Cantidad \$ 227,444,113.85 Cuenta 1-861-18719-000-000-000 **Execution Version**

2014-P00085 INFRASTRUCTURE AGREEMENT

dated as of March 17, 2014

between

AGUIRRE OFFSHORE GASPORT, LLC

and

PUERTO RICO ELECTRIC POWER AUTHORITY

with respect to the

GASPORT AND PIPELINE SYSTEM

for the provision of regasified LNG to the Aguirre Power Complex at Salinas, Puerto Rico

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THIS INFRASTRUCTURE AGREEMENT is dated as of the 1/2 day of March 2014.

BETWEEN:

PUERTO RICO ELECTRIC POWER AUTHORITY, a public corporation and governmental instrumentality organized under the laws of Puerto Rico (including its successors, "PREPA"), represented in this act by its Executive Director, Juan Alicea Flores, of legal age, married and resident of Caguas, Puerto Rico, authorized to sign this Agreement by Certificate of Resolution of PREPA, dated (Chrong 25, 2014; and

AGUIRRE OFFSHORE GASPORT, LLC, a Delaware limited liability company ("AOG"), represented in this act by its Chief Development Officer, Daniel Bustos, of legal age, married, and resident of Conroe, Texas, authorized to sign this Agreement by Certificate of Resolution of AOG, dated/<u>Ebuary 26</u> 2014.

WHEREAS:

- (A) PREPA desires to engage AOG to procure or provide to PREPA services consisting of the permitting, procurement, construction, management, testing and commissioning of the Facilities (whether directly or through Subcontractors).
- (B) AOG is able and willing to provide such services to PREPA for the remuneration, and subject to the terms, set out in this Agreement.
- (C) The parties acknowledge that the Works are specialized and complex in nature and as such AOG (and its Subcontractors) are required to possess the special expertise and financial capability to furnish or to procure from appropriately licensed (as may be required) third parties such services in accordance with this Agreement.
- (D) AOG shall select and procure third party professionals who will provide Design and Engineering Services under this Agreement and AOG is willing to assume financial responsibility for all aspects of such Design and Engineering Services.
- (E) The parties now wish to enter into this Agreement and undertake their respective rights and obligations as provided herein.

NOW IT IS HEREBY AGREED as follows:

PART 1 - AGREEMENT AND INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement, except to the extent that context requires otherwise, the following words and expressions shall have the meanings ascribed to them in this Clause 1.1:

"AAA" has the meaning set out in Clause 57.5(a).

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"AAA Rules" has the meaning set out in Clause 57,5(a).

"Acceptable Letter of Credit Provider" means a bank or other financial institution that is rated not less than A+ for long-term debt by Standard & Poor's Ratings Group, a division of McGraw-Hill Corporation (or an equivalent rating from Moody's Investors Service, Inc., Fitch Ratings or such other rating agency as may be approved by PREPA).

"Act of Insolvency" means the occurrence of one or more of the following events in respect of a party:

- (a) suspension of payment of debts or general inability to pay debts as they fall due;
- passage of a resolution, commencement of proceedings (which proceedings (b) commenced against it are not stayed within twenty-eight (28) days of service thereof) in the nature of bankruptcy or reorganization resulting from insolvency, or for its liquidation or for the appointment of a receiver, administrator, trustee in bankruptcy or liquidator of undertakings or assets;
- (c) a petition is presented or an order is made by any court of competent jurisdiction or other appropriate authority or a resolution is passed for bankruptcy, dissolution or winding up, unless such petition, order or resolution is being contested in good faith by appropriate proceedings and is stayed or released within thirty (30) days;
- (d) such party is unable or admits inability to pay its debts within the meaning of that expression within the provisions of any enactment governing insolvency in the place where it carries on business: or
- such party is subject to any act or proceeding analogous to clauses (a) (d) above (e) in any jurisdiction.

"Affiliate" means any person that directly or indirectly controls, is controlled by or under common control of a party; where the term "control" means more than 50% ownership of such party or the right to direct 50% of the voting shares.

"Agreement" means this Infrastructure Agreement (including the Schedules attached hereto) and all fully executed Change Orders and other amendments, supplements and other modifications hereof.

"Aguirre Power Complex" means the Aguirre Power Plant and Aguirre Combined Cycle Power Plant owned by PREPA, located in Salinas, Puerto Rico and all replacements, additions and extensions thereto.

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"Allowable Warranty Costs" means. during the Warranty Period, (i) the costs of mobilization of specialized equipment required by the Subcontractor or Warranty service provider to perform Warranty work, excluding the direct costs of the parts, materials and labor used by the relevant Subcontractor or Warranty service provider to effect the Warranty work and (ii) the reasonable shipping costs of a non-conforming part or other portion of the Works subject to Warranty work to the applicable repair facility required

by the Subcontractor or Warranty service provider solely to the extent that AOG has clearly demonstrated that such portion of the Works cannot be repaired in the vicinity of the Site. For the avoidance of doubt, "Allowable Warranty Costs" excludes incidental costs, including but not limited to, travel, accommodation and similar costs.

"AOG" has the meaning set out in the preamble hereto.

"AOG Background IP" means Intellectual Property owned by or licensed to AOG (including know-how and technical information) which exists on the Effective Date or is developed or acquired by AOG independently of this Agreement and is used by AOG in the performance of the Works or otherwise made available to PREPA under or in connection with this Agreement, but does not include the Project IP.

"AOG Event of Default" means any event or circumstance described in Clause 51.3.

"AOG Fee" means the amount calculated as follows:

- (a) if the Capital Costs are less than or equal to the Capital Costs Target, then the AOG Fee shall be:
 - (i) twelve and four-tenths percent (12.4%) of the Capital Costs; *plus*
 - (ii) fifty percent (50%) of the amount, if any, by which the Capital Costs Target exceeds the Capital Costs (*i.e.*, cost savings are shared equally between the parties); and
- (b) if the Capital Costs are greater than the Capital Costs Target, then the AOG Fee shall be:
 - (i) twelve and four-tenths percent (12.4%) of the Capital Costs Target; *plus*
 - (ii) ten percent (10%) of the amount, if any, by which the Capital Costs exceed the Capital Costs Target, up to a maximum of one hundred ten percent (110%) of the Capital Costs Target; *plus*
 - (iii) five percent (5%) of the amount, if any, by which the Capital Costs exceed one hundred ten percent (110%) of the Capital Costs Target, up to a maximum of one hundred twenty percent (120%) of the Capital Costs Target; *plus*
 - (iv) zero percent (0%) of the amount. if any, by which the Capital Costs exceed one hundred twenty percent (120%) of the Capital Costs Target;

<u>provided</u> that no AOG Fee shall be payable to AOG in respect of Capital Costs incurred or otherwise payable to Subcontractors following termination of this Agreement pursuant to Clause 51 3 for an AOG Event of Default.

"AOG O&M Personnel" has the meaning set out in Clause 7.5(a).

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"AOG Permits" means those permits listed in Part 1 of Schedule 6 and any other authorization, consent, approval, license, lease, ruling, permit, exemption, filing, variance, order, judgment, decree, publication, notice to, declarations of or with or regulation by or with any Competent Authority required for the performance of the Works (other than the PREPA Permits).

"AOG Person" means (a) AOG, (b) any Subcontractor, (c) any Engineer, (d) any other person for whom AOG or any Subcontractor or Engineer may be responsible or liable and (e) any personnel, agent, shareholder, member, partner, other owner thereof, director, officer, Affiliate, successor or assign of AOG or any Subcontractor or Engineer or of any other person directly or indirectly employed by any of the foregoing.

"AOG's Credit Support" means the EELP Credit Support, the Letter of Credit and the Retainage.

"AOG's Insurances" means the insurances which AOG is required to effect and maintain in accordance with Schedule 9 and the insurance programs promulgated in accordance with Schedule 9.

"AOG's Project Manager" means any person nominated by AOG in the manner provided in Clause 11.2(a).

"Background Information" means the information provided in Schedule 18.

"Base Warranty Period" means a period commencing on the Substantial Completion Date and ending on the one (1) year anniversary thereof.

"Budgets" means the Project Capital Budget and the Capital Costs Target.

"Business Day" means a day (other than a Saturday, Sunday or holiday as established in Schedule 3).

"Capital Costs" means all unaffiliated third-party costs incurred by AOG in connection with (a) the development, design, engineering, procurement, construction, training, precommissioning and commissioning of the Works, including amounts payable to Subcontractors and Engineers, and (b) the performance of the Works and AOG's obligations under this Agreement; provided that Capital Costs shall not include:

- Excluded Budget Items; (i)
- (ii) Non-Allowable Costs; or
- any costs not described in Clause 37.1(e). (iii)

"Capital Costs Target" means the PCB Amount as of the Effective Date, being \$227,444,113,85, which amount may be adjusted or otherwise modified from time to time in accordance with Clause 36.1; provided that the Capital Costs Target shall not include Excluded Budget Items.

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"Certificate of Readiness for Pre-Commissioning Tests" means the certificate issued by PREPA in accordance with clause 3 of Schedule 16 in substantially the form set out in Part 1 of Schedule 12.

"Change" means (a) a Change in Work or (b) an adjustment to, or other modification of, any Project Variable.

"Change in Work" means any modification, adjustment, addition, omission or other variation to, in or from the Works.

"Change of Law" means:

- (a) the enactment, adoption, promulgation, modification or repeal of any Law after the Effective Date (but does not include the coming into effect of any draft Law which had been officially published as the Effective Date);
- (b) the imposition of any condition or requirement on the issuance, maintenance or renewal of any Permit after the Effective Date; or
- (c) an order of any Competent Authority after the Effective Date with respect to any applicable Law or Permit.

"Change Order" means an agreement executed by the parties and identified as such that authorizes a Change.

"Charter" means the Time Charter Party and LNG Storage and Regasification Agreement, dated on or about the Effective Date, between EEPR and PREPA.

"Claimant" has the meaning set out in Clause 57.4(d).

"**Commissioning Framework**" means the Commissioning Framework attached as Schedule 5.

"Commissioning Tests" means the tests and procedures described as such in Schedule 16 and as further developed as described therein.

"Competent Authority" means any international, federal, state or local administrative, executive, legislative or judicial governmental authority and any agency, ministry, department, court, commission, board, agency, institution, political subdivision thereof or similar entity of any such authority with jurisdiction over the matter at issue.

"Completion Guarantees" has the meaning set out in Clause 20.

"Concession" means a Concession Agreement to be executed among AOG, PREPA and the Puerto Rico Ports Authority or other relevant Competent Authority.

"Confidential Information" means all commercial, technical and other information in any form (including information regarding negotiations leading to the execution of this

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Agreement, all communications between the parties and all information concerning the business transactions, technical plans, commercial or financial arrangements or affairs of the parties) in the possession or knowledge of a party which is disclosed to the other party pursuant to this Agreement at any time and any new information, in respect of the Facilities, produced at the request of a party or by AOG in carrying out the Works, including any such information which is provided verbally to a party by any officer, employee or agent of the other party, but does not include information:

- (a) which has, at the time of disclosure, become generally available to the public or is in the public domain through no fault of the receiving party;
- (b) already known to the party (as evidenced by its written records at the date of the disclosure), where such information was not obtained, directly or indirectly, from any party to which it relates;
- (c) disclosed with the prior written consent of the party to which it relates;
- (d) which was in the receiving party's possession prior to the Effective Date, other than any information that was provided:
 - (i) for the purpose of discussions and negotiations relating to this Agreement; or
 - (ii) directly or indirectly by the other party;
- (e) which is the subject of a confidential obligation between the parties; or
- (f) which is obtained from a third party who is not under an obligation of confidentiality with respect to the information.

"Consequential Damages" has the meaning set out in Clause 53.3(a).

"Construction Equipment" means all facilities, equipment, machinery, tools, apparatus, appliances or anything required in or for the construction, completion and maintenance of the Works and which are to be provided by AOG, but does not include the Equipment or other things intended to form or forming part of the Facilities.

"Contract Documents" has the meaning set out in Clause 2.1.

"**Cost Project Variables**" means the Capital Costs, the Project Capital Budget, the PCB Amount and the Capital Costs Target.

"Default Interest Rate" means three percent (3%) above the 1-month rate quoted under "London Interbank Offered Rates (Libor)" published in the "Money Rates" section of the Eastern Edition (U S.) of *The Wall Street Journal*.

"Definitive Agreements" means this Agreement, the Charter, the Concession and the O&M Agreement.

"Delay Events" has the meaning set out in Clause 23.1(a).

"Delay Liquidated Damages" has the meaning set out in Clause 21(a).

"Design and Engineering Services" means all of the design, engineering and related services (but excluding procurement and construction services) to be performed by the Engineers, required to permit AOG to construct the Facilities as described in Part 2 of Schedule 3.

"Determination" has the meaning set out in Clause 57.4(f).

"Direct Subcontract" means a Subcontract to which AOG or one of its Affiliates is a party.

"Dispute" has the meaning set out in Clause 57.1.

"Dispute Resolution Procedures" means the procedure for resolving Disputes as set out in Clause 57.

"Draft EIS" has the meaning set out in Clause 3.2(a)(i).

"EELP" means Excelerate Energy Limited Partnership, a Delaware (U.S.) limited partnership.

"EELP Alternative Credit Support" means the replacement credit support described in Clause 14 of the EELP Guarantee.

"**EELP Credit Support**" means the EELP Guarantee or, if it has been delivered pursuant to Clause 33.2, the EELP Alternative Credit Support.

"EELP Guarantee" means the guarantee in substantially the form set out in Schedule 11.

"EEPR" means Excelerate Energy Puerto Rico, LLC.

"Effective Date" means the date of this Agreement.

"Engineering Act" means Act No. 173-1988 of Puerto Rico.

"Engineers" means the person or persons selected and procured by AOG to perform the Design and Engineering Services pursuant to Clause 15.

"Engineers Agreement" means each agreement to be executed by an Engineer, AOG and PREPA in substantially the form of Schedule 7.

"Environmental Law" means:

(a) any applicable federal, state, commonwealth or local statute, law, ordinance, rule, regulation, code, treaty, convention, protocol, directive, license, permit,

authorization, approval, consent, order, judgment, decree, injunction, directive, requirement by, of, or agreement with any Competent Authority relating to:

- the protection, preservation or restoration of the environment (including air, water, vapor, surface water, ground water, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or to human health and safety; or
- the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release (including spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching and dumping) or disposal of, Hazardous Substances;
- (b) any common law or equitable doctrine (including injunctive relief and tort doctrines such as negligence, nuisance, trespass and strict liability) that may impose liability or obligations for injuries or damages related or incidental to, or threatened as a result of, the presence of or exposure to any Hazardous Substance; and
- (c) the following statutes and implementing regulations:
 - (i) the U.S. Clean Air Act (42 U.S.C. Section 7401 et seq.);
 - (ii) the U.S. Water Pollution Control Act (33 U.S.C. Section 1251 et seq.);
 - (iii) the U.S. Oil Pollution Act of 1990 (33 U.S.C. Section 2701 et seq.);
 - (iv) the U.S. Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.);
 - (v) the U.S. Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.);
 - (vi) the U.S. Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.); and
 - (vii) the U.S. Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.).

"Equipment" means equipment, machinery, apparatus, materials, articles and things of all kinds to be provided and incorporated in the Facilities as part of the Works (including the Spare Parts), but does not include Construction Equipment.

"Excess Cost Authorization" means an authorization by PREPA's Project Manager of a Capital Cost that is not contemplated by subclause (i), (ii), (iii), (iv), (v) or (vi) of Clause 37.1(c).

"Excluded Budget Items" means:

- (a) any internal costs, overheads and other expenses for AOG's personnel (other than the out-of-pocket costs of AOG's personnel, such as travel expenses);
- (b) the AOG Fee;
- (c) the Permitting Success Fee; and
- (d) the Permitting Costs.

"Expert" has the meaning set out in Clause 57.3(c).

"Expert Determination" has the meaning set out in Clause 57.4(a).

"Facilities" means the GasPort and the Pipeline

"Facilities Training Plan" has the meaning set out in Clause 7.4(b).

"FERC" means the U.S. Federal Energy Regulatory Commission.

"FERC Permit" means a Natural Gas Act Section 3 license to be issued by the FERC with respect to the Facilities and the FSRU.

"Final" with respect to a Permit, means that such Permit has been granted or issued by the relevant Competent Authority and either (a) all statutory and regulatory appeal periods have expired without an appeal being filed in respect of such Permit or (b) an appeal has been filed within such periods and resolved without the cessation, termination, revocation or adverse modification of such Permit.

"Final Acceptance" means that all of the following have occurred:

- (a) PREPA's Project Manager has issued the Substantial Completion Certificate;
- (b) AOG has cleared away and removed from the Site all wreckage, rubbish and debris of any kind which it was responsible for creating;
- (c) AOG has removed from the Site all Construction Equipment;
- (d) AOG has provided the "as-built" drawings to PREPA;
- (e) the Works have been totally completed and executed in accordance with this Agreement;
- (f) AOG has paid all Delay Liquidated Damages (if any) owing to PREPA under this Agreement; and
- (g) AOG has rectified any and all Punch List items that have been notified to AOG in accordance with Clause 28(d).

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"Final Acceptance Certificate" means the certificate to be issued by PREPA pursuant to Clause 29(b), in substantially the form set out in Part 3 of Schedule 12.

"Final Acceptance Date" means the date upon which Final Acceptance has been achieved.

"Final Acceptance Deadline" means the date that is ninety (90) days after the Substantial Completion Date.

"Final Payment" has the meaning given to that term in Clause 37.8(b)(ii).

"Final Payment Claim" has the meaning given to that term in Clause 37.8(b)(i).

"Final Releases" means (a) a final claim waiver and release by AOG in the form of Schedule 21, Part 1 and (b) a final claim waiver and release by a Subcontractor in the form of Schedule 21, Part 2.

"Financial Close" means that PREPA has received the proceeds from the PREPA Financing.

"FNTP" has the meaning set out in Clause 3.3(a).

"FNTP Date" means the date specified in the FNTP as the date on which AOG shall commence the FNTP Works.

"FNTP Works" means those Works described as such in Section 4.1(d) of Part 1 of Schedule 3.

"Force Majeure" has the meaning set out in Clause 45.1.

"FSRU" means the floating storage and regasification unit (whether "Exemplar" or "Excellence") to be chartered by PREPA pursuant to the Charter.

"Gas Delivery Point" means the connection point between the Facilities and the Aguirre Power Complex referred to in Section 2.1 of Part 1 Schedule 3.

"GasPort" means the offshore LNG receiving facility (to include liquid and vapor loading arms, high pressure gas arms and other appurtenant infrastructure on the marine jetty up to the flange of the Pipeline) that is to be constructed on the Offshore Site and which will be a marine jetty receiving facility of the "Across the Jetty" type and located approximately three (3) miles south of the Aguirre Power Complex outside of Jobos Bay, as depicted in Part 3 of Schedule 2.

"Good Industry Practices" means all due care, diligence and skill in the practices, methods, specifications, standards of safety, engineering, design, procurement and performance (including standards relating to the operation and maintenance of the completed Facilities) that are generally be expected of a reputable contractor experienced

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in the types of work to be performed under this Agreement (as such general expectations may change from time to time).

"Hazardous Substances" means (a) any substance or material that is regulated by any applicable Law due to the harmful, toxic or dangerous composition or characteristics of such substance or material and (b) any substance or material, whether liquid, solid or gas, that is listed, defined, designated, or classified as toxic, hazardous, radioactive or dangerous under any Environmental Law, whether by type or by quantity. Hazardous Substance includes any explosive or radioactive material, asbestos, asbestos containing material, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, crude oil or fraction thereof and used or waste oil, special waste or petroleum products or any derivative or by-product thereof, radon, methane, toxic waste, pollutant, contaminant, hazardous waste, toxic or hazardous substances, any product that is flammable, inflammable, combustible, corrosive, caustic, poisonous, explosive or hazardous or any materials related to any of the foregoing, as defined in any applicable Environmental Law; provided that Hazardous Substances shall exclude LNG and Natural Gas.

"Infringing Matter" has the meaning set out in Clause 46.5(a).

"Intellectual Property" means copyright, all rights conferred under statute, common law or equity in relation to inventions (including patents), registered and unregistered trademarks, registered and unregistered designs, circuit layouts, confidential information and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

"IVU" means value added tax, goods and services tax or similar broad-based consumption tax or a tax on services.

"Key Personnel" means the personnel engaged pursuant to Clause 12.2(a) and specified in Schedule 4.

"Law" means all maritime, national, federal, commonwealth and state laws, including all statutes, ordinances, codes, laws, orders, rules, regulations, executive orders, decrees, circulars, notifications, legally binding requirements, rulings, decisions, international conventions, treaties, regulations, requirements, instructions or directions by any Competent Authority.

"Letter of Credit" has the meaning set out in Clause 32(a).

"LNG" means Natural Gas liquefied by cooling such that it is in a liquid state at or near atmospheric pressure.

"LNTP" has the meaning set out in Clause 3.2(a).

"LNTP Date" means the date specified in the LNTP as the date on which AOG shall commence the LNTP Works.

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"LNTP Works" means those Works described as such in Section 4.1(c) of Part 1 of Schedule 3.

"Major Subcontract" means a Direct Subcontract the value of which exceeds one hundred thousand U.S. dollars (US\$100,000).

"Major Subcontractor" means any Subcontractor party to a Major Subcontract.

"Mechanical Completion Deadline" means the date that is the later of (a) five hundred seventy-five (575) days after the LNTP Date and (b) three hundred nincty-five (395) days after the FNTP Date, as may be modified in accordance with the relevant provisions of this Agreement that permit changes to the Schedule Project Variables, and subject to Clause 3.2(e).

"Mobilization Payment" means ten million U.S. dollars (US\$10,000,000) to be paid by PREPA to AOG pursuant to Clause 37.5(a).

"MOU" means the Amended and Restated Memorandum of Understanding, dated December 2, 2011, between PREPA and EELP.

"MRCC" has the meaning set out in Clause 2.2(c)(ii).

"Natural Gas" means any hydrocarbon or mixture of hydrocarbons consisting predominantly of methane, other hydrocarbons and non-combustible gases. all of which are substantially in the gaseous phase at standard conditions: a pressure of 1,013.25 millibar (14.69 psi) absolute and at a temperature of sixty degrees Fahrenheit (60° F).

"Non-Allowable Costs" means:

- (a) costs incurred in connection with AOG's Warranty obligations set forth in Clause 19 other than Allowable Warranty Costs;
- (b) costs incurred to replace any Spare Part used by AOG to fulfill its Warranty obligations pursuant to Clause 19;
- (c) any amount payable by AOG in respect of an indemnification obligation hereunder;
- (d) the Delay Liquidated Damages;
- (e) any cost that is stated herein to be (i) at AOG's cost or responsibility or (ii) not reimbursable by PREPA;
- (f) costs incurred by AOG under Clause 14.1(c) (other than Allowable Warranty Costs but including any costs incurred in connection with engagement of any substitute Engineer under Clause 15.2);
- (g) indemnity costs incurred by AOG under Clause 43.1 or otherwise; and

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(g) any cost that is stated herein to be a Non-Allowable Cost.

"Notice of Dispute" has the meaning set out in Clause 57.2.

"O&M Agreement" means (a) initially, the Terminal Operation and Maintenance Agreement, dated on or about the Effective Date, between AOG and PREPA and (b) if such Terminal Operation and Maintenance Agreement is no longer in effect. any contract entered into for the operation and/or maintenance of the Facilities.

"O&M Contractor" means the contractor party to the O&M Agreement then in effect.

"O&M Manual" means the complete instructions of the start-up, operation (including all anticipated modes of operation during normal and emergency conditions) and maintenance of the Facilities, as produced by AOG in accordance with Clause 7.6 and Section 9.1 of Part 1 of Schedule 3.

"Offshore Site" means the area that will be subject to the Concession, as depicted in Part 3 of Schedule 2.

"Onshore Site" means the area owned by PREPA over which the Pipeline will cross, as depicted in Part 3 of Schedule 2.

"Onshore Site Access Agreement" means a site access agreement with respect to the Onshore Site, between PREPA and an AOG Person in substantially the form attached as Schedule 20; <u>provided</u> that if the standard form of site access agreement that PREPA uses in the ordinary course changes after the Effective Date, the parties shall negotiate in good faith to agree on a new form of site access agreement based on such changed standard form.

"PCB Amount" at any time, means the aggregate U.S. dollar amount of the items in the Project Capital Budget.

"Permits" mean the PREPA Permits and AOG Permits.

"Permitting Costs" means (a) the reasonable out-of-pocket costs (including consulting, development, engineering, legal, design and reasonable travel expenses) incurred by AOG and its Affiliates payable to a third party in respect of obtaining the AOG Permits, *less* (b) an amount of five million U.S. dollars (US\$5,000,000) paid by PREPA prior to the Effective Date pursuant to Section 4.3.1 of the MOU for Incurred Project Costs (as defined in the MOU). As of the Effective Date, the outstanding Permitting Costs aggregated five million five hundred ninety-five thousand and two dollars and eighty cents (US\$5,595,002.80) and will be paid in accordance with Clause 37.3.

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"**Permitting Success Fee**" means a fee payable to AOG in accordance with Clause 37.3 in the amount of one million two hundred thousand U.S. dollars (US\$1,200,000).

"**Personnel**" means all natural persons (including employees, officers, servants and agents) engaged by or through (a) PREPA or (b) AOG or any of its Subcontractors utilized in the performance of the Works, as the case may be.

"**Pipeline**" means the offshore pipeline to receive regasified LNG from the connecting flange located on the GasPort, and transport it along the sea floor to the Aguirre Power Complex and the onshore distribution pipeline system with the related equipment up to the Gas Delivery Point, as depicted in Part 3 Schedule 2.

"Power Complex Training Plan" has the meaning set out in Clause 7.4(b).

"PR Code" has the meaning set out in Clause 40.2(b).

"**Pre-Commissioning Tests**" means the tests described as such in Schedule 16 and as further developed as described therein.

"PREPA" has the meaning set out in the preamble hereto.

"**PREPA Bonds**" means the first power revenue bonds issued by PREPA after the Effective Date under the Trust Agreement, dated as of January 1, 1974, between PREPA and U.S. Bank National Association, as amended, that are identified as being issued in whole or in part for the purpose of financing PREPA's obligations set forth in this Agreement.

"PREPA Event of Default" means any event or circumstance described in Clause 51.4.

"PREPA Financing" means either PREPA Bonds or PREPA Loan Program Financing.

"**PREPA Financing Parties' Engineer**" means the engineering firm retained by the PREPA Financing Parties to report on progress in the performance of the Works and other matters relating to this Agreement.

"PREPA Financing Party" means any person that purchases or owns any of the PREPA Bonds and any trustee or agent representing any such person.

"PREPA Interface Personnel" has the meaning set out in Clause 8.4.

"**PREPA Loan Program Financing**" means loans, loan guarantees or similar financing obtained pursuant to a governmental loan program in whole or in part for the purpose of financing PREPA's obligations set forth in this Agreement.

"PREPA Permits" mean those permits set out in Part 2 of Schedule 6.

"PREPA Person" means (a) PREPA, (b) any PREPA Financing Party, (c) the PREPA Financing Parties' Engineer, (d) any personnel, agent, shareholder, member, partner, other owner thereof, director, officer, Affiliate, successor or assign of any of the foregoing or of any other person directly or indirectly employed by any of the foregoing, and (e) any invitee or contractor of any of the foregoing.

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"PREPA Risk Event" has the meaning set out in Clause 23.2.

"**PREPA's Insurances**" means the insurances which PREPA is required to effect and maintain in accordance with Schedule 9 and the insurance programs promulgated in accordance with Schedule 9.

"**PREPA's Project Manager**" means any person appointed by PREPA in the manner provided in Clause 11.1(a).

"**Prior Works**" means those Works described as such in Section 4.1(b) of Part 1 of Schedule 3, together with any other Works performed after the Effective Date and prior to the FNTP Date that the parties agree in writing to include as Prior Works.

"**Project Capital Budget**" means the overall budget (itemized) for the performance and completion of the Works by persons other than AOG and its Affiliates, which (a) shall be initially as set forth in Schedule 15 and (b) may be adjusted or otherwise modified from time to time in accordance with the relevant provisions of this Agreement; <u>provided</u> that the Project Capital Budget shall not include Excluded Budget Items.

"**Project Documents**" means the Definitive Agreements and all other material contracts and agreements relating to the ownership, design, engineering, procurement, construction, testing, commissioning, maintenance, repair, operations, financing or use of the Facilities.

"**Project IP**" means all Intellectual Property arising or created by AOG or a Subcontractor in performing the Works and AOG's other obligations under this Agreement, including Intellectual Property subsisting in or in relation to:

- (a) the Facilities and the Equipment;
- (b) the Contract Documents; and
- (c) all software, documents, drawings, designs and other materials created or arising in the performance of the Works,

but does not include AOG Background IP.

"**Project Schedule**" means the detailed program for performance of the LNTP Works and FNTP Works using the critical path method prepared by AOG in a detailed level, the initial version (or baseline) of which is attached to this Agreement as Schedule 1, as may be amended from time to time in accordance with the relevant provisions of this Agreement.

"Project Variables" means the Cost Project Variables and the Schedule Project Variables.

"Puerto Rico" means the Commonwealth of Puerto Rico.

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"Punch List" means a list of non-conforming or incomplete items of the Works:

- (a) that do not prevent the Works from achieving Substantial Completion;
- (b) that do not prevent the Facilities from being safely used for their intended purposes; and
- (c) rectification of which will not prejudice the use of the Facilities.

"Punch List Protocol" means Schedule 17.

"Request for Expert Determination" has the meaning set out in Clause 57.4(d).

"Request for Payment" means a request for payment in substantially the form of Schedule 13.

"Respondent" has the meaning set out in Clause 57.4(d).

"Response" has the meaning set out in Clause 57.4(d).

"Retainage" has the meaning set out in Clause 37.7.

"Schedule Project Variables" means the Mechanical Completion Deadline, the Substantial Completion Deadline, the Project Schedule, the Final Acceptance Deadline and the final day of the Warranty Period.

"Site" means the Offshore Site and the Onshore Site.

"Site Conditions" means the nature and location of the Works, and the general and local conditions with respect to environment, meteorology, seismic activity, marine, sea-bed, harbor, ocean conditions, transportation, access, waste disposal, handling and storage of materials, availability and quality of electric power, availability and condition of roads, availability of labor resources, climatic conditions and seasons, physical conditions where the Works are to be performed and the surrounding area as a whole, topography and ground surface conditions, subsurface geology and conditions, nature and quantity of surface and subsurface materials to be encountered and the location of underground utilities.

"Site Manager" means any person nominated by AOG as the Site Manager pursuant to Clause 11.2(f).

"Site Regulations" means the rules to be observed by all people on the Site during the execution of the Works, which are to be prepared by AOG in accordance with Clause 18.5(a).

"Spare Parts" means those spare parts which AOG is required to supply in respect of the Equipment in accordance with Section 8 of Part 1 of Schedule 3.

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"Subcontract" means a contract pursuant to which AOG procures any part of the Works, including the Major Subcontracts and the Supermajor Subcontracts.

"Subcontractor" means any person (other than AOG or an Affiliate thereof) that is a party to a Subcontract to perform a portion of the Works.

"Substantial Completion" means that all of the following have occurred:

- the Works have been executed and completed in accordance with this Agreement. (a) except for items included on the Punch List;
- (b) the Facilities have passed all Tests;
- if (i) the FSRU arrives with sufficient heel onboard (but no LNG carrier is present (c) with a cargo), Phase I Commissioning (as defined in the Charter) has been completed successfully or (ii) an LNG carrier is present with a cargo, Phase I and Phase II Commissioning (as defined in the Charter) have been completed successfully, in each case in accordance with the Commissioning Framework;
- (d) the Facilities are capable of being operated safely under reasonable and normal operational conditions;
- (e) the Works are in a condition which allows PREPA to comply with all applicable Laws relating to the operation of the Facilities;
- AOG has provided the copies of the O&M Manual specified in Clause 7.6(d) to **(î)** PREPA;
- AOG has provided the Spare Parts; (g)
- all documents and other information required under this Agreement, including (h) Project IP and AOG Background IP, have been supplied to PREPA or PREPA's Project Manager; and
- all AOG Permits which are necessary for the operation of the Facilities have been (i) transferred (to the extent permitted by Law) to PREPA or PREPA's nominee to the extent requested by PREPA,

all in accordance with this Agreement.

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"Substantial Completion Certificate" means the certificate to be issued by PREPA pursuant to Clause 28, in substantially the form set out in Part 2 of Schedule 12.

"Substantial Completion Date" means the date on which Substantial Completion occurs, as specified in the Substantial Completion Certificate.

"Substantial Completion Deadline" means the Mechanical Completion Deadline plus twenty-one (21) days.

"Substantial Completion Payment" has the meaning given to that term in Clause 37.8(a)(iii).

"Substantial Completion Payment Claim" has the meaning given to that term in Clause 37.8(a)(i).

"Supermajor Subcontract" means a Subcontract the value of which exceeds three million U.S. dollars (US\$3,000,000).

"Taxes" means all taxes pursuant to any Law (whether currently in force or coming into force on or after the Effective Date), including all sales, excise consumption and use taxes including any IVU, storage taxes, income, profit, fringe benefits, franchise and personal property taxes, payroll and employment taxes, levies, imposts, deductions, charges, withholdings and duties (including stamp, customs and transaction duties), license and permit fees together with any related interest, penalties, fines and other statutory charges and whether imposed by local governments or foreign governments or authorities.

"Technical Dispute" has the meaning set out in Clause 57.3(c).

"Termination Payment" has the meaning set out in Clause 52.2(a).

"Tests" means collectively:

- (a) the Tests during Construction,
- (b) the Pre-Commissioning Tests; and
- (c) the Commissioning Tests.

"Tests during Construction" means the tests described as such in Schedule 16 and as further developed as described therein.

"Training Plans" means the Facilities Training Plan and the Power Complex Training Plan.

"U.S." means the United States of America.

"Undisputed" with respect to any matter, shall mean that a Notice of Dispute has not been submitted in respect thereof in accordance with Clause 57.2.

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"Unusual Weather Conditions" means weather conditions at the Site that deviate from the historical data recorded by the National Oceanic and Atmospheric Administration's National Weather Service at the Site that results in (a) an inability to perform work at the Site, (b) a vessel, barge, dive-ship or other similar watercraft being prevented from sailing or performing work and/or (c) a shipment from being delivered.

"Warranty" has the meaning set out in Clause 19.1(a).

"Warranty Period" means, with respect to any portion of the Works, a period commencing on the Substantial Completion Date and ending on the one (1) year anniversary of the Substantial Completion Date, as may be extended in respect of any part of the Works that is repaired, replaced or made good in accordance with Clause 19.2(f).

"Willful Misconduct" means an intentional or reckless disregard of any provision of this Agreement, but shall not include any error of judgment or mistake made by any person in the exercise, in good faith, of any function, authority or discretion conferred pursuant to this Agreement.

"Works" means all works (including the Design and Engineering Services to be performed by the Engineers, the construction, testing, pre-commissioning, training and commissioning of the Facilities) and services to be performed by, and all goods, materials and equipment to be supplied by, AOG or previously supplied by EELP under the MOU in order to construct and complete the Facilities in accordance with the Contract Documents, as further defined in Section 4 of Part 1 of Schedule 3, including the Prior Works, the LNTP Works and the FNTP Works.

"Works executed" has the meaning set out in Clause 52.1(b)(i).

1.2. Interpretation

In this Agreement, unless the contrary intention appears or context otherwise requires:

- (a) references to an agreement, deed, instrument, license, code or other document (including this Agreement), or to a provision contained in any thereof, shall be construed, at the relevant time, as a reference to it as it may then have been amended, varied, supplemented, modified, suspended or novated;
- (b) a reference to a statute, ordinance, code, treaty or other Law shall be construed, at any particular time, as including all regulations and any consolidation, modification, amendment, re-enactment or replacement of any of them at any time then in force;
- (c) references to the Laws of any country include the applicable Laws of any political subdivision of that country;
- (d) wherever references are made in this Agreement to codes and standards in accordance with which the Works must be executed, the editions or the revised versions of such codes and standards current at the Effective Date apply unless otherwise specified;
- (e) the singular includes the plural and vice versa;
 - words importing a particular gender include all genders;
 - references to times of day are to local time in Puerto Rico unless otherwise stated;

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- (h) a reference to a Clause or Schedule is a reference to a Clause of, or Schedule to, this Agreement;
- (i) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (j) a reference to PREPA's Project Manager or AOG's Project Manager is also a reference to PREPA or AOG, as the case may be;
- (k) headings are for reference only, do not form part of this Agreement, and are not to be taken into consideration in the interpretation or construction of this Agreement;
- (l) in computing any period of time under this Agreement, (i) the day of the act, event or default from which such period begins to run shall be included and (ii) if the last day of the period so computed is not a Business Day, unless this Agreement provides otherwise, the period shall run until the end of the next Business Day;
- (m) unless this Agreement provides otherwise, any payment falling due on a non-Business Day shall be deemed to be due and payable on the following Business Day,
- (n) any statement qualified by reference to a party's state of knowledge, belief or awareness shall be deemed to include an additional statement that, before making it, such party has made such inquiry as it would be reasonable to expect it to have made;
- (o) a reference to "**assets**" includes present and future properties, revenues and rights of every description;
- (p) a reference to "**conduct**" includes an omission, statement or undertaking, whether or not in writing;
- (q) a reference to "**costs**" means only those costs which are directly referable to the event in question, and for which there is satisfactory supporting evidence;
- (r) a reference to a "day", "month" or "year" means a calendar day, month or year, respectively, under the Gregorian calendar,
- (s) the words "include" and "including" are to be construed without limitation;
- (t) a reference to "**indebtedness**" includes any obligation (whether incurred as principal or surety or otherwise) for the payment or repayment of money, whether present or future, actual or contingent;
- (u) a reference to a "**judgment**" includes any order, injunction, determination, award or other judicial or arbitral measure in any jurisdiction;

- (v) a reference to a "law" includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure, in each case of any jurisdiction whatever (and "lawful" and "unlawful" shall be construed accordingly);
- (w) a reference to an "official requirement" includes any rule, directive, request or guideline (whether or not having the force of law, but not being a law) of any Competent Authority;
- (x) the word "**parties**" means PREPA and AOG (and each of their successors and permitted assigns) and the word "**party**" means one (1) of them;
- (y) a reference to a "person" includes any natural person, firm, company, corporation, partnership, other entity, Competent Authority, government, state or agency of a state, or any association, foundation, trust or partnership (whether or not having separate legal personality) and words denoting natural persons include any other persons;
- (z) the "winding up" of a person also includes the amalgamation, reconstruction, reorganization (by way of voluntary arrangement, scheme of arrangement or otherwise), administration, dissolution, liquidation, merger or consolidation of that person and any equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled or resident or carries on business or has assets;
- (aa) a reference to "writing" includes a typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form and expressions referring to writing are to be construed accordingly;
- (bb) the words "hereof", "herein" and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (cc) the words in this Agreement will bear their ordinary and natural meaning; and
- (dd) the parties have had the opportunity of obtaining legal advice and accordingly no provision is to be construed *contra proferentem*.

1.3. Language of this Agreement

The language which governs the interpretation of this Agreement is the English language. All notices to be given by a party and all other communications and documentation which are in any way relevant to this Agreement or the performance or termination of this Agreement, including any dispute resolution proceedings, shall be in the English language.

2. <u>CONTRACT DOCUMENTS</u>

2.1. The Contract Documents

The following documents, their respective schedules, annexes and appendices, and all subsequent amendments, supplements and other modifications to such documents, will together constitute the entire agreement between the parties in respect of the Works (the **"Contract Documents"**):

- (a) Clauses 1 through 70 of this Agreement, as amended from time to time by Change Orders or any other written amendments;
- (b) the Schedules;
- (c) specifications prepared by AOG and approved by PREPA; and
- (d) drawings prepared by the Engineers and approved by the parties.

The Contract Documents shall be deemed to form and be read and construed as part of this Agreement.

2.2. Conditions Precedent to this Agreement

The following conditions precedent shall be conditions to the effectiveness of this Agreement:

- (a) Except for the Concession, the Definitive Agreements have been entered into by the parties thereto and are in full force and effect;
- (b) AOG has submitted to PREPA a sworn statement that neither it nor any of its Personnel have been convicted, nor have they pleaded guilty to any felony or misdemeanor involving fraud or misuse or illegal appropriation of public funds as enumerated in Article 3 of Public Law number 428 of September 22, 2004 of Puerto Rico; and
- (c) AOG has submitted to PREPA-
 - a certificate issued by the Treasury Department of Puerto Rico, Area for Internal Revenues confirming that AOG has filed its income tax return for the last five (5) years or is paying such taxes in accordance with an installment plan in compliance with its terms;
 - (ii) a certificate issued by the Municipal Revenues Collection Center ("MRCC") confirming that AOG does not owe any tax to the MRCC; and
 - a certificate from the Child Support Administration confirming that AOG is in compliance with the requirements to withhold from employees amounts in respect of child support; and

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(iv) a certificate issued by the Department of Labor and Human Resources of Puerto Rico, confirming that (A) AOG has paid to the Department of Labor and Human Resources of Puerto Rico amounts in respect of its employees' contributions, in accordance with the Puerto Rico Employment Security Act, (B) is paying such contributions by an installment plan in compliance with its terms or (C) is not legally required to have made any such payments or contributions.

2.3. Interpretation of the Contract Documents

The Contract Documents are intended to be correlative, complementary and mutually explanatory of one another, and this Agreement is to be read as a whole, except that:

- (a) in the case of conflict or ambiguity between any of the documents constituting this Agreement, the order of precedence is the order set out in Clause 2.1; and
- (b) if this Agreement provides for differing standards of product, workmanship, finish, design, engineering, materials or construction, AOG, and the Engineers when applicable, must attain the highest specified standard.

2.4. Ambiguity or Discrepancy

If either party discovers any ambiguity or discrepancy in or between any of the Contract Documents, such party must notify the other party of such ambiguity or discrepancy. In the event of an ambiguity or discrepancy within or between any of the Contract Documents coming to or being brought to the attention of PREPA's Project Manager, PREPA's Project Manager must, where applicable, apply to the interpretation of the Contract Documents an order of precedence which is the same as the order in which the documents are listed in Clause 2.1, and in any event must issue to AOG the necessary instructions to be followed by AOG in carrying out the Works. No such ambiguity or discrepancy, or any interpretation or direction in respect thereof, shall entitle AOG to any payment of additional Capital Costs or a modification of any Project Variable.

3. NOTICES TO PROCEED

3.1. Conditionality

Notwithstanding the Effective Date having occurred, the parties acknowledge and agree that with the exception of Clauses 1 through 6 inclusive, 11, 43, 44, 46, 47, 48, 49 and 53 through 63 inclusive (which provisions shall come into force on the Effective Date), the rights, liabilities and obligations of the parties under this Agreement in respect of:

- (a) the LNTP Works shall commence on the date of PREPA's issuance of the LNTP pursuant to Clause 3.2; and
- (b) the FNTP Works shall commence on the date of PREPA's issuance of the FNTP pursuant to Clause 3.3.

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3.2. LNTP

- (a) PREPA may issue a limited notice to proceed (the "LNTP") to AOG after:
 - (i) AOG has delivered to PREPA evidence that FERC issued a draft environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 (the "Draft EIS") and that FERC has opened the comment period related thereto, and PREPA, in its sole discretion, has deemed the Draft EIS satisfactory; and
 - (ii) as contemplated by Clause 13.3(a), AOG has delivered to PREPA the revised Project Schedule taking into account the issuance of the Draft EIS.
- (b) PREPA may, in its sole discretion, waive the conditions precedent in subclauses (i) and (ii) of Clause 3.2(a) by notice in writing to AOG.
- (c) Immediately following the LNTP Date, (i) AOG shall commence performance of the LNTP Works in accordance with the Project Schedule and (ii) the terms of this Agreement, solely where and to the extent they apply in respect of the LNTP Works, shall be fully effective and shall govern AOG's performance of the LNTP Works.
- (d) If (i) the condition set forth in Clause 3.2(a)(i) is not satisfied or waived by PREPA on or prior to the date that is ninety (90) days after the Effective Date or (ii) the condition set forth in Clause 3.2(a)(ii) is not satisfied on or prior to the date that is thirty (30) days after issuance by FERC of the Draft EIS, then PREPA, at its discretion, may terminate this Agreement by notice in writing to AOG. If the condition precedent set forth in Clause 3.2(a)(i) is not satisfied or waived by PREPA on or prior to the date that is one hundred eighty (180) days after the Effective Date, then AOG may, at its discretion, terminate this Agreement by notice in writing to PREPA. In the case of a termination of this Agreement under this Clause 3.2(d), other than (x) in respect of payment of any Permitting Costs, the Permitting Success Fee (if all Final AOG Permits required for the performance of the Works and completion of the Facilities have been obtained) and any Prior Works completed by AOG before the date of termination, which PREPA shall pay to AOG within thirty (30) days after the date of termination and (y) in respect of the Mobilization Payment (if paid), which shall be credited to PREPA, each party shall bear its own costs incurred in relation to this Agreement; provided, however, that if the Draft EIS is not issued due to any act or omission of AOG that is the direct cause of such non-issuance, PREPA shall pay only fifty percent (50%) of any Permitting Costs in the case of a termination under this Clause 3.2(d) (and AOG shall be responsible for the remaining fifty percent (50%) of such Permitting Costs). The net amount payable from one party to the other upon termination of this Agreement in accordance with this Clause 3.2(d) shall be paid within thirty (30) days after termination of this Agreement. The provisions of Clause 52 shall not apply to a termination pursuant to this Clause 3.2(d).

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(e) <u>Provided</u> that AOG has made commercially reasonable efforts to obtain the Draft EIS, if the LNTP is not issued by the later of July 1, 2014 or five (5) days after the delivery of the revised Project Schedule required pursuant to Clause 3.2(a)(ii), AOG shall present to PREPA a proposal for the reasonable changes in Capital Costs, if any, required to achieve Substantial Completion by the Substantial Completion Deadline. PREPA shall thereafter elect, in its sole discretion, either to (i) accept such reasonable changes or (ii) agree to a reasonable adjustment in the Schedule Project Variables necessary to maintain the previously approved level of Capital Costs.

3.3. FNTP

- PREPA shall issue a full notice to proceed (the "FNTP") to AOG within five (5) Business Days after satisfaction or waiver in accordance with Clause 3.3(b) of the following conditions precedent:
 - (i) AOG has obtained (A) the AOG Permits required by Part 1 of Schedule 6 and all such AOG Permits are Final and (B) an Act 73-2008 tax decree covering the FSRU and any substitute vessel permitted to be deployed from time to time in accordance with the Charter, and such tax decree is in full force and effect;
 - PREPA has obtained the PREPA Permits required by Part 2 of Schedule 6 (other than the Environmental Quality Board Title V Operating Permit) and all such PREPA Permits are Final;
 - (iii) Financial Close has occurred;
 - (iv) the Concession shall have been entered into by the parties thereto and shall be in full force and effect;
 - (v) there is no pending or threatened action, suit or other proceeding brought by any governmental entity or other third party (A) challenging or seeking to restrain or prohibit the transactions contemplated by this Agreement or (B) that may otherwise have an adverse effect of the ability of PREPA to fulfill its obligations under this Agreement or to use the Facilities, in each case in any material respect; and
 - (vi) there is no pending appeal of any of the AOG Permits or PREPA Permits referenced in subclause (i) or (ii) above.
- (b) PREPA may, in its sole discretion, waive the conditions in subclauses (i)(B), (v) and (vi) of Clause 3.3(a) by notice in writing to AOG.
- (c) Immediately following the FNTP Date, (i) AOG shall commence performance of the FNTP Works in accordance with the Project Schedule and (ii) the terms of this Agreement, solely where and to the extent they apply in respect of the FNTP

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Works, shall be fully effective and shall govern AOG's performance of the FNTP Works.

- (d) The parties shall have the following termination rights prior to issuance of the FNTP:
 - (i) If the conditions set forth in subclause (i) of Clause 3.3(a) are not satisfied on or prior to the date that is one hundred eighty (180) days after the Effective Date, then PREPA may, at its discretion, terminate this Agreement by notice in writing to AOG.
 - (ii) If the condition set forth in subclause (ii) of Clause 3.3(a) is not satisfied on or prior to the date that is one hundred eighty (180) days after receipt of all Final AOG Permits, then AOG may, at its discretion, terminate this Agreement by notice in writing to PREPA.
 - (iii) If (A) the conditions set forth in subclauses (iii) and (iv) of Clause 3.3(a) are not satisfied on or prior to the date that is one hundred eighty (180) days after receipt of all Final AOG Permits and all Final PREPA Permits or (B) the conditions set forth in subclauses (v) and (vi) of Clause 3.3(a) are not satisfied or waived by PREPA on or prior to the date that is three hundred sixty-five (365) days after Financial Close, then either party may, at its discretion, terminate this Agreement by notice in writing to the other party.
- (e) If this Agreement is terminated in accordance with Clause 3.3(d), PREPA shall pay to AOG, within thirty (30) days after the date of termination, the lesser of:
 - (i) the Termination Payment (excluding the component of the Termination Payment described in Clause 52.2(a)(v)); provided, however, that if AOG has not obtained all Final AOG Permits required by Part 1 of Schedule 6, the Permitting Success Fee shall not be payable; provided further, however, that if AOG has not obtained all Final AOG Permits required by Part 1 of Schedule 6 due to any act or omission of AOG that is the direct cause of such non-issuance, only fifty percent (50%) of the Permitting Costs shall be payable by PREPA (and AOG shall be responsible for the remaining fifty percent (50%) of such Permitting Costs); and
 - (ii) (A) eighty-four million U.S. dollars (US\$84,000,000), *plus* (B) the portion of the value of all Change Orders attributable to LNTP Works (as agreed by the parties at the time of executing such Change Orders), *less* (C) the Mobilization Payment, *less* (D) any amounts previously paid by PREPA in connection with the procurement of the long lead time items identified in Section 7 of Schedule 3, Part 1 Scope of Work;

provided, however, that if the foregoing calculation results in PREPA owing a negative amount to AOG, AOG shall pay to PREPA the absolute value of such amount within thirty (30) days after termination of this Agreement. The

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provisions of Clause 52 shall not apply to a termination pursuant to this Clause 3.3(e).

3.4. Prior Works

The parties acknowledge that certain Prior Works have been performed and certain Permitting Costs have been incurred by EELP on behalf of AOG for PREPA pursuant to the MOU and form part of the Works and that AOG may perform additional Prior Works under this Agreement prior to the FNTP Date and will incur additional Permitting Costs under this Agreement. The parties agree that on and from the Effective Date, this Agreement will:

- (a) retrospectively apply to all the Prior Works and all the Permitting Costs;
- (b) supersede and replace any contractual arrangements or otherwise between PREPA and EELP or AOG in relation to the Prior Works and the Permitting Costs, including the MOU;
- (c) retrospectively apply to any instructions or directions given to EELP or AOG by PREPA's representatives in relation to or in connection with the Prior Works or the Permitting Costs; and
- (d) take into account any sums paid by PREPA or any other entity to EELP or AOG in relation to or in connection with the Prior Works or the Permitting Costs.

Any amounts due and payable in respect of the Prior Works but not yet paid to AOG at the Effective Date shall be paid by PREPA in accordance with Clause 37.2, and Permitting Costs shall be payable by PREPA in accordance with Clause 37 3.

3.5. Permitting

From and after the Effective Date, AOG shall continue to incur Permitting Costs to obtain the AOG Permits as promptly as reasonably practicable; <u>provided</u>; <u>however</u>; that, the aggregate of all Permitting Costs shall not exceed US\$9,400,000 unless agreed to by the parties in writing. Such Permitting Costs shall be payable by PREPA to AOG in accordance with Clause 37.3.

4. <u>REPRESENTATIONS AND WARRANTIES</u>

4.1. Representations and Warranties of AOG

AOG makes the following representations and warranties to PREPA, each of which is true and correct on the Effective Date:

(a) AOG is a company duly organized, validly existing and in good standing under the laws of Delaware, is a separate legal entity which is capable of suing and being sued and is duly qualified to do business in Puerto Rico;

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- (b) AOG has all requisite power and authority to:
 - (i) enter into and perform this Agreement;
 - (ii) carry out the transactions contemplated under this Agreement; and
 - (iii) own and use its properties and to transact the business in which it is engaged and holds or expects to obtain all franchises, licenses and permits necessary and required for such activities;
- (c) all actions, conditions and things required to be taken, fulfilled and done, including the obtaining of any necessary permits (excluding the AOG Permits and the PREPA Permits), in order to enable AOG to lawfully enter into, exercise its rights and perform and comply with its obligations under this Agreement, to ensure that those obligations are valid, legally binding and enforceable, have been taken, fulfilled and done;
- (d) AOG's execution, delivery, and performance of this Agreement have been duly authorized by it and do not and will not conflict with:
 - (i) any law or official requirement applicable to it;
 - (ii) its constitutional documents (including its limited liability company agreement); or
 - (iii) any agreement or instrument binding on all or any of its assets;
- (e) AOG's obligations under this Agreement are valid, binding and enforceable at law and in equity in accordance with its terms;
- (f) AOG is not in breach of, in default under, or in violation of, any Laws, or the provisions of any franchise or license, or in breach of, in default under, or in violation of, any provision of its limited liability company agreement, any promissory note, indenture or any evidence of indebtedness or security therefor, lease, contract, license or other agreement by which it is bound, which breach, default or violation of such agreement may result in a material adverse effect on the business or financial condition of AOG, and the execution and delivery of this Agreement and the performance of its obligations under this Agreement will not constitute or result in any such breach, default or violation;
- (g) to the best of AOG's knowledge, no suit, claim, action, arbitration, or legal, administrative or other proceeding is current, pending or threatened against AOG to restrain the entry into this Agreement or that would affect the validity or enforceability of this Agreement, the ability of AOG to fulfill its commitments under this Agreement in any material respect, or that could reasonably be expected to result in any material adverse change in the business or financial condition of AOG;

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- (h) AOG is not subject to any outstanding judgment, rule, order, statement of claim, injunction or decree of any court, governmental or regulatory body acting in an arbitral or adjudicative capacity that materially affects its ability to perform its obligations under this Agreement; and
- (i) none of AOG, the officers and directors of AOG or any other person involved in the management of AOG has ever been convicted of, nor plead guilty to, any felony or misdemeanor involving fraud, misuse or illegal appropriation of public funds as enumerated in Article 3 of Public Law No. 428 of September 2004 of Puerto Rico.

4.2. Representations and Warranties of PREPA

PREPA makes the following representations and warranties to AOG, each of which is true and correct on the Effective Date:

- (a) PREPA is a public corporation and government instrumentality duly organized, validly existing and in good standing under the laws of Puerto Rico, is a separate legal entity which is capable of suing and being sued and is duly qualified to do business in Puerto Rico;
- (b) PREPA has all requisite power and authority to:
 - (i) enter into and perform this Agreement; and
 - (ii) carry out the transactions contemplated under this Agreement;
- (c) all actions, conditions and things required to be taken, fulfilled and done, including the obtaining of any necessary permits (excluding the AOG Permits and the PREPA Permits), in order to enable PREPA to lawfully enter into, exercise its rights and perform and comply with its obligations under this Agreement, to ensure that those obligations are valid, legally binding and enforceable, have been taken, fulfilled and done;
- (d) PREPA's execution, delivery, and performance of this Agreement have been duly authorized by it and do not and will not conflict with:
 - (i) any law or official requirement applicable to it;
 - (ii) its constitutional documents (including its articles of incorporation and bylaws); or
 - (iii) any agreement or instrument binding on all or any of its assets;
 - PREPA's obligations under this Agreement are valid, binding and enforceable at law and in equity in accordance with its terms;

(e)

- (f) PREPA is not in breach of, in default under, or in violation of, any Laws, or the provisions of any franchise or license, or in breach of, in default under, or in violation of, any provision of its articles of incorporation or by-laws, any promissory note, indenture or any evidence of indebtedness or security therefor, lease, contract, license or other agreement by which it is bound, which breach, default or violation of such agreement may result in a material adverse effect on the business or financial condition of PREPA, and the execution and delivery of this Agreement and the performance of its obligations under this Agreement will not constitute or result in any such breach, default or violation;
- (g) to the best of PREPA's knowledge, no suit, claim, action, arbitration, or legal, administrative or other proceeding is currently pending against PREPA to restrain the entry into this Agreement or that would affect the validity of this Agreement in any material respect; and
- (h) PREPA is not subject to any outstanding judgment, rule, order, statement of claim, injunction or decree of any court, governmental or regulatory body acting in an arbitral or adjudicative capacity that materially affects its ability to perform its obligations under this Agreement.

5. <u>RELATIONSHIP BETWEEN THE PARTIES</u>

5.1. No Partnership or Agency

PREPA and AOG are independent entities and nothing contained in this Agreement will be construed to imply that there is any relationship of partnership or of principal/agent or of employer/employee between them, nor are they engaging in a joint venture through participation in the transactions contemplated by this Agreement.

5.2. Relationship among AOG, PREPA and the Engineers

Notwithstanding anything in this Agreement to the contrary (but without intending to limit the Warranty, AOG's responsibility for the performance of Subcontractors in accordance with Clause 14.1(c), or any provision of this Agreement making AOG liable for the financial risks resulting from acts, omissions and obligations of the Engineers), each of the Engineers is being retained by AOG on a separate and independent basis and not on the basis that AOG and the Engineers or PREPA and the Engineers constitute any form of joint venture or partnership relationship.

5.3. Instructions of PREPA

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- Notwithstanding anything to the contrary in this Agreement (other than as expressly provided for in this Clause 5.3), AOG is not authorized by this Agreement, and must not purport, without PREPA's express written consent or instruction, to enter into any agreement on behalf of PREPA, including the following:
- (a) negotiating the supply (including the price, quality, quantity, transportation and delivery) of LNG or regasified LNG;

- (b) directing any O&M Contractor to undertake any variation of the services under any O&M Agreement;
- (c) entering into any agreement which purports to bind or create any liability on PREPA or in respect of the Facilities, except as expressly provided for in this Agreement;
- (d) taking any action which it knows or reasonably should know would impede the assertion of PREPA's rights, compliance or ability to comply with any Project Document; or
- (e) approving the settlement, waiver, release, filing or prosecuting of any right, claim, debt, liability or suit on PREPA's behalf.

5.4. Contracts of AOG

All contracts, agreements and arrangements entered into by AOG in providing the Works will (except as otherwise expressly agreed with PREPA) be entered into by AOG as principal (not as agent of PREPA).

5.5. AOG's Responsibility for the Works

Subject to the provisions of this Agreement, AOG is solely responsible for the manner in which the Works are performed, and all employees, representatives, Subcontractors or any other party engaged by AOG in connection with the performance of this Agreement are under the complete control of AOG and will not be deemed to be employees of PREPA, and nothing contained in this Agreement or in any Subcontract or other contract awarded by AOG will be construed as creating any contractual relationship between any such employees, representatives, Subcontractors or other third parties and PREPA.

6. NO THIRD PARTY BENEFICIARIES

The terms and provisions of this Agreement are intended solely for the benefit of each party and its successors and permitted assigns and, except as expressly provided herein, it is not the intention of the parties to confer any rights on any person other than the parties.

PART 2 - SUBJECT MATTER OF THIS AGREEMENT

7. AOG'S OBLIGATIONS

7.1. Works

(a)

AOG shall perform all the Works in accordance with Part 1 of Schedule 3 and in accordance with all applicable Laws and approvals, including complying with the Engineering Act and ensuring that contracted Engineers be licensed to practice their profession in Puerto Rico and be members in good standing of the "Colegio de Ingenieros y Agrimensores de Puerto Rico" and/or the "Colegio de Arquitectos de Puerto Rico" as required by the Engineering Act.

- (b) AOG undertakes to provide sufficient personnel to ensure performance and completion of the Works in accordance with the provisions of this Agreement, AOG shall also provide all materials and equipment and all other things, whether of a temporary or permanent nature, to ensure performance and completion of the Works in accordance with the provisions of this Agreement.
- (c) AOG shall comply with all applicable Laws and the provisions of Act No. 84-2002 of Puerto Rico, which establishes a Code of Ethics for contractors, suppliers and economic incentive applicants of the Executive Agencies of Puerto Rico.
- (d) AOG must perform all such work and supply all such equipment not specifically mentioned in this Agreement but which can be reasonably inferred from this Agreement as being required for the proper use of the Facilities for their intended purposes as if such work and equipment were expressly mentioned in this Agreement.
- (e) AOG shall carry out the Works in accordance with this Agreement in such manner that no act, omission or default of it in relation thereto shall constitute a breach of any of the provisions of the Concession.
- (f) Subject to Clause 8.2, AOG shall be solely responsible for determining what access routes it requires to perform the Works.

7.2. **AOG's Permit Obligations**

- AOG must take all commercially reasonable steps (including the payment of (a) relevant fees) required to achieve issuance of the Draft EIS and to acquire and maintain all AOG Permits. Notwithstanding the foregoing, prior to filing or otherwise submitting any material documentation (as hereinafter defined) to any Competent Authority in connection with obtaining or maintaining the AOG Permits, AOG shall (i) provide PREPA with a draft of such submission at least five (5) Business Days prior to the contemplated submission date, (ii) take into account any comments of PREPA to such submission and (iii) obtain PREPA's concurrence, not to be unreasonably withheld or delayed, to such submission. If PREPA has not responded to AOG by the close of business in Puerto Rico on the day before the contemplated submission date, PREPA shall be deemed to have concurred. For the purposes of this Clause 7.2(a), "material documentation" means any submission that has the potential to materially affect the timing of obtaining any AOG Permit, the ability of AOG to maintain any AOG Permit or the conditions included in any AOG Permit.
- If reasonably requested by PREPA, AOG must use its reasonable efforts to assist (b) PREPA in obtaining the PREPA Perm
 7.3. AOG-Provided Services and Consumables
 AOG must: PREPA in obtaining the PREPA Permits in a timely and expeditious manner.

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- (a) arrange for the supply of all consumables, services, electrical supplies (including electricity for commissioning and testing), utilities, lubricants, chemicals, catalysts, other materials and facilities;
- (b) arrange for all drainage facilities;
- (c) dispose of contaminated soil and chemicals;
- (d) dispose of all waste created by any AOG Person;
- (e) procure all required water; and
- (f) perform all work and services of any nature required by this Agreement,

in each case as necessary for the proper performance of the Works and in order to achieve the Completion Guarantees.

7.4. Training

- (a) AOG must train, in accordance with and to the standards and timing set out in Section 9.2 of Part 1 of Schedule 3:
 - (i) the AOG O&M Personnel so as to ensure that such Personnel will be able to operate and maintain the Facilities efficiently and safely following the Substantial Completion Date; and
 - (ii) the PREPA Interface Personnel so as to ensure that such Personnel will be able to assist with the interface between the operations of PREPA and the operation and maintenance of the Facilities by the O&M Contractor.
- (b) AOG will prepare a training plan applicable to the operation and maintenance of the Facilities (the "Facilities Training Plan") and a training plan applicable to the interface between the Facilities and the Aguirre Power Complex (the "Power Complex Training Plan"), each of which must be submitted to PREPA's Project Manager for approval no later than two (2) months prior to the Mechanical Completion Deadline. AOG must revise the Training Plans to accommodate any reasonable comments or concerns of PREPA or PREPA's Project Manager.
- (c) AOG shall provide to each person attending the training referred to in Clause 7.4(a) a copy of the applicable approved Training Plan.

7.5.O&M Personnel(a)No later th
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(a) No later than five (5) months prior to the Mechanical Completion Deadline, AOG will make available a sufficient number of competent and qualified Personnel (which personnel may be Personnel of the O&M Contractor) for training in the operation and maintenance of the Facilities by AOG in accordance with Clause 7.4(a) (the "AOG O&M Personnel").

- (b) Following the successful completion of the training of the AOG O&M Personnel, AOG will use such Personnel in operating and maintaining the Facilities during the Pre-Commissioning Tests.
- (c) Except to the extent directed by PREPA or in the case of gross negligence or Willful Misconduct, any act or omission of any AOG O&M Personnel shall be deemed, for the purposes of this Agreement, to be an act or omission of AOG and AOG shall not be released from any of its obligations under this Agreement.
- (d) AOG may, by notice to PREPA, remove, or arrange to be removed any Personnel who, in its reasonable opinion, are incompetent, negligent or guilty of misconduct, and provide a suitable replacement.

7.6. O&M Manual

- (a) No later than two (2) months prior to the Mechanical Completion Deadline, AOG must prepare and deliver to PREPA's Project Manager one (1) printed copy and one (1) electronic copy of a draft of the O&M Manual containing the information required by Section 9.1 of Part 1 of Schedule 3.
- (b) AOG must obtain for PREPA all relevant instruction manuals and special directions or recommendations from the relevant manufacturers of any Equipment and must itself provide written instructions in the O&M Manual where such are not available from such manufacturers.
- (c) The O&M Manual must be prepared:
 - based on all relevant instruction manuals and special directions or recommendations from the relevant manufacturers of any Equipment obtained in accordance with Clause 7.6(b);
 - (ii) based on all applicable Laws and Good Industry Practices; and
 - (iii) in full consideration of the experience level and technical background of PREPA's Personnel and AOG's training-related obligations under this Clause 7,

and must include all software, codes, manuals and licenses relevant to the operation of the Facilities.

- (d) No later than fourtcen (14) days prior to the Substantial Completion Date, AOG must deliver to PREPA one (1) electronic set and eight (8) printed sets of the final and complete version of the O&M Manual.
 - Promptly after the Substantial Completion Date (and in any event, prior to the Final Acceptance Date), AOG must update and revise the O&M Manual as necessary to reflect the completion of all of AOG's obligations under this Agreement, other than its Warranty obligations.

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(f) AOG warrants that adherence to the O&M Manual will facilitate the operation of the Facilities at the levels of capacity, safety, efficiency, reliability and maintainability required by this Agreement and will not materially impair any warranty or guarantee of Equipment or the Works assigned to PREPA.

7.7. Spare Parts

- (a) AOG is responsible for the provision of the Spare Parts, which Spare Parts will be included in the Budgets as Capital Costs (except as provided in Clause 7.7(c)).
- (b) As at the Substantial Completion Date, AOG must:
 - (i) ensure that the Spare Parts have been delivered and are safely stored in the vicinity of the Facilities; and
 - (ii) provide PREPA with a parts numbers list for the Spare Parts, incorporating the names of manufacturers of the Spare Parts.
- (c) AOG shall have the right to use any Spare Part to fulfill its obligations pursuant to Clause 19; provided that AOG must promptly replace such Spare Part at its sole cost, and such cost shall be a Non-Allowable Cost.

7.8. Managing Connections

- (a) AOG must connect the Pipeline to the Gas Delivery Point in accordance with Section 2 of Part 1 of Schedule 3.
- (b) AOG shall review with PREPA the design of the interconnection(s) required pursuant to Clause 7.8(a) and the construction schedule therefor and shall design, construct and commission such interconnection(s) to achieve compatibility with the interconnection design requirements, equipment and gas specification of PREPA and with all relevant applicable Laws.

7.9. Avoidance of Damage or Interference

- (a) AOG shall use reasonable efforts to carry out the Works, and in particular the commissioning and carrying out of Tests which involve the connection of the Facilities or any part thereof to the Aguirre Power Complex and the FSRU, so as to:
 - (i) minimize any interference to the Aguirre Power Complex and the FSRU;
 - (ii) avoid damage to the Aguirre Power Complex and the FSRU; and
 - (iii) avoid damage to property and interference with the lawful rights of PREPA and third parties.

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- (b) AOG must promptly report to PREPA's Project Manager any interference with and/or damage to:
 - (i) the Aguirre Power Complex or the FSRU; and
 - (ii) the property and rights referred to in Clause 7.9(a)(iii).

8. PREPA'S OBLIGATIONS

8.1. Payment

Subject to the terms and conditions hereof, PREPA must make timely payment to AOG of all amounts payable under this Agreement as and when they fall due in accordance with this Agreement.

8.2. Access to the Site

- (a) Subject to Clauses 8.2(b) and 8.2(c), upon execution of an Onshore Site Access Agreement by an AOG Person, PREPA must provide such AOG Person with reasonable access to the Aguirre Power Complex and to the Onshore Site to the extent reasonably deemed necessary by AOG to enable AOG to execute the Works and perform its other obligations under this Agreement. If such access is denied, impeded or delayed for any PREPA Risk Event, PREPA shall authorize a Change in accordance with Clause 38 for delays and/or costs incurred to the extent caused thereby.
- (b) AOG acknowledges that the rights referred to in Clause 8.2(a) will be nonexclusive, and that AOG must, upon reasonable notice from PREPA:
 - (i) give all reasonable opportunities for carrying out their work to any other contractors employed or authorized by PREPA on or near the Site; and
 - (ii) permit reasonable access to the Works for PREPA's Project Manager for the purpose of inspecting the progress of the Works.
- (c) As a condition precedent to PREPA's obligation to provide access to any portion of the Aguirre Power Complex or the Onshore Site to any AOG Person in accordance with Clause 8.2(a), such AOG Person shall have delivered to PREPA a duly executed counterpart of an Onshore Site Access Agreement. PREPA shall enter into an Onshore Site Access Agreement promptly after being requested to do so by AOG; provided, however, that PREPA shall retain discretion to decline to enter into an Onshore Site Access Agreement with any AOG Person on the basis of reasonable security or safety grounds described in writing to AOG. AOG shall be liable for the compliance of all AOG Persons with the terms of such Onshore Site Access Agreements (and any costs incurred in connection with non-compliance by an AOG Person with an Onshore Site Access Agreement shall be Non-Allowable Costs).

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(d) PREPA shall provide AOG, at no cost to AOG, reasonable access to the existing helicopter base located at the Aguirre Power Complex for use in connection with medi-vac transportation.

8.3. PREPA's Permit Obligations

- (a) PREPA must take commercially reasonable steps (including the payment of relevant fees) required to acquire and maintain all PREPA Permits.
- (b) If reasonably requested by AOG, PREPA must use its reasonable efforts to assist AOG in obtaining the AOG Permits in a timely and expeditious manner.

8.4. PREPA Personnel

No later than six (6) months prior to the Mechanical Completion Deadline, PREPA will, at its own cost, make available a sufficient number of competent and qualified PREPA Personnel who shall be trained by AOG in accordance with Clause 7.4(a) in the interface between the operations of PREPA at the Aguirre Power Complex and the operation and maintenance of the Facilities by the O&M Contractor (the "**PREPA Interface Personnel**").

8.5. Financing

- (a) PREPA shall use commercially reasonable efforts to achieve Financial Close on financial terms satisfactory to PREPA, in its sole discretion, no later than ninety (90) days following receipt of all Final AOG Permits and all Final PREPA Permits; provided, however, that the foregoing obligation shall be satisfied if PREPA has used commercially reasonable efforts at any time to obtain, in its sole discretion, either PREPA Bonds or PREPA Loan Program Financing (it being agreed that PREPA shall have no obligation to seek both PREPA Bonds and PREPA Loan Program Financing). Notwithstanding the foregoing, PREPA shall have no obligation to use commercially reasonable efforts to achieve Financial Close if an event or series of events occurs that, singularly or collectively, (a) are materially adverse to the project, (b) materially and adversely affect the ability of PREPA to use the Facilities or (c) impose materially greater costs on any of the parties (it being acknowledged and agreed that if such an event occurs the parties will confer in good faith on potential changes to the Works required as a result of such an event).
- (b) Upon PREPA's reasonable request, AOG shall provide such documents, information, and cooperation as PREPA may require to facilitate the PREPA Financing, including considering in good faith any amendments or clarifications to this Agreement that PREPA may reasonably require in connection with obtaining the PREPA Financing; provided that AOG shall not be required to approve any such amendments or clarifications unless AOG is satisfied (in its discretion) that such amendments or clarifications have no material impact (cconomic or otherwise) on AOG, in which event AOG shall act reasonably in deciding whether to approve such amendment or clarification.

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9. SITE CONDITIONS AND BACKGROUND INFORMATION

9.1. Site Conditions

- (a) AOG acknowledges that it has investigated and assessed the Offshore Site to the full extent necessary for its purposes and is familiar with and has satisfied itself with respect to the Site Conditions of the Offshore Site.
- (b) Notwithstanding Clause 9.1(a), PREPA acknowledges and agrees that:
 - (i) AOG is not guaranteeing any Site Condition;
 - (ii) the Project Variables may be modified pursuant to Clause 38 as a result of (A) Site Conditions at the Site that differ from the information contained in the Background Information or (B) modifications to the Background Information; <u>provided</u> that the Capital Costs Target shall not be adjusted for Site Conditions at the Offshore Site; and
 - (iii) without limiting the restriction on adjustments to the Capital Costs Target for Site Conditions at the Offshore Site in subclause (ii) above, AOG shall not be responsible for:
 - (A) any Site Conditions differing in any way from the Site Conditions specifically depicted in the Background Information;
 - (B) any concealed or unknown conditions at the Site in an existing structure that is at variance with any Site Conditions that may be indicated by this Agreement or the Background Information; or
 - (C) unknown physical conditions below the surface of the Site.

9.2. Background Information

- (a) Subject to Clause 9.2(b), PREPA gives no warranty or undertaking as to the completeness, accuracy or fitness for any purpose of any of the Background Information or any other information provided by PREPA or any of its Affiliates in connection with this Agreement. Subject to Clause 9.2(b), AOG agrees that, with the exception of information provided fraudulently, neither PREPA nor any of its agents, employees, directors, officers or representatives will be liable to AOG in contract, tort (including negligence or breach of statutory duty), statute or otherwise, and nor will AOG be entitled to any relief under this Agreement (including an extension to the Mechanical Completion Deadline, the Substantial Completion Deadline and the Final Acceptance Deadline) in respect of or as a result of:
 - (i) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Background Information or any other information

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provided by PREPA or any of its Affiliates in connection with this Agreement;

- (ii) any failure to make available to AOG any materials, documents, drawings, plans or other information relating to the Works, except to the extent such documents, drawings, plans or other information constitutes part of the Background Information; and
- (iii) any ambiguities, discrepancies, inconsistencies, divergences, construction impracticalities or omissions from, within or between the Contract Documents.
- (b) Notwithstanding Clause 9.2(a), if PREPA modifies any Background Information that affects the Works, AOG shall be entitled to a Change in accordance with Clause 38 to the extent reasonably necessary to accommodate the impact of such modification on the Works.

PART 3 - EXECUTION OF THE WORKS

10. PERFORMANCE OF THE WORKS

10.1. Performance of the Works

AOG must perform the Works in a professional, timely, safe and environmentally responsible manner and in accordance with this Agreement (in particular Schedules 2 and 3), all Permits, all applicable Laws and Good Industry Practices.

10.2. Laws and Corrupt Practices

- (a) Each party must comply with all applicable Laws affecting the performance of this Agreement and binding upon such party.
- (b) Each party hereby acknowledges and agrees that certain laws of the U.S. and Puerto Rico prohibit any person from corruptly making any payment of money or anything of value, directly or indirectly, to any foreign government official, political party, official of a political party, or candidate for political office for the purpose of obtaining or retaining business or otherwise securing an improper advantage. Each party hereby represents and warrants that (i) it is familiar with applicable anti-corruption and anti-bribery laws, and (ii) in the performance of its obligations hereunder, it has not made or offered to make, and will not make or offer to make, any such proscribed payment.

10.3. Change of Law

(a) If AOG becomes aware of any Change of Law that it believes may affect any Project Variable, AOG shall give written notice to PREPA's Project Manager with:

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- (i) details of such Change of Law; and
- (ii) any other information which PREPA's Project Manager reasonably requires (including AOG's estimate of any changes to the Project Schedule that will be necessary to comply with such Change of Law).
- (b) Any amendment to this Agreement (including any adjustment of any Project Variable) resulting from a Change of Law will be deemed to be a Change requested by PREPA and the provisions of Clause 38.2 shall apply; provided that PREPA shall notify AOG within ten (10) Business Days of receiving AOG's statement pursuant to Clause 38.2(b) whether:
 - (i) PREPA agrees with AOG's statement pursuant to Clause 38.2(b), in which case (as appropriate):
 - (A) the Cost Project Variables (other than the Capital Costs Target) will be adjusted in accordance with the principles set out in Clause 38.5(a);
 - (B) any extension of the Schedule Project Variables will be determined in accordance with Clause 23, and PREPA's Project Manager is entitled to take account of AOG's estimate set out in Clause 38.2(a) when determining such extension of time;
 - (C) the terms and conditions of this Agreement will apply to such Change as though it formed part of the original Works; and
 - (D) the parties will seek to agree to any other amendments to this Agreement which are necessary as a consequence of the carrying out of such Change; or
 - (ii) PREPA disagrees with AOG's statement pursuant to Clause 38.2(b), in which case the provisions of Clause 57 shall apply.

10.4. Health, Safety, Security and Environment

- (a) Without prejudice and in addition to Clauses 10.1 and 18.6, AOG must carry out the Works (including commissioning and the carrying out of Tests):
 - (i) in accordance with the health and safety, security, and environmental standards set forth in Schedule 22;
 - so as to avoid any material risk to the health and/or safety of any employee, contractor or member of the public, it being understood that operation in compliance with applicable Laws, Schedule 22, and the terms of the AOG Permits shall not be deemed to create such material risk;

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- so as to avoid any material and unnecessary or improper interference with access to, use and occupation of public or private thoroughfates, or of properties, whether in the possession of PREPA or otherwise (including the Facilities);
- (iv) without unreasonable or unnecessary noise or other disturbance;
- (v) in a manner which prevents unreasonable silting and erosion, or pollution of or unauthorized discharges into any river, stream, waterway, drain, watercourse, bay or sea and which will not have any material adverse effect on the Facilities or any Permit required for the construction, commissioning, operation, maintenance or ownership of same; and
- (vi) so as not to cause or knowingly permit contamination of any land, either on or off the Site, by any deliberate or accidental disposal, including leakage or spillage of any effluent, pollutant, contaminant, flammable, corrosive, radioactive or otherwise hazardous or toxic substance (including petroleum, its derivatives and products, and other hydrocarbons) and waste.
- (b) In the event of the occurrence or suspected occurrence of an incident involving health, safety, security or environmental matters caused by the carrying out of the Works or otherwise by AOG which could, in the opinion of AOG, reasonably be expected to:
 - (i) endanger or adversely affect in any material respect the health and safety of any employee, contractor or member of the public; or
 - (ii) give rise at any time to any material environmental damage or to any material damage to the Facilities, the FSRU or the Aguirre Power Complex,
 - AOG must:
 - (A) promptly upon AOG's Project Manager becoming aware thereof, notify PREPA's Project Manager of such incident; provided that if immediate response measures are needed, the response measures can be initiated prior to such notification and such notification shall be made at the earliest opportunity;
 - (B) take and complete promptly whatever reasonable action is required under applicable Law to prevent, mitigate or remedy any such incident and the consequences thereof; and
 - (C) investigate such incident, and following such investigation, report to PREPA's Project Manager the details of such incident and the results of such investigation.

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- (c) AOG will be liable for, and must defend, indemnify and hold PREPA harmless from and against any and all suits, actions or administrative proceedings, claims, demands, liabilities, losses, damages, defects and costs and expenses arising out of claims.
 - (i) in respect of the health and safety of any employee, contractor or member of the public;
 - (ii) for environmental damage or claims;
 - (iii) for property damage in relation to the Facilities, the FSRU or the Aguirre Power Complex,

in each case that is caused by the carrying out of the Works or otherwise by AOG, except to the extent that such suits, actions or administrative proceedings, claims, demands, liabilities, losses, damages, defects or costs are attributed to a PREPA Risk Event or the action or inaction of PREPA. PREPA shall promptly notify AOG in writing of the assertion of any claim giving rise to an indemnification obligation under this Clause 10.4(c) and AOG shall have the right to assume and control the defense and settlement of such claim. This indemnification shall apply regardless of whether the claim asserted is based on the strict liability of the indemnified party.

11. **REPRESENTATIVES**

11.1. PREPA's Project Manager

- (a) Within ten (10) Business Days after the LNTP Date, PREPA must nominate PREPA's Project Manager. Concurrently with such nomination, PREPA must provide to AOG (i) full details of the curriculum vitac of the proposed PREPA's Project Manager and (ii) evidence of the due appointment and authorization of such person, including (A) any formalities that may be required by law and (B) the scope of such person's authority, including any limitations thereon. AOG shall be entitled to interview the proposed PREPA's Project Manager if so requested by AOG. PREPA's Project Manager shall possess a working knowledge of the English language and be able to communicate proficiently in written and spoken English.
- (b) PREPA's Project Manager shall represent and act for PREPA at all times during the term of this Agreement, and PREPA shall be bound by the actions of PREPA's Project Manager, and all matters within the knowledge of PREPA's Project Manager are deemed to be within the knowledge of PREPA. PREPA shall be responsible for the acts and omissions of PREPA's Project Manager and any other Personnel as if such acts and omissions had been performed directly by PREPA

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- (c) All notices, instructions, information and all other communications given by AOG or AOG's Project Manager to PREPA under this Agreement must be given to PREPA's Project Manager, except as otherwise provided.
- PREPA must not revoke the appointment of PREPA's Project Manager without prior notification to AOG. After such notification, such PREPA's Project Manager's appointment will cease and PREPA must nominate some other person as PREPA's Project Manager pursuant to the procedure set out in Clause 11.1(a).
- (e) PREPA's Project Manager may at any time delegate to any person any of the powers and duties vested in him, or revoke such delegation, on provision to AOG of written notice signed by PREPA (i) specifying the powers and duties that are to be delegated or revoked, (ii) listing the persons to or from whom such powers and duties are to be delegated or revoked and (iii) setting forth a comprehensive summary of (A) all persons to whom PREPA's Project Manager has delegated powers or duties that have not been revoked and (B) the delegated powers and duties of such persons. Any prior delegation pursuant to this Clause 11.1(e) to a person not described in the summary described in clause (iii) of the preceding sentence shall be deemed to have been revoked and such person shall have no further authority to act on behalf of PREPA or PREPA's Project Manager. Any act or exercise by any person of powers and duties properly delegated to him in accordance with this Clause 11.1(e) shall be deemed to be an act or exercise by PREPA's Project Manager.
- (f) PREPA's Project Manager shall be entitled to exercise any right (including the exercise of a discretion) and perform any obligations of PREPA or otherwise take any actions permitted under this Agreement, and AOG shall be entitled to treat any such exercise or performance by PREPA's Project Manager as the exercise or performance of the same by PREPA; provided, however, that the authority of PREPA's Project Manager to approve certain expenditures shall be subject to pre-approval by PREPA management.
- (g) PREPA may from time to time replace PREPA's Project Manager with any other person in accordance with the procedures set forth in Clause 11.1(a); provided that PREPA shall, within three (3) days of any replacement under this Clause 11.1(g), confirm such replacement to AOG in writing.
- (h) AOG must comply with PREPA's Project Manager's directions that are consistent with AOG's obligations hereunder.

11.2. AOG's Project Manager and Site Manager

(a) Within ten (10) Business Days after the LNTP Date, AOG must nominate AOG's Project Manager. AOG must provide, upon request by PREPA, full details of the curriculum vitae of the proposed AOG's Project Manager and evidence of the due appointment and authorization of such person, including any formalities that may

be required by law, and PREPA shall be entitled to interview the proposed AOG's Project Manager if so requested by PREPA.

- (b) AOG's Project Manager shall represent and act for AOG at all times during the term of this Agreement, and AOG shall be bound by the actions of AOG's Project Manager, and all matters within the knowledge of AOG's Project Manager are deemed to be within the knowledge of AOG. AOG shall be responsible for the acts and omissions of AOG's Project Manager and any other Personnel as if such acts and omissions had been performed directly by AOG.
- (c) All notices, instructions, information and all other communications given by PREPA or PREPA's Project Manager to AOG under this Agreement must be given to AOG's Project Manager, except as otherwise provided.
- (d) AOG must not revoke the appointment of AOG's Project Manager without prior notification to PREPA. After such notification, AOG's Project Manager's appointment will cease and AOG must nominate some other person as AOG's Project Manager pursuant to the procedure set out in Clause 11.2(a).
- (e) AOG's Project Manager may at any time delegate to any person any of the powers and duties vested in him, or revoke such delegation, on provision to AOG of written notice signed by AOG (i) specifying the powers and duties that are to be delegated or revoked, (ii) listing the persons to or from whom such powers and duties are to be delegated or revoked and (iii) setting forth a comprehensive summary of (A) all persons to whom AOG's Project Manager has delegated powers or duties that have not been revoked and (B) the delegated powers and duties of such persons. Any prior delegation pursuant to this Clause 11.2(e) to a person not described in the summary described in clause (iii) of the preceding sentence shall be deemed to have been revoked and such person shall have no further authority to act on behalf of AOG or AOG's Project Manager. Any act or exercise by any person of powers and duties properly delegated to him in accordance with this Clause 11.2(e) shall be deemed to be an act or exercise by AOG's Project Manager.
- (f) From the commencement of the LNTP Works at the Site until the Final Acceptance Date, AOG's Project Manager must appoint a suitable person to act as the Site Manager, who must personally supervise all work done at the Site by AOG and must be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Works, and whenever the Site Manager is absent from the Site, a suitable person must be appointed to act as the Site Manager's deputy.
 - g) Without prejudice to Clause 11.2(c), PREPA or PREPA's Project Manager must give all notices, instructions, information and other communications appertaining to the execution of the Works at the Site to the Site Manager, or, in his absence, his deputy.

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- (h) PREPA may by notice to AOG object to any representative or person appointed by AOG under Clause 11.2(a) or 11.2(e) and/or to any person to whom AOG's Project Manager delegates any powers or duties under Clause 11.2(e), who is, in any such case, in the reasonable opinion of PREPA, incompetent, negligent, guilty of misconduct or guilty of a serious breach of the Site Regulations or an Onshore Site Access Agreement or whose involvement is reasonably considered by PREPA not to be in the best interests of the Works and the Facilities. Upon receipt of such notice, AOG must remove that person from the Works and must not employ that person on the Site or in activities connected with the Works without PREPA's approval, and must promptly appoint a replacement.
- AOG may from time to time replace AOG's Project Manager with any other person in accordance with the procedures set forth in Clause 11.2(a); provided that AOG shall, within three (3) days of any replacement under this Clause 11.2(i), confirm such replacement to PREPA in writing.

12. AOG'S ORGANIZATION

12.1. Organization Chart

- (a) Within twenty-one (21) Business Days after the Effective Date, AOG must supply to PREPA for approval, not to be unreasonably delayed or withheld, a preliminary organization chart showing the proposed organization to be established by AOG for carrying out the Works, including, to the extent known, the identities of the Key Personnel specified in Schedule 4, together with the curricula vitae of such Key Personnel. PREPA shall be deemed to have approved the organization chart if it makes no objection within ten (10) Business Days after its receipt. If PREPA objects to such organization chart, AOG must submit a replacement within ten (10) Business Days of such objects to any of the proposed Key Personnel within such ten (10)-Business Day period, then AOG must nominate a replacement or replacements, as applicable, within ten (10) Business Days of such objection, and this Clause 12.1(a) shall apply to such replacements.
- (b) Within twenty-one (21) Business Days after LNTP, AOG must supply to PREPA for approval, not to be unreasonably delayed or withheld, an updated organization chart showing the proposed organization to be established by AOG for carrying out the Works, including the identities of the Key Personnel specified in Schedule 4, together with the curricula vitae of such Key Personnel. The approval process described in Clause 12.1(a) shall apply to finalization of such updated organization chart.
 - AOG must promptly notify PREPA of any proposed revision or alteration of the preliminary or updated organization charts described in this Clause 12.1, which must not be made without the prior approval of PREPA's Project Manager, which approval shall not be unreasonably withheld or delayed.

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12.2. Key Personnel

- (a) The Key Personnel are to be engaged throughout the execution of the Works in the positions set out in Schedule 4.
- (b) AOG must ensure that any individual member of its Key Personnel is readily available to discuss, explain or make presentations to PREPA and its designees on any part of the Works for which it is responsible.
- (c) AOG may only remove or replace a member of the Key Personnel with the prior approval of PREPA's Project Manager; <u>provided</u> that any substitute Personnel must be at least equally qualified for the duties of the position as the person for whom they are substituted, and there is an uninterrupted transition between the Key Personnel and their replacements.

12.3. Use of Local Labor

As far as it is reasonable and economically practicable to do so, AOG must use labor available from Puerto Rico. AOG shall maintain and, upon request, make available to PREPA a list of (a) Personnel hired from Puerto Rico and (b) a list of open job positions available to persons from Puerto Rico.

12.4. Replacement of Persons

- (a) PREPA's Project Manager is entitled to direct the removal of any person engaged in the performance of the Works if, in PREPA's reasonable opinion, that person is incompetent, negligent or guilty of misconduct.
- (b) Upon any such direction, AOG must promptly remove, or arrange for the removal of, the person specified and appoint a suitable replacement.

13. WORKS PROGRAM AND PROGRESS

13.1. Project Schedule

Without prejudice to AOG's obligation pursuant to the Completion Guarantee, AOG must use reasonable efforts to proceed with the Works in accordance with the Project Schedule; <u>provided</u> that AOG's obligations, and PREPA's rights and remedies, for AOG's failure to proceed with the Works in accordance with the Project Schedule shall be limited to those set forth in Clauses 13.3, 13.4 and 21.

13.2. Progress Reports

AOG must monitor progress of all the activities specified in the Project Schedule, and supply a progress report in the form provided in Schedule 19 to PREPA's Project Manager by the tenth (10th) day of each month, or more frequently as PREPA's Project Manager may reasonably direct, detailing progress of all activities specified in the Project Schedule for the previous month.

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13.3. Revised Project Schedule

- (a) AOG shall deliver a revised Project Schedule to PREPA that incorporates the Draft EIS no later than ten (10) Business Days after issuance of such Draft EIS by FERC.
- (b) AOG shall deliver a revised Project Schedule to PREPA no later than five (5) Business Days after issuance the LNTP. Such revised Project Schedule shall be the baseline for all subsequent progress reports delivered by AOG in accordance with Clause 13.2.
- (c) If at any time AOG's actual progress on the critical path falls behind the Project Schedule, or it becomes apparent that it will fall behind, AOG must notify PREPA's Project Manager as soon as reasonably practicable and promptly prepare and submit to PREPA's Project Manager for its acknowledgment a revised Project Schedule showing all or any changes to the critical path taking into account the prevailing circumstances and notify PREPA's Project Manager of the actions being taken to expedite progress so as to achieve the Completion Guarantees. If at any time it becomes apparent to PREPA that AOG's progress on the critical path has fallen behind or will fall behind, PREPA may require AOG to prepare and submit to PREPA's Project Manager for its acknowledgment a revised Project Schedule, demonstrating how the lost time will be recovered, as previously described in this Clause 13.3, and AOG shall comply with any reasonable instructions of PREPA's Project Manager to proceed with the Works in accordance with such revised Project Schedule. For the avoidance of doubt, changes to the Project Schedulc pursuant to this Clause 13.3(c) or otherwise shall not impact the Schedule Project Variables and an extension to the Schedule Project Variables shall be governed exclusively by Clause 23.3.

13.4. Progress of the Works

- (a) AOG must use reasonable efforts to avoid or otherwise mitigate delay in the progress of the Works due to any cause whatsoever.
- (b) If, in the opinion of PREPA's Project Manager, a delay in the progress of the Works attributable to AOG is such that there is a reasonable likelihood that there will be a delay in the achievement of Substantial Completion by the Substantial Completion Deadline, PREPA may give a notice to AOG requiring AOG to remedy the delay.

14. SUBCONTRACTS

14.1. Subcontracting

(a) (a)

The parties acknowledge that AOG intends to subcontract performance of the Works. Subject to this Clause 14, AOG may subcontract the Works.

- (b) AOG may enter into Subcontracts other than Major Subcontracts without PREPA's consent; <u>provided</u> that in all cases AOG must only engage Subcontractors that are safe, environmentally responsible, careful, skilled, experienced, licensed (where so required) and competent in their respective disciplines.
- (c) AOG shall remain liable for the performance of Subcontractors it engages and for the performance of Engineers and AOG shall remain liable for performance of all Warranty work pursuant to Clause 19, without regard to whether a warranty provided in a Subcontract, an Engineers Agreement or otherwise is more narrow than the Warranty.

14.2. Approval

- (a) Prior to entering into any Major Subcontract, AOG must seek the written approval of PREPA's Project Manager of the proposed Major Subcontract; provided that PREPA's Project Manager shall (i) approve any Major Subcontract reasonably proposed by AOG and (ii) not unreasonably withhold, delay or condition such approval; provided, however, that it shall be reasonable for PREPA's Project Manager to reject any proposed Major Subcontract that does not contain each of the terms set forth in Clause 14.4(a). Any request for such approval must be made not later than ten (10) days (or, in the case of Supermajor Subcontracts. thirty (30) days) prior to the date on which AOG wishes to enter into such Major Subcontract and failure to do so will entitle PREPA's Project Manager to withhold its approval. PREPA shall have a period of ten (10) days (or, in the case of Supermajor Subcontracts, thirty (30) days) in which to withhold or provide its approval thereof If PREPA elects not to approve such Major Subcontract, it shall promptly notify AOG of the basis therefor. Failure of PREPA to timely respond to such notice or to provide a reasonable basis for non-approval of such Major Subcontract shall be deemed to be an approval by PREPA of such Major Subcontract
- (b) Any request for approval for Major Subcontracts in accordance with Clause 14.2(a) must include:
 - (i) full particulars in writing of the Works to be subcontracted;
 - (ii) the proposed site for the subcontracted work;
 - (iii) the name and address of the proposed Major Subcontractor;
 - (iv) information establishing the proposed Major Subcontractor's license (if required) and previous experience and qualifications to successfully execute such subcontracted work;
 - (v) the proposed terms of such Major Subcontract and, if applicable, how it deviates from the requirements of Clause 14.4(a);

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- (vi) the process and criteria used by AOG for the selection of such Major Subcontractor; and
- (vii) any other information reasonably requested by PREPA's Project Manager for the purpose of determining whether to approve the proposed Subcontract.

14.3. Responsibility

- (a) AOG acknowledges and agrees that subcontracting does not relieve AOG from any of its liability or obligations under this Agreement.
- (b) AOG shall fulfill all of its duties, obligations and liabilities under the Direct Subcontracts promptly upon such duties, obligations and liabilities falling due.
 AOG shall diligently exercise its rights under the Direct Subcontracts for the benefit, and in the best interests, of PREPA, the Works and the Facilities.
- (c) AOG is liable to PREPA for the acts and omissions of Subcontractors and their employees and agents, as if they were acts or omissions of AOG, and no approval of any Subcontractor or the terms of any Subcontract (including a Major Subcontract) by PREPA or PREPA's Project Manager will imply in any way that such Subcontractor has been nominated by PREPA, nor will it diminish in any way AOG's responsibility and liability for the acts and omissions of that Subcontractor.

14.4. Terms of Major Subcontracts

- (a) Each Major Subcontract must include provisions that the Subcontractor undertakes to AOG obligations and liabilities which will enable AOG to discharge AOG's obligations and liabilities to PREPA under the terms of this Agreement in respect of the subcontracted work, including, to the extent commercially reasonable:
 - (i) indemnities given by such Subcontractor for the benefit of PREPA;
 - (ii) a termination for convenience provision which enables PREPA to mitigate cost impacts to the greatest extent possible, including (A) for materials and equipment Subcontracts, provisions for cancellation fees at various stages of materials or equipment fabrication, plus reasonable order disruption fees and (B) for labor and other services Subcontracts, provisions for a cancellation payment that includes only work performed under the Subcontract up to the effective date of cancellation, plus demobilization costs;
 - (iii) insurance requirements consistent with those contained in this Agreement;
 - (iv) liability of the Subcontractors for defects which may arise in such subcontracted work similar to the liability of AOG under this Agreement;

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- (v) a provision entitling AOG to compensation for delay;
- (vi) provisions similar to Clauses 46.3(a) and 46.3(b), providing for and enabling the license by the Subcontractor to PREPA of all Project IP;
- (vii) where the Subcontract includes the undertaking of fabrication work, a warranty by the Subcontractor that it has reviewed the drawings provided by AOG and that such drawings will be suitable for the fabrication work proposed;
- (viii) a provision that PREPA and PREPA's Project Manager are able to enter upon the site upon which the Subcontractor is undertaking the subcontracted work at reasonable times and for reasonable durations;
- (ix) a provision permitting for retention of at least four percent (4%) of the Subcontract price payable to the Subcontractor until final completion of such Subcontract;
- upon the termination of this Agreement or repudiation or abandonment of this Agreement by AOG, if so directed by PREPA, undertakings that such Subcontractor will:
 - subject to having been paid therefor, provide to PREPA all designs, documents, materials and other things intended for incorporation in the Works; and
 - (B) acquiesce in the assignment or novation to PREPA at PREPA's absolute discretion of AOG's interests in such Subcontract without payment of any transfer fees or additional costs to PREPA other than the originally agreed prices for the subcontracted services performed to date; and
- (xi) in the case of Supermajor Subcontracts, a provision that the Subcontractor party thereto shall comply with the obligations set forth in Clause 12.3.
- (b) The approval (or deemed approval) of any Major Subcontract by PREPA pursuant to Clause 14.2 shall evidence PREPA's approval of any provision of such Major Subcontract that does not comply with the requirements of Clause 14.4(a).
- (c) No later than ten (10) days after the execution of each Major Subcontract, AOG shall provide PREPA with a copy of such Major Subcontract.

14.5. Exercise of Rights under Major Subcontracts

(a) PREPA may at any time request that AOG exercise or enforce any provision of, or any right of AOG under and in accordance with, a Major Subcontract and AOG shall take all reasonable steps to promptly comply with such request. If any such requested action is inconsistent with AOG's obligations hereunder, AOG shall be

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entitled to a Change pursuant to Clause 38 for any delay suffered or increased costs incurred.

- If during the Warranty Period PREPA makes a request of AOG in accordance (b)with Clause 14 5(a) and AOG fails to promptly exercise or enforce its rights under a Major Subcontract as requested, then PREPA shall have the right to "step-in" to exercise or enforce such rights;
- (c) AOG shall not, without PREPA's prior written consent, agree in writing with a Major Subcontractor to:
 - (i) waive any of its rights under a Major Subcontract;
 - (ii) waive any obligation, breach, liability or other matter under a Major Subcontract to the benefit of a Subcontractor;
 - (iii) award an extension of time, increase the contract price payable or grant any other relief under a Major Subcontract:
 - terminate or suspend the performance of work under a Major Subcontract; (iv)
 - (v)allow a Subcontractor to transfer any of its rights and/or obligations under a Major Subcontract (unless such Major Subcontract expressly provides otherwise):
 - (vi)allow any increase or reduction in the scope, or any other variation, supplement or amendment to the terms, of a Major Subcontract; nor
 - (vii) permit a settlement of a claim against such Major Subcontractor or against such Major Subcontractor's bonding company or insurance provider.

14.6. No Restrictions

AOG warrants that it has no agreement, arrangement or understanding with any person which:

- would or might restrict the supply of Spare Parts to PREPA or to any O&M (a) Contractor for the Works:
- would, directly or indirectly, interfere with, restrict or impede PREPA in the (b)exercise of any right or remedy under this Agreement; or
- otherwise, consequent on the away 14.7. Payment of Subcontractors by PREPA If a Subcontractors by PREPA would entitle AOG, directly or indirectly, to any benefit, whether financial or (c) otherwise, consequent on the award of a Subcontract to such Subcontractor.

If a Subcontractor alleges to PREPA that AOG is in default of its payment obligations under a Major Subcontract, PREPA shall (a) promptly notify AOG thereof and (b) have the right, upon compliance by PREPA with applicable Law (including the Puerto Rico Civil Code) and after discussion with AOG with respect thereto, to make payment of such amount directly to such Subcontractor. Such direct payment to the Subcontractor shall be deemed to be a payment under this Agreement and AOG shall have no further entitlement to such amount.

15. DESIGN AND ENGINEERING SERVICES

15.1. Procurement of Design and Engineering Services

- (a) Notwithstanding any provision in this Agreement to the contrary, PREPA hereby acknowledges and agrees that (i) AOG is not licensed to practice engineering in Puerto Rico and (ii) nothing contained herein shall be construed as (A) an offer or agreement by AOG to itself practice engineering within Puerto Rico or to itself render such engineering services or (B) requiring or allowing AOG to perform any Design and Engineering Services nor as requiring or allowing any Engineer to perform any construction services or other Works. Therefore, AOG shall evaluate and select, following the same process used to execute Supermajor Subcontracts under Clause 14, the Engineers that shall be retained to perform the Design and Engineering Services. Promptly upon selection by AOG, PREPA and each Engineer shall execute an Engineers Agreement and/or such further agreements. instruments and documents which are necessary to ensure compliance with the Engineering Act. AOG shall cause the Engineers to expressly and irrevocably assume all responsibility for performing any task or obligation which constitutes (or which now or hereafter could be construed to constitute) Design and Engineering Services; provided that, in order to induce PREPA to enter into this Agreement, AOG has, pursuant to this Agreement (including Clauses 14.1(c) and 19) expressly assumed responsibility for all obligations of the Engineers with respect to the Design and Engineering Services to be performed in accordance with this Agreement.
- (b) AOG shall not undertake itself the Design and Engineering Services. All of the natural persons who will be performing Design and Engineering Services in Puerto Rico shall at all times during the performance of the Design and Engineering Services be engineers and/or architects licensed in Puerto Rico and members in good standing of the "Colegio de Ingenieros y Agrimensores de Puerto Rico" and/or the "Colegio de Arquitectos de Puerto Rico". Any legal entity contracted to perform the Design and Engineering Services in Puerto Rico shall be a professional services corporation, partnership or limited liability company duly authorized to perform design and/or engineering services in Puerto Rico in accordance with the Engineering Act.

(c)

AOG shall not sign or certify any preliminary or final drawings or documents and/or engage in the exercise of the engineering profession, architectural profession and/or any other profession, or receive any compensation for the performance of Design and Engineering Services, in violation of any Laws. Except to the extent permitted by applicable Laws, only natural persons practicing the profession as individuals or as partners, members, shareholders or employees of a civil partnership, limited liability company or professional services corporation completely owned by natural persons who possess a license to practice the engineering profession and/or architecture profession in Puerto Rico, and who are members in good standing of the "Colegio de Ingenieros y Agrimensores de Puerto Rico" and/or the "Colegio de Arquitectos de Puerto Rico," and which persons themselves possess a license to practice the engineering profession and/or architecture profession in Puerto Rico, and who are also members in good standing of the "Colegio de Ingenieros y Agrimensores de Puerto Rico" and/or the "Colegio de Ingenieros y Agrimensores de Puerto Rico" and/or the "Colegio de Arquitectos de Puerto Rico" may sign any preliminary or final drawings or documents and/or engage in the practice of the engineering profession and/or architecture profession, and the Engineers shall only sign or certify any such drawings or documents or engage in such profession to the extent qualified to do so under Law.

(d) This Agreement shall be construed and enforced, to the maximum extent permitted by Law, as requiring the Engineers alone to perform the Design and Engineering Services. If, notwithstanding the provisions of this Clause 15, any provision of this Agreement could be construed as requiring or allowing AOG to perform any task or obligation constituting Design and Engineering Services (or intended by the parties to constitute Design and Engineering Services), which if so performed by AOG would constitute a violation of Law, such provision shall be deemed severable from the remaining provisions of this Agreement to the extent required to preserve the enforceability of all other provisions of this Agreement.

15.2. Assumption of Risks; Defaults by Engineers

- (a) As between PREPA and AOG, AOG shall bear all financial risks of any default, non-performance or unsatisfactory performance by the Engineers in the performance of the Design and Engineering Services.
- (b) If any default in connection with Design and Engineering Services (including the failure of the Engineers to perform the Design and Engineering Services) shall have occurred and be continuing under this Agreement, AOG (as the party financially liable for all Design and Engineering Services) shall be entitled in the place and stead of the defaulting Engineer to remedy such default by retaining a substitute Engineer in accordance with the provisions of Clause 15.2(d). Schedule Project Variables shall not be modified based on the substitution of the Engineer unless previously approved by PREPA. Notwithstanding PREPA's approval, any cost incurred in connection with the Design and Engineering Services to be performed by the substitute Engineer shall be considered a Non-Allowable Cost to the extent that such cost is in excess of the amount budgeted in the Project Capital Budget for such expense.

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If any default in connection with Design and Engineering Services shall have occurred and be continuing under this Agreement and AOG does not perform its

obligations under Clause 15.2(b), PREPA is hereby authorized, although it is not obligated, to retain directly one (1) or more persons, each of whom shall be qualified Engineers under applicable Laws to perform such unperformed or defaulted Design and Engineering Services in the place and stead of the defaulting Engineer.

- (d) As noted in Clause 15.1(a), the Engineers shall be selected and retained by AOG to perform the Design and Engineering Services and, upon selection of an Engineer by AOG, AOG, PREPA and each Engineer shall execute an Engineers Agreement and/or such further agreements, instruments and documents which are necessary to ensure compliance with the Engineering Act. Notwithstanding the foregoing, PREPA acknowledges and agrees that AOG's ability to properly and satisfactorily perform the Works is, in part, dependent upon the Engineers' proper and satisfactory performance of the Design and Engineering Services. If AOG determines that any Engineer is not properly or satisfactorily performing the Design and Engineering Services for which it is responsible in accordance with terms of this Agreement, AOG shall give prompt notice to PREPA of such determination and, in AOG's reasonable discretion and following the same process used to execute Supermajor Subcontracts under Clause 14, AOG shall promptly select (after consultation with PREPA regarding such appointment), in addition to or in replacement of the defaulting Engineer, another person or persons to perform the Design and Engineering Services for which such defaulting Engineer is responsible. PREPA, AOG and such substitute Engineer shall execute an Engineers Agreement and/or such further agreements. instruments and documents which are necessary to ensure compliance with the Engineering Act.
- (e) AOG (and not the Engineers) shall be responsible for the means, methods, techniques, sequences or procedures of construction selected by AOG in carrying out the Works, for safety precautions and programs incident to the Works, and for any failure of AOG to comply with laws, rules, regulations, ordinances, codes or orders applicable to AOG's performance of the Works. The Engineers shall not, during visits to the Site or otherwise in the performance of the Design and Engineering Services, have authority over or responsibility for the means. methods, techniques, sequences or procedures related to the Works (other than the Design and Engineering Services) or safety precautions and programs incident to the work of AOG, or for any failure of AOG to comply with laws, rules, regulations, ordinances, codes or orders applicable to AOG's performance of the Works.

5.3. Limitation on the Engineers' Liability

Although AOG is financially liable hereunder for all obligations and responsibilities of the Engineers in the performance of the Design and Engineering Services, PREPA expressly acknowledges and agrees that no term or provision of this Agreement is intended to make the Engineers jointly liable with AOG for the acts or omissions of AOG in the performance of the Works (other than Design and Engineering Services).

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15.4. Drawings and Documents

AOG must provide to PREPA's Project Manager for review copies of Engineers' drawings and documents in accordance with Part 2 of Schedule 2.

15.5. **Comments on Design Information**

Without prejudice to PREPA's rights under Clause 38, PREPA's Project Manager may, within ten (10) days of receipt of any design information (or such longer period, notified by PREPA's Project Manager to AOG, as may be reasonable given the timing, complexity and rate of submission), comment thereon if, in its opinion, such design information is not in accordance with the terms of this Agreement, and the Engineers must amend the design information to take into account such comments. If PREPA's Project Manager does not comment on such design information within the abovementioned period (or, if applicable, the longer period referred to), such design information shall be deemed to be approved.

15.6. AOG Responsibility

AOG acknowledges that any comments or approval or failure to comment or approve by PREPA's Project Manager in accordance with Clause 15.5 will not relieve AOG of any of its responsibility for the completion of the Works (including the Prior Works) or any other obligation in accordance with this Agreement.

16. PROCUREMENT

Transportation 16.1.

- AOG must procure and transport at its own risk all the Equipment and the (a) Construction Equipment to the Site in an expeditious and orderly manner.
- Unless otherwise provided in this Agreement, AOG is entitled to select any mode (b)of transport operated by any person to carry the Equipment and the Construction Equipment.
- (c) Upon dispatch of each shipment of significant items of Equipment and the Construction Equipment, AOG must notify PREPA's Project Manager of the description of the Equipment and the Construction Equipment, the point and means of dispatch and the estimated time and point of delivery at the Site, and AOG must furnish PREPA with relevant shipping documents.
- AOG is responsible for obtaining, if required, all Permits for transportation of the (d) Equipment and the Construction Equipment to the Site.

16.2. Customs Clearance (a) AOG shall be responsible for the importation into Puerto Rico of all goods, tools, materials, Equipment, Construction Equipment and supplies required for the

Works, whether provided by AOG or a third party, and PREPA will reimburse AOG as Capital Costs for all import services and customs fees incurred in connection therewith.

(b) AOG must handle all imported Equipment and the Construction Equipment at the point(s) of import, and from the point of import to the Site.

17. QUALITY ASSURANCE

17.1. Quality Assurance and Control

AOG shall comply with the requirements on quality assurance and quality control set out in Section 10 of Part 1 of Schedule 3.

17.2. **Conflict With Other Obligations**

In case of any conflict between the quality assurance requirements specified in Section 10 of Part 1 of Schedule 3 and AOG's other obligations under this Agreement, the latter shall prevail.

17.3. PREPA's Liability

Notwithstanding any knowledge of PREPA of, or involvement by PREPA in, AOG's quality assurance and control program, or PREPA's approval thereof, PREPA is not:

- responsible in any way to ensure conformity of the Works with the requirements (a) of this Agreement; or
- liable to AOG for, and in connection with, the quality assurance requirements (b) specified in this Agreement or any consequences of those requirements.

18. CONSTRUCTION

18.1. Setting Out

- AOG is responsible for the true and proper setting out of the Works, including in (a) relation to bench marks, reference marks and lines.
- If, at any time during the progress of the Works, any error appears in the position, (b) level, settlement of foundations or alignment of the Works, AOG must notify PREPA's Project Manager of such error and promptly rectify such error to the reasonable satisfaction of PREPA's Project Manager at AOG's cost, and such cost shall be a Non-Allowable Cost.

18.2. Supervision (a) AOG the W AOG must give or provide all necessary superintendence during the execution of the Works, and the Site Manager or his deputy must be present on the Site

throughout normal working hours to provide full-time superintendence of the Works.

(b) AOG must provide and employ only such technical Personnel as are skilled and experienced in their respective callings and such supervisory staff as are competent to give adequate supervision to the work they are required to supervise.

18.3. Labor

- (a) Unless otherwise provided in this Agreement, AOG is responsible for the recruitment, employment, transportation, accommodation, catering and remuneration of all skilled, semi-skilled and unskilled labor, both local or expatriate, required for the execution of the Works, and AOG acknowledges and agrees that:
 - (i) it will have no entitlement to any extension of time or other compensation due to any shortages of such labor; and
 - (ii) PREPA has no responsibility to AOG or any person employed by AOG in respect of remuneration, annual sick leave, long service leave, public holidays, redundancy payments or any other similar benefits under any applicable Law.
- (b) AOG is solely responsible for:
 - (i) obtaining all necessary permits or visas from the appropriate authorities for the entry into Puerto Rico of all labor and Personnel to be employed on the Site, but PREPA will, upon request from AOG, render reasonable assistance to AOG in obtaining such employee work permits or visas; and
 - (ii) industrial relations connected with the performance of the Works (including, if necessary, discussions and negotiations with all relevant unions in relation to any industrial action relating to the Works), and AOG must keep PREPA's Project Manager informed of any disputes with or demands by its and the Subcontractors' workforce and any other circumstances which could result in industrial action affecting the normal working of the Site.
- (c) AOG's and the Subcontractors' employees must work in accordance with the relevant labor agreements, Site agreements and the arrangements in place from time to time, and AOG must at all times during the progress of the Works use reasonable efforts to prevent any unlawful, riotous or disorderly conduct or behavior by or among its employees and the labor of its Subcontractors.
 -) Subject to Clause 18.9, AOG must, in all dealings with its labor and the labor of its Subcontractors for the time being employed on or in connection with the Works, pay due regard to all relevant recognized festivals, official holidays and religious or other customs.

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18.4. Construction Equipment

- (a) All Construction Equipment brought by AOG onto the Site is deemed to be intended to be used exclusively for the execution of the Works and AOG must not remove the same from the Site until such Construction Equipment is no longer required for the execution of the Works. AOG shall be responsible for all customs formalities in respect of the Construction Equipment and for the payment of all duties in respect thereof, which shall be passed through to PREPA as Capital Costs.
- (b) Subject to Clause 18.4(c), title to and ownership of all Construction Equipment will remain with AOG and risk of damage to such Construction Equipment remains with AOG.
- (c) Unless otherwise specified in this Agreement, upon completion of the Works. AOG must remove from the Site all Construction Equipment brought by AOG onto the Site, and any surplus Construction Equipment or other materials remaining on the Site for a period of six (6) months after the Final Acceptance Date, without requirement for the consent of AOG, will, upon thirty (30) Business Days' prior notice to AOG, vest in and become the property of PREPA unless removed before the expiration of such notice period.
- (d) PREPA will, if requested, render reasonable assistance to AOG in obtaining any Permit required by AOG for the export of Construction Equipment imported by AOG for use in the execution of the Works which is no longer required for the execution of the Works.
- If ownership or property rights to any Construction Equipment, either wholly or (e) partly, vest in some person other than any AOG Person, AOG must notify PREPA of the name and address of such third party. In order to avoid seizure by such third party of any such Construction Equipment, PREPA may pay to such person the amount of any rent. overdue installment or other sums payable to that person and, to the extent PREPA has previously paid AOG such amount, such amount shall be a debt due and payable by AOG to PREPA on demand and may be deducted from any payments otherwise due from PREPA to AOG. AOG shall ensure that any agreement between AOG and such other person in relation to Construction Equipment contains a provision that such person will, on request in writing made by PREPA within thirty (30) days after the date on which any seizure has become effective and on PREPA undertaking to pay all hire charges in respect thereof, from such date, hire such Construction Equipment to PREPA on the same terms in all respects as the same was hired to AOG, save that PREPA shall be entitled to permit the use thereof by any other contractor employed by it for the purpose of completing the Works in the event of termination of this Agreement.

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18.5. Site Regulations

- (a) AOG must, within thirty (30) days after the LNTP Date, prepare and submit to PREPA proposed Site Regulations for PREPA's Project Manager's approval, setting out the rules to be observed by all people on the Site during the execution of the Works. Such Site Regulations shall be consistent with the Onshore Site Access Agreement and include provisions prohibiting the possession or use of alcohol, drugs and weapons at or in the vicinity of the Site.
- (b) Once the Site Regulations are approved by PREPA's Project Manager, each AOG Person and PREPA Person must comply with the Site Regulations.

18.6. Occupational Health and Safety and Environment

Without prejudice to and without limiting Clause 10.4:

- (a) AOG must give priority to and is responsible for ensuring safe and environmentally responsible working practices in relation to this Agreement;
- (b) in addition to complying with all applicable Laws concerned with occupational health, safety and environment that are applicable to the performance of the Works (including such Laws that are not in effect at the Effective Date), AOG must comply with the provisions on health, safety and environment set out in Schedule 22;
- (c) in the event that PREPA discovers or becomes aware of a materially unsafe practice or material breach of AOG's obligations under this Agreement relating to health, safety and environment, then in addition to any other rights under this Agreement, PREPA's Project Manager may immediately suspend the performance of the Works by written notice to AOG's Project Manager associated with such unsafe practice or breach, and will not lift the suspension until the work area is made safe and the unsafe practice removed, or the breach is rectified; and
- (d) all costs and delay or disruption caused by a suspension pursuant to
 Clause 18.6(c) are the responsibility of AOG, and (i) such costs shall be a Non-Allowable Cost and (ii) AOG will have no right to any extension of time or other compensation as a consequence of such suspension.

18.7. Emergency Work

- (a) If, by reason of an emergency arising in connection with and during the execution of the Works, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Works, AOG must promptly carry out such work.
 - If AOG is unable or unwilling to do such work promptly, PREPA may do or cause to be done such work as PREPA may determine is necessary in order to prevent damage to the Works, and as soon as practicable after the occurrence of

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any such emergency, PREPA must notify AOG of such emergency, the work done and the reasons for such work.

(c) If the work done or caused to be done by PREPA in accordance with Clause 18.7(b) is work which AOG was liable to do at its own expense under this Agreement, the reasonable costs incurred by PREPA as a result thereof shall be a debt due and payable to PREPA on demand and may be deducted from any payments otherwise due from PREPA to AOG, and such cost shall be a Non-Allowable Cost.

18.8. Site Clearance

In the course of carrying out the Works, AOG must keep the Site reasonably free from all unnecessary obstructions, and must store or remove any surplus materials, clear away from the Site any wreckage, rubbish or temporary works and remove any Construction Equipment no longer required for the execution of the Works.

18.9. The Works at Night and on Holidays

Unless otherwise provided in this Agreement, in any Permit or in order to meet the Project Schedule, the hours of work shall be as set out in Section 1.5 of Part 1 of Schedule 3 and at all other times no work will be carried out without the prior consent of PREPA's Project Manager. except where the work is necessary or required to ensure the safety of the Works or for the protection of life or to prevent loss of or damage to property, in which case AOG must advise PREPA's Project Manager as soon as reasonably practicable.

19. WARRANTY

19.1. The Warranty

- (a) Subject to Clause 19.1(b) and notwithstanding any approval given or withheld by PREPA under this Agreement, AOG warrants to PREPA that (all of the warranties listed in this Clause 19.1(a), collectively, the "Warranty"):
 - (i) at the Substantial Completion Date:
 - (A) the Facilities and each of their constituent parts will be free from defects and deficiencies, structural or otherwise; and
 - (B) the Works will have been performed strictly in accordance with this Agreement;
 - (ii) the Facilities and each of their constituent parts will be designed and engineered by the Engineers with all the skill, care and diligence to be expected of appropriately qualified, properly licensed and experienced professional designers and engineers with experience in designing and

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engineering facilities of a similar size, type, nature and complexity to the Facilities;

- (iii) the Facilities will be designed and engineered by the Engineers, and constructed as an integrated facility applying Good Industry Practices, and based on the manufacturers' specifications and guidelines for operation and maintenance and in accordance with industry standards;
- (iv) the Equipment and materials installed as part of the Facilities will:
 - (A) unless otherwise agreed, be new and unused and of first class quality;
 - (B) conform to the specifications and descriptions set forth in the Contract Documents;
 - (C) be free from any encumbrance or lien; and
 - (D) not be generally recognized in accordance with applicable industry standards as being deleterious or to be avoided for the purposes for which they are applied;
- (v) the Facilities and each of their constituent parts will be designed and engineered by the Engineers, and constructed, completed, tested and delivered:
 - (A) in accordance with applicable Laws, including, to the extent applicable, the Engineering Act;
 - (B) in accordance with Part 1 of Schedule 2 and Part 1 of Schedule 3;
 - (C) in accordance with manufacturers' specifications and guidelines;
 - (D) so as to not impair any warranty or guarantee of Equipment or Works assigned to PREPA; and
 - (E) so as to be capable of being operated in accordance with the requirements of this Agreement in a safe, environmentally responsible, economic and efficient manner and free from unreasonable risk to the health and well-being of persons involved in the operation and maintenance of the Facilities and from any avoidable risk of pollution, nuisance, interference or hazard; and
- (vi) without limiting AOG's obligations above, the Facilities and each of their constituent parts will comply at Substantial Completion with all applicable Laws then in effect or that have been officially published as of the Effective Date but have not yet come into effect.

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- (b) Notwithstanding Clause 19.1(a), AOG is not responsible for the repair. replacement or making good of any defect or of any damage to the Facilities to the extent that it arises out of or results from any of the following causes, which are excluded from the Warranty:
 - (i) improper use, operation or maintenance of the Facilities by a PREPA Person or any other person authorized by PREPA to use, operate or maintain the Facilities (other than an AOG Person), except where such operation or maintenance was performed (A) in accordance with the O&M Manual or (B) by AOG or an AOG Affiliate, as O&M Contractor;
 - (ii) operation of the Facilities or actual operating conditions at the Site outside the specifications provided in this Agreement, except where such operation was performed (A) in accordance with the O&M Manual or (B) by AOG or an AOG Affiliate, as O&M Contractor;
 - (iii) any work performed by or on behalf of PREPA to remedy a defect pursuant to Clause 19.2(e) or any damage to the Facilities caused by such work; and
 - (iv) normal wear and tear.

19.2. Warranty Obligations

- (a) Subject to Clause 19.1(b), AOG must, at such times as PREPA reasonably requires and in a manner which causes as little disruption to the operation of the Facilities as is reasonably possible, promptly repair, replace or otherwise make good, or promptly procure that the relevant Subcontractor or Engineer, as applicable, repairs, replaces or otherwise makes good, any defect in or damage to any part of the Facilities which PREPA notifies AOG thereof or which AOG or an AOG Affiliate identifies while performing its obligations under the O&M Agreement (for so long as AOG or an AOG Affiliate is the O&M Contractor), in each case during the Warranty Period and that arises from:
 - (i) any defective materials, workmanship, design or engineering; and/or
 - (ii) any other failure to comply with the Warranty, unless such failure to comply occurs as a direct result of inaccuracies or changes in the Background Information.
- Promptly following the discovery of a defect in the Facilities or any other breach of the Warranty, PREPA's Project Manager must give AOG a notice stating the nature of the defect together with all available cvidence, and PREPA must afford AOG (and its Subcontractors and other AOG Persons, as applicable), at PREPA's cost but subject to the restrictions set forth in Clause 8.2, all necessary access to the subject part, material or equipment subject to Warranty inspection and/or repair, and PREPA shall pay for all costs of labor, materials and equipment necessary to provide such access for Warranty inspection and/or repair by AOG in

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accordance with this Clause 19; <u>provided</u> that, except in an emergency, PREPA shall be obliged to afford such access only during periods of normal shut down for maintenance purposes.

- (c) AOG or any Subcontractor may, with the consent of PREPA, remove from the Site any item of the Facilities which is defective if the nature of the defect and/or any damage to the Facilities caused by the defect is such that repairs cannot be expeditiously carried out at the Site.
- (d) If the repair or replacement or making good is of such a character that it may affect the efficiency of the Facilities or any part of it, PREPA's Project Manager may give to AOG a notice requiring that tests be made by AOG or its Subcontractor of the defective part of the Facilities promptly on completion of such remedial work, whereupon AOG must carry out or procure the carrying out of such tests, and if such part fails the tests, AOG must carry out or procure the carrying out of further repair, replacement or making good (as the case may be) until that part of the Facilities passes such tests.
- (e) If AOG fails (whether directly or indirectly through a Subcontractor) to commence and continue the work necessary to remedy a defect or any damage to the Facilities caused by such defect within a reasonable time, PREPA may proceed to do such work at AOG's cost (unless such cost is an Allowable Warranty Cost, in which case it shall be reimbursable by PREPA), and such cost shall be a Non-Allowable Cost. The Warranty shall not apply to such work performed by PREPA.
- (f) Where PREPA's Project Manager, acting reasonably, considers that satisfactory repair, replacement or making good is made pursuant to this Clause 19, the Warranty Period will recommence from the date of completion of such repair, replacement or making good, but only in respect of that part of the Works so repaired, replaced or made good; <u>provided</u> that the Warranty Period in respect of any part of the Works so repaired, replaced or made good will not extend beyond two (2) years after the Substantial Completion Date.

19.3. Subcontractor Warranties

- (a) AOG acknowledges and agrees that (i) a Subcontractor may provide a warranty under a Subcontract that is broader in scope or longer in duration than the Warranty and (ii) in such case, PREPA shall have the benefit of such broader or longer warranty notwithstanding the exclusions set forth in Clause 19.1(b) or elsewhere in this Agreement.
- (b) If a warranty provided in a Subcontract extends beyond the Base Warranty Period, AOG shall take all necessary steps to ensure that PREPA receives an assignment of the benefits of such Subcontractor warranty. Until such assignment becomes effective, AOG shall be responsible for enforcing such Subcontractor warranty for the benefit of PREPA. Once such assignment becomes effective,

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AOG shall have no further obligation in respect of such Subcontractor warranty with respect to any period that extends beyond the Base Warranty Period.

19.4. No Other Warranties

Subject to Clause 19.3(a), the Warranty is in lieu of any other warranty, express or implied, of design, materials or workmanship, and all such warranties (including any implied warranty of merchantability, fitness for purpose or workmanlike performance) are hereby expressly excluded from this Agreement. All defects in the Works, whether arising in contract, tort (including negligence), strict liability, product liability or otherwise, shall be subject to the agreements and limitations of this Clause 19. For avoidance of doubt, failures not related to construction or design are not covered by this Clause 19.4.

PART 4 - COMPLETION

20. <u>COMPLETION GUARANTEE</u>

AOG guarantees that it will achieve Substantial Completion by the Substantial Completion Deadline and that it will achieve Final Acceptance by the Final Acceptance Deadline (the "**Completion Guarantees**").

21. DELAY LIQUIDATED DAMAGES

- (a) Subject to Clauses 38, 45 and 53.2, if AOG fails to achieve Substantial Completion by the Substantial Completion Deadline, AOG shall be liable to PREPA for liquidated damages in the amount specified in Schedule 8 from and including the day immediately following the Substantial Completion Deadline up to and including the Substantial Completion Date (the "Delay Liquidated Damages").
- (b) Delay Liquidated Damages shall become a debt due and payable to PREPA at the end of each thirty (30)-day period during which such damages accrue, and may be deducted from any payments otherwise due from PREPA to AOG.
- (c) The parties agree that the Delay Liquidated Damages are a fair and reasonable pre-estimate of the damages likely to be sustained by PREPA as a result of AOG's failure to attain Substantial Completion by the Substantial Completion Deadline.
- (d) The payment of Delay Liquidated Damages does not in any way relieve AOG from any of its obligations to complete the Works or from any other obligations and liabilities of AOG under this Agreement.
- (e) If this Clause 21 is found for any reason to be void, invalid or otherwise inoperative so as to disentitle PREPA from claiming Delay Liquidated Damages, PREPA shall be entitled to claim against AOG actual damages for AOG's delay

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in achieving Substantial Completion by the Substantial Completion Deadline; provided that such damages shall be limited by Clause 53.2(a).

(f) If AOG does not achieve the Completion Guarantee in respect of Final Acceptance, PREPA's sole remedy shall be to not pay the Retainage until it becomes payable in accordance with Clause 37.7.

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23. MODIFICATION OF THE SCHEDULE PROJECT VARIABLES

23.1. Notice of Delay

- (a) AOG must give notice to PREPA's Project Manager of all incidents, circumstances and/or events of any nature affecting or likely to affect the progress of the Works such that a Completion Guarantee will not be achieved ("Delay Events") as soon as reasonably practicable after AOG becomes aware thereof.
- (b) Subject to Clause 23.1(c), within ten (10) Business Days after such Delay Event has first arisen, AOG must give a further notice to PREPA's Project Manager, which must include:
 - the material circumstances of such Delay Event, including the cause or causes;
 - (ii) the nature and expected extent of any delay caused by such Delay Event;
 - (iii) the corrective action already undertaken or to be undertaken;
 - (iv) the effect on the critical path noted on the Project Schedule;
 - (v) the period, if any, by which in its opinion the Schedule Project Variables should be extended; and
 - (vi) a statement that it is a notice pursuant to this Clause 23.1(b).
- (c) Where a Delay Event has a continuing effect or where AOG is unable to determine whether the effect of a Delay Event will actually cause delay to the progress of the Works such that it is not practicable for AOG to give notice in accordance with Clause 23.1(b), a statement to that effect with reasons together with interim written particulars (including details of the likely consequences of the Delay Event on progress of the Works and an estimate of the likelihood or likely extent of the delay) must be submitted by AOG within ten (10) Business Days after the notice given in accordance with Clause 23.1(a) in place of the notice required under Clause 23.1(b), and AOG must (i) submit with the monthly progress reports contemplated by Clause 13.2 further interim written particulars until the actual delay caused (if any) is ascertainable, at which time AOG must, as soon as practicable, give a final notice to PREPA's Project Manager including the

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particulars set out in Clause 23.1(b) and (ii) promptly after any material change in the status of such delay, submit to PREPA's Project Manager written particulars of such change in status.

23.2. PREPA Risk Events

Subject to the other provisions of this Clause 23, AOG will only be entitled to an extension of the Schedule Project Variables where a delay to the critical path of the Project Schedule is caused by any of the following events, whether occurring before, on or after the Substantial Completion Deadline (each, a "**PREPA Risk Event**"):

- (a) any interruption or delay of, or other adverse effect on, the Works due to:
 - an act or omission by any PREPA Person (other than the exercise by PREPA of any rights or powers conferred by this Agreement or any failure to exercise any such right or power);
 - (ii) a breach of this Agreement by PREPA;
 - (iii) a PREPA Event of Default;
 - (iv) a failure of PREPA to perform its obligations under this Agreement within the time periods required by this Agreement;
 - (v) minimizing interference to the Aguirre Power Complex as contemplated by Clause 7.9(a)(i), provided that AOG has provided PREPA with reasonable advance notice of such event and detail regarding the estimated impact of such minimization of interference; or
 - (vi) giving reasonable opportunities for carrying out their work to any other contractors employed or authorized by PREPA on or near the Site as contemplated by Clause 8.2(b)(i), provided that AOG has provided PREPA with reasonable advance notice of such event and detail regarding the estimated impact of giving other contractors such opportunities;
- (b) any disruption in the performance of the Works caused by (i) the clean-up, removal and disposal of any Hazardous Substance (unless caused by an act or omission of an AOG Person that is in breach of this Agreement) or (ii) the discovery of any unknown Site Condition;
- (c) a Change that is requested by PREPA in accordance with Clause 38.2, except where such Change is required as a result of an act or omission of AOG that is in breach of this Agreement;
- (d) a suspension of any or all of AOG's obligations or a reduction in the rate of progress of the Works pursuant to Clause 50.1 or 50.2;

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a Force Majeure event;

- (f) a Change of Law;
- (g) any other matter in respect of which any provision of this Agreement expressly states that PREPA shall authorize an adjustment of any Project Variable;
- (h) in connection with commissioning of the Facilities, any of the events referred to in Clause 3.2(b)(iii)(Λ)-(F) of the Charter; or
- (i) PREPA's failure to obtain and/or maintain PREPA's Insurances in accordance with Schedule 9 (whether pursuant to the exercise of PREPA's right to terminate PREPA's Insurances or otherwise), provided that (i) such event shall be a PREPA Risk Event only to the extent that the termination or other failure to obtain or maintain PREPA's Insurances was not due to any action or inaction on the part of any AOGP Person in breach of the OCIP (as defined in clause 1 1 of Schedule 9) and (ii) any extension of the Schedule Project Variables for such event shall in no case be longer than sixty (60) days.

23.3. Extension of Time

- (a) PREPA's Project Manager must, within ten (10) Business Days of receipt of the notice delivered by AOG pursuant to Clause 23.1(b) or 23.1(c) (as the case may be), either:
 - notify AOG's Project Manager and PREPA of its determination as to the period, if any, by which the Schedule Project Variables shall be extended; or
 - (ii) reasonably request further information from AOG to support the claim for an extension of time.
- (b) In the event that PREPA's Project Manager reasonably requests further information from AOG in accordance with Clause 23.3(a)(ii), PREPA's Project Manager must, within ten (10) Business Days of receipt of such further information, notify AOG's Project Manager and PREPA of its determination as to the period, if any, by which the Schedule Project Variables shall be extended.
- (c) Notwithstanding any other provisions of this Clause 23 (in particular, Clauses 23.3(a) and 23.3(b)):
 - PREPA or PREPA's Project Manager may at any time make a determination as to the period, if any, by which the Schedule Project Variables shall be extended;
 - PREPA or PREPA's Project Manager shall make a fair and reasonable determination as to the period, if any, by which the Schedule Project Variables shall be extended; and

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(iii) if AOG does not agree with any such determination, (A) AOG shall not be bound by such determination and (B) the parties shall seek to resolve such disagreement by way of good faith negotiations; if the parties fail to agree, the provisions of Clause 57 shall apply.

23.4. Conditions Precedent to Extension of the Schedule Project Variables

- (a) Notwithstanding any other provision of this Clause 23, in the event that AOG fails to submit any of the notices required under Clause 23.1(a), 23.1(b) or 23.1(c) within the times required, the extension of time shall be reduced by the period (if any) that such delay in submitting such notice affects the critical path noted on the Project Schedule.
- (b) It is a further condition precedent to AOG's entitlement to an extension of time that the critical path noted on the Project Schedule is affected in a manner which might reasonably be expected to result in a delay to AOG achieving any Completion Guarantee.

23.5. Concurrent Delays

If there are two or more concurrent Delay Events and only one of those is a PREPA Risk Event, then AOG is not entitled to an extension of time for the period of that concurrency.

23.6. Acceleration

- (a) PREPA's Project Manager may direct AOG to accelerate the Works for any reason, including as an alternative to granting an extension of time to the Schedule Project Variables; <u>provided</u> that PREPA shall have no right to make any such request if:
 - AOG reasonably believes that compliance therewith would adversely affect any obligation of any AOG Person under any Definitive Agreement; or
 - (ii) compliance with such request would increase the Capital Costs unless (A) the Cost Project Variables are adjusted pursuant to Clause 38 and such adjustment is satisfactory to AOG or (B) Clause 23.6(b) applies.
- (b) If PREPA's Project Manager directs an acceleration of the Works under Clause 23.6(a) as a consequence of an act or omission of AOG that is in breach of this Agreement, AOG shall not be entitled to receive any additional compensation for expenses incurred in response to such direction (which expenses shall be Non-Allowable Costs) and neither Budget shall be modified.

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PART 5 - COMMISSIONING, TESTS, SUBSTANTIAL COMPLETION AND FINAL ACCEPTANCE

24. <u>TESTING</u>

24.1. General

- (a) Any notice which must be given by AOG to PREPA's Project Manager in accordance with this Agreement with respect to AOG's intention to carry out any Test specified in Schedule 16 must include details of:
 - (i) the item to be tested;
 - (ii) the Test to be performed; and
 - (iii) the proposed date and location of the Test.
- (b) PREPA's Project Manager and any other person designated by PREPA may attend and witness any Test.
- (c) AOG agrees that neither the execution of any Test nor the issue of a Test certificate releases AOG from any of its responsibilities, obligations or liabilities (including repair or replacement or both of any Equipment, Facilities or part of the Works damaged during the course of any Tests) under this Agreement.

24.2. [Reserved]

24.3. Revenue from Natural Gas

Subject to the terms of the Charter, PREPA is entitled to all of the Natural Gas delivered into the Pipeline during the Works and to receive any revenue derived from such Natural Gas, whether or not PREPA has assumed occupancy or possession of the Facilities (or any part thereof).

24.4. Interconnection Requirements

AOG must carry out the Works, and in particular all activities relating to the connection of the Facilities to the FSRU and the Aguirre Power Complex, so as to enable the parties to comply with their respective obligations under the applicable regulations and such that AOG obtains the AOG Permits.

6. General Test and/or Inspection Rights

(a) AOG shall perform all Tests and inspections described in Schedule 16. If PREPA's Project Manager reasonably requires, AOG shall inspect, test or retest any materials or equipment provided by AOG in order to confirm that the requirements of this Agreement are met.

- (b) No part of the Works or foundations may be covered up on the Site without carrying out any test and/or inspection required under this Agreement, and AOG must give reasonable notice to PREPA whenever any such part of the Works or foundations are ready or about to be ready for test and/or inspection.
- (c) AOG must uncover any part of the Works or foundations or make openings in or through the same, and reinstate and make good such part(s) as PREPA may from time to time require, in which case AOG will be entitled to an extension to the Schedule Project Variables in accordance with Clause 23 only to the extent that AOG has been delayed or impeded in the performance of any of its obligations under this Agreement due to the uncovering, making openings in or through, reinstating and making good the same in accordance with this Clause 24.5(c) if those parts of the Works or foundations had been covered up at the Site after compliance with Clause 24.5(b) and are subsequently found to have been executed in accordance with this Agreement.
- (d) Where re-performance, repair, replacement, uncovering, reinstating, testing and inspection are additional to the requirements of this Agreement, the Project Variables shall be modified in accordance with Clause 38 except where such additional work is a consequence of an act or omission of AOG that is in breach of this Agreement.

25. TESTS DURING CONSTRUCTION

25.1. Testing

AOG must procure the carrying out of the Tests during Construction, subject to the provision of at least five (5) Business Days' notice to PREPA's Project Manager of the carrying out of such Tests. If pursuant to Schedule 16 and any further detailed testing procedures as further developed as described therein, an item of Equipment is subject to factory acceptance testing, AOG must not allow such item of Equipment to be transported to the Site unless it has successfully completed such factory acceptance testing.

25.2. Results

Within ten (10) Business Days after completion of any Test during Construction, AOG must give PREPA's Project Manager a report of the test results.

25.3. PREPA's Notice

PREPA's Project Manager may, within five (5) Business Days of receipt of a report produced in accordance with Clause 25.2, give AOG a notice that it considers:

(a) such report is deficient in any way, and that it directs AOG to correct and resubmit the report, in which case AOG must re-submit the report;

- (b) in its reasonable opinion, that AOG has failed the relevant Test during Construction; or
- (c) that the relevant Test during Construction has been successfully performed.

If PREPA fails to issue a notice contemplated by this Clause 25.3 within the applicable five (5) Business Day period, then PREPA shall be deemed to have delivered a notice in accordance with Clause 25.3(c).

25.4. AOG's Requirements

If the Works fail any Test during Construction, AOG must promptly:

- (a) give PREPA's Project Manager notice of the cause of such failure and the remedial action to be taken;
- (b) remedy the cause of such failure; and
- (c) reschedule, re-perform and report on results of such Test during Construction in accordance with this Clause 25 until such Test during Construction is passed.

26. <u>COMMISSIONING</u>

The procedures applicable to the commissioning of the Facilities shall be governed by the Commissioning Framework.

27. <u>PRE-COMMISSIONING TESTS</u>

27.1. Pre-Commissioning Tests

- (a) Upon receipt of the Certificate of Readiness for Pre-Commissioning Tests, AOG must carry out the Pre-Commissioning Tests; <u>provided</u> that AOG has given at least forty-eight (48) hours' prior notification to PREPA's Project Manager of its intention to perform the Pre-Commissioning Tests.
- (b) It is a condition precedent to the commencement of any of the Pre-Commissioning Tests that AOG has received the Certificate of Readiness for Pre-Commissioning Tests.

27.2. Procedure

(a) The Pre-Commissioning Tests shall be carried out in accordance with Schedule 16.

If a Pre-Commissioning Test is interrupted or terminated for any reason, such Test must be re-started from the beginning, unless otherwise approved by PREPA's Project Manager.

(b)

- (c) PREPA's Project Manager or AOG is entitled to order the cessation of any Pre-Commissioning Test if damage to the Works or other property or personal injury is likely to result from continuation.
- (d) The results of each Pre-Commissioning Test must be presented in a written report produced by AOG and delivered to PREPA's Project Manager within ten (10) Business Days after the completion of the relevant Test.
- (e) PREPA's Project Manager may, within five (5) Business Days of receipt of a report produced in accordance with Clause 27.2(d), give AOG a notice that it considers:
 - (i) such report is deficient in any way, and that it directs AOG to correct and re-submit the report, in which case AOG must re-submit the report;
 - (ii) in its reasonable opinion, that AOG has failed the relevant Pro-Commissioning Test; or
 - (iii) that the relevant Pre-Commissioning Test has been successfully performed.
- (f) If the Facilities fail to pass any of the Pre-Commissioning Tests (or any repetition thereof in the event of prior failure) or if any Pre-Commissioning Test is stopped before its completion, AOG must make all appropriate adjustments and modifications with all reasonable speed, and such Pre-Commissioning Test must, subject to at least twenty-four (24) hours' prior notice having been given by AOG to PREPA's Project Manager, be repeated as soon as practicable thereafter.
- (g) When all of the Pre-Commissioning Tests have been passed, PREPA shall issue a notice pursuant to Clause 27.2(e)(iii) in respect of all of the Pre-Commissioning Tests; provided, however, that if PREPA does not issue a notice in accordance with Clause 27.2(e) within the applicable ten (10) Business Day period, then PREPA shall be deemed to have issued a notice pursuant to Clause 27.2(e)(iii).

28. SUBSTANTIAL COMPLETION

- (a) When AOG believes that all of the requirements for Substantial Completion have been achieved, AOG shall give notice thereof to PREPA's Project Manager.
- (b) PREPA's Project Manager must, within ten (10) Business Days after receipt of AOG's notice under Clause 28(a), either issue the Substantial Completion Certificate or notify AOG of any of the requirements for Substantial Completion that have not been achieved, provided that if PREPA issues the Substantial Completion Certificate, then the Substantial Completion Date shall be the date on which AOG delivered to PREPA the notice described in Clause 28(a).

If any of the requirements for Substantial Completion have not been achieved, AOG must then achieve such requirements and must repeat the procedure

described in Clause 28(a), in which case the Substantial Completion Date shall be the date on which the applicable repeated notice was delivered to PREPA in accordance with Clause 28(a).

- (d) PREPA must, within fifteen (15) Business Days after the Substantial Completion Date, issue the Punch List following the Punch List Protocol. Disputed Punch List items shall be subject to Expert Determination pursuant to Clause 57.4.
- (e) PREPA shall take over the Facilities on the Substantial Completion Date.

29. <u>FINAL ACCEPTANCE</u>

- (a) When AOG believes that all of the requirements for Final Acceptance have been achieved, AOG shall give notice thereof to PREPA's Project Manager.
- (b) PREPA's Project Manager must, within ten (10) Business Days after receipt of AOG's notice under Clause 29(a), either issue the Final Acceptance Certificate or notify AOG of any of the requirements for Final Acceptance that have not been achieved, provided that if PREPA fails to either issue the Final Acceptance Certificate or notify AOG of any outstanding requirements within such ten (10) Business Day period, then PREPA shall be deemed to have issued the Final Acceptance Certificate.
- (c) If any of the requirements for Final Acceptance have not been achieved, AOG must then achieve such requirements and must repeat the procedure described in Clause 29(a).

PART 6 - AOG'S CREDIT SUPPORT

30. AOG'S CREDIT SUPPORT GENERALLY

AOG shall provide the EELP Guarantee and the Letter of Credit to PREPA within five (5) Business Days after the LNTP Date. If the EELP Guarantee and the Letter of Credit are not delivered by such date, the LNTP shall be deemed to have been cancelled.

31. [RESERVED]

32. LETTER OF CREDIT

(a) Within five (5) Business Days after the LNTP Date, AOG shall procure for the benefit of PREPA an irrevocable standby letter of credit from an Acceptable Letter of Credit Provider in substantially the form set out in Schedule 10 in the amount of (i) sixty million U.S. dollars (US\$60,000,000) until completion of full Commissioning (as defined in the Charter) and (ii) thirty million U.S. dollars (US\$30,000,000) thereafter (the "Letter of Credit") and, if required by PREPA, a related confirmation in a form to be agreed; provided, however, that the amount of the Letter of Credit will be reduced to thirty million U.S. dollars (US\$30,000,000) after successful completion of Phase I Commissioning (as

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defined in the Charter) if (x) the FSRU arrives at the GasPort with an LNG cargo on board and (y) first delivery of an LNG cargo by an LNG carrier to the GasPort does not occur within thirty (30) days after Substantial Completion for reasons attributable to PREPA or its LNG supplier. AOG shall maintain the Letter of Credit in full force and effect until the earlier of (i) termination of the Base Warranty Period and (ii) final payment in accordance with Clause 52 of any amounts owed upon termination of this Agreement. PREPA may seek to draw on the Letter of Credit under this Agreement or under the applicable provisions of any other Definitive Agreement.

- (b) If:
 - (i) the issuer of the Letter of Credit ceases to be an Acceptable Letter of Credit Provider;
 - (ii) the issuer of the Letter of Credit fails to comply with or perform its obligations under the Letter of Credit if such failure shall be continuing after the lapse of any grace period specified therein;
 - (iii) the issuer of the Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, the Letter of Credit;
 - (iv) an Act of Insolvency shall occur with respect to the issuer of the Letter of Credit; or
 - (v) the Letter of Credit is or becomes invalid or unenforceable for any reason whatsoever or is withdrawn or expires without being replaced pursuant to Clause 32(c), in each case before the termination of the Base Warranty Period, then:

AOG must notify PREPA's Project Manager and obtain within ten (10) days a replacement Letter of Credit in substantially the form set out in Schedule 10 from another Acceptable Letter of Credit Provider.

(c) If the Letter of Credit is due to expire before the termination of the Base Warranty Period and AOG has not provided a replacement by the date which is thirty (30) Business Days before the date on which the Letter of Credit is due to expire, the provisions of Clause 51.3(a)(iv) shall apply and PREPA shall be entitled to draw on the Letter of Credit.

33. <u>EELP CREDIT SUPPORT</u>

33.1. EELP Guarantee

Within five (5) Business Days after the LNTP Date, AOG shall arrange for EELP to provide the EELP Guarantee.

33.2. EELP Alternative Credit Support

In the event of (i) a failure to maintain the required current ratio, (ii) a failure to maintain the required net worth or (iii) the occurrence of a net worth event, in each case as described in Clause 14 of the EELP Guarantee, then AOG shall, within ten (10) Business Days thereafter, arrange for EELP to provide the EELP Alternative Credit Support.

33.3. Illegality of EELP Credit Support

If the EELP Credit Support is or becomes invalid or unenforceable for any reason whatsoever, or if the EELP Credit Support is withdrawn or expires, AOG must promptly notify PREPA's Project Manager and obtain within ten (10) Business Days replacement credit support that is acceptable to PREPA in its absolute discretion.

34. RECOURSE TO AOG'S CREDIT SUPPORT

34.1. Reasons for Seeking Payment

PREPA may seek payment under AOG's Credit Support for any of the following reasons:

- (a) AOG has not paid in full any amount due to PREPA under this Agreement within five (5) Business Days after such amount becomes due and payable pursuant to this Agreement;
- (b) a lien exists or has been asserted with respect to the Facilities or any of its constituent parts for which AOG is liable that has not been released or discharged; or
- (c) the Letter of Credit is due to expire before the end of the Base Warranty Period and AOG has not provided a replacement Letter of Credit by the date that is thirty (30) days prior to the date on which the Letter of Credit is due to expire, in which case PREPA shall be entitled to draw on the Letter of Credit in full.

34.2. Prior Notice to AOG

At least ten (10) days prior to seeking payment under any of AOG's Credit Support, PREPA shall notify AOG in writing of its intention to seek such payment, which notice shall be accompanied by reasonable supporting evidence; <u>provided</u>, <u>however</u>, that this Clause 34.2 shall not apply in the event that PREPA has previously provided AOG with advance notice of the circumstances that are the basis for such payment, together with reasonable supporting evidence related thereto.

. <u>CASH COLLATERAL</u>

(a) If PREPA draws on the Letter of Credit pursuant to Clause 34.1(c), PREPA shall hold the proceeds of such drawing as cash collateral for AOG's obligations hercunder until AOG provides a replacement Letter of Credit, at which time

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PREPA shall return such proceeds (less any amounts applied pursuant to the obligations described in Clauses 34.1(a) and 34.1(b)) to AOG.

(b) PREPA is not obliged to hold cash collateral in any definable account, and is not required to account to AOG for any interest earned on cash collateral.

PART 7 - PAYMENT

36. BUDGETS AND CAPITAL COSTS

36.1. Budgets

The Project Capital Budget and the Capital Costs Target as of the Effective Date is set forth in Schedule 15 and shall be subject to adjustment from time to time only as follows:

Event or Circumstance	Project Capital Budget	Capital Costs Target
PREPA Risk Events (Clause 23.2)	Adjusted	Adjusted except for (a) a Force Majeure event, (b) a Change of Law or (c) discovery of an unknown Site Condition at the Offshore Site.
Changes (Clause 38)	Adjusted	Adjusted except for any Change in Work that (a) is requested by AOG or (b) becomes necessary or desirable because of any act or omission of AOG that is in breach of this Agreement
Changes in the cost of equipment, materials and labor	Adjusted	Adjusted only if such change occurs prior to Financial Close
Performance by AOG of its Warranty obligations set forth in Clause 19	Not adjusted except for Allowable Warranty Costs	Not adjusted
Costs incurred pursuant to Clause 7.7(c) to replace any Spare Part used by AOG to fulfill its obligations pursuant to Clause 19	Not adjusted	Not adjusted
Excess Cost Authorization (subclause (vii) of Clause 37.1(e))	Adjusted	Not adjusted unless otherwise agreed by PREPA

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Event or Circumstance	Project Capital Budget	Capital Costs Target
(a) Site Conditions at the Site that differ from the information contained in the Background Information or (b) modifications to the Background Information (subclause (ii) of Clause 9.1(b), Clause 9.2(b) or Clause 19.2(a)(ii))	Adjusted	Adjusted except in respect of the Offshore Site
Costs incurred in connection with an acceleration complying with subclause (A) of Clause 23.6(a)(ii)	Adjusted	Adjusted
Amounts reimbursed pursuant to Clause 40.2(g)	Adjusted	Not adjusted

If the Project Capital Budget or Capital Costs Target is subject to adjustment in accordance with this Clause 36.1, AOG will be entitled to a Change in accordance with Clause 38.3 (except that PREPA will have no discretion to reject such Change under Clause 38.3(b) unless PREPA reasonably believes that the Project Capital Budget or Capital Costs Target (as the case may be) is not subject to adjustment in the manner proposed by AOG).

The procurement, construction, and installation of both the Gas Pre-Heating System (defined in Section 11.7 of Schedule 2, Part 1- Design Specifications) and the Gas Filtration and Metering System (defined in Section 11.5 of Schedule 2, Part 1 - Design Specifications) are not included in the Project Capital Budget. Following completion of detailed design and engineering, AOG and PREPA will agree on a Change Order for the equipment to be procured by AOG, and the Project Capital Budget will be adjusted accordingly. For the avoidance of doubt, the cost of procurement, construction, and installation of the Pipeline up to the Gas Delivery Point is included in the Project Capital Budget and will not require a Change Order.

36.2. Capital Costs

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(a) AOG shall procure that Capital Costs are only incurred at such times and in such amounts as are necessary to permit the achievement of the Completion Guarantees.

- (b) AOG shall monitor and review the Capital Costs incurred by the Subcontractors having regard to the Project Capital Budget. AOG shall notify PREPA's Project Manager of any projected increase of the Capital Costs in relation to the Project Capital Budget (detailing the timing, amount of and reasons for such deviation).
- (c) Either party may at any time request a meeting to discuss and review a projected increase in the Capital Costs.

37. TERMS OF PAYMENT

37.1. Payments Generally

- (a) PREPA must pay to AOG the Capital Costs, the Mobilization Payment, the AOG Fee, the Permitting Costs, the amount payable in respect of the Prior Works and the Permitting Success Fee in accordance with the procedures set out in this Clause 37.
- (b) Unless otherwise agreed by the parties, all payments by the parties under this Agreement will be by electronic funds transfer to a bank account notified by each party to the other party.
- (c) No payment and no partial or entire use or occupancy of the Works by PREPA shall be deemed to constitute Substantial Completion or Final Acceptance or will operate to release AOG from any of its obligations or liabilities under this Agreement; <u>provided</u> that such partial use or occupancy does not cause actual delay to the execution of the Works by AOG.
- (d) Each Request for Payment shall be accompanied by:
 - (i) in the case of Capital Costs, reasonable supporting documentation (including invoices) evidencing the Capital Costs of AOG's Subcontractors that AOG is seeking to recover pursuant to such Request for Payment;
 - (ii) (A) an AOG interim claim waiver and release in the form attached as Schedule 14, Part 1; and (B) a Subcontractor interim claim waiver and release in the form attached as Schedule 14, Part 2 from each Subcontractor that is a party to a Supermajor Subcontract and performed any work during the period of the Request for Payment;
 - (iii) details of any other payments claimed by AOG; and
 - (iv) in the case of a payment for the LNTP Works or the FNTP Works, a progress report as contemplated by Clause 13.2 relating thereto.

PREPA shall pay any Capital Cost that is:

(i) contemplated by the Project Capital Budget;

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- (ii) contemplated by a Subcontract that has been approved by PREPA;
- (iii) contemplated by a Change Order;
- (iv) reasonably incurred and necessary for the Works;
- (v) incurred in the case of an emergency;
- (vi) expressly permitted by the terms hereof (including Clauses 40.2(g) and 45.7); or
- (vii) authorized by PREPA's Project Manager pursuant to an Excess Cost Authorization.

37.2. Payment on the Execution and Delivery of this Agreement

- (a) Simultaneously with the execution and delivery of this Agreement, AOG shall submit a Request for Payment to PREPA for one million eight hundred twentytwo thousand, one hundred seventy-seven dollars and thirty-four cents (USD \$1,822,177.34), corresponding to the sum of the Capital Costs in respect of all Prior Works accrued as of the Effective Date.
- (b) PREPA shall, within thirty (30) days of receipt of such Request for Payment, pay the amount shown on such Request for Payment, less any amount that PREPA is entitled to withhold, retain or set off pursuant to this Agreement.

37.3. Permitting Costs and Permitting Success Fee

PREPA shall pay AOG the Permitting Costs and the Permitting Success Fee within ninety (90) days after AOG provides PREPA with evidence that all AOG Permits required for the performance of the Works and completion of the Facilities have been obtained and are Final.

37.4. LNTP Works, FNTP Works and Certain Prior Works

- (a) The following provisions of this Clause 37.4 shall apply to the payment for the LNTP Works, the FNTP Works and any portion of the Prior Works performed on or after the Effective Date.
- (b) On a monthly basis, AOG's Project Manager will review with PREPA's Project Manager and/or PREPA (and at PREPA's Project Manager's election, an independent engineer engaged by PREPA) Capital Costs that were incurred during the prior month. If PREPA believes that any such Capital Cost does not meet the standard set forth in Clause 37.1(e), it shall promptly notify AOG of the basis therefor. If PREPA does not provide the notice described in the preceding sentence in respect of any such Capital Cost within five (5) Business Days after such review, such Capital Cost shall be deemed to have met the standard set forth in Clause 37.1(e) and to have been approved by PREPA.

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- (c) AOG will be entitled to submit to PREPA's Project Manager a Request for Payment in respect of the prior month, based on the review described in Clause 37.4(b), signed by AOG's Project Manager.
- (d) PREPA shall, within five (5) days of receipt of a Request for Payment pursuant to Clause 37.4(c), review such Request for Payment and pay the amount shown on such Request for Payment, less any amount attributable to any portion of a Request for Payment that does not comply with the requirements of Clause 37.1(d) or that otherwise contains a manifest error.
- (e) For the avoidance of doubt, PREPA is not obliged to make payment in respect of any LNTP Works, FNTP Works or any portion of the Prior Work performed on or after the Effective Date unless such LNTP Works, FNTP Works or Prior Works have been achieved and/or completed in accordance with the terms of this Agreement

37.5. Mobilization Payment

- (a) On or after the Effective Date, AOG shall submit a Request for Payment to PREPA for the Mobilization Payment. On or prior to the date that is five (5) Business Days after the LNTP Date, PREPA shall pay the Mobilization Payment to AOG. If the Mobilization Payment is not paid by such date, the LNTP shall be deemed to have been cancelled.
- (b) Upon the earlier of (i) the Substantial Completion Date and (ii) the termination of this Agreement, the entire outstanding balance of the Mobilization Payment shall become due and payable by AOG to PREPA. In the case that the Substantial Completion Date occurs, such amount shall be included as a deduction from the Substantial Completion Payment Claim, and, in the event of the earlier termination of this Agreement, such amount will be credited to PREPA when determining the amount payable as a consequence of termination under Clause 52, 3.2(d) or 3.3(e).

37.6. Payment Reconciliation and Withholding

- (a) If PREPA intends to pay less than the full amount shown on a Request for Payment, PREPA must, at least five (5) Business Days prior to the due date therefor (or, in the case of Requests for Payments issued under Clause 37.4(d), on or prior to the due date therefor), provide notice to AOG of the reasons for paying such lesser sum.
- (b) Notwithstanding payment by PREPA of any amount shown on a Request for Payment under Clause 37.4(d), PREPA shall have the right to notify AOG within twenty (20) Business Days of PREPA's receipt of such Request for Payment that PREPA was entitled to withhold, retain or set off any portion of such amount pursuant to this Agreement. Upon AOG's receipt of such notice, the disputed portion of the Request for Payment shall be subject to the dispute resolution provisions set forth in Clause 57. Any adjustment to the amount of the disputed

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Request for Payment shall be applied to the next Request for Payment issued by AOG following final resolution of such dispute.

- (c) Without prejudice to any other rights of PREPA to withhold payment to AOG, PREPA may withhold from any payment due to AOG such amount as reasonably necessary or appropriate to protect it from liability because of any one or more of the following reasons:
 - (i) defects and deficiencies in any Works that have not been corrected within a reasonable amount of time, whether or not payment has been made;
 - (ii) the filing of third party claims relating to the Facilities or any of its constituent parts for which AOG is liable;
 - (iii) AOG's failure to make payments to Subcontractors as required pursuant to the terms of the Subcontracts;
 - (iv) a lien exists or has been asserted with respect to the Facilities or any of its constituent parts for which AOG is liable that has not been released or discharged;
 - failure by AOG to provide or procure a replacement Letter of Credit and/or EELP Credit Support in accordance with Clause 32 or 33, as the case may be;
 - (vi) failure by AOG to provide AOG's Insurances;
 - (vii) failure, in any material respect, to carry out the Works as stated in such Request for Payment;
 - (viii) any overpayments made by PREPA with respect to a previous payment: and
 - (ix) a Dispute exists as to the accuracy or completeness of any Request for Payment that has been submitted for resolution in accordance with Clause 57 (but only with respect to the amount then in dispute).
- (d) IVU at the rate applicable at the date of invoice shall be payable by PREPA on all payments where it is properly chargeable on submission by AOG of a proper IVU invoice.

187.7. **AOG Fee**

AOG shall be entitled to claim from PREPA, pursuant to any Request for Payment, ninety-six percent (96%) of the amount of the AOG Fee corresponding to the Capital Costs in such Request for Payment and PREPA shall pay such portion of the AOG Fee pursuant to any Request for Payment in accordance with Clause 37.4(d). PREPA shall pay the balance of the AOG Fee (the "**Retainage**") within twenty (20) Business Days

after receipt of a Request for Payment that is delivered by AOG on or after the Final Acceptance Date.

37.8. Final Payments

- (a) <u>Substantial Completion</u>.
 - (i) Within sixty (60) Business Days after the Substantial Completion Date, AOG shall submit to PREPA a preliminary statement of:
 - (A) the Capital Costs payable through Substantial Completion, summarizing and reconciling all previous payments made by PREPA and adjustments to the Project Capital Budget; and
 - (B) such other amounts as AOG considers to be due from PREPA as of the Substantial Completion Date.
 - Within one hundred eighty (180) days after the Substantial Completion Date, AOG must submit a final payment claim (the "Substantial Completion Payment Claim"), which must:
 - (A) include statements for the Capital Costs payable through Substantial Completion, summarizing and reconciling all previous payments made by PREPA and adjustments to the Project Capital Budget;
 - (B) include such other amounts as AOG considers to be due from PREPA as of the Substantial Completion Date; and
 - (C) be accompanied by a certificate of AOG stating that there are no claims, or other obligations outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Works which could in any way materially affect PREPA.
 - (iii) Within fifteen (15) Business Days after receipt of the Substantial Completion Payment Claim, PREPA must pay to AOG the amount requested in the Substantial Completion Claim *less* any amounts which PREPA is entitled to withhold, retain or set off pursuant to this Agreement (including a deduction for the Mobilization Payment) (the "Substantial Completion Payment"). If PREPA does not pay the amount requested by AOG in the Substantial Completion Payment Claim:
 - (A) PREPA shall promptly notify AOG of the basis therefor;
 - (B) the parties shall promptly meet to resolve the difference; and

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- (C) if the parties resolve the difference, PREPA shall pay any additional amount the parties have agreed is owing.
- (iv) If AOG owes amounts to PREPA under this Agreement that are greater than the Substantial Completion Payment, then AOG shall pay such amount within fifteen (15) Business Days after delivery of the Substantial Completion Payment Claim.

(b) Expiration of the Warranty Period.

- Within sixty (60) Business Days after the end of the Warranty Period, AOG must submit a final payment claim (the "Final Payment Claim"), which must include:
 - (A) statements for the Capital Costs payable during the Warranty Period, summarizing and reconciling all previous payments made by PREPA and adjustments to the Project Capital Budget; and
 - (B) such other amounts as AOG considers to be due from PREPA in connection with the Warranty Period.
- (ii) Within fifteen (15) Business Days after receipt of the Final Payment Claim, PREPA must pay to AOG the amount requested in the Final Payment Claim *less* any amounts which PREPA is entitled to withhold, retain or set off pursuant to this Agreement (the "Final Payment"). If PREPA pays the amount requested by AOG in the Final Payment Claim, AOG shall simultaneously deliver to PREPA executed Final Releases from AOG and each Subcontractor. If PREPA does not pay the amount requested by AOG in the Final Payment Claim:
 - (A) PREPA shall promptly notify AOG of the basis therefor;
 - (B) the parties shall promptly meet to resolve the difference; and
 - (C) if the parties resolve the difference, (A) PREPA shall pay any additional amount the parties have agreed is owing and (B) AOG shall simultaneously deliver to PREPA executed Final Releases from AOG and each such Subcontractor.
- (iii) If AOG owes amounts to PREPA under this Agreement that are greater than the Final Payment, then AOG shall pay such amount within fifteen (15) Business Days after delivery of the Final Payment Claim.

37.9. Set Off Without may be,

Without prejudice to any other rights of a party, it may deduct from any moneys which may be, or become, payable to the other party, any non-contingent and matured amount which is payable from the other party to such party, and nothing in this Clause 37.9

affects the right of a party to recover from the other party the whole of the debt or any balance that remains owing after any such deduction.

37.10. Interest

- (a) In the event that either party fails to make any payment on the due date therefor or within the period set forth in this Agreement, that party is liable to pay to the other party interest on the amount of such delayed payment at the Default Interest Rate for the period of delay until payment in full (including the period after any judgment of a court or arbitral tribunal).
- (b) Any payment by such party under this Agreement must be credited first against any interest so accrued and the balance of payment, if any, must be applied in reduction of the outstanding balance.

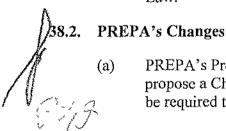
37.11. Contract Price

Notwithstanding anything in this Agreement to the contrary, the parties agree that the contract price applicable to this Agreement is two hundred ninety-five million U.S. dollars US\$295,000,000. AOG acknowledges that PREPA requires further internal approval before it can issue payment of any monetary obligations under this Agreement in excess of such contract price; provided, however, that any delay or inability of PREPA to obtain such internal approval shall not excuse any obligations of PREPA set forth in this Agreement.

38. <u>CHANGES</u>

38.1. General

- (a) AOG must not carry out any Change in Work except in accordance with this Clause 38.
- (b) No Change shall invalidate this Agreement.
- (c) Any Change shall be governed by all of the provisions of this Agreement.
- (d) No Change in Work shall be effective, and AOG shall not perform any Change in Work, unless such is embodied in a Change Order executed by the parties.
- (e) AOG acknowledges that each Change Order will be filed by PREPA in the Office of the Comptroller of the Commonwealth of Puerto Rico if required by applicable Law.



PREPA's Project Manager has the right to notify AOG of PREPA's intention to propose a Change in Work, and subject to the terms of this Clause 38, AOG will be required to perform such Change in Work.

- (b) Within ten (10) Business Days after its receipt of the notice referred to in Clause 38.2(a) or the information required to be provided pursuant to Clause 10.3(a), AOG must provide to PREPA's Project Manager a written statement setting out detailed particulars of any effect such Change in Work would have on the Works and/or on any other provisions of this Agreement if the contemplated Change in Work is effected, including:
 - (i) the work and/or Equipment required or no longer required as a consequence of such Change in Work;
 - (ii) an estimate of the increase or decrease in the Cost Project Variables
 (which will include any extra costs necessarily incurred (if any) by AOG
 for delay or disruption as a consequence of a Change in Work);
 - (iii) any proposed adjustment of any Schedule Project Variable;
 - (iv) any effect on the availability and/or cost of insurance;
 - (v) any proposed modifications to this Agreement; and
 - (vi) any other information which PREPA's Project Manager may reasonably request.
- (c) Following receipt of AOG's statement in accordance with Clause 38.2(b), PREPA's Project Manager may issue a notice to AOG, which either:
 - (i) directs AOG to implement such Change in Work, subject to the following terms:
 - (A) the Cost Project Variables will be modified in accordance with the principles set out in Clause 38.5(a);
 - (B) any adjustment to the Schedule Project Variables will be determined in accordance with Clause 23, and the parties shall take account of AOG's estimate set out in Clause 38.2(b) when determining such adjustment;
 - (C) the terms and conditions of this Agreement will apply to such Change in Work as though it formed part of the original Works;
 - (D) the parties will seek to agree any other amendments to this Agreement that are required to carry out such Change in Work; and
 - (E) the parties shall enter into a Change Order reflecting such Change in Work; or
 - (ii) withdraws the direction to AOG to perform such Change in Work.

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(d) PREPA in its discretion may suggest to AOG that AOG engage certain Subcontractors to perform a Change in Work, in which case AOG shall reasonably consider engaging such Subcontractors consistent with PREPA's recommendation.

38.3. AOG's Changes

- (a) AOG may from time to time during its performance of this Agreement propose to PREPA's Project Manager any Change which AOG considers necessary or desirable, and such proposal must be accompanied by the information referred to in Clause 38.2(b).
- (b) PREPA's Project Manager may in its absolute discretion, by notice, approve or reject any Change proposed by AOG pursuant to Clause 38.3(a), and if such Change is approved, Clause 38.2(c)(i) will apply to such Change as though it had been proposed by PREPA under Clause 38.2(a).

38.4. Omissions

- (a) AOG acknowledges that a Change in Work may involve the omission of any part or parts of the Works and PREPA acknowledges and agrees that PREPA may not engage others to carry out that part or parts so omitted.
- (b) AOG acknowledges that any one or more omissions will not constitute a basis to allege that PREPA has repudiated this Agreement, regardless of the extent or timing of the omission(s), except to the extent that all or substantially all of the Works has been omitted.

38.5. Valuation of Changes

- (a) The change in the Cost Project Variables in respect of any Change in Work shall be determined as follows:
 - (i) the parties will endeavor to agree on the valuation; and
 - (ii) failing agreement under Clause 38.5(a)(i) within a reasonable time (but no more than fifteen (15) Business Days after PREPA's direction to AOG to implement such Change in Work in accordance with Clause 38.2(c)(i)), the change in the Cost Project Variables in respect of any Change in Work shall be determined as follows:
 - (A) in the event that such Change in Work involves additional work, the increase to the Cost Project Variables will be no more than the estimate provided in accordance with Clause 38.2(b); and
 - (B) in the event that such Change in Work involves the omission of part of the Works or results in a saving to AOG, the reduction in

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the Cost Project Variables will be no less than the estimate provided in accordance with Clause 38.2(b).

(b) A Change in Work made necessary by any default of AOG in the performance of its obligations under this Agreement (i) will not result in any increase in the Cost Project Variables and any costs associated therewith shall be Non-Allowable Costs and (ii) subject to Clause 23, shall not result in any adjustment of the Schedule Project Variables.

38.6. Conditions Precedent to Changes

It is a condition precedent to AOG being:

- entitled to an adjustment of a Project Variable (pursuant to this Agreement or otherwise at common law or equity or in restitution) in relation to any Change in Work that AOG has been instructed to carry out such Change in Work pursuant to Clause 38.2(c)(i); and
- (b) obligated to perform any Change in Work that the parties shall have executed and delivered a Change Order in respect thereof.

38.7. Payment

Once an adjustment to the Cost Project Variables for a particular Change in Work has been agreed or determined in accordance with Clause 38.5(a), the Cost Project Variables will be modified accordingly, and payment by PREPA in relation to such Change in Work will be made in accordance with Clause 37.

39. <u>DELAY COSTS</u>

39.1. Limitation of Compensation

Subject to the terms of this Clause 39, AOG's entitlement to recover from PREPA any compensation for delay is limited to its extra costs reasonably incurred as a direct consequence of any PREPA Risk Event.

39.2. Notice and Assessment of Delay

Where AOG has reasonably incurred extra cost as a consequence of a PREPA Risk Event, AOG must give to PREPA's Project Manager notice of its claim for delay costs at the same time as the notice referred to in Clause 23.1(b) or the final notice in Clause 23.1(c) (as the case may be), including all available particulars and supporting documentation (including timesheets) and a statement that it is a notice pursuant to this Clause 39.2.

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39.3. Delay Costs in Connection with Certain Extensions of Time

Delay costs in connection with extensions of time pursuant to a suspension of any or all of AOG's obligations or a reduction in the rate of progress of the Works pursuant to Clause 50.1 or 50.2 must be dealt with under Clause 50.3 only.

39.4. Sole Entitlement

The sums payable under this Clause 39 and Clauses 21, 38.5(a), and 50.3 and are AOG's sole entitlement to compensation for delay or disruption, including delay or disruption caused by PREPA Risk Events, whether in breach of contract or otherwise, and are in substitution for and exclude AOG's rights and remedies at common law (including the right to recover damages for breach of contract or otherwise).

40. <u>TAXES</u>

40.1. AOG to Pay Taxes

Unless specifically stated elsewhere in this Agreement, AOG is solely liable for payment of, and warrants that it will pay for its own account, and ensure the payment of, any Puerto Rican income tax payable by AOG at the rates in effect as of the Effective Date. Unless specifically stated elsewhere in this Agreement, the payment of all Taxes (other than income taxes at the rates in effect as of the Effective Date) imposed on AOG in Puerto Rico connection with this Agreement, including the following, shall be for PREPA's account:

- (a) all Taxes imposed and assessments made in relation to the Construction Equipment, Equipment and the Works;
- (b) all contributions payable by Law, award and pursuant to any contract with an industrial or trade union or other association of employees or otherwise with respect to or ascertained by reference to the wages, salaries or other compensation paid to employees of AOG or its Subcontractors in respect of the Works, including taxes or contributions for workers' compensation, unemployment or sickness benefit, old age benefit, welfare funds, pensions and disability insurance;
- (c) the cost of all import or export licenses if required and all import or export taxes or customs or other duties or tariffs on services and Equipment imported or exported by AOG in connection with or for the purposes of this Agreement; and
- (d) all harbor dues, pilotage fees, port fees, wharf fees, loading or unloading costs, gang fees and all excesses for such dues, costs or fees.

AOG shall ensure timely payment of such amounts on PREPA's behalf. PREPA shall indemnify and keep indemnified AOG, any company owning equity in AOG and that company's Affiliates, their successors and assigns from and against all liability for payment of all of the above Taxes, assessments and contributions, dues, costs and fees

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and all liability arising in respect of any non-payment (other than in respect of Puerto Rican income tax imposed on AOG at the rates in effect as of the Effective Date).

40.2. Withholding Tax

- (a) So long as PREPA provides satisfactory evidence to AOG within thirty (30) days of any withholding or payment described below that such withholding or payment was properly made to the relevant authority, or at such other time agreed to by the parties or prescribed by Law, PREPA is not liable to AOG and AOG has no claim against PREPA in respect of any sum which would otherwise be payable to AOG under this Agreement:
 - (i) which it has withheld from payment in accordance with any Tax or other Law, until it is released from, or relieved from all liability pursuant to the relevant Law in respect of the amount so withheld and is lawfully entitled to pay the sum to AOG; or
 - (ii) which it has paid in accordance with the provisions of any Tax or other Law to the person or authority legally entitled to accept payment.
- (b) Subject to Clause 40.2(f), AOG acknowledges that PREPA may be required to deduct and withhold at source a percentage of the payments made pursuant to this Agreement which are subject to the provisions of Section 1062.03 of the Puerto Rico Internal Revenue Code of 2011 (the "PR Code"). For the avoidance of doubt, PREPA shall exclude from the withholding at source generally required pursuant to PR Code Section 1062.03, those payments falling under paragraphs (1), (5) and (8) of PR Code Section 1062.03(b).
- (c) Notwithstanding the foregoing, and subject to Clause 40.2(f), AOG acknowledges that the amount to be deducted and withheld by PREPA as stated in Clause 40.2(b) may be increased to a maximum of twenty-nine percent (29%) if AOG is held to be a foreign corporation or partnership which is not dedicated to industry or business in Puerto Rico, as required by PR Code Section 1062.11.
- (d) Payments for construction work made pursuant to this Agreement shall not be subject to the special contribution imposed by Act 48-2013. As a result, no special contribution withholding shall be made by PREPA from such payments.
- (e) AOG shall ensure that deductions and withholdings are made from all payments made to its Subcontractors in accordance with the PR Code and, where such deductions and withholdings are made, no withholdings or deductions in respect of Capital Costs shall be made by PREPA under this Agreement.
- (f) If AOG obtains a waiver from the Treasury Department of Puerto Rico releasing payors from the withholding at source generally required by PR Code Section 1062.03 in respect of any calendar year and provides a copy of such waiver to PREPA, Clauses 40.2(b) and 40.2(c) shall not apply in respect of that calendar year.

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- (g) In accordance with Act No. 48-2013 AOG acknowledges that PREPA shall withhold an amount equal to one and one-half percent (1.5%) from payments made in connection with professional services provided under this Agreement, including the AOG Fee. This amount shall be remitted to the Treasury Department of Puerto Rico. All amounts withheld pursuant to this Clause 40.2(g) shall be reimbursed by PREPA to AOG. AOG shall include any such reimbursement request as a separate miscellaneous line item on the applicable Request for Payment. Any amounts reimbursed by PREPA pursuant to this Clause 40.2(g) shall be excluded from the definition of Capital Costs for purposes of the definition of the AOG Fee.
- (h) If AOG is liable to pay any amounts to the Treasury Department of Puerto Rico in respect of income tax, the MRCC in respect of property tax, the Child Support Administration or the Department of Human Resources of Puerto Rico as a debt (which liability has been determined by a final and non-appealable judgment), PREPA shall be entitled to set off such amounts due to AOG under this Agreement, so long as PREPA provides satisfactory evidence to AOG within thirty (30) days of any such setoff, or at such other time agreed to by the parties or prescribed by Law, that such setoff was in connection with a payment properly made to the relevant authority.

40.3. Exemptions and Concessions

- (a) The benefit of any Tax exemption or concessional rate available when AOG purchases Equipment will, as far as possible, be passed on to PREPA through a reduction in the Capital Costs and the PCB Amount if the cost of the relevant Equipment is charged to PREPA in accordance with this Agreement.
- (b) Where PREPA and its contractors (including AOG) are entitled to an exemption or concession concerning any Tax or import duty with respect to Equipment under this Agreement, PREPA must use reasonable endeavors to enable AOG to claim such concession or exemption. If AOG fails to obtain a concession or exemption to which it is entitled and that it has properly claimed, the cost of the Tax or duty payable as a result will be passed onto PREPA.

40.4. General

AOG must provide sufficient information regarding the nature and cost of the Facilities to enable all the relevant statutory obligations of PREPA that are dependent upon that information to be satisfied.

PART 8 - RISK DISTRIBUTION

41. <u>OWNERSHIP</u>

The ownership of:

- (a) the Facilities and the Spare Parts shall transfer to PREPA on the Substantial Completion Date;
- (b) the Construction Equipment shall at all times remain with AOG or its Subcontractors or their lessors; and
- (c) all LNG and all regasified LNG produced by the Facilities will at all times remain with PREPA or its designee, and AOG agrees and acknowledges that it has no legal or equitable title to, or interest in, such LNG or regasified LNG produced by the Facilities.

42. CARE, CUSTODY, CONTROL AND RISK OF LOSS

42.1. Prior to the Substantial Completion Date

- (a) Notwithstanding the ownership of the Facilities, Spare Parts, LNG and Natural Gas produced by the Facilities in accordance with Clause 41, AOG is fully responsible for the care and custody of the Works, Spare Parts and regasified LNG produced by the Facilities until the Substantial Completion Date, and must make good, at its cost, any loss or damage that may occur thereto from any cause whatsoever (including any thereof caused by AOG or its Subcontractors) prior to the Substantial Completion Date.
- (b) Notwithstanding Clause 42.1(a), AOG shall not be liable for any loss or damage to the Facilities that is occasioned by:
 - (i) any Force Majeure event;
 - (ii) any other PREPA Risk Event; and/or
 - (iii) any act or omission of a third party other than an AOG Person (except to the extent that such act or omission arises in connection with AOG's failure to comply with the security obligations set forth in Clause 10.4(a)(i)).

In the event of loss or damage to the Facilities being occasioned by any of the foregoing prior to the Substantial Completion Date, AOG shall, if instructed by PREPA, reconstruct, repair or replace the same, and PREPA shall authorize a Change in accordance with Clause 38 in respect of such reconstruction, repair or replacement.

42.2. From and After the Substantial Completion Date

From and after the Substantial Completion Date:

(a) the O&M Contractor shall have care, custody, control and risk of loss of the Spare Parts; and

(b) PREPA shall have care, custody, control and risk of loss of the Works (other than the Spare Parts) and regasified LNG produced by the Facilities.

42.3. Construction Equipment and Certain Other AOG Property

AOG shall have care, custody, control and risk of loss of the Construction Equipment and other property of AOG used or intended to be used for the purposes of the Works. PREPA shall have no liability for any loss or damage that may occur to such Construction Equipment or other property that may occur from any cause whatsoever unless directly caused by:

- (a) an act of PREPA; or
- (b) an omission of PREPA in breach of this Agreement or duty owed to AOG under applicable law.

43. INDEMNITIES AND MITIGATION

43.1. Indemnity by AOG

AOG is liable for and indemnifies each PREPA Person from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, defects and costs and expenses of any nature, including legal fees and expenses:

- (a) in respect of personal injury to or death of any person and/or loss of or damage to any property (including the Facilities), real or personal, of any person arising in any manner out of the acts or omissions of any AOG Person; and
- (b) in any other case, arising in any manner out of the acts or omissions of AOG or any Subcontractor or its or their employees or agents, under or in connection with this Agreement,

whether or not the acts or omissions are in tort, breach of contract, bad faith, Willful Misconduct or otherwise.

43.2. Indemnity by PREPA

PREPA is liable for and indemnifies each AOG Person from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, defects and costs and expenses of any nature, including legal fees and expenses:

(a) in respect of personal injury to or death of any person and/or loss of or damage to any property (including the Facilities), real or personal, of any person arising in any manner out of the acts or omissions of any PREPA Person; and

(b)

in any other case, arising in any manner out of the acts or omissions of PREPA or its employees or agents, under or in connection with this Agreement,

whether or not the acts or omissions are in tort, breach of contract, bad faith, Willful Misconduct or otherwise.

43.3. Mitigation

Each party must take all reasonable measures to mitigate any loss or damage which has occurred.

44. **INSURANCE**

The parties shall comply with the provisions of Schedule 9.

45. FORCE MAJEURE

45.1. Relief from Force Majeure

Neither party shall be responsible for any failure to fulfill any term or condition of this Agreement if and to the extent that fulfillment has been delayed or temporarily prevented by an event or circumstance, or a number or combination of events or circumstances, that (a) is beyond the control and without the fault or negligence of the affected party and (b) by the exercise of reasonable diligence, the affected party is unable to provide against (a **"Force Majeure"**).

45.2. Force Majeure

Without prejudice to the generality of Clause 45.1, Force Majeure events shall include the following (but only to the extent that a circumstance or combination of circumstances described below satisfies the conditions specified in subclauses (a) and (b) of the definition of Force Majeure):

- (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of sabotage or terrorism (including an act of any independent unit or individual engaged in activities in furtherance of a program of irregular warfare), public international trade sanctions, community action, political and terrorists' activity, piracy, ambush, kidnapping or indigenous action, seizure of power by military or other non-legal means or threat of any of the foregoing;
- (b) except to the extent that they constitute remedies or sanctions lawfully exercised by a Competent Authority as a result of any breach of any Law in effect as at the Effective Date, any act of state or other exercise of sovereign, judicial or executive prerogative by any Competent Authority, including expropriation, requisition, nationalization, compulsory acquisition, cancellation or revocation of any Permit by any Competent Authority, or acts claimed to be justified by executive necessity;

ionizing radiation or contamination, radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear waste from the combustion

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of nuclear, radioactive, toxic, explosive or other hazardous properties of any explosive assembly or nuclear component;

- (d) strikes, work-to-rule, go-slows or industrial disputes (i) at a national or regional level, (ii) by labor not employed by the affected party, its contractors or its suppliers or (iii) that are of a political nature, such as, by way of example and not limitation, labor actions associated with or directed against a political party, or those that are directed against either party as part of a broader pattern of labor actions against companies or facilities with foreign ownership or management;
- (e) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds;
- (f) chemical contamination, epidemic, plague, quarantine restrictions, act of God, lightning, earthquakes, flood, fire, cyclone, hurricane, typhoon, tidal wave, tsunami, tornado, tropical depressions, named tropical storms as designated by the National Hurricane Center of the National Oceanic and Atmospheric Administration, eddy, loop or eddy driven currents, fog, droughts, landslides, Unusual Weather Conditions and/or other natural physical disasters;
- (g) maritime or aviation disasters;
- (h) any decision of the master of a ship engaged in shipping activities related to the Works that compliance with a Subcontract or an order of AOG conflicts with such master's obligation to act as a reasonable and prudent operator;
- (i) any explosion, structural collapse, accident, shipwreck, navigation or maritime peril or unavoidable accident, to the extent that is not caused by an act or omission of AOG that is in breach of this Agreement; and
- (j) a lapse of Permit that (i) shall itself have existed for twenty (20) consecutive Business Days or more, (ii) together with any and all other lapses of Permits that have occurred in the same year, shall have existed in the aggregate for thirty (30) Business Days or more in such year or (iii) together with any and all other lapses of Permits that have occurred in the same and in the two (2) immediately preceding years, shall have existed, in the aggregate for forty (40) Business Days or more, to the extent that is not caused by an act or omission of AOG that is in breach of this Agreement.

45.3. Exclusions

The following shall not constitute a Force Majeure event:

- (a) breakdown or failure of equipment caused by normal wear and tear, or by failure to properly maintain equipment or stock of spares;
- b) a party's inability to obtain financing or the unavailability of funds to pay amounts when due in the currency of payment;

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- (c) changes in either party's market factors, default of payment obligations or other commercial, financial or economic conditions;
- (d) any action or inaction by a Competent Authority under any Permit, or the failure to obtain or the withdrawal of any Permit, of which a party was aware, or should have been aware through the exercise of due diligence, reasonable skill and care or reasonable efforts, on and from the Effective Date, and
- (e) a breach of any provision of this Agreement.

45.4. Third-Party Causes

Any event or circumstance that affects any Subcontractor or other third party and prevents, impedes or delays the performance by a party of its obligations under this Agreement shall constitute Force Majeure affecting such party to the extent that:

- (a) such event or circumstance is of a kind or character that, had it primarily affected such party, would have come within the definition of Force Majeure under Clause 45.1; and
- (b) such party is rendered unable by such event or circumstance to perform any of its obligations under this Agreement.

45.5. Notice and Mitigation

If a Force Majeure occurs, the party that is or may be delayed in performing any of its obligations under this Agreement shall:

- (a) promptly give notice to the other party, which must include:
 - (i) full particulars of the event of Force Majeure;
 - (ii) full particulars of the effect of such event of Force Majeure on that party's ability to perform its obligations under this Agreement (including the details of the causal connection between them);
 - (iii) an estimate of the likely duration of the Force Majeure;
 - (iv) details of the corrective measures already undertaken or to be undertaken; and
 - (v) a statement that such notice is given in accordance with this Clause 45.5; and

use all commercially reasonable efforts to remedy the situation without delay and to minimize the effects of such Force Majeure.

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45.6. Project Variable Adjustments

If either party is delayed in performing any of its obligations under this Agreement by a Force Majeure event, the Project Variables shall, except as otherwise expressly provided in this Agreement, be adjusted in accordance with Clauses 23, 36.1 and 38.

45.7. Standby; Materials

Subject to the provisions of this Clause 45 and AOG agreeing that it is safe and practical in the circumstances of such Force Majeure event to do so, PREPA shall, within five (5) Business Days after it receives notice of a Force Majeure event. notify AOG whether AOG should remain on stand-by at the Site. If such notice instructs AOG that it:

- (a) should remain on stand-by at the Site, AOG shall (A) remain on stand-by at the Site for a period of not more than the amount of time contemplated in the applicable Subcontracts (or for such longer period as the relevant Subcontractors may agree) and (B) not be entitled to any additional compensation therefor; <u>provided</u> that any additional compensation owed to Subcontractors under the Subcontracts for standby time shall be Capital Costs and be payable by PREPA; or
- (b) is not required to remain on stand-by at the Site, AOG shall be allowed to leave the Site, in which case any intermediate demobilization or mobilization fees payable to Subcontractors under the Subcontracts shall be Capital Costs and be payable by PREPA.

45.8. Actions Upon Cessation of Force Majeure

Upon cessation of any Force Majeure event, AOG shall prepare a revised Project Schedule to include for rescheduling of the Works so as to minimize the effects of the delay resulting therefrom; <u>provided</u> that if, in accordance with Clause 45.7, AOG has left the Site as a result of such Force Majeure event, AOG may allow in such revised Project Schedule any necessary time for completion of any operations on which it is engaged at the date of cessation of such Force Majeure event. Having made due allowance for any instruction to accelerate the Works given in accordance with Clause 38, PREPA shall authorize a Change in accordance with Clause 23.6 to modify the Project Variables in order to take into account any remaining effects of such delay.

PART 9 - INTELLECTUAL PROPERTY

46. INTELLECTUAL PROPERTY RIGHTS

46.1. AOG to Obtain all Necessary Rights

AOG must take commercially reasonable efforts to ensure that it has all necessary rights and licenses to Intellectual Property subsisting in any matter, thing or process (including documentation, drawings and software) used or to be used by or on behalf of AOG in

performing the Works or delivered or to be delivered by it to PREPA under this Agreement.

46.2. **Ownership of Project IP**

All Project IP vests in and is the property of AOG upon such Project IP coming into existence. To the extent rights to such Project IP does not vest in AOG by operation of law, PREPA hereby assigns the entire right, title and interest to such Project IP to AOG. PREPA shall execute and deliver, and shall cause any PREPA Person to execute and deliver any additional documents and perform any additional acts at AOG's expense that may be necessary or appropriate to effectuate and perform its obligations under such assignment and the transactions contemplated hereby,

46.3. License of Project IP and AOG Background IP

- (a) AOG grants to PREPA and its Affiliates an irrevocable, perpetual, non-exclusive, royalty-free, non-transferable (except as permitted by Clause 46.7) license to use, reproduce, modify and adapt the Project IP solely for the purposes of maintaining. repairing, using and operating the Works and Facilities or for purposes of the Aguirre Power Complex's operational requirements, or to permit or authorize any person to do any of the foregoing on behalf of PREPA or Affiliates, and such license shall survive termination and expiry of this Agreement; provided, however, that any trademark or service mark licenses: (i) shall terminate automatically upon termination of this Agreement for any reason, and (ii) use by PREPA or its Affiliates of any licensed marks shall be subject to AOG's approval.
- (b) AOG grants to PREPA and its Affiliates a perpetual, irrevocable, non-exclusive, royalty-free, non-transferable (except as permitted in Clause 46.7) license to use, reproduce, modify and adapt AOG Background IP to the extent necessary to exercise its rights with respect to the Project IP in connection with the Works and Facilities or for purposes of the Aguirre Power Complex's operational requirements.
- Any fees in relation to the granting of licenses pursuant to Clauses 46.3(a) and (c) 46.3(a) are deemed to form part of the PCB Amount.
- PREPA shall not copy, distribute, publish, decompile, reverse engineer, decrypt, (ď) or disassemble any information (including software) provided by or on behalf of AOG relating to the Works or the Facilities, nor permit or authorize any person to do any of the foregoing, except to the extent (i) such restriction is legally prohibited by applicable law and cannot be waived or (ii) required for PREPA's normal use and operation of the Facilities pursuant to the exercise of all the licensed rights in Clauses 46.3(a) and 46.3(b).

46.4. Intellectual Property Warranty and Indemnity

AOG warrants and represents that:

- (i) it has all rights and licenses necessary to grant to PREPA the licenses of the Project IP and AOG Background IP granted in Clauses 46.3(a) and 46.3(b); and
- (ii) to AOG's knowledge, the Project IP, AOG Background IP and any use of them by or on behalf of PREPA, in the operation, maintenance or use of the Facilities, will not infringe the Intellectual Property of any third party.
- (b) AOG must indemnify and keep indemnified PREPA and its Affiliates and their officers, employees, agents and contractors from and against all claims, liability, loss, damage, costs and expenses arising out of any claim that the Project IP or AOG Background IP or any use thereof by or on behalf of PREPA in connection with the Works or the Facilities infringes the Intellectual Property of a third party. AOG shall have sole control over the defense of the claim and any negotiation for its settlement. AOG shall pay damages, costs, and attorneys' fees, if any, decided or awarded in a final court or arbitration decision against the indemnified party in the action specifically on account of such infringement or agreed in an in or out of court settlement, but only if (i) PREPA notifies AOG promptly upon learning of the claim (provided that this requirement will exclude liability solely to the extent that AOG is prejudiced by PREPA's failure to give such prompt notice), and (ii) PREPA takes no action that willfully and materially impairs AOG's defense of the claim. Any indemnified party hereunder shall have the right, but not the obligation, to participate and be represented in any indemnified action to defend its own interests by its own counsel at its own expense. Notwithstanding the forgoing. AOG shall not indemnify, and assumes no liability with respect to, claims for infringement of Intellectual Property or improper use of other proprietary rights to the extent that such claims relate to or arise out of (A) modification of the Project IP, AOG Background IP, the Works, or the Facilities occurring after delivery thereof by AOG, (B) the combination of any component of the Works or the Facilities with other products, materials, equipment, parts or apparatus and not approved by AOG, (C) any modifications to the Works or Facilities made by AOG to accommodate a Change in Work, designs, drawings, or specifications provided by PREPA to meet a PREPA requirement, or (D) a failure to promptly install an update to any component of the Works or Facilities required by AOG.

46.5. Right to Operate or Use the Facilities

(a) If, in connection with a claim referred to in Clause 46.4(b), PREPA is enjoined or either PREPA or AOG is prevented from operating or using the Works, the Facilities, the Project IP or AOG Background IP or any part thereof ("Infringing Matter"), AOG must, in addition to its other obligations under this Agreement, take all commercially reasonable steps necessary to procure for PREPA the right to operate or use the Infringing Matter for its intended purpose.

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- (b) If AOG is unable to procure such rights within such time as PREPA's Project Manager reasonably directs, AOG must promptly comply with any direction by PREPA's Project Manager to do one or more of the following:
 - modify the Infringing Matter (but not so as to adversely affect its functionality or fitness for the purpose for which it is intended);
 - (ii) replace the affected part of the Infringing Matter, so as to overcome the infringement, which shall be a Non-Allowable Cost;
 - (iii) remove the affected part of the Infringing Matter and compensate PREPA for any cost, loss, expense or damage incurred by PREPA;
 - (iv) acquire a license for PREPA to use such Intellectual Property, if such license can be acquired on commercially reasonable terms, which shall be a Non-Allowable Cost,

and any such direction is not a Change under this Agreement, nor does it entitle AOG to an adjustment of the Capital Costs, the Project Capital Budget or the Schedule Project Variables.

46.6. No Third Party Payments

AOG represents and warrants that except for amounts included in the Capital Costs, no royalties or other payments are due or payable by PREPA or its Affiliates to AOG or any other person in respect of the Project IP or the use of or the grant of a right to use AOG Background IP.

46.7. Assignment

PREPA shall be entitled to assign or transfer the licenses of the Project IP and AOG Background IP granted by AOG in accordance with Clauses 46.3(a) and 46.3(b) to (i) its any of its Affiliates or (ii) to any person or persons that, in the case of this clause (ii) acquires ownership and control over or the right to operate the Facilities via a bona fide, arms-length transaction.

46.8. Survival of Obligations

The rights and obligations of this Clause 46 will not cease on the completion, expiry or termination of this Agreement or any other discharge of this Agreement.

47. <u>CONFIDENTIAL INFORMATION</u>

47.1. Obligations of Confidentiality

Subject to Clause 47.2, each party must ensure that all Confidential Information is kept confidential and neither party may disclose, directly or indirectly, any Confidential Information to a third party, nor use such Confidential Information for its own purposes

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(other than in the proper performance of its obligations under this Agreement), without the prior approval of the other party, and each party agrees, without limitation:

- (a) not to discuss the extent or existence of any such Confidential Information with any Affiliate or third party without the prior approval of the other party;
- (b)not to use or circulate within its organization the Confidential Information except to the extent necessary for the purposes of performing its obligations under this Agreement;
- (¢) not to store the Confidential Information on any computer, database or other electronic means of data or information storage facility unless such storage facility is under the sole control of the party and cannot be accessed by any third parties and will be returned or destroyed in accordance with paragraph (h) of this Clause 47.1;
- (d) not to copy the Confidential Information in whole or in part except as necessary for the purposes of performing the Works;
- (e) not to alter or remove any proprietary rights or copyright notice or other identification which indicates an ownership interest in any part of the Confidential Information;
- to notify the other party of the existence of any circumstances surrounding any (f) unauthorized knowledge, possession or use of the Confidential Information or any part of it by any person;
- to take reasonable steps which are necessary or desirable to ensure continued (g) confidentiality and protection of the Confidential Information and to prevent access to or use of the Confidential Information by any unauthorized person; and
- to return promptly to the other party or provide satisfactory evidence as to the (h) destruction of all Confidential Information on request by the other party provided that (i) (except in the case of any termination of this Agreement) the party may retain for record purposes only one (1) copy of any document, specifications, manuals, procedures, programs and other work product prepared by it, and such work product must be kept in a secure area and access restricted to it in accordance with the provisions of this Clause 47 and (ii) PREPA shall be entitled to retain such Confidential Information and such copies as it shall reasonably require in connection with the operation and maintenance of the Facilities.

Exceptions

- (a) Either party will be entitled to disclose Confidential Information without the prior consent of the other party if such disclosure is made in good faith:
 - (i) pursuant to or in accordance with:

- (A) an order of any court of law or pursuant to the Dispute Resolution Procedures;
- (B) the requirements of any applicable Law, any regulatory agency or public authority; or
- (C) the rules of a recognized stock exchange;

<u>provided</u> that in those circumstances, the party must notify the other party as soon as reasonably practicable so as to allow the other party to take such steps as it may consider necessary to resist such production, pending which the party must take all reasonable steps to resist (or where that is not practicable, to minimize) such production, subject to the approval of the other party; or

- (ii) to:
 - (A) any Subcontractor, consultant, officer or employee who is involved in performing the Works;
 - (B) the senior management of an Affiliate of the disclosing party;
 - (C) the auditors, legal advisers, insurers or other professional persons acting for and on behalf of the party or Affiliate; and
 - any bank, financial institution or other person from which such party is seeking or obtaining finance in connection with this Agreement or the advisers to such bank, financial institution or other person;

<u>provided</u> that such disclosure is necessary to enable such party to perform or comply with, or to protect or enforce its rights under, this Agreement or any other contract contemplated under this Agreement or for some other legitimate business purpose.

- (b) Each party must use reasonable efforts to procure the observance of the restrictions in this Clause 47 by any person to whom it discloses information in accordance with Clause 47.2(a) (including the procurement of appropriate written confidentiality undertakings by such persons) to ensure that:
 - (i) the recipients of the Confidential Information are made aware of the confidential nature of the Confidential Information; and
 - (ii) the recipient does not use or disclose the Confidential Information except in the manner and to the extent that the party is permitted to use or disclose the same under this Agreement.

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47.3. Effect of Termination

- (a) On termination or expiry of this Agreement any party which has received information protected by Clause 47 which relates to the other party, must return any records of such information (including all copies) within its possession, custody or control to the other party or dispose of such records as the other party directs, provided that PREPA shall be entitled to retain such information and such copies as it shall reasonably require in connection with the operation and maintenance of the Facilities.
- (b) The obligations imposed by this Clause 47 will not cease on the completion, expiry, termination or any other discharge of this Agreement.

48. <u>PUBLICITY</u>

- (a) Neither party shall publish (or permit to be published) any information, report, document, photograph, illustration or article concerning the Works, the Facilities or any other matters related to this Agreement without the prior approval of the other party.
- (b) If a party receives an inquiry from the media concerning the Works, the Facilities or any other matters related to this Agreement, (i) it shall immediately notify the other party and (ii) neither party shall disclose any information to the media without the consent of the other party.

49. <u>AUDIT RIGHTS</u>

- (a) AOG shall maintain complete and accurate records in connection with this Agreement and all transactions related thereto and all such records shall be maintained for at least ten (10) years after the Final Acceptance Date. In particular, AOG shall maintain records of all Capital Costs reports and calculations thereof.
- (b) PREPA and/or its duly authorized representatives shall have the right to audit, examine and make photocopies of all accounts, records, correspondence and all other documents, including Capital Costs and other costs or charges pertaining to this Agreement or the Subcontracts to verify the amounts claimed.
- (c) This Clause 49 shall extend to transactions with third parties when the transactions are deemed by PREPA and/or its duly authorized representatives to relate, actually or potentially, to performance under this Agreement.
- (d) PREPA shall, within ten (10) Business Days of any written request, be afforded access to such records for the purposes of audit and verification; <u>provided</u> that any such access shall be granted during normal working hours.

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PART 10 - SUSPENSION AND TERMINATION

50. SUSPENSION

50.1. Suspension Ordered by PREPA

- (a) PREPA may, by notice to AOG specifying the relevant obligation which is to be suspended, the effective date of the suspension, the reasons, if any, for such suspension and any other matters that PREPA considers relevant, order AOG to suspend performance of all or any of its obligations under this Agreement (it being agreed and acknowledged that PREPA may suspend such performance for any reason or for no reason).
- (b) AOG must comply with the terms of any notice given under Clause 50.1(a) by PREPA's Project Manager, including the taking of any action to prepare the Facilities (and any materials or equipment awaiting incorporation) for the suspension of operations and the suspension of performance of the relevant obligations until ordered in writing to resume such performance.

50.2. Suspension for PREPA's Failure to Pay or to Maintain PREPA's Insurances

- (a) If PREPA has failed to pay to AOG any sum due under this Agreement in excess of ten million U.S. dollars (US\$10,000,000) by the due date therefor, AOG may give a notice to PREPA requiring payment of such sum, with interest in accordance with Clause 37.10(a). If PREPA fails to pay such sum together with such interest within four (4) Business Days of such notice, then AOG may by a further notice to PREPA suspend performance of all or any of its obligations under this Agreement or reduce the rate of progress of the Works.
- (b) If PREPA has failed to obtain and/or maintain PREPA's Insurances in accordance with Schedule 9 (whether pursuant to the exercise of PREPA's right to terminate PREPA's Insurances or otherwise), AOG shall have the right, by notice to PREPA, to suspend performance of all or any of its obligations under this Agreement or reduce the rate of progress of the Works, provided that such right (i) shall not allow for a suspension or aggregate reduction in progress of the Works in excess of sixty (60) days and (ii) shall not apply to the extent that the termination or other failure to obtain or maintain PREPA's Insurances was due to any action or inaction on the part of any AOGP Person in breach of the OCIP (as defined in clause 1.1 of Schedule 9).

50.3. Costs of Suspension

If AOG's performance of any of its obligations is suspended in accordance with this Clause 50, any extra costs reasonably incurred as a direct result of such suspension must be paid by PREPA to AOG, except where suspension is ordered due to any act, omission, default or breach of this Agreement by AOG.

50.4. AOG's Obligations during Suspension

Subject to Clause 50.5, during any period of suspension, AOG must:

- (a) take all reasonable steps which are necessary for the care, security and preservation of the Works and the Facilities;
- (b) not remove from the Site any Equipment or any part of the Facilities or any Construction Equipment, without the prior consent of PREPA; and
- (c) take all reasonable measures to minimize the costs and losses of suspension to PREPA and AOG, including meeting with PREPA on a regular basis.

50.5. Prolonged Suspension

- (a) If, by virtue of a suspension pursuant to Clause 50.1 (other than by reason of AOG's act, omission, default or breach of this Agreement) or 50.2. the performance of any of AOG's obligations is suspended for a continuous period of at least thirty (30) days, then at any time thereafter and <u>provided</u> that at that time such performance is still suspended, AOG may give a notice to PREPA of an intent to demobilize AOG's equipment. If PREPA does not order resumption of performance within fourteen (14) days after receipt of such notice, then:
 - (i) AOG shall have the right to demobilize its equipment;
 - (ii) the parties shall discuss a mutually acceptable remobilization schedule, taking AOG's other commitments and PREPA's schedule requirements into consideration; and
 - (iii) any intermediate demobilization and mobilization fees shall be for PREPA's account.
- (b) If, by virtue of a suspension pursuant to Clause 50.1 (other than by reason of AOG's act, omission, default or breach of this Agreement) or 50.2, the performance of any of AOG's obligations is suspended for a continuous period of at least ninety (90) days, then at any time thereafter and <u>provided</u> that at that time such performance is still suspended, AOG may give a notice to PREPA of an intent to treat the suspension:
 - (i) where it affects a part only of the Works, as a deletion of such part from the scope of the Works; or
 - (ii) where it affects the whole of the Works, as a termination of this Agreement pursuant to Clause 51.2, which shall apply to such termination.
 - If PREPA does not order resumption of performance within fourteen (14) days after receipt of the notice described in Clause 50.5(b), then AOG shall have the

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right to delete the affected portion of the Works from the scope of Works or terminate this Agreement, as applicable.

(d) Where a suspension is treated as a deletion of a part only of the Works in accordance with Clause 50.5(c), the Capital Costs, the Project Capital Budget and the Schedule Project Variables will be adjusted in accordance with Clauses 23, 36.1 and 38.

51. **TERMINATION**

51.1. Termination Generally

- (a) Termination by a party pursuant to this Clause 51 is (i) without prejudice to any other rights or remedies which may be exercised by such party under this Agreement and (ii) not in lieu of or in addition to the rights conferred on such party by this Clause 51.
- (b) Except as otherwise specified in Clauses 3.2 and 3.3, this Clause 51 sets forth the exclusive mechanisms for terminating this Agreement.

51.2. Termination for PREPA's Convenience

PREPA may, in its absolute discretion, terminate this Agreement at any time for any reason by giving AOG a notice of termination that refers to this Clause 51.2. This Agreement shall terminate on the date which is sixty (60) days after the date of any such notice of termination from PREPA.

51.3. Termination for an AOG Event of Default

- (a) If any of the following occur, PREPA, without prejudice to any other rights or remedies it may possess under this Agreement, may immediately terminate this Agreement upon the giving of a notice of termination to AOG referring to this Clause 51.3(a) and specifying its reasons for termination:
 - (i) AOG commits or suffers an Act of Insolvency;
 - (ii) AOG assigns or transfers this Agreement or any right or interest under this Agreement in violation of Clause 54.1;
 - (iii) Substantial Completion has not occurred by the date that is six (6) months after the Substantial Completion Deadline; provided that such six (6)-month period shall be extended for an additional period (as designated by AOG) of up to two (2) months if AOG:
 - (A) provides evidence to PREPA that Substantial Completion will be achieved within such additional period; and

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- (B) continues to pay the Delay Liquidated Damages until the earlier of
 (1) the Substantial Completion Date and (2) the end of such additional period, which Delay Liquidated Damages will be determined in accordance with Schedule 8;
- AOG fails to provide, replace or maintain any of AOG's Credit Support within ten (10) Business Days after PREPA notifies AOG that such AOG Credit Support is required to be provided, replaced or maintained;
- (v) any representation and warranty made by AOG in Clause 4.1 was materially incorrect when made so as to materially affect PREPA's interests;
- (vi) any breach by AOG of any provision of Clause 10.2(b) occurs; or
- (vii) any act or omission of any AOG Person that results in the cessation, termination, revocation or an adverse modification of the FERC Permit, the Concession, or any other Permit that is material and/or necessary or required for PREPA or the O&M Contractor to operate the Facilities or any other material improvements related thereto.
- (b) If any of the following occur, then PREPA may, without prejudice to any other rights it may have under this Agreement, give a notice to AOG stating the nature of the default, and requiring AOG to remedy such default, and if AOG fails to remedy or to take adequate steps to remedy such default within thirty (30) days after such notice, then PREPA may immediately terminate this Agreement upon the giving of a notice of termination to AOG that refers to this Clause 51.3(b):
 - AOG has, without valid reason and without PREPA's consent, failed to commence the Works promptly or has suspended the progress of the Works for more than thirty (30) days (other than in accordance with Clause 50.1) or otherwise abandons or repudiates this Agreement,
 - (ii) AOG fails to obtain and/or maintain AOG's Insurances in accordance with Schedule 9;
 - (iii) AOG fails to pay to PREPA any Undisputed amount owing under this Agreement in excess of twenty million U.S. dollars (US\$20,000,000);
 - (iv) AOG fails to comply with Clause 69; or
 - (v) AOG materially breaches any other material provision of this Agreement, where such breach, on its own or together with a series of other material breaches of other material provisions of this Agreement, (A) has a material adverse effect on the provision of the Works by AOG or (B) materially and adversely affects the enjoyment by PREPA of its rights under this Agreement.

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51.4. Termination for a PREPA Event of Default

- (a) If any of the following occur, AOG, without prejudice to any other rights or remedies it may possess under this Agreement, may immediately terminate this Agreement upon the giving of a notice of termination to PREPA referring to this Clause 51.4(a) and specifying its reasons for termination:
 - (i) PREPA commits or suffers an Act of Insolvency;
 - (ii) any act or omission of any PREPA Person that that results in the cessation, termination, revocation or an adverse modification of any PREPA Permit or the Concession; or
 - (iii) PREPA fails to obtain and/or maintain PREPA's Insurances in accordance with Schedule 9 (other than for reasons caused by any action or inaction on the part of any AOGP Person in breach of the OCIP (as defined in clause 1.1 of Schedule 9)) and AOG is able to obtain replacement insurance but PREPA does not agree to pay all of the costs thereof in accordance with Clause 4.7 of Schedule 9 within thirty (30) days after receiving notice from AOG of PREPA's obligation to pay such costs.
- (b) If PREPA fails to pay to AOG any Undisputed amount owing under this Agreement in excess of twenty million U.S. dollars (US\$20,000.000), then AOG may, without prejudice to any other rights it may have under this Agreement, give a notice to PREPA stating the nature of the default, and requiring PREPA to remedy such default, and if PREPA fails to remedy or to take adequate steps to remedy such default within thirty (30) days after such notice, then AOG may immediately terminate this Agreement upon the giving of a notice of termination to PREPA that refers to this Clause 51.4(b).

51.5. Automatic Termination

Before Substantial Completion, this Agreement shall terminate automatically upon termination of the Charter by EEPR for cause in accordance with Clause 62.2 of the Charter.

51.6. Termination for Prolonged PREPA Risk Event

If the Works are halted for a continuous period of at least one (1) year by reason of a PREPA Risk Event, either party may immediately terminate this Agreement by giving a notice of termination to the other party that refers to this Clause 51.6.

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52. <u>CONSEQUENCES OF TERMINATION</u>

52.1. Generally

- (a) Upon receipt of the notice of termination under Clause 51, AOG must either promptly or upon the date specified in the notice of termination, as the case may be:
 - (i) cease all further work, except for such work as PREPA may specify in the notice of termination for the sole purpose of securing, preserving and protecting that part of the Works already executed and any work required to leave the Site and the Facilities in a clean and safe condition;
 - (ii) terminate all Direct Subcontracts, except those to be assigned or novated to PREPA pursuant to paragraph (vi) of this Clause 52.1(a);
 - (iii) remove all of the Construction Equipment and repatriate AOG's and its Subcontractors' Personnel from the Site and the Facilities;
 - (iv) remove from the Site and the Facilities any wreckage, rubbish and debris of any kind, and leave the whole of the Site and the Facilities in a clean and safe condition;
 - (v) to the extent AOG has received payment therefor, deliver possession to PREPA of those parts of the Works executed by AOG up to the date of termination of this Agreement and any documentation or other information obtained or created by AOG or its Subcontractors in connection with this Agreement or the Facilities;
 - (vi) to the extent AOG has received payment therefor and to the extent legally possible, assign or novate to PREPA all right, title and benefit of AOG to the Works and in the Equipment as at the date of termination, and, as may be required by PREPA, in any Direct Subcontract; and
 - (vii) notwithstanding any lien or any other right to withhold the same, promptly deliver to PREPA all drawings, specifications and other documents prepared by AOG or its Subcontractors as at the date of termination in connection with the Works, other than AOG's Background IP and the Project IP to the extent that it is not required for the operation and maintenance of the Facilities.
 - In this Clause 52:
 - (i) the term "Works executed" includes all work executed, services provided and Equipment acquired by AOG and used or intended to be used for the purpose of the Works, up to and including the date of termination; and

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 (ii) in calculating any monies due from PREPA to AOG, due account shall be taken of any sum previously paid by PREPA to AOG under this Agreement.

52.2. Consequences of Termination for PREPA's Convenience

- (a) In the event of termination of this Agreement under Clause 51.2, PREPA shall pay to AOG, as provided in Clause 52.2(b), a termination payment (the "**Termination Payment**"), which shall consist of the following:
 - (i) all unpaid Permitting Costs and, to the extent that all Final AOG Permits required for the performance of the Works and completion of the Facilities have been obtained as of the termination date, the Permitting Success Fee; *plus*
 - (ii) the unpaid portion of the Capital Costs incurred and the AOG Fee earned by AOG up to the date of termination (which AOG Fee shall be based on Capital Costs Target and the amount of Capital Costs incurred, in each case as of the date of termination); *plus*
 - (iii) to the extent actually and directly incurred by AOG, (A) AOG's reasonable costs actually incurred in demobilization and (B) any reasonable cancellation costs actually incurred by AOG in terminating Subcontracts; *plus*
 - (iv) any and all other sums owing to AOG and the other AOG Persons under this Agreement; *plus*
 - (v) any direct costs, losses or damages incurred or suffered by AOG as a consequence of the termination of this Agreement; *less*
 - (vi) the Mobilization Payment.
- (b) On or before the date that is:
 - sixty (60) Business Days after termination of this Agreement under Clause 51.2, AOG shall submit a preliminary Request for Payment of the Termination Payment; and
 - (ii) one hundred eighty (180) days after termination of this Agreement under Clause 51.2, AOG shall submit a final Request for Payment of the Termination Payment, which shall deduct any amount paid by AOG pursuant to the preliminary Request for Payment delivered pursuant to the preceding subclause (i).

Each such Request for Payment shall be accompanied by documentation (including invoices) evidencing all claimed costs. Within thirty (30) days of

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PREPA's receipt of each such Request for Payment, PREPA shall pay AOG the amount set forth therein. Notwithstanding the foregoing, if:

- (A) the Mobilization Payment exceeds the aggregate of each other component of the Termination Payment as calculated in the final Request for Payment (prior to the deduction for any amount paid by AOG pursuant to the preliminary Request for Payment therefor) described in subclause (ii) of Clause 52.2(b), such excess shall be due and payable by AOG to PREPA thirty (30) days after the date on which PREPA requests such payment; and
- (B) AOG fails to deliver either Request for Payment described in Clause 52.2(b), the full amount of the Mobilization Payment shall be immediately due and payable to PREPA.

52.3. Consequences of Termination for an AOG Event of Default

- (a) In the event of termination of this Agreement under Clause 51.3:
 - (i) PREPA may enter upon the Site and the Facilities and expel AOG;
 - (ii) PREPA may (whether directly or through a third party) execute and complete the Works;
 - PREPA shall be entitled to be paid any direct costs, losses or damages incurred or suffered by PREPA as a consequence of the termination of this Agreement, which shall be a Non-Allowable Cost; and
 - (iv) AOG shall be entitled to be paid:
 - (A) the Capital Costs attributable to the Works executed as at the date of termination; *less*
 - (B) the aggregate of all previous payments by PREPA in respect of the Works; *less*
 - (C) any amount payable to PREPA pursuant to Clause 52.3(a)(iii); less
 - (D) the Mobilization Payment.
- (b) If any amount is payable pursuant to Clause 52.3(a)(iii) or 52.3(a)(iv), such amount shall be due and payable thirty (30) days after the date on which PREPA or AOG, as the case may be, provides documentation (including invoices) evidencing all claimed costs to the other party.

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52.4. Consequences of Termination for a PREPA Event of Default

- (a) In the event of termination of this Agreement under Clause 51.4, PREPA shall pay to AOG within thirty (30) days of PREPA's receipt of a corresponding Request for Payment. the Termination Payment.
- (b) AOG shall submit with the Request for Payment documentation (including invoices) evidencing all claimed costs. Notwithstanding the foregoing, if the Mobilization Payment exceeds the aggregate of each other component of the Termination Payment, such excess shall be due and payable by AOG to PREPA thirty (30) days after the date on which PREPA requests such payment. Further, if AOG fails to deliver a calculation of the Termination Payment to PREPA on or before the date that is sixty (60) Business Days after termination of this Agreement under Clause 51.4, the full amount of the Mobilization Payment shall be immediately due and payable to PREPA

52.5. No Other Consequences of Termination

This Clause 52 sets forth the exclusive remedies for termination of this Agreement (except to the extent that Clauses 3.2 and 3.3 specify remedies for termination of this Agreement for failure to issue LNTP or FNTP or the failure by a party to satisfy the conditions precedent related thereto and to the extent that Clause 37.5(b) provides for recoupment of the Mobilization Payment by PREPA). Notwithstanding the foregoing, nothing contained in this Agreement shall affect, modify, diminish or waive (or be deemed to be a waiver of) any right or remedy of any party under any other Definitive Agreement, such rights and remedies being expressly reserved by the parties thereto.

PART 11 - LIABILITY

53. LIABILITY

53.1. Limitation of Each Party's Liability

- (a) Each party agrees that the other party's obligations are limited to those expressly stipulated in this Agreement, and that each party has entered into this Agreement in reliance on the other party's express waiver of any rights other than those provided for in this Agreement, including those arising out of:
 - (i) any breach of an implied term, including a term implied by law;
 - (ii) any tort or other act or omission by or on behalf of the other party; and
 - (iii) any equitable or restitutionary obligations.

Each party's remedies with respect to this Agreement, the Works and all related matters are limited to those expressly set out in this Agreement.

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53.2. Limitation of AOG's Liability

- (a) The aggregate liability of AOG for Delay Liquidated Damages under Clause 21 for the first six (6) months of Delay Liquidated Damages (or actual damages payable pursuant to Clause 21(e)) will not exceed the AOG Fee paid to AOG pursuant to Clause 37.7 (excluding any default interest which accrues in accordance with Clause 37.10(a) due to late payment of Delay Liquidated Damages by AOG).
- (b) Subject to Clause 53.2(c), but notwithstanding any other provision of this Agreement to the contrary, AOG's total cumulative overall liability (including all Non-Allowable Costs) under or in respect of this Agreement and the Works shall be limited to sixty million U.S. dollars (US\$60,000,000). Such limit shall apply not only in contract, but also at law, in tort or any other legal proceeding.
- (c) The limitations on AOG's liability set forth in Clause 53.2(b) shall not apply to the extent that AOG (i) has the right to recover amounts from insurance or under Subcontracts (which rights AOG shall diligently pursue) and (ii) AOG actually recovers such amounts.

53.3. Consequential Damages and Indirect Losses

- (a) Subject to Clause 53.3(b), and without prejudice to AOG's obligation to pay Delay Liquidated Damages pursuant to Clause 21, neither party is liable to the other under this Agreement, the law of tort (including negligence), statute, in equity or otherwise for any of the following arising out of or in connection with this Agreement ("Consequential Damages"):
 - (i) consequential damages and indirect losses, including losses that do not arise in the ordinary course of events as a consequence of the breach in question; and
 - (ii) loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), in each case (A) whether direct or indirect to the extent that these are not included in clause (i) above and (B) whether or not foreseeable at the Effective Date.
- (b) Neither party shall be entitled to the benefit of the exclusion in Clause 53.3(a):
 - (i) in respect of Consequential Damages of third parties that would be payable under any of such party's indemnification obligations set forth in this Agreement;
 - (ii) in respect of Consequential Damages that are recoverable by insurance or from Subcontractors; and
 - (iii) in cases of negligence, fraud, Willful Misconduct or illegal or unlawful acts.

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PART 12 - ASSIGNMENT

54. ASSIGNMENT

54.1. Assignment by AOG

Neither this Agreement nor any interest nor any claim under this Agreement nor any sum(s) which may become due or owing to AOG as a result of AOG's execution of the Works may be assigned, transferred or pledged, charged or mortgaged by AOG, without PREPA's express written consent, which PREPA is entitled to withhold in its absolute discretion.

54.2. Assignment by PREPA

- (a) Subject to Clause 54.2(b), except as approved in writing by AOG, neither this Agreement nor any interest nor any claim under this Agreement, may be assigned, transferred, pledged, charged or mortgaged by PREPA; provided, however, that PREPA may assign this Agreement to any of its Affiliates without the consent of AOG.
- (b) PREPA may, without the consent of AOG, assign, mortgage, or charge its rights, interests, obligations or liabilities under this Agreement, the Letter of Credit, the EELP Credit Support and PREPA's Insurances as collateral security for the PREPA Bonds.

PART 13 - MISCELLANEOUS

55. <u>NOTICES</u>

55.1. Delivery

All notices required to be given under this Agreement shall be valid only if either (a) given and deemed received in accordance with this Clause 55 or (b) actually received by the representatives of the recipient designated in or pursuant to this Clause. For avoidance of doubt, actual receipt by an officer, employee, or agent of a recipient other than the person designated in or pursuant to this Clause 55 shall not be effective to constitute notice for purposes of this Agreement.

55.2. Requirements of Notices

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Any notice, demand, offer, or other communication required or permitted to be given pursuant to this Agreement shall be in writing signed by or on behalf of the party giving such notice and shall be hand delivered to the other party or sent by overnight courier, messenger, registered letter, cmail or fax to the other party at the addresses set forth below. Notices provided by mail will be deemed delivered five (5) Business Days after posting. Email and facsimile notices will be deemed delivered on the day of the transmission, if sent before 4:00 p.m. local time at the receiver's location. If sent after 4:00 p.m. local time at the receiver's location, such notice will be deemed delivered on

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the following Business Day. Notice transmitted by hand delivery is effective when delivered.

If to AOG:

Attention of Edward Scott Excelerate Energy LP 1450 Lake Robbins Drive, Suite 200 The Woodlands, Texas 77380 Telephonc: +1 (832) 813-7634 Facsimile: +1 (832) 813-7103 Email Address. edward.scott@excelerateenergy.com

With a copy to:

H. Steven Walton Frederic Dorwart, Lawyers 124 East 4th Street Tulsa, Oklahoma 74103 Telephone: +1 (918) 583-9920 Facsimile: +1 (918) 584-2729 Email Address: swalton@fdlaw.com

If to PREPA:

Attention of Juan F. Alicea Flores Puerto Rico Electric Power Authority PO Box 364267 San Juan, PR 00936-4267 Telephone: +1 (787) 521-4672 Facsimile: +1 (787) 521-4665 Email Address: j-alicea@aeepr.com

With a copy to:

Agreement Manager Puerto Rico Electric Power Authority PO Box 364267 San Juan, PR 00936-4267 Telephone: +1 (787) 521-4884 Email Address: aogp-agreementmanager@aeepr.com

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The parties may change the addresses and related information set forth above for notices at any time by five (5) Business Days' prior notice to the other party.

56. GOVERNING LAW

This Agreement and any obligations arising out of or in connection with it shall be governed by and interpreted in accordance with the laws of Puerto Rico (provided that Clauses 57.5 through 57.10 shall be governed by and interpreted in accordance with the laws of the State of New York).

57. **DISPUTE RESOLUTION**

57.1. Disputes

Any dispute arising out of or in connection with this Agreement, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any obligations arising out of or in connection with it (a "**Dispute**"), shall be resolved in accordance with this Clause 57.

57.2. Notice of Dispute

Either party may, by notice in writing to the other party at the address given for the sending of notices under this Agreement in Clause 55, and in a manner provided for in such Clause, give notice that a Dispute has arisen (a "Notice of Dispute"). Such Notice of Dispute shall set out brief details of the nature of such Dispute. The parties shall use reasonable efforts to settle by negotiation any Dispute referred to in a Notice of Dispute.

57.3. Informal Dispute Resolution

- (a) For ten (10) Business days following the date of a party's receipt of a Notice of Dispute, PREPA's Project Manager and AOG's Project Manager shall use their best efforts to resolve such Dispute by way of good faith negotiations.
- (b) If such Dispute is not resolved within ten (10) Business Days after the date of a party's receipt of such Notice of Dispute, each party shall, within five (5) Business Days after the expiry of such ten (10)-Business Day period, appoint a senior representative (who has authority to resolve such Dispute) who will seek to agree to a resolution of such Dispute by way of good faith negotiations.
- (c) If such Dispute is not resolved within seven (7) Business Days after such appointment, either party may refer such Dispute for resolution by an expert (the "Expert") (to the extent that the parties agree that it is a Technical Dispute) pursuant to Clause 57.4 or to arbitration to be resolved by an arbitral tribunal pursuant to Clauses 57.5 through 57.10. A "Technical Dispute" is a Dispute concerning solely technical, engineering, construction or operational matters relating to this Agreement.

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57.4. Expert Determination

- (a) For resolution of a Technical Dispute not otherwise resolved under Clause 57.3, the parties shall submit such Dispute to an Expert for determination as specified herein (an "Expert Determination").
- (b) The purpose of the Expert Determination is to resolve Disputes as rapidly and economically as possible and, in any event, in accordance with this Clause 57.4.
- (c) Promptly following the first time that a Technical Dispute arises that is not otherwise resolved under Clause 57.3, the parties shall agree on the appointment of an Expert and shall agree with the Expert the terms of his appointment. The Expert shall have all reasonable discretion to achieve a just, expeditious and economical resolution. The Expert appointed shall satisfy the requirements set forth in Clause 57.4(h). The Expert shall act as an expert, not an arbitrator. Either party shall serve details of a suggested Expert on the other party. If the parties are unable to agree on the identity of the Expert, or if the person proposed is unable or unwilling to act, then, within ten (10) Business Days of a party serving details of a suggested Expert on the other party or the proposed Expert declining to act, either party shall be entitled to request that an Expert be appointed by the Institute of Chartered Accountants or the President of the Royal Institution of Naval Architects of London (as appropriate) on the application of a party. All costs of and associated with the request for the appointment of an Expert by such Institute or President (as applicable) shall be borne equally by the parties.
- (d) Either party (the "Claimant") may refer a Dispute to an Expert by serving a notice on the other party (the "Respondent"), with a copy to the Expert, of its intention to refer a Dispute for Expert Determination (a "Request for Expert Determination"). A Request for Expert Determination shall contain:
 - (i) a concise summary of the nature and background of such Dispute and the issues arising therein;
 - (ii) a statement of the relief claimed;
 - (iii) a statement of all matters agreed between the parties with respect to such Dispute; and
 - (iv) copies of all documents which the Claimant believes have an important and direct bearing on the issues of such Dispute.
 - Within five (5) Business Days after service of a Request for Expert Determination, the Respondent shall serve its response (the "**Response**") upon the Claimant, with a copy to the Expert. The Response shall:
 - (i) admit or deny any matters stated in the Request for Expert Determination and include a concise summary of the nature and background of other

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issues or circumstances giving rise to such Dispute, including any counterclaims; and

- (ii) include copies of all additional documentation that the Respondent believes have an important and direct bearing on the issues of such Dispute.
- (f) The Expert shall make its determination in writing (the "**Determination**"). The Determination shall:
 - (i) contain a summary of the issues in Dispute and state the factual findings and legal conclusions, including where applicable reference to pertinent provisions of this Agreement in support of the Determination;
 - (ii) be based on the terms and conditions of this Agreement and applicable principles of the governing law set forth herein;
 - (iii) where applicable, contain a specific finding of the amount awarded to the parties (in U.S. dollars); and
 - (iv) where no provision of this Agreement or principle of governing law would bring clear resolution to such Dispute, be based upon the Expert's understanding of the spirit of this Agreement.
- (g) The Expert shall issue the Determination within twenty-eight (28) days of the receipt date of the Request for Expert Determination (or such longer period as the parties may agree) and the Determination shall be dated and signed by the Expert. Either party may request that a brief and informal hearing be held before the Expert, but the hearing shall not extend the time as provided for herein within which the Expert shall issue the Determination. The language of the Expert Determination and all related proceedings shall be English. All documents presented to the Expert shall be in English and all hearings shall be conducted in English.
- (h) Each Expert shall:
 - (i) be generally recognized as a expert in technical, engineering or operational matters;
 - be engaged in the LNG engineering and construction industry and experienced in matters relating to (A) LNG and natural gas transfer piping design and construction, (B) dock/ports design and construction and (C) the interpretation of contractual documents;
 - (iii) not be a present or former employee or agent or consultant or counsel to either party or any Affiliate thereof or any government authority of Puerto Rico;

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- (iv) not have any financial or personal interest in this Agreement or the Works or otherwise have a conflict of interest through previous or pending contractual or other relationships with either party;
- (v) at all times be, and serve as, a neutral and independent expert:
- (vi) be obliged prior to and after its appointment on a continuing basis, to disclose to the parties any possible conflicts of interest:
- (vii) at no time have any *ex parte* communications with either party;
- (viii) render its Determination within the time period and adhere to the other time periods agreed to by the parties:
- (ix)not serve as an arbitrator or witness in any arbitration proceedings commenced by the parties pursuant to Clause 57.5;
- certify in writing that it possesses the experience set forth herein; and (x)
- (xi) abide by the requirements of this Clause 57.4.
- (i) The period of appointment of an Expert shall expire upon the earliest of:
 - (i) Final Acceptance;
 - (ii) termination of this Agreement in accordance with its terms; or
 - (iii) resignation or physical or legal incapacity of the Expert.
- (j) If the term of the Expert expires before Final Acceptance or termination of this Agreement as provided for under this Agreement, a new Expert shall be appointed by agreement of the parties within thirty (30) days of (i) such expiry, if a Technical Dispute then exists or (ii) the date that the services of an Expert become necessary because a Technical Dispute arises that is not otherwise resolved under Clause 57.3.
- Within five (5) days following the appointment of the Expert, the Expert shall be (k) given a complete copy of this Agreement.
- All costs related to the maintenance and conduct of the Expert and the Expert (1)Determination, including professional fees and travel costs of the Expert, shall be shared equally by the parties. The Expert shall render a monthly invoice to each party for its proportionate share of the costs.
- The Request for Expert Determination process and all matters arising in the (m)course thereof are and will be kept confidential by the parties in accordance with this Agreement, except insofar as necessary to implement or enforce any Expert Determination.

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(n) In the absence of manifest error, or a failure by the Expert to disclose any relevant conflicting interest or fraud, the Expert's determination shall be final, conclusive and binding on the parties and not subject to appeal. In the case of manifest error, fraud or a failure by the Expert to disclose any relevant conflict of interest, each party shall have the right to appeal the Expert's determination, in which case such determination shall be treated as a Dispute subject to the binding arbitration provisions set forth in Clauses 57.5 through 57.10.

57.5. Arbitration

- Except for Technical Disputes to be determined by Expert Determination pursuant (a) to Clause 57.4, all Disputes that cannot be resolved by the parties pursuant to Clause 57.3 shall be referred to and finally resolved by arbitration in accordance with the Rules of the International Division of the American Arbitration Association ("AAA") in force at the time a Demand for Arbitration is served (the "AAA Rules"),
- (b) The seat or place of the arbitration shall be in New York. Without prejudice to the foregoing, the parties agree that, with the consent of the parties and any arbitral tribunal constituted hereunder, hearings may take place in Houston, Texas or San Juan, Puerto Rico.
- (c) The arbitration shall be conducted in the English language. All documents submitted in connection with the proceedings shall be in the English language, or, if in another language, accompanied by an English translation.
- (d) The AAA Rules are incorporated by reference into this Clause 57.5.
- (e) The number of arbitrators shall be three (3). The claimant shall appoint one (1) arbitrator. The respondent shall appoint one (1) arbitrator. The AAA shall appoint the chairman.
- (f) Each party expressly agrees and consents to this procedure for nominating and appointing the arbitral tribunal.
- (g) Service of any Demand for Arbitration made pursuant to this Clause 57.5 shall be at the address given for the sending of notices under this Agreement in Clause 55. and in a manner provided for in such Clause.
- The arbitral tribunal shall apply the IBA Rules on the taking of evidence in (h)International Arbitration.

In Clauses 57.5, 57.7, 57.8, 57.9 and 57.10:

"Consolidation Order" means an order by a Tribunal that a Primary Dispute and a Linked Dispute be resolved in the same arbitral proceedings.

57.6. Definitions In Clauses 5 "Consolidat Linked Disp

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"Demand for Arbitration" has the meaning ascribed thereto in the AAA Rules.

"Existing Dispute" means any Dispute and/or any dispute, claim, difference or controversy arising out of, relating to or having any connection with the Linked Agreement, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any obligations arising out of or in connection with it.

"Joinder" means the joining of a party to this Agreement or a party to the Linked Agreement to an Existing Dispute.

"Joinder Order" means an order for Joinder made by a Tribunal.

"Linked Agreement" means the Charter.

"Linked Dispute" means any Dispute and/or any dispute, claim, difference or controversy arising out of, relating to or having any connection with the Linked Agreement, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any obligations arising out of or in connection with it where a Demand for Arbitration is served after a Demand for Arbitration has been served in respect of a Primary Dispute.

"Primary Dispute" means any Dispute and/or any dispute, claim, difference or controversy arising out of, relating to or having any connection with the Linked Agreement, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any obligations arising out of or in connection with it, where a Demand for Arbitration has been served before a Demand for Arbitration has been served in relation to a Linked Dispute.

"Registrar" has the meaning ascribed thereto in the AAA Rules.

"**Tribunal**" means any arbitral tribunal appointed under this Agreement or the Linked Agreement.

57.7. Joinder of Parties

- (a) Prior to the constitution of the Tribunal in an Existing Dispute, any party to such Existing Dispute may effect a Joinder by serving notice on the party it seeks to join at the address given for the sending of notices under this Agreement or the Linked Agreement (as applicable) and in a manner provided for in this Agreement or the Linked Agreement (as applicable).
 - After the constitution of a Tribunal in an Existing Dispute, any party to such Existing Dispute may apply to the Tribunal for a Joinder Order.

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- (c) The party seeking Joinder under Clause 57.7(a) or 57.7(b) shall promptly notify all parties to the Existing Dispute of any Joinder or application for a Joinder Order (as applicable). The party seeking a Joinder Order under Clause 57.7(b) shall promptly notify the party it seeks to join at the address given for the sending of notices under this Agreement or the Linked Agreement (as applicable) and in a manner provided for in this Agreement or the Linked Agreement (as applicable).
- (d) On an application under Clause 57.7(b), the Tribunal appointed in relation to the Existing Dispute may, if it considers it appropriate in all the circumstances, make a Joinder Order.
- (e) If a Tribunal appointed in relation to an Existing Dispute makes a Joinder Order, it shall order that notice of the Joinder Order and its effect be given immediately to (i) all parties to the Existing Dispute, including the party joined to the Existing Dispute by way of the Joinder Order, and (ii) the AAA.
- (f) Each party:
 - (i) consents to Joinder in accordance with the procedure set out in this Clause 57.7;
 - (ii) agrees to be bound by any Joinder and any award made by the Tribunal in an Existing Dispute to which it is joined; and
 - (iii) agrees that (A) the arbitral rules governing such procedure shall be the rules governing an Existing Dispute and (B) the seat for such arbitral proceedings will be the seat of the Existing Dispute.

57.8. Consolidation of Disputes

- (a) Any party to a Primary Dispute and a Linked Dispute may apply to the Tribunal appointed in relation to the Primary Dispute for a Consolidation Order in relation to any Linked Dispute.
- (b) The applicant party shall promptly notify all parties to the Primary Dispute and the Linked Dispute and the Tribunal appointed in relation to the Linked Dispute (if any) of any application under Clause 57.8(a).
- (c) The Tribunal appointed in relation to the Primary Dispute may, if it considers it appropriate in all the circumstances, make a Consolidation Order on an application brought under Clause 57.8(a).
- (d) If the Tribunal appointed in relation to the Primary Dispute makes a Consolidation Order:
 - It shall immediately, to the exclusion of other Tribunals, have jurisdiction to resolve finally the Linked Dispute in addition to its jurisdiction in relation to the Primary Dispute.

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- (ii) It shall order that notice of the Consolidation Order and its effect be given immediately to (A) any arbitrators already appointed in relation to the Linked Dispute, (B) all parties to the Linked Dispute, (C) all parties to the Primary Dispute and (D) the Registrar.
- (iii) Any appointment of an arbitrator in relation to the Linked Dispute before the date of the Consolidation Order will terminate immediately and such arbitrator will be deemed to be *functus officio*. The termination is without prejudice to:
 - (A) the validity of any act done or order made by such arbitrator or by the court in support of such arbitration before his appointment is terminated, which act done or order made will be treated as if it had been made in the arbitration of the consolidated Primary Dispute and Linked Dispute unless the Tribunal appointed in respect of the Primary Dispute orders otherwise;
 - (B) his entitlement to be paid his proper fees and disbursements; and
 - (C) the date when any claim or defense was raised for the purpose of applying any limitation bar or any similar rule or provision.
- (e) If a Tribunal appointed under the Linked Agreement makes a Consolidation Order which confers on that Tribunal jurisdiction to resolve a Linked Dispute arising under this Agreement, such Consolidation Order and the award of such Tribunal shall bind the parties to the Primary Dispute and the Linked Dispute being heard by that Tribunal.
- (f) Following a Consolidation Order, the costs of the terminated arbitration of the Linked Dispute (including the parties' legal or other costs) shall be deemed to be costs of the arbitration of the consolidated Primary Dispute and Linked Dispute.
- (g) The arbitral rules governing any proceeding following a Consolidation Order will be the rules governing the Primary Dispute and the seat of such arbitration proceedings will be the seat of the Primary Dispute.

57.9. Powers of the Tribunal following a Consolidation Order or Joinder

Following a Joinder or Consolidation Order, the Tribunal may also give any other directions it considers appropriate to:

- (a) give effect to the Joinder or Consolidation Order and make provisions for any costs which may result from it (including costs in any arbitration terminated as a result of a Consolidation Order); and
- (b) ensure the proper organization of the arbitration proceedings and the proper formulation and resolution of the issues between the parties.

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57.10. Enforcement of Awards in the event of Joinder or a Consolidation Order

- (a) Where a Tribunal is appointed under this Agreement or the Linked Agreement, the whole of its award (including any part relating to a Linked Dispute or following Joinder) shall be deemed for the purposes of the New York Convention on the Recognition and Enforcement of Arbitral Awards 1958 to be contemplated by this Agreement and the Linked Agreement.
- (b) Each party waives any objection, on the basis of Joinder, a Joinder Order or a Consolidation Order, to the validity and/or enforcement of any arbitral award made by a Tribunal following any Joinder, Joinder Order or Consolidation Order.

58. WAIVER OF TRIAL BY JURY

SUBJECT TO CLAUSE 57.5:

(a) EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT; AND

(b) THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A BENCH TRIAL.

59. <u>EXPENSES</u>

Except as expressly provided herein, the parties must bear their own costs and expenses (including the fees and expenses of their respective agents, representatives, advisors, legal counsel and accountants) necessary for the negotiation, execution, delivery, performance of and compliance with this Agreement.

60. <u>AMENDMENTS AND WAIVERS</u>

This Agreement may be amended, waived or otherwise modified only in a writing signed by a duly authorized representative of each party that specifically references this Agreement. A party to this Agreement may decide or fail to require full or timely performance of any obligation arising under this Agreement. The decision or failure of a party to require full or timely performance of any obligation arising under this Agreement (whether on a single occasion or on multiple occasions) shall not be deemed a waiver of any such obligation. No such decisions or failures shall give rise to any claim of estoppel, laches, course of dealing, amendment of this Agreement by course of dealing, or other defense of any nature to any obligation arising hereunder.

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SEVERABILITY

If any provision of this Agreement, or the application of such provision to any person or set of circumstances, shall be determined to be invalid, unlawful or unenforceable to any extent for any reason, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those as to which it is determined to be invalid, unlawful or unenforceable, shall not be affected and shall continue to be enforceable to the fullest extent permitted by Law. If a provision is found to be unenforceable, the parties will negotiate in good faith to reform this Agreement as necessary with a view to as closely as possible achieve the original intentions of the parties as set forth in this Agreement. No failure to agree upon such provisions shall be susceptible to dispute resolution pursuant to Clause 57.

62. ENTIRE AGREEMENT

62.1. Entire Agreement

This Agreement is the entire agreement of the parties respecting the subject matter hereof. There are no other agreements, representations or warranties, whether oral or written, respecting the subject matter hereof. No course of prior dealings involving any of the parties hereto shall be relevant or advisable to interpret, supplement, explain or vary any of the terms of this Agreement, except as expressly provided herein.

62.2. Non-Inducement

Subject to Clauses 4.1 and 4.2, each party agrees that neither of them has been induced to enter into this Agreement by any representation, warranty or undertaking not expressly incorporated into it, and that any pre-contractual representations and warranties, whether made orally or in writing, are of no effect unless expressly incorporated into this Agreement, with the result that neither party is entitled to any claim to damages in reliance on such pre-contractual representations and warranties (including claims arising in tort or under statute).

63. SURVIVAL

Any provision under this Agreement that, by its express terms, extends beyond the expiration or earlier termination of this Agreement, and any provision that by its nature and context should survive expiration or earlier termination of this Agreement, shall not be affected by expiration or early termination of this Agreement and shall so survive. The early termination of this Agreement shall not affect any rights between the parties that were in being at the time of, or came into being as a result of, such termination.

64. CLAIMS FOR LABOR AND MATERIALS

AOG shall assume the defense of and save harmless PREPA from claims of and disputes with Subcontractors regarding labor, materials, tools, and/or equipment provided by them and AOG shall not suffer any mechanics or other liens to remain outstanding against any of the property, equipment, tools, and/or materials used in connection with the Works. If AOG fails to comply with its obligations in this respect, PREPA may satisfy or pay any such liens or claims.

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65. <u>EXPEDIENCY</u>

The Substantial Completion Deadline (as may be extended pursuant to Clause 23.3) shall be of the essence. It is expressly understood and agreed that the Substantial Completion Deadline (as may be extended pursuant to Clause 23.3) is reasonable to achieve Substantial Completion, taking into consideration the circumstances and conditions of the Site, the industry and the general conditions prevailing in Puerto Rico.

66. OFFICIALS NOT TO BENEFIT

No officer, employee or agent of PREPA or otherwise of the Government of Puerto Rico shall acquire, hold or be entitled to any share of this Agreement or to any benefit that may arise therefrom. In addition to the restrictions and limitations established under the provisions of Act No. 12 of July 24, 1985 of Puerto Rico, retired or former Personnel of PREPA, whose work was in any way related to the award or management of contracts, shall in no way benefit from any contract with or order from PREPA for a period of two (2) years after leaving the employment of, or otherwise ceasing the provision of services to, PREPA.

67. <u>CONFLICT OF INTEREST</u>

- (a) Each party warrants that, as of the Effective Date, it has not entered into any contractual relationship which conflicts with this Agreement and no Personnel of such party has any personal or economic interest in this Agreement.
- (b) AOG warrants that it, its Personnel and its Subcontractors, have not and will not receive payment or benefit of any nature for services rendered regularly through an appointment to a governmental agency, body, public corporation or municipality in Puerto Rico. AOG certifies that it may have entered into consulting services contracts with other governmental agencies or bodies, but that such contracts do not constitute a conflict of interest for AOG. For the avoidance of doubt, AOG shall be considered to have a conflicting interest where:
 - (i) on behalf of a client, it has a duty to oppose in accordance with obligations owed to another client (whether current, past or future); or
 - (ii) its conduct is described as such in the canons of ethics applicable to AOG and its Personnel or in the laws or regulations of Puerto Rico.
- (c) Where PREPA considers, in its reasonable opinion, that a conflict of interest may exist, PREPA shall be entitled to require AOG to address such conflict. AOG may within thirty (30) Business Days of such requirement request a meeting with PREPA to discuss the alleged conflict of interest.

68. 5. A

DISCRIMINATION

AOG certifies that it provides equal opportunity employment, and does not discriminate in its selection of Personnel by reason of race, color, gender, age, national or social origin, social status, political ideas or affiliations, religion, for being or perceived to be a victim of domestic violence, sexual aggression or harassment regardless of marital status, sexual orientation, gender identity or immigration status, for physical or mental disability, for veteran status or based on genetic information

69. UNFAIR LABOR PRACTICES

AOG, or any of its Subcontractors or agents, shall comply with an order issued by the Puerto Rico Labor Relations Board and/or the National Labor Relations Board upon their finding that AOG or any of its Subcontractors or agents have committed an unfair labor practice after the date said order becomes binding, final and conclusive. Any declaration or determination by the Puerto Rico Labor Relations Board and/or by the National Labor Relations Board that AOG or its agents have not complied with an order issued by said Board relating to any unfair labor practice, shall not be binding, final, and conclusive, unless such order is affirmed or by a Court of competent jurisdiction, and the time for filing an appeal to such order expired or all appeals have been otherwise exhausted.

70. OFFICE OF THE COMPTROLLER

The demand of the obligations of either party under this Agreement will be subject to the filing of this Agreement at the Office of the Comptroller of the Commonwealth of Puerto Rico, in compliance with the Act of October 30, 1975, No. 18 of Puerto Rico.

[Signature Page Follows]

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IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused this Infrastructure Agreement to be signed by their respective officers thereunto duly authorized as of the day and year first set forth above.

SIGNATORIES

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SIGNED by **PUERTO RICO ELECTRIC POWER AUTHORITY** pating by its Expecting Director, Even F. Aligner Florence

acting by its Executive Director, Juan F. Alicea Flores:

'ss:

SIGNED by

AGUIRRE OFFSHORE GASPORT, LLC)
acting by its Chief Development Officer, Daniel Bustos:)
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