

## **LUMA ENERGY O&M AGREEMENT EVALUATION**

This contract, where absolute control of the electrical system and its Energy Control Center, is delegated to Luma Energy, creates a private vertical monopoly against the law. Furthermore, the dismantling of PREPA to make way for a private for-profit interest endangers our national security and an essential service that constitutes an internationally recognized human right. The contract has so many deficiencies that it is not possible to correct it by individual amendments. To make this contract legal requires radical changes in its nature. The contract should be reframed as a public-private partnership for the administration of PREPA by Luma Energy. The contract should be redesigned to preserve the administrative and operational structure of PREPA, maintaining the workforce, labor rights per the collective agreements, and the administrative manuals applicable to management, with clear definitions of Luma Energy's managerial prerogatives. This could be accomplished without impairing PREPA's decision-making power over public policy matters, federal funds, network reconstruction, renewable energy, and tariffs. Besides, for the contract to be valid under the law, Luma Energy has to make significant capital contributions to improve the electricity service so that both parties' contributions are equivalent. With this model, Luma Energy will be able to implement the best practices and knowledge of the industry to modernize the electrical system. Still, at the same time, the People of Puerto Rico do not have to assume an excessive risk if Luma Energy decides to rescind the contract. This event would leave Puerto Rico without an Electric company.

The Active and Retired Employees Alliance position is that this contract should be declared void and null, and immediately canceled. Luma Energy should return all amounts of money illegally paid. However, to demonstrate the contract's leonine and abusive nature, the Alliance submits a detailed table of the agreement's defects, why they are detrimental to Puerto Rico's People, and how to address its illegal clauses. As it is evident from a reading of the changes suggested, they would transform the contract into a management agreement that would preserve PREPA's integrity and labor rights, but with senior management's direction composed of Luma Energy's personnel. Only in this way could it be possible to address the legal and national security issues faced if the contract is enforced.

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<p><b>Article 1</b> <i>Definitions</i> <i>“Force Majeure”</i></p>	<p>Means any act, event, circumstance or condition (other than lack of finances) whether affecting the T&amp;D System Power Supply, PREPA, Operator or any of PREPA’s Contractors or subcontractors or Operator’s Subcontractors that is beyond the reasonable control of an unforeseeable by, or which, if foreseeable, could not be avoided in whole or in part by the exercise of due diligence and it materially interferes with or materially increases the cost of such Party’s obligations. The definition includes an act of God, outage Event, landslide, earthquake, fire, explosion, flood or similar occurrence, war armed conflict, invasion, acts of terror, acts of civil or military authority, sabotage or similar occurrence, computer sabotage or virus, acts of public enemy, acts of foreign enemy, extortion, blockade, embargo, revolution, interference by military authorities, quarantine, epidemic, insurrection, riot or civil commotion or disturbance or civil disobedience</p>	<ul style="list-style-type: none"> <li>○ Too broad on what Force Majeure includes, the definition should be limited to real unforeseeable events.</li> </ul>	<p><b>LUMA ENERGY</b></p>	<p><b>PREPA</b></p>	<p>Eliminate the disposition in the provisions of an “Force Majeure” to exclude an event of interruption or outage. The definition should be modified to include only extraordinary and unforeseeable events.</p>

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<p><b>Article 2</b></p> <p>2.2(b)(ix) Front-End Transition Service Fee</p> <p>2.3 Initial Term</p>	<p>At least 4.5 months of up-front payment of the transition service fee</p> <p>This Agreement shall be in effect from the Effective Date through the fifteenth (15<sup>th</sup>) anniversary of the Service Commencement Date.</p>	<ul style="list-style-type: none"> <li>○ Benefits Luma because PREPA has to pay for Luma’s Front-End Transition Fee when Luma is just setting up their business.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	<p>Luma should pay for the expenses of their own operations.</p> <p>The provision in regard to the “Initial Term Contract” should be modified to 5 years and establish it should be established that it can be terminated beforehand if Luma Energy does not comply with the metrics on how to facilitate to the maximum, the integration of solar systems in ceilings and to nearby places of consumption through PREPA.</p>
<p><b>Article 3</b></p> <p>3.2 Engagement of Operator</p> <p>3.4 Liens</p> <p>3.5 Right of Access</p> <p>3.6 Exclusivity</p>	<p>Under Engagement of Operator, <u>PREPA has to pay to the Operator a service fee and has to fund service accounts, capital costs, outage event costs and other expenses.</u> The Operator may create liens on any assets owned by PREPA.</p>	<ul style="list-style-type: none"> <li>○ Benefits Luma because PREPA may be subjected to make additional payments to the Operator. It injures PREPA because they</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	<p>Luma should be required to fund service accounts, capital costs, outage event costs and any other extra expenses.</p>

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<p>3.7 <i>Essential Public Service</i></p> <p>3.9(b) (ii) <i>Qualified Management Contract</i></p>	<p>Under Right of Access, <u>Upon reasonable noticed to operator, at reasonable times during normal business hours and at their own respective cost and risk, each of PREPA, P3, PREB and their respective Representatives shall have the right to access the T&amp;D System assets and all System Information for Oversight of Operator’s performance of the O&amp;M Services</u> and to otherwise carry out their obligations under Applicable Law; provided that such access shall not interfere with Operator’s performance of the O&amp;M Services and may be provided by read-only access where available or a reasonably equivalent form of access to such information.</p> <p>Operator, Contractors, Subcontractors and their Representatives have exclusivity of the O&amp;M services with respect to the T&amp;D System. Under Essential Public Service, the Operator <u>relies on the funding of Service Accounts by PREPA</u>, for the Operator to perform the O&amp;M services and have the opportunity to earn the fee in full.</p>	<p>have to continuously fund the Service Accounts. That is a financial stress that PREPA could not afford. Also, this agreements limits PREPA’s ability to have access to its assets.</p>			<p>Eliminate the provision that gives authority to Luma, Contractors and subcontractors the <b>exclusive right</b> subjected to section 3.5 (right to access), to enter, occupy and use the T&amp;D System and its related fields. PREPA should be in control of its assets and participate in all aspect of the public policy formulation.</p> <p>Even though the Contract recognizes that the electrical service is an essential public service, it should be emphasized, the responsibility in the Contract of providing this public service <u>with the goal of providing universal access to renewable energy in or close to</u></p>

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					<u>the place of consumption to every customer by 2035.</u>
<b>Article 4</b> <i>4.1 Front-End Transition Period</i>	If PREPA does not give the <u>Front-End Transition fee, then Luma will not provide services</u> . Luma has the right to terminate the contract if PREPA’s motion with the Title III Court seeking administrative expense treatment for any accrued and unpaid amounts required to be paid by PREPA under this Agreement if the motion is not approved by the Court on or before the date that is 90 days following the date on which the motion was filed. Luma can also retain the Front-End Transition Fee obtained up to the date of termination. P3 may provide comments to Luma on the appropriateness of the proposed System Remediation Plan.	<ul style="list-style-type: none"> <li>○ Benefits Luma because if there is no Front-End transition fee administrative treatment, then Luma won’t provide services and may terminate the contract. This will injure PREPA because if the fees are not paid, Luma Energy may terminate agreement and leave the country after dismantling PREPA. This is a substantial risk due to PREPA’s economic situation. Also, PREPA is not able to assume the administrative expense due to its financial condition.</li> </ul>	<b>LUMA</b>	<b>PREPA</b>	Front End Fee should not be an administrative expense. PREPA should not pay for Luma’s foundation and shop setup.
<i>4.1(h) System Operation Principles</i>	In regard to the System Operation Principles, they must be submitted to P3 for its review and approval and may provide Luma with	<ul style="list-style-type: none"> <li>○ Benefits P3 because they review and approve the System Operation Principles. It injures</li> </ul>	<b>P3</b>	<b>PREPA</b>	PREPA and PREB should be permitted to review and approve the System

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4.2 Luma Energy's Responsibilities 4.2(e) Initial Budgets	comments, they may also recommend any changes and modifications.	PREPA because PREPA nor PREB get to review the System Operation Principles.			Operation Principles and should be permitted to provide Luma Energy with comments, recommendations and any modification if applicable.
	With the initial budget, Luma prepares and submits to P3 the proposed initial budget (Generation budget). Luma can only be required to submit it if Luma received the Generation Budget prepared by PREPA and delivered to Luma. <u>P3 on behalf of PREPA</u> , has to review and may provide comments on the initial budget.	<ul style="list-style-type: none"> <li>○ Benefits Luma because they prepare the initial budget and prepare Back-End Transition Plan. It injures PREPA because PREPA is not included in the procedure regarding the Initial Budget and the Back-End Transition Plan.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	<p>PREPA and PREB should have the right to review and provide comments if needed and participate in the procedure regarding the approval of the Initial Budget prepared by Luma Energy. PREPA and PREB should also participate in any procedure regarding the approval and review of the Back-End Transition Plan.</p> <p>Luma Energy <u>should not</u> alter the budget without PREPA's consent and the approval of the</p>

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4.2 (h)(j) <i>Physical Security Plan, Data Security, Plan and Vegetation Management</i>	Luma has to develop and Provide P3 and PREB, with plans of action meeting Contract Standards that outline the Physical Security Plan (physical security of the T&D System, data security, cyber security)	<ul style="list-style-type: none"> <li>○ Benefits Luma because they develop and have the control on creating the Physical Security Plan which covers all data security regarding T&amp;D System. Injures PREPA because PREPA does not have any participation in the process of review and approval of the Physical Security Plan.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	<p>Puerto Rico Energy Business (PREB).</p> <p>Luma Energy should provide PREPA and PREB with the Physical Security Plan for it to be reviewed and approved by both. PREPA and PREB should participate in any procedure regarding the approval of the Physical Security Plan</p>
4.2(i) <i>Back-End Transition Plan</i>	In regard to the Back-End Transition Plan, Luma Energy prepares and submits to P3 with copy to PREB (but not to PREPA) a detailed Back-End Transition Plan.	<ul style="list-style-type: none"> <li>○ Benefits Luma Energy and because Luma has the control on creating the Back-End Transition Plan. Injures PREPA because PREPA does not participate in the process of review and approval of the Back-End Transition Plan.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	Luma Energy should submit to PREPA and PREB a detailed Back-End Transition Plan for them to review and provide recommendations if needed.
4.2(j) <i>Employment Evaluations</i> 4.2(k) <i>Employment Offers</i>	Luma will use “reasonable efforts” to interview and evaluate PREPA’s employees and affiliates to work at Luma Energy ServCo, LLC. Luma Energy, LLC or Luma Energy ServCo, LLC <u>will not be liable for</u>	<ul style="list-style-type: none"> <li>○ Benefits Luma because they decide how many of PREPA’s employees they want to hire, and the benefits they will</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	All PREPA’s employees and benefits and rights according to the collective bargaining

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	<u>dismissals or other pay or benefits for PREPA's employees who are not hired.</u> Luma Energy ServCo, LLC has to give priority in hiring to any of the PREPA's employees who qualify, however, Luma Energy ServCo, LLC is <u>not required to hire all or substantially all of the PREPA's Employees.</u>	get. It injures PREPA because PREPA's collective agreement, employees' seniority and job positions under PREPA are not being incorporated.			agreements and administrative manuals should be maintained. The only employees that will be hired by Luma would be the top management according to a management agreement a a new public-private partnership.
<i>4.3 PREPA and P3 Responsibilities 4.3(f)</i>	PREPA and P3, at PREPA's <u>sole cost</u> , have to comply with the Operator's obligations to take over the O&M Services and other responsibilities and rights regarding the T&D System.	<ul style="list-style-type: none"> <li>○ Benefits Luma because PREPA has to incur in expenses in order to comply with Operator's obligations, which injures PREPA with the cumulative expenses. Also, the nature of the powers delegated in the agreement is overbroad and illegal.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	It should be at Luma Energy's sole cost, the compliance with Operator's obligations to take over the O&M Services and other responsibilities and rights regarding the T&D System. PREPA should maintain al its powers regarding public policy matters.
<i>4.5(i) Conditions Precedent to Service Commencement Date, Federal Funding</i>	PREPA may and should have access to adequate capital costs for the first 3 years of the term.	<ul style="list-style-type: none"> <li>○ Benefits Luma Energy because after 3 years, PREPA does not have the access and control to</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	PREPA should have the control of the local capital and

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		federal funding. It injures PREPA because PREPA would not have control of the federal funds.			federal funds at any time.
<i>4.6 Front-End Transition Period</i>	Apart from the hourly fully allocated cost rate for each category of Luma Energy’s, employee or Affiliate personnel that provided Front-End Transition Services, there is also a fixed fee of \$60,000,000.	<ul style="list-style-type: none"> <li>○ Benefits Luma because PREPA covers all of the costs and expenses regarding the Front-End Transition Fee and additionally pays an excessive premium. Injures PREPA because PREPA is paying Luma to just create their business in Puerto Rico and the cost is outrageous.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	There should be cost sharing between the Parties depending on their different functions and obligations. The contract should also specify what the cost sharing will entail. Luma should also incur in certain costs depending on their obligations and functions so that a balance of costs be created. The front-end transition cost should be cover by Luma because it has to do with the creation of the business in Puerto Rico.
<i>4.8 Failure of Service Commencement Date Conditions</i>	If Luma Energy’s Commencement Date Conditions is delayed and are not satisfied or waived by P3 by the established date and is	<ul style="list-style-type: none"> <li>○ Benefits Luma Energy because they will only give PREPA a</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	Luma Energy should pay PREPA actual liquidated damages.

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	not caused by PREPA’s fault or Force Majeure, Luma has to pay PREPA all monetary damages, costs, losses and expenses relating to the failure of Luma’s Service Commencement Date Conditions, PREPA is entitled also to liquidated damages, <u>and a maximum amount of \$40,000,000.</u> If PREPA is responsible for the delay, then Luma may terminate contract.	maximum of \$40,000,000 in liquidated damages. Injures PREPA because, Luma pays less in penalty fees and PREPA has to pay penalties in excess of Luma’s obligations.			
<p><b>Article 5</b>  <i>O&amp;M Services</i>  5.1 Services Generally  5.2 System Contracts  5.2(c) powers  5.6 System Regulatory Matters</p>	<p>From the start of the Service Commencement Date and in exchange for PREPA’s payment to Operator of all amounts owing to Operator under this Agreement, Operator shall i) provide management, operation, maintenance, repair, restoration and replacement and other related services for the T&amp;D System. Operator as agent for and on behalf of PREPA, will administer and perform System Contracts and PREPA’s payment obligations thereunder, which shall be an expense that is paid by Operator as a T&amp;D Pass-Through Expenditure.</p> <p><u>PREPA authorizes Operator to enforce PREPA’s rights under any such system Contracts. Operator has full power and authority to act on PREPA’s behalf and to legally bind PREPA.</u> PREPA irrevocably has to authorize Operator to: Represent PREPA before PREB with respect to any matter</p>	<ul style="list-style-type: none"> <li>○ Benefits Luma because Operator has control over PREPA’s rights under the System Contracts and all operational matter including the Energy Control System. It injures PREPA because Luma does not assume any obligations and PREPA loses control in regard to O&amp;M and T&amp;D System contracts.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	Luma Energy should assume only the obligations related to managerial matters. Luma Energy’s functions should be limited in regard to the Operation and Management of the Transmission and Distribution systems as well as the customer service. Luma should not manage the Electric Control Center. Operator should not have full power and authority to act on PREPA’s behalf and

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<p>5.8 Labor and Employment; Employee Benefits (a) Employee Plans</p>	<p>related to the performance of O&amp;M Services provided by Operator during this Agreement, file submissions before the PREB and represent PREPA before any Governmental Body.</p>				<p>to legally bind PREPA.</p>
	<p>Luma SevCo will provide employee benefits to Luma Energy ServCo employees <u>according to the plans created by Luma ServCo</u> to provide benefits to Luma ServCo employees (Luma <u>ServCo Benefits Plan</u>). Operator will not be responsible for any obligations or debts of PREPA under PREPA’s retirement plans. Luma ServCo pursuant to Act 29 will make any employer contributions permitted under the law to PREPA’s retirement plan with respect to any Hired Former Employee of PREPA that elects to continue participating in PREPA’s defined benefit retirement plan.</p>	<ul style="list-style-type: none"> <li>○ Benefits Luma because Luma ServCo will provide employees with their own retirement plan that will compete with PREPA’s Retirement System. The employees that choses Luma’s retirement plan will not be entitled to the same benefit plans they had with PREPA. It injures PREPA because the employees that do not continue under the PREPA retirement plan, will affect its solvency and the ones who leave the plan will take their monetary contributions and will stop contributing to the plan. This will decapitalize the Retirement System</li> </ul>	<p><b>LUMA ENERGY</b></p>	<p><b>PREPA</b></p>	<p>All employees should be members of PREPA’s retirement plan. Additionally, Luma should make contributions to the retirement’s system actuarial debt. Luma Energy, should be required to include all benefits for the employees they are hiring, including, but not limited to their collective bargaining agreements, recognizing the union, medical plan, retirement plan, among others. Luma should assume full responsibility for paying the pension debts of PREPA</p>

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5.12 Legal Matters	<u>Operator will manage PREPA’s legal matters</u> in regard to the O&M Services or with other legal matters involving Operator under this Agreement.	<ul style="list-style-type: none"> <li>○ Benefits Luma because they also have control over the PREPA’s legal matters.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	PREPA should be the one to manage their own legal matters in regard to the O&M Services. Operator should not be the one to manage PREPA’s legal matters.
5.15 Information	Operator shall, subject to the Remediation Plan, provide PREPA <u>with timely read-only access</u> where available or a reasonable equivalent form of access to the information necessary	<ul style="list-style-type: none"> <li>○ Benefits Luma Energy because it has full control of the Remediation Plan. It injures PREPA because PREPA does not participate of the process of reviewing and approving the Plan.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	PREPA should be able to make recommendations and participate in the process of review of the Remediation Plan.
<b>Article 6</b> <i>Rights and Responsibilities of PREPA and P3r</i> 6.1 (ii) (iii) (vi) <i>Rights and Responsibilities of PREPA</i>	<u>PREPA must pay service fee and any other amounts due to Operator, and fund Service Accounts.</u> PREPA has to also ensure that, to the extent PROMESA requires PREPA to submit any budget to the FOMB (Financial Oversight and Management Board) such budget provides that PREPA is authorized to pay amounts due to Operator and fund Service Accounts.	<ul style="list-style-type: none"> <li>○ Benefits Luma because PREPA is required to pay service fees to operator and fund service accounts which causes PREPA to incur in more costs. It injures PREPA because there is no cost sharing. The obligations assumed by PREPA are unaffordable.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	The budget that PREPA prepares should be in accord with a cost sharing agreement between the parties and based on PREPA’s financial situation.

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6.1(b) Authorization of P3	After PREPA assigns and delegates to P3 rights and responsibilities necessary for P3 to act as PREPA's liaison with Operator. <u>PREPA has to be responsible for all acts and omissions of P3</u> in connection with this agreement and the other transactions documents, as well as other contemplated transactions.	<ul style="list-style-type: none"> <li>○ Benefit P3 because it imposes the responsibility on PREPA on any acts and omissions. Injures PREPA because PREPA has to be responsible for all acts and omissions of P3</li> </ul>	P3	PREPA	Each party should have the obligation to compensate the others in regard to each of their acts and omission. Each party have to assume responsibilities for their own obligations and functions, and each party should be liable for their own acts and omissions in regard to the Agreement and other transaction documents. PREPA should not be liable for another Parties' act and omission.
6.2 Rights and Responsibilities	Operator has to rely on the written directions of P3. The <u>P3 is responsible for overseeing</u> , subject to the terms and conditions stated in the agreement, Operator's performance of the O&M services under this agreement. <u>P3 also reviews and approve budgets. They also review and approve the Incentive fee payable to Luma for a given Contract year.</u> Costs of	<ul style="list-style-type: none"> <li>○ Benefits P3 because they are responsible on overseeing Operator's performance of the O&amp;M services and review and approve budgets, including the Incentive Budget. It</li> </ul>	P3	PREPA	PREPA should have the right to oversee, Operator's performance of the O&M services under the Agreement. PREPA should also be permitted to

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	Operator's Contractors' Subcontractors and Affiliates shall be T&D expenditures except to the extent such costs are Disallowed costs.	injures PREPA because PREPA does not participate of the review and approval of the budgets.			participate in the process of review and approval of the Incentive Fee that is payable to Luma for a given Contract year.  Additionally, Luma Energy should not be able to contract Parent Companies or Affiliates as Contractors that may create conflicts of interest in the future.
6.2 (c) Approvals and Consent	When any approval or consent by PREPA to an Operator submission, request or report is required, <u>the approval or consent is given by the P3 in writing which is conclusive evidence of such approval or consent and is binding on PREPA</u>	<ul style="list-style-type: none"> <li>Anything regarding the review, approval or consent on a report requires P3 written consent binding on PREPA. Injures PREPA because PREPA is not included on the approval or consent of the report. PREPA is not involve in the participation of the review on the report.</li> </ul>	<b>P3</b>	<b>PREPA</b>	PREPA should be permitted to review for approval and consent any submission, request or report by Operator. P3 should not be permitted to give approval or consent in writing that will become conclusive evidence of the approval binding on PREPA.
6.3 (c) Reporting Audits, Adding	At any time and from time to time, PREPA, P3, PREB, COR3 or the DHS OIG may	<ul style="list-style-type: none"> <li>Any party can audit</li> </ul>	<b>NEUTRAL</b>	<b>NEUTRAL</b>	<b>NEUTRAL</b>

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<p>conduct a partial or full Audit related to all Federally Funded Capital Improvements and the Parties and have to maintain related records.</p>				
<p><i>Article 7 Compensation Budgets 7.1 Service Fee (a) (iii), 7.1 (c)(i) (vi)(vii) Incentive Fee</i></p> <p>In addition to PREPA’s funding or payment of T&amp;D Pass-Through Expenditures, Generation Pass-Through Expenditures, Capital Improvements, Outage Event Costs and any other amounts that become due and owing to Operator hereunder, from and after the Service Commencement Date, as compensation for the performance of the O&amp;M Services; PREPA has to pay Luma the Service Fee. <u>The Service fee will not be subjected to any deduction, abatement, counterclaim, no federal funds shall be used to pay the fee. PREPA has to pay the Operator an “Incentive Fee”.</u></p>	<p>Benefits Luma Energy because PREPA has to pay Luma Service Fee. Injures PREPA because there is no cost sharing and PREPA has the burden of covering all the expenses. Also, it is absurd that PREPA is not able to reduce the amount owed to Luma without deduction, abatement, counterclaim.</p>	<p><b>LUMA ENERGY</b></p>	<p><b>PREPA</b></p>	<p>The Service Fee should be subjected to deduction, abatement, counterclaim and there should be cost sharing between the parties.</p> <p>If the Renewable Portfolio Standard (as defined by Act 17-2019) objective of 40% renewable energy by 2025 is not achieved, an amount \$5,000,000 adjusted for inflation using the CPI factor shall be deducted from the Incentive Fee in 2025 and in each subsequent year for which this objective is not achieved.</p>

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7.2 Pass-Through Expenditures (a)(b)	If any Major Outage Event (Force Majeure) prevents Operator from achieving Performance Metrics, Operator will be entitled to earn the Incentive fee for the period that such Major Outage Event continues. If any Force Majeure Event, other than a Force Majeure Event prevents Operator from achieving one or more of the Performance Metrics, <u>Operator will be entitled to earn the Incentive Fee for the period that such force majeure continued. PREPA has to also pay costs and expense (T&amp;D Pass-Through expenditures) incurred by Luma ServCo as well as the Generation Pass-Through Expenditures.</u>	<ul style="list-style-type: none"> <li>○ Benefits Luma, if a <b>Force Majeure</b> occurs, PREPA has to pay T&amp;D Pass-through Expenditures and the Generation Pass Through Expenditures even if the performance metrics were not achieved. It injures PREPA because if a <b>Force Majeure</b> occurs PREPA has to pay, even if the performance metrics are not achieved.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	If a Force Majeure occurs, Luma Energy should not be paid for the performance metrics not achieved. If the performance metrics were not achieved, Luma should not be entitled to payment and should pay a penalty. Additionally, there should be cost sharing between the parties.
7.5(b) Service Account, Capital Account Federally funded	PREPA has to fund the Capital Account which is federally funded, received for the T&D System and proceeds from any other financing or funds of PREPA which are designated for Capital Costs (federally funded).	<ul style="list-style-type: none"> <li>○ Benefits Luma Energy because Luma has control of the federal funds. Injures PREPA because PREPA does not have control of the federal funds. Also, there is uncertainty about the disbursement of federal funds based on a concession contract.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	PREPA should have full control of the federal funds.

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7.5(c) Service Account Non-Federally Funded	PREPA has to fund the Capital Account-Non-Federally Funded with any or both A) proceeds from draws on financing provided by Operator or its Affiliates on terms agreed on by Operator and PREPA and B) proceeds from any other financings or any funds of PREPA, the use of which are designated for Capital Costs (Non-Federally Funded).	<ul style="list-style-type: none"> <li>○ Benefits Luma, PREPA has to fund Non-Federally Funded Capital Account, which means PREPA would be injured because PREPA will have to use public funds in order to make the payments.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	Luma Energy should provide or share the Non-Federally Funds.
7.5(d) Outage Event Reserve Account	<p><u>PREPA has to establish one or more Outage Event Reserve Accounts</u> from which Operator will draw funds from time to time to pay for costs in connection with an Outage Event, the <u>funds in the account have to be \$30,000,000.</u></p> <p>A purchase Power Account from which Operator shall draw funds from time to time to pay for operation and management expenses incurred in connection with the GridCo-GenCo PPOA, any expenses incurred in connection with the Shared Services Agreement and any expenses incurred in connection with the Generation Supply Contracts, as applicable (the “Purchase Power Account”)</p>	<ul style="list-style-type: none"> <li>○ Benefits Luma because PREPA is the one responsible on having an Outage Reserve Account and a Power Account for Luma Energy’s benefit. Injures PREPA because PREPA keeps paying for everything and there is no cost sharing between the parties.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	<p>Luma Energy should be the one to establish one or more Outage Event Reserve Accounts from which Operator will draw funds from time to time to pay for costs in connection with the Outage event. Luma is responsible for the sound operation of the T&amp;D System, therefore it should be accountable for outages.</p> <p>In the alternative, if PREPA lacks sufficient funds to</p>

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				<p>fund the Outage Event Reserve Account to this level, the difference shall be funded by Operator and Operator shall be entitled to recover this expense as adjusted for inflation based on the CPI Factor upon termination or expiration of this Agreement</p> <p>If PREPA lacks sufficient funds to fund the Purchase Power Account to this level, the difference shall be funded by Operator and Operator shall be entitled to recover this expense as adjusted for inflation based on the CPI Factor upon termination or</p>
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<u>Article</u>	<u>Agreement</u>	<u>Comments</u>	<u>Who benefits?</u>	<u>Injured Party</u>	<u>Amendments</u>
					expiration of this Agreement.
7.7 <i>Unfunded Amounts</i>	<u>Operator has no obligation or responsibility to incur or pay any costs or make expenditures in providing the O&amp;M Services</u> they only have to take reasonable measures to maintain the continuity of the services to the extent possible in the absence of sufficient funding.	<ul style="list-style-type: none"> <li>○ Benefits Luma because they do not have to maintain the quality of the O&amp;M Services. Injures PREPA because Operator has to only take reasonable measures to maintain continuity of the services.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	Operator should have the obligation or responsibility of paying any costs or make expenditures in providing the O&M Services. Operator should maintain the quality of the services.
7.9 <i>PREPA Payment of P3's Costs</i>	PREPA is solely responsible for all costs and expenses of P3 in connection with the performance of the P3's obligations under this Agreement and has to pay or reimburse P3 promptly for any out-of-pocket or third-party expenses.	<ul style="list-style-type: none"> <li>○ Benefits P3 because PREPA has to reimburse P3 for all cost and expenses which keeps accumulating, injuring PREPA. Injures PREPA because PREPA has to incur in new operational costs</li> </ul>	<b>P3</b>	<b>PREPA</b>	P3 should be responsible for all costs and expenses of P3 in regard to P3's performance of the obligations under the Agreement, not PREPA.
<i>Article 8 Credit Support 8.2 Guarantor Reports</i>	While any guarantee is outstanding, Operator has to deliver to P3 (with copy to PREB) a copy of unaudited balance sheets, within 120 days after the end of Guarantor's fiscal year, a copy of the audited balance sheets, and the related audited statements of income, changes in equity and cash flows for such fiscal year.	<ul style="list-style-type: none"> <li>○ Benefits P3 because the P3 will receive a copy of audits and annual reports by Operator. Injures PREPA because</li> </ul>	<b>P3</b>	<b>PREPA</b>	PREPA should receive a copy of audits and annual reports by Operator and participate in the process or review and

<u>Article</u>	<u>Agreement</u>	<u>Comments</u>	<u>Who benefits?</u>	<u>Injured Party</u>	<u>Amendments</u>
	Operator has to also provide an opinion of an independent public accountant of national stature in the U.S. (or equivalent jurisdiction of Guarantor) engaged by Guarantor. If applicable, Operator will also furnish P3 copies of the quarterly and annual reports of Guarantor(s) filed with the U.S. Securities Exchange Commission or with any other comparable international securities' regulatory agency.	they don't participate in the process or review and approval of the audits and annual reports.			approval of the audits and annual reports.
<b>Article 9</b> <i>Compliance with Applicable Law 9.2(c) Anti-Corruption and Sanction Laws</i>	if Operator violates Anti-Corruption Laws, it will be subject to Title III of Act 2, known as the Code of Ethics for Subcontractors, Suppliers and Applicants for Economic Incentives of the Government of Puerto Rico.	<ul style="list-style-type: none"> <li>○ Benefits the P3 because the Operator has to notify in writing, if to the Operator's knowledge, its subsidiaries, officers and directors are being investigated. Injures PREPA because the information is not shared with PREPA</li> </ul>	<b>P3</b>	<b>PREPA</b>	P3 should share with PREPA the notification in writing, if to Operator's knowledge, its subsidiaries officers and directors are being investigated.
<b>Article 10</b> <i>Insurance 10.1 Insurance Generally</i>	From Service Commencement Date and for remainder of Term thereafter, and for any additional period, Operator has to maintain in effect, any Contractor and Subcontractor for performing any of the O&M Service to maintain in effect, for the benefit of PREPA and Operator <u>as applicable, the insurance policies and limits of coverage</u> . A prudent person in the business of operating and managing the T&D Systems <u>would maintain</u>	<ul style="list-style-type: none"> <li>○ Benefits LUMA because PREPA pays for Luma's insurance which protects its property and operations. Injures PREPA because PREPA has to pay for an insurance that does not protect PREPA, but protects Luma</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	Luma Energy should cover the cost of the insurance because the insurance is protecting Luma.

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	<p><u>the “Required Insurance” which shall be acceptable to P3. All premiums, deductibles, and other fees, costs and expenses (including uninsured Losses that are not Disallowed Costs and losses in excess of insurance) shall be T&amp;D Pass-Through Expenditures.</u></p>				
<i>10.02 Commercial Availability</i>	<p>P3 has the right to seek alternative coverage acceptable to P3 if a required insurance policy is not available at a commercially reasonable rate. <u>During that period, any loss that would otherwise have been insured shall be treated as a T&amp;D Pass-Through Expenditure.</u></p>	<ul style="list-style-type: none"> <li>○ Benefits Luma because they don’t have to incur in any cost and any loss that would have been insured otherwise, PREPA will be injured because it will be an extra cost to PREPA.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	There should be cost sharing between the parties. If the insurance covers a certain party, that party should be the one to cover the insurance cost.
<i>10.03 Additional Named Insureds</i>	<p>Operator indemnitees and PREPA shall be included as additional named insureds, where commercially applicable and pertinent to coverage, along with waivers of subrogation, breach of warranties, or separation of insureds and contractual liability endorsements on any Required Insurance policies.</p>	<ul style="list-style-type: none"> <li>○ Even though PREPA is included in the insurance, PREPA also has to pay for Luma and its indemnitee’s insurance.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	Luma should pay for its own insurance policies.

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10.4 Warranties

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	Operator shall be named as “loss payee” for each of the policies contemplated herein and shall be entitled to receive all proceeds of the Required Insurance. In the event of a O&M loss or T&D System or System site, PREPA has to open an account in which to deposit the amounts of the insurance proceeds. <u>PREPA will hold amounts in trust for the benefit of Operator, and PREPA shall deposit such amounts in the Insurance Proceeds account.</u>	<ul style="list-style-type: none"><li>○ Benefits Luma because it gives control to Luma of the insurance proceeds. Injures PREPA because they will lose control of the payments of the Insurance Proceeds.</li></ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	PREPA should be the one who administer the Insurance Proceeds.
10.4 Warranties	Operator maintains and enforce any warranties or guarantees on any of PREPA’s owned or leased vehicles, facilities, equipment or other items.	<ul style="list-style-type: none"><li>○ Benefits Luma because PREPA will lose control the warranties of assets. Injures PREPA because it takes away control of PREPA’s warranties.</li></ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	PREPA should have control of it’s warranties and guarantees.

<u>Article</u>	<u>Agreement</u>	<u>Comments</u>	<u>Who benefits?</u>	<u>Injured Party</u>	<u>Amendments</u>
<p><b>Article 11</b> <i>Subcontractors and Contractors</i></p> <p><i>11.1 (b)(c)(d) Ability to Subcontract and Contract, Contractors Generally, Federally Funded Capital Improvements, Non-Federally Funded Capital Improvements</i></p>	<p>Operator shall have the right, but not the obligation, to engage Contractors as agent for PREPA to perform the O&amp;M Services. PREPA's payment, under any contract shall be a T&amp;D Pass-Through Expenditure. Operator has to provide P3 with copy to PREB, with a list of Contractor that Operator has engaged or intends to engage for the performance of any O&amp;M Services the cost of which is expected to exceed 10 million per year or 30 million in the aggregate (Material Contractor). P3 shall have the right to approve any Material Contractor engaged in Operator to perform any of the O&amp;M Services.</p>	<ul style="list-style-type: none"> <li>○ Benefits Luma Energy because they have control on choosing contractors and Subcontractors to perform O&amp;M Services. Injures PREPA because it is without PREPA's consent or approval because it releases Luma from complying from its O&amp;M obligations.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	<p>Operator should not have the right to engage Contractors as agent for PREPA to perform the O&amp;M Services without PREPA's consent.</p>
	<p>Under Federally Funded Capital Improvements, PREPA acknowledges and agrees that Operator may hire Contractors, as agent for and on behalf of PREPA, to perform <u>any Non-Federally funded Capital Improvements</u>.</p>	<ul style="list-style-type: none"> <li>○ Benefits Luma because PREPA has to pay for the hiring of the Operator's Contractors which makes PREPA to incur into more expenses. Also, PREPA has no input in the determination on the hiring of Contractors</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	<p>PREPA should participate and consent in the determination of any Federally Funded Capital Improvement project.</p> <p>Also, Lumas parent companies and</p>



<u>Article</u>	<u>Agreement</u>	<u>Comments</u>	<u>Who benefits?</u>	<u>Injured Party</u>	<u>Amendments</u>
		does not benefit PREPA, more expenses that will come out from public funds. It also injures the Commonwealth and the general fund because it gives special tax treatment to Luma and to its Contractors and agents.			to any Subcontract or Contract that is entered into, extended or amended and is a Covered Contract.  There should be no tax privileges for Luma.
<b>Article 12</b> <i>Taxation</i> 12.1 Withholding Tax	PREPA shall be entitled to deduct and withhold (or cause to be deducted or withheld) from any consideration payable or otherwise deliverable pursuant the Agreement, amounts as may be required to be deducted or withheld therefrom under any provision of the U.S. federal, state, Commonwealth, municipal, local or non-U.S. Tax law	<ul style="list-style-type: none"> <li>○ A matter of compliance with applicable law.</li> </ul>	<b>NEUTRAL</b>	<b>NEUTRAL</b>	<b>NEUTRAL</b>
<b>Article 13</b> <i>Intellectual Property;</i> <i>Proprietary Information</i> 13.1 Intellectual Property (v)	PREPA acknowledges that nothing in this Agreement is intended to prevent Operator from developing, researching, or distributing any products or offerings similar to, and separate from, any Work Product developed for PREPA.	<ul style="list-style-type: none"> <li>○ Benefits Luma because they will have access to all Intellectual Property that belongs to PREPA. Additionally, PREPA will be injured because Luma Energy may develop products similar</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	Luma Energy pay royalties for using PREPA’s Intellectual Property. Luma Energy should not be permitted to develop products similar to PREPA’s work

<u>Article</u>	<u>Agreement</u>	<u>Comments</u>	<u>Who benefits?</u>	<u>Injured Party</u>	<u>Amendments</u>
<i>(e) License of PREPA Intellectual Property</i>	PREPA grants, and shall cause its Affiliates to grant, to Operator and its Affiliates a fully paid-up, royalty free, nonexclusive, non-transferable PREPA’s Licensed Intellectual Property, as well as PREPA’s Trademark License Grant	to PREPA’s work product and trademark.			product and trademark.
<b>Article 14</b> <i>Events of Default; Remedies 14.2 (b) Termination for Operator Event of Default</i>	<u>Upon the occurrence of any other Operator Event of Default, P3 may terminate this Agreement upon not less than 120 days prior written notice to Operator, to the prior approval of PREB or the FOMB, court decision is not needed.</u>	<ul style="list-style-type: none"> <li>○ Benefits P3 because P3 may terminate Agreement if Operator defaults. This Agreement does not benefit Luma Energy because P3 can terminate Agreement if Operator defaults.</li> </ul>	<b>P3</b>	<b>NEUTRAL</b>	<b>NEUTRAL</b>
<i>14.4 Termination for PREPA, Event of Default</i>	Upon occurrence of the default by PREPA, Operator may terminate the Agreement upon not less than 120 days prior written notice to P3 without the need of a court decision	<ul style="list-style-type: none"> <li>○ Benefits Luma Energy because Operator may terminate Agreement upon the default of PREPA. It injures PREPA because without the need of a court decision in 120 days prior, Luma Energy can terminate the agreement. This leaves PREPA unable to assume the obligation to provide</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	Notice of default should be not less than a year. If there is an occurrence of the default by PREPA, it should be up to a court to terminate the Agreement to look at its merits. Luma should perform all the T&D or O&M Services until the court decides the controversy.

<u>Article</u>	<u>Agreement</u>	<u>Comments</u>	<u>Who benefits?</u>	<u>Injured Party</u>	<u>Amendments</u>
<p><i>14.6 Remedies Upon Early Termination</i></p> <p><i>(a)Accrued and Unpaid Amounts</i></p> <p><i>(b)Back-End Transition Fee</i></p>	<p>In the event of an early termination of this Agreement for any reason, <u>PREPA shall pay Operator any accrued and unpaid amounts required to be paid by PREPA</u> which include the Front-End Transition Service Fee, the T&amp;D Pass-Through Expenditures, the Generation Pass-Through Expenditures, any Capital Costs, Outage Event Costs, Fixed Fee and Incentive Fee as of the effective date of the termination. If Operator is performing the Back-End Transition Services, <u>PREPA has to also be responsible for the payment of the Back-End Transition Service Fee.</u></p>	<p>electrical services with such a short notice.</p> <ul style="list-style-type: none"> <li>○ Benefits Luma because in the event of an early termination of the Agreement, PREPA has to pay all cost up to the date of termination which injures PREPA.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	PREPA should deduct from any payments owed to Luma the penalties and damages caused by the termination.
<p><b>Article 15</b></p> <p><i>Dispute Resolution</i></p> <p><i>15.1 Scope</i></p>	<p>If there is any dispute between the Parties of this Agreement, Operator acknowledges and agrees that P3 or any designated persons appointed by the P3 can be authorized to participate in or act for and on behalf of PREPA in any Dispute Resolution Procedures</p>	<ul style="list-style-type: none"> <li>○ Benefits the P3 because they can act as representatives on dispute resolutions on behalf of PREPA.</li> </ul>	<b>P3</b>	<b>PREPA</b>	P3 should be prohibited from participating in the Agreement and should also be prohibited to act as representatives of PREPA on a dispute resolution procedure. PREPA should choose to participate on dispute resolution procedures or should be able to designate and appoint persons

<u>Article</u>	<u>Agreement</u>	<u>Comments</u>	<u>Who benefits?</u>	<u>Injured Party</u>	<u>Amendments</u>
					to act for and on behalf of PREPA.
<i>Article 16 Back-End Transition Service</i>	Immediately upon the expiration or earlier termination of this Agreement, at P3's election and in its sole discretion, Luma Energy shall transfer all the ownership interests in ServCo and all ServCo corporate books and records to PREPA or, at <u>P3's discretion, its designee free and clear of all liens and P3 will accept transfer at no cost to PREPA</u>	<ul style="list-style-type: none"> <li>○ Injures PREPA because it is excluded from the transfer of the assets.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	PREPA should be included to participate of the determination of the way to transfer the assets. Luma should be accountable for any legal or financial responsibility of the O&M Services.
<i>16.3 Transfer Obligation</i>	<u>Luma Energy will have no further legal or financial responsibility</u> with respect to the performance of any contracts, leases or licenses held by or in the name of SevCo or in relation to any pension "other post-employment benefits" and other employee and vendor obligations.	<ul style="list-style-type: none"> <li>○ Benefits Luma Energy because they are not responsible financially or legally with any contracts, licenses and performances held by ServCo. It injures PREPA because they have to deal with all those contracts, licenses, employment benefits post-termination. PREPA will have to deal with any "fall-out".</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	Luma Energy should be required to have legal or/and financial responsibility with respect to the performance of any contracts, leases or licenses held by or in the name of Luma Energy ServCo or in relation to any pension "other post-employment benefits" and other employee and vendor obligations.

<u>Article</u>	<u>Agreement</u>	<u>Comments</u>	<u>Who benefits?</u>	<u>Injured Party</u>	<u>Amendments</u>
<i>16.4 Back-End Transition Period Compensation (a) (c)</i>	<u>PREPA shall pay Operator the Back-End Transition Service Fee.</u> The Parties acknowledge and agree that federal funding shall not be used to pay the back-End-Transition Service Fee. The Back-End Transition Service Fee shall not be subject to any deduction, abatement, counterclaim or set-off of any kind or nature.	<ul style="list-style-type: none"> <li>○ Benefits Luma because PREPA has to pay the Back-End Transition Service Fee. It injures PREPA because they have to incur into more expenses without any deduction, abatement, counterclaim or set-off of any kind or nature.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	Luma Energy should pay the Back-End Transition Service Fee and PREPA should be able to deduct, abate, counterclaim or set-off any amount owed by Luma.
<i>Article 17 Force Majeure Events 17.2 Relief</i>	If and to the extent a Force Majeure Event interferes with, delays or increases the cost of a Party's performance of its obligation under the Agreement, <u>a party can be excused from performance</u> and any associated events if the party gave proper notice and description. In the event <u>Operator is the party claiming the Force Majeure Event, Operator will be excused with respect to the achievement of any Performance Metrics affected by the Force Majeure Event and entitled to request adjustments to the Budgets or the Performance Metrics.</u>	<ul style="list-style-type: none"> <li>○ Benefits Luma because Luma Energy will be excused from performing as a result of Force Majeure and may be entitled to payment even if they do not comply with the performance metrics.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	Luma should not be able to receive performance bonuses in the case that is not complying with the approved metrics.
<i>Article 18 Indemnification 18.1 Indemnification by Operator</i>	Operator shall indemnify, defend and hold harmless PREPA, P3 and their Affiliates and Representatives, and pay the full amount of any and all Losses incurred by an PREPA Indemnitee to the extent arising from, as determined by a final and non-appealable judgement by a court of competent	<ul style="list-style-type: none"> <li>○ Requires a final non appealable judgement for PREPA to be compensated when in other instances it does not require the same for</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	PREPA has the right to set off, deduct or abate any sums owed by Luma in the performance of the O&M Service Contract without any

<u>Article</u>	<u>Agreement</u>	<u>Comments</u>	<u>Who benefits?</u>	<u>Injured Party</u>	<u>Amendments</u>
	jurisdiction if the Operator breached its obligations and performance.	Luma. Additionally, because the amounts owed to Luma are not subjected to set-off, abatement and deduction.			judicial determination.
<i>18.2 Indemnification by PREPA</i>	PREPA has to indemnify, defend and hold harmless Operator and the Equity Participants and its and their Affiliates and Representatives, from and against and pay the full amount of any and all Losses incurred by an Operator Indemnitee to the extent arising from, as determined by a final non-appealable judgement by a court of competent jurisdiction if PREPA or P3 breached obligations and performance under this Agreement, negligence, materially affected the T&D Systems among others.	<ul style="list-style-type: none"> <li>○ Benefits Luma because PREPA has to indemnify Luma Energy if PREPA or P3 breach their obligations. PREPA will be affected because of the expenses they would have to incur in case of the breach of obligations.</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	PREPA should not be held liable and have to indemnify for a breach of obligation and performance caused by P3.
<i>18.6 Additional Liability Limitation for Certain Damages</i>	Operator may be providing O&M Services <u>that shall have no responsibility or liability</u> for any matter that is the subject of the system remediation <u>plan during the period operator is repairing or improving</u> the T&D System Assets, business process or controls, accounting, information, technology and administrative functions among others.	<ul style="list-style-type: none"> <li>○ Benefits Luma Energy because Operator will not be responsible or liable for anything that happens during the repairing or improving of systems and other functions</li> <li>○ Injures PREPA because if something happens with any of the T&amp;D Systems, Luma will not</li> </ul>	<b>LUMA ENERGY</b>	<b>PREPA</b>	Luma Energy have to be responsible and held liable during the period that Operator is repairing or improving the T&D System Assets, business process or controls, accounting, information, technology and administrative

<u>Article</u>	<u>Agreement</u>	<u>Comments</u>	<u>Who benefits?</u>	<u>Injured Party</u>	<u>Amendments</u>
		be responsible which means PREPA will.			functions among others.
<b>Article 19</b> <i>Representation and Warranties</i>	Agreements regarding representation and warranties of PREPA and Operator, the Existence and Powers, Due Authorization and Binding Obligation, No Conflicts, No Consents, No Litigation, no legal prohibition, Title III Approval, Charges, Intellectual Property, the agreements for both parties are parallel in regard to warranties and does not favor one over the other.	<ul style="list-style-type: none"> <li>The Agreements in article 19 regarding warranties apply to all the parties in a Neutral way.</li> </ul>	<b>NEUTRAL</b>	<b>NEUTRAL</b>	<b>NEUTRAL</b>
<b>Article 20</b> <i>Miscellaneous 20.1 Fees and Expenses</i>	Agreements that relating to fees and expenses, notices, amendments, relationship of the parties, assignments and transfer interest on overdue obligation, waivers severability, survival, no third-party beneficiaries, counterparts, office of the comptroller, governing law, Commonwealth obligations and the PREB.	<ul style="list-style-type: none"> <li>The Agreements in Article 20 apply to all the parties in a Neutral way.</li> </ul>	<b>NEUTRAL</b>	<b>NEUTRAL</b>	<b>NEUTRAL</b>

## LUMA ENERGY O&M AGREEMENT EVALUATION

### GENERAL AMENDMENTS NOT SHOWN IN THE TABLE:

- Prohibit the dismantling through the division or “reorganization” of PREPA in two distinct companies: “GenCo and GridCo”.
- Eliminate de provision that authorized Luma to abandon the contract in case of a regulatory change.
- Eliminate the provisions that Luma will have the authority over the selection of the Administrator of grants or subsidies or to act as director to administrate the federal funds for the electrical system.
- Prevent that Luma Energy/ ManagementCo, request changes or modifications to the federal financing (included in the modifications or reassignment in between the worksheets of the project relating to the T&D System prepared by FEMA in conformity with Section 428 of the Stafford Law) or the Integrated Plan of Resources, Annex ii-39.
- Eliminate the provisions that permit Quanta Services, Inc., ATCO and other entities affiliated to Luma Energy to participate of the projects of the Puerto Rico electrical system and/ or benefit of the federal funds for the electrical system in Puerto Rico.
- Prevent Luma Energy the opportunity to request the increase on the electrical rate or tariffs.
- Prohibit Luma Energy the option to suspend or terminate the electrical system to entities of the government, like municipalities that the Contract grants to Luma Energy for the implementation of the Regulation 8818 of September 27 of 2016, Regulation on the Contribution in Place of Taxes (“CELI”). This way, Luma Energy won’t be able to suspend the electrical system to the municipal governments and other agencies that perform the services to the citizens, putting in danger the supply of essential services.
- Amend the provisions regarding the Service Fee for it to be subjected to the fulfillment on Luma’s part in regard to the metrics established by the Puerto Rico Energy Business and the reimbursements of Luma’s expenses (T&D Pass-Through Expenditures) is associated to the direct expenses of repairs and maintenance of the electricity grid subject to the corroboration and approval of the PREB.

- Eliminate the provision on relief of responsibility for the damages to paying customers in favor of Luma Energy conceded by PREPA under the Contract.
- Prohibit that Luma Energy have any inference on certain aspects of the generation of energy, tariffs, planification, acquisition of servitude, among other issues to avoid that Luma Energy and Operator with profit making objective, take control of the monopoly of the electrical system of the island.
- Prohibit that Luma energy acquire all or part of the electrical system.
- Revoke the provision that permits Luma prepare PREPA's Integrated Resource Plan contrary to what it is established under Law 17.
- The Contract should be amended to have it be approved by the Legislature.
- The Executive Order 2021-012 should be modified as well as the mission of the Committee to include and listen to different sectors of the Puerto Rican civil society.
- The amended Contract should establish clear metrics regarding the electric service performance from Luma Energy's part in a way that it is reliable, resilient and with savings for customers.

#### **AGREEMENTS BREAKDOWN:**

**BENEFITS LUMA ENERGY: 41 Agreements**

**BENEFITS P3: 8 Agreements**

**BENEFITS PREPA: 0 Agreements**

**NEUTRAL: 4 Agreements**

## **LUMA ENERGY O&M AGREEMENT EVALUATION**

### **SUMMARY OF FINDINGS**

According to the Agreements established in the contract, PREPA's role in the decision-making has been totally impaired. If PREPA and P3 have a disagreement that could generate any conflict for PREPA in the long run, P3 will be the entity in charge of the decision-making and the administration of the Agreements on behalf of PREPA. PREPA is also the public corporation responsible for almost all the risks and problems in any of Luma's services concerning the system. Also, it is responsible for any breach of obligations by P3 and Luma Energy. If Luma Energy decides to terminate the contract, it will leave Puerto Rico without an energy company since it requires PREPA to be dismantled. Almost all the Agreements protect Luma Energy and P3. In the case of a "force majeure" PREPA will have to incur "extra" expenses because if Luma Energy decides to terminate the contract and leave, it may do so and charge PREPA for all services fees and penalties accrued. The agreement is not beneficial to PREPA because it is not cost-efficient, and it does not consider what is in the "best interest of the employees." Instead, the situation regarding PREPA's employees is unknown because, under the contract, Luma Energy decides how many employees it will hire from PREPA and Affiliates and their benefits, not the benefits they were receiving PREPA. The employees not employed by Luma Energy will go to the central government, where they must look where to place them.

Moreover, there are no vacancies at the time, which will double the costs that PREPA and the Government will have to incur. Lastly, many of the expenses and fees that PREPA must incur to pay Luma Energy will come from local public funds. On the contrary, Luma Energy does not have to incur any costs before the Service Commencement date. As a matter of fact, to this date, Luma Energy has already billed around \$100 million in public funds just to set shop without it officially starting any performance that benefits PREPA. Finally, the contract will create an employee migration towards Luma's 401K retirement plan that will impair the PREPA's Retirement System's abilities to comply with its obligations.