CONFIDENTIAL As of 2019

## PUERTO RICO TRANSMISSION AND DISTRIBUTION SYSTEM

### OPERATION AND MAINTENANCE AGREEMENT

dated as of

[•], **2019** 

by and between

## THE PUERTO RICO ELECTRIC POWER AUTHORITY

and

[ullet]

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# PUERTO RICO TRANSMISSION AND DISTRIBUTION SYSTEM OPERATION AND MAINTENANCE AGREEMENT

This **PUERTO RICO TRANSMISSION AND DISTRIBUTION SYSTEM OPERATION AND MAINTENANCE AGREEMENT** (this "<u>Agreement</u>") is made and entered into as of this [●] day of [●], 2019 by and between the Puerto Rico Electric Power Authority ("<u>Owner</u>"), 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, and [●] ("<u>Operator</u>" and, together with Owner, the "<u>Parties</u>" and each a "<u>Party</u>"), a [●] organized under the laws of [●]. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in Article 1.

#### **RECITALS**

WHEREAS, Owner owns and operates Owner's transmission and distribution system and related facilities, equipment and other assets related to the transmission and distribution system in which Owner has an ownership or leasehold interest, (the "T&D System");

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 No. 120 of the Legislative Assembly of Puerto Rico, enacted on June 21, 2018 ("Act 120"), Owner is authorized to execute and deliver this Agreement, perform its obligations hereunder and enter into the

WHEREAS, in accordance with Act 120, Owner desires to

-transform Puerto Rico's energy system into a modern, sustainable, reliable, efficient, cost-effective and resilient system; and

#### WHEREAS,

Operator desires to provide

the O&M Services for the T&D System 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:

<sup>&</sup>lt;sup>1</sup> Note to Qualified Respondent: Operator entity must be authorized to do business in Puerto Rico but is not required to be organized in Puerto Rico.

# ARTICLE 1 DEFINITIONS; INTERPRETATION

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

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


" $\underline{\text{Act 2}}$ " means Act No. 2 of the Legislative Assembly of Puerto Rico, enacted on January 4, 2018.

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

"Act 29" has the meaning set forth in the Recitals.

"Act 120" has the meaning set forth in the Recitals.

"Act 173" has the meaning set forth in Section 9.2(e).

"<u>Administrator</u>" means the Authority, in its capacity as Administrator under this Agreement.

"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.

"Agreement" has the meaning set forth in the introductory paragraph.

"Anti-Corruption Laws" has the meaning set forth in Section 9.2(a).

"Applicable Law" means any 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.

"Audit" and similar expressions mean, with respect to any matter relating to the T&D System, the O&M Services or this Agreement, including compliance with the terms of this Agreement, the performance of such reviews, investigations, inspections, examinations and audits relating to such matter as advisable or necessary in the circumstances, conducted in each case in accordance with applicable United States audit practices customarily accepted in the electric sector, if any, and the terms of this Agreement or as required by Applicable Law.

"Authority" means the Puerto Rico Public-Private Partnerships Authority.

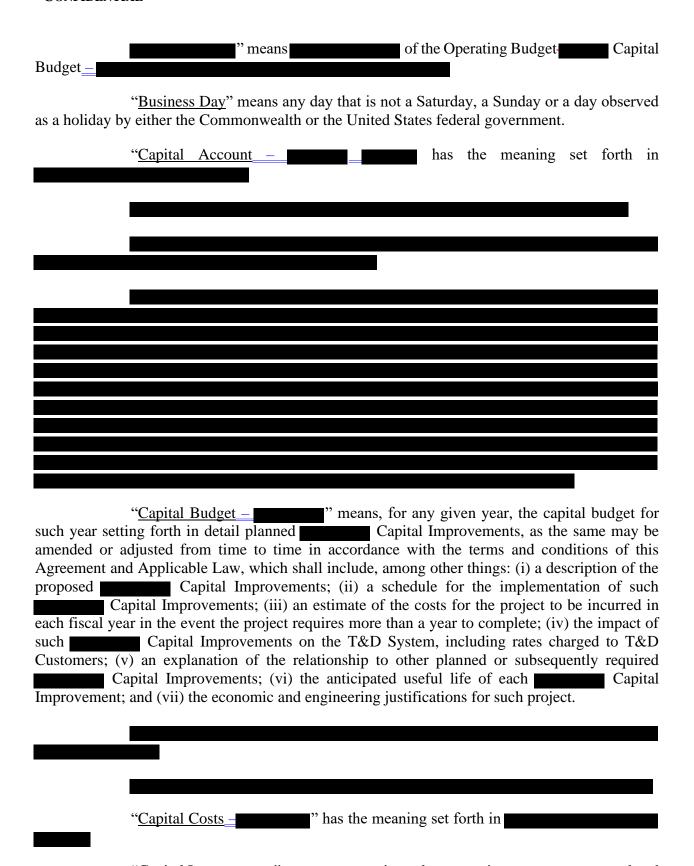
"<u>Authorized Inspector</u>" has the meaning set forth in Section 6.3(b).

"Back-End Transition Costs" has the meaning set forth in Section 16.4(a).

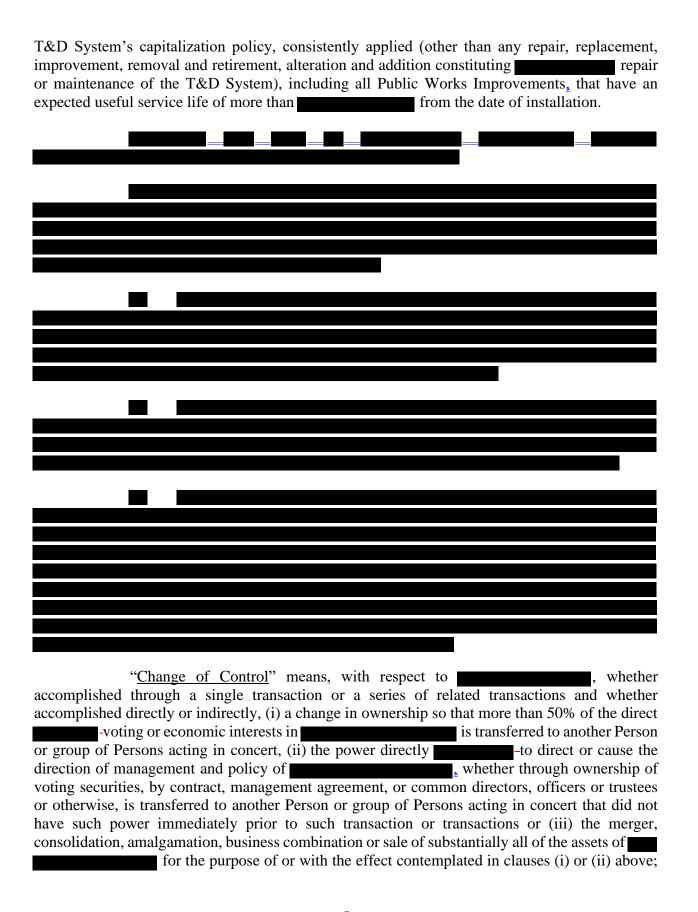
"Back-End Transition Plan" has the meaning set forth in Section 4.2(i).

"Back-End Transition Services" means services provided under this Agreement to complete the transition and handover of the O&M Services, and other rights and responsibilities with respect to the T&D System, back to Owner or to a successor operator upon the expiration or early termination of the Term hereof, including the services contemplated by the Back-End Transition Plan.

"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) 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 (iii) any similar insolvency or bankruptcy code applicable under the laws of any other jurisdiction.



"Capital Improvement" means any repair, replacement, improvement, removal and retirement, alteration and addition that constitutes a capital property unit in accordance with the



<u>provided</u>, <u>however</u>, that, notwithstanding anything to the contrary set forth in this definition, none of the following shall constitute a "Change of Control" for the purposes of this Agreement:

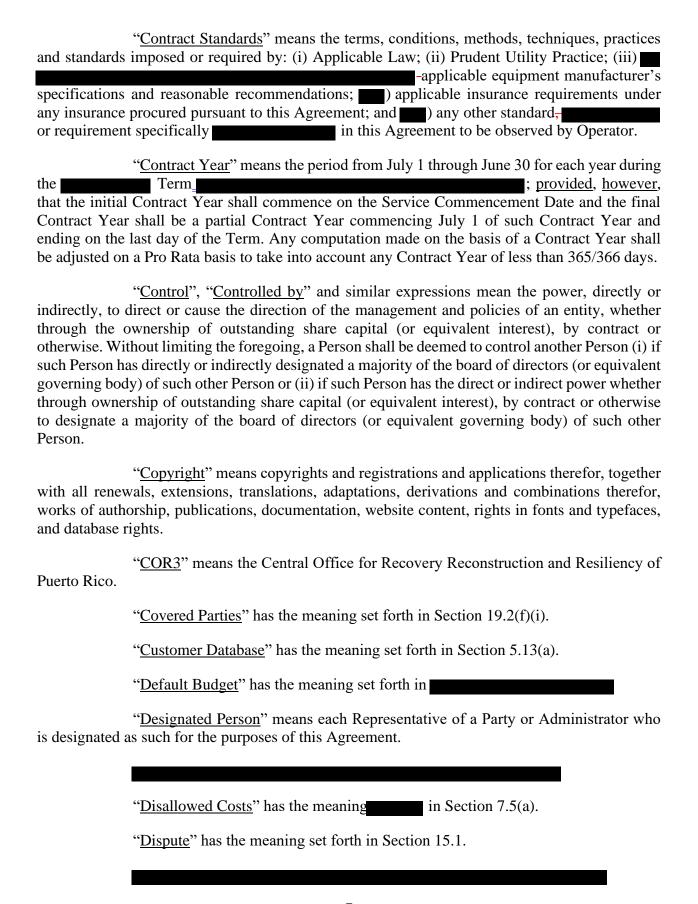
- (A) transfers of direct or indirect ownership interests in Operator between or among Persons that are Affiliates of each other or Persons who are under common Control;
- (B) transfers of shares of Operator or the direct or indirect shareholders of Operator pursuant to bona fide open market transactions on the New York Stock Exchange, NASDAQ, London Stock Exchange or comparable United States or foreign securities exchange, including any such transactions involving an initial or "follow on" public offering so long as such transfers would not require the approval or consent of the PREB (or such approval or consent has been obtained);
- (C) transfers of direct or indirect ownership interests in Operator by any Equity Participant or its beneficial owner(s) to any Person 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) together retain, in the aggregate, 50% or more 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.

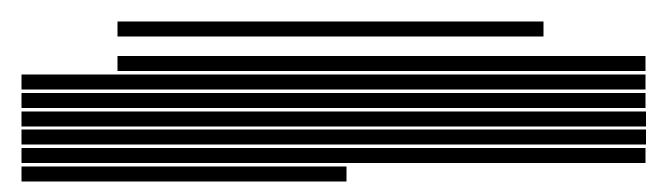
"Claiming Party" has the meaning set forth in Section 17.1(a).

"Commonwealth" means the Commonwealth of Puerto Rico.

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

"Confidential Information" has the meaning set forth in Section 13.2(a)(i).





"Effective Date" has the meaning set forth in Section 2.2(a).

"Emergency Plan" has the meaning set forth in Section 4.2(h).

"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 T&D System or the O&M 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, in connection with the T&D System or the O&M Services; (iii) any fines or penalties assessed for non-compliance with any Environmental Law in connection with the T&D System or the O&M Services; or (iv) any liabilities, costs or expenses necessary 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 EQB, EPA or other relevant Governmental Body, in each case having the force of law and applicable from time to time, relating to (A) 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.

"EPA" means the United States Environmental Protection Agency.

"EQB" means the Puerto Rico Environmental Quality Board.

"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.

"Excess Expenditures" has the meaning set forth in Section 7.3(b).

"Extension Term" has the meaning set forth in Section 2.3(b).

"Federal Funding" means any funding for the repair, replacement, restoration, construction or hazard mitigation of the T&D System.

received or to be received from any U.S. federal agency,

including FEMA and HUD,

"Federal Funding Requirements" has the meaning set forth in Section 5.4(a)

"FEMA" means the U.S. Federal Emergency Management Agency.

"Fixed Fee" has the meaning set forth in Section 7.1(b)(i).

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

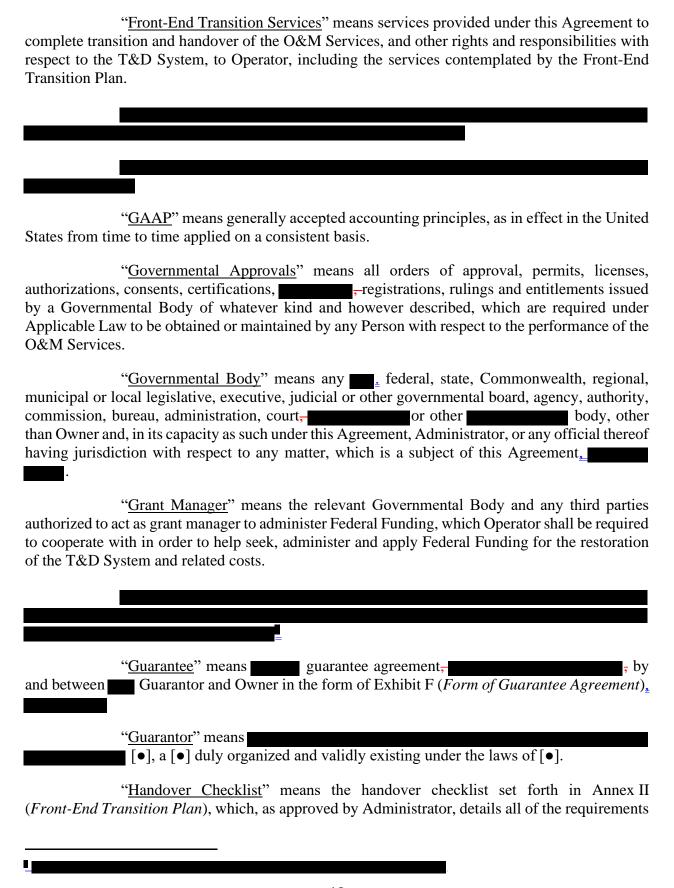
"<u>Force Majeure Event</u>" means an Operator Force Majeure Event or an Owner Force Majeure Event, as the context requires.

"Front-End Subcontractors" has the meaning set forth in Section 4.8(a).

"Front-End Transition Period" means the period of time from and including the Date to and excluding the Service Commencement Date.

"Front-End Transition Plan" has the meaning set forth in Section 4.1(a).

"Front-End Transition Service Fee" has the meaning set forth in Section 4.5(b).



for Operator to complete the Front-End Transition Services by the Target 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 or polychlorinated biphenyl; and (iii) any other pollutant, contaminant, material, substance or waste that is listed, defined or is subject to regulation under any Environmental Law.

"<u>Hired Former Employees of Owner</u>" has the meaning set forth in Section 4.2(k).

"HUD" means the U.S. Department of Housing and Urban Development.

"ICC" has the meaning set forth in

"Incentive Fee" has the meaning set forth in Section 7.1(c)(i).

"Incentive Fee Report" has the meaning set forth in Section 7.1(c)(ii).

"<u>Indemnifying Party</u>" 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.

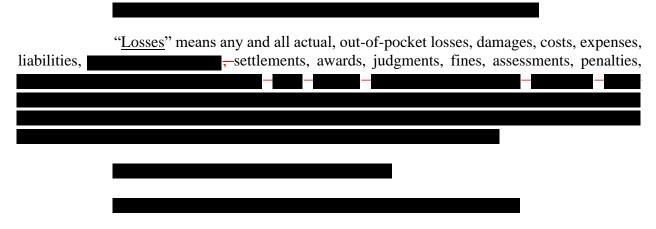
"Independent Expert" has the meaning set forth in

"Information" means any and all information relating to the T&D System,

details regarding revenues generated by the T&D System (including information regarding the collection thereof), operating income, expenses, capital expenditures and budgeted operating results relating to the O&M Services; (ii) 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 T&D System or the O&M Services; and (iii) books, records, accounts and documents relating to the O&M Services, including any Information that is stored electronically or on computer-related media-;

"Initial Budgets" means the Budgets for the initial Contract Year,
"Initial Term" has the meaning set forth in Section 2.3(a).
" <u>Integrated Resource Plan</u> " means the integrated resource plan contemplated under Act No. 57 of the Legislative Assembly of Puerto Rico, enacted on May 27, 2014.
"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)
to any of the foregoing right
to any of the foregoing
, and (ix) copies and tangible embodiments thereof, 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.
"Internal Revenue Code" means the United States Internal Revenue Code of 1986.
"Interview Deadline" has the meaning set forth in Section 4.2(j).
"Know-How" means know-how, trade secrets, confidential and proprietary information, 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
"Legal Proceeding" means any ——litigation, action, suit (whether civil, criminal, administrative, — judicial————binding arbitration or mediation or ————proceeding, in each case commenced, brought, conducted, heard before or otherwise involving any Governmental Body, arbitrator or mediator

"<u>Lien</u>" 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.



"Named Windstorm" is a storm or weather disturbance that is named by the National Oceanic and Atmospheric Administration's National Hurricane Center or similar body until sustained wind speeds drop below the parameter for naming storms.

"Non-Storm Emergency Event" has the meaning set forth in

"Non-Storm Emergency Expenditures" has the meaning set forth in

"O&M Services" has the meaning set forth in Section 5.1.

"Operating Account" has the meaning set forth in Section 7.4(a)(i).

"Operating Budget" means the annual budget of the Pass-Through Expenditures required to perform the O&M Services (exclusive of the cost of Capital Improvements and Storm Events), as the same may be amended or adjusted from time to time in accordance with the terms and conditions of this Agreement and Applicable Law.

<sup>&</sup>quot;Operator" has the meaning set forth in the introductory paragraph.

"Operator Audited Financial Statements" has the meaning set forth in Error! Reference source not found..

"Operator Event of Default" has the meaning set forth in Section 14.1(a).

"Operator Force Majeure Event" means any act, event, circumstance or condition interferes with or —increases the cost of performing Operator's obligations hereunder to the extent that such act, event, circumstance or condition is not the result of the willful Operator-Subject to the foregoing , Operator Force Majeure Event shall include, acts of God, fire, flood, drought, earthquake. hurricane and Named Windstorms; 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 T&D System.

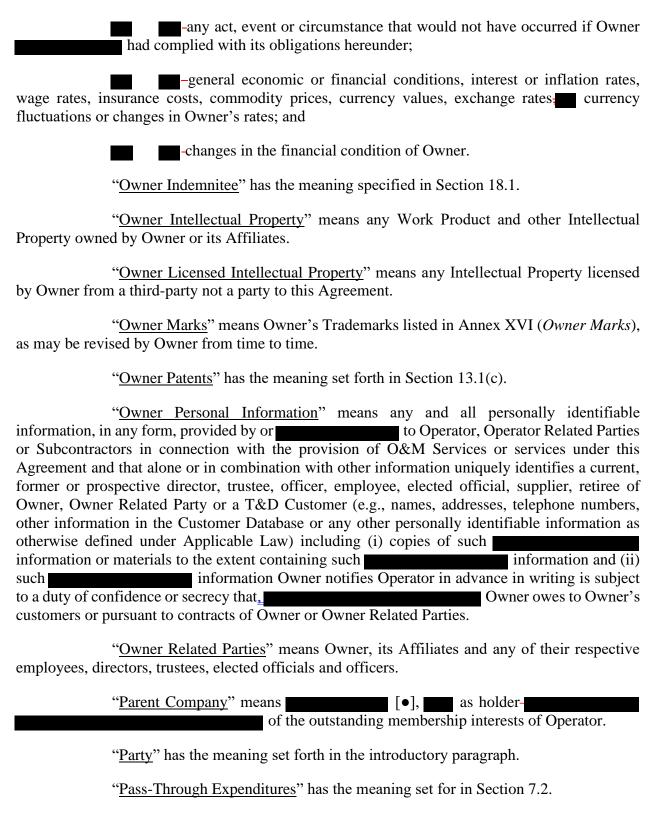
It is specifically understood that <u>none</u> of the following acts, events or circumstances shall constitute Operator Force Majeure Events:
general economic or financial conditions, interest or inflation rates
-currency values, exchange rates, currency
fluctuations-
the financial condition of Operator, the Guarantor, any of their
Affiliates or any Subcontractor;
the failure of Operator to secure Patents, other Intellectual Property
rights or licenses in connection with the performance of the O&M Services;

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"Operator Indemnitee" has the r	meaning specified in Section 18.2.
"Operator Marks" means Oper Marks), as may be revised by Operator from time	ator's Trademarks listed in Annex XV ( <i>Operato</i> me to time.
"Operator Pre-Existing Intelleted Section 13.1(b).3	ctual Property" has the meaning specified in
"Operator Related Parties" mean and any of their respective employees, director	
	ent Date Conditions" has the meaning set forth in

"Other Employees" has the meaning set forth in Section 4.2(k).

Section 4.4(a).

	"Owner" has the meaning set forth in the introductory paragraph.
Section 4.3(a).	"Owner-Acquired Governmental Approvals" has the meaning set forth in
	"Owner Employees" has the meaning set forth in Section 4.2(j).
	"Owner Event of Default" has the meaning set forth in
	O WHEN ST DOING! HAS UND MOUNTING SECTION IN
	"Owner Force Majeure Event" means any act, event—circumstance
	interferes with the performance of Owner's obligations hereunder,
	It is specifically understood that none of the
following acts	, events or circumstances shall constitute Owner Force Majeure Events:



"<u>Patents</u>" means patents (including utility and design patents), patent applications, PCT filings, patent disclosures and all related extensions, continuations, continuations-in-part,

divisions, reissues, and reexaminations, utility models, certificates of invention and design patents and all extensions thereto.
"Performance Metrics" has the meaning set forth in Section 7.1(c)(i).
"Permitted Liens" means
Liens arising by operation of law that are either contested in good faith and for which Operator has established adequate releases or that are discharged promptly and Liens existing as of the Effective Date, if any.
"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.
"Power and Energy" means the electrical energy, capacity and ancillary service available from the System Power Supply.
"PRDH" means the Puerto Rico Department of Housing.
"PREB" means the <i>Negociado de Energia de Puerto Rico</i> , or the Puerto Rico Energy Bureau, an independent body created by Act No. 57 of the Legislative Assembly of Puerto Rico, enacted on May 27, 2014.
"Pre-Existing Environmental Condition" means the presence of Hazardous Materials in environmental media anywhere in, at, on or under the T&D System on the Date.

"<u>Pro Rata</u>" 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.

"<u>Prudent Utility Practice</u>" means those practices, methods, techniques, conduct and acts that, at the time they are to be employed and in light of the circumstances known or reasonably

believed to exist at such time, are
shall not be limited to the optimum practice, method or act <sub>2</sub> to the exclusion of all others, but rather shall be a spectrum of possible practices, methods acts,
the Parties  -agree that the
-agree that the
Prudent Utility Practice
Capital Improvements-
hereunder.
" <u>Public Information Disclosure Requirements</u> " has the meaning set forth in Section 13.2(a)(ii).
"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.
" <u>Public Works Improvements</u> " means Capital Improvements performed as a result of requirements or requests of a Governmental Body.
"Rate Order" has the meaning set forth in Section 5.5(g).

"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.

"Remedial Action" means any investigation, clean-up, removal action, remedial 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.

"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.

"RFP" means the Puerto Rico Electric Power Transmission and Distribution System Request for Proposals 2019-2 issued by the Puerto Rico Public-Private Partnerships Authority.

"Sanctioned Country" has the meaning set forth in Section 19.2(f)(vi).

"Sanctioned Person" has the meaning set forth in Section 19.2(f)(vi).

"Sanctions" has the meaning set forth in Section 19.2(f)(vi).

"ServCo" has the meaning set forth in Section 4.2(d).

"ServCo Benefit Plans" has the meaning set forth in Section 5.7(a).

"ServCo Employees" has the meaning set forth in Section 4.2(k).

"Service Account" has the meaning set forth in Section 7.4(c).

"Service Commencement Date" has the meaning set forth in Section 4.6(b).

"Service Commencement Date Conditions" has the meaning set forth in Section 4.4.

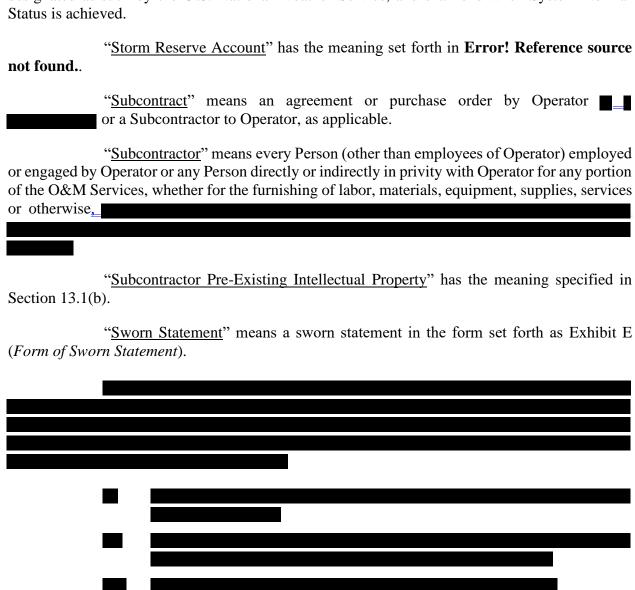
"Service Fee" has the meaning set forth in Section 7.1(a).

"Servicing Contract" means the servicing contract, dated as of the date hereof, by and between Operator and in the form set forth as Exhibit G (Form of Servicing Contract).

"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 relating thereto and any translations thereof.

"Storm Costs" has the meaning set forth in Error! Reference source not found.

"Storm Event" means an event where (i) at least twenty thousand five hundred (20,500) T&D Customers are interrupted or (ii) at least one hundred fifty (150) outage jobs for the T&D System are logged, in each case within a twenty-four (24) hour period due to a storm designated as such by the U.S. National Weather Service, and shall end when System Normal Status is achieved.



"System Information" has the meaning set forth in Section 5.13(a).

"System Normal Status" means a state in which fewer than one thousand (1,000) T&D Customers remain interrupted for a continuous period of eight (8) hours following a Storm Event.

"System Power Supply" means electric capacity, energy and ancillary services from any power supply sources authorized under Applicable Law to operate in the Commonwealth.

"T&D Customers" means customers of the T&D System.

"T&D System" has the meaning set forth in the Recitals.

"<u>T&D System Sites</u>" means the real property and interests therein upon which the components of the T&D System are and will be located.

"Target Service Commencement Date" means [INSERT DATE]. 4

"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.

"<u>Tax Opinion</u>" means an opinion 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.

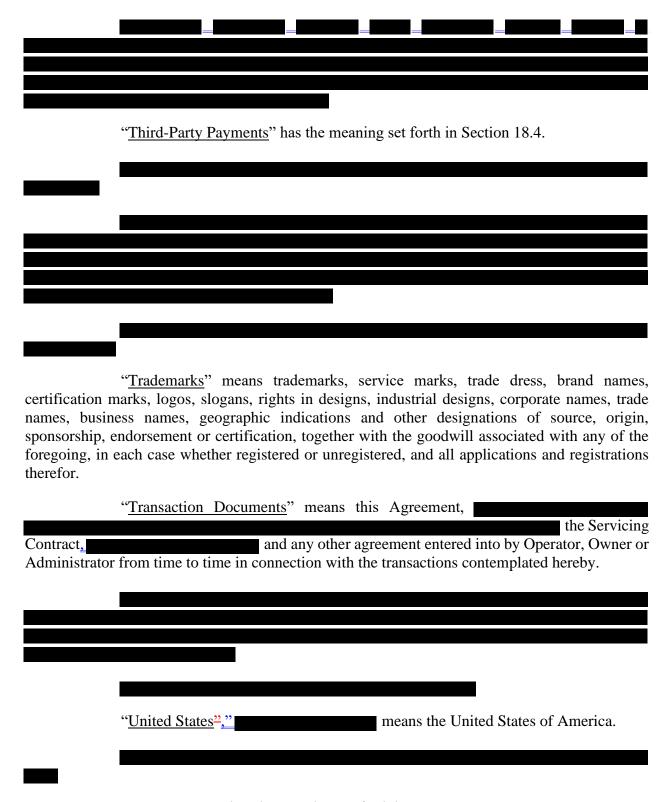
adversely affects the exclusion from gross income of interest on obligations of Owner, its Affiliates or another Governmental Body for federal income tax purposes under the Internal Revenue Code, substantially in the form set forth in Exhibit C<sub>2</sub>

"<u>Tax Return</u>" 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"

"Term" means the Initial Term together with the Extension Term, if any.

<sup>&</sup>lt;sup>24</sup>Note to Qualified Respondent: Please indicate a proposed duration for the Front-End Transition Period.



"Work Product" has the meaning set forth in Section 13.1(a).

**Section 1.2 Interpretation; Construction.** 

- (a) <u>Headings</u>. 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. 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.
- (b) Construction. For purposes of this Agreement: (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 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 "\$" 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) <u>Days and Time</u>. 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.
- (d) <u>Accounting Principles</u>. 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) <u>Negotiated Agreement</u>. 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 either Party by virtue of the authorship of any provisions hereof.

# **ARTICLE 2**

<b>PURPOSE</b> ; EF	FECTIVE DATE;
,	<u>;</u> TERM
Section 2.1	<b>Purpose</b> . Owner hereby contracts with Operator for Operator to provide,
	the Service
Section 2.2	Effective Date:
(a)	Execution of the Agreement. This Agreement shall become effective on the
date that it is execute	ed by the Parties (the "Effective Date"):
(b)	Conditions to
(0)	Conditions to
	following conditions
	Tollowing Conditions
	(i) receipt by the Parties of an Energy Compliance Certificate issued by
PREB;	
Board of Directors of	(ii) adopted by the
board of Directors of	of the Authority-

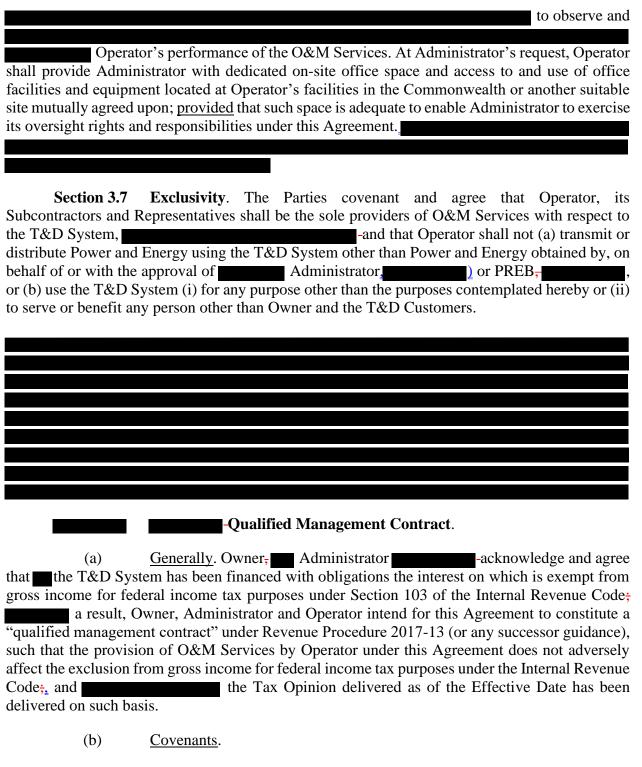
-receipt by Owner of	
(viii) receipt by Owner of copies of the federal funding certification the form set forth as Exhibit A (Form of Federal Funding Certifications), duly executed Operator;	
(ix) receipt by Owner of a copy of a certificate as to certain matter Commonwealth law in the form set forth as Exhibit B (Form of Commonwealth Certification duly executed by Operator;	
(x) receipt by Owner of a copy of the Servicing Contraduly executed by	act,
(xi) receipt by Owner of a Tax Opinion;	
required in connection with the Front-End Transition Plan, Governmental Approx	vals

satisfied	(c)	If any of the Front-End Services Commencement Date Conditions are not
Sec	tion 2.3	Term.
		Initial Term. This Agreement shall be in effect from the Effective Date $(15^{th})^{\frac{8}{2}}$ anniversary of the Service Commencement Date (such period of "), unless extended or earlier terminated in accordance with the terms hereof.
	ceed the n	Extension. Operator and Administrator mutually agree to extend the Initial Term for an additional ed at the time (the "Extension Term"); provided that (i) the Extension Term naximum term permitted under Act 29 at the time of such extension and (ii) in connection with such Extension

# ARTICLE 3 OWNERSHIP OF THE T&D SYSTEM

**Section 3.1 Ownership**. The T&D System is and shall be owned by Owner throughout and following the Term, and Operator shall have no ownership interest therein.

Section 3.2 independent contractor or leasehold interest if for providing the O&	n the T&D System. T	ny legal, equital he only comper	ble, tax, beneficia sation payable by	l or other ownership y Owner to Operator
	_	_		
Subcontractors	pursuan	All and to this Agreem		by Operator or its
Owner and shall be d the Servicing Contract as an agent for Owner generality of the foreg counterclaim or dedu- respect to any other obligated to pay or de	t. In collecting such and and shall have no riggoing, shall have no riggoing for any amounts matter in dispute he	nounts, Operator tht or claim to so tht to assert a cla s, which may be reunder. Operat	count(s) specified and any Subcontruch amounts and, aim of set-off, received to Operate for is uncondition	ractor shall act solely without limiting the oupment, abatement, or hereunder or with
right,	-	perator and its S occupy and us	ubcontractors shate the T&D Systems in accordance w	m
Section 3.4 the 7 and all Liens, other tha or (b) any acts, omissi Nothing in this Agree Owner, including the	an Permitted Liens, ari ons or debts of Operato ment shall be deemed	sing out of or in or, Guarantor, th to create any Lic	connection with (a eir Affiliates and en in favor of Ope	their Subcontractors. erator on any asset of
Section 3.5 of the Term hereof, C shall peaceably leave consistent with Opera	and surrender the To	the extent Adm &D System to	ninistrator request	s, its Subcontractors
Section 3.6 respective Representa	Right of Access. Up		Administra	ator, PREB and their



(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 available to an owner or lessor of the T&D System covered by this Agreement; (B) it shall not take any tax position inconsistent with it being a service provider with respect to such T&D System; 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 such facilities.

(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 T&D System 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.

# ARTICLE 4 FRONT-END TRANSITION PERIOD

## Section 4.1 Generally.

(a) Role of Operator. Throughout the Front-End Transition Period, Operator shall provide the Front-End Transition Services (which are not O&M Services) as described in the front-end transition plan set forth in Annex II ( <i>Front-End Transition Plan</i> ), which provides for the transition and handover of the O&M Services and other rights and responsibilities with respect to the T&D System to, and the provision of other services by, Operator prior to the Service Commencement Date under this Agreement (the "Front-End Transition Plan"). The Front-End Transition Services shall be provided in a manner consistent with the Contract Standards and such that the provision of such services hereunder shall ensure a timely and orderly transition of the T&D System to Operator and ServCo, without disruption of customer service and business continuity, by the Target Service Commencement Date.
(b) Owner Cooperation. Owner Shall take all such actions as may be reasonably necessary to enable or assist Operator to provide the Front-End Transition Services
, including (i) providing Operator's Representatives with a designated space and facilities at Owner's principal offices for their use throughout the Front-End Transition 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 Front-End Transition Services, ——(iii)
encouraging and facilitating a positive and cooperative working relationship with respect to the implementation and completion of the
Front-End Transition Plan and the performance of the Front-End Transition Services.
Section 4.2 Operator Responsibilities. As soon as practicable after the Date but in any event prior to the Target Service Commencement Date, Operator shall satisfy the following obligations, each of which shall be a condition precedent to the occurrence of the Service Commencement Date:
(a) <u>Front-End Transition Plan</u> . Operator shall carry out and complete the Front-End Transition Plan as it specifically relates to transition obligations to be performed by Operator prior to the Service Commencement Date, and shall provide all management, technical, administrative, engineering, labor relations and other personnel necessary in connection therewith.
(b) <u>Handover Checklist</u> . By no later than the tenth (10 <sup>th</sup> ) day of each month, Operator shall provide Administrator written monthly reports, including an annotated Handover Checklist, with respect to Operator's performance of the Front-End Transition Services. From time to time during the Front-End Transition Period, in light of experience developed during the Front-End Transition Period, the Handover Checklist shall be adjusted, updated or otherwise

ready to perform all O&M Services, Operator shall provide Administrator with written notice of such, including a completed Handover Checklist.

- Governmental Approvals. Operator shall (i) coordinate with Owner and Administrator to prepare for and support Operator's efforts to transfer or assign, to the extent permitted by Applicable Law, or reissue or assist with the issuance of Governmental Approvals required for the performance of the O&M Services pursuant to the terms of this Agreement, (ii) submit complete applications and take all other steps necessary under Applicable Law to obtain and maintain all required Governmental Approvals, and (iii) provide Owner and Administrator with copies of any such Governmental Approvals.
- ServCo. Operator shall form a subsidiary service company ("ServCo") to (d) employ the ServCo Employees and provide the O&M Services in accordance with the Contract Standards. ServCo shall be authorized to do business in the Commonwealth. Without the prior approval of Administrator, ServCo may not engage in any other business or activity other than to provide the O&M Services pursuant to this Agreement.
- Confirmation of shall execute and deliver a confirmation to Administrator that remains in full force and effect.
- Required Insurance. Operator shall submit to Administrator certificates of (f) insurance for all Required Insurance.
- Initial Budgets. Operator shall prepare and submit to Administrator the (g) proposed Initial Budgets. Within forty-five (45) days following its receipt of such proposed Initial Budgets, Administrator, shall provide Operator comments on the appropriateness of the proposed Initial Budgets and recommend any changes or modifications it believes are necessary or appropriate. Within thirty (30) days from receipt of Administrator's comments, Operator shall submit to PREB the revised Initial Budgets, incorporating or rejecting any of the modifications or changes suggested by the Administrator, PREB shall review such Initial

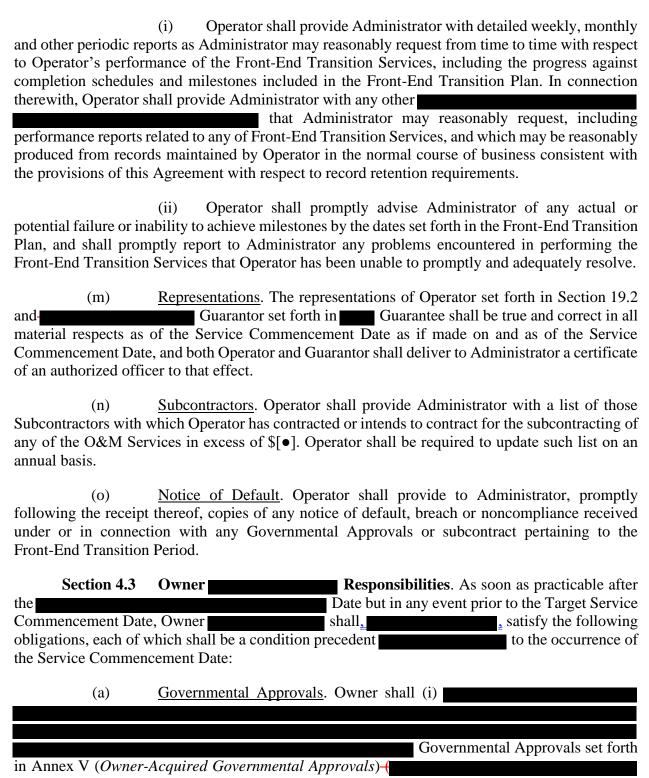
Budget proposal in accordance with Applicable Law.

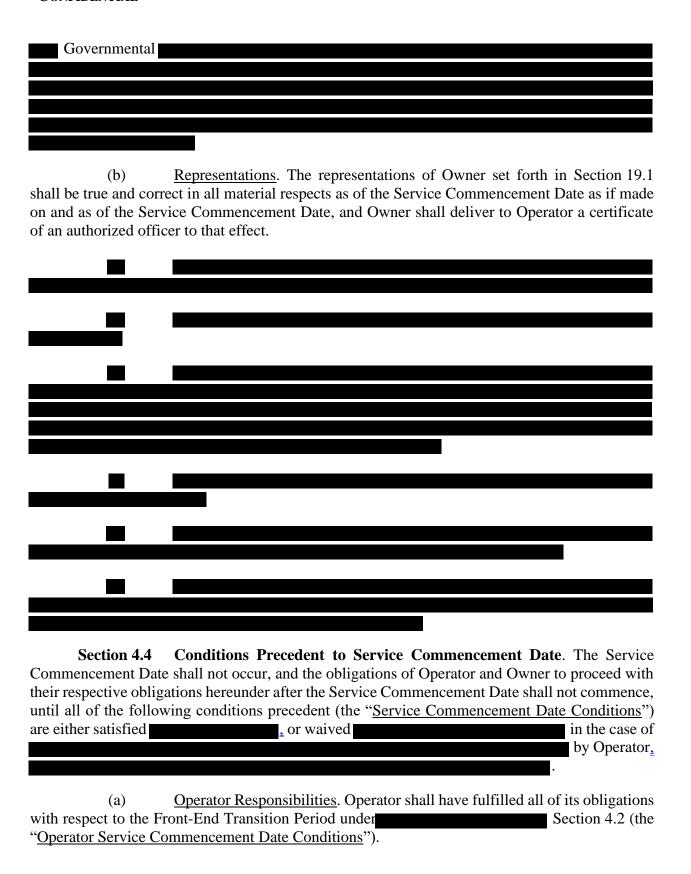
Emergency Plan. Operator shall provide Administrator and PREB with a (h) plan of action meeting Contract Standards that outlines the procedures and actions necessary for responding to any emergency affecting or reasonably likely to affect the T&D System (the "Emergency Plan"), including fire, weather, environmental, health, safety and other potential emergency conditions. The Emergency Plan shall: (i) provide for appropriate notice of any such emergency to PREB and all other Governmental Bodies having jurisdiction over the T&D System and for measures that facilitate coordinated emergency response actions by all appropriate Governmental Bodies; (ii) specifically include outage minimization and response measures; and (iii) assure the timely availability of all personnel required to respond to any emergency in accordance with Contract Standards.

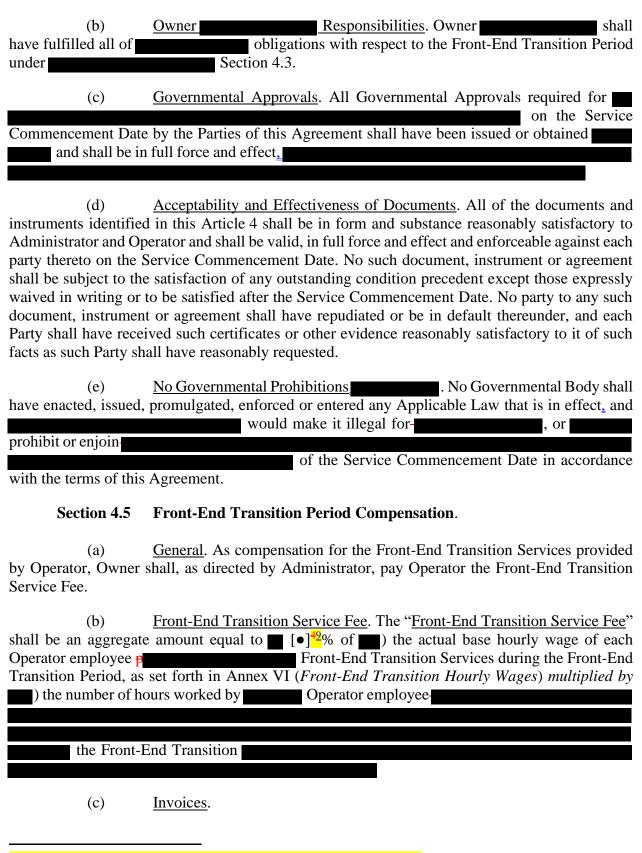
(i) <u>Back-End Transition Plan</u> . Operator shall prepare and submit to Administrator a detailed back-end transition plan consistent with the back-end transition plan set forth in Annex III ( <i>Back-End Transition Plan</i> ), which provides for the transition and handover of the O&M Services, and other rights and responsibilities with respect to the T&D System, back to Owner or to a successor operator upon the expiration or early termination of the Term hereof (the " <u>Back-End Transition Plan</u> "). Such Back-End Transition Plan shall be updated on an annual basis as necessary or appropriate.
(j) <u>Employment Interviews</u> . As soon as reasonably practicable following the
Date (but not less than one hundred and twenty (120) days prior to the Target Service Commencement Date) (the "Interview Deadline"), ServCo shall use its efforts to interview and evaluate candidates for employment at ServCo, effective as of the Service Commencement Date, the regular employees of Owner and its Affiliates (i) who remain employed by Owner and its Affiliates as of the Interview Deadline or are hired by Owner or its Affiliates on or after the Date hereof 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) who apply to Operator in a job category Operator wishes to fill (collectively, the "Owner Employees").
(k) <u>Employment Offers</u> . Operator shall
Owner Employees who meet Operator's stated requirements for employment as set forth in Annex IV (Operator Employment Requirements)-
Owner Employees  Each Owner Employee who accepts an offer of employment with ServCo pursuant to this Section 4.2(k) shall be referred to as a "Hired Former Employee of Owner."  the Service Commencement Date and the Term  ServCo shall employ such other employees, including any of the Affiliates as of the
Date hired for the operation of the T&D System ("Other Employees" and, together with the Hired Former Employees of Owner, the "ServCo 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:
Date hired for the operation of the T&D System ("Other Employees" and, together with the Hired Former Employees of Owner, the "ServCo 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:
Date hired for the operation of the T&D System ("Other Employees" and, together with the Hired Former Employees of Owner, the "ServCo Employees"), as are necessary to provide the O&M Services. The following initial terms and conditions of employment shall

consistent with the restrictions, modifications and annulments applied by Puerto Rico Act No. 3-2017 and Act No. 66-2014, immediately prior to the Service Commencement Date.

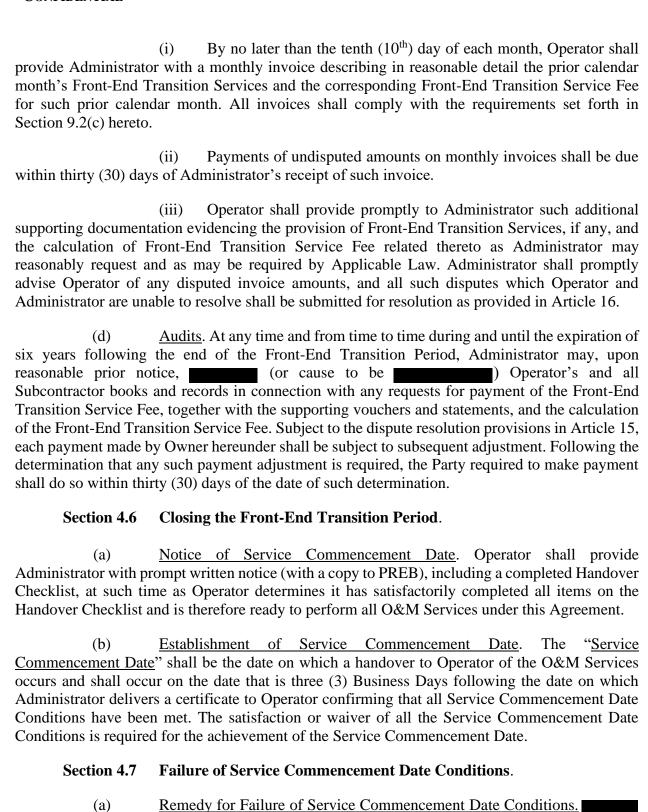
#### (l) <u>Periodic Reports</u>.



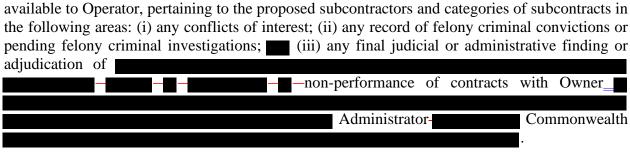




<sup>&</sup>lt;sup>49</sup>Note to Qualified Respondents: Please indicate a proposed percentage.



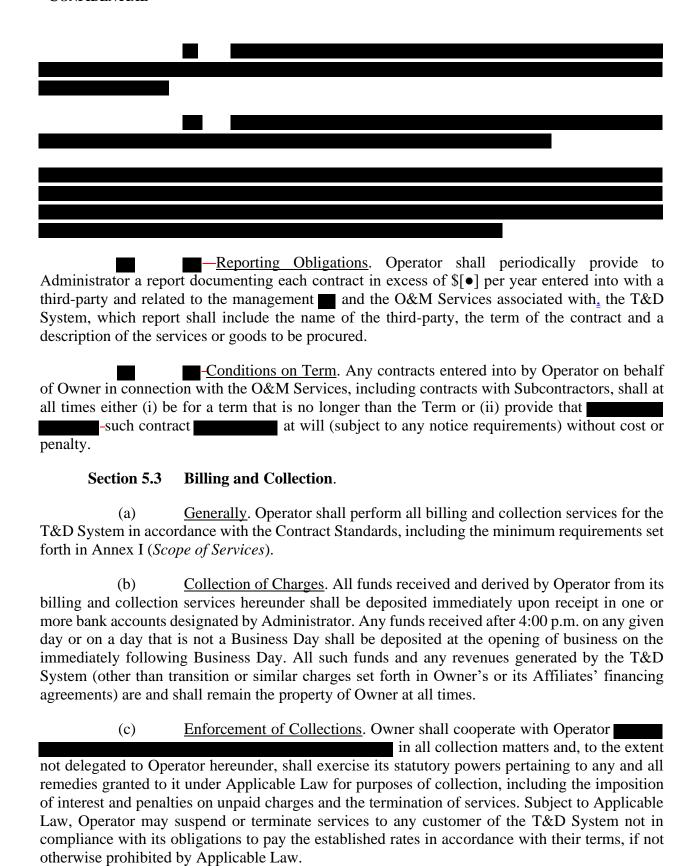
arising from or rel	ated to	failure		of whatever type or nature the Commencement Date
(b) of the Service Commencer written notice to	ce Commend nent Date or s	cement Date Condi such later date as A	tions are not satisfied dministrator,	nt Date Conditions. If any d or waived by the Target and Operator may agree, han thirty (30) days prior
Section 4.8	Subcontra	ctors During the	Front-End Transiti	on Period.
	or to perforn more would	n any Front-End T be anticipated to b	Transition Services e paid to such Subco	pprove any Subcontractor hereunder for which an ontractor (the " <u>Front-End</u> or delayed.
	e, Operator sl	val. Operator also s	of recommended From Shall furnish Adminis	nt-End Subcontractors for strator, together with such r, to the extent reasonably



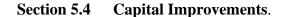
Administrator may approve any Approval. proposed Front-End Subcontractor, which approval shall not be unreasonably withheld, or delayed. If a proposed Front-End Subcontractor is approved for the Front-End Transition Period, such Subcontractor shall be deemed to be approved for the specified categories of potential work for the duration of the Front-End Transition Period, unless Administrator otherwise notifies Operator. Subject to the foregoing, the approval or withholding thereof by Administrator of any proposed Front-End Subcontractor shall not create any liability of Owner or Administrator to Operator, such Front-End Subcontractor, third parties or otherwise. When engaging Front-End Subcontractors, Operator shall not be relieved from its responsibility under this Agreement and liability for any error, fault or inconsistency in the provisions of the Front-End Transition Services hereunder. All such subcontracts shall be subject to Applicable Law and shall be assignable to Owner at Administrator's discretion . All Front-End Subcontractors shall be required to furnish a Sworn Statement.

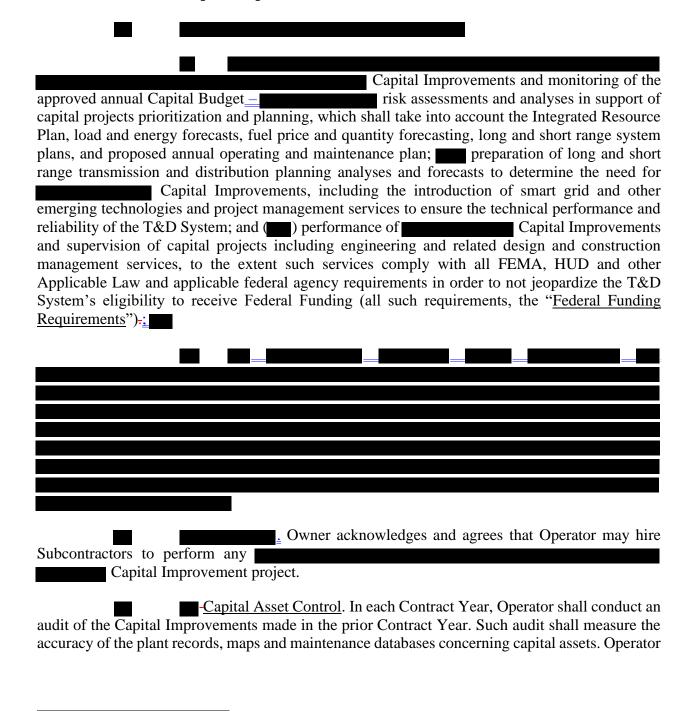
## ARTICLE 5 O&M SERVICES

<b>Section 5.1</b> and in exchange for ■	Services Generally. Commencing on the Service Commencement Date
und in exchange for	Operator shall provide management, operation, maintenance, repair
System, including the establishment of poli "O&M Services"), in It is the Parties' into Administrator as set	for the T&I e services set forth in this Article 5 and Annex I ( <i>Scope of Services</i> ), and the icies, programs and procedures with respect thereto (all such services, the
Section 5.2	System Contracts.
"System Contracts"), satisfied by Owner; obligations under suc	Generally. Operator shall administer and perform, on behalf of Owner obligations under the continue to be a continue to be a continue to be a continued that Operator shall administer and perform Owner's rights an another System Contracts in such a manner so as not to expand or increase the by Owner thereunder:  Owner shall administer and perform Owner's rights and contracts in such a manner so as not to expand or increase the by Owner thereunder:
	Operator to enforce Owner'
rights under any suc	ch System Contracts.
_	



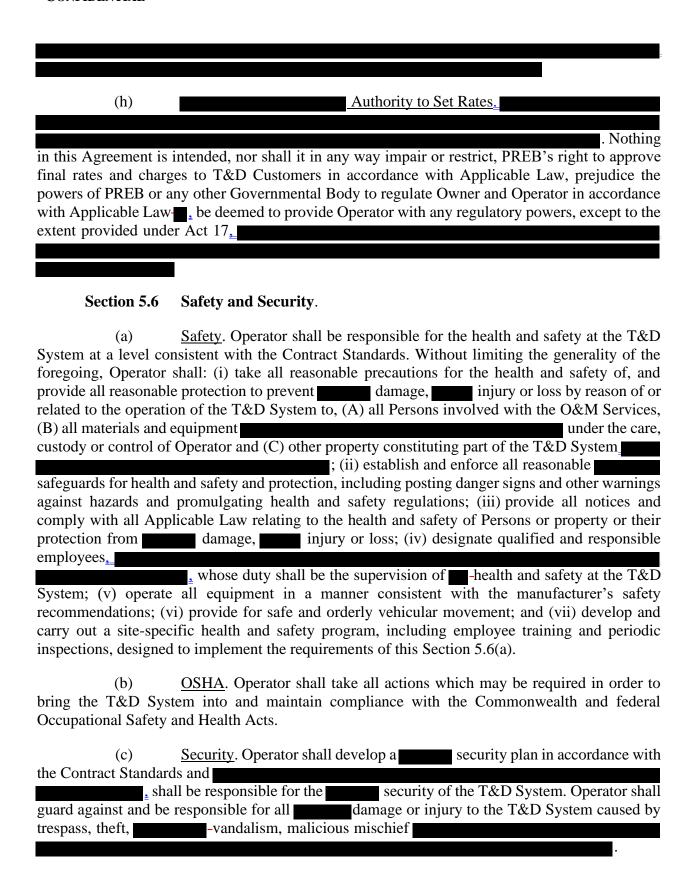
(d) <u>Servicing Contract</u>. Operator shall at all times conduct the billing and collection services in compliance with the terms of the Servicing Contract. In the event of any conflict or issue of interpretation between the Servicing Contract and this Agreement in connection with Operator's obligations for billing and collection services, the Servicing Contract shall prevail over this Agreement.





shall also conduct a physical inventory of all capital assets from time to time in accordance with the Contract Standards.
Section 5.5 System Regulatory Matters.
(a) <u>General</u> . Operator shall
Owner (i) before PREB with respect to any matter related to the performance of any of the O&M Services provided by Operator under this Agreement and shall be responsible for all relevant filings and other submissions before PREB.
and (ii) before any Governmental Body and any other similar industry or regulatory institutions or organizations having regulatory jurisdiction.
(b) <u>Applications and Submittals</u> . Operator shall make all filings, applications and reports necessary to obtain and maintain all Governmental Approvals required to be obtained by or in the name of Operator or Owner,
ey of in the name of operator of o whor <u>t</u>
Approvals that are required to be obtained or maintained in the name of Owner, Operator shall: (i) prepare the application and develop and furnish all necessary supporting material and data and information that may be required; (ii) familiarize itself with the terms and conditions of such Governmental Approvals; (iii) attend all required meetings and hearings; 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) <u>Data and Information</u> . All data, information and action required to be supplied or 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 T&D

System and primary permittee. The data and information supplied by Operator to Owner, Administrator and all regulatory agencies in connection therewith shall be correct and complete in all material respects.
. Operator shall be responsible for any schedule and cost consequences which may result from the submission of materially incorrect or incomplete information and the untimely submission of required information-
(d) <u>Non-Compliance and Enforcement</u> . Operator shall report to Administrator in writing, as soon as possible upon obtaining knowledge thereof (but in no event more than twenty-four (24) hours, all violations of the terms and conditions of any Governmental Approval
(e) Reports to Governmental Bodies. Operator 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 T&D System.
Such reports shall contain all information required by the Governmental Body and may be identical to comparable reports previously prepared for Administrator if such are acceptable to the Governmental Body.
(f) <u>Integrated Resource Plan</u> . In accordance with and when required pursuant to Applicable Law, Operator shall prepare a proposed Integrated Resource Plan for submission to PREB. The proposed Integrated Resource Plan shall be designed in a manner to ensure that, if approved by PREB and subject to the forecast assumptions specified therein, Operator is able to provide safe and adequate transmission and distribution service at
(g) <u>PREB Rate Proceedings</u> . Operator may, from time to time, propose that a change in customer rates or charges be made, which, if approved by PREB pursuant to Applicable Law, may result in a change in customer rates or charges consistent with the scope of PREB's approval.
Any Budget submitted by Operator to Administrator and approved by Administrator in accordance with Section 7.3(a) shall be consistent with the determinations, directives and requirements established by PREB through a rate review proceeding ("Rate Order").

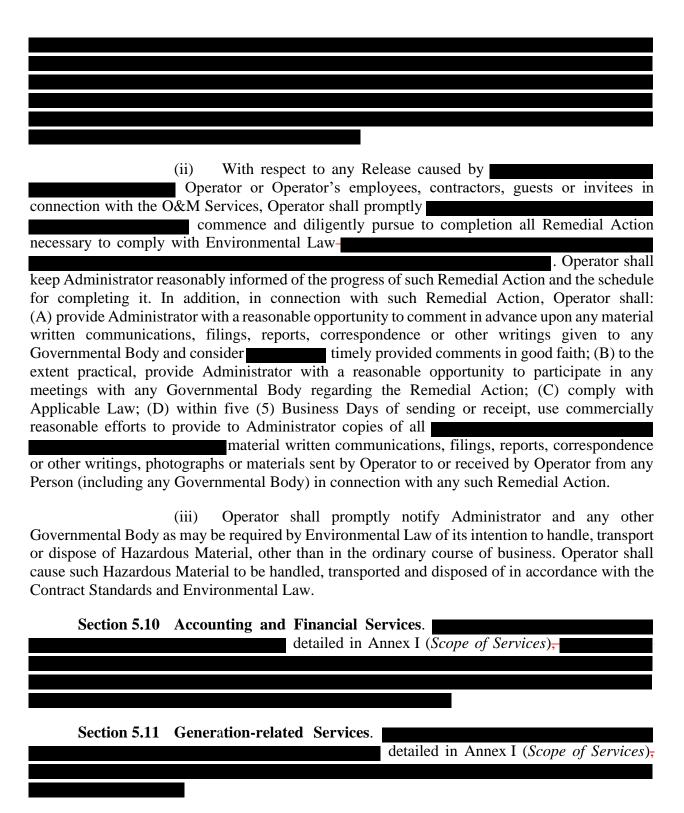


Section 5.7 Labor and Employment; Employee Benefits.

(a) <u>Employee Plans</u> . ServCo shall provide employee benefits to ServCo Employees pursuant to the plans created by ServCo to provide benefits to ServCo Employees (collectively, the " <u>ServCo Benefit Plans</u> "). From and after the Service Commencement Date, except as required by Applicable Law, Hired Former Employees of Owner shall accrue no additional benefits under any employee benefit plan, policy, program or arrangement of Owner or its Affiliates.
ServCo Benefit Plan
A Hired Former Employee of Owner may also choose (to the extent permitted) to transfer his contributions to Owner's retirement plan to any retirement plan available to ServCo employees.
(i) The ServCo Benefit Plans shall credit the Hired Former Employees of Owner for service prior to the Service Commencement Date with Owner and its Affiliates for purposes of eligibility to participate , vesting and, with respect to vacation plans only, benefit accrual.
(ii) The ServCo Benefit Plans shall waive all limitations as to pre-existing conditions and actively-at-work exclusions and waiting periods for transitioned employees (and their eligible dependents).
(b) <u>Exclusivity</u> . Operator may not, without Administrator's prior written approval, utilize ServCo or its employees for any purpose other than providing the O&M Services under this Agreement, nor may it hire, for any other business of Operator or an Affiliate, any existing ServCo employees without Owner's prior written consent.
(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 5.8 Procurement and Administration of Federal Funding.
(a) General. As between the Parties, Owner shall retain the exclusive right to receive amounts from all Federal Funding for the T&D System. Operator shall perform the O&M Services in compliance with the Federal Funding Requirements and shall be responsible for carrying out any Capital Improvements financed in full or in part with available Federal Funding, and shall complete all work related to such Capital Improvements in compliance with the Federal Funding Requirements in order to ensure the Federal Funding anticipated or received is administered in accordance with all such requirements.

(b) <u>Cooperation and Participation</u> . shall be required to cooperate and participate with any relevant Governmental Body and any Grant Manager in order to help seek, administer and apply Federal Funding for the restoration of the T&D System and related costs. shall be required to cooperate and participate in any audits or investigations performed by Commonwealth or federal authorities.
(c) <u>Compliance with Applicable Law, Regulation and Policy.</u> Operator shall procure any work related to the T&D System, the cost of which may be submitted for Federal Funding, in full compliance with (i) Applicable Law, including the procurement rules set forth in 2 C.F.R. Part 200 applicable to Owner, (ii) the provisions related to Federal Funding, as applicable, set forth in Annex VIII ( <i>Federal Funding Provisions</i> ), (iii) applicable Owner policy; (iv) applicable COR3 policy and (v) applicable PRDH policy.  Operator shall
require any Subcontractors engaged to complete such work to execute a certification substantially in the form of Exhibit A (Form of Federal Funding Certifications) at the commencement of the subcontract.
Section 5.9 Environmental, Health and Safety Matters.  (a) Generally.  Operator shall be responsible for performing the following environmental health and safety activities related to the provision of electric service to the T&D Customers: (i) managing an environmental, health and safety program for the T&D System in accordance with the Contract Standards; (ii) coordinating, overseeing, ensuring and maintaining compliance of the T&D System with Environmental Law, 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; (v) providing environmental permitting services to support operations;
(b) <u>Pre-Existing Environmental Conditions.</u>
Operator shall perform the O&M Services so as not to exacerbate the effect or costs of any Pre-Existing Environmental Condition identified by Owner, Administrator——————————————————————————————————

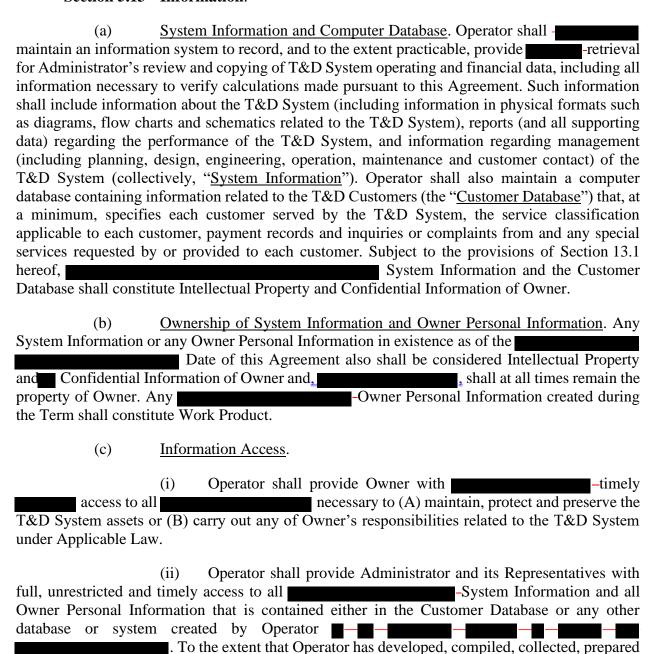
existence thereof, commence and diligently prosecute such actions as are required by Applicable Law or to prevent future material interference with the performance of the O&M Services or material increases in costs of performing the O&M Services. Administrator shall have the right to contest any determination of a Pre-Existing Environmental Condition and shall not be required to take any action under this Section 5.9 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 T&D System pending resolution of the contest. Notice and Remedial Action Requirements. (c) Operator shall, promptly upon thereof, 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, and the location at which the Release has occurred, the time, the agencies involved, the damage that has occurred and the Remedial Action Notice of any such Release, if initially delivered orally, shall be delivered in writing promptly following Operator knowledge of such Release. This reporting obligation shall be in addition to any other reporting obligation under Environmental Laws.



**Section 5.12 Emergency Action**. Notwithstanding anything to the contrary in this Agreement, if at any time Operator determines in good faith that an emergency situation exists with respect to the T&D System such that immediate action must be taken to protect the safety of the public, Owner's employees and Operator's employees, to protect the safety or integrity of the

T&D System, or to mitigate the immediate consequences of an 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 Emergency Plan. As promptly thereafter as is reasonable, Operator shall notify Administrator and PREB of the event and Operator's response thereto. For so long as the emergency situation continues, Operator shall provide a weekly written update to Administrator and PREB 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 situation has ended.

#### Section 5.13 Information.



or archived information in the conduct of its services under this Agreement, Operator shall provide Administrator with full and complete access to such information. Administrator's access to information pursuant to this Section 5.13(c) shall be no less than the access afforded by Operator to its employees and executives.

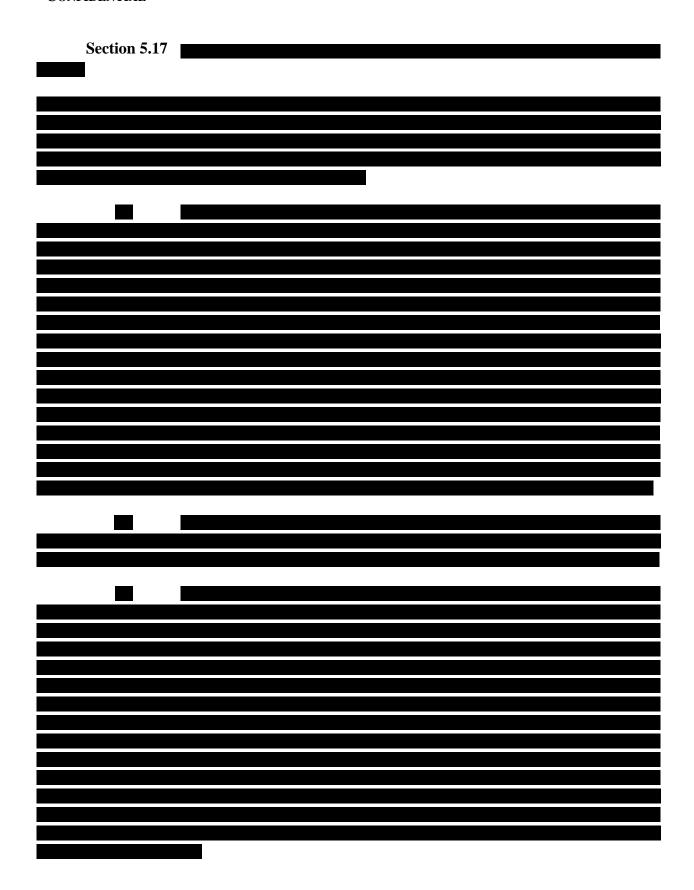
Restrictions. Operator may not use any System Information or Owner (d) related purposes without Personal Information for non-Owner Administrator's prior written permission. Such permission, if granted, will be granted on a non-discriminatory basis and it shall be obligation to comply with all Applicable Law and regulations, and otherwise obtain any consents that may be necessary, prior to any such permitted use. Notwithstanding the foregoing, unless required by Applicable Law or by a Governmental Body (in which case Operator shall provide Administrator with such advance notice as is practicable), Operator, an Operator Related Party or any Affiliate shall not, and shall not authorize any third-party to, (i) use the Customer Database or other customer information systems of Owner to extract, sort or otherwise use any information related to the T&D Customers (including name, address, telephone number and energy usage, or any other information contained in the Customer Database) or (ii) use mechanisms for customer access (including meter reading, customer representatives and service call centers), available solely as a result of Operator's role hereunder, to market any services to the T&D Customers. To the extent information related to the T&D Customers is available from other sources, neither Operator nor its Affiliates shall be precluded by this Agreement from using in its business such data obtained from other sources.

Section 5.14 Bill Payments.

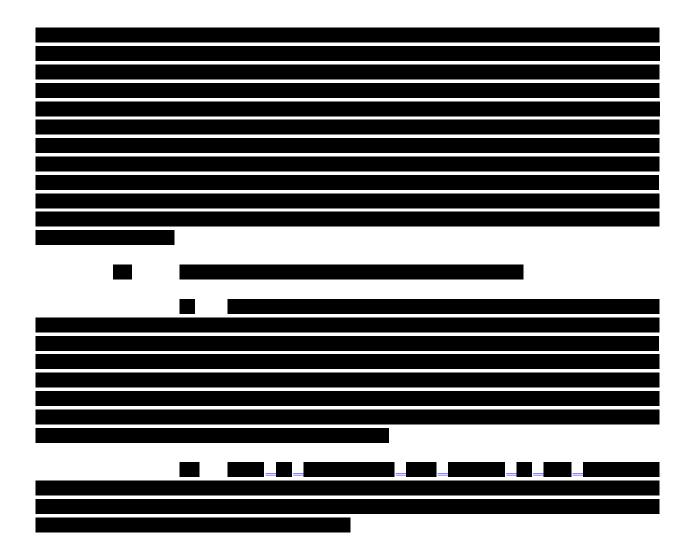
Operator shall timely pay all bills related to the T&D System, that are proper, appropriate and not otherwise disputed and which it has authority to pay and shall assure that, to the extent within Operator's control, no mechanics' or similar Liens are filed against any portion of the T&D System. In the event that Operator fails to timely pay any —bill —Administrator shall have the right, but not the obligation, to pay such bill and deduct an administrative fee in an amount of \$[•] from the Incentive Fee otherwise due to Operator.

**Section 5.15 Compliance with Obligations**. Operator shall use reasonable efforts to provide all representations, certifications, records and other documents necessary or appropriate for Owner to comply with any obligations under Applicable Law (including obligations with respect to the FOMB under PROMESA and obligations related to the federal securities laws and 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.

**Section 5.16 Energy Policy under Act 17**. As further detailed in Annex I (*Scope of Services*), Operator shall be responsible for coordinating and assisting with the services and operations contemplated under Act 17, including services and operations related to microgrids, distributed generation, renewable energy sources, net metering and energy cooperatives.



	-Additional Services.	,—Operator shall
perform such additiona	al services reasonably related to the T&D	System not included within
O&M Services based u Operator.	pon terms and conditions,	agreed to by
and I	Minimistrator.	
_		

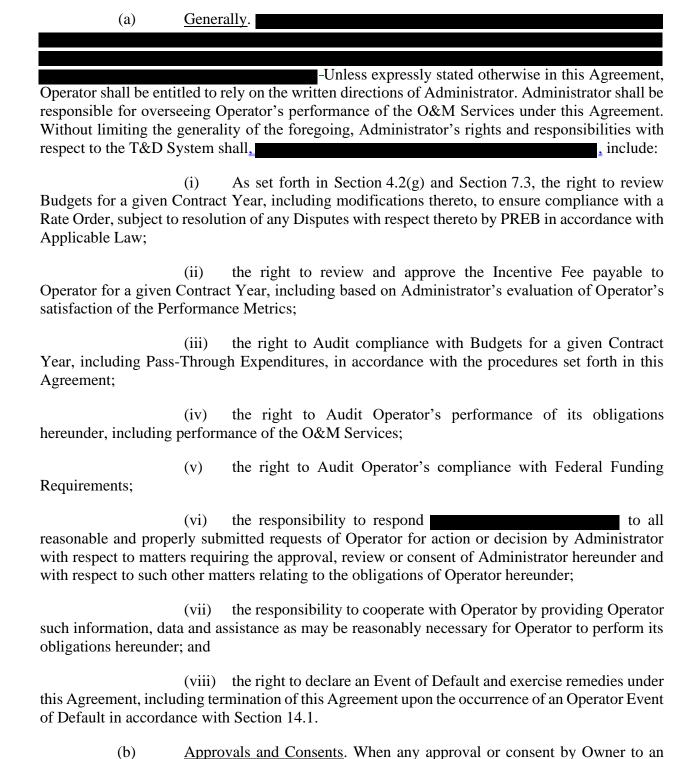


## ARTICLE 6 RIGHTS AND RESPONSIBILITIES OF OWNER AND ADMINISTRATOR

## **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 T&D System:
(i) grant and assure Operator access to the T&D System for the performance of Operator's obligations hereunder.
-pay the Service Fee and any other amounts due Operator, in accordance with the terms and conditions of this Agreement;
ensure that any budget submitted by Owner to FOMB for approval in accordance with PROMESA provides that Owner is authorized to pay amounts due to Operator under this Agreement;
—cooperate with Operator and Administrator in obtaining and maintaining all Governmental Approvals-:
(b) <u>Authorization of Administrator</u> . 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.

#### Section 6.2 Rights and Responsibilities of Administrator.



Operator submission, request or report is required pursuant to the terms of this Agreement, the approval or consent may be given by Administrator in writing, and such writing shall be conclusive

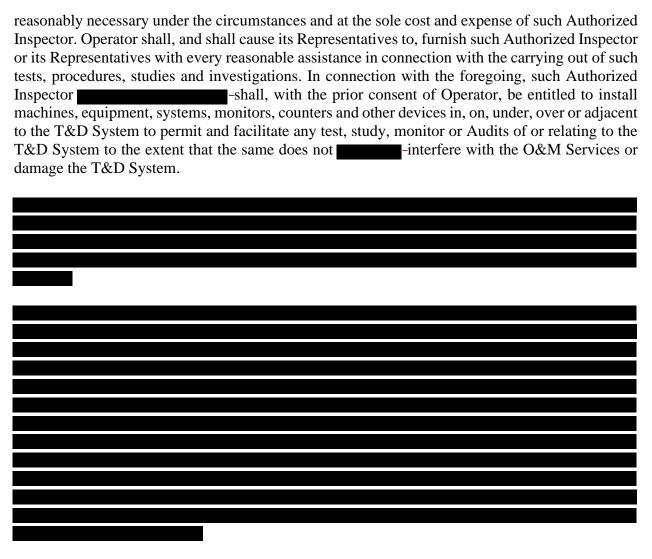
evidence of such approval or consent and shall be binding on Owner.

(c)	Consultants. Administrator shall have the right,
obligations under th	to engage third-party consultants to advise onits Agreement,
Section 6.3	Reporting; Audits.
(a)	Reports.
accident or incident knowledge of the Administrator of a	(ii) Operator shall promptly notify Administrator of all material ecciving knowledge thereof, promptly notify Administrator of material at related to the T&D System within twenty-four (24) hours of receiving occurrence of such material accident or incident and promptly notify all material claims made by or against Operator of which Operator has atial material claims that Operator reasonably expects to make against, or to be
(b)	<u>Information</u> . At the reasonable request of Administrator or (each, an " <u>Authorized Inspector</u> "),
	Operator shall (i) make available or cause to be

made available to such Authorized Inspector all Information related to this Agreement or the T&D System as may be specified in such request and as shall be in the possession or control of Operator or its Representatives and (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 the interview (except in the case of investigations of possible criminal conduct, violations of Applicable Law, in which case no prior notice shall be required by such Authorized Inspector), 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 Applicable Law;

(c) reasonable times,	Audit Rights. In a	ddition to the r	ights set out in	Section 6.3(b), at all
or may cause a Reprequired to be maintage	ained or delivered by O&M Services for	d by it, to carry Operator under the purpose of	out: (A) an Auc this Agreement i verifying	orized Inspector may, dit of the Information n connection with the all, at reasonable times
Representative for preasonably be required copies of the Inform	or or its designated as may reasonably be ourposes of such Au ed by such Authorized	d Representative required by such adit and otherwised Inspector in conduct of such Author onduct of such A	e such reasonal Authorized Insp se provide such connection with t rized Inspector sh	ector or its designated cooperation as may
any Authorize be entitled to perform	-			r consent of Operator, on in connection with

the T&D System or the O&M Services as such Authorized Inspector may determine to be



**Section 6.4 Staffing Levels**. By the Service Commencement Date, Owner and Administrator shall only maintain staffing in connection with the O&M Services at those levels strictly necessary to ensure that Owner and Administrator are able to meet their obligations under this Agreement.

## ARTICLE 7 COMPENSATION; BUDGETS

#### Section 7.1 Service Fee.

#### (a) <u>General</u>.

and

after the Service Commencement Date, as compensation for the performance of the O&M Services, Owner shall, as directed by Administrator, pay Operator a management service fee consisting of a Fixed Fee and an Incentive Fee (collectively, the "Service Fee").

#### (b) Fixed Fee.

- (i) The fixed fee payable to Operator for each Contract Year shall be as set forth in Annex IX ( $Fixed\ Fee$ )<sup>714</sup>, adjusted on a Pro Rata basis for a partial Contract Year (the "Fixed Fee").
- (ii) Owner shall, as directed by Administrator, pay the Fixed Fee in monthly installments in an amount equal to (i) one-twelfth (1/12) of the Fixed Fee for such Contract Year 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 the tenth (10<sup>th</sup>) Business Day of each month of the Term, Operator shall submit to Administrator an invoice for the Fixed Fee payable in respect of the prior month. The invoice shall specify the monthly portion of the Fixed Fee for the relevant month and show the annual Fixed Fee as calculated for the then current Contract Year, together with the accumulated payments to the date of such invoice-
- Owner shall, as directed by Administrator, 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) hereto.

#### (c) Incentive Fee.

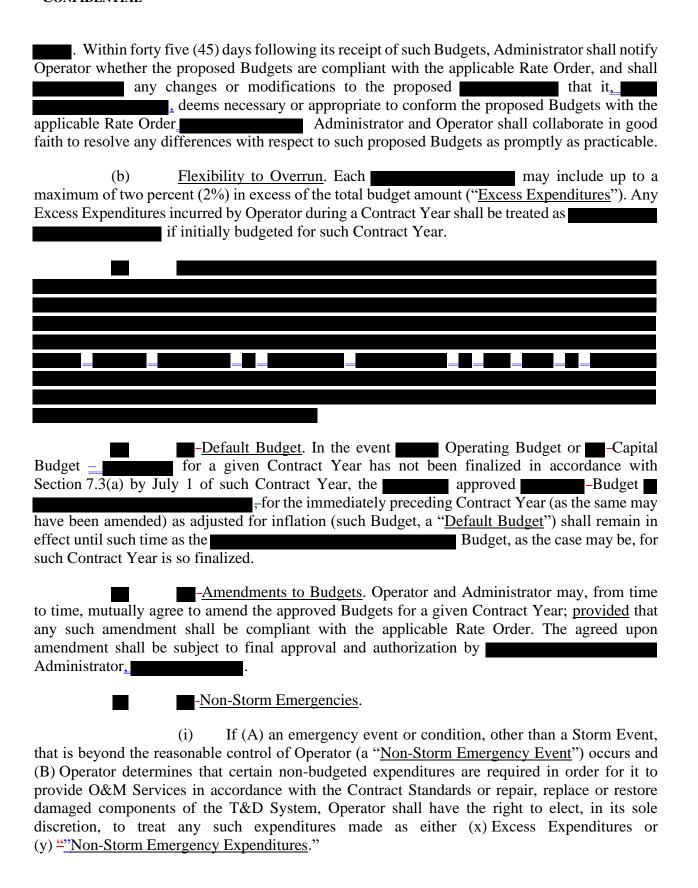
- (i) Operator shall be entitled to earn the incentive fee in any given Contract Year ("Incentive Fee"), which fee shall be calculated as set forth in Annex X (*Calculation of Incentive Fee*) based on Operator's ability to timely exceed the performance metrics set forth in Annex XI (*Performance Metrics*) (the "<u>Performance Metrics</u>").
- (ii) No later than sixty (60) days following the end of a Contract Year, Operator shall submit a report (the "<u>Incentive Fee Report</u>") to Administrator with (A) supporting performance data, information and reports evidencing its achievement of one or more of the

<sup>714</sup> Note to Qualified Respondent: Please see Annex IX (Fixed Fee).

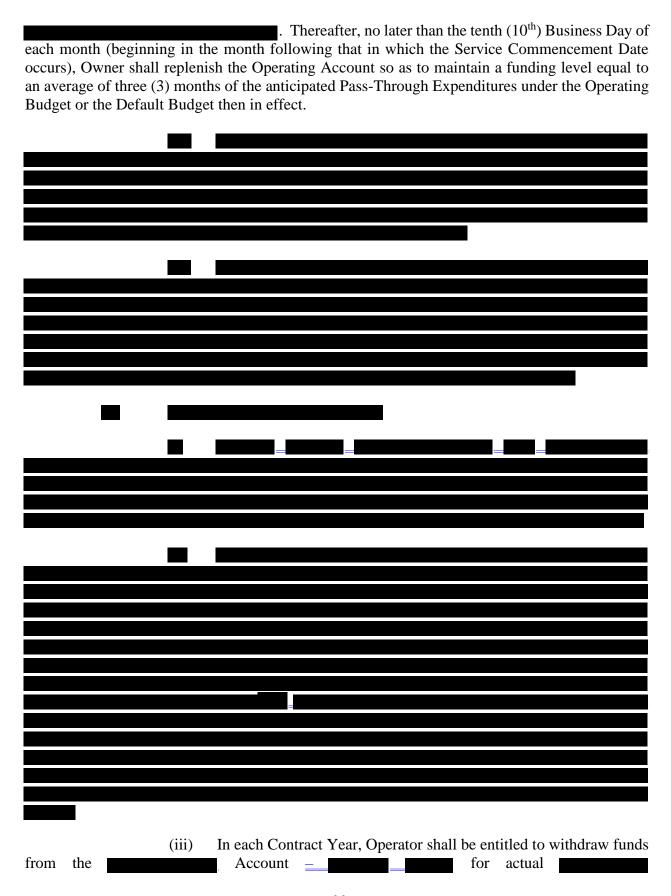
Performance Metrics and (B) a good faith calculation based thereon of its proposed Incentive Fee, in each case for such Contract Year.

(iii) Administrator shall have a period of sixty (60) days after receipt to review the Incentive Fee Report. During this period, Operator shall make available 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 Incentive Fee Report.
(iv) If Administrator delivers to Operator a written statement describing any disagreements with the Incentive Fee Report during such review period, then Operator and Administrator shall attempt to resolve in good faith any such disagreements. If
Operator and Administrator reach a resolution with respect to such matters, or if Administrator has no disagreements with the Incentive Fee Report, Administrator shall promptly direct Owner to pay the Incentive Fee.
(v) Once determined in accordance with Section 7.1(c)(iv), Owner shall, as directed by Administrator, pay the amount of the Incentive Fee.  for a given Contract Year in equal monthly installments over the remainder of the subsequent Contract Year, such that the Incentive Fee shall have been resid in full by the last month of such Contract Year.
paid in full by the last month of such Contract Year.
-The Performance Metrics may be amended from time to time as mutually agreed between Operator and PREB in accordance with Applicable Law; provided that (i) any amendment to the Performance Metrics shall be implemented as an amendment to this Agreement in accordance with Section 20.3 and (ii) a Tax Opinion is obtained.  The Parties acknowledge and agree that PREB shall have the right to propose amendments to the Performance Metrics from time to time and that shall consider any proposed amendments in good faith.

- <u>Service Fee Disputes</u> . In the event that a Dispute arises between Operator
and Administrator in connection with the Service Fee, Administrator
the matter
Section 7.2 Pass-Through Expenditures. "Pass-Through Expenditures" shall be
costs- expenses incurred by Operator or ServCo (without markup for
profit, administration or otherwise) that are necessary and reasonable in the course of providing the O&M Services, set forth in Annex XII
(Pass-Through Expenditures); provided that Pass-Through Expenditures shall not include any
. Operator shall pay for Pass-Through Expenditures in accordance with Section 7.4.
Section 7.3 Budgets.
(a) <u>Generally</u> . For any Contract Year (other than the initial Contract Year, for which the procedures for the Initial Budgets shall apply, or a year in which a rate adjustment approved by PREB enters into effect), Operator shall, no later than ninety (90) days prior to the commencement of such Contract Year, submit to Administrator the proposed Budgets for such Contract Year.  Administrator shall,
review such proposed Budgets to ensure compliance with the applicable Rate Order



approve the Non-S	(ii) If Operator elects to treat the expenditures as Non-Storm Emergency ator shall submit a request to ——————————————————————————————————
Administrator <sub>s</sub>	if initially budgeted.
arises between Operamendments thereto	-Budget Disputes. the event that a dispute rator and Administrator in connection with a Budget, including proposed and Expenditures, the matter
Section 7.4	Service Accounts.
(a)	Operating Account.
accounts from which	(i) No later than ten (10) Business Days prior to the Service e, Owner shall, as directed by Administrator, establish one or more operating operator shall draw funds from time to time to pay for actual Pass-Through ed by Operator in performing in the O&M Services (collectively, the "Operating Account").
	(ii) No later than three (3) Business — prior to the Service e, Owner shall fund the Operating Account with an amount equal to this of the anticipated Pass-Through Expenditures based on the then-currently Budget_



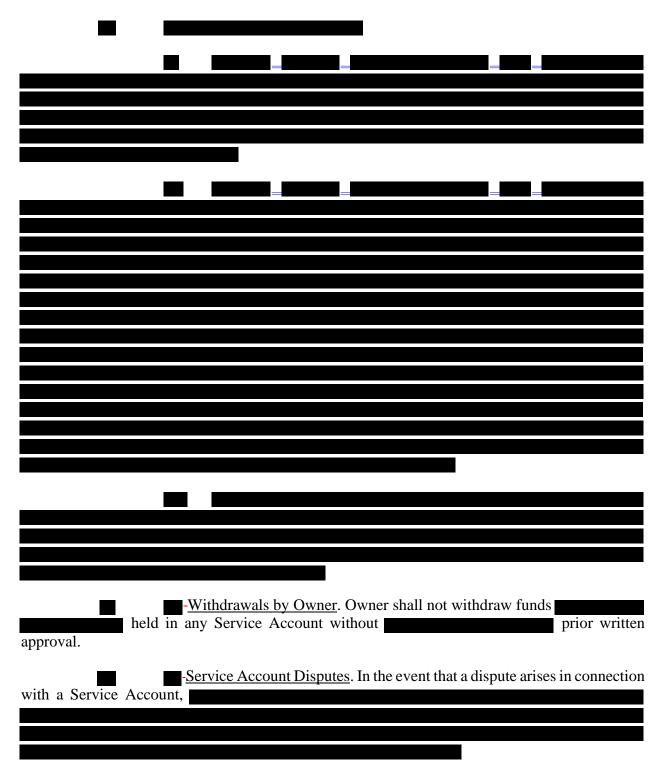
Budget on	incurred under the Default Budget then in effe	er the approved ct_
recommendations to mitigate	Business Days in advance of an ,	wever, that Operator shall notify by Excess Expenditure withdrawal providing the details thereof and Account that are not included in the or the Default Budget then
shall be entitled to withdraw further from time to time as necessary. Si Administrator with written not following each month end Operator seasonable detail the actual	ry to fund payment for actual multaneous with each such withdrawal, include being paid. Not shall furnish Administrator with	Operator thdrawal, Operator shall provide ding a summary of later than ten (10) Business Days a full accounting setting forth in
(i) Commencement Date, Owner accounts from which Operatorelated to the O&M Services (	No later than ten (10) Busing shall, as directed by Administrator shall draw funds from time to Capital Improvement collectively, the "Capital Account	ents (" <u>Capital Costs</u> ").
the Capital Account = proceeds from dra	owner shall, as directed by Adm with $f(A)$ aws on financing provided by Op and $f(A)$ and $f(A)$ are designated for Capital Costs.	any other financings

(iii) In each Contract Year, Operator shall be entitled to withdraw funds from the Capital Account for actual Capital Costs incurred under the approved Capital Budget for the Default Budget then in effect.
; provided, however, that Operator shall notify Administrator at least ten (10) Business Days in advance of any Excess Expenditure withdrawal providing the details thereof and recommendations to mitigate any additional excess costs. Operator shall not withdraw funds from the Capital Account for Capital Costs that are not included in the then-currently approved Capital Budget for the Default Budget then in effect, unless such been approved by PREB.
shall be entitled to withdraw funds from the Capital from time to time as necessary to fund payment for actual Capital Simultaneous with each such withdrawal, Operator shall provide Administrator with written notice of such withdrawal, including a summary of Capital being paid. Not later than ten (10) Business Days following each month end during which funds were withdrawn from the Capital Operator shall furnish Administrator with a full accounting setting forth in reasonable detail the actual Capital Costs
-Storm Reserve Account.
(i) No later than ten (10) Business Days prior to the Service Commencement Date, Owner as directed by Administrator, shall establish one or more storm reserve accounts from which Operator shall draw funds from time to time to pay for costs in connection with a Storm Event ("Storm Costs") incurred by Operator (collectively, the "Storm Reserve Account".
(ii) No later than three (3) Business prior to the Service Commencement Date, Owner shall fund the Storm Reserve Account with an amount equal to \$[•]. Promptly following a withdrawal, Owner shall replenish the Storm Reserve Account so as to maintain an amount equal to \$[•].
(iii) Subject to the terms of this Operator shall be entitled to withdraw funds from the Storm Reserve Account from time to time as necessary to fund payment for Storm Costs. Simultaneous with each such withdrawal, Operator shall provide Administrator with written notice of such withdrawal, including a summary of Storm Costs being paid. Not later than ten (10) Business Days following each month end during which funds were withdrawn from the Storm Reserve Account, Operator shall furnish Administrator with a full

<sup>815</sup> Note to Qualified Respondent: Please indicate a proposed amount.

<sup>916</sup> Note to Qualified Respondent: Please indicate a proposed amount.

accounting setting forth in reasonable detail the actual Storm Costs incurred and paid during the prior month.



Section 7.5 Disallowed Costs.

(a) Generally. In the event that (i) Administrator determines that all or a portion of any Pass-Through Expenditures, Capital Costs, Storm Costs, or Non-Storm Emergency Expenditures incurred by Operator are incurred Operator's or willful misconduct or (ii) FEMA, HUD or a similar Governmental Body (such as COR3 or PRDH) denies reimbursement of all or a portion of Capital Costs, on the
grounds that actions taken by Operator were in violation of any Federal Funding Requirements and such denial becomes final, Operator shall be responsible for such costs (" <u>Disallowed Costs</u> "), and such costs shall not be treated as Pass-Through Expenditures, up to an amount of \$[•] in each Contract Year-
— <u>Disallowed Costs Disputes</u> . In the event that a dispute arises in connection with Disallowed Costs,
Section 7.6 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 funds to pay such costs or expenditures are not available for withdrawal by Operator from the Service Accounts.  the extent such funds are not available for withdrawal by Operator from the Service Accounts, Operator shall take reasonable measures to the continuity of the O&M Services in accordance with the Contract Standards.

<sup>1017</sup> Note to Qualified Respondent: Please indicate a proposed amount.

# ARTICLE 8 CREDIT SUPPORT

Section 8.1			Operator shall cause
	1 1	provided on or prior the throughout the	
Section 8.2 Gua furnish Administrator: (i) v	_	after the end of	• Operator shall
unaudited balance sheets of	of Guarantor at t	he end of each such	, a copy of the
	ed twenty (120) days a dited balance sheets of lated audited statemen	Guarantor at the tts of income, changes	_
present, in all material respective and cash flows of to in such financial statements the United States statements shall reflect the periods involved, except as foregoing, Operator shall national stature in the United Status	Guarantor as at the ents, all in accordance e consistent applications disclosed in the notes provide an opinion the ited States e. If applicable, Operates and other documents	consistent of such accounting sto such financial statement of an independent of Shall also furnish A of Guarantor files	and for the periods referred accounting principles in the applied. Such financial principles throughout the tements. In addition to the dent public accountant of engaged by administrator copies of the ed with the U.S. Securities
	_		

# 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 Applicable Law.

#### **Section 9.2 Anti-Corruption and Sanctions Laws.**

- (a) Anti-Corruption. Neither Operator, its subsidiaries, any director, officer or employee of Operator or its subsidiaries, nor, in connection with this Agreement or the O&M Services; any Affiliates or directors, officers or employees of any Affiliates of Operator shall violate, conspire to violate, aid and abet the violation of, or be convicted of violating or admit culpability in respect of, any (i) 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") or (ii) criminal laws or regulations. No funds transferred, directly or indirectly, by Owner to Operator shall be transferred by Operator, directly or indirectly, in violation of any Anti-Corruption Laws or any criminal laws or regulations. 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) <u>Sanctions</u>. Neither Operator nor its subsidiaries, nor, in connection in any way with this Agreement or the O&M Services , its Affiliates or any director, officer or employee of Operator, its subsidiaries or its Affiliates, shall 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, directly or indirectly, by Owner to Operator shall be transferred by Operator, directly or indirectly, to a Sanctioned Person or in violation of Sanctions.
- (c) <u>Policies and Procedures</u>. Operator and its subsidiaries shall maintain and implement policies, procedures and controls reasonably designed to ensure compliance by Operator and its subsidiaries with the Anti-Corruption Laws, Sanctions and criminal laws and regulations. Operator shall include in all invoices to Administrator a written certification substantially in the form of Exhibit D (*Form of Anti-Corruption Certification*), and acknowledges that any invoice not including such certification will not be accepted by Operator. 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 D (*Form of Anti-Corruption Certification*).
- (d) <u>Notice</u>. Operator shall immediately notify Administrator in writing pursuant to Section 20.2 if (i) Operator, its subsidiaries, any director, officer or employee of Operator or its subsidiaries, or, in connection with this Agreement or the O&M Services, any Affiliates or directors, officers or employees of any Affiliates of Operator violates any of the provisions of this Section 9.2 or (ii) to Operator's knowledge, Operator, its subsidiaries, any director, officer or employee of Operator or its subsidiaries, or, in connection with this

Agreement or the O&M Services, any Affiliates or directors, officers or employees of any Affiliates of Operator becomes subject to any investigation by law enforcement or regulatory authorities in connection with the Anti-Corruption Laws, Sanctions or criminal laws or regulations.

- (e) <u>Practice of Engineering, Architecture and Other Professions in the Commonwealth</u>. 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 ("<u>Act 173</u>"), then (i) Operator shall comply (and shall require its subcontractors or agents, if any, to comply) with Act 173 and (ii) Operator shall monitor compliance by its subcontractors and agents with Act 173.
- (f) <u>Contractor and Supplier Contracts</u>. To the extent permitted by Applicable Law, Operator shall include the provisions of this Article 9 and Exhibit B in every subcontract and supply contract in order for such provisions to be binding on each subcontractor or supplier.
- (g) <u>Local Goods and Services</u>. As required by Article 10 of Act No. 14 of the Legislative Assembly of Puerto Rico, enacted on January 8, 2004, Operator shall use, to the extent available and applicable to the services provided hereunder, and to the extent permitted by Applicable Law and the Federal Funding Requirements, 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 9.3 Non-Discrimination Laws.**

- (a) Generally. Operator shall comply with all Applicable Law regarding non-discrimination, including: (i) the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq. (1981); (ii) the Civil Rights Act of 1991, P.L. 102-166; (iii) Executive Order Number 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000(e) note, as amended by Executive Order Number 11375, 32 Fed. Reg. 14,303 (1967) and by Executive Order Number 12086, 43 Fed. Reg. 46,501 (1978); (iv) the Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1981); (v) the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34 (1967); (vi) the Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794 (1981); (vii) the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (1990); (viii) Act No. 100 of the Legislative Assembly of Puerto Rico, enacted on June 30, 1959, 29 P.R. Laws Ann. § 146 et seq.; (ix) Act No. 17 of the Legislative Assembly of Puerto Rico, enacted on April 22, 1988, 29 P.R. Laws Ann. § 155 et seq.; and (x) Act No. 69 of the Legislative Assembly of Puerto Rico, enacted on June 6, 1985, 29 P.R. Laws Ann. § 1321 et seq.
- (b) The Americans With Disabilities Act. Pursuant to federal regulations promulgated under the authority of the Americans With Disabilities Act, 28 C.F.R. § 35.101 *et seq.*, Operator understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Agreement or from activities provided for under this Agreement on the basis of the disability. Operator agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of the Americans With Disabilities Act that are applicable to all benefits, services, programs and activities provided by Owner through contracts with outside contractors.

- Section 9.4 Commonwealth Non-Discrimination/Sexual Harassment Clause. Pursuant to Act No. 100 of the Legislative Assembly of Puerto Rico, enacted on June 30, 1959, 29 P.R. Laws Ann. § 146 *et seq.* (Non-Discrimination Act), Act No. 17 of the Legislative Assembly of Puerto Rico, enacted on April 22, 1988, 29 P.R. Laws Ann. § 155 *et seq.* (Sexual Harassment Act) and Act No. 69 of the Legislative Assembly of Puerto Rico, enacted on June 6, 1985, 29 P.R. Laws Ann. § 1321 *et seq.* (Sexual Discrimination Act), Operator agrees as follows during the Term:
- (a) <u>No Discrimination in Hiring</u>. In the hiring of any employees for the manufacture of supplies, performance of work or any other activity required under this Agreement or any subcontract, Operator, any Subcontractor or any Person acting on behalf of Operator or a Subcontractor shall not by reason of gender, race, creed or color discriminate against any person who is qualified and available to perform the work to which the employment relates.
- (b) <u>No Discrimination Against Employees</u>. Neither Operator nor any Subcontractor nor any Person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under this Agreement on account of gender, race, creed or color.
- (c) <u>Sexual Harassment Policy</u>. Operator and all Subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- (d) <u>No Discrimination Against Subcontractors</u>. Operator shall not discriminate by reason of gender, race, creed or color against any Subcontractor or supplier who is qualified to perform the work to which the contract relates.
- (e) <u>Subcontractor Obligations</u>. Operator shall include the provisions of this Section 9.4 in every subcontract so that such provisions shall be binding upon each Subcontractor.
- **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, it becomes delinquent in the payment of Taxes imposed by 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 (a) certified that it has complied and is in compliance with the provisions of the

Public-Private Partnerships Authority's Ethical Guidelines and (b) delivered the Sworn Statement herewith.

**Section 9.8 Duty to Inform of Criminal Investigations**. Operator shall inform Administrator if, at any time during the Term, it becomes 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.

**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 T&D System.

# ARTICLE 10 INSURANCE

Section 10.1 Generally.
the Term and and for such additional periods as may be specified, Operator
shall, provide and maintain in effect, and cause any
performing any of the O&M Services to maintain in effect, for the benefit of Owner
and Operator, as applicable, the insurance policies and limits of coverage specified in
Annex XIII (Insurance Specifications), and such additional coverage as may be required by
Applicable Law and those that a prudent Person in the business of operating and managing the
T&D System 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 I (Scope of Services).
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. Any such waiver shall be effective only so long as such
insurance shall not be available at commercially reasonable rates; provided that during the period
of such waiver, Operator maintains the maximum amount of such insurance otherwise available at
commercially reasonable rates
Section 10.3 Additional Named Insureds. Operator and Operator Indemnitees shall be
included as additional named insureds, where applicable, including in Annex XIII ( <i>Insurance</i>
Specifications), along with waivers of subrogation on any Required Insurance policies, which
policies shall require thirty (30) days' prior written notice to Administrator prior to the effective
date of any change in or non-renewal or cancellation of such policies. Insurance coverage required
pursuant to this Section 10.3 shall be maintained with generally recognized financially responsible
insurers and qualified and authorized to insure risks in the Commonwealth.

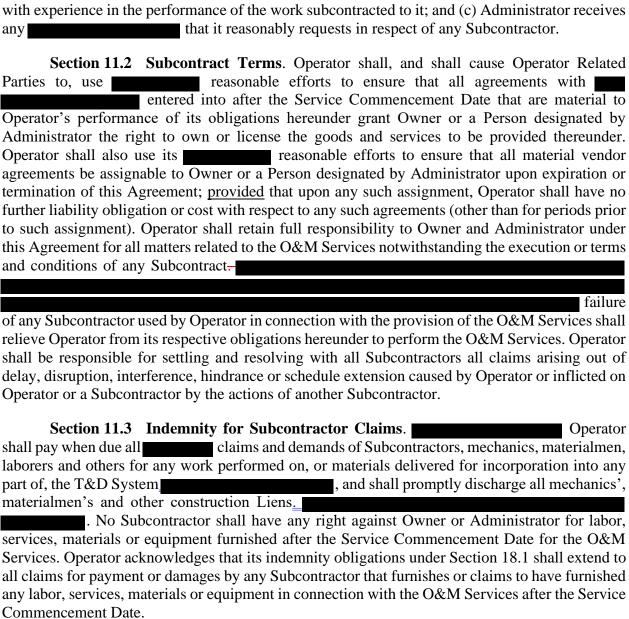
**Section 10.4 Warranties**. Operator shall maintain and enforce any warranties or guarantees on any facilities, vehicles, equipment or other items owned or leased by Owner (to the extent made known to Operator), or purchased or leased on behalf of Owner and used by Operator in performing O&M Services 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.

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 sixty (60) days prior to the beginning of each Contract Year throughout the Term, 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 or require the Subcontractor to obtain and maintain insurance in accordance with the applicable requirements of Annex XIII (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 and shall not constitute a waiver of any of the requirements in this Article 10.

#### ARTICLE 11 SUBCONTRACTORS

Section 11.1 Ability to Subcontract. Operator shall have the right to engage Subcontractors to perform the O&M Services. Operator shall ensure that: (a) any Subcontractor engaged by it exercises due diligence in the performance of the services subcontracted to such Subcontractor; (b) any Subcontractor performing O&M Services shall be a licensed professional with experience in the performance of the work subcontracted to it; and (c) Administrator receives any that it reasonably requests in respect of any Subcontractor.



**Section 11.4** Assignability. All contracts entered into with Subcontractors by Operator, and all warranties and other rights related thereto, with respect to the T&D System shall be assignable to Administrator or a Person designated by Administrator, solely at Administrator's election and without cost or penalty, at the end of the Term or in the event that Administrator takes

over from Operator the performance of the services that were subcontracted and each Subcontractor shall acknowledge in writing the rights of Administrator to take such assignments.

#### ARTICLE 12 TAXATION

Section 12.1 Withholding Tax. Owner shall be entitled (a) to 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 (b) to request any necessary Tax forms or 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.

### Section 12.2 Tax Obligations.

- (a) <u>Payment of Taxes</u>. Operator and each of its subsidiaries (including ServCo) 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 respects.
- (b) <u>Tax Deductions</u>. Operator and each of its subsidiaries (including ServCo) 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

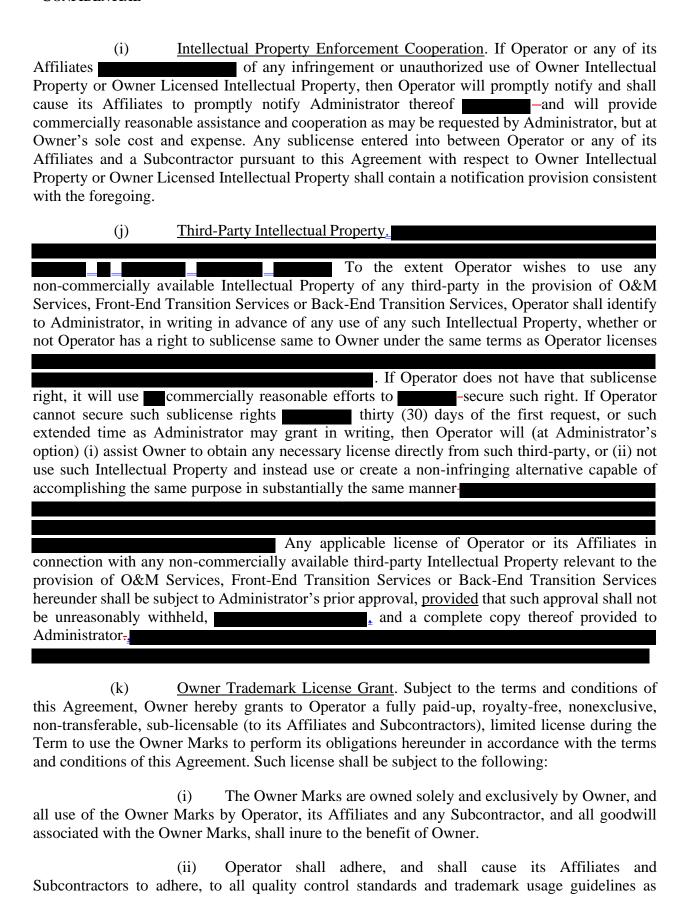
# **Section 13.1 Intellectual Property.**

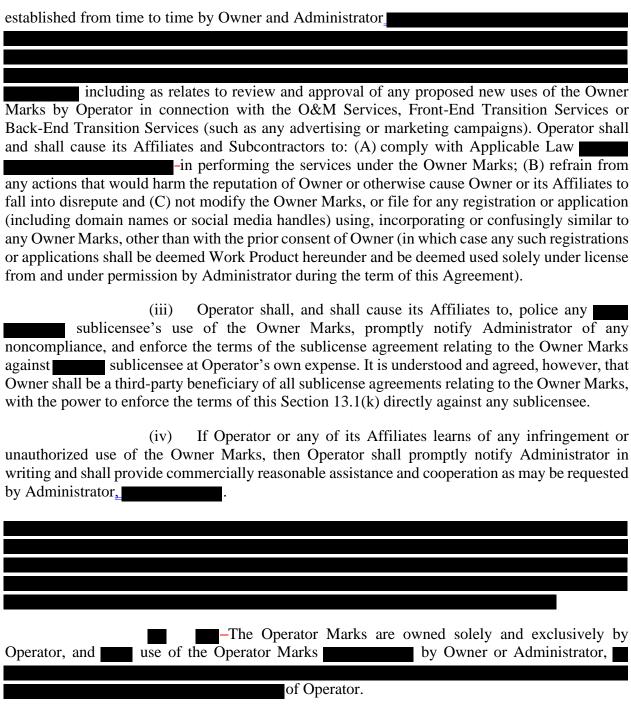
that, as between them, and whether or not specifically recognized or perfected under any
Applicable Law, shall own all right, title and interest in and to all Intellectual Property, and derivatives thereof, regardless of format, first created or produced under this Agreement or otherwise arising in connection with the performance of the O&M Services, Front-End Transition Services or Back-End Transition Services by Operator and its Affiliates and, to the extent the applicable third-party contracts so
provide, any of their Subcontractors
<u>"Work Product"</u> ), all of which shall, to the fullest
extent under Law, be considered works made for hire.
Operator shall (i) use commercially reasonable efforts to ensure
that relevant third-party contracts with Subcontractors properly reflect Owner's ownership of
Work Product pursuant to the preceding sentence, and (ii) in any event, ensure that third-party contracts with Subcontractors properly reflect the grant of licenses from such Subcontractors
pursuant to Section 13.1(b).
Subcontractor refuses to include such a provision in a relevant third-party contract, Operator shall
notify Administrator and, at Administrator's request,
Operator shall not use such Subcontractor for the provision of the O&M Services, Front-End Transition Services or Back-End Transition Services.
OXIVI Services, Pront-End Transition Services of Back-End Transition Services,
Whether or not any Work Product constitutes a work made for hire, all Work Product shall be the Intellectual Property of Owner, which shall have the sole right to obtain or claim Patent (pursuant
to Section 13.1(c)), Copyright, Trademark and any other Intellectual Property rights therein, and to otherwise preserve its rights in and to the Work Product.
(h) Due Evictine Intellectual Duenouty, Any Intellectual Duenouty, expend by
(b) <u>Pre-Existing Intellectual Property</u> . Any Intellectual Property owned by Operator or its Affiliates on one hand, or a Subcontractor on the other hand, that is not Work
Product and is embedded in or otherwise necessary for the
Work Product,

of the T&D System— shall remain the Intellectual Property of the owner (and shall be referred to, as the case may be, as "Operator Pre-Existing Intellectual Property" or "Subcontractor Pre-Existing Intellectual Property", as the case may be). Except as Administrator and Operator may otherwise mutually agree,  Affiliates hereby grant to Owner, a non-exclusive, fully paid-up, royalty-free, worldwide reproduce, distribute,  display,—  Operator Pre-Existing Intellectual Property  Operator Pre-Existing
Except as Administrator and Operator may otherwise mutually agree, Operator shall cause its Affiliates to grant to Owner the foregoing license, and Operator shall further cause any of its Subcontractors to grant to Owner a non-exclusive license to Subcontractor Pre-Existing Intellectual Property within the scope of the foregoing grant.
Product  does not automatically vest in Owner, Operator shall transfer and assign and shall cause its Affiliates to transfer and assign and shall use commercially reasonable efforts to cause any of their Subcontractors to transfer and assign, and Operator does hereby assign all right, title and interest (including all Intellectual Property rights————————————————————————————————————
Pursuant to this Section 13.1(c), Operator shall provide all necessary assistance for Owner to obtain, sustain and, from time to time, enforce such Owner Patents. Such assistance shall be at Owner's sole cost and expense.

(d) <u>License of Owner Intellectual Property</u>. Subject to the terms and conditions of this Agreement, Owner hereby grants, and shall cause its Affiliates to grant to Operator and its Affiliates a fully paid-up, royalty-free, nonexclusive, non-transferable, sub-licensable (only to

Subcontractors), limited license during the Term, including for purposes of performing services under Section 17.2 hereof, to make, have made, use, execute, sell, offer for sale, export, import, reproduce, distribute, perform, display and create derivative from the Owner Intellectual Property, and to the extent sub-licensable, Owner Licensed
Intellectual Property, each solely as necessary to perform their obligations pursuant to this Agreement. The use of Owner Licensed Intellectual Property shall be subject to the license terms governing such use of third-party Intellectual Property. To the extent any Owner Licensed Intellectual Property cannot be licensed to Operator or its Affiliates or their Subcontractors for any reason, then Operator or its Affiliates or their Subcontractors must promptly, obtain their own third-party license for the
relevant Intellectual Property .
(e) Operator Restricted Uses. Operator shall not and shall ensure that its Affiliates do not sublicense, rent, lease, distribute or otherwise authorize the use of Owner Intellectual Property or Owner Licensed Intellectual Property to or by or on behalf of anyone other than Operator and its Affiliates, and the Subcontractors, for purposes of this Agreement, and otherwise shall not use Owner Intellectual Property or Owner Licensed Intellectual Property for any other purpose.
(f) Reverse Engineering. Operator shall not, and shall ensure that its Affiliates do not, and shall ensure that the Subcontractors do not, decompile, disassemble or reverse engineer any Software that is part of any Owner Intellectual Property or Owner Licensed Intellectual Property, or provide any third-party with access to any such Software (including any source code therein) without Administrator's advance written consent, which may be withheld in Administrator's sole discretion;
(g)
Operator shall be responsible for
compliance by with the terms and conditions of this Agreement and this Section 13.1 as if undertaken by Operator.
(h) Third Party Panafiaiary Operator agrees to enforce and shall cause all of
(h) Third-Party Beneficiary. Operator agrees to enforce, and shall cause all of its Affiliates to enforce, the terms of the sublicense agreement with respect to Owner Intellectual Property or Owner Licensed Intellectual Property against the sublicensee. It is understood and agreed, however, that Owner shall be a third-party beneficiary of all sublicense agreements relating to Owner Intellectual Property and Owner Licensed Intellectual Property, with the power to enforce relevant terms directly against any sublicensee. Each sublicense will include a provision that, in the event terminates, at Administrator's option, the sublicense shall become a direct license with Owner or Owner's designees.

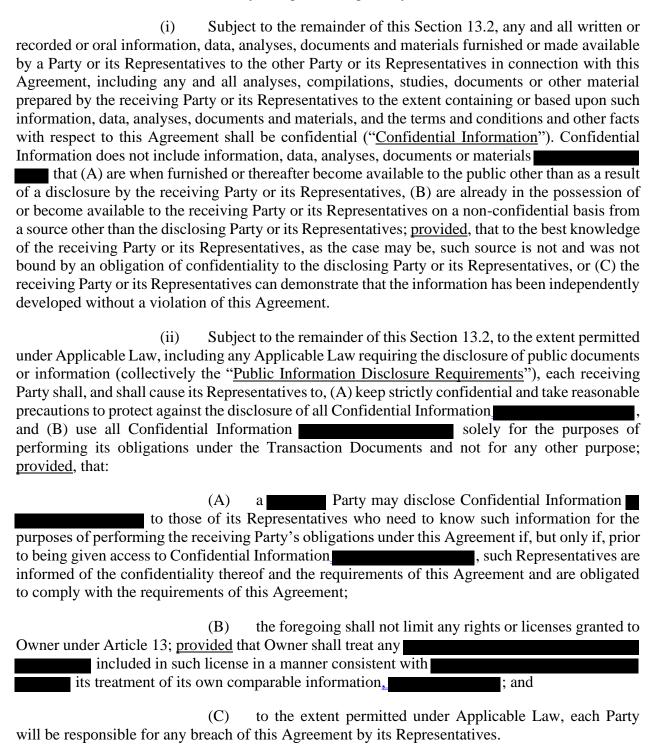




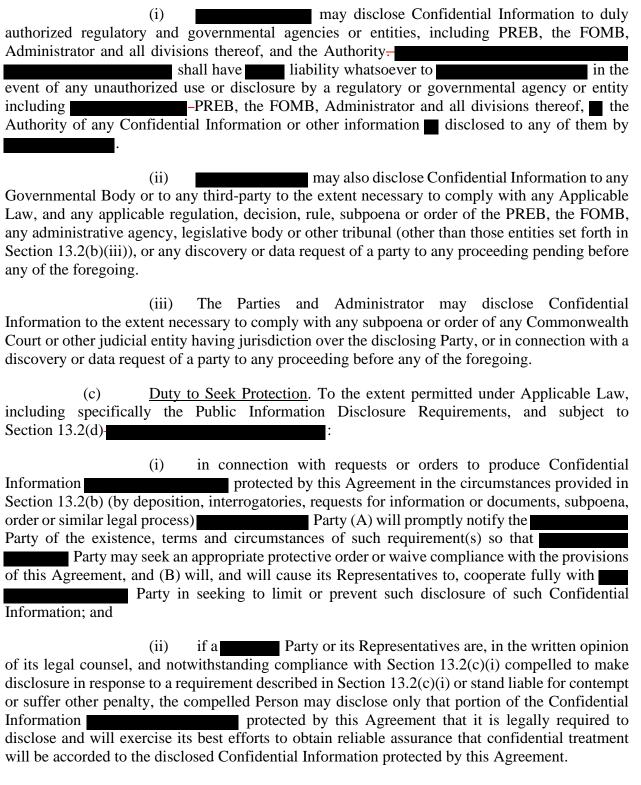
(l) Other. Notwithstanding anything to the contrary in this Agreement, any non-compliance, error or mistake of either Party with respect to any of its obligations under Section 5.13 or this Section 13.1 shall not constitute an event of default or a breach under this Agreement if such non-compliance, error or mistake is (i) inadvertent, (ii) does not have, or would not reasonably be expected to have, a material and adverse effect on the performance by the either Party of its obligations under this Agreement and (iii) is cured within thirty (30) days of such Party becoming aware of such non-compliance, error or mistake.

#### **Section 13.2 Proprietary Information.**

(a) <u>Confidentiality Obligation; Regulatory Disclosure.</u>



#### (b) Permitted Disclosures.

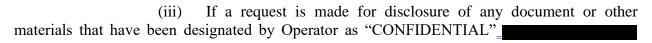


(d) <u>Ownership and Return of Information</u>. Subject to the remainder of this Section 13.2, Confidential Information shall be and remain the property of the Party providing it.

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 of use 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.

#### (e) Public Information Disclosure Requirements-Related Obligations.

- (i) Operator acknowledges and agrees that any documents or other materials, including any records, work product, books, papers and any other supporting documentation relating to this Agreement, and Operator's and any such Persons' performance hereunder, maintained by Operator and its Representatives or Affiliates, in Owner's possession may be considered public information subject to disclosure in accordance with applicable Public Information Disclosure Requirements.
- (ii) Operator may designate conspicuously any documents or other materials that it believes contain trade secretification that would be exempted from disclosure in response to a public records request under applicable Public Information Disclosure Requirements by placing "CONFIDENTIAL" in the header or footer of such page or record affected. Any such designation of trade secret or other basis for exemption shall be accompanied by a concise statement of reasons supporting the claim including citation to the specific authorization for exemption from disclosure under the Public Information Disclosure Requirements.



then Owner will notify Operator and may request advice from Owner's counsel before disclosing any such documents in accordance with Applicable Law, including any 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 (if any). Notwithstanding the foregoing, it is the responsibility of Operator to monitor requests for disclosure and proceedings and make timely filings. Owner may make filings of its own concerning possible disclosure; however, Owner is 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

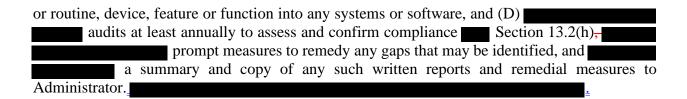
Owner shall not be required to wait for a response before making a

Owner shall not be required to wait for a response before making a disclosure or otherwise taking action under the Public Information Disclosure Requirements.

(B) Under no other circumstances will 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", — the disclosure is —-required by Applicable Law or by an order of court-
(iv) Nothing contained in this Section 13.2(e) 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 will 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").
(v) 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 will 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.
(vi) Operator shall indemnify and hold Owner harmless from and against
any and all
arising out of, relating to or resulting from Owner's refusal to disclose any material that Operator has designated as "CONFIDENTIAL"
disclosed under the Public Information Disclosure Requirements.
(f) <u>Customer Information</u> . Notwithstanding anything contained in this Section 13.2 or otherwise in this Agreement to the contrary, the Parties agree that Operator shall not, and shall ensure that Operator Related Parties do not, use or disclose any Owner Personal Information except as
(g) Owner Confidential Information. Operator acknowledges that in performing the O&M Services, Front-End Transition Services and Back-End Transition Services it will have access to and be providing to Owner information that belongs to Owner. Therefore, notwithstanding anything to the contrary in this Agreement, any information, data, analyses, documents and materials relating to the T&D System, Work Product or relating to the System Information or Customer Database shall be deemed Confidential Information of Owner.

(h) <u>Security</u> .
(i) Operator shall comply with, and shall cause all Operator Related Parties and all Subcontractors to comply with, and shall cause and any data security policies and procedures
of Owner, and all requirements of Applicable Law regarding data security, cyber security and information security, including notification of, with respect to Owner Personal Information and the Confidential Information
Operator shall notify, Administrator (if possible, in
writing) of any
of which it has knowledge, and at Administrator's direction shall perform an analysis of the cause, shall
and shall cooperate fully with any civil or criminal authority in any investigation or action relating to such
-Without limiting the foregoing,Operator shall,
appropriate organizational, administrative, physical and technical measures (in to maintain
the security of and to protect the internal and external integrity of the software, hardware, computer equipment and other information technology used in connection with its business and data contained therein or thereon against any accidental or unlawful use, processing, destruction or accidental loss, alteration, unauthorized disclosure, theft or access (including to any data or information contained in or stored on such systems), (B)
disaster recovery measures—  to safeguard its systems and its ongoing ability to conduct its business and satisfy its contractual access and data retention obligations, including in the event of a disaster, (C) introducing or knowingly permitting the introduction of any virus, worm, bomb, Trojan horse, trap door, stop code or other harmful code, timer, clock, counter or other limiting design, instruction



# ARTICLE 14 EVENTS OF DEFAULT; REMEDIES

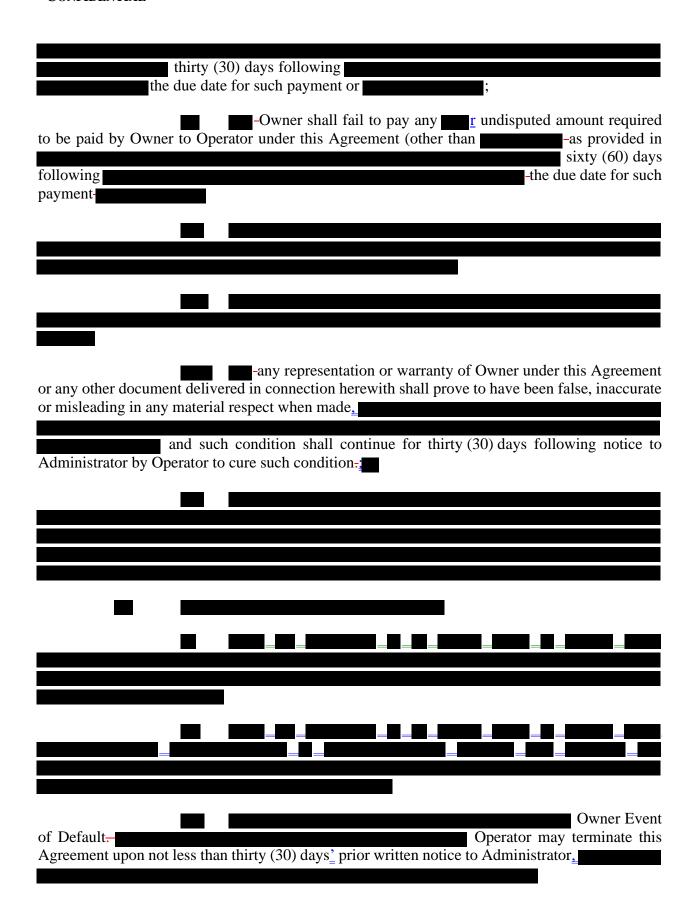
# **Section 14.1** Events of Default By Operator.

(a) <u>Operator Events of Default</u> . Each of the following shall constitute an event of default by Operator (an " <u>Operator Event of Default</u> "):
(i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (A) liquidation, reorganization or other relief in respect of any of Operator, ServCo or Guarantor or its debts, or of a substantial part of its respective assets, under the Bankruptcy Code or (B) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any of Operator, ServCo or Guarantor or for a substantial part 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;
(ii) any of Operator, ServCo or Guarantor shall (A) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under the Bankruptcy Code, (B) 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)(i), (C) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any of Operator, ServCo or Guarantor or for a substantial part of its respective assets, (D) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (E) make a general assignment for the benefit of creditors or (F) take any action for the purpose of effecting any of the foregoing;
(iii) Operator shall fail to provide or maintain in full force and effect, which failure shall not be cured within five (5) Business Days following its occurrence in a manner acceptable to Administrator;
(iv) Operator shall fail to perform any material obligation, covenant, term or condition under this Agreement or, Guarantor shall fail to perform any material obligation, covenant, term or condition under Guarantee (in each case other than a payment obligation as provided in Section 14.1(a)(v)), which failure shall not be cured within days following receipt of written notice thereof from Administrator; provided, however, that as long as Operator or 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 subject to cure, then Operator or Guarantor, as the case may be, shall have an additional thirty (30) days to cure such default;

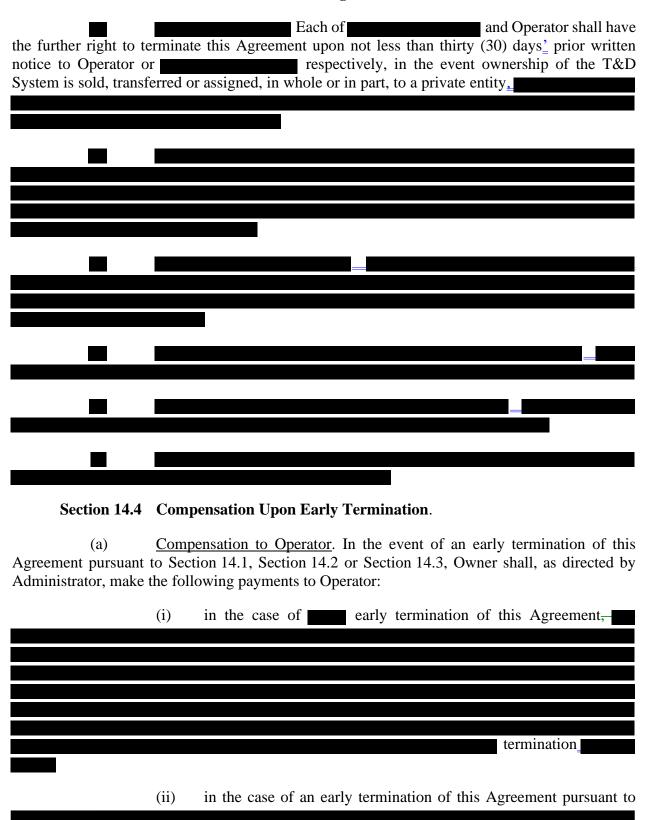
following notice to Operator or Guarantor, as the case may be, by Administrator to cure such failure following the due date for such payment or application;
(vi) any representation or warranty of Operator under this Agreement or
any other document delivered in connection herewith or-  Guarantor under Guarantee shall prove to have been false, inaccurate or misleading in any material respect when made.
such condition shall continue for thirty (30) days following notice to Operator by Administrator to cure such condition;
(vii) Operator to obtain or maintain the Required Insurance, unless such failure due to carrier insolvency and such failure continues for five (following notice by Administrator to Operator to cure such failure;
(viii) a Change of Control of Operator shall have occurred on or after the Date;
(ix) 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 in accordance with the express terms of this Agreement
(x) Operator is determined by a court of competent jurisdiction to have violated any of the provisions of Article 3.2 of Act 2 or is convicted of, or enters a plea of <i>nolo contendere</i> , with respect to any of the crimes listed in Section 19.2(f)(ii) by a court of competent jurisdiction; or
(xi) Operator or its Affiliates shall fail to perform any material obligation, covenant, term or condition under the Servicing Contract, which failure shall not be cured within days following receipt of written notice thereof; provided, however, that as long as Operator or its Affiliates are diligently attempting in good faith to cure such failure and it is reasonably expected that such failure is subject to cure, then Operator or its Affiliates shall

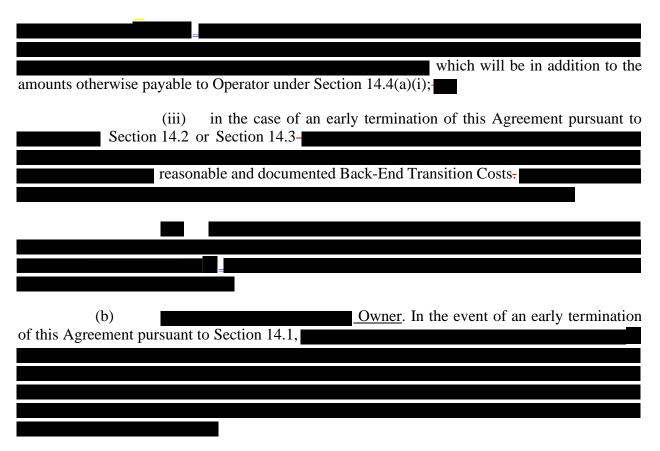
(b) <u>Termination for Operator Event of Default.</u>

(i) Upon the occurrence of an Operator Event of Default under Section 14.1(a)(i), Section 14.1(a)(ii) or Section 14.1(a)(x), this Agreement shall immediately terminate without further action by Administrator.
(ii) Upon the occurrence of any other Operator Event of Default may terminate this Agreement upon not less than thirty (30) days' prio written notice to Operator, subject, to the extent required by Applicable Law, to the prior approvator of PREB or the FOMB (if then in
of tree of the Powd (if then in
Section 14.2 Events of Default By Owner.  (a) Owner Events of Default. Each of the following shall constitute an event of default by Owner (an "Owner Event of Default"):
Owner shall fail to perform any material obligation, covenant term or condition under this Agreement (other than a payment obligation as provided in the payment obligation.
shall not be cured within days following receipt of written notice thereof from Operator; <u>provided</u> , <u>however</u> , that as long as Owner is diligently attempting in good faith to cursuch failure and it is reasonably expected that such failure is subject to cure, then Owner shall have an additional thirty (30) days to cure such default;
Owner shall fail to pay any undisputed Service Fees to be paid to Operator under this Agreement-



#### **Section 14.3 Additional Termination Rights.**



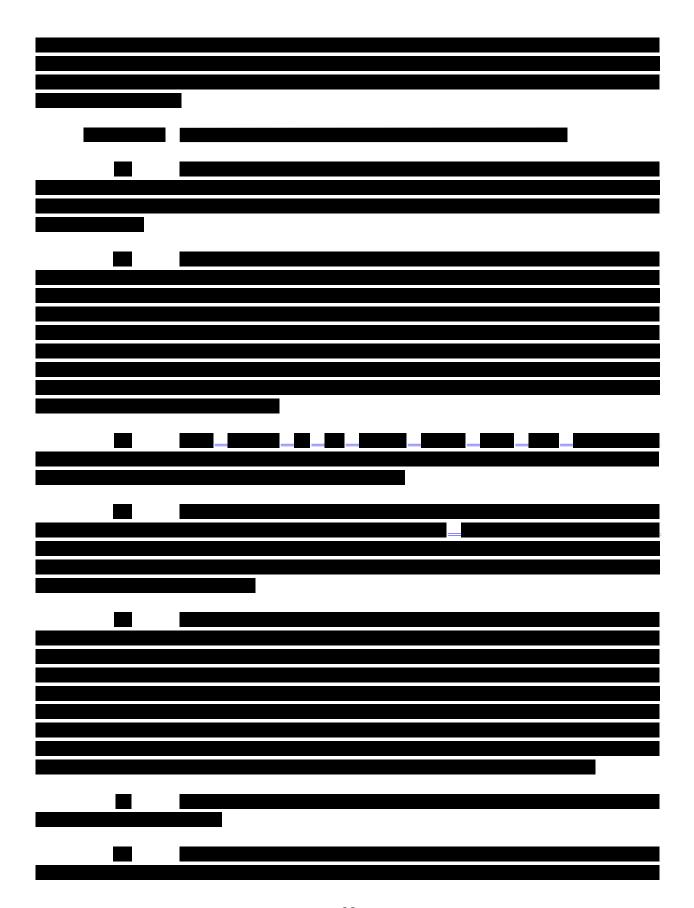


**Section 14.5** Additional Remedies for Breach. The Parties agree that, except as otherwise provided in this Agreement, in the event that either Party breaches this Agreement, the other Party may exercise any rights it has under this Agreement and under Applicable Law to recover damages, secure specific performance or obtain injunctive relief.



# ARTICLE 15 DISPUTE RESOLUTION

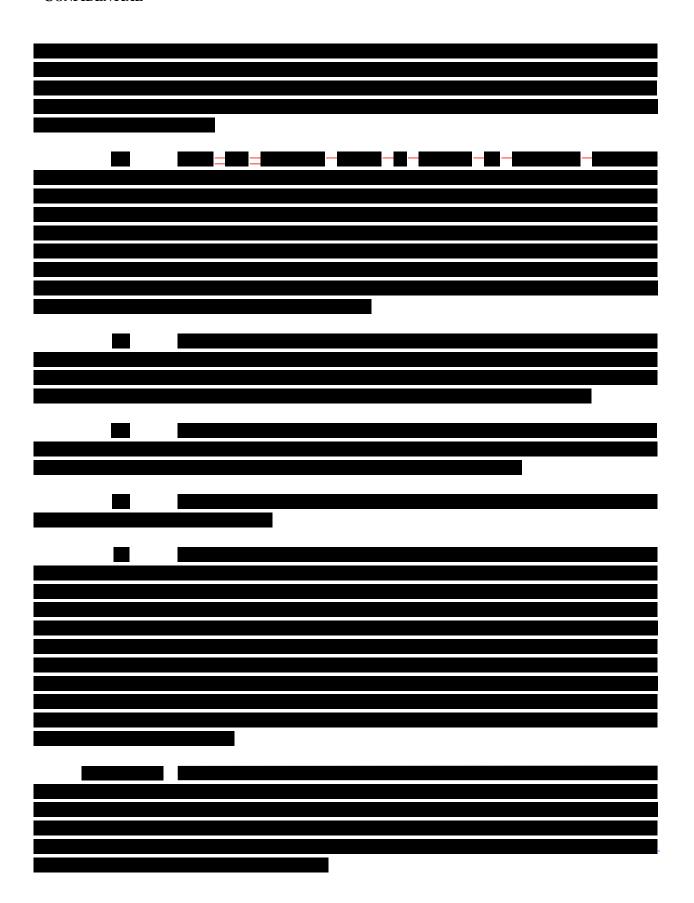
<b>Section 15.1 Scope</b> . Except as otherwise expressly provided in this Agreement, any dispute between the Parties arising out of, relating to, or in connection with this Agreement or the existence, interpretation, breach, termination or validity thereof (a " <u>Dispute</u> ") shall be resolved in accordance with the procedures set forth in this Article 15, which shall constitute the sole and exclusive procedures for the resolution of such Disputes,
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 contemplated by this Article 15 from and after Operator's receipt of notice from Administrator confirming such participation.
Section 15.2
Upon receipt of Dispute from a Party, the Parties will refer the dispute to the Designated Person of each Party. The Designated Persons shall negotiate to resolve the Dispute,
. All communications, negotiations and discussions pursuant to this shall be confidential, and shall be treated as compromise settlement discussions and negotiations and shall not be used, offered or admissible as evidence in any subsequent proceeding without the mutual consent of the Parties.



-Mediation.
thirty (30) days after the
, either Party refer the
Dispute to
through their respective Designated Persons,  If the Parties cannot so agree within thirty (30) days after
. If the Faitles cannot so agree within thirty (30) days after
the Parties y promptly app
to the ICC for appointment of a single mediator accordance with the Mediation Rules.
shall be an atternational to mastice law in the Heited States and
shall be an attorney authorized to practice law in the United States or the Commonwealth. The mediator shall be paid for the mediation services, and shall be reimbursed for all reasonable out-of-pocket costs incurred in carrying out the mediation dutic hereunder, including the costs of consultants. All fees and costs of the mediation (including payment for the services of the mediator and reimbursement of all reasonable out-of-pocket costs.)

mediator's appointment, and shall comply with all procedures the mediator establishes for the conduct of the mediation.

-the within ninety (90) days	the Parties-	Dispute

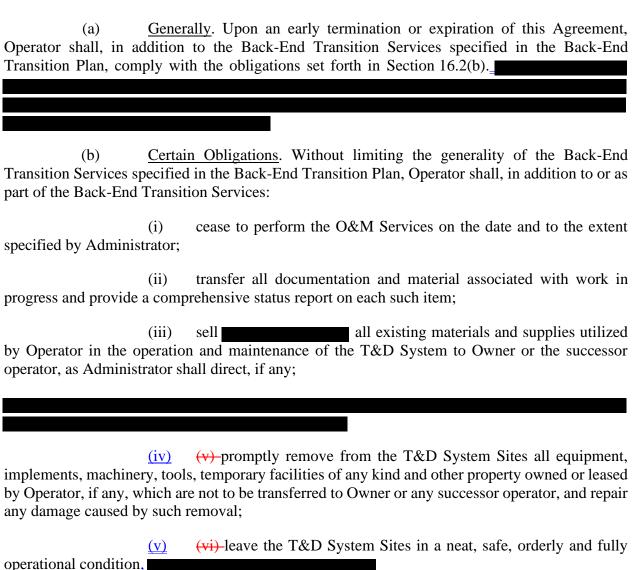


Dravisional Daliaf
-Provisional Relief
emergency or provisional
that may be necessary and that not otherwise available under this Agreement, including temporary and preliminary injunctive relief, restraining orders and other remedies to avoid imminent irreparable harm, provide uninterrupted electrical and other services, or preserve the status quo pending the conclusion of negotiation, mediation or
<u> </u>

### ARTICLE 16 BACK-END TRANSITION

**Section 16.1 Successor Operator**. Following (a) Operator's receipt of Owner's termination notice under Article 14 or Administrator's receipt of Operator's termination notice under Article 14 or (b) the later of (i) the Initial Term or (ii) the Extension Term, 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. Operator shall fully cooperate with Administrator during any such procurement process.

### **Section 16.2 Back-End Transition Services.**

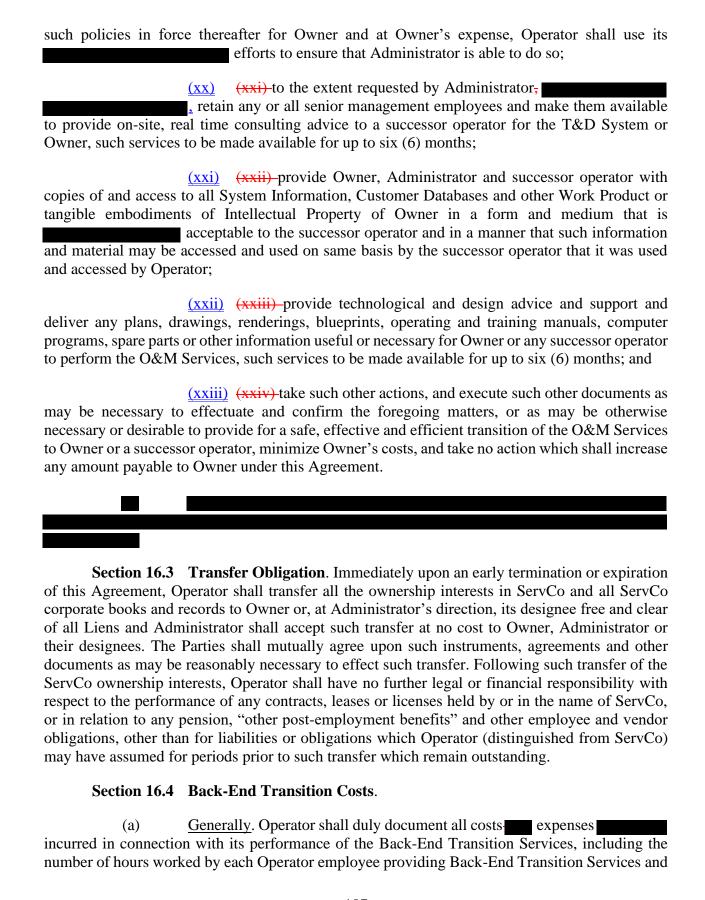


[•] months-worth of consumables and spare parts and return to Owner any non-fixed assets in

good working order and condition;

(vi) (vii)—leave the T&D System Sites with not less than

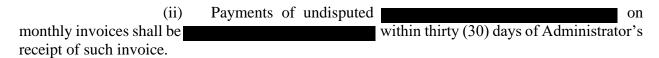
- (vii) promptly remove all employees of Operator and any Subcontractors and vacate the T&D System Sites;
- (viii) (ix) with respect to any ongoing Capital Improvements, promptly deliver to Administrator a list of all supplies, materials, machinery, equipment, property and special order items previously delivered or fabricated by Operator or any Subcontractor but not yet incorporated in the T&D System Sites;
- (ix) (x) deliver to Administrator all computer programs used at the T&D System Sites in the performance of O&M Services, including all revisions and updates thereto;
- (xi) deliver to Administrator a copy of all books, records, customer lists, account information, personnel information, drawings, reports, plans and other data in its possession or control relating to the performance of the O&M Services;
  - (xii) deliver to Administrator current maps of the T&D System;
- (xii) provide Administrator with a list of all files, and access and security codes with instructions and demonstrations which show how to open and change such codes;
- (xiii) (xiv) promptly deliver to Administrator copies of all subcontracts, together with a statement of (A) the items ordered and not yet delivered pursuant to each agreement; (B) the expected delivery date of all such items; (C) the total cost of each agreement and the terms of payment; and (D) the estimated cost of canceling each agreement;
- (xiv) as Administrator shall direct, terminate or assign to Owner all subcontracts and make no additional agreements with Subcontractors with respect to the T&D System without the prior written approval of Administrator;
- (xvi) advise Administrator promptly of any special circumstances that might limit or prohibit cancellation of any subcontract;
- (xvi) (xvii) as directed by Administrator, transfer to Owner by appropriate instruments of title, and deliver to the T&D System Sites (or such other place as Administrator may specify), all special order items pursuant to this Agreement for which Owner has made or is obligated to make payment;
- (xvii) (xviii) promptly transfer or assign to Owner all warranties given by any manufacturer or Subcontractor with respect to particular components of the O&M Services;
- (xviii) (xix)—notify Administrator promptly in writing of any legal proceedings against Operator by any Subcontractor or other relating to the termination of the O&M Services or any subcontracts;
- (xix) (xx)-provide promptly written notice of termination, effective as of date of termination of this Agreement, under each policy of Required Insurance (with a copy of each such notice to Owner and Administrator); provided that if Administrator elects to continue



the actual base hourly wage of such employee (collectively, the "<u>Back-End Transition Costs</u>"). In the case of expiration or an early termination of this Agreement pursuant to Section 14.2 or Section 14.3 only, Owner, shall, as directed by Administrator, reimburse Operator for reasonable and documented Back-End Transition Costs in accordance with Section 16.4(b).

#### (b) Invoices.

(i) By no later than the tenth (10<sup>th</sup>) day of each month during which Operator is performing the Back-End Transition Services, Operator shall provide Administrator with a monthly invoice describing in reasonable detail the prior calendar month's Back-End Transition Services and the corresponding Back-End Transition Costs for such prior calendar month. All invoices shall comply with the requirements set forth in Section 9.2(c) hereto.



(iii) Operator shall provide promptly to Administrator such additional supporting documentation evidencing the provision of Back-End Transition Services, if any, and the calculation of Back-End Transition Costs 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 submitted for resolution as provided in Article 15.

# ARTICLE 17 FORCE MAJEURE EVENTS

# Section 17.1 Notice; Mitigation.

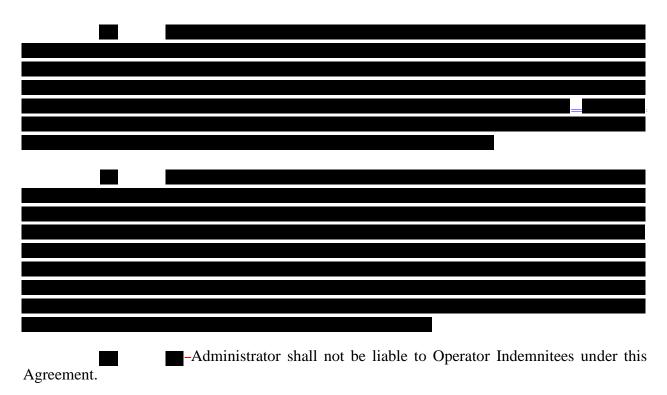
(a) Notice The Party claiming a Force Majeure Event (the "Claiming Party") shall notify the other Party in writing, on or promptly after the date it first followed within five (5) by a written description of (i) the Force Majeure Event and the cause thereof (to the extent known), (ii) the date the Force 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 will be affected, and the impact, if any, on any scheduled completion dates for Capital Improvements, and (iv) mitigating actions that the Claiming Party has taken or proposes to take in order to reduce the impact of the Force Majeure Event-
(b) Militarian Whanavan a Farra Mairra Farra dall area da Citati
(b) <u>Mitigation</u> . Whenever a Force Majeure Event shall occur, the Claiming Party shall, as promptly as reasonably possible, use its 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 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 17.1.
(d) <u>Notice of Cessation of Force Majeure Event</u> . The Claiming Party shall
promptly (but in no event later than thereafter) provide notice to
the other Party as soon as the Force Majeure Event has been ceased and no longer prevents it from
complying with its obligations under this Agreement, and shall promptly thereafter resume
compliance with this Agreement.
Section 17.2 Relief.
(a) Compally If and to the systems a Force Majorine French intenferor
(a) <u>Generally</u> . 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 17.1, such Party shall be
excused from performance and in the event Operator is such party, shall also be
any affected Performance Metrics-
. The occurrence

of 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—(ii)
any obligation hereunder not affected by the occurrence of the Force Majeure Event.
(b) Extended Event. 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, and a Party has giver timely notice and description as required by Section 17.1, Administrator and Operator shall negotiate in good faith to determine whether modifications to the Service Fee, Term or other provisions of this Agreement are appropriate under the circumstances; provided that any such modifications shall (i) in Administrator's sole judgment, not jeopardize the tax exempt status of Owner's indebtedness, (ii) be subject to approval by PREB in accordance with Applicable Law and (iii) otherwise comply with Applicable Law.

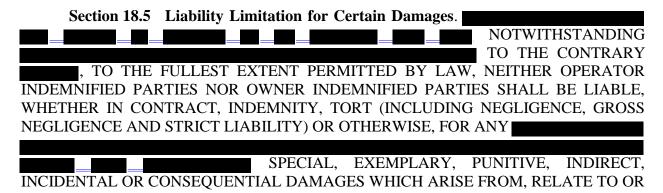
# ARTICLE 18 INDEMNIFICATION

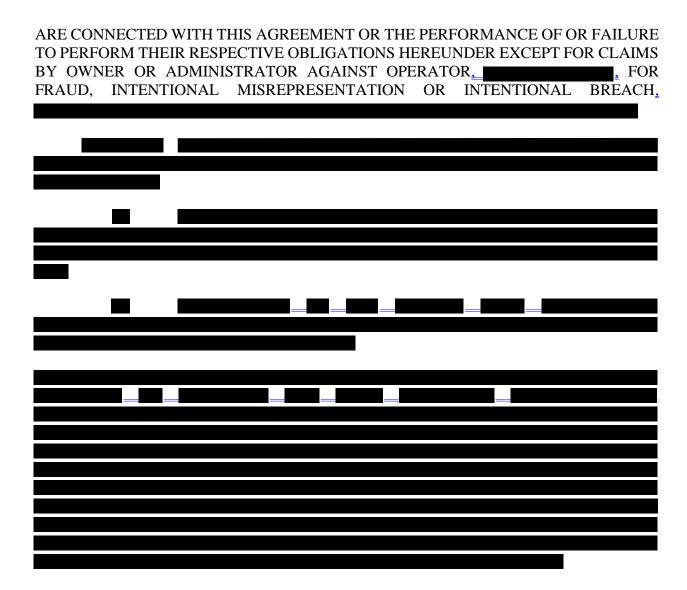
Section 18.1 Indemnification by Operator.
Operator shall indemnify, defend and hold harmless Owner,
Administrator and their respective ——Representatives (each, an "Owner Indemnitee"), from and against (and pay the full amount of any and all Losses ——incurred by an
from and against (and pay the full amount of) any and all Losses incurred by an Owner Indemnitee
Owner indemnitee
or willful
misconduct of Operator Indemnitees 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. Notwithstanding the foregoing, Operator shall not be required to reimburse or indemnify
any Owner Indemnitee for any Losses to the extent caused by negligence
or willful misconduct of any Owner Indemnitee or to the extent attributable to any Force
Majeure Event. An Owner Indemnitee shall promptly notify Operator 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. These indemnification provisions are for
the protection of Owner Indemnitees only and shall not establish, of themselves, any liability to
The provisions of this Section 18.1 shall
survive termination of this Agreement.
survive termination of this Agreement.
Section 18.2 Indemnification by Owner.
Owner shall indemnify, defend and hold harmless Operator and its Affiliates and
Representatives (each, an "Operator Indemnitee"), from and against (and pay the full amount of)
any and all Losses incurred by an Operator Indemnitee
or in connection with
any Losses for claims of any nature based on events or circumstances to the extent arising
prior to the Service Commencement Date-
negligence or willful misconduct of Owner Indemnitees in connection with this
Agreement;
claims brought by
ServCo employees or former employees with respect to benefits under ServCo's pension or other

employee benefit plans-:
Owner's indemnification obligations
hereunder shall not be limited by any coverage exclusions or other provisions in any insurance
policy maintained  Owner which is intended to respond to such events. Notwithstanding the foregoing, Owner shall not be required to reimburse or indemnify any Operator Indemnitee for
any Losses to the extent caused by the or willful misconduct of
any Operator Indemnitee or to the extent attributable to any Force Majeure Event. An Operator
Indemnitee shall promptly notify Owner 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. These indemnification provisions are for the protection of Operator
Indemnitees only and shall not establish, of themselves, any liability to
The provisions of this Section 18.2 shall survive termination of this Agreement.
Section 18.3 Limitation on Liability. Notwithstanding anything contained in this
Agreement to the contrary:



**Section 18.4 Insurance Recovery**. 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 three (3) 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 its commercially reasonable efforts to recover under insurance policies or indemnity, contribution or other similar agreements other than this Agreement for any Losses to the same extent such Party would if such Losses were not subject to indemnification, compensation or reimbursement hereunder.





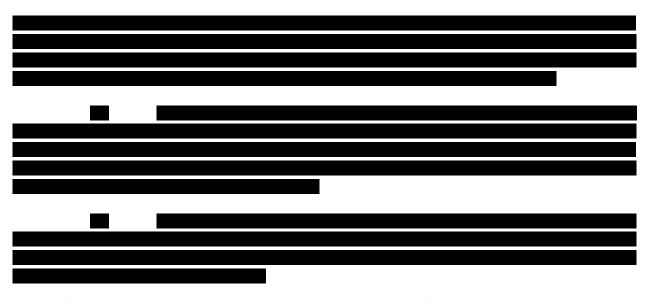
### ARTICLE 19 REPRESENTATIONS AND WARRANTIES

**Section 19.1 Representations and Warranties of Owner**. Owner hereby represents and warrants to Operator that:

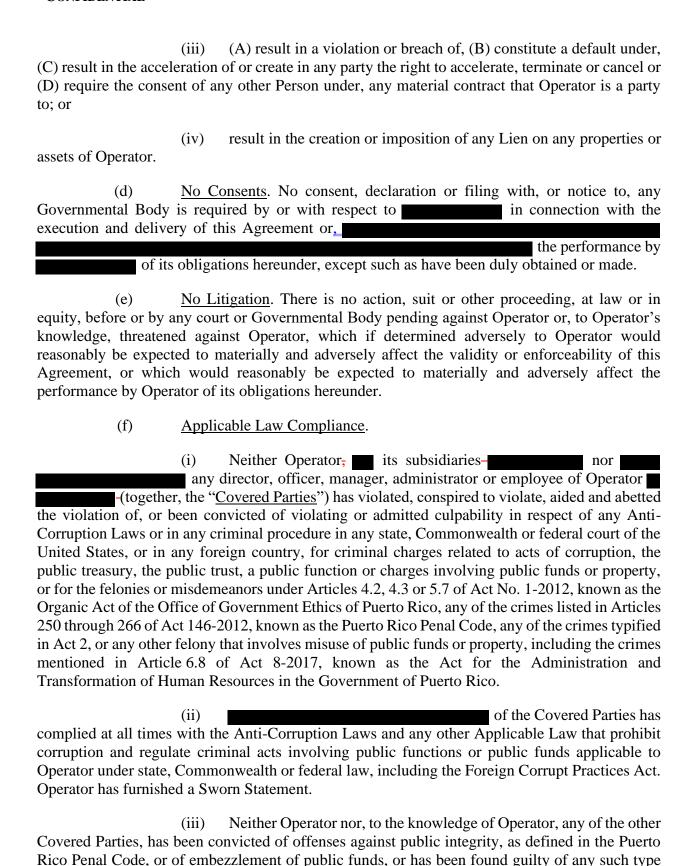
(a) <u>Existence and Powers</u> . Owner is a public corporation and instrumentality of
the Commonwealth duly organized, validly existing and in good standing under the laws of the
Commonwealth. Owner has all requisite corporate power and authority to enter into this
Agreement, carry out its obligations hereunder and consummate the transactions contemplated
hereby.

- 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 all requisite 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) <u>No Conflicts</u>. Neither the execution, delivery or performance by Owner of this Agreement, nor the consummation of the transactions contemplated hereby will:
- (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 that Owner is a party to; or
- (iv) result in the creation or imposition of any Lien on any properties or assets of Owner.
- (d) <u>No Consents</u>. No consent, declaration or filing with, or notice to, any Governmental Body is required by or with respect to Owner in connection with the execution and delivery of this Agreement or the performance by Owner of its obligations hereunder, except such as have been duly obtained or made.

equity, before or by a knowledge, threatened be expected to material	No Litigation. There is no action, suit or other proceeding, at law or in my court or Governmental Body pending against Owner or, to Owner's against Owner, which if determined adversely to Owner would reasonably lly and adversely affect the validity or enforceability of this Agreement, or be expected to materially and adversely affect the performance by Owner obligations hereunder.
	No Legal Prohibition. There is no Applicable Law in effect on the date nibit the execution, delivery or performance by Owner of this Agreement



- Section 19.2 Representations and Warranties of Operator. Operator hereby represents and warrants to Owner that,
- (a) <u>Existence and Powers</u>. Operator is a [●] duly organized, validly existing and in good standing under the laws of
- the Commonwealth. Operator has all requisite corporate power and authority to enter into this Agreement, carry out its obligations hereunder and consummate the transactions contemplated hereby.
- 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 all requisite 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.
- (c) <u>No Conflict</u>. Neither the execution, delivery or performance by Operator of this Agreement, nor the consummation of the transactions contemplated hereby will:
- (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;



of offense in the courts of the Commonwealth, the courts of the United States or any court of any jurisdiction.

- (iv) Operator has not, directly or indirectly, made or received, or will make or receive, any payments in connection with this Agreement or the O&M Services in order illegally or improperly to obtain business or other rights.
- (v) Operator does not have knowledge 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.
- Neither Operator, its subsidiaries, its Affiliate nor any directors, officers or employees of Operators, its subsidiaries or Affiliates is 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"), nor is Parent Company or its subsidiaries 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, and there are not now, nor have there been within the past five years, any formal or informal proceedings, allegations, investigations or inquiries pending, expected or, to the knowledge of Parent Company, threatened against Parent Company, its subsidiaries, or any of their respective officers or directors concerning violations or potential violations of, or conduct sanctionable under, any Sanctions.
- (vii) 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 will subsequently comply with it in its entirety.
- (viii) 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.
- (g) <u>Accuracy of Information</u>. 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.
- (h) <u>Ability to Perform Obligations</u>. Operator has the required authority, ability, skills, access to funds, technical support and capacity to perform all its obligations with respect to

the O&M Services and all of its other obligations under this Agreement, all in accordance with the Transaction Documents.

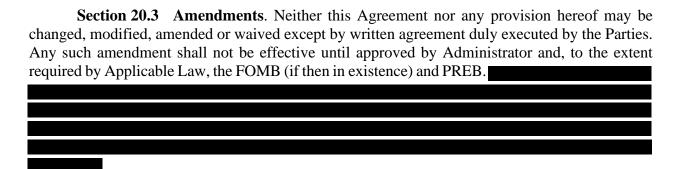
- (i) <u>Knowledge of Requirements</u>. Operator has knowledge in all material respects of all legal requirements and business and engineering practices that must be followed in performing its obligations under this Agreement.
- (j) <u>No Litigation with Owner</u>. Neither Operator nor any of its shareholders or its or their Affiliates are involved in any litigation, arbitration or claim against Owner, Administrator, the Authority, AAFAF, the FOMB-

### ARTICLE 20 MISCELLANEOUS

**Section 20.1 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 this Agreement and the transactions contemplated hereby shall be borne by the Party incurring such costs and expenses; <u>provided</u>, <u>however</u>, 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 will be subject to any rights of such Party arising from a breach of this Agreement by the other Party prior to such termination.

**Section 20.2 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 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 and Administrator at the address, email address set forth below (or at such other address, email address as shall be specified by a Party or Administrator in a notice given in accordance with this Section 20.2):

If to Owner or Administrator:	Puerto Rico Electric Power Authority  [•]  [•]  Attention: [•]  Telephone: [•]  Email: [•]  with a copy to:  Administrator  [•]  [•]  Attention: [•]  Telephone: [•]  Email: [•]
If to Operator:	[•] [•] [•] Attention: [•] Telephone: [•] Email: [•]

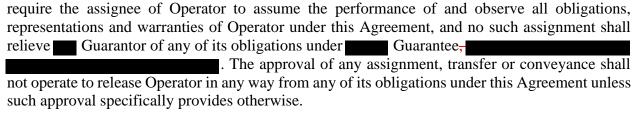


**Section 20.4 Entire Agreement**. This Agreement, together with the appendices, annexes and exhibits attached hereto, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior oral or written agreements, understandings, proposals, representations 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, Operator's Proposal and any amendments or supplements to the RFP or the Proposal.

Section 20.5 Relationship of the Parties. Except as otherwise expressly provided in this Agreement, 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, between the Parties. 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, agent or Representative of Owner. Operator shall be an independent contractor and shall be responsible for and have control over the 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 ServCo, Operator or any of their respective subcontractors, nor to make Operator an alter ego or a successor employer of Owner, and Operator shall act in accordance with the foregoing.

### Section 20.6 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 without the prior written consent of Administrator, ; 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 direct or indirect subsidiary of Parent Company, (B) reasonably 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 approval given in one instance shall not relieve Operator of its obligation to obtain the prior written approval of Administrator to any further assignment. Any assignment of this Agreement that is approved by Administrator shall



(b) <u>By Owner</u>. 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; <u>provided</u>, <u>however</u>, that Owner may, without the prior written consent of Operator, assign or otherwise dispose of any of its rights and obligations hereunder: (1) to Administrator; or (2) with prior approval of the FOMB (to the extent such approval is required by Applicable Law), to another Governmental Body if such assignee assumes, and is reasonably capable of discharging, the duties and obligations of Owner hereunder.

Section 20.7 Interest on Overdue Obligations. Except as otherwise provided herein, all amounts due hereunder, whether as damages, credits, revenue, charges—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 20.8 Waivers. Either Party and 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. No waiver by any Party or Administrator 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 or Administrator 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 or Administrator 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 20.9 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 either 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 20.10 Survival. The rights and obligations of the Parties Section 20.10, Article 13, Article 15, Article 16, Article 18, Article 1 and shall survive the expiration or to Agreement. No expiration or early termination of this Agreement shall (a) limit of the respective rights and obligations of the Parties accrued prior to the date of su (b) preclude either Party from impleading the other Party in any Legal Proceeding third-party as to any matter occurring during the Term.	9. Section 20.2 ermination of this or otherwise affect uch termination or
<b>Section 20.11 No Third-Party Beneficiaries</b> . Unless specifically set Agreement is exclusively for the benefit of Owner, Operator and, where Agreement, Administrator, and shall not provide any claim, liability, reimbursement, cause of action or other rights.	
Section 20.12	
-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 to be one and the same agreement or document. A signed copy of this Agreement or other means of electronic transmission shall be deemed to have the sand delivery of an original executed copy of this Agreement for all purposes.	ent transmitted by
-Governing Law. This Agreement and all controversies, disputes, suits, actions or proceedings arising out of or relating to	

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.

-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.

IN WITNESS WHEREOF, Owner-Operator each has caused this Agreement to be duly executed as of the day and year first above written. PUERTO RICO ELECTRIC POWER AUTHORITY By: Name: Title: [OPERATOR] By: Name: Title:

# Annex I<sup>1521</sup>2223 Scope of Services

This Annex I (Scope of Services) is designed to set forth certain O&M Services in addition to the those contained in Article 5 to the Agreement. This Annex I (Scope of Services) is not intended, nor should it be deemed, to be an exclusive list of O&M Services.

### I. <u>T&D System Operation Services</u>.

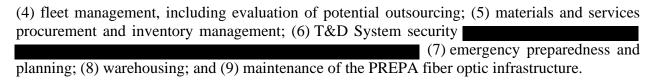
- A. <u>General</u>. Operator shall be responsible for all electric transmission, distribution and load serving activities for the safe and reliable operation and maintenance of the T&D System, including: (1) expansions and replacements to meet the Contract Standards and Owner's then current Integrated Resource Plan; (2) management and performance of construction of improvements thereto, including compliance with approved FEMA scope of work for projects that are eligible for Federal Funding and required maintenance; (3) delivery of Power and Energy to customers, including the implementation of the activities set forth in II.A and B of this Annex I (*Scope of Services*); (4) billing and collections implementation and optimization; (5) maintenance and improvement of public lighting system; (6) maintenance of fiber optic cable structure infrastructure, as set forth in lease agreement between Owner and PREPA Networks; and (7) compliance with interconnection of renewables in accordance with Applicable Law.
- B. <u>Day-to-Day Operation</u>. Operator shall be responsible for the day-to-day operation of the T&D System, including, (1) satisfying customer concerns; (2) physical operation of the T&D System; (3) maintaining T&D System configuration; (4) maintenance of an Open Access Same-Time Information System; (5) optimization of reliability performance goals, cost of generation, cost and impact of planned maintenance and use of load shedding; (6) producing, reviewing and maintaining all operating logs and maintenance records to meet regulatory and contractual requirements; (7) managing control center operations, including generation scheduling and economic T&D System dispatch; and (8) all human resources functions, including training employees.
- C. <u>Engineering Activities</u>. Operator shall be responsible for all engineering activities related to the operation of the T&D System, including: (1) analyses related to, and maintenance of records and standards for design and engineering, design standards, construction standards, system mapping and related information, system performance, reliability, root cause analysis, equipment ratings, customer contact and needs assessment; administration of customer contribution in aid of construction; (2) managing an effective environmental, health and safety program; and

Note to Qualified Respondent: Annex I (Scope of Services) is an indicative outline that remains subject to ongoing review.

- (3) maintenance of environmental, health, safety, regulatory and other compliance and the documentation thereof.
- D. <u>Maintenance of Technical Documentation</u>. Operator shall be responsible for maintenance of revisions to all T&D System drawings, specifications, construction manuals, equipment diagrams and other technical documentation, including: (1) management of T&D System interconnection permit applications and processing thereof (including negotiation and administration of generation interconnection agreements); and (2) preparing capital project close-out reports.
- E. <u>Energy Efficiency Activities</u>. Operator shall be responsible for promoting, administering, planning, developing and implementing energy efficiency, demand response, load management and renewable energy programs and policies for the T&D System as required under applicable law, regulation or the Integrated Resource Plan, including:
- 1. research and demonstration projects for the T&D System and Owner's customers, coordination with third parties or other resources necessary or desirable to develop and implement such programs and responding to customer inquiries with respect to such programs or service; and
- 2. implementing the customer energy efficiency programs and customer-sited renewable energy programs, as well as any other customer incentive programs that are intended to promote (a) customer adoption of energy and/or capacity saving measures; and/or (b) customer-sited green and/or alternative generation or storage technologies (the "Energy Efficiency Programs") pursuant thereto.
- F. <u>Legal Services</u>. Operator shall be responsible for day-to-day legal responsibilities relating to the O&M Services, in coordination with Owner in accordance with processes set forth in this Annex I (*Scope of Services*).
- G. Other. Operator shall be responsible for other activities necessary, appropriate or advisable, including research and development, to safely, reliably and efficiently operate and maintain the T&D System in accordance with the Contract Standards, including cooperation, regarding Operator's performance under the Agreement, with third parties providing services to Owner with respect to Owner's provision of electric service.

### II. Asset Management and Maintenance Services.

A. <u>General</u>. Operator shall be responsible for all maintenance, repairs and replacement of the machinery, equipment, structures, improvements and all other assets of the T&D System in accordance with the Contract Standards, including the following: (1) development and implementation of asset management strategies and risk optimization for combined technical performance, life cycle cost, customer satisfaction and regulatory compliance; (2) real estate management, easements, leases and agreements, pole attachments (including billing and collection for pole attachment fees, as well as maintaining a complete inventory of type and location of each attachment and plans for revenue optimization), joint use agreements and telecommunications for the provision of electric service, including cybersecurity; (3) meter maintenance or replacement;



- B. <u>Inventory Control.</u> Operator shall, consistent with the Contract Standards, the Agreement and this Annex I (*Scope of Services*): (1) maintain an inventory of equipment, spare parts, materials and supplies and shall maintain and document an inventory control program; (2) comply with the inventory policy provided in this Annex I (*Scope of Services*); (3) purchase, maintain and store inventory in a manner also consistent with the system policies and procedures adopted from time to time by Operator in accordance with Prudent Utility Practice and provided in writing to Owner and (4) complete, on an agreed-upon cycle count basis, a physical inventory of the equipment, spare parts, materials and supplies and reconcile the same with the inventory assets carried on the balance sheet and provide the
- C. <u>Fleet Management; Refueling</u>. Operator shall, consistent with the Contract Standards, the Agreement and this Annex I (*Scope of Services*), provide fleet management and vehicle refueling operations, including scheduling of vehicle replacements, specification of technical requirements, compliance with Commonwealth and federal alternative fuel environmental compliance programs, performance of maintenance activities, maintenance of vehicle signage and other similar functions.
- D. <u>Necessary Equipment and Systems</u>. Operator shall, consistent with the Contract Standards, the Agreement and this Annex I (*Scope of Services*), determine, acquire, deploy and maintain tools, equipment and information systems necessary to perform all O&M Services under the Agreement.
- F. <u>Public Lighting</u>. Operator shall be responsible for operating and maintaining the public lighting system, as well as pursuing the installation of highly efficient LED technology.
- III. <u>Continuous Improvement Services</u>. Operator shall be responsible for continuous improvement of the T&D System, including the implementation of the following activities: (i) development and administration of research and development, the goal of which is to increase operational efficiency and effectiveness and improve maintenance practices; (ii) establishing and conducting a continuous improvement program designed to enhance Operator's performance, operational efficiency and the cost effective delivery of services to customers; and (iii) monitoring industry advancements and technological changes in the operation, maintenance, repair and expansion of transmission and distribution systems, including customer care and related services, by electric utilities.

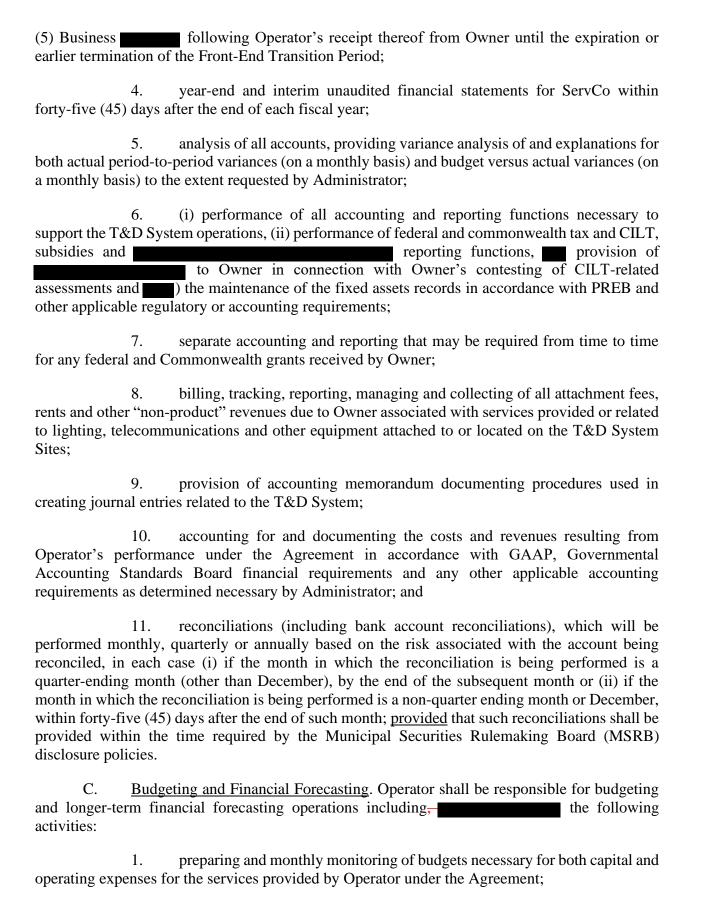
### IV. Government, Community and Media Relations.

- A. <u>General</u>. Operator shall be responsible for (i) conducting government, community and media relations with respect to the management, operation and maintenance of the T&D System in accordance with such policies and procedures as Operator may from time to time adopt in its sole discretion; and (ii) staffing public events and presenting workshops, seminars and similar activities during normal business hours, evenings, weekends and holidays.
- B. <u>Communications</u>. It is the Parties' intention that to enable Operator to effectively communicate with the customers and government officials regarding T&D System matters, Operator shall have direct responsibility for media and other public communications on all utility-related matters, including communications with public officials and local municipalities and counties regarding storm preparation, management, coordination and response, customer communications, 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 under the Agreement.
- C. <u>Government Relations</u>. 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 T&D System and provision of utility-related services by Operator, in accordance with such policies and procedures as Operator may from time to time adopt in its sole and absolute discretion.
- D. <u>Community and Media Relations</u>. Operator shall be responsible for the performance of customer service functions related to the provision of electric service, except as otherwise provided in the Agreement or herein, including the following: (i) achieving a high level of customer satisfaction; (ii) maintaining customer contact; (iii) marketing and sales for retail system expansion, retail customer retention and customer care and service programs; and (iv) performing other activities necessary, appropriate or advisable to implement customer service programs in accordance with E and F of this Annex I (*Scope of Services*), the Contract Standards or as Applicable Law may require.
- E. <u>Customer Satisfaction</u>. Operator shall be responsible for achieving customer satisfaction by performing the following customer service functions at minimum:
- 1. determining the approach and methodology for measuring, monitoring and optimizing customer satisfaction;
- 2. monitoring customer satisfaction results; overseeing the performance of perception-based and transactional-based customer satisfaction surveys for other service providers; interpreting and communicating the results of customer surveys; and coordinating initiatives aimed at improving the product portfolio, service delivery mechanisms and overall customer satisfaction across the full spectrum of services provided, such as system operations and electronic transaction and self-help options, customer interactions and back-office functions.

- F. <u>Customer Contact</u>. Operator shall be responsible for maintaining customer contact by performing the following customer service functions at minimum:
- 1. maintaining customer contact through call centers with toll free service numbers, customer offices, authorized payment centers;
- 2. maintaining and overseeing a customer website and other electronic media, inbound and outbound customer communication systems;
- 3. management of customer loyalty and satisfaction programs, customer services field operations and customer care and institutional communications and responding to customer inquiries regarding services; and
- 4. marketing and sales for retail system expansion, retail customer retention and customer care and service programs, including all aspects of marketing planning and implementation activities, promotion and communications; market research; account relationship management; economic development; field sales; trade ally relations; and demand response, renewable and Energy Efficiency Programs.
- V. <u>Testing, Reports and Records</u>. Operator shall be responsible for (i) preparation of a monthly operations report; (ii) producing and delivering to Administrator information as Administrator may reasonably request to determine Operator's performance under the Agreement and (iii) 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.

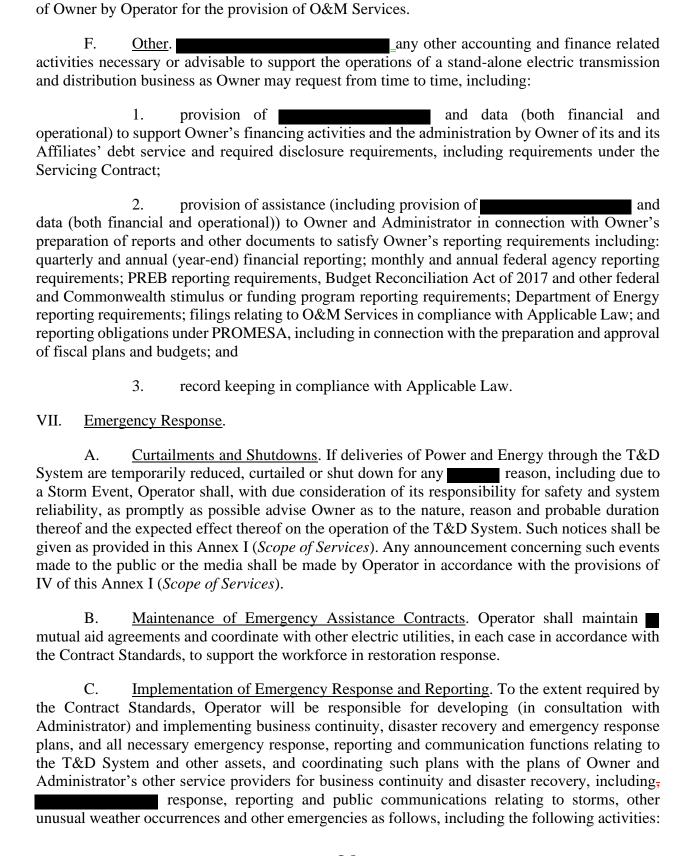
### VI. Finance and Accounting Services.

- A. <u>General</u>. Operator shall be responsible for all finance, accounting, budgeting, longer-term financial forecasting and treasury operations related to the T&D System, including the implementation of the activities set forth in A and F of this Annex I (*Scope of Services*).
- B. <u>Accounting and Reporting</u>. 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, in accordance with GAAP, Governmental Accounting Standards Board financial requirements and other applicable standards;
- 2. maintenance of a general ledger and all subledgers in accordance with PREB regulation and Applicable Law regarding accounts necessary to support the preparation of monthly financial statements and management reports for ServCo;
- 3. on a monthly basis, provision of (i) a balance sheet, an income statement (including a revenue analysis) and a direct method cash flow statement for ServCo, and (ii) budget to actuals analyses to explain the month's results with explanations; in each case not later than five



- 2. analyzing monthly and year-to-date budget to actual variances, and explanations thereof and formulating financial projections based on the variance analyses;
- 3. analyzing revenue and expenditure projections for the annual or multi-year period beyond the period of actual results; and
- 4. preparing and delivering sales, revenues and costs budget input data for the annual budgeting processes, the Integrated Resource Plan and Owner's other long-range financial planning processes.
- D. <u>Auditing</u>. Operator shall be responsible for auditing operations, including the following activities:
- 1. auditing of rents and other revenues due to Owner associated with services provided on or related to lighting, telecommunications and other equipment attached to or located on the T&D System Sites;
- 2. internal audit function to perform annual risk assessment related to the T&D System for the purpose of developing the appropriate risk based audit universe and associated 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;
- 3. provision of all necessary 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
- 4. provision of copies of, and reasonable access to, the risk based audit universe and associated annual audit plan referenced in and the right of Owner to inspect, during normal business hours and upon reasonable prior notice, internal audit reports and recommendations of ServCo and management responses thereto; it being agreed, however, that the foregoing shall be deemed to be Confidential Information and shall therefore not be used by Owner except with respect to any fraudulent conduct or willful misconduct identified in such reports and recommendations.
- E. <u>Treasury</u>. Operator shall maintain customary treasury and cash management operations in accordance with the Contract Standards and be responsible for treasury operations, including the following activities:
- 1. timely and accurate collection of customer remittances and other "non-product" revenue on Owner's behalf through lockbox operations, customer centers and other sources:
- 2. monthly or as requested cash flow projections (including daily, weekly and monthly forecasts of customer cash receipts); and

3.



monthly reconciliations of Owner bank accounts that are managed on behalf

- 1. (i) timely reporting to such Governmental Bodies as may be necessary, appropriate or advisable of such emergency conditions including 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 Owner to exercise proper oversight of Operator's response to emergency conditions;
- 2. storm monitoring and mobilization of Operator or Subcontractor's workforce (including workforce available under any mutual assistance agreements) in connection with anticipated storms and other electrical system emergencies;
  - 3. media, fire, police and government coordination;
- 4. customer communications, including all inbound and outbound customer communication systems;
  - 5. system condition monitoring;
- 6. repair and replacement of damaged components of the T&D System, including due to Non-Storm Emergency Events;
  - 7. public safety activities;
  - 8. restoration of the T&D System to pre-emergency conditions;
- 9. conducting periodic drills (including as required by Applicable Law) to test the validity of emergency response plans and strategies, conduct post-event analysis and incorporate lessons learned from drills and actual events to improve the overall state of readiness, including periodic drills with federal, state, Commonwealth, municipal, local and private critical load stakeholders (including hospital, police, telecommunication, water and sewer and critical manufacturing operations); and
- 10. preparation and analysis of all information and data to support claims for reimbursement from FEMA for costs incurred due to Storm Events.

### VIII. Maintenance.

- A. <u>Generally</u>. Operator shall perform all normal and ordinary maintenance of the machinery, equipment, structures, improvements and all other property constituting the T&D System, keep the T&D System in —operational condition and repair, in a neat and orderly condition and in accordance with the Contract Standards. 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 T&D System and conduct predictive, preventive and corrective maintenance of the T&D System as required by the Contract Standards.
- B. <u>Maintenance Logs</u>. Operator shall keep maintenance logs in accordance with the Contract Standards.

- C. <u>Safety and Security</u>. Operator shall maintain the T&D System with due regard for public health and safety and at a safe level at least consistent with Contract Standards, including, the following:
- 1. taking reasonable precautions in the performance of the O&M Services for the health and safety of all persons working at the T&D System, to prevent damage, injury or loss to the T&D System and to other T&D System property;
- 2. establishing and enforcing all reasonable safeguards for health and safety and protection, including posting danger signs and other warnings against hazards and promulgating safety regulations;
- 3. 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;
- 4. designating qualified and responsible employees whose duty shall be the supervision of plant health and safety, the prevention of fires and accidents and the coordination of such activities as shall be necessary with federal and local officials; and
  - 5. designing and implementing cybersecurity measures in accordance with

# IX. <u>Customer Service</u>.

- A. <u>Generally</u>. Operator shall provide customer service for the T&D System in compliance with the requirements of IX of this Annex I (*Scope of Services*). Operator shall update and implement the customer service manual which shall be consistent with the Contract Standards, as well as this Annex I (*Scope of Services*) and Annex XI (*Performance Metrics*) within one hundred eighty (180) days of the Service Commencement Date and shall deliver a certificate to Administrator to the effect that such customer service manual has been so updated. The manual shall be revised as necessary or appropriate from time to time.
- B. <u>Customer Service Requirements</u>. Operator shall perform the customer services in accordance with, and the customer service manual shall address, the following minimum requirements, in accordance with the Contract Standards:
- 1. Operator shall maintain a staff dedicated to assisting customers. The customer service staff shall be trained to answer questions related to the T&D System and customer bills.
- 2. Operator shall establish and maintain toll-free customer service hotlines to allow customers to ask questions, raise issues and lodge complaints.
- 3. Operator shall establish and maintain a twenty-four (24) hour per day toll-free hotline, with adequate capacity and personnel, that will be answered at all times by a Person and not a voicemail or other automated recorder, for the receipt of reports of emergencies relating to the T&D System.

- 4. Operator shall establish and maintain a T&D System website that is capable of receiving customer inquiries and complaints.
- 5. Operator shall respond to customer questions and complaints (however received).
- 6. Operator shall respond to emergencies in the T&D System, including temporary reductions, curtailments or shut downs of deliveries of Power and Energy for any reason, including due to a Storm Event.
- C. <u>Reports</u>. Operator shall submit as part of its reports delivered pursuant to V of this Annex I (*Scope of Services*), and the required with respect to the public outreach education campaign.
- D. <u>Public Outreach and Education Campaign</u>. Operator shall develop and implement, within one hundred and eighty (180) days of the Service Commencement Date, a public outreach and education campaign designed to inform customers generally about the scope, nature and extent of the T&D System operations and shall provide a certificate to Administrator as to the existence and implementation of such campaign. The public outreach and education shall comply with the requirements set forth in [•].
- E. <u>Customer Service Surveys</u>. No later than three (3) months following the Service Commencement Date, Owner will engage the services of an independent, qualified professional survey firm selected mutually by Owner and Operator to develop and implement a customer satisfaction survey. If the Parties are not able to agree on a survey firm, either Party may refer to the matter to an Independent Expert. The initial customer satisfaction survey shall be used to develop an overall customer satisfaction rating, which shall provide the basis for evaluating and measuring Operator's performance of its customer service obligations. Operator is required to perform its customer service obligations in a manner that improves the overall customer satisfaction rating determined each Contract Year through subsequent annual customer service satisfaction surveys conducted by the independent, qualified professional survey firm.

### X. Meter-Related Services.

A. <u>Generally</u>. Operator shall perform all residential and commercial customer meter reading, installation, replacement and maintenance functions, including checking for open meter bypasses within the T&D System, in accordance with the requirements of IX of this Annex I (*Scope of Services*). Operator shall, within one hundred eighty (180) days of the Service Commencement Date, develop a quality assurance program for meter functions as part of the manuals and related computer programs developed by Operator in accordance with Contract Standards which shall (i) provide a detailed description of the means and methods of properly operating and managing the applicable managed asset and all sampling, testing and measurement procedures; (ii) document predictive, preventive and corrective maintenance procedures, practices and schedules for the managed assets; (iii)

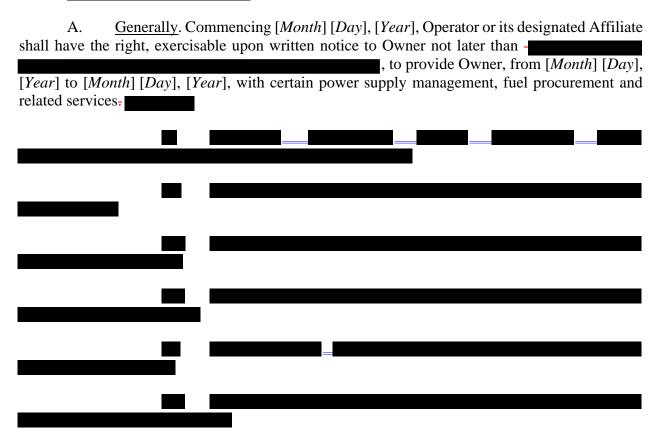
be reviewed and approved by any relevant Governmental Body, in accordance with Applicable Law and shall provide a certificate to Administrator as to the existence

of such program. Such program shall also include the planned meter replacement program. The quality assurance program shall be revised as necessary from time to time.

- B. <u>Meter-Related Requirements</u>. Operator shall perform the meter-related services in accordance with, and the quality assurance program shall address, the following minimum requirements:
- 1. To the extent Operator uses meter readers, Operator shall establish and maintain a staff dedicated to reading meters. All such employees shall be skilled in reading meters, and in performing meter reading services, shall carry at all times proper identification.
- 2. Operator shall read residential meters on a bi-monthly basis or such other frequency as mutually agreed by the Parties during the Term.
- 3. Operator shall read commercial, industrial and government accounts meters on a monthly basis.
- 4. Operator shall, upon request and reasonable notice, obtain final meter readings and render closing bills for property title transfers.
- 5. Operator shall, upon request and reasonable notice, obtain re-readings for residential and commercial customers.
- 6. Operator shall provide the meter readings in an electronic format compatible with the billing system for the T&D System.
- 7. Operator shall be responsible for all repairs and services required to maintain the proper operation and accurate reporting of all new and existing meters, meter reading systems and associated components.
- 8. For both existing and new meters installed by Operator, Operator shall maintain, repair, replace or otherwise take action to resume proper meter operation as soon as practicable but not later than the requirements of Annex XI (*Performance Metrics*).
- 9. Operator shall maintain a sufficient supply of spare parts for meter and all ancillary components.
- 10. Operator shall inspect all meters upon receipt of meter data that indicates unusually high or low energy usage compared to historical usage to ensure proper calibration of all components of the meter system, as well as reduce the amount of non-technical losses (e.g., theft).
- 11. Operator shall inspect all commercial and industrial meter installations at a minimum of once per year to check proper operation and to check that devices to prevent tampering of a meter or bypassing of a meter are intact and shall provide a certificate to Administrator that such inspection has been completed.

- 12. Operator shall keep records of and remedy any meter that has not been measuring the correct energy usage because of unauthorized or willfully intended damage, defacing or tampering with any meter component.
- 13. Operator shall, upon request and reasonable notice, disconnect and reconnect meters.
- C. <u>Repair and Replacement of Meters</u>. Operator shall be responsible for all repairs, replacements, upgrades and maintenance of the meters, transmitters and appurtenant wiring, computer system and software necessary to ensure the proper operation and accurate reporting of the meters, transmitters, computer system and remote reading equipment during the Term, following the Service Commencement Date.

#### XI. Generation-Related Services. 25



B. <u>Power Supply</u>. Promptly following the date of the Agreement, Owner shall, establish a separate trade name for its generation operations currently conducted by the department in Owner that is responsible for planning and managing Owner's power supply, including the following with respect to power supply planning and management: (i) resource procurement, contract negotiations and management and project development oversight, (ii) procurement and transportation of fuels for electricity generation; (iii) interconnection to the Owner system, (iv) scheduling of electric energy and capacity, (v) system dispatch planning and scheduling and

- (vi) representation of Owner before PREB, and thereafter conduct such generation operations thereunder.
- C. <u>Transfer and Assumption of Functions and Responsibilities</u>. It is the Parties' understanding and agreement that as soon as practicable following the Service Commencement Date (but in any event not later than [Month] [Day], [Year]), Owner shall transfer to Operator or its designated Affiliates, and Operator or such Affiliates shall assume, the functions and responsibilities of the department that is responsible for planning and managing Owner's power supply as of the date of the Agreement, including its electric planning function, which transfer and assumption may be effected in phases.
- XII. <u>Act 17</u>. Operator shall engage Subcontractors in connection with the services and operations contemplated under Act 17, including services and operations related to microgrids, distributed generation, renewable energy sources, net metering and energy cooperatives, in accordance with the terms of the Agreement.

#### Annex II

#### **Front-End Transition Plan**

## Annex III

#### **Back-End Transition Plan**

## Annex IV

# **Operator Employment Requirements**

## Annex V

# **Owner-Acquired Governmental Approvals**

## Annex VI

# Front-End Transition Hourly Wages

## **Annex VII**

## Contracts

## **Annex VIII**

## **Federal Funding Provisions**

Annex IX

Fixed Fee 1626

Contract Year	Fixed Fee
1	\$[●]
2	\$[●]
3	\$[●]
4	\$[●]
5	\$[●]
6	\$[●]
7	\$[●]
8	\$[●]
9	\$[●]
10	\$[●]
11	\$[●]
12	\$[●]
13	\$[●]
14	\$[●]
15	\$[●]

<sup>1626</sup> Note to Qualified Respondents: Please indicate proposed amounts.

#### Annex X

#### **Calculation of Incentive Fee**

#### Annex XI

## **Performance Metrics**

[•]

## **Annex XII**

## Pass-Through Expenditures

[•]

#### **Annex XIII**

#### Insurance Specifications 1727

- I. Required Insurance for the T&D System. Operator shall maintain, on Owner's behalf, the insurance coverage
  - A. property and casualty insurance for the T&D System (which shall, among other things, be at least of the type and extent required by the T&D System's receipt of Federal Funding);
  - B. commercial general liability insurance;
  - C. excess liability insurance;
  - D. business interruption insurance;
  - E. cyber insurance; and
  - F. pollution legal liability insurance.
- II. Required Insurance for Operator. In addition to and separate from the foregoing, Operator shall maintain, on its own behalf, the insurance coverage
  - A. worker's compensation insurance, chauffer's insurance, employer's liability insurance and all other employee required insurance; and
  - B. fiduciary liability insurance.
- III. Additional Named Insureds.
  - A. [●]

Note to Qualified Respondent: Annex I (*Insurance Specifications*) is an indicative outline that remains subject to ongoing review.

## Annex XIV

## **Operator Termination Fee**



<sup>1829</sup> Note to Qualified Respondents: Please indicate a proposed amount or formula.

## Annex XV

## **Operator Marks**

[•]

## Annex XVI

#### **Owner Marks**

[•]

#### Exhibit A

#### Form of Federal Funding Certifications

Agreement for Federal Funding reimbursement, including any of Operator's
and at a parties a
subcontractors, Operator, and all tiers of Operator's subcontractors as applicable, will be required
to comply with all applicable federal certifications and requirements, including the execution of
these two (2) certifications. Capitalized terms used but not otherwise defined herein shall have the
meaning ascribed to them in the Puerto Rico Transmission and Distribution System Operation and
Maintenance Agreement dated

# CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

#### INSTRUCTIONS FOR CERTIFICATION

- 1. By executing the Agreement, Operator (referred to herein as the "prospective lower tier participant") is providing the certification set out below.
- 2. The certification in this Exhibit A is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the United States federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- 3. The prospective lower tier participant shall provide immediate written notice to Owner and Administrator if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- 4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, Agreement and voluntarily excluded, as used in this Exhibit A, have the respective meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.
- 5. The prospective lower tier participant agrees by executing the Agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- 6. The prospective lower tier participant further agrees by executing the Agreement that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

- 7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
- 8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the United States federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

# CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS

- (1) The prospective lower tier participant certifies, by execution of the Agreement, that neither it, nor its principals, is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to the Agreement.

OPERATOR Company Name	Contract Number
Name of Operator's Authorized Official	
Title	
Signature of Operator's Authorized Official	Date

# CERTIFICATION REGARDING LOBBYING FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

The undersigned Operator certifies, to the best of its knowledge and belief, that:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of Operator or any Affiliate, to any person for influencing or attempting to influence an officer or employee of an agency, a member of the United States Congress, an officer or employee of the United States Congress, or an employee of a member of the United States Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of the United States Congress, an officer or employee of the United States Congress, or an employee of a member of the United States Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

OPERATOR certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, OPERATOR understands and agrees that the provisions of 31U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

OPERATOR Name		
Signature of Operator's Authorized Official		
Name and Title of Operator's Authorized Official	Date	

#### FEDERAL FUNDING CONDITIONS

To the extent Owner and Operator determine that any costs under the Agreement will be submitted for HUD reimbursement, the Agreement will require that Operator comply with all applicable HUD requirements, including the following:

#### 1. Section 3 Covered Assistance

HUD's "Section 3" program requires that recipients of certain HUD financial assistance, to the greatest extent possible, provide training, employment, contracting and other economic opportunities to low- and very low-income persons, especially recipients of government assistance for housing, and to businesses that provide economic opportunities to low- and very low-income persons. "Section 3 covered assistance" includes assistance provided under any HUD community development program that is expended for work arising in connection with public construction projects.

#### 2. Section 3 Clause

If Owner and Administrator determine to submit any of the costs incurred under the Agreement for HUD reimbursement, and the Agreement is determined to be a Section 3 covered contract, pursuant to 24 C.F.R. § 135.38, it shall include the following clause (referred to as the "Section 3 Clause"):

THE WORK TO BE PERFORMED UNDER THIS CONTRACT IS SUBJECT TO THE REOUIREMENTS OF SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968, AS AMENDED, 12 U.S.C. 1701U (SECTION 3). THE PURPOSE OF SECTION 3 IS TO ENSURE THAT EMPLOYMENT AND OTHER ECONOMIC OPPORTUNITIES GENERATED BY HUD ASSISTANCE OR HUD-ASSISTED PROJECTS COVERED BY SECTION 3 SHALL, TO THE GREATEST EXTENT FEASIBLE, BE LOW-LOW-INCOME DIRECTED TO AND **VERY** PERSONS. PARTICULARLY PERSONS WHO ARE RECIPIENTS OF HUD ASSISTANCE FOR HOUSING.

THE PARTIES TO THIS CONTRACT AGREE TO COMPLY WITH HUD'S REGULATIONS IN 24 CFR PART 135, WHICH IMPLEMENT SECTION 3. AS EVIDENCED BY THEIR EXECUTION OF THIS CONTRACT, THE PARTIES TO THIS CONTRACT CERTIFY THAT THEY ARE UNDER NO CONTRACTUAL OR OTHER IMPEDIMENT THAT WOULD PREVENT THEM FROM COMPLYING WITH THE PART 135 REGULATIONS.

THE CONTRACTOR AGREES TO SEND TO EACH LABOR ORGANIZATION OR REPRESENTATIVE OF WORKERS WITH WHICH THE CONTRACTOR HAS A COLLECTIVE BARGAINING AGREEMENT OR OTHER UNDERSTANDING, IF ANY, A NOTICE ADVISING THE LABOR ORGANIZATION OR WORKERS' REPRESENTATIVE OF THE CONTRACTOR'S COMMITMENTS UNDER THIS SECTION 3 CLAUSE, AND

WILL POST COPIES OF THE NOTICE IN CONSPICUOUS PLACES AT THE WORK SITE WHERE BOTH EMPLOYEES AND APPLICANTS FOR TRAINING AND EMPLOYMENT POSITIONS CAN SEE THE NOTICE. THE NOTICE SHALL DESCRIBE THE SECTION 3 PREFERENCE, SHALL SET FORTH MINIMUM NUMBER AND JOB TITLES SUBJECT TO HIRE, AVAILABILITY OF APPRENTICESHIP AND TRAINING POSITIONS, THE QUALIFICATIONS FOR EACH; AND THE NAME AND LOCATION OF THE PERSON(S) TAKING APPLICATIONS FOR EACH OF THE POSITIONS; AND THE ANTICIPATED DATE THE WORK SHALL BEGIN.

THE CONTRACTOR AGREES TO INCLUDE THIS SECTION 3 CLAUSE IN SUBCONTRACT SUBJECT TO **COMPLIANCE** REGULATIONS IN 24 CFR PART 135, AND AGREES TO TAKE APPROPRIATE ACTION, AS PROVIDED IN AN APPLICABLE PROVISION OF THE SUBCONTRACT OR IN THIS SECTION 3 CLAUSE, UPON A FINDING THAT THE SUBCONTRACTOR IS IN VIOLATION OF THE REGULATIONS IN 24 CFR PART 135. THE CONTRACTOR WILL NOT SUBCONTRACT WITH ANY**SUBCONTRACTOR** WHERE THE **CONTRACTOR** HAS **NOTICE** OR**KNOWLEDGE THAT** THE SUBCONTRACTOR HAS BEEN FOUND IN VIOLATION OF REGULATIONS IN 24 CFR PART 135.

THE CONTRACTOR WILL CERTIFY THAT ANY VACANT EMPLOYMENT POSITIONS, INCLUDING TRAINING POSITIONS, THAT ARE FILLED (1) AFTER THE CONTRACTOR IS SELECTED BUT BEFORE THE CONTRACT IS EXECUTED, AND (2) WITH PERSONS OTHER THAN THOSE TO WHOM THE REGULATIONS OF 24 CFR PART 135 REQUIRE EMPLOYMENT OPPORTUNITIES TO BE DIRECTED, WERE NOT FILLED TO CIRCUMVENT THE CONTRACTOR'S OBLIGATIONS UNDER 24 CFR PART 135.

NONCOMPLIANCE WITH HUD'S REGULATIONS IN 24 CFR PART 135 MAY RESULT IN SANCTIONS, TERMINATION OF THIS CONTRACT FOR DEFAULT, AND DEBARMENT OR SUSPENSION FROM FUTURE HUD ASSISTED CONTRACTS.

WITH RESPECT TO WORK PERFORMED IN CONNECTION WITH SECTION 3 COVERED INDIAN HOUSING ASSISTANCE, SECTION 7(B) OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT (25 U.S.C. 450E) ALSO APPLIES TO THE WORK TO BE PERFORMED UNDER THIS CONTRACT. SECTION 7(B) REQUIRES THAT TO THE GREATEST EXTENT FEASIBLE (I) PREFERENCE AND OPPORTUNITIES FOR TRAINING AND EMPLOYMENT SHALL BE GIVEN TO INDIANS, AND (II) PREFERENCE IN THE AWARD OF CONTRACTS AND SUBCONTRACTS SHALL BE GIVEN TO INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES. PARTIES TO THIS CONTRACT THAT ARE SUBJECT TO THE PROVISIONS OF SECTION 3

AND SECTION 7(B) AGREE TO COMPLY WITH SECTION 3 TO THE MAXIMUM EXTENT FEASIBLE, BUT NOT IN DEROGATION OF COMPLIANCE WITH SECTION 7(B).

#### 3. Davis-Bacon Act and Copeland Anti-Kickback Act

Additionally, HUD-funded contracts are subject to the Davis-Bacon Act and the Copeland Anti-Kickback Act. The regulations promulgated under this legislation require contracts in excess of \$2,000 which are entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds, including grants, to contain the provisions at 24 C.F.R. § 5.5. These "Fair Labor Standards" provisions are provided in HUD Form 4010. In accordance with the Davis-Bacon Act, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor and must be required to pay wages not less than once a week. The applicable prevailing wage determination is available here: https://www.wdol.gov/wdol/scafiles/davisbacon/pr.html and in the Data Room. The decision to award a contract to a contractor must be conditioned upon acceptance of the wage determination.

#### Exhibit B

#### **Form of Commonwealth Certifications**

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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 not 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 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 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 owe Puerto Rico sales and use taxes to the Commonwealth (Form SC 2942);
(iii) a Puerto Rico Sales and Use Tax Filing Certificate 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 2927);
(iv) 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
(v) 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 Transmission and Distribution System Operation and Maintenance Agreement dated
By: Name: Title:

## **Exhibit C**

# Form of Tax Opinion

#### Exhibit D

#### **Form of Anti-Corruption Certifications**

We certify under penalty of nullity that no public servant of Owner will 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 of	therwise defined herein shall have the meaning ascribed to them
in the Puerto Rico Transmission	and Distribution System Operation and Maintenance Agreement
dated	
By:	<u></u>
Name:	
Title:	

#### **Exhibit E**

#### **Form of Sworn Statement**

#### **SWORN STATEMENT**

## **ACT 2-2018**

0.1				, of legal age,				and resident
of the				, hereby	solemn	ly swear:		
1.	That n	ny pei	rsonal st	atus is the one state	d above	•		
2.		I		the position (hereinafter refe under the laws	rred to	as the	"Company")	organized as a
Identif				·				
3. purpos	That I ses of th			ed to represent the	Compa	ny and a	ll of its partne	ers and owners for
been c Act No Human	ive dire onvicte o. 8-201 n Resou	ctors d of, a l 7, as	or mem nor have amende of the Go	mpany nor any of i bers of its Board of they pleaded guilty ed, known as the "A overnment of Puerto the "Anti-Corruptio	Directo to, any act for the Rico" of	rs, or persons of the crime Managor for any	sons that fulfil mes in Article ement and Tra of the crimes li	similar tasks, have 6.8 of Puerto Rico insformation of the sted in Puerto Rico
any fo	future rmer pu	payn ıblic (	nent of a	bonuses have been pany such commission that participated in with	ons or both	onuses to otiations a	any public of	ficial, employee or as contemplated by
	us, to n	nake		ted above is true to c I sign this declara				
D.,.								
Name:				·				
Title:								
Affida	vit No.							

Sworn and subscribed before me by		_, of the personal	l circumstances stated
above, in his/her capacity as	of _		; who is
personally known to me or whom I have	e identified pursuan	t the following f	form of identification:
. t	this day of	. 20 .	

## Exhibit F

## Form of Guarantee

## **Exhibit G**

# Form of Servicing Contract