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Bid Submission Date: The date on which Proposals were due to be submitted under ORECRFP22-1, which was [January 26, 2023].

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

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

Change of Control: Any transfer, sale, assignment, pledge, or other disposition of shares of or equity interests in Seller having the result (directly or indirectly and either immediately or after giving effect to the exercise of any options that have vested) of changing the entity or entities which possess the power (directly or indirectly and either immediately or after giving effect to the exercise of any options that have vested) to direct or cause the direction of the management or policies of Seller (from the entity or entities possessing such power as to Seller as of the Effective Date), whether such change is voluntary or involuntary on the part of Seller; provided, however, that a Change in Control with respect to Seller shall not include any transfer, sale assignment, pledge or other disposition if: (a) such transfer, sale, assignment, pledge or other disposition is in connection with a financing of the Selected Project, or is the result of the exercise of remedies by financing parties providing a financing; (b) such transfer, sale, assignment, pledge or disposition is pursuant to a tax equity financing of the Selected Project, or is the result of the exercise of remedies by a tax equity investor upon a default under such tax equity financing documents; or (c) following such transfer, sale assignment, pledge or other disposition, ~~the the management and policies of Seller continue to be directly or indirectly controlled solely by an~~ entity or entities ~~possessing that possessed~~ such power as to Seller as of the Effective Date ~~continue(s) to directly or indirectly control the management or policies of Seller.~~

Clean Electrolytic Hydrogen: Hydrogen produced from water through electrolysis, utilizing renewable electricity to electrochemically split water into hydrogen and oxygen.

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.

Construction and Operations Plan (COP): The Construction and Operations Plan required to be submitted to BOEM.

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

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

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under which the transmission owners transferred to the ISO Operational Control (as defined in the ISO/TO Agreement) over designated transmission facilities.

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

Index OREC Strike Price: The fixed strike price set forth in Section 4.03(a)(i) of this Agreement.

Ineligible Energy Storage: An energy storage project that (i) is owned by a regulated utility, the New York Power Authority, or the Long Island Power Authority, (ii) has been awarded a utility Bulk Dispatch Rights Contract or other award or contract from a utility, (iii) receives a NYSERDA Retail Storage Incentive, or a NYSERDA Bulk Storage Incentive or (iv) is subject to any NYSERDA award or contract (unless such award or contract expressly provides otherwise, in which case the terms of such award or contract shall control).

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

Installed Storage Capacity: The maximum amount of energy measured in MWh that is capable of being stored in the Energy Storage Component.

Interconnection Cost Allocation: The total costs actually allocated to and borne by the Selected Project (either directly or through reimbursement to a transmission owner or other party) pursuant to ~~NYISO interconnection requirements, as memorialized in~~ the Selected Project's Class Year Interconnection Facilities Study, interconnection agreement and/or other relevant agreement(s) (such as an engineering, procurement and construction contract) with NYISO or any relevant transmission owner, including any allocated costs of Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities and/or System Deliverability Upgrades; provided that any costs (i) attributable to Developer's Attachment Facilities<sup>7</sup> or (ii) of operation, maintenance or other ongoing compliance requirements shall not be included in the Interconnection Cost Allocation. Terms capitalized but not defined in this definition shall have the meanings assigned to them by applicable NYISO tariffs.

Interconnection Cost Allocation Baseline: The estimated amount of Interconnection Cost Allocation established for the Selected Project in ORECRFP22-1. The Interconnection Cost Allocation Baseline under this Agreement is \$ \_\_\_\_\_.

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<sup>7</sup> Developer's Attachment Facilities is defined in the NYISO tariff as "all facilities and equipment, as identified in Appendix A of the Standard Large Generator Interconnection Agreement, that are located between the Large Generating Facility or Class Year Transmission Project and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Large Generating Facility or Class Year Transmission Project to the New York State Transmission System. Developer's Attachment Facilities are sole use facilities.

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

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, [2052/2057], subject to any extension applicable under Section 5.06(c) and/or 18.12.

Permitted Transferee: Any Person who: (a) has, or whose parent entity has, (i) creditworthiness equal to or higher than that of Seller, as determined by NYSERDA in its reasonable discretion applying its credit standards and policies consistently<sup>8</sup> or (ii) ~~has~~ creditworthiness equal to or higher than that level of creditworthiness required by NYSERDA's then-current credit standards and policies; (b) together with its Affiliates, has at least two (2) years of experience in the operation of or development of contractually-committed capacity of at least 200MWs of offshore wind projects of similar technology to the Selected Project, or has retained third-party ~~operators~~ contractors who, individually or collectively, have such experience with respect to such technology; and (c) as of the date of such assignment, has not been a party adverse to NYSERDA in litigation or regulatory proceedings within the preceding five (5) years and is not currently a party adverse to NYSERDA in any pending litigation, arbitration, administrative, regulatory, or formal dispute resolution proceeding.

Person: means a natural person, corporation, electric cooperative, partnership, trust, association, joint venture, real estate investment trust or business trust (including an beneficiary thereof), unincorporated association, municipal corporation, municipally-owned utility, municipality or other governmental authority, and any other form of business or legal entity.

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

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

Proposal: Documents submitted by Seller in response to ORECRFP22-1 with respect to the Selected Project, described as \_\_\_\_\_.

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

P50 Annual 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

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<sup>8</sup> If so desired by Seller, prong (i) can be re-drafted prior to execution as an objective test designed by NYSERDA based on Seller's particular circumstances.

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Delivery Point would exceed that amount is 50 percent. As of the Effective Date, the P50 Annual OREC Exceedance for the Selected Project is \_\_\_\_\_ and may be updated as provided in Section 2.01(e) of this Agreement.

Qualifying Federal Support: Any direct federal financial support to the Selected Project in the form of Renewable Tax Benefits or direct financial benefits expressly intended to incentivize (i) the development and operation of (x) energy infrastructure (including electrical transmission, storage and/or generation and/or the production of fuels from electrical energy) and/or (y) facilities that manufacture equipment or components used for such purposes, and (ii) which either (A) arises from a law enacted by the U.S. Congress after the Bid Submission Date or (B) arises from Section 45(b)(9), Section 45(b)(11), Section 48(a)(12) or Section 48(a)(14) of the Internal Revenue Code in existence on the Bid Submission Date. Qualifying Federal Support shall not include ordinary course tax deductions, federal loans, federal loan guarantees, or federal research and development grants that are awarded competitively.

Qualifying Federal Support Amount (QFS Amount): The total economic value realized by the Seller or any of its Affiliates from the Qualifying Federal Support or the monetization thereof. Subject to the foregoing, the QFS Amount shall include, without limitation or duplication: (i) any reduction in tax liability realized by Seller or its Affiliates in connection with the Qualifying Federal Support; (ii) any amounts received directly from the U.S. government in connection with the Qualifying Federal Support, (iii) any excess economic value realized by the Seller or its Affiliates in any tax equity financing or other transaction the primary purpose of which is for a party to realize the value of Qualifying Federal Support and in which the Qualifying Federal Support is exchanged for economic value (relative to a scenario with no Qualifying Federal Support) and includes without limitation any leasing transaction (including a sale-leaseback, inverted lease or the like) that has the result of the foregoing; and (iv) any reduction in procurement, equipment supply, or other direct costs related to the Selected Project and realized by the Seller or its Affiliates as a result of the Qualifying Federal Support. ~~The QFS Amount shall exclude any benefits which were available to the Selected Project as of the Bid Submission Date (including depreciation, to the extent that such depreciation was available as of such date, or the monetization of such depreciation benefits).~~

Qualifying Federal Support Price Reduction (QFS Price Reduction): The reduction in dollars per OREC to the Fixed OREC Price or Index OREC Strike Price (as applicable) as calculated pursuant to Section 5.07 of this Agreement.

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

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

Renewable Tax Benefits: means (i) any investment tax credits under Section 48 of the Internal Revenue Code, as amended from time to time, (ii) any production tax credits under Section 45 of the Internal Revenue Code, as amended from time to time, (iii) any other federal production tax credits, depreciation deductions or other tax credits that are intended to provide a specific tax benefit (A) to an owner of, operator of, or security interest holder in a project or facility that is

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Article III

Electricity Delivery Requirements

Section 3.01. Selected Project Interconnecting in the New York Control Area. The Actual Production associated with the ORECs for the Selected Project must either be (a) delivered into a market administered by the NYISO for end-use in New York State, (b) delivered through a wholesale meter under the control of a utility, public authority or municipal electric company such that it can be measured, and such that consumption within New York State can be tracked and verified by such entity or by the NYISO, or (c) delivered through a dedicated generation meter at the Delivery Point that shall be compliant with the requirements and standards stated in Section 5.3 of the NYGATS Operating Rules, as such rules may be amended or changed from time to time.

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

Section 3.03. Bilateral Sales. Nothing in this Agreement shall be read to prohibit bilateral sales by Seller for electric energy, capacity, or ancillary services produced by the Selected Project; provided that electric energy used for any purpose other than delivery to the Injection Point shall be subject to Section 3.04. Electric energy from the Selected Project sold on a bilateral basis will produce ORECs and NYSERDA will purchase such ORECs in accordance with Article II of this Agreement until the Annual OREC Cap is reached, provided that the energy is delivered and sold within the NYCA in accordance with this Article.

Section 3.04. Alternate Uses. ~~The Seller may propose~~ Unless otherwise agreed to in writing by NYSERDA ~~a plan for alternate uses,~~ use of the Selected Project's electric output energy for any purpose other than delivery to the Injection Point (for example, to produce Clean Electrolytic Hydrogen) shall be limited to electric energy that is (i) in excess of the amount of energy associated with ORECs sold hereunder up to the Annual OREC Cap or (ii) generated at times during which the delivery ~~and sale~~ of such electrical output energy at the ~~Delivery~~ Injection Point is not possible due to curtailment of the Selected Project by the ~~NYISO.~~ Any administrator of the

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local control area. Prior to engaging in any such ~~plan must include~~ alternate use, Seller agrees to (i) provide notice to NYSERDA of its intent to do so and (ii) establish specific mechanisms reasonably acceptable to NYSERDA for measuring and allocating electric ~~output~~ energy to ensure that the alternate use is associated only with electric ~~output~~ energy falling within the two categories referenced in this Section 3.04 and shall be subject to NYSERDA's approval or denial in NYSERDA's reasonable discretion.

Article IV

Pricing and Payment

Section 4.01. Determination of Applicable OREC Price. The Applicable OREC Price shall be the [Index/Fixed] OREC Price, as selected by NYSERDA pursuant to ORECRFP22-1 and as set forth in Section [4.02/4.03] of this Agreement.

[Section 4.02. Fixed OREC Price.

(a) The Fixed OREC Price for each month in the respective Contract Years shall be \_\_\_\_\_, subject to any applicable reduction under Section 4.02(b).

(b) In the event that a New Carbon Price Mechanism applies to electric generation in New York State, NYSERDA shall reduce the Fixed OREC Price prospectively (“Fixed OREC Carbon Price Adjustment”).

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

(ii) The Fixed OREC Carbon Price Adjustment shall be applied on the first day of the first month after the date on which the New Carbon Price Mechanism takes effect and shall last until the cessation of the New Carbon Price Mechanism or the end of the Contract Delivery Term, whichever comes first.

(iii) The Fixed OREC Carbon Price Adjustment shall be calculated by NYSERDA no less than annually, based on a 12-month period that NYSERDA may select

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where:

NYSERDA Interconnection Savings Share = the greater of (i) 80% of the Interconnection Net Savings and (ii) Interconnection Net Savings minus \$50,000,000.

RF = Recovery Factor of [0.0870 for projects with a 20-year term / 0.0781 for projects with a 25-year term].

(d)[*For projects with interconnection cost sharing:* To the extent Interconnection Shareable Costs exist, the Index OREC Strike Price or Fixed OREC Price will be increased by the Interconnection Price Increase, calculated as follows:

$$\text{Interconnection Price Increase} = \frac{\text{NYSERDA Interconnection Cost Share (\$)} \times \text{RF}}{\text{P50 Annual OREC Exceedance}}$$

where:

NYSERDA Interconnection Cost Share = The NYSERDA share of Interconnection Shareable Costs according to the following schedule:

*[Insert cost sharing schedule in accordance with Proposal. In no case shall the NYSERDA Interconnection Cost Share be greater than 80%.]*

RF = Recovery Factor of [0.0870 for projects with a 20-year term / 0.0781 for projects with a 25-year term].

For any incremental costs incurred as a result of matters within the reasonable control of the Selected Project, including but not limited to (x) a change in Injection Point or (y) increases in the amount of requested interconnection capacity (“Interconnection Elective Project Costs”) to be counted as Interconnection Shareable Costs, the Project must first request approval from NYSERDA. NYSERDA will approve the request if NYSERDA concludes, in its sole discretion, that the incurrence of such Interconnection Elective Project Costs would provide net benefits to ratepayers either through (i) increased energy deliverability at appropriate cost, (ii) net savings on a system-wide basis, or otherwise.]

[Section 5.05. For projects with energy storage: Reduction in Price for Undelivered or Ineligible Energy Storage. For projects that include an Energy Storage Component, should the Energy Storage Component (i) not reach Commercial Operation ~~at the full Bid Storage Capacity (MWh)~~ on or before the Commercial Operation Milestone Date or (ii) at any time become Ineligible Energy Storage, NYSERDA may, upon Notice to Seller, reduce the Index OREC Strike Price or Fixed OREC Price, as applicable, by the Energy Storage Component Price Reduction Amount. In such event, the Index OREC Strike Price or Fixed OREC Price would be increased by the Energy Storage Component Price Reduction Amount if and when the Energy Storage Component reaches Commercial Operation ~~at the full Bid Storage Capacity and is not Ineligible Energy Storage.~~ Should the Installed Storage Capacity be less than the Bid Storage Capacity, the Index OREC Price shall, upon Notice to Seller, be reduced by an amount equal to the product of (A) the Energy Storage Component Price Reduction Amount multiplied by (B) the quotient, reflected as a percentage, obtained by dividing (X) the sum of (a)

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the Bid Storage Capacity minus (b) the Installed Storage Capacity by (Y) the Bid Storage Capacity.

Section 5.06. Meshed Network Integration and Adjustment.

(a) In the event that NYSERDA determines that any changes to design or scope of the Selected Project (other than those already contemplated as the responsibility of the Seller in Exhibit L) are necessary or appropriate to prepare for or implement a future offshore transmission system, the schedule, delivery and/or pricing provisions of this Agreement shall be adjusted to account for any delays and/or reasonably expected increases or decreases in project cost established based on a cost estimate or other study carried out on behalf of the Selected Project and reviewed by a third party mutually acceptable to the Seller and NYSERDA.

(b) Prior to the Selected Project being connected to a meshed or other offshore transmission system, the Parties shall negotiate in good faith to amend the pricing and delivery provisions of this Agreement, prospective from the date on which the Selected Project would be connected to such a system (the “Offshore System Date”), to ensure that (i) the economic value to the Seller of the Selected Project is not reduced for reasons attributable to the implementation of the offshore transmission system (for example, changes in expected dispatch, ability to provide capacity services, nodal vs. zonal pricing basis risk, potential out-of-state delivery, and/or project delays) and (ii) to the extent economic value accrues to the Selected Project from implementing the offshore transmission system, that those additional economic benefits are passed through to ratepayers.

(c) In the event that implementation of a meshed or other offshore transmission system causes delays in commencement of Commercial Operation of the Selected Project, the Outer Limit Date shall be extended by the period of such delay.

(d) In the event that implementation of a meshed or other offshore transmission system causes the Selected Project to experience downtime or a delay in the commencement of Commercial Operation of the Selected Project, the OREC price will be adjusted, or the project will be otherwise compensated, on terms established in the amendment to this Agreement negotiated pursuant to Section 5.06(b).

Section 5.07. Qualifying Federal Support.

(a) In the event that Seller or any of its Affiliates receives Qualifying Federal Support, Seller shall determine the QFS Amount and provide notice of the same to NYSERDA, including supporting calculations thereto. Seller shall also make available or cause to be made available to NYSERDA all books and records in its control that are reasonably necessary to determine the QFS Amount and shall use commercially reasonable efforts to provide NYSERDA with any other books and records reasonably requested by NYSERDA. Such books and records shall include all tax and other filings made with respect to obtaining any of the Renewable Tax Benefits that Seller or any tax equity party is claiming or proposing to claim as well as all work papers and other due diligence and compliance records, files and data related to the qualification for the Renewable Tax Benefits to which Seller has in its possession or reasonably has access.



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administrator of any attribute accounting system operating in such control area.

Section 6.02. Progress Reports.<sup>10</sup> Beginning on the first such date following the Effective Date, and continuing through the date on which the Contract Delivery Term has commenced, Seller shall provide quarterly written progress reports to NYSERDA, on March 1, June 1, September 1, and December 1. Progress reports shall be made based on facts known to Seller on the date of submittal to NYSERDA, and NYSERDA acknowledges that the facts underlying the subject matter of such reports are constantly changing. Such reports shall be substantially in the form of Exhibit K to this Agreement, and shall describe at a minimum:

- (a) Seller's progress in obtaining all required environmental or other permits and/or local approvals;
- (b) the status of development and/or construction planning or activities with regard to the Selected Project;
- (c) the status of the interconnection process between the Selected Project and the administrator of the control area;
- (d) purchases, delivery, and/or installation of any major equipment associated with the Selected Project, including actions taken pursuant to Section 12.11;
- (e) activities undertaken pursuant to Seller's Stakeholder Engagement Plan, including how Seller has taken into account the interests of Disadvantaged Communities, updates on Seller's consultations with the Consulting State Agencies, timely notice of upcoming meetings and known outreach events and activities for the next quarter that representatives of NYSERDA may attend;
- (f) on a form to be provided by NYSERDA, information relating to the employment on the Selected Project, as both contractors and sub-contractors, of Minority and Women-Owned Business Enterprises ("MWBES") and Service-Disabled Veteran-Owned Businesses ("SDVOBs") registered with the Department of State, including identifying information for such firms, the expenditure on such firms, and the time period in which such firms were engaged, and additional reporting metrics set forth under New York State Labor Law Section 224-d (7), including but not limited to Seller's diversity, equity, and inclusion efforts;
- (g) updates with respect to expenditures on community benefit funds, grants, apprenticeships and internships, educational cooperative efforts, and/or training initiatives;
- (h) updates with respect to jobs created and retained (reported by industry and location);
- (i) the status of specific industry growth activities including industry event dates and

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<sup>10</sup> [Specific reporting requirements are subject to further discussion.](#)

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- (d) Seller intends to make investments in New York State to help ensure that members of Disadvantaged Communities share in the Economic Benefits that will be generated as a result of this Agreement. Seller will make reasonable efforts to ensure that members of Disadvantaged Communities are apprised of employment opportunities in connection with the Selected Project and to put in place processes to ensure that businesses in Disadvantaged Communities have the opportunity and awareness to compete for contracting opportunities and, to advance the interests of Disadvantaged Communities when making the investments set out in Exhibit D of this Agreement in accordance with Section 12.01(c). In connection with such activities and obligations, Seller shall conduct ongoing stakeholder and community engagement must agree to coordinate with NYSERDA throughout implementation of the Selected Project to reasonably align the investments and associated benefits claimed with NYSERDA's broader approach for the delivery, measurement, tracking, and reporting of benefits to Disadvantaged Communities, pursuant to the provisions of the Climate Leadership and Community Protection Act.
- (e) As part of the quarterly progress reports described in Section 6.02, Seller shall describe the activities undertaken in accordance with this Section 6.05 associated with Disadvantaged Communities.

Section 6.06. [Energy Storage Performance Metrics. For projects that include Energy Storage: consistent with the Program Manual for the Bulk Energy Storage Incentive Program,<sup>12</sup> NYSERDA will require 15-minute interval data to assess the carbon impact from the Energy Storage. A NYSERDA quality assurance contractor to be identified by NYSERDA shall be provided interval data showing 15-minute charge and discharge data from the Energy Storage through an automated data transfer. This shall be established at Commercial Operation, and this data shall be provided for at least five years. During the Contract Delivery Term NYSERDA will request an annual report describing the services the Energy Storage provided to the NYCA during the previous year.]

Section 6.07. Reporting Failures. In the event that at any time after the Effective Date Seller (a) fails to provide information expressly required by this Agreement to be reported to NYSERDA, or (b) fails to provide information reasonably requested by NYSERDA in connection with the matters contemplated by this Agreement, in either case within the time period required by this Agreement or if a time period is not specified in this Agreement, as otherwise reasonably required by NYSERDA but in no case earlier than ten (10) Business Days after request of NYSERDA in writing and, following written notice of such failure, Seller does not cure the failure within ~~a reasonable time period,~~ thirty (30) days (or such longer if such breach is not capable of being cured within such thirty (30) day period and Seller is diligently pursuing such cure). NYSERDA shall be permitted to draw from Seller's Contract Security (or, if elected by Seller or if no Contract Security is in place, Seller shall pay NYSERDA) an amount equal to \$10,000 per uncured failure to provide information; provided that the amount shall increase to \$20,000 per uncured failure after the first three times this provision is triggered. The

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<sup>12</sup> NYSERDA Bulk Energy Storage Incentive Program Manual, May 2020, <https://www.nyserda.ny.gov/-/media/Files/Programs/Energy-Storage/bulk-program-manual.pdf>.

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payments contemplated in this Section 6.07 for reporting failures are designed to help compensate NYSERDA for, among other things, the damages that result from the failure to timely submit information to NYSERDA and do not constitute a penalty payment. Seller may request a 15-day extension to any of its reporting deadlines to account for reporting delays outside of Seller's control. Seller's first such extension request will be deemed automatically approved, and subsequent requests will be approved or denied in NYSERDA's sole discretion.

Section 6.08. Outages. Seller agrees to provide NYSERDA with as much advanced notice as possible of any planned or unplanned outages or reductions in output of the Selected Project during the Contract Delivery Term.

Article VII

Audits

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

Article VIII

Assignment and Change of Control

Section 8.01. General Restrictions. Except as specifically permitted by this Article VIII, (a) the assignment, transfer, conveyance, or other disposal of this Agreement or any of Seller's rights, obligations, interests or responsibilities hereunder, in whole or in part, without the prior express written consent of NYSERDA is prohibited and shall be void *ab initio* and of no effect as to NYSERDA and (b) any Change of Control without the prior express written consent of NYSERDA shall constitute an Event of Default under this Agreement. Any such consent shall not be unreasonably withheld, conditioned, or delayed. Seller agrees to reimburse NYSERDA for NYSERDA's reasonable out of pocket costs and expenses incurred by its use of outside attorneys, consultants, accountants and advisors in connection with any of Seller's requests for NYSERDA's consent 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. Without limiting NYSERDA's right to reasonably withhold any requested consent, any NYSERDA consent will, in any event, be conditioned on (x) the execution and delivery by Seller and its

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proposed assignee of an instrument of assignment pursuant to which such assignee assumes all of Seller's duties and obligations under this Agreement, (y) delivery by such assignee of Contract Security to NYSERDA in substitution of the Contract Security provided by Seller hereunder, and (z) the execution and delivery by Seller and NYSERDA of mutual releases of liability with respect to this Agreement, in each case, in form and substance satisfactory to NYSERDA.

Section 8.02. Permitted Assignments by Seller. Notwithstanding Section 8.01, NYSERDA's consent shall not be required for Seller to either (a) pledge or assign the Selected Project, this Agreement, or the accounts, revenues, or proceeds from this Agreement in connection with financing arrangements, or (b) assign the Selected Project and this Agreement to an Affiliate if the then-current Contract Security remains in place. Upon Seller's reasonable request, NYSERDA shall execute a consent to assignment associated with a financing in a commercially reasonable form acceptable to NYSERDA and Seller.

Section 8.03. Permitted Change of Control. Notwithstanding Section 8.01, NYSERDA's consent shall not be required for any Change of Control that constitutes a disposition to a Permitted Transferee. If Seller provides NYSERDA with written notice of its intent to effectuate a Change of Control setting forth a description of the transferee describing how it fits within the definition of Permitted Transferee and NYSERDA does not respond within fifteen (15) Business Days, NYSERDA shall be deemed to have confirmed that the proposed Change of Control does not require NYSERDA's consent.

Section 8.04. Change in Tax Identification Number. Seller must notify NYSERDA within five (5) Business Days of any change in the Seller's federal tax identification number (W-9 form), and Seller shall promptly provide NYSERDA with a replacement W-9 form.

Section 8.05. Advance Notice. To the extent not prohibited by the U.S. securities laws and regulations (and to the extent Seller determines any such prohibition exists, Seller agrees to confer with NYSERDA) Seller agrees to provide NYSERDA advance notice ~~of assignments, mergers, consolidations, transfers, or changes in control to be effectuated under this Article,~~ in accordance with Section 19.01 of this Agreement, of (i) any assignment, transfer, conveyance, or other disposal of this Agreement or any of Seller's rights, obligations, interests or responsibilities hereunder, in whole or in part and (ii) any Change of Control in which Seller has or should reasonably have actual knowledge of such transaction likely to cause the Change in Control, in each case regardless of whether or not NYSERDA's consent is required hereunder. NYSERDA agrees to execute a confidentiality agreement, as reasonably determined by Seller as necessary, to protect the disclosures required by this Section.

Article IX

Seller's Representations, Warranties and Guarantees

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

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- (a) Convening of regular and ongoing stakeholder meetings and regular and ongoing engagement and participation in public meetings and briefings of local officials and stakeholders to keep communities and residents apprised of the Selected Project's progress; to identify opportunities for Disadvantaged Communities and other affected communities and residents to benefit from activities being undertaken by the Selected Project;
- (b) Formation of one or more advisory or working groups with representation from Disadvantaged Communities and other affected communities to inform community benefit investments, including workforce development activities, made as part of the Selected Project;
- (c) Maintenance of a website and social media channels through which residents and communities may stay apprised of the Selected Project's progress and submit questions and comments during the development, construction, and operation of the Selected Project;
- (d) Making reasonable efforts to hire from within communities directly affected by the Selected Project, including through the publicizing of job opportunities within Disadvantaged Communities and other affected communities;
- (e) Coordinating closely with NYSERDA prior to scheduling public events to avoid redundancy and facilitate appropriate outreach; and
- (f) Documenting the input and feedback received from stakeholder and community engagement activities and making reasonable attempts to address feedback received through these activities.

Section 12.14. Site Access. Seller agrees to (i) not unreasonably withhold site accessibility (including vessels buoys and other structures) for the advancement of third-party scientific and technological study, including installation of cellular capabilities, near-real time data sharing functionality, power sources for platform or benthic monitoring equipment, weather reporting equipment for increased navigational safety, use of other navigational aids beyond current regulations (such as AIS) and environmental sensors and (ii) work with state, federal and other stakeholders to assess the most appropriate means of third-party scientific monitoring plan development and implementation including addressing potential health and safety requirements.

Section 12.15. HVDC and Meshed Readiness. Seller agrees that-:

- (a) any transmission cabling used by the Selected Project [that traverses the Narrows, the East River between the Brooklyn and Throgs Neck Bridges, or the Hudson River north of Battery Park shall utilize HVDC technology;](#)
- (b) any transmission cabling that traverses the Lower Bay, Raritan Bay, Arthur Kill, the Narrows, the Upper Bay (New York Harbor), the East or Hudson Rivers, Block Island Sound or the Long Island Sound shall utilize HVDC technology ~~-if~~ unless (i) such

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transmission cabling is required to connect the Selected Project's converter station to a point of interconnection and (ii) the Seller demonstrates to NYSERDA's reasonable satisfaction that there is adequate remaining right of way to install at least two additional marine HVDC cables, beyond any cabling already planned under existing contracts to NYSERDA, in the same location(s) as the proposed HVAC cable(s); and

- (c) if the radial interconnection utilized by the Selected Project uses HVDC technology, Seller shall cause the Selected Project to adhere to the requirements set forth in Exhibit L.

[Section 12.16. Repurposing Plan. Seller shall undertake all activities and perform all obligations required of Seller as described in the Seller's repurposing plan set forth in Exhibit R, which may be updated from time to time with NYSERDA's prior written consent.

[*Only for Proposals with an Affected Resource:* Upon and after the Effective Date, Seller shall operate, or use best efforts to cause third parties to operate, the Affected Resource in compliance with all applicable laws and regulations, including NYISO tariffs, until such time that (i) a determination has been made by NYISO, the applicable local transmission operator(s) and any other relevant regulatory authorities that the change in generation profile or deactivation of the Affected Resource required to accomplish the repurposing plan will not lead to a violation of the Reliability Rules as defined in the NYISO tariff, or any other reliability, wholesale market, or other applicable criteria, standards, laws or rules applicable to the Affected Resource; and (ii) such deactivation or change in generation profile will not cause a net increase in air pollutant emissions. If the NYISO, applicable local transmission operator(s) or any other relevant regulatory authorities make any determination that impacts the Affected Resource's ability to deactivate or change its generation profile as contemplated by the repurposing plan set forth in Exhibit R, Seller shall within three (3) days of such determination provide to NYSERDA: written notice of such determination along with copies of any relevant correspondence or other documentation received by Seller from the relevant authority(ies). If, at any time, carrying out the repurposing plan in compliance with this Section 12.16 becomes reasonably likely to delay Commercial Operation (an "Affected Resource Delay"), Seller shall promptly notify NYSERDA of such delay and its anticipated duration. In the event of any Affected Resource Delay, NYSERDA may elect in its sole discretion for Seller to pursue its contingency plan as described in Exhibit R.]

Section 12.17. MWBE and SDVOB Requirements. In addition to Seller's Economic Benefits obligations pursuant to this Agreement, for service contracts valued over \$100,000, and for goods contracts valued over \$250,000, Seller agrees to and shall consult with the New York State MWBE Directory and the Office of General Services SDVOB directory and shall undertake commercially reasonable efforts to contract with MWBEs and SDVOBs. Seller agrees to consult the New York Offshore Wind Supply Chain Database, the ESD MWBE Database, and the OGS SDVOB Database for sub-contracting goods and services associated with Project development, manufacturing, construction, maintenance and operations, including for iron and steel pursuant to Section 12.11. Seller agrees to use commercially reasonable efforts to maximize opportunities for MWBEs and SDVOBs in relation to the Selected Project; such opportunities include but are not limited to subcontracting opportunities, mentorship programs, joint venturing, and other business development activities. Seller shall document commercially reasonable efforts undertaken pursuant to this Section in each quarterly progress report submitted pursuant

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decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of sixty (60) or more days; or an order for relief against a Party, shall be entered in an involuntary case under the Bankruptcy Code; or

~~(e)~~ Interconnection. Unless otherwise agreed in writing by NYSERDA (not to be unreasonably withheld, conditioned, or delayed), ~~failure of the NYISO Transmission Planning Advisory Subcommittee to accept the system reliability impact study within fifteen (15) months after the Effective Date of this Agreement;~~ or delayed for reasons solely attributable to the actions or inactions of the transmission/distribution utility, public authority or municipal electric company and outside of the reasonable control of Seller, (i) failure of the draft system reliability impact study to be presented at a meeting of the NYISO Transmission Planning Advisory Subcommittee within fifteen (15) months after the Effective Date of this Agreement or (ii) failure of the Seller to enter into the interconnection agreement for the Selected Project within forty-eight (48) months after the Effective Date of this Agreement; or

~~(e)~~(f) COP Submission. Unless otherwise agreed in writing by NYSERDA (not to be unreasonably withheld, conditioned, or delayed), failure of Seller to submit its COP to BOEM within eighteen (18) months after the Effective Date of this Agreement; or any voluntary withdrawal of any such submission; or

~~(f)~~(g) Abandonment. On or after the Selected Project (or any phase thereof) enters Commercial Operation, the permanent relinquishment by Seller of all of its possession and control of the Selected Project, other than a transfer permitted under this Agreement or to the extent caused by Force Majeure or an Event of Default by NYSERDA; or

~~(g)~~(h) Failure to Provide Additional Contract Security. Failure by Seller to provide to NYSERDA, on or before January 1, 2026, and periodically thereafter, additional Contract Security, by the dates and in the amounts set out in Section 15.02, and such failure is not remedied within ten (10) Business Days of the respective due dates of such additional Contract Security; or

~~(h)~~(i) Public Service Commission Submission. Unless otherwise agreed in writing by NYSERDA (such agreement not to be unreasonably withheld, conditioned, or delayed), failure of Seller to submit to the New York Public Service Commission within eighteen (18) months after the Effective Date of this Agreement such applications for such certificates of environmental compatibility and public need as are necessary to construct the facilities that will deliver energy from the Selected Project to its corresponding Delivery Point or any voluntary withdrawal of any such application; or

~~(i)~~(j) Prevailing Wage Default. Failure by Seller to ensure that any failure to pay the Prevailing Wage in accordance with Section 18.10 is cured within twelve (12) months from the date of written notification by NYSERDA; or

~~(j)~~(k) Non-Permitted Change of Control. A Change of Control of the Seller, other than as specifically permitted by Article VIII, occurs; or

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(1) Failure to Commence Construction. Failure by Seller to commence construction of the Selected Project within six (6) months of the later of the Selected Project having secured COP approval or a certificate of environmental compatibility and public need from the New York Public Service Commission.

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

Section 13.03. Specific Performance. The Parties agree that, in the case of a default of Seller, irreparable damage would occur in the event that NYSERDA could not obtain ORECs pursuant to this Agreement from the date of such Event of Default in which Seller was the defaulting Party, and accordingly, each Party hereby agrees that NYSERDA shall be entitled to elect specific performance of this Agreement to compel the Transfer of all ORECs produced by the Selected Project following the date of any 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 Event of Default by Seller prior to the date of commencement of Commercial Operations, 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 of the Selected Project by Seller upon an attestation from appropriate representative of Seller that (i) the Selected Project is less