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Agreement No. _____

**STANDARD FORM
OFFSHORE WIND RENEWABLE ENERGY CERTIFICATE
PURCHASE AND SALE AGREEMENT**

BY AND BETWEEN

THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

AND

[SELLER]

Dated: _____

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This Offshore Wind Renewable Energy Certificate Purchase and Sale Agreement (“Agreement”) is entered into as of _____ (the “Effective Date”) by and between the New York State Energy Research and Development Authority (“NYSERDA”), a public benefit corporation, having a principal business address of 17 Columbia Circle, Albany, New York 12203, and _____ (“Seller”), a _____, having a principal business address of _____. NYSERDA and Seller are each referred to herein as a “Party” and are collectively referred to herein as the “Parties.”

WHEREAS, the New York State Public Service Commission (“PSC”) through its “Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement”¹ (“Phase 1 Order”) established, as part of its Clean Energy Standard,² an Offshore Wind Standard with a goal of having 2,400 megawatts (“MW”) of offshore wind facilities operational and delivering energy to New York State by 2030; and

WHEREAS, in 2019 the New York State Legislature enacted the Climate Leadership and Community Protection Act, which directed the achievement of 9 Gigawatts of offshore wind delivered into New York State by the year 2035;

WHEREAS, on April 23, 2020 the PSC issued an order (“2020 Offshore Wind Order”)³ that directed and authorized NYSERDA, as the central procurement administrator, to issue a solicitation in 2020 for the procurement of the renewable energy certificates representing the attributes associated with the generating capacity of offshore wind generating capacity (hereinafter defined in Article I as “ORECs”); and

WHEREAS, NYSERDA has conducted a competitive solicitation in the form of ORECRFP20-1 to procure ORECs; and

WHEREAS, Seller has participated in ORECRFP20-1 and has been selected by NYSERDA for an award with respect to the [PROJECT NAME] (hereinafter defined in Article I as the “Selected Project”); and

WHEREAS, Seller agrees to sell to NYSERDA, and NYSERDA agrees to purchase from Seller, the ORECs associated with the energy production of the Selected Project during the Contract Delivery Term, on the terms and subject to the conditions set forth herein;

NOW, THEREFORE, for and in consideration of the premises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency, and adequacy of which are hereby acknowledged, this Agreement has been entered into by the Parties to define, among other things, their rights and obligations concerning the ORECs associated with the generation of electric energy by the Selected Project, the delivery by Seller of ORECs to NYSERDA, and payments by NYSERDA to Seller during the term of this Agreement.

¹ See Case 18-E-0071, In the Matter of Offshore Wind Energy, issued and effective July 12, 2018.

² See Case 15-E-0302, et al., Large-Scale Renewable Program and Clean Energy Standard, Order Adopting a Clean Energy Standard issued and effective August 1, 2016.

³ See Case 18-E-0071, In the Matter of Offshore Wind Energy, Order Authorizing Offshore Wind Solicitation in 2020, issued and effective April 23, 2020 (“2020 Offshore Wind Order”).

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Article I

Definitions

The terms defined in the recitals, the preamble, this Article I or any other Articles of this Agreement, whenever used in this Agreement (including in any Exhibit hereto), shall have the respective meanings indicated in such provision for all purposes of this Agreement (each such meaning to be equally applicable to the singular and the plural forms of the respective terms so defined). All references herein to a Section, Article or Exhibit are to a Section, Article or Exhibit of or to this Agreement, unless otherwise indicated. The words “hereby”, “herein”, “hereof”, “hereunder” and words of similar import refer to this Agreement as a whole (including any Exhibit) and not merely to the specific section, paragraph or clause in which such word appears unless so specified. The words “include”, “includes”, and “including” shall be deemed, in every instance, to be followed by the phrase “without limitation.” Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. Except as otherwise expressly provided herein, all references to “dollars” and “\$” shall be deemed references to the lawful money of the United States of America.

Acceptable Guaranty: An unconditional, irrevocable, direct-pay guaranty (a) in the form of Exhibit G duly executed by an Acceptable Guarantor; and (b) as to which NYSERDA has received (i) such financial statements in respect of such Acceptable Guarantor as it has reasonably requested, (ii) customary legal opinions with respect to capacity, authority and enforceability of such guaranty and as to such other matters as reasonably requested by NYSERDA, and (iii) corporate documents, resolutions, copies of any necessary consents and approvals and customary certificates by and in respect of such Acceptable Guarantor as may be reasonably requested by NYSERDA.

Acceptable Guarantor: A corporation, business trust, partnership, limited liability company or other legal entity that has outstanding senior unguaranteed and unsecured long-term debt that is rated at least “BBB” by S&P or “Baa2” by Moody’s.

Actual Production: The amount of electric energy production in MWh generated by the Selected Project during any Contract Year, measured at the Injection Point.

Annual OREC Cap: An amount of ORECs equal to the product of 1.1 and the P10 Annual OREC Exceedance. The Annual OREC Cap under this Agreement shall be _____ ORECs unless and until the P10 Annual OREC Exceedance is adjusted by Seller in accordance with Section 2.01(e). Seller will retain ownership and all rights to ORECs that exceed the Annual OREC Cap.

Applicable Law: All applicable provisions of all constitutions, treaties, statutes, laws (including the common law), rules, regulations, ordinances, and codes and any order, writ, injunction, decree, judgment, award, decision or determination of any court of jurisdiction or any federal, state, municipal or other governmental department, commission, board, bureau, agency, authority or instrumentality, including the NYISO tariffs.

Applicable OREC Price: The methodology for determining the Monthly OREC Price as set out in Section 4.01 of this Agreement.

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Applicable Class Year: The Class Year in which the Selected Project has been placed for purposes of the NYISO interconnection process.

Applicable Zone: The NYISO load zone that includes the Delivery Point. The Applicable Zone for purposes of this Agreement shall be _____.

BOEM: The Bureau of Ocean Energy Management within the U.S. Department of the Interior.

Business Day: Means any day except a Saturday, Sunday or a New York State or NERC recognized holiday.

Commercial Operation: A state of operational readiness under which (i) generating capacity is available and physically producing electric energy, and (ii) all rights, abilities, permits and approvals to schedule and deliver energy to the Injection Point have been obtained.

Consulting State Agency: The New York State Department of State, the New York State Department of Environmental Conservation, the New York State Office of Parks, Recreation and Historic Preservation, the New York State Office of General Services, and NYSERDA, and any other state agency that NYSERDA directs Seller to include.

Contingent Award Notification Date: The date on which NYSERDA notified Seller that it had been selected for an award contingent on the negotiation of this Agreement. For purposes of this Agreement, the Contingent Award Notification Date was _____.

Contract Delivery Term: *[If the Selected Project is to be undertaken in phases as described in Section 2.1.8 of ORECRFP20-1, this definition and other applicable provisions of this Agreement will be conformed accordingly]*. A period that shall commence on the first day of the month after any portion of the Selected Project commences Commercial Operation and end at the earlier of (i) the date upon which the Contract Tenor has elapsed, or (ii) the Outer Limit Date. If less than twenty-five percent (25%) of the Selected Project has commenced Commercial Operation (as determined on an installed capacity basis as compared to the Offer Capacity), Seller may elect to delay the commencement of the Contract Delivery Term for a period not to exceed one year after any portion of the Select Project has achieved Commercial Operation. Seller must make such election in writing in conformance with the requirements of Article XIX of this Agreement.

Contract Security: All amounts provided to NYSERDA, in the form of cash, Letters of Credit, or an Acceptable Guaranty, as determined in Article XV of this Agreement.

Contract Tenor: The maximum duration of the Contract Delivery Term. The Contract Tenor under this Agreement shall be [20/25] years; provided that, once the Contract Delivery Term has begun, if a Force Majeure causes the cessation of production or delivery of at least fifty percent (50%) of the Operational Installed Capacity, the Contract Tenor for such portion of the Selected Project affected by such Force Majeure shall be extended on a day-for-day basis for the duration of such cessation of production or delivery.

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Contract Year: A 12-month period commencing with the beginning of the Contract Delivery Term and each anniversary thereof within the Contract Delivery Term. As used in this Agreement, the phrase “Contract Year” followed by a number shall refer to a discrete Contract Year within the Contract Delivery Term such that “Contract Year 1” refers to the first 12-month period commencing with the beginning of the Contract Delivery Term, “Contract Year 2” refers to the second such 12-month period, and so on.

Delivery Point: For Selected Projects that inject energy directly into the NYCA, the generator bus or location where (a) the administrator of the wholesale power market, or (b) the operator of the transmission/distribution utility, public authority or municipal electric company, measures, or otherwise determines, energy production from the Selected Project. For Selected Projects that inject energy outside of the NYCA, the generator bus or location where the NYISO measures energy delivery from the Selected Project into the NYCA.

Economic Benefits: Financial expenditures benefitting New York State, as specified in Exhibit I, that Seller can demonstrate will accrue after January 1, 2020.

Economic Benefits Report: A confidential report by Seller to NYSERDA prepared in accordance with Exhibit I of this Agreement.

Economic Benefits Shortfall: The amount by which the Verified Total Dollars of Economic Benefits is less than the product of 0.85 and the Expected Total Dollars.

Environmental Attributes: All environmental characteristics, claims, credits, benefits, emissions reductions, offsets, allowances, and allocations, however characterized, denominated, measured or entitled, attributable to the generation of Actual Production by the Selected Project, including but not limited to: (i) any direct emissions or any avoided emissions of pollutants to the air, soil or water including but not limited to sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), particulate matter and other pollutants; (ii) any direct or avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change to contribute to altering the Earth’s climate by trapping heat in the atmosphere; (iii) all set-aside allowances and/or allocations from emissions trading programs made unnecessary for compliance in such program as a result of performance under this Agreement, including but not limited to allocations available under 6 NYCRR §§ 204, 237 and 238; and (iv) all credits, certificates, registrations, recordations, or other memorializations of whatever type or sort, representing any of the above; provided, however, that Environmental Attributes shall not include: (a) any federal production tax credits; (b) any state or federal investment tax credits or other tax credits associated with the construction or ownership of the Selected Project; (c) any depreciation deductions under Applicable Laws (including any bonus or accelerated depreciation); or (d) any state, federal or private grants, financing, guarantees or other credit support relating to the construction or ownership, operation or maintenance of the Selected Project or the output thereof, in each case whether arising before or after the Effective Date.

Expected Total Dollars: The total amount, in nominal dollars, of Economic Benefits (as described in Exhibit I) expected to accrue to New York State as a result of the development, construction, modification, interconnection, and operation of the Selected Project from January

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1, 2020 through the end of the first three (3) Contract Years. The amount of Expected Total Dollars under this Agreement is \$_____.

Fixed OREC Price: A fixed, as-offered price in dollars per OREC as described in Section 4.02 of this Agreement.

Forward Certificate Transfer: An automated monthly transfer of ORECs to NYSERDA as described in Section 10.3 of the NYGATS Operating Rules.

General Terms of Use: The terms of use for the NYGATS, operated and administered by APX, Inc. (or its successor) for NYSERDA.

Independent Engineer: A licensed professional engineer with expertise in the development of offshore wind energy projects, reasonably selected by and retained by Seller in order to determine the Operational Installed Capacity of the Selected Project as provided in Section 2.01(c) of this Agreement.

Independent System Operator/Transmission Owner Agreement (“ISO/TO Agreement”): The agreement, which includes Appendices A-1 and A-2, that establishes the terms and conditions under which the transmission owners transferred to the ISO Operational Control (as defined in the ISO/TO Agreement) over designated transmission facilities.

Index OREC Price: An adjustable price in dollars per OREC that nets a fixed, as-offered strike price monthly against a reference price expressed in a market index as determined pursuant to Section 4.03 of this Agreement.

Injection Point: For Selected Projects that interconnect directly into the NYCA, the Injection Point shall be the Delivery Point. For Selected Projects that interconnect outside of the NYCA, the Injection Point shall be the generator bus or location where the administrator of the local control area measures energy delivery from the Selected Project into the local market.

Maximum Project Capacity: The product of the Offer Capacity and 1.05. The Maximum Project Capacity for the Selected Project is ____ MW.

Monthly OREC Price: A price in dollars per OREC for each month of the Contract Delivery Term. If the Applicable OREC Price is the Fixed OREC Price, the Monthly OREC Price shall be calculated pursuant to Section 4.02 of this Agreement. If the Applicable OREC Price is the Index OREC Price, the Monthly OREC Price shall be calculated pursuant to Section 4.03 of this Agreement.

New York Control Area (NYCA): The geographic bounds of the electricity system that is under the control of the NYISO, which includes transmission facilities listed in the ISO/TO Agreement Appendices A-1 and A-2, as may be amended from time to time.

New York Generation Attribute Tracking System (NYGATS): The tracking system, administered under the auspices of NYSERDA, that records electricity generation attribute information within New York State, and processes generation attribute information from energy

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imported and consumed within New York State, as a basis for creating generation attribute certificates, including ORECs. NYGATS will create exactly one OREC per MWh of generation attributable to the Selected Project and delivered to the Delivery Point in accordance with the applicable electricity delivery requirement set forth in Article III of this Agreement.

New York State Environmental Disclosure Rules: The program rules adopted by the PSC in Case 94-E-0952, Opinion No. 98-19, Opinion and Order Adopting Environmental Disclosure Requirements and Establishing a Tracking Mechanism, (issued December 15, 1998) Appendix pp. 2-3, as amended from time to time.

NYGATS Operating Rules: The operating rules, the General Terms of Use, and other guidelines published by NYGATS and as amended from time to time.

NYISO: The New York Independent System Operator, Inc. is the administrator of the wholesale power markets in New York and manages the physical electrical operations of the New York Control Area.

NYISO Capacity Market: Collectively, the wholesale markets for capacity administered by NYISO.

NYISO Energy Market: Collectively, the wholesale markets for electric energy administered by NYISO.

NYSERDA NYGATS Account: The NYGATS account established by NYSERDA into which Seller shall transfer ORECs as performance under this Agreement.

Offer Capacity: The electric generating capacity of the Selected Project. The Offer Capacity under this Agreement shall be ____ MW, unless and until reduced by Seller pursuant to Section 15.07(b) of this Agreement.

Offshore Wind Renewable Energy Certificate (OREC): The electronic record of generation data created by NYGATS and representing all of the attributes including the Environmental Attributes of one MWh of electricity generation from the Selected Project.

Operational Installed Capacity: The gross generating capacity, in MW, of the Selected Project that has achieved Commercial Operation and for which an Independent Engineer's report has been submitted to NYSERDA pursuant to Section 2.01(c) of this Agreement.

Outer Limit Date: A backstop date upon which the Contract Delivery Term ends, regardless of whether the Contract Tenor has elapsed. The Outer Limit Date is January 1, [2049/2054], subject to any extension applicable under Section 12.11.

Port Infrastructure Funding Program: One or more of the funding programs provided or supported by New York State or its instrumentalities as described in Appendix C.2 to ORECRFP20-1.

Prevailing Wage: Shall have the meaning set forth in Section 18.10 of this Agreement.

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Project Labor Agreement or PLA: As described in Section 18.11 of this Agreement, a collective bargaining agreement (including a pre-hire agreement) covering Seller, contractors in the construction industry working on the Selected Project, and a bona fide building and construction trade labor organization representing craft workers on the Selected Project.

Proposal: Documents submitted by Seller in response to ORECRFP20-1 with respect to the Selected Project, described as _____.

P10 Annual OREC Exceedance: An amount of electrical energy (in MWh), such that the estimated probability in any given year that generation from the Selected Project delivered to the Delivery Point would exceed that amount is 10 percent. As of the Effective Date, the P10 Annual OREC Exceedance for the Selected Project is _____ and may be updated as provided in Section 2.01(e) of this Agreement.

P50 Annual Production: An amount of electrical energy (in MWh), such that the estimated probability in any given year that generation from the Selected Project delivered to the Delivery Point would exceed that amount is 50 percent. The P50 Annual Production shall not be considered confidential or proprietary for any purpose under this Agreement.

Reference Capacity Price: An index of NYISO Capacity Market prices for the Applicable Zone calculated as set forth in Section 4.03 of this Agreement.

Reference Energy Price: An index of NYISO Energy Market prices for Applicable Zone calculated as set forth in Section 4.03 of this Agreement.

Selected Project: The offshore wind generation facility selected for award by NYSERDA in ORECRFP20-1 and as described in Exhibit H to this Agreement.

Summer Capability Period: The period commencing May 1 through October 31 of each year.

Uncompleted Offer Capacity: The amount by which the product of 0.95 and the Offer Capacity exceeds the Operational Installed Capacity.

Verified Total Dollars: The total dollar amount of Economic Benefits as calculated pursuant to Exhibit I and verified to have accrued to New York as a result of the development, construction, modification, interconnection, and operation of the Selected Project from January 1, 2020 through the end of the first three (3) Contract Years.

Winter Capability Period: The period commencing November 1 of each year through April 30 of the following year.

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Article II

Purchase and Sale of ORECs

Section 2.01. Purchase and Sale Obligations.

- (a) On the terms and subject to the conditions of this Agreement, Seller agrees to sell, assign, convey, deliver and transfer to NYSERDA, and NYSERDA agrees to purchase from Seller, all right, title and interest in the ORECs produced by the Selected Project during each month of the Contract Delivery Term.
- (b) For the avoidance of doubt, the only products Seller is selling and NYSERDA is buying under this Agreement are ORECs and all rights, title, and interest associated with those ORECs. Seller is not selling to NYSERDA and NYSERDA is not purchasing any electric energy, capacity, or ancillary services associated with the Selected Project.
- (c) As a condition precedent to NYSERDA's purchase obligation in Section 2.01(a), Seller shall deliver to NYSERDA the report of an Independent Engineer demonstrating that the Operational Installed Capacity of the Selected Project is no greater than the Maximum Project Capacity.
 - (i) If Seller elects to build the Selected Project in phases, Seller may deliver an Independent Engineer's report for each phase; provided that NYSERDA shall purchase ORECs only from those portions of the Selected Project for which the Operational Installed Capacity has been confirmed by an Independent Engineer's report.
 - (ii) If Seller elects to install additional offshore wind facilities within the same leased area as the Selected Project, Seller shall deliver to NYSERDA, in writing, a plan for verifying that the generation and associated ORECs from the Selected Project will be accounted for separately from any generation and ORECs produced by such additional facilities.
- (d) Notwithstanding Subsection 2.01(a), in no Contract Year shall NYSERDA be obligated under this Agreement to purchase from Seller, nor Seller obligated under this Agreement to sell to NYSERDA, more ORECs than the Annual OREC Cap. Seller shall be free to sell, assign, transfer or otherwise subject to any encumbrance any ORECs produced by the Selected Project in excess of the Annual OREC Cap.
- (e) With NYSERDA's written consent, which shall not be unreasonably withheld, conditioned, or delayed, Seller may, at any time prior to Commercial Operation of the Selected Project, adjust the P10 Annual OREC Exceedance (and, thereby, the Annual OREC Cap) to reflect changes in the technical or meteorological assumptions upon which the prior estimate was based or changes in the capacity of the Selected Project up to the Maximum Project Capacity.

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Section 2.02. NYSERDA's Rights, Title and Interest in ORECs. The right, title, and interest to the ORECs NYSERDA is acquiring under this Agreement shall include perpetual and exclusive rights to such ORECs and the underlying Environmental Attributes, including but not limited to the exclusive rights to claim or represent, consistent with New York State Environmental Disclosure Rules: (i) that the energy associated with ORECs was generated by the Selected Project; and (ii) that New York State and/or the Offshore Wind Standard is responsible for the environmental benefits, including reductions in emissions and/or other pollution or any other environmental benefit resulting from the generation of the energy associated with the ORECs.

Section 2.03. Transfer. Seller shall transfer ORECs up to the Annual OREC Cap to the NYSERDA NYGATS Account on a monthly basis via a Forward Certificate Transfer. At the time of transfer by Seller to NYSERDA, the ORECs shall be free and clear of all liens, judgments, encumbrances and restrictions.

Section 2.04. Other Attributes. In the event that, because of the Environmental Attributes of the Actual Production, Seller becomes eligible, at no incremental cost to Seller other than de minimis administrative cost, for credits, allowances or other benefits under any emission-trading, emission-recordation, renewable energy, or other greenhouse gas emissions reduction regime other than the Clean Energy Standard and the Offshore Wind Standard ("Credits"), NYSERDA may request that Seller take all commercially reasonable actions necessary to apply for and secure such title to such Credits, to the maximum extent to which the Selected Project is entitled. Seller shall provide NYSERDA with evidence of taking such actions. NYSERDA and Seller shall reasonably cooperate to cause title to such Credits to be conveyed to NYSERDA after such title is secured by Seller.

Section 2.05. Assignment of ORECs. NYSERDA shall be free to sell, assign, transfer or otherwise subject to any encumbrance, any of the ORECs NYSERDA acquires under this Agreement, at any time and from time to time to any entity and on such terms and conditions as NYSERDA may desire. Any financial or other consideration received by NYSERDA from any such action shall inure solely to NYSERDA's benefit, to be applied as determined by NYSERDA as the central procurement administrator of the Offshore Wind Standard program or a successor and shall not affect Seller's rights or obligations under the terms of this Agreement.

Article III

Electricity Delivery Requirements

Section 3.01. Selected Project Interconnecting in the New York Control Area. The Actual Production associated with the ORECs for the Selected Project must either be (a) delivered into a market administered by the NYISO for end-use in New York State, (b) delivered through a wholesale meter under the control of a utility, public authority or municipal electric company such that it can be measured, and such that consumption within New York State can be tracked and verified by such entity or by the NYISO, or (c) delivered through a dedicated generation meter at the Delivery Point that shall be compliant with the requirements and standards stated in

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Section 5.3 of the NYGATS Operating Rules, as such rules may be amended or changed from time to time.

Section 3.02. External Selected Project. The Actual Production associated with the ORECs for a Selected Project interconnecting in a control area adjacent to the NYCA shall be scheduled, delivered to, and settled in the NYISO energy market in each hour via the NYISO or on a bilateral basis to a New York State load-serving entity or end user. Seller shall provide the North American Electric Reliability Corporation (NERC) tag information from the OATI (Open Access Technology International) System, including tag fields Sending and Receiving Control Areas (CA) and Purchasing/Selling Entity (PSE) Name and Number, identifying within the notes section of the tag the Selected Project and the Selected Project's NYGATS ID number. Compliance with this delivery requirement shall be verified by NYGATS, which shall require an attestation from the importer that the information contained in the NERC tag is accurate and identifies the electricity generated by the Selected Project as the electricity associated with the import. Delivery of electric energy during the Contract Delivery Term that complies with this electricity delivery requirement will be sufficient to support the creation of ORECs by NYGATS up to the Annual OREC Cap and in accordance with the transfer requirements of Section 2.03 of this Agreement. The number of ORECs created will be the lesser of the hourly energy schedule of the import, or the hourly meter reading of the Actual Production of the Selected Project measured at the Injection Point.

Section 3.03. Bilateral Sales. Nothing in this Agreement shall be read to prohibit bilateral sales by Seller for electric energy, capacity, or ancillary services produced by the Selected Project. Electric energy from the Selected Project sold on a bilateral basis will produce ORECs and NYSERDA will purchase such ORECs in accordance with Article II of this Agreement, provided that the energy is delivered into the NYCA in accordance with this Article.

Article IV

Pricing and Payment

Section 4.01. Determination of Applicable OREC Price. The Applicable OREC Price shall be the [Index/Fixed] OREC Price, as selected by NYSERDA pursuant to ORECRFP20-1 and as set forth in Section [4.02/4.03] of this Agreement.

[Section 4.02. Fixed OREC Price.

- (a) The Fixed OREC Price for each month in the respective Contract Years shall be _____, subject to any applicable reduction under Section 4.02(b).
- (b) In the event that a New Carbon Price Mechanism applies to electric generation in New York State, NYSERDA shall reduce the Fixed OREC Price prospectively ("Fixed OREC Carbon Price Adjustment").
 - (i) For purposes of this Agreement a "New Carbon Price Mechanism" is a New York State, NYISO, or federal statute, regulation, rule, order, or policy enacted or promulgated after the submission of the Bid Proposal that applies to electric

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generation consumed in New York State and that imposes a discernible economic cost on electric generators that is based upon and is quantified in direct proportion to their emissions of carbon dioxide and/or other GHGs. The term “New Carbon Price Mechanism” may include, but is not limited to (A) the imposition of any fee, adder, or tax applied to emissions of GHGs, and (B) a policy that caps emissions of GHGs and facilitates the exchange of emissions allowances, the price of which may be discerned from publicly-available data (“Cap and Trade Program”). For the avoidance of doubt, the Regional Greenhouse Gas Initiative (“RGGI”) predates the Bid Proposal and, therefore, neither New York’s continued participation in RGGI, nor any programmatic changes to RGGI that occur after the submission of the Bid Proposal shall be considered a New Carbon Price Mechanism.

- (ii) The Fixed OREC Carbon Price Adjustment shall be applied on the first day of the first month after the date on which the New Carbon Price Mechanism takes effect and shall last until the cessation of the New Carbon Price Mechanism or the end of the Contract Delivery Term, whichever comes first.
- (iii) The Fixed OREC Carbon Price Adjustment shall be calculated by NYSERDA no less than annually, based on a 12-month period that NYSERDA may select in its reasonable discretion; provided, however that if NYISO publishes data that readily facilitate monthly calculation, NYSERDA shall calculate the Fixed OREC Carbon Price Adjustment each month and apply it to the Monthly OREC Price.
- (iv) The value of the Fixed OREC Carbon Price Adjustment shall be determined as follows:
 - (A) If NYISO calculates the carbon impact on LBMP (“LBMP_c”), the Fixed OREC Carbon Price Adjustment for each month shall be the generation-weighted LBMP_c in the Applicable Zone or, if the Carbon Price applies to external resources, at the Proxy Generator Bus as defined in Section 2.16 of the NYISO Market Administration and Control Area Service Tariff; or
 - (B) If NYISO does not calculate the carbon impact on LBMP, the Parties shall amend this Agreement in a manner that provides for calculating the Fixed OREC Carbon Price Adjustment using available data and in a manner that reasonably fulfills the directive in the 2020 Offshore Wind Order,⁴ as applied to the offshore wind context, that the incremental revenue associated with the New Carbon Price Mechanism be deducted from the Fixed OREC price. The value of RGGI allowances shall not be included in the calculation of the Fixed OREC Carbon Price Adjustment and shall not be deducted from the Fixed OREC price.

⁴ 2020 Offshore Wind Order at 23.

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- (c) NYSERDA shall deduct the Fixed OREC Carbon Price Adjustment from the Fixed OREC Price in order to determine the Monthly OREC Price. However, for any month in which the Fixed OREC Carbon Price Adjustment exceeds the Fixed OREC Price, the Monthly OREC Price shall be zero.]

[Section 4.03. Index OREC Price.

- (a) For each month, the Index OREC Price shall equal the Index OREC Strike Price minus the Reference Energy Price minus the Reference Capacity Price; provided that in no case shall the Index OREC price exceed the Index OREC Strike Price.
- (i) The Index OREC Strike Price, for each month in the respective Contract Years shall be _____.
- (ii) Using data published by NYISO for its day-ahead energy market, NYSERDA shall calculate the Reference Energy Price for each month by:
- (A) identifying the location-based marginal price (“LBMP”) for each hour of the month in the Applicable Zone; and
- (B) taking the simple (not load-weighted) average of each such hourly LBMP to determine the Reference Energy Price.
- (iii) The Reference Capacity Price for each month shall be calculated by NYSERDA using data published by NYISO for its monthly spot market unforced capacity (“UCAP”) prices. NYSERDA shall:
- (A) identify the UCAP price (in dollars per kW-month) for such month in the Applicable Zone (“Reference UCAP Price”);
- (B) taking the product of (1) the Reference UCAP Price (\$/kW-month), (2) the UCAP Production Factor submitted by Seller in its Proposal for the Winter Capability Period (___%) or Summer Capability Period (___%), as applicable, (3) the Operational Installed Capacity (MW), and (4) a conversion factor of 1,000 kW/MW;
- (C) dividing the total amount of dollars calculated in (ii) by the total amount of ORECs produced from the Selected Project for that month (including any ORECs produced in excess of the Annual OREC Cap) to determine the Reference Capacity Price; and
- (D) In any month in which NYISO subjects the Applicable Zone to buyer-side mitigation in a manner that has the effect of excluding one or more offshore wind generators from participating at their full capacity in the NYISO Capacity Market for the Applicable Zone, the Reference

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Capacity Price shall be multiplied by a Mitigation Factor. The Mitigation Factor shall be calculated as the percentage of UCAP offered in the Applicable Zone and Applicable Class Year by Qualified Renewable Exemption Applicants, as defined in the NYISO Services Tariff Att. H, that has been determined to be exempt from the Offer Floor requirement imposed by the NYISO Services Tariff Att. H, Section 23.4.5.

- (b) The following formulae depict the calculation of the Monthly OREC Price based on the Index OREC Price in accordance with Section 4.03(a).

$$\text{Monthly OREC Price} = \text{OSP}^{\text{Index}} - \text{REP} - \text{RCP} \times \text{MF}$$

where:

$\text{OSP}^{\text{Index}}$ = Index OREC Strike Price (\$/MWh)
 REP = Reference Energy Price (\$/MWh)
 RCP = Reference Capacity Price (\$/MWh)
 MF = Mitigation Factor (%) (if applicable)

The calculation of each month's Reference Capacity Price will be based on a Reference UCAP Price. The Reference UCAP Price is converted to its \$/MWh equivalent, the Reference Capacity Price, through the following equation.

$$\text{RCP} = \frac{\text{RUP} \times \text{UPF} \times \text{IC} \times 1,000}{\text{OQ}}$$

where:

RUP = Reference UCAP Price (\$/kW-month)
 UPF = UCAP Production Factor (decimal fraction), ___% for both the Summer Capability Period and Winter Capability Period.
 IC = Installed capacity (ICAP) of the generator (MW)
 OQ = Metered delivered energy (MWh)
1,000 = kW to MW conversion factor]

Section 4.04. Invoices.

- (a) Within fifteen (15) days after the conclusion of each month, NYSERDA shall inform Seller of the Monthly OREC Price for that month.
- (b) Seller shall submit monthly invoices for the ORECs transferred by Seller into the NYSERDA NYGATS Account and associated with the Actual Production in the prior month during the Contract Delivery Term. Invoices for the prior month shall not be submitted before the fifteenth (15) day of the following month; invoices submitted before

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the fifteenth (15) day of the following month shall not be considered proper invoices for purposes of NYSERDA's Prompt Payment Policy. Invoices shall be submitted electronically to NYSERDA's online invoice system at: <https://services.nyserderda.ny.gov/Invoices/> or, if this Selected Project is managed through NYSERDA's Salesforce application, via NYSERDA's Salesforce Portal with Seller's log-in credentials. Invoices must reflect the quantity of ORECs transferred to the NYSERDA NYGATS Account for the prior month, and must be accompanied by such information and data requested by NYSERDA and sufficient for NYSERDA to verify compliance with the electricity delivery requirements in Article III and other requirements in this Agreement. NYSERDA shall have no obligation to pay any invoice submitted more than six (6) months after NYSERDA notifies Seller of the Monthly OREC Price for the ORECs transferred in the month for which payment is requested. Invoices submitted by Seller shall be deemed to have been submitted on its initial date of receipt by NYSERDA even if Seller subsequently adjusts such initial invoice (including pursuant to Section 5.01, or to comply with this Section 4.04(b)).

Section 4.05. Payment. The amount payable to Seller with respect to each monthly invoice shall be the product of: (a) the number of ORECs associated with the Actual Production during the prior month and transferred to the NYSERDA NYGATS Account, and (b) the Monthly OREC Price for the prior month, subject to the Annual OREC Cap during each Contract Year. If, for any month, the amount payable to Seller is a negative amount because the Monthly OREC Price for that month was negative, NYSERDA shall make no payment to Seller for that month and instead shall record a debit in such amount ("Monthly Debit"). Any Monthly Debit shall be deducted from each subsequent month's payment by NYSERDA until the Monthly Debit is fully recovered. Any Monthly Debit that goes unrecovered for twelve months shall be settled by Seller in cash within thirty (30) days after the conclusion of such twelve-month period, except that all Monthly Debts outstanding at the conclusion of the Contract Delivery Term shall be settled by Seller in cash within thirty (30) days after the conclusion of the Contract Delivery Term.

Section 4.06. Prompt Payment Policy. Subject to Section 4.04, NYSERDA shall make payments to Seller in accordance with and subject to its Prompt Payment Policy Statement, attached hereto as Exhibit C. Such payments shall be made by wire transfer to an account designated by Seller. NYSERDA shall have no obligation to pay any invoice not accompanied by all information requested by NYSERDA in accordance with Section 6.01.

Section 4.07. Changes in Law.

- (a) In the event that a change in Applicable Law after the Effective Date changes, or on the date such change takes effect ("Change in Law Date") will change, the price structure or methodology, settlement, zonal structure, or terminology used in either the NYISO Energy Market or NYISO Capacity Market such that the calculation of Reference Energy Price or Reference Capacity Price becomes impossible or no longer reasonably reflects the objective of providing a market-based index of energy and/or capacity prices in the Applicable Zone, in each case as they existed on the Effective Date, the Parties shall negotiate in good faith to amend this Agreement, prospective from the Change in Law Date, to make such conforming changes as are necessary to achieve that objective.

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- (b) In the event that a change in Applicable Law after the Effective Date eliminates the NYISO Capacity Market entirely and without replacement, the Parties agree the Reference Capacity Price shall be zero. In the event that a change in Applicable Law after the Effective Date replaces the NYISO Capacity Market with a new resource adequacy construct, the Parties agree to negotiate in good faith to amend this Agreement, prospective from the Change in Law Date, to make such conforming changes as are necessary to replace the current Reference Capacity Price formula with a formula that reasonably comprises an index of prices available to generators in the Applicable Zone under the new resource adequacy construct.

Article V

Adjustments

Section 5.01. True-Up Adjustments. NYSERDA may (and, at the request of Seller, shall) review past invoices, including, but not limited to, the calculation of the Reference Energy Price and Reference Capacity Price, to determine if a true-up adjustment is necessary. If necessary, NYSERDA shall adjust, including by means of set-off, payments to subsequent invoices consistent with adjustments by NYGATS based on NYISO or other local control area billing settlement true-up procedures, based on actual metered production data measured at the Injection Point or Delivery Point, actual and verified data reflecting compliance with the electricity delivery requirements set forth in Article III, and/or based on the number of ORECs transferred.

Section 5.02. Time Period for Disputes and Adjustment of Invoices. A Party may seek a correction of any invoice, or any adjustment to an invoice, rendered under this Agreement within twelve (12) months of the date the invoice or adjustment to an invoice was rendered. Unless a party has submitted a written request for review of an invoice or an adjustment to an invoice within twelve (12) months of the date of the invoice or adjustment to the invoice, the invoice or adjustment shall be considered final and not subject to further adjustment.

Article VI

Records and Reports

Section 6.01. Monthly Reports. Seller shall, at NYSERDA's request, provide NYSERDA access to generation and delivery data, including detailed monthly market accounting settlement or other pertinent data from the administrator(s) of the energy market into which energy from the Selected Project was delivered, from the entity or party in control of any meter through which the energy from the Selected Project was delivered, and from the administrator of any attribute accounting system operating in such control area.

Section 6.02. Progress Reports. Beginning on the first such date following the Effective Date, and continuing through the commencement of the Contract Delivery Term, Seller shall provide quarterly written progress reports to NYSERDA, on March 1, June 1, September 1, and December 1. Progress reports shall be made based on facts known to Seller on the date of

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submittal to NYSERDA, and NYSERDA acknowledges that the facts underlying the subject matter of such reports are constantly changing. Such reports shall be substantially in the form of Exhibit K to this Agreement, and shall describe at a minimum (a) Seller's progress in obtaining all required environmental or other permits and/or local approvals; (b) the status of development and/or construction planning or activities with regard to the Selected Project; (c) the status of the interconnection process between the Selected Project and the administrator of the control area; (d) purchases, delivery, and/or installation of any major equipment associated with the Selected Project; (e) activities undertaken pursuant to Seller's community outreach plan, including timely notice of upcoming meetings and known outreach events and activities for the next quarter that representatives of NYSERDA may attend; (f) the status of Seller's activities associated with the New York State Supplier Opportunity (See ORECRFP20-1 at Section 2.2.10); (g) updates to Seller's Fisheries Mitigation Plan and/or Environmental Mitigation Plan; (h) updates on Seller's supported monitoring of key commercial fish Stocks and wildlife of conservation concern; and (i) an estimated date for Commercial Operation. Such reports shall also include copies of any permits or approvals granted and/or copies of any correspondence of any type denying or refusing any permit or approval. Seller shall notify NYSERDA within twenty (20) days of discovering any event that could reasonably cause a material delay in any of the activities listed above. Commencing with the first progress report that indicates that construction activities falling within the scope of Section 18.10 have commenced and with each subsequent progress report submitted on June 1 and December 1 thereafter, Seller shall include a written attestation prepared by a New York State independent certified public accountant or other qualified party, in a form to be agreed upon, confirming that the Prevailing Wage requirement of Section 18.10 is being met.

Section 6.03. Additional Documents. Within thirty (30) days of the Effective Date, Seller shall provide to NYSERDA:

- (a) a certificate, dated as of the most recent practicable date prior to the Effective Date, issued by the Delaware Secretary of State confirming the corporate good standing of Seller;
- (b) a certificate of an appropriate officer or authorized representative of Seller, dated as of the most recent practicable date prior to the Effective Date, in form and substance reasonably satisfactory to NYSERDA and certifying: (i) the names and signatures of the officers or authorized representatives of Seller authorized to sign any documents to be delivered hereunder, and (ii) the accuracy and completeness of resolutions of Seller, authorizing and approving all matters in connection with the transactions contemplated thereby; and
- (c) a rendering of the site layout plan required by Section 6.4.4 of ORECRFP20-1 in shapefile format for geographic information system software.

Seller shall promptly provide NYSERDA with updated and corrected versions of the above-referenced materials upon any change in the information provided therein.

Section 6.04. Maintenance of Records. Except as excused by NYSERDA in writing, Seller shall keep, maintain, and preserve throughout the term of this Agreement and for a period

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of seven (7) years following the expiration of this Agreement, full and detailed books, accounts, and records pertaining to Seller's performance under the Agreement, including without limitation, all bills, invoices, payrolls, subcontracting efforts and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by Seller in the course of such performance. The foregoing records may be kept, maintained, or preserved on any information storage device, or one or more electronic networks or databases, provided that such records can be converted into clearly legible form within a reasonable time. Seller may destroy or otherwise dispose of a record falling within the scope of this Section seven (7) years following the creation thereof with the written consent of NYSERDA, such consent not to be unreasonably withheld.

Article VII

Audits

Section 7.01. Audits. NYSERDA shall have the right from time to time and at all reasonable times during the term of the Agreement and a period of seven (7) years thereafter to inspect and audit any and all books, accounts and records pertaining to Seller's performance under this Agreement, at the office or offices of Seller where they are then being kept, maintained and preserved in accordance with Section 6.04. If such books, accounts and records are not kept at an office within the State of New York, within a reasonable time of a request by NYSERDA, Seller shall make such books, accounts and records available to NYSERDA at NYSERDA's offices or at an agreed upon location within the State of New York. Except to the extent any invoice or adjustment to an invoice is final under Section 5.02, any invoice rendered under this Agreement shall be subject to retroactive adjustment (reduction or increase) regarding amounts included therein that are found by NYSERDA on the basis of any audit of Seller by an agency of the United States, the State of New York or NYSERDA not to constitute a properly invoiced amount.

Article VIII

Assignment and Change of Control

Section 8.01. General Restrictions. Except as specifically permitted by this Article VIII, the assignment, transfer, conveyance, or other disposal of this Agreement or any of Seller's rights, obligations, interests or responsibilities hereunder, in whole or in part, without the prior express written consent of NYSERDA is prohibited and shall be void and of no effect as to NYSERDA. Such consent shall not be unreasonably withheld, conditioned, or delayed. Seller agrees to reimburse NYSERDA for NYSERDA's reasonable costs and expenses incurred by its use of outside attorneys, consultants, accountants and advisors in connection with this Agreement in response to Seller's requests made pursuant to this Section 8.01, without regard to whether such consent is provided. NYSERDA shall provide an invoice to Seller for such charges, with appropriate documentation, and Seller shall pay such invoice within thirty (30) days. When assignable, this Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the successors and assignees of the Parties; provided, however, that no assignment, pledge or other transfer of this Agreement by Seller shall operate to release Seller from any of its obligations under this Agreement (and shall not impair any Contract Security

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provided by Seller hereunder) unless such assignee, pledgee or transferee (a) agrees in writing to assume all of Seller's obligations under this Agreement, and (b) provides Contract Security to replace that previously provided by Seller, in which case, at Seller's request, NYSERDA (or its successors or assigns) will execute a release of Seller from its obligations thereunder.

Section 8.02. Permitted Assignments by Seller. NYSERDA's consent shall not be required for Seller to either (a) pledge or assign the Selected Project, this Agreement, or the accounts, revenues, or proceeds from this Agreement in connection with financing arrangements, or (b) assign the Selected Project and this Agreement to an affiliate if the then-current Contract Security remains in place. Upon Seller's reasonable request, NYSERDA shall execute a consent to assignment associated with a financing in a commercially reasonable form acceptable to NYSERDA and Seller. For purposes of this Section 8.02, the term "affiliate" shall include any company, corporation, or other entity that controls, is controlled by, or is under common control with Seller, but only for so long as such control, directly or indirectly, meets the following definition. For purposes of this definition, "control" shall mean ownership or control, directly or indirectly, of at least fifty percent (50%) of the shares having voting rights, or other equivalent rights of the subject entity entitled to vote.

Section 8.03. Assignment with Change of Control. Seller may, upon written notice, assign its rights and obligations hereunder, or transfer such rights and obligations by operation of law, to any entity (a) with which or into which such Seller merges or consolidates; (b) which acquires greater than fifty percent (50%) of Seller's equity interests or actual control of Seller; or (c) to which Seller transfers all or substantially all of its assets; in each case provided that such other entity agrees to be bound by the terms hereof.

Article IX

Seller's Warranties and Guarantees

Section 9.01. Seller Warranties and Guarantees. As a material inducement to NYSERDA to enter into this Agreement, Seller makes the following warranties and guarantees, as of the Effective Date, all of which shall survive the execution and delivery of this Agreement:

- (a) that Seller (i) is a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization; (ii) has or will have all requisite corporate power, and has or will have all material governmental permits necessary to own its assets or lease and operate its properties and carry on its business as now being or as proposed to be conducted, to construct, finance, own, maintain and operate the Selected Project, to execute and deliver this Agreement, and to consummate the transactions contemplated herein; and (iii) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary;
- (b) that the execution, delivery and performance by Seller, the entry into this Agreement by Seller, and the consummation of the transactions contemplated by this Agreement will not: (i) violate any Applicable Law or any provision of the limited liability company agreement or other governing documents of Seller; (ii) violate, conflict with, result in a

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breach of or constitute (alone or with notice or lapse of time or both) a default or an event of default under any indenture, agreement (including the limited liability company agreement of Seller), mortgage, deed of trust, note, lease, contract or other instrument to which Seller is a party or by which it or any of its property is bound; or (iii) result in the creation or imposition of any lien upon any property or assets of Seller;

- (c) that Seller has, or reasonably expects to have prior to the time needed, all real property rights to construct, interconnect, and operate the Selected Project;
- (d) that the ORECs transferred to NYSERDA under this Agreement, will be free and clear of any liens, encumbrances and/or defects of title as of the date of transfer;
- (e) that the attributes included in the ORECs transferred to NYSERDA under this Agreement shall not have otherwise been, nor will be sold, retired, claimed or represented as part of electricity output or sales, or used to satisfy obligations in any other jurisdiction;
- (f) that this Agreement will be duly executed and delivered by Seller and will constitute the legal, valid and binding obligation of Seller enforceable against Seller in accordance with the terms thereof;
- (g) as of the Effective Date, to the best of Seller's knowledge after due inquiry, that there are no existing undisclosed or threatened material legal actions, claims, or encumbrances, or liabilities that may adversely affect Seller's performance of this Agreement or NYSERDA's rights hereunder;
- (h) as of the Effective Date, that Seller has no knowledge that any information or document or statement furnished by Seller in connection with this Agreement or the documents submitted to NYSERDA under ORECRFP20-1 contain any untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading; and
- (i) Seller certifies that all information provided to NYSERDA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate.

Section 9.02. Continuing Nature of Representations, Warranties and Guarantees. The representations and warranties set forth in this Article are made as of the Effective Date and deemed made continually throughout the Contract Delivery Term, except to the extent that such representation and warranty states that it is permitted or required to be made only as of a specific date. If at any time during the Contract Delivery Term, Seller has knowledge of any event or information that causes any of the representations and warranties of an ongoing nature in this Article IX to be untrue or misleading, Seller shall provide NYSERDA with prompt written notice of the event or information, the representations and warranties affected, and the corrective action Seller shall take. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

Section 9.03. Limitation on Representations, Warranties and Guarantees. Except as expressly set forth herein, there is no warranty of merchantability or fitness for a particular

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purpose with respect to the ORECs transferred hereunder, and any and all implied warranties are disclaimed.

Article X

NYSERDA's Representations, Warranties and Guarantees

Section 10.01. NYSERDA Representations, Warranties and Guaranties. As a material inducement to Seller to enter into this Agreement, NYSERDA makes the following warranties and guarantees, as of the Effective Date, all of which shall survive the execution and delivery of this Agreement:

- (a) that NYSERDA is an instrumentality of the State of New York and a public authority and public benefit corporation, created under the New York State Public Authorities Law, validly existing and in good standing under the laws of the State of New York;
- (b) that NYSERDA has all necessary power and authority to execute and deliver this Agreement and all other agreements contemplated herein and hereby and to consummate the transactions contemplated hereby and thereby. The execution and delivery by NYSERDA of this Agreement and all other agreements contemplated herein and hereby and the consummation of the transactions contemplated hereby and thereby have been or, if not yet executed and delivered, will be when executed and delivered, duly authorized by all necessary actions on the part of NYSERDA, and no other actions or proceedings on the part of NYSERDA are necessary to authorize this Agreement or any other agreement contemplated herein and hereby or the consummation of the transactions contemplated hereby and thereby;
- (c) that the execution, delivery and performance by NYSERDA of this Agreement does not (i) violate any Applicable Law; (ii) violate, conflict with, result in a material breach of or constitute (alone or with notice or lapse of time or both) a material default or event of default under any indenture, agreement, mortgage, deed of trust, note, lease, contract or other instrument to which NYSERDA is a party or by which NYSERDA or any of its property is bound; or (iii) result in the creation or imposition of any lien upon any property or assets of NYSERDA. This Agreement will not conflict with any other agreement or contract to which NYSERDA is a party;
- (d) that this Agreement has been duly executed and delivered by NYSERDA and constitutes the legal, valid and binding obligation of NYSERDA enforceable against NYSERDA in accordance with the terms thereof;
- (e) that NYSERDA is familiar with and in compliance with all Applicable Law, except where the failure to so comply would not result in a material adverse effect on NYSERDA's ability to perform its obligations; and
- (f) that there is no action, suit or claim at law or in equity, or before or by a governmental authority pending or, to the best knowledge of NYSERDA after due inquiry, threatened against NYSERDA or affecting any of its properties or assets that could reasonably be

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expected to result in a material adverse effect on NYSERDA's ability to perform its obligations.

Section 10.02. Continuing Nature of Representations, Warranties and Guarantees. The representations and warranties set forth in this Article are made as of the Effective Date and deemed made continually throughout the Contract Delivery Term, except to the extent that such representation and warranty states that it is permitted or required to be made only as of a specific date. If at any time during the Contract Delivery Term, NYSERDA has knowledge of any event or information that causes any of the representations and warranties in this Article X to be untrue or misleading, NYSERDA shall provide Seller with prompt written notice of the event or information, the representations and warranties affected, and the corrective action NYSERDA shall take. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

Article XI

Indemnification and Insurance

Section 11.01. Indemnification. Seller shall protect, indemnify, and hold harmless NYSERDA and the State of New York from and against all third party liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' and/or experts' fees and expenses) ("Loss") imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, or arising out of or relating to Seller's breach of this Agreement or to the extent caused by the alleged negligence, unlawful act or omission, or intentional misconduct of Seller in the course of the development of the Selected Project, or the production or delivery of ORECs under this Agreement. Seller shall have no obligation to protect, indemnify, or hold harmless NYSERDA or the State of New York with respect to any claims asserted against NYSERDA or the State of New York challenging (i) the legal validity of (a) this Agreement, (b) the purchase or sale of ORECs, or (c) the competitive solicitation process held by NYSERDA to procure ORECs; or (ii) the administration of NYGATS and/or the OREC program under the Phase 1 Order and related regulatory proceedings (including any dispute arising out of the resale of ORECs by NYSERDA). The obligations of Seller under this Article shall survive any expiration or termination of this Agreement and shall not be limited by the amount of Seller's insurance coverage.

Section 11.02. Indemnification Procedures. NYSERDA shall give reasonable notice to Seller of any claim or notice of the commencement of any action, administrative or legal proceeding or investigation as to which indemnification under this Article may apply or promptly after NYSERDA has actual knowledge of any other Loss that would result in a claim for indemnification. NYSERDA shall reasonably cooperate with Seller in the defense of any such claim. Seller shall use counsel reasonably satisfactory to NYSERDA to defend any such claim (with consent to counsel not to be unreasonably withheld, conditioned, or delayed) and shall control the defense of any such claim. NYSERDA may participate in the defense of any such claim at its own expense. Seller may not agree to any settlement or compromise of any claim without NYSERDA's prior written consent (which consent may not be unreasonably

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withheld, conditioned, or delayed) that is not an unconditional release of NYSERDA from any and all liabilities upon the payment of money that will be paid by Seller.

Section 11.03. Failure to Defend. If Seller fails to assume the defense of a claim meriting indemnification, NYSERDA may at the expense of Seller contest, settle or pay such claim, and Seller shall promptly reimburse NYSERDA for all costs reasonably incurred and documented by NYSERDA associated therewith.

Section 11.04. Insurance. Seller, at no cost to NYSERDA, shall maintain or cause to be maintained, on or before the date upon which construction begins and continuing throughout the duration of the Contract Delivery Term, commercial general liability insurance in an amount customary for projects of this type and size. All such insurance shall be evidenced by certificates of insurance, each of which shall: (a) name or be endorsed to cover NYSERDA and the State of New York as additional insureds; and (b) provide that such insurance may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof.

Article XII

Economic Benefits, Fisheries, and Environmental Obligations

Section 12.01. Economic Benefits Report and Verification.

- (a) Within one hundred twenty (120) days after the third anniversary of the commencement of the Contract Delivery Term, Seller shall submit an Economic Benefits Report funded at its expense and prepared in accordance with Exhibit I. The Economic Benefits Report shall calculate and verify the actual Economic Benefits, in dollars, that have resulted from Seller's activities.
- (b) Within sixty (60) Business Days of receipt, NYSERDA shall either: (1) accept the Economic Benefits Report in its entirety, in writing, indicating that the total Verified Total Dollars meets or exceeds the product of 0.85 and the Expected Total Dollars, or (2) return the Economic Benefits Report to Seller with a written response to Seller explaining NYSERDA's preliminary conclusion that there is an Economic Benefits Shortfall. Such response will include a description of any Economic Benefits claimed by Seller that have been preliminarily determined to be invalid or improperly documented, if any. If NYSERDA's preliminary determination is inconsistent with the Agreed-Upon Procedures Report, such response also will explain NYSERDA's basis for such variance. Seller will be given a reasonable opportunity to dispute NYSERDA's preliminary conclusion and/or to revise and resubmit the Economic Benefits Report.
- (c) Seller agrees to make reasonable efforts to undertake and complete all activities and perform all obligations described in Exhibit D (Industry Growth Activities) to this Agreement.

Section 12.02. Economic Benefits Shortfall. If there is an Economic Benefits Shortfall, Seller shall: (1) provide to NYSERDA for NYSERDA's approval a plan to make additional economic investments in New York State in an amount reasonably comparable to the amount of

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the Economic Benefits Shortfall; or (2) upon the mutual agreement of the Parties, pay the amount of the Economic Benefits Shortfall or cause such amount to be paid into an account for the receipt of such funds created by NYSERDA, within six (6) months of NYSERDA's final notification of the amount owed under Subsection 12.01(b) of this Agreement; such amounts may, at Seller's direction, be deducted by NYSERDA from payments owed to Seller under Article IV of this Agreement.

Section 12.03. Consultation with New York State Agencies. Seller shall consult with the Consulting State Agencies at the request of such agencies regarding the planning and development of the Selected Project, and will make best efforts to respond to feedback timely provided by the Consulting State Agencies. Concurrent with its initial submission of the Construction and Operations Plan ("COP") for the Selected Project to BOEM, including a draft COP, Seller shall share such COP with NYSERDA for distribution to any Consulting State Agency that may request a copy of same. NYSERDA acknowledges that, after submission of the COP, the review process organized under the National Environmental Policy Act ("NEPA") will present a forum for some New York State Agencies to participate in the analysis of the Selected Project's environmental impacts, including as cooperating agencies in the scoping, data collection, and alternatives-evaluation aspects of the NEPA process. Accordingly, NYSERDA will rely on the NEPA review process to create opportunities for the Consulting State Agencies to engage with and analyze the COP for the Selected Project to the greatest extent practicable. Nevertheless, without compromising the centrality of the NEPA review process with respect to the COP, Seller agrees to meet with Consulting State Agencies, at their reasonable request, during the development, construction, and operational phases of the Selected Project.

Section 12.04. Technical Working Group Participation. Upon NYSERDA's request, Seller shall participate in any technical working groups convened by NYSERDA and related to offshore wind development, and through such technical working groups engage with the relevant stakeholder groups regarding the Selected Project.

Section 12.05. Fisheries Mitigation Plan. Seller has provided as Exhibit E to this Agreement a Fisheries Mitigation Plan. The Parties contemplate that the Fisheries Mitigation Plan will evolve due to various factors, including, but not limited to, the State Agency Consultation and Technical Working Group Participation described above, and through interactions with BOEM and other federal agencies during the federal review of the Site Assessment Plan ("SAP") and COP. Seller shall amend the Fisheries Mitigation Plan from time to time to reflect such continuing consultation and processes and shall provide updated Fisheries Mitigation Plans to NYSERDA. Seller may also amend the Fisheries Mitigation Plan in ways that do not derive from consultation with state or federal agencies if (i) such amendment does not materially reduce Seller's mitigation commitments in the Fisheries Mitigation Plan, or (ii) NYSERDA consents in writing (such consent not to be unreasonably withheld, conditioned, or delayed). Updates to the Fisheries Mitigation Plan shall be noted in the quarterly progress reports required by Section 6.02. Seller shall undertake all activities and perform all obligations described in the Fisheries Mitigation Plan, as provided in Exhibit E and updated from time to time, unless excused by NYSERDA on the grounds that such activities or obligations are impractical in light of project objectives or unnecessary to protect fishery resources. In the case of any inconsistency between Exhibit E and the body of this Agreement, the body of this Agreement shall control.

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Section 12.06. Environmental Mitigation Plan. Seller has provided as Exhibit F to this Agreement an Environmental Mitigation Plan. The Parties contemplate that the Environmental Mitigation Plan will evolve due to various factors, including, but not limited to, the State Agency Consultation and Technical Working Group Participation described above, and through interactions with BOEM and other federal agencies during the federal review of the SAP and COP. Seller shall amend the Environmental Mitigation Plan from time to time to reflect such continuing consultation and processes and shall provide updated Environmental Mitigation Plans to NYSERDA. Seller may also amend the Environmental Mitigation Plan in ways that do not derive from consultation with state or federal agencies if (i) such amendment does not materially reduce Seller's mitigation commitments in the Environmental Mitigation Plan, or (ii) NYSERDA consents in writing (such consent not to be unreasonably withheld, conditioned, or delayed). Updates to the Environmental Mitigation Plan shall be noted in the quarterly progress reports required by Section 6.02. Seller shall undertake all activities and perform all obligations described in the Environmental Mitigation Plan, as provided in Exhibit F and updated from time to time, unless excused by NYSERDA on the grounds that such activities or obligations are impractical in light of project objectives or unnecessary to protect environmental resources. In the case of any inconsistency between Exhibit F and the body of this Agreement, the body of this Agreement shall control.

Section 12.07. Site and Environmental Data.

- (a) Seller agrees to provide to NYSERDA, upon NYSERDA's request, any information or data and supporting metadata that is developed in furtherance of the Selected Project and relates to environmental characteristics, or use by wildlife, of any offshore, nearshore or onshore areas, as well as any data sponsored or developed by Seller relating to the potential impacts of the construction, operation, or decommissioning of the Selected Project on the environment and wildlife of such areas (collectively, "Site and Environmental Data"). Seller shall provide NYSERDA, within 120 days of the Effective Date, a Data Availability Plan detailing when and how previously-collected Site and Environmental Data will be made available, and how new Site and Environmental Data will be made available on an ongoing basis. Seller further agrees, upon NYSERDA's request, to make Site and Environmental Data publicly available on an ongoing basis as soon after collection as is practicable. Data that Seller, a third party that Seller has consulted as part of the environmental review process or in the course of developing its fisheries mitigation plan, or a regulatory authority deems proprietary or confidential business information, or otherwise is inappropriate for disclosure (such as cultural resource survey results, wind resource data, Metocean data and geophysical/geotechnical data), or that Seller has received subject to a non-disclosure agreement, will not be considered Site and Environmental Data for purposes of this Section.
- (b) Upon commissioning of the Selected Project, Seller agrees to make commercially reasonable efforts to work with NYSERDA to validate a final accounting of the Selected Project's (i) carbon footprint and (ii) energy and carbon payback periods. Seller further agrees to public disclosure of NYSERDA's determination of the Selected Project's carbon footprint, and energy and carbon payback periods.

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Section 12.08. Lighting Controls. Seller shall install lighting controls on the Selected Project to minimize nighttime visibility from shore and risk to wildlife.

Section 12.09. Site Perimeter. Seller's Proposal included a site layout plan that delineated the perimeter of the area in which offshore wind turbines may be placed for the Selected Project ("Site Perimeter"). Pursuant to Section 6.03 of this Agreement, Seller has agreed to render the site layout plan, including the Site Perimeter, in a shapefile format for geographic information system software. Seller agrees that no more than five percent (5%) of the offshore wind electric generation facilities that comprise the Selected Project, measured on an installed capacity basis, shall be located outside Site Perimeter, as determined according to the geographic information system file submitted by Seller, without NYSERDA's prior written consent (not to be unreasonably withheld, conditioned, or delayed).

Section 12.10. Support for Monitoring of Key Commercial Fish Stocks and Wildlife of Conservation Concern. Within two years of the Effective Date, Seller shall provide financial commitment for monitoring key commercial fish stocks and wildlife of conservation concern in an amount no less than \$10,000 (ten thousand dollars) per MW of Offer Capacity. Of that amount, no less than \$5,000 (five thousand dollars) per MW of Offer Capacity shall be allocated to support regional monitoring of key regional commercial fish stocks to better understand how offshore wind energy development is potentially altering the biomass and/or distribution of these stocks, and no less than \$5,000 (five thousand dollars) per MW of Offer Capacity shall be allocated to support regional monitoring of wildlife of conservation concern to better understand how offshore wind energy development effects distribution and abundance of sensitive species. Such funding shall be directed to advance the responsible development of the offshore wind energy industry, and not limited exclusively to the Selected Project. The financial support required by this Section 12.10 may be provided by any combination of (i) donation by Seller to a not-for-profit organization with the capacity for undertaking the monitoring work described herein, and (ii) direct expenditure by Seller to finance the monitoring work described. The commitment and application of such funds shall be made with NYSERDA's consent, which shall not be unreasonably withheld or delayed.

[Section 12.11. Port Infrastructure Investment Plan. Seller shall undertake all activities and perform all obligations required of Seller as described in the Port Infrastructure Investment Plan, as provided in Exhibit L, which may be updated from time to time with NYSERDA's prior written consent. Notwithstanding the foregoing, for purposes of this Section 12.11 only, Seller shall be excused from performance of its activities and obligations described in the Port Infrastructure Investment Plan (but not its commitment of Expected Total Dollars) if, through no fault of Seller and despite Seller's diligence and use of best efforts and its compliance with the requirements of the Port Infrastructure Funding Programs described in Exhibit L, Seller is unable to undertake an activity or perform an obligation because of the work required for the port facilities to be suitable and available for Seller's use have not been completed by the Port Completion Deadline, as defined in Exhibit L. Notwithstanding the foregoing, should Seller elect to use the port facilities as described in Exhibit L despite the failure to meet the Port Completion Deadline, Seller may opt to undertake the activities and perform its obligations as described in the Port Infrastructure Plan after the work on the port facilities are completed, in which case the Outer Limit Date will be extended by one month for each month of such delay past the Port Completion Deadline, for a period no longer than two (2) years.]

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Article XIII

Events of Default

Section 13.01. Event of Default. For the purposes of this Agreement, “Event of Default” shall mean any of the following:

- (a) Representations, Warranties and Guarantees. Any representation, warranty, or guarantee made in this Agreement, or any attestation made pursuant to Section 15.06 of this Agreement, that shall prove to have been false or misleading in any material respect as of the time made or deemed to be made, and such false or misleading representation, warranty, or guarantee is not fully cured within ten (10) days after the responsible Party discovers its error, provided, however, that such period shall be extended for an additional period of up to sixty (60) days if the responsible Party is unable to cure within the initial ten (10) day period so long as such cure is diligently pursued by the responsible Party until such breach has been corrected; or
- (b) Other Obligations. A Party shall default in the performance of any of its obligations under Sections 2.01, 2.03, 4.05, 6.04, 7.01, 12.02, and 12.11 of this Agreement and such default shall continue un-remedied for a period of thirty (30) days after the defaulting Party receives notice thereof from the non-defaulting Party; provided, however, that such period shall be extended for an additional period of up to thirty (30) days if, despite using commercially reasonable efforts, the defaulting Party is unable to cure within the initial thirty (30) day period so long as such cure is diligently pursued by the defaulting Party until such breach has been corrected; or
- (c) Voluntary Proceedings. A Party shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (ii) make a general assignment for the benefit of its creditors; (iii) commence a voluntary case under the Bankruptcy Code; (iv) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or readjustment of debts; (v) fail to convert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code; or (vi) take any corporate action for the purpose of effecting any of the foregoing; or
- (d) Involuntary Proceedings. A proceeding or case shall be commenced against a Party, without its application or consent, in any court of competent jurisdiction, seeking (i) its liquidation, reorganization, dissolution or winding-up, or the composition or readjustment of its debts; (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of all or any substantial part of its assets; or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case shall continue un-dismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue un-

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stayed and in effect, for a period of sixty (60) or more days; or an order for relief against a Party, shall be entered in an involuntary case under the Bankruptcy Code; or

- (e) Interconnection. Unless otherwise agreed in writing by NYSERDA (not to be unreasonably withheld, conditioned, or delayed), failure of the NYISO Transmission Planning Advisory Subcommittee to accept the system reliability impact study within fifteen (15) months after the Effective Date of this Agreement; or
- (f) COP Submission. Unless otherwise agreed in writing by NYSERDA (not to be unreasonably withheld, conditioned, or delayed), failure of Seller to submit its COP to BOEM within eighteen (18) months after the Effective Date of this Agreement; or
- (g) Abandonment. On or after the Selected Project (or any phase thereof) enters Commercial Operation, the permanent relinquishment by Seller of all of its possession and control of the Selected Project, other than a transfer permitted under this Agreement or to the extent caused by Force Majeure or an Event of Default by NYSERDA; or
- (h) Failure to Provide Additional Contract Security. Failure by Seller to provide to NYSERDA, on or before January 1, 2024, and periodically thereafter, additional Contract Security, by the dates and in the amounts set out in Section 15.02, and such failure is not remedied within ten (10) Business Days of the respective due dates of such additional Contract Security; or
- (i) Prevailing Wage Default. Failure by Seller to ensure that any failure to pay the Prevailing Wage in accordance with Section 18.10 is cured within 12 months from the date of written notification by NYSERDA.

Section 13.02. Effect of an Event of Default. In addition to any other remedy available to it under this Agreement or under Applicable Law, upon any occurrence of an Event of Default, the non-defaulting Party shall be entitled to suspend performance of its obligations under this Agreement until the earlier of such time as (a) such Event of Default has been cured, or (b) the non-defaulting Party has elected to terminate this Agreement pursuant to Article XIV below. Notwithstanding the foregoing, (i) for any Event of Default by Seller prior to commencement of Commercial Operation by the Selected Project (or any portion thereof), NYSERDA shall be entitled only to stipulated damages pursuant to Article XV; and (ii) for any Event of Default after commencement of Commercial Operation by the Selected Project (or any portion thereof), if NYSERDA elects not to suspend performance of its obligations and Seller transfers ORECs to NYSERDA, NYSERDA shall be obligated to accept such ORECs and pay for such ORECs in accordance with this Agreement.

Article XIV

Termination

Section 14.01. Termination. This Agreement may be terminated:

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- (a) at any time by either NYSERDA or Seller if: (i) an Event of Default occurs (and following the expiration of any applicable cure period), (ii) the Party seeking to terminate this Agreement hereunder is the non-defaulting Party, and (iii) the non-defaulting Party has not waived such Event of Default in writing;
- (b) at any time by the mutual written consent of Seller and NYSERDA;
- (c) at any time prior to Commercial Operation by Seller upon an attestation from appropriate representative of Seller that (i) the Selected Project is less than twenty-five percent (25%) constructed on an installed capacity basis, and (ii) Seller has relinquished any and all effort to further develop or construct the Selected Project;
- (d) by NYSERDA in the event it is found that the certification filed by Seller in accordance with New York State Finance Law Sections 139-j and 139-k was intentionally false or intentionally incomplete;
- (e) by NYSERDA in the event it is found that Seller made material misrepresentations in the certification filed by Seller in accordance with New York State Tax Law Section 5-a that were intentionally false when made.

Section 14.02. Effect of Termination. Except as otherwise set forth in Section 18.03 below, in the event of a termination of this Agreement as provided in Section 14.01 above, neither Party shall have any further right or obligation hereunder. In addition, the Parties agree that, in the case of a termination based on the default of Seller, irreparable damage would occur in the event that NYSERDA could not obtain ORECs pursuant to this Agreement from the date of Event of Default in which Seller was the defaulting Party, and accordingly, each Party hereby agrees that NYSERDA shall be entitled to elect to compel specific performance of this Agreement to compel the transfer to NYSERDA of all ORECs associated with Actual Production following the date of any termination for such an Event of Default in accordance with the terms hereof, subject to payment in accordance with this Agreement, together with any other remedy at law or equity available to NYSERDA in connection therewith, without the necessity of demonstrating the inadequacy of money damages. Notwithstanding the foregoing, for any termination by Seller or NYSERDA prior to Commercial Operation of any portion of the Project NYSERDA shall be entitled only to stipulated damages pursuant to Article XV.

Section 14.03. Good Faith Negotiation. Both Parties agree that, should any dispute arise during the term of this Agreement, the Parties will make a good faith, though non-binding effort to reconcile any difference or dispute before the filing of an action in any court.

Section 14.04. Damages. Neither Party shall be liable to the other for consequential, incidental, punitive, exemplary, or indirect damages, lost profits or other business interruption damages arising from the breach of this Agreement; provided, however, that nothing in this Section 14.04 shall limit (i) Seller's obligations under Section 11.01 of this Agreement, or (ii) either Party's liability for fraud.

Section 14.05. No Recourse. The Parties agree that their obligations arising under (or relating to) this Agreement shall be without recourse to any member, unitholder, director,

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officer, shareholder, authorized representative or partner of either Party, any controlling person thereof, or any successor of any such member, unitholder, director, officer, shareholder, authorized representative partner or controlling Person (each a member of the “Extended Group”); and no member of the Extended Group shall have any liability in such capacity for the obligations of either Party; provided, however, that notwithstanding the foregoing, nothing in this Section 14.05 shall negate, excuse, limit, reduce, or otherwise affect (a) the obligations and liability of any member of the Extended Group under any guaranty executed by such member of the Extended Group pursuant to Section 15.05 below; or (b) NYSERDA’s right and ability to pursue, enforce, and obtain any and all remedies and relief against any member of the Extended Group under any guaranty executed by such member of the Extended Group pursuant to Section 15.05 below. The Parties reserve the right to modify or terminate this Agreement without the consent of any member of the Extended Group.

Article XV

Contract Security

Section 15.01. Initial Contract Security. No more than five (5) Business Days after the Effective Date, unless otherwise agreed to by NYSERDA, Seller must provide Contract Security, in the form of cash, certified funds, a Letter of Credit conforming to the requirements of Section 15.03, or an Acceptable Guaranty conforming to the requirements of Section 15.05, in an amount equal to the product of the Offer Capacity (in MW) and five thousand dollars (\$5,000). Seller may provide the Contract Security through any combination of the forms set forth in the preceding sentence.

Section 15.02. Additional Contract Security. Seller shall provide additional Contract Security in an amount equal to the product of the Uncompleted Offer Capacity (in MW) (less any Offer Capacity Reduction as defined in Section 15.07(b)) and twenty-thousand dollars (\$20,000) on or before January 1, 2024. Every twelve (12) months thereafter, Seller shall provide incremental additional Contract Security in an amount equal to the product of the Uncompleted Offer Capacity (in MW) (less any Offer Capacity Reduction as defined in Section 15.07(b)) and ten-thousand dollars (\$10,000), until such time as the Operational Installed Capacity equals or exceeds the product of 0.95 and the Offer Capacity (less any Offer Capacity Reduction as defined in Section 15.07(b)).

Section 15.03. Letter of Credit. Any Letter of Credit shall be a clean, unconditional and irrevocable standby letter of credit in favor of NYSERDA as beneficiary, issued for direct payment by a bank that is a member of the New York Clearinghouse Association, substantially in the form of the letter of credit attached hereto as Exhibit B (“Letter of Credit”), in a face amount that, either individually or in combination with another form of Contract Security under Section 15.01, is equal to the Contract Security amount, and which Letter of Credit shall provide that the issuing bank will pay to NYSERDA amounts in aggregate up to that same face amount upon presentation of only the Sight Draft in the amount to be drawn and the Payment Certificate, in the form of Annex A and Annex B, respectively, to such Letter of Credit, and have an expiration date not shorter than one (1) year together with an automatic renewal provision. Should the Operational Installed Capacity be less than the product of 0.95 multiplied by the Offer Capacity by a date thirty (30) days prior to the expiration date of the Letter of Credit, and Seller not having provided

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NYSERDA or arranged with NYSEERDA to provide a substitute Letter of Credit prior to such expiration, NYSEERDA shall be thereupon entitled to draw on the Letter of Credit for the full amount then outstanding and the funds received shall be held by NYSEERDA until a substitute Letter of Credit has been provided, or for application against subsequent obligations of Seller.

Section 15.04. Replacement Letter of Credit. Any assignee within Article VIII of this Agreement shall, simultaneously with its assignment becoming effective, deliver to NYSEERDA a replacement Letter of Credit meeting the requirements of this Article, and NYSEERDA shall, within twenty (20) Business Days after receipt of a compliant replacement Letter of Credit, return the original Letter of Credit to Seller. Upon the failure of an assignee to deliver a compliant replacement Letter of Credit to NYSEERDA simultaneously with its assignment becoming effective, NYSEERDA shall be thereupon entitled to draw on the Letter of Credit for the full amount then outstanding and the funds received shall be held by NYSEERDA for application against subsequent obligations of Seller and/or the assignee under this Agreement.

Section 15.05. Acceptable Guaranty. Seller may fulfill the requirements of Sections 15.01 and Section 15.02 through an Acceptable Guaranty. If at any time a guaranty provided under this Section 15.05 ceases to be an Acceptable Guaranty, Seller shall provide to NYSEERDA replacement Contract Security in the form of cash, certified funds, a substitute Acceptable Guaranty, or Letters of Credit conforming to the requirements of Section 15.01 and Section 15.03 within five (5) Business Days.

Section 15.06. Refund of Security. Amounts required by Seller as Contract Security will be reduced and refunded by NYSEERDA to Seller as follows:

- (a) Within thirty (30) Business Days of NYSEERDA's receipt of an Independent Engineer's report (which may be the same report submitted for purposes of Section 2.01(c) of this Agreement) demonstrating that the Operational Installed Capacity equals or exceeds the product of 0.95 and the Offer Capacity.
- (b) On a prorated basis, expressed as a fraction of the Contract Security equal to the Operational Installed Capacity divided by the product of 0.95 and the Offer Capacity, within thirty (30) Business Days of NYSEERDA's receipt of an attestation from the appropriate representative of Seller that the Operational Installed Capacity is greater than zero and less than the product of 0.95 and the Offer Capacity. For clarity, the cumulative total amount of Contract Security returned to Seller under this Subsection 15.06(b) at any point in time shall not exceed the amount equal to the Contract Security multiplied by the Operational Installed Capacity at that point in time divided by the product of 0.95 and the Offer Capacity.

Section 15.07. Retention of Security. Amounts provided by Seller as Contract Security and not refunded pursuant to Section 15.06 above will be retained by NYSEERDA as follows:

- (a) In their entirety, (i) upon termination of this Agreement under Section 14.01(a) of this Agreement due to the occurrence of a Seller Event of Default if such Event of Default remains uncured after the expiration of the applicable cure period, or (ii) upon termination under Section 14.01(c);

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- (b) On a prorated basis if Seller notifies NYSERDA in writing that Seller intends to build the Selected Project such that, once complete, the Operational Installed Capacity will be less than the product of 0.95 and the Offer Capacity (such amount by which the Operational Installed Capacity is less than 95% of the Offer Capacity being the “Offer Capacity Reduction”). The amount that will be retained, expressed as a fraction of the total Contract Security held by NYSERDA as of the date of such notification, shall equal the Offer Capacity Reduction divided by the Offer Capacity. In the event that Seller has provided the Contract Security in the form of a Letter of Credit or an Acceptable Guaranty, NYSERDA shall be entitled to draw on the Letter of Credit or obtain payment under the Acceptable Guaranty, respectively, for the prorated amount of the Contract Security calculated in accordance with this Section 15.07(b) as of the date of Seller’s written notification to NYSERDA of Seller’s intent in respect of the Offer Capacity Reduction.

Section 15.08. Stipulated Damages. NYSERDA and Seller hereby agree, acknowledge and stipulate that NYSERDA’s retention of amounts provided by Seller as Contract Security pursuant to this Article XV, in the proportions stated within this Article, is fair and reasonable under the circumstances and in light of the uncertainty and inability to quantify adequately the harm that would result to NYSERDA as a result of the events that permit NYSERDA to retain such amounts of the Contract Security.

Section 15.09. Failure to Extend BOEM Lease. In the event that the Contract Delivery Term exceeds the duration of Seller’s offshore wind lease issued by BOEM, Seller shall use commercially reasonable efforts to seek an extension of the lease as necessary to allow the Seller to fulfill its obligations under this Agreement. If Seller is unable, wholly or in part, to perform its obligations under this Agreement due to expiration of the operations term of such lease or denial of its extension request, such non-performance shall be excused. Seller shall not be liable for any losses or damages arising out of a failure to perform that occurs due to expiration of the operations term of its offshore wind lease.

Article XVI

Force Majeure

Section 16.01. Force Majeure Defined. “Force Majeure” means an event or circumstance that was not reasonably anticipated as of the Effective Date: (a) that was not within the control of the Party claiming its occurrence; (b) that could not have been prevented or avoided by such Party through the exercise of reasonable diligence; and (c) that directly prohibits or prevents such Party from performing its obligations under this Agreement. For avoidance of doubt, to the extent meeting the foregoing requirements, examples of events that may constitute Force Majeure include:

acts of God, an act or threatened act of the public enemy, war (imminent, declared or otherwise), blockade, accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistances to, or adjuncts of, shipping or navigation, perils of the sea, air crash, shipwreck, train wrecks or other failures or delays of transportation, nuclear emergency, radioactive

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contamination, cyber-attack, ionizing radiation, release of hazardous waste or materials, sabotage, terrorist acts, invasion, insurrection, riot, non-site specific industrial disturbance by a union or organized labor (including any non-site specific strike or boycott), fire, flood, lightning, earthquake, hurricane, tornado, waves or winds of extreme force, access to the Selected Project being limited due to weather or sea state conditions, extreme accumulation of snow or ice, naturally occurring epidemic, explosion or any similar cataclysmic occurrence, acts, inaction or restraints of a governmental authority (which do not constitute a change in Applicable Law falling within the scope of Section 4.07 of this Agreement) which temporarily or permanently prevent required performance under this Agreement, including limitations on the scheduling of Selected Project installation and maintenance directly arising out of or resulting from such Force Majeure or unavailability of NYGATS.

Under no circumstances shall Force Majeure include (w) any full or partial curtailment in the electric output of the Selected Project that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such curtailment or mishap would otherwise qualify as a Force Majeure, (x) any occurrence or event that merely increases the costs or causes an economic hardship to a Party, or (y) any occurrence or event that was caused by or contributed to by the Party claiming the Force Majeure. In addition, a delay or inability to perform attributable to a Party's lack of preparation, a Party's failure to timely obtain and maintain all necessary permits or qualifications, a failure to satisfy contractual conditions or commitments, or lack of or deficiency in funding or other resources shall each not constitute a Force Majeure or be the basis for a claim of Force Majeure.

Section 16.02. Effect of Force Majeure. If either Party is unable, wholly or in part, by Force Majeure to perform obligations under this Agreement, such performance shall be excused and suspended so long as the circumstances that give rise to such inability exist or would exist if the Party claiming the Force Majeure used commercially reasonable efforts to cure such circumstances, but for no longer period. The Party whose performance is affected shall give prompt notice thereof; such notice may be given orally or in writing but, if given orally, it shall be promptly confirmed in writing, providing details regarding the nature, extent and expected duration of the Force Majeure, its anticipated effect on the ability of such party to perform obligations under this Agreement, and the estimated duration of any interruption in service or other adverse effects resulting from such Force Majeure, and shall be updated or supplemented to keep the other Party advised of the effect and remedial measures being undertaken to overcome the Force Majeure. Such inability shall be promptly corrected to the extent it may be corrected through the exercise of commercially reasonable due diligence. Neither Party shall be liable for any losses or damages arising out of a suspension of performance that occurs because of Force Majeure.

Article XVII

Compliance with Certain Laws

Section 17.01. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts executed

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and to be performed in New York State without regard to its conflicts of laws principles. The parties irrevocably acknowledge and accept that all actions arising under or relating to this Agreement, and the transactions contemplated hereby and thereby shall be brought exclusively in a United States District Court or New York State Court located in Albany, New York having subject matter jurisdiction over such matters, and each of the Parties hereby consents to and accepts such personal jurisdiction of, and waives any objection as to the laying of venue in, such courts for purposes of such action.

Section 17.02. Laws of the State of New York. Seller shall comply with all of the requirements set forth in Exhibit A hereto.

Section 17.03. All Legal Provisions Deemed Included. It is the intent and understanding of Seller and NYSERDA that each and every provision of law required by the laws of the State of New York to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either NYSERDA or Seller, promptly be amended so as to comply strictly with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions. In such event, the Parties shall negotiate such amendment in good faith with the intent that such amendment reflects, as closely as possible, the terms and conditions of this Agreement in effect prior to such amendment; provided that such amendment shall not in any event alter (a) the purchase and sale obligations of the Parties pursuant to this Agreement, or (b) the pricing and payment provisions of this Agreement.

Section 17.04. Permits and Approvals. Seller shall be responsible to obtain all applicable permits and regulatory approvals that may be required in order to develop and/or operate the Selected Project over the duration of the Contract Delivery Term, and NYSERDA's obligations to purchase ORECs is conditional on Seller's acquisition of such permits and approvals. Nothing in this Agreement in any way replaces or modifies the necessity or applicability of any permit or approval process. Seller shall provide prompt notice to NYSERDA of the initiation of any criminal or regulatory investigation, hearing, proceeding, or review process ("Process") by any Federal or State entity regarding any actual or alleged violation of any permit or approval obtained or applied for with respect to the Selected Project, as well as of any modification, penalty and/or fine that may be imposed or occur as a result of such a Process or violation.

Section 17.05. Other Legal Requirements. The references to particular laws of the State of New York in this Article and elsewhere in this Agreement are not intended to be exclusive and nothing contained in such Article, Exhibit and Agreement shall be deemed to modify the obligations of each Party to comply with all legal requirements.

Article XVIII

Additional Provisions

Section 18.01. Forward Contract. Each Party represents and warrants to the other that it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code, that this Agreement is a "forward contract" within the meaning of the United States Bankruptcy

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Code, and that the remedies identified in this Agreement shall be “contractual rights” as provided for in 11 U.S.C. § 556 as that provision may be amended from time to time.

Section 18.02. Taxes/Costs. Seller shall be responsible for and obligated to pay all present and future taxes, fees, levies and costs that may be assessed by any entity including but not limited to NYGATS with respect to Seller’s provision of ORECs to NYSERDA, or with respect to the measurement, tracking, and verification and participation in NYGATS necessary for the creation and transfer of the ORECs and/or the energy with which they are associated, into the NYSERDA NYGATS account.

Section 18.03. Term. Unless terminated earlier under this Article, this Agreement shall expire upon the expiration of the Contract Delivery Term. Upon such date or upon earlier termination of this Agreement under Article XIV, neither Party shall have any further obligation to the other, except that Article I, Sections 2.02, 2.03, 5.01, 7.01, 11.01, 11.02, 14.02, 15.06, 17.01, 18.03, 18.04, 19.01, 19.02, 20.01, 21.02, 21.03, 21.04, and all payment obligations under Article IV shall survive.

Section 18.04. Waiver. Either Party to this Agreement may (a) extend the time for the performance of any of the obligations or other acts of the other Party, (b) waive any inaccuracies in the representations and warranties of the other Party contained herein or in any document delivered by the other Party pursuant hereto, or (c) waive compliance with any of the agreements or conditions of the other Party contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the Party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition, of this Agreement. No provision of this Agreement will be deemed to have been waived unless the waiver is in writing; no delay by either Party in exercising its rights hereunder, including the right to terminate this Agreement, shall be deemed to constitute or evidence any waiver by such Party of any right hereunder. The rights granted in this Agreement are cumulative of every other right or remedy that the enforcing Party may otherwise have at law or in equity or by statute.

Section 18.05. Independent Contractor. The status of Seller under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, Seller and its respective officers, agents, employees, representatives and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, rights or privileges derived from workers’ compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit. Nothing in this Agreement shall be construed as creating a partnership, joint venture or other relationship between NYSERDA and Seller for any reason.

Section 18.06. Severability. Without limiting the terms of Section 4.01, if any provision of this Agreement shall be declared by any court of competent jurisdiction to be illegal, void or unenforceable, all other provisions of this Agreement shall not be affected and shall remain in

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full force and effect. If any provision of this Agreement is so broad as to be unenforceable, that provision shall be interpreted to be only so broad as will enable it to be enforced.

Section 18.07. Seller Expense. Seller shall, at its own expense, make all arrangements necessary to: (a) register the Selected Project and transfer ORECs to the NYSERDA NYGATS Account, and (b) interconnect the Selected Project and comply with the electricity delivery requirements set out in Article III. This requirement encompasses Seller's purchasing or arranging for all services including, without limitation, transmission, ancillary services, any control area services, line losses and transaction fees necessary to deliver energy to the New York Control Area, in accordance with all rules and protocols of the NYISO, throughout the Contract Delivery Term. NYSERDA shall, at its own expense, make all arrangements necessary to accept the transfer of ORECs pursuant to this Agreement, and shall be responsible for any applicable fees or charges incident to the purchase or subsequent sale of ORECs to third parties

Section 18.08. Environmental Disclosure. The Parties agree that, at the time of the execution of this Agreement, New York employs NYGATS for the tracking, registration, and trading of generation attributes, including renewable or environmental attributes or credits, and that NYGATS will be used by the New York State Department of Public Service to accomplish verification of the transactions consummated hereunder as part of the Environmental Disclosure Rules.

Section 18.09. No Third Party Beneficiaries. Nothing herein is intended to or should be construed to create any rights of any kind whatsoever in any persons not party to this Agreement.

Section 18.10. Prevailing Wage. Although this is not a public work covered by NYS Article 8, and unless otherwise provided in a PLA covering the construction of the Project, all laborers, workmen and mechanics (within the meaning of those terms under NYS Labor Law Article 8) performing construction activities within the United States (including federal waters) with respect to the Selected Project, including, but not limited to, the assembly, staging, installation, erection, and placement of the Selected Project and its electrical interconnection as well as those construction activities related to start-up and commissioning of the Selected Project, whether through long-term or short-term employment, must be paid wages and benefits in an amount not less than the Prevailing Rates that would be applicable in the area where the Selected Project construction activities occur. For construction activities occurring in New York, the Prevailing Rates shall be determined under NYS Labor Law Section 220. For construction activities that occur outside of New York, the Prevailing Rates shall be determined under the prevailing wage law of the state in which the Selected Project construction activities occur that would be applicable to a public work. For construction activities in federal waters, the rates shall be those applicable at the location of the port or ports from which the laborers, workmen, or mechanics are based for purposes of that offshore work. For the avoidance of doubt, a laborer, workman, or mechanic will not be deemed to be based at a port due solely to his or her short-lived or incidental presence at, or transit through, the port (or state in which the port is located). Unless provided otherwise in any negotiated PLA, it is generally expected that covered construction, for the purpose of this Section, will include United States-based offsite fabrication traditionally performed on-site by construction craft when that fabrication produces items specifically designed for construction of the Selected Project, fabrication occurs off-site for the convenience of the contractor, and the fabrication is part of a single integrated construction

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process. This requirement applies: (1) to all laborers, workmen and mechanics performing construction activities, whether direct employees of the Seller or of Seller's subcontractor(s), and (2) regardless of whether or not such employment was claimed as an Economic Benefit in its Proposal.

Section 18.11. Project Labor Agreement.

- (a) Unless extended by NYSERDA, Seller shall, no later than 30 days after the date of BOEM's approval of the COP for the Selected Project, present to NYSERDA for its review a plan outlining its intentions with respect to the negotiation of a PLA to cover construction activities within the United States (including in federal waters) on the Selected Project. NYSERDA should be kept reasonably apprised of negotiations as they proceed, and NYSERDA shall have the right to have one or more representatives attend negotiation sessions as it determines is in its best interests. A final form of PLA, agreed to by Seller and the trades, consistent with the description in Exhibit J to this Agreement shall be presented to NYSERDA for review and approval no later than 180 days after BOEM's approval of the COP for the Selected Project (unless extended by NYSERDA, which request for extension shall not be unreasonably withheld, conditioned, or delayed).
- (b) NYSERDA may appoint a mediator of its own choosing who shall endeavor to assist the parties in their negotiations: (i) at any time upon mutual agreement of Seller and the trades; (ii) at the request of either Seller or the trades at any point after active negotiations on the PLA have been ongoing for no less than ninety (90) days; or (iii) at the request of either Seller or the trades at any point more than 180 days after BOEM's approval of the COP for the Selected Project. In the event that mediation does not result in a final form of PLA agreed to by the Seller and the trades within three (3) months of the date that the mediator is appointed, NYSERDA shall determine whether the time for negotiations should be extended. In the event that NYSERDA decides not to extend the time for negotiation, NYSERDA may determine that, notwithstanding good faith efforts by Seller, satisfactory completion of PLA negotiations is no longer practicable.
- (c) NYSERDA's review of any agreed-upon final form of PLA will be based on the specific terms of the negotiated PLA and will take into account the best interests of NYSERDA with respect to the Selected Project, and the public it serves, and will include consideration of project viability, the cost-effectiveness of the PLA, and the need for timely completion of the Selected Project. NYSERDA will complete and provide the results of such review to Seller within thirty (30) days or the final form of PLA as presented shall be deemed approved. If NYSERDA disapproves the final form of PLA, NYSERDA will identify changes to the final form of PLA that would render it approvable, and Seller will promptly resume negotiations with the trades. No more than sixty (60) days after such disapproval, so long as Seller and the trades have negotiated in good faith during that period, NYSERDA will render a determination under Section 18.11(b) of this Agreement regarding whether satisfactory completion of PLA negotiations is no longer practicable.

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Article XIX

Notices, Entire Agreement, Amendment, Counterparts

Section 19.01. Notices.

- (a) All notices, requests, consents, approvals and other communications that may or are required to be given by either Party to the other under this Agreement shall be in writing and shall be transmitted either:

- (1) via certified or registered United States mail, return receipt requested;
- (2) by personal delivery;
- (3) by expedited delivery service; or
- (4) by e-mail, return receipt requested.

Such notices shall be addressed as follows, or to such different addresses as the Parties may from time-to-time designate as set forth in paragraph (c) below:

To Seller:

To NYSERDA: NYSERDA
 Attn: Office of the General Counsel
 17 Columbia Circle
 Albany, New York 12203-6399
 email address: pete.keane@nyserda.ny.gov

With a copy to: NYSERDA
 Attn: Large-Scale Renewables Director
 17 Columbia Circle
 Albany, New York 12203-6399
 email address: offshorewind@nyserda.ny.gov

- (b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt of an email acknowledgement of receipt.
- (c) The Parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other Party sent in accordance herewith. The Parties agree to designate individuals mutually as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the Parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

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Section 19.02. Entire Agreement; Amendment. This Agreement, including the Exhibits and Schedules hereto, embodies the entire agreement and understanding between NYSERDA and Seller and supersedes all prior agreements and understandings relating to the subject matter hereof. Except as otherwise expressly provided for herein, this Agreement may be amended, modified, changed, waived, discharged or terminated only by an instrument in writing, signed by the Party against which enforcement of such amendment, modification, change, waiver, discharge or termination is sought.

Section 19.03. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Facsimile and electronic signatures shall have the same force and effect as original signatures for all purposes of this Agreement.

Article XX

Publicity

Section 20.01. Publicity. Seller and/or the Selected Project owner will collaborate with NYSERDA with regard to the preparation of any press release, public announcement, publication or media interview with respect to the Parties' entry into this Agreement or the subject matter thereof or which concerns NYSERDA or the Offshore Wind Standard program. To the extent applicable, in any such press release, public announcement publication, or media interview Seller and/or its employees shall credit NYSERDA and the funding participation of the Offshore Wind Standard program in the activities of the Selected Project. Seller may not represent that positions taken or advanced by Seller represent the opinion or position of NYSERDA, the PSC, or the State of New York.

Section 20.02. Publication of Agreement. Seller acknowledges that NYSERDA may file this Agreement publicly with the PSC or otherwise publish the Agreement. Prior to such publication, NYSERDA will redact any critical electric infrastructure information contained in the Agreement, including in the exhibits hereto, and will consider Seller's requests for the redaction of confidential business information; provided, however that NYSERDA shall not accept any such request to redact price information contained in this Agreement.

Article XXI

Confidentiality

Section 21.01. Seller Authorization. Seller may be required to authorize the direct transfer to NYSERDA by an energy market administrator or the operator of the transmission and/or distribution system into which the energy from the Selected Project is delivered of transactional and/or delivery information and data pertinent to the verification of attribute creation and electricity delivery, and thereby to waive confidentiality with respect to the disclosure of such information to NYSERDA. To the maximum extent allowed by law, NYSERDA shall treat any such information so received in accordance with the applicable confidentiality requirements of the energy market administrator or transmission operator.

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Section 21.02. Freedom of Information Law. Seller acknowledges that NYSERDA is subject to and must comply with the requirements of New York's Freedom of Information Law ("FOIL"). See Public Officers' Law Article 6.

Section 21.03. Trade Secrets/Commercial Information. The FOIL (Public Officers Law § 87(d)(2)) provides an exception to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." If NYSERDA receives a request from a third party for information or a document received from Seller and that has been marked "Confidential" or "Proprietary," NYSERDA will process such request under the procedures provided by NYSERDA's FOIL regulations.

Section 21.04. Claim of Confidentiality. Information of any tangible form including any document that Seller wishes to be protected from disclosure to third parties, including any information provided as a part of a Proposal submitted in response to ORECRFP20-1, must be marked "Confidential" or "Proprietary" at the time such information is provided to NYSERDA. NYSERDA reserves the right to make public, after the fifth anniversary of the Contingent Award Notification Date, this Agreement, in its entirety or in part.

The Parties hereto have caused this Agreement to be executed and delivered by their duly authorized representatives.

[SELLER]

NEW YORK STATE ENERGY RESEARCH
AND DEVELOPMENT AUTHORITY

By:

By:

Name:

Title:

Date:

Name:

Title:

Date:

**EXHIBITS TO OFFSHORE WIND RENEWABLE ENERGY CERTIFICATE
STANDARD FORM PURCHASE AND SALE AGREEMENT**

Exhibit A	Standard Terms and Conditions for all NYSERDA Agreements
Exhibit B	Form of Irrevocable Standby Letter of Credit
Exhibit C	NYSERDA Prompt Payment Policy
Exhibit D	Seller's Industry Growth Activity Commitments
Exhibit E	Fisheries Mitigation Plan
Exhibit F	Environmental Mitigation Plan
Exhibit G	Form of Guaranty
Exhibit H	Description of Selected Project
Exhibit I	Economic Benefits Claims and Verification
Exhibit J	Project Labor Agreement Requirements
Exhibit K	Progress Report Template
Exhibit L	Port Infrastructure Investment Plan

EXHIBIT A

REVISED 5/12

STANDARD TERMS AND CONDITIONS
FOR ALL NYSERDA AGREEMENTS

(Based on Standard Clauses for New York State Contracts and Tax Law Section 5-a)

The parties to the Agreement agree to be bound by the following clauses which are hereby made a part of the Agreement:

1. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is an Agreement for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Agreement shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. If this is a building service Agreement as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second subsequent violation.

2. WAGE AND HOURS PROVISIONS. If this is a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

3. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 2878 of the Public Authorities Law, if this Agreement was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to NYSERDA a non-collusive bidding certification on Contractor's behalf.

4. INTERNATIONAL BOYCOTT PROHIBITION. If this Agreement exceeds \$5,000, the Contractor agrees, as a material condition of the Agreement, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Agreement's execution, such Agreement, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify NYSERDA within five (5) business days of such conviction, determination or disposition of appeal. (See and compare Section 220-f of the Labor Law, Section 139-h of the State Finance Law, and 2 NYCRR 105.4).

5. SET-OFF RIGHTS. NYSERDA shall have all of its common law and statutory rights of set-off. These rights shall include, but not be limited to, NYSERDA's option to withhold for the purposes of set-off any moneys due to the Contractor under this Agreement up to any amounts due and owing to NYSERDA with regard to this Agreement, any other Agreement, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to NYSERDA for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

6. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Contractor and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law ("FOIL," Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is statutorily exempt from disclosure. Therefore, unless the Agreement specifically requires otherwise, Contractor should submit information to NYSERDA in a non-confidential, non-proprietary format. FOIL does provide that NYSERDA may deny access to records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format Contractor considers a proprietary and/or confidential trade secret, Contractor shall fully identify and plainly label the information "confidential" or "proprietary" at the time of disclosure. By so marking such information, Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of Contractor. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner

to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA's policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<https://openfoil.ny.gov/newfoilrequest?agencyCode=DOS>) and NYSERDA's Regulations, Part 501 (<https://www.nyserda.ny.gov/About/New-York-State-Regulations>).

7. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** As a condition to NYSERDA's obligation to pay any invoices submitted by Contractor pursuant to this Agreement, Contractor shall provide to NYSERDA its Federal employer identification number or Federal social security number, or both such numbers when the Contractor has both such numbers. Where the Contractor does not have such number or numbers, the Contractor must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by Contractor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

8. CONFLICTING TERMS. In the event of a conflict between the terms of the Agreement (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit A, the terms of this Exhibit A shall control.

9. GOVERNING LAW. This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

10. NO ARBITRATION. Disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily required) without the NYSERDA's written consent, but must, instead, be heard in a court of competent jurisdiction of the State of New York.

11. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify

NYSERDA, in writing, of each and every change of address to which service of process can be made. Service by NYSERDA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

12. CRIMINAL ACTIVITY. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of any allegation previously unknown to it that the Contractor or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Contractor's proposal to NYSERDA, convicted of a felony, under the laws of the United States or Territory of the United States, then NYSERDA may exercise its stop work right under this Agreement. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of the fact, previously unknown to it, that Contractor or any of its principals is under such indictment or has been so convicted, then NYSERDA may exercise its right to terminate this Agreement. If the Contractor knowingly withheld information about such an indictment or conviction, NYSERDA may declare the Agreement null and void and may seek legal remedies against the Contractor and its principals. The Contractor or its principals may also be subject to penalties for any violation of law which may apply in the particular circumstances. For a Contractor which is an association, partnership, corporation, or other organization, the provisions of this paragraph apply to any such indictment or conviction of the organization itself or any of its officers, partners, or directors or members of any similar governing body, as applicable.

13. PERMITS. It is the responsibility of the Contractor to acquire and maintain, at its own cost, any and all permits, licenses, easements, waivers and permissions of every nature necessary to perform the work.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this Agreement will be in accordance with, but not limited to, the specifications and provisions of State Finance Law Section 165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by NYSERDA.

15. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
625 Broadway
Albany, New York 12207
Telephone: 518-292-5200
Fax: 518-292-5884
<http://www.esd.ny.gov>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
625 Broadway
Albany, New York 12207
Telephone: 518-292-5200
Fax: 518-292-5803
<http://www.esd.ny.gov>

The Omnibus Procurement Act of 1992 requires that by signing this Agreement, Contractors certify that whenever the total amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this Agreement and agrees to cooperate with the State in these efforts.

16. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

17. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

18. PROCUREMENT LOBBYING. To the extent this Agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this Agreement the

Contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, NYSERDA may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

19. COMPLIANCE WITH TAX LAW SECTION 5-a. The following provisions apply to Contractors that have entered into agreements in an amount exceeding \$100,000 for the purchase of goods and services:

- a) Before such agreement can take effect, the Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).
- b) Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).
- c) Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.

Certifications referenced in paragraphs (b) and (c) above will be maintained by NYSERDA and made a part hereof and incorporated herein by reference.

NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with Tax Law Section 5-a was false when made.

20. IRANIAN ENERGY SECTOR DIVESTMENT. In accordance with Section 2879-c of the Public Authorities Law, by signing this Agreement, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of [section 165-a of the State Finance Law](#) (See www.ogs.ny.gov/about/regs/ida.asp).

EXHIBIT B

LETTER OF CREDIT

FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

DATE: _____, 20__

BENEFICIARY:

THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
17 COLUMBIA CIRCLE, ALBANY, NEW YORK 12203-6399

LADIES AND GENTLEMEN:

BY THE ORDER OF:

[SELLER]

[SELLER'S ADDRESS]

WE HEREBY ISSUE OUR IRREVOCABLE CREDIT NO: _____ IN YOUR FAVOR FOR THE ACCOUNT OF _____ (THE "SELLER") FOR AN AMOUNT OR AMOUNTS NOT TO EXCEED IN THE AGGREGATE [STATE IN WORDS] U.S. DOLLARS AVAILABLE BY YOUR DRAFTS AT SIGHT ON [INSERT NAME AND ADDRESS OF ISSUING BANK], NEW YORK, NEW YORK, USA, WHEN ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

1. YOUR SIGHT DRAFT DRAWN ON US IN THE FORM OF ANNEX A HERETO (THE "SIGHT DRAFT"); AND
2. A DATED PAYMENT CERTIFICATE PURPORTEDLY SIGNED BY A DULY AUTHORIZED OFFICER OF NYSERDA IN THE FORM OF ANNEX B HERETO (THE "PAYMENT CERTIFICATE").

MULTIPLE DRAWINGS ARE PERMITTED IN AMOUNTS NOT TO EXCEED, IN COMBINATION, THE AGGREGATE AMOUNT.

DRAWINGS PRESENTED BY FACSIMILE TO FACSIMILE NUMBER _____ ARE ACCEPTABLE; PROVIDED THAT SUCH FAX PRESENTATION IS RECEIVED ON OR BEFORE THE EXPIRY DATE ON THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, IT BEING UNDERSTOOD THAT ANY SUCH FAX PRESENTATION SHALL BE CONSIDERED THE SOLE OPERATIVE INSTRUMENT OF DRAWING. IN THE EVENT OF PRESENTATION BY FAX, THE ORIGINAL DOCUMENTS SHOULD NOT BE PRESENTED.

FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO YOU AGAINST YOUR PAYMENT CERTIFICATE AND SIGHT DRAFT PRESENTED IN FULL COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT ON OR BEFORE 5:00 P.M., NEW YORK TIME, ON THE EXPIRATION DATE HEREOF. THIS LETTER OF CREDIT WILL EXPIRE ON [INSERT DATE] SUBJECT TO THE FOLLOWING SENTENCE. IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED FOR SUCCESSIVE ADDITIONAL PERIODS OF 1 YEAR FROM ANY FUTURE EXPIRATION DATE HEREOF, WITHOUT AMENDMENT, UNLESS AT LEAST 90 DAYS PRIOR TO ANY SUCH EXPIRATION DATE WE NOTIFY YOU BY COURIER OR REGISTERED MAIL THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT FOR ANY SUCH ADDITIONAL PERIOD.

PAYMENT AGAINST CONFORMING DOCUMENTS PRESENTED UNDER THIS LETTER OF CREDIT SHALL BE MADE BY US AT OR BEFORE 5:00 P.M., NEW YORK TIME, ON THE SECOND (OR, IN THE CASE OF A PRESENTATION AFTER 10:30 A.M., NEW YORK TIME, THE THIRD) BANKING DAY AFTER PRESENTATION.

ALL PAYMENTS MADE BY US UNDER THIS LETTER OF CREDIT WILL BE MADE IN IMMEDIATELY AVAILABLE FUNDS AND WILL BE DISBURSED FROM OUR OWN FUNDS. IF REQUESTED BY YOU, PAYMENT UNDER THIS

LETTER OF CREDIT MAY BE MADE BY WIRE TRANSFER OF FEDERAL RESERVE BANK OF NEW YORK FUNDS TO YOUR ACCOUNT IN A BANK ON THE FEDERAL RESERVE WIRE SYSTEM. BENEFICIARY'S BANK [INSERT NAME AND ACCOUNT NUMBER].

THIS LETTER OF CREDIT IS NOT TRANSFERABLE. ONLY YOU MAY MAKE ANY PAYMENT CERTIFICATE AND SIGHT DRAFT UNDER THIS LETTER OF CREDIT.

ANY SIGHT DRAFT DRAWN HEREUNDER MUST BE MARKED "DRAWN UNDER [INSERT NAME AND ADDRESS OF ISSUING BANK], STANDBY LETTER OF CREDIT NUMBER [INSERT] DATE [INSERT]."

ALL BANK CHARGES INCLUDING BUT NOT LIMITED TO, FEES OR COMMISSIONS, SHALL BE FOR APPLICANT'S ACCOUNT.

MISCELLANEOUS

THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING. SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED OR AMPLIFIED BY REFERENCE TO ANY DOCUMENT OR INSTRUMENT REFERRED TO HEREIN OR IN WHICH THIS LETTER OF CREDIT IS REFERRED OR TO WHICH IT RELATES (INCLUDING, WITHOUT LIMITATION, THE AGREEMENT) AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT OR INSTRUMENT.

WE HEREBY AGREE WITH YOU THAT EACH DULY COMPLETED PAYMENT CERTIFICATE AND SIGHT DRAFT DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION TO US ON OR BEFORE THE EXPIRY DATE. THE OBLIGATION OF [ISSUING BANK] UNDER THIS LETTER OF CREDIT IS THE INDIVIDUAL OBLIGATION OF [ISSUING BANK] AND IS IN NO WAY CONTINGENT UPON REIMBURSEMENT WITH RESPECT THERETO.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION 600 (PROVIDED, HOWEVER, THAT DRAWINGS PERMITTED HEREUNDER SHALL NOT BE DEEMED TO BE DRAWINGS BY INSTALLMENTS WITHIN ARTICLE 32 OF THE UCP) AND AS TO MATTERS NOT GOVERNED BY THE UCP, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND APPLICABLE U.S. FEDERAL LAW.

PLEASE ADDRESS ALL CORRESPONDENCE REGARDING THIS LETTER OF CREDIT TO THE ATTENTION OF OUR STANDBY LETTER OF CREDIT UNIT, INCLUDING THE LETTER OF CREDIT REFERENCE NUMBER AS IT APPEARS ABOVE.

ALL PARTIES TO THIS LETTER OF CREDIT ARE ADVISED THAT THE U.S. GOVERNMENT HAS IN PLACE CERTAIN SANCTIONS AGAINST CERTAIN COUNTRIES, INDIVIDUALS, ENTITIES, AND VESSELS. OUR ENTITIES, INCLUDING BRANCHES AND, IN CERTAIN CIRCUMSTANCES, SUBSIDIARIES, ARE/WILL BE PROHIBITED FROM ENGAGING IN TRANSACTIONS OR OTHER ACTIVITIES WITHIN THE SCOPE OF APPLICABLE SANCTIONS.

[NAME AND ADDRESS OF ISSUING BANK]

AUTHORIZED SIGNATURE
OF OFFICER OF ISSUING BANK

Annex A to Exhibit B - Irrevocable Standby Letter of Credit

SIGHT DRAFT

Letter of Credit No. _____

Date of Letter of Credit: _____

Date of Draft: _____

FOR VALUE RECEIVED

Pay on Demand to: THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, U.S. _____ Dollars (U.S. \$_____). The amount of this draft does not exceed the amount available to be drawn by the Beneficiary under the Letter of Credit.

Charge to account of [Name of Seller].

Drawn under [Name of Bank] Letter of Credit No. _____.

Payment by the bank pursuant to this drawing shall be made to _____, ABA Number _____, Account Number _____, Attention: _____, Re: _____.

To: [Issuing Bank]
[Address]
Attention: _____

As Beneficiary

By: _____
[Name and Title]

Annex B to Exhibit B - Irrevocable Standby Letter of Credit

PAYMENT CERTIFICATE

To:
[Issuing Bank]
[Address]

Re: Irrevocable Standby Letter of Credit No: _____ [Insert]

The undersigned, a duly authorized officer of the undersigned Beneficiary, hereby certifies to [Issuing Bank], with reference to the Irrevocable Standby Letter of Credit No: [Insert] (“Letter of Credit”), that Seller, having provided the Letter of Credit to the New York State Energy Research and Development Authority (“NYSERDA”) as Security for performance under NYSERDA Agreement No. _____ (“Agreement”) in the aggregate amount of \$ _____, (“Letter of Credit Amount”) either [check the appropriate space]:

_____ Seller failed to provide and maintain contract security in the manner required by Article XV of Agreement, under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount.

_____ The Agreement has been Terminated prior to Commercial Operation; under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount.

_____ Seller failed to provide to NYSERDA proof that the system reliability impact study was accepted by the NYISO Transmission Planning Advisory Subcommittee within the timeline prescribed by Section 13.01(e) of the Agreement.

_____ Seller failed to submit its Construction and Operations Plan to the Bureau of Ocean Energy Management within the U.S. Department of the Interior within the timeline prescribed by Section 13.01(f) of the Agreement.

_____ The Operational Installed Capacity is less than 95% of the Offer Capacity or Seller has notified NYSERDA in writing that Seller intends to build the Selected Project such that, once complete, the Operational Installed Capacity will be less than 95% of the Offer Capacity; under either which circumstance, NYSERDA is authorized to draw a percentage of the Letter of Credit Amount, such percentage will be equal to 95% of the Offer Capacity minus the actual or intended Operational Installed Capacity, divided by the Offer Capacity.

_____ Seller has assigned its rights under the Agreement and the assignee has not delivered to the undersigned Beneficiary a replacement letter of credit satisfying the requirements of the Agreement; under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount;

_____ the Letter of Credit is currently set to expire within thirty (30) days and the Seller has not made arrangements acceptable to the undersigned Beneficiary to provide a substitute letter of credit prior to such expiration; under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount.

The terms used herein which are not specifically defined herein are defined in the Letter of Credit or the Agreement, referenced above.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this payment Certificate as of the ____
day of _____.

As Beneficiary

By: _____
[Name and Title]

EXHIBIT C

NYSERDA PROMPT PAYMENT POLICY STATEMENT

504.1. Purpose and Applicability.

(a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations.⁵

(b) This Exhibit applies generally to payments due and owing by the NYSERDA to the Contractor pursuant to this Agreement. However, this Exhibit does not apply to Payments due and owing when NYSERDA is exercising a Set-Off against all or part of the Payment, or if a State or Federal law, rule or regulation specifically requires otherwise.

504.2. Definitions. Capitalized terms not otherwise defined in this Exhibit shall have the same meaning as set forth earlier in this Agreement. In addition to said terms, the following terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) "Date of Payment" means the date on which NYSERDA requisitions a check from its statutory fiscal agent, the Department of Taxation and Finance, to make a Payment.

(b) "Designated Payment Office" means the Office of NYSERDA's Controller, located at 17 Columbia Circle, Albany, New York 12203.

(c) "Payment" means payment properly due and owing to Contractor pursuant to Article IV of this Agreement.

(d) "Prompt Payment" means a Payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Exhibit in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(e) "Payment Due Date" means the date by which the Date of Payment must occur, in accordance with the provisions of Sections 504.3 through 504.5 of this Exhibit, in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(f) "Proper Invoice" means a written request for Payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as NYSERDA may reasonably require, including but not limited to any requirements set forth in this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

⁵ This is only a summary; the full text of Part 504 can be accessed at: <https://www.nyserda.ny.gov/About/New-York-State-Regulations>

(g)(1) “Receipt of an Invoice” means:

(i) if the Payment is one for which an invoice is required, the later of:

(a) the date on which a Proper Invoice is actually received in the Designated Payment Office during normal business hours; or

(b) the date by which, during normal business hours, NYSERDA has actually received all the purchased goods, property or services covered by a Proper Invoice previously received in the Designated Payment Office.

(ii) if the Agreement provides that a Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice the 30th calendar day, excluding legal holidays, before the date so specified or predetermined.

(2) For purposes of this subdivision, if the Agreement requires a multifaceted, completed or working system, or delivery of no less than a specified quantity of goods, property or services and only a portion of such systems or less than the required goods, property or services are working, completed or delivered, even though the Contractor has invoiced NYSERDA for the portion working, completed or delivered, NYSERDA will not be in Receipt of an Invoice until the specified minimum amount of the systems, goods, property or services are working, completed or delivered.

(h) “Set-off” means the reduction by NYSERDA of a payment due a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to NYSERDA.

504.3. Prompt Payment Schedule. Except as otherwise provided by law or regulation or in Sections 504.4 and 504.5 of this Exhibit, the Date of Payment by NYSERDA of an amount properly due and owing under this Agreement shall be no later than thirty (30) calendar days, excluding legal holidays, after Receipt of a Proper Invoice.

504.4. Payment Procedures.

(a) Unless otherwise specified in this Agreement, a Proper Invoice submitted by the Contractor to the Designated Payment Office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the Designated Payment Office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by NYSERDA.

(b) NYSERDA shall notify the Contractor within fifteen (15) calendar days after Receipt of an Invoice of:

- (1) any defects in the delivered goods, property or services;
- (2) any defects in the invoice; or

(3) suspected improprieties of any kind.

(c) The existence of any defects or suspected improprieties shall prevent the commencement of the time period specified in Section 504.3 until any such defects or improprieties are corrected or otherwise resolved.

(d) If NYSERDA fails to notify a Contractor of a defect or impropriety within the fifteen (15) calendar day period specified in subdivision (b) of this section, the sole effect shall be that the number of days allowed for Payment shall be reduced by the number of days between the 15th day and the day that notification was transmitted to the Contractor. If NYSERDA fails to provide reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the Payment Due Date shall be calculated using the original date of Receipt of an Invoice.

(e) In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution of a defect or suspected impropriety, NYSERDA shall make Payment, consistent with any such correction or resolution and the provisions of this Exhibit.

504.5. Exceptions and Extension of Payment Due Date. NYSERDA has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Exhibit, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the Payment Due Date:

(a) If this Agreement provides Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice, if any documentation, supporting data, performance verification, or notice specifically required by this Agreement or other State or Federal mandate has not been submitted to NYSERDA on a timely basis, then the Payment Due Date shall be extended by the number of calendar days from the date by which all such matter was to be submitted to NYSERDA and the date when NYSERDA has actually received such matter.

(b) If an inspection or testing period, performance verification, audit or other review or documentation independent of the Contractor is specifically required by this Agreement or by other State or Federal mandate, whether to be performed by or on behalf of NYSERDA or another entity, or is specifically permitted by this Agreement or by other State or Federal provision and NYSERDA or other entity with the right to do so elects to have such activity or documentation undertaken, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when any such activity or documentation has been completed, NYSERDA has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

(c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the Contract, prior to Payment, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when the State or Federal agency, or other contributing party to the Contract, has completed the

inspection, advised NYSEERDA of the results of the inspection, and any deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.

(d) If appropriated funds from which Payment is to be made have not yet been appropriated or, if appropriated, not yet been made available to NYSEERDA, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when such funds are made available to NYSEERDA.

504.6. Interest Eligibility and Computation. If NYSEERDA fails to make Prompt Payment, NYSEERDA shall pay interest to the Contractor on the Payment when such interest computed as provided herein is equal to or more than ten dollars (\$10.00). Interest shall be computed and accrue at the daily rate in effect on the Date of Payment, as set by the New York State Tax Commission for corporate taxes pursuant to Section 1096(e)(1) of the Tax Law. Interest on such a Payment shall be computed for the period beginning on the day after the Payment Due Date and ending on the Date of Payment.

504.7. Sources of Funds to Pay Interest. Any interest payable by NYSEERDA pursuant to Exhibit shall be paid only from the same accounts, funds, or appropriations that are lawfully available to make the related Payment.

504.8. Incorporation of Prompt Payment Policy Statement into Contracts. The provisions of this Exhibit shall apply to all Payments as they become due and owing pursuant to the terms and conditions of this Agreement, notwithstanding that NYSEERDA may subsequently amend its Prompt Payment Policy by further rulemaking.

504.9. Notice of Objection. Contractor may object to any action taken by NYSEERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to NYSEERDA. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, at the notice address set forth in Article XIX of this Agreement. The Vice President of NYSEERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSEERDA's action. Within fifteen (15) working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the Contractor either that NYSEERDA's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed thirty (30) working days.

504.10. Judicial Review. Any determination made by NYSEERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid is subject to judicial review in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules. Such proceedings shall only be commenced upon completion of the review procedure specified in Section 504.9 of this Exhibit or any other review procedure that may be specified in this Agreement or by other law, rule, or regulation.

504.11. Court Action or Other Legal Processes.

(a) Notwithstanding any other law to the contrary, the liability of NYSERDA to make an interest payment to a Contractor pursuant to this Exhibit shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.

(b) With respect to the court action or other legal processes referred to in subdivision (a) of this section, any interest obligation incurred by NYSERDA after the date specified therein pursuant to any provision of law other than Public Authorities Law Section 2880 shall be determined as prescribed by such separate provision of law, shall be paid as directed by the court, and shall be paid from any source of funds available for that purpose.

EXHIBIT D

SELLER'S INDUSTRY GROWTH ACTIVITY COMMITMENTS

EXHIBIT E

FISHERIES MITIGATION PLAN

EXHIBIT F

ENVIRONMENTAL MITIGATION PLAN

EXHIBIT G

FORM OF GUARANTY

THIS GUARANTY is dated and effective as of _____ (as amended, restated or modified from time to time, the “Guaranty”), and is made by _____, a _____ organized under the laws of the _____ (the “Guarantor”), in favor of the New York State Energy Research and Development Authority (“NYSERDA”), a New York public benefit corporation, having a principal business address of 17 Columbia Circle, Albany, New York 12203. All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

WHEREAS, pursuant to an Offshore Wind Renewable Energy Certificate Standard Form Purchase and Sale Agreement dated as of _____ (the “Agreement”) by and between _____, a _____ organized under the laws of the _____ (the “Seller”), and NYSERDA, the Seller has agreed sell to NYSERDA and NYSERDA has agreed to purchase from Seller certain renewable energy certificates (“ORECs”), as more specifically set forth in the Agreement; and

WHEREAS, in order to induce NYSERDA to purchase the ORECs, and with full knowledge that NYSERDA would not purchase the ORECs without this Guaranty, Guarantor has agreed to execute and deliver this Guaranty to NYSERDA, for the benefit of NYSERDA, as security for Seller’s performance of certain of its obligations under the Agreement;

WHEREAS, Guarantor is a _____ of Seller and will significantly benefit from NYSERDA’s purchase of the ORECs from the Seller; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties each intending to be legally bound, hereby do agree as follows:

1. GUARANTY.

(a) Guarantor irrevocably, absolutely and unconditionally guarantees as a primary obligor and not merely as surety, to NYSERDA the full and prompt payment no later than two (2) business days following written demand by NYSERDA, of an amount in U.S. dollars equal to the Contract Security that (i) is calculated in accordance with Sections 15.01 and 15.02 of the Agreement, and (ii) NYSERDA is entitled to retain or, in the event that Contract Security is provided in the form of an Acceptable Guaranty, to receive, in accordance with Section 15.07 of the Agreement (the “Guaranteed Obligations”); provided that Guarantor’s aggregate liability under this Guaranty, including, without limitation, on account of the Guaranteed Obligations, shall not exceed [___] Dollars (\$___) under any circumstances (“Guaranty Capped Value”).

(b) Guarantor understands, agrees and confirms that NYSERDA may enforce this Guaranty up to the full amount of the Guaranteed Obligations against Guarantor without

proceeding against Seller or under any other guaranty covering all or a portion of the Guaranteed Obligations. This Guaranty is a guaranty of prompt payment and performance and not of collection, and is limited to payment and performance of the Guaranteed Obligations.

2. LIABILITY OF GUARANTOR ABSOLUTE. The liability of Guarantor hereunder is primary, absolute and unconditional and is exclusive and independent of any security for or other guaranty of the obligations of Seller whether executed by Guarantor, any other guarantor or by any other party, and the liability of Guarantor hereunder shall not be affected or impaired by any circumstance or occurrence whatsoever, including, without limitation: (a) any other continuing or other guaranty, undertaking or maximum liability of Guarantor or of any other party as to the Guaranteed Obligations, (b) any payment on or in reduction of any such other guaranty or undertaking, (c) any dissolution, termination or increase, decrease or change in personnel by Seller, (d) the failure of either Guarantor to receive any benefit from or as a result of its execution, delivery and performance of this Guaranty, (e) any payment made to NYSERDA pursuant to the Agreement that NYSERDA repays Seller pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceeding, and Guarantor waives any right to the deferral or modification of its obligations hereunder by reason of any such proceeding, (f) any action or inaction by NYSERDA as contemplated in Section 5 hereof, (g) any invalidity, rescission, irregularity or unenforceability of all or any part of the Guaranteed Obligations, (h) any statute of limitations affecting its liability hereunder or the enforcement thereof, which Guarantor hereby waives to the fullest extent permitted by applicable law, (i) any law that provides that the obligation of a guarantor must neither be larger in amount or in other respects more burdensome than that of the principal or that reduces a guarantor's obligation in proportion to the principal obligation, (j) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation or dissolution proceeding commenced by or against any Person, including without limitation any discharge of, or bar or stay against collecting, all or any of the Guaranteed Obligations in or as a result of any such proceeding, (k) any extension of credit or the grant of any lien under Section 364 of the United States Bankruptcy Code, or (l) the application or non-application of Section 1111(b)(2) of the United States Bankruptcy Code.

3. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF GUARANTOR. In order to induce NYSERDA to enter into the purchase of ORECs pursuant to the Agreement, Guarantor represents, warrants and covenants that:

(a) Guarantor (i) is a duly organized and validly existing corporation, partnership, or limited liability company, as the case may be, in good standing under the laws of the jurisdiction of its organization and (ii) has the corporate, trust, partnership or limited liability company power and authority, as the case may be, to own its property and assets and to transact the business in which it is engaged and presently proposes to engage;

(b) Guarantor has the corporate, trust, partnership or limited liability company power and authority, as the case may be, to execute, deliver and perform the terms and provisions of this Guaranty and has taken all necessary corporate, trust, partnership or limited liability company action, as the case may be, to authorize the execution, delivery and performance by it of this Guaranty;

(c) Guarantor has duly executed and delivered this Guaranty, and this Guaranty constitutes the legal, valid and binding obligation of such Guarantor enforceable in accordance with its terms;

(d) neither the execution, delivery or performance by Guarantor of this Guaranty, nor compliance by it with the terms and provisions hereof, will (i) contravene any provision of any applicable law, statute, rule or regulation or any applicable order, writ, injunction or decree of any court or governmental instrumentality or (ii) conflict with, violate or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under any agreement, contract or instrument to which Guarantor is a party, except where non-compliance would not reasonably be expected to have a material adverse effect upon the legality, validity, binding effect or enforceability against Guarantor of this Guaranty; and

(e) no order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except as have been obtained or made prior to the date when required and which remain in full force and effect), or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorize, or is required in connection with, (i) the execution, delivery and performance of this Guaranty by such Guarantor or (ii) the legality, validity, binding effect or enforceability of this Guaranty, in each case, except where non-compliance would not reasonably be expected to have a material adverse effect upon the legality, validity, binding effect or enforceability against Guarantor of this Guaranty.

4. WAIVERS BY GUARANTOR.

(a) Guarantor hereby waives to the fullest extent permitted by applicable law notice of acceptance of this Guaranty and notice of the existence, creation or incurrence of any new or additional liability to which it may apply, and waives promptness, diligence, presentment, demand of payment, demand for performance, protest, notice of dishonor or nonpayment of any such liabilities, suit or taking of other action by NYSERDA against, and any other notice to, any party liable thereon (including Guarantor, any other guarantor or Seller) and Guarantor further hereby waives any and all notice of the creation, renewal, extension or accrual of any of the Guaranteed Obligations and notice or proof of reliance by NYSERDA upon this Guaranty, and the Guaranteed Obligations shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended, modified, supplemented or waived, in reliance upon this Guaranty.

(b) Guarantor waives any right to require NYSERDA to: (i) proceed against Seller, any other guarantor of the Guaranteed Obligations or any other party; (ii) file or enforce a claim in any bankruptcy or other proceeding with respect to any person; and (iii) pursue any remedy in NYSERDA's power whatsoever. Guarantor waives any and all defenses based on or arising out of any defense of Seller, any other guarantor of the Guaranteed Obligations or any other party including, without limitation, (1) defenses arising from the bankruptcy, insolvency, dissolution or liquidation of the Seller, or any injunction, stay or similar action in any bankruptcy, insolvency or other proceeding barring or limiting payment of any Guaranteed Obligation by the Seller; (2) defenses relating to the power or authority of the Seller to enter into the Agreement, and to perform the Guaranteed Obligations thereunder, including, without limitation, any lack or limitation of status or of power, or any incapacity or disability, of the Seller, or of any other

guarantor or obligor in respect of any Guaranteed Obligation, or any change whatsoever in the capital structure, constitution or business of the Seller; (3) defenses arising from any release or amendment or waiver of, or consent to departure from, any other guarantee or support document, or any exchange, release or non-perfection of any collateral, for any Guaranteed Obligation; and (4) defenses arising from any event or circumstance constituting fraud in the inducement or any other similar event or circumstance; except that such waiver shall not include a defense of the Seller arising from (i) payment in full in cash of the Guaranteed Obligations, or (ii) Seller's entitlement to a refund of all or a portion of the Contract Security pursuant to the terms of Section 15.06 of the Agreement. NYSERDA may, at its election, exercise any right or remedy it may have against Seller or any other party, or any security, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent the Guaranteed Obligations have been paid in full in cash. Guarantor waives any defense arising out of any such election by NYSERDA, even though such election operates to impair or extinguish any right of reimbursement, contribution, indemnification or subrogation or other right or remedy of Guarantor against Seller, any other guarantor of the Guaranteed Obligations or any other party or any security.

(c) Guarantor has knowledge and assumes all responsibility for being and keeping itself informed of Seller's affairs and assets and of all other circumstances bearing upon the likelihood of events giving rise to NYSERDA's right to retain the amounts of the Contract Security in accordance with the terms of the Agreement, and has adequate means to obtain from Seller on an ongoing basis information relating thereto and Seller's ability to perform its obligations under the Agreement, and agrees to assume the responsibility for keeping, and to keep, so informed for so long as this Guaranty is in effect.

(d) Guarantor warrants and agrees that each of the waivers set forth in Section 2 and in this Section 4 is made with full knowledge of its significance and consequences and that if any of such waivers are determined to be contrary to any applicable law or public policy, such waivers shall be effective only to the maximum extent permitted by applicable law.

5. RIGHTS OF NYSERDA. NYSERDA may at any time and from time to time without the consent of, or notice to, Guarantor, without incurring responsibility to Guarantor, without impairing or releasing the obligations or liabilities of Guarantor hereunder, upon or without any terms or conditions and in whole or in part:

(a) change the manner, place or terms of payment of the Contract Security pursuant to the terms of the Agreement, which may have the effect of changing the amount of the Guaranteed Obligations, and the guaranty herein made shall apply to the Guaranteed Obligations as so changed; provided that in no event shall the amount exceed the Guaranty Capped Value;

(b) exercise or refrain from exercising any rights against Seller, any other guarantor of Seller or others or otherwise act or refrain from acting;

(c) consent to or waive any breach of, or any act, omission or default under, the Agreement or any of the instruments or agreements referred to therein, or otherwise amend, modify or supplement the Agreement or any of such other instruments or agreements;

(d) act or fail to act in any manner which may deprive Guarantor of its right to subrogation against Seller to recover full indemnity for any payments made pursuant to this Guaranty; and/or

(e) take any other action or omit to take any other action which would, under otherwise applicable principles of common law, give rise to a legal or equitable discharge of Guarantor from its liabilities under this Guaranty (including, without limitation, any action or omission whatsoever that might otherwise vary the risk of such Guarantor or constitute a legal or equitable defense to or discharge of the liabilities of a guarantor or surety or that might otherwise limit recourse against such Guarantor).

6. CONTINUING GUARANTY. This Guaranty is a continuing one and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. No failure or delay on the part of NYSERDA in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein expressly specified are cumulative and not exclusive of any rights or remedies that NYSERDA would otherwise have. No notice to or demand on Guarantor in any case shall entitle Guarantor to any other further notice or demand in similar or other circumstances or constitute a waiver of the rights of NYSERDA to any other or further action in any circumstances without notice or demand.

7. EXPENSES. Guarantor hereby agrees to pay all reasonable out-of-pocket costs and expenses of NYSERDA in connection with the enforcement of this Guaranty and the protection of NYSERDA's rights hereunder and any amendment, waiver or consent relating hereto (including, in each case, without limitation, the reasonable out-of-pocket fees and disbursements of counsel employed or retained by NYSERDA).

8. BENEFIT AND BINDING EFFECT. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of NYSERDA and its successors and assigns.

9. AMENDMENTS; WAIVERS. Neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated except with the written consent of Guarantor directly affected thereby and with the written consent of NYSERDA.

10. NOTICE. All notices and other communications shall be in writing and addressed to such party at (a) in the case of NYSERDA, as provided in the Agreement, and (b) in the case of Guarantor, at its address set forth opposite its signature page below; or in any case at such other address as any of the Persons listed above may hereafter notify the others in writing.

11. CONSENT TO JURISDICTION; SERVICE OF PROCESS.

(a) This Guaranty shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts executed and to be performed in New York State without regard to its conflicts of laws principles. The parties irrevocably acknowledge and accept that all actions arising under or relating to this Guaranty shall be brought exclusively in a United States District Court or New York State Court located in Albany, New York having subject matter jurisdiction over such matters, and each of the Parties hereby consents to and accepts such personal jurisdiction of, and waives any objection as to the laying of venue in, such courts for

purposes of such action. Guarantor further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to Guarantor at its address set forth opposite its signature below, such service to become effective 30 days after such mailing. Guarantor hereby irrevocably waives any objection to such service of process and further irrevocably waives and agrees not to plead or claim in any action or proceeding commenced hereunder that such service of process was in any way invalid or ineffective. Nothing herein shall affect the right of NYSERDA to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Guarantor in any other jurisdiction.

(b) Guarantor hereby irrevocably waives (to the fullest extent permitted by applicable law) any objection that it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Guaranty brought in the courts referred to in Section 11(a) above and hereby further irrevocably waives and agrees not to plead or claim in any such court that such action or proceeding brought in any such court has been brought in an inconvenient forum.

(c) GUARANTOR AND NYSERDA (BY ITS ACCEPTANCE OF THE BENEFITS OF THIS GUARANTY) HEREBY IRREVOCABLY WAIVES ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12. COUNTERPARTS. This Guaranty may be executed in any number of counterparts and by the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed and delivered as of the date first above written.

Address:

as Guarantor

By: _____

Name:

Title:

Accepted and Agreed to:

NYSERDA

EXHIBIT H

DESCRIPTION OF SELECTED PROJECT

Selected Project: Those turbines, identified below and with the attributes described herein, owned or controlled by Seller within the _____ BOEM lease area and designated by Seller to be included in the Selected Project, and related equipment necessary to deliver electric energy to the Delivery Point. Seller shall update the facility descriptions contained in this Exhibit H from time to time in accordance with the terms herein; provided, however, that any change to the Offer Capacity or Site Perimeter must be undertaken in conformance with this Agreement.

[PROJECT SITE MAP]

Turbine	Serial Number	Turbine	Serial Number	Turbine	Serial Number
1	To be identified	2	To be identified	3	To be identified

Delivery Point: _____.

Point of Interconnection: _____.

Offer Capacity: _____.

P50 Annual Production: _____.

Lighting Controls: _____.

Related Equipment (excludes Critical Energy/Electric Infrastructure Information):

(Preliminary design to be replaced with the final installed)

Cable Route:

(Preliminary design to be replaced with the final installed)

Cable Landfall Location: _____.

EXHIBIT I

ECONOMIC BENEFITS CLAIMS AND VERIFICATION

[Subject to customization based on particular aspects of the economic benefits proposed in Seller's Bid Proposal].

I. Definitions

For purposes of this Exhibit I, the following definitions apply:

Agreed-Upon Procedures Report (AUPR) – a confidential report of findings based on specific procedures performed on a subject matter; defined by the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Attestation Engagements, Number 18, Attestation Standards: Clarification and Recodification. Independent CPAs performing an AUPR do not provide an opinion or negative assurance. Instead, the AUPR is in the form of procedures and the Independent CPA's findings resulting from the performance of those procedures. It is produced by the Independent CPA pursuant to this Exhibit I to support Seller's economic benefits claims.

Claimed Expense – an expenditure included as an Eligible Economic Benefit in the Economic Benefits Report prepared by the Seller.

Eligible Economic Benefit – an expenditure described in Section II of this Exhibit I.

General Contractor – an individual or company that has a direct contractual relationship with Seller (including any affiliate acting on behalf of Seller) for work performed in federal waters related to the construction and installation of the Selected Project.

Host Community Agreement – a contract between Seller and a state or municipal government entity within New York State, or with a New York State non-governmental organization, detailing the rights and obligations of each party during the construction, operation, and decommissioning of the Selected Project, including financial, health, economic development and/or environmental benefits that will be provided to the community by Seller.

Independent CPA – the independent New York State certified public accountant, funded at the Seller's expense, that performs the steps to complete the agreed upon procedures and prepare an AUPR. The Independent CPA must not be an employee of Seller or its affiliates, and must not prepare the Economic Benefits Report and accompanying documents.

New York State Firm – a company, business, or entity with a principal place of business in New York State. A branch, office or worksite location of a non-New York State firm that operates within New York will be treated as a New York State Firm for the purposes of economic benefits verification so long the supporting documentation from such firm makes evident that the Claimed Expense was for work performed in New York State, services provided in New York State, or for materials, goods, or equipment sourced from New York State.

Payment Application – a construction document (for example, AIA Form G702 or similar) that details payments made to a General Contractor or subcontractor.

Payments in Lieu of Taxes (PILOT) – payments made to local government(s) to compensate for some or all of the tax revenue lost as a result of tax-exempt ownership or use of land or property.

II. Types of Eligible Economic Benefits

Eligible Economic Benefits Shall include expenditures made from January 1, 2020 through the end of the first three (3) Contract Years of the Contract Delivery Term within the following categories:

- a. Payments for labor-related expenditures for work that is performed in New York State or subject to a Project Labor Agreement approved by NYSERDA pursuant to Section 18.11 of this Agreement. Examples include gross wages (including employer-side payroll tax payments), and benefit costs incurred in association with the employment of construction, boat crews, rail and port workers, contractors and laborers, operations and maintenance personnel, engineering or environmental service providers, consultants, other employees and financial and legal service providers associated with the Selected Project. Work performed in federal waters shall be considered to be performed in New York State for purposes of this Exhibit I if the workers are based out of facilities located in New York State.
- b. Payments for in-state purchases of goods and services. Includes expenditures as a result of:
 - i. The purchase and consumption of local goods and services (including sales tax), such as, but not limited to, food, lodging, vehicles, equipment, fuel; and/or
 - ii. The purchase of materials sourced from within New York State such as, but not limited to, gravel, steel, concrete and similar materials and/or the purchase and use of equipment and products manufactured or assembled within New York State and/or the use of rental equipment or similar supplies sourced within New York State (wind turbine components not manufactured within New York State are excluded).
- c. Payments, rents and taxes paid to local New York State entities. Includes:
 - i. New or increased revenues for jurisdictions in New York State from January 1, 2020 through the end of the first three (3) Contract Years of the Contract Delivery Term, including tax payments, PILOT payments, and/or payments under Host Community Agreements.
 - ii. Payments to fishing mitigation or compensation initiatives; and/or

- iii. Payments intended to mitigate the visual, environmental, historical, cultural or other impacts associated with development, construction, operation or decommissioning of the Selected Project.
- d. Financing expenditures (fees to in-state banks related to financing transactions but not the cost of borrowing).
- e. Transmission and interconnection fees and expenditures, including those paid to NYISO or a New York utility relating to services provided within New York State. Expenditures associated with overbuilt transmission, that is, transmission in excess of what is required to accommodate the Selected Project, may not be claimed; provided, however, that fees and expenditures associated with transmission and interconnection facilities, and upgrades to such facilities, identified through the NYISO interconnection process and funded by the Seller shall qualify as a Eligible Economic Benefits.
- f. Other expenditures, accompanied by supporting explanation that establishes that such expenditures are specific to the Selected Project and support spending and job creation in New York; provided, however, that in no case shall Seller's costs of preparing the Bid Proposal be considered an Eligible Economic Benefit.
- g. Long-term capital investments by Seller and/or its affiliates in offshore wind-enabling supply chain, infrastructure, workforce development and research and development initiatives in the state that are intended to have an enduring impact on the offshore wind industry and the New York State economy. These Economic Benefits may include:
 - i. Investments in the offshore wind-related supply chain, such as ports that provide staging, assembly or other services to the offshore wind industry, and manufacturing infrastructure for components used in the manufacture of offshore wind generation or interconnection equipment.
 - ii. Investment in transportation facilities capable of serving future offshore wind installation, operation and maintenance needs, such as investment in Jones Act-compliant vessels.
 - iii. Investments in workforce development applicable to future offshore wind development in New York State, such as establishing a training facility, donating key components for training purposes to technical schools in New York State, building of training labs or materials testing facilities. Investments in Industry Growth Activities (see Exhibit D) may be included if they create capabilities to support future offshore wind facilities.
 - iv. Investment in research and development in New York State applicable to improvements in offshore wind generation and delivery equipment and technology.
 - v. Investments in development of broadly-applicable sea bed, wind and metocean data (not specific to the Selected Project), fisheries and wildlife data, that will be made publicly available, and that have beneficial impact to future offshore wind

development that would benefit New York State. This category shall include expenditures undertaken pursuant to Section 12.10 of this Agreement and approved by NYSERDA as described therein.

- vi. Other capital investments of this type accompanied by an explanation demonstrating their effect to support the development of the offshore wind industry supply chain and future offshore wind investment in New York.

III. Verification

Economic Benefits Report. Within one hundred twenty (120) days of the third anniversary of the beginning of the Contract Delivery Term, Seller must submit the Economic Benefits Report through the Independent CPA.

Verification Process. The verification process for the Seller is as follows:

- a. No later than thirty (30) months after the beginning of the Contract Delivery Term, Seller will provide the name of its selected Independent CPA to NYSERDA. Upon engagement, Seller will provide this Agreement, highlighting the Expected Total Dollars and this Exhibit I, to the Independent CPA, with appropriate redactions of any non-public information unrelated to Economic Benefits or the Economic Benefits Report.
- b. Seller will prepare an Economic Benefits Report that both summarizes in narrative form and documents the total dollar amount of actual Economic Benefits accrued to New York as a result of the development, construction, modification, and operation of the Selected Project from January 1, 2020 through the end of the first three (3) years of the Contract Delivery Term. The Economic Benefits Report shall also describe the activities of Seller in fulfillment of Section 12.01(c) of this Agreement with respect to Industry Growth Activities, described in Exhibit D, over the same period. The Independent CPA will not verify those Industry Growth Activities in the AUPR quantitatively, except to the extent such activities result in expenditures claimed as Eligible Economic Benefits.
- c. Acceptable documentation for expenditures incurred by Seller and/or its affiliates shall include the following (for an individual expense within each category of expense, any one of the listed documents or any combination thereof will be acceptable):
 - i. For labor-related expenses: either W-2s, 1099s or other tax documentation; copies of subcontracts or other labor-related arrangements detailing labor provided under such contracts and that provide confirmation that labor is for work performed within New York or is covered by the Project Labor Agreement described in Section 18.11 of this Agreement.

- ii. For local goods and services: either receipts for hotels, meals, fuel, rental cars, and equipment purchased in New York (per diem payments without specific, itemized expenses are not an acceptable form of documentation); a check register report per vendor for goods or services sourced from a New York State Firm (which includes the check numbers, dollar amounts, invoice numbers paid and totals); each corresponding individual invoice for services, equipment, materials and goods sourced from a New York State Firm that was submitted for payment accompanied by proof of payment; or a bank statement with applicable checks or wire transfers.
 - iii. For operations and maintenance expenses: either itemized receipts; a check register report per vendor (which includes the check numbers, dollar amounts, invoice numbers paid and totals); each corresponding individual invoice that was submitted for payment accompanied by proof of payment; or a bank statement with applicable checks or wire transfers.
 - iv. For other expenditures: such evidence of payment as the context requires, provided that such documentation must show the date and purpose of the expenditure.
 - v. Seller may redact personal, sensitive, legally protected and other non-public information (e.g., social security numbers, tax identification numbers, street addresses, apartment numbers, etc.) from documentation to comply with Applicable Law, enhance privacy protection, and otherwise inhibit the potential improper use of such information.
 - vi. Seller and/or its affiliates may use other forms of documentation for a category of expense, subject to NYSERDA's approval, which shall not be unreasonably denied, conditioned, or delayed.
- d. Expenditures incurred by a General Contractor (and/or its subcontractor(s)) require the same documentation process as outlined above. Seller is responsible for obtaining all necessary documentation from General Contractors. In addition:
- i. If the General Contractor(s) is located in New York State: Acceptable documentation of in-house labor billed to the Selected Project by the contractor includes payroll records with confirmation from the General Contractor that such payments are for work on the Selected Project. General Contractor may also self-certify costs of in-house equipment use. Acceptable documentation includes records of equipment use in construction of the Selected Project. Documentation should be accompanied by a letter signed by a principal of the company attesting to the expenses.
 - ii. New York subcontractors utilized by the General Contractor: Acceptable documentation includes the General Contractor's check register reports by vendor (which includes the check numbers, dollar amounts, invoices paid and totals); the last Payment Application and final release waiver for each

subcontractor to corroborate the payments in the check register report; or a bank statement with applicable checks or wire transfers.

- iii. New York State Firms utilized by the General Contractor (lower tier subcontractors or not part of a subcontract agreement): Acceptable documentation includes the General Contractor's (and/or its direct or lower tier subcontractor's) check register reports by vendor (which includes the check numbers, dollar amounts, invoices paid and totals); corresponding individual invoices that were submitted to the General Contractor and/or its subcontractor at any tier for payment; or a bank statement with applicable checks or wire transfers.
- iv. Labor costs that are undertaken by an out of state firm, but which nonetheless are attributable to work performed in New York and/or by workers covered by the Project Labor Agreement, may be documented in the manner described above, along with such additional documentation necessary to identify and support any apportionment of such costs among projects.
- e. Seller may not include indirect benefits or those created by any "multiplier effect" or other attribution method under which the creation of peripheral spending and jobs might be credited to direct capital infused into the economy.
- f. Seller should provide its Economic Benefits Report to the Independent CPA, collect all supporting documentation to support the Claimed Expenses in the Economic Benefits Report, and submit all documentation requested by the Independent CPA as needed.
- g. The Independent CPA will submit the Agreed-Upon Procedure Report to NYSERDA within one hundred twenty (120) days of the third anniversary of the commencement of the Contract Delivery Term. Neither Seller nor the Independent CPA shall provide the documentation underlying the claims in the Economic Benefits Report to NYSERDA. Seller, however, must retain such documentation in accordance with Section 6.04 of this Agreement so that it can be made available to NYSERDA upon NYSERDA's request pursuant to Section 7.01 of this Agreement.
- h. NYSERDA will examine the verified Economic Benefits Report and the Agreed-Upon Procedure Report, and confirm the calculation of the Verified Total Dollars by the Independent CPA. NYSERDA will compare the Verified Total Dollars, in total, to the Expected Total Dollars, and proceed in accordance with Section 12.01(b) of this Agreement.

IV. Guidance for Independent CPA; Agreed Upon Procedures

This section sets forth the agreed upon procedures that the Independent CPA must follow in order to issue the AUPR related to the Seller's Economic Benefits Report.

Deadline for Submission. The Independent CPA is responsible for submitting the AUPR within one hundred twenty (120) days of the third anniversary of the commencement of the Contract Delivery Term. The AUPR must be received by NYSERDA on or before this date.

Organization of Report. The Independent CPA should organize its submission to NYSERDA as follows:

- AUPR
- Procedures and Findings
- Seller's original Economic Benefits Report

Use of Sampling Techniques. The Independent CPA will review each expenditure valued at more than \$50,000 over the period covered by, and as reported in, the Economic Benefits Report. At its discretion, the Independent CPA may rely on sampling of representative expenditures under \$50,000. If sampling is used, however, the Independent CPA must review a sample of transactions to be determined by the value and number of items included in the overall population, but no fewer than 150 such transactions or the number of such transactions that the Independent CPA determines would be statistically significant, whichever is greater. If sampling is used, the Independent CPA must also disclose the population and sample size in the AUPR.

Applying General Procedures to Specific Circumstances. This document provides guidance and specific examples of the procedures to be performed in providing NYSERDA with assurances as to the accuracy and completeness of Seller's Economic Benefits Report. Because accounting systems and data structures vary among companies, the requirements described in this Exhibit I are not intended to be all-inclusive, but rather represent the guidance and principles to be applied in performing tests of the documentation associated with the information submitted to NYSERDA by Seller.

General Notes on Performing the AUPR.

- a. The AUPR must be produced by responding to each step in the Economic Benefits Agreed Upon Procedures that follow this section. When submitting the AUPR to NYSERDA, a scan of a printout is acceptable, as is a PDF with electronic signatures.
- b. While performing the Agreed Upon Procedures, the Independent CPA may develop a list of questioned costs, including but not limited to unsubstantiated or inaccurate dollar value claims, etc. The Seller may choose to remove any unsubstantiated claims from its report prior to submission of a final Economic Benefits Report to NYSERDA.
- c. If the Independent CPA confronts an issue that the Independent CPA believes is not reasonably resolved by the guidance and principles contained in this Exhibit I, the Independent CPA may email designated points of contact at Seller and NYSERDA, who will make good faith efforts resolve the question by mutual agreement as quickly as possible. Any such resolution shall be memorialized in the AUPR.

Agreed Upon Procedures.

The purpose of performing the agreed upon procedures is to ensure and confirm the information submitted by the Seller on the Economic Benefits Report is accurate and falls within the categories of Eligible Economic Benefits described above.

- a. Inquire of the Seller whether each Claimed Expense is related to the development, construction, operation and/or maintenance of the Selected Project.
- b. From the Seller's Economic Benefits Report, if sampling is used, select an appropriate sample for detailed testing of underlying transactions in accordance with the sampling methodology noted above. Disclose the population as well as the sample size for each category in the AUPR.
- c. For Seller's or its affiliates' labor-related expenditures:
 - i. Compare the expenditures claimed for each transaction selected to the Seller's or its affiliates' payroll records (e.g., payroll journals, W-2 forms, or benefits invoices) and determine:
 1. The name of the employer/purchaser is the Seller or an affiliate;
 2. The work was performed in New York State or the employer has certified that the employee is covered by the Project Labor Agreement approved by NYSERDA pursuant to Section 18.11 of this Agreement;
 3. Expenditure amounts agree to the payroll records and/or other supporting acceptable documentation;
 4. The payment was for services rendered during the time period described in this Exhibit I;
 5. Expenditure agrees to the relevant provided financial records of Seller and/or its affiliates (which may include payroll journal, general ledger, cancelled checks, etc.); and
 6. Expenditure is listed under the proper category.
- d. For Seller's in-state purchases of goods and services:
 - i. Compare the expenditures claimed for each transaction selected to the Seller's or its affiliates' supporting documentation accompanying the Economic Benefits Reports and determine:
 1. Seller (or Seller's affiliate or General Contractor) is named as the employer, payor on the invoice, and/or as party to the applicable agreement;
 2. Expenditure amounts agree to the supporting acceptable documentation;

3. The payment was for services rendered or goods received during the time period specified in this Exhibit I;
 4. Payment is associated with goods, services, equipment, materials, operations and/or maintenance expenses;
 5. The vendor is a New York State Firm; and
 6. Expenditure agrees to the relevant provided financial records of Seller and/or its affiliates (which may include cash disbursements journal, payroll journal, general ledger, cancelled checks, etc.).
- ii. Inspect records supporting in-house equipment expenditures and obtain copy of letter provided by the Seller (or its affiliate(s)) or General Contractor attesting to the accuracy of the expenditures reported for in-house equipment use.
- e. For Long-term capital investments by Seller and/or its affiliates in offshore wind-enabling supply chain, infrastructure, workforce development and research and development initiatives in the state that are intended to have an enduring impact on the offshore wind industry and the New York State economy and/or investments not covered by (c) or (d) above:
- i. Compare each Claimed Expense to Seller's supporting documentation accompanying the Economic Benefits Report and determine:
 1. Seller (or Seller's affiliate or General Contractor) made the expenditure and/or investment;
 2. Expenditure/investment amounts agree to the supporting acceptable documentation;
 3. The payment was made during the time period specified in this Exhibit I; and
 4. The payee or investment is in New York, or the expenditure and/or investment was made for an above-described purpose for the benefit of New York (including the establishment of a fund accessible by New York residents or entities, or for a purpose to benefit New York).
- f. For other expenditures:
- i. Compare the expenditures claimed for each transaction selected to the Seller's supporting documentation accompanying the Economic Benefits Reports and determine:

1. Seller (or Seller's affiliate or General Contractor) is named as the employer, payor on the invoice, and/or as party to the applicable agreement or other documentation;
2. Expenditure amounts agree to the supporting acceptable documentation;
3. The payment was for services rendered or goods received during the time period specified in this Exhibit I;
4. The expenditure is an Eligible Economic Benefit as described above;
5. The payee is a New York State Firm, a New York State municipality, or other counterparty as described above; and
6. Expenditure agrees to the relevant provided financial records (which may include cash disbursements journal, payroll journal, general ledger, cancelled checks, etc.).

EXHIBIT J

PROJECT LABOR AGREEMENT REQUIREMENTS

The final form of PLA presented to NYSERDA for review and approval pursuant to Section 18.11 of this Agreement should address:

1. Provisions that appropriately limit applicability of the PLA to United States-based (including Federal waters) covered work on the Selected Project (and not extending to any other work performed by contractors and subcontractors, or to the work of their affiliated entities), ensuring that Selected Project contractors or subcontractors are not required to become a signatory to any other labor agreement, and appropriately providing for the supremacy of the PLA over any potentially conflicting labor agreements that might otherwise apply to contractors and subcontractors. The PLA must apply to all covered construction and all contractors and subcontractors, of whatever tier, performing construction work on the Selected Project (subject to appropriate exceptions), and the PLA should be available to all contractors and subcontractors, of whatever tier, regardless of their union affiliation;
2. Provisions for appropriate union recognition and security (limited to Selected Project work) and the referral of skilled craft workers, including provisions for staffing in the event qualified referrals are not reasonably available and for the reasonable use of a number of core employees by contractors and subcontractors (regardless of union affiliation and referral practices that might otherwise exist);
3. Comprehensive labor harmony provisions to ensure against schedule disruption as a result of worksite disputes or other labor disputes of any kind;
4. Comprehensive provisions for the resolution of workplace disputes through third party resolution, including provisions for the resolution of jurisdictional disputes (without disruption to the schedule of the Selected Project), and appropriate provisions for labor management cooperation;
5. Appropriate provisions to allow the cost-effective and efficient coordination of multiple trades and contractors and subcontractors (notwithstanding any local labor agreements that might otherwise be applicable to contractors and subcontractors), as well as other appropriate management rights (such as appropriate provisions respecting specialty work and/or workers; adequately ensuring the contractors' or subcontractors' choice of materials, techniques, methods, technology or design, or, regardless of source or location; use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials, tools, or other labor-saving devices; the installation or use of materials, supplies or equipment regardless of their source (including as may be required by a vendor and/or to ensure warranty coverage); and to perform off-site work, subject to any restrictions imposed by law);
6. Appropriate provisions promoting minority- or women-owned business enterprise

(“MWBE”) employment and service-disabled veteran owned business (“SDVOB”) employment, as well as the employment of low-income workers in New York;

7. Appropriate provisions for the use of apprentices; and
8. Appropriate provisions for rules governing worksite access and conduct.



EXHIBIT K

Progress Report

- 1. [DEVELOPER]
2. Date: [March/June/September/December] 1, 20[XX]

Dear NYSDERDA Offshore Wind Team,

- 3. [DEVELOPER] ("Seller") submits this Progress Report pursuant to Section 6.02 of the Offshore Wind Renewable Energy Certificate Purchase and Sale Agreement ("the Agreement") between the New York State Energy Research and Development Authority ("NYSDERDA") and Seller.

Pursuant to Section 21.04 of the Agreement, all information enclosed herein that Seller wishes to protect from disclosure to third parties has been marked "confidential" or "proprietary." Seller acknowledges that NYSDERDA is subject to and must comply with the requirements of New York's Freedom of Information Law ("FOIL"). See Public Officers' Law Article 6.

I, the undersigned certify that I am an Officer or otherwise authorized representative of Seller, that I am authorized to provide this Progress Report on behalf of Seller and that all statements herein are true and accurate.

Seller's Authorized Representative:
Representative Title:
Representative Signature:
Date of Signature:

Instructions: Please complete and submit this Progress Report by 5:00 p.m. ET as of the Date referenced above to (1) NYSDERDA's designated Contract Manger via email, and (2) to NYSDERDA's Offshore Wind Contract Management SharePoint Platform via the link: [INSERT LINK]

4. Status of Development and/or Construction Planning or Activities with Regard to the Project

[Insert Update]

Please attach an updated project schedule as Appendix A.1 to this report.

Please attach an updated financing plan as Appendix A.2 to this report.

Please attach an updated hiring summary schedule including New York State hiring as Appendix A.3 to this report.

Please attach an updated Site Layout Plan including links to associated ShapeFiles as Appendix A.4 to this report.

5. Progress in Obtaining Environmental Permits and/or Local Approvals

[Insert update]

Please attach any Federal and/or State and/or Local permitting/approval applications as filed within the previous quarter as Appendix B.1 to this report.

Please attach any completed permits and/or approvals, duly authorized by the relevant Federal and/or State and/or Local authority, as Appendix B.2 to this report.

6. Status of the Interconnection Process between the Project and the Administrator of the Control Area

[Insert Update]

Please attach an updated interconnection plan including updated interconnection study results, cable routing plan, and status of obtaining related permits as Appendix C.1 to this report.

Please attach interconnection applications as filed within the previous quarter as Appendix C.2 to this report.

Please attach completed interconnection and/or approvals, duly authorized by the relevant authority, as Appendix C.3 to this report.

7. Purchases, Delivery, and/or Installation of any Major Equipment Associated with the Project

[Insert Update]

Please attach executed supply agreements and purchase orders or summaries thereof issued for goods and services within the previous quarter as Appendix D.1 to this report.

Please attach an updated summary of activities undertaken to support compliance with the New York Supplier Opportunity (see Agreements, Exhibit D and Exhibit I) including notice of any New York State contractors and any M/WBEs engaged by the Project as Appendix D.2 to this report.

Please attach a summary of upcoming activities anticipated to support compliance with the New York Supplier Opportunity (see Agreements, Exhibit D and Exhibit I) as Appendix D.3 to this report.

8. Activities Undertaken pursuant to Project Community Outreach Plan, including Upcoming Meetings and Known Outreach Activities for the Next Quarter

[Insert Update]

Please attach a list of completed meetings, outreach activities, and outcomes including Consultations with NYS Agencies and Technical Working Group (TWG) Participation for the previous quarter including outcomes as Appendix E.1 to this report.

Please attach a list of upcoming meetings, outreach activities, and outcomes including Consultations with NYS Agencies and TWG Participation for the next quarter as Appendix E.2 to this report.

9. Status of Seller's activities associated with the New York State Supplier Opportunity

[Insert Update]

Please attach a summary of communication efforts and outcomes for all opportunities for contracts with an anticipated contract value of \$5 million or greater to the New York State Supplier Database, as Appendix F.1 to this report. Note per the terms of ORECRFP18-1 Section 2.2.9, this includes the communication efforts for goods or services directly tendered by the Seller or from goods and services tendered by its Major Suppliers.

Please attach a summary of exemptions for the provision of goods and services that cannot practically be performed by the New York State supply chain at this time as Appendix F.2 to this report.

10. Updates to Fisheries Mitigation Plan and/or Environmental Mitigation Plan

[Insert Update]

Please attach the current version (including Mitigation Plan version number) of the Fisheries Mitigation Plan as Appendix G.1 to this report.

If the version has changed since the last Progress Report, please attach a redline update of the Fisheries Mitigation Plan as Appendix G.2 to this report.

Please attach the current version (including Mitigation Plan version number) of the Environmental Mitigation Plan as Appendix G.3 to this report.



Effective Date: [MM.DD.YYYY]

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If the version has changed since the last Progress Report, please attach a redline update of the Environmental Mitigation Plan as Appendix G.4 to this report.

11. Site and Environmental Data Acquisition

[Insert Update, Including all current links]

12. Financial Support for Monitoring Fisheries and Wildlife

[Insert update regarding expenditures and associated activity confirming that the requirement of Section 12.10 of the Agreement has been met].

13. Prevailing Wage and Project Labor Agreement

[Insert Update]

Commencing with the first progress report that indicates that construction activities falling within the scope of Section 18.10 of the Agreement have commenced and with each subsequent progress report submitted on June 1 and December 1 thereafter, please attach a written attestation prepared by a New York State independent certified public accountant or other qualified party confirming that the Prevailing Wage requirement of Section 18.10 is being met.

Please attach the attestation as described as Appendix I.1 to this report.

Please attach an update as to Project Labor Agreement plan as Appendix I.2 to this report.

14. Estimated Date for Commercial Operation

[Insert Update]



Offshore Wind Renewable Energy Certificate
Purchase and Sale Agreement by and between
the New York State Energy Research and Development Authority
and [DEVELOPER]

Effective Date: [MM.DD.YYYY]
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15. Appendix [X.Y]

[Insert Content]

EXHIBIT L
PORT INFRASTRUCTURE INVESTMENT PLAN