



GOVERNMENT OF PUERTO RICO

Puerto Rico Public-Private Partnerships Authority

February 7, 2019

Puerto Rico Public-Private Partnerships Authority
PO Box 42001
San Juan, Puerto Rico 00940-2001

Attention: Omar Marrero, Esq.
Executive Director

Re: Confidentiality Agreement

Ladies and Gentlemen:

1. In consideration of a potential public-private partnership transaction (the "Transaction") for Puerto Rico's electric power transmission and distribution system (the "T&D System"), the Puerto Rico Public-Private Partnerships Authority (the "Authority"), acting for itself and on behalf of the Puerto Rico Electric Power Authority (the "Participating Government Entity"), and the Participating Government Entity will provide us with certain information concerning the T&D System, which is currently non-public and confidential. In consideration of any Evaluation Material (as defined below), and as a condition to being furnished any such information by the Authority or the Participating Government Entity, we agree to treat any information (whether prepared by the Authority, the Participating Government Entity, their advisors or otherwise) furnished or made available (whether orally or in writing) by or on behalf of the Authority or the Participating Government Entity to us or our directors, officers, employees, agents, advisors, prospective lenders or affiliates or representatives of our agents, advisors, prospective lenders or affiliates (each of the foregoing, other than us, a "Representative"), whether furnished before or after the date of this Agreement, regardless of the form in which such information is communicated or maintained, and all notes, reports, analyses, compilations, studies, files or other documents or material, whether prepared by us or others, which are based on, contain or otherwise reflect such information (collectively, the "Evaluation Material") as confidential in accordance with the provisions of this letter agreement (this "Agreement"), and to take or abstain from taking certain other actions set forth in this Agreement. The term "Evaluation Material" does not include information that we can demonstrate: (a) was already possessed by us or our Representatives prior to the date hereof; provided that the source of such information was not known by us or our Representatives to be bound by another confidentiality agreement with or other obligation of secrecy to the Authority, the Participating Government Entity or another party with respect to such material, or otherwise prohibited from furnishing or making available the information to us or our Representatives by a contractual, legal or fiduciary obligation; (b) is or becomes generally



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available to the public, other than as a result of a disclosure by us or our Representatives in breach of this Agreement; (c) becomes available to us or our Representatives on a non-confidential basis from a source other than the Authority, the Participating Government Entity or their respective advisors; provided that such source is not known by us or our Representatives to be bound by another confidentiality agreement with or other obligation of secrecy to the Authority, the Participating Government Entity or another party with respect to such material, or otherwise prohibited from furnishing or making available the information to us or our Representatives by a contractual, legal or fiduciary obligation; or (d) was independently conceived of and developed by us or our Representatives prior to receipt of and without reference to the Evaluation Material or any derivative thereof.

2. We hereby agree that the Evaluation Material will be used solely for the purpose of evaluating the Transaction between the Participating Government Entity and us, and that the Evaluation Material will be kept confidential by us and our Representatives and will not be disclosed by us or any of our Representatives to any person; provided, however, that: (a) any such information may be disclosed only to those of our Representatives who need to know such information for the purpose of assisting us in evaluating any such possible Transaction between the Participating Government Entity and us (it being understood that such Representatives shall be informed by us of the confidentiality covenants contained in this Agreement and shall be directed by us to treat such information confidentially); (b) we may disclose any such information to which the Authority consents in writing (in respect to their respective information); and (c) any disclosure of information may be made which is permissible pursuant to paragraph 8 herein. We further agree that we are responsible to the Authority and the Participating Government Entity for any action or failure to act that would constitute a breach or violation of the preceding sentence or any of the other terms of this Agreement by us and /or any of our Representatives. For the avoidance of doubt, and subject to the terms of this Agreement, we agree that neither we nor our Representatives shall use any Evaluation Material in any manner that has or could reasonably be expected to have a material adverse effect on the Authority or the Participating Government Entity, as determined in a final, non-appealable judgment by a court of competent jurisdiction; provided, however, that the Authority and the Participating Government Entity agree, subject to paragraph 9 below, that any decision by us to exit the process with respect to any possible Transaction shall not be considered to have had a material adverse effect on the Authority or the Participating Government Entity.

3. We hereby acknowledge that we are aware, and that we will advise Representatives who are informed as to the matters which are the subject of this Agreement, that the United States securities laws prohibit any person who has received from an issuer material, non-public information concerning the matters which are the subject of this Agreement from purchasing or selling bonds of such issuer or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such bonds. In addition, without

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the prior written consent of the Authority, neither we nor our Representatives will disclose to any person (including, without limitation, any person directly or indirectly bidding on, or otherwise involved in, the Transaction contemplated hereby): (a) the fact that discussions, negotiations or exchanges are taking (or have taken) place concerning any possible Transaction between the Participating Government Entity and us; (b) the fact that Evaluation Material has been made available to us or any of our Representatives or that we or any of our Representatives has inspected Evaluation Material; or (c) any of the proposed terms, proposed conditions or other facts with respect to any such possible Transaction, including the status thereof and our potential participation therein (the foregoing information, "Transaction Information").

4. Without the prior written consent of the Authority, neither we nor our Representatives will: (a) enter into any discussions, negotiations, agreements, arrangements or understandings with any other potential bidder or equity or debt financing source (other than our Representatives as permitted under this Agreement) regarding the Transaction; or (b) submit any joint bid together with any third party in connection with the Transaction.

5. We acknowledge that the Evaluation Material is and remains the property of the Participating Government Entity. In no event shall we or any of our Representatives be deemed, by virtue of this Agreement, to have acquired any right or interest of any kind or nature whatsoever, in or to, any Evaluation Material.

6. In the event that we decide not to submit a proposal to the Authority for the Transaction, in the event proposals submitted by us are rejected, or upon the written request of the Authority, we shall promptly deliver or cause to be delivered to the Authority (or destroy, with such destruction to be certified to the Authority) all documents or other matter furnished by the Authority, the Participating Government Entity or its agents or representatives constituting Evaluation Material, together with any copies, extracts or other reproductions, in whole or in part thereof, in our possession or our Representatives' possession. In such event, all other documents or other matters constituting Evaluation Material prepared by us or our Representatives will be destroyed, with any such destruction certified to the Authority. We and our Representatives shall be entitled to retain Evaluation Material upon prior notice to the Authority only if such retention is required to comply with applicable law or regulation, applicable self-regulatory professional standards of general application to such profession or our bona fide internal record retention policies ("Retained Evaluation Material"); provided that we and our Representatives shall minimize any such retention of Retained Evaluation Material. Notwithstanding the foregoing, we and our Representatives shall not be required to destroy electronic versions of Evaluation Material commingled with other electronic records that are collected and maintained in a separate secure facility as part of our and our Representatives' respective bona fide information technology backup procedures in accordance with the normal course of business. Any Retained Evaluation Material shall continue to be subject to the confidentiality requirements and

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protections of this Agreement pursuant to the terms thereof until they are destroyed or returned to the Authority as required by this Agreement.

7. We acknowledge and agree that (a) Citigroup Global Markets Inc. ("Financial Advisor") is acting as financial advisor in connection with the Transaction, (b) an advisor to be designated by the Authority ("Technical Advisor") will act as technical advisor in connection with the Transaction and (c) neither is or will be advising us nor owes or will owe any fiduciary, contractual or any other duties to us in connection with the Transaction. We acknowledge and agree that the Authority, the Participating Government Entity and their officials, employees, representatives or advisors (collectively, the "Government Parties"), the Financial Advisor and the Technical Advisor have not made and do not make any express or implied representation or warranty as to the accuracy or completeness of the information contained in the Evaluation Material or any other information provided to us or our Representatives in connection with the matters contemplated hereby. Only those representations and warranties that may be made to us in a definitive written agreement for a Transaction, when, as, and if executed and subject to such limitations and restrictions as may be specified therein, shall have any legal effect, and we agree that if we determine to engage in a Transaction, such determination will be based solely on the terms of such definitive written agreement and on our own investigation, analysis and assessment of the Transaction. We further acknowledge and agree, on our own behalf and on behalf of our affiliates, principals, partners, members, Representatives or controlling parties and any team member (the "Proponent Parties"), that, except as otherwise agreed in a definitive written agreement for a Transaction, neither we nor any of the other Proponent Parties shall hold the Government Parties liable in any jurisdiction or under any applicable laws for any losses, claims, damages or liabilities (whether direct or indirect, in contract, tort or otherwise) incurred by us in respect of: (i) any action taken or omitted to be taken by the Authority, the Participating Government Entity, the Financial Advisor or the Technical Advisor in connection with or relating to the Transaction; (ii) any written or oral information (including Evaluation Material) provided as part, in connection with or related to the Transaction; or (iii) any loss or damage caused or deemed or interpreted to be caused by any Government Party, the Financial Advisor or the Technical Advisor in connection with the information provided, the process surrounding the Transaction or the Transaction itself, in each case that have not been held in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from the willful misconduct of any Government Party, the Financial Advisor or the Technical Advisor, respectively.

8. In the event that we or our Representatives (a) are presented with a request for documents by any administrative agency or required by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process and, in the case of our Representatives that are accounting firms, the applicable professional standards of the American Institute of Certified Public Accountants, Public Company Accounting Oversight Board or state boards of accountancy or obligations thereunder, in each case regarding any Evaluation Material or



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Transaction Information which may be in our possession, (b) are presented with a subpoena *duces tecum* regarding any Evaluation Material or Transaction Information which may be in our possession or (c) are required under applicable law or the applicable rules or regulations of any securities exchange or similar self-regulatory organization to disclose any Evaluation Material or Transaction Information which may be in our possession, we or our Representatives will provide prompt notice of such event to the Authority and the Participating Government Entity to the extent not prohibited by applicable law or regulation with the understanding that the Authority and the Participating Government Entity shall have the opportunity to seek a protective order or other appropriate remedy, at the Authority's and the Participating Government Entity's sole cost and expense, and will consult with the Authority and the Participating Government Entity with respect to the Authority or the Participating Government Entity taking steps to resist or narrow the scope of such request or legal process or waive compliance with the applicable provisions of this Agreement by us or our Representative; provided, however, that we or such Representatives shall not be obligated to withhold such delivery beyond that time as may be ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce it otherwise extended. If a protective order or other remedy is not obtained, or the receipt of a waiver hereunder has been granted, or if prior notice is not permitted by applicable law or regulation, and we or such Representatives are legally required to disclose any Evaluation Material or Transaction Information, we or such Representatives (i) are permitted, without liability hereunder, to furnish that portion (and only that portion) of the Evaluation Material or Transaction Information which, in the written opinion of counsel to us or such Representatives, as the case may be, we or such Representative are legally required to disclose and (ii) will exercise our reasonable efforts to have confidential treatment accorded to any Evaluation Material or Transaction Information so furnished. We agree to reasonably cooperate with the Authority and the Participating Government Entity in any action brought by the Authority or the Participating Government Entity to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to the Evaluation Material or Transaction Information.

9. We and the Authority agree that unless and until a definitive agreement with respect to the Transaction has been executed and delivered, other than with respect to the matters covered and as otherwise set forth in this Agreement, we, the Authority and the Participating Government Entity will not be under any legal obligation of any kind whatsoever with respect to the Transaction by virtue of this or any written or oral expression with respect to the Transaction by any of their directors, officers, employees, agents or any other representatives or their advisors or representatives thereof. Without limiting the generality of the foregoing, we specifically acknowledge and agree that, unless and until such a definitive written agreement is entered into, the Authority may conduct and change the process with respect to any possible Transaction as the Authority, in its sole discretion, shall determine, including, without limitation, at any time terminating access to the Evaluation Material by us and our Representatives, rejecting any and all offers without stating reasons, negotiating with one or more other parties and entering into a definitive agreement for a Transaction without prior notice to us or



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any other person. Nothing in this Agreement requires us to submit a bid in regard to the Transaction and we and the Proponent Parties will not be deemed to have made any representation, warranty or commitment regarding the Transaction, except for any representation, warranty or commitment made in this Agreement, unless such representation, warranty or commitment is made in such a bid, a written document executed by us or until a definitive agreement for the Transaction is signed. Nothing contained in this Agreement shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between the parties. The agreement set forth in this paragraph may not be modified or waived unless the parties agree in writing.

10. We agree to indemnify, defend and hold harmless the Government Parties against any and all losses, claims, damages, costs or liabilities (including, without limitation, legal fees and the cost of enforcing this indemnity) (collectively, "Losses") in connection with or as a result of any action or inaction that would constitute a breach or violation by us or our Representatives, as determined in a final, non-appealable judgment by a court of competent jurisdiction, of any of our obligations under this Agreement.

11. It is further understood and agreed that money damages would be both incalculable and an insufficient remedy for any breach of this Agreement by us or our Representative and that any such breach would cause the Authority and the Participating Government Entity irreparable harm. Accordingly, it is also further understood and agreed that the Authority and the Participating Government Entity shall be entitled to seek specific performance and injunctive or other equitable relief for any breach or threatened breach of this Agreement. Such remedy shall not be deemed to be the exclusive remedy for breach of this Agreement by us but shall be in addition to all other remedies available at law or in equity to the Authority and the Participating Government Entity. In no event shall either party be liable for consequential or punitive damages under this Agreement.

12. The parties hereto agree that the Participating Government Entity is intended to be a third-party beneficiary of the obligations of confidentiality, indemnity, exculpation and otherwise as set forth in this Agreement.

13. It is understood and agreed that no failure or delay by the Authority in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

14. This Agreement will automatically expire, unless previously terminated in accordance with this Agreement, the earlier of (i) three (3) years from the date hereof and (ii) three (3) years after a breach of this Agreement by us or our Representatives becomes known to the Authority or the Participating Government Entity.





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15. As used in this Agreement, the term "person" shall mean any individual, corporation, company, association, partnership, joint venture, trust or other unincorporated organization or entity.
16. This Agreement may be modified or amended only by a separate written agreement signed by the parties expressly so modifying or amending this Agreement.
17. This Agreement supersedes all prior oral or written agreements or understandings that may exist between any of the parties hereto in respect of any Evaluation Material.
18. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall not affect the validity or enforceability of any other part of that provision or of any other provisions of this Agreement, which shall remain in full force and effect to the fullest extent permitted by law.
19. Except as provided in any definitive written agreement with respect to a Transaction, the obligations under this Agreement shall continue whether or not any negotiations continue or a Transaction is consummated, except that our obligations in this Agreement relating to information about the Authority and the Participating Government Entity terminate on completion of a Transaction.
20. We agree and consent to personal jurisdiction and venue in any federal court within the Commonwealth of Puerto Rico, having subject matter jurisdiction, for the purposes of any action, suit or proceeding arising out of or relating to this Agreement. To the fullest extent permitted by law, we and the Authority and the Participating Government Entity hereby agree to waive trial by jury in any action proceeding or counterclaim brought by or on behalf of either party with respect to any matter whatsoever relating to this Agreement.
21. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Puerto Rico.
22. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.





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Very truly yours,

By:

Kyle Crowley

SVP and Chief Development Officer

Exelon Business Services Company, LLC

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Accepted and agreed to as of the date first above written:

PUERTO RICO PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY

By: 

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