

**GOVERNMENT OF PUERTO RICO  
PUERTO RICO ELECTRIC POWER AUTHORITY  
PROFESSIONAL SERVICES AGREEMENT**

-----APPEAR-----

**AS FIRST PARTY:** The Puerto Rico Electric Power Authority (PREPA), a public corporation and government instrumentality of the Commonwealth of Puerto Rico, created by Act 83 of May 2, 1941, as amended (Act 83), represented in this act by its Executive Director, Josué A. Colón Ortiz, of legal age, married, and resident of Caguas, Puerto Rico. -----

**AS SECOND PARTY:** King & Spalding, LLP ("King & Spalding"), a limited liability partnership formed and existing under the laws of the State of Georgia, United States of America, with a place of business at 1700 Pennsylvania Ave., NW, Washington, DC 20006, herein represented by Steven M. Kupka, who has authority to enter into this agreement by virtue of his position as a King & Spalding partner. -----

Both PREPA and King & Spalding are herein individually referred to as a Party and collectively referred to as the Parties. -----

-----WITNESSETH-----

**WHEREAS:** PREPA, by virtue of 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,** Pursuant Section 205 (2) (d) of Act No. 83 competitive bidding shall not be necessary when professional or expert services or work are required and PREPA deems it in the best interests of good administration for such works or services to be contracted without such announcements. -----



WHEREAS: PREPA desires to enter into this Professional Services Agreement (Agreement) with King & Spalding for the performance of the Services.-----

WHEREAS: King & Spalding hereby certifies 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 covenants and agreements contained in this Agreement, hereinafter stated, the Parties agree themselves, their personal representatives, and successors to enter into this Agreement under the following: -----

-----**TERMS AND CONDITIONS**-----

**Article 1. Scope of Services**

1.1 King & Spalding shall provide with legal services to the Program Management Office, the Generation Directorate and the Planning and Environmental Protection Directorate with the current PREB mandated Renewable & Energy Storage RFP. In matters of the Renewable & Energy Storage RFP, PREPA shall receive from King & Spalding legal services related to ongoing requests for information from said participants, PREB resolutions and orders and any other legal service, as requested by PREPA.-----

1.2 At the direction of PREPA, King & Spalding may be required to work with other consulting, legal, investment, or other type of firms. The Parties agree to discuss such assignment in advance, so that all the Parties have a clear understanding as



to their responsibilities. King & Spalding is not responsible for worked performed by others. -----

1.3 The PREB has established that it will execute the Renewable Energy and Energy Storage Tranche 2 procurement process, through an independent coordinator (the "PREB-Independent Coordinator"), as per its Resolution and Order dated October 29, 2021 (the "R&O"). Stakeholder roles in the management of the Tranche 2 procurement process and their extent remain unclear and, according to the R&O, PREB "will set the detailed powers and duties of the PREB-Independent Coordinator as well as the role of PREPA in the Tranche 2 RFP process" in a separate resolution to be published in a later date (the "New R&O").-----  
King & Spalding's scope of services does not include supporting PREPA on the Tranche 2 RFP process. Should PREPA seek to engage King & Spalding to support the Tranche 2 RFP process, PREPA must amend the King & Spalding's scope to include Tranche 2 and remove all such services which would result in duplicative work with regards to the responsibilities of the PREB-Independent Coordinator.-----



**Article 2. Services Coordination**

All the Services of King & Spalding in relation to the terms and conditions of this Agreement will be coordinated through the Deputy Executive Director of Operations Office and through the Legal Affairs Office or the person delegated by either of them.----

**Article 3. Agreement Assignment or Subcontract**

King & Spalding shall not assign nor subcontract its rights and obligations under this Agreement, except in the event PREPA give written authorization for such actions. Provided, that no subcontract shall be considered for PREPA's approval, except when the following requirements are met: (1) King & Spalding delivers to 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 King & Spalding's rights under the subcontract, in the event that PREPA declares King & Spalding in breach or default of any of the Agreement terms and conditions; and (3) the subcontract includes, as a condition for its validity and enforceability, a provision establishing for the subcontractor the obligation to comply with all King & Spalding's obligations under the Agreement (*mirror image clause*), except for such obligations, terms and conditions which exclusively related with works or services not included under the subcontract. A request to subcontract shall specify the issues or matters that will be referred to the subcontractor. \_\_\_\_\_



**Article 4. Agreement Term**

This Agreement shall be in effect from the date of its execution until June 30, 2023, (The Agreement Term).-----



**Article 5. Agreement Termination**

5.1 Either Party shall have the right to terminate this Agreement, at any moment, by providing the other Party a thirty (30) days prior written notice by registered mail, return receipt requested, or overnight express mail to King & Spalding. If notice is given, the Agreement shall terminate upon the expiration of the 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 Agreement. The rights, duties and responsibilities of the Parties shall continue in full force and effect during the thirty (30) day notice period. King & Spalding shall have no further right to compensation except for what has been accrued for services rendered and expenses incurred under the Agreement until said date of effective termination.-----

5.2 PREPA shall have the right to terminate this Agreement immediately in the event of negligence, dereliction of duties or noncompliance by King & Spalding, without prior written notice. -----

5.3 King & Spalding may terminate this Agreement as required or permitted by applicable Rules of Professional Conduct.-----

**Article 6. Payment**

6.1 In accordance with the terms and conditions contained herein, PREPA agrees and King & Spalding accepts that the total amount to be paid under the Agreement shall not exceed a cumulative amount of one million dollars (\$1,000,000), including reimbursable expenses (the "Agreement Amount"). All payments to be made under

this Agreement will be charged to account 1-4019-92311-556-673. PREPA will only pay for Services already rendered before the submitted invoice date. PREPA will not be required to make advance payments for any future service to be rendered by King & Spalding under the Agreement.-----

6.2 Nothing herein shall preclude the Parties from agreeing to increase said amount in writing and signed by both Parties. -----

PREPA will pay King & Spalding for the Services according to the hourly rates established in Appendix A. Appendix A attached hereto provides a schedule of the attorneys assigned to this matter. Should King & Spalding assign another person not included in Appendix A hereto to attend to PREPA's matters pursuant to this Agreement, King & Spalding shall promptly send PREPA an amended schedule to include such person's name and/or position, and request approval from PREPA for such amended schedule. Such approval from PREPA shall not be unreasonably withheld.-----



6.3 King & Spalding shall immediately notify PREPA when the billing under the Agreement amounts seventy-five percent (75%) of the Agreement Amount. Once this notification has been issued, King & Spalding, in coordination with PREPA, will ensure that no services will be rendered in excess of the Agreement Amount, except that a written amendment is agreed upon by both Parties. In addition, King & Spalding shall present an itemized list of the remaining billable Services under the Agreement.-----



**Article 7. Fees, Expenses and Disbursements**

7.1 PREPA should not be billed for (a) time spent in processing conflict searches, preparing billing statements, or in responding to PREPA inquiries concerning King & Spalding's invoices; or (b) travel time during which King & Spalding is billing another client for work performed while traveling. Moreover, PREPA requires that only professional services be billed. Accordingly, PREPA should not be billed for the administrative tasks of creating, organizing, reviewing and/or updating files; routine or periodic status reports; receiving, reviewing, and/or distributing mail; faxing or copying documents; checking electronic mail or converting information to disk. -----

7.2 PREPA will reimburse King & Spalding for actual costs and expenses related to matters assigned to King & Spalding and for necessary and reasonable out-of-pocket disbursements, subject to the limitations and exceptions set forth below. King & Spalding is expected to have a system in place that ensures those who bill time and disbursements to PREPA matters do so promptly and accurately. -----

7.3 PREPA will not reimburse King & Spalding for: (a) costs included in a 'miscellaneous' or 'other' category of charges; (b) overhead costs and expenses—such as those relating to fees for time or overtime expended by support staff (secretaries, administrative/clerical personnel, internal messengers, and other similar services), word processing and/or proofreading, cost of supplies or equipment, and/or other similar costs of doing business; (f) time spent attending education seminars or training programs; or (h) mark-ups or surcharges on any cost



or expense. In addition, if communications are sent to PREPA using more than one medium, PREPA does not expect to pay for the cost of both communications. For instance, if a piece of correspondence is sent to PREPA by email, we do not expect to pay for the cost of that same correspondence if it is also sent via regular or expedited mail. -----

7.4 PREPA will reimburse King & Spalding for separately itemized expenses and disbursements in the following categories: -----

7.4.1 Messenger/courier service – PREPA will reimburse actual charges billed to King & Spalding for deliveries (including overnight deliveries) where this level of service is required because of time constraints imposed by PREPA or because of the need for reliability given the nature of the items being transported. Appropriate summaries of messenger/courier expenses must reflect the date and cost of the service and the identity of the sender and the recipient or the points of transportation. -----

7.4.2 Travel – PREPA will reimburse actual charges for transportation and hotels reasonable and necessary for effective services to PREPA. PREPA will not pay for any first-class or business-class travel. Summaries of transportation expenses should reflect the identity of the user, the date and amount of each specific cost, and the points of travel. Summaries of lodging and meals expenses should include the identity of the person making the expenditure, the date and amount, and the nature of the expenditure. -----





Travel expenses reimbursement applies for personnel providing the services to PREPA, travel expenses for family members or guests are not chargeable to PREPA or reimbursable. -----

7.4.3 Air Travel- The cost of air travel will be reimbursed up to an amount of \$500 per person per round trip (including: seat assignment, applicable taxes, and other applicable fees). King & Spalding shall submit a copy of the airline ticket and paid invoice. Airfare may only be invoiced following completion of travel. -----

Airfare necessary to attend PREPA's official business will be paid by PREPA according to these guidelines. King & Spalding shall buy an economic class ticket or equivalent, then if desired, he/she may upgrade, but PREPA will only pay the amount corresponding to the economy class or equivalent airfare. Baggage fees will not be reimbursed. -----

Any travel and lodging expense for which a reimbursement is requested shall be reasonable and necessary, and any extraordinary travel and lodging expenses shall be authorized in writing and in advance by PREPA.-----

7.4.4 Maximum Per Diem Rates (no proof of payment will be required): -----


Meals: - \$57 per person for each traveling day for persons working "on-site" at PREPA. Under no circumstances PREPA will reimburse alcoholic beverages.-----

Lodging (standard not smoking room): - \$200 per person, per night not



including government fees and taxes King & Spalding will use the most economical alternative of lodging, including temporary rentals of apartments or rooms (Airbnb like rentals). For travel period longer than five days, temporary rentals shall be coordinated when this temporary rental is less expensive than hotel accommodation, and evidence of said temporary rental shall be provided. -----

Ground Transportation: - \$20 per person, per working day. If a car is rented for the services to be provided, a fixed amount of \$25 per day will be reimbursed for parking expenses, upon presentation of evidence of the car rental (no proof of payment will be required).-----



7.4.5 Reimbursable expenses shall not exceed six percent (6%) of the Agreement Price in one year and will be reimbursed by PREPA through the presentation of acceptable evidence for such expenses. This limitation does not apply to expenses related to third-party services necessary for King & Spalding to render its Services under the Agreement, given they are previously approved by PREPA. -----

7.4.6 Photocopying/printing – PREPA will reimburse actual charges for outside binding, and printing services and costs of outside photocopying services, which are not to exceed the actual five (5) cents per page for black and white copies, and twenty-five (25) cents per page for color copies. Summaries of expenditures for copying should reflect both the number of copies made and



the cost per copy. -----

7.4.7 Third-Party Services – The approval of PREPA must be obtained in writing prior to retaining any third-party services. King & Spalding shall be responsible for ensuring that there are no conflicts of interest between any third party and PREPA or between any third-party clients and PREPA. In addition, all arrangements with third-party vendors should include an appropriate undertaking of confidentiality and data privacy. Invoices from third-party vendors should be paid directly by King & Spalding, incorporated into its invoice to PREPA and should include appropriate detail. Copies of third-party invoices may be requested by PREPA and should be retained in accordance with PREPA's guidelines. -----

7.4.8 PREPA reserves the right to question the charges on any bill (even after payment) and to obtain a discount or refund of those charges that are disputed. At PREPA's request, copies of bills and records reflecting reimbursable expenses must be provided to PREPA. -----


**Article 8. Invoices**

8.1 King & Spalding shall submit monthly invoices within the first thirty (30) days following the period invoiced. King & Spalding will provide to PREPA an invoice for each billing period which will include a description of the services rendered and the number of hours spent by each person. The invoice for professional services shall



be itemized and must be duly certified by an authorized representative of King & Spalding. -----

8.2 PREPA will review the invoices within thirty (30) days upon receipt, and if they are in compliance with the requirements set forth in this Agreement, it will proceed with payment. Payment is due within thirty (30) days of receipt of the invoice. If any statement remains unpaid for more than sixty (60) days, PREPA agrees that King & Spalding may cease performing services or terminate the Agreement unless arrangements satisfactory to both parties are made in good faith for payment of outstanding statements. 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. -----

 8.3 All invoices submitted by King & Spalding shall include the following Certification in order to proceed with its payment: -----

No Interest Certification:

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

\_\_\_\_\_  
*King & Spalding's Representative Signature*



This is an essential requirement and those invoices without this Certification will not be processed for payment. In order to comply with the certification requirements set forth above, King & Spalding shall require that subcontractors, if any approved by PREPA, providing Services also make the certification set forth above in any invoices submitted in connection with the Services. -----

**Article 9. Information and Material Facts**

- 9.1 PREPA shall promptly provide to King & Spalding all information under the control of PREPA and necessary for King & Spalding to perform the Services under this Agreement and those material facts that King & Spalding may reasonably require in order to provide its Services to PREPA. PREPA will ensure, to the best of its knowledge and belief, that the documents, data, and other information and material facts provided to King & Spalding, which are under its control, are true and complete, and does not constitute misleading or inaccurate information and King & Spalding shall be entitled to rely on the accuracy and completeness of the documents, data, and other information and material facts.-----
- 9.2 PREPA will advise in writing King & Spalding of any developments of which PREPA becomes aware, and which PREPA considers may have a material effect with respect to the information and/or facts provided to King & Spalding.----



**Article 10. Information Disclosure and Confidentiality**

10.1 King & Spalding acknowledges the proprietary and confidential nature of all internal, non-public, information systems, financial, and business information relating to PREPA and its personnel, its subsidiary corporations and affiliates and their personnel, the Commonwealth of Puerto Rico, its agencies, corporations and/or municipalities and their personnel, now or hereafter provided to King & Spalding or otherwise obtained by King & Spalding in the course of rendering services for PREPA (collectively, "Confidential Information"). -----

10.2 King & Spalding and its employees, affiliates and authorized sub-contractors shall keep in strict confidence all Confidential Information, and: (i) shall not make public or disclose any of said materials without the previous written consent of PREPA, provided that King & Spalding shall be permitted to share financial and other information prepared or provided for purposes of PREPA's SEC Investigation, SEC or other government regulators, as may be required in the course of King & Spalding's representation of PREPA under this Agreement; (ii) shall use the Confidential Information only to perform King & Spalding's obligations under this Agreement; and (iii) will reproduce the Confidential Information only as required to perform King & Spalding's obligations under this Agreement. -----

10.3 "Confidential Information" shall not apply to any information which: -----  
(a) is generally known to the public at the time of disclosure to King & Spalding or becomes generally known through no wrongful act on the part



of King & Spalding;-----

- (b) is in King & Spalding 's possession at the time of disclosure otherwise than as a result of King & Spalding 's breach of any legal obligation; -----
- (c) becomes known to King & Spalding through disclosure by sources other than King & Spalding having the legal right to disclose such information; or
- (d) is independently developed by King & Spalding without reference to or reliance upon the confidential information. -----

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



10.5 King & Spalding will not disclose any Confidential Information relating to the work that King & Spalding performs under this Agreement except as provided herein or by applicable the Rules of Professional Conduct or law. -----

10.6 King & Spalding may divulge Confidential Information to its employees 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 King & Spalding shall direct them, and they shall agree, to treat such information as confidential and to return all materials to King & Spalding



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 Agreement. -----

10.7 King & Spalding shall return all Confidential Information, as well as any other document to which PREPA is entitled that may relate to its work under this Agreement, to PREPA within thirty (30) days after date of the expiration or earlier termination of this Agreement or destroy such information, certifying 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, King & Spalding may retain its own work product as long as it maintains the confidentiality of PREPA's Confidential Information as otherwise provided in this Agreement and other Confidential Information for regulatory, professional liability, and recordkeeping purposes (provided it continues to maintain its confidentiality in accordance with this Agreement). 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 upon request for inspection by the Office of the Comptroller of Puerto Rico. Such inspection, if undertaken, shall not constitute a waiver of the attorney-client privilege or work product doctrine. -----



10.8 The Parties shall take all reasonable steps to keep confidential and use only for the purposes contemplated by the terms of the Agreement the information provided by PREPA and/or King & Spalding, and take all reasonable steps to ensure that such information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement. -----

10.9 The Parties also agree that, except as agreed to in writing by both Parties, they will not, at any time after termination of this Agreement, disclose any confidential information to any person whatsoever, or permit any person whatsoever to examine and/or make copies of any reports prepared by King & Spalding or under its control by reason of its consulting services, and that upon termination of this Agreement each Party will turn over to the other all documents, papers, and other matters in its possession or under its control that relate to the other Party. King & Spalding may retain one file copy for its records. -----



**Article 11. Rights and Titles**

11.1 King & Spalding will submit any reports reasonably required by PREPA regarding services performed under this Agreement. If required by PREPA, at the completion of the assigned tasks, King & Spalding will submit a final written report describing the work it has performed. This requirement shall not be interpreted as a waiver by PREPA of King & Spalding's ethical obligation and responsibility of keeping PREPA informed of the progress of the assigned matters. This obligation includes King & Spalding's commitment to preparing and



delivering to PREPA's external auditors, in a timely manner, the legal letters periodically requested in connection with pending or threatened litigation, claims and assessments or loss contingencies, as part of the financial statements audit process for PREPA, its subsidiaries and affiliates, prepared in accordance with King & Spalding's policy. King & Spalding shall not invoice the time spent in preparing a reasonable number of customary letters to auditors. -----

11.2 All rights, titles and interest in any reports, documents, analyses, investigations and any other by-product conceived or developed by King & Spalding exclusively for PREPA in performing its obligations under this Agreement shall be the exclusive property of PREPA. King & Spalding shall retain all right, title and interest in and to proprietary works of authorship, pre-existing or other have not been created specifically for PREPA under this Contract. With the exception of items marked as "CONFIDENTIAL" by King & Spalding, PREPA shall retain the right to use, refer, share, or provide to any third party, as PREPA may determine, the results of any reports, documents, analyses, investigations or any other by-product of the Services performed by the Contractor under this Contract.-----

**Article 12. Copyright**

King & Spalding and PREPA shall jointly defend any suit or action brought against either party based on a claim that any document, report, study, analysis, copyrighted composition, article or any by-product of those, either used in the performance of the Services by King & Spalding or provided to PREPA by King & Spalding as part of its



Services, or used in the performance of this Agreement, including their use by PREPA, constitutes an infringement of any patents or copyrights of the United States. The Party of this Agreement subject to the claim or that becomes aware of a potential claim shall promptly notify in writing the other Party of this Agreement, and give the authority, information, and assistance reasonable and necessary for the defense of such claim. ---

**Article 13. Responsibility for Damages**

The appearing 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 14. Independent Contractor**

14.1 King & Spalding shall be considered as an independent contractor, for all material purposes under this Agreement, and all persons engaged or contracted by King & Spalding for the performance of its obligations herein, shall be considered as its employees or agents, and not as employees or agents of PREPA. -----

14.2 As an independent contractor, King & Spalding shall not be entitled to any fringe benefits, such as, but not limited to vacation, sick leave, and to which PREPA's employees are entitled. -----



**Article 15. Employees not to Benefit**

No officer, employee or agent of PREPA, nor of the Government of the Commonwealth of Puerto Rico or its Municipal Governments shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom.-----

**Article 16. Conflict of Interest**

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



16.2 King & Spalding acknowledges that in executing its services pursuant to this Agreement it has a duty of complete loyalty towards PREPA which includes not having conflict of interest. "Conflict of Interest" means representing clients who have or may have interests that are contrary to PREPA, but does not include rendering services that are unrelated to the services covered in this Agreement. Also, King & Spalding shall have the continuous obligation to disclose to PREPA all information and circumstances of its relations with clients and third persons that would result in a conflict of interest which would influence King & Spalding when performing its responsibilities under this Agreement. -----



16.3 The Parties understand and agree that a conflict of interest exists when King & Spalding must advocate a position or outcome on behalf of any existing or future client contrary to PREPA's interests. Also, any conduct defined in the Rules of Professional Conduct regarding conflict of interests shall apply to King & Spalding and its personnel. -----

16.4 In the event that any of the partners, directors, agents or employees of King & Spalding engaged in providing services under this Agreement should participate in the conduct described herein, said conduct shall constitute a violation of the prohibitions provided herein.-----

16.5 King & Spalding's partners, directors, agents or employees and personnel shall avoid even the appearance of the existence of conflicting interests. -----

16.6 In the event that the existence of adverse interests is discovered, the PREPA's Executive Director shall inform King & Spalding in writing of PREPA's intention to terminate this Agreement within a thirty (30) day period. During said period, King & Spalding may request a hearing with the Executive Director to present its arguments regarding the alleged conflict of interests. In the event that King & Spalding does not request such hearing during the specified thirty (30) day period or the controversy is not satisfactory settled before or during the hearing, this Agreement shall be terminated or canceled. -----

16.7 King & Spalding certifies that, at the time of the execution of this Agreement, it does not have nor does it represent anyone who has Conflict of Interests with



PREPA. If such Conflict of Interest arises after the execution of the Agreement,  
King & Spalding shall notify PREPA immediately. -----

**Article 17. Notices**

All notices and other communications hereunder shall be in writing and shall be deemed given when delivered personally or sent by telecopy, or 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 to the following addresses:-----

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

or for hand or overnight courier delivery:

Puerto Rico Electric Power Authority  
1110 Ponce de León Avenue  
San Juan, PR 00907-3802

Attention: Josué A. Colón Ortiz  
Executive Director

To King & Spalding: Steven M. Kupka, Esq.  
King & Spalding LLP  
1700 Pennsylvania Avenue NW  
Suite 200  
Washington, D.C. 20006-4704

with a copy to

General Counsel  
King & Spalding LLP  
1180 Peachtree Street NE  
Atlanta, GA 30309-3521



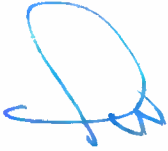


**Article 18. Applicable Law and Venue**

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico. The court and authorities of the Commonwealth of Puerto Rico and the federal courts of the United States shall have jurisdiction over all controversies that may arise with respect to this Agreement. The Parties hereby waive any other venue to which they might be entitled by the virtue of domicile or otherwise. Should either party initiate or bring suit or action before any other court, it is agreed that upon application, any such suit or action shall be dismissed, without prejudice, and may be filed in accordance with this provision. -----

**Article 19. Change in Law**

During the term of this Agreement, any change in law, including, but not limited to changes in applicable tax law, which cause an increase in King & Spalding's costs when providing the services, shall be King & Spalding's responsibility and PREPA shall not be obligated to increase the Agreement Amount. -----



**Article 20. Force Majeure**

20.1 The Parties shall be excused from performing their respective responsibilities and obligations under this Agreement and shall not be liable in damages or otherwise, if and only to the extent that they are unable to perform or are prevented from performing by a force majeure event. -----



20.2 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 of a force majeure event.-----

20.3 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 event, 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 event has occurred shall be on the Party claiming the force majeure. -----



**Article 21. Novation**

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

21.2 The previous provision shall be equally applicable in such other cases where PREPA gives King & Spalding a time extension for the compliance of any of its



obligations under this Agreement, or where PREPA dispenses the claim or demand of any of its credits or rights under the Agreement. -----

**Article 22. Severability**

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

**Article 23. Save and Hold Harmless**

King & Spalding agrees to save and hold harmless and to indemnify PREPA for all expenses and costs of any nature (including reasonable attorneys' fees) incurred by PREPA arising out of any third party claim made by any person for bodily injuries, including death, or for property damage, to the extent directly caused by King & Spalding by the negligent act or omission, in the performance or nonperformance of its obligations under the Agreement, but not to the point directly caused or contributed by negligence or tort of PREPA or a third party, who is not an employee or subcontractor of King & Spalding.-----

With respect to any indemnity set forth in this Agreement, the Party which shall be entitled to receive indemnity shall give prompt notice to the other Party of its receipt of any threat, indication or other notice of any claim, investigation or demand that might give rise to any losses required to be indemnified hereunder and shall reasonably

cooperate in the defense of such claim. The indemnifying party shall have the right to conduct defense of such action at its sole expense. -----

**Article 24. Insurance**

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

1. Commonwealth of Puerto Rico Workmen's Compensation Insurance:

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

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

2. Employer's Liability Insurance:

King & Spalding shall provide Employer's Liability Insurance with a minimum bodily injury limits of at least \$1,000,000 for each employee and at least \$1,000,000 for each accident covering against the liability imposed by Law upon King & Spalding 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. -----



3. Commercial General Liability Insurance:

King & Spalding shall provide a Commercial General Liability Insurance with limits of at least \$1,000,000 per occurrence and at least \$1,000,000 aggregate. -----

4. Commercial Automobile Liability Insurance:

King & Spalding shall provide a Commercial Automobile Liability Insurance with limits of at least \$1,000,000 combined single limit covering all owned or schedule autos, non-owned autos, and hired autos.-----

5. Professional Liability Insurance:

King & Spalding shall provide a Professional Liability Insurance with limits of at least \$1,000,000 per claim and at least \$1,000,000 aggregate. -----

6. Requirements under the Policies:

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

a. As Additional Insured:

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

- b. A 30 day cancellation or nonrenewable notice to be sent to the above address
- c. An endorsement including this Agreement under contractual liability coverage and identifying it by number, date and Parties to the Agreement. -----
- d. Waiver of subrogation in favor of Puerto Rico Electric Power Authority (PREPA). -----



e. Breach of Warranties or Conditions: -----

*"The Breach of any of the Warranties or Conditions in this policy by the Insured shall not prejudice 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. -----

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

**Article 25. Compliance with the Commonwealth of Puerto Rico Contracting Requirements**

King & Spalding will comply with all applicable laws, regulations and executive orders that regulate the contracting process and requirements of the Government of Puerto Rico, including Act 73-2019, as amended, known as the "2019 General Services Administration Act for the Centralization of Purchases of the Government of Puerto Rico" (Act 73-2019). In compliance with the provisions of Act 73-2019, King & Spalding has provided PREPA the Certification of Eligibility of the Unique Registry of Professional Services Providers (known in Spanish as "*Certificado de Elegibilidad del Registro Único de Proveedores de Servicios Profesionales*", and hereinafter referred to as the "RUP Certification"), issued by the General Services Administration. It is hereby acknowledged that pursuant to the provisions of Article 42 of Act 73-2019, a valid RUP Certification serves as evidence of compliance with the documentation requirements



necessary for contracting professional services with the Government of Puerto Rico, particularly those applicable under Act 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.), the Puerto Rico Department of Treasury Circular Letter Number 1300-16-16 issued on January 22, 2016, as amended, and the sworn statement before notary public required pursuant to Article 3.3 of Act 2-2018.-----  
Further, King & Spalding hereby certifies, guarantees, acknowledges and agrees to the following:-----

A. King & Spalding hereby certifies that as of the execution of this Contract, it has filed income, sales and use ("IVU" for its Spanish acronym), and property taxes returns, in Puerto Rico for the past five (5) years. King & Spalding also certifies that it does not have any outstanding debt or other debts with the Government of Puerto Rico for income, IVU taxes (collected by the Department of the Treasury), real or chattel property taxes (collected by the "*Centro de Recaudación de Ingresos Municipales*" ("CRIM")), unemployment insurance premiums, workers' compensation payments, Social Security for chauffeurs from the Department of Labor and Human Resources, nor have debts with the Puerto Rico Child Support Administration (known in Spanish as the *Administración Para El Sustento de Menores* (ASUME)). In the event that King & Spalding owes taxes or premiums to said government agencies, it agrees that PREPA may withhold any monies due





to King & Spalding under this Contract to be applied to the payment and cancellation of said debt. King & Spalding also certifies that it is in corporate "Good Standing" at the Department of State of Puerto Rico. King & Spalding hereby represents and certifies that it is duly authorized to do business under the laws of Puerto Rico by the Department of State and the execution, delivery and performance of all the services under this Contract are within King & Spalding authorized powers and are not in contravention of law. King & Spalding also certifies that it is in compliance with the Merchant's Registration. Accordingly, King & Spalding has submitted to PREPA its RUP Certification from the General Services Administration. King & Spalding shall maintain its certificate valid for the duration of this Contract.-----

In accordance with the provisions of Article 42 of Act 73-2019, PREPA, as an Exempt Entity, recognizes the validity of the RUP Certification issued by the General Services Administration, who requires from professional service providers all certifications and documents required for governmental contracting, in accordance with Act 237-2004, as amended, and other provisions approved thereunder.-----

B. Special Contribution for Professional and Consulting Services: As required by Act 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.-----

- C. Social Security and Income Tax Retentions: In compliance with Executive Order 1991 OE- 24; and C.F.R. Part 404 et. Seq., King & Spalding 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.
- D. 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 U.S. citizens and Non-U.S. citizens, which are nonresidents of the Commonwealth of Puerto Rico, PREPA 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*). King & Spalding will request PREPA not to make such withholdings if, to the satisfaction of PREPA, King & Spalding 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. As proof of the remittance of withholdings to the Treasury Department required by this Paragraph L (as well as Paragraph J above), PREPA agrees to provide King & Spalding with a completed copy of the Puerto Rico Treasury Department Form 480.6C (entitled, "*Declaración Informativa - Ingresos Sujetos a Retención - No Residentes*"). -----

- E. Compliance with Act 1 of Governmental Ethics: King & Spalding will certify compliance with Act 1-2012, as amended, known as the Ethics Act of the Government of Puerto Rico (Act 1-2012), which stipulates that no employee or executive of PREPA nor any member of his/he immediate family (spouse, dependent children or other members of his/her household or any individual whose financial affairs are under the control of the employee) shall have any direct or indirect pecuniary interest in the Services to be rendered under this 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.; -----
- F. Act 168-2000: Law for the Strengthening of the Family Support and Livelihood of Elderly People: King & Spalding will certify that if there is any Judicial or Administrative Order demanding payment or any economic support regarding Act 168-2000, as amended, the same is current and in all aspects in compliance. Act 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. -----
- G. Act 127-2004: 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 Act 18 of October 30, 1975, as amended. -----



- H. Prohibition with respect to execution by public officers: 3 L.P.R.A. §8615(c):  
No public officer or employee authorized to contract on behalf of the executive agency for which he/she works may execute a contract between the agency for which he/she works and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office. -----
- I. Prohibition with respect to contracting with officers or employees: 3 L.P.R.A. §8615(d): No executive agency may execute a contract in which any of its officers or employees or any member of their family units has or has had direct or indirect economic interest during the last four (4) years prior to their holding office, unless the Governor gives authorization thereto with the previous recommendation of the Secretary of the Treasury and the Secretary of Justice. --
- J. Prohibition with respect to contracts with officers and employees of other Government entities: 3 L.P.R.A. §8615(e): No public officer or employee may be a party to or have any interest in any profits or benefits produced by a contract with any other executive agency or government dependency unless the Governor gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice. -----
- K. Prohibition with respect to evaluation and approval by public officers: 3 L.P.R.A. §8615(f): No public officer or employee who has the power to approve or authorize contracts shall evaluate, consider, approve or authorize any contract



between an executive agency and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office. -----

L. Prohibition with respect to execution by public officers' contracts with former public officers: 3 L.P.R.A. §8615(h): No executive agency shall execute contracts with or for the benefit of persons who have been public officers or employees of said executive agency until after two (2) years have elapsed from the time said person has ceased working as such. -----

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, if applicable, and if mutually agreed upon in writing between the Parties. -----

N. Rules of Professional Ethics: King & Spalding 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. Provisions Required under Act 14-2004: King & Spalding agrees that articles extracted, produced, assembled, packaged or distributed in Puerto Rico by enterprises with operations in Puerto Rico, or distributed by agents established in Puerto Rico shall be used when the service is rendered, provided that they are available.-----



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


**Article 27. Anti -Corruption Code for a New Puerto Rico**

King & Spalding agrees to comply with the provisions of Act 2-2018, as the same may be amended from time to time, which establishes the Anti -Corruption Code for a New Puerto Rico (Act 2-2018). King & Spalding hereby certifies that it does not represent particular interests in cases or matters that imply a conflict of interest, or of public policy, between the executive agency and the particular interests it represents. King & Spalding shall furnish a sworn statement to the effect that neither King & Spalding 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 King & Spalding 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 (Act 8-2017) or any of the crimes included in Act 2-2018. -----



King & Spalding 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, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code (Act 146-2012), any of the crimes typified in Act 2-2018, 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. -----

PREPA shall have the right to terminate the Contract in the event King & Spalding is convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3 or 5.7 of Act 1-2012, any of the crimes listed in Articles 250 through 266 of Act 146-2012, any of the crimes typified in Act 2-2018, 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. -----



Consequences of Non - Compliance: King & Spalding expressly agrees that the conditions outlined throughout this Article 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 the PREPA to render this Contract null and void, and King & Spalding shall reimburse the PREPA all moneys received under this Contract. -----

**Article 28. Non-Discrimination**

King & Spalding certifies that it will not discriminate unlawfully against any employee or applicant for employment on account of race, color, gender, age, sex, national or social





origin, social status, political ideas or affiliation, religion, for being or perceived to be a victim of domestic violence, sexual aggression or harassment, regardless of marital status, sexual orientation, gender identity or immigrant status, for physical or mental disability, for veteran status or genetic information.-----

**Article 29. Representation**

Each of the Parties represents to the other that: -----

- (1) it has the legal power and authority to enter into this Agreement and to perform its obligations hereunder, and neither the execution of this Agreement nor the performance of its obligations hereunder will violate any agreement or obligation from that party to others; and -----
- (2) the officer or representative who has executed and delivered this Agreement on its behalf is authorized to do so. -----

**Article 30. Contractor Certification Requirement**

The Parties acknowledge that King & Spalding has submitted the certification titled "Contractor Certification Requirement" required in accordance with the Contract Review Policy of the Financial Oversight and Management Board for Puerto Rico, effective as of November 6, 2017, as amended, signed by King & Spalding's Executive Director (or another official with an equivalent position or authority to issue such certifications). A signed copy of the "Contractor Certification Requirement" is included as an annex to this Agreement.-----



King & Spalding represents and warrants that the information included in the Contractor Certification Requirement is complete, accurate and correct, and that any misrepresentation, inaccuracy or falseness in such Certification will render the Agreement null and void and King & Spalding will have the obligation to reimburse immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under the Agreement. -----

**Article 31. Transfer of skills and technical knowledge**

For this Agreement, the transfer of skills and technical knowledge required by the Certified Fiscal Plan is inapplicable given the non-recurring or specialized nature of the contracted services.-----

**Article 32. Entire Agreement**

The terms and conditions contained herein constitute the entire agreement between PREPA and King & Spalding with respect to the subject matter of this Agreement, and supersede all communications, negotiations, and agreements of the Parties, whether written or oral, other than these, made prior to the signing of this Agreement.-----

IN WITNESS WHEREOF, the Parties hereto sign this Agreement in San Juan, Puerto Rico this 22 day of July, 2022. -----

Puerto Rico Electric Power Authority

  
\_\_\_\_\_  
Josué A. Colón Ortiz  
Executive Director

1

King & Spalding, LLP

  
\_\_\_\_\_  
Steve Kupka  
Partner

Email: [skupka@kslaw.com](mailto:skupka@kslaw.com)

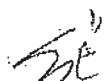
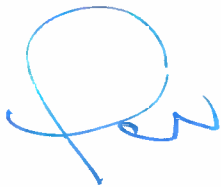


APPENDIX A

TIMEKEEPERS & HOUR RATES

<b>Timekeeper</b>	<b>Title</b>	<b>Rate (\$/hr)</b>
Malone, Kelly	Partner	1,100
Zisman, Stuart	Partner	1,100
Koch, Alec	Partner	1,140
Borders, Sarah	Partner	1,169
Bowe, Jim	Partner	1,087
Katz, Jonathan	Partner	1,009
Kupka, Steve	Partner	1,033
Cagle, Kim	Partner	1,009
Clancy, Lachlan	Partner	1,098
Lang, David	Partner	1,013
McWhirter, Jill	Partner	1,021
Futch, Kevin	Counsel	1,009
Hirsch, Eric	Counsel	1,013
Ferkin, Zori	Counsel	1,041
Greenberg, Mark	Counsel	1,060
Bromage, Zoë	Senior Associate	815
Snyder, Jesse	Senior Associate	849
Primrose, Sarah	Associate	886
Martin, Silvia	Associate	820
Langa, Fernando	Associate	824
Kazam, Alexander	Associate	770
Ye, Connie	Associate	739
Garza, Amanda	Associate	790
Cadavid, Miguel	Associate	730
Martinez, Russell	Associate	656
Pozzi de Calcena, Rafaela	Associate	656
Sheehy, Sean	Associate	600
Horan Mendez, Erin	Associate	600
Schofield, Sarah	Associate	600
Smith, Lisa	Senior Attorney	751
Massoni, Greg	Consultant	562
Hosein, Saira	Paralegal	445
Crawford, Julie	Paralegal	360
de Varennes, P. Annette	Paralegal	423

Lindley, Kathleen	Paralegal	430
Wheeler, Bob	Paralegal	735
Seufert, Jason	Paralegal	310
Scarmazzi, Carla	Specialist	445
Ward, Jarrett	Litigation Support	295
Dukes, Bill	Litigation Support	315
Shirley, Tammy	Research Supervisor	350
Kinsinger, Jeffrey	Director eDiscovery Ops	335



Contractor Certification Requirement

The following certification shall be provided to the Oversight Board and the Commonwealth's Contracting Government Entity by the Chief Executive Officer (or equivalent highest rank officer) of each proposed contractor under contracts submitted for review:

1. The expected contractor's subcontractor(s) in connection with the proposed contract<sup>1</sup> is (are) the following: *NONE*

**(Name of individual or firm, including names of principals, principal stakeholders, and owners of the latter)**

**(Principal terms and conditions of the contractual relation and role of the subcontractor)**

**(Amount of proposed contract payable to each subcontractor)**

2. Neither the contractor nor any of its owners<sup>2</sup>, partners, directors, officials or employees, has agreed to share or give a percentage of the contractor's compensation under the contract to, or otherwise compensate, any third party, whether directly or indirectly, in connection with the procurement, negotiation, execution or performance of the contract, except as follows: *NONE*

**(Name of individual or firm, including names of principals, principal stakeholders, and owners of the latter)**

**(Principal terms and conditions of the compensation sharing arrangement and consideration for such benefit)**

3. To the best knowledge of the signatory (after due investigation), no person has unduly intervened in the procurement, negotiation or execution of the contract, for its own benefit or that of a third person, in contravention of applicable law.

4. To the best knowledge of the signatory (after due investigation), no person has: (i) offered, paid, or promised to pay money to; (ii) offered, given or promised to give anything of value to; or (iii) otherwise influenced any public official or employee with the purpose of securing any advantages, privileges or favors for the benefit of such person in connection with the contract (such as the execution of a subcontract with contractor, beneficial treatment under the contract, or the written or unwritten promise of a gift, favor, or other monetary or non-monetary benefit).

<sup>1</sup>As used herein, the term "contract" is inclusive of any amendments, modifications or extensions.

<sup>2</sup>For purposes of this certification, a contractor's "owner" shall mean any person or entity with more than a ten percent (10%) ownership interest in the contractor.

5. Neither the contractor, nor any of its owners, partners, directors, officials or employees or, to the best of its knowledge (after due investigation), its representatives or sub-contractors, has required, directly or indirectly, from third persons to take any action with the purpose of influencing any public official or employee in connection with the procurement, negotiation or execution of the contract, in contravention of applicable law.
6. Any incorrect, incomplete or false statement made by the contractor's representative as part of this certification shall cause the nullity of the proposed contract and the contractor must reimburse immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under the proposed contract.

**The above certifications shall be signed under penalty of perjury by the Chief Executive Officer (or equivalent highest rank officer) in the following form:**

**"I hereby certify under penalty of perjury that the foregoing is complete, true and correct."**

By: Steven M. Kupka

Date: 5/27/22

Signature: *Sm. Kupka*

