



GOVERNMENT OF PUERTO RICO
PUERTO RICO PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY
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ADDENDUM NO. 1 TO REQUEST FOR PROPOSALS

Puerto Rico Electric Power
Thermal Generation Facilities
RFP 2020-1

Issued by the Puerto Rico Public-Private Partnerships Authority

Date Initial RFP Issued: November 10, 2020

Date of Addendum: March 9, 2021



GOVERNMENT OF PUERTO RICO

PUERTO RICO PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY

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This confidential RFP (as defined below) is prepared for informational purposes only. It is being delivered to a limited number of Proponents (as defined below) who may be interested in pursuing a potential transaction as further described herein. This RFP does not purport to be all-inclusive or to contain all the information that a Proponent may desire in investigating the potential transaction. By accepting this RFP, the recipient agrees (i) to keep confidential the information contained herein or made available in connection with any further exploration of the potential transaction and (ii) that such information will only be used for the purposes set forth herein. No express or implied warranty is given by the Puerto Rico Public-Private Partnerships Authority or any other agency or instrumentality of the Government of Puerto Rico as to the accuracy or completeness of the information contained herein or otherwise made available in connection with the Project (as defined below).



Addendum No. 1

This Addendum No. 1 shall be part of the Request for Proposals for Puerto Rico Electric Power Thermal Generation Facilities (the “RFP”) issued by the Puerto Rico Public-Private Partnerships Authority on November 10, 2020. Capitalized terms not defined herein shall have the meaning set forth in the RFP.

The purpose of this Addendum No. 1 is to update certain terms set forth in the RFP. Other than as specified herein and in the RFP, there are no other changes to the RFP and the remainder of the RFP should be construed in accordance with its terms, subject to publication of any additional addenda.

Section 1.3 of the RFP is hereby deleted in its entirety and replaced with the following:

1.3 Key Milestones

The following timeline summarizes certain key milestones in the RFP Process (as defined below), which are described in more detail in Section 3 (*Description of RFP Process*) of this RFP:

Milestones	Target Dates
RFP issued and Data Room access granted	November 10, 2020
Period for due diligence and Q&A process	November, 2020 through May, 2021
Site tours (virtual site tours uploaded to Data Room)	Early February, 2021
Distribution of initial draft of O&M Agreement	March 9, 2021
Management presentations and following Q&A session (in each case, to be conducted virtually)	Late March/Early April, 2021
Proponents provide comments on initial draft of O&M Agreement	April 14, 2021
Meetings with Proponents to discuss comments to O&M Agreement (expected to be conducted virtually)	Late April, 2021
Distribution of second draft of O&M Agreement	Mid-May, 2021
Binding Proposal Submission Deadline	Late June, 2021
Proponent presentation of Binding Proposal to P3 Partnership Committee	Early July, 2021
Notification of Selected Proponent	Early August, 2021

The timeline of RFP key milestones provided above is included for illustrative purposes only. Target dates and deadlines are subject to modification. Additional information regarding key dates and deadlines will be provided through the issuance of addenda to this RFP. As indicated in Section 4.4 (*Addenda to RFP*) of this RFP, each Proponent is responsible for periodically reviewing the PowerAdvocate© website’s Messaging Tab for regular updates to the RFP timeline and other important information.

In light of the timeline for the procurement process and the fact that Proponents are expected to provide comments to the initial draft of the O&M Agreement by mid-April, Proponents are strongly encouraged to engage advisors, including Puerto Rico counsel, as soon as possible.

The Authority expects to provide a baseline set of evaluation criteria (including but not limited to certain performance metrics) via an addendum to the RFP before the end of May. The Authority encourages Proponents



to continue to review the Data Room and submit RFC's via the Messaging Tab in PowerAdvocate. Any RFCs submitted will continue to be answered and posted on a rolling basis.



Section 3.4 of the RFP is hereby deleted in its entirety and replaced with the following:

3.4 O&M Agreement Process

O&M Agreement

A first draft of the O&M Agreement is included in **Annex B** to this RFP. Comments to the first draft of the O&M Agreement are to be provided via PowerAdvocate© by no later than **12:00 PM AST on April 14, 2021**.

Proponents are invited to submit only material, substantive comments to the draft of the O&M Agreement via PowerAdvocate© in electronic (Microsoft Word) form. In the case of consortia, comments from all members of the Proponent's team and its advisors should be included in one single markup. Markups should be prepared using black-lining to indicate the proposed modification with explanatory footnotes where appropriate. Proponents are strongly encouraged to limit comments to the draft O&M Agreement to those that will materially enhance the Project and its ability to achieve the parties' objectives. Proponents are encouraged to identify comments in order of priority, thus allowing for an efficient review process.

With a view towards an efficient review process, each Proponent should also summarize the comments reflected in its markup of the draft O&M Agreement in order of priority in a separate summary document using the following chart format:

Item number (in order of priority)	Document and section reference	Summary of proposed modification	Reasons for proposed modification

A single revised draft of the O&M Agreement will be circulated to all Proponents following the Partnership Committee's review of comments to the initial draft of the O&M Agreement and discussions with Proponents. This revised draft will reflect any comments from Proponents that the Partnership Committee has accepted. Additional details relating to the initial and any revised draft of the O&M Agreement will be provided in subsequent addenda to this RFP.

Discussions with Proponents

Following Proponents' formal submission of written comments, the Authority intends to schedule discussions with Proponents in late April 2021 to walk through the comments received. These discussions are expected to be held virtually and are intended to provide each Proponent and its advisors with an opportunity to present and explain its comments on the draft O&M Agreement and to provide the Authority with an opportunity to seek any clarification on these comments.

All Proponents will have equal opportunity for dialogue, and fair consideration will be given to all perspectives. However, Proponents should not rely on discussions with the Authority and its advisors to modify the terms and conditions of the RFP; only changes formalized through an addendum to the RFP may be relied upon. All discussions will be subject to the terms of the Confidentiality Agreement entered into between the Authority and each Proponent.



The RFP is hereby amended to insert after Annex A the following new Annex B:

ANNEX B: O&M AGREEMENT

**PUERTO RICO THERMAL GENERATION FACILITIES
OPERATION AND MAINTENANCE AGREEMENT**

dated as of

__, 2021

by and among

[OWNER OF THE LEGACY GENERATION ASSETS]
as Owner,

THE PUERTO RICO PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY
as Administrator,

and

[●]
as Operator

This draft contains the following types of footnotes:

- **Note to Draft:** Footnotes in bold text are explanatory footnotes to bidders providing context for the approach on various topics.
- **Note to Proponent:** Footnotes highlighted in yellow indicate items that will be required of bidders in their submission to the RFP (e.g. Annexes that bidders will need to prepare or amounts they will need to propose as part of their bid).

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PUERTO RICO THERMAL GENERATION FACILITIES OPERATION AND MAINTENANCE AGREEMENT

This PUERTO RICO THERMAL GENERATION FACILITIES OPERATION AND MAINTENANCE AGREEMENT (this “Agreement”) is made and entered into as of this _____ day of [____], 2021 by and among: (i) the [Owner of the Legacy Generation Assets] (“Owner”)¹, a [●] [subsidiary of PREPA (as defined below)]; (ii) the Puerto Rico Public-Private Partnerships Authority (“Administrator”), a public corporation of the Commonwealth of Puerto Rico, created by Act No. 29 of the Legislative Assembly of Puerto Rico, enacted on June 8, 2009; and (iii) [●] (“Operator” and, together with Owner and Administrator, the “Parties” and each a “Party”), a [●] organized under the laws of [●]. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in Article 1 (*Definitions; Interpretation*).

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WHEREAS, Owner owns and operates the base-load generation plants and combustion turbine peaking units listed on Annex I (*Legacy Generation Assets*) in which Owner has an ownership interest (the “Legacy Generation Assets”);

WHEREAS, in accordance with Act No. 120 of the Legislative Assembly of Puerto Rico, enacted on June 21, 2018 (“Act 120”), Owner desires to transform Puerto Rico’s energy system into a modern, sustainable, reliable, efficient, cost-effective and resilient system;

WHEREAS, Owner desires to engage Operator to provide the O&M Services for the Legacy Generation Assets in accordance with the terms of this Agreement and has designated Administrator as a Representative of Owner for purposes of this Agreement;

WHEREAS, pursuant to, and under the terms and conditions contained in, Act No. 29 of the Legislative Assembly of Puerto Rico, enacted on June 8, 2009 (“Act 29”), and Act 120, Owner is authorized to execute and deliver this Agreement, perform its obligations hereunder and enter into the transactions contemplated hereby; and

WHEREAS, Operator desires to provide the O&M Services for the Legacy Generation Assets in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

¹ **Note to Draft:** Counterparty subject to the finalization of the PREPA reorganization.

ARTICLE 1
DEFINITIONS; INTERPRETATION

Section 1.1 Definitions. As used in this Agreement, the following capitalized terms have the respective meanings set forth below.

“AAFAF” means the Puerto Rico Fiscal Agency and Financial Advisory Authority.

“Act 2” means Act No. 2 of the Legislative Assembly of Puerto Rico, enacted on January 4, 2018.

“Act 3” means Act No. 3 of the Legislative Assembly of Puerto Rico, enacted on January 23, 2017.

“Act 17” means Act No. 17 of the Legislative Assembly of Puerto Rico, enacted on April 11, 2019.

“Act 26” means Act No. 26 of the Legislative Assembly of Puerto Rico, enacted on January 27, 2017.

“Act 29” has the meaning set forth in the Recitals.

“Act 57” means Act No. 57 of the Legislative Assembly of Puerto Rico, enacted on May 17, 2014.

“Act 66” means Act No. 66 of the Legislative Assembly of Puerto Rico, enacted on June 17, 2014.

“Act 120” has the meaning set forth in the Recitals.

“Act 173” has the meaning set forth in Section 9.3(a) (*Commonwealth Requirements – Practice of Engineering, Architecture and Other Professions in the Commonwealth*).

“Act 237” means Act No. 237 of the Legislative Assembly of Puerto Rico, enacted on August 31, 2004.

“Adjusted O&M Fixed Fee” has the meaning set forth in Section I of Annex II (*Compensation – O&M Fixed Fee*).

“Administrator” has the meaning set forth in the introductory paragraph.

“Administrator Dispute” has the meaning set forth in Section 6.2(b) (*Rights and Responsibilities of Administrator – Disputes*).

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly, including through one or more intermediaries, Controls, is Controlled by or is under common Control with such Person; provided, that each Equity Participant and its Affiliates shall be deemed “Affiliates” of Operator.

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“Agreed Operating Procedures” means the written operating procedures developed by T&D Operator and Operator in accordance with the T&D-Generation Operating Agreement, which shall include a method of day-to-day and real-time communications; clearances and switching practices; outage scheduling; daily available energy reports; economic dispatch of dependable capacity, spinning reserve capacity and excess capacity; the respective Legacy Generation Asset’s operating log; reactive power support; voltage scheduling; emergency procedures; and other necessary reporting procedures.

“Agreement” has the meaning set forth in the introductory paragraph.

“Annual Performance Test” has the meaning set forth in Section 4.2(o) (*Operator Responsibilities – Annual Performance Test*).

“Anti-Corruption Laws” has the meaning set forth in Section 9.2(a) (*Anti-Corruption and Sanctions Laws – Anti-Corruption*).

“Applicable Law” means any foreign, national, federal, state, Commonwealth, municipal or local law, constitution, treaty, convention, statute, ordinance, code, rule, regulation, common law, case law or other similar requirement enacted, adopted, promulgated or applied by any Governmental Body, including any Environmental Law, PROMESA, and any order issued by the Title III Court, in each case applicable to the Parties.

“Audit” means a review with respect to any matter relating to the Legacy Generation Assets, the O&M Services or this Agreement, including compliance with the terms of this Agreement, conducted in accordance with applicable United States audit practices customarily accepted in the electric sector and the terms of this Agreement or as required by Applicable Law.

“Authorized Inspector” has the meaning set forth in Section 6.3(a) (*Reporting: Audits – Generally*).

“Bankruptcy Code” means the United States Bankruptcy Code, 11 U.S.C. 101 *et seq.* “Bankruptcy Code” shall also include (i) Title III of PROMESA, (ii) Title VI of PROMESA, (iii) any similar state or Commonwealth law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due and (iv) any similar insolvency or bankruptcy code applicable under the laws of any other jurisdiction.

“Baseline Environmental Study” means the environmental study identifying Pre-Existing Environmental Conditions attached hereto as Annex III (*Baseline Environmental Study*).

“Baseload Unit” means each Legacy Generation Asset designated as a Baseload Unit in Annex I (*Legacy Generation Assets*).

“Business Day” means any day that is not a Saturday, a Sunday or a day observed as a holiday by either the Commonwealth or the United States federal government.

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“Capital Spare Part” means any major, new or refurbished, equipment item the cost of which is equal to or in excess of US\$1,000,000 that is essential to the operation of a Legacy Generation Asset.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq.

“Change in Law” means any of the following events or conditions occurring on or after the Proposal Submission Date that has had, or is reasonably expected to have, a material adverse effect on the performance or the cost of performance by the Parties of their respective obligations under this Agreement (other than payment obligations), or on the operation or maintenance of the Legacy Generation Assets:

(i) the adoption, promulgation or issuance of a modification or written change in the Applicable Law or the administrative or judicial interpretation thereof, unless such modification or written change was duly adopted, promulgated or issued in final form prior to the Proposal Submission Date and becomes effective without any further action by any Governmental Body or governmental official having jurisdiction;

(ii) any order or judgment of any Governmental Body to the extent such order or judgment is not the result of willful misconduct or negligent action or omission or lack of reasonable diligence of the Party claiming the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful misconduct or negligent action or omission of, or lack of reasonable diligence by, the Party; or

(iii) the denial of an application for, the delay in the review, issuance or renewal of, or the suspension, termination, interruption, imposition of a new condition in connection with the issuance, renewal or the failure of issuance or renewal of any Governmental Approval to the extent that such denial, delay, suspension, termination, interruption, imposition of a new condition or failure (A) materially interferes with the performance of this Agreement and (B) is not the result of willful misconduct or negligent action or omission or a lack of reasonable diligence of the Party claiming the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such denial, delay, suspension, termination, interruption, imposition of a new condition or failure shall not be construed as such a willful misconduct or negligent action or omission of, or lack of reasonable diligence by, the Party;

provided that “Change in Law” shall not include (x) the imposition of a Tax, or an increase in Taxes, unless such imposition or increase has a materially disproportionate impact on any of Operator, the Legacy Generation Assets or private operators of generation facilities in the Commonwealth or Contractors (as defined in Act 29) compared to any other entities that operate in the Power and Electricity sector in the Commonwealth; or (y) the delay or denial of any request to approve an O&M Budget or performance relief.

“Change in Regulatory Law” means any change, amendment or modification to any Commonwealth Applicable Law (and not, for the avoidance of doubt, the Applicable Law of any other jurisdiction) or any adoption of, or change to, any administrative or judicial interpretation

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(having the force of law) of any Commonwealth Applicable Law or any regulation or regulatory action under any Commonwealth Applicable Law, in each case occurring on or after the Proposal Submission Date, that:

(i) alters the scope of PREB’s statutory oversight over Operator or Owner in a manner that materially and adversely affects Operator’s ability to perform its obligations under this Agreement;

(ii) renders unenforceable or invalid, in whole or in part, any right or privilege granted to Operator under this Agreement, including by invalidating Operator’s selection under the RFP; or

(iii) subjects Operator (or any of its Affiliates or Subcontractors that provides O&M Services hereunder) to other substantive regulation by PREB in a manner that materially and adversely affects Operator’s ability to perform its obligations under this Agreement to the extent not otherwise mitigated by the terms of this Agreement, or that constitutes a default by the FOMB under the terms of the FOMB Protocol Agreement, provided, that written notice of such default has been given to FOMB by Operator and such default continues unremedied for a period of thirty (30) days following such written notice, provided, further, that any such default by the FOMB shall constitute a Change in Regulatory Law regardless of whether the conditions in the introductory paragraph of this definition are satisfied.

“Change of Control” means, with respect to Operator, whether accomplished through a single transaction or a series of related transactions and whether accomplished directly or indirectly, (i) a change in ownership resulting in more than 50% of the direct or indirect voting or economic interests in Operator being transferred to another Person or group of Persons acting in concert, (ii) the power directly or indirectly to direct or cause the direction of management and policy of Operator, whether through ownership of voting securities, by contract, management agreement or common directors, officers or trustees or otherwise, being transferred to another Person or group of Persons acting in concert or (iii) the merger, consolidation, amalgamation, business combination involving Operator or sale of substantially all of the assets of Operator for the purpose of or with the effect contemplated in clauses (i) or (ii) above; provided, however, that, notwithstanding anything to the contrary set forth in this definition, [so long as the Guarantee continues to be provided,]² none of the following shall constitute a “Change of Control” for the purposes of this Agreement:

(A) transfers of direct or indirect ownership, voting or economic interests in Operator between or among Persons that are Affiliates of each other or Persons who are under common Control;

(B) transfers or sales of shares of Operator or the direct or indirect shareholders of Operator pursuant to bona fide open market transactions (including block trades) on the New York Stock Exchange, NASDAQ, London Stock Exchange or comparable United States or foreign

² **Note to Draft:** This will apply if there is a Guarantee initially.

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securities exchange, including any such transactions involving an initial or “follow on” public offering; and

(C) transfers of direct or indirect ownership interests in Operator to any Person that is not an Equity Participant so long as the Equity Participants or their respective beneficial owner(s) having ownership interests in Operator (as of the later of (1) the Effective Date or (2) the date on which Administrator most recently approved a Change of Control pursuant to Section 21.6(c) (*Assignment and Transfer – Change of Control*) or waived a Change of Control pursuant to Section 14.2(b) (*Termination for Operator Event of Default – Termination for Other Operator Event of Default*)) together retain, in the aggregate, more than 50% of the direct or indirect voting or economic interests in Operator or the power directly or indirectly to direct or cause the direction of management and policy of Operator, through ownership of voting securities or common directors, officers or trustees.

“Claiming Party” has the meaning set forth in Section 18.1(a) (*Notice; Mitigation – Notice*).

“Commencement Date Governmental Approvals” has the meaning set forth in Section 4.4 (*Governmental Approvals and Tax Matters – Generally*).

“Commonwealth” means the Commonwealth of Puerto Rico.

“Commonwealth Court” means the Commonwealth Court of First Instance, San Juan Part.

“Confidential Information” means data or information in any form disclosed by one Party to the other Party by any means, if and for so long as the data and information are protectable as trade secrets by the disclosing Party or are otherwise confidential. As a non-exhaustive list of examples, “Confidential Information” includes non-public information regarding a Party’s Intellectual Property, financial condition and financial projections, business and marketing plans, product plans, product and device prototypes, the results of product testing, research data, market intelligence, technical designs and specifications, secret methods, manufacturing processes, source code of proprietary software, the content of unpublished patent applications, customer lists, vendor lists, internal cost data, the terms of contracts with employees and third parties, and information tending to embarrass the disclosing Party or tending to tarnish its reputation or brand. For the avoidance of doubt, information in this list of examples is only considered “Confidential Information” for so long as it has not been made known to the general public by the disclosing Party or through the rightful actions of a third party.

“Consent Decree” means the Consent Decree between PREPA and the United States of America (through the United States Department of Justice and the EPA), as entered by the United States District Court for the District of Puerto Rico on March 19, 1999 in Civil Action No. 93-2527(CCC), as modified on September 9, 2004, and as may be further modified in the future, including any successor consent decree thereto.

“Consumables” means consumables of all kinds that are necessary for the operation and maintenance of the Legacy Generation Assets, or any part thereof, including gaskets, parts that

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are not repairable, oils, grease, chemicals, lubricants, filters, resins and specialty gases but excluding fuel, electricity and water.

“Contract Nullification or Cancellation” has the meaning set forth in Section 14.6(c)(i) (*Remedies Upon Early Termination – Termination Fee*).

“Contract Standards” means the terms, conditions, methods, techniques, practices and standards imposed or required by: (i) Applicable Law; (ii) Prudent Industry Practice; (iii) applicable equipment manufacturer’s specifications and reasonable recommendations; (iv) applicable insurance requirements under any insurance procured pursuant to this Agreement; and (v) any other standard, term, condition or requirement specifically contracted in this Agreement to be observed by Operator.

“Contract Year” means the period from July 1 through June 30 for each year during that portion of the Term commencing on the Service Commencement Date; provided, however, that (i) the initial Contract Year shall commence on the Service Commencement Date and (ii) the final Contract Year shall end on the [tenth (10th)] anniversary of the Service Commencement Date. Any computation made on the basis of a Contract Year shall be adjusted on a Pro Rata basis to take into account any Contract Year of less than 365/366 days.

“Control”, “Controlled by” and similar expressions mean the power, directly or indirectly, to direct or cause the direction of the management and policies of an entity, whether through the ownership of outstanding share capital (or equivalent interest), by contract or otherwise. Without limiting the foregoing, a Person shall be deemed to control another Person (i) if such Person has directly or indirectly designated a majority of the board of directors (or equivalent governing body) of such other Person or (ii) if such Person has the direct or indirect power whether through ownership of outstanding share capital (or equivalent interest), by contract or otherwise to designate a majority of the board of directors (or equivalent governing body) of such other Person.

“Copyright” means the exclusive legal rights held by the owner of a copyright including the rights to copy, publicly perform, publicly display, distribute, adapt, translate, modify and create derivative works of copyrighted subject matter, including the rights to any registrations and applications therefor, together with all renewals, extensions, translations, adaptations, derivations and combinations therefor, works of authorship, publications, documentation, website content, rights in fonts and typefaces and database rights.

“Covered Contract” means any contract for management, service, or incentive payment arrangement between Owner, Administrator, or Operator and another Person under which such Person provides services involving all, a portion of, or any function of, the Legacy Generation Assets; provided that “Covered Contract” shall not include any (A) Subcontract in which the compensation to the Subcontractor is paid by Operator solely out of the applicable Service Fee, (B) contract for services that are solely incidental to the primary governmental function or functions of the Legacy Generation Assets (such as contracts for janitorial, equipment repair, bookkeeping, physical security, or similar services), (C) contract for services performed exclusively during the Mobilization Period, pursuant to Article 16 (*Decommissioning*) or Article 17 (*Demobilization*) or in accordance with the Shared Services Agreement, (D) contract to design, build, rehabilitate or purchase property, assets, equipment or supplies, (E) contract to procure natural gas, coal or fuel

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oil, (F) contract for management, service or incentive payment arrangement or for consulting services under which the compensation consists entirely of a fixed fee and/or fees at hourly rates, (G) a negotiated, arm's length contract with a term of less than fifty (50) days, and (H) sales of assets (other than real property) in the ordinary course of business at the end of their expected useful lives.

["CPI Factor"] means the amount equal to (i) CPI Value for the calendar year immediately prior to the date of any adjustment *divided by* (ii) the CPI Value for the calendar year two (2) years prior to the date of such adjustment rounded to the fifth decimal place; provided, however, that in no case shall be the CPI Factor for any adjustment period be less than 1.000. For illustrative purposes only, if an amount is to be adjusted for inflation on July 1, 2020, for the one-year period of July 1, 2020 through July 1, 2021, the amount shall be multiplied by a CPI Factor equal to 1.021921 or the CPI Value for calendar year 2019 (which is 263.211) divided by the CPI Value for calendar year 2018 (which is 257.565).]

["CPI Value"] for any year means the "Annual Value" of such year obtained from "Consumer Price Index—All Urban Consumers—U.S. All Items Less Food and Energy (CUUR0000SA0L1E)" published by the Bureau of Labor Statistics of the United States Department of Labor, which is the calendar year 12-month average rounded to three decimal places; provided, however, that: (i) if such index is changed so that the base year thereof changes, such index shall be converted in accordance with the conversion factor published by the Bureau of Labor Statistics of the United States Department of Labor; (ii) if such index is discontinued or revised during the Term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if such index had not been discontinued or revised; and (iii) any such revision shall not result in the retroactive adjustment of any amounts paid or payable pursuant to this Agreement prior to such revision. For illustrative purposes only, the CPI Value for the calendar year 2019 is 263.211, which can be obtained directly as an annual value or computed using monthly values with data from the official website of the Bureau of Labor Statistics of the United States Department of Labor.]³

"Cybersecurity Breach" means any successful act to gain unauthorized access to, disrupt or misuse an Information System or information stored on such Information System.

"Declared Emergency or Major Disaster" means an event declared as an emergency or major disaster in accordance with the provisions of the Stafford Act.

"Decommissioning Account" has the meaning set forth in Section 7.6(c)(i) (*Service Accounts – Decommissioning Account*).

"Decommissioning Budget" has the meaning set forth in Section 16.2(a) (*Decommissioning Services – Decommissioning Budget*).

"Decommissioning Budget Dispute" has the meaning set forth in Section 16.2(c) (*Decommissioning Services – Decommissioning Budget Disputes*).

³ **Note to Draft:** To the extent Proponents propose an annual escalation of any of the components of compensation, such escalation would be at CPI as defined here.

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“Decommissioning Commencement Date” has the meaning set forth in Section 16.1(b) (*Decommissioning Services – Decommissioning Plan*).

“Decommissioning Completion Date” has the meaning set forth in Section 16.1(b) (*Decommissioning Services – Decommissioning Plan*).

“Decommissioning Notification Date” has the meaning set forth in Section 16.1(a) (*Decommissioning Services – Generally*).

“Decommissioning Fixed Fee” means the management service fee consisting of a fixed fee paid by Owner to Operator as compensation for the performance of the Decommissioning Services provided for any Legacy Generation Asset.

“Decommissioning Fixed Fee Dispute” has the meaning set forth in Section 7.1(c)(v) (*Service Fee – Decommissioning Fixed Fee*).

“Decommissioning Incentive Payment” means one or more incentive payments based on Operator’s performance of the Decommissioning Services.

“Decommissioning Penalty” means one or more liquidated damages penalties based on Operator’s performance of the Decommissioning Services.

“Decommissioning Plan” has the meaning set forth in Section 16.1(b) (*Decommissioning Services – Decommissioning Plan*).

“Decommissioning Service Fee” means the Decommissioning Fixed Fee together with the Decommissioning Incentive Payment minus the Decommissioning Penalty, if any.

“Decommissioning Services” means services provided under this Agreement in order to complete the dismantlement and removal of the structures comprising the Legacy Generation Assets, and all other activities indispensable for the retirement, dismantlement, decontamination or storage of the Legacy Generation Assets, including the services contemplated by the Decommissioning Plan, in each case in compliance with Applicable Law and in accordance with the Integrated Resource Plan; provided that the Decommissioning Services shall not include O&M Services or Demobilization Services.

“Delay Liquidated Damages” has the meaning set forth in Section 4.8(a) (*Failure of Service Commencement Date Conditions – Remedy for Delay of Service Commencement Date Conditions*).

“Delay Period Date” has the meaning set forth in Section 4.8(a) (*Failure of Service Commencement Date Conditions – Remedy for Delay of Service Commencement Date Conditions*).

“Demobilization Account” has the meaning set forth in Section 17.3(c)(i) (*Demobilization Period Compensation – Funding*).

“Demobilization Commencement Date” has the meaning set forth in Section 17.1(a) (*Demobilization Services – Generally*).

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“Demobilization Period” means the period of time from and including the Demobilization Commencement Date through the last day of the Term.

“Demobilization Plan” has the meaning set forth in Section 17.1(b) (*Demobilization Services – Demobilization Plan*).

“Demobilization Service Fee” has the meaning set forth in Section Section 17.3(b) (*Demobilization Period Compensation – Demobilization Service Fee*).

“Demobilization Service Fee Dispute” has the meaning set forth in Section 17.3(d)(ii) (*Demobilization Period Compensation – Invoices*).

“Demobilization Service Fee Estimate Dispute” has the meaning set forth in Section 17.3(c)(iii) (*Demobilization Period Compensation – Funding*).

“Demobilization Services” means services provided under this Agreement in order to complete the demobilization and handover of the rights and responsibilities, if any, with respect to the remaining Legacy Generation Assets, back to Owner or to a successor operator upon the early termination or expiration of the Term, including the services contemplated by the Demobilization Plan; provided that the Demobilization Services shall not be O&M Services or Decommissioning Services.

“Designated Person” means each Representative of Operator or Administrator who is designated as such for the purposes of Article 15 (*Dispute Resolution*).

“DHS” means U.S. Department of Homeland Security.

“Disallowed Costs” has the meaning set forth in Section 7.7(a) (*Disallowed Costs – Generally*).

“Disallowed Costs Dispute” has the meaning set forth in Section 7.7(b) (*Disallowed Costs – Disallowed Costs Disputes*).

“Dispute” has the meaning set forth in Section 15.1 (*Scope*).

“Dispute Resolution Procedure” has the meaning set forth in Section 15.1 (*Scope*).

“Easement” means those certain real property rights vested or to be vested in Owner, whether or not recorded in the Registry of the Property of Puerto Rico, that: (i) encumber land portions or estates for the benefit of the Legacy Generation Assets to permit the ingress to and egress from each Generation Site to the public road; (ii) grant air rights; (iii) constitute restrictive use and construction covenants (*servidumbres en equidad*) for the operation of the Legacy Generation Assets; and (iv) allow for the construction and installation of above- or below-ground improvements and equipment and for the addition to, or maintenance, repair, restoration, replacement or alteration of, the Legacy Generation Assets or any other service for the Legacy Generation Assets.

“Effective Date” has the meaning set forth in Section 2.2(a) (*Effective Date – Execution of the Agreement*).

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“Emergency” or “Emergency Event” means (i) any Declared Emergency or Major Disaster and (ii) any other circumstance defined as an Emergency in the Generation Emergency Response Plan to be prepared pursuant to Section 4.2(e) (*Operator Responsibilities – Generation Emergency Response Plan*).

“Emergency Unit” means each Legacy Generation Asset designated as an Emergency Unit in Annex I (*Legacy Generation Assets*).

“Energy Compliance Certificate” means the certificate issued by the PREB certifying that this Agreement complies with Act 120 and the regulatory framework, including Act 17.

“Environmental Claim and Cleanup Liability” means: (i) any liabilities, costs or expenses arising from or relating to any claim by a Governmental Body or other third party pursuant to any Environmental Law for personal injury, property damage or damage to natural resources or the environment (whether based on negligent acts or omissions, statutory liability or strict liability without fault or otherwise) in connection with the Legacy Generation Assets, the O&M Services, the Decommissioning Services, the Mobilization Services or the Demobilization Services; (ii) any liabilities, costs or expenses arising from or relating to any investigation, study, remediation or abatement of any Release of Hazardous Materials, to the extent required by any Environmental Law or to meet the published cleanup standards of any Governmental Body with jurisdiction over such Release, and in accordance with the Safety and Hazardous Materials Procedures Manual, in connection with the Legacy Generation Assets, the O&M Services or the Decommissioning Services; (iii) any fines or penalties assessed for non-compliance with any Environmental Law in connection with the Legacy Generation Assets, the O&M Services or the Decommissioning Services; or (iv) any liabilities, costs or expenses indispensable to achieve or maintain compliance with any Environmental Law.

“Environmental Law” means (i) any law, statute, ordinance, code, rule, regulation, order, writ, injunction, decree, ruling, determination, award, standard, permit or variance of any Governmental Body, or any binding agreement with any Governmental Body, and (ii) any consent order or decree, settlement agreement or other similar agreement between Owner and the Puerto Rico Department of Natural and Environmental Resources, EPA, the United States Department of Justice, or other relevant Governmental Body, in each case having the force of law and applicable from time to time, relating to (A) the conservation, protection, pollution, contamination or remediation of the environment or natural resources, (B) any Hazardous Material, including investigation, study, remediation or abatement of such Hazardous Material, (C) the storage, treatment, disposal, recycling or transportation of any Hazardous Material or (D) human health or safety. For avoidance of doubt, Environmental Law includes the Consent Decree.

“Environmental Notice of Violation” means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim and Cleanup Liability relating to actual or alleged non-compliance with any Environmental Law.

“EPA” means the United States Environmental Protection Agency.

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“Equity Participant” means any Person who holds any shares of capital stock or securities of, or units, partnership interests, membership interests or other equity interests in, Operator.

“Event of Default” means an Operator Event of Default or an Owner Event of Default, as the case may be.

“Expert Technical Determination” has the meaning set forth in Section 15.4(a) (*Expert Technical Determination Procedure for Technical Disputes – Generally*).

“Extended Event” has the meaning set forth in Section 18.2(c) (*Relief – Extended Event*).

“Extension Term” has the meaning set forth in Section 2.3(b) (*Term – Extension*).

“Facility Contracts” means (i) the contracts, leases, licenses, permits and other similar arrangements of all types related to the Legacy Generation Assets that have been entered into by Owner (or pursuant to which Owner otherwise has rights), remain in effect as of the Service Commencement Date and are identified in Annex IV (*Contracts*) and (ii) any other contracts, leases, licenses, permits and similar arrangements of all types entered into after the Effective Date by Owner, or by Operator on behalf and as agent of Owner, related to the Legacy Generation Assets, O&M Services, Decommissioning Services or the Demobilization Services pursuant to Section 4.3(d) (*Owner and Administrator Responsibilities– Additional Facility Contracts Between Effective Date and Service Commencement Date*) and/or Section 5.2(d) (*Facility Contracts – Additional Facility Contracts or Expired Facility Contracts After Service Commencement Date*), including contracts related to:

- (A) the ownership and operation and maintenance of the Legacy Generation Assets (including long-term service agreements with original equipment manufacturers and other related agreements);
- (B) Fuel Contracts;
- (C) all information technology hardware and software used to operate or administrate the Legacy Generation Assets; or
- (D) Legacy Generation Assets operation, decommissioning, or ancillary services.

For the avoidance of doubt, Facility Contracts shall not include the T&D-Generation Operating Agreement, the Shared Services Agreement, collective bargaining agreements with union labor or, with regard to clause (C) above, any agreement related to information technology, hardware and software utilized by Operator before the Effective Date and extended thereafter to operate or administer the Legacy Generation Assets.

“Facility Information” means any and all information relating to the Legacy Generation Assets, including: (i) actual and budgeted operating expenses (including actual and budgeted expenses related to maintenance and repair and actual and budgeted fuel-related expenses); (ii) daily operations log for the Legacy Generation Assets, which shall include information known to it customary and appropriate for the operation and maintenance of thermal generation

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facilities and any significant events related to the operation of the Legacy Generation Assets; (iii) all certificates, correspondence, data (including test data), documents, facts, files, information, investigations, materials, notices, plans, projections, records, reports, requests, samples, schedules, statements, studies, surveys, tests and test results analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by Operator or any of its Representatives in connection with the Legacy Generation Assets, the O&M Services or the Decommissioning Services; and (iv) books, records, accounts and documents relating to the O&M Services or the Decommissioning Services, including any information that is stored electronically or on computer-related media but not including (A) Operator's Confidential Information or other information that Operator reasonably believes is subject to attorney-client or other legal privilege, confidentiality restrictions or trade secret protections, (B) personally identifiable information protected by Applicable Law, other than Owner Personal Information, (C) correspondence between employees or other Representatives of Operator, (D) information and records pertaining to the applicable Service Fee or (E) information or records pertaining to any dispute with Owner or Administrator or their respective Representatives.

“Failure to Pay Penalties” has the meaning set forth in Section 14.1(k) (*Events of Default by Operator – Failure to Pay Penalties*).

“Fees-and-Costs” means reasonable and documented fees and expenses of attorneys, expert witnesses, engineers and consultants with respect to any Legal Proceeding.

“Fiscal Plan” means each of the PREPA Fiscal Plan, certified on June 29, 2020 by the FOMB, and the 2020 Fiscal Plan for Puerto Rico, certified by the FOMB on May 27, 2020, in each case as supplemented and amended from time to time, and any successors thereto.

“FOMB” means the Financial Oversight and Management Board for Puerto Rico.

“FOMB Protocol Agreement” means a protocol agreement among Operator, Administrator, Owner, and the FOMB, which shall include provisions governing the FOMB's interaction with the Parties with respect to the respective duties of the FOMB and Owner under PROMESA, which shall apply only during the period the FOMB is in existence and Owner is a covered territorial instrumentality pursuant to PROMESA.⁴

“Forced Outage” means unplanned disconnection or stoppage of a Legacy Generation Asset due to failure or defect of the unit or its equipment, or another such event, including due to the operational or unplanned malfunctioning of equipment on the transmission grid or human error that impacts the operation of the Legacy Generation Asset.

“Force Majeure Event” means any act, event, circumstance or condition (other than lack of finances) whether affecting the Legacy Generation Assets, Owner, Operator or any of Owner's subcontractors or Operator's Subcontractors that (i) is beyond the reasonable control of and unforeseeable by, or which, if foreseeable, could not be avoided in whole or in part by the exercise of due diligence by, the Party relying on such act, event or condition as justification for not

⁴ **Note to Draft:** The FOMB Protocol Agreement will lay out the manner in which the FOMB will provide input on matters arising under this contract that fall within the FOMB's purview pursuant to PROMESA.

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performing an obligation or complying with any condition required of such Party under this Agreement, and (ii) materially interferes with or materially increases the cost of performing such Party's obligations hereunder, to the extent that such act, event, circumstance or condition is not the result of the willful or negligent act, error or omission or breach of this Agreement by such Party; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as a willful or negligent act, error or omission or breach of this Agreement by such Party.

Subject to the requirements specified in the foregoing paragraph, Force Majeure Event shall include, by way of example, the following acts, events or conditions:

(A) an act of God, landslide, earthquake, fire, explosion, flood or similar occurrence;

(B) war, armed conflict, invasion, acts of terror, acts of civil or military authority, sabotage or similar occurrence, computer sabotage or virus, acts of a public enemy, acts of a foreign enemy, extortion, blockade, embargo, revolution, interference by military authorities, quarantine, epidemic, insurrection, riot or civil commotion or disturbance or civil disobedience;

(C) to the extent not covered by (A) or (B) above, any event that causes any federal or Commonwealth Governmental Body to declare the municipality in which the applicable Legacy Generation Asset is located part of a "disaster zone," "disaster area," "state of emergency" or any similar pronouncement;

(D) a Change in Law;

(E) the failure of any appropriate Governmental Body or private utility having operational jurisdiction in the area in which the respective Legacy Generation Asset is located to provide and maintain services to any facility comprising part of the Legacy Generation Assets, which services are required for the performance of this Agreement, if such failure results in a delay or curtailment of the performance of any of the O&M Services, the Mobilization Services, the Decommissioning Services or the Demobilization Services;

(F) any failure of title to any portion of the Generation Sites, any revocation or termination or invalidity of any Easement or other access right, any other failure or restriction of access to the Generation Sites, or any enforcement of any Lien on the Generation Sites or on any improvements thereon not consented to in writing by, or arising out of any action or agreement entered into by, the Party adversely affected thereby;

(G) the preemption of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the Legacy Generation Assets;

(H) the presence of archeological finds, endangered species or Hazardous Material at the Generation Sites, except to the extent Operator caused or knew or reasonably should have known of such presence, or the Release of any reportable quantity, as defined under applicable Environmental Law, of Hazardous Material or of any other Release that could reasonably be expected to result in material Losses to Owner;

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(I) strikes, boycotts, work stoppages, lockouts or other labor or employment disputes or disturbances with respect to the employees of Operator, but only if occurring in the twelve (12) months immediately following the Service Commencement Date;

(J) an unanticipated, significant and sustained failure in the transmission grid or dispatch operations; and

(K) denial of access to the transmission grid, operational or unplanned malfunctioning of the transmission grid.

It is specifically understood that none of the following acts, events or conditions shall constitute a Force Majeure Event:

(1) reasonably anticipated weather conditions for the geographic area of the Legacy Generation Assets, except to the extent such weather condition otherwise falls under one of the circumstances described in clauses (A) or (C) above;

(2) general economic conditions, interest or inflation rates, increases in wage rates of Operator's employees and Subcontractors, insurance costs, commodity prices or currency fluctuations, or exchange rates;

(3) the financial condition of Owner, Operator, [Guarantor(s),] any of their Affiliates or any Subcontractors;

(4) any increase for any reason in premiums charged by Operator's insurers or the insurance markets generally for the required insurance that are compensated as Pass-Through Expenditures;

(5) the failure of Operator to secure Patents or licenses in connection with the technology necessary to perform its obligations under this Agreement, if available on commercially reasonable terms;

(6) equipment malfunction or failure (unless caused by an event that would otherwise constitute a Force Majeure Event);

(7) interruption in the delivery of fuel or gas to the applicable Legacy Generation Asset or Legacy Generation Assets (unless caused by an event that would otherwise constitute a Force Majeure Event);

(8) the unavailability of a disposal facility for waste produced in connection with the Decommissioning Services (unless caused by an event that would otherwise constitute a Force Majeure Event);

(9) union or labor work rules, requirements or demands relating to Operator's employees which have the effect of increasing the number of employees employed at the Legacy Generation Assets, reducing the operating flexibility of Operator or otherwise increasing the cost to Operator of performing the O&M Services or the Decommissioning Services;

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(10) any impact of prevailing wage laws on Operator’s operation and maintenance costs with respect to wages and benefits;

(11) the failure of any Subcontractor or supplier to furnish labor, materials, services or equipment for any reason (unless caused by an event that would otherwise constitute a Force Majeure Event);

(12) strikes, boycotts, work stoppages, lockouts or other labor or employment disputes or disturbances with respect to the employees of Operator, but only if occurring from and after the date that is twelve (12) months immediately following the Service Commencement Date; and

(13) notwithstanding clause (B) above, the novel coronavirus or COVID-19 in any of its variants.

“Force Majeure Event Dispute” has the meaning set forth in Section 18.1(c) (*Notice; Mitigation – Burden of Proof*).

“Fuel” means natural gas, propane, gasoline (vehicles), light distillate no. 2 fuel oil (diesel) or residual no. 6 fuel oil bunker fuel, as applicable.

“Fuel Account” has the meaning set forth in Section 7.6(b)(i) (*Service Accounts – Fuel Account*).

“Fuel Adjustment Clause” means the applicable cost recovery rate provision, as approved by PREB from time to time pursuant to Applicable Law, which is made up of the estimated charges related to the purchase, transportation, testing and delivery of fuel for the Legacy Generation Assets for the next quarterly period, along with any prior period cost reconciliations.

“Fuel Budget” means, for any given Contract Year, the budget of the Fuel Costs for such Contract Year, together with the projected budget of the Fuel Costs for the following two (2) Contract Years, and including monthly forecasts and quarterly budgets of estimated variable Fuel Costs expected to be incurred pursuant to the terms and conditions of any fuel supply agreement for the applicable Legacy Generation Assets, as such budget may be amended or adjusted from time to time in accordance with the terms and conditions of this Agreement and, with respect to the quarterly budgets described above, as adjusted pursuant to Section 7.3(d) (*O&M Budgets – Quarterly Adjustments to Fuel Budget*) in connection with the Fuel Adjustment Clause, the applicable fuel-supply agreements, and the T&D-Generation Operating Agreement.

“Fuel Contracts” means any contracts, leases, licenses, permits and similar arrangements of all types entered into by Owner, or by Operator on behalf and as agent of Owner, related to the procurement, delivery, quality-testing and storage of fuel, and the maintenance of fuel tanks and pipelines.

“Fuel Costs” has the meaning set forth in Section 7.6(b)(i) (*Service Accounts – Fuel Account*).

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“Generation Emergency Response Plan” has the meaning set forth in Section 4.2(e) (*Operator Responsibilities – Generation Emergency Response Plan*).

“Generation Sites” means the real property and interests therein upon which the components of the Legacy Generation Assets are and shall be located.

“Governmental Approvals” means all orders of approval, permits, licenses, authorizations, consents, certifications, exemptions, registrations, rulings and entitlements issued by a Governmental Body of whatever kind and however described that are required under Applicable Law to be obtained or maintained by any Person with respect to the performance of the O&M Services.

“Governmental Body” means any U.S. federal, state, Commonwealth, regional, municipal or local legislative, executive, judicial or other governmental board, agency, authority, commission, bureau, administration, court, instrumentality or other duly authorized body, including PREB and the FOMB (if then in existence), other than Owner and, in its capacity as such under this Agreement, Administrator, or any official thereof having jurisdiction with respect to any subject of this Agreement. [“Guarantee” means the guarantee agreement, dated as of the date hereof, by and between Guarantor(s) and Owner in the form of Exhibit A (*Form of Guarantee Agreement*).

“Guarantor” means [●], a [●] duly organized and validly existing under the laws of [●], and, as determined pursuant to the terms and conditions of the Guarantee, [any of their respective][its] permitted successors and assigns.]⁵

“Handover Checklist” means the handover checklist set forth in Annex V (*Mobilization Plan*), which details all of the requirements for Operator to complete the Mobilization Services by the Target Service Commencement Date.

“Handover Checklist Dispute” has the meaning set forth in Section 4.7(a) (*Closing the Mobilization Period – Notice of Service Commencement Date*).

“Hazardous Material” means: (i) any waste, substance, object or material deemed hazardous under Environmental Law, including “hazardous substances” as defined in CERCLA and “hazardous waste” as defined in RCRA and any local counterpart law; (ii) any oil or petroleum product, lead-based paint, per- or poly-fluoroalkyl substances or polychlorinated biphenyl; and (iii) any other pollutant, contaminant, material, substance or waste that has deleterious or hazardous properties and that is listed, defined or is subject to regulation under any Environmental Law.

“Heat Rate” means the average thermal efficiency of a respective Legacy Generation Asset’s ability to convert Fuel into Power and Electricity, determined for each Contract Year pursuant to Section 4.2(o) (*Mobilization Period – Annual Performance Test*) and Section IV(A) of Annex VII (*Scope of Services – Testing, Reports and Records – Annual Performance Test*).

⁵ **Note to Draft:** In the event that the entity (with the requisite level of financial capacity) that qualified during the RFQ stage is not the same entity that enters into this Agreement, that pre-qualified entity will be required to provide a Guarantee of the Operator’s obligations under this Agreement.

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“Hired Former Employees of Owner” has the meaning set forth in Section 4.2(g) (*Operator Responsibilities – Employment Offers*).

“ICC” has the meaning set forth in Section 15.4(b)(i) (*Expert Technical Determination Procedure for Technical Disputes – Procedures*).

“Incentive Payment” means each of the O&M Incentive Payment and Decommissioning Incentive Payment.

“Incentives and Penalties” means the incentives and penalties set forth in Section III of Annex II (*Compensation – Incentives and Penalties*).

“Incentives and Penalties Report” has the meaning set forth in Section 7.1(d)(ii) (*Service Fee – Incentives and Penalties*).

“Indemnifying Party” means (i) in the case of a claim for indemnification by Operator Indemnitee, Owner and (ii) in the case of a claim for indemnification by an Owner Indemnitee, Operator.

“Independent Expert” has the meaning set forth in Section 15.4(a) (*Expert Technical Determination Procedure for Technical Disputes – Generally*).

“Information System” means a discrete set of electronic information resources organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information, including, such resources organized as any specialized system such as industrial/process controls systems, telephone switching and private branch exchange systems, and environmental control systems, and “Information Systems” means more than one Information System.

“Initial O&M Budgets” means, collectively, the Operating Budget and the Fuel Budget, in each case, for the initial Contract Year, and the projected budget for the following two (2) Contract Years.

“Initial Term” has the meaning set forth in Section 2.3(a) (*Term – Initial Term*).

“Insurance Proceeds Account” has the meaning set forth in Section 10.3 (*Additional Named Insureds*).

“Integrated Resource Plan” means the latest integrated resource plan contemplated under Act 57, as (i) set forth in the Final Resolution and Order issued by PREB on August 24, 2020, as supplemented and amended from time to time, and (ii) subsequently approved by PREB in accordance with Applicable Law.

“Intellectual Property” means all (i) Patents, (ii) Trademarks, (iii) domain names, URLs and any other addresses for use on the Internet or any other computer network or communication system, (iv) Copyrights, (v) rights of publicity, rights of privacy and moral rights, (vi) Know-How, (vii) other intellectual property or similar corresponding or equivalent right to any of the foregoing or other proprietary or contract right relating to any of the foregoing (including

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remedies against infringements thereof and rights of protection of interest therein under the laws of all jurisdictions) and (viii) copies and tangible embodiments thereof (including Software), in each case whether or not the same are in existence as of the date of this Agreement or developed after such date and in any jurisdiction throughout the world.

“Interconnection Point” means the physical demarcation point(s) where the output of the respective Legacy Generation Asset is delivered to the T&D System, as set forth in the T&D-Generation Operating Agreement.

“Internal Revenue Code” means the United States Internal Revenue Code of 1986.

“Interview Deadline” has the meaning set forth in Section 4.2(f) (*Operator Responsibilities – Employment Evaluations*).

“Know-How” means proprietary rights in all, trade secrets, confidential or proprietary information, including confidential or proprietary concepts, ideas, knowledge, rights in research and development, financial, marketing and business data, pricing and cost information, plans (including business and marketing plans), algorithms, formulae, inventions, processes, techniques, technical data, designs, drawings (including engineering and AutoCAD drawings), specifications, databases, blueprints and customer and supplier lists and information, in each case whether patentable or not and whether or not reduced to practice.

“Legacy Generation Assets” has the meaning set forth in the Recitals; provided that the Legacy Generation Assets shall include Out-of-Service Units solely for the purposes of the Decommissioning Services and the O&M Services described in Section 5.19 (*Out-of-Service Units*).

“Legal Proceeding” means any claim, litigation, action, suit (whether civil, criminal, administrative, judicial or investigative), audit, hearing, investigation, binding arbitration or mediation or proceeding, in each case commenced, brought, conducted, heard before or otherwise involving any Governmental Body, arbitrator or mediator.

“Lien” means any and every lien, pledge, security interest, claim, mortgage, deed of trust, lease, charge, option, right of first refusal, easement or other real estate declaration, covenant, condition, restriction or servitude, transfer restriction under any encumbrance or any other restriction or limitation whatsoever, including mechanics’, materialmen’s, laborers’ and lenders’ liens.

“Losses” means any and all actual out-of-pocket (i) losses, damages, costs, expenses, liabilities, interest, deficiencies, awards, judgments, fines, assessments, penalties, forfeitures, obligations, deposits, Taxes, costs, offsets, expenses or other charges of any kind, including Fees-and-Costs, Environmental Claim and Cleanup Liability and costs of enforcing any right to indemnification hereunder or pursuing any insurance providers and (ii) settlements in connection with Section 19.1 (*Indemnification by Operator*) and Section 19.2 (*Indemnification by Owner*), the amount of which either has been agreed by Operator and Administrator or is below a specified amount to be agreed by Operator and Administrator from time to time.

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“Material Facility Contract” has the meaning set forth in Section 5.2(d) (*Facility Contracts – Additional Facility Contracts or Expired Facility Contracts After Service Commencement Date*).

“Material Subcontractor” has the meaning set forth in Section 11.1(a) (*Ability to Subcontract – Subcontractors Generally*).

“Mediation Rules” has the meaning set forth in Section 15.5(b) (*Mediation – Procedures*).

“Minimum Performance Threshold” has the meaning set forth in Section III.A. of Annex II (*Compensation – Incentives and Penalties*).

“Minimum Performance Threshold Default” has the meaning set forth in Section 14.1(l) (*Events of Default by Operator – Failure to Meet Minimum Performance Threshold*).

“Mobilization Account” has the meaning set forth in Section 4.6(c) (*Mobilization Period Compensation – Funding*).

“Mobilization Period” means the period of time from and including the Effective Date to and excluding the Service Commencement Date.

“Mobilization Plan” has the meaning set forth in Section 4.1(a) (*Mobilization Period Generally – Role of Operator*).

“Mobilization Service Fee” has the meaning set forth in Section 4.6(b) (*Mobilization Period Compensation – Mobilization Service Fee*).

“Mobilization Service Fee Dispute” has the meaning set forth in Section 4.6(d)(ii) (*Mobilization Period Compensation – Invoices*).

“Mobilization Service Fee Estimate Dispute” has the meaning set forth in Section 4.6(c)(ii) (*Mobilization Period Compensation – Funding*).

“Mobilization Services” means services provided by Operator under this Agreement prior to the Service Commencement Date in order to complete the mobilization and handover to Operator of the operation, management and other rights and responsibilities with respect to the Legacy Generation Assets pursuant to this Agreement, including the services contemplated by the Mobilization Plan; provided that the Mobilization Services shall not be O&M Services.

“Negotiation Period” has the meaning set forth in Section 15.3(b)(i) (*Negotiation – Negotiation Period*).

“Notice of Dispute” has the meaning set forth in Section 15.2(a) (*Commencement of the Dispute Resolution Procedure – Notice*).

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“Notice of Mediation” has the meaning set forth in Section 15.5(a) (*Mediation – Generally*).

“O&M Budget” means each of the Operating Budget and the Fuel Budget, and “O&M Budgets” means, collectively, both of them.

“O&M Budget Dispute” has the meaning set forth in Section 7.3(e) (*O&M Budgets – Budget Disputes*).

“O&M Fixed Fee” means the management service fee consisting of a fixed fee paid by Owner to Operator as compensation for the performance of the O&M Services.

“O&M Fixed Fee Adjustment” means a proportional adjustment of the O&M Fixed Fee, in any of Contract Year 6 through Contract Year 10, in the event that (i) Operator has begun or begins to perform Decommissioning Services with respect to a Legacy Generation Asset; or (ii) one or more Legacy Generation Assets has been or is removed from the Scope of O&M Services, in each case, in accordance with this Agreement.

“O&M Incentive Payment” means one or more incentive payments based on Operator’s performance of the O&M Services.

“O&M Penalty” means one or more liquidated damages penalties based on Operator’s performance of the O&M Services.

“O&M Service Fee” means the O&M Fixed Fee together with the O&M Incentive Payment minus the O&M Penalty, if any.

“O&M Services” has the meaning set forth in Section 5.1 (*Services Generally*).

“Occupational Safety and Health Act” or “OSHA” means the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*

“Operating Account” has the meaning set forth in Section 7.6(a)(i) (*Service Accounts – Operating Account*).

“Operating Budget”, for any given Contract Year, (i) means the budget of the Pass-Through Expenditures required to perform the O&M Services (including the reasonably foreseeable costs of Planned Outages, Unplanned Outages and Forced Outages) for such Contract Year, together with the projected budget for the following two (2) Contract Years, in each case including monthly budgets of such expenditures and cash flows, as such budget may be amended or adjusted from time to time in accordance with the terms and conditions of this Agreement and the T&D-Generation Operating Agreement; and (ii) includes amounts equal to the maximum amounts of the O&M Fixed Fee and the O&M Incentive Payment available in such Contract Year.

“Operations and Maintenance Procedures” has the meaning set forth in Section 4.2(1) (*Operator Responsibilities – Operations and Maintenance Procedures*).

“Operator” has the meaning set forth in the introductory paragraph.

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“Operator Benefit Plans” has the meaning set forth in Section 5.5(a) (*Labor and Employment; Employee Benefits – Employee Plans*).

“Operator Employees” has the meaning set forth in Section 4.2(h) (*Operator Responsibilities – Employment Offers*).

“Operator Event of Default” has the meaning set forth in Section 14.1 (*Events of Default By Operator*).

“Operator Indemnitee” has the meaning specified in Section 18.2(a) (*Indemnification by Owner – Generally*).

“Operator Intellectual Property” means any Intellectual Property owned by or licensed to Operator or its Affiliates that is (i) used in the performance of the O&M Services or in connection with the Legacy Generation Assets and (ii) is embedded in or otherwise necessary for the use of the Work Product (as defined herein) or for the operation of the Legacy Generation Assets, but which does not constitute Work Product.

“Operator Related Parties” means Operator, Parent Company, [Guarantor(s),] their Affiliates and any of their respective employees, directors and officers.

“Operator Service Commencement Date Conditions” has the meaning set forth in Section 4.5(a) (*Conditions Precedent to Service Commencement Date – Operator Responsibilities*).

“Operator Termination Fee” has the meaning set forth in Section 14.6(c) (*Remedies Upon Early Termination – Termination Fee*).

“Operator Training Program” has the meaning set forth in Section 4.2(n) (*Operator Responsibilities – Operator Training Program*).

“Other Employees” has the meaning set forth in Section 4.2(g) (*Operator Responsibilities – Employment Offers*).

“Out-of-Service Unit” means the Legacy Generation Assets identified on Annex I (*Legacy Generation Assets*) that, as of the Service Commencement Date, are out of service and not being repaired, or are decommissioned, and not scheduled to return to service in the future.

“Overdue Rate” means the lower of (i) the Prime Rate *plus* two percent (2%) and (ii) the highest rate permitted by Applicable Law.

“Oversight” means, with respect to any matter relating to the Legacy Generation Assets, the O&M Services or this Agreement, the performance of such reviews, investigations, inspections, or examinations relating to such matters as are reasonably necessary in the circumstances, conducted, in each case, in accordance with generally accepted contract administration practices used in the electric utility industry.

“Owner” has the meaning set forth in the introductory paragraph.

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“Owner Employees” has the meaning set forth in Section 4.2(f) (*Operator Responsibilities – Employment Evaluations*).

“Owner Event of Default” has the meaning set forth in Section 14.3 (*Events of Default By Owner*).

“Owner Fault” means (i) any breach (including any breach of any representation and warranty set forth in any Transaction Document), (ii) any failure of compliance or nonperformance by Owner or Administrator with its respective obligations under any Transaction Document or (iii) any gross negligence, tort or willful misconduct by Owner or Administrator with respect to performance of its respective obligations under any Transaction Document (whether or not attributable to any officer, trustee, member, agent, employee, representative, contractor, subcontractor of any tier or independent contractor of Owner or Administrator other than Operator and its Subcontractors), which has had, or is reasonably expected to have, a material adverse effect on Operator’s performance or cost of performance or on Operator’s rights or obligations under this Agreement or on the operation or maintenance of the Legacy Generation Assets.

“Owner Indemnitee” has the meaning specified in Section 19.1 (*Indemnification by Operator*).

“Owner Personal Information” means any and all personally identifiable information, in any form, collected by or provided to Operator, Operator Related Parties or Subcontractors in connection with the provision of O&M Services or services under this Agreement and that, alone or in combination with other information, uniquely identifies a current, former or prospective director, trustee, officer, employee, elected official, supplier, retiree of Owner, an Owner Related Party or a customer of any Owner Related Party (e.g., names, addresses, telephone numbers, or any other personally identifiable information as otherwise defined under Applicable Law) including (i) copies of such information or materials to the extent containing such information or (ii) such information Owner notifies Operator in advance in writing is subject to a duty of confidentiality that Owner owes to Owner’s customers or pursuant to contracts of Owner or Owner Related Parties.

“Owner Related Parties” means Owner, its Affiliates and any of their respective employees, directors, trustees, elected officials and officers.

“Owner Service Commencement Date Conditions” has the meaning set forth in Section 4.5(b) (*Conditions Precedent to Service Commencement Date – Owner and Administrator Responsibilities*).

“Owner Termination Fee” has the meaning set forth in Section 14.6(c)(ii) (*Remedies Upon Early Termination – Termination Fee*).

[“Parent Company” means [●]⁶ and its successors and assigns.]

⁶ **Note to Proponent:** The relevant entity should be provided in the submission to the RFP. Parent Company should be the ultimate parent company of Operator.

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“Party” has the meaning set forth in the introductory paragraph.

“Pass-Through Expenditures” has the meaning set forth in Section 7.2 (*Pass-Through Expenditures*).

“Patents” means the exclusive legal rights held by the owner of a patent (including utility and design patents) to exclude others from using, making, having made, selling, offering to sell, and importing patented subject matter and to practice patented methods. Patents include all legal rights in any patent applications, PCT filings, patent disclosures, issued patents and all related extensions, continuations, continuations-in-part, divisions, reissues and reexaminations, utility models, certificates of invention and design patents, and all extensions thereto.

“Peaking Unit” means each Legacy Generation Asset designated as a Peaking Unit in Annex I (*Legacy Generation Assets*).

“Penalty” means each of the O&M Penalty and the Decommissioning Penalty.

“Permitted Liens” means (i) Liens arising by operation of law that are either contested in good faith and for which Operator or any Subcontractor has established adequate reserves or that are discharged promptly, (ii) Liens existing as of the Effective Date, if any, (iii) Liens that result from any act or omission by any Owner Related Party, Administrator or any other Governmental Body and (iv) purchase money Liens or similar Liens securing rental payments under capital lease arrangements.

“Person” means any individual (including the heirs, beneficiaries, executors, legal representatives or administrators thereof), firm, corporation, company, association, partnership, limited partnership, limited liability company, joint stock company, joint venture, trust, business trust, unincorporated organization or other entity or a Governmental Body.

“Planned Outage” means a planned partial or complete disconnection or stoppage of the generating capability of the applicable Legacy Generation Asset that is for the purpose of inspection, testing, major overhauls, preventive maintenance, corrective maintenance or improvement of such Legacy Generation Asset and for which notice has been previously given to the T&D Operator.

“Power and Electricity” means the electrical energy, capacity and ancillary services available from the Legacy Generation Assets.

“PREB” means the Puerto Rico Energy Bureau, also known as the *Negociado de Energia de Puerto Rico*, an independent body created by Act 57.

“PREB Actions” has the meaning set forth in Section 3.9(c) (*Qualified Management Contract – PREB Actions*).

“PREPA” means the Puerto Rico Electric Power Authority, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by Act No. 83 of the Legislative Assembly of Puerto Rico, enacted on May 2, 1941.

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“Pre-Existing Environmental Condition” means the presence of Hazardous Materials in environmental media anywhere in, at, from, as a result of, on or under the Legacy Generation Assets or the Generation Sites on the Service Commencement Date.

“Pre-Existing Environmental Condition Liability Standard” has the meaning set forth in Section 5.9(b)(iii) (*Environmental, Health and Safety Matters – Pre-Existing Environmental Conditions*).

“Prime Rate” means a variable per annum rate equal, as of any date of determination, to the rate as of such date published in the “Money Rates” section of The Wall Street Journal as being the “Prime Rate” (or, if more than one rate is published as the “Prime Rate,” then the highest of such rates), or a mutually agreeable alternative source of the prime rate if it is no longer published in the “Money Rates” section of The Wall Street Journal or the method of computation thereof is substantially modified.

“PRIRC” means the Internal Revenue Code for a New Puerto Rico of 2011.

“Pro Rata” and similar expressions mean an adjustment to a cost, payment or other amount due over a period of time to account for it accruing over only a portion of such period.

“PROMESA” means the Puerto Rico Oversight, Management and Economic Stability Act enacted on June 30, 2016 (P.L. 114-187).

“Proposal” means the proposal submitted in response to the RFP.

“Proposal Submission Date” means [●], 2021.

“Prudent Industry Practice” means, at any particular time, the practices, methods, techniques, conduct and acts that, at the time they are employed, are generally recognized and utilized by companies operating gas and/or oil-fired, electric power generation plants in the United States. The interpretation of acts (including the practices, methods, techniques, conduct and acts engaged in or adopted by a significant portion of the electrical generation industry prior thereto) shall take into account the facts and the characteristics of the Legacy Generation Assets known at the time the decision was made. Prudent Industry Practice is not intended to be limited to the optimum or minimum practice, method, technique, conduct or act, to the exclusion of all others, but rather to be a spectrum of possible practices, methods, techniques, conduct or acts that a prudent operator would take to accomplish the intended objectives at reasonable cost consistent with public and employee safety, reliability, and environmental compliance.

“Public Information Disclosure Requirements” means any Applicable Law requiring the disclosure of public documents or information.

“Public-Private Partnerships Authority’s Ethical Guidelines” means the “Public-Private Partnerships Authority’s Guidelines for the Evaluation of Conflicts of Interest and Unfair Advantages in the Procurement of Public-Private Partnership Contracts,” promulgated by the Public-Private Partnerships Authority and dated as of December 19, 2009.

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“Rate Order” means any rate order reflecting determinations and directives of, and requirements established by, PREB through its review of an application by T&D Operator requesting a change in customer rates or charges and the subsequent rate review proceeding.

“RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.

“Release” means any emission, spill, seepage, leak, escape, leaching, discharge, injection, pumping, pouring, emptying, dumping, disposal, migration or release of Hazardous Materials from any source into or upon the environment.

“Reliance Letter” means a letter from tax counsel, substantially in the form set forth in Exhibit B (*Form of Reliance Letter*) that shall accompany a Tax Opinion and shall permit Operator to rely on such Tax Opinion.

“Remedial Action” means any investigation, clean-up, removal action, restoration, repair, abatement, response action, corrective action, monitoring, sampling and analysis, installation, reclamation, closure or post-closure in connection with the suspected, threatened or actual Release of Hazardous Materials.

“Representative” means, with respect to any Person, any director, officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, contractor, Subcontractor, other Person for whom such Person is responsible at law or other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its “Representative.”

“Required Insurance” has the meaning set forth in Section 10.1 (*Insurance Generally*).

“Reserve Account” has the meaning set forth in Section 7.6(d)(i) (*Service Accounts – Reserve Account*).

“Revenue Procedure 2017-13” means the revenue procedure issued by the United States Internal Revenue Service that provides safe harbor conditions under which a management contract does not result in private business use under § 141(b) of the Internal Revenue Code or subsequent guidance from the United States Internal Revenue Service.

“RFP” means the Puerto Rico Electric Power Thermal Generation Facilities Request for Proposals 2020-1 issued by the Puerto Rico Public-Private Partnerships Authority.

“Safety and Hazardous Materials Procedures Manual” has the meaning set forth in Section 4.2(m) (*Operator Responsibilities – Safety and Hazardous Materials Procedures Manual*).

“Sanctioned Country” has the meaning set forth in Section 20.2(g)(iv) (*Representations and Warranties of Operator – Applicable Law Compliance*).

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“Sanctioned Person” has the meaning set forth in Section 20.2(g)(iv) (*Representations and Warranties of Operator – Applicable Law Compliance*).

“Sanctions” has the meaning set forth in Section 20.2(g)(iv) (*Representations and Warranties of Operator – Applicable Law Compliance*).

“Service Accounts” means the Operating Account and the Fuel Account, each of which is a “Service Account.”

“Service Account Dispute” has the meaning set forth in Section 7.6(e) (*Service Accounts – Service Account Disputes*).

“Service Commencement Date” has the meaning set forth in Section 4.7(b) (*Closing the Mobilization Period – Establishment of Service Commencement Date*).

“Service Commencement Date Conditions” has the meaning set forth in Section 4.5 (*Conditions Precedent to Service Commencement Date*).

“Service Fee” means each of the Decommissioning Service Fee and the O&M Service Fee.

“Service Fee Dispute” has the meaning set forth in Section 7.1(e) (*Service Fee – Service Fee Disputes*).

“Services Documentation” means, collectively, the Operations and Maintenance Procedures, the Generation Emergency Response Plan, the Safety and Hazardous Materials Procedures Manual and the Operator Training Program.

“Shared Services Agreement” means the shared services agreement, or similar contractual arrangement, by and among the T&D Operator, PREPA, Owner and the other parties thereto, pursuant to the T&D O&M Agreement, providing the terms and conditions pursuant to which T&D Operator shall provide certain shared services to Owner or its designee or agent.

“Software” means computer programs, proprietary software, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code, operating systems, design documents, website code and specifications, flow-charts, user manuals and training materials unless provided by Operator relating thereto and any translations thereof.

“Spare Parts” means any new or refurbished replacement parts and tools, equipment and components or combination thereof such maintained or to be maintained by Operator in accordance with this Agreement in connection with the operation, maintenance, repair of the Legacy Generation Assets, excluding any Capital Spare Parts.

“Stafford Act” means the Robert T. Stafford Disaster Relief and Recovery Act, enacted on November 23, 1988.

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“Subcontract” means an agreement or purchase order by Operator to a Subcontractor or a Subcontractor to Operator, as applicable.

“Subcontractor” means every Person (other than employees of Operator) employed or engaged by Operator or any Person directly or indirectly in privity with Operator for the performance of any portion of the Mobilization Services, the O&M Services, the Decommissioning Services or the Demobilization Services, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise. For the avoidance of doubt: (i) Subcontractors includes personnel from Operator’s Affiliates assigned to perform the Mobilization Services, the O&M Services, the Decommissioning Services or the Demobilization Services under this Agreement, and (ii) Subcontractors does not include third parties merely providing commercially available “off-the-shelf” Software or Information Systems to Operator (directly or as a service).

“Subcontractor Intellectual Property” means any Intellectual Property owned by or licensed to a Subcontractor that is (i) used in the performance of the O&M Services or in connection with the Legacy Generation Assets and (ii) is embedded in or otherwise necessary for the use of the Work Product (as defined herein) or for the operation of the Legacy Generation Assets, but which does not constitute Work Product.

“Sworn Statement” means a sworn statement in the form set forth as Exhibit C (*Form of Sworn Statement*).

“T&D-Generation Operating Agreement”⁷ means the operating agreement by and among T&D Operator, Operator, Administrator, and the other parties thereto, substantially consistent with the provisions set forth in Annex VI (*T&D-Generation Operating Agreement*) providing for certain rights and responsibilities, including fuel and non-fuel budgeting and account funding, the demarcation of the Legacy Generation Assets, dispatch and shut down procedures and protocols, planned maintenance communications, switching and clearance procedures, access to plant substations and other related equipment, and the Agreed Operating Procedures to be developed and attached thereunder.

“T&D O&M Agreement” means the operation and maintenance agreement for the T&D System, entered into on June 22, 2020, by and among PREPA, Administrator, LUMA Energy, LLC and LUMA Energy ServCo, LLC, pursuant to which T&D Operator shall operate, maintain and modernize the T&D System.

“T&D Operator” means LUMA Energy, LLC together with LUMA Energy ServCo, LLC.

“T&D System” means PREPA’s transmission and distribution system and related facilities, equipment and other assets related to the transmission and distribution system in which PREPA has an ownership or leasehold interest.

⁷ **Note to Draft:** The T&D-Generation Operation Agreement is referred to as the GridCo-GenCo PPOA in the T&D O&M Agreement.

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“Target Service Commencement Date” means [●]8.

“Tax” means all U.S. federal, state, Commonwealth, municipal, local and non-U.S. taxes and similar governmental charges, imposts, levies, fees and assessments, however denominated (including income taxes, business asset taxes, franchise taxes, net worth taxes, capital taxes, estimated taxes, withholding taxes, use taxes, value added tax, gross or net receipt taxes, sales taxes, transfer taxes or fees, excise taxes, real and personal property taxes, ad valorem taxes, payroll related taxes, employment taxes, unemployment insurance, social security taxes, minimum taxes and import duties and other obligations of the same or a similar nature), together with any related liabilities, penalties, fines, additions to tax or interest imposed by a Governmental Body.

“Tax Opinion” means an opinion, substantially in the form set forth in Exhibit D (*Form of Tax Opinion – Effective Date*) of Nixon Peabody LLP as counsel to the FOMB or other tax counsel reasonably acceptable to Administrator, rendered in connection with this Agreement and providing that neither this Agreement nor any provision hereof, nor the performance by each Party of its obligations hereunder (including Operator’s administration of the Facility Contracts), adversely affects the exclusion from gross income of interest on obligations of Owner, its Affiliates or another Governmental Body for federal income tax purposes under the Internal Revenue Code.

“Tax Return” means any report, return, information return, form, declaration, statement or other information (including any amendments thereto and including any schedule or statement thereto) required to be filed or maintained by Applicable Law in connection with the determination, assessment or collection of any Tax.

“Technical Dispute” has the meaning set forth in Section 15.3(b)(i) (*Negotiation – Negotiation Period*)

“Term” means the Initial Term together with the Extension Term, if any.

“Tested Capacity” means, with respect to each Legacy Generation Asset, the capacity of such asset, determined for each Contract Year pursuant to Section 4.2(o) (*Mobilization Period – Annual Performance Test*) and Section IV(A) of Annex VII (*Scope of Services – Testing, Reports and Records – Annual Performance Test*).

“Third-Party Intellectual Property” means Intellectual Property that is licensed to Operator by a third-party that is not an Affiliate of Operator or a Subcontractor and is used in the performance of this Agreement.

“Third-Party Payments” has the meaning set forth in Section 19.4(a) (*Insurance and Other Recovery – Generally*).

⁸ **Note to Proponent:** A target date for the Service Commencement Date should be provided in the submission to the RFP. Proponents should consider that the government has a strong desire for the Target Service Commencement Date to occur within six months or fewer of the Effective Date.

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“Title III Approvals” means any findings, approvals and protections of the Title III Court or any other applicable court authorizing or approving Owner’s entry into and performance of this Agreement and that are otherwise necessary to the Parties’ performance of this Agreement.

“Title III Case” means Owner’s case under Title III of PROMESA in the U.S. District Court.

“Title III Court” means the U.S. District Court presiding over the Title III Case.

“Trademarks” means the exclusive legal rights to use and display any marks, names or symbols in association with businesses, products or services as an indication of ownership, origin, affiliation, or sponsorship, including trademarks, service marks, trade dress, brand names, certification marks, logos, slogans, rights in designs, industrial designs, corporate names, trade names, business names, geographic indications and other designations of source, origin, sponsorship, endorsement or certification, together with the goodwill associated with any of the foregoing, in each case whether registered or unregistered, and all applications and registrations therefor.

“Transaction Documents” means this Agreement, [the Guarantee,] the FOMB Protocol Agreement and any other agreement entered into by Operator, Owner or Administrator from time to time in connection with the transactions contemplated hereby and expressly designated a “Transaction Document” by the parties thereto.

“U.S. District Court” means the United States District Court for the District of Puerto Rico.

“United States” or “U.S.” means the United States of America.

“Unplanned Outage” means a partial or complete disconnection or stoppage of the generating capability of the applicable Legacy Generation Asset that is not a Planned Outage or a Forced Outage.

Section 1.2 Interpretation; Construction.

(a) Headings. The table of contents, articles, titles and headings to sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. Except as otherwise indicated, all references in this Agreement to “Articles”, “Sections”, “Annexes” and “Exhibits” are intended to refer to Articles and Sections of this Agreement and Annexes and Exhibits to this Agreement.

(b) Annexes and Exhibits. The Annexes and Exhibits referred to herein shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein. In the event of an irreconcilable conflict, discrepancy, error or omission, the following descending order of precedence shall govern: (i) this Agreement, (ii) the Annexes and (iii) the Exhibits.

(c) Construction. For purposes of this Agreement: (i) “include”, “includes” or “including” shall be deemed to be followed by “without limitation”; (ii) “hereof”, “herein”,

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“hereby”, “hereto” and “hereunder” shall refer to this Agreement as a whole and not to any particular provision of this Agreement; (iii) “extent” in the phrase “to the extent” shall mean the degree to which a subject or other item extends and shall not simply mean “if”; (iv) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including”; (v) “dollars” and “US\$” shall mean United States Dollars; (vi) the singular includes the plural and vice versa; (vii) reference to a gender includes the other gender; (viii) “any” shall mean “any and all”; (ix) “or” is used in the inclusive sense of “and/or”; (x) reference to any agreement, document or instrument means such agreement, document or instrument as amended, supplemented and modified in effect from time to time in accordance with its terms; (xi) reference to any Applicable Law means such Applicable Law as amended from time to time and includes any successor legislation thereto and any rules and regulations promulgated thereunder; and (xii) reference to any Person at any time refers to such Person’s permitted successors and assigns.

(d) Days and Time. All references to days herein are references to calendar days, unless specified as Business Days, and, unless specified otherwise, all statements of or references to a specific time in this Agreement are to Atlantic Standard Time.

(e) Accounting Principles. All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with then generally accepted accounting principles in the United States, consistently applied.

(f) Negotiated Agreement. The Parties have participated jointly in the negotiation and drafting of this Agreement with the benefit of competent legal representation, and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. In the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions hereof.

(g) References to Generation of Power. The phrases “generate”, “generated”, “generating” and “generation” and any similar phrases herein, when used with respect to Power and Electricity, shall mean and refer to the operation of the Legacy Generation Assets in accordance with this Agreement and the generation of Power and Electricity in accordance with this Agreement and the T&D-Generation Operating Agreement.

(h) Actions Taken Pursuant to Agreement. The Parties acknowledge that this Agreement sets forth procedures and intended results with respect to various circumstances that may arise during the Term. Such circumstances include the “generation” of Power and Electricity; Changes in Law and Force Majeure Events; the preparation, revision and updating of the O&M Budgets, and any other plan, manual, schedule or similar document to be prepared or amended under Article 4 (*Mobilization Period*); the provision of the Mobilization Services and the Demobilization Services; the provision of the O&M Services and additional services; the provision of the Decommissioning Services; and the assignment and transfer of this Agreement. Unless otherwise agreed to by the Parties, any correspondence, report, submittal, revision update, consent or other document or communication given pursuant to this Agreement on account of such a

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circumstance shall be considered as among the Parties to be an action taken pursuant to this Agreement and not an amendment hereto.

ARTICLE 2
PURPOSE; EFFECTIVE DATE; TERM

Section 2.1 Purpose. Owner hereby contracts with Operator for the provision of (i) O&M Services, including the services listed in Article 5 (*O&M Services*) and Annex VII (*Scope of Services*) commencing on the Service Commencement Date, (ii) the Mobilization Services, (iii) the Decommissioning Services and (iv) the Demobilization Services, in each case, subject to the terms and conditions of this Agreement. The Parties acknowledge and agree that (i) this Agreement is a “Partnership Contract” as defined in Act 29, (ii) Operator is a “Contractor” as defined in Act 29, entitled to all of the benefits, rights and protections granted to a “Contractor” thereunder and (iii) Operator is not a “Contractor” as that term is defined in Title 2, Part 200 of the Code of Federal Regulations, Section 200.23.

Section 2.2 Effective Date.

(a) Execution of the Agreement. This Agreement shall become effective on the date that it is executed by the Parties, by which execution the Parties acknowledge and agree that the conditions in Section 2.2(b) (*Effective Date – Conditions to Execution*) have been satisfied (the “Effective Date”).

(b) Conditions to Execution. The following conditions shall have been satisfied prior to the Effective Date:

(i) receipt by the Parties of an Energy Compliance Certificate issued by PREB;

(ii) receipt by the Parties of a resolution adopted by the board of directors of Administrator, in form and substance reasonably acceptable to Administrator and Operator, authorizing the execution, delivery and performance of this Agreement and the transactions contemplated hereby;

(iii) receipt by the Parties of a resolution adopted by the board of directors of Owner, in form and substance reasonably acceptable to Administrator and Operator, authorizing the execution, delivery and performance of this Agreement and the transactions contemplated hereby;

(iv) receipt by the Parties of authorization from the FOMB, in form and substance reasonably acceptable to Administrator and Operator, of the execution, delivery and performance of this Agreement and the transactions contemplated hereby;

(v) receipt by the Parties of approval from the Governor of the Commonwealth or his/her delegate, in form and substance reasonably acceptable to Administrator and Operator, for the execution, delivery and performance of this Agreement and the transactions contemplated hereby;

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- (vi) [receipt by Owner of the Guarantee;]⁹
 - (vii) receipt by Owner of a copy of a certificate as to certain matters of Commonwealth law in the form set forth as Exhibit E (*Form of Commonwealth Certifications*), duly executed by Operator;
 - (viii) receipt by Owner of a Tax Opinion in the form set forth as Exhibit D (*Form of Tax Opinion – Effective Date*) and receipt by Operator of a Reliance Letter;¹⁰
 - (ix) receipt by Owner of a Sworn Statement executed by Operator;
 - (x) Operator’s receipt of, and written agreement to be subject to, the obligations under the Consent Decree and the jurisdiction of the United States District Court for the District of Puerto Rico in connection with the Consent Decree. Such written agreement shall contain the acknowledgement required by Section 20.2(i) (*Representations and Warranties of Operator – Ability to Perform Obligations*) and shall be substantially in the form of Exhibit G (*Form of Acknowledgment of Consent Decree*). To the extent required to effectuate this Section 2.2(b)(x) (*Effective Date – Conditions to Execution*), Operator shall assist Owner in taking all necessary steps to make Operator a signatory to the Consent Decree or to obtain any needed U.S. District Court approval; and
 - (xi) a final plan for the reorganization of PREPA between owner of the Legacy Generation Assets and the owner of the T&D System shall have been approved by the applicable Governmental Bodies.
- (c) Outside Date. If the Effective Date has not occurred by the date specified in the RFP or such later date as the Parties may mutually agree in writing, the Bid Security (as defined in the RFP) shall be held, drawn or returned as provided in the RFP.

Section 2.3 Term.

- (a) Initial Term.¹¹ This Agreement shall be in effect from the Effective Date through the [tenth] ([10]th) anniversary of the Service Commencement Date (such period of time, the “Initial Term”), unless extended or earlier terminated, in whole or in part, in accordance with the terms hereof.
- (b) Extension. Operator and Administrator (acting on Owner’s behalf) may mutually agree to extend, for all or some of the Legacy Generation Assets, the Initial Term for an additional period to be determined at the time and on terms and conditions to be agreed in good faith

⁹ **Note to Draft:** To be included in the event that the entity (with the requisite level of financial capacity) that qualified during the RFQ stage is not the same entity that enters into this Agreement and that pre-qualified entity is required to provide a Guarantee.

¹⁰ **Note to Draft:** Based on the current Conditions Precedent to the Service Commencement Date, it is not expected that a bringdown of the tax opinion would be required. If the Conditions Precedent were to change or be expanded, this analysis would need to be reviewed and confirmed.

¹¹ **Note to Draft:** The term is currently expected to be tied to the Legacy Generation Asset scheduled to be in service for the longest period (in accordance with the PREB retirement schedule, as adjusted if needed pursuant to the integration of replacement power and in consideration of the average life of the system as a whole) plus the time to decommission that Legacy Generation Asset.

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(the “Extension Term”); provided that (i) the Extension Term shall not exceed the maximum term permitted under Act 29 at the time of such extension, (ii) to the extent required, a Tax Opinion shall have been delivered to Owner and a Reliance Letter shall have been received by Operator in connection with such Extension Term, (iii) to the extent required by Applicable Law, the conditions precedent to the Effective Date set forth in Section 2.2(b) (*Conditions to Execution*) shall have been satisfied prior to the first date of the Extension Term and (iv) to the extent required by Applicable Law, the Extension Term shall not be effective until approved by the PREB.

(c) Reduction. Upon written notice to Operator, Administrator (acting on behalf of Owner) shall have the right to reduce the scope of the O&M Services, the Decommissioning Services and/or the Term, if and to the extent necessary, (1) in accordance with Section 3.9 (*Qualified Management Contract*), to prevent any adverse effect to the exclusion from gross income of interest on obligations of Owner, its Affiliates or another Governmental Body for federal income tax purposes under the Internal Revenue Code or (2) to comply with the Fiscal Plan or any other Applicable Law or contractual requirement, including in connection with the development of new generation capacity as mandated by the Integrated Resource Plan. In the case of a reduction in the scope of the O&M Services, the O&M Fixed Fee shall be reduced as provided in Section 7.1(b)(iv) (*O&M Fixed Fee*).

ARTICLE 3
OWNERSHIP OF THE LEGACY GENERATION ASSETS

Section 3.1 Ownership. The Legacy Generation Assets are and shall be owned by Owner throughout the Term, and Operator shall have no ownership interest in the Legacy Generation Assets.

Section 3.2 Engagement of Operator. Operator shall perform the O&M Services as an independent contractor and shall not have any legal, equitable, tax, beneficial or other ownership or leasehold interest in the Legacy Generation Assets. The only compensation payable by Owner to Operator for providing the O&M Services and the Decommissioning Services for the Legacy Generation Assets shall be the O&M Service Fee and the Decommissioning Service Fee, as applicable. Owner shall cause to be funded the Service Accounts in the manner contemplated hereunder for Operator's payment of Pass-Through Expenditures (without limiting Owner's indemnity or other obligations hereunder).

Section 3.3 Use of Legacy Generation Assets. From the Service Commencement Date and for the remainder of the Term thereafter, Operator and Subcontractors shall have the exclusive right (except as set forth in this Agreement), subject to Section 3.5 (*Right of Access*), to enter upon, occupy and use the Legacy Generation Assets and the Generation Sites for the sole purpose of performing the O&M Services and Decommissioning Services, as applicable, in accordance with the terms hereof. Owner shall ensure that Operator and its Subcontractors are provided with all necessary access to exercise such right.

Section 3.4 Liens. From the Service Commencement Date and for the remainder of the Term thereafter, Operator shall keep the Legacy Generation Assets free and clear of any and all Liens (other than Permitted Liens) arising out of or in connection with any acts, omissions or debts of Operator[, Guarantor(s)] or [its][their] Affiliates. Nothing in this Agreement shall be deemed to create any Lien in favor of Operator on any asset of Owner, including the Legacy Generation Assets, as security for the obligations of Owner hereunder.

Section 3.5 Right of Access. Upon reasonable notice to Operator, at reasonable times during normal business hours and at their own respective cost and risk, each of Owner, Administrator, PREB and their respective Representatives shall have the right to access the Legacy Generation Assets and all Facility Information for Oversight of Operator's performance of the O&M Services and to otherwise carry out their obligations under Applicable Law; provided that such access shall not interfere with Operator's performance of the O&M Services and may be provided by read-only access where available, or a reasonably equivalent form of access to such information. Owner, Administrator, PREB and their respective Representatives shall comply with all of Operator's access, security (including cybersecurity) and safety procedures when exercising such right of access. Owner shall be responsible for the security of all access credentials provided to, and each access made and use and disclosure of Facility Information by, Owner, Administrator, PREB and their respective Representatives hereunder. At Administrator's request and sole cost and expense, Operator shall provide Administrator with dedicated on-site office space and access to and use of office facilities and equipment located at Operator's facilities in the Commonwealth or another suitable site mutually agreed upon; provided that such space is reasonable and adequate to enable Administrator to exercise its Oversight rights and responsibilities under this Agreement.

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Section 3.6 Exclusivity. The Parties covenant and agree that Operator, Subcontractors and their respective Representatives shall be the sole and exclusive providers of O&M Services with respect to the Legacy Generation Assets and that Operator shall not (i) generate Power and Electricity using the Legacy Generation Assets other than on behalf of or with the approval of Owner (or Administrator, if applicable) or PREB in accordance with Applicable Law or (ii) use the Legacy Generation Assets (A) for any purpose other than the purposes contemplated hereby or (B) to serve or benefit any person other than Owner.

Section 3.7 Essential Public Service. The Parties acknowledge that Owner's provision of the Power and Electricity requirements of the Commonwealth constitutes an essential public service; it being understood that such acknowledgement shall not impose any obligation on the Parties other than those set forth in this Agreement. Owner acknowledges that Operator shall rely on (i) the certifications, resolutions, authorizations and approvals referred to in Section 2.2 (*Effective Date*) and (ii) the funding of the Service Accounts caused by Owner in the manner contemplated hereunder, in each case in order for Operator to (A) perform the O&M Services and Decommissioning Services under this Agreement and (B) have the opportunity to earn the applicable Service Fee in full.

Section 3.8 Reporting Obligations. In accordance with Sections IV and V of Annex VII (*Scope of Services – Testing, Reports and Records; Finance and Accounting Services*) Operator shall provide (i) Facility Information (both financial and operational), as reasonably available (and in any event on a monthly basis), to support Owner's financing activities, including Owner's administration of debt service and Owner's required disclosure and tax requirements, and (ii) upon the request of Owner and/or Administrator, assistance to Owner and Administrator in connection with Owner's preparation of reports and other documents to satisfy Owner's reporting requirements.

Section 3.9 Qualified Management Contract.

(a) Generally. The Legacy Generation Assets have been financed with obligations the interest on which is exempt from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code. The Parties intend for this Agreement to constitute a "qualified management contract" under Revenue Procedure 2017-13, such that the provision of O&M Services by Operator under this Agreement does not adversely affect the exclusion from gross income for federal income tax purposes under the Internal Revenue Code of the interest on such obligations. The Tax Opinion and the Reliance Letter delivered as of the Effective Date have been delivered on such basis.

(b) Covenants.

(i) Operator covenants and agrees that: (A) neither it nor any direct or indirect owner of an equity interest in it is entitled to any U.S. federal income tax benefits relating to the Legacy Generation Assets that are available to an owner or lessor of the Legacy Generation Assets covered by this Agreement; (B) it shall not take any tax position inconsistent with it being a service provider with respect to such Legacy Generation Assets; and (C) it shall not, and shall not permit or enable any direct or indirect owner of any equity interest in it to, claim any depreciation or amortization deduction, investment tax credit or deduction for any payment as rent, with respect to the Legacy Generation Assets.

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(ii) Owner, Administrator and Operator each covenant and agree that the terms of this Agreement shall be construed so as to comply with the requirements of Revenue Procedure 2017-13. To the extent that this Agreement is determined to fail to comply with Revenue Procedure 2017-13 for any reason or otherwise is determined to result in private business use of the Legacy Generation Assets within the meaning of Section 141 of the Internal Revenue Code, the Parties agree that they shall use reasonable efforts to amend the terms of this Agreement in order to comply with Revenue Procedure 2017-13 and Section 141 of the Internal Revenue Code to prevent any adverse effect to the exclusion from gross income of the interest on obligations of Owner, its Affiliate or another Governmental Body for federal income tax purposes under the Internal Revenue Code.

(c) PREB Actions. The Parties hereby acknowledge and agree that to the extent PREB (i) is not permitted under Applicable Law to carry out its rights, duties and obligations under this Agreement (“PREB Actions”), all of which PREB is deemed to have acknowledged by delivery of the Energy Compliance Certificate, or (ii) ceases to be an entity of the government of the Commonwealth, the related PREB Actions shall automatically become the rights, duties and obligations of Administrator. In the event that such PREB Actions become the rights, duties and obligations of Administrator, Administrator shall exercise such rights, duties and obligations (x) taking into account the standards, processes and procedures previously used by PREB with respect to the PREB Actions, (y) in a manner that does not adversely affect the exclusion from gross income of interest on obligations of Owner, its Affiliates or another Governmental Body for federal income tax purposes under the Internal Revenue Code and (z) taking into account any obligations under Section 10.1 of Act 120, to the extent applicable.

ARTICLE 4
MOBILIZATION PERIOD

Section 4.1 Mobilization Period Generally.

(a) Role of Operator. Throughout the Mobilization Period, Operator shall not provide the O&M Services or otherwise be responsible for the Legacy Generation Assets, but shall, subject to and conditioned upon Owner providing funding pursuant to Section 4.6(b) (*Mobilization Period Compensation – Mobilization Service Fee*), solely provide the Mobilization Services as described in the Mobilization plan set forth in Annex V (*Mobilization Plan*) (the “Mobilization Plan”). The Mobilization Services are intended to ensure an orderly transfer of the care, custody and control of the Legacy Generation Assets to Operator by the Target Service Commencement Date without disruption of power supply.

(b) Owner and Administrator Cooperation. Each of Owner and Administrator shall take all such actions as may be reasonably necessary to enable or assist Operator in providing the Mobilization Services, including (i) providing Operator’s Representatives with a designated space and facilities at Owner’s principal offices and/or the Generation Sites for their use throughout the Mobilization Period, (ii) allowing access, during normal business or operational hours (as may be applicable and relevant) and at such other times as are required, to Owner’s premises for the purpose of providing the Mobilization Services, (iii) cooperating with and assisting, and causing its Representatives to cooperate with and assist, Operator in its performance of the Mobilization Services and its efforts to timely satisfy the Operator Service Commencement Date Conditions and (iv) encouraging and facilitating a positive and cooperative working relationship with respect to the implementation and completion of the Mobilization Plan and the performance of the Mobilization Services.

(c) Administrative Expense Treatment.

(i) No later than ten (10) Business Days after the Effective Date, Owner shall file a motion with the Title III Court seeking administrative expense treatment for any accrued and unpaid amounts required to be paid by Owner under this Agreement during the Mobilization Period, including the Mobilization Service Fee.

(ii) Operator shall have the right to terminate this Agreement upon not less than thirty (30) days’ prior written notice to Administrator (with a copy to PREB) (A) if such motion has not been approved by the Title III Court on or before the date that is ninety (90) days following the date on which such motion is filed, which ninety (90) day period may be extended for an additional forty-five (45) days by Administrator at its sole discretion, or such later date as Administrator and Operator may agree or (B) if such approval has been reversed on appeal.

(iii) In the event of the termination of this Agreement pursuant to this Section 4.1(c) (*Mobilization Period Generally – Administrative Expense Treatment*), Operator shall retain any Mobilization Service Fee earned as of the effective date of such termination, and, within five (5) Business Days of the effective date of such termination, shall return to Administrator any amounts held in the Mobilization Account in excess of any earned Mobilization Service Fee. This Agreement (other than with respect to the aforementioned payment obligations and any

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limitations on liability set out elsewhere in this Agreement, each of which shall continue in effect) shall thereafter become void and have no effect, without any liability on the part of any Party or its Affiliates or Representatives in respect thereof, except that nothing herein shall relieve any party from liability that cannot be waived as a matter of Applicable Law, claims of fraud or intentional breach or misrepresentation; provided that, in any such event, the limitations of liability specified in this Agreement (including Section 14.6(d) (*Remedies Upon Early Termination – Additional Remedies*) and Section 19.3 (*Limitation on Liability*)) shall, notwithstanding the foregoing, continue to apply. Furthermore, the remedies provided in this Section 4.1(c) (*Mobilization Period Generally – Administrative Expense Treatment*) shall be the sole and exclusive remedies of the Parties for any termination of this Agreement pursuant Section 4.1(c) (*Mobilization Period Generally – Administrative Expense Treatment*).

Section 4.2 Operator Responsibilities. As soon as practicable after the Effective Date but in any event prior to the Target Service Commencement Date (subject to Owner and Administrator complying with their obligations set forth in Section 4.3 (*Owner and Administrator Responsibilities*)), Operator shall satisfy the following conditions precedent to (i) Owner's obligations to handover to Operator the O&M Services and other rights and responsibilities with respect to the Legacy Generation Assets pursuant to Section 4.7(b) (*Closing the Mobilization Period – Establishment of Service Commencement Date*) and (ii) the occurrence of the Service Commencement Date:

(a) Mobilization Plan. Operator shall carry out and complete the Mobilization Plan, and shall provide for management, technical, administrative, engineering, labor relations and other personnel necessary in connection therewith.

(b) Handover Checklist. On or prior to the tenth (10th) day of each month, Operator shall provide Administrator written monthly reports with respect to Operator's performance of the Mobilization Services, including a copy of the Handover Checklist updated to reflect the progress of each item, the percentage completion for each item, the dollars expended for each item, and the identification of any risks to the completion of the Handover Checklist tasks, listed therein. From time to time during the Mobilization Period, in light of experience developed up to such point in the Mobilization Period, the Handover Checklist shall be adjusted, updated or otherwise modified by Operator and Administrator, each acting reasonably, as necessary to reflect such experience.

(c) [Confirmation of Guarantee. Operator shall execute and deliver a confirmation to Administrator that the Guarantee remains in full force and effect.]

(d) Required Insurance. Operator shall submit to Administrator certificates of insurance for all Required Insurance to be effective as of the Service Commencement Date.

(e) Generation Emergency Response Plan. As soon as reasonably practicable, but not less than ninety (90) days, following the Effective Date, Operator shall provide Administrator and PREB, for their information and approval, with a plan of action that takes effect from the Service Commencement Date and outlines the procedures and actions necessary for responding to any emergency affecting or reasonably likely emergency that could affect the Legacy Generation Assets after the Service Commencement Date (the "Generation Emergency Response

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Plan”), including fire, weather, environmental, health, safety and other potential emergency conditions, which Generation Emergency Response Plan shall become effective on the Service Commencement Date. The Generation Emergency Response Plan shall (i) provide for appropriate notice of any such emergency to PREB and all other Governmental Bodies that Operator is notified in writing have jurisdiction over the Legacy Generation Assets, (ii) establish measures that facilitate coordinated emergency response actions by all appropriate Governmental Bodies, (iii) specifically include outage minimization and response measures and (iv) assure the timely availability of all personnel required to respond to any emergency in accordance with the Contract Standards. In the event of a Declared Emergency or Major Disaster, such Generation Emergency Response Plan shall be updated by Operator as necessary or appropriate.

(f) Employment Evaluations. As soon as reasonably practicable, but not less than sixty (60) days, following the Effective Date (the “Interview Deadline”), Operator shall use commercially reasonable efforts, in accordance with the Owner Employee Interview Plan set forth in Schedule 1 to Annex VIII (*Operator Employment Requirements*), to interview and evaluate as candidates for employment at Operator, effective as of the Service Commencement Date, the regular employees of Owner and its Affiliates (other than Owner’s transmission and distribution employees who have been hired by T&D Operator) who (i) are currently and remain employed by Owner and its Affiliates as of the Interview Deadline or are hired by Owner or its Affiliates on or after the Effective Date in the ordinary course of business consistent with the past practices of Owner and its Affiliates to replace any existing employee of Owner, and (ii) apply to Operator in a job category Operator wishes to fill (collectively, the “Owner Employees”). For the avoidance of doubt, Operator shall not be liable for severance or other pay or benefits for Owner Employees who are not hired by Operator, including those to whom an offer of employment is made but who do not accept such offer. Owner and its Affiliates shall waive any non-competition, confidentiality or other obligation arising under any employment contract between Owner or Affiliate and any Owner Employee that may otherwise restrict any of Owner Employee’s rights to be employed by Operator. Owner shall provide Operator with the following information regarding Owner Employees promptly on request: (x) job description for current and any prior positions occupied by such Owner Employee, (y) date of employment and (z) current salary.

(g) Employment Offers. Operator shall give priority in hiring to any Owner Employees who meet Operator’s stated requirements for employment as set forth in Annex VIII (*Operator Employment Requirements*) over other equally qualified and equally evaluated applicants for the same job category that are not Owner Employees, it being understood that (i) Operator shall not be required to hire all or substantially all of the Owner Employees and (ii) the determination of which Owner Employees to hire shall be made by Operator in Operator’s sole discretion, acting in good faith. Each Owner Employee who accepts an offer of employment with Operator pursuant to this Section 4.2(g) (*Operator Responsibilities – Employment Offers*) shall be referred to as a “Hired Former Employee of Owner.” On the Service Commencement Date and during the Term, Operator shall employ such other employees, including any employees of Operator or any of its Affiliates as of the Effective Date hired for the operation of the Legacy Generation Assets (“Other Employees” and, together with the Hired Former Employees of Owner, the “Operator Employees”), as are necessary to provide the O&M Services. The following initial terms and conditions of employment shall apply to the Hired Former Employees of Owner, but not to any Other Employees:

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(i) Offers of employment shall remain open for a period of ten (10) Business Days. Any such offer that is accepted within such ten (10) Business Day period shall thereafter be irrevocable until the Service Commencement Date.

(ii) Offers of employment shall provide for employment with Operator on terms and conditions that are set at Operator's sole discretion, but shall in all cases provide for (A) a base salary or regular hourly wage rate at least equal to the base salary or wage rate provided by Owner or its Affiliates (as applicable) to the Owner Employee immediately prior to the Service Commencement Date, (B) the employee fringe benefits established in Act 26 and (C) any other benefits required to be offered to Owner Employees pursuant to Act 120, as any such benefits may have been restricted, conditioned, modified or annulled by Act 3, Act 26 and Act 66.

(h) Periodic Reports.

(i) Operator shall provide Administrator with detailed monthly reports as Administrator may reasonably request from time to time with respect to Operator's performance of the Mobilization Services, including the progress against the Handover Checklist and any other completion schedules and milestones included in the Mobilization Plan, and including total actual dollar expenditures and any request for information submitted by Operator to Owner. In addition, Administrator may reasonably request any other periodic reports from time to time. In connection therewith, Operator shall provide Administrator (with copy to PREB) with any other information that (A) Administrator may reasonably request, including performance reports related to any of the Mobilization Services, and (B) may be reasonably produced from records maintained by Operator in the normal course of business consistent with the provisions of this Agreement relating to document retention.

(ii) Operator shall promptly advise Administrator of any actual or potential failure or inability to achieve milestones by the dates set forth in the Mobilization Plan, and shall promptly report to Administrator any problems encountered in performing the Mobilization Services that Operator has been unable to promptly and adequately resolve.

(i) Consumables, Spare Parts and Capital Spare Parts.¹² Promptly (and in any event within sixty (60) days) following the Effective Date, and in accordance with the Mobilization Plan, Operator shall review the inventory of Consumables, Spare Parts and Capital Spare Parts for each Legacy Generation Asset and submit to Administrator (with copy to Owner), for its review and approval, a recommendation in consultation with the original equipment manufacturers of any additional Consumables, Spare Parts and Capital Spare Parts necessary to provide Operator with a supply of such Consumables, Spare Parts and Capital Spare Parts to allow Operator to comply with its obligations under this Agreement for twelve (12) months following the Service Commencement Date (with any modifications deemed to be appropriate by Administrator). After such twelve (12) month period, it shall be Operator's responsibility to procure any additional, necessary Consumables and Spare Parts, and any additional, necessary Capital Spare Parts in accordance with Section 5.6

¹² **Note to Draft:** Capital Spare Parts are included here (and in Section 5.6) to permit Operator the opportunity to recommend whether any such major parts are needed to have on hand in order to operate the Legacy Generation Asset(s) in accordance with this Agreement.

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(*Option to Propose Capital Spare Parts*), in each case in accordance with the then-approved Operating Budget.

(j) Representations. The representations of Operator set forth in Section 20.2 (*Representations and Warranties of Operator*) [and Guarantor(s) set forth in its Guarantee] shall be true and correct in all material respects as of the Service Commencement Date (other than any representations that are expressly made as of an earlier date), as if made on and as of the Service Commencement Date, and [both] Operator [and Guarantor(s)] shall deliver to Administrator a certificate of an authorized officer of such entity to that effect.

(k) Notice of Default. Operator shall provide to Administrator, promptly following the receipt thereof, copies of any notice of default, breach or noncompliance received under or in connection with any Governmental Approvals, if any, or Subcontract pertaining to the Mobilization Period.

(l) Operations and Maintenance Procedures. As soon as practicable (and in any event within sixty (60) days) after the Effective Date and at such time and in such manner as to permit Operator to perform its obligations under Section 4.2 (*Operator Responsibilities*), Operator shall prepare and submit to Administrator (with copy to Owner) procedures related to the operation and maintenance and fuel supply of each Legacy Generation Asset (such procedures, the "Operations and Maintenance Procedures"), which procedures shall be developed in accordance with Prudent Industry Practice. Within thirty (30) days following its receipt of such proposed Operations and Maintenance Procedures, Administrator, acting reasonably, shall provide Operator comments on the appropriateness of the proposed Operations and Maintenance Procedures and recommend any changes or modifications it believes are necessary or appropriate. Within thirty (30) days following receipt of Administrator's comments, if any, or the end of forty-five (45) days following Administrator's receipt of the proposed Operations and Maintenance Procedures, if Administrator has no comments, Operator shall submit to Administrator for its review and approval the revised Operations and Maintenance Procedures incorporating or rejecting any of the modifications or changes suggested by Administrator, together with an explanation of any of Administrator's comments, as Operator shall reasonably deem appropriate in its sole discretion. Such Operations and Maintenance Procedures shall be updated by Operator, subject to review by Administrator, on an annual basis as necessary or appropriate.

(m) Safety and Hazardous Materials Procedures Manual. Promptly (and in any event within sixty (60) days) following the Effective Date, Operator shall prepare and submit to Administrator (with copy to Owner), for its information and approval, a manual, for each applicable Legacy Generation Asset and consistent with the Safety and Hazardous Materials Procedures Manual outline set forth in Schedule 1 to Annex VII (*Scope of Services*), that sets forth an illness and injury prevention program, a description of Operator's participation in workplace safety and health management programs and a risk management plan that meets the latest requirements of Applicable Law (the "Safety and Hazardous Materials Procedures Manual"). Within thirty (30) days following its receipt of such proposed Safety and Hazardous Materials Procedures Manual, Administrator, acting reasonably, shall provide Operator comments on the appropriateness of the proposed Safety and Hazardous Materials Procedures Manual and recommend any changes or modifications it believes are necessary or appropriate. Within thirty (30) days following receipt of Administrator's comments, if any, or the end of forty-five (45) days following Administrator's

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receipt of the proposed Safety and Hazardous Materials Procedures Manual, if Administrator has no comments, Operator shall submit to Administrator for its review and approval the revised Safety and Hazardous Materials Procedures Manual incorporating or rejecting any of the modifications or changes suggested by Administrator, together with an explanation of any of Administrator's comments, as Operator shall reasonably deem appropriate in its sole discretion. Such Safety and Hazardous Materials Procedures Manual shall be updated by Operator, subject to review by Administrator, on an annual basis as necessary or appropriate.

(n) Operator Training Program. Promptly (and in any event within ninety (90) days) following the Effective Date, Operator shall prepare and submit to Administrator (with copy to Owner), for its information and approval, a written program, for each applicable Legacy Generation Asset, that ensures all personnel involved in providing the O&M Services have the required knowledge, training and experience for their respective assigned duties, including special training required for meeting all requirements under the Consent Decree and for the handling Hazardous Materials (the "Operator Training Program"). Within thirty (30) days following its receipt of such proposed Operator Training Program, Administrator, acting reasonably, shall provide Operator comments on the appropriateness of the proposed Operator Training Program and recommend any changes or modifications it believes are necessary or appropriate. Within thirty (30) days following receipt of Administrator's comments, if any, or the end of forty-five (45) days following Administrator's receipt of the proposed Operator Training Program, if Administrator has no comments, Operator shall submit to Administrator for its review and approval the revised Operator Training Program incorporating or rejecting any of the modifications or changes suggested by Administrator, together with an explanation of any of Administrator's comments, as Operator shall reasonably deem appropriate in its sole discretion. Such Operator Training Program shall be updated by Operator, subject to review by Administrator, on an annual basis as necessary or appropriate.

(o) Annual Performance Test. Within sixty (60) days following the Effective Date, Operator shall (i) coordinate with T&D Operator to develop and agree upon the requirements and procedures for an annual performance test (the "Annual Performance Test") to determine the Tested Capacity and Heat Rate for each Legacy Generation Asset with respect to each Contract Year, which procedures shall include notice to Administrator, Owner and T&D Operator of the date of the planned Annual Performance Test and permit each of Administrator, Owner and T&D Operator to send onsite witnesses to such test, and (ii) perform the first of such Annual Performance Tests, which shall determine the Tested Capacity and Heat Rate for each Legacy Generation Asset for the first Contract Year.

(p) T&D-Generation Operating Agreement. Operator shall have become a party to the T&D-Generation Operating Agreement and shall have agreed to the initial Agreed Operating Procedures set forth therein.

Section 4.3 Owner and Administrator Responsibilities. As soon as practicable after the Effective Date but in any event prior to the Target Service Commencement Date and at such time and in such manner as to permit Operator to perform its obligations under Section 4.2 (*Operator Responsibilities*), Owner and Administrator shall, at Owner's sole cost, satisfy the following conditions precedent (i) to Operator's obligations to take over the O&M Services and other rights and responsibilities with respect to the Legacy Generation Assets pursuant

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to Section 4.7(b) (*Closing the Mobilization Period – Establishment of Service Commencement Date*) and (ii) to the occurrence of the Service Commencement Date:

(a) Representations. The representations of Owner set forth in Section 20.1 (*Representations and Warranties of Owner*) shall be true and correct in all material respects as of the Service Commencement Date as if made on and as of the Service Commencement Date (other than any representations that are expressly made as of an earlier date), and Owner shall deliver to Operator a certificate of an authorized officer to that effect.

(b) Access. Owner shall provide Operator, its Subcontractors, if any, and their Representatives with access to the Legacy Generation Assets and the Generation Sites for the sole purpose of performing the Mobilization Services in accordance with the terms hereof.

(c) Initial O&M Budget. Administrator shall provide Operator with the Initial O&M Budgets as soon as practicable following the Effective Date, which Initial O&M Budgets shall have been approved by PREB and shall reflect the applicable Rate Order, in the case of the Operating Budget, and the then-current Fuel Adjustment Clause, in the case of the Fuel Budget.¹³

(d) Additional Facility Contracts Between Effective Date and Service Commencement Date. During the Mobilization Period, the Parties agree that it is the intent that Owner and Administrator shall not amend or enter into any new Facility Contracts; provided, however, that:

(i) if Owner and Administrator identify a need to do so, then Administrator shall notify Operator of such need and coordinate with Operator to implement any such amendment or new Facility Contract; provided that as part of such consultation process the Parties shall review the impact of any such amendment or new Facility Contract on the Initial O&M Budgets; and

(ii) following such consultation process, Administrator shall ultimately determine if such amendment or new Facility Contract is required; provided that such amendment or new Facility Contract shall not be entered into if it causes Operator to exceed the Initial O&M Budgets.

(e) Notices with respect to Facility Contracts. Owner shall (i) notify each counterparty to a Facility Contract in writing of Owner's delegation of authority to Operator with respect to such Facility Contract in the manner contemplated by Section 5.2(a) (*Facility Contracts – Generally*) and (ii) have obtained all required consents from such counterparties as may be required thereby in connection with such delegation of authority and (iii) take all such other actions as may be necessary for Operator to be able to comply with its obligations under Section 5.2(a) (*Facility Contracts – Generally*).

(f) Mobilization Plan. Owner and Administrator shall perform all obligations of Owner and Administrator agreed in the Mobilization Plan.

¹³ **Note to Draft:** The Initial O&M Budget will be based on the then-current Rate Order, which will be provided in advance for review in the data room. Additionally, Operator will have input in subsequent budgets (see Section 7.3(b)).

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(g) Labor. Owner and Administrator shall use commercially reasonable efforts to provide Operator the opportunity to hire Owner Employees in a manner consistent with the Proposal submitted by Operator or its Affiliate.

(h) Service Accounts. Owner shall provide evidence satisfactory to Operator that it has opened the Service Accounts and that each Service Account shall have been funded by such date and in an amount not less than the amount required to be funded in accordance with Section 7.6 (*Service Accounts*).

(i) Consumables, Spare Parts and Capital Spare Parts.

(i) Subject to Administrator's approval of the recommendation provided by Operator pursuant to Section 4.2(i) (*Operator Responsibilities – Consumables, Spare Parts and Capital Spare Parts*), Owner shall procure and deliver to the applicable Generation Site the additional Consumables, Spare Parts and Capital Spare Parts, if any, in accordance with such recommendation, to allow Operator to comply with its obligations under this Agreement for twelve (12) months following the Service Commencement Date. After such twelve (12) month period, it shall be Operator's responsibility to procure any additional, necessary Consumables and Spare Parts, and any additional, necessary Capital Spare Parts in accordance with Section 5.6 (*Option to Propose Capital Spare Parts*), in each case in accordance with the then-approved Operating Budget.

(ii) For the avoidance of doubt, title to the Consumables, Spare Parts and Capital Spare Parts shall remain vested in, or be vested in, the Owner at all times.

(j) Delivery of Fuel. Subject to Operator recommending quantities in accordance with the Operations and Maintenance Procedures, which shall specifically detail the manner in which necessary quantities of Fuel shall be determined and delivered, Owner shall procure and supply the initial delivery of Fuel to each Legacy Generation Asset sufficient to allow Operator to comply with its obligations under this Agreement for one (1) month after the Service Commencement Date.

Section 4.4 Governmental Approvals and Tax Matters. Except as otherwise provided herein, the Parties intend that all Governmental Approvals shall continue to name Owner as the permittee or applicant and that Operator shall only be a permittee, applicant, co-permittee or co-applicant if and to the extent required by Applicable Law. Promptly following the Effective Date, Operator, Administrator and Owner shall coordinate identifying the Governmental Approvals required for the commencement on the Service Commencement Date of the O&M Services (the "Commencement Date Governmental Approvals"). Once the Parties have identified the Commencement Date Governmental Approvals: (i) (A) Operator shall coordinate with Owner and Administrator to prepare for and support Owner's efforts related to the transfer or assignment, to the extent required by Applicable Law, or the reissuance or assistance with the issuance of the Commencement Date Governmental Approvals, (B) Owner, with Operator's assistance, shall submit complete applications and take all other steps necessary under Applicable Law to obtain and maintain all required Commencement Date Governmental Approvals and (C) Owner shall provide Operator and Administrator with copies of any such Commencement Date Governmental Approvals; and (ii) Operator and Administrator shall cooperate with Owner in good faith in

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identifying, preparing, applying for, obtaining and maintaining the Commencement Date Governmental Approvals.

Section 4.5 Conditions Precedent to Service Commencement Date. The Service Commencement Date shall not occur, and the obligations of the Parties to proceed with their respective obligations hereunder on, and after, the Service Commencement Date shall not commence, until all of the following conditions precedent (the “Service Commencement Date Conditions”) are, unless otherwise mutually agreed between the Parties in writing, either satisfied as determined, or waived in writing, by (i) Administrator, in the case of Section 4.5(a) (*Conditions Precedent to Service Commencement Date – Operator Responsibilities*), (ii) Operator, in the case of Section 4.5(b) (*Conditions Precedent to Service Commencement Date – Owner and Administrator Responsibilities*) or (iii) both Administrator and Operator, in the case of Section 4.5(c) (*Conditions Precedent to Service Commencement Date – Governmental Approvals*), Section 4.5(d) (*Conditions Precedent to Service Commencement Date – Acceptability and Effectiveness of Documents*), Section 4.5(e) (*Conditions Precedent to Service Commencement Date – No Governmental Prohibitions or Injunctions*), Section 4.5(f) (*Conditions Precedent to Service Commencement Date – Initial O&M Budgets*), Section 4.5(g) (*Conditions Precedent to Service Commencement Date – Delivery of Fuel*) and Section 4.5(h) (*Conditions Precedent to Service Commencement Date – FOMB Protocol Agreement*).

(a) Operator Responsibilities. Operator shall have fulfilled all of its obligations with respect to the Mobilization Period under this Agreement, including Section 4.2 (*Operator Responsibilities*) (the “Operator Service Commencement Date Conditions”).

(b) Owner and Administrator Responsibilities. Owner and Administrator shall have fulfilled all of their respective obligations with respect to the Mobilization Period under this Agreement, including Section 4.3 (*Owner and Administrator Responsibilities*) (the “Owner Service Commencement Date Conditions”).

(c) Governmental Approvals. All Commencement Date Governmental Approvals shall have been issued or obtained by the Parties and shall be in full force and effect.

(d) Acceptability and Effectiveness of Documents. All of the documents and instruments identified in this Article 4 (*Mobilization Period*) shall be in form and substance reasonably satisfactory to Administrator and Operator and shall be valid, in full force and effect and enforceable against each party thereto on the Service Commencement Date. No such document, instrument or agreement shall be subject to the satisfaction of any outstanding condition precedent except those expressly waived in writing or to be satisfied after the Service Commencement Date. No party to any such document, instrument or agreement shall have repudiated or be in default thereunder, and each Party shall have received such certificates or other evidence reasonably satisfactory to it of such facts as such Party shall have reasonably requested.

(e) No Governmental Prohibitions or Injunctions. No Governmental Body shall have enacted, issued, promulgated or enforced any Applicable Law that shall be in effect, and no injunction shall be in effect, which, in each case, would make it illegal for, or otherwise prohibit or enjoin, any Party’s performance of its obligations hereunder in accordance with the terms of this Agreement from and after the Service Commencement Date.

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(f) Initial O&M Budgets. The Initial O&M Budgets (including any amendment thereto pursuant to Section 4.3(d) (*Owner and Administrator Responsibilities – Additional Facility Contracts Between Effective Date and Service Commencement Date*)) shall have been finalized for purposes of this Agreement in accordance with Section 4.3(c) (*Owner and Administrator Responsibilities – Initial O&M Budgets*).

(g) Delivery of Fuel. Owner shall have procured and delivered the Fuel in accordance with Section 4.3(j) (*Owner Responsibilities – Delivery of Fuel*).

(h) FOMB Protocol Agreement. Each of Operator, Owner, Administrator and the FOMB shall have duly executed a FOMB Protocol Agreement in form and substance satisfactory to the Parties.

Section 4.6 Mobilization Period Compensation.

(a) General. As compensation for the Mobilization Services provided by Operator, Owner shall pay Operator the Mobilization Service Fee. The Mobilization Service Fee shall not be subject to any abatement, deduction, counterclaim or set-off of any kind or nature.

(b) Mobilization Service Fee. The “Mobilization Service Fee” shall be an aggregate amount equal to: (i) (A) the hourly fully allocated cost rate for each category of Operator employee, Affiliate personnel providing Mobilization Services, as set out in Annex IX (*Mobilization Hourly Fully Allocated Rates*); *multiplied by* (B) the number of hours worked by each Operator employee or Affiliate personnel in such category providing Mobilization Services; *plus* (ii) all other necessary and documented costs and expenses incurred by Operator (without markup for profit) that are necessary and reasonable in the course of providing the Mobilization Services and satisfying the Service Commencement Date Conditions, including the cost of any Subcontractors and/or consultants providing Mobilization Services.¹⁴

(c) Funding.

(i) Owner shall establish one or more accounts from which Owner shall draw funds from time to time to pay Operator the Mobilization Service Fee (collectively, the “Mobilization Account”). Promptly after the Effective Date (and in any event within five (5) Business Days), Operator shall deliver to Administrator, for its review and approval, an estimate of the anticipated Mobilization Service Fee for the following two (2) months of the Mobilization Period. Within ten (10) days of delivery of such estimate, and prior to and as a condition to the commencement of any Mobilization Services, Administrator shall provide Operator evidence reasonably satisfactory to Operator that an amount equal to the sum of the anticipated Mobilization Service Fee for the following two (2) months has been funded in the Mobilization Account by Owner. Prior to the end of each month during the Mobilization Period, Operator shall deliver to Administrator an estimate of the anticipated Mobilization Service Fee for the following two (2) months. No later than the tenth (10th) Business Day of the following month during the Mobilization Period, Owner shall replenish the Mobilization Account so as to maintain a balance in the

¹⁴ **Note to Proponent:** The estimate of the total cost of mobilization (including the total hourly fully allocated cost rate, subcontractor costs, and other expenses) and any required personnel should be provided in the submission to the RFP, see Annex IX.

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Mobilization Account at the end of each calendar month equal to the sum of the anticipated Mobilization Service Fee for the subsequent two (2) months (excluding from the calculation any disputed amounts with respect to the Mobilization Service Fee that remain in the Mobilization Account), and so on subsequently until the Mobilization Services conclude.

(ii) In the event a Dispute arises between Operator and Administrator in connection with Operator's estimate of the anticipated Mobilization Service Fee, the matter shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, a "Mobilization Service Fee Estimate Dispute").

(d) Invoices

(i) On or prior to the tenth (10th) day of each month during which Operator is performing the Mobilization Services, Operator shall provide Administrator with a monthly invoice describing in reasonable detail the prior calendar month's Mobilization Services and the corresponding Mobilization Service Fee for such prior calendar month. All invoices shall comply with the requirements set forth in Section 9.2(c) (*Anti-Corruption and Sanctions Laws – Policies and Procedures*).

(ii) Operator shall provide promptly to Administrator such additional supporting documentation evidencing the provision of the Mobilization Services, if any, including evidence of the payment of any Subcontractor whose fees are included in the Mobilization Service Fee, and the calculation of the Mobilization Service Fee related thereto as Administrator may reasonably request and as may be required by Applicable Law. Administrator shall promptly advise Operator of any disputed invoice amounts, and all such disputes which Operator and Administrator are unable to resolve shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, a "Mobilization Service Fee Dispute").

(iii) Payments of undisputed amounts under any invoice shall be due within thirty (30) days of Administrator's receipt of such invoice.

(iv) All invoices and supporting documentation shall be provided by electronic transmission upon Administrator's reasonable request.

(e) Audits. At any time and from time to time during and until the expiration of six (6) years following the end of the Mobilization Period, Administrator may, upon reasonable prior notice, Audit (or cause to be Audited) the books and records of Operator or any Subcontractor in connection with any requests for payment of the Mobilization Service Fee, together with the supporting vouchers and statements, and the calculation of the Mobilization Service Fee. Subject to the dispute resolution provisions in Article 15 (*Dispute Resolution*), each payment made by Owner hereunder shall be subject to subsequent adjustment. Following the determination that any such payment adjustment is required, the Party required to make payment shall do so within thirty (30) days of the date of such determination.

Section 4.7 Closing the Mobilization Period.

(a) Notice of Service Commencement Date. Operator shall provide Administrator with prompt written notice (with a copy to PREB), including a completed Handover

Checklist, at such time as Operator determines it has satisfactorily completed all items on the Handover Checklist and is therefore ready to perform all O&M Services under this Agreement. Administrator shall respond within ten (10) Business Days whether Administrator confirms or disputes the completion of any item on the Handover Checklist, together with a written statement providing reasonable detail and supporting evidence for the basis of any dispute. In the event Administrator disputes completion of any item(s) on the Handover Checklist, Operator may advise Owner of its disagreement with Administrator's decision. The Parties shall attempt to resolve in good faith any disputed item(s) and, in the event the Parties are unable to resolve such disputed item(s) within thirty (30) days, such disputed item(s) only shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, a "Handover Checklist Dispute").

(b) Establishment of Service Commencement Date. The "Service Commencement Date" shall be the date on which a handover to Operator of the O&M Services occurs, which shall be (i) the first (1st) Business Day of a calendar month that is at least three (3) Business Days following the date on which Administrator delivers a certificate to Operator confirming that all Service Commencement Date Conditions have been met or (ii) such other date as the Parties may agree. The satisfaction or waiver of all the Service Commencement Date Conditions is required for the achievement of the Service Commencement Date.

Section 4.8 Failure of Service Commencement Date Conditions.

(a) Remedy for Delay of Service Commencement Date Conditions. If any of the Operator Service Commencement Date Conditions are not satisfied or waived by Administrator on or before the date that is ninety (90) days following the Target Service Commencement Date or such later date as Administrator and Operator may agree (such date, the "Delay Period Date"), and the failure to satisfy any outstanding Operator Service Commencement Date Condition(s) is not caused by any Force Majeure Event or Owner Fault, and the other Service Commencement Date Conditions have been or are immediately capable of being satisfied or waived by the Delay Period Date, Operator shall pay to Owner, as Owner's sole and exclusive remedy for all monetary damages, costs, losses and expenses of whatever type or nature arising from or related to such failure of Operator Service Commencement Date Conditions to occur by the Delay Period Date, liquidated damages (the "Delay Liquidated Damages"), calculated from the first Business Day immediately following the Delay Period Date, in the amount of US\$[•]¹⁵ per week for each week (or for any portion of a week on a Pro Rata basis) the Target Service Commencement Date is delayed beyond the Delay Period Date, up to a maximum of US\$[•]¹⁶. Operator shall not be required to pay Delay Liquidated Damages after the earlier of (i) the date on which the Operator Service Commencement Date Conditions are satisfied by Operator or waived by Administrator or (ii) the date of termination of this Agreement pursuant to Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*); provided that Operator shall pay any accrued and unpaid Delay Liquidated Damages as of such earlier date. It is understood and agreed by the Parties that if any of the Operator Service Commencement Date Conditions are not satisfied or waived by the Delay Period Date, Owner's damages would be difficult or impossible to

¹⁵ **Note to Proponent:** Please indicate a proposed amount for the per week Delay Liquidated Damages.

¹⁶ **Note to Proponent:** Please indicate a proposed amount for the maximum Delay Liquidated Damages.

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quantify with reasonable certainty, and accordingly, the payment provided for in this Section 4.8(a) (*Failure of Service Commencement Date Conditions – Remedy for Delay of Service Commencement Date Conditions*) is a payment of liquidated damages (and not penalties), which is based on the Parties' estimate of damages Owner would suffer or incur. Operator hereby irrevocably waives any right it may have to raise as a defense that the Delay Liquidated Damages are excessive or punitive.

(b) Termination for Failure of Service Commencement Date Conditions.

(i) Administrator shall have the right, subject to approval by PREB, to terminate this Agreement upon not less than thirty (30) days' prior written notice to Operator if all of the Owner Service Commencement Date Conditions are satisfied but any of the Operator Service Commencement Date Conditions are not satisfied by Operator or waived by Administrator (unless such failure to satisfy the Operator Service Commencement Date Conditions is the result of the acts, omissions or breach of Owner) by the date that is six (6) months following the Target Service Commencement Date or such later date as Administrator and Operator may agree.

(ii) Operator shall have the right to terminate this Agreement upon not less than thirty (30) days' prior written notice to Administrator (with copy to PREB) if all of the Operator Service Commencement Date Conditions are satisfied but any of the Owner Service Commencement Date Conditions are not satisfied by Owner or waived by Operator (unless such failure to satisfy the Owner Service Commencement Date Conditions is the result of the acts, omissions or breach of Operator) by the date that is six (6) months following the Target Service Commencement Date or such later date as Administrator and Operator may agree.

(iii) Each of Administrator and Operator shall have the right to terminate this Agreement upon not less than thirty (30) days' prior written notice to Operator or Administrator (with copy to PREB), respectively, if any of the Service Commencement Date Conditions (other than those referred to in Section 4.8(b)(i) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*) and Section 4.8(b)(ii) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*)) are not satisfied or waived by each of Administrator and Operator by the date that is [nine (9) months] following the Target Service Commencement Date or such later date as Administrator and Operator may agree.

(iv) Notwithstanding anything to the contrary in this Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*), if the Service Commencement Date Conditions are satisfied or waived prior to any such termination right being exercised, then neither Administrator nor Operator shall have the right to terminate this Agreement pursuant to this Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*).

(v) In the event of the termination of this Agreement pursuant to this Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*), (A) Operator shall retain any Mobilization Service Fee earned as of the effective date of such termination, and shall within five (5) Business Days of the effective date of such termination, return to Administrator any amounts held in the Mobilization

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Account in excess of any earned Mobilization Service Fee and (B) Operator shall pay any accrued and unpaid Delay Liquidated Damages as of the effective date of such termination. This Agreement (other than with respect to the aforementioned payment obligations and any limitations on liability set out elsewhere in this Agreement, each of which shall continue in effect) shall thereafter become void and have no effect, without any liability on the part of any Party or its Affiliates or Representatives in respect thereof, except that nothing herein shall relieve any party from liability that cannot be waived as a matter of Applicable Law, claims of fraud or intentional breach or misrepresentation; provided that, in any such event, the limitations of liability specified in this Agreement (including Section 14.6(d) (*Remedies Upon Early Termination – Additional Remedies*) and Section 19.3 (*Limitation on Liability*)) shall, notwithstanding the foregoing, continue to apply. Furthermore, the remedies provided in this Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*) shall be the sole and exclusive remedies of the Parties for any termination of this Agreement pursuant to Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*).

(vi) In addition to and notwithstanding anything to the contrary in this Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*), in the event this Agreement is terminated prior to the Service Commencement Date other than as a result of the acts, omissions or breach of Operator, Operator shall be reimbursed for any reasonable and documented costs and expenses incurred by Operator (without markup for profit) that are necessary and reasonable in the course of terminating the activities undertaken in connection with the Mobilization Services, including reasonable and documented breakage fees for any Subcontractors providing Mobilization Services.

(c) Effect of Force Majeure Events or Owner Fault. The dates in Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*) shall each be extended on a day-for-day basis for the period of any Force Majeure Event or any Owner Fault (except in the case of clauses (ii) and (iii) of Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*), in which case Owner shall not receive any such extension where the delay is caused by any Owner Fault).

ARTICLE 5 O&M SERVICES

Section 5.1 Services Generally. Commencing on the Service Commencement Date, and in exchange for Owner's payment to Operator of all amounts owing to Operator under this Agreement, Operator shall (i) provide management, operation, maintenance, repair and other related services for the Legacy Generation Assets, in each case that are customary and appropriate, or as required by Applicable Law, including the services set forth in this Article 5 (*O&M Services*) and Annex VII (*Scope of Services*), and (ii) establish policies, programs and procedures with respect thereto, to the extent not already established in the Services Documentation (all such services, the "O&M Services"), in each case, in accordance with the Contract Standards and Applicable Law. It is the Parties' intent that except for the rights and responsibilities reserved to Owner and Administrator as set forth in Article 6 (*Rights and Responsibilities of Owner and Administrator*) or as may otherwise be expressly provided in this Agreement, Operator shall (A) be entitled to exercise all of the rights and perform the responsibilities of Owner in providing the O&M Services, and (B) have the autonomy and responsibility to operate and maintain the Legacy Generation Assets and establish the related plans, policies, procedures and programs with respect thereto as provided in this Agreement. In providing such O&M services, Operator must comply with all requirements of Applicable Law, including the requirements of the Consent Decree.

Section 5.2 Facility Contracts.

(a) Generally. Operator, as agent for and on behalf of Owner, shall administer and perform Facility Contracts, if any, and Owner's payment obligations thereunder, which shall be an expense that is paid by Operator as a Pass-Through Expenditure. Notwithstanding the foregoing, (i) Operator shall administer and perform Owner's rights and obligations under such Facility Contracts in such a manner so as not to expand or increase the liabilities assumed by Owner thereunder, other than with respect to an amendment, renewal or expansion of existing Facility Contracts as required to provide the O&M Services or Decommissioning Services hereunder and (ii) Owner shall administer and perform any rights and obligations under such Facility Contracts to the extent that Applicable Law requires Owner's performance of such functions or Applicable Law or such Facility Contract prohibits Owner from delegating such functions. Owner hereby authorizes Operator to enforce Owner's rights under any such Facility Contracts. In the event that the cost of administering and performing Owner's rights and obligations, including enforcement, for any Facility Contract exceeds [\$1,000,000]¹⁷, then such costs shall be subject to approval by Administrator, such approval not to be unreasonably withheld, delayed or conditioned.

(b) Agent Designation. Owner hereby designates and appoints Operator as its agent, and Operator hereby accepts such designation and appointment, for the purpose of entering into Facility Contracts on behalf of and for the account of Owner, as may be necessary or appropriate to operate, maintain and/or decommission the Legacy Generation Assets and to make such additions and extensions thereto in accordance with the terms of this Agreement.

(c) Powers. In such capacity as Owner's designated agent pursuant to Section 5.2(b) (*Facility Contracts – Agent Designation*), Operator shall have full power and

¹⁷ **Note to Draft:** Figures to be confirmed in subsequent draft.

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authority to act on Owner's behalf and to legally bind Owner, subject, in each case, to (i) Operator's action in such regard being consistent with Prudent Industry Practice and (ii) Owner's rights and responsibilities provided in Section 6.1 (*Rights and Responsibilities of Owner*) and the other terms of this Agreement. Operator and Owner shall promptly implement such policies and procedures as may be necessary or appropriate to effect the activities contemplated by this Section 5.2 (*Facility Contracts*) and to separately identify and segregate the equipment, material, supplies and services that Operator is purchasing as agent of Owner from those Operator (or its Affiliates) may be purchasing for its own or another Person's account. Where necessary or required by a Governmental Body or Person, Operator and Owner shall execute and deliver such instruments, agreements, certificates or other evidence confirming Operator's designation, appointment and authority to act as Owner's agent as provide in this Section 5.2 (*Facility Contracts*).

(d) Additional Facility Contracts or Expired Facility Contracts After Service Commencement Date. After the Service Commencement Date, if any Facility Contracts are required: (i) for the operation, maintenance and/or decommissioning of the Legacy Generation Assets or to comply with the provisions of this Agreement or Contract Standards or (ii) to replace any existing Facility Contract that has expired or has been terminated, then, in each case, Operator shall be responsible for obtaining such Facility Contract in Owner's name and on Owner's behalf; provided that (x) any new or replacement Facility Contract shall be procured in accordance with Applicable Law, (y) any new or replacement Facility Contract that provides for payments in excess of US\$[1,000,000]¹⁸ in any Contract Year or US\$[3,000,000]¹⁹ in the aggregate (each a "Material Facility Contract") shall be subject to approval by Administrator, such approval not to be unreasonably withheld, delayed or conditioned, following which such proposed Facility Contract shall be executed by Owner and (z) a Tax Opinion and a Reliance Letter shall have been obtained, at the expense of Owner, with respect to any new, extended, amended or replacement Facility Contract that is a Covered Contract.

(e) Reporting Obligations. Operator shall on or about the tenth (10th) Business Day of each Contract Year provide to Administrator a report documenting each Material Facility Contract and Material Subcontractor, which report shall include the name of the third party, the term, if applicable, of the Facility Contract or Subcontract, a description of the services or goods to be procured and the estimated amount payable thereunder.

(f) Conditions on Term. Any Facility Contract entered into by Operator on behalf of Owner in connection with the O&M Services and/or the Decommissioning Services, including contracts with Subcontractors, shall, unless otherwise approved in writing by Administrator, such approval not to be unreasonably withheld, delayed or conditioned, either (i) be for a term that is no longer than the Term or (ii) provide that such contract is terminable at will (subject to any notice requirements) without cost or penalty. As permitted by Section 6(d)(ii) of Act 120, Facility Contracts for the provision of professional or consulting services (as defined in Act 237) entered into by the Operator on behalf of the Owner shall not be subject to the limitations on term established in Article 3(F.) of Act 237.

¹⁸ **Note to Draft:** Figures to be confirmed in subsequent draft.

¹⁹ **Note to Draft:** Figures to be confirmed in subsequent draft.

Section 5.3 Facility Regulatory Matters.

(a) General. From the Service Commencement Date and during the duration of the Term thereafter, Operator shall function as agent of Owner, and Owner hereby may request Operator to (i) represent Owner before PREB with respect to any matter related to the performance of any of the O&M Services provided by Operator under this Agreement, (ii) prepare all related filings and other submissions before PREB and (iii) represent Owner before any Governmental Body and any other similar industry or regulatory institutions or organizations having regulatory jurisdiction, in each case in consultation with T&D Operator as necessary.

(b) Applications and Submittals. Operator, as agent of Owner, shall cooperate with T&D Operator to make all filings and applications and submit all reports necessary to (i) comply with Applicable Law, and (ii) obtain and maintain all Governmental Approvals in the name of Owner or, if required by Applicable Law, Operator. Owner and Administrator shall cooperate with Operator and, as necessary, T&D Operator, in fulfilling such obligations, including by promptly (and in any event within thirty (30) days) providing any necessary information to Operator and making all such filings and applications and submitting such reports requested by Operator in cases where Applicable Law does not permit Operator to do so. With respect to Governmental Approvals that are obtained or maintained in the name of Owner, Operator shall: (i) prepare the application and develop and furnish all necessary supporting material, data and information that may be required; (ii) familiarize itself with the terms and conditions of such Governmental Approvals; (iii) attend all meetings and hearings required to obtain such approvals; and (iv) take all other action necessary or otherwise reasonably requested by Administrator in order to assist and support Owner in obtaining, maintaining, renewing, extending and complying, as may be relevant, with the terms of such Governmental Approvals. Operator shall agree to be named as a co-permittee on any Governmental Approval if so required by the issuing Governmental Body.

(c) Data and Information. All data and information required to be supplied and actions required to be taken in connection with the Governmental Approvals required for the O&M Services shall be supplied and taken by Operator on a timely basis considering the requirements of Applicable Law and the responsibilities of Owner as the legal and beneficial owner of the Legacy Generation Assets. The data and information supplied by Operator (as agent for Owner) to Owner, T&D Operator, Administrator and all regulatory agencies in connection therewith shall be correct and complete in all material respects; provided, however, that Operator shall be entitled to rely upon, and shall not be liable for, any such data and information derived from or comprising data and information supplied by or on behalf of Owner, T&D Operator or Administrator.

(d) Non-Compliance and Enforcement. Operator shall report to Administrator and PREB, in writing, as soon as possible upon obtaining actual knowledge thereof (but in no event more than forty-eight (48) hours (or such shorter period within which notice is required to be given to a Governmental Body under Applicable Law) after obtaining such knowledge), all violations of the terms and conditions of any Governmental Approval.

(e) Reports to Governmental Bodies. Operator, as agent for Owner, shall prepare all periodic and annual reports, make all information submittals and provide, on a timely basis, all notices to all Governmental Bodies required by all Governmental Approvals and under Applicable Law with respect to the Legacy Generation Assets; provided, however, that Operator shall be

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entitled to rely upon, and shall not be liable for, any such data and information derived from or comprising data and information supplied by or on behalf of Owner, T&D Operator or Administrator or from errors or omissions in such information. Such reports shall contain all information required by the Governmental Body and under Applicable Law and may be substantially similar or identical to comparable reports previously prepared for Administrator if such are acceptable to the Governmental Body.

(f) Opportunity for Comment. In connection with applications, reports, or submissions made under this Section 5.3 (*Facility Regulatory Matters*), Operator shall: (i) provide Administrator with a reasonable opportunity (and in any event within thirty (30) days) to comment in advance upon material written communications, filings, reports, or other writings given to any Governmental Body and consider accurate and timely provided comments in good faith, and (ii) to the extent practical, provide Administrator with a reasonable opportunity to participate in any meetings with any Governmental Body.

Section 5.4 Safety and Security.

(a) Safety. Consistent with the Contract Standards, Operator shall: (i) take all reasonable precautions and actions for the health and safety of, and provide all reasonable protection to prevent physical damage, bodily injury or loss as a result of the operation of the Legacy Generation Assets to, (A) all members of the public, including Persons involved in providing the O&M Services, (B) all materials and equipment used in the provision of the O&M Services and under the care, custody or control of Operator and (C) other property constituting part of the Legacy Generation Assets and under the care, custody or control of Operator; (ii) establish and enforce all reasonable applicable safeguards for health and safety and protection, including posting danger signs and other warnings against hazards and promulgating health and safety regulations; (iii) provide all notices and comply with all Applicable Law relating to the health and safety of Persons or property or their protection from physical damage, bodily injury or loss; (iv) designate qualified and responsible employees, in such numbers as Operator shall determine at its sole discretion in accordance with Prudent Industry Practice, whose duty shall be the supervision of health and safety at the Legacy Generation Assets; (v) operate all equipment in a manner consistent with the manufacturer's safety recommendations; (vi) provide for safe and orderly equipment and vehicular movement; and (vii) develop and carry out a site-specific health and safety program, including OSHA required and other employee training and periodic inspections, designed to implement the requirements of this Section 5.4(a) (*Safety and Security – Safety*).

(b) Security. Operator shall guard against and be responsible for all physical damage to the Legacy Generation Assets in accordance with the Contract Standards, and DHS to the extent DHS has jurisdiction, caused by trespass, theft, negligence, vandalism, malicious mischief or cyber-attacks of third parties. Operator shall guard against and be responsible for, in each case to the extent of Operator's negligence, all physical damage to the Legacy Generation Assets caused by trespass, theft, vandalism or malicious mischief of third parties. Any reasonable cost arising therefrom shall be treated as Pass-Through Expenditures hereunder, except to the extent such costs are Disallowed Costs.

Section 5.5 Labor and Employment; Employee Benefits.

(a) Employee Plans. Operator shall provide employee benefits to Operator Employees pursuant to the plans created by Operator to provide benefits to Operator Employees (collectively, the “Operator Benefit Plans”). Operator shall not assume nor shall it be responsible for any obligations or debts of Owner under Owner’s retirement plans. Operator shall, pursuant to Act 29, make any employer contributions it is permitted to make under Applicable Law to Owner’s retirement plan with respect to any Hired Former Employee of Owner that elects to continue participating in Owner’s defined benefit retirement plan.

(i) Hired Former Employees of Owner shall not receive credit for their service prior to the Service Commencement Date for purposes of benefit accrual except as otherwise required by Act 120.

(ii) Operator shall exercise commercially reasonable efforts to cause the Operator Benefit Plans to waive all limitations as to pre-existing conditions, actively-at-work exclusions and waiting periods for transitioned employees (and their eligible dependents).

(b) Exclusivity. Operator shall not, without the prior written approval of Administrator (such approval not to be unreasonably withheld, delayed or conditioned), utilize Operator or its employees for any purpose other than providing the O&M Services or Decommissioning Services under this Agreement. In addition, Operator shall not hire, for any other business of Operator or an Affiliate, any existing Operator employees without Owner’s prior written consent (such consent not to be unreasonably withheld, delayed or conditioned).

(c) Other. Nothing in this Agreement is intended to amend any employee benefit plan or affect the applicable plan sponsor’s right to amend or terminate any employee benefit plan pursuant to the terms of such plan.

Section 5.6 Option to Propose Capital Spare Parts. From the Service Commencement Date and for the remainder of the Term thereafter, Operator shall procure, store, maintain and administer the Consumables, Spare Parts and any Capital Spare Parts, in accordance with the applicable O&M Budget then in effect. In connection with such maintenance and administration, Operator shall conduct a physical inventory and review of all Capital Spare Parts in accordance with the Contract Standards on an annual basis. Operator shall provide the results of such review to Owner and Administrator promptly following the completion of such review. If, pursuant to such review, Operator determines that the procurement and future installation of any replacement Capital Spare Parts (a) is necessary to allow Operator to continue to operate the respective Legacy Generation Asset to comply with its obligations under this Agreement, in accordance with the Integrated Resource Plan and the anticipated duration of the O&M Services for such Legacy Generation Asset, or (b) would improve unit availability and/or reduce fuel costs, which improvement and/or reduction would be realized within the anticipated duration of the O&M Services for such Legacy Generation Asset, then Operator shall submit a detailed recommendation of such procurement (including anticipated costs in connection therewith) to Administrator (with copy to Owner) for its review and approval. Within thirty (30) days following its receipt of such recommendation, Administrator shall provide Operator with its written approval or rejection of the recommendation. To the extent such approval is granted, Operator shall be entitled to withdraw

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funds from the Reserve Account to fund payment for costs in connection with such procurement and installation in accordance with Section 7.6(d) (*Service Accounts – Reserve Account*) and the approved recommendation. Any such procurement and installation shall be performed in accordance with Applicable Law.

Section 5.7 Management of Fuel and Fuel Contracts. From the Service Commencement Date and for the remainder of the Term thereafter, Operator shall source, procure and manage the transportation, delivery, supply, quality-testing, storage and handling of Fuel, manage and maintain fuel tanks, perform any required environmental reporting, and maintain and administer the Fuel Contracts, in accordance with Contract Standards and the applicable Fuel Budget then in effect. Any renewal of an existing Fuel Contract and any procurement of a new Fuel Contract shall be subject to approval by Administrator and performed in accordance with Applicable Law.

Section 5.8 Administration of Federal Funding. As among the Parties, Owner shall retain the exclusive right to any federal funds received or to be received by or for the benefit of Owner, for the repair, improvement, resiliency, construction or hazard mitigation of the applicable Legacy Generation Assets, from any U.S. federal agency, including the U.S. Federal Emergency Management Agency and the U.S. Department of Housing and Urban Development. The Parties shall cooperate and participate with any relevant Governmental Body and any third parties, in either case, authorized by Owner to act as grant manager in order to help administer, manage, deploy and apply any such federal funds.

Section 5.9 Environmental, Health and Safety Matters.

(a) Generally. Operator shall perform the following environmental, health and safety activities related to the generation of Power and Electricity: (i) managing an environmental, health and safety program for each of the applicable Legacy Generation Assets in accordance with the Safety and Hazardous Materials Procedures Manual, Applicable Law, and the Contract Standards; (ii) coordinating, overseeing, ensuring and maintaining compliance of the Legacy Generation Assets with applicable Environmental Law and the Consent Decree, including documentation thereof; (iii) monitoring emerging federal, state, Commonwealth, municipal and local Environmental Law to ensure future and ongoing compliance and operational efficiencies; (iv) performing analyses of proposed Environmental Law to ensure future compliance thereunder; and (v) providing environmental permitting services to support operations; provided, however, that Operator shall not be responsible for any of the foregoing activities with respect to any Pre-Existing Environmental Conditions, all of which shall be obligations of Owner, except to the extent (i) Owner and Operator agree in writing that Operator shall assume responsibility for any of the foregoing, (ii) Operator exacerbates a Pre-Existing Environmental Condition related to a Release that requires Remedial Action with respect to any impacted soil, soil vapor, sediment, groundwater or surface water, and such exacerbation is attributable to Operator's gross negligence or willful misconduct, or (iii) Operator exacerbates any other Pre-Existing Environmental Condition not described in (ii) and such exacerbation is attributable to Operator's negligence or willful misconduct.

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(b) Pre-Existing Environmental Conditions.

(i) Operator shall perform the O&M Services so as not to exacerbate the effect or costs of (A) any Pre-Existing Environmental Condition disclosed with reasonable specificity by Owner in the Baseline Environmental Study or (B) any Pre-Existing Environmental Condition of which Operator reasonably should have known. Discovery of a Pre-Existing Environmental Condition by Operator shall not be deemed an exacerbation of such condition; however, once Operator is aware of such condition, Operator shall perform the O&M Services so as not to exacerbate the effect or costs of such Pre-Existing Environmental Condition. If at any time a Pre-Existing Environmental Condition is determined to exist that (A) requires an action under Applicable Law, (B) materially interferes with the performance of the O&M Services or (C) materially increases the cost of performing the O&M Services, then Administrator shall, as soon as reasonably practicable given the condition in question, after written notice from any Governmental Body or Operator of the presence or existence thereof, commence and diligently prosecute such actions as are required by Applicable Law or to prevent future material interference with the performance of the O&M Services or material increases in costs of performing the O&M Services.

(ii) Administrator shall have the right to contest any determination of a Pre-Existing Environmental Condition and shall not be required to take any action under this Section 5.9 (*Environmental, Health and Safety Matters*) so long as (A) it is contesting any determination of a Pre-Existing Environmental Condition in good faith by appropriate proceedings conducted with due diligence and (B) Applicable Law permits continued operation of the applicable Legacy Generation Asset(s) pending resolution of the contest.

(iii) Operator shall not be responsible for any Losses resulting from or related to any Pre-Existing Environmental Conditions, except to the extent such Losses are based in whole or in part on Operator's exacerbation of a Pre-Existing Environmental Condition that was disclosed to Operator in the Baseline Environmental Study or otherwise, or that Operator is otherwise aware of, and (A) the Pre-Existing Environmental Condition is related to a Release that requires Remedial Action with respect to any impacted soil, soil vapor, sediment, groundwater or surface water, and such exacerbation is attributable to Operator's gross negligence or willful misconduct; or (B) the Pre-Existing Environmental Condition is not described in (A) and such exacerbation is attributable to Operator's negligence or willful misconduct (the "Pre-Existing Environmental Condition Liability Standard").

(c) Notice and Remedial Action Requirements.

(i) Operator shall, promptly upon obtaining knowledge thereof, and in accordance with the Safety and Hazardous Materials Procedures Manual, report to Administrator, on a per occurrence basis, the Release of any reportable quantity, as defined under applicable Environmental Law, of Hazardous Material or of any other Release that could reasonably be expected to result in material Losses to Owner or Operator, and the location at which the Release has occurred, the time, the agencies involved, the damage that has occurred and the Remedial Action alternatives to be considered for decision-making by Administrator. Notice of any such Release, if initially delivered orally, shall be delivered to Administrator in writing promptly following

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Operator's actual knowledge of such Release. This reporting obligation shall be in addition to any other reporting obligation under Environmental Laws.

(ii) With respect to Releases that are not subject to Section 5.8(c)(iii) (*Environmental, Health and Safety Matters – Notice and Remedial Action Requirements*), upon receipt of the notification described in Section 5.8(c)(i) (*Environmental, Health and Safety Matters – Notice and Remedial Action Requirements*), Administrator shall promptly propose the Remedial Action to Operator for its consideration. Operator and Administrator shall work in good faith to reach a prompt, written agreement for the pursuit of the Remedial Action, including terms assuring the pre-funding and prompt reimbursement of Operator's reasonable and documented costs in effectuating the Remedial Action determined by Administrator, which costs shall be treated as Pass-Through Expenditures hereunder, except to the extent such costs are Disallowed Costs. If such an agreement cannot be reached within ten (10) Business Days, or such other time as Administrator and Operator may agree, Administrator (or Owner, as the case may be) may proceed with the Remedial Action at its cost, including at such times and in a manner so as to not materially interfere with the performance of the O&M Services. In the event of a Pre-Existing Environmental Condition, Administrator and Operator may also reach an agreement whereby Operator is compensated for effectuating the Remedial Action proposed by Administrator after the presentation of Remedial Action alternatives by Operator for such condition.

(iii) With respect to any Release caused by the gross negligence or willful misconduct of Operator or Operator's employees, contractors, guests or invitees in connection with the O&M Services or the Decommissioning Services, Operator shall promptly obtain the necessary Governmental Approvals for, and then commence and diligently pursue to completion all Remedial Action necessary to comply with Environmental Law. Operator shall keep Administrator reasonably informed of the progress of such Remedial Action and the schedule for completing it. In addition, in connection with such Remedial Action, Operator shall: (A) provide Administrator with a reasonable opportunity to comment in advance upon any material written communications, filings, reports, correspondence or other writings given to any Governmental Body and consider accurate and timely provided comments in good faith; (B) to the extent practical, provide Administrator with a reasonable opportunity to participate in any meetings with any Governmental Body regarding the Remedial Action; (C) comply with Applicable Law; (D) within five (5) Business Days of sending or receipt, use commercially reasonable efforts to provide to Administrator copies of all non-privileged material written communications, filings, reports, correspondence or other writings, photographs or materials sent by Operator to or received by Operator from any Person (including any Governmental Body) in connection with any such Remedial Action.

(iv) Operator shall promptly notify Administrator, and any other Governmental Body as may be required by Environmental Law, in writing of its intention to handle, transport or dispose of Hazardous Material, other than in the ordinary course of business. Operator shall cause such Hazardous Material to be handled, transported, manifested, and disposed of in accordance with Environmental Law and the Safety and Hazardous Materials Procedures Manual. Operator shall be deemed to be arranging for any disposal of any Hazardous Material associated with any Remedial Action or otherwise only if and to the extent that any disposal of Hazardous Material is necessitated by the gross negligence or willful misconduct of Operator, in which case Operator also shall be deemed the owner of such Hazardous Materials and identified as the "generator" on any manifest or bill of lading.

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(d) Consent Decree. This Agreement is conditioned on Operator's agreement to be subject to the obligations under the Consent Decree and the jurisdiction of the United States District Court for the District of Puerto Rico in connection with the Consent Decree. To the extent required to effectuate this Section 5.8(d) (*Environmental, Health and Safety Matters – Consent Decree*), Operator shall assist Owner in taking all necessary steps to make Operator a signatory to the Consent Decree or to obtain any needed U.S. District Court approval.

Section 5.10 Accounting and Financial Services. Operator shall provide accounting and financial services in respect of the Legacy Generation Assets, including those services listed in Annex VII (*Scope of Services*).

Section 5.11 Legal Matters. Operator shall manage Owner's legal matters in respect of the O&M Services, other than with respect to any dispute with, or other legal matters involving, Operator pursuant to this Agreement, and Owner's related reporting obligations, including those services listed in Annex VII (*Scope of Services*). In performing this Agreement, nothing shall require, or shall be construed as requiring, Operator to act as legal counsel to, or to provide legal advice or representation to, Owner.

Section 5.12 Coordination with T&D Operator.

(a) T&D-Generation Operating Agreement. Commencing on the Service Commencement Date, Operator shall perform its obligations, covenants and undertakings under the T&D-Generation Operating Agreement and shall coordinate with T&D Operator as required thereunder.

(b) Agreed Operating Procedures. Operator, as agent for Owner and in accordance with the T&D-Generation Operating Agreement and the Agreed Operating Procedures developed thereunder, shall: (i) coordinate the dispatch of Power and Electricity from available Legacy Generation Assets to the respective Interconnection Point and provide related services; (ii) coordinate the scheduling of load requirements and Power and Electricity with T&D Operator; (iii) develop inputs to T&D Operator with respect to scheduling requirements and capacity requirements taking into consideration unit outages and other operational constraints; (iv) provide information with respect to operational constraints, including air permit constraints; and (v) perform any other ancillary services related to coordinating the dispatch of Power and Electricity from available Legacy Generation Assets.

(c) Generation Information. At the request of T&D Operator, Operator shall grant reasonable access to information consistent with Prudent Industry Practice required to perform the dispatch and scheduling of Power and Electricity, which includes fuel availability, Heat Rate, fuel inventory, unit availability, unit marginal cost, unit outage schedules and any other information reasonably requested by T&D Operator consistent with Prudent Industry Practice required to perform the dispatch, scheduling and coordination of Power and Electricity.

(d) PREB Submittals. At the request of T&D Operator, Operator shall coordinate with T&D Operator and grant reasonable access to information consistent with Prudent Industry Practice required to prepare all filings and other submissions before PREB with respect to any matter related to the performance of any of the O&M Services provided by Operator under this Agreement,

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including in connection with the Fuel Adjustment Clause. Operator shall further cooperate in good faith with T&D Operator in anticipation of and throughout the course of any Rate Order modification proceedings before PREB, pursuant to Section 7.5 (*PREB Rate Proceedings*).

Section 5.13 Notification of Accidents and Emergencies.

(a) Accidents. Operator shall promptly notify Administrator and any other required authority, including OSHA and PREB, in writing of any material accident or incident related to the Legacy Generation Assets within twenty-four (24) hours of receiving knowledge of the occurrence thereof and promptly notify Administrator in writing of all material claims made by or against Operator of which Operator has knowledge, or potential material claims that Operator reasonably expects to make against, or to be made against it by, third parties.

(b) Emergencies. Operator shall promptly notify Administrator and PREB in writing of all Emergencies related to the Legacy Generation Assets upon receiving knowledge thereof. Notwithstanding anything to the contrary in this Agreement, if at any time Operator determines in good faith that an Emergency Event exists with respect to the Legacy Generation Assets such that immediate action must be taken to (i) protect the safety of the public, Owner's employees and Operator's employees, (ii) protect the safety or integrity of the Legacy Generation Assets or prevent or limit environmental harm or (iii) mitigate the immediate consequences of such Emergency Event, Operator shall take all such action that it deems in good faith to be reasonable and appropriate under the circumstances in accordance with the Generation Emergency Response Plan. As promptly thereafter as is reasonable, Operator shall notify Administrator and PREB in writing of Operator's response to such Emergency Event. For so long as the Emergency Event continues, Operator shall provide a weekly written update to Administrator and PREB (provided that PREB may otherwise request more frequent updates in accordance with Applicable Law) specifying the nature of the Emergency Event, the remediation measures being taken by Operator, the expected duration of the Emergency Event and an estimate of any increases in costs resulting therefrom. Operator shall notify Administrator and PREB in writing as soon as the Emergency Event has ended. All necessary and documented costs related to the remediation of the Emergency Event shall be Pass-Through Expenditures and Operator shall be entitled to draw upon any Service Account to pay for such costs. As soon as practicable following the end of such Emergency Event, all such costs incurred shall be reflected in a proposed amendment to the approved Operating Budget, subject to the provisions of Section 7.3(c) (*O&M Budgets – Amendments to the Operating Budget*).

Section 5.14 Information.

(a) Facility Information and Computer Database. Operator shall, subject to the applicable Services Documentation, administer and maintain an Information System to record, and to the extent practicable, provide retrieval for Administrator's review and copying of Facility Information.

(b) Ownership of Owner Personal Information. Any Owner Personal Information in existence as of the Service Commencement Date of this Agreement shall be considered Confidential Information of Owner and, as among the Parties, shall at all times remain the Intellectual Property of Owner.

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(c) Information Access.

(i) Operator shall provide Owner with timely read-only access where available, or a reasonably equivalent form of access to all information necessary to (A) maintain, protect and preserve the Legacy Generation Assets or (B) carry out any of Owner's responsibilities related to the Legacy Generation Assets under Applicable Law. For the avoidance of doubt, the access to information provided under this Section 5.14(c)(i) (*Information – Information Access*) shall be on the same basis as set out in Section 5.14(c)(ii) (*Information – Information Access*).

(ii) To the extent necessary for Owner and Administrator, as applicable, to carry out its responsibilities under this Agreement, Operator shall provide Administrator and its Representatives with (A) unrestricted read-only access where available, or a reasonably equivalent form of access to such information, to all Facility Information and all Owner Personal Information, in each case contained in any database or system created or managed by Operator hereunder, and (B) to the extent that Operator has developed, compiled, collected, prepared or archived such information in the conduct of its services under this Agreement, full and complete access to such information, subject to confidentiality obligations applicable to Operator's Confidential Information and provided that Administrator and its Representatives shall comply with all of Operator's access, security (including cybersecurity) and safety procedures when exercising such right of access. Administrator shall be responsible for the security of all access credentials provided to and each access made and use and disclosure of Facility Information by Administrator or its Representatives hereunder.

(d) Restrictions. Operator may not use any Facility Information or Owner Personal Information for any purpose unrelated to the O&M Services without the prior written consent of Administrator, such approval not to be unreasonably withheld, delayed or conditioned. To the extent such consent is granted, Operator shall comply with all Applicable Law, and otherwise obtain any necessary consents, prior to any such permitted use.

Section 5.15 Bill Payments. Subject to Section 7.6 (*Service Accounts*) and Section 7.8 (*Unfunded Amounts*) and to the extent not prevented from doing so by Owner Fault, Operator shall (i) timely pay all bills related to the Legacy Generation Assets, that are proper, appropriate and not otherwise disputed, and (ii) assure that, to the extent within Operator's control, no mechanics' or similar Liens are filed against any component of the Legacy Generation Assets. In the event that Operator fails to timely pay any such bill, Administrator shall have the right to instruct Owner to pay such bill and deduct an administrative fee in an amount of US\$500 from the Incentive Payment otherwise due to Operator.

Section 5.16 Compliance with Obligations. Each Party shall use reasonable efforts to provide all representations, certifications, records and other documents necessary or appropriate for it and other Parties to comply with any obligations under Applicable Law (including obligations (i) with respect to PREB, (ii) with respect to the FOMB under PROMESA, (iii) related to the federal securities laws and (iv) related to maintaining the exclusion from gross income of interest on Owner's or its Affiliates' obligations for federal income tax purposes) or any of the agreements that Owner or its Affiliates may be party to from time to time that relate to the O&M Services.

Section 5.17 Energy Policy under Act 17. As further detailed in Annex VII (*Scope of Services*), in accordance with the O&M Budget then in effect, Operator shall coordinate and assist with the services and operations required under Act 17, including services and operations related to the purchase and storage of fuel for Power and Electricity generation, the provision and maintenance of information regarding the Legacy Generation Assets, and decommissioning the Legacy Generation Assets in accordance with (a) the Integrated Resource Plan and (b) any order by PREB consistent with the intent of Act 17 and the Integrated Resource Plan.

Section 5.18 Enforcement of Easements. Owner hereby authorizes Operator to enforce Owner's rights under the Easements. Operator, to the extent permitted by Applicable Law, may remove any obstruction of any kind or form hindering the area encumbered by an Easement.

Section 5.19 Out-of-Service Units. Operator shall provide limited O&M Services for the Out-of-Service Units, consisting of management, maintenance, and other related services, in each case that are customary and appropriate, or as required by Applicable Law, to maintain the Out-of-Service Units for the period of time from and including the Service Commencement Date to and excluding the Decommissioning Commencement Date for the applicable Out-of-Service Unit. Operator shall take all necessary measures to ensure the safety of authorized personnel and visitors that may access the surroundings or interior of the Out-of-Service Units.

Section 5.20 Other Services.

(a) Implied Services. If any services, functions or responsibilities not specifically described in this Agreement are reasonably required for the proper performance and provision of the O&M Services in accordance with Contract Standards, they shall be deemed to be implied by and included within the O&M Services, except to the extent they are rights and responsibilities reserved to Owner or Administrator as set forth in Article 6 (*Rights and Responsibilities of Owner and Administrator*) or as otherwise expressly provided in this Agreement.

(b) Additional Services. If requested by Administrator, Operator may perform such additional services reasonably related to the Legacy Generation Assets not included within O&M Services, based upon terms and conditions, including price and additional reasonable and documented fees payable to Operator, agreed to by Operator and Administrator.

(c) Exclusivity. Without the prior approval of Administrator, Operator may not engage in any other business or activity other than to employ Operator employees and to provide the O&M Services and Decommissioning Services pursuant to this Agreement.

ARTICLE 6
RIGHTS AND RESPONSIBILITIES OF OWNER AND ADMINISTRATOR

Section 6.1 Rights and Responsibilities of Owner.

(a) Generally. From and after the Service Commencement Date, Owner shall have the following rights and responsibilities with respect to the operation, management and maintenance of the Legacy Generation Assets:

(i) grant and assure Operator access to the Legacy Generation Assets for the performance of Operator's obligations hereunder;

(ii) pay the applicable Service Fee and any other amounts due Operator, and fund the Service Accounts, all in accordance with the terms and conditions of this Agreement;

(iii) ensure that, to the extent PROMESA requires Owner to submit any budget to the FOMB for approval, such budget provides that Owner is authorized to pay amounts due to Operator under this Agreement and fund the Service Accounts in accordance with Section 7.6 (*Service Accounts*);

(iv) cooperate with Operator such that the budgets and funds in support of O&M Services are sufficient in amount to enable Operator to meet the Contracts Standards;

(v) (A) respond promptly (and in any event within thirty (30) days or shorter period required by this Agreement) to all requests of Operator with respect to all matters requiring the approval, review or consent of Owner (and in each such case, unless otherwise specifically stated in this Agreement, Owner shall not unreasonably withhold, delay or condition any such approval, review or consent) and as to such other matters relating to the obligations of Operator hereunder in respect of which Operator shall reasonably request the response of Owner in accordance with the provisions of this Agreement, (B) provide Operator with such information, data and assistance as may be reasonably necessary or appropriate for Operator to perform its obligations (including with respect to any PREB rate or other proceeding or requirement) hereunder, and (C) from time to time, as and when requested by Operator, execute and deliver, or cause to be executed and delivered, all such documents and instruments and take, or cause to be taken, all such reasonable actions, as may be reasonably necessary for Operator to perform its obligations under this Agreement;

(vi) except as otherwise contemplated by Section 5.11 (*Legal Matters*), manage Owner's legal matters, including Owner's reporting and related legal compliance;

(vii) cooperate with Operator and Administrator in obtaining and maintaining all Governmental Approvals;

(viii) take all other actions, and cause its employees and other Representatives to take all other actions, reasonably required or reasonably requested by Operator to permit Operator to perform the O&M Services in compliance with the Contract Standards and this Agreement, including with respect to the constitution of Easements and enforcement of rights thereunder;

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(ix) exercise its statutory powers pertaining to any and all rights and remedies granted to it under Applicable Law, including doing so promptly when requested by Operator;

(x) comply with all Applicable Law; and

(xi) coordinate any Audits that Owner is entitled to perform hereunder with any Audits being undertaken by Administrator and any other Governmental Body that has the right under Applicable Law to perform an Audit.

(b) Authorization of Administrator. Owner hereby assigns and delegates to Administrator the rights and responsibilities under this Agreement necessary for Administrator to administer this Agreement and act as Owner's liaison with Operator in connection with the O&M Services; provided that such assignment and delegation shall not release Owner from any of its obligations set forth herein; and provided, further, that Owner shall be responsible for all acts and omissions of Administrator in connection with this Agreement and the other Transaction Documents, and the transactions contemplated hereby and thereby, in the same manner as if such acts and omissions were those of Owner. For the avoidance of doubt, Owner's delegation of rights and responsibilities under this Agreement includes Owner's submission to applicable oversight by, and obligations to, PREB.

Section 6.2 Rights and Responsibilities of Administrator.

(a) Generally. Operator shall be entitled to rely on the written directions of Administrator. Administrator shall be responsible for overseeing, in the manner provided for and subject to the terms and conditions of this Agreement, Operator's performance of the O&M Services under this Agreement. Without limiting the generality of the foregoing, from and after the Service Commencement Date, Administrator shall have the following rights and responsibilities with respect to the operation, management and maintenance of the Legacy Generation Assets:

(i) as set forth in Section 7.3 (*O&M Budgets*), review and approve O&M Budgets, including modifications thereto, to ensure compliance with a Rate Order;

(ii) review and approve the Incentive Payment payable to Operator for a given Contract Year, including based on Administrator's evaluation of Operator's performance with respect to the Incentives and Penalties;

(iii) cooperate with Operator such that the budgets and funds in support of O&M Services are sufficient in amount to enable Operator to meet the Contracts Standards;

(iv) exercise Oversight in relation to Operator's compliance with O&M Budgets, including Pass-Through Expenditures, in accordance with the procedures set forth in this Agreement; provided that, Administrator shall (i) reasonably coordinate with Owner to avoid duplicative Oversight and (ii) except to the extent provided under this Agreement, avoid exercising Oversight with respect to items that fall within the scope of PREB's statutory oversight;

(v) exercise Oversight in relation to Operator's performance of its obligations hereunder, including performance of the O&M Services;

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(vi) respond promptly (and in any event within thirty (30) days or shorter period required by this Agreement) to all requests of Operator with respect to matters requiring the approval, review or consent of Administrator (and in each such case, unless otherwise specifically stated in this Agreement, Administrator shall not unreasonably withhold, delay or condition any such approval, review or consent) and as to such other matters relating to the obligations of Operator hereunder in respect of which Operator shall reasonably request the response of Administrator in accordance with the provisions of this Agreement;

(vii) (A) cooperate with Operator by providing Operator such information, data and assistance as may be reasonably necessary for Operator to perform its obligations hereunder and (B) from time to time, as and when requested by Owner, execute and deliver, or cause to be executed and delivered, all such documents and instruments and take, or cause to be taken, all such reasonable actions, as necessary for Operator to perform its obligations under this Agreement;

(viii) for the avoidance of doubt, in the event that any new or replacement Facility Contract, Capital Spare Part, Fuel Contract and/or Subcontractor services are subject to a procurement process under Act 29 or Act 120, Administrator (or any other entity required by Applicable Law to undertake such procurement) shall manage all aspects of the procurement process with the support of Operator, as necessary;

(ix) declare an Event of Default and exercise remedies under this Agreement, including termination of this Agreement upon the occurrence of an Operator Event of Default in accordance with Section 14.1 (*Events of Default By Operator*); and

(x) coordinate any Audits that Administrator is entitled to perform hereunder with any Audits being undertaken by Owner and any other Governmental Body that has the right under Applicable Law to perform an Audit.

(b) Disputes. In the event of a Dispute among the Parties with respect to clauses (ii) through (a)(x) of Section 6.2(a) (*Rights and Responsibilities of Administrator – Generally*), such Dispute shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, an “Administrator Dispute”).

(c) Approvals and Consents. When any approval or consent by Owner to an Operator submission, request or report is required pursuant to the terms of this Agreement, the approval or consent shall be given by Administrator in writing, and such writing shall be conclusive evidence of such approval or consent and shall be binding on Owner.

Section 6.3 Reporting; Audits.

(a) Generally. At the reasonable request of Administrator or its relevant consultant (each, an “Authorized Inspector”), at Administrator’s sole cost and expense, at reasonable times during normal business hours, Operator shall: (i) make available or cause to be made available to such Authorized Inspector all information related to this Agreement or the Legacy Generation Assets as may be specified in such request and as shall be in the possession or control of Operator or its Representatives; (ii) permit such Authorized Inspector, upon ten (10) Business Days’ prior notice to Operator, which notice shall identify the persons such Authorized Inspector requests to be present for an interview and describe with reasonable specificity the subject matter to be raised in

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the interview, to discuss the obligations of Operator under this Agreement with any of the directors, chief executive officer and chief financial officer of Operator and its Representatives, for the purpose of enabling such Authorized Inspector to determine whether Operator is in compliance with this Agreement; and (iii) otherwise provide such cooperation as may reasonably be required by such Authorized Inspector in connection with any such Audit of the information required to be maintained or delivered by Operator under this Agreement or required by Applicable Law. Such Authorized Inspector shall be entitled to make copies of the information related to the conduct of such Audit and to take extracts therefrom at such Authorized Inspector's sole cost and expense. Absent good cause or as may be required by Applicable Law, audits shall occur no more than once every Contract Year. In the course of performing its Audits hereunder, each Authorized Inspector and its Representatives shall avoid any disruption to Operator's performance of the O&M Services or Operator's rights or responsibilities under this Agreement, having regard to the nature of the Audits being performed, and when accessing the Legacy Generation Assets, each Authorized Inspector and its Representatives shall do so at its own risk and shall comply with all of Operator's safety procedures.

(b) No Other Audit Rights. This Agreement does not provide any Governmental Body any rights to undertake any Audit other than those stated herein, and, without restricting the foregoing, this Agreement does not provide any regional, municipal or local body with any rights to perform any Audit in addition to those permitted by Applicable Law. For the avoidance of doubt, nothing in this Section 6.3 (*Reporting; Audits*) shall be construed as a limitation on the right of PREB to conduct audits as needed in the performance of its statutory duties.

Section 6.4 Staffing Levels. From and after the Service Commencement Date and at all times during the Term, Owner and Administrator, including any of their Subcontracts, shall maintain staffing in connection with the O&M Services only at those levels strictly necessary for Owner and Administrator to timely and efficiently perform their obligations under this Agreement. Before the Service Commencement Date, Owner shall maintain staffing necessary to continue to perform its obligations at the same or higher level than it performed such obligations as of the Proposal Submission Date.

Section 6.5 Rights and Responsibilities of PREB. Nothing in Article 5 (*O&M Services*) specifically, and in this Agreement generally, shall be construed to limit the authority of PREB to exercise its statutory authority to regulate and take actions to protect the public interest regarding the generation of Power and Electricity.

**ARTICLE 7
COMPENSATION; O&M BUDGETS**

Section 7.1 Service Fee.

(a) Generally.

(i) In addition to Owner's funding or payment of Pass-Through Expenditures, in accordance with the then-currently approved Operating Budget, and any other amounts that become due and owing to Operator hereunder, from and after the Service Commencement Date, Owner shall pay Operator, in accordance with this Agreement, the O&M Fixed Fee and the applicable Decommissioning Fixed Fee.

(ii) In addition to the fees described in the foregoing paragraph, with respect to each Contract Year from and after the Service Commencement Date and as described in Section III of Annex II (*Compensation – Incentives and Penalties*) of this Agreement, Operator may (A) be eligible to receive an O&M Incentive Payment and a Decommissioning Incentive Payment, and (B) be subject to an O&M Penalty or a Decommissioning Penalty.

(iii) For the avoidance of doubt, the applicable Service Fee shall constitute payment for the reasonable costs and expenses of Operator's corporate overhead costs, none of which shall be subject to reimbursement as a Pass-Through Expenditure. Except as otherwise provided for in this Agreement, the applicable Service Fee shall not be subject to any abatement, deduction, counterclaim or set-off of any kind or nature.

(b) O&M Fixed Fee.

(i) The O&M Fixed Fee payable to Operator for each Contract Year as compensation for the performance of the O&M Services shall be as set forth in Section I of Annex II (*Compensation – O&M Fixed Fee*), adjusted on a Pro Rata basis for a partial Contract Year. Owner and Administrator agree that an amount equal to the maximum amount of the O&M Fixed Fee available in any given Contract Year shall be included in the Operating Budget for such Contract Year.

(ii) Owner shall pay the O&M Fixed Fee in monthly installments equal to (i) one-twelfth (1/12) of the O&M Fixed Fee for a Contract Year of twelve (12) months or (ii) in the case of any partial Contract Year, an amount equal to one (1) divided by the number of months in such Contract Year. In the event of a partial month, the monthly installment shall be adjusted on a Pro Rata basis.

(iii) On or prior to the tenth (10th) Business Day of each month of any Contract Year, Operator shall submit to Administrator an invoice for the O&M Fixed Fee payable in respect of the prior month. The invoice shall specify the monthly portion of the O&M Fixed Fee for the relevant month, together with (A) the aggregate portion of the annual O&M Fixed Fee paid through such month and (B) the accumulated payments to the date of such invoice. Owner shall pay the invoice by the last Business Day of the month on which the invoice was submitted. All invoices shall comply with the requirements set forth in Section 9.2(c) (*Anti-Corruption and Sanctions Laws – Policies and Procedures*) hereto.

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(iv) The O&M Fixed Fee shall not be subject to the O&M Fixed Adjustment during the first five (5) Contract Years. Beginning on the sixth (6th) Contract Year and for any Contract Year thereafter, the O&M Fixed Fee shall be subject to the O&M Fixed Fee Adjustment at any time and from time to time upon (i) the commencement of Decommissioning Services with respect to a Legacy Generation Asset or (ii) the removal, permanently or indefinitely, of a Legacy Generation Asset from the scope of the O&M Services by Administrator pursuant to Section 2.3(b) (*Term – Extension; Reduction*), as set forth in Section I of Annex II (*Compensation – O&M Fixed Fee*).

(c) Decommissioning Fixed Fee.

(i) Beginning on the sixth (6th) Contract Year, Operator shall be paid a Decommissioning Fixed Fee as compensation for any Decommissioning Services provided in such Contract Year with respect to any Legacy Generation Asset. The Decommissioning Fixed Fee shall be as set forth in Section II.A. of Annex II (*Service Fee – Decommissioning Fixed Fee*), adjusted on a Pro Rata basis for a partial Contract Year. For the avoidance of doubt, Operator shall not be eligible to receive a Decommissioning Fixed Fee with respect to any Legacy Generation Asset during the first five (5) Contract Years.

(ii) Owner shall pay any Decommissioning Fixed Fees in monthly installments equal to (i) one-twelfth (1/12) of the applicable Decommissioning Fixed Fee for a Contract Year of twelve (12) months or (ii) in the case of any partial Contract Year, an amount equal to one (1) divided by the number of months in such Contract Year. In the event of a partial month, the monthly installment shall be adjusted on a Pro Rata basis.

(iii) On or prior to the tenth (10th) Business Day of each month of any Contract Year, Operator shall submit to Administrator an invoice for each applicable Decommissioning Fixed Fee payable in respect of the prior month. Each invoice shall specify the monthly portion of the applicable Decommissioning Fixed Fee for the relevant month, together with (A) the aggregate portion of the annual Decommissioning Fixed Fees paid through such month and (B) the accumulated payments to the date of such invoice. Owner shall pay the invoice by the last Business Day of the month on which the invoice was submitted; provided that (x) in the event that Operator submits such invoice to Administrator after the tenth (10th) Business Day of such month, then Owner shall not be obligated to pay the invoice until the last Business Day of the month immediately following the month in which such invoice was submitted and (y) ten percent (10%) of the amount of Decommissioning Fixed Fees included in each monthly invoice shall be retained by Owner and the aggregate of such retained amount shall be paid to Operator no later than five (5) Business Days after the applicable Decommissioning Services have been completed to the satisfaction of the Administrator (on behalf of Owner). All invoices shall comply with the requirements set forth in Section 9.2(c) (*Anti-Corruption and Sanctions Laws – Policies and Procedures*) hereto.

(iv) Owner and Administrator agree that an amount equal to the maximum amount of the Decommissioning Fixed Fees available in any given Contract Year after which Decommissioning Services have commenced shall be included in the applicable Decommissioning Budgets to be submitted by Operator in accordance with Section 16.2(a) (*Decommissioning Compensation – Decommissioning Budget*).

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(v) Administrator shall promptly advise Operator of any disputed invoice amounts, and all such disputes which Operator and Administrator are unable to resolve shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, a “Decommissioning Fixed Fee Dispute”).

(vi) Payments of undisputed amounts under any invoice shall be due within thirty (30) days of Administrator’s receipt of such invoice.

(d) Incentives and Penalties.

(i) Based on Operator’s performance with respect to the Incentives and Penalties described in Section III of Annex II (*Compensation – Incentives and Penalties*), Operator shall be eligible to receive Incentive Payments or be subject to Penalties as a deduction from the applicable Service Fee in any given Contract Year. For the avoidance of doubt, no Incentive Payments or Penalties shall be earned or incurred during the Mobilization Period or the Demobilization Period. The Incentive Payments or Penalties to be earned or incurred on any given Contract Year shall be calculated as set forth in Section III of Annex II (*Compensation – Incentives and Penalties*), as adjusted on a Pro Rata basis for a partial Contract Year. Owner and Administrator agree that an amount equal to the maximum amount of the Incentive Payments available in any given Contract Year shall be included in the Operating Budget or the Decommissioning Budgets, as applicable, for such Contract Year.

(ii) No later than thirty (30) days following the end of a Contract Year, Operator shall submit a report (the “Incentives and Penalties Report”) to Administrator with (A) supporting performance data, information and reports evidencing its performance with respect to one or more of the categories of Incentives and Penalties and (B) based thereon, its good faith calculation of the proposed Incentive Payment and/or Penalties, in each case for such Contract Year. The Incentives and Penalties Report shall comply with the requirements set forth in Section 9.2(c) (*Anti-Corruption and Sanctions Laws – Policies and Procedures*).

(iii) Administrator shall have a period of sixty (60) days after receipt to review the Incentives and Penalties Report. During this period, Operator shall grant to Administrator reasonable access during normal business hours to all relevant personnel, Representatives of Operator, books and records of Operator and other items reasonably requested by Administrator in connection with the review of the Incentives and Penalties Report.

(iv) If Administrator delivers to Operator a written statement describing any disagreements with the Incentives and Penalties Report during such sixty (60) day review period, then Operator and Administrator shall attempt to resolve in good faith any such disagreements. If (A) Administrator does not deliver such statement during such sixty (60) day review period (in which case it shall be deemed to have agreed with the Incentives and Penalties Report), (B) if Operator and Administrator reach a resolution with respect to such matters or (C) if Administrator has no disagreements with the Incentives and Penalties Report, then Owner shall pay the Incentive Payment in accordance with Section 7.1(d)(v) (*Service Fee – Incentives and Penalties*).

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(v) Once determined in accordance with **Section 7.1(d)(iv)** (*Service Fee – Incentives and Penalties*), Owner shall pay the Incentive Payment, or any portion thereof that is not subject to a Dispute, for a given Contract Year within ten (10) days of such determination and in any event within six (6) months following the end of the given Contract Year or, in the event of an early termination of this Agreement or the end of the Term, six (6) months following the date of such termination or end of the Term. Once determined in accordance with **Section 7.1(d)(iv)** (*Service Fee – Incentives and Penalties*), Owner shall deduct the Penalty, or any portion thereof that is not subject to a Dispute, from the next payment of the applicable Service Fee due to the Operator following such determination (or in the event the Penalty is higher than such payment, from the next series of payments). In the event that due to an early termination of this Agreement or the end of the Term, the Service Fee payments due to Operator after such determination are not sufficient to deduct the full amount of the Penalty, Operator shall pay to Owner the amount of the Penalty that has not been deducted from the Service Fee within six (6) months following the date of such termination or end of the Term.

(vi) If any Force Majeure Event (other than a Force Majeure Event that is a Forced Outage) occurs, Operator and Administrator shall negotiate proportional adjustments to the relevant categories of Incentives and Penalties, as applicable, which shall apply during the duration of the Force Majeure Event.

(e) Service Fee Disputes. The Parties hereby agree that, in the event that a Dispute arises between Operator and Administrator in connection with the applicable Service Fee (including any adjustments thereto as permitted by this Agreement), the matter shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, a “Service Fee Dispute”).

Section 7.2 Pass-Through Expenditures. For purposes of this Agreement, “Pass-Through Expenditures” shall be the reasonable costs and expenses incurred by Operator in the course of providing O&M Services and the Decommissioning Services pursuant to this Agreement (without markup for profit), including the reasonable costs and expenses set forth in Annex X (*Pass-Through Expenditures*); provided that Pass-Through Expenditures shall not include any (i) Disallowed Costs or (ii) Operator overhead costs which are included in the applicable Service Fee. Operator shall pay Pass-Through Expenditures in accordance with Section 7.6 (*Service Accounts*).

Section 7.3 O&M Budgets.

(a) Generally. For any Contract Year (other than the initial Contract Year, for which the procedures for the Initial O&M Budget set forth in Section 4.3(c) (*Owner and Administrator Responsibilities – Initial O&M Budget*) shall apply), or a year in which a rate adjustment approved by PREB enters into effect, in which case the O&M Budget used in connection with obtaining such rate adjustment shall be used, Operator shall, no later than one hundred and fifty (150) days prior to the commencement of such Contract Year, submit to Administrator the proposed O&M Budgets for such Contract Year. Administrator shall, acting reasonably, review such proposed O&M Budgets to ensure compliance with Section 7.4 (*O&M Budget Policy*). Within thirty (30) days following its receipt of such O&M Budgets, Administrator shall notify Operator whether the proposed O&M Budgets are compliant with Section 7.4 (*O&M Budget Policy*), and shall request, acting reasonably, any changes or modifications to the proposed O&M Budgets to conform the

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proposed O&M Budgets with Section 7.4 (*O&M Budget Policy*). Within ten (10) days following receipt of Administrator's request for changes or modifications, if applicable, Operator shall submit to Administrator revised O&M Budgets including such changes or modifications requested by Administrator.

(b) Compliance with Existing Rate Order. The Operator acknowledges that the Initial O&M Budget represents the maximum expenditure budget (excluding expenditures related to Fuel Costs, which shall be subject to rates determined pursuant to the Fuel Adjustment Clause as described in Section 7.3(d) (*O&M Budgets – Quarterly Adjustments to Fuel Budget*)) allocated to the Legacy Generation Assets under the Rate Order approved by PREB as of the Effective Date. In no event shall the Operating Budget for any subsequent Contract Year exceed the maximum expenditure budget allocated to the Legacy Generation Assets under the applicable Rate Order.

(c) Amendments to the Operating Budget.

(i) Operator may, from time to time, propose to amend the approved Operating Budget for a given Contract Year; provided that any such amendment shall be compliant with the applicable Rate Order.

(ii) In the event Decommissioning Services for one or more of the Legacy Generation Assets occur during any given Contract Year and the applicable Decommissioning Budgets for such Legacy Generation Asset has been approved pursuant to Section 16.2(a) (*Decommissioning Compensation – Decommissioning Budget*), the approved Operating Budget for such Contract Year shall be amended to reflect the removal of all costs related to such Legacy Generation Assets from such Operating Budget, including the O&M Fixed Fee Adjustment, as set forth in Section I of Annex II (*Compensation – O&M Fixed Fee*), as of the month such Decommissioning Services commence.

(d) Quarterly Adjustments to Fuel Budget. No later than fourteen (14) days prior to the end of a quarter, Operator shall prepare and submit to PREB for approval (with copy to Administrator and the T&D Operator), as necessary, (i) a record of actual Fuel Costs spent in the current quarter, with all applicable invoices and necessary supporting information for auditing purposes, and (ii) revised quarterly budgets describing the estimated variable Fuel Costs for the following quarter for the purpose of resetting the Fuel Costs to be recovered for that quarter. In the event PREB does not timely approve a proposed revised quarterly Fuel Budget prior to the start of the applicable quarter, the proposed quarterly Fuel Budget shall be adjusted to reflect the maximum amount of Fuel Costs to be recovered through the rates set forth in the applicable Fuel Adjustment Clause then in effect.

(e) O&M Budget Disputes. The Parties hereby agree that, in the event that a dispute arises between Operator, Owner and Administrator in connection with an O&M Budget (including proposed amendments thereto or the need for amendments thereto), the matter shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, an "O&M Budget Dispute").

Section 7.4 O&M Budget Policy. The O&M Budgets and the related Operator staffing levels for each Contract Year shall be designed to be adequate in both scope and amounts to

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reasonably assure that Operator is able to carry out the related O&M Services in accordance with the Contract Standards. The Parties further acknowledge and agree that, from time to time, it may be necessary or appropriate to amend or otherwise adjust the Incentives and Penalties or the O&M Budgets as a result of (i) Force Majeure Events, (ii) Owner Fault, (iii) Forced Outages or (iv) additional requirements imposed by Owner, Administrator or any other Governmental Body after approval of the O&M Budgets, in the case of each of clauses (i) to (iv), which (A) have resulted (or are reasonably likely to result) in schedule delays or increased work scope or costs and (B) are not be attributable to Operator's gross negligence or willful misconduct. Operator shall provide notice to Administrator promptly following the occurrence of an event contemplated above and the Parties shall, in good faith and acting reasonably, consider necessary adjustments to the Incentives and Penalties or the O&M Budgets that are based on rates that are reasonable and customary. Notwithstanding the foregoing, any such adjustments shall be compliant with the applicable Rate Order or subject to the Fuel Adjustment Clause.

Section 7.5 PREB Rate Proceedings. Operator acknowledges that from time to time, or as otherwise required by Applicable Law or ordered by PREB, T&D Operator may apply to PREB to request a change in the then-current Rate Order. Operator shall cooperate in good faith with T&D Operator and Administrator to prepare proposed O&M Budgets to be included in or otherwise form the basis of such Rate Order modification request. Operator shall further support the T&D Operator through any applicable proceedings arising in connection with the Rate Order modification request to ensure that adequate amounts are available for inclusion in any O&M Budget.

Section 7.6 Service Accounts.

(a) Operating Account.

(i) No later than ten (10) Business Days prior to the Service Commencement Date, Owner shall establish one or more operating accounts from which Operator shall draw funds from time to time to pay for Pass-Through Expenditures actually incurred by Operator in performing the O&M Services and from which Owner shall pay the O&M Service Fee (collectively, the "Operating Account"). Owner shall pay Operator the O&M Service Fee in accordance with the terms of Section 7.1 (*Service Fee*) from funds available in the Operating Account.

(ii) No later than ten (10) Business Days prior to the Service Commencement Date, Owner shall fund (or shall cause PREPA to fund) the Operating Account with an amount equal to the sum of (A) anticipated Pass-Through Expenditures for the following two (2) months, based on the then-currently approved Operating Budget *plus* (B) the anticipated O&M Service Fee for the following two (2) months, no later than the tenth (10th) Business Day of each month (beginning in the month following that in which the Service Commencement Date occurs), Owner shall replenish (or shall cause PREPA to replenish) the Operating Account so as to maintain a funding level equal to the sum of anticipated Pass-Through Expenditures for the subsequent two (2) months, under the Operating Budget and the anticipated O&M Service Fee for the subsequent two (2) months.

(iii) In each Contract Year, Operator shall be entitled to withdraw funds from the Operating Account for Pass-Through Expenditures actually incurred under the approved

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Operating Budget. Operator shall not withdraw funds from the Operating Account for Pass-Through Expenditures that are not included in the then-currently approved Operating Budget; provided that such approval shall not be required in case of: (A) a Force Majeure Event, Owner Fault, Forced Outage, Declared Emergency or Major Disaster; and (B) any circumstance, event or condition unforeseeable by Operator or which, if foreseeable, could not be avoided in whole or in part by the exercise of due diligence by Operator, requiring funding in excess of the amounts available for such matter in the then-currently approved Operating Budget and for which a prudent Person in the business of operating and managing the Legacy Generation Assets would expend funds prior to the time that the applicable O&M Budget could reasonably be expected to be amended); provided further, however, that Operator shall (x) notify Administrator in writing promptly upon Operator becoming aware of the occurrence of such circumstance, event or condition and (y) provide for its review and approval the details of such circumstance, event or condition and the amount of any withdrawal related thereto that Operator intends to make from the Operating Account.

(iv) Not less than twenty-four (24) hours before each withdrawal of funds from the Operating Account, Operator shall provide Administrator with written notice of such withdrawal, including a summary of Pass-Through Expenditures being paid. Not later than ten (10) Business Days following each month end, Operator shall furnish Administrator with a full accounting setting forth in reasonable detail the Pass-Through Expenditures actually incurred and paid during the prior month.

(b) Fuel Account.

(i) No later than the Service Commencement Date, Owner shall have established one or more fuel accounts from which Operator shall draw funds from time to time to pay for costs and expenses related to the purchase, transportation, testing, delivery and storage (including tank maintenance) of fuel for the Legacy Generation Assets actually incurred by Operator (the "Fuel Costs") in performing the O&M Services (collectively, the "Fuel Account").

(ii) No later than ten (10) Business Days prior to the Service Commencement Date, Owner shall fund (or shall cause PREPA to fund) the Fuel Account with an amount equal to at least an average of two (2) months of Fuel Costs, based on the average monthly Fuel Costs set forth in the then-currently approved Fuel Budget for the current quarter. Thereafter, no later than the tenth (10th) and the twenty-fifth (25th) Business Day of each month (beginning in the month following that in which the Service Commencement Date occurs), Owner shall replenish (or shall cause PREPA to replenish) the Fuel Account so as to maintain a funding level equal to at least an average of two (2) months of Fuel Costs, based on the average monthly Fuel Costs set forth in the then-currently approved Fuel Budget for the current quarter. Owner's required funding of the Fuel Account may be increased in accordance with any special stipulations in the approved and in-force fuel supply agreements for the applicable Legacy Generation Assets.

(iii) Promptly after receiving approval from PREB of the Fuel Costs submitted by Operator pursuant to Section 7.3(d) (*O&M Budgets – Quarterly Adjustments to Fuel Budgets*), Owner shall deposit in the Fuel Account an amount equivalent to the variance between the Fuel Budget for the applicable quarterly period and the Fuel Costs actually spent in such period.

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(iv) In each Contract Year, Operator shall be entitled to withdraw funds from the Fuel Account for Fuel Costs actually incurred under the approved Fuel Budget. Operator shall withdraw funds from the Fuel Account only for Fuel Costs that are incurred pursuant to approved and in-effect fuel supply agreements for the Legacy Generation Assets. Operator shall not withdraw funds from the Fuel Account for any non-fuel costs or Fuel Costs that are not incurred pursuant to approved and executed fuel supply agreements for the Legacy Generation Assets.

(v) Not less than twenty-four (24) hours before each withdrawal of funds from the Fuel Account, Operator shall provide Administrator with written notice of such withdrawal, including a summary of Fuel Costs being paid and the applicable supporting invoices. Not later than ten (10) Business Days following each month end, Operator shall furnish PREB and Administrator with a full accounting setting forth in reasonable detail the Fuel Costs actually incurred and paid during the prior month.

(c) Decommissioning Account.

(i) No later than ten (10) Business Days prior to the Service Commencement Date, Owner shall establish one or more operating accounts from which Operator shall draw funds from time to time to pay for Pass-Through Expenditures actually incurred by Operator in performing the Decommissioning Services and from which Owner shall pay the Decommissioning Service Fee (collectively, the “Decommissioning Account”). Owner shall pay Operator the Decommissioning Service Fee in accordance with the terms of Section 7.1 (*Service Fee*) from funds available in the Decommissioning Account.

(ii) No later than ten (10) Business Days prior to the Decommissioning Commencement Date for the applicable Legacy Generation Asset, Owner shall fund (or shall cause PREPA to fund) the Decommissioning Account with an amount equal to the sum of (A) anticipated Pass-Through Expenditures for the following two (2) months, based on the then-currently approved Decommissioning Budget *plus* (B) the anticipated Decommissioning Service Fee for the following two (2) months, no later than the tenth (10th) Business Day of each month (beginning in the month following that in which the applicable Decommissioning Commencement Date occurs), Owner shall replenish (or shall cause PREPA to replenish) the Decommissioning Account so as to maintain a funding level equal to the sum of anticipated Pass-Through Expenditures for the subsequent two (2) months, under the then-currently approved Decommissioning Budget, and the anticipated Decommissioning Service Fee for the subsequent two (2) months, and so on subsequently until the Decommissioning Services conclude.

(iii) During the performance of the Decommissioning Services for the applicable Legacy Generation Asset, Operator shall be entitled to withdraw funds from the Decommissioning Account for Pass-Through Expenditures actually incurred under the approved Decommissioning Budget. Operator shall not withdraw funds from the Decommissioning Account for Pass-Through Expenditures that are not included in the then-currently approved Decommissioning Budget; provided that such approval shall not be required in case of: (A) a Force Majeure Event, Owner Fault, Forced Outage, Declared Emergency or Major Disaster; and/or (B) any circumstance, event or condition unforeseeable by Operator or which, if foreseeable, could not be avoided in whole or in part by the exercise of due diligence by Operator, requiring funding in excess of the amounts available for such matter in the then-currently approved Decommissioning

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Budget and for which a prudent Person in the business of decommissioning the Legacy Generation Assets would expend funds prior to the time that such Decommissioning Budget could reasonably be expected to be amended; provided further, however, that Operator shall (x) notify Administrator in writing promptly upon Operator becoming aware of the occurrence of such circumstance, event or condition and (y) provide the details of such circumstance, event or condition and the amount of any withdrawal related thereto that Operator intends to make from the Decommissioning Account.

(iv) Not less than twenty-four (24) hours before each withdrawal of funds from the Decommissioning Account, Operator shall provide Administrator with written notice of such withdrawal, including a summary of Pass-Through Expenditures being paid. Not later than ten (10) Business Days following each month end, Operator shall furnish Administrator with a full accounting setting forth in reasonable detail the Pass-Through Expenditures actually incurred and paid during the prior month.

(d) Reserve Account.

(i) No later than ten (10) Business Days prior to the Service Commencement Date, Owner shall establish one or more reserve accounts (each, a “Reserve Account”) from which Operator shall draw funds from time to time to pay for (A) costs in connection with Forced Outages that constitute Force Majeure Events and any other Force Majeure Events, (B) any shortfalls in the required funding of the Mobilization Account, Service Accounts or Decommissioning Account and (C) costs in connection with the procurement and installation of any Capital Spare Parts approved by Administrator in accordance with Section 5.6 (*Option to Propose Capital Spare Parts*).

(ii) No later than ten (10) Business Days prior to the Service Commencement Date, Owner shall fund (or shall cause PREPA to fund) the Reserve Account with an amount equal to US\$[•]²⁰. Following a withdrawal from the Reserve Account, Owner shall replenish (or shall cause PREPA to replenish) the Reserve Account by depositing no later than the tenth (10th) Business Day of each month (beginning in the month following that in which the withdrawal occurred) an amount equal to the aggregate amount withdrawn from the Reserve Account during the previous month; provided that if, in any given month, Owner does not have sufficient funds to fund the Reserve Account in the required amount, the failure to so fund shall not constitute a default hereunder so long as the Reserve Account is topped up to the level at which it should be in at any given point as soon as Owner has sufficient funds to do so.

(iii) Subject to the terms of this Section 7.6(c) (*Service Accounts – Reserve Account*), Operator shall be entitled to withdraw funds from the Reserve Account from time to time only as necessary to pay for (A) costs in connection with Forced Outages that constitute Force Majeure Events, (B) any shortfalls in the required funding of the Mobilization Account, Service Accounts or Decommissioning Account or (C) costs in connection with the procurement and installation of any Capital Spare Parts approved by Administrator in accordance with Section 5.6 (*Option to Propose Capital Spare Parts*). Simultaneous with each such withdrawal, Operator shall provide Administrator with written notice of such withdrawal, including a summary of costs being paid. Not later than ten (10) Business Days following each month end during which funds were

²⁰ **Note to Proponent:** Please indicate a proposed initial funding amount for the Reserve Account.

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withdrawn from the Reserve Account, Operator shall furnish Administrator with a full accounting setting forth in reasonable detail the costs related to the Forced Outage actually incurred and paid during the prior month, the transfer of funds to the Mobilization Account, Service Accounts or Decommissioning Account or the costs related to the approved procurement and installation of such Capital Spare Part.

(e) Service Account Disputes. The Parties hereby agree that, in the event that a dispute arises in connection with a Service Account, the Mobilization Account or the Demobilization Account, the matter shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, a “Service Account Dispute”).

(f) Withdrawals by Owner. Owner shall not withdraw funds held in (i) any Service Account (other than from the Operating Account for payment of the O&M Service Fee due to Operator), (ii) the Mobilization Account (other than for payment of the Mobilization Service Fee due to Operator), (iii) the Decommissioning Account (other than for payment of the Decommissioning Service Fee due to Operator) or (iv) the Demobilization Account (other than for payment of the Demobilization Service Fee due to Operator), in each case without the prior written approval of each of Administrator and Operator.

Section 7.7 Disallowed Costs.

(a) Generally. Subject to the limitations on liability in Section 19.3 (*Limitation on Liability*), none of the following shall be treated as Pass-Through Expenditures for purposes of payment from Owner to Operator, and each shall be the sole responsibility of Operator (collectively, “Disallowed Costs”):

(i) any and all Pass-Through Expenditures incurred as a result of Operator’s negligence (including gross negligence) or willful misconduct, except as otherwise provided in Section 5.9(b)(iii) (*Environmental, Health and Safety Matters – Pre-Existing Environmental Conditions*) where the applicable standard shall be the Pre-Existing Environmental Condition Liability Standard;

(ii) any and all fines, penalties or other similar payments or charges imposed by PREB, Puerto Rico Department of Natural and Environmental Resources, the EPA, the United States Department of Justice, OSHA or any other Governmental Body on Operator, except to the extent Operator is performing its obligations under this Agreement in accordance with this Agreement; and

(iii) any and all expenditures in excess of the then-currently approved Operating Budget or Decommissioning Budget(s) that are incurred by Operator other than as a result of Owner Fault, Operator’s compliance with the Consent Decree or other Applicable Law, or a Force Majeure Event.

(b) Disallowed Costs Disputes. The Parties hereby agree that, in the event that a dispute arises in connection with Disallowed Costs, the matter shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, a “Disallowed Costs Dispute”). In such event, Operator may continue to withdraw such Pass-Through Expenditures from the applicable Service Account; provided Operator shall be responsible to

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reimburse Owner promptly (and in any event within five (5) Business Days) any Pass-Through Expenditures that are determined to be Disallowed Costs pursuant to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*).

Section 7.8 Unfunded Amounts. Notwithstanding anything contained in this Agreement to the contrary, the Parties acknowledge and agree that Operator shall have no obligation or responsibility to incur or pay any costs or make expenditures in providing the O&M Services hereunder (other than Disallowed Costs) to the extent any of the Service Accounts do not contain sufficient funds to pay such costs and expenditures. Without limiting Operator's termination rights hereunder, and except to the extent Operator exercises its rights to cease providing the O&M Services pursuant to Section 14.4 (*Termination for Owner Event of Default*), to the extent sufficient funds are not available for withdrawal by Operator from the Service Accounts, the Mobilization Account or the Demobilization Account, as applicable, Operator shall take reasonable measures to maintain the continuity of the O&M Services, the Decommissioning Services, the Mobilization Services and the Demobilization Services in accordance with the Contract Standards to the extent possible in the absence of its receipt of such sufficient funding.

Section 7.9 Owner Payment of Administrator Costs. Owner shall be solely responsible for all costs and expenses of Administrator in connection with the performance of Administrator's obligations under this Agreement, and shall pay or reimburse Administrator promptly for any out-of-pocket or third-party costs and expenses.

ARTICLE 8
[CREDIT SUPPORT

Section 8.1 Guarantee. Operator shall cause the Guarantee to be provided on or prior to the Effective Date and maintained thereafter throughout the Term.

Section 8.2 Guarantor Reports. While any Guarantee is outstanding, Operator shall deliver to Administrator (with copy to PREB): (i) within sixty (60) days after the end of the second quarter of a Guarantor's fiscal year, a copy of the unaudited balance sheets of such Guarantor at the end of each such period and the related unaudited statements of income, changes in equity and cash flows for each such period, in a manner and containing information consistent with such Guarantor's current practices; and (ii) within one hundred twenty (120) days after the end of such Guarantor's fiscal year, a copy of the audited balance sheets of such Guarantor at the end of each such fiscal year, and the related audited statements of income, changes in equity and cash flows for such fiscal year, including, in each case, the notes thereto, in each case prepared in accordance with generally accepted accounting principles consistently applied in the United States (or the equivalent jurisdiction of such Guarantor), together with a certificate from such Guarantor's chief financial officer that such financial statements fairly present, in all material respects, the financial condition and the results of operations, changes in equity and cash flows of such Guarantor as at the respective dates of and for the periods referred to in such financial statements, all in accordance with generally accepted accounting principles in the United States (or the equivalent jurisdiction of such Guarantor) consistently applied. Such financial statements shall reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such financial statements. In addition to the foregoing, Operator shall provide an opinion thereon of an independent public accountant of national stature in the United States (or the equivalent jurisdiction of such Guarantor) engaged by such Guarantor. If applicable, Operator shall also furnish Administrator copies of the quarterly and annual reports of Guarantor(s) filed with the U.S. Securities and Exchange Commission or with any other comparable international securities regulatory agency.]²¹

²¹ **Note to Draft:** Retention of this Article is dependent on whether there is a Guarantor.

ARTICLE 9
COMPLIANCE WITH APPLICABLE LAW

Section 9.1 Compliance Obligations. Operator shall perform, and shall cause all Subcontractors to perform, the O&M Services in accordance with the Contract Standards and Applicable Law, including the Consent Decree.

Section 9.2 Anti-Corruption and Sanctions Laws.

(a) Anti-Corruption. Neither Operator, its subsidiaries or Parent Company, nor, when acting on behalf of Operator or its subsidiaries, any director or officer or employee of Operator or its subsidiaries, nor, in connection with this Agreement or the O&M Services, any Affiliates of Operator shall violate, conspire to violate, aid and abet the violation of any anti-bribery, anti-corruption or anti-money laundering law or regulation, including Act 2 and any other laws or regulation related to political activity, conflicts of interest, embezzlement, the misuse of public funds, or property or bidding on or otherwise seeking government contracts (collectively, the “Anti-Corruption Laws”). No funds transferred by Owner to Operator shall be transferred by Operator, directly or indirectly, in violation of any Anti-Corruption Laws. Operator acknowledges and agrees that it shall 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.

(b) Sanctions. Neither Operator, its subsidiaries, Parent Company or Affiliates, nor any director or officer of Operator, its subsidiaries, Parent Company or Affiliates are Sanctioned Persons or are located, organized or resident in a Sanctioned Country. Neither Operator nor its subsidiaries, nor any director, or officer or employee of Operator, its subsidiaries (when acting on behalf of Operator or its subsidiaries), shall directly or, knowingly, indirectly, engage in any transactions or business activity of any kind with a Sanctioned Person or a Person located, organized or resident in a Sanctioned Country. No funds transferred by Owner to Operator or its subsidiaries shall be transferred by Operator or its subsidiaries, directly or indirectly, to a Sanctioned Person, a Person located, organized or resident in a Sanctioned Country, or in violation of Sanctions.

(c) Policies and Procedures. Operator and its subsidiaries, Parent Company and Affiliates shall maintain and implement policies, procedures and controls reasonably designed to ensure compliance by Operator and its subsidiaries with the Anti-Corruption Laws and Sanctions. Operator shall include in all invoices to Administrator a written certification substantially in the form of Exhibit F (*Form of Anti-Corruption Certification*), and acknowledges that any invoice not including such certification shall not be accepted by Administrator. Operator shall require any Subcontractors engaged by Operator to execute at the commencement of the Subcontract (i) a Sworn Statement and (ii) a certification substantially in the form of Exhibit F (*Form of Anti-Corruption Certification*).

(d) Notice. Operator shall within five (5) Business Days notify Administrator in writing in accordance with Section 21.2 (*Notices*) if, to Operator’s knowledge, Operator, its subsidiaries, any director, officer or employee of Operator or its subsidiaries or Parent Company, or, in connection with this Agreement or the O&M Services, any Affiliates of Operator becomes subject to any investigation by law enforcement or regulatory authorities in connection with the Anti-Corruption Laws or Sanctions.

Section 9.3 Commonwealth Requirements.

(a) Practice of Engineering, Architecture and Other Professions in the Commonwealth. To the extent that performance of the O&M Services involves performance of architectural, engineering, land surveying and landscape architecture services governed by Act No. 173 of the Legislative Assembly of Puerto Rico, enacted on August 12, 1988 (“Act 173”), then (i) Operator shall comply (and shall require Subcontractors or agents, if any, to comply) with Act 173 and (ii) Operator shall require that its Subcontractors and agents comply with Act 173.

(b) Subcontractor and Supplier Contracts. To the extent permitted by Applicable Law, Operator shall include the provisions of this Article 9 (*Compliance with Applicable Law*) in every Subcontract and supply contract in order for such provisions to be binding on each Subcontractor or supplier. Operator shall require any Subcontractors engaged by Operator to execute at the commencement of such Subcontract a certification substantially in the form of Exhibit E (*Form of Commonwealth Certifications*).

(c) Local Goods and Services. As required by Article 10 of Act No. 14 of the Legislative Assembly of Puerto Rico, enacted on January 8, 2004, Operator shall use commercially reasonable efforts to use, to the extent available and applicable to the services provided hereunder, and to the extent permitted by Applicable Law, goods extracted, produced, assembled, packaged, bottled or distributed in the Commonwealth by businesses operating in the Commonwealth or distributed by agents established in the Commonwealth.

Section 9.4 Non-Discrimination Laws. Operator shall comply with all Applicable Law regarding non-discrimination.

Section 9.5 Non-Collusion and Acceptance. Operator attests, subject to the penalties for perjury, that no Representative of Operator, directly or indirectly, to the best of Operator’s knowledge, entered into or offered to enter into any combination, conspiracy, collusion or agreement to receive or pay any sum of money or other consideration for the execution of this Agreement other than that which is expressly set forth in this Agreement.

Section 9.6 Commonwealth Tax Liabilities. Operator shall inform Administrator if, at any time during the Term, there are any material tax disputes with any Governmental Body of the Commonwealth (other than Commonwealth Tax liabilities for which Operator is not responsible under this Agreement, if any).

Section 9.7 Certifications Required by Commonwealth Contractor Requirements. Operator has (i) certified that it has complied and is in compliance with the provisions of the Public-Private Partnerships Authority’s Ethical Guidelines and (ii) delivered the Sworn Statement upon execution hereof.

Section 9.8 Duty to Inform of Criminal Investigations. Operator shall inform Administrator and PREB if, at any time during the Term, it becomes aware that it is subject to investigation in connection with criminal charges related to acts of corruption, the public treasury, the public trust, a public function or charges involving public funds or property.

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Section 9.9 Act 120. Pursuant to Section 5(f) of Act 120 and subject to the provisions of this Agreement, Operator shall at all times comply with the public policy and regulatory framework applicable to the Legacy Generation Assets.

ARTICLE 10 INSURANCE

Section 10.1 Insurance Generally. From the Service Commencement Date and for the remainder of the Term thereafter, and for such additional periods as may be specified, Operator shall maintain in effect, and cause any Subcontractor performing any of the O&M Services or the Decommissioning Services to maintain in effect, for the benefit of Owner and Operator, as applicable, the insurance policies and limits of coverage specified in Annex XI (*Insurance Specifications*), and such additional coverage (i) as may be required by Applicable Law and (ii) that a prudent Person in the business of operating, managing and decommissioning the Legacy Generation Assets would maintain (the “Required Insurance”), and shall provide insurance management services, including placing insurance with carriers, and claims management and processing, as more fully described in Annex VII (*Scope of Services*). All Required Insurance shall be in a form reasonably acceptable to Administrator and shall only be issued by generally recognized financially responsible insurers that (x) are authorized to do business in the Commonwealth or are otherwise authorized or permitted by the Office of the Commissioner of Insurance of Puerto Rico and (y) at a minimum have a rating of A(VIII) or better by A.M. Best Company or an equivalent rating by another similarly recognized insurance rating agency (unless Administrator consents to waive this requirement). All premiums, deductibles, and other reasonable fees, costs and expenses (including uninsured Losses that are not Disallowed Costs and losses in excess of insurance) shall be Pass-Through Expenditures.

Section 10.2 Commercial Availability. Notwithstanding anything to the contrary herein, if any Required Insurance policy shall not be available at commercially reasonable rates, Operator shall promptly notify Administrator, in writing, but in no event less than sixty (60) days prior to the expiration of any Required Insurance and Operator shall have the right to request that Administrator consent to waive such requirement, which consent shall not be unreasonably withheld, delayed or conditioned. In the event that any Required Insurance policy is not available at commercially reasonable rates, as reasonably determined by Administrator, and Administrator consents to waive such requirement, any such waiver shall be effective only for so long as such insurance shall not be available at commercially reasonable rates; provided that during the period of such waiver, (i) Operator shall maintain the maximum amount of such insurance otherwise available at commercially reasonable rates and (ii) Administrator shall have the right to seek alternative coverage acceptable to Administrator. During the period of any such waiver, any loss that would otherwise have been insured shall be treated as a Pass-Through Expenditure, and the Parties shall consider appropriate adjustments to the O&M Budgets in accordance with Section 7.4 (*O&M Budget Policy*). If Administrator elects to purchase alternative coverage for the period of such waiver (x) Operator shall use its commercially reasonable efforts to ensure that Administrator is able to timely obtain such coverage and (y) any reasonable excess cost of such alternative coverage shall be treated as a Pass-Through Expenditure.

Section 10.3 Additional Named Insureds. Operator, Operator Indemnitees and Owner shall be included as additional named insureds, where commercially applicable and pertinent to the coverage, including as provided in Annex XI (*Insurance Specifications*), along with waivers of subrogation, breach of warranties or separation of insureds and contractual liability endorsements on any Required Insurance policies, which policies shall require thirty (30) days prior written notice to Administrator by Operator prior to the effective date of any change in or non-renewal or

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cancellation of such policies. Insurance coverage required pursuant to this Section 10.3 (*Additional Named Insureds*) shall be maintained with generally recognized financially responsible insurers that (i) are authorized to do business in the Commonwealth or are otherwise authorized or permitted by the Office of the Commissioner of Insurance of Puerto Rico and (ii) at a minimum have a rating of A(VIII) or better by A.M. Best Company or an equivalent rating by another similarly recognized insurance rating agency (unless Administrator consents to waive this requirement). In addition, Operator shall be named as a “loss payee” for each of the policies of insurance contemplated herein and shall be entitled to receive all proceeds of the Required Insurance. In the event of a Loss relating to the O&M Services, the Legacy Generation Assets or any Generation Site, Owner shall open an account in which to deposit any proceeds of insurance for any such Losses (the “Insurance Proceeds Account”). If Operator receives any proceeds of insurance for any Losses relating to the O&M Services, the Legacy Generation Assets or any Generation Site, Operator shall deposit such amounts into the Insurance Proceeds Account within three (3) Business Days of receipt of such proceeds. If Owner receives any proceeds of insurance for any Losses relating to the O&M Services, the Legacy Generation Assets or any Generation Site, Owner shall hold such amounts in trust, for the benefit of Operator, and Owner shall deposit such amounts in the Insurance Proceeds Account within three (3) Business Days following the request of Operator. Funds in the Insurance Proceeds Account shall be used either to remediate or decommission the Legacy Generation Assets in a manner consistent with Prudent Industry Practice and reasonably approved by Administrator. In consultation with and subject to the approval of Administrator (with notice to PREB), Operator shall determine whether to use such funds to remediate or decommission the Legacy Generation Assets, taking into account the Integrated Resource Plan and the other generation resources available to the T&D System (including load and energy forecasts and long and short range system plans prepared by T&D Operator), each to the extent applicable.

Section 10.4 Warranties. Operator shall maintain and enforce any warranties or guarantees on any facilities, vehicles, equipment or other items owned or leased by Owner (to the extent made known to Operator), or purchased or leased on behalf of Owner and used by Operator in performing O&M Services under this Agreement. Operator shall not, by act or omission, negligently or knowingly invalidate in whole or part such warranties or guarantees without the prior approval of Administrator, such approval not to be unreasonably withheld, delayed or conditioned.

Section 10.5 Certificates of Insurance, Policies and Notice. Operator shall supply Administrator with copies of certificates of insurance promptly following issuance by the insurers. Not later than (i) sixty (60) days prior to the beginning of each Contract Year following the Service Commencement Date, Operator shall furnish certificates of insurance to Administrator to confirm the continued effectiveness of the Required Insurance. Whenever a Subcontractor is utilized, Operator shall either obtain and maintain on behalf of the Subcontractor, or require the Subcontractor to obtain and maintain, insurance in accordance with the applicable requirements of Annex XI (*Insurance Specifications*). Administrator’s receipt of certificates that do not comply with the requirements stated herein, or Operator’s failure to provide certificates, shall not limit or relieve Operator of the duties and responsibility of maintaining insurance in compliance with the requirements in this Article 10 (*Insurance*) and shall not constitute a waiver of any of the requirements in this Article 10 (*Insurance*).

**ARTICLE 11
SUBCONTRACTORS**

Section 11.1 Ability to Subcontract.

(a) Subcontractors Generally. Operator shall have the right, but not the obligation, to engage Subcontractors to perform the O&M Services or the Decommissioning Services. Operator's payment obligations under any Subcontract shall be a Pass-Through Expenditure. Operator shall provide Administrator (with copy to PREB) with a list of Subcontractors that Operator has engaged or intends to engage for the performance of any of the O&M Services or the Decommissioning Services the cost of which is expected to exceed US\$5,000,000 per year or US\$15,000,000 in the aggregate (each a "Material Subcontractor"). Administrator shall have the right to approve any Material Subcontractor engaged by Operator to perform any O&M Services or Decommissioning Services, which approval shall not be unreasonably withheld, delayed or conditioned. Operator shall be required to update such list on or about the fifth (5th) Business Day of each Contract Year. Operator shall ensure that: (i) any Subcontractor engaged by it exercises due diligence in the performance of the services subcontracted to such Subcontractor; (ii) any Subcontractor performing O&M Services shall be a licensed professional with experience in the performance of the work subcontracted to it; (iii) Administrator receives any information that it reasonably requests in respect of any Subcontractor; and (iv) the costs incurred with respect to any Subcontractor shall be consistent with the applicable O&M Budget or Decommissioning Budget and Operator shall use reasonable efforts to procure ensure such costs are reasonable and consistent with market terms, as applicable.

Section 11.2 Subcontract Terms.

(a) General. A Tax Opinion and a Reliance Letter shall be obtained, at the expense of Owner or Administrator, with respect to any Subcontract that is entered into, extended or amended and is a Covered Contract. Operator shall use commercially reasonable efforts to ensure that all agreements with third parties entered into after the Service Commencement Date in its own name or as agent for Owner that are material to Operator's performance of its obligations hereunder grant Owner or a Person designated by Administrator the right to own or license the goods and services to be provided thereunder. All contracts entered into with Subcontractors by Operator as agent for Owner, and all warranties and other rights related thereto, with respect to the Legacy Generation Assets (a) shall be assignable to Administrator or a Person designated by Administrator, solely at Administrator's election and without cost or penalty, upon early termination of this Agreement, and each Subcontractor shall acknowledge in writing the rights of Administrator to take such assignments and (b) shall terminate at the end of the Term. Operator shall be responsible for settling and resolving with all Subcontractors all claims arising out of delay, disruption, interference, hindrance or schedule extension caused by Operator or inflicted on Operator or a Subcontractor by the actions of another Subcontractor.

(b) Terms Related to Consent Decree. Operator shall provide to each person, firm, corporation, contractor, or subcontractor hired to perform any requirement of the Consent Decree (including its attachments or appendices) a copy of all sections of the Consent Decree (including its attachments and appendices) relevant to the employment of the person, firm, corporation, contractor, or subcontractor, and shall condition all contracts or subcontracts entered

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into upon performance of the requirement(s) in conformity with the terms of the Consent Decree (including its attachments and appendices). Operator shall further require that each such person, firm, corporation, contractor, or subcontractor provide written notice of the Consent Decree to all subcontractors hired to perform any portion of any requirement of this Consent Decree

Section 11.3 Indemnity for Subcontractor Claims. Operator shall retain full responsibility to Owner and Administrator under this Agreement for all matters related to the O&M Services and Decommissioning Services notwithstanding the execution or terms and conditions of any Subcontract. Subject to the limitations on liability set forth in Section 19.3 (*Limitation on Liability*), no failure of any Subcontractor used by Operator in connection with the provision of the O&M Services or Decommissioning Services shall relieve Operator from its respective obligations hereunder to perform the O&M Services and Decommissioning Services. Subject to Section 7.7 (*Disallowed Costs*) and Section 7.8 (*Unfunded Amounts*), Operator shall pay when due all undisputed claims and demands of Subcontractors, mechanics, materialmen, laborers and others for any work performed on, or materials delivered for incorporation into any part of, the Legacy Generation Assets by or on behalf of Operator, and shall promptly discharge all mechanics', materialmen's and other construction Liens registered against the Legacy Generation Assets. All such reasonable costs (other than Disallowed Costs) shall be treated as Pass-Through Expenditures. No Subcontractor shall have any right against Owner or Administrator for labor, services, materials or equipment furnished after the Service Commencement Date for the O&M Services or the Decommissioning Services. Operator acknowledges that its indemnity obligations under Section 19.1 (*Indemnification by Operator*) shall extend to all claims for payment or damages by any Subcontractor that furnishes or claims to have furnished any labor, services, materials or equipment in connection with the O&M Services after the Service Commencement Date or in connection with the Decommissioning Services.

**ARTICLE 12
TAXATION**

Section 12.1 Withholding Tax. Owner shall be entitled to (i) deduct and withhold (or cause to be deducted or withheld) from any consideration payable or otherwise deliverable pursuant to this Agreement, such 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 or under any applicable legal requirement and (ii) request any necessary Tax forms or information, from Operator or any other Person to whom a payment is required to be made pursuant to this Agreement. To the extent such amounts are so deducted or withheld and paid to the applicable taxing authority, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid. The Parties agree to cooperate in good faith to reduce or eliminate the amount of any applicable withholding Taxes. In the event any withholding Taxes are paid by Owner in respect of amounts payable to Operator, Owner shall use commercially reasonable efforts to provide Operator (x) receipts or other evidence of payment of such withholding taxes and (y) all informative statements required by Applicable Law.

Section 12.2 Tax Obligations.

(a) Payment of Taxes. Operator and each of its subsidiaries shall prepare and timely file, or cause to be prepared and filed at its cost, all Tax Returns required to be filed by it under any Applicable Law and shall pay any Taxes required to be paid by it under Applicable Law (whether or not shown as due on such Tax Returns). Such Tax Returns shall be true, correct and complete in all material respects.

(b) Exemption from Taxes. During the Term, Operator shall not be responsible for, and Operator and the Legacy Generation Assets shall not be subject to, (i) any real property Tax imposed on or measured by the value of the Legacy Generation Assets (including any real property constituting part of the Legacy Generation Assets) that is imposed by any Governmental Body of the Commonwealth or that is imposed on the “owner” of the Legacy Generation Assets (including relating to future expenditures for real property) or (ii) any personal property tax that is imposed by any Governmental Body of the Commonwealth on property owned by Owner and used by Operator exclusively for the Legacy Generation Assets or for the services or functions subject to this Agreement, all of which shall be obligations of Owner, if and to the extent any such Taxes are payable.

(c) Tax Deductions. Operator and each of its subsidiaries shall comply with all applicable withholding, employment, social security and similar provisions of applicable U.S. federal, state, Commonwealth, municipal, local and foreign laws, and timely withhold and pay all Taxes that it is required to withhold and pay from any Person, including its employees and independent contractors. Owner shall not make any such withholdings or deductions on behalf of Operator.

ARTICLE 13
INTELLECTUAL PROPERTY; PROPRIETARY INFORMATION

Section 13.1 Intellectual Property.

(a) Operator Intellectual Property and Subcontractor Intellectual Property. Operator hereby grants to Owner, and shall cause its Affiliates and Subcontractors to grant to Owner, a perpetual, non-exclusive, fully paid-up, royalty-free license and sublicense, under all of such party's rights in, to and under the Operator Intellectual Property and Subcontractor Intellectual Property solely in connection with the Legacy Generation Assets and related facilities and their related operations (including the O&M Services or the Decommissioning Services) by or on behalf of Owner or any successors or operators thereto to (i) make, have made, use, sell, offer for sale, export or import any product, service or apparatus and practice any method, and (ii) use, reproduce, distribute, perform, display, execute and create derivative works in any medium or format, whether now known or later developed, in connection with any of the foregoing. Operator Intellectual Property and Subcontractor Intellectual Property are Operator's Confidential Information to the extent disclosed to Owner and for so long as they are protectable as trade secrets or are otherwise confidential, and for the avoidance of doubt shall remain the Intellectual Property of the owner thereof.

(b) Third-Party Intellectual Property. Operator shall use commercially reasonable efforts to ensure that any Third-Party Intellectual Property is sublicensable to Owner under terms substantially similar to those obtained by Operator for the use thereof in connection with the Legacy Generation Assets and related facilities and their related operations. The use of Third-Party Intellectual Property shall be subject to the license terms governing the use of such Intellectual Property. To the extent Operator wishes to use any non-commercially available Intellectual Property of any third-party in the provision of the O&M Services or the Decommissioning Services, Operator shall identify to Administrator, in writing in advance of any use of any such Intellectual Property, whether or not Operator has a right to sublicense same to Owner under the same terms as those of the foregoing license requirements.

(i) If, despite using commercially reasonable efforts, Operator cannot secure such license or sublicense rights, then Operator shall (A) assist Owner in obtaining any necessary license directly from such third-party or (B) pursue licensing of a non-infringing alternative capable of accomplishing the same purpose in substantially the same manner, and, in the case of clause (A) and (B), Operator shall not use such Third-Party Intellectual Property or such alternative prior to Owner obtaining a sufficient license thereto.

(c) Work Product. The Parties hereby acknowledge and agree that, as between them, Owner shall own all right, title and interest in and to all Intellectual Property, regardless of format, created or produced in the performance of the O&M Services or the Decommissioning Services by Operator and its Affiliates if the cost of such creation or development is a Pass-Through Expenditure (collectively, "Work Product"), all of which shall, to the fullest extent under Copyright law, be considered works made for hire. For the avoidance of doubt, Work Product shall not include any Intellectual Property created or produced (A) prior to the Effective Date or (B) outside the performance of the O&M Services or the Decommissioning Services. To the extent that ownership in any Work Product does not automatically vest in Owner, Operator does hereby transfer and

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assign, and shall cause its Affiliates to transfer and assign, and shall use commercially reasonable efforts to cause any of its or their Subcontractors to transfer and assign, all right, title and interest in, to and under such Work Product and any Intellectual Property therein to Owner, and to execute all documents and take all actions requested by Administrator to transfer and record such ownership.

Section 13.2 Proprietary Information

(a) Confidentiality Obligation.

(i) Subject to the remainder of this Section 13.2 (*Proprietary Information*), any and all written, recorded or oral Facility Information furnished or made available in connection with this Agreement, or that constitutes Work Product, shall be deemed Owner's Confidential Information, with respect to which Operator shall be deemed to be the receiving Party and Owner shall be deemed to be the disclosing Party. Operator's Confidential Information includes Confidential Information pertaining to Operator Intellectual Property or Subcontractor Intellectual Property, or to Operator's policies and strategies. Confidential Information shall not include any of the foregoing that: (A) is when furnished, or thereafter becomes, available to the public other than as a result of a disclosure by the receiving Party or its Representatives; (B) is already in the possession of or become available to the receiving Party or its Representatives on a non-confidential basis from a source other than the disclosing Party or its Representatives; provided, that to the actual knowledge of the receiving Party or its Representatives, as the case may be, such source is not and was not bound by an obligation of confidentiality to the disclosing Party or its Representatives; or (C) the receiving Party or its Representatives can demonstrate has been independently developed without a violation of this Agreement.

(ii) Subject to the remainder of this Section 13.2 (*Proprietary Information*), each receiving Party shall, and shall cause its Representatives to, (A) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information of the disclosing Party, and (B) use all Confidential Information of the disclosing Party solely for the purposes of performing its obligations under the Transaction Documents and not for any other purpose; provided, that:

(A) a receiving Party may disclose Confidential Information of the disclosing Party to those of its Representatives who need to know such information for the purposes of performing the receiving Party's obligations under this Agreement if, but only if, prior to being given access to such Confidential Information, such Representatives are informed of the confidentiality thereof and the requirements of this Agreement and are obligated to comply with the requirements of this Agreement;

(B) the foregoing shall not limit any rights or licenses granted under Article 13 (*Intellectual Property; Proprietary Information*); provided that the licensee shall treat any Confidential Information included in such license in a manner consistent with this Section 13.2 (*Proprietary Information*) and in any event with the same care as it would treat its own comparable information, acting reasonably; and

(C) each Party shall be responsible for any breach of this Agreement by its Representatives.

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(b) Permitted Disclosures.

(i) Subject to the terms of this Section 13.2(*Proprietary Information*), each receiving Party may disclose Confidential Information of the disclosing Party to a duly authorized Governmental Body where required to do so by Applicable Law. None of the Parties shall have any liability whatsoever to the other Party in the event of any unauthorized use or disclosure by a Governmental Body of any Confidential Information of another Party to the extent such disclosure was required by Applicable Law and was in accordance with the requirements of this Section 13.2 (*Proprietary Information*).

(ii) Subject to the terms of this Section 13.2 (*Proprietary Information*), each Party may disclose Confidential Information of the other Party to the extent necessary to comply with any subpoena or order of any Commonwealth Court or other judicial entity having jurisdiction over the receiving Party, or in connection with a discovery or data request of a party to any proceeding before any of the foregoing.

(c) Ownership and Return of Information. Subject to the remainder of this Section 13.2 (*Proprietary Information*), Confidential Information shall be and remain the property of the Party disclosing it. Nothing in this Agreement shall be construed as granting any rights in or to Confidential Information to the Party or Representatives receiving it, except the right to use it in accordance with the terms of this Agreement. Notwithstanding the foregoing, the Parties and Administrator shall have the right to retain copies of Confidential Information, subject to the confidentiality obligations in this Section 13.2 (*Proprietary Information*).

(d) Public Information Disclosure Requirements-Related Obligations.

(i) Operator acknowledges and agrees that any documents or other materials relating to this Agreement in Owner's possession may be considered public information subject to disclosure in accordance with applicable Public Information Disclosure Requirements. Operator shall then have the opportunity to either consent to the disclosure or assert its basis for non-disclosure and claimed exception under Applicable Law to Owner within the time period specified in the notice issued by Owner. Notwithstanding the foregoing, it is the responsibility of Operator to monitor requests for disclosure issued by Owner and related proceedings and make timely filings. Owner may make filings of its own concerning possible disclosure; provided, however, Owner shall be under no obligation to support Operator's positions.

(A) By entering this Agreement, Operator consents to, and expressly waives any right to contest, the provision by Owner to Owner's counsel of all or any part of any documents or materials in Owner's possession in accordance with the Public Information Disclosure Requirements. Owner shall have no responsibility or obligation for Operator's failure to respond or to respond timely to any request for disclosure in accordance with the Public Information Disclosure Requirements, and other than the obligations of Owner expressly stated hereunder, Owner shall not be required, except where required under Applicable Law, to wait for a response before making a disclosure or otherwise taking action under the Public Information Disclosure Requirements.

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(B) Under no other circumstances shall Owner be responsible or liable to Operator or any other party as a result of disclosing any such documents or materials, including materials marked “CONFIDENTIAL”, where the disclosure is required by Applicable Law or by an order of court.

(ii) Nothing contained in this Section 13.2(d) (*Proprietary Information – Public Information Disclosure Requirements-Related Obligations*) shall modify or amend requirements and obligations imposed on Owner by the Public Information Disclosure Requirements, and the provisions of the Public Information Disclosure Requirements shall control to the extent of a conflict with the procedures under this Agreement or Owner’s obligations with respect to Confidential Information. Owner shall not advise a submitting party or Operator as to the nature or content of documents or materials that may be entitled to protection from disclosure under the Public Information Disclosure Requirements, as to the interpretation thereof, or as to relevant definition (e.g., “trade secret”).

(iii) In the event of any proceeding or litigation concerning the disclosure of any documents or other materials in accordance with the Public Information Disclosure Requirements to third-parties, Owner’s sole involvement shall be as a stakeholder retaining the material until otherwise ordered by a Commonwealth Court or other court or authority having jurisdiction. Operator shall be responsible for prosecuting or defending any action, acting on its own behalf, concerning such documents or materials at its sole expense and risk; provided, however, that Owner may intervene or participate in the litigation in such manner as it deems necessary or desirable.

Section 13.3 Data Security.

(a) Cybersecurity Breaches. Operator shall comply with, and shall use commercially reasonable efforts to ensure that all Operator Related Parties and all Subcontractors comply with all Contract Standards and all requirements of Applicable Law regarding data security, cyber security and information security in respect of the Facility Information and related Information Systems. Operator shall promptly notify, and shall use commercially reasonable measures to ensure that all Operator Related Parties and Subcontractors promptly notify, Administrator and PREB (in writing) of any material Cybersecurity Breaches or any other material losses or theft of any data of which it has knowledge. At Administrator’s direction, Operator shall (i) perform an analysis of the cause, (ii) remedy any Cybersecurity Breach including notification of consumers or government entities when required by Applicable Law, and (iii) cooperate fully with any civil or criminal authority in any investigation or action relating to such breach or attempted breach.

(b) Cybersecurity Program. Without limiting the foregoing, Operator shall : (A) establish and maintain reasonable and appropriate organizational, administrative, physical and technical measures in place to maintain the security of and to protect the internal and external integrity of the Facility Information and related Information Systems against any unlawful or unauthorized use, processing, destruction, loss, alteration, disclosure, theft or access (including to any data or information contained in or stored on such systems); (B) establish and maintain backup, security and disaster recovery measures to safeguard the Facility Information and related Information Systems; (C) limit the risk of introducing or knowingly permitting the introduction of any virus, worm, bomb, Trojan horse, trap door, stop code or other harmful code, timer, clock,

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counter or other limiting design, instruction or routine, device, feature or function into the Facility Information and related Information Systems; and (D) require security audits, at a frequency consistent with industry standards, to assess and confirm compliance with this Section 13.3 (*Data Security*), (including using reputable third-party vendors to perform, penetration testing, cybersecurity audits and vulnerability assessments) and requires taking prompt measures to remedy any gaps that may be identified. Operator shall provide a summary of the security program as well as a copy of any written audit reports and remedial measures to Administrator. Any security audit information is Confidential Information of Owner, and neither Party shall disclose such security audit information without the consent of the other Party.

ARTICLE 14
EVENTS OF DEFAULT; REMEDIES

Section 14.1 Events of Default by Operator. Each of the following shall constitute an event of default by Operator (an “Operator Event of Default”):

(a) Involuntary Bankruptcy. An involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of Operator [or Guarantor(s)] or its debts, or of a substantial portion of its respective assets, under the Bankruptcy Code or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Operator [or Guarantor(s)] or for a substantial portion of its assets, and, in any such case, such proceeding or petition shall continue undismissed for a period of sixty (60) or more days or an order or decree approving or ordering any of the foregoing shall be entered;

(b) Voluntary Bankruptcy. Operator [or Guarantor(s)] shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under the Bankruptcy Code, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in Section 14.1(a) (*Events of Default by Operator – Involuntary Bankruptcy*), (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Operator [or Guarantor(s)] or for a substantial portion of its respective assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(c) [Failure to Provide or Maintain the Guarantee. Operator shall fail to provide or maintain in full force and effect the Guarantee, which failure shall not be cured in a manner acceptable to Administrator within five (5) Business Days following receipt of written notice thereof;]

(d) Failure to Perform a Material Obligation. Operator shall fail to perform any material obligation, covenant, term or condition under this Agreement [or Guarantor(s) shall fail to perform any material obligation, covenant, term or condition under the Guarantee] ([in each case] other than a payment obligation as provided in Section 14.1(e) (*Events of Default By Operator – Failure to Pay*), which failure shall not be cured within sixty (60) days following receipt of written notice thereof by Administrator; provided, however, that as long as Operator [or such Guarantor, as the case may be,] is diligently attempting in good faith to cure such failure and it is reasonably expected that such failure is curable, then Operator [or such Guarantor, as the case may be,] shall have an additional thirty (30) days to cure such default; provided, further, that any failure to perform which is not curable shall not be deemed an Operator Event of Default if (i) within sixty (60) days following receipt of written notice thereof, Operator [or such Guarantor] shall have diligently and in good faith taken measures to prevent such failure to perform from recurring and (ii) such failure to perform which is not curable is not a recurring failure for the same issue as a prior failure to perform that has previously (A) occurred and (B) not been deemed an Operator Event of Default;

(e) Failure to Pay. Operator [or Guarantor(s)] shall fail to pay any undisputed amount required to be paid by Operator under this Agreement [or by Guarantor(s) under the Guarantee,] which failure shall not be cured within sixty (60) days following written notice thereof

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by Administrator; provided that if such payment relates to a Pass-Through Expenditure, an Operator Event of Default shall not be deemed to have occurred if sufficient funds for such payment are not available in the relevant Service Account;

(f) False or Inaccurate Representation or Warranty. Any representation or warranty of Operator under this Agreement or any other document delivered in connection herewith [or of Guarantor(s) under the Guarantee] shall prove to have been false, inaccurate or misleading in any material respect when made, and the legality of this Agreement [or such Guarantee] or the ability of Operator [or Guarantor(s)] to carry out its obligations hereunder or thereunder shall thereby be materially and adversely affected, which condition shall not be cured within thirty (30) days following written notice thereof by Administrator;

(g) Failure to Obtain or Maintain Insurance. Operator shall fail to obtain or maintain the Required Insurance, unless such failure is due to carrier insolvency or the fact that the Required Insurance is not available at commercially reasonable rates but only for such period of time and to the extent specified in Section 10.2 (*Commercial Availability*) (in which case no failure shall be understood to have occurred), which failure shall not be cured within ten (10) Business Days following written notice thereof by Administrator;

(h) Change of Control. A Change of Control of Operator that is not permitted by this Agreement shall occur on or after the Effective Date;

(i) Illegal Transfer. Operator shall enter into an agreement to, or shall assign, transfer, convey, lease, encumber or otherwise dispose of all or any portion of its rights or obligations under this Agreement other than (i) in accordance with the express terms of this Agreement and Applicable Law or (ii) with the consent of Administrator and PREB;

(j) Violation of Law. A court of competent jurisdiction shall have determined that Operator shall have violated any of the provisions of Article 3.2 of Act 2 or Operator shall be convicted by a court of competent jurisdiction, or shall enter a plea of *nolo contendere* with such court, with respect to any of the crimes listed in Section 20.2(g)(i)(B) (*Representations and Warranties of Operator – Applicable Law Compliance*);

(k) Failure to Pay Penalties. Operator [or Guarantor(s)] shall fail to pay any undisputed Penalties required to be paid by Operator under this Agreement [or by Guarantor(s) under the Guarantee] during three (3) or more consecutive Contract Years, which failure shall not be cured within sixty (60) days following written notice thereof by Administrator (a “Failure to Pay Penalties”); or

(l) Failure to Meet Minimum Performance Threshold. Operator [or Guarantor(s)] shall fail to meet the Minimum Performance Thresholds for two (2) consecutive Contract Years with respect to any of the following Incentives and Penalties standards: (i) commercial availability and reliability, (ii) safety compliance, (iii) environmental compliance and (iv) decommissioning; provided that such failure to meet the Minimum Performance Thresholds shall not have been excused by a Force Majeure Event, a Forced Outage or Owner Fault (a “Minimum Performance Threshold Default”).

Section 14.2 Termination for Operator Event of Default

(a) Termination for Involuntary Bankruptcy, Voluntary Bankruptcy or Violation of Law. Upon the occurrence of an Operator Event of Default under Section 14.1(a) (*Events of Default By Operator – Involuntary Bankruptcy*), Section 14.1(b) (*Events of Default By Operator – Voluntary Bankruptcy*) or Section 14.1(j) (*Events of Default By Operator – Violation of Law*), this Agreement shall immediately terminate without further action by Administrator, without need for a court decision or arbitral award confirming Administrator’s right to terminate.

(b) Termination for Other Operator Event of Default. Upon the occurrence of any other Operator Event of Default, Administrator may terminate this Agreement upon not less than one hundred twenty (120) days prior written notice to Operator, subject, to the extent required by Applicable Law, to the prior approval of PREB or the FOMB (if then in existence), without need for a court decision or arbitral award confirming Administrator’s right to terminate; provided, however, that any such notice of termination with respect to an Operator Event of Default under Section 14.1(h) (*Events of Default By Operator – Change of Control*) must be given no later than thirty (30) days following Administrator’s receipt of written notice from Operator of the occurrence of such Change of Control. If Administrator fails to give such notice to Operator within such thirty (30) day period, Administrator shall be deemed to have waived the Operator Event of Default with respect to such Change of Control and its termination rights with respect thereto (but not with respect to any subsequent Change of Control) shall expire and be of no further force or effect. For the avoidance of doubt, nothing in this Section 14.2 (*Termination for Operator Event of Default*) shall limit Operator’s right to contest, pursuant to Article 15 (*Dispute Resolution*), whether an Operator Event of Default has occurred, or any of its other rights herein.

Section 14.3 Events of Default By Owner. Each of the following shall constitute an event of default by Owner (an “Owner Event of Default”):

(a) Involuntary Bankruptcy. An involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of Owner or its debts, or of a substantial portion of its respective assets, under the Bankruptcy Code or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Owner or for a substantial portion of its assets, and, in any such case, such proceeding or petition shall continue undismissed for a period of sixty (60) or more days or an order or decree approving or ordering any of the foregoing shall be entered; provided, however, that the pursuit by creditors of Owner of relief from the automatic stay extant pursuant to section 362(a) of the Bankruptcy Code in the current Title III Case for the purpose of seeking appointment of a receiver under applicable law shall not constitute an Owner Event of Default unless and until any such receiver is duly appointed;

(b) Voluntary Bankruptcy. Owner shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under the Bankruptcy Code (other than the current Title III Case), (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in Section 14.3(a) (*Events of Default By Owner – Involuntary Bankruptcy*), (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Owner or for a substantial portion of its respective assets, (iv) file an answer admitting the material allegations of a

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petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(c) Failure to Perform a Material Obligation. Owner shall fail to perform any material obligation, covenant, term or condition under this Agreement (other than a payment obligation as provided in Section 14.3(d) (*Events of Default By Owner – Failure to Pay Service Fee*) or Section 14.3(e) (*Events of Default By Owner – Failure to Pay Other Undisputed Amount*) or a failure to fund the Mobilization Account or Service Account, or as provided in Section 14.3(f) (*Events of Default By Owner – Failure to Fund Mobilization Account or Service Account*)), which failure shall not be cured within sixty (60) days following written notice thereof by Operator; provided, however, that as long as Owner is diligently attempting in good faith to cure such failure and it is reasonably expected that such failure is curable, then Owner shall have an additional thirty (30) days to cure such default; provided, further, that any failure to perform which is not curable shall not be deemed an Owner Event of Default if (i) within sixty (60) days following receipt of written notice thereof, Owner shall have diligently and in good faith taken measures to prevent such failure to perform from recurring and (ii) such failure to perform which is not curable is not a recurring failure for the same issue as a prior failure to perform that has previously (A) occurred and (B) not been deemed an Owner Event of Default;

(d) Failure to Pay Service Fee. Owner shall fail to pay any undisputed Service Fees to be paid to Operator under this Agreement, which failure shall continue for thirty (30) days following written notice thereof by Operator;

(e) Failure to Pay Other Undisputed Amount. Owner shall fail to pay any other undisputed amount required to be paid by Owner to Operator under this Agreement (other than as provided in Section 14.3(d) (*Events of Default By Owner – Failure to Pay Service Fee*)), which failure shall not be cured within sixty (60) days following written notice thereof by Operator;

(f) Failure to Fund Mobilization Account or Service Account. Owner shall fail to fund the Mobilization Account or any Service Account in an amount equal to at least one half (1/2) of the requisite funding for such Mobilization Account or Service Account, which failure shall not be cured within five (5) Business Days following written notice thereof by Operator; or

(g) False or Inaccurate Representation or Warranty. Any representation or warranty of Owner under this Agreement or any other document delivered in connection herewith shall prove to have been false, inaccurate or misleading in any material respect when made, and the legality of this Agreement or the ability of Operator to carry out its obligations hereunder shall thereby be materially and adversely affected, which condition shall not be cured within thirty (30) days following written notice thereof by Operator.

Section 14.4 Termination for Owner Event of Default. Upon the occurrence of an Owner Event of Default under Section 14.3 (*Events of Default By Owner*), Operator may terminate this Agreement upon not less than one hundred twenty (120) days prior written notice to Administrator, without need for a court decision or arbitral award confirming Operator's right to terminate; provided that upon the occurrence of an Owner Event of Default under Section 14.3(f) (*Events of Default By Owner – Failure to Fund Mobilization Account or Service Account*) relating to funding of the Mobilization Account or the Operating Account, the Agreement shall terminate

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and, subject to Article 17 (*Demobilization*), Operator's obligation to perform the Mobilization Services, the O&M Services, the Decommissioning Services or the Demobilization Services, as applicable, shall cease, upon the earlier of (i) the date that is one hundred twenty (120) days following the date on which Administrator receives written notice from Operator, (ii) the date on which there is no funding in the Mobilization Account, or (iii) the date that is sixty (60) days following the date on which Administrator receives written notice from Operator that there is no funding in the Operating Account, in each case without need for a court decision or arbitral award confirming Operator's right to terminate. For the avoidance of doubt, nothing in this Section 14.4 (*Termination for Owner Event of Default*) shall limit Owner's right to contest, pursuant to Article 15 (*Dispute Resolution*), whether an Owner Event of Default has occurred, or any of its other rights herein. Owner agrees the automatic stay extant in the Title III Case pursuant to section 362(a) of the Bankruptcy Code shall not apply to the exercise by Operator of its termination rights or other remedies under this Section 14.4 (*Termination for Owner Event of Default*), Section 14.5 (*Additional Termination Rights*) or Section 14.6 (*Remedies Upon Early Termination*).

Section 14.5 Additional Termination Rights.

(a) Failure of Service Commencement Date Conditions. As set forth in Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*), each of Administrator and Operator shall have the right to terminate this Agreement for failure to satisfy the Service Commencement Date Conditions, in accordance with and subject to the terms set forth in Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*) in all respects.

(b) Extended Force Majeure Event. Each of Administrator and Operator shall have the right to terminate this Agreement upon not less than one hundred twenty (120) days' prior written notice to Operator or Administrator, respectively, in the event that a Force Majeure Event continues for a period in excess of eighteen (18) consecutive months and materially interferes with, delays or increases the cost of the Mobilization Services, the O&M Services, the Decommissioning Services or the Demobilization Services.

(c) Change in Regulatory Law. Operator shall have the right to terminate this Agreement upon not less than one hundred twenty (120) days' prior written notice to Administrator in the event of a Change in Regulatory Law.

Section 14.6 Remedies Upon Early Termination.

(a) Accrued and Unpaid Amounts. In the event of an early termination of this Agreement for any reason, as of the effective date of such termination (i) Owner shall pay Operator any accrued and unpaid amounts required to be paid by Owner under this Agreement, including the Mobilization Service Fee, the Pass-Through Expenditures, the O&M Fixed Fee, the applicable Decommissioning Fixed Fees and the Incentive Payment, in each case, as of the effective date of such termination and (ii) Operator shall pay Owner (A) any accrued and unpaid Penalties and (B) any penalties, fines or moneys incurred by Operator and owed to Governmental Entities for violations of Applicable Law, including Environmental Law.

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(b) Demobilization Service Fee. In the event of an early termination of this Agreement pursuant to Section 14.2, (*Termination for Operator Event of Default*), Section 14.4 (*Termination for Owner Event of Default*) or Section 14.5 (*Additional Termination Rights*), and if Operator is performing the Demobilization Services, Owner shall be responsible for payment of the portion of the Demobilization Service Fee that is accrued and unpaid as of the effective date of such termination.

(c) Termination Fee.

(i) In the event this Agreement is (A) terminated, revoked, nullified, cancelled or otherwise rendered invalid by any duly enacted law of the Commonwealth, as determined by a final non-appealable judgment by a court of competent jurisdiction (a "Contract Nullification or Cancellation") or (B) terminated by Operator pursuant to Section 14.5(c) (*Additional Termination Rights – Change in Regulatory Law*), but only if such termination is as a result of the circumstances described in clauses (ii), (iii) or (iv) of the definition of "Change in Regulatory Law", Owner shall pay Operator the Operator Termination Fee set forth in Section I of Annex XII (*Termination Fees – Operator Termination Fee*) (the "Operator Termination Fee")²². For the avoidance of doubt, (x) Owner shall have no obligation to pay the Operator Termination Fee other than in the circumstances described in clauses (A), (B) and (C) of the preceding sentence and (y) the "resolution" of this Agreement pursuant to Act 2 as described under Section 14.1(j) (*Events of Default by Operator - Violation of Law*) shall not be considered a Contract Nullification or Cancellation.

(ii) In the event of an early termination of this Agreement by Administrator due to a Failure to Pay Penalties or a Minimum Performance Threshold Default, Operator shall pay Owner the amount set forth in Section II of Annex XII (*Termination Fees – Owner Termination Fee*) (the "Owner Termination Fee")²³. For the avoidance of doubt, Operator shall have no obligation to pay the Owner Termination Fee other than in the event of an early termination of this Agreement by Administrator due to a Failure to Pay Penalties or a Minimum Performance Threshold Default.

(iii) The Parties hereby acknowledge and agree that, notwithstanding anything to the contrary in this Agreement:

(A) if this Agreement is (1) terminated due to a Contract Nullification or Cancellation or (2) terminated by Operator pursuant to Section 14.5(c) (*Additional Termination Rights – Change in Regulatory Law*) (but only if such termination is as a result of the circumstances described in clauses (ii), (iii) or (iv) of the definition of "Change in Regulatory Law"), Operator's damages would be difficult or impossible to quantify with reasonable certainty, and accordingly, the payment to Operator of the Operator Termination Fee (x) is a payment of liquidated damages (and not penalties), which is based on the Parties' estimate of damages Operator would suffer or incur, and (y) shall constitute Operator's sole and exclusive remedy for all monetary

²² **Note to Proponent: The amount of the Operator Termination Fee should be provided in the submission to the RFP.**

²³ **Note to Proponent: The amount of the Owner Termination Fee should be provided in the submission to the RFP.**

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damages, costs, losses and expenses of whatever type or nature arising from or related to this Agreement due to the events described in clauses (1), (2), and (3) of this sentence; and

(iv) if this Agreement is terminated by Administrator due to a Failure to Pay Penalties or a Minimum Performance Threshold Default, Owner's damages would be difficult or impossible to quantify with reasonable certainty, and accordingly, the payment to Owner of the Owner Termination Fee (x) is a payment of liquidated damages (and not penalties), which is based on the Parties' estimate of damages Owner would suffer or incur, and (y) shall constitute Owner's sole and exclusive remedy for all monetary damages, costs, losses and expenses of whatever type or nature arising from or related to termination of this Agreement due to a Failure to Pay Penalties or a Minimum Performance Threshold Default.

(v) Each of Operator and Owner hereby irrevocably waives any right it may have to raise as a defense that the Owner Termination Fee and Operator Termination Fee, respectively, are excessive or punitive.

(d) Additional Remedies. The Parties agree that, except as otherwise provided in this Agreement (including the sole and exclusive remedies set forth in Section 4.1(c) (*Mobilization Period Generally – Administrative Expense Treatment*), Section 4.8 (*Failure of Service Commencement Date Conditions*) and Section 14.6(c) (*Remedies Upon Early Termination – Termination Fee*)) in which cases the remedy specified in such provision shall be the sole remedy available, in the event that the Agreement is terminated early due to an Event of Default in accordance with the terms hereof, any other Party may exercise any rights it has under this Agreement and under Applicable Law to recover damages, secure specific performance or obtain injunctive relief.

(e) Debarment. Upon the termination of this Agreement pursuant to Section 14.2 (*Termination for Operator Event of Default*), Operator shall be disqualified from contracting with any Commonwealth Governmental Body for ten (10) years in accordance with Section 10(a)(15)(c) of Act 29.

ARTICLE 15 DISPUTE RESOLUTION

Section 15.1 Scope. Except as otherwise expressly provided in this Agreement, any dispute among the Parties arising out of, relating to or in connection with this Agreement or the existence, interpretation, breach, termination or validity thereof (a “Dispute”) shall be resolved in accordance with the procedures set forth in this Article 15 (*Dispute Resolution*), which shall constitute the sole and exclusive procedures for the resolution of such Disputes (the “Dispute Resolution Procedure”), including as to the validity of any termination or effective date of any termination. Operator acknowledges and agrees that Administrator (or any Designated Person appointed by Administrator) shall be authorized to participate in or act for and on behalf of Owner in any Dispute Resolution Procedure contemplated by this Article 15 (*Dispute Resolution*). For the avoidance of doubt, the Dispute Resolution Procedures set forth in this Agreement shall not apply to any dispute between a Party and PREB, which disputes shall be subject to resolution in accordance with Applicable Law. Notwithstanding anything to the contrary herein, in the event that Operator disagrees with a decision of PREB, nothing shall prejudice, limit or otherwise impair Operator’s right to exercise its rights pursuant to Act No. 38 of June 30, 2017 and Section 6.5(c) of Act 57.

Section 15.2 Commencement of the Dispute Resolution Procedure.

(a) Notice. If a Dispute arises, any Party may initiate the Dispute Resolution Procedure by giving a written notice of the Dispute to the other Party (a “Notice of Dispute”). The Notice of Dispute shall contain a brief statement of the nature of the Dispute, set out the relief requested and request that the Dispute Resolution Procedure of this Article 15 (*Dispute Resolution*) be commenced.

(b) Tolling. Any limitation period imposed by this Agreement or by Applicable Law in respect of a Dispute shall be tolled upon the delivery of a Notice of Dispute pursuant to this Section 15.2 (*Commencement of the Dispute Resolution Procedure*) for the duration of any Dispute Resolution Procedure pursuant to this Article 15 (*Dispute Resolution*).

Section 15.3 Negotiation.

(a) Generally. Upon receipt of a Notice of Dispute from a Party, the Parties shall refer the dispute to the Designated Person of each Party. The Designated Persons shall negotiate in good faith and attempt to resolve the Dispute within thirty (30) days after the date on which the Notice of Dispute was issued, or such longer period as the Designated Persons may otherwise agree. All communications, negotiations and discussions pursuant to this Section 15.3 (*Negotiation*) shall be (i) confidential, (ii) without prejudice privileged, (iii) treated as compromise settlement discussions and negotiations and (iv) not used, offered or admissible as evidence in any subsequent proceeding without the mutual consent of the Parties.

(b) Negotiation Period.

(i) If the Dispute remains unresolved thirty (30) days after the Notice of Dispute is issued (or such longer period as Operator and Administrator may mutually agree in writing) (the “Negotiation Period”), then any Mobilization Service Fee Estimate Dispute,

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Mobilization Service Fee Dispute, Demobilization Service Fee Estimate Dispute, Demobilization Service Fee Dispute, Handover Checklist Dispute, Administrator Dispute, Service Fee Dispute, O&M Budget Dispute, Decommissioning Budget Dispute, Service Account Dispute, Disallowed Costs Dispute or Force Majeure Event Dispute (each a “Technical Dispute”), or any engineering or technical dispute Operator and Administrator mutually agree in writing is a Technical Dispute shall be referred to the Expert Technical Determination procedure set forth in Section 15.4 (*Expert Technical Determination Procedure for Technical Disputes*) for a final and binding determination.

(ii) If the Dispute, other than a Technical Dispute, remains unresolved after the end of the Negotiation Period, then the Dispute shall proceed to mediation pursuant to Section 15.5 (*Mediation*), and if necessary, litigation pursuant to Section 15.6 (*Litigation as a Final Resort*), for a final and binding determination.

Section 15.4 Expert Technical Determination Procedure for Technical Disputes.

(a) Generally. Any Technical Disputes unresolved within the Negotiation Period shall be referred to an independent expert (the “Independent Expert”) for a final and binding expert determination (“Expert Technical Determination”).

(b) Procedures.

(i) For the purposes of this Section 15.4 (*Expert Technical Determination Procedure for Technical Disputes*), the Independent Expert shall be a reputable Person or Persons possessing expert knowledge and experience for the Expert Technical Determination of the Technical Dispute in question and shall be independent of and impartial as among the Parties. Operator and Administrator shall, in the first instance, attempt to agree on an Independent Expert through their respective Designated Persons. If Operator and Administrator cannot so agree within ten (10) days after the end of the Negotiation Period, the Parties shall promptly (and in any event within five (5) Business Days) apply to the ICC International Centre for ADR (the “ICC”) for the appointment of an Independent Expert in accordance with the ICC Rules for the Appointment of Experts and Neutrals.

(ii) Once selected by Operator and Administrator, neither Party shall communicate independently with the expert, and all communications the Parties make with the Independent Expert must be simultaneously copied to all other Parties.

(iii) The Independent Expert shall, in consultation with the parties, determine the procedure to be undertaken in the Expert Technical Determination. The Independent Expert shall determine the Technical Dispute within sixty (60) days after his or her appointment or as otherwise agreed by the Parties. This sixty (60) day time period may be extended by the Independent Expert or by the agreement of the Parties. A failure to determine the matter within sixty (60) days shall not be a ground to challenge any award or determination by the Independent Expert.

(iv) The determination by the Independent Expert on any Technical Dispute shall be final and binding on the Parties hereto. The costs of the Independent Expert shall be borne by Operator (and, for the avoidance of doubt, shall not be a Pass-Through Expenditure), to the extent that the Independent Expert resolves any dispute in Owner’s favor, and by Owner, to the extent that the Independent Expert resolves any dispute in Operator’s favor, or as determined by

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the Independent Expert if the dispute is not resolved entirely in favor of Owner or Operator. Notwithstanding any other provisions of this Article 15 (*Dispute Resolution*), enforcement of any determination of an Independent Expert may be sought by either of the Parties before any court of competent jurisdiction. To the extent permitted by law, any rights to appeal from or cause a review of any such determination by any Independent Expert are hereby waived by the Parties.

(c) Not an Arbitrator. The Independent Expert is not an arbitrator and shall not be deemed to be acting in an arbitral capacity.

(d) Confidentiality. The Parties agree that any Expert Technical Determination carried out pursuant to this Section 15.4 (*Expert Technical Determination Procedure for Technical Disputes*) shall be kept private and confidential, and that the existence of the Expert Technical Determination and any element of it (including the identity of the Parties, the identity of all witnesses and experts who may be called upon in the Expert Technical Determination, all materials created for the purposes of the Expert Technical Determination, all testimony or other oral submissions in the Expert Technical Determination, and all documents produced by a Party in connection with an Expert Technical Determination that were not already in the possession of the other Party) shall be kept confidential, except (i) with the consent of the Parties, (ii) to the extent disclosure may be lawfully required in *bona fide* judicial proceedings relating to the Expert Technical Determination, (iii) where disclosure is lawfully required by a legal duty, and (iv) where such information is already in the public domain other than as a result of a breach of this clause. The Parties also agree not to use any information disclosed to them during the Technical Dispute for any purpose other than in connection with the Expert Technical Determination.

Section 15.5 Mediation.

(a) Generally. If a Dispute, other than a Technical Dispute, remains unresolved after the Negotiation Period, either Operator or Administrator may refer the Dispute to mediation through a written notice of mediation (the "Notice of Mediation"). Each Party to this Agreement agrees that it may not initiate a civil action as provided in Section 15.6 (*Litigation as a Final Resort*) (other than provisional relief sought on an expedited basis) unless (i) the matter in question has first been submitted to mediation in accordance with the provisions of this Section 15.5(a) (*Mediation – Generally*) or (ii) such Party would be barred from asserting its claim in a civil action if it were required to submit to mediation pursuant to Section 15.3 (*Negotiation*).

(b) Procedures.

(i) The Parties shall, in the first instance, attempt to agree on a mediator through their respective Designated Persons. If the Parties cannot so agree within thirty (30) days after the Notice of Mediation is sent, either of the Parties may promptly apply to the ICC for appointment of a single mediator in accordance with the Mediation Rules of the International Chamber of Commerce (the "Mediation Rules"). Absent any written agreement to the contrary by the Parties, the mediator shall be an attorney or mediator authorized to practice law in the United States or the Commonwealth of Puerto Rico. The mediator shall be paid for the mediation services, and shall be reimbursed for all reasonable and documented out-of-pocket costs incurred in carrying out the mediation duties hereunder, including the costs of consultants. All Fees-and-Costs of the mediation shall be shared equally by the Parties (and, for the avoidance of doubt, shall not be a Pass-

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Through Expenditure). The Parties shall request that the mediator schedule the mediation within thirty (30) days of the mediator's appointment, and shall comply with all procedures the mediator establishes for the conduct of the mediation. Absent any written agreement to the contrary by the Parties, if the Dispute is not resolved within ninety (90) days of the Notice of Mediation, the mediation shall be terminated.

(ii) For the avoidance of doubt, absent the written agreement of the Parties, the Mediation Rules shall not apply to any mediation carried out pursuant to this Section 15.5(b) (*Mediation – Procedures*). Rather, the reference to the ICC and the Mediation Rules above should be understood as referring solely to the designation of the ICC as an appointing authority to appoint a mediator pursuant to the procedures set forth in the Mediation Rules in the event the Parties are unable to agree on a mediator within the timeframe specified.

(c) Confidentiality. The Parties agree that any mediation carried out pursuant to this Section 15.5(b) (*Mediation – Procedures*) shall be kept private and confidential, and that the existence of the mediation and any element of it (including the identity of the Parties, the identity of all witnesses and experts who may be called upon at the mediation, all materials created for the purposes of the mediation, all testimony or other oral submissions at the mediation, and all documents produced by a Party in connection with a mediation that were not already in the possession of the other Party) shall be kept confidential, except (i) with the consent of the Parties, (ii) to the extent disclosure may be lawfully required in *bona fide* judicial proceedings relating to the mediation, (iii) where disclosure is lawfully required by a legal duty and (iv) where such information is already in the public domain other than as a result of a breach of this clause. The Parties also agree not to use any information disclosed to them during the mediation for any purpose other than in connection with the mediation.

Section 15.6 Litigation as a Final Resort.

(a) Civil Action. In the event that the Parties fail to resolve any Dispute, other than a Technical Dispute, within ninety (90) days after the date the mediator is selected pursuant to the procedures set forth in Section 15.5(b) (*Mediation – Procedures*) (or such longer period as the Parties may mutually agree), either Party may initiate a civil action in the Commonwealth Court and in accordance with all applicable rules of civil procedure. The Parties acknowledge and understand that, to resolve any and all claims arising out of this Agreement (other than any Technical Dispute), they may file a civil action, including actions in equity, in the Commonwealth Court, except for those claims (such as regulatory and energy policy matters) that must be resolved by PREB in accordance with Act 57. Owner and Operator each irrevocably consents to the jurisdiction of such courts (as appropriate, depending on the subject matter of the dispute) in any such actions or proceedings, waives any objection it may have to the jurisdiction of any such action or proceeding, as well as objections or defenses based on sovereign immunity. The Parties acknowledge and agree that the terms and conditions of this Agreement have been freely, fairly and thoroughly negotiated.

(b) Costs and Expenses. Except as required by Operator's indemnity obligations under Section 19.1 (*Indemnification by Operator*), each Party shall bear its own costs and expenses in any Legal Proceeding where it is the named defendant or in any Legal Proceeding among the Parties (and, for the avoidance of doubt, such costs and expenses shall not be a Pass-Through

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Expenditure). Notwithstanding the foregoing, each Party retains its rights to bring any Legal Proceeding or to implead the other Party as to any matter arising hereunder.

Section 15.7 Waiver of Jury Trial. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING BROUGHT UNDER THIS AGREEMENT. Each Party (i) certifies that no representative of any other Party has represented, expressly or otherwise, that such other Party would not, in the event of litigation, seek to enforce the foregoing waiver, and (ii) acknowledges that it and each other Party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Agreement.

Section 15.8 Provisional Relief. Notwithstanding any other provision in this Agreement, no Party shall be precluded from initiating a proceeding in the Commonwealth Court for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement, including temporary and preliminary injunctive relief, restraining orders and other remedies to avoid imminent irreparable harm, provide uninterrupted electrical and other services or preserve the status quo pending the conclusion of such negotiation, mediation or litigation. The commencement of or participation in an action for provisional relief with regard to Technical Disputes shall not constitute a waiver of the requirements or procedures of Section 15.5 (*Mediation*).

Section 15.9 Continuing Obligations. The Parties agree that during the resolution of a Dispute pursuant to the Dispute Resolution Procedure, the Parties shall continue to perform their obligations under this Agreement; provided that such performance shall (i) be without prejudice to the rights and remedies of any of the Parties and (ii) not be read or construed as a waiver of a Party's right to claim for recovery of any loss, costs, expenses or damages suffered as a result of the continued performance of this Agreement.

**ARTICLE 16
DECOMMISSIONING**

Section 16.1 Decommissioning Services.

(a) Generally. After the Service Commencement Date (i) Administrator (acting on behalf of Owner and in accordance with the Integrated Resource Plan) may deliver to Operator a decommissioning notice to commence Decommissioning Services for one or more of the Legacy Generation Assets or (ii) in the event that Operator determines in accordance with Prudent Industry Practice that, due to an Emergency Event, Extended Event, or other critical developments at the applicable Legacy Generation Asset, all or a portion of the Legacy Generation Asset cannot continue to be safely operated and maintained, Operator may deliver to Owner, Administrator and PREB a request to commence Decommissioning Services for the applicable Legacy Generation Asset, which request Administrator, Owner and PREB shall approve or deny within thirty (30) days of receipt. The date on which the Operator receives the notice referenced in clause (i) above or the date on which Operator receives the approval from Administrator, Owner and PREB referenced in clause (ii) above shall be the “Decommissioning Notification Date” for the respective Legacy Generation Asset.

(b) Decommissioning Plan. No later than sixty (60) days after the Decommissioning Notification Date for a Legacy Generation Asset, Operator shall prepare and submit to Administrator and PREB (with copy to Owner), for their information and approval, a decommissioning plan for such Legacy Generation Asset (the “Decommissioning Plan”) consistent with the Decommissioning Plan outline set forth in Annex XIII (*Decommissioning Plan*). The Decommissioning Plan shall provide for (i) the permitting, demolition, decontamination and dismantling/or preparation for conversion, as applicable, of the Legacy Generation Asset, for waste disposal, for achievement of end-state conditions within a prescribed time, (ii) the development of the Decommissioning Budget, as set forth in Section 16.2 (*Decommissioning Compensation*) below, (iii) reasonably acceptable arrangements to facilitate the transition of Operator Employees, who meet certain qualifications at such Legacy Generation Asset and whose positions will be eliminated after the completion of the Decommissioning Services, into new jobs or industries, including a training and/or severance plan (to be funded by Owner) for any Operator Employees not hired into a successor job or industry, which arrangements Operator, Owner and Administrator shall cooperate as needed to implement, and (iv) a timeline setting forth when Decommissioning Services shall be provided, including the date on which the Decommissioning Services shall commence (the “Decommissioning Commencement Date”) and the date on which the Decommissioning Services for such Legacy Generation Asset shall be completed (the “Decommissioning Completion Date”).

(c) Out-of-Service Units. On or after the Service Commencement Date, Administrator (acting on behalf of Owner) may deliver to Operator a decommissioning notice to proceed regarding one or more of the Out-of-Service Units. Operator shall prepare the Decommissioning Plan for such Out-of-Service Unit in accordance with Section 16.1(b) (*Decommissioning Services – Decommissioning Plan*). Owner shall pay Operator the Decommissioning Service Fee in accordance with Section 16.2(d) (*Decommissioning Compensation – Decommissioning Service Fee*).

Section 16.2 Decommissioning Compensation.

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(a) Decommissioning Budget. As part of Operator's Decommissioning Plan, Operator shall create a budget of the Pass-Through Expenditures required to perform the Decommissioning Services for the applicable Legacy Generation Asset, including monthly budgets of such expenditures and cash flows for each applicable Contract Year during which the Decommissioning Services are expected to be provided (such budget, as amended or adjusted from time to time, the "Decommissioning Budget"). Operator shall submit the Decommissioning Budget to Administrator (with copy to Owner) as part of the Decommissioning Plan. Within thirty (30) days following its receipt of the Decommissioning Budget, Administrator shall notify Operator whether the proposed Decommissioning Budget is compliant with Section 16.2(b) (*Decommissioning Compensation - Decommissioning Budget Policy*), and shall request, acting reasonably, any changes or modifications to the proposed Decommissioning Budget to conform the proposed Decommissioning Budget with Section 16.2(b) (*Decommissioning Compensation - Decommissioning Budget Policy*). Within ten (10) days following receipt of Administrator's request for changes or modifications, if applicable, Operator shall submit to Administrator a revised Decommissioning Budget including such changes or modifications requested by Administrator.

(b) Decommissioning Budget Policy. The Decommissioning Budget shall be designed to be adequate in both scope and amounts to reasonably assure that Operator is able to carry out the related Decommissioning Services in accordance with the parameters promulgated by PREB for such Legacy Generation Asset, if applicable, and the Contract Standards. The Parties further acknowledge and agree that, from time to time, it may be necessary or appropriate to amend or otherwise adjust the Decommissioning Budget or the related Incentives and Penalties as a result of (i) Force Majeure Events, (ii) Owner Fault or (iii) additional requirements imposed by Owner, Administrator or any other Governmental Body after approval of the Decommissioning Budget, in the case of each of clauses (i) to (iii) which (A) have resulted (or are reasonably likely to result) in schedule delays or increased work scope or costs and (B) are not be attributable to Operator's gross negligence or willful misconduct. Operator shall provide notice to Administrator promptly following the occurrence of an event contemplated above and the Parties shall, in good faith and acting reasonably, consider necessary adjustments to the Decommissioning Budget or the related Incentives and Penalties. Notwithstanding the foregoing, any such adjustments shall be compliant with the applicable Rate Order.

(c) Decommissioning Budget Disputes. The Parties hereby agree that, in the event that a dispute arises between Operator, Owner and Administrator in connection with a Decommissioning Budget submitted with the respective Decommissioning Plan (including proposed amendments thereto or the need for amendments thereto), the matter shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, a "Decommissioning Budget Dispute").

(d) Decommissioning Service Fee. Owner shall pay Operator the applicable Decommissioning Fixed Fees in accordance with Section 7.1(c) (*Service Fee – Decommissioning Fixed Fee*). Operator shall be entitled to earn an Incentive Payment or shall incur a Penalty based on Operator's performance of the Decommissioning Services in accordance with the Incentives and Penalties, as set forth in Section 7.1(d) (*Service Fee – Incentive and Penalties*).

(e) Funding. Owner shall establish the Decommissioning Account in accordance with Section 7.6(c) (*Service Accounts – Decommissioning Account*).

ARTICLE 17 DEMOBILIZATION

Section 17.1 Demobilization Services.

(a) Generally. Subject to **Section 17.1(d)** (*Demobilization Services – Demobilization Expiry Date*) and Section 17.3(c)(ii) (*Demobilization Period Compensation – Funding*), upon (i) Operator’s receipt of a termination notice from Owner or Administrator’s receipt of a termination notice from Operator, in each case under Article 14 (*Events of Default; Remedies*) or (ii) six (6) months prior to the expiry of the later of (A) the Initial Term or (B) the Extension Term (such date, the “Demobilization Commencement Date”), Operator, in addition to providing any remaining O&M Services and/or Decommissioning Services, as applicable, shall (1) perform the Demobilization Services specified in the Demobilization Plan, and (2) commence preparations for an orderly surrender of the Generation Sites and any remaining Legacy Generation Assets to Owner or Administrator (or their designee). In the event of an early termination of this Agreement pursuant to Article 14 (*Events of Default; Remedies*), Operator shall reasonably cooperate with Administrator during any procurement process to identify a successor operator.

(b) Demobilization Plan. No later than thirty (30) days after the Demobilization Commencement Date, Operator shall prepare and submit to Administrator (with copy to Owner and PREB), for its information and approval, a detailed demobilization plan consistent with the Demobilization Plan outline set forth in Annex XIV (*Demobilization Plan*), which plan shall (i) in the event of the early termination of this Agreement, include reasonably acceptable arrangements to facilitate the transition of Operator Employees, who meet certain qualifications at such Legacy Generation Asset and whose positions will be eliminated after the completion of the Demobilization Services, into new jobs or industries, including (A) the possible hiring of Operator Employees by a successor operator and (B) a training and/or severance plan (to be funded by Owner) for any Operator Employees not hired into a successor job or industry, which arrangements Operator, Owner and Administrator shall cooperate as needed to implement, and (ii) provide for the transfer and handover of the rights and responsibilities with respect to the Generation Sites and any remaining Legacy Generation Assets back to Owner or to a successor operator upon the expiration or early termination of the Term (the “Demobilization Plan”). Regardless of whether the Demobilization Plan is prepared pursuant to clause (i) or (ii), the Demobilization Plan shall include a decommissioning report detailing (1) the status of each of the Legacy Generation Assets for which Decommissioning Services were or are being performed, (2) the condition of each of the Legacy Generation Assets in operation and (3) all notifications given pursuant to, and retirements of, applicable permits with respect to each Legacy Generation Asset.

(c) Successor Operator. In the event that the Demobilization Commencement Date occurs pursuant to clause **17.1(a)(i)** (*Demobilization Services – Generally*), Administrator, on behalf of Owner, shall initiate efforts, including such procurement process as may be required, to identify and select a successor operator as promptly as practicable. Operator shall have the right to submit a proposal in such procurement on the same basis as other proponents. For the avoidance of doubt, if this Agreement is terminated prior to the Service Commencement Date, the Demobilization Commencement Date shall not occur.

(d) Demobilization Expiry Date. Operator shall have no obligation to continue performing any Demobilization Services as of the earlier of (i) the date which is twelve (12) months

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following the expiration or early termination of the Term and (ii) the date on which there are no funds available in the Demobilization Account, without a need for a court decision or arbitral award confirming Operator's right to terminate.

(e) Surrender of the Legacy Generation Assets. Upon completion or the earlier expiration of the obligation to provide the Demobilization Services in accordance with this Article 17 (*Demobilization*), Operator and, if and to the extent Administrator requests, its Subcontractors shall peaceably leave and surrender any remaining Legacy Generation Assets to Owner or its designee in a condition consistent with Operator's responsibilities hereunder. For the avoidance of doubt, if the early termination of this Agreement pursuant to Article 14 (*Events of Default; Remedies*) occurs prior to the decommissioning of each and every Legacy Generation Asset, Operator shall surrender each remaining Legacy Generation Asset with a sufficient supply of Fuel to allow Owner or its designee to operate the applicable Legacy Generation Asset for one (1) month after the date of surrender.

Section 17.2 Demobilization Prior to Completion of Decommissioning. The Parties shall, immediately upon the early termination of this Agreement pursuant to Article 14 (*Events of Default; Remedies*) that occurs prior to the decommissioning of each and every Legacy Generation Asset, implement any arrangements contemplated by the Demobilization Plan, including arrangements relating to (i) the possible hiring of Operator Employees by a successor operator and (ii) the treatment of severance costs associated with any Operator Employees not hired by a successor operator. For the avoidance of doubt, any reasonable, properly incurred and ordinary course costs related to Operator Employees that are (x) incurred up to the date of early termination or expiration of this Agreement and (y) reflected in then-currently approved O&M Budget shall be Pass-Through Expenditures in accordance with Section 7.2 (*Pass-Through Expenditures*) and Section 7.3 (*O&M Budgets*).

Section 17.3 Demobilization Period Compensation.

(a) General. As compensation for the Demobilization Services provided by Operator, Owner shall pay Operator the Demobilization Service Fee. The Demobilization Service Fee shall not be subject to any abatement, deduction, counterclaim or set-off of any kind or nature.

(b) Demobilization Service Fee. The "Demobilization Service Fee" shall be an aggregate amount equal to (i) the hourly fully allocated cost rate for each category of Operator employee or Affiliate personnel providing Demobilization Services *multiplied by* (ii) the number of hours worked by each Operator employee or Affiliate personnel in such category providing Demobilization Services *plus* (iii) [] percent (%) ²⁴ of the product of (i) and (ii), *plus* (iv) all other reasonable and documented costs and expenses incurred by Operator (without markup for profit) that are necessary and reasonable in the course of providing the Demobilization Services, including the cost of any Subcontractors providing Demobilization Services.

²⁴ **Note to Proponent:** This information will be provided by Proponents in their submission to the RFP.

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(c) Funding.

(i) Owner shall establish one or more accounts from which Owner shall draw funds from time to time to pay Operator the Demobilization Service Fee (collectively, the “Demobilization Account”).

(ii) Promptly after the Demobilization Commencement Date (and in any event within five (5) Business Days), Operator shall deliver to Administrator an estimate of the anticipated Demobilization Service Fee for the following two (2) months. Within ten (10) days of delivery of such estimate, and prior to and as a condition to the commencement of any Demobilization Services, Administrator shall provide Operator evidence reasonably satisfactory to Operator that an amount equal to the sum of the anticipated Demobilization Service Fee for the following two (2) months, has been funded in the Demobilization Account by Owner. Prior to the end of each month during the period in which Operator performs the Demobilization Services, Operator shall deliver to Administrator an estimate of the anticipated Demobilization Service Fee for the two (2) months. No later than the tenth (10th) Business Day of each month during the period in which Operator performs the Demobilization Services, Owner shall replenish the Demobilization Account so as to maintain a balance in the Demobilization Account at the end of each calendar month equal to the sum of the anticipated Demobilization Service Fee for the subsequent two (2) months, and so on subsequently until the Demobilization Services conclude.

(iii) In the event a Dispute arises between Operator and Administrator in connection with Operator’s estimate of the anticipated Demobilization Service Fee, the matter shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, a “Demobilization Service Fee Estimate Dispute”).

(d) Invoices.

(i) On or prior to the tenth (10th) day of each month during which Operator is performing the Demobilization Services, Operator shall provide Administrator with a monthly invoice describing in detail the prior calendar month’s Demobilization Services and the corresponding Demobilization Service Fee for such prior calendar month. All invoices shall comply with the requirements set forth in Section 9.2(c) (*Anti-Corruption and Sanctions Laws – Policies and Procedures*).

(ii) Operator shall provide promptly to Administrator such additional supporting documentation evidencing the provision of the Demobilization Services, if any, and the calculation of the Demobilization Service Fee related thereto, as Administrator may reasonably request and as may be required by Applicable Law. Administrator shall promptly advise Operator of any disputed invoice amounts, and all such disputes which Operator and Administrator are unable to resolve shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, a “Demobilization Service Fee Dispute”).

(iii) Payments of undisputed amounts under any invoice shall be due within thirty (30) days of Administrator’s receipt of such invoice.

(e) Audits. At any time and from time to time during and until the expiration of six (6) years following the end of the period during which Operator performs the Demobilization

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Services, Administrator may, upon reasonable prior notice, Audit (or cause to be Audited) the books and records of Operator or any Subcontractor in connection with any requests for payment of the Demobilization Service Fee, together with the supporting vouchers and statements, and the calculation of the Demobilization Service Fee. Subject to the dispute resolution provisions in Article 15 (*Dispute Resolution*), each payment made by Owner hereunder shall be subject to subsequent adjustment. Following the determination that any such payment adjustment is required, the Party required to make payment shall do so within thirty (30) days of the date of such determination.

ARTICLE 18
FORCE MAJEURE EVENTS

Section 18.1 Notice; Mitigation.

(a) Notice. The Party claiming a Force Majeure Event (the “Claiming Party”) shall notify the other Party in writing (with copy to Administrator and PREB), on or promptly after the date it first becomes aware of such Force Majeure Event, followed within five (5) Business Days by a written description of (i) the Force Majeure Event and the cause thereof (to the extent known), (ii) the date the Force Majeure Event began and its estimated duration, (iii) the manner in which and the estimated time during which the performance of the Claiming Party’s obligations hereunder shall be affected and (iv) mitigating actions that the Claiming Party plans to take in order to reduce the impact of the Force Majeure Event; provided that the Claiming Party’s failure to promptly notify the other Party shall not preclude the Claiming Party from obtaining relief with respect to the Force Majeure Event if the other Party has not been prejudiced by the Claiming Party’s delay to provide prompt notice.

(b) Mitigation. Whenever a Force Majeure Event shall occur, the Claiming Party shall, as promptly as reasonably possible, use commercially reasonable efforts to mitigate or eliminate the cause therefor, reduce costs resulting therefrom, mitigate and limit damage to the other Party and resume full performance under this Agreement.

(c) Burden of Proof. The Claiming Party shall bear the burden of proof as to the existence and impact of the Force Majeure Event, and shall furnish promptly in writing (if and to the extent available to it) any additional documents or other information relating to the Force Majeure Event reasonably requested by the other Party. While the Force Majeure Event continues, the Claiming Party shall give notice to the other Party before the first day of each succeeding month updating the information previously submitted with respect to the nature, cause, impact and potential duration of the Force Majeure Event pursuant to this Section 18.1 (*Notice; Mitigation*). The Parties hereby agree that, in the event that a Dispute arises between the Parties in connection with whether and to the extent an event, circumstance or condition constitutes a Force Majeure Event, or whether such Force Majeure Event continues, the matter shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, a “Force Majeure Event Dispute”).

(d) Notice of Cessation of Force Majeure Event. Upon the cessation of a Force Majeure Event, including a determination by the Independent Expert that a Force Majeure Event no longer exists, the Claiming Party shall (i) promptly (but in any event within five (5) Business Days) provide notice to the other Party and (ii) promptly thereafter resume compliance with this Agreement.

Section 18.2 Relief.

(a) Generally. If and to the extent a Force Majeure Event interferes with, delays or increases the cost of, a Party’s performance of its obligations under this Agreement, and such Party has given timely notice and description as required by Section 18.1 (*Notice; Mitigation*), such Party shall be excused from performance and any associated Events of Default except to the extent

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contemplated in Section 18.2(c) (*Relief – Extended Event*). In the event Operator is the party claiming the Force Majeure Event, Operator shall be entitled to request appropriate adjustments to the O&M Budgets or the Incentives and Penalties in accordance with Section 7.4 (*O&M Budget Policy*).

(b) Limitations. The occurrence of a Force Majeure Event shall not excuse or delay the performance of (i) a Party's obligation to pay amounts previously accrued and owing under this Agreement, including any earned but unpaid Service Fees, (ii) Owner's obligation to continue to pay the O&M Fixed Fee and the applicable Decommissioning Fixed Fees and to deposit and make funds available for Operator's use in the Service Accounts in accordance with Article 7 (*Compensation; O&M Budgets*) and (iii) any obligation hereunder not affected by the occurrence of the Force Majeure Event.

(c) Extended Event. In addition to all other relief pursuant to this Agreement, including under Section 4.8(c) (*Failure of Service Commencement Conditions – Effect of Force Majeure Events or Owner Fault*) and Section 7.4 (*O&M Budget Policy*), if and to the extent a Force Majeure Event continues for a period in excess of one hundred twenty (120) consecutive days and materially interferes with, delays or increases the cost of the O&M Services in accordance herewith (an "Extended Event"), and a Party has given timely notice and detailed and documented description as required by Section 18.1 (*Notice; Mitigation*), Administrator and Operator shall negotiate in good faith to determine whether modifications to the Incentive Payment, in accordance with Section III of Annex II (*Compensation – Incentives and Penalties*) or other provisions of this Agreement are appropriate under the circumstances; provided any such modification (i) shall not be effective until Administrator has obtained, at the cost of Owner or Administrator, a Tax Opinion and a Reliance Letter with respect to any such modification and (ii) shall be subject to approval by PREB in accordance with Applicable Law.

ARTICLE 19
INDEMNIFICATION

Section 19.1 Indemnification by Operator.

(a) Generally. Subject to the limitations on liability set forth in this Section 19.1 (*Indemnification by Operator*), Section 19.3 (*Limitation on Liability*), Section 19.4 (*Insurance and Other Recovery*), Section 19.5 (*Liability Limitation for Certain Damages*) and Section 19.6 (*Additional Liability Limitation for Certain Damages*), Operator shall indemnify, defend and hold harmless Owner, Administrator and their respective Affiliates and Representatives (each, including Owner, an “Owner Indemnitee”), from and against (and pay the full amount of) any and all Losses incurred by an Owner Indemnitee to the extent arising or resulting from, in each case, as determined by a final and non-appealable judgment by a court of competent jurisdiction: (i) any breach by Operator of any representation or warranty of Operator in this Agreement that has a material adverse effect on the Legacy Generation Assets or on the performance or the cost of performance by any Party of its respective obligations under this Agreement; (ii) the failure by Operator to perform its obligations under this Agreement; or (iii) the negligence (including gross negligence) or willful misconduct of Operator Indemnitees in connection with the performance of Operator’s obligations under this Agreement, except as otherwise provided in Section 5.9(b)(iii) (*Environmental, Health and Safety Matters – Pre-Existing Environmental Conditions*) where the applicable standard shall be the Pre-Existing Environmental Condition Liability Standard. Operator’s indemnification obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by Operator which is intended to respond to such events. In the event that any Losses are incurred by an Owner Indemnitee in connection with Section 5.9 (*Environmental, Health and Safety Matters*) as described in clause (ii) above, then Operator’s liability shall be reduced by the amount of the Penalty paid or owed, if any, with respect to the environmental compliance category in Section I.G of Annex II (*Compensation – Incentives and Penalties*), if such Penalties arose as a result of the same conduct that led to Owner Indemnitee’s Losses.

(b) Limitations. Notwithstanding the foregoing, Operator shall not be required to reimburse or indemnify any Owner Indemnitee for any Losses to the extent caused by or due to (i) Owner Fault, (ii) a Force Majeure Event, other than to the extent caused by the gross negligence or willful misconduct of any Operator Indemnitee in responding to such Force Majeure Event, (iii) the negligence (including gross negligence) or willful misconduct of any Owner Indemnitee, (iv) any matter for which Owner expressly indemnifies Operator pursuant to Section 19.2 (*Indemnification by Owner*), or (v) events or circumstances arising prior to the Service Commencement Date, in each case as determined by a final and non-appealable judgment by a court of competent jurisdiction.

(c) Notice, Defense and Survival. An Owner Indemnitee shall promptly notify Operator in writing pursuant to Section 21.2 (*Notices*) of this Agreement of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and Operator shall have the right to assume the defense of the claim in any Legal Proceeding and to approve any settlement of the claim, such approval not to be unreasonably withheld, delayed or conditioned. For the avoidance of doubt, any Fees-and-Costs associated with Operator defending Owner Indemnitees pursuant to this Section 19.1 (*Indemnification by Operator*) shall be Pass-Through Expenditures, except to the extent Operator’s liability to pay such Fees-and-Costs is determined by a final and non-appealable

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judgment by a court of competent jurisdiction. The indemnification provisions in this Section 19.1 (*Indemnification by Operator*) are (i) for the protection of Owner Indemnitees only and shall not establish, of themselves, any liability to any Person not party to this Agreement and (ii) shall survive termination of this Agreement.

Section 19.2 Indemnification by Owner.

(a) Generally. Subject to the limitations on liability set forth in this Section 19.2 (*Indemnification by Owner*), Section 19.3 (*Limitation on Liability*), Section 19.4 (*Insurance and Other Recovery*), Section 19.5 (*Liability Limitation for Certain Damages*) and Section 19.6 (*Additional Liability Limitation for Certain Damages*), Owner shall indemnify, defend and hold harmless Operator and the Equity Participants and its and their respective Affiliates and Representatives (each, including Operator, an “Operator Indemnitee”), from and against (and pay the full amount of) any and all Losses incurred by an Operator Indemnitee to the extent arising or resulting from, in each case, as determined by a final and non-appealable judgment by a court of competent jurisdiction: (i) any breach by Owner or Administrator of any of its respective representations or warranties in this Agreement that has a material adverse effect on the Legacy Generation Assets or on the performance or the cost of performance by any Party of its respective obligations under this Agreement; (ii) any failure by Owner or Administrator to perform its obligations under this Agreement or resulting from any Owner Fault; (iii) claims of any nature relating to the Legacy Generation Assets, Owner’s operation thereof or any matter in the nature of the services to be provided by, or any other obligations imposed on, Operator hereunder, in each case based on events or circumstances to the extent arising prior to the Service Commencement Date; (iv) the negligence (including gross negligence) or willful misconduct of Owner Indemnitees in connection with this Agreement; (v) claims brought by Owner employees or former employees with respect to the non-payment or underfunding of benefits under Owner’s pension or other employee benefit plans; (vi) claims brought against Operator by a Person not party to this Agreement in connection with the Legacy Generation Assets or Operator’s performance of the O&M Services for loss of profits or revenues or special, exemplary, punitive, indirect or consequential damages, except for claims of fraud or intentional misrepresentation of any Operator Indemnitee; or (vii) Pre-Existing Environmental Conditions, other than an exacerbation of such Pre-Existing Environmental Conditions to the extent caused by the negligence (including gross negligence) or willful misconduct of any Operator Indemnitee.

(b) Limitations. Owner’s indemnification obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by Owner which is intended to respond to such events. Notwithstanding the foregoing, other than with respect clauses (vi) and (vii) of Section 19.2(a) (*Indemnification by Owner – Generally*), to which the following statement shall not apply, Owner shall not be required to reimburse or indemnify any Operator Indemnitee for any Losses to the extent caused by or due to: (i) a Force Majeure Event, other than to the extent caused by the gross negligence or willful misconduct of any Owner Indemnitee in responding to such Force Majeure Event or (ii) any matter for which Operator expressly indemnifies Owner pursuant to Section 19.1 (*Indemnification by Operator*), in each case as determined by a final and non-appealable judgment by a court of competent jurisdiction. Notwithstanding the foregoing, other than with respect clause (vi) of Section 19.2(a) (*Indemnification by Owner – Generally*), Owner shall not be required to reimburse or indemnify

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any Operator Indemnitee for any Losses to the extent caused by or due to the negligence (including gross negligence) or willful misconduct of any Operator Indemnitee.

(c) Notice, Defense and Survival. An Operator Indemnitee shall promptly notify Owner in writing pursuant to Section 21.2 (*Notices*) of this Agreement of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and Owner shall have the right to assume the defense of the claim in any Legal Proceeding and to approve any settlement of the claim, such approval not to be unreasonably withheld, delayed or conditioned. Any amount payable by Owner to any Operator Indemnitee pursuant to this Section 19.2 (*Indemnification by Owner*) that remains unsatisfied for a period of sixty (60) days shall be treated as a Pass-Through Expenditure; provided, however, that the foregoing shall not limit Owner's ability to contest whether such payment is due. The provisions in this Section 19.2 (*Indemnification by Owner*) (i) are for the protection of Operator Indemnitees only and shall not establish, of themselves, any liability to any Person not party to this Agreement and (ii) shall survive termination of this Agreement.

Section 19.3 Limitation on Liability. Notwithstanding anything contained in this Agreement to the contrary:

(a) Operator's liability to Owner Indemnitees under this Agreement (other than for any Losses attributable to Operator's gross negligence or willful misconduct, for which there shall be no limitation on Operator's liability) shall be limited to US\$[●]²⁵.

(b) Owner's liability to Operator Indemnitees under this Agreement (other than for any Losses attributable to Owner's gross negligence or willful misconduct, for which there shall be no limitation on Owner's liability) shall be limited to US\$[●]²⁶.

(c) Administrator shall not be liable to Operator Indemnitees under this Agreement.

Section 19.4 Insurance and Other Recovery.

(a) Generally. The amount of any Losses that are subject to indemnification, compensation or reimbursement under this Agreement shall be reduced by the amount of any insurance proceeds and any indemnity, contribution or other similar payment actually received by Owner Indemnitee or Operator Indemnitee, as applicable, in respect of such Losses or any of the events, conditions, facts or circumstances resulting in or relating to such Losses ("Third-Party Payments"). If an Owner Indemnitee or Operator Indemnitee, as applicable, receives any Third-Party Payment with respect to any Losses for which it has previously been indemnified (directly or indirectly) by an Indemnifying Party, Owner Indemnitee or Operator Indemnitee, as applicable, shall promptly (and in any event within five (5) Business Days after receiving such Third-Party Payment) pay to the Indemnifying Party an amount equal to such Third-Party Payment or, if it is a lesser amount, the amount of such previously indemnified Losses. Owner Indemnitee or Operator Indemnitee, as applicable, shall use commercially reasonable efforts to recover under insurance policies or indemnity, contribution or other similar agreements other than this Agreement

²⁵ **Note to Proponent: Please indicate a proposed amount for the Operator's liability cap.**

²⁶ **Note to Proponent: Please indicate a proposed amount for the Owner's liability cap.**

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for any Losses to the same extent such Party would if such Losses were not subject to indemnification, compensation or reimbursement hereunder.

(b) Subrogation of Claims. If a Party makes any indemnity payment for any Losses suffered or incurred by an Owner Indemnitee or Operator Indemnitee, as applicable, pursuant to the provisions of this Article 19 (*Indemnification*), such indemnifying Party shall be subrogated, to the extent of such payment, to all rights and remedies of the Owner Indemnitee or Operator Indemnitee, as applicable, to any insurance benefits or other claims of the Owner Indemnitee or Operator Indemnitee, as applicable, with respect to such Losses and with respect to the matter giving rise to such Losses.

Section 19.5 Liability Limitation for Certain Damages. TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER OPERATOR INDEMNITEES NOR OWNER INDEMNITEES SHALL BE LIABLE, WHETHER IN CONTRACT, INDEMNITY, TORT (INCLUDING NEGLIGENCE, GROSS NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, FOR ANY LOSS OF PROFITS OR REVENUES (OTHER THAN COMPENSATION DUE BY OWNER TO OPERATOR UNDER THIS AGREEMENT), OR ANY SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHICH ARISE FROM, RELATE TO OR ARE CONNECTED WITH THIS AGREEMENT OR THE PERFORMANCE OF OR FAILURE TO PERFORM THEIR RESPECTIVE OBLIGATIONS HEREUNDER EXCEPT FOR CLAIMS BROUGHT AGAINST OPERATOR BY A PERSON NOT PARTY TO THIS AGREEMENT IN CONNECTION WITH THE LEGACY GENERATION ASSETS OR OPERATOR'S PERFORMANCE OF THE O&M SERVICES.

Section 19.6 Additional Liability Limitation for Certain Damages.

(a) OWNER AND ADMINISTRATOR UNDERSTAND THAT OPERATOR MAY BE PROVIDING O&M SERVICES THAT:

(i) AS OF THE SERVICE COMMENCEMENT DATE, INCORPORATE OR ARE RELIANT UPON ASSETS (INCLUDING THE LEGACY GENERATION ASSETS) THAT ARE IN A CONDITION REQUIRING REPAIRS OR IMPROVEMENTS; AND

(ii) INCORPORATE OR ARE RELIANT UPON INFORMATION, SYSTEMS, DATA OR INSTRUCTIONS THAT HAVE BEEN, ARE OR ARE TO BE PROVIDED BY OWNER OR THIRD PARTIES.

(b) AS SUCH, OWNER AND ADMINISTRATOR ACKNOWLEDGE AND AGREE THAT, EXCEPT TO THE EXTENT ARISING OR RESULTING FROM THE NEGLIGENCE (INCLUDING GROSS NEGLIGENCE) OR WILLFUL MISCONDUCT OF OPERATOR INDEMNITEES IN CONNECTION WITH THIS AGREEMENT, OPERATOR INDEMNITEES SHALL HAVE NO LIABILITY HEREUNDER FOR ANY DEFECT, ERROR, DEFAULT, DELAY OR LOSSES ARISING AS A RESULT OF ANY PROCESSING DEFICIENCY, INACCURACY, ERROR OR OMISSION TO THE EXTENT CAUSED BY A THIRD PARTY OR BY INFORMATION, SYSTEMS, DATA OR INSTRUCTIONS PROVIDED

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BY A THIRD PARTY, OWNER, ADMINISTRATOR OR THEIR RESPECTIVE REPRESENTATIVES.

ARTICLE 20
REPRESENTATIONS AND WARRANTIES

Section 20.1 Representations and Warranties of Owner. Owner hereby represents and warrants to Operator that:

(a) Existence and Powers. Owner is a public corporation and instrumentality of the Commonwealth duly organized, validly existing and in good standing under the laws of the Commonwealth. Owner has the required corporate power and authority to enter into this Agreement, carry out its obligations hereunder and consummate the transactions contemplated hereby. Administrator has the required corporate power and authority to carry out its obligations under this Agreement and on behalf of Owner, including the power and authority to bind Owner with respect to any matter contemplated under this Agreement.

(b) Due Authorization and Binding Obligation. The execution and delivery by Owner of this Agreement, the performance by Owner of its obligations hereunder and the consummation by Owner of the transactions contemplated hereby have been duly and validly authorized and approved by the required corporate or other similar action on the part of Owner. This Agreement has been duly and validly executed and delivered by Owner, and (assuming due authorization, execution and delivery by Operator) this Agreement constitutes a legal, valid and binding obligation of Owner enforceable against Owner in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or similar Applicable Law affecting creditors' rights generally and by general equity principles.

(c) No Conflicts. Neither the execution, delivery or performance by Owner of this Agreement, nor the consummation of the transactions contemplated hereby shall: (i) result in a material violation or breach of, or material default under, any provision of the organizational documents of Owner; (ii) result in a violation of, or give any Governmental Body the right to challenge any of the transactions contemplated hereby under, any Applicable Law applicable to Owner; (iii) (A) result in a violation or breach of, (B) constitute a default under, (C) result in the acceleration of or create in any party the right to accelerate, terminate or cancel or (D) require the consent of any other Person under, any material contract to which Owner is a party; or (iv) result in the creation or imposition of any Lien on any properties or assets of Owner.

(d) No Consents. No consent, declaration or filing with, or notice to, any Governmental Body is required by or with respect to Owner in connection with (i) the execution and delivery of this Agreement or (ii) the performance by Owner of its obligations hereunder, except (A) such as have been duly obtained or made and (B) in the case of clause (ii), for those Governmental Approvals to be obtained after the Effective Date but before the Service Commencement Date.

(e) No Litigation. There is no action, suit or other proceeding, at law or in equity, before or by any court or Governmental Body pending against Owner or, to Owner's knowledge, threatened against Owner, which if determined adversely against Owner would reasonably be expected to materially and adversely affect (i) the validity or enforceability of this Agreement or (ii) the performance by Owner or Operator of their respective obligations hereunder.

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(f) No Legal Prohibition. There is no Applicable Law in effect on the date hereof that would prohibit the execution, delivery or performance by Owner of this Agreement and the transactions contemplated hereby.

(g) Title III Approval. No approval of the Title III Court is required for Owner to enter into this Agreement. Owner's entry into, and the Parties' performance of, this Agreement, constitutes use or enjoyment by Owner of its revenue-producing property within the meaning of section 305(3) of PROMESA.

(h) Facility Contracts. To Owner's knowledge and except as otherwise disclosed to Operator, (i) each material Facility Contract is in full force and effect and was procured in accordance with applicable Commonwealth law, (ii) there are no pending claims by or against any counterparty to a material Facility Contract, (iii) neither Owner nor any counterparty to a material Facility Contract is in default of its obligations under any material Facility Contract and (iv) Operator is permitted to administer and perform Owner's obligations under each material Facility Contract on Owner's behalf.

(i) Operation of Legacy Generation Assets. Without limiting any other representations or warranties set out herein, from the Effective Date to the Service Commencement Date, Owner has, except as otherwise permitted by this Agreement or required by Applicable Law (including requirements related to the Title III Case), operated the Legacy Generation Assets in the ordinary course.

(j) Pre-Existing Environmental Conditions. As of the Service Commencement Date, after commercially reasonable inquiry, Owner is not aware of material Pre-Existing Environmental Conditions on or at the Generation Sites which have not been disclosed to Operator pursuant to the Baseline Environmental Study.

Section 20.2 Representations and Warranties of Operator. Operator hereby represents and warrants to Owner that:

(a) Existence and Powers. Operator is a [type of organization] duly organized, validly existing and in good standing under the laws of [Puerto Rico], and is qualified to do business and in good standing in the Commonwealth. Operator has the required corporate power and authority to enter into this Agreement, carry out its obligations hereunder and consummate the transactions contemplated hereby.

(b) Due Authorization and Binding Obligation. The execution and delivery by Operator of this Agreement, the performance by Operator of its obligations hereunder and the consummation by Operator of the transactions contemplated hereby have been duly and validly authorized and approved by the required corporate or other similar action on the part of Operator. This Agreement has been duly and validly executed and delivered by Operator, and (assuming due authorization, execution and delivery by Owner) this Agreement constitutes a legal, valid and binding obligation of Operator enforceable against Operator in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or similar Applicable Law affecting creditors' rights generally and by general equity principles.

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(c) No Conflicts. Neither the execution, delivery or performance by Operator of this Agreement, nor the consummation of the transactions contemplated hereby shall: (i) result in a material violation or breach of, or material default under, any provision of the organizational documents of Operator; (ii) result in a violation of, or give any Governmental Body the right to challenge any of the transactions contemplated hereby under, any Applicable Law applicable to Operator; (iii) (A) result in a violation or breach of, (B) constitute a default under, (C) result in the acceleration of or create in any party the right to accelerate, terminate or cancel or (D) require the consent of any other Person under, any material contract to which Operator is a party; or (iv) result in the creation or imposition of any Lien on any properties or assets of Operator.

(d) No Consents. No consent, declaration or filing with, or notice to, any Governmental Body is required by or with respect to Operator in connection with (i) the execution and delivery of this Agreement or (ii) the performance by Operator of its obligations hereunder, except (A) such as have been duly obtained or made and (B) in the case of clause (ii), for those Governmental Approvals to be obtained after the Effective Date but before the Service Commencement Date.

(e) No Litigation. There is no action, suit or other proceeding, at law or in equity, before or by any court or Governmental Body pending against Operator or, to Operator's knowledge, threatened against Operator, which if determined adversely against Operator would reasonably be expected to materially and adversely affect (i) the validity or enforceability of this Agreement or (ii) the performance by Operator or Owner of their respective obligations hereunder.

(f) No Legal Prohibition. There is no Applicable Law in effect on the date hereof that would prohibit the execution, delivery or performance by Operator of this Agreement and the transactions contemplated hereby.

(g) Applicable Law Compliance.

(i) None of Operator or its subsidiaries or, when acting on behalf of Operator or its subsidiaries, any director, officer, manager, administrator or employee of Operator or its subsidiaries or, in connection with this Agreement or the O&M Services or the Decommissioning Services, any Affiliates of Operator has:

(A) violated, conspired to violate, aided and abetted the violation of any Anti-Corruption Laws or committed any felonies or misdemeanors under Articles 4.2, 4.3 or 5.7 of Act No. 1-2012, 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, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2, or any other felony that involves misuse of public funds or property, including the crimes mentioned in Article 6.8 of Act 8-2017, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico;

(B) failed to comply at any time with the Anti-Corruption Laws and any other Applicable Law that prohibit corruption and regulate criminal acts involving public functions or public funds applicable to Operator under state, Commonwealth or federal law, or solely with respect to Operator, failed to furnish a Sworn Statement; or

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(C) been convicted of offenses against public integrity, as defined in the Puerto Rico Penal Code, or of embezzlement of public funds, or has been found guilty of any such type of offense in the courts of the Commonwealth, the courts of the United States or any court of any jurisdiction.

(ii) Operator has not, directly or indirectly, made or received, and shall not make or receive, any payments in connection with this Agreement or the O&M Services or the Decommissioning Services in order to illegally or improperly to obtain business or other rights.

(iii) Operator is not aware that it is being investigated as part of a criminal or civil process by any law enforcement or regulatory authority in connection in any way with the Anti-Corruption Laws or any criminal laws or regulations.

(iv) None of Operator, its subsidiaries, Parent Company or any directors, officers or employees of any thereof is (A) a Person, or is a Person owned or controlled by a Person (a "Sanctioned Person"), with whom dealings are restricted or prohibited by, or are sanctionable under, any economic sanctions or trade restrictions administered or enforced by the U.S. government (including the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State or the Bureau of Industry and Security of the U.S. Department of Commerce), the United Nations Security Council, the European Union or Her Majesty's Treasury or any other authority with jurisdiction over Operator, its subsidiaries or its Affiliates (collectively, "Sanctions") or (B) located, organized or resident in a country or territory with which dealings are broadly restricted, prohibited or made sanctionable under any Sanctions (currently, the Crimea, Cuba, Iran, North Korea and Syria) (each, a "Sanctioned Country"). Operator and its subsidiaries have not violated and have not engaged in any conduct sanctionable under Sanctions. There are not now, nor have there been within the past five (5) years, any formal or informal proceedings, allegations, investigations or inquiries pending, expected or, to the knowledge of the Parent Company, threatened against the Parent Company, Operator, its subsidiaries, or any of their respective officers or directors concerning violations or potential violations of, or conduct sanctionable under, any Sanctions.

(v) No official or employee of Owner has a direct or indirect economic interest in Operator's rights under this Agreement in accordance with the provisions of Act 2, which Operator herein certifies it has received a copy of, read, understood and complied with at all times prior to the execution of this Agreement and shall subsequently comply with it in its entirety.

(vi) Operator does not represent particular interests in cases or matters that imply conflicts of interest, or of public policy, between Owner and the particular interests it represents.

(h) Accuracy of Information. All of the information relating to Operator or any of its Affiliates delivered by or on behalf of Operator to Owner and Administrator in connection with the execution of this Agreement was true, accurate and complete in all material respects when delivered.

(i) Ability to Perform Obligations. Operator has the required authority, ability, skills, access to funds, technical support and capacity to perform all its obligations with respect to

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the O&M Services and the Decommissioning Services and all of its other obligations under this Agreement, all in accordance with the Transaction Documents. Operator acknowledges that it has been provided with a complete copy of the Consent Decree (including its appendices and attachments) at least thirty (30) days prior to the Effective Date, and has the required authority, ability, skills, access to funds, technical support and capacity to meet the requirements of the Consent Decree relating to its obligations under this Agreement.

(j) Knowledge of Requirements. Operator has knowledge in all material respects of all legal requirements, Applicable Law, and business and engineering practices that must be followed in performing its obligations under this Agreement.

(k) No Litigation with Owner. Neither Operator nor any of its shareholders or its or their Affiliates are involved in any litigation, arbitration or claim against Owner, Administrator, AAFAF or the FOMB.

**ARTICLE 21
MISCELLANEOUS**

Section 21.1 Fees and Expenses. Except as otherwise expressly provided in this Agreement, all costs and expenses incurred, including fees and disbursements of counsel, financial advisors and accountants, in connection with the negotiation and execution of this Agreement shall be borne by the Party incurring such costs and expenses; provided, however, that, in the event this Agreement is terminated in accordance with its terms, the obligation of each Party to bear its own costs and expenses shall be subject to any rights of such Party arising from a breach of this Agreement by the other Party prior to such termination.

Section 21.2 Notices. All notices or other communications to be delivered in connection with this Agreement shall be in writing and shall be deemed to have been properly delivered, given and received (a) on the date of delivery if delivered by hand during normal business hours of the recipient during a Business Day, otherwise on the next Business Day, (b) on the date of successful transmission if sent via email (with return receipt) during normal business hours of the recipient during a Business Day, otherwise on the next Business Day, or (c) on the date of receipt by the addressee if sent by a nationally recognized overnight courier or by registered or certified mail, return receipt requested, if received on a Business Day, otherwise on the next Business Day. Such notices or other communications must be sent to each respective Party at the address, email address set forth below (or at such other address, email address as shall be specified by a Party in a notice given in accordance with this Section 21.2 (*Notices*)):

If to Owner:

Puerto Rico Electric Power Authority
PO BOX 364267
San Juan, Puerto Rico 00936-4267
Attention: Chief Executive Officer – [Efran Parades-Maisonet]
Telephone: (787) 521-[____]
Email: [Efran.Parades]@prepa.com

with copies to:

Administrator
PO BOX 42001
San Juan, Puerto Rico 00940-2001
Attention: Executive Director – Fermín E. Fontanés Gómez
Telephone: (787) 722-2525 Ext. 15330
Email: Fermin.Fontanes@p3.pr.gov and Administrator@p3.pr.gov

And

PREB
268 Avenida Muñoz Rivera
Edificio World Plaza
Piso 7, Suite 704
Hato Rey, Puerto Rico 00918
Attention: President - Edison Avilés Deliz
Telephone: (787) 523-6262
Email: eavilesdeliz@energia.pr.gov

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If to Administrator: Administrator
PO BOX 42001
San Juan, Puerto Rico 00940-2001
Attention: Executive Director – Fermín E. Fontanés Gómez
Telephone: (787) 722-2525 Ext. 15330
Email: Fermin.Fontanes@p3.pr.gov and Administrator@p3.pr.gov

If to Operator: [Operator Name]
[Address]

Attention:
Email:

with copies to:
[Operator Name]
[Address]

Attention:

Section 21.3 Amendments. Neither this Agreement nor any provision hereof may be changed, modified, amended or waived, except by written agreement duly executed by the Parties. Any such amendment shall not be effective until (i) to the extent required by Applicable Law, approved by PREB and the FOMB (if then in existence) and (ii) Administrator has obtained a Tax Opinion and a Reliance Letter, at the cost of Owner or Administrator, with respect to any such amendment. Wherever this Agreement requires the Parties to use good faith, reasonable, commercially reasonable or other efforts to amend the terms of this Agreement, Operator shall not be deemed to be in breach of such requirement as a result of its insistence that such amendment not adversely affect Operator’s compensation under, or its return on investment or other economic interests with respect to, this Agreement, except to the extent such adverse effect results solely from inflation or the imposition of a Tax or an increase in Taxes of general application.

Section 21.4 Entire Agreement. This Agreement, together with the Annexes and Exhibits attached hereto, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior oral or written agreements, understandings, proposals, representations or warranties relating to this Agreement. Without limiting the generality of the foregoing, this Agreement shall completely and fully supersede all other understandings and agreements among the Parties with respect to such transactions, including those contained in the RFP, the Proposal by Operator or its Affiliate and any amendments or supplements to the RFP or the Proposal.

Section 21.5 Relationship of the Parties. Nothing in this Agreement is intended to create, or shall be deemed or construed as creating, any partnership, joint venture or other legal entity, or give rise to any fiduciary duty, among the Parties. Except as otherwise expressly provided in this Agreement, no Party shall have the authority or right, or hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of any other Party, except as expressly provided herein. No provision in this Agreement shall result in Operator or any of its employees, Subcontractors, agents or Representatives being considered an employee, contractor or Representative of Owner. Operator shall be an independent contractor and shall be responsible for and have control over the

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performance of the O&M Services hereunder, subject to the standards set forth in this Agreement. Nothing in this Agreement shall be interpreted to create a relationship of co-employer between Owner and Operator or Administrator and Operator as to the employees of Operator or any of its respective subcontractors, nor to make Operator an alter ego or a successor employer of Owner.

Section 21.6 Assignment and Transfer.

(a) By Operator. Operator shall not assign, transfer, convey, lease, encumber or otherwise dispose of its rights or obligations under this Agreement or related to the O&M Services or the Decommissioning Services without the prior written consent of Administrator, which consent shall not be unreasonably withheld, delayed or conditioned, and to the extent required by Applicable Law, PREB or other Governmental Bodies; provided, however, that Operator may, without the prior written consent of Administrator, assign or otherwise dispose of any of its rights and obligations hereunder to an Affiliate of Operator so long as: (i) such Affiliate is (A) a Controlled direct or indirect subsidiary of the Parent Company, (B) reasonably and legally, operationally and financially capable of discharging the duties and obligations of Operator hereunder and (C) assumes in writing all of Operator's obligations hereunder; and (ii) such assignment is otherwise permitted under, and in compliance with, Applicable Law. Any such consent given in one instance shall not relieve Operator of its obligation to obtain the prior written consent of Administrator to any further assignment. Any assignment of this Agreement that is approved by Administrator shall require the assignee of Operator to assume the performance of and observe all obligations, representations and warranties of Operator under this Agreement[, and no such assignment shall relieve Guarantor(s) of any of its obligations under the Guarantee]. The consent to any assignment, transfer or conveyance shall not operate to release Operator in any way from any of its obligations under this Agreement unless such consent specifically provides otherwise. Any amendments to this Agreement requested by a potential assignee or transferee of Operator shall be submitted to and approved by the board of directors of Administrator pursuant to Section 10(a)(19) of Act 29.

(b) By Owner. Owner shall not assign, transfer, convey, lease, encumber or otherwise dispose of its rights or obligations under this Agreement without the prior written consent of Operator; provided, however, that Owner may, without the prior written consent of Operator, assign or otherwise dispose of any of its rights and obligations hereunder: (i) to Administrator; or (ii) with prior approval of the FOMB (if then in existence and to the extent such approval is required by Applicable Law), to another Governmental Body if such assignee assumes, and is reasonably and legally, operationally and financially capable of discharging, the duties and obligations of Owner hereunder.

(c) Change of Control. Nothing contained in the foregoing shall be deemed to prohibit or limit, whether accomplished through a single transaction or a series of related or unrelated transactions and whether accomplished directly or indirectly, transfers of direct or indirect ownership interests in the Operator by any Equity Participant or its beneficial owner(s) to any Person; provided that if any such transfer results in a Change of Control of the Operator, the approval of Administrator shall be required for any such transfer.

Section 21.7 Interest on Overdue Obligations. Except as otherwise provided herein, all amounts due hereunder, whether as fees, damages, credits, revenue, charges or reimbursements, that are not paid when due shall bear interest at the Overdue Rate, on the amount outstanding from time

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to time, and all such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due, as accrued.

Section 21.8 Waivers. Either Operator or Administrator may, at any time, (i) extend the time for the performance of any of the obligations or other acts of the other Party, (ii) waive any inaccuracies in the representations and warranties of the other Party contained herein or (iii) waive compliance by the other Party with any of the agreements or conditions contained herein to the extent consistent with Applicable Law. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in a written instrument executed and delivered by the Party so waiving. No waiver by any Party of any breach of this Agreement shall operate or be construed as a waiver of any preceding or subsequent breach, whether of a similar or different character, unless expressly set forth in such written waiver. Neither any course of conduct or failure or delay of any Party in exercising or enforcing any right, remedy or power hereunder shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy or power hereunder, or any abandonment or discontinuance of steps to enforce such right, remedy or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right, remedy or power.

Section 21.9 Severability. If any term or provision of this Agreement is invalid, illegal or incapable of being enforced in any situation or in any jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other term or provision hereof or the offending term or provision in any other situation or any other jurisdiction, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon any such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible, in a mutually acceptable manner, in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 21.10 Survival. The rights and obligations of the Parties pursuant to this Section 21.10 (*Survival*), Article 13 (*Intellectual Property; Proprietary Information*), Article 15 (*Dispute Resolution*), Article 17 (*Demobilization*), Article 19 (*Indemnification*), Section 21.2 (*Notices*) and Section 21.15 (*Governing Law*) shall survive the expiration or termination of this Agreement. No expiration or early termination of this Agreement shall (i) limit or otherwise affect the respective rights and obligations of the Parties accrued prior to the date of such termination or (ii) preclude any Party from impleading any other Party in any Legal Proceeding originated by a third party as to any matter occurring during the Term.

Section 21.11 No Third-Party Beneficiaries. Unless specifically set forth herein, this Agreement is exclusively for the benefit of the Parties and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other rights.

Section 21.12 Remedies.

(a) Cumulative and Non-Exclusive Remedies. Except as otherwise provided in this Agreement, any and all remedies herein expressly conferred upon a Party shall be deemed

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cumulative with and not exclusive of any other remedy expressly conferred hereby, and the exercise by a Party of any one such remedy shall not preclude the exercise of any other such remedy.

(b) **Irreparable Damage and Harm.** The Parties agree that irreparable damage and harm would occur in the event that any provision of this Agreement were not performed in accordance with its terms and that, although monetary damages may be available for such a breach, monetary damages would be an inadequate remedy therefor. Accordingly, each of the Parties agrees that, in the event of any breach or threatened breach of any provision of this Agreement by such Party, the other Party shall be entitled to an injunction or injunctions, specific performance and other equitable relief to prevent or restrain breaches or threatened breaches hereof and to specifically enforce the terms and provisions hereof. A Party seeking an order or injunction to prevent breaches of this Agreement or to enforce specifically the terms and provisions hereof shall not be required to provide, furnish or post any bond or other security in connection with or as a condition to obtaining any such order or injunction, and each Party hereby irrevocably waives any right it may have to require the provision, furnishing or posting of any such bond or other security. In the event that any Legal Proceeding should be brought in equity to enforce the provisions of this Agreement, each Party agrees that it shall not allege, and each Party hereby waives the defense, that there is an adequate remedy available at law.

Section 21.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same agreement or document. A signed copy of this Agreement transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes.

Section 21.14 Office of the Comptroller. Owner agrees to file this Agreement with the Comptroller of the Commonwealth promptly after its execution and to provide Operator with evidence of its filing within fifteen (15) days following the Effective Date. The Parties acknowledge and agree that the obligations and considerations under this Agreement shall not be enforceable until this Agreement shall have been registered with the Office of the Comptroller of the Commonwealth as provided by Act No. 18 of the Legislative Assembly of Puerto Rico, enacted on October 30, 1975.

Section 21.15 Governing Law. This Agreement and all matters, claims, controversies, disputes, suits, actions or proceedings arising out of or relating to this Agreement and the negotiation, execution or performance of this Agreement or any of the transactions contemplated hereby, including all rights of the Parties (whether sounding in contract, tort, common or statutory law, equity or otherwise) in connection therewith, shall be interpreted, construed and governed by and in accordance with, and enforced pursuant to, the internal laws of the Commonwealth (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction), except where the federal supremacy clause requires otherwise.

Section 21.16 Commonwealth Obligations. THE OBLIGATIONS OF OWNER AND ADMINISTRATOR UNDER THIS AGREEMENT SHALL NOT BE DEEMED OBLIGATIONS OF THE COMMONWEALTH OR ANY INSTRUMENTALITY OF THE COMMONWEALTH OTHER THAN OWNER AND ADMINISTRATOR.

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Section 21.17 PREB Authority. Notwithstanding anything to the contrary herein, no provision of this Agreement shall be interpreted, construed or deemed to limit, restrict, supersede, supplant or otherwise affect, in each case in any way, the rights, responsibilities or authority granted to PREB under Applicable Law with respect to the Legacy Generation Assets, Owner or Operator.

[Signature page follows]

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IN WITNESS WHEREOF, Owner, Administrator and Operator each has caused this Agreement to be duly executed as of the day and year first above written.

**PUERTO RICO ELECTRIC POWER
AUTHORITY, solely in its capacity as OWNER**

By: _____

Name: _____

Title: _____

**PUERTO RICO PUBLIC-PRIVATE
PARTNERSHIPS AUTHORITY, solely in its
capacity as ADMINISTRATOR**

By: _____

Name: _____

Title: _____

[Operator], solely in its capacity as OPERATOR

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Annex I –

Legacy Generation Assets

Legacy Generation Asset	Operational Classification ²⁷	Out-of-Service Unit ²⁸
Aguirre Steam Unit 1	Baseload Unit	
Aguirre Steam Unit 2	Baseload Unit	
Aguirre GT Unit 1	Peaking Unit	Yes
Aguirre GT Unit 2	Peaking Unit	
Aguirre CC 1 - Steam	Baseload Unit	
Aguirre CC 1 – Combustion	Baseload Units	
Aguirre CC 2 – Steam	Baseload Unit	Yes
Aguirre CC 2 - Combustion	Baseload Units	Yes
Cambalache Unit 1	Peaking Unit	Yes
Cambalache Unit 2	Peaking Unit	
Cambalache Unit 3	Peaking Unit	
Costa Sur Unit 1	Baseload Unit	Yes
Costa Sur Unit 2	Baseload Unit	Yes
Costa Sur Unit 3	Baseload Unit	Yes
Costa Sur Unit 4	Baseload Unit	Yes
Costa Sur Unit 5	Baseload Unit	
Costa Sur Unit 6	Baseload Unit	
Costa Sur GT Unit 1	Peaking Unit	Yes
Costa Sur GT Unit 2	Peaking Unit	Yes
Culebra Unit 1	Emergency Unit	
Culebra Unit 2	Emergency Unit	
Culebra Unit 3	Emergency Unit	
Mayaguez Unit 1	Peaking Unit	
Mayaguez Unit 2	Peaking Unit	
Mayaguez Unit 3	Peaking Unit	
Mayaguez Unit 4	Peaking Unit	
Palo Seco Unit 1	Baseload Unit	
Palo Seco Unit 2	Baseload Unit	Yes
Palo Seco Unit 3	Baseload Unit	
Palo Seco Unit 4	Baseload Unit	
Palo Seco CT Unit 1-1	Peaking Unit	
Palo Seco CT Unit 1-2	Peaking Unit	
Palo Seco CT Unit 2-1	Peaking Unit	
Palo Seco CT Unit 2-2	Peaking Unit	
Palo Seco CT Unit 3-1	Peaking Unit	
Palo Seco CT Unit 3-2	Peaking Unit	
Palo Seco MobilePacs	Peaking Unit	
San Juan Unit 1 - Steam	Baseload Unit	Yes
San Juan Unit 2 – Steam	Baseload Unit	Yes
San Juan Unit 3 – Steam	Baseload Unit	Yes
San Juan Unit 4 – Steam	Baseload Unit	Yes
San Juan CC 5 - Gas	Baseload Unit	
San Juan CC 5 - Steam	Baseload Unit	

²⁷ **Note to Draft:** Certain of the Peaking Units have Black Start functionality.

²⁸ **Note to Draft:** The list of Out-of-Service Units is subject to ongoing review and updates by the P3 advisory team. Please also refer to the Confidential Information Memorandum and the virtual tours uploaded to the Data Room.

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San Juan CC 6 - Gas	Baseload Unit	
San Juan CC 6 - Steam	Baseload Unit	
San Juan Unit 7 - Steam	Baseload Unit	
San Juan Unit 8 – Steam	Baseload Unit	
San Juan Unit 9 - Steam	Baseload Unit	
San Juan Unit 10 - Steam	Baseload Unit	Yes
Daguao CT Unit 1	Peaking Unit	
Daguao CT Unit 2	Peaking Unit	
Yabucoa CT Unit 1	Peaking Unit	
Yabucoa CT Unit 2	Peaking Unit	
Jobos CT Unit 1	Peaking Unit	
Jobos CT Unit 2	Peaking Unit	
Vega Baja CT Unit 1	Peaking Unit	
Vega Baja CT Unit 2	Peaking Unit	
Vieques Unit 1	Emergency Unit	
Vieques Unit 2	Emergency Unit	

**Annex II –
Compensation**

I. O&M Fixed Fee

A. O&M Fixed Fee Amounts

Subject to the O&M Fixed Fee Adjustment (as defined below), the O&M Fixed Fee payable to Operator in each Contract Year as compensation for the performance of the O&M Services pursuant to Article 7 (*Compensation; O&M Budgets*) shall be as follows:

Contract Year	O&M Fixed Fee²⁹
1	US\$ ●
2	US\$ ●
3	US\$ ●
4	US\$ ●
5	US\$ ●
6	US\$ ●
7	US\$ ●
8	US\$ ●
9	US\$ ●
10	US\$ ●

B. Adjustments to O&M Fixed Fee upon Decommissioning or Removal from Scope of Services

Commencing in Contract Year 6, the O&M Fixed Fee for any of Contract Year 6 through Contract Year 10 shall be subject to an O&M Fixed Fee Adjustment in the event that (i) Operator has begun or begins to perform Decommissioning Services with respect to a Legacy Generation Asset; or (ii) one or more Legacy Generation Assets has been or is removed from the Scope of O&M Services, permanently or indefinitely, in each case, pursuant to Section 2.3 (*Term*). For the avoidance of doubt, there shall be no O&M Fixed Fee Adjustment in Contract Year 1 through Contract Year 5 as a result of Operator beginning to provide Decommissioning Services with respect to a Legacy Generation Asset or a Legacy Generation Asset being removed from the Scope of O&M Services.

Any O&M Fixed Fee Adjustment shall be effective as of the date (such date, an “Adjustment Date”) on which (i) Operator commences Decommissioning Services with respect to a Legacy Generation Asset, or (ii) a Legacy Generation Asset is removed from the scope of the O&M Services pursuant to Section 2.3 (*Term*); provided, however, that if the event described in clause (i) or (ii) occurs prior to the first day of Contract Year 6, then the Adjustment Date with respect to such event shall be the first day of Contract Year 6.

Following an Adjustment Date, the O&M Fixed Fee payable for a given Contract Year shall be the Adjusted O&M Fixed Fee.

The Adjusted O&M Fixed Fee shall be calculated in accordance with the following formula:

²⁹ **Note to Proponent: Amounts corresponding to the proposed O&M Fixed Fee for each Contract Year should be provided in the submission to the RFP.**

Adjusted O&M Fixed Fee = OFF – the aggregate of all O&M Fixed Fee Adjustments for Legacy Generation Assets which are permanently or indefinitely out of service or are being or have been decommissioned,

where:

- OFF = The applicable O&M Fixed Fee for a given Contract Year, as set forth in Section I.A. (O&M Fixed Fee Amounts) above;
- O&M Fixed Fee Adjustment = OFF x AR; and
- AR = The applicable ratio corresponding to the percentage of the O&M Fixed Fee allocated to each Legacy Generation Asset which are being or have been decommissioned, as set forth in the tables below:³⁰

Legacy Generation Asset	Applicable Ratio (AR)
Aguirre Steam Unit 1	11.27%
Aguirre Steam Unit 2	11.27%
Aguirre GT Unit 1	0.05%
Aguirre GT Unit 2	0.53%
Aguirre CC 1 – Steam	2.40%
Aguirre CC 1 – Gas	5.01%
Aguirre CC 2 – Steam	0.05%
Aguirre CC 2 – Gas	0.05%
Cambalache Unit 1	0.05%
Cambalache Unit 2	2.07%
Cambalache Unit 3	2.07%
Costa Sur Unit 1	0.05%
Costa Sur Unit 2	0.05%
Costa Sur Unit 3	0.05%
Costa Sur Unit 4	0.05%
Costa Sur Unit 5	10.27%
Costa Sur Unit 6	10.27%
Costa Sur GT Unit 1	0.05%
Costa Sur GT Unit 2	0.05%
Mayaguez Unit 1	1.38%
Mayaguez Unit 2	1.38%
Mayaguez Unit 3	1.38%
Mayaguez Unit 4	1.38%
Palo Seco Unit 1	2.13%
Palo Seco Unit 2	0.05%
Palo Seco Unit 3	5.41%
Palo Seco Unit 4	5.41%
Palo Seco GT Unit 1-1	0.53%
Palo Seco GT Unit 1-2	0.53%
Palo Seco GT Unit 2-1	0.53%
Palo Seco GT Unit 2-2	0.53%
Palo Seco GT Unit 3-1	0.53%
Palo Seco GT Unit 3-2	0.53%
Palo Seco MobilePac 1	0.68%
Palo Seco MobilePac 2	0.68%

Legacy Generation Asset	Applicable Ratio (AR)
Palo Seco MobilePac 3	0.68%
San Juan Unit 1 – Steam	0.05%
San Juan Unit 2 – Steam	0.05%
San Juan Unit 3 – Steam	0.05%
San Juan Unit 4 – Steam	0.05%
San Juan CC 5 – Gas	4.01%
San Juan CC 5 – Steam	1.50%
San Juan CC 6 – Gas	4.01%
San Juan CC 6 – Steam	1.50%
San Juan Unit 7 – Steam	2.50%
San Juan Unit 8 – Steam	2.50%
San Juan Unit 9 - Steam	0.05%
San Juan Unit 10 - Steam	0.05%
Daguao GT Unit 1	0.53%
Daguao GT Unit 2	0.53%
Yabucoa GT Unit 1	0.53%
Yabucoa GT Unit 2	0.53%
Jobos GT Unit 1	0.53%
Jobos GT Unit 2	0.53%
Vega Baja GT Unit 1	0.53%
Vega Baja GT Unit 2	0.53%
Total	100.00%

³⁰ **Note to Draft:** AR percentages were calculated using information on each Legacy Generation Asset’s nameplate capacity (MW) as provided by PREPA, as adjusted to allocate one percent across the Out-of-Service Units, and are subject to further updates in subsequent stages of the RFP process, including to potentially provide percentages for the Culebra and Vieques Emergency Units.

II. Decommissioning Fixed Fees

A. **Decommissioning Fixed Fee for Legacy Generation Assets**

No Decommissioning Fixed Fee shall be payable during Contract Year 1 through Contract Year 5 with respect to any Legacy Generation Asset.

Commencing in Contract Year 6, in the event that Operator has begun or begins providing Decommissioning Services with respect to a Legacy Generation Asset. Operator shall be entitled to receive the Decommissioning Fixed Fee (or a Pro Rata portion thereof) as compensation for performing such Decommissioning Services for each Contract Year (or portion thereof) that such Decommissioning Services are provided. The Decommissioning Fixed Fee payable to Operator per Contract Year with respect to a Legacy Generation Asset shall be an amount equal to [•]³¹ percent ([•]%) of the applicable O&M Fixed Fee Adjustment for such Legacy Generation Asset pursuant to Section I.B. (*Compensation – O&M Fixed Fee – Adjustments to O&M Fixed Fee upon Decommissioning or Removal from Scope of Services*).

B. **Monthly Payments and Withholding of 10% Decommissioning Fixed Fees**

Subject to the following paragraph, Owner shall pay the applicable Decommissioning Fixed Fees described in Section II.A. (*Decommissioning Fixed Fee for Legacy Generation Assets*) of this Annex II (*Compensation*) in twelve (12) equal monthly installments in each Contract Year during which Decommissioning Services are being provided by Operator, as adjusted on a Pro Rata basis for any partial Contract Year.

An amount equal to ten percent (10%) of each monthly Decommissioning Fixed Fee invoice shall be retained by Owner and the aggregate of such retained amounts shall be paid to Operator no later than five (5) Business Days after the applicable Decommissioning Services have been completed to the satisfaction of the Administrator.

III. Incentives and Penalties

A. **General.**

In each Contract Year, Operator shall be (i) eligible to receive financial incentive compensation in the form of an Incentive Payment or (ii) subject to potential Penalty, in each case, based on Operator's performance in providing the O&M Services and/or the Decommissioning Services, as applicable, with respect to the performance categories described in this Section III of Annex II (*Compensation – Incentives and Penalties*); provided that no Incentive Payment shall be paid to, and no Penalty shall be incurred by, Operator during the Mobilization Period or the Demobilization Period. Following any O&M Fixed Fee Adjustment, the maximum Incentive Payment that Operator is entitled to earn for such Contract Year(s) shall be correspondingly subject to Pro Rata reduction.

³¹ **Note to Proponent:** Amount corresponding to the proposed monthly Decommissioning Fixed Fee for each Legacy Generation Asset should be provided in the submission to the RFP.

Upon the occurrence and continuation of any Force Majeure Event (other than a Force Majeure Event that is a Forced Outage), Operator and Administrator shall negotiate in good faith adjustments or modifications to the relevant categories of Incentives and Penalties, as applicable, which shall apply during the duration of such Force Majeure Event.

Certain categories of Incentives and Penalties include minimum standards of performance that Operator must meet (each, a “Minimum Performance Threshold”). Failure to meet one or more Minimum Performance Thresholds may trigger a “Minimum Performance Threshold Default” pursuant to Section 14.1(1) (*Events of Default by Operator – Failure to Meet Minimum Performance Threshold*).

B. O&M Services Categories

To incentivize Operator to meet certain targets in performing the O&M Services, Operator shall be evaluated in four (4) categories: (i) Operation Cost Efficiency, (ii) Equivalent Availability Factor (EAF), (iii) Safety Compliance and (iv) Environmental Compliance, as described in this Section III.B. of Annex II (*Compensation – Incentives and Penalties – O&M Services Categories*).

1. Operation Cost Efficiency

The applicable Operating Budget for each Contract Year shall be the benchmarks for determining Operator’s cost efficiency in such Contract Year, subject to adjustments for Force Majeure Events. Operator shall receive an O&M Incentive Payment based on a percentage of the total amount of cost savings achieved by Operator in the delivery of the O&M Services as compared to the approved Operating Budget.

Measurement Parameter: Actual expenditures as a percentage (%) of the approved Operating Budget, where actual savings equal the Operating Budget minus actual expenditures.

Criteria:	
>95% but <99%	Operator receives [•]% of the actual savings ³²
>90% but ≤95%	Operator receives [•]% of the actual savings
>85% but ≤90%	Operator receives [•]% of the actual savings
≤85%	Operator receives [•]% of the actual savings

For each Contract Year, the maximum O&M Incentive Payment payable to Operator under the Operation Cost Efficiency category shall be US\$[•]³³, which shall be subject to Pro Rata reduction following any O&M Fixed Fee Adjustment.

2. Equivalent Availability Factor (EAF)

For each Contract Year, the Parties shall perform the Annual Performance Test described in Section 4.2(o) (*Operator Responsibilities – Annual Performance Test*) for each Legacy Generation Asset. The overall annual Equivalent Availability Factor (as defined below) target shall

³² **Note to Proponent:** Please indicate a proposed percentage for each placeholder in the table.

³³ **Note to Proponent:** Please indicate a proposed amount for the Incentive Payment cap under this category.

be 75% for Baseload Units and 65% for Peaking Units.³⁴ The Annual Performance Test shall be performed during the Mobilization Period for Contract Year 1 and during the first thirty (30) days of each Contract Year thereafter.

To the extent Operator’s overall annual Equivalent Availability Factor for a Contract Year exceeds the 75% and 65% targets referenced above, Operator shall receive a graduated O&M Incentive Payment, and to the extent it falls below the targets referenced above, Operator shall be subject to an O&M Penalty, in each case, subject to a maximum cap as described below. The Equivalent Availability Factor shall be adjusted for excusable events including Force Majeure Events.

As used in this Section III of Annex II (*Compensation – Incentives and Penalties*), “Equivalent Availability Factor” shall be defined in accordance with IEEE 762-2006, *IEEE Standard Definitions for Use in Reporting Electric Generating Unit Reliability, Availability, and Productivity* (“IEEE 762-2006”) as:

$$EAF = \frac{(AH-EPDH-EUDH)}{PH} \times 100 \%$$

where:

- AH = Available Hours
- EPDH= Equivalent Planned Derated Hours
- EUDH = Equivalent Unplanned Derated Hours
- PH = Planned Hours or number of hours that the Legacy Generation Asset was in active state

As used in this Section III of Annex II (*Compensation – Incentives and Penalties*), the aforementioned terms have the meanings ascribed to them in IEEE 762-2006.

The actual calculated Equivalent Availability Factor percent for each asset for a Contract Year in a category (Baseload Units and Peaking Units) shall be weighted that Contract Year by the ratio of its Tested Capacity to the total Tested Capacity for the category for that Contract Year to arrive at the overall Equivalent Availability Percent for that category of generation units for purposes of the Incentives and Penalties.

Measurement Parameter: Equivalent Availability Factor for Baseload Units

Criteria:	
>80%	Operator receives an Incentive Payment of US\$ [•] ³⁵
>77.5% but ≤80%	Operator receives an Incentive Payment of US\$ [•]
>75% but ≤77.5%	Operator receives an Incentive Payment of US\$ [•]
≤75%	Operator pays a Penalty of US\$ [•]

³⁵ **Note to Proponent:** Please indicate a proposed amount for each placeholder in the table.

³⁵ **Note to Proponent:** Please indicate a proposed amount for each placeholder in the table.

Measurement Parameter: Equivalent Availability Factor for Peaking Units

Criteria:	
>75%	Operator receives an Incentive Payment of US\$ [•] ³⁶
>70% but ≤75%	Operator receives an Incentive Payment of US\$ [•]
>65% but ≤70%	Operator receives an Incentive Payment of US\$ [•]
≤65%	Operator pays a Penalty of US\$ [•]

For each Contract Year, the maximum aggregate O&M Incentive Payment payable to Operator with respect to the parameters of the Equivalent Availability Factor category shall be US\$ [•]³⁷, which shall be subject to Pro Rata reduction following any O&M Fixed Fee Adjustment.

Minimum Performance Threshold for Equivalent Availability Factor Category: The Minimum Performance Threshold for the annual Equivalent Availability Factor for the applicable Legacy Generation Assets shall be at least 75% for the Baseload Units, collectively, and at least 65% for the Peaking Units, collectively, subject to adjustments for Force Majeure Events. Failure by Operator to achieve either Minimum Performance Threshold in two (2) consecutive Contract Years shall trigger a Minimum Performance Threshold Default pursuant to Section 14.1(l) (*Events of Default by Operator – Failure to Meet Minimum Performance Threshold*).

3. Safety Compliance

Operator shall receive an O&M Incentive Payment based on its performance for each Contract Year with respect to the safety compliance targets described below, which, for the avoidance of doubt, shall also include the performance of O&M Services by Operator’s subcontractors. If Operator performs below the relevant targets, Operator shall be subject to an O&M Penalty, as described below.

Measurement Parameter: OSHA Lost Time Incidents (LTI)

Number of LTI Incidents:	
3 or less	Operator receives an Incentive Payment of US\$ [•] ³⁸
Between 3 and 5	Operator receives an Incentive Payment of US\$ [•]
>5	Operator pays a Penalty of US\$ [•]

Measurement Parameter: OSHA Recordable Injury or Illness (I&I)

Number of I&I Incidents:	
0	Operator receives an Incentive Payment of US\$ [•] ³⁹
Between 1 and 3	Operator receives an Incentive Payment of US\$ [•]
>3	Operator pays a Penalty of US\$ [•]

³⁶ **Note to Proponent:** Please indicate a proposed amount for each placeholder in the table.

³⁷ **Note to Proponent:** Please indicate a proposed amount for the Incentive Payment cap under this category.

³⁸ **Note to Proponent:** Please indicate a proposed amount for each placeholder in the table.

³⁹ **Note to Proponent:** Please indicate a proposed amount for each placeholder in the table.

Measurement Parameter: OSHA Fatality or Severe Injury

Number of Fatalities or Severe Injuries:	
0	Operator receives an Incentive Payment of US\$[•] ⁴⁰
≥1	Operator pays a Penalty of US\$[•]

For each Contract Year, the maximum aggregate O&M Incentive Payment payable to Operator shall be US\$[•]⁴¹ and the maximum aggregate O&M Penalty that Operator may incur shall be US\$[•]⁴², in each case with respect to parameters of the Safety Compliance category described herein, and in each case which shall be subject to Pro Rata reduction following any O&M Fixed Fee Adjustment.

Minimum Performance Threshold for Safety Compliance Category: The payment of penalties by Operator on any of the safety compliance measurement parameters in two (2) consecutive Contract Years shall trigger a Minimum Performance Threshold Default pursuant to Section 14.1(l) (*Events of Default by Operator – Failure to Meet Minimum Performance Threshold*).

4. Environmental Compliance

Operator shall receive an O&M Incentive Payment based on its performance with respect to the environmental target described below. If Operator performs below the relevant target, Operator shall be subject to an O&M Penalty, as described below.

Measurement Parameter: Violation of Consent Decrees and/or Notice of Violations (NOVs)

Number of Violations or NOVs:	
0	Operator receives an Incentive Payment of US\$[•] ⁴³
>1	Operator pays a Penalty of US\$[•] (for each violation or NOV)

For each Contract Year, the maximum aggregate O&M Incentive Payment payable to Operator shall be US\$[•]⁴⁴ and the maximum aggregate O&M Penalty that Operator may incur shall be US\$[•]⁴⁵, in each case with respect to parameters of the Environmental Compliance category described herein, and in each case which shall be subject to Pro Rata reduction following any O&M Fixed Fee Adjustment.

Minimum Performance Threshold for Environmental Compliance Category: The payment of an O&M Penalty by Operator under the Environmental Compliance category for two (2) consecutive

⁴⁰ **Note to Proponent:** Please indicate a proposed amount for this placeholder.

⁴¹ **Note to Proponent:** Please indicate a proposed amount for the Incentive Payment cap under this category.

⁴² **Note to Proponent:** Please indicate a proposed amount for the Penalty cap under this category.

⁴³ **Note to Proponent:** Please indicate a proposed amount for each placeholder in the table.

⁴⁴ **Note to Proponent:** Please indicate a proposed amount for the Incentive Payment cap under this category.

⁴⁵ **Note to Proponent:** Please indicate a proposed amount for the Penalty cap under this category.

Contract Years shall trigger a Minimum Performance Threshold Default pursuant to Section 14.1(l) (*Events of Default by Operator – Failure to Meet Minimum Performance Threshold*).

C. Decommissioning Services Categories

To incentivize Operator to meet certain targets in performing the Decommissioning Services with respect to a Legacy Generation Asset, Operator shall be evaluated in accordance with the Decommissioning Cost Efficiency category, as described in this Section III.C. of Annex II (*Compensation – Incentives and Penalties – Decommissioning Services Categories*).

1. Decommissioning Costs Efficiency

Prior to the commencement of Decommissioning Services for any Legacy Generation Asset, Operator shall propose a Decommissioning Budget and a timeline as part of its proposed Decommissioning Plan, in accordance with Section 16.1 (*Decommissioning*). Upon completion of such Decommissioning Services, as agreed by Operator, Administrator and PREB:

- If (i) Operator’s actual expenditures are consistent with the estimates included in the applicable Decommissioning Budget and (ii) Operator successfully completes the applicable Decommissioning Services on or before relevant Decommissioning Completion Date, Operator shall receive the Decommissioning Fixed Fee and no Incentive Payment or Penalty shall be applicable.
- If (i) Operator’s actual expenditures are below the estimates included in the applicable Decommissioning Budget and (ii) Operator successfully completes the applicable Decommissioning Services on or before relevant Decommissioning Completion Date, Operator shall be eligible to receive a Decommissioning Incentive Payment consisting of a percentage of the actual cost reduction as compared to the estimates included in the applicable Decommissioning Budget (subject to a maximum cap).
- Operator shall be liable and responsible for all costs and expenses that exceed the estimates included in the applicable Decommissioning Budget.

Measurement Parameter: Actual expenditures as a percentage (%) of the approved Decommissioning Budget, where actual savings equal the Decommissioning Budget minus actual expenditures.

Criteria:	
>95% but <99%	Operator receives [•] % of the actual savings ⁴⁶
>90% but ≤95%	Operator receives [•] % of the actual savings
>85% but ≤90%	Operator receives [•] % of the actual savings
≤85%	Operator receives [•] % of the actual savings

⁴⁶ **Note to Proponent:** Please indicate a proposed amount for each placeholder in the table.

For each Contract Year, the aggregate Decommissioning Incentive Payment payable to Operator under the Decommissioning Costs Efficiency category for all applicable Legacy Generation Assets shall be US\$[•]⁴⁷.

If the Decommissioning Services with respect to a Legacy Generation Asset are not completed by the applicable Decommissioning Completion Date, then Operator shall be subject to a Decommissioning Penalty consisting of [•] percent ([•]%)⁴⁸ of the Decommissioning Fixed Fee for such Legacy Generation Asset for each week, or for any portion of a week on a Pro Rata basis, the completion of the Decommissioning Services is delayed past the applicable Decommissioning Completion Date.

Minimum Performance Threshold: In the event Operator (i) exceeds the costs and expenses included in the applicable Decommissioning Budget and/or (ii) fails to complete the Decommissioning Services before the Decommissioning Completion Date for any two (2) Legacy Generation Assets, Administrator (on behalf of Owner) may, in its sole discretion, engage an independent third party to perform any future Decommissioning Services with respect to any Legacy Generation Assets without incurring, or becoming liable for, the payment of any penalty, premium or termination fee to Operator and Operator shall not be entitled to any Decommissioning Fixed Fee for such asset.

⁴⁷ **Note to Proponent:** Please indicate a proposed amount for the Incentive Payment cap under this category.

⁴⁸ **Note to Proponent:** Please indicate a proposed percentage that shall be used to measure the weekly penalty for delays in reaching the Decommissioning Completion Date.

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**Annex III –
Baseline Environmental Study**

[To come.]

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**Annex IV –
Contracts**

[To come.]

**Annex V –
Mobilization Plan**

[●]⁴⁹

⁴⁹ **Note to Proponent: A Mobilization Plan should be provided in the submission to the RFP.**

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**Annex VI –
T&D-Generation Operating Agreement**

[To come.]

Annex VII –

Scope of Services

This Annex VII (Scope of Services) is designed to set forth certain O&M Services in addition to those contained in Article 5 (O&M Services) to the Agreement, certain of which O&M Services shall also apply to the performance of the Decommissioning Services, Mobilization Services and Demobilization Services. This Annex VII (Scope of Services) is not intended, nor should it be deemed, to be an exclusive list of O&M Services. However, the Agreement, including this Annex VII (Scope of Services), absent subsequent changes agreed to by the Parties, sets forth the entire scope of O&M Services to be provided pursuant to the Agreement, with the exception of the services provided pursuant to the Shared Services Agreement until such time as Operator begins to provide such services. Capitalized terms used but not defined in this Annex VII (Scope of Services) have the respective meanings set forth in the Agreement. All obligations of Operator set forth herein shall be performed in accordance with and are subject to the requirements of the main body of the Agreement.

I. Legacy Generation Assets Operation Services.

A. General. Operator shall be responsible for all management, operation, maintenance, repair and other related services with respect to the Legacy Generation Assets, subject to the terms and conditions of the Agreement, including (1) day-to-day operation and maintenance services; (2) identifying, justifying and managing any required maintenance capital expenditures; (3) providing routine inspections and annual operating tests of the Legacy Generation Assets in coordination with T&D Operator; (4) establishing appropriate and customary safety work rules and practices; (5) developing an operation and maintenance training program; (6) provisioning, storing and maintaining the inventory of spare and consumable parts for the Legacy Generation Assets; (7) establishing and maintaining a computerized maintenance management system for the Legacy Generation Assets; (8) performing scheduled and emergency maintenance, repair and replacement of equipment, including any balance of plant equipment; (9) managing Planned Outages, Unplanned Outages and Forced Outages and restoration of power supply to the transmission grid; (10) coordinating business continuity and emergency planning and storm restoration and recovery in coordination with T&D Operator; (11) procuring and managing water or power supply, as applicable; (12) maintaining and repairing fuel and water systems, including tanks, pumps, filters, and piping, as required; (13) procuring and managing the delivery and quality testing of fuel; (14) liaising with Owner, PREPA, the T&D Operator or any of their assignees or successors regarding dispatch, dispatch planning and related T&D system matters and providing required information; (15) interfacing with and providing reports to regulators including PREB and with environmental compliance agencies such as the EPA, the Puerto Rico Department of Natural and Environmental Resources, the Occupational Safety and Health Administration and others, as may be required; (16) obtaining, complying with and maintaining licenses, permits, consents and the Consent Decree, as necessary; (17) providing periodic reports regarding programmed and non-programmed operations, maintenance, repairs, services and modifications performed and to be performed; (18) preparing for and assisting in, or subcontracting for and overseeing, the decommissioning of the relevant plants as outlined in the IRP Final Resolution and Order, in coordination with PREPA/the T&D Operator, Owner and PREB; (19) participating in emergency planning and drills led by the T&D Operator, as needed; and (20) assisting with the transition of the plants to third parties or to new uses

(synchronous condensers, etc.) to the extent certain of the plants are removed from the O&M Agreement.

B. Day-to-Day Operation. Operator shall be responsible for the day-to-day safe operation of the Legacy Generation Assets, including start-up, load adjustments, active follow-up of operating parameters and alarms, and shut-down of the plants or units thereof as directed by the T&D Operator and in accordance with Operator's Operations and Maintenance Procedures.

C. Compliance with T&D-Generation Operating Agreement. Operator shall perform its obligations under the T&D-Generation Operating Agreement, including the Agreed Operating Procedures included therein, and shall coordinate with T&D Operator as required thereunder, including by fulfilling the T&D Operator's instructions with regards to generation dispatch and other obligations set forth in the Agreed Operating Procedures, in order to effectively and safely supply the T&D System with requested electric generation and other services.

D. Engineering Activities. Operator shall be responsible for engineering activities related to the safe operation of the Legacy Generation Assets, including: (1) analyses related to, and maintenance of records and standards for design and engineering, design standards, construction standards and related information, plant performance, reliability analysis, root cause analysis, equipment ratings and needs assessment; (2) managing an effective environmental, health and safety program; and (3) maintenance of an environmental, health, safety, regulatory compliance program and the documentation thereof.

E. Maintenance of Technical Documentation. Operator shall be responsible for maintenance of revisions to all drawings, specifications, construction manuals, equipment diagrams and other technical documentation related to the Legacy Generation Assets.

F. Fuel. Operator shall be responsible for procuring, transporting and managing the delivery and quality testing of Fuel, including natural gas, diesel (number 2 fuel oil) and number 6 fuel oil (including logistics, fuel testing and storage tank management), and approving invoices, as applicable and in accordance with existing and future fuel contract requirements, as an agent for Owner.

G. Planning, Environmental and Regulatory. Operator shall be responsible for (1) compliance with Environmental Law (including the Consent Decree), including emissions monitoring, recordkeeping, and reporting; (2) maintenance of documentation, timely submission of applications for permits and approvals, and acquisition of permits, approvals, and Easements as required for the Legacy Generation Assets operations; and (3) compliance with applicable regulatory and legislative requirements subject to operating constraints and Prudent Industry Practice. In performing these services and any other services under the Agreement, nothing shall require, or shall be construed as requiring, Operator to act as legal counsel to, or to provide legal advice or representation to, Owner.

H. Legal Services. Operator shall be responsible for (1) day-to-day legal responsibilities relating to the O&M Services, Decommissioning Services and Demobilization Services, in coordination with Owner and Administrator in accordance with processes set forth in this Annex VII (*Scope of Services*); and (2) collaborating with the T&D Operator to prepare, present, and defend current or future rate cases or other regulatory or legal matters as they relate to the Agreement, as

well as preparing, presenting, and defending any non-compliance with local legislative requirements. In performing these services and any other services under this Agreement, nothing shall require, or shall be construed as requiring, Operator to act as legal counsel to, or to provide legal advice or representation to, Owner.

I. Insurance and Claims. Operator shall maintain the appropriate level of insurance as to cover claims that arise after executing the Agreement and following the Service Commencement Date, consistent with Prudent Industry Practices and with the requirements of the Agreement. As part of the Mobilization Plan, Operator shall develop a comprehensive insurance program, to be reviewed and approved by Administrator, which approval shall not be unreasonably withheld, delayed or conditioned. The insurance program shall be provided to PREB for its knowledge. Operator shall be responsible for preparing and submitting insurance claims (including claims that may have arisen prior to the Effective Date and/or the Service Commencement Date) on behalf of Owner as well as keeping Administrator timely informed of such claims processes.

J. Subcontracting. Operator shall evaluate opportunities for the subcontracting of any specific activities associated with this Annex VII (*Scope of Services*) that shall provide greater efficiencies and value to the operation of the Legacy Generation Assets and seek to implement such activities within budget and regulatory constraints and in accordance with the Agreement.

K. Good Neighbor. Operator shall conduct community outreach events (e.g., volunteer events, charitable contribution events, etc.) by region on a quarterly basis. All complaints received by PREB that are attributable to the Legacy Generation Assets shall be promptly resolved (to PREB's satisfaction) no later than thirty (30) Business Days after Operator receives notification of such complaint from PREB. Operator shall provide Administrator written quarterly reports with respect to any complaints received and Operator's resolution of such complaints.⁵⁰

L. Other. Operator shall be responsible for other activities necessary, appropriate or advisable to operate and maintain the Legacy Generation Assets in accordance with the Contract Standards, including cooperation, as specified in the Agreement, during Operator's performance of the O&M Services, Decommissioning Services, Mobilization Services and Demobilization Services under the Agreement, with third parties providing services to Owner with respect to Owner's provision of electric generation services, provided Owner shall impose similar obligations on such third parties to also cooperate with Operator.

II. Asset Management and Maintenance Services.

A. General. Operator shall be responsible for managing and maintaining all assets of the Legacy Generation Assets, including machinery, equipment, structures, improvements and condition assessment of the components of the Legacy Generation Assets, including the following: (1) development and implementation of asset management strategies and risk management and mitigation for combined technical performance, life cycle cost, safety and regulatory compliance; (2) real estate management, Easements, leases and agreements; (3) fleet management and equipment; (4) materials and services procurement in accordance with the process required by Applicable Law and inventory management; (5) Legacy Generation Assets security in accordance with Applicable Law and to protect the Legacy Generation Assets from vandalism, terrorism or

⁵⁰ **Note to Proponent: The submission to the RFP should include a proposal for a Good Neighbor program.**

other acts; (6) business continuity and emergency preparedness and planning; (7) warehousing of on and off-island capital and other spare parts and consumables; (8) fuel procurement, management and testing services; and (9) training of operators and maintenance technicians.

B. Inventory Control. Operator shall, consistent with the Contract Standards, the Agreement and this Annex VII (*Scope of Services*): (1) maintain an inventory of fuel, equipment, spare parts, capital spare parts, materials and supplies (appropriate for day-to-day operations and Emergencies), and shall maintain and document an inventory control program; (2) purchase, maintain and store inventory in a manner also consistent with the Legacy Generation Assets policies and procedures adopted from time to time by Operator and provided in writing to Owner and Administrator and the Generation Emergency Response Plan; and (3) complete, on an agreed-upon cycle count basis, a physical inventory and a condition assessment of the equipment, spare parts, materials and supplies.

C. Necessary Equipment and Systems. Operator shall, consistent with the Contract Standards, the Agreement and this Annex VII (*Scope of Services*), determine, acquire, deploy and maintain tools, equipment and Information Systems necessary to perform all O&M Services, Decommissioning Services, Mobilization Services and Demobilization Services under the Agreement.

D. Information Technology. Operator shall, consistent with the Contract Standards, the Agreement and this Annex VII (*Scope of Services*), be responsible for (1) providing information technology systems maintenance support and improvements in accordance with cybersecurity requirements that support network and day-to-day activities; and (2) developing and maintaining a business continuity plan in the event of natural, man-made or cyber-attack incidents. Operator shall periodically provide Administrator (with copy to PREB) and the T&D Operator managed Energy Control Center the most current versions of the business continuity plan.

III. Government, Community and Media Relations.

A. General. Operator shall be responsible for (1) conducting government, community and media relations with respect to the management, operation and maintenance of the Legacy Generation Assets in accordance with such policies and procedures as Operator may from time to time adopt in accordance with Applicable Law; and (2) staffing public events and presenting workshops, seminars and similar activities during normal business hours, evenings, weekends and holidays.

B. Communications. It is the Parties' intention that, to enable Operator to effectively communicate with the government officials regarding Legacy Generation Assets matters, Operator shall have direct responsibility for media and other public communications on all matters related to the Legacy Generation Assets, including communications with public officials, regulators and local municipalities and counties regarding storm preparation, management, coordination and response, programs and complaints and related matters. Accordingly, Operator shall have full authority to determine all communications policies and procedures relating to its provision of O&M Services, Decommissioning Services, Mobilization Services and Demobilization Services under the Agreement. Nevertheless, Operator agrees that (i) during Emergency Operating Conditions as defined and described in the Operations and Maintenance Procedures inclusive of major events (e.g., Forced Outages and Declared Emergency or Major Disaster) or (ii) if it takes actions in Operator's

capacity as Operator, that could be reasonably be expected to have broader impacts on public safety and/or public health, Operator shall endeavor to keep Owner, Administrator and T&D Operator, and, as appropriate, other local, state, and federal government entities, informed and act in consultation with Owner, Administrator and T&D Operator. These communications shall be made in accordance with the Operations and Maintenance Procedures. Furthermore, Operator agrees that during a Declared Emergency or Major Disaster, Operator shall have certain responsibilities under the T&D Operator's Incident Command System.

C. Government Relations. Operator shall be responsible for coordinating, conducting and formulating communications with municipal, local, state and federal representatives and organizations relating to operation and maintenance of the Legacy Generation Assets and provision of generation-related services by Operator, including PREB, in accordance with such policies and procedures as Operator may from time to time adopt in its sole and absolute discretion.

IV. Testing, Reports and Records.

A. Annual Performance Test. Operator shall be responsible for conducting the Annual Performance Test for each Legacy Generation Asset, in coordination with the T&D Operator, in accordance with the Agreed Upon Procedures set forth in the T&D-Generation Operating Agreement. Each Annual Performance Test shall determine the Tested Capacity and Heat Rate for each Legacy Generation Asset for the current Contract Year. Operator shall document the results of such Annual Performance Test in accordance with Section IV.B.C below, and shall promptly submit such results to Administrator and T&D Operator.

B. Other Reports and Records as Requested by Administrator or T&D Operator. Operator shall be responsible for (A) preparing a monthly operations report; (B) producing and delivering to Administrator information as Administrator may reasonably request to determine Operator's performance under the Agreement; and (C) developing and maintaining a comprehensive document management program with records storage, retention and destruction guidelines and procedures, in accordance with applicable Commonwealth and federal guidelines and regulations, and as otherwise provided for under the Agreement.

V. Finance and Accounting Services.

A. General. Operator shall be responsible for all finance, accounting, budgeting, longer-term financial forecasting and treasury operations related to the Legacy Generation Assets, including the implementation of the activities set forth in Sections V.A through V.E of this Annex VII (*Scope of Services*). In the exercise of the responsibilities described in this Annex VII—Section V (*Scope of Services—Finance and Accounting Services*), the Operator may utilize Owner's existing accounting system.

B. Accounting and Reporting. Operator shall be responsible for accounting and reporting operations including the following activities:

1. maintenance of a complete and separate set of financial and accounting records relating to the O&M Services, Decommissioning Services, Mobilization Services and Demobilization Services, in accordance with GAAP and other applicable standards (including with

FERC's Uniformed System of Accounts, the 1974 Puerto Rico Electric Power Authority Trust Agreement and other accounting best practices);

2. maintenance of a general ledger and all subledgers in accordance with Applicable Law regarding accounts necessary to support the preparation of monthly financial statements and management reports for Operator;

3. on a monthly basis until the expiration or earlier termination of the Mobilization Period, provision of budget to actuals analyses to explain the month's results with explanations;

4. analysis of all accounts within the Operating Budget, Fuel Budget and Decommissioning Budget, on a plant by plant and monthly basis, providing variance analysis of and explanations for both actual period-to-period variances (on a quarterly basis) and budget versus actual variances (on a monthly basis) to the extent reasonably requested by Administrator;

5. (i) performance of all accounting and reporting functions necessary to support the Legacy Generation Assets operations; (ii) the maintenance of the fixed assets records in accordance with PREB and other applicable regulatory or accounting requirements and (iii) performance of all reporting and recordkeeping functions necessary in connection with the performance and completion of the Decommissioning Services for the Legacy Generation Assets, including Operator's recommendations to commence Decommissioning Services for a Legacy Generation Asset, if any;

6. separate accounting and reporting that may be required from time to time for any federal and Commonwealth grants received by Owner to the extent reasonable prior notice of any such grants obtained is provided to Operator;

7. provision of accounting memorandum documenting procedures used in creating journal entries related to the Legacy Generation Assets;

8. accounting for and documenting the costs and revenues resulting from Operator's performance under the Agreement in accordance with GAAP and any other applicable accounting requirements as determined necessary by Administrator (including in accordance with FERC's Uniformed System of Accounts, the 1974 Puerto Rico Electric Power Authority Trust Agreement, and other accounting best practices, as applicable) in compliance with Section 6.3 (*Reporting: Audits*) of the main body of the Agreement;

9. reconciliations (including bank account reconciliations), which shall be performed monthly, quarterly or annually based on the risk associated with the account being reconciled, in each case (i) if the month in which the reconciliation is being performed is a quarter-ending month (other than December), by the end of the subsequent month or (ii) if the month in which the reconciliation is being performed is a non-quarter ending month or December, within forty-five (45) days after the end of such month; and

10. beginning in the first year of the Agreement, preparation from time to time as requested by PREB, but no less frequently than every three (3) years, of a depreciation study, the goal of which is to determine consolidated annual depreciation accrual rates for preparation of

financial statements and factors that relate to the fair and timely recovery of capital invested in the Legacy Generation Assets.

C. Budgeting and Financial Forecasting. Operator shall be responsible for budgeting and longer-term financial forecasting operations, including the following activities:

1. preparing and monthly monitoring of budgets necessary for operating expenses for the services provided by Operator under the Agreement;
2. update the Fuel Budget on a quarterly basis to comply with Section 7.3(d) of this Agreement (*O&M Budgets – Quarterly Adjustments to Fuel Budget*);
3. analyzing monthly and year-to-date budget to actual variances, and explanations thereof and formulating financial projections based on the variance analyses;
4. analyzing expenditure projections for the annual or multi-year period beyond the period of actual results;
5. preparing and delivering costs budget input data for the annual budgeting processes, the Integrated Resource Plan and Owner's and Administrator's other long-range financial planning processes; and
6. risk management operations consistent with enterprise risk management practices covering the potential risks involved in the conduct of the O&M Services, Decommissioning Services, Mobilization Services and Demobilization Services including the following activities: (i) managing counterparty credit risk, (ii) managing commodity market risk, and (iii) conducting a risk management program.

D. Auditing. Operator shall be responsible for auditing operations, including the following activities:

1. internal audit function to perform annual risk assessment related to the Legacy Generation Assets for the purpose of developing the appropriate risk-based annual audit plan as well as performing financial, regulatory and third-party contract compliance and operational audits and reviews, including review of the associated internal controls, based on the results of the annual risk assessment and associated annual audit plan;
2. provision of all necessary information and assistance to Owner's external auditors in connection with their audit of the financial statements and underlying financial records maintained by Operator related to the services provided under the Agreement; and
3. provision of copies of, and reasonable access to, the risk based annual audit plan referenced in Section V.D.1 of this Annex VII (*Scope of Services*); and the right of Administrator to inspect, during normal business hours and upon reasonable prior notice, internal audit reports and recommendations of Operator and management responses thereto; it being agreed, however, that the foregoing information shall be deemed to be confidential and shall therefore not be used by Owner or Administrator except with respect to any fraudulent conduct or willful misconduct identified in such reports and recommendations.

E. Other. any other accounting and finance related activities necessary or advisable to support the operation and maintenance of the Legacy Generation Assets as Administrator may request from time to time, including:

1. provision of information and data (both financial and operational) to support Owner's financing activities and the administration of Owner's and its affiliates' debt service and required disclosure requirements;

2. provision of assistance (including provision of information and data (both financial and operational)) to Owner and Administrator in connection with the preparation of reports and other documents to satisfy Owner's reporting requirements including: quarterly and annual (year-end) financial reporting; monthly and annual federal agency reporting requirements; PREB reporting requirements, Budget Reconciliation Act of 2017 and other federal and Commonwealth stimulus or funding program reporting requirements; Department of Energy reporting requirements; and filings relating to the O&M Services, Decommissioning Services, Mobilization Services and Demobilization Services in compliance with Applicable Law, and in accordance with Section 6.3 (*Reporting: Audits*) of the main body of the Agreement; and

3. record keeping in compliance with Applicable Law.

VI. Emergency Response.

A. Curtailments and Shutdowns. If the generation of electricity through the Legacy Generation Assets is temporarily reduced, curtailed or shut down for any reason, Operator shall, with due consideration of its responsibility for safety and plant reliability, as promptly as possible, advise Owner, Administrator and T&D Operator (and other Stakeholders as defined in the Generation Emergency Response Plan) as to the nature, reason and probable duration thereof and the expected effect thereof on the operation of the Legacy Generation Assets. Such notices shall be given as provided in this Annex VII (*Scope of Services*). Any announcement concerning such events made to the public or the media shall be made by Operator in accordance with the provisions of the Generation Emergency Response Plan and Section III of this Annex VII (*Scope of Services*).

B. Implementation of the Generation Emergency Response Plan. Operator shall jointly develop with T&D Operator (in consultation with Administrator), and implement, a Generation Emergency Response Plan that addresses, disaster recovery and emergency response and restoration, and all necessary emergency response, business continuity, reporting and communication functions relating to the Legacy Generation Assets, and coordinating such plans with the plans of Owner and Administrator's other service providers for business continuity and disaster recovery, including response, reporting and public communications relating to storms, other unusual weather occurrences and other Emergencies as follows, including the following activities:

1. (i) timely reporting to such Governmental Bodies as may be necessary, appropriate or advisable of such emergency conditions including timely regular updates as to the courses of action taken in response thereto or in anticipation thereof and progress made in responding to such emergency conditions and (ii) periodic reporting to Administrator of such emergency conditions as necessary or appropriate to permit Administrator to exercise proper Oversight of Operator's response to emergency conditions;

2. weather monitoring and mobilization of Operator or Subcontractor's workforce in connection with anticipated storms and other electric generation emergencies;
3. media, fire, police and government coordination (municipal, state and federal);
4. facility condition monitoring;
5. reporting to Administrator of the condition of each Legacy Generation Asset after a Forced Outage, Declared Emergency or Major Disaster, and the repairs and replacements, if any, needed to restore each such Legacy Generation Assets to pre-emergency conditions;
6. repair and replacement of damaged components of the Legacy Generation Assets, including due to Forced Outages or Declared Emergencies or Major Disasters; provided that to the extent the reasonable costs required to perform such repairs or replacements would result in the Pass-Through Expenditures with respect to O&M Services for any Contract Year to exceed the O&M Budget for such Contract Year, such repairs or replacements shall require Administrator approval;
7. employee and public safety activities;
8. at the request of Administrator, restoration of the Legacy Generation Assets to pre-emergency conditions; and
9. conducting periodic drills, including as required by Applicable Law and in accordance with the T&D-Generation Operating Agreement.

VII. Maintenance.

A. Generally. Operator shall perform all normal and ordinary maintenance of all property constituting the Legacy Generation Assets, including machinery, structures, and electrical system components, keep the Legacy Generation Assets in operational condition and repair, in a neat and orderly condition and in accordance with the Contract Standards. This provision includes the machinery/tools used for the daily operation of the Legacy Generation Assets. Operator shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, consumables and services that are necessary for the normal and ordinary maintenance of the Legacy Generation Assets consistent with Contract Standards and their vehicle/machinery assets and conduct predictive, preventive and corrective maintenance of the Legacy Generation Assets as required by the Contract Standards.

B. Maintenance Logs. Operator shall keep maintenance logs in accordance with the Contract Standards, which shall be available for review by Administrator.

C. Safety and Security. Operator shall maintain the Legacy Generation Assets with due regard for employee and public health and safety at least consistent with Contract Standards, including the following:

1. establishing and prioritizing workplace safety initiatives, including systematically evaluating all Legacy Generation Assets sites to identify and address any immediate safety issues;
2. taking reasonable precautions in the performance of the O&M Services, Decommissioning Services, Mobilization Services and Demobilization Services for the health and safety of all persons working at the Legacy Generation Assets, to prevent employee injury, damage, injury or loss to the Legacy Generation Assets and to other Legacy Generation Assets property;
3. establishing and enforcing all reasonable safeguards for health and safety and protection, including fencing, posting danger signs and other warnings against hazards and applicable safety laws and regulations;
4. giving all notices and complying with all Applicable Law relating to the health and safety of persons or property or their protection from damage, injury or loss;
5. designating qualified and responsible employees whose duty shall be the supervision of health and safety, the prevention of fires, accidents spills, explosions and high energy piping failures and the coordination of such activities as shall be necessary with federal and local officials;
6. designing and implementing cybersecurity measures in accordance with Contract Standards and in the manner specified and subject to the provisions set forth in the main body of the Agreement; and
7. developing and maintaining a physical security program in accordance with application regulations/law for the protection of the Legacy Generation Assets critical infrastructure, other assets and persons.

Schedule 1 to Annex VII

Safety and Hazardous Materials Procedures Manual Outline

[•]⁵¹

⁵¹ **Note to Proponent:** The Safety and Hazardous Materials Procedures Manual Outline should be provided in the submission to the RFP.

**Annex VIII –
Operator Employment Requirements**

[●]⁵²

⁵² **Note to Proponent: Operator Employment Requirements should be provided in the submission to the RFP.**

Schedule 1 to Annex VIII
Owner Employee Interview Plan

[To come.]

**Annex IX –
Mobilization Hourly Fully Allocated Rates**

[●]⁵³

⁵³ **Note to Proponent:** The amounts of the Mobilization Hourly Fully Allocated Rates should be provided in the submission to the RFP.

Annex X –

Pass-Through Expenditures

Pass-Through Expenditures shall be the types of reasonable costs and expenses incurred and documented by Operator in the course of providing O&M Services, Decommissioning Services, Mobilization Services and Demobilization Services (without markup for profit) and shall include all such costs except to the extent any such costs are determined to be Disallowed Costs in the manner set forth in Section 7.7 (*Disallowed Costs*) of the main body of the Agreement. For the avoidance of doubt, costs and expenses incurred by Operator prior to the Effective Date shall not be deemed to be Pass-Through Expenditures. Capitalized terms used but not defined in this Annex X (*Pass-Through Expenditures*) have the respective meanings set forth in the Agreement.

Except as otherwise provided in the Agreement, Pass-Through Expenditures shall include the following items:

1. wages, salaries, bonuses, employer contributions to pension and employee medical plans (including employer contributions for Hired Former Employees of Owner that elect to continue participating in Owner's defined benefit retirement plan), employer contributions to workmen's compensation, non-occupational disability and other mandatory employment related insurance and taxes, vacation, sick leaves and other mandatory leaves with pay, overtime and meal period compensation and associated benefits and other post-employment benefits incurred by Operator in performing the O&M Services, the Decommissioning Services, Mobilization Services and Demobilization Services, excluding all costs resulting from noncompliance by Operator with wage and hour, discrimination, wrongful dismissal or with any other applicable labor or employment related legislation, as well as the costs of defending such claims if such claims are found to be true by a final non-appealable judgment or administrative determination by a court of competent jurisdiction or other Governmental Body (including costs arising out of or related to additional compensation, damages, penalties, court costs and attorney's fees but excluding, for the avoidance of doubt, any costs incurred by Operator, including defense related costs, which are incurred at the direction or with the consent of Administrator);
2. reasonable costs incurred and documented by Operator in performing the O&M Services, Decommissioning Services, Mobilization Services and Demobilization Services, including costs of all subcontracted and seconded employees, costs and expenses of all goods and services (including all materials, supplies, spare parts, vehicles and mileage, equipment rental, other transportation, freight, purchased services, training, Subcontractor costs, employee per diems, administrative costs such as dues, subscriptions, meals and entertainment, office supplies, postage, rent and travel communications, utilities and other costs), repair and maintenance costs, and the costs (including fees) incurred or payable with respect to banking services and accounts, cash management, leases, equipment rentals, easements, licenses, permits, consents and similar instruments;
3. reasonable costs incurred with respect to professional services, including legal, engineering, accounting, financial, auditing, information technology, telecommunication and other contracted services;

4. reasonable costs incurred with respect to the security of physical assets, information technology, operational technology and processes;
5. claims, lawsuits, litigations, losses, fines, penalties, reasonable costs and expenses, judgments, liens, settlements, appeals, disbursements and similar expense (including reasonable and documented fees of external counsel; provided that Operator shall not be required to provide documentation that would waive any privilege between Operator and its external counsel), incurred in connection with the performance of the O&M Services and the Decommissioning Services;
6. reasonable costs related to Forced Outages and Force Majeure Events;
7. reasonable costs associated with the Generation Emergency Response Plan, and the other Services Documentation required under the Agreement;
8. any Tax related to Owner-owned, leased or licensed assets or revenues, and reasonable costs incurred in connection with any tax audits of Owner;
9. any Commonwealth sales or use taxes (including the additional taxes of Sections 4210.01 and 4210.02 of the Puerto Rico Internal Revenue Code of 2011 (PRIRC)), municipal sales or use taxes, Commonwealth excise taxes, municipal license taxes, municipal excise taxes and any other taxes imposed by the Commonwealth, a municipality or any other Governmental Body on Owner or Operator, if Operator is acting on behalf of Owner pursuant to the Agreement, to the extent that Owner ever becomes subject to the payment of such taxes; provided that any (i) income taxes imposed on Operator by the PRIRC or Act 29, or (ii) other taxes imposed on Operator as a result of the establishment of its operations in the Commonwealth or the continuation thereof (including sales and use taxes and excise taxes on goods or services that are not required to be acquired by Operator on behalf of Owner for the performance of the O&M Services and the Decommissioning Services under the Agreement) shall not be Pass-Through Expenditures;
10. any municipal construction excise taxes related to construction work performed by Operator in connection with the O&M Services and the Decommissioning Services;
11. reasonable costs to obtain and maintain in effect Required Insurance, including premium, claims and deductible payments;
12. reasonable costs incurred in connection with Intellectual Property, including licensing of Intellectual Property for use in connection with this Agreement;
13. reasonable costs incurred in connection with data security, including the implementation, operation and maintenance of a cybersecurity program;
14. reasonable costs incurred in connection with Operator's performance serving in the role of the operator of the Legacy Generation Assets, including the services set forth in Section I.C of Annex VII (*Scope of Services*) to the Agreement;

15. reasonable costs of compliance with PREB or other applicable regulatory requirements to which Owner or Operator is subject;
16. reasonable costs incurred in connection with branding and customer and public communications;
17. reasonable costs incurred in connection with Owner's community service programs and community engagement;
18. reasonable costs incurred in connection with the administration and performance of the Facility Contracts including as required by Section 5.2 (*Facility Contracts*) in the main body of the Agreement;
19. Fuel Costs incurred pursuant to approved and executed fuel supply agreements for the Legacy Generation Assets; and,
20. stipulated penalties under the Consent Decree or any similar arrangement that may be entered into in the future.

**Annex XI –
Insurance Specifications**

[To come.]

**Annex XII –
Termination Fees**

I. Operator Termination Fee⁵⁴

Contract Year	Operator Termination Fee
1	US\$ [•]
2	US\$ [•]
3	US\$ [•]
4	US\$ [•]
5	US\$ [•]
6	US\$ [•]
7	US\$ [•]
8	US\$ [•]
9	US\$ [•]
10	US\$ [•]

II. Owner Termination Fee⁵⁵

Contract Year	Owner Termination Fee
1	US\$ [•]
2	US\$ [•]
3	US\$ [•]
4	US\$ [•]
5	US\$ [•]
6	US\$ [•]
7	US\$ [•]
8	US\$ [•]
9	US\$ [•]
10	US\$ [•]

⁵⁴ **Note to Proponent:** The amounts of the Operator Termination Fee should be provided in the submission to the RFP.

⁵⁵ **Note to Proponent:** The amounts of the Owner Termination Fee should be provided in the submission to the RFP.

**Annex XIII –
Decommissioning Plan**

[●]⁵⁶

⁵⁶ **Note to Proponent:** An outline of the proposed Decommissioning Plan should be provided in the submission to the RFP.

**Annex XIV –
Demobilization Plan**

[•]⁵⁷

⁵⁷ **Note to Proponent: A Demobilization Plan should be provided in the submission to the RFP.**

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Exhibit A –

[Form of Guarantee Agreement]

THIS GUARANTEE AGREEMENT (the “Guarantee”) is made and entered into as of this [•] day of [•], 2020 by and among: (i) [•] (“Guarantor”), a [•] organized under the laws of [•]; and (ii) the Puerto Rico Electric Power Authority (“Owner” and, together with Guarantor, the “Parties” and each a “Party”), a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by Act No. 83 of the Legislative Assembly of Puerto Rico, enacted on May 2, 1941.

RECITALS

WHEREAS, Owner, the Puerto Rico Public-Private Partnerships Authority (“Administrator”), a public corporation of the Commonwealth of Puerto Rico, created by Act No. 29 of the Legislative Assembly of Puerto Rico, enacted on June 8, 2009 and [•] (“Operator”), a [•] organized under the laws of [•], have entered into the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement (as amended, modified or supplemented from time to time in accordance with its terms, the “O&M Agreement”), whereby Operator has agreed to provide the O&M Services and the Decommissioning Services for the Legacy Generation Assets in accordance with the terms of the O&M Agreement;

WHEREAS, Guarantor [indirectly] owns [•]% of the equity interests of Operator; and

WHEREAS, Owner and Administrator shall enter into the O&M Agreement only if Guarantor guarantees the performance by Operator of all of Operator’s responsibilities and obligations, including amounts payable by, and the covenants and agreements of, Operator under the O&M Agreement, but in all cases subject to the limitations set forth herein, including Section 3.10 (*Limitation on Liability*) (all such obligations and responsibilities, the “Obligations”) as set forth in this Guarantee.

NOW THEREFORE, in order to induce the execution and delivery of the O&M Agreement by Owner and Administrator and in consideration thereof, Guarantor agrees as follows:

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ARTICLE 1
DEFINITIONS; INTERPRETATION

Section 1.1 Definitions. Capitalized terms used but not defined herein shall have the respective meanings set forth in the O&M Agreement.

Section 1.2 Interpretation; Construction.

(a) **Headings.** Articles, titles and headings to sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Guarantee. Except as otherwise indicated, all references in this Guarantee to “Articles” and “Sections” are intended to refer to Articles and Sections of this Guarantee.

(b) **Construction.** For purposes of this Guarantee: (i) “include”, “includes” or “including” shall be deemed to be followed by “without limitation”; (ii) “hereof”, “herein”, “hereby”, “hereto” and “hereunder” shall refer to this Guarantee as a whole and not to any particular provision of this Guarantee; (iii) “extent” in the phrase “to the extent” shall mean the degree to which a subject or other item extends and shall not simply mean “if”; (iv) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including”; (v) “dollars” and “US\$” shall mean United States Dollars; (vi) the singular includes the plural and vice versa; (vii) reference to a gender includes the other gender; (viii) “any” shall mean “any and all”; (ix) “or” is used in the inclusive sense of “and/or”; (x) reference to any agreement, document or instrument means such agreement, document or instrument as amended, supplemented and modified in effect from time to time in accordance with its terms; (xi) reference to any Applicable Law means such Applicable Law as amended from time to time and includes any successor legislation thereto and any rules and regulations promulgated thereunder; and (xii) reference to any Person at any time refers to such Person’s permitted successors and assigns.

(c) **Days and Time.** All references to days herein are references to calendar days, unless specified as Business Days, and, unless specified otherwise, all statements of or references to a specific time in this Guarantee are to Atlantic Standard Time.

(d) **Accounting Principles.** All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with then generally accepted accounting principles in the United States, consistently applied.

(e) **Negotiated Agreement.** The Parties have participated jointly in the negotiation and drafting of this Guarantee with the benefit of competent legal representation, and the language used in this Guarantee shall be deemed to be the language chosen by the Parties to express their mutual intent. In the event that an ambiguity or question of intent or interpretation arises, this Guarantee shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions hereof.

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(f) Payments. All payments required to be made by Guarantor hereunder shall be made in dollars.

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ARTICLE 2
REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of Guarantor. Guarantor hereby represents and warrants that:

(a) Existence and Powers. Guarantor is a [●] duly organized, validly existing and in good standing under the laws of [●]. Guarantor has the required corporate power and authority to enter into this Guarantee, carry out its obligations hereunder and consummate the transactions contemplated hereby.

(b) Due Authorization and Binding Obligation. The execution and delivery by Guarantor of this Guarantee, the performance by Guarantor of its obligations hereunder and the consummation by Guarantor of the transactions contemplated hereby have been duly and validly authorized and approved by the required corporate or other similar action on the part of Guarantor. This Agreement has been duly and validly executed and delivered by Guarantor, and (assuming due authorization, execution and delivery by Owner) this Guarantee constitutes a legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or similar Applicable Law affecting creditors' rights generally and by general equity principles.

(c) No Conflicts. Neither the execution, delivery or performance by Guarantor of this Guarantee, nor the consummation of the transactions contemplated hereby shall: (i) result in a material violation or breach of, or material default under, any provision of the organizational documents of Guarantor; (ii) result in a violation of, or give any Governmental Body the right to challenge any of the transactions contemplated hereby under, any Applicable Law applicable to Guarantor; (iii) (A) result in a violation or breach of, (B) constitute a default under, (C) result in the acceleration of or create in any party the right to accelerate, terminate or cancel or (D) require the consent of any other Person under, any material contract to which Guarantor is a party; or (iv) result in the creation or imposition of any Lien on any properties or assets of Guarantor.

(d) No Consents. No consent, declaration or filing with, or notice to, any Governmental Body is required by or with respect to Guarantor in connection with (i) the execution and delivery of this Guarantee or (ii) the performance by Guarantor of its payment or other obligations hereunder, except such as have been duly obtained or made.

(e) No Litigation. There is no action, suit or other proceeding, at law or in equity, before or by any court or Governmental Body pending against Guarantor or, to Guarantor's knowledge, threatened against Guarantor, which if determined adversely against Guarantor would reasonably be expected to materially and adversely affect (i) the validity or enforceability of this Guarantee or (ii) the performance by Guarantor of its respective obligations hereunder.

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(f) No Legal Prohibition. There is no Applicable Law in effect on the date hereof that would prohibit the execution, delivery or performance by Guarantor of this Guarantee and the transactions contemplated hereby.

(g) Consent to Agreements. Guarantor is fully aware of the terms and conditions of the O&M Agreement.

(h) Consideration. The Guarantee is made in furtherance of the purposes for which Guarantor has been organized, and the assumption by Guarantor of its obligations hereunder shall result in a material benefit to Guarantor.

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ARTICLE 3
GUARANTEE COVENANTS

Section 3.1 Guarantee to Owner. Subject to Section 3.10 (*Limitation on Liability*), Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to Owner: (i) the full and prompt payment when due of each and all of the payments required to be credited or made by Operator under the O&M Agreement to, or for the account of, Owner, as the case may be, when the same shall become due and payable pursuant to this Guarantee; and (ii) the full and prompt performance and observance of each and all of the Obligations. Notwithstanding the unconditional nature of Guarantor's obligations as set forth herein, Guarantor shall have the right to assert the defenses provided in Section 3.4 (*Defenses, Set-Offs and Counterclaims*) against claims made under this Guarantee.

Section 3.2 Right of Owner to Proceed Against Guarantor.

(a) Generally. This Guarantee shall constitute a guarantee of payment and of performance and not of collection, and Guarantor specifically agrees that in the event of a failure by Operator to pay or perform any Obligation guaranteed hereunder, subject to any notice and cure periods under the O&M Agreement, Owner shall have the right to proceed first and directly against Guarantor under this Guarantee and without proceeding against Operator or exhausting any other remedies against Operator which Owner may have.

(b) No Conditions for Enforcement. Without limiting the foregoing, Guarantor agrees that it shall not be necessary, and that Guarantor shall not be entitled to require, as a condition of enforcing the liability of Guarantor hereunder, that Owner:

(i) file suit or proceed to obtain a personal judgment against Operator or any other person that may be liable for the Obligations or any part of the Obligations;

(ii) make any other effort to obtain payment or performance of the Obligations from Operator other than providing Operator with any notice of such payment or performance as may be required by the terms of the O&M Agreement or required to be given to Operator under Applicable Law;

(iii) foreclose against or seek to realize upon any security for the Obligations; or

(iv) exercise any other right or remedy to which Owner or Administrator is or may be entitled in connection with the Obligations or any security therefor or any other guarantee thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of Operator or to the enforcement of remedies under the O&M Agreement.

(c) Unexcused Failure; Single Full Performance. Upon any unexcused failure by Operator in the payment or performance of any Obligation and the giving of such notice or demand, if any, to Operator and Guarantor as may be required in connection with such Obligation

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and this Guarantee, the liability of Guarantor shall be effective and shall immediately be paid or performed. Notwithstanding Owner's right to proceed directly against Guarantor and subject to Section 3.10 (*Limitation on Liability*), Owner (or any successor) shall not be entitled to more than a single full performance of the Obligations in regard to any breach or non-performance thereof.

Section 3.3 Guarantee Absolute and Unconditional.

(a) Generally. The obligations of Guarantor hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect until Operator shall have fully discharged the Obligations in accordance with their respective terms and conditions and, except as provided in Section 3.4 (*Defenses, Set-Offs and Counterclaims*), shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such Obligations) based on any claim that Guarantor may have against Operator, Owner, Administrator or any other person. Without limiting the foregoing, the obligations of Guarantor hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by, or further consent of, Guarantor):

(i) the extension or renewal of this Guarantee or the O&M Agreement up to the specified term of each agreement;

(ii) any exercise or failure, omission or delay by Owner or Administrator in the exercise of any right, power or remedy conferred on Owner or Administrator, as the case may be, with respect to this Guarantee or the O&M Agreement except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim;

(iii) any permitted transfer or assignment of rights or obligations under the O&M Agreement or under any other Transaction Document by any party thereto, or any permitted assignment, conveyance or other transfer of any of their respective interests in the O&M Agreement or in, to or under any of the Transaction Documents;

(iv) any permitted assignment for the purpose of creating a security interest or mortgage of all or any part of the respective interests of Owner or any other person in any Transaction Document or in any of the Legacy Generation Assets;

(v) any renewal, amendment, change or modification in respect of any of the Obligations or terms or conditions of any Transaction Document;

(vi) any failure of title with respect to all or any part of the respective interests of any person in any of the Legacy Generation Assets;

(vii) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshaling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium,

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arrangement, composition with creditors or readjustment of, or other similar proceedings against or affecting Operator or Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guarantee or the O&M Agreement in any such proceeding (it being specifically understood, consented and agreed to that, to the extent permitted by Applicable Law, this Guarantee shall remain and continue in full force and effect and shall be enforceable against Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred as a result thereof, it being the intent and purpose of this Guarantee that Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);

(viii) except as permitted by Section 4.1 (*Maintenance Of Corporate Existence*), Section 4.2 (*Guarantor Reports*) or the O&M Agreement, any sale or other transfer by Guarantor or any Affiliate of any of the capital stock or other interest of Guarantor or any Affiliate in Operator now or hereafter owned, directly or indirectly, by Guarantor or any Affiliate, or any change in composition of the interests in Operator;

(ix) any failure on the part of Operator for any reason to perform or comply with any agreement with Guarantor;

(x) the failure on the part of Owner to provide any notice to Guarantor which is not required to be given to Guarantor pursuant to this Guarantee and to Operator as a condition to the enforcement of Obligations pursuant to the O&M Agreement;

(xi) any failure of any party to the O&M Agreement to mitigate damages resulting from any default by Operator or Guarantor under the O&M Agreement;

(xii) the merger, consolidation or amalgamation of any party to the O&M Agreement into or with any other person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any person;

(xiii) any legal disability or incapacity of Operator or Guarantor with respect to the O&M Agreement; or

(xiv) the fact that entering into the O&M Agreement by Operator or Guarantor was invalid or in excess of the powers of such party.

(b) Recovery of Money Due or Owing. Should any money due or owing under this Guarantee not be recoverable from Guarantor due to any of the matters specified in Section 3.3(a) (*Guarantee Absolute and Unconditional - Generally*), then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from Guarantor as though Guarantor were principal obligor in place of Operator pursuant to the terms of the O&M Agreement and not merely a guarantor and shall be paid by Guarantor forthwith subject to the terms of this Guarantee.

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(c) Scope. Notwithstanding anything to the contrary expressed in this Guarantee, nothing in this Guarantee shall be deemed to amend, modify, clarify, expand or reduce Operator's rights, benefits, duties or obligations under the O&M Agreement.

Section 3.4 Defenses, Set-Offs and Counterclaims. Notwithstanding any provision contained herein to the contrary, Guarantor shall be entitled to exercise or assert any and all legal or equitable rights or defenses which Operator may have under the O&M Agreement or under Applicable Law (other than bankruptcy or insolvency of Operator and other than any defense which Operator has expressly waived in the O&M Agreement or Guarantor has expressly waived in Section 3.5 (*Waivers by Guarantor*) or elsewhere hereunder), and the obligations of Guarantor hereunder are subject to such counterclaims, set-offs or deductions which Operator is permitted to assert pursuant to the O&M Agreement, if any.

Section 3.5 Waivers by Guarantor. Guarantor hereby unconditionally and irrevocably waives:

- (a) notice from Owner of its acceptance of this Guarantee;
- (b) notice of any of the events referred to in Section 3.3 (*Guarantee Absolute and Unconditional*), except to the extent that notice is required to be given as a condition to the Obligations or the enforcement of remedies under the O&M Agreement;
- (c) to the fullest extent lawfully possible, all notices that may be required by statute, rule of law or otherwise to preserve intact any rights against Guarantor, except any notice to Operator required pursuant to the O&M Agreement or Applicable Law as a condition to any Obligation or the enforcement of remedies under the O&M Agreement;
- (d) to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period which may be applicable to guarantors (or parties in similar relationships) which would be shorter than the applicable statute of limitations period for the underlying claim;
- (e) any right to require a proceeding first against Operator;
- (f) any right to require a proceeding first against any person or the security provided by or under the O&M Agreement, except to the extent the O&M Agreement specifically requires a proceeding first against any person (except Operator) or security;
- (g) any requirement that Operator be joined as a party to any proceeding for the enforcement of any term of the O&M Agreement;
- (h) the requirement of, or the notice of, the filing of claims by Owner or Administrator in the event of the receivership or bankruptcy of Operator; and
- (i) all demands upon Operator or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of

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this Section 3.5 (*Waivers by Guarantor*), by rule of law or otherwise, constitute grounds for relieving or discharging Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.

Section 3.6 Payment of Costs and Expenses. Guarantor agrees to pay Owner and Administrator on demand all Fees-and-Costs incurred by or on behalf of Owner in successfully enforcing by Legal Proceeding observance of the covenants, agreements and obligations contained in this Guarantee against Guarantor, other than the Fees-and-Costs that Owner or Administrator incurs in performing any of its obligations under the O&M Agreement where such obligations are a condition to performance by Operator of its Obligations.

Section 3.7 Subordination of Rights. Guarantor agrees that any right of subrogation or contribution which it may have against Operator as a result of any payment or performance hereunder is hereby fully subordinated to the rights of Owner and Administrator hereunder and under the O&M Agreement and that Guarantor shall not recover or seek to recover any payment made by it hereunder from Operator until Operator and Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guarantee.

Section 3.8 Separate Obligations; Reinstatement.

(a) Separate Obligations. The obligations of Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall: (i) to the extent permitted by Applicable Law, constitute separate and independent obligations of Guarantor from its other obligations under this Guarantee; (ii) give rise to separate and independent causes of action against Guarantor; and (iii) apply irrespective of any indulgence granted from time to time by Owner.

(b) Reinstatement. Guarantor agrees that this Guarantee shall be automatically reinstated if and to the extent that for any reason any payment or performance by or on behalf of Operator is rescinded or must be otherwise restored by Owner, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding, unless such rescission or restoration is pursuant to the terms of the O&M Agreement or Operator's enforcement of such terms under Applicable Law.

Section 3.9 Term. This Guarantee shall remain in full force and effect from the date of execution and delivery hereof until all of the Obligations of Operator have been fully paid and performed.

Section 3.10 Limitation on Liability. Notwithstanding anything herein or otherwise to the contrary, the aggregate liability of Guarantor under or with respect to this Guarantee with respect to all matters whatsoever or howsoever arising, including where arising from gross negligence and willful misconduct of Operator, any Operator Indemnitee or Guarantor, and regardless of any other rights and remedies that Owner or Administrator may have against Operator under the O&M Agreement, under Applicable Law or otherwise, shall in no event

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exceed, when added to the aggregate liability of any other guarantor of the Obligations, US\$[•]⁵⁸. Without limiting the foregoing, to the fullest extent permitted by law, in no event shall Guarantor be liable, whether in contract, indemnity, tort (including negligence, gross negligence and strict liability) or otherwise, for any loss of profits or revenues, special, exemplary, punitive, indirect, incidental or consequential damages which arise from, relate to or are connected with this Guarantee or the performance of or failure to perform the Obligations except for claims of fraud or intentional misrepresentation.

⁵⁸ **Note to Draft**: Amount to be confirmed.

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ARTICLE 4
GENERAL COVENANTS

Section 4.1 Maintenance Of Corporate Existence

(a) Consolidation, Amalgamation, Merger, Sale or Transfer. Guarantor covenants that during the term of this Guarantee it shall maintain its corporate existence, shall not dissolve or otherwise dispose of all or substantially all of its assets and shall not consolidate or amalgamate with or merge into another entity or permit one or more other entities to consolidate or amalgamate with or merge into it unless the successor is Guarantor; provided, however, that Guarantor may consolidate or amalgamate with or merge into another entity, or permit one or more other entities to consolidate or amalgamate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if the successor entity (if other than Guarantor) (i) is acceptable to Owner, acting reasonably, (ii) assumes in writing all the obligations of Guarantor hereunder and (iii) delivers to Owner an opinion of counsel to the effect that its obligations under the Guarantee are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws.

(b) Continuance of Obligations. If a consolidation, amalgamation, merger or sale or other transfer is made as permitted by this Section 4.1 (*Maintenance Of Corporate Existence*), the provisions of this Section 4.1 (*Maintenance Of Corporate Existence*) shall continue in full force and effect and no further consolidation, amalgamation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section 4.1 (*Maintenance Of Corporate Existence*). No such consolidation, amalgamation, merger or sale or other transfer shall have the effect of releasing the initial Guarantor from its liability hereunder unless a successor entity has assumed responsibility for this Guarantee in accordance with this Section 4.1 (*Maintenance Of Corporate Existence*).

Section 4.2 Guarantor Reports. While this Guarantee is outstanding, Guarantor shall assist Operator in delivering to Administrator the reports required pursuant to Section 8.2 (*Guarantor Reports*) of the O&M Agreement.

Section 4.3 Assignment. Except as permitted pursuant to Section 4.1 (*Maintenance Of Corporate Existence*), Guarantor shall not assign, transfer, convey, lease, encumber or otherwise dispose of its rights or obligations under this Guarantee without the prior written consent of Administrator, which consent shall not be unreasonably withheld, delayed or conditioned.

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ARTICLE 5
MISCELLANEOUS

Section 5.1 Consent to Jurisdiction. Any dispute between the Parties arising out of, relating to or in connection with this Guarantee or the existence, interpretation, breach, termination or validity thereof shall be resolved in accordance with the procedures set forth in Article 15 (*Dispute Resolution*) of the O&M Agreement as if it were a Dispute, *mutatis mutandis*; provided that, for the avoidance of doubt, Guarantor hereby irrevocably: (i) agrees that any Legal Proceeding related to this Guarantee or to any rights or relationship between the Parties arising therefrom (other than any negotiation between the Parties in accordance with Section 15.3 (*Negotiation*) of the O&M Agreement) shall be solely and exclusively initiated and maintained in the Commonwealth Court; (ii) consents to the jurisdiction of the Commonwealth Court in any such Legal Proceeding; (iii) waives any objection which it may have to the laying of the jurisdiction of any such Legal Proceeding in the Commonwealth Court; and (iv) waives its right to a trial by jury in any Legal Proceeding in the Commonwealth Court.

Section 5.2 Notices. All notices or other communications to be delivered in connection with the Guarantee shall be in writing and shall be deemed to have been properly delivered, given and received (i) on the date of delivery if delivered by hand during normal business hours of the recipient during a Business Day, otherwise on the next Business Day, (ii) on the date of successful transmission if sent via email (with return receipt) during normal business hours of the recipient during a Business Day, otherwise on the next Business Day, or (iii) on the date of receipt by the addressee if sent by a nationally recognized overnight courier or by registered or certified mail, return receipt requested, if received on a Business Day, otherwise on the next Business Day. Such notices or other communications must be sent to each respective Party at the address, email address set forth below (or at such other address, email address as shall be specified by a Party in a notice given in accordance with this Section 5.2 (*Notices*)):

If to Owner:

Puerto Rico Electric Power Authority

[•]

[•]

Attention: [•]

Telephone: [•]

Email: [•]

with a copy to:

Administrator

[•]

[•]

Attention: [•]

Telephone: [•]

Email: [•]

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If to Guarantor:

[•]

[•]

[•]

Attention: [•]

Telephone: [•]

Email: [•]

Section 5.3 Amendments. Neither this Guarantee nor any provision hereof may be changed, modified, amended or waived except by written agreement duly executed by the Parties. To the extent required by Applicable Law, any such amendment shall not be effective until approved by the FOMB (if then in existence) and PREB.

Section 5.4 Entire Agreement. This Guarantee constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior oral or written agreements, understandings, proposals, representations or warranties relating to this Guarantee. Without limiting the generality of the foregoing, this Guarantee shall completely and fully supersede all other understandings and agreements among the Parties with respect to such transactions, including those contained in the RFP, the Proposal by Operator or its Affiliate and any amendments or supplements to the RFP or the Proposal.

Section 5.5 Interest on Overdue Obligations. Except as otherwise provided herein, all amounts due hereunder, whether as fees, damages, credits, revenue, charges or reimbursements, that are not paid when due shall bear interest at the Overdue Rate, on the amount outstanding from time to time, and all such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due, as accrued.

Section 5.6 Waivers. Either Guarantor or Owner may, at any time, (a) extend the time for the performance of any of the obligations or other acts of the other Party, (b) waive any inaccuracies in the representations and warranties of the other Party contained herein or (c) waive compliance by the other Party with any of the agreements or conditions contained herein. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in a written instrument executed and delivered by the Party so waiving. No waiver by any Party of any breach of this Guarantee shall operate or be construed as a waiver of any preceding or subsequent breach, whether of a similar or different character, unless expressly set forth in such written waiver. Neither any course of conduct or failure or delay of any Party in exercising or enforcing any right, remedy or power hereunder shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy or power hereunder, or any abandonment or discontinuance of steps to enforce such right, remedy or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right, remedy or power.

Section 5.7 Survival. The rights and obligations of the Parties pursuant to Section 5.1 (*Consent to Jurisdiction*), Section 5.2 (*Notices*) and Section 5.12 (*Governing Law*) shall survive the expiration or termination of this Guarantee. No expiration or early termination of this

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Guarantee shall (i) limit or otherwise affect the respective rights and obligations of the Parties accrued prior to the date of such termination or (ii) preclude any Party from impleading any other Party in any Legal Proceeding originated by a third-party as to any matter occurring during the term of this Guarantee.

Section 5.8 Severability. If any term or provision of this Guarantee is invalid, illegal or incapable of being enforced in any situation or in any jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other term or provision hereof or the offending term or provision in any other situation or any other jurisdiction, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon any such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Guarantee so as to effect the original intent of the Parties as closely as possible, in a mutually acceptable manner, in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 5.9 Remedies

(a) Cumulative and Non-Exclusive Remedies. Except as otherwise provided in this Guarantee, any and all remedies herein expressly conferred upon a Party shall be deemed cumulative with and not exclusive of any other remedy expressly conferred hereby, and the exercise by a Party of any one such remedy shall not preclude the exercise of any other such remedy.

(b) Irreparable Damage and Harm. The Parties agree that irreparable damage and harm would occur in the event that any provision of this Guarantee were not performed in accordance with its terms and that, although monetary damages may be available for such a breach, monetary damages would be an inadequate remedy therefor. Accordingly, each of the Parties agrees that, in the event of any breach or threatened breach of any provision of this Guarantee by such Party, the other Party shall be entitled to an injunction or injunctions, specific performance and other equitable relief to prevent or restrain breaches or threatened breaches hereof and to specifically enforce the terms and provisions hereof. A Party seeking an order or injunction to prevent breaches of this Guarantee or to enforce specifically the terms and provisions hereof shall not be required to provide, furnish or post any bond or other security in connection with or as a condition to obtaining any such order or injunction, and each Party hereby irrevocably waives any right it may have to require the provision, furnishing or posting of any such bond or other security. In the event that any Legal Proceeding should be brought in equity to enforce the provisions of this Guarantee, each Party agrees that it shall not allege, and each Party hereby waives the defense, that there is an adequate remedy available at law.

Section 5.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same agreement or document. A signed copy of this Guarantee transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Guarantee for all purposes.

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Section 5.11 Office of the Comptroller. Owner agrees to file this Guarantee with the Comptroller of the Commonwealth promptly after its execution and to provide Guarantor with evidence of its filing within fifteen (15) days following the execution of this Guarantee. The Parties acknowledge and agree that the obligations and considerations under this Guarantee shall not be enforceable until this Guarantee shall have been registered with the Office of the Comptroller of the Commonwealth as provided by Act No. 18 of the Legislative Assembly of Puerto Rico, enacted on October 30, 1975.

Section 5.12 Governing Law. This Agreement and all matters, claims, controversies, disputes, suits, actions or proceedings arising out of or relating to this Guarantee and the negotiation, execution or performance of this Guarantee or any of the transactions contemplated hereby, including all rights of the Parties (whether sounding in contract, tort, common or statutory law, equity or otherwise) in connection therewith, shall be interpreted, construed and governed by and in accordance with, and enforced pursuant to, the internal laws of the Commonwealth (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction), except where the federal supremacy clause requires otherwise.

Section 5.13 COMMONWEALTH OBLIGATIONS. THE OBLIGATIONS OF OWNER UNDER THIS AGREEMENT SHALL NOT BE DEEMED OBLIGATIONS OF THE COMMONWEALTH OR ANY INSTRUMENTALITY OF THE COMMONWEALTH OTHER THAN OWNER.

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IN WITNESS WHEREOF, Guarantor has caused this Guarantee to be duly executed as of the day and year first above written.

[GUARANTOR]

By: _____

Name: _____

Title: _____

Accepted and agreed to by:

PUERTO RICO ELECTRIC POWER AUTHORITY

By: _____

Name: _____

Title: _____

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**Exhibit B –
Form of Reliance Letter**

_____, 2021

Puerto Rico Thermal Generation Facilities Operation and Maintenance
Agreement dated as of _____, 2021

Ladies and Gentlemen:

In connection with the execution of the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement dated as of _____, 2021 by and among the Puerto Rico Electric Power Authority, the Puerto Rico Public-Private Partnerships Authority, and _____ (the “Agreement”) we have delivered our legal opinion relating to the impact of the Agreement on the federal income tax status of interest on bonds issued by the Authority, its Affiliates, and other Governmental Bodies (the “Bonds”), dated the date hereof and addressed to the Financial Oversight and Management Board. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Agreement.

You may rely on said opinion as though the same were addressed to you. No attorney-client relationship has existed or exists between any addressee of this letter and our firm in connection with the Agreement or the Bonds or by virtue of this letter.

Very truly yours,

**Exhibit C –
Form of Sworn Statement**

SWORN STATEMENT

ACT 2-2018

I, _____, of legal age, single/married, _____ and resident of the _____, hereby solemnly swear:

1. That my personal status is the one stated above.
2. That I hold the position of _____ (hereinafter referred to as the “Company”) organized as a _____ under the laws of _____ with the Federal Identification No. _____.
3. That I am authorized to represent the Company and all of its partners and owners for purposes of this affidavit.
4. That neither the Company nor any of its presidents, vice-presidents, directors, managers, executive directors or members of its Board of Directors, or persons that fulfill similar tasks, have been convicted of, nor have they pleaded guilty to, any of the crimes in Article 6.8 of Puerto Rico Act No. 8-2017, as amended, known as the “Act for the Management and Transformation of the Human Resources of the Government of Puerto Rico” or for any of the crimes listed in Puerto Rico Act No. 2-2018, known as the “Anti-Corruption Code for a New Puerto Rico”.
5. No commissions or bonuses have been paid, in cash or in kind, and there is not commitment for the future payment of any such commissions or bonuses to any public official, employee or any former public official that participated in the negotiations and transactions contemplated by the Company’s agreement with _____ while working for the Government of Puerto Rico.
6. That neither the Company nor any of its presidents, vice-presidents, directors, managers, executive directors or members of its Board of Directors, or persons that fulfill similar tasks have any conflicts of interest in acting as the Operator of the Legacy Generation Assets.
7. That everything stated above is true to the best of my knowledge, information and belief and thus, to make it public I sign this declaration in _____, this ____ day of _____, 20__.

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By: _____

Name:

Title:

Affidavit No. _____

Sworn and subscribed before me by _____, of the personal circumstances stated above, in his/her capacity as _____ of _____; who is personally known to me or whom I have identified pursuant the following form of identification: _____, this ___ day of _____, 20__.

Exhibit D –

Form of Tax Opinion – Effective Date

_____, 202_

Ladies and Gentlemen:

We have served as tax counsel to the Federal Oversight and Management Board for Puerto Rico (“FOMB”) with respect to the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement dated as of _____, 2021 (the “Agreement”) by and among the Puerto Rico Electric Power Authority (the “Authority”), as owner, the Puerto Rico Public-Private Partnerships Authority, as administrator (the “Administrator”), and [●] (“Operator” and, together with Authority and Administrator, the “Parties”). Pursuant to the terms of the Agreement, the Operator shall provide management, operation, maintenance, repair and other related services for the Authority’s base-load generation plants and combustion turbine peaking plants (the “Legacy Generation Assets”). The Authority, its Affiliates, and other Governmental Bodies currently have outstanding obligations the interest on which is excluded from gross income for federal income tax purposes (the “Existing Bonds”). On the date of issuance of each of the bond issues comprising the Existing Bonds, the respective bond counsel for each such issuance delivered an opinion (each an “Approving Opinion”) that interest on the related Existing Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code (the “Code”). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Agreement.

This opinion is being delivered in accordance with Section 2.2(b)(viii) of the Agreement.

In rendering the opinion set forth herein, we have reviewed (i) the Agreement, including the exhibits thereto, (ii) the Facility Contracts in effect as of the date hereof, (iii) the opinion of Sargent and Lundy or another nationally recognized engineering firm acceptable to the Parties, dated _____, 202_, which sets forth, among other things, the reasonably expected weighted average economic life of the Legacy Generation Assets, and (iv) such other opinions, certificates and documents as have been provided to us by the Authority and others in connection with the Agreement. We have also relied upon the facts set forth in the representations made by the Parties to the Agreement and such other documents and opinions to the extent we deemed necessary to render the opinions set forth herein. Sections 4.4 and 4.5 of the Agreement contain Service Date Conditions and Commencement Date Government Approvals (collectively, the “Conditions”) that must be satisfied or obtained in order for the Service Commencement Date to occur. In rendering the opinion set forth herein, we have assumed that the Conditions are either mere formalities or that the likelihood that the Conditions will not be satisfied or obtained is remote. We have also assumed that the Service Commencement Date will occur on or before [●]. We have not undertaken an independent audit or investigation of the matters set forth in any of the foregoing and our opinion assumes the accuracy of the information and any conclusions set forth therein and compliance with any covenants and directions set forth in said documents, including the Agreement.

In addition, the Code and the Revenue Procedure (as defined below), impose certain requirements that must be met subsequent to the issuance and delivery of the Existing Bonds and subsequent to the execution of the Agreement for interest on the Existing Bonds thereon to be and

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remain excluded from gross income for federal income tax purposes. Noncompliance with such requirements could cause the interest on the Existing Bonds to be included in gross income for federal income tax purposes retroactive to the date of issue of each issue of the Existing Bonds.

Section 103 of the Code provides generally that interest on a “private activity bond” is not excluded from gross income. Section 141 of the Code, in part, provides that a private activity bond is an obligation issued as part of an issue that meets the private business tests. Under the private business tests, bonds are treated as private activity bonds if the issue of which those bonds are a part satisfy both the private business use test and the private security or payment test. The private business use test is met if more than 10 percent of the proceeds of an issue are used in the trade or business of a nongovernmental person (“private business use”). Under Treasury regulation section 1.141-3, private business use can result from the use of the facilities financed by the issue, including as a result of a lease of such property to a nongovernmental person or a management contract with respect to such property. The private security or payment test is generally met if the payment of the principal of, or the interest on, more than 10 percent of the proceeds of an issue is (under the terms of such issue or any underlying arrangement) directly or indirectly: (A) secured by any interest in property used or to be used for a private business use, or payments in respect of such property, or (B) to be derived from payments (whether or not to the issuer) in respect of property, or borrowed money, used or to be used for a private business use.

Under Treasury regulation section 1.141-3(b)(4), a management contract with respect to financed property may result in private business use of that property, based on all of the facts and circumstances. The regulations provide that a management contract with respect to financed property generally results in private business use of that property if the contract provides for compensation for services rendered with compensation based, in whole or in part, on a share of net profits from the operation of the facility, or if the service provider is treated as the lessee or owner of financed property for federal income tax purposes.

Treasury regulation section 1.141-3 defines a management contract as a management, service, or incentive payment contract between a governmental person and a service provider under which the service provider provides services involving all, a portion of, or any function of, a facility. For example, a contract for the provision of management services for an entire hospital, a contract for management services for a specific department of a hospital, and an incentive payment contract for physician services to patients of a hospital are each treated as a management contract.

In Revenue Procedure 2017-13 (the “Revenue Procedure”) the Internal Revenue Service provided a safe harbor under which a management contract can be treated as not resulting in private business use. The Revenue Procedure refers to the governmental owner of the related facilities as the “qualified user” and the manager or operator as the “service provider.” Under the Revenue Procedure, a management contract that satisfies the following conditions shall not be treated as resulting in private business use:

- (1) The payments to the service provider under the contract must be reasonable compensation for services rendered during the term of the contract. “Compensation” includes payments to reimburse actual and direct expenses paid by the service provider and related administrative overhead expenses of the service provider.

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- (2) The contract must not provide to the service provider a share of net profits from the operation of the managed property. Compensation to the service provider shall not be treated as providing a share of net profits if no element of the compensation takes into account, or is contingent upon, either the managed property's net profits or both the managed property's revenues and expenses (other than any reimbursements of direct and actual expenses paid by the service provider to unrelated third parties) for any fiscal period. For this purpose, the elements of the compensation are the eligibility for, the amount of, and the timing of the payment of the compensation. Incentive compensation is not treated as providing a share of net profits if eligibility is determined by the service provider's performance in meeting one or more standards that measure quality of services, performance or productivity.
- (3) The contract must not, in substance, impose upon the service provider the burden of bearing any share of net losses from the operation of the managed property.
- (4) The term of the contract, including all renewal options must not be greater than the lesser of 30 years or 80 percent of the weighted average reasonably expected economic life of the managed property.
- (5) The qualified user must exercise a significant degree of control over the use of the managed property. This control requirement is met if the contract requires the qualified user to approve the annual budget of the managed property, capital expenditures with respect to the managed property, each disposition of property that is part of the managed property, rates charged for the use of the managed property, and the general nature and type of use of the managed property (for example, the type of services).
- (6) The qualified user must bear the risk of loss upon damage or destruction of the managed property (for example, due to force majeure).
- (7) The service provider must agree that it is not entitled to and shall not take any tax position that is inconsistent with being a service provider to the qualified user with respect to the managed property. For example, the service provider must agree not to claim any depreciation or amortization deduction, investment tax credit, or deduction for any payment as rent with respect to the managed property.
- (8) The service provider must not have any role or relationship with the qualified user that, in effect, substantially limits the qualified user's ability to exercise its rights under the contract, based on all the facts and circumstances. A service provider shall not be treated as having a role or relationship prohibited by this provision if: (a) no more than 20 percent of the voting power of the governing body of the qualified user is vested in the directors, officers, shareholders, partners, members, and employees of the service provider, in the aggregate; (b) the governing body of the qualified user does not include the chief executive officer of the service provider or the chairperson (or equivalent executive) of the service provider's governing body; and (c) the chief executive officer of the service provider is not the chief executive officer of the qualified user or any of the qualified user's related parties.

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Based upon our review of the foregoing documents, and assuming the accuracy of the information and certifications, and compliance with the covenants, representations, and directions set forth therein, and assuming compliance with the terms of the Agreement, we are of the opinion that neither the Agreement nor any provision thereof, nor the performance by each Party to the Agreement of its respective obligations thereunder (including Operator's administration of the Facility Contracts), adversely affects the exclusion from gross income of interest on the Existing Bonds of the Authority, its Affiliates or another Governmental Body for federal income tax purposes under Section 103 of the Code. In the event that the Service Commencement Date does not occur on or before [●], this opinion shall be redelivered in final form as of the Service Commencement Date, subject to any necessary adjustments taking into account the later date.

This opinion is limited to the specific matter addressed herein and shall not be construed as confirming or restating the Approving Opinions. We have not been engaged to, nor have we undertaken to, determine whether the interest on the Existing Bonds continues to qualify as of this date for exclusion from gross income for federal income tax purposes. Accordingly, we express no opinion on such matter.

This opinion is delivered as of the date hereof and relates solely to the Internal Revenue Code and Treasury regulations as in effect on the date hereof. We disclaim any obligation to advise you or any other person of developments of law or fact covered by this opinion that may occur after the date hereof, including any amendments made subsequent to the date hereof to the documents described above. Furthermore, we express no opinion as to any federal, state or local tax law consequences with respect to the Existing Bonds, or the interest thereon, if any action is taken with respect to the Agreement or the proceeds thereof upon the advice or approval of other counsel.

This opinion is being delivered by us as tax counsel to the FOMB in connection with the Agreement and may not be relied upon by any other person, or used or reproduced for any other purpose, without our prior written consent.

Sincerely,

Nixon Peabody LLP

Exhibit E –

Form of Commonwealth Certifications

Operator, for itself and Parent Company (if Operator is a partnership under the Puerto Rico Internal Revenue Code), represents that as of the Effective Date (i) neither it nor Parent Company has any outstanding debts for unemployment insurance, temporary disability (workmen’s compensation), or chauffeur’s social security with the Department of Labor and Human Resources of the Commonwealth, income taxes with the Department of Treasury of the Commonwealth or real or personal property taxes with the Municipal Revenues Collection Center (“CRIM”) or (ii) it or Parent Company have a payment plan in place with respect to any outstanding debt for the foregoing items and have complied therewith.

Operator shall deliver to Owner prior to the Effective Date a copy of its Certificate of Incorporation, Certificate of Organization and Certificate of Authorization to do Business in Puerto Rico issued by the Puerto Rico Department of State, as applicable.

Operator shall also obtain and deliver to Owner, in each case dated no earlier than sixty (60) days prior to the Effective Date, the following:

- (i) a copy of Operator’s Merchant’s Registration Certificate (Form SC 2918);
- (ii) a Certificate of Good Standing issued by the Puerto Rico Department of State;
- (iii) a certification issued by the Puerto Rico Treasury Department indicating that Operator and Parent Company (if Operator is a Partnership under the Puerto Rico Internal Revenue Code) do not have any debts under any concept, including income tax, with the Commonwealth (Form SC 6096);
- (iv) a Puerto Rico Sales and Use Tax Filing Certification issued by the Puerto Rico Treasury Department reflecting that Operator has filed its Puerto Rico Sales and Use Tax returns for the last sixty (60) tax periods (Form SC 2942);
- (v) an all concepts debt certification issued by CRIM reflecting that Operator does not owe any taxes to CRIM with respect to real or personal property; and
- (vi) a certification issued by the Puerto Rico Child Support Administration for Operator reflecting that Operator is in compliance with the withholdings required to be made by employers under Applicable Law.

Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Puerto Rico Thermal Generation Operation and Maintenance Agreement dated _____.

By: _____
Name:
Title:

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Exhibit F –

Form of Anti-Corruption Certifications

We certify under penalty of nullity that no public servant of Owner shall derive or obtain any benefit or profit of any kind 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 delivery of goods or for the O&M Services provided is the agreed-upon price that has been negotiated with Owner or its Representatives. The total amount shown on this invoice is true and correct. The O&M Services have been rendered, and no payment has been received.

Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Puerto Rico Thermal Generation Operation and Maintenance Agreement dated _____.

By: _____
Name:
Title:

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**Exhibit G–
Form of Acknowledgement of Consent Decree**

[To come.]



GOVERNMENT OF PUERTO RICO
Puerto Rico Public-Private Partnerships Authority



[END OF ADDENDUM]