

**GOVERNMENT OF PUERTO RICO
PROFESSIONAL SERVICES CONTRACT**

APPEAR

As First Party: Puerto Rico Electric Power Authority (PREPA), a public corporation and government instrumentality of the Commonwealth of Puerto Rico, created by Act No. 83 of May 2, 1941, as amended, represented in this act by its Chief Executive Officer/Executive Director, mister José F. Ortiz Vázquez, of legal age, married and resident of San Juan, Puerto Rico.

As Second Party: Siemens Industry, Inc. (Consultant), a corporation organized and existing under the laws of Delaware, with offices at 400 State Street, Schenectady, NY 12305, herein represented by its General Manager, Scott Hulett, of legal age, and a resident of Texas, and its Commercial Controller, Krishant Sivanesan, of legal age, and resident of Minnesota duly authorized to appear in representation of the Consultant by Corporate Resolution dated April 1, 2019.

Both PREPA and the Consultant which are hereinafter referred to individually as a "Party" and, jointly as "Parties".

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WHEREAS, PREPA, by virtue of its enabling act, Act No. 83 of May 2, 1941, as amended (Act 83), has the authority to engage those professional, technical and consulting services necessary and convenient to the activities, programs, and operations of PREPA;

WHEREAS, as established in Section 205 (1) of Act 83, all purchases and contracts for supplies or services, except personal services, made by PREPA, including its capital construction contracts, shall be made by calling for bids with sufficient time before the date the bids are opened so that PREPA can guarantee proper knowledge and appearance of competitive bidders.

WHEREAS, by virtue of Resolution 4719 of June 26, 2019, PREPA's Governing Board authorized the Chief Executive Officer to continue with the contractual relationship with PREPA for Fiscal Year 2019-2020, up to a maximum amount of \$750,000.

WHEREAS, PREPA desires to enter into this Professional Services Contract with the Consultant for the performance of his consulting services (Services).

WHEREAS, the Consultant states that it is ready, willing and able to provide the Services pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises and the terms and conditions set forth herein, PREPA and the Consultant agree as follows:

1. SCOPE OF SERVICES

The Consultant must provide all required tasks and services required by PREPA in matters of the Integrated Resource Plan ("IRP") as established by PREPA, in Exhibit A and B of this Contract. In case of any discrepancies between the Request for Proposals, and the consultant's proposal, the Request for Proposals shall be deemed supreme.

2. TERM OF CONTRACT

This Contract shall be in effect from the date of its execution until June 30, 2020 (The Contract Period). The Contract may be extended, upon mutual agreement of the Parties, for additional annual fiscal periods subject to the availability of funds and previous required authorizations. Either party shall have the right to terminate this Contract for its convenience, at any moment, by providing the other Party thirty (30) days written notice by registered mail, return receipt requested, or overnight express mail. If notice is given, this Contract shall terminate upon the expiration of thirty (30) days and PREPA shall be obligated to pay all fees and expenses incurred up to the day of effective termination, in accordance with the terms of this Contract. The rights, duties and responsibilities of the Parties shall continue in full force and effect during the thirty (30) day notice period. Consultant shall have no further right to compensation except for what has been accrued for services rendered under this Contract until said date of effective termination.

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3. COMPENSATION AND PAYMENT

As compensation for services rendered under this Contract, PREPA agrees and Consultant accepts that the total amount to be paid under this Contract shall not exceed seven hundred fifty thousand dollars (\$750,000) (Contract Amount). However, nothing herein shall preclude the Parties from agreeing to increase said amount. PREPA will only pay for services that are evidenced by a properly submitted invoice for services rendered. Notwithstanding the foregoing, any increase to the Contract Amount shall be evidenced in writing and signed by both Consultant and PREPA. PREPA will not be required to make advance payments for any service to be rendered by Consultant under this Contract. The Contract Amount includes the reimbursable expenses.

All payments performed under this Contract will be charged to PREPA's budget account number 01-4019-92306-550-059.

Consultant shall submit its invoices every two (2) weeks for work performed. Each invoice for professional services shall be itemized and must be duly certified by an authorized representative of Consultant. Consultant shall allocate any

invoiced fees between: (i) activities undertaken outside of Puerto Rico; and (ii) those relating to activities undertaken within Puerto Rico.

Invoices will be approved or denied by PREPA within seven (7) calendar days of Consultant's submission of its invoice after which time, acceptance of the invoice and milestone specified in the invoice will be deemed accepted by PREPA. Payment is due within thirty (30) days from invoice approval if they are in compliance with the requirements set forth in this Contract including the evidence of compliance with insurance policies, certifications and other governmental documents. The Consultant is responsible to continuously verify that PREPA has their current and valid insurance policies, certifications and other governmental documents. If the invoice is denied, PREPA will submit to the Consultant the corresponding objections to the payment. The Consultant will make the corresponding adjustments to the invoice and submit it for PREPA's approval. PREPA reserves the right to conduct the audits it deems necessary, and it will not be subject to finance charges regarding invoice payments subject to an audit.

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After providing written notice to PREPA, Consultant may immediately suspend all work in the event any undisputed invoice becomes past due. Consultant shall have no obligation to resume work until PREPA has made payment for all past due invoices. In any instance where Consultant elects to suspend work for past due invoices, the project scheduled shall be extended for a period of time equal to the period of suspension.

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

"We certify under penalty of nullity that no public servant of the Puerto Rico Electric Power Authority, their respective 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 Contract. The only consideration to be received in exchange for the services provided is the agreed-upon price that has been negotiated with an authorized representative of the Puerto Rico Electric Power Authority. The total amount shown on this invoice is true and correct. The services have been rendered, and no payment has been received."

Consultant's Signature

Consultant agrees to submit bank account wiring instructions to PREPA in order to facilitate payment by means of electronic transfer.

Final acceptance of the work by PREPA will occur only after successful completion of the final report by the Consultant and after PREPA's receipt of all final Documents reflecting all changes and corrections.

Consultant shall request final acceptance in writing stipulating in the final invoice that:

The work is completed.

Final acceptance and payment does not constitute a waiver by PREPA of any rights with respect to Siemens's continuing obligations under the Contract. Siemens PTI waives all claims against PREPA beyond final payment, other than those previously made in writing and still unsettled.

Final acceptance of the work will be confirmed by PREPA upon the earlier of: (1) the final payment to Consultant; or (2) thirty (30) days, following submission of the final invoice.

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4. REIMBURSABLE EXPENSES

PREPA shall reimburse Consultant for out of pocket expenses incurred in providing the Services, subject to the terms of this Contract. As established in Appendix B, reimbursable expenses shall not exceed six thousand dollars (\$6,000) and will be reimbursed by PREPA through the presentation of acceptable evidence for such expenses. Reimbursement for air travel expenses is restricted to lowest available economy airfares. PREPA shall not pay for travel time, provided, however, that Consultant personnel may work while traveling, and such time is compensable as otherwise provided under this Contract. Payment for travel time shall be made only if the invoice details the services rendered and the time billed on each matter as required in this Contract.

Any travel and lodging expense for which a reimbursement is requested shall be reasonable and necessary, and any travel and lodging expenses shall be authorized in writing and in advance by PREPA. PREPA will not reimburse expenses that do not comply with this provision and Appendix B. Under no circumstances will expenses for alcoholic beverages be reimbursed.

Third-Party Vendors and/or Out of Pocket Expenses: PREPA shall reimburse Consultant for costs that may be invoiced to Consultant by third party vendors for goods or services (related, for example, to tele-communication services, research, print materials, court reporters, or messengers) necessary to support the Services and provided exclusively for the benefit of PREPA.

5. CONFLICTS OF INTEREST.

- A. Consultant acknowledges that in executing its services pursuant to this Contract, its Power Technologies International business segment (Business Segment) within Siemens industry, Inc.'s Digital Grid Business Unit of the Energy Management Division has an obligation of complete loyalty towards PREPA, in rendering professional services, including having no conflict of interests. "Conflict of interests" means representing clients who have or may have interests that are contrary to PREPA, but does not include rendering services that are unrelated to this engagement. This duty includes the continued obligation to disclose to PREPA all circumstances of the Consultant Business Segment's, its relations with clients and third parties which would result in a conflict of interest, and any adverse interest which would influence Consultant Business Segment when executing the Contract or while it is in effect.

This conduct by one of Consultant's Business Segment, managers, executives, officers, clerks or employees shall be attributed to Consultant for purposes of this prohibition. Consultant shall endeavor to avoid even the appearance of the existence of a conflict of interest that has not otherwise been waived.

Consultant acknowledges the power of PREPA's Chief Executive Officer to oversee the enforcement of the prohibitions established herein. If PREPA's Chief Executive Officer determines the existence or the emergence of conflict of interest with Consultant Business Segment, he shall inform such findings in writing and his intentions to terminate the Contract within a thirty (30) day term. Within such term, Consultant can request a meeting with PREPA's Chief Executive Officer to present its arguments regarding the alleged conflict of interest. This meeting shall be granted in every case. If such meeting is not requested within the specified term, or if the controversy is not settled satisfactorily during the meeting, this Contract shall be terminated at the end of said thirty (30) day period.

Consultant certifies that at the time of the execution of this Contract, the Consultant Business Segment does not have nor does represent anyone who has conflict of interest that are in conflict with PREPA. If such conflicting interests arise after the execution of this Contract, Consultant shall, to the extent consistent with its obligations to other clients, notify PREPA immediately.

- B. No employee, officer, or agent of PREPA shall participate in the selection, or in the award or administration of a contract, supported by Federal funds, if a conflict of interest, real or apparent, would be involved.

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6. RESPONSIBILITIES OF PREPA

PREPA shall use reasonable efforts to cooperate with the Consultant, including by providing any information reasonably requested by Consultant and providing access to any facility at which the Services are to be performed at such times as may reasonably be requested by the Consultant.

7. OWNERSHIP AND USE OF DOCUMENTS

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With the exception of Consultant's working papers, the Consultant acknowledges PREPA's ownership of all results of any study, report, investigations or any other by-product of the Services performed by the Consultant under this Contract. The Consultant shall retain all right, title, and interest in and to proprietary works of authorship, pre-existing or otherwise, that have not been created under this Contract. PREPA shall retain the right to use, refer, share, or provide to any third party, as PREPA may determine, the results of any study, report, investigation or any other by-product of the services performed by the Consultant under this Contract provided that such use, reference or sharing with third parties will be done at the sole risk of PREPA and without any liability to the Consultant. Notwithstanding anything to the contrary, the license to Work provided herein shall not include any software or software documentation. Any such license needed to use software programs shall be obtained by PREPA from the software owners. In the event of any termination, Consultant shall deliver such information, reports, papers and other materials to PREPA, in document form and/or as computer object files, and the Consultant recognizes PREPA's right to request such documentation. Should Consultant fail to deliver said information, PREPA may seek a judicial order to enforce its rights. Except as otherwise provided, all information, drafts, documents, reports, papers and other materials developed and prepared by the Consultant or any Sub-Consultant, or any of its agents or representatives, for purposes of performing the obligations hereunder shall be deemed privileged work product of PREPA.

8. NON-DISCLOSURE AND CONFIDENTIALITY

A. **Confidential Information (the "Confidential Information"); Definition:** The term Confidential Information, as used throughout this Contract, means any information by either Party to the other Party that is marked confidential or concerning PREPA and/or PREPA's operations and that of Consultant (e.g., the projects, computer processing systems, object and source codes and other business and financial affairs of PREPA). The term Confidential Information shall also be deemed to include all notes, analysis, compilation, studies and interpretation or other documents prepared by Consultant, its agents or representatives in connection with the PREPA's operations.

B. **Non-Disclosure:** Consultant and its employees, affiliates and authorized subcontractors agrees to take all reasonable steps or measures to keep confidential all Confidential Information and will not, at any time, present or future, without PREPA's express written authorization, use or sell, market or disclose any Confidential Information to any third party, firm, corporation, or association for any purpose whatsoever. Consultant further agrees that, except as they relate to the normal course of the service, the Consultant will not make copies of the Confidential Information except upon PREPA's express written authorization, signed by an authorized representative of PREPA, and will not remove any copy or sample of Confidential Information without the prior written authorization from PREPA. Consultant retains the right to control its work papers subject to these confidentiality provisions.

"Confidential Information" shall not apply to any information which:

- a) is generally known to (a) the public at the time of disclosure or becomes generally known through no wrongful act on the part of receiving party;
- b) is in the receiving party's possession at the time of disclosure otherwise than as a result of the receiving party's breach of any legal obligation;
- c) becomes known to the receiving party through disclosure by sources other than receiving party having the legal right to disclose such information; or
- d) is independently developed by the receiving party without reference to or reliance upon the confidential information.

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In addition, these provisions shall not prohibit a receiving party from making any disclosure pursuant to applicable law or any subpoena or order of a court or a Governmental or Administrative tribunal which may assert jurisdiction over a receiving party; provided that, to the extent legally permissible, the receiving party shall promptly notify the disclosing party of any such disclosure obligations and reasonably cooperate with the disclosing party's efforts to lawfully avoid and/or minimize the extent of such disclosure.

Consultant will not disclose any Confidential Information relating to the work that Consultant performs under this Contract.

A receiving party may divulge Confidential Information to its employees and employees of its affiliates who need to know such information to fulfill the purposes of this engagement provided that such persons: (i) shall have been advised of the confidential nature of such information and receiving party shall direct them, and they shall agree, to treat such information as confidential and to return all materials upon request, but for one copy for record purposes only; and (ii) in each case, such person shall be bound by the terms of this Contract.

Consultant may develop for itself, or for others, problem solving approaches, frameworks or other tools and processes developed in performing the services and any additional services provided hereunder, and nothing contained herein precludes Consultant from developing or disclosing such materials and information provided that the same do not contain or reflect Confidential Information.

C. **Return of Documents:** Consultant shall return or destroy all Confidential Information, as well as any other document that may relate to its work under this Contract, to PREPA within thirty (30) days after date of the expiration or earlier termination of this Contract, and shall certify that all the information has been returned to PREPA or destroyed, but for electronic information held in archive and/or backup files to the extent such files cannot be deleted without unreasonable effort or expense and created in the ordinary course pursuant to established data backup/archive procedures; provided, however, Consultant may retain its own work product as long as it maintains the confidentiality of PREPA's Confidential Information as otherwise provided in this Contract. During this thirty (30) day period, and except to the extent making such documents available would result in the loss of legal privilege for PREPA, these documents shall be available for inspection by the Office of the Comptroller of Puerto Rico. This Article shall survive the termination, expiration or completion of this Contract.

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D. **Equitable Relief:** A receiving party's material negligent discharge or the breach of the confidentiality clause hereinabove continuing after receipt of written warning or abandonment of the duties assigned hereunder shall constitute a breach of this Contract and the disclosing party will be entitled to terminate this Contract forthwith, without having to comply with the requirements of notice set forth above, without limitations of any other rights and remedies under law, and will release and discharge the disclosing party from any further obligations and liabilities hereunder.

9. TERMINATION BY THE CHIEF OF STAFF OF THE GOVERNOR OF PUERTO RICO AND INTERAGENCY AGREEMENTS

Pursuant to Memorandum No. 2017-001, Circular Letter 141-17, of the Office of the Chief of Staff of the Governor of Puerto Rico (*Secretaría de la Gobernación*) and the Office of Management and Budget (*Oficina de Gerencia y Presupuesto – OGP*), the Chief of Staff shall have the authority to terminate this Contract at any time. If so directed by the Chief of Staff, PREPA will terminate this Contract by delivering to the Consultant a notice of termination specifying the extent to which the performance of the work under this Contract is terminated, and the effective date of termination. Upon the effective date of termination, the Consultant shall immediately discontinue all services affected and deliver to PREPA all information, studies and other materials property of PREPA. In the event of a termination by notice, PREPA shall be liable

only for payment of services rendered up to and including the effective date of termination.

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

10. COMPLIANCE WITH THE COMMONWEALTH OF PUERTO RICO CONTRACTING REQUIREMENTS

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The Consultant will comply will all applicable State Law, Regulations or Executive Orders that regulate the contracting process and requirements of the Commonwealth of Puerto Rico. Particularly: *Law Num. 237-2004*, as amended, which establishes uniform contracting requirements for professional and consultant services for the agencies and governmental entities of the Commonwealth of Puerto Rico. 3 L.P.R.A. § 8611 et seq., and the Puerto Rico Department of Treasury Circular Letter Number 1300 – 16 - 16. CC Num.1300-16-16 (22/01/2016).

- A. **Executive Order Num. OE-1991-24 of June 18, 1991 to require certification of compliance with the Internal Revenue Services of the Commonwealth of Puerto Rico:** Pursuant to Executive Order Number OE-1991-24 of June 18, 1991, the Consultant will certify and guarantee that it has filed all the necessary and required income tax returns to the Government of Puerto Rico for the last five (5) years. The Consultant, further will certify that it has complied and is current with the payment of any and all income taxes that are, or were due, to the Government of Puerto Rico. The Consultant shall provide, to the satisfaction of PREPA, and whenever requested by PREPA during the term of this Contract, the necessary documentation to support its compliance with this clause. The Consultant will be given a specific amount of time to produce said documents. During the term of this Contract, the Consultant agrees to pay and/or to remain current with any repayment plan agreed to by the Consultant with the Government of Puerto Rico.
- B. **Executive Order Num. OE-1992-52 of August 28, 1992 to require certification of compliance with the Department of Labor of the Commonwealth of Puerto Rico.** Pursuant to Executive Order Number 1992-52, dated August 28, 1992 amending OE-1991-24, the Consultant will certify and warrant that it has made all payments required for

unemployment benefits, workmen's compensation and social security for chauffeurs, whichever is applicable, or that in lieu thereof, has subscribed a payment plan in connection with any such unpaid items and is in full compliance with the terms thereof. The Consultant accepts and acknowledges its responsibility for requiring and obtaining a similar warranty and certification from each and every Consultant and Sub Consultant whose service the Consultant has secured in connection with the services to be rendered under this Contract and shall forward evidence to PREPA as to its compliance with this requirement.

C. **Social Security and Income Tax Retentions:** In compliance with Executive Order 1991 OE- 24; and C.F.R. Part 404 et. Seq., the Consultant will be responsible for rendering and paying the Federal Social Security and Income Tax Contributions for any amount owed as a result of the income, from this Contract.

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D. **Government of Puerto Rico Municipal Tax Collection Center:** The Consultant will certify and guarantee that it does not have any current debt with regards to property taxes that may be registered with the Government of Puerto Rico's Municipal Tax Collection Center (known in Spanish as *Centro de Recaudación de Ingresos Municipales* ("CRIM")). The Consultant further will certify to be current with the payment of any and all property taxes that are or were due to the Government of Puerto Rico. The Consultant shall provide, to the satisfaction of PREPA and whenever requested by PREPA during the term of this Contract, Certification issued by the Municipal Revenues Collection Center (MRCC), assuring that Consultant does not owe any tax accruing to such governmental agency. To request such Certification, Consultant will use the form issued by the MRCC (called "CRIM-Certificados, Radicación, Estado de Cuenta y Todos los Conceptos" in the website). The Consultant will deliver upon request any documentation requested by PREPA. During the Term of this Contract, the Consultant agrees to pay and/or to remain current with any repayment plan agreed to by the Consultant with the Government of Puerto Rico with regards to its property taxes. The Consultant shall provide a Personal Property Tax Filing Certification, issued by the MRCC which indicates that Consultant has filed its Personal Property Tax Return for the last five (5) contributory terms or Negative Debt certification issued by the MRCC with respect to real and property taxes and a sworn statement executed by Consultant indicating that (i) its revenues are derived from the rendering of professional services, (ii) during the last five (5) years (or the time in which it has been providing professional services) it has had no taxable business or personal property on the 1st of January of each year, (iii) that for such reasons it has not been required to file personal property tax returns, as required under Article 6.03 of Act 83-1991, as amended and (iv) that for such reason it does not have an electronic tax file in the MRCC's electronic system.

- E. The Consultant shall furnish a Certification issued by the Treasury Department of Puerto Rico which indicates that Consultant does not owe Puerto Rico Sales and Use taxes to the Commonwealth of Puerto Rico; or is paying such taxes by an installment plan and is in full compliance with its terms.
- F. The Consultant shall provide a Puerto Rico Sales and Use Tax Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that Consultant has filed his Puerto Rico Sales and Use Tax for the last sixty (60) contributory periods. A copy of Consultant's Certificate of Merchant's Registration issued by the Treasury Department of Puerto Rico.
- G. **Income Tax Retention Law:** PREPA shall deduct and withhold ten percent (10%) of any and all payments to residents of the Commonwealth of Puerto Rico as required by the Internal Revenue Code of Puerto Rico. In case of US citizens and Non US citizens, which are nonresidents of the Commonwealth of Puerto Rico the Consultant will retain twenty percent (20%) and twenty-nine percent (29%) respectively. PREPA will remit such withholdings to the Government of Puerto Rico's Treasury Department (known in Spanish as *Departamento de Hacienda de Puerto Rico*). The Consultant will request PREPA not to make such withholdings if, to the satisfaction of PREPA, the Consultant timely provides a release from such obligation by the Government of Puerto Rico's Treasury Department. 3 L.P.R.A. § 8611 et seq., 2011 L.P.R. 232; 232-2011. PREPA shall provide a certificate stating that such tax withholding was collected under this Article 10.
- H. **Special Contribution for Professional and Consulting Services:** As required by Act No. 48-2013, as amended, PREPA will withhold a special contribution of one point five percent (1.5%) of the gross amounts paid under this Contract.
- I. **Puerto Rico Child Support Administration (ASUME):** The Consultant shall present, to the satisfaction of PREPA, the necessary documentation certifying that the Consultant nor any of its owners, affiliates of subsidiaries, if applicable, have any debt, outstanding debt, or legal procedures to collect child support payments that may be registered with the Puerto Rico Child Support Administration (known in Spanish as the *Administración Para El Sustento de Menores (ASUME)*). The Consultant will be given a specific amount of time to deliver said documents. 3 L.P.R.A. § 8611 et seq.;
- J. **Compliance with Act No. 1 of Governmental Ethics:** The Consultant will certify compliance with Act No. 1 of January 3, 2012, as amended, known as the Ethics Act of the Government of Puerto Rico, which stipulates that no employee or executive of PREPA nor any member of his/he immediate family

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(spouse, dependent children or other members of his/her household or any individual whose financial affairs are under the control of the employee) shall have any direct or indirect pecuniary interest in the services to be rendered under this Contract, except as may be expressly authorized by the Governor of Puerto Rico in consultation with the Secretary of Treasury and the Secretary of Justice of the Government. 3 L.P.R.A. § 8611 et seq.

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- K. **Law 168-2000: Law for the Strengthening of the Family Support and Livelihood of Elderly People:** The Consultant will certify that if there is any Judicial or Administrative Order demanding payment or any economic support regarding Act No. 168-2000, as amended, the same is current and in all aspects in compliance. Act No. 168-2000 “*Law for the Strengthening of the Family Support and Livelihood of Elderly People*” in Spanish: “*Ley para el Fortalecimiento del Apoyo Familiar y Sustento de Personas de Edad Avanzada*”, 3 L.P.R.A. §8611 et seq.
 - L. **Law Num. 127, May 31, 2004: Contract Registration in the Comptroller’s Office of Puerto Rico Act:** Payment for services object of this Contract will not be made until this Contract is properly registered in the Office of the Comptroller of the Government of Puerto Rico pursuant to Law Number 18 of October 30, 1975, as amended.
 - M. **Dispensation:** Any and all necessary dispensations have been obtained from any government entity and that said dispensations shall become part of the contracting record.
 - N. **Rules of Professional Ethics:** The Consultant acknowledges and accepts that it is knowledgeable of the rules of ethics of his/her profession and assumes responsibility for his/her own actions.
 - O. **Anti-Corruption Code for a New Puerto Rico:** Consultant agrees to comply with the provisions of Act No. 2-2018, as the same may be amended from time to time, which establishes the Anti-Corruption Code for a New Puerto Rico. The Consultant hereby certifies that it does not represent particular interests in cases or matters that imply conflicts of interest, or of public policy, between the executive agency and the particular interests it represents.

Consultant shall furnish a sworn statement to the effect that neither Consultant nor any president, vice president, executive director or any member of a board of officials or board of directors, or any person performing equivalent functions for Consultant 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.

Consultant hereby certifies that it has not been convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.

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

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- P. The Consultant shall provide a Good Standing Certificate and Certificate of Authorization to do business in Puerto Rico, both issued by the Department of State of Puerto Rico.
- Q. **Consequences of Non-Compliance:** The Consultant expressly agrees that the conditions outlined throughout this Section 10 are essential requirements of this Contract. Consequently, should any one of these representations, warranties or certifications be incorrect, inaccurate or misleading, in whole or in part, there shall be sufficient cause for PREPA to render this Contract null and void, and the Consultant shall reimburse the PREPA all moneys received under this Contract.
11. **Breach of Contract Terms.** Any violation or breach of terms of this Contract on the part of the Consultant or a Sub-Consultant may result in the suspension or termination of this Contract or such other action, including the recovery of damages, as may be necessary to enforce the rights of PREPA. The duties and obligations imposed by this Contract and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.
12. **Changes.** At any time, and only through a mutually agreed written change order, PREPA may make changes in the Services or work to be performed within the general scope of this Contract. If such changes cause an increase or decrease in

Consultant's cost of, or time required for, performance of any services under this Contract, an equitable adjustment shall be made and this Contract shall be modified in writing accordingly, provided, however, that no changes shall be made to the scope of the Services that would render the costs incurred in the performance of this Contract unallowable or not allocable under, or outside the scope or not reasonable for the completion of, Federal grant awards from FEMA or any other U.S. Federal agency.

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13. Indemnification. The Consultant shall indemnify, defend and hold harmless PREPA, its agents and employees, from and against any and all third party claims, actions, suits, charges and judgments arising from, or related to, personal injury including death or damage to tangible property to the extent resulting from the negligence, fraud or willful misconduct of the Consultant in the performance of the services called for in this Contract. The failure of the Consultant to obtain, maintain, or pay for any insurance coverage necessary to insure its obligations under this Contract and/or the failure of Consultant's insurance carrier to provide insurance coverage shall not relieve Consultant of its indemnification obligations. If notified promptly in writing by PREPA, and given the authority, information, assistance and the sole right to control the defense and settlement of same, the Consultant shall pay all damages and costs awarded therein against PREPA.

14. Liabilities. Neither Consultant, nor its suppliers shall be liable, whether in Contract, warranty, failure of a remedy to achieve its intended or essential purposes, tort (including negligence), strict liability, indemnity or any other legal theory, for loss of use, revenue or profit, or for costs of capital or of substitute use or performance, or for indirect, special, liquidated, incidental or consequential damages, or for any other loss or cost of a similar type, or for claims by PREPA for damages of PREPA's customers. Consultant's maximum liability under this Contract shall be the revenue received by Consultant under this Contract. PREPA and Consultant agree that the exclusions and limitations set forth in this article are separate and independent from any remedies which PREPA may have hereunder and shall be given full force and effect whether or not any or all such remedies shall be deemed to have failed of their essential purpose.

15. Insurance. The Consultant shall maintain adequate insurance coverage to hold harmless PREPA, its agents and employees from and against any and all claims, actions, suits, charges and judgments arising from or related to the negligence, fraud or willful misconduct of the Consultant in the performance of the Services. Consultant shall obtain and maintain in full force and effect during the life of this Contract policies of insurance covering all the services engaged under the Contract, which shall be obtained from insurance companies authorized to provide coverage for operations in Puerto Rico, and to that effect it shall provide in original certificates of insurance and endorsements, as follows:

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- A. Employer's Liability Insurance – Consultant shall provide Employer's Liability Insurance with minimum bodily injury limits of \$1,000,000 for each employee and \$1,000,000 for each accident covering against the liability imposed by law upon Consultant as result of bodily injury, by accident or disease, including death arising out of and in the course of employment, and outside of and distinct from any claim under the Workmen's Compensation Act of the Commonwealth of Puerto Rico.
 - B. Commercial General Liability Insurance – Consultant shall provide a Commercial General Liability Insurance with limits of \$1,000,000 per claim and \$1,000,000 aggregate.
 - C. Commercial Automobile Liability Insurance – Consultant shall provide a Commercial Automobile Liability Insurance with limits of \$1,000,000 combined single limits covering all owned, non-owned and hired automobiles.
 - D. Professional Liability Insurance – Consultant shall maintain a Professional Liability Insurance with limits of \$1,000,000 per claim and \$1,000,000 aggregate.
 - E. Workmen's Compensation: The Consultant shall provide Workmen's Compensation insurance as required by Act 45-1935, as amended. Consultant shall also be responsible for compliance with Act 45 by all its subcontractors, agents and invitees, if any, or shall certify that such subcontractors, agents and invitees have obtained said policies on their own behalf. Consultant shall furnish to PREPA a certificate from the Puerto Rico's State Insurance Fund showing that all personnel employed in the work are covered by the workmen's compensation insurance, in accordance with this Contract.

Requirements under the Policies

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

As "additional insured":

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

A thirty (30) day cancellation or nonrenewable notice to be sent by certified mail with return receipt to the above address;

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

Waiver of subrogation in favor of PREPA for claims due to Consultant's sole negligence;

Breach of Warranties or conditions: The breach of any of the Warranties or Conditions in this policy by Consultant shall not prejudice PREPA's rights under this policy.

Furnishing of Policies:

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

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

16. Modifications and Amendments. No amendment to or modification or other alteration of the Contract shall be valid or binding upon the parties unless made in writing, signed by the parties and, if applicable, approved by the Commonwealth of Puerto Rico.

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17. Assignment. The Consultant shall not assign, hypothecate or encumber any interest in this Contract, and shall not transfer any interest or any of its liabilities or obligations under this Contract (whether by assignment or novation) without the prior written approval of PREPA.

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18. Disputes.

(a) In the event of a disputed or contested billing, PREPA shall withhold only the contested amount and shall pay any undisputed amount. No interest shall accrue on any unpaid balance.

(b) Any claims or causes of action that may arise out of this Contract must be heard by a court of competent jurisdiction in the Commonwealth of Puerto Rico, and the Consultant hereby irrevocably submits to the exclusive jurisdiction of the United States District Court for the District of Puerto Rico / the courts of the Commonwealth of Puerto Rico in connection with any claims or causes of action that may arise out of this Contract.

19. Governing Law. This Contract shall be governed by, interpreted and enforced in accordance with, the laws of the Commonwealth of Puerto Rico and any applicable Federal laws and regulations. In the event of conflict between Puerto Rico law and Federal laws and regulations, the latter shall prevail.

20. Severability. In the event that any one or more of the provisions contained in this Contract are for any reason held to be invalid, illegal or unenforceable in any respect,

such invalidity, illegality or unenforceability will not affect other provisions of this Contract. If any clause is not applicable to the specific type of Contract in no way that will affect the applicability of all applicable clauses within this Contract.

21. Certification of Government Agreements: The Consultant hereby certifies that, at the time of execution of this Contract, it does not have any other agreement with any agency, public corporation, municipality, or instrumentality of the Government of Puerto Rico.

22. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given when delivered personally or sent by telecopy, or sent, postage prepaid, by registered, certified or express mail (return receipt requested) or reputable overnight courier service and shall be deemed given when so delivered by hand, or telecopied, or if mailed, three days after mailing (one business day in the case of express mail or overnight courier service) to the parties at the following addresses:

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If to Consultant: Nelson Bacalao
Senior Manager, consulting
Siemens Industry, Inc.
4615 Southwest Freeway, Suite 900
Houston, Texas 77027 USA

If to PREPA: José F. Ortiz Vázquez
Chief Executive Officer

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

23. Counterparts. This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

24. Warranty. The Consultant warrants that it shall perform the services under this Contract with the standard of care, skill and diligence expected, at the time and place of performance, of recognized professional firms performing services of a similar type and nature (the "Standard"). No other warranty, express or implied, is made or intended by this Contract, by furnishing oral or written reports of findings made, or by any other act of the Consultant.

The Consultant shall re-perform, at no additional cost to PREPA any services under this Contract or extra work that do not meet the Standard, provided that the Consultant shall be notified in writing of such failure to meet the Standard within one year after the date of the completion of the services under this Contract or after the date of the completion of any extra work, whichever occurs first. The Consultant's liability, responsibility and obligations, and PREPA's sole remedy, for the Consultant's failure to meet the Standard or for any errors or omissions in the performance of Services under this Contract or extra work under this Contract shall be limited to such re-performance. Notwithstanding any other provision of this Contract, the Consultant shall not, in any way, be responsible or liable for any performance or process guarantees of any kind.

CONSULTANT HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE SOFTWARE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.

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25. **Force Majeure.** The Parties hereto shall be excused from performing hereunder and shall not be liable in damages or otherwise, if and only to the extent that they shall be unable to perform, or are prevented from performing by a Force Majeure event. For purposes of this Contract, Force Majeure means any cause without the fault or negligence, and beyond the reasonable control of, the party claiming the occurrence of a Force Majeure. Force Majeure may include, but not be limited to, the following: acts of God, industrial disturbances, acts of the public enemy, war, strikes, blockages, 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, and failure of any subcontractor 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, and that such Party, promptly after the occurrence, but not later than ten (10) days, of the alleged Force Majeure, gives the other Party written notice describing the particulars of the occurrence and its estimated duration. The burden of proof as to whether a Force Majeure has occurred shall be on the Party claiming the Force Majeure. In the event of any delay which can be shown to be attributable to a Force Majeure, the date for performance of the work shall be extended for a period equal to the period of delay and its impact to the project schedule, providing the Consultant or PREPA has taken reasonable steps to proceed with the performance of its obligations under the Contract and has made written notification of such delay and of any corrective action taken. Consultant shall not be entitled to any increase in compensation.

26. The Parties acknowledge that PREPA is undergoing a transformation process, and therefore, both Parties agree that in the eventuality of the execution of a Partnership Contract, Sale Contract or any other PREPA Transaction (as these terms are defined in Act 120-2018), PREPA may sell, assign, convey, transfer, pledge, mortgage,


sublease, delegate, hypothecate, or otherwise dispose (each, a "Transfer") any of its rights, title, or interest in this Contract as permitted by applicable law and at any time, and without Consultant's consent or cost, expense or incremental liability to PREPA, to any future operator of Puerto Rico's electric power transmission and distribution system or any of its affiliates, or to any governmental agency, body, public corporation or municipality of Puerto Rico; provided, that PREPA shall notify Consultant no later than thirty (30) days before the effective date of any such Transfer.

27. Entire Contract. Subject to any additional Commonwealth requirements not specified herein, this Contract and its attachments, (and any executed amendments to either), constitutes the entire Contract between the Parties and supersedes all prior agreements and understandings, oral or written, with respect to the subject matter hereof. This Contract will inure to the benefit of, and be binding upon, the Parties and their respecting successors and assigns.

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IN WITNESS THEREOF, the Parties hereto execute this Contract as of the 30 of July, 2019.

Puerto Rico Electric Power Authority




José F. Ortiz Vázquez
Chief Executive Officer
Tax Id No. 660-43-3747

Siemens Industry, Inc.



Scott Hulett
General Manager
Tax Id. No. 13-2762488



Krishant Sivanesan
Commercial Controller

**ACKNOWLEDGEMENT OF
APPOINTED SIGNATURE AUTHORITY FROM
SIEMENS INDUSTRY, INC.
DIGITAL GRID BUSINESS UNIT**

- A. Effective the 1st of April, 2019, we, the undersigned, Ruth Gratzke (Head of RC -US SI PSS) and Sabrina Wecking, (Senior Director Finance) of the Digital Grid Business Unit of Siemens Industry, Inc. (the "Corporation") a corporation duly organized and existing under the laws of the State of Delaware, by virtue of the authority vested by the Board of Directors and in accordance with the By-Laws of the Corporation and the laws of said State, do hereby acknowledge that the following individuals are hereby authorized to sign or countersign and otherwise execute in the name, or on behalf of the Corporation, any bids, proposals, bonds, releases and waivers of liens, and any certificates, affidavits, or ancillary documents in connection therewith; any licensing qualification or registration filings, returns, certifications or questionnaires; any contracts, leases, agreements, guarantees and any certificates, affidavits, or ancillary documents in connection therewith, up to and including a transactional limit of indicated in the table below; and any releases, compromises or settlements in connection with claims or disputes arising out of any such transaction.

<u>Portfolio Unit</u>	<u>Transaction Limit</u>	<u>Business Operations Position</u>	<u>Finance/Central Support Function Position</u>
CS&D– Grid Control Solutions & Delivery	\$5.0M	Ken Geisler Country BU Segment Manager - RC-US SI DG CS&D	Nico Zeissler Country BU Finance Manager - RC-US SI DG CS&D
SW&C Consulting	\$2.5M	Scott Hulett Country BU Segment Manager - RC-US SI DG SW&C PTI	Krishant Sivanesan Country BU Finance Manager - RC-US SI DG SW&C
SW&C Software	\$2.5M	Randy Horn Director Regional Product and Project Engineering RC-US SI DG SW&C	Country BU Finance Manager - RC-US SI DG SW&C
SA&P Products & Services CS&D Systems Solutions & Delivery	\$1.0M	Pat Wilkinson Country BU Segment Manager - RC-US SI DG SA&P	Jason Noble Country BU Finance Manager - RC-US SI DG SA&P
*Stand-alone licensure of software products under standard pricing and contract terms.			

- B. Further, we do hereby acknowledge that the following individual is authorized to sign or countersign and otherwise execute in the name, or on behalf of the Corporation, any bids, proposals, or ancillary documents in connection therewith, up to and including a transactional limit of \$1,000,000 under Siemens standard terms and conditions. ***This authority expressly excludes execution of contractual documents associated to such bids or proposals.***

<u>Portfolio Unit</u>	<u>Business Operations (Name/Position)</u>	<u>Finance/Central Support Function (Name/Position)</u>
Digital Grid (all portfolio units)	***TBD*** Area Sales Manager - RC-US SI DG S	Jason Noble Country BU Finance Manager - RC- US SI DG

- C. We further acknowledge that each of the signatures of the persons referred to in paragraph A and B are binding upon the Corporation.
- D. We further acknowledge that any document shall require the signature of two (2) of the above Authorized Signatories, one each from Business Operations and from Finance/Central Support Functions, whom shall have the requisite signature authority to be legally binding upon the Corporation.
- E. We further acknowledge individuals shall ensure that appropriate processes and reviews of such documents has occurred, including but not limited to, the Company's "Limits of Authority" process.
- F. We further acknowledge that each of the persons referred to in paragraph A herein is authorized to delegate such person's authority hereunder to additional members of his or her management team up to the limit of established therein, **provided that such delegation is in written form signed by the delegator and filed with the Legal Department.**
- G. We further acknowledge that the Secretary or an Assistant Secretary of the Corporation is authorized to issue certifications attesting to the incumbency, authority and status of any of the persons referred to in this resolution.
- H. Those persons who currently hold the positions described hereinabove are as indicated in Appendix A, which shall be updated from time to time.

IN WITNESS WHEREOF, we have hereunto subscribed our names and affixed the corporate seal of the said Corporation, as of the 1st day of April 2019.



Ruth Gratzke
Head of RC -US SI PSS
Siemens Industry, Inc.
Digital Grid Business Unit

Wecking
Sabrina

Digitally signed by Wecking Sabrina
DN: cn=Wecking Sabrina, o=Siemens,
email=sabrina.Wecking@siemens.com
Date: 2019.03.31 18:00:34 -0500

Sabrina Wecking
Senior Director Finance RC – US SI DG
Siemens Industry, Inc.
Digital Grid Business Unit