

----- **DEED NUMBER TWO (2)** -----

----- **DEED OF PUBLIC TRUST**-----

---In the City of San Juan, Puerto Rico, this fourteenth (14<sup>th</sup>) day of March, two thousand twenty-two (2022).-----

----- **BEFORE ME** -----

---Edgardo Nieves Quiles, Attorney-at-Law and Notary Public in and for the Commonwealth of Puerto Rico with offices located on the eight (8<sup>th</sup>) floor, of two hundred and fifty (250) Muñoz Rivera Avenue in San Juan, Puerto Rico, and residence in San Juan, Puerto Rico. -----

----- **APPEAR** -----

---**AS PARTY OF THE FIRST PART:** The Commonwealth of Puerto Rico (the “**Commonwealth**”), represented by its Secretary of Treasury, Francisco Parés Alicea, of legal age, government official, single, and resident of San Juan, Puerto Rico, who is authorized to appear in this deed on behalf of the Commonwealth by Section 103 of Act 53-2021 of the Legislative Assembly of the Commonwealth and a Resolution of the Financial Oversight and Management Board for Puerto Rico dated February twenty-second (22nd), two thousand twenty-two (2022), which the undersigned Notary Public has received, reviewed and confirmed, and hereby certify and attest that the same provides the corresponding authority described hereto and complies with all requirements provided by law.-----

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---**AS PARTY OF THE SECOND PART:** the Financial Oversight and Management Board for Puerto Rico (the “**Oversight Board**”), represented by its Executive Director, Natalie Ann Jaresko, of legal age, executive, single, and resident of Dorado, Puerto Rico, who is authorized to appear in this deed on behalf of the Oversight Board by a Resolution of the Oversight Board dated March eleven (11), two thousand twenty-two (2022), which the undersigned Notary Public has received, reviewed and confirmed, and hereby certify and attest that the same provides the corresponding authority



described hereto and complies with all requirements provided by law.-----

---I, the Notary, hereby attest that I am personally acquainted with the appearing parties, and from their statements I also attest as to their age, civil status, occupation and residence. They assure me that they have, and in my judgment they do have, the legal capacity necessary and representative authority for this act, and for that purpose they freely-----

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----- ARTICLE I – RECITALS -----

---1.1. On June 30, 2016, the Puerto Rico Oversight, Management, and Economic Stability Act, Public Law 114-187 (“**PROMESA**”) was enacted into law by the Congress of the United States. PROMESA created the Oversight Board and established a mechanism under its Title III that allows the Commonwealth to file a petition in federal district court to adjust its debts. PROMESA provides that the Oversight Board would represent the Commonwealth in such debt restructuring proceeding. -----

---1.2. On May 3, 2017, the Oversight Board, as the representative of the Commonwealth under PROMESA, filed a petition for the Commonwealth under Title III of PROMESA in the United States District Court for the District of Puerto Rico (the “**Court**”), in Case No. 17-BK-3283-LTS (the “**Commonwealth Title III Case**”).-----

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---1.3. On January 18, 2022, the Court entered an order (the “**Confirmation Order**”) (Docket Entry No. 19813), approving and confirming the terms of the Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al., dated January 14, 2022 (Docket Entry No. 19784) (the “**Plan**”), in the Commonwealth Title III Case. The Plan incorporates certain documents filed as part of a Plan Supplement (the “**Plan Supplement**”), including the “Guidelines for the Governance and Administration of the Puerto Rico Plan of Adjustment Pension Reserve Trust and Monitoring of Plan of Adjustment Pension Benefits” (the “**Guidelines**”). References herein to the Plan shall be deemed to include the



Guidelines, which are attached hereto as Exhibit A. -----

---1.4. The Plan contemplates the establishment of a pension reserve trust (the “**Pension Reserve Trust**”) to provide financial support for the Commonwealth’s pension obligations under the pay-as-you-go pension system (the “**PayGo System**”) created under the Commonwealth’s Act 106 of 2017. Section 83.1 of the Plan provides that “On or prior to the Effective Date, the Commonwealth shall take all necessary steps to establish the Pension Reserve Trust, including, without limitation, by execution and delivery of the Pension Reserve Deed of Trust.” The “**Effective Date**” refers to the date on which all the conditions to confirmation and consummation of the Plan are satisfied or waived. Section 22 of the Confirmation Order (Creation of Pension Reserve Trust) provides that “Upon execution of the Pension Reserve Deed of Trust pursuant to Section 83.1 of the Plan, the Pension Reserve Trust shall be established and validly created pursuant to the terms of the Pension Reserve Deed of Trust, with no further authorization or legislative action being required, and shall not be subject to taxation by the Commonwealth.” -----

---1.5. The Plan defines the “**Pension Reserve Deed of Trust**” as “the deed of trust to be executed and delivered on or prior to the Effective Date, reasonably acceptable to the Government of Puerto Rico, the Retiree Committee and labor organizations party to plan support agreements for the Plan, substantially in the form included in the Plan Supplement, providing for, among other things, creating the Pension Reserve Trust and providing for the terms for the deposit and withdrawal of monies in the Pension Reserve Trust for the benefit of the Retirees.” The “**Retiree Committee**” refers to the committee of retired former employees of the Commonwealth, its agencies and instrumentalities appointed by the Office of the United States Trustee in the Commonwealth Title III Case. -----

---1.6. Section 83.2 of the Plan provides that the Pension Reserve Trust “will be managed by an independent entity whose members shall meet the

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independence, professionalism, experience and qualification standards set forth in the Pension Reserve Deed of Trust and shall be subject to all Commonwealth contracting, ethics and conflicts of interest laws and regulations.” -----

---1.7. Prior to confirmation of the Plan, the Oversight Board and the Retiree Committee entered into a Plan Support Agreement dated June 7, 2019 (the “**Retiree Committee PSA**”). The Retiree Committee PSA requires the establishment of the Pension Reserve Trust and independent management of the funds held in the Pension Reserve Trust. The Guidelines further provide for the establishment of an independent council to monitor on behalf of Commonwealth retirees the funding of and withdrawals from the Pension Reserve Trust by the Commonwealth, as more fully set forth in the Guidelines. -----

---1.8. A separate Plan Support Agreement between the Oversight Board and the American Federation of State, County, and Municipal Employees (“**AFSCME**”), also dated June 7, 2019 (collectively with the Retiree Committee PSA, the “**PSAs**”), includes substantially similar provisions.---

---1.9. In accordance with the PSAs, the Oversight Board, the Retiree Committee, AFSCME, and the Puerto Rico Fiscal Agency and Financial Advisory Authority, as fiscal agent of the Commonwealth, negotiated and drafted the Guidelines. -----

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---1.10. The Guidelines provide for: (i) the creation and administration of the Pension Reserve Trust, (ii) the creation and governance of a board of trustees to provide the independent and professional management of the Pension Reserve Trust required by the Plan and the PSAs (the “**Pension Reserve Board**”), and (iii) the creation and governance of an independent council to monitor on behalf of retirees the funding of and withdrawals from the Pension Reserve Trust by the Commonwealth, as required by the PSA (the “**Pension Benefits Council**”), all as more fully set forth in the Guidelines.-----





---1.11. Section 83.2 of the Plan and Section 23 of the Confirmation Order provide for the funding of the Pension Reserve Trust. Section 23 of the Confirmation Order also provides for the funding of the Pension Reserve Board and the Pension Benefits Council. -----

---1.12. The Guidelines provide that the terms thereof shall be incorporated into the Pension Reserve Deed of Trust.-----

---1.13. Pursuant to Sections 6.1(A) and (B) of the Guidelines, the Oversight Board will perform certain of the start-up functions of the Pension Benefits Council and the Pension Reserve Board on behalf of the Pension Reserve Trust to commence the administration of the Pension Reserve Trust as set forth in the Guidelines, for a period commencing as of the date of execution of this Deed of Public Trust and concluding upon the earlier to occur of October 1, 2022, or the day the Pension Reserve Board commences its inaugural Board meeting-----

---1.14. The Commonwealth and the Oversight Board are entering into this Deed of Public Trust (this “**Deed**”) for the purpose of creating the Pension Reserve Trust, incorporating the Guidelines into this Deed and providing for their implementation, and otherwise complying with the relevant provisions of the Plan, the Confirmation Order, and the PSAs. -----

---1.15. The Commonwealth and the Oversight Board represent and warrant that the terms of this Deed are reasonably acceptable to the Commonwealth, the Retiree Committee, and labor organizations party to the PSAs, as contemplated in Section 1.388 of the Plan; -----

---1.16. Capitalized terms used in this Deed and not defined herein shall have the meaning set forth in the Plan. -----

----- **ARTICLE II – CREATION OF THE TRUST** -----

---2.1. The Commonwealth hereby creates the Pension Reserve Trust contemplated by the Plan, the Confirmation Order, and the PSAs. The Pension Reserve Trust is created in accordance with the Commonwealth’s Act 219 of August 31, 2012, as amended, 32 L.P.R.A. §3351 et. seq. (the

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“Trust Act”). This Deed is the Pension Reserve Deed of Trust contemplated by the Plan and the Confirmation Order. -----

---2.2. The Guidelines are attached hereto as Exhibit A and are incorporated in their entirety into and made a part of this Deed. References to this Deed shall be deemed to include the Guidelines and any other Exhibit attached to this Deed. If there is any conflict between the Guidelines and the other provisions of this Deed, the provisions of the Guidelines shall control. -----

---2.3. The Oversight Board agrees to perform the functions it is authorized to perform on behalf of the Pension Reserve Trust as set forth in the Guidelines.-----

---2.4. The Pension Reserve Trust shall be deemed to be an irrevocable public trust within the meaning of Chapter III of the Trust Act (32 L.P.R.A. §3354 et. seq.). -----

---2.5. The Pension Reserve Trust hereby established shall also be designated and known by its full legal title as the Plan of Adjustment Pension Reserve Trust. -----

---2.6. **Independent Legal Entity.** The Pension Reserve Trust shall be a legal entity separate and independent from the Commonwealth, with full legal personality. The property, assets, title, and rights of the Pension Reserve Trust together constitute a fully autonomous separate estate from the Commonwealth and the administration of the estate is limited to the specific purposes established by the Plan and this Deed. Creditors of the Commonwealth shall have no recourse against the Pension Reserve Trust or any of its assets. -----

---2.7. In accordance with the Plan, this Deed, because it incorporates the Guidelines, also establishes and provides for the governance of the Pension Reserve Board and the Pension Benefits Council. -----

---2.8. **Not a Commonwealth Instrumentality.** The Pension Reserve Trust, the Pension Reserve Board, and the Pension Benefits Council shall not be, and shall not be deemed to be, instrumentalities of the

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Commonwealth. -----

---2.9. **Legal Capacity.** The Pension Reserve Trust, the Pension Reserve Board and the Pension Benefits Council shall each have the authority to bring and prosecute any cause of action for the proper administration and funding of the Pension Reserve Trust in accordance with the Guidelines. --

---2.10. As contemplated by the Trust Act, the administration of the Pension Reserve Trust and the rights, powers, duties, obligations, liabilities, limitations and responsibilities of the Oversight Board, the Pension Reserve Board and the Pension Benefits Council shall be governed exclusively by the provisions of this Deed (including the Guidelines), the Plan, and the Confirmation Order; therefore, the provisions of the Trust Act related to such matters shall not apply in any manner to this Deed or to the Pension Reserve Trust, the Oversight Board, the Pension Reserve Board, or the Pension Benefits Council.-----

---2.11. **Assets of the Pension Reserve Trust Not Subject to Attachment or Seizure by Creditors.** The assets of the Pension Reserve Trust shall not be subject to attachment or any other legal remedy by or on behalf the creditors of the Commonwealth, the Pension Reserve Trust, the Pension Reserve Board, any Trustee, the Pension Benefits Council, any Council Member, or any other person. Without limiting the generality of the foregoing, the Pension Reserve Trust shall have the protections set forth in Article 44 of the Trust Law. -----

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----- **ARTICLE III – ASSETS OF THE PENSION RESERVE TRUST** -----

---3.1. **Funding.** The funding of the Pension Reserve Trust shall be governed by the Plan and the Guidelines. In accordance with the Plan and the Guidelines, on or about the Effective Date of the Plan, the Commonwealth shall transfer to the Pension Reserve Trust the initial amount provided in the Plan, to be allocated by the Oversight Board among the accounts described in the Guidelines. -----

---3.2. **Corpus of the Trust.** The assets of the Pension Reserve Trust shall



consist of (a) all funds deposited in the Pension Reserve Trust by or on behalf of the Commonwealth pursuant to the Plan; (b) any other funds deposited in the Pension Reserve Trust by the Commonwealth or any other entity; and (c) the investment returns, rent, income, proceeds and earnings of the assets of the Pension Reserve Trust.-----

----- **ARTICLE IV – PUBLIC PURPOSE; BENEFICIARY** -----

----- **OF THE PENSION RESERVE TRUST** -----

---4.1. **Public Purpose.** The funds of the Pension Reserve Trust shall be used exclusively (i) to provide financial support for the Commonwealth’s pension obligations under the PayGo System in accordance with the Guidelines and (ii) to pay the expenses of the Pension Reserve Board and the Pension Benefits Council, as provided in the Guidelines. Upon termination of the Pension Reserve Trust, any remaining assets of the Pension Reserve Trust shall be transferred to the Commonwealth as provided in Section 9.2. -----

---4.2. **Beneficiary of the Trust.** The beneficiary of the Pension Reserve Trust shall be the Commonwealth of Puerto Rico. The funds in the Pension Reserve Trust shall be used solely for the payment of the defined benefit pensions and annuities of Pension Reserve Trust Participants (as defined in the Guidelines) in accordance with the terms and procedures established in the Plan and the Guidelines, and to pay the expenses of the Pension Reserve Trust, the Pension Reserve Board, and the Pension Benefits Council as provided in the Guidelines. -----

---4.3. **Non-Impairment Covenant.** As required by Section 83.3 of the Plan, the Commonwealth covenants, for the benefit of all Participants, that, with respect to payments and other obligations owed to Participants pursuant to the Plan, including, without limitation, PayGo obligations and all components of the Total Monthly Retirement Benefit after any adjustment pursuant to the Plan, all such obligations shall remain in place and not otherwise be altered, modified or amended until all such obligations

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have been satisfied in full in accordance with the provisions of the Plan and the Definitive Documents and the New GO Bonds Legislation, enforceable by any and each of the Oversight Board and any affected Retirees and, with respect to any such provision, this Pension Reserve Deed of Trust shall not be amended or modified by the Commonwealth except (i) with express prior written consent of the Oversight Board (if in existence), and a majority in number of the Retirees receiving benefits pursuant to the Plan who are affected by such amendment or modification, or (ii) pursuant to a new or re-opened Title III case for the Commonwealth and a confirmed new or modified, and effective, plan of adjustment.-----

-----**ARTICLE V- TRUSTEES; PENSION RESERVE BOARD** -----

---5.1. The trustees of the Pension Reserve Trust shall be the members of the Pension Reserve Board (the “**Trustees**”). The Pension Reserve Board shall be the “independent entity” that will manage the Pension Reserve Trust as contemplated by Section 83.2 of the Plan.-----

---5.2. **Appointment of Trustees; Qualification of Trustees.** The Trustees shall be appointed as set forth in the Guidelines. As required by Section 83.2 of the Plan, the Trustees shall meet the independence, professionalism, experience and qualification standards set forth in the Guidelines and shall be subject to all applicable Commonwealth contracting, ethics and conflicts of interest laws and regulations, as provided in greater detail below.-----

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---5.3. **Acceptance of Appointment or Election.** Once a person is appointed as a Trustee, that person’s acceptance of such position shall be set forth in a supplement to this Deed.-----

---5.4. **Duties of the Trustees.** Upon acceptance of their appointment in accordance with section 5.3 above, the Trustees shall be required to discharge their duties as set forth in the Guidelines.-----

---5.5. **Commonwealth Contracting, Ethics and Conflicts of Interest Laws and Regulations Applicable to Trustees; Code of Conduct and Ethics Policy.** As required by Section 83.2 of the Plan, the Pension Reserve



Trust and the Trustees shall be subject to all Commonwealth contracting, ethics and conflicts of interest laws and regulations (“**Applicable Puerto Rico Laws**”). In furtherance of the foregoing and in accordance with Section 7.2 of the Guidelines, the Pension Reserve Board shall create under its bylaws a Code of Conduct and Ethics Policy (the “**Pension Reserve Board Code of Conduct**”) that is appropriate and consistent with all Applicable Puerto Rico Laws and the best practices of similar bodies operating within the United States: (a) governing matters such as independence, conflicts of interest, anti-corruption, procurement, contracting, document retention, and confidentiality policies; and (b) setting forth the Trustees’ fiduciary obligation to act ethically in connection with the use of public funds and affirming the Pension Reserve Board’s commitment to do so. By accepting their appointment as Trustees, the Trustees shall be deemed to have agreed to comply with all Applicable Puerto Rico Laws and the Pension Reserve Board Code of Conduct. -----

---5.6. **Management and Ownership of Assets.** The Pension Reserve Board shall have the exclusive custody and management of the assets of the Pension Reserve Trust. The Pension Reserve Trust shall be considered a single investment pool and shall not be segregated into separate trusts. Title to all assets of the Pension Reserve Trust shall at all times be considered vested in the Pension Reserve Trust. The Trustees shall have the authority to take all actions, in conformance with the Plan and the Guidelines, that in their judgment, in the exercise of their fiduciary duties, are necessary or desirable for the proper administration of the Pension Reserve Trust or with respect to the investment, disposition or liquidation of any assets of the Pension Reserve Trust, although such actions may not be specifically set forth herein. -----

---5.7. **Books and Records.** The Trustees shall cause to be kept full and accurate records and books of account of all transactions affecting the assets

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of the Pension Reserve Trust, following standards that are generally accepted in public pension funds in the United States. -----

---5.8. **Audit.** The Trustees shall at least once each year cause an independent certified public accountant to audit the Pension Reserve Trust.

----- **ARTICLE VI – PENSION BENEFITS COUNCIL** -----

---6.1. Pursuant to the Guidelines, a Pension Benefits Council shall be established.-----

---6.2. **Election and Appointment of Council Members.** The members of the Pension Benefits Council (the “**Council Members**”) shall be elected or appointed as set forth in the Guidelines.-----

---6.3. **Acceptance of Appointment or Election.** Once a person is appointed or elected as a Council Member, that person’s acceptance of such position shall be set forth in a supplement to this Deed. -----

---6.4. **Duties of the Council Members.** Upon acceptance of their appointment in accordance with section 6.3 above, the Council Members shall be required to discharge their duties as set forth in the Guidelines.----

---6.5. **Code of Conduct and Ethics Policy of Pension Benefits Council.**

In accordance with Section 3.2 of the Guidelines, the Pension Benefits Council shall create under its bylaws a Code of Conduct and Ethics Policy (the “**Pension Benefits Council Code of Conduct**”) that is appropriate and consistent with all Applicable Puerto Rico Laws and the best practices of similar bodies operating within the United States: (a) governing matters such as independence, conflicts of interest, anti-corruption, procurement, contracting, document retention, and confidentiality policies; and (b) setting forth the Council Members’ fiduciary obligation to act ethically in connection with the performance of their duties as set forth herein and in the Guidelines and affirming the Pension Benefit Council’s commitment to do so. By accepting their election or appointment as Council Members, the Council Members shall be deemed to have agreed to comply with the Pension Benefits Council Code of Conduct. -----

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----- ARTICLE VII – WITHDRAWAL OF FUNDS -----

---7.1. **Approval of Release of Funds.** The funds held in the Pension Reserve Trust shall be released to the Commonwealth to satisfy its obligations under the Plan to all Pension Reserve Trust Participants (as defined in the Guidelines), solely in accordance with the Guidelines. -----

---7.2. **Budget and Administrative Expenses.** The Pension Reserve Board and the Pension Benefits Council shall each approve a budget as provided in the Guidelines. The administrative expenses to administer the Pension Reserve Trust, the Pension Benefits Council, and the Pension Reserve Board, including compensation and expense reimbursement to the Council Members and the Trustees (as applicable) and professionals shall be made from the account for administrative and operating expenses of the Pension Benefits Council and the Pension Reserve Board, as applicable, and funded from the Pension Reserve Trust as provided in the Guidelines. -----

---7.3. **Compensation.** Trustees and Council Members shall be entitled to compensation and reimbursement of reasonable expenses as set forth in the Guidelines and the bylaws of the Pension Benefits Council and the Pension Reserve Board established pursuant to the Guidelines, as applicable. -----

-----ARTICLE VIII – DOCUMENT PRESERVATION AND DISCLOSURE-----

---8.1. **General.** Each of the Pension Benefits Council and the Pension Reserve Board shall provide the reports and information required by the Guidelines. -----

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---8.2. **Preservation of Documents.** The documents originated or received by the Pension Reserve Trust, the Pension Benefits Council, and the Pension Reserve Board shall be subject to and preserved under the same laws and regulations applicable to public documents of the Commonwealth.

---8.3. **Access to Documents.** The documents originated, kept, or received by the Pension Reserve Trust, the Pension Benefits Council, and the Pension Reserve Board shall be public, unless deemed confidential or privileged as established under the laws, jurisprudence, and regulations



pertaining to public documents of the Commonwealth.-----

----- **ARTICLE IX — DURATION AND TERMINATION OF TRUST** -----

---9.1. **Termination.** The Pension Reserve Trust shall terminate on the earlier of (i) sixty (60) calendar days after the date all funds held in the Pension Reserve Trust are withdrawn in accordance with the Guidelines or (ii) such time when the retirement benefits owed to all Pension Reserve Trust Participants under the Plan have been fully satisfied, all as more specifically described in the Guidelines. -----

---9.2. **Transfer of Assets.** Upon termination of the Pension Reserve Trust, all of its assets, property and causes of action shall be transferred to the Commonwealth. Any termination of the Pension Reserve Trust and transfer of assets and property to the Commonwealth shall take into account and provide for the Wind-Down Expenses (as defined in the Guidelines).-----

----- **ARTICLE X — AMENDMENTS** -----

---10.1. This Deed of Public Trust shall not be amended or modified by the Commonwealth except as provided in Section 10.1 of the Guidelines, and, as applicable, in compliance with Section 4.3 hereof and Section 83.3 of the Plan. -----

----- **ARTICLE XI — MISCELLANEOUS** -----

---11.1. **Interpretation.** Any capitalized terms not defined in this Deed (including the Guidelines) shall have the meanings ascribed to such terms in the Plan. If there is a conflict between the Guidelines and the other provisions of the Plan, the Plan shall control. The titles and the headings of sections of this Deed are for convenience of reference only and shall not affect the interpretation of this Deed. -----

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---11.2. **Statutory References.** Except as set forth herein, statutory references in this Deed are intended to include any amending, revising, or superseding statutory provisions governing the referenced subject matter, and, for the avoidance of doubt, all such statutes and such amending, revising, or superseding provisions apply herein only insofar as they are



(i) consistent with the Plan and this Deed, and (ii) do not impair the independence of the Pension Reserve Trust, the Pension Reserve Board, and the Pension Benefits Council from the Commonwealth of Puerto Rico under the Guidelines.-----

---11.3. **Severability.** In the event that any provision of this Deed shall be held illegal or invalid for any reason whatsoever, said illegality or invalidity shall not affect the validity or enforceability of the remaining provisions of this Deed and shall be construed and enforced as if said illegal or invalid provision had never been inserted herein. -----

---11.4. This Deed shall be filed in the Registry of Trusts of the Office of Notary Inspections of the Commonwealth of Puerto Rico and with the Court as part of the Plan Supplement on or prior to the Effective Date.-----

---11.5. **Internal Revenue Stamps.** The Secretary of Treasury hereby certifies that this deed is exempt from the payment of internal revenue stamps, as it is executed by and for the benefit of the Commonwealth. In the event that any such internal revenue stamps were to be required, the Commonwealth agrees to pay the same. -----

----- **ACCEPTANCE** -----

---The appearing parties hereby accept, ratify, and confirm this Deed, and I, the Notary, do hereby certify that I have advised them as to the pertinent legal warnings and of the legal effects of this Deed, as well as of their right under the Notarial Law of Puerto Rico to have one or more witnesses to appear herein and read and sign this Deed together with them, which right they have waived, and this Deed having been read by them, to which fact I hereby certify, the appearing parties sign the same before me, and affix their initials on each and every page of this instrument, all before me, the Notary.-

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**GUIDELINES FOR THE GOVERNANCE AND ADMINISTRATION  
OF THE PUERTO RICO PLAN OF ADJUSTMENT PENSION RESERVE TRUST AND  
MONITORING OF PLAN OF ADJUSTMENT PENSION BENEFITS**

**I. INTRODUCTION; PENSION RESERVE TRUST; PENSION BENEFITS  
COUNCIL; PENSION RESERVE BOARD**

**1.1 Purpose:** The Plan Support Agreement between the Financial Oversight and Management Board for Puerto Rico (the “**Oversight Board**”) and the Official Committee of Retired Employees of the Commonwealth of Puerto Rico (the “**Retiree Committee**”), dated June 7, 2019 (the “**COR PSA**”)<sup>1</sup>, in connection with the prospective confirmed Plan of Adjustment (the “**Plan of Adjustment**” or “**Plan**”) for the Commonwealth of Puerto Rico (“**Puerto Rico**” or the “**Commonwealth**”) in its PROMESA Title III case, provides for (among other things) the creation of: (a) a Commonwealth Plan of Adjustment Pension Reserve Trust (the “**Pension Reserve Trust**”) to provide financial support for the Commonwealth’s pension obligations under the PayGo System (defined below); and (b) a Commonwealth Plan of Adjustment Pension Reserve Board of Trustees (the “**Pension Reserve Board**”) that shall be responsible for, among other things, the custody, administration, and investment of the funds held in the Pension Reserve Trust. In accordance with the COR PSA, the guidelines set forth herein (the “**Guidelines**”) provide for the creation and governance of the Pension Reserve Trust and Pension Reserve Board, as set forth below. In addition, these Guidelines set forth the terms under which a Commonwealth Plan of Adjustment Pension Benefits Council (the “**Pension Benefits Council**”) shall be established for the purpose of ensuring the Commonwealth’s compliance with certain provisions of the Plan of Adjustment related to the funding of the Pension Reserve Trust and shall, along with the Pension Reserve Board, administer requests by the Commonwealth to withdraw funds from the Pension Reserve Trust. These Guidelines will be included in the Plan Supplement<sup>2</sup>, and the terms and conditions set forth herein shall be incorporated into the Pension Reserve Deed of Trust, which will be executed and put into effect on or before the Plan Effective Date.<sup>3</sup> The Pension Reserve Trust, the Pension Benefits Council, and the Pension Reserve Board shall operate on a July 1 to June 30 fiscal year.

**1.2 Responsibilities of the Pension Benefits Council**

- A. Pension Reserve Trust Funding and Withdrawals. The Pension Benefits Council shall have responsibility and authority to monitor the proper and timely funding of the Pension Reserve Trust by the Commonwealth in accordance with the terms and conditions of the Plan. The Pension Benefits Council shall also have responsibility and authority, in consultation with the Pension Reserve Board pursuant to Sections 5.2(B) and (C) below, to approve the release of funds deposited into the Pension Reserve Trust as necessary for the Commonwealth to satisfy its obligations pursuant to the Plan to all Participants who are entitled to receive, as of the Effective Date or thereafter, defined benefit pension payments or annuities through the PayGo system (or any substitute or successor system) pursuant to the Plan for services rendered on or prior to the Effective Date (the “**Pension Reserve Trust Participants**”), as further set forth in Article V below. The Pension Benefits Council shall have no authority with respect to the management or investment of the assets of the Pension Reserve Trust other than as expressly set forth in these Guidelines.
- B. PayGo Fees. The Pension Benefits Council shall monitor the calculation and collection of PayGo Fees (as defined in Act 106 of 2017; such act, as it may be amended from time to time or supplanted by subsequent legislation, “**Act 106**”) by



<sup>1</sup> The Oversight Board also entered into a Plan Support Agreement (the “**AFSCME PSA**”) with the American Federation of State, County and Municipal Employees (“**AFSCME**”), which also provides (albeit with somewhat different terminology) for the creation of a Pension Reserve Board and a Pension Reserve Trust as reflected in the term sheet annexed to the AFSCME PSA.

<sup>2</sup> Any capitalized terms not defined herein shall have the meanings ascribed to such terms in the Plan of Adjustment.

the pension board created under Act 106 (together with any successor to such board under any supplanting legislation, the “**Act 106 Board**”), consistent with Section 4.3 below, for the purposes of (i) performing its AWM Study pursuant to Section 1.4(B) below and (ii) confirming whether the conditions for withdrawal of funds from the Pension Reserve Trust in Section 5.3(C) below have occurred. For the avoidance of doubt, the Pension Benefits Council shall not have any responsibility or authority to administer the calculation and collection of PayGo Fees (such matters being governed, without limitation, by Act 106 and the Act 106 Board).

- C. Enforcement Rights. The Pension Benefits Council’s enforcement remedy for a failure to properly and timely fund the Pension Reserve Trust, per subparagraph 1.2(A) above, the failure by the Commonwealth to provide sufficient and necessary information to the Pension Benefits Council so that it may effectively meet its responsibilities under these Guidelines and the Deed of Trust, or the failure to return any Advance Withdrawal Amount to the Trust pursuant to Section 5.6 below, shall be limited to seeking in the U.S. District Court for the District of Puerto Rico or any other court having jurisdiction (and any appellate court) to enjoin or compel the Commonwealth, the Act 106 Board, and/or such other entity or entities as may have responsibility for such matters to comply with the Plan and, provided further, that the Pension Benefits Council shall provide the Commonwealth, the Act 106 Board, and/or such other entity or entities with written notice setting forth a description of such failure or issue at least ninety (90) calendar days prior to the Pension Benefits Council bringing an action as described above.

**1.3 Term of the Pension Benefits Council:** Subject to modification of the Pension Reserve Deed of Trust, the Pension Benefits Council shall exist until the earlier of (i) thirty (30) calendar days after the date all funds held in the Pension Reserve Trust are withdrawn in accordance with these Guidelines or (ii) such time when the retirement benefits owed to all Pension Reserve Trust Participants under the Plan have been fully satisfied.

#### **1.4 Responsibilities of the Pension Reserve Board**

- A. Management of Funds. The Pension Reserve Board shall have sole responsibility for the custody, administration, and investment of the funds held in the Pension Reserve Trust.
- B. Asset and Withdrawal Modeling. To prudently invest the assets held in the Pension Reserve Trust in anticipation of future funding levels and withdrawals pursuant to Article V, the Pension Reserve Board shall retain a nationally recognized actuarial firm to perform an asset and withdrawal management study (the “**AWM Study**”) no less frequently than every three (3) years, which shall be presented to the Pension Reserve Board for consideration in the evaluation of different investment strategies. The projected cash inflows and related assumptions in the AWM Study shall be based on best estimates of the funding into the Pension Reserve Trust by the Commonwealth and investment returns at the time the AWM Study is being performed. The projected cash outflows and related assumptions in the AWM Study shall be based on best estimates of projected Commonwealth cash flow deficits and projected PayGo payments.
- C. Pension Reserve Trust Withdrawals. The Pension Reserve Board shall also have responsibility and authority to review and evaluate any request made for the withdrawal of any funds from the Pension Reserve Trust pursuant to Article V below and to make a recommendation to the Pension Benefits Council regarding the propriety of such request pursuant to Section 5.2(B) or (C) below.

**1.5 Term of the Pension Reserve Board:** The Pension Reserve Board shall exist until thirty (30) calendar days after the date all funds held in the Pension Reserve Trust are withdrawn in accordance with these Guidelines.

**1.6 Relationship Between the Pension Benefits Council and the Pension Reserve Board:** These Guidelines set forth separate and distinct roles and responsibilities for each of the Pension Benefits Council and the Pension Reserve Board (each, a “**Pension Reserve Trust Entity**”), and are designed to provide each Pension Reserve Trust Entity with sufficient authority to discharge





its respective duties independent of the other. Notwithstanding the foregoing, in the event that a Pension Reserve Trust Entity determines that the other Pension Reserve Trust Entity is not complying with its obligations under these Guidelines or applicable law, each Pension Reserve Trust Entity shall attempt to resolve such dispute in good faith. In the event those efforts do not resolve the dispute, either Pension Reserve Trust Entity may commence a lawsuit to resolve the dispute in accordance with Sections 4.4 or 8.4 below, as applicable.

- A. In the development of the separate annual budget limitations for each of the Pension Benefits Council and the Pension Reserve Board set forth in Sections 3.5 and 7.4 below, respectively, it is anticipated that the Pension Reserve Board shall retain an Executive Director and/or other administrative staff. The staff retained by the Pension Reserve Board shall also execute such administrative tasks as requested of it by the Pension Benefits Council consistent with the Pension Benefits Council's duties and authority under these Guidelines, including but not limited to financial management, procurement, maintenance of a website (which may be a single website if the Council and Board agree), logistical support for meetings and any other operational functions of the Council. Similarly, for ordinary-course administrative accounting services of the two Pension Reserve Trust Entities, absent any conflict of interest, the Pension Reserve Board shall retain an independent and nationally-recognized accounting firm to render accounting services on behalf of both Pension Reserve Trust Entities and the Pension Reserve Trust itself; provided further, that where there are issues and required analyses (apart from ordinary-course administrative accounting) that touch upon the responsibilities of both Entities, the Entities may (as deemed appropriate in each Entity's judgment), and are encouraged to, jointly engage the requisite professional(s) under a common interest agreement in order to avoid duplication of efforts and unnecessary expenses. For the avoidance of doubt, ordinary-course administrative accounting services would not include, without limitation, any accounting services that the Pension Benefits Council determines are needed in order to discharge its responsibilities under Section 1.2(A) or 1.2(B) above.

**1.7 Account Structure and Initial Funding of the Pension Reserve Trust:**

- A. Account Structure of the Pension Reserve Trust: The Pension Reserve Trust shall include (i) investment accounts, (ii) an account for administrative and operating expenses of the Pension Reserve Board, and (iii) an account for administrative and operating expenses of the Pension Benefits Council. The Pension Reserve Board shall have the authority to establish additional accounts as deemed necessary in the exercise of the Pension Reserve Board's duties. All such accounts shall be in the name of, and controlled by, the Pension Reserve Board, except that the account for administrative and operating expenses of the Pension Benefits Council shall be in the name of, and controlled by, the Pension Benefits Council. From time to time as appropriate, the Pension Reserve Board shall promptly transfer appropriate sums into the account for administrative and operating expenses of the Pension Benefits Council for the payment of the Pension Benefits Council's expenses.

Initial Funding: The Commonwealth shall deposit an initial funding of \$5,000,000.00 as provided for in the Plan into the Pension Reserve Trust, as follows: (i) \$550,000.00 shall be deposited into the administrative and operating account of the Pension Benefits Council immediately after the establishment of said account by the Oversight Board pursuant to Section 8.6 below; and (ii) \$4,450,000 shall be deposited into the administrative and operating account of the Pension Reserve Board immediately after the establishment of said account by the Oversight Board pursuant to Section 8.6 below;.





## II. PENSION BENEFITS COUNCIL MEMBERS & ELECTIONS

### 2.1 Composition of the Pension Benefits Council Following the Transitional Period:

- A. Membership: Following the Transitional Period defined in Section 2.2 below, the Pension Benefits Council shall consist of nine (9) members, as follows:
- i. Five (5) members, each of whom as of the date the Election Process Notice is posted pursuant to Section 2.3(B) below (the “**Election Process Notice Date**”), (x) must be receiving a pension or annuity as a Pension Reserve Trust Participant, and (y) is not an active employee of Puerto Rico or any of its agencies, instrumentalities, or public corporations (each, an “**Eligible Retiree**”); provided, however, that at all times there shall specifically be two (2) Pension Benefits Council members who were participants in the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“**ERS**”), two (2) Pension Benefits Council members who were participants in the Teachers Retirement System (“**TRS**”), and one (1) Pension Benefits Council member who was a participant in the Judiciary Retirement System (“**JRS**”); and provided further, that if there are insufficient Eligible Retirees who were participants in ERS, JRS or TRS, as the case may be, elected to fill the applicable seat or seats on the Pension Benefits Council, such seat or seats shall then be filled by Eligible Retirees who were not participants in such retirement system receiving the highest number of votes regardless of which retirement system he/she was a participant of, after the other seats have been filled to meet the composition requirements above. In the event an Eligible Retiree receives a pension or annuity as a result of being a participant in more than one of ERS, TRS and JRS, that person shall be deemed to be an Eligible Retiree with respect to the last retirement system as to which he/she accrued any vested pension benefits;
  - ii. One (1) member who as of the Election Process Notice Date (x) is a Pension Reserve Trust Participant, and (y) is an active employee of the Commonwealth or any of its agencies, instrumentalities, or public corporations (other than PREPA and UPR) (an “**Eligible Active Employee**”); provided, however, that if an Eligible Active Employee is not elected to fill the seat on the Pension Benefits Council, such seat(s) shall then be filled by the Eligible Retiree receiving the highest number of votes regardless of which retirement system he/she was a participant of, after the other seats have been filled to meet the composition requirements of this Section 2.1;
  - iii. One (1) appointee by AFSCME, who may but is not required to meet the qualifications of an Eligible Active Employee;
  - iv. One (1) appointee by the Governor of Puerto Rico; and
  - v. One (1) member appointed by the Oversight Board, while it is in existence in accordance with the Plan.

Upon termination of the Oversight Board, the Governor of Puerto Rico shall appoint a member to the Pension Benefits Council to fill the seat occupied by the Oversight Board’s appointee, as necessary, and shall then have the right prospectively to appoint two (2) members to the Pension Benefits Council in accordance with these Guidelines.

- B. Eligibility: Each Pension Benefits Council member, other than the appointees of the Governor, the Oversight Board, and AFSCME, must be a Pension Reserve Trust Participant, as described above, and individuals who are solely beneficiaries of such participants cannot be members of the Pension Benefits Council. Members of the Pension Benefits Council other than the appointees of the Oversight Board and AFSCME, must be residents of Puerto Rico. Members of the Pension Benefits Council cannot concurrently be members of the Act 106 Board. In addition, each



person seeking to be elected to the Pension Benefits Council must comply with the requirements set forth in Section 2.3(C) below.

- C. Term: Following the Transitional Period, members of the Pension Benefits Council shall serve for terms of four (4) years, beginning on January 1 of the applicable calendar year. If the term of the initial Pension Benefits Council elected during the Transitional Period begins on a date other than January 1, the term of service for the members of that initial Pension Benefits Council shall consist of that partial first year plus three (3) additional years. If a member of the Pension Benefits Council who is an Eligible Retiree does not complete his or her term for any reason, the remaining Eligible Retirees on the Pension Benefits Council, acting through majority vote (or as otherwise provided in the Pension Benefits Council's bylaws), shall promptly appoint a person who is eligible to serve in such position and shall seek to maintain the composition of the Eligible Retiree seats in accordance with Section 2.1(A)(i) above. If a member of the Pension Benefits Council who is an Eligible Active Employee retires, leaves his or her government employment, or otherwise does not complete his or her term for any reason, the Pension Benefits Council, acting through majority vote (or as otherwise provided in the Pension Benefits Council's bylaws), shall promptly appoint a person who is eligible to serve in such position. If the Governor's or the Oversight Board's appointee does not complete his or her term for any reason, then the Governor or the Oversight Board, as applicable, shall promptly appoint a new appointee. The term of any such appointment under this Section 2.1(C) shall be until the next regularly scheduled election for any Pension Benefits Council seat, at which point such position shall be filled in accordance with this Article II. If the member being replaced does not remain on the Pension Benefits Council pending appointment of a replacement member, the Pension Benefits Council shall nonetheless be authorized to conduct business as if it had a full roster of members.

## 2.2 Transitional Period:

- A. Membership During Transitional Period: The Pension Benefits Council shall initially consist of (w) five (5) Eligible Retirees appointed by the Retiree Committee, (x) two (2) appointees by AFSCME who may but are not required to meet the qualifications of an Eligible Active Employee, (y) the Governor's appointee, and (z) the Oversight Board's appointee. The persons described in clauses (w) through (z) shall be appointed or designated no later than the Effective Date of the Plan; provided, however, that in the event any of such persons is not timely appointed or designated, such delay shall not delay or impair the operation of the Pension Benefits Council. The period from the Effective Date to the date of commencement of the terms of the Pension Benefits Council members elected pursuant to Sections 2.1, 2.2(B), and 2.3 shall be referred to herein as the "**Transitional Period.**" Each member of the Pension Benefits Council serving during the Transitional Period, other than the appointees of AFSCME, the Governor, and the Oversight Board, shall serve until replaced by the applicable new member elected in accordance with Sections 2.1, 2.2(B), and 2.3. During the Transitional Period, an election shall be conducted as provided in Sections 2.2(C) and 2.3 below.
- B. Initial Meeting: An initial meeting of the Pension Benefits Council shall be scheduled by the Oversight Board's designee for a date, time, and location reasonably convenient to all Pension Benefits Council members for as soon as practicable after the Effective Date (subject to the proviso above that tardy appointment or designation of a member shall not delay or impair the calling of the meeting); provided, however, that if the Oversight Board has failed to designate its member as of the Effective Date, any other Pension Benefits Council member may call the meeting. This initial meeting shall address, among other potential matters, initiatives for (i) the selection of counsel to the Pension Benefits Council and any other professionals it deems necessary to fulfill its responsibilities in accordance with Section 4.5 below, (ii) the development of bylaws for the Pension Benefits Council in accordance with Section 3.1 below, and (iii) the creation and conducting of an orientation program for the Pension Benefits Council members in accordance with Section 3.7 below.



- C. Transitional Period Election: The Pension Benefits Council shall facilitate an election among the Eligible Retirees and the Eligible Active Employees to elect the six (6) new members who will, along with the appointees by the Governor, the Oversight Board, and AFSCME, constitute the Pension Benefits Council in accordance with Section 2.1 above. Such election shall be conducted with the intent of being completed by October 1, 2023, so that the elected slate can assume their positions on the Council on or about January 1, 2024, in accordance with Section 2.3(H) below, or to be completed as soon as practicable thereafter, but no later than two (2) years after the Effective Date of the Plan, subject to the requirements of Section 2.1(A) above, as follows:
- i. Two (2) Pension Benefits Council seats shall be designated for Eligible Retirees who shall have been participants in ERS, two (2) Pension Benefits Council seats shall be designated for Eligible Retirees who shall have been participants in TRS, one (1) Pension Benefits Council seat shall be designated for an Eligible Retiree who shall have been a participant in JRS, and one (1) Pension Benefits Council seat shall be designated for Eligible Active Employees.
  - ii. Each Eligible Retiree who was a participant in a particular retirement system may only vote for an Eligible Retiree who was a participant in that system and who is a proper candidate pursuant to the procedures set forth in Section 2.3(C) below. The number of votes cast by an Eligible Retiree in any election shall be equal to the number of Pension Benefits Council seats designated for an Eligible Retiree who was a participant of the voting Eligible Retiree's retirement system (i.e., one or two). The elected Eligible Retirees shall be those who are proper candidates pursuant to the procedures set forth in Section 2.3(C) below and who garner the highest number of votes in each applicable retirement-system category. Each Eligible Active Employee may cast one vote for an Eligible Active Employee who is a proper candidate pursuant to the procedures set forth in Section 2.3(C) below for the Pension Benefits Council seat designated for an Eligible Active Employee. The elected Eligible Active Employee shall be the Eligible Active Employee who is a proper candidate pursuant to the procedures set forth in Section 2.3(C) below and who garners the highest number of votes.

**2.3 Transitional Period Election Process:** The election occurring during the Transitional Period shall follow the process set forth in this Section 2.3.

- A. Election Process: The Pension Benefits Council shall retain an independent third party service with experience in conducting elections similar to the Pension Benefits Council elections (the "**Election Administrator**") to be responsible for providing notices, facilitating the nomination and balloting process, and determining candidate eligibility as provided for in Sections 2.3(B), (C), and (F) below and may retain such Election Administrator to assist, as deemed desirable by the Council, in conducting the election in any other respect in accordance with methods decided by the Pension Benefits Council. The Pension Benefits Council, in consultation with the Election Administrator, shall develop procedures for voting in the election after consideration of best practices in order to reasonably meet the specific needs and purposes of the election. Such procedures shall be set forth in the Election Process Notice and/or in the Election Notice.
- B. Election Process Notice: A notice of the process for nominating and electing Pension Benefits Council members (the "**Election Process Notice**") will be posted by the Election Administrator in at least two (2) newspapers of general daily circulation in Puerto Rico, both in print and in any corresponding Internet version of each publication, once in each of two consecutive weeks, at least ninety (90) days prior to the election. The Election Process Notice will also be posted on the website of the Pension Benefits Council no later than the time of the first publication and will remain continuously posted on the website until completion of the election process.



C. Nomination Process:

- i. *Nomination:* In the Election Process Notice, the Election Administrator will give notice of the availability of a nomination form (“**Nomination Form**”), which each Eligible Retiree and Eligible Active Employee may obtain electronically from the Pension Benefits Council’s website or by making a written request by mail to the Pension Benefits Council or Election Administrator. Any Eligible Retiree or Eligible Active Employee may nominate himself or herself to stand for election to serve on the Pension Benefits Council by submitting a completed Nomination Form to the Election Administrator or by serving on the Election Administrator other written notice that contains all of the information required by the nomination form. The Nomination Form will request such information as the Election Administrator reasonably determines is required to establish whether a person meets the eligibility requirements set forth in these Guidelines, and shall identify the date by which a completed Nomination Form must be submitted to the Election Administrator. Members of the Pension Benefits Council may be a candidate for re-election; provided, however, that members who have served two consecutive terms (with service during the Transitional Period not qualifying as a term for purposes of this provision) may not be a candidate in the election immediately following their second term; provided further, however, that such member may be a candidate in any subsequent election (subject to a new two-consecutive-term limitation).
- ii. *Candidate Eligibility Determinations:* All Eligible Retirees and Eligible Active Employees are eligible to be a candidate unless such person is disqualified by the express terms of these Guidelines. The Election Administrator shall, in consultation with the Pension Benefits Council, determine the eligibility of all candidates but may not create additional eligibility requirements. Eligible candidates shall be notified by mail by the Election Administrator (and, to the extent practicable, electronic mail) of their eligibility and mailed a copy of the election rules no later than fifteen (15) calendar days prior to commencement of the Candidate Meetings described in Section 2.3(C)(iii) below. Ineligible nominees shall also be advised by overnight mail by the Election Administrator (and, to the extent practicable, electronic mail) not later than fifteen (15) calendar days prior to commencement of the Candidate Meetings of the reason(s) they are not eligible. Such nominees shall have ten (10) calendar days from the date of mailing of said notice to appeal the decision to the Pension Benefits Council. If the appeal has not been resolved prior to the Candidate Meetings, the nominee may attend a Candidate Meeting pending resolution of the appeal.
- iii. *Candidate Meetings:* The Pension Benefits Council will hold at least one meeting in San Juan and one meeting in Ponce, on separate days, to provide information about the term of service and responsibilities of the members (each, a “**Candidate Meeting**”). Each candidate who has been notified of their eligibility to serve must attend at least one Candidate Meeting, which attendance may be by videoconference. In the event a person who has submitted a Nomination Form does not attend a Candidate Meeting, that person shall not be eligible to stand for election.
- iv. *Election Notification:* Once a definitive list of candidates is assembled by the Election Administrator, the list will be included in an election notice (the “**Election Notice**”) posted by the Election Administrator in the same newspaper(s) as employed in Section 2.3(B) above, both in print and in any corresponding Internet version of each publication, once in each of two consecutive weeks, and on the Pension Benefits Council’s website. The Election Notice shall also provide any additional specific information not previously included in the Election Process Notice regarding the manner by which the election shall take place.





- D. Tally of Ballots: Ballots shall be submitted by voters directly to the Election Administrator, who shall then tabulate and certify the election results promptly after the deadline for submitting ballots. The candidate who receives the highest number of votes cast for each vacant seat (determined pursuant to Section 2.2(B) above) shall be declared elected. Any tie votes shall be decided by a coin toss conducted by the Election Administrator, in the presence of the candidates who are tied, and in the presence of the Election Administrator and the Pension Benefits Council or their designees.
- E. Notification of Election Results: Notification of the election results shall be mailed by the Election Administrator to the candidates, posted on the Pension Benefits Council’s website, and concurrently issued by general press release.
- F. Protests and Appeals: Any candidate may challenge an election by delivering a protest in writing to the Pension Benefits Council so that is received by the Council within ten (10) calendar days after the election results are mailed and posted on the Pension Benefits Council’s website.
- G. Arbitration: Any timely request for appeal submitted pursuant to Section 2.3(C)(ii) or Section 2.3(F) above shall be resolved through a mandatory expedited arbitration process to be conducted by an arbitrator licensed by the Supreme Court of Puerto Rico and selected by the Pension Benefits Council. The arbitrator’s award and decision shall be final and binding as to all parties. The Pension Reserve Trust shall bear the expenses of the arbitration process incurred by the Pension Benefits Council and the arbitrator. Candidates shall be responsible for the cost of their own representation in the arbitration process.
- H. Commencement of Term: The term of service for the members of the Pension Benefits Council elected during the Transitional Period pursuant to Sections 2.1, 2.2(B), and 2.3 shall begin sixty (60) calendar days following the certification of the results of the election by the Pension Benefits Council; provided, however, that the term of a replacement member appointed pursuant to Section 2.1(C) shall begin immediately upon appointment.
- I. Rules and Procedures for the Election: Except as otherwise provided in Section 2.3(C)(ii) above with respect to establishing additional eligibility criteria, the Pension Benefits Council is authorized to adopt, amend, or supplement all rules and regulations that it deems necessary and prudent to implement the Transitional Period election process established in this Section 2.3.

#### 2.4 Elections Following the Transitional Period

Election Cycle: Subject to Section 2.1(C) above, following the Transitional Period, elections of new members shall occur every four (4) years, in the fourth year of the term of the Pension Benefits Council, with the intention to complete the election process and certification of the results on or before November 15 of the fourth year following the prior elections. Subject to Pension Benefits Council bylaws, new member terms shall begin on January 1 of the calendar year following the elections.

Election Policies and Procedures: Subject to the limitation in Section 2.3(C)(ii) above on creating additional eligibility criteria, following the end of the Transitional Period, the Pension Benefits Council may, but is not required to, adopt the Transitional Period election process, as set forth in Section 2.3, for future elections. The Pension Benefits Council may establish at any time and from time to time new election policies and procedures that are designed to create a process that reasonably promotes accessibility for voters and an efficient and cost-effective process. In designing the election policies and procedures, the Pension Benefits Council will consider the merits of the Transitional Period election process and any voting impediments known to the Pension Benefits Council. These election policies and procedures shall be included in or incorporated by reference into the Pension Benefits Council’s bylaws.



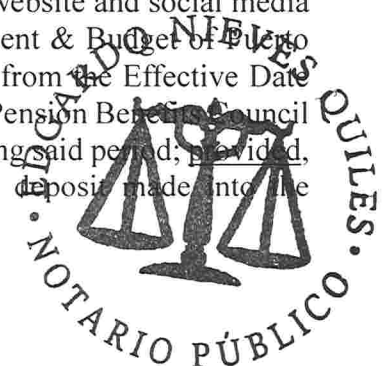
### III. PENSION BENEFITS COUNCIL GOVERNANCE

**3.1 Bylaws:** As soon as practicable after formation of the Pension Benefits Council, the Pension Benefits Council shall adopt by an affirmative vote of at least six of its members, with at least one of said votes being that of the Governor's or the Oversight Board's appointees, a set of bylaws to govern the Pension Benefits Council's conduct, which shall be consistent with the Plan and these Guidelines. Such bylaws shall include appropriate provisions regarding fiduciary duties and obligations of the Pension Benefits Council; meetings of the Pension Benefits Council (which shall allow for attendance by videoconference); guidelines for disclosure of conflicts of interest for Pension Benefits Council members; removal and replacement of Pension Benefits Council members; voting on matters by Pension Benefits Council members. In particular, without otherwise limiting the Pension Benefits Council's ability to develop appropriate bylaws, the Pension Benefits Council's bylaws shall provide that each Pension Benefits Council member shall have one vote, subject to any disqualifying conflict of interest, with respect to any matter being voted upon. The bylaws shall also provide that, if any subcommittee is formed by the Pension Benefits Council, at least one appointee of the Governor shall be a member of such subcommittee. The Pension Benefits Council bylaws shall also include provisions governing ethics, anti-corruption, conflicts of interest, procurement, contracting, use of public funds and public disclosure. As appropriate, these provisions shall be consistent with Puerto Rico laws applicable to instrumentalities of the Commonwealth; provided, however, that inclusion of such provisions into the bylaws shall not affect the independence of the Pension Benefits Council and shall not subject it to governance and regulation as an instrumentality of Puerto Rico. The Pension Benefits Council may, from time to time, amend the Pension Benefits Council's bylaws by an affirmative vote of at least six of its members, solely to facilitate the purposes and functions of the Pension Benefits Council pursuant to the Plan and these Guidelines; provided, however, that if any non-consenting member believes the amendment is improper and inconsistent with the purposes and functions of the Pension Benefits Council, that member may bring the issue before the U.S. District Court for the District of Puerto Rico for resolution. Any such amendments shall be promptly posted to the Council's website and on its social media platforms.

**3.2 Code of Conduct and Ethics Policy:** The Pension Benefits Council's bylaws shall include a Code of Conduct and Ethics Policy setting forth the Pension Benefits Council members' obligation to act ethically in connection with the use of public funds and in the interest of all Pension Reserve Trust Participants, each as defined in the Plan, and affirming the Pension Benefits Council's commitment to do so. The Code of Conduct and Ethics Policy shall include provisions regarding confidentiality, conflicts of interests and self-dealing, as well as a gift policy and an enforcement policy, each consistent with provisions of relevant Puerto Rico law. Specifically, and without limitation, such policy must expressly forbid any Council member, members of their extended families (within three degrees of consanguinity), professional, or vendor of goods or services employed by the Pension Benefits Council from accepting any payment or other thing of value from any party seeking or having responsibility to provide goods or services for compensation to the Council directly, or indirectly by subcontractor, affiliate, or other such relationship with a professional or vendor.

**3.3 Compensation:** Pension Benefits Council members shall meet as often as is reasonably necessary and prudent to address the business of the Pension Benefits Council. For each meeting of the Pension Benefits Council or any designated sub-committees of the Pension Benefits Council, members shall be entitled to a reasonable stipend. As of the Effective Date of the Plan of Adjustment, the stipend shall be \$125 per meeting. The amount of the stipend may be reviewed and adjusted from time to time by a two-thirds vote of the Pension Benefits Council, consistent with reasonable and customary practice in the market and to reflect regular increases in respect of inflation. Pension Benefits Council members shall also be reimbursed for their reasonable expenses incurred in attending meetings and otherwise carrying out their responsibilities as Pension Benefits Council members. The Pension Benefits Council's compensation and travel policy will be incorporated into the Pension Benefits Council's bylaws.

**3.4 Transitional Operating Budget:** For informational purposes, as soon as practicable after its establishment, the Pension Benefits Council shall make public on its website and social media platforms and provide a copy to the Director of the Office of Management & Budget of Puerto Rico, a budget of anticipated expenses to be incurred during the period from the Effective Date through the following June 30 for ordinary and recurring activities of the Pension Benefits Council and for other non-recurring activities reasonably foreseeable to occur during said period; provided, however, that such budget shall not exceed the amount of the initial deposit made into the



administrative and operating expense account of the Pension Benefits Council pursuant to Section 1.7(B) above.

**3.5 Administrative Operating Budget:** For informational purposes, by June 1 of each year, the Pension Benefits Council shall make public on its website and social media platforms and provide a copy to the Director of the Office of Management & Budget of Puerto Rico, a budget of anticipated expenses to be incurred in the forthcoming fiscal year for ordinary and recurring activities of the Pension Benefits Council and for other non-recurring activities reasonably foreseeable to occur in such fiscal year, which budget shall have been approved by a two-thirds vote of the Pension Benefits Council. The annual actual aggregate administrative expenses for the Pension Benefits Council in any given fiscal year shall not be higher than \$400,000.00 (adjusted for actual inflation rate); provided that non-ordinary course expenses including, but not limited to, (i) litigation-related fees and expenses, if any, and (ii) election-related expenses are excluded from the calculation of administrative expenses. The Oversight Board, as long as it is in existence, shall review the annual expenditures of the Pension Benefits Council and adjust its budget for ordinary course expenses at its reasonable discretion from time to time based on actual spending requirements; provided, however, that if there is a dispute between the Oversight Board, or the Commonwealth upon termination of the Oversight Board, and the Pension Benefits Council regarding the budget or expenses incurred by the Council, the parties will use good-faith best efforts to resolve it consensually; provided further, however, that if such dispute is not resolved consensually within thirty (30) days of the dispute being identified, either party may seek resolution of the matter in the U.S. District Court for the District of Puerto Rico; and provided further, however, that pending resolution of the matter the Pension Benefits Council shall receive funding in accordance with the prior year's budget. The payment of these administrative expenses shall be made from the account for administrative and operating expenses of the Pension Benefits Council of the Pension Reserve Trust. Additionally, to the extent that legal action is taken against the Pension Benefits Council or other parties which would require funds from the Pension Reserve Trust, the Commonwealth will reimburse the Pension Reserve Trust for such expenses.

**3.6 Annual Report:** Following the end of each fiscal year, the Pension Benefits Council, with the assistance of its retained professionals as described in Section 4.5 below, shall promptly prepare and issue a public report, as of the end of the fiscal year, regarding (x) any projected or actual deposits into, or withdrawals from, the Pension Reserve Trust, (y) an itemized report of all expenditures made to Council professionals and an itemized report of any payments made to Council members, including payments made on behalf of Council members to travel to and attend any meeting, and (z) such other information related to the Pension Benefits Council's responsibilities and activities that the Pension Benefits Council determines is relevant to Participants, including, for example, a comparison of the Pension Benefits Council's expenses that were actually incurred during such fiscal year to the Pension Benefits Council's budgeted expenses. Each such annual report shall be posted on the Pension Benefits Council's website and social media platforms.

**3.7 Orientation and Continuing Education Policy:** The Pension Benefits Council shall adopt a program for the orientation of new members and the continued education of existing members regarding their duties, relevant provisions of the Plan, financial matters, and governance of the Pension Benefits Council. The goal of the program shall be for the Pension Benefits Council members to maintain the skill and knowledge necessary to meet their obligations and duties. With respect to the initial Pension Benefits Council formed on or about the Effective Date of the Plan, the Pension Benefits Council shall use its reasonable best efforts to develop and conduct an initial orientation program as soon as practicable after the Effective Date, pursuant to the Initial Meeting described in Section 2.2(B) above. Pending the conducting of such orientation program, the initial Pension Benefits Council members may conduct business solely to address initial start-up matters, in accordance with the Initial Meeting described in Section 2.2(B) above. For the avoidance of doubt, the items described in Section 2.2(B) constitute a non-exhaustive list of start-up matters, and the Pension Benefits Council may address any other such matters that it deems prudent to address pending conducting of the orientation program. With respect to any person elected or appointed to the initial or any subsequent Pension Benefits Council after the orientation program is developed, such person must attend the orientation program before assuming its position on the Pension Benefits Council.





#### IV. POWERS OF THE PENSION BENEFITS COUNCIL

The Pension Benefits Council shall have the power to take any action reasonably necessary in order to fulfill its responsibilities as set forth in Section 1.2 above, including, but not limited to:

**4.1 Request for Documents and Information:** The Pension Benefits Council shall have the right to request and receive from the Commonwealth (on behalf of itself and any of its agencies and instrumentalities) and the Act 106 Board the following information deemed by the Pension Benefits Council as reasonably necessary to carry out its responsibilities as set forth in Section 1.2 above:

- A. Contact Information: The Pension Benefits Council shall have the right to request and receive the Commonwealth's most current information regarding the mailing address and such other contact information (e.g., telephone number and electronic mail address, if available) on file for each person who is entitled to cast a ballot in any election to select the members of the Pension Benefits Council, at any time within the six (6) month period preceding such election. The received information shall exclusively be used for said election process.
- B. Actuarial/Valuation Data: In addition to the information and documents above, the Pension Benefits Council shall receive from the Commonwealth, and shall share with the Pension Reserve Board, the most current actuarial and valuation data on an annual basis within a reasonable time after this information is available.

**4.2 Review Regarding Funding of and Withdrawals from Pension Reserve Trust:** Pursuant to Section 1.2(A) above, in addition to the right to request documents and information set forth in Section 4.1 above, the Pension Benefits Council shall have the right, once every fiscal year, to review all records and processes related to the calculation and deposit of funds into the Pension Reserve Trust by the Commonwealth, including, without limitation, any report of the Commonwealth's independent calculation agent relating to such deposit or lack of deposit. The Pension Benefits Council and the Pension Reserve Board shall also have the right to review all information reasonably necessary to evaluate the calculation and propriety of a request by the Commonwealth for the withdrawal of funds from the Pension Reserve Trust, in accordance with Article V below, including, without limitation, any report of the Commonwealth's independent calculation agent relating to such withdrawal request. The Pension Benefits Council and Pension Reserve Board shall also be given reasonable access to the independent calculation agent to review such materials.

**4.3 Review of PayGo Fee Collections:** The Pension Benefits Council shall have the right, once every fiscal year, to review the collections of PayGo Fees, in order to assess compliance with Act 106. The Commonwealth shall continue to publish information regarding the calculation and collection of PayGo Fees in accordance with its current practices.

**4.4 Power to Sue and Jurisdiction of U.S. District Court:** Subject to the limitations on scope of authority and responsibility in Section 1.2 and on remedies in Section 1.2(C) above, the Pension Benefits Council has legal capacity and the power to bring any cause of action on behalf of the Pension Benefits Council and/or the Pension Reserve Trust, as appropriate, against the Commonwealth, or any other appropriate party (as to the Oversight Board, subject to Section 8.6(C) below), regarding: the improper implementation of the Pension Reserve Trust relative to the Council's scope of responsibilities under Section 1.2 above, including deposits into and proper return of any Advance Withdrawal Amount to the Pension Reserve Trust pursuant to Article V below; and the Commonwealth's non-compliance with any Plan provision pertaining to the rights of all Pension Reserve Trust Participants, as well as any other dispute or matter in connection with the performance of the Pension Benefits Council's duties under these Guidelines. The Pension Benefits Council on behalf of the Council and/or the Pension Reserve Trust, as appropriate, may also bring any cause of action to resolve a dispute pursuant to Section 1.6 or 3.1 above. Except as provided in Section 2.3(G) above, the U.S. District Court for the District of Puerto Rico shall have original and exclusive jurisdiction over any such causes of action of the Pension Benefits Council described in this paragraph, as well as any causes of action against the Pension Benefits Council.

**4.5 Employment of Professionals:** Subject to Section 1.6(A) above, the Pension Benefits Council shall engage in a public Request for Proposal ("RFP") process in order to obtain certain



service providers, such as attorneys, insurance advisors, accountants, the Election Administrator, and actuaries, and whose contract amount is greater than \$250,000.00 for a fiscal year (provided that retention of the Election Administrator and any outside counsel shall require an RFP process regardless of the projected contract amount). Selection of all such providers shall require a positive vote of a 2/3 majority of the Pension Benefits Council members who participate in the vote. The Pension Benefits Council shall have the authority to enter into contracts to assist in the performance of the duties of the Pension Benefits Council hereunder, and incur reasonable fees and expenses in connection with hiring such service providers; provided, however, that (i) while the Oversight Board is in existence with respect to the Commonwealth, all engagement agreements with any such service providers or any consultant engaged to assist with the RFP process shall be subject to review and approval by the Oversight Board pursuant to its Contract Review Policy as in effect from time to time; and (ii) all contracts executed by the Pension Benefits Council shall be made public and shall be registered with the Office of the Comptroller of Puerto Rico (the “**Comptroller Office**”) pursuant to applicable Puerto Rico laws. All such fees and expenses shall be paid from the Pension Reserve Trust. An individual or organization that has provided a cash or in-kind contribution to any candidate for membership or any member of the Pension Benefits Council shall be ineligible to serve as a professional for five years from the date of such contribution.

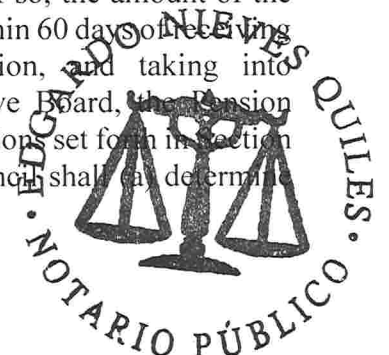
**4.6 Independence:** The Pension Benefits Council shall be incorporated under the laws of Puerto Rico as a not-for-profit entity. For the avoidance of doubt, the Pension Benefits Council shall not be, and shall not be deemed, an instrumentality of the Commonwealth, nor is it responsible for the obligations of the Commonwealth under the Plan.

## V. PENSION RESERVE TRUST WITHDRAWALS

**5.1 Scope:** This Article V governs, among other things, withdrawals from the Pension Reserve Trust that shall be made pursuant to the request of the Commonwealth. No provision of these Guidelines modifies the obligation of the Commonwealth to deposit funds into the Pension Reserve Trust pursuant to the Plan of Adjustment. For the avoidance of doubt, any disputes arising in connection with the matters governed by this Article V shall be heard by the U.S. District Court for the District of Puerto Rico, which shall have original and exclusive jurisdiction.

### 5.2 Withdrawals:

- ⚡
- A. Funds may be withdrawn from the Pension Reserve Trust at any time to pay the costs and expenses of the Pension Benefits Council and the Pension Reserve Board as budgeted pursuant to these Guidelines, respectively, in each case in accordance with these Guidelines. The Pension Benefits Council and the Pension Reserve Board shall each have the authority to withdraw funds necessary to pay such costs and expenses. Funds cannot be withdrawn for any other purpose during the period beginning as of the Effective Date of the Plan of Adjustment and ending on the last day of the 2031 Fiscal Year, subject to Section 5.2(D) below.
  - B. Beginning on the first day of the 2032 Fiscal Year, the Commonwealth may make a request to the Pension Benefits Council (“**Withdrawal Request**”) (with a copy served concurrently upon the Pension Reserve Board) in which it asserts that the conditions set forth in Section 5.3 below were fully satisfied with respect to the prior fiscal year (the “**Applicable Fiscal Year**”) and therefore that a lump-sum withdrawal should be made from the Pension Reserve Trust calculated in accordance with Section 5.4 below (“**Withdrawal**”). The Commonwealth shall submit to the Pension Benefits Council and the Pension Reserve Board all necessary information for their evaluation of such Withdrawal Request, consistent with their rights to receive and review such information under Section 4.2 above. Within 45 days of receiving the Withdrawal Request and said necessary information, the Pension Reserve Board shall make a written recommendation to the Pension Benefits Council regarding the Board’s view as to whether each of the conditions set forth in Section 5.3 below is satisfied and, if so, the amount of the Withdrawal that is appropriate under Section 5.4 below. Within 60 days of receiving the Withdrawal Request and said necessary information, and taking into consideration the recommendation of the Pension Reserve Board, the Pension Benefits Council shall determine whether each of the conditions set forth in Section 5.3 below is satisfied and, if so, the Pension Benefits Council shall determine



the amount of the Withdrawal and (b) authorize and direct the Pension Reserve Board to (i) liquidate such assets of the Pension Reserve Trust as the Pension Reserve Board determines to be necessary or prudent to fund the Withdrawal and (ii) facilitate the Withdrawal and transfer of such sum to the Treasury Single Account (the “TSA”) or other appropriate account designated by the Commonwealth. If the Pension Reserve Board disagrees with the determination of the Pension Benefits Council with respect to a Withdrawal Request under this Section 5.2(B), any such disagreement shall be resolved by the U.S. District Court for the District of Puerto Rico, consistent with Sections 1.6, 4.4, and 8.4.

- C. Beginning with the first day of the 2032 Fiscal Year, the Commonwealth may make a request to the Pension Benefits Council (“**Fully Funded Withdrawal Request**”) (with a copy served concurrently upon the Pension Reserve Board) in which it asserts that the condition set forth in Section 5.5 below was fully satisfied with respect to the prior fiscal year (the “**Fully Funded Fiscal Year**”), and therefore that a lump-sum withdrawal should be made from the Pension Reserve Trust calculated in accordance with Section 5.5 below (the “**Fully Funded Pension Reserve Trust Withdrawal**”). The Commonwealth shall submit to the Pension Benefits Council and the Pension Reserve Board all necessary information for their evaluation of such request, consistent with their rights to receive and review such information under Section 4.2 above. Within 45 days of receiving the Withdrawal Request and said necessary information, the Pension Reserve Board shall make a written recommendation to the Pension Benefits Council regarding the Board’s view as to whether each of the conditions set forth in Section 5.5 below is satisfied. Within 60 days of receiving the Fully Funded Withdrawal Request and said necessary information, having taken into consideration the recommendation of the Pension Reserve Board, and in the event the Pension Benefits Council determines that the condition set forth in Section 5.5 below is satisfied, the Pension Benefits Council shall authorize and direct the Pension Reserve Board to (i) liquidate such assets of the Pension Reserve Trust as the Pension Reserve Board determines to be necessary or prudent to fund the Fully Funded Pension Reserve Trust Withdrawal and (ii) facilitate the Fully Funded Pension Reserve Trust Withdrawal and transfer of such sum to the TSA or other appropriate account designated by the Commonwealth. If the Pension Reserve Board disagrees with the determination of the Pension Benefits Council with respect to a Withdrawal Request under this Section 5.2(C), any such disagreement shall be resolved by the U.S. District Court for the District of Puerto Rico, consistent with Sections 1.6, 4.4, and 8.4.
- D. The Pension Benefits Council shall not have the authority to approve any withdrawal of funds that is not in compliance with these Guidelines, subject to amendment of the Guidelines as set forth in Section 10.1 below.

**5.3 Conditions for Withdrawals:** The Pension Benefits Council shall approve a Withdrawal Request if the Pension Benefits Council determines that each of the following conditions is satisfied:



- A. Puerto Rico generates an actual cash flow deficit after contractual debt service pursuant to the Certified Fiscal Plan in effect as of the Effective Date of the Plan of Adjustment for the Applicable Fiscal Year (a “**Cash Flow Deficit**”), determined in each case pursuant to the “cash surplus” reported in the Net Cash Flow in the Treasury Single Account Cash Flow Report issued by AAFAF. For the avoidance of doubt, the calculation and reporting of the Cash Flow Deficit and the Unrestricted Cash Balance of Puerto Rico, as defined in Section 5.3(B) below, shall remain consistent with the calculation and reporting methodology in effect as of the Effective Date regardless of any subsequent or future changes to the Commonwealth’s central cash management system and/or reporting of the TSA.
- B. The sum of the cash balance in all TSA accounts plus the cash balances in the two TSA sweep accounts (the “**Unrestricted Cash Balance of Puerto Rico**”) shall be lower than \$2.0 billion as of the end of the Applicable Fiscal Year. For the avoidance of doubt, the Unrestricted Cash Balance of Puerto Rico shall exclude any such amounts related to the emergency reserve fund (of up to \$1.3 billion) and the revolving facility for reconstruction and capital works (of up to \$750 million).



- C. (i) the municipalities and government entities obligated to pay PayGo Fees, as identified in the monthly PayGo reporting package periodically published by AAFAF, have paid at least 75% of their PayGo Fees on an aggregate and cumulative basis during the period beginning as of July 1, 2017 (the inception of the PayGo System) and ending as of the last day of the Applicable Fiscal Year, (ii) the Commonwealth has offset delinquent PayGo Fees against any appropriations from and obligations of the Commonwealth to the delinquent municipalities and government entities, (iii) the Commonwealth and/or ERS have instructed CRIM to withhold amounts from the Basic Tax remittances to satisfy any past due PayGo Fees, if applicable, (iv) the Commonwealth has instructed AAFAF to withhold amounts to fund any past due PayGo Fees from any request by a municipality for release of any excess Special Additional Tax (“**Excess CAE**”), if applicable, and (v) the Commonwealth is diligently pursuing payment plans pursuant to ERS Resolution 2019-02 to collect past due PayGo Fees from all municipalities and government entities that were more than six (6) months past due as of the end of the Applicable Fiscal Year.

**5.4 Amount of Withdrawal:** In the event the Pension Benefits Council determines that each of the conditions in Section 5.3 has been satisfied for a Withdrawal, then the Pension Benefits Council shall, in consultation with the Pension Reserve Board, perform the following calculations to determine the amount of the Withdrawal:

- A. First, determine the present value as of the end of the Applicable Fiscal Year of all projected pension benefits to be paid by the PayGo System based on the most recent actuarial valuation report prepared by the Commonwealth’s actuarial advisor, by discounting each projected pension benefit cash flow with the segment rate from the corresponding year of the rates defined by the US Internal Revenue Service under Internal Revenue Code Section 417(e)(3) (the “**417(e) rates**”) published for the third month prior to the measurement date used for the present value calculation (the “**Benefits Present Value**”); provided, however, that in the event the measurement date of the most recent valuation report is more than eighteen (18) months old, then the Pension Benefits Council shall use the most recent estimates of the projected pension benefits provided by the Commonwealth to the Pension Benefits Council or, absent such information, the Pension Benefits Council shall use the projected PayGo liabilities contained in the most recent AWM Study prepared for the Pension Reserve Board if such data is more current than the most recent actuarial valuation report. In the event that the IRS ceases to publish 417(e) rates, the Retirement Board shall implement a new publicly available basis for determining the present value that is market based and reflects a similar level of risk to the rates most recently reflected in the 417(e) rates;
- B. Second, divide the balance of the Pension Reserve Trust as of the end of the Applicable Fiscal Year by the Benefits Present Value, and express the result as a percentage (the “**Funded Percentage**”);
- C. Third, determine the product of (x) the Funded Percentage, and (y) the amount of all pension benefits actually paid by the PayGo System during the Applicable Fiscal Year, excluding all administrative and other costs that are not pension benefits (the “**PayGo Benefits Amount**”), with such product expressed as an amount in U.S. dollars (the “**Withdrawal Formula Amount**”); provided, however, that in the event in any Fiscal Year (i) of a federally-declared natural disaster, (ii) of a federally – declared pandemic other than the current Covid-19 pandemic, or (iii) that the Cash Flow Deficit is generated by a material negative variance between projected Non-Own Source Revenues and actual Non-Own Source Revenues for such Fiscal Year, the PayGo Benefits Amount shall be multiplied by two (2) for such Fiscal Year; and
- D. Fourth, determine the lower of (y) the PayGo Benefits Amount and (z) the Withdrawal Formula Amount (such lower amount defined as the “**Applicable Withdrawal Amount**”); provided, however, that in the event that the Funded Percentage as of the end of any Applicable Fiscal Year is ten (10) percent or lower, then the Applicable Withdrawal Amount shall be equal to (i) the lower of (a) the PayGo Benefits Amount and (b) the balance of the Pension Reserve Trust less (ii)

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the sum of (A) the amount, if any, that the Pension Benefits Council reasonably determines is necessary and appropriate to satisfy its actual and projected costs and expenses to complete its functions under these Guidelines, plus (B) the amount, if any, that the Pension Reserve Board reasonably determines is necessary and appropriate to satisfy its actual and projected costs and expenses to complete its functions under these Guidelines (the sum of (ii)(A) and (B), the “**Wind-Down Expenses**”).

The amount that shall be withdrawn from the Pension Reserve Trust shall be the lesser of (y) the Applicable Withdrawal Amount and (z) the Cash Flow Deficit for the Applicable Fiscal Year (the “**Pension Reserve Trust Withdrawal Amount**”).

**5.5 Fully Funded Pension Reserve Trust Withdrawals:** The Pension Benefits Council shall approve a Fully Funded Withdrawal Request in the event that the Pension Benefits Council determines that the Funded Percentage as of the end of the Fully Funded Fiscal Year is one hundred (100) percent or higher after accounting for any Applicable Withdrawal Amount for such Fully Funded Fiscal Year. In the event that the Pension Benefits Council determines this criterion is satisfied, the amount of the Fully Funded Pension Reserve Trust Withdrawal shall be equal to the amount of the aggregate pension benefits to be paid by the PayGo System during the following fiscal year. For the avoidance of doubt, the conditions and provisions of Sections 5.3 and Section 5.4 above shall not be applicable with respect to any Fully Funded Withdrawal Request or Fully Funded Pension Reserve Trust Withdrawal.

**5.6 Timing of Pension Reserve Trust Withdrawals:** Withdrawals from the Pension Reserve Trust, as allowed for an Applicable Fiscal Year pursuant to Sections 5.3, 5.4, and 5.5 above, shall occur within six (6) months after the end of such Applicable Fiscal Year, provided that all requisite information pursuant to Section 5.3 has been provided to the Pension Benefits Council; provided, however, that if at the beginning of an Applicable Fiscal Year the sum of (a) the Unrestricted Cash Balance of Puerto Rico at the beginning of such Applicable Fiscal Year and (b) the projected Net Cash Flow for such Applicable Fiscal Year in the Treasury Single Account Cash Flow Report is less than \$500 million, the Commonwealth may request to withdraw funds from the Pension Reserve Trust during the Applicable Fiscal Year (the “**Advance Withdrawal Request**”); provided that the condition pursuant to Section 5.3(C) has been satisfied

A. Advance Withdrawal Amount: The allowed withdrawal amount for an Advance Withdrawal Request shall be the product of (a) 50% and (b) the calculation of the Pension Reserve Trust Withdrawal Amount pursuant to Section 5.4 but replacing (x) the actual Cash Flow Deficit for such Applicable Fiscal Year with the projected Cash Flow Deficit for such Applicable Fiscal Year, (y) the Benefits Present Value at the end of the Applicable Fiscal Year with the Benefits Present Value at the beginning of the Applicable Fiscal Year, and (z) the Pension Reserve Trust balance at the end of such Applicable Fiscal Year with the Pension Reserve Trust balance at the beginning of such Applicable Fiscal Year (the “**Advance Withdrawal Amount**”).

B. True-up of Advance Withdrawal Request: At the end of the Applicable Fiscal Year in which an Advance Withdrawal Request is made, the absolute difference between the Advance Withdrawal Amount and the Pension Reserve Trust Withdrawal Amount pursuant to Section 5.4 shall be calculated (the “**Advance True-up Amount**”). If the Pension Reserve Trust Withdrawal Amount for the Applicable Fiscal Year exceeds the Advance Withdrawal Amount already made during the Applicable Fiscal Year, additional withdrawal in the amount of the Advance True-up Amount shall be permitted. However, if the Advance Withdrawal Amount made during the Applicable Fiscal Year exceeds the Pension Reserve Trust Withdrawal Amount for the Applicable Fiscal Year, the Commonwealth shall deposit the Advance True-up Amount back into the Pension Reserve Trust within six (6) months of the end of the Applicable Fiscal Year. For the avoidance of doubt, if the conditions pursuant to Section 5.3 are not met at the end of the Applicable Fiscal Year, the Commonwealth shall deposit the Advance Withdrawal Amount in its entirety back into the Pension Reserve Trust within six (6) months of the end of the Applicable Fiscal Year.



**5.7 Commonwealth Power to Sue and Jurisdiction of U.S. District Court:** In addition to any rights under applicable law, the Commonwealth shall have legal capacity and the right to bring any cause of action to resolve any dispute relating to or arising from this Article V of these Guidelines, including but not limited to, any claim or matter related to or arising from a Withdrawal Request, a Fully Funded Withdrawal Request, or Advance Withdrawal Request. The U.S. District Court for the District of Puerto Rico shall have original and exclusive jurisdiction over any said causes of action, as well as any other causes of action against the Pension Benefits Council or the Pension Reserve Board.

**5.8 Taxes:** The funds held in the Pension Reserve Trust shall be exempt from the payment of any taxes to Puerto Rico and its municipalities and instrumentalities to the maximum extent permitted by applicable law (including PROMESA).

## VI. PENSION RESERVE BOARD MEMBERS

### 6.1 Composition of the Pension Reserve Board:

- A. Membership: The Pension Reserve Board shall consist of five (5) trustees, to be appointed within three (3) months after the occurrence of the Effective Date. The Pension Benefits Council shall, by a two-thirds vote of the Pension Benefits Council's members, appoint two (2) trustees, the Governor of Puerto Rico shall appoint two (2) trustees, and the Oversight Board shall appoint one (1) trustee; provided, however, that in the event any of such persons are not timely appointed or designated, such delay shall not delay or impair the operation of the Pension Reserve Board, which shall commence its activities on the first business day of the first calendar week following expiration of the three-month period following the Effective Date on which there are at least three (3) appointed Pension Reserve Board trustees (the "**Commencement Date**"). As each trustee is appointed, the appointing entity shall certify to the Oversight Board, the Governor's office, and the Pension Benefits Council such appointment and the trustee's specific qualifications that satisfy the criteria in Section 6.1(B) below. If the Oversight Board no longer exists, the fifth trustee shall be appointed by the Pension Benefits Council. A person may not serve more than two (2) terms as a member of the Pension Reserve Board, regardless of whether such person has served consecutive terms.
- B. Inaugural Meeting. On or as soon as practicable after the Commencement Date, the Pension Reserve Board shall call and convene an inaugural meeting of the Board. At that meeting, the Oversight Board shall deliver custody of all documents and information regarding or related to the Oversight Board's activities on behalf of the Pension Reserve Trust and the Pension Reserve Board, including, without limitation, all bank account information for the administrative and operating accounts opened by the Oversight Board for the Pension Reserve Trust in the name of the Pension Reserve Board and the Pension Benefits Council. By convening said meeting, the Oversight Board's duties and authority under Section 8.6 of these Guidelines shall automatically cease. At or immediately after the inaugural meeting, the Oversight Board shall take all other necessary and reasonable steps to transfer to the Pension Reserve Board control of all bank accounts and any other assets of the Pension Reserve Trust, and any documents and information of or belonging to the Pension Reserve Trust or the Pension Reserve Board.
- C. Eligibility and Qualifications: No trustee shall be appointed to the Pension Reserve Board who has a known or reasonably perceived conflict of interest. Except for the Governor's appointee, trustees of the Pension Reserve Board cannot concurrently be active employees of Puerto Rico or any of its agencies, instrumentalities, or public corporations, and for the avoidance of doubt, no trustee (including the Governor's appointee) can concurrently be a member of the Act 106 Board. In addition, no trustee can be a former member of the boards of ERS, TRS, or JRS. Each trustee of the Pension Reserve Board shall have proven leadership skills and have expert knowledge or extensive experience with respect to either (with at least one Board trustee satisfying each of the two categories of qualifications below):



- i. Economics, finance, or institutional investments, as evidenced by one or more of the following:
  - (a) An earned masters or Ph.D. in economics or finance from a doctorate-granting U.S.-accredited institution;
  - (b) The Chartered Financial Analyst credential of the CFA Institute; or
  - (c) A minimum of fifteen (15) years of professional experience as a certified public accountant with audit expertise of financial management, pension, or insurance clients;

*or*
- ii. Asset management expertise, as evidenced by one or both of the following:
  - (a) At least fifteen (15) years of asset management industry experience; and
  - (b) Technical competencies including investment strategy, investment management across different asset classes, investment risk management, third party management of external asset managers and custodians, corporate governance, financial management, strategic leadership, communication and stakeholder management and networking.

D. Term: Trustees of the Pension Reserve Board shall serve for a term of six (6) years, beginning on January 1 of the relevant year; provided, however, that if the term of the initial Pension Reserve Board begins on a date other than January 1, the term of service for the members of that initial Pension Reserve Board shall consist of that partial first year plus five (5) additional calendar years; provided further, that a Trustee can be reappointed at the expiration of his or her term. If a trustee of the Pension Reserve Board does not complete his or her term for any reason, the entity or person that appointed such person pursuant to Section 6.1(A) above or 6.1(D) below shall appoint a replacement trustee who is eligible to serve in such position. In each case, the replacement trustee shall serve for the remainder of the six-year term.



## VII. PENSION RESERVE BOARD GOVERNANCE

**7.1 Bylaws:** As soon as practicable after the Commencement Date, the Pension Reserve Board shall by an affirmative vote of at least four trustees (or a simple majority if any appointing party fails to timely appoint trustees to the Pension Reserve Board) adopt a set of bylaws to govern the Pension Reserve Board's conduct, which shall be consistent with the Plan and these Guidelines. It shall include appropriate provisions regarding fiduciary duties, obligations of the Pension Reserve Board, meetings of the Pension Reserve Board, removal and replacement of Pension Reserve Board trustees, and voting on matters by Pension Reserve Board trustees. In particular, without otherwise limiting the Pension Reserve Board's ability to develop appropriate bylaws, the Pension Reserve Board's bylaws shall provide that each Pension Reserve Board trustee shall have one vote, subject to any disqualifying conflict of interest, with respect to any matter being voted upon. The bylaws shall also provide that, if any subcommittee is formed by the Pension Reserve Board, at least one appointee of the Governor shall be a member of such subcommittee. The Pension Reserve Board may, from time to time, amend its bylaws by an affirmative vote of at least four trustees (or a simple majority if any appointing party fails to timely appoint a trustee to fill a vacancy on the Board) to ensure that the Pension Reserve Board satisfies its purposes and functions pursuant to these Guidelines; provided, however, that if any non-consenting trustee believes the amendment is improper and inconsistent with the purposes and functions of the Pension Reserve Board, that member may bring the issue before the U.S. District Court for the District of Puerto Rico for resolution. Any such amendments shall be promptly posted to the Board's website and on its social media platforms. Consistent with the Plan and the Confirmation Order, the Pension Reserve Board shall be subject to Puerto Rico laws governing ethics, anti-corruption, conflicts of



interest, contracting, and public disclosure applicable to instrumentalities of the Commonwealth, and such provisions shall be, and shall be deemed to be, incorporated into the Pension Reserve Board's bylaws; provided, however, that the application of such laws to the Pension Reserve Board shall not affect its status as an independent entity that is not an instrumentality of Puerto Rico, as more fully described in Section 8.5 below.

**7.2 Code of Conduct and Ethics Policy:** The Pension Reserve Board's bylaws shall include a Code of Conduct and Ethics Policy setting forth the Pension Reserve Board's obligation to act ethically in connection with the use of public funds and in the interest of the Commonwealth and the Pension Reserve Trust Participants, and affirming the Pension Reserve Board's commitment to do so. The Code of Conduct and Ethics Policy shall include provisions regarding confidentiality, conflicts of interests and self-dealing, as well as a gift policy and an enforcement policy consistent with relevant provisions of Puerto Rico law and as required by the Plan and the Confirmation Order. Specifically, and without limitation, such policy must expressly forbid any Board member, professional, or vendor of goods or services employed by the Pension Reserve Board from accepting any payment or other thing of value from any party seeking or having responsibility to invest Pension Reserve Trust funds or provide goods or services for compensation to the Board directly, or indirectly by subcontractor, affiliate, or other such relationship with a professional or vendor. The Code of Conduct and Ethics Policy for the Board must also expressly forbid the placement of Pension Reserve Trust assets for investment with any advisor, or the use of a placement agent or similar service provider, who at the individual or entity level, has contributed to a political candidate for any elected office of the Commonwealth government during the preceding five (5) years or contributed towards a Commonwealth plebiscite during the previous five (5) years. Such contributions must be prohibited while providing such services to the Board.

**7.3 Compensation:** Pension Reserve Board members shall be paid an annual compensation in an amount not to exceed \$50,000.00 (subject to adjustment for inflation), paid in four equal installments at the end of each calendar quarter; provided, however, that if, in the judgment of the Oversight Board or the Pension Benefits Council, it is determined that this amount is inadequate to attract appropriate and desirable trustees to serve on the Board with the requisite level of skills and qualifications identified in Section 6.1B above, the Oversight Board or Pension Benefits Council, as the case may be, may seek to amend this annual compensation amount upon application to the U.S. District Court for the District of Puerto Rico, in accordance with Section 8.4 below. Compensation for the period from the Commencement Date to the end of the first calendar quarter thereafter shall be prorated and paid on the first business day following said calendar quarter. Pension Reserve Board members shall also be reimbursed for their reasonable expenses incurred in attending meetings and otherwise carrying out their responsibilities as Pension Reserve Board members. The Pension Reserve Board's compensation and travel policy shall be incorporated into the Pension Reserve Board's bylaws. Notwithstanding the foregoing, any Pension Reserve Board member employed by the Government of Puerto Rico or any public corporation or instrumentality shall not receive compensation for his or her service on the Pension Reserve Board while so employed, but may receive reimbursement of expenses as provided in this Section 7.3.

**7.4 Budget:** For informational purposes, by June 1 of each year, the Pension Reserve Board shall make public on its website and provide a copy to the Director of the Office of Management & Budget of Puerto Rico, a budget of anticipated expenses to be incurred in the forthcoming fiscal year for ordinary and recurring activities of the Pension Reserve Board and for other non-recurring activities reasonably foreseeable to occur in the forthcoming fiscal year. The annual actual aggregate administrative expenses for the Pension Reserve Board in any given fiscal year shall not be higher than \$1,400,000.00 (adjusted for actual inflation rate); provided that non-ordinary course expenses including, but not limited to, litigation-related fees and expenses, if any, as well as investment-related expenses are excluded from the calculation of administrative expenses. The Oversight Board, as long as it is in existence, shall review the annual expenditures of the Pension Reserve Board and adjust its budget for ordinary course expenses at its reasonable discretion from time to time based on actual spending requirements; provided, however, that if there is a dispute between the Oversight Board, or the Commonwealth upon termination of the Oversight Board, and the Pension Reserve Board regarding the budget, the parties will use good-faith best efforts to resolve it consensually; provided further, however, that if such dispute is not resolved consensually within thirty (30) days of the dispute being identified, either party may seek resolution of the matter in the U.S. District Court for the District of Puerto Rico; and provided further, however, that pending resolution of the matter the Pension Reserve Board shall receive funding in accordance with the prior year's budget. The payment of these administrative expenses shall be made from



the account for administrative and operating expenses of the Pension Reserve Board within the Pension Reserve Trust.

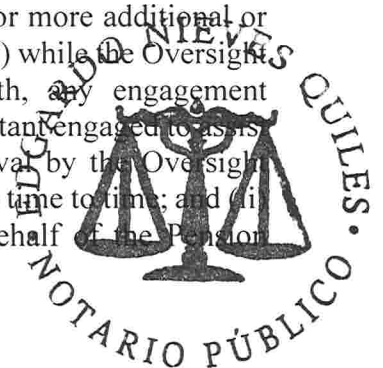
**7.5 Reports to Pension Benefits Council:** On a quarterly basis, the Pension Reserve Board will participate in a meeting with the Pension Benefits Council and the Act 106 Board to report on (w) the composition of the Pension Reserve Trust assets and investments, and the performance of said investments, (x) all investment management fees, commissions and similar compensation to investment managers and (y) other matters regarding the performance of the Pension Reserve Board pursuant to these Guidelines. Such quarterly reports shall be posted to a website to be maintained by the Pension Reserve Board and its social media platforms.

**7.6 Annual Report:** Following the end of each fiscal year, the Pension Reserve Board, with the assistance of its retained professionals as described in Section 8.1 and Section 8.3 below, shall promptly prepare and issue a public report, as of the end of the fiscal year, regarding (w) the composition of the Pension Reserve Trust assets and investments over the course of the reporting period and the performance of said investments by asset class and by each investment manager during the calendar year just ended, (x) a list of current investment managers and assets under management within the Pension Reserve Trust, (y) an itemized report of all receipts and distributions during the reporting period, all expenditures made to professionals and investment managers, and an itemized report of any payments made to Board members, including payments made on behalf of Board members to travel to and attend any meeting, and (z) such other information that the Pension Reserve Board determines is relevant to Participants, including a comparison of the Pension Reserve Board's expenses that were actually incurred during such fiscal year to the Pension Reserve Board's budgeted expenses. Each such annual report shall be posted on the Pension Reserve Board's website and its social media platforms.

## VIII. POWERS OF THE PENSION RESERVE BOARD

**8.1 Management of Pension Reserve Trust:** The Pension Reserve Board shall be responsible for the management of the Pension Reserve Trust, including, but not limited to, employing staff as needed for the Pension Reserve Trust, selecting a custodian to hold the assets of the Pension Reserve Trust, directing (in consultation with the investment advisor(s) selected pursuant to this Section 8.1) the investment of the assets of the Pension Reserve Trust, and managing the administration of the Pension Reserve Trust. The Pension Reserve Board shall also have responsibilities with respect to withdrawal requests pursuant to Article V of these Guidelines, including making recommendations to the Pension Benefits Council with respect to withdrawal requests pursuant to Sections 5.2(B) and (C). The Pension Reserve Board will also have the authority to take any and all steps it determines are necessary or desirable in its discretion to maximize the tax efficiency of the assets and investments of the Pension Reserve Trust.

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- A. Selection of Investment Advisor(s): The Pension Reserve Board shall retain one or more qualified investment advisors through a competitive and public process. The Pension Reserve Board shall set minimum qualification requirements, including the following requirements: (i) the investment advisor must be registered as an investment advisor under the Investment Advisers Act of 1940, (ii) the investment advisor and each of its key professionals must not have material conflicts of interest with the Pension Reserve Board, (iii) the investment advisor must agree to serve as a fiduciary, and (iv) the investment advisor must have a verifiable and successful operating history with at least three (3) pension fund clients each of which has a minimum of \$5 billion in assets under management. As soon as reasonably practicable following the Effective Date of the Plan, the Pension Reserve Board shall conduct a public RFP process in order to search for such investment advisor(s). The goal of the RFP shall be to solicit and evaluate proposals in a fair and objective manner, and the RFP process shall be documented and public. The Pension Reserve Board may retain a qualified consultant to manage the RFP process. As it determines to be necessary or prudent, the Pension Reserve Board may renew the RFP process from time to time to select one or more additional or replacement investment advisor(s). Provided, however that: (i) while the Oversight Board is in existence with respect to the Commonwealth, any engagement agreements with any such investment advisor(s) or any consultant engaged to assist with the RFP process shall be subject to review and approval by the Oversight Board pursuant to its Contract Review Policy as in effect from time to time; and (ii) all contracts executed by the Pension Reserve Board on behalf of the Pension



Reserve Board and/or the Pension Reserve Trust shall be made public and shall be registered with the Comptroller Office pursuant to applicable Puerto Rico laws.

- B. Roles & Responsibilities: The investment advisor(s) shall have the following roles and responsibilities, and the terms of such relationship shall be set forth in a written agreement in which the advisor shall acknowledge its fiduciary status:
- i. Advising the Pension Reserve Board on issues concerning the selection of investments for the Pension Reserve Trust;
  - ii. Assisting in the development and maintenance, and periodic review and modification as appropriate, of an investment policy statement designed to set forth the goals, objectives and risk tolerances of the Pension Reserve Trust's investment program (the "**Investment Policy Statement**"), as described below;
  - iii. Advising in the development of the Pension Reserve Trust's asset allocation strategy;
  - iv. Providing investment advice to the Pension Reserve Board with respect to the Pension Reserve Trust;
  - v. Assisting in the analysis, selection, monitoring and replacement of investments and investment managers;
  - vi. Assisting the Pension Reserve Board with the review of the performance and risk of the selected investments, on at least a semi-annual basis, in comparison to their stated objectives and their related performance and pricing as compared to their peers and benchmarks;
  - vii. Bringing information to the Pension Reserve Board, on an ad hoc basis as appropriate, that the investment advisor feels may be relevant to the Pension Reserve Board's assessment of a given investment, asset class or strategy.

The Pension Reserve Board, working with the investment advisor(s), shall select investment manager(s) to manage the investments of the Pension Reserve Trust. The Pension Reserve Board shall conduct a public RFP process in order to search for such investment manager(s). The goal of the RFP shall be to solicit and evaluate proposals in a fair and objective manner, and the RFP process shall be documented and public. The Pension Reserve Board may retain a qualified consultant to manage the RFP process. As it determines to be necessary or prudent, the Pension Reserve Board may renew the RFP process from time to time to select one or more additional or replacement investment manager(s); provided, however that: (i) while the Oversight Board is in existence with respect to the Commonwealth, any engagement agreements with any such investment manager(s) or any consultant engaged to assist with the RFP process shall be subject to review and approval by the Oversight Board pursuant to its Contract Review Policy as in effect from time to time; and (ii) all contracts executed by the Pension Benefits Board on behalf of the Pension Reserve Board and/or the Pension Reserve Trust shall be made public and shall be registered with the Comptroller Office pursuant to applicable Puerto Rico laws. Subject to the provisions of these Guidelines, the roles and responsibilities of the Pension Reserve Board and any third party shall be set forth in a written agreement and, as appropriate, the Investment Policy Statement.

- C. Development of Investment Policy Statement: The Pension Reserve Board, together with expert assistance from its investment advisor(s), shall develop the Investment Policy Statement. The Investment Policy Statement shall be designed to provide meaningful direction for the Pension Reserve Board, the investment advisor(s), and investment managers in the management of the Pension Reserve Trust. The Investment Policy Statement shall:

- i. Provide a mechanism to establish and review the Pension Reserve Trust's investment objectives and risk tolerances;





- ii. Establish the roles, responsibilities and reporting requirements of the Pension Reserve Board, investment advisor(s), investment managers, custodian bank, and any other Pension Reserve Trust service providers;
- iii. Establish a public RFP process in order to search for investment advisor(s), investment managers, custodian bank, and any other Pension Reserve Trust service providers with the goal of soliciting and evaluating proposals in a fair and objective manner in a documented and public process;
- iv. Identify appropriate investment asset classes, asset allocation targets and ranges that are designed to facilitate achievement of the Pension Reserve Trust's objectives;
- v. Identify asset class and investment manager guidelines, evaluation, selection and monitoring criteria and performance benchmarks;
- vi. Document a prudent monitoring and measurement process that includes criteria for replacing and retaining investment managers;
- vii. Identify investment constraints and limitations, including any prohibited types of investments and minimum ratings for assets.
- viii. Require any private equity manager with whom the Pension Reserve Board invests to comply with the reporting guidelines developed by the Institutional Limited Partners Association (the "ILPA") as such guidelines are amended from time to time by the ILPA and require any private equity manager to offer financial terms for any investment placed by the Pension Reserve Board that are no less favorable than the terms offered by that private equity manager to other investors in the same fund or investment.

D. Investment Objective: The Pension Reserve Board, investment advisor(s), and investment managers shall perform their duties for the exclusive benefit of and in the best economic interest of the Commonwealth and the Pension Reserve Trust Participants. The objective of the Pension Reserve Trust's investment program is to generate returns within an appropriately risk-constrained framework, net of reasonable investment fees and expenses, in order to serve the intended purposes of the Pension Reserve Trust under the Plan of Adjustment. This will be accomplished through a carefully planned and executed long-term investment program that allocates and manages the assets of the Pension Reserve Trust.



Prudent Management of the Pension Reserve Trust: This Section 8.1 is meant to serve as a general framework for the prudent management of the Pension Reserve Trust. Changing conditions, economic trends or other factors may necessitate modification of this framework. The Investment Policy Statement at all times shall reflect the current objectives and guidelines for the Pension Reserve Board's management of the Pension Reserve Trust, and the Investment Policy Statement may be modified by written approval of the Pension Reserve Board. The Pension Reserve Board shall promptly provide a copy of such modified Investment Policy Statement to the Pension Benefits Council and the Act 106 Board, and shall post that documentation at the Pension Reserve Board website.

**8.2 Requests for Documents and Information**: In order to prudently invest the assets held in the Pension Reserve Trust in view of the intended purposes of the Pension Reserve Trust under the Plan of Adjustment, the Pension Reserve Board shall have the right to request and receive, on an annual basis, such actuarial and pension benefit information regarding Eligible Retirees and Eligible Active Employees, or information related to projections of future Commonwealth surpluses, as it reasonably determines is necessary.

**8.3 Employment of Professionals**: In addition to the investment professionals retained pursuant to Section 8.1 above, the Pension Reserve Board shall engage in a public RFP process in order to retain necessary and desirable service providers whose contract amount is greater than \$250,000.00 (provided that retention of any outside counsel shall require an RFP process regardless of the projected contract amount). The Pension Reserve Board shall have the authority

to enter into contracts and incur fees and expenses in connection with hiring such service providers. All such fees and expenses shall be paid from the Pension Reserve Trust. Provided, however that: (i) while the Oversight Board is in existence with respect to the Commonwealth, any engagement agreements with any such service providers or any consultant engaged to assist with the RFP process shall be subject to review and approval by the Oversight Board pursuant to its Contract Review Policy as in effect from time to time; and (ii) all contracts executed by the Pension Benefits Board on behalf of the Pension Reserve Board and/or the Pension Reserve Trust shall be made public and shall be registered with the Comptroller Office pursuant to applicable Puerto Rico laws.

**8.4 Power to Sue and Jurisdiction of U.S. District Court:** The Pension Reserve Board has legal capacity and the power to bring any cause of action in the name of the Pension Reserve Board and/or the Pension Reserve Trust, as appropriate, against the Commonwealth and/or the Act 106 Board, or any other appropriate party, regarding any matters in connection with the performance of the Pension Reserve Board's duties pursuant to these Guidelines. The Pension Reserve Board has legal capacity and power to bring any cause of action in the name of the Pension Reserve Board and/or the Pension Reserve Trust, as appropriate, to resolve a dispute pursuant to Section 1.6 or 7.1 above. The U.S. District Court for the District of Puerto Rico shall have original and exclusive jurisdiction over any such causes of action of the Pension Reserve Trust, as well as any causes of action against the Pension Reserve Board or Pension Reserve Trust. In addition to any rights under applicable law, the Commonwealth, as grantor, shall have legal capacity and the right to bring any cause of action to resolve any dispute relating to the performance of the Pension Reserve Board, including and not limited to the administration and investment of the funds held in the Pension Reserve Trust. The U.S. District Court for the District of Puerto Rico shall have original and exclusive jurisdiction over any said causes of action, as well as any causes of action against the Pension Reserve Board.

**8.5 Independence:** For the avoidance of doubt, neither the Pension Reserve Board nor the Pension Reserve Trust shall be an instrumentality of the Commonwealth, nor are they responsible for the obligations of the Commonwealth under the Plan. The Pension Reserve Board from time to time may adopt such rules and regulations as may be necessary or desirable for its proper and efficient administration. All reasonable and proper expenses incurred in the administration of the Pension Reserve Board's responsibilities pursuant to an approved budget will be paid out of the Pension Reserve Trust. Further, for the avoidance of doubt, notwithstanding the foregoing, the Pension Reserve Board is not to be incorporated and is not to be deemed to have legal personality separate from the Pension Reserve Trust.

**8.6 Interim Role of the Oversight Board:** Upon the execution of the Pension Reserve Deed of Trust, the Oversight Board shall perform certain of the start-up functions of the Pension Benefits Council and the Pension Reserve Board for the purpose of performing initial tasks to establish and commence administration of the Pension Reserve Trust as set forth below, for a period concluding upon the earlier to occur of October 1, 2022 or the day the Pension Reserve Board commences its inaugural Board meeting.

- A. Upon the execution of the Pension Reserve Deed of Trust, the Oversight Board shall have the authority to establish two interest-bearing checking accounts with a federally-insured bank, one in the name of the Pension Benefits Council and one in the name of the Pension Reserve Board, to serve as administrative and operating accounts and to receive the initial funding under Section 1.7(B) above. Pending the inaugural meeting of the Pension Reserve Board pursuant to Section 6.1(B) above, the Oversight Board shall be authorized to pay all expenses of the Pension Benefits Council consistent with the Council's budget from the Council's administrative and operating account. The Oversight Board shall keep complete records of any such payment and undertake reasonable steps to confirm that such expenses are consistent with the Council's budget. For the avoidance of doubt, the Oversight Board shall not invest the funds in the administrative and operating accounts or otherwise manage them other than as described herein. In accordance with Section 6.1(B), the Oversight Board shall cease any bank authorization it has upon the convening of the inaugural Board meeting and deliver any records and documents in its possession or control in connection with the Pension Reserve Trust to the Pension Reserve Board and the Pension Benefits Council, as applicable. The Oversight Board shall also file appropriate documents with the appropriate agency for the incorporation of the Pension Benefits Council as a not-for-profit corporation.





- B. If, after expiration of the three-month period following the Effective Date, the Commencement Date and the inaugural Pension Reserve Board meeting have not occurred pursuant to Sections 6.1(A) and (B) above, but the Oversight Board has made its appointment of a trustee to the Pension Reserve Board, then pending the Commencement Date and inaugural meeting, the Oversight Board is authorized to take any reasonable actions to support the timely and effective operations of the Pension Reserve Board, which may include any of the following:
- i. commence and engage in an RFP process to select an investment advisor pursuant to Section 8.1 above, subject to Pension Reserve Board review and approval;
  - ii. commence and engage in an Expression of Interest (EOI) and RFP process to recommend a custodian bank, subject to Pension Reserve Board review and approval;
  - iii. commence and engage in an EOI and RFP process regarding a third party asset servicer, asset managers and other essential partners. Any formal retention decisions will be subject to formal ratification by the Pension Reserve Board;
  - iv. conduct reasonable steps to identify and recommend to the Pension Reserve Board suitable Executive Director candidates;
  - v. if applicable, interact with the United States Internal Revenue Service regarding the taxation of the Pension Reserve Trust; and
  - vi. undertake any other reasonable measures or initiatives that a prudent board of trustees would undertake to enable governance, operational and organizational readiness of the Pension Reserve Trust, the Pension Benefits Council, and the Pension Reserve Board by October 1, 2022, subject to review and ratification by the Pension Reserve Board or Pension Benefits Council in accordance with their respective roles as set forth in these Guidelines.

The actions of the Oversight Board described in this Section 8.6 are in furtherance of the implementation of the Plan of Adjustment and carrying out its responsibilities in accordance with PROMESA. Pursuant to PROMESA section 105, the Oversight Board, its members, and its employees shall not be liable for any obligation of or claim against the Oversight Board or its members or employees or the territorial government resulting from actions taken with respect to these Guidelines.



## IX. INDEMNIFICATION & INSURANCE

**9.1 Indemnification:** Except for acts determined by a final order of the U.S. District Court for the District of Puerto Rico or an appellate court to constitute criminal acts, willful misconduct, fraud, or a material violation of the Code of Conduct and Ethics Policy, and to the extent not covered by insurance as set forth in Section 9.2, the members of the Pension Benefits Council, the trustees of the Pension Reserve Board, and the Election Administrator shall be indemnified by the Pension Reserve Trust against all expenses (including costs and attorneys' fees) actually and necessarily incurred or payable by the member or the Election Administrator in connection with the defense of any action, suit or proceeding to which the member may be made a party by reason of the member being or having been so designated as a member of the Pension Benefits Council or the Pension Reserve Board, respectively, or by reason of any action or omission or alleged action or omission by the member in such capacity or to which the Election Administrator may be made a party.

**9.2 Insurance:** The Pension Benefits Council, the Pension Reserve Board shall each maintain appropriate amounts of fiduciary liability insurance (as to the Pension Reserve Board) or other professional liability/error and omissions insurance, crime and computer crime insurance covering any loss due to dishonest acts, and any other insurance that the Pension Benefits Council and Pension Reserve Board each reasonably determines is necessary. Such insurance shall be provided

by a nationally-recognized insurance carrier. Such insurance policies shall provide for both (i) non-indemnifiable coverage (commonly referred to as "Side A" coverage) pursuant to which the insurer will pay to, or on behalf of, the insured person the applicable amount with respect to any covered loss, except to the extent the Pension Reserve Trust has paid such amount to, or on behalf of, the insured person as indemnification or as an advance, and (ii) indemnification coverage (commonly referred to as "Side B" coverage) pursuant to which the insurer will pay to, or on behalf of, the Pension Reserve Trust the applicable amount with respect to any covered loss arising from claims first made against an insured person, to the extent that the Pension Reserve Trust has paid such amount to, or on behalf of, the insured person as indemnification or advancement. All reasonable insurance costs shall be paid from the Pension Reserve Trust.

**X. OTHER PROVISIONS**

**10.1 Amendment of Guidelines:** The Pension Reserve Board, the Pension Benefits Council, or the Commonwealth may recommend that these Guidelines and/or the Deed of Trust, as applicable, be amended to ensure that the Pension Reserve Trust satisfies its purpose and function pursuant to the Plan. In the event of such a recommendation, the Pension Reserve Board, the Pension Benefits Council, and the Commonwealth shall confer in good faith to reach agreement on any such amendment. If a consensus is reached, then the parties shall present such amendment to the U.S. District Court for the District of Puerto Rico for its approval, with notice and opportunity to be heard. If consensus is not reached by the parties, the recommending party may nonetheless seek such amendment in the District Court. The U.S. District Court for the District of Puerto Rico shall have original and exclusive jurisdiction to approve or reject any proposed amendments of these Guidelines, and these Guidelines may only be modified pursuant to a final, non-appealable order of that Court. For the absence of doubt, pursuant to Section 83.3 of the Plan, any amendments to these Guidelines or the Pension Reserve Deed of Trust shall not affect the Commonwealth's obligations to Participants under the Plan, unless the procedures for doing so under Section 83.3 of the Plan are complied with.

**10.2 Termination of Pension Reserve Trust:** The Pension Reserve Trust shall terminate on the earlier of (i) sixty (60) calendar days after the date all funds held in the Pension Reserve Trust are withdrawn in accordance with Article V above or (ii) such time when the retirement benefits owed to all Pension Reserve Trust Participants have been fully satisfied. Upon termination of the Pension Reserve Trust, all of its assets, property, and causes of action shall be transferred to the Commonwealth. Consistent with Section 5.4(D) above, any termination of the Pension Reserve Trust and transfer of assets and property to the Commonwealth shall take into account and provide for the Wind-Down Expenses.

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---(Signed): The **COMMONWEALTH OF PUERTO RICO**, represented by its Secretary of Treasury, Francisco Parés Alicea. -----

---(Signed): The **FINANCIAL OVERSIGHT MANAGEMENT BOARD FOR PUERTO RICO**, represented by its Executive Director, Natalie Ann Jaresko.-----

---(Signed, sealed, marked and flourished): **EDGARDO NIEVES QUILES** .-----

---The original and the certified copy the deed are exempt from the payment of internal revenue stamps as it is executed by and for the benefit of the Commonwealth of Puerto Rico, pursuant to Section 11.5 above. -----

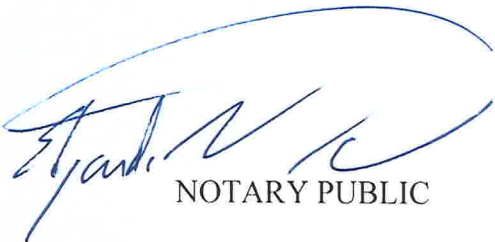
---The initials of the appearing parties are found on each page of the original of this Deed. -----

---All pages of the original of this Deed are flourished and sealed by the undersigned Notary Public.-----

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---I, the undersigned Notary Public, certify that the foregoing is a true and exact copy of Deed Number Two (2), the original of which consists of thirty-nine (39) pages, which forms part of my protocol of public instruments for the current year. -----

---IN WITNESS WHEREOF, and to deliver to The **COMMONWEALTH OF PUERTO RICO**, I issue the first (1<sup>st</sup>) certified copy of this Deed, consisting of forty (40) pages, which I sign, seal, mark and flourish in San Juan, Puerto Rico, on the same date of its execution.-----

  
NOTARY PUBLIC

