

TERM SHEET FOR T&D SYSTEM PARTNERSHIP CONTRACT

The summary of terms and conditions is provided for discussion purposes only and is not a commitment by the Puerto Rico Electric Power Authority (“PREPA”) to enter into a contract (the “Partnership Contract”). The terms and conditions contained below are an indication of the terms and conditions that the Puerto Rico Public-Private Partnerships Authority (the “Authority”) and PREPA believe should be included in any negotiated Partnership Contract resulting from the Request for Proposals 2019-2 (the “RFP”) issued by the Authority. It is the intention to use the terms and conditions below as the basis for a definitive Partnership Contract; provided, however, that the terms and conditions set forth below are subject to change.

This term sheet (the “Term Sheet”) is subject to the terms and conditions set forth in the RFP, and neither this Term Sheet nor any of its contents may be used for any other purpose without the prior written consent of the Authority and PREPA. No legal obligation or liability shall arise between the parties with respect to the subject matter hereof unless and until the Partnership Contract shall have been finalized in mutually acceptable form, approved by the parties’ respective governing bodies and by the relevant Puerto Rico governmental authorities and executed by both parties, and then only in accordance with the terms and conditions thereof. Although the term “Partnership Contract” is used throughout this Term Sheet, nothing contained in the Partnership Contract shall be intended to create, or shall be deemed or construed as creating, any partnership between the Parties.

1. GENERAL

1.1. Parties: PREPA (together with its successors, “Owner”) and a special purpose vehicle (“Operator” and, together with Owner, the “Parties”) formed and owned by a selected private sector company or consortium (“Parent Co.”) solely for the purpose of performing the Services (as defined below). Operator shall not engage in any unrelated business or own any unrelated assets.

1.2. Project: Pursuant to the Partnership Contract, Operator shall provide management, operation, maintenance, repair and other services to be specified in an exhibit to the Partnership Contract for the electric power transmission and distribution system and related facilities (the “T&D System”) owned by Owner (collectively, the “Services”).

As part of the Services, Operator shall, among other things: (i) provide all transmission and distribution services to customers of the T&D System (“T&D Customers”); (ii) manage the procurement of electric power from third parties to meet the demand of the T&D Customers and dispatch all available power in accordance with Industry Standards (as defined below) and the terms of the Partnership Contract; (iii) bill and collect from T&D Customers for Owner’s account all applicable revenues, fees and

charges in accordance with the Partnership Contract and Industry Standards and pursuant to rates and charges approved by the Puerto Rico Energy Bureau (the “**PREB**”); (iv) act as servicer under the Servicing Contract (as defined below) and bill, collect and remit the Charges (as defined below) in accordance with the Servicing Contract; (v) assist Owner, Administrator (as defined below) and Grant Manager (as defined below) with the procurement associated with, and the management and deployment of, funding for the restoration of the T&D System received or to be received from any U.S. federal agency, including, without limitation, the U.S. Federal Emergency Management Agency (“**FEMA**”) and the U.S. Department of Housing and Urban Development (“**HUD**”) (any such funding, “**Federal Funding**”); (vi) administer and perform, on behalf of Owner, all executory agreements and other necessary agreements required for the operation, maintenance, repair and restoration of the T&D System as provided in the Partnership Contract; and (vii) procure such ancillary services as may be necessary to support the safe and reliable operation of the T&D System.

Operator shall perform the Services as an independent contractor and shall not have any legal, equitable, tax, beneficial or other ownership or leasehold interest in the T&D System.

1.3. Qualified Management Contract:

The initial terms of the Partnership Contract in effect as of the Commencement Date (as defined below) are intended to meet the requirements to be a “**Qualified Management Contract**” in accordance with the safe harbor set forth in Revenue Procedure 2017-13 issued by the U.S. Internal Revenue Service (the “**IRS**”), such that the Partnership Contract does not constitute a private use of the T&D System by Operator, and thereby preserve the tax exempt status of certain of Owner’s indebtedness. Terms or conditions in this Term Sheet that are inconsistent with the treatment of the Partnership Contract as a Qualified Management Contract in accordance with the safe harbor set forth in Revenue Procedure 2017-13 shall be modified or eliminated in order to satisfy the requirements of Revenue Procedure 2017-13 or necessary to preserve the tax exempt status of certain of Owner’s indebtedness.

Administrator shall have the right to terminate the Partnership Contract, subject to the applicable notice period, if necessary to preserve the tax exempt status of certain of Owner’s indebtedness; provided that, prior to, and in order to avoid, any such termination, the Parties shall negotiate in good faith to make any mutually acceptable modifications to the Partnership Contract that would preserve the tax exempt status of certain of Owner’s indebtedness.

To the extent the Parties desire to amend the initial terms of the Partnership Contract to include provisions that do not expressly meet the requirements of Revenue Procedure 2017-13 (the “**Amended Partnership Contract**”), Operator shall cooperate in good faith to obtain a favorable private letter ruling from the IRS. Such Amended **Partnership** Contract will not be effective unless and until such favorable ruling is obtained.

1.4. Administrator:

Owner shall assign and delegate certain rights and obligations under the Partnership Contract to another entity of the Government of Puerto Rico (“**Administrator**”), which will act on behalf of, solely for the benefit of and have a fiduciary duty to Owner. Administrator shall be deemed a Party to the Partnership Contract for purposes of any such right or obligation. Administrator may exercise its rights and perform its obligations under the Partnership Contract based on the advice of and/or in consultation with one or more third party consultants.

The assignment and delegation of rights and obligations to Administrator shall be structured so as to preserve the tax exempt status of certain of Owner’s indebtedness.

1.5. Term:

The Partnership Contract shall become effective on the date on which it is executed (the “**Effective Date**”), which shall occur following satisfaction of the Conditions to Execution (as defined below), and shall remain in full force and effect for a period of [a minimum of ten (10)] years from the Commencement Date (as defined below) unless earlier terminated in accordance with the terms of the Partnership Contract (the “**Term**”). In accordance with the safe harbor set forth in Revenue Procedure 2017-13 issued by the IRS, the Term shall not exceed the shorter of thirty (30) years and 80% of the expected useful life of the T&D System assets.

1.6. Title III Case:

The Parties shall negotiate the scope of any findings, approvals or protections related to the Partnership Contract to be sought in connection with Owner’s case pursuant to Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (known as PROMESA).

1.7. Conditions to Execution:

The Parties shall execute the Partnership Contract upon satisfaction of the following “**Conditions to Execution**”:

- receipt of approvals from each of: the PREB; the board of directors of each of Owner and the Authority; the Governor of Puerto Rico or his delegate; and the Financial Oversight and Management Board for Puerto Rico (the “**FOMB**”);

- Operator demonstrating to the satisfaction of the Authority that it has the ability to perform the Services and to otherwise perform its obligations under the Partnership Contract; and
- Operator delivering confirmation of the Parent Guaranty (as defined below) and establishing the Performance Security Fund (as defined below).

1.8. Conditions to Commencement:

There shall be a transition period commencing on the Effective Date during which Operator shall be responsible for, among other things, ensuring that the following conditions (the “**Conditions to Commencement**”) occur:

- the orderly transition of operation, management and maintenance of the T&D System in accordance with the transition plan agreed to by the Parties (an initial version of which shall be included as part of Parent Co.’s RFP submission), which plan shall set forth the manner in which Operator shall assume Owner’s obligations with respect to the Services and the principles and methods pursuant to which Operator shall perform the Services commencing on the Commencement Date;
- the receipt of all Required Permits (as defined below); and
- the procurement of all required insurance.

“**Applicable Law**” shall mean all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any governmental authority that apply to either or both of the Parties, the T&D System, the Services or the terms of the Partnership Contract.

1.9. Commencement Date:

The “**Commencement Date**” shall occur on the third (3rd) business day following written acknowledgement by Administrator that the Conditions to Commencement have been satisfied or waived; provided that such date shall be no later than a specified number of days from the Effective Date (the “**Outside Date**”).

The Partnership Contract may be terminated prior to the Commencement Date: (i) with the Parties’ mutual consent; or (ii) by Administrator, with the prior approval of the FOMB to the extent such approval is required by Applicable Law, if any of the Conditions to Commencement have not been satisfied by the Outside Date. The right to terminate the Partnership Contract prior to the Commencement Date, however, shall not be available to any Party whose failure to comply with the Partnership Contract has been the cause of, or resulted in, the failure of such Conditions to Commencement to be satisfied.

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1.10. Reliance:

Operator shall acknowledge that Owner provides an essential public service and that, to comply with Applicable Law, Owner will rely on the performance by Operator of its obligations under the Partnership Contract.

2. SCOPE OF SERVICES AND OPERATOR'S OBLIGATIONS

2.1. Services Generally:

Commencing on the Commencement Date, Operator shall perform the Services set forth in the Partnership Contract in accordance with the operating standards to be set forth in the Partnership Contract, Applicable Law, Prudent Utility Practice (as defined below) and applicable permit requirements (collectively, "**Industry Standards**"), it being understood that the Parties intend that, except for the rights and responsibilities reserved to Owner under the Partnership Contract, Operator shall assume and undertake the rights and responsibilities for management, operation, maintenance and repair of the T&D System, and prepare, subject to the approval of Administrator, policies, programs and procedures for the safe and efficient operation and maintenance of the T&D System and in compliance with Applicable Law. The Services shall include, without limitation, the rights and responsibilities set forth in Section 1.2 above and in **Annex A** to this Term Sheet, and shall be further specified in an exhibit to the Partnership Contract.

"**Prudent Utility Practice**" shall mean those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as the highest U.S. standards applicable in the electric transmission and distribution industry.

2.2. Exclusivity:

Owner shall covenant and agree with Operator that, except as otherwise provided in the Partnership Contract, Operator, its employees, subcontractors and agents shall be the sole providers of Services with respect to the T&D System.

Operator shall not transmit or distribute power and energy using the T&D System other than power and energy obtained by, on behalf of or with the approval of Administrator or PREB, and shall not use the T&D System for any purpose other than the purposes contemplated by the Partnership Contract.

2.3. Risk of Loss:

The Parties shall acknowledge and agree that as between Owner and Operator and except as otherwise specified in the Partnership Contract, risk of loss of, or damage to, the T&D System shall be borne by Owner.

- 2.4. Regulatory Oversight:** Operator shall represent Owner before the PREB with respect to the T&D System and shall be responsible for all relevant filings and other submissions before the PREB. Operator shall at all times perform the Services in accordance with Applicable Law, including any applicable PREB regulations. Nothing in the Partnership Contract shall prejudice the powers of the PREB or any other governmental authority to regulate Owner and Operator in accordance with Applicable Law or be deemed to provide Owner with any regulatory powers.
- 2.5. Ownership of T&D System:** Owner shall retain title to its assets related to the T&D System, including any additions, replacements and extensions that arise in connection with the Services performed by Operator.
- 2.6. Contracts:** Operator shall administer and perform, on behalf of Owner, Owner's rights and obligations under existing contracts related to the T&D System (including but not limited to any power purchase and operating agreements), which shall be listed in the Partnership Contract and include, without limitation, certain executory agreements and leases that Owner shall have assumed prior to the Effective Date and post-petition agreements and leases entered into by Owner. Operator shall at all times administer and perform such contracts in a manner that preserves the tax exempt status of certain of Owner's indebtedness.
- 2.7. T&D Customer Billing; Charges:** Operator shall be responsible for billing and collecting from T&D Customers, for Owner's account, all applicable fees, charges and revenues related to the T&D System in accordance with the Partnership Contract and Industry Standards. All of such fees, charges, and revenues shall be the exclusive property of Owner, and Operator is unconditionally and absolutely obligated to pay or deposit all such funds promptly and directly into an account established in the name of and for the benefit of Owner. In collecting such revenues, Operator shall act solely as an agent for Owner and shall have no right or claim to such funds and, without limiting the generality of the foregoing, shall have no right to assert a claim of set-off, recoupment, abatement, counterclaim or deduction for any amounts which may be owed to Operator under the Partnership Contract.

In addition, Operator, acting as servicer, shall be responsible for billing and collecting all “Transition Charges,” “Pension Charges” and other charges (collectively, the “Charges”) imposed to support legacy obligations established under or in connection with Owner’s Title III plan of adjustment (the “Title III Plan”), and shall be required to enter into a Servicing Contract. Operator shall remit the Charges in accordance with the Servicing Contract and the Title III Plan. Operator shall be compensated for acting as servicer with respect to the Charges in accordance with the terms of the Servicing Contract.

“Servicing Contract” shall mean the contract or contracts approved pursuant to the Title III Plan to govern the collection and remittance of the Charges, which contract(s) shall be in form and substance customary for utility securitization transactions and shall, among other provisions, require that Operator, as servicer, (i) obtain meter reads, calculate or estimate electricity usage and bill the Charges to the customers as a separate line item on electric bills; (ii) collect the Charges from customers and take any actions consistent with Applicable Law to collect such Charges; (iii) remit collected Charges to the appropriate parties established under the Title III Plan; (iv) provide reasonable reporting; and (v) indemnify the trustee for the securitization transactions for losses occasioned by the negligence or willful misconduct of Operator.

2.8. Federal Disaster Recovery Funding:

Operator shall perform the Services in compliance with all FEMA, HUD and other applicable federal agency requirements in order to ensure the T&D System’s eligibility to receive and apply Federal Funding.

Operator shall be required to cooperate with Owner, other relevant governmental authorities and any third parties authorized to act as grant manager to administer Federal Funding (“Grant Manager”) in order to help seek, administer and apply Federal Funding for the restoration of the T&D System and related costs. As between the Parties, Owner shall retain the exclusive right to receive monies from all Federal Funding for the T&D System.

Any work related to the T&D System, the cost of which may be submitted for Federal Funding, shall be procured in full compliance with Applicable Law, including but not limited to the procurement rules set forth in 2 C.F.R. Part 200 applicable to Owner. The Partnership Contract and any other contracts for work related to the T&D System shall include all necessary clauses and certifications as may be required by Applicable Law as a result of the receipt of Federal Funding.

2.9. Permits:

Operator shall, in the name of and on behalf of Owner, apply for, obtain and maintain all necessary permits, licenses and approvals (and renewals thereof) required to allow Operator to perform the Services pursuant to the Partnership Contract (the “**Required Permits**”). All Required Permits shall be registered under Owner’s name, unless Applicable Laws require that Operator be the permit holder.

Owner shall provide reasonably necessary assistance to Operator in securing the Required Permits. Operator also shall file such reports, notices, and other communications as may be required by any governmental authority regarding such Required Permits or the performance of the Services.

2.10. Labor:

Operator shall employ the necessary and appropriate personnel to perform the Services.

Prior to the Commencement Date, Operator shall use its best efforts to interview any Owner employee as of the Effective Date who applies to Operator for employment in a job category Operator wishes to fill. Operator may offer employment to any such Owner employee who meets Operator’s stated requirements for employment but shall have no obligation to offer employment to any such Owner employee.

2.11. Insurance:

Operator shall maintain, on Owner’s behalf, the insurance coverage for the Term as shall be set forth in the Partnership Contract, including, without limitation:

- property and casualty insurance for the T&D System (which shall, among other things, be of the type and extent required to receive Federal Funding);
- commercial general liability insurance;
- excess liability insurance;
- business interruption insurance;
- cyber insurance; and
- pollution legal liability insurance.

In addition to and separate from the foregoing, Operator shall maintain, on its own behalf, the insurance coverage for the Term as shall be set forth in the Partnership Contract, including, without limitation:

- worker’s compensation insurance, employer’s liability insurance and all other employee-required insurance; and
- fiduciary liability insurance.

2.12. Subcontractors: Operator may engage subcontractors to assist in performing the Services and otherwise perform any of its obligations arising out of the Partnership Contract in a manner consistent with Applicable Law, including, without limitation, the applicable Federal Funding requirements. Operator shall engage all subcontractors in its own name and shall be liable under the Partnership Contract for their acts and omissions as if they were Operator's own employees. Operator shall not subcontract any of its obligations relating to the Charges except in accordance with the Servicing Contract.

Operator shall pay when due all claims and demands of subcontractors, mechanics, materialmen, laborers and others for any work performed on, or materials delivered for incorporation into any part of, the T&D System, and shall promptly discharge all mechanics', materialmen's and other construction liens.

2.13. Exit Transition Plan: Operator shall prepare and submit to Administrator, the Authority and the FOMB, within six (6) months of the Commencement Date, a plan for the transition by Operator of the Services upon expiration or the earlier termination of the Partnership Contract, which plan shall be updated on an annual basis as necessary or appropriate (the "**Exit Transition Plan**").

2.14. Taxes: Operator shall timely file all tax returns required to be filed by it under Applicable Law. Operator shall be responsible for the payment of all taxes and withholdings (including for the avoidance of doubt, in respect of any income and employment taxes) imposed by Puerto Rico, the United States, or any other applicable taxing jurisdiction. Operator shall not make any retentions or deductions for any taxes (including, for the avoidance of doubt, social security and employment taxes) on behalf of Operator.

2.15. Relationship with Affiliates: Operator shall maintain an arm's length relationship with its affiliates and enter into transactions with affiliates with respect to the T&D System only on a commercially reasonable basis and pursuant to enforceable agreements.

2.16. Negative Covenants: Operator shall not, among other things (and as shall be further specified in the Partnership Contract):

- take any steps to liquidate, wind up, dissolve or otherwise transfer or dispose of all or any portion of its property, assets or business other than to carry out a permitted reorganization or restructuring;
- lease, mortgage, grant, or permit any lien or encumbrance on any of the assets of the T&D System or of Operator's rights under the Partnership Contract, except as provided under the Partnership Contract and, to the extent applicable, the Servicing Contract; or

- subject to the requirements under Applicable Law and the Title III Plan, interfere with or impede the collection and remittance of the Charges.

2.17. Compliance with Applicable Law:

Operator shall bear sole responsibility for complying with all Applicable Laws in performing the Services, including, without limitation, the applicable Federal Funding requirements other than those Federal Funding requirements that may only be satisfied by Owner and/or Grant Manager.

3. OVERSIGHT AND BUDGET

- 3.1. Owner Oversight:** As the owner, lessor or controlling entity of the T&D System, Owner shall retain the ultimate authority and control over the assets comprising the T&D System, and shall assign and delegate certain rights and obligations under the Partnership Contract to Administrator.
- 3.2. Annual Budget:** Operator shall be responsible for preparing and submitting to Administrator's board of directors a proposed annual budget for the T&D System that includes, among other things, anticipated operating expenses (including Pass-Through Expenditures (as defined below)) and Capital Investments (as defined below) for the upcoming year. Administrator's board of directors shall advise Operator whether such proposed annual budget is acceptable or requires any modification. If Administrator's board of directors advises Operator that a modification is required, any disagreement regarding the proposed modification shall be subject to a dispute resolution mechanism to be set forth in the Partnership Contract. The budget that is ultimately approved by Administrator's board of directors as a result of this process shall be the "**Annual Budget**" for the upcoming year.
- 3.3. Budget Reallocation:** Operator shall have flexibility, subject to compliance with the Partnership Contract and prior consultation with Owner or Administrator, to reallocate or postpone expenditures within the Annual Budget, subject to limits to be specified in the Partnership Agreement, in order to address changed operational or commercial circumstances or new legal or regulatory requirements.
- 3.4. Default Budget:** In the event Administrator's board of directors has not approved an Annual Budget within the time period specified in the Partnership Contract, the Annual Budget for the preceding year (as adjusted for inflation) shall remain in effect until such time as the corresponding Annual Budget is so approved in accordance with the Partnership Contract.
- 3.5. Records and Reporting:** Operator shall prepare and maintain complete and accurate books and records related to the Services and shall have available a complete and updated copy of such books at an appropriately secure location. Operator shall ensure the backup and storage in safe custody of all information, data and records concerning the Services in accordance with Industry Standards.

Operator shall provide Administrator, the Authority, the FOMB (if then in existence), Grant Manager, the Comptroller General of the United States, FEMA, HUD and any of their authorized representatives access to any books, documents, papers, and records of Operator that are directly pertinent to either (x) any work performed by Operator or (y) as may be procured by Operator and submitted for reimbursement using Federal Funding, for the purposes of making audits, examinations, excerpts, and transcriptions. These records shall be maintained for a minimum of three (3) years after the date of submission of the final expenditure report for each project involving Federal Funding. Operator shall also permit any of the foregoing entities to reproduce and/or copy excerpts and transcriptions as reasonably needed and shall provide Grant Manager or its authorized representatives access to the T&D System as may be necessary to perform its functions.

Operator shall prepare and present periodic reports relating to the Services as required under the Partnership Contract and Applicable Law. Operator shall be required to prepare such additional reports as may be reasonably requested by Administrator and the FOMB.

Operator shall notify Administrator, the Authority and the FOMB (if then in existence) as soon as reasonably practicable of any issues of which Operator or Operator's personnel is aware that could materially impact the ability of Operator to perform the Services in accordance with Industry Standards.

Operator shall also be required to comply with the reporting requirements set forth in the Servicing Contract and any other reporting requirements mandated by Applicable Law.

3.6. Access:

Owner, Administrator and their respective representatives shall have the right to access the T&D System assets and all of Operator's information, data and records concerning the T&D System to observe and audit Operator's performance of the Services.

4. CAPITAL INVESTMENTS

- 4.1. General:** As part of its preparation of the proposed Annual Budget, Operator shall prepare a plan for capital investments (“**Capital Investments**”) for the T&D System in accordance with Industry Standards. Such Capital Investments plan shall include, at a minimum: (i) a description of the proposed Capital Investments; (ii) a schedule for the implementation of such Capital Investments; and (iii) the impact of such Capital Investments on the T&D System, including rates charged to T&D Customers. The plan shall be reviewed and approved by in accordance with the procedures for the review and approval of the Annual Budget.
- The Parties shall acknowledge and agree that Capital Investments during approximately the first ten (10) years of the Term shall be principally financed through available Federal Funding.
- 4.2. Federal Funding for Capital Investments:** Operator shall be responsible for carrying out any Capital Investments financed in full or in part with available Federal Funding, and shall complete all work related to such Capital Investments in compliance with all FEMA, HUD and other applicable federal agency requirements in order to ensure the Federal Funding anticipated or received is administered in accordance with all such requirements. In connection with any such Capital Investments, Operator shall agree to enter into any additional agreements as may be necessary or required to ensure full compliance with Applicable Law, including but not limited to the procurement rules set forth in 2 C.F.R. Part 200 applicable to Owner.
- 4.3. Optional Financing Proposal:** Each prospective Operator may include, as part of its comments to the Term Sheet, a preliminary, indicative and non-binding description of whether, and on what terms, it may be willing to provide a loan or other financing for Capital Investments. Such financing shall be structured so that it does not jeopardize the tax exempt status of Owner’s indebtedness. The proposed terms, if any, for such financing shall be included in **Annex B** to this Term Sheet.

5. COMPENSATION

5.1. Operator Compensation Generally:

Operator compensation for performing the Services shall consist of (i) a fixed fee (the “**Fixed Fee**”) and (ii) an incentive fee (the “**Incentive Fee**”). In addition, Operator shall be reimbursed for specified costs and expenses incurred by it (without any mark-up or profit) in the course of performing the Services, including operating and maintenance expenses (“**Pass-Through Expenditures**”) and, together with the Fixed Fee and Incentive Fee, “**Operator Compensation**”). Operator Compensation shall at all times comply with the safe harbor set forth in Revenue Procedure 2017-13.

5.2. Fixed Fee:

The Fixed Fee, expressed in nominal U.S. dollars, shall be such amount as will have been proposed by Parent Co. in its RFP submission, prorated as appropriate for any partial period. The annual Fixed Fee for a given year shall be paid over the course of that year.

5.3. Incentive Fee:

Operator shall have the opportunity to earn a variable Incentive Fee based on its ability to timely exceed certain customer service, technical and operational, and financial performance metrics to be set forth in the Partnership Contract (“**Performance Metrics**”). Operator shall not be entitled to any Incentive Fee for a given year unless it also exceeds the minimum cost management Performance Metrics to be set forth in the Partnership Contract.

The Incentive Fee, expressed in nominal U.S. dollars, shall not in any year be greater than a maximum amount to be set forth in the Partnership Contract. The Earned Incentive Fee (as defined below) for a given year shall be determined at the end of such year and shall be paid over the course of the following year. Accordingly, no Earned Incentive Fee shall be payable in the first year of the Term, but the Earned Incentive Fee corresponding to achieving the Performance Metrics in the first year shall be fully paid over the course of the second year of the Term and so on.

5.4. Performance Metrics:

The Partnership Contract shall set forth Performance Metrics, which may be updated periodically as agreed among Operator, Administrator and the PREB in accordance with Applicable Law. Full compliance with the Performance Metrics shall result in Operator receiving the Incentive Fee in full and partial compliance with the Performance Metrics shall result in Operator receiving only a portion of the Incentive Fee (any full amount or portion of the Incentive Fee, the “**Earned Incentive Fee**”).

Customer service Performance Metrics shall account for a portion of the Incentive Fee and are expected to consist of the following criteria (among others):

- customer complaint rate;
- average speed of answer;
- abandonment rate; and
- time required to resolve or otherwise address customer inquiries or requests.

Technical and operations Performance Metrics shall account for a portion of the Incentive Fee and are expected to consist of criteria based on electric reliability, employee safety, and timely responsiveness to customer interconnections, including the following (among others):

- System Average Interruption Duration Index (SAIDI);
- System Average Interruption Frequency Index (SAIFI);
- Customer Average Interruption Index (CAIDI);
- Occupational Safety and Health Administration (“**OSHA**”) recordable employee injury incidence rate;
- OSHA days away from work after injury rate (severity);
- interconnection cycle time;
- energy efficiency annualized energy savings;
- renewable energy generated; and
- compliance with environmental and other regulations.

Financial Performance Metrics shall account for a portion of the Incentive Fee and are expected to consist of criteria that focus on cost management, billing and collections, including the following (among others):

- achieve spending levels equal to or less than a specified percentage of the approved Annual Budget;
- days sales outstanding;
- net write-offs per \$100 billed revenue;
- purchased power invoicing; and
- annualized cost savings.

The Performance Metrics described herein are not intended to be comprehensive. RFP submissions shall include proposed Performance Metrics that demonstrate improvements to the T&D System and the applicable Incentive Fee.

5.5. Pass-Through Expenditures:

Operator shall be reimbursed by Owner for Pass-Through Expenditures to be set forth in the Partnership Contract, which are expected to consist of the following cost and expenses (among others):

- costs incurred by Operator for goods and services required to perform the Services;
- costs incurred by Operator for ordinary course capital improvements to the T&D System;
- wages, salaries, benefits, pensions and other labor costs of Operator's employees;
- taxes related to assets owned or leased by Owner; and
- costs to obtain and maintain in effect the required insurance.

The Pass-Through Expenditures described herein are not intended to be comprehensive. RFP submissions shall include proposed Pass-Through Expenditures for which Operator would expect to be reimbursed.

5.6. Operating Account:

Owner shall establish one or more operating accounts from which Operator shall draw funds from time to time to pay for Pass-Through Expenditures as and to the extent incurred by Operator (collectively, the "**Operating Account**"). Simultaneous with each such withdrawal from the Operating Account, Operator shall provide Administrator with written notice of such withdrawal, including a summary of Pass-Through Expenditures being paid, and, at each month end, a full accounting setting forth in reasonable detail the actual Pass-Through Expenditures incurred and paid during the prior month.

5.7. Inflation Adjustment:

Each year, the Fixed Fee and the Incentive Fee shall be adjusted for inflation based on a price index to be specified in the Partnership Contract as of the end of the prior year.

5.8. Rate Structure:

The Fixed Fee and the Incentive Fee shall be incorporated into the rates charged to T&D Customers.

5.9. Overdue Payments:

Amounts payable under the Partnership Contract that are not paid when due shall bear interest until paid at a rate to be specified in the Partnership Contract. Any such unpaid amounts, including accrued and unpaid interest, must be paid no later than five (5) years from the original due date.

5.10. Withholding Taxes

Any payments to be made to Operator will be made without withholding or deduction on account of any taxes, unless otherwise required by Applicable Law. If any amounts are so deducted or withheld and paid to the applicable taxing authority, they will be treated as having been paid to Operator for all purposes of the Partnership Contract. The Parties shall cooperate in good faith to reduce or eliminate the amount of such withholding taxes.

6. PARENT GUARANTY AND PERFORMANCE SECURITY FUND

6.1. Parent Guaranty: Operator shall provide an irrevocable, unconditional guaranty from Parent Co. of Operator's indemnification and any other payments, if applicable, to be specified in the Partnership Contract and performance obligations under the Partnership Contract in the form to be set forth in the Partnership Contract (the "**Parent Guaranty**").

During the Term, Parent Co. shall maintain a credit rating equal to or higher than a rating to be specified in the Partnership Contract from at least two (2) of Standard & Poor's Rating Services, Fitch Investors Service, Inc. and Moody's Investor Services (or their respective successors). In the event Parent Co.'s credit rating fails to comply with this requirement, Operator and Parent Co. shall be required to take the actions to be specified in the Partnership Contract.

6.2. Performance Security Fund: Operator shall establish a performance security fund in an amount to be specified in the Partnership Contract as security for the prompt and complete performance of Operator's indemnification and any other payments, if applicable, to be specified in the Partnership Contract and performance obligations under the Partnership Contract (the "**Performance Security Fund**").

The Performance Security Fund shall be comprised of one or any combination of the following:

- an irrevocable standby letter of credit, in form and substance acceptable to Administrator, issued by an Acceptable Bank (as defined below); or
- United States currency, deposited in an account with an Acceptable Bank under which Administrator is designated as beneficiary with sole authority to draw from the account.

"**Acceptable Bank**" shall mean either (i) a commercial bank or financial institution (that is not an affiliate of Operator) organized under the laws of the United States or a political subdivision thereof or (ii) a U.S. branch office of a foreign bank, and, with respect to an entity identified in clause (i) or (ii), that meets credit rating, shareholder equity and other minimum criteria to be specified in the Partnership Contract.

7. EVENTS OF DEFAULT AND TERMINATION

7.1. Owner Events of Default:

Owner events of default (each, an “**Owner Event of Default**”) shall include the following:

- any representation or warranty of Owner under the Partnership Contract shall prove to be false, inaccurate or misleading, and either the ability of Owner to carry out its obligations under the Partnership Contract in any material respect or the legality of the Partnership Contract shall be thereby adversely affected;
- Owner shall fail to pay any undisputed amount due to Operator when due under the Partnership Contract (including indemnification and any other payments to be specified in the Partnership Contract) after notice and opportunity to cure such failure; and
- Owner shall fail or refuse to perform any material obligation, covenant, agreement, term or condition under the Partnership Contract, which failure or refusal has had or is reasonably likely to have a material adverse effect on Operator’s ability to carry out its obligations under the Partnership Contract and, after Operator’s written notice to Owner, such failure or refusal shall continue for a period to be specified in the Partnership Contract.

Subject to any applicable notice and cure periods or other remedies provided for in the Partnership Contract, the occurrence of an Owner Event of Default shall trigger a right of Operator to terminate the Partnership Contract (a “**Operator Termination**”).

7.2. Operator Events of Default:

Operator events of default (each, a “**Operator Event of Default**”) shall include, without limitation, the following:

- any representation or warranty of Operator under the Partnership Contract or any other document delivered in connection therewith shall prove to be false, inaccurate or misleading in any material respect;
- Operator shall withdraw from, or surrender or abandon, a material portion of the T&D System or clearly indicate in writing an intent to do any of the foregoing (for this purpose, but without limitation, Operator shall be deemed to have withdrawn from, surrendered or abandoned a material portion of the T&D System if, after written notice from Owner or Administrator indicating that it believes Operator has withdrawn from, surrendered or abandoned the T&D System, Operator shall fail to indicate in writing its continued commitment to operate the T&D System and take measurable steps to demonstrate such commitment and/or fail to perform the Services);

- Operator shall enter into an agreement to, or shall assign, transfer, convey, lease, encumber or otherwise dispose of all or any portion of its rights or obligations under the Partnership Contract other than in accordance with the express terms of the Partnership Contract;
- Operator shall terminate, or deliver notice of termination of, any related agreement for the Services;
- Operator shall voluntarily or involuntary file for bankruptcy or insolvency;
- Operator shall fail to maintain in full force the Parent Guaranty or the Performance Security Fund;
- Operator shall fail to obtain or maintain the required insurance;
- an Operator change of control shall occur;
- Operator shall fail to pay any undisputed amount due to Owner or Administrator when due under the Partnership Contract (including indemnification and any other payments to be specified in the Partnership Contract) after notice and opportunity to cure such failure; and
- Operator shall fail or refuse to perform any material obligation, covenant, agreement, term or condition under the Partnership Contract or the Servicing Contract and, after Administrator's written notice to Operator, such failure or refusal shall continue for a period to be specified in the Partnership Contract or the Servicing Contract, respectively.

Subject to any applicable notice and cure periods or other remedies provided for in the Partnership Contract (and, to the extent required by Applicable Law, the prior approval of the FOMB (if then in existence)), the occurrence of an Operator Event of Default shall trigger a right of Administrator to terminate the Partnership Contract (an "**Owner Termination**").

7.3. Termination for T&D System Sale:

Each Party shall have the further right to terminate the Partnership Contract, subject to the applicable notice period, in the event the T&D System is sold, transferred or assigned to a private party.

7.4. Operator's Obligations upon Termination or Expiration:

Upon termination of the Partnership Contract or nine (9) months prior to the expiration of the Partnership Contract in accordance with its terms, Operator shall, at Administrator's request and direction, provide for an effective continuity of service and a smooth and orderly transition to any successor operator in accordance with the Exit Transition Plan and shall negotiate in good faith, together with the successor operator, a transition services agreement; provided that, in the event of an Owner Termination, Operator shall be obligated to pay the costs and expenses associated with such continuity of service and transition.

Operator's obligations in connection with the transition of the Services shall include, without limitation:

- promptly taking all action as necessary to protect and preserve all materials, equipment, tools, facilities and other property of the T&D System;
- as Administrator shall direct, promptly removing from the T&D System all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by Operator, and repair any damage caused by such removal;
- delivering to Administrator a copy of all books, records, customer lists, account information, personnel information, drawings, reports, plans and other data in its possession or control relating to the Services;
- leaving the T&D System in a clean, safe, orderly and fully operational condition;
- as Administrator shall direct, terminating or assigning to Administrator all subcontracts and not entering into additional agreements with subcontractors without the prior written approval of Administrator;
- notifying Administrator promptly in writing of any legal proceedings against Operator by any third parties relating to the termination of the Services;
- conveying to Administrator the title to any assets owned by Operator necessary for the operation, management, maintenance, repair and replacement of the T&D System; and
- turning over all Charges and funds collected or received under the Servicing Contract or pursuant to the Title III Plan and otherwise providing for the assignment of all servicing obligations under and pursuant to the Servicing Contract.

8. INDEMNIFICATION AND FORCE MAJEURE

**8.1. Indemnification
by Operator:**

Operator shall indemnify and hold harmless Owner, Administrator, the Authority, the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”), the FOMB and the trustee for the securitization transactions, and their respective elected officials, officers, directors, employees, representatives, agents and subcontractors (each, an “**Owner Indemnatee**”), from and against (and pay the full amount of) any losses and damages by an Owner Indemnatee to third parties arising from or in connection with (or alleged to arise from or in connection with) Operator’s failure to comply with the Partnership Contract or the Servicing Contract. Operator’s indemnification obligations under the Partnership Contract shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by Operator that is intended to respond to such events. Notwithstanding the foregoing, Operator shall not be required to reimburse or indemnify any Owner Indemnatee for any losses or damages to the extent caused by (i) Owner’s or Administrator’s breach of any of its obligations under the Partnership Contract or (ii) the negligence or willful misconduct of such Owner Indemnatee.

**8.2. Indemnification
by Owner:**

Owner shall indemnify and hold harmless Operator and its officers, directors, employees, representatives, agents and subcontractors (each, an “**Operator Indemnatee**”), from and against (and pay the full amount of) any losses and damages by an Operator Indemnatee to third parties arising from or in connection with (or alleged to arise from or in connection with) any events or circumstances that arose prior to the Commencement Date (except to the extent that Operator has an obligation to mitigate or manage any such event or circumstance pursuant to the terms of the Partnership Contract). Owner’s indemnification obligations under the Partnership Contract shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by Owner that is intended to respond to such events. Notwithstanding the foregoing, Owner shall not be required to reimburse or indemnify any Operator Indemnatee for any losses or damages to the extent caused by (i) Operator’s breach of any of its obligations under the Partnership Contract or (ii) the negligence or willful misconduct of such Operator Indemnatee.

8.3. No Consequential or Punitive Damages:

In no event shall any Party be liable to the other Party or obligated in any manner to pay to the other Party any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations under the Partnership Contract, or the material falseness or inaccuracy of any representation made in the Partnership Contract, whether such claims are based upon contract, tort, negligence, warranty or other legal theory. The waiver of the foregoing damages is intended to apply to only disputes and claims as among Owner, Administrator and Operator, and specifically is not intended to limit the scope of the indemnity provisions in Section 8.1 and Section 8.2 above, which indemnification includes all claims by third-parties irrespective of the nature thereof or the relief sought thereby.

8.4. Force Majeure Event:

Except as otherwise specifically provided in the Partnership Contract, neither Party shall be liable to the other for any failure or delay in performance of any obligation under the Partnership Contract to the extent due to the occurrence of a Force Majeure Event.

“**Force Majeure Event**” shall be defined in the Partnership Contract, but shall include events that (i) are beyond the reasonable control of the Parties, (ii) are not reasonably anticipated as of the Effective Date, (iii) are not the result of the fault or negligence of the Party claiming a Force Majeure Event and (iv) which, by exercise of due diligence and foresight, could not reasonably have been avoided.

9. MISCELLANEOUS

9.1. Owner Representations and Warranties:

Owner shall provide representations and warranties covering the following matters (among others), as shall be further specified in the Partnership Contract:

- organization, power and authority;
- enforceability of the Partnership Contract;
- no conflicts;
- requisite consents;
- compliance with law; and
- no adverse legal proceedings.

9.2. Operator Representations and Warranties:

Operator shall provide representations and warranties covering the following matters (among others), as shall be further specified in the Partnership Contract:

- organization, power and authority;
- enforceability of the Partnership Contract;
- no conflicts;
- requisite consents;
- compliance with law;
- no adverse legal proceedings;
- accuracy of information provided in response to RFP;
- requisite skill and experience to perform the Services; and
- no adverse claim against Owner, Administrator, the Authority, AAFAF, the FOMB and/or their affiliates.

9.3. Intellectual Property and Data:

Owner shall retain ownership to all of its intellectual property and technology (“**Owner IP**”). Owner shall grant to Operator a non-exclusive, non-transferable license under Owner IP during the Term solely to the extent necessary for Operator to perform the Services. Operator shall assign to Owner any intellectual property or technology developed by or on behalf of Operator that is an improvement, modification or derivative work of Owner IP or that is specifically developed for Owner by or on behalf of Operator in the course of performing the Services. With respect to any other intellectual property or technology of Operator that is used in, necessary for or related to the T&D System or Operator’s performance of the Services, Operator shall grant to Owner a perpetual, irrevocable, non-exclusive, royalty-free, sublicensable and transferable license to use, modify or otherwise exploit any such intellectual property and technology. Upon Owner’s request, Operator will provide Owner with copies of tangible embodiments of or other documentation related to any intellectual property or technology assigned or licensed to Owner above.

With respect to any information of T&D Customers, including personally identifiable information, Operator will comply with all requirements of Applicable Law and any policies and procedures of Owner. As between the Parties, all such information will be owned by Owner.

9.4. Assignment:

Operator shall not assign, transfer, convey, lease, encumber or otherwise dispose of its rights or obligations under the Partnership Contract or related to the Services without the prior written consent of Administrator.

Owner shall not assign, transfer, convey, lease, encumber or otherwise dispose of its rights or obligations under the Partnership Contract or related to the Services without the prior written consent of Operator, other than (i) to Administrator and (ii) with the prior approval of the FOMB (to the extent such approval is required by Applicable Law), to another government entity if such assignee assumes, and is legally capable of discharging, such rights and obligations.

9.5. Governing Law:

The Partnership Contract shall be governed by the laws of Puerto Rico.

9.6. Dispute Resolution:

Any dispute between the Parties regarding technical issues related to the Services shall be subject to an expedited dispute resolution mechanism (the “**Expedited Dispute Process**”) to be set forth in the Partnership Contract.

All disputes between the Parties that are not settled pursuant to the Expedited Dispute Process shall be subject to the exclusive jurisdiction of the Commonwealth Court of First Instance, San Juan Part, and each Party hereto shall be deemed to consent to the jurisdiction thereof.

Operator shall acknowledge and agree that Administrator shall be authorized to participate in or act for and on behalf of Owner in any dispute resolution proceeding contemplated under the Partnership Contract. Operator shall continue to perform the Services in accordance with the terms of the Partnership Contract during the pendency of any dispute between the Parties.

**9.7. Waiver of
Certain Defenses:**

Operator shall acknowledge that it is responsible for performing the Services and shall agree that, unless otherwise permitted pursuant to the provisions of the Partnership Contract with respect to the occurrence of Force Majeure Events, and without limiting such provisions, it shall not assert (i) impossibility or impracticability of performance, (ii) lack of fitness for use or operation of the T&D System, (iii) the existence, non-existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event or contingency that may be a basic assumption of Operator or (iv) commercial frustration of purposes, in each case as a defense against any claim by Owner and/or Administrator against Operator.

**9.8. Relationship of
the Parties:**

Nothing contained in the Partnership Contract shall be intended to create, or shall be deemed or construed as creating, any partnership, joint venture or other legal entity, or give rise to any fiduciary duty, between the Parties. No Party shall have the authority or right, or hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of any other Party, except as expressly provided in the Partnership Contract. No provision in the Partnership Contract shall result in Operator or any of its employees, subcontractors, agents or representatives being considered an employee, subcontractor, agent or representative of Owner or Administrator. Operator shall be an independent contractor and shall be responsible for performing the Services, subject to the standards to be set forth in the Partnership Contract.

9.9. Expenses:

Each Party shall be responsible for its own costs and expenses related to the review, diligence, negotiation and consummation of the transactions contemplated in this Term Sheet.

Annex A
Scope of Services

- A.1.1. General:** The Scope of Services set forth in this **Annex A** is intended to supplement and be read in conjunction with Section 1.2 and Section 2 above. It is not intended to be comprehensive. RFP submissions shall include proposed adjustments to the Scope of Services.
- A.1.2. Operation:** Operator shall be responsible for all electric transmission, distribution, and load serving activities for the safe and reliable operation, maintenance and management of the T&D System, including expansions and replacements to meet Industry Standards, management and performance of construction of improvements thereto and delivery of electrical power to T&D Customers, including but not limited to the following:
- day-to-day operation of the T&D System;
 - engineering activities;
 - maintenance revisions to all T&D System drawings and other technical documentation;
 - control center operations, including generation scheduling and economic T&D System dispatch;
 - integration of renewable generation and distributed energy resources into the T&D System;
 - power procurement for the T&D System;
 - maintaining the environmental, health and safety compliance of the T&D System;
 - interfacing with regulators in connection with the T&D System, including with respect to environmental compliance;
 - providing information technology system support and improvements and safeguarding the T&D System software and data;
 - procuring from third parties all goods and services necessary to perform the Services;
 - coordinating, conducting and formulating communications with Puerto Rico (including municipal) and federal representatives and organizations relating to the operation of the T&D System and provision of Services by Operator;
 - monitoring the regulatory environment and general marketplace for changes or trends that could impact the T&D System;
 - monitoring industry advancements and technological changes in operation, maintenance, repair and expansion of transmission and distribution systems by electric utilities;
 - determining, acquiring, deploying, and maintaining tools and equipment systems necessary to perform the Services;

- providing all personnel and human-resource related services and personnel training for Operator personnel, and
 - general T&D System planning, including sourcing, designing and implementing system growth and improvement.
- A.1.3. Maintenance, Repair and Replacement:** Operator shall be responsible for all maintenance, repairs and replacement of the machinery, equipment, structures, improvements and all other assets of the T&D System in accordance with Industry Standards.
- A.1.4. Customer Service:** Operator shall be responsible for the performance of customer service functions related to the T&D System, including but not limited to the following:
- achieving a high level of customer satisfaction;
 - maintaining customer contact through call centers, customer offices, authorized payment centers, a customer website, customer satisfaction programs and other customer communication systems; and
 - other activities necessary, appropriate or advisable to implement customer service programs in accordance with the Partnership Contract and Industry Standards.
- A.1.5. Finance and Accounting:** Operator shall be responsible for all finance and accounting operations related to the T&D System, including but not limited to the following:
- maintaining financial and accounting records relating to the Services in accordance with applicable government utility accounting and other Prudent Utility Standards;
 - preparing of periodic financial statements in accordance with applicable government utility accounting standards;
 - preparing a depreciation study from time to time;
 - performing tax reporting functions (including monitoring, reviewing and verifying all tax billings);
 - preparing and analyzing budget, revenue and other financial projections; and
 - performing the internal audit function and annual risk assessments related to the T&D System.
- A.1.6. Safety and Security:** Operator shall maintain the T&D System with due regard for public safety and at a safe level at least consistent with Industry Standards, including but not limited to the following:
- taking reasonable precautions in the performance of Services for the safety of all persons working at the T&D System, to prevent damage, injury or loss to the T&D System and to other T&D System property;

- establishing and enforcing all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards and promulgating safety regulations;
- giving all notices and complying with all Applicable Laws relating to the safety of persons or property or their protection from damage, injury or loss;
- designating qualified and responsible employees whose duty shall be the supervision of plant safety, the prevention of fires and accidents and the coordination of such activities as shall be necessary with federal and local officials; and
- designing and implementing cybersecurity measures in accordance with Industry Standards.

Operator also shall develop a security plan in accordance with Industry Standards and shall be responsible for the security of the T&D System, including maintaining suitable fences, gates and locks. Operator shall guard against and be responsible for all damage or injury caused by trespass, theft, negligence, vandalism or malicious mischief of third parties.

A.1.7. Emergency Response:

Operator shall be responsible for, in consultation with the relevant governmental bodies, developing and implementing business continuity, disaster recovery and emergency response plans and all necessary emergency response, reporting and communication functions related to the T&D System, including but not limited to:

- responding, reporting and communicating with respect to storms, natural disasters and other emergencies;
- coordinating such plans with the plans of Owner's other service providers for business continuity and disaster recovery;
- media, fire, police and government coordination;
- conducting periodic drills (including as required by Administrator and Applicable Law) to test the emergency response plans;
- storm monitoring and mobilization in connection with anticipated storms and other electric system emergencies;
- customer communications;
- system condition monitoring;
- repair, replacement and restoration of T&D System to pre-emergency conditions; and
- preparing and analyzing all information and data necessary or appropriate to support claims for reimbursement from FEMA and other governmental bodies.

If deliveries of power and energy through the T&D System are temporarily reduced, curtailed or shut down for any reason, including due to a storm event, Operator shall, as promptly possible, advise the Administrator and other relevant government bodies as to the nature, reason and probable duration thereof and the expected effect thereof on the operation of the T&D System, and take all steps necessary to remedy the reduction, curtailment or shutdown and to resume full performance hereunder as soon as possible.

A.1.8. Additional Services:

If requested by Administrator, Operator shall perform additional services reasonably related to the T&D System and not expressly contemplated as Services under the Partnership Agreement, based upon terms and conditions mutually agreed to by the Parties.

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Annex B
Operator Financing Proposal