P3A T&D TRANSFORMATION –
LUMA ENERGY CLARIFICATION QUESTIONS AND P3A RESPONSES

	Topic	Clarification Question(s)	P3 Response(s)	Notes and/or Updates to O&M Agreement
1.	Definition of "Capital Costs"	The Consortium's view re: costs is as follows: **QUESTION A.** Re: Capital costs - Capital management costs are capital costs. Please confirm. **Follow up question/response issued 11/5/19**: *Re response #1 in the CR#1 – "A and your request that we clarify what is intended by "capital management costs" – please note: These would be the costs of managing Capital Improvements (including Federally Funded Capital Improvements and Non-Federally Funded Capital Improvements, including the project management costs, associated with any such Capital Improvements. Please confirm these would be included as Capital Costs*. **QUESTION B.** Re: secondment costs - The Operator is free to second employees from the Consortium or any of their respective Affiliates (i.e., whomever, and wherever located (including whether on island or in their home jurisdiction) and for how long as Operator feels is required to perform the O&M Services) into Servco and whatever proportion that they are being used by Servco, they will be considered seconded by Servco, and the costs of those secondments will be T&D Pass- Through Expenditures (for clarity without any profit margins on such secondment costs). Please confirm. **QUESTION C.** Re: other costs – we confirm that only those costs listed in Appendix 1 hereto will be excluded from being T&D Pass-Through Expenditures. Please confirm.	**RESPONSE A.** Project management of capital projects will be done by ServCo Employees and will be a T&D Pass Through Expenditure. Capital planning for capital projects should be done by Management Co. as part of the management services provided in exchange for the Fixed Fee. To the extent that any of the project management costs incurred by ServCo can be reimbursed by Federal Funding as a capital cost, the parties would seek reimbursement of such costs from Federal Funding. (*see* P3 Response dated 11/7/19) **RESPONSE B.** As provided in Annex X, costs incurred by ServCo in performing the O&M Services, including costs of all seconded employees, are considered T&D Pass-Through Expenditures, except to the extent any such costs are determined to be Disallowed Costs in the manner set forth in Section 7.6. (*see* P3 Response dated 11/4/19) **RESPONSE C.** See responses to the specific items listed in Appendix 1. We cannot confirm that Appendix 1 is an exhaustive list of items that would not be T&D Pass-Through Expenditures. For example, it does not include costs of ManagementCo subcontracting services that are intended to be performed by ManagementCo after the Front-End Transition Period (which, pursuant to Section 11.1(a) would not be a T&D Pass-Through Expenditure and would instead need to be paid out of the Fixed Fee). (*see* P3 Response dated 11/4/19)	With respect to Response A, as related to project management of capital projects, the relevant clarification was reflected in Item 3 of Annex X of the O&M Agreement (*T&D Pass-Through Expenditures*) as included in the November 15 draft of the O&M Agreement. See excerpted blacklines below: ***Annex X of the O&M Agreement****. […]* *3. costs related to Capital Improvements to the system, including project management costs incurred by ServCo Employees and the cost of debt for long-lived assets and all other costs associated with funding these improvements, except for Capital Improvements owned by Operator as contemplated by Section 5.5(d) (Capital Improvements – Option to Propose Operator-Owned Capital Improvements) of the main body of the Agreement.* As related to capital planning for capital projects, we note that Section 5.5 of the O&M Agreement (*Capital Improvements*) already clarifies the scope of the Operator's O&M services related to capital projects, including those related to forecasting and analysis for capital projects. With respect to Response B, we note that Item 2 of Annex X of the O&M Agreement (*T&D Pass-Through Expenditures*), as included in the November 15 draft of the O&M Agreement, includes the following language: "costs incurred by ServCo in performing the O&M Services, including costs of all subcontracted and seconded employees." With respect to Response C, because we don't think Appendix 1 was intended to be an

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				exhaustive list, we did not expect to make changes to the O&M Agreement.
2.	Definition of "Capital Improvement"	The definition of Capital Improvement includes " any repair, replacement, improvement, removal and retirement, alteration and addition that (i) constitutes a capital property unit in accordance with the T&D System's capitalization policy, consistently applied" – Please define the meaning of "capital property unit" and clarify what the "T&D system capitalization policy" is intended to refer to, and whether it is a policy Operator is supposed to develop and adopt as part of the O&M Services.	A "capital property unit" means a capitalizable expenditure that adds to or increases the value of Owner's capital assets. The "T&D System capital policy" is intended to refer to the PREPA capitalization policy, adapted as needed and agreed to by Owner and Operator during the Front-End Transition Period. The PREPA capitalization policy, in summary, only capitalizes expenditures of $1,200 or more if the item acquired is expected to be consumed over more than one year or the expenditure is expected to increase the useful life of a capital asset by more than one year. Anything under the $1,200 threshold is expensed, regardless of the estimated useful life. (*see* P3 Response dated 11/11/19)	We have reflected this in the definition of "Capital Improvement" in Section 1 of the O&M Agreement, which has been modified as follows: *"Capital Improvement" means any repair, replacement, improvement, removal and retirement, alteration and addition that (i) constitutes a capital property unit in accordance with the T&D System's capitalization policy, consistently applied (other than any repair, replacement, improvement, removal and retirement, alteration and addition constituting ordinary course repair or maintenance of the T&D System), including all Public Works Improvements that have been approved in accordance with this Agreement, and (ii) have an expected useful service life of more than one (1) year from the date of installation. For the avoidance of doubt, a "capital property unit" shall be understood to mean "capitalizable expenditure that adds to or increases the value of Owner's capital assets" and the "T&D System capital policy" shall be understood to refer to the PREPA capitalization policy, adapted as needed and agreed to by Owner and Operator during the Front-End Transition Period.*
3.	Definition of "Prime Rate"	The term Prime Rate makes reference to the rate published by the Wall Street Journal, but does not provide a mechanism if the Wall Street Journal ceases to publish a Prime Rate. The term Prime Rate is only used in the definition of the Overdue Rate. If there is no Prime Rate, then the Overdue Rate will be the highest rate permitted by law. The term Overdue Rate is used in Section 20.7 of the O&M Agreement and Section 5.5 of the Guarantee. In both, it states that interest not paid when due shall bear interest at the Overdue Rate. This could pose a problem, as there is no highest rate permitted by	Confirmed. The definition of Prime Rate will be amended to include an alternative source of the prime rate if it is no longer published in the Wall Street Journal. (*see* P3 Response dated 11/11/19)	This change was addressed in the revised definition of "Prime Rate" included in the November 15 version of the O&M Agreement as shown in the blackline below: *"Prime Rate" means a variable per annum rate equal, as of any date of determination, to the rate as of such date published in the "Money Rates" section of The Wall Street Journal as being the "Prime Rate" (or, if more than one rate is published as the "Prime Rate," then the highest of such rates)**, or a mutually agreeable alternative source of the prime rate if it is no***

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		law currently in Puerto Rico in the case of borrowers which are legal entities. Please confirm that the definition of Prime Rate will be amended to include a reference to an alternative source if the Wall Street Journal ceases to publish a Prime Rate.		***longer published in the "Money Rates" section of The Wall Street Journal or the method of computation thereof is substantially modified***.
4.	Sections 2.2(b)(ix) – Effective Date Conditions, 4.1(c), 4.6	**QUESTION A.** In light of the provisions set out in Section 4.1(c) – it appears that any payments of the Front-End Transition Fees will be subject to receipt of the approval of the motion by the Title III Court. Please confirm (1) how the Owner intends to obtain approval to make the required deposit of 4.5 months of the estimated Front-End Transition Service Fee in the Front-End Transition Account under Sec. 2.2(b)(ix) (a condition to the Effective Date); (2) whether Operator will be able to withdraw funds from such account prior to the approval of the administrative expenses motion; and (3) whether Owner will be able to maintain 4.5 months of the estimated Front-End Transition Fee in the period prior to receipt of approval of the motion by the Title III Court. **QUESTION B.** In your Nov. 11 response to our third request for clarifications, item 4, you state that approval of the Title III Court is not required for Owner to deposit and maintain 4.5 months of the anticipated Front-End Transition Service Fee in the Front-End Transition Account or for Operator to withdraw funds from such account. Please explain the basis for this position. Is there an existing law or order permitting this? **QUESTION C.** With respect to your November 15 response, question 9, we propose to set up a conference call between our bankruptcy / PROMESA counsel and yours to further understand the basis for your response to this question. Again, this is a critical issue and it relates directly to the ability to be paid during the Front- End Transition Period. Please	**RESPONSE A.** We confirm that approval from the Title III Court is not required in order for (1) Owner to deposit and maintain 4.5 months of the estimated Front-End Transition Service Fee in the Front-End Transition Account or (2) Operator to withdraw funds from such account. (P3 Response dated 11/11/19) **RESPONSE B.** We note that pursuant to Section 4.6 of the O&M Agreement, Owner will draw funds from the Front-End Transition Service Account to pay Operator the Front-End Transition Service Fee (rather than Operator withdrawing funds from such account). There is no existing Title III Court order or law specifically addressing with these matters. However, as you can confirm with your counsel, under Title III of PROMESA (and under Chapter 9 of the US Bankruptcy Code) municipal debtors are given very wide latitude to conduct their business and operate in the ordinary course without prior court approval. In our view, setting up an escrow account and paying a service provider for services to be rendered during the proceeding (all of which will be disclosed in the proceedings) would fall within this type of permitted conduct. (P3 Response dated 11/15/19) **RESPONSE C.** Confirmed. The Authority and its advisors are available for a call at 2pm EST / 3pm AST on Thursday, November 21. (P3 Response dated 11/11/19)	These responses and clarifications, as well as the call on October 14, 2019 with OMM and Proskauer, were intended to be informative and assist Luma in its diligence process. As a result, we did not expect to make reference to, or reflect them in, the O&M Agreement. Luma should also rely on additional information publicly available and the views of your legal counsel.

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		confirm availability for such a call and propose possible dates and times.		
5.	Section 4.2(h)(ii)	We confirm that the Data Security Plan will be subject to the System Remediation Plan as per the process for the implementation of the System Remediation Plan and as per the approach to Data Security in each case noted in Section 13.3. Please confirm.	Confirmed, during the period Operator is repairing or improving the T&D System assets in accordance with the System Remediation Plan. (*see* P3 Response dated 11/4/19)	We have reflected this in Section 4.2(h) of the O&M Agreement, which has been modified as follows: (*h) Physical Security Plan, Data Security Plan and Vegetation Management Plan. ManagementCo shall develop and provide Administrator and PREB, for their information, with plans of action meeting Contract Standards that outline the procedures and actions necessary for maintaining (i) the physical security of the T&D System after the Service Commencement Date (the "Physical Security Plan"); (ii) data security, cyber security and information security relating to the T&D System (the "Data Security Plan"); and (iii) a comprehensive vegetation management program (the "Vegetation Management Plan"), each of which shall become effective on the Service Commencement Date; provided that as long as each of the Physical Security Plan, Data Security Plan, and Vegetation Management Plan are substantially complete on the Service Commencement Date, their finalization shall not delay the Service Commencement Date from occurring if all other Service Commencement Date Conditions have been satisfied or waived. For the avoidance of doubt, the Data Security Plan shall be subject to the System Remediation Plan, including the approach for implementation outlined in Section 4.1(d) of this Agreement.*

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6.	Section 4.5(p)	Section 4.5(p) provides that a "final plan" for reorganization of PREPA be "approved by the relevant Commonwealth Governmental Bodies." We confirm that "Commonwealth Governmental Bodies" means applicable Governmental Bodies, and that "final plan" means a plan confirmed by the Title III Court. Please confirm.	To the extent the final plan for the separation of GridCo and GenCo assets and businesses is specifically included in the Title III Plan, it would also have to be approved by the Title III Court. We do not know today whether and to what extent the Title III Plan will specify the details of the separation. (P3 Response dated 11/4/19)	We have reflected this in Section 4.5(q) of the O&M Agreement, which has been modified as follows: *(q) PREPA Reorganization. A final plan for the reorganization of PREPA into GenCo and GridCo shall have been approved by the applicable ~~relevant Commonwealth~~ Governmental Bodies, and the GridCo-GenCo PPOA shall have become effective.*
7.	Section 5.6(c)	We confirm that the requirement that all data and information supplied by Operator (as agent for Owner) will be correct and complete in all material respects is subject to the System Remediation Plan. Please confirm.	Confirmed, with respect to the period Operator is repairing or improving the T&D System assets in accordance with the System Remediation Plan, provided that Operator identify any known inaccuracies in the information supplied to Owner at the time such information is provided to Owner. (*see* P3 Response dated 11/4/19)	We have reflected this in Section 5.6(c) of the O&M Agreement, which has been modified as follows: *Data and Information. All data and information required to be supplied and actions required to be taken in connection with the Governmental Approvals required for the O&M Services shall be supplied and taken by Operator on a timely basis considering the requirements of Applicable Law, the System Remediation Plan and the responsibilities of Owner as the legal and beneficial owner of the T&D System. For the avoidance of doubt, the requirement that all data and information supplied by Operator be correct shall be subject to the System Remediation Plan, including the process for implementation outlined in Section 4.1(d) of this Agreement, provided that Operator shall nevertheless be required to identify to Owner any known inaccuracies in the information supplied to Owner at the time such information is provided. The data and information supplied by Operator (as agent for Owner) to Owner, Administrator and all regulatory agencies in connection therewith shall be correct and complete in all material respects; provided, however, that Operator shall be entitled to rely upon, and shall not be liable for, any such data and information derived from or comprising data and information supplied by or on behalf of Owner or Administrator.*

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8.	Section 5.7(c)	We confirm that Operator's responsibility for <u>all</u> physical damage to the T&D System caused by cyber-attacks will be subject to the System Remediation Plan, as per the process for the implementation of the System Remediation Plan and as per the approach to Data Security in each case noted in Section 13.3. Please confirm.	Confirmed, during the period Operator is repairing or improving the T&D System assets in accordance with the System Remediation Plan. (*see* P3 Response dated 11/4/19)	We have reflected this in Section 5.7(c) of the O&M Agreement, which has been modified as follows: *<u>Security</u>. Operator shall implement the Physical Security Plan in accordance with such plan. In accordance with the Physical Security Plan, Operator shall guard against and be responsible for all physical damage to the T&D System caused by trespass, theft, negligence, vandalism, malicious mischief or cyber-attacks of third-parties. For the avoidance of doubt, Operator's responsibility for physical damage to the T&D system caused by cyber-attacks during the period Operator is repairing or improving the T&D System shall be subject to the System Remediation Plan, including the process for implementation outlined in Section 4.1(d). Operator shall guard against and be responsible for, in each case to the extent of Operator's negligence, all physical damage to the T&D System caused by trespass, theft, vandalism or malicious mischief of third-parties. Any cost arising therefrom shall be treated as T&D Pass-Through Expenditures hereunder, except to the extent such costs are costs are Disallowed Costs. The Physical Security Plan shall be updated by Operator from time to time as necessary or appropriate.*
9.	Section 5.15(c)(ii)	We confirm that the access to information to be provided in 5.5(c)(i) will be on the same basis as set out in 5.5(c)(ii). Please confirm.	We assume this question refers to Section 5.15(c)(i) & (ii). If so, confirmed. (*see* P3 Response dated 11/4/19)	We have reflected this in Section 5.15(c) of the O&M Agreement, which has been modified as follows: *(i) Operator shall, subject to the System Remediation Plan, provide Owner with timely read-only access where available, or a reasonably equivalent form of access to all information necessary to (A) maintain, protect and preserve the T&D System assets or (B) carry out any of Owner's responsibilities related to the T&D System under Applicable Law. For the avoidance of doubt, the access to information provided under this Section 5.15(c)(i) shall be on*

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				the same basis as set out in Section 5.15(c)(ii) of this Agreement.
10.	Section 7.2	We understand that T&D Pass-Through Expenditures made over and above Budgeted amounts will be paid by Owner, provided they are not Disallowed Costs, subject to Owner's termination pursuant to Section 14.5(e). Please confirm.	Confirmed, provided that if Operator becomes aware that T&D Pass-Through Expenditures are expected to exceed a Budget for such Contract Year, Operator has the obligation under Section 7.3(e) to: (i) notify PREB and Administrator; and (ii) seek an amendment to any Budget. In addition, in the event of Force Majeure Event, Owner Fault and other similar circumstances described in the O&M Agreement, Operator has the obligation to consider any necessary adjustments to the Budgets. (*see* P3 Response dated 11/7/19)	This response and clarification was intended to be informative. Given that we refer to the explicit contractual provisions in our response, we did not expect to make reference to, or reflect them in, the O&M Agreement.
11.	Section 7.2(a) and Section 11.1(a)	Section 7.2(a) provides: "For purposes of this Agreement, "T&D Pass-Through Expenditures" shall be the costs and expenses incurred by ServCo [emphasis added] in the course of providing O&M Services pursuant to this Agreement (without markup for profit), including the costs and expenses set forth in Annex X (T&D Pass Through Expenditures); provided that T&D Pass-Through Expenditures shall not include any Disallowed Costs or any Generation Pass-Through Expenditures. Operator shall pay T&D Pass-Through Expenditures in accordance with Section 7.5 (Service Accounts)" Section 5.1(a) which provides that Operator (i.e., both ManagementCo and ServCo) will provide O&M Services. Section 11.1(a) provides: "Operator shall have the right, but not the obligation, to engage Subcontractors to perform the O&M Services, subject to Section 11.1(c) (Ability to Subcontract and Contract – Federally	We understand that ServCo will have all the employees and perform the O&M Services, which will be T&D Pass-Through Expenditures. With respect to ManagementCo, we see them as having a management, oversight and planning role in exchange for which Operator receives the Fixed Fee. We do not expect ManagementCo to be doing work that would be Pass-Through Expenditures, but the concept of Operator is included in Section 5.1(a) given that the management and strategy work of ManagementCo is embedded in the O&M Services. (*see* P3 Response dated 11/4/19)	This was reflected in the November 15 version of the O&M Agreement. See excerpted blacklines below: ***Section 7.1. Service Fee****. (a) Generally. In addition to Owner's funding or payment of T&D Pass-Through Expenditures, Generation Pass-Through Expenditures, Capital Improvements, Outage Event Costs and any other amounts that become due and owing to Operator hereunder, from and after the Service Commencement Date, as compensation for the performance of the O&M Services, Owner shall, in accordance with this Agreement, pay ManagementCo a management service fee consisting of the Fixed Fee and the Incentive Fee (collectively, the "Service Fee"). The ~~p~~Parties acknowledge and agree that: (i) the following costs shall be paid by ManagementCo from the Fixed Fee: (A) the wages and benefits of senior management level personnel employed by ManagementCo responsible for and dedicated to ServCo, (B) ManagementCo's corporate overhead costs and (C) any subcontract with respect to any service to be provided by ManagementCo between the Service Commencement Date and the expiration or early*

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		Funded Capital Improvements) in the case of Federally Funded Capital Improvements. Operator's payment obligations under any Subcontract shall be a T&D Pass-Through Expenditure…. [emphasis added]" Consistent with Sections 5.1(a) and 11.1(a), we confirm that the costs and expenses of Operator (i.e. both ManagementCo and Servco) will be T&D Pass-Through Costs, and that the reference to "Servco" in Section 7.2(a) should be replaced with a reference to "Operator". Please confirm.		*termination of this Agreement; and (ii) no Federal Funding shall be used to pay the Service Fee. The Service Fee shall not be subject to any abatement, deduction, counterclaim or set-off of any kind or nature.* ***Section 7.2(a) (Pass-Through Expenditures – T&D Pass-Through Expenditures):*** *"For purposes of this Agreement, "T&D Pass-Through Expenditures" shall be the costs and expenses incurred by ServCo in the course of providing O&M Services pursuant to this Agreement (without markup for profit), including the costs and expenses set forth in Annex X (T&D Pass-Through Expenditures); provided that T&D Pass-Through Expenditures shall not include any* ***(i)*** *Disallowed Costs* ~~***or any***~~*,* ***(ii)*** *Generation Pass-Through Expenditures* ***or (iii) costs payable by ManagementCo from the Fixed Fee pursuant to Section 7.1(a) (Service Fee – Generally)****. Operator shall pay T&D Pass-Through Expenditures in accordance with Section 7.5 (Service Accounts)."*
12.	Section 11.1(a)	Section 11.1(a) provides: "(except to the extent Operator elects to subcontract any service to be provided by ManagementCo between the Service Commencement Date and the expiration or early termination of this Agreement, in which case any such payment obligation shall be paid by ManagementCo from the Fixed Fee)" We confirm that except for the costs that are identified in Appendix 1 of this table as not being included as T&D Pass Through Expenditures" all costs, including costs of Subcontractors of ManagementCo and Servco will be T&D Pass Through Expenditures. Please confirm.	As provided in Section 11.1(a), the cost of any subcontract for services to be provided by ManagementCo from and after the Service Commencement Date will be paid by ManagementCo from the Fixed Fee (and will not be a T&D Pass-Through Expenditure). (*see* P3 Response dated 11/4/19)	See Item 11 above.

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13.	Section 11.3	Section 11.3 provides in part that: "Operator shall pay when due all undisputed claims and demands of Subcontractors, mechanics, materialmen, laborers and others for any work performed on, or materials delivered for incorporation into any part of, the T&D System by or on behalf of Operator, and shall promptly discharge all mechanics', materialmen's and other construction Liens registered against the T&D System. All such costs (other than Disallowed Costs) shall be treated as T&D Pass-Through Expenditures." Please confirm that Operator shall have no obligation to pay Subcontractor and the other referenced service providers, or pay for materials, or discharge the referenced liens, to the extent there are insufficient funds in the Accounts to make such payments, or Operator is otherwise unable to withdraw such funds for any reason.	Confirmed. Provided that such costs are T&D Pass-Through Expenditures (and not Disallowed Costs), Operator shall have no obligation to pay Subcontractors, mechanics, materialmen, laborers and other pursuant to Section 11.3 to the extent there are insufficient funds in the Service Accounts to make such payments. However, as noted in prior responses and as set forth in Section 11.1(a), the cost of any subcontract for services to be provided by ManagementCo from and after the Service Commencement Date will be paid by ManagementCo from the Fixed Fee and are the responsibility of ManagementCo (and will not be a T&D Pass-Through Expenditure). (*see* P3 Response dated 11/11/19)	This was reflected in the revised Section 11.3 included in the November 15 version of the O&M Agreement. See excerpted blackline below: ***Section 7.7 Unfunded Amounts*** *Notwithstanding anything contained in this Agreement to the contrary, the Parties acknowledge and agree that Operator shall have no obligation or responsibility to incur or pay any costs or make expenditures in providing the O&M Services hereunder (other than Disallowed Costs) to the extent any of the Service Accounts do not contain sufficient funds to pay such costs and expenditures. Without limiting Operator's termination rights hereunder, and except to the extent Operator exercises its rights to cease providing the O&M Services pursuant to Section 14. 4(Termination for Owner Event of Default) ~~if funds equal to at least two-thirds (2/3) of the amount required in Section 7.5 (Service Accounts)~~, to the extent sufficient funds are not available for withdrawal by Operator from the Service Accounts, the Front-End Transition Account or the Back-End Transition Account, as applicable, Operator shall take reasonable measures to maintain the continuity of the O&M Services in accordance with the Contract Standards to the extent possible in the absence of its receipt of ~~any~~ such sufficient funding.*
14.	Section 13.1(b)	We confirm that the license grant in 13.1(b) only applies for the purpose of Owner (or its nominee) operating the T&D System and for no other purpose. Please confirm.	Confirmed. Please note the following language in 13.1(b): Owner shall not and shall ensure that its Affiliates do not sublicense, rent, lease, distribute or otherwise authorize the use of Operator Intellectual Property, Contractor Intellectual Property or Subcontractor Intellectual Property to, by or on behalf of anyone other than Owner and its Affiliates or, any successors or operators thereto or any other third-party with whom Owner, its	We have reflected this in Section 13.1(b) of the O&M Agreement, which has been modified as follows: *(b) License of Operator Intellectual Property, Contractor Intellectual Property, and Subcontractor Intellectual Property. Except as Administrator and Operator may otherwise mutually agree, Operator and its Affiliates hereby grant to Owner, and shall cause its Affiliates to grant to Owner, a perpetual, non-exclusive, fully paid-up, royalty-free license and sublicense,*

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			Affiliates or any successors or operators thereto contract *for purposes of operating the T&D System and related facilities*. (*see* P3 Response dated 11/4/19)	*under Operator Intellectual Property ~~and~~, Subcontractor Intellectual Property, ~~or~~ and Contractor Intellectual Property (as the case may be) solely in connection with the T&D System and related facilities and their related operations (including the O&M Services) by or on behalf of Owner or any successors or operators thereto to (i) make, have made, use, sell, offer for sale, export or import any product, service or apparatus and practice any method, and (ii) use, reproduce, distribute, perform, display, execute and create derivative works in any medium or format, whether now known or later developed, in connection with any of the foregoing. Owner shall not and shall ensure that its Affiliates do not sublicense, rent, lease, distribute or otherwise authorize the use of Operator Intellectual Property, Contractor Intellectual Property or Subcontractor Intellectual Property to, by or on behalf of anyone other than Owner and its Affiliates, any successors or operators thereto or any other third-party with whom Owner, its Affiliates or any successors or operators thereto contract solely for purposes of operating the T&D system and related facilities.*
15.	Sections 13.1(a), 13.1(c) and 13.2(h)	We confirm that the obligation to obtain for Owner sublicenses of Third Party Intellectual Property under 13.1(c) shall apply to all Third Party Intellectual Property and that the references to: (i) licensors in 13.1(a); (ii) the addition of the Owner's right to use residuals in 13.2(h), and (iii) the warranties of non-infringement in 19.2(h), were not intended to include Third Party Intellectual Property or to create separate licensing obligations. Please confirm.	Although there are no references to "licensors" in Section 13.1(a), we agree that Section 13.1(a) is not intended to cover Third Party Intellectual Property, but it does cover Contractor Intellectual Property and Subcontractor Intellectual Property. With respect to the residuals in Section 13.2(h), we agree that the O&M Agreement does not require any action with respect to Third Party Intellectual Property. With respect to the Intellectual Property representation (addressed in Section 19.2(g)), that representation covers the licenses granted to Owner and the Owner's exercise of the rights granted to it in the O&M Agreement. However, the representation does not limit	We have reflected this in Section 13.1(a) of the O&M Agreement, which has been modified as follows: *…Operator Intellectual Property and Subcontractor Intellectual Property include all derivatives and improvements thereto or therein (other than those constituting Work Product). For the sake of clarity, "improvements" means all developments and improvements Operator, its Affiliates or Subcontractors may make with respect to their Intellectual Property, respectively, and "derivatives" means any work based on or derived from one or more already existing works. This Section 13.1(a) is not intended to cover Third-Party Intellectual*

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			the obligations of Operator under Section 13.1(c). (*see* P3 Response dated 11/4/19)	*Property, but does cover Contractor Intellectual Property and Subcontractor Intellectual Property*.
16.	Section 13.1(c)(ii)	We confirm that Operator would not be required to infringe any third party intellectual property rights in the performance of the Agreement. Please confirm.	Confirmed. (*see* P3 Response dated 11/4/19)	We have reflected this in Section 13.1(c)(ii) of the O&M Agreement, which has been modified as follows: *In no event shall Operator's inability to obtain a right to license or sublicense any non-commercially available Intellectual Property of any third party excuse Operator's inability to perform or meet any deadline under this Agreement. Any applicable license of Operator or its Affiliates in connection with any non-commercially available third-party Intellectual Property relevant to the provision of the O&M Services, the Front-End Transition Services or the Back-End Transition Services hereunder shall be subject to Administrator's prior approval; provided that such approval shall not be unreasonably withheld, delayed or conditioned, and a complete copy of such licenses shall be provided to Administrator. Operator shall be excused for performance hereunder only to the extent such performance is impacted by Administrator's unreasonable withholding, conditioning or delaying of such approval. For the avoidance of doubt, nothing in this Section 13.1(c)(ii) shall be interpreted to require Operator to infringe any Third-Party Intellectual Property.*
17.	Section 13.1(d)(ii)	We confirm that the assignment of Work Product would not result in the assignment of any pre-existing intellectual property. Please confirm.	Confirmed. To the extent such pre-existing intellectual property is (i) used in the performance of the O&M Services or in connection with the T&D System and (ii) is embedded in or otherwise necessary for the use of the Work Product, Operator shall grant a license to Owner in accordance with the terms of Section 13.1(b). (*see* P3 Response dated 11/4/19)	We have reflected this in Section 13.1(d)(i) of the O&M Agreement, which has been modified as follows: ***(i)*** *The Parties hereby acknowledge and agree that, as between them, Owner shall own all right, title and interest in and to (A) all Intellectual Property, and derivatives thereof, regardless of format, created or produced in the performance of the O&M Services, the Front-End Transition Services or the Back-End Transition Services by*

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				Operator and its Affiliates if the cost of such creation or development is a T&D Pass-Through Expenditure and (B) to the extent the applicable third-party contracts so provide, any such Intellectual Property created by any of their Contractors or Subcontractors in connection therewith (collectively, "Work Product"), all of which shall, to the fullest extent under Copyright law, be considered works made for hire. For the avoidance of doubt, (x) Work Product shall not include any Intellectual Property created or produced prior to the Effective Date and (y) Operator Intellectual Property, Subcontractor Intellectual Property, Contractor Intellectual Property or Third-Party Intellectual Property (which for certainty, includes all derivatives or improvements thereto or therein the cost of which is not a T&D Pass-Through Expenditure).
18.	Section 13.1(d)(iii)	We confirm that the Operator is not responsible for the content of contracts between Contractor and Owner, where the Operator is not also a party to such contract. Please confirm.	To the extent Operator arranges for a Contractor to perform any of its obligations under the O&M Agreement, Owner expects that Operator will negotiate terms of such contract that comply with and are in accordance with the terms of the O&M Agreement. (*see* P3 Response dated 11/4/19)	We have reflected this in Section 13.1(d)(iii) of the O&M Agreement, which has been modified as follows: *Operator shall (A) use commercially reasonable efforts to ensure that relevant contracts with Contractors or Subcontractors properly reflect Owner's ownership of Work Product, and (B) in any event, ensure that contracts with Contractors or Subcontractors properly reflect the grant of licenses from such Contractors and Subcontractors (and Operator's right to sublicense) pursuant to Section 13.1(b) (License of Operator Intellectual Property, Contractor Intellectual Property or Subcontractor Intellectual Property) or, where Operator is not a party to the agreement with the respective Contractor, ensure that the contract between Owner and the Contractor includes a license from the Contractor to Owner of a scope consistent with the license granted in Section 13.1(b) (License of Operator Intellectual Property, Contractor Intellectual Property or Subcontractor Intellectual Property). For the*

	Topic	Clarification Question(s)	P3 Response(s)	Notes and/or Updates to O&M Agreement
				avoidance of doubt,, to the extent Operator arranges for a Contractor to perform any of its obligations under the Agreement, Operator shall negotiate terms of such contract that comply with, and are in accordance with, the terms of this Agreement.[…]
19.	Section 13.2(a)(i)	We confirm that the carve outs from the definition of Confidential Information (such as the information being publicly available) applies to all of such information, not just System Information. Please confirm.	Confirmed. (*see* P3 Response dated 11/4/19)	We have reflected this in Section 13.2(a)(i) of the O&M Agreement, which has been modified as follows: *[…] Confidential Information shall not include ~~System Information~~ any of the foregoing that: (A) is when furnished, or thereafter becomes, available to the public other than as a result of a disclosure by the receiving Party or its Representatives; (B) is already in the possession of or become available to the receiving Party or its Representatives on a non-confidential basis from a source other than the disclosing Party or its Representatives; provided, that to the actual knowledge of the receiving Party or its Representatives, as the case may be, such source is not and was not bound by an obligation of confidentiality to the disclosing Party or its Representatives; or (C) the receiving Party or its Representatives can demonstrate has been independently developed without a violation of this Agreement.*
20.	Section 18.6(b)(i)	This Section provides: "…OPERATOR INDEMNITEES: SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR ANY MATTER THAT IS THE SUBJECT OF THE SYSTEM REMEDIATION PLAN DURING THE PERIOD OPERATOR IS REPAIRING OR IMPROVING THE T&D SYSTEM ASSETS, BUSINESS PROCESS OR CONTROLS, WHETHER FORMAL OR INFORMAL, INCLUDING ACCOUNTING, INFORMATION, TECHNOLOGY AND ADMINISTRATIVE FUNCTIONS, IN EACH CASE RELATED TO SUCH MATTER IN	Confirmed, during the period Operator is repairing or improving the T&D System assets in accordance with the System Remediation Plan. (*see* P3 Response dated 11/4/19)	We have reflected this in Section 18.6(b)(i) of the O&M Agreement, which has been modified as follows: *SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR ANY MATTER THAT IS THE SUBJECT OF THE SYSTEM REMEDIATION PLAN DURING THE PERIOD OPERATOR IS REPAIRING OR IMPROVING THE T&D SYSTEM ASSETS, BUSINESS PROCESS OR CONTROLS, WHETHER FORMAL OR INFORMAL, INCLUDING ACOCUNTING, INFORMATION, TECHNOLOGY AND ADMINISTRATIVE FUNCTIONS, IN EACH*

	Topic	Clarification Question(s)	P3 Response(s)	Notes and/or Updates to O&M Agreement
		ACCORDANCE WITH THE SYSTEM REMEDIATION PLAN;" As per Section 13.3, and the process for the implementation of the System Remediation Plan generally, and the fact same will address Data Security (including cybersecurity breaches) we confirm that cybersecurity breaches will be a liability for which Operator Indemnitees are not responsible as per the provisions noted in Section 18.6(b)(i). Please confirm.		*CASE RELATED TO SUCH MATTER IN ACCORDANCE WITH THE SYSTEM REMEDIATION PLAN. FOR THE AVOIDANCE OF DOUBT, OPERATOR SHALL NOT BE LIABLE FOR DAMAGES ARISING FROM CYBERSECURITY BREACHES OCCURING DURING THE PERIOD OPERATOR IS REPAIRING OR IMPROVING THE T&D SYSTEM ASSETS IN ACCORDANCE WITH THE IMPLEMENTATION OF THE SYSTEM REMEDIATION PLAN IN SECTION 4.1(d) OF THIS AGREEMENT;*
21.	Annex VI, Section IV	"…payments of the service fee to the Operator may, at the request of GenCo or the Administrator at any time and from time to time, be reduced by amounts owed to GenCo consisting of Generation Pass-Through Expenditures and applied by Operator in accordance with the allocation methodology." We confirm that only amounts owed to Genco by Operator (emphasis added) consisting of Generation Pass-Through Expenditures could be potentially offset and applied to Operator in accordance with allocation methodology. Amounts owed by third-party Generators to Genco considered Generation Pass-Through Expenditures will not reduce payments from Genco to Operator. Please confirm.	Confirmed. The Shared Services service fee may only be offset by amounts owed by Operator to GenCo consisting of Generation Pass-Through Expenditures. To clarify, the funding for Generation Pass-Through Expenditures, by definition, will always flow from (i) Owner, who will fund the Generation Expenditures Accounts, to (ii) Operator, who will draw funds from the Generation Expenditures Accounts, and finally to (iii) GenCo and IPPs (third-party generators), who will be paid by Operator. In no event will amounts owed by IPPs to GenCo be considered Generation Pass-Through Expenditures. (*see* P3 Response dated 11/4/19)	We have reflected this in Section IV of Annex VI the O&M Agreement (*GenCo Shared Services*), which has been modified as follows: *As compensation for the performance of the Shared Services, GenCo shall pay a shared service fee (without markup for profit) to be determined in, and in accordance with, the allocation methodology of the Shared Services Agreement; provided that payments of the service fee to the Operator may, at the request of GenCo or the Administrator at any time and from time to time, be reduced by amounts owed by GridCo to GenCo consisting of Generation Pass-Through Expenditures and applied by Operator in accordance with the allocation methodology.*
22.	General – Priority of Payments	**QUESTION A.** Please confirm that all fees and other amounts payable to Operator (or paid by Operator and passed through to Owner) and all account pre- funding requirements under the OMA will be paid prior to debt service, either because it would constitute "Current Expenses" under PREPA's existing and future indebtedness secured by System Revenues or otherwise, and that any existing or future liens	**RESPONSE A**. Following PREPA's emergence from the Title III process, the debt service payments will come off the top of System Revenues (as provided in the Servicing Contract) and the remaining amount of System Revenues will be used to fund the Service Accounts or otherwise returned to PREPA. While the Title III process is ongoing, Operator's claims under the O&M Agreement will have administrative claim status in the Title III Case following the Title III Court's approval of a motion seeking administrative expense	With respect to Response A and Response B, these responses and clarifications, as well as the call on October 14, 2019 with OMM and Proskauer, were intended to be informative and assist Luma in its diligence process and supplement prior information provided in the Title III restructuring white paper. Luma should also rely on additional information publicly available and the views of your legal counsel. As a result, we did not expect to make reference to, or reflect them in, the O&M Agreement. .

	Topic	Clarification Question(s)	P3 Response(s)	Notes and/or Updates to O&M Agreement
		will be subordinated to such amounts payable or pre-funded. **QUESTION B.** In your Nov. 11 response to our third request for clarifications, item 15, you state that after PREPA's emergence from the Title III process, debt service payments will "come off the top of System Revenues (as provided in the Servicing Contract) and the remaining amount of System Revenues will be used to fund the Service Accounts or otherwise returned to PREPA." Can you please provide additional detail on this response? We were under the impression that the refinanced debt would be paid from proceeds of the Transition Charge. We have also discussed at our meetings that there will most likely be a securitization of revenues, and are aware from the OMA that Operator will need to be party to a Servicing Contract, which we will not have the benefit of seeing before execution of the OMA. Which debts will be paid from general System Revenues (as opposed to the Transition Charge) before Operator is paid, and do you have a sense of sizing of the expected debt service payments?	treatment for any such claims. (P3 Response dated 11/11/19) **RESPONSE B.** Confirmed. The current restructuring support agreement provides for bondholders to exchange their existing bonds for new bonds to be issued by a securitization entity. The repayment of such new bonds will be secured through the imposition of a Transition Charge, which will be implemented in rate increases and added to the amount billed to T&D Customers. Additionally, the restructuring support agreement provides for additional indebtedness that can be used to fund, among other things, the service account reserves which would be secured by a separate charge from the Transition Charge and/or taxes or other fees on Puerto Rico electricity. Aside from the securitization debt referred to above, there is not expected to be additional indebtedness upon exit of Title III. Regarding the Service Contract, Operator will be party to the Servicing Contract, pursuant to which Operator, acting as Servicer, will service, administer and collect the Transition Charges. As previously indicated, the Servicing Contract will be negotiated during the Front-End Transition Period and will have to be reasonably acceptable to Operator. (*see* P3 Response dated 11/15/19)	Further, with respect to Response A, in particular, we note that Section 4.1(c) of the O&M Agreement already provides protection to Operator during the Front-End Transition Period by requiring the Owner to file a motion seeking administrative expense treatment for accrued and unpaid amounts required to be paid by Owner during the Front End Transition Period and prior to Owner's receipt of the Title III Approvals pursuant to Section 4.5(o) (*Conditions Precedent to Service Commencement Date – Title III Approvals*).
23.	General – Accounting	If it so chooses, will Operator be able to utilize the PREPA e-suites system for accounting purposes for Genco, Gridco and Servco?	Yes, Operator will be able to utilize PREPA's existing Oracle accounting system. (*see* P3 Response dated 11/11/19)	We have reflected this in Section IV(A) of Annex I (*Scope of Services*) of the O&M Agreement, which has been modified by adding the language highlighted below as follows: *General. 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 Sections VI.A through VI.F of this Annex I (Scope*

	Topic	Clarification Question(s)	P3 Response(s)	Notes and/or Updates to O&M Agreement
				of Services). In the exercise of the responsibilities described in this Section VI, the Operator may utilize Owner's existing accounting system.
24.	General – PREPANET	The OMA is silent with respect to the operations of PREPA Networks after the OMA is executed. Please confirm that Operator will have no responsibility for managing PREPA Net (other than with respect to contracts between PREPA and PREPA Net, in its capacity as agent of PREPA).	Confirmed, Operator will have no responsibility for managing PREPA Networks, LLC (PREPA Net) other than responsibilities delineated in existing agreements between PREPA and PREPA Net (i.e. OTILA). (*see* P3 Response dated 11/11/19)	We have reflected this in Section I(A) of Annex I (*Scope of Services*) of the O&M Agreement, which has been modified by adding the proviso below after item (6) highlighted below as follows: *(6) maintenance of fiber optic cable structure infrastructure, as set forth in lease agreement between Owner and PREPA Networks (for the avoidance of doubt, the Parties acknowledge and agree that Operator shall have no other responsibility relating to PREPA Networks, LLC)*;
25.	General – Regulatory	**QUESTION 1.** It is our understanding that the intent of the performance-based incentives and penalty provisions in Section 6.25B of Act No. 17-2019, is to incentivize electric power service companies to strictly comply with PREB orders. The Performance Metrics discussed throughout the O & M Agreement, and set forth in Annex VIII of the Agreement, evaluate an entity's performance and are used to determine the financial reward or penalty an electric power service company will receive for meeting or failing to meet the specified targets associated with the metric. Section 6.25B of Act No. 17-2019 requires PREB to promulgate regulations on or before December 31, 2019, on Performance-Based Incentives and Penalty Provisions. On August 26, 2019, in Case No. NEPR-MI-2019-0014, PREB issued a Resolution on the Notice of Proposed Regulation and Request for Comments on its proposed regulation on performance incentive mechanisms. The proposed Regulation for Performance Incentive Mechanisms will establish the metrics reporting requirements for all certified electric power companies and outlines the process on how to establish metrics, targets and financial incentives. Comments were	**RESPONSE 1.** The Authority has reached out to PREB with respect to the Performance-Based Incentives and Penalty Provisions and will be supplementing this response when we received PREB's feedback about the foregoing. (*see* P3 Response dated 11/15/19) **RESPONSE 2.** Conversations with PREB are ongoing, but the Authority has not received formal feedback from the PREB regarding the performance incentives regulation. PREB has not received comments from PREPA regarding the performance incentives regulation. PREB expects the performance metrics to be handled during the Front-End Transition Period in order to incorporate the views, comments and recommendations of Operator. (*see* P3 Response dated 11/20/19) **RESPONSE 3.** We understand that the purpose of Section 8(f) of Act 120 was for the parties to be able to establish in the Partnership Agreement the rates (or a mechanism to adjust the rates) charged to consumers, not the fees paid to Operator.	These responses and clarifications were intended to be informative and assist Luma in its diligence process. As a result, we did not expect to make reference to, or reflect them in, the O&M Agreement**.**

	Topic	Clarification Question(s)	P3 Response(s)	Notes and/or Updates to O&M Agreement
		submitted on September 25, 2019. PREB has not yet issued the Final Regulation. It appears, then, that the Performance-Based Incentives and Penalty Provisions will apply to Operator in addition to the Performance Metrics set forth in the O&M Agreement. Can you agree if this is your understanding as well? Has PREPA provided any comments to PREB on these regulations? Would PREPA be willing to provide a request to PREB that it modify its regulation to address this point – for example by stating in the regulations that "unless PREB otherwise orders, the metrics and penalties in the Regulations apply" and then add a requirement in the OMA that receipt of such an order in favor of PREPA and Operator that the performance metrics and incentive regime in the OMA prevails over the regulations will be a Services Commencement Date Condition? OR If both regimes apply – provide in the O&M Agreement that any penalties paid to PREB under its regimes will be pass-through costs. Please advise. **QUESTION 2.** In The Authority's November 15 Response to our Consortium's Request for Clarification (Fourth Submission), question 4 noted additional follow-up from PREB regarding their performance incentives regulation. Has further feedback been received? **QUESTION 3.** As you are aware, pursuant to Section 8(f) of Act No. 120-2018, a contractor has the power to collect any duties, rents, and rates and any other type of fees for any service or function it provides, or for the construction, repair, improvement, and use of the facilities or PREPA's assets pursuant to the terms of the contract. However, PREB still retains jurisdiction under Act No. 83 of 1941, as amended, "<u>or any pertinent special laws, to revise and approve any modification to such duties, rents, and rates and any other types of fees</u>." (*Emphasis added*.) Moreover, Section 8(f) requires the contractor and PREPA to	However, even if Section 8(f) of Act 120 is interpreted to also apply to fees payable to Operator, it does not authorize PREB to unilaterally modify the Fixed Fee or the Incentive Fee. Rather, such section requires that, if the parties were to amend the O&M Agreement to modify the Fixed Fee or the Incentive Fee, any such amendment be submitted to PREB for its prior review and approval. (*see* P3 Response dated 11/15/19)	

	Topic	Clarification Question(s)	P3 Response(s)	Notes and/or Updates to O&M Agreement
		"meet the requirements imposed on PREPA or any other Electric Service Company (as defined in Act No. 57-2014…)." This appears to give the PREB the power to revise the Fixed Fee and Incentive Fee under the agreement. We note that subparagraph (iii) of the Change in Regulatory Law addresses a situation where there is "*any regulatory action under the foregoing (i.e. the Commonwealth law) [item in brackets added for clarification]* ...that "(iii) .. subjects Operator …. to…substantive regulation by PREB in a manner that materially and adversely affects Operator's ability to perform its obligations under this Agreement …". We confirm our understanding that this wording would capture a circumstance where there was a change to the Fixed Fee of Incentive Fee made by PREB that was not otherwise agreed to by Operator. Please confirm that this is consistent with your interpretation as well.		
26.	Annexes XV, XVI, XVII	Please confirm our expectation that we are not required to complete the sections for Operator Marks, Owner Marks, and Existing Liens at this time.	The initial draft of the Owner Marks and Existing Liens annexes will be provided by the Authority, together with Owner. The Operator Marks annex is not required to be completed by the Proposal Submission Deadline. (*see* P3 Response dated 11/20/19)	These responses and clarifications were intended to be informative and clarify the timing of completing the reference annexes. As a result, we did not expect to make reference to or reflect them in the O&M Agreement. Drafts of these annexes will be provided to Luma as soon as they are ready.