

2019-P00113
USUFRUCT AGREEMENT
FOR BATTERY ENERGY STORAGE SYSTEM
AS HUMANITARIAN HELP FOR PUERTO RICO

CONTRACT NO. _____

This USUFRUCT AGREEMENT FOR BATTERY ENERGY STORAGE SYSTEM AS HUMANITARIAN HELP FOR PUERTO RICO (this "Agreement"), dated ~~---~~May 21, ~~---~~, 2019, is made and entered by and between PUERTO RICO ELECTRIC POWER AUTHORITY, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico ("PREPA"), created pursuant to the provisions of Act 83 of May 2, 1941, as amended, known as "Puerto Rico Electric Power Authority Act" (the "Act"), herein represented by its Chief Executive Officer / Executive Director, José F. Ortiz Vázquez, of legal age, married, engineer and resident of San Juan, Puerto Rico and AES ES TAIT, LLC, a limited liability company organized and existing under the laws of the State of Delaware and authorized to do business in the Commonwealth of Puerto Rico ("AES"), herein represented by its Vice President and Secretary, Judi Sobeki, of legal age, executive and resident of Ohio. AES and PREPA are sometimes collectively referred to as the "Parties" and each, individually, as a "Party".

WITNESSETH:

WHEREAS, considering the current energy crisis affecting Puerto Rico as a result of the aftermath of Hurricane María, which passed through Puerto Rico on September 20, 2017, AES desires to collaborate with the restoration of Puerto Rico's electric system by facilitating to PREPA the commissioning, transportation and installation of a Battery Energy Storage System (as more particularly described in Section 1 hereto, the "BESS"), for a specific time period;

WHEREAS, PREPA was created and exists for the purpose of conserving, developing and utilizing, and aiding in the conservation, development and utilization of water and energy resources of Puerto Rico and making available to the inhabitants of Puerto Rico the benefits thereof, and to promote the general welfare and increase commerce and prosperity. For such purposes, PREPA has been granted and shall have and may exercise all rights and powers necessary or convenient to carry out the aforesaid purposes, including, without limitation, the power to (i) make contracts and to execute all instruments necessary or convenient in the exercise of any of its powers; and (ii) acquire, hold and use any property (whether real, personal, or mixed, tangible or intangible), or any interest therein; and

WHEREAS, in consideration of the foregoing, AES wishes to grant a usufruct right over the BESS in favor PREPA and PREPA desires to accept the same, subject to the mutually agreed upon terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree to the following:



TERMS AND CONDITIONS

Section 1. Description of the BESS and Equipment Mobilization. The BESS consists of six (6) battery energy storage containers capable of regulate frequency +/-12MW, and the following equipment:

- (1) Battery Containers (6 ea)
- (2) Battery Modules and Trays (864 ea)
- (3) BMS System
- (4) Isolation Transformers (5 ea)
- (5) Chillers (5 ea)
- (6) 13.8 KV Switchgear equipment (1 ea)
- (7) Auxiliary Transformers (1 ea)
- (8) Auxiliary Panelboards (6 ea)
- (9) Main Distribution Panelboard (1 ea)
- (10) Distribution Transformers (6 ea)
- (11) System Controllers (SCADA System components)

Section 2. Usufruct Right Over the BESS.

2.1 Usufruct Right. AES hereby grants to PREPA a right to usufruct the BESS for the Term (as defined below), exempt from the inventory and security obligations set forth in Article 419 of the Puerto Rico Civil Code, as amended, 31 L.P.R.A. sec. 1541, and PREPA hereby accepts said right, effective as of the date the Commencement Date.

The Parties acknowledge and agree that AES shall not have any responsibility or obligation before PREPA under or with respect to this Agreement if the BESS is lost, stolen, broken or damaged prior to its commissioning or during the Term of this Agreement.

2.2 Commencement Date. The Commencement Date shall be the latest to occur between (a) the date of the execution of this Agreement, and (b) the date of completion of the BESS commissioning at the Site.

Section 3. Term of Usufruct Right; Duration and Termination. The usufruct right over the BESS shall remain in effect for a term of eighteen (18) months commencing on the Commencement Date (the "**Term**"). Upon termination of the Term (or early termination thereof), PREPA shall put the BESS at the disposal of AES and assist AES with its removal.

Section 4. Site. The BESS is to be located at PREPA's Palo Seco power plant located at State Road PR-165, Km. 30.3, Palo Seco Ward of the Municipality of Toa Baja, Puerto Rico (the "**Site**"), as more particularly described and graphically depicted in **Schedule 4** hereto. PREPA hereby represents and warrants to AES that the Site is and during the Term will be (i) wholly owned by PREPA, and (ii) adequate for the placement, installation and interconnection of the BESS.

Section 5. Commissioning of the BESS and AES Services. AES will provide the BESS, as well as the required transportation, delivery, installation, interconnection and maintenance of the BESS (collectively, the "**AES Services**"), all in accordance with PREPA's technical specifications and requirements for the installation and interconnection of the BESS attached hereto as **Schedule 5**. AES and its installation contractor shall have the right, but not the obligation, to (i) review the technical specifications provided by PREPA and make suggested modifications for PREPA's review and approval prior to performing any AES Services, and (ii) refrain from performing any AES Services if, in the sole judgment of AES or its installation contractor, there may be an adverse consequence in performing the AES Services in accordance

with the technical specifications and information received from PREPA. In addition, PREPA shall provide to AES all specifications, requirements and any other information necessary, pertinent or requested by AES in order to perform the AES Services in an effective and efficient manner and without causing problems or damages to PREPA's system and related property or putting at risk the safety of workers, including without limitation, the technical information necessary to cause the interconnection of the BESS to PREPA's system.

For purposes of this Agreement, "interconnection" by AES shall mean the obligation of AES to provide the necessary infrastructure to perform the connection of the BESS system with the PREPA system, such as a feeder line from the BESS switchgear to the location established by PREPA for the connection of the systems; provided that PREPA personnel will perform the actual interconnection of the BESS and PREPA systems, having the support of AES and its installation contractor.

AES shall install the BESS at the Site, at no cost to PREPA; provided that the Parties shall determine, by mutual agreement, the date, time and manner in which the installation and other AES Services shall be performed.

Once the BESS is installed and interconnected, PREPA shall provide a certification to AES, to the effect that the BESS has been installed and interconnected in compliance with PREPA's technical specifications and requirements.

Subject to compliance with the terms of any Non-Disclosure Agreement and/or Confidentiality Agreement that may be in place, PREPA shall be entitled to have present any personnel it may deem necessary while the AES Services are being performed, in order to safeguard its duties.

Notwithstanding anything herein to the contrary, the obligation of AES to perform any of the AES Services shall be subject to the receipt of such information, specifications and certifications as may be required by AES or otherwise set forth herein and to the maximum monetary limit of Three Million Dollars (US \$3,000,000), of which up to Two Million Three Hundred Thousand Dollars (US \$2,300,000) are to be allocated, as needed, for transportation, installation and commissioning of the BESS and up to Seven Hundred Thousand Dollars (US \$700,000) are to be allocated, as needed, for costs of operation and maintenance of the BESS. If the costs exceed the abovementioned amount of Three Million Dollars (\$3,000,000) and AES does not want to pay any amount in excess of the Three Million Dollars, then PREPA will not have any responsibility to pay any amount and will cancel the Usufruct Agreement in its best interests.

The Parties acknowledge and agree that AES shall have no responsibility or obligation whatsoever before PREPA under or with respect to this Agreement, including, without limitation, the obligation to substitute all or any part of the BESS, in case the BESS is lost, stolen or damaged through negligence of PREPA or a third party.

Section 6. Permits. Except for any license, permit or registration specifically required to AES under applicable law, PREPA shall obtain all the necessary permits and authorizations required for the installation and interconnection of the BESS at the Site. AES shall have no responsibility to perform any of the AES Services until receipt of a certification from PREPA stating that all required Permits have been duly obtained and are in full force and effect.

Section 7. Rent. The Parties agree that the rent to be paid by PREPA in favor of AES under this Agreement, as consideration for the usufruct right herein granted, shall be the total sum of ONE DOLLAR (US \$1.00) (the "Rent"), payable on even date hereof pursuant to a certified check in favor of AES ES TAIT, LLC. Such Rent shall be paid by PREPA from the account set forth in Exhibit A hereto. In the event the Term is extended, the Parties shall negotiate a rent in consideration of the prevailing market rates and conditions applicable at the time and shall amend this Agreement accordingly.

Section 8. Invoice Certification. All invoices issued under this Agreement must include a written and signed certification by AES stating that no officer or employee of PREPA, and its respective subsidiaries or affiliates, will personally derive or obtain any benefit or profit of any kind from this Agreement, with the acknowledgement that invoices

which do not include this certification will not be paid. The Rent will be paid as set forth herein following AES's delivery to PREPA of the corresponding invoice, duly signed and certified by AES or its agent, and containing the following statement:

"We certify under penalty of nullity that, to the undersigned's actual knowledge, no public servant working for Puerto Rico Electric Power Authority, or for any of its subsidiaries or affiliates, will derive or obtain any benefit or profit of any kind from the contractual relationship which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the same. The only consideration for the rendering of goods or services has been the payment agreed upon with an authorized representative of PREPA. The amount billed is fair, true and correct. The services of AES ES TAIT, LLC under the "Usufruct Agreement for Battery Energy Storage System as Humanitarian Help for Puerto Rico" have been performed to date and no payment has been received."

Disbursements under this Agreement shall be subject, at all times, to the availability of assigned funds duly certified in accordance with the applicable laws of the Commonwealth of Puerto Rico.

Section 9. Limit of Responsibility. AES shall not have any responsibility or obligation to PREPA under or with respect to the Agreement if the BESS is lost, stolen, broken or damaged prior to its commissioning or during the Term of the Agreement and AES shall not have to replace the equipment under any circumstance, including, without limitation, if the BESS is stolen, damaged, or otherwise broken or malfunctioning.

AES shall have no liability to PREPA in connection with the BESS or its capacity to store or deliver energy or electrical output or in connection with any outage, disconnection, curtailment, reduction or the interruption of any of the AES services whether scheduled or unscheduled; including, but not limited to any disconnection or curtailment that is attributable to a force majeure event such as severe weather conditions, a hurricane or tropical storm.

For avoidance of doubt, AES makes no representations or warranties with respect to the BESS, except for those specifically set forth herein. PREPA acknowledges that it has entered into this Agreement relying on its own investigation of the BESS and related circumstances and without relying upon any representations or warranties made by AES or anyone acting or claiming to act on AES's behalf concerning the BESS, except as stated herein.

The Parties agree that any obligation, responsibility or indemnifiable interest on the part of AES under or with respect to this Agreement (including, without limitation, those related to the BESS and the AES Services) shall be subject to a maximum limit equal to ONE DOLLAR (US \$1.00).

Section 10. Indemnification, Release and Hold Harmless. PREPA shall indemnify and release and hold AES, its members, officers, directors, agents, employees, contractors and representatives harmless from: (i) any damages caused by or caused to the BESS once installed and interconnected as per PREPA's technical specifications; (ii) outage, disconnection, curtailment, reduction or curtailments or the interruption of any of the AES services of any kind, and for any reason in connection with the BESS and its operation including, but not limited to, force majeure, equipment failure or malfunction, among others; (iii) damages or loss of the BESS whether caused intentionally or accidentally by third parties or due to malfunction of the equipment; (iv) any environmental condition or contamination present or found at the Site or the area surrounding the BESS' selected location, including any contamination in the soil, subsoil or groundwater and which requires: (a) any type of notification to any pertinent regulatory agency; or (b) any type environmental investigation or assessment; or (c) any type of corrective or remedial action to address the condition and comply with any regulatory or agency requirements.

For purposes of item (iv) of this **Section 10**, AES shall not be deemed or considered, in any way whatsoever, an owner or operator of the Site or the area surrounding the BESS' selected location or any facility located thereat.

Section 11. Insurance. During the Term of this Agreement PREPA shall maintain (A) Commercial Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate, including AES as an additional insured party and having at least the following coverages: Personal and Advertising Injury, Contractual Liability, Employer's Liability and Fire Legal Liability. The policy shall also contain endorsements providing (i) resignation of subrogation in favor of AES, (ii) that PREPA shall be solely responsible for the payment of all premiums under such policy and that AES shall have no obligation for the payment thereof notwithstanding that AES is or may be named as an insured, and (iii) a thirty (30) days prior written notice of cancelation or non-renewal, and (B) All Risk Insurance Policy with extended coverage, vandalism and malicious mischief endorsements, in an amount adequate to cover the full replacement value of the BESS in the event of a fire or other casualty.

All policies of insurance procured by hereunder shall be issued by insurance companies classified no less than A- Excellent under the AMBest system, licensed to do business in the Commonwealth of Puerto Rico and in good standing with the Office of the Commissioner of Insurance of Puerto Rico.

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

1. Commonwealth of Puerto Rico Workmen's Compensation Insurance

AES shall provide Workmen's Compensation Insurance as required by the Workmen's Compensation Act of the Commonwealth of Puerto Rico.

AES shall also be responsible for compliance with said Workmen's Compensation Act by all its subcontractors, agents and invitees, if any.

AES shall furnish to PREPA a certificate from the Puerto Rico's State Insurance Fund showing that the all personnel employed in the work are covered by the Workmen's Compensation Insurance, in according with this Agreement.

2. Employer's Liability Insurance

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

3. Commercial General Liability Insurance

AES shall provide a Commercial General Liability Insurance with limits of \$1,000,000 per occurrence and \$1,000,000 aggregate.

4. Commercial Automobile Liability Insurance

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

5. Professional Liability Insurance

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

6. Pollution Liability Insurance

AES shall provide a Pollution Liability Insurance with limits of \$1,000,000 per claim and \$1,000.00 per aggregate.

Requirements under these policies:

The Commercial General Liability Insurance and the Commercial Automobile Liability Insurance required under this Agreement, shall be endorsed to include:

- a. As additional Insured:
Puerto Rico Electric Power Authority
Risk Management Office
PO Box 364267
San Juan, Puerto Rico 00936-4267
- b. A 30-day cancellation or nonrenewable notice to be sent to the above address.
- c. An endorsement including this Agreement under contractual liability coverage identifying it by number, date and parties to the Agreement.
- d. Waiver of Subrogation in favor of PREPA.
- e. Breach of Warranties or Conditions:

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

Section 12. Notices. Any notice to be given hereunder shall be in writing and will be sufficiently served when delivered by hand, facsimile or properly mailed to the following addresses to the Party to which it is required or desired to be given, or to such other person or address as either Party may specify by notice as required hereunder.

If to AES:

AES ES TAIT, LLC
PO Box 1890
Guayama, P.R. 00785

Telecopier: (787) 866-8139

Attention: Judi L. Sobecki

If to PREPA:

PUERTO RICO ELECTRIC POWER AUTHORITY
PO Box 364267
San Juan, Puerto Rico 00936-4267

Telecopier: (787) 521-4665

Attention: José F. Ortiz Vázquez
Chief Executive Officer/Executive Director

Notices shall be deemed delivered (i) at the time of receipt, if hand delivered; (ii) forty-eight (48) hours after being sent, if sent via certified mail; and (iii) twenty-four (24) hours after its deposit with a delivery service, if sent for next-day delivery.

In the event any of the Parties changes its address, it must notify the other of the change of address within the first five (5) days from the date of the change.

Section 13. Termination. This Agreement may be terminated before the end of the Term by any of the Parties, as follows:

(1) due to non-compliance with the obligations incurred under this Agreement, if the same are not cured within thirty (30) days after the receipt of a written notice of the occurrence of a breach. Each Party is responsible for notifying the other in writing of said termination; or

(2) with a thirty (30) days' prior written notice to the other Party, without a right to any compensation whatsoever; or

(3) immediately or at such other date as may be provided by any binding law, regulation determination, order or similar mandate.

Section 14. No liens, encumbrances or third party rights; Personal Property. PREPA may not encumber, constitute any lien or otherwise grant any rights to third parties in connection with this Agreement or the BESS without the prior written consent of AES. The Parties acknowledge and agree that the BESS is and shall be deemed as AES' personal property, at all times.

Section 15. Excusable Delay. In general, either Party will be excused from, and will not be liable for, any delay in performance or failure to perform, and will not be deemed to be in default for any delay in or failure of performance due to causes beyond its reasonable control.

Section 16. Force Majeure. The Parties hereto shall be excused from performing hereunder and shall not be liable in damages, if they shall be unable to perform, or are prevented from performing by a force majeure event. For purposes of this Agreement, a "force majeure event" means an event beyond the reasonable control of any of the Parties, which prevents such Party from complying with any of its obligations hereunder or under the Agreement. Force majeure may include, but is not be limited to, the following: Acts of God, industrial disturbances, acts of the public enemy, terrorism, war, blockades, boycotts, riots, insurrections, epidemics, earthquakes, storms, floods, civil disturbances, lockouts, fires, explosions, interruptions of services due to the acts or failure to act of any governmental authority; provided that these events, or any other claimed as a force majeure event, and/or its effects, are beyond the reasonable control and without the fault or negligence of the Party claiming the force majeure event, and that such Party, within ten (10) days after the occurrence of the alleged force majeure event or as reasonably possible after such force majeure event, gives the other Party written notice describing the particulars of the occurrence and its estimated duration.

The Parties acknowledge and agree that this Force Majeure clause shall be included in any agreement signed by the Parties in connection with the extension of the Term of this Agreement.

Section 17. Government Contract Clauses.

(1) **No Payments or Gratuities.** AES, nor, to AES's knowledge, its officers, directors or agents, has made any payment or gift to any Government employee or official to obtain a favorable evaluation or the execution of this Agreement. No fee or gratuity will be paid to any Government employee or official in connection with this Agreement to meet the requirements of this Agreement.

(2) **Conflicts of Interest.** AES, and to AES's actual knowledge, its directors, officers, members, partners or agents, have no interest nor shall they acquire any

interest, directly or indirectly, in cases or issues which may conflict in any manner with its performance under this Agreement. To the actual knowledge of AES (i) no public official or employee of the Government or employee of the legislative and judicial branches of the Government has participated in any decision relating to this Agreement, which affects such official's or employee's personal interest or the interest of any entity or business in which such officer or employee or any member of his family has or has had an economic interest, directly or indirectly, and (ii) no official or employee of the Government or of the legislative and judicial branches of the Government has any interest, direct or indirect, in this Agreement or any proceeds thereof. AES hereby certifies that neither it nor any of its shareholders, directors, executives, officers, agents and/or employees, as applicable, receives a salary or any kind of compensation for the delivery of regular services by appointment in any agency, instrumentality, public corporation, or municipality of the Commonwealth of Puerto Rico. AES further agrees to request the Government's consent or waiver to any agreement that may be contrary to the certifications made herein prior to its execution, which consent or waiver will not be unreasonably denied. It is acknowledged that the certifications as to the non-existence of a conflict of interest are essential conditions of this Agreement, and if found to be intentionally false, misleading, altered or forged, such finding may be grounds for termination.

(3) **Compliance with Tax Laws; Delivery of Certifications.** AES shall be responsible for the retention, proper filing and payment of all taxes and impositions arising under this Agreement, if applicable, and agrees that it will comply with the tax laws, rules and regulations of the Commonwealth of Puerto Rico. AES certifies that it has filed all of its tax returns for the past five (5) years, as applicable, owes no taxes and/or is up to date in any payment plan for such taxes. AES also certifies that it does not have outstanding debts regarding its treatment of unemployment insurance premiums, workers' compensation payments, social security for chauffeurs in Puerto Rico or the Administration for the Sustenance of Minors (known by its Spanish acronym "ASUME").

Prior to the execution of this Agreement, AES has submitted to the Government the certifications and documents listed in **Exhibit B** hereto, to the extent applicable. Copies of the abovementioned certifications are attached hereto as part of **Exhibit B** and are made a part hereof by this reference. PREPA certifies that no additional certifications are required to be delivered by AES to PREPA in accordance with applicable law.

(4) **Registration of this Agreement.** PREPA shall remit or cause the remission of a copy of this Agreement to the Office of the Comptroller of Puerto Rico within fifteen (15) days following the date of the execution of this Agreement. No provision, consideration or services under this Agreement may be demanded until the same has been filed for registration with the Office of the Comptroller of Puerto Rico pursuant to Act No. 18 of October 30, 1975, as amended and Act No. 127 of May 31, 2004, as amended.

(5) **Anti-Corruption Code for a New Puerto Rico.** AES agrees to comply with the provisions of Act 2-2018, as the same may be amended from time to time, which establishes the Anti-Corruption Code for a New Puerto Rico. AES hereby certifies that it does not represent particular interests in cases or matters that imply a conflicts of interest, or of public policy, between the executive agency and the particular interests. AES shall furnish a sworn statement to the effect that neither AES nor its president, vice president, executive director or any member of its board of officials or board of directors, or any person performing equivalent functions for AES has been convicted of or has pled guilty to any of the crimes listed in Article 6.8 of Act 8-2017, as amended, known as the "Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico" or any of the crimes included in Act 2-2018.

AES hereby certifies that it has not been convicted in Puerto Rico or the United States Federal court for any of the crimes listed under Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico,

any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.

PREPA shall have the right to terminate the contract in the event of any of the crimes listed under Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.

(6) **Ethics Representations.** AES acknowledges, represents and warrants that no official or employee of the Government has a direct or indirect economic interest in AES's rights under this Agreement as required by the Government's Ethics Law, Act No. 1, enacted on January 3, 2012, as amended from time to time, and its implementing regulations (the "*Ethics Law and Regulations*").

(7) **Non Discrimination Clauses.** AES agrees that it will not discriminate against any employees or applicant for employment on account of race, color, religion, sex, sexual orientation, disability or national origin in compliance with all applicable Commonwealth and federal laws and regulations regarding non-discrimination.

(8) **Enabling Act.** This Agreement is entered into by PREPA pursuant to the Act. PREPA hereby certifies that the appearing party executing this Agreement in representation of PREPA has been duly appointed and authorized to act in such capacity.

(9) **Puerto Rico Products.** Articles extracted, produced, assembled, packaged or distributed in Puerto Rico by enterprises with operations in Puerto Rico, or distributed by agents established in Puerto Rico shall be used when the service is rendered, provided that they are available.

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

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

(12) **Prohibition with respect to contracts with officers and employees of other Government entities.** No public officer or employee may be a party to or have any interest in any profits or benefits produced by a contract with any other executive agency or government dependency unless the Governor gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice.

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

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

The term "**Government**", as used in this Agreement, shall mean the Commonwealth of Puerto Rico.

9. **Miscellaneous.**

9.1 **Governing Law; Forum.** The Agreement shall be subject and interpreted in accordance with the laws of the Commonwealth of Puerto Rico, and any cause of action arising from the same shall be filed at a Court of First Instance of San Juan, Puerto Rico.

9.2 **Assignability.** The Agreement may not be transferred, or assigned to another person, whether natural or juridical, except with the mutual written agreement between the Parties.

9.3 **Document Retention.** AES shall retain all documents generated with respect to this Agreement in accordance with AES' document management practices. In the event that an audit has been initiated and any finding remains without resolution at the end of said period, the documents shall be retained until the resolution of the finding.

9.4 **Separability.** If one or more clauses of this Agreement are declared invalid, void, unenforceable or illegal, that shall not affect the validity of the remaining portions of this Agreement, which shall remain in full force and effect.

9.5 **Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to the subject-matter hereof. Any amendment or modification to the same shall be in writing and executed by the Parties.

9.6 **Delivery of Services.** The Parties to this Agreement acknowledge that no services shall be delivered until such time as this Agreement is signed by both Parties. Additionally, services shall not continue under this Agreement after the Term, unless an amendment extending the Term is executed by both Parties. No services shall be paid in violation of this clause.

9.7 **Registration.** Performance of services object of this Agreement may not be demanded until the same has been filed for registration with the Office of the Comptroller, in accordance with Act No. 18 of October 30, 1975, as amended.

9.8 **Counterparts.** This Agreement may be signed in counterparts, all of which shall constitute one and the same Agreement.

9.9 **Recitals.** The premises of this Agreement are made to form an integral part of the same by this reference.

9.10 **Time is of the Essence.** The Parties acknowledge that time is of the essence in the negotiation, execution and delivery of this Agreement and any notices required hereunder.

9.11 **Confidentiality.** Except as and to the extent required by applicable law, the Parties shall observe and, to the extent applicable, shall cause their principals, employees, affiliates, agents, and their respective representatives to maintain confidentiality with respect to any information related to either of the Parties, which information is acquired in connection with this Agreement. Each of the Parties agrees that neither it, nor any of its

affiliates, nor their respective officers, directors, employees, agents, advisors or consultants will use any confidential information obtained from the other Party except in connection with the proposed Agreement. Except as and to the extent required by applicable law, no information provided in connection with this Agreement, and the negotiation of this Agreement, shall be disclosed to any third person or entity without the prior written consent of the other Party. However, each of the Parties may disclose such information to the following: (i) to any of its affiliates, and to their respective officers, directors, employees and agents, provided that such individuals need to know such information in order to conclude the transactions contemplated by this Agreement and are required by such Party to maintain the confidentiality and non-disclosure of such information; and (ii) to attorneys, accountants and/or advisers, provided that such attorney, accountant and/or advisor is required to maintain the confidentiality and non-disclosure of such information. Nothing herein contained shall be construed as to limit the capacity of a Party to share information as and to the extent required by applicable law.

9.12 Public Announcements. No public announcements shall be made in connection with the BESS and/or the Agreement unless previously approved by AES in writing.

9.13 Expenses. Each Party will be responsible for its own legal and professional expenses, as well as any other similar expenses relating to the preparation and negotiation of this Agreement and the other related documents in connection hereof.

9.14 Termination by the Chief of Staff. The office of the Chief of Staff shall have the authority to terminate this Contract at any time.

9.15 Effectiveness. This Agreement shall commence and be effective as of its execution.

SUCH IS THE AGREEMENT accepted by the Parties, upon finding it in accordance with their agreements and, and are, therefore, bound by the same.

IN WITNESS WHEREOF, each of the Parties, herein represented by its authorized representative, executes this Agreement, in San Juan, Puerto Rico, on this 21 day of May, of 2019.

**PUERTO RICO ELECTRIC POWER
AUTHORITY**

By: _____
Name: José F. Ortiz Vázquez
Title: Chief Executive Officer
S.S. 660-43-3747

AES ESTAIT, LLC

By: _____
Name: Judi Sobocki
Title: Vice President & Secretary
S.S. 271-81-4237

Submitted by: _____
Reviewed and Approved by: _____
Attorney

Exhibit A
Payment of Rent for Use Right

Account Number 1-4019-92306-550-059



Exhibit B

1	Certificate of Filing of Income Tax Returns (Form SC 6088) (Treasury Department)	X
2	Debt Certificate (Form SC 6096) or Evidence of Payment Plan (Treasury Department)	X
3	Copy of the Merchant Registration (Form SC 2918) (Treasury Department)	N/A
4	Certification of Tax Exemption (if applicable) (Treasury Department)	N/A
5	Certificate of Filing of Sale and Use Tax Return-IVU (Form SC 2942)	N/A
6	Debt Certificate of Sales and Use Tax-IVU (Form SC 2927)	N/A
7	Certificate of Filing of Personal Property Tax Returns (CRIM) (if no personal property is owned and no filing have been made, please deliver a sworn statement to that effect)	See 8.
8	Debt Certificate for All Concepts (CRIM) (If no personal or real property is owned, please deliver a Negative Certificate of Real or Personal Property)	X
9	Certificate of Employer Registration and Certificate of Debt for Unemployment and Disability Insurance. (Department of Labor and Human Resources)	X
10	Certificate for Chauffeur's Insurance (Department of Labor and Human Resources)	X
11	Corporate Resolution: notarized or stamped and on the letterhead of the corporation	X
12	Certificate Good Standing (State Department)	X
13	Certificate of Existence or Certificate of Authorization to do Business in Puerto Rico (State Department)	X
14	Certificate of Compliance with Administration for Sustenance of Minors (ASUME)	X
15	Sworn Statement Act 2-2018	X
16	ACH Request Form (if applicable for payment)	N/A

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Schedule 4

Location of the BESS

Installation Location for PR BESS at Palo Seco Power Plant:



Handwritten signature



AAO



Schedule 5

Technical specifications and requirements for the installation and interconnection of the BESS

Attached hereto.

Ad

Specifications and Technical Requirements
AES BESS Humanitarian Project
Palo Seco Steam Plant

Requirements for PREPA evaluation and acceptance prior installation and connection to PREPA's electrical system, as per article 2.5 of the Memorandum of Understanding (MOU) between the parties:

1. Project Drawings signed and stamped by a professional engineer:
 - a. Conceptual design
 - b. Current and proposed levels drawings
 - c. Drainage drawings that includes the location of existing drains or parts of the systems (natural or man-made), runoff calculations, and water bodies (perennial and intermittent) and natural systems (wetlands, sinks, and others)
 - d. Storm Water drawings: with the location of the final drainage system and discharge points
 - e. One Line Diagrams: electricals, controls and communications
 - f. CES Plan: sedimentation and erosion control measures
 - g. Grounding Grid
 - h. Equipment supporting base design: for 150 MPH winds
 - i. Civil drawings

2. For Environmental Permits:
 - a. Estimated volumes of non-hazardous solid waste and ground movement: AES shall submit calculations in a spreadsheet signed and stamped by a licensed engineer.
 - b. Soil study: boring tests results performed in the project's designated area
 - c. AES or transporter permit for the transport of solid non-hazardous waste (DS-1)
 - d. Toa Baja Landfill acceptance letter: final destination of non-hazardous solid waste
 - e. Copy of manifests for the non-hazardous solid waste disposal: during project execution

3. Technical Specifications:
 - a. Measuring equipment
 - PT (Power Transformers) -
 - CT (Current Transformers) -
 - Meter
 - b. Service Transformers.
 - c. Breakers
 - d. Cables (power, data and communications)

4. Remote data to be shared with PREPA (Palo Seco Steam Plant and SCADA)

5. BESS Operating Procedures
 - a. Normal and Emergency Start Up

b. Normal and Emergency Shutdown

6. SAFETY PROVISIONS

- a. Copies of all training certificates, licenses or certifications required, according to the scope of work. For example: pesticide applicator, electrician, spill response, refrigeration technician, DOT training for hazardous substances, etc.
- b. Safety Data Sheets for all chemicals products to be used in the project, including the batteries: for evaluation and approval by the Occupational Safety and Health Office at school (Hazard Communication Section).
- c. Certification of compliance with medical surveillance requirements, according to scope of work. For example: respiratory protection, asbestos, lead, etc.
- d. Certification of compliance Fit Test requirements.
- e. Loss Control Program.
- f. Accident / incident investigation procedure
- g. Compliance with requirements of all applicable regulations included in the 29 CFR. The Program latest revision date shall not be greater than a year from the projects commencement date.
- h. Copy of Site Specific Work plan, which includes the procedure to be followed during the project to achieve compliance with the applicable standards and regulations. These standards and regulations include, but are not limited to, when applicable:
 1. Occupational Exposure to lead (29 CFR 1926.62)
 2. Scaffolds (29 CFR 1926 Subpart L)
 3. Confined Spaces (29 CFR 1910.146)
 4. Occupational Exposure to Noise (29 CFR 1910.95)
 5. Hazardous Materials (29 CFR 1910 subpart H)
 6. Personal Protective Equipment (29 CFR Subpart I)
 7. Hazard Communication (29 CFR 1910.1200)
 8. HAZWOPER (29 CFR 1910.120)
 9. Fire Protection (29 CFR 1910 Subpart L)
 10. Respiratory Protection (29 CFR 1910.134)
 11. Fall Protection (29 CFR 1926 Subpart M)
 12. Electrical (29 CFR 1926 Subpart K)
 13. Welding (29 CFR 1926 Subpart J)
 14. Welding (29 CFR 1926 Subpart J)

15. Excavations (29 CFR 1926 Subpart P)
 16. Demolitions (29 CFR 1926 Subpart T)
 17. Explosives (29 CFR 1926 Subpart U)
 18. Electric Industry (29 CFR 1910.269)
 19. Lockout/Tag out (29 CFR 1910.147)
 20. Asbestos (29 CFR 1910.1001)
 21. Any other regulation or guideline applicable to the scope of work.
- i. The Site Specific Work Plan shall include contingency procedures during emergencies for atmospheric disturbances, fire, oil spill, accidents.
 - j. Special Safety Conditions, as needed:
 1. Services including the application of chemical products within closed spaces, like buildings, will be offered between Mondays to Saturday AFTER PREPA's WORKING HOURS. The Contractor will take all steps necessary to assure the area will be free of nuisance odors or vapors before school personnel is to reoccupy. All these will be done in coordination with the local supervisor of PREPA. Services in outer parts of high school can be done during regular working hours.
 2. The Contractor shall submit an attendance list of all employees that have been authorized to work in the Project and may not use any other for the performance of the Scope of Work. For new personnel, the Contractor shall submit the information and documents previously requested in these technical specifications for evaluation by the Head of Environmental Section and Occupational Safety Officer of the plant.
 3. The Contractor shall assure that all wastes are removed and properly disposed of, in accordance with all applicable Federal and Local Laws and Regulations, during and after completion of work.
 4. Before commencement of the work, the Contractor shall take a safety meeting with a Safety Officer, Environmental Officer and the project manager on PREPA's behalf. During this meeting the site-specific work plan will be discussed and reviewed, including the safety rules and the environmental protection procedures to be followed. Also, a tour to the working will take place.
 5. All chemical products to be used shall be classified as Approved or Conditionally Approved by PREPA's Hazard Communication.

6. Welding operations will comply with the requirements of OSHA, ANSI, ASME and NFPA.
7. Welding procedures and welder's qualifications shall be submitted for evaluation before commencement of work. Each welder's certification shall be on file and accessible to PREPA inspector upon request. Welding records shall be kept according to ANSI B 31.1, for. 127.6
8. If the project involves the handling of non-asbestos insulation or other dust generating materials, like gypsum board, contingency measure shall be taken to prevent the release of the dust to adjacent areas.
9. Coating Application Procedures - The procedures shall be explicit with regard as how the requirements of this technical specification will be implemented, addressing the equipment to be used, and the frequency and acceptance criteria associated with the quality control procedure.
10. The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any Governmental authority having jurisdiction over the safety of persons or property or to protect them from damage, injury or loss. The Contractor shall erect and maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, safety regulations and notifying owners and promulgating users of adjacent utilities, as required by applicable regulations.
11. The Contractor shall designate a Safety Officer at the site whose sole duty shall be the prevention of accidents. The Safety Officer shall develop, coordinate and comply with the project safety program
12. Compliance with all safety provisions by subcontractors shall be the responsibility of the Contractor.
13. Contractor agrees that it shall perform all work in compliance with federal, state and local occupational safety and health regulations, including but not limiting to hazard communication. In addition, the Contractor agrees to observe the compliance of all precautions stated upon the applicable safety data sheets and shall label all chemicals used and properly identify disposal containers.
14. Contractor shall obtain and maintain, during the duration of the contract, all applicable permits from all federal, state and local regulatory authorities or

other applicable government agency with respect to discharge, disposal, use, storage, handling and transportation of hazardous chemicals and substances. For projects including the handling of asbestos, **lead**, or spilled hazardous substances, any notification required to EPA or the EQB (now, BNER) will be done by the Contractor, but in coordination with the Safety Officer and the Environmental Advisor or Officer.

15. Contractor shall not cause or permit that any hazardous chemical or product containing a hazardous chemical to be disposed or inadequately handled at, or in the vicinity of, any place where any employee, agent, or Contractor of the Puerto Rico Electric Power Authority, or any employee of any such agent or Contractor, may be at risk or exposed to hazard as a result thereof during normal use or any foreseeable emergency.

END OF SPECIFICATIONS AND TECHNICAL REQUIREMENTS

