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ORECRFP18-1 – APPENDIX F

REVISED 9.26.18

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

BY AND BETWEEN

THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

AND

[NAME OF SELLER]

Dated: _____, 2019

Agreement No. _____

This Offshore Wind Renewable Energy Certificate Standard Form Purchase and Sale Agreement (“Agreement”) is entered into as of _____, 2019 (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 [insert as appropriate], 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, 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 the Phase 1 Order the PSC directed and authorized NYSERDA, as the central procurement administrator, to issue solicitations, during 2018 and 2019, for the procurement of the renewable energy certificates (“ORECs”) representing the attributes associated with the generating capacity of approximately 800 MW of offshore wind generating capacity; and

WHEREAS, NYSERDA has conducted a competitive solicitation in the form of ORECRFP18-1 to procure ORECs; and

WHEREAS, NYSERDA ORECRFP18-1, which is incorporated herein and made part hereof, provided, among other things, that this Agreement would be employed to govern the rights and obligations of the Parties; and

WHEREAS, Seller has participated in ORECRFP18-1 and has been selected by NYSERDA for an award with respect to the [name of facility] (“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.

Article I

Definitions

The terms defined in this Article I, whenever used in this Agreement (including in any Exhibit hereto), shall have the respective meanings indicated below 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.

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

Annual OREC Cap: The 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.

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.

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

Award Notification Date: For purposes of this Agreement, the Award Notification Date will be [Month] [Day], 2019.

BOEM: The Bureau of Ocean Energy Management within the United States 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.

Contract Delivery Term: 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.

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

Contract Tenor: The maximum duration of the Contract Delivery Term. The Contract Tenor under this Agreement shall be [___] years.

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 New York Control Area, 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 New York Control Area, the generator bus or location where the NYISO measures energy delivery from the Selected Project into the New York Control Area.

Economic Benefits Report: A Report by Seller to NYSERDA in accordance with Appendix C of ORECRFP18-1.

Economic Benefits Shortfall: The amount by which the Verified Total Dollars 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, allocations, howsoever characterized, denominated, measured or entitled, attributable to the generation of Actual Production by a 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 (GHGs) that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of 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.

Expected Total Dollars: The total dollar amount of Incremental Economic Benefits in Categories 1 and 2 (as described in ORECRFP18-1) as presented in the Proposal and accepted by NYSERDA, expected to accrue to New York State as a result of the development, construction, modification, interconnection, and operation of the Selected Project from the Award Notification Date through the end of the first three (3) Contract Years. The 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 certificates to NYSERDA as described in Section 10.3 of the NYGATS Operating Rules.

Incremental Economic Benefits: Incremental Economic Benefits are financial expenditures benefitting New York State within the categories specified in Appendix C of ORECRFP18-1 and are those that Seller can demonstrate: (1) will accrue subsequent to an award under ORECRFP18-1, and (2) would not have accrued but for the award under ORECRFP18-1. Economic benefits previously claimed with respect to the Selected Project that are subject to a pending award under a previous solicitation or that are the subject of a current NYSERDA agreement are not Incremental Economic Benefits.

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(b) of this Agreement.

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 by NYSERDA pursuant to Section 4.03 of this Agreement.

Injection Point: For Selected Projects that interconnect directly into the New York Control Area, the Injection Point shall be the Delivery Point. For Selected Projects that interconnect outside of the New York Control Area, 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 determined by NYSERDA 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 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.

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 15.06 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(b) 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, [2047/2052].

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

Project Labor Agreement: As described in Section 18.11 of this Agreement, a collective bargaining agreement (including a pre-hire agreement) covering both 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 ORECRFP18-1 with respect to the Selected Project.

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. The P10 Annual OREC Exceedance for the Selected Project has been included with the Proposal and may be updated as provided in Section 2.01(e) of this Agreement.

Reference Capacity Price: A broad index of NYISO Capacity Market prices for the coastal and near-coastal zones of New York State calculated as set forth in Section 4.03 of this Agreement.

Reference Energy Price: A broad index of NYISO Energy Market prices for the coastal and near-coastal zones of New York State calculated as set forth in Section 4.03 of this Agreement.

Selected Project: The offshore wind generation facility described in the Proposal and selected for award by NYSERDA in ORECRFP18-1.

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 Incremental Economic Benefits in Categories 1 and 2 verified by NYSERDA to have accrued to New York as a result of the development, construction, modification, interconnection, and operation of the Selected Project from the Award Notification Date through the end of the first three (3) Contract Years.

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 whose Operational Installed Capacity has been confirmed within an Independent Engineer's report.
 - (ii) If, at any point during the Contract Delivery Term, Seller elects to install additional offshore wind facilities within the same leased area, 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 than any generation and ORECs produced by such additional facilities.
- (d) Notwithstanding Subsection 2.01(a), in no Contract Year shall NYSERDA be obligated to purchase from Seller under this Agreement more ORECs than the Annual OREC Cap.
- (e) With NYSERDA's written consent, which shall not be unreasonably withheld or delayed, Seller may, at any time prior to Commercial Operation of the Selected Project, adjust the P10 Annual OREC Exceedance (and, therefore, 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.

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 the 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. Seller shall continue to transfer ORECs in accordance with Section 2.04 and NYSERDA shall own in perpetuity all right, title, and interest in any ORECs and Environmental Attributes associated with electric generation from the Selected Project subsequent to the conclusion of the Contract Delivery Term; provided that in any calendar year Seller shall retain ownership of any ORECs (and associated Environmental Attributes) in excess of the Annual OREC Cap.

Section 2.04. 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 2.05. Other Attributes. In the event that, owing to the Environmental Attributes of the Actual Production, Seller becomes eligible for credits, allowances or other benefits under any emission-trading, emission-recording, renewable energy, or other greenhouse gas emissions reduction regime other than the Clean Energy Standard and the Offshore Wind Standard, NYSERDA may request that Seller take actions reasonably 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 2.06. 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 Selected Projects that inject the energy generated by the Selected Project directly into the New York Control Area 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 Section 5.3 of the NYGATS Operating Rules.

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 New York Control Area 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 2.04 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 or capacity produced by the Selected Project. Electric energy from the Selected Project sold on a bilateral basis may produce ORECs and NYSERDA will purchase such ORECs in accordance with Article II of this Agreement, provided that Seller demonstrates that the ultimate purchaser of such electricity is a load-serving entity in New York State or one or more New York State end-users.

Article IV

Pricing and Payment

Section 4.01. Determination of Applicable OREC Price.

[Upon finalization of award to Seller, NYSERDA will notify Seller whether NYSERDA has selected Seller's Fixed OREC offer or Seller's Index OREC offer for award. In the event that Seller's Fixed OREC offer is selected, this Section 4.01 will identify the Fixed OREC Price as the Applicable OREC Price for the entire Contract Delivery Term. In the event that Seller's Index OREC offer is selected, this Section 4.01 will provide as follows:]

- (a) The Applicable OREC Price shall be the Index OREC Price, as determined by NYSERDA pursuant to Section 4.03 of this Agreement, for the entire Contract Delivery Term, unless and until the Index OREC Price described in this Agreement is invalidated by a final, unstayed judgment of a court of competent jurisdiction.
- (b) In the event of that the Index OREC Price is invalidated as described in Section 4.01, NYSERDA shall notify Seller that the Applicable OREC Price shall be the Fixed OREC Price as described in Section 4.02 of this Agreement. From the date that NYSERDA so notifies Seller until the end of the Contract Delivery Term, the Applicable OREC Price shall remain the Fixed OREC Price unless and until a change in Applicable Law occurs that once again renders the Index OREC Price lawful notwithstanding previously being held invalid. In such case, NYSERDA will so notify Seller and the Applicable OREC Price shall revert to the Index OREC Price, effective as of the date of such notification by NYSERDA. Any and all changes to the Applicable OREC Price under this Subsection 4.01(b) shall be prospective from the effective date of such change.
- (c) If, pursuant to Subsection 4.01(b), the Applicable OREC Price changes in the middle of the month, NYSERDA will pay Seller for that month: (1) the Index OREC Price for each OREC created during the portion of the month in which the Index OREC price was the Applicable OREC Price, and (2) the Fixed OREC Price for each OREC created during the portion of the month in which the Fixed OREC Price was the Applicable OREC Price.

Section 4.02. Fixed OREC Price.

For each Contract Year, the Fixed OREC Price shall be:

Contract Year 1:	\$__
Contract Year 2:	\$__
Contract Year 3:	\$__
Contract Year 4:	\$__
Contract Year 5:	\$__
Contract Year 6:	\$__
Contract Year 7:	\$__
Contract Year 8:	\$__
Contract Year 9:	\$__
Contract Year 10:	\$__
Contract Year 11:	\$__
Contract Year 12:	\$__
Contract Year 13:	\$__
Contract Year 14:	\$__
Contract Year 15:	\$__
Contract Year 16:	\$__
Contract Year 17:	\$__
Contract Year 18:	\$__
Contract Year 19:	\$__
Contract Year 20:	\$__
Contract Year 21:	\$__
Contract Year 22:	\$__
Contract Year 23:	\$__
Contract Year 24:	\$__
Contract Year 25:	\$__

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.

(1) The Index OREC Strike Price, for each Contract Year shall be:

Contract Year 1:	\$__
Contract Year 2:	\$__
Contract Year 3:	\$__
Contract Year 4:	\$__
Contract Year 5:	\$__
Contract Year 6:	\$__
Contract Year 7:	\$__
Contract Year 8:	\$__
Contract Year 9:	\$__
Contract Year 10:	\$__

Contract Year 11: \$ ___
Contract Year 12: \$ ___
Contract Year 13: \$ ___
Contract Year 14: \$ ___
Contract Year 15: \$ ___
Contract Year 16: \$ ___
Contract Year 17: \$ ___
Contract Year 18: \$ ___
Contract Year 19: \$ ___
Contract Year 20: \$ ___
Contract Year 21: \$ ___
Contract Year 22: \$ ___
Contract Year 23: \$ ___
Contract Year 24: \$ ___
Contract Year 25: \$ ___

(2) Using data published by NYISO for its day-ahead energy market, NYSERDA shall calculate the Reference Energy Price for each month by:

(i) identifying the location-based marginal price (“LBMP”) for each hour of the month in both Zone J and Zone K, and the amount of electric energy in MWh consumed in each zone in each hour (“Hourly Zonal Load”);

(ii) for each such hour, calculating a “Load-Weighted Average Price” by dividing the sum of (A) the product of the LBMP for Zone J and the Hourly Zonal Load for Zone J, and (B) the product of the LBMP for Zone K and the Hourly Zonal Load for Zone K, by the sum of the Hourly Zonal Load for Zone J and the Hourly Zonal Load for Zone K;

(iii) taking the average of the Load-Weighted Average Prices for each hour of the month to determine the Reference Energy Price.

(3) Using data published by NYISO for its monthly spot market unforced capacity (“UCAP”) prices, NYSERDA shall calculate the Reference Capacity Price for each month by:

(i) identifying the UCAP prices in dollars per kW-month for NYISO Zones G, H, I, J, and K (the “Applicable Zones”), and the energy consumed in MWh for each zone (“Monthly Zonal Load”);

(ii) calculating the “Reference UCAP Price” (the load-weighted average of the monthly UCAP prices in each Applicable Zone) by dividing the sum of the products of the UCAP price for each zone and the Monthly Zonal Load for each Applicable Zone by sum of the Monthly Zonal Loads for all Applicable Zones;

(iii) taking the product of (A) the Reference UCAP Price (\$/kW-month), (B) the NYISO UCAP Production Factor submitted by Seller in its Proposal for the Winter Capability Period or Summer Capability Period, as applicable, (C) the Operational Installed Capacity (MW), and (D) a conversion factor of 1,000 kW/MW;

(iv) dividing the total amount of dollars calculated in (iii) 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.

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 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.nyserda.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. 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 must be accompanied by information and data, as specified in Section 6.01, sufficient for NYSERDA to verify compliance with the electricity delivery requirements set out in Article III and other requirements in this Agreement.

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 produced from 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 of 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 of 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 check or wire transfer to an account designated by Seller. NYSERDA shall have no obligation to pay any invoice not accompanied by all information required 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 (i) materially reduces NYISO Capacity Market revenues available to offshore wind facilities that participate in the Offshore Wind Standard program, as a class, and (ii) does not apply generally to all generation facilities in NYISO but does apply selectively based on generator fuel type or receipt of compensation for Environmental Attributes, the Parties shall negotiate in good faith to agree mutually to amend the definition of Reference Capacity Price in this Agreement to reflect a more accurate index capacity price for offshore wind facilities that receive compensation for environmental attributes, which shall be a Reference Capacity Price of zero in the event such change in Applicable Law has the effect of excluding offshore wind facilities that participate in the Offshore Wind Standard program from the NYISO Capacity Market; provided that this obligation to amend the Agreement shall apply only if Seller has selected a NYISO UCAP Production Factor greater than zero.
- (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.
- (c) In the event that a change in Applicable Law after the Effective Date changes the price structure, 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 as described in Section 4.03 of this Agreement becomes impossible or can no longer reasonably fulfill the objective of providing an index of market energy and capacity prices in the coastal and near-coastal areas of New York State, the Parties shall negotiate in good faith to amend this Agreement to make such conforming changes as are necessary to achieve that objective; provided that this obligation to amend the Reference Capacity Price shall apply only if Seller has selected a NYISO UCAP Production Factor greater than zero.

Article V

Adjustments

Section 5.01. True-Up Adjustments. NYSERDA may 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. Other Adjustments. NYSERDA may adjust its contractual payment obligations under this Agreement to reflect the costs borne by NYSERDA, if any, for participation in any renewable energy attribute accounting system operating in the Selected Project's local control area, including all fees and charges, if any, for the delivery, registration and/or retirement of the attributes or certificates in such renewable energy attribute accounting system.

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. Seller may be required to waive confidentiality, as to NYSERDA, for 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.

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, which reports shall be in letter form, through a method specified by NYSERDA, and which shall describe at a minimum (a) Seller's progress in obtaining and securing 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 that representatives of NYSERDA may attend; the status of seller's activities associated with the New York State Supplier Opportunity; and (f) 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 ten (10) days of any event that could reasonably cause a material delay in any of the activities listed above. Seller shall include with each progress report 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 Seller is in compliance with the Prevailing Wage requirement of Section 18.10.

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

- (a) certificates, dated as of the most recent practicable date prior to the Effective Date, issued by the [insert jurisdiction of Seller's organization] Secretary of State confirming the corporate good standing of Seller;
- (b) a certificate of an appropriate officer 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 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 6.4.2 of ORECRFP18-1 in shapefile format for geographic information system software.

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

Section 6.04. Maintenance of Records. Seller shall keep, maintain, and preserve at its principal office throughout the term of this Agreement and for a period 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.

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 such period 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. 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. Any payment made 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, subcontracting 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 or delayed. Seller agrees to compensate 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, except 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 provided by Seller hereunder) unless the NYSERDA (or its successors or assigns) expressly releases in the writing 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 NYERSDA and Seller.

Section 8.03. Change of Control of Seller. 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) (i) that Seller is a [corporation/limited liability company/partnership] 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 (3) 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 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 respective limited liability company agreements 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, 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) 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 ORECRFP18-1 contain any untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading;
- (i) that Seller shall not, and shall not cause or permit any voluntary abandonment of the development, construction or operation of the Selected Project; and
- (j) 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 and Warranties. 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 in this Article IX to be untrue or misleading, Seller shall provide the 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.

Article X

NYSERDA's Warranties and Guarantees

Section 10.01. NYSERDA 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, 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 expected to result in a material adverse effect on NYSERDA's ability to perform its obligations.

Section 10.02. Continuing Nature of Representations and Warranties. 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 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, arising out of or relating to Seller's performance under this Agreement. 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 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 withheld 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 incurred 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 insurance policies, 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 policy 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 of 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 C to ORECRFP18-1. The Economic Benefits Report shall calculate and verify the actual Incremental Economic Benefits that have resulted in each of Categories for which Seller claimed Incremental Economic Benefits in Seller's Proposal in response to ORECRFP18-1. The Economic Benefits Verification Standards shall define valid expense claims, standard submission and documentation processes, and best practices.
- (b) Within sixty (60) Business Days of receipt, NYSERDA shall either (1) accept the Economic Benefits Report in its entirety, in writing, or (2) return the Economic Benefits Report to Seller with a written response to Seller explaining and describing NYSERDA's preliminary conclusion there is an Economic Benefits Shortfall. Such response will include a description of any Incremental Economic Benefits claimed by Seller that have been preliminarily determined to be invalid or improperly documented, if any. Seller will be given a reasonable opportunity to dispute NYSERDA's preliminary conclusion or to revise the Economic Benefits Report.
- (c) In its Proposal, Seller proposed to perform certain activities described in ORECRFP18-1 as Category 3 Economic Benefits (including the vendor notifications and twice-yearly reports to NYSERDA described in Section 2.2.9 of ORECRFP18-1), which is included as Exhibit D to this Agreement. Seller agrees to undertake all activities and perform all obligations described in Exhibit D to this Agreement, including any alternative compliance obligations required therein for failure to perform the activities originally proposed.

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 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 notification of the final 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 New York State agencies at the request of such agencies during the planning and development of

the Selected Project. At least 90 days prior to submitting a Site Assessment Plan (or any component thereof) to BOEM and at least 120 days prior to submitting a Construction and Operations Plan (or any component thereof) to BOEM, Seller shall share a draft of such plan with 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, and NYSERDA, except to the extent that any such agency has indicated its preference to decline such consultation. So long as such agencies provide feedback to Seller within thirty (30) days of their receipt of Seller's draft plans, Seller shall make best efforts to meet with such agencies upon their request and to consider feedback provided by such agencies. [If Seller has already submitted a Site Assessment Plan or Construction and Operations Plan to BOEM as of the Effective Date or if Seller foresees that compliance with this consultation requirement may not be practicable, Seller shall propose to NYSERDA an alternative process for consulting such agencies.]

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, which Seller may amend from time to time with NYSERDA's consent. Seller shall undertake all activities and perform all obligations described in the Fisheries Mitigation Plan 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.

Section 12.06. Environmental Mitigation Plan. Seller has provided as Exhibit F to this Agreement an Environmental Mitigation Plan, which Seller may amend from time to time with NYSERDA's consent. Seller shall undertake all activities and perform all obligations described in the Environmental Mitigation Plan 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.

Section 12.07. Site and Environmental Data. 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 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 deems proprietary or confidential business information, such as Metocean data and geophysical/geotechnical data, will not be considered Site and Environmental Data for purposes of this Section.

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

systems, unless Seller and NYSERDA agree that a different technology is preferable because it has demonstrated better performance or because aircraft detection lighting systems are determined not to meet the requirements of the Federal Aviation Administration for use on offshore wind facilities.

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 offshore wind turbine that is part of the Selected Project shall be located outside the Site Perimeter, as determined according to the geographic information system file submitted by Seller, without NYSERDA's prior written consent.

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) Warranties and Guarantees. Any representation, warranty, or guarantee made in this Agreement, or any attestation made pursuant to Section 15.05 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; or
- (b) Other Obligations. A Party shall default in the performance of any of its obligations under Sections 2.01, 2.03, 2.04, 4.05, 6.04, 7.01 and 12.02 of this Agreement and such default shall continue un-remedied for a period of thirty (30) days after the defaulting Party receives notice or otherwise has actual knowledge thereof; 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-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. Failure of Seller to provide NYSERDA proof within thirty-six (36) months of the Effective Date, that the applicable interconnection facilities study has been completed by the NYISO or applicable control area administrator or responsible transmission organization; or
- (f) 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 a Force Majeure or an Event of Default by Buyer; or
- (g) Failure to Provide Additional Contract Security. Failure by Seller to provide to NYSERDA, on or before January 1, 2023, and periodically thereafter, additional Contract Security, by the dates and in the amounts set out in Section 15.02; or
- (h) Prevailing Wage Default. Failure by Seller to cure its failure to pay the Prevailing Wage in accordance with Section 18.10 within 12 months from the date of written notification by NYSERDA.
- (i) Failure to Make Payment. Failure of either Party to make payment when due and payable under the terms of this Agreement.

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, for any 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.

Article XIV

Termination

Section 14.01. Termination. This Agreement may be terminated:

- (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 project;
- (d) unless otherwise mutually agreed upon by NYSERDA and Seller in writing, on the expiration of the Contract Delivery Term (subject to Section 18.03 of this Agreement);
- (e) by NYSERDA, if any information or document or statement furnished by Seller in connection with this Agreement or the documents submitted to NYSERDA under ORECRFP18-1 are found to contain any untrue statement of a material fact or have omitted a material fact;
- (f) 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;
- (g) 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 was 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, including Payment, 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.

Article XV

Contract Security

Section 15.01. Initial Contract Security. On or before the Effective Date, unless otherwise agreed to by NYSERDA, Seller must provide Contract Security, in the form of cash, certified

funds or a Letter of Credit conforming to the requirements of Section 15.03, in an amount equal to the product of the Offer Capacity (in MW) and five thousand dollars (\$5,000).

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) and twenty-thousand dollars (\$20,000) on or before January 1, 2023. 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) and ten-thousand dollars (\$10,000.00), until such times as the Operational Installed Capacity equals to or exceeds the product of 0.95 multiplied by the Offer Capacity.

Section 15.03. Letter of Credit. A 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 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 the Letter of Credit, and have an expiration date not shorter than one (1) year. 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 NYSERDA or arranged with NYSERDA to provide a substitute Letter of Credit prior to such expiration, NYSERDA 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 NYSERDA 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 receipt of the assignment, deliver to NYSERDA a replacement Letter of Credit meeting the requirements of this Article, and NYSERDA 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 NYSERDA simultaneously with its receipt of the assignment, NYSERDA 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 NYSERDA for application against subsequent obligations of Seller and/or the assignee under this Agreement.

Section 15.05. Refund of Security. Amounts required by Seller as Contract Security will be reduced and refunded by NYSERDA to Seller as follows:

- (a) Within thirty (30) Business Days of NYSERDA’s receipt of an attestation from the appropriate representative of Seller 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 NYSERDA’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 15.05(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 15.06. Retention of Security. Amounts provided by Seller as Contract Security and not refunded pursuant to Section 15.05 above will be retained by NYSERDA as follows:

- (a) In their entirety, upon the occurrence of a Seller Event of Default if such Event of Default remains uncured after the expiration of the applicable cure period, or upon termination under Section 14.01(c);
- (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 reduced amount 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.

Section 15.07. Stipulated Damages. NYSERDA and Seller hereby agree, acknowledge and stipulate that NYSERDA’s retention of amounts provided by Seller as Contract Security pursuant to 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.

Article XVI

Force Majeure

Section 16.01. Force Majeure Defined. “Force Majeure” means an unusual, unexpected and significant event: (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. 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, (y) any occurrence or event that was caused by or contributed to by the Party claiming the Force Majeure, or (z) be due to the variability in the frequency or force of the wind, excepting where such force causes material damage to the Selected Project that could not have been reasonably avoided. 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 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 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.

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. 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 Seller 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 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 Sections 2.02, 2.03, 5.02, 7.01, 11.01, 11.02, 17.01, 18.04, 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 NYSERDA in exercising its rights hereunder, including the right to terminate this Agreement, shall be deemed to constitute or evidence any waiver by NYSERDA 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. 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 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.

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 Program.

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 on the Project, all laborers, workmen and mechanics (within the meaning of those terms under NYS Labor Law Article 8) performing construction activities with respect to the Project, including, but not limited to, the assembly, staging, installation, erection, related manufacturing and placement of the Project and its electrical interconnection as well as start-up and commissioning of the Project, whether through long-term or short-term employment, must be paid wages and benefits in an amount not

less than the Prevailing Rates (as determined under NYS Section 220) that would be applicable to a public work in the area where the subject Project construction activities will occur. For construction activities in federal waters, the rates will 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. 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 Incremental Economic Benefit in its Proposal.

Section 18.11. Project Labor Agreement. Seller shall, on or before December 31, 2019, present to NYSERDA for NYSERDA's review and approval, a Project Labor Agreement to cover construction activities for the Selected Project, as described at section 2.2.2 of OSWRFP18-1, unless NYSERDA has extended that date or determined that satisfactory completion of Project Labor Agreement negotiations is no longer practicable.

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:	Company Attn: Name Address Line 1 Address Line 2 City, State Zip code email Address:
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@nyscrda.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.

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.

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. 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.

Article XXI

Confidentiality

Section 21.01. Seller Waiver. Seller may be required to waive confidentiality, as to NYSERDA, for 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.

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 ORECRFP18-1, 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 Award Notification Date, this Agreement, in its entirety or in part.

IN WITNESS WHEREOF, 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:

Name:

Title:

STATE OF _____)
SS:
COUNTY OF _____)

On the ____ day of _____, 20__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

Notary

**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 Category 3 Commitments
Exhibit E	Fisheries Mitigation Plan
Exhibit F	Environmental Mitigation Plan

EXHIBIT A

REVISED 5/12

STANDARD TERMS AND CONDITIONS
FOR ALL NYSERDA AGREEMENTS²

(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

² NYSERDA's Standard Forms and Agreements can be found on NYSERDA's website:
<https://www.nyserda.ny.gov/Funding-Opportunities/Standard-Forms-and-Agreements>

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].

PAYMENT AGAINST CONFORMING DOCUMENTS PRESENTED UNDER THIS LETTER OF CREDIT SHALL BE MADE BY US AT OR BEFORE 2:00 P.M., NEW YORK TIME, ON THE NEXT (OR, IN THE CASE OF A PRESENTATION AFTER 10:30 A.M., NEW YORK TIME, THE SECOND NEXT) 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.

DRAFT / All Contents Subject to Further Deliberation and Final Decision

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.

[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 to NYSERDA, on or before the first Effective Date of the Agreement, Contract Security in the amount required under Section 15.01 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.

_____ Seller failed to timely provide to NYSERDA Contract Security in the amount(s) required under Section 15.02 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 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 applicable interconnection facilities study was completed by the NYISO or applicable control area administrator or responsible transmission organization within thirty-six (36) months of the Effective Date.

_____The Operational Installed Capacity is less than the Offer Capacity; under which circumstance, NYSERDA is authorized to draw a percentage of the Letter of Credit Amount, such percentage will be equal to the Offer Capacity minus the 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.³

(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

³ 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>

requirements set forth in this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

(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 NYSERDA 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 NYSERDA, 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 NYSERDA.

504.6. Interest Eligibility and Computation. If NYSERDA fails to make Prompt Payment, NYSERDA 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 NYSERDA 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 NYSERDA may subsequently amend its Prompt Payment Policy by further rulemaking.

504.9. Notice of Objection. Contractor may object to any action taken by NYSERDA 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 NYSERDA. 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 NYSERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSERDA'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 NYSERDA'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 NYSERDA 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.