amounts due and owing under this Contract, on their due date.
- D. Upon cessation of the Force Majeure event, the Party claiming Force Majeure shall notify the other Party of the termination of the Force Majeure claim. Performance shall be resumed, but the excuse from performing due to a Force Majeure event shall not operate to extend the term of this Contract nor obligate either Party to make up deliveries or receipts, as the case may be.
- E. Seller recognizes that PREPA provides an essential service for the Commonwealth of Puerto Rico. Should any Force Majeure event cause Seller

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to suspend or reduce deliveries, Seller shall give PREPA first priority for supply.

ARTICLE XII. General Liabilities

- A. Seller agrees to make, use, provide, and take all proper and necessary precautions, safeguards, and protection against the occurrence or happening of injuries, death, and/or damages to any person or property during the delivery process.
- B. Seller shall indemnify PREPA against, and save PREPA harmless from, public liability, costs, and expenses resulting therefrom, or damages that may happen or occur through the fault, willful misconduct, or negligent acts or omissions of Seller, its employees, agents, and subcontractors, during the supply of fuel or performance of this Contract, or while carrying out any act or action directly or indirectly related to, or in connection with, the performance of this Contract, and from loss, liability, and fines incurred for, or by reason of violation by Seller of any federal, state, or municipal ordinance or regulation of law, while a delivery is in progress.
- C. Seller shall indemnify PREPA against, and save PREPA harmless from, all expenses and costs of any nature arising out of any claim due to an environmental non-compliance or violation, caused by Seller, its agents, employees, subcontractors or assignees during performance or nonperformance of its obligations under this Contract.
- D. Seller shall indemnify and defend PREPA against, and save PREPA harmless from (including in each case PREPA's officers, agents, and employees) any



finer, penalties, damages, expenses, costs or claims, actions, and causes of actions, which may arise due or attributable to the fact that any of the fuel provided by Seller has deviations or variations from the contracted and guaranteed Specifications for the same.

- E. Seller shall indemnify PREPA against, and save PREPA harmless from, all expenses and costs of any nature (including attorneys' fees) incurred by PREPA arising out damages, caused by Seller, by act or omission, in the performance or nonperformance of its obligations under this Contract.
- F. Notwithstanding anything to the contrary in this Contract, neither Party shall be liable to the other pursuant to this Contract for any punitive, consequential, or exemplary damages.

ARTICLE XIII. Performance Security and Insurance

- A. Upon execution of this Contract, Seller shall provide PREPA with a Performance Bond payable to the order of PREPA to secure Seller's performance under this Contract, including delivery in compliance with the Specifications. The Performance Bond shall be issued by a qualified surety company authorized to do business in Puerto Rico and reasonably acceptable to PREPA, in the amount equivalent to five percent (5.0%) of the estimated Contract value set out in paragraph (G) of Article X (Measurement and Payment), governed by the laws of the Commonwealth of Puerto Rico and otherwise in a form reasonably acceptable to PREPA.



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- B. In lieu of a Performance Bond, PREPA will accept a Letter of Credit (such Letter of Credit or Performance Bond, a "**Performance Security**"), issued by a qualified bank reasonably acceptable to PREPA, provided that such Letter of Credit shall be for the same amount as specified for the Performance Bond in paragraph (A) above and shall satisfy the following conditions:
1. issued or notified or confirmed by a local bank in Puerto Rico;
 2. unconditional and irrevocable;
 3. payments made by the issuing bank on a business day by wire transfer, immediately after PREPA's first demand for payment;
 4. governed and construed in accordance with the laws of the Commonwealth of Puerto Rico; and
 5. otherwise in a form reasonably acceptable to PREPA.
- C. Seller shall procure, and maintain in full force and effect during the term of this Contract, policies of insurance covering all operations engaged in by Seller under this Contract, including as follows:
1. Commonwealth of Puerto Rico Workmen's Compensation Insurance as required by the Workmen's Compensation Act 45-1935 of the Commonwealth of Puerto Rico; provided that Seller shall (i) also be responsible for compliance with said Workmen's Compensation Act by all its subcontractors, agents and invitees, if any, and (ii) furnish from the Puerto Rico State Insurance Fund a certificate showing that all personnel



employed in the work are covered by the Workmen's Compensation Insurance in accordance with this Contract;

2. Employer's Liability Insurance with minimum bodily injury limits of \$1,000,000 for each employee and \$1,000,000 for each accident covering against the liability covered by law upon Seller as result of bodily injury, by accident or disease, including death arising out of and in the course off employment, and outside of and distinct from any claim under the Workmen's Compensation Act of the Commonwealth of Puerto Rico;
 3. Commercial General Liability Insurance with limits of \$1,000,000 per occurrence and \$1,000,000 aggregate;
 4. Commercial Automotive Liability Insurance with a limit of \$1,000,000 combined single limit covering all owned or scheduled autos, or non-owned or hired autos, and including the MCS-90 (Motor Carrier Endorsement); and
 5. Pollution Liability Insurance with limits of \$10,000,000 per claim and \$10,000,000 in aggregate.
- D. The Commercial General Liability and the Commercial Automotive Liability Insurance under this Contract shall be endorsed to include:
1. As additional insured:
 - a. The Puerto Rico Electric Power Authority
 - b. Genera PR LLC, as agent on behalf of and for the account of PREPA



2. a thirty (30) day cancellation or nonrenewable notice to be sent to the above address;
3. an endorsement including this Contract under contractual liability coverage and identifying it by number, date and parties to this Contract;
4. a waiver of subrogation in favor of PREPA; and
5. the following provision on breach of warranties or conditions:

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

- E. All required policies of insurance shall be in a form acceptable to PREPA and shall be issued only by insurance companies authorized to do business in Puerto Rico. Upon request by PREPA, Seller shall furnish a certificate of insurance in original signed by an authorized representative of the insurance company in Puerto Rico describing the coverage afforded.
- F. In addition to the foregoing, Seller shall maintain adequate insurance coverage for the duration of this Contract to cover cost of replacement or repair of any breakage caused by carelessness, negligence, or lack of skill, or other similar occurrence, on the part of Seller's employees in the performance of required deliveries, including coverage for bodily and property damage and any such other items.

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ARTICLE XIV. Notices

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

To PREPA:

PREPA
c/o Genera PR LLC, agent of PREPA
Fuels Office
250 Muñoz Rivera Ave., Suite 1200
San Juan, Puerto Rico 00918
Attention: Lorena Torres
Gerente Oficina de Combustible
legal@genera-pr.com

To Seller:

Puerto Rico Energy LLC

Attention: Mario Ricardo Sierra Varela

P.O. Box 11961

San Juan, Puerto Rico 00922

Notices can also be sent through e-mail and shall be deemed valid if the notified Party provides the notifying Party with confirmation of receipt, provided notices are sent to the following e-mail addresses:

To PREPA: fuels@genera-pr.com

with copy to:

legal@genera-pr.com

To Seller: mario.sierra@energy-latam.com

With copy to:

Ruben.gonzalez@energy-latam.com

A Party shall notify the other Party in writing upon any change of its address(es) from

those set forth above, and from and after giving of such notice, the address therein specified shall be deemed the address of the notifying Party for the giving of notices.

ARTICLE XV. Compliance with Commonwealth of Puerto Rico Contracting Requirements

Seller shall comply with all applicable laws, including local and federal regulations and Executive Orders that regulate the environmental matters and contracting processes and requirements in the Commonwealth of Puerto Rico.

A. Filing of Puerto Rico Income Tax Returns

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

B. Payment of Puerto Rico Income Taxes

In compliance with Executive Order Number OE-1991-24 of June 18, 1991, Seller hereby certifies that it has complied and is current with the payment of all income taxes that are, or were due, to the Government of Puerto Rico. As

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evidence thereof, Seller has delivered to PREPA a certification issued by the Treasury Department of Puerto Rico indicating that Seller does not owe taxes to the Commonwealth of Puerto Rico; or is paying such taxes by an installment plan in full compliance with its terms (Form SC 6096). During the term of this Contract, Seller agrees to pay and/or to remain current with any repayment plan agreed to by Seller with the Government of Puerto Rico. Seller accepts and acknowledges its responsibility for requiring and obtaining a similar warranty and certification from each subcontractor whose service Seller has secured in connection with the services to be rendered under this Contract and shall forward evidence to PREPA as to its compliance with this requirement.

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

Pursuant to Executive Order Number 1992-52, dated August 28, 1992 amending OE-1991-24, Seller certifies and warrants that it has made all payments required for unemployment benefits, workmen's compensation and social security for chauffeurs, whichever is applicable, or that in lieu thereof, has subscribed a payment plan in connection with any such unpaid items and is in full compliance with the terms thereof. As evidence thereof, Seller has delivered to PREPA:

1. A certification issued by the Bureau of Employment Security (*Negociado de Seguridad de Empleo*) of the Puerto Rico Department of Labor and Human Resources certifying that Seller does not owe taxes regarding Unemployment or Disability Insurance.

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2. A certification issued by the Program for Social Security for Chauffeurs and Other Employees of the Puerto Rico Department of Labor and Human Resources certifying that Seller has no debt with respect to such program.

D. Real and Personal Property Taxes

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

1. a certification issued by the Municipal Revenues Collection Center ("**MRCC**"), assuring that Seller does not owe any tax accrued during the last five (5) years to such governmental agency with respect to personal property; or negative Debt certification issued by the MRCC with respect to personal property taxes and a sworn statement executed by Seller indicating that (i) its revenues are derived from the rendering of professional services, (ii) during the last five (5) years (or the time in which it has been providing professional services) it has had no taxable business or personal property on the 1st of January of each year, (ii) that for such reasons it has not been required to file personal property tax returns, as required under Article 6.03 of Act 83-1991, as amended and

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(iii) that for such reason it does not have an electronic tax file in the MRCC's electronic system.

2. an All Concepts Debt Certification issued by the MRCC assuring that Seller does not owe any taxes to such governmental agency with respect to real and personal property; or
3. a negative certification issued by the MRCC with respect to real property taxes.

E. Sales and Use Taxes

Seller has delivered to PREPA:

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

F. Puerto Rico Child Support Administration (*ASUME*)

Seller hereby certifies that it is not duty bound to pay child support, or if so, that Seller is up to date or has a payment plan to such effects. As evidence thereof, Seller has delivered to PREPA a certification issued by the Puerto Rico Child Support Administration (*Administración Para El Sustento de Menores (ASUME)*) certifying that Seller does not have any debt, outstanding debt, or legal procedures to collect child support payments that may be registered with

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G. Resolution of Debt

If any of the certifications listed in items A through F of this Article shows a debt, and Seller has requested a review or adjustment of this debt, Seller hereby certifies that it has made such request at the time of Contract execution. If the requested review or adjustment is denied and such determination is final, Seller will provide, immediately, to PREPA a proof of payment of this debt; otherwise, Seller accepts that the owed amount be offset by PREPA and retained at the origin, deducted from the corresponding payments. Seller accepts and acknowledges its responsibility for requiring and obtaining a similar warranty and certification from each and every contractor and subcontractor whose service Seller has secured in connection with the services to be rendered under this Contract and shall forward evidence to PREPA as to its compliance with this requirement.

H. Organization Documents

Upon execution of this Contract, Seller shall provide:

1. a Good Standing Certificate issued by the Department of State of Puerto Rico; and
2. a Certification of Incorporation, or Certification of Organization or Certificate of Authorization to do business in Puerto Rico, issued by the Department of State of Puerto Rico.

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I. Compliance with Act 1 of Governmental Ethics

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

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

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

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

Seller acknowledges that payment under this Contract will not be made until this Contract is properly registered in the Office of the Comptroller of the Government of Puerto Rico pursuant to Law Number 18 of October 30, 1975,

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as amended.

- L. Prohibition with respect to execution by public officers: (3 L.P.R.A. 8615(c))

Seller acknowledges that no public officer or employee authorized to contract on behalf of the executive agency for which he/she works may execute a contract between the agency for which he/she works and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office.

- M. Prohibition with respect to contracting with officers or employees: (3 L.P.R.A. 8615(d))

Seller acknowledges that no executive agency may execute a contract in which any of its officers or employees or any member of their family units has or has had direct or indirect economic interest during the last four (4) years prior to their holding office, unless the Governor gives authorization thereto with the previous recommendation of the Secretary of the Treasury and the Secretary of Justice.

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

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

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

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

- P. Prohibition with respect to execution by public officers contracts with former public officers: (3 L.P.R.A. 8615(h))

Seller acknowledges that no executive agency shall execute contracts with or for the benefit of persons who have been public officers or employees of said executive agency until after two (2) years have elapsed from the time said person has ceased working as such.

- Q. Dispensation

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

- R. Rules of Professional Ethics

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

- S. Anti-Corruption Code for a New Puerto Rico

1. Seller agrees to comply with the provisions of Act 2-2018, as the same may be amended from time to time, which establishes the Anti-Corruption Code for a New Puerto Rico.

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2. Seller hereby certifies that it does not represent particular interests in cases or matters that imply a conflict of interest, or of public policy, between the executive agency and the particular interests it represents.
3. Seller shall furnish a sworn statement to the effect that neither it nor any president, vice president, executive director or any member of a board of officials or board of directors, or any person performing equivalent functions for Seller has been convicted of or has pled guilty to any of the crimes listed in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico, or any of the crimes included in Act 2-2018.
4. Seller hereby certifies that it has not been convicted in Puerto Rico or United States Federal court under Articles 4.2, 4.3, or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.

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5. PREPA shall have the right to terminate this Contract in the event Seller is convicted in Puerto Rico or United States Federal Court under Articles 4.2, 4.3, or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, of any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico, or any other felony that involves misuse of public funds or property, including the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.

T. Provisions Required under Act 14-2004

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

U. Contract Review Policy

1. The Parties acknowledge that Seller has submitted the certification titled "Contractor Certification Requirement" required in accordance with the Contract Review Policy of the Financial Oversight and Management Board for Puerto Rico, effective as of November 6, 2017 and amended on October 30, 2020, signed by Seller's Executive Director (or another

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official with an equivalent position or authority to issue such certifications). A signed copy of the "Contractor Certification Requirement" is included as an annex to this Contract.

2. Seller represents and warrants that the information included in the Contractor Certification Requirement is complete, accurate and correct, and that any misrepresentation, inaccuracy or falseness in such Certification will render this Contract null and void and Seller will have the obligation to reimburse immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under this Contract.
3. For this Contract, the transfer of skills and technical knowledge required by the Certified Fiscal Plan is inapplicable given the non-recurring or specialized nature of the contracted services.
4. Seller expressly agrees that the conditions outlined throughout this paragraph (U) are essential requirements of this Contract. Consequently, should any one of these representations, warranties, or certifications be incorrect, inaccurate, or misleading, in whole or in part, there shall be sufficient cause for PREPA to render this Contract null and void and to terminate it with immediate effect, and Seller shall reimburse PREPA all moneys received under this Contract.

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ARTICLE XVI. ASSIGNMENT AND SUBCONTRACTING

- A. This Contract, as well as any rights, duties, liabilities, or obligations under it, cannot be assigned, transferred, subcontracted, hypothecated, or otherwise disposed of by Seller without the prior written consent of PREPA, except that Seller and its assigns may without such consent assign all or a portion of their rights and interests under this Contract (including any collateral) in connection with any securitization or bank funding arrangement entered into by Seller or an assignee of Seller. Seller acknowledges that, other than assignments in connection with any securitization or bank funding arrangement entered into by Seller or an assignee of Seller, PREPA does not favor requests for assignment, transfer, subcontracting, hypothecation, or other types of disposal of this Contract and/or duties or obligations under it, and will have reasonable grounds not to approve any request to that effect, unless, in the business judgment of PREPA, the particular circumstances of the request warrant its approval and the assignment, transfer, subcontracting, hypothecation, or disposal does not operate against PREPA's best interests.
- B. No subcontract shall be considered for PREPA's approval, except when the following requirements are met: (i) Seller delivers PREPA a copy of the subcontract, not less than thirty (30) days prior to the effective date of the proposed subcontract; (ii) the subcontract includes, as a condition for its legal validity and enforceability, a provision whereby PREPA has the right to substitute, subrogate, or assume Seller's rights under the subcontract, in the

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event that PREPA declares Seller in breach or default of any of the Contract terms and conditions; (iii) the subcontract includes, as a condition for its validity and enforceability, a provision establishing for the subcontractor the obligation to comply with all Seller's obligations under this Contract (a mirror image clause), except for such obligations, term, and conditions which exclusively relate to works or services not included under the subcontract. Consent to assignment or subcontracting under this Article shall not relieve Seller of its full responsibilities under this Contract, nor be construed as an approval of the terms of said assignment or subcontract. Seller shall be responsible for all services performed by its subcontractors, employees, agents or assignees, whose performance Seller shall ensure complies with the provisions of this Contract.

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

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

ARTICLE XVII. Financial Reporting

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ARTICLE XVIII. Contingent Fees

- A. Seller represents and warrants that it has not employed any person to solicit or secure this Contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this representation or warranty will give PREPA the right to immediately terminate this Contract and/or to deduct from any payment or from the Performance Security the amount of such commission, percentage, brokerage, or contingent fee, or to claim said amount by whatever means available under the law.
- B. No officer, employee or agent of PREPA or of the Commonwealth of Puerto Rico, or of any Municipal Government of Puerto Rico, shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom.
- C. Seller represents and warrants that it is authorized to enter into and to perform its obligations under this Contract, and that it is not prohibited from doing business in Puerto Rico or barred from contracting with agencies or instrumentalities of the Commonwealth of Puerto Rico.

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ARTICLE XIX. Choice of Law and Venue

This Contract, its Exhibits and any other document specifically incorporated into it shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico. Other than matters relating to the PREPA Bankruptcy, which shall be heard and determined in the United States District Court for the District of Puerto Rico, the Parties expressly agree that all actions and proceedings arising out of or relating to this Contract shall be heard and determined in the courts of the Commonwealth of Puerto Rico, and the Parties hereby irrevocably submit to the jurisdiction of such court in any such action or proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such action or proceeding. The Parties hereby irrevocably waive all rights to trial by jury in any action, proceeding or counterclaim (whether based in contract, tort or otherwise) arising out of or relating to this Contract or the actions of any Party or their respective representatives in the negotiation or performance hereof.

ARTICLE XX. Code of Ethics

Each Party represents and warrants that, in connection with this Contract:

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

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

ARTICLE XXI. Modification and Novation

No modification, amendment, change, renewal, extension, discharge, or waiver of this Contract, or any provision thereof, shall be valid or binding except by a written agreement of the Parties executed by a duly authorized officer of each Party. No such modification, amendment or change to this Contract shall be understood as a contractual novation unless expressly agreed in writing by the Parties, including in cases where PREPA grants Seller a time extension for compliance with any of its obligations or where PREPA waives or resolves any of its rights under this Contract.

ARTICLE XXII. Separability

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

ARTICLE XXIII. Interpretation

- A. The words "include" and "including" mean "including, but not limited to" and corresponding grammatical variants.

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- B. Words and abbreviations not defined in this Contract which have generally accepted technical or design, engineering, or construction industry meanings are used in this Contract in accordance with such recognized meanings.
- C. References to a person include such person's successors and assigns, provided that with respect to a Party and its rights and obligations under this Contract, references to a Party shall only include such Party's successors and assigns if this Contract permits such successors and assigns.
- D. The words "day" and "days" refers to calendar days unless specified as business days. Business days shall mean the days on which banks are open for business in Puerto Rico.
- E. Nothing in this Contract shall be construed or interpreted to limit the Puerto Rico Energy Bureau's powers under the laws of the Commonwealth of Puerto Rico.
- F. This Contract may be executed in any numbers of counterparts, and may be delivered by electronic mail, and each such copy when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same Contract.



ARTICLE XXIV. Entire Agreement

This Contract, together with its Exhibits A (Specifications), B (Sample Calculation (Btu Deficiency Adjustment)), and C (Sample Calculation (Escalator)), constitutes the entire agreement of the Parties as to the subject matter addressed herein, and supersedes any and all prior agreements, Requests for Proposals, proposal letters or letters of award between PREPA and Seller.

[Signatures appear on the following page.]



FUEL PURCHASE CONTRACT
SAN JUAN, PALO SECO, AGUIRRE, MAYAGÜEZ, CAMBALACHE,
AND VARIOUS GAS TURBINE GENERATING STATIONS
Page 57

IN WITNESS WHEREOF, the Parties have caused this Contract to be duly
executed as of October 27, 2023 in San Juan, Puerto Rico.

The Puerto Rico Electric Power Authority
as PREPA



Brannen McElmurray
Authorized Signatory for Genera PR LLC,
exclusively as agent on behalf of and for
the account of PREPA

Puerto Rico Energy LLC,
as Seller



Mario Ricardo Sierra Varela
Chairman
EIN: 660-759525

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EXHIBIT A
SPECIFICATIONS

PARAMETER	ASTM METHOD	CAMBALACHE	SAN JUAN	PALO SECO	AGUIRRE	MAYAGÜEZ OTHER UNITS
		MIN-MAX	MIN-MAX	MIN-MAX	MIN-MAX	MIN-MAX
SAMPLING	D-4057					
GRAVITY, API DEGREE AT 60F	D-287, D-4052	30.0-42.0	30.0-42.0	30.0-42.0	30.0-42.0	30.0-42.0
VISCOSITY, KINEMATIC CTS AT IOOF	D-445, D2161	2.3-5.8	2.3-5.8	2.3-5.8	2.3-5.8	2.3-5.8
WATER & SEDIMENT, % VOLUME	D-473	MAX 0.1	MAX 0.1	MAX 0.1	MAX 0.1	MAX 0.1
FLASH POINT, DEGREE F, PMCT	D-93	MIN 125.0	MIN 125.0	MIN 125.0	MIN 125.0	MIN 125.0
SULFUR, PPM	D-7039, D-2622	MAX 15.0	MAX 15.0	MAX 15.0	MAX 15.0	MAX 15.0
SULFUR, % WEIGHT	D-7039, D-2622	MAX 0.0015	MAX 0.0015	MAX 0.0015	MAX 0.0015	MAX 0.0015
ASH, % WEIGHT	D-482	MAX 0.005	MAX 0.005	MAX 0.005	MAX 0.005	MAX 0.005
POUR POINT, DEGREE F	D-97	MAX 15.0	MAX 15.0	MAX 15.0	MAX 15.0	MAX 15.0
SODIUM+ POTASSIUM, PPM	D-5863	MAX 0.5	MAX 0.5	MAX 0.5	MAX 0.5	MAX 0.5
VANADIUM, PPM	D-3605, D-5863	MAX 0.5	MAX 0.5	MAX 0.5	MAX 0.5	MAX 0.5
CALCIUM, PPM	D-5863	MAX 0.2	MAX 0.2	MAX 0.2	MAX 0.2	MAX 0.2
HEATING VALUE, BTU/LB (GROSS) AT 60F*	D-240	MIN 18,600*	MIN 18,600*	MIN 18,600*	MIN 18,600*	MIN 18,600*
DISTILLATION TEMP 90% POINT F	D-96	MAX 650	MAX 650	MAX 650	MAX 650	MAX 650
CARBON RESIDUE WT. % (10% BOTTOMS)	D-524	MAX 1.0	MAX 1.0	MAX 1.0	MAX 1.0	MAX 1.0
FILTERABLE PARTICULATES MG/100ML	D-2276	MAX 4.0	MAX 4.0	MAX 4.0	MAX 4.0	MAX 4.0
CETANE INDEX	D-4737	40.0-56.0	40.0-56.0	NOT REGULATED	NOT REGULATED	NOT REGULATED
COLOR	VISUAL	UNDYED	UNDYED	UNDYED	UNDYED	UNDYED
LEAD PPM	D-5863	0.01-1.0	0.01-1.0	0.01-1.0	0.01-1.0	0.01-1.0
FUEL BOUND NITROGEN, % WEIGHT	D-4629	MAX 0.055	0.015	0.015	0.015	MAX 0.10

* = requirement is gross heating value, but net heating value should be included for operations calculations.

EXHIBIT B

SAMPLE CALCULATION (BTU DEFICIENCY ADJUSTMENT)

Example of calculation to determine credit due to PREPA if Seller supplies fuel of lower heat content than the guaranteed calorific value (in Btu):

Assume:

1. Guaranteed calorific value is 18,600 Btu/pound of fuel measured at 60° F.
2. Seller delivers 50,000 barrels of fuel measured at 60° F.
3. The COA of the fuel delivered indicates a heat content of 18,500 Btu per pound.

To calculate the equivalent barrels of the deficiency, divide the difference of Btus/pound received by the guaranteed minimum and multiply this fraction by the delivered volume.

Calculation:

$$(50,000 \text{ barrels}) \times ((18,600 - 18,500) / 18,600) = 268.82 \text{ bbl.}$$

PREPA receives a deficiency credit for 268.82 bbl.

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EXHIBIT C

SAMPLE CALCULATION (ESCALATOR)

Indexes for Ultra Low Sulfur Diesel

	Platts NY		Platts USGC		Argus, NY		Argus USGC	
	Low	High	Low	High	Low	High	Low	High
01/02/17	170.52	170.62	168.92	169.02	169.53	170.13	168.17	168.57
01/03/17	164.57	164.67	163.22	163.32	164.67	165.17	162.17	163.17
01/04/17	166.40	166.50	164.10	164.20	166.15	166.65	163.15	164.25

First step: Average

Platts New York= $(170.52+170.62+164.57+164.67+166.4+166.5)/6 = 167.2133$
Platts US Gulf Coast = $(168.92+169.02+163.22+163.32+164.1 +164.2)/6 = 165.4633$
Argus New York= $(169.53+170.13+164.67+165.17+166.15+166.65)/6 = 167.05$
Argus USGC = $(168.17+168.57+162.17+163.17+163.15+164.25)/6 = 164.9133$

Second step: Interpolation

Plait's ULSD = $(167.2133+165.4633)/2 = 166.3383$
Argus ULSD = $(167.05+164.9133)/2 = 165.9817$

Third step: Final Calculation

Escalation Factor for a delivery commencing on January 3, 2017 $= [\frac{1}{2}(\text{Platts ULSD}) + \frac{1}{2}(\text{Argus ULSD})] \times 0.42$ $= \frac{1}{2}(166.3383) + \frac{1}{2}(165.9817) \times 0.42$ $= (83.1692 + 82.9908) \times 0.42 = 69.7872$
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EXHIBIT D

DESIGNATED STORAGE TERMINALS

PUERTO RICO ENERGY - BAYAMON
Coordinates 18°25'0.39"N / 66°07'57.41"W
The terminal is located at the Caribbean Sea,
at the North of Puerto Rico island on the Industrial Park at Bayamon

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Exhibit B

Genera PR contract award of No. 6 Fuel Oil Contract to Novum Energy Trading Inc

Docket Number: NEPR-MI-2023-0004

In Re: Genera PR LLC Fuel Optimization Plan

Re: Request for Certification of Initiatives – Genera PR contract award of No. 6 Fuel Oil Contract to Novum Energy Trading Inc.

On October 20, 2023, after a competitive procurement process (“RFP no. 00003962”), Genera PR LLC (“Genera” or “Operator”), as agent on behalf of and for the account of the Puerto Rico Electric Power Authority (“PREPA”), awarded Novum Energy Trading Inc. (“Novum” or “Supplier”) a contract for the supply of No. 6 Fuel Oil (“HFO”) for the San Juan, Aguirre, Costa Sur, and Palo Seco steam power generation plants (“HFO Contract”). Thereafter, on October 28, 2023, the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”) reviewed and approved the HFO Contract subject to Operator and Novum execution of the HFO Contract, which occurred on October 30, 2023.

The HFO Contract term is one-year, effective October 30, 2023, with the option to extend it for an additional year. The fuel specified quantities, as nominated by Genera, shall be delivered to the aforementioned generation plants.

The contract also provides that Genera has the right to purchase HFO from any alternative source for use if (i) Operator identifies a price for HFO that is lower than the HFO Contract price, provided that Operator may not purchase more than 25% of its HFO from such alternate source; (ii) either party has declared a force majeure or other emergency situation that has resulted, or could reasonably result, in a shortage of requested quantities of HFO; or (iii) the Supplier has failed, or could fail over time, to deliver requested quantities of fuel, in which case Operator would have the right to purchase from alternate sources any quantities reasonably expected to cover shortages resulting from such failure or expected failure.

The price for each barrel of HFO consists of an escalator (fuel market price) plus a fixed price differential, known as an “adder.” The fixed price differential for all deliveries of HFO to all generating stations shall be \$4.30 per barrel for a sixty-

day payment term, \$2.88 per barrel for a thirty-day payment term, or \$2.17 per barrel for a fifteen-day payment term. The escalator shall be increased or decreased according to Platt's Oilgram Price Report for "0.5% Dlvd US Atlantic Coast Barge corresponding to the effective date of the posting for the date the HFO delivery, evaluated using the formula set out in the contract.

Upon mutual agreement and subject to providing a thirty-day advance notice to Novum, the operator may also choose to change the above-described fixed price differential and escalator to an alternate fixed price differential and escalator. The alternate fixed price differential (In US dollars per barrel) for all deliveries of HFO to all generating plants under contract shall be \$13.62 per barrel for payment in 60 days, \$12.20 per barrel for payment in 30 days or \$11.49 per barrel, for payment fifteen days after completion of delivery. The alternate escalator shall be increased or decreased according to postings of the front Month Brent Crude Oil Future Contracts and evaluated using the formula set forth in the contract.

Applicable Initiatives for HFO

- Initiatives 3, Change of Fuel Oil Escalator and Reduction of Fuel Oil Adder
- Initiative 5, Spot Purchase Option for Fuel Oil and ULSD, and
- Initiative 7, Payment Terms Management of the Fuel Optimization Plan are applicable to the new HFO Contract.

Execution Version

NO. 6 FUEL OIL PURCHASE CONTRACT
AGUIRRE, COSTA SUR, SAN JUAN AND PALO SECO STEAM PLANTS
CONTRACT NUMBER 101348

AS FIRST PARTY: The Puerto Rico Electric Power Authority ("**PREPA**"), a public corporation and government instrumentality of the Commonwealth of Puerto Rico, created by Act of May 2, 1941, No. 83 (Act 83-1941), as amended, represented in this act by Genera PR LLC exclusively as agent on behalf of and for the account of PREPA, represented by Brannen McElmurray, of legal age, married and authorized signatory of Genera PR LLC, a limited liability company organized and existing under the laws of Puerto Rico ("**Genera**").

AS SECOND PARTY: Novum Energy Trading, Inc. ("**Seller**"), a corporation organized and existing under the laws of Delaware, authorized to do business in Puerto Rico, duly registered as a supplier to PREPA, represented in this act by its Chief Financial Officer, of legal age, married, and authorized to sign this Contract by the corporate authority vested in him.

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

WITNESSETH

A. WHEREAS, on January 24, 2023, (i) PREPA, (ii) the Puerto Rico Public-Private Partnership Authority, a public corporation of the Commonwealth of Puerto Rico, created by Act No. 29 of the Legislative Assembly of Puerto Rico, enacted June 8,



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 2

2009 (“**Administrator**”) and (iii) Genera entered into the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement (the “**Generation O&M Agreement**”), whereby PREPA, the Administrator, and Genera agreed that as of the “**Service Commencement Date**” as defined therein, which occurred on or about July 1, 2023, Genera would become the operator of the “**Legacy Generation Assets**” as defined therein, as an agent of PREPA;

- B. WHEREAS, PREPA, by virtue of Act No. 83 of May 2, 1941, as amended (“Act 83”), has the authority to engage professional, technical, and consulting services and such other services necessary and convenient to pursue the activities, programs, and operations of PREPA;
- C. WHEREAS, pursuant to section 5.2(b) of the Generation O&M Agreement, Agent Designation, PREPA designated and appointed Genera as its agent, and Genera accepted such designation and appointment, for the purpose of entering into Facility Contracts on behalf of and for the account of PREPA, as may be necessary or appropriate to operate, maintain the Legacy Generation Assets and to make such additions and extensions thereto in accordance with the terms of the Generation O&M Agreement;
- D. WHEREAS, PREPA issued a Request for Proposal (“RFP”) for the supply of No. 6 Fuel Oil to meet the fuel oil requirements of the Aguirre, San Juan, Palo Seco, and Costa Sur steam plants (the “**Generating Stations**”);
- E. WHEREAS, in response to such RFP, Seller made an offer for the supply of No. 6 Fuel Oil to meet the fuel oil requirements of the Generating Stations; and
- F. WHEREAS, PREPA wishes to accept Seller’s offer as and to the extent provided

Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 3

below, and Seller is willing to supply No. 6 Fuel Oil to the Generating Stations in accordance with the terms set out below;

THEREFORE, after a negotiation process between the Parties and in consideration of the mutual covenants herein stated, PREPA and Seller agree as follows:

ARTICLE I: Scope of Supply

- A. Seller agrees to sell and deliver to PREPA all of PREPA's requirements for, and PREPA agrees to purchase from Seller, No. 6 Fuel Oil for use in the Generating Stations that complies with Article V (Specifications), Exhibit A (Specifications) attached and made a part hereof, and applicable law, including regulations administered by the Environmental Protection Agency ("EPA") and the Environmental Quality Board ("EQB") for Puerto Rico (the "Fuel"). The monthly rate of Fuel delivery for each calendar month of this Contract shall be the amount of Fuel requested by PREPA in accordance with the nomination process set out in paragraph (B) of Article IV (Delivery and Title). Seller shall deliver such Fuel to the Generating Stations in quantities and at times requested by PREPA in accordance with this Contract.
- B. Notwithstanding any contrary provision of paragraph (A) of this Article, PREPA has the right to purchase No. 6 Fuel Oil from any source for use in the Generating Stations if (i) PREPA identifies a price for No. 6 Fuel Oil from such source that is lower than the price which has been agreed in this Contract, provided that PREPA may not purchase more than twenty-five percent (25%) of its requirements for No. 6 Fuel Oil for the Generating Stations from such alternate sources under this subparagraph (B)(i), (ii) either Party has declared a Force Majeure or other emergency



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 4

situation that has resulted, or could reasonably result with the passage of time, in a shortage of requested quantities of Fuel, or a shortage has occurred as described in paragraph (H) of Article IV (Delivery and Title), in which cases PREPA may purchase from alternate sources any quantities reasonably expected to cover such shortages, or (iii) Seller has failed, or could fail with the passage of time, to deliver requested quantities of Fuel, in which case PREPA has the right to purchase from alternate sources any quantities reasonably expected to cover shortages resulting from such failure or expected failure.

- C. Seller acknowledges that, in accordance with the terms and conditions of the Generation O&M Agreement, Genera is acting as Owner's agent in the administration of this Contract. As such, all references to PREPA taking any action, receiving any notice or disclosure, making any declaration or determination, scheduling deliveries or otherwise directing Seller without limitation to any provision or administration act related to this Contract, shall be understood to refer to Genera, acting on PREPA's behalf.

ARTICLE II: Term and Termination

- A. This Contract shall become effective on the date of its execution by the Parties and remain in effect for a period of one (1) year, starting from the commencement date notified by PREPA to Seller in writing (the "**Initial Term**"). This Contract may be extended for an additional year only by written amendment agreed upon by the Parties made ninety (90) days prior to the expiration of the Initial Term, subject to Seller's satisfactory performance, the authorizations required according to PREPA's rules and regulations, and an amount for Fuel approved in PREPA's



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 5

certified budget sufficient to cover the extension of this Contract.

- B. This Contract may be extended on a monthly basis beyond the Initial Term, or any extension under paragraph (A) of this Article, by mutual agreement after the end of the Initial Term or its extended term, as applicable; provided, however, that said extensions shall not exceed four (4) consecutive months, except when an emergency is declared by PREPA.
- C. This Contract shall terminate upon the earliest to occur of the following events:
1. the expiration of the term in accordance with paragraphs (A) and (B) of this Article;
 2. the Parties' mutual agreement in writing to terminate this Contract;
 3. a Party's election in a written notice to the other Party to terminate this Contract following a Force Majeure claim that extends for a period of more than ninety (90) consecutive days, in accordance with paragraph (C) of Article XI (Force Majeure);
 4. PREPA's election in a written notice to Seller to terminate this Contract (i) for convenience (with, for the avoidance of doubt, no liability or cost to PREPA whatsoever) on a date for termination identified in such notice, which shall occur no earlier than thirty (30) days after the date of such notice, or (ii) in accordance with paragraph (D) of Article V (Specifications), paragraph (I) of Article VII (Price), paragraph (B) of Article VIII (Duties and Taxes), paragraphs (S)(5) or (U)(4) of Article XV (Compliance with Commonwealth of Puerto Rico Contracting Requirements), or paragraph (A) of Article XVIII (Contingent Fees); and



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 6

5. a non-defaulting Party's election to terminate this Contract following five (5) business days' advance notice in writing to the other Party (the "**Defaulting Party**") of the occurrence of the following events (each, a "**Default**"), provided that such event remains uncured at the effective date and time of such termination:
 - a. for PREPA only as the Defaulting Party, failure to reduce Seller's credit exposure to PREPA below the Credit Limit within ten (10) days following exceedance of the Credit Limit and corresponding notice thereof from Seller in accordance with paragraph (D) of Article VII (Price);
 - b. for Seller only as the Defaulting Party, failure to deliver Fuel ten (10) days after its committed delivery date without PREPA's consent, except when such failure to deliver is a consequence of Force Majeure under Article XI (Force Majeure) or in accordance with paragraph (E) of Article VII (Price);
 - c. failure of the Defaulting Party to pay an invoice within five (5) business days after the date required for payment under this Contract;
 - d. breach by the Defaulting Party of any material obligation under this Contract other than those identified in paragraphs (5)(a) and (b) above, or the material inaccuracy of any representation or warranty given by such Defaulting Party under this Contract, in each case that has continued uncured for a period of seven (7) days following an



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 7

- initial notice of such failure from the performing Party to the Defaulting Party; or
- e. other than in respect of the PREPA Bankruptcy, (i) commencement by the Defaulting Party of any debt adjustment proceeding, bankruptcy proceeding, insolvency proceeding, dissolution or wind-up proceeding, proceeding under the Public Corporation Debt Enforcement and Recovery Act, Act No. 71, of June 28, 2014, or any similar proceedings, (ii) the filing of a petition in bankruptcy or insolvency against the Defaulting Party, or (iii) appointment of a receiver for the Defaulting Party without the other Party's consent.
- D. Upon the termination of this Contract under paragraph (C)(5) above following the occurrence of a Default by PREPA, all amounts owed to Seller under this Contract shall immediately become due and payable.
- E. Termination under this Article, or as otherwise permitted under this Contract, shall not create any liability to the terminating Party, provided that it shall continue to be responsible for the payment of amounts due and owing to the non-terminating Party prior to the date of such termination.
- F. A Party's exercise of its right to terminate this Contract shall not be understood as a waiver by the Party of any claim, right or other remedy it may have under this Contract or under the law for delays or breaches incurred by the other Party in the performance of its obligations under this Contract.
- G. Upon termination of this Contract, Seller shall (i) release the vessel delivering under this Contract (subject to vessel owner's approval) and use commercially



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 8

reasonable efforts to assist PREPA in obtaining the use of the vessel, and (ii) have no further right to compensation except for what has been accrued for Fuel supplied and services rendered under this Contract until said date of effective termination.

ARTICLE III: Independent Contractor

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

ARTICLE IV: Delivery and Title

- A. Seller shall deliver Fuel to PREPA at the Generating Stations via vessel (which includes, for this Contract, any barge, ship or other waterborne vessel) or via pipeline transfer. The title to and risk of loss of the product shall pass from Seller to PREPA after the Fuel passes (i) for waterborne deliveries to Aguirre, San Juan or Palo Seco, the pipeline flange connecting Seller's vessel to PREPA's pipeline at the dock for the respective plants, and (ii) for pipeline transfers to Costa Sur, San Juan or Palo Seco, the pipeline interconnection between PREPA's plant Fuel pipeline and Seller's terminal (each such flange or interconnection, as applicable, a "Delivery Point").
- B. PREPA shall submit to Seller, no later than the fifteenth (15th) day of each month, a nonbinding monthly estimate of its requirements for Fuel for each Generating



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 9

Station and proposed dates for delivery of Fuel for the following month. Seller shall promptly acknowledge receipt of such nonbinding estimate and shall, within five (5) days of such receipt, confirm those proposed delivery dates or propose new delivery dates for such following month. PREPA shall accept or make a counterproposal with respect to such delivery schedule within one (1) business day. The accepted delivery schedule or, if accepted by Seller, the counter-proposed delivery schedule, as applicable, shall be final. Delivery dates shall consist of delivery windows of two (2) days each for actual delivery to occur. If estimates are not submitted within the aforementioned timeframes, delivery will be delayed for as long as required for Seller to obtain availability of the Fuel.

- C. During the term of this Contract, Seller shall maintain a minimum stock reserve of 150,000 barrels available at Seller's designated storage terminal(s) in Puerto Rico, as identified in Exhibit D (Designated Storage Terminals) attached and made a part hereof, for prompt delivery upon request by PREPA to cover changes in operational needs (the "**Minimum Stock Reserve**"). PREPA shall have the right to increase the Minimum Stock Reserve requirement to 200,000 barrels (and, thereafter, to reduce such requirement back to 150,000 barrels) by giving Seller fifteen (15) days' prior notice of such increase (or reduction).
- D. Seller shall be responsible for cleaning, removing, and disposing of any spill of any product that might occur before the Delivery Point during delivery. Seller shall secure and provide all materials, permits, and personnel required for fuel handling and transfer.



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 10

E. Seller acknowledges that (i) deliveries via vessel to the San Juan and Palo Seco steam plants through the San Juan Dock C, at present, are limited to an arrival draft of 26 feet, (ii) deliveries via vessel to the Aguirre steam plant are limited by a dredged channel in Jobos Bay with maximum draft of 21.5 feet, and (iii) deliveries via vessel calling on the CORCO dock (Costa Sur Plant) in Guayanilla Bay, at present, are limited as follows:

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

Seller shall conduct its own investigation relative to navigational information or any natural changes that might occur at the San Juan Dock C, Jobos Bay or Guayanilla Bay, and shall bear responsibility for all risk of loss prior to delivery of Fuel to PREPA in accordance with paragraph (A) above, as PREPA does not assume any responsibility for the same.

F. For so long as a single vessel is available in Puerto Rico to transport the product from Seller's dock to the Generating Stations, the Parties agree to treat any mechanical breakdown of the vessel that prevents delivery of the product, and is not a consequence of Seller fault or negligence, as a Force Majeure event.




Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 11

- G. Seller shall ensure that all product delivered to PREPA enters PREPA's pipelines at a temperature below one hundred eighty-five degrees Fahrenheit (185° F) and above one hundred twenty-five degrees Fahrenheit (125° F), and at a pressure below one hundred fifty (150) psig and above one hundred twenty-five (125) psig, in each case as measured at the Delivery Point.
- H. If Seller, for any reason, except as provided in paragraph (E) of Article VII (Price) or Article XI (Force Majeure) of this Contract, fails to deliver the Fuel required under this Contract, PREPA may procure replacement fuel from any other supplier. In such event, PREPA shall notify Seller of the chosen supplier and applicable price, and Seller shall reimburse PREPA for any difference which PREPA may have paid in excess of the contracted price by a credit to the next invoice sent to PREPA after PREPA submits evidence of such payment. Seller acknowledges and agrees that, by accepting such credit, PREPA does not waive any rights or remedies available to PREPA under the law, including rights to any claims or actions for damages caused by noncompliance by Seller with the terms of this Contract.
- I. Seller shall bear responsibility for any and all damages to the dock or to any other property caused by the vessel during delivery. At all times until Fuel has reached a Delivery Point, Seller shall ensure that all such Fuel or other product deliveries, transfers and operations comply with Homeland Security Regulations including 33 CFR §§ 104 & 105, as well as 33 CFR §§ 154, 155 & 156.
- J. Intentionally Omitted.
- K. Seller shall at all times execute reasonable plans to avoid human hazards or damage to public or private property that may be caused by Seller's operation and




Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 12

performance under this Contract, including under extreme weather conditions or other foreseeable Force Majeure events.

- L. Seller shall ensure that every vessel used in deliveries of Fuel to PREPA complies with applicable law and can be accepted by the delivery terminal(s). Seller shall bear the risk of any failure to obtain such acceptance.
- M. Seller shall familiarize itself with each Generating Station location and the corresponding Delivery Point referred to in this Contract. Seller shall ensure that it has the proper personnel and equipment to service such locations and Delivery Points in accordance with this Contract.

ARTICLE V: Specifications

- A. Upon each delivery, Seller hereby represents and warrants to PREPA that all Fuel supplied meets all of the specifications and requirements set out in Exhibit A (Specifications) and this Article.
- B. Seller shall ensure that the delivered Fuel (i) is appropriate for burning without requiring extraordinary maintenance to the boiler, associated equipment, or causing other extraordinary problems in the operation of a Generating Station, (ii) conforms to all prevailing Federal or local environmental rules and regulations, including EPA and EQB requirements, and (iii) is free of any components that have been derived from petrochemical processes such as ethylene, cracker residues, olefin, resins, styrenes, acetates, phenols, inorganic acids and microorganisms, with no water, solid or fibrous foreign matter, and contains no hazardous wastes including chlorinated hydrocarbons.



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 13

- C. Seller further warrants, and shall ensure, that the delivered Fuel shall be homogeneously stable and shall not separate, stratify or form undesirable compounds by chemical reaction during shipping, storage, handling and heating. A Fuel shipment shall be considered to be homogeneous when the maximum difference between any two (2) samples from different strata or compartments is not greater than 0.3 degrees for tested API and 0.02 weight percent in tested sulfur, provided that the qualities of all tested samples are within all contracted specifications.
- D. In the event that during the term of this Contract, either Federal or Commonwealth of Puerto Rico laws or regulations are modified, requiring the burning of a fuel with different specifications than those incorporated into this Contract, and if these changes require an adjustment in the price of the Fuel to be supplied, then the Parties shall meet within five (5) days from the enactment of any such law or regulation to discuss the matter for the purpose of establishing new price terms satisfactory to both Parties. If an agreement cannot be reached prior to the effective date of any such law or the enforcement date of any such regulations, then PREPA shall have the right to terminate this Contract.
- E. In the event that, during the term of this Contract, PREPA requests a fuel of different specifications than those incorporated into this Contract, Seller and PREPA shall meet to negotiate in good faith new price terms (lower or higher than the contracted price) for said different fuel oil specifications satisfactory to both Parties. If an agreement cannot be reached, the Contract terms and the contracted fuel specification incorporated herein shall prevail.



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 14

- F. To assure fuel compliance with specifications, before discharge of each delivery, the Parties will jointly contract a mutually agreed independent laboratory company (the "**Independent Laboratory**") accredited by U.S. Customs and Border Protection as per 19 CFR § 151.12 to perform laboratory analyses of the Fuel actually being supplied as per specified methods. The Parties shall procure a laboratory certificate, including all the parameters contained in Exhibit A (Specifications) and this Article and signed by an authorized chemist in Puerto Rico, from such Independent Laboratory, and its results shall be considered final and binding for both Parties with respect to the corresponding delivery.
- G. The sampling process shall allow for a large enough representative split of the volumetric composite sample such that PREPA can receive a one (1) liter sample for its own use. The sample shall be provided to PREPA by the Independent Laboratory within the next twenty-four (24) hours after completion of Fuel discharge or transfer. The cost of such additional sampling shall be borne by PREPA.
- H. Should PREPA encounter difficulties in the efficient handling and burning of the fuel actually delivered, special analysis of the retained independent inspector's sample shall be requested by PREPA and made by an authorized laboratory licensed in Puerto Rico (or if such laboratory is not available in Puerto Rico to run the required tests, a laboratory in the U.S. can be used as a substitute), so as to determine whether such difficulties are attributable to the fuel delivered not being in compliance with the specifications and Seller warranties under this Contract.



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 15

- I. If it is determined that the difficulties are attributable to the fuel not being in compliance with the specifications or Seller warranties under this Contract, then Seller shall take such immediate measures as necessary to correct the deviation and to prevent further difficulties. PREPA's acceptance of, or agreement to, remedial or preventive measures shall not constitute a waiver of any rights available to it under the law, including rights of actions or claims for damages caused by Seller's noncompliance with the Fuel specifications or with any other provision of this Contract.

- J. If during any delivery Seller fails to meet the specifications and warranties as contracted, PREPA reserves the right to any combination of the following: (i) immediately reject the shipment, (ii) evaluate the deviation and propose to Seller the remediation of such failure through a deduction of a dollar amount from the amounts due to Seller for nonconforming fuel, and/or (iii) establish a claim for nonperformance and/or breach of contract. PREPA shall notify Seller of any specification non-compliance that will result in product being rejected or discounts to be applied before discharge commences, and discharge will be suspended until Seller and PREPA can reach an agreement as to the appropriate remedy for failure of fuel to meet the specifications and warranties as contracted.

- K. Seller shall be responsible for any fines, penalties, damages, expenses, costs, or claims, actions, and causes of actions, which may arise as a consequence of any deviations or variations of the fuel provided by Seller from the contracted or guaranteed specifications, requirements and warranties for Fuel to be delivered. Without limiting the foregoing sentence, if any deviations or variations from the



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 16

Fuel specifications exist when such fuel is delivered to PREPA, Seller shall indemnify PREPA against, and hold and save PREPA harmless from, and will defend PREPA, its officers, agents, and employees, from any claims, actions, causes of actions, damages, costs, fines, penalties and expenses due or attributable to variations or deviations from Fuel specifications as contracted and guaranteed by Seller.

ARTICLE VI: Laytime and Demurrage

- A. Seller shall bear all demurrage incurred in connection with the vessel(s) delivering product pursuant to this Contract, and PREPA shall assume no responsibility or liability for the same, unless such demurrage is attributable to the willful misconduct or gross negligence of PREPA or suspension of delivery in accordance with paragraph (E) of Article VII (Price).
- B. Seller shall deliver, or ensure the delivery by the vessel's master or its agent of, a notice of the impending arrival of each vessel to PREPA seventy-two (72), forty-eight (48), and twenty-four (24) hours before the vessel's arrival. In the event the vessel is delayed in getting into berth after giving notice, due to docking restrictions or for any reason over which PREPA has no control, such delay shall not count as used laytime.
- C. Seller acknowledges and agrees that it is the practice of CORCO/Proterm to load and unload vessels at the CORCO docks in order of their arrival to the CORCO/Proterm buoy, subject to the availability of the docks, and that PREPA shall not be responsible for demurrage attributable to dock unavailability.




Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 17

- D. Laytime shall commence six (6) hours after the later to occur of (i) Seller tendering a Notice of Readiness to PREPA or (ii) arrival at berth and clearance by Customs. Laytime shall commence within the meaning of this Article regardless of whether the vessel arrives during or outside normal business hours. Laytime shall not be increased as a result of, nor shall PREPA be held accountable for, any delay in berthing the vessel attributable to the failure of Seller to give the notices set forth in this Article.
- E. Allowed laytime shall be forty-two (42) hours for each delivery of Fuel under this Contract, provided that the allowed laytime shall be increased by the time a vessel is prevented or delayed from arriving, discharging cargo, disconnecting or departing due to:
1. such vessel's condition, capabilities or facilities, or failure to comply with U.S. Coast Guard or other governmental agency regulations, which prevent or impair Seller from connecting, discharging its entire cargo within thirty (30) hours, disconnecting and departing within the allowed laytime;
 2. Seller's failure to deliver Fuel in compliance with the specifications, warranties or requirements of this Contract, including the unloading temperature and pressure specified in paragraph (G) of Article IV (Delivery and Title);
 3. regulations of port authorities or the vessel's owners or master;
 4. Seller's total cargo volume exceeding the established maximum cargo volumes;
 5. tide conditions, heavy seas, wind or bad weather of any nature; or



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 18

6. Seller's personnel or agents failing to promptly perform the connection or disconnection of Seller's discharging hoses.
- F. If a vessel is delayed at any discharging berth for ship's purposes or reasons beyond the control of PREPA, laytime shall cease when discharging is completed even though hoses are not disconnected. If regulations of port authorities or the vessel's owner prohibit discharging of the cargo at night, time so lost shall increase the allowed laytime. If PREPA prohibits discharging at night, time lost shall count as laytime. In all other cases laytime shall continue to run until cargo hoses or loading arms, as the case may be, have been disconnected.
- G. If, and only to the extent, demurrage claims arise as a result of PREPA willful misconduct or gross negligence, PREPA shall pay demurrage per running hours, and pro-rata for a part thereof, for all time that exceeds the allowed laytime at the rate stated in the Voyage Charter Agreement for the vessel if such vessel is contracted under a voyage charterparty ("VCP") arrangement. For time charter party ("TCP") vessels, the Parties shall use current TC3 value plus Wordscale 10 points with a minimum flat rate of US\$ 5.50 per metric ton. Seller shall present all demurrage claims in writing along with substantiation of PREPA's willful misconduct or gross negligence in connection therewith no later than ninety (90) days after the Fuel delivery date, after which PREPA shall no longer be liable for any demurrage charges for said delivery.
- H. If discharging has ceased because it is completed or if the discharging rate has decreased to a rate which will not permit discharge of the entire cargo within forty-two (42) hours, or due to any other problem with the vessel, PREPA may order the



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 19

vessel off the dock at no cost to PREPA. If practical, the vessel shall be allowed to return later and complete discharging. In the event that the discharging rate has decreased to a rate which will not permit discharge of the entire cargo within forty-two (42) hours, PREPA may delay ordering the vessel off the dock and allow pumping to continue, provided Seller pays the dock per hour fee rate and any other associated cost.

- I. Prior to making any claim for demurrage, Seller shall provide to PREPA written notice, and all available and appropriate documentation and evidence in support, of any demurrage claim which Seller may bring against PREPA, including evidence of Seller's compliance with this Article.

ARTICLE VII: Price

- A. The price to be paid for each barrel of Fuel delivered throughout the entire duration of this Contract will consist of a fixed price differential plus an escalator.
- B. The fixed price differential (in U.S. dollars per barrel) for all deliveries of Fuel to all Generating Stations under this Contract shall be \$4.30 per barrel, for payment sixty (60) days after completion of delivery; or \$2.88 per barrel, for payment thirty (30) days after completion of delivery; or \$2.17 per barrel, for payment fifteen (15) days after completion of delivery.
- C. The escalator shall be increased or decreased according to Platt's Oilgram Price Report for "0.5% Dlv'd US Atlantic Coast Barge" (Platt's code AUAMA00) corresponding to the effective date of the posting for the day the Fuel delivery commences, the day before, and the day after the Fuel delivery, each one of these evaluated utilizing the following formula:




Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 20

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

Upon mutual agreement by the Parties, and subject to its obligation to provide (30) day advance notice to Seller, PREPA may choose to change the above-described fixed price differential and escalator to an alternate fixed price differential and alternate escalator. The alternate fixed price differential (in US dollars per barrel) for all deliveries of Fuel to all Generating Stations under this Contract shall be \$13.62 per barrel, for payment sixty (60) days after completion of delivery; or \$12.20 per barrel, for payment thirty (30) days after completion of delivery; or \$11.49 per barrel, for payment fifteen (15) days after completion of delivery. The alternate escalator shall be increased or decreased according to postings of the Front Month Brent Crude Oil Futures Contract published by the Intercontinental Exchange (ICE) corresponding to the effective date of the posting for the day the Fuel delivery commences, the day before, and the day after the Fuel delivery, each one of these evaluated utilizing the following formula:

100 percent (100%) of the Front Month Brent Crude Oil Futures Contract, as published by the ICE, in (\$/bbl), rounded to three (3) decimal places

The Parties may mutually agree to deem the day of commencement of delivery for pricing purposes for any particular delivery by written notice prior to actual day of commencement of delivery.



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 21

Sample calculations of the escalator and the alternate escalator a shown in Exhibit C (Sample Calculation (Escalator) and Sample Calculation (Alternate Escalator)) attached hereto and made a part hereof.

- D. Seller shall provide PREPA with a credit limit of two hundred million dollars (\$200,000,000) for the obligation arising solely under this Contract (the “**Credit Limit**”). Whenever the Credit Limit is reached, Seller shall notify PREPA thereof in writing, and PREPA shall accelerate payments of invoices in chronological order as much as necessary to comply with the Credit Limit.
- E. If a Default occurs as a result of PREPA’s failure to pay any invoice by the end of the 60-day credit term described in paragraph (E) of Article X (Measurement and Payment) or if the Credit Limit will be exceeded by a scheduled delivery, Seller may, at its sole discretion, suspend deliveries to PREPA. Where Seller suspends deliveries under this paragraph (E), Seller shall resume deliveries to PREPA as soon as such Default is cured or PREPA has reduced Seller’s exposure under such Credit Limit to allow for additional deliveries. Any costs, including demurrage, due to this suspension of delivery under these circumstances shall be borne by PREPA.
- F. The pricing period for determination of the escalator comprises the three (3) days around the deemed commencement of discharge date, as agreed by the Parties. Pricing will be established considering the deemed discharge date agreed between the Parties, and this pricing shall not be modified except by mutual agreement. Should the delivery or deemed delivery take place on a Saturday, Sunday or on a holiday, the effective prices in the last edition of Platt’s Oilgram



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 22

Price Report or published before that date will be utilized to readjust the prices.

- G. The date published prices are made effective will govern, holding the price firm until the next publication date. Should the format used by the publishers for the postings be changed, the Parties shall meet within five (5) days of the occurrence to determine how to interpret the same.
- H. Seller assumes the responsibility and costs of transportation of the product, and all other related responsibilities and costs, up to each Delivery Point.
- I. In the event, that during the term of this Contract, Platt's Oilgram Price Report or any other contracted price postings cease to exist, the Parties shall meet to establish an alternative mean to determine the contracted price satisfactory to both Parties. If the Parties are unable to agree on an alternative means to determine the contracted price within forty-five (45) days after any of the contracted price postings ceases to exist, then PREPA shall have the right to terminate this Contract.

ARTICLE VIII: Duties and Taxes

- A. The contracted price for Fuel includes all Federal, Commonwealth of Puerto Rico and local taxes, fees and established import tariffs for the Fuel being supplied. Puerto Rico's excise tax and municipal patent payment shall be fully reimbursed by PREPA and are to be presented as a separate line item on the invoice in addition to the contracted price. PREPA shall reimburse Seller the amount corresponding to the payment of the municipal patent, once Seller presents PREPA evidence, issued by the corresponding municipality, with respect to the percentage established as a basis for the calculation of the amount to be paid as



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 23

such patent. If, during the term of this Contract, the agreed percent changes, Seller shall immediately present PREPA the corresponding evidence, issued by the corresponding municipality and reflect it in the invoice.

- B. Any changes, whether up or down, in the applicable taxes, fees, or tariffs, should they be imposed, will be reflected in the price for Fuel in its entirety as long as these taxes, fees or tariffs do not discriminate whether the product is domestic or foreign, and Seller will adjust the price accordingly. However, should said new or increased taxes, fees or tariffs discriminate on the basis of whether the product is domestic or foreign and said new or increased taxes, fees or tariffs result in a lower price for domestic fuel, Seller shall supply Fuel which results in the lowest cost to PREPA. Should domestic Fuel be unavailable, the Parties shall meet within five (5) days from Seller's notification of same to discuss Fuel availability from other sources and negotiate the financial aspect of any taxes, fees or tariffs applicable to that product. If an agreement cannot be reached, PREPA shall have the right to terminate this Contract without Seller being entitled to any further compensation, except for Fuel already delivered and due by PREPA.
- C. Upon PREPA's request, Seller shall apply for any applicable waivers of taxes, fees or tariffs, and any costs associated with the application to such waivers will be passed in their entirety to PREPA.



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 24

ARTICLE IX: Guaranteed Calorific Value

- A. Seller guarantees delivery of Fuel with a minimum calorific value of 150,000 Btu/gal, as established in Exhibit A (Specifications). PREPA shall have no obligation to pay a premium for calorific values over such minimum.
- B. For any delivery by Seller in which the fuel fails to meet the guarantee set out in paragraph (A) above, PREPA shall receive a credit for a number of barrels equivalent to such deficiency, calculated on the basis of the example set out in Exhibit B (Sample Calculation (Btu Deficiency Adjustment)) attached and made a part hereof. PREPA shall receive such credit before computing the Fuel billings for the invoice applicable to such delivery.
- C. The provisions of Article V (Specifications) regarding compliance with specifications and laboratory analyses shall apply to this Article whenever required.

ARTICLE X: Measurement and Payment

- A. The quantity of Fuel delivered to PREPA shall be computed by measurements in PREPA's on-shore tanks, to be conducted by a mutually agreed independent inspector accredited by U.S. Customs and Border Protection as per 19 CFR § 151.13 and qualified by PREPA. Inspection costs shall be borne by Seller. All measurements shall be corrected to sixty degrees Fahrenheit (60° F) using the ASTM Petroleum Measurements Table 6-B. Quantities certified on the independent inspector's report will be binding for both Parties absent fraud or manifest error.



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 25

- B. Notwithstanding anything herein to the contrary, PREPA reserves the right to exclusively select and contract inspection services to conduct measurements and produce certifications of quantity at any time during the term of this Contract. If PREPA exercises this right, then this inspection cost shall be borne fully by PREPA, and Seller, at its own expense, may send its own inspector to verify these measurements.
- C. Seller shall invoice PREPA regularly and promptly after Fuel is delivered. For payment purposes, Seller shall send invoices to PREPA via e-mail in accordance with Article XIV (Notices). Seller shall also send a paper copy of all invoices by regular mail to the notice address required pursuant to Article XIV (Notices). Soft or hard copies of the inspector's certificates of quantity shall be included with each respective invoice.
- D. All invoices submitted by Seller shall include the following Certification in order to enable PREPA to proceed with its payment. This is an essential requirement, and those invoices without this Certification will not be processed for payment:

No Interest Certification:

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

Authorized Representative Signature




Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 26

- E. PREPA shall pay the undisputed portion of each invoice submitted by Seller in immediately available U.S. dollars, as provided for in Article VII (Price), within sixty (60) days after both completion of discharge for the corresponding delivery and receipt by PREPA of the invoice and all necessary documents and requirements of this Contract. Should the due date of an invoice fall on a non-business day, payment shall be made the following business day.
- F. PREPA, at its sole discretion, subject to its obligation to provide at least thirty (30) days' advance written notice to Seller, may elect to commence payment of all future invoices either fifteen (15) or thirty (30) days after completion of delivery and at the corresponding reduced fixed price differential. If PREPA elects to commence payment of future invoices thirty (30) days after completion of delivery, then PREPA may, subject to at least thirty (30) days' advance written notice to Seller, further elect to commence payment of all future invoices fifteen (15) days after completion of delivery and at the corresponding reduced fixed price differential. In each case, such election shall commence with deliveries on the day following the thirty (30) day notice period established in this paragraph. Upon making an election to pay invoices fifteen (15) or thirty (30) days after completion of delivery, PREPA shall not have the right to switch back to the sixty (60) day or thirty (30) day payment terms, as applicable, during the term of this Contract.
- G. PREPA estimates the maximum value of this Contract not to exceed \$1,170,000,000.00, and will make payments under this Contract from account #01-2321-23215.



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 27

H. PREPA represents and warrants to Seller on the date of this Contract that, as regards the proceeding commenced in respect of PREPA pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), pending as of the signing of this Contract in the PROMESA Court, Case No. 17-4780 (the **"PREPA Bankruptcy"**):

1. (i) Seller's right to payment for charges validly incurred in accordance with this Contract or owed by PREPA under this Contract arise from a post-petition transaction with PREPA, (ii) the consideration made available by Seller benefits PREPA and its affiliate subject to the PREPA Bankruptcy, and supports PREPA's obligations under this Contract, and (iii) as a result of the foregoing, Seller's right to payment for charges validly incurred in accordance with this Contract or owed by PREPA under this Contract during the PREPA Bankruptcy constitute reasonable and necessary expenses of preserving PREPA and an administrative expense; and
2. other than the PREPA Bankruptcy, except as previously disclosed in writing, there is no pending action or proceeding in which PREPA is a party before any court, governmental agency or arbitrator that could reasonably be expected to affect materially and adversely the financial condition or operations of PREPA or the ability of PREPA to perform its obligations under, or which purports to affect the legality, validity or enforceability of, this Contract as in effect on the date of this Contract.



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 28

If PREPA becomes aware that any of the representations or warranties set out above in this paragraph have become untrue or incorrect, then PREPA shall notify Seller of such event as soon as reasonably practicable.

- I. In respect of the PREPA Bankruptcy, PREPA and Seller stipulate that this Contract is a post-petition agreement executed after the petition date of the PREPA Bankruptcy and, if subject to such proceeding, then entitled to administrative expense treatment under Public Law No: 114-187 (June 30, 2016), otherwise known as PROMESA, and the Bankruptcy Code. Further, PREPA stipulates that all of Seller's costs and obligations owed to Seller under this Contract shall be treated as administrative expenses and will support such recovery in any proceeding before any relevant court.
- J. Following the resolution of the PREPA Bankruptcy, the Parties shall cooperate and discuss in good faith a reduction to the pricing and an increase to the Credit Limit under this Contract to reflect the improved credit profile of PREPA.
- K. PREPA shall invoice Seller for any claims or other amounts due to PREPA in connection with this Contract, including in connection with Seller's failure to fulfill its obligations or a claim arises for warranty, indemnity or defects of services or fuel rendered. If Seller has not paid such amounts within sixty (60) days, PREPA shall have the right either to set off such amounts due to PREPA against amounts due to Seller, or to draw upon the Performance Security, as applicable, for such amounts.



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco

Page 29

- L. The Parties shall use their reasonable efforts to resolve any dispute regarding payment of any invoice issued under this Article by amicable negotiation, provided that if the Parties fail to resolve such dispute by the payment due date, then either Party may seek to resolve such dispute in accordance with Article XIX (Choice of Law and Venue).

ARTICLE XI: Force Majeure

- A. Each Party shall be excused from performing, and shall not be liable in damages or otherwise for failure to perform, an obligation under this Contract (other than a payment obligation) to the extent that it is unable to perform or is prevented from performing by a Force Majeure event. For the purpose of this Contract, “**Force Majeure**” means any cause without the fault or negligence, and beyond the reasonable control, of the Party claiming the occurrence of such event, whether foreseeable or not, which prevents the claiming Party from performing an obligation under this Contract, provided that the Party claiming such event as Force Majeure notifies the other Party in writing of the alleged Force Majeure event within ten (10) days of its occurrence. Such notice shall include the particulars of the occurrence and, to the extent possible, its estimated duration.
- B. Force Majeure may include the following: acts of God, industrial disturbances, acts of the public enemy, war, blockages, boycotts, riots, insurrections, epidemics (including quarantine and lockdown related to such epidemics), earthquakes, storms, floods, civil disturbances, lockouts, fires, explosions, acts or failure to act of any governmental authority, and mechanical issues related to the vessel or Puerto Rico port or terminals, provided that such events, or any other claimed as



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 30

Force Majeure, otherwise meet the requirements and Force Majeure definition set out in paragraph (A) of this Article. The burden of proof as to whether a Force Majeure event has occurred shall be on the Party claiming Force Majeure.

- C. In the event that the Force Majeure claim extends for a period of more than ninety (90) consecutive days, either Party shall have the right to terminate this Contract without further obligation, except that such Party shall still be responsible for the payment of amounts due and owing under this Contract, on their due date.
- D. Upon cessation of the Force Majeure event, the Party claiming Force Majeure shall notify the other Party of the termination of the Force Majeure claim. Performance shall be resumed, but the excuse from performing due to a Force Majeure event shall not operate to extend the term of this Contract nor obligate either Party to make up deliveries or receipts, as the case may be.
- E. Seller recognizes that PREPA provides an essential service for the Commonwealth of Puerto Rico. Should any Force Majeure event cause Seller to suspend or reduce deliveries, Seller shall give PREPA first priority for supply.

ARTICLE XII: General Liabilities

- A. The Parties agree to make, use, provide, and take all proper and necessary precautions, safeguards, and protection against the occurrence or happening of injuries, death, and/or damages to any person or property during the delivery process.
- B. Each Party agrees to indemnify the other Party against, and save the other Party harmless from, public liability, costs, and expenses resulting therefrom, or damages that may happen or occur through the negligence or willful misconduct



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 31

of the indemnifying Party, its employees, agents, and subcontractors, during the performance of this Contract, or while carrying out any act or action directly or indirectly related to, or in connection with, the performance of this Contract, and from loss, liability, and fines incurred for, or by reason of violation by the breaching Party of any federal, state, or municipal ordinance or regulation of law, while a delivery is in progress.

- C. To the extent caused by Seller's negligence, Seller shall indemnify PREPA against, and save PREPA harmless from, all expenses and costs of any nature arising out of any claim due to an environmental noncompliance or violation, caused by Seller, its agents, employees, subcontractors or assignees during performance or nonperformance of its obligations under this Contract.
- D. To the extent caused by PREPA's negligence, PREPA shall indemnify Seller against, and save Seller harmless from, all expenses and costs of any nature arising out of any claim due to an environmental noncompliance or violation, caused by PREPA, its agents, employees, subcontractors or assignees during performance or nonperformance of its obligations under this Contract.
- E. Notwithstanding anything to the contrary in this Contract, neither Party shall be liable to the other pursuant to this Contract for any punitive, consequential, or exemplary damages.

ARTICLE XIII: Performance Security and Insurance

- A. Upon execution of this Contract, Seller shall provide PREPA with a Performance Bond payable to the order of PREPA, issued by a qualified surety company authorized to do business in Puerto Rico and reasonably acceptable to PREPA, in



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 32

the amount equivalent to five percent (5.0%) of the estimated Contract value set out in paragraph (G) of Article X (Measurement and Payment), governed by the laws of the Commonwealth of Puerto Rico and otherwise in a form reasonably acceptable to PREPA.

B. In lieu of a Performance Bond, PREPA will accept a Letter of Credit (such Letter of Credit or Performance Bond, a "**Performance Security**"), issued by a qualified bank reasonably acceptable to PREPA, provided that such Letter of Credit shall be for the same amount as specified for the Performance Bond in paragraph (A) above and shall satisfy the following conditions:

1. issued or notified or confirmed by a local bank in Puerto Rico;
2. unconditional and irrevocable;
3. payments made by the issuing bank on a business day by wire transfer, immediately after PREPA's first demand for payment;
4. governed and construed in accordance with the laws of the Commonwealth of Puerto Rico; and
5. otherwise in a form reasonably acceptable to PREPA.

C. Seller shall procure, and maintain in full force and effect during the term of this Contract, policies of insurance covering all operations engaged in by Seller under this Contract, including as follows:

1. Commonwealth of Puerto Rico Workmen's Compensation Insurance as required by the Workmen's Compensation Act 45-1935 of the Commonwealth of Puerto Rico; provided that Seller shall (i) also be responsible for compliance with said Workmen's Compensation Act by all



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 33

its subcontractors, agents and invitees, if any, and (ii) furnish from the Puerto Rico State Insurance Fund a certificate showing that all personnel employed in the work are covered by the Workmen's Compensation Insurance in accordance with this Contract;

2. Employer's Liability Insurance with minimum bodily injury limits of \$1,000,000 for each employee and \$1,000,000 for each accident covering against the liability covered by law upon Seller as result of bodily injury, by accident or disease, including death arising out of and in the course off employment, and outside of and distinct from any claim under the Workmen's Compensation Act of the Commonwealth of Puerto Rico;
3. Commercial General Liability Insurance with limits of \$1,000,000 per occurrence and \$1,000,000 aggregate;
4. Commercial Automotive Liability Insurance with a limit of \$1,000,000 combined single limit covering all owned or scheduled autos, or non-owned or hired autos, and including the MCS-90 (Motor Carrier Endorsement); and
5. Pollution Liability Insurance with limits of \$10,000,000 per claim and \$10,000,000 in aggregate.

D. The Commercial General Liability and the Commercial Automotive Liability Insurance under this Contract shall be endorsed to include:

1. As additional insured:

The Puerto Rico Electric Power Authority
GENERA PR LLC, as agent of the Puerto Rico Electric
Power Authority



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 34

2. a thirty (30) day) cancellation or nonrenewable notice to be sent to the above address;
3. an endorsement including this Contract under contractual liability coverage and identifying it by number, date and parties to this Contract;
4. a waiver of subrogation in favor of PREPA; and
5. the following provision on breach of warranties or conditions:

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

- E. All required policies of insurance shall be in a form acceptable to PREPA and shall be issued only by insurance companies authorized to do business in Puerto Rico. Upon request by PREPA, Seller shall furnish a certificate of insurance in original signed by an authorized representative of the insurance company in Puerto Rico describing the coverage afforded.
- F. In addition to the foregoing, Seller shall maintain adequate insurance coverage for the duration of this Contract to cover cost of replacement or repair of any breakage caused by carelessness, negligence, or lack of skill, or other similar occurrence, on the part of Seller's employees in the performance of required deliveries, including coverage for bodily and property damage and any such other items.

ARTICLE XIV: Notices

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

To PREPA:

PREPA




Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 35

c/o GENERA PR LLC, its agent
Fuels Office
250 Muñoz Rivera Ave., Suite 1200
San Juan, Puerto Rico 00918
Attention: Lorena Torres
Gerente Oficina de Combustible
legal@genera-pr.com

To Seller: Novum Energy Trading Inc.
3200 Kirby Drive, Suite 1000
Houston Texas 77098
Attention: Chris Scott, Chief Financial Officer

Notices can also be sent through e-mail and shall be deemed valid if the notified Party provides the notifying Party with confirmation of receipt, provided notices are sent to the following e-mail addresses:

To PREPA: fuels@genera-pr.com

with copy to:

legal@genera-pr.com

To Seller: netiprfuels@novumenergy.com

with copy to:

legal.global@novumenergy.com

A Party shall notify the other Party in writing upon any change of its address(es) from those set forth above, and from and after giving of such notice, the address therein specified shall be deemed the address of the notifying Party for the giving of notices.

ARTICLE XV: Compliance with Commonwealth of Puerto Rico Contracting Requirements

Seller shall comply with all applicable laws, including local and federal regulations and Executive Orders that regulate the environmental matters and contracting processes and requirements in the Commonwealth of Puerto Rico.



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 36

A. Filing of Puerto Rico Income Tax Returns

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

B. Payment of Puerto Rico Income Taxes

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




Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 37

services to be rendered under this Contract and shall forward evidence to PREPA as to its compliance with this requirement. Seller represents and warrants that it will inform PREPA if, at any time during the term of this Contract, there is any material tax dispute between Seller and any Governmental Body of the Commonwealth of Puerto Rico (other than Commonwealth tax liabilities for which Seller is not responsible under this Contract, if any).

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

Pursuant to Executive Order Number 1992-52, dated August 28, 1992 amending OE-1991-24, Seller certifies and warrants that it has made all payments required for unemployment benefits, workmen's compensation and social security for chauffeurs, whichever is applicable, or that in lieu thereof, has subscribed a payment plan in connection with any such unpaid items and is in full compliance with the terms thereof. As evidence thereof, Seller has delivered to PREPA:

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

D. Real and Personal Property Taxes

Seller hereby certifies and guarantees that it does not have any current debt




Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco

Page 38

regarding property taxes that may be registered with the Government of Puerto Rico's Municipal Tax Collection Center (*Centro de Recaudación de Ingresos Municipales* ("**CRIM**"). Seller further certifies to be current with the payment of any and all property taxes that are or were due to the Government of Puerto Rico. Seller shall provide:

1. a certification issued by the Municipal Revenues Collection Center ("**MRCC**"), assuring that Seller does not owe any tax accrued during the last five (5) years to such governmental agency with respect to personal property; or negative Debt certification issued by the MRCC with respect to personal property taxes and a sworn statement executed by Seller indicating that (i) its revenues are derived from the rendering of professional services, (ii) during the last five (5) years (or the time in which it has been providing professional services) it has had no taxable business or personal property on the 1st of January of each year, (ii) that for such reasons it has not been required to file personal property tax returns, as required under Article 6.03 of Act 83-1991, as amended and (iii) that for such reason it does not have an electronic tax file in the MRCC's electronic system.
2. an All Concepts Debt Certification issued by the MRCC assuring that Seller does not owe any taxes to such governmental agency with respect to real and personal property; or
3. a negative certification issued by the MRCC with respect to real property taxes.




Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 39

E. Sales and Use Taxes

Seller has delivered to PREPA:

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

F. Puerto Rico Child Support Administration (*ASUME*)

Seller hereby certifies that it is not duty bound to pay child support, or if so, that Seller is up to date or has a payment plan to such effects. As evidence thereof, Seller has delivered to PREPA a certification issued by the Puerto Rico Child Support Administration (*Administración Para El Sustento de Menores (ASUME)*) certifying that Seller does not have any debt, outstanding debt, or legal procedures to collect child support payments that may be registered with ASUME.

G. Resolution of Debt

If any of the certifications listed in items A through F of this Article shows a debt, and Seller has requested a review or adjustment of this debt, Seller hereby certifies that it has made such request at the time of Contract execution. If the requested review or adjustment is denied and such determination is final, Seller will provide, immediately, to PREPA a proof of payment of this debt; otherwise, Seller accepts that the owed amount be offset by PREPA and retained at the origin, deducted from the corresponding payments. Seller accepts and acknowledges its responsibility for requiring and obtaining a similar warranty and certification from

Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 40

each and every contractor and subcontractor whose service Seller has secured in connection with the services to be rendered under this Contract and shall forward evidence to PREPA as to its compliance with this requirement.

H. Organization Documents

Upon execution of this Contract, Seller shall provide:

1. a Good Standing Certificate issued by the Department of State of Puerto Rico; and
2. a Certification of Incorporation, or Certification of Organization or Certificate of Authorization to do business in Puerto Rico, issued by the Department of State of Puerto Rico.

I. Compliance with Act 1 of Governmental Ethics

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



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 41

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

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

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

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

L. Prohibition with respect to execution by public officers: (3 L.P.R.A. 8615(c))

Seller acknowledges that no public officer or employee authorized to contract on behalf of the executive agency for which he/she works may execute a contract between the agency for which he/she works and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office.



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 42

- M. Prohibition with respect to contracting with officers or employees: (3 L.P.R.A. 8615(d))

Seller acknowledges that no executive agency may execute a contract in which any of its officers or employees or any member of their family units has or has had direct or indirect economic interest during the last four (4) years prior to their holding office, unless the Governor gives authorization thereto with the previous recommendation of the Secretary of the Treasury and the Secretary of Justice.

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

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

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

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

- P. Prohibition with respect to execution by public officers contracts with former public officers: (3 L.P.R.A. 8615(h))

Seller acknowledges that no executive agency shall execute contracts with or for the benefit of persons who have been public officers or employees of said



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 43

executive agency until after two (2) years have elapsed from the time said person has ceased working as such.

Q. Dispensation

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

R. Rules of Professional Ethics

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

S. Anti-Corruption Laws

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



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 44

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

5. PREPA shall have the right to terminate this Contract in the event Seller is convicted in Puerto Rico or United States Federal Court under Articles 4.2, 4.3, or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, of any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico, or any other felony that involves misuse of public funds or property, including the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 45

6. Seller represents and warrants that it has not violated and will not violate, conspire to violate, or aide and abet the violation of any Anti-Corruption Laws. No funds transferred by PREPA to Seller shall be transferred by the Seller, in violation of any Anti-Corruption Laws.
7. Seller represents and warrants that it is not a Sanctioned Person or is located, organized or resident in Sanctioned Country.
8. Seller represents and warrants that it maintains and implement policies and procedures and controls reasonably designed to ensure compliance with the Anti-Corruption Laws and Sanctions and will promptly notify PREPA in writing if Seller becomes subject to any investigation by law enforcement or regulatory authorities in connection with the Anti-Corruption Laws or Sanctions, and will at all times comply with all applicable law regarding non-discrimination.
9. Seller represents, warrants and attests, subject to penalties for perjury, that no representative of Seller, directly or indirectly, to the best of the Seller's knowledge, entered into or offered to enter into any combination, conspiracy, collusion, or agreement to receive or pay any sum of money or other consideration for the execution of this Contract.
10. Seller represents and warrants that it will inform PREPA if now, or at any time during the term of this Contract, it or its representatives become aware that they are subject to investigation in connection with criminal charges related to acts of corruption, the public treasury, the public trust, a public function or charges involving public funds or property.



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 46

T. Provisions Required under Act 14-2004

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

U. Contract Review Policy

1. The Parties acknowledge that Seller has submitted the certification titled "Contractor Certification Requirement" required in accordance with the Contract Review Policy of the Financial Oversight and Management Board for Puerto Rico, effective as of November 6, 2017 and amended on October 30, 2020, signed by Seller's Executive Director (or another official with an equivalent position or authority to issue such certifications). A signed copy of the "Contractor Certification Requirement" is included as an annex to this Contract.
2. Seller represents and warrants that the information included in the Contractor Certification Requirement is complete, accurate and correct, and that any misrepresentation, inaccuracy or falseness in such Certification will render this Contract null and void and Seller will have the obligation to reimburse immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under this Contract.
3. For this Contract, the transfer of skills and technical knowledge required by the Certified Fiscal Plan is inapplicable given the non-recurring or specialized nature of the contracted services.



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 47

4. Seller expressly agrees that the conditions outlined throughout this paragraph (U) are essential requirements of this Contract. Consequently, should any one of these representations, warranties, or certifications be incorrect, inaccurate, or misleading, in whole or in part, there shall be sufficient cause for PREPA to render this Contract null and void and to terminate it with immediate effect, and Seller shall reimburse PREPA all moneys received under this Contract.

ARTICLE XVI: Assignments and Subcontracting

- A. This Contract, as well as any rights, duties, liabilities, or obligations under it, cannot be assigned, transferred, subcontracted, hypothecated or otherwise disposed of by either Party without the prior written consent of the other Party, and such consent shall not be unreasonably withheld. Seller acknowledges that PREPA does not favor requests for assignment, transfer, subcontracting, hypothecation, or other types of disposal of this Contract and/or duties or obligations under it, and will have reasonable grounds not to approve any request to that effect, unless, in the business judgment of PREPA, the particular circumstances of the request warrant its approval and the assignment, transfer, subcontracting, hypothecation, or disposal does not operate against PREPA's best interests.
- B. No subcontract shall be considered for PREPA's approval, except when the following requirements are met: (i) Seller delivers PREPA a copy of the subcontract, not less than thirty (30) days prior to the effective date of the proposed subcontract; (ii) the subcontract includes, as a condition for its legal validity and enforceability, a provision whereby PREPA has the right to substitute, subrogate,



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 48

or assume Seller's rights under the subcontract, in the event that PREPA declares Seller in breach or default of any of the Contract terms and conditions; (iii) the subcontract includes, as a condition for its validity and enforceability, a provision establishing for the subcontractor the obligation to comply with all Seller's obligations under this Contract (a mirror image clause), except for such obligations, term, and conditions which exclusively relate to works or services not included under the subcontract. Consent to assignment or subcontracting under this Article shall not relieve Seller of its full responsibilities under this Contract, nor be construed as an approval of the terms of said assignment or subcontract. Seller shall be responsible for all services performed by its subcontractors, employees, agents or assignees, whose performance Seller shall ensure complies with the provisions of this Contract.

C. Notwithstanding paragraph (A) above, Seller may assign:

1. this Contract or any rights or obligations arising out of it, without prior consent of PREPA, to one of its affiliates, provided that such affiliate is a U.S. incorporated, substantially capitalized trading entity, and fully owned, directly or indirectly, by Novum Energy Trading Corp., a corporation incorporated under the laws of the British Virgin Islands. Prior to assignment, Seller shall provide PREPA with all the documentation that certifies that the assignee satisfies the foregoing criteria; and
2. the right to be paid under invoices created under this Contract, provided that (i) any resultant payment complies with applicable law, (ii) Seller shall notify PREPA of the assignment or transfer via written notice in a form



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 49

reasonably acceptable to PREPA, in accordance with the provisions of Act 21-2012 and this Contract, and said notice shall indicate the rights granted, including reasonable proof that the assignment has been made, the exact amount of funds to be assigned or transferred, and specific identification information regarding the assignee (full name of the person or company), address and any other contact information, and (iii) Seller shall provide PREPA with a cashier's check or money order payment of two hundred dollars (\$200), payable to "Puerto Rico Electric Power Authority", for administrative costs for processing said assignment. Seller acknowledges and agrees that PREPA's payment obligation under any assignment of funds will cease upon payment of the outstanding amounts under this Contract, and that PREPA shall not be required to make payments or transfer any funds for an amount that exceeds the payment to which Seller is entitled to under this Contract.

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



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 50

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

ARTICLE XVII: Financial Reporting

Intentionally left in blank

ARTICLE XVIII: Contingent Fees

- A. Seller represents and warrants that it has not employed any person to solicit or secure this Contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this representation or warranty will give PREPA the right to immediately terminate this Contract and/or to deduct from any payment or from the Performance Security the amount of such commission, percentage, brokerage, or contingent fee, or to claim said amount by whatever means available under the law.
- B. No officer, employee or agent of PREPA or of the Commonwealth of Puerto Rico, or of any Municipal Government of Puerto Rico, shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Contract if made with a well-known oil corporation for its general benefit, although said corporation employs a relative, by reasons of consanguinity or affinity, of a PREPA employee.
- C. Seller represents and warrants that it is authorized to enter into and to perform its obligations under this Contract, and that it is not prohibited from doing business in Puerto Rico or barred from contracting with agencies or instrumentalities of the



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 51

Commonwealth of Puerto Rico.

ARTICLE XIX: Choice of Law and Venue

This Contract, its Exhibits and any other document specifically incorporated into it shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico. All actions and proceedings arising out of or relating to this Contract will be heard and determined in the United States District Court for the District of Puerto Rico (“**USDCPR**”), and the Parties hereby irrevocably submit to the jurisdiction of such court in any such action or proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such action or proceeding. In the event that the USDCPR does not have jurisdiction over an action or proceeding, the Parties agree that such action or proceeding will be heard and determined in the courts of the Commonwealth of Puerto Rico with jurisdiction. The Parties hereby irrevocably waive all rights to trial by jury in any action, proceeding or counterclaim (whether based in contract, tort or otherwise) arising out of or relating to this Contract or the actions of any Party or their respective representatives in the negotiation or performance hereof.

ARTICLE XX: Code of Ethics

Each Party represents and warrants that, in connection with this Contract:

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



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 52

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

ARTICLE XXI: Modification and Novation

No modification, amendment, change, renewal, extension, discharge, or waiver of this Contract, or any provision thereof, shall be valid or binding except by a written agreement of the Parties executed by a duly authorized officer of each Party. No such modification, amendment or change to this Contract shall be understood as a contractual novation unless expressly agreed in writing by the Parties, including in cases where PREPA grants Seller a time extension for compliance with any of its obligations or where PREPA waives or resolves any of its rights under this Contract.

ARTICLE XXII: Separability

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

ARTICLE XXIII: Interpretation

- A. The words "include" and "including" mean "including, but not limited to" and corresponding grammatical variants.



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 53

- B. Words and abbreviations not defined in this Contract which have generally accepted technical or design, engineering, or construction industry meanings are used in this Contract in accordance with such recognized meanings.
- C. References to a person include such person's successors and assigns, provided that with respect to a Party and its rights and obligations under this Contract, references to a Party shall only include such Party's successors and assigns if this Contract permits such successors and assigns.
- D. The words "day" and "days" refers to calendar days unless specified as business days. Business days shall mean the days on which banks are open for business in Puerto Rico.
- E. Nothing in this Contract shall be construed or interpreted to limit the Puerto Rico Energy Bureau's powers under the laws of the Commonwealth of Puerto Rico.
- F. This Contract may be executed in any numbers of counterparts, and may be delivered by electronic mail, and each such copy when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same Contract.

ARTICLE XXIV: Entire Agreement

This Contract, together with its Exhibits A (Specifications), B (Sample Calculation (Btu Deficiency Adjustment)), and C (Sample Calculation (Escalator)), constitutes the entire agreement of the Parties as to the subject matter addressed herein, and supersedes any and all prior agreements between PREPA and Seller.

[Signatures appear on the following page.]



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 54

IN WITNESS WHEREOF, the Parties have caused this Contract to be duly
executed as of 30th October, 2023, in San Juan, Puerto Rico.

The Puerto Rico Electric Power Authority,
as PREPA



Brannen McElmurray
Authorized Signatory for Genera PR LLC,
exclusively as agent on behalf of and for
the account of PREPA

Novum Energy Trading, Inc.,
as Seller



Christopher J. Scott
Chief Financial Officer
EIN: 46-1332185



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 55

EXHIBIT A
SPECIFICATIONS

PARAMETER	ASTM METHOD	MINIMUM	MAXIMUM
SAMPLING	D-4057	3 LEVELS COMPOSITE - (UML)	
GRAVITY, API DEGREE AT 60°F	D-287	10.5	23
VISCOSITY, SFS AT 122°F	D-445, D-88	65	350
WATER & SEDIMENT, % VOLUME	D-1796, D-473, D-95	-	1.0
FLASH POINT, DEGREE F, PMCT	D-93	150	
SULFUR, % WEIGHT	D-4294	-	0.49
ASH, % WEIGHT	D-482	-	0.1
ASPHALTENES, % WEIGHT	D-3279	-	8.0
POUR POINT, DEGREE F	D-97	-	60
SODIUM + POTASSIUM, PPM	D-5863	-	35
VANADIUM, PPM	D-1548, D-5708, D-5863	-	150
CALCIUM, PPM	D-5863	-	75
HEATING VALUE, BTU/GAL (GROSS) AT 60°F	D-240	150,000	-



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 56

EXHIBIT B

SAMPLE CALCULATION (BTU DEFICIENCY ADJUSTMENT)

Example of calculation to determine credit due to PREPA if Seller supplies fuel of lower heat content than the guaranteed calorific value (in Btu):

Assume:

1. Guaranteed calorific value is 150,000 Btu/gallon of fuel measured at 60° F.
2. Seller delivers 5,000 barrels of fuel measured at 60° F.
3. The inspector's certificate of the fuel delivered indicates an API degree of 15.8 measured at 60° F which is equivalent to 8.0 lbs./gallon.
4. Fuel with a heating value of 17,500 Btus per pound or that measures 140,000 Btus/gallon measured at 60° F, (8.0 lbs./gallon) (17,500 Btus/lb.) = 140,000 Btus/gallon. Therefore actual Btus delivered were 140,000 Btus/gallon.

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

Calculation:

$$(5,000 \text{ barrels}) \times ((150,000 - 140,000) / 150,000) = 333.33 \text{ bbl.}$$

PREPA receives a deficiency credit for 333.33 bbl.



Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 57

EXHIBIT C

SAMPLE CALCULATION (ESCALATOR)

	Platt's Oilgram Price Report 0.5% S Marine Atlantic Coast	
December 20, 2022	88.230	\$/Bbl
December 21, 2022	89.210	\$/Bbl
December 22, 2022	88.270	\$/Bbl

Proceed with Platt's 0.5% S Marine Atlantic Coast Average Calculation	
Average = (88.230 + 89.210 + 88.270) / 3 =	88.570

Escalation Factor for a delivery starting on December 21, 2022 =	88.570	\$/Bbl
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SAMPLE CALCUATION (ALTERNATE ESCALATOR)

Physical Date	Front Month Contract	ICE Front Month BRENT Crude Oil Futures	
December 25, 2022	February-2023	80.250	\$/Bbl
December 26, 2022	February-2023	81.500	\$/Bbl
December 27, 2022	February-2023	82.755	\$/Bbl

Proceed with ICE Front Month Brent Crude Oil Futures Average Calculation	
Average = (80.250 + 81.500 + 82.755) / 3 =	81.502

Escalation Factor for a delivery starting on December 26, 2022 =	81.502	\$/Bbl
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Contract - No. 6 Fuel Oil - Aguirre, Costa Sur, San Juan and Palo Seco
Page 58

EXHIBIT D
DESIGNATED STORAGE TERMINALS

Novum has storage agreements in place for fuel oil tank lease space at two facilities. Please find a summary below of shell capacities at each location. Novum is always reviewing and analyzing opportunities to incrementally change its tank footprint as necessary.

Ocean Point Terminals, St. Croix, US Virgin Islands
584,000 barrels

CORCO, Puerto Rico
426,000 barrels


