



GOVERNMENT OF PUERTO RICO
Puerto Rico Public-Private Partnerships Authority



ADDENDUM NO. 2 TO REQUEST FOR PROPOSALS

Puerto Rico Electric Power
Transmission and Distribution System
RFP 2019-2

Issued by the Puerto Rico Public-Private Partnerships Authority

Date Initial RFP Issued: February 1, 2019

Date of Addendum: May 24, 2019



GOVERNMENT OF PUERTO RICO
Puerto Rico Public-Private Partnerships Authority



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





Addendum No. 2

This Addendum No. 2 shall be part of the Request for Proposals for Puerto Rico Electric Power Transmission and Distribution (the “RFP”) issued by the Puerto Rico Public-Private Partnerships Authority on February 1, 2019. Capitalized terms not defined herein shall have the meaning set forth in the RFP.

The purpose of this Addendum No. 2 is to update certain terms set forth in the RFP. Other than as specified herein and in Addendum No. 1 to the RFP, issued on April 17, 2019, there are no other changes to the RFP and the remainder of the RFP should be construed in accordance with its terms, subject to publication of any additional addenda.

Global Amendment:

This RFP and all ancillary documents, including but not limited to the Term Sheet, are hereby amended in their entirety so that any reference to the Partnership Contract shall be construed to refer and relate to the O&M Agreement.

Section 3.5 of the RFP is hereby deleted in its entirety and replaced with the following:

3.5 O&M Agreement Process

O&M Agreement

A first draft of the O&M Agreement is included in **Annex D** to this RFP. Comments to the first draft of the O&M Agreement are to be provided via PowerAdvocate© by no later than **12:00 PM AST on June 14, 2019**.

Qualified Respondents are invited to submit only material, substantive comments to the draft O&M Agreement by submitting a markup using black-lining to indicate the proposed modification with explanatory footnotes where appropriate. Qualified Respondents are strongly encouraged to limit comments to the draft O&M Agreement to those that will materially enhance the Project and its ability to achieve the parties’ objectives. Qualified Respondents are advised that comments from all members of the Qualified Respondent’s team and its advisors should be included in a single electronic (Microsoft Word) document.

In order to allow for an efficient review process, each Qualified Respondent should also summarize the comments reflected in its markup of the draft O&M Agreement in order of priority in a separate summary document using the following chart format:

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

A single revised draft of the O&M Agreement is expected to be circulated to all Qualified Respondents, which will reflect any comments from Qualified Respondents that the Authority has accepted. Additional details relating to the revised draft of the O&M Agreement will be provided in subsequent addenda to this RFP.



Financing Term Sheet

A term sheet summarizing the terms and conditions contemplated for the financing proposal from Qualified Respondents (the “**Financing Term Sheet**”) is included in **Annex E** to this RFP. Comments to the Financing Term Sheet are also to be provided via PowerAdvocate© by no later than **12:00 PM AST on June 14, 2019**.

Qualified Respondents are invited to submit only material, substantive comments to the Financing Term Sheet by submitting a markup using black-lining to indicate the proposed modification with explanatory footnotes where appropriate. Qualified Respondents are advised that comments from all members of the Qualified Respondent’s team and its advisors should be included in a single electronic (Microsoft Word) document.

Discussions with Qualified Respondents

The Authority intends to schedule discussions with Qualified Respondents in late June and early July 2019 to walk through the comments received on the first draft of the O&M Agreement and the Financing Term Sheet. These discussions will provide each Qualified Respondent and its advisors with an opportunity to present its comments on the draft O&M Agreement and the Financing Term Sheet and for the Authority to seek any clarification on these comments.

All Qualified Respondents will have equal opportunity for dialogue, and fair consideration will be given to all perspectives. Discussion should not be relied upon to modify the terms and conditions of the RFP; only changes formalized through an addendum to the RFP may be relied upon. All discussions will be subject to the terms of the Confidentiality Agreement entered into between the Authority and each Qualified Respondent.



The RFP is hereby amended to insert after Annex C the following new Annex D:

ANNEX D: O&M AGREEMENT

**PUERTO RICO TRANSMISSION AND DISTRIBUTION SYSTEM
OPERATION AND MAINTENANCE AGREEMENT**

dated as of

[•], 2019

by and between

THE PUERTO RICO ELECTRIC POWER AUTHORITY

and

[•]

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**PUERTO RICO TRANSMISSION AND DISTRIBUTION SYSTEM
OPERATION AND MAINTENANCE AGREEMENT**

This **PUERTO RICO TRANSMISSION AND DISTRIBUTION SYSTEM OPERATION AND MAINTENANCE AGREEMENT** (this “Agreement”) is made and entered into as of this [●] day of [●], 2019 by and between the Puerto Rico Electric Power Authority (“Owner”), a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by Act No. 83 of the Legislative Assembly of Puerto Rico, enacted on May 2, 1941, and [●] (“Operator” and, together with Owner, the “Parties” and each a “Party”), a [●] organized under the laws of [●].¹ Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in Article 1.

RECITALS

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

WHEREAS, pursuant to, and under the terms and conditions contained in, Act No. 29 of the Legislative Assembly of Puerto Rico, enacted on June 8, 2009 (“Act 29”) and Act No. 120 of the Legislative Assembly of Puerto Rico, enacted on June 21, 2018 (“Act 120”), Owner is authorized to execute and deliver this Agreement, perform its obligations hereunder and enter into the transaction;

WHEREAS, in accordance with Act 120, Owner desires to engage Operator to provide the O&M Services for the T&D System in accordance with the terms of this Agreement in order to transform Puerto Rico’s energy system into a modern, sustainable, reliable, efficient, cost-effective and resilient system; and

WHEREAS, Operator desires to provide the O&M Services for the T&D System in accordance with the terms of this Agreement.

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

¹ Note to Qualified Respondent: Operator entity must be authorized to do business in Puerto Rico but is not required to be organized in Puerto Rico.

ARTICLE 1
DEFINITIONS; INTERPRETATION

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

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

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

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

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

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

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

“Administrator” means the Authority, in its capacity as Administrator under this Agreement.

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly, including through one or more intermediaries, Controls, is Controlled by or is under common Control with such Person.

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

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

“Applicable Law” means any international, national, federal, state, Commonwealth, municipal or local law, constitution, treaty, convention, statute, ordinance, code, rule, regulation, common law, case law or other similar requirement enacted, adopted, promulgated or applied by any Governmental Body.

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

“Authority” means the Puerto Rico Public-Private Partnerships Authority.

“Authorized Inspector” has the meaning set forth in Section 6.3(b).

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

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

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

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

“Budget” means one or both of the Operating Budget and Capital Budget.

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

“Capital Account” has the meaning set forth in Section 7.4(b)(i).

“Capital Budget” means, for any given year, the capital budget for such year setting forth in detail planned Capital Improvements, as the same may be amended or adjusted from time to time in accordance with the terms and conditions of this Agreement and Applicable Law, which shall include, among other things: (i) a description of the proposed Capital Improvements; (ii) a schedule for the implementation of such Capital Improvements; (iii) an estimate of the costs for the project to be incurred in each fiscal year in the event the project requires more than a year to complete; (iv) the impact of such Capital Improvements on the T&D System, including rates charged to T&D Customers; (v) an explanation of the relationship to other planned or subsequently required Capital Improvements; (vi) the anticipated useful life of each Capital Improvement; and (vii) the economic and engineering justifications for such project.

“Capital Costs” has the meaning set forth in Section 7.4(b)(i).

“Capital Improvement” means any repair, replacement, improvement, removal and retirement, alteration and addition that constitutes a capital property unit in accordance with the T&D System’s capitalization policy, consistently applied (other than any repair, replacement, improvement, removal and retirement, alteration and addition constituting repair or maintenance of the T&D System), including all Public Works Improvements that have an expected useful service life of more than one year from the date of installation.

“Change of Control” means, with respect to any Person, whether accomplished through a single transaction or a series of related transactions and whether accomplished directly or indirectly, (i) a change in ownership so that more than 50% of the direct or indirect voting or economic interests in such Person is transferred to another Person or group of Persons acting in concert, (ii) the power directly or indirectly to direct or cause the direction of management and

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policy of such Person, whether through ownership of voting securities, by contract, management agreement, or common directors, officers or trustees or otherwise, is transferred to another Person or group of Persons acting in concert that did not have such power immediately prior to such transaction or transactions or (iii) the merger, consolidation, amalgamation, business combination or sale of substantially all of the assets of such Person for the purpose of or with the effect contemplated in clauses (i) or (ii) above; provided, however, that, notwithstanding anything to the contrary set forth in this definition, none of the following shall constitute a “Change of Control” for the purposes of this Agreement:

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

(B) transfers of shares of Operator or the direct or indirect shareholders of Operator pursuant to bona fide open market transactions on the New York Stock Exchange, NASDAQ, London Stock Exchange or comparable United States or foreign securities exchange, including any such transactions involving an initial or “follow on” public offering so long as such transfers would not require the approval or consent of the PREB (or such approval or consent has been obtained); and

(C) transfers of direct or indirect ownership interests in Operator by any Equity Participant or its beneficial owner(s) to any Person so long as the Equity Participants or their respective beneficial owner(s) having ownership interests in Operator (as of the later of (1) the Effective Date or (2) the date on which Administrator most recently approved a Change of Control) together retain, in the aggregate, 50% or more of the direct or indirect voting or economic interests in Operator or the power directly or indirectly to direct or cause the direction of management and policy of Operator, through ownership of voting securities or common directors, officers or trustees.

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

“Commonwealth” means the Commonwealth of Puerto Rico.

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

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

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

“Contract Year” means the period from July 1 through June 30 for each year during the Term; provided, however, that the initial Contract Year shall commence on the Service Commencement Date and the final Contract Year shall be a partial Contract Year commencing

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July 1 of such Contract Year and ending on the last day of the Term. Any computation made on the basis of a Contract Year shall be adjusted on a Pro Rata basis to take into account any Contract Year of less than 365/366 days.

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

“Copyright” means 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.

“Covered Parties” has the meaning set forth in Section 19.2(f)(i).

“Customer Database” has the meaning set forth in Section 5.13(a).

“Default Budget” has the meaning set forth in Section 7.3(c).

“Designated Person” means each Representative of a Party or Administrator who is designated as such for the purposes of this Agreement.

“Disallowed Costs” has the meaning in Section 7.5(a).

“Dispute” has the meaning set forth in Section 15.1.

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

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

“Energy Compliance Certificate” means the certificate issued by the PREB certifying that this Agreement complies with Act 120 and the regulatory framework, including Act No. 17 of the Legislative Assembly of Puerto Rico, enacted on April 11, 2019.

“Environmental Claim and Cleanup Liability” means (i) any liabilities, costs or expenses arising from or relating to any claim by a Governmental Body or other third-party pursuant to any Environmental Law for personal injury, property damage or damage to natural resources or the environment (whether based on negligent acts or omissions, statutory liability or strict liability without fault or otherwise) in connection with the T&D System or the O&M

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Services; (ii) any liabilities, costs or expenses arising from or relating to any investigation, study, remediation or abatement of any Release of Hazardous Materials, to the extent required by any Environmental Law or to meet the published cleanup standards of any Governmental Body with jurisdiction over such Release, in connection with the T&D System or the O&M Services; (iii) any fines or penalties assessed for non-compliance with any Environmental Law in connection with the T&D System or the O&M Services; or (iv) any liabilities, costs or expenses necessary to achieve or maintain compliance with any Environmental Law.

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

“EPA” means the United States Environmental Protection Agency.

“EQB” means the Puerto Rico Environmental Quality Board.

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

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

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

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

“Federal Funding” means any funding for the repair, replacement, restoration, construction or hazard mitigation of the T&D System received or to be received from any U.S. federal agency, including FEMA and HUD, and in respect of which Operator shall be required to assist Owner, Administrator and Grant Manager in the procurement, management and deployment, as part of the O&M Services.

“Federal Funding Requirements” has the meaning set forth in Section 5.4(a).

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

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

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

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“Force Majeure Event” means an Operator Force Majeure Event or an Owner Force Majeure Event, as the context requires.

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

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

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

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

“Front-End Transition Services” means services provided under this Agreement to complete transition and handover of the O&M Services, and other rights and responsibilities with respect to the T&D System, to Operator, including the services contemplated by the Front-End Transition Plan.

“GAAP” means generally accepted accounting principles, as in effect in the United States from time to time applied on a consistent basis.

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

“Governmental Body” means any federal, state, Commonwealth, regional, municipal or local legislative, executive, judicial or other governmental board, agency, authority, commission, bureau, administration, court, instrumentality or other body, other than Owner and, in its capacity as such under this Agreement, Administrator, or any official thereof having jurisdiction with respect to any matter, which is a subject of this Agreement.

“Grant Manager” means the relevant Governmental Body and any third parties authorized to act as grant manager to administer Federal Funding, which Operator shall be required to cooperate with in order to help seek, administer and apply Federal Funding for the restoration of the T&D System and related costs.

“Guarantee” means the guarantee agreement, dated as of the date hereof, by and between the Guarantor and Owner in the form of Exhibit F (*Form of Guarantee Agreement*).

“Guarantor” means [●], a [●] duly organized and validly existing under the laws of [●].

“Handover Checklist” means the handover checklist set forth in Annex II (*Front-End Transition Plan*), which, as approved by Administrator, details all of the requirements for Operator to complete the Front-End Transition Services by the Target Service Commencement Date.

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

“Hired Former Employees of Owner” has the meaning set forth in Section 4.2(k).

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

“ICC” has the meaning set forth in Section 15.3(b).

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

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

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

“Independent Expert” has the meaning set forth in Section 15.6(a).

“Information” means any and all information relating to the T&D System, including: (i) income statements, balance sheets, statements of cash flow and changes in financial position, details regarding revenues generated by the T&D System (including information regarding the collection thereof), operating income, expenses, capital expenditures and budgeted operating results relating to the O&M Services; (ii) all certificates, correspondence, data (including test data), documents, facts, files, information, investigations, materials, notices, plans, projections, records, reports, requests, samples, schedules, statements, studies, surveys, tests and test results analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by Operator or any of its Representatives in connection with the T&D System or the O&M Services; and (iii) books, records, accounts and documents relating to the O&M Services, including any Information that is stored electronically or on computer-related media.

“Initial Budgets” means the Budgets for the initial Contract Year, together with the proposed monthly Operating Budget and Capital Budget for the initial Contract Year.

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

“Integrated Resource Plan” means the integrated resource plan contemplated under Act No. 57 of the Legislative Assembly of Puerto Rico, enacted on May 27, 2014.

“Intellectual Property” means all (i) Patents, (ii) Trademarks, (iii) domain names, URLs and any other addresses for use on the Internet or any other computer network or communication system, (iv) Copyrights, (v) rights of publicity, rights of privacy, royal warrants and moral rights, (vi) Know-How, (vii) Software, (viii) other intellectual property or similar

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corresponding or equivalent right to any of the foregoing or other proprietary or contract right relating to any of the foregoing (including remedies against infringements thereof and rights of protection of interest therein under the laws of all jurisdictions), and (ix) copies and tangible embodiments thereof, in each case whether or not the same are in existence as of the date of this Agreement or developed after such date and in any jurisdiction throughout the world.

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

“Interview Deadline” has the meaning set forth in Section 4.2(j).

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

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

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

“Liquidated Damages” has the meaning set forth in Section 4.7(a).

“Losses” means any and all actual, out-of-pocket losses, damages, costs, expenses, liabilities, interest, deficiencies, settlements, awards, judgments, fines, assessments, penalties, forfeiture, obligation, deposit, Tax, cost, offsets, expenses, diminutions in value, Legal Proceedings or other charges of any kind, including reasonable and documented attorneys’ fees, costs of investigation and costs of enforcing any right to indemnification hereunder or pursuing any insurance providers.

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

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

“Non-Storm Emergency Event” has the meaning set forth in Section 7.3(e)(i)

“Non-Storm Emergency Expenditures” has the meaning set forth in Section 7.3(e)(i).

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

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

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

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

“Operator Audited Financial Statements” has the meaning set forth in Section 6.3(a)(i).

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

“Operator Force Majeure Event” means any act, event, circumstance or condition (other than lack of finances) that is beyond the reasonable control of and unforeseeable by Operator, or which, if foreseeable, could not be avoided in whole or in part by the exercise of due diligence, and that materially interferes with or materially increases the cost of performing Operator’s obligations hereunder to the extent that such act, event, circumstance or condition is not the result of the willful or negligent act, error or omission or breach of this Agreement by Operator or any Subcontractor or Affiliate thereof. Subject to the requirements specified in the foregoing sentence, Operator Force Majeure Event shall include: (i) acts of God, fire, flood, drought, earthquake, hurricane and Named Windstorms; (ii) war, acts of terror and acts of civil or military authority; and (iii) the preemption of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the T&D System. It is specifically understood that none of the following acts, events or circumstances shall constitute Operator Force Majeure Events:

(A) general economic or financial conditions, interest or inflation rates, wage rates, insurance costs, commodity prices, currency values, exchange rates, currency fluctuations or changes in Owner’s rates;

(B) the financial condition of Operator, the Guarantor, any of their Affiliates or any Subcontractor;

(C) any increase for any reason in premiums charged by Operator’s insurers or the insurance markets generally for the required insurance;

(D) the failure of Operator to secure Patents, other Intellectual Property rights or licenses in connection with the performance of the O&M Services;

(E) equipment malfunction or failure (unless caused by a Force Majeure Event);

(F) union or labor work rules, requirements or demands, which have the effect of increasing the number of employees employed at the T&D System, reducing the operating flexibility of Operator or otherwise increase the cost to Operator of performing the O&M Services;

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

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

(I) strikes, boycotts, work stoppages, lockouts or other labor or employment disputes or disturbances with respect to the employees of Owner or the employees of Operator, its Subcontractors or its Affiliates;

(J) any act, event or circumstance that would not have occurred if Operator had complied with its obligations hereunder; or

(K) a storm that is comparable in length or severity of its effect on the T&D System to any storm that has occurred in the Commonwealth within ten years prior to the Effective Date and that is not a hurricane or a Named Windstorm.

"Operator Indemnitee" has the meaning specified in Section 18.2.

"Operator Marks" means Operator's Trademarks listed in Annex XV (*Operator Marks*), as may be revised by Operator from time to time.

"Operator Pre-Existing Intellectual Property" has the meaning specified in Section 13.1(b).

"Operator Related Entity" means (i) Operator, (ii) any Equity Participant, (iii) any other Affiliate of Operator, (iv) any Subcontractors (including suppliers) to Operator, (v) any other Persons performing any of the O&M Services, (vi) any other Persons for whom Operator may be legally or contractually responsible and (vii) the Representatives of any of the foregoing.

"Operator Related Parties" means Operator, Parent Company, their Affiliates and any of their respective employees, directors and officers.

"Operator Service Commencement Date Conditions" has the meaning set forth in Section 4.4(a).

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

"Overdue Rate" means the legal rate of interest provided for under Regulation No. 78-1 (Puerto Rico Regulation No. 3702 of October 25, 1988) of the Office of the Commissioner of Financial Institutions of the Commonwealth.

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

"Owner-Acquired Governmental Approvals" has the meaning set forth in Section 4.3(a).

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“Owner Employees” has the meaning set forth in Section 4.2(j).

“Owner Event of Default” has the meaning set forth in Section 14.1(a).

“Owner Force Majeure Event” means any act, event or circumstance that is beyond the reasonable control of and unforeseeable by Owner, or which, if foreseeable, could not be avoided in whole or in part by the exercise of due diligence, and that (i) materially interferes with the performance of Owner’s obligations hereunder, (ii) results in any material increase in the pass-through costs to be reimbursed by Owner pursuant to Section 7.2, (iii) requires any material capital expenditures, or (iv) otherwise materially increases the cost to Owner of the O&M Services provided by Operator hereunder, including as a result of an Operator Force Majeure Event. It is specifically understood that none of the following acts, events or circumstances shall constitute Owner Force Majeure Events:

(A) any act, event or circumstance that would not have occurred if Owner had complied with its obligations hereunder;

(B) general economic or financial conditions, interest or inflation rates, wage rates, insurance costs, commodity prices, currency values, exchange rates, currency fluctuations or changes in Owner’s rates; and

(C) changes in the financial condition of Owner.

“Owner Indemnitee” has the meaning specified in Section 18.1.

“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).

“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 confidence or secrecy that Owner owes to Owner’s customers or pursuant to contracts of Owner or Owner Related Parties.

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

“Parent Company” means [●], as holder of not less than a majority of the outstanding membership interests of Operator.

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

“Pass-Through Expenditures” has the meaning set for in Section 7.2.

“Patents” means patents (including utility and design patents), patent applications, PCT filings, patent disclosures and all related extensions, continuations, continuations-in-part, divisions, reissues, and reexaminations, utility models, certificates of invention and design patents, and all extensions thereto.

“Penalty Notice” has the meaning set forth in Section 7.1(e)(i).

“Performance Metrics” has the meaning set forth in Section 7.1(c)(i).

“Permitted Liens” means Liens arising by operation of law that are either contested in good faith and for which Operator has established adequate releases or that are discharged promptly and Liens existing as of the Effective Date, if any.

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

“Power and Energy” means the electrical energy, capacity and ancillary services available from the System Power Supply.

“PRDH” means the Puerto Rico Department of Housing.

“PREB” means the *Negociado de Energia de Puerto Rico*, or the Puerto Rico Energy Bureau, an independent body created by Act No. 57 of the Legislative Assembly of Puerto Rico, enacted on May 27, 2014.

“Pre-Existing Environmental Condition” means the presence of Undisclosed Hazardous Materials in environmental media anywhere in, at, on or under the T&D System on the Effective Date.

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

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

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

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“Prudent Utility Practice” means those practices, methods, techniques, conduct and acts that, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as the highest U.S. standards applicable in the electric transmission and distribution industry to the operation, management, maintenance, repair and replacement of assets, facilities and properties of the type covered by this Agreement. The interpretation of “Prudent Utility Practice” shall (i) not be limited to the optimum practice, method or act to the exclusion of all others, but rather shall be a spectrum of possible practices, methods or acts, which can fall within this description and (ii) take into account the characteristics of the T&D System and a particular time; provided, however, that the Parties acknowledge and agree that the stringency of Prudent Utility Practice shall increase as the characteristics of the T&D System improve through Operator’s performance of the O&M Services, achievement of Performance Metrics and the implementation of Capital Improvements. In no event shall any evolution of Prudent Utility Practice relieve Operator of its obligations hereunder.

“Public Information Disclosure Requirements” has the meaning set forth in Section 13.2(a)(ii).

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

“Public Works Improvements” means Capital Improvements performed as a result of requirements or requests of a Governmental Body.

“Rate Order” has the meaning set forth in Section 5.5(g).

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

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

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

“Required Insurance” has the meaning set forth in Section 10.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Storm Costs” has the meaning set forth in Section 7.4(c)(i).

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

“Storm Reserve Account” has the meaning set forth in Section 7.4(c)(i).

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

“Subcontractor” means every Person (other than employees of Operator) employed or engaged by Operator or any Person directly or indirectly in privity with Operator for any portion of the O&M Services, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise.

“Subcontractor Pre-Existing Intellectual Property” has the meaning specified in Section 13.1(b).

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

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

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

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

“T&D Customers” means customers of the T&D System.

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

“T&D System Sites” means the real property and interests therein upon which the components of the T&D System are and will be located.

“Target Service Commencement Date” means [INSERT DATE].²

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

“Tax Opinion” means an opinion of Nixon Peabody LLP as counsel to the FOMB or other tax counsel reasonably acceptable to Administrator, rendered in connection with this Agreement and providing that neither this Agreement nor any provision hereof adversely affects

² Note to Qualified Respondent: Please indicate a proposed duration for the Front-End Transition Period.

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

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

“Technical Dispute” has the meaning set forth in Section 15.6(a).

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

“Third-Party Payments” has the meaning set forth in Section 18.4.

“Trademarks” means trademarks, service marks, trade dress, brand names, certification marks, logos, slogans, rights in designs, industrial designs, corporate names, trade names, business names, geographic indications and other designations of source, origin, sponsorship, endorsement or certification, together with the goodwill associated with any of the foregoing, in each case whether registered or unregistered, and all applications and registrations therefor.

“Transaction Documents” means this Agreement, the Guarantee, the Servicing Contract and any other agreement entered into by Operator, Owner or Administrator from time to time in connection with the transactions contemplated hereby.

“Undisclosed” means any act, condition, event, circumstance or information that was neither communicated nor included in the Transaction Documents nor otherwise disclosed in writing to Operator on or prior to the Effective Date nor reasonably inferable from such communications and disclosures.

“United States” means the United States of America.

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

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

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

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

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

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

ARTICLE 2
PURPOSE; EFFECTIVE DATE; TERM

Section 2.1 Purpose. Owner hereby contracts with Operator for Operator to provide, in exchange for the Service Fee, management, operation, maintenance, repair, restoration, replacement and other services for the T&D System, including the services listed in Article 5 and Annex I (*Scope of Services*), in accordance with the Contract Standards.

Section 2.2 Effective Date.

(a) Execution of the Agreement. This Agreement shall become effective on the date that it is executed by the Parties (the "Effective Date").

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

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

(ii) receipt by the Parties of a resolution adopted by the Board of Directors of the Authority authorizing the execution, delivery and performance of this Agreement and the transactions contemplated hereby;

(iii) receipt by the Parties of a resolution adopted by the Board of Directors of Owner authorizing the execution, delivery and performance of this Agreement and the transactions contemplated hereby;

(iv) receipt by the Parties of authorization from the FOMB of the execution, delivery and performance of this Agreement and the transactions contemplated hereby;

(v) receipt by the Parties of approval from the Governor of the Commonwealth or its delegate for the execution, delivery and performance of this Agreement and the transactions contemplated hereby;

(vi) receipt by Owner of any required approvals from the United States District Court for the District of Puerto Rico, in its capacity as the court presiding over Owner's case under Title III of PROMESA;

(vii) receipt by Owner of the duly executed Guarantee;

(viii) receipt by Owner of copies of the federal funding certifications in the form set forth as Exhibit A (*Form of Federal Funding Certifications*), duly executed by Operator;

(ix) 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 Operator;

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- by Operator;
- (x) receipt by Owner of a copy of the Servicing Contract, duly executed
 - (xi) receipt by Owner of a Tax Opinion; and
 - (xii) receipt by the Parties of any Governmental Approvals required in connection with the Front-End Transition Plan, if any.³

Section 2.3 Term.

(a) Initial Term. This Agreement shall be in effect from the Effective Date through 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) Extension. Operator and Administrator may mutually agree to extend the Initial Term for an additional period to be determined at the time (the “Extension Term”); provided that (i) the Extension Term shall not exceed the maximum term permitted under Act 29 at the time of such extension and (ii) a Tax Opinion is obtained in connection with such Extension Term.

³ Note to Qualified Respondent: To be determined based on the definitive Front-End Transition Plan.

**ARTICLE 3
OWNERSHIP OF THE T&D SYSTEM**

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

Section 3.2 Engagement of Operator. Operator shall perform the O&M Services as an independent contractor and shall not have any legal, equitable, tax, beneficial or other ownership or leasehold interest in the T&D System. The only compensation payable by Owner to Operator for providing the O&M Services for the T&D System shall be the Service Fee. All amounts collected by Operator or its Subcontractors pursuant to this Agreement (other than the Service Fee paid to Operator hereunder and transition or similar charges set forth in Owner's or its Affiliates' financing agreements) shall be the property of Owner and shall be deposited by Operator daily in such account(s) specified in accordance with the Servicing Contract. In collecting such amounts, Operator and any Subcontractor shall act solely as an agent for Owner and shall have no right or claim to such amounts 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 hereunder or with respect to any other matter in dispute hereunder. Operator is unconditionally and absolutely obligated to pay or deposit all such amounts as directed by Administrator.

Section 3.3 Use of T&D System. During the Term, Operator and its Subcontractors shall have the right to enter upon, occupy and use the T&D System for the sole purpose of performing the O&M Services in accordance with the terms hereof.

Section 3.4 Liens. At all times during the Term, Operator shall keep the T&D System free and clear of any and all Liens, other than Permitted Liens, arising out of or in connection with (a) the O&M Services or (b) any acts, omissions or debts of Operator, Guarantor, their Affiliates and their Subcontractors. Nothing in this Agreement shall be deemed to create any Lien in favor of Operator on any asset of Owner, including the T&D System, as security for the obligations of Owner hereunder.

Section 3.5 Surrender of the T&D System. Upon the expiration or earlier termination of the Term hereof, Operator and, if and to the extent Administrator requests, its Subcontractors shall peaceably leave and surrender the T&D System to Owner or its designee in a condition consistent with Operator's responsibilities hereunder.

Section 3.6 Right of Access. Upon reasonable notice to Operator, Administrator, PREB 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 O&M Services. At Administrator's request, Operator shall provide Administrator with dedicated on-site office space and access to and use of office facilities and equipment located at Operator's facilities in the Commonwealth or another suitable site mutually agreed upon; provided that such space is adequate to enable Administrator to exercise its oversight rights and responsibilities under this Agreement.

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Section 3.7 Exclusivity. The Parties covenant and agree that Operator, its Subcontractors and Representatives shall be the sole providers of O&M Services with respect to the T&D System, except as otherwise provided herein, and that Operator shall not (a) 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, as applicable, or (b) use the T&D System (i) for any purpose other than the purposes contemplated hereby or (ii) to serve or benefit any person other than Owner and the T&D Customers.

Section 3.8 Reliance. Operator acknowledges that Owner is providing an essential public service and is relying on the performance by Operator of its obligations hereunder to comply with its obligations under Applicable Law. So long as there has been no Operator Force Majeure Event and, in such case, only to the extent of Operator Force Majeure Event, Operator assumes the risk of the practicability and possibility of performance of the O&M Services in a manner that meets all of the requirements hereof, even though such performance and operation may involve technological or market breakthroughs or overcoming facts, events or circumstances that may be different from those assumed by Operator in entering into this Agreement. Operator agrees that sufficient consideration for the assumption of such risks and duties is included in the Service Fee.

Section 3.9 Qualified Management Contract.

(a) Generally. Owner, Administrator and Operator acknowledge and agree that (i) the T&D System has been financed with obligations the interest on which is exempt from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code; (ii) as a result, Owner, Administrator and Operator intend for this Agreement to constitute a “qualified management contract” under Revenue Procedure 2017-13 (or any successor guidance), such that the provision of O&M Services by Operator under this Agreement does not adversely affect the exclusion from gross income for federal income tax purposes under the Internal Revenue Code; and (iii) the Tax Opinion delivered as of the Effective Date has been delivered on such basis.

(b) Covenants.

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

(ii) Owner, Administrator and Operator each covenant and agree that the terms of this Agreement shall be construed so as to comply with the requirements of Revenue Procedure 2017-13. To the extent that this Agreement is determined to fail to comply with Revenue Procedure 2017-13 for any reason or otherwise is determined to result in private business use of the T&D System within the meaning of section 141 of the Internal Revenue Code, the Parties agree that they shall use reasonable efforts to amend the terms of this Agreement in order to comply with Revenue Procedure 2017-13.

ARTICLE 4
FRONT-END TRANSITION PERIOD

Section 4.1 Generally.

(a) Role of Operator. Throughout the Front-End Transition Period, Operator shall provide the Front-End Transition Services (which are not O&M Services) as described in the front-end transition plan set forth in Annex II (*Front-End Transition Plan*), which provides for the transition and handover of the O&M Services and other rights and responsibilities with respect to the T&D System to, and the provision of other services by, Operator prior to the Service Commencement Date under this Agreement (the "Front-End Transition Plan"). The Front-End Transition Services shall be provided in a manner consistent with the Contract Standards and such that the provision of such services hereunder shall ensure a timely and orderly transition of the T&D System to Operator and ServCo, without disruption of customer service and business continuity, by the Target Service Commencement Date.

(b) Owner Cooperation. Owner shall take all such actions as may be reasonably necessary to enable or assist Operator to provide the Front-End Transition Services, including (i) providing Operator's Representatives with a designated space and facilities at Owner's principal offices for their use throughout the Front-End Transition Period, (ii) allowing access, during normal business or operational hours (as may be applicable and relevant) and at such other times as are required, to Owner's premises for the purpose of providing the Front-End Transition Services, and (iii) encouraging and facilitating a positive and cooperative working relationship with respect to the implementation and completion of the Front-End Transition Plan and the performance of the Front-End Transition Services.

Section 4.2 Operator Responsibilities. As soon as practicable after the Effective Date but in any event prior to the Target Service Commencement Date, Operator shall satisfy the following obligations, each of which shall be a condition precedent to the occurrence of the Service Commencement Date:

(a) Front-End Transition Plan. Operator shall carry out and complete the Front-End Transition Plan as it specifically relates to transition obligations to be performed by Operator prior to the Service Commencement Date, and shall provide all management, technical, administrative, engineering, labor relations and other personnel necessary in connection therewith.

(b) Handover Checklist. By no later than the tenth (10th) day of each month, Operator shall provide Administrator written monthly reports, including an annotated Handover Checklist, with respect to Operator's performance of the Front-End Transition Services. From time to time during the Front-End Transition Period, in light of experience developed during the Front-End Transition Period, the Handover Checklist shall be adjusted, updated or otherwise modified by Operator and Administrator as necessary. Once Operator determines it has satisfactorily completed all items on the Handover Checklist and is therefore ready to perform all O&M Services, Operator shall provide Administrator with written notice of such, including a completed Handover Checklist.

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(c) Governmental Approvals. Operator shall (i) coordinate with Owner and Administrator to prepare for and support Operator's efforts to transfer or assign, to the extent permitted by Applicable Law, or reissue or assist with the issuance of Governmental Approvals required for the performance of the O&M Services pursuant to the terms of this Agreement, (ii) submit complete applications and take all other steps necessary under Applicable Law to obtain and maintain all required Governmental Approvals, and (iii) provide Owner and Administrator with copies of any such Governmental Approvals.

(d) ServCo. Operator shall form a subsidiary service company ("ServCo") to employ the ServCo Employees and provide the O&M Services in accordance with the Contract Standards. ServCo shall be authorized to do business in the Commonwealth. Without the prior approval of Administrator, ServCo may not engage in any other business or activity other than to provide the O&M Services pursuant to this Agreement.

(e) Confirmation of Guarantee. Guarantor shall execute and deliver a confirmation to Administrator that the Guarantee remains in full force and effect.

(f) Required Insurance. Operator shall submit to Administrator certificates of insurance for all Required Insurance.

(g) Initial Budgets. Operator shall prepare and submit to Administrator the proposed Initial Budgets. Within forty-five (45) days following its receipt of such proposed Initial Budgets, Administrator shall provide Operator comments on the appropriateness of the proposed Initial Budgets and recommend any changes or modifications it believes are necessary or appropriate. Within thirty (30) days from receipt of Administrator's comments, Operator shall submit to PREB the revised Initial Budgets, incorporating or rejecting any of the modifications or changes suggested by the Administrator, together with an explanation of any of Administrator's comments. PREB shall review such Initial Budget proposal in accordance with Applicable Law.

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

(i) Back-End Transition Plan. Operator shall prepare and submit to Administrator a detailed back-end transition plan consistent with the back-end transition plan set forth in Annex III (*Back-End Transition Plan*), which provides for the transition and handover of the O&M Services, and other rights and responsibilities with respect to the T&D System, back to Owner or to a successor operator upon the expiration or early termination of the Term hereof (the "Back-End Transition Plan"). Such Back-End Transition Plan shall be updated on an annual basis as necessary or appropriate.

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(j) Employment Interviews. As soon as reasonably practicable following the Effective Date (but not less than one hundred and twenty (120) days prior to the Target Service Commencement Date) (the “Interview Deadline”), ServCo shall use its best efforts to interview and evaluate candidates for employment at ServCo, effective as of the Service Commencement Date, the regular employees of Owner and its Affiliates (i) who remain employed by Owner and its Affiliates as of the Interview Deadline or are hired by Owner or its Affiliates on or after the Effective Date hereof in the ordinary course of business consistent with the past practices of Owner and its Affiliates to replace any existing employee of Owner, and (ii) who apply to Operator in a job category Operator wishes to fill (collectively, the “Owner Employees”).

(k) Employment Offers. Operator shall give priority to any Owner Employees who meet Operator’s stated requirements for employment as set forth in Annex IV (*Operator Employment Requirements*) over other equally qualified and equally evaluated applicants for the same job category that are not Owner Employees. Each Owner Employee who accepts an offer of employment with ServCo pursuant to this Section 4.2(k) shall be referred to as a “Hired Former Employee of Owner.” On the Service Commencement Date and during the Term, ServCo 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 “ServCo Employees”), as are necessary to provide the O&M Services. The following initial terms and conditions of employment shall apply to the Hired Former Employees of Owner, but not to any Other Employees:

(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 ServCo on the following initial terms and conditions: (A) a base salary or regular hourly wage rate at least equal to the base salary or wage rate provided by Owner and its Affiliates immediately prior to the Service Commencement Date and (B) employee fringe benefits that are no less favorable to those provided to government employees by Act No. 26-2017, and which are consistent with the restrictions, modifications and annulments applied by Puerto Rico Act No. 3-2017 and Act No. 66-2014, immediately prior to the Service Commencement Date.

(l) Periodic Reports.

(i) Operator shall provide Administrator with detailed weekly, monthly and other periodic reports as Administrator may reasonably request from time to time with respect to Operator’s performance of the Front-End Transition Services, including the progress against completion schedules and milestones included in the Front-End Transition Plan. In connection therewith, Operator shall provide Administrator with any other documents, reports, data and other information or statement that Administrator may reasonably request, including performance reports related to any of Front-End Transition Services, and which may be reasonably produced from records maintained by Operator in the normal course of business consistent with the provisions of this Agreement with respect to record retention requirements.

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(ii) Operator 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 Operator has been unable to promptly and adequately resolve.

(m) Representations. The representations of Operator set forth in Section 19.2 and of Guarantor set forth in the Guarantee shall be true and correct in all material respects as of the Service Commencement Date as if made on and as of the Service Commencement Date, and both Operator and Guarantor shall deliver to Administrator a certificate of an authorized officer to that effect.

(n) Subcontractors. Operator shall provide Administrator with a list of those Subcontractors with which Operator has contracted or intends to contract for the subcontracting of any of the O&M Services in excess of \$[●]. Operator shall be required to update such list on an annual basis.

(o) Notice of Default. Operator shall provide to Administrator, promptly following the receipt thereof, copies of any notice of default, breach or noncompliance received under or in connection with any Governmental Approvals or subcontract pertaining to the Front-End Transition Period.

Section 4.3 Owner Responsibilities. As soon as practicable after the Effective Date but in any event prior to the Target Service Commencement Date, Owner shall satisfy the following obligations, each of which shall be a condition precedent to the occurrence of the Service Commencement Date:

(a) Governmental Approvals. Owner shall (i) obtain or maintain the Governmental Approvals set forth in Annex V (*Owner-Acquired Governmental Approvals*) (the "Owner-Acquired Governmental Approvals") and (ii) prepare for and support Operator's efforts to transfer or assign, to the extent permitted by Applicable Law, or reissue or assist with the issuance of Governmental Approvals required for the performance of the O&M Services pursuant to the terms of this Agreement.

(b) Representations. The representations of Owner set forth in Section 19.1 shall be true and correct in all material respects as of the Service Commencement Date as if made on and as of the Service Commencement Date, and Owner shall deliver to Operator a certificate of an authorized officer to that effect.

Section 4.4 Conditions Precedent to Service Commencement Date. The Service Commencement Date shall not occur, and the obligations of Operator and Owner 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 or waived by Administrator or, in the case of Section 4.4(b) only, by Operator.

(a) Operator Responsibilities. Operator shall have fulfilled all of its obligations with respect to the Front-End Transition Period under Section 4.2 (the "Operator Service Commencement Date Conditions").

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(b) Owner Responsibilities. Owner shall have fulfilled all of its obligations with respect to the Front-End Transition Period under Section 4.3.

(c) Governmental Approvals. All Governmental Approvals required for the execution, delivery and performance on the Service Commencement Date by the Parties of this Agreement shall have been issued or obtained and shall be in full force and effect.

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

(e) No Governmental Prohibitions. No Governmental Body shall have enacted, issued, promulgated, enforced or entered any Applicable Law that is in effect and would make it illegal for Operator to provide, or otherwise prohibit or enjoin Operator from providing, the O&M Services for the T&D System as of the Service Commencement Date in accordance with the terms of this Agreement.

Section 4.5 Front-End Transition Period Compensation.

(a) General. As compensation for the Front-End Transition Services provided by Operator, Owner shall, as directed by Administrator, pay Operator the Front-End Transition Service Fee.

(b) Front-End Transition Service Fee. The “Front-End Transition Service Fee” shall be an aggregate amount equal to [●]⁴% of (i) the actual base hourly wage of each Operator employee providing Front-End Transition Services during the Front-End Transition Period, as set forth in Annex VI (*Front-End Transition Hourly Wages*) multiplied by (ii) the number of hours worked by each Operator employee providing Front-End Transition Services during the Front-End Transition Period.

(c) Invoices.

(i) By no later than the tenth (10th) day of each month, Operator shall provide Administrator with a monthly invoice describing in reasonable detail the prior calendar month’s Front-End Transition Services and the corresponding Front-End Transition Service Fee for such prior calendar month. All invoices shall comply with the requirements set forth in Section 9.2(c) hereto.

⁴ Note to Qualified Respondents: Please indicate a proposed percentage.

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(ii) Payments of undisputed amounts on monthly invoices shall be due within thirty (30) days of Administrator's receipt of such invoice.

(iii) Operator shall provide promptly to Administrator such additional supporting documentation evidencing the provision of Front-End Transition Services, if any, and the calculation of Front-End Transition Service Fee related thereto as Administrator may reasonably request and as may be required by Applicable Law. Administrator shall promptly advise Operator of any disputed invoice amounts, and all such disputes which Operator and Administrator are unable to resolve shall be submitted for resolution as provided in Article 16.

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

Section 4.6 Closing the Front-End Transition Period.

(a) Notice of Service Commencement Date. Operator shall provide Administrator with prompt written notice (with a copy to PREB), including a completed Handover Checklist, at such time as Operator determines it has satisfactorily completed all items on the Handover Checklist and is therefore ready to perform all O&M Services under this Agreement.

(b) Establishment of Service Commencement Date. The "Service Commencement Date" shall be the date on which a handover to Operator of the O&M Services occurs and shall occur on the date that is three (3) Business Days following the date on which Administrator delivers a certificate to Operator confirming that all Service Commencement Date Conditions have been met. The satisfaction or waiver of all the Service Commencement Date Conditions is required for the achievement of the Service Commencement Date.

Section 4.7 Failure of Service Commencement Date Conditions.

(a) Remedy for Failure of Service Commencement Date Conditions. If any of the Operator Service Commencement Date Conditions are not satisfied or waived by Administrator by the Target Service Commencement Date or such later date as Administrator and Operator may agree, Operator shall pay to Owner, as Owner's sole and exclusive remedy for all monetary damages, costs, losses and expenses of whatever type or nature arising from or related to such failure of Service Commencement Date Conditions, liquidated damages (the "Liquidated Damages") in the amount of \$[●]⁵ per week for each week (or for any portion of a week on a Pro

⁵ Note to Qualified Respondent: Please indicate a proposed amount.

Rata basis) the Target Service Commencement Date is delayed, up to a maximum of \$[●]⁶. It is understood and agreed by the Parties that if any of the Operator Service Commencement Date Conditions are not satisfied or waived by the Target Service Commencement Date or such later date as Administrator and Operator may agree, Owner's damages would be difficult or impossible to quantify with reasonable certainty, and accordingly, the payment provided for in this Section 4.7(a) is a payment of liquidated damages (and not penalties), which is based on the Parties' estimate of damages Owner would suffer or incur. Operator hereby irrevocably waives any right it may have to raise as a defense that the Liquidated Damages are excessive or punitive.

(b) Termination for Failure of Service Commencement Date Conditions. If any of the Operator Service Commencement Date Conditions are not satisfied or waived by the Target Service Commencement Date or such later date as Administrator and Operator may agree, Administrator may terminate this Agreement upon not less than thirty (30) days prior written notice to Operator.

Section 4.8 Subcontractors During the Front-End Transition Period.

(a) General. Administrator shall have the right to approve any Subcontractor engaged by Operator to perform any Front-End Transition Services hereunder for which an aggregate of \$[●] or more would be anticipated to be paid to such Subcontractor (the "Front-End Subcontractors"), which approval shall not be unreasonably withheld or delayed.

(b) Identification. Promptly following the Effective Date, Operator shall propose a list of recommended Front-End Subcontractors for Administrator's review and approval. Operator also shall furnish Administrator, together with such list, all information or documents requested by Administrator, to the extent reasonably available to Operator, pertaining to the proposed subcontractors and categories of subcontracts in the following areas: (i) any conflicts of interest; (ii) any record of felony criminal convictions or pending felony criminal investigations; (iii) any final judicial or administrative finding or adjudication of illegal employment discrimination; and (iv) any known final judicial or administrative finding or adjudication of non-performance of contracts with Owner, Administrator or the Commonwealth.

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

⁶ Note to Qualified Respondent: Please indicate a proposed amount.

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Administrator's discretion. All Front-End Subcontractors shall be required to furnish a Sworn Statement.

**ARTICLE 5
O&M SERVICES**

Section 5.1 Services Generally. Commencing on the Service Commencement Date, and in exchange for the Service Fee, Operator shall provide management, operation, maintenance, repair, restoration and replacement and other services for the T&D System, including the services set forth in this Article 5 and Annex I (*Scope of Services*), and the establishment of policies, programs and procedures with respect thereto (all such services, the “O&M Services”), in each case, in accordance with the Contract Standards. It is the Parties’ intent that except for the rights and responsibilities reserved to Owner and Administrator as set forth in Article 6 or as may otherwise be expressly provided in this Agreement, Operator shall assume and undertake the rights and responsibilities of Owner for the T&D System, including the O&M Services.

Section 5.2 System Contracts.

(a) Generally. Operator shall administer and perform, on behalf of Owner, Owner’s rights and obligations under the contracts identified in Annex VII (*Contracts*) (the “System Contracts”), other than payment obligations thereunder, which shall continue to be satisfied by Owner; provided that Operator shall administer and perform Owner’s rights and obligations under such System Contracts in such a manner so as not to expand or increase the liabilities assumed by Owner thereunder. Owner shall authorize Operator to enforce Owner’s rights under any such System Contracts. Upon the expiration or termination of any System Contract, Operator shall be responsible for replacing the expired or terminated System Contract to the extent necessary to provide the O&M Services; provided that any System Contract in an amount in excess of \$[●] shall be subject to approval by Administrator.

(b) Reporting Obligations. Operator shall periodically provide to Administrator a report documenting each contract in excess of \$[●] per year entered into with a third-party and related to the management and the O&M Services associated with the T&D System, which report shall include the name of the third-party, the term of the contract and a description of the services or goods to be procured.

(c) Conditions on Term. Any contracts entered into by Operator on behalf of Owner in connection with the O&M Services, including contracts with Subcontractors, shall at all times either (i) be for a term that is no longer than the Term or (ii) provide that Owner may terminate such contract at will (subject to any notice requirements) without cost or penalty.

Section 5.3 Billing and Collection.

(a) Generally. Operator shall perform all billing and collection services for the T&D System in accordance with the Contract Standards, including the minimum requirements set forth in Annex I (*Scope of Services*).

(b) Collection of Charges. All funds received and derived by Operator from its billing and collection services hereunder shall be deposited immediately upon receipt in one or more bank accounts designated by Administrator. Any funds received after 4:00 p.m. on any given day or on a day that is not a Business Day shall be deposited at the opening of business on the

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immediately following Business Day. All such funds and any revenues generated by the T&D System (other than transition or similar charges set forth in Owner's or its Affiliates' financing agreements) are and shall remain the property of Owner at all times.

(c) Enforcement of Collections. Owner shall cooperate with Operator in all collection matters and, to the extent not delegated to Operator hereunder, shall exercise its statutory powers pertaining to any and all remedies granted to it under Applicable Law for purposes of collection, including the imposition of interest and penalties on unpaid charges and the termination of services. Subject to Applicable Law, Operator may suspend or terminate services to any customer of the T&D System not in compliance with its obligations to pay the established rates in accordance with their terms, if not otherwise prohibited by Applicable Law.

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

Section 5.4 Capital Improvements.

(a) Generally. Operator shall be responsible for: (i) preparation of recommended Capital Improvements and monitoring of the approved annual Capital Budget; risk assessments and analyses in support of capital projects prioritization and planning, 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 plan; (ii) preparation of long and short range transmission and distribution planning analyses and forecasts to determine the need for 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; and (iii) performance of Capital Improvements and supervision of capital projects including engineering and related design and construction management services, to the extent such services comply with all FEMA, HUD and other Applicable Law and applicable federal agency requirements in order to not jeopardize the T&D System's eligibility to receive Federal Funding (all such requirements, the "Federal Funding Requirements"). Owner acknowledges and agrees that Operator may hire Subcontractors to perform any such Capital Improvement project.

(b) Capital Asset Control. In each Contract Year, Operator shall conduct an audit of the Capital Improvements made in the prior Contract Year. Such audit 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.

(c) Proposals. Operator shall from time to time during the Term propose to Administrator Capital Improvements that would be made and owned by Operator or its designated Affiliate; provided, however, that no such Capital Improvements shall be made that would in any manner jeopardize, in Administrator's sole discretion, the exclusion from gross income of interest on Owner's or its Affiliates' obligations under the Internal Revenue Code. Operator shall provide

Administrator with a description in sufficient detail to enable Administrator to make a fully informed assessment and analysis of any such proposed Capital Improvement. Any such proposed Capital Improvements shall be subject to approval by PREB in accordance with Applicable Law.

Section 5.5 System Regulatory Matters.

(a) General. Operator shall represent Owner (i) before PREB with respect to any matter related to the performance of any of the O&M Services provided by Operator under this Agreement and shall be responsible for all relevant filings and other submissions before PREB and (ii) before any Governmental Body and any other similar industry or regulatory institutions or organizations having regulatory jurisdiction.

(b) Applications and Submittals. Operator shall make all filings, applications and reports necessary to obtain and maintain all Governmental Approvals required to be obtained by or in the name of Operator or Owner. With respect to Governmental Approvals that are required to be obtained or maintained in the name of Owner, Operator shall: (i) prepare the application and develop and furnish all necessary supporting material and data and information that may be required; (ii) familiarize itself with the terms and conditions of such Governmental Approvals; (iii) attend all required meetings and hearings; and (iv) take all other action necessary or otherwise reasonably requested by Administrator in order to assist and support Owner in obtaining, maintaining, renewing, extending and complying, as may be relevant, with the terms of such Governmental Approvals. Operator shall agree to be named as a co-permittee on any Governmental Approval if so required by the issuing Governmental Body. Operator shall not disadvantage Owner in any application, data submittal or other communication with any Governmental Body regarding Governmental Approvals.

(c) Data and Information. All data, information and action required to be supplied or taken in connection with the Governmental Approvals required for the O&M Services shall be supplied and taken by Operator on a timely basis considering the requirements of Applicable Law and the responsibilities of Owner as the legal and beneficial owner of the T&D System and primary permittee. The data and information supplied by Operator to Owner, Administrator and all regulatory agencies in connection therewith shall be correct and complete in all material respects. Operator shall be responsible for any schedule and cost consequences which may result from the submission of materially incorrect or incomplete information and the untimely submission of required information.

(d) Non-Compliance and Enforcement. Operator shall report to Administrator in writing, as soon as possible upon obtaining knowledge thereof (but in no event more than twenty-four (24) hours later), all violations of the terms and conditions of any Governmental Approval. Administrator shall have the right independently to enforce compliance with the requirements of any Governmental Approval regardless of whether a concurrent or different regulatory enforcement action has been undertaken by any other Governmental Body.

(e) Reports to Governmental Bodies. Operator shall prepare all periodic and annual reports, make all information submittals and provide, on a timely basis, all notices to all Governmental Bodies required by all Governmental Approvals and under Applicable Law with respect to the T&D System. Such reports shall contain all information required by the

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Governmental Body and may be identical to comparable reports previously prepared for Administrator if such are acceptable to the Governmental Body.

(f) Integrated Resource Plan. In accordance with and when required pursuant to Applicable Law, Operator shall prepare a proposed Integrated Resource Plan for submission to PREB. The proposed Integrated Resource Plan shall be designed in a manner to ensure that, if approved by PREB and subject to the forecast assumptions specified therein, Operator is able to provide safe and adequate transmission and distribution service at rates which are at the lowest level consistent with sound fiscal operating practices and Applicable Law.

(g) PREB Rate Proceedings. Operator may, from time to time, propose that a change in customer rates or charges be made, which, if approved by PREB pursuant to Applicable Law, may result in a change in customer rates or charges consistent with the scope of PREB's approval. Any Budget submitted by Operator to Administrator and approved by Administrator in accordance with Section 7.3(a) shall be consistent with the determinations, directives and requirements established by PREB through a rate review proceeding ("Rate Order").

(h) Authority to Set Rates. Nothing in this Agreement is intended, nor shall it in any way impair or restrict, PREB's right to approve final rates and charges to T&D Customers in accordance with Applicable Law, prejudice the powers of PREB or any other Governmental Body to regulate Owner and Operator in accordance with Applicable Law or be deemed to provide Operator with any regulatory powers, except to the extent provided under Act 17.

Section 5.6 Safety and Security.

(a) Safety. Operator shall be responsible for the health and safety at the T&D System at a level consistent with the Contract Standards. Without limiting the generality of the foregoing, Operator shall: (i) take all reasonable precautions for the health and safety of, and provide all reasonable protection to prevent damage, injury or loss by reason of or related to the operation of the T&D System to, (A) all Persons involved with the O&M Services, (B) all materials and equipment under the care, custody or control of Operator and (C) other property constituting part of the T&D System; (ii) establish and enforce all reasonable safeguards for health and safety and protection, including posting danger signs and other warnings against hazards and promulgating health and safety regulations; (iii) provide all notices and comply with all Applicable Law relating to the health and safety of Persons or property or their protection from damage, injury or loss; (iv) designate qualified and responsible employees whose duty shall be the supervision of the health and safety at the T&D System; (v) operate all equipment in a manner consistent with the manufacturer's safety recommendations; (vi) provide for safe and orderly vehicular movement; and (vii) develop and carry out a site-specific health and safety program, including employee training and periodic inspections, designed to implement the requirements of this Section 5.6(a).

(b) OSHA. Operator shall take all actions which may be required in order to bring the T&D System into and maintain compliance with the Commonwealth and federal Occupational Safety and Health Acts.

(c) Security. Operator shall develop a security plan in accordance with the Contract Standards and shall be responsible for the security of the T&D System. Operator shall

guard against and be responsible for all damage or injury to the T&D System caused by trespass, theft, negligence, vandalism, malicious mischief or cyber-attacks of third parties.

Section 5.7 Labor and Employment; Employee Benefits.

(a) Employee Plans. ServCo shall provide employee benefits to ServCo Employees pursuant to the plans created by ServCo to provide benefits to ServCo Employees (collectively, the “ServCo Benefit Plans”). From and after the Service Commencement Date, except as required by Applicable Law, Hired Former Employees of Owner shall accrue no additional benefits under any employee benefit plan, policy, program or arrangement of Owner or its Affiliates. In the event that a Hired Former Employee of Owner elects to continue participating in Owner’s defined benefit retirement plan pursuant to Act 29 and Act 120, ServCo shall be responsible for making the required future employer contributions with respect to such employee but shall have no other liability or responsibility with respect to such plan, nor shall it be required to provide benefits to such employee under the ServCo Benefit Plan. A Hired Former Employee of Owner may also choose (to the extent permitted) to transfer his contributions to Owner’s retirement plan to any retirement plan available to ServCo employees.

(i) The ServCo Benefit Plans shall credit the Hired Former Employees of Owner for service prior to the Service Commencement Date with Owner and its Affiliates for purposes of eligibility to participate, vesting and, with respect to vacation plans only, benefit accrual.

(ii) The ServCo Benefit Plans shall waive all limitations as to pre-existing conditions and actively-at-work exclusions and waiting periods for transitioned employees (and their eligible dependents).

(b) Exclusivity. Operator may not, without Administrator’s prior written approval, utilize ServCo or its employees for any purpose other than providing the O&M Services under this Agreement, nor may it hire, for any other business of Operator or an Affiliate, any existing ServCo employees without Owner’s prior written consent.

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

Section 5.8 Procurement and Administration of Federal Funding.

(a) General. As between the Parties, Owner shall retain the exclusive right to receive amounts from all Federal Funding for the T&D System. Operator shall perform the O&M Services in compliance with the Federal Funding Requirements and shall be responsible for carrying out any Capital Improvements financed in full or in part with available Federal Funding, and shall complete all work related to such Capital Improvements in compliance with the Federal Funding Requirements in order to ensure the Federal Funding anticipated or received is administered in accordance with all such requirements.

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(b) Cooperation and Participation. Operator shall be required to cooperate and participate with any relevant Governmental Body and any Grant Manager in order to help seek, administer and apply Federal Funding for the restoration of the T&D System and related costs. Operator shall be required to cooperate and participate in any audits or investigations performed by Commonwealth or federal authorities.

(c) Compliance with Applicable Law, Regulation and Policy. Operator shall procure any work related to the T&D System, the cost of which may be submitted for Federal Funding, in full compliance with (i) Applicable Law, including the procurement rules set forth in 2 C.F.R. Part 200 applicable to Owner, (ii) the provisions related to Federal Funding, as applicable, set forth in Annex VIII (*Federal Funding Provisions*), (iii) applicable Owner policy; (iv) applicable COR3 policy and (v) applicable PRDH policy. Operator shall require any Subcontractors engaged to complete such work to execute a certification substantially in the form of Exhibit A (*Form of Federal Funding Certifications*) at the commencement of the subcontract.

Section 5.9 Environmental, Health and Safety Matters.

(a) Generally. Operator shall be responsible for performing the following environmental health and safety activities related to the provision of electric service to the T&D Customers: (i) managing an environmental, health and safety program for the T&D System in accordance with the Contract Standards; (ii) coordinating, overseeing, ensuring and maintaining compliance of the T&D System with Environmental Law, including documentation thereof; (iii) monitoring emerging federal, state, Commonwealth, municipal and local Environmental Law to ensure future and ongoing compliance and operational efficiencies; (iv) performing analyses of proposed Environmental Law to ensure future compliance thereunder; (v) providing environmental permitting services to support operations; and (vi) maintaining the corporate environmental profile with stewardship, reporting and best practices relating to environmental endeavors.

(b) Pre-Existing Environmental Conditions.

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

(ii) Administrator shall have the right to contest any determination of a Pre-Existing Environmental Condition and shall not be required to take any action under this Section 5.9 so long as (A) it is contesting any determination of a Pre-Existing Environmental Condition in good faith by appropriate proceedings conducted with due diligence and

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(B) Applicable Law permits continued operation of the T&D System pending resolution of the contest.

(iii) Operator shall not be responsible for any third-party Legal Proceeding resulting from Pre-Existing Environmental Conditions, except to the extent such Legal Proceeding is based in whole or in part on Operator's breach of its obligations hereunder, gross negligence or willful misconduct.

(c) Notice and Remedial Action Requirements.

(i) Operator shall, promptly upon receiving notice thereof, report to Administrator, on a per occurrence basis, the Release of any reportable quantity, as defined under applicable Environmental Law, of Hazardous Material or of any other Release that could reasonably be expected to result in material Losses to Owner, and the location at which the Release has occurred, the time, the agencies involved, the damage that has occurred and the Remedial Action taken or to be taken. Notice of any such Release, if initially delivered orally, shall be delivered in writing promptly following Operator knowledge of such Release. This reporting obligation shall be in addition to any other reporting obligation under Environmental Laws.

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

(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 the Contract Standards and Environmental Law.

Section 5.10 Accounting and Financial Services. As further detailed in Annex I (*Scope of Services*), Operator shall provide accounting and financial services such that Owner meets or exceeds Prudent Utility Practice in respect of financial and accounting records and such that all of Owner's reporting requirements are met in a timely, organized and efficient manner.

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Section 5.11 Generation-related Services. As further detailed in Annex I (*Scope of Services*), Operator shall coordinate management of power supply from available generation assets and provide related services.

Section 5.12 Emergency Action. Notwithstanding anything to the contrary in this Agreement, if at any time Operator determines in good faith that an emergency situation exists with respect to the T&D System such that immediate action must be taken to protect the safety of the public, Owner's employees and Operator's employees, to protect the safety or integrity of the T&D System, or to mitigate the immediate consequences of an emergency event, Operator shall take all such action that it deems in good faith to be reasonable and appropriate under the circumstances in accordance with the Emergency Plan. As promptly thereafter as is reasonable, Operator shall notify Administrator and PREB of the event and Operator's response thereto. For so long as the emergency situation continues, Operator shall provide a weekly written update to Administrator and PREB specifying the nature of the emergency event, the remediation measures being taken by Operator, the expected duration of the emergency event and an estimate of any increases in costs resulting therefrom. Operator shall notify Administrator and PREB in writing as soon as the emergency situation has ended.

Section 5.13 Information.

(a) System Information and Computer Database. Operator shall establish and maintain an information system to record, and to the extent practicable, provide real time retrieval for Administrator's review and copying of T&D System operating and financial data, including all information necessary to verify calculations made pursuant to this Agreement. Such information shall include information about the T&D System (including information in physical formats such as diagrams, flow charts and schematics related to the T&D System), reports (and all supporting data) regarding the performance of the T&D System, and information regarding management (including planning, design, engineering, operation, maintenance and customer contact) of the T&D System (collectively, "System Information"). Operator shall also maintain a computer database containing information related to the T&D Customers (the "Customer Database") that, at a minimum, specifies each customer served by the T&D System, the service classification applicable to each customer, payment records and inquiries or complaints from and any special services requested by or provided to each customer. Subject to the provisions of Section 13.1 hereof, all System Information and the Customer Database shall constitute Intellectual Property and Confidential Information of Owner.

(b) Ownership of System Information and Owner Personal Information. Any System Information or any Owner Personal Information in existence as of the Effective Date of this Agreement also shall be considered Intellectual Property and Confidential Information of Owner and shall at all times remain the property of Owner. Any System Information or any Owner Personal Information created during the Term shall constitute Work Product.

(c) Information Access.

(i) Operator shall provide Owner with full, unrestricted and timely access to all information necessary to (A) maintain, protect and preserve the T&D System assets or (B) carry out any of Owner's responsibilities related to the T&D System under Applicable Law.

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(ii) Operator shall provide Administrator and its Representatives with full, unrestricted and timely access to all information regarding the System Information and all Owner Personal Information that is contained either in the Customer Database or any other database or system created by Operator at no additional expense to Owner and Administrator. To the extent that Operator has developed, compiled, collected, prepared or archived information in the conduct of its services under this Agreement, Operator shall provide Administrator with full and complete access to such information. Administrator's access to information pursuant to this Section 5.13(c) shall be no less than the access afforded by Operator to its employees and executives.

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

(e) **Cybersecurity.** Operator shall ensure all information systems are secure from cybersecurity threats at all times in accordance with the Contract Standards.

Section 5.14 Bill Payments. Operator shall timely pay all bills related to the T&D System that are proper, appropriate and not otherwise disputed and which it has authority to pay and shall assure that, to the extent within Operator's control, no mechanics' or similar Liens are filed against any portion of the T&D System. In the event that Operator fails to timely pay any such bill, Administrator shall have the right, but not the obligation, to pay such bill and deduct an administrative fee in an amount of \$[●] from the Incentive Fee otherwise due to Operator.

Section 5.15 Compliance with Obligations. Operator shall use reasonable efforts to provide all representations, certifications, records and other documents necessary or appropriate for Owner to comply with any obligations under Applicable Law (including obligations with respect to the FOMB under PROMESA and obligations related to the federal securities laws and to maintaining the exclusion from gross income of interest on Owner's or its Affiliates' obligations for federal income tax purposes) or any of the agreements that Owner or its Affiliates may be party to from time to time.

Section 5.16 Energy Policy under Act 17. As further detailed in Annex I (*Scope of Services*), Operator shall be responsible for coordinating and assisting with the services and

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operations contemplated under Act 17, including services and operations related to microgrids, distributed generation, renewable energy sources, net metering and energy cooperatives.

Section 5.17 Other Services.

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

(b) Additional Services. If requested by Administrator, Operator shall perform such additional services reasonably related to the T&D System not included within O&M Services based upon terms and conditions agreed to by Operator and Administrator.

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 Operator 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 amounts due to Operator under this Agreement; and

(iv) cooperate with Operator and Administrator in obtaining and maintaining all Governmental Approvals.

(b) Authorization of Administrator. Owner hereby assigns and delegates to Administrator the rights and responsibilities under this Agreement necessary for Administrator to administer this Agreement and act as Owner's liaison with Operator in connection with the O&M Services.

Section 6.2 Rights and Responsibilities of Administrator.

(a) Generally. The Parties hereby acknowledge and agree that 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. Unless expressly stated otherwise in this Agreement, Operator shall be entitled to rely on the written directions of Administrator. Administrator shall be responsible for overseeing Operator's performance of the O&M Services under this Agreement. Without limiting the generality of the foregoing, Administrator's rights and responsibilities with respect to the T&D System shall include:

(i) As set forth in Section 4.2(g) and Section 7.3, the right to review Budgets for a given Contract Year, including modifications thereto, to ensure compliance with a Rate Order, subject to resolution of any Disputes with respect thereto by PREB in accordance with Applicable Law;

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

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(iii) the right to Audit compliance with Budgets for a given Contract Year, including Pass-Through Expenditures, in accordance with the procedures set forth in this Agreement;

(iv) the right to Audit Operator's performance of its obligations hereunder, including performance of the O&M Services;

(v) the right to Audit Operator's compliance with Federal Funding Requirements;

(vi) the responsibility to respond in a timely manner to all reasonable and properly submitted requests of Operator for action or decision by Administrator with respect to matters requiring the approval, review or consent of Administrator hereunder and with respect to such other matters relating to the obligations of Operator hereunder;

(vii) the responsibility to cooperate with Operator by providing Operator such information, data and assistance as may be reasonably necessary for Operator to perform its obligations hereunder; and

(viii) the right to declare an Event of Default and exercise remedies under this Agreement, including termination of this Agreement upon the occurrence of an Operator Event of Default in accordance with Section 14.1.

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

(c) Consultants. Administrator shall have the right to engage third-party consultants to advise on and carry out its obligations under this Agreement.

Section 6.3 Reporting; Audits.

(a) Reports.

(i) Operator shall deliver to Administrator: (A) within sixty (60) days after the end of each six-month period following the first day of each Contract Year, a copy of the unaudited balance sheets of Operator at the end of each such six-month period and the related unaudited statements of income, changes in equity and cash flows for such six-month period, in a manner and containing information consistent with Operator's current practices and (B) within one-hundred twenty (120) days after the end of each Contract Year a copy of the audited balance sheets of Operator at the end of each such Contract Year, and the related audited statements of income, changes in equity and cash flows for such Contract Year, including, in each case, the notes thereto, in each case prepared in accordance with generally accepted accounting principles consistently applied in the United States (the "Operator Audited Financial Statements") and certified by Operator's chief financial officer that such financial statements fairly present, in all material respects, the financial condition and the results of operations, changes in equity and cash flows of Operator as at the respective dates of and for the periods referred to in such financial

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statements, all in accordance with generally accepted accounting principles in the United States consistently applied. Such audited financial statements shall reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such audited financial statements. In addition to the foregoing, together with the Operator Audited Financial Statements, Operator shall provide an opinion thereon of an independent public accountant of national stature in the United States engaged by Operator.

(ii) Operator shall promptly notify Administrator of all material emergencies upon receiving knowledge thereof, promptly notify Administrator of all material accident or incident related to the T&D System within twenty-four (24) hours of receiving knowledge of the occurrence of such material accident or incident and promptly notify Administrator of all material claims made by or against Operator of which Operator has knowledge, or potential material claims that Operator reasonably expects to make against, or to be made against it by, third parties.

(b) Information. At the reasonable request of Administrator or any other Governmental Body of competent jurisdiction (each, an "Authorized Inspector"), Operator shall (i) make available or cause to be made available to such Authorized Inspector all Information related to this Agreement or the T&D System as may be specified in such request and as shall be in the possession or control of Operator or its Representatives and (ii) permit such Authorized Inspector, upon ten (10) Business Days' prior notice to Operator, which notice shall identify the persons such Authorized Inspector requests to be present for an interview and describe with reasonable specificity the subject matter to be raised in the interview (except in the case of investigations of possible criminal conduct, violations of Applicable Law, in which case no prior notice shall be required by such Authorized Inspector), to discuss the obligations of Operator under this Agreement with any of the directors, chief executive officer and chief financial officer of Operator and its Representatives, for the purpose of enabling such Authorized Inspector to determine whether Operator is in compliance with this Agreement and Applicable Law; provided, however, that nothing in this Agreement shall require the disclosure by any Party of Information that the Party has a reasonable basis to believe is protected by attorney-client or other legal privilege.

(c) Audit Rights. In addition to the rights set out in Section 6.3(b), at all reasonable times, upon forty eight (48) hours' prior notice, any Authorized Inspector may, or may cause a Representative designated by it, to carry out: (A) an Audit of the Information required to be maintained or delivered by Operator under this Agreement in connection with the performance of the O&M Services for the purpose of verifying the information contained therein; and (B) any Audit required by Act 29. Operator shall, at reasonable times, make available or cause to be made available to such Authorized Inspector or its designated Representative such reasonable information and material as may reasonably be required by such Authorized Inspector or its designated Representative for purposes of such Audit and otherwise provide such cooperation as may reasonably be required by such Authorized Inspector in connection with the same. Such Authorized Inspector shall be entitled to make copies of the Information related to the conduct of such Audit and to take extracts therefrom at such Authorized Inspector's sole cost and expense.

(i) Each Authorized Inspector and its Representatives shall, at all times, have access to the T&D System, and Operator shall, and shall cause its Representatives to, furnish

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each Authorized Inspector with every reasonable assistance for auditing the Information or ascertaining compliance with this Agreement at such Authorized Inspector's sole cost and expense.

(ii) At any time and from time to time, any Authorized Inspector and its Representatives shall, with the prior consent of Operator, be entitled to perform or cause to be performed any test, study or investigation in connection with the T&D System or the O&M Services as such Authorized Inspector may determine to be reasonably necessary under the circumstances and at the sole cost and expense of such Authorized Inspector. Operator shall, and shall cause its Representatives to, furnish such Authorized Inspector or its Representatives with every reasonable assistance in connection with the carrying out of such tests, procedures, studies and investigations. In connection with the foregoing, such Authorized Inspector and its Representatives shall, with the prior consent of Operator, be entitled to install machines, equipment, systems, monitors, counters and other devices in, on, under, over or adjacent to the T&D System to permit and facilitate any test, study, monitor or Audits of or relating to the T&D System to the extent that the same does not materially interfere with the O&M Services or damage the T&D System.

(iii) In the course of performing its Audits hereunder, each Authorized Inspector shall use its reasonable efforts to avoid any disruption to Operator's performance of the O&M Services or Operator's rights or responsibilities under this Agreement, having regard to the nature of the Audits being performed (except as necessary in the case of performing investigations of possible criminal conduct).

(d) Assistance and Approvals. Wherever in this Agreement reference is made to (i) any Authorized Inspector or its Representatives providing assistance, services, approvals or consents to or on behalf of Operator or its Representatives or (ii) any Authorized Inspector or its Representatives performing an Audit of the T&D System, the O&M Services or any part thereof or the books, records, documents, Budgets, proposals, requests, procedures, certificates, plans, drawings, specifications, contracts, agreements, schedules, reports, lists or other instruments of Operator or its Representatives, such undertaking by such Authorized Inspector or its Representatives shall not relieve or exempt Operator from, or represent a waiver of, any requirement, liability, Operator Event of Default, covenant, agreement or obligation under this Agreement or at law or in equity and shall not create or impose any requirement, liability, covenant, agreement or obligation (including an obligation to provide other assistance, services or approvals) on any Authorized Inspector or its Representatives not otherwise created or imposed pursuant to the express provisions of this Agreement.

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

ARTICLE 7
COMPENSATION; BUDGETS

Section 7.1 Service Fee.

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

(b) Fixed Fee.

(i) The fixed fee payable to Operator for each Contract Year shall be as set forth in Annex IX (*Fixed Fee*)⁷, adjusted on a Pro Rata basis for a partial Contract Year (the “Fixed Fee”).

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

(iii) On the tenth (10th) Business Day of each month of the Term, Operator shall submit to Administrator an invoice for the Fixed Fee payable in respect of the prior month. The invoice shall specify the monthly portion of the Fixed Fee for the relevant month and show the annual Fixed Fee as calculated for the then current Contract Year, together with the accumulated payments to the date of such invoice and such other documentation or information as Administrator may reasonably require to determine the accuracy and appropriateness of the invoice. Owner shall, as directed by Administrator, pay the invoice by the last Business Day of the month on which the invoice was submitted. All invoices shall comply with the requirements set forth in Section 9.2(c) hereto.

(c) Incentive Fee.

(i) Operator shall be entitled to earn the incentive fee in any given Contract Year (“Incentive Fee”), which fee shall be calculated as set forth in Annex X (*Calculation of Incentive Fee*) based on Operator’s ability to timely exceed the performance metrics set forth in Annex XI (*Performance Metrics*) (the “Performance Metrics”).

(ii) No later than sixty (60) days following the end of a Contract Year, Operator shall submit a report (the “Incentive Fee Report”) to Administrator with (A) supporting performance data, information and reports evidencing its achievement of one or more of the Performance Metrics and (B) a good faith calculation based thereon of its proposed Incentive Fee, in each case for such Contract Year.

⁷ Note to Qualified Respondent: Please see Annex IX (*Fixed Fee*).

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

(iv) If Administrator delivers to Operator a written statement describing any disagreements with the Incentive Fee Report during such review period, then Operator and Administrator shall attempt to resolve in good faith any such disagreements. If Operator and Administrator reach a resolution with respect to such matters, or if Administrator has no disagreements with the Incentive Fee Report, Administrator shall promptly direct Owner to pay the Incentive Fee.

(v) Once determined in accordance with Section 7.1(c)(iv), Owner shall, as directed by Administrator, pay the amount of the Incentive Fee for a given Contract Year in equal monthly installments over the remainder of the subsequent Contract Year, such that the Incentive Fee shall have been paid in full by the last month of such Contract Year.

(d) Amendments to Performance Metrics. The Performance Metrics may be amended from time to time as mutually agreed between Operator and PREB in accordance with Applicable Law; provided that (i) any amendment to the Performance Metrics shall be implemented as an amendment to this Agreement in accordance with Section 20.3 and (ii) a Tax Opinion is obtained with respect to any such amendment. The Parties acknowledge and agree that PREB shall have the right to propose amendments to the Performance Metrics from time to time and that Operator shall consider any proposed amendments in good faith.

(e) Penalties. Operator acknowledges and agrees that it may be assessed a penalty or penalties in the amounts set forth in Annex XI (*Performance Metrics*) for the failure to satisfy certain minimum Performance Metrics.

(i) As soon as reasonably practicable following Administrator becoming aware that a penalty may be assessed in accordance with Annex XI (*Performance Metrics*), Administrator shall deliver to Operator (with copy to PREB) a statement (the "Penalty Notice") setting forth in reasonable detail the basis for such penalty. Operator shall promptly notify Administrator if it becomes aware of facts or circumstances that may result in such a penalty being assessed, and in any event within ten (10) days of gaining knowledge thereto.

(ii) Operator shall have a period of thirty (30) days after receipt to review such Penalty Notice. If Operator does not deliver to Administrator a written statement describing any objections Operator has to the Penalty Notice within such period, then Operator shall be deemed to have irrevocably accepted such Penalty Notice, and Administrator shall reduce the next Fixed Fee payment payable to Operator by the amount of such penalty. If Operator delivers such a written statement to Administrator, then Operator and Administrator shall attempt to resolve the matters contemplated by the Penalty Notice in good faith the matters within thirty (30) days.

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(f) Service Fee Disputes. In the event that a Dispute arises between Operator and Administrator in connection with the Service Fee, either Operator or Administrator may refer the matter to PREB for resolution in accordance with Applicable Law.

Section 7.2 Pass-Through Expenditures. “Pass-Through Expenditures” shall be the types of costs and expenses incurred by Operator or ServCo (without markup for profit, administration or otherwise) that are necessary and reasonable in the course of providing the O&M Services set forth in Annex XII (*Pass-Through Expenditures*); provided that Pass-Through Expenditures shall not include any fines, penalties or other similar payments or charges imposed by PREB on Operator, except to the extent Operator is performing its obligations under this Agreement in accordance with the Contract Standards. Operator shall pay for Pass-Through Expenditures in accordance with Section 7.4.

Section 7.3 Budgets.

(a) Generally. For any Contract Year (other than the initial Contract Year, for which the procedures for the Initial Budgets shall apply, or a year in which a rate adjustment approved by PREB enters into effect), Operator shall, no later than ninety (90) days prior to the commencement of such Contract Year, submit to Administrator the proposed Budgets for such Contract Year. Administrator shall review such proposed Budgets to ensure compliance with the applicable Rate Order. Within forty five (45) days following its receipt of such Budgets, Administrator shall notify Operator whether the proposed Budgets are compliant with the applicable Rate Order, and shall require any changes or modifications to the proposed Budget that it deems necessary or appropriate to conform the proposed Budgets with the applicable Rate Order. 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 may include up to a maximum of two percent (2%) in excess of the total budget amount (“Excess Expenditures”). Any Excess Expenditures incurred by Operator during a Contract Year shall be treated as if initially budgeted for such Contract Year.

(c) Default Budget. In the event the Operating Budget or the Capital Budget for a given Contract Year has not been finalized in accordance with Section 7.3(a) by July 1 of such Contract Year, the approved Operating Budget or Capital Budget, as the case may be, for the immediately preceding Contract Year (as the same may have been amended) as adjusted for inflation (such Budget, a “Default Budget”) shall remain in effect until such time as the Operating Budget or Capital Budget, as the case may be, for such Contract Year is so finalized.

(d) Amendments to Budgets. Operator and Administrator may, from time to time, mutually agree to amend the approved Budgets for a given Contract Year; 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 the Board of Directors of Administrator.

(e) Non-Storm Emergencies.

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(i) If (A) an emergency event or condition, other than a Storm Event, that is beyond the reasonable control of Operator (a “Non-Storm Emergency Event”) occurs and (B) Operator determines that certain non-budgeted expenditures are required in order for it to provide O&M Services in accordance with the Contract Standards or repair, replace or restore damaged components of the T&D System, Operator shall have the right to elect, in its sole discretion, to treat any such expenditures made as either (x) Excess Expenditures or (y) “Non-Storm Emergency Expenditures.”

(ii) If Operator elects to treat the expenditures as Non-Storm Emergency Expenditures, Operator shall submit a request to the Board of Directors of Administrator to approve the Non-Storm Emergency Expenditures and amend the then-current approved Budget to cover such expenditures. If approved by the Board of Directors of Administrator, the Non-Storm Emergency Expenditures shall be treated as if initially budgeted.

(f) Budget Disputes. In the event that a dispute arises between Operator and Administrator in connection with a Budget, including proposed amendments thereto and Non-Storm Emergency Expenditures, either Operator or Administrator may refer the matter to PREB for resolution in accordance with Applicable Law.

Section 7.4 Service Accounts.

(a) Operating Account.

(i) No later than ten (10) Business Days prior to the Service Commencement Date, Owner shall, as directed by Administrator, establish one or more operating accounts from which Operator shall draw funds from time to time to pay for actual Pass-Through Expenditures incurred by Operator in performing in the O&M Services (collectively, the “Operating Account”).

(ii) No later than three (3) Business Day prior to the Service Commencement Date, Owner shall fund the Operating Account with an amount equal to three (3) months of the anticipated Pass-Through Expenditures based on the then-currently approved Operating Budget. Thereafter, no later than the tenth (10th) Business Day of each month (beginning in the month following that in which the Service Commencement Date occurs), Owner shall replenish the Operating Account so as to maintain a funding level equal to an average of three (3) months of the anticipated Pass-Through Expenditures under the Operating Budget or the Default Budget then in effect.

(iii) In each Contract Year, Operator shall be entitled to withdraw funds from the Operating Account for actual Pass-Through Expenditures incurred under the approved Operating Budget or the Default Budget then in effect; provided, however, that Operator shall notify Administrator at least ten (10) Business Days in advance of any Excess Expenditure withdrawal, providing the details thereof and recommendations to mitigate any additional excess costs. Without Administrator’s prior written approval, Operator shall not withdraw funds from the Operating Account for Pass-Through Expenditures that are not included in the then-currently approved Operating Budget or the Default Budget then in effect.

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(iv) Subject to the terms of this Section 7.4(a), Operator shall be entitled to withdraw funds from the Operating Account from time to time as necessary to fund payment for actual Pass-Through Expenditures. Simultaneous with each such withdrawal, Operator shall provide Administrator with written notice of such withdrawal, including a summary of Pass-Through Expenditures being paid. Not later than ten (10) Business Days following each month end, Operator shall furnish Administrator with a full accounting setting forth in reasonable detail the actual Pass-Through Expenditures incurred and paid during the prior month.

(b) Capital Account.

(i) No later than ten (10) Business Days prior to the Service Commencement Date, Owner shall, as directed by Administrator, establish one or more capital accounts from which Operator shall draw funds from time to time to pay for the cost of Capital Improvements (“Capital Costs”) related to the O&M Services (collectively, the “Capital Account”).

(ii) Owner shall, as directed by Administrator from time to time, fund the Capital Account with (A) Federal Funding received for the T&D System, (B) proceeds from draws on financing provided by Operator or its Affiliates and (C) proceeds from any other financings the use of which are designated for Capital Costs.

(iii) In each Contract Year, Operator shall be entitled to withdraw funds from the Capital Account for actual Capital Costs incurred under the approved Capital Budget or the Default Budget then in effect; provided, however, that Operator shall notify Administrator at least ten (10) Business Days in advance of any Excess Expenditure withdrawal, providing the details thereof and recommendations to mitigate any additional excess costs. Operator shall not withdraw funds from the Capital Account for Capital Costs that are not included in the then-currently approved Capital Budget or the Default Budget then in effect, unless such Capital Costs have been approved by PREB.

(iv) Subject to the terms of this Section 7.4(b), Operator shall be entitled to withdraw funds from the Capital Account from time to time as necessary to fund payment for actual Capital Costs. Simultaneous with each such withdrawal, Operator shall provide Administrator with written notice of such withdrawal, including a summary of Capital Costs being paid. Not later than ten (10) Business Days following each month end during which funds were withdrawn from the Capital Account, Operator shall furnish Administrator with a full accounting setting forth in reasonable detail the actual Capital Costs paid during the prior month.

(c) Storm Reserve Account.

(i) No later than ten (10) Business Days prior to the Service Commencement Date, Owner as directed by Administrator, shall establish one or more storm reserve accounts from which Operator shall draw funds from time to time to pay for costs in connection with a Storm Event (“Storm Costs”) incurred by Operator (collectively, the “Storm Reserve Account” and, together with the Operating Account and the Capital Account, the “Service Accounts”).

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(ii) No later than three (3) Business Day prior to the Service Commencement Date, Owner shall fund the Storm Reserve Account with an amount equal to \$[●].⁸ Promptly following a withdrawal, Owner shall replenish the Storm Reserve Account so as to maintain an amount equal to \$[●].⁹

(iii) Subject to the terms of this Section 7.4(c), Operator shall be entitled to withdraw funds from the Storm Reserve Account from time to time as necessary to fund payment for Storm Costs. Simultaneous with each such withdrawal, Operator shall provide Administrator with written notice of such withdrawal, including a summary of Storm Costs being paid. Not later than ten (10) Business Days following each month end during which funds were withdrawn from the Storm Reserve Account, Operator shall furnish Administrator with a full accounting setting forth in reasonable detail the actual Storm Costs incurred and paid during the prior month.

(d) Withdrawals by Owner. Owner shall not withdraw funds held in any Service Account without Administrator's prior written approval.

(e) Service Account Disputes. In the event that a dispute arises in connection with a Service Account, either Operator or Administrator may refer the matter to PREB for resolution in accordance with Applicable Law.

Section 7.5 Disallowed Costs.

(a) Generally. In the event that (i) Administrator determines that all or a portion of any Pass-Through Expenditures, Capital Costs, Storm Costs or Non-Storm Emergency Expenditures incurred by Operator are incurred in a manner inconsistent with the Contract Standards and/or are attributable to Operator's gross negligence or willful misconduct or (ii) FEMA, HUD or a similar Governmental Body (such as COR3 or PRDH) denies reimbursement of all or a portion of Capital Costs, Storm Costs or Non-Storm Emergency Expenditures incurred by Operator on the grounds that actions taken by Operator were in violation of any Federal Funding Requirements and such denial becomes final, Operator shall be responsible for such costs ("Disallowed Costs"), and such costs shall not be treated as Pass-Through Expenditures, up to an amount of \$[●].¹⁰ in each Contract Year.

(b) Pass-Through Expenditures. Any and all Losses (i) resulting from or arising out of Operator's gross negligence or willful misconduct during the Term in performing its obligations hereunder or (ii) incurred or due to a breach of any representation, warranty or covenant, or Event of Default by Operator shall be Disallowed Costs and shall not be treated as Pass-Through Expenditures for purposes of payment from Owner to Operator.

⁸ Note to Qualified Respondent: Please indicate a proposed amount.

⁹ Note to Qualified Respondent: Please indicate a proposed amount.

¹⁰ Note to Qualified Respondent: Please indicate a proposed amount.

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(c) Disallowed Costs Disputes. In the event that a dispute arises in connection with Disallowed Costs, either Operator or Administrator may refer the matter to PREB for resolution in accordance with Applicable Law.

Section 7.6 Unfunded Amounts. Notwithstanding anything contained in this Agreement to the contrary, the Parties acknowledge and agree that Operator shall have no obligation or responsibility to incur or pay any costs or make expenditures in providing the O&M Services hereunder (other than those costs for which Operator is liable pursuant to this Agreement, including Disallowed Costs) to the extent funds to pay such costs or expenditures are not available for withdrawal by Operator from the Service Accounts. To the extent such funds are not available for withdrawal by Operator from the Service Accounts, Operator shall take reasonable measures to reduce costs while maintaining the continuity of the O&M Services in accordance with the Contract Standards.

ARTICLE 8
CREDIT SUPPORT

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

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

ARTICLE 9
COMPLIANCE WITH APPLICABLE LAW

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

Section 9.2 Anti-Corruption and Sanctions Laws.

(a) Anti-Corruption. Neither Operator, its subsidiaries, any director, officer or employee of Operator or its subsidiaries, nor, in connection with this Agreement or the O&M Services, any Affiliates or directors, officers or employees of any Affiliates of Operator shall violate, conspire to violate, aid and abet the violation of, or be convicted of violating or admit culpability in respect of, any (i) anti-bribery, Anti-Corruption or anti-money laundering law or regulation, including Act 2 and any other laws or regulation related to political activity, conflicts of interest, embezzlement, the misuse of public funds or property or bidding on or otherwise seeking government contracts (collectively, the “Anti-Corruption Laws”) or (ii) criminal laws or regulations. No funds transferred, directly or indirectly, by Owner to Operator shall be transferred by Operator, directly or indirectly, in violation of any Anti-Corruption Laws or any criminal laws or regulations. Operator acknowledges and agrees that it shall be subject to Title III of Act 2, known as the Code of Ethics for Subcontractors, Suppliers and Applicants for Economic Incentives of the Government of Puerto Rico.

(b) Sanctions. Neither Operator nor its subsidiaries, nor, in connection in any way with this Agreement or the O&M Services, its Affiliates or any director, officer or employee of Operator, its subsidiaries or its Affiliates, shall engage in any transactions or business activity of any kind with a Sanctioned Person or a Person located, organized or resident in a Sanctioned Country. No funds transferred, directly or indirectly, by Owner to Operator shall be transferred by Operator, directly or indirectly, to a Sanctioned Person or in violation of Sanctions.

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

(d) Notice. Operator shall immediately notify Administrator in writing pursuant to Section 20.2 if (i) Operator, its subsidiaries, any director, officer or employee of Operator or its subsidiaries, or, in connection with this Agreement or the O&M Services, any Affiliates or directors, officers or employees of any Affiliates of Operator violates any of the provisions of this Section 9.2 or (ii) to Operator’s knowledge, Operator, its subsidiaries, any director, officer or employee of Operator or its subsidiaries, or, in connection with this Agreement or the O&M Services, any Affiliates or directors, officers or employees of any Affiliates of Operator becomes

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subject to any investigation by law enforcement or regulatory authorities in connection with the Anti-Corruption Laws, Sanctions or criminal laws or regulations.

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

(f) Contractor and Supplier Contracts. To the extent permitted by Applicable Law, Operator shall include the provisions of this Article 9 and Exhibit B in every subcontract and supply contract in order for such provisions to be binding on each subcontractor or supplier.

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

Section 9.3 Non-Discrimination Laws.

(a) Generally. Operator shall comply with all Applicable Law regarding non-discrimination, including: (i) the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.* (1981); (ii) the Civil Rights Act of 1991, P.L. 102-166; (iii) Executive Order Number 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000(e) note, as amended by Executive Order Number 11375, 32 Fed. Reg. 14,303 (1967) and by Executive Order Number 12086, 43 Fed. Reg. 46,501 (1978); (iv) the Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1981); (v) the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34 (1967); (vi) the Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794 (1981); (vii) the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (1990); (viii) Act No. 100 of the Legislative Assembly of Puerto Rico, enacted on June 30, 1959, 29 P.R. Laws Ann. § 146 *et seq.*; (ix) Act No. 17 of the Legislative Assembly of Puerto Rico, enacted on April 22, 1988, 29 P.R. Laws Ann. § 155 *et seq.*; and (x) Act No. 69 of the Legislative Assembly of Puerto Rico, enacted on June 6, 1985, 29 P.R. Laws Ann. § 1321 *et seq.*

(b) The Americans With Disabilities Act. Pursuant to federal regulations promulgated under the authority of the Americans With Disabilities Act, 28 C.F.R. § 35.101 *et seq.*, Operator understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Agreement or from activities provided for under this Agreement on the basis of the disability. Operator agrees to comply with the “General Prohibitions Against Discrimination,” 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of the Americans With Disabilities Act that are applicable to all benefits, services, programs and activities provided by Owner through contracts with outside contractors. Operator shall be responsible for and agrees to indemnify and hold harmless Owner from all losses, damages,

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expenses, claims, demands, suits and actions brought by any party against Owner as a result of Operator's failure to comply with the provisions of this Section 9.3(b).

Section 9.4 Commonwealth Non-Discrimination/Sexual Harassment Clause. Pursuant to Act No. 100 of the Legislative Assembly of Puerto Rico, enacted on June 30, 1959, 29 P.R. Laws Ann. § 146 *et seq.* (Non-Discrimination Act), Act No. 17 of the Legislative Assembly of Puerto Rico, enacted on April 22, 1988, 29 P.R. Laws Ann. § 155 *et seq.* (Sexual Harassment Act) and Act No. 69 of the Legislative Assembly of Puerto Rico, enacted on June 6, 1985, 29 P.R. Laws Ann. § 1321 *et seq.* (Sexual Discrimination Act), Operator agrees as follows during the Term:

(a) No Discrimination in Hiring. In the hiring of any employees for the manufacture of supplies, performance of work or any other activity required under this Agreement or any subcontract, Operator, any Subcontractor or any Person acting on behalf of Operator or a Subcontractor shall not by reason of gender, race, creed or color discriminate against any person who is qualified and available to perform the work to which the employment relates.

(b) No Discrimination Against Employees. Neither Operator nor any Subcontractor nor any Person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under this Agreement on account of gender, race, creed or color.

(c) Sexual Harassment Policy. Operator and all Subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

(d) No Discrimination Against Subcontractors. Operator shall not discriminate by reason of gender, race, creed or color against any Subcontractor or supplier who is qualified to perform the work to which the contract relates.

(e) Subcontractor Obligations. Operator shall include the provisions of this Section 9.4 in every subcontract so that such provisions shall be binding upon each Subcontractor.

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

Section 9.6 Commonwealth Tax Liabilities. Operator shall inform Administrator if, at any time during the Term, it becomes delinquent in the payment of Taxes imposed by any Governmental Body of the Commonwealth (other than Commonwealth Tax liabilities for which Operator is not responsible under this Agreement, if any).

Section 9.7 Certifications Required by Commonwealth Contractor Requirements. Operator has (a) certified that it has complied and is in compliance with the provisions of the Public-Private Partnerships Authority's Ethical Guidelines and (b) delivered the Sworn Statement herewith.

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

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

ARTICLE 10 INSURANCE

Section 10.1 Generally. Throughout the Term and for such additional periods as may be specified, Operator shall, provide and maintain in effect, and cause any Operator Related Entity performing any of the O&M Services to provide and maintain in effect, for the benefit of Owner and Operator, as applicable, the insurance policies and minimum limits of coverage specified in Annex XIII (*Insurance Specifications*), and such additional coverage as may be required by Applicable Law and those that a prudent Person in the business of operating and managing the T&D System would maintain (the “Required Insurance”), and shall provide insurance management services, including placing insurance with carriers, and claims management and processing, as more fully described in Annex I (*Scope of Services*).

Section 10.2 Commercial Availability. Notwithstanding anything to the contrary herein, if any Required Insurance policy shall not be available at commercially reasonable rates, Operator shall promptly notify Administrator, in writing, but in no event less than sixty (60) days prior to the expiration of any Required Insurance and Operator shall have the right to request that Administrator consent to waive such requirement, which consent shall not be unreasonably withheld, delayed or conditioned. Any such waiver shall be effective only so long as such insurance shall not be available at commercially reasonable rates; provided that during the period of such waiver, Operator maintains the maximum amount of such insurance otherwise available at commercially reasonable rates.

Section 10.3 Additional Named Insureds. Operator and Operator Indemnitees shall be included as additional named insureds, where applicable, including in Annex XIII (*Insurance Specifications*), along with waivers of subrogation on any Required Insurance policies, which policies shall require thirty (30) days prior written notice to Administrator prior to the effective date of any change in or non-renewal or cancellation of such policies. Insurance coverage required pursuant to this Section 10.3 shall be maintained with generally recognized financially responsible insurers and qualified and authorized to insure risks in the Commonwealth.

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

Section 10.5 Certificates of Insurance, Policies and Notice. Operator shall supply Administrator with certified copies of certificates of insurance promptly following issuance by the insurers. Not later than sixty (60) days prior to the beginning of each Contract Year throughout the Term, Operator shall furnish certificates of insurance to Administrator to confirm the continued effectiveness of the Required Insurance. Whenever a Subcontractor is utilized, Operator shall either obtain and maintain or require the Subcontractor to obtain and maintain insurance in accordance with the applicable requirements of Annex XIII (*Insurance Specifications*). Administrator’s receipt of certificates that do not comply with the requirements stated herein, or Operator’s failure to provide certificates, shall not limit or relieve Operator of the duties and

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responsibility of maintaining insurance in compliance with the requirements in this Article 10 and shall not constitute a waiver of any of the requirements in this Article 10.

**ARTICLE 11
SUBCONTRACTORS**

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

Section 11.2 Subcontract Terms. Operator shall, and shall cause Operator Related Parties to, use reasonable efforts to ensure that all agreements with third parties entered into after the Service Commencement Date that are material to Operator's performance of its obligations hereunder grant Owner or a Person designated by Administrator the right to own or license the goods and services to be provided thereunder. Operator shall also use its reasonable efforts to ensure that all material vendor agreements be assignable to Owner or a Person designated by Administrator upon expiration or termination of this Agreement; provided that upon any such assignment, Operator shall have no further liability obligation or cost with respect to any such agreements (other than for periods prior to such assignment). Operator shall retain full responsibility to Owner and Administrator under this Agreement for all matters related to the O&M Services notwithstanding the execution or terms and conditions of any Subcontract. No failure of any Subcontractor used by Operator in connection with the provision of the O&M Services shall relieve Operator from its respective obligations hereunder to perform the O&M Services. Operator shall be responsible for settling and resolving with all Subcontractors all claims arising out of delay, disruption, interference, hindrance or schedule extension caused by Operator or inflicted on Operator or a Subcontractor by the actions of another Subcontractor.

Section 11.3 Indemnity for Subcontractor Claims. 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. No Subcontractor shall have any right against Owner or Administrator for labor, services, materials or equipment furnished after the Service Commencement Date for the O&M Services. Operator acknowledges that its indemnity obligations under Section 18.1 shall extend to all claims for payment or damages by any Subcontractor that furnishes or claims to have furnished any labor, services, materials or equipment in connection with the O&M Services after the Service Commencement Date.

Section 11.4 Assignability. All contracts entered into with Subcontractors by Operator, and all warranties and other rights related thereto, with respect to the T&D System shall be assignable to Administrator or a Person designated by Administrator, solely at Administrator's election and without cost or penalty, at the end of the Term or in the event that Administrator takes over from Operator the performance of the services that were subcontracted and each Subcontractor shall acknowledge in writing the rights of Administrator to take such assignments.

**ARTICLE 12
TAXATION**

Section 12.1 Withholding Tax. Owner shall be entitled (a) to deduct and withhold (or cause to be deducted or withheld) from any consideration payable or otherwise deliverable pursuant to this Agreement, such amounts as may be required to be deducted or withheld therefrom under any provision of the U.S. federal, state, Commonwealth, municipal, local or non-U.S. Tax law or under any applicable legal requirement and (b) to request any necessary Tax forms or information, from Operator or any other Person to whom a payment is required to be made pursuant to this Agreement. To the extent such amounts are so deducted or withheld and paid to the applicable taxing authority, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid. The Parties agree to cooperate in good faith to reduce or eliminate the amount of any applicable withholding Taxes.

Section 12.2 Tax Obligations.

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

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

ARTICLE 13
INTELLECTUAL PROPERTY; PROPRIETARY INFORMATION

Section 13.1 Intellectual Property.

(a) Owner Intellectual Property. The Parties hereby acknowledge and agree that, as between them, and whether or not specifically recognized or perfected under any Applicable Law, Owner shall own all right, title and interest in and to all Intellectual Property, and derivatives thereof, regardless of format, first created or produced under this Agreement or otherwise arising in connection with the performance of the O&M Services, Front-End Transition Services or Back-End Transition Services by Operator and its Affiliates and, to the extent the applicable third-party contracts so provide, any of their Subcontractors (“Work Product”), all of which shall, to the fullest extent under Applicable Law, be considered works made for hire. Operator shall (i) use commercially reasonable efforts to ensure that relevant third-party contracts with Subcontractors properly reflect Owner’s ownership of Work Product pursuant to the preceding sentence, and (ii) in any event, ensure that third-party contracts with Subcontractors properly reflect the grant of licenses from such Subcontractors pursuant to Section 13.1(b). If any Subcontractor refuses to include such a provision in a relevant third-party contract, Operator shall notify Administrator and, at Administrator’s request, Operator shall not use such Subcontractor for the provision of the O&M Services, Front-End Transition Services or Back-End Transition Services. Whether or not any Work Product constitutes a work made for hire, all Work Product shall be the Intellectual Property of Owner, which shall have the sole right to obtain or claim Patent (pursuant to Section 13.1(c)), Copyright, Trademark and any other Intellectual Property rights therein, and to otherwise preserve its rights in and to the Work Product.

(b) Pre-Existing Intellectual Property. Any Intellectual Property owned by Operator or its Affiliates on one hand, or a Subcontractor on the other hand, that is not Work Product and is embedded in or otherwise necessary for the Work Product, or is otherwise used in connection with or is necessary for the operation of the T&D System but that does not constitute “Work Product,” shall remain the Intellectual Property of the owner (and shall be referred to, as the case may be, as “Operator Pre-Existing Intellectual Property” or “Subcontractor Pre-Existing Intellectual Property”, as the case may be). Except as Administrator and Operator may otherwise mutually agree, Operator and its Affiliates hereby grant to Owner, a non-exclusive, fully paid-up, royalty-free, worldwide licenses to make, have made, use, sell, offer for sale, export, import, reproduce, distribute, perform, display, execute and create derivative works from Operator Pre-Existing Intellectual Property used in performing Operator’s obligations pursuant to this Agreement, including in connection with the T&D System and related facilities and their related operations by Owner or any successors or operators thereto. Except as Administrator and Operator may otherwise mutually agree, Operator shall cause its Affiliates to grant to Owner the foregoing license, and Operator shall further cause any of its Subcontractors to grant to Owner a non-exclusive license to Subcontractor Pre-Existing Intellectual Property within the scope of the foregoing grant.

(c) Assignment of Work Product. To the extent that ownership in any Work Product does not automatically vest in Owner, Operator shall transfer and assign and shall cause its Affiliates to transfer and assign and shall use commercially reasonable efforts to cause any of their Subcontractors to transfer and assign, and Operator does hereby assign all right, title and

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interest (including all Intellectual Property rights and any related Copyright rights) in and to such Work Product to Owner. Operator shall, and shall cause its Affiliates and shall use commercially reasonable efforts to cause any applicable Subcontractors to, execute all documents and take all actions requested by Administrator to transfer such ownership and otherwise assist Owner to register, patent and otherwise maintain and protect Owner's Intellectual Property rights in and to such Work Product anywhere in the world. Operator shall promptly and fully disclose in writing to Owner all patentable Work Product created during the Term. Upon notification, Owner shall have the right, in its sole discretion and at its sole cost and expense, to patent such Work Product (the resulting Patents shall be "Owner Patents"). Pursuant to this Section 13.1(c), Operator shall provide all necessary assistance for Owner to obtain, sustain and, from time to time, enforce such Owner Patents. Such assistance shall be at Owner's sole cost and expense.

(d) License of Owner Intellectual Property. Subject to the terms and conditions of this Agreement, Owner hereby grants, and shall cause its Affiliates to grant to Operator and its Affiliates a fully paid-up, royalty-free, nonexclusive, non-transferable, sub-licensable (only to Subcontractors), limited license during the Term, including for purposes of performing services under Section 17.2 hereof, to make, have made, use, execute, sell, offer for sale, export, import, reproduce, distribute, perform, display and create derivative work from the Work Product and any other Owner Intellectual Property, and to the extent sub-licensable, Owner Licensed Intellectual Property, each solely as necessary to perform their obligations pursuant to this Agreement. The use of Owner Licensed Intellectual Property shall be subject to the license terms governing such use of third-party Intellectual Property. To the extent any Owner Licensed Intellectual Property cannot be licensed to Operator or its Affiliates or their Subcontractors for any reason, then Operator or its Affiliates or their Subcontractors must promptly obtain their own third-party license for the relevant Intellectual Property.

(e) Operator Restricted Uses. Operator shall not and shall ensure that its Affiliates do not sublicense, rent, lease, distribute or otherwise authorize the use of Owner Intellectual Property or Owner Licensed Intellectual Property to or by or on behalf of anyone other than Operator and its Affiliates, and the Subcontractors, for purposes of this Agreement, and otherwise shall not use Owner Intellectual Property or Owner Licensed Intellectual Property for any other purpose.

(f) Reverse Engineering. Operator shall not, and shall ensure that its Affiliates do not, and shall ensure that the Subcontractors do not, decompile, disassemble or reverse engineer any Software that is part of any Owner Intellectual Property or Owner Licensed Intellectual Property, or provide any third-party with access to any such Software (including any source code therein) without Administrator's advance written consent, which may be withheld in Administrator's sole discretion.

(g) Operator Sublicensee Approval. Operator shall be responsible for compliance by all of its Affiliates and the Subcontractors with the terms and conditions of this Agreement and this Section 13.1 as if undertaken by Operator. Any sublicensee of Operator or any of its Affiliates with respect to Owner Intellectual Property or Owner Licensed Intellectual Property must be approved in advance in writing by Administrator, and such consent shall not be unreasonably withheld or delayed. Unless Administrator otherwise agrees, sublicensee shall expressly agree in writing to be bound by any applicable terms of this Agreement.

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(h) Third-Party Beneficiary. Operator agrees to enforce, and shall cause all of its Affiliates to enforce, the terms of the sublicense agreement with respect to Owner Intellectual Property or Owner Licensed Intellectual Property against the sublicensee. It is understood and agreed, however, that Owner shall be a third-party beneficiary of all sublicense agreements relating to Owner Intellectual Property and Owner Licensed Intellectual Property, with the power to enforce relevant terms directly against any sublicensee. Each sublicense will include a provision that, in the event the sublicense agreement terminates, at Administrator's option, the sublicense shall become a direct license with Owner or Owner's designees.

(i) Intellectual Property Enforcement Cooperation. If Operator or any of its Affiliates learns of any infringement or unauthorized use of Owner Intellectual Property or Owner Licensed Intellectual Property, then Operator will promptly notify and shall cause its Affiliates to promptly notify Administrator thereof in writing and will provide commercially reasonable assistance and cooperation as may be requested by Administrator, but at Owner's sole cost and expense. Any sublicense entered into between Operator or any of its Affiliates and a Subcontractor pursuant to this Agreement with respect to Owner Intellectual Property or Owner Licensed Intellectual Property shall contain a notification provision consistent with the foregoing.

(j) Third-Party Intellectual Property. To the extent Operator wishes to use any non-commercially available Intellectual Property of any third-party in the provision of O&M Services, Front-End Transition Services or Back-End Transition Services, Operator shall identify to Administrator, in writing in advance of any use of any such Intellectual Property, whether or not Operator has a right to sublicense same to Owner under the same terms as Operator licenses Operator Pre-Existing Intellectual Property to Owner pursuant to Section 13.1(b). If Operator does not have that sublicense right, it will use all commercially reasonable efforts to promptly secure such right. If Operator cannot secure such sublicense rights with thirty (30) days of the first request, or such extended time as Administrator may grant in writing, then Operator will (at Administrator's option) (i) assist Owner to obtain any necessary license directly from such third-party, or (ii) not use such Intellectual Property and instead use or create a non-infringing alternative capable of accomplishing the same purpose in substantially the same manner without incurring any increase in costs or expenses. In no event will Operator's inability to obtain a right to sublicense any non-commercially available Intellectual Property excuse Operator's inability to perform or meet any deadline under this Agreement. Any applicable license of Operator or its Affiliates in connection with any non-commercially available third-party Intellectual Property relevant to the provision of O&M Services, Front-End Transition Services or Back-End Transition Services hereunder shall be subject to Administrator's prior approval, provided that such approval shall not be unreasonably withheld, and a complete copy thereof provided to Administrator.

(k) Owner Trademark License Grant. Subject to the terms and conditions of this Agreement, Owner hereby grants to Operator a fully paid-up, royalty-free, nonexclusive, non-transferable, sub-licensable (to its Affiliates and Subcontractors), limited license during the Term to use the Owner Marks to perform its obligations hereunder in accordance with the terms and conditions of this Agreement. Such license shall be subject to the following:

(i) The Owner Marks are owned solely and exclusively by Owner, and all use of the Owner Marks by Operator, its Affiliates and any Subcontractor, and all goodwill associated with the Owner Marks, shall inure to the benefit of Owner.

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(ii) Operator shall adhere, and shall cause its Affiliates and Subcontractors to adhere, to all quality control standards and trademark usage guidelines as established from time to time by Owner and Administrator, including as relates to review and approval of any proposed new uses of the Owner Marks by Operator in connection with the O&M Services, Front-End Transition Services or Back-End Transition Services (such as any advertising or marketing campaigns). Operator shall and shall cause its Affiliates and Subcontractors to: (A) comply with Applicable Law and the highest industry standards in performing the services under the Owner Marks; (B) refrain from any actions that would harm the reputation of Owner or otherwise cause Owner or its Affiliates to fall into disrepute and (C) not modify the Owner Marks, or file for any registration or application (including domain names or social media handles) using, incorporating or confusingly similar to any Owner Marks, other than with the prior consent of Owner (in which case any such registrations or applications shall be deemed Work Product hereunder and be deemed used solely under license from and under permission by Administrator during the term of this Agreement).

(iii) Operator shall, and shall cause its Affiliates to, police any sublicensee's use of the Owner Marks, promptly notify Administrator of any noncompliance, and enforce the terms of the sublicense agreement relating to the Owner Marks against the sublicensee at Operator's own expense. It is understood and agreed, however, that Owner shall be a third-party beneficiary of all sublicense agreements relating to the Owner Marks, with the power to enforce the terms of this Section 13.1(k) directly against any sublicensee.

(iv) If Operator or any of its Affiliates learns of any infringement or unauthorized use of the Owner Marks, then Operator shall promptly notify Administrator in writing and shall provide commercially reasonable assistance and cooperation as may be requested by Administrator.

(v) Upon the written request of Administrator, Operator shall use the Operator Marks to perform its obligations hereunder in accordance with the terms and conditions of this Agreement, including with respect to the O&M Services, Front-End Transition Services or Back-End Transition Services (including any advertising or marketing campaigns), and Administrator shall have the right to review and approve any proposed uses of the Operator Marks in connection therewith.

(vi) The Operator Marks are owned solely and exclusively by Operator, and all use of the Operator Marks by Owner or Administrator, its Affiliates and any Subcontractor, and all goodwill associated with the Operator Marks, shall inure to the benefit of Operator.

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

Section 13.2 Proprietary Information.

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(a) Confidentiality Obligation; Regulatory Disclosure.

(i) Subject to the remainder of this Section 13.2, any and all written or recorded or oral information, data, analyses, documents and materials furnished or made available by a Party or its Representatives to the other Party or its Representatives in connection with this Agreement, including any and all analyses, compilations, studies, documents or other material prepared by the receiving Party or its Representatives to the extent containing or based upon such information, data, analyses, documents and materials, and the terms and conditions and other facts with respect to this Agreement shall be confidential (“Confidential Information”). Confidential Information does not include information, data, analyses, documents or materials that (A) are when furnished or thereafter become available to the public other than as a result of a disclosure by the receiving Party or its Representatives, (B) are already in the possession of or become available to the receiving Party or its Representatives on a non-confidential basis from a source other than the disclosing Party or its Representatives; provided, that to the best knowledge of the receiving Party or its Representatives, as the case may be, such source is not and was not bound by an obligation of confidentiality to the disclosing Party or its Representatives, or (C) the receiving Party or its Representatives can demonstrate that the information has been independently developed without a violation of this Agreement.

(ii) Subject to the remainder of this Section 13.2, to the extent permitted under Applicable Law, including any Applicable Law requiring the disclosure of public documents or information (collectively the “Public Information Disclosure Requirements”), each receiving Party shall, and shall cause its Representatives to, (A) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information, and (B) use all Confidential Information solely for the purposes of performing its obligations under the Transaction Documents and not for any other purpose; provided, that:

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

(B) the foregoing shall not limit any rights or licenses granted to Owner under Article 13; provided that Owner shall treat any confidential information included in such license in a manner consistent with its treatment of its own comparable information; and

(C) to the extent permitted under Applicable Law, each Party will be responsible for any breach of this Agreement by its Representatives.

(b) Permitted Disclosures.

(i) Owner may disclose Confidential Information to duly authorized regulatory and governmental agencies or entities, including PREB, the FOMB, Administrator and all divisions thereof, and the Authority. Owner shall have no liability whatsoever to Operator in the event of any unauthorized use or disclosure by a regulatory or governmental agency or entity

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including without limitation PREB, the FOMB, Administrator and all divisions thereof, the Authority of any Confidential Information or other information disclosed to any of them by Owner.

(ii) Owner may also disclose Confidential Information to any Governmental Body or to any third-party to the extent necessary to comply with any Applicable Law, and any applicable regulation, decision, rule, subpoena or order of the PREB, the FOMB, any administrative agency, legislative body or other tribunal (other than those entities set forth in Section 13.2(b)(iii)), or any discovery or data request of a party to any proceeding pending before any of the foregoing.

(iii) The Parties and Administrator may disclose Confidential Information to the extent necessary to comply with any subpoena or order of any Commonwealth Court or other judicial entity having jurisdiction over the disclosing Party, or in connection with a discovery or data request of a party to any proceeding before any of the foregoing.

(c) Duty to Seek Protection. To the extent permitted under Applicable Law, including specifically the Public Information Disclosure Requirements, and subject to Section 13.2(d) specifically with respect to Owner:

(i) in connection with requests or orders to produce Confidential Information protected by this Agreement in the circumstances provided in Section 13.2(b) (by deposition, interrogatories, requests for information or documents, subpoena, order or similar legal process) each Party (A) will promptly notify the other Party of the existence, terms and circumstances of such requirement(s) so that such other Party may seek an appropriate protective order or waive compliance with the provisions of this Agreement, and (B) will, and will cause its Representatives to, cooperate fully with such other Party in seeking to limit or prevent such disclosure of such Confidential Information; and

(ii) if a Party or its Representatives are, in the written opinion of its legal counsel, and notwithstanding compliance with Section 13.2(c)(i) compelled to make disclosure in response to a requirement described in Section 13.2(c)(i) or stand liable for contempt or suffer other penalty, the compelled Person may disclose only that portion of the Confidential Information protected by this Agreement that it is legally required to disclose and will exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded to the disclosed Confidential Information protected by this Agreement.

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

(e) Public Information Disclosure Requirements-Related Obligations.

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(i) Operator acknowledges and agrees that any documents or other materials, including any records work product, books, papers and any other supporting documentation relating to this Agreement, and Operator's and any such Persons' performance hereunder, maintained by Operator and its Representatives or Affiliates, in Owner's possession may be considered public information subject to disclosure in accordance with applicable Public Information Disclosure Requirements.

(ii) Operator may designate conspicuously any documents or other materials that it believes contain trade secret or information that would be exempted from disclosure in response to a public records request under applicable Public Information Disclosure Requirements by placing "CONFIDENTIAL" in the header or footer of such page or record affected. Any such designation of trade secret or other basis for exemption shall be accompanied by a concise statement of reasons supporting the claim including citation to the specific authorization for exemption from disclosure under the Public Information Disclosure Requirements.

(iii) If a request is made for disclosure of any document or other materials that have been designated by Operator as "CONFIDENTIAL", then Owner will notify Operator and may request advice from Owner's counsel before disclosing any such documents in accordance with Applicable Law, including any applicable Public Information Disclosure Requirements. Operator shall then have the opportunity to either consent to the disclosure or assert its basis for non-disclosure and claimed exception under Applicable Law to Owner within the time period specified in the notice issued by Owner (if any). Notwithstanding the foregoing, it is the responsibility of Operator to monitor requests for disclosure and proceedings and make timely filings. Owner may make filings of its own concerning possible disclosure; however, Owner is under no obligation to support Operator's positions.

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

(B) Under no other circumstances will Owner be responsible or liable to Operator or any other party as a result of disclosing any such documents or materials, including materials marked "CONFIDENTIAL", whether the disclosure is deemed required by Applicable Law or by an order of court or Owner's counsel or occurs through inadvertence, mistake or negligence on the part of Owner or any of its Representatives.

(iv) Nothing contained in this Section 13.2(e) shall modify or amend requirements and obligations imposed on Owner by the Public Information Disclosure Requirements, and the provisions of the Public Information Disclosure Requirements shall control to the extent of a conflict with the procedures under this Agreement or Owner's obligations with respect to Confidential Information. Owner will not advise a submitting party or Operator as to the

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nature or content of documents or materials that may be entitled to protection from disclosure under the Public Information Disclosure Requirements, as to the interpretation thereof, or as to relevant definition (e.g., “trade secret”).

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

(vi) Operator shall indemnify and hold Owner harmless from and against any and all claims, causes of action, suits, legal or administrative proceedings, damages, losses, liabilities, response costs, costs and expenses, including any injury to or death of persons or damage to or loss of property (including damage to utility facilities), and including attorneys’ and expert witness fees and costs, arising out of, relating to or resulting from Owner’s refusal to disclose any material that Operator has designated as “CONFIDENTIAL” but was disclosed under the Public Information Disclosure Requirements.

(f) Customer Information. Notwithstanding anything contained in this Section 13.2 or otherwise in this Agreement to the contrary, the Parties agree that Operator shall not, and shall ensure that Operator Related Parties do not, use or disclose any Owner Personal Information except as directed by Administrator or as may be required by Applicable Law.

(g) Owner Confidential Information. Operator acknowledges that in performing the O&M Services, Front-End Transition Services and Back-End Transition Services it will have access to and be providing to Owner information that belongs to Owner. Therefore, notwithstanding anything to the contrary in this Agreement, any information, data, analyses, documents and materials relating to the T&D System, Work Product or otherwise relating to the System Information or Customer Database shall be deemed Confidential Information of Owner.

(h) Security.

(i) Operator shall comply with, and shall cause all Operator Related Parties and all Subcontractors to comply with, best industry practices and any data security policies and procedures of Owner, and all requirements of Applicable Law, regarding data security, cyber security and information security, including notification of security breaches or attempted breaches, with respect to Owner Personal Information and the Confidential Information of Owner or Owner Related Parties, including any comparable information that may be included as Work Product hereunder. Operator shall immediately notify, and shall cause all Operator Related Parties and Subcontractors to immediately notify, Administrator (if possible, in writing) of any breaches in or attempted breaches in data security or any other losses or theft of any such data of which it has knowledge, and at Administrator’s direction shall perform an analysis of the cause, shall remedy such breach and shall cooperate fully with any civil or criminal authority in any investigation or action relating to such breach or attempted breach. Operator shall indemnify,

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defend and hold harmless Owner and Owner Indemnitees, in the manner provided in Section 19.1, from any Losses resulting from any actual or attempted breaches in data security or any losses or theft or misuse of data under its possession or control.

(ii) Without limiting the foregoing, Operator shall, and shall cause all Operator Related Parties and all Subcontractors to: (A) have appropriate organizational, administrative, physical and technical measures in place to maintain the security of and to protect the internal and external integrity of the software, hardware, computer equipment and other information technology used in connection with its business and data contained therein or thereon against any accidental or unlawful use, processing, destruction or accidental loss, alteration, unauthorized disclosure, theft or access (including to any data or information contained in or stored on such systems), (B) maintain backup, security and disaster recovery measures reasonably consistent with best industry practices to safeguard its systems and its ongoing ability to conduct its business and satisfy its contractual access and data retention obligations, including in the event of a disaster, (C) refrain from introducing or knowingly permitting the introduction of any virus, worm, bomb, Trojan horse, trap door, stop code or other harmful code, timer, clock, counter or other limiting design, instruction or routine, device, feature or function into any systems or software, and (D) undertake audits at least annually to assess and confirm compliance Section 13.2(h), take prompt measures to remedy any gaps that may be identified, and provide a summary and copy of any such written reports and remedial measures to Administrator.

ARTICLE 14
EVENTS OF DEFAULT; REMEDIES

Section 14.1 Events of Default By Operator.

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

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

(ii) any of Operator, ServCo or Guarantor shall (A) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under the Bankruptcy Code, (B) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in Section 14.1(a)(i), (C) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any of Operator, ServCo or Guarantor or for a substantial part of its respective assets, (D) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (E) make a general assignment for the benefit of creditors or (F) take any action for the purpose of effecting any of the foregoing;

(iii) Operator shall fail to provide or maintain in full force and effect the Guarantee, which failure shall not be cured within five (5) Business Days following its occurrence in a manner acceptable to Administrator;

(iv) Operator shall fail to perform any material obligation, covenant, term or condition under this Agreement or Guarantor shall fail to perform any material obligation, covenant, term or condition under the Guarantee (in each case other than a payment obligation as provided in Section 14.1(a)(v)), which failure shall not be cured within thirty (30) days following receipt of written notice thereof from Administrator; provided, however, that as long as Operator or Guarantor, as the case may be, is diligently attempting in good faith to cure such failure and it is reasonably expected that such failure is subject to cure, then Operator or Guarantor, as the case may be, shall have an additional thirty (30) days to cure such default;

(v) Operator or Guarantor shall fail to pay any undisputed amount required to be paid by Operator under this Agreement or by Guarantor under the Guarantee, and such failure shall continue for sixty (60) days following notice to Operator or Guarantor, as the case may be, by Administrator to cure such failure following the due date for such payment or application;

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(vi) any representation or warranty of Operator under this Agreement or any other document delivered in connection herewith or of Guarantor under the Guarantee shall prove to have been false, inaccurate or misleading in any material respect when made and such condition shall continue for thirty (30) days following notice to Operator by Administrator to cure such condition;

(vii) Operator shall fail to obtain or maintain the Required Insurance, unless such failure is due to carrier insolvency, and in such case such failure continues for five (5) Business Days following notice by Administrator to Operator to cure such failure;

(viii) a Change of Control of Operator shall have occurred on or after the Effective Date;

(ix) Operator shall enter into an agreement to, or shall assign, transfer, convey, lease, encumber or otherwise dispose of all or any portion of its rights or obligations under this Agreement other than in accordance with the express terms of this Agreement;

(x) Operator is determined by a court of competent jurisdiction to have violated any of the provisions of Article 3.2 of Act 2 or is convicted of, or enters a plea of *nolo contendere*, with respect to any of the crimes listed in Section 19.2(f)(ii) by a court of competent jurisdiction; or

(xi) Operator or its Affiliates shall fail to perform any material obligation, covenant, term or condition under the Servicing Contract, which failure shall not be cured within thirty (30) days following receipt of written notice thereof; provided, however, that as long as Operator or its Affiliates are diligently attempting in good faith to cure such failure and it is reasonably expected that such failure is subject to cure, then Operator or its Affiliates shall have an additional thirty (30) days to cure such default.

(b) Termination for Operator Event of Default.

(i) Upon the occurrence of an Operator Event of Default under Section 14.1(a)(i), Section 14.1(a)(ii) or Section 14.1(a)(x), this Agreement shall immediately terminate without further action by Administrator.

(ii) Upon the occurrence of any other Operator Event of Default, Administrator may terminate this Agreement upon not less than thirty (30) days prior written notice to Operator, subject, to the extent required by Applicable Law, to the prior approval of PREB or the FOMB (if then in existence).

Section 14.2 Events of Default By Owner.

(a) Owner Events of Default. Each of the following shall constitute an event of default by Owner (an "Owner Event of Default"):

(i) Owner shall fail to perform any material obligation, covenant, term or condition under this Agreement (other than a payment obligation as provided in Section 14.2(a)(ii) or Section 14.2(a)(iii)), which failure shall not be cured within thirty (30)

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days following receipt of written notice thereof from Operator; provided, however, that as long as Owner is diligently attempting in good faith to cure such failure and it is reasonably expected that such failure is subject to cure, then Owner shall have an additional thirty (30) days to cure such default;

(ii) Owner shall fail to pay any undisputed Service Fees to be paid to Operator under this Agreement and such failure shall continue for thirty (30) days following notice to Administrator by Operator to cure such failure following the due date for such payment or application;

(iii) Owner shall fail to pay any undisputed amount required to be paid by Owner to Operator under this Agreement (other than Service Fees as provided in Section 14.2(a)(ii)) and such failure shall continue for sixty (60) days following notice to Administrator by Operator to cure such failure following the due date for such payment or application; or

(iv) 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 such condition shall continue for thirty (30) days following notice to Administrator by Operator to cure such condition.

(b) Termination for Owner Event of Default. Upon the occurrence of an Owner Event of Default, Operator may terminate this Agreement upon not less than thirty (30) days prior written notice to Administrator.

Section 14.3 Additional Termination Rights. Each of Administrator and Operator shall have the further right to terminate this Agreement upon not less than thirty (30) days prior written notice to Operator or Administrator, respectively, in the event ownership of the T&D System is sold, transferred or assigned, in whole or in part, to a private entity.

Section 14.4 Compensation Upon Early Termination.

(a) Compensation to Operator. In the event of an early termination of this Agreement pursuant to Section 14.1, Section 14.2 or Section 14.3, Owner shall, as directed by Administrator, make the following payments to Operator:

(i) in the case of any early termination of this Agreement, any accrued and unpaid Pass-Through Expenditures, Fixed Fee and Incentive Fee, in each case, as of the effective date of such termination;

(ii) in the case of an early termination of this Agreement pursuant to Section 14.2 or Section 14.3 only, a termination fee set forth in with Annex XIV (*Operator Termination Fee*)¹¹, which will be in addition to the amounts otherwise payable to Operator under Section 14.4(a)(i); and

¹¹ **Note to Qualified Respondent: Please see Annex XIV (*Operator Termination Fee*).**

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(iii) in the case of an early termination of this Agreement pursuant to Section 14.2 or Section 14.3 only, reasonable and documented Back-End Transition Costs.

(b) Compensation to Owner. In the event of an early termination of this Agreement pursuant to Section 14.1, Operator shall pay Owner an amount equal to \$[●]¹². For the avoidance of doubt, in the event of an early termination of this Agreement pursuant to Section 14.1, Operator shall be solely responsible, and shall not be entitled to receive payment from Owner or Administrator, for the Back-End Transition Costs.

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

¹² Note to Qualified Respondent: Please indicate a proposed amount.

ARTICLE 15 DISPUTE RESOLUTION

Section 15.1 Scope. Except as otherwise expressly provided in this Agreement, any dispute between the Parties arising out of, relating to or in connection with this Agreement or the existence, interpretation, breach, termination or validity thereof (a “Dispute”) shall be resolved in accordance with the procedures set forth in this Article 15, which shall constitute the sole and exclusive procedures for the resolution of such Disputes, 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 proceeding contemplated by this Article 15 from and after Operator’s receipt of notice from Administrator confirming such participation.

Section 15.2 Informal Dispute Resolution Procedures. The Parties agree that, at all times, they shall attempt to resolve any Dispute promptly through diligent, good faith negotiations. Upon receipt of written notice of a 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 to resolve the Dispute, conferring as often as they deem reasonably necessary, and shall gather and in good faith furnish to each other the information pertinent to the Dispute. All communications, negotiations and discussions pursuant to this Section 15.2 shall be confidential and shall be treated as compromise settlement discussions and negotiations and shall not be used, offered or admissible as evidence in any subsequent proceeding without the mutual consent of the Parties.

Section 15.3 Mediation.

(a) Mediation of Disputes. Each Party to this Agreement agrees that it may not initiate a civil action as provided in Section 15.4 (other than provisional relief sought on an expedited basis) unless (i) the matter in question has been submitted to mediation in accordance with the provisions of this Section 15.3 or (ii) such Party would be barred from asserting its claim in a civil action if it were required to submit to mediation pursuant to Section 15.3.

(b) Process for Mediation. Mediation of a Dispute under this Agreement may not be commenced until the earlier of: (i) such time as both of the Designated Persons, after following the procedures set forth in Section 15.2, conclude in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or (ii) thirty (30) days after the notice referring the Dispute to the Designated Persons, pursuant to Section 15.2 (the “Negotiation Period”). If, after such time period, the Dispute remains unresolved, either Party shall refer the Dispute to a mediator, who shall be an attorney in good standing with the Puerto Rico Supreme Court. With respect to the selection of a mediator, the Parties, through their respective Designated Persons, shall attempt in good faith to agree on a mediator. If the Parties cannot so agree within thirty (30) days after it is determined that the Designated Persons cannot resolve the Dispute or within thirty (30) days after the end of the Negotiation Period, the Parties shall promptly apply to the International Chamber of Commerce (“ICC”) for appointment of a single mediator in accordance with the ICC Mediation Rules. The mediator selected by the ICC shall be an attorney authorized to practice law in the United States or the Commonwealth. The mediator shall be paid for the mediation services, and shall be reimbursed for all reasonable out-of-pocket costs incurred

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in carrying out the mediation duties hereunder, including the costs of consultants. All fees and costs of the mediation (including payment for the services of the mediator and reimbursement of all reasonable out-of-pocket costs (including the costs of consultants) of the mediator) shall be shared equally by the Parties. The Parties shall request that the mediator schedule the mediation within thirty (30) days of the mediator's appointment, and shall comply with all procedures the mediator establishes for the conduct of the mediation.

Section 15.4 Litigation as a Final Resort.

(a) Civil Action. In the event that the Parties fail to resolve any Dispute within ninety (90) days after the date the mediator is selected pursuant to the procedures set forth in Section 15.3 (or such longer period as the Parties may mutually agree), either Party may initiate a civil action in the Commonwealth Court and in accordance with all applicable rules of civil procedure; provided that any Technical Dispute that is not resolved pursuant to Section 15.2 and Section 15.3 shall be referred to an Independent Expert pursuant to Section 15.6. The Parties acknowledge and understand that, to resolve any and all claims arising out of this Agreement (other than any Technical Dispute), they may file a civil action, including actions in equity, in the Commonwealth Court. Owner and Operator each irrevocably consents to the exclusive jurisdiction of such courts in any such actions or proceedings, waives any objection it may have to the jurisdiction of any such action or proceeding, and waives its right to a trial by jury.

(b) Costs and Expenses. Except as required by Operator's indemnity obligations under Section 18.1, each Party shall bear its own costs and expenses in any Legal Proceeding where it is the named defendant or in any Legal Proceeding between the Parties. Notwithstanding the foregoing, each Party retains its rights to bring any Legal Proceeding or to implead the other Party as to any matter arising hereunder.

Section 15.5 Provisional Relief. Notwithstanding any other provision in this Agreement, no Party shall be precluded from initiating a proceeding in the Commonwealth Court for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement, including temporary and preliminary injunctive relief, restraining orders and other remedies to avoid imminent irreparable harm, provide uninterrupted electrical and other services or preserve the status quo pending the conclusion of such negotiation, mediation or litigation. The commencement of or participation in an action for provisional relief with regard to Technical Disputes shall not constitute a waiver of the requirements or procedures of Section 15.6.

Section 15.6 Referral of Technical Disputes to Independent Expert.

(a) Technical Disputes. If the procedures described in Section 15.2 and Section 15.3 do not result in resolution of any engineering or technical dispute (each, a "Technical Dispute"), the Technical Dispute shall be referred to an Independent Expert. The "Independent Expert" shall be a reputable Person or Persons possessing expert knowledge and experience for the determination of the matter in question and shall be independent of the Parties. The Independent Expert shall be appointed by agreement between the Parties or, if the Parties are not able to agree within thirty (30) days, by the ICC International Centre for ADR in accordance with the Rules for the Appointment of Experts and Neutrals of the International Chamber of

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Commerce. Such Independent Expert shall determine the matter in question as soon as practicable in light of the circumstances, but in no event later than sixty (60) days after his or her appointment or as otherwise agreed by the Parties on the basis of terms of reference agreed between the Parties or otherwise as the Independent Expert may himself or herself determine as an expert and not as arbitrator, and such determination shall be final and binding on the Parties hereto, except as otherwise provided herein. A failure to determine the matter within sixty (60) days shall not be a ground to challenge any award or determination by the Independent Expert.

(b) Costs and Enforcement. The costs of the Independent Expert shall be borne by Operator, to the extent that the Independent Expert resolves any dispute in Owner's favor, and by Owner, to the extent that the Independent Expert resolves any dispute in Operator's favor, or as determined by the Independent Expert if the dispute is not resolved entirely in favor of Owner or Operator. Enforcement of any determination of an Independent Expert may be entered by any court of competent jurisdiction. To the extent permitted by law, any rights to appeal from or cause a review of any such determination by any Independent Expert are hereby waived by the Parties.

ARTICLE 16
BACK-END TRANSITION

Section 16.1 Successor Operator. Following (a) Operator's receipt of Owner's termination notice under Article 14 or Administrator's receipt of Operator's termination notice under Article 14 or (b) the later of (i) the Initial Term or (ii) the Extension Term, Administrator, on behalf of Owner, shall initiate efforts, including such procurement process as may be required, to identify and select a successor operator as promptly as practicable. Operator shall have the right to submit a proposal in such procurement on the same basis as other proponents. Operator shall fully cooperate with Administrator during any such procurement process.

Section 16.2 Back-End Transition Services.

(a) Generally. Upon an early termination or expiration of this Agreement, Operator shall, in addition to the Back-End Transition Services specified in the Back-End Transition Plan, comply with the obligations set forth in Section 16.2(b).

(b) Certain Obligations. Without limiting the generality of the Back-End Transition Services specified in the Back-End Transition Plan, Operator shall, in addition to or as part of the Back-End Transition Services:

(i) cease to perform the O&M Services on the date and to the extent specified by Administrator;

(ii) transfer all documentation and material associated with work in progress and provide a comprehensive status report on each such item;

(iii) sell all existing materials and supplies utilized by Operator in the operation and maintenance of the T&D System to Owner or the successor operator, as Administrator shall direct, if any;

(iv) promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other property at the T&D System Sites;

(v) promptly remove from the T&D System Sites all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by Operator, if any, which are not to be transferred to Owner or any successor operator, and repair any damage caused by such removal;

(vi) leave the T&D System Sites in a neat, safe, orderly and fully operational condition;

(vii) leave the T&D System Sites with not less than [●] months-worth of consumables and spare parts and return to Owner any non-fixed assets in good working order and condition;

(viii) promptly remove all employees of Operator and any Subcontractors and vacate the T&D System Sites;

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(ix) with respect to any ongoing Capital Improvements, promptly deliver to Administrator a list of all supplies, materials, machinery, equipment, property and special order items previously delivered or fabricated by Operator or any Subcontractor but not yet incorporated in the T&D System Sites;

(x) deliver to Administrator all computer programs used at the T&D System Sites in the performance of O&M Services, including all revisions and updates thereto;

(xi) deliver to Administrator a copy of all books, records, customer lists, account information, personnel information, drawings, reports, plans and other data in its possession or control relating to the performance of the O&M Services;

(xii) deliver to Administrator current maps of the T&D System;

(xiii) provide Administrator with a list of all files, and access and security codes with instructions and demonstrations which show how to open and change such codes;

(xiv) promptly deliver to Administrator copies of all subcontracts, together with a statement of (A) the items ordered and not yet delivered pursuant to each agreement; (B) the expected delivery date of all such items; (C) the total cost of each agreement and the terms of payment; and (D) the estimated cost of canceling each agreement;

(xv) as Administrator shall direct, terminate or assign to Owner all subcontracts and make no additional agreements with Subcontractors with respect to the T&D System without the prior written approval of Administrator;

(xvi) advise Administrator promptly of any special circumstances that might limit or prohibit cancellation of any subcontract;

(xvii) as directed by Administrator, transfer to Owner by appropriate instruments of title, and deliver to the T&D System Sites (or such other place as Administrator may specify), all special order items pursuant to this Agreement for which Owner has made or is obligated to make payment;

(xviii) promptly transfer or assign to Owner all warranties given by any manufacturer or Subcontractor with respect to particular components of the O&M Services;

(xix) notify Administrator promptly in writing of any legal proceedings against Operator by any Subcontractor or other third parties relating to the termination of the O&M Services or any subcontracts;

(xx) provide promptly written notice of termination, effective as of date of termination of this Agreement, under each policy of Required Insurance (with a copy of each such notice to Owner and Administrator); provided that if Administrator elects to continue such policies in force thereafter for Owner and at Owner's expense, Operator shall use its best efforts to ensure that Administrator is able to do so;

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(xxi) to the extent requested by Administrator, retain any or all senior management employees and make them available to provide on-site, real time consulting advice to a successor operator for the T&D System or Owner, such services to be made available for up to six (6) months;

(xxii) provide Owner, Administrator and successor operator with copies of and access to all System Information, Customer Databases and other Work Product or tangible embodiments of Intellectual Property of Owner in a form and medium that is reasonable acceptable to the successor operator and in a manner that such information and material may be accessed and used on same basis by the successor operator that it was used and accessed by Operator;

(xxiii) provide technological and design advice and support and deliver any plans, drawings, renderings, blueprints, operating and training manuals, computer programs, spare parts or other information useful or necessary for Owner or any successor operator to perform the O&M Services, such services to be made available for up to six (6) months; and

(xxiv) take such other actions, and execute such other documents as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to provide for a safe, effective and efficient transition of the O&M Services to Owner or a successor operator, minimize Owner's costs, and take no action which shall increase any amount payable to Owner under this Agreement.

Section 16.3 Transfer Obligation. Immediately upon an early termination or expiration of this Agreement, Operator shall transfer all the ownership interests in ServCo and all ServCo corporate books and records to Owner or, at Administrator's direction, its designee free and clear of all Liens and Administrator shall accept such transfer at no cost to Owner, Administrator or their designees. The Parties shall mutually agree upon such instruments, agreements and other documents as may be reasonably necessary to effect such transfer. Following such transfer of the ServCo ownership interests, Operator shall have no further legal or financial responsibility with respect to the performance of any contracts, leases or licenses held by or in the name of ServCo, or in relation to any pension, "other post-employment benefits" and other employee and vendor obligations, other than for liabilities or obligations which Operator (distinguished from ServCo) may have assumed for periods prior to such transfer which remain outstanding.

Section 16.4 Back-End Transition Costs.

(a) Generally. Operator shall duly document all costs and expenses incurred in connection with its performance of the Back-End Transition Services, including the number of hours worked by each Operator employee providing Back-End Transition Services and the actual base hourly wage of such employee (collectively, the "Back-End Transition Costs"). In the case of expiration or an early termination of this Agreement pursuant to Section 14.2 or Section 14.3 only, Owner, shall, as directed by Administrator, reimburse Operator for reasonable and documented Back-End Transition Costs in accordance with Section 16.4(b).

(b) Invoices.

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

(ii) Payments of undisputed amounts on monthly invoices shall be due within thirty (30) days of Administrator's receipt of such invoice.

(iii) Operator shall provide promptly to Administrator such additional supporting documentation evidencing the provision of Back-End Transition Services, if any, and the calculation of Back-End Transition Costs related thereto as Administrator may reasonably request and as may be required by Applicable Law. Administrator shall promptly advise Operator of any disputed invoice amounts, and all such disputes which Operator and Administrator are unable to resolve shall be submitted for resolution as provided in Article 15.

ARTICLE 17
FORCE MAJEURE EVENTS

Section 17.1 Notice; Mitigation.

(a) Notice of Commencement. The Party claiming a Force Majeure Event (the “Claiming Party”) shall notify the other Party in writing, on or promptly after the date it first knew of the commencement thereof, followed within five (5) days by a written description of (i) the Force Majeure Event and the cause thereof (to the extent known), (ii) the date the Force Majeure Event began and its estimated duration, (iii) the manner in which and the estimated time during which the performance of the Claiming Party’s obligations hereunder will be affected, and the impact, if any, on any scheduled completion dates for Capital Improvements, and (iv) mitigating actions that the Claiming Party has taken or proposes to take in order to reduce the impact of the Force Majeure Event.

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

(c) Burden of Proof. The Claiming Party shall bear the burden of proof as to the existence of the Force Majeure Event and its inability to perform any of its obligations hereunder as a result thereof, and shall furnish promptly in writing (if and to the extent available to it) any additional documents or other information relating to the Force Majeure Event reasonably requested by the other Party. While the Force Majeure Event continues, the Claiming Party shall give notice to the other Party before the first day of each succeeding month updating the information previously submitted with respect to the nature, cause, impact and potential duration of the Force Majeure Event pursuant to this Section 17.1.

(d) Notice of Cessation of Force Majeure Event. The Claiming Party shall promptly (but in no event later than three (3) days thereafter) provide notice to the other Party as soon as the Force Majeure Event has been ceased and no longer prevents it from complying with its obligations under this Agreement, and shall promptly thereafter resume compliance with this Agreement.

Section 17.2 Relief.

(a) Generally. If and to the extent a Force Majeure Event interferes with, delays or increases the cost of, a Party’s performance of its obligations under this Agreement, and such Party has given timely notice and description as required by Section 17.1, such Party shall be excused from performance and in the event Operator is such party, shall also be excused with respect to the achievement of any affected Performance Metrics pursuant to Section 17.1. The occurrence of Force Majeure Event shall not excuse or delay the performance of (i) a Party’s obligation to pay amounts previously accrued and owing under this Agreement and (ii) any obligation hereunder not affected by the occurrence of the Force Majeure Event.

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(b) Extended Event. If and to the extent a Force Majeure Event continues for a period in excess of one-hundred twenty (120) consecutive days and materially interferes with, delays or increases the cost of the O&M Services in accordance herewith, and a Party has given timely notice and description as required by Section 17.1, Administrator and Operator shall negotiate in good faith to determine whether modifications to the Service Fee, Term or other provisions of this Agreement are appropriate under the circumstances; provided that any such modifications shall (i) in Administrator's sole judgment, not jeopardize the tax exempt status of Owner's indebtedness, (ii) be subject to approval by PREB in accordance with Applicable Law and (iii) otherwise comply with Applicable Law.

**ARTICLE 18
INDEMNIFICATION**

Section 18.1 Indemnification by Operator. Operator shall indemnify, defend and hold harmless Owner, Administrator and their respective Affiliates and Representatives (each, an “Owner Indemnitee”), from and against (and pay the full amount of) any and all Losses incurred by an Owner Indemnitee arising from or in connection with (or alleged to arise from or in connection with) (a) any failure by Operator to perform its obligations under this Agreement, including any failure to comply with Applicable Law in the performance of the O&M Services; (b) any breach by Operator of any representation, warranty or covenant of Operator in this Agreement; (c) any Environmental Claim and Cleanup Liability arising out of or in connection with the performance by Operator of the O&M Services or any other obligations of Operator hereunder; and (d) the gross negligence or willful misconduct of Operator Indemnitees. Operator’s indemnification obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by Operator which is intended to respond to such events. Notwithstanding the foregoing, Operator shall not be required to reimburse or indemnify any Owner Indemnitee for any Losses to the extent caused by the gross negligence or willful misconduct of any Owner Indemnitee or to the extent attributable to any Force Majeure Event. An Owner Indemnitee shall promptly notify Operator of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and Operator shall have the right to assume the defense of the claim in any Legal Proceeding and to approve any settlement of the claim, such approval not to be unreasonably withheld. These indemnification provisions are for the protection of Owner Indemnitees only and shall not establish, of themselves, any liability to third parties. The provisions of this Section 18.1 shall survive termination of this Agreement.

Section 18.2 Indemnification by Owner. Owner shall indemnify, defend and hold harmless Operator and its Affiliates and Representatives (each, an “Operator Indemnitee”), from and against (and pay the full amount of) any and all Losses incurred by an Operator Indemnitee arising from or in connection with (or alleged to arise from or in connection with) (a) any breach by Owner of any representation, warranty or covenant of Owner in this Agreement; (b) any Losses for claims of any nature based on events or circumstances to the extent arising prior to the Service 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 this Agreement); (c) the gross negligence or willful misconduct of Owner Indemnitees in connection with this Agreement; and (d) claims brought by ServCo employees or former employees with respect to benefits under ServCo’s pension or other employee benefit plans. Owner’s indemnification obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained Owner which is intended to respond to such events. Notwithstanding the foregoing, Owner shall not be required to reimburse or indemnify any Operator Indemnitee for any Losses to the extent caused by the gross negligence or willful misconduct of any Operator Indemnitee or to the extent attributable to any Force Majeure Event. An Operator Indemnitee shall promptly notify Owner of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and Owner shall have the right to assume the defense of the claim in any Legal Proceeding and to approve any settlement of the claim, such approval not to be unreasonably withheld. These indemnification provisions are for the protection of Operator Indemnitees only and shall not establish, of

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themselves, any liability to third parties. The provisions of this Section 18.2 shall survive termination of this Agreement.

Section 18.3 Limitation on Liability. Notwithstanding anything contained in this Agreement to the contrary:

(a) Operator’s liability to Owner Indemnitees under this Agreement (other than for any Losses attributable to Operator’s gross negligence or willful misconduct, for which there shall be no limitation on Operator’s liability) shall be limited to \$[●]¹³.

(b) Owner’s liability to Operator Indemnitees under this Agreement (other than for any Losses attributable to Owner’s gross negligence or willful misconduct, for which there shall be no limitation on Owner’s liability) shall be limited to \$[●]¹⁴.

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

Section 18.4 Insurance Recovery. The amount of any Losses that are subject to indemnification, compensation or reimbursement under this Agreement shall be reduced by the amount of any insurance proceeds and any indemnity, contribution or other similar payment actually received by Owner Indemnitee or Operator Indemnitee, as applicable, in respect of such Losses or any of the events, conditions, facts or circumstances resulting in or relating to such Losses (“Third-Party Payments”). If an Owner Indemnitee or Operator Indemnitee, as applicable, receives any Third-Party Payment with respect to any Losses for which it has previously been indemnified (directly or indirectly) by an Indemnifying Party, Owner Indemnitee or Operator Indemnitee, as applicable, shall promptly (and in any event within three (3) Business Days after receiving such Third-Party Payment) pay to the Indemnifying Party an amount equal to such Third-Party Payment or, if it is a lesser amount, the amount of such previously indemnified Losses. Owner Indemnitee or Operator Indemnitee, as applicable, shall use its commercially reasonable efforts to recover under insurance policies or indemnity, contribution or other similar agreements other than this Agreement for any Losses to the same extent such Party would if such Losses were not subject to indemnification, compensation or reimbursement hereunder.

Section 18.5 Liability Limitation for Certain Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER OPERATOR INDEMNIFIED PARTIES NOR OWNER INDEMNIFIED PARTIES SHALL BE LIABLE, WHETHER IN CONTRACT, INDEMNITY, TORT (INCLUDING NEGLIGENCE, GROSS NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, FOR ANY SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHICH ARISE FROM, RELATE TO OR ARE CONNECTED WITH THIS AGREEMENT OR THE PERFORMANCE OF OR FAILURE TO PERFORM THEIR RESPECTIVE OBLIGATIONS HEREUNDER EXCEPT FOR CLAIMS BY

¹³ Note to Qualified Respondent: Please indicate a proposed amount.

¹⁴ Note to Qualified Respondent: Please indicate a proposed amount.

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OWNER OR ADMINISTRATOR AGAINST OPERATOR FOR FRAUD, INTENTIONAL MISREPRESENTATION OR INTENTIONAL BREACH.

ARTICLE 19
REPRESENTATIONS AND WARRANTIES

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

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

(b) Due Authorization and Binding Obligation. The execution and delivery by 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 that Owner is a party to; or

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

(d) No Consents. No consent, declaration or filing with, or notice to, any Governmental Body is required by or with respect to Owner in connection with the execution and delivery of this Agreement or the performance by Owner of its obligations hereunder, except such as have been duly obtained or made.

(e) No Litigation. There is no action, suit or other proceeding, at law or in equity, before or by any court or Governmental Body pending against Owner or, to Owner's knowledge, threatened against Owner, which if determined adversely to Owner would reasonably

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be expected to materially and adversely affect the validity or enforceability of this Agreement, or which would reasonably be expected to materially and adversely affect the performance by Owner of its obligations hereunder.

(f) No Legal Prohibition. There is no Applicable Law in effect on the date hereof that would prohibit the execution, delivery or performance by Owner of this Agreement and the transactions contemplated hereby.

Section 19.2 Representations and Warranties of Operator. Operator hereby represents and warrants to Owner that:

(a) Existence and Powers. Operator is a [●] duly organized, validly existing and in good standing under the laws of the Commonwealth. Operator has all requisite corporate power and authority to enter into this Agreement, carry out its obligations hereunder and consummate the transactions contemplated hereby.

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

(c) No Conflict. Neither the execution, delivery or performance by Operator of this Agreement, nor the consummation of the transactions contemplated hereby will:

(i) result in a material violation or breach of, or material default under, any provision of the organizational documents of Operator;

(ii) result in a violation of, or give any Governmental Body the right to challenge any of the transactions contemplated hereby under, any Applicable Law applicable to Operator;

(iii) (A) result in a violation or breach of, (B) constitute a default under, (C) result in the acceleration of or create in any party the right to accelerate, terminate or cancel or (D) require the consent of any other Person under, any material contract that Operator is a party to; or

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

(d) No Consents. No consent, declaration or filing with, or notice to, any Governmental Body is required by or with respect to Owner in connection with the execution and delivery of this Agreement or the performance by Owner of its obligations hereunder, except such as have been duly obtained or made.

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(e) No Litigation. There is no action, suit or other proceeding, at law or in equity, before or by any court or Governmental Body pending against Operator or, to Operator's knowledge, threatened against Operator, which if determined adversely to Operator would reasonably be expected to materially and adversely affect the validity or enforceability of this Agreement, or which would reasonably be expected to materially and adversely affect the performance by Operator of its obligations hereunder.

(f) Applicable Law Compliance.

(i) Neither Operator, its subsidiaries and Affiliates, nor any director, officer, manager, administrator or employee of Operator or its Affiliates (together, the "Covered Parties") has violated, conspired to violate, aided and abetted the violation of, or been convicted of violating or admitted culpability in respect of any Anti-Corruption Laws or in any criminal procedure in any state, Commonwealth or federal court of the United States, or in any foreign country, for criminal charges related to acts of corruption, the public treasury, the public trust, a public function or charges involving public funds or property, or for the felonies or misdemeanors under Articles 4.2, 4.3 or 5.7 of Act No. 1-2012, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2, or any other felony that involves misuse of public funds or property, including the crimes mentioned in Article 6.8 of Act 8-2017, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.

(ii) Each of the Covered Parties has complied at all times with the Anti-Corruption Laws and any other Applicable Law that prohibit corruption and regulate criminal acts involving public functions or public funds applicable to Operator under state, Commonwealth or federal law, including the Foreign Corrupt Practices Act. Operator has furnished a Sworn Statement.

(iii) Neither Operator nor, to the knowledge of Operator, any of the other Covered Parties, has been convicted of offenses against public integrity, as defined in the Puerto Rico Penal Code, or of embezzlement of public funds, or has been found guilty of any such type of offense in the courts of the Commonwealth, the courts of the United States or any court of any jurisdiction.

(iv) Operator has not, directly or indirectly, made or received, or will make or receive, any payments in connection with this Agreement or the O&M Services in order illegally or improperly to obtain business or other rights.

(v) Operator does not have knowledge that it is being investigated as part of a criminal or civil process by any law enforcement or regulatory authority in connection in any way with the Anti-Corruption Laws or any criminal laws or regulations.

(vi) Neither Operator, its subsidiaries, its Affiliate nor any directors, officers or employees of Operators, its subsidiaries or Affiliates is a Person, or is a Person owned or controlled by a Person, (a "Sanctioned Person") with whom dealings are restricted or prohibited by, or are sanctionable under, any economic sanctions or trade restrictions administered or

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enforced by the U.S. government (including the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State or the Bureau of Industry and Security of the U.S. Department of Commerce), the United Nations Security Council, the European Union or Her Majesty's Treasury or any other authority with jurisdiction over Operator, its subsidiaries or its Affiliates (collectively, "Sanctions"), nor is the Parent Company or its subsidiaries located, organized or resident in a country or territory with which dealings are broadly restricted, prohibited or made sanctionable under any Sanctions (currently, the Crimea, Cuba, Iran, North Korea and Syria) (each, a "Sanctioned Country"). Operator and its subsidiaries have not violated and have not engaged in any conduct sanctionable under Sanctions, and there are not now, nor have there been within the past five years, any formal or informal proceedings, allegations, investigations or inquiries pending, expected or, to the knowledge of the Parent Company, threatened against the Parent Company, its subsidiaries, or any of their respective officers or directors concerning violations or potential violations of, or conduct sanctionable under, any Sanctions.

(vii) No official or employee of Owner has a direct or indirect economic interest in Operator's rights under this Agreement in accordance with the provisions of Act 2, which Operator herein certifies it has received a copy of, read, understood and complied with at all times prior to the execution of this Agreement and will subsequently comply with it in its entirety.

(viii) Operator does not represent particular interests in cases or matters that imply conflicts of interest, or of public policy, between Owner and the particular interests it represents.

(g) Accuracy of Information. All of the information relating to Operator or any of its Affiliates delivered by or on behalf of Operator to Owner and Administrator in connection with the execution of this Agreement was true, accurate and complete in all material respects when delivered.

(h) Ability to Perform Obligations. Operator has the required authority, ability, skills, access to funds, technical support and capacity to perform all its obligations with respect to the O&M Services and all of its other obligations under this Agreement, all in accordance with the Transaction Documents.

(i) Knowledge of Requirements. Operator has knowledge in all material respects of all legal requirements and business and engineering practices that must be followed in performing its obligations under this Agreement.

(j) No Litigation with Owner. Neither Operator nor any of its shareholders or its or their Affiliates are involved in any litigation, arbitration or claim against Owner, Administrator, the Authority, AAFAF, the FOMB and/or its or their Affiliates.

**ARTICLE 20
MISCELLANEOUS**

Section 20.1 Fees and Expenses. Except as otherwise expressly provided in this Agreement, all costs and expenses incurred, including fees and disbursements of counsel, financial advisors and accountants, in connection with this Agreement and the transactions contemplated hereby shall be borne by the Party incurring such costs and expenses; provided, however, that, in the event this Agreement is terminated in accordance with its terms, the obligation of each Party to bear its own costs and expenses will be subject to any rights of such Party arising from a breach of this Agreement by the other Party prior to such termination.

Section 20.2 Notices. All notices or other communications to be delivered in connection with this Agreement shall be in writing and shall be deemed to have been properly delivered, given and received (a) on the date of delivery if delivered by hand during normal business hours of the recipient during a Business Day, otherwise on the next Business Day, (b) on the date of successful transmission if sent via email during normal business hours of the recipient during a Business Day, otherwise on the next Business Day, or (c) on the date of receipt by the addressee if sent by a nationally recognized overnight courier or by registered or certified mail, return receipt requested, if received on a Business Day, otherwise on the next Business Day. Such notices or other communications must be sent to each respective Party and Administrator at the address, email address set forth below (or at such other address, email address as shall be specified by a Party or Administrator in a notice given in accordance with this Section 20.2):

If to Owner or Administrator:

Puerto Rico Electric Power Authority

[•]

[•]

Attention: [•]

Telephone: [•]

Email: [•]

with a copy to:

Administrator

[•]

[•]

Attention: [•]

Telephone: [•]

Email: [•]

If to Operator:

[•]

[•]

[•]

Attention: [•]

Telephone: [•]

Email: [•]

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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 approved by Administrator and, to the extent required by Applicable Law, the FOMB (if then in existence) and PREB.

Section 20.4 Entire Agreement. This Agreement, together with the appendices, annexes and exhibits attached hereto, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior oral or written agreements, understandings, proposals, representations or warranties relating to this Agreement. Without limiting the generality of the foregoing, this Agreement shall completely and fully supersede all other understandings and agreements among the Parties with respect to such transactions, including those contained in the RFP, Operator's Proposal and any amendments or supplements to the RFP or the Proposal.

Section 20.5 Relationship of the Parties. Except as otherwise expressly provided in this Agreement, nothing in this Agreement is intended to create, or shall be deemed or construed as creating, any partnership, joint venture or other legal entity, or give rise to any fiduciary duty, between the Parties. No Party shall have the authority or right, or hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of any other Party, except as expressly provided herein. No provision in this Agreement shall result in Operator or any of its employees, Subcontractors, agents or Representatives being considered an employee, contractor, agent or Representative of Owner. Operator shall be an independent contractor and shall be responsible for and have control over the performance of the O&M Services hereunder, subject to the standards set forth in this Agreement. Nothing in this Agreement shall be interpreted to create a relationship of co-employer between Owner and Operator or Administrator and Operator as to the employees of ServCo, Operator or any of their respective subcontractors, nor to make Operator an alter ego or a successor employer of Owner, and Operator shall act in accordance with the foregoing.

Section 20.6 Assignment and Transfer.

(a) By Operator. Operator shall not assign, transfer, convey, lease, encumber or otherwise dispose of its rights or obligations under this Agreement or related to the O&M Services without the prior written consent of Administrator; provided, however, that Operator may, without the prior written consent of Administrator, assign or otherwise dispose of any of its rights and obligations hereunder to an Affiliate of Operator so long as: (i) such Affiliate is (A) a wholly-owned direct or indirect subsidiary of the Parent Company, (B) reasonably capable of discharging, the duties and obligations of Operator hereunder and (C) assumes in writing all of Operator's obligations hereunder; and (ii) such assignment is otherwise in permitted under, and in compliance with, Applicable Law. Any such approval given in one instance shall not relieve Operator of its obligation to obtain the prior written approval of Administrator to any further assignment. Any assignment of this Agreement that is approved by Administrator shall require the assignee of Operator to assume the performance of and observe all obligations, representations and warranties of Operator under this Agreement, and no such assignment shall relieve Guarantor of any of its obligations under the Guarantee, which shall remain in full force and effect during the Term. The approval of any assignment, transfer or conveyance shall not operate to release Operator in any way from any of its obligations under this Agreement unless such approval specifically provides otherwise.

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(b) By Owner. Owner shall not assign, transfer, convey, lease, encumber or otherwise dispose of its rights or obligations under this Agreement without the prior written consent of Operator; provided, however, that Owner may, without the prior written consent of Operator, assign or otherwise dispose of any of its rights and obligations hereunder: (1) to Administrator; or (2) with prior approval of the FOMB (to the extent such approval is required by Applicable Law), to another Governmental Body if such assignee assumes, and is reasonably capable of discharging, the duties and obligations of Owner hereunder.

Section 20.7 Interest on Overdue Obligations. Except as otherwise provided herein, all amounts due hereunder, whether as damages, credits, revenue, charges or reimbursements, that are not paid when due shall bear interest at the Overdue Rate, on the amount outstanding from time to time, and all such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due, as accrued.

Section 20.8 Waivers. Either Party and Administrator may, at any time, (i) extend the time for the performance of any of the obligations or other acts of the other Party, (ii) waive any inaccuracies in the representations and warranties of the other Party contained herein or (iii) waive compliance by the other Party with any of the agreements or conditions contained herein. No waiver by any Party or Administrator of any of the provisions hereof shall be effective unless explicitly set forth in a written instrument executed and delivered by the Party so waiving. No waiver by any Party or Administrator of any breach of this Agreement shall operate or be construed as a waiver of any preceding or subsequent breach, whether of a similar or different character, unless expressly set forth in such written waiver. Neither any course of conduct or failure or delay of any Party or Administrator in exercising or enforcing any right, remedy or power hereunder shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy or power hereunder, or any abandonment or discontinuance of steps to enforce such right, remedy or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right, remedy or power.

Section 20.9 Severability. If any term or provision of this Agreement is invalid, illegal or incapable of being enforced in any situation or in any jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other term or provision hereof or the offending term or provision in any other situation or any other jurisdiction, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either Party. Upon any such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible, in a mutually acceptable manner, in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 20.10 Survival. The rights and obligations of the Parties pursuant to this Section 20.10, Article 13, Article 15, Article 16, Article 18, Article 19, Section 20.2 and Section 20.14 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 either Party from impleading the other Party in any Legal Proceeding originated by a third-party as to any matter occurring during the Term.

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Section 20.11 No Third-Party Beneficiaries. Unless specifically set forth herein, this Agreement is exclusively for the benefit of Owner, Operator and, where specified in this Agreement, Administrator, 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 provisions hereof shall not be required to provide, furnish or post any bond or other security in connection with or as a condition to obtaining any such order or injunction, and each Party hereby irrevocably waives any right it may have to require the provision, furnishing or posting of any such bond or other security. In the event that any Legal Proceeding should be brought in equity to enforce the provisions of this Agreement, each Party agrees that it shall not allege, and each Party hereby waives the defense, that there is an adequate remedy available at law.

Section 20.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same agreement or document. A signed copy of this Agreement transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes.

Section 20.14 Time is of the Essence. Time is of the essence in the performance of the transactions contemplated by this Agreement.

Section 20.15 Governing Law. This Agreement and all matters, claims, controversies, disputes, suits, actions or proceedings arising out of or relating to this Agreement and the negotiation, execution or performance of this Agreement or any of the transactions contemplated hereby, including all rights of the Parties (whether sounding in contract, tort, common or statutory law, equity or otherwise) in connection therewith, shall be interpreted, construed and governed by and in accordance with, and enforced pursuant to, the internal laws of the Commonwealth

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(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 20.16 Commonwealth Obligations. THE OBLIGATIONS OF OWNER AND ADMINISTRATOR UNDER THIS AGREEMENT SHALL NOT BE DEEMED OBLIGATIONS OF THE COMMONWEALTH OR ANY INSTRUMENTALITY OF THE COMMONWEALTH OTHER THAN OWNER AND ADMINISTRATOR.

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IN WITNESS WHEREOF, Owner and Operator each has caused this Agreement to be duly executed as of the day and year first above written.

PUERTO RICO ELECTRIC POWER AUTHORITY

By: _____

Name: _____

Title: _____

[OPERATOR]

By: _____

Name: _____

Title: _____

Annex I¹⁵
Scope of Services

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

I. T&D System Operation Services.

A. General. Operator shall be responsible for all electric transmission, distribution and load serving activities for the safe and reliable operation and maintenance of the T&D System, including: (1) expansions and replacements to meet the Contract Standards and Owner's then current Integrated Resource Plan; (2) management and performance of construction of improvements thereto, including compliance with approved FEMA scope of work for projects that are eligible for Federal Funding and required maintenance; (3) delivery of Power and Energy to customers, including the implementation of the activities set forth in II.A and B of this Annex I (*Scope of Services*); (4) billing and collections implementation and optimization; (5) maintenance and improvement of public lighting system; (6) maintenance of fiber optic cable structure infrastructure, as set forth in lease agreement between Owner and PREPA Networks; and (7) compliance with interconnection of renewables in accordance with Applicable Law.

B. Day-to-Day Operation. Operator shall be responsible for the day-to-day operation of the T&D System, including, without limitation: (1) satisfying customer concerns; (2) physical operation of the T&D System; (3) maintaining T&D System configuration; (4) maintenance of an Open Access Same-Time Information System; (5) optimization of reliability performance goals, cost of generation, cost and impact of planned maintenance and use of load shedding; (6) producing, reviewing and maintaining all operating logs and maintenance records to meet regulatory and contractual requirements; (7) managing control center operations, including generation scheduling and economic T&D System dispatch; and (8) all human resources functions, including training employees.

C. Engineering Activities. Operator shall be responsible for all engineering activities related to the operation of the T&D System, including: (1) analyses related to, and maintenance of records and standards for design and engineering, design standards, construction standards, system mapping and related information, system performance, reliability, root cause analysis, equipment ratings, customer contact and needs assessment; administration of customer contribution in aid of construction; (2) managing an effective environmental health and safety program; and (3) maintenance of environmental, health, safety, regulatory and other compliance and the documentation thereof.

D. Maintenance of Technical Documentation. Operator shall be responsible for maintenance of revisions to all T&D System drawings, specifications, construction manuals, equipment diagrams and other technical documentation, including: (1) management of T&D

¹⁵ Note to Qualified Respondent: Annex I (*Scope of Services*) is an indicative outline that remains subject to ongoing review.

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System interconnection permit applications and processing thereof (including negotiation and administration of generation interconnection agreements); and (2) preparing capital project close-out reports.

E. Energy Efficiency Activities. Operator shall be responsible for promoting, administering, planning, developing and implementing energy efficiency, demand response, load management and renewable energy programs and policies for the T&D System as required under applicable law, regulation or the Integrated Resource Plan, including:

1. research and demonstration projects for the T&D System and Owner's customers, coordination with third parties or other resources necessary or desirable to develop and implement such programs and responding to customer inquiries with respect to such programs or service; and

2. implementing the customer energy efficiency programs and customer-sited renewable energy programs, as well as any other customer incentive programs that are intended to promote (a) customer adoption of energy and/or capacity saving measures; and/or (b) customer-sited green and/or alternative generation or storage technologies (the "Energy Efficiency Programs") pursuant thereto.

F. Legal Services. Operator shall be responsible for day-to-day legal responsibilities relating to the O&M Services, in coordination with Owner in accordance with processes set forth in this Annex I (*Scope of Services*).

G. Other. Operator shall be responsible for other activities necessary, appropriate or advisable, including research and development, to safely, reliably and efficiently operate and maintain the T&D System in accordance with the Contract Standards, including cooperation, regarding Operator's performance under the Agreement, with third parties providing services to Owner with respect to Owner's provision of electric service.

II. Asset Management and Maintenance Services.

A. General. Operator shall be responsible for all maintenance, repairs and replacement of the machinery, equipment, structures, improvements and all other assets of the T&D System in accordance with the Contract Standards, including the following: (1) development and implementation of asset management strategies and risk optimization for combined technical performance, life cycle cost, customer satisfaction and regulatory compliance; (2) real estate management, easements, leases and agreements, pole attachments (including billing and collection for pole attachment fees, as well as maintaining a complete inventory of type and location of each attachment and plans for revenue optimization), joint use agreements and telecommunications for the provision of electric service, including cybersecurity; (3) meter maintenance or replacement; (4) fleet management, including evaluation of potential outsourcing; (5) materials and services procurement and inventory management; (6) T&D System security to protect the system from vandalism, terrorism or other acts; (7) emergency preparedness and planning; (8) warehousing; and (9) maintenance of the PREPA fiber optic infrastructure.

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B. Inventory Control. Operator shall, consistent with the Contract Standards, the Agreement and this Annex I (*Scope of Services*): (1) maintain an inventory of equipment, spare parts, materials and supplies and shall maintain and document an inventory control program; (2) comply with the inventory policy provided in this Annex I (*Scope of Services*); (3) purchase, maintain and store inventory in a manner also consistent with the system policies and procedures adopted from time to time by Operator in accordance with Prudent Utility Practice and provided in writing to Owner and (4) complete, on an agreed-upon cycle count basis, a physical inventory of the equipment, spare parts, materials and supplies and reconcile the same with the inventory assets carried on the balance sheet and provide the information to Owner.

C. Fleet Management; Refueling. Operator shall, consistent with the Contract Standards, the Agreement and this Annex I (*Scope of Services*), provide fleet management and vehicle refueling operations, including scheduling of vehicle replacements, specification of technical requirements, compliance with Commonwealth and federal alternative fuel environmental compliance programs, performance of maintenance activities, maintenance of vehicle signage and other similar functions.

D. Necessary Equipment and Systems. Operator shall, consistent with the Contract Standards, the Agreement and this Annex I (*Scope of Services*), determine, acquire, deploy and maintain tools, equipment and information systems necessary to perform all O&M Services under the Agreement.

E. Information Technology. Operator shall be responsible for providing information technology systems maintenance support and improvements in accordance with strategic goals of achieving interoperability and “near plug and play” flexibility of open design and standard-based data architecture and in compliance with requirements for technical architecture, data modeling and software development life cycle; and safeguarding the system software and data.

F. Public Lighting. Operator shall be responsible for operating and maintaining the public lighting system, as well as pursuing the installation of highly efficient LED technology.

III. Continuous Improvement Services. Operator shall be responsible for continuous improvement of the T&D System, including the implementation of the following activities: (i) development and administration of research and development, the goal of which is to increase operational efficiency and effectiveness and improve maintenance practices; (ii) establishing and conducting a continuous improvement program designed to enhance Operator’s performance, operational efficiency and the cost effective delivery of services to customers; and (iii) monitoring industry advancements and technological changes in the operation, maintenance, repair and expansion of transmission and distribution systems, including customer care and related services, by electric utilities.

IV. Government, Community and Media Relations.

A. General. Operator shall be responsible for (i) conducting government, community and media relations with respect to the management, operation and maintenance of the T&D System in accordance with such policies and procedures as Operator may from time to time adopt

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in its sole discretion; and (ii) staffing public events and presenting workshops, seminars and similar activities during normal business hours, evenings, weekends and holidays.

B. Communications. It is the Parties' intention that to enable Operator to effectively communicate with the customers and government officials regarding T&D System matters, Operator shall have direct responsibility for media and other public communications on all utility-related matters, including communications with public officials and local municipalities and counties regarding storm preparation, management, coordination and response, customer communications, programs and complaints and related matters. Accordingly, Operator shall have full authority to determine all communications policies and procedures relating to its provision of O&M Services under the Agreement.

C. Government Relations. Operator shall be responsible for coordinating, conducting and formulating communications with municipal, local, state and federal representatives and organizations relating to operation and maintenance of the T&D System and provision of utility-related services by Operator, in accordance with such policies and procedures as Operator may from time to time adopt in its sole and absolute discretion.

D. Community and Media Relations. Operator shall be responsible for the performance of customer service functions related to the provision of electric service, except as otherwise provided in the Agreement or herein, including the following: (i) achieving a high level of customer satisfaction; (ii) maintaining customer contact; (iii) marketing and sales for retail system expansion, retail customer retention and customer care and service programs; and (iv) performing other activities necessary, appropriate or advisable to implement customer service programs in accordance with E and F of this Annex I (*Scope of Services*), the Contract Standards or as Applicable Law may require.

E. Customer Satisfaction. Operator shall be responsible for achieving a high level of customer satisfaction by performing the following customer service functions at minimum:

1. determining the approach and methodology for measuring, monitoring and optimizing customer satisfaction;
2. monitoring customer satisfaction results; overseeing the performance of perception-based and transactional-based customer satisfaction surveys for other service providers; interpreting and communicating the results of customer surveys; and coordinating initiatives aimed at improving the product portfolio, service delivery mechanisms and overall customer satisfaction across the full spectrum of services provided, such as system operations and electronic transaction and self-help options, customer interactions and back-office functions.

F. Customer Contact. Operator shall be responsible for maintaining customer contact by performing the following customer service functions at minimum:

1. maintaining customer contact through call centers with toll free service numbers, customer offices, authorized payment centers;

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2. maintaining and overseeing a customer website and other electronic media, inbound and outbound customer communication systems;

3. management of customer loyalty and satisfaction programs, customer services field operations and customer care and institutional communications and responding to customer inquiries regarding services; and

4. marketing and sales for retail system expansion, retail customer retention and customer care and service programs, including all aspects of marketing planning and implementation activities, promotion and communications; market research; account relationship management; economic development; field sales; trade ally relations; and demand response, renewable and Energy Efficiency Programs.

V. Testing, Reports and Records. Operator shall be responsible for (i) preparation of a monthly operations report; (ii) producing and delivering to Administrator information as Administrator may reasonably request to determine Operator's performance under the Agreement and (iii) developing and maintaining a comprehensive document management program with records storage, retention and destruction guidelines and procedures, in accordance with applicable Commonwealth and federal guidelines and regulations.

VI. Finance and Accounting Services.

A. General. Operator shall be responsible for all finance, accounting, budgeting, longer-term financial forecasting and treasury operations related to the T&D System, including the implementation of the activities set forth in A and F of this Annex I (*Scope of Services*).

B. Accounting and Reporting. Operator shall be responsible for accounting and reporting operations including the following activities:

1. maintenance of a complete and separate set of financial and accounting records relating to the O&M Services, in accordance with GAAP, Governmental Accounting Standards Board financial requirements and other applicable standards;

2. maintenance of a general ledger and all subledgers in accordance with PREB regulation and Applicable Law regarding accounts necessary to support the preparation of monthly financial statements and management reports for ServCo;

3. on a monthly basis, provision of (i) a balance sheet, an income statement (including a revenue analysis) and a direct method cash flow statement for ServCo, and (ii) budget to actuals analyses to explain the month's results with explanations; in each case not later than five (5) Business Day following Operator's receipt thereof from Owner until the expiration or earlier termination of the Front-End Transition Period;

4. year-end and interim unaudited financial statements for ServCo within forty-five (45) days after the end of each fiscal year;

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5. analysis of all accounts, providing variance analysis of and explanations for both actual period-to-period variances (on a monthly basis) and budget versus actual variances (on a monthly basis) to the extent requested by Administrator;

6. (i) performance of all accounting and reporting functions necessary to support the T&D System operations, (ii) performance of federal and commonwealth tax and CILT, subsidies and public lighting reporting functions, provision of information to Owner in connection with Owner's contesting of CILT-related assessments and (iii) the maintenance of the fixed assets records in accordance with PREB and other applicable regulatory or accounting requirements;

7. separate accounting and reporting that may be required from time to time for any federal and Commonwealth grants received by Owner;

8. billing, tracking, reporting, managing and collecting of all attachment fees, rents and other "non-product" revenues due to Owner associated with services provided or related to lighting, telecommunications and other equipment attached to or located on the T&D System Sites;

9. provision of accounting memorandum documenting procedures used in creating journal entries related to the T&D System;

10. accounting for and documenting the costs and revenues resulting from Operator's performance under the Agreement in accordance with GAAP, Governmental Accounting Standards Board financial requirements and any other applicable accounting requirements as determined necessary by Administrator; and

11. reconciliations (including bank account reconciliations), which will be performed monthly, quarterly or annually based on the risk associated with the account being reconciled, in each case (i) if the month in which the reconciliation is being performed is a quarter-ending month (other than December), by the end of the subsequent month or (ii) if the month in which the reconciliation is being performed is a non-quarter ending month or December, within forty-five (45) days after the end of such month; provided that such reconciliations shall be provided within the time required by the Municipal Securities Rulemaking Board (MSRB) disclosure policies.

C. Budgeting and Financial Forecasting. Operator shall be responsible for budgeting and longer-term financial forecasting operations including, without limitation, the following activities:

1. preparing and monthly monitoring of budgets necessary for both capital and operating expenses for the services provided by Operator under the Agreement;

2. analyzing monthly and year-to-date budget to actual variances, and explanations thereof and formulating financial projections based on the variance analyses;

3. analyzing revenue and expenditure projections for the annual or multi-year period beyond the period of actual results; and

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4. preparing and delivering sales, revenues and costs budget input data for the annual budgeting processes, the Integrated Resource Plan and Owner's other long-range financial planning processes.

D. Auditing. Operator shall be responsible for auditing operations, including the following activities:

1. auditing of rents and other revenues due to Owner associated with services provided on or related to lighting, telecommunications and other equipment attached to or located on the T&D System Sites;

2. internal audit function to perform annual risk assessment related to the T&D System for the purpose of developing the appropriate risk based audit universe and associated annual audit plan as well as performing financial, regulatory and third-party contract compliance and operational audits and reviews, including review of the associated internal controls, based on the results of the annual risk assessment and associated annual audit plan;

3. provision of all necessary information and assistance to Owner's external auditors in connection with their audit of the financial statements and underlying financial records maintained by Operator related to the services provided under the Agreement; and

4. provision of copies of, and reasonable access to, the risk based audit universe and associated annual audit plan referenced in VI above; and the right of Owner to inspect, during normal business hours and upon reasonable prior notice, internal audit reports and recommendations of ServCo and management responses thereto; it being agreed, however, that the foregoing information shall be deemed to be Confidential Information and shall therefore not be used by Owner except with respect to any fraudulent conduct or willful misconduct identified in such reports and recommendations.

E. Treasury. Operator shall maintain customary treasury and cash management operations in accordance with the Contract Standards and be responsible for treasury operations, including the following activities:

1. timely and accurate collection of customer remittances and other "non-product" revenue on Owner's behalf through lockbox operations, customer centers and other sources;

2. monthly or as requested cash flow projections (including daily, weekly and monthly forecasts of customer cash receipts); and

3. monthly reconciliations of Owner bank accounts that are managed on behalf of Owner by Operator for the provision of O&M Services.

F. Other. any other accounting and finance related activities necessary or advisable to support the operations of a stand-alone electric transmission and distribution business as Owner may request from time to time, including:

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1. provision of information and data (both financial and operational) to support Owner's financing activities and the administration by Owner of its and its Affiliates' debt service and required disclosure requirements, including requirements under the Servicing Contract;

2. provision of assistance (including provision of information and data (both financial and operational)) to Owner and Administrator in connection with Owner's preparation of reports and other documents to satisfy Owner's reporting requirements including: quarterly and annual (year-end) financial reporting; monthly and annual federal agency reporting requirements; PREB reporting requirements, Budget Reconciliation Act of 2017 and other federal and Commonwealth stimulus or funding program reporting requirements; Department of Energy reporting requirements; filings relating to O&M Services in compliance with Applicable Law; and reporting obligations under PROMESA, including in connection with the preparation and approval of fiscal plans and budgets; and

3. record keeping in compliance with Applicable Law.

VII. Emergency Response.

A. Curtailments and Shutdowns. 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, with due consideration of its responsibility for safety and system reliability, as promptly as possible advise Owner as to the nature, reason and probable duration thereof and the expected effect thereof on the operation of the T&D System. Such notices shall be given as provided in this Annex I (*Scope of Services*). Any announcement concerning such events made to the public or the media shall be made by Operator in accordance with the provisions of IV of this Annex I (*Scope of Services*).

B. Maintenance of Emergency Assistance Contracts. Operator shall maintain of mutual aid agreements and coordinate with other electric utilities, in each case in accordance with the Contract Standards, to support the workforce in restoration response.

C. Implementation of Emergency Response and Reporting. To the extent required by the Contract Standards, Operator will be responsible for developing (in consultation with Administrator) and implementing business continuity, disaster recovery and emergency response plans, and all necessary emergency response, reporting and communication functions relating to the T&D System and other assets, and coordinating such plans with the plans of Owner and Administrator's other service providers for business continuity and disaster recovery, including, without limitation, response, reporting and public communications relating to storms, other unusual weather occurrences and other emergencies as follows, including the following activities:

1. (i) timely reporting to such Governmental Bodies as may be necessary, appropriate or advisable of such emergency conditions including regular updates as to the courses of action taken in response thereto or in anticipation thereof and progress made in responding to such emergency conditions and (ii) periodic reporting to Administrator of such emergency conditions as necessary or appropriate to permit Owner to exercise proper oversight of Operator's response to emergency conditions;

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

VIII. Maintenance.

A. Generally. Operator shall perform all normal and ordinary maintenance of the machinery, equipment, structures, improvements and all other property constituting the T&D System, keep the T&D System in optimal operational condition and repair, in a neat and orderly condition and in accordance with the Contract Standards. Operator shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, consumables and services that are necessary for the normal and ordinary maintenance of the T&D System and conduct predictive, preventive and corrective maintenance of the T&D System as required by the Contract Standards.

B. Maintenance Logs. Operator shall keep maintenance logs in accordance with the Contract Standards.

C. Safety and Security. Operator shall maintain the T&D System with due regard for public health and safety and at a safe level at least consistent with Contract Standards, including, but not limited to, the following:

1. taking reasonable precautions in the performance of the O&M Services for the health and safety of all persons working at the T&D System, to prevent damage, injury or loss to the T&D System and to other T&D System property;

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

IX. Customer Service.

A. Generally. Operator shall provide customer service for the T&D System in compliance with the requirements of IX of this Annex I (*Scope of Services*). Operator shall update and implement the customer service manual which shall be consistent with the Contract Standards, as well as this Annex I (*Scope of Services*) and Annex XI (*Performance Metrics*) within one hundred eighty (180) days of the Service Commencement Date and shall deliver a certificate to Administrator to the effect that such customer service manual has been so updated. The manual shall be revised as necessary or appropriate from time to time.

B. Customer Service Requirements. Operator shall perform the customer services in accordance with, and the customer service manual shall address, the following minimum requirements, in accordance with the Contract Standards:

1. Operator shall maintain a staff dedicated to assisting customers. The customer service staff shall be trained to answer questions related to the T&D System and customer bills.
2. Operator shall establish and maintain toll-free customer service hotlines to allow customers to ask questions, raise issues and lodge complaints.
3. Operator shall establish and maintain a twenty-four (24) hour per day toll-free hotline, with adequate capacity and personnel, that will be answered at all times by a Person and not a voicemail or other automated recorder, for the receipt of reports of emergencies relating to the T&D System.
4. Operator shall establish and maintain a T&D System website that is capable of receiving customer inquiries and complaints.
5. Operator shall respond to customer questions and complaints (however received).

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6. Operator shall respond to emergencies in the T&D System, including temporary reductions, curtailments or shut downs of deliveries of Power and Energy for any reason, including due to a Storm Event.

C. Reports. Operator shall submit as part of its reports delivered pursuant to V of this Annex I (*Scope of Services*), and the information required with respect to the public outreach education campaign.

D. Public Outreach and Education Campaign. Operator shall develop and implement, within one hundred and eighty (180) days of the Service Commencement Date, a public outreach and education campaign designed to inform customers generally about the scope, nature and extent of the T&D System operations and shall provide a certificate to Administrator as to the existence and implementation of such campaign. The public outreach and education shall comply with the requirements set forth in [●].

E. Customer Service Surveys. No later than three (3) months following the Service Commencement Date, Owner will engage the services of an independent, qualified professional survey firm selected mutually by Owner and Operator to develop and implement a customer satisfaction survey. If the Parties are not able to agree on a survey firm, either Party may refer to the matter to an Independent Expert. The initial customer satisfaction survey shall be used to develop an overall customer satisfaction rating, which shall provide the basis for evaluating and measuring Operator's performance of its customer service obligations. Operator is required to perform its customer service obligations in a manner that improves the overall customer satisfaction rating determined each Contract Year through subsequent annual customer service satisfaction surveys conducted by the independent, qualified professional survey firm.

X. Meter-Related Services.

A. Generally. Operator shall perform all residential and commercial customer meter reading, installation, replacement and maintenance functions, including checking for open meter bypasses within the T&D System, in accordance with the requirements of IX of this Annex I (*Scope of Services*). Operator shall, within one hundred eighty (180) days of the Service Commencement Date, develop a quality assurance program for meter functions as part of the manuals and related computer programs developed by Operator in accordance with Contract Standards which shall (i) provide a detailed description of the means and methods of properly operating and managing the applicable managed asset and all sampling, testing and measurement procedures; (ii) document predictive, preventive and corrective maintenance procedures, practices and schedules for the managed assets; (iii) be sufficiently detailed to permit such plants to be operated and maintained by a third-party reasonably experienced in water and wastewater service and treatment; and (iv) be reviewed and approved by any relevant Governmental Body, in accordance with Applicable Law and shall provide a certificate to Administrator as to the existence of such program. Such program shall also include the planned meter replacement program. The quality assurance program shall be revised as necessary from time to time.

B. Meter-Related Requirements. Operator shall perform the meter-related services in accordance with, and the quality assurance program shall address, the following minimum requirements:

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

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C. Repair and Replacement of Meters. Operator shall be responsible for all repairs, replacements, upgrades and maintenance of the meters, transmitters and appurtenant wiring, computer system and software necessary to ensure the proper operation and accurate reporting of the meters, transmitters, computer system and remote reading equipment during the Term, following the Service Commencement Date.

XI. Generation-Related Services.

A. Generally. Commencing [Month] [Day], [Year], Operator or its designated Affiliate shall have the right, exercisable upon written notice to Owner not later than ten (10) Business Days following the Effective Date, to provide Owner, from [Month] [Day], [Year] to [Month] [Day], [Year], with certain power supply management, fuel procurement and related services.

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

C. Transfer and Assumption of Functions and Responsibilities. It is the Parties' understanding and agreement that as soon as practicable following the Service Commencement Date (but in any event not later than [Month] [Day], [Year]), Owner shall transfer to Operator or its designated Affiliates, and Operator or such Affiliates shall assume, the functions and responsibilities of the department that is responsible for planning and managing Owner's power supply as of the date of the Agreement, including its electric planning function, which transfer and assumption may be effected in phases.

XII. Act 17. Operator shall engage Subcontractors in connection with the services and operations contemplated under Act 17, including services and operations related to microgrids, distributed generation, renewable energy sources, net metering and energy cooperatives, in accordance with the terms of the Agreement.

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Annex II
Front-End Transition Plan

[•]

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Annex III
Back-End Transition Plan

[•]

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Annex IV

Operator Employment Requirements

[•]

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Annex V

Owner-Acquired Governmental Approvals

[•]

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Annex VI

Front-End Transition Hourly Wages

[•]

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Annex VII

Contracts

[•]

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Annex VIII
Federal Funding Provisions

[•]

Annex IX

Fixed Fee¹⁶

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

¹⁶ Note to Qualified Respondents: Please indicate proposed amounts.

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Annex X

Calculation of Incentive Fee

[•]

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Annex XI
Performance Metrics

[•]

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Annex XII

Pass-Through Expenditures

[•]

Annex XIII

Insurance Specifications¹⁷

- I. Required Insurance for the T&D System. Operator shall maintain, on Owner's behalf, the insurance coverage for the Term as shall be set forth in the Agreement, including:
 - A. property and casualty insurance for the T&D System (which shall, among other things, be at least of the type and extent required by the T&D System's receipt of Federal Funding);
 - B. commercial general liability insurance;
 - C. excess liability insurance;
 - D. business interruption insurance;
 - E. cyber insurance; and
 - F. pollution legal liability insurance.

- II. Required Insurance for Operator. In addition to and separate from the foregoing, Operator shall maintain, on its own behalf, the insurance coverage for the Term as shall be set forth in the Agreement, including:
 - A. worker's compensation insurance, chauffer's insurance, employer's liability insurance and all other employee required insurance; and
 - B. fiduciary liability insurance.

- III. Additional Named Insureds.
 - A. [•]

¹⁷ Note to Qualified Respondent: Annex I (*Insurance Specifications*) is an indicative outline that remains subject to ongoing review.

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Annex XIV
Operator Termination Fee

[●]¹⁸

¹⁸ **Note to Qualified Respondents: Please indicate a proposed amount or formula.**

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Annex XV
Operator Marks

[•]

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Annex XVI

Owner Marks

[•]

Exhibit A

Form of Federal Funding Certifications

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

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS**

INSTRUCTIONS FOR CERTIFICATION

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

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

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

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

OPERATOR
Company Name

Contract Number

Name of Operator's
Authorized Official

Title

Signature of Operator's
Authorized Official

Date

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

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

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

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

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

OPERATOR Name

Signature of Operator's
Authorized Official

Name and Title of Operator's
Authorized Official

Date

FEDERAL FUNDING CONDITIONS

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

1. Section 3 Covered Assistance

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

2. Section 3 Clause

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit B

Form of Commonwealth Certifications

Operator, for itself and Parent Company (if Operator is a partnership under the Puerto Rico Internal Revenue Code) represents that as of the Effective Date (i) neither it nor Parent Company has any outstanding debts for unemployment insurance, temporary disability (workmen's compensation), or chauffeur's social security with the Department of Labor and Human Resources of the Commonwealth, income taxes with the Department of Treasury of the Commonwealth or real or personal property taxes with the Municipal Revenues Collection Center ("CRIM") or (ii) it or Parent Company have a payment plan in place with respect to any outstanding debt for the foregoing items and have complied therewith.

Operator shall obtain and deliver to Owner, in each case dated no earlier than sixty (60) days prior to the Effective Date, the following:

- (i) a copy of Operator's Merchant's Registration Certificate (Form SC 2918);
- (ii) a certification issued by the Puerto Rico Treasury Department indicating that Operator and Parent Company (if Operator is a Partnership under the Puerto Rico Internal Revenue Code) do not owe Puerto Rico sales and use taxes to the Commonwealth (Form SC 2942);
- (iii) a Puerto Rico Sales and Use Tax Filing Certificate issued by the Puerto Rico Treasury Department reflecting that Operator has filed its Puerto Rico Sales and Use Tax returns for the last sixty (60) tax periods (Form SC 2927);
- (iv) an all concepts debt certification issued by CRIM reflecting that Operator does not owe any taxes to CRIM with respect to real or personal property; and
- (v) a certification issued by the Puerto Rico Child Support Administration for Operator reflecting that Operator is in compliance with the withholdings required to be made by employers under Applicable Law.

Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement dated _____.

By: _____
Name:
Title:

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Exhibit C
Form of Tax Opinion

[•]

Exhibit D

Form of Anti-Corruption Certifications

We certify under penalty of nullity that no public servant of Owner will derive or obtain any benefit or profit of any kind from the contractual relationship which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the Agreement. The only consideration to be received in exchange for the delivery of goods or for the O&M Services provided is the agreed-upon price that has been negotiated with Owner or its Representatives. The total amount shown on this invoice is true and correct. The O&M Services have been rendered, and no payment has been received.

Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement dated _____.

By: _____

Name:

Title:

Exhibit E

Form of Sworn Statement

SWORN STATEMENT

ACT 2-2018

I, _____, of legal age, single/married, _____ and resident of the _____, hereby solemnly swear:

1. That my personal status is the one stated above.
2. That I hold the position of _____ of _____ (hereinafter referred to as the “Company”) organized as a _____ under the laws of _____ with the Federal Identification No. _____.
3. That I am authorized to represent the Company and all of its partners and owners for purposes of this affidavit.
4. That neither the Company nor any of its presidents, vice-presidents, directors, managers, executive directors or members of its Board of Directors, or persons that fulfil similar tasks, have been convicted of, nor have they pleaded guilty to, any of the crimes in Article 6.8 of Puerto Rico Act No. 8-2017, as amended, known as the “Act for the Management and Transformation of the Human Resources of the Government of Puerto Rico” or for any of the crimes listed in Puerto Rico Act No. 2-2018, known as the “Anti-Corruption Code for a New Puerto Rico”.
5. No commissions or bonuses have been paid, in cash or in kind, and there is not commitment for the future payment of any such commissions or bonuses to any public official, employee or any former public official that participated in the negotiations and transactions contemplated by the Company’s agreement with _____ while working for the Government of Puerto Rico.
6. That everything stated above is true to the best of my knowledge, information and belief and thus, to make it public I sign this declaration in _____, this ____th day of _____, 20__.

By: _____
Name:
Title:

Affidavit No. _____

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

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Exhibit F
Form of Guarantee

[•]

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Exhibit G
Form of Servicing Contract

[•]



GOVERNMENT OF PUERTO RICO
Puerto Rico Public-Private Partnerships Authority



The RFP is hereby amended to insert after the new Annex D the following new Annex E:

ANNEX E: FINANCING TERM SHEET

**TERM SHEET FOR
PROSPECTIVE OPERATOR FINANCING PROPOSAL**

*This term sheet (the “**Financing Term Sheet**”) is provided for discussion purposes only and is not a commitment by the Puerto Rico Electric Power Authority (“**PREPA**”) or any affiliate to enter into any financing transaction contemplated thereby (the “**Financing Transaction**”). The terms and conditions below summarize the material terms and conditions that the Puerto Rico Public-Private Partnerships Authority (the “**Authority**”) and PREPA believe should be included in any financing provided by the Selected Proponent in connection with the contract (the “**O&M 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 further discussion and negotiation. Capitalized terms not defined herein shall have the meaning set forth in the RFP.*

This Financing Term Sheet is subject to the terms and conditions set forth in the RFP, and neither this Financing Term Sheet nor any of its contents may be used for any other purpose without the prior written consent of the Authority. No legal obligation or liability shall arise between the parties with respect to the subject matter hereof unless and until the definitive documentation regarding the Financing Transaction 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 each party, and then only in accordance with the terms and conditions thereof. The terms of each of the O&M Contract and the Financing Transaction are intended to meet the requirements of the safe harbor set forth in Revenue Procedure 2017-13 issued by the U.S. Internal Revenue Service, and thereby preserve the tax exempt status of certain of PREPAs indebtedness.

1. Borrower	PREPA, as legal owner of the electric power transmission and distribution system and related facilities (the “ T&D System ”), and any successor thereof.
2. Facility	Multi-draw senior secured term loan facility (the “ Facility ”) for a principal amount of not less than \$[•] in the aggregate, may be comprised of two or three separate facilities: <ol style="list-style-type: none"> 1. Tranche A – in the aggregate maximum amount not exceeding \$[•]; 2. Tranche B – in the aggregate maximum amount not exceeding \$[•]; and 3. Tranche C – in the aggregate maximum amount not exceeding \$[•].
3. Security and Ranking	<p>Loans disbursed under <u>Tranche A</u>, to the extent permitted by applicable law, will be secured by a pledge of the funds committed by any U.S. federal agency for the restoration of the T&D System.¹</p> <p>Loans disbursed under <u>Tranche B</u> will be secured by a contractual first lien on the net revenues of PREPA (i.e., the excess of all moneys received by PREPA in connection with its ownership of the T&D system over current expenses during a particular period); <u>provided</u> that, for the avoidance of doubt, the lien shall not include any money or other property received or to be received on account of the transition charge imposed to support legacy debt or pension obligations established under or in connection with PREPA’s Title III Plan or any other money or other property that are the result of any other dedicated charges in connection therewith.</p> <p>Loans disbursed under <u>Tranche C</u> will be secured by an Issuer Funding Charge (as defined in the “Securitization Term Sheet” relating to PREPA’s Title III Plan, as may be amended and finalized in definitive documentation for PREPA’s Title III Plan).²</p>
4. Draws	Minimum draws of not less than US\$5M (or, if less, in the unused amount of the multi-draw term loan commitment).
5. Term	Minimum five years from closing date (or such greater term to maturity as specified in the bidder’s proposal).

¹ Form and structure of security interest subject to further discussions. For the avoidance of doubt, the federal government will not be a party to the Facility.

² The Securitization Term Sheet, attached to PREPA’s Recovery Plan Term Sheet as Annex A, is subject to approval by the Title III Court.

6. Availability Period	Draws can be made on the Facility at any time and from time to time, subject to certain conditions precedent, for a period commencing on the closing date and terminating [●] months from the closing date.
7. Use of Proceeds from Tranche A	Proceeds from any disbursement under <u>Tranche A</u> may only be used to fund capital expenditures related to the T&D System solely to the extent such capital expenditures qualify for coverage or reimbursement from funds anticipated from any agency of the U.S. federal government.
8. Use of Proceeds from Tranche B and Tranche C	Proceeds from any disbursement under <u>Tranche B</u> and <u>Tranche C</u> may only be used to fund (i) specified capital expenditures related to the T&D System, (ii) any other capital requirements permitted by the terms of the “Securitization Term Sheet” relating to PREPA’s Title III Plan and (iii) fees and expenses under the Facility, in each case included in the budget or long-term plan approved by the operator (and, to the extent required, any other governmental authority) for the T&D System.
9. Interest Rate³	For Tranche A loans, [●]% per annum. For Tranche B loans, [●]% per annum. For Tranche C loans, [●] % per annum.
10. Amortization	None, bullet repayment on maturity of all outstanding amounts. Tranches may be structured with a “turbo” feature providing for mandatory prepayment from available pledged revenues, such as may be available to secure Tranche C loans financed by Issuer Funding Charges.
11. Optional Prepayment	Upon notice, amounts outstanding under the Facility may be voluntarily repaid by the Borrower at any time and from time to time without premium or penalty.
12. Mandatory Prepayment for Tranche A	Loans disbursed under Tranche A shall be repaid prior to maturity by PREPA promptly following the receipt of funds previously committed by the relevant U.S. federal government agency related to the purpose of which such loans were disbursed.
13. Additional Prepayments for Tranche B and Tranche C	Additional customary prepayment events for a facility of similar nature and duration, plus: <ul style="list-style-type: none"> (i) Mandatory, upon early termination of O&M Contract; and (ii) Optional, at the Borrower’s sole discretion, from proceeds of incurrence of other financial debt by PREPA other than working capital and other financial indebtedness to be agreed and permitted by the terms of the securitization bonds issued as part of PREPA’s Title III Plan. <p>For any early termination of the O&M Contract due to an Operator default, PREPA will have [●] years from the effective date of such termination to repay the debt under the Facility, which will continue to accrue interest at the contract rate until payment is made; <u>provided</u> that PREPA will have set-off rights for amounts owed by Operator under the O&M Contract.</p> <p>For any early termination of the O&M Contract due to an Owner default, PREPA will have [●] years (which shall be shorter than the period provided for an Operator default) from the effective date of such termination to repay the debt under the Facility, which will continue to accrue interest at the contract rate until payment is made.</p>
14. Conditions Precedent to Closing	Customary closing conditions for a facility of similar nature and duration, plus: <ul style="list-style-type: none"> (i) the entry into the O&M Contract; (ii) the Title III Plan having become effective after the issuance of a final, confirmation order by the Title III Court approving, among other things, the O&M Contract, the

³ For purposes of complying with QMA provisions, interest rate needs to be a market rate of return and comparable to similar instruments.

	<p>terms and conditions of the Facility and the validity of the security interest granted under the Facility;</p> <p>(iii) the issuance of securitization bonds under PREPA’s Restructuring Support Agreement;</p> <p>(iv) the delivery of a legal opinion from qualified tax counsel that the Facility does not affect QMA-compliance of the O&M Contract;</p> <p>(v) the receipt of confirmation that the net revenues from the T&D System are projected to be sufficient to cover all costs associated with Tranche B and Tranche C, including debt service; and</p> <p>(vi) the receipt of confirmation from PREPA that the incurrence of debt under the Facility is in compliance with any requirement under the securitization bonds issued in connection with PREPA’s Title III Plan.</p>
15. Specific Conditions Precedent to Draws under Tranche A	<p>Customary conditions precedents for the disbursement of funds under similar facilities, plus:</p> <p>(i) evidence that funds anticipated to be received from any agency of the U.S. federal government have been validly committed by such agency; and</p> <p>(ii) the designated recipient of the funds has agreed, to the extent permitted by applicable law, to turn over (and if permissible, pledge) such funds to the repayment of the loans incurred under Tranche A.</p>
16. Reps and Warranties	<p>Customary reps and warranties for a facility of similar nature and duration, including specific reps and warranties regarding approvals from all relevant governmental authorities under applicable law (including the FOMB) and compliance with the then-applicable PREPA Fiscal Plan.⁴</p>
17. Covenants	<p>Customary covenants for a facility of similar nature and duration, plus any covenants required to comply with the “Securitization Term Sheet” relating to PREPA’s Title III Plan.</p>
18. Events of Default	<p>Customary events of default for a facility of similar nature and duration (with thresholds and grace periods to be agreed in the definitive Facility documentation).</p>
19. Governing Law	<p>Puerto Rico.</p>
20. Jurisdiction	<p>Commonwealth Court of First Instance, San Juan Part.</p>
21. Fees	<p>No upfront or arranging fees. Commitment fee of [●]% of any undrawn amount.</p>
22. Assignment	<p>The Facility may be assigned by the lender in whole or in part only with the prior consent of PREPA and/or the Government of Puerto Rico (which consent shall not be unreasonably delayed or withheld).</p>
23. Other Provisions	<p>Customary provisions relating to indemnity, reimbursement of certain costs and expenses, among other provisions reasonably satisfactory to PREPA and the Operator.</p>

⁴ The “Fiscal Plan” refers to the Puerto Rico Electric Power Authority Fiscal Plan, as certified by the FOMB on August 1, 2018, as it may be amended, supplemented or modified from time to time.



GOVERNMENT OF PUERTO RICO
Puerto Rico Public-Private Partnerships Authority



[END OF ADDENDUM]