

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "*Memorandum of Understanding*") is made and entered into as of November 15, 2018 by and between: the Puerto Rico Energy Bureau ("**PREB**"), the Puerto Rico Fiscal Agency & Financial Advisory Authority (the "**Authority**"), and the Puerto Rico Public-Private Partnerships Authority (the "**P3 Authority**") (each individually a "**Party**," and collectively the "**Parties**").

WITNESSETH:

WHEREAS, on June 20, 2018, Governor Ricardo Rosselló Nevares signed Act No. 120-2018, known as the Puerto Rico Electric System Transformation Act ("**Act No. 120-2018**") to authorize the required legal framework for the sale, disposition and/or transfer of the Puerto Rico Electric Power Authority's ("**PREPA**") assets, operations, functions and services (collectively, the "**PREPA Transactions**");

WHEREAS, Act No. 120-2018 authorized PREPA to sell or otherwise dispose of its assets under the mechanisms established in Act No. 29-2009, as amended ("**Act No. 29-2009**"), known as the Public-Private Partnership Act;

WHEREAS, Act No. 120-2018 designates the P3 Authority as the sole government entity authorized and responsible for implementing the public policy regarding the PREPA Transactions, for determining the functions, services or facilities for which partnerships will be established, and for determining which generation assets will be privatized;

WHEREAS, PREB is a specialized independent governmental entity created by Act 57-2014 (and reorganized under Act 211-2018), in charge of regulating, overseeing, and enforcing the public policy on energy of the Government of Puerto Rico, which has regulatory, investigative, and adjudicative jurisdiction over PREPA and any other certified electric power company providing services within the Government of Puerto Rico;

WHEREAS, Section 8(c) of Act No. 120-2018 requires that PREB provide the technical, expert, financial, and human resources assistance as the P3 Authority requests to ensure that each PREPA Transaction succeeds;

WHEREAS, the Parties have a shared interest in consummating the PREPA Transactions and have concluded that it is to their collective advantage for the Authority and the P3 Authority to share certain information related to the PREPA Transactions with PREB; and

WHEREAS, the Parties recognize the highly sensitive nature of any non-public information regarding the PREPA Transactions that the Authority and the P3 Authority may share with PREB and therefore desire to execute this binding Memorandum of Understanding to establish the terms and conditions upon which they will share said information;

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein set forth, the Parties agree:

1. Information Sharing; Cooperation.

(a) The Parties agree that the P3 Authority may, at its sole discretion, share with PREB certain material information and documents regarding, in connection with and in anticipation of the PREPA Transactions, including, without limitations, (i) information, data, agreements, documents, reports, proposals, interpretations, plans, studies, forecasts, projections and records containing or otherwise reflecting information about the PREPA Transactions, and (ii) memoranda, analyses, compilations, studies or other documents developed based upon or which include information related to the PREPA Transactions.

(b) PREB agrees that it shall promptly confirm receipt of any information delivered to PREB by the P3 Authority. When confirming any such receipt, PREB shall also include an estimated timeline for providing feedback to the P3 Authority regarding the information for which receipt is being confirmed.

(c) Each Party agrees to use reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, and to assist and cooperate with the other Party and with the Partnership Committee (as defined in Act No. 29-2009) in doing all things, necessary, proper or advisable to carry out the PREPA Transactions. PREB agrees that it shall provide any assistance consistent with the purposes of Act 120 that the P3A Authority may reasonably request in connection with a PREPA Transaction, including but not limited to financial, consulting, technical, administrative and advisory assistance.

2. Confidentiality.

(a) *"Confidential Information"* means all non-public information relating to the PREPA Transactions provided by the P3 Authority, either directly or through any of its representatives, to PREB either directly or indirectly to any of its representatives, including, without limitation, (i) the existence of any discussions or negotiations between the P3 Authority and third parties regarding the Proposed Transaction, and (ii) any proposal of business terms for the PREPA Transactions. Confidential Information of a Disclosing Party shall include no information that (A) is or becomes generally known to the public other than as a result of a breach or default of this letter agreement by PREB, (B) is or becomes known to PREB through a source having the right to disclose such information to PREB on a non-confidential basis or (C) was or is independently developed by PREB without reference to or reliance on the Confidential Information of the P3 Authority of any disclosure made.

(b) PREB shall use the Confidential Information only to provide input to and advising the P3 Authority regarding the PREPA Transactions, and for no other purpose. Under Section 9(i) of Act No. 29-2009, PREB shall keep confidential and not disclose to, discuss with, or otherwise provide to any person or entity any Confidential Information, except:

- i. to any representatives of PREB on a "need-to-know" basis to the extent the assistance of such representatives of the PREB must provide input and advising the P3 Authority regarding the PREPA Transactions, provided, however, that the PREB shall (i) advise each of its representatives of the confidential nature of such Confidential Information under this letter agreement, (ii) use reasonable efforts to require such representatives to maintain the confidentiality of such Confidential Information, and (iii) be liable to the P3 Authority for any breach of its obligations hereunder by any of its representatives; or
- ii. to the extent required by court order or applicable law ("*Legal Requirements*"), provided, however, that (to the extent permitted) the PREB shall advise the P3 Authority immediately upon receiving any demand for disclosure of any Confidential Information under any court order or applicable law in Section 2(e) of this Memorandum of Understanding.

(c) PREB agrees that, to the extent applicable, the P3 Authority shall retain exclusive ownership of the Confidential Information and PREB shall not have any right or interest in the Confidential Information of the P3 Authority.

(d) The Parties agree that the P3 Authority would not have shared and would not share the Confidential Information with PREB but for their shared interests arising out of the PREPA Transactions, and the P3 Authority's understanding that such Confidential Information would be kept confidential by PREB and would remain protected by any privileges and immunities.

(e) If PREB or its counsel is served with or otherwise subject to legal process (including subpoena) that requires PREB or its counsel to testify about, produce or otherwise divulge any Confidential Information it has received from the P3 Authority, PREB shall, to the extent legally permitted: (i) as soon as practicable inform the P3 Authority; (ii) provide the P3 Authority with copies of such subpoena or other legal process; (iii) assert all objections to protect such Confidential Information in response to such subpoena or other legal process; and (iv) make every other reasonable effort to prevent or limit any disclosure of the Confidential Information. Nothing in this Memorandum of Understanding, however, shall compel any Party to violate a valid order of a court. In addition, the Parties agree that the P3 Authority may attempt to obtain a protective order or agree to an arrangement with the person or entity demanding such Confidential Information to prevent or limit the extent of such disclosure, prior to PREB's disclosure of such Confidential Information

(f) Each Party may withdraw at any time, with or without reason, from this Memorandum of Understanding upon notifying the other Party, in which case this Memorandum of Understanding shall no longer be operative on future communications between the withdrawing Party and the other Party, but which Memorandum of Understanding shall continue to protect all Confidential Information covered by this Memorandum of Understanding and disclosed to or by the withdrawing Party prior to receiving the withdrawing Party's withdrawal notification. In such case, the P3 Authority may require PREB to take these reasonable steps regarding any Confidential

Information in PREB's possession: at its option, promptly either (i) return to the P3 Authority all Confidential Information or (ii) destroy Confidential Information and so certify in writing upon request of the P3 Authority; provided, however, that PREB shall not be required to destroy or return any of its work product that may contain or reference Confidential Information used or any Confidential Information relied on in providing legal services, or required to be preserved by law, as long as such materials are maintained in confidence under this Memorandum of Understanding.

(g) Any inadvertent or unintentional disclosure of Confidential Information supplied under this Memorandum of Understanding, regardless of whether such information was so designated during disclosure, shall not be deemed a waiver in whole or in part of any confidentiality, privilege or immunity, either on the specific information disclosed or on any other information relating thereto or to related subject (and none of the Parties shall assert such a waiver argument). Upon discovery of such disclosure, the Parties shall cooperate reasonably and in good faith to restore the confidentiality, privilege or immunity to that disclosed material, including, without limitation, the retrieval of any copies of the disclosed Confidential Information.

(h) This Memorandum of Understanding and the Parties' obligations shall survive for 2 years after its termination.

3. Miscellaneous.

(a) Injunctive Relief. The Parties agree that any breach of the provisions contained herein by a Party will cause irreparable harm and, therefore, the Parties agree that injunctive relief is the appropriate means to enforce this Memorandum of Understanding.

(b) Binding Nature; No Third Party Beneficiaries. This Memorandum of Understanding shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Memorandum of Understanding, express or implied, should confer upon any person or entity, other than the Parties, any rights or remedies under or from this Memorandum of Understanding.

(c) Governing Law. This Memorandum of Understanding shall be governed by the substantive laws of the Commonwealth of Puerto Rico, without regard to its conflict of laws rules.

(d) Entire Agreement. This Memorandum of Understanding contains the entire agreement on the matters contained herein between the Parties, and supersedes all prior or contemporaneous agreements, contracts, promises or representations, whether written or oral, between the Parties. No subsequent or contemporaneous agreements, contracts, promises or representations regarding the subject shall be binding and effective between the Parties, unless set forth in writing and signed by authorized representatives of the Parties.

(e) Counterparts. This Memorandum of Understanding may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterpart together shall constitute the same instrument.

(f) Notices. All notices, requests and other communications under this Memorandum of Understanding shall be in writing (including a writing delivered by facsimile transmission) and shall be deemed to have been duly given if delivered personally, or sent by overnight courier guaranteeing next day delivery, or by facsimile or electronic correspondence, addressed to each Party's address included below. All such notices, requests and other communications shall be deemed to have been received on the date of delivery thereof, if delivered by hand, on the fifth day after the mailing thereof, if mailed, on the second day after the sending thereof, if by overnight courier, and when received, if faxed or sent by email.

If to PREB:

Puerto Rico Energy Bureau
World Plaza Building
268 Muñoz Rivera Avenue
San Juan, Puerto Rico 00918
Attention: Edison Avilés Deliz
Email: eavilesdeliz@energia.pr.gov

If to the Authority:

Puerto Rico Fiscal Agency & Financial Advisory Authority
Roberto Sánchez Vilella Government Center,
De Diego Avenue, Stop 22
San Juan Puerto Rico 00940-2001
Attention: Christian Sobrino Vega
Email: CEO@aafaf.pr.gov

If to the P3 Authority:

Puerto Rico Public-Private Partnerships Authority
Roberto Sánchez Vilella Government Center,
De Diego Avenue, Stop 22
San Juan Puerto Rico 00940-2001
Attention: Fermín E. Fontanés Gómez
Email: fermin.fontanes@p3.pr.gov

(g) Waivers and Amendment. No amendment or waiver of any provision of this Memorandum of Understanding, or consent to any departure therefrom, shall be effective unless the same shall be in writing and signed by a duly authorized representative of each Party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure by a Party to exercise, and no delay in exercising, any right shall operate as a waiver thereof, or shall any single or partial exercise of any right preclude any other or further exercise thereof or exercising any other right. The remedies provided in this Memorandum of Understanding are cumulative and not exclusive of any remedies provided by law.

(h) Invalid Provisions; Severability. If any provision of this Memorandum of Understanding is held to be illegal, invalid or unenforceable under present or future laws effective during the term, such provision shall be severable; this Memorandum of Understanding shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part; and the remaining provisions of this Memorandum of Understanding shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or its severance from this Memorandum of Understanding.

(i) Headings. The headings and titles to the articles, sections, and paragraphs of this Memorandum of Understanding are inserted for convenience only and shall not be deemed a part or affect the construction or interpretation of any provision.

(j) Assignability. Neither this Memorandum of Understanding nor any rights and obligations may be transferred, assigned, pledged or hypothecated by any Party to any other person without the prior written consent of each Party to this Memorandum of Understanding. Any assignment without such consent shall be void.

(k) No Agency. This Memorandum of Understanding does not, and shall not be deemed or construed to, make any Party the agent or legal representative of another Party for any purpose, and no Party shall have the right or authority to assume or create any obligation or responsibility, expressed or implied, on behalf of or in the name of another Party, or to bind any other Party.

(l) Representations and Warranties. Each Party represents to the others that it, and the person executing this Memorandum of Understanding on its behalf, has the power and authority to enter into this Memorandum of Understanding, and this Memorandum of Understanding is valid and binding and enforceable against it under its terms.

[Signature Page Follows]

The Parties accept and agree to abide by the terms of this Memorandum of Understanding.

PUERTO RICO ENERGY BUREAU

By: 

Name: Edison Aviles Deliz
Title: Chairman

**PUERTO RICO FISCAL AGENCY &
FINANCIAL ADVISORY AUTHORITY**

By: 

Name: Christian Sobrino, Esq.
Title: CEO and President

**PUERTO RICO PUBLIC-PRIVATE
PARTNERSHIPS AUTHORITY**

By: 

Name: Omar J. Marrero
Title: Executive Director