
POWER PURCHASE AND OPERATING AGREEMENT

BY AND BETWEEN

ENERGIZA LLC

AND

THE PUERTO RICO ELECTRIC POWER AUTHORITY

AND

**SAN JUAN GENERATION ASSETS LLC AND CRATOS ENERGY HOLDINGS LLC
(BOTH SOLELY FOR THE PURPOSES OF SECTION 21.4).**

DATED AS OF DECEMBER 20, 2024



**Puerto Rico
Electric Power
Authority**

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TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 - DEFINITIONS & INTERPRETATIONS	12
1.1 Definitions.....	12
1.2 Interpretation.....	38
ARTICLE 2 - TERM, EFFECTIVENESS AND PERFORMANCE SECURITY.....	40
2.1 Signing Conditions.....	40
2.2 Initial Term	40
2.3 Extension.....	40
2.4 Initial Effectiveness & Closing Date	40
2.5 Performance Security from Seller.....	41
ARTICLE 3 - PRE-OPERATION PERIOD.....	43
3.1 Seller's Development Obligations	43
3.2 PREPA Development Obligations.....	43
3.3 Extensions of Time	43
3.4 Guaranteed Performance Liquidated Damages	44
3.5 Delay Liquidated Damages.....	45
3.6 Independent Expert	45
3.7 Seller's Utilities	45
ARTICLE 4 - FACILITY DESIGN REQUIREMENTS.....	46
4.1 Proposed Design	46
4.2 Modifications	47
4.3 Pre-Synchronization Testing.....	48
4.4 Protective Relays & Control	49

4.5	Facility Upgrades	50
ARTICLE 5 - SYNCHRONIZATION		51
5.1	Scheduling Synchronization	51
5.2	Initial Synchronization.....	51
ARTICLE 6 - TESTING, CAPACITY RATINGS AND COMPLETION.....		52
6.1	General.....	52
6.2	Guaranteed Performance Testing.....	52
6.3	Emissions and Noise Testing.....	52
6.4	Conditions to Commercial Operation Date.....	53
6.5	Annual Performance Testing	53
6.6	Protocols & Procedures.....	54
6.7	Seller Interconnection Facilities	54
ARTICLE 7 - LONG-TERM FUEL SUPPLY.....		56
7.1	Adequate Fuel Supply.....	56
7.2	Take or Pay Fuel.....	56
7.3	Fuel Supply Interruption.....	56
7.4	Hydrogen Fuel Implementation	57
ARTICLE 8 - SALE AND PURCHASE OF ENERGY		58
8.1	General.....	58
8.2	Title & Risk of Loss.....	58
ARTICLE 9 - CONTROL AND OPERATION OF THE FACILITY		59
9.1	General.....	59
9.2	Scheduled Maintenance	59
9.3	Non-Scheduled Maintenance	60
9.4	Emergencies.....	61

9.5	Restoration of the Facility	61
9.6	Communication.....	61
9.7	Qualified Operator	62
9.8	Operation of the Facility	62
9.9	PREPA's Operation of Seller's Complex	62
9.10	Record Keeping	63
9.11	Network, Cyber and Physical Security	63
ARTICLE 10 - DISPATCH.....		65
10.1	Right to Dispatch	65
10.2	Pre-Operation Period	65
10.3	Operation Period.....	65
10.4	Dispatch Priority	66
ARTICLE 11 - REVENUE METERING		67
11.1	Meter Ownership & Maintenance.....	67
11.2	Meter Inspection	67
11.3	Meter Testing & Calibration.....	67
11.4	Meter Reading.....	68
11.5	Data	68
ARTICLE 12 - COMPENSATION, PAYMENT AND BILLINGS.....		69
12.1	General.....	69
12.2	Energy Payment.....	69
12.3	Capacity Payment	71
12.4	Start-up Payment.....	72
12.5	Ancillary Services Payment.....	72
12.6	Equivalent Availability Adjustment Factor	73

12.7	Invoicing	73
12.8	Green Credits	74
12.9	Improvement in Financial Condition.....	74
ARTICLE 13 - LIABILITY.....		76
13.1	General.....	76
13.2	Foreseeable Damages.....	76
13.3	Sole Remedy	76
13.4	No Liability.....	76
13.5	Obligation to Pay	77
13.6	Seller's Liability Cap.....	77
ARTICLE 14 - REPRESENTATIONS, WARRANTIES & COVENANTS.....		78
14.1	Seller Representations & Warranties.....	78
14.2	PREPA Representations & Warranties.....	79
14.3	Compliance with Laws and Operating Permits	80
14.4	Fines & Penalties	80
14.5	Confidentiality	81
14.6	Seller's Offices.....	81
14.7	Other Business	81
14.8	Reporting.....	81
14.9	Corporate Existence	82
14.10	Technology Improvements	82
14.11	Local Content.....	83
14.12	Local Goods and Services.....	84
14.13	Subcontracting	84
14.14	Administrative Expense Treatment.....	84

ARTICLE 15 - INDEMNIFICATION 85

 15.1 General 85

 15.2 Notice of Claim 85

 15.3 Claims Arising from Environmental Harm 85

ARTICLE 16 - FORCE MAJEURE 86

 16.1 General 86

 16.2 Instances of Force Majeure 86

 16.3 Notice 87

 16.4 Consequences 87

 16.5 Disputes 87

ARTICLE 17 - TERMINATION 88

 17.1 Termination Date 88

 17.2 Termination for Prolonged Force Majeure 88

 17.3 Termination Payment 89

 17.4 Transfer of Facility 90

 17.5 No Discharge of Obligations 92

ARTICLE 18 - DEFAULT 93

 18.1 Events of Seller's Default 93

 18.2 PREPA's Events of Default 94

 18.3 Certain Material Breaches 94

 18.4 Remedies & Disputes 95

 18.5 Clauses Required Under Section 10(a)(xv) of the PPP Act 95

ARTICLE 19 - TAXES 97

 19.1 Seller Requirements 97

 19.2 PREPA Requirements 97

ARTICLE 20 - INSURANCE	98
20.1 Seller Requirements	98
20.2 Requirements for Seller Policies.....	99
20.3 Contractor Requirements	99
20.4 Requirements for the Contractor Policies	101
20.5 Application of Proceeds.....	101
20.6 General Provision.....	101
ARTICLE 21 - ASSIGNMENT.....	103
21.1 Restriction on Assignment.....	103
21.2 PREPA's Right to Assign	103
21.3 Seller's Right to Assign	103
21.4 Restrictions on Equity Investment Transfers.....	105
21.5 Restrictions on Asset Transfers	106
ARTICLE 22 - NOTICES	108
22.1 General.....	108
22.2 Change of Address or Persons	109
ARTICLE 23 - MISCELLANEOUS PROVISIONS	110
23.1 Fees and Expenses	110
23.2 Exchange of Information	110
23.3 Cooperation.....	110
23.4 Amendments	110
23.5 Entire Agreement.....	110
23.6 System Operator's Role	111
23.7 Relationship of the Parties	111
23.8 Waivers	111

23.9	Severability	111
23.10	No Third-Party Beneficiaries	112
23.11	Remedies	112
23.12	Office of the Comptroller	112
23.13	Enhanced Transparency	112
23.14	Governing Law	113
23.16	Commonwealth Obligations	113
23.16	Practice of Engineering, Architecture and Other Professions in the Commonwealth	113
23.17	PREB Authority	113
23.18	Further Requirements	113
ARTICLE 24 - DISPUTE RESOLUTION		114
24.1	Scope	114
24.2	Commencement of the Dispute Resolution Procedure	114
24.3	Negotiation	114
24.4	Expert Technical Determination Procedure for Technical Disputes	115
24.5	Mediation	116
24.6	Litigation as a Final Resort	117
24.7	Waiver of Jury Trial	117
24.8	Provisional Relief	117
24.9	Continuing Obligations	117
APPENDIX A FORM OF CONSTRUCTION START DATE CERTIFICATE		120
APPENDIX B MILESTONE SCHEDULE		121
APPENDIX C PERMITS		122
APPENDIX D FACILITY SITE		127
APPENDIX E PERFORMANCE GUARANTEE TESTING PROTOCOL		131

APPENDIX F SIGNING CONDITIONS..... 132

APPENDIX G CONDITIONS PRECEDENT 134

 PART 1 - CONDITIONS FOR THE BENEFIT OF PREPA 134

 PART 2 - CONDITIONS FOR THE BENEFIT OF SELLER..... 134

 PART 3 - CONDITIONS FOR THE BENEFIT OF EACH OF THE PARTIES 134

APPENDIX H FORM OF CONDITIONS PRECEDENT CERTIFICATE 136

APPENDIX I FORM OF PERFORMANCE SECURITY 137

APPENDIX J SECURITY AMOUNT 142

APPENDIX K PRE-APPROVED INDEPENDENT EXPERTS 143

APPENDIX L FORM OF INTERCONNECTION FACILITIES COMPLETION NOTICE ... 144

APPENDIX M OPERATING CHARACTERISTICS 145

APPENDIX N FORM OF INITIAL SYNCHRONIZATION NOTICE..... 150

APPENDIX O SYSTEM OPERATION PRINCIPLES 151

APPENDIX P SAMPLE CALCULATIONS 152

APPENDIX Q ANCILLARY SERVICES 153

APPENDIX R FORM OF COMMERCIAL OPERATION DATE CERTIFICATE..... 154

APPENDIX S HYDROGEN FUEL IMPLEMENTATION 155

APPENDIX T FORM OF DIRECT AGREEMENT 158

APPENDIX U FORM OF FOMB CERTIFICATION..... 166

APPENDIX V FORM OF SWORN STATEMENT 168

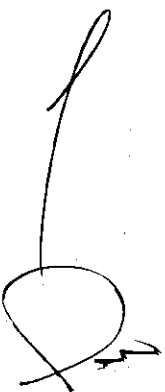
APPENDIX W FORM OF WARRANTY COMPLIANCE CERTIFICATE..... 170

APPENDIX X FORM OF ANTI-CORRUPTION CERTIFICATION..... 171

APPENDIX Y DESIGN LIMITS..... 172

APPENDIX Z LIST OF THIRD PARTIES COSTS INCURRED BY SELLER 178

POWER PURCHASE AND OPERATING AGREEMENT



THIS POWER PURCHASE AND OPERATING AGREEMENT (the "Agreement"), is entered into and effective as of this 20th day of December, 2024 (the "Agreement Date"), by and between **ENERGIZA LLC**, a limited liability company organized under the laws of Puerto Rico, employer identification number 66-1036276, with its principal office at Calle C, Lote 30, BAYAMON, PR, 00961, and authorized to do business in the Commonwealth of Puerto Rico ("Seller") and herein represented by Luis Berrios, President, of legal age, married, and a resident of Puerto Rico, who is duly authorized to enter into this Agreement as certified by the Resolution dated December 16, 2024, the **PUERTO RICO ELECTRIC POWER AUTHORITY**, a Puerto Rico public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, authorized to enter into this Agreement by virtue of Act Number 83 of May 2, 1941 (22 L.P.R.A. § 196(f)) (the "PREPA Enabling Act"), employer identification number 660433747, with offices at NEOS Building, Ponce de León Av. 1110, San Juan, PR 00936 (including any successor thereto, "PREPA") and herein represented by its Executive Director, Josué A. Colón Ortiz, of legal age, married, professional engineer and resident of Caguas, Puerto Rico, and **SAN JUAN GENERATION ASSETS LLC**, a limited liability company organized under the laws of Puerto Rico ("Tropigas") and **CRATOS ENERGY HOLDINGS LLC** a limited liability company organized under the laws of Puerto Rico ("Cratos") (both in their capacity as Sponsors, but solely for the purposes of Section 21.4). Both Seller and PREPA are herein individually referred to as a "Party" and collectively referred to as the "Parties". Capitalized words used throughout this Agreement have the meaning ascribed to them in Article 1 (Definitions & Interpretations).

RECITALS

WHEREAS, PREPA is an electric utility engaged (by itself or through its subsidiaries or agents) in the generation, transmission, distribution and sale of electric power within the Commonwealth of Puerto Rico (the "Commonwealth");

WHEREAS, Puerto Rico is in the process of transforming its electric system and seeks to develop new generation capacity in accordance with Puerto Rico's energy policy and has therefore issued Request for Proposals No. 2023-1 dated August 22, 2023, as amended ("RFP") to certain private sector companies and consortia to prepare and submit binding proposals to develop, finance, engineer, procure, construct, own, commission, operate and maintain a generation facility utilizing a combined cycle gas turbine/steam turbine technology or reciprocating engine technology power plant in a suitable location in Puerto Rico;

WHEREAS, pursuant to the process set forth in the RFP and based on the proposal submitted by Seller in response to the RFP on March 15, 2024 ("Seller's Proposal"), the project was awarded to Seller as selected proponent with the goal of encouraging and incentivizing innovation and best practices in the design, construction and operation of the Facility, while allowing Seller to achieve best "value for money" and bankability of the project;

WHEREAS, PREPA either directly or through a wholly owned subsidiary owns the transmission and distribution system (the "T&D System") and related facilities, equipment and other assets, which are operated and maintained by LUMA Energy ServCo, LLC ("LUMA"),

pursuant to that certain Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement, dated as of June 22, 2020 (the "T&D O&M Agreement");

WHEREAS, PREPA either directly or through a wholly owned subsidiary continues as owner of the T&D System and LUMA serves as the System Operator and effectively assumes, as PREPA's agent, both the operational and regulatory responsibilities once performed by PREPA;

WHEREAS, Seller will sell exclusively to PREPA and PREPA will purchase all the capacity and electric energy produced by Seller at the Facility; and

WHEREAS, Seller will develop the Facility and the Parties will effectuate the sales and purchases of capacity and energy under the terms and subject to the conditions set forth in this Agreement.

NOW THEREFORE, in consideration of these premises and of the mutual covenants and agreements set forth herein, the sufficiency of which is acknowledged, Seller and PREPA, intending to be legally bound, hereby agree to the following:

ARTICLE 1 - DEFINITIONS & INTERPRETATIONS

1.1 Definitions.

Whenever the following terms appear in this Agreement, whether in the singular or in the plural, present or past tense, they have the meaning stated below:

"Acceptable Bank" means a national bank, national association, commercial bank or other financial institution registered in the United States, having a branch located within the Commonwealth or the contiguous United States and, in each case, that has a long-term issuer rating of at least (i) if headquartered within the Commonwealth, then "B+" by Standard & Poor's Ratings Services, "B1" by Moody's Investors Services Inc., or "B+" by Fitch Ratings Inc. or (ii) if headquartered outside of the Commonwealth, then "A-" by Standard & Poor's Ratings Services, "A3" by Moody's Investors Services Inc., or "A-" by Fitch Ratings Inc., or in each case if the relevant rating agencies cease to engage in business or rate the obligations in question, then an equivalent rating from another internationally recognized rating agency selected by Seller with the written consent of PREPA; provided that, if such financial institution's ratings satisfy such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications.

"Act 2" has the meaning set forth in Section 18.3(b) (*Certain Material Breaches*).

"Act 29" means Act No. 29 of the Commonwealth Legislative Assembly enacted on June 8, 2009, as amended and also known as the "Public-Private Partnership Authority Act".

"Act 120" means Act No. 120-2018, as amended, also known as the Puerto Rico Electric Power System Transformation Act.

"Act 173" has the meaning set forth in Section 23.16 (*Practice of Engineering, Architecture and Other Professions in the Commonwealth*).

"Adjusted Guaranteed Heat Rate" or "AGHR" means the Guaranteed Heat Rate, as adjusted per the applicable Degradation Adjustment Factor for such period according to Appendix M (*Operating Characteristics*).

"Affected Party" has the meaning as set forth in Section 16.1 (*General*).

"Affiliate" means with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls (e.g., a parent or grandparent company), is Controlled by (e.g., a subsidiary company), or is under common Control (e.g., a sister company) with, such Person.

"Agreed Operating Procedures" means the procedures for the Facility's operation and integration into the T&D System, as set out in the Interconnection Agreement.

"Agreement" has the meaning set forth in the recitals.

"Agreement Date" has the meaning set forth in the recitals.

"Agreement Date Obligations" has the meaning set forth in Section 2.4(a) (*Initial Effectiveness & Closing Date*).

"Agreement Year" means the period from July 1 through June 30 of the following year during that portion of the Term commencing on the Commercial Operation Date; provided, however, that (i) the initial Agreement Year shall commence on the Commercial Operation Date and end on June 30 of the following calendar year and (ii) the final Agreement Year shall end on the end of the Supply Period. Any computation made on the basis of an Agreement Year shall be adjusted on a pro rata basis to take into account any Agreement Year of less than 365 days.

"Ambient Conditions" means the conditions of temperature, pressure, and humidity, of the surrounding environment at the location of the Facility.

"Ancillary Services" means the ancillary services to be provided by Seller to PREPA as set forth in Appendix Q (*Ancillary Services*).

"Ancillary Services Payment" or "AP" has the meaning set forth in Section 12.5 (*Ancillary Services Payment*).

"Annual Month EAF" has the meaning set forth in Section 12.6 (*Equivalent Availability Adjustment Factor*).

"Annual Performance Testing" has the meaning set forth in Section 6.5(a) (*Annual Performance Testing*).

"Applicable Law" or "Law" means with respect to any Person, any constitution, bilateral or multilateral treaty, statute, law, rule, regulation, ordinance, judgment, order, decree, governmental consent, or approval or any published directive, guideline, requirement or other governmental restriction, which has the force of law, or any determination, or interpretation of any of the foregoing, by any judicial authority, which legally binds such Person or its property whether in effect as of the Agreement Date or thereafter.

"Applicable Standards" means the PREPA Design Criteria Documents, any other applicable PREPA standards that PREPA has made available or identified to Seller as applicable to Seller's performance of its obligations under this Agreement, and any other codes, standards or requirements set forth in any Applicable Law, including any applicable federal, state or local code, the latest standards of the Institute of Electrical and Electronic Engineers (IEEE), National Electrical Manufacturer's Association (NEMA), American Concrete Institute (ACI), American National Standards Institute (ANSI), International Code Council Code (ICC), National Fire Protection Association (NFPA) and the North American Electric Reliability Corporation (NERC), as well as the latest editions of the National Electrical Code (NEC) and the National Electrical Safety Code (NESC), to the extent not inconsistent with the foregoing.

"Approved Design" has the meaning set forth in Section 4.1(c) (*Proposed Design*).

"Authorized Officer" means the Chief Executive Officer, the President, any Vice President, the Chief Financial Officer, the Treasurer, the Secretary, the Assistant Secretary, or any other officer of Seller, who is authorized to act on Seller's behalf.

“Automatic Generation Control” or “AGC” means the supplementary control that (i) automatically adjusts the power output level of the Facility, (ii) maintains generator frequency as close as possible to the desired system value, minimizing the accumulation of system time error, and (iii) maintains the Facility as close as possible to its economic loading as calculated by the System Operator’s Economic Dispatch process.

“Available Capacity” means, for any hour, the Capacity made available at the Point of Interconnection for dispatch from the Facility to PREPA during that hour, expressed in kilowatts (kW).

“Average Heat Rate Correction Factor” or “AHRCF” means, for any period after the Commercial Operation Date, the weighted average (weighted by kWh of Net Electrical Output) of the Heat Rate Correction Factors for each hour during the period that the Facility is dispatched, which weighted average is used to calculate the Energy Payment and is intended to adjust for the effect on fuel consumption due to the varying efficiency of the Facility at different Ambient Conditions and Dispatch levels as directed by the System Operator.

“Average Net Derating” means, for any hour, the average amount expressed in kilowatts as a positive number by which the Dependable Capacity exceeds the Available Capacity after adjusting for Ambient Conditions, including deratings attributable to a Force Majeure claimed by Seller. In the event Dependable Capacity is less than Available Capacity, the Average Net Derating shall equal zero.

“Backfeed” means any electric power (other than power needed for construction activities prior to the Backfeed Date) that is required to flow from the T&D System to the Facility.

“Backfeed Date” has the meaning set forth in Appendix B (Milestone Schedule).

“Backup Fuel” means ULSD fuel, also known as #2 distillate, or any other type of fuel as mutually agreed by the Parties.

“Backup Meter” has the meaning set forth in Section 11.1 (Meter Ownership & Maintenance).

“Bankruptcy Code” means the United States Bankruptcy Code, 11 U.S.C. 101 et seq., as well as (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.

“Billing Period” means a Month, provided that (i) the first such period shall begin on the Initial Synchronization Date and end on the final Day of the Month in which the Initial Synchronization Date occurs, and (ii) the last such period shall begin on the first Day of the Month in which the Supply Period will expire and end on the last Day of the Supply Period.

“Bulk-Power System EO” means the Executive Order, E.O. 13920 of May 1, 2020, as supplemented by and including the rules and regulations published by the U.S. Department of Energy in connection therewith.

"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.

"Capacity" means the net electric generating output (calculated as gross electric generating capacity less station use) for the Facility, expressed in kilowatts (kW).

"Capacity Degradation Curves" means the output degradation data (graphical or tabular) that shows the expected output degradation over time as provided by the original equipment manufacturer.

"Capacity Escalation Factor" or "CEF" means two percent (2%).

"Capacity Payment" or "CP" has the meaning set forth in Section 12.3 (Capacity Payment).

"Capacity Purchase Price" or "CPP" means US\$21.05 per kW-Month through November 30, 2025. On December 1, 2025, the CPP will be adjusted by the Capacity Escalation Factor to determine the CPP applicable to the period starting on December 1, 2025 through November 30, 2026. For each twelve (12) month period starting on each December 1 thereafter, the CPP for that period will be determined on December 1 by adjusting the CPP of the prior twelve (12) month period by the Capacity Escalation Factor.

"Cash" means cash or short-term securities with a maturity of ninety (90) days or less.

"Change in Law" means any of the following events or conditions occurring on or after the Agreement Date that has had, or is reasonably expected to have, a material adverse effect on the performance or the cost of performance by the Parties of their respective obligations under this Agreement (other than payment obligations), or on the construction, operation, or maintenance of the Facility:

(a) the adoption, promulgation or issuance of a modification or written change in the Applicable Law, Applicable Standards, or the administrative or judicial interpretation thereof, unless such modification or written change was duly adopted, promulgated, or issued in final form prior to the Agreement Date and becomes effective without any further action by any Governmental Authority or governmental official having jurisdiction;

(b) any order or judgment of any Governmental Authority to the extent such order or judgment is not the result of willful misconduct or negligent action or omission or lack of reasonable diligence of the Party claiming the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such willful misconduct or negligent action or omission of, or lack of reasonable diligence by, the Party; or

(c) the denial of an application for, the material delay in the review, issuance or renewal of, or the suspension, termination, interruption, imposition of a new condition in connection with, the issuance, renewal or the failure of issuance or renewal of any approval by a Governmental Authority to the extent that such denial, delay, suspension, termination, interruption, imposition of a new condition or failure (i) interferes in any material respect with the performance of this Agreement and (ii) is not the result of willful misconduct or negligent

action or omission or a lack of reasonable diligence of the Party claiming the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such denial, delay, suspension, termination, interruption, imposition of a new condition or failure shall not be construed as such willful misconduct or negligent action or omission of, or lack of reasonable diligence by, the Party.

provided that "Change in Law" shall not include (x) the imposition of a Tax, or an increase in Taxes, on Seller's gross or net income or benefits or payroll or withholding Taxes for Seller's employees or municipal real or personal Taxes, unless the imposition or increase applies only to Seller; (y) sales, use, and other Taxes payable by PREPA pursuant to Section 19.2; or (z) the delay or denial of any request to approve performance relief, except where arising out of the Title III Case.

"Change in Regulatory Law" means any change, amendment or modification to any Commonwealth (and not, for the avoidance of doubt, the Applicable Law of any other jurisdiction) or any adoption of, or change to, any administrative or judicial interpretation (having the force of law) of any Commonwealth Applicable Law or any regulation promulgated or regulatory action taken under any Commonwealth Applicable Law, in each case occurring on or after the Agreement Date, that:

(a) alters the scope of PREB's statutory oversight over Seller or PREPA in a manner that materially and adversely affects Seller's ability to perform its obligations under this Agreement;

(b) renders unenforceable or invalid, in whole or in part, any material right or privilege granted to Seller under this Agreement, including by invalidating Seller's selection under the RFP; or

(c) subjects Seller to rate or other substantive regulation by PREB in a manner that materially and adversely affects Seller's ability to perform its obligations under this Agreement to the extent not otherwise mitigated by the terms of this Agreement, and such effect continues unremedied for a period of one hundred eighty (180) days following such written notice.

"Claims" means all claims, actions, suits, demands, or proceedings brought by any Person for liabilities, judgments, losses, costs (including court costs, reasonable and documented attorneys' fees, and costs of investigation), fines, penalties, expenses, and damages of whatsoever kind or nature, arising in contract, tort, or otherwise.

"Closing Date" has the meaning set forth in Section 2.4(a) (Initial Effectiveness & Closing Date).

"COD Termination Event" means the occurrence of the Long-Stop Date prior to the Commercial Operation Date.

"Cold Start" means a start-up of the Facility with the intent of generating power wherein the generating equipment has been shut down for a period of at least seventy-two (72) hours.

“Commercial Operation” means the satisfaction of the requirements set forth in Section 6.4 (*Conditions to Commercial Operation Date*).

“Commercial Operation Date” or “COD” the date on which Seller first achieved Commercial Operation.

“Commonwealth” has the meaning set forth in the recitals.

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

“Conditions Precedent” has the meaning set forth in Section 2.4(a) (*Initial Effectiveness & Closing Date*).

“Construction Start” means the satisfaction of all requirements set forth in the form of certificate set forth in Appendix A (*Form of Construction Start Date Certificate*).

“Construction Start Date” means the date on which Seller achieves Construction Start, as evidenced by a certificate issued by Seller to PREPA and PREB in a form substantially similar to that set forth in Appendix A (*Form of Construction Start Date Certificate*).

“Control” means, with respect to a company or corporation, (i) the ownership (whether directly or indirectly) of more than fifty percent (>50%) of the total issued voting share capital or other voting interest of that company or corporation, (ii) the ability to unilaterally appoint a majority of the board directors or equivalent body of that company or corporation through the ownership of securities with voting power or otherwise, without the need of the vote or approval of another, or (iii) the ability to unilaterally direct the business affairs and/or operations of that company or corporation, without the need of the vote or approval of another; and the terms “Controls,” “Controlled,” and “Controlling” have a corresponding meaning, provided that if two (2) shareholders each own fifty percent (50%) of the total issued and outstanding shares of a corporation, then neither shareholder controls such corporation.

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

“CPI Adjustment Factor” or “CPI” means an annual inflation adjustment to occur on December 1 of each Agreement Year beginning on December 1, 2025. For December 1, 2025, the CPI Adjustment Factor amount shall be equal to the (i) CPI Value for the twelve (12) month period ending and including October 2025 divided by (ii) the CPI Value for the twelve (12) month period from and including November 2023 to and including October 2024, rounded to the fifth decimal place. The CPI Adjustment Factor shall be updated for December 1 of each subsequent Agreement Year by dividing the twelve (12) months ended October of that Agreement Year by the CPI Value for the twelve (12) months ended October of the prior Agreement Year. In no case shall the CPI Adjustment Factor for any twelve (12) month period in any Agreement Year be less than 1.00 or greater than 1.05.

“CPI Value” means, for any Year, the twelve (12) month average rounded to three decimal places obtained from “*Consumer Price Index—All Urban Consumers—U.S. All Items Less Food and Energy (CUUR0000SA0L1E)*” published by the Bureau of Labor Statistics of the United States

Department of Labor; provided, however, that: (i) if such index is changed so that the base year thereof changes, such index shall be converted in accordance with the conversion factor published by the Bureau of Labor Statistics of the United States Department of Labor; (ii) if such index is discontinued or revised during the Term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if such index had not been discontinued or revised; and (iii) any such revision shall not result in the retroactive adjustment of any amounts paid or payable pursuant to this Agreement prior to such revision. For illustrative purposes only, the CPI Value for the calendar year 2023 was 308.381, which can be obtained directly as an annual value or computed using monthly values with data from the official website of the Bureau of Labor Statistics of the United States Department of Labor.

“Critical Project” has the meaning set forth in Title V of PROMESA.

“Day” means a period of twenty-four (24) consecutive hours, beginning at 00:00:00 hours on any Gregorian calendar day and ending at 11:59:59 hours on such day.

“Debt” means the sum of all amounts required to be paid or repaid by Seller in respect of indebtedness for borrowed money, including principal, accrued interest, reasonable and documented breakage costs (as commonly understood in the market), including swap breakage costs, and reasonable and documented fees and expenses, but excluding any prepayment penalties, make-whole and indemnification claims and any indebtedness constituting Net Equity Investment and financial debt owed to Affiliates, as evidenced by audited financial statements and, if applicable, interim financial statements for any interim periods subsequent to the last audited period.

“Default” means a Seller Default or a PREPA Default, as applicable.

“Degradation Adjustment Factor” means the Heat Rate Degradation factor per the original equipment manufacturer’s degradation curves, as utilized in setting the Heat Rate Degradation Table set forth on Appendix M (Operating Characteristics).

“Delayed Party” has the meaning set forth in Section 3.3(a) (Extensions of Time).

“Dependable Capacity” or “DC” means the net electric generating output (calculated as gross electric generating capacity less station use), modified for ambient conditions for a specified period of time, such as a month or a season, for the Facility expressed in kilowatts (kW), as determined pursuant to Article 6 (Testing, Capacity Ratings and Completion).

“Derated Hours” means the hours, exclusive of Outage Hours, during which the Facility is not capable of operating at one hundred percent (100%) of its Dependable Capacity for reasons attributable to Seller, including hours attributable to a Force Majeure claimed by Seller.

“Derating” means the operation of the Facility being limited to a Capacity level that is below its one hundred percent (100%) Dependable Capacity.

“Design Limits” has the meaning set forth on Appendix Y (Design Limits).

“Designated Person” means each Representative of PREPA or Seller who is designated as such for the purposes of Article 24 (Dispute Resolution).

“Development Abandonment” means the permanent cessation after the Closing Date and prior to the Commercial Operation Date by Seller of the development and construction of the Facility being installed by Seller, as evidenced by Seller’s or its construction contractors’ personnel having withdrawn from the Site (unless Seller demonstrates otherwise) and Seller having otherwise ceased development and construction activities related to the Facility for more than one hundred twenty (120) consecutive Days for any reason other than as a result of Force Majeure affecting Seller or a PREPA Risk Event.

“Disclosing Party” has the meaning set forth in Section 14.5(a) (Confidentiality).

“Dispatch” means the ability of PREPA to schedule and control, directly or indirectly, manually, or automatically, the generation of the Facility in order to increase or decrease the Net Electrical Output delivered in accordance with Prudent Utility Practices (PUPs) and subject to the System Operation Principles, Agreed Operating Procedures and the Facility’s Design Limits.

“Dispatch Factor” means the average operating load level percentage while the Facility is dispatched as specified by Seller.

“Dispatch Instruction” has the meaning set forth in Section 10.1 (Right to Dispatch).

“Dispatch Notice” means the operating instruction and any subsequent updates given by PREPA (directly or through the SCADA system) to Seller, directing the Facility to make available at a specified quantity of Net Electrical Output.

“Dispatchable Mode” means a period during which the Facility will be in AGC mode with the turbine-generator governors in the frequency bias mode and voltage regulators in service, or off AGC and block-loaded at PREPA’s request, with the speed governors and voltage regulators in service.

“Dispute” has the meaning set forth in Section 24.1 (Scope).

“Dispute Resolution Procedure” has the meaning set forth in Section 24.1 (Scope).

“DNER” has the meaning set forth in Section 6.3 (Emissions and Noise Testing).

“Dollars”, “US\$” and “\$” means the lawful currency of the United States of America.

“Economic Dispatch” means the short-term determination of the optimal output of generation facilities by PREPA, to meet the system load, at the lowest possible cost, subject to transmission and operational constraints.

“Emergency” means collectively a T&D Emergency and/or a Facility Emergency.

“Emissions Testing” has the meaning specified in Section 6.3 (Emissions and Noise Testing).

“Energy Compliance Certificate” means the certificate issued by the PREB certifying that this Agreement complies with the *Puerto Rico Energy Public Policy Act* and the applicable regulatory framework.

“Energy Cost” shall have the meaning and be calculated as set forth in Section 12.2(a) (*Energy Payment*).

“Energy Payment” or “EP” has the meaning set forth in Section 12.2 (*Energy Payment*).

“Energy Purchase Price” or “EPP” means the Dollar per kilowatt hour rate that PREPA will pay Seller for energy delivered to PREPA as determined in accordance with Article 12 (*Compensation, Payment and Billings*).

“Equity Investment” means the amount invested in the design, development, construction, equipment procurement, installation, commissioning and operation of the Facility and the Interconnection Facility, including costs to acquire the Site and costs of permitting, by Seller’s direct or indirect parent corporation or other investors as common stock, preferred stock or equivalents, general or limited partnership interests, subordinated debt, or other qualifying contributions, in each case as evidenced by audited financial statements and, if applicable, interim financial statements for any interim periods subsequent to the last audited period.

“Equity Transfer” has the meaning set forth in Section 21.4 (*Restrictions on Equity Investment Transfers*).

“Equivalent Availability Adjustment Factor” or “EAAF” has the meaning as set forth in Section 12.6 (*Equivalent Availability Adjustment Factor*).

“Equivalent Availability Factor” or “EAF” means, for any period of time, the Period Hours less the Outage Hours less the Equivalent Derated Hours, divided by the Period Hours less the Equivalent Force Majeure Hours, expressed as a percentage pursuant to the following formula:

$$\text{EAF (\%)} = \frac{\text{PH} - \text{OH} - \text{EDH}}{\text{PH} - \text{EFMH}} \times 100$$

Where:

EAF = Equivalent Availability Factor

PH = Period Hours

OH = Outage Hours

EDH = Equivalent Derated Hours

EFMH = Equivalent Force Majeure Hours

For purpose of this calculation or any other calculation hereunder, all hours shall be rounded to the nearest one-tenth (1/10) of an hour and the EAF to the nearest one-tenth (1/10) of a percent.

"Equivalent Derated Hours" means, for any period of time, the sum, expressed in hours, of the fractions obtained by dividing the Average Net Deratings for each hour during such period by the Dependable Capacity applicable to that hour.

"Equivalent Force Majeure Hours" or "EFMH" means, for any period of time (i) the sum of the fractions obtained by dividing, for each Derated Hour during such period, the Average Net Deratings during such Derated Hour attributable to a Force Majeure claimed by Seller by the Dependable Capacity applicable to that Derated Hour, plus (ii) all Outage Hours attributable to a Force Majeure claimed by Seller.

"Estimated Interconnection Facility Costs" means the estimated costs for construction of the POI Facility in an amount of US\$2,600,450.

"Exceptions" means liability arising from:

- (a) Seller's fraud, willful misconduct or Gross Negligence;
- (b) Seller's indemnity obligation under Section 15.1 (General) for personal injury or death of a third party;
- (c) Seller's indemnity obligation under Section 15.3 (Claims Arising from Environmental Harm); or
- (d) Seller's obligation to pay or provide a credit for Liquidated Damages under this Agreement.

"Expert Technical Determination" has the meaning set forth in Section 24.4(a) (Expert Technical Determination Procedure for Technical Disputes).

"Facility" means Seller's energy production facility, including all fuel supply and generation facilities, as applicable, located at the Site and capable of making Dependable Capacity available at the Point of Interconnection, including Seller's Interconnection Facilities.

"Facility Construction Contract" means the primary contract for the construction of the Facility entered into between Seller and one or more contractors.

"Facility Emergency" means an operational condition or situation affecting the Facility, which has resulted in, or will likely result in, imminent significant disruption of generation and likely endangers life or property.

"Feasibility Study" means a study (conducted by the System Operator and paid for by Seller) of the feasibility of the interconnection of the Facility that models and assesses the capability of the transmission system to integrate energy at the proposed location from the Facility into the T&D System.

"Final Estimated Interconnection Facility Costs" means the final estimate of aggregate costs for construction of the POI Facility determined pursuant to the completed Feasibility Study,

System Impact Study and Interconnection Facility Study (as evidenced in the Interconnection Facility Study, to be attached as an annex to the Interconnection Agreement).

“Financing Documents” means any and all loan agreements, notes, bonds, indentures, security agreements, direct agreements, assignments and acknowledgements, registration or disclosure statements, subordination agreements, mortgages, deeds of trust, credit agreements, intercreditor agreements, note or bond purchase agreements, hedging agreements, participation agreements other documents entered into by Seller relating to the financing of the Facility and/or the refinancing thereof provided by any Project Lender, including any modifications, supplements, extensions, renewals and replacements of any such financing or refinancing.

“Fiscal Year” means the period from July 1 through June 30 of the following year, unless otherwise agreed by the Parties.

“Fixed O&M Charge” or “FOMC” means US\$7.45 per kW-Month through November 30, 2025. On December 1, 2025, the FOMC will be adjusted by the CPI Adjustment Factor to determine the FOMC applicable to the period starting on December 1, 2025, through November 30, 2026. For each twelve (12) month period starting on each December 1 thereafter, the FOMC for that period will be determined on December 1 by adjusting the FOMC of the prior twelve (12) month period by the CPI Adjustment Factor; provided that the annual adjustment pursuant to the CPI Adjustment Factor shall never result in the Fixed O&M Charge being greater than US\$15.00 per kW-Month.

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

“FOMB Certification” has the meaning set forth in Section 18.3(a) (*Certain Material Breaches*).

“Force Majeure” has the meaning set forth in Section 16.1 (*General*).

“Force Majeure Adjustment Factor” or “FMAF” means the adjustment factor calculated as set forth in Section 12.3 (*Capacity Payment*).

“Forced Shutdown” means a shutdown of the Facility which directly results in the Facility being unable to generate power due to the unexpected or imminent breakdown of the equipment at the Facility, including as caused by equipment failures and disruptions of fuel supply but other than those caused by a Force Majeure or PREPA’s failure to approve the cost of Backup Fuel delivered to Seller’s Complex in accordance with Section 7.3(b).

“Fuel” means natural gas (including liquified natural gas or “LNG” intended to be gasified) or green hydrogen blended gas fuel, procured or produced, or Backup Fuel.

“Fuel Price” means the Dollar per MMBtu of natural gas fuel consumed by Seller determined pursuant to the Fuel Price Index applicable to that Billing Period, plus (i) any gross revenue Tax paid by Seller related to such consumption and (ii) any other Taxes paid by Seller under the Fuel Supply Arrangements related to such consumption (in both cases (i) and (ii) to the extent that the applicability of that Tax to Seller and the unavailability of an exemption that may otherwise be available to PREPA has been confirmed via a Private Ruling Letter issued by the

Puerto Rico Department of Treasury under the rules of persons operating or acting on behalf of a Governmental Authority), provided that Seller will notify PREPA of any new or change in Taxes that may affect the Fuel Price not less than sixty (60) days in advance of when such Taxes will apply.

"Fuel Price Index" means $(115\% * HH + \$7.95)$ in US\$/MMBtu for natural gas fuel.

"Fuel Supply Arrangement" means any agreements entered into by Seller for the purchase (and sale) of Fuel for the Facility.

"GAAP" means Generally Accepted Accounting Principles, as promulgated by the Financial Accounting Standards Board.

"Governmental Authority" means any court, tribunal or governmental or quasi-governmental body, regulatory body, agency, authority, office, department, commission, board, bureau, public corporation, municipality or instrumentality, in each case at any federal, state, Commonwealth, Commonwealth's Legislative Assembly, county, municipal, or local level, having jurisdiction over a Party, the Facility or the Site, including FOMB and PREB, but excluding PREPA.

"Green Credits" means "renewable energy certificates" and "environmental and social attributes," as defined in the Green Energy Incentives Act of Puerto Rico (Act No. 83 of July 19, 2010), renewable energy credits, environmental attributes, emissions reductions, offsets, allowances or benefits, however entitled (or payments in lieu thereof), whether monetary, fiscal or in the form of physical property, which are now or in the future may be available to the Facility, as a facility that generates or produces electricity by means of "green energy" (as defined in Act No. 83 of July 19, 2010), or from renewable or non-polluting resources, granted or available to Seller as the owner or operator of the Facility or otherwise, in each case, from any Governmental Authority or third party, including renewable energy credits established pursuant to Act No. 83 of July 19, 2010, but shall exclude (i) any Tax Credits and grants in lieu thereof, (ii) other tax incentives, benefits or credits, including those available under Puerto Rico Act 60-2019, (iii) any accelerated depreciation, and (iv) proceeds from (i) through (iii), in each case, associated with the Facility or otherwise available to Seller, each of which (i) through (iii) Seller expressly reserves.

"Green Hydrogen" means hydrogen generated by "renewable energy" sources as such term is defined in the *Puerto Rico Energy Public Policy Act*.

"Green Hydrogen Fuel Implementation" has the meaning set forth in Section 7.4 (Hydrogen Fuel Implementation).

"Gross Negligence" means any act or failure to act by a Person with complete lack of care, or the exercise of such a small degree of care, that demonstrates a Person's reckless disregard for the rights (including property rights) or the safety or welfare of others to such a degree that such act or failure to act appears to be a conscious or voluntary disregard of the need to use reasonable care to avoid grave injury or harm to persons, property, or both.

“Guaranteed Capacity” means 478,368 kW for Primary Fuel and 334,354 kW for Backup Fuel, the guaranteed amount of net kW power that the Facility can generate corrected to ISO Conditions.

“Guaranteed Commercial Operation Date” means the date listed as “Guaranteed Commercial Operation Date” in the Milestone Schedule, as may be adjusted in accordance with Section 3.3 (Extensions of Time).

“Guaranteed Construction Start Date” means the date of “Guaranteed Construction Start Date” in the Milestone Schedule, as may be adjusted in accordance with Section 3.3 (Extensions of Time).

“Guaranteed Heat Rate” means 6,314 BTU/kWh for Primary Fuel and 7,659 BTU/kWh for Backup Fuel, the guaranteed fuel energy consumption rate expressed in BTUs (Higher Heating Value or “HHV”) required by the Facility to generate one (1) kWh of net electric energy corrected to ISO Conditions.

“Guaranteed Performance” means both Guaranteed Capacity and Guaranteed Heat Rate.

“Guaranteed Performance Liquidated Damages Cure Period” has the meaning set forth in Section 3.4(a) (Guaranteed Performance Liquidated Damages).

“Guaranteed Performance Testing” has the meaning set forth in Section 6.2(a) (Guaranteed Performance Testing).

“Heat Consumption” has the meaning set forth in Section 12.5.

“Heat Rate” means the real time fuel energy consumption rate expressed in BTUs (HHV) required by the Facility to generate one (1) kWh of net electric energy.

“Heat Rate Correction Curves” has the meaning set forth in Appendix M (Operating Characteristics).

“Heat Rate Correction Factor” or “HRCF” means, for each hour, the factor used in the determination of the Average Heat Rate Correction Factor, based on both the ambient conditions and the average for the hour of the percentage of Dependable Capacity rounded to the nearest percentage point and determined in accordance with Appendix M (Operating Characteristics).

“Heat Rate Degradation Table” means the Heat Rate Degradation Table set forth in Appendix M (Operating Characteristics) that shows the expected Heat Rate Degradation utilized to establish the Degradation Adjustment Factor.

“HH” means the final settlement price (in USD per MMBTU) for the New York Mercantile Exchange’s Henry Hub+ natural gas futures contract for the calendar month in which the relevant cargo’s delivery window is scheduled to begin.

"Hot Start" means a start-up of the Facility with the intent of generating power wherein the generating equipment has been shut down for a period of less than eight (8) hours and kept in warm condition so as to minimize the time to re-synchronize.

"Hydrogen Fuel Implementation" has the meaning set forth in Section 7.4 (Hydrogen Fuel Implementation).

"Indemnifying Party" has the meaning set forth in Section 15.1 (General).

"Indemnitees" means, with respect to either PREPA or Seller, (i) permitted successors and assigns, and (ii) as to both the Party and its permitted successors and assigns, Affiliates, directors, officers, equity-holders, partners, employees, representatives, agents and contractors, and each of their respective heirs, successors and assigns.

"Independent Expert" has the meaning set forth in Section 3.6 (Independent Expert).

"Initial Synchronization" means the first time that Seller synchronizes the Facility with the T&D System.

"Initial Synchronization Date" means the date on which Initial Synchronization occurs.

"Initial Synchronization Notice" has the meaning set forth in Section 4.3(f) (Pre-Synchronization Testing).

"Insolvency Event" means any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding with respect to a Party or any of its respective properties, or any action taken by any trustee or receiver of a Party or by any court in any such proceeding (other than the current Title III Case), in each case initiated at any time after the Agreement Date.

"Interconnection Agreement" means the interconnection agreement entered into between Seller and PREPA, which sets out the terms upon which the Facility will connect and remain connected to the T&D System.

"Interconnection Construction Contract" means the primary contract for the construction of the Interconnection Facilities to be installed or constructed by Seller, to be entered into between Seller and one or more contractors, which shall include the provisions required under the Interconnection Agreement.

"Interconnection Cost Payment" means \$30,811.90 per Month (or such lower amount determined pursuant to Annex G (Conditions Precedent), Part 3, Section (e)); provided that, if the Final Estimated Interconnection Facility Costs are higher than the Estimated Interconnection Facility Costs, the Interconnection Cost Payment shall be increased on a pro rata basis to reflect such higher costs up to \$118,487 per Month; provided further, that if the actual costs incurred for the construction of the POI Facility (as such actual costs have been evidenced by the certificate issued by Seller to PREPA by no later than the Commercial Operation Date pursuant to Section 6.4(a)(v)) are lower than the Estimated Interconnection Facility Costs, the Interconnection Cost Payment shall be reduced on a pro rata basis to reflect such lower costs.

"Interconnection Facilities" or "IF" means Seller Interconnection Facilities and PREPA Interconnection Facilities.

"Interconnection Facilities Completion Notice" has the meaning set forth in Section 4.3(c) (*Pre-Synchronization Testing*).

"Interconnection Facility Study" means an engineering study (conducted by the System Operator and paid for by Seller) to determine the required point of interconnection, upgrades and expansions needed to physically provide a safe and reliable interconnect for the Facility, as well as all the necessary network upgrades (outside the point of interconnection identified during the System Impact Study) to inject the full output of the Facility to the grid. The Interconnection Facility Study includes the cost and scheduled completion date for such additions that would be required to provide grid support services to integrate the Facility.

"Interest" means the compensation for the accrual of monetary obligations under this Agreement computed monthly and prorated daily from the time each such obligation becomes past due based on an annual interest rate equal to the lesser of: (i) (A) for payments made during the first ten (10) Business Days after such a payment becomes due, in each case, the prime commercial lending rate as set by Citibank NA., New York, New York or any other bank as mutually agreed by the Parties or any other equivalent rate as mutually agreed by the Parties (for the purposes of this definition, the "Prime Rate"), and (B) for payments made beginning on the eleventh (11th) Business Day after such a payment is due, the Prime Rate plus two percent (2%); and (ii) the maximum rate allowable under Article 1169 of the Puerto Rico Civil Code or successor statute applicable to past due amounts.

"ISO Conditions" means the standard conditions used by the gas turbine industry and which are defined as 59 F/15 C, 14.7 psia/1.013 bar and sixty percent (60%) relative humidity, established by the International Organization for Standardization (ISO).

"Legal Challenge" means any action, suit or proceeding brought or commenced by a third party (excluding any Affiliate of a Party) seeking to contest the validity of this Agreement, any Permits or the development, construction, or operation of the Facility or PREPA Interconnection Facilities, which action, suit or proceeding materially impairs the ability of the Parties to perform their respective obligations hereunder or delays the development, financing, construction or operation of the Facility or PREPA Interconnection Facilities.

"Liquidated Damages" means, collectively, Seller Delay Liquidated Damages and Seller Guaranteed Performance Liquidated Damages.

"Long-Stop Date" means the earlier to occur of (i) the first date on which accrued Seller Delay Liquidated Damages (determined without reference to the operation of Section 3.5(a)) exceed the Security Amount, and (ii) the two hundred seventieth (270th) Day after the Guaranteed Commercial Operation Date (as may be extended by the terms of this Agreement).

"LUMA" has the meaning set forth in the recitals.

"Major Equipment" means all prime generation equipment including turbines, generators, heat recovery steam generators and related equipment, transformers, emissions control, fuel supply

"Non-Affected Party" has the meaning set forth in Section 16.1(d) (*General*).

"Non-Natural Force Majeure" means any event specified in clause (i) of Section 16.2 (*Instances of Force Majeure*), provided that such event satisfies the requirements for Force Majeure set out in Section 16.1 (*General*).

"Non-Scheduled Derating" means any Derating other than a Scheduled Derating.

"Non-Scheduled Outage" means any Outage other than a Scheduled Outage.

"Non-Spinning Reserve" means generation that is available, but not running, and which is capable of ramping up and synchronizing in a short period of time.

"Non-Spinning Reserve Mode Hours" has the meaning set forth in Section 12.5.

"Notice of Dispute" has the meaning set forth in Section 24.2 (*Commencement of the Dispute Resolution Procedure*).

"Notice of Mediation" has the meaning set forth in Section 24.5 (*Mediation*).

"Operating Characteristics" has the meaning set forth in Appendix M (*Operating Characteristics*).

"Operating Hours" has the meaning set forth in Section 12.5.

"Outage" means an operating period in which the generating unit is not available to produce electric power. An outage exists whenever the generating unit is not synchronized to the grid system and in a mode not able to generate power (i.e., not available). An outage starts when the unit is either disconnected from the grid or otherwise becomes unavailable to generate power and the outage ends when the unit is declared available to the System Operator.

"Outage Hours" means the number of hours that the Facility is in an Outage for reasons attributable to Seller, including hours attributable to a Force Majeure claimed by Seller, and not capable of providing service at any capacity level, provided that any hour of Outage caused solely by PREPA's failure to approve the cost of Backup Fuel delivered to Seller's Complex in accordance with Section 7.3(b) shall not be considered an Outage Hour.

"Outside Closing Date" has the meaning set forth in Section 2.4(b) (*Initial Effectiveness & Closing Date*).

"P3A" means the Public-Private Partnerships Authority of Puerto Rico.

"Party" or "Parties" has the meaning set forth in the recitals.

"Pending Permit Delay" means for any Permit for which Seller has duly and properly applied and has exercised and continues to exercise diligent efforts to obtain, the denial of or delay in granting such Permit by the relevant Governmental Authority for any reason, other than Seller's

equipment, condenser (air cooled), hydrogen equipment, substation equipment and any other equipment with a delivery cycle that is greater than twelve (12) months.

“Malware” means computer software, code or instructions that: (i) intentionally, and with malice intent by a third party, adversely affect the operation, security or integrity of a computing, telecommunications or other digital operating or processing system or environment, including, other programs, data, databases, computer libraries and computer and communications equipment, by altering, destroying, disrupting or inhibiting such operation, security or integrity; (ii) without functional purpose, self-replicate written manual intervention; (iii) purport to perform a useful function but which actually performs either a destructive or harmful function, or perform no useful function other than utilize substantial computer, telecommunications or memory resources with the intent of causing harm; or (iv) without authorization collect and/or transmit to third parties any information or data, including such software, code or instructions commonly known as viruses, trojans, logic bombs, worms, adware and spyware.

“Mediation Rules” means the mediation rules of the International Chamber of Commerce.

“Milestone” means any of the milestone events set out in the column captioned “*Milestone*” in the table set forth in the Milestone Schedule.

“Milestone Schedule” means the schedule set out in Appendix B (*Milestone Schedule*).

“Minimum Acceptance Criteria” means both ninety-five percent (95%) of Guaranteed Capacity and one hundred and five percent (105%) of Guaranteed Heat Rate.

“MMBtu” means Million British thermal units.

“Month” means a calendar month, which shall begin at 00:00:00 on the first Day of such calendar month and end at 11:59:59 on the last Day of such calendar month.

“Natural Force Majeure” means any event of Force Majeure other than a Non-Natural Force Majeure.

“Negotiation Period” has the meaning set forth in Section 24.3(b)(i) (*Negotiation Period*).

“Net Electrical Output” or “NEO” means for a specified period of time, all of the net electrical energy output of the Facility (expressed in kWh) during such period, as measured at the Point of Interconnection in accordance with Article 11 (*Revenue Metering*) approved and calibrated metering.

“Net Equity Investment” means, as of any Termination Date, Equity Investment in the Facility, less Cash dividends and distributions paid by Seller to the holders of such Equity Investment through the Termination Date, in each case as evidenced by audited financial statements and, if applicable, interim financial statements for any interim periods subsequent to the last audited period.

“Noise Emissions Testing” has the meaning specified in Section 6.3(b) (*Emissions and Noise Testing*).

failure to comply with the requirements for the issuance of such Permit, which denial or delay materially impairs the ability of Seller to achieve Commercial Operation.

"Period Hours" means all hours in the relevant period.

"Permanent Closing" means, after the Commercial Operation Date, the occurrence of any of the following events: (i) an affirmative action taken by Seller, its successors, or assignees, as applicable, to permanently shut down the operations of the Facility; (ii) for any period of eighteen (18) consecutive Months, excluding periods of Outages due to Force Majeure affecting Seller or any PREPA Risk Event, the Facility's availability being equal to zero (0); or (iii) for any period of thirty-six (36) consecutive Months, regardless of whether Seller claims Force Majeure during such period, the Facility's availability being equal to zero (0), excluding periods of Outages due to any PREPA Risk Event.

"Permits" means all permits, licenses, approvals, authorizations, consents, variances or waivers issued by a Governmental Authority with jurisdiction over Seller and Seller's Complex that Seller or its contractors will require for the development, construction, ownership, start-up, operation, maintenance or financing of Seller's Complex, including those set out in Appendix C (Permits).

"Person" means an individual, partnership, corporation, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, or a government or agency or political subdivision thereof.

"POI Facility" means the new breaker and line extending ten (10) feet outside of the Portuaria substation fence located on PREPA's side of the Point of Interconnection, as specified in the Interconnection Facility Study.

"POI Facility Works" has the meaning set forth in Section 3.1(f) (Seller's Development Obligations).

"Point of Change in Ownership" or "POCO" means a monopole outside of the Portuaria substation fence.

"Point of Interconnection" or "POI" means the physical point at which the Facility connects to the T&D System at the new Portuaria TC Substation.

"PPP Act" means Public Private Partnership Authority Act, Act No. 29-2009, as amended.

"Pre-Operation Fuel Cost" shall have the meaning and be calculated as set forth in Section 12.2(a) (Energy Payment).

"Pre-Operation Period" means the period of time from (and including) the Closing Date and ending on (but excluding) the Commercial Operation Date.

"PREB" means the Puerto Rico Energy Bureau.

"PREPA" has the meaning set forth in the recitals.

“PREPA Bankruptcy” means the proceeding commenced pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), pending as of the Agreement Date in the PROMESA Court, Case No. 17-4780, and any adversary proceedings related thereto.

“PREPA Default” has the meaning set forth in Section 18.2 (*PREPA’s Events of Default*).


“PREPA Design Criteria Documents” or “DCDs” has the meaning set forth in the Interconnection Agreement.

“PREPA Enabling Act” has the meaning set forth in the recitals.

“PREPA IE Costs” has the meaning set forth in Section 12.2(b).

“PREPA Interconnection Facilities” means all equipment and facilities (including the Revenue Meters) located on PREPA’s side of the Point of Change in Ownership, including the Point of Change in Ownership, constructed and installed for the purpose of interconnecting the Facility, as further described in the Interconnection Agreement.

“PREPA Risk Event” means any of the following events:

- 
- (a) Force Majeure or Legal Challenge in each case affecting PREPA;
 - (b) a T&D System Event;
 - (c) a breach, delay or failure by PREPA in performing any material obligation under this Agreement or the Interconnection Agreement;
 - (d) following any modifications to the DCDs under Section 4.2 (*Modifications*), the Facility’s prolonged unavailability as reasonably required to carry out changes to the Facility to comply with such modifications;
 - (e) any delay in the completion of the PREPA Interconnection Facilities, if any, beyond the date identified as the time for completion/occurrence of the Milestone for Initial Synchronization in the Milestone Schedule, as adjusted in accordance with Section 3.3 (*Extensions of Time*) by either Party; or
 - (f) any Change in Regulatory Law or other Change in Law that: (i) does not otherwise qualify as a Force Majeure pursuant to Article 16; (ii) causes Seller to incur material additional liability for which Seller is not compensated under this Agreement; and (iii) is being applied to Seller in a discriminatory or arbitrary manner;

which, in each case, did not result from an act or omission of Seller or Natural Force Majeure affecting Seller.

“PREPA’s Operating Period” has the meaning set forth in Section 9.9 (*PREPA’s Operation of Seller’s Complex*).

“Primary Fuel” means natural gas.

"Project Lenders" means any Person providing, arranging, insuring or guaranteeing all or part of the construction or permanent financing or other funding, for Seller's Complex, the Interconnection Facilities, or any portion thereof, or any agent, trustee or other Person representing or acting on behalf of any such Person.

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

"PROMESA Court" means the United States District Court for the District of Puerto Rico.

"Proposal" means the final and binding proposal submitted by Seller in response to the RFP, as such proposal may have been further amended or updated prior to the Agreement Date pursuant to the terms of the RFP.

"Proposed Design" has the meaning set forth in Section 4.1(b) (*Proposed Design*).

"Proposed Initial Synchronization Date" has the meaning set forth in Section 5.1(a) (*Scheduling Synchronization*).

"Prudent Utility Practices" or "PUPs" means, at any particular time, the practices, methods, techniques, conduct and acts that, at the time they are employed, are generally recognized and accepted by power plant companies operating in the United States inclusive of recommendations by equipment suppliers and manufacturers as set forth in their operating manuals, as such practices, methods, techniques, conduct and acts appropriate to the operation, maintenance, repair and replacement of assets, facilities and properties of the type covered by this Agreement, including equipment for the generation, and delivery of electricity, in accordance with the National Electrical Safety Code, the National Electrical Code and any other applicable federal, state or local code. Prudent Utility Practice is not intended to be limited to the optimum or minimum practice, method, technique, conduct or act, to the exclusion of all others, but rather to be a spectrum of possible practices, methods, techniques, conduct or acts that a prudent operator would take to accomplish the intended objectives at just and reasonable cost consistent with reliability, safety, expediency, and good customer relations.

"Puerto Rico Civil Code" means Act No. 55-2020.

"Puerto Rico Comptroller" means the Office of the Comptroller for the Commonwealth of Puerto Rico.

"Qualified Independent Testing Contractor" means a qualified independent third party, reasonably acceptable to PREPA, for the development, revision and implementation of the testing procedures for each Annual Performance Testing.

"Qualified Operator" means NAES Corporation, or another qualified and experienced operator reasonably acceptable to PREPA.

"Qualified Service Provider" means: (i) for the initial ten (10) years after the Commercial Operation Date, Mitsubishi Power Americas Inc.; and (ii) at any time thereafter, any qualified and experienced service provider reasonably acceptable to PREPA.

“Ramp Rates” means the rate(s) of time required for the Facility to change its kilowatt (kW) output from a particular output level to another output level as set forth in Appendix M (Operating Characteristics), as such rates may be updated pursuant to Section 10.3(c).

“Receiving Party” has the meaning set forth in Section 14.5(a) (Confidentiality).

“Registry” has the meaning set forth in Section 12.8 (Green Credits).

“Revenue Meters” or “Revenue Metering” has the meaning set forth in Section 11.1 (Meter Ownership & Maintenance).

“Revised Energy Purchase Price” has the meaning set forth in Section 7.3(b) (Fuel Supply Interruption).

“Revitalization Coordinator” has the meaning set forth in Title V of PROMESA.

“RFP” has the meaning set forth in the recitals.

“RTU” has the meaning set forth in Section 10.1 (Right to Dispatch).

“Sanctioned Jurisdiction” means at any time a jurisdiction that is the target of comprehensive Sanctions (as of the date hereof, Cuba, Iran, North Korea, Syria, Crimea, the so-called Donetsk People’s Republic, the so-called Luhansk People’s Republic, and the non-Ukrainian-government controlled regions of Kherson and Zaporizhzhia).

“Sanctioned Person” means any individual, entity, organization, or government with whom any dealings are restricted or prohibited by Sanctions, including as a result of being: (i) designated on a list of Persons subject to Sanctions; (ii) subject to an executive order or other Law imposing Sanctions (such as the Government of Venezuela); (iii) located, organized, ordinarily resident in, or the government of, a Sanctioned Jurisdiction; or (iv) owned or controlled, directly or indirectly, individually or in aggregate, by any individual, entity, organization, or government described in clauses (i), (ii), and (iii).

“Sanctions” means all economic or financial sanctions or trade embargoes imposed, administered, or enforced by the United States (including the U.S. Department of the Treasury’s Office of Foreign Assets Control and the U.S. Department of State), European Union, United Kingdom, United Nations, or other relevant sanctions authority.

“SCADA” means the Facility’s supervisory control and data acquisition system, which may include equipment installed by Seller in accordance with the requirements of PREPA and the System Operator.

“Scheduled Derating” means a planned Derating that Seller has coordinated in advance with PREPA with a mutually agreed commencement date, time, and duration, as provided in the Scheduled Maintenance Program prepared pursuant to Section 9.2 (Scheduled Maintenance).

“Scheduled Expiration Date” has the meaning set forth in Section 2.5(b) (Performance Security from Seller).

“Scheduled Maintenance Program” has the meaning set forth in Section 9.2(b) (*Scheduled Maintenance*).

“Scheduled Monthly NG Quantity” has the meaning set forth in Section 10.3(a) (*Operation Period*).

“Scheduled Outage” means a planned Outage that Seller has coordinated in advance with System Operator with mutually agreed commencement date, time and duration, as provided in the Scheduled Maintenance Program prepared pursuant to Section 9.2 (*Scheduled Maintenance*).

“Security Amount” has the meaning set forth in Appendix J (*Security Amount*).

“Seller” has the meaning set forth in the recitals.

“Seller Default” has the meaning set forth in Section 18.1 (*Events of Seller’s Default*).

“Seller Delay Liquidated Damages” means the amount of One Hundred Thousand Dollars (US\$100,000) to be paid per Day by Seller to PREPA for each Day that Commercial Operation does not occur after the Guaranteed Commercial Operation Date.

“Seller Guaranteed Performance Liquidated Damages” means the amount to be paid by Seller to PREPA in the event the Facility does not meet either the Guaranteed Capacity or Guaranteed Heat Rate, which shall be the aggregate of:

(a) One Thousand Five Hundred Dollars (US\$1,500) for each whole kW that the Tested Capacity, determined pursuant to Section 6.2 (*Guaranteed Performance Testing*), is below the Guaranteed Capacity; and

(b) One Hundred Thousand Dollars (US\$100,000) for each BTU/kWh (HHV) that the Heat Rate, determined pursuant to Section 6.2 (*Guaranteed Performance Testing*), is above the Guaranteed Heat Rate.

“Seller Interconnection Facilities” means all equipment and facilities, located on Seller’s side of the Point of Change in Ownership, constructed and installed for the purpose of interconnecting the Facility with PREPA’s electric transmission system, including all metering equipment, transmission lines and associated equipment, relay and switching equipment, and protective devices and safety equipment, as set forth in the Interconnection Agreement.

“Seller Liability Cap” means the greater of: (i) twenty percent (20%) of the greatest amount of Capacity Payments paid to Seller in any Agreement Year during the Term, or (ii) Twenty Million Dollars (\$20,000,000).

“Seller Performance Security” has the meaning set forth in Section 2.5(a) (*Performance Security from Seller*).

“Seller’s Complex” means the premises, facilities and infrastructure comprising the Facility, Seller Interconnection Facilities, fuel storage, the desalination plant, if required, and other

ancillary equipment owned by Seller for the purpose of performing its obligations under this Agreement.

“Seller’s Proposal” has the meaning set forth in the recitals.

“Site” means the approximately 13 acres of land located in Puerto Nuevo, Guaynabo, Puerto Rico, as further described in Appendix D (Facility Site).

“Spinning Reserve” means the amount of unused generation capacity of a running unit (“spinning”) capable of synchronizing and ramping in a short period of time, which can compensate for power shortages or frequency deviation within a given period of time, expressed in kilowatts, available at the Point of Interconnection for immediate dispatch (as described in Appendix Q (Ancillary Services)) by PREPA for the purpose of spinning reserve, as determined in accordance with Section 12.5 (Ancillary Services Payment).

“Sponsor” means any Person that (i) owns 10% or more of the direct and indirect voting or economic interest in Seller, or otherwise (ii) Controls or has the power to direct or cause the direction of management and policy of Seller, through ownership of voting securities, by contract, or common directors, officers, or trustees.

“Start-up Cost Cold” or “SUCC” means, for each Cold Start, an amount in Dollars equal to 9705.37 (MMBTU) multiplied by the Fuel Price (US\$/MMBtu).

“Start-up Cost Hot” or “SUCH” means, for each Hot Start, an amount in Dollars equal to 3874.99 (MMBTU) multiplied by the Fuel Price (US\$/MMBtu).

“Start-up Cost Warm” or “SUCW” means, for each Warm Start, an amount in Dollars equal to 7392.09 (MMBTU) multiplied by the Fuel Price (US\$/MMBtu).

“Start-up Payment” or “SP” has the meaning set forth in Section 12.4 (Start-up Payment).

“Substitute Provider” has the meaning set forth in Appendix T (Form of Direct Agreement).

“Supply Period” means the period that commences on the Commercial Operation Date and expires on the thirtieth (30th) anniversary thereof.

“Sworn Statement” means a sworn statement in the form set forth as Appendix V (Form of Sworn Statement).

“System Impact Study” means a study (conducted by the System Operator and paid for by Seller) that models and analyzes the impact of the Facility within the T&D System to identify network upgrades, any additional new infrastructure needed to alleviate equipment violations, and allocate projects their responsibilities. This study will, at a minimum, (i) determine the power capabilities of the major interconnection equipment required to complete the Interconnection Facilities, (ii) specify the maximum fault currents necessary to specify short circuit duty and interrupting ratings for the electrical equipment, (iii) approve or disapprove generator step-up (GSU) transformer impedance and reactive compensation equipment for proper control of voltage and reactive power flow, (iv) quantify the impact to the T&D System and the actions required to

mitigate such impact, and (v) specify the requirements for the Facility and the PREPA Interconnection Facilities.

"System Operation Principles" means the rules and protocols used by the System Operator to operate the T&D System in accordance with Prudent Utility Practices, as set forth in Appendix Q (System Operation Principles).

"System Operator" means LUMA or any future operator of Puerto Rico's electric power Transmission and Distribution System.

"Systems" has the meaning set forth in Section 9.11(a) (Network, Cyber and Physical Security).

"T&D Emergency" means an operational condition or situation affecting the T&D System (including system security and reliability or a declaration of an emergency event under Applicable Law or by any Governmental Authority), which has resulted in, or will likely result in, imminent significant disruption of service to a significant number of customers or likely endangers life or property.

"T&D O&M Agreement" has the meaning set forth in the recitals.

"T&D System Event" means any condition in the T&D System or act or omission of the System Operator that prevents or impairs PREPA from receiving and taking delivery of, or pursuant to which PREPA elects not to receive or take delivery of, a quantity of energy made available by Seller at the Point of Interconnection, including (i) any curtailment, reduction, or disconnection instructions issued by System Operator in a Dispatch Instruction issued by System Operator (or otherwise) for any reason, including as a result of low demand for electricity in the Commonwealth and including any instruction from System Operator preventing Seller from reconnecting, or (ii) any condition in the T&D System (including a T&D Emergency affecting such system) that causes or may cause physical damage to the Facility or life endangerment, and any damage to or the tripping of protection relays installed in the Facility with settings as instructed by System Operator, but in each case excluding any such event resulting from an act or omission of Seller, a Natural Force Majeure affecting Seller or a PREPA Risk Event pursuant to paragraphs (a), (c), (d) and (e) of such definition.

"Tax Credits" means any available production or investment tax credits under the Internal Revenue Code or other Applicable Law as a result of the ownership and operation of the Facility or the output generated by the Facility.

"Taxes" means any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges of any nature whatsoever, including, without limitation, income taxes and repatriation (tollgate) taxes, property taxes, municipal licenses taxes, employment taxes, payroll taxes or construction excise taxes, imposed or assessed by a Governmental Authority responsible for implementing Applicable Law relating to tax on or as a result of the construction, ownership or operations of the Facility.

"Technical Dispute" has the meaning set forth in Section 24.4(b).

“Technical Input” has the meaning set forth in Section 4.1(c) (Proposed Design).

“Term” has the meaning set forth in Section 2.2 (Initial Term).

“Termination Date” means the date of the earliest to occur of any of the events set forth in Section 7.1 (Termination Date).

“Termination Payment for a Force Majeure Event” means: (i) prior to the Commercial Operation Date, the sum of (x) the outstanding Debt, plus Net Equity Investment, plus (y) all reasonable out-of-pocket and documented costs, fees and expenses associated with the termination of any contracts incurred by Seller as a direct result of such termination, in each case calculated as of the Termination Date, less (z) any all Risk Physical Damage Property and Equipment Breakdown Policy insurance proceeds received by Seller (or that Seller would have received had it complied with this Agreement); and (ii) from and after the Commercial Operation Date, (x) the present value of all remaining Capacity Payments excluding the Fixed O&M Charge for the remainder of the Term, using a discount rate of thirteen percent (13%), plus (y) for any contracts that are not assigned to PREPA, all reasonable out-of-pocket and documented costs, fees and expenses incurred by Seller as a direct result of terminating such contracts, in each case calculated as of the Termination Date, less (z) any all Risk Physical Damage Property and Equipment Breakdown Policy insurance proceeds received by Seller (or that Seller would have received had it complied with this Agreement).

“Termination Payment for a PREPA Default” means: (i) prior to the Commercial Operation Date, the sum of (x) the outstanding Debt, plus Net Equity Investment, plus (y) all reasonable out-of-pocket and documented costs, fees and expenses associated with the termination of any contracts incurred by Seller as a direct result of such termination, in each case calculated as of the Termination Date, less (z) any all Risk Physical Damage Property and Equipment Breakdown Policy insurance proceeds received (or that Seller would have received had it complied with this Agreement); and (ii) from and after the Commercial Operation Date, (x) the present value of all remaining Capacity Payments excluding the Fixed O&M Charge for the remainder of the Term, using a discount rate of twelve percent (12%), plus (y) for any contracts that are not assigned to PREPA, all reasonable out-of-pocket and documented costs, fees and expenses incurred by Seller as a direct result of terminating such contracts, in each case calculated as of the Termination Date, less (z) any all Risk Physical Damage Property and Equipment Breakdown Policy insurance proceeds received by Seller (or that Seller would have received had it complied with this Agreement).

“Termination Payment for a Seller Default” means the outstanding Debt, calculated as of the Termination Date, less any all Risk Physical Damage Property and Equipment Breakdown Policy insurance proceeds received (or that Seller would have received had it complied with this Agreement).

“Tested Capacity” means the net electric generating output (calculated as gross electric generating capacity less station use) as demonstrated by the Guaranteed Performance Testing for the Facility expressed in kilowatts (kW), for each type of Fuel.

“Tested Heat Rate” means the fuel energy consumption rate expressed in BTUs (Higher Heating Value “HHV”) required by the Facility to generate one (1) kWh of net electric energy (i.e., BTU/kWh at ISO Conditions) for each type of Fuel, as demonstrated by the Guaranteed Performance Testing.

“Testing Protocol” means PREPA’s standard protocols for testing and commissioning of projects similar to the Facility set forth in Appendix E (*Performance Guarantee Testing Protocol*).

“Title III Case” means PREPA’s proceedings under Title III of PROMESA in the U.S. District Court.

“ToP Shortfall” has the meaning set forth in Section 7.2 (*Take or Pay Fuel*).

“ToP Shortfall Payment” or “TOPSP” means, for any Billing Period with a ToP Shortfall, the product of the ToP Shortfall for such Billing Period times the Fuel Price for such Billing Period.

“Transfer” has the meaning set forth in Section 21.2 (*PREPA’s Right to Assign*).

“Transmission and Distribution System” or “T&D System” means the interconnected network of high voltage transmission lines, low voltage distribution lines, and associated electric substations owned by PREPA (including the PREPA Interconnection Facilities after completion), located on PREPA’s side of the Point of Interconnection, which transmit and distribute electricity to customers in the Commonwealth.

“ULSD fuel” means ultra-low sulfur diesel fuel oil, which shall be of the light distillate fuel oil type (e.g., #2 fuel oil or diesel fuel) and not including heavy or residual fuel oils (e.g., #4, #5, #6 or Bunker C).

“Unrestricted Net Worth” means, for any Person, the sum of (i) the subscribed and paid-up equity (including additional paid-in capital), and (ii) the Unrestricted Retained Earnings, in each case of such Person.

“Unrestricted Retained Earnings” means, for any Person, the amount of accumulated profits and gains realized out of the normal and continuous operations of such Person after deducting distributions to stockholders and transfers to capital stock or other accounts, and which is (i) not appropriated by its board of such Person for corporate expansion projects or programs, (ii) not covered by a restriction for dividend declaration under a loan agreement, (iii) not required to be retained under special circumstances obtaining in such Person such as when there is a need for a special reserve for probable contingences, and (iv) not otherwise covered by any other legal restriction (which refers to any injunction, judgement, or order issued by any judicial authority) on the ability of such Person to distribute or otherwise apply its equity.

“Variable Operations and Maintenance Correction Factor” or “VOMCF” shall have the meaning and be calculated as set forth in Section 12.2(b).

“Variable Operations and Maintenance Costs” or “VOM” means US\$5 per MWh through November 30, 2025. On December 1, 2025, the VOM will be adjusted by the CPI Adjustment Factor to determine the VOM applicable to the period starting on December 1, 2025 through

November 30, 2026. For each twelve (12) month period starting on each December 1 thereafter, the VOM for that period will be determined on December 1 by adjusting the VOM of the prior twelve (12) month period by the CPI Adjustment Factor.

“Warm Start” means a start-up of the Facility with the intent of generating power wherein the generating equipment has been shut down for a period between eight (8) and seventy-two (72) hours.

“Wholly-Owned Affiliate” means, with respect to a Sponsor, any Person that:

(a) owns directly or indirectly one hundred percent (100%) of the issued share capital and voting rights of such Sponsor;

(b) has one hundred percent (100%) of its issued share capital and voting rights owned directly or indirectly by such Sponsor; or

(c) has one hundred percent (100%) of its issued share capital and voting rights owned directly or indirectly by another Person which owns directly or indirectly one hundred percent (100%) of the issued share capital and voting rights of such Sponsor.

“Year” means a calendar year, which shall be the twelve (12) Month period beginning at 00:00:00 hours on January 1 and ending at 11:59:59 hours on the subsequent January 1.

1.2 Interpretation.

The rules of interpretation listed below shall apply when interpreting this Agreement:

(a) Words importing the singular also include the plural and vice versa.

(b) References to natural persons or parties include any person having legal capacity.

(c) References to a Person include such Person’s successors and assigns; provided that with respect to a Party and its rights and obligations under this Agreement, references to a Party shall only include such Party’s successors and assigns if this Agreement permits such successors and assigns.

(d) Words importing one gender include the other gender.

(e) The words “include” and “including” mean “including, but not limited to” and corresponding grammatical variants.

(f) Except as otherwise expressly stated herein, all references in this Agreement to this Agreement (including the Appendices) or to laws, regulations, contracts, agreements, or other documents shall be deemed to mean this Agreement (including the Appendices) and such laws, regulations, contracts, agreements or other documents, as the same may be modified, supplemented, or amended from time to time.

(g) Except as otherwise expressly stated herein, all references to Recitals, Sections, Articles, and Appendices in this Agreement are references to the Recitals, Sections, Articles, and Appendices of this Agreement.

(h) Words and abbreviations not defined in this Agreement which have generally accepted technical or design, engineering, or construction industry meanings are used in this Agreement in accordance with such recognized meanings.

(i) The terms "hereof," "herein," "hereto," "hereunder" and words of similar or like import, refer to this entire Agreement, together with its Appendices, and not any one particular Article, Section, Appendix, or other subdivision of this Agreement.

(j) The terms "Article", "Section", "Appendix", "Annex", "Exhibit" and words of similar or like import, refer to the ones included in this Agreement.

(k) The headings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties, nor should they be used to aid in any manner in the construction of this Agreement.

(l) References to PREPA and the System Operator in the definitions of Dispatch Instruction and T&D System Event include its dispatching center(s) and the T&D System, as applicable.

(m) Terms used in the present tense may be interpreted as referring to the past tense and vice versa.

(n) Unless specified otherwise, all statements of or references to a specific time in this Agreement are to Puerto Rico time.

(o) Nothing contained in this Agreement shall be construed or interpreted to limit in any way PREB's power and authority under the laws of the Commonwealth.

ARTICLE 2 - TERM, EFFECTIVENESS AND PERFORMANCE SECURITY

2.1 Signing Conditions. The Parties shall complete their respective obligations set out in Appendix F (Signing Conditions) no later than the Agreement Date. Seller acknowledges and agrees that submittal of the certifications and documents set out in Appendix F (Signing Conditions) constitutes an essential condition of this Agreement.

2.2 Initial Term. The term of this Agreement (the "Term") shall begin on the Agreement Date and continue until the end of the Supply Period, unless extended or earlier terminated in accordance with the terms hereof.

2.3 Extension. Following the end of the initial Term, the Parties may agree to extend the Term, with approval from PREB and P3A in accordance with Act 120, for up to two (2) consecutive periods of ten (10) Fiscal Years each. This Agreement shall be deemed a PREPA Transaction subject to the requirements of Act 120. Either Party may notify the other of its desire to extend the Term in writing pursuant to this Section 2.3 not less than eighteen (18) Months prior to the end of the initial Term or extended Term, as the case may be. During any extension, all provisions contained herein shall remain in effect unless otherwise agreed in writing. If the Parties extend the Term, then the word "Term" shall thereafter be deemed to mean the original Term as so extended.

2.4 Initial Effectiveness & Closing Date.

(a) The rights and obligations of the Parties under Article 1 (Definitions & Interpretation), this Article 2 (Term, Effectiveness and Performance Security), Article 14 (Representations, Warranties & Covenants), Article 16 (Force Majeure), Article 19 (Taxes), Article 21 (Assignment), Article 22 (Notices) and Article 23 (Miscellaneous Provisions) shall enter into full force and effect on the Agreement Date (collectively, the "Agreement Date Obligations"). Subject to the foregoing rights and obligations that become effective on the Agreement Date, the remaining provisions of this Agreement shall become effective on the date (the "Closing Date") as of which the Parties jointly sign a certificate, in a form substantially similar to that set forth in Appendix H (Form of Conditions Precedent Certificate), confirming the satisfaction or waiver of each of the conditions precedent set out in Appendix G (Conditions Precedent) (the "Conditions Precedent"). The Parties shall issue such certificate within five (5) Business Days after the occurrence of such satisfaction or waiver. Each Party shall use its commercially reasonable efforts to satisfy their respective Conditions Precedent and cause the Closing Date to occur no later than two hundred seventy (270) Days after the Agreement Date.

(b) If the Closing Date does not occur for any reason (other than Force Majeure) within three hundred eighty (380) Days after the Agreement Date (the "Outside Closing Date"), unless the Parties otherwise agree in writing, this Agreement shall automatically terminate at midnight on such Day; provided that, upon termination of this Agreement in accordance with this Section 2.4(b), (i) neither Party shall incur any liability to the other Party; provided further that if (x) the reason for the failure of the Closing Date to occur is the failure of PREPA to satisfy the PREPA Conditions in Part 2 of Appendix G, or (y) PREPA terminates this Agreement in its sole discretion pursuant to sub-clause (d) of Part 3 of Appendix G, then PREPA shall reimburse Seller for such actual and documented out-of-pocket costs incurred in connection with the

development-related activities listed in Appendix Z (List of Third Parties Costs Incurred by Seller) hereto (up to an amount per each category listed for "Phase I" and "Phase II" as set forth in the corresponding "Amount" column of such category line item) related to the procurement of the long-lead items of Major Equipment and performing the development-related activities that are reasonably incurred by Seller to third parties towards Seller's fulfilling its obligations under this Agreement (*provided*, that for the long lead equipment items listed in Phase II of Appendix Z, Seller shall give forty-five (45) Day's written notice to PREPA prior to incurring such costs and PREPA shall have the right to choose if Seller should proceed with the procurement of the long-lead items of Major Equipment or change the Milestone Schedule for Commercial Operation Date); and (ii) PREPA shall return the Seller Performance Security to Seller unless (x) Seller has breached any of the Agreement Date Obligations and failed to cure such breach within thirty (30) Days following PREPA's written notice thereof or (y) any condition set forth in Part 1 (Conditions for the Benefit of PREPA) of Appendix G (Conditions Precedent) remains unsatisfied as of the Outside Closing Date (except when failure to satisfy such conditions precedent was caused by PREPA's breach of this Agreement or any other reason outside of Seller's control), in which case PREPA shall have the right to draw on the full face amount of the Seller Performance Security.

2.5 Performance Security from Seller.

(a) To secure the due, proper, timely and full performance of Seller's obligations under this Agreement, Seller shall provide to PREPA as a condition precedent to the Closing Date, at Seller's sole expense, one or more on-first-demand, irrevocable standby letters of credit issued by an Acceptable Bank in a form substantially similar to that set forth in Appendix I (Form of Performance Security) or in a form otherwise reasonably acceptable to PREPA or Cash collateral or other on-first-demand, irrevocable security acceptable to PREPA in its sole discretion in an amount equal to the Security Amount (the "Seller Performance Security").

(b) Seller shall (i) maintain the Seller Performance Security in full force and effect and in accordance with this Agreement until the date that is sixty (60) Days after the expiration of the Term (the "Scheduled Expiration Date") and (ii) together with the delivery of each Seller Performance Security or replacement thereof, deliver a written statement dated as of the delivery date duly signed by its authorized representative certifying that the issuer of such Seller Performance Security meets the requirements of an Acceptable Bank.

(c) Seller shall cause an Acceptable Bank to issue, reissue or replace any Seller Performance Security (in compliance with this Section 2.5) in accordance with the following:

(i) to the extent that the Seller Performance Security will expire or cease to exist prior to the Scheduled Expiration Date, then no later than thirty (30) Days prior to the date of such expiration or cessation; and

(ii) in the event that the issuer of the Seller Performance Security ceases to meet the requirements of an Acceptable Bank, then no later than five (5) Business Days after the date of such cessation.

(d) PREPA shall have the right to draw down on the Seller Performance Security (via a full or one or more partial drawings, as applicable) to satisfy any outstanding,

unpaid amounts hereunder or as otherwise specifically provided herein, upon the occurrence of any of the following events:

(i) COD Termination Event;

(ii) Seller's failure to pay Liquidated Damages when due under this Agreement that are not subject to a good faith Dispute, which Dispute, for the avoidance of doubt, shall be considered a Technical Dispute and therefore referred to the Expert Technical Determination procedure set forth in Section 24.4 (*Expert Technical Determination Procedure for Technical Dispute*);

(iii) Seller's failure to provide replacement Seller Performance Security in accordance with Section 2.5(c); provided that (x) PREPA deposits the amount so drawn in an escrow account in a bank selected by PREPA until Seller delivers the replacement Seller Performance Security to PREPA, and upon such delivery, PREPA shall cause the release of the drawn amounts on deposit in such account to Seller, and (y) PREPA shall have the right to draw from the escrow account in accordance with this Section 2.5(d), and Seller shall bear the costs of opening and maintaining such escrow account;

(iv) except as otherwise covered by items (i) to (iii) of this Section 2.5(d), a Seller Default; or

(v) any other event that expressly entitles PREPA to draw down or claim on the Seller Performance Security under this Agreement.

(e) PREPA shall have the right to draw down on the entire undrawn portion of the face amount of the Seller Performance Security upon the occurrence of (i) the events described in items (i) and (ii) of Section 2.5(d) (in each case, even if they do not result in the termination of this Agreement pursuant to Section 17.1) and (ii) PREPA's termination of this Agreement upon a Seller Default.

ARTICLE 3 - PRE-OPERATION PERIOD

3.1 Seller's Development Obligations.

(a) Seller shall develop, design, finance, permit, construct, install, test and commission the Facility and achieve Commercial Operation no later than the Guaranteed Commercial Operation Date, at its own cost, in accordance with the Milestone Schedule, the requirements of all Permits, the DCDs, the Approved Design, the Interconnection Agreement, Prudent Utility Practices, the other provisions of this Agreement, Applicable Law and Applicable Standards.

(b) Seller shall acquire (or lease) all land parcels, easements, rights-of-way and other real property rights required to construct, test, commission, own, operate and repair the Facility in its own name and at its own cost, and maintain such rights until the end of the Term.

(c) Seller may, in its discretion, (i) no later than ten (10) Business Days, submit to the Revitalization Coordinator an application for the designation of the Facility as a Critical Project with an expedited permitting process and (ii) if Seller elects to make such submission, exercise its reasonable efforts to obtain such designation as promptly as possible.

(d) Seller shall submit progress reports to PREPA on the development, construction, permitting, third-party contracting and financing of the Facility no later than the tenth (10th) Business Day of every Month, commencing on the Agreement Date and continuing until the Commercial Operation Date. Seller acknowledges that PREPA may keep the System Operator, PREB and other Governmental Authorities apprised of Seller's progress.

(e) Seller shall comply with all terms and conditions contained in the Interconnection Agreement, including developing, designing, permitting, constructing, installing, testing and commissioning the Seller Interconnection Facilities. As it relates to the PREPA Interconnection Facilities, Seller shall only be responsible for the payment or reimbursement of interconnection costs for the construction of the POI Facility.

(f) Seller shall promptly pay to PREPA all amounts invoiced by PREPA for the cost incurred by PREPA to develop, design, finance, permit, construct, install, test and commission the POI Facility in accordance with the Interconnection Agreement (the "POI Facility Works").


3.2 PREPA Development Obligations.

PREPA shall develop, design, permit, construct, install, test and commission any PREPA Interconnection Facilities no later than the Backfeed Date, as adjusted in accordance with Section 3.3 (Extensions of Time) by either Party, provided that Seller has complied with Section 3.1(f) (Seller's Development Obligations).

3.3 Extensions of Time.

(a) Each Party (the "Delayed Party") shall have the right to an extension of the time for the completion or occurrence of any Milestone or deadline expressly stated herein where

(i) Force Majeure, (ii) a breach, delay or failure by the other Party in performing any material obligation under this Agreement or the Interconnection Agreement, (iii) a Change in Law, or (iv) (in the case of Seller only) any other PREPA Risk Event, in each case, directly delays the Delayed Party's ability to achieve such Milestone or deadline, but only to the extent that: (x) such delay would not have occurred but for the occurrence of such event; (y) the Delayed Party exercises its commercially reasonable efforts to mitigate the effects of such delay; and (z) the Delayed Party has notified the other Party of such delay and provided such other Party with a detailed explanation of the circumstances leading to such delay as promptly as possible, but no later than ten (10) Business Days after the Delayed Party becomes aware of the delay.



(b) If a Party exercises its right to an extension of time in accordance with Section 3.3(a), then (i) the time for completion or occurrence of such Milestone or deadline shall be extended by the number of Days during which such event giving rise to such delay prevented such Party from achieving such Milestone or deadline, and (ii) if the right to an extension of time is exercised by a Party due to a Force Majeure affecting PREPA, PREPA shall reimburse Seller for the actual and documented out-of-pocket costs reasonably incurred by Seller to third parties, including reasonable and documented capital costs and interest expenses, as a direct result of such extension; provided, however that with regard to such reimbursement, PREPA may elect, in its sole discretion to either: (A) pay such actual and documented costs directly to Seller; (B) adjust the Capacity Purchase Price to account for the resulting impacts of such actual and documented costs, or (C) pay a portion of such actual and documented costs directly to Seller and a portion through an adjustment to the Capacity Purchase Price.

3.4 Guaranteed Performance Liquidated Damages.

(a) Upon Seller's failure to deliver the Guaranteed Capacity and the Guaranteed Heat Rate, if not cured within six (6) Months after the date of the first Guaranteed Performance Testing (the "Guaranteed Performance Liquidated Damages Cure Period"), Seller shall pay the aggregate Seller Guaranteed Performance Liquidated Damages to PREPA no later than forty-five (45) Days after receipt of an invoice therefor. The Parties acknowledge and agree that the aggregate Seller Guaranteed Performance Liquidated Damages are a one-time payment and represent a fair and reasonable estimate of the losses that PREPA will suffer if Seller does not deliver the Guaranteed Capacity and the Guaranteed Heat Rate by the expiration of the Guaranteed Performance Liquidated Damages Cure Period, and accordingly, the Parties hereby waive their right to dispute the validity of this Section 3.4(a).

(b) Notwithstanding Seller's ability to pay Seller Guaranteed Performance Liquidated Damages, in the event that either the Capacity is below the amount of seventy percent (70%) of the Dependable Capacity or the Heat Rate is above the amount of one hundred thirty percent (130%) of the Guaranteed Heat Rate, in each case for more than twelve (12) consecutive Months after Commercial Operation Date (unless Seller and PREPA otherwise agree in writing), PREPA shall be entitled to invoke its termination rights and other remedies under this Agreement and/or under Applicable Law.

3.5 Delay Liquidated Damages.

(a) Subject to Section 3.3 (Extensions of Time), for each Day of delay in achieving Commercial Operation after the Guaranteed Commercial Operation Date until the earlier of (i) the Commercial Operation Date and (ii) the Long-Stop Date, Seller shall pay to PREPA Seller Delay Liquidated Damages no later than thirty (30) Days after receipt of an invoice therefor. The Parties acknowledge and agree that Seller Delay Liquidated Damages represent a fair and reasonable estimate of the losses that PREPA will suffer if Commercial Operation does not occur by the Guaranteed Commercial Operation Date, and accordingly the Parties hereby waive their right to dispute the validity of this Section 3.5(a).


(b) The Parties acknowledge and agree that Seller's maximum aggregate liability arising out of this Agreement for delays in achieving Commercial Operation by the Guaranteed Commercial Operation Date shall not exceed Thirty Million Dollars (US\$30,000,000).

3.6 Independent Expert. If an independent engineer has not been already appointed by the Project Lenders, at PREPA's option, PREPA may require Seller to appoint an independent engineer chosen from a list of pre-approved experts, as set forth in Appendix K (Pre-Approved Independent Experts) (the Project Lenders' appointed independent engineer or the Seller-appointed one, the "Independent Expert"). In all scenarios, the Independent Expert shall be independent of and impartial as among the Parties. The Independent Expert shall review technical matters, assist in the resolution of technical issues, issue non-binding technical recommendations in connection with technical disputes in accordance with this Agreement and monitor the works undertaken by, or on behalf of, Seller (i) for the design, construction and commissioning of the Facility and (ii) the operation of the Facility during the Supply Period. The Independent Expert's staff shall include suitably qualified engineers and other professionals who possess the competence to carry out such duty. The Independent Expert shall verify that Seller complies with this Agreement and shall conduct reviews of works performed by, or on behalf of, Seller. Seller shall consider all non-binding technical recommendations issued by the Independent Expert in order to comply with the requirements of this Agreement during the Pre-Operation Period. Whenever carrying out its duties in accordance with this Agreement, the Independent Expert shall act independently. Once appointed, neither Party shall communicate independently with the Independent Expert, and all communications the Parties make with the Independent Expert must be simultaneously copied to all other Parties. All costs and fees associated with the appointment of, and services provided by, the Independent Expert arising prior to the Commercial Operation Date shall be borne exclusively by Seller.

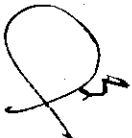
3.7 Seller's Utilities. Prior to the Initial Synchronization Date, Seller shall procure, at its own cost, the electricity required for the Facility, which electricity it shall obtain from PREPA at the most advantageous published rate available to Seller (unless Seller generates electricity for its own use), and shall procure all of its other water, fuel and other utilities during the Term. From and after the Initial Synchronization Date, PREPA agrees to provide back-feed electricity to Seller as requested by Seller at the most advantageous published rate available to Seller, which Seller shall select based on what it is otherwise qualified for, and shall conform with rates the System Operator charges to similar customers.

ARTICLE 4 - FACILITY DESIGN REQUIREMENTS

4.1 Proposed Design.



(a) Beginning any time after the Agreement Date, but no later than sixty (60) Days after the Closing Date, Seller shall submit to PREPA and the System Operator the design documentation and specifications for the construction of Facility, which shall include at a minimum the design and specifications for the Major Equipment to be used in the construction of the Facility. PREPA and the System Operator shall review and comment on such submission within fifteen (15) Business Days. If PREPA and the System Operator fail to respond within such fifteen (15) Business Day period, Seller's submission shall be deemed approved, unless PREPA or System Operator have made a request for more information or for the Parties to discuss Seller's submission within that fifteen (15) Business Day period.



(b) No later than sixty (60) Days (or such longer time as the Parties may mutually agree in writing) after PREPA provides its comments (or approval) pursuant to Section 4.1(a), Seller shall submit to PREPA the issued-for-construction design of the Facility (the "Proposed Design"). Seller agrees to ensure that the Proposed Design will comply with Prudent Utility Practices, the requirements of the Interconnection Agreement, the Operating Characteristics, Permits, Applicable Laws, Applicable Standards and the DCDs.

(c) No later than thirty (30) Days following Seller's delivery to PREPA of the Proposed Design, PREPA shall complete its review of the Proposed Design and deliver to Seller written notice that PREPA either: (i) accepts the Proposed Design (the "Approved Design") and confirms that Seller Interconnection Facilities, if constructed in accordance with such design, will comply with PREPA's interconnection requirements as set forth in the Interconnection Agreement; or (ii) does not accept such design based on its review, in which case PREPA shall simultaneously deliver to Seller a written and detailed description of PREPA's objections to such design and PREPA's required modifications thereto, which modifications PREPA shall reasonably propose in good faith and consistent with Prudent Utility Practices (the "Technical Input"). PREPA's objections will be limited to identification of deficiencies in the Proposed Design to comply with the requirements in Section 4.1(b), and any other functional capabilities, as well as any gaps versus known system requirements that would prevent the Seller Interconnection Facilities from meeting the requirements of this Agreement. If PREPA fails to respond within such thirty (30) Day period, Seller's Proposed Design shall be deemed the Approved Design, unless PREPA or System Operator have made a request for more information or for the Parties to discuss Seller's submission within that thirty (30) Day period.

(d) If PREPA provides Technical Input to Seller in accordance with the foregoing, within twenty (20) Business Days thereafter, Seller and PREPA shall negotiate in good faith to mutually agree upon any adjustments to the Proposed Design to address Seller's concerns. Upon reaching agreement, Seller shall prepare and submit to PREPA a revised Proposed Design based on such agreed measures to address PREPA's Technical Input. No later than ten (10) Business Days following Seller's delivery to PREPA of Seller's revised Proposed Design, PREPA shall review such revised Proposed Design and notify Seller in writing either that: (i) such revised design constitutes the Approved Design; or (ii) PREPA does not accept such design, in which case PREPA shall simultaneously deliver to Seller further Technical Input. The Parties

shall repeat the foregoing process until PREPA accepts an Approved Design, such approval not to be unreasonably withheld or delayed. If PREPA fails to respond within such ten (10) Business Day period, Seller's Proposed Design shall be deemed the Approved Design, unless PREPA or System Operator have made a request for more information or for the Parties to discuss Seller's Proposed Design within that ten (10) Business Day period.

(e) The Parties shall exercise commercially reasonable efforts to agree upon an Approved Design within sixty (60) Days of Seller's submission of the revised Proposed Design after Seller has first received PREPA's Technical Input. The Parties' failure to agree on the Approved Design within ninety (90) Days after Seller's first submission of a Proposed Design shall constitute grounds for an extension of time for the occurrence of Milestones to the extent otherwise permitted under Section 3.3 (Extensions of Time).

(f) Seller shall not commence construction of the Facility without PREPA's written consent until the Parties have agreed on an Approved Design; provided that Seller may, at its risk, order long-lead items of Major Equipment for the Facility prior to the Parties agreeing on the Approved Design.

(g) Prior to the Initial Synchronization Date, Seller may notify PREPA of reasonable updates from Seller's equipment suppliers and corresponding modifications to the Approved Design necessitated by supply constraints or market availability, provided that such updates and modifications shall not adversely impact Seller's compliance with other provisions of this Agreement.

(h) In the event of any conflict between the requirements, rights and obligations of the Parties between the terms of the Interconnection Agreement and the terms of this Agreement, the terms of the Interconnection Agreement shall control.

4.2 Modifications.

(a) Each Party shall notify the other in advance of any changes to its system, and the reasons for those changes that may affect the coordination of protective devices between Seller and PREPA interconnected systems or otherwise affect either Party's Interconnection Facilities.

(b) PREPA reserves the right to modify or expand the DCDs, its requirements for protective devices in the Interconnection Facilities, in each case from time to time in accordance with Prudent Utility Practices and Applicable Law and in consultation with Seller; provided that any such modification or expansion shall not cause Seller to incur any material additional liability (other than costs, for which PREPA will reimburse Seller as provided below). If PREPA desires to exercise such modification or expansion right in consideration of the risk of imminent and substantial harm to human life, property or the T&D System (including degradation of service), then it shall notify Seller thereof in writing, providing the rationale for such change in reasonable detail, subject to the limitations set forth in Section 4.2(c) and Section 4.2(d), and Seller shall implement such change, and PREPA will reimburse Seller the cost of such modification or expansion in accordance with this Agreement.

(c) If Seller implements any modification or expansion that PREPA requires under this Section 4.2 (Modifications), then, subject to PREPA's reimbursement obligation as set forth in Section 4.2(b) above, Seller shall assume the cost of such implementation. If such modification or expansion in any manner increases the cost to Seller of operating the Facility or reduces the Facility's ability to make available Net Electrical Output, then the Parties shall treat that portion of Seller's increased costs of operation or reasonably projected lost revenue under this Agreement arising out of such reduction as a cost of such change, provided that Seller shall take all reasonable steps to minimize or mitigate such costs and losses.

(d) Modifications or expansions of the DCDs shall not become effective until Seller has had a reasonable period of time to comply with any such modified or expanded requirement.

4.3 Pre-Synchronization Testing.

(a) Prior to the Initial Synchronization Date, Seller shall perform the acceptance testing of Seller Interconnection Facilities in accordance with the Testing Protocol. Seller shall provide to PREPA no less than ten (10) Days' written notice of such testing and PREPA shall have a representative witness and evaluate the testing.

(b) No later than fifteen (15) Business Days following completion of such testing and submission to PREPA of the commissioning turn-over documents prepared by Seller, PREPA shall review such procedure and notify Seller in writing whether PREPA (i) accepts such commissioning turn-over documents, or (ii) declines to accept such commissioning turn-over documents acting reasonably in accordance with Prudent Utility Practice. In case PREPA declines to accept such commissioning turn-over documents, PREPA shall simultaneously deliver to Seller a written and detailed technical description of PREPA's objections to such commissioning turn-over documents and PREPA's required modifications thereto, which Seller shall jointly work with the testing contractor using commercially reasonable efforts to incorporate in good faith. If PREPA has provided required modifications to the commissioning turn-over documents, then no later than five (5) Business Days following Seller's delivery to PREPA of revised commissioning turn-over documents consistent with such modifications, PREPA shall review such revised commissioning turn-over documents and notify Seller in writing either of PREPA's approval or that PREPA continues to require modifications thereto. The Parties shall repeat the foregoing process until PREPA approves the commissioning turn-over documents, such approval not to be unreasonably withheld or delayed. PREPA shall have the right to finally determine, acting reasonably in accordance with Prudent Utility Practice, whether Seller has adequately designed, constructed and tested Seller Interconnection Facilities and whether such facilities comply with the Approved Design, and PREPA's other requirements. PREPA shall use reasonable efforts to accept Seller's commissioning turn-over documents within fifteen (15) Business Days after Seller's delivery to PREPA of such revised commissioning turn-over documents.

(c) Upon completion of the pre-synchronization testing of Seller Interconnection Facilities, Seller shall provide written notice (which shall include a copy of the red line drawing used for the construction of Seller Interconnection Facilities) to PREPA that Seller has substantially completed and tested Seller Interconnection Facilities in accordance with

Section 4.3(a) (“Interconnection Facilities Completion Notice”), in a form substantially similar to that set forth in Appendix L (*Form of Interconnection Facilities Completion Notice*).

(d) Following receipt of the Interconnection Facilities Completion Notice, PREPA shall inspect (or the Parties shall appoint an Independent Expert to inspect) Seller Interconnection Facilities and the remainder of the Facility to confirm that Seller has constructed Seller Interconnection Facilities in accordance with the Approved Design, which inspection and confirmation PREPA shall complete promptly, but in any case within five (5) Business Days following PREPA’s receipt of the Interconnection Facilities Completion Notice.

(e) If PREPA, in consultation with the Independent Expert, determines in good faith acting reasonably in accordance with Prudent Utility Practice that Seller has not constructed Seller Interconnection Facilities or remainder of the Facility in accordance with the Approved Design and that such deviation would, if PREPA synchronized the Facility with the T&D System, adversely affect the operations of the T&D System, PREPA shall so advise Seller in writing within five (5) Business Days following PREPA’s (or the Independent Expert’s, as applicable) inspection of Seller Interconnection Facilities or remainder of the Facility, as applicable, and Seller shall correct or mitigate any such deviation prior to interconnecting the Facility to the T&D System and resubmit the Interconnection Facilities Completion Notice (in which case Section 4.3(d) shall again apply). If the Parties cannot reach an agreement on whether Seller has constructed Seller Interconnection Facilities or the remainder of the Facility in accordance with the Approved Design after Seller has submitted two (2) Interconnection Facilities Completion Notices that PREPA has found to be deficient, then either Party may refer the matter to dispute resolution pursuant to Article 24 (*Dispute Resolution*).

(f) If PREPA, in consultation with the Independent Expert, determines, acting reasonably in accordance with Prudent Utility Practice, that (i) the Facility has been constructed in accordance with this Agreement and (ii) equipment with sync-check and other capabilities required by the System Operator has been installed at the Facility, then PREPA shall notify Seller thereof (such notification, the “Initial Synchronization Notice”), in a form substantially similar to that set forth in Appendix N (*Form of Initial Synchronization Notice*), and the Parties shall proceed with Initial Synchronization pursuant to Article 5 (*Synchronization*) and testing pursuant to Article 6 (*Testing, Capacity Ratings and Completion*).

4.4 Protective Relays & Control.

(a) Seller shall provide PREPA with the proposed design of the complete protection systems (including relay devices and relay settings), in accordance with the Interconnection Agreement, for PREPA’s review and inspection not later than sixty (60) Days prior to the Proposed Initial Synchronization Date. Seller shall submit the protection requirements in three stages: (i) design; (ii) protection report (i.e., the settings to be implemented according to the Approved Design); and (iii) the tests that Seller shall perform with the approved settings.

(b) If PREPA declines to accept such protection requirements for any reason acting reasonably in accordance with Prudent Utility Practice, Seller agrees to comply with any request made by PREPA to provide the protection scheme requirements in accordance with Prudent Utility Practice, including acceptable relay settings, prior to the Initial Synchronization

Date. PREPA agrees to give any comments or suggested changes pursuant to this Section 4.4 within thirty (30) Days after Seller submits the protection requirements at each stage to PREPA, provided that PREPA shall have at least ten (10) Days to evaluate each individual submission after receipt. If the Parties cannot reach an agreement within thirty (30) Days after PREPA's receipt of the complete set of protection requirements, including relay settings, then the Parties shall resolve such Dispute in accordance with Article 24 (Dispute Resolution).

(c) Seller further agrees that control and protection scheme parameters such as ramp rates, frequency fluctuations, overvoltage or low voltage ride-through, voltage support, and dynamic power factor will align in all material respects with the DCDs.

4.5 Facility Upgrades. From and after the Initial Synchronization Date, Seller shall not carry out any upgrades or modifications to the Facility that will, or may reasonably be expected to, impair or limit the Facility's compliance with the Prudent Utility Practices, alter its Operating Characteristics or expand or limit its ability to make available Net Electrical Output at the Point of Interconnection, including the addition of energy storage systems, capacity expansions or other upgrades not contemplated by the Approved Design, in each case, without PREPA's prior written consent, which PREPA may withhold in its sole discretion. The Parties acknowledge that this Section 4.5 does not restrict Seller's performance of routine maintenance or technology upgrades required to ensure safe and reliable operation, or regular replacement of equipment to maintain the performance of the Facility in accordance with this Agreement and the Approved Design.

ARTICLE 5 - SYNCHRONIZATION

5.1 Scheduling Synchronization.

(a) Seller shall notify PREPA, PREB and the System Operator in writing of the proposed Initial Synchronization Date (the "Proposed Initial Synchronization Date") and the start-up and testing schedule for the Facility no later than thirty (30) Days prior to the Proposed Initial Synchronization Date. Seller shall have the right to postpone or accelerate such date with at least fourteen (14) Days' prior written notice to PREPA, PREB and the System Operator. Upon the issuance of the Initial Synchronization Notice, the Parties shall agree on the actual Initial Synchronization Date at least seven (7) Days in advance of such date.

(b) Prior to Initial Synchronization Date, Seller shall verify that all trip circuits are properly wired, and relay settings are programmed and tested prior to the Facility full energization. This may be performed through a relay test generator at the Facility.

(c) PREPA and the System Operator reserve the right to delay the actual Initial Synchronization Date for each/any unit of the Facility due to problems with such unit that could adversely affect the operations of the electrical system. In such event, PREPA and/or the System Operator shall promptly give Seller notice of such problems and Seller shall promptly remedy any problems with facilities or equipment which Seller installed or maintains.

5.2 Initial Synchronization.

Seller shall not energize, back-feed, or synchronize the Facility without notifying PREB and PREPA and without the System Operator's prior approval, such approval not to be unreasonably withheld or delayed. Subject to Seller's compliance with the Interconnection Agreement and this Agreement, the System Operator, as agent to PREPA, agrees to allow the Facility to interconnect to the T&D System at the Point of Interconnection in accordance with the terms of this Agreement and the Interconnection Agreement from the Initial Synchronization Date.

ARTICLE 6 - TESTING, CAPACITY RATINGS AND COMPLETION

6.1 General.

The Dependable Capacity for the Facility shall be the Tested Capacity (as determined by the Guaranteed Performance Testing and starting with the first Annual Performance Testing, as determined pursuant to Section 6.5).

6.2 Guaranteed Performance Testing.

(a) On or promptly after the Initial Synchronization Date, Seller shall provide PREPA with at least ten (10) Days prior written notice that the Facility is ready for the demonstration of its Tested Capacity and Tested Heat Rate (the "Guaranteed Performance Testing") and the date and time when Seller shall perform the testing according to the Testing Protocol and PREPA shall have the right to monitor the testing.

(b) If the Guaranteed Performance Testing is completed in accordance with the Testing Protocol and any disputes with respect to such testing have been resolved to the satisfaction of the Parties as provided therein, Seller shall set the Tested Capacity and Tested Heat Rate based on the results obtained in the testing and corrected to the same ambient conditions as the Guaranteed Capacity and Guaranteed Heat Rate. The Tested Capacity and Tested Heat Rate shall be measured against the Guaranteed Capacity and Guaranteed Heat Rate.

(c) Seller may conduct additional performance testing if Seller is not satisfied with the results and has not met the Guaranteed Performance. Requests for additional tests shall: (i) be made in writing no later than five (5) Days after termination of the most recent Guaranteed Performance Testing; and (ii) indicate the date and time when Seller will perform the additional tests, which shall be on a date that is at least ten (10) Days after providing notice thereof to PREPA. Seller shall be entitled to perform as many additional tests as it deems appropriate, at its own cost, during a period that shall not exceed six (6) Months from the first Guaranteed Performance Testing date. Upon expiration of the six (6) Months following the Initial Synchronization Date, the Tested Capacity and Tested Heat Rate shall be determined based on the results obtained during the most recent Guaranteed Performance Testing.

6.3 Emissions and Noise Testing.

(a) To demonstrate compliance with required regulations and permitted levels of emissions at site operating conditions and at the various required load levels, Seller shall conduct an emissions testing of the Facility (the "Emissions Testing") after finalization of the construction of the Facility and prior to Commercial Operation Date and any time thereafter in accordance with permit requirements. Seller acknowledges that emissions levels shall conform to the applicable permit requirements and the emissions testing procedures shall conform to Applicable Standards.

(b) To demonstrate compliance with required regulations and permitted levels of noise emissions at site operating conditions and at the various required load levels, Seller shall conduct an acoustics testing of the Facility, including near field and far field (the "Noise Emissions Testing") after finalization of the construction of the Facility and prior to Commercial

Operation Date, and any time thereafter in accordance with permit requirements. Seller acknowledges that acoustic levels shall conform to the applicable permit requirements and acoustic testing procedures shall conform to Applicable Standards.

(c) Seller shall provide written notice to the relevant Governmental Authorities, including the Department of Natural and Environmental Resources (the "DNER"), of all Emissions Testing and initial operational test runs conducted at the Facility at least fifteen (15) days prior to conducting such tests, or as otherwise required under Applicable Laws and/or relevant permit conditions, to afford the DNER and any other relevant Governmental Authority the opportunity to have an observer present during such tests. Seller shall also deliver a copy of such notifications to PREPA, PREB and the System Operator.

6.4 Conditions to Commercial Operation Date.

(a) Commercial Operations shall occur on the date that the following conditions have been satisfied, as certified by Seller in a certificate, in a form substantially similar to that set forth in Appendix R (Form of Commercial Operation Date Certificate):

(i) determination of the Tested Capacity and Tested Heat Rate pursuant to Section 6.2 (Guaranteed Performance Testing), which such Capacity and Heat Rate shall meet or exceed the Guaranteed Performance (or, to the extent that the Tested Capacity and Tested Heat Rate do not achieve the Guaranteed Performance, the Minimum Acceptance Criteria shall have been achieved);

(ii) successful completion of the initial emissions and noise testing pursuant to Section 6.3 (Emissions and Noise Testing);

(iii) delivery to PREPA of copies of all material Permits needed to operate the Facility and Seller Interconnection Facilities;

(iv) delivery to PREPA of a full set of electronic red-lined "as-installed" drawings for the Facility and a full set of warranty documents from the equipment manufacturers and construction contractor(s), with clean "as-installed" drawings to be provided six (6) Months later;

(v) delivery to PREPA of a certificate issued by Seller with evidence of the actual costs (denominated as a Dollar amount) incurred to interconnect the Facility to the T&D System, along with the calculation of the new monthly Interconnection Cost Payment; and

(vi) delivery to PREPA for its review and approval of all Fuel Supply Arrangements, Fuel transportation agreements, Backup Fuel agreements and other commitments for the supply and transportation of Fuel and Backup Fuel pursuant to Section 7.1(c) (Adequate Fuel Supply).

(b) PREPA shall confirm and countersign such notification, such confirmation not to be unreasonably withheld or delayed.

6.5 Annual Performance Testing.

(a) Upon completion of the first Agreement Year, the Dependable Capacity and Heat Rate for the Primary Fuel shall be reset by testing as described in this Section 6.5 and in accordance with the Testing Protocol (the "Annual Performance Testing"). Seller shall hire a Qualified Independent Testing Contractor. All costs and fees associated with the appointment of, and services provided by, the Qualified Independent Testing Contractor and arising in connection with the Annual Performance Testing, shall be borne exclusively by Seller. In the event System Operator requires a demonstration test annually for the Backup Fuel that requires a Qualified Independent Testing Contractor, then the cost for such testing shall be borne by PREPA.

(b) The Annual Performance Testing shall occur every Agreement Year. Prior to the end of each Agreement Year, Seller shall coordinate with, and the testing shall be conducted by, the Qualified Independent Testing Contractor. Such Annual Performance Testing will be witnessed by PREPA's personnel. In addition, Seller may also, at any time, notify in writing PREPA and the Independent Expert of its intention to reset the Dependable Capacity and Heat Rate at least fourteen (14) Days in advance, and such notification shall include the date and time where the retesting will take place. The Parties shall cooperate in good faith to determine mutually acceptable dates for such testing. The cost for such testing shall be borne by Seller.


(c) If Seller resets the Dependable Capacity and Heat Rate, the payments for Dependable Capacity and Heat Rate shall thereafter be made based on this new Dependable Capacity and Heat Rate. This new Dependable Capacity, as set forth pursuant to this Section 6.5, and the Dependable Capacity and Heat Rate must be within the limits that could have been set originally under such provision taking into account degradation curves. In addition to the Annual Performance Testing, either Party may, at any time, and from time to time, upon written request, and with the final written approval of the other Party, perform testing to reestablish either the Dependable Capacity or the Heat Rate. The cost for such testing shall be borne by the requesting Party.

6.6 Protocols & Procedures.

No later than one hundred eighty (180) after the Closing Date, the Parties shall agree upon any adjustments or additions to the Testing Protocols and Agreed Operating Procedures applicable to the Facility, taking into consideration Prudent Utility Practices, the Approved Design, the Operating Characteristics, and the terms and conditions of this Agreement. The Testing Protocols and Agreed Operating Procedures shall only be modified with the written consent of the Parties. In the event of any conflict between the terms and conditions of this Agreement and the Testing Protocols or Agreed Operating Procedures, the terms and conditions of this Agreement shall prevail. Seller acknowledges and agrees that (i) its compliance with the Agreed Operating Procedures or Testing Protocols shall not relieve it from any liability that it would otherwise have under this Agreement, and (ii) PREPA shall not be liable to Seller or any other Person by reason of its review or approval of the Agreed Operating Procedures or Testing Protocols.

6.7 Seller Interconnection Facilities.

(a) On the Commercial Operation Date, Seller shall (i) release and forever discharge PREPA and its respective officers, directors, agents, and employees, and all property connected with or a part of the site of the POI Facility from any and all contractual liens and any



other liens arising by operation of Applicable Law or otherwise in connection with, or arising out of, the performance of Seller's obligations under this Agreement, including construction of Seller Interconnection Facilities; and (ii) specifically waive and release any lien, right, security interest or encumbrance of any kind in connection with this Agreement or Applicable Law, established by Seller, its contractors at any tier, material suppliers, laborers and all other Persons or entities furnishing services, labor or materials in connection with Seller's obligations under this Agreement and all other interests therein and all improvements and materials placed on such site or machinery furnished in connection with such work.

(b) Seller shall at all times own and have responsibility for (at its own cost and expense) the safe and reliable operation and maintenance of all Seller Interconnection Facilities. PREPA shall own and have responsibility for the safe and reliable operation and maintenance of any PREPA Interconnection Facilities. If the System Operator implements any change in the protection system relay settings, equipment, or studies due to any improvement at the Interconnection Facilities required by Seller or as a result of the Facility, then Seller shall bear all reasonable and documented costs and expenses incurred by PREPA.

ARTICLE 7 - LONG-TERM FUEL SUPPLY

7.1 Adequate Fuel Supply.

(a) Seller shall maintain a supply of Fuel adequate to allow Seller to support the operation of the Facility pursuant to the terms and conditions of the Agreement for the Term.

(b) Seller assumes full risk and responsibility for acquiring and maintaining long-term firm supplies of Fuel and other necessary materials and transportation therefor for the Term to provide the Dependable Capacity and Net Electrical Output requirements hereunder. In connection with the foregoing, Seller shall be responsible for acquiring, transporting and/or storing at the Facility adequate supplies of Fuel and other materials used in the operation of the Facility during the Term.

(c) On or before the Commercial Operation Date, Seller shall provide PREPA for its review and approval (such approval not to be unreasonably withheld or delayed), all Fuel Supply Arrangements, Fuel transportation agreements, Backup Fuel agreements and other commitments for the supply and transportation of Fuel and Backup Fuel. Seller shall not make any amendments to any of these documents without PREPA's prior written approval, such approval not to be unreasonably withheld or delayed.

(d) The Parties agree that the Fuel Supply Arrangement with NFEnergia LLC for the supply of natural gas shall be agreed to and approved prior to Agreement Date and not subject to further approval unless amended.

7.2 Take or Pay Fuel. If Seller does not take all or any part of a Scheduled Monthly NG Quantity (such shortfall, the "ToP Shortfall") then Seller shall add the ToP Shortfall Payment to the Energy Payment for that Month in which such ToP Shortfall is due under the Fuel Supply Arrangement, provided, however, that PREPA shall be in no obligation to pay the ToP Shortfall Payment to the extent such ToP Shortfall arises from or relates to (i) a Force Majeure affecting Seller, or (ii) reasons attributable to Seller (including the occurrence of a Forced Shutdown caused by or contributed to by Seller).

7.3 Fuel Supply Interruption. Seller agrees that, in the event of any Fuel supply interruption, Seller shall nevertheless remain subject to all of its obligations hereunder to supply electric energy, by using Backup Fuel. The Energy Payments that apply in such event are set forth below:

(a) To the extent commercially reasonable and in accordance with Prudent Utility Practices, in the event of an interruption of Fuel that causes the non-availability of Fuel to the Facility, Seller shall use all reasonable efforts and act diligently to remedy such interruption. The Parties shall cooperate and mutually endeavor to minimize any adverse effects and costs for the Parties from a Fuel interruption or the resulting Fuel substitution.

(b) Seller shall use its reasonable efforts to provide PREPA notice of any such Fuel interruption. In order to maintain the Facility's Available Capacity and avoid declaring a Force Majeure, Seller may by 10:00 a.m. on the Day prior to any Day affected by such interruption provide PREPA the price or prices at which Net Electrical Output could be generated from

Backup Fuels for each hour of the following Day as a result of such Fuel interruption (the "Revised Energy Purchase Prices"). The Revised Energy Purchase Prices shall reflect Seller's cost of such Backup Fuel delivered to Seller's Complex, which cost shall be reasonably acceptable to PREPA. If the Facility is Dispatched on such following Day, the Revised Energy Purchase Prices shall be used in the calculation of the Energy Payment relating to such Day in lieu of the price designated as "EPP" in Section 12.2 (Energy Payment).

7.4 Hydrogen Fuel Implementation.

(a) Seller shall cause the Facility to be developed in such a manner that it is capable of operating at least on thirty percent (30%) hydrogen fuel, by volume and blended with natural gas, as of Commercial Operation Date. Seller shall provide PREPA with a terminal point at the Facility to receive hydrogen fuel to utilize during its operation. The percentage of hydrogen fuel capability during operation of the Facility shall increase over time in accordance with the provisions of Appendix s (Hydrogen Fuel Implementation). Seller acknowledges and agrees that it is the public policy of Puerto Rico that Green Hydrogen is expected to be introduced in increasingly higher percentages over time as the Green Hydrogen technology advances.

(b) Seller shall deliver to PREPA an annual report, as prepared by Seller based on the form of report mutually agreed by the Parties prior to Commercial Operation Date, including any developments on the market on Green Hydrogen technology and the financial and technical feasibility of implementing up to one hundred percent (100%) Green Hydrogen in the operation of the Facility (the "Green Hydrogen Fuel Implementation").

(c) At any time and from time to time, either Party may request by written notice to the other Party that the Parties meet to discuss in good faith the technical and financial feasibility of the Green Hydrogen Fuel Implementation. Upon receipt of such notice, the Parties shall meet to discuss in good faith whether the Green Hydrogen Fuel Implementation is technically and financially feasible and, if so, alternatives to proceed with the Green Hydrogen Fuel Implementation.

ARTICLE 8 - SALE AND PURCHASE OF ENERGY

8.1 General.

(a) Seller agrees to sell, and PREPA agrees to accept delivery of and purchase Net Electrical Output of the Facility from and after the Initial Synchronization Date, subject to the terms and conditions of this Agreement.

(b) Seller agrees to sell, and PREPA agrees to purchase, Dependable Capacity from and after the Commercial Operation Date of the Facility, subject to the terms and conditions of this Agreement.

8.2 Title & Risk of Loss.

The Net Electrical Output that Seller makes available to PREPA under this Agreement shall become the property of PREPA at the Point of Interconnection, at which point title to the Net Electrical Output and all risk of loss associated with such output shall transfer to PREPA. PREPA reserves the right to retain all rights, title, benefits and other interest in, arising out of or related to, the generation, transmission, distribution, or supply of such energy that it or any of its Affiliates may realize through its existing or future power generation sources (including the Facility), customer agreements or other projects or improvements to the T&D System.

ARTICLE 9 - CONTROL AND OPERATION OF THE FACILITY

9.1 General.

From the Initial Synchronization Date until the expiry of the Supply Period, Seller shall:

(a) operate, maintain, test, repair and, if necessary, replace the Facility (or any portion thereof) in accordance with (i) the Agreed Operating Procedures, (ii) the Testing Protocol, (iii) Dispatch Instructions, (iv) Prudent Utility Practices, (v) this Agreement, and (vii) Applicable Law and Applicable Standards, and subject to the Operating Characteristics;

(b) ensure that (i) Seller's personnel remain on duty at the Facility at the times required to meet Seller's obligations under this Agreement, and (ii) any contractor that Seller engages for the operation, maintenance, testing or repair of the Facility qualifies as a Qualified Operator; and

(c) make the entire net electrical generating capacity of the Facility exclusively available to PREPA.

9.2 Scheduled Maintenance.

(a) Seller shall (i) ensure that no more than one thousand eighty hours (1,080) of Scheduled Outage or Scheduled Deratings occur per Agreement Year, (ii) plan its Scheduled Maintenance Program so as to minimize interruptions or reductions to the supply of Net Electrical Output, and (iii) cooperate with PREPA and the System Operator to coordinate the Scheduled Outages and Scheduled Deratings with T&D System needs. Seller may only use the allowance for Scheduled Outages or Scheduled Deratings in the Agreement Year in which the allowance accrues, and any unused hours shall not be carried over to subsequent Agreement Years.

(b) At least sixty (60) Days prior to the Commercial Operation Date, Seller shall submit a written schedule of Scheduled Outages and Scheduled Deratings program (the "Scheduled Maintenance Program") for review and approval by the System Operator and PREB, in accordance with the System Operator's Outage scheduling and reporting procedures set forth in the System Operation Principles, such approval not to be unreasonably withheld or delayed based on Prudent Utility Practices. Seller will work in good faith with the System Operator and PREB in order to address any concerns regarding the scheduling of the Scheduled Outages and Scheduled Deratings in the Scheduled Maintenance Program.

(c) Seller shall provide the following information for each proposed Scheduled Outage and Scheduled Derating:

- (i) description of the work that Seller will perform during such event;
- (ii) approximate start date and time;
- (iii) approximate end date and time;
- (iv) approximate time to restore the Facility to full operation; and

(v) for Scheduled Deratings, the Net Electrical Output available during such event.

(d) Seller shall use all reasonable efforts to accommodate any request from PREPA or the System Operator to reschedule the proposed Scheduled Maintenance Program. If Seller cannot accommodate PREPA's or the System Operator's request to reschedule the proposed Scheduled Maintenance Program, then Seller shall provide the reasons therefor and alternative dates for the Scheduled Maintenance Program. PREPA and the System Operator shall select between the alternative dates proposed by Seller to finalize the Scheduled Maintenance Program.

(e) Seller shall notify PREPA and the System Operator at least seven (7) Days prior to the start of any Scheduled Outage or Scheduled Derating and shall maintain close coordination with PREPA and the System Operator as such event approaches.

(f) If a condition occurs that impacts the Scheduled Maintenance Program, then Seller shall promptly, on becoming aware of such condition, notify PREPA and the System Operator of such change (including an estimate of the length of the Scheduled Outage or Scheduled Derating) and request PREPA's and the System Operator's approval to revise the Scheduled Maintenance Program, such approval not to be unreasonably withheld or delayed. Seller shall bear any costs incurred by PREPA and the System Operator for revisions made less than sixty (60) Days before the start date of a Scheduled Outage or Scheduled Derating or that results in such event being scheduled less than sixty (60) Days before the start of the revised Scheduled Outage or Scheduled Derating, other than in cases of Force Majeure.

(g) Only those Outages or Deratings that (i) meet the submittal timelines in Section 9.2(b), and (ii) PREPA and the System Operator approve in accordance with this Section 9.2 shall constitute a Scheduled Outage or Scheduled Derating, respectively.

9.3 Non-Scheduled Maintenance.

(a) If Seller determines that it requires a Non-Scheduled Outage or Non-Scheduled Derating, then Seller shall coordinate the timing of such Non-Scheduled Outage or Non-Scheduled Derating, as applicable, with PREPA and the System Operator.

(b) Seller shall use commercially reasonable efforts to notify PREPA and the System Operator of any Non-Scheduled Outage or Non-Scheduled Derating no later than 17:00 hours (Puerto Rico time) on the third (3rd) Business Day prior to the Day on which such Non-Scheduled Outage or Non-Scheduled Derating will occur. In the event of an unexpected Non-Scheduled Outage or Non-Scheduled Derating, Seller shall provide notice to PREPA and the System Operator by telephone or email as soon as reasonably practicable and, in all cases other than those qualifying as Force Majeure, no more than fifteen (15) minutes following the occurrence of such Non-Scheduled Outage or Non-Scheduled Derating. Seller shall, as soon as reasonably practicable thereafter, provide PREPA and the System Operator with a written notice that includes (i) the event or condition, (ii) the date and time of such event or condition, (iii) the expected end date and time of such event or condition, (iv) for Non-Scheduled Deratings, the Net

Electrical Output available during such event or condition, and (v) any other information reasonably requested by PREPA and the System Operator.

(c) Notwithstanding the delivery of a notice of a Non-Scheduled Outage or coordination with PREPA and the System Operator to resolve such event, the Facility shall be deemed unavailable for the duration of a Non-Scheduled Outage.

9.4 Emergencies.

(a) No later than the Initial Synchronization Date, Seller shall cooperate with the System Operator in establishing written Emergency plans, including (i) recovery from a Non-Scheduled Outage, (ii) black start policies and plans, (iii) delivery by PREPA and the System Operator to Seller of prompt written notice of the occurrence of all T&D Emergencies, and (iv) follow-up and frequent status reports on any ongoing Facility Emergency.

(b) Seller shall (i) make technical information and data available to PREPA and the System Operator concerning start-up times and black-start capabilities for any type of Emergency, (ii) promptly inform PREPA and the System Operator of any Facility Emergency at or other material issues with the Facility or the Site, (iii) submit a remediation program setting out the actions Seller shall take to mitigate the Facility Emergency or other material issues at the Facility, and (iv) abide by such program.

(c) If any of a Scheduled Outage, Non-Scheduled Outage, Scheduled Derating or Non-Scheduled Derating occurs at the Facility, and such event occurs or would occur coincident with a T&D Emergency, then PREPA or the System Operator may request that Seller make commercially reasonable efforts, consistent with Prudent Utility Practices, to reschedule the Scheduled Outage, Non-Scheduled Outage, Scheduled Derating or Non-Scheduled Derating, as applicable, or if such event has begun, to expedite the completion thereof.

9.5 Restoration of the Facility.

Following any Facility Emergency, Outage or Derating, Seller shall provide as much prior notice as reasonably practicable to PREPA and the System Operator of the date and time that it will bring the Facility back online, provided that Seller shall furnish at least two (2) Days' prior notice for restoration from a Scheduled Outage or Scheduled Derating and at least two (2) hours' notice for restoration from a Non-Scheduled Outage, Non-Scheduled Derating or Emergency, in each case, in accordance with the Agreed Operating Procedures. PREPA and the System Operator shall have the right to rely on such notice for purposes of delivering Dispatch Instructions to Seller.

9.6 Communication Facilities.

(a) Seller shall provide, install, commission, maintain, repair and replace (as necessary), at its own cost and expense, the communication facilities linking the Facility with the System Operator's dispatching centers in accordance with the Interconnection Agreement and Agreed Operating Procedures.

(b) Items provided by Seller in accordance with this Section 9.6 shall be subject to the approval of PREPA and the System Operator, which shall not be unreasonably withheld or delayed.

9.7 Qualified Operator and Service Provider.

(a) Seller covenants and warrants that Seller's Complex shall be operated and maintained by a Qualified Operator in accordance with (i) the Agreed Operating Procedures, (ii) Prudent Utility Practices, including, synchronizing, voltage and reactive power control, and (iii) consistent with Applicable Standards.

(b) Seller covenants and warrants that it shall at all times (before and after the Commercial Operation Date) maintain a maintenance services agreement with a Qualified Service Provider, which shall include customary terms and conditions.

9.8 Operation of the Facility.

Seller covenants and warrants that the Facility shall be operated at the voltage levels determined pursuant to the Interconnection Agreement. Appendix Y (Design Limits) specifies the Design Limits applicable to the Facility. Such limits shall include ramp rates and allowable step changes. Seller warrants that it will correct any Facility design or construction defect that causes the Facility to have a material adverse effect on PREPA's voltage level or voltage waveform.

9.9 PREPA's Operation of Seller's Complex.

(a) If a Permanent Closing of Seller's Complex occurs (in the case of clause (i) of the definition thereof, without PREPA being notified sixty (60) Months prior to such occurrence), Seller shall be in default under Section 18.1(e). In such case, PREPA shall be entitled to invoke its remedies under this Agreement or under Applicable Law, provided that PREPA shall also have the right, and Seller shall permit PREPA, to operate or cause to operate Seller's Complex for a period of sixty (60) Months from the occurrence of such Permanent Closing (and, in the case of clause (i) of the definition thereof, decreased by the actual number of Months between the date of notice to PREPA of such Permanent Closing and the date operation of Seller's Complex by Seller actually ceases) ("PREPA's Operating Period"), provided further that PREPA shall have and retain an option to purchase Seller's Complex at any time after the occurrence of a Permanent Closing. pursuant to Section 17.3(a)(i).

(b) Any amount paid by PREPA to reduce the debt of Seller's Complex, to operate the facility and/or any capital improvement made by PREPA on Seller's Complex during PREPA's Operating Period, shall be reimbursed to PREPA in full by Seller, its successors, or assignees, as applicable, upon the termination of this Agreement, or may be reduced from the termination payment to be made by PREPA pursuant to Section 17.3 (Termination Payment) in the event PREPA exercises its option to purchase Seller's Complex in accordance with this Agreement. In the event PREPA does not exercise its option to purchase, and Seller's Complex is sold to a third party, PREPA shall receive from the proceeds of such sale reimbursement for its payments to reduce the debt and for capital improvements made pursuant to this paragraph; provided that PREPA's right to receive such reimbursements shall be subordinate to the rights of the Project Lenders to receive repayment out of such proceeds.

9.10 Record Keeping.

(a) Each Party shall keep complete and accurate books, accounts, records and other data required for the proper administration of all transactions with respect to all matters relating to this Agreement.

(b) Seller shall maintain such records and data for a minimum of five (5) Years after the preparation of such records or data and for any additional length of time required by regulatory agencies with jurisdiction over each of the Parties; provided that neither Party shall dispose of or destroy any records without thirty (30) Days' prior written notice to the other Party. Within ten (10) Days after receipt of the notice of intention to destroy or dispose, the other Party shall have the right to require the notifying Party in writing to deliver to it certain records at the requesting Party's sole cost and expense. No more than ten (10) Days from receipt of such notice, the Party proposing to dispose of or destroy such records shall deliver any records requested by the requesting Party.


(c) Seller shall maintain in electronic copy (i) as-built drawings, operation and maintenance manuals and other detailed technical documentation for design, engineering, construction, testing, commissioning, operation, maintenance and repair of the Facility, and Seller Interconnection Facilities; and (ii) an accurate and up-to-date operating log at the Facility with records of (1) real and reactive power production for each hour, (2) changes in operating status, Outages, Deratings or Emergencies, (3) any unusual conditions found during inspections, (4) the capacity available for Dispatch for each hour as determined consistent with Prudent Utility Practices and subject to verification by PREPA and the System Operator, (5) any safety incident, accident or other occurrence at the Site that results in injury to persons or damage to property, (6) electrical characteristics of the Facility and settings or adjustments of the Facility's control equipment and protective devices, (7) maintenance performance, (8) all material data in relation to Guaranteed Performance Testing and other testing conducted pursuant to this Agreement, Guaranteed Performance, metering, invoicing, payments, Claims, reimbursements, credits and any other charges to PREPA and the System Operator, and (9) any other significant events related to the operation of the Facility.

(d) Either Party shall have the right from time to time, upon fourteen (14) Days' written notice to the other Party and during regular business hours, to examine the books, accounts, records, and other data of the other Party relating to the proper administration of this Agreement any time during the period that this Agreement requires the records to be maintained.


(e) Seller shall deliver to PREPA and the System Operator a Monthly operations and maintenance report by the tenth (10th) Day of each Month describing operations and maintenance activities performed in respect of the Facility during the previous Month.

9.11 Network, Cyber and Physical Security.

(a) Seller shall use commercially reasonable efforts to prevent malware or cyber related intrusions from accessing or entering any aspect of the Facility or any other information systems, operating environments and processes used or relied upon by Seller to provide the Net Electrical Output, including the information, data and other materials delivered




by or on behalf of Seller to PREPA and the System Operator, the customers of PREPA, or any third-party providers (collectively, the “Systems”). Throughout the Term, Seller shall implement improvements to, and upgrades of, its Malware prevention and correction programs and processes consistent with the then-current the North American Electric Reliability Corporation (NERC), the National Institute of Standards and Technology (NIST) industry standards and, in any case, no less robust than the programs and processes implemented by Seller in respect of its own information systems. If Malware enters the Systems, Seller shall notify PREPA as soon as it becomes aware of such presence and take immediate action, at Seller’s cost, to eliminate and remediate the Malware effects. Seller shall regularly, and otherwise at the request of PREPA, provide sufficient evidence of its efforts to continuously monitor and evaluate the effectiveness of Seller’s information security safeguards. Seller shall require that its subcontractors also comply with the obligations of Seller under this Section 9.11(a), as related to network and cyber security.



(b) Seller shall document and implement a physical security policy and plan in support of protecting the Facility, including buildings, equipment, systems and related supporting infrastructure, against threats associated with their physical environment. The purpose of the physical security policy is to establish the rules for monitoring and maintaining the safety and security of the Facility, its contents and personnel. The security plan should account for personnel access, including the granting, control, monitoring, and removal of physical access to the Facility for both employees and visitors. All Facility entrances, where unauthorized persons could enter the premises, shall be controlled. Visitors in controlled areas of the Facility must be accompanied by authorized personnel at all times. Security personnel must review security card, badges and/or key access rights for the Facility on a periodic basis and remove access for individuals that no longer require access. The physical security plan should include physical security systems, controls and security personnel to comply with all applicable regulations including but not limited to building codes, fire prevention codes, local regulations and OSHA requirements. Throughout the Term, Seller shall implement improvements to, and upgrades of, its physical security plan, including prevention and correction programs and processes consistent with the then-current NERC and NIST physical security controls. If there is a physical security breach, Seller shall notify PREPA as soon as it becomes aware of such presence and take immediate action, at Seller’s cost, to eliminate and remediate the Facility’s security event. Seller shall regularly, and otherwise at the request of PREPA, provide sufficient evidence of its efforts to continuously monitor and evaluate the effectiveness of Seller’s physical security safeguards. Seller shall require that its subcontractors also comply with the obligations of Seller under this Section 9.11(b), as related to physical security.

ARTICLE 10 - DISPATCH

10.1 Right to Dispatch.



Subject to Section 10.3(b) and the other terms of this Agreement, PREPA at its sole discretion, shall have the right to Dispatch the Facility within its Design Limits. PREPA will determine the appropriate level of Dispatch by means of its Automatic Generation Control system taking into account Prudent Utility Practices and will communicate the same to Seller (directly or through the SCADA system) ("Dispatch Instruction"). From and after the Commercial Operation Date, Seller shall control and operate Seller's Complex in accordance with such Dispatch Instructions, provided that PREPA's Dispatch Instructions are in accordance with the terms of this Agreement. Seller will provide the dispatcher a status report of Seller's Complex conditions every eight (8) hours, including any Seller's Complex restrictions, and the hourly integrated net generation during that period. Seller shall notify the dispatcher immediately if there is any pertinent change in Seller's Complex status. Seller shall make available through the Facility's Remote Terminal Unit ("RTU") the actual Facility load limit adjustment.

10.2 Pre-Operation Period.

During the Pre-Operation Period, Seller shall have the right to operate the Facility substantially in accordance with the commissioning and testing schedule delivered to PREPA pursuant to Section 5.1(a) and subject to the Agreed Operating Procedures. Any Net Electrical Output produced by the Facility during such period shall be purchased by PREPA under Article 8 (*Sale and Purchase of Energy*).

10.3 Operation Period.

(a) Starting on the Commercial Operation Date, the Facility shall be operated in the Dispatchable Mode. Sixty-five (65) Days prior to the target Commercial Operation Date (as notified by Seller to PREPA) and thirty-five (35) Days prior to the start of each subsequent Month, PREPA shall provide Seller with an estimated daily schedule of operations for the following three (3) Months. Following receipt of the estimated daily schedule of operations, Seller shall provide fuel supplier with schedule of its natural gas requirements for following three (3) Months commencing with Month M (in chronological order, Months "M," "M+1" and "M+2"). PREPA acknowledges that natural gas quantities set forth for Month "M" become binding following nomination ("Scheduled Monthly NG Quantity"). In addition, no later than seven (7) Days prior to the target Commercial Operation Date (as notified by Seller to PREPA), and by Friday of each week PREPA shall provide Seller with an estimated hourly schedule of operations for the following five (5) weeks. The actual schedule shall be determined by the requirements for operation in accordance with Economic Dispatch and Prudent Utility Practices and may be substantially different than the schedule provided in accordance with this Section 10.3. PREPA will immediately provide notice to Seller at any time that the total output level or operational duration that it intends to Dispatch the Facility during any given Month deviates by five percent (5%) or more from the estimates previously provided to Seller.

(b) PREPA shall provide Seller with six (6) hours prior notice of a request to either start-up or shut down any unit of the Facility, subject to the Agreed Operating Procedures, other than in cases of Force Majeure.

(c) The Facility may be dispatched during any hour of the Day from fifty-two percent (52%) to approximately one hundred percent (100%) of its Dependable Capacity, subject to the Ramp Rates, ambient conditions to maintain emissions compliance, and the Agreed Operating Procedures. Preliminary Ramp Rates for the Facility are set forth on Appendix M (Operating Characteristics). Revised Ramp Rates, which will replace the preliminary Ramp Rates set forth on Appendix M (Operating Characteristics), will be used throughout the remainder of the Term and will be exactly what the original equipment manufacturer provides, shall be established within sixty (60) Days following the later of (i) Seller's selection of gas turbine and steam turbine equipment for the Facility and (ii) Seller's completion of the detailed design of the Facility. In the event that the Facility is operating with one or more gas turbines or steam turbines not in operation, the Facility Dispatch levels will be reduced in accordance with Prudent Utility Practices and so as to comply with the Facility's Permits.

(d) Seller shall provide PREPA with Ancillary Services, which can be used by PREPA to maintain the reliability of the T&D System. Seller hereby confirms that the Facility can provide each of the Ancillary Services within the Design Limits.

10.4 Dispatch Priority.

The Parties acknowledge and agree that the Dispatch of the Facility shall be made in accordance with Economic Dispatch, according to the System Operation Principles as determined by the System Operator and that, based on the expected performance of the Facility and the prices set forth in this Agreement, it is expected that System Operator will Dispatch the Facility ahead of other less efficient facilities.

ARTICLE 11 - REVENUE METERING

11.1 Meter Ownership & Maintenance.


PREPA shall own and the System Operator shall maintain all meters and metering equipment (including RTUs) used to measure the delivery and receipt of Net Electrical Output, for payment purposes (the "Revenue Meters"). Seller shall own and maintain meters and metering devices for backup purposes (the "Backup Meters"). Seller shall install, at its own expense, the Revenue Meters, the Backup Meters and all other meters and metering equipment at the Facility in accordance with the Interconnection Agreement. The Revenue Meters and the Backup Meters (subject to Section 11.3) and all other meters and metering equipment shall meet the System Operator's specifications and be subject to the System Operator's approval (not to be unreasonably withheld, delayed or conditioned), and which decision the System Operator shall communicate to Seller no later than ten (10) Business Days after Seller's notice to the System Operator regarding the installation of the proposed meters.

11.2 Meter Inspection.


The System Operator shall seal the Revenue Meters, and the System Operator personnel shall only break the seals for inspection, testing or adjustment of the meters performed in accordance with the Interconnection Agreement. The System Operator shall provide ten (10) Business Day's prior written notice of such inspection, testing or adjustment and Seller shall have the right to have a representative present during such meter inspection, testing or adjustment. If either Party believes that there has been a meter failure or stoppage, such Party shall immediately notify the other Party to coordinate an inspection or test at the earliest convenient date.

11.3 Meter Testing & Calibration.

(a) At least annually, at the System Operator's cost and, in addition, from time to time upon ten (10) Business Days' prior written notice by either Party at its cost (unless the results demonstrate that meters for which the System Operator has operation and maintenance responsibility fall outside of the limits established in American National Standard Institute Code for Electricity Metering (ANSI C12.16, latest version ("ANSI C12.16")), in which case the System Operator shall bear the cost of such additional tests), the System Operator shall test and verify the calibration of the Revenue Meters and backup meters, in accordance with the provisions for meter testing as established by ANSI C12.16. When, as a result of such a test, the System Operator finds the Revenue Meters or backup meter within the range specified by the standard, the System Operator shall not adjust the amount paid to Seller for Net Electrical Output delivered to the System Operator. If the System Operator finds a Revenue Meter or Backup Meter outside the range specified by the standard, then the Party owning such defective or inaccurate device shall adjust, repair, replace and/or recalibrate such device as near as practicable to a condition of zero (0) error at that Party's expense. If the System Operator finds that the Revenue Meters are outside the range specified by the standard, but that the backup meters are within such range, then the Parties shall use the backup meters to calculate the correct amount of Net Electrical Output delivered (reasonably adjusted for line losses) to the System Operator for the actual period during which the Revenue Meters experience inaccurate measurements.



(b) If the Parties cannot determine the actual period during which inaccurate measurements were made, they shall use a period equal to the time elapsed since the most recent test, but in no case a period in excess of six (6) Months. If the System Operator finds the Revenue Meters outside the range specified by the standard, and either the backup meters are not available, or testing demonstrates the backup meters are also out of calibration, each Party shall adjust its meters, and the Parties shall use the corrected meter readings of the most accurate meter for the actual period during which inaccurate measurements were made (reasonably adjusted for line losses where appropriate). If the Parties cannot determine the actual period during which inaccurate measurements were made, the Parties shall use a period equal to one half of the time elapsed since the most recent test, but in no case for a period in excess of six (6) Months.



(c) To the extent that the adjustment period covers a period of deliveries for which the System Operator has already remitted payment, the System Operator shall use the corrected measurements as determined in accordance with this Section 11.3 to recalculate the amount due for the period of the inaccuracy and shall subtract the previous payments by the System Operator for this period from such recomputed amount. If the difference is a positive number, the System Operator shall cause to pay the difference to Seller. If the difference is a negative number, Seller shall pay the difference to the System Operator, or the System Operator may offset such amounts against payments due to Seller by the System Operator hereunder. The owing Party shall make the payment or credit of such difference no later than thirty (30) Days after the owing Party receives written notice of the amount due, unless the System Operator elects (via written notice to Seller) payment via an offset. Each Party shall comply with any reasonable request of the other Party concerning the sealing of meters, the presence of a representative of the other Party when there are broken seals or the other Party is performing tests, and other matters affecting the accuracy of the measurement of electricity delivered from the Facility.

11.4 Meter Reading.


During each one (1) Fiscal Year from and after the Initial Synchronization Date, the System Operator shall read the meters on a Monthly basis (prior to the last Day in each Month and, in any event, at least twelve (12) times per Fiscal Year (prorated for any partial Fiscal Year)) to determine the amount of Net Electrical Output delivered to the System Operator from the Facility for each Billing Period. At the System Operator's option, the System Operator may choose to read the meters more frequently and total such readings in accordance with the applicable Billing Periods. The System Operator shall provide Seller with a written statement containing the reading details and totals within ten (10) Days following the end of each Billing Period. The System Operator shall notify Seller of any site meter readings and Seller may, at its option, be present for such reading.

11.5 Data.


From the Initial Synchronization Date until the end of the Supply Period, Seller shall own all data and information recorded from operation, scheduling, dispatch, testing and maintenance of the Facility, and Seller shall be deemed to have granted to the System Operator a non-terminable, transferable, non-exclusive, royalty free and cost free license to copy and use such data and information for the purpose of modeling the T&D System and assessing the operation, scheduling, dispatch, metering and testing of the Facility during the Supply Period.

ARTICLE 12 - COMPENSATION, PAYMENT AND BILLINGS

12.1 General.



(a) PREPA shall pay or shall cause Seller to be paid for the Net Electrical Output and Dependable Capacity delivered and billed to PREPA every Billing Period. Such payment will be equal to an Energy Payment plus a Capacity Payment plus a Start-up Payment plus an Ancillary Services Payment, as set forth below and in the sample calculations attached hereto as Appendix P (Sample Calculations). Seller shall include in all invoices to PREPA a written certification substantially in the form of Appendix X (Form of Anti-Corruption Certification) and acknowledges that any invoice not including such certification shall not be accepted by PREPA.



(b) The Parties agree and acknowledge that certain gross revenue Taxes or other Taxes payable by Seller under the Fuel Supply Arrangements may be imposed on Seller related to the consumption of fuel under this Agreement during the Supply Period, which Taxes have been accounted for in the calculations of the Energy Payment and Ancillary Services Payment set forth below. However, Seller shall use reasonable best efforts and act diligently to (i) obtain any tax benefits that may be applicable to Seller or may otherwise generated in connection with the operation of the Facility, and (ii) eliminate or reduce, to the greatest extent possible, any such required imposition of Taxes. Promptly after payment of any such Taxes, Seller shall deliver to PREPA a copy of a receipt issued by the relevant Governmental Authority evidencing the payment of such Taxes and any other evidence of such payment reasonably requested by PREPA.

(c) The Parties agree and acknowledge that PREPA may, in the future, wish to make a prepayment of electricity under this Agreement. In such case, the Parties agree to discuss in good faith the terms and conditions under which such prepayment would be effected.

12.2 Energy Payment.

For each Billing Period, PREPA shall pay or shall cause to be paid to Seller a payment (the "Energy Payment" or "EP") for the Net Electrical Output of the Facility (including Net Electrical Output delivered prior to the Commercial Operation Date) measured in accordance with Section 11.1 (Meter Ownership & Maintenance) and calculated as set forth below.

(a) **Pre-Operation Period:** For each Billing Period during the Pre-Operation Period, the Energy Payment shall be equal to:

$$EP (\text{US}\$) = EC \times \text{NEO}$$

Where:

$$EC (\text{US}\$/\text{kWh}) = \text{Energy Cost}$$

$$EC = (\text{Heat Rate (BTU/kWh)} \times \text{Pre-Operation Fuel Cost (US}\$/\text{BTU)}) + (\text{VOM (US}\$/\text{kWh)})$$

Pre-Operation Fuel Cost is the cost of Fuel used during the Pre-Operation Period, as agreed upon between Seller and PREPA, plus any gross revenue Tax paid by Seller related to the consumption of such Fuel (established in Dollars per BTU)

VOM = Variable Operations and Maintenance Costs

NEO (kWh) = Net Electrical Output for such Billing Period

(b) **Supply Period:** For each Billing Period during the Term, the Energy Payment shall be equal to:

$$EP \text{ (US\$)} = (EPP \times NEO) + \text{TOPSP (if applicable)} + \text{PREPA IE Costs}$$

Where:

EPP (US\$/kWh) = Energy Purchase Price

$$EPP = (\text{Adjusted Guaranteed Heat Rate (BTU/kWh)} \times \text{AHRCF} \times \text{Fuel Price (US\$/BTU)}) + ((\text{VOM (US\$/kWh)} \times (\text{VOMCF}))$$

VOM = Variable Operations and Maintenance Costs

VOMCF = Variable Operations and Maintenance Correction Factor, means the correction factor to account for the effect of the Dispatch Factor on the Variable Operations and Maintenance Costs and is equal to 1 divided by the Dispatch Factor, which shall be applied for each hour interval based upon the average operating load level percentage as specified by Seller

NEO (kWh) = Net Electrical Output for such Billing Period

AHRCF = Average Heat Rate Correction Factor, which shall be applied for each interval based upon the ambient conditions and operating load level as specified by Seller

TOPSP = ToP Shortfall Payment (if applicable)

PREPA IE Costs = during the Supply Period, any Independent Expert costs, if the involvement of the Independent Expert was requested by PREPA in accordance with Section 3.6.

The Adjusted Guaranteed Heat Rate in the Energy Payment calculation is to be based upon the Tested Heat Rate set by Seller from the results of the Guaranteed Performance Testing for the first Agreement Year post-COD and from the results of performance testing set forth in Section 6.5 for all years thereafter. In the case where the performance test demonstrates a Tested Heat Rate above the Guaranteed Heat Rate, Seller may exercise Seller's right to cure the performance shortfall pursuant to Section 6.2(c). Further, either PREPA or Seller may exercise their right to reset the Heat Rate pursuant to Section 6.5. Where subsequent testing demonstrates a different Heat Rate pursuant to retesting the Facility, and wherein such performance level is within the Heat Rate Degradation Table provided by Seller, then Seller shall reset the Heat Rate to be used in the

Energy Payment calculation for future Billing Periods. Any Billing Period with more than one agreed upon set Heat Rate shall be calculated on a prorated basis factoring the appropriate Heat Rate for each associated portion of operation during the Billing Period.

12.3 Capacity Payment.

Prior to Commercial Operation Date, the Capacity Payment shall be equal to zero (0). For each Billing Period after the Commercial Operation Date, PREPA shall cause to pay to Seller a payment (the "Capacity Payment" or "CP") for the Dependable Capacity (DC) of the Facility on Primary Fuel made available at the Point of Interconnection on a Dollars per kW basis at a monthly rate calculated as follows:

$$CP \text{ (US\$)} = ((CPP + FOMC) \times DC) \times FMAF \times EAAF + ICP$$

Where:

CPP (US\$/kW-Month) = Capacity Purchase Price

FOMC (US\$/kW-Month) = Fixed O&M Charge

DC (kW) = Dependable Capacity

EAAF = Equivalent Availability Adjustment Factor (converted to decimals)

ICP (US\$/ Month) = Interconnection Cost Payment

EFMH = Equivalent Force Majeure Hours

FMAF = Force Majeure Adjustment Factor, which shall be calculated as follows:

$$FMAF = \frac{\text{Period Hours} - EFMH}{\text{Period Hours}}$$

Provided that, if in any Billing Period where a Force Majeure prevents Seller or both Parties from performing its obligations under this Agreement and applying the above equation would result in the FMAF < 0.67, for purposes of calculating the FMAF, the EFMH for that Billing Period shall be capped at thirty three percent (33%) of the Period Hours for that Billing Period. Any excess EFMH not used in the calculation of the Billing Period FMAF as a result of the foregoing cap shall be multiplied by 1.005 and carried over into the next Billing Period, and so on until such EFMH equals zero; provided further that Seller may not carry over into any Billing Period more than 1930 EFMH. If the application of the foregoing provision would cause more than 1930 EFMH to be carried over, such carried over EFMH shall be capped at 1930 and the excess above 1930 shall be added back to the EFMH in the foregoing equation for such Billing Period, even if that results in the FMAF < 0.67. For the avoidance of doubt, in the event that a Force Majeure only prevents PREPA from performing its obligations under this Agreement and Seller is capable of performance, then the EFMH during that period shall be equal to zero.

The Dependable Capacity in the Capacity Payment calculation shall be based upon the Capacity set by Seller from the results of the Guaranteed Performance Testing for the first

Agreement Year of operation post-COD, and from the results of the Annual Performance Testing set forth in Section 6.5 for all Agreement Years thereafter. In the case where Guaranteed Performance Testing demonstrates a Tested Capacity below the Guaranteed Capacity, Seller may exercise Seller's right to cure the performance shortfall pursuant to Section 6.2(c). Further, either PREPA or Seller may exercise their right to reset the Dependable Capacity pursuant to Section 6.5. Where subsequent testing demonstrates a different Dependable Capacity pursuant to retesting the Facility, and where such performance level is within the Capacity Degradation Curves provided by Seller, then Seller shall reset the Dependable Capacity to be used in the Capacity Payment calculation for future Billing Periods. Any Billing Period with more than one agreed upon set Dependable Capacity shall be calculated on a prorated basis factoring the appropriate Dependable Capacity level for each associated portion of operation during the Billing Period.

12.4 Start-up Payment.

For each Billing Period, PREPA shall cause to pay to Seller a payment (the "Start-up Payment" or "SP") equal to the amount calculated as follows:

$$SP \text{ (US\$)} = (SC \times SUCC) + (SW \times SUCW) + (SH \times SUCH)$$

Where:

SC = Total number of Cold Starts during the Billing Period (count of Cold Start)

SW = Total number of Warm Starts during the Billing Period (count of Warm Start)

SH = Total number of Hot Starts during the Billing Period (count of Hot Start)

SUCC = Start-up Cost Cold (US\$/start)

SUCW = Start-up Cost Warm (US\$/start)

SUCH = Start-up Cost Hot (US\$/start)

12.5 Ancillary Services Payment.

Prior to Commercial Operation Date, the Ancillary Services Payment shall be equal to zero (0). For each Billing Period after the Commercial Operation Date, PREPA shall pay or shall cause to be paid to Seller a payment (the "Ancillary Services Payment" or "AP") for the Fuel and Variable Operations and Maintenance Costs associated with providing Ancillary Services as directed by the System Operator acting on behalf of PREPA (e.g., if Seller is requested to operate the plant in Spinning Reserve or be available in Non-Spinning Reserve mode, thereby consuming fuel and incurring other costs), on a Dollar basis calculated as follows (as applicable, depending on the Ancillary Service provided):

$$AP \text{ for Spinning Reserve (US\$)} = \text{Heat Consumption (BTU/hr)} \times \text{Fuel Price (US\$/BTU)} \times \text{Operating Hours (hr)}$$

AP for Non-Spinning Reserve (US\$) = Non-Spinning Reserve Rate (US\$/hr) x Non-Spinning Reserve Mode Hours (hr)

Where:

Heat Consumption = Fuel consumed when operating in Spinning Reserve

Operating Hours = the duration (expressed in hours) of the operation in Spinning Reserve

Non-Spinning Reserve Mode Hours = the duration (expressed in hours) of operation in Non-Spinning Reserve

12.6 Equivalent Availability Adjustment Factor.

For each Billing Period, the Equivalent Availability Adjustment Factor ("EAAF") shall be calculated as set forth below based on the EAF for the period comprising the last thirty-six (36) Billing Periods ending with the one being billed ("Annual Month EAF"). For Billing Periods with less than thirty-six (36) prior Billing Periods (i.e., Billing Periods 1 through 35), EAAF shall be calculated based on the average of the current and all prior Billing Periods based on actual EAF. For the first eighteen (18) Billing Periods of operation post-COD, the EAAF used to calculate the Capacity Payment will be one hundred percent (100%). As of the nineteenth (19) Billing Period of operation post-COD, the EAAF shall be based on the actual EAF for the first eighteen (18) Billing Periods.

<u>Range</u>	<u>EAAF</u>
EAF \geq 95%	100%
95% > EAF \geq 90%	100% - ((95%-EAF) x 1.25)
90% > EAF \geq 85%	93.75% - ((90%-EAF) x 1.5)
85% > EAF \geq 80%	86.25% - ((85%-EAF) x 2)
80% > EAF \geq 75%	76.25% - ((80%-EAF) x 2.5)
75% > EAF	0%

12.7 Invoicing.

(a) On or before the fifteenth (15th) day following the end of each Billing Period, Seller shall provide PREPA with a written invoice for the Net Electrical Output delivered to PREPA, for the Dependable Capacity made available to PREPA, and for the Start-up Payment due for starts incurred during the Billing Period, and for all other amounts or reimbursements due to Seller hereunder, and such invoice shall be paid by PREPA within forty-five (45) Days after the end of the Billing Period. Interest shall accrue on the outstanding payments due to Seller commencing on the forty-sixth (46th) Day after the Billing Period. Notwithstanding the payment

requirements set forth in this Section 12.7, any amounts owed to PREPA may, at PREPA's discretion, be offset against the amounts due to Seller from PREPA under this Agreement.

(b) Payment to Seller shall be made by wire transfer to an account with a bank to be specified by Seller in writing at least thirty (30) Days prior to the Initial Synchronization Date or with such other banks or institutions as may thereafter be specified by Seller in writing. Payment to PREPA shall be made by wire transfer to an account with a bank to be specified by PREPA in writing at least thirty (30) Days prior to the Initial Synchronization Date or with such other banks as may thereafter be specified by PREPA in writing. Either Party may, by written notice to the other, change the address to which such payments are to be sent.

(c) If a discrepancy exists between the amount of Net Electrical Output determined by PREPA and the amount set forth in Seller's invoice to PREPA, or PREPA in good faith disputes any other amount in such invoice, PREPA shall cause to pay the amount it determined in good faith is due based on its meter reading or otherwise, the balance shall be paid when the dispute is resolved in accordance with this Agreement.

12.8 Green Credits.

(a) Promptly upon Seller's receipt of a Green Credit, but no later than the transfer deadline with respect to such Green Credit, in partial consideration for the Capacity Payment, Seller shall convey to PREPA, at no additional cost, all of the Green Credits associated with the provision of such Net Electrical Output of, or otherwise generated in connection with, operation of the Facility. The Parties shall execute all documentation required to confirm the registration of such Green Credits with the North American Renewables Registry or another similar registry acceptable to Seller and PREPA (the "Registry") and the transfer of such Green Credits as reasonably requested by PREPA in accordance with the rules of the Registry, in each case, at Seller's expense. PREPA shall have the sole right to own, market, trade, sell or otherwise transfer such Green Credits available to or in respect of the Facility to any Person, and any Green Credits that are now available or in the future might become available in respect of the Facility during the Supply Period shall inure to the benefit of, and remain the property of, PREPA. In the event that the Green Credits are not transferrable to PREPA under Applicable Law, the Parties shall discuss in good faith a manner in which to provide PREPA with the benefits that it would have received from the Green Credits had those credits been transferrable.

(b) The Parties shall not construe any part of this Agreement to require Seller to transfer to PREPA or any other Person any Tax Credits or any other Tax benefit provided by any Governmental Authority.

12.9 Improvement in Financial Condition.

(a) The Parties agree and acknowledge that this Agreement was negotiated during a period of historically high-interest rates caused, among other reasons, by the economic impacts of the COVID-19 pandemic. These unprecedented conditions significantly influenced the terms of the Agreement, including the calculation of the Capacity Payment. Additionally, the Parties acknowledge that PREPA is undergoing the PREPA Bankruptcy, which may affect its financial obligations and operations. In light of these extraordinary circumstances, the Parties

recognize the potential for future refinancing opportunities that could reduce financing costs and agree negotiate in good faith a downward adjustment to the Capacity Payment under the following scenarios:

- (i) Upon PREPA's emergence from the PREPA Bankruptcy, or
- (ii) a material reduction in prevailing market interest rates.

(b) If Seller secures improved financing or debt restructuring terms from commercial or institutional lenders at an interest rate lower than the rate applicable at the time of the Agreement Date due to: (i) PREPA's emergence from the PREPA Bankruptcy, or (ii) a material reduction in prevailing market interest rates, the Parties shall negotiate in good faith to establish a reasonable reduction in the Capacity Payment to reflect such improved financial conditions.

(c) For each of the triggering events described under Section 12.9(b) above, Seller shall provide written notice to PREPA within thirty (30) Days of achieving refinancing. Such notice shall include, (i) in the case of bankruptcy refinancing, evidence of the PREPA Bankruptcy process and its impact on the refinancing, along with the terms of the restructured debt and a calculation of cost savings, and (ii) in the case of interest rate reduction, documentation of the new loan agreement, the original loan terms, and an analysis of the financial benefits from the reduced interest rate.

(d) Upon notification, Seller and PREPA shall negotiate in good faith a downward adjustment to the Capacity Payment to reflect the financial benefits of refinancing. Such adjustment shall (i) be based on the cost savings directly attributable to the refinancing event, (ii) ensure that Seller retains sufficient financial capacity to meet its obligations under the Agreement, (iii) equitably allocate cost savings between the Parties, and (iv) the reduction in the Capacity Payment under Section 12.3 shall never be greater than US\$0.50 per kW-Month (the "Reduction Cap"), provided, however, that such Reduction Cap shall not be applicable if Seller secures improved refinancing from the Loan Programs Office of the U.S. Department of Energy or any other governmental institution or agency.

ARTICLE 13 - LIABILITY

13.1 General.

From and after the Initial Synchronization Date, each Party shall be responsible for the energy and facilities located on its respective side of the Point of Change in Ownership. Except as provided in Section 13.2 (Foreseeable Damages) below, Seller shall have no liability to PREPA for loss or damage to PREPA's generation or Transmission and Distribution System resulting directly or indirectly from the use, misuse or presence of said energy once it passes the Point of Interconnection.

13.2 Foreseeable Damages

Each Party shall have liability for all foreseeable damages suffered by the other Party as a necessary consequence of the first Party's negligent performance or omissions or failure to perform its respective obligations under this Agreement, including during any cure period in accordance with Article 17 (Termination), and as stated under Article 1168 of the Puerto Rico Civil Code, subject to the terms of Section 13.4 (No Liability) and Section 13.6 (Seller's Liability Cap). For purposes of this provision, the "foreseeable damages" shall include (without duplication): (i) if this Agreement is terminated due to the first Party's negligent performance or omissions or failure to perform its respective obligations under this Agreement, the direct economic loss of the other Party, if any, resulting from termination of this Agreement; (ii) all costs, brokerage fees, commissions, legal expenses, and other similar transaction costs and expenses, reasonably incurred by the other Party in connection with the first Party's negligent performance or omissions or failure to perform its respective obligations under this Agreement; and (iii) with respect to Seller, costs and losses to Seller in respect of any debt financing of the Facility (including as a result of any acceleration of such debt).

13.3 Sole Remedy.

Notwithstanding anything to the contrary, Seller's liability and PREPA's sole remedy for any damage resulting from (i) the failure to deliver the electrical energy resulting from the low availability of the Facility and its failure to achieve the committed Annual Month EAF of ninety-five percent (95%) shall be those adjustments to the Capacity Purchase Price set forth in Section 12.3 (Capacity Payment), (ii) the delay of Seller in achieving Commercial Operation by the Guaranteed Commercial Operation Date shall be Seller Delay Liquidated Damages, and (iii) the failure to deliver the Guaranteed Capacity and the Guaranteed Heat Rate shall be Seller Guaranteed Performance Liquidated Damages. The Parties agree that the remedies provided in the preceding sentence shall not limit any other remedy PREPA may be entitled to under this Agreement in the event this Agreement is terminated pursuant to Article 17 (Termination).

13.4 No Liability.

Neither Party nor its officers, directors, shareholders, agents, employees and representatives shall, in any event, be liable to the other Party or its officers, directors, shareholders, agents, employees or representatives for Claims for incidental, consequential, special, punitive or indirect damages to persons or property, whether arising in tort, contract or otherwise, connected with or resulting from performance or non-performance under this

Agreement, including Claims made by either Party's customers or suppliers, Claims made by third parties, Claims made by either Party for lost profits (other than payments expressly contemplated by any provision of this Agreement) or Claims arising from Force Majeure; provided that nothing contained in this Section 13.4 shall exclude or limit a Party's liability for fraud, willful misconduct or Gross Negligence.

13.5 Obligation to Pay.

Nothing in this Article 13 (Liability) shall relieve either Party of its obligation to make payments that become due pursuant to Article 12 (Compensation, Payment and Billings).

13.6 Seller's Liability Cap.

Seller's liability to PREPA under this Agreement, whether based on contract, warranty or tort, including errors or omissions, negligence, strict liability or otherwise, or any other claim or cause of action, with respect to any and all Claims shall not exceed the amount equal to Seller Liability Cap; provided that (i) nothing contained in this Section 13.6 shall exclude or limit Seller's liability for the Exceptions, and (ii) for purposes of determining Seller's liability under this Agreement, the Parties shall deduct the proceeds of insurance received by Seller (or that would have been received had Seller complied with the terms of this Agreement), relating to the event or circumstances which resulted in such liability.

ARTICLE 14 - REPRESENTATIONS, WARRANTIES & COVENANTS

14.1 Seller Representations & Warranties.

Seller represents and warrants to PREPA on the Agreement Date, and again on the Closing Date, as follows:

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of Puerto Rico, and is registered to do business in the Commonwealth. Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, to deliver, and to perform its obligations under this Agreement;

(b) the execution, delivery and performance by Seller of this Agreement have been duly authorized, and do not and will not (i) require any additional internal consent or approval of Seller, other than that which has been obtained, and (ii) violate or result in a breach of any provision of Seller's certificate of formation or operating agreement or other organic documents, any material indenture, contract or agreement to which it is a party or by which it or its properties may be bound, or any Applicable Law, determination or award presently in effect;

(c) Seller is not in default under any document or instrument referred to in this Agreement, which default could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement;

(d) this Agreement constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency or similar Laws affecting the enforcement of rights generally;

(e) no official or employee of PREPA has a direct or indirect economic interest in Seller's rights under this Agreement in accordance with the provisions of Act 2 and Act 29, which Seller herein certifies it has received a copy of, read, understood and complied with at all times previous to the execution of this Agreement and agrees that it will subsequently comply with it in its entirety;

(f) no official or employee of Seller receives payment or benefit of any nature for services rendered regularly through an appointment by a Governmental Authority;

(g) Seller does not represent particular interests in cases or matters that imply conflicts of interest, or of public policy, between PREPA and the particular interests it represents;

(h) Each of Seller, any Sponsor (or Affiliates controlled thereby), their respective directors, members, partners, officers, employees, Controlling shareholders, and to the knowledge of Seller, any of its Affiliates (other than Affiliates controlled by Sponsors), and their respective directors, members, partners, officers, employees, Controlling shareholders, and any agents, representatives, or other persons acting on their behalf, (i) is not and will not become a Sanctioned Person; (ii) is, has at all times been, and will continue to be, in compliance with applicable Sanctions; (iii) in the course of its performance under this Agreement, will not directly or indirectly act on behalf of or involve (including the provision or obtaining of any services or resources to or from) any Sanctioned Person or Sanctioned Jurisdiction, or otherwise engage in

any activities that would result in a violation of, or constitute sanctionable activity under, Sanctions; and (iv) will not use any funds remitted by PREPA under this Agreement or lend, contribute or otherwise make available such funds, to any Affiliate, agent, joint venture partner, or other person to fund or facilitate any activities or business of, with, in, or relating to any Sanctioned Person or Sanctioned Jurisdiction, or in any other manner that would result in a violation of, or constitute sanctionable activity under, Sanctions. Neither Seller, nor any Sponsor (or Affiliates controlled thereby), nor, to the knowledge of Seller, any of its Affiliates (other than Affiliates controlled by Sponsors), has been subject to any legal proceedings or made any disclosures to any Governmental Authority relating to violations of applicable Sanctions. None of Seller, any of its Affiliates, or Sponsors is an "*Entidad rusa colaboradora*" (collaborating Russian entity) as that term is defined in Section 5 of Puerto Rico Executive Order OE-2022-018; and

(i) except as previously disclosed in writing, there is no pending action or proceeding in which Seller is a party before any court, governmental agency or arbitrator that could reasonably be expected to affect materially and adversely the financial condition or operations of Seller or the ability of Seller to perform its obligations under, or which purports to affect the legality, validity or enforceability of, this Agreement as in effect on the date hereof.

14.2 PREPA Representations & Warranties.

PREPA represents and warrants to Seller on the Agreement Date, and again on the Closing Date, as follows:

(a) pursuant to the PREPA Enabling Act, PREPA is a public corporation duly organized and validly existing under the laws of the Commonwealth and has all requisite power and authority to conduct its business as now conducted, to own its properties, and to execute, to deliver, and to perform its obligations under this Agreement;

(b) the execution, delivery and performance by PREPA of this Agreement, including PREPA's agreement that all of PREPA's costs and obligations owed to Seller under this Agreement constitute administrative expenses (i) has been duly authorized by PREPA's governing board in accordance with Applicable Law, (ii) does not and will not require any additional internal consent or approval of PREPA, (iii) does not require any approval from the PROMESA Court or any other additional external consent or approval, other than FOMB approvals and those other approvals expressly identified in this Agreement, and (iv) does not and will not violate any Applicable Law, including any provision of the PREPA Enabling Act, or its regulations, or any material indenture, contract or agreement to which it is a party or by which its properties may be bound;

(c) this Agreement is a legal, valid, and binding obligation of PREPA, enforceable against PREPA in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency or similar Laws affecting the enforcement of rights generally (i) Seller's right to payment for charges validly incurred in accordance with this Agreement or owed by PREPA under this Agreement arise from a post-petition transaction with PREPA, (ii) the consideration made available by Seller benefits PREPA, and supports PREPA's obligations, under this Agreement, and (iii) as a result of the foregoing, Seller's right to payment for charges

validly incurred in accordance with this Agreement or owed by PREPA under this Agreement during the PREPA Bankruptcy constitute reasonable and necessary expenses of preserving PREPA and an administrative expense; and

(d) other than the PREPA Bankruptcy, except as previously disclosed in writing, there is no pending action or proceeding in which PREPA is a party before any court, governmental agency or arbitrator that could reasonably be expected to affect materially and adversely the financial condition or operations of PREPA or the ability of PREPA to perform its obligations under, or which purports to affect the legality, validity or enforceability of, this Agreement as in effect on the date hereof.

14.3 Compliance with Laws and Operating Permits.

The Parties shall, at all times and in all material respects, comply with and operate in accordance to all Permits and Applicable Law, including the Bulk-Power System EO (if in effect) and any regulations or orders issued thereunder, and such other Laws applicable to (i) the use, occupancy and operation of the Facility, and (ii) Seller as an Electric Power Company or Electric Power Generation Company (each, as defined under Act No. 57-2014), as the case may be. Seller shall give all required notices required in connection with all Permits and other permits for the development and construction of PREPA Interconnection Facilities and shall pay all charges and fees required in connection therewith. Seller shall complete all environmental impact studies necessary for the design, construction, operation and maintenance of the Facility as agreed to in the Interconnection Agreement. Once obtained, Seller shall comply with, and promptly submit to PREPA copies of, all material Permits and other permits contemplated by this Section 14.3. Furthermore, pursuant to Section 5(f) of Act 120 and subject to the provisions of this Agreement, Seller shall at all times comply with the public policy and regulatory framework applicable to the Facility. Nothing contained herein shall be interpreted as obligating Seller or PREPA to take any action which would be in violation of the United States Constitution, federal law or the laws of Puerto Rico or of any affirmative action program or equal opportunity obligation to which Seller, its affiliated companies or PREPA are or may be bound under federal law or the laws of Puerto Rico.

14.4 Fines & Penalties.

Each Party shall be solely responsible for the payment of any and all fines or other penalties incurred by or imposed upon such Party or its agents, suppliers, employees or subcontractors for noncompliance by such Party, its agents, employees, suppliers or subcontractors with Applicable Law in connection with, (i) in the case of Seller, the development and construction of Seller Interconnection Facilities, and the development, construction, ownership and operation, maintenance or repair of the Facility, except to the extent that any act or omission of PREPA caused such noncompliance, and (ii) in the case of PREPA, the proper operation of the T&D System, except to the extent that any act or omission of Seller caused such noncompliance, in each case as determined by applicable Governmental Authority having jurisdiction over the Facility, subject to the indemnification provisions of Article 15 (Indemnification).

14.5 Confidentiality.

(a) Each Party (such Party, the "Receiving Party") shall keep all Agreement terms and information obtained from the other Party (the "Disclosing Party"), and not otherwise generally available to the public (but without limitation of any liability the Receiving Party may have to the Disclosing Party for information that becomes generally available to the public through the negligence or willful misconduct of any of the Receiving Party, its Affiliates or their respective employees, agents and representatives), confidential and use such information solely in connection with the performance of its obligations under this Agreement. Disclosure of such information may be made only within the Receiving Party's organization to key personnel, to third parties serving as the Receiving Party's legal, financial or technical advisors whose duties justify their need to review and know such material, and to lenders, prospective lenders, investors and prospective investors. The Receiving Party shall require each Person (and personnel thereof) to agree in writing for the benefit of the Disclosing Party to maintain the confidentiality of such information.

(b) To the extent any Governmental Authority requires a Receiving Party to disclose such information or requires such information to secure a governmental approval or authorization, such Receiving Party shall promptly notify the Disclosing Party and use its commercially reasonable efforts to seek a confidentiality agreement that assures confidential treatment of the information consistent with the terms of this Section 14.5(b). In the event the Receiving Party cannot obtain a confidentiality agreement, such Receiving Party shall use commercially reasonable efforts to obtain through court action the appropriate protective order. Notwithstanding the foregoing and Section 14.5(a), PREPA may disclose the terms and conditions of this Agreement to (i) FOMB, PREB, P3A, COR3, the PROMESA Court, and any Governmental Authority for the purpose of obtaining the consents and approvals, together with such additional information as may be required to obtain such consents and approvals, (ii) P3A, any owner of the T&D System, and any potential or then-existing PREPA and their respective advisors and lenders, (iii) the Commonwealth's Legislative Assembly, pursuant to the Commonwealth's Constitution and Applicable Laws, and (iv) the Puerto Rico Comptroller through the filings required by Applicable Law, which will make this Agreement subject to the open records requirement.

14.6 Seller's Offices.

If a change or substitution of one or more of Seller's corporate officers occurs, then Seller shall deliver to PREPA a certification of the names of its corporate officers.

14.7 Other Business.

Seller shall not (i) engage in any business activity other than as reasonably required to perform its obligations under this Agreement and the Interconnection Agreement, (ii) enter into any merger, consolidation or amalgamation with any entity, or (iii) demerge, separate or split into one or more entities, in each case, without PREPA's prior written consent, which shall not be unreasonably withheld, delayed or conditioned.

14.8 Reporting.

(a) Seller agrees that each Fiscal Year following the Commercial Operation Date it will cause an audit to be prepared in accordance with GAAP, of its books and accounts pertaining to Seller's Complex by an independent firm of certified public accountants of suitable experience and acceptable to PREPA. Such audit shall commence on or before thirty (30) Days after the end of the Fiscal Year and shall be completed within ninety (90) Days after its commencement date. On or before the last Day of the first Month following the completion of such audit, reports of such audits shall be delivered to PREPA. Such audit reports shall set forth, in respect to the preceding Fiscal Year, the same matters as are herein above required for the semiannual reports.

(b) Seller further agrees that, within thirty (30) Days after the end of each Fiscal Year, it will cause to be delivered to PREPA an annual certification of the names of its Authorized Officers, accountants, and consulting engineers.

(c) Seller shall make available to PREPA copies of any maintenance evaluations and reports received by Seller to be provided by Seller to any third party with a financial security interest or lien on Seller's Complex (excluding any reports prepared for or at the request of any equity owners of Seller), including evaluations or reports generated at the request of such third parties or performed by an engineering firm employed by such third party.

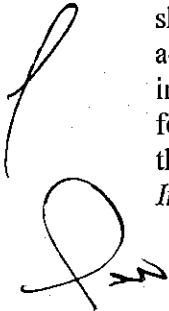
(d) At all times, as available, Seller agrees to provide at no cost to PREPA copies of all final site related reports and applications, including, technical, environmental, geological, seismological, licensing and permitting data in Seller's possession and any other information that PREPA may reasonably request that are in Seller's possession, excluding any proprietary design information relating to Seller's Complex.

14.9 Corporate Existence.

Seller covenants that during the Term it will maintain its corporate existence, will not dissolve, demerge, separate, or split or otherwise dispose of all or substantially all of its assets and will not consolidate or amalgamate with or merge into another entity or permit one or more other entities to consolidate or amalgamate with or merge into it; provided, however, that Seller may consolidate or amalgamate with or merge into another entity, or permit one or more other entities to consolidate or amalgamate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if the successor entity (if other than Seller) (i) is acceptable to PREPA, acting reasonably and with prior written consent, and (ii) assumes in writing all the obligations of Seller hereunder.

14.10 Technology Improvements.

Seller agrees that whenever it becomes aware that a technology improvement (that constitutes a capital improvement other than the incorporation of replacement items having improved characteristics carried out in the ordinary course of the operation and maintenance of the Facility) relating to the operating performance or efficiency of Seller's Complex becomes commercially available and that would result in annual savings (net of the cost of such improvement, amortized equally over the lesser of (i) five (5) years or (ii) the remaining life of this Agreement) to Seller in excess of five percent (5%) of the payments made by PREPA to Seller



pursuant to Article 12 (Compensation, Payment and Billings) during the immediately preceding twelve (12) Billing Periods, Seller shall provide written notification of such technology improvement to PREPA. Seller shall submit to PREPA a technical report describing such improvement, a cost estimate and the expected benefits of the incorporation of such technology improvement into Seller's Complex. If the Parties cannot agree on the costs and/or the benefits of the incorporation of such technology improvement, the determination of such costs and/or benefits shall be determined by an independent engineer selected by the Parties. Seller further agrees that if Seller decides to incorporate such technology improvement into Seller's Complex, except as it related to any technology improvement relating to the Hydrogen Fuel Implementation, PREPA shall have the option, exercisable within thirty (30) Days of such notice, to share equally (by adjustment of the Capacity Payment) with Seller in the costs and benefits of such technology improvement during the remaining Term. Seller acknowledges and agrees that the obligations set forth in this Section 14.10 are independent from, and will not apply to, its obligation to undertake the Hydrogen Fuel Implementation (which shall be governed by Section 7.4 (Hydrogen Fuel Implementation)).


14.11 Local Content.

(a) Seller agrees to use its reasonable efforts when soliciting and obtaining personnel to perform services for the Facility in the Commonwealth, to ensure that individuals who are *bona fide* residents of the Commonwealth (as defined in Section 14.11(c)) perform not less than thirty percent (30%) of the total personnel hours expended in the construction of the Facility (prior to the Commercial Operation Date) and not less than thirty percent (30%) of the total personnel hours expended in Seller's performance of the services pursuant to this Agreement (following the Commercial Operation Date).

(b) Seller agrees to use its reasonable efforts when soliciting and selecting subcontractors and vendors to perform services for the Facility in the Commonwealth, to ensure that businesses owned and controlled by one or more individuals, who are *bona fide* residents of the Commonwealth (as defined in Section 14.11(c)), perform not less than thirty percent (30%) of the total personnel hours expended in the construction of the Facility (prior to the Commercial Operation Date), as measured by person-hours on an annual basis. For purposes of the preceding sentence, "owned and controlled" means a business: (i) owned at least fifty-one percent (51%) by one or more of such individuals (e.g., in the case of a corporate form of organization such individuals must hold at least fifty-one percent (51%) of all voting stock of the corporation; in the case of a partnership or other form of business concern such individuals must hold at least fifty-one percent (51%) of the beneficial interests in the partnership or business concern); and (ii) one or more of such Persons (who need not be owners of the business) control the management and daily business operations. Seller shall use commercially reasonable efforts to select legal entities established under the Commonwealth or a legal entity that has a significant presence in the Commonwealth as its subcontractors and vendors.

(c) For purposes of this Section 14.11(c), a *bona fide* resident of the Commonwealth means an individual who has been a resident of the Commonwealth immediately prior to commencing work on the Facility and will continue to be a resident of the Commonwealth during the performed services. To the extent that despite Seller's reasonable efforts Seller has failed to achieve the goals set forth in Sections 14.1(a) and (b), Seller may, for purposes of

calculating satisfaction of such percentages of local content, include the services of individuals who at some time prior to commencing work on the Facility, but not necessarily including the period of time immediately prior to commencing work on the Facility, were residents of the Commonwealth for at least five (5) consecutive Years and who relocated to the Commonwealth in order to perform work on the Facility. Seller shall require equivalent undertakings from its subcontractors.



(d) With a view towards fostering a positive and constructive relationship between Seller and the applicable government bodies, Seller shall disclose to PREPA information related to any Affiliate of Seller that proposes to participate in any procurement relating to subcontracting of services to be provided under this Agreement. Seller shall make commercially reasonable efforts to ensure that a legal entity established under the Commonwealth or a legal entity that has a significant presence in the Commonwealth are included in the procurement process for materials and services under the Agreement.

(e) Nothing contained herein shall be interpreted as obligating Seller to take any action which would violate Applicable Law or any affirmative action program or equal opportunity obligation to which Seller or its Affiliates are or may be bound under Applicable Law.

14.12 Local Goods and Services.

As required by Article 11 of Act No. 14-2004, as amended, and Act No. 42-2018, as amended, and any other Applicable Law, Seller shall not exclude by specification and shall use commercially reasonable efforts to select and use goods and services extracted, produced, assembled, packaged, bottled, or distributed, as applicable, in the Commonwealth by businesses, municipalities and consortiums operating in the Commonwealth or distributed by agents established in the Commonwealth.

14.13 Subcontracting.

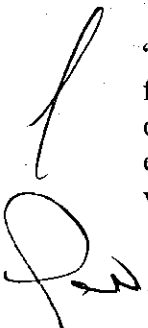
Neither Party shall be relieved of its obligations under this Agreement as a result of subcontracting any of its obligations to a third party.

14.14 Administrative Expense Treatment.

PREPA and Seller stipulate that this Agreement is a post-petition agreement executed after the PREPA Title III petition date and entitled to administrative expense treatment under PROMESA and the Bankruptcy Code. Further, PREPA stipulates that all of PREPA's costs and obligations owed to Seller under this Agreement constitute administrative expenses and that it will support such recovery in any proceeding before any relevant court.

ARTICLE 15 - INDEMNIFICATION

15.1 General.



Subject to the other provisions of this Article 15 (Indemnification), each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party and each of Indemnitees from and against any and all Claims by third parties for or on account of injury, bodily or otherwise, or death of persons or for damage to or destruction of third-party property, in each case to the extent resulting from or arising out of, the Indemnifying Party's violation of Law, negligence, willful misconduct or failure to perform under this Agreement.

15.2 Notice of Claim.

In the event any Party to this Agreement receives notice of any claim or cause of action for which such Party elects to assert a right of indemnification and hold harmless from the other party, the Party receiving such notice must give prompt written notice to the other Party of the claim. The party required to give the indemnification and hold harmless under the terms and provisions of this Agreement will have control of the defense of any such claim or cause of action (except to the extent prevented by any legal conflict of interest) including the selection of counsel to handle same. In addition to the counsel so selected, the Party being indemnified and held harmless shall be entitled to be represented by counsel of his or its own choosing but, in such event, the cost and expense of said additional counsel shall be borne by the indemnitee.

15.3 Claims Arising from Environmental Harm.

Seller shall indemnify and hold harmless PREPA, and each of its Indemnitees, against any and all Claims arising directly or indirectly out of any environmental condition on the Site or any environmental harm due to the actions or omissions of Seller or Seller's agents or employees during the design, development, construction or operation of the Facility, in each case as a result of the release from or presence at the Facility of pollutants, hazardous substances, materials or wastes in excess of amounts and concentrations permitted by Applicable Law then in effect. In the event Seller fails to reimburse PREPA for such Claims within thirty (30) Days of receipt of written notice from PREPA stating that such Claims were incurred (including reasonable documentation of such Claims), PREPA may offset the amount of such Claims against amounts due to Seller from PREPA under this Agreement. In the event Seller disputes that Claims are due to the actions of Seller or Seller's agents, the Parties shall resolve such Dispute pursuant to Article 24 (Dispute Resolution), and PREPA shall not offset any such disputed amounts until final settlement under Article 24 (Dispute Resolution).

ARTICLE 16 - FORCE MAJEURE

16.1 General.

For purposes of this Agreement, "Force Majeure" means any event or circumstance beyond the reasonable control of the affected Party (the "Affected Party") and not resulting from the fault or negligence of the Affected Party claiming the Force Majeure, which wholly or partially prevents the Affected Party from performing any of its obligations under this Agreement, but only if and to the extent that:

(a) the Affected Party could not have prevented, avoided or removed such circumstance, despite the exercise of reasonable diligence consistent with Prudent Utility Practices;

(b) the Affected Party has taken all reasonable precautions, due care and reasonable alternative measures in order to (i) avoid the effect of such event or circumstance on the Affected Party's ability to perform such obligation under this Agreement, and (ii) mitigate the consequences thereof;

(c) such event or circumstance did not directly or indirectly arise out of the breach by the Affected Party of any of its obligations under this Agreement or the fault or negligence of the Affected Party; and


(d) the Affected Party has given the other Party ("Non-Affected Party") notice of such event or circumstance in accordance with Article 22 (Notices).

Except as provided in Section 16.4 (Consequences), Force Majeure shall excuse the Affected Party claiming the Force Majeure from performing the obligation affected by such Force Majeure and the Affected Party shall have no liability for damages or otherwise to the extent caused by such non-performance. The Affected Party shall bear the burden of proving whether Force Majeure has occurred.

16.2 Instances of Force Majeure.

Provided that a claim of Force Majeure satisfies the requirements of Section 16.1 (General), Force Majeure may include the following events: (i) the act or failure to act of any Governmental Authority (including any Change in Regulatory Law or other Change in Law), any Pending Permit Delay, acts of public or foreign enemy, war, invasion, rebellion, terrorism, sabotage, sanctions, riots, insurrections, civil or industrial disturbances, strikes (national and other general strikes), lockouts, boycotts, works to rule, go-slows and other public agitation, and blockades; (ii) acts of God, epidemics, pandemics, earthquakes, storms, tornado, drought, hail, plague, lightning, hurricane, natural calamity, floods, fires, and explosions; (iii) failure or delay of any subcontractor or supplier of the Affected Party to perform as a result of an event that would constitute Force Majeure hereunder; or (iv) port congestion or closure.

Notwithstanding the foregoing, Force Majeure shall expressly not include:



(a) bankruptcy or the inability to pay of a Party or any of its subcontractors or suppliers at any tier;

(b) breakdown or defect of temporary works or Seller's equipment or any subcontractor's equipment, other than breakdown caused by a separate Force Majeure;

(c) any changes in prevailing market prices for goods, fuel, or labor;

(d) strikes, lockouts, works to rule, go-slows, and other industrial disturbances that are limited to personnel of Seller and any of its Affiliates; or

(e) any failure by a Party to obtain and/or maintain a Permit, other than in the case of a Pending Permit Delay.

16.3 Notice.

A Party claiming Force Majeure shall, within ten (10) Days after the occurrence, or on or promptly after the date it first becomes aware of such Force Majeure, give the Non-Affected Party written notice thereof, describing (i) the particulars of such occurrence, (ii) an estimate of the duration of the impact of such event on the Affected Party's ability to perform its obligations, and (iii) how such claim otherwise satisfies the requirements of Section 16.1 (General), provided that if the Affected Party fails to notify the other Party within such ten (10) Day period, the Affected Party will not be precluded from claiming Force Majeure, but Force Majeure will be deemed to have commenced as of the date on which such notice is given.

16.4 Consequences.

Neither Party shall be excused by reason of Force Majeure from the obligation to make any payments, when due, to the other Party.

16.5 Disputes.

For purposes of this Article, if a Party disputes the other Party's claim of Force Majeure, such dispute shall be resolved pursuant to Article 24 (Dispute Resolution).

ARTICLE 17 - TERMINATION

17.1 Termination Date.

Subject to Section 17.5 (No Discharge of Obligations), this Agreement shall automatically terminate on the earliest to occur of:

- (a) end of the Term;
- (b) mutual consent of the Parties in writing;
- (c) following the occurrence of a Default and failure of the defaulting Party to cure such Default within thirty (30) Days of having received a written notice by the non-defaulting Party, termination of this Agreement by the non-defaulting Party; or
- (d) termination of this Agreement by a Party in accordance with Section 17.2 (Termination for Prolonged Force Majeure).

17.2 Termination for Prolonged Force Majeure.

(a) Subject to Section 17.2(d) below, either Party shall have the right, but not the obligation, to terminate this Agreement if (A) a PREPA Risk Event under paragraph (b), (e) or (f) of the definition of PREPA Risk Event or (B) any event of Force Majeure, prevents either Party from performing any of its obligations under this Agreement for a continuous period of eighteen (18) Months, except that:

(i) Seller shall not have the right to terminate this Agreement pursuant to this Section 17.2(a) so long as PREPA has continued paying for Capacity Payments, and elects in such event to continue paying, and actually makes, Capacity Payments beyond such eighteen (18) month period when due pursuant to the terms of this Agreement (other than disputed amounts, which the Parties shall resolve in accordance with Article 24 (Dispute Resolution)); and

(ii) if PREPA is prevented from performing its obligations under this Agreement pursuant to this Section 17.2(a), in lieu of termination of this Agreement pursuant to this Section 17.2(a) and payment of amounts under Section 17.3(a)(iii), so long as PREPA has continued paying for Capacity Payments and continues paying Capacity Payments beyond such eighteen (18) month period when due pursuant to the terms of this Agreement (other than disputed amounts, which the Parties shall resolve in accordance with Article 24 (Dispute Resolution)), PREPA may elect to request Seller to negotiate in good faith an adjustment to the Capacity Purchase Price or other terms of this Agreement to address the negative impact of the relevant PREPA Risk Event or Force Majeure; provided that, (A) any such adjustment may not have an adverse impact on the economics of this Agreement with respect to Seller, and (B) if the Parties are unable to agree on such adjustment within six (6) months after such negotiations have commenced, then either (A) PREPA may continue paying for Capacity Payments; or (B) either Party shall have the right to terminate this Agreement pursuant to this Section 17.2(a).

(b) If a PREPA Risk Event under paragraph (b), (e) or (f) of the definition of PREPA Risk Event or any Force Majeure prevents both Parties from performing any of their

obligations under this Agreement, the eighteen (18) month continuous period under Section 17.2(a) above shall start to run from the date on which one Party is no longer prevented from performing any of its obligations under this Agreement.

(c) In the case of Natural Force Majeure, the termination right under Section 17.2(a) above shall only apply if the Parties agree, or it is determined by the Independent Expert, that the Facility cannot be repaired, reconstructed or replaced on a commercially feasible basis taking into account the insurance proceeds required to be applied to such repair, reconstruction, or replacement under Section 20.5 (Application of Proceeds) and any other amounts in the Facility accounts available for such repair, reconstruction or replacement.

(d) If a Party wishes to exercise its right to terminate this Agreement pursuant to Section 17.2(a) above, it shall issue a notice of termination to the other Party specifying the date on which the party giving such notice proposes to terminate this Agreement, which date shall not be less than sixty (60) Days from the date of such notice. If the event giving rise to such notice of termination is continuing on such date, unless the Parties otherwise agree in writing, this Agreement shall terminate at midnight on such date.

17.3 Termination Payment.

(a) If this Agreement is terminated after the Closing Date:


(i) by PREPA pursuant to Section 17.1(c) (Termination Date) with respect to a Seller Default, PREPA shall have the right to purchase Seller's right, title and interest in the Facility (free and clear of any lien, encumbrance or claim) for an amount equal to the Termination Payment for a Seller Default calculated as of the Termination Date;

(ii) by Seller pursuant to Section 17.1(c) (Termination Date) with respect to a PREPA Default, Seller shall have the right, but not the obligation, to require PREPA to purchase Seller's right, title and interest in the Facility for an amount equal to the Termination Payment for a PREPA Default, calculated as of the Termination Date;


(iii) by Seller or PREPA, as applicable, pursuant to Section 17.1(d) (Termination Date) with respect to (i) a Force Majeure or (ii) a PREPA Risk Event that occurs under paragraph (b), (e) or (f) of the definition of PREPA Risk Event, in each case where PREPA is prevented from performing its obligations under this Agreement and if, but only if, payments for Capacity Payment are due and unpaid under this Agreement in accordance with Section 17.2(a) (Termination for Prolonged Force Majeure), then: (A) in the case of a termination by Seller, Seller shall have the right but not the obligation to, require PREPA to; and (B) in the case of a termination by PREPA, PREPA shall have the obligation to (unless not required by Seller), in each case, purchase Seller's right, title and interest in the Facility, free and clear of any lien, encumbrance or claim for an amount equal to the Termination Payment for a Force Majeure Event calculated as of the Termination Date; and

(iv) in the event of termination of this Agreement by Seller or PREPA, as applicable, for a PREPA Risk Event that occurs under paragraph (b), (e) or (f) of the definition of PREPA Risk Event or a Force Majeure pursuant to Section 17.1(d) (Termination Date) where Seller is prevented from performing its obligations under this Agreement, the Parties acknowledge

and agree that no Termination Payment for a Force Majeure Event or any other type of termination payment shall be required, in which case PREPA shall not have the right to a transfer of the Facility to PREPA.



(b) In the event of any termination of this Agreement, any all Risk Physical Damage Property and Equipment Breakdown Policy insurance proceeds received by Seller from any insurance policy pursuant to Article 20 (Insurance) (or that Seller would have received had it complied with this Agreement) shall be applied to reduce the outstanding Debt in the first instance (except for any insurance proceeds received in connection with the damage or loss of the Facility applied toward the repair, reconstruction or replacement of the Facility, as permitted by the Project Lenders), which, for the avoidance of doubt, shall be applied to reduce the termination payment under Section 17.3. If a termination payment is made by PREPA to Seller pursuant to Section 17.3(a) (Termination Payment), and all Risk Physical Damage Property and Equipment Breakdown Policy insurance proceeds are subsequently received by Seller, such proceeds shall be paid, immediately and in any event within five (5) Business Days, to PREPA.



(c) In the event of any termination of this Agreement, any termination payment which Seller is entitled to recover under this Section 17.3 shall be paid by PREPA no later than ninety (90) Days after the first day of PREPA's next Fiscal Year, provided, however, that during such period PREPA pays any interest or principal payments due by Seller to Project Lenders on outstanding Debt that becomes due and payable, but excluding any acceleration of such outstanding Debt.

(d) In the event of termination of this Agreement by Seller and with respect to any termination payment which Seller is entitled to recover under this Section 17.3, PREPA shall have the right to pay to Seller any amount in excess of the outstanding Debt in the form of a note in lieu of Cash, which note shall include customary terms and conditions, with a tenor not to exceed five (5) Years, with an interest rate equal to the greater of (i) the then current yield for PREPA bonds of similar maturity as traded in the secondary market or (ii) ten percent (10.00%), and with the right to prepay the note at par.

(e) In the event of payment by PREPA of the termination payment provided in this Section 17.3, PREPA shall make such payment without any deduction or offset that would result in the amount paid under this Section 17.3 being less than the amount of outstanding Debt.

(f) For the avoidance of doubt, PREPA may, with not less than sixty (60) Days' prior written notice, elect at any time to stop paying the Capacity Payments, which shall not be considered a PREPA Default but shall entitle Seller to terminate this Agreement pursuant to Section 17.2 (Termination for Prolonged Force Majeure).

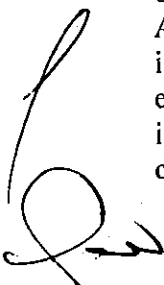
(g) For the avoidance of doubt, PREPA shall be entitled to pursue any other remedies and Claims that it may have against Seller under this Agreement separately.

17.4 Transfer of Facility.

(a) Upon the expiration of the Term or the earlier termination of this Agreement where PREPA has no obligation to and otherwise does not purchase Seller's right, title and interest in the Facility, Seller shall be entirely responsible (at its sole cost, risk and

expense) for owning, operating, maintaining and ultimately removing the Facility and related equipment at the end of their useful lives in accordance with all Applicable Laws; provided, however, that upon expiration of the Term, the Parties may negotiate in good faith the transfer of the Facility from Seller to PREPA.

(b) Immediately upon payment by PREPA of the termination payment under Section 17.3 (Termination Payment), Seller shall (i) assign to PREPA or its designee, subject to Applicable Law, free and clear of all liens and encumbrances, any leasehold or real estate interest on the Site where the Facility is located, and (ii) transfer to PREPA or its designee, subject to Applicable Law, free and clear of all liens and encumbrances, all of Seller's right, title and interest in the Facility. For the avoidance of doubt, PREPA shall have the right, at its sole discretion, to engage another seller to perform the services furnished by the Facility. Seller's obligation include insofar as they are part of or used in the Facility, the transfer to PREPA or its designee, free and clear of all liens and encumbrances, of all of Seller's right, title and interest in:

- 
- (i) all raw materials, consumables and spare parts;
 - (ii) all tangible personal property;
 - (iii) all intangible personal property, including patents, patent licenses, patent applications, tradenames, trademarks, trademark registrations and applications, trade secrets, copyrights, know-how and any other intellectual property rights;
 - (iv) all buildings and fixtures;
 - (v) computerized and non-computerized records, reports, data, files and information;
 - (vi) all drawings, test results and documents relating to the Facility;
 - (vii) all warranties of equipment, materials and work;
 - (viii) all contract rights and insurance policies;
 - (ix) all work in progress under contracts with vendors, suppliers, contractors and subcontractors; and
 - (x) all rights with respect to any insurance proceeds payable to or for the account of Seller, but unpaid at the date of termination of this Agreement, in respect of Seller's right, title and interest in the Facility.

(c) In the event of termination of this Agreement for a Natural Force Majeure and payment of the termination payment by PREPA to Seller pursuant to Section 17.3(a) (Termination Payment), the Facility shall be delivered to PREPA in "as is/where is" condition. In all other termination scenarios under this Agreement, upon payment of the termination payment by PREPA to Seller pursuant to Section 17.3(a) (Termination Payment), the Facility shall be delivered to PREPA in good working condition and operating in accordance with all Applicable Laws and Permits, subject to the Facility's maintenance records per Mitsubishi's standard

recommended operations and maintenance instructions. In all instances, Seller shall be obliged to provide PREPA all information required under Section 17.4.

17.5 No Discharge of Obligations.

Cancellation, expiration or earlier termination of this Agreement shall not relieve the Parties of obligations incurred prior to, or as a result of, such cancellation, expiration or earlier termination of this Agreement, which shall survive such events pursuant to the terms of this Agreement, including Section 2.5 (Performance Security from Seller), Section 3.5 (Delay Liquidated Damages), Section 9.10 (Record Keeping), Article 13 (Liability), Section 14.5 (Confidentiality), Article 15 (Indemnification), Article 16 (Force Majeure), Article 17 (Termination), Section 18.3 (Certain Material Breaches) and Article 23 (Miscellaneous Provisions). The Articles, Sections, and Appendices designated in the preceding sentence shall survive the Termination Date, provided that Section 14.5 (Confidentiality) shall expire on the second (2nd) anniversary of the Termination Date. Without limiting the foregoing, termination of this Agreement shall not discharge either Party from any obligation it owes to the other Party under this Agreement by reason of any transaction, loss, cost, damage, expense or liability which shall occur or arise (or the circumstances, events, or basis that have occurred or arisen) prior to the Termination Date. Any such obligation owed (whether the same shall be known or unknown at termination or whether the circumstances, events, or basis of the same shall be known or unknown at termination) shall survive the Termination Date.

ARTICLE 18 - DEFAULT

18.1 Events of Seller's Default.

The following events shall constitute a "Seller Default" under this Agreement by Seller:

(a) the provision of materially incorrect or misleading information, representation or certification submitted (or made) by Seller in connection with either (i) the submission of Seller's Proposal in response to the RFP, or (ii) the execution, delivery or performance by Seller of this Agreement, relating to either (A) corruption or bribery matters, or (B) a representation made by Seller under Section 18.3 (*Certain Material Breaches*);

(b) Seller's failure to remit in full any amount due and payable under this Agreement to PREPA, which failure is not cured by Seller within sixty (60) Days after the date on which Seller receives written notice from PREPA of such failure (other than disputed amounts, which the Parties shall resolve in accordance with Article 24 (*Dispute Resolution*));

(c) Seller's failure to observe or perform any covenant contained in Section 18.3 (*Certain Material Breaches*);

(d) the Equivalent Availability Factor is less than sixty percent (60%) for any period of twelve (12) consecutive Months, or less than seventy percent (70%) for any period of twenty-four (24) consecutive Months;

(e) Development Abandonment or Permanent Closing;

(f) a termination of the Interconnection Agreement due to a default thereunder by Seller;

(g) a COD Termination Event;

(h) failure to obtain required insurance under Article 20 (*Insurance*), which failure is not cured by Seller within twenty (20) Business Days after the date on which Seller receives written notice from PREPA of such failure;

(i) an Insolvency Event with respect to Seller, whether voluntary or involuntary, and, in case it is involuntary, such Insolvency Event 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;

(j) the occurrence of the event set forth in Section 3.4(b) (*Guaranteed Performance Liquidated Damages*); and

(k) except as otherwise covered in paragraphs (a) through (j), the failure by Seller to observe or perform in any material respect its obligations under this Agreement, which remains uncured for a period of one hundred twenty (120) Days after the date on which Seller receives written notice from PREPA of such failure, or such longer period (not to exceed an

additional cure period of one hundred fifty (150) Days) if Seller can cure such default and diligently pursues such cure.

18.2 PREPA's Events of Default.

The following events shall constitute a "PREPA Default" under this Agreement by PREPA:

(a) a materially incorrect or misleading representation or warranty made by PREPA under this Agreement or any certification submitted by PREPA in connection with the execution, delivery or performance of this Agreement, which in either case remains uncured for a period of at least sixty (60) Days after receipt by PREPA of notice thereof from Seller;

(b) failure to remit in full any amount due and payable under this Agreement to Seller, which failure is not cured by PREPA within forty-five (45) Days after the date on which PREPA receives written notice from Seller of such failure (other than disputed amounts, which the Parties shall resolve in accordance with Article 24 (Dispute Resolution));

(c) an Insolvency Event with respect to PREPA, whether voluntary or involuntary, and, in case it is involuntary, such Insolvency Event 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;

(d) any condemnation or nationalization of the Facility by any Governmental Authority;


(e) default in the observance or performance of any of the material terms, covenants or conditions contained in this Agreement, which remains uncured for a period of one hundred twenty (120) Days after the date on which PREPA receives written notice from Seller of such failure, or such longer period (not to exceed an additional cure period of one hundred fifty (150) Days) if PREPA can cure such default and diligently pursues such cure; and

(f) a termination of the Interconnection Agreement due to a default thereunder by PREPA.

18.3 Certain Material Breaches.

(a) Pursuant to FOMB's contract review policy (FOMB POLICY: REVIEW OF CONTRACTS, as modified on April 30, 2021), Seller represents and warrants to PREPA on the Agreement Date, and again on the Closing Date, (i) the due execution by Seller and delivery to PREPA of a certification (the "FOMB Certification") in a form substantially similar to that set forth in Appendix U (Form of FOMB Certification), and (ii) the completeness, accuracy, and correctness of all information included in such FOMB Certification. Without limiting the foregoing in any way, Seller acknowledges and agrees that PREPA, in consultation with the FOMB, shall have the right to declare this Agreement null and void in the event of any misrepresentation, or inaccuracy or falseness with respect to a material fact in the FOMB Certification. In addition, PREPA, after disclosure to and consultation with the FOMB, may provide in its discretion an opportunity to Seller to attempt to cure any such misrepresentation, or

inaccuracy of falseness in the FOMB Certification and PREPA, after disclosure to and consultation with the FOMB, shall have the discretion to determine whether any such cure is acceptable. In the event that PREPA declares this Agreement null and void in the event of any misrepresentation, or inaccuracy of falseness with respect to a material fact in the FOMB Certification, Seller shall have the obligation to reimburse immediately to PREPA or the Commonwealth, as applicable, any amounts, payments or benefits received from PREPA or the Commonwealth under this Agreement.



(b) In accordance with Article 3.4 of Act No. 2-2018, known as the Anti-Corruption Code for a New Puerto Rico ("Act 2"), Seller acknowledges and agrees that its conviction or guilty plea for any of the crimes as enumerated in Article 3.4 of Act 2, in addition to any other applicable liability, shall render this Agreement null and void, and Seller shall reimburse PREPA immediately for any amounts, payments or benefits received from PREPA under this Agreement that directly resulted from the committed crime, but only to the extent required by Act 2.

(c) Pursuant to Section 3.4 of Act 2, Seller represents and warrants to PREPA on the Agreement Date, and again on the Closing Date, that neither Seller, nor any of its officers, directors, managers and/or administrators has been convicted in any Puerto Rico or United States Federal court 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, of any of the crimes listed in Articles 250 through 266 of Act No. 146-2012, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2 or any other felony that involves the misuse of public funds or property, including the crimes mentioned in Article 6.8 of Act No. 8-2017, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico. Seller acknowledges and agrees that it shall be subject to Title III of Act 2, known as the Code of Ethics for Contractors, Suppliers and Applicants of Economic Incentives of the Government of Puerto Rico, PREPA shall have the right to terminate this Agreement if Puerto Rico or United States Federal Court convicts Seller 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, of any of the crimes listed in Articles 250 through 266 of Act No. 146-2012, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2 or any other felony that involves the misuse of public funds or property, including the crimes mentioned in Article 6.8 of Act No. 8-2017, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.

(d) Seller acknowledges and agrees that the conditions outlined throughout this Section 18.3 constitute essential requirements of this Agreement.

18.4 Remedies & Disputes.

Upon the occurrence of a Default, the non-defaulting Party shall have the right to invoke its remedies under this Agreement and/or under Applicable Law. Any Disputes in connection with the existence of a Default shall be resolved in the manner prescribed in Article 24 (*Dispute Resolution*).

18.5 Clauses Required Under Section 10(a)(xv) of the PPP Act.

Pursuant to Section 10(a)(xv) of the PPP Act, Seller acknowledges and agrees that:

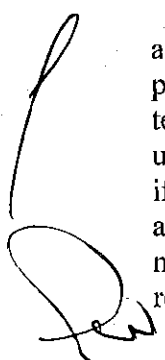
(a) The breach of this Agreement by Seller could be sufficient cause for PREPA to claim damages caused to the public treasury.

(b) If Seller breaches its obligations under this Agreement and such breach results in the termination thereof, Seller shall be disqualified from contracting with any other Governmental Authority for a period of ten (10) years from the final and official termination date of this Agreement.

(c) The sanctions imposed by the PPP Act shall not exclude any other sanction that could be established by the Parties under this Agreement.

ARTICLE 19 - TAXES

19.1 Seller Requirements.



Seller will promptly pay and discharge all Taxes applicable to the construction, ownership and operation of the Facility and otherwise imposed upon it or in respect of all or any part of its property or business, all trade accounts payable in accordance with usual and customary business terms, and all Claims for work, labor or materials which, if unpaid, might become a lien or charge upon any of its property; provided that Seller shall not be required to pay any such Taxes or Claim if: (i) the validity, applicability or amount thereof remains contested in good faith by appropriate actions or proceedings that will prevent the forfeiture or sale of any property of Seller or any material interference with the use thereof by Seller, and (ii) Seller has set aside on its books reserves deemed by it to be adequate with respect thereto.


19.2 PREPA Requirements.

PREPA shall pay or shall cause to be paid all sales, use, excise, value-added or other similar consumption Taxes imposed on or with respect to the purchase and sale of Net Electrical Output at the Point of Interconnection, except any such Taxes related to the construction, ownership and operation of the Facility payable by Seller pursuant to Section 21.1 (*Restriction on Assignment*). The Parties hereby acknowledge that the purchase and sale of the Net Electrical Output is currently exempt from the sales and use tax applicable under the Puerto Rico Internal Revenue Code of 2011.

ARTICLE 20 - INSURANCE

20.1 Seller Requirements.

Subject to Section 20.6 (General Provision), Seller shall obtain and maintain in full force and effect from the Construction Start Date and during the Term of this Agreement and thereafter as provided herein policies of insurance covering all operations engaged in by this Agreement, which shall be formally agreed with an insurance company authorized to do business in the Commonwealth, and to that effect, it shall provide in original certificates of insurance and endorsements as follows:



(a) *Worker's Compensation Insurance*: Seller shall provide and maintain worker's compensation insurance as required by Act No. 45 of April 18, 1935, also known as the Worker's Compensation Act of the Commonwealth of Puerto Rico. Seller shall also have responsibility for compliance with said Worker's Compensation Act by all its subcontractors, agents and invitees. Seller shall furnish PREPA a certificate from the State Insurance Fund, in a form reasonably acceptable to PREPA, showing that all personnel employed in the work are covered by the Worker's Compensation Insurance, in accordance with this Agreement. Imported technical personnel are exempted, as per Act of May 16, 1958 No 16. Seller shall furnish evidence of such exemption and certificate from the insurance carrier covering said personnel.

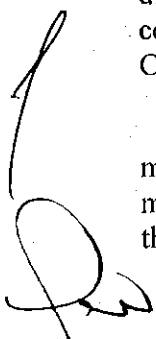
(b) *Commercial General Liability Insurance*: Seller shall provide and maintain commercial general liability insurance with limits of US\$1,000,000 per occurrence and US\$2,000,000 aggregate. Such insurance shall include specific coverage for contractual liability, "XCU" explosion, collapse and underground damages coverage, products and completed operations liability.

(c) *Automobile Liability Insurance*: Seller shall provide and maintain automobile liability insurance with limits of US\$1,000,000 combined single limit covering all owned, non-owned and hired automobiles.

(d) *Excess Umbrella Liability Insurance*: shall provide and maintain excess umbrella liability insurance with limits of US\$4,000,000 per occurrence in excess of the limits of insurance provided in Section 20.1(b) above;

(e) *All Risk Physical Damage Property Insurance*: Seller shall provide and maintain all-risk physical damage property insurance, including machinery coverage to cover all real and personal property of Seller (including earthquake and hurricane occurrence) to one hundred percent (100%) of replacement cost. Seller shall place this insurance policy in effect on the Commercial Operation Date. The insurance, as required in this Section 20.1(e), shall cover work at the Site and shall also cover portions of the work located away from the Site and portions of the work in transit. The policy shall include as insured property scaffolding, false work, and temporary buildings located at the Site.

(f) *Equipment Breakdown Policy*: Unless included in the all-risk physical damage insurance required in Section 20.1(e), Seller shall provide and maintain an equipment breakdown policy to cover all equipment and machinery of Seller. This insurance shall name PREPA as an additional insured under this policy.



(g) *Employer's Liability Insurance*: To the extent that Seller employs employees, Seller shall provide and maintain employer's liability insurance with minimum bodily injury limits of US\$1,000,000 for each employee and US\$1,000,000 for each accident, covering against the liability imposed by Law upon Seller as a result of bodily injury, by accident or disease, including death arising out of and in the course of employment, outside of and in the course of employment, and outside of and distinct from any claim under the Worker's Compensation Act of the Commonwealth.

(h) *Business and Cyber Interruption Insurance*: Seller shall provide and maintain business interruption insurances with respect to the Facility on terms reflecting typical market requirements for independent power project. Seller shall place this policy into effect on the Commercial Operation Date.

20.2 Requirements for Seller Policies.

Seller shall ensure that the provider of the commercial general liability insurance and automobile liability insurance, as required under Section 20.1 (*Seller Requirements*), endorses such insurance to include:

(a) as additional insured:

Puerto Rico Electric Power Authority
Risk Management Office
PO Box 364267
San Juan, PR 00936-4267;

(b) a thirty (30) Days' cancellation or nonrenewable notice (ten (10) Days for non-payment of premium) to be sent by certified mail to Seller (with a copy to PREPA) with return receipt to the above address sent by Seller;


(c) an endorsement including this Agreement under contractual liability coverage and identifying it by number, date and the Parties;

(d) a waiver of subrogation in favor of PREPA; and

(e) the breach of any of the warranties or conditions in these policies by Seller shall not prejudice PREPA's rights under this policy.

20.3 Contractor Requirements.

The contractors and designers retained by Seller to construct the Facility (other than the POI Facility, if such facility is constructed by PREPA) shall obtain and maintain in full force and effect before the Construction Start Date, policies of insurance covering all constructions engaged in by this Agreement, which shall be formally agreed with insurance companies authorized to do business in the Commonwealth, and to that effect Seller shall provide in the original certificate of insurance and endorsements, as follows:



(a) *Worker's Compensation Insurance*: Seller shall cause its contractors to provide and maintain worker's compensation insurance as required by the Worker's Compensation Act of the Commonwealth. Seller shall also have responsibility for compliance with said Worker's Compensation Act by all its subcontractors, agents, and invitees. Seller shall furnish PREPA a certificate from the State Insurance Fund showing that all personnel employed in the work are covered by the worker's compensation insurance, in accordance with this Agreement. Imported technical personnel are exempted, as per Act of May 16, 1958, No. 16. Seller shall furnish evidence of such exemption and certificate from the insurance carrier covering said personnel.

(b) *Employer's Liability Insurance*: Seller shall cause its contractors to provide and maintain employer's liability insurance with minimum bodily injury limits of US\$1,000,000 for each employee and US\$1,000,000 for each accident, covering against the liability imposed by Law upon its contractors as a result of bodily injury, by accident or disease, including death arising out of and in the course of employment and outside of and distinct from any claim under the Worker's Compensation Act of the Commonwealth.

(c) *Commercial General Liability Insurance*: Seller shall cause its contractors to provide and maintain commercial general liability insurance with limits of US\$1,000,000 per occurrence and US\$2,000,000 aggregate. There shall be no endorsement or modification of the commercial general liability insurance limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage. Continuing commercial general liability insurance shall cover liability arising from products completed operations and liability assumed under an insured contract for at least three (3) Years following substantial completion of the work.

(d) *Automobile Liability Insurance*: Seller shall cause its contractors to provide and maintain automobile liability insurance with limits of US\$1,000,000 combined single limit covering all owned, non-owned and hired automobiles.

(e) *Excess Umbrella Liability Insurance*: Seller shall cause its contractors to provide and maintain excess umbrella liability Insurance with limits of US\$4,000,000 per occurrence in excess of the limits of insurance provided in Section 20.3(c) (*Commercial General Liability Insurance*).

(f) *Builder's Risk Insurance*: Seller shall provide or cause its contractors to provide and maintain in force builder's risk insurance for the entire work. Such insurance shall be written in an amount equal to the total contract sum as well as subsequent modifications of that sum. The insurance shall apply on a replacement cost basis and coverage shall be written on a completed value form as follows:

(i) The insurance as required above shall be written to cover all risks of physical loss except those specifically excluded in the policy and shall insure at least against the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, riot, civil commotion, theft, vandalism, malicious mischief, earthquake and collapse.

(ii) Seller shall pay any deductible applicable to the insurance purchased in compliance with this requirement.

(iii) Waiver of Subrogation. Seller shall waive all rights against PREPA and its officers, directors, agents, and employees for recovery for damages caused by fire and other perils to the extent covered by builder's risk or property insurance purchased pursuant to the requirements of this Agreement or any other property insurance applicable to the work.

20.4 Requirements for the Contractor Policies.

Seller shall cause its contractors to ensure that the provider of the commercial general liability insurance and automobile liability insurance, as required under Section 20.3 (Contractor Requirements), endorses, or provides that, such insurance to include:

(a) as additional insured:

Puerto Rico Electric Power Authority
Risk Management Office
PO Box 364267
San Juan, PR 00926-4267;

(b) a thirty (30) Days' cancellation or nonrenewable notice to be sent by certified mail with return receipt to the above address;

(c) an endorsement including this Agreement under contractual liability coverage and identifying it by number, date, and the Parties, or confirming that the commercial general liability form includes contractual coverage for this Agreement;

(d) a waiver of subrogation in favor of PREPA; and


(e) the breach of any of the warranties or conditions in these policies by the relevant contractor or designer shall not prejudice PREPA's rights under this policy, which may be provided by a standard severability of interests and separation of insureds clause.

20.5 Application of Proceeds.

Subject to Article 17 (*Termination*) and to the terms and conditions of any direct agreement or other similar agreement executed by PREPA, Seller and/or a Project Lender, Seller shall apply any and all insurance proceeds received in connection with the damage or loss of the Facility toward the repair, reconstruction or replacement of the Facility, as permitted by the Project Lenders.

20.6 General Provision.

(a) Subject to Section 20.6(b) below, PREPA shall review the requirements of this Article 20 (Insurance) prior to the Construction Start Date to confirm that an insurance company meeting the requirements of this Article 20 (Insurance) continues to make available the foregoing policies. Seller, its contractors and subcontractors shall cause its insurers or agents to



provide not later than ten (10) Business Days prior to the Construction Start Date, with originals or certified true and correct copies of insurance certificates for such policies (which have entered into full force and effect), in a form of certificate approved by PREPA, such approval not to be unreasonably withheld or delayed. Any deductible applicable on required insurance policies under this Article 20 (Insurance) shall be paid by Seller, its contractors, or subcontractors. Failure of each party to obtain certificates of insurance shall not relieve Seller, contractor or subcontractor of the insurance requirements set forth herein. Failure to obtain the insurance coverage required by this Article 20 (Insurance) shall in no way relieve or limit Seller, contractor or subcontractor obligations or liabilities under this Agreement.

(b) Notwithstanding the foregoing, in the event any insurance (including the limits or deductibles thereof) required to be maintained by this Article 20 (Insurance), other than insurance required to be maintained by Applicable Law, is not available on commercially reasonable terms in the commercial insurance market, PREPA acting upon consultation with an independent insurance consultant, shall not unreasonably withhold its agreement to waive (or modify) such requirement to the extent the maintenance thereof is not so available and/or, to the extent applicable, may allow Seller (or the Facility, as applicable) to obtain the best available insurance comparable to the requirements of this Article 20 (Insurance) on commercially reasonable terms then available in the commercial insurance market (as determined by an independent insurance consultant); provided that (i) Seller shall first request any such waiver (or modification) in writing, which request shall be accompanied by written reports prepared by Seller and an independent insurance consultant, satisfactory to PREPA, certifying that such insurance is not available on commercially reasonable terms in the commercial insurance market for similar generation projects of similar type and capacity (and, in any case where the required amount is not so available, certifying as to the maximum amount which is so available) and explaining in detail the basis for such conclusions and the form and substance of such reports to be satisfactory to PREPA; (ii) at any time after the granting of any such waiver (or modification), but not more often than once annually, PREPA may request, and Seller shall furnish to PREPA within fifteen (15) days after such request, supplemental reports satisfactory to PREPA updating the prior reports and reaffirming such conclusion; and (iii) any such waiver (or modification) shall be effective only so long as such insurance shall not be available on commercially reasonable terms in the commercial insurance market (as determined by an independent insurance consultant), it being understood that the failure of Seller to timely furnish any such supplemental report shall be conclusive evidence that such waiver (or modification) is no longer effective because such condition no longer exists.

ARTICLE 21 - ASSIGNMENT

21.1 Restriction on Assignment.

Except as otherwise provided in this Article 21 (Assignment), neither Party shall assign or transfer this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. Any attempt to assign this Agreement without the prior written consent of the corresponding Party shall be void. Any failure of a Party to respond to any request by the other Party for consent to assignment pursuant to this Section 21.1 shall not be deemed or construed as an acceptance or consent to such proposed assignment.

21.2 PREPA's Right to Assign.

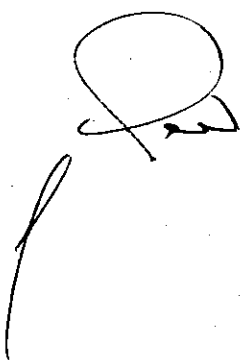
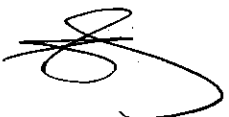
Notwithstanding the provisions of Section 21.1 (Restriction on Assignment), the Parties acknowledge that PREPA is undergoing a transformation process, and therefore agree that, after the front-end transition period of a Partnership Contract, Sale Contract or any other PREPA Transaction (as these terms are defined in Act 120), PREPA may sell, assign, convey, transfer, pledge, mortgage, sublease, delegate, hypothecate or otherwise dispose (each, a "Transfer") any of its rights, title or interest in this Agreement as permitted by Applicable Law and at any time, without Seller's consent, and without cost, expense, or incremental liability to PREPA, to an Affiliate of PREPA or any Governmental Authority of Puerto Rico financially, legally and operationally capable of performing all of PREPA's payment and performance obligations under this Agreement; provided that PREPA shall notify Seller in writing no later than thirty (30) Days before the effective date of any such Transfer. Unless otherwise agreed by PREPA, following a Transfer to one of the entities described in the previous sentence, PREPA shall be released from all obligations under this Agreement to the extent such transferee assumes such obligations in writing, provided that, for any Transfer to an Affiliate of PREPA, PREPA shall guarantee the payment obligations of such Affiliate arising out of this Agreement following such assignment.

21.3 Seller's Right to Assign.

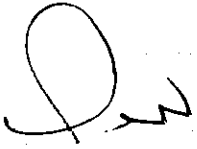
(a) Notwithstanding the provisions of Section 20.1 (Seller Requirements), Seller shall have the right to assign, pledge or encumber this Agreement in its entirety or in part without PREPA's consent to the Project Lenders as collateral security in order to obtain financing or other funding. PREPA agrees to execute and deliver an agreement consenting to any assignment as collateral security in favor of the Project Lenders containing terms and conditions that are customary for transactions of this kind. PREPA agrees to cooperate in good faith in this regard and to provide other customary and reasonable documents and acknowledgments as the Project Lenders may reasonably request in connection with the financing of the Facility, including estoppel certificates and direct agreement or consent to an assignment in accordance with this Section 21.3 and substantially in the form of Appendix T (Form of Direct Agreement) and a legal opinion addressed to the Project Lenders with respect to due authorization and capacity of PREPA to enter into such agreement or consent, and enforceability thereof, in each case as reasonably acceptable to PREPA. PREPA further agrees to negotiate in good faith such amendments to this Agreement as may be reasonably requested by the Project Lenders and which are of a nature typically obtained by financing parties in non-recourse financing and are reasonably acceptable to PREPA. In addition, Seller shall have the right to assign this Agreement as collateral security

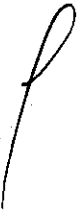
to any agent, trustee or other Person (including any corporation or partnership) representing the Project Lenders under the Financing Documents.

(b) If Seller shall assign this Agreement as collateral security pursuant to Section 21.3(a), then so long as the secured obligations, or any consolidation, modification, or extension of such obligation shall remain outstanding, the following provisions shall apply:

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- (i) The making of an assignment pursuant to Section 21.3(a) shall not be deemed to constitute an assignment or transfer of this Agreement, nor shall any assignee referred to above, as such, be deemed to be an assignee or transferee of this Agreement so as to require such assignee, as such, to assume the performance of any of the terms and conditions of Seller to be performed hereunder; provided that the purchaser at any sale of this Agreement in any proceeding for the foreclosure of any assignment, or the assignee or transferee of this Agreement in any proceedings for the foreclosure of any assignment, or the assignee or transferee of this Agreement under any instrument of assignment or transfer in lieu of the foreclosure of any assignment, shall be deemed to be an assignee or transferee within the meaning of this Section 21.3(b) and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Seller to be performed hereunder from and after the date of such purchase and assignment.
- (ii) Notwithstanding any other provision of this Agreement, to the extent permitted by Applicable Law, any sale of Seller's rights in this Agreement in any secured creditor's sale, any proceeding for the foreclosure of any assignment, or the assignment or transfer of this Agreement in lieu of the foreclosure of any assignment, shall be deemed to be a permitted sale, transfer or assignment of this Agreement, and this Agreement shall continue in full force and effect following any such sale, transfer or assignment.
- (iii) If PREPA terminates this Agreement prior to the expiration of the Term due to a Seller Default or rejects or disaffirms this Agreement pursuant to any bankruptcy Law or proceeding or other similar Applicable Law or proceedings affecting creditors' rights generally with respect to a bankruptcy proceeding relating to Seller or otherwise, PREPA agrees, if outstanding obligations to a Project Lender exist, and subject to the receipt of all necessary approvals, to enter into a new power purchase and operating agreement with the Project Lender (or its designee or nominee) on substantially similar terms to this Agreement; provided that such designee or nominee: (i) qualifies as a Substitute Provider (as defined in the form of direct agreement included at Appendix T (Form of Direct Agreement)); (ii) has provided to PREPA (x) its audited financial statements prepared in accordance with GAAP, demonstrating that such new designee or nominee has an Unrestricted Net Worth of at least twenty-five million Dollars (US\$25,000,000) (or that its direct or indirect parent has an Unrestricted Net Worth of at least seventy-five million Dollars (US\$75,000,000)), and (y) the certifications and documentation required by Appendix F (Signing Conditions), but construing
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references to Seller therein as references to such new designee or nominee; and (iii) has accepted all terms, provisions and limitations of this Agreement, effective as of the date of such termination.

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- (iv) Seller shall not have the right to assign its rights, title or interest under this Agreement to any Affiliate of Seller without the prior express written consent of PREPA, unless on or after the Commercial Operation Date (i) such Affiliate agrees to be bound by the terms of this Agreement and to fully perform the obligations of Seller hereunder (including Appendix F (Signing Conditions)), (ii) each Sponsor maintains at least the same percentage of the total equity ownership interest in such Affiliate, whether directly or indirectly, as Equity Investment it owns, directly or indirectly, in Seller at the time of such assignment, and (iii) Seller or a Sponsor owns, directly or indirectly, no less than fifty-one percent (51%) of the total equity in such Affiliate. Seller shall notify PREPA of Seller's intention to assign this Agreement at least thirty (30) Days in advance of any such assignment.



21.4 Restrictions on Equity Investment Transfers.


Each of Tropigas and Cratos agree not to, and Seller shall ensure that any other Sponsor does not assign, sell or transfer (whether directly or indirectly) to any other Person any part of its ownership interests in Seller or renounce any preferential subscription rights for ownership interests in connection with a capital increase (each, an "Equity Transfer") at any time prior to the Commercial Operation Date without the prior express written consent of PREPA, which shall not be unreasonably withheld or delayed. On or after the Commercial Operation Date, each of Tropigas and Cratos agree not to, and Seller shall ensure that any other Sponsor does not effect an Equity Transfer at any time without the prior express written consent of PREPA, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, a Sponsor may, without PREPA's consent:

(a) create a security interest in its ownership interest in Seller in favor of the Project Lenders, and PREPA hereby approves any Equity Transfer thereof resulting from the enforcement of such security interests in accordance with the Financing Documents;

(b) (i) prior to the Commercial Operation Date, effect an Equity Transfer solely in connection with a financing transaction involving Tax Credits, provided that such transfer does not result in the Control of Seller or the Facility being transferred to a third party other than the Sponsor or Seller, as applicable; and (ii) at any time after the Commercial Operation Date, effect an Equity Transfer back to Seller or Sponsor, as applicable, pursuant to the terms of such financing transaction entered into prior to the Commercial Operation Date involving Tax Credits, if applicable.

(c) at any time after the Commercial Operation Date, effect an Equity Transfer to a Wholly-Owned Affiliate of a Sponsor, provided that such Wholly-Owned Affiliate remains a Wholly-Owned Affiliate of such Sponsor at all times after such Equity Transfer; or

(d) at any time from and after the second anniversary of the Commercial Operation Date, effect an Equity Transfer to a Person, including a Wholly-Owned Affiliate, provided that such Equity Transfer, when aggregated with all previous Equity Transfers, does not result in a transfer of more than forty-nine percent (49%) of the issued and outstanding shares and voting rights in Seller to any Person other than a Sponsor or a Wholly-Owned Affiliate of a Sponsor.




If Seller intends to effect an Equity Transfer, then it shall notify PREPA of such intention at least sixty (60) Days in advance of the intended date of such transfer. The failure of PREPA to respond to any request by Seller for consent to transfer pursuant to this Section 21.4 within such sixty (60) Days shall be deemed as an acceptance and consent to such proposed transfer. PREPA acknowledge and agree that the identity and existence of such third party, and the potential transfer, shall be kept confidential in accordance with Section 14.5 (Confidentiality); and if requested by Seller, PREPA shall enter into a confidentiality agreement with respect to the same, in a form reasonably acceptable to PREPA, provided that Seller shall reimburse PREPA for the cost of negotiating and executing such agreement. Prior to PREPA's consent to any Equity Transfer, Seller shall cause the proposed new owner of such equity to provide to PREPA (i) its audited financial statements as per GAAP, demonstrating that such new owner has a tangible net worth of at least twenty-five million Dollars (US\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least seventy-five million Dollars (US\$75,000,000)), (ii) evidence reasonably acceptable to PREPA that such new owner is or has engaged a Qualified Operator, and (iii) the certifications and documentation required by Appendix F (Signing Conditions), but construing references to Seller therein as references to such new owner. In each case, Seller shall obtain any regulatory approvals required in respect of such transfer and ensure such transfer otherwise complies with Applicable Law.

21.5 Restrictions on Asset Transfers.

(a) Seller shall not sell or transfer, directly or indirectly, the Facility, any portion of the Facility or substantially all of its assets either (i) at any time prior to the Commercial Operation Date, or (ii) for any such sale or transfer occurring on or after the Commercial Operation Date, without PREPA's prior express written consent, such consent not to be unreasonably withheld or delayed. The foregoing prohibition shall not apply to any such transfer that (A) forms part of a foreclosure on any mortgage, lien, pledge, charge or other encumbrance granted to the Project Lenders under any non-recourse project financing related exclusively to such assets and such lenders or their agent have entered into a direct agreement with PREPA in respect of the collateral assignment of this Agreement and the Interconnection Agreement, or (B) constitutes a permitted assignment under Article 21 (Assignment).

(b) If Seller intends to sell the Facility, or any portion of the Facility, or substantially all of its assets, pursuant to PREPA's consent under Section 21.5(a), then it shall notify PREPA of its intention to sell at least sixty (60) Days in advance of the intended date of such sale. PREPA shall not unreasonably withhold or delay its consent to any such sale or transfer. The failure of PREPA to respond to any request by Seller for consent to such a sale or transfer within such sixty (60) Days shall be deemed as an acceptance and consent to such proposed sale or transfer. Prior to PREPA's consent to any such asset transfer, Seller shall cause the proposed new owner to provide PREPA with (i) its audited financial statements as per GAAP,



demonstrating that such new owner has a tangible net worth of at least twenty-five million Dollars (US\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least seventy-five million Dollars (US\$75,000,000)), (ii) evidence reasonably acceptable to PREPA that such new owner is or has engaged a Qualified Operator, and (iii) the certifications and documentation required by Appendix F (*Signing Conditions*), but construing references to Seller therein as references to such new owner. In each case, (A) Seller shall obtain any regulatory approvals required in respect of such transfer and ensure such transfer otherwise complies with Applicable Law, and (B) if requested by PREPA, the Parties and such new owner shall enter into an agreement under which (x) Seller assigns and transfers all of its rights and obligations under this Agreement to such new owner, and (y) such new owner expressly assumes all liabilities of Seller arising under this Agreement prior to the date of such assignment.

ARTICLE 22 - NOTICES

22.1 General.


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 (i) 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, (ii) on the date of successful transmission if sent via email (with return receipt) during normal business hours of the recipient during a Business Day, otherwise on the next Business Day, or (iii) 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 at the address, email address set forth below (or at such other address, email address as shall be specified by a Party in a notice given in accordance with this Section 22.1 (General)):



IF TO SELLER:

Energiza LLC
Attention: Humberto Berrios
E-mail: lhberrios@tropigaspr.com

For Dispatch Notices




Operational Personnel
Attention: Sergio Picon
E-mail: Sergio.picon@cratosglobal.com

IF TO PREPA:

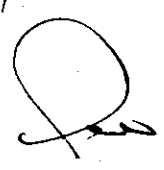
Puerto Rico Electric Power Authority
PO Box 364267
San Juan, PR 00936-4267
Attention: Josué A. Colón Ortiz - Executive Director (or any other person designated as Executive Director in the future)
E-mail: Josue.colon@prepa.pr.gov

With a copy to, for so long as LUMA Energy LLC and LUMA Energy ServCo LLC collectively serve as the "System Operator" under the T&D O&M Agreement:

LUMA Energy, LLC
Juan Ruiz Velez Building, Office 04-015
1110 Ponce de León Avenue
San Juan, Puerto Rico
Attention: Brian Walshe
E-mail: brian.walshe@lumapr.com



IF TO TROPIGAS (solely for the purposes of Section 21.4):
SAN JUAN GENERATION ASSETS LLC
PO Box 70205, San Juan, Puerto Rico 00936
Attention: Humberto Berrios
E-mail: lhberrios@tropigaspr.com




IF TO CRATOS (solely for the purposes of Section 21.4):
CRATOS ENERGY HOLDINGS LLC
PO Box 70205, San Juan, Puerto Rico 00936
Attention: Sergio Picon
E-mail: sergio.picon@cratosglobal.com

22.2 Change of Address or Persons.

Either Party may change, by notice as above provided, the persons and/or addresses to which all such notices are to be sent.

ARTICLE 23 - MISCELLANEOUS PROVISIONS

23.1 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 the negotiation and execution of this Agreement 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 shall be subject to any rights of such Party arising from a breach of this Agreement by the other Party prior to such termination.



23.2 Exchange of Information. For purposes of conducting any investigations and evaluations as the Parties may deem reasonable and necessary to determine the feasibility of the Facility, any PREPA Interconnection Facilities and the technical aspects related to the sale of Net Electric Output of the Facility, the Parties agree to cooperate reasonably and in good faith and provide each other and their respective representatives reasonable and timely access to relevant personnel, advisors (including environmental consultants), properties, and books and records, provided the information is not privileged, confidential or protected under other agreements with third parties or by Law. Subject to the conditions stated in the previous sentence, each Party hereby agrees to cooperate and exchange information reasonably necessary to permit, finance, construct and operate the Facility. Notwithstanding anything in this Agreement to the contrary, Seller shall remain solely responsible for permitting, financing, constructing, and operating the Facility. Seller shall comply with all terms and conditions contained in the Interconnection Agreement. PREPA shall bear no liability or cost under this Agreement related to interconnection or electric distribution or transmission service for the Facility, except as expressly set forth in this Agreement.

23.3 Cooperation.


To the extent legally permitted, the Parties agree to cooperate reasonably and in good faith in the mutually beneficial endeavor to obtain (i) control of, or other required access and rights to, the real property upon which the Facility and any PREPA Interconnection Facilities will be located, (ii) financing for the Facility and any PREPA Interconnection Facilities, and (iii) all necessary Permits, endorsements and approvals for siting and construction of the Facility and any PREPA Interconnection Facilities. Notwithstanding anything in this Agreement to the contrary, Seller shall remain solely responsible for obtaining the items set out in this Section 23.3.

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

23.5 Entire Agreement. This Agreement, together with the 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, the proposal by Seller or its Affiliate and any amendments or supplements to the RFP or the proposal.

23.6 System Operator's Role. The Parties hereby acknowledge that by virtue of the T&D O&M Agreement, System Operator, as agent to PREPA, shall have the ability to effectively assume and discharge all rights and operational and regulatory obligations and responsibilities of PREPA under this Agreement.



23.7 Relationship of the Parties. Nothing in this Agreement is intended to create, or shall be deemed or construed as creating, any partnership, joint venture or other legal entity, or give rise to any fiduciary duty, among the Parties. Except as otherwise expressly provided in this Agreement, no Party shall have the authority or right, or hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of any other Party, except as expressly provided herein. No provision in this Agreement shall result in Seller or any of its employees, subcontractors, agents or representatives being considered an employee, contractor or representative of PREPA. Nothing in this Agreement shall be interpreted to create a relationship of co-employer between PREPA and Seller or any of its respective subcontractors, nor to make Seller an alter ego or a successor employer of PREPA.

23.8 Waivers. Either PREPA or Seller 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 of any of the provisions hereof shall be effective unless explicitly set forth in a written instrument executed and delivered by the Party so waiving. No waiver by any Party of any breach of this 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 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.

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

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

23.11 Remedies.

(a) Cumulative and Non-Exclusive Remedies. Except as otherwise provided in this Agreement, any and all remedies herein expressly conferred upon a Party shall 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 shall not preclude the exercise of any other such remedy.

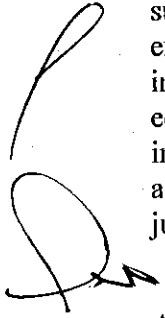
(b) Irreparable Damage and Harm. The Parties agree that irreparable damage and harm would occur in the event that any provision of this Agreement were not performed in accordance with its terms and that, although monetary damages may be available for such a breach, monetary damages would be an inadequate 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.

(c) 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.

23.12 Office of the Comptroller. PREPA agrees to file this Agreement with the Comptroller of the Commonwealth promptly after its execution and to provide Seller with evidence of its filing within fifteen (15) days following the Agreement Date. The Parties acknowledge and agree that the obligations and considerations under this Agreement shall not be enforceable until this Agreement shall have been registered with the Office of the Comptroller of the Commonwealth as provided by Act No. 18 of October 30, 1975.

23.13 Enhanced Transparency. No later than ninety (90) Days following each Agreement Year, Seller shall provide to PREPA an annual report for PREPA to make available to the Commonwealth's Legislative Assembly, which report shall include a summary of Seller's operational performance for such prior Agreement Year and expectations for the upcoming Agreement Year. From time to time, Seller shall provide such information as PREPA may

reasonably request pursuant to Section 14.5(b), which requests Seller acknowledges may and accepts that could be on behalf of the Commonwealth's Legislative Assembly or another governmental body.



23.14 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 (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.

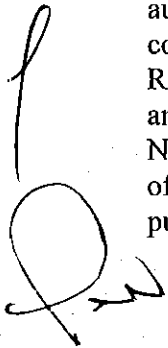
23.15 Commonwealth Obligations. THE OBLIGATIONS OF PREPA UNDER THIS AGREEMENT SHALL NOT BE DEEMED OBLIGATIONS OF THE COMMONWEALTH OR ANY INSTRUMENTALITY OF THE COMMONWEALTH OTHER THAN PREPA.

23.16 Practice of Engineering, Architecture and Other Professions in the Commonwealth. To the extent that performance of this Agreement involves performance of architectural, engineering, land surveying and landscape architecture services governed by Act No. 173 of August 12, 1988 ("Act 173"), then Seller shall comply (and shall require contractors and subcontractors or agents, if any, to comply) with Act 173.

23.17 PREB Authority. Notwithstanding anything to the contrary herein, no provision of this Agreement shall be interpreted, construed or deemed to limit, restrict, supersede, supplant or otherwise affect, in each case in any way, the rights, responsibilities or authority granted to PREB under Applicable Law.

23.18 Further Requirements. The Parties may seek to extend this Agreement only in conformity with the terms of Section 2.3 (Extension) of this Agreement. For the avoidance of doubt, PREPA's approval of such extension pursuant to Section 2.3 (Extension) of this Agreement shall be provided only following a decision of the P3A Board of Directors in accordance with Act 29 and Act 120. This Agreement shall be deemed a PREPA Transaction subject to the requirements of Act 120.

ARTICLE 24 - DISPUTE RESOLUTION



24.1 Scope. Except as otherwise expressly provided in this Agreement, any dispute among the Parties arising out of, relating to or in connection with this Agreement or the existence, interpretation, breach, termination or validity thereof (a "Dispute") shall be resolved in accordance with the procedures set forth in this Article 24 (Dispute Resolution), which shall constitute the sole and exclusive procedures for the resolution of such Disputes (the "Dispute Resolution Procedure"), including as to the validity of any termination or effective date of any termination. Seller acknowledges and agrees that PREPA (or any Designated Person appointed by PREPA) shall be authorized to participate in or act for and on behalf of PREPA in any Dispute Resolution Procedure contemplated by this Article 24 (Dispute Resolution). For the avoidance of doubt, the Dispute Resolution Procedures set forth in this Agreement shall not apply to any dispute between a Party and PREB, which disputes shall be subject to resolution in accordance with Applicable Law. Notwithstanding anything to the contrary herein, in the event that Seller disagrees with a decision of PREB, nothing shall prejudice, limit or otherwise impair Seller's right to exercise its rights pursuant to Act No. 38-2017 and Section 6.5(c) of Act No. 57-2014.

24.2 Commencement of the Dispute Resolution Procedure.

(a) Notice. If a Dispute arises, any Party may initiate the Dispute Resolution Procedure by giving a written notice of the Dispute to the other Party (a "Notice of Dispute"). The Notice of Dispute shall contain a brief statement of the nature of the Dispute, set out the relief requested and request that the Dispute Resolution Procedure of this Article 24 (Dispute Resolution) be commenced.

(b) Tolling. Any limitation period imposed by this Agreement or by Applicable Law in respect of a Dispute shall be tolled upon the delivery of a Notice of Dispute pursuant to this Section 24.2 (Commencement of the Dispute Resolution Procedure) for the duration of any Dispute Resolution Procedure pursuant to this Article 24 (Dispute Resolution).

24.3 Negotiation.

(a) Generally. Upon receipt of a Notice of Dispute from a Party, the Parties shall refer the dispute to the Designated Person of each Party. The Designated Persons shall negotiate in good faith and attempt to resolve the Dispute within thirty (30) days after the date on which the Notice of Dispute was issued, or such longer period as the Designated Persons may otherwise agree. All communications, negotiations and discussions pursuant to this Section 24.3 (Negotiation) shall be (i) confidential, (ii) without prejudice privileged, (iii) treated as compromise settlement discussions and negotiations, and (iv) not used, offered or admissible as evidence in any subsequent proceeding without the mutual consent of the Parties.

(b) Negotiation Period.

(i) If the Dispute remains unresolved thirty (30) days after the Notice of Dispute is issued (or such longer period as the Parties may mutually agree in writing) (the "Negotiation Period"), then any engineering or technical dispute, including whether, and the amount of any, Liquidated Damages are owed by Seller, the Parties mutually agree in writing is a technical dispute (a "Technical Dispute"), shall be referred to the expert technical determination

procedure set forth in Section 24.4 (Expert Technical Determination Procedure for Technical Disputes) for a final and binding determination.

(ii) If the Dispute, other than a Technical Dispute, remains unresolved after the end of the Negotiation Period, then the Dispute shall proceed to mediation pursuant to Section 24.5 (Mediation), and if necessary, litigation pursuant to Section 24.6 (Litigation as a Final Resort), for a final and binding determination.

24.4 Expert Technical Determination Procedure for Technical Disputes.

(a) Generally. Any Technical Disputes unresolved within the Negotiation Period shall be referred to the Independent Expert for a final and binding expert determination ("Expert Technical Determination"). PREPA shall be entitled to select an independent engineer from the list of pre-approved experts as set forth in Appendix K (Pre-Approved Independent Experts) to decide the Expert Technical Determination instead of the Independent Expert (in which case, all references to "Independent Expert" in this Section 24.4(a) shall be deemed references to such PREPA-appointed independent expert).

(b) Procedures.

(i) The Independent Expert shall, in consultation with the Parties, determine the procedure to be undertaken in the Expert Technical Determination. The Independent Expert shall determine the Technical Dispute within sixty (60) days after receiving notice of the Technical Dispute or as otherwise agreed by the Parties. This sixty (60) day time period may be extended by the Independent Expert or by the agreement of the Parties. 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.

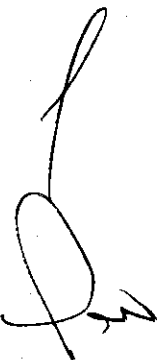
(ii) The determination by the Independent Expert on any Technical Dispute shall be final and binding on the Parties hereto. Notwithstanding any other provisions of this Article 24 (Dispute Resolution), enforcement of any determination of an Independent Expert may be sought by either of the Parties before 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.

(c) Not an Arbitrator. The Independent Expert is not an arbitrator and shall not be deemed to be acting in an arbitral capacity.

(d) Confidentiality. The Parties agree that any Expert Technical Determination carried out pursuant to this Section 24.4 (Expert Technical Determination Procedure for Technical Disputes) shall be kept private and confidential, and that the existence of the Expert Technical Determination and any element of it (including the identity of the Parties, the identity of all witnesses and experts who may be called upon in the Expert Technical Determination, all materials created for the purposes of the Expert Technical Determination, all testimony or other oral submissions in the Expert Technical Determination, and all documents produced by a Party in connection with an Expert Technical Determination that were not already in the possession of the other Party) shall be kept confidential, except (i) with the consent of the Parties, (ii) to the extent disclosure may be lawfully required in *bona fide* judicial proceedings relating to the Expert

Technical Determination, (iii) where disclosure is lawfully required by a legal duty, and (iv) where such information is already in the public domain other than as a result of a breach of this clause. The Parties also agree not to use any information disclosed to them during the Technical Dispute for any purpose other than in connection with the Expert Technical Determination.

24.5 Mediation.



(a) Generally. If a Dispute, other than a Technical Dispute, remains unresolved after the Negotiation Period, either Party may refer the Dispute to mediation through a written notice of mediation (the "Notice of Mediation"). Each Party to this Agreement agrees that it may not initiate a civil action as provided in Section 24.6 (Litigation as a Final Resort) (other than provisional relief sought on an expedited basis) unless (i) the matter in question has first been submitted to mediation in accordance with the provisions of this Section 24.5(a) (Mediation – Generally), 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 24.3 (Negotiation).

(b) Procedures.

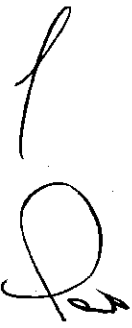
(i) The Parties shall, in the first instance, attempt to agree on a mediator through their respective Designated Persons. If the Parties cannot so agree within thirty (30) days after the Notice of Mediation is sent, either of the Parties may promptly apply to the ICC for appointment of a single mediator in accordance with the Mediation Rules of the International Chamber of Commerce (the "Mediation Rules"). Absent any written agreement to the contrary by the Parties, the mediator shall be an attorney or mediator authorized to practice law in the United States or the Commonwealth of Puerto Rico. The mediator shall be paid for the mediation services, and shall be reimbursed for all reasonable and documented out-of-pocket costs incurred in carrying out the mediation duties hereunder, including the costs of consultants. All fees-and-costs of the mediation 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. Absent any written agreement to the contrary by the Parties, if the Dispute is not resolved within ninety (90) days of the Notice of Mediation, the mediation shall be terminated.

(ii) For the avoidance of doubt, absent the written agreement of the Parties, the Mediation Rules shall not apply to any mediation carried out pursuant to this Section 24.5(b) (Mediation – Procedures). Rather, the reference to the ICC and the Mediation Rules above should be understood as referring solely to the designation of the ICC as an appointing authority to appoint a mediator pursuant to the procedures set forth in the Mediation Rules in the event the Parties are unable to agree on a mediator within the timeframe specified.

(c) Confidentiality. The Parties agree that any mediation carried out pursuant to Section 24.5(b) (Mediation – Procedures) shall be kept private and confidential, and that the existence of the mediation and any element of it (including the identity of the Parties, the identity of all witnesses and experts who may be called upon at the mediation, all materials created for the purposes of the mediation, all testimony or other oral submissions at the mediation, and all documents produced by a Party in connection with a mediation that were not already in the possession of the other Party) shall be kept confidential, except (i) with the consent of the Parties,

(ii) to the extent disclosure may be lawfully required in *bona fide* judicial proceedings relating to the mediation, (iii) where disclosure is lawfully required by a legal duty, and (iv) where such information is already in the public domain other than as a result of a breach of this clause. The Parties also agree not to use any information disclosed to them during the mediation for any purpose other than in connection with the mediation.

24.6 Litigation as a Final Resort.



(a) Civil Action. In the event that the Parties fail to resolve any Dispute, other than a Technical Dispute, within ninety (90) days after the date the mediator is selected pursuant to the procedures set forth in Section 24.5(b) (Mediation – Procedures) (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. 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. PREPA and Seller 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, as well as objections or defenses based on sovereign immunity. The Parties acknowledge and agree that the terms and conditions of this Agreement have been freely, fairly and thoroughly negotiated.

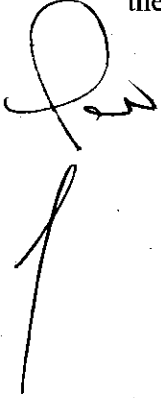
(b) Costs and Expenses. Except as required by Seller's indemnity obligations under this Agreement, each Party shall bear its own costs and expenses in any legal proceeding where it is the named defendant or in any legal proceeding among the Parties. Notwithstanding the foregoing, each Party retains its rights to bring any legal proceeding or to implead the other Party as to any matter arising hereunder.

24.7 Waiver of Jury Trial. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING BROUGHT UNDER THIS AGREEMENT. Each Party (i) certifies that no representative of any other Party has represented, expressly or otherwise, that such other Party would not, in the event of litigation, seek to enforce the foregoing waiver, and (ii) acknowledges that it and each other Party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Agreement.

24.8 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 24.5 (Mediation).

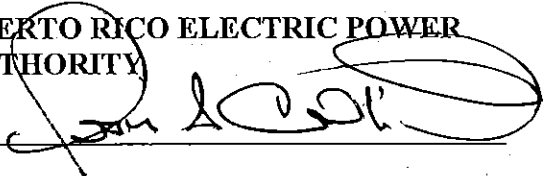
24.9 Continuing Obligations. The Parties agree that during the resolution of a Dispute pursuant to the Dispute Resolution Procedure, the Parties shall continue to perform their

obligations under this Agreement; provided that such performance shall (i) be without prejudice to the rights and remedies of any of the Parties, and (ii) not be read or construed as a waiver of a Party's right to claim for recovery of any loss, costs, expenses or damages suffered as a result of the continued performance of this Agreement.

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by a vertical line and a small flourish at the bottom.A handwritten signature in black ink, consisting of a large, stylized initial 'S' followed by a vertical line and a small flourish at the bottom.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written.

**PUERTO RICO ELECTRIC POWER
AUTHORITY**

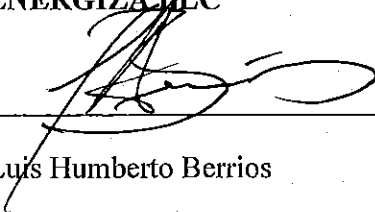


Josué A. Colón Ortiz

Executive Director

Tax ID Number: 660-43-3747

ENERGIZA LLC

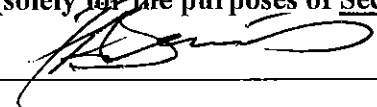


Luis Humberto Berrios

President

Tax ID Number: 17643-26912

**SAN JUAN GENERATION ASSETS LLC
(solely for the purposes of Section 21.4)**



Luis Humberto Berrios

President

Tax ID Number: 66-1068199

**CRATOS ENERGY HOLDINGS LLC
(solely for the purposes of Section 21.4)**



Sergio A. Picon

President

Tax ID Number: 66-1073426

**APPENDIX A
FORM OF CONSTRUCTION START DATE CERTIFICATE**

CONSTRUCTION START DATE CERTIFICATE

Date: [•]

From: Energiza LLC (“Seller”)

To: Puerto Rico Electric Power Authority (“PREPA”)

We refer to the Power Purchase and Operating Agreement between PREPA and Seller dated December 20, 2024 (the “PPOA”). Unless the context otherwise requires, capitalized terms used in this Construction Start Date Certificate shall have the meanings ascribed to them in the PPOA.

We hereby certify that Seller has:

1. obtained all Permits, authorizations and real property rights needed to start construction of the Facility;
2. secured the necessary financing and equity (which shareholders have contributed) for the construction of the Facility (including the execution of documents between Seller and the Project Lenders that include binding commitments which, together with Equity Investment, provide for one hundred percent (100%) of the total capital cost of the Facility) and satisfied all conditions associated with, and made (or will make substantially concurrently herewith), the initial draw of funds for such construction under the Financing Documents, except to the extent that the capital has not yet been expended and such use constitutes a condition to the initial draw;
3. entered into the Facility Construction Contract, Interconnection Construction Contract and any other agreements necessary to build the Facility and sell the Net Electrical Output of the Facility to PREPA in accordance with the PPOA;
4. received PREPA’s confirmation of the Approved Design;
5. maintains the Seller Performance Security required by the PPOA in full force and effect; and
6. given each of its primary contractor(s) under the Facility Construction Contract a full, unconditional notice to proceed with construction of the Facility.

The Construction Start Date occurred on [•].

Very truly yours,
Energiza LLC
as Seller

Acknowledged and agreed,
Puerto Rico Electric Power Authority
as PREPA

**APPENDIX B
MILESTONE SCHEDULE**

Seller Milestones:

Milestone	Milestone Date
EPA Air Permit Date	January 1 2025
Closing Date	June 30 2025
Guaranteed Construction Start Date	October 20 2025
Initial Synchronization Date	January 14 2028
Guaranteed Commercial Operation Date	June 30 2028

PREPA Milestones:

Milestone	Milestone Date
Backfeed Date	May 31 2027

**APPENDIX C
PERMITS**

Base Line Studies

Baseline Studies

Index #	Study	Purpose
1.1	Phase I and II Environmental Assessment	Environmental review of existing property conditions and neighborhood environmental conditions
1.2	Flood Plain	To comply with state OGPe new construction requirements
1.3	Asbestos Inspection and Lead Based Paint (LBP) Inspection	Identify and sampling materials that may contain asbestos / LBP, if demolition is needed
1.4	Wetlands	To determine wetland limits, USACE jurisdiction, and mitigation, if needed
1.5	Flora and Fauna	Describe existing plants and animals
1.6	Cultural Resources	Describe archaeological and cultural resources
1.7	Survey and Topographic Study	Needed for studies and construction designs
1.8	Hydrological and Hydraulic (HH Study)	Needed to comply with state and federal entities
1.9	Emissions Analysis	To determine the level of air permitting required
1.10	Risk Analysis	To determine the Operations and Maintenance (O&M) risk
1.11	Land Use	Rectifying existing zoning vs. proposed use
1.12	Environmental Noise Studies	To determine the noise profile at the proposed facility

Federal Permits Studies and Approvals

Preliminary Permits, Studies, and Approvals

Index #	Agency	Permit/Approvals	Agency Action
	FEDERAL		
2.1	U.S. Environmental Protection Agency (EPA) Region 2 / DNER	Spill Prevention, Control, and Countermeasure Plan (SPCC) (Clean Water Act [CWA], 33 United States Code (U.S.C.) §1321(j))	Approval of Plan for responding to spills to prevent significant threat to the environment.

2.2		National Pollutant Discharge Elimination System (NPDES) permits	For various discharges during construction and operations (CWA, (33 USC § 1342).
2.3		Title V Operating Permit	Permit issued based on actual equipment installed and operations.
2.4	U.S. Environmental Protection Agency (EPA) Region 2 and DNER	PSD Permit for Major Sources	Air Emissions - Construction
2.5		NPDES Permit - Wastewater Discharges	Applicable if a discharge is proposed into a Water of the United States. If PRASA permit applies, no need for NPDES permit.
2.6	U.S. Army Corps of Engineers (USACE)	Nationwide Permit No. 6 – Survey Activities	Geotechnical and geophysical surveys may be authorized under NWP No. 6.
2.7		Section 404 (CWA)	Regulates the discharge of dredged or fill material into waters of the United States, including wetlands
2.8	U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Services (NMFS)	Section 7 of Endangered Species Act	Provide biological opinion on species of wildlife and plants that are federally listed as threatened or endangered. Issue incidentals take permit as necessary.
2.9		Migratory Bird Treaty Act (16 U.S.C. 703 et seq.)	Consult on potential impact to migratory birds covered under the MBTA.

Commonwealth Permits, Studies and Approvals

Preliminary Permits, Studies, and Approvals

Index #	Agency	Permit/Approvals	Agency Action
COMMONWEALTH OF PUERTO RICO			
3.1	Permits Management Office (OGPe)	Puerto Rico Environmental Policy Act 416 Environmental Impact Statement (EIS) Process	The Project is filed as critical infrastructure under EO-2023-24, signed September 11, 2023 Recomendación Ambiental / Environmental Compliance Determination /Determinación de Cumplimiento Ambiental (REA / DEA) - Before any commonwealth agency may issue an approval or other major commonwealth action, a full analysis of all potential impacts must be conducted under the commonwealth EIS process. Consultation with other commonwealth agencies is required.
3.2	Puerto Rico Planning Board (PB) / Junta de Planificación (JP) and/or Permits Management Office (OGPe)	Siting Consultation – intra- regional project	A project that impacts more than one region of Puerto Rico, as defined by the Puerto Rico Planning Board is considered as a regional project and needs the evaluation and approval of the Planning Board via a Siting Consultation.
3.3	Departamento de Transportación y Obras Públicas (DTOP)	Franchise for NG Facility - Natural Gas Company Authorization	Required for facilities that distribute and store NG.
3.4	Puerto Rico Department of Natural and Environmental Resources (DNER)	Departamento de Recursos Naturales y Ambientales (DNER)	The Commonwealth lead agency for Joint Permit Application pursuant to Section 404 CWA and Section 10 RHA. The Joint Permit is a joint application for all required state permits, including a Submerged Land Use Concession (DNER), a P.R. CZM Consistency Certificate (Planning Board), and a Water Quality Certificate (DNER).
3.5		Section 401 Water Quality Certification	This certificate is obtained through DNER Joint Permit Application.
3.6		Title V Operating Permit	Application is usually based on actual equipment installed and operation. Filing can be deferred until after construction. If needed, a Location Approval Permit (Rule 201) and a Construction Permit (Rule 203) will be submitted. As soon as the final design of the facility is defined, will be providing more details about the permissions required by DNER.
3.7		Habitat Categorization	Required by the New Puerto Rico Wildlife Law (#241) and the Joint Regulation for Construction Works and Land Use (Section 48).

3.8	DNER/USEPA	Air Emissions Permit (PFE) for Operations	Air Emissions - Operations - Title V and Permit for Major Sources (PSD) Monitoring and Reporting Requirements
3.9	State Historic Preservation Office (SHPO) / Oficina Estatal de Conservación Histórica (OECH)	Section 106 Consultation (National Historic Preservation Act)	Consult SHPO about potential Project impacts to cultural resources eligible to and/or listed in the National Register of Historic Places.
3.10	DNER	Asbestos Removal Permit - Asbestos and/or Lead Abatement	DNER - Requires asbestos and lead study.
3.11	OGPe	Demolition Permit	Demolition of Existing Structures. This permit is to be obtained through a Construction Permit.
3.12	DNER / OGPe	Unique Incidental Permit - Waste Generation	DNER / OGPe - If waste generation exceeds 40 cubic yards.
3.13	OGPe	Unique Incidental Permit	Includes Erosion and Sedimentation Control (CES), Fugitive Emissions Dust (PFE), Waste Management (DS-3), Earth Movement, and Tree Cutting and Mitigation.
3.14	USEPA	Storm Water General Permit for Construction	Facility Construction - Applicable since the site is larger than 1 acre.
3.15	OGPe	Construction Permit (PCOC)	Whole facility construction permit.
3.16	Municipality of Guaynabo/OGPe	Unique Permit for Facility Operations	Use Permit. It requires a NFPA59 or Fire Code Compliance Analysis and Certification, as the permit includes a Fire Department endorsement.
3.17	DNER/USEPA	Air Emissions Permit (PFE) for Operations	Air Emissions - Operations - Title V and PSD Monitoring and Reporting Requirements
3.18	PREB	Electric Service Company Certification	All electric power companies in Puerto Rico shall receive a certification from the Puerto Rico Energy Bureau (PREB) to provide services.
3.19	DNER	Recycling Plan for Construction Activities	Permit, part of the construction permit
3.20	DNER	Hazardous Waste	Permit for hazard management and disposal
3.21	DNER	Permit to Generate and Store Used Oil	Permit
3.22	EPA	Facility Response Plan	Administrative Response Plan; Submit to EPA site
3.23	Required by EPA through PR Agency: DNER	Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA)/SARA Tier II Reporting	Plan Approval

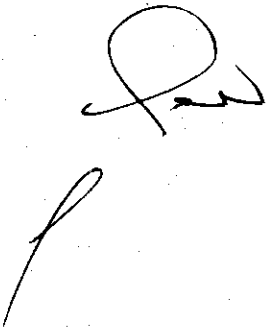
3.24	DNER	Groundwater extraction well construction permit and DNER water franchise. (If Applicable)	Required for the extraction of surface waters. Energiza's current design does not include extraction of surface waters but this permit is required if the design should include extraction of surface waters.
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Endorsements

Endorsements

Index #	Agency	Permit/Approvals	Agency Action
4.1	PRASA	Infrastructure Endorsement	Water and Sanitary Interconnection
4.2	PREPA/LUMA	Infrastructure Endorsement	Electricity Interconnection
4.3	NET	Infrastructure Endorsement	Telecomm Interconnection
4.4	PRASA	Water and Sanitary Design Plans	Infrastructure Endorsement
4.5	PREPA/LUMA	Electricity Design Plans	Infrastructure Endorsement
4.6	NET	Telecom Design Plans	Infrastructure Endorsement
4.7	DNER/US Coast Guard	Emergency Response Plan	Endorsement
4.8	US Coast Guard	Operations Manual and Facility Security Review	Endorsement
4.9	PR Department of Health	Endorsement for Use Permit	Endorsement
4.10	PR Fire Bureau	Endorsement for Use Permit	Endorsement

**APPENDIX D
FACILITY SITE**



PUERTO RICO CCPP 470MW
PLOT PLAN
SHEET INDEX

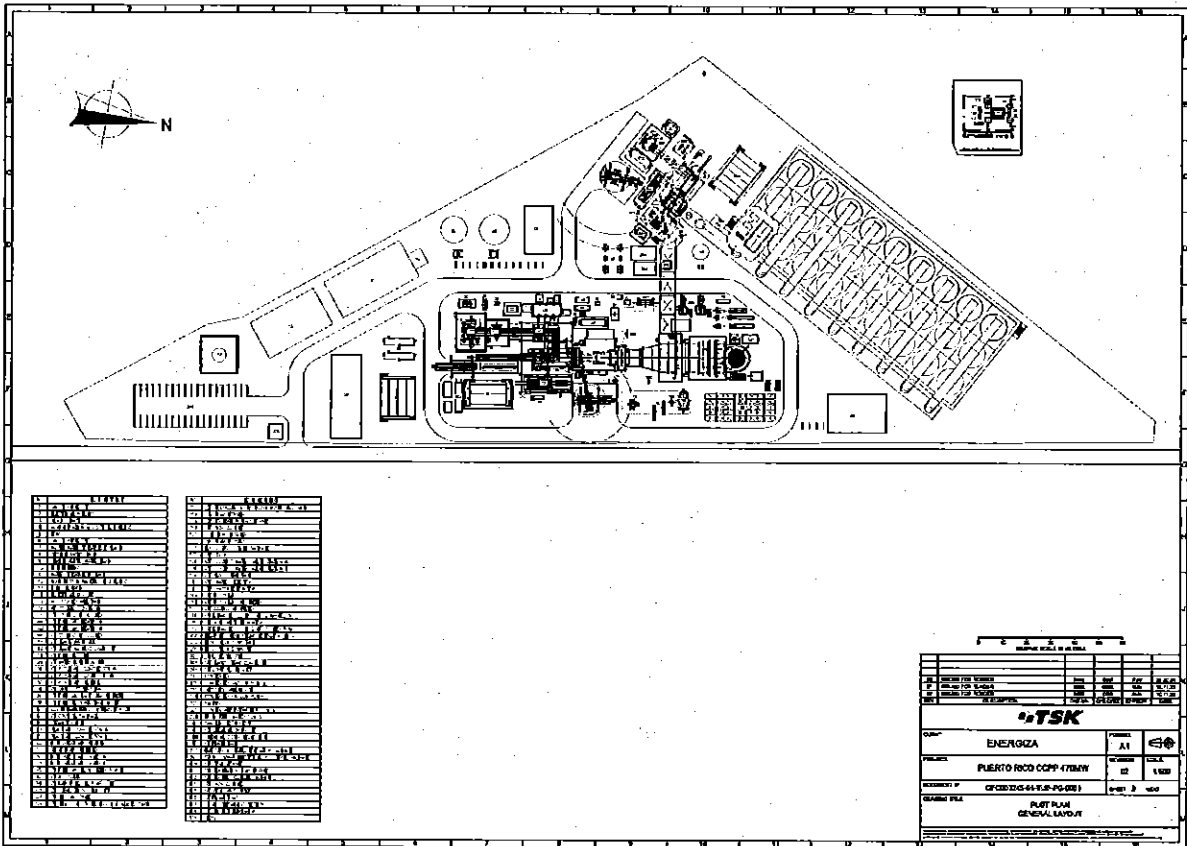
SHEET	DESCRIPTION	REV	DATE
0	INDICE	02	20.02.24
1	SITE LOCATION & TERMINAL POINT	02	20.02.24
2	GENERAL LAYOUT	02	20.02.24

[Handwritten signature]

PROYECTO	ENERGIA	CLIENTE	AI
PROYECTO	PUERTO RICO CCPP 470MW	ESCALA	1:1
PROYECTO	OFICINA 51-700-PC-001	FECHA	20.02.24
TSK CONSULTORES EN INGENIERIA Y ARQUITECTURA			

[Handwritten signature]

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TSK			
CLIENTE	ENERGIZA	PROYECTO	A1
PROYECTO	PUERTO RICO COPP 475MW	ESCALA	1:1000
PROYECTO N°	CP02-200-44-38-PG-001	FECHA	3/04/04
GRABADO EN	PLANT PLAN GENERAL LAYOUT		

Handwritten signature

APPENDIX E
PERFORMANCE GUARANTEE TESTING PROTOCOL

CAPACITY TEST PROCEDURES

Objective

The purpose of the test is to set the Facility's Dependable Capacity and Heat Rate, and to validate Facility actual performance versus Guaranteed Performance. Testing will follow the applicable ASTM Performance Test Codes (PTCs).

ASME PTCs provide uniform rules and procedures for the planning, preparation, execution, and reporting of performance test results. They provide protocols for establishing testing parameters and methods of measurement. They provide mathematical examples on computing the test results and statistical methods to determine the quality of the tests by calculating the test uncertainty.

Test Conditions

The Facility shall be in its normal base-loaded operation mode with the voltage regulator and governor in service, but not on Automatic Generation Control. The Facility shall be operating at steady state and at normal operating conditions. All major components shall be operated within their design capacities including pressures, temperatures, and flow rates. All necessary safety and environmental equipment shall be in service.

Test Verification

During the capacity test, critical pressures, temperatures, and flow rates along with the electrical loads shall be recorded at least hourly and copies of the records provided to PREPA.

Witnessing

PREPA and the System Operator may provide on-site witnesses at their discretion.

Declaration of Dependable Capacity and Heat Rate and Conformance to Guaranteed Performance

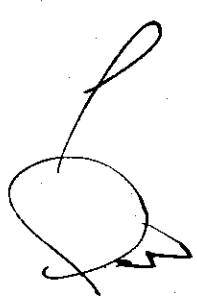
Upon completion of the capacity tests, PREPA shall declare the Dependable Capacity provided that the Dependable Capacity set by such declaration shall be based upon actual operation of the Facility during the capacity tests described in this Appendix. The Dependable Capacity declared by PREPA shall be at a level equal to or less than the average output results of the Dependable Capacity test. The System Operator shall notify PREPA of the Dependable Capacity and Heat Rate in accordance with Article 6 (Testing, Capacity Ratings and Completion).

Additionally, the performance test results for Capacity and Heat Rate will be compared to the Guaranteed Performance, both Guaranteed Capacity and Guaranteed Heat Rate. Performance test tolerances will be included based on the relevant ASME PTC Code.

APPENDIX F
SIGNING CONDITIONS

1. Together with the signing of this Agreement, to the extent applicable, Seller shall provide:

- (a) a copy of Seller's Merchant's Registration Certificate;
- (b) an income tax return filing certificate issued by the Internal Revenue Division of the Treasury Department of Puerto Rico evidencing that Seller has filed its income tax return for the last five (5) Years (obtained by using the Request for Copy and/or Certification of Income Tax Returns Form issued by the Treasury Department of Puerto Rico);
- (c) a certificate of no debt, or payment plan and compliance therewith, issued by the Internal Revenue Division of the Treasury Department of Puerto Rico dated no earlier than sixty (60) days prior to the Agreement Date, confirming that Seller does not owe Taxes to the Commonwealth;
- (d) a certificate, or payment plan and compliance therewith, issued by the Municipal Revenues Collection Center evidencing that Seller does not owe any Taxes to such governmental agency;
- (e) a certificate issued by the Department of Labor and Human Resources of Puerto Rico, evidencing that Seller has paid to the Puerto Rico Department of Labor and Human Resources its unemployment insurance, temporary disability (workmen's compensation) and chauffeur's social security contributions or is paying such contributions by an installment plan in full compliance with its terms;
- (f) a certificate issued by the Puerto Rico Child Support Administration (ASUME) evidencing that Seller has complied with the withholdings required to be made by employers under Applicable Law;
- (g) the Sworn Statement, as of the Agreement Date;
- (h) if any of the previously required certifications show a debt, and Seller has requested a review or adjustment of this debt, a certification that Seller has made such request at the Agreement Date; and if PREPA denies the requested review or adjustment and such determination is final, proof of payment of this debt to PREPA or confirmation that Seller accepts that PREPA shall offset the owed amount from the corresponding payments;
- (i) Receipt by the Parties of an Energy Compliance Certificate (as required by Act 120);
- (j) Resolution adopted by the board of directors of PREPA, authorizing the execution, delivery and performance of this Agreement and the transactions contemplated hereby;

- 
- (k) evidence of Seller's ability to provide equity by no later than the Closing Date in an amount at least equal to the sum of the minimum amount required by the Financing Documents to develop and construct the Facility, provided, however, that in no event such equity shall be lower than twenty-five percent (25%);
 - (l) the following technical documents:
 - 1. a preliminary engineering design of the Facility, consistent with Prudent Utility Practices, the Interconnection Agreement and the DCDs; and
 - 2. a proposed relay protection scheme (to include any Seller Interconnection Facilities); and
 - (m) One or more documents evidencing that Seller owns or leases Seller's Complex and has the right to use, for the Term of this Agreement, the real property on which Seller's Complex is located. Such document or documents may include a deed of purchase or lease agreement.



2. Prior to the signing of this Agreement:

- (a) Seller shall have provided the FOMB Certification;
- (b) FOMB, PREB, P3A and the Governor of the Commonwealth of Puerto Rico and all other applicable Governmental Authorities shall have approved the execution version of this Agreement;
- (c) The System Operator shall have provided the preliminary Feasibility Study, System Impact Study and Interconnection Facility Study; and
- (d) Seller shall have presented PREPA with documents evidencing Seller's ownership and/or control of the Site for the purposes of implementing the Facility.

**APPENDIX G
CONDITIONS PRECEDENT**

PART 1 - CONDITIONS FOR THE BENEFIT OF PREPA

PREPA's obligation to consummate the Closing shall be subject to the following conditions precedent having been satisfied by Seller (or waived in writing by PREPA):

- 
- 
- (a) the Seller Performance Security;
 - (b) insurance certificates or cover notes evidencing the insurance coverages required pursuant to Article 20 (Insurance), which insurance certificates and cover notes shall be reasonably acceptable in form and substance to PREPA and shall be in full force and effect and PREPA having approved thereof in writing, such approval not to be unreasonably withheld or delayed;
 - (c) copies of all material Permits needed to construct the Facility and Seller Interconnection Facilities;
 - (d) a certificate, signed by a duly authorized representative of Seller, in a form substantially similar to that set forth in Appendix W (Form of Warranty Compliance Certificate); and
 - (e) a legal opinion prepared by its external counsel in a form reasonably acceptable to PREPA, confirming the warranty made by Seller in Section 14.1(d) (Seller Representations & Warranties).

PART 2 - CONDITIONS FOR THE BENEFIT OF SELLER


Seller's obligation to consummate the Closing shall be subject to the following conditions precedent having been satisfied by PREPA (or waived in writing by Seller):

- (a) evidence of filing of this Agreement with the Puerto Rico Comptroller; and
- (b) delivery of a legal opinion prepared by its external counsel in a form reasonably acceptable to Seller, confirming the warranty made by PREPA in Section 14.2(c) (PREPA Representations & Warranties).

PART 3 - CONDITIONS FOR THE BENEFIT OF EACH OF THE PARTIES

PREPA and Seller's obligation to consummate the Closing shall be subject to the following conditions precedent having been satisfied in full (or waived in writing by each of PREPA and Seller):

- (a) the FOMB shall have recognized that PREPA's costs and obligations owed to Seller arising under this Agreement are administrative expenses entitled to administrative priority treatment in the PREPA Bankruptcy within the meaning of section 503 of the Bankruptcy Code, as made applicable by section 301(a) of PROMESA;

- 
- (b) the execution and delivery of the Interconnection Agreement by the Parties;
 - (c) completion of the Feasibility Study, System Impact Study and Interconnection Facility Study;
 - (d) the absence of any proceeding, action or claim pending or threatened which may have a potentially adverse effect on this Agreement or which involves or otherwise affects the public tender process pursuant to which Seller has executed this Agreement; and
 - (e) the final estimate of aggregate costs for the construction of the POI Facility determined pursuant to the completed Feasibility Study, System Impact Study and Interconnection Facility Study (as evidenced in the Interconnection Facility Study) (the "Final Estimated Interconnection Facility Costs") not being greater than Ten Million Dollars (US\$10,000,000) (the "Estimated Interconnection Facility Costs Cap"). However, if the aggregate Final Estimated Interconnection Facility Costs are in excess of the Estimated Interconnection Facility Costs Cap, the Parties shall negotiate in good faith for a period of sixty (60) Days an alternative technical and/or financial solution for payment of such excess costs and, if the Parties reach an agreement in writing by the end of the sixty (60) day period, this condition precedent will be deemed to be satisfied.

In the absence of an agreement in writing between the Parties by the end of the sixty (60) day period, PREPA has the right to either pay the increased Interconnection Cost Payment (as adjusted on a pro rata basis to reflect the Final Estimated Interconnection Facility Costs that are in excess of the Estimated Interconnection Facility Costs Cap) (in which case, this condition precedent will be deemed to be satisfied), or terminate the Agreement in its sole discretion at any time until the Agreement otherwise terminates pursuant to its terms on the Outside Closing Date.

**APPENDIX H
FORM OF CONDITIONS PRECEDENT CERTIFICATE**

CONDITIONS PRECEDENT CERTIFICATE

Date: [•]

Agreement: [•] [NTD: Insert contract number and title.]

From: The Puerto Rico Electric Power Authority ("PREPA")

To: Energiza LLC ("Seller")

We refer to the Power Purchase and Operating Agreement dated December 20, 2024 between PREPA and Seller (the "PPOA"). Unless the context otherwise requires, capitalized terms used in this Condition Precedent Certificate shall have the meanings ascribed to them in the PPOA.

Seller hereby certifies and confirms to PREPA that Seller has satisfied all of its Conditions Precedent under the PPOA, including mutual conditions. By signature below, PREPA likewise hereby certifies and confirms to Seller that PREPA has satisfied all of its Conditions Precedent under the PPOA, including mutual conditions.

We hereby certify that the Closing Date occurred on [•].

Very truly yours,

Acknowledged and agreed,

Energiza LLC
as Seller

Puerto Rico Electric Power Authority
as PREPA

**APPENDIX I
FORM OF PERFORMANCE SECURITY**

IRREVOCABLE STANDBY LETTER OF CREDIT

[Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: PUERTO RICO ELECTRIC POWER AUTHORITY
Reference No.: [•] **Address:** [•]
Attn: [•]

Date of Issuance: [•]

[PREPA-ENERGIZA] Power Purchase and Operating Agreement – Performance Security
No. [•]

We understand that **Energiza LLC** (the "Applicant") has entered into a contract with you, Beneficiary, dated December 20, 2024 (the "Agreement"), which requires a Seller Performance Security in the form and amount of this irrevocable standby letter of credit ("Letter of Credit").

At the request of the Applicant, we [*name of Bank*], hereby issue this Letter of Credit and irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [•] United States Dollars (USD [•]) in each case upon receipt by us of your first demand in writing at the Place of Presentation listed below in person, by registered or certified mail or by international overnight courier service, in a form substantially similar to that set forth in Annex A hereto (signed by your authorized representative and appropriately completed) ("Demand"), without your needing to prove or to show grounds for your Demand or the sum specified therein. We shall remit all payment(s) under this Letter of Credit into a bank account of your choice and discretion as specified in your Demand. You may make one or more Demands under this Letter of Credit. Partial drawings are permitted.

Any Demand made by Beneficiary in accordance herewith shall be conclusive evidence that the sum stated in such Demand is properly due and payable to Beneficiary under this Letter of Credit. We shall have no right and shall not be under any duty or responsibility to enquire into the reason or circumstances of any Demand made by Beneficiary or the respective rights and/or obligations and/or liabilities of Beneficiary and the Applicant under the Agreement. Any discrepancy between the explicit terms hereof and the Rules (defined below) shall be read in favor of the terms set forth in this Letter of Credit.

Place of Presentation: [insert address of Bank branch where Beneficiary presents a Demand].

We shall, within five (5) business days after receipt of any Demand served from time to time by Beneficiary, pay to Beneficiary in immediately available funds the lesser of: (a) the amount specified in the Demand; and (b) the then applicable amount remaining on the Letter of Credit. If a Demand made by Beneficiary hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, then we shall give Beneficiary, within two (2) business days after receipt of such Demand, notice that such Demand was not effected in accordance with the

terms and conditions of this Letter of Credit, stating the reason therefore. Upon being notified that a Demand was not made in conformity with this Letter of Credit, Beneficiary may attempt to correct such non-conforming Demand. Our obligations under this Letter of Credit are primary and not by way of surety or guarantee.

[This Letter of Credit shall enter into force and effect upon expiry of Seller Performance Security No. [●], dated [●] and issued by [●].] [NTD: *Insert this language if this is a replacement Letter of Credit.*]

This Letter of Credit shall expire on [date] but such expiration date shall be automatically extended for a period of one (1) year on [one year anniversary of prior date] ("Expiry Date"), and on each successive expiration date thereafter, unless at least one hundred twenty (120) calendar days before the then current Expiry Date we notify both Beneficiary and Applicant that we have decided not to extend this Letter of Credit beyond the then current Expiry Date. Any such notice shall be delivered by registered or certified mail, or by FedEx, both to:

Beneficiary at:

[●]

And to Applicant at:

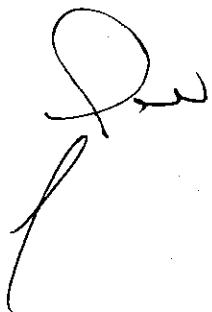
[●]

In the event Beneficiary and Applicant are so notified by us pursuant to the immediately preceding sentence, Beneficiary may draw any amount or the entire amount available under this Letter of Credit by Beneficiary's presentment, at the Place of Presentation, of a drawing certificate duly signed in substantially the form of Annex A attached hereto appropriately completed. In no event shall the Expiry Date of this Letter of Credit be subject to automatic extension beyond sixty (60) calendar days after the expiration of the Agreement term, and any pending automatic one-year extension shall be ineffective beyond such date. The Expiry Date does not affect our liability to make payment of any demand received prior to the Expiry Date.

This Letter of Credit is subject to ICC International Standby Practices 1998 (ISP 98), International Chamber of Commerce Publication No. 590 (the "Rules"). For matters not addressed by the Rules, this Letter of Credit is governed by and to be construed in accordance with the laws of [jurisdiction of the Qualified Bank]. In the event of a conflict between the terms of this Letter of Credit and the Rules, ICC Publication No. 758, the terms of this Letter of Credit shall prevail.

The courts of the [*United States federal courts in the Commonwealth of Puerto Rico*] shall have exclusive jurisdiction in respect of all disputes arising out of this Letter of Credit (including, without limitation, the enforceability of this Letter of Credit).

By:
Authorized Signatory

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by a horizontal line and a vertical stroke extending downwards.A handwritten signature in black ink, consisting of a large, stylized initial 'R' followed by a horizontal line and a vertical stroke extending downwards.

ANNEX A - FORM OF DRAWING CERTIFICATE

[Letterhead of Beneficiary]

[Name of Issuing Bank]

Date: [•]

[Insert Work Description] – Performance Security No. [•]

We refer to the above-captioned irrevocable standby letter of credit, with reference number [•] ("Letter of Credit"). Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to them in the Letter of Credit or the Agreement. We hereby inform you that:



1. a COD Termination Event, or a Default (as defined in the Agreement) by Applicant or the owing by Applicant to Beneficiary has occurred under the Agreement for penalties or any other liabilities, damages, losses, costs or expenses arising out of or relating to a breach of any obligation under the Agreement by Applicant, such as Default or otherwise, or the Agreement provides that Beneficiary may draw on the Letter of Credit, entitling us to call upon the Letter of Credit; or
2. applicant owes Liquidated Damages under and in accordance with the Agreement; or
3. you no longer meet the requirements of an Acceptable Bank (as defined below) and five (5) calendar days or more have elapsed since the date on which you no longer met such requirements, and the Applicant has not delivered to Beneficiary a replacement letter of credit that is substantially identical to the Letter of Credit, meeting the requirements of the Agreement.; or
4. thirty (30) or less calendar days remain before the current Expiry Date, the Applicant's obligation to maintain the Letter of Credit under the Agreement extends beyond such Expiry Date, and the Applicant has not delivered to Beneficiary a replacement Letter of Credit substantially identical to the Letter of Credit and meeting the requirements of the Agreement.

This letter serves as our demand for payment under the Letter of Credit. We request that you immediately pay the sum of [•] into the bank account below:

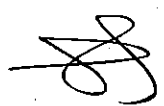
Account Name: [•]

Account Number: [•]

Bank Name: [•]

Bank Address: [•]

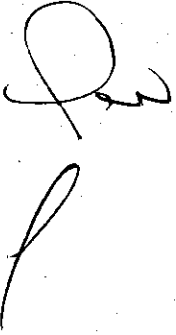
Swift Code: [•]



Yours very truly,

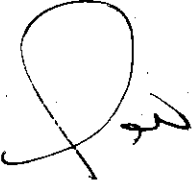
The Puerto Rico Electric Power Authority

By:
Authorized Signatory

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by a horizontal line and a vertical stroke, and a separate, smaller, stylized initial 'P' below it.A handwritten signature in black ink, consisting of a stylized, cursive initial 'S' followed by a horizontal line and a vertical stroke.

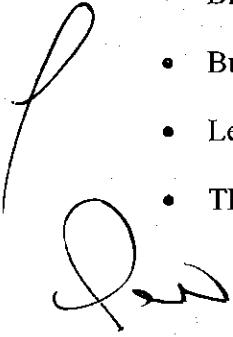
**APPENDIX J
SECURITY AMOUNT**

- From Closing Date to Construction Start Date, Twenty Million Dollars (\$20,000,000).
- From Construction Start Date to Commercial Operation Date, Sixty Million Dollars (\$60,000,000).
- From Commercial Operation Date until the end of the Term, Twenty Million Dollars (\$20,000,000).



**APPENDIX K
PRE-APPROVED INDEPENDENT EXPERTS**

- Bechtel
- Black & Veatch
- Burns & McDonnell
- Leidos
- TRC Companies

A large, stylized handwritten signature in black ink, located to the left of the list of companies. The signature is cursive and appears to be a name like 'John' or 'James'.A smaller, stylized handwritten signature in black ink, located at the bottom left of the page.

**APPENDIX L
FORM OF INTERCONNECTION FACILITIES COMPLETION NOTICE**

Date: [●]

Agreement: [●] [NTD: Insert contract number and title.]

From: Energiza LLC (“Seller”)

To: Puerto Rico Electric Power Authority (“PREPA”)

We refer to the Power Purchase and Operating Agreement dated December 20, 2024 between PREPA and Seller (the “PPOA”). Unless the context otherwise requires, capitalized terms used in this Interconnection Facilities Completion Notice shall have the meanings ascribed to them in the PPOA.

We hereby certify that, on [date], Seller has substantially completed and tested Seller Interconnection Facilities in accordance with Sections 4.3(a) and (b) (*Pre-Synchronization Testing*) of the PPOA.

As required by Section 4.3(c) (*Pre-Synchronization Testing*) of the PPOA, a copy of the red line drawing used for the construction of Seller Interconnection Facilities is attached to this document.

Very truly yours,

Energiza LLC
as Seller

[●]

Acknowledged and agreed,

**Puerto Rico Electric Power
Authority**
as PREPA

[●]

**APPENDIX M
OPERATING CHARACTERISTICS**

Estimated Performance Natural Gas

		ISO Conditions (59F)	Site Conditions (80 degF)	(70 degF)	(90 degF)	
25% Load at 60% RH all cases	Output (MW)	152.163	145.233	148.896	139.887	
	Net Plant Heat Rate HHV (BTU/kWh)	9794	9863	9806	10050	
	Nox (ppm, lbs/hr)	Not Applicable Transient case below MECL				
	CO (ppm, lbs/hr)	Not Applicable Transient case below MECL				
	SOx (ppm, lbs/hr)	Not Applicable Transient case below MECL				
	Particulate Matter, PM10 (lbs/hr)	Not Applicable Transient case below MECL				
Minimum Operating Load at 60% RH all cases	Plant Load	52%	58%	55%	61%	
	Output (MW)	283.140	291.357	287.991	293.733	
	Net Plant Heat Rate HHV (BTU/kWh)	6741	6709	6708	6733	
	Nox (ppm, lbs/hr)	2.5	2.5	2.5	2.5	
	CO (ppm, lbs/hr)	2.5	2.5	2.5	2.5	
	SOx (ppm, lbs/hr)	0.02	0.02	0.02	0.02	
	Particulate Matter, PM10 (lbs/hr)	3.7	3.77	3.74	3.79	
	75% Load at 60% RH all cases	Output (MW)	371.250	353.331	362.439	342.738
Net Plant Heat Rate HHV (BTU/kWh)		6423	6438	6419	6492	
Nox (ppm, lbs/hr)		2.5	2.5	2.5	2.5	
CO (ppm, lbs/hr)		2.5	2.5	2.5	2.5	
SOx (ppm, lbs/hr)		0.02	0.02	0.02	0.02	
Particulate Matter, PM10 (lbs/hr)		4.47	4.25	4.36	4.13	
Base Load (100%) at 60% RH all cases		Output (MW)	478.368	453.618	465.993	439.362
		Net Plant Heat Rate HHV (BTU/kWh)	6314	6324	6309	6371
	Nox (ppm, lbs/hr)	2.5	2.5	2.5	2.5	
	CO (ppm, lbs/hr)	2.5	2.5	2.5	2.5	
	SOx (ppm, lbs/hr)	0.02	0.02	0.02	0.02	
	Particulate Matter, PM10 (lbs/hr)	5.53	5.24	5.38	5.09	

Estimated Performance FO#2 (Ultra low sulfur)

		ISO Conditions (59F)	Design case (80 degF)	Min Tem (70 degF)	Max Tem (90 degF)
25% Load at 60% RH all cases	Output (MW)	Later	Later	Later	Later
	Net Plant Heat Rate HHV (BTU/kWh)	Later	Later	Later	Later
	Nox (ppm, lbs/hr) CO (ppm, lbs/hr) SOx (ppm, lbs/hr) Particulate Matter, PM10 (lbs/hr)	Not Applicable Transient case bellow MECL			
Minimum Operating Load at 60% RH all cases	Output (MW)	60%	60%	60%	60%
	Net Plant Heat Rate HHV (BTU/kWh)	221.3	209.8	215.9	201.6
	Nox (ppm, lbs/hr)	8431	8483	8432	8586
	CO (ppm, lbs/hr)	5	5	5	5
	SOx (ppm, lbs/hr)	100	100	100	100
	SOx (ppm, lbs/hr)	0.269	0.269	0.269	0.269
	Particulate Matter, PM10 (lbs/hr)	40.67	38.84	39.76	37.39
75% Load at 60% RH all cases	Output (MW)	262.2	247.7	255.5	238.8
	Net Plant Heat Rate HHV (BTU/kWh)	7947	7982	7937	8076
	Nox (ppm, lbs/hr)	5	5	5	5
	CO (ppm, lbs/hr)	100	100	100	100
	SOx (ppm, lbs/hr)	0.269	0.269	0.269	0.269
	SOx (ppm, lbs/hr)	44.36	42.03	43.18	40.81
	Particulate Matter, PM10 (lbs/hr)				
Base Load (100%) at 60% RH all cases	Output (MW)	334.4	314.7	324.7	303.4
	Net Plant Heat Rate HHV (BTU/kWh)	7659	7696	7661	7776
	Nox (ppm, lbs/hr)	5	5	5	5
	CO (ppm, lbs/hr)	60	60	60	60
	SOx (ppm, lbs/hr)	0.254	0.254	0.254	0.254
	SOx (ppm, lbs/hr)	56.44	53.5	54.95	51.96
	Particulate Matter, PM10 (lbs/hr)				

Ramp Rates

Hot Start

Gas Turbine
Steam Turbine

<i>To Synchronization</i>	<i>Hold load time</i>	<i>To base load</i>
80	83 to 129	142
126	N/A	146

Warm Start

Gas Turbine
Steam Turbine

<i>To Synchronization</i>	<i>Hold load time</i>	<i>To base load</i>
110	111 to 182	265
156	N/A	278

Cold Start

Gas Turbine
Steam Turbine

<i>To Synchronization</i>	<i>Hold load time</i>	<i>To base load</i>
135	135 to 245	398
193	193 to 253	405

Shutdown

Gas Turbine
Steam Turbine

<i>Base load to no load</i>	<i>Total time to no speed</i>
31	62
24	90

Note: All times in minutes

For detailed information related to the start and shutdown of the power plant, refer to the Mitsubishi preliminary graphics provided in Appendix Y (Design Limits).

PART 1. DEGRADATION ADJUSTMENT FACTOR

$$AGHR_i = GHR_i \times (1 + DAF_i)$$

OEM Heat Rate Degradation Table

EFH		HR	DAF
EFH @ Period End	Outage	%	%
0 - 8000 Hours	-	0.72	0.36
8000 - 15000 Hours	-	1.00	0.14
15000 - 24000 Hours	-	1.33	0.16
24000 - 35000 Hours	-	1.55	0.11
35000 - 42000 Hours	-	1.63	0.04
42000 - 60000 Hours	-	1.67	0.02
	MI1	1.38	
60000 - 68000 Hours	-	1.71	0.17
68000 - 90000 Hours	-	2.01	0.15
90000 - 102000 Hours	-	2.12	0.05
102000 - 120000 Hours	-	2.15	0.01
	MI2	1.84	
120000 - 144000 Hours	-	2.19	0.18
144000 - 162000 Hours	-	2.30	0.06
162000 - 180000 Hours	-	2.32	0.01
	MI3	2.04	
180000 - 204000 Hours	-	2.41	0.19
204000 - 222000 Hours	-	2.50	0.05
222000 - 234000 Hours	-	2.51	0.00
234000 - 240000 Hours	-	2.52	0.00
	MI4	2.20	

Example 1

EFH @ Period End (Hours)	DAF %	Tested Heat Rate	Guaranteed Heat Rate	AGHR
1000	0.3577	6314	6314	6337

Example 2

EFH @ Period End (Hours)	DAF %	Tested Heat Rate	Guaranteed Heat Rate	AGHR
42500	0.0220	6418	6418	6419

Example 3

EFH @ Period End (Hours)	DAF %	Tested Heat Rate	Guaranteed Heat Rate	AGHR
59000	0.0220	6420	6420	6421

Example 4				
EFH @ Period End (Hours)	DAF %	Tested Heat Rate	Guaranteed Heat Rate	AGHR
61000	0.1678	6401	6401	6412

PART 2. HEAT RATE CORRECTION CURVES AND HEAT RATE CORRECTION FACTORS

Heat Rate Correction Curves shall provide the adjustments factors to determine the expected hourly Heat Rate based on the OEM Heat Rate Correction Curves, which account for both the ambient conditions and the average load level for the hour (i.e., the percentage of Dependable Capacity (% versus baseload)). The OEM Heat Rate Correction Curves shall be provided by Seller not less than three (3) months prior to Guaranteed Performance Testing.

Heat Rate Correction Factors are calculated from the Heat Rate Correction Curves.

**APPENDIX N
FORM OF INITIAL SYNCHRONIZATION NOTICE**

INITIAL SYNCHRONIZATION NOTICE

Date: [•]

Agreement: [•] [NTD: Insert contract number and title.]

From: Puerto Rico Electric Power Authority ("PREPA")

To: Energiza LLC ("Seller")

We refer to the Power Purchase and Operating Agreement dated December 20, 2024 between PREPA and Seller (the "PPOA"). Unless the context otherwise requires, capitalized terms used in this Initial Synchronization Notice shall have the meanings ascribed to them in the PPOA.

PREPA, in consultation with the Independent Expert, has determined that Seller has constructed the Seller Interconnection Facilities and the Facility in accordance with the Approved Design. Nothing in this certificate relieves or waives any obligation that Seller might have under the Agreement.

The Parties shall proceed with Initial Synchronization and testing pursuant to Article 5 (Synchronization).

Very truly yours,

Energiza LLC
as Seller

[•]

Acknowledged and agreed,

**Puerto Rico Electric Power
Authority**
as PREPA

[•]

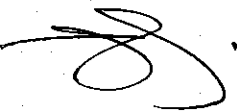
APPENDIX O
SYSTEM OPERATION PRINCIPLES

[Please refer to <https://lumapr.com/wp-content/uploads/2022/06/System-Operation-Principles-Rev-1.1.pdf>]



**APPENDIX P
SAMPLE CALCULATIONS**

[Please see attached]



New H2 CCGT - Energiza PPOA Sample Calcs

Payment	Assumptions	Units	Pre-Operation Period	FY1
Energy Payment - Pre-Operation Period				
EP = EC x NEO = \$72.41/MWh x 309,982MWh = \$22,446,799	Energy Payment; contractual calculation as defined in Section 12.2(a)	US\$	22,446,799	
EC = Heat Rate x Pre-Operation Fuel Cost + VOM = 6.50MMBtu/MWh x \$10.25/MMBtu + \$5.79/MWh = \$72.41/MWh	Energy Cost; contractual calculation as defined in Section 12.2(a)	US\$/MWh	72.41	
Pre-Operation Fuel Cost = Fuel Cost during Pre-Operation Period + Gross Revenue Tax = \$10.25/MMBtu + \$0/MMBtu = \$10.25/MMBtu	Contractual calculation as defined in Section 12.2(a)	US\$/MMBtu	10.25	
Guaranteed Capacity:	Plant capacity as defined in Section 1.1	MW	478.368	
Dispatch Factor:	Illustrative assumption; will be calculated by Energiza based on plant performance	%	90.00%	
NEO = Guaranteed Capacity x Number of Hours in Period x Dispatch Factor = 478.368MW x 720 hours x 90% = 309,982MWh	Net Electrical Output; contractual term as defined in Section 1.1 and Section 12.2(a); assumed time period of 30 days (720 hours)	MWh	309,982.46	
Heat Rate:	Contractual value as defined in Section 1.1; illustrative assumption; actual value will be provided by Energiza based on actual plant capabilities.	MMBtu/MWh	6.50	
Henry Hub Price:	Contractual value as defined in Section 1.1 ("HH"); illustrative assumption	US\$/MMBtu	2.00	
Fuel Cost during Pre-Operation Period = 115% x HH + \$7.95/MMBtu = 115% x \$2.00/MMBtu + \$7.95/MMBtu = 10.25/MMBtu	Contractual calculation as defined in Section 1.1 ("Fuel Price Index")	US\$/MMBtu	10.25	
Gross Revenue Tax:	Contractual value sourced from Section 12.2(a); illustrative assumption; actual value to be determined	US\$/MMBtu	0.00	
VOM = \$5/MWh x (1 + CPI_VOM)^(Number of Years) = \$5/MWh x (1 + 5%)^3 = \$5.79/MWh	Variable Operations and Maintenance Costs; contractual calculation as defined in Section 1.1; assumes today's \$5/MWh VOM compounded at assumed CPI from now until 12/27 (testing start assumed in 2028).	US\$/MWh	5.79	
CPI_VOM:	CPI Adjustment Factor; contractual value as defined in Section 1.1; illustrative assumption (assumed to be the contractual CPI cap)	%	5.00%	

New H2 CCGT - Energiza PPOA Sample Calcs

Energy Payment - Supply Period				
EP = (EPP x NEO) + TOPSP + PREPA IE Costs = (\$73.83/MWh x 3,771,453MWh) + \$0 + \$10,000 = \$278,456,375	Energy Payment; contractual calculation as defined in Section 12.2(b)	US\$		278,456,375
EPP = (Adjusted Guaranteed Heat Rate x AHRCF x Fuel Price) + (VOM x VOMCF) = (6.50MMBtu/MWh x 1.0068 x \$10.25/MMBtu) + (\$6.08/MWh x 1.11) = \$73.83/MWh	Energy Purchase Price; Contractual calculation as defined in Section 1.1 and Section 12.2(b)	US\$/MWh		73.83
VOM = \$5/MWh x (1 + CPI_VOM)^(Number of Years) = \$5/MWh x (1 + 5%)^4 = \$6.08/MWh	Variable Operations and Maintenance Costs; contractual calculation as defined in Section 1.1; assumes today's \$5/MWh VOM compounded at assumed CPI from now until year 1 of operations (assumed to be Dec-28).	US\$/MWh		6.08
CPI_VOM:	CPI Adjustment Factor; contractual value as defined in Section 1.1; illustrative assumption (assumed to be the contractual CPI cap)	%		5.00%
VOMCF = 1 / Dispatch Factor = 1 / 90% = 1.11	Variable Operations and Maintenance Correction Factor; contractual calculation as defined in Section 1.1 and Section 12.2(b)	N/A		1.11
Dispatch Factor:	Illustrative assumption; will be calculated by Energiza based on plant performance	%		90.00%
Guaranteed Capacity:	Plant capacity as defined in Section 1.1	MW		478.368
NEO = Guaranteed Capacity x Number of Hours in Period x Dispatch Factor = 478.368MW x 8,760 hours x 90% = 3,771,453MWh	Net Electrical Output; contractual term as defined in Section 1.1 and Section 12.2(b); assumed time period of 365 days (8,760 hours)	MWh		3,771,453
Adjusted Guaranteed Heat Rate:	Contractual value as defined in Section 1.1 and Section 12.2(b); illustrative assumption; actual value will be provided by Energiza based on actual plant capabilities	MMBtu/MWh		6.50
AHRCF:	Average Heat Rate Correction Factor; contractual value as defined in Section 1.1 and Section 12.2(b); illustrative assumption using Energiza illustrative calculations; will be updated when contract is finalized.	N/A		1.0068
Henry Hub Price:	Contractual value as defined in Section 1.1 ("HH"); illustrative assumption	US\$/MMBtu		2.00
Fuel Price = 115% x HH + \$7.95/MMBtu = 115% x \$2.00/MMBtu + \$7.95/MMBtu = 10.25/MMBtu	Contractual calculation as defined in Section 1.1 ("Fuel Price Index")	US\$/MMBtu		10.25
TOPSP	Take or Pay Shortfall Payment; contractual calculation as defined in Section 1.1 and Section 7.3; illustrative assumption (assumed at least minimum amount will always be taken)	US\$		0
PREPA IE Costs:	Contractual value as defined in Section 12.2(b); illustrative assumption; actual amount will be provided by PREPA when such costs arise	US\$		10,000

New H2 CCGT - Energiza PPOA Sample Calcs

Capacity Payment				
$CP = ((CPP + FOMC) \times DC) \times FMAF \times EAAF + ICP = ((\$22.79/\text{kW-Month} + \$9.06/\text{kW-Month}) \times 478.368\text{MW}) \times 0.99 \times 100\% + \$118,487 = \$182,169,937$	Capacity Payment; contractual calculation as defined in Section 12.3	US\$		182,169,937
$CPP = \$21.05/\text{kW-Month} \times (1 + CEF)^{\text{Years}} = \$21.05/\text{kW-Month} \times (1 + 2\%)^4 = \$22.79/\text{kW-Month}$	Capacity Purchase Price; contractual calculation as defined in Section 1.1 and Section 12.3; assumes today's \$21.05/kW-Month CPP compounded annually each December 1st at assumed CEF from now until year 1 of operations (assumed to be Dec-28)	US\$/kW-Month		22.79
CEF:	Capacity Escalation Factor; contractual value as defined in Section 1.1	%		2.00%
$FOMC = \$7.45/\text{kW-Month} \times (1 + 5\%)^4 = \$9.06/\text{kW-Month}$	Fixed O&M Charge; contractual calculation as defined in Section 1.1 and Section 12.3; assumes today's \$7.45/kW-Month FOMC compounded at assumed CPI from now until year 1 of operations (assumed to be Dec-28)	US\$/kW-Month		9.06
CPI_FOMC:	CPI Adjustment Factor; contractual value as defined in Section 1.1; illustrative assumption (assumed to be the contractual CPI cap)	%		5.00%
DC:	Plant capacity as defined in Section 1.1 ("Guaranteed Capacity")	MW		478.368
EAAF (EAF >=95%)	Equivalent Availability Adjustment Factor; contractual calculation as defined in Section 12.6; assumed to be 100%	%		100.00%
ICP:	Interconnection Cost Payment; contractual value as defined in Section 1.1	US\$/Month		118,487
EFMH:	Equivalent Force Majeure Hours; contractual calculation as defined in Section 1.1; illustrative assumption; actual hours will be determined by actual circumstances	Hours Per Month		8
$FMAF = (\text{Period Hours} - \text{EFMH}) / \text{Period Hours} = (720 \text{ hours} - 8 \text{ hours}) / 720 \text{ hours} = 0.99$	Force Majeure Adjustment Factor; contractual calculation as defined in Section 12.3; assumes 720 period hours (30 days)	N/A		0.99

New H2 CCGT - Energiza PPOA Sample Calcs

Start-up Payment				
SP = (SC x SUCC) + (SW x SUCW) + (SH x SUCH) = (4 starts x \$99,480.04/start) + (4 starts x \$75,768.92/start) + (4 starts x \$39,718.65/start) = \$859,870	Start-up Payment; contractual calculation as defined in Section 12.4	US\$		859,870
SUCC = SUFC x Fuel Price = 9,705.37MMBtu x \$10.25/MMBtu = \$99,480.04	Start-up Cost Cold; contractual calculation as defined in Section 12.4	US\$/start		99,480.04
SUCW = SUFW x Fuel Price = 7,392.09MMBtu x \$10.25/MMBtu = \$75,768.92	Start-up Cost Warm; contractual calculation as defined in Section 12.4	US\$/start		75,768.92
SUCH = SUFH x Fuel Price = 3,874.99MMBtu x \$10.25/MMBtu = \$39,718.65	Start-up Cost Hot; contractual calculation as defined in Section 12.4	US\$/start		39,718.65
Fuel Price = 115% x HH + \$7.95/MMBtu = 115% x \$2.00/MMBtu + \$7.95/MMBtu = 10.25/MMBtu	Contractual calculation as defined in Section 1.1 ("Fuel Price Index")	\$/MMBtu		10.25
SC:	Total number of Cold Starts during Billing Period; contractual calculation as defined in Section 12.4; illustrative assumption; actual value will be determined by actual plant performance	#		4
SUFC:	Start-up fuel cost Cold; contractual value as defined in Section 1.1 (in "Start-up Cost Cold" definition)	MMBtu		9,705.37
SW:	Total number of Warm Starts during Billing Period; contractual calculation as defined in Section 12.4; illustrative assumption; actual value will be determined by actual plant performance	#		4
SUFW:	Start-up fuel cost Warm; contractual value as defined in Section 1.1 (in "Start-up Cost Warm" definition)	MMBtu		7,392.09
SH:	Total number of Hot Starts during Billing Period; contractual calculation as defined in Section 12.4; illustrative assumption; actual value will be determined by actual plant performance	#		4
SUFH:	Start-up fuel cost Hot; contractual value as defined in Section 1.1 (in "Start-up Cost Hot" definition)	MMBtu		3,874.99

New H2 CCGT - Energiza PPOA Sample Calcs

Ancillary Services Payment				
AP for Spinning Reserve = (Heat Consumption x Fuel Price x Spinning Reserve Hours) + (Variable Operating Cost per hour x Spinning Reserve Hours) = (1,198.24MMBtu/hr x \$10.25/MMBtu x 120hours) + (\$2,400/Hour x 120hours) = \$1,761,835	Ancillary Services Payment for Spinning Reserve; contractual calculation as defined in Section 12.5	US\$		1,761,835
Fuel Price = 115% x HH + \$7.95/MMBtu = 115% x \$2.00/MMBtu + \$7.95/MMBtu = 10.25/MMBtu	Contractual calculation as defined in Section 1.1 ("Fuel Price Index")	\$/MMBtu		10.25
Heat Consumption:	Fuel consumed when operating in spinning reserve; contractual value as defined in Section 12.5; value provided by Energiza	MMBtu/Hour		1,198.24
Variable Operating Cost per hour	Contractual value as defined in Section 12.5	\$/Hour		2,400
Spinning Reserve Hours	Illustrative assumption; will be calculated based on actual operational performance	Hours		120

New H2 CCCT - Esmeralda PPOA Sample Calc

	Payment	Units	Assumptions	FY1	FY2	FY3	FY4	FY5	FY6	FY7	FY8	FY9	FY10
Capacity Payment: CP = ((CPP + FOMC) x DC) x FMAF + EAAF + CP = (\$22.79/KW-Month + \$9.06/KW-Month) x 478,580MW x 0.99 + \$118,487 + \$182,159,937		US\$	Capacity Payment; contractual calculation as defined in Section 12.3	182,169,937	187,327,045	192,664,403	197,040,487	183,664,229	170,756,966	151,606,088	1,471,844	1,421,844	1,121,844
Capacity Purchase Price: CPP = \$21.05/KW-Month x (1 + 2%)^4 = \$22.79/KW-Month		US\$/KW-Month	Capacity Purchase Price; contractual calculation as defined in Section 12.3; assumes today's \$21.05/KW-Month CPI compounded at assumed CFI from now until year 1 of operations (assumed to be Dec-28)	22.79	23.24	23.71	24.18	24.66	25.16	25.66	26.17	26.70	27.23
CFI:		%	Capacity Escalation Factor; contractual value as defined in Section 1.1	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
FOMC = \$7.45/KW-Month x (1 + 5%)^4 = \$9.06/KW-Month		US\$/KW-Month	Fixed O&M Charge; contractual calculation as defined in Section 1.1 and Section 12.3; assumes today's \$7.45/KW-Month FOMC compounded at assumed CFI from now until year 1 of operations (assumed to be Dec-28)	9.06	9.51	9.98	10.48	11.01	11.56	12.14	12.74	13.38	14.05
CPI_FOMC		%	CPI Adjustment Factor; contractual value as defined in Section 1.1; illustrative assumption (assumed to be the contractual CPI cap)	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
DC		MW	Plant capacity as defined in Section 1.1 (Guaranteed Capacity)	478	478	478	478	478	478	478	478	478	478
EAF_12-Month Actual		%	Equivalent Availability Factor; contractual value as defined in Section 1.1 and Section 12.6; illustrative assumption of actual 12-month average EAF. Note that 100% will be used for the calculations for the first three years.	97.50%	97.50%	92.50%	87.50%	82.50%	77.50%	72.50%	67.50%	62.50%	57.50%
EAF_Rolling 36-Month		%	Equivalent Availability Factor (rolling average of last 36 months); contractual calculation as defined in Section 1.1 and Section 12.6; illustrative assumption to show each line of the EAF calculation; assumed 100% first 36 months, and 36-month rolling average thereafter.	100.00%	100.00%	100.00%	92.50%	87.50%	82.50%	77.50%	72.50%	67.50%	62.50%
EAAF (see below)		%	Equivalent Availability Adjustment Factor; contractual calculation as defined in Section 1.1 and Section 12.6; based on rolling 36-month average EAF; see table in Section 12.6 for full calculations	100.00%	100.00%	96.88%	90.00%	81.25%	70.00%	60.00%	50.00%	40.00%	30.00%
ICP		US\$/Month	Interconnection Cost; Payment; contractual value as defined in Section 1.1	118,487	118,487	118,487	118,487	118,487	118,487	118,487	118,487	118,487	118,487
EPMH		Hours Per Month	Equivalent Force Majeure Hours; contractual calculation as defined in Section 1.1; illustrative assumption; actual hours will be determined by actual circumstances	8	8	8	8	8	8	8	8	8	8
FMAF = (Period hours - EPMH) / Period hours = 8 hours / 720 hours = 0.99		N/A	Force Majeure Adjustment Factor; contractual calculation as defined in Section 12.3; assumes 720 period hours (30 days)	0.99	0.99	0.99	0.99	0.99	0.99	0.99	0.99	0.99	0.99

New H2 CCST - Energize PPOA Sample Data

EAFF Calculation

- 95% > EAF >= 90%
- 90% > EAF >= 85%
- 85% > EAF >= 80%
- 80% > EAF >= 75%
- 75% > EAF

- EAFF >= 95%
- 90% > EAFF >= 80%
- 85% > EAFF >= 65%
- 80% > EAFF >= 50%
- 75% > EAFF


- EAFF
- 100%
- $100\% - ((95\% - EAFF) \times 1.2)$
- $93.25\% - ((90\% - EAFF) \times 1.5)$
- $86.25\% - ((85\% - EAFF) \times 2)$
- $76.25\% - ((80\% - EAFF) \times 2.5)$
- 0%

%	100.00%	100.00%	100.00%	96.88%	90.00%	81.25%	70.00%	0.00%	0.00%
%									
%									
%									
%									

**APPENDIX Q
ANCILLARY SERVICES**

Spinning Reserve:

AP for Spinning Reserve (US\$) = Full Speed No Load Heat Consumption (BTU/hr) x Fuel Price (US\$/BTU) x Spinning Reserve hours + Variable Operating and Maintenance Cost per hour x Spinning Reserve hours

 = (1198.24 MMBTU/hr x Fuel Price x Spinning Reserve hours) + (\$2400/hr x Spinning Reserve hours)

**APPENDIX R
FORM OF COMMERCIAL OPERATION DATE CERTIFICATE**

COMMERCIAL OPERATION DATE CERTIFICATE

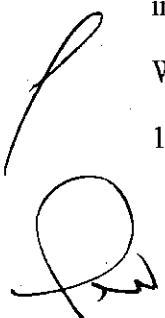
Date: [•]

From: Energiza LLC (“Seller”)

To: Puerto Rico Electric Power Authority (“PREPA”)

We refer to the Power Purchase and Operating Agreement between PREPA and Seller dated December 20, 2024 (the “PPOA”). Unless the context otherwise requires, capitalized terms used in this certificate shall have the meanings ascribed to them in the PPOA.

We hereby certify that:

- 
1. as demonstrated by the Guaranteed Performances Testing, (i) Seller has completed the installation, commissioning and testing of the Facility in accordance with this Agreement, (ii) the Facility can make available its generating capacity (as adjusted for Ambient Conditions at the time of testing in accordance with the Testing Protocol) that meets or exceeds the Guaranteed Performance (or, to the extent that the Guaranteed Performance exceeds such Capacity, (1) Seller has credited PREPA for all Seller Guaranteed Performance Liquidated Damages required by the PPOA in respect thereof, and (2) such Capacity meets or exceeds the Minimum Acceptance Criteria), and (iii) the Facility can make available Net Electrical Output that corresponds to such Capacity at the Point of Interconnection on a continuous basis, in each case, in accordance with Prudent Utility Practices and the PPOA;
 2. as demonstrated by the Noise Emissions Testing, the Facility is in compliance with required regulations and permitted levels of emissions and noise at site operating conditions and at the various required load levels, for both noise and emissions;
 3. Seller has obtained, is compliant, and maintains in force, all Permits required for the operation of the Facility;
 4. the Facility comply in all material respects with Applicable Law; and
 5. Seller has otherwise satisfied all conditions to Commercial Operation set forth in Section 6.4 (*Conditions to Commercial Operation Date*).

The Commercial Operation Date occurred on [•].

Very truly yours,
Energiza LLC
as Seller

Acknowledged and agreed,
Puerto Rico Electric Power Authority
as PREPA

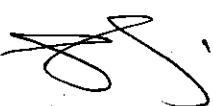
**APPENDIX S
HYDROGEN FUEL IMPLEMENTATION**

Power Generation - provision for equipment required for future power generation operation with hydrogen fuel:

% Hydrogen by Volume	Requirements for Completion	Priced into Proposal Today	Timing
Up to 30%	<ul style="list-style-type: none"> • The enclosure of the gas turbine will be supplied with modifications in size (larger than standard for LNG to accommodate H2 firing), to accommodate different ventilation system, hazardous gas detection system, fire protection system, piping material to SS, purge system and fuel valves. • An additional Fuel Gas Handling System ("FGHS") for hydrogen fuel operation with changes in the piping material. • HRSG (Heat Recovery Steam Generator) has been designed with a larger foundation to accommodate space for an additional catalyst Selective Catalytic Reduction ("SCR") system which may be required at the 	Yes	Complete at COD

	time of upgrade for higher H2 volumes to ensure emissions compliance.		
30% - 100% by Volume	<ul style="list-style-type: none"> Gas turbine combustion system changes; through the introduction of the multi-cluster designed to burn higher concentrations of hydrogen, or via a new combustor that is being developed, capable of burning through ammonia cracking. Changes inside the gas turbine enclosure to change the fuel gas pipe to a larger diameter and other possible changes in gas detection and ventilation for higher volumes. Changes in the fuel gas handling system to handle larger volumes. Possible addition of an SCR catalyst module. This will depend on the capacity of the new combustion system to mitigate NOx emissions. Additional BOP piping and other handling and 	<p>No, however, the following provisions have been made:</p> <ul style="list-style-type: none"> HRSR (Heat Recovery Steam Generator) has been designed with a larger foundation to accommodate space for an additional catalyst SCR system which may be required at the time of upgrade for higher H2 volumes to ensure emissions compliance. An additional Fuel Gas Handling system with changes in the piping material. The enclosure of the gas turbine will be supplied with modifications in size (larger than standard for LNG to accommodate H2 firing), to accommodate different ventilation system, hazardous gas detection 	To be determined in conjunction with PREPA

	missing equipment which is dependent on the medium for the delivery of H2 or Ammonia.	system, fire protection system, piping material to SS, purge system and fuel valves.	
--	---	--	--





APPENDIX T
FORM OF DIRECT AGREEMENT

THIS DIRECT AGREEMENT ("Direct Agreement") dated [●], 2024, is entered into among: (i) [the Puerto Rico Electric Power Authority], a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by an Act of 23 May 1941, No. 83 (the "Consenting Party"), (ii) [●] (together with its successors, designees and permitted assigns in such capacity, the "Administrative Agent") and (iii) [●] (the "Assignor"). All capitalized terms used herein and not otherwise defined in this Direct Agreement shall have the respective meanings set forth in the Assigned Agreement (as defined below). The principles of interpretation and construction set forth in the Assigned Agreement shall apply to, and are hereby incorporated by reference as if fully set out in, this Direct Agreement, *mutatis mutandis* and as if any references to "this Agreement" and "Party" in such provisions were references to, respectively, "this Direct Agreement" and "the parties hereto".

RECITALS

WHEREAS:

-  (A) the Assignor (as seller) and Consenting Party (as buyer) have entered into that certain Power Purchase and Operating Agreement, dated as of December 20, 2024 (the "Assigned Agreement"), pursuant to which the Assignor will develop a [●] megawatt Facility at the Site, (ii) interconnect the Facility with the T&D System, and (iii) sell the Net Electrical Output of the Facility exclusively to the Consenting Party, and the Consenting Party will purchase energy from the Facility built by the Assignor;
-  (B) Pursuant to Section 21.3 (Seller's Right to Assign) of the Assigned Agreement, the Consenting Party has agreed to use commercially reasonable efforts to cooperate with any financing efforts of the Assignor, and the Assignor may assign its rights to payment under the Assigned Agreement to Project Lenders as security for its obligations to any such lender in connection with any financing of the development and construction of the Facility;
- (C) [The Assignor has entered into that certain [Credit Agreement], dated as of [●] (the "Credit Agreement"), among Project Lenders from time to time party thereto (together with the Administrative Agent, each, a "Secured Party", and, collectively, the "Secured Parties") and the Administrative Agent, pursuant to which such Project Lenders will make loans to the Assignor to, among other things, finance the construction of the Facility; and
- (D) The Assignor has entered into that certain Security Agreement, dated as of [●] (the "Security Agreement"), among the Assignor, the other subsidiary guarantors from time to time party thereto and the Administrative Agent, pursuant to which each of the Assignor and such subsidiary guarantors have granted to the Administrative Agent, for the ratable benefit of the Secured Parties, a security interest in certain property as collateral security for the prompt and complete payment and performance when due of such entities' obligations under the Credit Agreement.]

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. NOTICE OF ASSIGNMENT

The Assignor hereby gives notice to the Consenting Party that pursuant to the Security Agreement, the Assignor has pledged and assigned to the Administrative Agent, for the benefit of the Secured Parties, and granted to the Administrative Agent a security interest in, all of the Assignor's right, title and interest in, to and under the Assigned Agreement pursuant to the Security Agreement (the "Assigned Interest"), as collateral security for the obligations of the Assignor under the Credit Agreement.

2. PAYMENTS UNDER THE ASSIGNED AGREEMENT

2.1 Billing Arrangements

The Consenting Party agrees that, unless and until it has been notified in writing by the Administrative Agent that the Security Agreement has been terminated, the Consenting Party will pay all amounts payable by it under the Assigned Agreement directly to the Assignor at such account as may be specified in a written notice delivered by the Administrative Agent and the Assignor to the Consenting Party. The Assignor authorizes and acknowledges the foregoing and agrees that any payment made consistent with this Section 2.1 shall be treated for all purposes as a payment made directly to the Assignor under the terms of the Assigned Agreement.

2.2 No Set-Off Except as Provided Under Assigned Agreement

The Consenting Party agrees that in making payments in respect of the Assigned Agreement, it will not offset any amounts owed to it by the Assignor except as provided under the Assigned Agreement.

3. RIGHTS OF ADMINISTRATIVE AGENT


3.1 Exercise of the Assignor's Rights and Remedies

If the Administrative Agent provides written notice to the Consenting Party that an event of default has occurred under the Credit Agreement and that the Administrative Agent desires to exercise its rights and remedies pursuant to the Security Agreement, the Administrative Agent or any Substitute Provider (as defined below) shall be entitled to exercise any and all rights of the Assignor under the Assigned Agreement in accordance with the terms of this Direct Agreement and the Assigned Agreement. The Consenting Party agrees to accept such exercise by the Administrative Agent or any Substitute Provider and continue its performance under the Assigned Agreement in accordance with the terms thereof.

3.2 Right to Cure

Upon the occurrence of an event of default by the Assignor under the Assigned Agreement, or upon the occurrence or non-occurrence of any other event or condition which would enable the Consenting Party to terminate its obligations under the Assigned Agreement (herein called a "default"), the Consenting Party

will not terminate its obligations under the Assigned Agreement until it first gives to the Administrative Agent (i) the written notice required to be given to Assignor by the Assigned Agreement specifying the nature of the default giving rise to such right (and in the case of a payment default, specifying the amount thereof); and (ii) the opportunity to cure such default for a period of forty five days (45) days from receipt of such notice, in the case of a payment default, and ninety (90) days from receipt of such notice, in the case of a non-payment default, and such time period shall begin for any such default upon the expiration of the applicable cure period, if any, set forth in the Assigned Agreement for the Assignor to cure such default.



3.3 No Liability

Except during any period in which the Administrative Agent or any Secured Party (or any of their respective designees or assignees) constitutes a Substitute Provider, the Consenting Party acknowledges and agrees that neither the Administrative Agent nor any Secured Party (or any of their respective designees or assignees) shall have any liability or obligation under the Assigned Agreement as a result of this Direct Agreement except to the extent of their respective interest in the Assigned Agreement, the Credit Agreement or the Security Agreement, nor shall the Administrative Agent or any Secured Party (or any of their respective designees or assignees) be obligated or required to perform any of the Assignor's obligations under the Assigned Agreement or to take any action to collect or enforce any claim for payment assigned under the Security Agreement. No curing of any defaults under the Assigned Agreement shall be construed as an assumption by the Administrative Agent or any Secured Party (or any of their respective designees or assignees) of any of the obligations, covenants or agreements of the Assignor under the Assigned Agreement.

3.4 Substitution: Transfer

- (a) The Consenting Party agrees that, notwithstanding anything to the contrary in the Assigned Agreement, if the Administrative Agent shall notify the Consenting Party in writing that an Event of Default (as defined in the Credit Agreement) has occurred and is continuing under the Credit Agreement and that the Administrative Agent desires to exercise its rights and remedies pursuant to the Security Agreement, then a Substitute Provider may be substituted for the Assignor under the Assigned Agreement. In such event, the Consenting Party will continue to perform its obligations under the Assigned Agreement in favor of the Substitute Provider, subject, in any event, to all of the Consenting Party's rights and remedies thereunder, but recognizing that the Substitute Provider's obligations under the Assigned Agreement shall be limited to the Substitute Provider's interest in the Facility and all revenues and proceeds derived therefrom. In the event that the Substitute Provider succeeds to the Assignor's interest under the Assigned Agreement, whether by foreclosure or otherwise, the Substitute Provider shall not be liable for curing or performing or be required to perform or cause to be performed any of the

defaults under the Assigned Agreement that were, by their nature, incapable of being cured or performed.

- (b) If the Assigned Agreement is rejected or terminated by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding involving the Assignor, and if within ninety (90) days after such rejection or termination the Administrative Agent shall so request, a Substitute Provider and the Consenting Party will promptly execute a new agreement that shall be for the balance of the remaining term under the Assigned Agreement (before giving effect to such rejection or termination) and shall contain the same agreements, terms and conditions as the Assigned Agreement. If the approval of any such trustee or debtor in possession or any regulatory approval is necessary in order for the Consenting Party to enter into or perform under any such new agreement, the Consenting Party shall cooperate with the Administrative Agent or Substitute Provider in obtaining such approvals.


"Substitute Provider" means, in respect of any assignment, transfer or sale permitted hereunder (each a "transfer") any person, including the Administrative Agent, any Secured Party, or the Administrative Agent's or any Secured Party's designee or assignee, if the transfer is made to the Administrative Agent or a Secured Party, or any purchaser of the Assigned Interest in a foreclosure sale or otherwise, who: (i) is at least as creditworthy (taking into account any credit support provided by such person) as the Assignor on the date of such transfer, (ii) is properly licensed or otherwise authorized to perform the Assignor's obligations under the Assigned Agreement, is a counterparty with whom the Consenting Party is not prohibited from transacting under the regulatory regime then-applicable to the Assigned Agreement, and has provided the certifications and documentation required by Appendix F (Signing Conditions) of the Assigned Agreement, but construing references to Seller therein as references to such new provided; (iii) meets the Consenting Party's internal credit policies as reasonably and consistently applied solely with respect to the maximum potential credit exposure of the Consenting Party to such person (it being understood that the determination of the amount of such credit exposure shall take into account the then current creditworthiness of such person and any collateral or guaranties posted for the benefit of such person), and otherwise has a tangible net worth of at least twenty-five million Dollars (US\$25,000,000) (or its direct or indirect parent has a tangible net worth of at least seventy-five million Dollars (US\$75,000,000)); (iv) has provided, to the extent requested, all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations (including, without limitation, the Patriot Act, rules and regulations of the Office of Foreign Assets Control and other similar client identification policies and procedures) as well as all documentation required by the Assigned Agreement (including as signing

conditions) and Puerto Rico law; (v) has not formally threatened in writing or commenced any litigation proceeding against the Consenting Party and is not subject of any formal written threat of litigation issued or of any litigation proceeding initiated by the Consenting Party; (vi) is or has engaged, in the Consenting Party's sole discretion, a Qualified Operator to develop, construct, test, commission, operate, maintain and repair a project similar to the one contemplated by the Assigned Agreement, to deliver energy to the Consenting Party from such a project and otherwise fulfil the Assignor's obligations under the Assigned Agreement.


4. REPRESENTATIONS

The Consenting Party represents that:

- (a) The Consenting Party is a Puerto Rico public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, duly organized, validly existing and in good standing under the laws of the Commonwealth of Puerto Rico and is duly qualified to conduct its business, to own its properties, and to execute and deliver, and to perform its obligations under, this Direct Agreement.
- (b) The execution, delivery and performance by the Consenting Party of this Direct Agreement have been duly authorized by all necessary corporate action and do not and will not (i) require any consent or approval of any Governmental Authority or the board of directors, members or partners (or equivalent persons), as the case may be, of the Consenting Party which has not been obtained, (ii) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Consenting Party, or (iii) violate or result in a breach of or constitute a default under, or require a consent that has not been obtained under or result in the creation of a lien under, its certificate of incorporation or by-laws or any indenture or loan or credit agreement or any other material agreement, lease or instrument to which the Consenting Party is a party or by which it or its properties may be bound or affected.
- (c) This Direct Agreement has been duly executed and delivered by the Consenting Party and constitutes the legal, valid and binding obligation of the Consenting Party enforceable against it in accordance with its terms, except as enforceability may be limited by general principles of equity and by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally. This Direct Agreement is in full force and effect.
- (d) No authorization, approval, consent, permit or other action by, or registration or filing with, any governmental authority or any other entity is necessary for or in connection with the execution or delivery by the Consenting Party of, or the performance by the Consenting Party of any of



its obligations under this Direct Agreement, other than those which have been duly obtained or made and are final and non-appealable and in full force and effect as of the date hereof.

- 
- (e) No litigation, action, suit, adverse proceeding or investigation before or by any arbitrator or government authority is pending or, to the best knowledge of the Consenting Party, threatened in writing against the Consenting Party or against any of its properties or revenues (i) with respect to this Direct Agreement or any of the transactions contemplated hereby or thereby; or (ii) which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the ability of the Consenting Party to perform its obligations under this Direct Agreement.

5. RESERVATION OF RIGHTS

The parties hereto agree that notwithstanding the terms of Sections 1 and 2 above, each of the Consenting Party and the Assignor reserves any and all rights and remedies (including those relating to set-off, counterclaim, deduction or retention) it may have under the Assigned Agreement or applicable law. The rights reserved by each of the Consenting Party and the Assignor under the Assigned Agreement and applicable law are cumulative and not exclusive of any rights it may have under the Assigned Agreement and/or applicable law.

6. MISCELLANEOUS

6.1 Notices

All notices and other communications hereunder shall be in writing and delivered to the applicable recipient pursuant to this Section 6.1: (i) if to the Consenting Party or to the Assignor, in accordance with the Assigned Agreement; (ii) if to the Administrative Agent, [•] or (iii) to such other address or facsimile number as any party may designate by notice given to all parties hereto pursuant to this Section 6.1. Delivery of notices and communications sent pursuant to this Section 6.1 shall be effective upon receipt.

6.2 Governing Law

THIS DIRECT AGREEMENT AND ALL QUESTIONS REGARDING ITS VALIDITY, INTERPRETATION, PERFORMANCE AND/OR ENFORCEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO ANY CONFLICT-OF-LAW PRINCIPLES OF SUCH COMMONWEALTH OR OTHER JURISDICTION TO THE CONTRARY. JURISDICTION AND VENUE OF ANY SUIT OR ACTION TO ENFORCE THIS DIRECT AGREEMENT SHALL REST SOLELY IN THE UNITED STATES FEDERAL COURTS IN THE SOUTHERN DISTRICT OF NEW YORK AND EACH OF THE PARTIES HERETO HEREBY SUBMITS TO THE PERSONAL JURISDICTION OF SUCH COURTS FOR THE PURPOSE OF RESOLVING ANY AND ALL MATTERS ARISING UNDER OR IN

RESPECT OF THIS DIRECT AGREEMENT AND AGREES THAT PERSONAL SERVICE UPON EACH SUCH PARTY MAY BE MADE BY DELIVERY THEREOF TO SUCH PARTY AT THE ADDRESS SPECIFIED HEREIN.

6.3 Waiver of Jury Trial

EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS DIRECT AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

6.4 Counterparts

This Direct Agreement may be executed by any number of, and on separate, counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. A facsimile or .pdf copy of a counterpart signature page shall serve as the functional equivalent of a manually executed copy for all purposes.

6.5 Headings Descriptive

The headings of the several sections and subsections of this Direct Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Direct Agreement.

6.6 Severability

In case any provision in or obligation under this Direct Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.7 Amendment

Neither this Direct Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by each party hereto.

6.8 Successors and Assigns

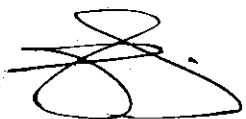
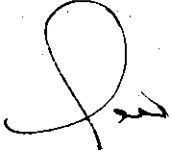
This Direct Agreement shall be binding upon the successors and assigns of the Consenting Party and inure, together with the rights and remedies of the Assignor and the Administrative Agent, to the benefit of the Assignor and the Administrative Agent.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties hereto have caused this Direct Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year above written.

**PUERTO RICO ELECTRIC POWER
AUTHORITY**

By _____
Name:
Title:

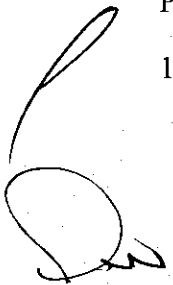


**APPENDIX U
FORM OF FOMB CERTIFICATION**

CONTRACTOR CERTIFICATION REQUIREMENT

Seller shall provide the following certification to FOMB and PREPA (the "Commonwealth's Contracting Government Entity"), signed by its Chief Executive Officer (or equivalent highest rank officer):

Unless the context otherwise requires, capitalized terms have the meanings defined in the Power Purchase and Operating Agreement dated December 20, 2024 (the "Agreement").

- 
1. Seller's subcontractor(s) in connection with the Agreement (including any amendments, modifications or extensions) is (are) the following:

(Name of individual or firm, including names of principals or owners of the latter)

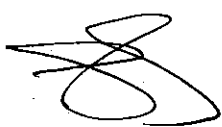
(Principal terms and conditions of the contractual relation and role of the subcontractor)

(Amount of proposed contract payable to each subcontractor)

2. Neither Seller nor any of its owners (including any Person or entity with more than a ten percent (10%) ownership interest in Seller), partners, directors, officials or employees, has agreed to share or give a percentage of Seller's compensation under the Agreement to, or otherwise compensate, any third party, whether directly or indirectly, in connection with the procurement, negotiation, execution or performance of the contract, except as follows:

(Name of individual or firm, including names of principals or owners of the latter)

(Principal terms and conditions of the compensation sharing arrangement and consideration for such benefit)

3. To the best knowledge of the signatory (after due investigation), no Person has unduly intervened in the procurement, negotiation or execution of the contract, for its own benefit or that of a third Person, in contravention of Applicable Law.
 4. To the best knowledge of the signatory (after due investigation), no Person has: (i) offered, paid, or promised to pay money to; (ii) offered, given or promised to give anything of value to; or (iii) otherwise influenced any public official or employee with the purpose of securing any advantages, privileges or favors for the benefit of such Person in connection with the Agreement (such as the execution of a subcontract with Seller, beneficial treatment under the contract, or the written or unwritten promise of a gift, favor, or other monetary or non-monetary benefit).
 5. Neither Seller, nor any of its owners, partners, directors, officials or employees or, to the best of its knowledge (after due investigation), its representatives or sub-contractors, has required, directly or indirectly, from third Persons to take any action with the purpose of
- 

influencing any public official or employee in connection with the procurement, negotiation or execution of the contract, in contravention of Applicable Law.

6. Any incorrect, incomplete or false statement made by Seller's representative as part of this certification shall cause the nullity of the proposed contract and Seller must reimburse immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under the Agreement.

The above certifications are hereby signed under penalty of perjury by the [Chief Executive Officer (or equivalent highest rank officer)] in the following form:

"I hereby certify under penalty of perjury that the foregoing is complete, true and correct."

By:


Date:


Signature:

**APPENDIX V
FORM OF SWORN STATEMENT**

SWORN STATEMENT

Comes now, (Company Name) organized and existing under the laws of [•], with employer's social security number [•], represented in this act by [Representative's Name], of legal age, [Civil Status] and resident in [dwelling] and under the most solemn oath declares the following:

- 
1. That my name and other personal circumstances are the aforementioned.
 2. That I hold the position of [Title] in the aforementioned company.
 3. That I am authorized to represent the aforementioned company for purposes of this affidavit.
 4. That the undersigned or [Company Name], its president, vice-president, directors, managers, executive director, members of its board of directors, board of directors, or any of its officials or person performing equivalent functions for the [Company Name]; or its subsidiaries or alter egos:

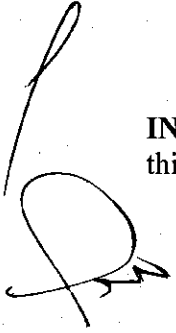
- 
1. Have not been convicted or have not pled guilty in a state or federal court, in any other jurisdiction of the United States of America, or in any other country, or are under investigation in any legislative, judicial, or administrative proceeding, whether in Puerto Rico, the United States of America, or any other country, of any of the crimes enumerated in Article 3 of Act 2-2018, known as the Anti-Corruption Code for a New Puerto Rico ("Act 2").
 2. That no commissions or bonuses have been paid, in Cash or in kind, and there is no 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 Agreement by and between the [Company Name] and the Puerto Rico Electric Power Authority while working for the Government of Puerto Rico.

5. The undersigned expressly recognizes that the conviction of any natural person or juridical person under Articles 4.2, 4.3 or 5.7 of Act 1-2012, known as the Government Ethics Office Organic Act, committing any of the crimes against public service or public funds deemed felonies under Articles 250 through 266 of Act 146-2012, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, or any other felony involving misappropriation or misuse of public funds or property, including, but not limited to, 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, will result in the automatic termination of any contract with the Government of Puerto Rico, and shall be ineligible to contract or bid with any executive agency of the Government of Puerto.

For purposes of federal jurisdiction or of the states or territories of the United States of America or any other country, the prohibitions contained in the aforementioned laws shall

apply in cases of a conviction for crimes whose elements are equivalent to those of the
aforementioned offenses.

6. That this sworn statement is executed in accordance with Act 8-2017 and Act 2-2018.
7. That everything stated above is true to the best of my knowledge, information and belief.



IN WITNESS WHEREOF, I affirm and sign the herein document in _____,
this _____ day of _____, 20_____.

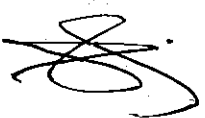
Representative's Signature

Affidavit No. _____

Duly sworn and subscribed to before me by _____, whose personal
circumstances are the above mentioned and who to me is personally known, or have identified by
means of _____, in _____, this ____ day of
_____, 20_____.

Notary Public

Seal



**APPENDIX W
FORM OF WARRANTY COMPLIANCE CERTIFICATE**

Date: [•]

Agreement: [•] [NTD: Insert contract number and title.]

To: Puerto Rico Electric Power Authority ("PREPA")

From: Energiza LLC ("Seller")

We refer to the Power Purchase and Operating Agreement dated December 20, 2024 between PREPA and Seller (the "PPOA"). Unless the context otherwise requires, capitalized terms used in this Warranty Compliance Certificate shall have the meanings ascribed to them in the PPOA.


I have reviewed the representations and warranties made by Seller under Article 14 (*Representations, Warranties, & Covenants*), and, on behalf of Seller, confirm and certify to PREPA the truth and correctness of such representations and warranties on the date hereof.

Very truly yours,

Energiza LLC
as Seller

[•]

APPENDIX X
FORM OF ANTI-CORRUPTION CERTIFICATION



“We certify under penalty of nullity that no public servant of the Puerto Rico Electric Power Authority (the “Authority” or “P3A”) 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 services provided is the agreed-upon price that has been negotiated with an authorized representative of the Authority. The total amount shown on this invoice is true and correct. The services have or will be rendered in accordance with the written agreement with the Authority, and no other payment has been received for such services.”

APPENDIX Y DESIGN LIMITS

Objective

This Appendix Y specifies the Design Limits applicable to the Facility for the purpose of Automatic Generation Control including Ramp Rates.

Design Limits

The following are the preliminary Design Limits for the Facility.

The Facility shall be designed for operation on base load, and the following limitations for different types of starts and the total hours for operation on oil fuel shall be applicable.

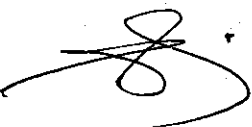
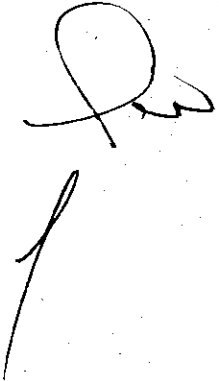
Hot Start	N/A (a shut-down period of less than 8 hours)
Warm Start	N/A (a shut-down period of between 8 hours and 72 hours)
Cold Start	Maximum 18 start-ups per year (a shut-down period exceeding 72 hours)
Total Starts Per year	100 starts
Total hours per year ULSD fuel	1500 hours

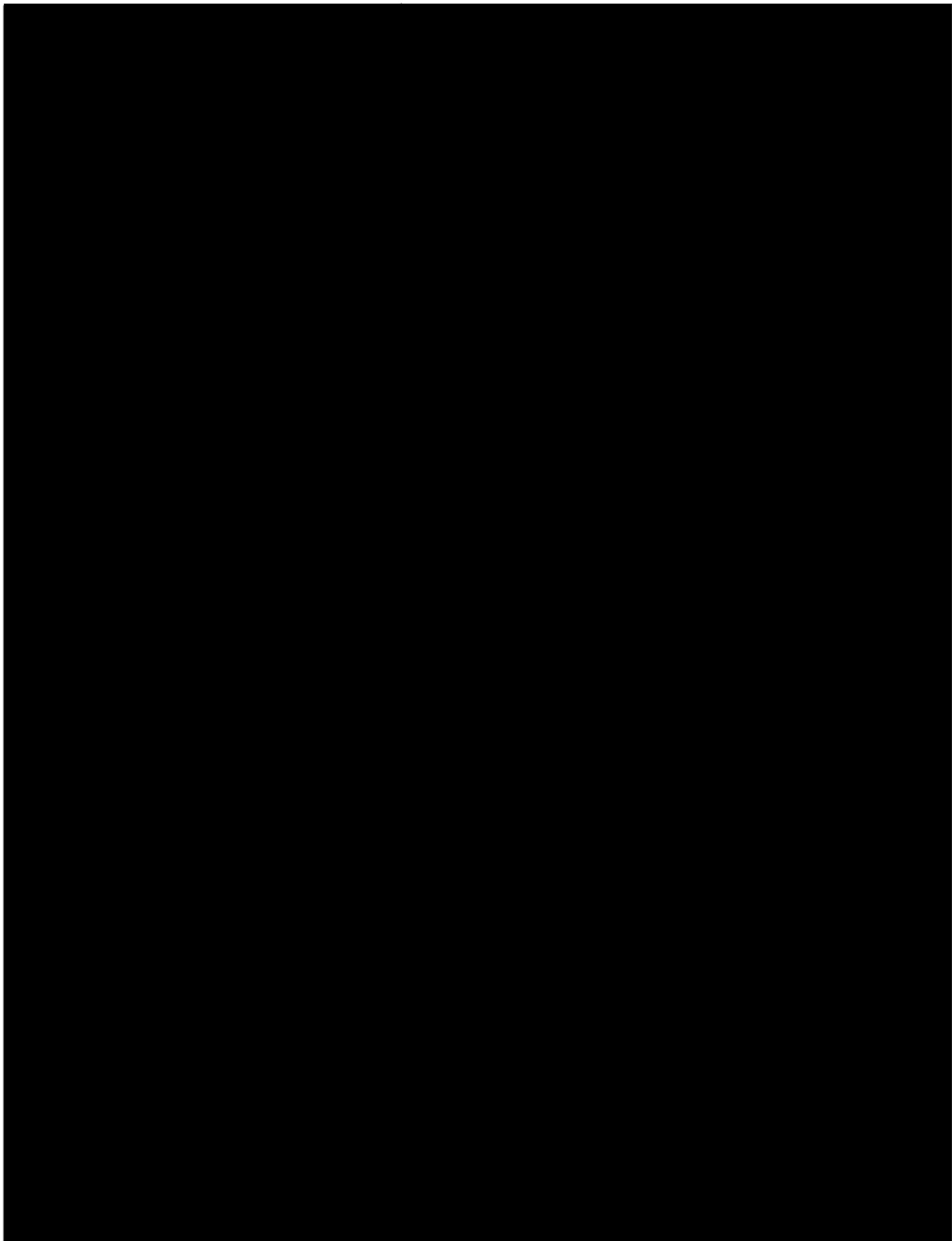
The equipment has been designed for continuous operation on Backup Fuel; however if the unit is operated more than 1500 hours in any single year on Backup Fuel, the variable cost will be adjusted to account for increased costs.

The equipment has been designed with no start limitations however if more than 100 starts in any single year, the variable cost will need to be adjusted to account for increased costs as per OEM LTSA requirements.

GSU Impedance	14% - 18%
GSU connection and winding	21kV/115kV. Ynd11
Generator Reactances (X''_d) (%)	- i. GTG: 17.1-19.4% - ii. STG: 12-13.6%
Generator Short Circuit Ratio (each)	- i. GTG: 0.67 at 405 MVA - ii. STG: 0.91 at 204 MVA
Generator Kilowatt rating	- i. GT: 135625-340725 kW

	-	ii. ST: 88097-159051 kW
Generator kvar rating	-	i. GT: 159558-400853 kVA
	-	ii. ST: 103643-187118 kV
Excitation System:	static excitation	





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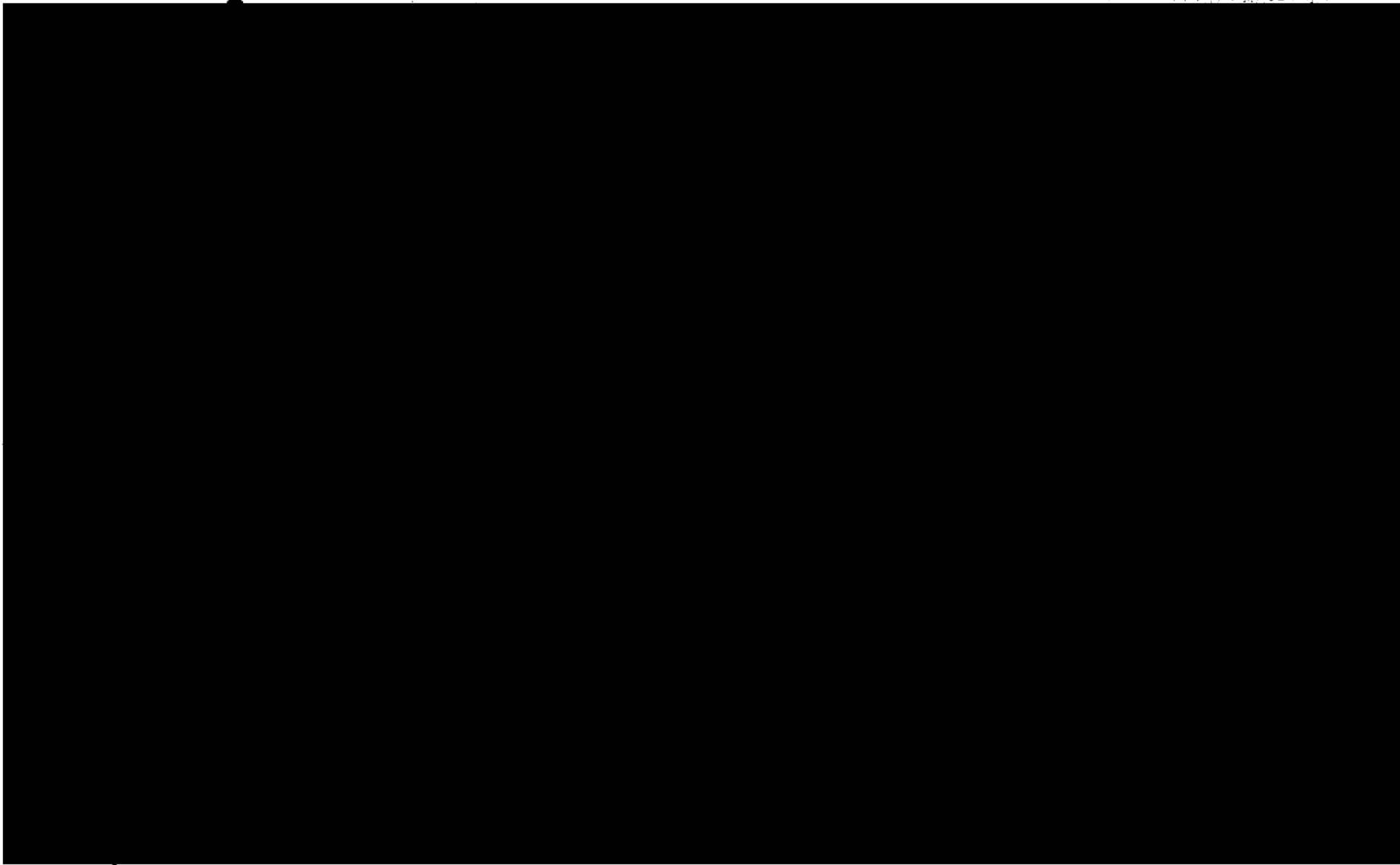
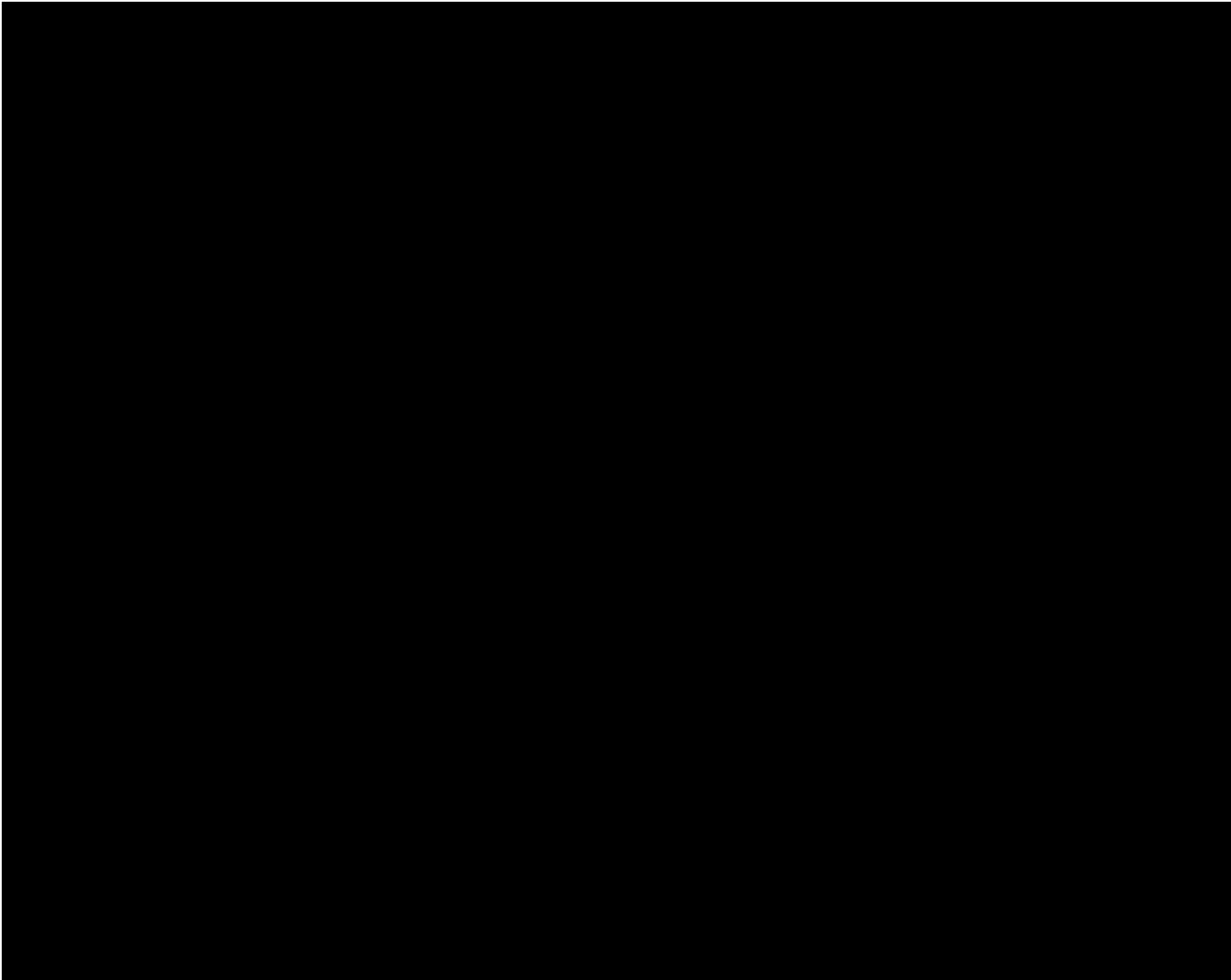


Figure 2 Worm

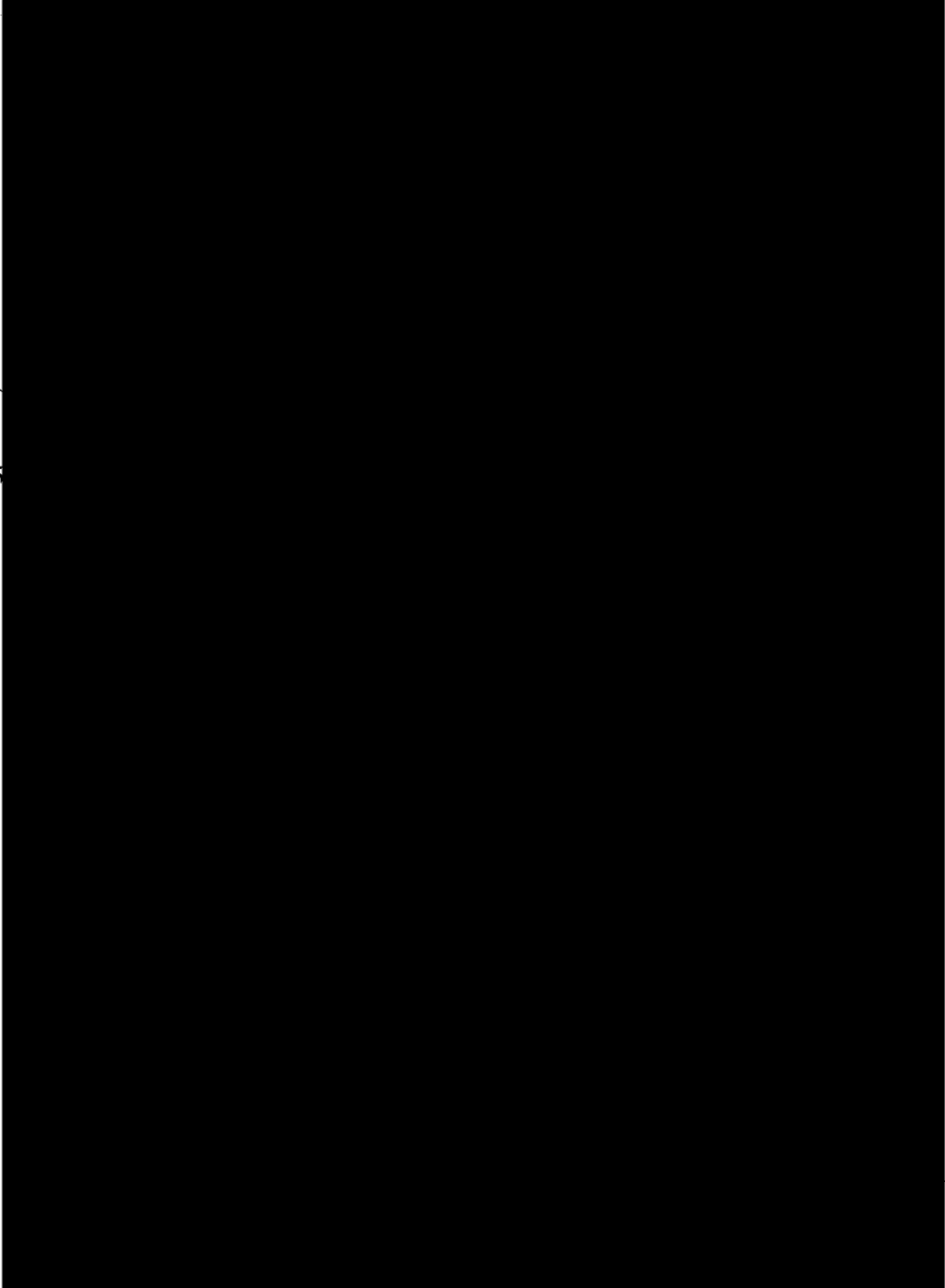
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CP

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APPENDIX Z
LIST OF THIRD PARTIES COSTS INCURRED BY SELLER

Phase I - Beginning Agreement Date:

Category	Task(s)	Amount
Permitting	Air Permit and Environmental Site Certificate	\$1,250,000
Engineering	Facility Engineering and Design Review	\$700,000
Interconnection	Additional Interconnection Study/Engineering	\$250,000
Geotechnical	Final Geotechnical Study	\$100,000
Legal	Legal Fees	\$750,000
Financing	PEI	\$250,000
EPC	EPC Consultant to review EPC contract and ensure sound execution strategy	\$100,000
Technical	Technical Experts to review items	\$100,000
Insurance	Review and advise on construction and operations insurance	\$75,000

Total \$3,575,000

Phase II - Beginning March 1, 2025:

Seller shall give forty-five (45) Days' written notice to PREPA prior to incurring costs listed below and PREPA shall have the right to choose if Seller should proceed with the procurement of the long-lead items of Major Equipment or change the Milestone Schedule for Commercial Operation Date.

Category	Company	Task(s)	Amount
Long Lead Equipment Items	Mitsubishi, TSK	Gas Turbine, Steam Turbine, HRSG Long Lead Items	\$28,500,000

Dr
P

A.