

PUERTO RICO TRANSMISSION AND DISTRIBUTION SYSTEM
OPERATION AND MAINTENANCE AGREEMENT¹

dated as of

[•], 2019

by and among

THE PUERTO RICO ELECTRIC POWER AUTHORITY
as Owner,

THE PUERTO RICO PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY
as Administrator,

[•]
as ManagementCo,

and

[•]
as Operator

This draft contains the following types of footnotes:

- **Note to Draft:** Footnotes in bold text are explanatory footnotes to bidders providing context for the changes in response to their comments. These footnotes were drafted in such a manner so as to avoid signalling which bidder(s) submitted the corresponding comments.
- **Note to Qualified Respondent:** Footnotes highlighted in yellow indicate items that will be required of bidders in their submission to the RFP (e.g. Annexes that bidders will need to prepare or amounts they will need to propose as part of their bid).

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[REDACTED]

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power whether through ownership of outstanding share capital (or equivalent interest), by contract or otherwise to designate a majority of the board of directors (or equivalent governing body) of such other Person.

“Copyright” means copyrights and registrations and applications therefor, together with all renewals, extensions, translations, adaptations, derivations and combinations therefor, works of authorship, publications, documentation, website content, rights in fonts and typefaces and database rights.

“COR3” means the Central Office for Recovery Reconstruction and Resiliency of Puerto Rico.

“CPI Factor” means the amount equal to (i) CPI Value for the calendar year immediately prior to the date of any adjustment divided by (ii) the CPI Value for the calendar year two (2) years prior to the date of such adjustment rounded to the fifth decimal place; provided, however, that in no case shall be the CPI Factor for any adjustment period be less than 1.000. For illustrative purposes only, if an amount is to be adjusted for inflation on July 1, 2019, for the one-year period of July 1, 2019 through July 1, 2020, the amount shall be multiplied by a CPI Factor equal to 1.02140 or the CPI Value for calendar year 2018 (which is 257.565) divided by the CPI Value for calendar year 2017 (which is 252.169).

“CPI Value” for any year means the “Annual Value” of such year obtained from “Consumer Price Index—All Urban Consumers—U.S. All Items Less Food and Energy (CUUR0000SA0L1E)” published by the Bureau of Labor Statistics of the United States Department of Labor, which is the calendar year 12-month average rounded to three decimal places; provided, however, that: (i) if such index is changed so that the base year thereof changes, such index shall be converted in accordance with the conversion factor published by the Bureau of Labor Statistics of the United States Department of Labor; (ii) if such index is discontinued or revised during the Term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if such index had not been discontinued or revised; and (iii) any such revision shall not result in the retroactive adjustment of any amounts paid or payable pursuant to this Agreement prior to such revision. For illustrative purposes only, the CPI Value for the calendar year 2018 is 257.565, which can be obtained directly as an annual value or computed using monthly values with data from the official website of the Bureau of Labor Statistics of the United States Department of Labor.

“Customer Database” has the meaning set forth in Section 5.15(a) (*Information – System Information and Computer Database*).

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

“Data Security Plan” has the meaning set forth in Section 4.2(h) (*Operator Responsibilities – Physical and Data Security Plans*). [REDACTED]

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

“Default Budget” has the meaning set forth in Section 7.3(d) (*Budgets – Default Budget*).

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

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

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

“DHS OIG” means U.S. Department of Homeland Security Office of Inspector General.

“Disallowed Costs” has the meaning set forth in Section 7.6(a) (*Disallowed Costs – Generally*).

“Disallowed Costs Dispute” has the meaning set forth in Section 7.6(██████████) (*Disallowed Costs – Disallowed Costs Disputes*).

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

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

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

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

“Emergency” or “Emergency Event” has the meaning set forth in the Emergency Response Plan and includes Major Outage Events and Declared Emergency or Major Disaster.

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“FAA” has the meaning set forth in Section 15.6(f)(i) (*Arbitration as a Final Resort – Awards*).

“Federal Funding” means any funding for the repair, replacement, restoration, improvement, resiliency, construction or hazard mitigation of the T&D System] received or to be received by or for the benefit of Owner from any U.S. federal agency, including FEMA and HUD.

“Federal Funding Procurement Manual” has the meaning set forth in Section 4.1(d) (*Front-End Transition Period Generally – Federal Funding Procurement Manual*).

“Federal Funding Requirements” has the meaning set forth in Section 5.5(a) (*Capital Improvements – Federal Funding Eligibility*).

“Federally Funded Capital Improvement” means Capital Improvements that are funded with Federal Funding.

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

“FEMA” means the U.S. Federal Emergency Management Agency.

“Fixed Fee” has the meaning set forth in Section 7.1(b)(i) (*Service Fee – Fixed Fee*).

“Fixed Fee Account” has the meaning set forth in Section 7.1(b)(ii) (*Service Fee – Fixed Fee*).

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

“Force Majeure Event”⁸ means any act, event, circumstance or condition (other than lack of finances) whether affecting the T&D System, the System Power Supply, Owner, ManagementCo, Operator or any of Owner’s Contractors or subcontractors, or Operator’s Subcontractors, that (i) is beyond the reasonable control of the Party relying on such act, event or condition as justification for not performing an obligation or complying with any condition required of such Party under this Agreement, and (ii) materially interferes with or materially increases the cost of performing such Party’s obligations hereunder, to the extent that such act, event, circumstance or condition is not the result of the willful or negligent act, error or omission or material breach of this Agreement by such Party; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as a willful or negligent act, error or omission or material breach of this Agreement by such Party.

⁸ Note to Draft: Items that were included in proposed definitions of Force Majeure Event relating to acts or omissions of Owner are covered in the definition of Owner Fault, rather than the definition of Force Majeure Event.

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

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

“Owner Event of Default” has the meaning set forth in [REDACTED] (*Events of Default By Owner*).

“Owner Fault” means any breach (including any breach of any representation and warranty set forth in any Transaction Document), failure of compliance or nonperformance by Owner, Administrator or PREB with its respective obligations under any Transaction Document or Applicable Law, or any negligence, tort or willful misconduct by Owner, Administrator or PREB with respect to performance of its respective obligations under any Transaction Document or under Applicable Law (whether or not attributable to any officer, trustee, member, agent, employee, representative, contractor, subcontractor of any tier or independent contractor of Owner, Administrator or PREB other than ManagementCo or Operator), that has had, or is reasonably expected to have, a material adverse effect on the performance of the Operator or ManagementCo under this Agreement or on the operation or maintenance of the T&D System.

“Owner Indemnitee” has the meaning specified in Section 18.1 (*Indemnification by Operator*).

“Owner Intellectual Property” means any Work Product and other Intellectual Property owned by Owner or its Affiliates.

“Owner Licensed Intellectual Property” means any Intellectual Property licensed by Owner from a third-party not a party to this Agreement.

“Owner Marks” means Owner’s Trademarks listed in Annex XVI (*Owner Marks*), as may be revised by Owner from time to time.

“Owner Patents” has the meaning set forth in Section 13.1(c) (*Intellectual Property – Work Product*).

“Owner Personal Information” means any and all personally identifiable information, in any form, provided by or to Operator, Operator Related Parties or Subcontractors in connection with the provision of O&M Services or services under this Agreement and that, alone or in combination with, other information uniquely identifies a current, former or prospective director, trustee, officer, employee, elected official, supplier, retiree of Owner, Owner Related Party or a T&D Customer (e.g., names, addresses, telephone numbers, other information in the Customer Database or any other personally identifiable information as otherwise defined under Applicable Law), including (i) copies of such information or materials to the extent containing such information and (ii) such information Owner notifies Operator in advance in writing is subject to a duty of confidentiality that Owner owes to Owner’s customers or pursuant to contracts of Owner or Owner Related Parties.

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

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“Sanctioned Person” has the meaning set forth in Section 19.2(g)(iv) (*Representations and Warranties of Operator – Applicable Law Compliance*).

“Sanctions” has the meaning set forth in Section 19.2(g)(iv) (*Representations and Warranties of Operator – Applicable Law Compliance*).

“Service Accounts” has the meaning set forth in Section 7.5(■)(i) (*Service Accounts – Major Outage Event Reserve Account*).

“Service Account Dispute” has the meaning set forth in Section 7.5(e) (*Service Accounts – Service Account Disputes*).

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

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

“Service Fee” has the meaning set forth in Section 7.1(a) (*Service Fee – Generally*).

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

“Servicing Contract” means the servicing contract, dated as of the date hereof, by and between Operator and [●]¹⁴ in the form set forth as Exhibit F (*Form of Servicing Contract*).

“Shared Services Agreement” means the shared services agreement to be entered into by Operator and GenCo to provide the GenCo Shared Services, as further described in Annex VII (*GenCo Shared Services*).

“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.

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

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

¹⁴ Note to Draft: The counterparty to the Servicing Contract will be the securitization vehicle set up for purposes of the Servicing Contract.

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foregoing, in each case whether registered or unregistered, and all applications and registrations therefor.

“Transaction Documents” means this Agreement, any written instrument comprising Acceptable Operator Security, the Servicing Contract and any other agreement entered into by ManagementCo, Operator, Owner or Administrator from time to time in connection with the transactions contemplated hereby and expressly designated a “Transaction Document” by the parties thereto.

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

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

“Utility Intellectual Property” has the meaning set forth in Section 13.1(i) (*Intellectual Property – Utility Intellectual Property*).

“Vegetation Management Plan” has the meaning set forth in [REDACTED]
4.2(h) [REDACTED] Responsibilities - [REDACTED]
[REDACTED]

“Work Product” has the meaning set forth in Section 13.1(c)(i) (*Intellectual Property – Work Product*).

Section 1.2 Interpretation; Construction.

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

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(viii) receipt by Owner of a copy of a certificate as to certain matters of Commonwealth law in the form set forth as Exhibit B (*Form of Commonwealth Certifications*), duly executed by ManagementCo and Operator;

(ix) receipt by Owner of a Tax Opinion and receipt by ManagementCo of a letter from tax counsel permitting ManagementCo and Operator to rely on such Tax Opinion;

(x) [REDACTED] has funded the Front-End Transition Account pursuant to Section 4.6(c)(ii);;

(xi) receipt by ManagementCo of (A) a list of the project worksheets related to the T&D System prepared by FEMA pursuant to Section 428 of the Stafford Act and (B) a summary of the costs estimates or preliminary costs estimates for Federally Funded Capital Improvements established as of such date; and

(xii) receipt by Owner of Title III Approvals from the Title III Court acceptable to ManagementCo and Owner.

Each of the forgoing items (i) through (xii) shall be acceptable to Owner and ManagementCo in their sole and absolute discretion and shall not be considered satisfied unless and until written confirmation of such satisfaction has been provided by each of Owner and ManagementCo.

(c) Outside Date. If the Effective Date has not occurred by the date specified in the RFP or such later date as the Parties may mutually agree in writing, the Bid Security (as defined in the RFP) shall be held, drawn or returned as provided in the RFP.¹⁷

Section 2.3 Term.

(a) Initial Term. This Agreement shall be in effect from the Effective Date through June 30 immediately following the [fifteenth (15th)] anniversary of the Service Commencement Date (such period of time, the "Initial Term"), unless extended or earlier terminated in accordance with the terms hereof.

(b) Performance Extension Option. In the event that the Extension Performance Levels as defined in and as set forth in Annex IX (*Performance Metrics*) are satisfied, ManagementCo shall have the right and option to extend the term of this Agreement from the date upon which it would otherwise expire for one extension period of ten (10) years (such period being hereinafter called the "Performance Extension Period") upon the same terms and conditions as are herein set forth. If ManagementCo elects to exercise said option to extend, it shall do so by giving notice of such election to Administrator at any time during the term of this Agreement on or before the date which is twelve (12) months prior to the expiry of the Initial

¹⁷ Note to Draft: The RFP will be amended to provide for the return of the bid security to (1) the parties that are not the Selected Proponent and (2) the Selected Proponent if the conditions precedent to the Effective Date are not met by an outside date.

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“qualified management contract” under Revenue Procedure 2017-13, such that the provision of O&M Services by ManagementCo and Operator under this Agreement does not adversely affect the exclusion from gross income for federal income tax purposes under the Internal Revenue Code of the interest on such obligations. The Tax Opinion and reliance letter delivered as of the Effective Date has been delivered on such basis.

(b) Covenants.

(i) ManagementCo and Operator covenant and agree that: (A) neither it nor any direct or indirect owner of an equity interest in it is entitled to any U.S. federal income tax benefits relating to the T&D System that are 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 the T&D System.

(ii) Owner, Administrator, ManagementCo 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.

(c) PREB Oversight.¹⁹

(i) The Parties agree and acknowledge that to the extent that PREB (i) is not permitted under Applicable Law to carry out its rights, duties and obligations under this Agreement (“PREB Obligations”) or (ii) ceases to be an entity of the government of the Commonwealth, the related PREB Obligations shall automatically become the rights, duties and obligations of Administrator. In the event that such PREB Obligations become the rights, duties and obligations of Administrator, Administrator shall exercise such rights, duties and obligations (i) taking into account the standards, processes and procedures previously used by PREB with respect to the PREB Obligations (ii) in a manner that does not adversely affect the exclusion from gross income of interest on obligations of Owner, its Affiliates or another Governmental Body for federal income tax purposes under the Internal Revenue Code; and (iii) taking into account its obligations under [Regulation 10.11] of Act 120 not to alter or amend this Agreement and not interfere with contractual matters.

¹⁹ Note to Draft: Tax counsel has advised that to the extent PREB is not permitted under Applicable Law to carry out the PREB Obligations, another entity of the Puerto Rico government must retain such rights, responsibilities and duties in order to preserve the tax-exempt status of PREPA debt. For that reason, this provision was added to transfer such rights, responsibilities and duties to Administrator in the event that Applicable Law prevents PREB from carrying out the PREB obligations.

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potentially relate, to an event that may be or has been declared an Emergency or Major Disaster.²²

(h) Physical, Data Security and Vegetation Management Plans. ManagementCo shall develop and provide Administrator and PREB with plans of action meeting Contract Standards that outlines the procedures and actions necessary for maintaining (i) the physical security of the T&D System (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”).

(i) Back-End Transition Plan. ManagementCo shall prepare and submit to Administrator a detailed back-end transition plan consistent with the back-end transition outline set forth in Annex IV (*Back-End Transition Plan*), which plan shall provide 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 (the “Back-End Transition Plan”). Such Back-End Transition Plan may be updated by ManagementCo on an annual basis as necessary or appropriate.

(j)

[REDACTED]

[REDACTED]

(k) Employment Evaluation [REDACTED]. As soon as reasonably practicable following the Effective Date but not less than one hundred twenty (120) days prior to the Target Service Commencement Date (the “Interview Deadline”), ManagementCo shall be provided access to legally compliant records and information relevant to its stated requirements for employment as set forth in Annex V (*Operator Employment Requirements*) and use commercially reasonable efforts to evaluate as candidates for employment at Operator, effective as of the Service Commencement Date, the regular employees of Owner and its Affiliates who (i) are currently and remain employed by Owner and its Affiliates (other than Owner and/or its Affiliates’s generation station employees) as of the Interview Deadline or are hired by Owner or its Affiliates on or after the Effective Date in the ordinary course of business consistent with the past practices of Owner and its Affiliates to replace any existing employee of Owner, and (ii) apply to Operator in a job category Operator wishes to fill (collectively, the “Owner Employees”). For the avoidance of doubt, neither ManagementCo nor Operator shall be liable for severance or other pay or benefits for Owner Employees who are not hired by Operator, including those to whom an offer of employment is made but who do not accept such offer. Owner and its Affiliates will waive any non-competition, confidentiality or other employment contract obligation between Owner or Affiliate and any Owner Employee that may otherwise restrict any Owner Employees’ rights to be employed by Operator.

²² Note to Draft: The definition of Contract Standards includes Prudent Utility Practice. The definition of Prudent Utility Practice takes into account “the facts and the characteristics of the T&D System and System Power Supply known at the time the decision was made”, which addresses adjustments that may be required given the emergency situation.

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

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

(ii) Offers of employment shall provide for employment with Operator on terms and conditions that are set at Operator's sole discretion, but shall in all cases provide for (A) a base salary or regular hourly wage rate at least equal to the base salary or wage rate provided by Owner or its Affiliates (as applicable) to the Owner Employee immediately prior to the Service Commencement Date and (B) employee fringe benefits that are no less favorable than those enjoyed by the Owner Employee immediately prior to the Service Commencement Date, to the extent consistent with, and as restricted, conditioned, modified or annulled by Puerto Rico Act No. 3-2017, Act No. 26-2017 and Act No. 66-2014.

(m) Periodic Reports.

(i) ManagementCo shall provide Administrator with detailed weekly, monthly and other periodic reports as Administrator may reasonably request from time to time with respect to ManagementCo's performance of the Front-End Transition Services, including the progress against the Handover Checklist and any other completion schedules and milestones included in the Front-End Transition Plan. In connection therewith, ManagementCo shall provide Administrator with any other information that (A) Administrator may reasonably request, including performance reports related to any of Front-End Transition Services, and (B) may be reasonably produced from records maintained by ManagementCo in the normal course of business consistent with the provisions of this Agreement relating to document retention.

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

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“Commencement Date Governmental Approvals”). Once the Parties have identified the Commencement Date Governmental Approvals: (a) (i) ManagementCo shall coordinate with Owner and Administrator to prepare for and support Owner’s efforts related to the transfer or assignment, to the extent required by Applicable Law, or the reissuance or assistance with the issuance of the Commencement Date Governmental Approvals, (ii) Owner, with Operator’s assistance, shall submit complete applications and take all other steps necessary under Applicable Law to obtain and maintain all required Commencement Date Governmental Approvals, and (iii) Owner shall provide ManagementCo and Administrator with copies of any such Commencement Date Governmental Approvals; and (b) ManagementCo [REDACTED] shall cooperate with Owner in good faith in identifying, preparing, applying for, obtaining and maintaining the Commencement Date Governmental Approvals.

Section 4.5 Conditions Precedent to Service Commencement Date.

The Service Commencement Date shall not occur, and the obligations of the Parties to proceed with their respective obligations hereunder after the Service Commencement Date shall not commence, until all of the following conditions precedent (the “Service Commencement Date Conditions”) are either satisfied as determined, or waived in writing, by (i) Administrator, in the case of Section 4.5(a) (*Conditions Precedent to Service Commencement Date – [REDACTED] Responsibilities*), Administrator, (ii) ManagementCo, in the case of Section 4.5(b) (*Conditions Precedent to Service Commencement Date – Owner and Administrator Responsibilities*), or (iii) both Administrator and ManagementCo, in the case of Section 4.5(c) (*Conditions Precedent to Service Commencement Date – Governmental Approvals*), Section 4.5(d) (*Conditions Precedent to Service Commencement Date – Acceptability and Effectiveness of Documents*), Section 4.5(e) (*Conditions Precedent to Service Commencement Date – No Governmental Prohibitions or Injunctions*), Section 4.5(f) (*Conditions Precedent to Service Commencement Date – Existing Environmental Conditions*), Section 4.5(g) (*Conditions Precedent to Service Commencement Date – Rate Order*), Section 4.5(h) (*Conditions Precedent to Service Commencement Date – Minimum Federal Funding*), Section 4.5(i) (*Conditions Precedent to Service Commencement Date – Procurement Manuals*), Section 4.5(j) (*Conditions Precedent to Service Commencement Date – Contract Standards and Other Documents*), Section 4.5(k) (*Conditions Precedent to Service Commencement Date – Servicing Contract*), [REDACTED] Section 4.5(l) (*Conditions Precedent to Service Commencement Date – GenCo*): [REDACTED]

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

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

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

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(ii) the System Remediation Plan; (iii) the Initial Budgets; (iv) a revised Annex IX (*Performance Metrics*) that accurately reflects the Performance Metrics agreed with PREB; (v) the Emergency Response Plan; (vi) the Physical, Data Security and Vegetation Management Plans; and (vii) the Back-End Transition Plan .

(k) Servicing Contract. Owner shall have received a copy of the Servicing Contract, duly executed by Operator.²⁵

(l) GenCo. [Reserved.]²⁶

(m) [REDACTED]

Section 4.6 Front-End Transition Period Compensation.

(a) General. As compensation for the Front-End Transition Services provided by ManagementCo, Owner shall pay ManagementCo the Front-End Transition Service Fee. The Parties acknowledge and agree that Federal Funding shall not be used to pay the Front-End Transition Service Fee. The Front-End Transition Service Fee shall not be subject to any abatement, deduction, counterclaim or set-off of any kind or nature.

(b) Front-End Transition Service Fee. The “Front-End Transition Service Fee” shall be an aggregate amount equal to (i) the hourly fully allocated cost rate for each category of ManagementCo employee, Affiliate personnel or Front-End Subcontractor providing Front-End Transition Services, as set out in Annex VI (*Front-End Transition Hourly Fully Allocated Rates*), multiplied by (ii) the number of hours worked by each ManagementCo employee or Affiliate personnel in such category providing Front-End Transition Services plus (iii) all other reasonable and documented costs and expenses incurred by ManagementCo (without markup for profit, administration or otherwise) that are necessary and reasonable in the course of providing the Front-End Transition Services and satisfying the Service Commencement Date Conditions.

(c) Advanced Funding.

(i) ManagementCo shall establish one or more accounts from which it shall draw funds from time to time to pay the Front-End Transition Service Fee (collectively, the “Front-End Transition Account”).

(ii) Prior to ManagementCo commencing the provision of any Front-End Transition Services, Owner shall deposit in the Front-End Transition Account, on account of and as an advance on payment for the Front-End Transition Services, an amount equal to the sum

²⁵ Note to Draft: Operator, as party to the Servicing Contract, will be consulted as to the provisions of the Servicing Contract.

²⁶ Note to Draft: Condition precedent to reflect agreed-upon plan for separation of Generation and T&D systems.

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effective date of such termination, and (C) if the termination occurred through no fault of ManagementCo, Owner shall pay ManagementCo a termination fee of \$[•] ("Owner Termination Fee") within five (5) Business Days of the effective date of such termination. This Agreement (other than with respect to the aforementioned payment obligations, which shall continue in effect) shall thereafter become void and have no effect, without any liability on the part of any Party or its Affiliates or Representatives in respect thereof, except that nothing herein will relieve any party from liability that cannot be waived as a matter of Applicable Law, claims of fraud or intentional breach or misrepresentation. Furthermore, the remedies provided in this Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*) shall be the sole and exclusive remedies of the Parties for any termination of this Agreement pursuant to Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*).

Section 4.9 Subcontractors During the Front-End Transition Period.

(a) General. ManagementCo shall have the right to engage subcontractors to perform certain Front-End Transition Services (the "Front-End Subcontractors"). [REDACTED] shall provide Administrator with a list of Front-End Subcontractors that [REDACTED] has engaged or intends to engage for the performance of any of the Front-End Transition Services in excess of \$[•] ("Material Front-End Subcontractor"). Administrator shall have the right to approve any Material Front-End Subcontractor engaged by [REDACTED] to perform any Front-End Transition Services the cost of which is expected to be in excess of \$[•], which approval shall not be unreasonably withheld, conditioned or delayed.

(b) Identification. Promptly following the Effective Date, as part of its subcontractor background checks, ManagementCo shall provide Administrator information requested by Administrator, to the extent reasonably available to ManagementCo, pertaining to the proposed Material Front-End Subcontractors in the following areas: (i) any conflicts of interest; (ii) any record of felony criminal convictions or pending felony criminal investigations and (iii) any final judicial or administrative finding or adjudication of non-performance of contracts with Owner or Administrator, in each case, to the knowledge of ManagementCo. In addition, to the extent any conflicts of interest may be identified, ManagementCo, Owner, and Administrator shall cooperate in good faith to avoid, mitigate and neutralize any such conflicts.

(c) Approval. If a proposed Material 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 ManagementCo. Subject to the foregoing, the approval or rejection by Administrator of any proposed Material Front-End Subcontractor shall not create any liability of Owner or Administrator to ManagementCo, such Material Front-End Subcontractor, any third-parties or otherwise. When engaging Front-End Subcontractors, ManagementCo 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 Front-End Subcontractors shall be required to furnish a Sworn Statement.

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(c) Powers. In such capacity as Owner's designated agent pursuant to Section 5.2(b) (*System Contracts – Agent Designation*), Operator shall have full power and authority to act on Owner's behalf and to legally bind Owner, subject, in each case, to Owner's rights and responsibilities provided in Section 6.1 (*Rights and Responsibilities of Owner*) and the other terms of this Agreement. Operator and Owner shall promptly implement such policies and procedures as may be necessary or appropriate to effect the activities contemplated by this Section 5.2 (*System Contracts*). Where necessary or required by a Governmental Body or Person, Operator and Owner shall execute and deliver such instruments, agreements, certificates or other evidence confirming Operator's designation, appointment and authority to act as Owner's agent as provide in this Section 5.2 (*System Contracts*).

(d) Additional System Contracts Between Effective Date and Service Commencement Date. From the Effective Date to the Service Commencement Date, if Owner or Administrator identify any additional contracts reasonably believed to be required to be treated as a System Contract hereunder, Administrator shall notify Operator in writing and provide a copy of such proposed System Contract, together with any other information regarding such contract reasonably requested by Operator. If the proposed System Contract is approved by Operator, acting reasonably, the Budgets shall be amended to the extent required as a result of such additional System Contract.

(e) Additional System Contracts or Expired System Contracts After Service Commencement Date. After the Service Commencement Date, if any System Contracts are required:

(i) for the operation and maintenance of the T&D System, to deliver services to T&D Customers or to comply with the provisions of this Agreement or Contract Standards; or

(ii) following the expiration or termination of any System Contract that was entered into by Owner prior to the Service Commencement Date;

then Operator shall be responsible for obtaining such System Contract in Owner's name and on Owner's behalf [REDACTED]; [REDACTED] that any new or replacement System Contract that provides for payments in excess of \$[•] in any Contract Year or \$[•] in the aggregate ("Material System Contract") shall be subject to approval by Administrator, acting reasonably and such approval shall not be unreasonably withheld, delayed or conditioned.

(f) Contractors. Notwithstanding the foregoing, Operator shall have the right to engage Contractors as agent for Owner to perform the O&M Services, and Owner's payment obligations thereunder shall be an expense that is paid by Operator as a T&D Pass-Through Expenditure. Operator shall ensure that: (a) any Contractor engaged exercises due diligence in the performance of the services contracted to such Contractor; (b) any Contractor performing O&M Services shall be a licensed professional possessing the necessary qualifications and certifications with experience in the performance of the work contracted to it; and (c) Administrator receives any information that it reasonably requests in respect of any Material

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Contractor. Operator shall provide Administrator with a list of Contractors that Operator has engaged or intends to engage for the performance of any of the O&M Services in excess of \$[•] ("Material Contractor"). Administrator shall have the right to approve any Material Contractor engaged by Operator to perform any O&M Services which approval shall not be unreasonably withheld, conditioned or delayed. [REDACTED]

(g) Subcontractors and Affiliate personnel. Notwithstanding the foregoing, Operator shall have the right (but no obligation) to engage Subcontractors to perform the O&M Services and Operator's payment obligations thereunder shall be an expense that is paid by Operator as a T&D Pass-Through Expenditure. Operator shall provide Administrator with a list of Subcontractors which Operator has engaged or intends to engage for the performance of any of the O&M Services the cost of which is expected to exceed \$[•] per year or \$[•] in the aggregate ("Material Subcontractor"). Administrator shall have the right to approve any Material Subcontractor engaged by Operator to perform any O&M Services which approval shall not be unreasonably withheld, conditioned or delayed. 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 information that it reasonably requests in respect of any Material Subcontractor. All contracts entered into with Subcontractors by Operator shall be assignable to Administrator and without cost or penalty, at the end of the Term. Operator may also utilize personnel from its Affiliates to perform O&M Services at the hourly fully allocated cost rate for each category of Affiliate personnel providing O&M Services. Operator shall retain full responsibility to Owner and Administrator under this Agreement for all matters related to the O&M Services subject to the limitations on liability set forth in Section 18.3 (*Limitation on Liability*).

(h) [REDACTED] Capital Improvements. Owner acknowledges and agrees that Operator may hire Contractors, as agent for and on behalf of Owner, to perform any Federally Funded Capital Improvement project or any Non-Federally Funded Capital Improvement project; provided that any Contracts related to the performance of any Federally Funded Capital Improvement shall comply with the Federal Funding Requirements, [REDACTED] described in the Federal Funding Procurement Manual and any competitive bidding processes required for the award of any such Contract—[REDACTED] that any [REDACTED] to [REDACTED] shall [REDACTED]—comply with the [REDACTED] Procurement Manual—[REDACTED]

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

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capital projects related to new generation in accordance with the Integrated Resource Plan and the Shared Services Agreement;

(ii) monitor the approved annual Capital Budget – Federally Funded and Capital Budget – Non-Federally Funded;

(iii) prepare risk assessments and analyses in support of prioritization and planning for Capital Improvements and other capital projects, which shall take into account the Integrated Resource Plan, load and energy forecasts, fuel price and quantity forecasting, long and short range system plans, and proposed annual operating and maintenance plans;

(iv) prepare long and short range transmission and distribution planning analyses and forecasts to determine the need for Federally Funded Capital Improvements and Non-Federally Funded Capital Improvements, including the introduction of smart grid and other emerging technologies and project management services to ensure the technical performance and reliability of the T&D System;

(v) prepare analyses and forecasts [REDACTED] to determine the need for generation-related capital projects, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] if applicable, in accordance with Section 5.13(d) (*Generation-Related Services – Procurement of Generation Projects and Generation Supply*) and the Shared Services Agreement, including the need for Owner to enter into new Generation Supply Contracts; and

(vi) perform and supervise Capital Improvements, including engineering and related design and construction management services.

(b) Federal Funding Eligibility. Owner shall notify Operator in writing of any Capital Improvements that may be eligible for Federal Funding. In such case, Owner and Operator shall cooperate with each other to address and comply with federal agency requirements, including any requirements set forth in the Federal Funding Procurement Manual (all such requirements, the “Federal Funding Requirements”), so as not to jeopardize the T&D System’s eligibility to receive Federal Funding. Such cooperation shall include Owner (i) providing Operator with such documents and information it requests with respect to the Federal Funding Requirements; (ii) sharing with Operator any specific requirements imposed by the relevant funding agency to maintain eligibility to receive Federal Funding; and (iii) making requests to such federal agencies (with the prior written consent of Operator, as agent of Owner) to review Owner and Operator’s systems and plans to comply with Federal Funding Requirements.

(c) Capital Asset Control. In each Contract Year, Operator shall conduct a review of the Capital Improvements made in the prior Contract Year. Such review shall measure the accuracy of the plant records, maps and maintenance databases concerning capital assets. Operator shall also conduct a physical inventory of all capital assets from time to time in accordance with the Contract Standards. Operator shall provide the results of each such review to Owner and Administrator promptly following the completion of such review.

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or otherwise reasonably requested by Administrator in order to assist and support Owner in obtaining, maintaining, renewing, extending and complying, as may be relevant, with the terms of such Governmental Approvals. Operator shall agree to be named as a co-permittee on any Governmental Approval if so required by the issuing Governmental Body.

(c) Data and Information. All data and information required to be supplied and actions required to be taken in connection with the Governmental Approvals required for the O&M Services shall be supplied and taken by Operator on a timely basis considering the requirements of Applicable Law and the responsibilities of Owner as the legal and beneficial owner of the T&D System. The data and information supplied by Operator to Owner, Administrator and all regulatory agencies (as agent for Owner) 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.

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

(e) Reports to Governmental Bodies. Operator, as agent for Owner, shall prepare all periodic and annual reports, make all information submittals and provide, on a timely basis, all notices to all Governmental Bodies required by all Governmental Approvals and under Applicable Law with respect to the T&D System; 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 or from errors or omissions in such information. Such reports shall contain all information required by the Governmental Body and may be substantially similar or identical to comparable reports previously prepared for Administrator if such are acceptable to the Governmental Body.

(f) Integrated Resource Plan. From time to time, or as otherwise required by PREB in accordance with Applicable Law, Operator, as agent for Owner, shall prepare a proposed Integrated Resource Plan for review and approval by PREB. The proposed Integrated Resource Plan shall be designed in a manner to ensure that, if approved by PREB and subject to the assumptions specified therein, [REDACTED] adequate [REDACTED] transmission and distribution [REDACTED] at the lowest reasonable rates; [REDACTED]

(g) PREB Rate Proceedings. From time to time, or as otherwise required by PREB in accordance with Applicable Law, Operator may 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; [REDACTED]

Each of Owner and Administrator shall support Operator's proposed rate changes to ensure that adequate amounts are available for inclusion in any Budget and provided that the rates are

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assuring the pre-funding and prompt reimbursement of all of Operator's costs in effectuating the Remedial Action determined by Administrator, which costs shall be treated as T&D Pass-Through Expenditures hereunder. If such an agreement cannot be reached, Administrator (or Owner, as the case may be) shall proceed with the Remedial Action at its cost, including at such times and in a manner so as to not materially interfere with the performance of the O&M Services and Operator shall have no responsibility for such Remedial Action. In the event of a Pre-Existing Environmental Condition, Administrator and Operator may also reach an agreement whereby Operator is compensated for effectuating the Remedial Action proposed by Administrator after the presentation of Remedial Action alternatives by Operator for such condition. Subject to Applicable Law, in no event shall ownership of any Hazardous Material, including as stated on manifests, be in the name of Operator, or Operator's employees, contractors, guests or invitees, nor shall Operator be deemed to be arranging for any disposal of any Hazardous Material associated with such Remedial Action or otherwise.

(ii) With respect to any Release caused by the gross negligence or willful misconduct of Operator or Operator's employees, contractors, guests or invitees in connection with the O&M Services, Operator shall promptly obtain the necessary Governmental Approvals for, and then commence and diligently pursue to completion all Remedial Action necessary to comply with Environmental Law. Operator shall keep Administrator reasonably informed of the progress of such Remedial Action and the schedule for completing it.

(iii) Operator shall promptly notify Administrator and any other Governmental Body as may be required by Environmental Law of its intention to handle, transport or dispose of Hazardous Material, other than in the ordinary course of business. Operator shall cause such Hazardous Material to be handled, transported and disposed of in accordance with Environmental Law.

Section 5.11 Accounting and Financial Services. Operator shall provide accounting and financial services in respect of the T&D System, including those services listed in Annex II (*Scope of Services*).

Section 5.12 Legal Matters. Operator shall manage Owner's legal matters in respect of the O&M Services and Owner's related reporting obligations, including those services listed in Annex II (*Scope of Services*). In performing this Agreement, nothing shall require, or shall be construed as requiring, Operator to act as legal counsel to, or to provide legal advice or representation to, Owner.

Section 5.13 Generation-Related Services.

(a) Power Supply Dispatch and Management. As further detailed in, and in accordance with, the System Operation Principles, Operator, as agent for Owner, shall: (i) dispatch, schedule and coordinate Power and Electricity from available generation assets and provide related services, [REDACTED]; (ii) coordinate the scheduling of [REDACTED] load requirements [REDACTED] Power and Electricity with IPPs pursuant to their respective Generation Supply Contracts and with GenCo pursuant to the GridCo-GenCo PPOA; (iii) implement and apply, on a daily and hourly basis as applicable, seven (7) days per week and twenty-four (24) hours per day, the System Operation

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Principles in order to ensure and coordinate the delivery of Power and Electricity; (iv) develop load and energy forecasts (including daily forecasts), scheduling requirements and capacity requirements taking into consideration unit outages; (v) request and consider information with respect to operational constraints; and (vi) perform any other services related to the dispatch, scheduling and/or coordination of Power and Electricity from existing and future available generation assets.

(b) Power Supply Information. In connection with Operator's performance of the dispatch, scheduling and coordination of Power and Electricity, Operator shall have the right from Owner, GenCo and may request the right from any IPP, as applicable, to reasonable access to information consistent with Prudent Utility Practice required to perform the dispatch and scheduling of Power and Electricity, which includes [REDACTED] fuel availability, fuel inventory, unit availability, unit outage schedules, electric system reliability requirements, reserve requirements and identification of must-run generation resources.

(c) Review of System Operation Principles. In connection with Operator's performance of the dispatch, scheduling and coordination of Power and Electricity, Operator and Administrator shall have the right from time to time to review the System Operation Principles, in coordination with Administrator or Operator, as applicable, taking into account Applicable Law, load and energy forecasts, long and short range system plans, proposed annual operating and maintenance plan, any limitation criteria, and the condition of the entire electric system. If Operator and Administrator determine upon review that the System Operation Principles should be revised, Operator shall prepare and submit revised System Operation Principles to PREB for approval. Subject to PREB approval, Operator shall perform the services described in Section 5.13(a) (*Generation-Related Services – Power Supply Dispatch and Management*) in accordance with the revised System Operation Principles.

(d) Procurement of Generation Projects and Generation Supply Contracts. Operator shall recommend Resource Adequacy that may require new generation procurement for Generation Projects and/or Generation Supply Contracts, which procurement shall be done in accordance with the Integrated Resource Plan and Applicable Law. Any such Generation Project and/or Generation Supply Contract shall be subject to the applicable procurement processes and approval by PREB in accordance with Applicable Law. In relation to any procurement Operator shall:

(i) prepare risk assessments and analyses in support of Resource Adequacy and Generation Project and/or Generation Supply Contract procurement prioritization and planning, which shall take into account the Integrated Resource Plan and Applicable Law;

(ii) prepare long and short range transmission and distribution planning analyses and forecasts to determine the need for Generation Project and/or Generation Supply Contract procurement;

(iii) meet with PREB on an annual basis to review the prepared analyses, demand projections prepared in accordance with the Integrated Resource Plan, existing System Power Supply, Legacy Generation Assets and generation assets owned by IPPs related to

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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;

(ii) pay the Service Fee and any other amounts due [REDACTED] Operator, and fund the Service Accounts and Back-End Transition Account, all in accordance with the terms and conditions of this Agreement;

(iii) ensure that any budget submitted by Owner to FOMB for approval in accordance with PROMESA provides that Owner is authorized to pay all amounts due under this Agreement, including the funding of the Service Accounts in accordance with Section 7.5 (*Service Accounts*);

(iv) ensure that the budgets and funds in support of O&M Services are sufficient in amount to enable Operator to meet Contracts Standards and provide a reasonable opportunity for Operator to achieve the performance standards and Performance Metrics.

(v) (A) respond promptly (and in any event within thirty (30) days or shorter period required by this Agreement) to all requests of Operator with respect to all matters requiring the approval, review or consent of Owner and as to such other matters relating to the obligations of Operator hereunder in respect of which Operator shall reasonably request the response of Owner in accordance with the provisions of this Agreement, (B) provide Operator with such information, data and assistance as may be reasonably necessary or appropriate for Operator to perform its obligations (including with respect to any PREB rate or other proceeding or requirement) hereunder, and (C) from time to time, as and when requested by Owner, execute and deliver, or cause to be executed and delivered, all such documents and instruments and take, or cause to be taken, all such reasonable actions, as Operator may reasonably deem necessary or desirable for Operator to perform its obligations under this Agreement;

(vi) except as otherwise contemplated by Section 5.12 (*Legal Matters*), manage Owner's legal matters, including Owners reporting and related legal compliance;

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

(viii) audit Operator's compliance with Federal Funding Requirements;

(ix) ensure that Operator, as an independent contractor, remains at all times during the Term a beneficiary to all Easements vested on Owner as provided in Regulation 7282 of January 25, 2007;

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(i) as set forth in Section 4.2(e) (*Operator Responsibilities – Initial Budgets*), the right to review and provide comments on the Initial Budgets;

(ii) as set forth in Section 7.3 (*Budgets*), the right to review and approve Budgets, including modifications thereto, to ensure compliance with a Rate Order;

(iii) the right to review and approve the Incentive Fee payable to [REDACTED] for a given Contract Year, including based on Administrator's evaluation of Operator's satisfaction of the Performance Metrics;

(iv) ensure that the budgets and funds in support of O&M Services are sufficient in amount to enable Operator to meet Contracts Standards and provide a reasonable opportunity for Operator to achieve the performance standards and Performance Metrics;

(v) the right to exercise Oversight in relation to Operator's compliance with Budgets, including T&D Pass-Through Expenditures and Generation Pass-Through Expenditures, in accordance with the procedures set forth in this Agreement;

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

(vii) the right, as agent of Owner, to Audit Operator's compliance with Federal Funding Requirements;

(viii) the responsibility to respond promptly (and in any event within thirty (30) days or shorter period required by this Agreement) to all requests of Operator with respect to matters requiring the approval, review or consent of Administrator and as to such other matters relating to the obligations of Operator hereunder in respect of which Operator shall reasonably request the response of Administrator in accordance with the provisions of this Agreement;

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

(x) to the extent reasonably requested by Operator, and to the extent consistent with Applicable Law, Administrator shall cooperate with Operator in its efforts to obtain and effectuate approvals of any Governmental Body having competent jurisdiction for the establishment of measures to prevent further revenue erosion associated with the T&D System and/or to enhance System Revenues, including attendance at meetings with appropriate officials of Governmental Bodies as may be reasonably requested by Operator for such purposes, identification of historical and potential governmental and quasi-governmental measures relevant to such purposes, and providing other cooperation, as may be reasonably requested by Operator, in pursuit of such purposes; and

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ARTICLE 7 COMPENSATION; BUDGETS

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 and any other amounts that become due and owing to ManagementCo or 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 parties acknowledge and agree that Federal Funding shall not 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.

(b) Fixed Fee.

(i) The fixed fee payable to [REDACTED] for each Contract Year shall be as set forth in Annex VIII (*Fixed Fee*)³³, adjusted on a Pro Rata basis for a partial Contract Year (the "Fixed Fee").

(ii) ManagementCo shall establish one or more accounts (collectively, the "Fixed Fee Account") from which it shall draw funds on the last Business Day of each calendar month during the Term to 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. ManagementCo shall have the right to withdraw amounts on deposit in the Fixed Fee Account to pay the Fixed Fee due on the last Business Day of each calendar month.

(iii) On or prior to the Service Commencement Date, Owner shall deposit in the Fixed Fee Account, on account of and as a payment of the Fixed Fee, an amount equal to the sum of the first six (6) months of the Fixed Fee. No later than the first Business Day immediately following the end of each calendar month during the Term, Owner shall deposit in the Fixed Fee Account, an amount sufficient to restore the balance in the Fixed Fee Account to a sum equal to six (6) months of the Fixed Fee.

(iv) On or prior to the last Business Day of each calendar month of the Term, ManagementCo shall submit to Administrator an invoice for the Fixed Fee payable in respect of such month. The invoice shall specify the monthly portion of the Fixed Fee for the relevant month, together with (A) the aggregate portion of the annual Fixed Fee paid through such month and (B) the accumulated payments to the date of such invoice, together with the amount Owner is required to deposit pursuant to Section 7.1(b)(iii) (*Service Fee – Fixed Fee*). All invoices shall comply with the requirements set forth in Section 9.2(c) (*Anti-Corruption and Sanctions Laws – Policies and Procedures*) hereto.

³³ Note to Draft: Please see Annex VIII (*Fixed Fee*).

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Operator whether the proposed Budgets are compliant with the applicable Rate Order and Section 7.4 (*Budget Policy*), and shall request, acting reasonably, any changes or modifications to the proposed Budgets to conform the proposed Budgets with the applicable Rate Order and Section 7.4 (*Budget Policy*). Administrator and Operator shall collaborate in good faith to resolve any differences with respect to such proposed Budgets as promptly as practicable.

(b) Flexibility to Overrun. Each Budget will include up to a maximum of two percent (2%) in excess of the total amount for excess expenditures that may arise in any Contract Year (“Excess Expenditures”); provided that such Excess Expenditures shall at all times be otherwise compliant with the applicable Rate Order. Any Excess Expenditures—[REDACTED] during a Contract Year shall be treated as T&D Pass-Through Expenditures and as if initially budgeted for such Contract Year.

(c) Flexibility to Reallocate. Operator shall have complete flexibility, subject to compliance with the Contract Standards and prior consultation with, but not subject to approval by, Administrator, to (i) reallocate or postpone expenditures within the approved Operating Budget, (ii) reallocate or postpone expenditures within the approved Capital Budget – Federally Funded, subject to the Federal Funding Requirements, and (iii) reallocate or postpone expenditures within the approved Capital Budget – Non-Federally Funded, in each case, (x) in order to address changed operational or commercial circumstances or new legal or regulatory requirements and (y) in a manner in which the reallocations do not exceed five percent (5%) of the relevant Budget or the expenditures are not postponed for a period longer than one (1) year.³⁶ Any such reallocated amounts will be treated as if initially budgeted in the relevant Budgets in all respects, including with respect to the associated Performance Metrics set forth in Annex IX (*Performance Metrics*).

(d) Default Budget. In the event any Budget for a given Contract Year has not been finalized in accordance with Section 7.3(a) (*Budgets – Generally*) by July 1 of such Contract Year, the applicable approved Budget for the immediately preceding Contract Year (as the same may have been amended) as adjusted for inflation based on the CPI Factor (such Budget, a “Default Budget”) shall remain in effect until such time as the applicable Budget for such Contract Year is so finalized; provided that any such adjustment for inflation based on the CPI Factor shall at all times be limited so as to result in a Default Budget that is compliant with the applicable Rate Order.

(e) Amendments to Budgets. Operator and Administrator may, from time to time, mutually agree to amend the approved Operating Budget and Capital Budget for a given Contract Year, including to account for any for Federally Funded Capital Improvements that have been Obligated since the date the Capital Budget – Federally Funded then in effect was approved; provided that any such amendment shall be compliant with the applicable Rate Order. The agreed upon amendment shall be subject to final approval and authorization by Administrator, acting reasonably. If, during a Contract Year, Operator becomes aware that T&D Pass-Through Expenditures or Generation Pass-Through Expenditures for such Contract Year are expected to exceed a Budget for such Contract Year (taking into account the allowances for

³⁶ Note to Draft: Tax counsel has advised that limitations on Operator’s ability to reallocate budgets are required for compliance with QMA requirements.

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Excess Expenditures), then (i) with respect to the Operating Budget and Capital Budget, Operator shall promptly notify PREB and Administrator and prepare and submit to PREB a proposed amended Operating Budget or Capital Budget for such Contract Year, as the case may be, which amendment shall require and be subject to approval by PREB, and (ii) with respect to the Generation Budget, (x) Operator shall notify PREB, Administrator and Owner and (y) Owner shall as promptly as practical prepare and submit to PREB a proposed amended Generation Budget, which amendment shall require and be subject to approval by PREB. ³⁷

(f) Budget Disputes. The Parties hereby agree that, in the event that a dispute arises between Operator, Owner and Administrator in connection with a Budget (including proposed amendments thereto), the matter shall be subject to resolution as a Technical Dispute in accordance with Article 15 (*Dispute Resolution*) (any such Dispute, a “Budget Dispute”). Any disagreement with PREB relating to a Budget (including any proposed amendment thereto) shall be resolved pursuant to Section 3.9(c)(ii) (*PREB Oversight*).

Section 7.4 Budget Policy. The Budgets and the related Operator staffing levels for each Contract Year shall be designed to be adequate in both scope and amounts to reasonably assure that Operator is able to carry out the related O&M Services in accordance with the Contract Standards and have a reasonable opportunity to earn the Incentive Fee for achieving the Performance Metrics. The Parties further acknowledge and agree that, from time to time, it may be necessary or appropriate to amend or otherwise adjust the Performance Metrics and/or the Budgets as a result of (i) Force Majeure Events, (ii) Owner Fault, (iii) Major Outage Events or (iv) additional requirements imposed by Owner, Administrator or any other Governmental Body after approval of the Budget, in each case, which (A) have resulted (or are reasonably likely to result) in schedule delays or increased work scope or costs and (B) are not be attributable to Operator’s gross negligence or willful misconduct. Operator shall provide notice to Administrator and PREB promptly following the occurrence of an event contemplated above and the Parties shall, in good faith and acting reasonably, consider necessary adjustments to the Performance Metrics and/or the Budgets that are based on rates that are reasonable and customary.

Section 7.5 Service Accounts.

(a) Operating Account.

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

³⁷ Note to Draft: The provision to address non-storm emergency events was omitted, as such events would be addressed by the new budget policy provision providing for amendments to Budgets in the event of emergencies.

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(ii) Owner shall fund the Capital Account – Non-Federally Funded with any or both of (A) proceeds from draws on financing provided by Operator or its Affiliates, on terms to be agreed on by Operator and Owner and (B) proceeds from any other financings or any funds of Owner the use of which are designated for Capital Costs – Non-Federally Funded.

(iii) Prior to Operator commencing any Operator Capital Improvement, Owner shall ensure that the Capital Account – Non-Federally Funded contains funds equal to the sum of anticipated Capital Costs – Non-Federally Funded for the following six (6) months based on the then-currently approved Capital Budget – Non-Federally Funded or the relevant Default Budget then in effect. Thereafter, no later than the tenth (10th) Business Day of each month, Owner shall replenish the Capital Account – Non-Federally Funded so as to maintain a funding level equal to the sum of anticipated Capital Costs – Non-Federally Funded for the subsequent six (6) months under the Capital Budget – Non-Federally Funded or the relevant Default Budget then in effect.

(iv) In each Contract Year, Operator shall be entitled to withdraw from the Capital Account – Non-Federally Funded funds for Capital Costs – Non-Federally Funded actually incurred under the approved Capital Budget – Non-Federally Funded or the relevant 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, together with the details thereof and recommendations for mitigating any additional excess costs. Without the prior written approval of Administrator, Operator shall not withdraw from the Capital Account – Non-Federally Funded funds for Capital Costs – Non-Federally Funded that are not included in the then-currently approved Capital Budget – Non-Federally Funded or the relevant Default Budget then in effect.

(v) Simultaneous with each withdrawal of funds from the Capital Account – Non-Federally Funded, Operator shall provide Administrator with written notice of such withdrawal, including a summary of Capital Costs – Non-Federally Funded being paid. Not later than ten (10) Business Days following each month end during which funds were withdrawn from the Capital Account – Non-Federally Funded, Operator shall furnish Administrator with a full accounting setting forth in reasonable detail the Capital Costs – Non-Federally Funded paid during the prior month.

(d) Major Outage Event Reserve Account.

(i) No later than ten (10) Business Days prior to the Service Commencement Date, Owner shall establish one or more storm reserve accounts—

_____ (collectively, the “_____” and, together with the Operating Account and the Capital Accounts, the “Service Accounts”) _____

(ii) No later than ten (10) Business Days prior to the Service Commencement Date, Owner shall fund the Major Outage Event Reserve Account with an

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failure is subject to cure, then Owner shall have an additional thirty (30) days to cure such default;

(d) Failure to Pay Service Fee or Fund the Fixed Fee Account. Owner shall fail to pay any undisputed Service Fees to be paid to [REDACTED] Operator under this Agreement or shall fail to fund the Fixed Fee Account pursuant to this Agreement, which failure shall continue for thirty (30) days following written notice thereof from Operator;

(e) Failure to Pay Other Undisputed Amount. Owner shall fail to pay any other undisputed amount required to be paid by Owner to [REDACTED] Operator under this Agreement (other than as provided in Section 14.3(d) (*Events of Default By Owner – Failure to Pay Service Fee*), which failure shall not be cured within thirty (30) days following written notice thereof from Operator;

(f) Failure to Fund Service Accounts or Back-End Transition Account. Owner shall fail to fund any Service Account or the Back-End Transition Account in an amount as required by this Agreement, which failure shall not be cured within five (5) Business Days following written notice thereof from Operator; or

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

Section 14.4 Termination for Owner Event of Default⁵⁶

(a) Termination for Involuntary Bankruptcy or Voluntary Bankruptcy. Upon the occurrence of an Owner Event of Default under Section 14.3(a) (*Events of Default By Owner – Involuntary Bankruptcy*) or Section 14.3(b) (*Events of Default By Owner – Voluntary Bankruptcy*), Operator may terminate this Agreement immediately upon written notice to Administrator, without need for a court decision or arbitral award confirming Operator's right to terminate.

(b) Termination for Failure to Perform a Material Obligation or False or Inaccurate Representation and/or Warranty. Upon the occurrence of an Owner Event of Default under Section 14.3(c) (*Events of Default By Owner – Failure to Perform a Material Obligation*) or under Section 14.3(g) (*Events of Default By Owner – False or Inaccurate Representation and/or Warranty*), Operator may terminate this Agreement upon not less than one hundred twenty (120) days prior written notice to Administrator, without need for a court decision or arbitral award confirming Operator's right to terminate;

⁵⁶ Note to Draft: The revised provisions provide for 120 days' notice in the event of termination by Operator due to any Owner Event of Default in order to ensure the O&M Services continue to be provided before performance of the O&M Services is transferred to a successor Operator.

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ARTICLE 15 DISPUTE RESOLUTION

Section 15.1 Scope. Except as otherwise expressly provided in this Agreement, any dispute among the Parties arising out of, relating to or in connection with this Agreement or the existence, interpretation, breach, termination or validity thereof (a “Dispute”) shall be resolved in accordance with the procedures set forth in this Article 15 (*Dispute Resolution*), which shall constitute the sole and exclusive procedures for the resolution of such Disputes (the “Dispute Resolution Procedure”), including as to the validity of any termination or effective date of any termination. Operator acknowledges and agrees that Administrator (or any Designated Person appointed by Administrator) shall be authorized to participate in or act for and on behalf of Owner in any Dispute Resolution Procedure contemplated by this Article 15 (*Dispute Resolution*). [REDACTED]

Section 15.2 Commencement of the Dispute Resolution Procedure.

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

(b) **Tolling.** Any limitation period imposed by this Agreement or by Applicable Law in respect of a Dispute shall be tolled upon the delivery of a Notice of Dispute pursuant to this Section 15.2 (*Commencement of the Dispute Resolution Procedure*) for the duration of any Dispute Resolution Procedure pursuant to this Article 15 (*Dispute Resolution*). For avoidance of doubt, any notice period required by this Agreement, including any written notice to terminate pursuant to Article 14 (Events of Default; Remedies), shall not be tolled.

Section 15.3 Negotiation.

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

(b) **Negotiation Period.**

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

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or ManagementCo (without markup for profit, administration or otherwise) that are necessary and reasonable in the course of providing the Back-End Transition Services.

(c) Initial Funding.

(i) Owner shall establish one or more accounts in which Owner shall deposit funds to pay the Back-End Transition Service Fee (collectively, the “Back-End Transition Account”). Owner agrees to fund the Back-End Transition Account in an amount equal to the anticipated Back-End Transition Service Fee for all Back-End Transition Services anticipated to be performed from the Back-End Transition Commencement Date through the Back-End Transition Termination Date (as estimated in good faith by ManagementCo) in equal monthly installments over the first three (3) Contract Years.

(ii) No later than ten (10) Business Days prior to the Service Commencement Date, Administrator shall provide ManagementCo evidence reasonably satisfactory to ManagementCo that an amount equal to the first installment of the Back-End Transition Service Fee has been funded in the Back-End Transition Account by Owner. From and after the Service Commencement Date, Owner agrees to fund each installment of the Back-End Transition Fee on or before the last Business Day of each calendar month and provide ManagementCo evidence reasonably satisfactory to ManagementCo that the Back-End Transition Account was funded. From the Back-End Transition Commencement Date Owner shall replenish the Back-End Transition Account so as to maintain a funding level equal to the then anticipated Back-End Transition Service Fee amount until the Back-End Transition Termination Date (as estimated in good faith from time to time by ManagementCo) no later than the tenth (10th) Business Day of each month.

(iii) Owner hereby pledges, transfers and assigns to ManagementCo, and grants to ManagementCo, as security for the Owner’s payment and funding obligations under this Agreement, a continuing perfected first priority security interest in and to, and a first lien upon the Back-End Transition Account and all amounts which may from time to time be on deposit in the Back-End Transition Account. This Agreement shall be deemed a security agreement within the meaning of the Uniform Commercial Code as in effect in the Commonwealth. Owner and Administrator agree to promptly (and in any event within five (5) Business Days) execute, acknowledge, deliver, file or do all acts, assignments, notices, agreements or other instruments as ManagementCo may require, including an account control agreement for the Front-End Transition Account in a form satisfactory to ManagementCo, in order to more fully perfect and protect the security interest confirmed or purported to be created herein.

(iv) Except as expressly set forth in Section 16.4(d)(ii) below, Owner shall not withdraw funds held in the Back-End Transition Account- [REDACTED]
[REDACTED]

(d) Back-End Transition Funding.

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ARTICLE 19
REPRESENTATIONS AND WARRANTIES⁶⁵

Section 19.1 Representations and Warranties of Owner. Owner hereby represents and warrants to Operator [REDACTED] that:

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

(b) Due Authorization and Binding Obligation. The execution and delivery by Owner of this Agreement, the performance by Owner of its obligations hereunder and the consummation by Owner of the transactions contemplated hereby have been duly and validly authorized and approved by 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) No Conflicts. 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 to which Owner is a party; or

(iv) result in the creation or imposition of any Lien on any properties or assets of Owner.

⁶⁵ Note to Draft: Additional Owner representations with respect to labor and other liabilities were not included given that Act 29 protects Operator from certain liabilities of Owner, including labor-related liabilities. Article 10 of Act 29 provides that Owner will be responsible for (i) all of its existing debts and obligations and (ii) obligations to Owner employees that Operator agrees to hire at execution, including obligations concerning the merits, time and service accrued by such employees, except to the extent that Operator expressly assumes such responsibilities under this Agreement.

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If to Operator

[•]

[•]

[•]

Attention: [•]

Telephone: [•]

Email: [•]

Section 20.3 Amendments. Neither this Agreement nor any provision hereof may be changed, modified, amended or waived, except by written agreement duly executed by the Parties. Any such amendment shall not be effective until (i) to the extent required by Applicable Law, approved by PREB and the FOMB (if then in existence) and (ii) Administrator has obtained a Tax Opinion, at the cost of Owner or Administrator, with respect to any such amendment. Wherever this Agreement requires the Parties to use good faith, reasonable, commercially reasonable, or other efforts to amend the terms of this Agreement, Operator shall not be deemed to be in breach of such requirement as a result of its insistence that such amendment not adversely affect Operator's or ManagementCo's compensation under, or its return on investment or other economic interests with respect to, this Agreement, except to the extent such adverse effect results solely from inflation and/or the imposition of a Tax or an increase in Taxes of general application.

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. Nothing in this Agreement is intended to create, or shall be deemed or construed as creating, any partnership, joint venture or other legal entity, or give rise to any fiduciary duty, among the Parties. Except as otherwise expressly provided in this Agreement, no Party shall have the authority or right, or hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of any other Party, except as expressly provided herein. No provision in this Agreement shall result in Operator or any of its employees, Subcontractors, agents or Representatives being considered an employee, contractor or Representative of Owner. Operator shall be an independent contractor and shall be responsible for and have control over the performance of the O&M Services hereunder, subject to the standards set forth in this Agreement. Nothing in this Agreement shall be interpreted to create a relationship of co-employer between Owner and Operator or Administrator and Operator as to the employees of Operator or any of its respective subcontractors, nor to make Operator an alter ego or a successor employer of Owner.

Section 20.6 Assignment and Transfer.

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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 any Party. Upon any such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible, in a mutually acceptable manner, in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 20.10 Survival. The rights and obligations of the Parties pursuant to this Section 20.10 (*Survival*) Article 13 (*Intellectual Property; Proprietary Information*), Article 15 (*Dispute Resolution*), Article 16 (*Back-End Transition*), Section 17.2(a) (*Relief – Generally*), Article 18 (*Indemnification*), Section 20.2 (*Notices*) and [REDACTED] (*Governing Law*) shall survive the expiration or termination of this Agreement. No expiration or early termination of this Agreement shall (a) limit or otherwise affect the respective rights and obligations of the Parties accrued prior to the date of such termination or (b) preclude any Party from impleading any other Party in any Legal Proceeding originated by a third-party as to any matter occurring during the Term.

Section 20.11 No Third-Party Beneficiaries. Unless specifically set forth herein, this Agreement is exclusively for the benefit of the Parties and shall not provide any third-parties with any remedy, claim, liability, reimbursement, cause of action or other rights.

Section 20.12 Remedies.

(a) Cumulative and Non-Exclusive Remedies. Except as otherwise provided in this Agreement, any and all remedies herein expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy expressly conferred hereby, and the exercise by a Party of any one such remedy will not preclude the exercise of any other such remedy.

(b) Irreparable Damage and Harm. The Parties agree that irreparable damage and harm would occur in the event that any provision of this Agreement were not performed in accordance with its terms and that, although monetary damages may be available for such a breach, monetary damages would be an inadequate remedy therefor. Accordingly, each of the Parties agrees that, in the event of any breach or threatened breach of any provision of this Agreement by such Party, the other Party shall be entitled to an injunction or injunctions, specific performance and other equitable relief to prevent or restrain breaches or threatened breaches hereof and to specifically enforce the terms and provisions hereof. A Party seeking an order or injunction to prevent breaches of this Agreement or to enforce specifically the terms and

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Operator and request such modification of service, and Operator shall (x) in the case of a decrease, following the expiration of the relevant notice period, decrease the manner, amount or quality of such Shared Service and (y) in the case of an increase, consider GenCo's request, in accordance with terms to be set forth in the Shared Services Agreement.

C. Liability. Operator shall not have any liability, whether direct or indirect, to GenCo for or in connection with the Shared Services or any other services provided or to be provided by Operator pursuant to the Shared Services Agreement except to the extent of (i) any [REDACTED] negligence or willful misconduct of Operator or any of its Affiliates, or any of their employees, representatives, agents, contractors, subcontractors or suppliers or (ii) any failure to comply with the Shared Services Agreement (including a failure to deliver such Shared [REDACTED] in accordance with the Contract Standards)- [REDACTED]

IV. Compensation Set-off.

As compensation for the performance of the Shared Services, GenCo shall pay a shared service fee (without markup for profit, administration or otherwise) 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 to GenCo consisting of Generation Pass-Through Expenditures and applied by Operator in accordance with the allocation methodology. The allocation methodology shall seek to reflect the amount of Shared Services actually provided to GenCo (as opposed to GridCo or other parties) and may be (i) based on the following approaches, (ii) assigned, distributed or allocated on a service-by-service basis, and (iii) further developed and determined subsequent to input from the relevant Owner or GenCo personnel and Operator:

- A. internal resource time allocation, e.g., full-time equivalent or employee hours;
- B. employee count (considering pending retirements and anticipated recruiting);
- C. equipment, data or inventory volume, e.g., number of workstations, vehicles or gigabytes used.

Allocators may be based on either budget or historical data, which shall be assessed and determined with inputs from PREPA personnel and Operator.

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Annex IX

Performance Metrics⁷⁵

I. General.

For each Contract Year, the Operator shall be eligible to receive financial incentive compensation (“Incentive Fee”) based on the [REDACTED] performance during the Contract Year as measured against the performance goals set forth by the Performance Metrics as described in this Annex IX. The Incentive Fee calculation is described in Annex X with a maximum amount that can be earned (the “Incentive Compensation Pool”).

II. Performance Categories.

To ensure that all performance goals are met, the Operator will be evaluated in three major Performance Categories: (i) Customer Satisfaction, (ii) Technical, Safety and Regulatory, and (iii) Financial Performance. Likewise, the Incentive Compensation Pool will be allocated across the Performance Categories in such a way as to align the [REDACTED] incentive compensation with the performance goals.

Table 1. Summary of Performance Categories

Performance Category	Performance Goal	Allocation of Incentive Compensation Pool
1. Customer Satisfaction	Achieve a high-level of customer satisfaction across all customer classes.	25%
2. Technical, Safety and Regulatory	Operate a safe, reliable electric grid while remaining complaint with applicable safety, environmental and other regulations.	50%
3. Financial Performance	Meet the approved Operating Budget, Capital Budget – Federally Funded and Capital Budget – Non-Federally Funded.	25%

⁷⁵ Note to Draft: This Annex IX (*Performance Metrics*) is provided for discussion purposes only. The below remains under consideration and development and serves as an indication of the performance metrics that will serve as the basis for evaluation of the performance of the Operator and drive the incentive compensation mechanism. Defined terms included here are governed by this annex

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Table 2. Summary of Performance Metrics

Note: Any Baseline Performance Level set using PREPA historical data will be subject to confirmation during the Front-End Transition Period.

Performance Metric	Description	Baseline Performance Level Derivation	Base Points	Effective Weight
A. Customer Satisfaction				
1. J.D. Power Customer Satisfaction Survey (Residential)	3rd party measure of customer satisfaction	Set during Front-End Transition Period	5.0	4%
2. J.D. Power Customer Satisfaction Survey (Business)	3rd party measure of customer satisfaction	Set during Front-End Transition Period	5.0	4%
3. Average Speed of Answer (minutes)	Time it takes on phone to reach an agent	PREPA historical data verified during Front-End Transition Period	5.0	4%
4. Customer Complaint Rate	Total monthly complaints registered with PREB	PREPA historical data verified during Front-End Transition Period	5.0	4%
5. First Call Resolution	% of calls with issues that are escalated	Set during Front-End Transition Period	5.0	4%
6. Abandonment Rate	# of abandoned calls per calls received	PREPA historical data verified during Front-End Transition Period	5.0	4%
B. Technical, Safety & Regulatory				
1. OSHA Recordable Incidence Rate	Measures the # of reportable OSHA incidents	PREPA historical data verified during Front-End Transition Period	5.0	6%
4. OSHA Days Away Rate (Severity)	Measures # of incidents resulting in 1 or more lost days	Set during Front-End Transition Period	5.0	6%
5. System Average Interruption Frequency Index (SAIFI)	Measures avg. outage frequency	PREPA historical data verified during Front-End Transition Period	5.0	6%
6. Customer Average Interruption Duration Index (CAIDI)	Measures avg. restoration time	PREPA historical data verified during Front-End Transition Period	5.0	6%
7. System Average Interruption Duration Index (SAIDI)	Measures avg. outage duration	PREPA historical data verified during Front-End Transition Period	5.0	6%
8. Customers Experiencing Multiple Interruptions (CEMI)	Measures multiple outages in a given period	Set during Front-End Transition Period	5.0	6%

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Annex X

Calculation of Incentive Fee⁸⁸

I. General.

For each Contract Year, [REDACTED] shall be eligible to receive an Incentive Compensation Pool based on the Operator's performance during the Contract Year as measured against the performance goals set forth by the Performance Metrics.

II. Performance Categories.

The Incentive Compensation Pool will be allocated across the three Performance Categories in such a way as to align [REDACTED] incentive compensation with the performance goals.

Table 1. Summary of Performance Categories

Note: The chart to be updated to include dollar values.

Performance Category	Performance Goal	Allocation of Incentive Compensation Pool
1. Customer Satisfaction	Achieve a high-level of customer satisfaction across all customer classes.	25%
2. Technical, Safety and Regulatory	Operate a safe, reliable electric grid while remaining complaint with applicable safety, environmental and other regulations.	50%
3. Financial Performance	Meet the approved Operating Budget, Capital Budget – Federally Funded and Capital Budget – Non-Federally Funded.	25%

III. Calculation Methodology.

A. Each Performance Metric is assigned a Base Point level with the sum of Base Points of all Performance Metrics within a Performance Category representing the maximum number of Base Points the Operator can earn within a single Performance Category. As described in Annex IX (Performance Metrics), except for the Binary Metrics, assuming the Operator reaches the Minimum Performance Level it has the potential to earn either 25%, 50%,

⁸⁸ Note to Draft: This Annex X (*Calculation of Incentive Fee*) is provided for discussion purposes only. The below remains under consideration and development and serves as an indication of the incentive compensation calculation mechanism. Defined terms included here are governed by Annex IX (*Performance Metrics*).

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Annex XI

T&D Pass-Through Expenditures

T&D Pass-Through Expenditures shall be the [REDACTED]-costs and expenses incurred-[REDACTED] in the course of providing O&M Services (without markup for profit, administration or otherwise); provided that T&D Pass-Through Expenditures shall not include any Disallowed Costs except as otherwise provided in this Agreement. Capitalized terms used but not defined in this Annex XI (*T&D Pass-Through Expenditures*) have the respective meanings set forth in the Agreement. Except as otherwise provided in the Agreement, T&D Pass-Through Expenditures shall include but are not limited to, the following items:

1. wages, salaries, bonuses, employer contributions to pension and employee medical plans, employer contributions to workmen's compensation, non-occupational disability and other mandatory employment related insurance, vacation, sick leaves and other mandatory leaves with pay, overtime and meal period compensation and associated benefits and other post-employment benefits incurred [REDACTED]—[REDACTED]—in performing the O&M Services, including Capital Improvements; but excluding all costs resulting from noncompliance by Operator with wage and hour, discrimination, wrongful dismissal or with any other applicable labor or employment related legislation, as well as the costs of defending such claims (including costs arising out of or related to additional compensation, damages, penalties, court costs and attorney's fees);
2. costs incurred-[REDACTED] in performing the O&M Services, including all goods and services (including all materials, supplies, spare parts, vehicles and mileage, other transportation, purchased services, Subcontractor costs, employee per diems, communications, utilities, and other costs), and the costs and fees incurred or payable with respect to banking services and accounts, cash management, leases, easements, licenses, permits, consents and similar instruments;
3. costs related to Capital Improvements to the system, including 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 the Agreement;
4. costs incurred with respect to professional services, including legal, engineering, accounting, financial, auditing, information technology, telecommunication, and other contracted services;
5. costs incurred with respect to the security of physical assets, information technology, operational technology, and processes;
6. claims, lawsuits, litigations, losses, fines, penalties, costs and expenses, judgments, liens, settlements, appeals, disbursements and similar expense (including reasonable and documented fees of external counsel provided that Operator does not intend to provide documentation that would waive any privilege between Operator and its external counsel and that arrangements with Operator's external counsel are not "agent for" Contracts [REDACTED] incurred in connection with the performance of the O&M Services;

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any inaccuracies in the representations and warranties of the other Party contained herein or (c) waive compliance by the other Party with any of the agreements or conditions contained herein. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in a written instrument executed and delivered by the Party so waiving. No waiver by any Party of any breach of this Guarantee shall operate or be construed as a waiver of any preceding or subsequent breach, whether of a similar or different character, unless expressly set forth in such written waiver. Neither any course of conduct or failure or delay of any Party in exercising or enforcing any right, remedy or power hereunder shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy or power hereunder, or any abandonment or discontinuance of steps to enforce such right, remedy or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right, remedy or power.

Section 5.7 Severability. If any term or provision of this Guarantee is invalid, illegal or incapable of being enforced in any situation or in any jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other term or provision hereof or the offending term or provision in any other situation or any other jurisdiction, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon any such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Guarantee so as to effect the original intent of the Parties as closely as possible, in a mutually acceptable manner, in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 5.8 Remedies.

(a) Cumulative and Non-Exclusive Remedies. Except as otherwise provided in this Guarantee, any and all remedies herein expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy expressly conferred hereby, and the exercise by a Party of any one such remedy will not preclude the exercise of any other such remedy.

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

Section 5.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same agreement or document. A signed copy of this Guarantee transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Guarantee for all purposes.

Section 5.10 Governing Law. This Agreement and all matters, claims, controversies, disputes, suits, actions or proceedings arising out of or relating to this Guarantee and the negotiation, execution or performance of this Guarantee or any of the transactions contemplated hereby, including all rights of the Parties (whether sounding in contract, tort, common or statutory law, equity or otherwise) in connection therewith, shall be interpreted, construed and governed by and in accordance with, and enforced pursuant to, the internal laws of the State of New Jersey (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction), except where the federal supremacy clause requires otherwise.

Section 5.11 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.