

**WASTE DELIVERY AND SUPPORT AGREEMENT**

**WASTE DELIVERY AND SUPPORT AGREEMENT** (this "Agreement"), dated as of April 4, 2012 (the "Effective Date"), is made by and between **ENERGY ANSWERS ARECIBO, LLC** ("Energy Answers") a Delaware limited liability company, authorized to do business in the Commonwealth of Puerto Rico, represented by its Vice President, Mark J. Green, of legal age, married and resident of Guaynabo, Puerto Rico, and **PUERTO RICO SOLID WASTE AUTHORITY**, a public corporation of the Commonwealth of Puerto Rico (the "Authority") created pursuant Act No. 70 of June 23, 1978, as amended (the "SWA Act"), represented by its Acting Executive Director, Antonio Ríos Díaz, of legal age, married, and resident of Bayamón, Puerto Rico, pursuant to Resolution No. 2012-003 of the Secretary of the Puerto Rico Department of Natural and Environmental Resources. The Authority and Energy Answers are herein individually referred to as a "Party" and collectively referred to as the "Parties".

**WITNESSETH**

**WHEREAS**, Energy Answers is developing a resource recovery renewable fuel power plant (including associated waste processing and fuel production components) to be located in Arecibo, Puerto Rico, consisting of a 80 MW (nominal) combined heat and power plant and utilizing MSW (as hereinafter defined) processed onsite into processed refuse fuel to generate steam and electricity, and to recover certain recyclable materials such as ferrous and nonferrous metals (the "Resource Recovery Facility"); and

**WHEREAS**, the Authority establishes and implements strategies to achieve the rational and planned management of solid waste in order to protect the environment and the public health, and, as recently affirmed by the Authority's Order No. 2011-003 dated November 10, 2011 (the "Administrative Order"), such strategies include, among others, enforcement of the Authority's hierarchy of waste disposition, which is, in the order of preference, reduction, reutilization, recycling and composting, recovery of energy, and sanitary landfill; and

**WHEREAS**, the public policy of the Authority calls for the structured closure of non-compliant landfills in northern and northwestern Puerto Rico and the development of one to two Waste to Energy Facilities in northern Puerto Rico to replace the non-compliant solid waste landfill disposal capacity scheduled to close within the coming few years, and, in furtherance of this public policy, the Puerto Rico Environmental Quality Board (the "EQB"), has in its recently adopted Resolution No. R-11-16-5 of October 19, 2011 (the "EQB Resolution"), mandated, among other things, compliance by all landfills in Puerto Rico, within thirty-six (36) months of its issuance, with the requirements of Regulation No. 5717 adopted by EQB on November 14, 1997, as amended, and Subtitle D of the Federal Resource Conservation and Recovery Act and applicable local laws and regulations, or the closure of such non-compliant landfills; and

**WHEREAS**, the Resource Recovery Facility is one of the projects sufficiently advanced in its development process and of adequate size to provide a significant portion of the solid waste management capacity of the northern region of Puerto Rico; and

**WHEREAS**, the SWA Act empowers the Authority to, among other things, require, direct, control, and enforce the flow of solid waste and the delivery thereof to designated facilities as established in Articles 5(ee) and 12 of the SWA Act (12 P.R. Laws Ann. §§ 1305(ee) and 1310a); and

**WHEREAS**, Article 5(l) of the SWA Act (12 P.R. Laws Ann. § 1305(l)) authorizes the Authority to enter into contracts with private entities for, among other things, the disposal of solid waste; and

**WHEREAS**, Article 5(n) of the SWA Act (12 P.R. Laws Ann. § 1305(n)) enables the Authority, among other things, to determine, fix, impose and alter rates or other terms and conditions for the services of public and private facilities for the collection, processing, recovery, final disposition or storing of solid waste in Puerto Rico; and

**WHEREAS**, the Authority has determined that the Resource Recovery Facility is consistent with the public policy of the Government of Puerto Rico and, therefore, the Authority hereby confirms that the Resource Recovery Facility is a designated disposal facility within the meaning of Articles 5(ee) and 12 of the SWA Act (12 P.R. Laws Ann. §§ 1305(ee) and 1310a).

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, Energy Answers and the Authority, intending to be legally bound, hereby agree to the following:

## **ARTICLE I** **DEFINITIONS**

For purposes of this Agreement, except as otherwise expressly provided herein, the following terms when used in this Agreement have the meanings assigned to them herein, such meanings to be equally applicable to singular and plural forms of the terms defined:

**"Abandonment"** means that: (a) Energy Answers, after the commencement of construction, permanently ceases the development of the Resource Recovery Facility prior to the Commencement Date, which shall be deemed to occur only after all or substantially all of Energy Answers' or its construction contractors' essential personnel (other than security personnel) have withdrawn from or failed to be present on or at the Resource Recovery Facility site and Energy Answers has otherwise ceased development activities related to the Resource Recovery Facility for more than one hundred twenty (120) consecutive days (other than for reason of Excusable Delay or any act or omission by the Authority, including a breach by the Authority of its obligations hereunder), or (b) after the Commencement Date, Energy Answers, its successors or permitted assignees, as applicable, shuts down or ceases operations of the Resource Recovery Facility other than for maintenance, repair or Excusable Delay.

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power of the Person specified.

"Authority Indemnatee(s)" has the meaning set forth in Section 6.1 of this Agreement.

"Authority Regulation" means any and all rules and regulations promulgated by the Authority pursuant to its lawful powers, including, but not limited to, one or more rules or regulations that may be designed to provide a legal framework of general application to implement and enforce performance or similar directives or administrative orders (including Performance Directives) directing the delivery and disposition of MSW to designated waste disposal facilities (including the Resource Recovery Facility).

"Base Fee" means the amount of \$36.05 per Ton of MSW delivered to and accepted by the Resource Recovery Facility.

"Best Efforts" means the efforts that a prudent Person desirous of achieving a result would use in similar circumstances to achieve that result as expeditiously as possible; provided, however, that: (a) with respect to the Authority's exercise of Best Efforts hereunder, the Authority will not be thereby required to: (i) take any action (or omit to take any action) that, in the Authority's reasonable opinion is contrary to, or beyond the powers granted to it under the SWA Act or any other relevant legal provisions or the regulations promulgated thereunder, including any Authority Regulation; or (ii) incur any liability or obligation (including monetary obligations) beyond the obligations expressly assumed hereunder, and (b) with respect to Energy Answers' efforts to enter into Municipality Contracts, Energy Answers shall not be required to: (i) enter into such contracts which would contain terms, which in Energy Answers' reasonable judgment are commercially unacceptable; or (ii) in connection with the procurement of such contracts, incur costs or penalties, which in Energy Answers' reasonable judgment are commercially unacceptable.

"Bypass Landfill" means a landfill reasonably acceptable to the Authority that has the required permits and/or authorizations, including those set forth in the EQB Resolution, and is designated in writing by Energy Answers for delivery and landfilling of excess MSW or nonhazardous waste during scheduled or unscheduled shutdowns at the Resource Recovery Facility.

"Calculation Month" means January of each Year.

"Change in Law" means, with respect to a Municipality Contract and/or a Performance Directive and except as may otherwise be provided therein: (a) the adoption, enactment, promulgation, issuance, modification, repeal or official change in interpretation after the effective date thereof (as defined therein) of any Federal, state, Commonwealth of Puerto Rico, or local law, ordinance, code, regulation, rule,

administrative order or ruling; (b) the imposition of any condition on the issuance, reissuance, or continued effectiveness of any permit, license, or approval relating to the Resource Recovery Facility or any landfill or Bypass Landfill at which MSW subject to such Municipality Contract and/or Performance Directive is disposed after such effective date which establishes requirements more burdensome than those imposed as of such effective date by law or proposed as of such effective date in any pending applications for permits, licenses, or approvals relating to the Resource Recovery Facility or any landfill or Bypass Landfill at which MSW subject to such Municipality Contract or Performance Directive is disposed; and/or (c) the order or judgment of any Federal, state, Commonwealth of Puerto Rico, or local court, administrative agency, or governmental body relating to the Resource Recovery Facility or any landfill or any Bypass Landfill at which MSW subject to such Municipality Contract and/or a Performance Directive is disposed, including the suspension, termination, interruption, or failure of renewal of any permit, license or approval, unless such suspension, termination, interruption, or failure of renewal results from the willful or negligent action of or failure to act in accordance with such Municipality Contract and/or a Performance Directive or applicable law as of such effective date by the party to such contract relying thereon; provided, however, that the contesting in good faith by such party of any such suspension, termination, interruption, or failure of renewal shall not constitute or be construed to constitute a willful or negligent action or inaction of such party; and provided, further, that for purposes of clause (a) above, no proposed or draft local law, ordinance, code, regulation, rule or ruling circulated or published for review and comment, and no draft bill or pending legislation or official announcement of anticipated changes in rules, regulations, or ruling position, which by its terms or by operation of law is not immediately effective, shall be considered to have been adopted, enacted, promulgated or issued, and no announced modification or official change in interpretation similarly not immediately effective shall be deemed to have been accomplished prior to the date that it becomes effective, either temporarily or permanently, notwithstanding the existence of provisions therein purporting to make such local law, ordinance, code, regulation, rule or ruling or modification or change in interpretation thereof effective retroactively as of some earlier date. The determination of the amount of the increase in the Base Fee, if any, resulting from such Change in Law shall be subject to the Rate Setting Process as and to the extent provided in Section 2.11 of this Agreement.

"Commencement Date" has the meaning specified in Section 3.2 of this Agreement.


"Day" means the 24-hour period beginning and ending at 12:00 midnight Puerto Rico Time.


"Defaulted Amount" has the meaning specified in Schedule 2.4 to this Agreement.

"Designated Municipality" shall mean any municipality that is made subject to a Performance Directive for the delivery of MSW to the Resource Recovery Facility. A municipality shall cease to be a Designated Municipality upon entering into a Municipality Contract.



"Disposal Fee" means the fee to be paid monthly by a Designated Municipality under a Performance Directive, for each Ton of MSW directed to and delivered at the Resource Recovery Facility, as specified in such Performance Directive. With respect to Performance Directives: (a) during the period from the Effective Date to the start of the Calculation Month immediately following the Year in which the commencement of construction of the Resource Recovery Facility occurs, the Disposal Fee shall be the Base Fee; (b) beginning on the Calculation Month immediately following the Year in which commencement of construction of the Resource Recovery Facility occurs, and on each subsequent Calculation Month during the Term and any extension thereof, the Disposal Fee shall be the Disposal Fee in effect at the end of the prior calendar Year adjusted by multiplying such fee by the Inflation Factor; and, (c) the Base Fee may be increased to account for the actual costs that Energy Answers incurs as a result of any Change in Law in accordance with the Rate Setting Process as and to the extent provided in Section 2.11 of this Agreement.

  
"EOB" means the Puerto Rico Environmental Quality Board, or any Governmental Authority succeeding in its functions.

  
"Excusable Delay" shall mean any delay in a Party's reasonable performance hereunder due to a cause beyond the reasonable control of and not the fault or negligence of the Party claiming the Excusable Delay, including, without limitation, an act of God, fire, earthquake, hurricane, flood, epidemic, explosion, war, invasion, insurrection, riot, mob violence, sabotage, vandalism, terrorism, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes or lockouts, litigation (other than litigation commenced by or on behalf of the Party invoking Excusable Delay that: (i) is not related to litigation commenced against such Party, or (ii) in the case of Energy Answers, which is not intended to secure or protect its rights and interests in connection with the construction and/or operation of the Resource Recovery Facility), condemnation, requisition, governmental restrictions including inability or delay in obtaining governmental consents or permits, laws or orders of governmental, civil, military or naval authorities, or any other cause, whether similar or dissimilar to the foregoing, other than: (a) lack of or inability to procure monies to fulfill such Party's commitments and obligations under this Agreement, unless such lack or inability has arisen, in whole or in part, by reason of the breach of one or more Performance Directives; (b) the failure of any subcontractor or supplier that is an Affiliate of the affected Party to furnish labor, services, materials, or equipment, unless itself resulting from an Excusable Delay; (c) the suspension, termination, interruption, denial, or failure of renewal of Regulatory Approvals resulting from any action or inaction or failure of compliance by Energy Answers or the Resource Recovery Facility; or (d) wear and tear or obsolescence of any parts or equipment utilized in or at the Resource Recovery Facility.

"Governmental Authority" means any federal, state, Commonwealth of Puerto Rico, local, municipal or other governmental or quasi-governmental authority, agency, department, board, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive, together or individually, exercising or entitled to

exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power over a Party, the Resource Recovery Facility, a Bypass Landfill or the MSW to be delivered hereunder.

"Hazardous Material" means any hazardous or toxic substance, material, or waste including, but not limited to: (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*); (b) any "hazardous substance" as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*) and regulations promulgated thereunder, as amended from time to time; (c) all substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. § 172.101), as amended from time to time; (d) any spilled, leaked or released petroleum or petroleum products; or (e) such substances, materials and wastes that are or become regulated under any federal, state or local law, ordinance or regulation including, but not limited to, the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*) and the Clean Water Act (33 U.S.C. § 1251 *et seq.*).

"Inflation Factor" with respect to a particular Year or portion thereof, means the amount determined, in accordance with the procedures set forth in Section 2.11 hereof, to be the Inflation Factor for such Year.

"Lender or Lenders" means a Person or Persons (or any agent or trustee thereof) providing financing or refinancing (including parties issuing or participating in the issuance of letters of credit or surety bonds supporting such financing or refinancing) of or for the construction, acquisition, development or operation of any portion of the Resource Recovery Facility (including the successors and assigns of any of the foregoing).

"Month" means a calendar month, which shall commence at 12:00 midnight on the last Day of the immediately preceding calendar month and end at 12:00 midnight of the last Day of the then current calendar month.

"MSW" means any refuse, garbage, trash, residue, or other discarded materials generated by municipal office, residential, household or commercial activities. "MSW": (a) is not intended to require the presorting and/or separation of any of the foregoing items, (b) allows for the source separation of recyclable materials at the discretion of the relevant Designated Municipality, and (c) excludes industrial waste, commercial waste of an industrial nature and Hazardous Materials.

"Municipality Contract" means a contract between Energy Answers and a municipality (including a Designated Municipality) substantially in the form to be incorporated as Exhibit A hereto by an amendment to this Agreement, or on such other form as Energy Answers and a municipality (including a Designated Municipality) may enter into.

"Party" has the meaning assigned to such term in the Recitals.

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"Performance Directive" means, with respect to all Designated Municipalities, an administrative order, rule or regulation or similar official document issued by the Authority, directing each of such Designated Municipalities, for the duration of the term of this Agreement (or if earlier, until the date of the execution of a Municipality Contract between Energy Answers and such Designated Municipality) to: (a) commence delivery to designated waste disposal facilities (including the Resource Recovery Facility) of a stated annual amount of MSW for each Designated Municipality, which stated amounts: (i) are anticipated to include all MSW under the direct or indirect control of the Designated Municipality less any source separated recyclable materials, and (ii) to total in the aggregate the Required MSW Amount minus the aggregate amount of MSW under Municipality Contracts that have been executed by Energy Answers and the respective municipalities, all in accordance with Schedule 2.3 to this Agreement; (b) pay the Disposal Fee therefor in respect of such stated annual amount; and (c) comply, in the case of Performance Directives relating to or affecting the Resource Recovery Facility, with such other terms and conditions as shall be necessary in order for the Resource Recovery Facility to be in compliance with applicable provisions of the Resource Recovery Facility's operating permit as approved by the EQB. With respect to any Designated Municipality, a Performance Directive shall remain effective until the earlier of: (a) the date such Designated Municipality enters into a Municipality Contract with Energy Answers; or (ii) the expiration of the Term of this Agreement, whether by the lapse of time or earlier termination hereof.

"Performance Directive MSW Amount" means, as of any date, the Required MSW Amount minus the aggregate amount of MSW under Municipality Contracts that have been executed by Energy Answers and are in effect as of such date, all in accordance with Schedule 2.3 to this Agreement.

"Person" means an individual, partnership, joint venture, corporation, limited liability company, trust, association, unincorporated organization or Governmental Authority.

"Power Purchase and Operating Agreement" means the Power Purchase and Operating Agreement dated December 4, 2009 between Energy Answers and the Puerto Rico Electric Power Authority for the purchase of the power generated at the Resource Recovery Facility.

"Rate Setting Process" means the administrative proceedings to be undertaken by the Authority setting the maximum rates or fees payable for acceptance of MSW by designated waste disposal facilities (including the Resource Recovery Facility), and the periodic adjustment thereof, including adjustments resulting from a Change in Law, to the extent such rates or fees are not otherwise agreed to directly by the applicable designated waste disposal facility and the applicable user thereof, including municipalities.

"Regulatory Approvals" means, collectively, all licenses, permits, approvals, orders, authorizations, registrations, filings or consents required by Governmental Authorities for or with respect to the design, engineering, procurement, construction,

administration, management, operation, improvement and maintenance of the Resource Recovery Facility.

"Required MSW Amount" means 2,100 Tons of MSW per day (determined on a rolling 7-day average), or approximately 63,000 Tons of MSW per month, which is the capacity of the Resource Recovery Facility as estimated by Energy Answers.

"Term" has the meaning specified in Section 3.1 of this Agreement.

"Ton" means a short ton of 2,000 lbs.

"Tonnage" means or refers to a number of Tons.

"Year" means a calendar year, which shall be the 12-month period beginning at 12:00 midnight on December 31 and ending at 12:00 midnight on the subsequent December 31.

## **ARTICLE 2**

### **OBLIGATIONS OF THE PARTIES**

2.1. Designated Facility. Pursuant to the provisions of the Administrative Order and Articles 5(ee) and 12 of the SWA Act (12 P.R. Laws Ann. § 1305(ee) and 1310a) and the determination of public policy compliance provided by the Authority for the construction of the Resource Recovery Facility, the Authority has recognized and acknowledged the Resource Recovery Facility as a designated disposal facility. As such, the Resource Recovery Facility is a part of the strategies of the Authority to achieve the long term, planned, structured, and rational management of solid waste in order to protect the environment and public health consistent with the public policy of Puerto Rico.

2.2. Utilization of Waste Disposal Capacity.

(a) Energy Answers is a highly experienced operator of waste to energy and resource recovery facilities in the continental United States and has made a thorough and independent review and study of the Puerto Rico market and has determined that there is sufficient volume and Tonnage of MSW available at the municipalities (including Designated Municipalities) to satisfy the waste disposal capacity of the Resource Recovery Facility.

(b) In accordance with the expected capacity of, and its development plans for, the Resource Recovery Facility, Energy Answers will use its Best Efforts to enter into Municipality Contracts with municipalities in order to achieve delivery of the Required MSW Amount to the Resource Recovery Facility by the Commencement Date. In this connection, Energy Answers has commenced discussions and negotiations with certain municipalities and commercial entities, and will endeavor to continue such discussions and negotiations and to commence discussions and negotiations with additional municipalities and commercial entities, with a view to entering into a Municipality Contract with each prior to the Commencement Date.



(c) Subject to the satisfaction of the terms and conditions contained herein, the Authority commits hereby, in accordance with any and all applicable Authority Regulations, to: (i) issue and enforce one or more Performance Directive(s); and (ii) exercise its Best Efforts to cooperate with and assist Energy Answers to enter into Municipality Contracts with municipalities; that, in the aggregate, result in the delivery to the Resource Recovery Facility of not less than the Required MSW Amount on and after the Commencement Date. Notwithstanding the foregoing, the Authority acknowledges and recognizes that Energy Answers has the right to give a single final notification to the Authority not later than the one hundred eightieth (180<sup>th</sup>) day preceding the Commencement Date of any known reduction in the availability of waste disposal capacity at the Resource Recovery Facility, the amount of such reduction to be subject to a final modification, upon notice to the Authority, based on the subsequent results of the performance tests of the Resource Recovery Facility upon completion of such tests prior to the Commencement Date.

(d) Energy Answers shall accept and process all MSW delivered to the Resource Recovery Facility pursuant to Municipality Contracts and/or Performance Directives (other than MSW directed by Energy Answers to a Bypass Landfill), it being understood that the Authority makes no representations, provides no guarantees, and assumes no liability, concerning the volume, content, composition, or quality of the MSW that Designated Municipalities deliver to the Resource Recovery Facility.

2.3. Milestones. In performing its obligations under Section 2.2 of this Agreement, the Authority shall: (a) exercise its Best Efforts to support Energy Answers' efforts to cause sufficient municipalities to enter into Municipality Contracts with Energy Answers on or before July 31, 2013; and (b) issue and enforce Performance Directives; such that the Required MSW Amount is delivered to the Resource Recovery Facility on and after the Commencement Date. Schedule 2.3 hereto sets forth certain additional covenants of the Parties relating to the actions to be taken to achieve delivery of the Required MSW Amount, including covenants of Energy Answers to independently obtain a stated amount of MSW.

2.4. Enforcement Mechanisms. The Authority shall employ all of its lawful powers to cause Designated Municipalities to comply with the terms of the applicable Performance Directive to which such Designated Municipalities are subject, all in accordance with and subject to the terms established in the Authority Regulations. In furtherance of the foregoing, the Parties intend to carry out the procedures outlined in Schedule 2.4 hereto.

2.5. Administrative Proceedings. The Authority shall establish a claims and adjudication procedure pursuant to Authority Regulations, which will permit Energy Answers or any Designated Municipality to bring claims regarding any non-compliance with the terms of its Performance Directives, the SWA Act or any other relevant legal provision within the Authority's jurisdiction. Among the matters which may be adjudicated by the Authority, through the use of its lawful powers and applicable

adjudicatory and/or regulatory procedures, including, without limitation, due process of law, shall be claims brought by Energy Answers for, among other things, the timely payment by a Designated Municipality of its payment obligations to Energy Answers under a Performance Directive. The Authority acknowledges that its lawful powers include the assessment of administrative fines upon a Designated Municipality that is in breach of a Performance Directive, or any other relevant legal provision which may from time to time arise from the breach of the terms, including payment terms, contained in such Performance Directive. The Parties acknowledge that in instances in which an administrative fine or fines are assessed by the Authority, it will be exclusively for the purpose of achieving compliance with the corresponding Performance Directive and not for the compensation of Energy Answers. Upon achievement of, or to induce compliance with such Performance Directive, the Authority will have sole discretion over the continued pursuit or lifting of any administrative fines imposed by the Authority, or to retain or remit to the Designated Municipality any or all of the funds collected from such actions, provided that in no instance will said funds be deemed the property of Energy Answers. Without limitation of the Authority's obligations under this Agreement, the Parties acknowledge that jurisdiction for claims by Energy Answers of this nature will be non-exclusive and may also be brought by Energy Answers in the Courts of the Commonwealth of Puerto Rico. In connection with its Rate Setting Process, the Authority shall have the capacity to impose from time to time, regulatory fees and charges on designated facilities (including the Resource Recovery Facility) for the costs incurred in such adjudications.

2.6. Regulatory Approvals. Promptly following the Effective Date and to the extent not previously done or accomplished, Energy Answers shall, at its sole cost, expense and risk, take all actions and do all things as shall be necessary or appropriate to apply for, prosecute and obtain all Regulatory Approvals as shall be necessary (or in Energy Answers' reasonable judgment, appropriate to apply for), such that development and construction of the Resource Recovery Facility commences on a date that, subject to Excusable Delays, allows for completion of construction and commencement of commercial operations at the Resource Recovery Facility no later than the Commencement Date.

2.7. Construction. After having obtained all Regulatory Approvals required therefor, Energy Answers shall, at its sole cost, expense and risk, cause the Resource Recovery Facility to be developed and constructed in a workmanlike fashion in accordance with such Regulatory Approvals, and to commence commercial operations by the Commencement Date.

2.8. Periodic Progress Reports. Energy Answers shall, on a monthly basis, report to the Authority in reasonable detail: (a) the status and progress of all applications and other proceedings relating to the issuance of all required Regulatory Approvals; (b) the status and progress of the development and construction of the Resource Recovery Facility; (c) the status and progress of Energy Answers' efforts to enter into Municipality Contracts; and (d) any other information regarding the foregoing matters as the Authority may reasonably require. Energy Answers shall cause its designated officers and other

representatives to meet with Authority representatives as reasonably necessary to discuss such reports and/or information.

2.9. Operations; Maintenance. Energy Answers shall, subject to Excusable Delay: (a) operate, maintain and repair the Resource Recovery Facility in accordance with good operating practices, and shall keep the Resource Recovery Facility in good operating condition by making all necessary repairs and replacements, consistent with the prevailing standards in the waste-to-energy industry for processable waste handling, and consistent with good steam and electrical generating plant practices; (b) maintain the safety of the Resource Recovery Facility at a level consistent with applicable law and good electrical generating plant practices; and (c) maintain the general appearance and aesthetic quality of the Resource Recovery Facility site in a neat and orderly condition, while minimizing the presence of odors, birds, and litter.

2.10. Labor and Materials. Energy Answers shall provide, or cause to be provided, at no cost to the Authority, any and all necessary labor, materials, and equipment for the reasonable operation, maintenance and repair of the Resource Recovery Facility, and will repair or replace, at its cost and expense, portions of the Resource Recovery Facility which become worn out, lost, stolen, obsolete, destroyed, damaged or rendered unfit for use.

2.11. Determination and Application of Certain Disposal Fee Adjustments.

(a) For each Year subsequent to the Year in which the commencement of construction of the Resource Recovery Facility occurs and for each Year thereafter during the Term and any extension thereof, the Inflation Factor applicable to such Year will be calculated by Energy Answers on the Calculation Month of such Year, subject to the Authority's review and approval, which shall not be unreasonably withheld, delayed or denied. On each such Year during the Term, Energy Answers shall submit to the Authority in writing Energy Answers' calculation of the Inflation Factor applicable to such year not later than the tenth (10<sup>th</sup>) Day of the Calculation Month, together with reasonably detailed evidence of actual increases in its operating costs and other relevant information, current and historical, that support the requested increase in the Disposal Fee. Within fifteen (15) Days following receipt thereof by the Authority, the Authority shall either approve or object to Energy Answers' proposed Inflation Factor. In the event the Authority objects to Energy Answers' proposal, the Parties shall meet and negotiate in good faith and agree on an Inflation Factor for such Year before the end of the relevant Calculation Month, failing which the Inflation Factor for such Year shall be the same Inflation Factor as for the previous Year, until such agreement is reached.

(b) For purposes of this Agreement, the Inflation Factor shall be equal to the sum of:

(i) the Annual Average U.S. Consumer Price Index for all Urban Consumers (CPI-U) for All Items (NOT seasonally adjusted), as defined and published by the Bureau of Labor and Statistics (the "CPI-U"), for the Year immediately

preceding the relevant Calculation Month, divided by the CPI-U for the second Year immediately preceding the relevant Calculation Month, multiplied by 88%; and

(ii) the Annual Average U.S. Consumer Price Index for all Urban Consumers (CPI-U): Water and Sewer and Trash Collection Services (NOT seasonally adjusted), as defined and published by the Bureau of Labor and Statistics (the "CPI-TCS"), for the Year immediately preceding the relevant Calculation Month, divided by the CPI-TCS for the second Year immediately preceding the relevant Calculation Month, multiplied by 12%;

provided, however, that the Inflation Factor for a particular Year shall never exceed 2.5%, nor be less than 0.0%.

The Inflation Factor ("IF") is expressed mathematically as follows:

$$IF: 0 < (A/B)*0.88 + (C/D)*0.12 < 1.0250$$

Where:

A is the CPI-U for the Year immediately preceding the relevant Calculation Month.

B is the CPI-U for the second Year immediately preceding the relevant Calculation Month.

C is the CPI-TCS for the Year immediately preceding the relevant Calculation Month.

D is the CPI-TCS for the second Year immediately preceding the relevant Calculation Month.

For the purposes of the calculations set forth in this Section, the Inflation Factor shall be rounded to four decimal places. An illustrative example of the Inflation Factor calculation is set forth in Schedule 2.11 hereto.

(c) The Rate Setting Process shall contain provisions to determine adjustments to the Base Fee resulting from a Change in Law. If such process results in a determination that the Base Fee should be increased by a specified amount as a result of such Change in Law, the Parties shall enter into a supplement to this Agreement reflecting such increase, and such increase shall be effective as of the date determined by the Authority.

### ARTICLE 3

#### TERM: TERMINATION

3.1. Term. The "Term" of this Agreement shall commence on the Effective Date and shall remain in effect until the earlier of: (a) the date on which the Performance Directive MSW Amount has been reduced to zero through the execution of Municipality Contracts between Energy Answers and municipalities; or (b) the date of the thirtieth (30<sup>th</sup>) anniversary of the Commencement Date: provided, however, that the Authority's obligation to issue Performance Directives under Section 2.2(c)(i) hereof shall expire on the date of the third (3<sup>rd</sup>) anniversary of the Commencement Date, unless the Parties, each



in its sole discretion, mutually agree to extend such period. Except for the Authority's obligation to issue Performance Directives, which shall expire as set forth in the immediately preceding sentence, all other terms and conditions of this Agreement shall remain in effect throughout the Term.

3.2. Commencement Date. At least thirty (30) days prior to the scheduled commencement of commercial operations at the Resource Recovery Facility, Energy Answers shall provide written notice to the Authority and to each municipality and Designated Municipality of the date on which each municipality and Designated Municipality under its Municipality Contract or Performance Directive, as the case may be, shall begin performing under such contract or Performance Directive, which date shall not be later than July 31, 2016, such date to be extended day for day to the extent of any delay in the commencement of commercial operations arising from Excusable Delays, or from postponements thereof agreed in writing between the Parties (such date, as it may be so extended, the "Commencement Date").

3.3. Termination. This Agreement may be terminated:

(a) by either Party, by written notice to the other, if for whatever reason Energy Answers is unable to obtain, or a Governmental Authority denies the issuance of all Regulatory Approvals necessary in order for Energy Answers to achieve: (i) the commencement of construction of the Resource Recovery Facility by December 31, 2013; or (ii) the commencement of commercial operations of the Resource Recovery Facility by July 31, 2016: provided that, in each case, each such deadline shall be extended day for day to the extent of any delay arising from Excusable Delays, or from postponements thereof agreed in writing between Energy Answers and the Authority:

(b) by either Party, by written notice to the other, if at any time any Regulatory Approval or material contract to which Energy Answers is a party (including the Power Purchase and Operating Agreement and the Prevention of Significant Deterioration (PSD) Permit issued by the U.S. Environmental Protection Agency) is terminated, revoked, or otherwise materially modified, in each case in a manner that prevents the continued operation of the Resource Recovery Facility, unless Energy Answers is pursuing with reasonable diligence the reversal of such termination, revocation or modification, or other legal, administrative or regulatory relief substantively equivalent in effect thereto:

(c) by either Party, by written notice to the other, upon the breach by such other Party (the "Defaulting Party") of its representations, warranties, covenants and other obligations hereunder, and the Defaulting Party's failure to cure such default within thirty (30) days following written notice thereof by the non-defaulting Party, or, if such breach is not susceptible of being cured by the payment of money or within such thirty (30) day period, if the Defaulting Party fails to commence and diligently pursues such cure, and achieves such cure to the reasonable satisfaction of the non-defaulting Party, within ninety (90) days following the date of the initial notice of default by the non-defaulting Party hereunder:

(d) by the Authority, if Energy Answers shall be generally not paying its debts when they become due; shall have filed, or consented by answer or otherwise to the filing against it of a petition for relief or reorganization and bankruptcy, or shall make an assignment for the benefit of its creditors in lieu of taking advantage of any such bankruptcy or insolvency law; shall consent to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect of any substantial part of its property; shall be adjudicated insolvent; or shall take corporate action for the purpose of any of the foregoing.

(e) by the Authority, if a court or Governmental Authority of competent jurisdiction shall enter an order appointing, without the consent of Energy Answers, a custodian, receiver, trustee or other officer with similar powers with respect to it or any substantial part of its property, or if an order for relief shall be entered in any case or proceeding for liquidation or reorganization, or otherwise to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up or liquidation of Energy Answers or if any petition for any such relief shall be filed against Energy Answers in any court of competent jurisdiction, and such order or petition shall not have been vacated or dismissed, as the case may be, within one hundred twenty (120) days; or

(h) by the Authority following an Abandonment.

3.4. Effect of Termination. If this Agreement is validly terminated pursuant to Section 3.3 hereof, there will be no further liability or obligation on the part of either Party as a direct result of such termination, other than: (a) liabilities of the Parties arising hereunder on or prior to the effective date of termination; and (b) the Parties' obligations under Articles 3, 6 and 7 hereof, which shall survive any such termination.

#### **ARTICLE 4**

#### **ASSIGNMENTS**

4.1. Requirement of Consent. Except as specifically provided in Section 4.2, this Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Unless otherwise agreed by the Parties and except as so specifically provided, no transfer hereof by Energy Answers (or any permitted successor thereof) shall be authorized unless the proposed transferee complies with the operational experience requirements established under the Administrative Order and applicable Authority Regulations. Any attempt to assign this Agreement without the prior written consent of the corresponding Party shall be void. Upon a permitted assignment by Energy Answers of this Agreement to any Person that assumes the obligations of Energy Answers hereunder in conjunction with the sale or other transfer, directly or indirectly, by Energy Answers of all or substantially all of its assets, Energy Answers shall be released from all liability hereunder.

4.2. Permitted Assignment. Energy Answers shall have the right to assign this Agreement as collateral security to a Lender as partial collateral security in order to obtain financing or other funding. In the case of such assignment to a Lender or a designee of a Lender, the Parties agree that the provisions of Schedule 4.2 shall apply. The Authority shall have the right to assign and transfer all or any portion of its rights and/or obligations hereunder to a Governmental Authority succeeding in its functions.

4.3. Sale of the Facility. In the event that Energy Answers (or any successor or permitted assignee thereof) proposes to sell or otherwise transfer title to the Resource Recovery Facility, or all or any portion of its ownership interest in the Resource Recovery Facility, it shall notify the Authority of such intent and afford the Authority the opportunity to participate in such process on the same terms and conditions as any other Person bidding to purchase the Resource Recovery Facility or such ownership interest, provided that such notice and opportunity shall not constitute or be deemed to constitute the extension to the Authority of a right of first offer or refusal, or any similar right, with respect to such proposed sale or other transfer, or to restrict Energy Answers (or such successor or permitted assignee) from negotiating and consummating with any third party such sale or other transfer.

## **ARTICLE 5**

### **REPRESENTATIONS AND WARRANTIES**

5.1. Representations and Warranties of the Parties. Each Party represents and warrants to the other as follows:

5.1.1 Organization. The Authority represents and warrants that it is an agency of the Government of Puerto Rico and has all requisite power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted, except where the failure to have such power and authority would not have a material adverse effect on the ability of the Authority to consummate the transactions contemplated hereby. Energy Answers represents and warrants that it is a limited liability company validly existing and in good standing under the laws of Delaware, duly authorized to do business in the Commonwealth of Puerto Rico, and has all requisite power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted, except where the failure to have such power and authority would not have a material adverse effect on the ability of Energy Answers to consummate the transactions contemplated hereby.

5.1.2 Authority Relative to Agreement. Such Party has full power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all required organizational action on the part of such Party, and no other proceedings on the part of such Party are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by such Party and constitutes a valid and binding agreement of such Party, enforceable against such Party in accordance with its terms,

subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

5.1.3 Consents. The execution and delivery of this Agreement by such Party will not: (a) (i) solely in the case of the Authority, conflict with or result in any breach of any provision of SWA Act and/or any other relevant legal provision, and (ii) solely in the case of Energy Answers, conflict with or result in any breach of any provision of the limited liability company agreement of Energy Answers; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority or other Persons (including without limitation consents from parties to loans, contracts, licenses, leases and other agreements to which it is a party); or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any material contract or undertaking to which such Party is a party or by which any of its assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained in writing, and except for immaterial exceptions to clauses (a) and (b) above.

5.1.4 Litigation. There are no claims, actions, proceedings or investigations pending or threatened against or relating to such Party or any of such Party's Affiliates before any court or Governmental Authority, which question, challenge the validity of, or could be reasonably expected to have the effect of preventing, delaying, making illegal or otherwise interfering with, this Agreement, the consummation of the transactions contemplated hereby or any action taken or proposed to be taken by such Party pursuant hereto or in connection with the transactions contemplated herein.

5.2. Representations, Warranties and Covenants of Energy Answers. In addition to its representations and warranties in Section 5.1 hereof, Energy Answers represents and warrants to, and covenants with the Authority that:

5.2.1 Criminal Proceedings.

(a) Act 458. Prior to the execution of this Agreement, Energy Answers submitted to the Authority a sworn statement to the effect that, as of the Effective Date, Energy Answers has not been convicted of, nor has it pled guilty to, any crime as enumerated in Article 3 of Act No. 458 of December 29, 2000, as amended by Act No. 428 of September 22, 2004 ("Act 458"). In accordance with Article 6 of Act 458, Energy Answers acknowledges that the conviction or guilty plea for any of the crimes as enumerated in Article 3 of such Act shall entail, in addition to any other applicable penalty, the automatic rescission of this Agreement. In addition, the Authority shall have the right to demand and Energy Answers shall pay the reimbursement of payments made pursuant to this Agreement subject to and in accordance with Act 458.

(b) Other Crimes. Neither Energy Answers nor, to the best of its knowledge, any of its officers, directors or equity participants has been convicted of offenses against public integrity, as defined in the Puerto Rico Penal Code, or of



embezzlement of public funds, and neither Energy Answers nor any of its officers or directors has been found guilty of any such offense in the Courts of the Commonwealth of Puerto Rico, any federal court or any other court in any jurisdiction of the United States of America.

5.2.2 Accuracy of Information. To the best of Energy Answers' knowledge, all information regarding Energy Answers provided to the Authority by Energy Answers or on its behalf was accurate in all material respects at the time such information was provided and continues to be accurate in all material respects as of the date hereof.

5.2.3 Code of Ethics. Energy Answers acknowledges, represents and warrants that, to the best of its knowledge, no official or employee of the Authority has a direct or indirect economic interest in Energy Answers' rights under this Agreement in accordance with the provisions of Act No. 84 of June 18, 2002, as amended, known as the "Code of Ethics for Contractors" (the "Code of Ethics"). which Code of Ethics Energy Answers certifies it has received a copy of, read, understood and complied with at all times prior to the execution of this Agreement and will subsequently comply with it in its entirety.

5.2.4 Economic Interests of Government Employees. Energy Answers represents and warrants that, to the best of its knowledge, no public official or employee who is empowered to evaluate, consider, approve, authorize or execute any agreement in the name and on behalf of the Authority, has or has had, during the last four (4) years before taking office, a direct or indirect economic interest in Energy Answers or any of its subsidiaries, parent entity or Affiliates. Energy Answers represents and warrants, as to itself, its equity participants, officers, directors and employees, or any member of their family unit, as defined in Act No. 12 of July 24, 1985, as amended ("Act 12"), and to the best of its knowledge as to its agents, that as of the date hereof no such Person held office as an employee of the Commonwealth of Puerto Rico during the two (2) year period preceding the execution of this Agreement. Energy Answers further represents and warrants, to the best of its knowledge as to itself, its equity participants, officers, directors and employees, or any member of their family unit, as defined in Act 12, and as to its agents, that no public official or employee of the Authority, nor any member of their family unit, has or has had, during the four (4) years preceding the execution of this Agreement, a direct or indirect economic interest in Energy Answers, and that no Authority or Commonwealth of Puerto Rico employee is an Affiliate of, or has any interest in or to the rights of Energy Answers under this Agreement.

5.2.5 Tax Filings.

(a) Energy Answers represents and warrants that, to the best of its knowledge, as of the date hereof: (i) it has no outstanding debts for unemployment insurance, temporary disability (worker's compensation), chauffeur's social security with the Puerto Rico Department of Labor and Human Resources, income taxes with the Puerto Rico Treasury Department, or real or personal property taxes with the Municipal

Revenue Collection Center (CRIM); or (ii) it has a payment plan in place with respect to any outstanding debt for the foregoing items and is in compliance therewith.

(b) Commonwealth Tax Liabilities. Energy Answers shall inform the Authority if, at any time during the term of this Agreement, it becomes aware that it is delinquent in the payment of taxes imposed by any Governmental Authority of the Commonwealth of Puerto Rico.

5.2.6 Non-Collusion and Acceptance. Energy Answers attests, subject to the penalty of perjury, that to the best of its knowledge, none of its officers, directors, employees or representatives has, directly or indirectly, entered into or offered to enter into any combination, conspiracy, collusion or agreement to receive or pay any sum of money or other consideration in exchange for the execution of this Agreement.

5.2.7 Integrity.

(a) Energy Answers shall conduct its business and perform its obligations under this Agreement with the highest standards of integrity and take no action that will violate any Commonwealth of Puerto Rico or federal laws, regulations or other requirements that govern Energy Answers' ability to contract with the Authority.

(b) Energy Answers shall not disclose to others any confidential information obtained by virtue of the contractual relationship established with the Authority through the execution of this Agreement.

(c) Energy Answers shall not, in connection with this Agreement or any other agreement with the Authority, directly or indirectly, offer, confer or agree to confer any pecuniary benefit on or to any Person as consideration for any decision, opinion, recommendation, vote or any other exercise of discretion, or violation of a known legal duty by any officer or employee of the Authority.

(d) Energy Answers shall not, in connection with this Agreement, directly or indirectly promise to give to any Person any gratuity for the benefit of or at the direction or request of any officer or employee of the Authority.

(e) Energy Answers shall not accept or agree to accept from, or give or agree to give to, any officer, employee or representative of the Authority, any gratuity from or on behalf of or to any Person in connection with this Agreement that is intended by the provider thereof to be a material inducement to enter into this Agreement or any other agreement.

(f) Energy Answers, upon being informed or acquiring knowledge that any violations to this Section 5.2.7 have occurred or may occur, shall immediately notify the Authority thereof in writing.

(g) Energy Answers, by executing this Agreement certifies that it has not violated any of the provisions of this Section 5.2.7.

(h) Upon the inquiry or request by or of the Office of the Comptroller of the Commonwealth of Puerto Rico or any of its officials, agents or representatives, Energy Answers shall provide, or if appropriate, make promptly available for inspection and copying, any information of any type or form deemed relevant by the Office of the Comptroller of the Commonwealth of Puerto Rico that relates to Energy Answers' performance of this Agreement. Such information may include, but not be limited to, Energy Answers' business or financial records, or documents or files of any type or form that relate to this Agreement. At least one copy of information described in the preceding sentence shall be retained by Energy Answers for a period of five (5) years unless otherwise provided by applicable law or regulation. Energy Answers shall be entitled to exercise any rights that it may have under applicable law, rule or regulation to protect the confidentiality of trade secrets and any other confidential or sensitive information being provided to any governmental entity pursuant to or in connection with this paragraph (h).

*✓*  
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(i) Without prejudice to the provisions of Section 3.3 hereof, in the event that Energy Answers breaches any of the provisions of this Section 5.2.7, the Authority may terminate this Agreement, claim damages and liquidated damages for any amount resulting from such breach or violation, and debar and suspend Energy Answers from doing business with the Authority. These rights and remedies are cumulative, and the enforcement or non-enforcement of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Authority may have under any applicable law, statute, regulation, or otherwise.

(j) For purposes of this Section 5.2.7 only, the terms "confidential information", "consent", and "gratuity" shall have the following meanings:

(i) "confidential information" means any information that is not known to the public or that is not available to the public upon request, disclosure of which would give an unfair, unethical, or illegal advantage to another Person that intends to contract with the Authority.

(ii) "consent" means the written permission signed by a duly authorized officer or employee of the Authority.

(iii) "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodgings, loans, subscriptions, advances, deposits of money, services, employment or contracts of any kind.

5.2.8 Local Goods and Services. As required by Article 10 of Act No. 14 of January 8, 2004, Energy Answers shall use, to the extent available, practicable and applicable to the performance of its obligations hereunder, goods extracted, produced, assembled, packaged, bottled or distributed in the Commonwealth of Puerto Rico by businesses operating in the Commonwealth of Puerto Rico or distributed by agents established in the Commonwealth of Puerto Rico.

5.2.9 Acknowledgements. Energy Answers acknowledges that:

(a) the Authority's performance obligations hereunder, including those under Article 2 are limited to: (i) the issuance of one or more Performance Directive(s) and the enforcement thereof in accordance with and subject to the provisions of the SWA Act, applicable Authority Regulations, and/or any other relevant legal provision, and applicable law; and (ii) the exercise of Best Efforts to assist and cooperate with Energy Answers in its efforts to enter into sufficient Municipality Contracts to achieve delivery of the Required MSW Amount by the Commencement Date;

(b) Nothing in this Agreement constitutes or should be deemed to be a guarantee (express or implied) of or for the payment or performance of the obligations of any Designated Municipality under a Performance Directive, or of a municipality (other than a Designated Municipality) under its respective Municipality Contract, by the Authority; nor is the Authority hereby providing any assurances or assuming any liability or obligation, and shall not be deemed to be providing any assurances or assuming any liability or obligation, for the ultimate outcome of: (i) any action or proceeding (including any enforcement action or proceeding) arising from or related to any alleged violation or breach of a Performance Directive by any municipality or other Person; or (ii) Energy Answers' or the Authority's efforts to secure Municipality Contracts by the date set forth in Section 2.3 hereof;

(c) the Authority's powers are limited to matters arising pursuant to the SWA Act, applicable Authority Regulations and/or any other relevant legal provision and the rules, regulations and orders promulgated or issued thereunder;

(d) the Authority has not made, and does not hereby make, any representation, warranty or assurance of any kind as to the profitability or future performance (financial or otherwise) of the Resource Recovery Facility; and

(e) nothing in this Agreement constitutes or should be deemed as: (i) a waiver or release by the Authority or any other Governmental Authority of the Commonwealth of Puerto Rico, in favor of Energy Answers (or any Affiliate thereof) relating to breaches or violations on the part of Energy Answers (or such Affiliates) of the SWA Act or any other applicable law; or (ii) a grant of exclusive rights to Energy Answers to develop, construct and/or operate a Waste to Energy Facility in Puerto Rico, it being understood that the Authority (or any Governmental Authority succeeding in its functions) may authorize, approve, promote, and support such additional Waste to Energy or other waste disposal, recycling, recovery, or conversion facilities aligned with the solid waste public policy of the Commonwealth of Puerto Rico as in the discretion of the Authority (or such successor Governmental Authority) shall be necessary, appropriate or convenient to promote and implement such public policy.

**ARTICLE 6**  
**INDEMNITY**



6.1. Energy Answers Indemnity. Energy Answers agrees to indemnify, save, defend, and hold harmless the Authority and its respective directors, officers, employees, lenders, agents and representatives (the "Authority Indemnitees"). from and against any and all damage, claim, liability, obligation, loss, penalty, fine, assessment, suits, judgment, cost or expense (including, without limitation, reasonable attorneys' fees and costs and expenses reasonably incurred in investigating, preparing, defending against or prosecuting any litigation or claim, action, suit, proceeding or demand, of any kind or character) threatened, suffered and/or incurred by the Authority or any Authority Indemnitee arising from: (a) claims by third parties against the Authority or Authority Indemnitee to the extent such third party claims result from: (i) the breach by Energy Answers of any material representation or warranty in this Agreement as of the Effective Date, (ii) a material breach by Energy Answers of a covenant made by it in this Agreement, or (iii) the gross negligence or willful misconduct of Energy Answers; (b) physical damage to any equipment or materials owned or used by the Authority or an Authority Indemnitee, in each case to the extent resulting from the negligence or misconduct of Energy Answers; or (c) personal injury to any Authority Indemnitee, to the extent resulting from the negligence or misconduct of Energy Answers.

6.2. Waiver of Remedies and Limitation of Liability.

(a) Except in the case of actual fraud or intentional breach of the Authority's obligations hereunder, Energy Answers' sole and exclusive remedy for breaches or alleged breaches hereof on the part of the Authority shall be limited to seeking specific performance of this Agreement on the part of the Authority, all other remedies for such breach (including monetary damages and recourse against assets or property of the Authority) being hereby waived by Energy Answers.

(b) Notwithstanding anything to the contrary contained in this Agreement, except in the case of actual fraud or intentional breach of its obligations hereunder by a Party hereto, no Party shall be liable for special, punitive, exemplary, incidental, consequential or indirect damages, or lost profits, whether based on contract, tort, strict liability, other laws or otherwise, and whether or not arising from the other Party's sole, joint or concurrent negligence, strict liability or other fault.

(c) Notwithstanding anything to the contrary contained in this Agreement, no representative or Affiliate of the Authority shall have any personal liability to Energy Answers or any other Person as a result of the breach of any representation, warranty, covenant or agreement of the Authority contained herein, and no representative or Affiliate of Energy Answers shall have any personal liability to the Authority or any other Person as a result of the breach of any representation, warranty, covenant or agreement of Energy Answers contained herein.

**ARTICLE 7**  
**MISCELLANEOUS**

**7.1 Governing Law; Venue.**

7.1.1 The interpretation and performance of this Agreement shall be in accordance with and controlled by the laws of Commonwealth of Puerto Rico, without giving effect to conflicts of laws provisions that would result in the application of the laws of another jurisdiction.

7.1.2 Any legal action or proceeding against any of the Parties with respect to this Agreement or the transactions in connection with or relating hereto, shall be brought in state courts of the Commonwealth of Puerto Rico sitting in San Juan, Puerto Rico, and/or in the United States District Court for the District of Puerto Rico to the extent it can acquire jurisdiction. By execution and delivery of this Agreement, each of the Parties hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts. Each of the Parties agrees that a judgment, after exhaustion of all available appeals, in any such action or proceeding shall be conclusive and binding upon each of the Parties, and may be enforced in any other jurisdiction, by a suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment.

7.1.3 None of the benefits or considerations granted in this Agreement shall be enforceable until a copy of this Agreement has been duly filed with the Office of the Comptroller of Puerto Rico, in accordance with Act No. 18 of October 30, 1975, as amended.

7.1.4. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

7.1.5 The pendency of litigation shall affect neither the obligations of the Parties to make any undisputed payment or render any undisputed service required by this Agreement nor the rights of the Parties under this Agreement.

7.2. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto relating to the subject matter hereof and all previous

agreements, discussions, communications, and correspondence with respect to the subject matter hereof are superseded by the execution of this Agreement.

7.3. Compliance with Law. In connection with this Agreement and the transactions contemplated hereby, each Party shall at all times comply with all applicable statutes, rules, regulations, ordinances, orders, decisions, judgments or decrees of, or any applicable restriction imposed by, the United States of America, any State (including for this purpose the Commonwealth of Puerto Rico), municipality or other political subdivision or any agency of any of the foregoing, or any competent court or other tribunal.

7.4. Amendment. This Agreement may not be amended or modified except by a written agreement signed by a duly authorized officer of each Party.

7.5. Successors and Assigns. This Agreement shall inure to the benefit of and, except as provided in Section 4.2, bind the respective successors and permitted assigns of the Parties hereto.

7.6. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by facsimile transmission, telexed or mailed by overnight courier or registered or certified mail (return receipt requested), postage prepaid, to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice; provided that notices of a change of address shall be effective only upon receipt thereof):

If to Energy Answers, to:

Energy Answers Arecibo, LLC  
c/o Energy Answers International, Inc.  
79 North Pearl Street, 4<sup>th</sup> Floor  
Albany, NY 12207  
Attention: Patrick Mahoney  
Phone: 518-434-1227  
Facsimile: 518-436-6343

If to the Authority, to:

Puerto Rico Solid Waste Authority  
P.O. Box 40285  
San Juan 00940-0255  
Attention: Executive Director  
Phone: 787-765-7575  
Facsimile: 787-753-2220

7.7. Rights Under this Agreement; No Third Party Beneficiaries. This Agreement shall be binding upon and inure solely to the benefit of the Parties. This Agreement is not intended to confer any rights hereunder upon any Person other than the Parties, the Authority Indemnitees, and Lenders to the extent provided in Section 4.2. Without limiting the foregoing, no provision of this Agreement shall create any third party beneficiary rights in any employee or former employee of any Party or any of their respective Affiliates (including any current or former beneficiary, spouse, or dependent thereof) in respect of continued employment or resumed employment, and no provision of this Agreement shall create any rights in any such Persons in respect of any benefits that may be provided, directly or indirectly, under any employee benefit plan or arrangement.

7.8. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7.9. Further Actions. Each Party agrees that it will, at its own expense, execute any and all certificates, documents, and other instruments and take such other further actions as may be reasonably necessary to give effect to the terms of this Agreement.

7.10. Severability. In the event that any of the provisions, portions, or applications of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the Parties shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, portions, or applications thereof shall not be affected thereby.

7.11. Interpretation. The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement. The terms "hereby", "hereof", "herein", "hereunder", and any similar terms as used in this Agreement refer to this Agreement. The terms "include", "includes" and "including" are not limiting. Words importing the singular number shall mean and include the plural number and vice versa. References to any law or regulation shall include any amendment or modification to such law or regulation. References to a "Section," "Article", "Schedule" or "Exhibit" shall, unless otherwise expressly indicated, be references to Sections, Articles, Schedules or Exhibits within or to this Agreement.

7.12. Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

7.13. No Sovereign Immunity. In each case subject to the provisions of Section 6.2 hereof, to the extent that the Authority (including assignees of the Authority's rights or obligations under this Agreement) may be entitled, in any jurisdiction, to claim

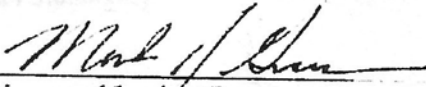


sovereign immunity from liability or from service of process, from suit, from the jurisdiction of any court, or from any other legal process, and to the extent that, in any such jurisdiction there may be attributed such a sovereign immunity (whether claimed or not), the Authority hereby irrevocably agrees not to claim, and hereby irrevocably waives, such sovereign immunity with respect to any claim or suit by Energy Answers hereunder against the Authority or other exercise of remedies by Energy Answers against the Authority arising pursuant to this Agreement.

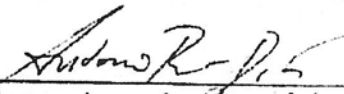
[Signature Page Follows]

IN WITNESS WHEREOF, Energy Answers and the Authority have caused this agreement to be signed by their respective duly authorized officers as of the date first above written.


**ENERGY ANSWERS ARECIBO, LLC**

By:   
Name: Mark S. Green  
Title: Vice President  
Date: 4/4/2012

**PUERTO RICO SOLID WASTE AUTHORITY**

By:   
Name: Antonio Rios Diaz  
Title: Executive Director  
Date: April 4, 2012

**General Counsel,  
Puerto Rico Solid Waste Authority**

By:   
Name: Keralia M. Moreda  
Date: 4.4.2012

## Schedule 2.3

Milestones Schedule

1. Milestones. In performing its obligations under Section 2.2 of this Agreement, the Parties will work in conjunction with each other and other involved parties to enter into Municipality Contracts sufficient to fully utilize the facility's 2,100 Ton per day capacity. Notwithstanding the foregoing, Energy Answers covenants that it will use its Best Efforts to secure at least three hundred (300) Tons per day of MSW to be delivered to the Resource Recovery Facility from third party suppliers. To ensure that the aggregate quantity of MSW to be covered by Municipal Contracts and Performance Directives is sufficient to use the full capacity of the Resource Recovery Facility and are secured prior to the Commencement Date, the Authority shall meet periodically with Energy Answers to determine the quantity of MSW that will be covered by Municipality Contracts that are anticipated to be in place by July 31, 2013 and whether a shortfall exists, or is anticipated to exist, between the quantity of MSW under such Municipality Contracts and the Required MSW Amount. If such a shortfall is determined to exist, the Authority shall select sufficient municipalities to become Designated Municipalities and issue Performance Directives to such municipalities, to be effective not later than such date and covering an aggregate minimum quantity of MSW, which when added to the aggregate minimum quantity of MSW under Municipality Contracts then anticipated to be in place as aforesaid, will equal or exceed the Required MSW Amount by the Commencement Date.

In the event that the MSW Tonnage actually covered by Municipality Contracts in effect on July 31, 2013 is less than was anticipated when a Performance Directive became effective on or before such date, with the result that the total MSW Tonnage covered by effective Performance Directives and Municipality Contracts for such date is less than the Required MSW Amount, the Authority with reasonable promptness will issue additional Performance Directives covering such additional MSW Tonnage as shall be necessary to eliminate such shortfall. The effect of the foregoing shall be that the MSW covered by the Authority's Performance Directives, combined with the MSW covered by executed and effective Municipality Contracts, shall not be less than the aggregate Required MSW Amount, which includes 300 tons to be sought by Energy Answers.

In the event Energy Answers does not secure in whole the abovementioned 300 Tons of MSW per day, on or before the milestone date of July 31, 2013, then to the extent such shortfall has continued to exist on the Commencement Date, Energy Answers will pay the Authority ten dollars (\$10.00) per Ton, per day, for each such shortfall Ton per day of MSW secured by the Authority and delivered to the Resource Recovery Facility, to eliminate such shortfall and reach the Required MSW Amount.

2. Designated Municipalities. The Authority hereby acknowledges and recognizes that all municipalities in Puerto Rico are subject to designation by the Authority under its

powers established in Articles 5(ee) and 12 of the SWA Act (12 P.R. Laws Ann. §§1305 and 1310a), to deliver or cause delivery of MSW under its control to designated disposal facilities and to pay the Disposal Fee for the amount of MSW required to be delivered. In support of this Agreement, the Authority shall, as necessary, designate municipalities to so deliver MSW to the Resource Recovery Facility pursuant to Performance Directives. The selection of these municipalities will be based on the available capacity of the Resource Recovery Facility, anticipated closure of noncompliant landfills in northern and northwestern Puerto Rico and in accordance with the solid waste management public policy, including but not limited to the EQB Resolution.


MAA

SC



Schedule 2.4Enforcement Procedures upon Breach of Performance Directive Payment Terms

The Parties agree that upon the occurrence of a monetary default by a Designated Municipality under a Performance Directive and after the expiration of any temporary waiver granted in writing by Energy Answers with respect thereto, the procedures against the Designated Municipality to enforce payment of the Defaulted Amount (as hereinafter defined) will include the measures set forth below. This listing is without limitation of any other actions which the respective Parties may elect to pursue against the Designated Municipality, giving due regard to any contractual rights Energy Answers may have, and to the scope of the Authority's lawful powers, in respect of such a default.

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1. By written notice to the Designated Municipality and the Authority (the "Notice"), Energy Answers will notify the Designated Municipality and the Authority that (i) a payment default by the Designated Municipality, which Energy Answers shall specify in reasonable detail, has become an event of default as to which no waiver by Energy Answers is then in effect; and (ii) Energy Answers therefore seeks immediate payment from the Designated Municipality of the amount in default, with interest thereon to the date of payment to Energy Answers, and reimbursement of Energy Answers' costs of enforcement (collectively, the "Defaulted Amount"). In the Notice Energy Answers will request the Authority to take such steps under the Authority Regulation as are necessary to cause the Designated Municipality to perform its obligations under the corresponding Performance Directive.
  2. The Authority will act upon all validly presented claims brought before it based on alleged breaches of Performance Directives, all in accordance with the provisions of the SWA Act, applicable Authority Regulations, and other applicable law.
  3. Energy Answers will promptly notify the Authority of any payment or partial payment thereafter received by it from the Designated Municipality in respect of the Defaulted Amount.

Schedule 2.11**Inflation Factor Sample Calculation:****I. Assumptions**

- 1 The Disposal Fee during 2012 is \$36.05/ton. \$36.05
- 2 The Inflation Factor is as provided in Section 2.13 of the WDSA.
- 3 The sample calculation is for the Inflation Factor to be applied to the 2013 Disposal Fee.
- 4  
CPI-U is equivalent to the annual average U.S. Consumer Price Index - All Urban Consumers, for All Items (Not Seasonally Adjusted), as published by the Bureau of Labor Statistics, for such year.
- 5 CPI-GTC is equivalent to the annual average U.S. Consumer Price Index - All Urban Consumers, for Garbage and trash collection (Not Seasonally Adjusted), as published by the Bureau of Labor Statistics, for such year.
- 6 The CPI-U from January 1, 2012 to December 31, 2012 = CPI-U 2012 = 225.672 = (A). 225.6720 (A)
- 7 The CPI-U from January 1, 2011 to December 31, 2011 = CPI-U 2011 = 219.179 = (B). 219.1790 (B)
- 8 The CPI-GTC from January 1, 2012 to December 31, 2012 = CPI-GTC 2012 = 399.257 = (C). 399.2570 (C)
- 9 The CPI-GTC from January 1, 2011 to December 31, 2011 = CPI-GTC 2011 = 388.794 = (D). 388.7940 (D)

**II. Calculation of the Inflation Factor (IF)**

$$IF = A/B (0.88) + C/D (0.12)$$

$$IF = 225.672 / 219.179 * 0.88 + 399.257 / 388.794 * 0.12$$

$$IF = 1.0293$$

**III. Calculation of the Disposal Fee for the Year**

$$IF = 1.0293 > 1.025, \text{ therefore } IF = 1.025$$

$$\text{Disposal Fee} = \$36.05 * IF$$

$$\text{Disposal Fee} = \$36.05 * 1.025$$

$$\text{Disposal Fee} = \$36.95$$

SCHEDULE 4.2  
Collateral Assignment Procedures

a. The Authority agrees to enter into consent to assignment with the Lenders and deliver a legal opinion to the Lenders, each containing terms and conditions that satisfactory to the Lenders, and acknowledges that the Lenders may require certain modifications to the Agreement. The Authority agrees to cooperate in good faith in this regard and to provide other customary and reasonable documents and acknowledgments as the Lenders may reasonably request.

b. Energy Answers shall provide the Authority with the name and address of each Lender who becomes an assignee of the Agreement pursuant to this Schedule 4.2.

c. Any assignment to a Lender may provide that it shall not constitute an assumption of any obligation of Energy Answers under the Agreement on the part of the Lender. Notwithstanding any such assignment, Energy Answers shall be and remain liable to the Authority under all provisions of the Agreement, the Agreement shall continue in accordance with its terms and any payments made by the Authority to a Lender or any other actions taken by the Authority with respect to a Lender pursuant to any such assignment shall be in full satisfaction of any duties or responsibilities which the Authority would otherwise owe to Energy Answers.

d. Notwithstanding any other provision of the Agreement, any sale of the Agreement in any proceeding for the foreclosure of any assignment, or the assignment or transfer of the Agreement in lieu of the foreclosure of any assignment, shall be deemed to be a permitted sale, transfer or assignment of the Agreement, and the Agreement shall continue in full force and effect following any such sale, transfer or assignment.

e. If the Agreement is terminated prior to the expiration of the Term due to a breach by Energy Answers (in which case the Authority shall promptly notify the Lenders of such termination) or if the Agreement is rejected or disaffirmed pursuant to any bankruptcy law or proceeding or other similar law or proceedings affecting creditors' rights generally with respect to a bankruptcy proceeding relating to Energy Answers or otherwise, the Authority agrees, if there are outstanding obligations to a Lender, subject to the receipt of all necessary approvals, to enter into a new waste delivery and management agreement with the Lender (or its designee or nominee; provided that such designee or nominee either is controlled by the Lender or is approved by the Authority) for the remainder of the Term upon all of the covenants, agreements, terms, provisions and limitations of the Agreement, effective as of the date of such termination.

f. The Authority agrees that it will deliver to the Lenders or agent for the Lenders at the address provided by Energy Answers pursuant to Section 7.6 copies of all notices of default given to Energy Answers under the Agreement contemporaneously with the delivery thereof to Energy Answers and will not exercise any remedies upon a default by Energy Answers hereunder unless it has given the Lenders written notice of such default.

g. Upon receipt of written notice from the Lender that Energy Answers is in default of its obligations under an agreement with the Lender, the Lender desires to exercise its rights under its assignment of the Agreement, and the Lender requests the Authority to continue to perform its obligations under the Agreement, (a) the Authority shall continue to perform its obligations under the Agreement for the benefit of the Lender, (b) the Authority agrees that upon receipt of such notice the Lender may directly enforce the Agreement against the Authority and (c) Lender shall be given an extended period for remedying or commencing the remedy of any alleged default, or causing the same to be remedied, in addition to the cure period given to Energy Answers pursuant to the terms of the Agreement to remedy (or such additional period as the Authority may agree with, and for the benefit of, the Lenders). The Authority agrees to accept performance on the part of the Lender or its designee as though the same had been done or performed by Energy Answers.



Exhibit A

Form of Municipality Contract

To be incorporated by amendment to the Agreement.

Estado Libre Asociado de Puerto Rico  
OFICINA DEL CONTRALOR  
P.O. Box 100089, San Juan PR 00910-0089

Certifico que el Contrato Nro. \_\_\_\_\_ es copia fiel y exacta de la  
copia que obra en nuestros archivos. El mismo consta de \_\_\_\_\_ páginas.  
Dada en San Juan, Puerto Rico, a \_\_\_\_\_ de \_\_\_\_\_ de \_\_\_\_\_

Administrador de Documentos  
o Ejecutivo Administrativo