

FUEL PURCHASE CONTRACT 902-04-09  
SAN JUAN, AGUIRRE, MAYAGÜEZ AND CAMBALACHE  
GAS TURBINE GENERATING STATIONS

AS FIRST PARTY: The Puerto Rico Electric Power Authority, hereinafter referred to as “PREPA” a public corporation and government instrumentality of the Commonwealth of Puerto Rico, created by Act of May 2, 1941, No. 83, as amended, employer’s Social Security Number 66-0433747, represented in this act by its Executive Director, Mr. Miguel Ángel Cordero López, of legal age, married, professional engineer, and resident of Caguas, Puerto Rico; and

AS SECOND PARTY: (contractor’s name), hereinafter referred to as “the Seller”, a (partnership or corporation) organized and existing under the laws of (Commonwealth of Puerto Rico or state), authorized to do business in Puerto Rico, Social Security Number \_\_\_\_\_, represented in this act by its (title), (name), of legal age, (civil status), and resident of (domicile), by virtue of (document that certifies representative powers) dated as of (date).

WITNESSETH

WHEREAS, PREPA issued an invitation to bid No. Q032704 for the supply of No. 2 fuel oil at San Juan, Aguirre, Mayagüez and Cambalache gas turbine generating stations.

WHEREAS, in response to the referred invitation to bid, the Seller made an offer to supply No. 2 fuel oil at San Juan, Aguirre, Mayagüez and Cambalache gas turbine generating stations.

NOW THEREFORE, in consideration of the mutual covenants herein stated, the parties agree themselves, their personal representatives, successors, and assignees, as follows:

## TERMS AND CONDITIONS

### ARTICLE I. Scope and Term of Contract

A. The Seller agrees to sell and deliver to PREPA and PREPA agrees to purchase from the Seller No. 2 light distillate fuel oil in compliance with the specifications detailed in Exhibit A, for the San Juan, Aguirre, Mayagüez and Cambalache gas turbine generating stations. The monthly rate of delivery for each calendar month of the Contract shall be the amount as requested by PREPA.

PREPA reserves its right to purchase approximately up to twenty-five percent (25%) of the plant requirements on the open market if such quantities become available at a lower price than that contracted at the time of purchase.

B. This Contract will become effective on the date of its signature, and will remain in effect for a period of one (1) year, after the commencement date as notified by PREPA. This Contract is subject to one (1) automatic renewal of one (1) year unless either party indicates its intention that said automatic renewal does not occur by providing the other party with written notice one hundred twenty (120) days before the expiration of the original contract term.

C. The Contract may be extended on a monthly basis upon mutual agreement after the end of the contracted term or its renewal, provided that, said extensions shall not exceed four (4) consecutive months, except when an emergency is declared by PREPA's Governing Board.

### ARTICLE II. Termination

Notwithstanding anything to the contrary in this Contract regarding its term, PREPA may, at any moment, terminate, cancel or accelerate its expiration, after giving Seller a

not less than sixty (60) days prior notice, when in PREPA's judgement such action responds to PREPA's best interests. Provided that, in the event, the Seller fails to comply with any of its obligations under the Contract, PREPA may declare an immediate Contract termination, cancellation or rescission, without prior notice to Seller. The exercise of its right to terminate, cancel or rescind the Contract shall not be understood as a waiver by PREPA to any other remedy it may have under this Contract or under the law for delays or breach incurred by the Seller in the performance of its obligations under the Contract.

#### ARTICLE III. Independent Contractor

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

#### ARTICLE IV. Duties and Taxes

The contracted price includes all taxes, fees, or established import tariffs for foreign material. In the event, that any new or increased taxes, fees, or tariffs, applicable to the product being supplied hereby are levied by Federal and/or Commonwealth of Puerto Rico Government, and as long as these taxes, fees, or tariffs do not discriminate whether the product is domestic or foreign, these will be passed on in their entirety to; any changes up or down in these taxes, fees, or tariffs, should they be imposed, will be reflected in the price in its entirety and bidder will adjust the price accordingly.

ARTICLE V. Delivery and Title

A. Delivery of the fuel shall be specified in Exhibit A or fuel components delivered for storage or blending at CORCO for final delivery of the product at San Juan, Aguirre, Mayagüez and Cambalache gas turbine generating stations, by the Seller of fuel as specified in Exhibit A. The price shall be established on the day the fuel commences transfer into PREPA's facilities.

All costs relating to the use of tankage at CORCO and to the handling of vessel or barge in CORCO's dock (rent, dockage, line handling, hoses connection, loading, unloading, etc.) shall be for Seller's account, and shall be as specified in Exhibit D of this Contract.

B. PREPA shall submit Seller a monthly estimate of its requirements and propose dates for delivery of fuel during the following month. The Seller shall promptly acknowledge receipt of such estimate and shall, within five (5) days of such receipt, confirm or propose new delivery dates for the following month. Said delivery schedule, if accepted by PREPA, shall be final. Delivery dates shall consist of delivery windows of three (3) days each for actual delivery to occur.

C. Title of product delivered shall pass to PREPA after the fuel passes the pipeline flange. The Seller is responsible for cleaning, removing, and disposing of any spill of his product, which might occur before the pipeline interconnection during delivery; and shall be responsible for securing all materials, permits, and personnel required for handling the transfer of fuel.

D. Deliveries via barge or vessel for San Juan fuel requirements are to be made at the Caribbean Petroleum Refining (CPR) facilities. Deliveries to CPR's dock, at present, are limited as follows:

Total Displacement	65,000 MT
LOA	800 feet
BEAM	106.0 feet
BCM	350 feet
Free Board	50 feet
Arrival Draft	38 feet

Deliveries via barge to the Aguirre, Mayagüez and Cambalache are limited by a dredged channel with a maximum draft of 21.5, 22 and 18 feet respectively.

Deliveries thru the CORCO's dock, at present, are limited as follows:

DWT 82,000 tons
LOA 840 feet
BCM 425 feet
DRAFT 38 feet sw

The Seller shall conduct its own investigation relative to navigational information or any natural changes that might occur at the San Juan, Jobos, Mayagüez, Arecibo or Guayanilla bay, as PREPA does not assume any responsibility for the same.

E. Maximum temperature of oil entering PREPA's pipeline shall not exceed one hundred twenty five degrees Fahrenheit (125<sup>0</sup>), nor shall be less than seventy five degrees Fahrenheit (75<sup>0</sup>), and at the pressure of not more than one hundred fifty

pounds square inch gage (150) psig., nor less than one hundred twenty five (125) psig., measured at PREPA's intake flange.

- F. If the Seller, for any reason, except as provided for in Force Majeure Article of this Contract, fails to deliver the fuel required as provided for in this Contract, PREPA may procure the product from any other supplier. In such event, PREPA may deduct from the Seller pending invoices or the Seller shall reimburse PREPA, for any difference which PREPA may have paid in excess of contracted price. It shall be understood that PREPA is not waiving any rights available to it under the law, including rights to any claims or actions for damages caused by noncompliance by the Seller with the terms of this Contract.
- G. The Seller will be responsible for any and all damages to the dock or to any other property caused by the vessel during delivery.
- H. Should PREPA need fuel of the same type and quality of the fuel herein contracted for, at any of its other plants, PREPA at its option may request deliveries and Seller shall deliver to such other plant up to a maximum of Seller's contractual commitment or inventory capabilities, if any. The fuel oil to be delivered under this condition by the Seller shall be at the same delivered price or lower and under the same payment conditions as for this steam plant, adjusted to reflect any increased or decreased transportation costs resulting from delivery to such other plant.

ARTICLE VI. Type of Fuel to be Supplied

- A. PREPA requires a fuel appropriate for burning without requiring extraordinary maintenance to the gas turbines and their associated equipment or extraordinary problems in the plant operations and which will yield the lowest cost per kW hour

produced. All fuel delivered shall be analyzed and evaluated in terms of its ultimate cost and consistency with PREPA's applicable environmental regulations.

- B. PREPA, in determining the award of the fuel to be contracted, considers environmental regulations that may be in effect at such time.

In the event that during the term of this Contract, Federal or Commonwealth of Puerto Rico laws or regulations are modified, requiring the burning of a fuel of different specifications than the fuel contracted for, or in the event that PREPA obtains permission to burn a fuel with different specifications than the fuel contracted for, and if these changes require an adjustment in the price of the fuel contracted for; then the parties shall meet within five (5) days from the enactment of any such law or regulations to discuss the matter for the purpose of establishing new price terms satisfactory to both parties. If agreement cannot be reached prior to the enforcement date of the regulations because Seller is not competitive, or for any reason cannot provide the fuel according to the new specifications; then PREPA shall have the right to terminate the Contract.

- C. In the event that, during the term of this Contract, PREPA requests a fuel of different specifications than the fuel contracted for, Seller and PREPA shall meet to establish new price terms for said different fuel oil specifications satisfactory to both parties. If the parties are unable to agree on new price terms, or the Seller for any reason cannot provide the fuel according to the new specifications, PREPA may exercise the option to continue to purchase fuel oil contracted or to terminate the Contract.

ARTICLE VII. Specifications

- A. Fuel shall be in accordance with the latest corresponding specifications, as specified in Exhibit A. PREPA requires a fuel with homogeneous hydrocarbons, free of inorganic acids and microorganisms and free of water, solid, or fibrous foreign matter, which will yield the lowest cost per kW hour produced. Any product offered will be analyzed and evaluated in terms of the ultimate cost.
- B. Gravity and sulfur analysis of upper, middle and lower samples shall be the appropriate means of establishing tank or vessel homogeneity. It is Seller's responsibility to provide PREPA with a quality certificate that ensure among others that the fuel intended for delivery complies with the contracted specifications and that the same is homogeneous.

A tank or vessel shall be considered to be homogeneous where the maximum difference in tested gravities between any two (2) samples from different strata is not greater than 0.3 degrees API and the maximum difference in tested sulfur content between any two (2) samples from different strata is not greater than 0.04 weight percent, further provided that all tested samples shall be within the contracted specifications.

In the event that fuel oil is received via tanker into PREPA's facilities, samples for homogeneity shall be taken from at least three (3) tanks representing not less than seventy per cent (70%) of the volume of cargo. Individual compartments samples shall be compared to vessel's composite to evaluate homogeneity of cargo. For fuel received via barge into PREPA's facilities, which was loaded from a certified tank, a full certification of the barge composite sample is required.

C. In determining compliance with the specifications, the Seller is required to make a laboratory analysis as per specified method of the fuel actually being supplied to assure that the fuel meets the specifications of this Contract, and shall submit a copy of the analysis to the plant superintendent or to PREPA's agent or representative before unloading each delivery. Copies shall also be sent to PREPA's Fuels Office attached to all invoices. The analysis should be certified by an authorized chemist licensed in Puerto Rico and approved by PREPA, and shall include items as per specifications contained in Exhibit A.

D. If PREPA encounters difficulties in the efficient handling and burning of the fuel, special analysis from the independent inspector retained sample shall be requested by PREPA and made by an authorized chemist licensed in Puerto Rico to determine whether such difficulties are attributable to the fuel delivered not being in compliance with the specifications.

If it is determined that the difficulties are attributable to the fuel not being in compliance with the specifications, the Seller will take such immediate measures as necessary to correct the deviation and to prevent further difficulties. PREPA's acceptance of, or agreement to, remedial or preventive measures shall not be interpreted or considered as a waiver of any rights available to it under the law, including, but not limited to, rights of actions or claims for damages caused by Seller's noncompliance with the fuel specifications or with any other provision of this Contract.

E. If during any delivery the Seller fails to meet the specifications as awarded, PREPA reserves the right to evaluate the deviation and deduct a monetary equivalent from

the amounts due to Seller, establish a claim for nonperformance, or terminate the contractual relationship due to Seller's nonperformance.

- F. The Seller will be held responsible for any fines, penalties, damages, expenses, costs or claims, actions, and causes of actions, which may arise due to the fact that any of the fuel provided by the Seller has deviations or variations from the contracted specification for the same. Therefore, if such circumstance takes place, the Seller will hold and save harmless and will defend PREPA, its officers, agents, and employees, from any claims, actions, causes of actions, damages, costs, fines, penalties, and expenses due to the above.

ARTICLE VIII. Laytime and Demurrage

- A. PREPA assumes no responsibility or liability for demurrage incurred by the vessel(s) delivering fuel pursuant to this Contract, unless such demurrage is attributable to the fault or negligence of PREPA. Laytime shall commence six (6) hours: a) after Seller notifies PREPA that the vessel is ready to discharge cargo; b) upon arrival at berth and cleared by Customs, whichever occurs last.
- B. Notice shall be given to PREPA seventy-two (72), forty-eight (48), and twenty-four (24) hours before the vessel's arrival by the vessel's master or its agent. In the event the vessel is delayed in getting into berth after giving notice, for any reason over which PREPA has no control or due to docking restrictions, if any, such delay shall not count as used laytime.

If the Seller's proposal includes the use of CORCO's facilities, it is understood and agreed that it is the practice of CORCO/Proterm to load and unload vessels at the docks in order of their arrival to CORCO/Proterm buoy, subject to the availability of

the docks. PREPA shall not be responsible for demurrages attributable to dock unavailability unless said unavailability, is caused by PREPA's intervention to change CORCO's practice.

Notices to be given under this Contract shall be deemed properly served on each other when delivered in writing personally by certified mail, or by fax machine.

- C. Laytime shall commence within the meaning of this Article, whether the vessel arrives during or outside normal business hours. Laytime shall not be increased, nor PREPA held accountable for, any delay in berthing the vessel attributable to the failure of the Seller to give the notices set forth in this Article.
- D. Allowed laytime shall be thirty-six (36) hours for each and every delivery of No. 2 light distillate fuel oil under this Contract. PREPA and Seller agree, however, that the allowed laytime of thirty-six (36) hours depends upon:
1. Seller's vessel being capable of pumping its entire cargo within thirty (30) hours.
  2. Seller's personnel or agents promptly performing the connection and disconnection of discharging hoses.
  3. An unloading temperature and pressure as specified in Article IV of these Conditions and Specifications.
  4. Seller's maximum cargo volume of 250,000 barrels.
- E. Allowed laytime shall be increased by the time a vessel is prevented or delayed from arriving, or departing, or discharging cargo due to:
1. tide conditions, heavy seas, wind or bad weather of any nature.

2. vessel's condition, vessel's facilities or vessel's failure to comply with U.S. Coast Guard or other governmental agency regulations, which do not permit connection, discharging cargo or disconnecting in the allowed laytime.
  3. the failure of the No. 2 light distillate fuel oil to meet the quantity or specifications by any of the determinations set forth in this agreement, or if the No. 2 light distillate fuel oil is otherwise unfit for PREPA's intended use.
  4. regulations of port authorities, vessel's owners or vessel's master, which prohibit discharging of the cargo at night.
  5. seller's cargo volume exceeds the established maximum cargo volume.
- F. If the vessel is delayed at any discharging berth for ships purposes or reasons beyond the control of PREPA, laytime shall cease when discharging is completed even though hoses are not disconnected. If regulations of port authorities or vessel's owner prohibit discharging of the cargo at night, time so lost shall increase the allowed laytime. If PREPA prohibits discharging at night, time lost shall count as laytime. In all other cases laytime shall continue to run until cargo hoses or loading arms, as the case may be, have been disconnected.
- G. PREPA shall pay demurrage per running hours, and pro rata for a part thereof, for all time that exceeds the allowed laytime at the rate stated in the Voyage Charter Agreement for the vessel.
- H. If discharging has ceased because it is completed or if the discharging rate has decreased to a rate, which will not permit discharge of the entire cargo within thirty-six (36) hours or due to any other problem with the vessel, PREPA may order to move off the vessel from the dock at no cost to PREPA. If practical, the vessel shall

be allowed to return later and complete discharging. In the event that the discharging rate has decreased to a rate which will not permit discharge of the entire cargo within thirty-six (36) hours, PREPA may delay ordering to move the vessel from the dock and allow pumping to continue. Provided however, the Seller pays the per hour dock fee rate and any other associated cost.

- I. The Seller shall furnish all appropriate documentation and available evidence in support of any demurrage claim, which may be brought against PREPA.

#### ARTICLE IX. General Liabilities

- A. The Seller agrees to make, use, provide, and take all proper, necessary precautions, safeguards, and protection against the occurrence or happening of injuries, death, and/or damages to any person or property during the delivery process. It also agrees to be responsible for, and indemnify, and save PREPA harmless from public liability, costs, and expenses resulting there from, or damages that may happen or occur solely through the fault, or negligent acts, or omissions of the Seller, its employees, agents, and subcontractor, during the performance of the supply, or while carrying out any act or action directly or indirectly related, or in connection with the performance of this Contract, and from loss, liability, and fines incurred for, or by reason of violation by Seller of any federal, state or municipal ordinance or regulation of law, while said delivery is in progress.
- B. The Seller will be held responsible for any fines, penalties, damages, expenses, costs or claims, actions, and causes of actions, which may arise due to the fact that any of the fuel provided by Seller has deviations or variations from the contracted and guaranteed specifications for the same. Therefore, should such circumstances

take place, Seller will hold and save harmless and will defend PREPA, its officers, agents, and employees from any claims, actions, causes of actions, damages, costs, fines, penalties, and expenses due or attributable to variations or deviations from fuel specifications as contracted and guaranteed by Seller.

- C. The appearing parties agree that their responsibilities for damages under this Contract will be governed by the Puerto Rico Civil Code and its case law, as dictated by the Supreme Court of Puerto Rico.
- D. The Seller shall not assign nor subcontract its rights and obligations under this Contract, except in the event PREPA gives written authorization for such actions. Provided that, no subcontract shall be considered for PREPA's approval, except when the following requirements are met: (1) the Seller delivers PREPA a copy of the subcontract, not less than thirty (30) days prior to the effective date of the proposed subcontract; (2) the subcontract includes, as a condition for its legal validity and enforceability, a provision whereby PREPA has the right to substitute, subrogate or assume Seller's rights under the subcontract, in the event that PREPA declares the Seller in breach or default of any of the Contract terms and conditions; (3) the subcontract includes, as a condition for its validity and enforceability, a provision establishing for the subcontractor the obligation to comply with all Seller's obligations under the Contract (mirror image clause), except for such obligations, term and conditions which exclusively related to works or services not included under the subcontract.

ARTICLE X. Price

Price contracted includes all taxes, fees or established import tariffs for the fuel being supplied.

The price for the fuel oil to be supplied under this Contract is as follows:

A. For each barrel of delivered fuel, the price to be paid will consist of an escalator plus a price differential with a sixty (60) day credit term. The fixed price differential is per barrel and the same is \_\_\_\_\_ from the escalator, to obtain the final fuel price.

Excise and Municipal taxes are to be presented as separate line items.

B. The escalator that is mentioned in Paragraph A of this Article shall be increased or decreased according to the effective date of the posting at the time the fuel delivery commences, the day before, and the day after the fuel delivery, each one of these evaluated utilizing the following formula:

Fifty percent of LS Diesel Off-road fuel from the average of quotations for the New York (Cargo) prices as published by the Platt's Oilgram Price Report;

plus fifty percent of LS Diesel Off-road from the average of quotations for the US Gulf Coast (Waterborne) prices as published by the Platt's Oilgram Price Report;

The price for a fuel delivery shall be based on:

1. The day the vessel commences the discharge, if the fuel is delivered via barge or vessel; or
2. The day when the delivery commences, if the fuel is delivered by pipeline.

In any of the two cases, should delivery take place on Saturday, Sunday or on a Holiday, the effective prices appearing in the last editions of Platt's Oilgram Price

Report and Argus U.S. Products, published before that date will be utilized to readjust the prices.

A sample calculation of the escalation factor appears as Exhibit C of these documents.

C. The date published prices are made effective will govern, holding the price firm until next publication date.

Should the format used by the publishers for the postings are changed, both parties will meet within five (5) days of the occurrence to determine how to interpret the same.

D. The Seller assumes the responsibility of the transportation of the product and all other related responsibilities up to PREPA's flange connecting Seller's vessel with the PREPA's pipeline at the dock.

E. Should PREPA require volumes of the same type and quality of the fuel herein contracted in excess of the requirements of the San Juan, Aguirre, Cambalache, and Mayagüez gas turbine generating stations, PREPA may, at its option, require it from the Seller. If the Seller has such fuel available, then Seller will supply it under the same terms and conditions agreed hereupon.

#### ARTICLE XI. Price Protection

The parties will have the right to price protection of the fuel being delivered except as provided for in the Force Majeure Article. Price protection is to be applied to those deliveries not made within the agreed delivery window as mentioned in Article IV.

Price protection is hereby defined for the Seller as the highest price between the price for the last day of the delivery window or actual delivery date as calculated in Article IX.

Conversely, price protection for PREPA will be the lowest price between the price for the last day of the delivery window or actual delivery date as calculated in Article IX.

ARTICLE XII. Duties and Taxes

The contracted price includes all taxes, fees, or established import tariffs for foreign material. In the event, that any new or increased taxes, fees, or tariffs, applicable to the product being supplied hereby are levied by Federal and/or Commonwealth of Puerto Rico Government, and as long as these taxes, fees, or tariffs do not discriminate whether the product is domestic or foreign, these will be passed on in their entirety to; any changes up or down in these taxes, fees, or tariffs, should they be imposed, will be reflected in the price in its entirety and Seller will adjust the price accordingly.

ARTICLE XIII. Measurements and Payment

- A. The quantity of fuel oil delivered to PREPA shall be computed by measurements in PREPA's shore tanks; and such measurements, unless otherwise mutually agreed, are to be conducted by an independent inspector selected from a list of independent inspectors qualified by PREPA. Selection from this list shall be made giving every candidate the same opportunity to be selected for the task. Inspection cost shall be borne equally between PREPA and the Seller. All measurements shall be corrected to sixty degrees (60°) Fahrenheit using ASTM Petroleum measurements Table 6-B. Quantities certified on the independent inspector's report, will be binding for both parties.
- B. The Seller shall invoice PREPA regularly and promptly after fuel is delivered. Copies of the inspector's certificates of quantity shall be included with invoices. Such

invoices shall be paid by PREPA in U.S. currency immediately available funds, sixty (60) days after completion of delivery.

- C. All invoices submitted by the Seller shall include the following Certification in order to proceed with its payment. This is an essential requirement and those invoices without this Certification, will not be processed for payment.

No Interest Certification:

*Under penalty of absolute nullity, I hereby certify that no employee, official or director of PREPA is a party or has any interest in the profits or benefits to be obtained under this Contract, or if any employee, official or director of PREPA has any interest in the profits or benefits under this contract a waiver has been previously obtained. I, also certify that the only consideration to deliver the fuel under this contract is the payment agreed with PREPA's authorized representative. The total amount of this invoice is fair and correct. The fuel has been delivered and no payment has been received for said concept.*

\_\_\_\_\_  
*Seller's Signature*

- D. Mail all billings and request for payment to:

Puerto Rico Electric Power Authority  
Attention: Fuels Office Manager  
PO Box 364267  
San Juan, Puerto Rico 00936-4267

#### ARTICLE XIV. Guaranteed Caloric Value

- A. The Seller guarantees that the minimum calorific values of the fuel supplied hereunder shall be as specified herein, or as quoted by the Seller, whichever is the higher. However, PREPA will not pay any premium for calorific values in excess of the minimum established in Exhibit A.
- B. During any delivery by the Seller, in which the fuel fails to meet such guarantee, the deficiency shall be determined in barrels, calculated on the basis of the example

attached as Exhibit B. The deficiency thus calculated shall serve as a credit deficiency occurred, for an equivalent number of barrels, before computing the fuel billings for such invoice.

ARTICLE XV. 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 event. Force Majeure may include, but not be limited to, the following: Acts of God, industrial disturbances, acts of the public enemy, war, 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, 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, within ten (10) days after the occurrence 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.

ARTICLE XVI. Preferred Client

The Seller recognizes that PREPA provides an essential service for the Commonwealth of Puerto Rico. Should any force majeure event cause the Seller to suspend or reduce deliveries, the Seller shall give PREPA first priority for supply.

ARTICLE XVII. Notices

A. Any notice to be given hereunder shall be in writing and will be sufficiently served when delivered in person or properly mailed to the following addresses:

To PREPA: Puerto Rico Electric Power Authority  
Fuels Office Manager  
PO Box 364267

To Seller: (Seller's Name)  
Seller's representative  
(Mailing Address)

B. Either Seller or PREPA, upon any change of its address as set forth above, shall notify the other party in writing and from and after giving of such notice, the address therein specified shall be deemed the address of such party for the giving of notices.

ARTICLE XVIII. Contract Assignment

A. This Contract, as well as any of the rights, duties, liabilities, and obligations under it, cannot be assigned, transferred, subcontracted, hypothecated or otherwise disposed of by the Seller without the previous written consent of PREPA.

B. PREPA does not favor request for assignment, transfers, hypothecation or other type of disposal of the Contract, and/or duties and obligations under it, and will be reluctant to approve any request to that effect, unless, in the judgment of PREPA, the particular circumstances of the request warrant its approval and the assignment,

transfer, hypothecation, or disposal does not operate against PREPA's best interests.

ARTICLE XIX. Performance Bond

Upon execution of the Contract, the Seller will furnish a performance bond payable to the order of PREPA issued by a qualified surety company, authorized to do business in Puerto Rico and acceptable to PREPA, in the amount of \_\_\_\_\_, equivalent to five percent (5%) of the estimated Contract value.

PREPA will accept a letter of credit for the same amount in lieu of a performance bond, provided that the letter of credit shall incorporate the following conditions to be acceptable to PREPA:

- A. to be issued or notified and confirmed by a local bank in Puerto Rico,
- B. to be unconditional and irrevocable.
- C. payments to be made by issuing bank on a business day by wire transfer, immediately after PREPA's instructions.
- D. to be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico, applicable to contracts being made and performed solely within Puerto Rico, without giving effect to any conflicts or choice of law principles which otherwise might be applicable, except to the extent such laws are inconsistent with the uniform customs and practices for documentary credits.
- E. final draft of the letter of credit shall be subject to approval by PREPA's Treasurer.

ARTICLE XX. Termination on Insolvency

If Seller enters into bankruptcy proceedings, or if the Seller becomes bankrupt or insolvent, or if a petition in bankruptcy is filed against the Seller, or if a receiver is

appointed for the Seller, PREPA shall have the right to terminate the Contract upon written notice to Seller, without prejudice to any claim or any other right of PREPA under the Contract at the time of such termination. Notice of termination under this provision shall create no liability to PREPA, except that PREPA shall still be responsible for the payment of amounts due and owing to the Seller not subject to claims by PREPA.

ARTICLE XXI. Certifications of Income Tax

Seller certifies and warrants that, at the time of the execution of this Contract, he has filed his Income Tax Return for the last five (5) years and does not owe any taxes to the Commonwealth of Puerto Rico; or is paying such taxes by an installment plan in full compliance with its terms. It shall be Seller's responsibility, also, to require all his subcontractors to comply with such certification and notify PREPA of such compliance.

It is expressly agreed that this condition is an essential requirement of this Contract and if the above certification is not correct, in whole or in part, this will be sufficient cause to cancel this Contract. If such cancellation takes place, Seller shall be obligated to reimburse to PREPA all the payments received under this Contract.

Prior to the execution of this Contract by the parties, the Seller shall submit an Income Tax Return Filing Certificate, issued by the Treasury Department of Puerto Rico, Area of Internal Revenues, assuring that the Seller has filed his Income Tax Return for the last five (5) years. To require such Certification, Seller will use the Request for the Copy and/or Certification of Income Tax Returns Form issued by the Treasury Department of Puerto Rico. The Seller shall submit a Certification of Debt, issued by the Internal Revenues Area.

Also, prior to the execution of the Contract, the Seller shall submit the Certification issued by the Municipal Revenues Collection Center (MRCC), assuring that the Seller does not owe any tax to such governmental agency. To require such Certification, Seller will use the form issued by the MRCC.

If either of the above required Certifications shows a debt, and the Seller has filed a petition to review or adjust such debt, it shall so certify at the time of the execution of the contract. If the review or adjustment is denied by a final and non appealable judgment, the Seller shall immediately provide PREPA with evidence of the payment of such debt; otherwise, the Seller agrees to cancel such debt from the amounts to be paid under the Contract, by PREPA withholding the corresponding amount.

ARTICLE XXII. Certification of Payments to Department of Labor and Human Resources of Puerto Rico

The Seller certifies and warrants that, at the time of the execution of this Contract, he has paid to the Department of Labor and Human Resources of Puerto Rico his employees' contributions, in accordance with the Puerto Rico Employment Security Act (unemployment, temporary disability or sickness or social security for chauffeurs); or is paying such contributions by an installment plan in full compliance with its terms. It shall be Seller's responsibility, also, to require all his subcontractors to comply with such certification and notify PREPA of such compliance.

It is expressly agreed that this condition is an essential requirement of this Contract and if the above Certification is not correct, in whole or in part, this will be sufficient cause to cancel this Contract. If such cancellation takes place, the Seller shall be obligated to reimburse to PREPA all the payments received under this Contract.

Prior to the execution of this Contract by the parties, the Seller shall submit a Certificate, issued by the Department of Labor and Human Resources of Puerto Rico, assuring that Seller has paid to the Human Resources and Labor Department his employees' contributions, in accordance with the Puerto Rico Employment Security Act (unemployment, temporary disability or sickness or social security for chauffeurs); or is paying such contributions by an installment plan in full compliance with its terms. To require such Certification, the Seller will use the form issued by the Department of Labor and Human Resources of Puerto Rico.

If the above required Certification shows a debt, and the Seller has filed a petition to review or adjust such debt, it shall so certify at the time of the execution of the Contract. If the review or adjustment is denied by a final and non appealable judgment, the Seller shall immediately provide PREPA with evidence of the payment of such debt; otherwise, Seller agrees to cancel such debt from the amounts to be paid under the Contract, by PREPA withholding the corresponding amount.

ARTICLE XXIII. Novation

No modification, change, renewal, extension, discharge, or waiver of this Contract, or any of the provisions herein contained, shall be valid and binding except by a written, mutual agreement of the parties signed by a duly authorized officer of each party.

PREPA and Seller expressly agree that no amendment or change order which could be made to Contract, during its term, shall be understood as a contractual novation, unless both parties agree to the contrary specifically and in writing. The previous provision shall be equally applicable in such other cases where PREPA gives Seller a time

extension for the compliance of any of its obligations under this Contract or where PREPA dispenses the claim or demand of any of its credits or rights under the Contract.

ARTICLE XXIV. Choice of Law and Venue

This Contract shall be governed by, and construed in accordance with the laws of the Commonwealth of Puerto Rico. Also, the contracting parties expressly agree that only the state courts of Puerto Rico will be the courts of competent and exclusive jurisdiction to decide over the judicial controversies that the appearing parties may have among them regarding the terms and conditions of this Contract.

ARTICLE XXV. Code of Ethic

The Seller agrees to comply with the provisions of Act of June 18, 2002, No. 84, which establishes a Code of Ethics for the Contractors, Suppliers and Economic Incentive Applicants of the Executive Agencies of the Commonwealth of Puerto Rico.

ARTICLE XXVI. Contingent Fees

- A. The Seller warrants that he has not employed any person to solicit or secure the Contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty will give PREPA the right to immediately terminate the Contract and/or to deduct from any payment the amount of such commission, percentage, brokerage, or contingent fee, or to claim said amount by whatever means available under the law.
- B. No officer, employee, or agent of PREPA or of the Commonwealth of Puerto Rico, or Municipal Governments shall be admitted to any share or part of the ensuing Contract or to any benefit that may arise there from, but this provision shall not be construed to extend to the ensuing Contract if made with a well known oil

corporation for its general benefit, although said corporation employs a relative, by reasons of consanguinity or affinity, to a PREPA employee.

C. The Seller represents and warrants that it is authorized to enter into, and to perform its obligations under this Contract and that it is not prohibited from doing business in Puerto Rico or barred from contracting with agencies or instrumentalities of the Commonwealth of Puerto Rico.

ARTICLE XXVII. Separability

If a court of competent jurisdiction declares any of the Contract provisions as null or invalid, such holding will not affect the validity and effectiveness of the remaining provisions of the Contract and the parties agree to comply with their respective obligations under such provisions not included by the judicial declaration.

ARTICLE XXVIII. Sworn Statement

Previous to the signing of this Contract, the Seller will have to submit a sworn statement that neither Seller nor any of its partners have been convicted, nor have they plead guilty of any felony or misdemeanor involving fraud, misuse or illegal appropriation of public funds as enumerated in Article 3 of Public Law number 428 of September 22, 2004, as amended.

ARTICLE XXIX. Save and Hold Harmless

Seller agrees to save and hold harmless and to indemnify PREPA for all expenses and costs of any nature (including attorneys' fees) incurred by PREPA arising out damages, caused by Seller, by act or omission, in the performance or nonperformance of its obligations under the Contract.

ARTICLE XXX. Transfer of Fund

PREPA does not have the legal obligation or is not committed to accept an Agreement to Transfer Funds between Seller and third parties by reason of the goods or services lent under this Contract. Nevertheless, Seller could request to PREPA, in writing, the recognition and acceptance of a Fund Transfer Agreement between the Seller and a third party, submitting the Agreement for evaluation according to the rules and procedures in force in PREPA. PREPA reserved the right to accept or not the requested recognition of the transfer. The assignor will pay to the Authority \$200 annually to be discounted starting of the first payment of the transfer and yearly thereafter, for administrative expenses.

Seller accepts that the recognition of the transfer of fund by PREPA it is subject to the following Terms and Conditions: (a) PREPA maintains its preferential rights to retain and discount, of every payment owed under this Contract, all and any sum that the Seller owe to PREPA whether under this Contract or under any other Contract or Purchase Order or by the right of compensation (setoff) that have PREPA against the Seller and to apply the sum retained and discounted to its balance against the Seller; (b) PREPA maintains its preferential right to retain and to discount, of every payment owed under this Contract and payable to the transferee all and any sum that the transferee owed to PREPA including but not limited to any right of compensation (setoff) of PREPA against the transferee and to apply the sum retained and discounted to its balance against the Transferee; (c) PREPA maintains its unlimited right to retain the payments in case of: (i) Seller does not comply with all the obligations and contractual responsibilities that can have toward PREPA; (ii) the existence of claims of any type or

nature from PREPA against Seller that rise in relation to said Contract or Purchase Order and/or relating to any other Contract between Seller and PREPA, including but not limited to claims of guarantee of the product sold or by defects or vices of the same and/or construction and independently that said obligations of Seller with PREPA be or not liquid and payable debts.

Seller and the Transferee recognize and accept that it is responsibility of Seller to pay the Transferee any quantity of money object of the transfer of funds that can receive from PREPA while have not covered the debt object of the same. Furthermore, Seller and the Transferee relieve PREPA of any claim in relation to said payment. Seller and the Transferee recognize and accept that to comply with the recognition, PREPA will issue all payments, yielded or not, payable to Seller and the Transferee. It will be responsibility of the Transferee to perform the payments to Seller of those payments that do not correspond to him.

Seller and the Transferee recognize and accept that PREPA will automatically cease to have obligation of any nature under this transfer in any of the following circumstances: (i) as soon as the debt of Seller toward the Transferee have been paid by Seller or collected from it, although itself have not pay off the same with the funds yields, (ii) as soon as PREPA have paid the sums under the Contract or Purchase Order object of this transfer (iii) as soon as PREPA have made payments to the total owed under the Contract or Purchase Order object of this transfer, (iv) as soon as a year have elapse since the due date and/or payment of any of the accounts receivables, yielded by Seller to the Transferee and the Transferee have not formulated, within such year, a written statement with acknowledgment of receipt to PREPA, demanding the payment.

Seller and the Transferee recognize and accept that is of its entire responsibility to request to PREPA, by means of a document, signed by both parties, to discontinue the payments to the transfer. Seller and Transferee relieve PREPA of any claim product of the breach of this obligation.

ARTICLE XXXI. Entire Agreement

This Contract constitutes the entire agreement of the parties as to the subject matter; however, should there be any difficulty or differences in understanding, interpreting, or applying its terms, the parties shall look for guidance and directives within the terms and conditions of the corresponding invitation to bid, specifications and letter of award, dated \_\_\_\_\_.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed as of \_\_\_\_\_, at San Juan, Puerto Rico.

PUERTO RICO ELECTRIC  
POWER AUTHORITY

COMPANY's NAME

\_\_\_\_\_  
Miguel Ángel Cordero López  
Executive Director

\_\_\_\_\_  
Company's Representative  
Title

FUEL SPECIFICATIONS  
SAN JUAN, AGUIRRE, MAYAGÜEZ, AND CAMBALACHE  
GAS TURBINES GENERATING STATIONS

PARAMETER	ASTM METHOD	MINIMUM	MAXIMUM
Sampling	C-4057-88	-	-
Gravity, API Degree at 60°	D-287-82	30.0	42.0
Viscosity, Kinematic CTS at 100° F	D-445-88 D-2161-87	2.3	5.8
Water and Sediment, % volume	D-95-83 D-473-81		0.1
Flash Point, Degree F, PMCT	D-93-90	125	
Sulfur, % weight <sup>1</sup>	D-4294-90		0.050
Ash, % weight	D-482-91		0.005
Pour Point, Degree F	D-97-87		15
Sodium plus Potassium, PPM <sup>2</sup>	D-1318-88		0.5
Vanadium, PPM	D-1548-91		0.5
Calcium, PPM	D-1548-91		2.0
Heating Value, BTU/lb. (Net) at 60° F	D-240-87	18,600	
Distillation Temp. 90% Point degree F	D-86		650
Carbon Residue WT. % (10% Bottoms)	D-524		1.0
Filterable Dirt (Particulates) Mg./100 ml.	D-2276		4
Color		<b>Dyed</b>	
Cetane Number	D-975	40	56
Lead PPM	A.A.	0.01	1.0
Fuel Bound Nitrogen Wt. %	4629-91		0.015

<sup>1</sup>Reproductibility and repeatability must be taken into consideration in order to comply with the maximum sulfur percent weight specification.

<sup>2</sup>Method D-1318-83 for sodium analysis, however, sodium as well as potassium can be analyzed by other acceptable atomic absorption or spectrometric analysis.

## **SAMPLE CALCULATION BTU DEFICIENCY ADJUSTMENT**

Example of calculation to determine credit due to PREPA if Seller supplies fuel of lower heat content than the guaranteed Btu value.

The contracted value is 18,600 Btus per pound of fuel measured at 60 degrees F.

Assume Seller delivers 50,000 barrels of fuel measured at 60 degrees F.

Assume the quality certificate of the fuel indicates a heat content of 18,500 Btu per pound.

Therefore:

To calculate the equivalent barrels deficiency divide the difference of Btus per pound received by the guaranteed minimum and multiply this fraction by the delivered volume.

Example:

$$(50,000 \text{ barrels}) \times ((18,600 - 18,500) / 18,600) = 268.82 \text{ bbl. (deficiency)}$$

SAMPLE CALCULATION  
ESCALATION FACTOR

	<b>Platt's Oilgram Price Report LS Diesel Off-road</b>	
	New York - Cargo	US Gulf Coast - Waterborne
May 18, 2009	144.07 – 145.07	144.07 – 144.57
May 19, 2009	145.16 – 146.16	145.66 – 146.16
May 20, 2009	151.61 – 152.61	150.61 – 151.11

<b>FIRST STEP: INDIVIDUAL MARKET AVERAGE</b>
LS Diesel Off-road New York = $\frac{(144.07 + 145.07 + 145.16 + 146.16 + 151.61 + 152.61)}{6} = 147.4467$
LS Diesel Off-road Gulf Coast = $\frac{(144.07 + 144.57 + 145.66 + 146.16 + 150.61 + 151.11)}{6} = 147.0300$

<b>SECOND STEP: FUEL PRICE AVERAGE</b>
Platt's LS Diesel Off-road = $\frac{(147.4467 + 147.0300)}{2} = 147.2384$ (cpg)

<b>THIRD STEP: FINAL CALCULATION</b>
Escalation Factor for a delivery commencing on May 19, 2009 = [147.2384] * 0.42 = 61.8401 (\$/bbl)

## TERMINALLING SERVICES AGREEMENT

This Agreement, hereinafter “the Agreement” is made between Puerto Rico Electric Power Authority, hereinafter referred to as “PREPA” a public corporation and government instrumentality of the Commonwealth of Puerto Rico, created by Act of May 2, 1941, No. 83, as amended, employer’s Social Security 66-0433747, represented in this act by its Executive Director, Miguel Ángel Cordero López, of legal age, married, professional engineer and resident of Caguas, Puerto Rico; and (contractor’s name), hereinafter referred to as “Seller”, a (partnership organized) and existing under the laws of (Commonwealth of Puerto Rico or state), authorized to do business in Puerto Rico, Social Security number \_\_\_\_\_, represented in this act by its (title), (name), of legal age, (civil status), and resident of (domicile), by virtue of (document that certifies representative powers) dated as of (date).

Whereas, in consideration of the mutual desire of the parties to enter into an Agreement whereby PREPA will provide Seller the use of its terminalling service agreement with CORCO for the duration of the fuel oil Contract between the parties. The use of these facilities will be as follows:

### ARTICLE I - FACILITIES DESIGNATED FOR SERVICE

A. The tanks designated by CORCO for service to PREPA and the ancillary equipment that comprise the petroleum products storage system are suitable for the safe storage and handling of products. CORCO shall assume all costs arising from, or related to, the ownership or operation of all tanks, pipelines/piping and ancillary equipment that are part of the facilities.

The designated tanks and shell capacity of the same are as follows:

Tank 703     150,000 barrels

Tank 952     150,000 barrels

B. CORCO may designate alternate above-ground storage facilities of comparable size in the event CORCO requires the utilization of the tanks that have been designated for service to PREPA. CORCO may temporarily retire one or more tanks designated for service to PREPA if such tank or tanks require repairs or normal maintenance. In such an event, CORCO will notify PREPA and PREPA will notify Seller at least two weeks in advance of the tank or tanks retirement, except that in case of emergency, and/or a Force Majeure event, the two (2) weeks advance notice will be waived. In either case, CORCO will return the tank or tanks for immediate use as soon as the normal maintenance of repairs has been successfully accomplished.

## ARTICLE II - FEES AND EXPENSES

- A. Storage Fee: Seller agrees to pay PREPA a storage fee of 0.4017 US Dollars per shell barrel per month (\$/Bbl/month), based on the shell capacity of the tanks.
- B. Unloading fee: Seller agrees to pay PREPA an unloading fee of 0.044889 US Dollars per barrel (\$/Bbl) for receiving the product from Seller's designated tanker/vessel/barge into CORCO or 0.065612 US Dollars per barrel (\$/Bbl) directly into PREPA's Costa Sur Steam plant.
- C. Loading fee: Seller agrees to pay PREPA a loading fee of 0.044889 US Dollars per barrel (\$/Bbl) for loading Seller's product or products to a tanker/vessel/barge.

- D. Blending fee: Seller agrees to pay PREPA a blending fee of 0.001801 US Dollars per shell capacity in barrels per hour (\$/shell Bbl/hour) when CORCO provides tank blending services at its facilities at Seller's request.
- E. Tank to tank transfer fee: Seller agrees to pay PREPA a tank to tank transfer fee of 0.020723 US Dollars per barrel (\$/Bbl) for product or products transferred from Seller's designated tank or tanks to other tank or tanks located inside or outside CORCO's facilities.
- F. Wharfage and dock maintenance fees: Seller agrees to pay PREPA wharfage and dock maintenance fees of 0.017267 US Dollars per barrel, for every barrel of product loaded or discharged at the CORCO docks.
- G. Dockage fee: Seller agrees to pay PREPA a dockage fee of 0.090187 US Dollars per gross register ton per twenty four (24) hours (\$/ton/24 hour) or fraction thereof, when Seller's designated tankers/vessels/barges are docked at CORCO's facilities.
- All the above fees shall increase automatically by four percent (4%) every year on the anniversary of the Fuel Purchase Contract and shall remain firm for a period of one (1) year.

### ARTICLE III - PAYMENT TERMS

PREPA agrees to invoice the storage fee to Seller in advance on or before the first (1<sup>st</sup>) business day of each calendar month and to invoice the handling fees (all the fees other than the storage fee) on or before the tenth (10<sup>th</sup>) calendar day of the month.

Seller agrees to pay the storage and handling fees outlined in this Agreement by the fifth (5<sup>th</sup>) working day after receipt of invoice. All payments will be made by telegraphic transfer in immediately available US dollars to the following account:

PUERTO RICO ELECTRIC POWER AUTHORITY  
CITIBANK, NY ABA NO. (ROUTING) 021-000089  
CITIBANK, PR ACCOUNT NUMBER 0-400015-015

For payments not received after the due date of the invoice, PREPA may deduct from any pending fuel invoice of Seller an equivalent amount of money.

#### ARTICLE IV - SERVICES

- A. In consideration of the above fees, CORCO shall provide the following services:
1. Receipt of Seller's nominated tankers/vessels/barges at CORCO's Guayanilla dock and the delivery of product or products to PREPA's designated tank or tanks and/or other vessels.
  2. Transfer of product or products via pipeline, tanker/vessel/barge, or to PREPA day tank or final tank facilities located in PREPA's South Coast Plant.
  3. Monthly inventory and throughput figures handled in the system per calendar month.
  4. Seller will provide the services of an independent inspector, for product quality and quantity determination at the facilities, whose findings shall be binding on both parties and the cost shall be borne by Seller.
  5. Subject to the terms of this Agreement, CORCO shall use commercially reasonable efforts to maintain the Tanks and all handling and delivery facilities in a satisfactory condition and working order so as to be able to promptly load, discharge and/or transfer the products. Each tank shall be capable to be filled to

at least ninety per cent (90%) of its shell capacity. In those cases where a tank cannot be filled to ninety per cent (90%) of its shell capacity, then the shell capacity of said tank shall be reduced by the equivalent volume deficiency for payment purposes of the storage fee.

6. Seller, CORCO and PREPA shall each by itself be responsible for all reporting to, and compliance with, all the various governmental agencies that the law and/or other applicable regulation may require from either Seller, CORCO or PREPA. Reporting to the proper authorities of entries and withdrawals involving the Foreign Trade Zone, along with reporting any oil spill within the facilities, shall be CORCO's sole responsibility.
7. Additional facility requirements: If any additional services or equipment not then available at the facility are required in order to continue providing services to PREPA or expand Seller's business operations at the facility (including, without limitation, services or equipment required by governmental agencies) under this Agreement, CORCO will notify Seller and PREPA of whether CORCO will provide such additional services or equipment within thirty (30) days after the earlier of (i) the request from Seller to provide such services or equipment or (ii) the receipt by CORCO of notice that additional services or equipment are required by a governmental agency. Failure to notify within the thirty (30) days period will constitute CORCO's election not to provide such additional service or equipment. In the event CORCO determines not to provide such services or equipment, Seller will have the right to install or construct additional equipment (at Seller's sole cost) and obtain or provide such additional services (at Seller's

sole cost) at the terminal for Seller's use, provided that such services or equipment do not unreasonably interfere with CORCO's operations with respect to CORCO's other customers. In the event Seller installs or constructs any additional equipment, Seller will have an exclusive property right over the additional equipment, and CORCO will have a non-exclusive right, for a mutually agreed upon fee, to use such equipment for itself and its customers, but only to the extent that such use does not interfere with Seller's use of such equipment for its own operations. In the event that neither CORCO nor Seller provides such services or equipment, and CORCO's ability to provide the affected services to Seller under this Agreement would therefore be materially impaired, performance by CORCO of the affected services shall be suspended immediately, without any liability to Seller, CORCO or to PREPA.

#### ARTICLE V - DOCK REGULATIONS AND RESTRICTIONS

Deliveries thru the CORCO dock, at present, are limited as follows:

DWT 82,000 tons
LOA 840 feet
BCM 425 feet
DRAFT 42 feet sw

#### ARTICLE VI - MARINE PROVISIONS

A ship berth at CORCO shall be provided to Seller's vessel. However, all port charges, including but not limited to, pilot fees, line handlers, cargo hose connections, taxes, duties, or other expenses related to the vessel shall be for the account of the vessel or Seller through their designated agencies. In order for CORCO to provide services under this Agreement, all vessels (ships and barges) handling products under this

Agreement shall always be in compliance with all U.S. Coast Guard Regulations. CORCO, at its cost, shall supply a U.S. Coast Guard certified "person in charge" and all other necessary persons for the safe receipt of the product.

#### ARTICLE VII - NOTICES

Seller shall give CORCO seventy-two (72) hours, forty-eight (48) hours, and twenty-four (24) hours notice before it nominates vessels arriving at CORCO Guayanilla dock. Said notice shall be sent via fax and be directed to the CORCO facility.

It is understood and agreed that it is the practice of CORCO to load and unload vessels at the docks in order of their arrival to CORCO sea-buoy, subject to the availability of the docks.

General notices: Notices to be given under this Agreement shall be deemed properly served on each other when delivered in writing personally, by certified mail, or by fax machine.

#### ARTICLE VIII - TITLE

Title to the product stored and handled at CORCO shall remain with Seller. CORCO shall be deemed to have custody of the product from the time it passes the flange connection between the vessel's delivery line and CORCO's receiving line and until it passes the flange connection between CORCO's delivery line and Seller's nominated vessel, barge or pipeline.

#### ARTICLE IX – 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, provided, however, that

neither party shall be excused by reason of Force Majeure from the obligation to make any payment due to the other party for more than ten (10) days after said payment is due. For purposes of this Agreement, Force Majeure means any cause without the fault or negligence, and beyond the reasonable control of, the party claiming the occurrence Force Majeure event. Force Majeure may include, but not be limited to, the following: Acts of God, strikes not related or provoked by any action taken by CORCO, industrial disturbances, acts of the public enemy, war, blockages, boycotts, riots, insurrections, epidemics, earthquakes, storms, floods, civil disturbances, lockouts, fires, explosions, interruption of services due to acts or failures to act of any governmental authority. Interference by, or restrictions or onerous regulations imposed by civil or military act or some constitution, decree, law, or otherwise, condemnation, failure of any subcontractor or supplier to perform, and any delay or inability of CORCO in obtaining the necessary licenses, permits or governmental approvals, good faith compliance with any applicable federal or domestic governmental statute, regulation or rule, whether or not it later proves to be invalid, provided that these events or any other claimed as Force Majeure, and/or its effects, are beyond the reasonable control of the party claiming the Force Majeure. The burden of proof as to whether a Force Majeure has occurred shall be on the party claiming the Force Majeure.

If either party is rendered wholly or partly unable to perform its obligations under this Agreement because of Force Majeure, that party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that:

(i) the non-performing party, within ten (10) days after the occurrence of the Force Majeure, gives the other party written notice describing the particulars of the occurrence

and its estimated duration; (ii) the suspension of performance be of no greater scope and of no longer duration that is required by the Force Majeure; (iii) no obligations of either party which arose prior to the Force Majeure be excused as a result of the Force Majeure; and (iv) the Force Majeure party use its best efforts to remedy its inability to perform and resume in full its performance under this Agreement, provided that this obligation shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the party involved in the dispute, are contrary to its interest.

#### ARTICLE X - ENTIRE AGREEMENT

The terms and conditions set forth in this Agreement comprise the entire Agreement between the parties, and changes or modifications to the same must be approved in writing by both parties.

#### ARTICLE XI - GOVERNING LAWS

This Agreement shall be governed and construed according to the laws of the Commonwealth of Puerto Rico and applicable U.S. Federal Law. Also the parties expressly agree that only the state courts of Puerto Rico will be the courts of competent and exclusive jurisdiction to decide over the judicial controversies that the appearing parties may have among them regarding the terms and conditions of this Agreement.

#### ARTICLE XII - LIABILITY

The parties agree that their responsibilities for damages under this Agreement will be governed by the Puerto Rico Civil Code and its case law, as dictated by the Supreme Court of Puerto Rico.

### ARTICLE XIII - ASSIGNMENT

This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of each of the parties hereto.

This Agreement shall not be assigned, in whole or in part, by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld, except that either party may assign to it an affiliate or a subsidiary corporation. No such assignment shall relieve the assigning party of any of its obligations under this Agreement.

### ARTICLE XIV - CONFIDENTIALITY

The terms of this Agreement shall not be disclosed to any third parties, except as required by law or regulation, without the prior consent of the other party.

### ARTICLE XV - SEPARABILITY

Any article or provision declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over the parties or deemed unlawful because of a statutory change will not otherwise affect the lawful obligations that arise under this Agreement.

### ARTICLE XVI - OTHER

Seller and PREPA expressly agree that no amendment or change order which could be made to this Agreement, during its term, shall be understood as a contractual novation, unless both parties agree to the contrary, specifically and in writing.

The previous provision shall be equally applicable in such other cases where PREPA gives Seller a time extension for the compliance of any of its obligation under this Agreement, or where PREPA dispenses the claim or demand of any of its credits or rights under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed as of \_\_\_\_\_, at San Juan, Puerto Rico.

PUERTO RICO ELECTRIC  
POWER AUTHORITY

COMPANY'S NAME

\_\_\_\_\_  
Miguel Ángel Cordero López  
Executive Director

\_\_\_\_\_  
Company's Representative