

2019-P00079

*Execution Version*

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**(1) NFENERGÍA LLC**

**AS SELLER**

**AND**

**(2) PUERTO RICO ELECTRIC POWER AUTHORITY**

**AS BUYER**

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**FUEL SALE AND PURCHASE AGREEMENT**

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**THIS AGREEMENT** is made this 5<sup>th</sup> Day of March, 2019 (the “**Effective Date**”).

**BETWEEN:**

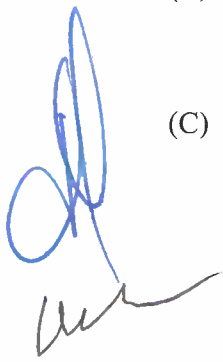
- (1) **NFENERGÍA LLC**, a Puerto Rico limited liability company (hereinafter called the “**Seller**”), and
- (2) **PUERTO RICO ELECTRIC POWER AUTHORITY (PREPA)**, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by an Act of 2 May 1941, No. 83, as amended, with its principal place of business at P.O. Box 363928, San Juan, Puerto Rico 00936-3928 (hereinafter called the “**Buyer**”).

Seller and Buyer shall each be a “**Party**” and, together, the “**Parties.**”

**WITNESSETH**

**WHEREAS:**

- (A) Buyer would benefit from and desires to (i) make power generation units 5 and 6 (collectively, the “**SJ 5&6 Units,**” and “**SJ 5**” and “**SJ 6,**” respectively) of the San Juan Combined Cycle Power Plant (the “**San Juan Power Plant**”) capable of using natural gas as their primary fuel, generating significant potential fuel savings versus diesel, and (ii) procure natural gas for the SJ 5&6 Units;
- (B) Buyer, by virtue of its enabling act (Act 83), has the authority to engage those professional, technical and consulting services necessary and convenient to the activities, programmes, and operations of Buyer;
- (C) Pursuant to Section 205 (2)(f) of Act No. 83 and to encourage greater competition, reduce the risk of collusion and promote the best possible terms and conditions in benefit of greater savings and reduction of costs and expenses of Buyer, Buyer carried out a competitive request for proposal (RFP) process for the (i) design, engineering, construction, supply, installation, commissioning and testing works required to make the SJ 5&6 Units capable of utilizing natural gas for power generation and (ii) supply of Natural Gas to such units, in each case as described herein;
- (D) Seller desires to provide natural gas to multiple on-island industrial users and is in the process of building a landed micro-fuel handling facility with multiple truck loading bays and other associated infrastructure, located in San Juan, Puerto Rico, adjacent to the SJ 5&6 Units, which affords Seller the opportunity to undertake the conversion of the SJ 5&6 Units and make Natural Gas available to Buyer, without requiring Buyer to make costly, new investments in additional fuel handling infrastructure;
- (E) Buyer may nominate up to 25 TBtu each year of the contract term taking into account the market price of diesel;



- (F) The Parties are committed to work together under the terms of this Agreement to ensure that the supply and utilization of natural gas for the SJ 5&6 Units shall start no later than the last quarter of natural year 2019;
- (G) The transactions contemplated under this Agreement are reasonable and necessary expenses related to the maintenance, repair and operation of the SJ 5&6 Units, and are consistent with standard practices for public utility systems and with Buyer's standard business operations of maintaining and operating its system; and
- (H) Buyer's expected cost and time savings from switching from diesel to Natural Gas to fuel SJ 5&6 Units in accordance with this Agreement will further its strategy of lowering electricity costs, and accelerating grid modernization; the displacement of diesel with Natural Gas will significantly reduce air emissions from the SJ 5&6 Units including for pollutants like SO<sub>2</sub>.

NOW, THEREFORE, SELLER AND BUYER HEREBY AGREE as follows:

## ARTICLE I DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement, except where the context otherwise requires, each of the following expressions have the following meaning:

**"Affiliate"** means, in relation to a Party, any company, corporation, partnership or other legal entity (in this definition referred to as a "**Person**") that (a) is directly or indirectly Controlled by such Party; (b) directly or indirectly Controls such Party; or (c) is directly or indirectly Controlled by a Person that also, directly or indirectly, Controls such Party; *provided, however*, that unless and until Buyer undergoes a Change of Control permitted by this Agreement, Buyer's only Affiliates are (x) the Puerto Rico Fiscal Agency and Financial Advisory Authority and (y) the Commonwealth of Puerto Rico.

**"Agreement"** means this Agreement and its Annexes and Exhibits, as may be amended, modified, varied or supplemented from time to time.

**"Annual Contract Quantity"** or "**ACQ**" shall have the meaning given to it in Clause 7.4(a)(i).

**"Annual Delivery Programme"** or "**ADP**" shall have the meaning given to it in Clause 7.4(a).

**"Anticipated Commencement Notice"** shall have the meaning given to it in Clause 7.4(a)(i)(B).

**"Applicable Law"** means, in relation to any legal person, property, transaction or event, all applicable provisions of laws, treaties, conventions, statutes, rules, regulations, permits, official directives and orders of, and the terms of all judgments, orders, awards, and decrees issued by, any Governmental Authority by which such legal Person is bound or having application to the property,

transaction or event in question, including the Electric Power Authority Revitalization Act and PROMESA.

“**Back-up Fuel Cover Amount**” shall have the meaning set forth in Clause 9.1(b).

“**Back-Up Fuel Quantity**” shall have the meaning set forth in Clause 9.1(a).

“**Back-Up Fuel Quantity Index Price**” means the lower of (a) the average of ULSD fuel from New York/Boston and US Gulf Coast as published in Platt’s Oilgram Report, plus \$6.70 and (b) the price actually paid in respect of the Back-Up Fuel Quantity procured by Buyer pursuant to Clause 9.1(a)(ii).

“**Base Cost**” shall have the meaning set forth in Exhibit C.

“**Binding Monthly Schedule**” shall have the meaning given to it in Clause 7.4(a)(iv).

“**BOP Contractor**” means any contractor of Seller, other than MHPSA, engaged to perform any activities within the fence-line of the San Juan Power Plant.

“**Btu**” means a British thermal unit, being that amount of heat that is equal to 1,055.056 Joules or 0.000293071 kWh.

“**Business Day**” means a Day, other than a Saturday, Sunday or a public holiday in San Juan (Puerto Rico) or New York (United States).

“**Buyer**” shall have the meaning given to it in the preamble to this Agreement.

“**Buyer Check Meter**” shall have the meaning given to it in Clause 10.2(b).

“**Buyer Firm Supply Conditions**” shall have the meaning given to it in Clause 3.2(f).

“**Buyer Group**” means Buyer, its Affiliates, and its and their respective directors, officers, personnel, contractors and subcontractors, and any heirs, successors, and assigns of any of the above.

“**Buyer Metering Station**” shall have the meaning given in Clause 10.1(b).

“**Buyer Permit Condition**” shall have the meaning given in Clause 3.2(a).

“**Buyer Property**” means the San Juan Power Plant, the improvements to the SJ 5&6 Units created by the Works, and the Interconnection Facility, in each case as modified from time to time, including as depicted in Annex C.

“**Carryover Credit**” shall have the meaning given in Clause 7.5(d).

“**Challenge Action**” means (a) any action, contested matter or proceeding commenced by (i) a Significant Party before the Title III Court or (ii) any other party-in-interest before the Title III Court, or (b) any order entered by the Title III Court or other Governmental Authority, which,

in the case of either (a) or (b), seeks to or has the effect to avoid, enjoin, rescind, set aside, stay, subordinate, or otherwise alter or impair, this Agreement or any of the transactions contemplated hereby in any way, including the payment or timing of payment of, any amounts paid or payable to Seller hereunder.

“**Change of Control**” means (a) in the case of Buyer, a transaction or series of related transactions (including transfers and issuances of, or the enforcement of any lien or encumbrance on, equity interests) pursuant to which, if consummated, a Puerto Rican Governmental Authority would no longer Control Buyer, and (b) in case of Seller, a transaction or series of related transactions (including transfers and issuances of, or the enforcement of any lien or encumbrance on, equity interests) pursuant to which, if consummated, Atlantic Energy Holdings LLC would cease to Control Seller.

“**Change of Law**” means the amendment, repeal or change of an existing Applicable Law, or a new Applicable Law, in either case that takes effect after the Effective Date.

“**Claims**” means all claims, demands, notices of violation or noncompliance, governmental requests for information, legal proceedings, liens, encumbrances, causes of action and other actions, of any kind or nature (including actions in rem or in personam and actions of Governmental Authorities). “**Claim**” means any of the foregoing.

“**Commissioning Start Date**” has the meaning given to it in Clause 5.4.

“**Confidential Information**” shall have the meaning given to it in Clause 26.1.

“**Construction Committee**” shall have the meaning give to it in Clause 8.4.

“**Contract Quarter**” means each calendar quarter (beginning each of January, April, July and October) during the Contract Year, provided that the first Contract Quarter shall begin as of the first Day of the Firm Supply Period and end on the last Day of such calendar quarter and the last Contract Quarter shall end on the last Day of the Firm Supply Period.

“**Contract Term**” shall have the meaning given to it in Clause 3.1(a).

“**Contract Year**” means any calendar year during the Firm Supply Period, except for the first Contract Year, which shall commence on the first Day of the Firm Supply Period, and the last Contract Year, which shall end on the last Day of the Firm Supply Period.

“**Contracting Officer**” means the Chief Executive Officer of Buyer, acting directly or through his properly authorized representatives as notified in writing to Seller.

“**Contractor**” refers to MHPSA and any BOP Contractor.

“**Control**” means the beneficial ownership, either directly or indirectly, of fifty percent (50%) or more of the voting rights in a Person, or (whether alone or acting in concert with others, and whether by the ownership of share capital, the possession of voting power, contract or otherwise) the right to appoint fifty percent (50%) or more of the board of directors or equivalent management body of such Person. “**Controlled**” shall have the correlative meaning.

“**Corporate Tax**” means any and all Taxes based on income, revenues, profits, or net worth and all state and local franchise, license, occupation and similar Taxes required for the maintenance of corporate existence or to maintain good standing that are assessed against a Party.

“**Daily Contract Quantity**” or “**DCQ**” shall have the meaning given to it in Clause 6.5.

“**Day**” means a period of twenty-four (24) consecutive hours beginning at 00:00 hours local time in Puerto Rico.

“**Defaulting Party**” shall have the meaning given to it in Clause 19.1(b).

“**Delay LDs**” shall have the meaning given to it in Clause 5.5.

“**Delivery Confirmation Request**” shall have the meaning given to it in Clause 4.2(c).

“**Delivery Point**” means the point of interconnection between Seller’s MFH Facility and Buyer’s Interconnection Facility, as identified on the schematic attached as Annex B (unless otherwise agreed in writing by the Parties).

“**Disclosing Party**” shall have the meaning given to it in Clause 26.1.

“**Discounted Surcharge Amount**” shall have the meaning given to it in Clause 12.3.

“**Dispatch**” shall have the meaning given to it in Clause 7.4(a)(i)(A).

“**Dispute**” shall have the meaning given to it in Clause 24.1(a).

“**Effective Date**” shall have the meaning given to it in the preamble to this Agreement.

“**Environmental Compliance Officer**” means an employee of Buyer in the role of manager of environmental compliance who is designated to be in charge of project inspections and environmental regulations compliance.

“**environmental violation**” means any violation of Applicable Law by a Contractor or its subcontractors in connection with the handling of any Hazardous Materials brought to or generated on the Site by a Contractor or its subcontractors in connection with the performance or non-performance of its obligations under this Agreement or its agreement with Seller.

“**Excess Nomination**” shall have the meaning given to it in Clause 7.5.

“**Excluded Losses**” shall have the meaning given to it in Clause 11.5.

“**Expert**” means a Person of appropriate industry expertise and experience to whom a Dispute, disagreement or another matter of interpretation is or is to be referred to pursuant to Clause 24.2.

“**Extension Notice**” shall have the meaning given to it in Clause 3.1(b).

“**Extension Term**” shall have the meaning given to it in Clause 3.1(b).



“**Final Completion**” shall have the meaning given to it in Clause 10.2 of Annex A.

“**Financing Entities**” means any and all lenders, security, note or bond holders, lien holders, investors, equity providers and other Persons providing any construction, interim or long-term equity or debt financing, refinancing, or recapitalization to Buyer, its Affiliate, and its or their heirs, successors and assigns, and any trustees or agents acting on their behalf.

“**Firm Supply Conditions**” shall have the meaning given to it in Clause 3.2.

“**Firm Supply Conditions Date**” shall have the meaning given to it in Clause 3.4.

“**Firm Supply Period**” shall have the meaning given to it in Clause 5.3.

“**Firm Supply Solvency Conditions**” means the Firm Supply Conditions set forth in Clause 3.2(f).

“**Fiscal Budget**” means the then-applicable annual fiscal budget approved and certified by the Oversight Board for PREPA in accordance with PROMESA.

“**Force Majeure**” shall have the meaning given to it in Clause 15.1.

“**Forced Shutdown**” means a shutdown condition of either of the SJ 5&6 Units, which makes one or both of them unavailable to produce power due to an unexpected or imminent breakdown, including as caused by equipment failures, disruption of the fuel supply and operator error.

“**Fuel Price**” shall have the meaning given to it in Exhibit C.

“**Full Surcharge Amount**” shall have the meaning given to it in Clause 12.3.

“**Governmental Authority**” means the government of the United States of America, any state thereof, the Commonwealth of Puerto Rico, or any local jurisdiction, or any political subdivision of any of the foregoing including, but not limited to courts, administrative bodies, departments, commissions, boards, bureaus, agencies, municipalities or other instrumentalities.

“**Guaranteed First Gas Date**” means June 1st, 2019, as may be extended in accordance with this Agreement.

“**Guaranteed First Gas Long-Stop Date**” means December 31st, 2019, as may be extended in accordance with this Agreement.

“**Guaranteed Item**” shall have the meaning given to it in Exhibit F.

“**Guaranteed Result**” shall have the meaning given to it in Exhibit F.

“**Guaranteed Substantial Completion Date**” means June 30<sup>th</sup>, 2020, as may be extended in accordance with this Agreement.

**“Hazardous Materials”** means any substance that is either defined or regulated as hazardous or toxic by, or as to which liability including for damages or remediation may be imposed under Applicable Law, including (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls and processes and certain cooling systems that use chlorofluorocarbons; (b) any chemicals, materials or substances which as of the applicable Effective Date are, or hereafter become, defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” or any words of similar import pursuant to Applicable Law; or (c) any other chemical, material, substance or waste, exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, or which may be the subject of liability under any Applicable Law for damages, costs or remediation.

**“Heating Value”** (also known as High Heating Value (HHV)) means the gross heating value on a dry basis, which is the number of Btus produced by the complete combustion at constant pressure of the amount of dry gas that would occupy a volume of one Standard Cubic Foot at a constant pressure of 14.73 psia and a temperature of 60° F with combustion air at the same temperature and pressure as the gas, the products of combustion being cooled to the initial temperature of the gas and air and the water formed by combustion condensed to the liquid state.

**“Incremental Tax Adjustment”** shall have the meaning given to it in Clause 12.3.

**“Initial Contract Term”** shall have the meaning given to it in Clause 3.1(a)(i).

**“Interconnection Facility”** means the facility connecting Seller’s MFH Facility to the SJ 5&6 Units, as depicted in Annex C.

**“Joule”** means a unit of energy defined in the International System of Units.

**“kWh”** shall mean kilowatt per hour.

**“LNG”** means Natural Gas in a liquid state at or below its boiling point and at or near atmospheric pressure.

**“LNG Delivery Plan”** shall have the meaning given to it in Clause 15.1(a).

**“Losses”** means all liabilities, damages, losses, costs and expenses (including those on account of loss of or damage to property, bodily injury, personal injury, illness, disease, maintenance, cure, loss of consortium (parental or spousal), loss of support, death, and wrongful termination of employment, and all litigation and arbitration costs and expenses and reasonable attorneys’ fees) that accrue at any time, whether created by or based upon law (including statute), contract, tort, voluntary settlement or otherwise, or under judicial proceedings, administrative proceedings or otherwise, or conditions in the premises of or attributable to any Person or Persons or any Party or Parties. “Loss” means any of the foregoing.

**“Maximum Annual Contract Quantity”** shall have the meaning given to it in Clause 6.1.

“**Maximum DCQ**” shall have the meaning given to it in Clause 6.5.

“**Maximum Hourly Rate**” shall have the meaning given to it in Clause 6.6(a).

“**Metering Equipment**” shall have the meaning given to it in Clause 10.2(a).

“**MFH Facility**” shall have the meaning given to it in Annex A.

“**MHPSA**” means Mitsubishi Hitachi Power Systems America, Inc.

“**Minimum DCQ**” shall have the meaning given to it in Clause 6.5.

“**Minimum Hourly Rate**” shall have the meaning given to it in Clause 6.6.

“**Mitigation Sale**” shall have the meaning given to it in Clause 7.5(c).

“**MMBtu**” means 1,000,000 Btu.

“**Monthly Invoice**” shall have the meaning given to it in Clause 13.2.

“**Natural Gas**” or “**NG**” means any saturated hydrocarbon or mixture of saturated hydrocarbons consisting essentially of methane and other combustible and non-combustible gases in a gaseous state.

“**Natural Gas Deficiency**” shall have the meaning set forth in Clause 9.1.

“**Natural Gas Manufacturing Discounted Payment**” shall have the meaning given to it in Clause 12.3.

“**Natural Gas Manufacturing Surcharge**” shall have the meaning given to it in Clause 12.1.

“**Ninety Day Schedule**” or “**NDS**” shall have the meaning given to it in Clause 7.4(a)(iv).

“**Off-Spec Natural Gas**” is any Natural Gas that does not conform to the Specifications set forth in Clause 4.1.

“**Operations Committee**” shall have the meaning given to it in Clause 8.3.

“**Oversight Board**” shall mean the Financial Oversight and Management Board for Puerto Rico.

“**Party**” and “**Parties**” shall have the meanings given to them in the preamble to this Agreement.

“**Permit**” means, in respect of either Party, any permit, license, consent, clearance, certificate, approval, authorization or similar document or authority (including for export or import) which any Applicable Laws requires such Party (or, in the case of Seller, any member of

the Seller Group) to hold or obtain in order for any of its obligations under this Agreement to be performed, including visas and permits for personnel to work and reside in any location.

“**Person**” means an individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a trust, any unincorporated organization, or any Governmental Authority.

“**Planned Buyer Shutdown**” shall have the meaning given to it in Clause 8.2.

“**Planned Seller Shutdown**” shall have the meaning given to it in Clause 8.2.

“**Postpetition Financing Budget**” shall mean the initial thirteen (13) week cash flow budget filed as Exhibit 1 to Docket No. 722 in Buyer’s Title III Case and any subsequent thirteen (13) week cash flow budget submitted by Buyer to the Commonwealth of Puerto Rico, in its capacity as “Lender” under the Credit Agreement (defined in the Postpetition Financing Order) and approved by the Lender and the Oversight Board, as set forth in the Postpetition Financing Order.

“**Postpetition Financing Order**” shall mean that certain *Order (A) Authorizing Debtor Puerto Rico Electric Power Authority to Obtain Postpetition Financing, (B) Providing Superpriority Administrative Expense Claims, and (C) Granting Related Relief* entered at Docket No. 744 in the Title III Case.

“**Prime Rate**” means the prime lending rate, as reported by The Wall Street Journal’s bank survey.

“**Project**” means the Works required to effect the conversion of the fuel delivery and combustion components of SJ 5&6 Units so that those units may be fueled primarily by Natural Gas, as well as the related design, construction and commissioning of the Interconnection Facility to deliver Natural Gas from the MFH Facility to the SJ 5&6 Units, as more particularly described in the Scope of Work.

“**PROMESA**” means the Puerto Rico Oversight, Management, and Economic Stability Act, 48 U.S.C. §§ 2101-2241, as may be amended or modified.

“**Puerto Rican Governmental Authority**” means a Governmental Authority of the Commonwealth of Puerto Rico, and excludes, for the avoidance of doubt, any Governmental Authority of the federal government of the United States of America or any state therein.

“**Punch List**” means the list of non-conforming or incomplete work items that are agreed by Buyer and Seller (each acting reasonably) as being unnecessary for commencement of the Firm Supply Period, but required for the Final Completion of the Work.

“**Reasonable and Prudent Operator**” means a Person seeking in good faith to perform its contractual obligations and comply with Applicable Law, and in so doing, and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced international operator engaged in the same type of undertaking under the same or similar circumstances and conditions.

“**Receiving Party**” shall have the meaning given to it in Clause 26.1.

“**Required Consents**” shall have the meaning given to it in Clause 16.1(c).

“**Required Testing**” means the tests set forth in the agreement between Seller and MHPSA regarding the Works.

“**Resident Engineer**” means the manager of Seller’s field office whose duties include, the administrative issues, quality control, and technical aspects of the Project. This person shall be a professional engineer registered in Puerto Rico and an active member of the Puerto Rico College of Engineers and Land Surveyors. The Resident Engineer shall be present at all times on site for Seller to be able to perform any task relating to the Project.

“**Safety Officer**” means an employee of Buyer in the role of manager of the HSSE programmes, whose duties include the prevention of accidents and the implementation of the safety and health programme and the site-specific work plan.

“**San Juan Power Plant**” shall have the meaning given to it in the Recitals.

“**Scheduled Maintenance**” means the maintenance periods scheduled to be performed on SJ 5&6 Units, the Interconnection Facility and/or the MFH Facility in accordance with Article VIII.

“**Scope of Work**” shall mean all works and other requirements set forth in Exhibit H.

“**Seller**” shall have the meaning given to it in the preamble to this Agreement.

“**Seller Group**” means Seller, its Affiliates, and its or their directors, officers, personnel, contractors and subcontractors, and any heirs, successors, and assigns of any of the above.

“**Seller’s Financing Sources**” shall have the meaning given to it in Clause 37.5.

“**Seller Metering Station**” shall have the meaning given in Clause 10.2(a).

“**Seller Property**” means the MFH Facility and all other property developed by Seller adjacent to or in the vicinity of the San Juan Power Plant (other than Buyer Property created by the Works), including as depicted in Annex C.

“**Seller’s Parent**” means Atlantic Energy Holdings LLC, a Delaware limited liability company.

“**Significant Party**” shall mean (i) U.S. Bank National Association, as successor Trustee pursuant to that certain Trust Agreement, dated as of January 1, 1974, as amended and supplemented, between Buyer and U.S. Bank National Association as successor Trustee, (ii) any holder of or insurer of bonds issued under the Trust Agreement in an aggregate principal amount exceeding \$200 million, (iii) the Oversight Board, (iv) the Buyer, or (v) the Puerto Rico Fiscal Agency and Financial Advisory Authority.

“**SJ 5**” shall have the meaning given to it in the Recitals to this Agreement.

“**SJ 5&6 Units**” shall have the meaning given to it in the Recitals to this Agreement.

“**SJ 6**” shall have the meaning given to it in the Recitals to this Agreement.

“**SJ 6 First Gas Requirements**” shall have the meaning given to it in Clause 5.4.

“**Specifications**” shall have the meaning given to it in Clause 4.1.

“**Standard Cubic Foot**” or “**scf**” means Natural Gas at a base temperature of 60° F and at a pressure of 14.73 psia with correction for deviation from Boyle’s Law.

“**Substantial Completion**” means, with respect to either of the SJ 5&6 Units, the date when (i) the Works have been completed in respect of such Unit (other than Punch List items), (ii) the Interconnection Facility is able to deliver Seller’s Natural Gas to the Delivery Point, (iii) Required Testing of the relevant Unit has been completed, and (iv) Seller has delivered written notice to Buyer that the relevant Unit has passed all Required Testing for such Unit in accordance with Exhibit F.

“**Supply Period**” shall have the meaning given to it in Clause 5.1.

“**Taxes**” shall have the meaning given to it in Article XIV.

“**TBtu**” means 1,000,000,000,000 Btu.

“**Termination Event**” shall have the meaning given to it in Clause 19.1(b).

“**Terms of Works**” means the requirements, Clauses, and processes for the Works included as Annex A.

“**Third Party**” means any Person not a Party to this Agreement; *provided, however*, that for the purpose of Article XI, “**Third Party**” means any person who is not a member of Seller Group or Buyer Group.

“**Title III Case**” shall mean the case under Title III of PROMESA styled *In re The Financial Oversight and Management Board for Puerto Rico, as representative of Puerto Rico Electric Power Authority (PREPA)* and numbered No. 17 BK 4780-LTS, which was instituted on July 2, 2017 by the Oversight Board by the filing of a voluntary petition for relief for Buyer.

“**Title III Court**” shall mean the United States District Court for the District of Puerto Rico, or any appellate court, presiding over the pending Title III Case of PREPA.

“**Transitional Supply Period**” shall have the meaning given to it in Clause 5.2.

“**Trust Agreement**” shall mean that certain Trust Agreement, dated as of January 1, 1974, between Buyer and U.S. Bank, National Association, as Successor Trustee, as amended, restated, or otherwise modified from time to time.

“Unit” means SJ 5 or SJ 6, as applicable.

“Unplanned Shutdown” shall have the meaning given to it in Clause 8.1.

“US” means the United States of America.

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

“Weekly Programme” shall have the meaning given to it in Clause 7.4(a)(v).

“Works” means the design, engineering, construction, supply, installation, commissioning and testing works within the fence line of the San Juan Power Plant required to make Natural Gas available to SJ 5&6 Units at the Delivery Point and to convert such units to Natural Gas burning power generation, all as further described in the Scope of Work.

## 1.2 Interpretation

In this Agreement, unless the context requires otherwise:

(a) References to Clauses, Annexes, and Exhibits are to Clauses, Annexes, and Exhibits of this Agreement. The Annexes and Exhibits hereto are incorporated herein as an integral part of this Agreement.

(b) References to a Person include that Person’s successors and permitted assigns.

(c) Headings of Clauses, Annexes, and Exhibits are for convenience only and shall not affect the construction or interpretation of this Agreement.

(d) Where the context requires, words denoting the singular or masculine or neuter only shall include the plural, feminine, body politic or corporate and vice versa.

(e) References to “include” and “including” shall be construed as “including without limitation.”

(f) The words “agree,” “agrees,” and “agreed” refer to a written agreement, executed and delivered by the Parties.

(g) Wherever either Party’s consent or agreement is expressed to “not be unreasonably withheld,” it is acknowledged that such obligation shall include, but not be limited to, the obligation of the Party not unreasonably to delay giving the relevant consent or agreement, and in the foregoing case as well as wherever either Party undertakes “efforts” or “endeavors” to do something, or refrain from doing something, it is acknowledged that such Party shall not be in breach of its obligations to the other Party to the extent that such Party’s actions are limited by such Party’s need to comply with its contractual obligations to any Person, provided that such Party has used its reasonable efforts to obtain any necessary waiver(s) of

such relevant obligations and that such Party has not assumed such obligations subsequent to entering into this Agreement.

(h) Any law, statute or statutory provision shall be construed as a reference to the same as it may be amended, modified or re-enacted, from time to time, and shall include any subordinate legislation made from time to time under that provision.

(i) If at any time during the Supply Period, the Prime Rate becomes unavailable or inappropriate then the Parties shall meet as soon as possible thereafter and in good faith discuss and attempt to agree in writing upon a suitable alternative replacement. If the Parties are unable to so agree upon a suitable alternative replacement, then either Party may refer the matter to an Expert for determination in accordance with Clause 24.2.

## ARTICLE II SALE AND PURCHASE

Seller agrees to sell and make available to Buyer at the Delivery Point, and Buyer agrees to purchase from Seller, Natural Gas in compliance with Article IV “**Quality**,” for use by Buyer solely as fuel for the SJ 5&6 Units. The quantity of Natural Gas to be made available by Seller at the Delivery Point shall be the amount required to operate the SJ 5&6 Units primarily on Natural Gas, as scheduled in accordance with Article VII. The price for such quantities shall be determined in accordance with Article XIII. Pursuant to Clause 7.4(a)(i), Buyer shall have the right, on or before June 1st of each year, to nominate zero (0) as the Annual Contract Quantity for the following Contract Year, and (at Buyer’s option) procure diesel from Third Parties during such Contract Year instead.

## ARTICLE III DURATION AND CONDITIONS

### 3.1 Contract Term

(a) This Agreement shall enter into full force and effect on the Effective Date and shall, subject to the terms hereof, continue in force and effect until and including the later of:

(i) the fifth (5<sup>th</sup>) anniversary of the first Day of the Firm Supply Period (the “**Initial Contract Term**”), and

(ii) the expiration of any Extension Term agreed to pursuant to Clause 3.1(b),

(such period, the “**Contract Term**”), unless this Agreement is terminated earlier in accordance with its terms.

(b) Subject to the provisions of this Clause 3.1(b), Buyer may elect to extend the Contract Term for three (3) separate five (5) year periods (each, an “**Extension Term**”). Buyer must notify Seller in writing of its intent to exercise its right to



extend (an “**Extension Notice**”) by no later than June 1st of the Contract Year preceding the final Contract Year of the Initial Contract Term or Extension Term, as applicable. Upon Seller’s receipt of an Extension Notice, the Parties shall have ninety (90) Days to agree in writing on the terms and conditions regarding price and volume applicable to such Extension Term. If, within such ninety (90) Day period, Buyer and Seller are unable to agree upon the volume of Natural Gas and price of Natural Gas delivered to the SJ 5&6 Units that will apply during the relevant Extension Term, then this Agreement shall terminate at the end of the Initial Contract Term or the then-current Extension Term, as applicable.

(c) In no event shall Buyer be permitted to use Natural Gas purchased from Seller pursuant to this Agreement in any power generation unit other than the SJ 5&6 Units.

(d) From and after the Effective Date, the Parties shall comply with the terms and conditions of Annex A, and Seller shall be responsible for the scope of work and associated costs required for the Works. Title to all Buyer Property created by the Works shall transfer from Seller at Substantial Completion free and clear of all liens and encumbrances. **NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, SELLER SHALL RETAIN EXCLUSIVE TITLE TO (AND BUYER SHALL HAVE NO ACTUAL OR BENEFICIAL RIGHT, TITLE, RIGHT TO USE, OR OTHER INTEREST, IN OR TO) THE SELLER PROPERTY AND ALL FIXTURES, APPURTENANCES AND OTHER ELEMENTS THERETO AND THEREOF.**

(e) During the Contract Term, Seller shall be the exclusive supplier of Natural Gas to Buyer for use as fuel at the SJ 5&6 Units. To the extent that a Seller failure to make available to Buyer a binding quantity of Natural Gas exceeding fifty percent (50%) of the nominations in the Binding Monthly Schedules over three (3) consecutive months, for the remaining duration of such failure, Buyer shall be entitled to procure from Third Parties the volume of Natural Gas that Seller fails to deliver during such remaining duration; *provided, however*, that Seller’s facilities shall not be used to deliver any such Natural Gas without Seller’s written consent signed by an authorized executive officer of Seller.

3.2 Each of the following will be “**Firm Supply Conditions**”:

(a) Buyer shall have obtained and maintained from the relevant Governmental Authorities all Permits necessary for the execution of its obligations under this Agreement, including the Permits set out in the column captioned “Buyer Permits” of the table set forth in Exhibit A (the “**Buyer Permit Condition**”);

(b) Seller shall have (i) given written notice to Buyer that (a) Seller has achieved Substantial Completion of one of the SJ 5&6 Units; and (b) Seller is able to supply Natural Gas on a fully operational basis to such Unit at the Delivery Point, and (ii) obtained from the relevant Governmental Authorities all Permits necessary

for the execution of its obligations under this Agreement, including the Permits set out in the column captioned "Seller Permits" of the table set forth in Exhibit A (the "Seller Firm Supply Condition");

(c) Buyer shall (i) have obtained the Required Consents with respect to funding for all amounts payable to Seller in connection with the Binding Monthly Schedule included in the then-operative Fiscal Budget and the then-operative Postpetition Financing Budget, to the extent that the Postpetition Financing Budget remains applicable, and, to the extent the Postpetition Financing Budget is no longer applicable, included only in the then-operative Fiscal Budget, (ii) have complied with all applicable terms of the Trust Agreement relating to Buyer's performance under this Agreement, except to the extent such terms of the Trust Agreement are modified, stayed, or otherwise excused by PROMESA and the pendency of the Title III Case, and (iii) be current on amounts due and payable to Seller under this Agreement pursuant to Clause 13.7 in excess of One Million Dollars (\$1,000,000.00);

(d) (i) no Challenge Action commenced by any Significant Party shall be pending, (ii) no Challenge Action commenced by any other party-in-interest shall be pending for which there is a reasonable likelihood such action could materially impair the ability of Buyer to perform under this Agreement, and (iii) no order relating to a Challenge Action by any party shall have been entered by the Title III Court or other Governmental Authority that impairs this Agreement or the transactions provided for or contemplated by this Agreement including any amounts paid or payable to Seller under this Agreement;

(e) both (i) no Significant Party shall have challenged the treatment of any amounts paid or payable to Seller under this Agreement as being considered for all purposes, including for purposes of the Trust Agreement, as "Current Expenses" as defined in the Trust Agreement, and (ii) neither Buyer or Seller has, due to any notice or action by a Person (other than the Parties) or a Governmental Authority, a reasonable basis for concluding that any or all amounts paid or payable to Seller under this Agreement would not be considered for all purposes, including for purposes of the Trust Agreement, "Current Expenses" as defined in the Trust Agreement, and to the extent either Party receives at any time any oral or written notice of any challenge by any Significant Party, Person, or Governmental Authority to the treatment of any amounts paid or payable to Seller under this Agreement as "Current Expenses," such Party shall immediately provide such notice to the other Party; and

(f) no order has been entered by the Title III Court or any other Governmental Authority expressly providing for the appointment of a receiver, custodian, or similar fiduciary for Buyer or any material portion of its property; provided that any order entered by the Title III Court modifying the automatic stay (other than an order of the Title III Court modifying the automatic stay to permit a party to seek the appointment of a receiver, custodian, or similar fiduciary for the Buyer or any material portion of its property in any forum other than the Title III Court) shall not

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impair or affect this Agreement (clause (c), clause (d), clause (e) and clause (f), collectively, the “**Firm Supply Solvency Conditions**,” and, together with the Buyer Permit Condition, the “**Buyer Firm Supply Conditions**”).

3.3 The Parties shall keep each other duly informed of the fulfillment of each of their respective Firm Supply Conditions. Seller shall notify Buyer and Buyer shall notify Seller in writing of the date on which it anticipates that the Seller Firm Supply Condition or the Buyer Firm Supply Conditions, respectively, will be satisfied no less than thirty (30) Days prior to such anticipated date. As soon as the Seller Firm Supply Condition or a Buyer Firm Supply Condition is satisfied, Seller or Buyer, respectively, shall confirm in writing the fulfillment of such Firm Supply Condition.

3.4 The Firm Supply Period will commence as provided in Clause 5.3. The “**Firm Supply Conditions Date**” shall be the date on which Seller Firm Supply Condition and the Buyer Firm Supply Conditions have been satisfied or expressly waived in accordance with Clause 3.7, provided that the Firm Supply Conditions Date will not occur until the latest date specified in a notice properly delivered under Clause 3.3.

3.5 Each Party shall use commercially reasonable efforts to cooperate and assist the other to obtain and maintain their respective Permits. Buyer shall not act or fail to act in any manner that delays, interferes with, impedes, or otherwise negatively impacts, Seller’s ability to satisfy the Firm Supply Conditions or thereafter to deliver Natural Gas hereunder. Seller shall not act or fail to act in any manner that delays, interferes with, impedes, or otherwise negatively impacts, Buyer’s ability to satisfy the Firm Supply Conditions or thereafter to receive Natural Gas hereunder. In agreeing to the Seller’s Firm Supply Conditions, the Guaranteed First Gas Date, the Guaranteed First Gas Long-Stop Date and the Guaranteed Substantial Completion Date, Seller has relied on the assumption that no other Puerto Rican Governmental Authority will act or fail to act in any manner that delays, interferes with, impedes, or otherwise negatively impacts, the Parties’ respective abilities to satisfy the Firm Supply Conditions or thereafter to deliver and receive Natural Gas hereunder, even though it is acknowledged that Buyer has no authority to, and is not required hereunder, to compel any such conduct (or abstention therefrom). Buyer’s obligations under this Clause 3.5 and the Seller assumptions regarding other Puerto Rican Governmental Authorities include (i) that Buyer will use commercially reasonable efforts to ensure that its Permits that are required in order to satisfy the Firm Supply Conditions are applied for, processed, granted and obtained in a timely manner, and are thereafter maintained for the duration of the Contract Term (provided that the foregoing does not require Buyer to compel action by any other Puerto Rican Governmental Authority), (ii) that Buyer will use commercially reasonable efforts to cooperate and assist Seller with obtaining and maintaining the Seller Permits, (iii) non-interference with Seller’s ability to deliver, or Buyer’s ability to accept, the quantity of Natural Gas contemplated hereby, (iv) completion of each action specified for Buyer in Exhibit A by the corresponding date specified therein, and (v) from the Effective Date until the Works are finally complete, unrestricted access (to the extent reasonably necessary to complete the Works) to and use of all areas on or adjacent to the San Juan Power Plant that are necessary for the execution of the Works, twenty-four (24) hours per Day, seven (7) Days per week, for Seller, its contractors, subcontractors, vendors and consultants, and their respective officers,

employees and representatives, in each case with prior notice (which may be included in a work plan agreed by the Parties). As Seller's sole and exclusive remedy in connection with Buyer's failure to comply with this Clause 3.5 and any variance from or inaccuracy of any of the assumptions made with respect to any Puerto Rican Governmental Authority or to any other party (A) the Guaranteed First Gas Date and the Guaranteed First Gas Long-Stop Date shall be automatically extended by the number of days by which such failure, variance or inaccuracy directly or indirectly delay the Commissioning Start Date beyond such date, (B) the Guaranteed Substantial Completion Date shall be automatically extended by the number of days by which such failure, variance or inaccuracy directly or indirectly delay achievement of Substantial Completion beyond such date, and (C) in accordance with Article 9 of Annex A, Seller shall be entitled to an equitable adjustment to the compensation payable hereunder.

3.6 Each Party shall furnish the other Party upon request by such other Party with such other reasonable assistance and other information in its possession (and not subject to applicable confidentiality restrictions) as the other Party may request in connection with its fulfillment of each Firm Supply Condition for which that other Party is the responsible Party.

3.7 Each Party shall be entitled, in its sole discretion, to waive the other Party's obligation to comply with such other Party's Firm Supply Conditions.

#### ARTICLE IV QUALITY

4.1 The Natural Gas delivered by Seller to or for the account of Buyer at the Delivery Point shall comply with the Natural Gas quality specifications set forth in Exhibit B (the "**Specifications**"). The standard test methods ASTM D1945, Standard Test Method for Analysis of Natural Gas by Gas Chromatography, then in effect, shall be used to determine compliance with the Specifications.

#### 4.2 Failure of Natural Gas to Conform to Specifications

(a) Seller shall notify Buyer as soon as reasonably practicable after becoming aware of any existing or anticipated failure of the NG available for delivery to the Delivery Point to conform to the Specifications, giving details of the nature and expected magnitude of the variance, the cause of the non-compliance and the probable duration, including the delivery time of such Off-Spec Natural Gas.

(b) If at any time, the NG offered for delivery by Seller is or is reasonably expected by Seller to be Off-Spec Natural Gas, Buyer may reject in whole or in part the delivery of such Off-Spec Natural Gas.

(c) If at any time, Seller is unable to deliver NG conforming to the Specifications but is able to deliver Off-Spec Natural Gas, Seller shall withhold deliveries until such time as it is able to deliver NG conforming to the Specifications; *provided, however*, that in such event Buyer shall be entitled to (i)

procure Back-up Fuel Quantity from Third Parties, or (ii) request delivery of such Off-Spec Natural Gas (a “**Delivery Confirmation Request**”), unless such delivery, in Seller’s opinion acting as a Reasonable and Prudent Operator, would have a detrimental effect on the MFH Facility or other related Seller Property.

(d) Unless both (i) Buyer is notified of the full extent to which Off-Spec Natural Gas actually fails to meet the Specifications, and (ii) Buyer makes a Delivery Confirmation Request pursuant to Clause 4.2(c) (which shall constitute a waiver in writing of its right to reject such Off-Spec Natural Gas), Seller shall, subject to Clause 11.5, be liable for all cost and expense directly incurred by Buyer as a result of the delivery of Off-Spec Natural Gas, including all the reasonable out-of-pocket, actual costs and expenses incurred (over and above those normally incurred in accepting conforming Natural Gas) in receiving and treating Off-Spec Natural Gas by such means as are appropriate; *provided, however*, that Buyer shall exercise commercially reasonable practices to minimize the costs and expenses which may occur.

(e) If (i) Buyer is notified of the full extent to which Off-Spec Natural Gas actually fails to meet the Specifications, and (ii) Buyer procures a Back-up Fuel Quantity from Third Parties pursuant to Clause 4.2(c) as a replacement for such Off-Spec Natural Gas, Seller shall be liable to Buyer for the Back-up Fuel Cover Amount for such Back-up Fuel Quantity, as determined pursuant to Clause 9.1(b).

(f) If (i) Buyer is notified of the full extent to which Off-Spec Natural Gas actually fails to meet the Specifications, and (ii) Buyer waives in writing its right to reject such Off-Spec Natural Gas, (A) such Off-Spec Natural Gas shall be deemed to have been delivered in accordance with this Agreement and (B) Seller shall not be liable for any damages to Buyer for the acceptance of such Off-Spec Natural Gas.

(g) When NG is not taken by Buyer due to it being Off-Spec Natural Gas or when Seller withholds NG pursuant to Clause 4.2(c), Buyer shall not be obliged to pay for such NG not taken, and such NG not taken shall be deemed not to have been made available and shall be considered a “Natural Gas Deficiency.”

(h) The price for all Off-Spec Natural Gas delivered to the Delivery Point, whether pursuant to paragraph (f) above or otherwise, shall equal eighty-five percent (85%) of the Fuel Price.

(i) Buyer shall have no right or remedy with respect to the Off-Spec Natural Gas other than those stated or referred to in this Clause 4.2 and Article XIX.

4.3 Any Dispute between the Parties concerning the measurement and/or testing of NG for the purposes of determining the quality thereof at the Delivery Point, shall be settled in accordance with the provisions of Clause 24.2 of this Agreement.

**ARTICLE V  
SUPPLY PERIOD**

5.1 The supply period for NG shall begin on the Commissioning Start Date and shall continue in force until and including the last Day of the Contract Term (the “**Supply Period**”).

5.2 The phase of the Supply Period from, and including, the Commissioning Start Date to, and including, the final Day of the calendar month in which the Firm Supply Conditions Date occurs shall be considered to be a transitional supply period (the “**Transitional Supply Period**”).

5.3 The phase of the Supply Period from and including the first Day of the first calendar month that commences after the Firm Supply Conditions Date to and including the last Day of the Contract Term shall be the “**Firm Supply Period.**”

5.4 Seller shall use commercially reasonable efforts to complete those elements of the Works that are necessary to make the Interconnection Facility and SJ 6 capable of receiving and using Natural Gas (the “**SJ 6 First Gas Requirements**”) for commissioning on a Day (the “**Commissioning Start Date**”) that occurs on or before the Guaranteed First Gas Date (as it may be extended pursuant to this Clause 5.4). Seller shall deliver written notice to Buyer promptly upon achievement of the SJ 6 First Gas Requirements and the Commissioning Start Date. If, due to events or circumstances not attributable to Seller (including (i) any event of Force Majeure, (ii) any material breach of this Agreement by Buyer (including of Clause 3.5), (iii) any variance from the assumptions specified in Clause 3.5 with respect to Puerto Rican Governmental Authorities, (iv) any act or omission of MHPSA, including failure to perform any part of the Works fully in accordance with the terms of the agreement between MHPSA and Seller, or any delay in performing such work, (v) any act or omission of Buyer, including Buyer’s inability, for any reason, to satisfy the Buyer Firm Supply Condition, and (vi) any Change of Law), satisfaction of the SJ 6 First Gas Requirements is delayed, the Guaranteed First Gas Date shall be automatically extended by the number of days by which such events or circumstances directly or indirectly delay satisfaction of the SJ 6 First Gas Requirements.

5.5 If the Commissioning Start Date fails to occur within seven (7) calendar Days after the Guaranteed First Gas Date, Seller shall be liable to Buyer for delay liquidated damages of Three Hundred Thirty-Three Thousand Three Hundred Thirty Three Dollars and 33/100 Cents (\$333,333.33) per Day that elapses between the Day that is the eighth (8<sup>th</sup>) day after the Guaranteed First Gas Date and the Commissioning Start Date (the “**Delay LDs**”), up to an aggregate maximum of Ten Million Dollars (\$10,000,000.00). The Parties acknowledge and agree that the Delay LDs are a reasonable calculation of the loss that Buyer will suffer as a result of such a delay, are assessed in light of the difficulty of calculating such loss, and do not constitute a penalty. The Delay LDs shall be Buyer’s sole and exclusive remedy, and Seller’s sole and exclusive liability, with respect to any delay in satisfaction of the SJ 6 First Gas Requirements or commencement of Natural Gas supply (save with respect to the applicable Termination Events in Clause 19.1(b)(ii) and Clause 19.1(b)(v)).

**ARTICLE VI**  
**NG QUANTITIES**

6.1 The “**Maximum Annual Contract Quantity**” for each Contract Year shall be twenty-five (25) TBTU unless otherwise agreed in writing by the Parties.

6.2 The Maximum Annual Contract Quantity shall be prorated downward ratably for each Contract Year of less than three hundred sixty-five (365) Days. Without prejudice to the provisions of Clause 6.5 and taking into account Seller’s commercial and technical restrictions and subject to the Parties obtaining any relevant Permits, during the Transitional Supply Period (a) Seller shall sell and deliver NG to Buyer at the Delivery Point and (b) Buyer shall purchase and take delivery from Seller, at the Delivery Point, such quantities of Natural Gas as the Parties agree are necessary for Seller to start-up, commission, test and complete, the Works, and Buyer shall make such quantities of Natural Gas available to the Seller for such purposes.

6.3 All the terms and conditions of this Agreement governing the delivery, receipt, metering and testing of, and payment for, Natural Gas, shall apply *mutatis mutandis* during the Transitional Supply Period, provided that:

(a) Seller shall make available the necessary agreed quantities of NG in accordance with Clause 6.2 and Buyer shall pay for such quantities of NG, in each case in accordance with this Agreement, provided that the quantities of NG to be delivered shall not, without prior written agreement between the Parties, exceed:

(i) the maximum amount of NG that Seller can supply technically, legally and commercially; and

(ii) The maximum amount of NG that Buyer can consume at SJ 5&6 Units.

(b) The Fuel Price applicable to the NG quantities consumed during the Transitional Supply Period up to a maximum quantity of one million two hundred thousand (1,200,000) MMBtu in aggregate for both SJ 5&6 Units shall be the Fuel Price calculated in accordance with Exhibit C, and Seller shall be solely responsible for the cost of NG in excess of such quantity, except to the extent that such excess quantities are used to generate power sold to the grid by Buyer.

6.4 The Parties shall be in contact on a regular basis to define the quantities of Natural Gas to deliver, and to agree upon a delivery programme, in accordance with Clauses 7.4(a)(iii), 7.4(a)(iv) and 7.5, and to start the supply as soon as practicable during the Transitional Supply Period.

6.5 In respect of each Day of every Contract Year, the contracted quantity for such Day (the “**Daily Contract Quantity**” or “**DCQ**”) shall be the daily nomination for such Day of the Binding Monthly Schedule or as otherwise agreed in writing. The maximum quantity that Buyer may nominate for any Day (the “**Maximum DCQ**”) shall be eighty-six thousand

one hundred sixty (86,160) MMBtu per Day; *provided, however*, that Seller shall use reasonable efforts to comply with Buyer's request to deliver a quantity on a Day in excess of the applicable Maximum DCQ. If Buyer nominates a quantity of Natural Gas for a given Day above zero (0), then the minimum quantity that Buyer may nominate for such Day (the "**Minimum DCQ**") shall be eleven thousand four hundred (11,400) MMBtu per Day; *provided, however*, that Seller shall use commercially reasonable efforts to comply with Buyer's request to deliver a quantity on a Day that is less than the applicable Minimum DCQ.

## 6.6 Hourly Rates

(a) Seller shall not be obliged, notwithstanding any other provision of this Agreement, to deliver the DCQ at an hourly rate over three thousand five hundred ninety 3590 MMBtu per hour ("**Maximum Hourly Rate**") or, if a DCQ above zero (0) has been nominated, under nine hundred fifty (950) MMBtu per hour ("**Minimum Hourly Rate**"); *provided, however*, that (i) Seller shall make commercially reasonable efforts to accommodate a lower send-out during start-up and shutdown of a Unit; and (ii) Seller shall use commercially reasonable efforts to comply with Buyer's requests to exceed the Maximum Hourly Rate or to deliver at a rate that is less than the Minimum Hourly Rate, to the extent necessary for Buyer's demand, subject to the operation of the SJ 5&6 Units.

(b) Buyer shall not be obliged, notwithstanding any other provision of this Agreement, to receive the DCQ at an hourly rate over the Maximum Hourly Rate or under the Minimum Hourly Rate; *provided, however*, that Buyer shall use commercially reasonable efforts to comply with Seller's exceptional requests to exceed such Maximum Hourly Rate or, if a DCQ above zero (0) has been nominated, fall below such Minimum Hourly Rate to the extent necessary for the performance of this Agreement.

## ARTICLE VII SCHEDULING

### 7.1 Transitional Supply Period

In accordance with Clause 6.4, the Parties shall agree to a delivery programme for the Transitional Supply Period.

During the Transitional Supply Period, Clauses 7.4(a)(iii), 7.4(a)(iv) and 7.5 shall apply *mutatis mutandis* to the binding NG quantities agreed between the Parties in accordance with Clause 6.4.

### 7.2 Firm Supply Period –first Contract Year

The first Contract Year shall begin on the first Day of the Firm Supply Period and end on December 31st following the start of the Firm Supply Period.



7.3 Firm Supply Period –except for first Contract Year and the last Contract Year:

Each Contract Year shall begin on January 1st, of the Contract Year at 00:00 local time and end on December 31st, of the Contract Year at 24:00 local time.

7.4 With respect to each Contract Year during the Firm Supply Period, the following provisions shall apply:

(a) The “**Annual Delivery Programme**” (“ADP”), Ninety Day Schedule (“NDS”) and Weekly Programme for such Contract Year shall be established according to the following conditions:

(i) Except for the first Contract Year, on or before June 1st, Buyer shall nominate, on a non-binding basis, the “**Annual Contract Quantity**” or “**ACQ**” for the upcoming Contract Year, which ACQ may be zero (0), but if it is more than zero (0), then it must be at least four (4) TBTU and shall not exceed the Maximum Annual Contract Quantity for such Contract Year. In establishing each ACQ, Buyer shall have the right to nominate a quantity of Natural Gas equal to zero (0) and, at Buyer’s election, to procure diesel from Third Parties during the relevant period. If Buyer nominates zero (0) or less than four (4) TBTU (which shall be deemed a nomination of zero (0)), such nomination shall be final and binding and Seller has no obligation to deliver for that Contract Year. In addition to the ACQ, Buyer shall provide on or before June 1st:

(A) an estimate of its Natural Gas consumption and projected electricity dispatch from SJ 5&6 Units (“**Dispatch**”) on a quarterly basis; and

(B) its non-binding estimate of the dates of any Scheduled Maintenance expected to occur during such Contract Year.

Regarding the first Contract Year, an estimation of the ACQ and the information required in this Clause 7.4(a)(i) are attached hereto as Annex E. Seller shall provide written notice to Buyer at least ninety (90) Days in advance of what it anticipates will be the Firm Supply Condition Date (the “**Anticipated Commencement Notice**”). Buyer shall confirm no later than ten (10) Days after receiving the Anticipated Commencement Notice, the final ACQ for the first Contract Year.

(ii) Except for the first Contract Year, on or before October 1st of each year thereafter, Buyer shall provide to Seller an ADP for the ACQ informed by Buyer in accordance with Clause 7.4(a)(i), for the following Contract Year showing Natural Gas consumption and Dispatch quantities on a monthly basis the sum of such quantities for the three (3) months of each calendar quarter (the “**Quarterly Quantity**”), in each case on a non-binding

basis. This ADP shall include the final dates of any Scheduled Maintenance to occur during such Contract Year.

(iii) Regarding the first Contract Year, Buyer shall provide Seller an estimated ADP no later than thirty (30) Days after the Effective Date. Once the Anticipated Commencement Notice is delivered to Buyer, Buyer shall confirm no later than ten (10) Days after such event, the final ADP for the first Contract Year.

(iv) On or before the fifth (5th) Day of each calendar month **M-1** Buyer shall provide to Seller its NG requirements and planned Dispatch for the three (3) months following M-1 (the “**NDS**” and such three months, in chronological order, months “**M**,” “**M+1**” and “**M+2**”). The NDS shall be final and binding for month **M** (the “**Binding Monthly Schedule**”), subject to Clause 7.6. The NDS shall be non-binding for months **M+1** and **M+2**. Such NDS shall include the monthly quantities of Natural Gas to be delivered in and planned Dispatch for each of the next three (3) months, as well as the daily Natural Gas requirements and planned Dispatch for month **M**. Buyer may request additional Natural Gas from Seller for month **M** after the deadline for submission of the NDS. Upon receipt of such a request, Seller shall inform Buyer within one (1) Day whether Seller can deliver all or a portion of such quantities and the applicable price, and Buyer shall have two (2) Days to accept or decline Seller’s offer. If Buyer accepts Seller’s offer, such quantities shall become firm and binding; *provided, however*, that such quantities shall not be treated as quantities of Natural Gas to which the Binding Monthly Schedule, the NDS, any Quarterly Quantity or the ACQ apply. Further, Buyer shall use commercially reasonable efforts to include in each NDS estimated, non-binding daily requirements for months **M+1** and **M+2**; and

(v) On or before 00.00 hours Puerto Rico Time of each Wednesday of each week, or, if such Day is not a Business Day, on the Business Day immediately preceding such Day, Buyer shall provide to Seller a daily estimate of its NG requirements and planned Dispatch for the coming week, to be provided on a daily basis with hourly detail. This weekly programme (“**Weekly Programme**”) shall be reasonably adjusted to the original NDS for the applicable month. For the purpose of this Clause 7.4 each Weekly Programme shall contain consumption details beginning 00:00 hours Sunday until 23:59 hours the following Saturday.

(b) The Parties shall cooperate in the scheduling to ensure that the supply of Natural Gas to the SJ 5&6 Units is as regular and as even as practicable (subject to Buyer’s Scheduled Maintenances) in a manner that is consistent with Seller’s projected deliveries and use of LNG, as such projected deliveries or requirements may be adjusted or exist from time to time. Under no circumstance shall Buyer, without the prior written agreement of Seller pursuant to Clause 7.4(a)(iv), be entitled to nominate any quantity of Natural Gas that would increase the daily,

weekly, monthly, quarterly or annual (as applicable) quantity of Natural Gas that Seller is required to deliver hereunder to exceed the quantity of Natural Gas nominated with respect to the relevant period pursuant to any earlier nomination under Clause 7.4(a).

(c) Buyer designates the Operational Manager as specified in Article XXIII to make all the notifications required under this Clause 7.4.

(d) Buyer will use commercially reasonable efforts to provide written notice to Seller as soon as practicable after information becomes available to Buyer or any event occurs that causes a discrepancy between the quantities of Natural Gas nominated by Buyer pursuant to this Clause 7.4 (including the ACQ, ADP, NDS, Quarterly Quantity, Binding Monthly Schedule and the Weekly Programme) and the quantities that Buyer is able to receive, regardless of whether such nomination is binding or non-binding. Such notice shall specify the cause of such discrepancy and the amount of such discrepancy. Unless and until Seller receives any such notice from Buyer, Seller shall be considered as acting reasonably in relying on the nominations provided by Buyer pursuant to this Clause 7.4.

7.5 If, during any month, Buyer determines that it no longer requires, or if Buyer is unable to receive, some or all of the quantity of Natural Gas set forth in the Binding Monthly Schedule for such month (such quantity, the “**Excess Nomination**”), then:

(a) Buyer shall promptly provide written notice to Seller of the quantities not needed or unable to be received;

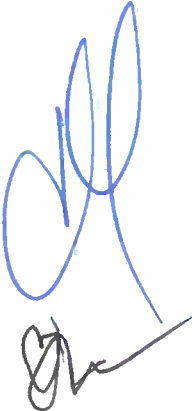
(b) Buyer shall remain obligated to pay the Fuel Price for the originally nominated Binding Monthly Quantity (subject to Buyer’s right to receive Carryover Credits pursuant to Clause 7.5(d));

(c) Seller shall use commercially reasonable efforts to sell the Excess Nomination, whether as Natural Gas or as LNG, at a reasonable price. If Seller is able to sell all or a portion of such Excess Nomination (such sale, a “**Mitigation Sale**”), Seller shall credit to Buyer the proceeds of such Mitigation Sale, less the reasonable, incremental out-of-pocket costs incurred by Seller in storing and transporting the Natural Gas or LNG sold, and marketing, making and performing such sale, in each case above what Seller would have incurred in making such gas available at the Delivery Point. Seller shall furnish the details of such Mitigation Sale in writing to Buyer within thirty (30) days of the date of such sale. Any sale of LNG or Natural Gas by Seller to any Third Party that Seller was already obligated to make (as of the date Seller becomes aware of the Excess Nomination) is not a Mitigation Sale. If Seller is unable to sell all or a portion of such Excess Nomination (such inability to be documented in a writing describing the market conditions that precluded such sale or made such sale commercially impracticable), Seller shall retain such quantities and credit Buyer with an amount equal to fifteen percent (15%) of the Fuel Price multiplied by the quantity not sold on the Day it would have otherwise been made available to Buyer; and

(d) To the extent that an Excess Nomination is caused by Force Majeure or a Forced Shutdown and Buyer pays for such Excess Nomination pursuant to Clause 7.5(b) (the “Credit Quantity”), Buyer shall be entitled to a credit determined by multiplying the Credit Quantity by the Fuel Price for the relevant month (a “Carryover Credit”), which may be applied to Buyer’s payment obligations in the immediately subsequent three (3) months, on a first-in first-out basis. To the extent any Carryover Credit is not applied to Buyer’s payment obligations in the three (3) months immediately following its accrual, such Carryover Credit shall expire.

7.6 Notwithstanding anything in this Agreement to the contrary, Buyer shall have no obligation to pay for any portion of a Binding Monthly Schedule to the extent not made available or not taken at the Delivery Point due to (a) an event of Force Majeure claimed by Seller or (b) any other reasons attributable to Seller (including any Unplanned Shutdowns affecting the MFH Facility, any Planned Seller Shutdown or other Scheduled Maintenance on the MFH Facility, or rejected or withheld Off-Spec Gas).

7.7 Notwithstanding any Binding Monthly Schedule delivered pursuant to this Article VII, and without limiting Buyer’s obligations and liabilities hereunder or under Applicable Law with respect to such binding nominations, until such time as the Title III Case is finally resolved (and is no longer subject to appeal), and unless (and then only to the extent that) the terms set forth in this Clause 7.7 are expressly waived by Seller by written notice expressly referring to this Clause 7.7:



(a) Seller shall not be obligated to deliver any quantity of Natural Gas set forth in a binding nomination unless the Firm Supply Solvency Conditions were satisfied at the time of each relevant nomination and remain satisfied at the time that the relevant quantity of Natural Gas is scheduled for delivery;

(b) if any Firm Supply Solvency Condition is not satisfied at any time, Seller’s obligations under this Agreement shall be immediately suspended for the duration of the Supply Period (without notice by or action of the Seller); and

(c) Seller is excused from performing under this Agreement, unless and until such Firm Supply Solvency Condition is satisfied in full, at which time the suspension of the Supply Period shall cease, and the Parties shall resume performance under the Agreement.

From and after the final resolution of the Title III Case, the terms and conditions of this Clause 7.7 shall be null and void and of no further force and effect.

## **ARTICLE VIII SHUTDOWN; COMMITTEES**

8.1 In the case of any unplanned outage, trip, curtailment or temporary discontinuance in the operation of the SJ 5&6 Units, the Interconnection Facility or the MFH Facility (including any unplanned outage, trip, curtailment or temporary discontinuance necessary to address any emergency or an imminent threat to the health and safety of people or

property) (an “**Unplanned Shutdown**”), the affected Party shall provide written notice thereof to the other Party as soon as reasonably possible, and in no event more than ninety (90) minutes after the start of such Unplanned Shutdown. During the period of any Unplanned Shutdown, the affected Party shall, from time to time, update the unaffected Party on the expected progress towards completing the maintenance or modification, whichever is applicable. Seller shall use commercially reasonable efforts to sell to third parties all quantities of Natural Gas for which Buyer is unable to take delivery during an Unplanned Shutdown affecting Buyer.

8.2 Buyer shall (a) within thirty (30) days of its receipt of the Anticipated Commencement Notice, provide a written notice to Seller indicating the periods of time during the first year of the Supply Period, and (b) by October 1 of each year during the Supply Period, a written notice to Seller indicating the periods of time during the next Contract Year, in each case, when Buyer has planned Scheduled Maintenance (each, a “**Planned Buyer Shutdown**”). Seller shall provide written notice to Buyer six (6) months prior to the dates during the next year when the MFH Facility will be shut down for maintenance or refurbishment (each, a “**Planned Seller Shutdown**”); *provided, however*, that in each Contract Year such Planned Seller Shutdowns and Unplanned Shutdowns of the MFH Facility will, in aggregate, last no longer than twenty-one (21) Days. Seller shall use commercially reasonable efforts to cause its Planned Seller Shutdowns to coincide with Planned Buyer Shutdowns. Each Party’s obligations under this Agreement to deliver and receive Natural Gas shall be suspended and excused during Unplanned Shutdowns affecting the other Party, Unplanned Shutdowns caused by Force Majeure, and Planned Buyer Shutdowns and Planned Seller Shutdowns.

8.3 The Parties shall establish a committee comprised of three (3) representatives of each Party (as set forth in Annex D) for the purpose of reviewing and discussing the operations of the Parties at the MFH Facility, the Interconnection Facility and the SJ 5&6 Units (such committee, the “**Operations Committee**”). The Operations Committee shall meet monthly from and after the Effective Date. Each Party shall have the right to change its representatives on the Operations Committee at its sole discretion by providing written notice thereof to the other Party.

8.4 The Parties shall establish a committee comprised of three (3) representatives of each Party (as set forth in Annex D) for the purpose of reviewing and discussing the progress and commissioning of the Works (such committee, the “**Construction Committee**”). The Construction Committee shall meet every week from and after the Effective Date until Final Completion is achieved, and thereafter, the Construction Committee shall meet monthly. Each Party shall have the right to change its representatives on the Construction Committee at its sole discretion by providing written notice thereof to the other Party.

## **ARTICLE IX SELLER’S SHORTFALL**

9.1 If, for any reason other than the occurrence of (a) an event of Force Majeure, (b) a Planned Seller Shutdown, (c) Excess Nominations, (d) the failure of any Firm Supply

Solvency Condition to be satisfied at any time (subject to Clause 7.7) or (e) reasons attributable to Buyer (including any Unplanned Shutdowns affecting the SJ 5&6 Units, any Scheduled Maintenance affecting SJ 5&6 Units or any suspension pursuant to Clause 13.9(b)), Seller fails to deliver to Buyer the scheduled quantity of Natural Gas in the Binding Monthly Schedule for the applicable month of any Contract Quarter (the “**Natural Gas Deficiency**”), then, as Buyer’s sole and exclusive remedy, and Seller’s sole and exclusive liability, with respect to such Natural Gas Deficiency (subject only to Buyer’s termination right pursuant to Clause 19.1(b)(ii)(B)):

(a) At Seller’s sole option, Seller shall either (i) make available to Buyer, at the SJ 5&6 Units, the equivalent quantity of diesel (the “**Back-up Fuel Quantity**”) required to make up for the energy content of the Natural Gas Deficiency, as calculated in accordance with Exhibit G or (ii) pay the Back-up Fuel Cover Amount so that Buyer may procure the Back-up Fuel Quantity from Third Parties.

(b) In case of Clause 9.1(a)(ii), if on the date of purchase of such Back-up Fuel Quantity by Buyer, the Back-Up Fuel Quantity Index Price exceeds the Fuel Price that would have been payable hereunder for an equivalent quantity of Natural Gas (based on energy content), Seller shall reimburse Buyer for the lower of (i) such difference multiplied by the Back-up Fuel Quantity Index Price applicable if Seller had delivered Natural Gas and (ii) the actual incremental cost to Buyer of sourcing and delivering the Back-up Fuel Quantity, relative to the Fuel Price that would have been paid to Seller for equivalent Natural Gas (the “**Back-up Fuel Cover Amount**”).

9.2 Any Back-Up Fuel Cover Amounts shall be due and payable by Seller to Buyer in accordance with Article XIII.

9.3 Seller agrees that Buyer’s damages associated with Seller’s failure to deliver NG hereunder would be difficult to estimate, and that Clause 9.1 represents a reasonable estimate of such damages.

## ARTICLE X MEASUREMENT AND TESTING

### 10.1 Unit of Measurement

The following guidelines shall be followed with regard to the units of measurement to be used by either Party to comply, as appropriate, with the provisions of this Agreement:

(a) The unit for the purpose of measuring volume shall be one cubic foot of Natural Gas at a base temperature of sixty degrees (60°) F and at a pressure of 14.73 psia with correction for deviation from Boyle’s Law. Computation of volumes, including any deviation from Boyle’s Law, shall comply with applicable rules, regulations, and orders promulgated by the appropriate regulatory authorities having jurisdiction. For payment purposes, the volume of Natural Gas delivered hereunder will be determined at the pressure reported by the Metering Equipment

or based on fifteen (15) Day average flowing pressure corrected, if necessary, in the event that the Metering Equipment is inoperable or not measuring accurately, as applicable, and will be multiplied by the Btu content per cubic foot to obtain the total Btu contained within such volume of Natural Gas.

(b) For purposes of measurement and meter calibration, the atmospheric pressure shall be assumed to be 14.73 psia, irrespective of actual elevation or location of the Delivery Point or any Metering Equipment above sea level, or variations in such atmospheric pressure from time to time.

(c) The static pressure of the Natural Gas passing through the Metering Equipment shall be determined by the use of electronic measurement equipment or by the use of another pressure recording device reasonably acceptable to both Parties. The instantaneous static pressure measurements from the electronic measurement equipment or the arithmetic average of the temperature recorded each Day shall be used in computing Natural Gas volumes.

(d) If Metering Equipment requiring the use of specific gravity is used, then the specific gravity of the Natural Gas delivered hereunder shall be determined by a method according to accepted industry practice. If a recording gravitometer is used, then the arithmetic average of the specific gravity of the Natural Gas flowing through the meters shall be used in computing Natural Gas volumes. If a spot test method is used, then the specific gravity of the Natural Gas delivered hereunder shall be determined as often as found necessary in practice. Any such test shall determine the specific gravity to be used in computation of volumes values effective the first Day of the following month and shall continue to be used until changed in a like manner by a subsequent test.

(e) The temperature of the Natural Gas shall be determined by a recording thermometer installed so that it will record the temperature of the Natural Gas flowing through the meters, and such flowing temperature shall be corrected to Fahrenheit.

(f) Heating Value and energy content will be measured by Seller as described in "Appendix F – Heating Value Calculation of API MPMS, Chapter 14.3." The determination of Natural Gas composition shall be in accordance with the GPA Standard 226 "Analysis for Natural Gas Chromatography" and GPA Standard 2172 "Calculation of Gross Heating Value relative density and compressibility factor for Natural Gas Mixtures from compositional analysis". The composition of the NG shall be continuously measured by on-line chromatographs installed and maintained (or caused to be installed and maintained) by Seller at Seller's sole expense. The Heating Value of the NG shall be calculated using results from the on-line chromatograph. In the event of failure of the on-line NG chromatograph, chromatograph analysis of samples collected proportional to the flow through the meters shall be Used. All electronic metering shall comply with the API Manual of Petroleum Standards, Chapter 21, Flow Measurement Using Electronic Metering

Systems, First Edition, dated September 1993, and any subsequent modification and amendment thereof.

(g) The energy content of all NG delivered hereunder shall be in Btu and shall equal the Standard Cubic Feet of such NG multiplied by the Heating Value of such NG.

## 10.2 Metering Equipment

(a) Prior to the start of the Supply Period, Seller shall install or cause to be installed, at Seller's expense, a main and a back-up ultrasonic meter as necessary to measure the flow, volume and Heating Value of Natural Gas delivered hereunder for revenue purposes (the "**Metering Equipment**"). The Metering Equipment will be installed at the point identified as "**Seller Metering Station**" on the schematic attached as Annex C. The Metering Equipment shall be designed and installed in accordance with the current recommendations of the American Gas Association. If the Metering Equipment (or component(s) thereof) is out of service or registering inaccurately, the volumes of Natural Gas delivered hereunder shall be estimated as follows, in descending order of priority:

- (i) by using the registration of the Buyer Check Meter;
- (ii) by correcting the error if the percentage of error is ascertainable by calibration, test, or mathematical calculation; or
- (iii) by estimating the quantity of delivery by measuring deliveries during prior periods under similar conditions when any meter was registering accurately.

(b) Buyer has a meter equipment necessary to measure the volume of Natural Gas delivered hereunder (the "**Buyer Check Meter**"). The Buyer Check Meter is installed at the point identified as "**Buyer Metering Station**" on the schematic attached as Annex C. The Buyer Check Meter is designed and installed in accordance with the current recommendations of the American Gas Association. In the event that Buyer notifies Seller of a discrepancy greater than plus or minus one percent (1%) between the quantity of Natural Gas delivered at the Delivery Point by Seller according to the Buyer Check Meter, and the quantity of Natural Gas measured by the Metering Equipment, the Parties will resolve and correct such discrepancy (including with respect to adjustments for prior Natural Gas deliveries).

(c) For the avoidance of doubt, it is the intent of the Parties that Natural Gas will only be considered delivered when it reaches the Delivery Point, and that any Natural Gas measured at the Metering Equipment that is not actually delivered to the Delivery Point will not be considered delivered and will not be charged to Buyer. In this regard, Buyer will not be charged for line fill or any losses or fuel used on the pipeline between the Metering Equipment and the Delivery Point. Also,



if Seller informs Seller about its intention to consume, due to any operational event, any quantity of Natural Gas stored in the pipeline that was not delivered to Buyer at the Delivery Point and, consequently, that was already measured by the Metering Equipment at the Seller Metering Station, Seller shall notify in writing Buyer of such circumstance. The Parties will resolve any material discrepancies resulting from Seller's consumption of Natural Gas under this Clause 10.2(c) in accordance with Clause 10.2(b).

### 10.3 Verification

The following guidelines shall be followed with regard to the verification of the Metering Equipment to be used in accordance with this Agreement:

(a) At least once each month, and from time to time upon at least two weeks prior written notice by either Party to the other, Seller shall verify or cause to be verified the accuracy of the Metering Equipment. When as a result of such test the Metering Equipment is found to be out of calibration by no more than one percent (1%) when compared to the manufacturer's specifications for such equipment, no adjustment shall be made in the amount paid by Buyer to Seller.

(b) If the testing of the Metering Equipment demonstrates that a meter is out of calibration by more than one percent (1%) when compared to the manufacturer's specifications for such equipment, the applicable Metering Equipment reading for the actual period during which out of calibration measurements were made shall be adjusted based on the methods stated in Clause 10.2 above.

(c) If the actual period that such equipment has been out of calibration cannot be determined to the mutual satisfaction of Seller and Buyer, the adjustment shall be for a period equal to one-half of the time elapsed since the most recent test. The previous payments made by Buyer to Seller for this period shall be subtracted from the amount of payments that are calculated to have been owed under this Agreement. The difference in US Dollars (which may be a positive or negative amount) shall be added to the next Monthly Invoice pursuant to Article XIII.

(d) The cost of the monthly testing and calibration of the Metering Equipment described in this Clause 10.3 shall be the responsibility of Seller. The cost of any testing and calibration of the Metering Equipment beyond the monthly test permitted in this Clause 10.3 shall also be the responsibility of Seller, unless the request to test any of the Metering Equipment is made by Buyer and the results of such test requested by Buyer demonstrate that the Metering Equipment is less than one percent (1%) out of calibration, in which case the cost of such testing and calibration shall be for Buyer's account.

(e) Each Party shall comply with any reasonable request of the other concerning the sealing of the Metering Equipment, the presence of a representative of Buyer when the seals are broken and tests are conducted, and other matters affecting the accuracy, testing and calibration of the Metering Equipment.

(f) If either Seller or Buyer believes that there has been a failure or stoppage of any of the Metering Equipment, it shall immediately notify the other Party.

#### 10.4 Availability of Readings

At the end of each Month, Seller shall make available to Buyer all readings of the metering equipment as referenced in Clause 10.2(a).

#### 10.5 Preservation of Records

Seller shall preserve or cause to be preserved for a period of at least three (3) years following the expiration of this Agreement all test data, charts, and other similar records regarding the measurement of Natural Gas delivered in accordance with this Agreement.

### ARTICLE XI RISK AND INDEMNITY

#### 11.1 Conversion Works.

(a) Subject to the provisions of Clause 11.2(b), Seller shall protect, defend, indemnify and hold harmless, the Buyer Group from and against any and all Claims and Losses by reason of damage to Third Party physical property, or for personal or bodily injury, or both, arising out of the performance of the Works or the Terms of Works to the extent such damage or injury is attributable to the negligence of Seller.

(b) Subject to the provisions of Clause 11.2(a), Buyer shall protect, defend, indemnify and hold harmless, the Seller Parties from and against any and all Claims and Losses by reason of damage to Third Party physical property, or for personal or bodily injury, or both, arising out of the performance of the Works or the Terms of Works to the extent such damage or injury is attributable to the negligence of Buyer.

#### 11.2 Knock-for-Knock Release and Indemnities.

(a) **SELLER HEREBY WAIVES AND RELEASES, AND SELLER SHALL PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS, THE BUYER GROUP** from and against any and all Claims and Losses by or of any Seller Group directly or indirectly arising out of, incident to, or in connection with (i) any bodily injury, illness or death of any member of Seller Group or (ii) the loss or destruction of any property owned by or in the possession of any member of Seller Group, arising out of or incident to the Works or activities contemplated by the Terms of Works.

(b) **BUYER HEREBY WAIVES AND RELEASES, AND BUYER SHALL PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS, THE SELLER GROUP** from and against any and all Claims and Losses by or of any Buyer Group directly or indirectly arising out of, incident to, or in connection with

(i) any bodily injury, illness or death of any member of Buyer Group or (ii) the loss or destruction of any property owned by or in the possession of any member of Buyer Group, arising out of or incident to the Works or activities contemplated by the Terms of Works.

**(c) THE OBLIGATIONS OF, AND THE WAIVER GIVEN BY, EACH PARTY PURSUANT TO THIS CLAUSE 11.2 (INCLUDING THE DEFINED TERMS “CLAIM” AND “LOSS”) ARE INTENDED TO BE GIVEN FULL AND LITERAL EFFECT AND SHALL APPLY REGARDLESS OF THE CAUSE OF THE RELEVANT EVENT, CIRCUMSTANCE, CLAIM OR LOSS, EVEN THOUGH CAUSED IN WHOLE OR IN PART BY (i) A PRE-EXISTING CONDITION, RELEASE, EXPLOSION OR FIRE, (ii) THE SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE NEGLIGENCE, GROSS NEGLIGENCE, BREACH OF DUTY (STATUTORY OR OTHERWISE), STRICT LIABILITY, OR OTHER LEGAL FAULT OF ANY PERSON, OR (iii) THE DEFECTIVE CONDITION OF VEHICLES, PREMISES OR OTHER PROPERTY OWNED, SUPPLIED, HIRED, CHARTERED OR BORROWED BY ANY PERSON, IN EACH CASE WHETHER PRECEDING OR DURING THE EXECUTION OF THIS AGREEMENT.**

11.3 Supply Period. The following indemnities shall apply during the Supply Period to the fullest extent permitted under Applicable Law:

(a) Third Party Claims.

(i) **SELLER SHALL PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE BUYER GROUP** from and against any and all Claims made by a Third Party in connection with any injury or death of persons and/or any damage to or loss of any property (excluding Natural Gas), in each case directly or indirectly arising out of, incident to, or in connection with, Seller’s operation of the MFH Facility, **TO THE EXTENT SUCH CLAIMS ARISE OUT OF THE NEGLIGENCE, STRICT LIABILITY OR WILLFUL MISCONDUCT OF SELLER.**

(ii) **BUYER SHALL PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE SELLER GROUP** from and against any and all Claims made by a Third Party in connection with any injury or death of persons and/or any damage to or loss of any property (excluding Natural Gas), in each case directly or indirectly arising out of, incident to, or in connection with, Buyer’s operation of the San Juan Power Plant (including the Interconnection Facility and the SJ 5&6 Units), **TO THE EXTENT SUCH CLAIMS ARISE OUT OF THE NEGLIGENCE, STRICT LIABILITY OR WILLFUL MISCONDUCT OF BUYER.**


(b) Natural Gas.



(i) The Natural Gas to be sold by Seller and purchased by Buyer in accordance with this Agreement shall be delivered to Buyer at the Delivery Point. Title in Natural Gas, and the risk of loss or contamination of Natural Gas, shall pass from Seller to Buyer at the Delivery Point.

(ii) **SELLER SHALL PROTECT, DEFEND, INDEMNIFY, RELEASE AND HOLD HARMLESS THE BUYER GROUP** from and against all Claims and Losses directly or indirectly arising out of, incident to, or in connection with (i) Third Party Claims of title to said Natural Gas or other charges thereon which attach before title passes to the Buyer, or (ii) environmental damage caused by any release, spill or explosion of Hazardous Materials associated with the Natural Gas before the Delivery Point (excluding, for the avoidance of doubt, any Claims or Losses for which Buyer is responsible pursuant to Clause 11.2).

(iii) **BUYER SHALL PROTECT, DEFEND, INDEMNIFY, RELEASE AND HOLD HARMLESS THE SELLER GROUP** from and against all Claims and Losses directly or indirectly arising out of, incident to, or in connection with (i) Third Party Claims of title to said Natural Gas or other charges thereon which attach after title passes to the Buyer, or (ii) environmental damage caused by any release, spill or explosion of Hazardous Materials associated with the Natural Gas from and after the Delivery Point (excluding, for the avoidance of doubt, any Claims or Losses for which Seller is responsible pursuant to Clause 11.2).



11.4 Notice and Defense. Any Person indemnified hereunder will, as soon as practicable after receiving notice of any suit brought against it within this indemnity, furnish to the indemnifying Party the full particulars within its knowledge thereof and will render all reasonable assistance requested by the indemnifying Party in the defense of any Claims. Each indemnified party will have the right but not the duty to participate, at its own expense, with counsel of its own selection, in the defense and/or settlement thereof without relieving the indemnifying Party of any obligations hereunder; *provided, however*, that an indemnifying Party that has acknowledged its indemnity obligations with respect to any Claim will have control over the defense and settlement of such Claim, as long as the settlement does not impose any obligations on the indemnified parties.

11.5 Excluded Losses. Notwithstanding any other provision of this Agreement, (1) in no event shall either Party be liable to the other Party for (a) any indirect, special, incidental or consequential losses, damages, liabilities or expenses, (b) loss of profits or revenue; loss of use; loss of power; cost of replacement power; loss by way of shutdowns; costs of substitute facilities, goods or services; loss of opportunity or loss of goodwill, whether or not constituting losses, damages, liabilities or expenses contemplated by Clause 11.5(a), or (c) claims of upstream or downstream customers or service providers to either Party for any of the aforementioned categories of damages (collectively, "Excluded Losses") howsoever arising, (2) Seller waives and shall indemnify Buyer Group from and against Claims by members of Seller Group for Excluded Losses, and (3) Buyer waives and shall indemnify Seller Group from and against Claims by members of Buyer Group or by any of its Financing Entities

for Excluded Losses, in each case, except to the extent that Seller's express remedies pursuant to Article VII or Buyer's express remedies pursuant to Article IX (including but not limited to any Back-up Fuel Cover Amounts) or Delay LDs as provided in Clause 5.5 may be construed as constituting or compensating for Excluded Losses.

11.6 Third Party Beneficiaries. The provisions of this Agreement are intended for the sole benefit of Buyer and Seller and there are no third-party beneficiaries hereof, other than indemnitees pursuant to this Article XI and Article 21 of Annex A, each of whom is hereby made a third party beneficiary to this Agreement, with direct enforcement rights against the relevant indemnitor, solely for the purpose of enforcing (or relying upon as a defense) the indemnification provisions under which it is a member of the indemnified group.

## ARTICLE XII NATURAL GAS MANUFACTURING SURCHARGE

12.1 In addition to any other amounts that may become due from Buyer to Seller under this Agreement, Buyer shall pay to Seller, on a monthly basis during the Initial Contract Term, a manufacturing surcharge payment of \$833,333.34 (or \$416,666.67 per Unit) per calendar month (the "**Natural Gas Manufacturing Surcharge**"), for each of the sixty (60) calendar months of the Initial Contract Term, subject to Buyer's rights and obligations to pay the Discounted Surcharge Amount or Full Surcharge Amount, as the case may be, pursuant to Clause 12.3, Clause 17.4(b) and Clause 19.5. Buyer shall not have any obligation to pay the Natural Gas Manufacturing Surcharge in respect of a Unit unless and until Seller has achieved Substantial Completion of such Unit pursuant to Annex A and the other Firm Supply Conditions have been satisfied or waived by the Party(ies) entitled to so waive them. The Natural Gas Manufacturing Surcharge shall be payable by Buyer to Seller regardless of the quantity of Natural Gas that is delivered (or not delivered) by Seller during each calendar month of the Initial Contract Term (or the reasons therefor). The Natural Gas Manufacturing Surcharge will not apply to any Extension Terms.

12.2 The Natural Gas Manufacturing Surcharge is a reasonable and necessary current expense of making Natural Gas available.

12.3 At any time during the Initial Contract Term, Buyer may elect to pay the remaining Natural Gas Manufacturing Surcharge amounts due to Seller under this Agreement by providing ninety (90) Days' written notice of such election, which notice shall set forth the reasons underlying Buyer's election to repay the remaining Natural Gas Manufacturing Surcharge payments and Buyer's sources of funds with respect to the same regardless whether such funds are Buyer's own revenue from profit or operations, provided by any Governmental Authority (including the Federal Emergency Management Agency) or received from a Third Party in connection with an acquisition or private financing. If Buyer's funds to be used to repay the remaining Natural Gas Manufacturing Surcharge payments derive from Buyer's own revenue and profit from operations or funding provided by any Governmental Authority (including the Federal Emergency Management Agency), Buyer shall pay to Seller the amount specified in Exhibit D (the "**Discounted Surcharge Amount**") corresponding to the month in which Buyer makes such election. If the funds to be used by Buyer to prepay the remaining Natural Gas Manufacturing Surcharge

payments derive from any source other than Buyer's own revenue and profit from operations or funding provided by any Governmental Authority (including the Federal Emergency Management Agency), Buyer will be required to pay the full amount of all remaining payments of the Natural Gas Manufacturing Surcharge for each Unit that has achieved Substantial Completion, without applying any discount factor (including any Incremental Tax Adjustment, the "**Full Surcharge Amount**," and together with the Discounted Surcharge Amount, the "**Natural Gas Manufacturing Discounted Payment**"). Buyer shall be responsible for the amount of additional Taxes for which Seller becomes liable as a result of its receipt of the one-time lump sum Natural Gas Manufacturing Discounted Payment instead of monthly payments of the Natural Gas Manufacturing Surcharge. The amount of the difference (if any) in the Taxes Seller will pay upon receipt of the Natural Gas Manufacturing Discounted Payment as compared to the aggregate amount of Taxes that Seller would have paid (assuming then current rates of taxation) if all remaining payments of the Natural Gas Manufacturing Surcharge had been paid as and when due shall be added to the Natural Gas Manufacturing Discounted Payment (the "**Incremental Tax Adjustment**"). Upon Buyer paying the applicable Natural Gas Manufacturing Discounted Payment (including any Incremental Tax Adjustment) to Seller in full, Buyer shall have no further obligation to pay the Natural Gas Manufacturing Surcharge during the remainder of the Contract Term.

### **ARTICLE XIII INVOICING AND PAYMENT**

13.1 Every month Seller shall invoice Buyer for the quantities in the Binding Monthly Schedule (as may be adjusted by Clause 7.6) for the previous calendar month plus any additional quantities Seller agreed to deliver pursuant to Clause 7.4(a)(iv), and whatsoever other amounts that are owed for those items regulated in accordance with this Agreement and current regulations governing the provision of the services at any given time. Buyer certifies that the funds for the payments of Services rendered under this Agreement come from budgetary allocations. All payments made under this Agreement will be charged to Buyer's budget account number 1-2321-23215-000-000.

13.2 Seller shall prepare and shall give to Buyer by the tenth (10th) Day of each calendar month an invoice substantially in the form set forth in Exhibit E (the "**Monthly Invoice**"), which shall show in respect of the preceding calendar month the following information:

- (a) The Fuel Price *multiplied by* the quantities in the Binding Monthly Schedule for such month;
- (b) Any additional quantities Seller agreed to deliver pursuant to Clause 7.4(a)(iv) *multiplied by* the price applicable to such quantities;
- (c) The amount of the Natural Gas Manufacturing Surcharge for such month;
- (d) Any applicable Taxes due for payment by Buyer;

(e) The proceeds from any Mitigation Sale or other sale of (or credit from) any Excess Nomination;

(f) The amount of any Carryover Credit that, pursuant to Clause 7.5(d), Buyer is entitled to apply to the applicable Monthly Invoice; and

(g) The net amount payable by Buyer to Seller, which shall be (a) *plus* (b) *plus* (c) *plus* (d) *minus* (e) *minus* (f).

Buyer shall provide written notice to Seller of any irregularity in a Monthly Invoice submitted by Seller within five (5) working Days of Buyer's receipt thereof, failing which such Monthly Invoice will be deemed to have been properly prepared and submitted.

13.3 If, at the time Seller issues a Monthly Invoice, Buyer is not current on amounts due and payable to Seller under this Agreement pursuant to Clause 13.7 in excess of One Million Dollars (\$1,000,000.00), the Fuel Price for the preceding calendar month set forth in such Monthly Invoice shall be calculated based on a Unit Cost that is equal to the Base Cost.

13.4 Subject to Clause 13.10, Buyer shall pay the amount to Seller due in accordance with such Monthly Invoice.

13.5 If Seller incurs a liability to Buyer for failing to deliver NG pursuant to Article IX, then Buyer shall send to Seller (following the end of the applicable month) an invoice and reasonable supporting documentation showing the amount payable by Seller in accordance with Article IX.

13.6 If any sums are due from one Party to the other Party, except for reasons addressed in Clauses 13.1 and 13.5, then the Party to which such sums are owed shall furnish to the other an invoice describing in reasonable detail the basis for the invoice and providing relevant supporting documentation.

13.7 In respect of any invoice issued pursuant to this Article XIII, Buyer or Seller, as the case might be, shall pay the amount due within thirty (30) Days after physical receipt of a properly submitted invoice.

13.8 Payment of amounts due to one Party from the other Party shall be made by wire transfer in immediately available funds into the bank account nominated from time to time by the Party to which the funds are owed. Each payment of any amount owing hereunder shall be for the full amount due, without reduction, withholding or offset for any reason (including any exchange charges, bank transfer charges or other fees or Taxes). Until further notice, the bank account for each Party is as follows:

**SELLER: Bank Name: Scotiabank de Puerto Rico**

**Bank Account #: 071006094388**



**BUYER:** Intermediary Bank Name: Citibank, NY

Receiving Bank Name: Citibank, PR

Bank Account #: 10-99-1506

Beneficiary Bank Name: Citibank, PR

For Further Credit to: Puerto Rico Electric Power Authority

Bank Account #: 0-400015-015

Notwithstanding the foregoing, Seller shall request from Buyer wire instructions prior to transferring any funds to Buyer and shall provide Buyer bank confirmation upon completion of each such transfer.

13.9 If any Party fails to pay the other Party the full amount of any invoice due by the due date (a) such Party shall also pay interest thereon to the other Party for the period commencing from and including the due date until and including the Day when payment is made. Interest shall be calculated at the rate of the Prime Rate *plus* 200 basis points percentage rate per annum, but no greater than the maximum amount allowable by law, and (b) where Buyer is the defaulting Party, Seller may suspend Natural Gas deliveries until the relevant amount is paid in full.

13.10 If a Party disagrees in good faith with any invoice, such Party shall pay the full amount invoiced or so stated by the due date thereof and shall immediately notify the other Party of the reasons for its disagreement. An invoice may be contested by the Party that received it, or modified by the Party that sent it, by written notice delivered to the other Party within a period of one hundred eighty (180) Days after such receipt or sending, as the case may be. If no such notice is served within such period of one hundred eighty (180) Days, such invoice shall be deemed correct and accepted by both Parties. Promptly after resolution of any Dispute as to an invoice, the amount of any overpayment or underpayment shall be paid by Seller or Buyer, as the case may be, to the other Party, together with interest thereon at the rate provided in Clause 13.10 from the date payment was due to the date of payment.

13.11 On or before the Commissioning Start Date, Seller shall procure the delivery to Buyer of a payment guarantee, which shall in no event exceed Thirty Million Dollars (\$30,000,000.00) issued by Seller's Parent to Buyer, in the form set forth in Exhibit I.

13.12 Invoices under this Agreement shall be delivered to the following addresses and deemed received on the date (a) personally delivered to the respective party or (ii) receipt is evidenced by certified or registered mail:

**SELLER:** NFEnergía LLC  
c/o New Fortress Energy



700 NW 1<sup>st</sup> Avenue, Suite 700  
Miami, FL 33030

Attention: Accounts Payable  
Email: accountspayable@newfortressenergy.com


**BUYER:** Autoridad de Energía Eléctrica de Puerto Rico  
Apartado 363928  
San Juan, Puerto Rico 00936-3928

and

Autoridad de Energía Eléctrica de Puerto Rico  
Ave. Ponce de León # 110 Pda. 17 ½  
Edificio NEOS, Piso 8, Ofic. 802  
Santurce, Puerto Rico 00907-3802

Attention: Edwin Barbosa, Fuel Office Administrator  
E-mail: Edwin.barbosa@aepr.com

**ARTICLE XIV  
DUTIES, TAXES AND CHARGES**



Each of Seller and Buyer shall be responsible for the payment of all taxes, fees, levies, royalties, duties, penalties, licenses, and other charges imposed by any Governmental Authority (“**Taxes**”) which it incurs and for which it is legally responsible for as a result of complying with this Agreement and which correspond to such Party under all applicable tax regulations and laws in force at the Effective Date and throughout the Contract Term in each of the jurisdictions relevant to this Agreement connected to the Parties. If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, the Party responsible for such Taxes shall promptly reimburse the other Party for such Taxes. Any Party entitled to an exemption from any such Taxes or charges shall furnish the other Party any necessary documentation thereof. Buyer shall cooperate and use commercially reasonable efforts to provide to Seller such information and execute and deliver such documents reasonably requested, to the extent not otherwise detrimental to Buyer, in connection with Seller’s efforts to obtain any available tax exemptions and/or incentives under applicable tax regulations and laws in force at the Effective Date and throughout the Contract Term.

14.1 For the avoidance of doubt and notwithstanding the above:

(a) Seller represents and warrants that it is the importer of record for all Natural Gas delivered hereunder, and shall be responsible for entry and entry summary filings as well as the payment of associated duties, Taxes and fees, if any, and all applicable record keeping requirements.

(b) Buyer shall pay or cause to be paid all Taxes imposed by any Governmental Authority after the Delivery Point on the sale, use, or purchase of Natural Gas delivered to Buyer under this Agreement (and on any LNG from which such Natural Gas is derived) and its transportation within the territory of Puerto Rico after the Delivery Point; provided that at all times Seller shall be responsible for the payment of all and any Corporate Tax payable in Puerto Rico in connection with this Agreement; and

(c) Seller shall pay or cause to be paid all Taxes imposed by any Governmental Authority on or with respect to Natural Gas delivered to Buyer under this Agreement (and on any LNG from which such Natural Gas is derived) prior to the Delivery Point and all Taxes at the Delivery Point.

#### **ARTICLE XV FORCE MAJEURE**

15.1 Neither Seller nor Buyer shall be liable for any failure to perform or for omission or delay in the performance of any of its obligations under this Agreement, other than the obligation to make payments of money when due, if and to the extent that the affected Party's performance is prevented, delayed or interfered with by an act, event or circumstance, or combinations of events or circumstances, whether of the kind described herein or otherwise, that is not reasonably within its control, such Party having acted as a Reasonable and Prudent Operator and which effects could not be prevented or overcome by the exercise of due diligence ("**Force Majeure**").

For the avoidance of doubt, provided that the requirements set out in the preceding paragraph are met, events of Force Majeure shall include but not be limited to the following:

(a) loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of the relevant loading terminal or upstream facilities affecting an LNG cargo and source indicated in the LNG Delivery Plan. The "**LNG Delivery Plan**" shall mean the indicative LNG cargo scheduling programme submitted by Seller to Buyer, solely for the purposes of this Clause 15.1(a), not later than 30 Days prior to the commencement of each Contract Year and which shall include for each LNG cargo the expected source. Seller shall inform Buyer of any modifications to the sources indicated in the LNG Delivery Plan, provided that Seller shall not at any time nominate any source that is affected by Force Majeure or that is affected by any event that could reasonably lead to a claim of Force Majeure relief under this Agreement.

(b) loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of an LNG Ship requiring her removal from service, which removal prevents Seller from delivering LNG to the MFH Facility;

(c) loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of the MFH Facility;

(d) loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of the SJ 5&6 Units; provided that if an event of Force Majeure affects only one of SJ 5&6 Units, but not both, the affected Party shall only be released from its obligations under this Agreement with regard to the unit affected by the event of Force Majeure;

(e) without prejudice to the obligations of Seller set forth in Clause 3.5 (which shall not be relieved in the event of a Force Majeure event of the type described in this Clause 15.1(e)), any act or omission of a Governmental Authority of the United States of America (including any Puerto Rican Governmental Authority), including refusal or failure to issue, delay in issuing, or amendment, revocation or suspension of, any Permit; and

(f) any act of God, lightning, storm, typhoon, hurricane, tornado, earthquake, fires, floods, tsunami, landslide, soil erosion, subsidence, washout, shipwreck, navigational and maritime perils, acts of any Governmental Authority or compliance with such acts; explosions, acts of the public enemy, wars (whether declared or undeclared), terrorism or threat thereof, civil war, piracy, civil and military disturbances, strikes, blockades, insurrections, riots, epidemics and quarantine restrictions; strike, lockout or other industrial disturbances involving an enterprise other than a Party, its transporter or its agents or sub-contractors in connection with its performance of this Agreement; radioactive contamination or ionising radiation; or breakdown or unavailability of port facilities or port services (including the channel, tugs or pilots).

15.2 Notwithstanding the foregoing provisions of Clause 15.1, the following shall not be events of Force Majeure:

(a) events arising out of market decline, market failure, industry economic conditions, or general economic conditions;

(b) where Buyer is the affected Party, any delay in achieving the Buyer Firm Supply Condition, unless such delay is caused by an event of Force Majeure;

(c) where Seller is the affected Party, any delay in achieving the Seller Firm Supply Condition, unless such delay is caused by an event of Force Majeure;

(d) the failure by a Party to obtain or the withdrawal of any authorization, approval, permit or permission of any Governmental Authority, because the Party claiming Force Majeure failed to act as a Reasonable and Prudent Operator in connection with its efforts to obtain or maintain such authorization, approval, permit, or permission;

*provided, however*, that the failure to obtain any authorization, approval, permit or permission of any Governmental Authority that is required in order to satisfy the Firm Supply Conditions shall under no circumstances be considered Force Majeure.

15.3 In the event of any failure or delay of a Party's performance due to the occurrence of a Force Majeure event, the affected Party shall use commercially reasonable efforts (acting as a Reasonable and Prudent Operator) to resume as soon as possible full performance of its obligations under this Agreement, provided that the settlement of strikes or boycotts, lockouts or other industrial disputes, or obstructive action by organizations or local inhabitants, shall be entirely within the discretion of the Party concerned.

15.4 A Party intending to seek relief under this Article XV shall as soon as reasonably practicable after it becomes aware of the occurrence of a Force Majeure event:

(a) notify the other Party of the occurrence of an event that it considers may subsequently lead it to claim Force Majeure relief under this Agreement, describing such event, in as much detail as is then reasonably available, and the obligations, the performance of which has been or could be delayed, hindered or prevented thereby, and the estimated period during which such performance may be suspended or reduced, including (to the extent known or ascertainable) the estimated extent of such suspension or reduction in performance; the obligations which could or have been actually delayed or prevented in performance and the estimated period during which such performance may be suspended or reduced, including (to the extent know or ascertainable) the estimated extent of such suspension or reduction in performance;

(b) give a bona-fide good faith estimate of when it shall be able to resume full performance of its obligations; and

(c) give the particulars of the programme to be implemented, if any, to resume full performance hereunder subject to any Third Party confidentiality obligations.

Such notices shall thereafter be supplemented and updated at reasonable intervals during the period of such Force Majeure, specifying the actions being taken to remedy the circumstances causing such Force Majeure and the date on which such Force Majeure is expected to terminate.

15.5 If any Party claims relief under this Article XV, it shall allow reasonable access to the other Party, upon such other Party's written request, to examine the scene of such event or circumstance which gave rise to the Force Majeure claim, provided that the Party not claiming relief under this Article XV shall bear the cost, expense and risk of examining such site.

15.6 Where an act, event or circumstance prevents, impedes or delays a Party's performance hereunder, even if such act, event or circumstance primarily affects a Third Party or Third Parties, it shall constitute Force Majeure hereunder as to Seller or Buyer, as appropriate, if and to the extent that it is of a kind or character that, if it had happened to a Party, would have come within the definition of Force Majeure under this Article XV.

15.7 Force Majeure takes effect at the moment a Force Majeure event occurs, not upon giving notice. A Party whose performance is excused by Force Majeure shall not be



required, during the period in which the circumstances of the Force Majeure event are continuing, to incur uneconomic cost, make additional investments in new facilities, or bring into production existing or potential reserves not already flowing in support of this Agreement.

15.8 If Seller is rendered wholly or partially unable to deliver NG under this Agreement as a result of a Force Majeure event claimed only by Buyer, Seller shall have the right to enter into binding contracts with Third Parties to sell and deliver LNG that is not reasonably expected to be needed by Seller to meet its obligations to Buyer hereunder based on the expected extent and duration of such Force Majeure as notified by Buyer.

15.9 If the Force Majeure event lasts for a period such that the affected Party shall be prevented from or delayed in performing its obligations hereunder for a period of three hundred and sixty five (365) consecutive Days (or, where the affected Party is not using commercially reasonable efforts to overcome the relevant Force Majeure (which the affected Party must show by providing a weekly report to the non-affected Party describing its efforts to overcome such Force Majeure), one hundred and eighty (180) consecutive Days) or more from the date on which the Force Majeure event first occurred, the Party not claiming Force Majeure shall have the right to terminate this Agreement without liability to either Party by giving written notice to the either Party.

**ARTICLE XVI  
REPRESENTATIONS, WARRANTIES AND LIABILITIES**

16.1 Each Party hereby represents and warrants to the other Party that, as of the Effective Date:

(a) With regard to Seller it is a corporation or limited liability company duly formed, validly existing and in good standing under the laws of the state and/or country of its incorporation or organization, and is duly qualified to do business in, and is in good standing in, all other jurisdictions where the nature of its business or nature of property owned by it makes such qualification necessary.

(b) With regard to Buyer it is a Puerto Rico public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, duly organized, validly existing and in good standing under the laws of the Commonwealth of Puerto Rico and is duly qualified to do business in, and is in good standing in, all other jurisdictions where the nature of its business or nature of property owned by it makes such qualification necessary.

(c) With regard to Buyer, all necessary consents and approvals required by Applicable Law (including PROMESA) from any relevant Governmental Authority (including, as an example, the Oversight Board, the Puerto Rico Fiscal Agency and Financial Advisory Authority, and Buyer's Governing Board) (the "**Required Consents**") to all of the terms and conditions of this Agreement have been obtained prior to the Effective Date.




(d) With regard to Buyer, all amounts payable to Seller under this Agreement are “Current Expenses” as defined in the Trust Agreement and are reasonable and necessary expenses related to the maintenance, repair and operation of the SJ 5&6 Units, and are consistent with standard practices for public utility systems and with Buyer’s standard business operations performed in maintaining and operating its system.

(e) Such Party has all requisite power and authority to conduct its business, to own or lease and operate its properties, and to execute, deliver, and perform its obligations under this Agreement.

(f) The execution, delivery and performance by such Party of this Agreement has been duly authorized by all necessary corporate action on the part of such Party and do not (i) require any consent or approval of any Governmental Authority, such Party’s governing body or any other Person, other than those that have been obtained, or the failure to obtain, of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party’s ability to perform its obligations hereunder, (ii) violate any provision of such Party’s Articles of incorporation or by-laws, or other organizational documents, or any Applicable Law in effect, or (iii) result in a breach of or constitute a default under such Party’s organizational documents or other material indentures, contracts or agreements to which it is a part or by which it or its properties may be bound.

(g) This Agreement is a legal, valid, and binding obligation of such Party enforceable against such Party, as appropriate, in accordance with its terms.



16.2 Seller warrants that it has good title to or good right to, all NG delivered hereunder and that all NG delivered to Buyer at the Delivery Point shall be free and clear of all liens, security interests, charges, assessments encumbrances and adverse claims whatsoever. Seller makes no representation or warranty, written or oral, express or implied that the NG will be fit for a particular purpose, or will be of merchantable quality, and all such representations and warranties are expressly excluded to the fullest extent permitted by law, but nothing in this Clause 16.2 affects the requirement that all NG delivered to Buyer under this Agreement will meet the Specifications of Article IV.

16.3 Seller shall take, or cause to be taken, all necessary actions to start NG deliveries from the first Day of any Transitional Supply Period and the first Day of the Firm Supply Period including the design and construction of any facility or its elements situated upstream of the Delivery Point.

16.4 Buyer shall take, or cause to be taken, all necessary actions to commence taking delivery of NG from the first Day of any Transitional Supply Period and the first Day of the Firm Supply Period including the design and construction of any facility or its elements situated downstream of the Delivery Point other than the Works.

16.5 Seller’s sole and exclusive liability, and Buyer’s sole and exclusive remedy, for failure by Seller to deliver Natural Gas in accordance with this Agreement will be limited

to the payment of the amounts detailed in Article IX, subject only to the additional remedies available to Buyer in the circumstances described in Clause 5.5 and Clause 19.1(b)(ii).

## **ARTICLE XVII ASSIGNMENT**

17.1 Except as provided in Clauses 17.2, 17.3, 17.4 and 17.5, neither Party may assign any of its rights or delegate any of its obligations under this Agreement to a Third Party without the prior written consent of the other Party. Any purported assignment of a Party's rights or obligations hereunder in contravention of this Article XVII shall be null and void and shall have no force or effect.

17.2 Notwithstanding the foregoing, Seller shall be entitled to assign, or as appropriate, delegate, all, but not part, of its rights and obligations under this Agreement to an Affiliate by providing notice to Buyer, provided that subsequent to any assignment or delegation made pursuant to this Clause 17.2, Seller and each subsequent assignee or delegate, having itself assigned or delegated to an Affiliate, shall be fully liable under this Agreement in the event of non-fulfilment of its obligations under this Agreement by an assignee or delegate.

17.3 Notwithstanding the foregoing provisions of this Article XVII, and without the prior written consent of Buyer but subject to Seller's written notification to Buyer, Seller may assign (a) its rights to payment under this Agreement to a trust, trustee, bank, paying agent, financial entity or other Person or company for the purposes of any bona fide financing or in order to facilitate the making of any such payment, and (b) any of Seller's rights under this Agreement to any lender or lender's agent as security for its obligations to any such lender under any such financing.

17.4 Buyer shall not effect a Change of Control of Buyer or transfer ownership of all or any part of the SJ 5&6 Units, other than in compliance with the terms of this Clause 17.4:

(a) Buyer shall give Seller at least sixty (60) Days' prior written notice of any proposed transfer of the SJ 5&6 Units or Change of Control of Buyer, which notice shall set forth the proposed transferee, the transaction or transactions giving rise to the transfer or Change of Control, and any performance assurance or credit support that such transferee proposes to provide in connection with the obligations under this Agreement.

(b) Notwithstanding anything in this Clause 17.4 to the contrary, without the prior written consent of Seller, Buyer shall not (i) assign this Agreement to any Person who does not have direct and exclusive ownership of, or the obligation to operate and maintain, the SJ 5&6 Units or (ii) assign this Agreement or effect a Change of Control to any Person whose creditworthiness is worse than the expected creditworthiness of Buyer at the time of such assignment (giving effect to the transaction contemplated at the time of such assignment). Whether or not Seller's consent to an assignment by Buyer or Change of Control affecting Buyer is required, it is a condition precedent to the effectiveness of any proposed assignment

by Buyer of this Agreement or proposed Change of Control affecting Buyer that Buyer has first paid to Seller (x) all amounts properly invoiced by Seller to Buyer hereunder prior to the proposed date of such assignment or Change of Control (other than any amounts (except any amounts constituting the Full Surcharge Amount) that are the subject of an ongoing dispute validly asserted by Buyer pursuant to Clause 13.10 prior to the date Buyer was notified of such assignment or Change of Control), regardless of whether the due date for payment of such invoices has occurred and (y) the Full Surcharge Amount. Any purported assignment made in the absence of such payments having been made shall be void *ab initio*.

17.5 Seller shall not effect a Change of Control of Seller or transfer direct ownership of the MFH Facility, other than in compliance with the terms of this Clause 17.5:

(a) Seller shall give Buyer at least sixty (60) Days' prior written notice of such transfer of the MFH Facility, which notice shall set forth the proposed transferee, the transaction or transactions giving rise to the transfer or Change of Control, and any performance assurance or credit support that such transferee proposes to provide in connection with the obligations under this Agreement.

(b) Notwithstanding anything in this Clause 17.5 to the contrary, but except to the extent otherwise permitted pursuant to Clause 17.2 or Clause 17.3, without the prior written consent of Buyer, Seller shall not assign this Agreement or effect a Change of Control to any Person whose creditworthiness is worse than the expected creditworthiness of Seller at the time of such assignment (giving effect to the transaction contemplated at the time of such assignment). Whether or not Buyer's consent to an assignment by Seller or Change of Control affecting Seller is required, it is a condition precedent to the effectiveness of any proposed assignment by Seller of this Agreement or proposed Change of Control affecting Seller that Seller has first paid to Buyer (x) all amounts invoiced by Buyer hereunder prior to the proposed date of such assignment or Change of Control (other than any amounts that are the subject of an ongoing dispute validly asserted by Seller pursuant to Clause 13.10 prior to the date Seller was notified of such assignment or Change of Control), regardless of whether the due date for payment of such invoices has occurred.



## ARTICLE XVIII SUBCONTRACTORS

Seller shall not subcontract its rights and obligations under this Agreement, except in the event Buyer gives written authorization for such actions; provided that no subcontract shall be considered for Buyer's approval, except when the following requirements are met: (1) Seller delivers Buyer a copy of the subcontract, not less than thirty (30) days prior to the effective date of the proposed subcontract; (2) the subcontract includes, as a condition for its legal validity and enforceability, a provision whereby Buyer has the right to substitute, subrogate or assume Seller's rights under the subcontract, in the event that Buyer declares Seller in breach or default of any of the Agreement terms and conditions; and (3) the subcontract includes, as a condition for its validity



and enforceability, a provision establishing for the subcontractor the obligation to comply unconditionally and entirely with all Seller's obligations under the Agreement (mirror image rule), except for such obligations, terms and conditions which exclusively related with works or services not included under the subcontract.

## **ARTICLE XIX TERMINATION**

19.1 This Agreement may be terminated if any of the following circumstances occur:

(a) the mutual agreement of the Parties;

(b) if a Termination Event on the part of either Party (the "**Defaulting Party**") has occurred, the other Party (and in the case of paragraph (ii) below, Buyer only) may at any time after which such Termination Event has occurred or during which such Termination Event is otherwise continuing, terminate this Agreement by giving written notice of termination to the Defaulting Party in accordance with this Article XIX, with such termination to take effect as from and including the date of such notice. The following shall each constitute a termination event (a "**Termination Event**"):

(i) if any undisputed amount in excess of One Million Dollars (\$1,000,000.00) payable by the Defaulting Party under this Agreement has not been paid in full by the due date for the payment of the relevant invoice and the other Party has (after such due date) given notice to the Defaulting Party requiring payment of such amount and the amount has not been paid in full within ten (10) Business Days after the date of such notice;

(ii) in the case of Seller as the Defaulting Party:

(A) Seller abandons performance of all of its obligations under the Agreement and does not take material steps to recommence such performance within seven (7) days of written notice from Buyer that it believes Seller has so abandoned;

(B) the Commissioning Start Date does not occur by the Guaranteed First Gas Long-Stop Date; or

(C) Substantial Completion does not occur by the Guaranteed Substantial Completion Date; *provided, however*, that if, prior to the Guaranteed Substantial Completion Date, Substantial Completion occurs for one Unit but not the other Unit, the Agreement may only be terminated with respect to the Unit for which Substantial Completion has not occurred and shall remain in full force and effect with respect to the Unit that achieved Substantial Completion (it being agreed that in such circumstances the Natural Gas volume



requirements under this Agreement shall be reduced by fifty percent (50%) on account of such termination).

(iii) if the Defaulting Party is unable to pay, suspends payment of, or agrees to a moratorium (or threatens any of the foregoing with respect to all or a material part of its debts), makes a general assignment or any composition or compromise with or for the benefit of its creditors except to the extent otherwise permitted by this Agreement, takes any proceedings with view to a readjustment, rescheduling or deferral of all or a substantial part of its indebtedness (other than in the case of a refinancing, but the commencement and pendency of the Title III Case shall not be considered a Termination Event, except that if any order has been entered by the Title III Court or any other Governmental Authority providing for the appointment of a receiver, custodian, or similar fiduciary for Buyer or any material portion of its property, the entry of any such order shall be considered a Termination Event);

(iv) if any order is made, or a petition is presented and not withdrawn within a period of twenty-one (21) Days, for the winding-up, liquidation, dissolution, custodianship or administration (or any equivalent proceedings) of the Defaulting Party; or

(v) if (A) Seller has not satisfied the SJ 6 First Gas Requirements by December 31, 2019, (B) from and after such date, Buyer is purchasing Back up Fuel Quantities and (C) Seller is not current pursuant to Clause 13.7 on payments to Buyer of Back-up Fuel Cover Amounts due and payable, the Buyer may terminate this Agreement by providing thirty (30) Days' prior written notice;

*provided, however,* that if the circumstances of such Termination Event are cured by the Defaulting Party within the notice period (if any) provided for such Termination Event, such termination notice shall be deemed withdrawn and this Agreement shall not terminate.

19.2 On and at any time after the occurrence of a Termination Event, any Party not subject to such Termination Event may, while such Termination Event subsists, by giving five (5) Days written notice of its intentions to the Defaulting Party, suspend performance of its obligations under this Agreement. Where the Defaulting Party is Buyer, any such suspension by Seller shall not constitute a failure by Seller to make quantities of NG available for sale and delivery pursuant to the terms of this Agreement during such period of suspension, and Buyer shall have no rights in respect of such suspended deliveries during such period of suspension. Where the Defaulting Party is Seller, any such suspension by Buyer shall not constitute a failure by Buyer to take delivery of quantities of NG pursuant to the terms of this Agreement during such period of suspension, and Seller shall have no rights in respect of such suspended deliveries during such period of suspension. If such Termination Event is remedied thereafter (including, with respect to any late payments, payment in full of any such outstanding amounts together with interest thereon), prior to



the exercise of rights under Clause 19.3 the notice of suspension served under this Clause 19.2 shall be deemed to be revoked automatically.

19.3 The termination of this Agreement under this Article XIX for any reason shall be without prejudice to the rights and remedies of the terminating Party accrued prior to such termination under this Agreement, including in respect of any antecedent breach (whether or not a repudiatory breach) giving rise to such termination. For the avoidance of doubt, neither Party will be liable to pay any termination payment upon termination of this Agreement other than in respect of liabilities accrued prior to the date of termination.

19.4 **To the fullest extent permitted under Applicable Law, each Party hereby irrevocably waives any right it might otherwise have, for any reason, to equitable rescission of this Agreement.**

19.5 Notwithstanding any other provision of this Agreement to the contrary, upon (a) termination of this Agreement by either Party (including pursuant to this Article XVIII, Clause 15.9, Article XXXII(c)) and including where Seller is the Defaulting Party) or by order of any Governmental Authority or (b) rejection of this Agreement pursuant to PROMESA in the Title III Case, (i) the Full Surcharge Amount (including any Incremental Tax Adjustment) and (ii) all other amounts that are owed pursuant to this Agreement with respect to obligations performed prior to the date of such termination, in each case, shall automatically become a debt due and payable by Buyer to Seller (and capable of being set off by Seller against any amount owed by Seller to Buyer under this Agreement, including in connection with the termination); *provided, however*, that if the Agreement is terminated pursuant to Clause 19.1(b)(ii)(A), Seller shall not be entitled to payment of the Full Surcharge Amount.


**ARTICLE XX  
NOVATION**

Buyer and Seller expressly agree that no amendment or change order which could be made to this Agreement, during its term, shall be understood as a contractual novation, unless both Parties agree to the contrary, specifically and in writing. The previous provision shall be equally applicable in such other cases where Buyer gives Seller a time extension for the compliance with any of its obligations under this Agreement or where Buyer dispenses the claim or demand of any of its credits or rights under the Agreement.

**ARTICLE XXI  
CHANGE IN LAW**

During the term of this Agreement, any change in law, including, but not limited to changes in applicable tax law, which causes an increase in Seller's costs when supplying the products or services to be acquired by Buyer, shall be Seller's responsibility and Buyer shall not be obliged to make additional payments nor to pay additional sums to the price or canon originally agreed for those products or services.

**ARTICLE XXII  
APPLICABLE LAW**

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico and, to the extent applicable, the laws of the United States of America, excluding any choice-of-law provisions that would require application of the laws of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods (the Vienna Sales Convention 1980) and the Convention on the Limitation Period in the International Sale of Goods shall not apply to this Agreement or to the performance thereof or to any aspect of any Dispute arising therefrom.

**ARTICLE XXIII  
RESERVED**

**ARTICLE XXIV  
SETTLEMENT OF DISPUTES**

24.1 Exclusive Jurisdiction

(a) Any claim, dispute, disagreement or controversy (each, a “**Dispute**”) that arises between the Parties under this Agreement or that is otherwise related to the subject matter of this Agreement, except for those Disputes to be resolved through Expert determination pursuant to Clause 24.2 below, shall be resolved exclusively in the Federal District Court for the District of Puerto Rico.

(b) In the event of such Dispute, each Party shall continue performing its obligations hereunder except to the extent such obligations have been properly suspended pursuant to the terms hereof. For the avoidance of doubt, Buyer shall continue paying undisputed amounts due under Article XIII.

24.2 Expert Determination

Any Dispute that arises between the Parties with respect to (i) the determination of quality under Article IV, or (ii) Article X may be referred by either Party to an Expert for such Expert’s determination of such Dispute, disagreement or other matter of interpretation in accordance with the following guidelines:

(a) The Parties hereby agree that such determination shall be conducted expeditiously by an Expert selected unanimously by the Parties.

(b) The Expert shall not be deemed to be acting in an arbitral capacity.

(c) The Party requesting that any matter arising under Article IV or Article X of this Agreement be referred to an Expert shall give the other Party notice of such request. If the Parties are unable to agree on the identity of an Expert within ten (10) Days after receipt of the notice of request for an Expert determination, then, upon the request of any of the Parties, the International Centre for Expertise of the

International Chamber of Commerce shall appoint such Expert and shall administer such Expert determination through the ICC's Rules for Expertise.

(d) The Expert shall be and remain at all times wholly impartial as between the Parties, and, once appointed, the Expert shall have no *ex parte* communications with either of the Parties concerning the Expert determination or the underlying Dispute.

(e) The Expert procedure shall take place in San Juan, Puerto Rico in English.

(f) Both Parties agree to cooperate fully in the expeditious conduct of such Expert determination and to provide the Expert with access to all facilities, books, records, documents, information and personnel necessary to make a fully informed decision in an expeditious manner.

(g) Before issuing a final decision, the Expert shall issue a draft report and allow the Parties to comment on it.

(h) The Expert shall endeavor to resolve the Dispute within thirty (30) Days (but no later than sixty (60) Days) after his appointment, taking into account the circumstances requiring an expeditious resolution of the Dispute.

(i) The Expert's decision shall be final and binding on the Parties.



24.3 Qualification of Experts

(a) No Person, without the prior written agreement of the Parties, shall be appointed as an Expert pursuant to Clause 24.2 if such Person:

(i) is (or has been at any time within ten years preceding notice of the Dispute) an employee of a Party or of an Affiliate of a Party;

(ii) is (or has been at any time within five years preceding notice of the Dispute) a consultant or contractor of a Party or of an Affiliate of a Party;

(iii) holds any significant financial interest in a Party; or

(iv) does not have at least ten years' experience advising or working in the North American NG industry with respect to the subject matters subject to the Expert's determination under Clause 24.2

(b) The Parties shall, within two months after the Effective Date, agree on a list of possible Experts for purposes of Clause 24.2; *provided, however*, that in the event that the Parties are unable to agree on a list of acceptable Experts, then in the event of a Dispute subject to Expert determination pursuant to Clause 24.2 the Expert shall be appointed by the International Centre for Expertise of the International Chamber of Commerce in accordance with Clause 24.2.

**ARTICLE XXV  
NON-WAIVER**

Delay or failure to exercise any right, power or remedy accruing to any Party as the result of any breach or default hereunder shall not impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach or Default.

**ARTICLE XXVI  
CONFIDENTIALITY**

26.1 Any information directly or indirectly disclosed or furnished, whether orally, in writing or in electronic, digital or any other form, by either Party (or its representatives, employees, directors, officers, agents or Affiliates) (the “**Disclosing Party**”) to the other Party (or its representatives, employees, directors, officers, agents or Affiliates) (the “**Receiving Party**”) in connection with this Agreement (or in connection with the terms and conditions or the negotiation of any other agreement or document related to this Agreement or to is subject matter either between the Parties or otherwise) which is not:

- (a) already known to the Receiving Party; or
- (b) already in the public domain (other than in violation of the terms of this Clause 26.1),

such information being “**Confidential Information**,” shall, unless otherwise agreed in writing by the Parties, be kept confidential and shall not be sold, traded, published or otherwise disclosed to any Third Party in any manner whatsoever (except as provided in Clause 26.2) by the Receiving Party. For the avoidance of doubt, the terms of this Agreement may be made public pursuant to Applicable Law.

26.2 The Receiving Party may disclose Confidential Information to the following Persons without the consent of the Disclosing Party:

- (a) To the Receiving Party’s and its Affiliates’ directors, agents and employees;
- (b) to the Receiving Party’s lenders and prospective lenders for the sole purpose of obtaining finance based on this Agreement;
- (c) to the Receiving Party’s advisors and consultants, including legal counsel, accountants and other agents of the Receiving Party for purposes connected with this Agreement;
- (d) to Third Parties on an aggregated basis to the extent such information is delivered to such Third Party for the sole purpose of calculating a published index;
- (e) to Experts and any court in connection with the resolution of a Dispute;
- (f) to co-shareholders and partners in upstream and downstream projects, any operator of Seller’s facilities and any other relevant Third Parties, in all cases



limited (i) only to operational information; and (ii) to the extent strictly necessary to implement this Agreement;

(g) to any insurer in connection with a policy of insurance required pursuant to this Agreement;

(h) to any lender or potential lender and to any employee, representative or advisor of such Person;

(i) to those contractor(s) that Seller retains or proposes to retain to perform any of Seller's obligations hereunder; or

(j) to any Governmental Authority or financial markets to the extent required or advisable in connection with any future financing activity related to Seller.

26.3 The Receiving Party disclosing Confidential Information pursuant to Clause 26.2 to a Person identified in Clause 26.2(b) to 26.2(f) shall ensure that such Person undertakes to hold such Confidential Information subject to confidentiality obligations equivalent to those set out in Clause 26.1 (excluding legal counsel). Each Party understands that the Receiving Party, and Persons, listed in Clause 26.2(a), (b) or (c) may now or in the future work on similar projects, and the Parties agree that, without prejudice to the other provisions in this Article XXVI, such Persons shall not be precluded from working on such other projects because they have reviewed any Confidential Information.

26.4 In the event that disclosure is required by any Governmental Authority or Applicable Law and such disclosure is not of the kind permitted pursuant to Clause 26.2(j), the Receiving Party subject to such requirement may disclose the Confidential Information to the extent so required, but shall promptly notify the Disclosing Party of such disclosure prior to so doing, and shall cooperate (consistent with the Receiving Party's legal obligations) with the Disclosing Party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the Disclosing Party. Notwithstanding the foregoing, Seller acknowledges that Clauses 26.4 and 26.5 shall not apply to any requirements applicable to Buyer to disclose any Confidential information that Buyer is required to disclose as a public entity under Applicable Law.

26.5 No press release or public statement concerning the existence, execution of, or other matters directly related to, this Agreement, or the transactions contemplated hereby, shall be issued by the representatives, directors, officers, agents or employees of either Party or its Affiliates unless otherwise agreed by the Parties in writing. In the case of any such press release or public statement, the Parties shall first consult and agree to the specific contents and the manner or timing of presentation or publication thereof. The foregoing shall not apply to any announcement by a Party required in order to comply with any Applicable Law, provided that in this case the relevant Party making such announcement notifies the other Party of the details of such announcement, the relevant Applicable Law to be complied with and, where applicable, the addressee of such announcement.

26.6 The Parties shall be entitled to all remedies available at law or in equity to enforce or seek relief in connection with the breach of the confidentiality obligation set out in this Article XXVI.


**ARTICLE XXVII  
NOTICES**

All notices to be given under this Agreement by one Party to the other shall be in writing, sent to the address and marked to the attention of the Person specified in Article XXIX and, unless otherwise agreed, in English.

**ARTICLE XXVIII  
CONTINGENT FEES**

Seller guarantees that it has not employed any person to solicit or secure this Agreement upon any agreement for a commission percentage, brokerage or contingent fee. Breach of this guarantee shall give Buyer the right to annul the Agreement or, at its discretion to deduct from the consideration payable hereunder the amount of such commission, percentage, brokerage or contingent fees. This warranty shall not apply to commissions payable by Contractors upon Contract or sales secured or made through bona fide established commercial or selling agencies maintained by Seller for the purpose of securing business.

**ARTICLE XXIX  
ADDRESSES**



**SELLER:** NFEnergía LLC  
c/o New Fortress Energy  
111 W 19th St., 8th Fl.  
New York, NY 10011

Attention: General Counsel  
Telephone: 516-268-7400  
Email: legal@newfortressenergy.com

Copy to: Vinson & Elkins LLP  
1001 Fannin St., Ste. 2500  
Houston, TX 77002

Attention: Mark Brasher  
Telephone: 713-758-3352  
Email: mbrasher@velaw.com

**BUYER:** Puerto Rico Electric Power Authority  
PO Box 364267  
San Juan, Puerto Rico 00936-4267

Attention: José F. Ortiz Vázquez  
Title: Chief Executive Officer



Copy to: King & Spalding LLP  
1700 Pennsylvania Avenue NW  
Ste. 200  
Washington, D.C. 20006

Attention: James F. Bowe, Jr.  
Telephone: 202-626-9601  
E-mail: jbowe@kslaw.com

Either Party may change its address details by giving not less than five (5) Days written notice to the other Party.

**ARTICLE XXX**  
**BUSINESS PRACTICES AND FOREIGN CORRUPT PRACTICES ACT**

30.1 Each Party agrees that in connection with its activities conducted pursuant to this Agreement, neither it nor any of its directors, officers, employees, or Affiliates shall (a) take any action, or omit to take any action that would violate any Applicable Law applicable to that Party, (b) make, promise to make, or authorize, the making of any payment, gift or transfer of anything of value, directly or indirectly, to any official or employee of any government or instrumentality of any government or to any political party or official thereof or any candidate of any political party for the purpose of influencing the action or inaction of such official, employee, political party or candidate, or (c) otherwise take any action, or omit to take any action that would cause the other Party to be in violation of any Applicable Law related to the business practices of such other Party, including the United States Foreign Corrupt Practices Act.

30.2 Each Party agrees and undertakes, on behalf of itself, its directors, officers, employees, or Affiliates, not to pay any fees, commissions or rebates to any employee, officer or agent of the other Party, or its Affiliates or shareholders nor provide or cause to be provided to any of them any gifts or entertainment of significant cost or value in connection with their activities conducted pursuant to this Agreement or in order to influence or induce any actions or inactions in connection with the commercial activities of the Parties under this Agreement.

30.3 Without prejudice to Article XXVIII, neither Party shall use any broker, agent, or other intermediary in connection with soliciting, obtaining, negotiating, structuring or performing this Agreement or in connection with the subject matter to which it applies.

30.4 Each Party shall indemnify and hold the other Party harmless from and against any and all losses, damages, liabilities, costs, expenses and claims which arise out of, are incident to, or result from any breach by such Party of this Article XXX.


30.5 Each Party shall use commercially reasonable efforts to cause its contractors and agents to agree to terms concerning business practices and the Foreign Corrupt Practices Act that are substantially similar to those set forth in this Article XXX.

**ARTICLE XXXI  
TRANSFER OF FUNDS**


If Seller decides to assign or transfer any right to payment of an amount, due or payable, to which he is entitled for services rendered or goods provided during the term of this Agreement, Seller shall notify Buyer of such transfer of funds, in accordance with the provisions of Act 21-2012. Said notice shall clearly indicate the rights granted, including a copy of the contract under which the assignment or transfer of the right to payment is made, the exact amount of funds to be assigned or transferred, and specific identification information regarding the assignee (full name of the person or company), address and any other contact information.

**ARTICLE XXXII  
CONFLICT OF INTEREST**

Seller certifies that none of its representatives under this Agreement receive payment or compensation of any nature, for services rendered regularly through an appointment to a governmental agency, body, public corporation or municipality of Puerto Rico. Seller also certifies that it may have consulting services contracts with other governmental agencies or bodies, but such condition does not constitute a conflict of interest for Seller.



Seller acknowledges that in executing the services pursuant to this Agreement it has a duty of complete loyalty towards Buyer which includes not having adverse interests to those of Buyer related to the services. Those adverse interests include representation of clients which have or may have opposed interests to those of Buyer in relation to the services. Also, Seller shall have the continuous obligation to disclose to Buyer all information and circumstances of its relations with clients and third persons and any interest which could reasonably influence Buyer when executing this Agreement or during its term.



The Parties certify that no officer, employee or agent of Buyer, or of the Government of the Commonwealth of Puerto Rico or Municipal Governments, shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

In addition to the restrictions and limitations established under the provisions of Act 1-2012, as amended, retired or former officers or employees of Buyer, whose work was in any way related to the award or management of contracts, shall in no way benefit from any contract with Buyer for a period of two (2) years after leaving employment with or ceasing services to Buyer.

- (a) Seller represents conflicting interests when on behalf of a client it must contend for that which it is his duty to oppose to comply with its obligations with another previous, present or potential client. Also, Seller represents conflicting interests when its conduct is described as such in the canons of ethics applicable to Seller and its personnel or in the laws or regulations of the Commonwealth of Puerto Rico.

(b) In the event that any of the partners, directors or employees of Seller should incur in the conduct described herein, said conduct shall constitute a violation to the prohibitions provided herein. Seller shall avoid even the appearance of the existence of conflicting interests.

(c) Seller acknowledges that Buyer's Contracting Officer shall have the power to intervene the acts of Seller and/or its agents, employees, and subcontractors regarding the enforcement of the prohibitions contained herein. In the event that Buyer should discover the existence of adverse interests with Seller, the Contracting Officer shall inform Seller, in writing, of Buyer's intention to terminate this Agreement within a thirty (30) Day period. During said period, Seller may request a meeting with the Contracting Officer to present his arguments regarding the alleged conflict of interests, which meeting shall be granted by Buyer in every case of alleged conflict of interests. In the event that Seller does not request such a meeting during the specified thirty (30) Day period or the controversy is not satisfactorily settled during the meeting, this Agreement shall be cancelled.

(d) Seller certifies that, at the time of award of this Agreement, it does not have any other contractual relation that can enter in a conflict of interest with this Agreement. Seller also certifies that no public employee has any personal or economical interest in this Agreement.



**ARTICLE XXXIII  
UNFAIR LABOR PRACTICE**

In the event that Seller or any of its subcontractors or agents do not comply with an order issued by the Puerto Rico Labor Relations Board and/or the National Labor Relations Board upon their finding that Seller or any of its subcontractors or agents have committed an unfair labor practice, no further payments shall be made by Buyer to Seller after the date of the said order, until such non-compliance is corrected. Any declaration by the Puerto Rico Labor Relations Board and/or by the National Labor Relation Board that the contractors or agents have not complied with an order issued by the Board relating to any unfair labor practice shall be binding, final, and conclusive unless such order is reversed or set aside by a Court of competent jurisdiction.

**ARTICLE XXXIV  
DISCRIMINATION**

Seller certifies that it is an employer with equal opportunity employment, and does not discriminate by reason of race, color, religion, political ideas, sex, nationality, age or mental or physical condition.

**ARTICLE XXXV  
COMPLIANCE WITH THE COMMONWEALTH OF PUERTO RICO CONTRACTING  
REQUIREMENTS**

Seller undertakes to comply with all applicable State Law, Regulations or Executive Orders that regulate the contracting process and requirements of the Commonwealth of Puerto Rico.

35.1 Executive Order Num. OE-1991-24 of June 18, 1991 to require certification of compliance with the Internal Revenue Services of the Commonwealth of Puerto Rico: Pursuant to Executive Order Number OE-1991-24 of June 18, 1991, Seller shall certify and guarantee that it has filed all the necessary and required income tax returns to the Government of Puerto Rico for the last five (5) years. Seller further will certify that it has complied and is current with the payment of any and all income taxes that are, or were due, to the Government of Puerto Rico. Seller shall provide, to the satisfaction of Buyer, and whenever requested by Buyer during the term of this Agreement, the necessary documentation to support its compliance with this Clause 35.1. Seller will be given a specific amount of time to produce said documents. During the term of this Agreement, Seller agrees to pay and/or to remain current with any repayment plan agreed to by Seller with the Government of Puerto Rico.

35.2 Executive Order Num. OE-1992-52 of August 28, 1992 to require certification of compliance with the Department of Labor of the Commonwealth of Puerto Rico. Pursuant to Executive Order Number 1992-52, dated August 28, 1992 amending OE-1991-24, Seller shall certify and warrant that it has made all payments required for unemployment benefits, workmen's compensation and social security for chauffeurs, whichever is applicable, or that in lieu thereof, has subscribed a payment plan in connection with any such unpaid items and is in full compliance with the terms thereof. Seller accepts and acknowledges its responsibility for requiring and obtaining a similar warranty and certification from each and every Contractor and Subcontractor whose service Seller has secured in connection with the services to be rendered under this Agreement and shall forward evidence to Buyer as to its compliance with this requirement.

35.3 Government of Puerto Rico Municipal Tax Collection Center: Seller shall certify and guarantee that it does not have any current debt with regards to property taxes that may be registered with the Government of Puerto Rico's Municipal Tax Collection Center (known in Spanish as Centro de Recaudación de Ingresos Municipales (CRIM)). Seller further will certify to be current with the payment of any and all property taxes that are or were due to the Government of Puerto Rico. Seller shall provide, to the satisfaction of Buyer and whenever requested by Buyer during the term of this Agreement, Certification issued by the Municipal Revenues Collection Center ("MRCC"), assuring that Seller does not owe any tax accruing to such governmental agency. To request such Certification, Seller will use the form issued by the MRCC (called "**CRIM-Certificados, Radicación, Estado de Cuenta y Todos los Conceptos**" in the MRCC website). Seller shall deliver upon request any documentation requested by Buyer. During the Term of this Agreement, Seller agrees to pay and/or to remain current with any repayment plan agreed to by Seller with the Government of Puerto Rico with regards to its property taxes.

Seller shall provide a Personal Property Tax Filing Certification, issued by the MRCC which indicates that Seller has filed its Personal Property Tax Return for the last five (5) contributory terms or Negative Debt certification issued by the MRCC with respect to real and property taxes and a sworn statement executed by Seller indicating that (i) its revenues are derived from the rendering of professional services, (ii) during the last five (5) years (or the time in which it has been providing professional services) it has had no taxable business or personal property on the 1st of January of each year, (iii) that for such reasons

it has not been required to file personal property tax returns, as required under Article 6.03 of Act 83-1991, as amended and (iv) that for such reason it does not have an electronic tax file in the MRCC's electronic system.

35.4 Seller shall furnish a Certification issued by the Treasury Department of Puerto Rico which indicates that Seller does not owe Puerto Rico Sales and Use taxes to the Commonwealth of Puerto Rico; or is paying such taxes by an installment plan and is in full compliance with its terms.

35.5 The Seller shall provide a Puerto Rico Sales and Use Tax Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that Seller has filed his Puerto Rico Sales and Use Tax for the last sixty (60) tax periods.

35.6 The Seller shall provide a copy of its Certificate of Merchant's Registration issued by the Treasury Department of Puerto Rico.

35.7 Puerto Rico Child Support Administration (ASUME): Seller shall present, to the satisfaction of Buyer, the necessary documentation certifying that neither Seller nor any of its owners, affiliates of subsidiaries, if applicable, have any debt, outstanding debt, or legal procedures to collect child support payments that may be registered with the Puerto Rico Child Support Administration (known in Spanish as the Administración Para El Sustento de Menores (ASUME)). Seller will be given a specific amount of time to deliver said documents. 3 L.P.R.A. § 8611 et seq.;

35.8 Seller shall provide a Good Standing Certificate issued by the Department of State of Puerto Rico.

35.9 Seller shall provide a Certification of Incorporation, or Certificate of Authorization to do business in Puerto Rico issued by the Department of State of Puerto Rico.

35.10 Social Security and Income Tax Withholdings: In compliance with Executive Order 1991 OE- Article XXIII; and 20 C.F.R. Part 404 et. seq., the Seller will be responsible for filing and depositing the Federal Social Security and Income Tax withholding obligations, as applicable, for any amounts paid in connection with this Contract.

35.11 Compliance with Act No. 1 of Governmental Ethics: Seller shall certify compliance with Act No. 1 of January 3, 2012, as amended, known as the Ethics Act of the Government of Puerto Rico, which stipulates that no employee or executive of Buyer nor any member of his/her immediate family (spouse, dependent children or other members of his/her household or any individual whose financial affairs are under the control of the employee) shall have any direct or indirect pecuniary interest in the services to be rendered under this Agreement, except as may be expressly authorized by the Governor of Puerto Rico in consultation with the Secretary of Treasury and the Secretary of Justice of the Government. 3 L.P.R.A. § 8611 et seq.

35.12 Law 168-2000: Law for the Strengthening of the Family Support and Livelihood of Elderly People: Seller shall certify that if there is any Judicial or Administrative Order

demanding payment or any economic support regarding Act No. 168-2000, as amended, the same is current and in all aspects in compliance. Act No. 168-2000 “**Law for the Strengthening of the Family Support and Livelihood of Elderly People**” in Spanish: “**Ley para el Fortalecimiento del Apoyo Familiar y Sustento de Personas de Edad Avanzada**”, 3 L.P.R.A. §8611 et seq.

35.13 Law Num. 127, May 31, 2004: Contract Registration in the Comptroller’s Office of Puerto Rico Act: Payment for services the object of this Agreement shall not be made until this Agreement is properly registered in the Office of the Comptroller of the Government of Puerto Rico pursuant to Law Number 18 of October 30, 1975, as amended.

35.14 Prohibition with respect to execution by public officers: (3 L.P.R.A. 8615(c)):

No public officer or employee authorized to contract on behalf of the executive agency for which he/she works may execute a contract between the agency for which he/she works and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office.

35.15 Prohibition with respect to contracting with officers or employees: (3 L.P.R.A. 8615(d)):

No executive agency may execute a contract in which any of its officers or employees or any member of their family units has or has had direct or indirect economic interest during the last four (4) years prior to their holding office, unless the Governor gives authorization thereto with the previous recommendation of the Secretary of the Treasury and the Secretary of Justice.

35.16 Prohibition with respect to contracts with officers and employees of other Government entities: (3 L.P.R.A. 8615(e)):

No public officer or employee may be a party to or have any interest in any profits or benefits produced by a contract with any other executive agency or government dependency unless the Governor gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice.

35.17 Prohibition with respect to evaluation and approval by public officers: (3 L.P.R.A. 8615(f)):

No public officer or employee who has the power to approve or authorize contracts shall evaluate, consider, approve or authorize any contract between an executive agency and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office.

35.18 Prohibition with respect to execution by public officers contracts with former public officers: (3 L.P.R.A. 8615(h)):

No executive agency shall execute contracts with or for the benefit of persons who have been public officers or employees of said executive agency until after two (2) years have elapsed from the time said person has ceased working as such.

35.19 Both Parties acknowledge and agree that the contracted services herein may be provided to another entity of the Executive Branch which enters into an interagency contract with Buyer or by direct disposition of the Chief of Staff. These services will be performed under the same terms and conditions in terms of hours of work and compensation set forth in this Agreement. For the purpose of this Clause 35.19, the term “**entity of the Executive Branch**” includes all agencies of the Government of Puerto Rico, as well as all instrumentalities and public corporations.

35.20 [Reserved]

35.21 Seller shall provide Workmen’s Compensation Insurance as required by the Workmen’s Compensation Act 45-1935 of the Commonwealth of Puerto Rico. Seller shall also be responsible for compliance with said Workmen’s Compensation Act by all its subcontractors, agents, and invitees, if any.

35.22 Invoices must include a written and signed certification stating that no officer or employee of Buyer, and their respective subsidiaries or affiliates, will personally derive or obtain any benefit or profit of any kind from this Agreement, with the acknowledgment that invoices that do not include this certification will not be paid. This certification must read as follows:

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

35.23 Anti-Corruption Code for a New Puerto Rico. Seller agrees to comply with the provisions of Act No. 2-2018, as the same may be amended from time to time, which establishes the Anti-Corruption Code for a New Puerto Rico. Seller hereby certifies that it does not represent particular interests in cases or matters that imply a conflict of interest, or of public policy, between the executive agency and the particular interests it represents.

Seller shall furnish a sworn statement to the effect that neither Seller nor any president, vice president, executive director or any member of a board of officials or board of directors, or any person performing equivalent functions for Seller has been convicted of or has pled guilty to any of the crimes listed in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico or any of the crimes included in Act 2-2018.

Seller hereby certifies that it has not been convicted in Puerto Rico or United States Federal court under Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 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 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.

Buyer shall have the right to terminate this Agreement in the event Seller is convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 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 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.

If any of the previously required Certifications shows a debt, and Seller has requested a review or adjustment of this debt, Seller will certify that it has made such request at the time of the Agreement execution. If the requested review or adjustment is denied and such determination is final, Seller will provide, immediately, to Buyer a proof of payment of this debt; otherwise, Seller accepts that the owed amount be offset by Buyer and retained at the origin, deducted from the corresponding payments.

35.24 Consequences of Non-Compliance: Seller expressly agrees that the conditions outlined throughout this Article XXXV are essential requirements of this Agreement.



**ARTICLE XXXVI  
INSURANCE**

**36.1 INSURANCE AND BONDS:**

Seller shall secure and maintain in full force and effect during the life of this Agreement as provided herein, policies of insurance covering all operations engaged in by the Agreement as follows:

- (a) Commonwealth of Puerto Rico Workmen's Compensation Insurance:

Seller shall provide Workmen's Compensation Insurance as required by the Workmen's Compensation Act 45-1935 of the Commonwealth of Puerto Rico. Seller shall also be responsible for compliance with said Workmen's Compensation Act by all its subcontractors, agents, and invitees, if any.



Seller shall furnish a certificate from the Puerto Rico's State Insurance Fund showing that all personnel employed in the work are covered by the Workmen's Compensation Insurance, in accordance with this Contract.

(b) Employer's Liability Insurance:

Seller shall provide Employer's Liability Insurance with minimum bodily injury limits of \$1,000,000 for each employee and \$1,000,000 for each accident covering against the liability imposed by Law upon Seller as result of bodily injury, by accident or disease, including death arising out of and in the course of employment, and outside of and distinct from any claim under the Workmen's Compensation Act of the Commonwealth of Puerto Rico.

(c) Commercial General Liability Insurance:

Seller shall provide a Commercial General Liability Insurance with limits of \$2,000,000 per occurrence and \$2,000,000 aggregate, and including coverage for explosion, collapse, and underground (XCU) hazard.

The Commercial General Liability Insurance or its equivalent must include coverage for bodily injuries and property damages caused during the operation of a watercraft.

(d) Excess Liability Insurance:

Seller shall provide an Excess Liability Insurance in excess of the Commercial General Liability Insurance limits. This Excess Liability Insurance will have limits of \$10,000,000 per occurrence and \$10,000,000 aggregate.

(e) Commercial Automobile Liability Insurance:

Seller shall provide a Commercial Automobile Liability Insurance with limits of \$1,000,000 combined single limit covering all owned, non-owned, and hired automobiles.

(f) Pollution Liability Insurance:

Seller shall provide a Pollution Liability Insurance with limits of \$1,000,000 per claim and \$1,000,000 per aggregate.

36.2 Requirements Under the Policies:

The Commercial General Liability or its equivalent and the Commercial Automobile Liability Insurance required under this Contract shall be endorsed to include:

A handwritten signature in blue ink, consisting of a stylized, cursive name that appears to be 'D. J. ...'.

(a) As Additional Insured:

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

(b) A thirty (30) Day cancellation or nonrenewable notice to be sent to the above address.

(c) An endorsement including this Agreement under contractual liability coverage and identifying it by number, date and parties to the contract.

(d) Waiver of Subrogation in favor of Puerto Rico Electric Power Authority (Buyer).

(e) Breach of Warranties or Conditions:

“The Breach of any of the Warranties or Conditions in this policy by the Insured shall not prejudice Buyer’s rights under this policy.”

36.3 Bonds:

Seller shall require each BOP Contractor to furnish at the time of the execution of an agreement to perform any part of the Works:

(a) A Performance Bond in the amount of twenty-five percent (25%) of the relevant contract price, with good and sufficient surety reasonably acceptable to Buyer guaranteeing to Buyer that such BOP Contractor will well and faithfully perform its obligations under such agreement.

(b) A Payment Bond in the amount of twenty-five percent (25%) of the relevant contract price, with good and sufficient surety reasonably acceptable to Buyer to guarantee to Buyer the prompt payment of all labor, supervision, equipment and materials required in the performance of the work.

(c) All bonds shall be issued in a form reasonably acceptable to Buyer.

36.4 Furnishing of Policies:

All required policies of insurance shall be in a form acceptable to Buyer and shall be issued only by insurance companies authorized to do business in Puerto Rico.

Seller shall furnish a certificate of insurance in original signed by an authorized representative of the insurer in Puerto Rico, describing the coverage afforded.

**ARTICLE XXXVII  
GENERAL**

37.1 If any inconsistency appears between the provisions contained in the body of this Agreement and any Annex or Exhibit to this Agreement, then the provisions of the body of this Agreement shall prevail.

37.2 If any one or more of the provisions, obligations, or terms herein or part thereof shall be determined by a court of competent jurisdiction to be wholly or partially invalid, void, illegal or unenforceable in any respect by operation of Applicable Law or otherwise, the validity, legality, or enforceability of the remaining provisions, obligations, or terms or part thereof in any other jurisdiction shall not in any way whatsoever be affected or impaired thereby and all provisions of this Agreement shall, if alternative interpretations are applicable, be construed so as to preserve the validity and enforceability hereof to the extent that the essential purposes of this Agreement can be determined and effectuated.

37.3 The Parties do not intend any term of this Agreement to be enforceable by any Third Party.

37.4 Nothing in this Agreement shall be deemed to create a partnership, joint venture or association, establish a principal and agent relationship or any other relationship of a similar nature, including employment, between the Parties or create any joint and several liabilities. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, to act on behalf of, to act as or be an agent or representative of, or to otherwise bind, the other Party.

37.5 From and after the Effective Date and for the remainder of the Contract Term, Buyer shall use commercially reasonable efforts to cooperate with any financing efforts of Seller (including any refinancing thereof) with respect to the development and construction of the MFH Facility and Works, including providing information regarding the MFH Facility, the Interconnection Facility and SJ 5&6 Units reasonably available to Buyer and responding to any reasonable questions asked or imposed by any of Seller's potential debt and equity financing sources ("**Seller's Financing Sources**"). Buyer consents to the collateral assignment of this Agreement to Seller's Financing Sources. In connection with such cooperation, Buyer agrees that it shall execute and deliver such further instruments and documents (if any) as are reasonably requested by Seller's Financing Sources in connection with such financing efforts on terms that are customary for the relevant type of financing in connection with a project similar to that described in the first sentence of this Clause 37.5, which instruments and documents may include notices, collateral assignments or direct agreements (containing customary lender cure rights and remedies provisions), acknowledgements, consents, certifications and representations and opinions of counsel.

37.6 The Parties acknowledge that this Agreement has been negotiated and prepared by the Parties with the advice of legal counsel to the extent deemed necessary by each Party. The Parties have agreed to the wording of this Agreement and none of the provisions of this Agreement shall be construed against one Party on the ground that such Party is the author of this Agreement or any part of this Agreement.



37.7 This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior proposals, negotiations and communications relative hereto, oral or written, and there are no other understandings or representations between the Parties hereto. This Agreement may not be amended except by an instrument in writing signed by a duly authorized representative of each Party.

[Signature Page Follows]

Two handwritten signatures are present on the left side of the page. The upper signature is written in blue ink and consists of several large, overlapping loops. The lower signature is written in black ink and is more fluid and cursive.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed by their respective duly authorized representative as of the day and year first above written.

**For and on behalf of**


**For and on behalf of**

**SELLER:**

**BUYER:**

**NFENERGÍA LLC**

**PUERTO RICO ELECTRIC POWER  
AUTHORITY**

Name:   
Title: CEO / Authorized Signatory  
S.S.

Name:   
Title: Chief Executive Officer  
S.S.

JULIANA STEFANOV  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01ST6261316  
Qualified in New York County  
My Commission Expires 05-14-2020

3.5.2019 


ANNEX A  
TERMS AND CONDITIONS FOR WORKS


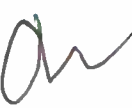
ARTICLE 1. Scope of Work

Seller shall furnish all labor, materials, design, supervision, equipment, tools, services, engineering, fabrication, procurement, construction, tests, startup, and other necessary services for completion of the Works in strict accordance with the Scope of Work, provisions of this Annex A and the Agreement, including reference drawings, all of which are hereby made a part hereof. On or before 60 days after the Commissioning Start Date, as part of its obligations herein stated, Seller shall deliver to Buyer a true and exact copy of all diagrams, plans, sketches, maps, and other documents used in the performance of contracted works and for which a third-party copyright or patent right would not be an impediment for such delivery. Seller shall be responsible for the scope of work and associated capital cost required for the Works, in each case, as specified herein.

The terms and conditions included on this Annex A will apply only to the Works. If there is any discrepancy between this document and the Agreement, the latter will prevail. The provisions of the Agreement shall also apply to the Works.

ARTICLE 2. Definitions

Whenever the words defined in this Article or pronouns used instead are mentioned in this Annex A, they shall have the meanings here given. If not defined in this Annex A, then the definitions provided in the Agreement will apply:

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- 2.1 “**Construction Manager**” means the professional assigned by Seller to provide the construction management services in connection with the execution of the Work. This professional shall be a professional engineer registered in Puerto Rico and an active member of the Puerto Rico College of Engineers and Land Surveyors.
- 2.2 “**Delay**” means an event that extends (affects) the completion date of the Work, by affecting tasks on the critical path. The project schedule shall clearly display that Seller has used, in full, all the float time available for the work involved with this request (such float belonging exclusively to Seller).
- 2.3 “**Engineer**” means Buyer’s Director of Generation, acting directly or through his properly authorized representatives.
- 2.4 “**MFH Facility**” shall have the meaning given to it in Annex C.
- 2.5 “**Notice to Proceed**” means a written order sent to Seller by the Contracting Officer, or his designated representative, notifying Seller of the date upon which Seller is given authority to begin the work.
- 2.6 “**Subcontractors**” shall have the meaning given to it in Article 18.
- 2.7 “**Warranty Period**” shall have the meaning given in Article 18.1.

ARTICLE 3. Commencement and Completion of Work

Seller, within ten (10) days after its receipt of the Notice to Proceed, shall file with the Engineer a schedule of proposed progress of the Works and the proposed detailed method of carrying on the Works including a full statement of equipment and equipment layout for the job. This progress chart and statement of operations shall show the dates of commencement and completion of each item of the Works. This schedule shall also include the milestones for the submittals and material ordering, the critical path of the Work, and the man-hours per item if said progress chart and/or statement of operations are not satisfactory to the Engineer, they shall be revised by Seller to provide for the use of adequate and sufficient equipment and force and a method of operations, which will assure the completion of the Works within the schedule set forth in the Scope of Work. This information shall become a part of this Agreement after the Engineer has approved it in writing. The schedule shall be actualized monthly by Seller and submitted to Buyer for approval.

ARTICLE 4. Suspension of Work

The Contracting Officer or the Engineer may, at any time, suspend the whole or any portion of the work under this Agreement, for the period of time that the Contracting Officer or the Engineer determines appropriate to Buyer, but this right to suspend the work shall not be construed as denying Seller actual reasonable, and necessary expenses due to delays caused by such suspension (such amounts to be paid as they accrue), it being understood that expenses will not be allowed for such suspension when ordered by the Contracting Officer or the Engineer on account of a Force Majeure event or due to Seller's failure to comply with the Agreement<sup>1</sup>. The cause of such suspension shall be put in writing by the Contracting Officer, the Engineer or the designated representative within two (2) working Days after the suspension or as soon as practicable.

ARTICLE 5. Other Work at the Site

Buyer reserves the right to perform other work outside of the scope of the Works or to enter into other contracts in connection with the SJ 5&6 Units. Seller shall afford Buyer and its other contractors a reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate Seller's work with the work performed by Buyer and its other contractors. If any part of Seller's work depends for proper execution or results upon the work of Buyer or of any other contractor, Seller shall inspect and promptly report to Buyer any defects in such work or any conflicts between such work and that of Seller, Buyer to decide, if necessary, the course to be followed by each party.

Wherever work being done by Buyer's own forces or by other contractors is contiguous to work covered by this Agreement, Buyer will secure the completion of the various portions of the work so as not to interfere with the Work. Whenever, in the opinion of Buyer, the orderly progress of the entire Project requires the use by Buyer's own forces or by other contractors, of construction equipment installed and operated by Seller for his own use, Buyer will arrange with Seller for such use, at times, and in locations which will not interfere with the work being done under this

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<sup>1</sup> Dependent upon Mitsubishi agreeing to the same.

Agreement, and will reimburse Seller for any incremental costs incurred by Seller as a result of any such use.

#### ARTICLE 6. Submittals

The Engineer shall be allowed five (5) working Days to evaluate and to review submittals and mark them as disapproved, approved as corrected or approved it becomes necessary. Seller is responsible to submit digital submittals. All submittals not approved shall be corrected as required and resubmitted for Buyer's evaluation.

Any review or approval by the Engineer or Buyer of such submittals under this Article 6, or specification or drawings under Article 9, shall not relieve Seller from its obligation to comply with the Agreement and the Scope of Work, unless otherwise agreed in writing by the Parties.

Before commencement of any work or task required in this Agreement, Seller shall submit for Buyer's approval the Occupational Safety and Health Programme.

#### ARTICLE 7. Specifications and Drawings

Buyer reserves the right to review and approve all drawings, specifications, methods, and data which Seller generates, from its responsibilities, obligations or liabilities under this Agreement. Seller shall obtain such reviews or approval in writing from Buyer. Seller shall keep at the working area a copy of the Agreement, its supplementary documents, specifications and drawings, and shall, at all times, give the Engineer access thereto. Anything called for in the specifications and not shown on the drawings or shown on the drawings and not mentioned in the specifications shall be of like effect as if called for or shown on both. In case of discrepancy in the specifications and drawings, the matter shall be immediately submitted to the Engineer, without whose decision said discrepancy shall not be adjusted by Seller, and Seller shall not proceed with the work so affected until it has received written order from the Engineer.

#### ARTICLE 8. Strict Accordance with Technical Requirements

All construction work called for in the Scope of Work and/or shown on the drawings to be performed by Seller shall be performed in strict accordance with the technical requirements of the contract documents.

#### ARTICLE 9. Changes and/or Extra Work

Seller shall be entitled to be reimbursed the actual direct incremental cost to Seller (including amounts paid to its contractors, vendors, consultants and Subcontractors) on account of any of the following events (each, a "**Change Event**"):

9.1 If Buyer, at any time, makes changes or orders extra work additional to the Scope of Work contracted, subject to previous written approval of Buyer's Contracting Officer, which changes may include, but not limited to, changes:

- (a) in the specifications including drawings and design;



- (b) in the method or manner of performance of the work;
- (c) in Buyer's furnished facilities, equipment, materials, services, or site; and/or,
- (d) acceleration in the performance of the work.

9.2 Within ten (10) working days after receipt of Buyer's written order of a change in the work (or such shorter or longer period of time as may be reasonably required as agreed by Buyer and Seller) or the occurrence of a Change Event, Seller shall promptly notify Buyer of the cost, schedule and other impact(s) Seller anticipate as a result of the Change Event. If Buyer agrees with Seller's statement as to the impact of the Change Event, the parties shall proceed promptly to enter into a written change order in connection with such change to equitably adjust Seller's cost (increase or decrease), schedule (lengthen or shorten), or other obligations under this Agreement in connection with such Change Event, including by modifying the Natural Gas Manufacturing Surcharge to include allowance for the relevant costs. If Buyer disagrees with Seller's statement as to the final impact of the Change Event, Buyer shall promptly advise Seller in writing of the basis for the disagreement and Buyer and Seller shall negotiate in good faith to resolve any issues in order to, when applicable, enter into a written change order to equitably adjust Seller's cost (increase or decrease), schedule (lengthen or shorten), or other obligations under the Agreement in connection with such change. Acceptance of the change order and an adjustment in the Agreement price and/or Agreement time shall not be unreasonably withheld. Once a written consent has been executed by Buyer's Contracting Officer, Seller shall proceed with the change. Except as herein provided, and within the time frames stated, no order, statement, or conduct of Buyer that does not constitute a Change Event shall be treated as a change under this Clause 9.2 or entitle Seller to an equitable adjustment hereunder.

If agreement on the prices for the extra work cannot be reached between Buyer and Seller, Buyer may order in writing Seller to perform the required work on a force account basis and Seller shall then execute the order and be paid on a reimbursable basis as its expenses accrue. Buyer may also elect to have such work performed by its own forces or by separate contract.

In order to facilitate review of quotations for extras or credits, all proposals submitted by Seller in connection with a change in the work by Buyer, except those so minor that their propriety can be seen by inspections, shall be accomplished by a complete itemization of the costs including labor, materials, equipment, and subcontracts. When subcontractors perform major cost items, they shall also be itemized.

## ARTICLE 10. Inspection

### 10.1 Periodic Inspection

All material and workmanship (if not otherwise designated by the specifications) shall be subject to inspection, examination, and test by Buyer's inspectors, at agreed times. During the Warranty Period, at the time of any such inspection, Buyer shall have the right to reject defective material, equipment or workmanship or require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material and equipment furnished by Seller shall be satisfactorily replaced with proper material and equipment,


without charge to Buyer. Seller shall furnish all facilities, labor, materials, and equipment reasonably necessary for any inspection and Required Testing to be performed in a safe manner that will not unnecessarily delay the work.

## 10.2 Final Inspection

Whenever all the materials have been furnished and all of the Works have been performed, including final cleaning-up as contemplated in Article 21, all in accordance with the drawings and Scope of Work, Seller shall notify the Engineer in writing that said work is completed and ready for final inspection. Final inspection shall occur within a ten (10) working Days period after the Engineer has received notice from Seller of Substantial Completion. After receipt of notice Buyer will notify Seller of the exact date and time of the final inspection and Seller shall accommodate Buyer's specific time. If all Works are found completed in accordance with the Scope of Work, this inspection shall constitute the final inspection and the date of receipt of the notice of Seller that the Works were completed and ready for final inspection shall be established as "**Final Completion.**" If, however, upon inspection by the Engineer it is found that any Work, in whole or in part, is unsatisfactory, the Engineer shall give Seller the necessary instructions as to replacement of material and performance of work necessary to achieve Final Completion and acceptance and Seller shall immediately comply with and execute such instructions. Upon satisfactory replacement and performance of such Work, Seller shall notify the Engineer, and another inspection shall be made which will constitute the final inspection if the Required Testing demonstrates Substantial Completion. In such event, the date of receipt of this last notice of Seller will be established as Final Completion of the Works or any separable part thereof under the Agreement. Final Completion, thus established, shall be used in calculating the actual time of performance of the work.



## 10.3 Substantial Completion Prior to Final Completion



When Seller believes that it has achieved Substantial Completion for SJ 5 or SJ 6, Seller shall submit a written notice to Buyer of its determination that the Works in respect of such Unit satisfy the requirements for Substantial Completion.

Following receipt of a Seller determination pursuant to Clause 10.3, Buyer (acting reasonably and in good faith) shall, within three (3) Days, either issue a certificate confirming that Substantial Completion has occurred for such unit or provide written notice to Seller (in a proposed Punch List) of the Works that remain to be completed in order for Substantial Completion of such unit to occur. Notwithstanding the achievement of Substantial Completion, Seller shall finish the items included in the Punch List and all other pending tasks or requirements of the contract documents, as required in the Substantial Completion certificate.

## ARTICLE 11. Superintendence by Seller

Before commencement of the Works, Seller shall designate a competent Construction Manager, reasonably satisfactory to the Engineer, with the expertise and resources necessary to provide construction management services. Seller shall also have a competent Resident Engineer,

reasonably satisfactory to the Engineer, on the work site, at all times during progress of the work, with authority to act for the Engineer. The Resident Engineer shall only be assigned to the Work. The Construction Manager and Resident Engineer shall represent Seller in his absence and all directions given to the Construction Manager and Resident Engineer by the Engineer shall be as binding as if given to Seller. Seller shall, at all times, enforce strict discipline and good order among its employees and shall not employ on the work any unsuitable or unskilled person in the work assigned to Seller. In addition, Seller shall be fully responsible for the negligent or wrongful acts or omissions of subcontractors or of persons both directly or indirectly employed by Seller and shall be liable to Buyer and/or any affected third parties for such acts or omissions.

ARTICLE 12. Sanitary Facilities

Seller shall furnish and maintain satisfactory, sanitary facilities for the use of the workmen engaged in the construction, as required by law or regulations.

ARTICLE 13. Access to Work

13.1 Buyer shall provide reasonable access to all Persons appointed or authorized by Seller to visit and inspect the Work, or any part thereof, at all reasonable times, and places during the progress of it.

13.2 Buyer shall provide Seller and its contractors, consultants, vendors, and Subcontractors, and each of their respective employees, agents, representatives and other personnel clear access to all areas of the site at all times necessary for the timely completion of the Works and Seller's other obligations hereunder.

ARTICLE 14. Independent Contractor

Seller shall be considered an independent contractor, for all purposes under this Agreement, and all persons engaged or contracted by Seller for the performance of its obligations herein, shall be considered either as its employees or agents or those of its subcontractors, and not as employees or agents of Buyer. In consequence, Seller is not entitled to any fringe benefits, such as, but not limited to vacations, sick leave, and other.

ARTICLE 15. Insurance, Bonds, and Indemnities

Seller shall cause MHPSA to secure and maintain in full force and effect until Final Acceptance, policies of insurance covering the Works as follows:

15.1 Commonwealth of Puerto Rico Workmen's Compensation Insurance:

Seller shall provide Workmen's Compensation Insurance as required by the Workmen's Compensation Act 45-1935 of the Commonwealth of Puerto Rico. Seller shall also be responsible for compliance with said Workmen's Compensation Act by all its subcontractors, agents, and invitees, if any.

Seller shall furnish a certificate from the Puerto Rico's State Insurance Fund showing that all personnel employed in the work are covered by the Workmen's Compensation Insurance, in accordance with this Contract.

15.2 Employer's Liability Insurance:

Seller shall provide Employer's Liability Insurance with minimum bodily injury limits of \$1,000,000 for each employee and \$1,000,000 for each accident covering against the liability imposed by Law upon Seller as result of bodily injury, by accident or disease, including death arising out of and in the course of employment, and outside of and distinct from any claim under the Workmen's Compensation Act of the Commonwealth of Puerto Rico.

15.3 Commercial General Liability Insurance:

Seller shall provide a Commercial General Liability Insurance or its equivalent with limits of \$2,000,000 per occurrence and \$2,000,000 aggregate, and including coverage for explosion, collapse, and underground (XCU) hazard.

15.4 Excess Liability Insurance:

Seller shall provide an Excess Liability Insurance in excess of the Commercial General Liability Insurance limits. This Excess Liability Insurance will have limits of \$10,000,000 per occurrence and \$10,000,000 aggregate.

15.5 Commercial Automobile Liability Insurance:

Seller shall provide a Commercial Automobile Liability Insurance with limits of \$1,000,000 combined single limit covering all owned, non-owned, and hired automobiles.

15.6 Pollution Liability Insurance:

Seller shall provide a Pollution Liability Insurance with limits of \$1,000,000 per claim and \$1,000,000 per aggregate.

15.7 Professional Liability Insurance:

Seller shall provide a Professional Liability Insurance with limits of \$1,000,000 per claim and \$1,000,000 per aggregate.

15.8 Requirements Under the Policies:

The Commercial General Liability or its equivalent and the Commercial Automobile Liability Insurance required under this Contract shall be endorsed to include:

- (a) As Additional Insured:

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

- (b) A thirty (30)-Day cancellation or nonrenewable notice to be sent to the above address.
- (c) An endorsement including this Contract under contractual liability coverage and identifying it by number, date and parties to the contract.
- (d) Waiver of Subrogation in favor of Puerto Rico Electric Power Authority (PREPA).
- (e) Breach of Warranties or Conditions:

“The Breach of any of the Warranties or Conditions in this policy by the Insured shall not prejudice Buyer’s rights under this policy.”

15.9 Bonds:

Seller shall require MHPSA to furnish, at the time of the execution of its agreement with Seller for the Works:

- (a) A Performance Bond in the amount of one hundred percent (100%) of the contract price thereunder, with good and sufficient surety reasonably acceptable to Buyer, guaranteeing to Buyer and Seller that MHPSA will well and faithfully perform the Works.
- (b) A Payment Bond in the amount of one hundred percent (100%) of the contract price thereunder, with good and sufficient surety reasonably acceptable to Buyer, to guarantee to Buyer and Seller the prompt payment by MHPSA of all labor, supervision, equipment and materials required in the performance of the Works.
- (c) All bonds shall be issued in the official form of Buyer.

15.10 Furnishing of Policies:

All required policies of insurance shall be in a form acceptable to Buyer and shall be issued only by insurance companies authorized to do business in Puerto Rico.

Seller shall furnish a certificate of insurance in original signed by an authorized representative of the insurer in Puerto Rico, describing the coverage afforded.

ARTICLE 16. Other Contracts

Buyer may award other contracts for additional work, and Seller shall fully cooperate with such other contractors, in accordance with Article 5, in their performance of other work at the San Juan Power Plant, and Seller shall coordinate its performance of the Works insofar as possible with that

performed under other contracts as may be directed by the Contracting Officer. Seller shall not commit or permit any acts which interfere with the performance of work by any other contractor.

ARTICLE 17. Correction of Work After Final Acceptance

Neither the final certificate for payment nor any provision in the Contract documents shall relieve MHPSA or any BOP Contractor of responsibility for faulty materials or workmanship and, unless otherwise specified, Seller shall require MHPSA and each BOP Contractor to remedy any defects due thereto and pay for any damage to other work resulting therefrom, on the terms set forth in Article 18 of this Annex A.

ARTICLE 18. Warranty and Performance Testing

Seller shall use commercially reasonable efforts to obtain from MHPSA and each BOP Contractor (“**Subcontractors**”) warranties of goods, equipment and materials on the following terms:

18.1 During the Required Testing completed by MHPSA prior to Substantial Completion, each Unit will satisfy the performance guarantees set forth in Exhibit F.

18.2 That all materials, parts or equipment used, and work performed for the Works comply in all respect with the terms and conditions of the Agreement; that they are free from any and all latent and patent defects in design, materials, and workmanship; that they are suitable and adequate for the purposes if any, specified in the Agreement, and that the services provided under this Agreement will conform with the standards of care and practice appropriate to a Reasonable and Prudent Operator. The warranty period will begin the date on Substantial Completion and will continue for a period of one (1) year or for whatever period MHPSA will provide (the “**Warranty Period**”). The Subcontractor will, upon written notice by Buyer, fully remedy, free of expense to Buyer, such defects as may develop on said services, materials, parts or equipment, provided that (i) they have been properly stored, installed and maintained, and operated within the specified parameters (including any such parameters provided by Seller’s contractors) and (ii) Buyer notifies the Subcontractor during the Warranty Period. The Performance Bond furnished by the relevant Subcontractor shall cover and serve as guarantee for this warranty.

18.3 For those materials, parts, equipment, which proves defective or deficient during the Warranty Period, the Subcontractor shall, at his own expense, repair or replace, transport-in, from Subcontractor’s facilities to Buyer’s site, and transport-out, from Buyer’s site to Subcontractor’s facilities, such materials, parts, and/or equipment. The Performance Bond furnished by the relevant subcontractor shall cover and serve as guarantee for the Subcontractor’s failure, in whole or in part, to properly perform his obligations under this Agreement.

18.4 For parts and equipment to be procured by Seller from other suppliers, and which will be furnished by Seller to Buyer under this Agreement, a written warranty shall be obtained by Seller from each supplier on the above terms and legally tendered to Buyer prior to the commencement of work. Seller shall assign all agreements with Subcontractors to Buyer upon Final Completion, at which point Seller shall be released from any future liability


with respect to the Works, whether under this Article 18, or pursuant to any other theory of law, including contract, tort, statute or equity.

18.5 The warranties shall not apply to the extent any defect is proven to be as a result of any of the following occurring after the date on which Buyer finally accepts the service and/or installation of the contracted product: (1) materials, parts, and equipment being repaired or modified by a third party without Subcontractor's or other supplier's authorization, as applicable, or being subjected to modification, misuse, improper maintenance or accident by a third party, (2) materials, parts, and equipment having their serial number or any part thereof altered, defaced or removed by a third party, or (3) materials, parts, and equipment being stored, installed, operated and maintained by a third party not in accordance with manuals, instruction books, or reasonable recommendations provided in writing by Subcontractor or other supplier, as applicable, to Buyer prior to such activity.

18.6 Save for its obligations under this Article 18, Seller shall not be liable for, and Buyer hereby waives, and releases Seller Group from, any Claims pertaining to the quality of the services performed hereunder and pertaining to any goods, equipment and materials supplied hereunder, including for breach of any warranty by a Subcontractor. SELLER MAKES NO WARRANTY (INCLUDING OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), EXPRESS OR IMPLIED, IN FACT OR BY LAW, AS TO THE QUALITY OF THE SERVICES, GOODS, EQUIPMENT OR MATERIALS FURNISHED PURSUANT TO THIS AGREEMENT.



ARTICLE 19. Correlation of Documents



The contract documents are complementary and what is required by one shall be as binding as if required by all. Seller shall keep at the work site a copy of the Contract documents relating to the Works and any supplementary documents, specifications and drawings relating thereto and shall give Buyer access thereto during all normal working hours.

In case of discrepancy or in the event of conflict among the different Contract documents such as the Fuel Sale and Purchase Agreement, Terms of Works (Annex A), the Scope of Work, technical specifications, drawings, and the offeror's proposal, these shall take precedence in the order given.

The terms and conditions contained in the Contract shall prevail over any conflicting terms and conditions contained in the Seller's Bidding Proposal.

ARTICLE 20. Notice

Any required notice to be given hereunder, related to the Works, shall be in writing and will be sufficiently served when delivered in person or properly mailed to the following addresses:

To PREPA: Puerto Rico Electric Power Authority  
PO Box 364267  
San Juan, Puerto Rico 00936-4267

Attention: Eng. Daniel Hernández Morales  
Acting Generation Director

To Seller: NFEnergía LLC  
c/o New Fortress Energy  
111 W 19<sup>th</sup> St., 8<sup>th</sup> Fl.  
New York, NY 10011

Attention: General Counsel  
516-268-7400  
legal@newfortressenergy.com

ARTICLE 21. Cleaning-Up

Except as provided herein, Seller shall, from time to time, as directed by the Engineer, remove from Buyer's property and from all public and private property all temporary structures no longer required for construction, rubbish, and waste materials resulting from his construction operations.

Upon completion of the Work, Seller shall remove from the vicinity of the San Juan Power Plant all remaining rubbish, unused materials, and other like material, belonging to him or used under his direction during the installation of the equipment, and in the event of his failure to do so the same may be removed by Buyer at Seller's expense, and his surety or sureties shall be liable therefor. Notwithstanding the foregoing (a) under no circumstances shall Seller have any responsibility for any Hazardous Materials or other materials at the site prior to the time when the Works begin, (b) should Seller encounter any such pre-existing materials during the course of the Works, it shall identify the same to Buyer and allow Buyer to address and remove the same, and (c) Buyer shall indemnify Seller Group from and against any and all claims, damages, losses, causes of action, demands, judgments and expenses arising out of or relating to any Hazardous Materials that are (i) present on the Site prior to the commencement of the Work or brought onto the Site by a member of Buyer Group, or (ii) improperly handled or disposed of by Buyer (including Hazardous Materials brought onto the Site or produced thereon by a Contractor). At the written request of Buyer and at Buyer's sole expense, Seller may agree to remove and remediate on behalf of Buyer any such Hazardous Materials or other materials to the extent located on the site with the understanding that Buyer will execute any and all documents, submittals or regulatory filings associated with the discovery of these materials, the work or the transportation and disposal of the materials.

ARTICLE 22. Safety Provisions. Seller shall require MHPSA and the BOP Contractors to:

- 22.1 Comply with all applicable laws, ordinances, rules, regulations and OSHA standards for the safety of personnel, equipment, property and to protect them from damage, injury or loss; erect and maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.




- 22.2 Submit a Site-specific Work Plan including: the scope of work, description of the activities to be done, special safety and health considerations to be addressed before commencement of the project, safety procedures to be applied and used during the project including but not limited to excavations, work zone protection, scaffolding, crane operations and emergency procedures for fire and chemical spill among others.
- 22.3 Before commencement of work, take part in a coordination meeting with Buyer's Safety Officer and Project Manager. During this meeting the areas to be worked on will be toured, the site-specific work plan will be reviewed and the protocols for Safety inspections and work permit system shall be discussed.
- 22.4 Designate one or more employees as their safety officer for the Project. The duties of the safety officer may be in addition to his/her normal duties. The safety officer shall be in charge of the prevention of accidents and the implementation of the Site-specific Plan in coordination with Buyer's Safety Officer, Project Manager and Resident Engineer, and shall have the opportunity to be present at all times on site while Seller is performing any task relating to the Project. The safety officer shall have a basic training of thirty (30) hours in Occupational Safety and Health Standards for Construction Industry from an approved OSHA Training Center. Evidence of the training shall be submitted if requested by Buyer.
- 22.5 Required welding operations shall comply with the requirements of OSHA, ANSI and NFPA.
- 22.6 Require all chemical products to be used to be classified as Approved or Conditionally Approved by Buyer's Hazard Communication Section.
- 22.7 Be responsible for maintaining good housekeeping and sanitary conditions in the work, rest, lunch and toilet areas. If the project involves the handling of non-asbestos insulation or other dust-generating materials, like gypsum board, steps shall be taken to prevent the release of dust to adjacent areas.
- 22.8 Have an incident investigation procedure and notify to Buyer in writing any incident or accident on Buyer's facility.
- 22.9 Have available and up to date all licenses, trainings, medical surveillance and related certificates for specialized personnel required by OSHA, EQB and DOT according to the scope of work to be performed.
- 22.10 Adhere to a one hundred percent (100%) drug /alcohol free work zone. At minimum, pre-project and post-accident testing is required. A positive post-accident test or positive pre-project test will result in worker dismissal from the project. Testing will be performed following closely the NIDA standards.
- 22.11 Services and activities inside buildings occupied by working personnel that could create a hazard to their safety or health will not be performed after Buyer's Working Hours, except to the extent that Seller puts in place such precautions as may be necessary to protect Buyer's employees and the public from any possible hazard caused by the work. Seller will


take all steps necessary to assure the area will be free of nuisance odors or vapors before Buyer's personnel are permitted to resume their occupation of the area. All such activities will be undertaken in coordination with the local supervisor of Buyer.

- 22.12 Assure that all wastes generated by Seller as a part of the Works are removed and properly disposed of, in accordance with all applicable laws and regulations, at the end of every work shift and after the completion of the Project, except to the extent that it is agreed with Buyer that members of Seller Group or a Contractor may deposit waste in Buyer-provided waste containers for disposal by Buyer.
- 22.13 Obtain and maintain, during the duration of the Project, the proper permits from all federal, state and local regulatory authorities with respect to discharge, disposal, use, storage, handling and transportation of Hazardous Materials used in connection with the Works. For all Works that require or include the handling of asbestos, lead, or spilled Hazardous Materials, Seller will require MHPSA and the BOP Contractor to provide any notifications required by Environmental Laws or any Permit to EPA or the EQB, but in coordination with the Safety Officer and the Environmental Advisor.

ARTICLE 23. Laws to be Observed



Seller shall use its commercially reasonable efforts to require MHPSA and the BOP Contractors to observe and comply with any and all federal, state and municipal Laws, by-laws, ordinances, and regulations in any manner affecting the Work, those employed on the Work, or the conduct of the Work, and with all such orders and decrees as exist at present or may be enacted prior to the completion of the work by bodies or courts having any jurisdiction or authority over the work. Seller shall use its commercially reasonable efforts to require MHPSA and the BOP Contractors to save and hold harmless and to indemnify Buyer and its representative's officers, agents, and servants against any claim or liability arising from or based on the violation of any such law, by-law, ordinance, regulation, order or decree, whether by MHPSA or the relevant BOP Contractor (as applicable) or their respective employees.



ARTICLE 24. Environmental Liabilities. Seller shall use its commercially reasonable efforts to require MHPSA and the BOP Contractors to:

- 24.1 Indemnify Buyer Group from any and all claims, damages, losses, causes of action, demands, judgments and expenses of any nature arising out of or relating to any claim due to an environmental violation, caused by such Contractor or such Contractor's agents, employees, subcontractors or any personnel assigned during the performance or non-performance of its obligations under this Agreement.
- 24.2 Have available, and near to the working area, the necessary equipment to control and recover any spills that may occur during the performance of Seller's obligations under this Agreement. This equipment should include all the necessary materials for waste disposal.
- 24.3 Ensure that all equipment to be used in the performance of Seller's obligations under this Agreement should be free of oil, transmission fluid or hydraulic fluid leakages. If the equipment develops a leakage during Seller's performance of its obligations hereunder, it

should be repaired or replaced immediately. While the leaking equipment is removed or repaired, it shall be MHPSA's or the relevant BOP Contractor's responsibility to use and replace the absorbent materials and drip pans.

- 24.4 Inform and coordinate with the Environmental Compliance Officer of Buyer's Environmental Protection and Quality Assurance Division (EPQAD) regarding any work to be done to avoid any environmental violation. In case of any incident, MHPSA or the relevant BOP Contractor shall immediately notify Buyer's on-site Supervisor, who will notify the EPQAD.
- 24.5 Before starting the work, submit the work plan to Buyer's EPQAD for evaluation.
- 24.6 Cause all chemical analysis to be performed by a Buyer-approved laboratory that is included in Buyer's Material Management Division Supplier Registry as a company that is qualified and evaluated to perform this type of work.
- 24.7 Agree that Buyer's personnel will audit the sampling and the disposal of waste material.
- 24.8 Ensure that the disposal of non-hazardous and hazardous waste material shall be done in a Puerto Rico Environmental Quality Board (PREQB) approved landfill.
- 24.9 Comply with 49 CFR 72 Sub. Part H (DOT requirements).
- 24.10 Cause all remedial actions and environmental work to be performed by a company previously approved by Buyer.
- 24.11 Cause all Work for which they are responsible to follow the Control Erosion and Sedimentation Plan (CES Plan). The temporary measures needed to control erosion and water pollution shall include, but not be limited to, berms, dikes, dams, sediment basins, fiber mats, netting, gravel, mulches, grasses, slope drains, and other erosion control devices or methods. These temporary measures shall be installed at the locations where there is a need to control erosion and water pollution during the construction of the project, and as directed by the engineer, and as shown on the drawings. The CES Plan presented in the drawings serves as a minimum for the requirements of erosion control during construction. MHPSA or the relevant BOP Contractor (as applicable) has the ultimate responsibility for providing adequate erosion control and water quality throughout the duration of the project. Therefore, if the provided plan is not working sufficiently to protect the project areas, then MHPSA or the relevant BOP Contractor (as applicable) shall provide additional measures as required to obtain the required protection.
- 24.12 Chemical products cannot reach any internal or external sewer at the construction site in order to prevent contamination and comply with all federal and local regulations related to the Clean Water Act.
- 24.13 Obtain and submit to Buyer's EPQAD any other type of permit required for their operation including: fuel or wastewater storage tanks, storage of remain material of excavations or any landfill required for the project, use and storage of chemicals. Furthermore, will take immediate response or mitigate any environmental concern and deficiencies found by

Buyer personnel or regulatory agencies. MHPSA or the relevant BOP Contractor (as applicable) will be responsible to notify Buyer immediately for any findings or environmental violations due to inspections by regulatory agencies.

- 24.14 Provide and maintain environmental protection measures during the commencement, construction and completion of the project, as defined under this contract. Environmental protection measures must be provided by MHPSA or the relevant BOP Contractor (as applicable) to correct conditions that may emerge or develop during the construction, as well as, the recondition of all environmental measures or controls employed at the project which do not fulfill their purpose.
- 24.15 The construction process shall be performed in such a manner that any adverse environmental impacts, where applicable, are reduced to a minimum and acceptable level.
- 24.16 It is intended that the natural resources within the Project boundaries and outside the limits of the permanent work performed, be preserved in their existing condition or be restored to an equivalent or improved condition, upon completion of the work. MHPSA or the relevant BOP Contractor (as applicable) shall confine his construction activities to areas defined by the work schedule, plans and specifications.
- 24.17 MHPSA or the relevant BOP Contractor (as applicable) and its engineer will establish, at least on a monthly basis, an orientation programme for the residents and business people to clarify details and the working schedule of the Project, and to attend to their needs or complaints.
- 24.18 All equipment to be used in the Works area shall be in new condition and shall be maintained in accordance with a good maintenance programme. A monthly record of maintenance shall be filed by MHPSA or the relevant BOP Contractor (as applicable) and submitted to Buyer's EPQAD. If required, Seller must perform and submit a monitoring study of gas emission or noise reduction on determined areas to comply with regulations. Seller shall be responsible to maintain the Works area in a clean and organized state.
- 24.19 The use of liners to cover up carrying trucks is compulsory.
- 24.20 Dispose of all waste generated by the components of the Works for which MHPSA or the relevant BOP Contractor (as applicable) is responsible, except to the extent that it is agreed with Buyer that members of Seller Group or a Contractor may deposit waste in Buyer-provided waste containers for disposal by Buyer. The waste shall be picked up and placed in containers which must be emptied on a regular schedule. The construction areas shall be clean and must be restored to their pre-existing condition upon completion. The use of Buyer's waste disposal equipment by MHPSA or the relevant BOP Contractor (as applicable) is not permitted.
- 24.21 Buyer's personnel will audit the sampling and the disposal of waste material.
- 24.22 A company previously approved by Buyer will perform all remedial actions and environmental work (if it is necessary).

- 24.23 All work shall be performed according to the Storm Water Pollution Prevention Plan (SWPPP), which is part of Buyer's NPDES Permit.
- 24.24 All work at Docks A, B and C shall be performed in accordance with best management practices to avoid any impact to NPDES Outfalls 002 and 003 and Intake 001 of the San Juan Power Plant.
- 24.25 All work will be performed in compliance with Consent Decree stipulations Civil Action No. 93-2527 CCC.

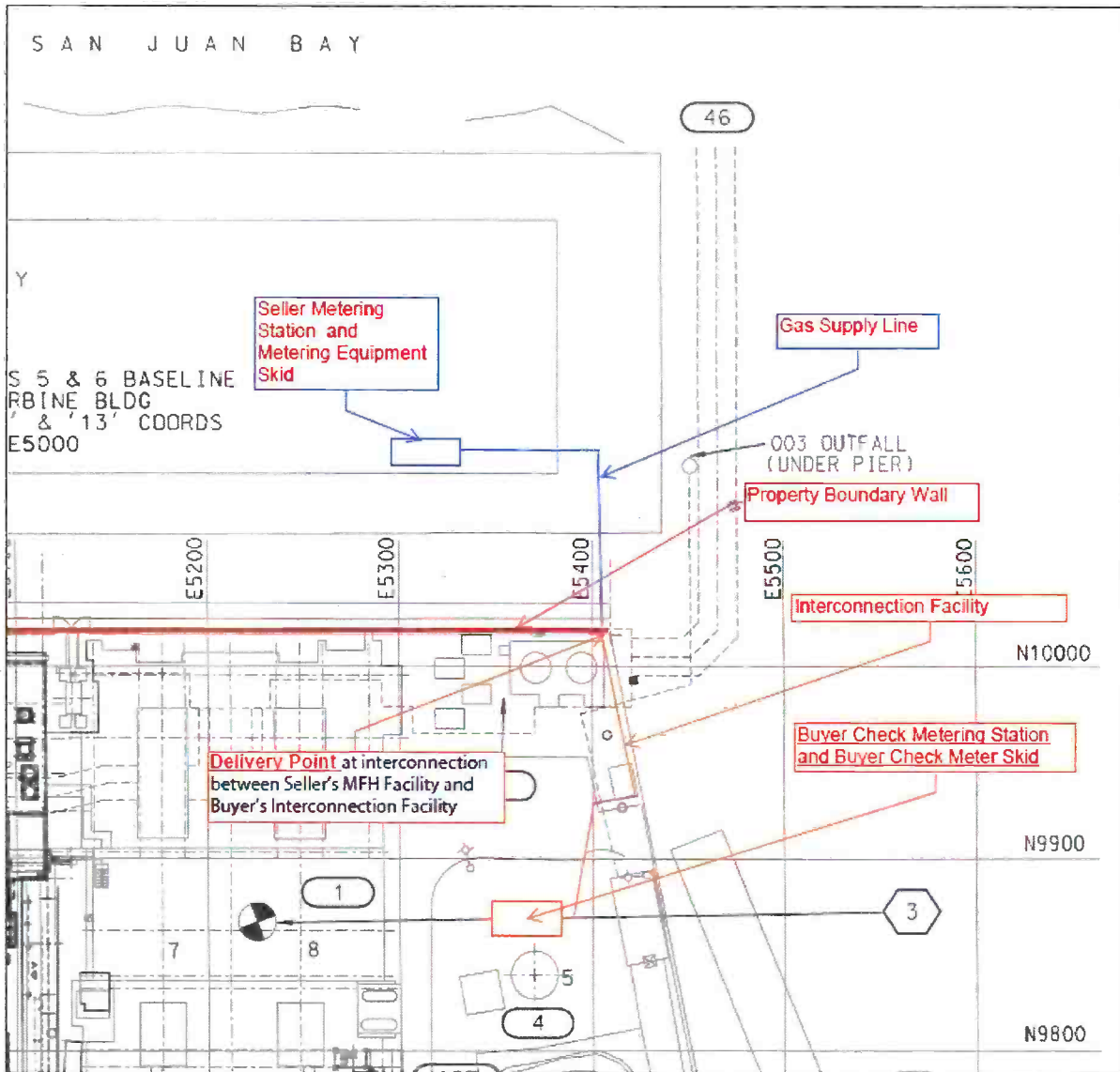
ARTICLE 25. Quality Assurance

MHPSA and each BOP Contractor shall submit for evaluation and approval by Buyer a quality control programme and establish a quality assurance programme, also to be evaluated and approved by Buyer, to satisfy all applicable regulations and requirements specified in the procurement documents. Such programmes shall contain all those measures necessary to assure that all basic technical requisites set forth in the drawings, codes, tests, and inspections for design, fabrication, cleaning, installation, packing, handling, shipping, long-term storage, when necessary, and test equipment are fulfilled. Buyer reserves the right to conduct audits and inspections to the facilities, activities, and/or documents when estimated and without previous notification necessary in order to assure that the quality control programme is adequate and is being properly implemented.

MHPSA and each BOP Contractor shall allow Buyer access to its facilities and documents, so that Buyer, through audits and inspections, can verify the quality of the labor, equipment, products, services, and any other related items provided by MHPSA or the relevant BOP Contractor (as applicable). In every case in which the materials or services to be furnished to Buyer are subcontracted partially or totally by MHPSA or the relevant BOP Contractor (as applicable), MHPSA or the relevant BOP Contractor (as applicable) shall request the subcontractor to accept and comply with all the requirements of this Quality Assurance Article.

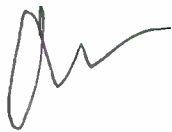
ARTICLE 26. Export Control. Buyer shall not re-export any products created by the Works by members of Seller Group or a Contractor.

Annex B  
Delivery Point



*[Handwritten blue scribbles and a signature]*

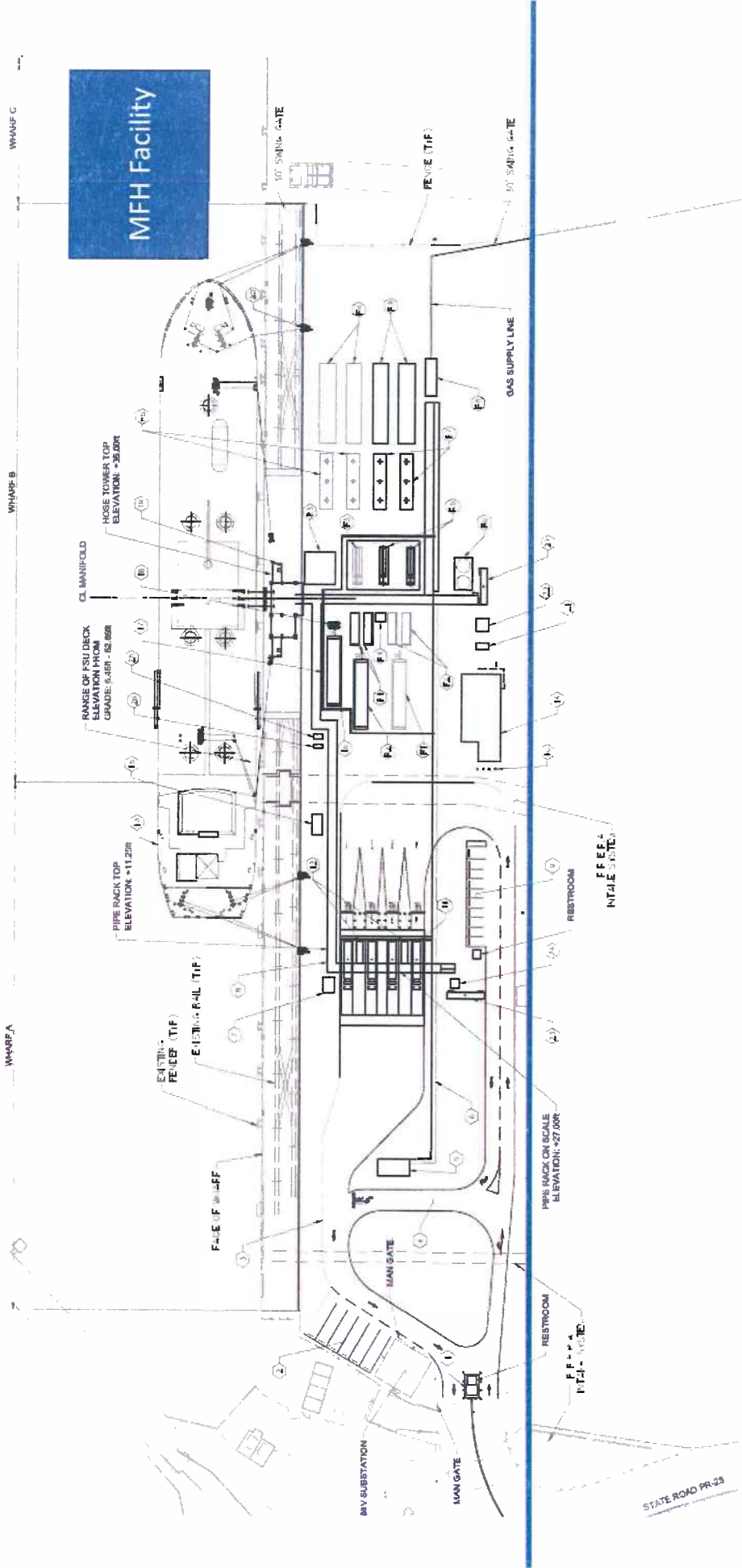
ANNEX C  
SELLER'S AND BUYER'S SITE DIAGRAMS; EACH PARTY'S PROPERTY

A handwritten signature in blue ink, consisting of several loops and a vertical stroke, positioned on the left side of the page.A handwritten signature in black ink, appearing as a series of connected, fluid strokes, positioned below the blue signature on the left side of the page.

Annex C



BAHIA DE PUERTO RICO

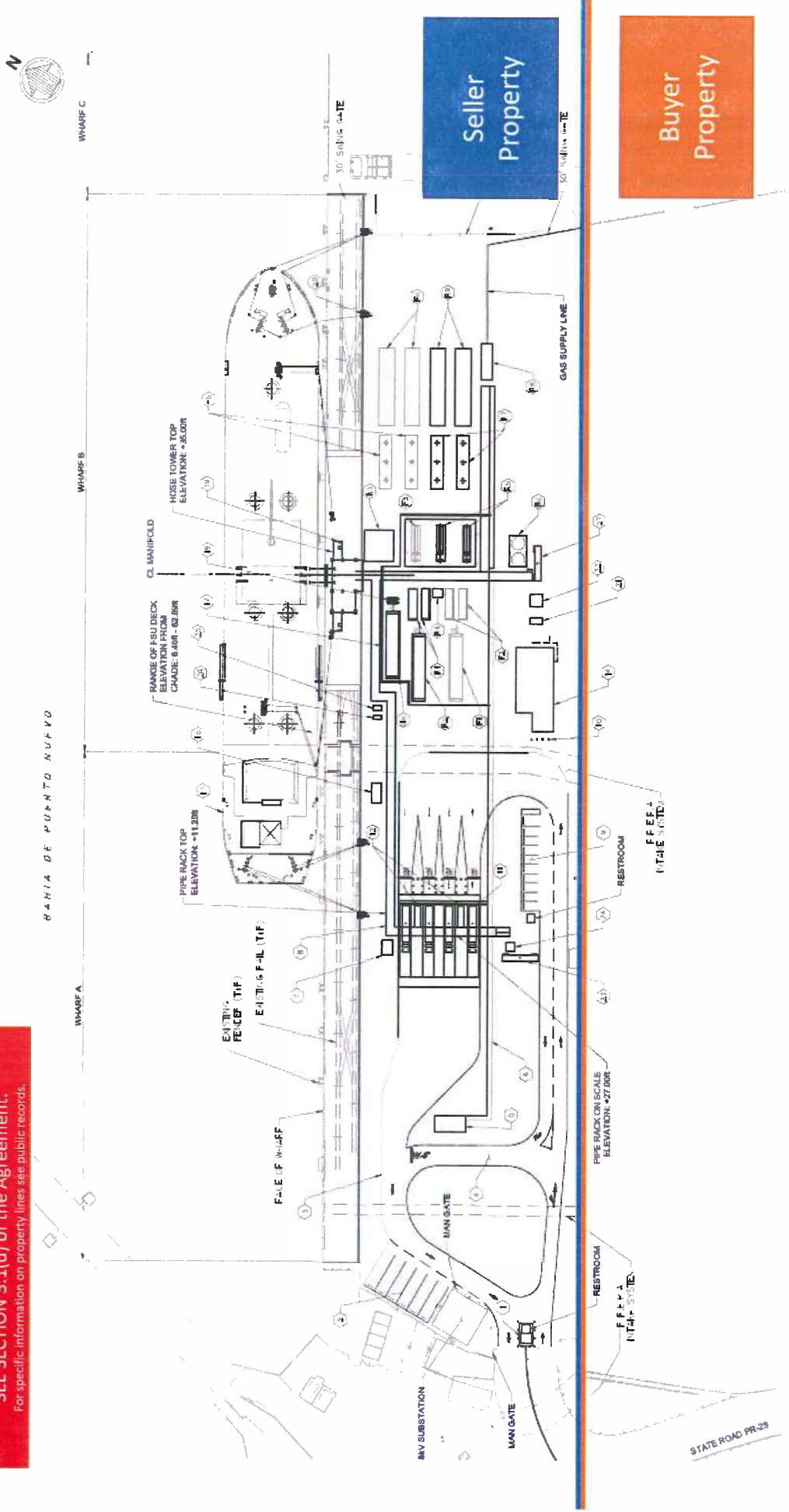


MFH Facility



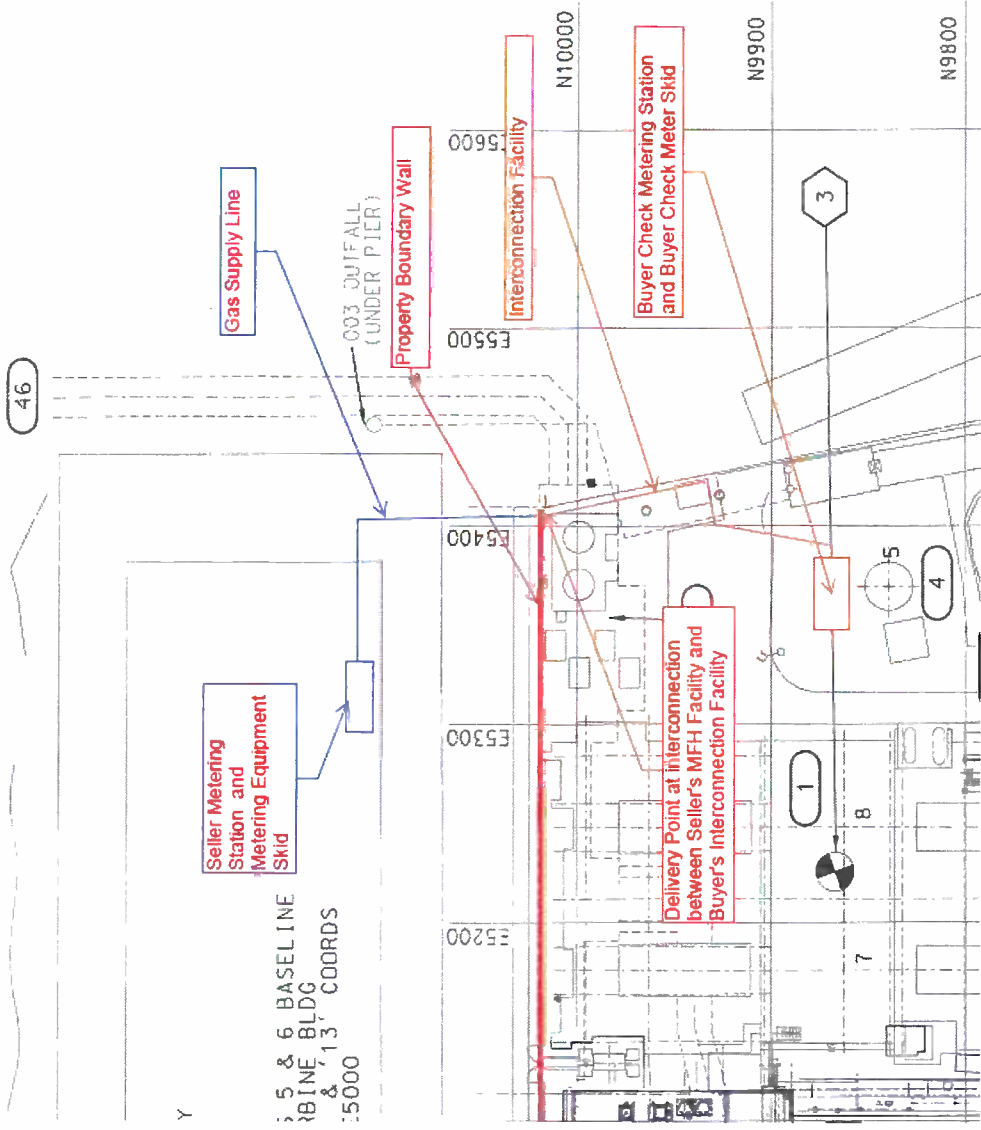
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**SEE SECTION 3.1(d) of the Agreement.**  
For specific information on property lines see public records.



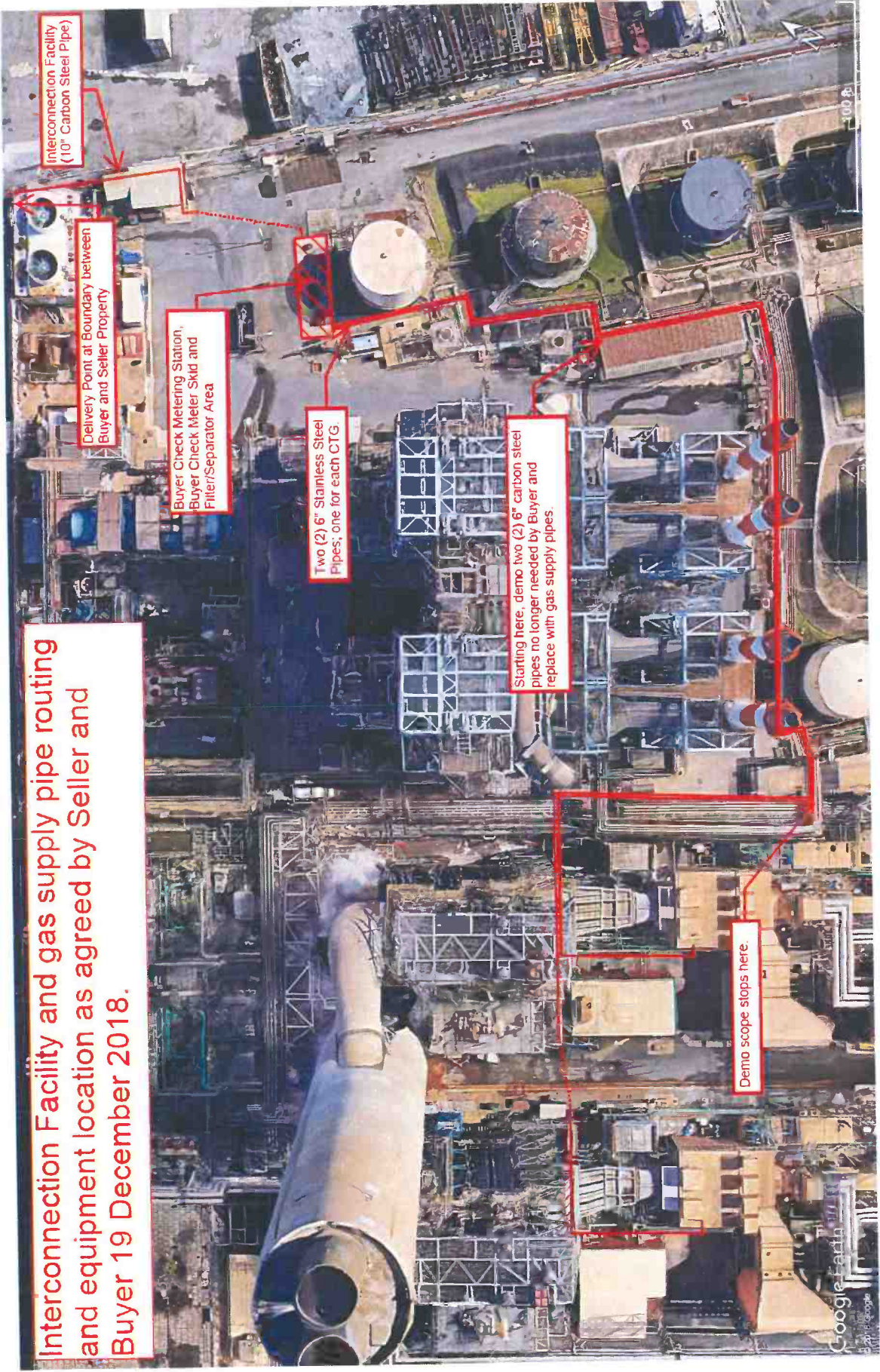
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SAN JUAN BAY



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**Interconnection Facility and gas supply pipe routing and equipment location as agreed by Seller and Buyer 19 December 2018.**



Interconnection Facility  
(10" Carbon Steel Pipe)

Delivery Point at Boundary between  
Buyer and Seller Property

Buyer Check Metering Station,  
Buyer Check Meter Skid and  
Filter/Separator Area

Two (2) 6" Stainless Steel  
Pipes; one for each CTG.

Starting here, demo two (2) 6" carbon steel  
pipes no longer needed by Buyer and  
replace with gas supply pipes.

Demo scope stops here.

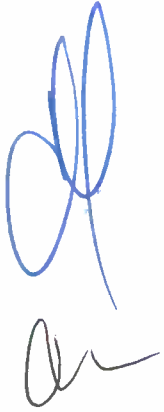
ANNEX D  
OPERATIONS COMMITTEE AND CONSTRUCTION COMMITTEE

Operations Committee

SELLER	BUYER
Brannen McElmurray	Radamés Alvarado
Simon Duncan	Javier Soto Suárez
Carlos A. Faris Ambert	Gary Germeroth

Construction Committee

SELLER	BUYER
Brannen McElmurray	José Molina
Sam Abdalla	Jorge Sánchez
Winnie Irizarry	Jaime Umpierre



Annex E  
Annual Contract Quantity

Month	Estimated Nomination (TBTU)	Dispatch	Scheduled Maintenance
June 2019	1.12	Baseload	Commissioning - SJ 6
July 2019	2.22	Baseload	-
August 2019	2.21	Baseload	-
September 2019	2.09	Baseload	-
October 2019	2.22	Baseload	-
November 2019	2.11	Baseload	-
December 2019	1.12	Baseload	Environmental Compliance
January 2020	1.13	Baseload	Environmental Compliance
February 2020	2.10	Baseload	-
March 2020	2.16	Baseload	-
April 2020	1.12	Baseload	Combustion Inspection - SJ 5
May 2020	2.13	Baseload	-
<b>Estimated ACQ</b>	21.73		





EXHIBIT A

PERMITS AND OBLIGATIONS

Buyer's Obligations Prior to Seller Beginning Works

Obligation	Date
EQB Construction Air Permit (SJ Units 5&6)	April 5, 2019
Buyer provides Seller with limited notice to proceed (LNTP) to begin demolition, rehabilitation of existing pipe supports, site-clearing, grading, and on-site storage of equipment and materials.	March 15, 2019
Buyer Provides Seller with full notice to proceed (FNTP)	April 15, 2019

Buyer's Obligations

Obligation	Date
LNTP Issued, and NFE granted site access to begin Preparatory Works	March 15, 2019
FNTP Issued and MHPSA granted site access with all Buyer Permits in hand	April 15, 2019
MHPSA granted access to open / shut down Unit 6	May 1, 2019
MHPSA granted access to open / shut down Unit 5	June 1, 2019 (subject to Substantial Completion of Unit 6)

Seller's Obligations Before Starting Construction

Obligation
Seller to perform a land survey and deliver results to Buyer

Buyer Permits

Permit Name
EQB Construction Air Permit (SJ Units 5&6)



Seller Permits

Permit Name
Permit Authorization under NPDES General Permit for Discharges from Construction Activities
Consolidated General Permit (MFH Facility)
EQB Construction Air Permit (MFH Facility)
EQB Air Emissions Operation Permit (MFH Facility)
Use Permit (MFH Facility)

EXHIBIT B  
SPECIFICATIONS

Natural Gas delivered by Seller shall satisfy the following conditions at the Delivery Point:

- a. Sulfur content less than 1 gr/100 scf
- b. Pressure Range between 400 and 660 psig at gas turbine inlet; fluctuation range restricted to +/- 21 psi
- c. Temperature at gas turbine inlet higher than 41°F
- d. Compliance with “Gas Fuel Specification - Natural Gas for Diffusion Combustor Application – MHPS PROPRIETARY INFORMATION STANDARD DOCUMENT IBSTD-10011 R3.0”

Assuming the above conditions have been satisfied, and Buyer’s equipment configuration is Mitsubishi 501F Class gas turbines, below is a sample gas chromatograph reading with illustrative data that would be available to Buyer at the Seller metering skid:

Example

ISO Analysis

Date-Time : 12/19/2018 10:24:51 AM    Analysis time : 170.00 sec    Cycle Time : 180.00 sec  
 Stream : Stream 1    Mode : Analysis    Cycle Start Time : 12/19/2018 08:09:34 AM  
 Analyzer : 729528    Stream Seq. : 1  
 Company : NFE NORTH HOLDINGS'

Firmware Revision, Checksum : 2.2.4, 2016/09/28, 0x58149886

Reference Temperature - Combustion Deg.C	Primary	Secondary	
Reference Temperature - Metering Deg.C	15.0	15.0	
Calorific Value - Units	MJ/m3	MJ/m3	

Component Name	Mole Percent	Relative Density
CG+ 47/35/17	0.0038%	0.0001
Propane	0.2722%	0.0041
i-Butane	0.0350%	0.0007
n-Butane	0.0322%	0.0006
Neopentane	0.0008%	0.0000
i-Pentane	0.0076%	0.0002
n-Pentane	0.0034%	0.0001
Nitrogen	0.0088%	0.0001
Methane	96.4182%	0.5341
Carbon Dioxide	0.0000%	0.0000
Ethane	3.2179%	0.0334
<b>TOTALS</b>	<b>100.0000%</b>	<b>0.5735</b>

\*\*\* indicates user-defined components

Primary Compressibility Factor(Z) @ 1.01325 BarA and 15.0 Deg.C = 0.99783

Base Pressure 1.01325 BarA

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Real Relative Density Gas - Primary	=	0.5745
Real Gas Density - Primary	=	0.7040 kg/m3
Total Unnormalized Mole Percent	=	99.552

ACTIVE ALARMS

Alarm Name	Alarm State
------------	-------------

ANALOG INPUTS

Analog Input	Value
Analog Input 1	0.000
Analog Input 2	0.000





EXHIBIT C  
FUEL PRICE

“**Fuel Price**” (per MMBtu) shall be equal to the Unit Cost *plus* Unit Fuel Cost, *where*:

(a) Unit Cost:

Except as otherwise provided in Clause 13.3:

During the Transitional Supply Period and months 1-12 of the Initial Contract Term, \$8.50/MMBtu (the “**Base Cost**”)

During months 13-24 of the Initial Contract Term, \$7.50/MMBtu

During months 25 until the end of Initial Contract Term, \$6.50/MMBtu

During any Extension Term, an amount per MMBtu to be agreed

(b) Unit Fuel Cost:

Gas Index Price multiplied by one hundred fifteen percent (115%).

“**Gas Index Price**” with respect to any Day, means the final settlement price (in USD per MMBtu) for the New York Mercantile Exchange's Henry Hub natural gas futures contract for the month in which the Day occurs.

In addition to the Fuel Price per MMBtu calculated in accordance with the formula set forth above, Buyer shall pay each month during the Initial Contract Term the applicable monthly instalment of the Natural Gas Manufacturing Surcharge described in Article XII, in accordance with the provisions of Article XIII.

EXHIBIT D  
NATURAL GAS MANUFACTURING SURCHARGE AMOUNT AND DISCOUNTED  
SURCHARGE AMOUNT

See tables, attached, subject to Article XII.


Exhibit D

For Information Purposes Only

Discount Rate 6.00%

Period	Beginning of Period	Scheduled Natural Gas Manufacturing Surcharge	Natural Gas Manufacturing Surcharge Amount	Discounted Surcharge Amount
1	\$50,000,000.00	\$833,333.33	\$49,166,666.67	\$42,699,257.91
2	\$49,166,666.67	\$833,333.33	\$48,333,333.34	\$42,075,254.04
3	\$48,333,333.34	\$833,333.33	\$47,500,000.01	\$41,448,130.31
4	\$47,500,000.01	\$833,333.33	\$46,666,666.68	\$40,817,870.96
5	\$46,666,666.68	\$833,333.33	\$45,833,333.35	\$40,184,460.32
6	\$45,833,333.35	\$833,333.33	\$45,000,000.02	\$39,547,882.63
7	\$45,000,000.02	\$833,333.33	\$44,166,666.69	\$38,908,122.04
8	\$44,166,666.69	\$833,333.33	\$43,333,333.36	\$38,265,162.66
9	\$43,333,333.36	\$833,333.33	\$42,500,000.03	\$37,618,988.47
10	\$42,500,000.03	\$833,333.33	\$41,666,666.70	\$36,969,583.42
11	\$41,666,666.70	\$833,333.33	\$40,833,333.37	\$36,316,931.34
12	\$40,833,333.37	\$833,333.33	\$40,000,000.04	\$35,661,016.00
13	\$40,000,000.04	\$833,333.33	\$39,166,666.71	\$35,001,821.08
14	\$39,166,666.71	\$833,333.33	\$38,333,333.38	\$34,339,330.19
15	\$38,333,333.38	\$833,333.33	\$37,500,000.05	\$33,673,526.85
16	\$37,500,000.05	\$833,333.33	\$36,666,666.72	\$33,004,394.48
17	\$36,666,666.72	\$833,333.33	\$35,833,333.39	\$32,331,916.46
18	\$35,833,333.39	\$833,333.33	\$35,000,000.06	\$31,656,076.05
19	\$35,000,000.06	\$833,333.33	\$34,166,666.73	\$30,976,856.43
20	\$34,166,666.73	\$833,333.33	\$33,333,333.40	\$30,294,240.71
21	\$33,333,333.40	\$833,333.33	\$32,500,000.07	\$29,608,211.92
22	\$32,500,000.07	\$833,333.33	\$31,666,666.74	\$28,918,752.98
23	\$31,666,666.74	\$833,333.33	\$30,833,333.41	\$28,225,846.75
24	\$30,833,333.41	\$833,333.33	\$30,000,000.08	\$27,529,475.99
25	\$30,000,000.08	\$833,333.33	\$29,166,666.75	\$26,829,623.37
26	\$29,166,666.75	\$833,333.33	\$28,333,333.42	\$26,126,271.49
27	\$28,333,333.42	\$833,333.33	\$27,500,000.09	\$25,419,402.85
28	\$27,500,000.09	\$833,333.33	\$26,666,666.76	\$24,708,999.87
29	\$26,666,666.76	\$833,333.33	\$25,833,333.43	\$23,995,044.87
30	\$25,833,333.43	\$833,333.33	\$25,000,000.10	\$23,277,520.10
31	\$25,000,000.10	\$833,333.33	\$24,166,666.77	\$22,556,407.71
32	\$24,166,666.77	\$833,333.33	\$23,333,333.44	\$21,831,689.75
33	\$23,333,333.44	\$833,333.33	\$22,500,000.11	\$21,103,348.20
34	\$22,500,000.11	\$833,333.33	\$21,666,666.78	\$20,371,364.94
35	\$21,666,666.78	\$833,333.33	\$20,833,333.45	\$19,635,721.77
36	\$20,833,333.45	\$833,333.33	\$20,000,000.12	\$18,896,400.39
37	\$20,000,000.12	\$833,333.33	\$19,166,666.79	\$18,153,382.39
38	\$19,166,666.79	\$833,333.33	\$18,333,333.46	\$17,406,649.31
39	\$18,333,333.46	\$833,333.33	\$17,500,000.13	\$16,656,182.56
40	\$17,500,000.13	\$833,333.33	\$16,666,666.80	\$15,901,963.47
41	\$16,666,666.80	\$833,333.33	\$15,833,333.47	\$15,143,973.29
42	\$15,833,333.47	\$833,333.33	\$15,000,000.14	\$14,382,193.16
43	\$15,000,000.14	\$833,333.33	\$14,166,666.81	\$13,616,604.13
44	\$14,166,666.81	\$833,333.33	\$13,333,333.48	\$12,847,187.16
45	\$13,333,333.48	\$833,333.33	\$12,500,000.15	\$12,073,923.09
46	\$12,500,000.15	\$833,333.33	\$11,666,666.82	\$11,296,792.71
47	\$11,666,666.82	\$833,333.33	\$10,833,333.49	\$10,515,776.68
48	\$10,833,333.49	\$833,333.33	\$10,000,000.16	\$9,730,855.57
49	\$10,000,000.16	\$833,333.33	\$9,166,666.83	\$8,942,009.85
50	\$9,166,666.83	\$833,333.33	\$8,333,333.50	\$8,149,219.90
51	\$8,333,333.50	\$833,333.33	\$7,500,000.17	\$7,352,466.00
52	\$7,500,000.17	\$833,333.33	\$6,666,666.84	\$6,551,728.34
53	\$6,666,666.84	\$833,333.33	\$5,833,333.51	\$5,746,986.98
54	\$5,833,333.51	\$833,333.33	\$5,000,000.18	\$4,938,221.92
55	\$5,000,000.18	\$833,333.33	\$4,166,666.85	\$4,125,413.03
56	\$4,166,666.85	\$833,333.33	\$3,333,333.52	\$3,308,540.10
57	\$3,333,333.52	\$833,333.33	\$2,500,000.19	\$2,487,582.81
58	\$2,500,000.19	\$833,333.33	\$1,666,666.86	\$1,662,520.72
59	\$1,666,666.86	\$833,333.33	\$833,333.53	\$833,333.33
60	\$833,333.53	\$833,333.33	\$0.20	\$0.00

# Exhibit E - Monthly Invoice

For Information Purposes Only

**Example**

## Invoicing and Payment

Illustrative Schedule for one pay period:

- Seller flows Gas
- Seller tenders invoice to Buyer on the 10th day of the following month; invoice may include the Fuel Price, Manufacturing Surcharge, applicable taxes due for payment by the Buyer, other charges owed, less a Mitigation Sale or other sale of any excess nomination, less any Carryover Credit
- Buyer pays invoice 30 days after receiving such invoice

Generic June						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

Generic July						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

Generic August						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						



# Exhibit E - Monthly Invoice (Continued)

For Information Purposes Only

**Example**

**Invoicing and Payment: Section 13.2**

Illustrative Pricing Example for a pay period in Year 1:

Gas Index Price <sup>(1)</sup>	\$/MMBtu	\$3.021
(x) Factor	%	115.00%
Unit Fuel Cost	\$/MMBtu	\$3.474
(+) Unit Cost <sup>(2)</sup>	\$/MMBtu	\$8.500
Fuel Price	\$/MMBtu	\$11.974
(x) Monthly Nominated Quantity <sup>(3)</sup>	MMBtu	2,083,333
<b>[a] Gas Cost</b>	<b>\$</b>	<b>\$24,946,145.83</b>

(1) "Gas Index Price" with respect to any Day means the final settlement price (in USD per MMBtu) for the New York Mercantile Exchange's Henry Hub natural gas futures contract for the Month in which the Day occurs.

(2) As defined in the Fuel Supply Agreement, the Unit Cost is subject to change per Section 13.3.

(3) Buyer may request additional quantities, but the price of such quantity will be determined pursuant to Section 7.4(a)(iv).

Price	\$/MMBtu	\$0.000
(x) Additional Quantity	MMBtu	0
<b>[b] Plus: Additional Gas Cost</b>	<b>\$</b>	<b>\$0.00</b>
<b>[c] Plus: Natural Gas Manufacturing Surcharge</b>	<b>\$</b>	<b>\$833,333.34</b>
<b>[d] Plus: Applicable Taxes Due for Payment by the Buyer</b>	<b>\$</b>	<b>\$0.00</b>
<b>[e] Less: Mitigation Sale or Other Sale of Any Excess Nomination</b>	<b>\$</b>	<b>\$0.00</b>
<b>[F] Less: Carryover Credit</b>	<b>\$</b>	<b>\$0.00</b>
<b>Total Invoice</b>	<b>\$</b>	<b>\$25,779,479.17</b>

# Exhibit E - Monthly Invoice (Continued)

For Information Purposes Only



Example

NFEnergia LLC  
 111 W 19th Street, 8th Floor  
 New York, NY 10011  
 United States of America

Bill To
Puerto Rico Power Authority P.O. Box 363928 San Juan Puerto Rico 00936-3928

Invoice Date	Due Date	Invoice
7/10/2019	8/9/2019	PREPA00001A

Billing Period No.	Start date	End date	Contract Number
1	6/1/2019	6/30/2019	

Products & Other Charges	Quantity (MMBtu)	Price	Amount (US\$)
<b>Description:</b>			
Manufactured Natural Gas made available, pursuant to the Fuel Sale and Purchase Agreement, to Units 5 and 6.			
<b>Quantities:</b>			
Monthly Nominated Quantity	2,083,333		
Additional Quantity	0		
<b>Gas Cost:</b>			
Gas Index Price		\$3.021	
(x) Factor		115.00%	
Unit Fuel Cost		\$3.474	
(+) Unit Cost		\$8.500	
Gas Cost	2,083,333	\$11.974	\$24,946,145.83
<b>Additional Quantities:</b>			
Additional Gas Cost	0	\$0.000	\$0.00
<b>Natural Gas Manufacturing Surcharge:</b>			
Monthly Amount			\$833,333.34
<b>Other:</b>			
Applicable Taxes Due for Payment by the Buyer			\$0.00
<b>Other:</b>			
Credit for Mitigation Sale or Other Sale of Any Excess Nomination			\$0.00
<b>Other:</b>			
Credit for Force Majeure or Forced Outage ("Carryover Credit ")			\$0.00
<b>Total Invoice</b>			<b>\$25,779,479.17</b>

*[Handwritten signature]*

Cash Wire Instructions - USD
Bank Name: JP Morgan Chase Bank, NA Bank Routing Number: 021000021 Beneficiary Account Name: Scotiabank de Puerto Rico Beneficiary Account Number: 001058975 For Further Credit Account Name: NFEnergia LLC For Further Credit Account Number: 071006094388

New Fortress Energy Contact
Jack Finlay Chief Financial Officer (441) 296 9954

**Certification**

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

Authorized Signatory

Example

"Gas Index Price" with respect to any Day means the final settlement price (in USD per MMBtu) for the New York Mercantile Exchange's Henry Hub natural gas futures contract for the Month in which the Day occurs. See Platt's Gas Daily cut-out below which illustrates October pricing. Additionally, the following website can be used to see pricing: <https://business.directenergy.com/market-insights/nymex-settlement-history>

GAS DAILY
THURSDAY, SEPTEMBER 27, 2018

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### NATURAL GAS FUTURES

## NYMEX October gas futures contract drops 6.1 cents, expires at \$3.021/MMBtu

The NYMEX October gas futures contract expired at \$3.021/MMBtu Wednesday, down 6.1 cents day on day as production hit a new high in the week thus far.

The front-month contract traded between \$2.981/MMBtu and \$3.088/MMBtu.

The November contract settled at \$2.98/MMBtu Wednesday, down 7.8 cents, a day before it rolls as the front-month.

US dry gas production hit a record high of 84.4 Bcf Tuesday, largely driven by a production rise in the Northeast, according to S&P Global Platts Analytics. Production averaged 83.6 Bcf/d in the past seven days, and with these historically high production levels, the market seems to have shrugged off concerns about the storage deficit.

Platts Analytics estimates output will drop 1.6 Bcf on day to 82.8 Bcf Wednesday. In September to date, production has averaged 83.3 Bcf/d, up 9.7 Bcf from year-ago levels.

Total US demand is estimated to remain relatively flat, averaging 76.4 Bcf/d in the week to date. Platts Analytics estimates demand to average 76 Bcf/d over the next two weeks, with the National Weather Service calling for a likelihood of moderate temperatures across much of the country over the next eight to 14 days.

Power demand is estimated to fall nearly 1 Bcf to 30.8 Bcf Wednesday. Gas-fired power burn is estimated to average 29.5 Bcf/d over the next seven days, down from 33.2 Bcf/d in the past week.

With production showing no signs of slowing down and seasonal demand flattening during the shoulder season, storage may see some strong injections before the winter demand hits and offset some of the production increases.

However, a consensus of analysts surveyed by S&P Global Platts expects a 61-Bcf injection for the week that ended September 21, about 25 Bcf below the storage build seen for the previous week. Current national gas stocks sit at 2.722 Tcf, at a 17.7% deficit to the five-year average of 3.308 Tcf for the same time period.

—Veda Chowdhury

### MONTH-AHEAD TEMPERATURE FORECAST MAP

October departure from average

Source: S&P Global Platts, Custom Weather

### NYMEX HENRY HUB GAS FUTURES CONTRACT, SEP 26

	Settlement	High	Low	+/-	Volume
Oct 2018	3.021	3.088	2.981	-0.061	8,336
Nov 2018	2.980	3.062	2.968	-0.078	135,344
Dec 2018	3.062	3.134	3.050	-0.087	19,926
Jan 2019	3.145	3.215	3.136	-0.064	15,421
Feb 2019	3.089	3.145	3.077	-0.047	52,53
Mar 2019	2.922	2.954	2.896	-0.030	87,43
Apr 2019	2.641	2.649	2.614	-0.001	87,28
May 2019	2.608	2.614	2.581	0.001	14,21
Jun 2019	2.638	2.640	2.610	0.003	4,38
Jul 2019	2.670	2.673	2.643	0.004	7,65
Aug 2019	2.671	2.673	2.644	0.004	15,14
Sep 2019	2.653	2.655	2.625	0.005	13,24
Oct 2019	2.671	2.673	2.643	0.005	18,51
Nov 2019	2.717	2.720	2.689	0.005	6,71
Dec 2019	2.840	2.842	2.814	0.006	3,41
Jan 2020	2.933	2.938	2.905	0.007	3,55
Feb 2020	2.886	2.889	2.876	-0.002	7,71
Mar 2020	2.787	2.782	2.744	-0.012	2,89
Apr 2020	2.520	2.521	2.502	0.005	11,72
May 2020	2.492	2.493	2.475	0.007	3,30
Jun 2020	2.520	2.520	2.513	0.008	1,11
Jul 2020	2.550	2.550	2.540	0.008	4,11
Aug 2020	2.555	2.555	2.555	0.008	9,11
Sep 2020	2.539	2.539	2.539	0.008	9,11
Oct 2020	2.555	2.555	2.547	0.008	9,11
Nov 2020	2.608	2.608	2.608	0.008	9,11
Dec 2020	2.734	2.734	2.734	0.008	9,11
Jan 2021	2.837	2.848	2.837	0.009	1,11
Feb 2021	2.789	2.789	2.789	0.006	9,11
Mar 2021	2.715	2.715	2.715	-0.001	9,11
Apr 2021	2.475	2.475	2.475	0.012	9,11
May 2021	2.445	2.445	2.445	0.012	9,11
Jun 2021	2.476	2.476	2.476	0.011	9,11
Jul 2021	2.509	2.509	2.509	0.011	9,11
Aug 2021	2.522	2.515	2.515	0.009	9,11
Sep 2021	2.514	2.514	2.514	0.009	9,11

Contract data for Tuesday  
 Volume of contracts traded: 560,755  
 Front-months open interest:  
 Oct. 8,971; Nov. 297,211; Dec.: 175,953  
 Total open interest: 1,821,489  
 Data is provided by a third-party vendor and is accurate as of 5:30 pm Eastern time.

### NYMEX PROMPT MONTH FUTURES CONTINUATION

(\$/MMBtu)

Note: The entire wick of the candlestick depicts the high and low daily front-month Henry Hub futures price range. The body of the candlestick depicts the price range between the open and close, with a red candlestick indicating a close on the downside and a green candlestick indicating a close on the upside.  
 Source: S&P Global Platts

### US GAS STORAGE SURPLUS vs ROLLING 5-YEAR AVERAGE

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**EXHIBIT F**  
**PERFORMANCE GUARANTEES AND REQUIRED TESTING**

Seller shall require MHP SA to guarantee that, as of Substantial Completion of a Unit, for each item set out in the column captioned "Guaranteed Item (Full Load)" (the "**Guaranteed Item**"), such Unit complies with the criteria set out in the column captioned "Guaranteed Result" (the "**Guaranteed Result**"), based on the fuel and timing condition set out in the column captioned "Timing/Fuel", in each case as set forth in the table below.

PERFORMANCE BASIS			
Guaranteed Item (Full Load)	Timing/Fuel	Guaranteed Result	Contractor Remedy
Change in GT Output	Oil fuel before and after conversion	No worse	LDs
Change in GT Heat Rate	Oil fuel before and after conversion	No worse	LDs
Change in GT Output	Gas fuel vs. oil fuel following conversion	+1%	Remedial Action
Change in GT Heat Rate	Gas fuel vs. oil fuel following conversion	0	LDs
Change in GT Exhaust Flow	Gas fuel vs. oil fuel following conversion	-0.75%	LDs
Change in GT Exhaust Temp	Gas fuel vs. oil fuel following conversion	No change	LDs
NOx Emissions (base load)	Gas fuel after conversion	< 25	Remedial Action
CO Emissions (base load)	Gas fuel after conversion	< 10	Remedial Action

To establish satisfaction of each Guaranteed Result prior to Substantial Completion of a Unit, Seller shall require MHP SA, in cooperation with PREPA, to conduct the Required Tests (i) before and after performance of the Works on such Unit, and (ii) in accordance with American Society of Mechanical Engineers Performance Test Code 22. A Unit undergoing a Required Test shall have a clean air inlet filter housing, air inlet duct, inlet filters and compressor. The Required Test results shall be corrected back to the following conditions:



1. Ambient temperature of 85 degrees Fahrenheit
2. Relative humidity of 70%
3. Barometric pressure of 14.696 psi
4. Power factor of 1.0

Seller shall exercise commercially reasonable efforts to ensure that MHPSA has, and causes its contractors and agents to agree to, terms concerning its guarantees and Required Testing in accordance with this Exhibit F. Seller shall not amend, vary, supplement, replace or waive the testing and commissioning provisions it has agreed with MHPSA without the prior written consent of Buyer (which Buyer will not unreasonably withhold or delay). Seller shall enforce all of its rights under any agreement with MHPSA in respect of a Unit's inability to meet a Guaranteed Result or MHPSA's performance in accordance with the Scope of Work, and shall fully pass through to Buyer all liquidated damages that Seller recovers from MHPSA in respect of any Guaranteed Items identified as having "LDs" in the column captioned "Contractor Remedy" of the table above.

Additionally, Seller shall use commercially reasonable efforts to (i) make PREPA an express third party beneficiary to the guarantees in this Exhibit F that are given by MHPSA pursuant to its agreement with Seller and (ii) ensure that all Seller's rights pursuant to the guarantee provisions of its agreement with MHPSA are freely assignable to PREPA, such that PREPA may have direct recourse against MHPSA for any failure by MHPSA to satisfy the performance guarantees set forth in this Exhibit F.



EXHIBIT G  
BACK-UP FUEL QUANTITY

The Back-up Fuel Quantity in barrels (BBLs) of diesel shall be calculated by dividing:

(a) the Daily Contracted Quantity in MMBtu

by

(b) the number of MMBtu per BBL from the sample test report from the diesel supply cargo.


Two handwritten signatures are present in the lower-left corner. The top signature is written in blue ink and consists of several loops and a long tail. The bottom signature is written in black ink and is more compact and angular.

EXHIBIT H  
SCOPE OF WORK

This Exhibit H covers the project description, scope of work and supply, and specifications included under this Agreement. The equipment, materials, and installation covered by this Exhibit H will be incorporated into the SJ 5&6 Units. The plant consists of two (2) one-on-one combined cycle units that currently operate on #2 diesel fuel and are being modified by Seller's contractors, subcontractors and agents to also operate on natural gas.

**Scope of Work**

The Works under these specifications shall include the procurement, construction, construction management, commissioning, testing, and startup of the systems and components. Seller's contractors, subcontractors and agents shall provide or cause to be provided materials and tools, labor, construction fuels, construction chemicals, administration and other services and items required to complete the Works. Seller's contractors, subcontractors and agents shall be responsible for receiving, unloading, storing, installing, commissioning, and testing of all equipment and components in accordance with original equipment manufacturer (OEM) requirements and these specifications. The Works shall include the following:

- 
1. Furnishing all materials, labor, incidentals, equipment, and accessories as required to complete the scope of work described herein.
  2. Receive at site; inspect; inventory; unload, place in, maintain, and remove from storage; protect from weather and damage; clean; dry; transport into place; and install all materials and equipment.
  3. Furnish and erect all temporary structural steel and lifting lugs required for structural steel, piping, and equipment erection.
  4. Pressure test all piping installed under this Agreement per ASME B31.1 – Power Piping.
  5. Plan, coordinate, and execute startup and commissioning activities for the equipment and systems installed under this Agreement.
  6. Maintain complete set of as-built drawings and turn over to Buyer upon completion of Works in accordance with the Agreement.

Civil/Structural Scope

1. Restore site grading and surfacing disturbed by Seller's contractors, subcontractors and agents to preexisting conditions.
2. Furnish and install concrete foundations, anchors, embedments, shims, and grout as required to level and support equipment and structures.
3. Furnish and install steel structures and accessories.

4. Furnish and install all coatings and touch-up coatings as required by these specifications.

Mechanical Scope

1. Furnish and install components associated with the fuel gas supply system as indicated on P&ID 199399-CFGA-M2381A and B from the LNG interface terminal point (TP-1) to the combustion turbine interface point at the fuel gas control valve skid located inside each CTG enclosure.
2. Furnish and install control air from existing control air header(s) to the new air-actuated valves indicated on the fuel gas supply system P&ID.
3. Furnish and install catalytic systems on one unit to control emissions of nitrogen oxides and carbon monoxide. The catalytic systems will be comprised of Selective Catalytic Reduction (SCR) and oxidation catalyst (OxCat), and shall be designed to allow the operators of San Juan Units 5 & 6 to comply with applicable environmental regulations (including annual operating limits). The catalytic systems shall employ commercially proven technologies designed for the combustion of natural gas and distillate fuel oil. The SCR system shall be designed to use an aqueous solution of ammonia as a reagent at a concentration that does not trigger requirements of Section 112(r) of the Clean Air Act. The system shall not be designed for anhydrous ammonia.

Instrumentation Scope

Furnish, install, and wire instrumentation shown on the fuel gas supply system P&ID 199399-CFGA-M2381A and B.

Electrical Scope

1. Furnish and install cable, raceway, motor starters, and circuit breakers, as required, to provide power to two (2) new CTG hydraulic pump skids (one new skid per CTG) from the existing CTG electrical enclosures.
2. Furnish and install necessary components to bond new skids and components to the existing plant ground grid.

Combustion Turbine Gas Conversion Modifications

Refer to MHPSA proposal included after page 8 of this Exhibit H.

**Codes and Standards**

The codes and industry standards used for design, fabrication, and construction are listed below and will be the editions, including all addenda, in effect as of the date of this Agreement. Other recognized standards may also be used by Seller's contractors, subcontractors and agents as design, fabrication, and construction guidelines when not in conflict with the listed standards.

- American Concrete Institute (ACI)

- American Institute of Steel Construction (AISC)
- American Iron and Steel Institute (AISI)
- American National Standards Institute (ANSI)
- American Society of Mechanical Engineers (ASME)
- American Society for Testing and Materials (ASTM)
- American Welding Society (AWS)
- Concrete Reinforcing Steel Institute (CRSI)
- Institute of Electrical and Electronics Engineers (IEEE)
- Instrument Society of America (ISA)
- Insulated Cable Engineers Association (ICEA)
- National Electrical Safety Code (NESC) or National Electric Code (NEC)
- National Fire Protection Association (NFPA)
- Occupational Safety and Health Administration (OSHA)
- 2018 Puerto Rico Building Code
- American Gas Association (AGA)
- American Petroleum Institute (API)
- National Association of Corrosion Engineers (NACE)

**Site Meteorological and Seismic Data**

Works shall be designed according to the following building code and site conditions:

<b>General Design Data:</b>	
Building Code	2018 Puerto Rico Building Code (Based on the 2018 International Building Code with amendments. References ASCE 7-05)
Occupancy Category	III
Site Elevation (Mean Sea Level), ft (m)	+7 feet (MSL)
<b>Wind Design Data:</b>	
Basic Wind Speed, V, Nominal 3 second gust wind speed at 33 ft (10 m) above ground for Exposure C category, mph (m/s)	As specified in 2018 Puerto Rico Building Code
Exposure Category	As specified in 2018 Puerto Rico Building Code
Topographic Factor, Kzt	As specified in 2018 Puerto Rico Building Code
Importance Factor (Wind Loads), I	As specified in 2018 Puerto Rico Building Code
<b>Seismic Design Data:</b>	
Short Period Mapped Spectral Acceleration, S <sub>s</sub>	As specified in 2018 Puerto Rico Building Code
One Second Period Mapped Spectral Acceleration, S <sub>1</sub>	As specified in 2018 Puerto Rico Building Code

Site Class	As specified in 2018 Puerto Rico Building Code
Seismic Design Category	As specified in 2018 Puerto Rico Building Code
Importance Factor (Seismic Loads), I <sub>e</sub>	As specified in 2018 Puerto Rico Building Code

**Scope of Supply**

The following is not meant to limit the Scope of Work, nor is it an exhaustive discussion or list of the scope of supply. The intention of the following is to clarify the intent and key provisions of the scope of supply, which is further described in Section 4 of the MHPS Scope of Work Document, included with this Agreement.

Seller will deliver vaporized LNG through one 10” carbon steel pipe to the Delivery Point in Buyer’s property, as identified in ANNEX B. The Delivery Point is the point at which the financial custody of the gas transfers to Buyer. For this purpose, MHSPA or a BOP Contractor will design and construct a metering station (shall be four-path gas ultrasonic flow meter, Daniel SeniorSonic 3414 model ) located at the front of the condensate tank 7-8. The readings of this metering station will be compared to the metering station on Seller’s side. This metering station shall include a flow computer that will communicate to the Buyer’s Ovation control system through fiber optic cable. Seller’s gas chromatograph installed in Seller’s metering station shall also communicate to the Buyer’s Ovation control system through fiber optic cable. The gas will be delivered to the SJ 5&6 Units through two six inches pipes from Buyer’s metering station. Piping will be stainless steel downstream of the gas absolute separators, as shown on the fuel gas supply system P&ID 199399-CFGA-M2381B.

Seller has selected floating storage units sized to meet the 7-day storage requirement. Vaporizers will be installed at Seller’s side to provide the required fuel gas flow. Piping connections and fire protection system upgrades will be included for the expansion of the facility’s vaporization and delivery capacity.

Seller is responsible in procuring new balance-of-plant systems necessary to support the project and combustion turbine modifications, including the fuel gas supply system. Such related systems are to transfer the natural gas from the LNG facility at wharfs A and B to the combustion turbines supplied by MHPSA. The new balance-of-plant systems will be designed, constructed, and tested in accordance appropriate codes and standards referenced above.

The fuel gas supply system will be designed to deliver natural gas to each combustion turbine. The system will be constructed of seamless, carbon and stainless steel piping, all welded construction with flanged isolation valves including an emergency, air-actuated isolation valve. The system will be designed to operate at nominal conditions of 525 psig and 48 degrees F. A gas absolute separator for each six inches stainless steel pipe line will be provided upstream of the gas supply interface connection with combustion turbines, between the financial custody metering station and gas turbines.

Seller is also responsible for procuring the mechanical conversions of the SJ 5&6 Units, including the fire protection system inside turbine enclosure of each unit. The conversion is going to be

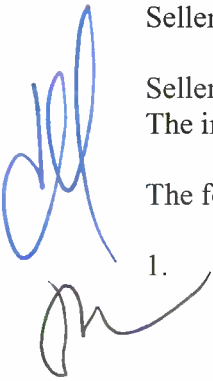
designed, installed and commissioned by MHPSA, the original equipment manufacturer, as more fully described later in this document. The conversion modifications include new dual fuel nozzles DF42 (provided by PREPA), fuel gas metering (Coriolis type), integration to existing control system (DCS Ovation) expansion to accommodate monitoring, control, and operation of the dual fuel systems; modifications to existing liquid fuel systems including liquid fuel metering system, fuel oil injection pump skid, purge air system, sweep air/sweep gas systems, and hydraulic control oil skid.

The MFH Facility will be designed to accommodate safe start up, shut down and load ramp rates for the SJ 5&6 Units. During the plant start up, natural gas will be supplied at the required pressure to the gas turbines by controls designed to maintain vaporization in line with the demand. The plant DCS Ovation control system will be integrated with the MFH Facility, metering stations, gas turbines' fuel flow meters, and fire protection systems. Similarly, when the power plant trips, the DCS control system integration will ensure that the gas pressure in the piping and equipment will remain within the design limits for a safe shutdown. During the ramp up and ramp down of gas turbines, the LNG vaporizer system is designed to maintain the system pressure in a steady state mode. The system is designed with double redundancy for high reliability and availability of the power plant.

Provide catalytic systems on one unit to control emissions of nitrogen oxides and carbon monoxide. The system(s) shall be installed with all necessary infrastructure and integrated with the human machine interface (HMI). Any improvements and modifications to the heat recovery steam generator (HRSG) required to accommodate the catalytic systems shall be furnished by the Seller.

Seller is responsible for procuring the system integration with the plant's DCS control system. The integration shall be in coordination with MHPSA and Emerson-Ovation.

The following provides a summary of the scope of supply.

- 
1. Financial custody fuel gas metering station (Buyer Property)
    - a. One four-path gas ultrasonic flow meter, Daniel SeniorSonic 3414 model
    - b. Flow computer with redundant processors, with communication to DCS control system
    - c. Isolation valves
    - d. Operation, maintenance and calibration procedures
    - e. Gas leak sensors
    - f. Audible and visible emergency alarms
    - g. One set of non-sparking maintenance tools
    - h. Roof, Light Fixtures (LED)
    - i. Integration for two ways communications to Plant's DCS control system through fiber optic cable
    - j. Ladder logic
    - k. Calibration Certified by Independent Laboratory
  2. Metering station fenced with gate for control access (TWIC compliance)

3. Three hand held gas leak sensors
4. Communication to Gas Chromatograph (located at Seller's side) through fiber optic cable connection to DCS control system
5. Fuel gas absolute separators
6. Furnish and install catalytic systems on on unit to control emissions of nitrogen oxides and carbon monoxide. The system shall be integrated with the turbine control system.
7. TFA support from MHPSA for construction, commissioning and field services (PREPA boundary)
8. Digital control system integration two ways communication: TFA support from emerson – ovation system (within PREPA and Seller Boundaries)
9. Gas Pipeline Purging, Validation and Commissioning Procedures
10. Welding procedures, welder's procedure qualifications records, quality inspections reports
11. Deliverables (2 cd's and two hard copies 24x36)
  - a. Civil and structural drawings
  - b. Electrical drawings
  - c. One line diagrams
  - d. Mechanical drawings
  - e. P&ID's
  - f. As built drawings
  - g. Technical specifications
  - h. Vendors list of equipment
  - i. Warranties of equipment
  - j. Operations, maintenance, and part list manual of all equipment and parts within PREPA boundary
  - k. NDT reports
  - l. Commissioning reports for all systems

**General Coating Requirements**

Coating Selection - Atmospheric Service Category				
Section	Description	Design Temp °F (°C) <sup>(1)</sup>	Coating System Number	Codes <sup>(2)</sup>
<b>1.0</b>	<b>Structural Steel</b>			
1.1	Outdoor columns, beams, girders, trusses, channels, and other structural members	≤200 (≤93)	1719	EPZ/EPZ/EPZ/URA
<b>2.0</b>	<b>Pipe and Welded Lugs</b>			
2.1	<b>Carbon Steels and Low Alloy (≤9% Cr) Steels</b>			
2.1.1	Uninsulated	≤200 (≤93)	1720	EPZ/EPZ/URA



Coating Selection - Atmospheric Service Category				
Section	Description	Design Temp °F (°C) <sup>(1)</sup>	Coating System Number	Codes <sup>(2)</sup>
2.1.2		>200 (>93) ≤1,000 (≤538)	1613	IZ/SLA
2.1.3	Insulated	>25 (>-4) <350 (<175)	No coating	
2.1.4		>350 (>175)	No coating	
2.1.5	Underground Pipe	≤200 (≤93)	3301	EPB
2.1.6	Underground Fittings and Field Girth Welds	≤200 (≤93)	3011	SPC/SPC
2.2	<b>Stainless Steels and High Nickel Alloys</b>			
2.2.1	Uninsulated	All	No coating	
2.2.2	Insulated	>120 (>50) <350 (<175)	No coating	
2.2.3		>350 (>175) <120 (<50)	No coating	
2.2.4	Underground Pipe	≤200 (≤93)	3301	EPB
2.2.5	Underground Fittings and Field Girth Welds	≤200 (≤93)	3011	SPC/SPC
3.0	<b>Bulk Valves, Fittings, Pumps, Compressors, Rotating Equipment, and Other Mechanical Equipment Not Specified Otherwise</b>	All	Manufacturer's Standard Coating	

Coating Selection - Atmospheric Service Category				
Section	Description	Design Temp °F (°C) <sup>(1)</sup>	Coating System Number	Codes <sup>(2)</sup>
4.0	Civil/Structural/ Architectural Surfaces and Equipment Not Specified Otherwise	All	Manufacturer's Standard Coating	
5.0	Electric Motors and Equipment Not Specified Otherwise	All	Manufacturer's Standard Coating	
6.0	Instrumentation and Control Panels Not Specified Otherwise	All	Manufacturer's Standard Coating	

1. Based on continuous operating temperature.
2. EPB - Epoxy, fusion bonded  
 EPS - Epoxy  
 EPZ - Epoxy zinc  
 IZ - Inorganic zinc  
 SLA - Silicone acrylic  
 SPC - Special  
 URA - Polyurethane

Coating System Data Sheets		
Drawing Number	Rev.	Title/Description
81113-DM-0691_1613	2	Coating System Data Sheets - System 1613 – Inorganic Zinc (IZ)/ Silicone Acrylic (SLA)
81113-DM-0703_1719	0	Coating System Data Sheets - System 1719 – Epoxy Zinc (EPZ)/Epoxy (EPS)/Epoxy (EPS)/Polyurethane (URA)
81113-DM-0704_1720	0	Coating System Data Sheets - System 1720 – Epoxy (EPS)/Epoxy (EPS)/Polyurethane (URA)

<b>Coating System Data Sheets</b>		
<b>Drawing Number</b>	<b>Rev.</b>	<b>Title/Description</b>
81113-DM-0662_3011	3	Coating System Data Sheets - System 3011 – Adhesive Primer (SPC)/Cold Applied Tape (SPC)
81113-DM-0664_3301	4	Coating System Data Sheets - System 3301 – Epoxy, Fusion Bonded (EPB)



 <b>BLACK &amp; VEATCH</b> Building a world of difference.	<b>Inorganic Zinc (IZ)/Silicone Acrylic (SLA)</b>	<b>Coating System 1613</b>
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<b>Project</b>	Energy-Std-2-03880-01420
<b>Description</b>	Inorganic zinc primer with ambient temperature cured high temperature finish
<b>Surfaces</b>	Carbon steel

	First Coat	Touchup	Second Coat	Third Coat
<b>VOC Limits</b>	4.17 lb/gal (500 g/L)	4.17 lb/gal (500 g/L)	3.5 lb/gal (420 g/L)	3.5 lb/gal (420 g/L)

**Approved Products** Coating manufacturers and products other than those listed herein are subject to Engineer's review/approval.


Manufacturer	First Coat	Touchup	Second Coat	Third Coat
Carboline	Carbozinc 11 Series	Carbozinc 11 Series	Thermaline 4000 AL	N/A
International	Interzinc 22	Interzinc 22	Intertherm 50	Intertherm 50
PPG	Dimetcote 9	Dimetcote 9	Hi-Temp 1000 V	N/A

<b>Surface Preparation</b>	SSPC-SP10/NACE No. 2 Near-White Metal Blast Cleaning Profile depth 1 mil (25 µm) to 2 mils (50 µm)
<b>Remarks</b>	Profile to be verified by Contractor using ASTM D4417 Method C. Welds to be prepared in accordance with NACE RP0178, Appendix C, Designation "E."

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Dry Film Thickness (DFT)					
	Generic Coating Type	Minimum DFT	Maximum DFT	Shop (S) or Field (F) Applied	Remarks
<b>First Coat</b>	IZ	2 mils (50 µm)	3 mils (75 µm)	S	
<b>Touchup</b>	IZ	2 mils (50 µm)	3 mils (75 µm)	S, F	SSPC-SP11 Power Tool Cleaning to Bare Metal (bare metal or rusted areas).
<b>Second Coat</b>	SLA	Per manufacturer's recommendation	Per manufacturer's recommendation	S, F	
<b>Third Coat</b>	SLA	1 mil (25 µm)	1.2 mils (30 µm)	S, F	International paint only.
<b>Completed System</b>	IZ/SLA	Per manufacturer's recommendation	Per manufacturer's recommendation		Dry film thickness to be verified in accordance with SSPC-PA2.

					2	02/10/16	General Revision	RJT	BPL	
					1	06/19/15	General Revision	GMA	RHW	
					0	03/29/13	Initial Issue	GMA	RHW	
REV	DATE	REVISIONS AND RECORD OF ISSUE		BY	APP	REV	DATE	REVISIONS AND RECORD OF ISSUE		
BLACK & VEATCH			COATING SYSTEM DATA SHEETS - SYSTEM 1613				Drawing No. 81113-DM-0691		Rev 2	

 <b>BLACK &amp; VEATCH</b>	<b>Epoxy Zinc (EPZ)/Epoxy (EPS)/Epoxy (EPS) Polyurethane (URA)</b>	<b>Coating System 1719</b>
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<b>Project</b>	Coating System and Blast Media Selection Procedure
<b>Description</b>	Epoxy zinc-rich primer/epoxy intermediate/epoxy intermediate/polyurethane finish; ISO 12944 C5-M (marine), M (medium) durability compliant
<b>Surfaces</b>	Carbon steel

<b>Regulatory Compliance</b>	Products must comply with all regulations regarding volatile organic compound (VOC) content and any restricted solvents for the point of application and, as required, for the site location.
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<b>Approved Products</b>	Coating manufacturers and products other than those listed herein are subject to Engineer's review/approval.			
<b>Manufacturer</b>	<b>First Coat</b>	<b>Second Coat</b>	<b>Third Coat</b>	<b>Fourth Coat</b>
Carboline	Carbozinc 859	Carboguard 60	Carboguard 60	Carbothane 134 HG
International	Interzinc 315	Intergard 475HS	Intergard 475HS	Interthane 990
Jotun	Barrier Plus	Jotamastic 87	Jotamastic 87	Hardtop XP
PPG	Amercoat 68HS	Amercoat 410	Amercoat 410	Sigmacover 550H

<b>Surface Preparation</b>	SSPC-SP 10/NACE No. 2, Near-White Metal Blast Cleaning; ISO 8501-1 Sa 2-1/2 Very Thorough Blast Cleaning Profile depth 2 to 3 mils (50 µm to 75 µm); sharp, angular profile
<b>Remarks</b>	Profile depth to be verified by Contractor using ASTM D4417, Method C; ISO 8503-1 Medium (G). Welds to be prepared in accordance with NACE SP0178, Appendix C, Designation "E." Dust and abrasives to be removed in accordance with ISO 8502-3, Rating 2 Maximum. Soluble salts to be removed in accordance with ISO 8502-6. Conductivity measured in accordance with ISO 8502-9 shall not exceed 100 mg/m <sup>2</sup> NaCl. Coating repairs and coating of welds shall be in accordance with manufacturer's published recommendations.

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Dry Film Thickness (DFT)					
	Generic Coating Type	Minimum DFT	Maximum DFT	Shop (S) or Field (F) Applied	Remarks
<b>First Coat</b>	EPZ	3 mils (75 µm)	4 mils (100 µm)	S	Slip factor 0.50 minimum.
<b>Second Coat</b>	EPS	4 mils (100 µm)	6 mils (150 µm)	S, F	Do not coat faying surface.
<b>Third Coat</b>	EPS	4 mils (100 µm)	6 mils (150 µm)	S, F	Do not coat faying surface.
<b>Fourth Coat</b>	URA	2 mils (50 µm)	3 mils (75 µm)	S, F	Do not coat faying surface.
<b>Completed System</b>		13 mils (325 µm)	19 mils (475 µm)		Dry film thickness to be verified in accordance with SSPC-PA 2 or ISO 19840.

BLACK & VEATCH		COATING SYSTEM DATA SHEETS - SYSTEM 1719				Drawing No. 81113-DM-0703		Rev 0	
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 <b>BLACK &amp; VEATCH</b>	<b>Epoxy (EPS)/Epoxy (EPS)/Polyurethane (URA)</b>	<b>Coating System 1720</b>
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<b>Project</b>	Coating System and Blast Media Selection Procedure
<b>Description</b>	Epoxy primer, epoxy intermediate, and polyurethane finish; ISO 12944 CS-M (marine), M (medium) durability compliant
<b>Surfaces</b>	Carbon steel

<b>Regulatory Compliance</b>	Products must comply with all regulations regarding volatile organic compound (VOC) content and any restricted solvents for the point of application and, as required, for the site location.
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<b>Approved Products</b>	Coating manufacturers and products other than those listed herein are subject to Engineer's review/approval.		
<b>Manufacturer</b>	<b>First Coat</b>	<b>Second Coat</b>	<b>Third Coat</b>
Carboline	Carboguard 893 SG	Carboguard 893 SG	Carbothane 133 LII
International	Intergard 475HS	Intergard 475HS	Interthane 870
Jotun	Jotamastic 87	Jotamastic 87	Hardtop XP
PPG	Amerlock 2/400	Amerlock 2/400	Sigmacover 550 H

<b>Surface Preparation</b>	SSPC-SP 10/NACE No. 2 Near-White Metal Blast Cleaning; ISO 8501-1 Very Thorough Blast Cleaning in accordance with Sa 2-1/2  Profile depth 2 to 3.4 mils (50 µm to 85 µm); sharp, angular profile meeting
<b>Remarks</b>	Profile to be verified by Contractor using ASTM D4417, Method C.  Welds to be prepared in accordance with NACE SP0178, Appendix C, Designation "E."  Dust and abrasives must be removed such that particle quantity and particle size do not exceed a rating of 2 in accordance with ISO 8502-3.  Soluble salts to be removed in accordance with ISO 8502-6. Conductivity measured in accordance with ISO 8502-9 shall not exceed 100 mg/m <sup>2</sup> NaCl.



Dry Film Thickness (DFT)					
	Generic Coating Type	Minimum DFT	Maximum DFT	Shop (S) or Field (F) Applied	Remarks
<b>First Coat</b>	EPS	5 mils (125 µm)	7 mils (175 µm)	S, F	
<b>Second Coat</b>	EPS	5 mils (125 µm)	7 mils (175 µm)	S, F	Stripe edges and welds before applying a full second coat.
<b>Third Coat</b>	URA	3 mils (75 µm)	4 mils (100 µm)	S, F	
<b>Completed System</b>		13 mils (325 µm)	18 mils (450 µm)		Each coat must provide a significant color change under all light sources.  Dry film thickness to be verified in accordance with SSPC-PA 2 or ISO 19840.

					0	12/29/17	Initial Issue	RJT	FY
REV	DATE	REVISIONS AND RECORD OF ISSUE	BY	APP	REV	DATE	REVISIONS AND RECORD OF ISSUE	BY	APP
BLACK & VEATCH		COATING SYSTEM DATA SHEETS - SYSTEM 1720				Drawing No. 81113-DM-0704		Rev 0	

 <b>BLACK &amp; VEATCH</b>	<b>Adhesive Primer (SPC)/Cold Applied Tape (SPC)</b>	<b>Coating System 3011</b>
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<b>Project</b>	Coating System and Blast Media Selection Procedure
<b>Description</b>	Adhesive primer with AWWA C209 Type II cold applied tape finish ( $\leq 120^{\circ}\text{F}$ ; $\leq 49^{\circ}\text{C}$ )
<b>Surfaces</b>	Carbon steel or stainless steel

<b>Regulatory Compliance</b>	Products must comply with all regulations regarding volatile organic compound (VOC) content and any restricted solvents for the point of application and, as required, for the site location.
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<b>Approved Products</b>	Coating manufacturers and products other than those listed herein are subject to Engineer's review/approval.		
<b>Manufacturer</b>	<b>First Coat</b>	<b>Touchup</b>	<b>Second Coat</b>
Berry Plastics	Polyken 1033a		Polyken 930-35
Denso	Denso Butyl Primer		Denso Butyl 35 Tape
Tapcoat	TC Omni-prime		H35 Gray

<b>Surface Preparation</b>	SSPC-SP3 Power Tool Cleaning
<b>Remarks</b>	Welds to be prepared in accordance with NACE RP0178, Appendix C, Designation "E."

Dry Film Thickness (DFT)					
	Generic Coating Type	Minimum DFT	Maximum DFT	Shop (S) or Field (F) Applied	Remarks
<b>First Coat</b>	SPC	1 mil (25 $\mu\text{m}$ )	2 mils (50 $\mu\text{m}$ )	S, F	
<b>Touchup</b>		N/A	N/A		
<b>Second Coat</b>	SPC	56 mils (1,400 $\mu\text{m}$ )	70 mils (1,750 $\mu\text{m}$ )	S, F	Add moldable sealant to fill voids. 50 percent overlap.
<b>Completed System</b>		57 mils (1,425 $\mu\text{m}$ )	72 mils (1,800 $\mu\text{m}$ )		



					2	07/12/13	Expanded to Stainless	GMA	RHW
					1	08/31/11	General Revision	GMA	RHW
3	02/29/16	Biennial Review	GMA	BPL	0	06/01/08	Initial Issue	BPL	RHW
REV	DATE	REVISIONS AND RECORD OF ISSUE	BY	APP	REV	DATE	REVISIONS AND RECORD OF ISSUE	BY	APP
BLACK & VEATCH		COATING SYSTEM DATA SHEETS - SYSTEM 3011				Drawing No. 81113-DM-0662		Rev 3	

 <b>BLACK &amp; VEATCH</b>	<b>Epoxy, Fusion Bonded (EPB)</b>	<b>Coating System 3301</b>
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<b>Project</b>	Coating System and Blast Media Selection Procedure
<b>Description</b>	Fusion bonded epoxy
<b>Surfaces</b>	Carbon steel or stainless steel

<b>Regulatory Compliance</b>	Products must comply with all regulations regarding volatile organic compound (VOC) content and any restricted solvents for the point of application and, as required, for the site location.
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<b>Approved Products</b>	Coating manufacturers and products other than those listed herein are subject to Engineer's review/approval.	
<b>Manufacturer</b>	<b>First Coat</b>	<b>Touchup</b>
3M	Scotchkote 6233	Scotchkote 323
Valspar	Pipeclad 2000	Pipeclad 970G

<b>Surface Preparation</b>	SSPC-SP 10/NACE No. 2 Near-White Blast Cleaning; ISO 8501-1 Sa 2-1/2 Very Thorough Blast Cleaning (Carbon Steel) SSPC-SP 16 Brush-Off Blast Cleaning of Non-Ferrous Metals (Stainless Steel) Profile depth 2 to 4 mils (50 µm to 100 µm)
<b>Remarks</b>	Profile depth to be verified by Contractor using ASTM D4417 Method C. Welds to be prepared in accordance with NACE SP0178, Appendix C, Designation "E."



Dry Film Thickness (DFT)					
	Generic Coating Type	Minimum DFT	Maximum DFT	Shop (S) or Field (F) Applied	Remarks
First Coat	EPB	14 mils (350 µm)	20 mils (500 µm)	S	
Touchup	EPS	25 mils (625 µm)	28 mils (700 µm)	S, F	SSPC-SP 11 Bare Metal Power Tool Cleaning.
Completed System		14 mils (350 µm)	20 mils (500 µm)		Dry film thickness to be verified in accordance with NACE SP0394. Holiday testing required in accordance with NACE SP0490.

					2	07/12/13	Expanded to Stainless	GMA	RHW	
4	09/27/17	Updated and Added Vaispar	RJT	BPL	1	06/30/09	Product Update	GRL	RHW	
3	02/29/16	Biennial Review	GMA	BPL	0	06/01/08	Initial Issue	BPL	RHW	
REV	DATE	REVISIONS AND RECORD OF ISSUE	BY	APP	REV	DATE	REVISIONS AND RECORD OF ISSUE	BY	APP	
<b>BLACK &amp; VEATCH</b>		<b>COATING SYSTEM DATA SHEETS - SYSTEM 3301</b>					<b>Drawing No. 81113-DM-0664</b>		<b>Rev 4</b>	







EXHIBIT I

PARENT LIMITED PAYMENT GUARANTEE

KNOW ALL MEN BY THESE PRESENTS, that we, NFENERGÍA LLC (“**Principal**”), and ATLANTIC ENERGY HOLDINGS LLC (“**Surety**”), are held and firmly bound unto PUERTO RICO ELECTRIC POWER AUTHORITY (“**Obligee**”), in the penal sum of up to, but not greater than, Thirty Million Dollars (\$30,000,000), lawful money of the United States (as such sum may be reduced pursuant to Section 2 or Section 5, the “**Penal Sum**”), to the payment of which well and truly to be made we hereby bind ourselves and our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents. This limited payment guarantee is made effective as of the Commissioning Start Date as defined in the Contract (the “**Effective Date**”).

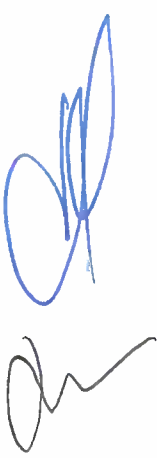
WHEREAS the above bound Principal has entered into that certain Fuel Sale and Purchase Agreement for the SJ 5&6 Units (the “**Contract**”) with the above named Obligee, effective the [ ] day of [ ], 2019, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length were attached herein.

WHEREAS, in the event of a Natural Gas Deficiency (as defined in the Contract), Principal has agreed to pay Obligee certain amounts in accordance with the terms and conditions of Article IX of the Contract.

NOW THEREFORE, the condition of the obligations is such that if Principal and/or Surety has paid to Obligee all amounts that are due and owing to Obligee by Principal under Article IX of the Contract over the Contract Term (as defined in the Contract), then this limited payment guarantee shall be null and void, otherwise to be in full force and effect.

This limited payment guarantee is executed by Surety and accepted by Obligee subject to the following expressed conditions. Capitalized terms used herein and not defined herein shall have the meaning set forth in the Contract.

1. Obligee shall provide notice of Principal’s failure to pay any undisputed amount due and owing under Article IX of the Contract (“**Default**”) to both Principal and Surety, providing ten (10) business days for Principal to cure the Default. If Principal has not cured the Default within such period of time, then Obligee may make a Demand on this limited payment guarantee pursuant to Sections 2 and 3 below, in an amount not to exceed the Penal Sum. Any Demand for an amount that exceeds the Penal Sum shall be invalid to the extent that it exceeds the Penal Sum.
2. Subject to satisfaction of the requirements of Section 1, within fifteen (15) business days of Surety’s receipt of a valid demand for payment under this limited payment guarantee (“**Demand**”), accompanied by the documentation referred to in Section 3 below, Surety shall pay to Obligee via wire transfer the amount stated in the Demand. Payment of a Demand by Surety shall constitute full satisfaction of all Claims against Principal in respect of which the Demand was made. Any Demand paid by Surety to Obligee in any Contract Year shall reduce the Penal Sum of this limited payment guarantee during such Contract Year.
3. Documentation to be provided to Surety in support of a Demand under this Guarantee shall be the following:
  - a. A photocopy of this limited payment guarantee.
  - b. A certificate, executed by a duly authorized representative of Obligee, that specifies the amount of the relevant Default.
  - c. All documentation (including invoices and records of nominations and natural gas or diesel quantities, quality and price) reasonably necessary to establish that the relevant amount is due and owing by Seller to Obligee under Article IX of the Contract.
4. The term of this limited payment guarantee is initially from the Effective Date to the conclusion of the Initial Contract Term. This limited payment guarantee will automatically renew for successive one (1) calendar year

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terms following expiration of the previous term, unless cancelled by Surety by providing Principal and Oblige no less than sixty (60) calendar days written notice of cancellation. This limited payment guarantee shall terminate automatically upon termination of the Contract for any reason. Any notice of cancellation or termination of the limited payment guarantee pursuant to this Section 4 will not nullify or void any liability or indebtedness incurred or accrued by Principal and Surety named herein prior to said date of cancellation or termination.

- 5. The Penal Sum shall be automatically adjusted at the beginning of each Contract Year to the amount determined pursuant to the following formula:

Penal Sum = (\$30,000,000 x (ACQ/MCQ)) - P

Where

ACQ = The Annual Contract Quantity (as defined in the Contract) for the relevant Contract Year

MCQ = 25 TBtu

P = The aggregate of all amounts paid by Surety to Oblige hereunder during previous Contract Years

- 6. Surety's liability under this limited payment guarantee (a) shall in no event exceed the Penal Sum and (b) is strictly limited to payment of Default amounts in accordance with Section 2 hereof; it being agreed that Surety shall not be obligated to perform (and shall not be liable for any performance or failure to perform by Principal of) any other obligations of Principal pursuant to the Contract.
7. This limited payment guarantee is governed by the laws of New York (with exclusion of its choice of law rules). Any dispute arising from or in connection to this limited payment guarantee shall be finally settled by binding arbitration in accordance with the International Chamber of Commerce Rules then in force (ICC Rules). The seat of the arbitration shall be New York and the arbitration shall be conducted in the English language.

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Signed, sealed and dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

ATTEST \_\_\_\_\_ BY \_\_\_\_\_ Principal

ATTEST \_\_\_\_\_ BY \_\_\_\_\_ Surety