



GOVERNMENT OF PUERTO RICO
Puerto Rico Public-Private Partnerships Authority



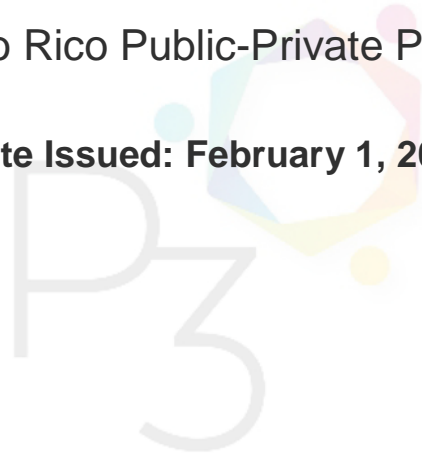
REQUEST FOR PROPOSALS

Puerto Rico Electric Power
Transmission and Distribution System

RFP 2019-2

Issued by the Puerto Rico Public-Private Partnerships Authority

Date Issued: February 1, 2019





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Puerto Rico Public-Private Partnerships Authority



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





1. Overview of RFP and PPP Process

1.1 Introduction

The Puerto Rico Public-Private Partnerships Authority (the “**Authority**”) and the Puerto Rico Electric Power Authority (“**PREPA**”) thank you for your interest in the transformation of Puerto Rico’s electric power transmission and distribution (“**T&D**”) system. The issuance of this confidential request for proposals (“**RFP**”) is an important milestone in this critical process for the people of Puerto Rico.

The Authority, in collaboration with PREPA, is issuing this RFP to the private sector companies and the consortium that (i) were selected to participate in the RFP stage by the Partnership Committee established by the Board of Directors of the Authority for this Project (as defined below) (the “**Partnership Committee**”) and (ii) have executed a confidentiality agreement with the Authority (the “**Confidentiality Agreement**”) (each such party, a “**Qualified Respondent**”).

The purpose of this RFP is to invite Qualified Respondents to prepare and submit proposals (“**Proposals**”) to manage, operate, maintain, rehabilitate, repair, refurbish, replace, improve, expand, as needed, and finance the T&D system (the “**Project**”) pursuant to a long-term public private partnership contract (the “**Partnership Contract**”). The Authority and PREPA expect that PREPA will enter into a Partnership Contract with a Qualified Respondent (the “**Private Party**”), and the Authority intends to award the Partnership Contract to the Qualified Respondent who submits a compliant Proposal and is selected in accordance with the process set forth in this RFP (such Qualified Respondent, the “**Selected Proponent**”). A term sheet summarizing the terms and conditions contemplated for the Partnership Contract (the “**Term Sheet**”) is included in **Annex A** of this RFP.

The Project is intended to achieve the following objectives for the T&D system:

- deliver low-cost electricity to ratepayers of Puerto Rico;
- increase T&D system resiliency, achieving performance in line with codes, specifications and standards consistent with mainland U.S. electric utilities;
- increase T&D system reliability;
- deploy new technologies; and
- exercise industry best practices and operational excellence.

The Authority intends that many of the capital improvements to be implemented as part of the Project will (i) be eligible for federal disaster assistance funding from many U.S. federal agencies, including, without limitation, the U.S. Federal Emergency Management Agency (“**FEMA**”) and the U.S. Department of Housing and Urban Development (“**HUD**”), and (ii) comply with all applicable federal and Puerto Rico law requirements, including those governing federal disaster assistance funding.

1.2 Available Documents

This RFP summarizes and refers to other documents, including those listed below, which are or will be available in the electronic data room managed by the Authority and its advisors (the “**Data Room**”) to which you will be granted access:

- a confidential information memorandum (the “**CIM**”);
- a financial model;



- a white paper on the electric sector regulatory framework;
- a white paper on environmental considerations;
- a white paper on federal funding;
- a white paper on labor considerations; and
- a white paper on PREPA’s voluntary bankruptcy process (the “**Title III Process**”).

Qualified Respondents are expected to review the documents summarized and referred to in this RFP for further background on the Project and the legal framework pursuant to which it will be executed. The summaries and references in this RFP are intended for convenience only.

1.3 Key Milestones

The following timeline summarizes certain key milestones in the RFP Process (as defined below), which are described in more detail in Section 3 (*Description of RFP Process*) of this RFP:

Milestones	Target Dates
RFP issued (including draft Term Sheet) and Data Room access granted	February 1, 2019
Period for due diligence and Q&A process	February through July 2019
Term Sheet discussion with Qualified Respondents	Expected February 2019
Management presentation	Expected early March 2019
Qualified Respondents provide comments on Term Sheet	Expected March 2019
Distribution of initial draft of Partnership Contract	Expected April 2019
Proposal submission deadline	Expected July 2019
Notification of preferred Qualified Respondents	Expected August 2019
Best and Final Proposal submission deadline	Expected August 2019
Notification of Selected Proponent to enter into Partnership Contract	Expected September 2019

The timeline of RFP key milestones provided above is included for illustrative purposes only. Target dates and deadlines are subject to modification. Additional information regarding key dates and deadlines will be provided through the issuance of addenda to this RFP. Qualified Respondents are strongly encouraged to engage advisors, including Puerto Rico counsel, as soon as possible.

As indicated in Section 4.4 (*Addenda to RFP*) of this RFP, each Qualified Respondent is responsible for periodically reviewing the PowerAdvocate© website for regular updates to the RFP timeline and other important information.



1.4 Definitions

For purposes of this RFP, the following defined terms will have the meanings used in the sections indicated below.

Term	Section	Term	Section
AAFAF	1.5	PPP	1.5
Act 29	1.5	PREPA	1.1
Act 120	1.5	PREPA Organic Act	2.3
Authority	1.1	Private Party	1.1
Best and Final Proposals	3.6	Project	1.1
CIM	1.2	PROMESA	2.6
Claim	5.10	Proposals	1.1
Committee Report	1.5	Qualified Respondent	1.1
Confidentiality Agreement	1.1	Regulation	1.5
Conflict of Interest	5.7	Related	5.2
Control	5.2	Restricted Parties	5.3
Data Room	1.2	RFC	3.2
Energy Bureau	3.7	RFP	1.1
Energy Compliance Certificate	3.7	RFP Process	1.5
Ethics Guidelines	5.3	RFQ Process	1.5
FEMA	1.1	Selected Proponent	1.1
FOMB	2.6	Submission Deadline	3.2
Government	1.5	T&D	1.1
HUD	1.1	Team Member	4.4
Management Presentation	3.3	Term Sheet	1.1
Partnership Committee	1.1	Title III Court	2.6
Partnership Contract	1.1	Title III Process	1.2

1.5 Legal Authority

The Authority was created pursuant to the Public-Private Partnership Authority Act, Act No. 29-2009, as amended (“**Act 29**”), as a public corporation of the Government of Puerto Rico (the “**Government**”), affiliated with the Puerto Rico Fiscal Agency and Financial Advisory Authority (known by its Spanish acronym “**AAFAF**”). The Authority is designated as the sole government entity authorized and responsible for implementing the Government’s public policy on Public-Private Partnerships (each, a “**PPP**”) and for determining the functions, services or facilities for which PPPs are to be established.

For each proposed PPP project, the Authority must establish a Partnership Committee, as provided in Act 29, responsible for, among other things: (i) qualifying, evaluating and selecting each proposed PPP; (ii) establishing the terms and conditions of the Partnership Contract to implement the PPP project as a result of the process described in the Request for Qualifications (for this Project, the “**RFQ Process**”) and the process described in this RFP (for this Project, the “**RFP Process**”); and (iii) preparing a report on the procedures followed and the reasons for selecting a particular Proposal (the “**Committee Report**”).

The transaction to be consummated pursuant to this RFP constitutes a “PREPA Transaction” (as defined in the Puerto Rico Electric System Transformation Act, Act No. 120-2018, as amended (“**Act 120**”)) subject to Act 120 and the proposed Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Partnership Contracts and Sale Contracts for the Transformation of the Electric System under Act No. 120-2018, as amended (as will be adopted once approved, the “**Regulation**”).

Qualified Respondents should note that the Partnership Committee has been vested with the authority to negotiate the terms of the Partnership Contract. PREPA has been vested with the authority to execute the



Partnership Contract negotiated by the Partnership Committee with a Qualified Respondent, subject to the approvals set forth in Section 3.7 (*Partnership Contract Approval Process*) of this RFP.





2. Project Summary

2.1 Transformation of the Electric System

The Project is part of the Government's mission to transform Puerto Rico's electric system into a modern, sustainable, reliable, efficient, cost-effective and resilient system. In particular, the Government seeks to transform Puerto Rico's electric system by implementing solutions that:

- are cost-effective and forward-looking;
- are resilient and built in accordance with codes, specifications and standards consistent with mainland U.S. electric utilities;
- harness innovative thinking and best practices from around the world; and
- contribute to greater economic development, revitalization and growth of Puerto Rico (in alignment with broader Government efforts to achieve fiscal and economic stability).

For more information on the transformation of Puerto Rico's electric system, see Section 2 (*Key Transformation Objectives*) and Section 4 (*Transformation Process Overview*) of the CIM.

2.2 T&D System and Regulatory Framework

The T&D system consists of 1,134 miles of transmission lines (230 kV and 115 kV), 1,549 miles of subtransmission lines (38kV) and 16,806 miles of primary voltage distribution lines (13 kV, 8 kV and 4 kV). The T&D system includes 178 transmission centers, 61 115 kV substations, 279 38 kV substations and 824 private substations. In Fiscal Year 2017, the T&D system served approximately 1.46 million customers, 91% of which were residential and 9% commercial. For more information on the T&D system, including technical specifications, see Section 5A (*T&D System Overview*) and Section 6 (*Demographics, Customers and Billing*) of the CIM.

Act 120 set in motion the development of a new regulatory framework for the electric sector. A working group was created under Act 120 to develop a new energy public policy and regulatory framework, in consultation with the Southern States Energy Board and the U.S. Department of Energy, among others. Proposed legislation to establish this new framework for Puerto Rico's energy sector is being debated before the Puerto Rico legislature. For more information on the regulatory framework for Puerto Rico's electric sector, see Section 11 (*Regulatory Overview*) of the CIM and the white paper on the electric sector regulatory framework.

2.3 PREPA

PREPA is a public corporation and instrumentality of the Government, created pursuant to Act No. 83-1941 of May 2, 1941, as amended (the "**PREPA Organic Act**"). Its purpose is to provide electric power in a reliable manner, contribute to the general welfare and the sustainable development of Puerto Rico and maximize the benefits—while minimizing the social, environmental and economic impacts—of electric energy generation and distribution. For more information on PREPA, its governance structure and its financial results, see Section 5 (*PREPA Business Overview*), Section 10 (*Governance Overview*) and Section 14 (*Financial Summary*) of the CIM.

2.4 Labor and Environmental Considerations

PREPA employs a large workforce of key personnel with invaluable experience that can be leveraged by a potential Private Party. As of February 2018, there were approximately 6,000 PREPA employees. For more



information on the key labor considerations for the Project, see Section 7 (*Human Resources*) of the CIM and the white paper on labor considerations. Act 29 requires the Partnership Committee to consider the commitments or priorities that each Qualified Respondent is willing to establish with respect to hiring current PREPA personnel, among other things, in evaluating Proposals. As indicated in Section 4.2 (*Indicative Evaluation Criteria*) of this RFP, more information on the evaluation criteria will be provided in subsequent addenda to this RFP.

In executing the Project, the Private Party will be expected to comply with all applicable local and federal environmental laws and requirements and minimize any adverse environmental impact on the T&D system. For more information on the key environmental considerations for the Project, see Section 9 (*Environmental & Legal Overview*) of the CIM and, once available in the Data Room, the white paper on environmental considerations.

2.5 Federal Disaster Recovery Funding

FEMA, HUD and/or other federal disaster recovery funding will be available to help finance the restoration of the T&D system as a result of the damage from Hurricanes Maria and Irma. The Private Party will be required to cooperate with the Authority, PREPA and any applicable federal or other public entity partners and their representatives or assigns to the fullest extent possible with respect to such disaster recovery funding, including by assisting with management of any repair or construction work for the T&D system and the coordination of any necessary elements of the work or grant application process. For more information on federal disaster recovery funding for the Project, see Section 12 (*Federal Funding Update*) of the CIM and the white paper on federal funding.

The Partnership Contract will include certain terms and conditions required by applicable Federal law. Each Qualified Respondent is required to complete the Debarment and Lobbying Certifications included in **Annex B** (*Federal Funding Certifications and Conditions*) of this RFP. To the extent the Authority and PREPA determine to submit any of the costs incurred under the Partnership Contract for Federal reimbursement, the Qualified Respondent will be required to comply with all applicable Federal certifications, terms and conditions. The Partnership Contract will include, as applicable, the contract provisions required by 2 C.F.R. § 200.326 and FEMA and HUD guidance.

2.6 Title III Process

In July 2017, a voluntary petition for bankruptcy relief was filed on behalf of PREPA, commencing a case under Title III of the Puerto Rico Oversight, Management and Economic Stability Act (“**PROMESA**”) in the U.S. District Court for the District of Puerto Rico (the “**Title III Court**”). Upon the commencement of PREPA’s Title III case, an automatic stay on litigation related to the financial indebtedness and other obligations of PREPA immediately went into effect.

The Partnership Contract will need to comply with the applicable requirements under PROMESA and be approved by the Financial Oversight and Management Board for Puerto Rico (the “**FOMB**”) pursuant to the FOMB’s Contract Review Policy (as modified July 3, 2018). The FOMB and its advisors are working closely with the Authority and PREPA throughout the RFP Process and are expected to be active participants in the process at all stages. Similar to Chapter 9 of the U.S. Bankruptcy Code, PROMESA does not include an express provision requiring post-petition contracts to be approved by the Title III Court. However, confirmation of a plan of adjustment in PREPA’s Title III case may be required to release liens against PREPA’s assets and help ensure that the Project is free and clear of all legacy liabilities. For more information on the Title III process and its interplay with the Project, see the white paper on the Title III Process.

2.7 Partnership Contract

The Project contemplates PREPA entering into a Partnership Contract with the Private Party. Throughout the term of the Partnership Contract, the Government will retain ownership of and title to all T&D assets, and the Private



Party will be granted all other rights and responsibilities associated with the T&D system, including but not limited to managing, operating, maintaining, rehabilitating, repairing, refurbishing, replacing, improving, expanding and financing, as needed, the T&D system. The Term Sheet summarizing the terms and conditions contemplated for the Partnership Contract is included in **Annex A** to this RFP. The Authority intends to schedule discussions with Qualified Respondents to walk through the Term Sheet and discuss any preliminary feedback.





3. Description of RFP Process

3.1 Data Room and Due Diligence

The Data Room has been established to facilitate access to additional technical, operational, financial and legal information regarding the T&D system. The Authority, PREPA and their advisors may add further information as considered necessary or as requested by Qualified Respondents.

Access to the Data Room is controlled. Subject to the prior execution of a Confidentiality Agreement, a Qualified Respondent will be authorized to access the Data Room using the link, which will be separately provided to each Qualified Respondent. Each Qualified Respondent is responsible for periodically reviewing the Data Room for further information.

Inclusion of any document or data in the Data Room relating to any other person does not imply the agreement of such person to the transaction contemplated in this RFP and does not constitute an express or implied representation or warranty by such person as to the accuracy, completeness, validity or status of such document or data.

As indicated in Section 1.3 (*Key Milestones*) of this RFP, each Qualified Respondent is responsible for periodically reviewing the PowerAdvocate© website for regular updates to this RFP and other important information, including information to be published after the issuance of this RFP.

3.2 Submission of RFCs

If a Qualified Respondent has any questions with respect to the contents of this RFP, the information available in the Data Room, the T&D system and other matters related to the Project, such Qualified Respondent may submit a request for clarification (“**RFC**”) at any time prior to the RFC submission deadline to be announced by the Authority (the “**Submission Deadline**”). Qualified Respondents must submit any RFCs in writing using the Messaging Tab in PowerAdvocate©. Verbal RFCs will not be accepted.

RFCs in General

RFCs will generally be answered in writing using the Messaging Tab in PowerAdvocate©. RFCs will be made available to all Qualified Respondents together with the answers thereto, unless the Qualified Respondent requests that an RFC be treated in confidence and the Authority agrees (as described below). The Authority does not guarantee that all RFCs received will be answered. The Authority may, in its sole and absolute discretion, make available all submitted RFCs, together with the Authority’s answers thereto, without expressly identifying the originator.

In Confidence RFCs

Qualified Respondents may request that an RFC be treated in confidence and that the RFC and answer not be circulated to all Qualified Respondents. Qualified Respondents must designate such an RFC as “confidentiality requested”. Upon receipt of such an RFC and supporting justification for the confidential treatment, the Authority will assess whether, in its sole and absolute discretion, the RFC is confidential in nature. The Authority does not guarantee that all such RFCs received will be answered.

If the Authority agrees that the RFC should be treated in confidence, a confidential answer will be provided to that Qualified Respondent only. Examples of RFCs that would be confidential include questions that relate to proprietary information, a Qualified Respondent’s proposed financing structure or other unique information that relates to the competitive strategy of a Qualified Respondent.



Alternatively, if the Authority determines, in its sole and absolute discretion, that an RFC for which confidentiality has been requested is not confidential and is of general application or would provide a significant clarification to this RFP or any process or other matter outlined hereunder, the Authority will inform the Qualified Respondent, in writing, and the Qualified Respondent will have the opportunity to indicate that it either (i) concurs that the RFC and answer will not be treated confidentially or (ii) wishes to withdraw the RFC. If the Qualified Respondent concurs with the Authority's determination that the RFC and answer should not be treated in confidence, the Authority may issue a clarification to all Qualified Respondents.

3.3 Management Presentation and Site Visits

Key managers of PREPA, together with representatives of the Authority and other relevant Government entities, will make a presentation regarding the Project (the "**Management Presentation**") to Qualified Respondents. The Management Presentation will be held in Puerto Rico. Detailed dates and logistics will be provided in due course. The Authority expects these presentations to last a full day.

Attendees for the Management Presentation will be restricted to a maximum of twenty members of a Qualified Respondent's team. During the presentation, Qualified Respondents will be able to ask questions on the materials presented. At the end of the presentation, there will be a dedicated questions and answers session that will also give Qualified Respondents an opportunity to ask questions on various topics. Qualified Respondents will be asked to supply the Authority's procurement representatives designated as points of contacts for this RFP with the names and titles of all attendees, and, in the case of advisors, who they represent, as well as a list of the key questions to be addressed, at least five days prior to the Management Presentation.

Qualified Respondents will have the opportunity to visit various PREPA facilities. The Authority will contact Qualified Respondents separately to inform them of the exact schedule for such visits.

3.4 Term Sheet Process

Prior to the initial distribution of the draft Partnership Contract described in Section 3.5 (*Partnership Contract Process*) of this RFP, each Qualified Respondent will have the opportunity to walk through and discuss the Term Sheet with the Authority and will be invited to submit comments to the Term Sheet. Additional details relating to the Term Sheet comment process will be provided in subsequent addenda to this RFP.

Comments regarding the Term Sheet are to be provided via PowerAdvocate® in electronic (Microsoft Word) form by the date to be specified by the Authority and its advisors. Qualified Respondents are advised that comments from all members of the Qualified Respondent's team and its advisors should be included in a single electronic (Microsoft Word) document. Qualified Respondents will be invited to submit only material, substantive comments to the Term Sheet by submitting a markup of the Term Sheet using black-lining to indicate the proposed modification with explanatory footnotes where appropriate. A single revised Term Sheet is expected to be circulated to all Qualified Respondents following the Authority and PREPA's review. This revised Term Sheet will reflect the comments from Qualified Respondents that the Authority and PREPA have accepted.

3.5 Partnership Contract Process

An initial draft of the Partnership Contract is expected to be made available for review and comment by Qualified Respondents. Comments regarding the draft of the Partnership Contract are to be provided via PowerAdvocate® in electronic (Microsoft Word) form by the date to be specified by the Authority and its advisors. Comments from all members of the Qualified Respondent's team and its advisors should be included in a single electronic (Microsoft Word) document.

Qualified Respondents will be invited to submit only material, substantive comments to the initial draft of the Partnership Contract by submitting a markup of the Partnership Contract using black-lining to indicate the



proposed modification with explanatory footnotes where appropriate. Qualified Respondents are encouraged to identify comments in order of priority, thus allowing for an efficient review process.

Qualified Respondents' proposed changes to the draft Partnership Contract reflected in their initial markup should be summarized in order of priority in the following chart:

Item number	Document and section reference	Text with proposed revision	Reasons for proposed modification

A single revised draft of the Partnership Contract is expected to be circulated to all Qualified Respondents following the Authority and PREPA's review of comments to the initial draft of the Partnership Contract. This revised draft will reflect any comments from Qualified Respondents that the Authority and PREPA have accepted. Any comments to the revised draft of the Partnership Contract are to be provided in the manner described above in this Section 3.5 and are to be submitted to the Authority as part of the Proposal.

3.6 Evaluation of Proposals

The Partnership Committee will review each Proposal in an initial screening process to evaluate completeness of the Proposal and compliance with specific requirements set forth in this RFP, among other elements. Initial screening will be a pass/fail determination as to whether a Proposal meets the threshold requirements. A Proposal that fails to meet these requirements will not be eligible for consideration in the evaluation process.

The Partnership Committee and the Authority reserve the right to request clarification from Qualified Respondents prior to rejecting a Proposal for failure to meet the initial screening requirements. Clarifications are limited exchanges between the Partnership Committee and a Qualified Respondent for the purpose of clarifying certain aspects of the Proposal. The Partnership Committee reserves the right, in its sole and absolute discretion, to disregard or waive minor informalities, irregularities, omissions, nonconformities, discrepancies and apparent clerical mistakes.

After the initial review, Proposals will be evaluated pursuant to Act 120 and the evaluation criteria to be set forth in subsequent addenda to this RFP, as indicated in Section 4.2 (*Indicative Evaluation Criteria*) of this RFP. The Partnership Committee will tabulate the Proposal scores, and then rank Qualified Respondents, starting with the Qualified Respondent receiving the highest total score, then continuing with the Qualified Respondent receiving the second highest total score, and so on. Considering the total score and ranking of Qualified Respondents, the Partnership Committee and the Authority will determine which preferred Qualified Respondents are to be invited to negotiate the terms of the Partnership Contract and submit best and final Proposals (**"Best and Final Proposals"**).

Following the completion of the negotiation and evaluation of Best and Final Proposals, the Partnership Committee will select the Selected Proponent and notify the Selected Proponent of its decision.

3.7 Partnership Contract Approval Process

Once the Partnership Committee and the Selected Proponent have finalized the negotiation of the Partnership Contract, the Partnership Committee will prepare the Committee Report to be circulated with the Partnership Contract for approval. Pursuant to applicable law, the Partnership Contract to be executed by PREPA and the Selected Proponent as a result of the RFP Process is subject to the approval of (i) the Puerto Rico Energy Bureau created by Act 57-2014, as amended, to regulate, monitor and enforce the energy public policy of the Government (the **"Energy Bureau"**), (ii) the board of directors of each of the Authority and PREPA, (iii) the FOMB and (iv) the Governor or his delegate. The mere fact that a required approval is obtained does not confer the right to claim



indemnity, refund or any payment whatsoever on account of expectations arisen in any of its stages, or for expenses incurred during the RFP Process or the RFQ Process.

Approval by Energy Bureau

To obtain the Energy Bureau's approval, the Energy Bureau must find that the Partnership Contract complies with the energy public policy and the regulatory framework and issue a certificate certifying that the Partnership Contract complies with the regulatory framework, the energy public policy and applicable law (the "**Energy Compliance Certificate**") within the period specified under applicable law. If the Energy Bureau does not issue the Energy Compliance Certificate, it will be deemed to have approved the Partnership Contract if it does not issue a negative decision regarding the Energy Compliance Certificate within the period specified under applicable law. Once the Energy Compliance Certificate has been issued, any amendment to the Partnership Contract will require the issuance of a new Energy Compliance Certificate.

Approval by Board of Directors of the Authority and Board of Directors of PREPA

After the issuance of the Energy Compliance Certificate and no later than thirty (30) days after the completion of the negotiation of the Partnership Contract, the Board of Directors of the Authority and the Board of Directors of PREPA will evaluate the Committee Report and approve or reject the Partnership Contract by means of a resolution. A resolution approving the Committee Report by the Board of Directors of the Authority requires the affirmative vote of both representatives of the public interest on the Board of Directors of the Authority.

Approval by FOMB

Once the Partnership Contract have been approved by the Energy Bureau, the Board of Directors of the Authority and the Board of Directors of PREPA, the Committee Report and the Partnership Contract will be submitted to the FOMB. The Partnership Contract will require the approval of the FOMB pursuant to, among other things, the FOMB's Contract Review Policy as modified July 3, 2018, which states that any contract with an aggregate expected value of \$10 million or more must be submitted to the FOMB for approval before its execution.

Approval by Governor

Following the FOMB's approval, the Committee Report and the Partnership Contract must be delivered to and approved by the Governor or his delegate. The Governor or his delegate must approve or deny the Partnership Contract in writing within thirty (30) days of receiving the Committee Report and the Partnership Contract. If the Governor or his delegate does not approve the Partnership Contract within thirty (30) days, the Partnership Contract will be treated as if it had been denied by the Governor.

3.8 Completion of RFP Process

Upon completion of the RFP process and execution of the Partnership Contract, the Authority will make public its report regarding the procurement and selection process, which shall contain certain information related to the RFP Process, except trade secrets and proprietary or privileged information of the Qualified Respondents. Information considered trade secrets or non-published financial data may be classified as proprietary by the Qualified Respondents. News or public announcements regarding any award resulting from this RFP (or any portion of the RFP Process) shall not be made by any Qualified Respondent without the Authority's written consent.

The Authority may cancel the award of a Partnership Contract at any time before the Partnership Contract is signed by PREPA and the Selected Proponent, without recourse to or liability by the Authority, PREPA, the FOMB, the Partnership Committee or any of their agents and advisors.



4. Submission and Evaluation of Proposals

4.1 Proposal Requirements

Detailed Proposal requirements will be provided in subsequent addenda to this RFP. At minimum, a Proposal submitted pursuant to this RFP will include the certifications included in **Annex B** (*Federal Funding Certifications and Conditions*) and **Annex C** (*Form of Respondent Certification*) of this RFP and must comply with any additional requirements set forth in Article 9(a) of Act 29.

4.2 Indicative Evaluation Criteria

Act 29 and Act 120 require the Partnership Committee to take into account certain factors in evaluating responses to the RFP. The Partnership Committee will review and evaluate Proposals based on the definitive evaluation criteria developed by the Authority and the Partnership Committee to meet the objectives of the Project, including those set forth in Act 120, Act 29 and Section 2 (*Key Transformation Objectives*) of the CIM, and provided to Qualified Respondents in subsequent addenda to this RFP. Qualified Respondents will be given sufficient time to respond to the definitive evaluation criteria. The evaluation criteria for the Project are expected to consist of the following graded criteria, among others:

- Criterion 1 – Reputation and Commercial, Financial, Operational and Technological Capacity;
- Criterion 2 – Financial and Compensation Proposal; and
- Criterion 3 – Operating Proposal.

The indicative evaluation criteria set forth in this section of the RFP are subject in all respects to the definitive evaluation criteria to be provided in subsequent addenda to this RFP. The Authority and the Partnership Committee may consider any other criterion that, in their sole and absolute discretion, they determine to be appropriate or necessary to award the Partnership Contract pursuant to Act 29 and Act 120.

4.3 Submission Instructions

All Proposals are to be submitted via PowerAdvocate® on or before the Submission Deadline. PowerAdvocate® submission instructions will be provided to Qualified Respondents in a subsequent addendum to this RFP.

All communications with the Authority or its designated representative(s) in connection with this RFP must be submitted via PowerAdvocate®. Communications submitted to the Authority or its designated representative(s) in connection with this RFP in any other manner (including via the P3TDProject@p3.pr.gov email address) will not be accepted.

By submitting a Proposal, the Qualified Respondent specifically authorizes the Authority, PREPA, the Partnership Committee and their respective officers, employees, advisors, counsel, accountants and other consultants and representatives to make any inquiry or investigation to verify the statements, documents and information submitted in connection with such Proposal, and to seek clarification from the Qualified Respondent's directors, officers, employees, advisors, counsel, accountants and other consultants and representatives related thereto.

The Authority also reserves the right to make such investigations as it deems necessary as to the qualifications or perceived conflicts of interest of any and all Qualified Respondents. Any appearance of a Conflict of Interest (as defined in Section 5.7 (*Conflicts of Interest and Ineligible Persons*) of this RFP) will constitute sufficient cause for the outright rejection of a Proposal. The Authority reserves the right to accept or reject, in whole or in part, and



without further explanation, any or all Proposals submitted and/or cancel this solicitation and reissue this RFP, or another version of it.

4.4 Addenda to RFP

As indicated in Section 1.3 (*Key Milestones*) of this RFP, each Qualified Respondent is responsible for periodically reviewing the PowerAdvocate® website for regular updates, amendments and addenda concerning the RFP and other important information.

The Authority reserves the right to amend this RFP at any time. All addenda will become part of this RFP. Each addendum will be available via PowerAdvocate®. In the event of any conflict in wording or issue of interpretation, issued addenda will prevail over the original wording in this RFP and any wording in prior addenda. Each Qualified Respondent will acknowledge receipt of each addendum in its Proposal. Each Qualified Respondent is solely responsible for ensuring that it has received all communications issued by the Authority and PREPA. To the extent that a Qualified Respondent has formed a consortium to participate in the RFP for this Project, such Qualified Respondent is also solely responsible for ensuring that each consortium member and each individual person, partnership, company or legal entity that is formally or informally reviewing the Project and intends to participate as a potential equity investor in the Private Party that will execute the Partnership Contract for this Project (each, a “**Team Member**”) have received all communications issued by the Authority and PREPA. Failure to obtain any such communication is at the sole and absolute risk of the Qualified Respondent and its Team Members, and the Authority and PREPA accept no responsibility for the failure of any Qualified Respondent or Team Member to receive or obtain all RFP information (including addenda). Each Proposal is deemed to be made on the basis of the complete RFP, as amended by any addenda.

4.5 Rejection and Withdrawal of Proposals

Issuance of this RFP does not constitute a commitment by the Authority to award a Partnership Contract. The Authority reserves the right to accept or reject, in whole or part, and without further explanation, any or all Proposals submitted and/or cancel this solicitation and reissue this RFP, or another version of it.

A Qualified Respondent may withdraw a Proposal by delivering to the Authority a written request for withdrawal prior to the Submission Deadline via PowerAdvocate®. Any such withdrawal does not prejudice the right of a Qualified Respondent to submit another Proposal prior to the Submission Deadline.

4.6 Ownership of a Proposal

All materials submitted in response to this RFP shall become the property of the Authority, irrespective of the selection or rejection of a Proposal.

4.7 Errors and Omissions in a Proposal

The Authority reserves the right to reject a Proposal that contains an error or omission. The Authority also reserves the right to request correction of any errors or omissions and/or to request any clarification or additional information from any particular Qualified Respondent without seeking clarifications from all Qualified Respondents.



5. Miscellaneous Legal

5.1 Legal Framework

Qualified Respondents are encouraged to review the following documents, which are or will be available for download on the Authority's website at <http://www.p3.pr.gov>, for further background on the Project and the legal framework within which it will be executed:

- the PREPA Organic Act;
- Act 29;
- Act 120;
- the Regulation;
- PROMESA;
- the Puerto Rico Energy Transformation and RELIEF Act, Act No. 57-2014, as amended; and
- the PREPA Revitalization Act, Act No. 4-2016, as amended.

In addition, the PREPA Fiscal Plan, certified on August 1, 2018 by the FOMB, is available at <http://www.oversightboard.pr.gov/documents>. The Financial Information and Operating Data Report for Puerto Rico, dated December 18, 2016, and the New Fiscal Plan for Puerto Rico, certified on October 23, 2018 by the FOMB, are available at <http://www.aafaf.pr.gov>.

5.2 Consortia

To the extent that any Qualified Respondent has formed or proposes to form a consortium to participate in this RFP, such Qualified Respondent should include in its Proposal the identity, role and capabilities of each consortium member and each Team Member. Team Members will include, without limitation, the ultimate owner or holding company of any such investor or, in the case of a managed fund or pension plan, the manager of the fund or pension plan. Each Team Member and its role must be identified in a Qualified Respondent's Proposal and may not be changed without the prior written consent of the Partnership Committee.

Except as specifically provided to the contrary in this RFP, no Team Member may join or participate, directly or indirectly, as a Team Member with more than one Qualified Respondent for the Project. Each person or legal entity that participates as a Team Member is responsible for ensuring that no other person or legal entity that is Related (as defined below) to it joins or participates, directly or indirectly, as a Team Member in any other Qualified Respondent. Unless otherwise provided herein, any violation of this provision by a Qualified Respondent will disqualify such Qualified Respondent and each of its Team Members.

A person or company is "**Related**" to another person or legal entity if:

- one may exercise Control (as defined below) over the other; or
- each is under the direct or indirect Control (as defined below) of the same ultimate person or legal entity.

For purposes of this RFP, a person or legal entity exercises "**Control**" of another if (a) it is the owner of any legal, beneficial or equitable interest in 50% or more of the voting securities in a corporation, partnership, joint venture, other person or entity or (b) it has the capacity to (i) control the composition of the majority of the board of directors



(or equivalent governing body) of any such person or entity, (ii) control the decisions made by or on behalf of any such person or entity or (iii) otherwise direct or cause the direction of the management, actions or policies of any such person or entity (whether formally or informally); and the terms “**Controlling**” and “**Controlled**” have corresponding meanings.

Each of the Team Members will ensure compliance with all licensing and other requirements under applicable laws with respect to the services to be provided by such Team Member.

Subject to the requirements and entitlements of the Authority set forth below, submission of a Proposal will not limit a Qualified Respondent’s ability to add to, substitute or subtract from its Team Members during the procurement process.

If for any reason, after the Submission Deadline, a Qualified Respondent wishes or is required to: (i) change any Team Members listed in the Qualified Respondent’s Proposal (either by adding new members, removing listed members or substituting new members for listed members), (ii) materially change the ownership or Control of a Qualified Respondent or a Team Member or (iii) change the legal relationship between the Qualified Respondent and/or its Team Members, such as the creation of a new joint venture, partnership or legal entity that will take the place of the Qualified Respondent, then, in each case, the Qualified Respondent must submit a written application (with such information as the Partnership Committee may require) to the Partnership Committee seeking its consent to the proposed change, which consent may be withheld, delayed or conditioned in the sole and absolute discretion of the Partnership Committee.

Without limiting the foregoing, the Partnership Committee may refuse to consent to a change to a Qualified Respondent or its Team Members and/or may disqualify the Qualified Respondent from further participation in the procurement process if, in its sole and absolute discretion, (a) the change would result in (i) a less desirable Qualified Respondent or less desirable Team Members than that originally proposed in the Qualified Respondent’s Proposal or (ii) the Qualified Respondent or its Team Members being materially different from the Qualified Respondent that submitted the Proposal, (b) evaluating the application for a change would delay the evaluation process or (c) the Partnership Committee deems the change detrimental to the process, the Project, PREPA or the Authority.

5.3 Restricted Parties

The following entities will be deemed “**Restricted Parties**” and neither they nor their respective directors, officers, partners, employees and persons or legal entities Related to them are eligible to participate as Team Members or to otherwise assist any Qualified Respondent or Team Member, directly or indirectly, or participate in any way as a director, officer, employee, advisor, counsel, accountant or other consultant or otherwise in connection with any Qualified Respondent. Each Qualified Respondent will ensure that each Team Member does not use, consult, include or seek advice from any Restricted Party. The following Restricted Parties have been identified:

- Ankura Consulting Group, LLC
- Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
- Cancio, Nadal, Rivera & Díaz, PSC
- Citigroup Global Markets Inc.
- Cleary Gottlieb Steen & Hamilton LLP
- CPM P.R. LLC
- Ernst & Young LLP
- Filsinger Energy Partners



- Greenberg Traurig LLP
- Hogan Lovells US LLP
- ICF International, Inc.
- King & Spalding LLP
- McKinsey & Company, Inc.
- Navigant Consulting, Inc.
- Norton Rose Fulbright US LLP
- O'Melveny & Myers LLP
- O'Neill & Borges LLC
- Pietrantonio Menendez & Alvarez LLC
- Proskauer Rose LLP
- Rooney Rippie & Ratnaswamy LLP
- Rothschild Inc.

At all times during the procurement process, Qualified Respondents must comply, and must ensure that all persons engaged to provide any type of assistance in connection with the Project are in compliance, with the Authority's Guidelines for the Evaluation of Conflicts of Interest and Unfair Advantages in the Procurement of Public-Private Partnership Contracts (the "**Ethics Guidelines**"), which are available for download on the Authority's website: <http://www.p3.pr.gov>.

Qualified Respondents should be aware that the list of Restricted Parties is not exhaustive and that a person that is not included as a Restricted Party may still be prohibited from participating in the Project pursuant to the provisions of the Ethics Guidelines.

Finally, except as to any Restricted Party, the fact that a person provides or has provided services to the Authority, PREPA or AAFAF in matters not related to the Project may not automatically prohibit such person from participating in the Project. To the extent any question exists as to whether such a person is a Restricted Party, the Qualified Respondent should consult with the Authority.

5.4 Confidentiality of Proposal

All Proposals will become the property of the Authority and may become public in accordance with applicable law, except for documents or information submitted by Qualified Respondents that are trade secrets, proprietary information or privileged or confidential information of the Qualified Respondents. Qualified Respondents are advised to review the confidentiality and publication provisions contained in Articles 9(i) and 9(j) of Act 29, Act 120 and the corresponding sections of the Regulation. In order to ensure that documents identified by Qualified Respondents as "confidential" or "proprietary" will not be subject to disclosure under Act 29, Qualified Respondents must label such documents as "confidential" or "proprietary," provide a written explanation of why such labeled documents are "confidential" or "proprietary," including why the disclosure of the information would be commercially harmful, specifically refer to any legal protection currently enjoyed by such information and why the disclosure of such information would not be necessary for the protection of the public interest, and request that the documents so labeled be treated as confidential by the Partnership Committee according to the process described in the following paragraph.



If a Qualified Respondent has special concerns about confidential or proprietary information that it desires to make available to the Partnership Committee prior to its Proposal, such Qualified Respondent may wish to:

- make a written request to the Partnership Committee for a meeting to specify and justify proposed confidential or proprietary documents;
- make an oral presentation to the Partnership Committee staff and legal counsel; and
- receive written notification from the Partnership Committee accepting or rejecting confidentiality requests.

Failure to take such precautions prior to filing a Proposal may subject confidential or proprietary information to disclosure under Articles 9(i) and 9(j) of Act 29, Act 120 and/or the corresponding provisions of the Regulation.

The Partnership Committee will evaluate all confidentiality requests according to the criteria indicated in Act 29, Act 120 and the Regulation. The Partnership Committee will determine whether or not the requested materials are exempt from disclosure. Upon such determination, the Authority will endeavor to maintain the confidentiality of any information that a Qualified Respondent indicates to be proprietary or a trade secret, or that must otherwise be protected from publication according to law, except as required by law or by a court order. In the event that the Partnership Committee elects to disclose the requested materials, it will notify the Qualified Respondent of its intent to disclose, in which case the Qualified Respondent may request the immediate return of such materials prior to disclosure by the Partnership Committee and they will thereafter form no part of the Qualified Respondent's submission. In no event will the Government, the Authority, the Partnership Committee or PREPA be liable to a Qualified Respondent for any disclosure required by law or a court order of all or a portion of a Proposal filed with the Authority.

Upon execution of the Partnership Contract, the Partnership Committee is required to make public its report regarding the procurement process, which report will contain information related to the qualification, procurement, selection and negotiation process, and the information contained in the Proposal, except information that qualifies as trade secrets, confidential, proprietary or privileged information of the Qualified Respondents or its Team Members clearly identified as such by the Qualified Respondents, or information that must otherwise be protected from publication according to law, as may have been determined by the Partnership Committee, unless otherwise required by law or by a court order.

5.5 Use of Confidential Information

Each Qualified Respondent must declare, and agree to be under an obligation to declare, that it does not have knowledge of or the ability to avail itself of confidential information of the Government, PREPA or the Authority relevant to the Project, except to the extent it has been expressly authorized by the Government, PREPA or the Authority. Such confidential information:

- will remain the sole property of the Government, the Authority or PREPA, as applicable, and the Qualified Respondent and its Team Members will treat it as confidential;
- may not be used by the Qualified Respondent or its Team Members for any other purpose other than submitting a Proposal or the performance of any subsequent agreement relating to the Project with the Government, the Authority or PREPA, as applicable;
- may not be disclosed by the Qualified Respondent or any Team Member to any person who is not involved in the Qualified Respondent's preparation of its Proposal or the performance of any subsequent agreement relating to the Project with the Government, the Authority or PREPA, as applicable, without prior written authorization from the party in respect of whom the confidential information relates;
- if requested by the Government, the Authority or PREPA, will be returned or destroyed, as appropriate, no later than ten calendar days after such request; and



- may not be used in any way that is detrimental to the Government, the Authority or PREPA.

Each Qualified Respondent and its Team Members will be responsible for any breach of the provisions of this Section 5.5 by any person to whom any of them discloses the confidential information. Each Qualified Respondent and its Team Members acknowledge and agree that a breach of the provisions of this Section 5.5 would cause the Authority, PREPA, the Government and/or their related entities to suffer loss which could not be adequately compensated by damages, and that the Authority, PREPA, the Government and/or any related entity may, in addition to any other remedy or relief, enforce any of the provisions of this Section 5.5 upon submission of the Qualified Respondent's Proposal to a court of competent jurisdiction for injunctive relief without proof of actual damage to the Authority, PREPA, the Government or any related entity.

The provisions in this Section 5.5 will survive any cancellation of this RFP and the conclusion of the RFP Process.

5.6 No Collusion or Lobbying

The Authority and PREPA are committed to a fair, open and transparent selection process.

No Collusion

Qualified Respondents and Team Members will not discuss or communicate, directly or indirectly, with any other Qualified Respondent(s) or any director, officer, employee, advisor, counsel, accountant, other consultant or representative or Team Member of any other Qualified Respondent regarding the preparation, content or representation of their Proposals. Proposals will be submitted without any connection (*i.e.*, arising through an equity interest (other than an equity interest that does not represent a Controlling interest in an entity, as determined by the Authority from time to time) in or of a Qualified Respondent or Team Member), knowledge, comparison of information or arrangement, with any other Qualified Respondent or any director, officer, employee, advisor, counsel, accountant or other consultant or representative or Team Member of any other Qualified Respondent.

By submitting a Proposal, a Qualified Respondent, on its own behalf and as authorized agent of each firm, corporation or individual Team Member of the Qualified Respondent, represents and confirms to the Authority, with the knowledge and intention that the Authority may rely on such representation and confirmation, that its Proposal has been prepared without collusion with other Qualified Respondents, fraud or unfair advantages. The Authority reserves the right to disqualify any Qualified Respondent that does not comply with this provision.

No Lobbying

Qualified Respondents, their Team Members and their respective directors, officers, employees, advisors, counsel, accountants and other consultants and representatives will not, except as expressly contemplated by this RFP or as expressly directed or permitted by the Authority, attempt to communicate, directly or indirectly, with any representative of the Authority, PREPA, the Partnership Committee or any of its members, AAFAF, the Energy Bureau, the Government, the FOMB or the federal government (other than as provided for in this RFP) in relation to the Project or the RFP Process, at any stage of the RFP Process, including during the evaluation process. The Authority reserves the right to disqualify a Qualified Respondent that does not comply with this provision.

Qualified Respondents, their Team Members and their respective directors, officers, employees, advisors, counsel, accountants and other consultants and representatives must certify that they have complied with the requirements of the Regulation by completing the Federal Funding Certifications and Conditions included as **Annex B** of this RFP and the Form of Respondent Certification included as **Annex C** of this RFP.



5.7 Conflicts of Interest and Ineligible Persons

Each Qualified Respondent submitting a Proposal on behalf of such Qualified Respondent and the Team Members of such Qualified Respondent must declare and continue to be under an obligation to declare all Conflicts of Interest or any situation that may be reasonably perceived as a Conflict of Interest that exists now or may exist in the future. A “**Conflict of Interest**” includes any situation or circumstance where, in relation to the Project, the Qualified Respondent submitting a Proposal or any Team Member of such Qualified Respondent has other commitments, relationships or financial interests that:

- (a) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of the Authority’s or PREPA’s independent judgment; or
- (b) could or could be seen to compromise, impair or be incompatible with the effective performance of its obligations under the Partnership Contract.

In connection with its Proposal, each Qualified Respondent and each Team Member will:

- (a) avoid any Conflict of Interest in relation to the Project;
- (b) disclose to the Authority and to PREPA without delay any actual or potential Conflict of Interest that arises during the RFP Process or at any point in the procurement process; and
- (c) comply with any requirements prescribed by the Authority and PREPA to resolve any Conflict of Interest.

Each Qualified Respondent is responsible for ensuring that all persons engaged to provide any type of assistance in connection with the Project are in compliance with the provisions of the Ethics Guidelines and, to the extent any question exists as to compliance with the Ethics Guidelines, the Qualified Respondent should consult with the Authority.

In addition to all contractual or other rights or rights available at law or in equity or legislation, the Authority and PREPA may immediately exclude a Qualified Respondent or any of its Team Members from further consideration or remove the Qualified Respondent or any Team Member from the RFP Process if:

- (a) the Qualified Respondent knew, or reasonably should have known, and fails to disclose an actual or potential Conflict of Interest;
- (b) the Qualified Respondent submitting a Proposal or a Team Member of such Qualified Respondent fails to comply with any requirements prescribed by the Authority or PREPA to resolve a Conflict of Interest; or
- (c) the Qualified Respondent’s Conflict of Interest issue cannot be resolved.

Pursuant to the Regulation, any person, by virtue of its participation in the RFP Process, authorizes the Authority to apply to the relevant competent governmental authority to obtain further information regarding a Qualified Respondent and, in particular, details of convictions of the offenses listed in Article 9(c)(ii) of Act 29 if the Partnership Committee considers it necessary for its selection or evaluation process.

5.8 Disclaimer

The information provided in this RFP, or any other written or oral information provided by the Authority, PREPA, the Partnership Committee, AAFAF, the FOMB, the Government or their respective officers, employees, advisors, counsel, consultants or other representatives in connection with the Project or the selection process is provided for the convenience of the Qualified Respondents only. Qualified Respondents and their Team Members will make their own conclusions as to such information. Oral explanations or instructions from officials, employees, advisors,



counsel, consultants or other representatives of the Authority, PREPA, the Partnership Committee or any Puerto Rico public agency will not be considered binding on the Authority, PREPA, the Partnership Committee, AAFAF, the FOMB or the Government. The Authority, PREPA, the Partnership Committee, the Government and their respective officers, employees, advisors, counsel, consultants and other representatives make no representation or warranty as to any information provided in connection with the RFP Process or the RFQ Process. The accuracy and completeness of such information is not warranted by any of them and none of them will have any liability in connection with such information or the selection process, all of which liability is expressly waived by each Qualified Respondent and each Team Member of such Qualified Respondent. This RFP is not an offer to enter into any contract of any kind whatsoever.

5.9 Reservation of Rights

In furtherance of the Authority's mission, the Partnership Committee reserves the right to reject any and all Proposals, to waive technical defects, irregularities or any informality in Proposals, and to accept or reject any Proposals in its sole and absolute discretion. The Partnership Committee also reserves the right to postpone the date on which Proposals are required to be submitted, or to take any other action it may deem in the best interests of the Authority, PREPA and the Government.

In addition, the Authority and PREPA reserve all rights (which rights will be exercisable by the Authority and PREPA in their sole and absolute discretion) available to them under applicable laws and regulations, including, without limitation, with or without cause and with or without notice, the right to:

- (a) modify the procurement process to address applicable law and/or the best interests of the Authority, PREPA and the Government;
- (b) develop the Project in any manner that they deem necessary and change the limits, scope and details of the Project;
- (c) if the Authority and PREPA are unable to negotiate a Partnership Contract to their satisfaction with a Qualified Respondent, terminate the process or pursue other alternatives relating to the Project, or exercise such other rights as they deem appropriate;
- (d) cancel the procurement process, as applicable, in whole or in part, at any time prior to the execution by PREPA of the Partnership Contract, without incurring any cost, obligation or liability whatsoever;
- (e) issue a new request for Proposals after withdrawal of this RFP;
- (f) reject or disqualify any and all Proposals and responses received at any time for any reason without any obligation, compensation or reimbursement to any existing Qualified Respondent or Team Member;
- (g) modify all dates, deadlines, processes, schedules and other requirements set out, described or projected in this RFP;
- (h) terminate evaluations of responses received at any time;
- (i) exclude any Qualified Respondent from submitting any response to this RFP based on the failure to comply with any requirements;
- (j) issue addenda, supplements and modifications to this RFP;
- (k) require direct confirmation of information furnished by a Qualified Respondent, additional information from a Qualified Respondent concerning its response or additional evidence of qualifications to perform the work described in this RFP;
- (l) consider, in the evaluation of any Proposal, any instances of poor performance by a Qualified Respondent, Team Member or individuals who will play an important role in the Project on behalf of a Qualified



Respondent and Team Member that any of the Authority, PREPA or the Government may have experienced or experienced by a third party, whether one of the included references or otherwise;

- (m) seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFP;
- (n) add or delete Qualified Respondent responsibilities from the information contained in this RFP or any subsequent process instruments;
- (o) negotiate with any party without being bound by any provision in its response;
- (p) waive any deficiency, defect, irregularity, non-conformity or non-compliance in any response to this RFP or permit clarifications or supplements to any response to this RFP, and accept such response even if such deficiency, defect, irregularity, non-conformity or non-compliance would otherwise render the response null and void or inadmissible;
- (q) add or eliminate facility expansion to or from the Project; and
- (r) exercise any other right reserved or afforded to the Authority and PREPA under Act 29, Act 120, the Regulation, this RFP or applicable law.

This RFP does not commit either the Authority or PREPA to enter into a contract or proceed with the Project as described herein. The Authority, PREPA, AAFAF, the FOMB and the Government assume no obligations, responsibilities or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP, or in considering or making any submission. All of such costs will be borne solely by each Qualified Respondent.

5.10 Limitation of Damages

Each Qualified Respondent, by submitting a Proposal, agrees that in no event will the Authority, PREPA, the Partnership Committee, AAFAF, the FOMB and the Government or any of their respective directors, officers, employees, advisors, counsel or representatives be liable, under any circumstances, for any claim, demand, liability, damage, loss, suit, action or cause of action, whether arising in contract, tort or otherwise, and all costs and expenses relating thereto (each, a **"Claim"**), or to reimburse or compensate the Qualified Respondent, any Team Member or their respective directors, officers, employees, advisors, counsel, accountants and other consultants and representatives, in any manner whatsoever, including, without limitation, any costs of preparation of the Proposal or the response to the RFP, loss of anticipated profits, loss of opportunity or for any other matter. Without in any way limiting the above, each Qualified Respondent and Team Member of such Qualified Respondent specifically agrees that it will have absolutely no Claim against the Authority, PREPA, the Partnership Committee, AAFAF, the FOMB or the Government or any of their respective directors, officers, employees, advisors, counsel or representatives if any such party for any reason whatsoever:

- does not select a list of Qualified Respondents;
- suspends, cancels or in any way modifies the Project or the solicitation process (including modification of the scope of the Project or modification of this RFP or both);
- accepts any compliant or non-compliant response or selects a list of one or more Qualified Respondent(s);
- under the terms of this RFP, permits or does not permit a Restricted Party to advise, assist or participate as part of a Qualified Respondent or its Team Members; or
- breaches or fundamentally breaches a contract or legal duty of the Authority, PREPA, the Partnership Committee, AAFAF, the FOMB or the Government, whether express or implied, and each Qualified Respondent and each Team Member waives any and all Claims whatsoever, including Claims for loss of



profits or loss of opportunity, if the Qualified Respondent is not selected as the Selected Proponent for any other reason whatsoever.

5.11 Judicial Review

Judicial review of the selection and award process for Proposals must be pursued in accordance with Article 20 (Judicial Review Procedures) of Act 29. Only those Qualified Respondents who comply with the applicable requirements set forth in Article 20 of Act 29 may request judicial review of a final determination by the Partnership Committee. Mechanisms for requesting reconsideration before the Authority or PREPA are not be available.

Article 20 establishes the period within which to seek judicial review, for the Puerto Rico Court of Appeals to address the writ of review, and to seek a writ of certiorari before the Puerto Rico Supreme Court. Article 20 also prescribes the notification requirements and the consequences of seeking such judicial remedies, including that if either the Puerto Rico Court of Appeals or the Puerto Rico Supreme Court grants a writ of review or writ of certiorari, as applicable, the procedures for the qualification of respondents, or for the evaluation or selection of Proposals or negotiation of the Partnership Contract by the Partnership Committee will not be stayed.

The qualification determinations of the Partnership Committee and the approval of the Partnership Contract by the Governor or the official onto whom he/she delegates, as provided under Article 9(g)(ii)-(v) of Act 29 will only be overturned upon a finding of manifest error, fraud or arbitrariness. The non-prevailing party will defray the expenses incurred by the other parties involved in judicial review proceedings under Article 20 of Act 29. The Qualified Respondent that seeks judicial review may not, under any circumstance, as part of its remedies, claim the right to be redressed for indirect, special or foreseeable damages, including lost profits.

The above is only a summary of Article 20 of Act 29, and Qualified Respondents should review and understand all such judicial review provisions.

5.12 Cost of Preparing Proposals

Qualified Respondents who participate in the RFP Process and submit a Proposal do so on a voluntary basis, and therefore will not be entitled to compensation of any kind. None of the Authority, PREPA or any other instrumentality of the Government will be responsible for any expenses in the preparation and/or presentation of the Proposals in connection with this RFP. No Qualified Respondent will be reimbursed for any cost or expense (including travel expenses) incurred as a result of preparing or submitting their Proposals.



GOVERNMENT OF PUERTO RICO
Puerto Rico Public-Private Partnerships Authority



ANNEX A: TERM SHEET



TERM SHEET FOR T&D SYSTEM PARTNERSHIP CONTRACT

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

*This term sheet (the “**Term Sheet**”) is subject to the terms and conditions set forth in the RFP, and neither this Term Sheet nor any of its contents may be used for any other purpose without the prior written consent of the Authority and PREPA. No legal obligation or liability shall arise between the parties with respect to the subject matter hereof unless and until the Partnership Contract shall have been finalized in mutually acceptable form, approved by the parties’ respective governing bodies and by the relevant Puerto Rico governmental authorities and executed by both parties, and then only in accordance with the terms and conditions thereof. Although the terms “**Concession**” and “**Concessionaire**” are used throughout this Term Sheet, Puerto Rico law will likely require the Partnership Contract to be structured, as a formal legal matter, as a lease and management agreement.*

1. GENERAL

1.1. Parties:

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

1.2. Project:

Pursuant to the Partnership Contract, Owner shall grant Concessionaire, on an exclusive basis, the right and responsibility to, among other things: (i) manage, operate, maintain, rehabilitate, repair, refurbish, replace, improve, expand, as needed, and finance the electric power transmission and distribution system and related facilities (the “**T&D System**”) owned by Owner; (ii) provide all transmission and distribution services to customers of the T&D System (“**T&D Customers**”); (iii) enter into agreements to procure electric power from third parties to meet the demand of the T&D Customers and dispatch all available power in accordance with Industry Standards (as defined below) and the terms of the Partnership Contract; (iv) bill and collect from T&D Customers for Concessionaire’s own account all applicable

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

1.3. Administrator:

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

1.4. Term:

The Partnership Contract shall become effective on the date on which it is executed (the “**Effective Date**”), which shall occur following satisfaction of the Conditions to Execution (as defined below), and shall remain in full force and effect for a period of [thirty (30)] years from the Commencement Date (as defined below) unless earlier terminated in accordance with the terms of the Partnership Contract (the “**Term**”).

1.5. Title III Order: Owner, acting through its authorized representative, shall request that the United States District Court for the District of Puerto Rico, in its capacity as the court presiding over Owner’s case (the “**Title III Case**”) pursuant to Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (known as PROMESA), issue a court order (the “**Title III Order**”) providing the following:

- Concessionaire has free and clear title to revenues collected from T&D Customers (other than the Charges, as defined below) it may receive as part of the Concession (the “**Free and Clear Finding**”);
- Concessionaire is not a legal successor to Owner;
- Owner is authorized to enter into the Partnership Contract and assume and assign executory contracts and unexpired leases in connection therewith;
- the Partnership Contract is a legal, valid, binding and enforceable obligation of Owner under Puerto Rico and federal law; and
- certain covenants to be specified in the Partnership Contract related to the Government of Puerto Rico (including, without limitation, a non-impairment covenant) are legal, valid, binding and enforceable.

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

- receipt of approvals from each of: the PREB; the board of directors of each of Owner and the Authority; the Governor of Puerto Rico or his delegate; and the Financial Oversight and Management Board for Puerto Rico (the “**FOMB**”);
- receipt of a Title III Order covering at least the Free and Clear Finding;
- Concessionaire demonstrating to the satisfaction of the Authority that it has, or has unconditional (other than customary routine conditions) access to, the funds necessary to carry out the Concession and to otherwise perform its obligations under the Partnership Contract; and
- Concessionaire delivering confirmation of the Parent Guaranty (as defined below) and establishing the Performance Security Fund (as defined below).

1.7. Conditions to Commencement:

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

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

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

1.8. Commencement Date:

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

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

1.9. Federal Disaster Recovery Funding:

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

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

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

1.10. Reliance:

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

2. SCOPE OF CONCESSION AND CONCESSIONAIRE’S OBLIGATIONS

2.1. Concession Generally:

Commencing on the Commencement Date, Concessionaire shall carry out the Concession in accordance with the operating standards to be set forth in the Partnership Contract, Applicable Law, Prudent Utility Practice (as defined below) and applicable permit requirements (collectively, “**Industry Standards**”), it being understood that the Parties intend that all risks, benefits, revenues, losses, liabilities, obligations and expenses arising out of or related to the Concession shall belong to and be for the account of Concessionaire. The scope of the Concession shall include, without limitation, the rights and responsibilities set forth in this Section 2.

Owner shall covenant and agree with Concessionaire that, except as otherwise provided in the Partnership Contract, Concessionaire, its employees, subcontractors and agents shall be entitled to the exclusive use of the T&D System for the purpose of carrying out the Concession in accordance with the terms of the Partnership Contract.

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

2.2. Risk of Loss:

The Parties shall acknowledge and agree that as between Owner and Concessionaire, risk of loss of, or damage to, the T&D System shall be borne by Concessionaire from the Commencement Date through the expiration of the Term or the earlier termination of the Partnership Contract.

2.3. Regulatory Oversight:

As between Concessionaire and Owner, Concessionaire shall be the sole representative before the PREB with respect to the T&D System. The PREB shall regulate Concessionaire in carrying out the Concession in accordance with Applicable Law. Nothing in the Partnership Contract shall prejudice the powers of the PREB or any other governmental authority to regulate Concessionaire in accordance with Applicable Law or be deemed to provide Owner with any regulatory powers.

Without limiting the foregoing, any action taken by the PREB or any other governmental authority in connection with the exercise of its regulatory powers or in response to a Force Majeure Event (as defined below) shall not constitute a failure of the Government of Puerto Rico to comply with the non-impairment covenant identified in Section 1.5 above.

2.4. Ownership of T&D System:

Owner shall retain title to its real property assets related to the T&D System and to the Retained Assets and Obligations (as defined below), but shall otherwise transfer to Concessionaire all rights and responsibilities primarily related to the T&D System held by Owner as of the Commencement Date necessary for Concessionaire to carry out the Concession, subject to any limitations under Applicable Law (including, without limitation, any restrictions on such transfers pursuant to Owner's existing agreements or set forth in the Puerto Rico Electric System Transformation Act, Act No. 120-2018, as amended). Notwithstanding the foregoing, Concessionaire shall assume all of the responsibilities as if it were the owner of the T&D System, including, without limitation, the obligation to pay license fees, taxes, renewal fees and other charges payable during the Term.

Owner shall not, without Concessionaire's prior written consent, sell, dispose of or create any lien or encumbrance over T&D System assets owned by Owner except as provided under the Partnership Contract.

Administrator may authorize Concessionaire to sell or otherwise dispose of T&D System assets owned by Owner that become obsolete or redundant for purposes of the Concession; provided that any such disposal shall be carried out in compliance with Applicable Law, including, without limitation, any laws or requirements applicable as a result of receipt of Federal Funding, including but not limited to those implemented through 2 C.F.R. Part 200.

2.5. No Representation or Warranty for T&D System:

Owner shall make no representation or warranty of any kind in relation to T&D System and shall expressly disclaim all warranties or merchantability or fitness for a particular purpose that may be implied by Applicable Law.

2.6. Contracts:

Concessionaire shall assume all of Owner's rights and obligations under existing contracts related to the T&D System (including but not limited to any power purchase and operating agreements), which shall be listed in the Partnership Contract and include, without limitation, certain executory agreements and leases that Owner shall have assumed prior to the Effective Date and post-petition agreements and leases entered into by Owner.

Concessionaire shall ensure that any contract (including, without limitation, leases and licenses) to be entered into by Concessionaire during the Term relating to carrying out the Concession that (i) is for a term of twelve (12) months or more, (ii) involves the payment of money to or the receipt of money by Concessionaire in excess of \$1,000,000 or (iii) is otherwise material to or necessary for the operation of the T&D System shall only be entered into by Concessionaire if such contract includes an express provision of assignability, at Administrator's option, to Administrator or its nominee upon the expiration of the Term or the earlier termination of the Partnership Contract.

**2.7. T&D Customer
Billing; Charges:**

Concessionaire shall be responsible for and have the right to bill and collect from T&D Customers, for Concessionaire's own account, all applicable fees, charges and revenues related to the Concession in accordance with the Partnership Contract and Industry Standards.

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

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

- 2.8. Permits:** Concessionaire shall apply for, obtain and maintain all necessary permits, licenses and approvals (and renewals thereof) required to allow Concessionaire to carry out the Concession pursuant to the Partnership Contract (the “**Required Permits**”).
- Owner shall provide reasonably necessary assistance to Concessionaire in securing or transferring the Required Permits to Concessionaire. Concessionaire also shall file such reports, notices, and other communications as may be required by any governmental authority regarding such Required Permits or the Concession.
- 2.9. Labor:** Concessionaire shall be responsible for ensuring that there is the necessary and appropriate personnel to carry out the Concession.
- Prior to the Commencement Date, Concessionaire shall use its best efforts to interview any Owner employee as of the Effective Date who applies to Concessionaire for employment in a job category Concessionaire wishes to fill. Concessionaire may offer employment to any such Owner employee who meets Concessionaire’s stated requirements for employment but shall have no obligation to offer employment to any such Owner employee.
- 2.10. Insurance:** Concessionaire shall maintain at its own expense the insurance coverage for the Term as shall be set forth in the Partnership Contract, including, without limitation:
- property and casualty insurance for the T&D System (which shall, among other things, be of the type and extent required to receive Federal Funding);
 - commercial general liability insurance;
 - excess liability insurance;
 - business interruption insurance;
 - cyber insurance;
 - pollution legal liability insurance; and
 - worker’s compensation insurance, employer’s liability insurance and all other employee-required insurance.
- 2.11. Access:** Concessionaire shall grant Administrator and its representatives reasonable access to the T&D System assets and all information, data and records concerning the T&D System to observe and audit Concessionaire’s performance of the Concession. Concessionaire shall provide Administrator such access during normal business hours and upon reasonable advance written request from time to time. Concessionaire shall be entitled to impose reasonable restrictions on such rights of access in the interest of safety or to prevent undue disruption of its operations.

2.12. Records and Reporting:

Concessionaire shall prepare and maintain complete and accurate books and records related to the T&D System and shall have available a complete and updated copy of such books at an appropriately secure location. Concessionaire shall ensure the backup and storage in safe custody of all information, data and records concerning the T&D System in accordance with Industry Standards.

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

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

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

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

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

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

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

2.15. Taxes: Concessionaire shall: (i) timely file all tax returns or reports required to be filed by it in respect of the Concession; (ii) pay when due all taxes that are or become payable in respect of the Concession; and (iii) timely and properly withhold and pay all taxes required to be withheld and paid by Concessionaire from other persons in respect of the Concession.

Subject to customary exceptions, if the Upfront Payment or any other payments to be made to Owner under the Concession (including indemnification and any other payments to be specified in the Partnership Contract) are subject to withholding taxes in any jurisdiction (including the jurisdiction in which Concessionaire or any of its beneficial owners is organized or domiciled), Concessionaire shall gross-up Owner for the amount of such withholding taxes. The Parties shall cooperate in good faith to reduce or eliminate the amount of such withholding taxes.

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

**2.17. Negative
Covenants:**

Concessionaire shall not, among other things (and as shall be further specified in the Partnership Contract):

- take any steps to liquidate, wind up, dissolve or otherwise transfer or dispose of all or any portion of its property, assets or business other than to carry out a permitted reorganization or restructuring;
- lease, mortgage, grant, or permit any lien or encumbrance on any of the assets of the T&D System or of Concessionaire's rights under the Partnership Contract, except as provided under the Partnership Contract (which shall include the ability to secure debt incurred to finance Concessionaire's obligations under the Partnership Contract with a security interest in revenues (other than the Charges) collected from T&D Customers ("**Net System Revenues**")) and, to the extent applicable, the Servicing Contract;
- establish or acquire any ownership interest in any other person or enter into any business other than the activities required and permitted under the Partnership Contract;
- grant loans or other financial facilities to, or give any guaranty or indemnity for or hold in trust the debts of obligations of, any other person other than in accordance with Prudent Utility Practice or as otherwise permitted under the Partnership Contract;
- declare or pay any dividend or any similar distribution if a Concessionaire default or Event of Default (as defined below) has occurred and is ongoing; or
- subject to the requirements under Applicable Law and the Title III Plan, interfere with or impede the collection and remittance of the Charges.

**2.18. Owner-Retained
Assets and
Obligations:**

Notwithstanding anything to the contrary herein, Owner shall retain and remain liable for the following (the "**Retained Assets and Obligations**"):

- obligations in relation to loans existing prior to the Commencement Date, except those assumed by Concessionaire;
- claims against Owner made after the Commencement Date arising from Owner's acts or omissions before the Commencement Date; and
- certain T&D System assets owned by Owner prior to the Commencement Date, which assets shall be specified in the Partnership Contract.

Notwithstanding the foregoing, Concessionaire shall be responsible for any incremental liability with respect to any of the Retained Assets and Obligations caused or aggravated by Concessionaire's acts or omissions.

2.19. Compliance with Applicable Law:

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

3. CAPITAL INVESTMENTS

3.1. General:

The Parties shall acknowledge and agree that capital investments for the T&D System (“**Capital Investments**”) during approximately the first ten (10) years of the Term shall be principally financed through available Federal Funding. Concessionaire may be requested to provide a specified percentage of “matching” funds for Capital Investments principally financed through available Federal Funding.

Concessionaire shall be required to make additional Capital Investments or enhancements to ongoing Capital Investments contemplated as of the Effective Date in accordance with Prudent Utility Practice, including to provide maintenance-related Capital Investments during the period in which Federal Funding is being deployed.

3.2. Federal Funding for Capital Investments:

Concessionaire shall be responsible for carrying out any Capital Investments financed in full or in part with available Federal Funding, and shall complete all work related to such Capital Investments in compliance with all FEMA, HUD and other applicable federal agency requirements in order to ensure the Federal Funding anticipated or received is administered in accordance with all such requirements. In connection with any such Capital Investments, Concessionaire shall agree to enter into any additional agreements as may be necessary or required to ensure full compliance with Applicable Law, including but not limited to the procurement rules set forth in 2 C.F.R. Part 200 applicable to Owner.

3.3. Additional Capital Investments:

Concessionaire shall propose Capital Investments that are intended to carry out the Concession in accordance with Prudent Utility Practice. Such proposals shall be in the form required by the PREB and shall include, at a minimum: (i) a description of the proposed Capital Investments; (ii) a schedule for the implementation of such Capital Investment; and (iii) the impact of such Capital Investment on the T&D System, including rates charged to T&D Customers.

4. COMPENSATION

4.1. Upfront Payment to Owner:

On the Commencement Date, Concessionaire shall make a one-time, lump-sum payment to Owner in exchange for the right to carry out the Concession (the “**Upfront Payment**”). The amount of the Upfront Payment is intended to cover repayment of Owner’s debtor-in-possession financing, administrative expenses related to Owner’s Title III Case and the Authority’s expenses related to the transactions contemplated in this Term Sheet.

The estimated amount of the Upfront Payment shall be calculated no later than thirty (30) days prior to the Commencement Date. The definitive amount of the Upfront Payment shall be provided to Concessionaire no later than three (3) business days prior to the anticipated Commencement Date; provided that such amount shall be no greater than an amount to be set forth in the Partnership Contract.

4.2. Concessionaire Compensation Generally:

Concessionaire shall be entitled to earn fair and reasonable compensation for carrying out the Concession (“**Concessionaire Compensation**”). Concessionaire Compensation shall consist of (i) a fixed fee (the “**Fixed Fee**”), (ii) an incentive fee (the “**Incentive Fee**”) and (iii) return on Capital Investments by Concessionaire, each of which shall be paid from Net System Revenues. In addition, Concessionaire shall be reimbursed from Net System Revenues for costs and expenses associated with carrying out the Concession, including operating and maintenance expenses. The rates charged to T&D Customers shall be periodically adjusted in accordance with Applicable Law to account for, among other things, such variations in costs and expenses.

For the first ten (10) years of the Term, Federal Funding is anticipated to comprise the majority of the Capital Investments for the T&D System. Over time, Concessionaire shall be expected make Capital Investments in the T&D System in accordance with Prudent Utility Practice. As a result, Concessionaire Compensation shall shift from the Fixed Fee and Incentive Fee to a return on Capital Investments by Concessionaire over time. RFP submissions shall be required to include a proposed timing for transitioning from a compensation model based on the Fixed Fee, the Incentive Fee and a return on Capital Investments to a compensation model based solely on a return on Capital Investments.

4.3. Fixed Fee: The Fixed Fee, expressed in nominal U.S. dollars, shall be such amount as will have been proposed by Parent Co. in its RFP submission, prorated as appropriate for any partial period. The annual Fixed Fee for a given year shall be paid from Net System Revenues over the course of that year. As described in Section 4.7 below, the Fixed Fee shall be reduced by any Return on Capital Invested (as defined below) in such year.

4.4. Incentive Fee: Concessionaire shall have the opportunity to earn a variable Incentive Fee based on its ability to timely exceed certain customer service, technical and operational, and financial performance metrics to be set forth in the Partnership Contract (“**Performance Metrics**”).

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

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

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

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

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

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

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

- days sales outstanding;
- net write-offs per \$100 billed revenue;
- purchased power invoicing; and
- annualized cost savings.

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

4.6. Inflation Adjustment:

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

4.7. Return on Capital Invested:

Concessionaire shall have the ability to earn a return on Capital Investments in accordance with a formula to be approved by the PREB (“**Return on Capital Invested**”). This formula is expected to include an authorized return on equity, return on debt and capital structure. The Return on Capital Invested shall be earned over the depreciable life of the Capital Investments, in accordance with Industry Standards. During any period that Concessionaire Compensation includes the Fixed Fee, the Return on Capital Invested for such period shall reduce the amount of the Fixed Fee for such period.

The Return on Capital Invested for Capital Investments whose depreciable lives (as measured in accordance with Industry Standards) extend beyond the stated initial Term of the Concession shall be addressed in the Partnership Contract.

4.8. Rate Structure: The Fixed Fee, the Incentive Fee and the Return on Capital Invested shall be incorporated into the rates charged to T&D Customers.

4.9. Residual Concession Value: Upon early termination of the Partnership Contract, Concessionaire shall recover an amount based on the net present value of: (i) an amount equal to an agreed upon return on Capital Investments made by Concessionaire but not yet recovered; and (ii) in the event the termination occurs during the first [ten (10)] years of the Term, the remaining balance of the Fixed Fee payable through year [ten (10)] *minus* any amount paid in respect of the return on Capital Investments pursuant to clause (i) above (the “**Residual Concession Value**”). The Residual Concession Value shall be adjusted in the manner to be provided in the Partnership Contract in the event the Partnership Contract is terminated due to a Concessionaire Event of Default.

5. PARENT GUARANTY AND PERFORMANCE SECURITY FUND

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

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

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

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

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

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

6. EVENTS OF DEFAULT AND TERMINATION

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

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

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

“**Expropriation Event**” shall be defined in the Partnership Contract, but shall include any expropriation, compulsory acquisition or seizure of the whole or any substantial part of Concessionaire’s property by a governmental authority without just compensation as required by Applicable Law.

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

- any representation or warranty of Concessionaire under the Partnership Contract or any other document delivered in connection therewith shall prove to be false, inaccurate or misleading in any material respect;

- Concessionaire shall withdraw from, or surrender or abandon, a material portion of the T&D System or clearly indicate in writing an intent to do any of the foregoing (for this purpose, but without limitation, Concessionaire shall be deemed to have withdrawn from, surrendered or abandoned a material portion of the T&D System if, after written notice from Owner or Administrator indicating that it believes Concessionaire has withdrawn from, surrendered or abandoned the T&D System, Concessionaire shall fail to indicate in writing its continued commitment to operate the T&D System and take measurable steps to demonstrate such commitment and/or fail to carry out the Concession);
- Concessionaire shall enter into an agreement to, or shall assign, transfer, convey, lease, encumber or otherwise dispose of all or any portion of its rights or obligations under the Partnership Contract other than in accordance with the express terms of the Partnership Contract;
- Concessionaire shall terminate, or deliver notice of termination of, any related agreement for the Concession;
- Concessionaire shall voluntarily or involuntarily file for bankruptcy or insolvency;
- Concessionaire shall fail to maintain in full force the Parent Guaranty or the Performance Security Fund;
- Concessionaire shall fail to obtain or maintain the required insurance;
- a Concessionaire change of control shall occur;
- Concessionaire shall fail to pay any undisputed amount due to Owner or Administrator when due under the Partnership Contract (including indemnification and any other payments to be specified in the Partnership Contract) after notice and opportunity to cure such failure; and
- Concessionaire shall fail or refuse to perform any material obligation, covenant, agreement, term or condition under the Partnership Contract or the Servicing Contract and, after Administrator's written notice to Concessionaire, such failure or refusal shall continue for a period to be specified in the Partnership Contract or the Servicing Contract, respectively.

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

6.3. Concessionaire's Obligations upon Termination or Expiration:

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

Concessionaire's obligations in connection with the transition of the Concession shall include, without limitation:

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

7. INDEMNIFICATION AND FORCE MAJEURE

7.1. Indemnification by Concessionaire:

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

7.2. Indemnification by Owner:

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

7.3. No Consequential or Punitive Damages: In no event shall any Party be liable to the other Party or obligated in any manner to pay to the other Party any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations under the Partnership Contract, or the material falseness or inaccuracy of any representation made in the Partnership Contract, whether such claims are based upon contract, tort, negligence, warranty or other legal theory. The waiver of the foregoing damages is intended to apply to only disputes and claims as among Owner, Administrator and Concessionaire, and specifically is not intended to limit the scope of the indemnity provisions in Section 7.1 and Section 7.2 above, which indemnification includes all claims by third-parties irrespective of the nature thereof or the relief sought thereby.

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

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

8. MISCELLANEOUS

8.1. Owner Representations and Warranties:

Owner shall provide representations and warranties covering the following matters (among others), as shall be further specified in the Partnership Contract, and subject to entry of the Title III Order, as applicable:

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

8.2. Concessionaire Representations and Warranties:

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

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

8.3. Intellectual Property:

All intellectual property and technology (i) owned, created, developed, licensed or acquired by or on behalf of Concessionaire or its affiliates and (ii) used in, necessary for or related to the Concession (including any intellectual property transferred to Concessionaire in accordance with Section 2.4 (such transferred intellectual property, “**Transferred IP**”)) (collectively, (i) and (ii), “**Concession IP**”) shall during the Term be owned by Concessionaire or its affiliates, as applicable, subject to the terms and conditions of the Partnership Contract.

Concessionaire shall grant Owner and Administrator a perpetual, irrevocable, worldwide, royalty-free, non-exclusive, sublicensable and transferable license to use, modify or otherwise exploit Concession IP owned or sublicensable by Concessionaire for any purpose and in connection with any products or services; provided that Owner’s and Administrator’s right to grant sublicenses to any successor concessionaire shall be limited solely to the use, modification or other exploitation of Concession IP in connection with the operation of the T&D System. For the

avoidance of doubt, upon expiration or early termination of the Partnership Contract, any Transferred IP shall be assigned to Administrator in accordance with Section 6.3 and the scope of the foregoing license shall automatically be limited to non-Transferred IP. In connection with the foregoing, the Concessionaire shall deliver to Administrator a copy of all Concession IP used in or necessary for the operation of the T&D System and any documentation related thereto.

Concessionaire shall not take any steps to transfer or dispose of any Concession IP owned by Concessionaire.

8.4. Assignment:

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

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

8.5. Governing Law:

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

**8.6. Dispute
Resolution:**

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

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

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

- 8.7. Waiver of Certain Defenses:** Concessionaire shall acknowledge that it is responsible for the Concession and shall agree that, unless otherwise permitted pursuant to the provisions of the Partnership Contract with respect to the occurrence of Force Majeure Events, and without limiting such provisions, it shall not assert (i) impossibility or impracticability of performance, (ii) lack of fitness for use or operation of the T&D System, (iii) the existence, non-existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event or contingency that may be a basic assumption of Concessionaire or (iv) commercial frustration of purposes, in each case as a defense against any claim by Owner and/or Administrator against Concessionaire.
- 8.8. Relationship of the Parties:** Nothing contained in the Partnership Contract shall be intended to create, or shall be deemed or construed as creating, any partnership, joint venture or other legal entity, or give rise to any fiduciary duty, between the Parties. No Party shall have the authority or right, or hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of any other Party, except as expressly provided in the Partnership Contract. No provision in the Partnership Contract shall result in Concessionaire or any of its employees, subcontractors, agents or representatives being considered an employee, subcontractor, agent or representative of Owner or Administrator. Concessionaire shall be an independent contractor and shall be responsible for and have control over the Concession, subject to the standards to be set forth in the Partnership Contract.
- 8.9. Expenses:** Each Party shall be responsible for its own costs and expenses related to the review, diligence, negotiation and consummation of the transactions contemplated in this Term Sheet.



GOVERNMENT OF PUERTO RICO
Puerto Rico Public-Private Partnerships Authority



ANNEX B: FEDERAL FUNDING CERTIFICATIONS AND CONDITIONS



FEDERAL FUNDING CERTIFICATIONS AND CONDITIONS

To the extent the Authority and PREPA determine to submit any of the costs incurred under the Partnership Contract for Federal reimbursement, the Qualified Respondent will be required to comply with all applicable Federal certifications and requirements. The Partnership Contract will include the contract provisions required by 2 C.F.R. § 200.326 and applicable FEMA and HUD guidance.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

INSTRUCTIONS FOR CERTIFICATION

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

unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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

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

QUALIFIED RESPONDENT
Company Name

Contract Number

Name of Qualified Respondent's
Authorized Official

Title

Signature of Qualified Respondent's
Authorized Official

Date

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

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

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

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

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

QUALIFIED RESPONDENT Name

Signature of Qualified Respondent's
Authorized Official

Name and Title of Qualified Respondent's
Authorized Official

Date

FEDERAL FUNDING CONDITIONS

To the extent the Authority and PREPA determine that any costs under the Partnership Contract will be submitted for HUD reimbursement, the Partnership Contract will require that the Private Party comply with all applicable HUD requirements, including the following:

1. Section 3 Covered Assistance

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

2. Section 3 Clause

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

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

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

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

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

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

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

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

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

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

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

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



ANNEX C: FORM OF RESPONDENT CERTIFICATION



[Letterhead of each Qualified Respondent or Team Member, as applicable]

Mr. Omar J. Marrero, Esq. — Executive Director
Puerto Rico Public-Private Partnerships Authority
Roberto Sánchez Vilella Government Center
De Diego Avenue, Parada 22
San Juan, PR 00940-2001 USA

Re: Puerto Rico Electric Power T&D System PPP - Request for Proposals

Ladies and Gentlemen:

We have carefully reviewed the Request for Proposals dated February 1, 2019, including all annexes thereto (“**RFP**”), issued by the Puerto Rico Public-Private Partnerships Authority and all other documents accompanying or made a part of the RFP. Capitalized terms used in this certificate have the meanings given to them in the RFP.

We acknowledge and agree to comply with all terms and conditions of the RFP, the attached Proposal and all enclosures thereto. Without limitation, we specifically acknowledge the disclaimer contained in Section 5.7 of the RFP and the limitation of damages contained in Section 5.10 of the RFP.

We certify that the information contained in the attached Proposal is true and correct. We further certify that the individual who has signed and delivered this certification is duly authorized to submit the attached Proposal on behalf of the Qualified Respondent or Team Member, as applicable, as its acts and deed and that the Qualified Respondent or Team Member, as applicable, is ready, willing and able to participate in the RFP Process and perform if awarded the Partnership Contract.

We further certify that we are *[describe the type of entity or entities (corporation, partnership, LLC, etc.)]* organized in *[indicate the jurisdiction of organization]* and the entity contemplated by Qualified Respondent and Team Members to be the one that shall execute the Partnership Contract and shall have no impediment to, and shall be authorized to do business in Puerto Rico and to enter into a contractual relationship with government entities in Puerto Rico, as well as to comply with any other applicable Puerto Rico or U.S. laws and/or requirements.

We further certify that our directors, officers, controlling shareholders or subsidiaries, parent company and, in the case of a partnership, our partners, and any person or entity that may be considered an alter ego or the passive economic agent of the Qualified Respondent or Team Member, as applicable (each, a “**Covered Party**”), have not been convicted, have not entered a guilty plea and have not been indicted, and probable cause has not been found for their arrest, in any criminal proceeding in Puerto Rico, the rest of the U.S. or any foreign jurisdiction, for (i) any of the crimes referenced in Articles 4.2, 4.3 or 5.7 of Act No. 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, (ii) any of the crimes typified in Articles 250 through 266 of Act No. 146-2012, as amended, known as the Puerto Rico Penal Code or (iii) any of the crimes listed in Act No. 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property,

including but not limited to the crimes mentioned in Article 6.8 of Act No. 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government, or under the U.S. Foreign Corrupt Practices Act; and no Covered Party is under investigation in any legislative, judicial or administrative proceedings, in Puerto Rico, the rest of the U.S. or any other jurisdiction. The Qualified Respondent and Team Members are in compliance with all federal, state, local and foreign laws applicable to the Qualified Respondent or Team Member(s) that prohibit corruption or regulate crimes against public functions or public funds, including the U.S. Foreign Corrupt Practices Act.

We further certify that we shall continue to comply at all times with laws which prohibit corruption or regulate crimes against public functions or funds, as may apply to the Qualified Respondent or any Team Member, as applicable, whether federal, state or Government statutes, including the U.S. Foreign Corrupt Practices Act. In addition, we further certify that we shall continue to conduct our business in compliance in all material respects with all applicable federal, state, local and foreign laws and regulations.

We further certify that no officer or employee of the Authority, PREPA, the Partnership Committee, AAFAF, the Energy Bureau, the Government, the FOMB or any public agency of Puerto Rico that participates in the selection process described in, or negotiations or approval in connection with, the RFP (nor any member of their families) has an economic interest in or is connected with the *[Qualified Respondent or Team Member, as applicable]*, and no officer or employee of the Authority, PREPA, the Partnership Committee, AAFAF, the Energy Bureau, the Government, the FOMB or any public agency of Puerto Rico (nor any member of their families) has directly or indirectly participated with the *[Qualified Respondent or Team Member, as applicable]* in the preparation of its Proposal.

We further certify that we are in compliance with the provisions of Act No. 2 of 2018, also known as the Anti-Corruption Act 2018.

We further certify that we have reviewed the provisions of the Authority's Guidelines for the Evaluation of Conflicts of Interest and Unfair Advantages in the Procurement of Public-Private Partnership Contracts, available on the Authority's website: <http://www.p3.pr.gov>, and that we are in compliance therewith.

We further certify that this Proposal is made without prior understanding, agreement, connection, discussion or collusion with any other person, firm or corporation submitting or participating in the submission of a separate Proposal or any officer, employee or agent of the Authority, PREPA, the Partnership Committee, AAFAF, the Energy Bureau, the Government, the FOMB or any public agency of Puerto Rico; and that the undersigned executed this Qualified Respondent and Team Members Certificate with full knowledge and understanding of the matters herein contained and was duly authorized to do so.

We further certify that Qualified Respondent and Team Members shall not, other than as permitted in the RFP, attempt to communicate in relation to the RFP, directly or indirectly, with any representative of the Authority, PREPA, the Partnership Committee, AAFAF, the Energy Bureau, the Government, the FOMB or any public agency of Puerto Rico, including any Restricted Parties, or any director, officer, employee, agent, advisor, staff member, counsel, consultant or

representative of any of the foregoing, as applicable, for any purpose whatsoever, including for purposes of: (a) commenting on or attempting to influence views on the merits of the Qualified Respondent's and Team Members' Proposal, or in relation to their Proposal; (b) influencing, or attempting to influence, the outcome of the RFP Process, or of the competitive selection process, including the review and evaluation of Proposals or the selection of the Qualified Respondents; (c) promoting the Qualified Respondent and Team Members or their interests in the Project, including in preference to that of other Qualified Respondents or Team Members; (d) commenting on or criticizing aspects of the RFP, the competitive selection process, or the Project, including in a manner which may give the Qualified Respondent or its Team Members a competitive or other advantage over other Qualified Respondents or their respective Team Members; and (e) criticizing the Proposals of other Qualified Respondents.

The undersigned Qualified Respondent and Team Members acknowledge that any violation or misrepresentation with respect to the above will prohibit their participation in any procurement process under Act 29 and other applicable laws of Puerto Rico and, therefore, will disqualify them from participating hereunder.

Except as provided above with respect to certain federal laws and regulations, the attached Proposal shall be governed by and construed in all respects according to the laws of Puerto Rico and the terms of the RFP.

Our business address is:

[Insert business address]

Yours faithfully,

[Insert appropriate signature block for signature by a person duly authorized to bind the Qualified Respondent or Team Member]