

[CONFIDENTIAL DRAFT AS OF ~~12/21/2020~~[12/22/2020](#)]

POWER PURCHASE AND OPERATING AGREEMENT
BETWEEN
PUERTO RICO ELECTRIC POWER AUTHORITY
AND
[•]
DATED [•]



**Puerto Rico
Electric Power
Authority**

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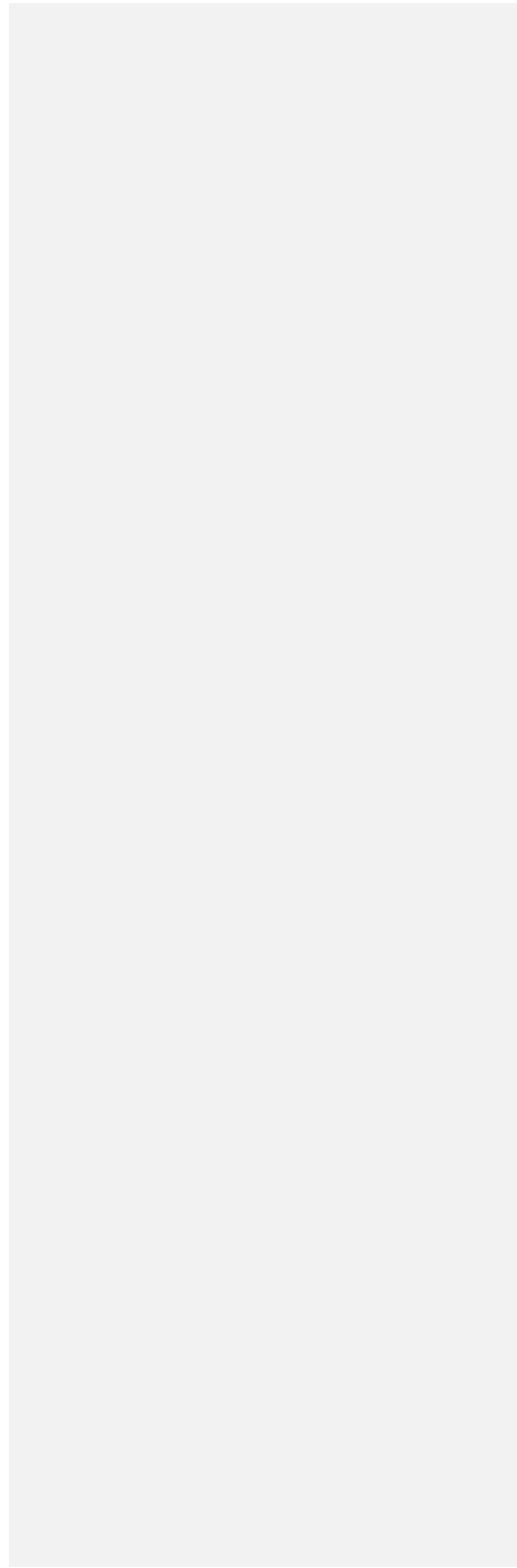
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THIS POWER PURCHASE AND OPERATING AGREEMENT (the “**Agreement**”) is entered into as of this [●] day of [●] (the “**Agreement Date**”) by and between the **PUERTO RICO ELECTRIC POWER AUTHORITY** (including any successor thereto, “**PREPA**”), a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by Act of May 2, 1941, No. 83, as amended, employer identification number [●], represented in this act by its Executive Director, Mr. [●], of legal age, [married], [engineer] and resident of [●], Puerto Rico; and [●] (“**SELLER**”), a [●] company, authorized to do business in Puerto Rico, employer identification number [●], with its principal office at [●], and represented in this act by its [●], [Mr./Ms.] [●], of legal age, [married], and a resident of [●], who is authorized to sign this Agreement on behalf of SELLER as certified by the Resolution dated [●]. PREPA and SELLER are herein individually referred to as a “**Party**” and collectively referred to as “**Parties.**”

RECITALS

WHEREAS,

- A. to procure renewable energy generation and energy storage services at one or more sites across the island of Puerto Rico in accordance with the requirements of the Puerto Rico Energy Public Policy Act (Act 17-2019), the Puerto Rico Energy Diversification Policy through Sustainable and Alternative Renewable Energy Act, Act 82-2010, the Final Resolution and Order on PREPA’s Integrated Resource Plan issued by PREB in Case No. CEPR-AP-2018-0001 on August 24, 2020, and the Resolution and Order on PREPA’s Draft Procurement Plan issued by PREB in Case No. NEPR-MI-2020-012 on December 8, 2020, PREPA has conducted a competitive procurement process by a Request for Proposals issued on [●] (the “**RFP**”) to select one or more developers to (i) design, construct, install, interconnect, test, commission, operate and maintain renewable energy generation, virtual power plants, and/or energy storage resources, and (ii) enter into agreement(s) with PREPA for the same (collectively, the “**Renewable Energy & Storage Procurement Program**”);
- B. SELLER, among other bidders, (i) submitted a proposal to participate in the Renewable Energy & Storage Procurement Program in response to the RFP issued by PREPA on [●] 2020 (the “**Bid Submission Date**”), together with an on-demand letter of credit (the “**Bid Security**”) and (ii) desires to (1) develop a [●] MW [photovoltaic solar energy generation]¹ facility, and (2) sell and make available to PREPA all of the capacity, Net Electrical Output, Ancillary Services and Green Credits of/from such facility exclusively to PREPA in accordance with this Agreement;
- C. PREPA (i) selected SELLER as one of the preferred bidders following the submission and evaluation of all proposals, and (ii) desires to purchase all of the capacity, Net Electrical Output, Ancillary Services and Green Credits of/from such facility in accordance with this Agreement; and
- D. Each Party’s governing board, as well as FOMB, P3A and PREB, have approved this Agreement as part of the Renewable Energy & Storage Procurement Program.

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

¹ **NOTE:** Draft agreement contemplates a solar project, but PREPA will adapt it for wind, run-of-river hydro and other renewable generation.

ARTICLE 1. DEFINITIONS & INTERPRETATION

1.1 Definitions

In this Agreement:

“**AC**” means alternating electrical current.

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

“**Affiliate**” means, with respect to a Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls (*e.g.*, a parent or grandparent company), is Controlled by (*e.g.*, a subsidiary company), or is under common Control (*e.g.*, a sister company) with, such Person.

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

“**Agreement Date**” has the meaning set forth in the preamble of this Agreement.

“**Agreement Year**” means each period of twelve (12) consecutive Months, provided that (i) the first such period shall begin on the Commercial Operation Date, (ii) each such subsequent year shall begin on the corresponding anniversary of such earlier date, and (iii) the last such period shall expire at the end of the Term.

“**Ambient Conditions**” has the meaning set forth in paragraph 2.a of Appendix G (*Determination of Deemed NEO*).

“**Ancillary Services**” means the services described in Appendix R (*Ancillary Services*).

“**Applicable Law**” means, with respect to any Person, any constitution, treaty, statute, law, rule, regulation, ordinance, judgment, order, decree, governmental consent or approval or any published directive, guideline, requirement or other governmental restriction, which has the force of law, or any determination, or interpretation of any of the foregoing, by any judicial authority, which legally binds such Person or its property whether in effect as of the Bid Submission Date or thereafter.

“**Applicable Standards**” means the MTRs, the PREPA Transmission and Distribution Standards, any other applicable PREPA standards that PREPA has made available or identified to SELLER as applicable to SELLER’s performance of its obligations under this Agreement, and any other codes, standards or requirements set forth in any Applicable Law, including any applicable federal, state or local code, the latest standards of the Institute of Electrical and Electronic Engineers (IEEE), National Electrical Manufacturer’s Association (NEMA), American Concrete Institute (ACI), American National Standards Institute (ANSI), International Code Council Code (ICC), National Fire Protection Association and the North American Electric Reliability Corporation (NERC), as well as the latest editions of the National Electrical Code and the National Electrical Safety Code (NESC), to the extent not inconsistent with the foregoing, in each case as modified from time to time.

“**Approved Design**” has the meaning set forth in Section 4.1c.

~~“Base Annual Quantity” means the P50 Energy Yield for such year, approved by PREPA in accordance with Section 6.10 (Base Annual Quantity).²~~

“Base Rate” has the meaning set forth in Appendix F (*Compensation & Example of Price Calculation*).

“Bid Security” has the meaning set forth in Recital B in the preamble of this Agreement.

“Bid Submission Date” has the meaning set forth in Recital B in the preamble of this Agreement.

“Billing Period” means a Month, provided that (a) the first such period shall begin on the Initial Synchronization Date and end on the final Day of the Month in which the Initial Synchronization Date occurs, and (b) the last such period shall begin on the first Day of the Month in which the Supply Period will expire and end on final Day of the Supply Period.

“Bulk-Power System EO” means E.O. 13920 of May 1, 2020 as supplemented by and including the rules and regulations published by the U.S. Department of Energy in connection therewith, as such may be modified from time to time.

“Business Day” means a Day other than (a) a Saturday, a Sunday or a Day on which commercial banks in San Juan, Puerto Rico are required or authorized to close, or (b) any other Day recognized as a holiday by PREPA as listed on Appendix A (*Holidays*) hereto or notified to SELLER from time to time.

“Capacity Shortfall LDs” has the meaning set forth in Section 5.3b~~3~~2.

“Claims” means all claims, actions, suits, or proceedings brought by any Person for liabilities, judgments, losses, costs (including court costs, attorneys’ fees and costs of investigation), fines, penalties, expenses and damages of whatsoever kind or nature, arising in contract, tort, or otherwise.

“Closing Date” has the meaning set forth in Section 2.3 (*Initial Effectivity & Closing Date*).

“COD Termination Event” means the accrual of Delay Liquidated Damages under this Agreement (determined without reference to the Seller Liability Cap) in excess of the Seller Liability Cap prior to the achievement by SELLER of the Commercial Operation Date.

“Commercial Operation” means satisfaction of the requirements set forth in a certificate issued by SELLER in accordance with Section 5.3d~~g~~ in the form set forth in Appendix W (*Form of Commercial Operation Date Certificate*).

“Commercial Operation Date” means the date when SELLER first achieves Commercial Operation.

~~“Construction Start” means satisfaction of the requirements set forth in a certificate issued by SELLER in the form set forth in Appendix V (*Form of Construction Start Date Certificate*).~~

~~“Construction Start Date” means the date on which SELLER achieves Construction Start, as evidenced by a certificate issued by SELLER to PREPA in a form set forth in Appendix V (*Form of Construction Start Date Certificate*).~~

²NOTE: PREPA to confirm whether to use P50 or an annualized Expected NEO.

“Construction Start Termination Event” means SELLER’s inability to achieve the [Construction Start Date by the Guaranteed Construction Start Date](#).

“Consulting Technical Expert” has the meaning set forth in Section 3.1 (*Consulting Technical Expert*).

“Contract Capacity” means, at any given time, the lower of (i) the Maximum Dispatch Limit, and (ii) the Generating Capacity.

“Contract Degradation” means [●]%.³

“Contract Rate” has the meaning set forth in Appendix F (*Compensation & Example of Price Calculation*).

“Control” means (a) the ownership (whether directly or indirectly) of more than fifty percent (>50%) of the total issued voting share capital or other voting interest of that company or corporation, or (b) the ability to unilaterally appoint a majority of the board directors or equivalent body of that company or corporation through the ownership of securities with voting power or otherwise, without the need of the vote or approval of another, or (c) the ability to unilaterally direct the business affairs and/or operations of that company or corporation, without the need of the vote or approval of another; and the terms **“Controls,” “Controlled,”** and **“Controlling”** shall have a corresponding meaning. For the avoidance of doubt, if a corporation is owned by two (2) shareholders at exactly fifty percent (50%) each, then that corporation shall not be considered under the control of either shareholder.

“COR3” means the Central Recovery and Reconstruction Office of Puerto Rico.

“Day” means a period of twenty-four (24) consecutive hours, beginning at 00:00 hours on any Gregorian calendar day and ending at 24:00 hours on such day Puerto Rico time.

“DC” means direct electrical current.

“Deemed NEO” means, for any Deemed NEO Period, the quantity of energy deemed available at the Interconnection Point (up to the Expected NEO for such period), but not taken by PREPA as a result of a PREPA Risk Event, in each case as determined in accordance with Appendix G (*Determination of Deemed NEO*).

“Deemed NEO Period” has the meaning set forth in Appendix G (*Determination of Deemed NEO*).

“Default” has the meaning set forth in Section 16.1 (*Definition*).

“Defects Liability Period” has the meaning set forth in Section 5.4b.

“Delay Liquidated Damages” has the meaning set forth in Section 3.5 (*Delay Liquidated Damages*).

“Derated Quantity” means, for each Event Interval, the quantity of energy by which the Expected NEO for such interval exceeds the Net Electrical Output during such interval, provided that if the

³~~NOTE: Should correspond to the rate of degradation used in the Energy Yield Assessment Report.~~

Net Electrical Output exceeds the Expected NEO for such interval, then the Derated Quantity for such interval shall equal zero (0).

“**Derating**” means, for any Time Interval, SELLER’s inability or failure to make Net Electrical Output available at the Interconnection Point in a quantity corresponding to the Expected NEO for such interval, but excluding any period of Outage.

“**Development Abandonment**” means that SELLER permanently ceases the development and construction of the Facility or the PREPA Interconnection Facilities prior to the Commercial Operation Date, as demonstrated by SELLER’s or its construction contractors’ personnel having withdrawn from the Site and SELLER having otherwise ceased development and construction activities related to the Facility for more than one hundred and twenty (120) consecutive Days for any reason other than as a result of Force Majeure affecting SELLER or for any PREPA Risk Event.

“**Disclosing Party**” has the meaning set forth in Section 12.8a.

“**Dispatch Notice**” means the operating instruction, and any subsequent updates, given by PREPA to SELLER, directing the Facility to discharge at a specified megawatt output.

“**Dispute**” has the meaning set forth in Section 21.10a.

“**Dispute Notice**” has the meaning set forth in Section 21.10a.

“**dollars**” and “**\$**” means United States dollars.

“**Emergency**” means an operational condition or situation affecting the Grid System (including system security and reliability) or a declaration of an emergency event under Applicable Law or by any Governmental Authority) or the Facility, which has resulted in, or will likely result in, imminent significant disruption of service to a significant number of customers or likely endangers life or property.

“**Energy Yield Assessment Report**” means a report, prepared by SELLER, that sets out an estimate of the energy (kWh) expected to be delivered by the Facility (daily, monthly, and annually) to the Interconnection Point and specifically defines the Facility’s P50 Energy Yield applicable to each Agreement Year during the Term.

“**Environmental Costs**” means any and all fixed and variable costs incurred by SELLER resulting from the imposition or assessment on, or as a result of the ownership or operations of, the Facility by Applicable Law relating to the environment, issued by a Governmental Authority.

“**Equity**” means any capital paid or caused to be paid by or on behalf of SELLER’s shareholders or their Affiliates to SELLER for shares in SELLER or in the form of shareholder loans to SELLER, which by their terms are subordinated to any indebtedness for borrowed money incurred by SELLER under financing documents with the Project Lenders.

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

“**Equivalent Force Majeure Derated Hours**” means, for any Agreement Year, the number of hours equal to (a) the sum of the fractions obtained by dividing the Derated Quantity for each Force Majeure Event Interval to date during such Agreement Year by the Expected NEO applicable to such Force Majeure Event Interval *divided by* (b) six (6).

“**Equivalent Grid System Derated Hours**” means, for any Agreement Year, the number of hours equal to (a) the sum of the fractions obtained by dividing the Derated Quantity for each Grid System Event Interval to date during such Agreement Year by the Expected NEO applicable to such Grid System Event Interval *divided by* (b) six (6).

“**Event Day**” has the meaning set forth in Appendix G (*Determination of Deemed NEO*).

“**Event Interval**” means any Time Interval (without double counting) in which (a) the Facility has the capability (including technically, subject to any Derating or Outage, and with sufficient solar irradiation) to make Expected NEO for such Time Interval available for delivery at the Interconnection Point, (b) SELLER has provided PREPA with written notice of such capability in accordance with Section 6.2 (*Availability Estimates*), and (c) a PREPA Risk Event results in the inability or failure of PREPA to take a quantity of net electrical energy made available at, but not delivered to, the Interconnection Point, up to the Expected NEO for such Time Interval.

“**Expected Losses**” means (i) incidence angle irradiance losses, (ii) irradiance losses due to module soiling, (iii) conversion losses due to irradiance level, (iv) conversion losses due to cell temperature above STP efficiency, (v) conversion losses due to module quality, (vi) conversion losses due to light induced module degradation, (vii) conversion losses due to mismatched modules and strings, (viii) DC ohmic wiring and combiner losses, (ix) DC to AC inverter conversion losses, (x) step-up field transformer losses, (xi) inverter nighttime power consumption, (xii) AC ohmic wiring field collection losses, (xiii) collector substation losses, (xiv) battery in charger losses, (xv) battery global losses, (xvi) battery out inverter losses, (xvii) Facility and auxiliaries power consumption, and (xviii) Interconnection Facilities and main step-up transformer losses.

“**Expected NEO**” has the meaning set forth in Appendix G (*Determination of Deemed NEO*).

“**Facility**” means a photovoltaic solar energy system located at the Site, capable of making Generating Capacity up to the Maximum Dispatch Limit available at the Interconnection Point, including the Seller Interconnection Facilities and any energy storage system, capacity expansion or other upgrades to such energy system from time to time.

“**Facility Availability**” means, during any Time Interval of an Agreement Year, the proportion of the Facility that is in a functional and operable state to make Net Electrical Output available at the Interconnection Point, determined in accordance with Section 3 of Appendix G (*Determination of Deemed NEO*) and expressed as a decimal number.

“**Facility Construction Contract**” means the primary contract for the construction of the Facility entered into between SELLER and one or more contractors.

“**Facility Performance Model**” has the meaning set forth in Appendix G (*Determination of Deemed NEO*).

“**Facility Study**” means an engineering study conducted by PREPA (or its designated advisor) to determine required modifications to the Grid System, including the cost and scheduled completion date for such modifications, required to provide grid support services needed to integrate the Facility into the Grid System.

“**Feasibility Study**” means a study conducted by PREPA (or its designated advisor) to determine the likelihood of successfully completing the Facility and integrating it into the Grid System in accordance with this Agreement.

[Power Purchase and Operating Agreement - PREPA and \[●\]](#)

~~“FNTP” means satisfaction of the requirements set forth in a certificate issued by SELLER in the form set forth in Appendix W (Form of Commercial Operation Date Certificate).~~

~~“FNTP Date” or “Full Notice To Proceed Date” means the date on which SELLER achieves FNTP, as evidenced by a certificate issued by SELLER to PREPA in a form set forth in Appendix V21.15 Appendix V (Form of FNTP Date Certificate).~~

~~“FNTP Termination Event” means SELLER’s inability to achieve the FNTP Date by the Guaranteed FNTP Date.~~

“FOMB” means the Financial Oversight and Management Board of Puerto Rico, or any successor thereto.

“Force Majeure” has the meaning set forth in Article 14 (*Force Majeure*).

“Force Majeure Event Interval” means, for any Agreement Year, an Event Interval in which a PREPA Risk Event occurs pursuant to paragraph (a) of such definition.

“Force Majeure Waiting Period” means, for each Agreement Year, ~~[-●-]~~ [three hundred fifty \(350\)](#) hours.⁴ **DISCUSS**

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

“Generating Capacity” means, at any given time, the instantaneous net AC electrical generating capacity ~~f~~ of the photovoltaic solar field~~l~~ (expressed in kW and exclusive of battery capacity), which the Facility can make available at the Interconnection Point as forecasted by the Facility Performance Model (and verified by the Performance Tests), based upon the prevailing Ambient Conditions at such time net of Expected Losses.

“Governmental Authority” means any court, tribunal or governmental or quasi-governmental body, regulatory body, agency, authority, office, department, commission, board, bureau, public corporation, municipality or instrumentality, in each case at any federal, state, Commonwealth of Puerto Rico, county, municipal, or local level, having jurisdiction over a Party, the Facility or the Site, and includes ~~the~~ FOMB and PREB.

“Green Credits” means “renewable energy certificates” and “environmental and social attributes”, as such terms are defined in the Puerto Rico Green Energy Incentives Act (Act No. 83 of July 19, 2010)⁵, renewable energy credits, environmental attributes, emissions reductions, offsets, allowances or benefits, however entitled (or payments in lieu thereof), whether monetary, fiscal or in the form of physical property, now or in the future available to the Facility, as a facility that generates or produces electricity by means of “green energy” (as such term is defined in the Puerto Rico Green Energy Incentives Act), or from renewable or non-polluting resources, granted or available to SELLER as the owner or operator of the Facility or otherwise, in each case, from any Governmental Authority or third party, including renewable energy credits established pursuant to

⁴ ~~NOTE: PREPA to confirm value. Shovel-ready PPOAs included 300 hours. This would cover 25 days. (See Time Interval limits relevant hours to 12 per day.) Grid System Waiting Period for Shovel-ready PPOAs added an additional 40 hours to this, or over 3 days. Collectively this exceeds 7.5% of the year. Developers will request higher pricing to account for this contractually permitted downtime.~~

⁵ ~~NOTE: D&V—Which provides a better reference, Act 83-2010 or Act 82-2010?~~

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the Green Energy Incentives Act of Puerto Rico, but shall exclude (i) any Tax Credits and grants in lieu thereof, (ii) other tax benefits or credits, (iii) any accelerated depreciation, and (iv) proceeds from (i) through (iii), in each case, associated with the Facility or otherwise available to SELLER, each of which (i) through (iii) are expressly reserved to SELLER.

“**Grid System**” means the interconnected network of high voltage transmission lines, low voltage distribution lines, and associated electric substations owned by PREPA (including, after handover on the Commercial Operation Date in accordance with Article 12 (*Representations, Warranties, & Covenants*), the PREPA Interconnection Facilities), which transmit and distribute electricity to users of electricity in the Commonwealth of Puerto Rico.

“**Grid System Event**” means any condition in the Grid System that prevents or impairs PREPA from receiving and taking delivery of a quantity of energy available at the Interconnection Point, including (a) any curtailment, disconnection or other Dispatch Notice issued by PREPA (or lack thereof), or (b) any condition in the Grid System (including an Emergency affecting such system) that causes or may cause physical damage to the Facility or life endangerment, and any damage to or tripping of the protection relays installed in the Facility with settings as instructed by PREPA, but in each case excluding any such event resulting from Force Majeure affecting SELLER or any PREPA Risk Event.

“**Grid System Event Interval**” means, for any Agreement Year, an Event Interval in which a PREPA Risk Event occurs pursuant to paragraph (b) of such definition.

“**Grid System Waiting Period**” means, for each Agreement Year, ~~+~~eighty (80) hours.

“**Guaranteed Commercial Operation Date**” means the second (2nd) anniversary of the Agreement Date, as adjusted in accordance with Section 3.4 (*Extensions of Time*).

“**Guaranteed ~~FNTP~~Construction Start Date**” means the corresponding date listed in the column captioned “*Time for Completion/Occurrence*” of the Milestone Schedule for ~~FNTP~~Construction Start, as adjusted in accordance with Section 3.4 (*Extensions of Time*).

“**hour**” means each period of sixty (60) minutes, with the first such period for any Day beginning at 00:00 (Puerto Rico Time) and including each sixty (60)-minute interval thereafter.

“**IF Completion Notice**” has the meaning set forth in Section 4.4c.

“**Indemnitees**” means, with respect to either PREPA or SELLER, (i) permitted successors and assigns, and (ii) as to both the Party and its permitted successors and assigns, their respective lenders, Affiliates, directors, officers, equity-holders, partners, employees, representatives, agents and contractors, and each of their respective heirs, successors and assigns.

“**Initial Performance Tests**” means the Performance Tests conducted in accordance with the Testing Protocol following the Initial Synchronization Date to establish the initial power curves of the Facility under various Ambient Conditions, verify the Facility Performance Model under Section 4.3b and confirm satisfaction of the requirements for Commercial Operation.

“**Initial Synchronization**” means the first time that SELLER synchronizes the Facility with the Grid System.

“**Initial Synchronization Date**” means the date on which Initial Synchronization occurs.

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“**Interconnection Agreement**” means the Interconnection Agreement entered into between SELLER and PREPA, which sets out the terms upon which the Facility will connect and remain connected to the Grid System, as amended from time to time.

“**Interconnection Construction Contract**” means the primary contract for the construction of the PREPA Interconnection Facilities to be entered into between SELLER and one or more contractors, which shall include provisions with respect to the requirements set forth in paragraph 3 of Appendix I (*Interconnection*).

“**Interconnection Facilities**” means the PREPA Interconnection Facilities and the Seller Interconnection Facilities.

“**Interconnection Point**” means the physical point [at PREPA’s substation] where the Facility connects to the Grid System, as specified in paragraph 1 of Appendix I (*Interconnection*).

“**Interconnection Study**” means a study conducted by PREPA that will, at a minimum, (a) determine the power capabilities of the major interconnection equipment required to complete the Interconnection Facilities, (b) specify the maximum fault currents necessary to specify short circuit duty and interrupting ratings, (c) approve or disapprove generator step-up (GSU) transformer impedance and transformer tap ranges necessary for proper control of voltage and reactive power flow, (d) quantify impact to the Grid System and the actions and costs required to mitigate such impact, (e) designate the PREPA dispatching centers that will coordinate the operation of the Facility, and (f) specify the Proposed Design requirements for the Facility and the PREPA Interconnection Facilities.

“**Insolvency Event**” means any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding with respect to SELLER or any of its respective properties or creditors, or any action taken by any trustee or receiver of SELLER or by any court in any such proceeding.

“**Interest**” means the compensation for the accrual of monetary obligations under this Agreement computed Monthly and prorated daily from the time each such obligation is past due based on an annual interest rate equal to the lesser of: (a) (1) for payments due during the first five (5) Days after such a payment is due, in each case, the Prime Commercial Lending Rate as set by Citibank NA., New York, New York or any other bank as mutually agreed by the Parties or any other equivalent rate as mutually agreed by the Parties (for the purposes of this definition, the “**Prime Rate**”), and (2) for payments due beginning on the sixth (6th) Day after such a payment is due, the Prime Rate plus five percent (5%); and (b) the maximum rate allowable under Article ~~1649~~1169 of the Puerto Rico Civil Code or successor statute applicable to past due amounts. The provisions of this definition shall not be construed to limit the applicable rate of interest on the project debt.

“**kW**” means kilowatt.

“**kWh**” means kilowatt hour.

“**Legal Challenge**” means any action, suit or proceeding brought or commenced by a third party (excluding any Affiliate of a Party) seeking to contest the validity of this Agreement, any Permits or the development, construction or operation of the Facility or PREPA Interconnection Facilities which materially impairs the ability of the Parties to perform their respective obligations hereunder or delays the development, construction or operation of the Facility or PREPA Interconnection Facilities.

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“**Long-Stop Date**” means the date that occurs [●] Days after the Guaranteed Commercial Operation Date, as extended in accordance with Section 3.4 (*Extensions of Time*).⁶

“**m²**” means square meter.

“**Main Meters**” has the meaning set forth in Section 8.1 (*Meter Ownership & Maintenance*).

“**Maximum Dispatch Limit**” means the maximum active export capacity of the Facility, measured at the Interconnection Point at any time, not to exceed [●] kW.

“**Milestone**” means any of the milestone events set out in the column captioned “*Milestone*” in the table set forth in the Milestone Schedule.

“**Milestone Schedule**” means the schedule set out in Appendix D (*Milestone Schedule*).

“**Minimum Acceptance Capacity**” has the meaning set forth in Section 5.3b~~3~~.²

“**Modification Limit**” means the lesser of (i) one percent (1%) of the total cost, determined as of the Commercial Operation Date, of the Facility, and (ii) one million five hundred thousand dollars (\$1,500,000).

“**Month**” means a calendar month, which shall begin at 00:00 on the first Day of such calendar month and end at 00:00 on the first Day of the next calendar month.

“**Monthly Payment**” has the meaning set forth in Appendix F (*Compensation & Example of Price Calculation*).

“**MTRs**” means the minimum technical requirements applicable to the Facility for connection of the Facility to the Grid System set forth in Appendix L (*Minimum Technical Requirements*), as PREPA may modify or replace from time to time after the Closing Date in accordance with Section 4.2 (*Modifications*).

“**MW**” means megawatts.

“**Net Electrical Output**” or “**NEO**” means, for any period of time, all of the net electrical energy output of the Facility (expressed in kWh) during such period, as measured at the Interconnection Point in accordance with Section 8.2 (*Meter Inspection*).

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

“**Non-Affected Party**” the meaning set forth in Section 14.1d.

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

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

⁶~~NOTE: Long-Stop Date corresponds to date when accrued SELLER Delay LDs reach Seller Liability Cap.~~

“**Operating Characteristics**” has the meaning set forth in Appendix K (*Operating Characteristics*).

“**Operating Procedures**” means the procedures for the Facility’s operation and integration into the Grid System, as set out in Appendix M (*Operating Procedures*), as amended from time to time.

“**Other Minimum Acceptance Criteria**” means capability of the Facility to comply with (i) the MTRs, Operating Characteristics and any other criteria set out in the Testing Protocol and Operating Procedures, and (ii) the requirement under this Agreement to keep the maximum Net Power Output under any Ambient Conditions below the Maximum Dispatch Limit (unless required by the MTRs or directed by PREPA in a Dispatch Notice).

“**Outage**” means, for any Time Interval, SELLER’s inability or failure to make Net Electrical Output available at the Interconnection Point.

“**P3A**” means the Public-Private Partnership Authority of Puerto Rico, or any successor thereto.

“**P50 Energy Yield**” means, for each Agreement Year, an estimate of the Net Electrical Output, expressed as kWh, that the Facility can deliver to the Interconnection Point with a probability of occurrence of fifty percent (50%) for such year, [as set out in the Energy Yield Assessment Report](#), based on forecasted Ambient Conditions and the assumption that the Facility (i) after the first (1st) Agreement Year, degrades at a rate equal to ~~the lesser of the actual degradation rate of the Facility (as determined with reference to the Facility Performance Model) and~~ the Contract Degradation and (ii) will make the Contract Capacity fully available at the Interconnection Point during such year.

“**Party**” and “**Parties**” has the meaning set forth in the preamble of this Agreement.

“**Pending Permit Delay**” means, for any Permit for which SELLER has duly and properly applied for and is exercising diligent efforts to obtain, the denial of or delay in granting such Permit by the relevant Governmental Authority, without justifiable cause and through no fault of SELLER, which materially impairs the ability of SELLER to perform a material obligation under this Agreement.

“**Performance Guarantees**” has the meaning set forth in Appendix Q (*Performance Guarantees*).

“**Performance Security**” has the meaning set forth in Section 2.5a.

“**Performance Tests**” means tests to (i) establish the Contract Capacity and confirm that the Generating Capacity can meet the Maximum Dispatch Limit under appropriate Ambient Conditions or otherwise complies with this Agreement, (ii) verify whether the Facility Performance Model reflects such power curves established by the Initial Performance Tests, including whether the actual NEO for Ambient Conditions during such tests equals the Expected NEO, assuming full Facility Availability, and (iii) verify that the Facility complies with each of the Other Minimum Acceptance Criteria, in each case in accordance with the Testing Protocol.

“**Permanent Closing**” means, after the Commercial Operation Date, the occurrence of any of the following events: (a) for any period of eighteen (18) consecutive Months, excluding periods of Outages due to Force Majeure affecting SELLER or any PREPA Risk Event, Facility Availability equals zero (0), or (b) for any period of thirty-six (36) consecutive Months, regardless of whether

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SELLER claims ~~a~~ Force Majeure during such period, Facility Availability equals zero (0), in each case excluding periods of Outages due to any PREPA Risk Event.

“**Permits**” means all permits, licenses, approvals, authorizations, consents, variances or waivers issued by federal, Commonwealth of Puerto Rico and local agencies, commissions, authorities, and regulatory bodies with jurisdiction over SELLER and the Facility which SELLER or its contractors will require for the development, construction, ownership, operation, maintenance or financing of the Facility and/or the Interconnection Facilities, including those set out in Appendix E (*Seller Permits*).

“**Permitted Derating**” means, for any Time Interval, a Derating that occurs as a result of a Scheduled Derating, Force Majeure affecting SELLER or PREPA Risk Event.

“**Permitted Outage**” means, for any Time Interval, an Outage that occurs as a result of a Scheduled Outage, Force Majeure affecting SELLER or PREPA Risk Event.

“**Person**” means an individual, partnership, corporation, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, or a government or agency or political subdivision thereof.

“**Post-Bid Submission Date Taxes**” means all Taxes resulting from Applicable Law enacted, approved or issued after the Bid Submission Date.

“**Post-Bid Submission Date Environmental Costs**” means all Environmental Costs resulting from Applicable Law enacted, approved or issued after the Bid Submission Date.

“**PREB**” means the Puerto Rico Energy Bureau, or any successor thereto.

“**PREPA**” has the meaning set forth in the preamble of this Agreement.

“**PREPA Interconnection Facilities**” means all equipment and facilities (including the Main Meters) located on PREPA’s side of the Interconnection Point, constructed and installed or upgraded for the purpose of interconnecting the Facility with the remainder of the Grid System, as further described in Appendix I (*Interconnection*) and not to include communication, control and protection equipment for which this Agreement assigns responsibility to SELLER.

“**PREPA Risk Event**” means any of the following events:

- a. ~~a~~ Force Majeure or a Legal Challenge in each case affecting PREPA;
- b. a Grid System Event; or
- c. a breach, delay or failure by PREPA in performing any material obligation under this Agreement or the Interconnection Agreement,

which, in each case, did not result from an act or omission of SELLER, ~~a~~ Force Majeure affecting SELLER or the circumstances described in Section 7.2 (~~Additional Right of Curtailment for Breach~~).

“**PREPA Transmission and Distribution Standards**” means the rules, regulations, codes and/or standards relating to operation of and interconnection with the Grid System which PREPA shall

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have made available or identified to SELLER as being applicable to SELLER's performance of its obligations under this Agreement, as such may be modified from time to time.

"Product" means all Net Electrical Output, Ancillary Services and Green Credits made available from or otherwise derived in connection with the operation of the Facility.

"Project Lenders" means any Person providing, arranging, insuring or guaranteeing all or part of the construction or permanent financing or other funding, including any tax equity financing, for the Facility or any portion thereof, or any agent, trustee or other Person representing or acting on behalf of any such Person.

"PROMESA Court" means the United States District Court for the District of Puerto Rico.

"Proposed Design" has the meaning set forth in Section 4.1**eb**.

"Proposed Initial Synchronization Date" has the meaning set forth in Section 5.1 (*Scheduling Synchronization*).

"Prudent Utility Practices" means those practices, methods, conduct and actions (including the practices, methods, conduct and acts engaged in or approved by a significant portion of the power industry in the United States) that, at a particular time, in the exercise of reasonable discretion at the time a decision was made, could have been expected to accomplish the desired result in a manner consistent with Applicable Laws and Applicable Standards for reliability, safety and economy.

"PSS/E" means power system simulation for engineering, a commercial software developed by Siemens PTI Inc.

"Qualified Bank" means a commercial bank or other financial institution licensed to do business within Puerto Rico, which has, as of the date of issuance or renewal of such guarantee, a long-term counterparty credit rating of at least "A" by Standard & Poor's Ratings Services, a long-term foreign currency deposit rating of "A2" by Moody's Investors Services Inc., or, if either such rating agency ceases to engage in business or rate the obligations in question, an equivalent rating from another internationally recognized rating agency selected by SELLER with the written consent of PREPA; provided that, if such financial institution's ratings satisfy such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications.

"Qualified Operator" means SELLER, an Affiliate of SELLER, or, if a third party contractor of SELLER or its Affiliate, an entity with at least [three (3)] years' experience operating facilities of a similar type and size as the Facility or another qualified and experienced operator reasonably acceptable to PREPA.

"Receiving Party" has the meaning set forth in Section 12.8a.

"Reference Pyranometers" has the meaning set forth in Part I of Appendix F (*Compensation & Example of Price Calculation*).

"Registry" has the meaning set forth in Section 9.5a.

"Renewable Energy & Storage Procurement Program" has the meaning set forth in Recital A in the preamble of this Agreement.

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“**RFP**” has the meaning set forth in Recital A in the preamble of this Agreement.

“**SCADA**” means the supervisory control and data acquisition system, which may include equipment installed by SELLER in accordance with PREPA requirements.

“**Scheduled Derating**” means a planned Derating that SELLER has coordinated in advance with PREPA with a mutually agreed commencement and duration, and set out in the Scheduled Maintenance Program pursuant to Article 6 (*Operation Of The Facility*).

“**Scheduled Maintenance Program**” has the meaning set forth in Section 6.3b.

“**Scheduled Outage**” means a planned Outage that SELLER has coordinated in advance with PREPA with a mutually agreed commencement and duration, and set out in the Scheduled Maintenance Program pursuant to Article 6 (*Operation Of The Facility*).

“**SELLER**” has the meaning set forth in the preamble of this Agreement.

“**Seller Interconnection Facilities**” means all equipment and facilities (including SELLER’s meters and metering equipment), located on SELLER’s side of the Interconnection Point, constructed and installed for the purpose of interconnecting the Facility with the Grid System, as further described in Appendix I (*Interconnection*).

“**Seller Liability Cap**” means (i) prior to the Commercial Operation Date, \$ [●], and (ii) from the Commercial Operation Date until thirty (30) Days following the expiration of the Supply Period, \$ [●].

“**Shareholder**” means, for any time of determination, any direct holder of capital stock in SELLER at such time.”

“**Site**” means the approximately [●] acres of land located in [●], Puerto Rico, as further described in Appendix H (*Facility Site*).

“**Sponsor**” means, for each Shareholder of, or a Person holding a partnership or membership interest in, SELLER on the Agreement Date, the ultimate parent company of such shareholder or Person.

“**Substantial Completion Notice**” has the meaning set forth in Section 4.4f.

“**Supply Period**” means the period that commences on the Commercial Operation Date and expires on the twenty-fifth (25th) anniversary thereof.

“**T&D Operator**” means LUMA Energy, LLC, or any future operator of Puerto Rico’s electric power transmission and distribution system or any of its Affiliates, including PREPA’s assignee under the circumstances described in Section 19.2 (*PREPA’s Right to Assign*).

“**Tax Credits**” means the production or investment tax credits (including any grants or payment in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or other Applicable Law available as a result of the ownership and operation of the Facility or the output generated by the Facility (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation).

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“**Taxes**” means any and all taxes, fees or other charges of any nature whatsoever, including income taxes and repatriation (tollgate) taxes, imposed or assessed by a Governmental Authority responsible for implementing Applicable Law relating to Tax on or as a result of the ownership or operations of the Facility.

“**Technical Dispute**” has the meaning set forth in Section 21.10b.

“**Technical Input**” has the meaning set forth in Section 4.1c.

“**Term**” has the meaning set forth in Section 2.2 (*Initial Term*).

“**Termination Date**” means the date of the earliest to occur of any of the events set forth in Section 15.1 (*Termination Date*).

“**Testing Protocol**” means PREPA’s standard protocols for testing and commissioning of projects similar to the Facility set forth in Appendix N (*Testing Protocol*), as amended from time to time.⁷

“**Time Interval**” means, with respect to the six (6) consecutive, ten (10) minute periods during each of the twelve (12) hours [between [7:00 and 19:00]] of each Day during an Agreement Year⁸, any one (1) of such periods.

“**Transfer**” has the meaning set forth in Section 19.2 (*PREPA’s Right to Assign*).

“**Wholly-Owned Affiliate**” means, with respect to a Shareholder, any Person that:

- a. owns directly or indirectly one hundred percent (100%) of the issued share capital and voting rights of such Shareholder;
- b. has one hundred percent (100%) of its issued share capital and voting rights owned directly or indirectly by such Shareholder; or
- c. has one hundred percent (100%) of its issued share capital and voting rights owned directly or indirectly by another Person which owns directly or indirectly one hundred percent (100%) of the issued share capital and voting rights of such Shareholder.

“**Year**” means a calendar year, which shall be the twelve (12) Month period beginning 00:00 on January 1 and ending at 00:00 on the subsequent January 1.

1.2 Rules of Interpretation

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

- a. Words importing the singular also include the plural and vice versa.
- b. References to natural persons or parties include any person having legal capacity.

⁷ ~~NOTE: PREPA operations to review and confirm. S&L has noted that PREPA may want to call this “Testing Protocol Guidelines.”~~

⁸ ~~NOTE: These times should represent operating hours for the project. Please advise if we need different times based on the season.~~

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- c. References to a Person include such Person's successors and assigns; provided that with respect to a Party and its rights and obligations under this Agreement, references to a Party shall only include such Party's successors and assigns if such successors and assigns are permitted by this Agreement.
- d. Words importing one gender include the other gender.
- e. The words "include" and "including" mean "including, but not limited to" and corresponding grammatical variants.
- f. Except as otherwise expressly stated herein, all references in this Agreement to this Agreement (including the Appendices hereto) or to contracts, agreements, or other documents shall be deemed to mean this Agreement (including the Appendices hereto) and such contracts, agreements or other documents, as the same may be modified, supplemented, or amended from time to time.
- g. Except as otherwise expressly stated herein, all references to Sections, Articles, and Appendices in this Agreement are references to the Sections, Articles, and Appendices of this Agreement.
- h. Words and abbreviations not defined in this Agreement which have generally accepted technical or design, engineering, or construction industry meanings are used in this Agreement in accordance with such recognized meanings.
- i. The terms "hereof," "herein," "hereto," "hereunder" and words of similar or like import, refer to this entire Agreement, together with its Appendices, and not any one particular Article, Section, Appendix, or other subdivision of this Agreement.
- j. The headings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties hereto, nor should they be used to aid in any manner in the construction of this Agreement.
- k. References to PREPA in the definition of Dispatch Notice, Grid System Event and ~~Articles~~ [Article 7 \(Dispatching\)](#), [Sections 6.2 \(Availability Estimates\)](#), ~~[●]~~ [6.6 \(Restoration of the Facility\)](#), [8.5 \(Data\)](#), [9.1 \(General\)](#), and [9.4 \(Ancillary Services\)](#), and [Appendix R \(Ancillary Services\)](#) include its dispatching center(s) and the T&D Operator, as applicable.
- l. Terms used in the present tense may be interpreted as referring to the past tense and vice versa.
- m. Nothing contained in this Agreement shall be construed or interpreted to limit in any way PREB's power and authority under the laws of the Commonwealth of Puerto Rico.

Commented [K&S1]: Silvia / Christina – please go through and correct these – should be all instances we discuss dispatch notices and dispatching (not the MDL though)... Also check survival and effectiveness cross-refs

ARTICLE 2. TERM, EFFECTIVENESS & PERFORMANCE SECURITY

2.1 Signing Conditions

The Parties shall complete their respective obligations set out in Appendix B (*Signing Conditions*) no later than the Agreement Date. SELLER recognizes that submittal of the certifications and documents set out in such Appendix constitute an essential condition of this Agreement.

2.2 Initial Term

The term of this Agreement (the “**Term**”) shall begin with the Agreement Date and continue until the expiration of the Supply Period, unless extended or earlier terminated in accordance with the terms hereof. If the Term is extended, the word “Term” shall thereafter be deemed to mean the original Term so extended.

2.3 Initial Effectivity & Closing Date

The rights and obligations of the Parties under Article 1 (*Definitions & Interpretation*), this Article 2 (*Term, Effectiveness & Performance Security*), Article 12 (*Representations, Warranties, & Covenants*), Article 14 (*Force Majeure*), Article 15 (*Termination*), Article 19 (*Assignment & Transfer*), Article 20 (*Notices*), Article 21 (*Miscellaneous Provisions*)], shall enter into full force and effect on the Agreement Date. Subject to the foregoing rights and obligations that become effective on the Agreement Date, the remaining provisions of this Agreement shall become effective on the date that the Parties jointly sign a certificate, in the form set forth in Appendix U (*Form of Conditions Precedent Certificate*), confirming the satisfaction or waiver of each of the conditions precedent set out in Appendix C (*Conditions Precedent*) (the “**Closing Date**”). The Parties shall issue such certificate within five (5) Business Days after the occurrence of such satisfaction or waiver. Each Party shall use its best efforts to cause the Closing Date to occur no later than thirty (30) Days after the Agreement Date. If the Closing Date does not occur for any reason within one hundred eighty (180) Days after the Agreement Date, then this Agreement shall automatically terminate at midnight on such Day without either Party incurring any liability to the other Party, provided that, in the event that SELLER breaches the foregoing obligations, PREPA shall have the right to draw on the full face amount of the Bid Security.

2.4 Extension

The Parties may agree to extend the Term of this Agreement, with approval from PREB, for up to two (2) consecutive periods of five (5) Agreement Years each, following the expiration of the initial Supply Period. Either Party may notify its desire to extend the Term to the other Party in writing as provided for under this Section 2.4 (*Extension*) not less than eighteen (18) Months prior to the expiration of the initial Supply Period or extended Supply Period, as the case may be. During any extension, all provisions contained herein shall remain in effect unless otherwise agreed.

2.5 Performance Security

a. To secure the due, proper, timely and full performance of SELLER’s obligations under this Agreement, SELLER shall provide to PREPA as a condition precedent to the Closing Date, at SELLER’s sole expense, one or more irrevocable, direct pay, on-first-demand bank guarantees or letters of credit issued by a Qualified Bank substantially in the form set forth in Appendix X (*Performance Security*) and otherwise acceptable to PREPA with a face amount equal to:

1. from the Closing Date until the Commercial Operation Date, \$ [●], equaling the product of \$ [30.00]/kW multiplied by the Maximum Dispatch Limit (expressed in kW); and
2. thereafter, \$ [●], equaling the product of \$ [●] / kW multiplied by the Maximum Dispatch Limit (expressed in kW),

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(the “Performance Security”).

- b. SELLER shall (i) maintain the Performance Security in full force and effect and in accordance with this Agreement until the date that occurs sixty (60) Days after the expiration of the Term (the “**Scheduled Expiration Date**”), and (ii) together with the delivery of each Performance Security or replacement thereof, deliver a written statement dated as of the delivery date duly signed by its authorized representative certifying that the issuer of such Performance Security meets the requirements of a Qualified Bank.
- c. SELLER shall cause a Qualified Bank to issue, reissue or replace any Performance Security (in compliance with this Section 2.5 (*Performance Security*)) in accordance with the following:
 1. to the extent that the Performance Security will expire or cease to exist prior to the Scheduled Expiration Date, then no later than twenty-one (21) Days prior to the date of such expiration or cessation;
 2. in the event that the issuer of the Performance Security ceases to meet the requirements of a Qualified Bank, then no later than twenty-one (21) Days after the date of such cessation; and
 3. if the Parties agree to increase the Maximum Dispatch Limit, then promptly upon the date of such agreement.
- d. PREPA shall have the right to draw down on or collect against the Performance Security (via a full or one or more partial drawings) upon the occurrence of any of the following events:
 1. ~~ENTP~~[Construction Start](#) Termination Event;
 2. COD Termination Event;
 3. SELLER’s failure to pay Delay Liquidated Damages when due under this Agreement;
 4. SELLER’s failure to provide replacement Performance Security in accordance with Section 2.5c; provided that (i) PREPA deposits the amount so drawn in an escrow account in a bank selected by PREPA until SELLER delivers replacement Performance Security to PREPA and upon such delivery, PREPA shall cause the release of the undrawn amounts deposited in the escrow account to SELLER, and (ii) PREPA shall have the right to draw from the escrow account in accordance with this Section 2.5d and SELLER shall bear the costs of opening and maintaining such escrow account;
 5. except as otherwise covered by Sections 2.5d.1 to 2.5d.4, a Default by SELLER; and
 6. any other event that expressly entitles PREPA to draw down or claim on the Performance Security under this Agreement.

PREPA shall have the right to draw down on the entire undrawn portion of the face amount of the Performance Security upon the occurrence of the events described in Sections 2.5d.1, 2.5d.2 and 2.5d.4.

ARTICLE 3. PRE-OPERATION PERIOD

3.1 Consulting Technical Expert

No later than sixty (60) Days after the Closing Date, PREPA shall consult with SELLER and appoint an engineer (the “**Consulting Technical Expert**”) to review technical matters, assist in the resolution of technical issues, issue non-binding technical recommendations in connection with Technical Disputes in accordance with this Agreement and monitor the works undertaken by, or on behalf of, SELLER (i) for the design, construction and commissioning of the Facility and the PREPA Interconnection Facilities, and (ii) the operation of the Facility during the Supply Period. PREPA may designate different Consulting Technical Experts for different purposes under this Agreement. The Consulting Technical Expert’s staff shall include suitably qualified engineers and other professionals who possess the competence to carry out such duty. The Consulting Technical Expert shall verify that SELLER complies with this Agreement and shall conduct reviews of works performed by, or on behalf of, SELLER in accordance with Appendix J (*Progress Review*). SELLER shall comply with the requirements of such reviews at all times as specified therein. Whenever carrying out its duties in accordance with this Agreement, the Consulting Technical Expert shall act on behalf of PREPA. Any action undertaken by PREPA shall not relieve SELLER from any responsibility it has under this Agreement.

3.2 SELLER’s Development Obligations

- a. SELLER shall develop, design, finance, permit, construct, install, test, and commission the Facility and the PREPA Interconnection Facilities, all to be completed no later than the Guaranteed Commercial Operation Date, at its own cost, in accordance with the Milestone Schedule, the requirements of all Permits (including the schedule set out in Appendix D (*Milestone Schedule*)), the MTRs, the Approved Design, the Interconnection Agreement, Prudent Utility Practices, the other provisions of this Agreement, Applicable Law and Applicable Standards.
- b. SELLER agrees that the works required as part of the Interconnection Facilities that will be performed within PREPA’s active system (including, for example, works conducted at a PREPA substation or to interconnect such facilities) may, at PREPA’s election, be executed by PREPA and its contractor or by SELLER (in any case, at SELLER’s expense and as described in the Facility Study). If PREPA elects to perform, or have its contractor perform, such work inside PREPA’s active system, then SELLER shall reimburse PREPA or directly fund all amounts invoiced by its contractors for the cost to complete such work.
- c. SELLER shall acquire (or lease) all land parcels, easements, rights-of-way and other real property rights required to construct, test, commission, own, operate and repair the Facility in its own name and at its own cost, and maintain such rights until the expiration of the Term.⁹

⁹ **NOTE:** We have removed the paragraph saying PREPA can step in and help develop the facilities where SELLER cannot complete a task (e.g., land acquisition). Nothing prevents PREPA from working with the developer to do this, and we do not see the need for a provision / think it could create confusion.

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3.3 Regular Updates

SELLER shall submit progress reports to PREPA on the development, construction, permitting, third-party contracting and financing of the Facility no later than the fifth (5th) Business Day of every Month, commencing on the first Month following the Closing Date and continuing until the Commercial Operation Date. SELLER acknowledges that PREPA may keep PREB and other Governmental Authorities apprised of its progress.

3.4 Extensions of Time

SELLER shall have the right to an extension of the time for the completion or occurrence of any Milestone where ~~Force Majeure~~ Force Majeure affecting SELLER or PREPA Risk Event directly delays SELLER's ability to achieve such Milestone, but only to the extent that (i) such delay would not have occurred but for the occurrence of such event, (ii) SELLER exercises its best efforts to mitigate the effects of such delay, and (iii) SELLER has notified PREPA of such delay, and provided PREPA with a detailed explanation of the circumstances leading to such delay, within five (5) Business Days of the occurrence of such event. If SELLER exercises the foregoing right, then the time for completion or occurrence of such Milestone shall extend by the number of Days during which such event giving rise to such delay prevented SELLER from achieving such Milestone; provided that, notwithstanding any other provision of this Agreement to the contrary, with respect to any extension of the Milestone for Commercial Operation (A) such extensions shall not exceed, in the aggregate ten percent (10%) of the period allocated for the time for completion / occurrence on the Agreement Date without the prior written approval of PREB, and (B) SELLER shall have no right to extend the time for completion or occurrence of such Milestone for the additional period required for PREPA to obtain PREB's approval of any extension.

3.5 Delay Liquidated Damages

For each Day of delay in achieving Commercial Operation after the Guaranteed Commercial Operation Date until the earlier of (i) the Commercial Operation Date, and (ii) the Long-Stop Date, SELLER shall pay to PREPA, no later than forty-five (45) Days after receipt of an invoice therefor, an amount equal to the product of (A) \$ [●] /kW per Day *multiplied by* (B) the Maximum Dispatch Limit, as liquidated damages (the "**Delay Liquidated Damages**") constituting PREPA's sole and exclusive remedy in respect of such delay, subject to PREPA's right of termination for delay under Section 15.1 (*Termination Date*). The Parties acknowledge and agree that SELLER's maximum aggregate liability arising out of this Agreement for delays in achieving Commercial Operation shall not exceed the Seller Liability Cap. SELLER acknowledges and agrees that the Delay Liquidated Damages represent a fair and reasonable estimate of the losses which PREPA will suffer if Commercial Operation does not occur by the Guaranteed Commercial Operation Date, and accordingly SELLER hereby waives its right to dispute the validity of this Section 3.5 (*Delay Liquidated Damages*).

3.6 Exchange of Information

For purposes of conducting any investigations and evaluations as the Parties may deem reasonable and necessary to determine the feasibility of the Facility, the PREPA Interconnection Facilities and the technical aspects related to the sale of Net Electric Output of the Facility, the Parties agree to cooperate reasonably and in good faith and provide each other and their respective representatives reasonable and timely access to relevant personnel, advisors (including environmental consultants), properties, and books and records, provided the information is not privileged, confidential or protected under other agreements with third parties or by law or regulation. Subject to the

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conditions stated in the previous sentence, each Party hereby agrees to cooperate and exchange information necessary to permit, finance, construct and operate the Facility. Notwithstanding anything in this Agreement to the contrary, SELLER shall remain solely responsible for permitting, financing, constructing and operating the Facility.

3.7 Cooperation

To the extent legally permitted, the Parties agree to cooperate reasonably and in good faith in the mutually beneficial endeavor to obtain (i) control of, or other required access and rights to, the real property upon which the Facility will be located, (ii) financing for the Facility and the PREPA Interconnection Facilities, and (iii) all necessary Permits, endorsements and approvals for siting and construction of the Facility and the PREPA Interconnection Facilities. Notwithstanding anything in this Agreement to the contrary, SELLER shall remain solely responsible for obtaining the items set out in subparagraphs (i) through (iii) of this Section 3.7 (*Cooperation*).

3.8 Interconnection Agreement⁺⁰

SELLER shall comply with all terms and conditions contained in the Interconnection Agreement. PREPA shall bear no liability or cost under this Agreement related to interconnection or electric distribution or transmission service for the Facility.

3.9 Protocols & Procedures⁺¹

No later than one hundred eighty (180) Days after the Closing Date, the Parties, in consultation with the Consulting Technical Expert, shall agree upon any adjustments or additions to the Testing Protocol (including in respect of the Performance Tests) and Operating Procedures applicable to the Facility, taking into consideration Prudent Utility Practices, the MTRs, the Approved Design, the Operating Characteristics, equipment supplier and manufacturer recommendations set forth in their operating manuals, and the terms and conditions of this Agreement. The Testing Protocol and Operating Procedures shall only be modified with the written consent of the Parties. In the event of any conflict between the terms and conditions of this Agreement and the Testing Protocol or Operating Procedures, the terms and conditions of this Agreement shall prevail. SELLER acknowledges and agrees that (i) its compliance with the Operating Procedures or Testing Protocol does not relieve SELLER from any liability that it would otherwise have under this Agreement, and (ii) PREPA shall not be liable to SELLER or any other person by reason of its review or approval of the Operating Procedures or Testing Protocol.

3.10 SELLER Utilities

SELLER shall procure at its own cost its own electricity prior to the Initial Synchronization Date, which it may obtain from PREPA through a separate agreement, and shall procure all of its other water, fuel and other utilities during the Term. From and after the Initial Synchronization Date, PREPA agrees to backfeed electricity to SELLER as requested by SELLER, at the most

⁺⁰ ~~NOTE: Consider what parts of this PPOA should go into the Interconnection Agreement (e.g., the scope of work in Annex B?):~~

⁺¹ ~~NOTE: While it's not uncommon for project owners to provide initial drafts of operating and testing procedures, we recommend having a standard template, negotiated upfront to the extent possible, attached to the PPOA. In the past, post signing negotiation of these documents contributed to project delays. In our recommendation, the Parties can use the template as a starting point for any further modifications but have an agreed fallback option in case these later negotiations do not progress.~~

advantageous published rate available to SELLER, based on PREPA's approved tariff and shall be consistent with rates PREPA charges to similar customers.

ARTICLE 4. FACILITY DESIGN REQUIREMENTS

4.1 Proposed Design

- a. No later than sixty (60) Days after the Closing Date, SELLER shall submit to PREPA a forty percent (40%) engineering design for the Facility and the PREPA Interconnection Facilities. PREPA shall review and comment on such design within ten (10) Business Days.
- b. No later than one hundred twenty (120) Days after the Closing Date, SELLER shall submit to PREPA the final engineering design of the Facility and the PREPA Interconnection Facilities (the "**Proposed Design**"). SELLER agrees to ensure that the Proposed Design will (i) comply with Prudent Utility Practices, the requirements of the Interconnection Agreement, the Operating Characteristics, Permits, Applicable Laws, Applicable Standards and the MTRs, and (ii) incorporate all equipment required for the Facility to comply with the MTRs.
- c. No later than thirty (30) Days following SELLER's delivery to PREPA of the Proposed Design, PREPA shall complete its review of the Proposed Design and deliver to SELLER written notice that PREPA either (i) accepts the Proposed Design (the "**Approved Design**") and (1) confirms that the PREPA Interconnection Facilities, if constructed in accordance with such design, will comply with PREPA's interconnection requirements and (2) that, subject to the results of the Feasibility Study, Facility Study and Interconnection Study and compliance with the requirements identified in such studies, the Facility and such PREPA Interconnection Facilities will be allowed to interconnect with the Grid System in accordance with this Agreement, or (ii) does not accept such design, in which case PREPA shall simultaneously deliver to SELLER a written and detailed description of PREPA's objections to such design and PREPA's required modifications thereto, which modifications PREPA shall reasonably propose in good faith and consistent with Prudent Utility Practices (the "**Technical Input**").
- d. If PREPA has provided Technical Input to SELLER in accordance with the foregoing, then no later than ten (10) Days following SELLER's delivery to PREPA of SELLER's revised Proposed Design, which revised Proposed Design shall be consistent with the MTRs and Technical Input, PREPA shall review such revised Proposed Design and notify SELLER in writing either that (i) such revised design constitutes the Approved Design, or (ii) PREPA does not accept such design, in which case PREPA shall simultaneously deliver to SELLER further Technical Input. The Parties shall repeat the foregoing process until PREPA accepts an Approved Design, which approval PREPA shall not unreasonably withhold.
- e. The Parties shall use good faith efforts to agree upon an Approved Design within sixty (60) Days of SELLER's submission of the revised Proposed Design, after SELLER has received PREPA's Technical Input for the first time. SELLER shall not, without PREPA's written consent, commence construction of the Facility or the PREPA Interconnection Facilities until the Approved Design is achieved; provided that, SELLER may, at its risk, order long-lead equipment prior to the achievement of the Approved Design.

4.2 Modifications

- a. Each Party shall notify the other in advance of any changes to its system, and the reasons for those changes, that would reasonably require modification or expansion of the MTRs, affect the coordination of protective devices between SELLER and PREPA interconnected systems or otherwise affect either Party's Interconnection Facilities.
- b. PREPA reserves the right to modify or expand the MTRs, or its requirements for protective devices in the Interconnection Facilities, in each case from time to time in accordance with Prudent Utility Practices. If PREPA desires to modify or expand the MTRs or its requirements for protective devices in the Interconnection Facilities in consideration of the risk of imminent and substantial harm to human life, property, or the Grid System (including degradation of service) but for the adoption of such change, specifically as it relates to reliability and safety margins, then SELLER shall implement such change.
- c. If SELLER implements any modification or expansion that PREPA requires, then SELLER shall assume the cost of such implementation, up to a total cost which, when added to any costs previously required by PREPA and incurred by SELLER pursuant to this Section 4.2 (*Modifications*) or Section 4.3 (*Modeling*) during the Term, does not exceed the Modification Limit. If such modification or expansion reduces the Facility's ability to make available Net Electrical Output, then the Parties shall treat that portion of SELLER's reasonably projected lost revenue under this Agreement arising out of such reduction as a cost of such change.
- d. If SELLER's costs attributable to such change (as reasonably determined and evidenced in writing to PREPA), when added to any costs previously incurred by SELLER pursuant to this Section 4.2 (*Modifications*) or Section 4.3 (*Modeling*) during the Term, exceed the Modification Limit, then PREPA shall increase the Monthly Payment to allow SELLER to recover that portion of the cost in excess of the Modification Limit in Monthly installments (i) in respect of modifications to the Facility, over a term of eighteen (18) Months or (ii) for a reduction of NEO, over the remaining Supply Period or so long as the reduction in NEO exists. Notwithstanding the foregoing, SELLER shall assume the total cost (without reimbursement) of implementing modifications to the MTRs or requirements for protective devices resulting from any deviations from the Operating Characteristics or the Approved Design or any changes to its system whatsoever.
- e. Modifications or expansions of the MTRs shall not become effective until SELLER has had a reasonable period of time to comply with any such modified or expanded requirement.

4.3 Modeling

- a. SELLER shall provide PREPA with (i) a Facility PSS/E model no later than the Agreement Date and (ii) an initial Facility Performance Model to PREPA for approval no later than the Initial Synchronization Date.
- b. Following the Initial Synchronization Date and prior to the Commercial Operation Date, the Parties shall validate the Facility Performance Model over a minimum period of thirty (30) Days. SELLER shall otherwise ensure that the Facility Performance Model complies with, and keep such model calibrated and up to date in accordance with, Appendix G (*Determination of Deemed NEO*).

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- c. SELLER agrees to keep the Facility PSS/E mathematical models current with the future versions of the PSS/E program and the Facility Performance Model up to date, and shall provide updated PSS/E mathematical models to PREPA not later than thirty (30) Days after a PSS/E version upgrade. SELLER shall submit to PREPA a report from Siemens PTI or another third-party engineering firm that validates and certifies the Facility PSS/E mathematical model as accurate, including the subsequent revisions performed to keep the mathematical model current with the future version of the PSS/E program. PREPA shall bear all costs incurred by SELLER in excess of the Modification Limit in connection with changes to the PSS/E mathematical model that result from modification or expansion of the MTRs or PREPA's requirements for protective devices in the Interconnection Facilities as per Section 4.2 (*Modifications*).

4.4 Pre-Synchronization Testing

- a. Prior to the Initial Synchronization Date, SELLER shall retain a contractor, approved in writing by PREPA (which approval PREPA shall not unreasonably withhold after SELLER has submitted to PREPA information about the experience of such contractor), to perform the acceptance testing of the Interconnection Facilities, which testing shall be performed pursuant to the Testing Protocol. SELLER shall provide to PREPA no less than ten (10) Days' written notice of such testing and PREPA shall have a representative witness and evaluate the testing.
- b. No later than fifteen (15) Business Days following completion of such testing and submission to PREPA of the testing book to be generated by the testing contractor, PREPA shall review such testing book and notify SELLER in writing that PREPA either (i) accepts such testing book, or (ii) does not accept such testing book, in which case PREPA shall simultaneously deliver to SELLER a written and detailed description of PREPA's objections to such testing book and PREPA's required modifications thereto, which modifications shall be made in good faith and be reasonable and consistent with Prudent Utility Practices. If PREPA has provided required modifications to the testing book, then no later than five (5) Business Days following SELLER's delivery to PREPA of a revised testing book consistent with such modifications, PREPA shall review such revised testing book and notify SELLER in writing either of PREPA's approval or that PREPA continues to require modifications thereto. The foregoing process shall be repeated until PREPA approves the testing book, which approval PREPA shall not unreasonably withhold. PREPA shall have the right to finally determine whether the Interconnection Facilities have been adequately designed, constructed and tested and that such facilities comply with the Approved Design and PREPA's other requirements. PREPA shall use reasonable efforts to accept SELLER's testing book within fifteen (15) Business Days after SELLER's delivery to PREPA of a revised testing book, after SELLER has received PREPA's objections to the testing book for the first time.¹²
- c. Upon completion of the pre-synchronization testing of the Interconnection Facilities, SELLER shall provide written notice (which shall include a copy of the red line drawing used for the construction of the Interconnection Facilities) to PREPA that SELLER has substantially completed and tested the Interconnection Facilities in accordance with Section 4.4a and 4.4b (the "**IF Completion Notice**"), in the form set forth in Appendix Z (*Form of IF Completion Notice*).

¹² ~~NOTE: Confirm that we need this paragraph (b) given that PREPA has inspection / verification rights under (d).~~

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- d. Following receipt of the IF Completion Notice, PREPA shall inspect (or the Parties shall appoint a Consulting Technical Expert to inspect) such Interconnection Facilities and the remainder of the Facility to confirm that they were constructed in accordance with the Approved Design, which inspection and confirmation shall be completed promptly, but in any case within five (5) Business Days following PREPA's receipt of SELLER's IF Completion Notice.
- e. If PREPA (or the Consulting Technical Expert, as applicable) determines in good faith that the Interconnection Facilities or remainder of the Facility have not been constructed in accordance with the Approved Design and that such deviation would, if PREPA synchronized the Facility with the Grid System, adversely affect the operations of the Grid System, PREPA shall so advise SELLER in writing within five (5) Business Days following PREPA's inspection of the Interconnection Facilities or Facility, as applicable, and SELLER shall correct or mitigate any such deviation prior to interconnecting the Facility to the Grid System and resubmit the IF Completion Notice (in which case Section 4.4d shall again apply). If the Parties cannot reach an agreement on whether the Interconnection Facilities or Facility have been constructed in accordance with the Approved Design after SELLER has submitted two (2) IF Completion Notices that PREPA has found to be deficient, then either Party may refer the matter to dispute resolution pursuant to Section 21.10 (*Dispute Resolution*).
- f. If PREPA, in consultation with the Consulting Technical Expert, determines that the Interconnection Facilities and the Facility have been constructed in accordance with the Approved Design, then PREPA shall notify SELLER thereof (such notification, the "**Substantial Completion Notice**"), in the form set forth in Appendix AA (*Form of Substantial Completion Notice*), and the Parties shall proceed with Initial Synchronization and testing pursuant to Article 5 (*Synchronization, Testing & Completion*).

4.5 Protection Relays & Control

- a. SELLER shall provide PREPA with complete protection systems (including relay devices and relay settings), in accordance with Appendix P (*Technical Requirements for Operation, Protection, & Control*), for PREPA's review and inspection not later than ~~sixty (60)~~ Days prior to the Proposed Initial Synchronization Date. SELLER shall submit the protection requirements in three stages: (1) design; (2) protection report (*i.e.* the settings to be implemented according to the Approved Design); and (3) the tests to be performed with the approved settings.
- b. If PREPA declines to accept such protection requirements for any reason, SELLER agrees to comply with any reasonable request made by PREPA to provide the protection scheme requirements, including acceptable relay settings, prior to the Initial Synchronization Date. PREPA agrees to give any comments or suggested changes pursuant to this Section 4.5 (*Protection Relays & Control*) within thirty (30) Days after SELLER submits the protection requirements at each stage to PREPA; provided that PREPA shall have at least ten (10) Days to evaluate each individual submission after receipt. If the Parties cannot reach an agreement within thirty (30) Days after PREPA's receipt of the complete set of protection requirements, including relay settings, then the Parties shall resolve such dispute in accordance with Section 21.10 (*Dispute Resolution*).
- c. SELLER further agrees that control and protection scheme parameters such as ramp rates, frequency fluctuations, overvoltage or low voltage ride-through, voltage support and

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dynamic power factor, will align in all material respects with the MTRs. SELLER shall procure equipment with electrical capabilities to comply with the above-mentioned parameters.

4.6 Voltage Schedule

PREPA shall prepare and submit to SELLER a written voltage schedule for the Facility no later than thirty (30) Days prior to the Proposed Initial Synchronization Date. From and after the Commercial Operation Date, PREPA may change such voltage schedule upon thirty (30) Days' prior written notice, or in accordance with the Operating Procedures, provided that such voltage schedule complies with the MTRs. SELLER shall use such voltage schedule in the operation of its Facility. PREPA shall base the voltage schedule on the normally expected operating conditions for the Facility and the reactive power requirements of the Grid System.

4.7 Technology Upgrades

From and after the Initial Synchronization Date, SELLER shall not carry out any technology upgrades to the Facility that will, or may be reasonably expected to, impair, alter, expand or limit the Facility's performance, Operating Characteristics or the Facility's ability to make available Net Electrical Output at Interconnection Point in accordance with the terms of this Agreement, including the addition of energy storage systems, capacity expansions or other upgrades, in each case without PREPA's prior written consent, which PREPA may withhold in its sole discretion.

ARTICLE 5. SYNCHRONIZATION, TESTING & COMPLETION

5.1 Scheduling Synchronization

Following receipt of the Substantial Completion Notice, SELLER shall notify PREPA in writing of the proposed Initial Synchronization Date (the "**Proposed Initial Synchronization Date**") and the start-up and testing schedule for the Facility and the PREPA Interconnection Facilities. SELLER shall provide such notice no later than [one hundred twenty (120)] Days prior to the Proposed Initial Synchronization Date. SELLER shall have the right to postpone or accelerate such date with at least fourteen (14) Days' advance written notice to PREPA. PREPA and SELLER shall agree on the actual Initial Synchronization Date at least seven (7) Days in advance of such date.

5.2 Initial Synchronization

SELLER shall not energize, back-feed or synchronize the Facility or Interconnection Facilities without PREPA's prior approval, which approval PREPA shall not unreasonably withhold. If PREPA unreasonably withholds such approval, and in so doing delays the Commercial Operation Date beyond the Guaranteed Commercial Operation Date, then the provisions of Section 3.4 (*Extensions of Time*) shall apply. Subject to SELLER's compliance with the Interconnection Agreement and this Agreement, PREPA agrees to allow the Facility to interconnect to the Grid System at the Interconnection Point in accordance with the terms of this Agreement from the Initial Synchronization Date. PREPA shall have the right to have a representative present at the Facility to witness the synchronization process on the Initial Synchronization Date.

5.3 Initial Performance Tests

- a. On or promptly after the Initial Synchronization Date, SELLER shall perform the Initial Performance Tests on the Facility, and the provisions of Sections 6.8b and 6.8c shall apply *mutatis mutandis* to such tests.
- b. SELLER warrants that the Initial Performance Test shall establish that the maximum Generating Capacity of the Facility (as adjusted for Ambient Conditions at the time of testing in accordance with the Testing Protocol and without exceeding the Operating Characteristics and limits of the Approved Design) will meet or exceed the Maximum Dispatch Limit. If the Initial Performance Tests establish that the Generating Capacity falls below the Maximum Dispatch Limit, then prior to the Long-Stop Date, SELLER may, at its election:
 1. take corrective actions to increase the Generating Capacity prior to the Long-Stop Date until the Initial Performance Tests demonstrate that the Facility can ~~achieve~~achieve the Maximum Dispatch Limit; or
 2. if the Generating Capacity meets or exceeds at least ~~ninety-five percent (95%)~~ of the Maximum Dispatch Limit (the “**Minimum Acceptance Capacity**”), then credit PREPA’s account in the amount of [\$200/kW] for each kW of the difference between the Maximum Dispatch Limit and the greater of such Generating Capacity and the Minimum Acceptance Capacity, as liquidated damages and a payment credit that PREPA can use to offset future payments under this Agreement (the “**Capacity Shortfall LDs**”),

provided that if, by the Long-Stop Date, such corrective actions result in the Generating Capacity meeting or exceeding the Minimum Acceptance Capacity but not the Maximum Dispatch Limit, then SELLER shall credit PREPA’s account for the Capacity Shortfall LDs. SELLER acknowledges and agrees that ~~(iii)~~ the Capacity Shortfall LDs represent a fair and reasonable estimate of the loss which PREPA will suffer if such a Generating Capacity shortfall occurs, and accordingly (ii) it hereby waives its right to dispute the validity of this Section 5.3b.
- c. If the Initial Performance Tests establish that the Facility fails to comply with the Other Minimum Acceptance Criteria¹³, then SELLER may, at its election:
 1. take corrective actions to improve the performance of the Facility; and
 2. repeat the Initial Performance Tests to establish that the Facility satisfies the MTRs and criteria set out in the Testing Protocol,in each case, prior to the Long-Stop Date.
- d. Subject to Sections 5.3b and 5.3c, if the Initial Performance Tests do not establish that the Facility meets the Minimum Acceptance Capacity and Other Minimum Acceptance Criteria, then PREPA shall have the right to reject the results of such tests.

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- e. Following the successful completion of the Initial Performance Tests (or crediting of liquidated damages, as applicable) and satisfaction of all other criteria to achieve Commercial Operation:
 - 1. SELLER shall notify PREPA in writing of the test results and the Commercial Operation Date by issuing a certificate thereof, in the form set forth in Appendix W (*Form of Commercial Operation Date Certificate*). PREPA shall confirm and countersign such notification, which confirmation PREPA shall not unreasonably withhold, and if the demonstrated Generating Capacity (as adjusted for Ambient Conditions) below the Maximum Dispatch Limit, then subject to Section 5.3c, the Parties shall amend this Agreement to reduce the Maximum Dispatch Limit accordingly.
 - 2. SELLER shall submit to PREPA a revised PSS/E mathematical model that represents the as-built Facility. This PSS/E model shall include all necessary functionality to properly model the Facility for both steady-state and dynamic simulations. SELLER shall also submit a Facility PSS/E validation report. This report shall be focused on PSS/E simulation results that show the model MTR compliance and performance, based on final adjustment and parameter settings of MTR and commissioning field tests as required in this Agreement.

5.4 Interconnection Facilities

- a. On the Commercial Operation Date:
 - 1. SELLER shall: (i) transfer good and valid legal title to the PREPA Interconnection Facilities to PREPA free and clear of all liens and any other Claims by third parties, and to the fullest extent allowed by Applicable Law, assign all of the underlying equipment supply contracts, the Interconnection Construction Contract and other contracts, and all remaining equipment-supplier warranties in respect of PREPA Interconnection Facilities, to PREPA, (ii) release and forever discharge PREPA and its respective officers, directors, agents, and employees, and all property connected with or a part of the site of the PREPA Interconnection Facilities, from any and all contractual liens and any other liens arising by operation of Applicable Law or otherwise in connection with, or arising out of, the performance of SELLER's obligations under this Agreement, and (iii) specifically waive and release any lien, right, security interest or encumbrance of any kind in connection with this Agreement, the Interconnection Construction Contract or Applicable Law, established by SELLER, its contractors at any tier, material suppliers, laborers and all other persons or entities furnishing services, labor or materials in connection with SELLER's obligations under this Agreement and all other interests therein and all improvements and materials placed on such site or machinery furnished in connection with such work; and
 - 2. SELLER hereby represents and warrants to PREPA that (i) the design, engineering, procurement, construction and completion of the PREPA Interconnection Facilities conform in all material respects with this Agreement, the Approved Design and all Applicable Law, (ii) the PREPA Interconnection Facilities are fit for their intended purpose and free from material defects and deficiencies of any kind, and designed, engineered and constructed in accordance with those practices, methods, techniques, standards and procedures which

prudent, diligent, skilled and experienced contractors generally accept for the procurement, erection and installation of equipment, and the engineering, design and construction of, electrical transmission facilities of a similar nature and magnitude, and (iii) PREPA possesses good and valid title to the entirety of the PREPA Interconnection Facilities free and clear of any lien or Claim and SELLER has not received, nor has SELLER become aware of, any notice of intention to assert a lien, or proceeding to establish a lien, arising out of or in connection with such facilities or SELLER's work related thereto.

- b. From the Commercial Operation Date until three hundred sixty-five (365) Days thereafter (the "**Defects Liability Period**"), SELLER shall promptly repair or replace any defect in design, workmanship or a component of any part of the PREPA Interconnection Facilities (and any physical damage to any other part caused thereby), which may appear during the Defects Liability Period. For any portion of such facilities which SELLER repairs or replaces during the Defects Liability Period, the Defects Liability Period for such portion shall extend for a period of three hundred sixty-five (365) Days after the date on which SELLER completes such repair or replacement. If any defect or damage appears during the Defects Liability Period, PREPA shall, promptly after becoming aware thereof, notify SELLER thereof. As soon as reasonably practicable after receiving notice of such defect or damage from PREPA, SELLER shall commence all repair or replacement work required to rectify such defect and/or damage. In the event that SELLER fails to commence or carry out such repair or replacement work, PREPA shall have the right to engage and pay other persons to carry out the same and all reasonable, documented costs incurred by PREPA in connection therewith shall be recoverable from SELLER and may, at the election of PREPA, be deducted from any monies due or that become due to SELLER under this Agreement or drawn on the Performance Security. SELLER shall procure that the contractor under the Interconnection Construction Contract obtains warranties for equipment used in such construction works from the respective manufacturers. Unless agreed with PREPA, SELLER shall ensure that such warranties extend for at least the Defects Liability Period with respect thereto and shall obligate any such manufacturer to rebuild, remove and replace any equipment supplied by such manufacturer which has a defect or deficiency, in each case in a manner and on terms and conditions substantially similar to those contained herein. The installation of all materials used in the construction of the PREPA Interconnection Facilities shall strictly comply with any relevant manufacturer's requirements. In the event that a manufacturer fails to honor its warranty based in whole or in part on a claim of defective installation, SELLER shall be liable for the cost of the associated removal, replacement, rebuilding and repair. SELLER shall perform all work contemplated by this Section 5.4b at its own cost.
- c. SELLER shall provide PREPA with as-built drawings of the Interconnection Facilities and the Facility within ninety (90) Days after the Commercial Operation Date and within ninety (90) Days after any material modification of the Interconnection Facilities or remainder of the Facility to the extent that such modification affects such as-built drawings.
- d. SELLER shall at all times own and be responsible for (at its own cost and expense) the safe and adequate operation and maintenance of all Seller Interconnection Facilities, including the transmission line and breaker that interconnect the Facility to the Grid System. After transfer from SELLER, PREPA shall own and be responsible for the safe and adequate operation and maintenance of the PREPA Interconnection Facilities. If PREPA implements any change in the protection system relay settings, equipment, or

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studies due to any improvement at the Interconnection Facilities required by SELLER or as a result of the Facility, SELLER shall bear all reasonable costs and expenses incurred by PREPA.

ARTICLE 6. OPERATION OF THE FACILITY

6.1 General

From the Initial Synchronization Date until the expiry of the Supply Period, SELLER shall:

- a. operate, test, maintain, repair and, if necessary, replace the Facility (or any portion thereof) in accordance with (i) the Operating Procedures, (ii) the Testing Protocol, (iii) the MTRs, (iv) Dispatch Notices, (v) Prudent Utility Practices, (vi) this Agreement, and (vii) Applicable Law and Applicable Standards, and subject to the Operating Characteristics;
- b. ensure that (i) personnel remain on duty at the Facility at the times required to meet SELLER's obligations under this Agreement, and (ii) any contractor that SELLER engages for the operation, testing, maintenance or repair of the Facility qualifies as a Qualified Operator;
- c. operate the Facility and associated inverters and protection schemes such that at no time shall the Net Power Output exceed the Maximum Dispatch Limit unless required by the MTRs or a Dispatch Notice; and
- d. ensure that the Facility satisfies the Performance Guarantees during each Agreement Year.

6.2 Availability Estimates

For each Day during the Supply Period, SELLER shall provide to PREPA written, accurate estimates of next Day and next week Expected NEO and expected average and peak Net Power Output for each Time Interval of expected operating hours (expressed in kW over each such hour of each Day), based on (a) the previous Day NEO and average and maximum Net Power Output for expected operating hours, (b) the estimated strength of the ~~†solar irradiation†~~ and other expected Ambient Conditions for the next Day and week according to the meteorological forecast for the region and site, and (c) the results of the Facility Performance Model.

6.3 Scheduled Maintenance

- a. SELLER shall (i) ensure no more than [●] Days of Scheduled Outage or Scheduled Deratings during any Agreement Year, (ii) plan its Scheduled Maintenance Program so as to minimize interruptions or reductions to the supply of Net Electrical Output, (iii) cooperate with PREPA to coordinate the Scheduled Outages and Scheduled Deratings with Grid System needs.
- b. SELLER shall, at least sixty (60) Days prior to the Commercial Operation Date, submit a written schedule of Scheduled Outages and Scheduled Deratings ("**Scheduled Maintenance Program**") for the remaining portion of the first Year of the Facility's operations and, if the Commercial Operation Date occurs after September 1, for the following one (1) Year, setting forth the proposed Scheduled Outages and Scheduled

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Deratings periods. Thereafter, SELLER shall submit to PREPA, in writing, by September 1 of each Year, its proposed Scheduled Maintenance Program for the next Year.¹⁴

- c. SELLER shall provide the following information for each proposed Scheduled Outage and Scheduled Derating:
 - 1. description of the work that SELLER will perform during such event;
 - 2. start date and time;
 - 3. end date and time;
 - 4. time to restore the Facility to full operation; and
 - 5. for Scheduled Deratings, the Net Electrical Output and Net Power Output available during such event.
- d. PREPA shall have thirty (30) Days from receipt of the proposed Scheduled Maintenance Program to notify SELLER whether it accepts the program or requires a rescheduling (and to what period when the maintenance can be performed). If PREPA fails to respond during such period, then the Scheduled Maintenance Program shall be deemed accepted.
- e. SELLER shall use reasonable efforts to accommodate any request to reschedule, and if unable to accommodate the request, provide the reasons therefor and alternative dates that it can accommodate. PREPA shall select between the alternative dates proposed to finalize the Scheduled Maintenance Program.
- f. SELLER shall notify PREPA at least seven (7) Days prior to the start of any Scheduled Outage or Scheduled Derating and shall maintain close coordination as such event approaches.
- g. If a condition occurs that causes SELLER to revise its Scheduled Maintenance Program, SELLER shall promptly notify PREPA of such change (including an estimate of the length of such Scheduled Outage or Scheduled Derating) after the condition causing the change becomes known to SELLER and request PREPA's approval, which PREPA shall not unreasonably withhold; provided that SELLER shall bear any costs incurred by PREPA for revisions made less than sixty (60) Days before the start date of the Scheduled Outage or Scheduled Derating before such revision occurs or that results in ~~a~~ such event being scheduled less than sixty (60) Days before the start of the revised Scheduled Outage or Scheduled Derating.
- h. Only those Outages or Deratings that (i) meet the submittal timelines in Section 6.3b, and (ii) PREPA approves in accordance with this Section 6.3 (*Scheduled Maintenance*), shall constitute a Scheduled Outage or Scheduled Derating, respectively.

¹⁴ ~~NOTE: Are there any periods during the year when Scheduled Outages or Deratings should not occur?~~

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6.4 Non-Scheduled Outages & Deratings

- a. If SELLER determines that it requires a Non-Scheduled Outage or Non-Scheduled Derating, then SELLER shall coordinate the timing of such Non-Scheduled Outage or Non-Scheduled Derating, as applicable, with PREPA.
- b. SELLER shall use commercially reasonable efforts to notify PREPA of any Non-Scheduled Outage or Non-Scheduled Derating no later than 5:00 pm (Puerto Rico time) on the third (3rd) Business Day prior to the Day that such Non-Scheduled Outage or Non-Scheduled Derating will occur. In the event of an unexpected Non-Scheduled Outage or Non-Scheduled Derating, SELLER shall provide notice to PREPA by telephone as soon as reasonably practicable and, in all cases, no more than fifteen (15) minutes following the occurrence of such Non-Scheduled Outage or Non-Scheduled Derating. Thereafter, SELLER shall, as soon as reasonably practicable, provide PREPA with a notice that includes (i) the event or condition, (ii) the date and time of such event or condition, (iii) the expected end date and time of such event or condition, (iv) for Non-Scheduled Deratings, the Net Electrical Output and Net Power Output available (if any) during such event or condition, and (v) any other information reasonably requested by PREPA.
- c. Notwithstanding the delivery of a notice of a Non-Scheduled Outage or coordination with PREPA to resolve such event, the Facility shall be deemed unavailable for the duration of a Non-Scheduled Outage.

6.5 Emergencies

- a. No later than the Initial Synchronization Date, each Party shall cooperate with the other in establishing written Emergency plans, including (i) recovery from a local or widespread electrical blackout, (ii) voltage reduction in order to effect load curtailment, (iii) policies for the delivery by PREPA to SELLER of prompt written notice of the occurrence of all Emergency and follow-up, and (iv) frequent status reports on any ongoing Emergency.
- b. SELLER shall (i) make technical information and data available to PREPA concerning start-up times and black-start capabilities, (ii) promptly inform PREPA of any Emergency at or other material issues with the Facility or the Site, and (iii) if requested by PREPA, submit a remediation program setting out the actions SELLER shall take to mitigate the Emergency or other material issues at the Facility, and (iv) abide by such program.
- c. If the Facility has a Scheduled Outage or a Non-Scheduled Outage, and such Scheduled Outage or Non-Scheduled Outage occurs or would occur coincident with an Emergency, then PREPA may request that SELLER shall make commercially reasonable efforts, consistent with Prudent Utility Practices, to reschedule the Scheduled Outage or Non-Scheduled Outage or if the Scheduled Outage or Non-Scheduled Outage has begun, to expedite the completion thereof.

6.6 Restoration of the Facility

Following any Emergency, Outage or Derating, SELLER shall provide as much advance notice as reasonably practicable to PREPA of the date and time that it will bring the Facility back online, provided that SELLER shall furnish at least two (2) Days' prior notice for restoration from a Scheduled Outage or Scheduled Derating and at least two (2) hours' notice for restoration from a

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Non-Scheduled Outage, Non-Scheduled Derating or Emergency. PREPA shall have the right to rely on such notice for purposes of delivering Dispatch Notices to SELLER.

6.7 Communication

SELLER shall provide, install, commission, maintain, repair, and replace (as necessary), at its own cost and expense, the following communication facilities linking the Facility with PREPA:

- a. one (1) Remote Terminal Unit (“RTU”), including setup installation and configuration specified by PREPA;
- b. two (2) independent telecommunication circuits, including one (1) voice grade to link the SCADA system to the Facility’s RTU using [distributed network] protocol through a designated PREPA communication node, and a second fiber optic circuit to link PREPA’s network to the Facility in order to access protection equipment, revenue meters and the dynamic system monitor through the ruggedcom security device as specified by PREPA;
- c. a voice telephone extension for the purpose of communicating with PREPA’s Monacillos Transmission Center and Ponce Transmission Center;
- d. a telephone line and equipment to transmit and receive e-mail messages to confirm oral communication between PREPA and SELLER; and
- e. dynamic system monitor equipment, components, and system which comply with the requirements of Appendix O (*Technical Specifications for the Dynamic System Monitor*), for recording the power disturbance caused by electro-mechanic swings and to measure the system response to the swing disturbance.

PREPA shall have the right to approve items provided by SELLER in accordance with this Section 6.7 (~~Communication~~ ~~Restoration of the Facility~~)

~~Following any Emergency, Outage or Derating, SELLER shall provide as much advance notice as reasonably practicable to PREPA of the date and time that it will bring the Facility back online, provided that SELLER shall furnish at least two (2) Days’ prior notice for restoration from a Scheduled Outage or Scheduled Derating and at least two (2) hours’ notice for restoration from a Non-Scheduled Outage, Non-Scheduled Derating or Emergency. PREPA shall have the right to rely on such notice for purposes of delivering Dispatch Notices to SELLER. Communication),~~ which approval PREPA shall not unreasonably withhold.

6.8 Record Keeping

- a. Each Party shall keep complete and accurate books, accounts, records and other data required for the proper administration of all transactions with respect to all matters relating to this Agreement.
- b. SELLER shall maintain such records and data for a minimum of five (5) Years after the preparation of such records or data and for any additional length of time required by regulatory agencies with jurisdiction over either of the Parties; provided that neither Party shall dispose of or destroy any records without thirty (30) Days’ prior written notice to the other Party. Within ten (10) Days after receipt of the notice of intention to destroy or dispose, the other Party shall have the right to require the notifying Party in writing to

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retain and deliver to it certain records at its sole cost and expense. Any records so notified shall be delivered to the Party requesting their return in no more than ten (10) Days.

- c. SELLER shall maintain, in physical and electronic copy, (i) as-built drawings, operation and maintenance manuals and other detailed technical documentation for design, engineering, construction, testing, commissioning, operation, maintenance, and repair of the Facility and PREPA Interconnection Facilities, and (ii) an accurate and up-to-date operating log at the Facility with records of (1) real and reactive power for each hour, (2) changes in operating status, Outages, Deratings or Emergencies, (3) any unusual conditions found during inspections, (4) any safety incident, accident or other occurrence at the Site that results in injury to persons or damage to property, (5) data and other inputs for, and outputs from, the Facility Performance Model, (6) electrical characteristics of the Facility and settings or adjustments of the Facility's control equipment and protective devices, (7) maintenance performance, (8) all data in relation to Performance Tests and other testing, Performance Guarantees, metering, invoicing, payments, Claims, reimbursements, credits and any other charges to PREPA, and (9) any other significant events related to operation of the Facility.
- d. Either Party shall have the right from time to time, upon fourteen (14) Days' written notice to the other Party and during regular business hours, to examine the records and data of the other Party relating to the proper administration of this Agreement any time during the period the records are required to be maintained. In addition, SELLER shall deliver to PREPA a Monthly operations and maintenance report by the tenth (10th) Day of each Month describing operations and maintenance activities performed in respect of the Facility during the previous Month.

6.9 Supply Period Performance Tests

- a. SELLER shall carry out Performance Tests on an annual basis in accordance with the Testing Protocol, no later than [●] during each Year, in order to maintain the Facility interconnected to the Grid System. At PREPA's request, SELLER shall provide certifications of Performance Tests and inspections of the electric and protection equipment, which may impact the Grid System. PREPA shall have the right to visit and visually monitor the Facility during operation and testing, including any Performance Tests.
- b. SELLER shall submit to PREPA, for evaluation and approval, all Performance Tests reports certified by an experienced and duly qualified independent laboratory or company with specialized expertise in acceptance and other relevant tests of renewable power generating facilities evidencing that the Facility satisfies each of the MTRs and the Performance Guarantees. PREPA shall have the right to approve such laboratory or company, which approval PREPA shall not unreasonably withhold. For the avoidance of doubt, SELLER acknowledges and agrees that PREPA will not accept manufacturers' test reports as evidence of compliance with this requirement.
- c. SELLER shall coordinate with, and the Performance Tests shall be witnessed by, PREPA's personnel and the Consulting Technical Expert. SELLER shall provide PREPA with at least thirty (30) Days' advance written notice of all Performance Tests, field tests or other matters that PREPA may witness hereunder. The Parties shall cooperate in good faith to determine mutually acceptable dates for such testing of all Performance Tests.

~~6.10 — Base Annual Quantity~~

~~At least thirty (30) Days prior to the commencement of each Agreement Year, SELLER shall prepare, and submit to PREPA for approval, the P50 Energy Yield for such year, based on the results of (i) for the first (1st) Agreement Year, the Initial Performance Tests, and (ii) for all other Agreement Years, the most recent Performance Tests performed prior to such Agreement Year. PREPA shall either confirm its approval or rejection of such submission within ten (10) Days of receipt of such submission.~~

ARTICLE 7. DISPATCHING

7.1 General

a. PREPA shall have the right, by providing Dispatch Notices to SELLER in accordance with the Operating Procedures, to direct SELLER to dispatch the Facility in respect of any Time Interval from the Initial Synchronization Date until the expiry of the Supply Period, and such right shall include the right to require SELLER to curtail, reduce or increase the Net Power Output, disconnect or connect the Facility, or to provide Ancillary Services, in accordance with:

1. Prudent Utility Practices (such as reasons affecting safety margins or reliability levels in the Grid System, power quality problems as well as outages and disconnections (“vias libres”) of the transmission center or line due to disturbances, maintenance, improvements, and Emergencies);
2. the requirements of Applicable Law and Permits;
3. the Operating Procedures; and
4. the Facility’s ability to generate or produce Net Electrical Output when the primary resource is available,¹⁵

in each case subject to the Operating Characteristics, the Scheduled Maintenance Program, and SELLER’s availability estimates under Section 6.2 (*Availability Estimates*). SELLER acknowledges and agrees that, for any Time Interval, PREPA’s failure to take a quantity of Net Electrical Output up to the ~~Expected NEO~~ during such period does not constitute a breach of this Agreement.

b. Subject to Section 7.1c, each Dispatch Notice shall remain effective unless and until PREPA modifies such Dispatch Notice by providing SELLER with an updated Dispatch Notice. If PREPA cannot issue an electronic submittal for reasons beyond PREPA’s control, PREPA may provide Dispatch Notices by (in order or preference, unless the Parties agree to a different order) electronic mail, facsimile transmission or telephonically to SELLER’s personnel designated in the Operating Procedures to receive such communications.

c. ~~If~~ PREPA submits a Dispatch Notice that does not conform with the Operating Characteristics, then SELLER shall promptly notify PREPA of the non-conformity and PREPA shall modify its Dispatch Notice to conform to the Operating Characteristics. Until

¹⁵ ~~NOTE: For solar without batteries~~

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such time as PREPA submits a modified Dispatch Notice, SELLER shall, as applicable, dispatch the Facility in accordance with the Operating Characteristics, and the Facility will not be deemed unavailable, but only to the extent the Facility was otherwise available but could not be dispatched because of its inability to operate outside of the Operating Characteristics.†

7.2 [Additional Right of Curtailment for Breach](#)

Notwithstanding ~~Sections~~[Section](#) 7.1 (*General*), PREPA shall have the additional right to curtail or reduce the Net Power Output, or disconnect the Facility, during the Supply Period, and SELLER shall have no right to any claim for compensation or otherwise, when SELLER fails to:

- a. operate the Facility in accordance with this Agreement or the MTRs;
- b. maintain the Net Power Output under the Maximum Dispatch Limit at any time under Ambient Conditions, unless required by the MTRs or PREPA's Dispatch Notice;
- c. successfully complete the annual Performance required under Section 6.9 ([Supply Period Performance Tests](#)); or
- d. keep the Facility Performance Model or Facility PSS/E mathematical models current and up to date in accordance with this Agreement, provided that (i) PREPA has given SELLER thirty (30) Days' notice of SELLER's failure to comply with the foregoing, and (ii) SELLER may reasonably perform such upgrade within that time period.

For the avoidance of doubt, any curtailment, reduction or disconnection shall end at the instruction of PREPA, which PREPA shall give promptly after SELLER cures such non-compliance.

ARTICLE 8. METERING

8.1 [Meter Ownership & Maintenance](#)

PREPA shall own and maintain the meters and metering equipment used to measure the delivery and receipt of Net Electrical Output for payment purposes (the "**Main Meters**"). SELLER shall install the Main Meters and all other meters and metering equipment at the Interconnection Point, as well as SELLER's back-up meters and metering equipment at the Facility in accordance with Appendix I (*Interconnection*). The Main Meters and the back-up meters and metering equipment shall meet PREPA's specifications and be subject to PREPA's approval, which approval PREPA shall not unreasonably withhold, and which decision PREPA shall inform SELLER no later than fifteen (15) Days after SELLER's notice to PREPA regarding the installation of the proposed meters.

8.2 [Meter Inspection](#)

PREPA shall seal the Main Meters. PREPA personnel may only break the seals for inspection, testing or adjustment of the meters performed in accordance with this Agreement. PREPA shall give SELLER ten (10) Days' prior written notice thereof and SELLER shall have the right to have a representative present during the meter inspection, testing or adjustment. If either Party believes that there has been a meter failure or stoppage, it shall immediately notify the other Party to coordinate an inspection or test at the earliest convenient date.

8.3 Meter Testing & Calibration

- a. At least annually, at PREPA's cost and, in addition from time to time upon two (2) weeks' prior written notice by either Party at its cost (unless the results demonstrate that meters for which PREPA has operation and maintenance responsibility fall outside of the limits established in American National Standard Institute Code for Electricity Metering (ANSI C12.16, latest version: "ANSI C12.16"), in which case PREPA shall bear the cost of such additional tests), PREPA will test and verify the calibration of the meter(s), including backup meters, in accordance with the provisions for meter testing as established by ANSI C12.16. When, as a result of such a test, a meter is found to be within the range specified by the standard, no adjustment will be made to the amount paid to SELLER for Net Electrical Output delivered to PREPA. If the meter is found to be outside the range specified by the standard, then (i) the Party owning such defective or inaccurate device shall adjust, repair, replace, and/or recalibrate such device as near as practicable to a condition of zero (0) error (subject to Section 5.4 (*Interconnection Facilities*)) at that Party's expense, and (ii) PREPA shall use the backup meters to calculate the correct amount of Net Electrical Output delivered to it for the actual period during which inaccurate measurements were made.
- b. If the Parties cannot determine the actual period during which inaccurate measurements were made, they shall use a period equal to the time elapsed since the most recent test, but in no case for a period in excess of six (6) Months. If the backup meters are not available, or if the testing of the backup meters demonstrates that those meters are out of calibration, the Party owning such device shall adjust the meter, and the Parties shall use the corrected meter readings of the most accurate meter for the actual period during which inaccurate measurements were made. If the Parties cannot determine the actual period during which inaccurate measurements were made, the Parties shall use a period equal to one half of the time elapsed since the most recent test, but in no case for a period in excess of six (6) Months.
- c. To the extent that the adjustment period covers a period of deliveries for which PREPA has already remitted payment, PREPA shall use the corrected measurements as determined in accordance with this Section 8.3 (*Meter Testing & Calibration*) to recalculate the amount due for the period of the inaccuracy and shall subtract the previous payments by PREPA for this period from such recomputed amount. If the difference is a positive number, PREPA shall pay the difference to SELLER. If the difference is a negative number, SELLER shall pay the difference to PREPA, or PREPA may offset such amounts against payments due to SELLER by PREPA hereunder. The owing Party shall make the payment or credit of such difference no later than thirty (30) Days after the owing Party receives written notice of the amount due, unless PREPA elects payment via an offset. Each Party shall comply with any reasonable request of the other Party concerning the sealing of meters, the presence of a representative of the other Party when the seals are broken and the test is made, and other matters affecting the accuracy of the measurement of electricity delivered from the Facility.

8.4 Meter Reading

During each one (1) Year period from and after the Initial Synchronization Date, PREPA shall read the meters at least twelve (12) times (prorated for any partial Year) to determine the amount of Net Electrical Output delivered to PREPA from the Facility for each Billing Period. At PREPA's option, PREPA may choose to read the meters more frequently and total such readings in

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accordance with the applicable Billing Periods. PREPA shall provide SELLER with a written statement containing the reading details and totals within ten (10) Days following the end of each Billing Period. PREPA shall notify SELLER of any site meter readings and SELLER may, at its option, be present for such reading.

8.5 Data

From the Initial Synchronization Date until the expiration of the Supply Period, PREPA shall own all data and information recorded from operation, scheduling, dispatch, testing, and maintenance of the Facility, which data and information PREPA shall license to SELLER for the limited purpose of operation, scheduling, dispatch, testing, and maintenance of the Facility during the Supply Period.

ARTICLE 9. SALE & PURCHASE

9.1 General

- a. SELLER agrees to provide and sell all of the Product of the Facility exclusively to PREPA. SELLER shall make available, during each Time Interval of each Agreement Year, a quantity of Net Electrical Output that corresponds to the Expected NEO for such Time Interval, other than during the occurrence of any Permitted Outage or Permitted Derating, provided that, during any Permitted Derating, SELLER shall make available a quantity of Net Electrical Output that corresponds to the Generating Capacity not limited by such Derating.
- b. PREPA agrees to pay for Product based on Monthly Payments determined in accordance with Appendix F (*Compensation & Example of Price Calculation*), from the Initial Synchronization Date until the expiration of the Supply Period, subject to the terms and conditions of this Agreement, provided that PREPA shall have no obligation to pay for a quantity of Net Electrical Output delivered for any period of time in excess of a quantity of the corresponding to the Maximum Dispatch Limit for such period, unless dispatched by PREPA or provided in accordance with the MTRs.

9.2 Title & Risk of Loss

The Net Electrical Output that SELLER makes available to PREPA under this Agreement shall become the property of PREPA at the Interconnection Point, at which point title to the Net Electrical Output and all risk of loss associated with such output shall transfer to PREPA. PREPA reserves the right to retain all rights, title, benefits and other interest in, arising out of, or related to the generation, transmission, distribution or supply of such energy that it or any of its Affiliates may realize through its existing or future power generation sources (including the Facility), customer agreements or other projects or improvements to the Grid System.

9.3 Right of Resale

PREPA shall have the right to resell all or any portion of the Product purchased under this Agreement, and SELLER shall, at no cost to PREPA, take all other actions from and after the Initial Synchronization Date to assist PREPA in receiving, and otherwise ensure that PREPA can receive and resell the Product, including submission of any reports or filings with applicable Governmental Authorities.

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9.4 Ancillary Services

The Parties acknowledge and agree that PREPA may, from time to time after the Commercial Operation Date, request SELLER to provide PREPA with Ancillary Services by delivering notice thereof to SELLER in accordance with Article 7 (*Dispatching*). SELLER shall provide such services in accordance with such request, in partial consideration of the Monthly Payments and for no additional cost.

9.5 Green Credits

- a. Contemporaneously with the sale of Net Electrical Output hereunder and in partial consideration for the Monthly Payments, SELLER shall convey to PREPA, at no additional cost, all of the Green Credits associated with the provision of such Net Electrical Output of, or otherwise generated in connection with, operation of the Facility. SELLER and PREPA shall execute all documentation required to confirm the registration of such Green Credits with the North American Renewables Registry or another similar registry acceptable to SELLER and PREPA ("**Registry**") and the transfer of such Green Credits as reasonably requested by PREPA in accordance with the rules of the Registry, in each case, at SELLER's expense.⁴⁶ PREPA shall have the sole right to own, market, trade, sell or otherwise transfer such Green Credits available to or in respect of the Facility to any Person, and any Green Credits that are now available or in the future might become available in respect of the Facility shall inure to the benefit of, and remain the property of, PREPA.
- b. The Parties shall not construe any part of this Agreement to require SELLER to transfer to PREPA or any other Person any Tax Credits or any other Tax benefit provided by any Governmental Authority.

ARTICLE 10. PAYMENT & BILLINGS

10.1 Invoicing

- a. On or before the fifteenth (15th) Day following the end of each Billing Period (or if later, within five (5) Days after SELLER receives the meter reading data pursuant to Section 8.4 (*Meter Reading*), SELLER shall provide PREPA with a written invoice for the Monthly Payment relating to such Billing Period. The invoice shall include (i) the details of the applicable Net Electrical Output delivered to PREPA, Deemed NEO, Expected NEO, Ancillary Services, Green Credits, Base Rate and Contract Rate for such Billing Period, and (ii) ~~Base Annual Quantity~~P50 Energy Yield and other information necessary to determine Facility performance (including the sum of Expected NEO and NEO for each Time Interval to date in the relevant Agreement Year, as well as projections of Expected NEO and NEO based on forecasted Ambient Conditions through the end of such year), insurance payments, credits owing to PREPA and an itemized statement of all other charges under this Agreement, as of such Billing Period.
- b. PREPA shall use reasonable efforts to review each invoice and notify SELLER of any invoicing issues within thirty (30) Days after receipt thereof. Upon PREPA's request,

⁴⁶ ~~NOTE: D&V—please identify documentation required for PREPA to confirm registration of Green Credits.~~

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SELLER shall furnish, within seven (7) Days, such further information as PREPA may reasonably request in support of the invoice.

- c. To the extent that an invoice complies with the requirements set forth in this Agreement, and subject to any direct agreement with Project Lenders, PREPA shall remit payment of undisputed amounts owed under such invoice no later than forty-five (45) Days after PREPA's receipt of such invoice and all required supporting documentation and certifications. SELLER acknowledges and agrees that PREPA may withhold payment (without accruing Interest) beyond such date if and so long as SELLER has failed to provide evidence that it has maintained the insurance policies required by this Agreement.
- d. The Parties shall use their reasonable efforts to resolve any dispute regarding payment by amicable negotiation, provided that if the Parties fail to resolve such dispute by the payment due date, then either Party may refer the dispute for resolution in accordance Section 21.10 (*Dispute Resolution*).
- e. If agreed or determined that PREPA has underpaid an invoice, then Interest shall accrue on the payments due to SELLER commencing on the Day after the date on which PREPA had the obligation to remit such payment pursuant to Section 10.1c, and continue until, but excluding, the relevant payment date.
- f. If agreed or determined that PREPA has overpaid an invoice, then PREPA shall have the right to deduct the amount of such overpayment plus Interest from future payments in the immediately following Billing Period(s) until PREPA has received full credit for such overpayment.

10.2 Invoice Certification

SELLER shall submit all invoices in the form acceptable to PREPA and include the following certification:

No Interest Certification:

"We certify under penalty of nullity that no public servant of PREPA will derive or obtain any benefit or profit from the contractual relationship which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the Agreement. The only consideration to be received in exchange for the performance of the ~~energy and~~ services and the sale of the energy to be provided is the agreed-upon price that has been negotiated with an authorized representative of PREPA. The total amount shown on this invoice is true and correct. The energy ~~and~~ has been provided, services have been rendered, and no payment has been received."

SELLER's Signature

SELLER acknowledges that the above certification constitutes an essential requirement of this Agreement, and that PREPA will not process for payment invoices provided without this certification. In order to comply with the certification requirements set forth above, SELLER shall require that its subcontractors also include the certification set forth above in any invoices submitted in connection with energy or services provided under this Agreement.

10.3 Payment Set-Off

Notwithstanding the payment requirements set forth in this Article 10 (*Payment & Billings*), PREPA shall have the right to set off any amounts due and owing to PREPA by SELLER pursuant to this Agreement, but which remain unpaid, against the amounts due and owing to SELLER by PREPA, provided that (i) such amounts are undisputed, have been determined to be owed to PREPA by a final determination pursuant to Section 21.10 (*Dispute Resolution*), or are explicitly described in this Agreement, and (ii) PREPA has provided SELLER with five (5) Business Days' advance written notice describing in reasonable detail the amounts to be set off before effecting any such set off.

10.4 Payment Method

Payments to a Party shall be made by wire transfer to an account with a bank specified by such Party in writing, which specification shall be notified to the other Party prior to the Closing, or with such other banks as may thereafter be specified by a Party in writing at least ten (10) Days prior to the date in which payment is due. Either Party may, by written notice to the other, change the address to which the notifying Party remits such payments.

ARTICLE 11. LIABILITY

11.1 General

From and after the Initial Synchronization Date, each Party shall be responsible for the energy and facilities located on its respective side of the Interconnection Point. Except as provided in Section 11.2 (*Foreseeable Damages*) below, SELLER shall have no liability to PREPA for loss or damage to PREPA's generation, transmission, and distribution system, resulting directly or indirectly from the use, misuse or presence of said energy once it passes the Interconnection Point.

11.2 Foreseeable Damages

Each Party shall have liability for all foreseeable damages suffered by the other Party as a necessary consequence of the first Party's negligent performance or omissions or failure to perform its respective obligations under this Agreement, including during any cure period in accordance with Article 15 (*Termination*), as stated under Article ~~1060~~1168 of the Puerto Rico Civil Code, subject to the terms of Section 11.3 (*No Liability*) below.

11.3 No Liability

Neither Party nor its officers, directors, agents, employees and representatives shall in any event be liable to the other Party or its officers, directors, agents, employees or representatives for Claims for incidental, consequential or indirect damages to persons or property, whether arising in tort, contract or otherwise, connected with or resulting from performance or non-performance under this Agreement including without limitation, Claims made by either Party's customers or suppliers, or Claims made by third parties, or Claims made by either Party for lost profits (other than payments expressly contemplated by any provision of this Agreement).

11.4 Obligation to Pay

Nothing in this Article 11 (*Liability*) shall relieve either Party of its obligation to make payments that become due pursuant to Article 10 (*Payment & Billings*).

11.5 Seller Liability Cap

SELLER's liability to PREPA under this Agreement, whether based on contract, warranty or tort, including errors or omissions, negligence, indemnity (including without limitation the indemnity provisions set forth in Article 13 (*Indemnification*) hereof), strict liability or otherwise, or any other claim or cause of action, with respect to any and all Claims shall not exceed the amount equal to the Seller Liability Cap; provided that SELLER's liability for payment or credit of any amounts under Section 3.5 (*Delay Liquidated Damages*), Section 5.3b.2, Section 13.3 (*Claims Arising from Environmental Harm*), Appendix Q (*Performance Guarantees*) or for which SELLER receives (or would have received had it complied with the terms of this Agreement) insurance proceeds, shall not be subject to the Seller Liability Cap.

ARTICLE 12. REPRESENTATIONS, WARRANTIES, & COVENANTS

12.1 Compliance with Law

SELLER shall, at all times and in all material respects, comply with Applicable Law, including the Bulk-Power System EO and such other laws applicable to (a) the use, occupancy, and operation of the Facility, and (b) SELLER as an Electric Power Company or Electric Power Generation Company (each, as defined under Act 57-2014), as the case may be. SELLER shall give all required notices, shall procure and maintain all Permits and other permits for the development and construction of the PREPA Interconnection Facilities, and shall pay all charges and fees required in connection therewith. SELLER shall complete all environmental impact studies necessary for the design, construction, operation and maintenance of the Facility and the PREPA Interconnection Facilities. Once obtained, SELLER shall comply with, and promptly submit to PREPA copies of, all material Permits and permits contemplated by this Section 12.1 (*Compliance with Law*). Furthermore, pursuant to Section 5(f) of Act 120-2018 and subject to the provisions of this Agreement, SELLER shall at all times comply with the public policy and regulatory framework applicable to the Facility.

12.2 Fines & Penalties

Each Party shall have sole responsibility for the payment of any and all fines or other penalties incurred by or imposed upon such Party or its agents, suppliers, employees or subcontractors for noncompliance by such Party, its agents, employees, suppliers, or subcontractors with Applicable Law to or in connection with, (a) in the case of SELLER, the development and construction of the PREPA Interconnection Facilities, and the development, construction, ownership and operation, maintenance or repair of the Facility, except to the extent that any act or omission of PREPA caused such noncompliance, and (b) in the case of PREPA, the proper operation of the Grid System, except to the extent that any act or omission of SELLER caused such noncompliance, in each case as determined by applicable Governmental Authority having jurisdiction over the Facility, subject to the indemnification provisions of Article 13 (*Indemnification*).

12.3 SELLER Representations & Warranties

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

- a. SELLER is a [[●] company], duly organized, validly existing under the laws of [●]; and SELLER has all requisite power and authority to conduct its business, to own its properties, and to execute, to deliver, and to perform its obligations under this Agreement;

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- b. the execution, delivery, and performance by SELLER of this Agreement have been duly authorized, and do not and will not (i) require any additional internal consent or approval of SELLER; or (ii) violate any provision of SELLER's certificate of formation or operating agreement, or any material indenture, contract or agreement to which it is a party or by which it or its properties may be bound, or any Applicable Law, determination or award presently in effect;
- c. SELLER is not in default under any document or instrument referred to in clause (ii) of Section 12.3b, which default could reasonably be expected to have a material adverse effect on the ability of SELLER to perform its obligations under this Agreement;
- d. this Agreement is a legal, valid and binding obligation of SELLER, enforceable against SELLER in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights generally; and
- e. except as previously disclosed in writing, there is no pending action or proceeding in which SELLER 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 SELLER or the ability of SELLER to perform its obligations under, or which purports to affect the legality, validity or enforceability of, this Agreement as in effect on the date hereof.

12.4 PREPA Representations & Warranties

PREPA represents and warrants to SELLER on the Closing Date as follows:

- a. pursuant to Act No. 83 of May 2, 1941, as amended, PREPA is a public corporation duly organized and validly existing under the laws of the Commonwealth of Puerto Rico and has all requisite power and authority to conduct its business as now conducted, to own its properties, and to execute, to deliver, and to perform its obligations under this Agreement;
- b. the execution, delivery and performance by PREPA of this Agreement has been duly authorized by PREPA's governing board in accordance with Applicable Law, and (i) does not and will not require any additional internal consent or approval of PREPA; and (ii) does not and will not violate any provision of Act No. 83 of May 2, 1941, as amended, or its regulations, or any material indenture, contract or agreement to which it is a party or by which its properties may be bound;
- c. this Agreement is a legal, valid, and binding obligation of PREPA, enforceable against PREPA in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights generally; and
- d. throughout the Term for so long as the Trust Indenture dated January 1, 1974, as amended, between PREPA and The Chase Manhattan Bank (National Association) as successor trustee remains in effect, PREPA shall treat all payments to SELLER under this Agreement as current expenses as defined by the terms of the Trust Agreement dated as of January 1, 1974, as amended, between PREPA and State Street Bank and Trust Company, as successor trustee, and any successor indentures or agreement, including any amendments, supplements or modifications thereto.

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12.5 SELLER's Financial Statements

For each of SELLER's fiscal years (or part thereof) during the Term, SELLER shall deliver to PREPA its audited financial statements for such fiscal year, prepared in accordance with GAAP, no later than ninety (90) Days following the completion of such fiscal year.

12.6 SELLER's Officers

SELLER shall deliver to PREPA an annual certification of the names of its corporate officers.

12.7 Other Business

SELLER shall not (a) engage in any business activity other than as reasonably required to perform its obligations under this Agreement and the Interconnection Agreement, and (b) enter into any merger, consolidation or amalgamation with any entity without PREPA's prior written consent.

12.8 Confidentiality

- a. Each Party (the "**Receiving Party**") agrees that all Agreement terms and information obtained from the other Party (the "**Disclosing Party**"), which is not otherwise generally available to the public (but without limitation of any liability the Receiving Party may have to the Disclosing Party for information that becomes generally available to the public through the negligence or willful misconduct of any of the Receiving Party, its Affiliates or their respective employees, agents and representatives), shall be kept confidential and used solely by the Receiving Party in connection with the performance of its obligations under this Agreement. Disclosure of such information may be made only within the Receiving Party's organization to key personnel, and to third parties serving as the Receiving Party's legal, financial or technical advisors, whose duties justify their need to review and know such material. The Receiving Party shall require each Person (and personnel thereof) to agree in writing for the benefit of the Disclosing Party to maintain the confidentiality of such information.
- b. To the extent a Receiving Party is required to disclose such information by any court, governmental agency or to the extent necessary to secure governmental approval or authorization, such Receiving Party shall promptly notify the Disclosing Party and use its commercially reasonable efforts to seek a confidentiality agreement that assures confidential treatment of the information consistent with the terms of this Section 12.8b. In the event the Receiving Party cannot obtain a confidentiality agreement, such Receiving Party shall use commercially reasonable efforts to obtain through court action the appropriate protective order. Notwithstanding the foregoing and Section 12.8a, PREPA may disclose the terms and conditions of this Agreement to (i) FOMB, PREB, COR3, P3A, the PROMESA Court, and any Governmental Authority for the purposes of obtaining the consents and approvals, together with such additional information as may be required to obtain such consents and approvals, (ii) COR3, P3A, any owner of the Grid System, and any potential or then-existing T&D Operator and their respective advisors and lenders, and (iii) the Puerto Rico Comptroller's Office through the filings required by Applicable Law, which will make this Agreement subject to the open records requirement.

12.9 Local Content

- a. SELLER agrees to use its commercially reasonable efforts, when soliciting and obtaining personnel to perform services for the Facility in Puerto Rico, to ensure that individuals who are *bona fide* residents of Puerto Rico as defined in Section 12.9c perform not less than thirty percent (30%) of the total personnel hours expended in the construction of the Facility (prior to the Commercial Operation Date) and not less than fifty percent (50%) of the total personnel hours expended in SELLER's performance of the services pursuant to this Agreement (following the Commercial Operation Date).
- b. SELLER agrees to use its commercially reasonable efforts, when soliciting and selecting subcontractors and vendors to perform services for the Facility in Puerto Rico, to ensure that business concerns owned and controlled by one or more individuals, who are *bona fide* residents of Puerto Rico as defined in Section 12.9c, perform not less than thirty percent (30%) of the total personnel hours expended in the construction of the Facility (prior to the Commercial Operation Date), as measured by person-hours on an annual basis. For purposes of the preceding sentence, "**owned and controlled**" means a business: (i) which is at least fifty-one percent (51%) owned by one or more of such individuals (e.g., in the case of a corporate form of organization such individuals must hold at least fifty-one percent (51%) of all voting stock of the corporation; in the case of a partnership or other form of business concern such individuals must hold at least fifty-one percent (51%) of the beneficial interests in the partnership or business concern); and (ii) whose management and daily business operations are controlled by one or more of such Persons (who need not be owners of the business).
- c. For purposes of this Section 12.9c, an individual shall be considered a *bona fide* resident of Puerto Rico, if said individual has been a resident of Puerto Rico immediately prior to commencing work on the Facility. To the extent that despite SELLER's reasonable efforts SELLER has failed to achieve the goals set forth in Section 12.9a or Section 12.9b, SELLER may for purposes of calculating satisfaction of such percentages of local content, include the services of individuals who at some time prior to commencing work on the Facility, but not necessarily including the period of time immediately prior to commencing work on the Facility, were residents of Puerto Rico for at least five (5) consecutive Years and who relocated to Puerto Rico in order to perform work on the Facility. SELLER shall, in good faith, be entitled to rely on the representation of each individual applicant and of each subcontractor or vendor as to whether such individual, subcontractor or vendor meets the criteria set forth herein. SELLER shall require equivalent undertakings from its subcontractors.
- d. Nothing contained herein shall be interpreted as obligating SELLER to take any action which would be in violation of the Applicable Law or any affirmative action program or equal opportunity obligation to which SELLER or its Affiliates are or may be bound under Applicable Law.

12.10 Subcontracting

Neither Party shall be relieved of its obligations under this Agreement as a result of subcontracting any of its obligations to a third party.

ARTICLE 13. INDEMNIFICATION

13.1 General

Subject to the other provisions of this Article 13 (*Indemnification*), each Party (the “**Indemnifying Party**”) shall indemnify and hold harmless the other Party and each of its Indemnitees from and against any and all Claims by third parties for or on account of injury, bodily or otherwise, or death of persons or for damage to or destruction of third party property, in each case to the extent resulting from or arising out of the Indemnifying Party’s violation of law, negligence, willful misconduct or failure to perform under this Agreement.

13.2 Notice of Claim

In the event any Party to this Agreement receives notice of any Claim for which such Party elects to assert a right of indemnification under this Article 13 (*Indemnification*) the Party receiving such notice shall give prompt written notice to the other Party of such Claim. The Party required to give the indemnification and hold harmless under the terms and provisions of this Agreement will have control of the defense of any such Claim (except to the extent prevented by any legal conflict of interest) including the selection of counsel to handle same. In addition to the counsel so selected, the Party being indemnified and held harmless shall be entitled to be represented by counsel of his or its own choosing but, in such event, the cost and expense of said additional counsel shall be borne by such Party.

13.3 Claims Arising from Environmental Harm

SELLER shall indemnify and hold harmless PREPA for any and all judgments (including expenses such as reasonable costs and attorneys’ fees) required to be incurred by PREPA as a result of any Claims resulting from any environmental harm due to the actions of SELLER or SELLER’s agents or employees during (i) the design, planning or construction of the Facility or the PREPA Interconnection Facilities or (ii) during the operation of the Facility, in each case arising as a result of the presence at such Facilities of pollutants, hazardous substances, materials or wastes in excess of amounts and concentrations permitted by Applicable Law then in effect. In the event SELLER fails to reimburse PREPA for such expenses within thirty (30) Days of receipt of written notice from PREPA stating that such expenses were incurred, PREPA may offset the amount of such expenses against amounts due SELLER from PREPA under this Agreement. In the event SELLER disputes that claimed expenses are due to the actions of SELLER or SELLER’s agents, such dispute shall be resolved pursuant to Section 21.10 (*Dispute Resolution*).

ARTICLE 14. FORCE MAJEURE

14.1 General

“**Force Majeure**” means, subject to Section 14.2 (*Instances of Force Majeure*), any event or circumstance beyond the reasonable control of the affected Party (the “**Affected Party**”) and not resulting from the fault or negligence of the Affected Party claiming the Force Majeure, which wholly or partially prevents the Affected Party from performing any of its obligations under this Agreement, but only if and to the extent that:

- a. the Affected Party could not have prevented, avoided or removed such circumstance, despite the exercise of reasonable diligence in accordance with consistent with Prudent Utility Practices;

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- b. the Affected Party has taken all reasonable precautions, due care and reasonable alternative measures in order to (i) avoid the effect of such event or circumstance on the Affected Party's ability to perform such obligation under this Contract, and (ii) mitigate the consequences thereof;
- c. such event or circumstance did not directly or indirectly arise out of the breach by the Affected Party of any of its obligations under this Agreement or the fault or negligence of the Affected Party; and
- d. the Affected Party has given the other Party ("**Non-Affected Party**") notice of such event or circumstance in accordance with Section 14.3 (*Notice*).

Except as provided in Section 14.4 (*Consequences*), ~~a~~Force Majeure shall excuse the Affected Party claiming the Force Majeure from performing the obligation affected by such Force Majeure and the Affected Party shall have no liability for damages or otherwise to the extent that caused by such non-performance. The Affected Party shall bear the burden of proving whether an event of Force Majeure has occurred.

14.2 Instances of Force Majeure

Provided that a claim of Force Majeure satisfies the requirements of Section 14.1 (*General*), Force Majeure may include the following: (i) acts of God, strikes, industrial disturbances, acts of public or foreign enemy, war, blockades, boycotts, riots, insurrections, epidemics, earthquakes, storms, sabotage, works to rule, go-slows and other public agitation; (ii) invasion, terrorism, rebellion, plague, lightning, hurricane, natural calamity, floods, civil disturbances, lockouts, fires, explosions, interruptions of services due to the act or failure to act of any Governmental Authority (other than PREPA); (iii) any Pending Permit Delay; and (iv) failure of any subcontractor or supplier of the Affected Party to perform as a result of an event that would constitute ~~a~~ Force Majeure hereunder. Notwithstanding the foregoing, ~~a~~Force Majeure ~~Event~~ shall expressly not include:

- a. bankruptcy of a Party or any of its subcontractors or suppliers at any tier;
- b. breakdown or defect of temporary works or the Contractor's equipment or any subcontractor's equipment, other than breakdown caused by a separate Force Majeure ~~Event~~;
- c. any changes in prevailing market prices for goods, fuel or labor;
- d. strikes, lockouts, works to rule, go-slows and other industrial disturbances by personnel of SELLER or any of its contractors and subcontractors at any tier;
- e. any failure by a Party to obtain and/or maintain a Permit, other than in the case of a Pending Permit Delay;
- f. any Pending Permit Delays in excess of twelve (12) Months; or
- g. any promulgation by the U.S. Department of Energy of implementation rules for the Bulk-Power System EO after the Bid Submission Date.

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14.3 Notice

A Party claiming Force Majeure shall, within ten (10) Days after the occurrence of the event(s) which forms the basis for such claim, give the Non-Affected Party written notice thereof, describing (i) the particulars of such occurrence, (ii) an estimate of the duration of the impact of such event on the Affected Party's ability to perform its obligations, and (iii) how such claim otherwise satisfies the requirements of Section 14.1 (*General*).

14.4 Consequences

Subject to Appendix G (*Determination of Deemed NEO*) neither Party shall be excused by reason of Force Majeure from the obligation to make any payments, when due, to the other Party.

14.5 Disputes

If a Party Disputes the other Party's claim of Force Majeure, such Dispute shall be resolved pursuant to Section 21.10 (*Dispute Resolution*).

ARTICLE 15. TERMINATION

15.1 Termination Date

Subject to Section 15.2 (*No Discharge of Obligations*), this Agreement shall terminate on the earlier to occur of:

- a. expiration of the Term;
- b. mutual consent of the Parties in writing;
- c. termination of the Agreement identified in a written notice delivered by the non-defaulting Party following the occurrence of a Default, provided that the termination date occurs no earlier than thirty (30) Days after the issuance of such notice;
- d. inability of the Parties to achieve the Closing Date by the date required under Section 2.3 (*Initial Effectivity & Closing Date*);
- e. a ~~FNTP~~ Construction Start Termination Event; or
- f. a COD Termination Event.

15.2 No Discharge of Obligations

Cancellation, expiration or earlier termination of this Agreement shall not relieve the Parties of obligations incurred prior to, or as a result of, such cancellation, expiration or earlier termination of this Agreement, which by their nature should survive such events, including this Section 15.2 (*No Discharge of Obligations*), and ~~Sections 2.5 (Performance Security), 6.8 (Record Keeping), 11 (Liability), Articles 11 (Liability), 13 (Indemnification), 14 (Force Majeure), and 15 (Termination), Sections 2.5 (Performance Security), 6.8 (Record Keeping), 12.8 (Confidentiality), 13 (Indemnification), 14 (Force Majeure), 15 (Termination), 16.2 (Certain Material Breaches), 18.1 (SELLER Requirements), and 21 (Miscellaneous Provisions), and Appendix Q (Performance Guarantees)~~. The Articles, Sections and Appendices designated in the preceding sentence shall survive the Terminate Date, provided that ~~Articles 12.8 (Confidentiality) and Article 13~~

(*Indemnification*) shall expire on the first (1st) and second (2nd) anniversary of the Termination Date, respectively. Without limiting the foregoing, termination of this Agreement shall not discharge either Party from any Claim or obligation it owes to the other Party under this Agreement by reason of any transaction, loss, cost, damage, expense or liability which shall occur or arise (or the circumstances, events, or basis of which shall occur or arise) prior to the Termination Date. Any such Claim or obligation owed (whether the same shall be known or unknown at termination or whether the circumstances, events or basis of the same shall be known or unknown at termination) shall survive the Termination Date. Except as otherwise expressly contemplated by this Agreement, any indebtedness by either Party to the other shall be considered payable within ninety (90) Days after the Termination Date.

15.3 Removal of Facility & Related Equipment

Following the Termination Date, SELLER shall be entirely responsible (at its sole cost, risk and expense) for owning, operating, maintaining and ultimately removing the Facility and related equipment at the end of their useful lives in accordance with all Applicable Laws.

ARTICLE 16. DEFAULT

16.1 Definition

The following events shall constitute a “**Default**” under this Agreement:

- a. for SELLER as the defaulting Party only, the provision of materially incorrect or misleading information, representation or certification submitted (or made) by SELLER in connection with either (i) the submission of SELLER’s proposal to PREPA in response to the RFP, or (ii) the execution, delivery or performance by SELLER of this Agreement, in each case relating to either (A) corruption or bribery matters, or (B) a representation made by SELLER under Section 16.2 (*Certain Material Breaches*);
- b. except as otherwise covered in Section 16.1a, a materially incorrect or misleading representation or warranty made by a Party under this Agreement or any certification submitted by a Party in connection with execution, delivery of performance of this Agreement, which in either case remains uncured for a period of at least thirty (30) Days after receipt by such Party of notice thereof from the other Party;
- c. for SELLER as the defaulting Party only, default by SELLER in the observance or performance of any covenant contained in Section 2.5 (*Performance Security*) where such default continues uncured for a period of at least thirty (30) Days;
- d. a Party’s failure to remit in full any amount due and payable under this Agreement to the other Party, which the first Party fails to cure within sixty (60) Days after the date on which the first Party receives written notice from the other Party of such failure (other than disputed amounts, which the Parties shall resolve in accordance with Section 21.10 (*Dispute Resolution*));
- e. for SELLER as defaulting Party, a default by SELLER under Sections 16.2a or 16.2b;
- f. except as otherwise covered in Sections 16.1c or 16.1d, default by a Party in the observance or performance of any of the material terms, covenants, or conditions contained in this Agreement, which remains uncured for a period of one hundred twenty

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(120) Days after the date on which the first Party receives written notice from the other Party of such failure, or such longer period (not to exceed an additional cure period of one hundred fifty (150) Days if the first Party can cure such default and diligently pursues such cure); and

- g. for SELLER only as the defaulting Party:
1. a ~~FNTP~~ [Construction Start](#) Termination Event;
 2. a COD Termination Event;
 3. a default by SELLER under the Interconnection Agreement;
 4. an Insolvency Event;
 5. a Development Abandonment;
 6. a Permanent Closing; or
 7. during any two (2) consecutive Agreement Years, SELLER fails to [(i) deliver an aggregate quantity of Net Electrical Output in excess of seventy percent (70%) of the ~~Base Annual Quantity~~ [P50 Energy Yield](#)], or (ii) keep the degradation of the Facility's ability to make Net Electrical Output available at the Interconnection Point equal to or less than the Contract Degradation,]¹⁷

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

16.2 [Certain Material Breaches](#)

- a. Pursuant to ~~the~~ FOMB's contract review policy (FOMB POLICY: REVIEW OF CONTRACTS, as modified on October 30, 2020), SELLER represents and warrants to PREPA on the Agreement Date, and again on the Closing Date, (i) the due execution by SELLER and delivery to PREPA of a certification (the "**FOMB Certification**") in the form set out in Appendix T (*Form of FOMB Certification*), and (ii) the completeness, accuracy and correctness of all information included in such FOMB Certification. As acknowledged, certified and agreed in the FOMB Certification, any misrepresentation, inaccuracy or falseness in such FOMB Certification shall render this Agreement null and void, and SELLER shall reimburse PREPA immediately for any amounts, payments or benefits received from PREPA under this Agreement.
- b. In accordance with Article [63.4](#) of ~~Public Law No. 458 of December 29, 2000~~ [Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico](#) of the Commonwealth of Puerto Rico, as amended, SELLER acknowledges and agrees that its conviction or guilty plea for any of the crimes as enumerated in Article [33.4](#) of such Act, in addition to any other applicable liability, shall render this Agreement null and void, and SELLER shall reimburse PREPA immediately for any amounts, payments or benefits

¹⁷ ~~NOTE: PREPA / S&L to advise whether useful or needed in light of restrictions in permissible degradation through definitions of P50 and Base Annual Quantity.~~

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received from PREPA under this Agreement that directly resulted from the committed crime, but only to the extent required by ~~Public Law No. 458~~[Act 2-2018](#).

- c. PREPA shall have the right to terminate this Agreement if 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, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.
- d. SELLER acknowledges and agrees that the conditions outlined throughout this Section 16.2 (*Certain Material Breaches*) constitute essential requirements of this Agreement.

16.3 Remedies & Disputes

Upon the occurrence of a Default, the non-defaulting Party shall have the right to invoke its remedies under this Agreement and/or under Applicable Law. Any Disputes in connection with the existence of a Default shall be resolved the matter in the manner prescribed in Section 21.10 (*Dispute Resolution*).

ARTICLE 17. TAXES & FEES

17.1 SELLER Requirements

SELLER shall bear all Taxes and Environmental Costs applicable to the construction and operation of the Facility, including Post-Bid Submission Date Tax or a Post-Bid Submission Date Environmental Cost.⁴⁸ SELLER will promptly pay and discharge all Taxes, assessments and governmental charges or levies imposed upon it or in respect of all or any part of its property or business, all trade accounts payable in accordance with usual and customary business terms, and all Claims for work, labor or materials which, if unpaid, might become a lien or charge upon any of its property; provided that SELLER shall not be required to pay any such tax, assessment, charge, levy, account payable or Claim if: (a) the validity, applicability or amount thereof is being contested in good faith by appropriate actions or proceedings which will prevent the forfeiture or sale of any property of SELLER or any material interference with the use thereof by SELLER, and (b) SELLER shall set aside on its books reserves deemed by it to be adequate with respect thereto.

17.2 PREPA Requirements

PREPA shall pay or cause to be paid all Taxes on or with respect to the purchase and sale Net Electrical Output at the Interconnection Point (including sales tax, excise tax, municipal license tax and value-added tax).

⁴⁸ ~~NOTE: This reflects PREPA's requested position. We expect it will make projects more difficult to finance and result in higher PPOA prices as lenders and project owners price change in law risk.~~

ARTICLE 18. INSURANCE⁴⁹

18.1 SELLER Requirements

SELLER shall obtain and maintain in full force and effect from the ~~FNTP~~[Construction Start](#) Date and during the Term of this Agreement and thereafter as provided herein policies of insurance covering all operations engaged in by this Agreement, which shall be formally agreed with an insurance company authorized to do business in Puerto Rico, and to that effect it shall provide in original certificates of insurance and endorsements as follows:

- a. Workman's Compensation Insurance: SELLER shall provide and maintain Workmen's Compensation Insurance as required by the Workmen's Compensation Act of the Commonwealth of Puerto Rico. SELLER shall also be responsible for compliance with said Workmen's Compensation Act by all his subcontractors, agents, and invitees. SELLER shall furnish PREPA a certificate from the State Insurance Fund, in a form acceptable to PREPA, showing that all personnel employed in the work are covered by the Workmen's Compensation Insurance, in accordance with this Agreement. Imported technical personnel are exempted, as per Act of May 16, 1958 No 16. SELLER shall furnish evidence of such exemption and certificate from the insurance carrier covering said personnel.
- b. Commercial General Liability Insurance: SELLER shall provide and maintain Commercial General Liability Insurance with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate.
- c. Automobile Liability Insurance: SELLER shall provide and maintain Automobile Liability Insurance with limits of \$1,000,000 combined single limit covering all owned, non-owned and hired automobiles.
- d. Excess Umbrella Liability Insurance: SELLER shall provide and maintain Excess Umbrella Liability Insurance with limits of \$4,000,000 per occurrence in excess of the limits of insurance provided in Section 18.1b.
- e. All Risk Physical Damage Property Insurance: SELLER shall provide and maintain All Risk Physical Damage Property Insurance, including machinery coverage to cover all real and personal property of SELLER (including earthquake and hurricane occurrence) to one hundred percent (100%) of replacement cost to the extent available on commercially reasonable terms as determined by SELLER and subject to a reasonable deductible, which shall be the total responsibility of SELLER. This policy of insurance shall be placed into effect on the Commercial Operation Date. The insurance as required in this Section 18.1e shall cover work at the Site and shall also cover portions of the work located away from the Site and portions of the work in transit. The policy shall include as insured property scaffolding, false work, and temporary buildings located at the Site.
- f. Machinery Insurance: SELLER shall provide and maintain machinery insurance, if any, required by the contract documents or by law, covering insured objects during installation and until final acceptance by PREPA. This insurance shall name as insured SELLER and PREPA.

⁴⁹ ~~NOTE: PREPA Risk Management Team to review.~~

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- g. Employer's Liability Insurance: SELLER shall provide and maintain Employer's Liability Insurance with minimum bodily injury limits of \$1,000,000 for each employee and \$1,000,000 for each accident, covering against the liability imposed by law upon SELLER as a result of bodily injury, by accident or disease, including death arising out of and in the course of employment, outside of and in the course of employment, and outside of and distinct from any claim under the Workmen's Compensation Act of the Commonwealth of Puerto Rico.
- h. Business Interruption Insurance: SELLER shall provide and maintain Business Interruption Insurance with respect to the Facility to include business interruption/loss of income for at least [twelve (12)]²⁰ Months, with a waiting period of no more than thirty (30) Days, an extended period of indemnity of an additional ninety (90) Days, and coverage for extra expense incurred during any period of interruption based on actual loss sustained.

18.2 Requirements for the SELLER Policies

The Commercial General Liability Insurance and Automobile Liability Insurance required under Section 18.1 (*SELLER Requirements*) shall be endorsed to include:

- a. as Additional Insured, using ISO Additional Insured Endorsement CG 20 26 11 85 or a substitute providing equivalent coverage:

Puerto Rico Electric Power Authority
Risk Management Office
PO Box 364267
San Juan, PR 00936-4267;
- b. a thirty (30) Days' cancellation or nonrenewable notice to be sent by certified mail with return receipt to the above address;
- c. an endorsement including this Agreement under contractual liability coverage and identifying it by number, date and the Parties;
- d. a waiver of Subrogation in favor of PREPA; and
- e. the breach of any of the Warranties or Conditions in these policies by SELLER shall not prejudice PREPA's rights under this policy.

18.3 Contractor Requirements

The contractors and designers retained by SELLER to construct the Facility and the PREPA Interconnection Facilities shall obtain and maintain in full force and effect before the [FNTP Construction Start](#) Date, policies of insurance covering all constructions engaged in by this Agreement, which shall be formally agreed with insurance companies authorized to do business in Puerto Rico, and to that effect SELLER shall provide in the original certificate of insurance and endorsements, as follows:

²⁰ ~~NOTE: PREPA to consider shorter period (e.g., six months) as duration impacts cost.~~

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- a. Workmen's Compensation Insurance: SELLER shall cause its contractors to provide and maintain Workmen's Compensation Insurance as required by the Workmen's Compensation Act of the Commonwealth of Puerto Rico. SELLER shall also be responsible for compliance with said Workmen's Compensation Act by all its subcontractors, agents, and invitees. SELLER shall furnish PREPA a certificate from the State Insurance Fund showing that all personnel employed in the work are covered by the Workmen's Compensation Insurance, in accordance with this Agreement. Imported technical personnel are exempted, as per Act of May 16, 1958, No. 16. SELLER shall furnish evidence of such exemption and certificate from the insurance carrier covering said personnel.
- b. Employer's Liability Insurance: SELLER shall cause its contractors to provide and maintain Employer's Liability Insurance with minimum bodily injury limits of \$1,000,000 for each employee and \$1,000,000 for each accident, covering against the liability imposed by law upon SELLER as a result of bodily injury, by accident or disease, including death arising out of and in the course of employment and outside of and distinct from any claim under the Workmen's Compensation Act of the Commonwealth of Puerto Rico.
- c. Commercial General Liability Insurance: SELLER shall cause its contractors to provide and maintain Commercial General Liability Insurance ("CGL") with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage. Continuing CGL insurance shall cover liability arising from products completed operations and liability assumed under an insured contract for at least three (3) Years following substantial completion of the work.
- d. Automobile Liability Insurance: SELLER shall cause its contractors to provide and maintain Automobile Liability Insurance with limits of \$1,000,000 combined single limit covering all owned, non-owned and hired automobiles.
- e. Excess Umbrella Liability Insurance: SELLER shall cause its contractors to provide and maintain Excess Umbrella Liability Insurance with limits of \$4,000,000 per occurrence in excess of the limits of insurance provided in Section 18.3c.
- f. Builder's Risk Insurance: SELLER shall cause its contractors to provide and maintain in force Builder's Risk Insurance for the entire work. Such insurance shall be written in an amount equal to the total contract sum as well as subsequent modifications of that sum. The insurance shall apply on a replacement cost basis and coverage shall be written on a completed value form as follows:
 1. The insurance as required above shall be written to cover all risks of physical loss except those specifically excluded in the policy, and shall inure at least against the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, riot, civil commotion, theft, vandalism, malicious mischief, earthquake, and collapse.
 2. Any deductible applicable to the insurance purchased in compliance with this requirement shall be paid by SELLER.
 3. Waiver of Subrogation. SELLER shall waive all rights against PREPA and its officers, directors, agents, and employees for recovery for damages caused by fire and other perils to the extent covered by builder's risk or property insurance

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purchased pursuant to the requirements of this Agreement, or any other property insurance applicable to the work.

18.4 Requirements for the Contractor Policies

The Commercial General Liability Insurance and Automobile Liability Insurance required under Section 18.3 (*Contractor Requirements*) shall be endorsed to include:

- a. as Additional Insured, using ISO Additional Insured Endorsement CG 20 26 11 85 or a substitute providing equivalent coverage:

Puerto Rico Electric Power Authority
Risk Management Office
PO Box 364267
San Juan, PR 00926-4267;
- b. a thirty (30) Days' cancellation or nonrenewable notice to be sent by certified mail with return receipt to the above address;
- c. an endorsement including this Agreement under contractual liability coverage and identifying it by number, date and the Parties;
- d. a waiver of Subrogation in favor of PREPA; and
- e. the breach of any of the Warranties or Conditions in these policies by the relevant Contractor or designer shall not prejudice PREPA's rights under this policy.

18.5 Application of Proceeds

SELLER shall apply any and all insurance proceeds received in connection with the damage or loss of the Facility, or (prior to their transfer) the PREPA Interconnection Facilities, toward the repair, reconstruction or replacement of the Facility or the PREPA Interconnection Facilities, as applicable.

ARTICLE 19. ASSIGNMENT & TRANSFER

19.1 Restriction on Assignment

Except as otherwise provided in this Article 19 (*Assignment & Transfer*), neither Party shall assign or transfer this Agreement or the Interconnection Agreement without the prior written consent of the other Party, which consent such Party shall not be unreasonably withhold. Any attempt to assign this Agreement or the Interconnection Agreement without the prior written consent of the corresponding Party shall be void.

19.2 PREPA's Right to Assign

Notwithstanding the provisions of Section 19.1 (*Restriction on Assignment*), the Parties acknowledge that PREPA is undergoing a transformation process, and therefore, 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,

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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 Agreement as permitted by Applicable Law and at any time, without SELLER’s consent and without cost, expense or incremental liability to PREPA, to a T&D Operator or to any Governmental Authority of Puerto Rico; provided that PREPA shall notify SELLER no later than thirty (30) Days before the effective date of any such Transfer. Unless otherwise agreed by PREPA, following the Transfer, PREPA shall be released from all obligations under this Agreement to the extent such transferee assumes such obligations in writing.

19.3 SELLER’s Right to Assign

Notwithstanding the provisions of Section 19.1 (*Restriction on Assignment*), SELLER shall have the right to assign this Agreement without PREPA’s consent to the Project Lenders as collateral security in order to obtain financing or other funding. PREPA agrees to execute and deliver an agreement consenting to any assignment as collateral security in favor of the Project Lenders containing terms and conditions that are customary for transactions of this kind. PREPA agrees to cooperate in good faith in this regard and to provide other customary and reasonable documents and acknowledgments as the Project Lenders may reasonably request in connection with the financing of the Facility, including a direct agreement or consent to assignment in accordance with this Section 19.3 (*SELLER’s Right to Assign*) and substantially in the form of Appendix Y (*Form of Direct Agreement*) and a legal opinion addressed to the Project Lenders with respect to due authorization and capacity of PREPA to enter into such agreement or consent, in each case as reasonably acceptable to PREPA, provided that SELLER shall reimburse PREPA for the cost of negotiating and providing such documents, acknowledgments, opinions and agreements. In addition, SELLER shall have the right to assign this Agreement to any agent, trustee or other Person (including any corporation or partnership) representing the Project Lenders under the financing documents. If SELLER shall assign this Agreement as collateral security pursuant to this Section 19.3 (*SELLER’s Right to Assign*), then so long as the secured obligations, or any consolidation, modification or extension of such obligation shall remain outstanding, the following provisions shall apply:

- a. The making of an assignment pursuant to the preceding provisions of this Section 19.3 (*SELLER’s Right to Assign*) shall not be deemed to constitute an assignment or transfer of this Agreement, nor shall any assignee referred to above, as such, be deemed to be an assignee or transferee of this Agreement so as to require such assignee, as such, to assume the performance of any of the terms and conditions of SELLER to be performed hereunder; provided that the purchaser at any sale of this Agreement in any proceeding for the foreclosure of any assignment, or the assignee or transferee of this Agreement in any proceedings for the foreclosure of any assignment, or the assignee or transferee of this Agreement under any instrument of assignment or transfer in lieu of the foreclosure of any assignment, shall be deemed to be an assignee or transferee within the meaning of this Section 19.3a and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of SELLER to be performed hereunder from and after the date of such purchase and assignment.
- b. Notwithstanding any other provision of this Agreement, any sale of SELLER’s rights in this Agreement in any secured creditor’s sale, any proceeding for the foreclosure of any assignment, or the assignment or transfer of this Agreement in lieu of the foreclosure of any assignment, shall be deemed to be a permitted sale, transfer or assignment of this Agreement, and this Agreement shall continue in full force and effect following any such sale, transfer or assignment.

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- c. If PREPA terminates this Agreement prior to the expiration of the Term due to a Default by SELLER or rejects or disaffirms this Agreement pursuant to any bankruptcy law or proceeding or other similar Applicable Law or proceedings affecting creditors' rights generally with respect to a bankruptcy proceeding relating to SELLER or otherwise, PREPA agrees, if there are outstanding obligations to a Project Lender, and subject to the receipt of all necessary approvals, to enter into a new power purchase and operating agreement with the Project Lender (or its designee or nominee) on substantially similar terms to this Agreement; provided that such designee or nominee (x) is controlled by the Project Lender, (y) is approved by PREPA (which approval PREPA shall not unreasonably withhold) and has provided to PREPA (i) its audited financial statements as per GAAP, demonstrating that such new designee or nominee has a tangible net worth of at least twenty-five million dollars (\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least seventy-five million dollars (\$75,000,000)), (ii) evidence reasonably acceptable to PREPA that such new designee or nominee is or has engaged a Qualified Operator, and (iii) the certifications and documentation required by Appendix B (*Signing Conditions*), but construing references to SELLER therein as references to such new designee or nominee, and (z) has accepted all terms, provisions and limitations of this Agreement, effective as of the date of such termination.

Notwithstanding the provisions of Section 19.1 (*Restriction on Assignment*), SELLER reserves the right to assign all of its rights, title and interest under this Agreement to any Affiliate of SELLER without the consent of PREPA, provided that (i) such Affiliate agrees to be bound by the terms of this Agreement and to fully perform the obligations of SELLER hereunder (including Appendix B (*Signing Conditions*)), [and] (ii) each Sponsor maintains the same equity interest in such Affiliate as required by Section 19.4 (*Restrictions on Equity Transfers*) [, and (iii) such assignment does not result in fifty-one percent (51%) or more of SELLER's equity control in the Project being transferred to a third-party other than SELLER]. SELLER shall notify PREPA of SELLER's intention to assign this Agreement at least thirty (30) Days in advance. For the avoidance of doubt, the failure of PREPA to respond to any request by SELLER for consent to assignment pursuant to Section 19.3 (*SELLER's Right to Assign*), shall not be deemed or construed as an acceptance or consent to such proposed assignment.

19.4 Restrictions on Equity Transfers

SELLER shall ensure that each [Sponsor] does not assign, sell or transfer (whether directly or indirectly) to any other Person any part of its ownership interests in SELLER or renounce any preferential subscription rights for ownership interests in connection with a capital increase (each, a "**Equity Transfer**") at any time prior to the Commercial Operation Date.²⁴ After the Commercial Operation Date, SELLER shall ensure that each [Sponsor] does not affect an Equity Transfer at any time without the prior approval of PREPA, provided that a [Sponsor] may:

- a. create a security interest in its ownership interest in SELLER in favor of the Project Lenders and PREPA hereby approves any Equity Transfer thereof resulting from the enforcement of such security interests in accordance with the financing documents of the Project Lenders;
- b. at any time after the Commercial Operation Date, effect an Equity Transfer to a Wholly-Owned Affiliate, provided that such Wholly-Owned Affiliate remains a Wholly-Owned Affiliate all times after such Equity Transfer; or

²⁴ NTD: Aligns with FOMB order on shovel-readies

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- c. [from and after the second anniversary of the Commercial Operation Date], effect an Equity Transfer to a person, including a Wholly-Owned Affiliate, provided that such Equity Transfer, when aggregated with all previous Equity Transfers, does not result in a transfer of more than forty-nine percent (49%) of the issued and outstanding shares and voting rights in SELLER to any Person other than a Sponsor or a Wholly-Owned Affiliate of a Sponsor.

For the avoidance of doubt, the failure of PREPA to respond to any request by SELLER for consent to transfer pursuant to this Section 19.4 (*Restrictions on Equity Transfers*), shall not be deemed or construed as an acceptance or consent to such proposed transfer. Prior to PREPA's approval of such transfer, SELLER shall cause the proposed new owner of such equity to provide to PREPA (i) its audited financial statements as per GAAP, demonstrating that such new owner has a tangible net worth of at least twenty-five million dollars (\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least seventy-five million dollars (\$75,000,000)), (ii) evidence reasonably acceptable to PREPA that such new owner is or has engaged a Qualified Operator, and (iii) the certifications and documentation required by ~~Appendix B (*Signing Conditions*)~~, but construing references to SELLER therein as references to such new owner. In each case, SELLER shall ensure that any regulatory approvals required have been obtained in respect of such transfer and such transfer otherwise complies with Applicable Law.

19.5 Restrictions on Asset Transfers

Prior to the Commercial Operation Date, SELLER shall not sell, directly or indirectly, the Facility, or any portion of the Facility or substantially all of its assets. After the Commercial Operation Date, if SELLER intends to sell the Facility, or any portion of the Facility, or substantially all of its assets, directly or indirectly, it shall notify PREPA of its intention to sell sixty (60) Days in advance of the intended date of such sale. PREPA shall have the right to approve the new owner, which approval PREPA shall not unreasonably withhold; provided that no such approval shall be required if (a) the transfer of SELLER's assets is part of any foreclosure on any mortgage, lien, pledge, charge or other encumbrance granted to the lenders under any non-recourse project financing related exclusively to such assets and such lenders or their agent has entered into a direct agreement with PREPA in respect of the collateral assignment of this Agreement and the Interconnection Agreement, or (b) such new owner constitutes any other permitted assignee under Section 19.3 (*SELLER's Right to Assign*). Prior to PREPA's approval of such new owner, SELLER shall cause the proposed new owner to provide PREPA with (i) its audited financial statements as per GAAP, demonstrating that such new owner has a tangible net worth of at least twenty-five million dollars (\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least seventy-five million dollars (\$75,000,000)), (ii) evidence reasonably acceptable to PREPA that such new owner is or has engaged a Qualified Operator, and (iii) the certifications and documentation required by ~~Appendix B (*Signing Conditions*)~~, but construing references to SELLER therein as references to such new owner. In each case, (1) SELLER shall ensure that any regulatory approvals required have been obtained in respect of such transfer and such transfer otherwise complies with Applicable Law, and (2) if requested by PREPA, the Parties and such new owner shall enter into an agreement under which (A) SELLER assigns and transfers all of its rights and obligations under this Agreement to such new owner, and (B) such new owner expressly assumes all liabilities of SELLER arising under this Agreement prior to the date of such assignment.

ARTICLE 20. NOTICES

20.1 General.

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

IF TO SELLER:

[●]
Attention: [●]
E-mail: [●]

IF TO PREPA:

Puerto Rico Electric Power Authority
1110 Ponce de León Avenue, Office
#808
San Juan, Puerto Rico

Attention: Director of Planning and
Environmental Protection

E-mail: [●]

20.2 Change of Address or Persons.

Either Party hereto may change, by notice as above provided, the Persons or addresses to which all such notices are sent.

ARTICLE 21. MISCELLANEOUS PROVISIONS

21.1 Waiver & Amendment

This Agreement, including the appendices hereto, may be amended or waived only by written agreement between the Parties. A waiver of any Default shall extend only to the particular Default waived and shall not limit or otherwise affect any rights that either Party may have with respect to any other or future Default. The Parties acknowledge and agree that any amendments to the economic or technical terms of this Agreement, or the scope of the Facility, require PREB approval.

21.2 Strict Performance

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

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21.3 No Third-Party Beneficiaries

This Agreement is intended solely for the benefit of the Parties hereto and, solely to the extent rights thereto are provided in this Agreement, for the benefit of the Project Lenders as third-party beneficiaries. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a Party to this Agreement.

21.4 No Sharing of Benefit

No officer, employee, or agent of SELLER or PREPA or municipal governments shall be entitled to any share or part of this Agreement or to any benefit that may arise therefrom that would be in violation of any Applicable Law of the Commonwealth of Puerto Rico or policy of PREPA.

21.5 No Association, Joint Venture, or Partnership

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

21.6 Successors

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

21.7 Complete Agreement

This Agreement is intended by the Parties as the final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement with respect to the subject matter hereof and supersedes all prior written and oral understandings between the Parties with respect thereto.

21.8 Severability

If any provision hereof shall be held invalid, illegal or unenforceable by the holding of an arbitral authority convened pursuant to Section 21.10 (*Dispute Resolution*), such holding shall not invalidate or render unenforceable any other provision hereof.

21.9 Anticorruption & Antibribery

SELLER certifies as of the Closing Date that, to its actual knowledge, it does not receive payment or benefit of any nature for services rendered regularly through an appointment to a Governmental Authority of Puerto Rico.

21.10 Dispute Resolution²²

- a. If a dispute arises between the Parties regarding the application, interpretation, enforceability, validity, performance, or breach of this Agreement or matters arising therefrom or relating thereto, whether sounding in contract, tort, unfair competition, law, equity or any other legal form (a “**Dispute**”), then such Dispute shall be resolved solely by either the agreement of the Parties, with or without a Technical Recommendation (as defined and subject to the terms set forth in Section 21.10b), or in a proceeding before PREB in accordance with this Section. In the event of a Dispute under this Agreement, the disputing Party may promptly provide written notice of the Dispute (a “**Dispute Notice**”) to the other Party. Following delivery of the Dispute Notice, the Parties shall either (i) agree in writing to submit such Dispute for a Technical Recommendation as provided in Section 21.10b, or (ii) absent such agreement, nominate a member of its respective senior management, who shall have decision-making authority on behalf of such Party, and such senior management members shall promptly meet and seek to achieve settlement, if possible, by negotiation and mutual agreement. If the Dispute is not resolved or submitted for Technical Recommendation within forty-five (45) Days after the Dispute Notice is received by the recipient Party (or such longer period of time as may be mutually agreed by the Parties in writing), then either Party may submit the Dispute for final determination to PREB.²³

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

21.11 No Economic Interest

SELLER represents, warrants and certifies as of the Closing Date, to its actual knowledge, that no public employee has any personal or economic interest in this Agreement.

²² ~~NOTE: PR counsel advise that the Puerto Rico Energy Bureau has primary and exclusive jurisdiction over disputes between PREPA and independent power producers. See 22 L.P.R.A. § 1054c (a)(6).~~

²³ ~~NOTE: D&V— Please confirm the Technical Dispute regime should not pose a regulatory issue since PREB has ultimate say.~~

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21.12 Code of Ethics

SELLER agrees to comply with the provisions of Act of June 18, 2002, No. 84, as amended, which establishes a Code of Ethics for the Contractors, Suppliers and Economic Incentive Applicants of the Executive Agencies of the Commonwealth of Puerto Rico.

21.13 Independent Contractor

SELLER shall be considered as an independent contractor, for all material purposes under this Agreement, and all Persons engaged or contracted by SELLER for the performance of its obligations herein, shall be considered as its employees or agents or those of its subcontractors, and not as employees or agents of PREPA.

21.14 Counterparts

This Agreement may be executed in any number of counterparts with the same effect as if both Parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one instrument.

21.15 Governing Law

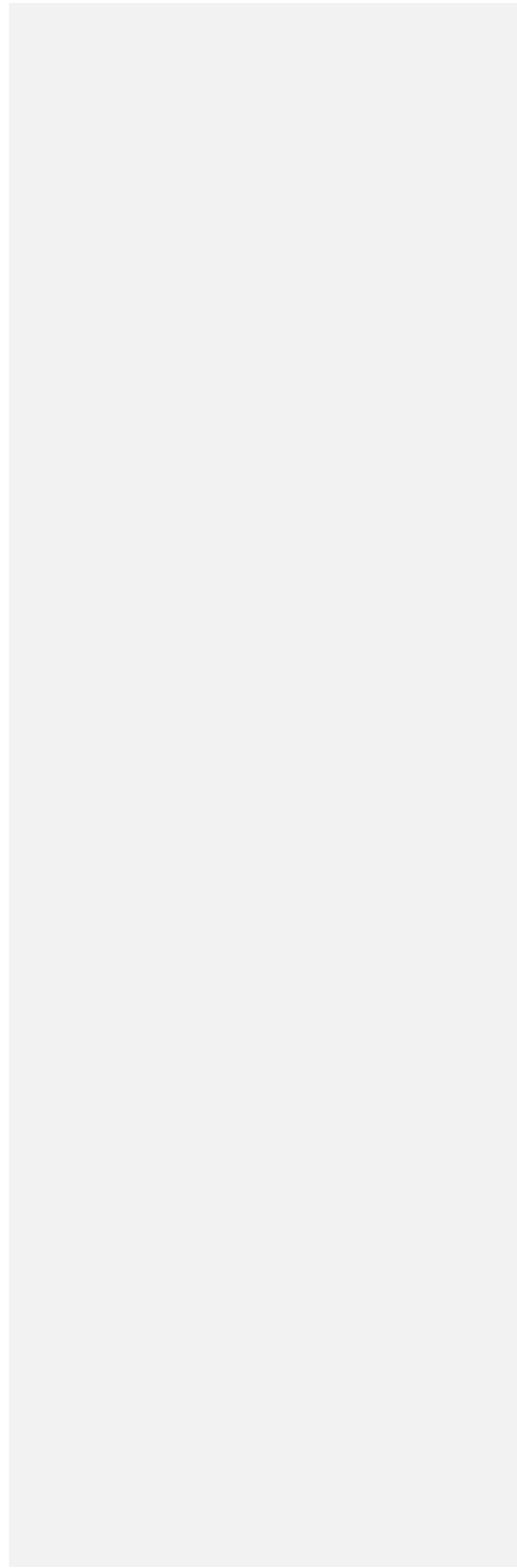
This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Puerto Rico without regard to any contrary result required under applicable conflicts of laws rules. The Parties herein agree that all Disputes arising hereunder shall be resolved pursuant to Section 21.10 (*Dispute Resolution*).

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

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

| | |
|--------------------------------------|-----|
| PUERTO RICO ELECTRIC POWER AUTHORITY | [●] |
| _____ | |
| Efran Paredes Maisonet | [●] |
| Executive Director | [●] |



APPENDIX A - HOLIDAYS

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

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

APPENDIX B - SIGNING CONDITIONS

1. Together with the signing of this Agreement, SELLER shall provide:
 - a. an original certificate of tax status and compliance from the Commonwealth of Puerto Rico for the five (5) previous years, confirming that it does not owe taxes to the Commonwealth of Puerto Rico or is paying such taxes by an installment plan in full compliance with its terms;
 - b. an income tax return filing certificate issued by the Treasury Department of Puerto Rico, Area of Internal Revenues assuring that SELLER has filed its Income Tax Return for the last five (5) years (obtained by using the Request for Copy and/or Certification of Income Tax Returns Form issued by the Treasury Department of Puerto Rico);
 - c. a certificate of debt issued by the Treasury Department of Puerto Rico, Area of Internal Revenues;
 - d. a certificate issued by the Municipal Revenues Collection Center assuring that SELLER does not owe any tax to such governmental agency;
 - e. a certificate issued by the Department of Labor and Human Resources of Puerto Rico, evidencing that SELLER has paid to the Department of Labor and Human Resources of Puerto Rico, if applicable, its employees' contributions, in accordance with the Puerto Rico Employment Security Act (unemployment, temporary disability or sickness or social security for chauffeurs) or is paying such contributions by an installment plan in full compliance with its terms;
 - f. a certificate issued by the Child Support Administration (ASUME) evidencing that SELLER has complied with the retention, if applicable, that an employer must do;
 - g. a sworn and notarized statement, as of the Agreement Date, evidencing compliance with [Article 3 of Public Law No. 458 of December 29, 2000, 3 Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico](#) of the Commonwealth of Puerto Rico, as amended, in the form set forth in Appendix J (*Progress Review*);
 - h. a certification, as of the Agreement Date, that, to its actual knowledge, no public employee has any personal or economic interest in this Agreement, under Section 21.11 (*No Economic Interest*);
 - i. a certification, as of the Agreement Date, that, to its actual knowledge, it does not receive payment or benefit of any nature for services rendered regularly through an appointment to a Governmental Authority of Puerto Rico, under Section 21.9 (*Anticorruption & Antibribery*);
 - j. if any of the previously required certifications show a debt, and SELLER has requested a review or adjustment of this debt, a certification that SELLER has made such request at the Agreement Date; and if the requested review or adjustment is denied and such determination is final, proof of payment of this debt to PREPA or confirmation that SELLER accepts that the owed amount be offset by PREPA and retained at the origin, deducted from the corresponding payments; and

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- k. the following technical documents:²⁴
 - i. the Energy Yield Assessment Report;
 - ii. a preliminary engineering design of the Facility and the PREPA Interconnection Facilities, consistent with Prudent Electrical Practices, the Interconnection Agreement and the MTRs,
 - iii. a proposed relay protection scheme (to include the PREPA Interconnection Facilities and the Seller Interconnection Facilities); and
 - iv. a certified PSS/E mathematical model of the specific facility, the manufacturer's performance data and expected output curve.

2. Prior to the signing of this Agreement:

- a. SELLER shall have provided the certification set forth in Appendix T (*Form of FOMB Certification*), and the Parties shall have obtained FOMB, PREB and P3A ~~approval~~[release](#) in respect of this Agreement~~[- including an Energy Compliance Certificate issued by PREB in respect of this Agreement];~~ and
- b. PREPA shall have completed the Feasibility Study, Facility Study and Interconnection Study.

²⁴ ~~NOTE: S&L To confirm these will be completed before signing.~~

APPENDIX C - CONDITIONS PRECEDENT

PART 1 - SELLER CONDITIONS

Except as set forth in Section 2.3 (*Initial Effectivity & Closing Date*), SELLER shall deliver the following as conditions precedent to the Closing Date:

- a. the Performance Security;
- b. insurance certificates or cover notes evidencing the insurance coverages required pursuant to Article 18 (*Insurance*), which insurance certificates and cover notes shall be acceptable in form and substance to PREPA and shall be in full force and effect and PREPA having approved thereof in writing, which approval PREPA shall not unreasonably withhold; and
- c. a legal opinion from external counsel in a form reasonably acceptable to PREPA, confirming the representations and warranties made by SELLER under Article 12 (*Representations, Warranties, & Covenants*).

PART 2- PREPA CONDITIONS

Except as set forth in Section 2.3 (*Initial Effectivity & Closing Date*), PREPA shall ensure the following as conditions precedent to the Closing Date:

- a. filing of this Agreement with the Comptroller of Puerto Rico.

PART 3 - MUTUAL CONDITIONS

Except as set forth in Section 2.3 (*Initial Effectivity & Closing Date*), the effectiveness of the rights and obligations of PREPA and SELLER under this Agreement shall be conditioned upon:

- a. the signing of the [Interconnection Agreement]; and
- b. there being no proceeding, action or claim pending or threatened which may have a potentially adverse effect on this Agreement or which involves or otherwise affects the public tender process pursuant to which SELLER was awarded this Agreement.

APPENDIX D - MILESTONE SCHEDULE

| Milestones | Time for Completion / Occurrence* | Delay Liquidated Damage Amount (USD Per Day of Delay) |
|--|--|--|
| FNTP Construction Start | 240 Days after Closing Date | [Nil] |
| Initial Synchronization | [●] Days after Closing Date | [Nil] |
| Commercial Operation | Guaranteed Commercial Operation Date | [●] |

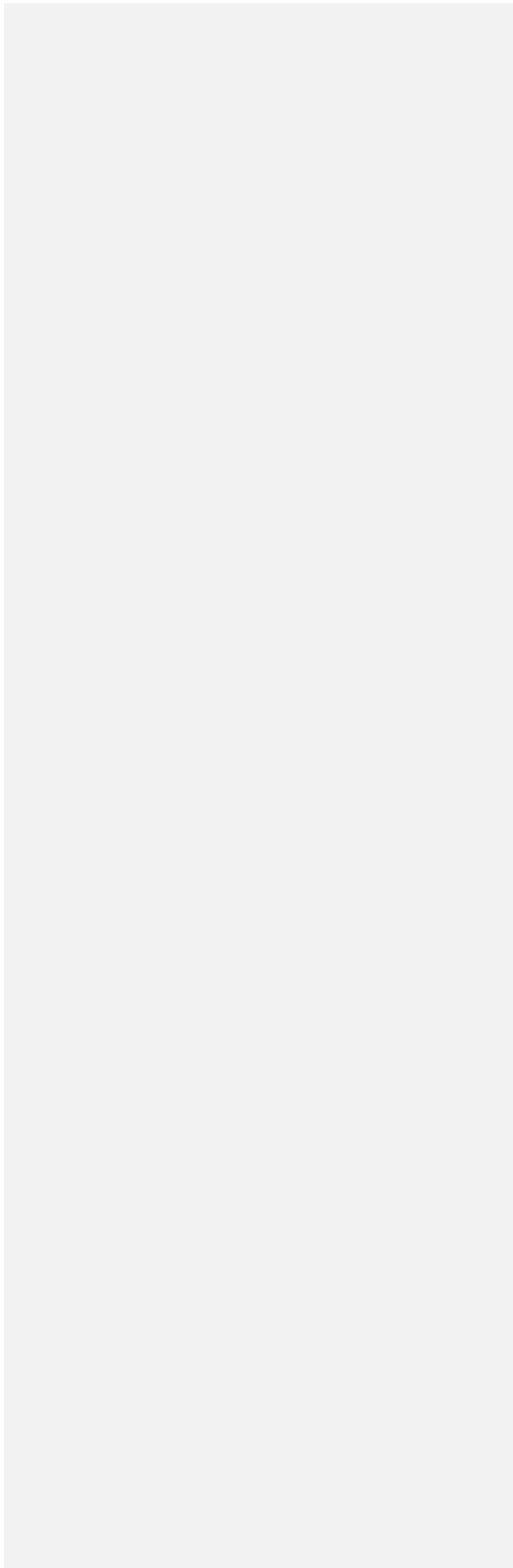
**Note: Milestone Dates may be calendar dates or number of Days from the Agreement Date.*

APPENDIX E - SELLER PERMITS

SELLER shall be responsible for obtaining the following licenses, permits and authorizations and any other licenses, permits and authorizations required by the Agreement.

| Issuing Agency | Permit Description | Date Required or Received |
|--|---------------------------|----------------------------------|
| Federal | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| Commonwealth | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| Other Applicable Governmental Authorities | | |
| | | |
| | | |

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APPENDIX F - COMPENSATION & EXAMPLE OF PRICE CALCULATION²⁵

1. Monthly Payment

For each Billing Period, PREPA shall pay to SELLER an amount for Product in arrears (the “**Monthly Payment**”) that comprises (a) a payment in respect of any Net Electrical Output, and (b) during the Supply Period, a payment in respect of any Deemed NEO. The Parties shall calculate the Monthly Payment for Billing Period “n” as follows:

$$MP_n = ((NEO_n + DNEO_n) * CR_n) - (IP_n + OC_n)$$

where:

- MP_n** = Monthly Payment for Billing Period “n”, expressed in dollars;
- NEO_n** = Net Electrical Output as metered in accordance with Article 8 (*Metering*) during Billing Period “n”, expressed in kWh;
- DNEO_n** = Deemed NEO for Billing Period “n”, as determined in accordance with Appendix G (*Determination of Deemed NEO*), expressed in kWh;
- CR_n** = Contract Rate for Billing Period “n”, as determined in accordance with Article 2 (*Pre-Operation Period*) below, expressed in \$/kWh;
- IP_n** = Insurance proceeds received by SELLER during Billing Period “n” from any insurance policy that SELLER may obtain in respect of PREPA Risk Events, expressed in dollars, in accordance with Paragraph 1 of Appendix G (*Determination of Deemed NEO*);
- OC_n** = Other credits or amounts to which PREPA has a right under this Agreement; and
- n** = such Billing Period.

If the Commercial Operation Date occurs during a Billing Period, then (a) the Parties shall perform the calculation set out above in respect of the periods (i) prior to the Commercial Operation Date, and (ii) on and after the Commercial Operation Date, and (b) the Monthly Payment for such Billing Period shall comprise the sum of such amounts. SELLER acknowledges and agrees that the Monthly Payment, and through it the Contract Rate, represents the all-in payment for the Product of the Facility, including all Ancillary Services, Green Credits and costs to SELLER of complying with this Agreement.

2. Contract Rate

For each Billing Period, PREPA shall pay a price (the “**Contract Rate**”) for the Net Electrical Output and Deemed NEO (if any) applicable to such Billing Period as follows:

²⁵ ~~NOTE: This Appendix sets out a Deemed Energy / take or pay structure for energy made available based on Ambient Conditions. If PREPA wants a capacity payment structure for solar & storage under a single agreement, then we will need a different formula and Appendix G.~~

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- c. from the Initial Synchronization Date until the Day before the Commercial Operation Date, the Contract Rate for Net Electrical Output shall equal fifty percent (50%) of the Base Rate, and PREPA shall have no obligation to pay for Deemed NEO; and
- d. during the Supply Period, the Contract Rate shall equal:
 - i. for the Net Electrical Output and Deemed NEO (if any) during the Agreement Year in which such Billing Period occurs, up to an aggregate quantity equal to the ~~Base Annual Quantity~~ P50 Energy Yield, the Base Rate; and
 - ii. for the incremental Net Electrical Output and Deemed NEO (if any) during such Agreement Year in excess of the ~~Base Annual Quantity~~ P50 Energy Yield, eighty percent (80%) of the Base Rate.

3. Base Rate

During the Term, the tariff (the “**Base Rate**”) shall equal \$[●]/kWh, escalated by [●] percent ([●]%) on July 1 of each Agreement Year (other than the first Agreement Year), provided that the rate (expressed in \$/kWh) payable in any Agreement Year shall (i) never exceed a maximum of \$[●]/kWh, and (ii) if PREPA emerges from bankruptcy in the proceedings before the PROMESA Court, be multiplied by a factor of [●] starting from the first Day of the Billing Period that commences immediately following the date of the order of the PROMESA Court confirming such emergence.²⁶²

²⁶² **NOTE:** Sub-para. (ii) includes a mechanism for pre-agreed cost savings following PREPA’s emergence from bankruptcy.

APPENDIX G - DETERMINATION OF DEEMED NEO

Notwithstanding Sections 7.1 (*General*), PREPA shall have no liability to SELLER in connection with any disconnection, curtailment or other reduction in, or failure by PREPA to take, net electrical output at the Interconnection Point, during any Billing Period, for any reason whatsoever, other than payment for Deemed NEO during the Supply Period in accordance with this Appendix G. The Parties shall determine the Deemed NEO for each Billing Period (or part thereof) during the Supply Period by calculating the sum of the Deemed NEO for each Deemed NEO Period, as well as the Expected NEO for any Time Interval, as follows:

1. Deemed NEO Periods

PREPA shall only pay for Deemed NEO during the Supply Period in respect of:

- a. any Force Majeure Event Interval that occurs during an Agreement Year if and only if, at the start of such interval, the Equivalent Force Majeure Derated Hours accumulated to date in such year exceed the Force Majeure Waiting Period applicable to such year;
- b. any Grid System Event Interval that occurs during an Agreement Year if and only if, at the start of such interval, the Equivalent Grid System Derated Hours accumulated to date in such year exceed the Grid System Waiting Period applicable to such year; and
- c. any Event Interval in which a PREPA Risk Event occurs pursuant to paragraph (c) of such definition,

(each such interval, a “**Deemed NEO Period**”). PREPA’s liability pursuant to this Appendix G for any single disconnection, curtailment or other reduction resulting in a Deemed NEO Period shall be offset by any insurance proceeds actually received by SELLER from any insurance policy that SELLER may obtain in respect of PREPA Risk Events.

2. Facility Performance Model

SELLER shall use a commercially available computer program for calculating the output of utility-scale photovoltaic projects (the “**Facility Performance Model**”) to determine the Expected NEO and Deemed NEO for any Time Interval, and for recording, monitoring and forecasting purposes, in accordance with the following:

- a. SELLER shall ensure that the Facility Performance Model (i) accounts for and records (A) the global solar irradiation available on the plane of array of solar photovoltaic modules (expressed in kW/m²) (including global horizontal irradiation, direct normal irradiation and diffuse irradiation), in determination of incidence angle irradiance losses, (B) ambient conditions including air temperature, humidity, wind speed and module temperature (expressed in °C), and other data as deemed appropriate for calculating solar panel output including inverter efficiency, transformer efficiency and other Expected Losses (collectively, the “**Ambient Conditions**”), (C) the status of modules, inverters, MV transformers, and MV/HV step-up transformer(s) as available from the SCADA system of the Facility; and (D) NEO, Generating Capacity, power factor and other data, as applicable, and (ii) communicates such data and the Expected NEO and Deemed NEO, in each case for each Time Interval of each Day. SELLER shall automatically collect and communicate the data in this paragraph (a) to PREPA via its SCADA system.

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- b. In collecting the required data, SELLER shall:
1. record average values over Time Intervals;
 2. utilize a data logger on the Site and date-stamped collected data;
 3. measure global solar irradiation on the plane of array of solar photovoltaic modules (“**GK**”) using pyranometers mounted in the plane of array of photovoltaic modules (the “**Reference Pyranometers**”), with a number of sensors adequate to provide reliable measurements; not change the location of such Reference Pyranometers without the prior written agreement of PREPA; and group global solar irradiation data into bins of fifty watts per square meter (50 W/m²) or other such increments as recommended by the Consulting Technical Expert;
 4. measure the ambient temperature, humidity and wind speed using sensors mounted at appropriate locations within the Facility (the “**Reference Ambient Sensors**”), adequate to provide reliable measurements of the Ambient Conditions; and not change the location of such Reference Ambient Sensors without the prior written agreement of PREPA;
 5. calculate module temperature including inverter efficiency, transformer efficiency and other Expected Losses using Prudent Utility Practices, module characteristics, heat transfer coefficients and measured Ambient Conditions; and group such data into bins of five degrees Celsius (5 °C) or other such increments as recommended by the Consulting Technical Expert; and
 6. calibrate Reference Pyranometers and Reference Ambient Sensors based on manufacturer’s recommendations.

provided that, for any projection or forecast of Ambient Conditions that will occur in the future, the Parties shall determine Ambient Conditions based on the meteorological forecast for the region and site of the Facility during the relevant Time Intervals.

- c. The Facility Performance Model shall store and analyze the Ambient Conditions and other data required in paragraphs (a) or (b) above for each Time Interval in order to determine the relationship between the Expected NEO and Net Electrical Output. SELLER shall ensure that the Facility Performance Model uses this suite of relationships, each a power curve corrected for cell temperature and Expected Losses to calculate the Expected NEO for each Time Interval within plus or minus [five percent (5%)] of the actual Net Electrical Output of the Facility for any Billing Period.
- d. The Facility Performance Model shall provide a mathematical representation of the Facility, including its technical configuration, and provide the following outputs:
1. Actual and projected performance ratios;
 2. Comparison of Expected NEO versus actual Net Electrical Output;
 3. Comparison of expected and actual average Generating Capacity;
 4. Expected and actual Ambient Conditions; and

5. Forecasted values for Expected NEO over time periods required by this Agreement.
- e. At PREPA's request, SELLER shall report the status and outputs of the Facility Performance Model to PREPA or its designee in the following formats:
1. A hard copy of power curves showing binned values only;
 2. A hard copy scatter plot showing the individual average Time Interval values of underlying data and the model outputs calculated in subparagraph (c) above; and
 3. All raw data obtained from the SCADA system, Reference Pyranometers and Reference Ambient Sensors, in electronic format, to enable comparison of the raw data to the binned data.
- f. SELLER shall keep such model up-to-date and accurate as regards the Facility's performance and ensure that the NEO for any hour does not deviate from the Expected NEO applicable to such hour by more than [five percent (5%)], or such other accuracy as deemed reasonable in writing by the Parties. To improve the accuracy of the Expected NEO and reflect actual conditions of the Facility's equipment, including but not limited to panel degradation and other Expected Losses, SELLER shall calibrate the Facility Performance Model (i) on a quarterly basis, including at least thirty (30) Days prior to the start of each Agreement Year, and (ii) if the Expected NEO for any hour deviates from the actual NEO in such hour by more than ~~five percent (5%)~~, or other such accuracy as deemed reasonable in writing by the Parties, for any reason other than a PREPA Risk Event, then within three (3) Business Days of a Party becoming aware of such deviation.
- g. PREPA shall have the right to approve the Facility Performance Model and all changes to model parameters, which approval PREPA shall not unreasonably withhold. The Parties shall validate all changes to such model of no less than thirty (30) Days. In each case, within ten (10) Business Days after receipt of each such proposed revisions, PREPA shall either approve such revisions or notify SELLER of further required revisions. SELLER shall submit its revised Facility Performance Model to PREPA within seven (7) Days after such notification, and PREPA shall notify SELLER of its approval or disapproval no later than seven (7) Days after such submittal. The failure of PREPA to respond within the applicable period, unless extended by mutual agreement, shall be deemed as approval by PREPA of SELLER's proposed Facility Performance Model for use in the determination of Expected NEO.
- h. The Parties acknowledge and agree that Disputes relating to the Facility Performance Model or determination of Generating Capacity, Expected NEO or Deemed NEO under this Appendix G (*Determination of Deemed NEO*) shall constitute Technical Disputes.

3. Facility Availability

SELLER shall ensure that the Facility Performance Model, unless otherwise agreed in writing, determines the Facility Availability for any Time Interval of a given Day by using the following formula (subject to revisions agreed in writing between the Parties):

$$FA = \frac{\sum_{j=1}^k [WA_j]}{k}$$

where:

- FA = Facility Availability calculated after “k” Time Intervals have elapsed;
- j = the relevant Time Interval;
- k = number of Time Intervals that have elapsed over the lesser of (i) the total number of Days since the Commercial Operation Date as of the date of such determination and (ii) thirty (30) Days; and
- WA = weighted average of the availability of the Facility (considering that inverters may be of different capacities and contribute proportionately to the overall Generating Capacity), calculated for every Time Interval by using the following formula:

$$WA = \frac{\sum_{i=1}^n [UA_i \times UC_i]}{MDL}$$

where:

- MDL = Maximum Dispatch Limit of the Facility, expressed in kW;
- UC_i = Maximum Dispatch Limit of inverter “i”, expressed in kW;
- n = number of inverters in the Facility;
- i = the relevant inverter; and
- UA_i = availability of inverter “i”, determined for each Time Interval by recording and analyzing the AC power output at the inverter terminal using the following formula:

$$UA_i = \frac{T - U_E - U_I}{T - U_E}$$

where:

- T = number of “k” Time Intervals with {array irradiance at or above 100 W/m²;}
- U_E = number of Time Intervals from the “T” Time Intervals that constitute Event Intervals; and

U_i = number of Time Intervals from the “T” Time Intervals affected by failure or unavailability of inverter “i”, other than Event Intervals,

provided that, for any Time Interval, if the failure or unavailability of inverter “i” commences (i) during the first five (5) minutes of such Time Interval, then such Time Interval shall be taken into account in the calculation of U_E or U_i above, as applicable, and (ii) during the last five (5) minutes of such Time Interval, then such Time Interval shall not be taken into account in the calculation above.

4. Expected NEO

The Parties shall determine, and ensure that the Facility Performance Model determines, the “Expected NEO” of the Facility as follows (subject to revisions agreed in writing between the Parties):

- a. For the first Agreement Year, the Facility’s Expected NEO for any Time Interval “i” of a given Day “i” shall be based on the readings from the Reference Pyranometers, Ambient Sensors and the average performance of the Facility, corrected for cell temperature if significant, during the most recent seven (7) Days prior to such Day “i” in which no PREPA Risk Event occurred, as calculated in accordance with the following formula (subject to revisions agreed in writing between the Parties):

$$ENEQ_i = \frac{\sum_{j=1}^7 \left(\frac{NEO_j}{GK_j} \right)}{7} \times GK_i \times FA$$

where:

$ENEQ_i$ = Expected NEO for Time Interval “i”, expressed in kWh;

NEO_j = NEO of the Facility for each Day “j”, expressed in kWh;

GK_j = [global solar irradiance in the plane of array for each Day “j”, expressed in kWh, and determined by taking the product of (a) the solar irradiance measured by the Reference Pyranometer during such Day “j”, expressed in kWh/m², multiplied by (b) the area of the plane of array, expressed in m²];

j = the most recent seven (7) Days prior to Day “i” in which no PREPA Risk Event occurred, numbered from one (1) to seven (7);

FA = the average of the Facility Availability for the lesser of (i) the total number of Time Intervals since the Commercial Operation Date or (ii) the most recent thirty (30) Days of Time Intervals, in either case, prior to Time Interval “i” in which no PREPA Risk Event occurred; and

GK_i = [global solar irradiance in the plane of array for Time Interval “i”, expressed in kWh, and determined by taking the product of (a) the solar

irradiance measured by the Reference Pyranometer during Time Interval “i”, expressed in kWh/m², multiplied by (b) the area of the plane of array, expressed in m²; but capped for such Day “i” at [●].

- b. After the end of the first Agreement Year, the Facility’s Expected NEO for any Time Interval “i” shall be based on the Facility Performance Model and calculated using the following formula (subject to revisions agreed in writing between the Parties):

$$ENEQ_i = \left(FA \times EP \times \frac{1 \text{ hour}^i}{6} \right)$$

where:

- ENEQ_i = Expected NEO for Time Interval “i”, expressed in kWh;
- FA = the average of the Facility Availability for the most recent thirty (30) Days of Time Intervals prior to Time Interval “i” in which no PREPA Risk Event occurred; and
- EP = estimated Contract Capacity of the Facility during Time Interval “i”, as determined by the Facility Performance Model, expressed in kW.

5. Deemed NEO

The Parties shall determine the Deemed NEO for each Deemed NEO Period as follows:

- a. No later than five (5) Business Days after the Day in which such Deemed NEO Period occurs (the “Event Day”), SELLER shall notify PREPA of such Deemed NEO Period, and PREPA shall confirm the occurrence of the relevant PREPA Risk Event.
- b. The Parties shall compare the Expected NEO for such Deemed NEO Period, using the Facility Performance Model and data communicated through the SCADA system, with the actual Net Electrical Output of the Facility, if any, during such Deemed NEO Period, and determine the Deemed NEO for such Deemed NEO Period “n” as follows (subject to revisions agreed in writing between the Parties):

$$DNEO_n = (ENEQ_n - NEO_n)$$

where:

- DNEO_n = Deemed NEO for Deemed NEO Period “n”;
- ENEQ_n = Expected NEO for Deemed NEO Period “n”, expressed in kWh; and
- NEO_n = NEO of the Facility for Deemed NEO Period “n”, expressed in kWh.
- c. Notwithstanding the foregoing, Deemed NEO shall equal zero (0) for any Deemed NEO Period in respect of which:
1. SELLER has not provided a Facility Performance Model approved by PREPA, which approval PREPA shall not unreasonably withhold;

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2. SELLER fails to provide, or there is any interruption to, the input data or outputs of the Facility Performance Model required in Section I for such hour; or
3. $NEO_n \geq ENEO_n$, each as defined in Section b above.

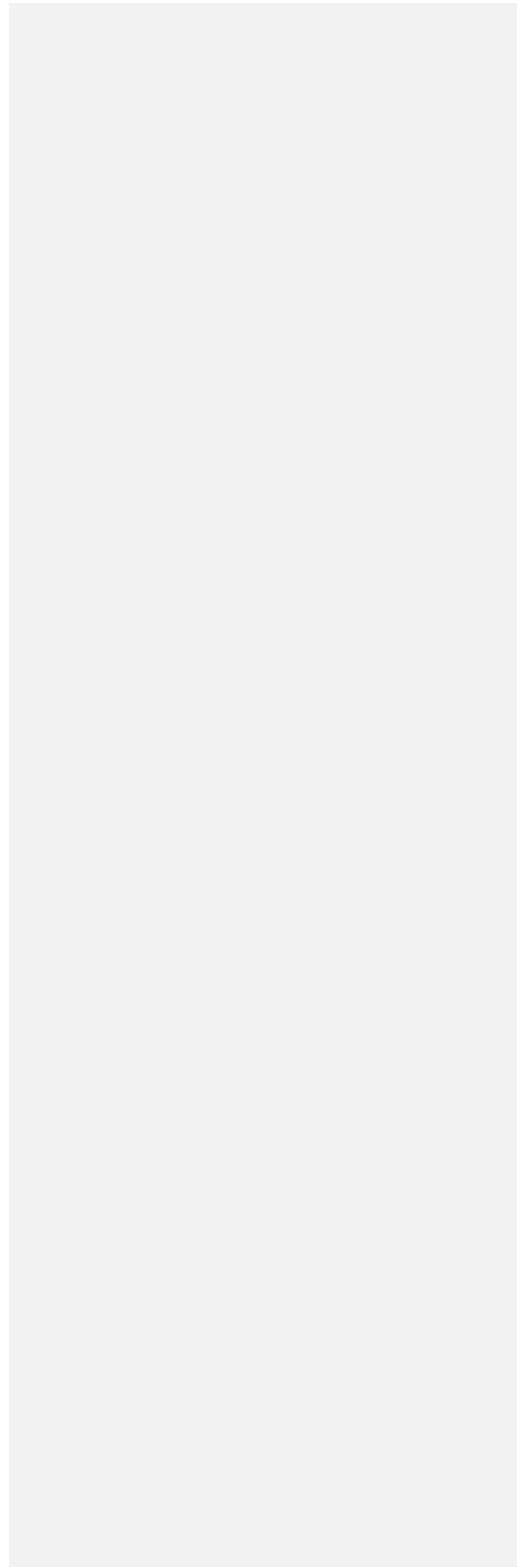
Where the Expected NEO and Deemed NEO have been determined, PREPA or SELLER may dispute the Deemed NEO calculated in terms of this Appendix [G](#) retrospectively, as a Technical Dispute, if the Deemed NEO calculated based on the Facility Performance Model proves to be different from the Deemed NEO calculated in terms of this Appendix [G](#). Overpayments made by PREPA may be set-off against payment due by PREPA, and underpayments may be included in the invoice for the Billing Period after such underpayment was determined. The amount of the overpayment or underpayment determined in this paragraph shall bear Interest from the date of such overpayment or underpayment to, but excluding, the date of repayment or set-off, as the case may be.

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APPENDIX H - FACILITY SITE

[●]²⁷₃

²⁷~~NTD~~₃ **NOTE:** SELLER to provide schematic of Site



APPENDIX I - INTERCONNECTION²⁸

APPENDIX J

1. Description of the Interconnection Facilities:

The electrical interconnection single line attached as Appendix I-1 identifies the Interconnection Point, PREPA Interconnection Facilities, the Seller Interconnection Facilities, and Metering location.

2. Interconnection Point Specifications:

SELLER shall perform and comply with the following interconnection specifications for the PREPA Interconnection Facilities. It is not an all-inclusive scope of work, as a Facility Study and an Interconnection Study are required to determine the design as described in Article 3 (*Pre-Operation Period*).

a. Preliminary Scope of Work:

[PREPA to provide]

b. Codes and Standards Requirements:

All designs should be in accordance with the latest PREPA Design Criteria Documents (DCDs) and Standards, applicable ANSI/IEEE and NESC standards, and building codes. This includes but is not limited to:

1. PREPA Civil Design Criteria;
2. PREPA Protection and Control Design Criteria;
3. PREPA Substation Design Criteria;
4. PREPA Transmission Design Criteria;
5. PREPA Distribution Design Criteria;
6. PREPA Drawings and Specifications Design Criteria;
7. PREPA Telecommunication Design Criteria.
8. NECA/BICSI 607, Standard for Telecommunications Bonding and Grounding Planning and Installation Methods for Commercial Buildings;
9. American Concrete Institute (ACI) Design Codes and Construction Specifications;
10. American Institute of Steel Construction (AISC);

²⁸ ~~NOTE: S&L / PREPA to confirm if we can cut any of this (particularly tasks for PREPA) or move all or most of it to the Interconnection Agreement.~~

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11. American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE);
12. American Welding Society (AWS);
13. American Wood Protection Association (AWPA);
14. Association of Edison Illuminating Companies (AEIC);
15. Building Industry Consulting Services International (BICSI);
16. Code of Federal Regulations (CFR);
17. Construction Specifications Institute (CSI);
18. Electric Power Research Institute (EPRI);
19. Federal Aviation Administration (FAA);
20. Federal Communications Commission (FCC);
21. Illuminating Engineering Society (IES);
22. Institute of Electrical and Electronics Engineers (IEEE);
23. Insulated Cable Engineers Association (ICEA);
24. International Electrotechnical Commission (IEC);
25. ITSIMM 6th Edition - Information Transport Systems Installation Methods Manual;
26. National Electrical Code (NEC);
27. National Electrical Manufacturers Association (NEMA);
28. National Electrical Safety Code (NESC);
29. National Fire Protection Association (NFPA);
30. NECA/BICSI 568, Standard for Installing Commercial Building Telecommunications Cabling;
31. North American Electric Reliability Corporation (NERC);
32. OSPDRM 5th Edition - Outside Plant Design Reference Manual;
33. Puerto Rico Building Code 2018;
34. Regulations per the Commonwealth of Puerto Rico;
35. Rural Utilities Service (RUS), United States Department of Agriculture;

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36. RUS 1724E-300, U.S. Dept. of Agriculture Design Guide for Rural Substations;
37. TDMM 14th Edition - Telecommunications Distribution Methods Manual;
38. Telecommunications Industry Association (TIA);
39. ANSI/TIA 568.0-D, Generic Telecommunications Cabling for Customer Premises;
40. ANSI/TIA 569-E, Telecommunications Pathways and Spaces;
41. ANSI/TIA 606-C, Administration Standard for Telecommunications Infrastructure;
42. ANSI/TIA 607-D, Generic Telecommunications Bonding and Grounding (Earthing) for Customer Premises;;
43. ANSI/TIA-1005-A, Telecommunications Infrastructure Standard for Industrial Premises; and
44. ANSI/TIA-758-B, Customer-Owned Outside Plant Telecommunications Infrastructure Standard.

c. Transmission Line Requirements:

1. SELLER shall perform the following tasks:
 - i. all ROW/Easement acquisition, including any studies, environmental permitting, real estate acquisitions, etc. required as per the Agreement;
 - ii. geotechnical soil borings, grounding tests, and studies along the transmission corridor and right of way;
 - iii. all applicable transmission designs and calculations typically found in typical transmission line design;
 - iv. stringing charts, engineered steel drawings, calculations, and PLS-CADD models of the transmission structures, including the applicable conductor size and OPGW (with 48 Fibers);
 - v. ampacity, shielding, and conductor sizing calculations for the transmission structure for the Interconnection Facilities;
 - vi. design and construction of foundations for transmission structures for the Interconnection Facilities;
 - vii. all transmission and distribution line design required for project completion; and

- viii. evaluation of existing transmission and distribution poles that may be modified due to new conductors or equipment additions.
- 2. PREPA shall review and provide comments on all SELLER's drawings, submittals and design inputs for SELLER's transmission line design.
- d. Transmission Center, Substation, and Sectionalizer Requirements:
 - 1. SELLER shall perform the following tasks:
 - i. all real estate acquisitions, including land surveys, land segregation, acquisition of land title/deeds, etc., studies (species, wetlands), and environmental permitting, etc. as required per the Agreement;
 - ii. all required upgrades resulting from calculations and studies are the responsibility of SELLER;
 - iii. short circuit study, coordination studies, and settings;
 - iv. geotechnical soil borings, grounding tests, and studies at the Interconnection Facilities;
 - v. protection and control electrical design, following latest industry standards, e.g., IEEE Standards and PREPA standards;
 - vi. clearing, preparing the site, and civil design for the Interconnection Facilities, including vegetation removal and grading;
 - vii. removal and disposal of the topsoil layer at the site for Interconnection Facilities (if required);
 - viii. filling the site with adequate material (crushed stone) to bring to level and all adequate drainage of Interconnection Facilities;
 - ix. connect the equipment grounds with the grounding mat;
 - x. fill the site with six inches of gravel as per the grounding standard;
 - xi. construction of retaining walls and/or fence around the site as required for a complete and secure site;
 - xii. construction of new driveway / access road to the Interconnection Facilities as applicable;
 - xiii. construction of the grounding mat on the site and connection to existing grounding mat;
 - xiv. construction of foundations for the structures of the Interconnection Facilities;
 - xv. installation of structures for the Interconnection Facilities;

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- xvi. installation of equipment and auxiliaries for the Interconnection Facilities;
- xvii. installation of the meter sockets and metering equipment for billing of Net Electrical Output;
- xviii. provide all materials required to interconnect the new protection and control system with the existing one (if applicable), including, but not limited to, relay panel, breaker control panels, DC upgrades, etc.;
- xix. installation of equipment and auxiliaries in the control house for the Interconnection Facilities;
- xx. design of the new control house (if applicable) layout at Interconnection Facilities, including location, civil design, internal layout, electrical design for lightning, convenience outlets, battery bank, and 125Vac supply panels, disconnects, and other associated materials and localization areas for control and protection panels;
- xxi. install and wire the Dynamic System Monitor (DSM);
- xxii. install the control cables from the equipment to the control house;
- xxiii. install and wire the AC and DC distribution panels;
- xxiv. install and wire the 125 VDC battery bank and related auxiliaries as applicable;
- xxv. all applicable AC and DC sizing calculations and verifications;
- xxvi. install the wiring for the Transient Recorder as required by PREPA. For security reasons, PREPA's relay personnel will wire these signals from the terminal block to the Transient Recorder. In addition, the following signals are required for the Transient Recorder:
 - A. analog signals - Phase A, B, and C voltage signals;
 - B. analog signals - Phase A, B, and C current signals from each line CT;
 - C. digital 87L output - Output TRIP signals associated with the primary protection of each line;
 - D. digital BU output - Output TRIP signal associated with the secondary protection (21/50/51) of each line;
 - E. digital - Output TRIP signal associated with the breaker failure protection of each line;
 - F. digital - TRIP signal from bus differential protection; and
 - G. digital - Status signal from each breaker;

- xxvii. programming the settings on the protection equipment for the Interconnection Facilities;
 - xxviii. cleaning, removal, and disposal of construction debris;
 - xxix. label the high voltage and auxiliary electrical equipment according to PREPA's practices; and
 - xxx. provide all spare parts as specified by PREPA.
2. PREPA shall perform the following tasks:
- i. project oversight, schedule evaluation, monitoring, and authorizing scope of work modifications and deviations;
 - ii. evaluate submittals and design input for all design phases for the following packages:
 - A. civil and physical design for above and below grade for the new or modification to transmission center, substation or sectionalizer;
 - B. protection and control, telecommunications, electrical design, and programming;
 - C. transmission and distribution line design; and
 - D. shop drawings, technical data of equipment and materials, bill of material;
 - iii. evaluate all temporary and permanent modifications to the Interconnection Facility; and
 - iv. evaluate the proposed construction work outage sequence for entire project coordination.
- e. Transmission Center/ Substation Remote End Requirements (Only applicable to a PREPA Interconnection Facilities that sectionalize an existing transmission line). The details of these remote end upgrades will be identified during the Facility Study and the Interconnection Study but will primarily include relaying upgrades/replacements to match the new sectionalizer relaying. All outages and construction work sequence plans will be coordinated with and approved by PREPA.
1. SELLER shall perform the following tasks:
- i. all required upgrades resulting from calculations and studies are the responsibility of SELLER;
 - ii. protection and control electrical design, following industry standards, e.g., IEEE Standards and PREPA standards;

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- iii. installation of equipment and auxiliaries for the Interconnection Facilities;
- iv. provide all materials required to interconnect the new protection and control system with the existing one (if applicable), including, but not limited to, relay panel, breaker control panels, DC upgrades, etc.;
- v. installation of equipment and auxiliaries in the control house for the Interconnection Facilities;
- vi. all applicable AC and DC sizing calculations and verifications;
- vii. programming the settings on the protection equipment for the Interconnection Facilities;
- viii. cleaning, removal, and disposal of construction debris;
- ix. install and wire the telecommunication equipment for the Interconnection Facilities;
- x. programming the communication settings for the relays, meters, and all miscellaneous equipment;
- xi. installation of conduits for control cables from the equipment to the control house;
- xii. installation of telecommunications pathways for the Interconnection Facilities, including conduits, cable trays, racks, among others;
- xiii. install telecommunications facilities and equipment, including all necessary jumper cables and peripherals, with telecommunications equipment labeling and color-coding in compliance with ANSI/TIA 606 Standard;
- xiv. install communications copper cable, including jumpers, and cross-connects and miscellaneous materials;
- xv. programming the telecommunications equipment (routers, firewalls, and network equipment);
- xvi. install the fiber optic terminations for protection relays at the Interconnection Facilities;
- xvii. install the wiring for the Transient Recorder as required by PREPA. For security reasons, PREPA's relay personnel will wire these signals from the terminal block to the Transient Recorder. In addition, the following signals are required for the Transient Recorder:
 - A. analog signals - Phase A, B, and C voltage signals;

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- B. analog signals - Phase A, B, and C current signals from each line CT;
 - C. digital 87L output - Output TRIP signals associated with the primary protection of each line;
 - D. digital BU output - Output TRIP signal associated with the secondary protection (21/50/51) of each line;
 - E. digital - Output TRIP signal associated with the breaker failure protection of each line;
 - F. digital - TRIP signal from bus differential protection; and
 - G. digital - Status signal from each breaker;
- xviii. provide a PREPA's site representative and the required technical resources from PREPA to comply with the construction milestone schedule.
2. PREPA shall perform the following tasks:
- i. evaluate all drawings, submittals and design inputs for SELLER's remote end design;
 - ii. project oversight, schedule evaluation, monitoring, and authorizing scope of work modifications and deviations;
 - iii. evaluate submittals and design input for all design phases for the following packages:
 - A. protection and control, telecommunications, electrical design, and programming; and
 - B. shop drawings, technical data of equipment and materials, bill of material;
 - iv. evaluate all temporary and permanent modifications to the Interconnection Facilities; and
 - v. evaluate the proposed construction work outage sequence for entire project coordination.
- f. Telecommunication Requirements (in addition to the requirements as identified in Section b):
- 1. SELLER shall perform the following tasks:
 - i. install, wire and program the SCADA Remote Terminal Units (RTUs) at the Interconnection Facilities and the Site;

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- ii. install and wire the telecommunication equipment for the Interconnection Facilities;
 - iii. programming the communication settings for the relays, meters, and all miscellaneous equipment connected to the RTU;
 - iv. installation of conduits for control cables from the equipment to the control house;
 - v. installation of telecommunications pathways at the Interconnection Facilities, including conduits, cable trays, racks, among others;
 - vi. provide and install telecommunications equipment power systems, with telecommunications equipment labeling and color-coding to comply with ANSI/TIA 606 Standard;
 - vii. program the DSM with the signal list provided by PREPA;
 - viii. design of the control house layout at the Interconnection Facilities and collector Site includes location, civil design, internal layout, electrical design for lightning, convenience outlets, battery bank, and 125Vac supply panels, disconnects, and other associated materials and localization areas for SCADA, DSM, and telecommunications equipment;
 - ix. programming the telecommunications equipment (routers, firewalls, and network equipment); and
 - x. install the fiber optic connections including 48-fiber OPGW, pathways, and terminations for the protection relays to allow the PREPA Interconnection Facilities to be fully operational.
2. PREPA shall perform the following tasks:
- i. review and comment on all submittals and design input for all design phases for the telecommunications packages; and
 - ii. support the integration of the new equipment into the overall PREPA Network.
- g. Commissioning and Testing Requirements:
1. SELLER shall perform the following tasks:
- i. all Outages and construction work sequence plans will be coordinated with and approved by PREPA;
 - ii. provide any revisions to the Testing Protocol and plans for PREPA's approval prior to performing any acceptance test and energization of any equipment;

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- iii. perform the acceptance and commissioning tests on the equipment and auxiliaries according to PREPA's practices and applicable standards at SELLER's collector site only, including voltage signals, current signals, relay outputs, breaker status and cable continuity;
- iv. perform grounding tests at all sites including the transmission corridor;
- v. perform testing on the interconnection of the transmission line;
- vi. perform impedance testing to validate the proper installation of all transmission and high voltage conductors and bus;
- vii. perform tests for the wiring of protection and control systems, RTU, DSM, Transient Recorder, and others associated services for the Interconnection Facility;
- viii. perform adjustments and operation tests for the protection and control systems;
- ix. submit all test reports signed and sealed by a PR licensed electrical engineer for PREPA's review;
- x. perform preliminary testing of the protection, control and telecommunication system and the integration into SELLER's SCADA system. Depending on the type of alarm or signal into SELLER's SCADA system, PREPA personnel may act as a witness to validate the input. Final validation and acceptance of the SCADA integration will be performed by PREPA;
- xi. perform operation tests for the telecommunication systems;
- xii. perform operation tests for the DSM;
- xiii. perform operation tests on the equipment and auxiliaries;
- xiv. perform operation tests for the transient recorder;
- xv. verification of the OTDR tests for fiber optic cable performed by SELLER for the following cables:
 - A. fiber cable between Interconnection Facilities and the Facility;
 - B. fiber cable for interconnection to PREPA's network;
 - C. fiber cable between new control room at Interconnection Facilities and meter cabinet located at the Interconnection Facilities; and

D. verification of Telecommunications facilities and equipment installations performed by SELLER at the Interconnection Facilities;

This work includes verification, testing, configuration, and inspection of equipment specified by PREPA and materials, cable installation, and testing by SELLER;

- xvi. provide a PREPA's site representative and the required technical resources from PREPA to comply with the Construction Milestone Schedule;
- xvii. witness all tests and commissioning of the electrical equipment installed at the Interconnection Facilities and the Site;
- xviii. submit all test protocols for PREPA approval; and
- xix. submit all test results in a test book for PREPA approval.

2. PREPA shall perform the following tasks:

- i. evaluate the test results and settings of the protection relays for Interconnection Facilities;
 - ii. evaluate the test results and settings of the communication equipment at the Interconnection Facilities;
 - iii. witness all tests and commissioning of the electrical equipment installed in PREPA Interconnection Facilities;
 - iv. at existing PREPA sites where protection and control components are being updated, modified, or interconnected with, the tests should be done exclusively by PREPA;
 - v. perform final SCADA tests by PREPA acceptance test personnel from the point where SELLER consolidates SCADA data and transmits it to the PREPA SCADA system;
 - vi. perform the acceptance and commissioning tests on the equipment and auxiliaries according to PREPA's practices and applicable standards at the Interconnection Facility and remote ends; and
 - vii. perform end to end testing of all trips and controls by PREPA's Acceptance Tests Department personnel.
- h. Transfer of PREPA Interconnection Facilities: PREPA will provide the detailed requirements for the transfer of the PREPA Interconnection Facilities (including the transmission and distribution equipment, the real estate and ROW easements and environmental permitting and protection) no later than the Approved Design timeline as identified in Section 4.1c. To initiate the transfer process, SELLER shall submit to PREPA:

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1. company name;
2. contact person information;
3. physical address of the Site and PREPA Interconnection Facilities;
4. segregation plan;
5. schematic plan;
6. previous due diligences for the acquisition of the property; if the land was financed by a bank, this document is required as part of the purchase and sale;
7. copy and proof of submission of all required permits including the environmental permits;
8. this Agreement; and
9. relevant deeds and leases.

3. Select Requirements for the Interconnection Construction Contract:

SELLER shall ensure that it and the contractor under the Interconnection Construction Contract:

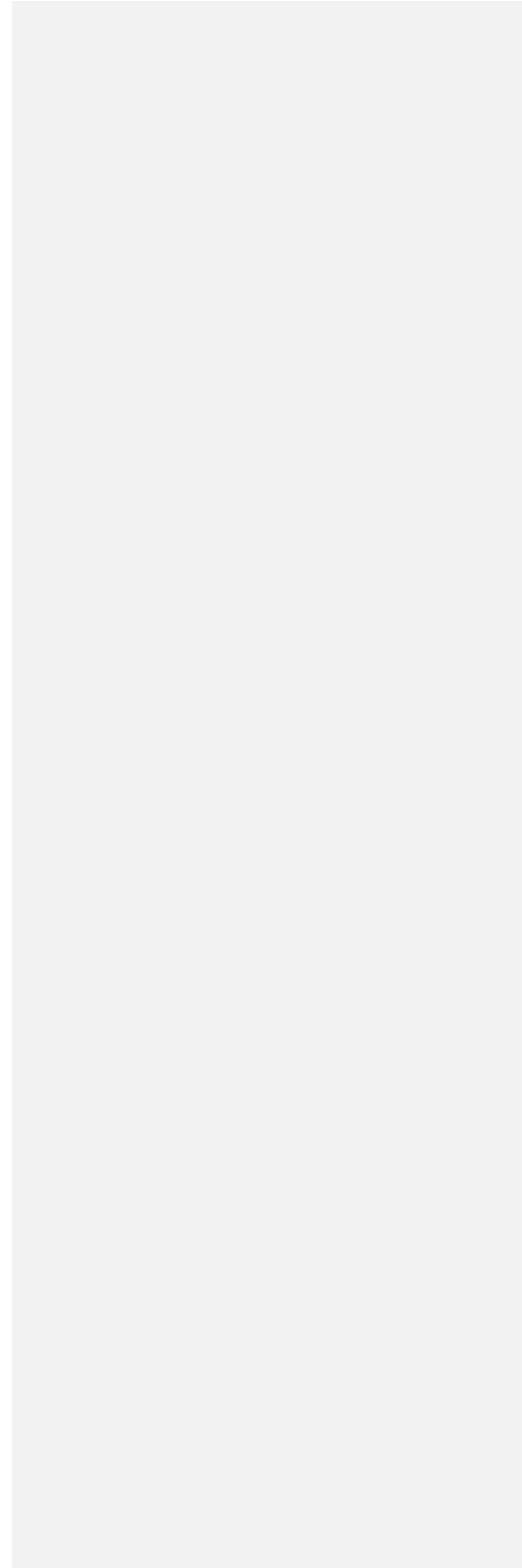
- a. disposes of all garbage generated because of the work, in accordance with the all Applicable Law;
- b. upon completion of the work, hands over the PREPA Interconnection Facilities work area free of contaminants;
- c. disposes of non-hazardous waste material generated by the PREPA Interconnection Facilities at an authorized landfill;
- d. complies with all environmental laws, during and after construction, including:
 1. submission of the Project Environmental Assessment to and receipt of approval from the Department of Natural and Environmental Resources of Puerto Rico and any other environmental, state and municipality permits for the Interconnection Facilities;
 2. all the terms and conditions established in the approvals of the submitted plans, Permits and endorsement from Governmental Authorities; and
 3. once the Interconnection Facilities are finished, the closing of any of the acquired permits that require closure.
- e. mitigates any environmental concern and deficiencies found by PREPA's personnel or any regulatory agencies caused by them at any time.

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APPENDIX J-1 - ELECTRICAL INTERCONNECTION SINGLE LINE

[APPENDIX J-2](#)

[\[●\]](#)



APPENDIX K - PROGRESS REVIEW

1. ~~1.~~ Scope

The Consulting Technical Expert shall make comments and recommendations to SELLER in respect of:

- a. any aspect of the design (including surveys and drawings) of the Facility or PREPA Interconnection Facilities;
- b. any works performed pursuant to the Facility Construction Contract or the Interconnection Construction Contract, or other contracts related to the design or engineering of the Facility or the PREPA Interconnection Facilities; and
- c. the operation of the Facility.

2. ~~2.~~ Reviews and Inspections

- a. For the design of any Facility or any required report, SELLER shall submit an electronic copy of such document requested by the Consulting Technical Expert. SELLER shall deliver all electronic copies requested for review by email to the address specified in such request in a readily accessible format agreed with the Consulting Technical Expert. The Consulting Technical Expert may provide comments on selected documents and shall designate comments in accordance with paragraph ~~(2) (Designations and Subsequent Actions)~~³ of this ~~Part H~~Appendix J (Progress Review).
- b. For works under paragraph ~~1.b of this Appendix J (Progress Review)~~^{above}, SELLER shall take all reasonable measures to allow the Consulting Technical Expert to undertake inspections as required. The Consulting Technical Expert shall submit a report to SELLER within forty-eight (48) hours after completion of an inspection activity. This report shall contain comments designated in accordance with paragraph ~~(2) (Designations and Subsequent Actions)~~³ of this ~~Part H~~Appendix J (Progress Review).
- c. For operation of the Facility, SELLER shall take all reasonable measures to allow the Consulting Technical Expert to undertake inspections as required. The Consulting Technical Expert shall submit a report within twenty-one (21) ~~days~~Days after completion of an inspection. This report shall contain comments designated in accordance with paragraph ~~(2) (Designations and Subsequent Actions)~~³ of this ~~Part H~~Appendix J (Progress Review).

3. ~~3.~~ Designations and Subsequent Actions

The designations of the relevant documents shall fall into one of the following categories:

- a. “Reviewed/Inspected and accepted”, meaning that the document, particular works or operation of the relevant component conform to the requirements of this Agreement. Such designation shall not relieve SELLER from any of its obligations or responsibilities under this Agreement or bind PREPA in respect of such document, particular works or operation of the relevant project component. If Consulting Technical Expert makes any comments

under this designation, such comments shall take the form of suggestions for alternative design, construction or operational procedures which may result in reduced cost, enhanced construction progress or contribute to ease of operation. SELLER shall have no obligation to adopt or respond to any such comments made under this designation.

- b. *“Reviewed/Inspected with comments”*, meaning the comments constitute a form of requests for further details or clarifications on the basis that the relevant document, works or operation of the relevant component does not appear to conform with the requirements of this Agreement. Such identified issues shall be deemed to have been considered non-compliant by PREPA’s Consulting Technical Expert on that basis until such time as SELLER provides the required details and clarifications in a sufficiently satisfactory manner for the Consulting Technical Expert to reach a final decision. Following receipt and review of the requested details and clarifications, the Consulting Technical Expert shall then designate such matter as either “Reviewed/Inspected and accepted” or “Reviewed/Inspected and rejected as non-compliant” as may be appropriate.
- c. *“Reviewed/Inspected and rejected as non-compliant”*, meaning the comments constitute the rejection by the Consulting Technical Expert of the documents, works or operation of the relevant component of the Facility on the basis that it does not comply with this Agreement, in which event the Consulting Technical Expert shall provide a statement setting out in adequate detail the reasons for such designation.

APPENDIX L - OPERATING CHARACTERISTICS

I. FACILITY DESCRIPTION

Facility name: [●]

Site name: [●]

Facility physical address: [●]

Total number of modules at the Facility: [●]

Project elevation: [●] (feet above sea level)

Project latitude: [●] (decimal form)

Project longitude: [●] (decimal form)

Technology type: [●]

Specific module description: [●]

[Provide detailed description, including the nameplate sizing of key equipment.]

Interconnection Point for the Facility will have characteristics as follows:

Distribution area: [●]

Existing zone: [●]

Load zone: [●]

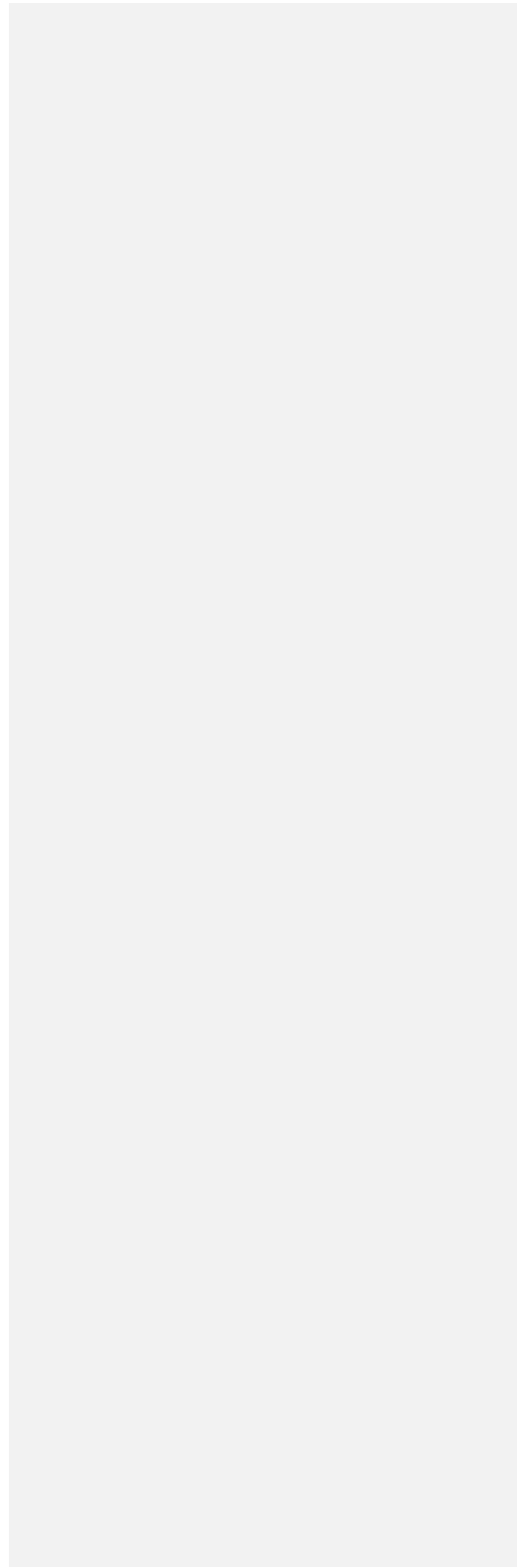
~~Delivery Point: [●]~~

Substation: [●]

Additional Information: [●]

II. OPERATIONAL CHARACTERISTICS

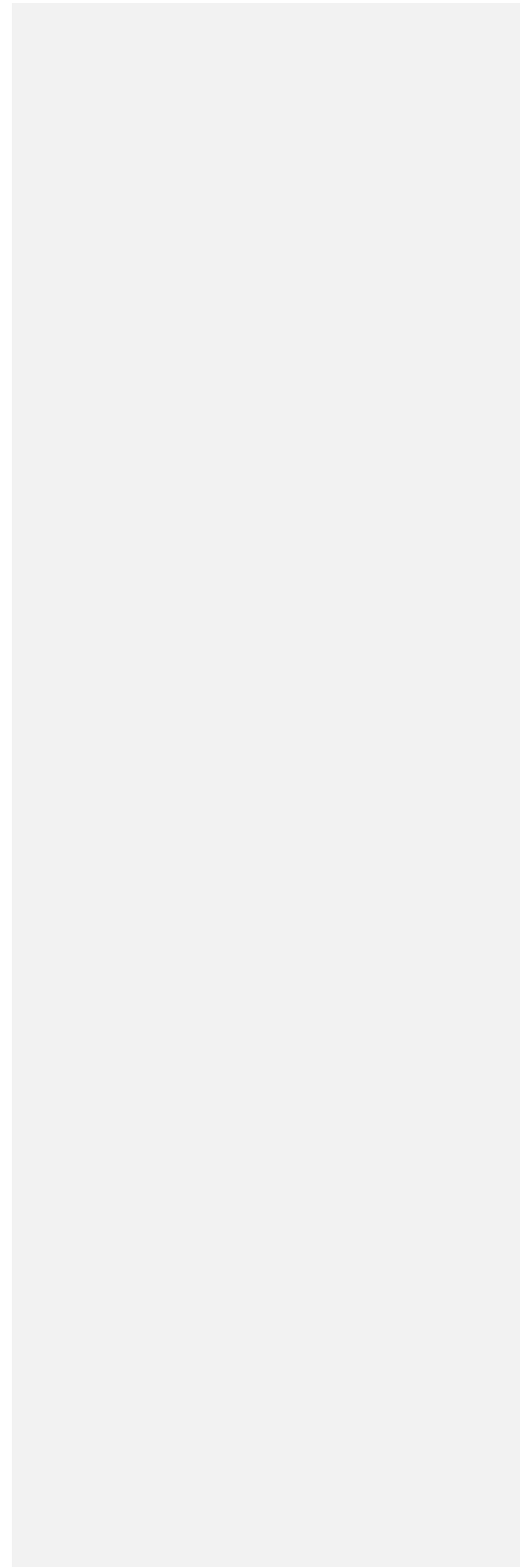
[●]



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APPENDIX M - MINIMUM TECHNICAL REQUIREMENTS

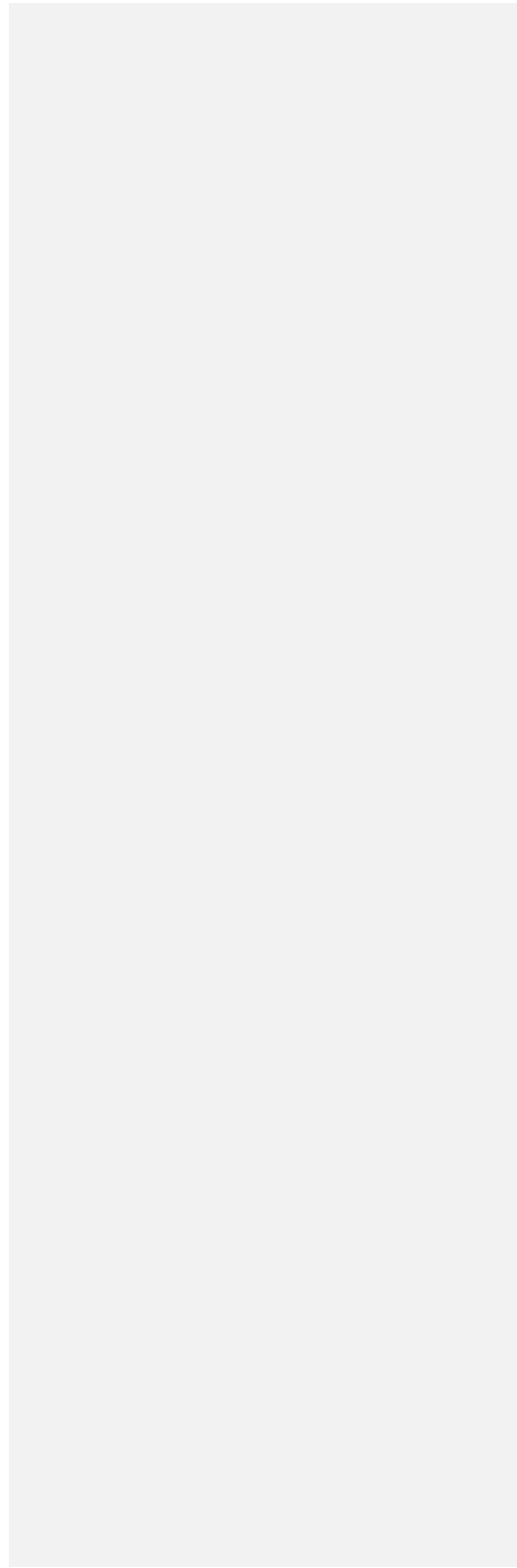
[•]



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APPENDIX N - OPERATING PROCEDURES

[•]



APPENDIX O - TESTING PROTOCOL

[●]²⁹

²⁹ ~~NOTE: Should cover, at minimum, steps for establishing (a) an indication of the date, time and duration of the tests required for COD, (b) the procedure for specific tests, including tests related to MTR compliance and reliable operation; (c) the success or failure criteria for the tests; and (d) the system for documenting the results of the tests.~~

APPENDIX P - TECHNICAL SPECIFICATIONS FOR THE DYNAMIC SYSTEM MONITOR³⁰

I. Introduction

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

II. Hardware

a. Inputs:

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

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

- #### c. Memory and storage capacity:

³⁰ ~~NOTE: PREPA to confirm this remains relevant and correct.~~

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

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

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

d. Communication:

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

e. Power Source:

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

f. Measurement accuracy:

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

III. Software

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

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

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

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

IV. General

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

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

APPENDIX Q - TECHNICAL REQUIREMENTS FOR OPERATION, PROTECTION, & CONTROL³⁴

APPENDIX R

1. SELLER shall provide general protection practices, which comply with PREPA's written protection system practices, design criteria documents (DCDs) and philosophy, in all the electrical equipment related to the Interconnection Facilities according to the standards and PREPA requirements in order to ensure personnel safety and secure operation and interconnection with PREPA's systems. SELLER is responsible for the design, accurate relay settings (in accordance with the Approved Design) and testing of the protection that shall contain the evaluated Seller Interconnection Facilities' settings. PREPA will evaluate and approve only the protection design, settings and tests of the Seller Interconnection Facilities related to PREPA's system stability, security and optimal performance. Those protection designs, settings and tests of the Seller Interconnection Facilities not related to PREPA's system stability, security and optimal performance will not be evaluated by PREPA.
2. As further defined in Article 3 (*Pre-Operation Period*) and Appendix I (*Interconnection*), SELLER shall be responsible for any protection related equipment, relays, scheme design, coordination and short circuit studies, and relay settings of all the protection equipment within PREPA's installation and remote terminals necessary to safely synchronize the Interconnection Facilities according to the latest technology and standards. For the avoidance of doubt, this includes the protection from (a) the PREPA Interconnection Facilities breaker to the Seller Interconnection Facilities and (b) the differential protection relay from the Seller Interconnection Facilities to PREPA's Interconnection Facilities.
3. SELLER shall submit a complete Seller Interconnection Facilities protection report with all relay settings, including all calculations and considerations for the relay settings in addition to coordination and short circuit studies. In addition to the foregoing, the report shall also provide, including but not limited to, the following:
 - a. The approved Seller Interconnection Facilities design single line drawings shall have all the equipment information and all the relay's input and output descriptions;
 - b. The Seller Interconnection Facilities relay settings shall include the logic, inputs, and outputs according to the Approved Design;
 - c. The backup overcurrent protection units of the Seller Interconnection Facilities relay shall be set so that PREPA does not provide short circuit current for more than one second;
 - d. The transformer from the Seller Interconnection Facilities to PREPA shall have Delta – WYE configuration to avoid zero sequence current contribution from the Facility during faults at the electrical system;
 - e. The Seller Interconnection Facilities transformer protection shall be set so that the Seller Interconnection Facilities does not provide short circuit current to PREPA or disconnects instantly;

³⁴ ~~NOTE: PREPA to confirm this remains relevant and correct.~~

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- f. The Seller Interconnection Facilities transformer protection shall provide an overvoltage protection unit on the delta side of the transformer to disconnect the Seller Interconnection Facilities during ground faults on the delta side of the transformer; and
- g. SELLER shall provide all the equipment data of the Seller Interconnection Facilities for PREPA's protection studies such as capacity, transformer and line impedances, current and voltage transformer ratios and information and short circuit duty, among others.

For the avoidance of doubt, PREPA does not assume, calculate or interpret any required item from manuals, graphs or relay curves, and SELLER shall ensure that all the required data is included in the report upon first submittal.

APPENDIX S - PERFORMANCE GUARANTEES³²

SELLER hereby guarantees to PREPA that:

- a. for each Agreement Year, the Facility will make available no less than ~~ninety-five~~one hundred percent (~~95~~100%) of the ~~Base Annual Quantity~~P50 Energy Yield at the Interconnection Point. If for any Agreement Year, the aggregate Net Electrical Output of such Agreement Year falls below ~~ninety-five~~one hundred percent (~~95~~100%) of the ~~Base Annual Quantity~~P50 Energy Yield for such Agreement Year, then SELLER shall grant PREPA a credit of an amount equal to the product of (a) [●]/kWh multiplied by (b) the total shortfall quantity (expressed in kWh) described above that falls below ~~ninety-five~~one hundred percent (~~95~~100%) of the ~~Base Annual Quantity~~P50 Energy Yield for such Agreement Year. PREPA shall have the right to use such credit to offset its payment obligations hereunder to SELLER beginning with the first invoice of the subsequent Agreement Year, and continuing until PREPA has received full value for such credit. In the event that any such unapplied credit exists as of the end of the Term, SELLER shall pay PREPA an amount equal to such unapplied credit no later than ninety (90) Days after the Termination Date; and
- b. [●].

³² ~~NOTE: PREPA to confirm specifics and applicability to different technologies.~~

APPENDIX T - ANCILLARY SERVICES

During the Supply Period and in addition to (or in lieu of) the dispatch of Net Electrical Output and meeting the requirements of the MTRs, SELLER shall provide to PREPA, and PREPA shall have the right to dispatch the Facility for receipt into the Grid System at the Interconnection Point, [•] (collectively, the “Ancillary Services”) in accordance with the General Technical Requirements (as defined below) and Prudent Utility Practices.

where:

[•]

The following requirements shall apply to the provision of Ancillary Services by SELLER (the “General Technical Requirements”):

1. [•]

[•]

[others]

APPENDIX U - FORM OF SWORN STATEMENT

SWORN STATEMENT

Comes now, (Company Name) organized and existing under the laws of [●], with employer's social security number [●], represented in this act by [Representative's Name], of legal age, [Civil Status] and resident in [dwelling] and under the most Solemn oath declares the following:

1. That my name and other personal circumstances are the aforementioned.
2. That I hold the position of [Title] in the aforementioned company.
3. That the undersigned or [Company Name], its president, vice-president, directors, executive director, members of its board of directors, board of directors, nor any of its officials or person performing equivalent functions for the [Company Name]; or its subsidiaries or alter egos:
 - a. Have not pled guilty to, or have not been convicted of, to any of the crimes enumerated in the Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico or any of the crimes included in Act 2-2018.
 - b. Have not pled guilty or have not been convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.
4. The undersigned expressly recognizes that the conviction in Puerto Rico or United States Federal court for under Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico will result in automatic termination of any contract in the Government of Puerto Rico.
5. That this statement is subscribed in compliance with Act 8-2017, as amended, and Act 2-2018.

IN WITNESS WHEREOF, I affirm and sign the herein document in _____, this
_____ day of _____, 20____.

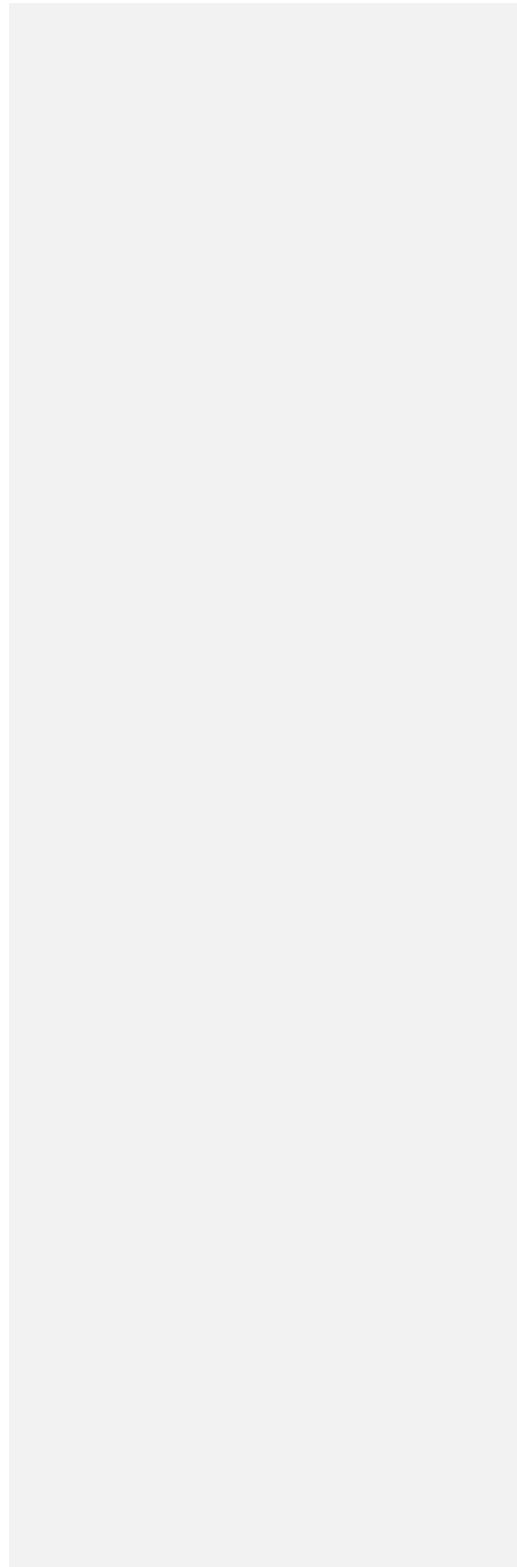
Affidavit No. _____

Representative's Signature

Duly sworn and subscribed to before me by _____, whose personal circumstances
are the above mentioned and who to me is personally known, or have identified by means of
_____, in _____, this ____ day of _____, 20__.

Notary Public

Seal



APPENDIX V - FORM OF FOMB CERTIFICATION

SELLER shall provide the following certification to ~~the~~ FOMB and the Commonwealth's Contracting Government Entity, signed by its Chief Executive Officer (or equivalent highest rank officer):

Unless the context otherwise requires, capitalized terms have the meanings defined in the Power Purchase and Operating Agreement dated [●] (the "Agreement").

1. SELLER's subcontractor(s) in connection with the Agreement (including any amendments, modifications or extensions) is (are) the following:

(Name of individual or firm, including names of principals or owners of the latter)

(Principal terms and conditions of the contractual relation and role of the subcontractor)

(Amount of proposed contract payable to each subcontractor)

2. Neither SELLER nor any of its owners (including any person or entity with more than a ten percent (10%) ownership interest in SELLER), partners, directors, officials or employees, has agreed to share or give a percentage of SELLER's compensation under the Agreement to, or otherwise compensate, any third party, whether directly or indirectly, in connection with the procurement, negotiation, execution or performance of the contract, except as follows:

(Name of individual or firm, including names of principals or owners of the latter)

(Principal terms and conditions of the compensation sharing arrangement and consideration for such benefit)

3. To the best knowledge of the signatory (after due investigation), no person has unduly intervened in the procurement, negotiation or execution of the contract, for its own benefit or that of a third person, in contravention of Applicable Law.
4. To the best knowledge of the signatory (after due investigation), no person has: (i) offered, paid, or promised to pay money to; (ii) offered, given or promised to give anything of value to; or (iii) otherwise influenced any public official or employee with the purpose of securing any advantages, privileges or favors for the benefit of such person in connection with the Agreement (such as the execution of a subcontract with SELLER, beneficial treatment under the contract, or the written or unwritten promise of a gift, favor, or other monetary or non-monetary benefit).
5. Neither SELLER, nor any of its owners, partners, directors, officials or employees or, to the best of its knowledge (after due investigation), its representatives or sub-contractors, has required, directly or indirectly, from third persons to take any action with the purpose of influencing any public official or employee in connection with the procurement, negotiation or execution of the contract, in contravention of applicable law.
6. Any incorrect, incomplete or false statement made by SELLER's representative as part of this certification shall cause the nullity of the proposed contract and SELLER must reimburse immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under the Agreement.

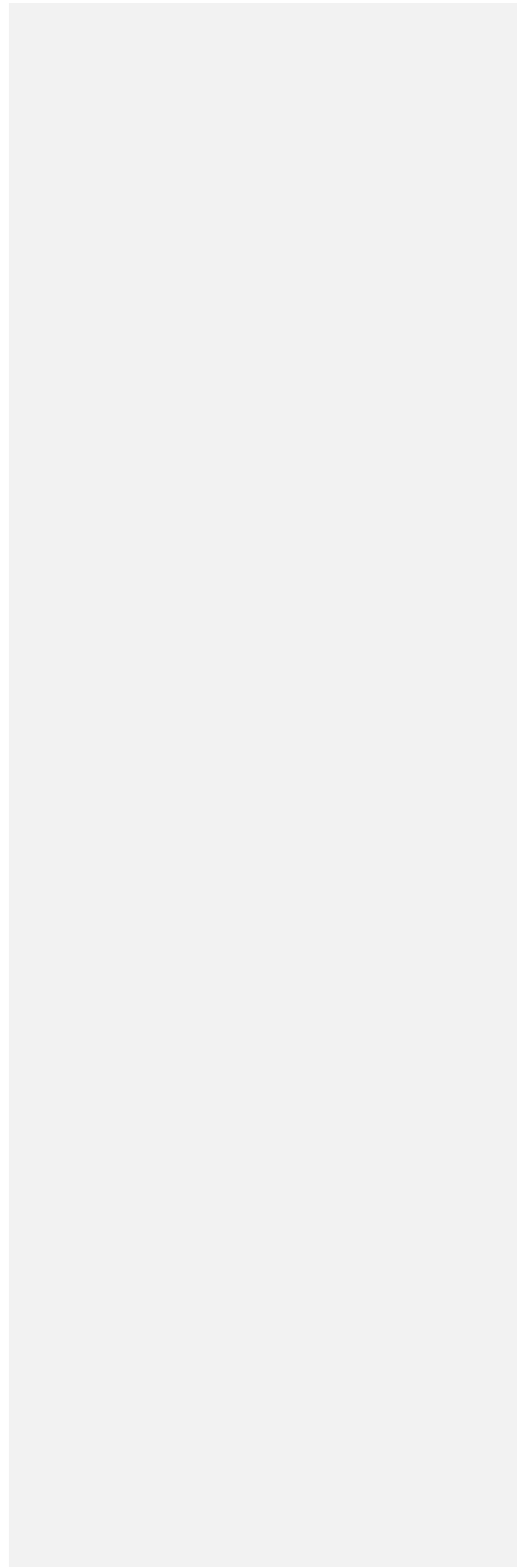
The above certifications are hereby signed under penalty of perjury by the [Chief Executive Officer (or equivalent highest rank officer)] in the following form:

“I hereby certify under penalty of perjury that the foregoing is complete, true and correct.”

By:

Date:

Signature:



APPENDIX W - FORM OF CONDITIONS PRECEDENT CERTIFICATE
CONDITIONS PRECEDENT CERTIFICATE

Date: [●]

Agreement: [●] [NTD: Insert contract number and title.]

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

To: [●] (“**SELLER**”)

We refer to the Power Purchase and Operating Agreement dated [●] between PREPA and SELLER (the “**PPOA**”). Unless the context otherwise requires, capitalized terms used in this Condition Precedent Certificate shall have the meanings ascribed to them in the PPOA.

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

We hereby certify that the Closing Date occurred on [●].

Very truly yours,

Acknowledged and agreed,

[●]
as SELLER

Puerto Rico Electric Power Authority
as PREPA

[●]

[●]

APPENDIX X - FORM OF FNTP CONSTRUCTION START DATE CERTIFICATE

FNTP

APPENDIX Y

CONSTRUCTION START DATE CERTIFICATE

Date: [●]

From: [●]

To: [●]

We refer to the Power Purchase and Operating Agreement between PREPA and SELLER dated [●] (the “PPOA”). Unless the context otherwise requires, capitalized terms used in this FNTP Construction Start Date Certificate shall have the meanings ascribed to them in the PPOA.

We hereby certify that SELLER has:

- a. obtained all Permits, authorizations and real property rights needed to start construction of the Facility and the PREPA Interconnection Facilities;
- b. secured the necessary financing and Equity (which Shareholders have contributed) for the construction of the Facility and the PREPA Interconnection Facilities (including execution of documents between SELLER and the Project Lenders that provide binding commitments for one hundred percent (100%) of the total capital cost of the Facility and PREPA Interconnection Facilities, other than the amount to be funded by Equity) and satisfied all conditions associated with, and made, the initial draw of funds for such construction under the financing documents with the Project Lenders;
- c. entered into the Facility Construction Contract, the Interconnection Construction Contract and any other agreements necessary to make the Product available to PREPA in accordance with the PPOA;
- d. received PREPA’s confirmation of the Approved Design;
- e. maintains the Performance Security required by the PPOA in full force and effect; and
- f. given each of its primary contractor(s) under the Facility Construction Contract and the Interconnection Construction Contract a full, unconditional notice to proceed with construction of the Facility and PREPA Interconnection Facilities, respectively.

The FNTP Construction Start Date occurred on [●].

Very truly yours,

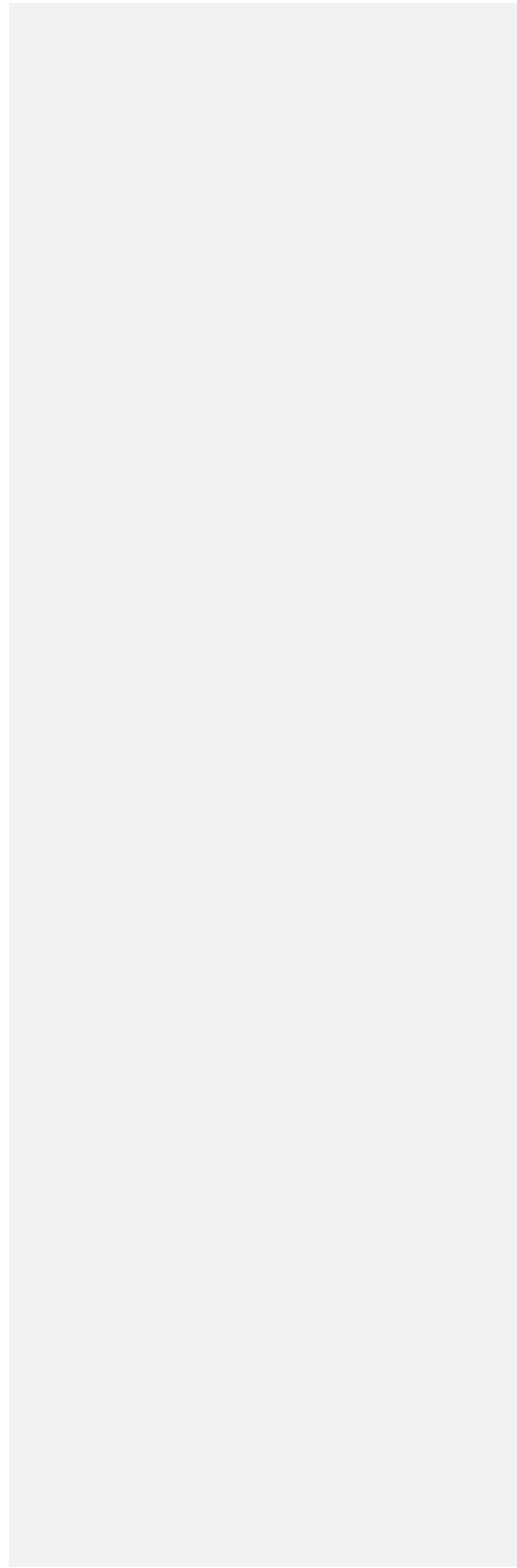
[•]
as SELLER

[•]

Acknowledged and agreed,

Puerto Rico Electric Power Authority
as PREPA

[•]



APPENDIX Z - FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

APPENDIX AA

COMMERCIAL OPERATION DATE CERTIFICATE

Date: [●]

From: [●] (“SELLER”)

To: [●]

We refer to the Power Purchase and Operating Agreement between PREPA and SELLER dated [●] (the “PPOA”). Unless the context otherwise requires, capitalized terms used in this Commercial Operation Date Certificate shall have the meanings ascribed to them in the PPOA.

We hereby certify that:

- a. as demonstrated by the Initial Performances Tests, the Facility (i) has been installed, completed, tested, and commissioned, together with the PREPA Interconnection Facilities, (ii) has demonstrated a Generating Capacity (as adjusted for Ambient Conditions at the time of testing in accordance with the Testing Protocol and without exceeding the limits of the Approved Design) that meets or exceeds the Maximum Dispatch Limit (or, to the extent that the Generating Capacity is less than the Maximum Dispatch Limit, (1) SELLER has credited PREPA for all liquidated damages required by the PPOA in respect thereof, and (2) the Generating Capacity meets or exceeds the Minimum Acceptance Capacity) and satisfies the Other Minimum Acceptance Criteria, (iii) is capable of providing Net Electrical Output to PREPA at the Interconnection Point, and (iv) is available for continuous operation by SELLER, in each case, in accordance with Prudent Utility Practices and the PPOA;
- b. SELLER has obtained, and maintains in force, all material Permits required for the construction and operation of the Facility; and
- c. the Facility and the PREPA Interconnection Facilities comply in all material respects with Applicable Law.

The Commercial Operation Date occurred on [●].

Very truly yours,

[●]
as SELLER

Acknowledged and agreed,

Puerto Rico Electric Power Authority
as PREPA

[●]

[●]

APPENDIX BB - FORM OF PERFORMANCE SECURITY

UNCONDITIONAL, ON-DEMAND BANK GUARANTEE

[Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: PUERTO RICO ELECTRIC POWER AUTHORITY
Address: [●]
Attn:[●]

Date: [●]

[PREPA-/SELLER Name] Power Purchase and Operating Agreement] – Performance Security No.

[●]

We (as Guarantor) understand that *[insert name of SELLER]* (the “*Applicant*”) has entered into a contract with you, the Beneficiary, dated [●] (as amended, the “*Agreement*”), which requires a Performance Security in the form and amount of this on-demand [bank guarantee / letter of credit] (“*Guarantee*”).

At the request of the Applicant, we *[name of Bank]*, hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [●] United States Dollars (USD [●]) in each case upon receipt by us of your first demand in writing at the Place of Presentation listed below in person, by registered or certified mail, by facsimile or by international overnight courier service, in the form attached as Annex A hereto (signed by your authorized representative) (“*Demand*”), without your needing to prove or to show grounds for your Demand or the sum specified therein. We shall remit all payment(s) under this Guarantee into a bank account of your choice and discretion as specified in your Demand. You may make one or more Demands under this Guarantee.

Any Demand made by the Beneficiary in accordance herewith shall be conclusive evidence that the sum stated in such Demand is properly due and payable to the Beneficiary under this Guarantee. The Guarantor shall have no right and shall not be under any duty or responsibility to enquire into the reason or circumstances of any Demand made by the Beneficiary or the respective rights and/or obligations and/or liabilities of the Beneficiary and the Applicant under the Agreement. Any discrepancy between the explicit terms hereof and the Rules (defined below) shall be read in favor of the terms set forth in this Guarantee.

Place of Presentation:

For paper presentation, at *[Bank to insert address of branch where a paper presentation is to be made in]*.

For electronic presentation by [facsimile], at *[Bank to insert facsimile information of branch where facsimile transmission is to be made]*.

The Guarantor shall, within three (3) business days after receipt of any Demand served from time to time by the Beneficiary, pay to the Beneficiary in immediately available funds the lesser of: (a) the amount specified in the Demand; and (b) the then applicable amount remaining on the Guarantee. If a Demand made by the Beneficiary hereunder does not, in any instance, conform to the terms and conditions of this Guarantee, then the Guarantor shall give the Beneficiary, within two (2) business days after receipt of such Demand, notice that such Demand was not effected in accordance with the terms and conditions of this Guarantee, stating the reason therefore. Upon being notified that a Demand was not made in conformity with this Guarantee, the Beneficiary may attempt to correct such non-conforming Demand. The obligations of the Guarantor under this Guarantee are primary and not by way of surety or guarantee. The Guarantor shall not be entitled as against the Beneficiary to make any withholding or deduction on account of any set-off or counterclaim whatsoever and howsoever arising.

The Guarantor will promptly notify the Beneficiary of any notice received or action filed alleging the insolvency or bankruptcy of the Guarantor or alleging any violations of regulatory requirements which could result in suspension or revocation of the Guarantor's charter or license to do business. In the event the Guarantor is unable to fulfil its obligations under this Guarantee for any reason, the Guarantor shall provide notice thereof immediately to the Beneficiary.

[This Guarantee shall enter into force and effect upon expiry of Performance Security No. [●], dated [●] and issued by [●].] [NTD: *Insert this language if this is a replacement Guarantee.*]

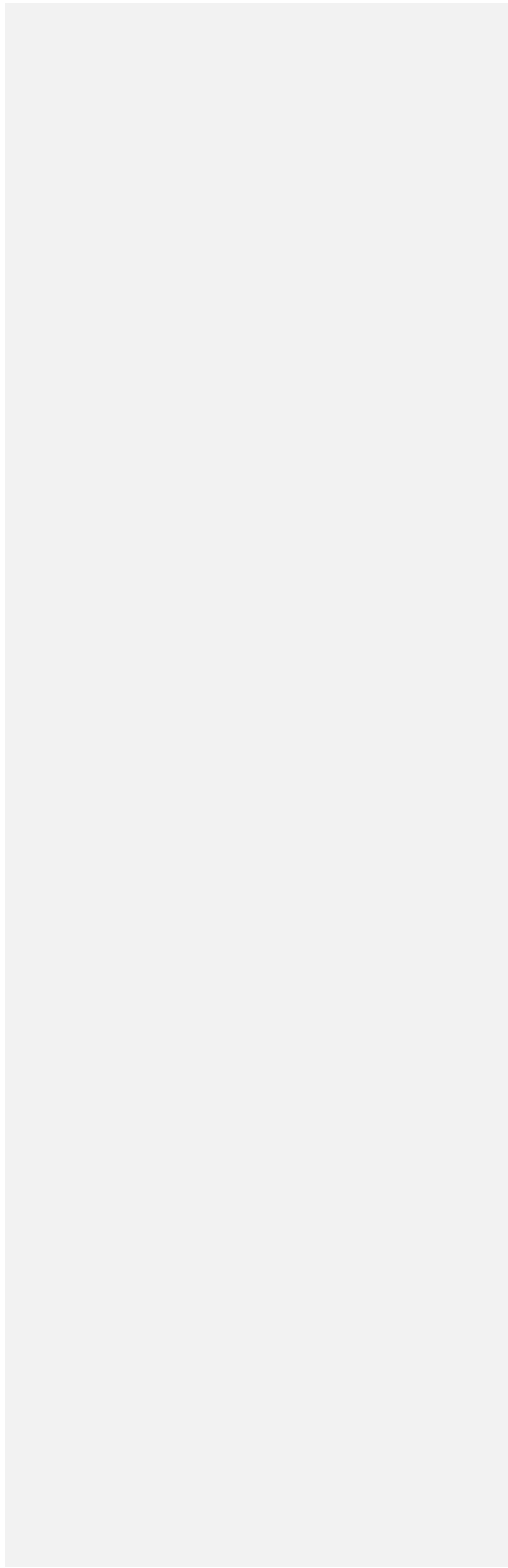
This Guarantee shall expire on the earlier to occur of (i) the date that you deliver a certificate to us, confirming that the principal has delivered to you a new Guarantee that replaces this Guarantee in accordance with Section 2.5 (*Performance Security*) of the Agreement, and (ii) [date] ("*Expiry Date*"). Consequently, we must receive any Demand for payment under this Guarantee at this office on or before such Expiry Date. Upon its expiry, you shall return the present Guarantee to us. It will, however, become null and void, irrespective of whether you have returned it.

The Beneficiary may assign and transfer its rights under this Guarantee to its lenders pursuant to its financing agreements or to any permitted assignee under the Contract by presentation to the Guarantor (at the above-stated Place for Presentation) of a demand for transfer, substantially in the form of Annex B attached hereto, appropriately completed. The Guarantor shall have no obligation to make any kind of payment to any assignee and/or transferee unless the Beneficiary has notified the Guarantor in writing of such assignment and/or transfer. For the avoidance of doubt, the Guarantor hereunder shall have no obligation to make any kind of payment to any other party, transferee and/or assignee if such payment is prohibited or blocked under any U.S. executive order, law or any rule or regulation of the office of foreign assets control of the U.S. treasury department or the U.S. commerce department, and any attempted transfer which violates this provision shall be null and void. The Guarantor may not assign, charge or transfer this Guarantee.

This Guarantee is subject to (i) the Uniform Rules for Demand Guarantees, ICC Publication No. 758 (the "*Rules*"), provided that no documentation other than that specified in this Guarantee is required for the Beneficiary to receive payment under this Guarantee, and the supporting statement under Article 15(a) of the Rules is specifically excluded, as is the application of Articles 21b, 21c, 23 and 33 of the Rules, and (ii) to the extent not inconsistent therewith, the laws of [jurisdiction of the Qualified Bank]. In the event of a conflict between the terms of this Guarantee and the Uniform Rules for Demand Guarantees, ICC Publication No. 758, the terms of this Guarantee shall prevail.

The courts of the [*United States federal courts in the Commonwealth of Puerto Rico*] shall have exclusive jurisdiction in respect of all disputes arising out of this Guarantee (including, without limitation, the enforceability of this Guarantee).

By:
Authorized Signatory



ANNEX A - FORM OF DEMAND LETTER

[Letterhead of Beneficiary]

[Name of Guarantor]

Date: [●]

[Insert Work Description] – Performance Security No. [●]

We refer to the above-captioned Unconditional On-Demand Bank Guarantee (the “*Guarantee*”). Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to them in the Guarantee. We hereby inform you that:

1. there is a Default (as defined in the Agreement) by Applicant or the owing by Applicant to the Beneficiary under the Agreement for penalties or any other liabilities, damages, losses, costs or expenses arising out of or relating to a breach of any obligation under the Agreement by Applicant, such Default or otherwise, or the Agreement provides that the Beneficiary may draw on the Guarantee, entitling us to call upon the Guarantee; or
2. applicant owes Beneficiary Liquidated Damages under and in accordance with the Agreement;
3. you no longer meet the requirements of a Qualified Bank (as defined below) and twenty-one (21) calendar days or more have elapsed since the date on which you no longer met such requirements, and the Applicant has not delivered to Beneficiary a replacement guarantee that is substantially identical to the Guarantee, meeting the requirements of the Agreement. “Qualified Bank” means, for any Guarantee, a commercial bank or other financial institution licensed to do business within Puerto Rico, which has, as of the date of issuance or renewal of such guarantee, a long-term counterparty credit rating of at least “A” by Standard & Poor’s Ratings Services, a long-term foreign currency deposit rating of “A2” by Moody’s Investors Services Inc., or, if either such rating agency ceases to engage in business or rate the obligations in question, an equivalent rating from another internationally recognized rating agency selected by Applicant with the written consent of PREPA; provided that, if such financial institution’s ratings satisfy such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications; or
4. twenty-one (21) or less calendar days remain before the current Expiry Date, the Applicant’s obligation to maintain the Guarantee under the Agreement extends beyond such Expiry Date, and the Applicant has not delivered to Beneficiary a replacement Guarantee substantially identical to the Guarantee and meeting the requirements of the Agreement.

This letter serves as our demand for payment under the Guarantee. We request that you immediately pay the sum of [●] into the bank account below:

Account Name: [●]

Account Number: [●]

Bank Name: [●]

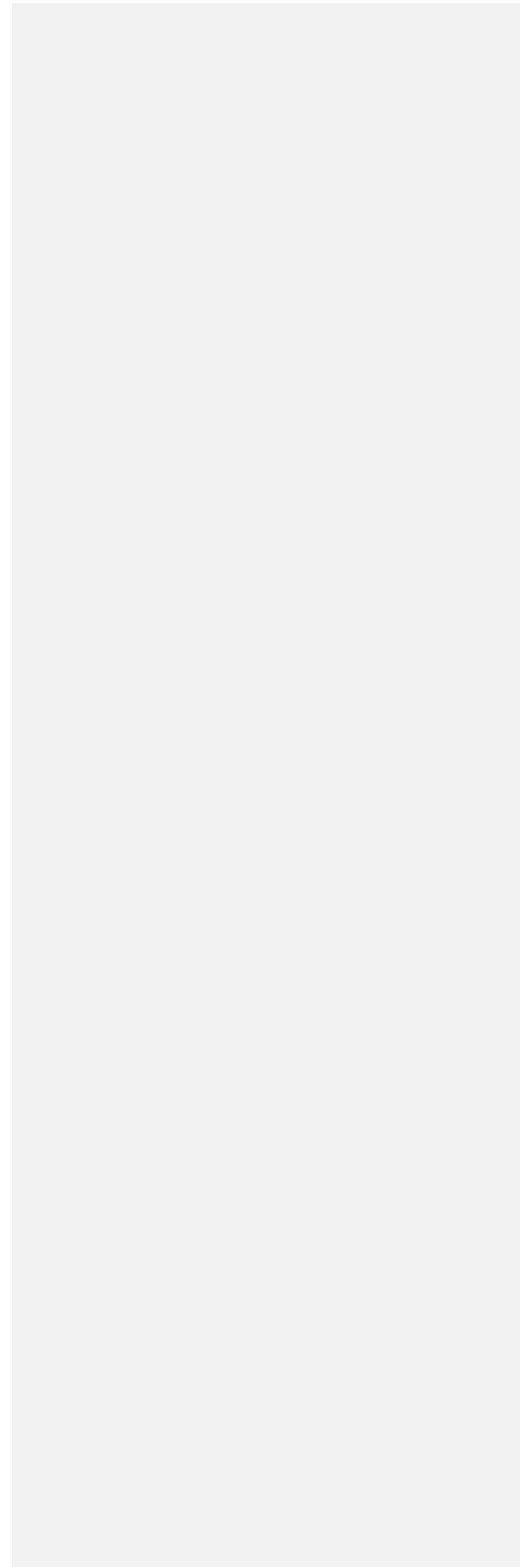
Bank Address: [•]

Swift Code: [•]

Yours very truly,

[The Puerto Rico Electric Power Authority]

By:
Authorized Signatory



ANNEX B - FORM OF TRANSFER

[Letterhead of Beneficiary]

[Name of Guarantor]

Date: [●]

[Insert Work Description] – Performance Security No. [●]

Gentlemen:

The undersigned Beneficiary hereby irrevocably transfers to:

Name of transferee

Address

All rights of the undersigned Beneficiary to draw under the above Guarantee in its entirety.

By this transfer, all rights of the undersigned Beneficiary in such Guarantee are transferred to the transferee and the transferee shall have the sole rights as Beneficiary thereof, including all drawing rights, all rights to transfer the Guarantee and sole rights relating to any amendments whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be directed to the transferee without necessity of any consent of or notice to the undersigned Beneficiary.

The original of such Guarantee along with all amendments, if any, is returned herewith, and we ask you to endorse the transfer on the reverse thereof and forward it directly to the transferee with your customary notice of transfer.

Sincerely,

Name of Beneficiary

Authorized Name & Title

Authorized Signature

Telephone Number

Accepted and Agreed:

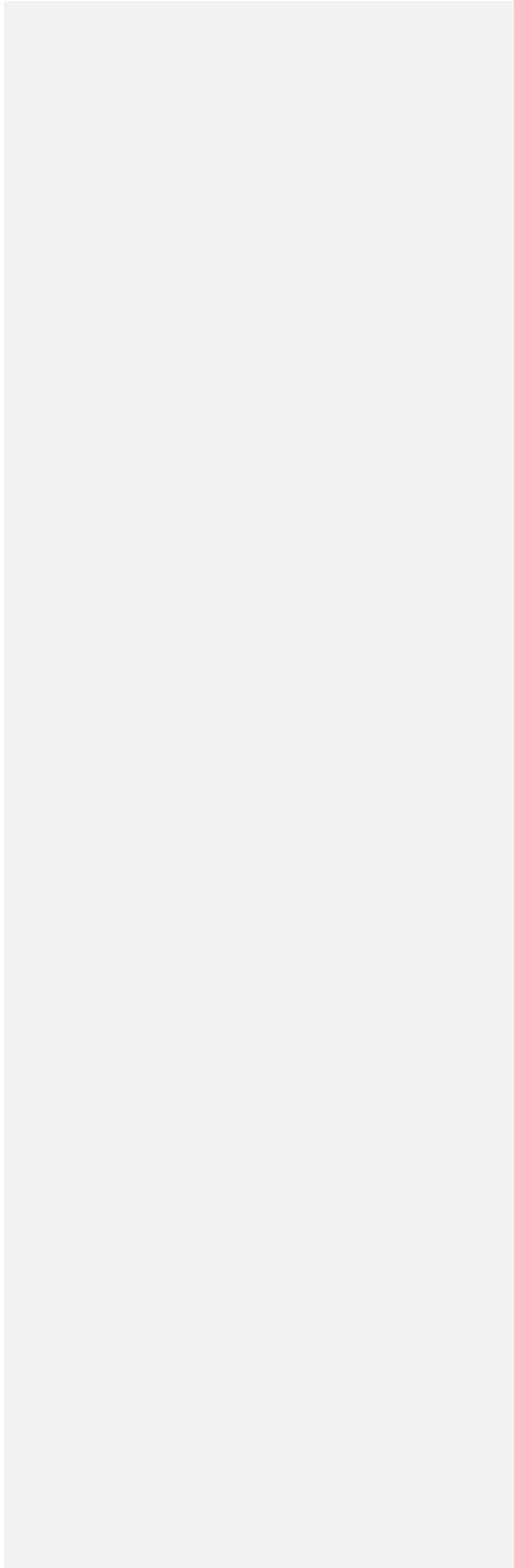
Name & Address of Bank _____

Authorized Name & Title _____

Authorized Signature _____

Telephone No. _____

This Form Must Be Executed in Duplicate.



APPENDIX CC - FORM OF DIRECT AGREEMENT

DIRECT AGREEMENT

THIS DIRECT AGREEMENT (“**Direct Agreement**”) dated [●], 2021, is entered into among: (i) the Puerto Rico Electric Power Authority, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by an Act of 23 May 1941, No. 83, as amended (the “**Consenting Party**”), (ii) [●] (together with its successors, designees and permitted assigns in such capacity, the “**Administrative Agent**”) and (iii) [●] (the “**Assignor**”). All capitalized terms used herein and not otherwise defined in this Direct Agreement shall have the respective meanings set forth in the Assigned Agreement (as defined below). The principles of interpretation and construction set forth in the Assigned Agreement shall apply to, and are hereby incorporated by reference as if fully set out in, this Direct Agreement, *mutatis mutandis* and as if any references to “this Agreement” and “Party” in such provisions were references to, respectively, “this Direct Agreement” and “the parties hereto”.

RECITALS

WHEREAS:

- (A) the Assignor (as seller) and Consenting Party (as buyer) have entered into that certain Power Purchase and Operating Agreement, dated as of [●] (as amended, restated or supplemented, the “**Assigned Agreement**”), pursuant to which the Assignor will develop a [●] MW Facility at the Site, (ii) interconnect the Facility with the Grid System, and (iii) sell the Net Electrical Output of the Facility exclusively to the Consenting Party, and the Consenting Party will purchase energy from the Facility built by the Assignor;
- (B) Pursuant to Section 19.3 (*SELLER’s Right to Assign*) of the Assigned Agreement, the Consenting Party has agreed to use commercially reasonable efforts to cooperate with any financing efforts of the Assignor, and the Assignor may assign its rights to payment under the Assigned Agreement to Project Lenders as security for its obligations to any such lender in connection with any financing of the development and construction of the Facility;
- (C) [The Assignor has entered into that certain [Credit Agreement], ~~dated as of [●],~~ dated as of [●] (as ~~further~~ amended, restated or supplemented, the “Credit Agreement”), among ~~the~~ Project Lenders from time to time party thereto (together with the Administrative Agent, each, a “**Secured Party**”, and, collectively, the “**Secured Parties**”) and the Administrative Agent, pursuant to which ~~the lenders party thereto~~ such Project Lenders will make loans to the Assignor to, among other things, finance the construction of a [●] with an approximate capacity of [●] MW (AC) ~~pursuant to which the Lenders will advance certain loans~~ the Facility; and
- (D) The Assignor has entered into that certain Security Agreement, dated as of [●] (as amended, restated or supplemented, the “Security Agreement”), among ~~[●], the Assignor, the Assignor and~~ the other subsidiary guarantors ~~from time to time party thereto, the Project Lenders~~ from time to time party thereto and the Administrative Agent, pursuant to which each of ~~each of [●], the Assignor, the Assignor and the others~~ such subsidiary guarantors ~~from time to time party thereto~~ have granted to the Administrative Agent, for the ratable benefit of the Secured Parties, a security interest in certain property as collateral security for the prompt and complete payment and performance when due of such entities’ obligations under the Credit Agreement.]³³

³³ ~~NTD: Contextualize for actual financing.~~

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. NOTICE OF ASSIGNMENT

The Assignor hereby gives notice to the Consenting Party that pursuant to the Security Agreement, the Assignor has pledged and assigned to the Administrative Agent, for the benefit of the Secured Parties, and granted to the Administrative Agent a security interest in, all of the Assignor's right, title and interest in, to and under the Assigned Agreement pursuant to the Security Agreement (the "**Assigned Interest**"), as collateral security for the obligations of the Assignor under the Credit Agreement.

2. PAYMENTS UNDER THE ASSIGNED AGREEMENT

2.1 Billing Arrangements

The Consenting Party agrees that, unless and until it has been notified in writing by the Administrative Agent that the Security Agreement has been terminated, the Consenting Party will pay all amounts payable by it under the Assigned Agreement directly to the Assignor at such account as may be specified in a written notice delivered by the Administrative Agent and the Assignor to the Consenting Party. The Assignor authorizes and acknowledges the foregoing and agrees that any payment made consistent with this Section 2.1 shall be treated for all purposes as a payment made directly to the Assignor under the terms of the Assigned Agreement.

2.2 No Set-Off Except as Provided Under Assigned Agreement

The Consenting Party agrees that in making payments in respect of the Assigned Agreement, it will not offset any amounts owed to it by the Assignor except as provided under the Assigned Agreement.

3. RIGHTS OF ADMINISTRATIVE AGENT

3.1 Exercise of the Assignor's Rights and Remedies

If the Administrative Agent provides written notice to the Consenting Party that an event of default has occurred under the Credit Agreement and that the Administrative Agent desires to exercise its rights and remedies pursuant to the Security Agreement, the Administrative Agent or any Substitute Provider (as defined below) shall be entitled to exercise any and all rights of the Assignor under the Assigned Agreement in accordance with the terms of this Direct Agreement and the Assigned Agreement. The Consenting Party agrees to accept such exercise by the Administrative Agent or any Substitute Provider and continue its performance under the Assigned Agreement in accordance with the terms thereof.

3.2 Right to Cure

Upon the occurrence of an event of default by the Assignor under the Assigned Agreement, or upon the occurrence or non-occurrence of any other event or condition which would enable the Consenting Party to terminate its obligations under the Assigned Agreement (herein called a "**default**"), the Consenting Party will not terminate its obligations under the Assigned Agreement until it first gives to the Administrative Agent (i) the written notice required to be given to Assignor by the Assigned Agreement specifying the nature of the default giving rise to such right (and in the case of a payment default, specifying the amount thereof); and (ii) the opportunity to cure such default for a period of ten (10) days, in the case of a payment default, and thirty (30) days, in the case of a non-payment default, which may be coincident with the applicable cure period, if any, set forth in the Assigned Agreement for the Assignor to cure such default, so long as the Administrative Agent has commenced and is diligently pursuing appropriate action to cure such

default and continues to perform all other obligations under the Assigned Agreement (unless performed by the Assignor).

3.3 No Liability

Except during any period in which the Administrative Agent or any Secured Party (or any of their respective designees or assignees) constitutes a Substitute Provider, the Consenting Party acknowledges and agrees that neither the Administrative Agent nor any Secured Party (or any of their respective designees or assignees) shall have any liability or obligation under the Assigned Agreement as a result of this Direct Agreement except to the extent of their respective interest in the Assigned Agreement, the Credit Agreement or the Security Agreement, nor shall the Administrative Agent or any Secured Party (or any of their respective designees or assignees) be obligated or required to perform any of the Assignor's obligations under the Assigned Agreement or to take any action to collect or enforce any claim for payment assigned under the Security Agreement. No curing of any defaults under the Assigned Agreement shall be construed as an assumption by the Administrative Agent or any Secured Party (or any of their respective designees or assignees) of any of the obligations, covenants or agreements of the Assignor under the Assigned Agreement.

3.4 Substitution: Transfer

- (a) The Consenting Party agrees that, notwithstanding anything to the contrary in the Assigned Agreement, if the Administrative Agent shall notify the Consenting Party in writing that an Event of Default (as defined in the Credit Agreement) has occurred and is continuing under the Credit Agreement and that the Administrative Agent desires to exercise its rights and remedies pursuant to the Security Agreement, then a Substitute Provider may be substituted for the Assignor under the Assigned Agreement. In such event, the Consenting Party will continue to perform its obligations under the Assigned Agreement in favor of the Substitute Provider, subject, in any event, to all of the Consenting Party's rights and remedies thereunder, but recognizing that the Substitute Provider's obligations under the Assigned Agreement shall be limited to the Substitute Provider's interest in the Facility and all revenues and proceeds derived therefrom. In the event that the Substitute Provider succeeds to the Assignor's interest under the Assigned Agreement, whether by foreclosure or otherwise, the Substitute Provider shall not be liable for curing or performing or be required to perform or cause to be performed any of the defaults under the Assigned Agreement that were, by their nature, incapable of being cured or performed.
- (b) If the Assigned Agreement is rejected or terminated by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding involving the Assignor, and if within ~~one hundred eighty~~ ninety (18090) days after such rejection or termination the Administrative Agent shall so request, a Substitute Provider and the Consenting Party will promptly execute a new agreement that shall be for the balance of the remaining term under the Assigned Agreement (before giving effect to such rejection or termination) and shall contain the same agreements, terms and conditions as the Assigned Agreement. If the approval of any such trustee or debtor in possession or any regulatory approval is necessary in order for the Consenting Party to enter into or perform under any such new agreement, the Consenting Party shall cooperate with the Administrative Agent or Substitute Provider in obtaining such approvals.
- (c) **"Substitute Provider"** means, in respect of any assignment, transfer or sale permitted hereunder (each a **"transfer"**) any person, including the Administrative Agent, any Secured Party, or the Administrative Agent's or any Secured Party's designee or

assignee, if the transfer is made to the Administrative Agent or a Secured Party, or any purchaser of the Assigned Interest in a foreclosure sale or otherwise, who: (i) is at least as creditworthy (taking into account any credit support provided by such person) as the Assignor on the date of such transfer, (ii) is properly licensed or otherwise authorized to perform the Assignor's obligations under the Assigned Agreement and is a counterparty with whom the Consenting Party is not prohibited from transacting under the regulatory regime then-applicable to the Assigned Agreement; (iii) meets the Consenting Party's internal credit policies as reasonably and consistently applied solely with respect to the maximum potential credit exposure of the Consenting Party to such person (it being understood that the determination of the amount of such credit exposure shall take into account the then current creditworthiness of such person and any collateral or guaranties posted for the benefit of such person); (iv) has provided, to the extent requested, all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations (including, without limitation, the Patriot Act, rules and regulations of the Office of Foreign Assets Control and other similar client identification policies and procedures) as well as all documentation required by the Assigned Agreement (including as signing conditions) and Puerto Rico law; ~~(v)~~ has not formally threatened in writing or commenced any litigation proceeding against the Consenting Party and is not subject of any formal written threat of litigation issued or of any litigation proceeding initiated by the ~~Contracting~~ Consenting Party; and ~~(vi)~~ has, in the Consenting Party's sole discretion, the technical and operational capability and experience to develop, construct, test, commission, operate, maintain and repair a project similar to the one contemplated by the Assigned Agreement, to deliver energy to the Consenting Party from such a project and otherwise fulfil the Assignor's obligations under the Assigned Agreement.

4. REPRESENTATIONS

The Consenting Party represents that:

4.1 The Consenting Party is a Puerto Rico public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, duly organized, validly existing and in good standing under the laws of the Commonwealth of Puerto Rico and is duly qualified to conduct its business, to own its properties, and to execute and deliver, and to perform its obligations under, this Direct Agreement.

4.2 The execution, delivery and performance by the Consenting Party of this Direct Agreement have been duly authorized by all necessary corporate action and do not and will not (i) require any consent or approval of any Governmental Authority or the board of directors, members or partners (or equivalent persons), as the case may be, of the Consenting Party which has not been obtained, (ii) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Consenting Party, or (iii) violate or result in a breach of or constitute a default under, or require a consent that has not been obtained under or result in the creation of a lien under, its certificate of incorporation or by-laws or any indenture or loan or credit agreement or any other material agreement, lease or instrument to which the Consenting Party is a party or by which it or its properties may be bound or affected.

4.3 This Direct Agreement has been duly executed and delivered by the Consenting Party and constitutes the legal, valid and binding obligation of the Consenting Party enforceable against it in accordance with its terms, except as enforceability may be limited by general principles of equity and by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally. This Direct Agreement is in full force and effect.

4.4 No authorization, approval, consent, permit or other action by, or registration or filing with, any governmental authority or any other entity is necessary for or in connection with the execution or delivery by the Consenting Party of, or the performance by the Consenting Party of any of its obligations under this Direct Agreement, other than those which have been duly obtained or made and are final and non-appealable and in full force and effect as of the date hereof.

4.5 No litigation, action, suit, adverse proceeding or investigation before or by any arbitrator or government authority is pending or, to the best knowledge of the Consenting Party, threatened in writing against the Consenting Party or against any of its properties or revenues (i) with respect to this Direct Agreement or any of the transactions contemplated hereby or thereby; or (ii) which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the ability of the Consenting Party to perform its obligations under this Direct Agreement.

5. RESERVATION OF RIGHTS

The parties hereto agree that notwithstanding the terms of Sections 1 and 2 above, each of the Consenting Party and the Assignor reserves any and all rights and remedies (including those relating to set-off, counterclaim, deduction or retention) it may have under the Assigned Agreement or applicable law. The rights reserved by each of the Consenting Party and the Assignor under the Assigned Agreement and applicable law are cumulative and not exclusive of any rights it may have under the Assigned Agreement and/or applicable law.

6. MISCELLANEOUS

6.1 Notices

All notices and other communications hereunder shall be in writing and delivered to the applicable recipient pursuant to this Section 6.1 (i) if to the Consenting Party or to the Assignor, in accordance with the Assigned Agreement; (ii) if to the Administrative Agent, [●] or (iii) to such other address or facsimile number as any party may designate by notice given to all parties hereto pursuant to this Section 6.1. Delivery of notices and communications sent pursuant to this Section 6.1 shall be effective upon receipt.

6.2 Governing Law

~~This direct agreement and all questions regarding its validity, interpretation, performance and/or enforcement shall be governed by and construed in accordance with the internal laws of the state of New York without regard to any conflict-of-law principles of such state or other jurisdiction to the contrary. Jurisdiction and venue of any suit or action to enforce this direct agreement shall rest solely in the supreme court of the state of New York, county of New York, and the united states district court for the southern district of New York and each of the parties hereto hereby submits to the personal jurisdiction of such courts for the purpose of resolving any and all matters arising under or in respect of this direct agreement and agrees that personal service upon each such party may be made by delivery thereof to such party at the address specified herein~~

THIS DIRECT AGREEMENT AND ALL QUESTIONS REGARDING ITS VALIDITY, INTERPRETATION, PERFORMANCE AND/OR ENFORCEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE COMMONWEALTH OF PUERTO RICO WITHOUT REGARD TO ANY CONFLICT-OF-LAW PRINCIPLES OF SUCH COMMONWEALTH OR OTHER JURISDICTION TO THE CONTRARY. JURISDICTION AND VENUE OF ANY SUIT OR ACTION TO ENFORCE THIS DIRECT AGREEMENT SHALL REST SOLELY IN [THE UNITED STATES FEDERAL COURTS IN THE COMMONWEALTH OF PUERTO RICO] AND EACH OF THE PARTIES HERETO HEREBY SUBMITS TO THE PERSONAL

JURISDICTION OF SUCH COURTS FOR THE PURPOSE OF RESOLVING ANY AND ALL MATTERS ARISING UNDER OR IN RESPECT OF THIS DIRECT AGREEMENT AND AGREES THAT PERSONAL SERVICE UPON EACH SUCH PARTY MAY BE MADE BY DELIVERY THEREOF TO SUCH PARTY AT THE ADDRESS SPECIFIED HEREIN.

6.3 Waiver of Jury Trial

~~Each of the parties hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this direct agreement or the transactions contemplated hereby~~

EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS DIRECT AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

6.4 Counterparts

This Direct Agreement may be executed by any number of, and on separate, counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. A facsimile or .pdf copy of a counterpart signature page shall serve as the functional equivalent of a manually executed copy for all purposes.

6.5 Headings Descriptive

The headings of the several sections and subsections of this Direct Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Direct Agreement.

6.6 Severability

In case any provision in or obligation under this Direct Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

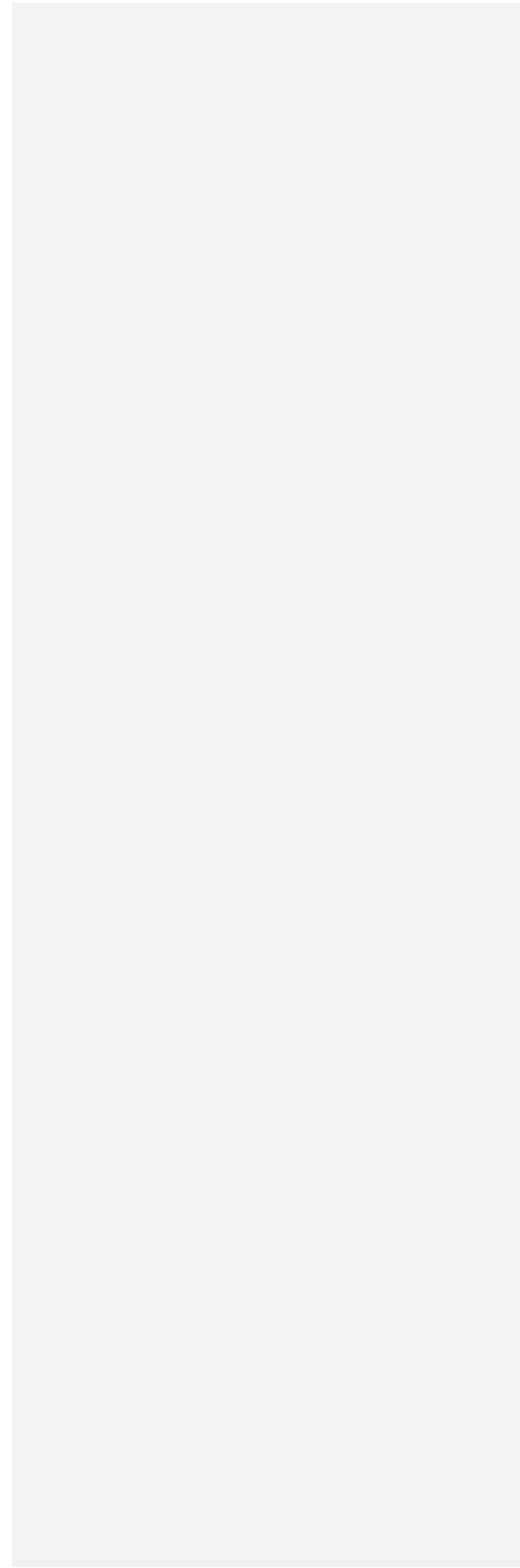
6.7 Amendment

Neither this Direct Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by each party hereto.

6.8 Successors and Assigns

This Direct Agreement shall be binding upon the successors and assigns of the Consenting Party and inure, together with the rights and remedies of the Assignor and the Administrative Agent, to the benefit of the Assignor and the Administrative Agent.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]



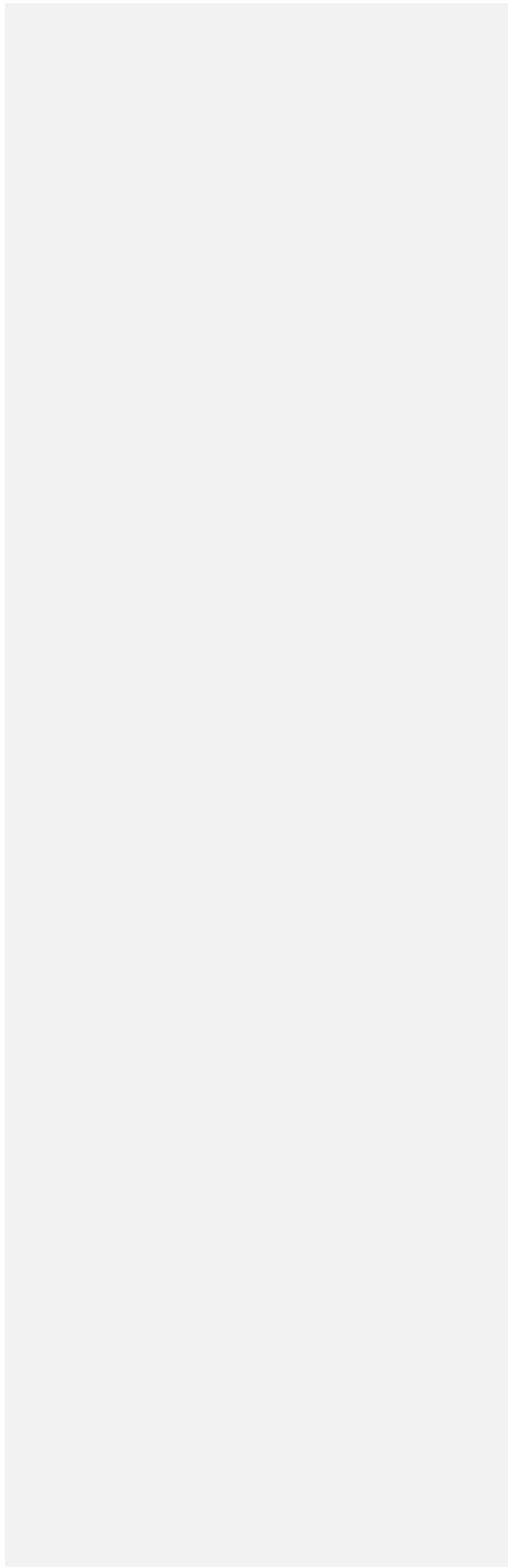
IN WITNESS WHEREOF, the parties hereto have caused this Direct Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year above written.

PUERTO RICO ELECTRIC POWER AUTHORITY

by

Name:

Title:

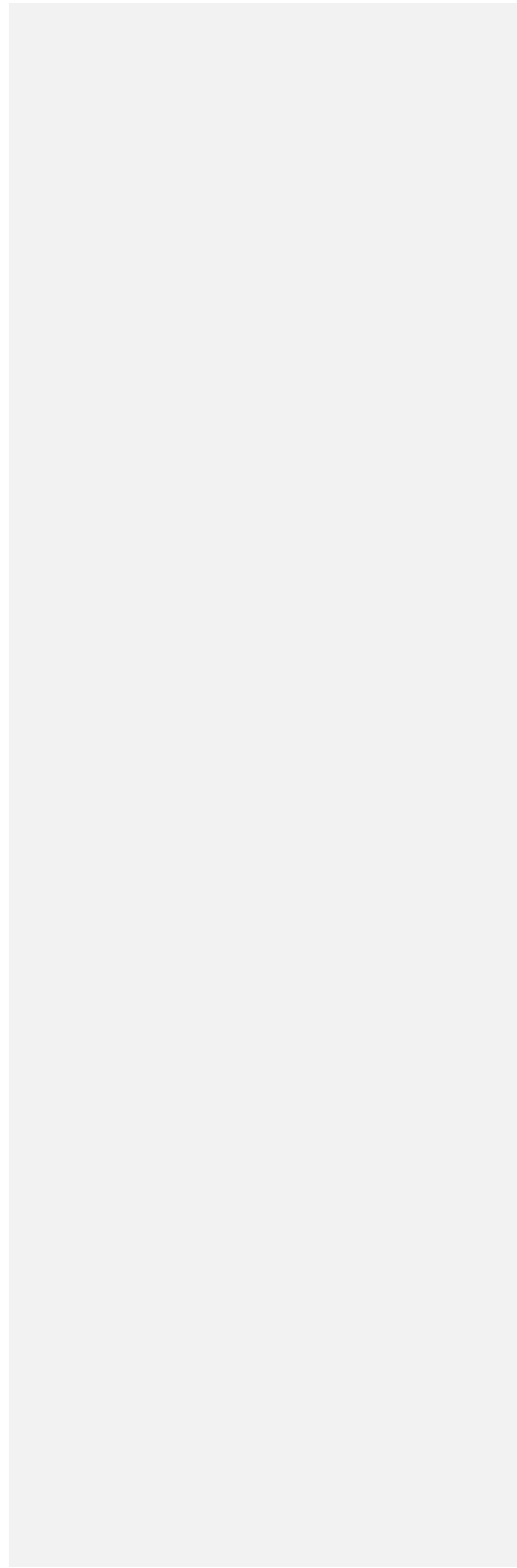


[●] as Administrative Agent

by

Name:

Title:



Document comparison by Workshare Compare on Tuesday, December 22, 2020 3:55:21 PM

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| Description | Solar PPOA_RE RFP_02 |
| Document 2 ID | iManage:///WORKAMER.USA.KSLAW.NET/WORKAMER/37837807/26 |
| Description | #37837807v26<WORKAMER> - Appendix E_Form of Solar PPOA |
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| Legend: | |
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| Style change | |
| Format change | |
| Moved deletion | del |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

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