

**OFFSHORE WIND  
POWER PURCHASE AGREEMENT  
TERMS SHEET**

This term sheet ("**Term Sheet**") describes the primary terms of a potential agreement to be entered into by and between ("**Seller**") and the State of Maryland Department of General Services ("**Buyer**"), (collectively, the "**Parties**") regarding the terms and conditions applicable to the sale and purchase of energy and associated environmental attributes (renewable energy credits "RECs") from offshore wind generation facilities as described below. Except as otherwise specifically stated below, this Term Sheet is non-binding and does not constitute or give rise to any legally binding commitment (nor does it constitute an offer to enter into a legally binding commitment). This transaction remains subject to, and conditioned upon, the necessary approvals and execution of final definitive agreements by the Parties. Each Party shall bear its own expenses associated with the negotiation and/or execution of the definitive agreements.

To provide a framework for the negotiation of definitive transaction documents, Buyer proposes the following terms for a power purchase agreement (the "**PPA**"). Please review the following terms and provide a mark-up to this PPA Term Sheet upon which you would be willing to negotiate and enter definitive transaction agreements with Buyer.

1.	Contract structure	<i>RECs: physical transfer</i> <i>Power: physical delivery, financial settlement</i>
2.	Term	20 years from Effective Date.
3.	Settlement Point	TBD
4.	Product	Energy, Environmental Attributes
5.	Contract Strike Price	[ <i>expressed as \$/MWh</i> ].
6.	Calculation Period	Monthly, see definition of Calculation Period.
7.	Monthly Settlement Amount	The Monthly Settlement Amount, which is settled over each Calculation Period, shall be the difference between the Settlement Point Price and the Contract Strike Price of each Settlement Interval during the Delivery Period.
8.	Payment Date	Approximately 30 days after the end of each Calculation Period.
9.	Buyer Environmental Attributes	All project Environmental Attributes, including renewable energy credits, included over the Term associated with Buyer's Percentage, including during the production of Test Energy.

		<p>Environmental Attributes do not include any associated tax benefits associated with the Facility.</p> <p>Applicable standard to be qualified under the PJM tri-qualified Renewable Energy Certificate Class 1 where a Class I REC is an electronic certificate issued by GATS for generation simultaneously qualifying for the respective portions of the Pennsylvania, New Jersey and Maryland renewable portfolio standard programs</p>
1	Expected COD 0.	[Date provided by Seller]
1	Guaranteed COD 1.	[Date provided by Seller up to 120 days after Expected COD.]  Guaranteed COD is subject to extension for Force Majeure.
1	Buyer Termination for COD Delay	Buyer shall have the right to terminate the Agreement if Commercial Operation has not been achieved by the Guaranteed COD date.
1	Commercial Operation Date 3.	Conditions to include, among other things: (a) execution of Interconnection Agreement, (b) commissioning of wind turbines at least equal to Buyer's Percentage and (c) completion of Facility as certified by a Licensed Professional Engineer. The Commercial Operation Date is subject to issuance by offshore wind developer (and acceptance by Buyer) of a Notice of Commercial Operation.
1	Pre-COD Termination Liquidated Damages	Buyer's exclusive remedy shall be payment by Seller of liquidated damages in the amount of the Development Security of One Hundred Twenty Million dollars (\$120,000,000) divided by one hundred and twenty (120) for every day COD is delayed beyond the Guaranteed Commercial Operation Date.
1	Termination Due to Unavailability of Financing	Seller may terminate this Agreement up until six (6) months after the Effective Date of this Agreement (a) if Seller is unable to obtain Financing for the Facility due to market conditions or Lenders' denial of financing or (b) if Seller is unable to obtain financing for the Facility on commercially reasonable terms. Seller's liability to Buyer for such early termination shall be fifteen million dollars (\$15,000,000).
1	Buyer Termination for Financing Delay	Buyer may terminate this Agreement on or after the date eighteen (18) months after the Effective Date of this Agreement if Seller is unable to demonstrate that it has obtained financing commitments by that date for the Facility.

	Buyer Credit Support	None provided as the State of Maryland maintains a AAA credit rating with the major credit agencies.
1	Creditworthy Bank (for seller Letter of Credit)	A U.S. commercial bank or a U.S. branch of a foreign bank, which U.S. commercial bank or foreign bank has at the applicable time a Credit Rating of (a) A- or better from Standard & Poor's or (b) A3 or better from Moody's.
1	Minimum Annual Availability 9.	90% of the Contract Year Availability from Attachment 7 and updates.
2	Deemed Generated Energy 0.	Metered energy at the Facility Meter located at the Point of Interconnection.
2	Planned Maintenance Outages 1.	Refer to Section 7.2.
2	Scheduling 2.	Seller will act as, or will appoint, the Market Participant during the Term as required for the PPA and will comply with all relevant Independent System Operator (ISO) Protocols.
2	Calculation Agent 3.	Seller.
2	Third party charges 4.	Seller shall be responsible for the costs, if applicable, of maintaining its account with the ISO/RTO. All ISO and other third-party charges (including all costs associated with registering, transferring and tracking the Environmental Attributes) are the responsibility of Seller throughout the Term.
2	Reporting 5.	Any reporting necessary under Dodd Frank shall be the responsibility of Seller at Seller's sole cost.
2	Choice of Law 6.	Maryland.
2	Disputes 7.	Any dispute related to the Contract shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

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# POWER PURCHASE AGREEMENT

By and Between

DEPARTMENT OF GENERAL SERVICES

And

(SELLER)

This Power Purchase Agreement (“Agreement or Contract”) is made and entered into this day of **TBD** (“Effective Date”), by and between the Maryland Department of General Services, a state entity existing under the laws of the State of Maryland (“Buyer”), and (SELLER), a limited liability company authorized to do business under the laws of the State of Maryland (“Seller”). The Buyer and Seller are hereinafter sometimes referred to individually as “Party” or referred to collectively as the “Parties.”

## RECITALS

WHEREAS the Buyer seeks to procure renewable energy sourced from a qualified offshore wind project in accordance with Md. Code Ann. Public Utilities Article Title 7, Subtitle 7-701 to promote clean energy development in Maryland and the greater mid- Atlantic region while meeting its long-term energy needs in accordance with Md. Code Ann., Public Utilities Article Title 7, Subtitle 7 (“PUC”);

WHEREAS, the Seller intends to develop an offshore wind facility;

WHEREAS, the Seller has acquired a lease of submerged lands located off the coast of the Delmarva Peninsula from the federal Bureau of Ocean Energy Management, an agency within the United States Department of the Interior;

WHEREAS, Buyer is authorized to purchase offshore wind energy in accordance with PUC § 7-704.4; and

WHEREAS, Seller is able to provide qualifying renewable energy sourced from an offshore wind facility to support the Buyer’s needs.

NOW, THEREFORE, the Parties have entered into this Agreement for and in consideration of the mutual covenants set forth herein and other good and valuable consideration, receipt of which is hereby acknowledged by each Party.

## ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 **Contract Definitions.** The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**AC**” means alternating current.

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

“**Agreement**” has the meaning set forth in the preamble and includes any attachments, appendices, exhibits, schedules, and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

“**Availability**” or “**Available**” means the proportion of the maximum possible energy output that the Facility is capable of generating and delivering to the Buyer in each Contract Year.

“**Availability Remedy Period**” Seller shall be entitled to a one hundred eighty (180) day period (“Availability Remedy Period”) where Seller shall diligently work to remedy its failure.

“**Bankrupt**” or “**Bankruptcy**” with respect to any entity, such entity: (a) voluntarily files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, or has any such petition filed or commenced against it by its creditors and such petition is not dismissed within sixty (60) days of the filing or commencement; (b) makes an assignment or any general arrangement for the benefit of creditors; (c) otherwise becomes insolvent, however evidenced; (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets.

“**Business Day**” means any day except a Saturday, Sunday, or a day that PJM declares to be a holiday, as posted on the PJM website. A Business Day shall begin at 8:00 am and end at 5:00 pm Eastern Prevailing Time (EPT).

“**Buyer**” means the State of Maryland by and through Maryland Department of General Services (DGS) or a successor agency.

“**Buyer Indemnitees**” has meaning set forth in Article 15.1 [Seller’s Indemnification].

“**Buyer Default**” means an Event of Default of Buyer.

“**Buyer's Percentage**” has the meaning set forth in Attachment 1 [Buyer’s Percentage of Facility’s Nameplate Rating], and shall be determined at time of contract award; provided however, that if, after the Effective Date, the Nameplate Capacity is modified (including by a modification of the rated output of any Unit(s) or a change in the number of Units in the Facility), Buyer's Percentage shall be adjusted so that, as a percentage of the modified Nameplate Capacity, it represents the same quantity as Buyer's Percentage of the original Nameplate Capacity.

“**Buyer’s Procurement Policies**” means the Maryland Department of General Services and the State of Maryland mandatory procurement clauses, which include Division II-Procurement Law Md. Code Ann. State Finance and Procurement Article, Titles 11 & 12 and as

modified by Maryland Public Utilities Article § 7-704.4, and the Code of Maryland Regulations Title 21 implementing Maryland statutory procurement requirements, that are in effect on the Effective Date of the Agreement.

**“Calculation Period”** means a calendar month during a given Contract Year.

**“Certificate of Public Convenience and Necessity”** means the necessary permit or license issued by the Maryland Public Service Commission to build and own transmission and other gas and electricity infrastructure.

**“COMAR”** means the Code of Maryland Regulations.

**“Commercial Operation”** the state whereby the Facility shall be operating and able to produce and deliver Energy to the Point of Interconnection in accordance with Article 4.14 [Facility Commercial Operation].

**“Commercial Operation Date”** has the meaning found in Article 4.14 [Facility Commercial Operation].

**“Compliance Cost Cap”** means \$1,200 per MW of the Facility’s Nameplate Capacity.

**“Confidential Information”** means any information in any form designated by a Party as Confidential pursuant to Article 18.1 [Non-Disclosure of Confidential Information], whether such information was disclosed prior to or after the Effective Date; provided however, that Confidential Information shall not include Unrestricted Information. Confidential Information shall not include that information deemed public by virtue of the Md. Code Ann. Gen. Prov. Article, Title 4.

**“Contract Strike Price”** means \$XX.XX per MWh of Energy delivered by Seller to the Point of Interconnection inclusive of the corresponding quantity of RECs and Environmental Attributes, for which the Monthly Settlement Amount is calculated in Attachment 4 [Settlement Schedule and Contract Strike Price].

**“Contract Term”** has the meaning set forth in Article 2.1.

**“Construction Start Date”** has the meaning set forth in Attachment 5.

**“Contract Year”** means a period of twelve (12) consecutive months beginning on January 1st and continuing through December 31st of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and the last Contract Year shall end at midnight at the end of the day prior to the anniversary of the Commercial Operation Date.

**“Credit Rating”** means, with respect to any Person, the rating then assigned to such Person's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by a Rating Agency or, if such Person does not have a rating for its senior unsecured long-term debt, then the “Issuer Credit Rating” for such Person established by S&P.



“**Damage Payment**” means the dollar amount that equals the amount of the Development Security.

“**Day-Ahead LMP**” has the meaning set forth in the PJM Tariff.

“**Day-Ahead Market**” has the meaning set forth in the PJM Tariff.

“**Day-Ahead Schedule**” has the meaning set forth in the PJM Tariff.

“**Defaulting Party**” has the meaning set forth in Article 13.1 [Event of Default].

“**Delay Damages**” has the meaning set forth in Article 13.6 [Delay Damages].

“**Delivery End Date**” means, as indicated on Attachment 2 [Facility Information], the date the Agreement terminates or expires.

“**Delivery Period**” means the period of time commencing on the Commercial Operation Date and ending at the Delivery End Date as included in Attachment 2 [Facility Information].

“**Designated Agent**” has meaning in Article 20.11 [Designated Agent]

“**Development Security**” means (i) cash or (ii) a Letter of Credit for the time interval between Financing and COD in the amount set forth in Article 16.2 [Security].

“**Economic Curtailment**” has the meaning set forth in Article 7.5 [Economic Curtailment].

“**Effective Date**” means the date the Agreement is ratified by all Parties.

“**Electrical Interconnection Facilities**” means the equipment and facilities required to safely and reliably interconnect the Facility to the PJM Transmission System or the transmission system of another Transmitting Utility in whose territory the Facility is located, as applicable, including the collection system between each Unit, transformers and all switching, metering, communications, and control and safety equipment.

“**Emergency**” means: (a) an abnormal grid condition requiring manual or automatic action to maintain grid frequency or voltage or to prevent loss of firm load, equipment damage or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; (b) system recovery from an abnormal condition that resulted in loss of firm load or equipment damage; or (c) a condition that requires implementation of “emergency procedures” (as defined by PJM or any Transmitting Utility).

“**Energy**” means three-phase, 60-cycle alternating current electric energy delivered under this Agreement.

“**Environmental Attributes**” means Renewable Energy Credits and any and all other federal, regional, state and other credits, certificates, transferable instruments, benefits, emission reductions, offsets and allowances that are attributable, now or in the future, to the Facility or the

Energy produced by the Facility, including, but not limited to: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the Facility's renewable feedstocks or its displacement of fossil-fuel derived or other conventional energy generation; (b) any environmental certificates issued by PJM under the GATS in connection with Energy delivered to Buyer; and (c) any voluntary emission reduction credits or renewable energy credits or any transferable indicia of environment improvement obtained or obtainable by Seller in the future in connection with the generation of Energy delivered to Buyer from the Facility; provided however, that Environmental Attributes shall not include: (i) federal PTCs or any state production tax credits; (ii) any investment tax credits or other tax credits associated with the construction or ownership of the Facility; or (iii) any non-environmental market related state, federal or private cash payments or grants relating in any way to the construction or ownership of the Facility or its operations.

“**Event of Default**” has the meaning set forth in Article 13 [Events of Default; Remedies].

“**Excused Energy**” means, for the purposes of calculating Annual Availability, the Energy that would have otherwise been generated if not for an Economic Curtailment, Force Majeure, or Planned Outage.

“**Expected Energy**” means the amount of Energy expected to be Delivered by the Facility as calculated in Attachment 3 [Facility Expected Energy Production].

“**Facility**” means an offshore wind-powered generating facility located off the coast of the Delmarva Peninsula contracted to provide Energy and associated Environmental Attributes to the Buyer.

“**Facility Meter**” means the revenue quality, electricity generation metering to be located at the Metering Point, which Facility Meter shall register all Energy produced by the Facility delivered to the Point of Interconnection.

“**FERC**” means the Federal Energy Regulatory Commission or any successor government agency.

“**Fitch**” means Fitch Ratings, Ltd. or successor credit rating agency recognized by mutual agreement of Parties.

“**Financing**” means Seller and/or one of its Affiliates has obtained debt and/or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller's owner(s).

“**Financing Security**” means (i) cash or (ii) a Letter of Credit for the time interval between the Effective Date and Financing in the amount set forth in Article 16.2 [Security].

“**Force Majeure Event**” shall have the meaning found in Article 12.2 [Definition of Force Majeure Event].

**“Forced Outage”** means an unplanned reduction, interruption or suspension of all or a portion of Energy deliveries from the Facility to the Point of Interconnection and are not the result of a Force Majeure Event or Planned Outage.

**“GAAP”** means the Generally Accepted Accounting Principles adopted by the Securities and Exchange Commission of the United States of America as may be amended from time to time.

**“GATS Operating Rules”** means the operating rules for GATS, as published by PJM Environmental Services, Inc. and posted on the PJM website.

**“Generator Attribute Tracking System”** or **“GATS”** means the system operated by the PJM Environmental Information’s Services, Inc, or successor entity, in accordance with the GATS Operating Rules to provide environmental and emissions attributes reporting and tracking services to its subscribers.

**“Good Utility Practice”** means the practices, methods and acts engaged in or approved by a significant portion of the state entity (in the case of Buyer) or renewable resource provider (in the case of Seller) during the relevant time period, and any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods and acts generally accepted in the region.

**“Governmental Authority”** means any federal, state, local, municipal or other governmental or quasi-governmental authority, agency, department, board, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive, together or individually, exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power over a Party, the Facility, the Products to be delivered hereunder or the Agreement.

**“Guaranteed Availability”** has the meaning set forth in Article 7.6 [Availability Guarantee].

**“Guaranteed Commercial Operation Date”** means the Expected Commercial Operation Date.

**“Guarantor”** means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (d) has a tangible net worth of at least One Hundred Million Dollars (\$100,000,000), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

“**Guaranty**” means a Guaranty Agreement: (a) in favor of Buyer; (b) executed and delivered by a Guarantor to Buyer; and (c) in the form that is acceptable to the Buyer.

“**Indemnified Person**” has the meaning set forth in Article 15.2(a) [Defense of Indemnified Claims].

“**Indemnifying Party**” has the meaning set forth in Article 15.2(a) [Defense of Indemnified Claims].

“**Instructed Operation**” means, (i) a mandatory direction of PJM, or (ii) an action required pursuant to the PJM Reliability Assurance Agreement to meet Emergencies and reliability needs including voltage support.

“**Interconnection Agreement**” means an agreement between Seller, PJM, and the Transmitting Utility (which may be Buyer or an Affiliate of Buyer) in whose territory the Facility is located regarding interconnection of the Facility to the transmission system of the Transmitting Utility.

“**Interconnection Facilities**” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“**Interest Rate**” means, as of any date, the lesser of: (a) the per annum rate of interest equal to the prime lending rate published in The Wall Street Journal under “Money Rates” on such day (or, if such rate is not published on such date, the rate published on the most recent preceding date on which such rate is published), plus two percent (2%); and (b) the maximum rate permitted by applicable Law, including but not limited to Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland.

“**Law**” means any statute, law, treaty, convention, rule, regulation, ordinance, code, Permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction issued, adopted, administered or implemented by a court or Governmental Authority, including any of the foregoing that are enacted, amended or issued after the Effective Date, and any binding interpretations of any of the foregoing.

“**Lien**” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, lien (statutory or other), preference, priority or other security agreement of any kind or nature whatsoever, including any sale-leaseback arrangement, conditional sale or other title retention agreement and any financing lease having substantially the same effect as any of the foregoing.

“**Lender**” means, collectively, any Person (i) providing credit support, senior or subordinated construction, interim, back leverage or long-term debt, working capital, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation, operation, maintenance, repair, replacement or improvement of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing

or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“**Letter(s) of Credit**” means one or more irrevocable, standby letters of credit issued by a Qualified Institution in a form substantially similar to the letter of credit set forth in Attachment 9.

“**Licensed Professional Engineer**” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of Maryland.

“**Locational Marginal Price**” or “**LMP**” has the meaning set forth in the PJM Operating Agreement.

“**Market Participant**” has the meaning set forth in the PJM Operating Agreement.

“**Maryland Portfolio Standards**” shall have meaning in Title 7, Subtitle 7, of the Public Utilities Article, Annotated Code of Maryland and subsequent supporting regulations as amended from time to time.

“**Maryland PSC**” means the Maryland Public Service Commission or successor entity.

“**Metering Point**” means the physical location at the Point of Interconnection where the Facility Meter is situated, as shown on the diagram submitted in Attachment 2.

“**Minimum Acceptable Credit Rating**” means a Credit Rating equal to or better than: (a) “BBB-” by S&P; and (b) “Baa3” by Moody's.

“**Minority Business Enterprise**” or “**MBE**” means a legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.

“**Moody's**” means Moody's Investors Service, Inc.

“**Monthly Settlement Amount**” means, for a given Calculation Period, the amounts owed by one Party to the other as defined in Attachment 4 [Settlement Schedule and Contract Strike Price].

“**Monthly Settlement Date**” has the meaning set forth in Article 10.2 [Billing].

“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

“**MWh**” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**MVAR**” means Mega Volt Ampere Reactive.

“**MVARh**” means Mega Volt Ampere Reactive hour.

“**Nameplate Capacity**” means the capacity quantity of Facility as submitted on Attachment 2 [Facility Information and Operating Limits].

“**Negative LMP**” means, in any Settlement Interval, the LMP at the Facility’s PNode is less than Zero dollars (\$0).

“**New Jersey Renewable Portfolio Standards**” shall have the meaning in New Jersey Statutes Annotated §§ 48:3-87 – 48:3-98.5 and supporting regulations (including those found at New Jersey Administrative Code Title 14, Chapter 8, Subchapter 2) as amended from time to time.

“**Non-Defaulting Party**” has the meaning set forth in Article 13.3 [General Remedies]. –

“**NERC**” means the North American Electric Reliability Corporation, or any other Person designated by FERC to perform its functions.

“**Notice**” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“**Party**” or “**Parties**” means the Buyer and Seller as specified in the first paragraph of this Agreement.

“**Pennsylvania Alternative Energy Portfolio Standards**” means those standards established by the Pennsylvania Alternative Energy Portfolio Standards Act, 73 Pennsylvania Consolidated Statutes §§ 1648.1 – 1648.9 and subsequent supporting regulations as amended from time to time.

“**Permit**” means any permit, authorization, license, order, consent, waiver, exception, exemption, variance or other approval by or from, and any filing, report, certification, declaration, notice or submission to or with, any Government Authority required to authorize action, including any of the foregoing relating to ownership, siting, construction, operation, use or maintenance of the Facility under any applicable Law.

“**Person**” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“**PJM**” means PJM Interconnection, LLC.

“**PJM Agreements**” means the PJM Tariff, the PJM Operating Agreement, the PJM RAA, the PJM Manuals and any other applicable PJM bylaws, procedures, manuals, or documents.

“**PJM Control Area**” shall have the meaning ascribed to it in the PJM Agreements.

“**PJM E-Account**” means an account obtainable through PJM which provides access to web-based PJM settlement, accounting, marketing, and other informational and economic systems.

“**PJM Interchange Energy Market**” has the meaning set forth in the PJM Tariff.

“**PJM Manual**” or “**PJM Manuals**” means the instructions, rules, procedures, and guidelines established by PJM for the operation, planning and accounting requirements of the PJM Control Area and PJM Interchange Energy Market.

“**PJM Member**” means any entity satisfying the requirements of PJM to conduct business with PJM, including Market Participants, transmission owners, generating entities and load serving entities.

“**PJM Operating Agreement**” means the operating agreement of PJM.

“**PJM RAA**” means the PJM Reliability Assurance Agreement.

“**PJM Tariff**” means the Open Access Transmission Tariff of PJM.

“**PJM Transmission System**” means the system of transmission lines and associated facilities that have been placed under PJM's operational control.

“**Planned Outage**” means the scheduled removal of service, in whole or in part, of a generating unit for inspection, routine maintenance, or repair with approval of PJM.

“**Point of Interconnection**” as indicated on Attachment 2 [Facility Information], the single point on the PJM Transmission System with a Pnode Identification in the PJM Bus Model, and in addition is assigned a Locational Marginal Price (LMP) defined as the hourly integrated market clearing price for energy at the location the energy is delivered or received. For purposes of this definition, a Pnode is a pricing node, and pricing nodes are transmission network locations where an LMP has been computed.

“**PNode**” has the meaning set forth in the PJM Operating Agreement.

“**Products**” means Energy and Environmental Attributes produced by the Facility during the Delivery Period.

“**Progress Report**” means a progress report including the items set forth in Article 4.13 [Progress Reports].

“**Qualified Institution**” means a U.S. commercial bank (or a foreign bank with a U.S. branch) having total assets of at least \$10 billion and a Credit Rating equal to or better than “A-” by S&P and an equivalent Credit Rating by Moody's or Fitch.

“**Rating Agency**” or “**Rating Agencies**” shall mean, individually or collectively, S&P, Moody's, and Fitch.

“**Receiving Party**” has the meaning set forth in Article 18.1 [Non-Disclosure of Confidential Information],

“**Regional Reliability Entity**” means the organization designated by NERC responsible for establishing and implementing reliability criteria and protocols for the Facility.

“**Regional Transmission Organization**” or “**RTO**” means any Person certified by FERC to provide open access transmission service over the transmission facilities of its members under a tariff filed with FERC.

“**Regulatory Charges**” has the meaning set forth in Article 11.1 [Regulatory Charges].

“**Renewable Energy Credit**” or “**REC**” means attributes associated with the Facility's generated energy as defined in the applicable Renewable Energy Portfolio Standards.

“**Renewable Energy Portfolio Standards**” (RPS) shall collectively mean the Maryland Portfolio Standards, New Jersey Portfolio Standards, and the Pennsylvania Alternative Energy Portfolio Standards.

“**Renewable Resources**” means a qualifying resource under the Renewable Energy Portfolio Standards.

“**S&P**” means Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

“**Seller**” has the meaning set forth on the Cover Sheet.

“**Seller Event of Default**” shall have the meaning set forth in Article 13.1 [Events of Default] and 13.2 [Additional Seller Events of Default]

“**Settlement Amount**” means the calculation of the difference between the Contract Strike Price and the Settlement Point Price as described in Attachment 4 [Settlement Schedule and Contract Strike Price].

“**Settlement Interval**” has the meaning set forth in the PJM Operating Agreement.

“**Settlement Point**” has the meaning set forth in Attachment 4 [Settlement Schedule and Contract Strike Price].

“**Settlement Point Price**” means the price for a given Settlement Interval at the Settlement Point.



“**State**” means the State of Maryland.

“**Summer**” means the months of June through August of a calendar year.

“**System Emergency**” means any condition that requires, as determined and declared by PJM or the Transmission Utility, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

“**Tax**” or “**Taxes**” means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“**Tax Credits**” means the Production Tax Credit as defined in Article 45 of the Internal Revenue Code of 1986, investment tax credit (ITC), and any other state, local or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities.

“**Test Energy**” means any and all Products produced by a Facility as measured at the Point of Interconnection prior to the Commercial Operation Date.

“**Test Energy Rate**” means \$**STBD** per MWh of Test Energy.

“**Third Party**” means any Person not a Party to the Agreement

“**Transmission System**” means the transmission, distribution or interconnection facilities that provide energy delivery services to the Point of Interconnection and/or the PJM Grid, as applicable.

“**Transmission Utility**” means any utility (including its control area operators) or RTO (including PJM) that owns, operates, or controls facilities for transmitting electric energy.

“**Unit**” means an individual generator set at the Facility.

“**Unrestricted Information**” means any information disclosed by one Party to the other Party that: (a) is or becomes part of the public domain without fault of the receiving Party; (b) was received by the receiving Party from a Person under no obligation to the disclosing Party with respect to maintaining the confidentiality thereof; or (c) was already in the receiving Party's possession and not subject to confidentiality restrictions at the time the information was made available by the disclosing Party.

“**Veteran-owned Small Business Enterprise**” or “**VSBE**” means a business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.

“**Winter**” means the months of December through February of the calendar year.

1.2 **Interpretation.** Unless otherwise required by the context in which any term appears:

- (a) the singular shall include the plural and vice versa;
- (b) references to Articles, Sections, Schedules, or Attachments shall be to Articles, Sections, Schedules, or Attachments of the Agreement, unless otherwise specified;
- (c) all references to a particular Person in any capacity shall be deemed to refer also to such Person's successors and permitted assigns in such capacity;
- (d) the words “herein,” “hereof and “hereunder” shall refer to the Agreement as a whole and not to any particular section or subsection thereof;
- (e) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation” and shall not be construed to mean that the examples given are an exclusive list of the topics covered;
- (f) all accounting terms not specifically defined herein shall be construed in accordance with GAAP;
- (g) references to the Agreement shall include a reference to all schedules and Attachments hereto, each of which shall be incorporated by reference into the Agreement;
- (h) references to any agreement, document, or instrument, including the PJM Agreements, shall be construed to refer to such agreement, document, or instrument as the same may be amended, modified, supplemented, or replaced from time to time;
- (i) the masculine shall include the feminine and neuter and vice versa;
- (j) references to a Law shall be construed to refer to such Law as the same may be amended, modified, supplemented, or restated from time to time;
- (k) the term “month” shall mean a calendar month unless otherwise indicated, and a “day” shall be a 24-hour period beginning at 12:00:01 am and ending at 12:00:00 midnight; provided however, that a “day” may be 23 or 25 hours on those days on which daylight savings time begins or ends;
- (l) unless expressly provided otherwise in the Agreement, where the Agreement requires the consent, approval or similar action by a Party, such consent, approval, or action shall be made or given in such Party's sole discretion;
- (m) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Good Utility Practice or the PJM Agreements, shall have such meaning in the Agreement, or (ii) do not have well known and generally accepted meaning in

Good Utility Practice or the PJM Agreements but have well known technical or trade meanings shall have such recognized meanings; and

- (n) all references to dollars are to U.S. dollars.

## **ARTICLE 2 TERM**

2.1 **Contract Term**. The term of the Agreement (the “Contract Term”) will commence upon the Effective Date and, unless earlier terminated pursuant to the express provisions of the Agreement, will continue until the end of the Delivery Period; provided however, that all provisions of the Agreement which must, in order to give full force and effect to the rights and obligations of the Parties, survive termination or expiration of the Agreement, shall so survive, including Articles 13 [Events of Default; Remedies], 14 [Dispute Resolution], 15 [Indemnification], and 18 [Confidentiality].

## **ARTICLE 3 CONDITIONS PRECEDENT**

3.1 **Conditions Precedent**. The Delivery Period shall not commence until all of the following conditions are met:

- a) the Facility’s Commercial Operation Date shall have occurred;
- b) Seller or one of its Affiliates shall have obtained and demonstrated possession of all Permits required for the lawful operation of the Facility and for Seller to perform its obligations under the Agreement, including but not limited to Permits related to environmental matters and Certificate of Public Convenience and Necessity, as necessary;
- c) no Seller default or Event of Default shall be occurring;
- d) Seller shall be a PJM Member and shall have entered into all required PJM Agreements required for the performance of Seller's obligations in connection with the Facility and the Agreement, which agreements shall be in full force and effect or Seller shall have entered into an agreement with a Market Participant that will perform all of Seller’s PJM-related obligations in connection with the Facility and the Agreement;
- e) the Facility shall be qualified under the PJM tri-qualified Renewable Energy Certificate Class 1 where a Class I REC is an electronic certificate issued by GATS for generation simultaneously qualifying for the respective portions of the Pennsylvania, New Jersey and Maryland renewable portfolio standard programs;
- f) Seller shall have made all filings and applications required for accreditation of the Facility in GATS and for the registration, origination and transfer of

Environmental Attributes from the Facility that are eligible for origination, registration, and transfer under GATS;

- g) Seller shall have entered into all agreements and made all filings and other arrangements necessary for the transmission and delivery of the Energy associated with Buyer's Percentage of the Facility from the Facility to the Point of Interconnection;
- h) Seller shall have obtained all necessary authorizations from FERC to sell Energy at market-based rates as contemplated by the Agreement and shall be in compliance with such authorization;
- i) Seller shall be in compliance with Article 16 [Security Requirements];
- j) Seller shall notify buyer of Pnode identification number assigned by PJM for the Point of Interconnection; and
- k) Seller shall have provided Buyer with written evidence that all of the preceding conditions have been satisfied.

#### **ARTICLE 4 FACILITY DEVELOPMENT**

4.1 **Project Development and Construction.** Seller is solely responsible for the design and construction of the Facility, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

- a) Seller must provide documentation of the ability to connect from the lease area to the PJM Interconnection, LLC ("PJM") grid at a point located on the Delmarva Peninsula. The Delmarva Peninsula contains the peninsula between the Chesapeake and Delaware bays, including most of Delaware and those parts of Maryland and Virginia east of the Chesapeake Bay. The Seller shall include with its response to these specifications any applications filed or agreements held with PJM (and, if needed, waive confidentiality with PJM for verification of the applications or agreements).

4.2 **Site Selection.** The Facility shall be geographically located offshore of the Delmarva Peninsula and interconnected on the Delmarva Peninsula. Seller shall obtain or have obtained the required lease agreement from the United States Bureau of Oceanic Energy Management or other applicable Governmental Authority holding jurisdiction over the site. The lease agreement shall specify the terms and conditions for use of the seabed and airspace for wind development.

- a) Seller must provide proof of lease and lease area described above.

4.3 **Community Benefit, Labor, Steel, Fisheries and Wildlife.** Within 120 days of the Effective Date of this Agreement, Seller shall provide a written description, including assurances and guarantees, of how the project shall:

- a) Promote increased opportunities for local business and small, minority, women-owned and veteran-owned business in the clean energy industry;
- b) Facilitate a steady supply of highly skilled craft workers who shall be paid not less than the prevailing wage rate determined by the Commissioner of Labor and Industry, Title 17, Subtitle 2 of the State Finance and Procurement Article;
- c) Provide for financial and technical assistance to support monitoring and mitigation of wildlife and habitat impacts associated with the proposed offshore wind project;
- d) Provide for mitigating the impacts of the construction and operation of the proposed offshore wind project on fisheries, which may include a description for how the project would follow the U.S. Bureau of Ocean Energy Management Draft Fisheries Mitigation Guidance;
- e) Plan to use domestic iron, steel and manufactured goods to the greatest extent practicable; and
- f) Plan to use locally and domestically manufactured construction materials and components.

4.4 **Labor Employment Agreement.** Within ninety (90) days after the Effective Date of the Agreement, the Seller shall enter into an agreement and provide a copy of said agreement, with one or more labor organizations which establishes the terms and conditions of employment at the construction site of the project. Additionally, these agreements shall:

- a) Promote safe completion of the project by ensuring that at least eighty percent (80%) of the craft workers on the project have completed an Occupational Safety and Health Administration ten (10) or thirty (30) hour course.
- b) Promote career training opportunities in the manufacturing, maintenance and construction industries for local residents, veterans, women and minorities.
- c) Maximize the use of skilled labor, particularly with regard to the construction and manufacturing components of the project, using methods including outreach, hiring or referral methods under Title 11, Subtitle 4 of the Labor and Employment article.

4.5 **Labor Peace Agreement.** Within ninety (90) days after the Effective Date of the Agreement, the Seller shall submit attestation that it has entered into a labor peace agreement with each labor organization which is actively engaged in representing, or attempting to represent, employees performing operations and maintenance work on the projects(s) which:

- a) Prohibits strikes, lockouts or any other economic interference with the project;
- b) Describes the class or classes of covered employees to whom the labor peace agreement applies;
- c) Describes any class or classes of employees not currently represented by a labor organization;
- d) Describes the classes of covered employees for which labor peace agreement negotiations have not yet concluded; and
- e) For classes of employees that are not covered by a labor peace agreement, provides an attestation that no labor organization has sought to negotiate such an agreement.

4.6 **Socioeconomic Goals.** An overall minimum MBE subcontractor participation goal of 15% and a VSBE goal of 3%, representing a percentage of the total Contract dollar value, including all renewal option terms, if any, has been established for this procurement.

(a) Notwithstanding any subgoals established for this Agreement, the Seller is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.

(b) By submitting a response to this solicitation, the Offeror acknowledges the overall not to exceed MBE subcontractor participation goal and subgoals and commits to achieving the overall goal and subgoals by utilizing certified minority business enterprises.

(c) Where applicable, subcontractors utilized in meeting the established MBE and VSBE participation goals shall be identified using Attachment D, MBE Forms D-1A and Attachment E, VSBE Form E-1A as appropriate. Guidance for completion of the Attachments is provided in the Mandatory Affidavits and Attachments to this solicitation.

(d) Seller shall provide a complete list of all subcontractors that will work on the Contract, including those utilized in meeting the MBE and VSBE subcontracting goals, in Exhibit 1, . . . This list shall include a full description of the duties each subcontractor shall perform and why/how each subcontractor was deemed the most qualified for this project. Subcontractors utilized in meeting the established MBE and VSBE participation goals for this Contract shall be identified as provided in the appropriate attachments.

4.7 **Site Control.** Seller shall have exclusive control over the designated offshore site during the development, construction, and operation phases through the Term of this Agreement.

4.8 **Regulatory Approvals.** Seller shall obtain all necessary permits, licenses, and approvals from Governmental Authorities for offshore wind development, including but not limited to environmental permits, navigational clearances, interconnection agreements, and PJM authorizations.

4.9 **EPA Compliance.** Materials, supplies, equipment, or other services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable. Materials, supplies,

equipment or other services shall comply in all respects to the Environmental Noise Act of 1974 of the State of Maryland.

4.10 **OSHA Compliance.** All materials, supplies, equipment or services supplied as a result of this contract shall comply with the applicable U.S. and Maryland Occupational Safety and Health Act Standards.

4.11 **Facility Generated Environmental Attributes.** Seller shall: (a) take all actions necessary to register, certify, and transfer Environmental Attributes from Seller to Buyer in accordance with GATS and applicable Law: and (b) bear all costs associated therewith, including program fees and registration fees. Seller shall comply with RPS in connection with Seller's transfer of RECs to Buyer hereunder.

4.12 **Commissioning and Acceptance Testing.** Prior to the Facility's Commercial Operation Date, Seller shall coordinate and be responsible for commissioning the Facility and conducting comprehensive testing to ensure that the Facility meets the performance testing criteria applicable to offshore wind facilities set for by the Transmission Utility and PJM. Seller shall have the testing results reviewed and certified by a Licensed Professional Engineer and provide documentation to Buyer.

4.13 **Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings (no more than monthly) between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. Each Progress Report shall include a statement confirming that the project remains on target to meet the Guaranteed Commercial Operation Date, and if not, why the date has changed, and the expected period of time of delay or advancement. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of milestones within ten (10) Business Days of receipt of such request by Seller.

4.14 **Facility Commercial Operation.** Facility Commercial Operation may only be accepted once all the following conditions are met:

- (a) Buyer's Percentage of the Units comprising the Facility shall have been fully commissioned and shall be operational;
- (b) all performance testing of the Electrical Interconnection Facilities shall have been successfully completed in accordance with PJM Manuals (or any other applicable RTO rules);
- (c) Seller has delivered to Buyer a completion certificate from a Licensed Professional Engineer stating that the entire Facility, as described in Attachment 2 is fully operational and delivering energy to the Point of Interconnection;
- (d) the Facility shall be operating and able to produce and deliver Energy to

the Point of Interconnection: (i) pursuant to the terms of the Agreement and the Interconnection Agreement; and (ii) in accordance with Good Utility Practice; and

(e) the computer monitoring system (CMS) for the Facility shall have been installed and tested and shall be fully operational; and

(f) Seller has delivered and Buyer has accepted written notice of Facility Commercial Operation.

4.15 **Facility Commercial Operation Date.** The date by which Seller shall have delivered to Buyer written attestation of an authorized officer of Seller that the Facility has achieved the conditions of Article 4.14 [Facility Commercial Operation].

4.16 **Expected Commercial Operation Date.** The Expected Commercial Operation Date shall be that certain date, which is no later than 48 months from the Effective Date of the Agreement with the Buyer as defined in Attachment 5 [Commercial Milestones].

4.17 **Guaranteed Commercial Operation Date.** The Guaranteed Commercial Operation Date shall be the date which is one hundred and twenty (120) days from the Expected Commercial Operation Date.

4.18 **Failure to Achieve Guaranteed Commercial Operation Date.** In the event Seller misses any Commercial Milestones and cannot reasonably demonstrate a plan for completing the Facility by the Guaranteed COD, Seller shall owe to Buyer Delay Damages as defined in Article 13.6

4.19 **Delay Damages.** In the event Commercial Operation does not occur by the Guaranteed Commercial Operation Date, Buyer shall have the right, but not the obligation, to terminate the Agreement without liability and, in the event of termination, shall still be entitled to receive Delay Damages.

## **ARTICLE 5 PURCHASE AND SALE**

5.1 **Purchase and Sale Obligation.** During the Delivery Period, Seller shall: (a) deliver and sell Buyer's Percentage of all Products produced by, or associated with, the Facility to Buyer; and (b) not offer, deliver, sell or make available to any Person other than Buyer, Buyer's Percentage of all Products produced by, or associated with, the Facility. Subject to the rights of the Parties pursuant to Article 5.4 [Limitations on Buyer's Obligation to Purchase], during the Delivery Period Buyer shall: (i) have the exclusive right to purchase and receive Buyer's Percentage of all Products produced by, or associated with, the Facility; and (ii) accept and purchase Buyer's Percentage of all Products produced by, or associated with, the Facility and delivered to Buyer in accordance with the terms and conditions of the Agreement while maintaining the purchase as a wholesale transaction.



5.2 **Quantity.** The quantity of Energy required to be delivered by Seller to Buyer at the Point of Interconnection shall be equal to the Buyer's Percentage of the Energy produced by the Facility and measured at the Point of Interconnection. The quantity of RECs required to be delivered by Seller to Buyer shall be equal to Buyer's Percentage of the Energy produced by the Facility as measured at the Point of Interconnection.

5.3 **Limitations on Buyer's Obligation to Purchase.** Notwithstanding anything to the contrary set forth in the Agreement: (a) Buyer shall not be obligated to accept delivery of any Energy from Seller under the Agreement to the extent it is unable to do so due to a Force Majeure Event or an Instructed Operation; and (b) Buyer's obligation to make purchases of Energy pursuant to the Agreement is expressly conditioned on the delivery and sale by Seller, in accordance with the terms of the Agreement, of RECs in an amount equal to Buyer's Percentage of the Energy produced by the Facility.

5.4 **Origination of Products.** Products provided by Seller to Buyer hereunder shall be required to originate from Energy produced by the Facility unless otherwise agreed to by Buyer.

5.5 **Test Energy.** Buyer shall have the right to title and the right to purchase Test Energy and associated Products produced by the Facility prior to the Facility's Commercial Operation Date, but Buyer is not obligated to purchase Test Energy. Energy Delivered prior to the Commercial Operation Date shall be settled at the Test Energy Rate.

## **ARTICLE 6 FORECASTING, SCHEDULING, AND DELIVERY OF PRODUCTS**

6.1 **Weekly Forecasts.** Commencing fourteen (14) days prior to the anticipated Initial Delivery Date, and throughout the Delivery Period, Seller and/or Designated Agent shall update the Attachment 3 [Facility Expected Energy Production] table, and deliver to Buyer and/or Designated Agent on a weekly basis and in a form reasonably acceptable to Buyer, one (1) month rolling forecasts of Energy production by the Facility, which forecasts shall be prepared in good faith and in accordance with Good Utility Practice based on historical performance, weather forecasts, maintenance schedules, Seller's other generation projections, and other relevant data and considerations. Any notable changes from prior forecasts or historical energy delivery shall be noted and an explanation provided.

6.2 **Scheduling of Energy.** Seller shall promptly schedule the Facility's power in the PJM market in accordance with the applicable PJM operating procedures, manuals, and business practices (as defined or determined by PJM). Seller shall bear full responsibility for adhering to PJM's scheduling procedures including but not limited to submission deadlines, bidding requirements, and providing supporting documentation. Seller shall use reasonable efforts to optimize the Facility's performance in the PJM market to maximize revenue while complying with PJM dispatch orders.

6.3 **PJM E-Account.** Each of Buyer or Buyer's Designated Agent and Seller or Seller's Designated Agent shall establish and maintain for the duration of the Delivery Period, PJM E-Accounts for Seller to provide and Buyer to receive Products. To the extent that Buyer or

Seller makes a change in Designated Scheduling Agent or becomes a member of PJM directly, Seller and Buyer shall reasonably accommodate such changes.

6.4 **Delivery of Energy.** Seller shall be solely responsible for arranging, scheduling with PJM and other Transmitting Utilities, and delivering Energy to be delivered hereunder to the Point of Interconnection. As between the Parties, Seller shall be solely responsible for any and all costs and charges incurred in connection therewith, whether imposed pursuant to standards or provisions established by FERC, any other Governmental Authority or any Transmitting Utility, including transmission costs, scheduling costs, imbalance costs, congestion costs, operating reserve charges (day-ahead and balancing) and the cost of firm transmission rights prior to the Point of Interconnection. Buyer shall be responsible for any of these costs incurred at or beyond the Point of Interconnection, not including any negative LMP at the Point of Interconnection.

6.5 **Delivery of Environmental Attributes.** Throughout the Term of this Agreement, Seller shall deliver all RECs and other Environmental Attributes to Buyer based on the metered MWh of Energy delivered to the Point of Interconnection for each Calculation Period.

6.6 **Title and Risk of Loss.**

(a) Title to, and risk of loss related to Energy sold by Seller to Buyer pursuant to the Agreement shall pass and transfer from Seller to Buyer upon delivery thereof for Buyer's account at the Point of Interconnection. Seller covenants that it shall have good and marketable title to all Energy delivered to Buyer at the Point of Interconnection and that it has the right to, and will, sell and deliver such Energy to Buyer free and clear of all Liens. Ownership of Energy shall be transferred from Seller to Buyer using the PJM eSchedule application.

(b) Title to, and risk of loss related to Environmental Attributes sold by Seller to Buyer pursuant to the Agreement shall pass and transfer from Seller to Buyer upon the completion of the recordation of transfer and physical or electronic delivery of such Environmental Attributes to Buyer in definitive form in accordance with GATS Operating Rules or other applicable Law. Seller shall transfer certificates into Buyer's GATS account(s) as necessary to transfer Environmental Attributes to Buyer under GATS. Seller covenants that it shall have good and marketable title to all Environmental Attributes delivered to Buyer and that it has the right to, and will, sell and deliver such Environmental Attributes to Buyer free and clear of all Liens.

## **ARTICLE 7 OPERATIONS, AND MAINTENANCE**

7.1 **Operations and Maintenance of the Facility.** To the extent required to achieve Commercial Operation, and at all times during the Delivery Period, Seller shall maintain the Facility in accordance with Good Utility Practice and with manufacturer recommended specifications.

7.2 **Planned Outage.** No later than thirty (30) days prior to Seller's anticipated Initial Delivery Date, Seller and/or Seller's Designated Agent shall deliver to Buyer and/or Buyer's Designated Agent a schedule of planned maintenance for the Facility for the following

twelve (12) month period, which schedule shall: (a) be updated by Seller and/or Designated Agent by each March 31 and September 30 to cover the twelve (12) month period following such update; (b) be consistent with the requirements of Good Utility Practice and the Interconnection Agreement; (c) indicate the planned commencement and completion dates for each planned maintenance during the period covered thereby, as well as the affected portions of the Facility; and (d) be in form and substance reasonably acceptable to Buyer. To the extent Seller is required by any Transmission Utility to provide information regarding maintenance, outages or availability of the Facility, Seller shall, simultaneous with the submission thereof to such Transmission Utility, deliver a copy thereof to Buyer. At the request of Buyer, Seller shall make reasonable efforts to accommodate modifications to the Planned Outage schedule provided such modifications do not (i) conflict with the manufacturer's warranty requirements, (ii) endanger the Facility's staff, or (iii) risk major damage to the Facility.

(a) The Energy that would have been generated but not for the Planned Outage shall be considered Excused Energy for the purposes of calculating Availability in a given Contract Year provided such Excused Energy shall not exceed 500 MWh.

7.3 **Forced Outage.** Promptly upon the occurrence of a Forced Outage, the Seller shall notify the Buyer thereof. If such Forced Outage is continuing twenty-four (24) hours after it first occurred, the Seller shall deliver to the Buyer a written notice describing, to the extent that it is aware thereof, (i) the nature and cause of the Forced Outage, (ii) the expected restoration date or time and (iii) the measures being implemented to remedy the cause(s) of that Forced Outage.

7.4 **Reliability Curtailment.** In the event the Transmitting Utility issues a reliability directive curtailing the Facility output, Seller shall promptly notify the Buyer of such directive and comply with the curtailment order provided by the Transmitting Utility. Buyer will not owe for Energy not delivered due to a reliability curtailment order; however, the Energy shall be considered Excused Energy for the purposes of the Annual Availability Calculation.

7.5 **Economic Curtailment.** In the event the Settlement Point Price falls below \$0.00 for a given Settlement Interval, Seller shall curtail the Facility output ("Economic Curtailment"). The Energy that would have been otherwise generated and Delivered by the Facility shall be Excused Energy for the purposes of calculating the Facility's Availability.

7.6 **Availability Guarantee.** Throughout the Delivery Period, Seller shall maintain an Availability of no less than ninety percent (90%) ("Guaranteed Availability") calculated for each Contract Year based on the production values in Attachment 3 [Facility Expected Energy Production] and the Weekly Forecasts in Article 6.1. On or before the fifteenth (15th) Business Day following the end of each Contract Year during the Delivery Period, Seller shall provide Buyer with the Availability calculated for the preceding Contract Year, consistent with Attachment 3 [Facility Expected Energy Production], along with any supporting documentation reasonably required for Buyer to independently confirm the Facility's Availability percentage calculation. Buyer may Terminate the Agreement with no penalty due to failure on the part of Seller to maintain Guaranteed Availability.

## ARTICLE 8 SELLER COVENANTS

8.1 **Compliance with Law and Utility Requirements.** Seller shall comply with, and cause the Facility to comply with: (a) Good Utility Practice; (b) all applicable requirements of Law; and (c) all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by the Maryland PSC, any other Governmental Authority, any Transmitting Utility, NERC and/or any Regional Reliability Entity, including, in each case, all practices, requirements, rules, procedures and standards related to Seller's construction, ownership, operation and maintenance of the Facility and its performance of its obligations under the Agreement (including obligations related to the generation, scheduling and transmission of Energy), whether such requirements were imposed prior to or after the Effective Date. Seller shall be solely responsible for registering as the "Generator Operator" of the Facility with NERC and any applicable Regional Reliability Entities.

8.2 **Permits.** Seller shall maintain in full force and effect all Permits necessary for it to perform its obligations under the Agreement, including all Permits necessary to operate and maintain the Facility.

8.3 **Interconnection Agreement.** Seller shall ensure the Facility complies with the terms and conditions of the Interconnection Agreement at all times.

8.4 **PJM Membership.** Seller shall, at all times during the Delivery Period, either: (a) be a member in good standing of PJM and be qualified as a PJM "Market Seller" pursuant to the PJM Agreements; or (b) have entered into an agreement with a Market Participant that will perform all of Seller's PJM-related obligations in connection with the Facility and the Agreement.

8.6 **Market-Based Rate Authority.** Seller shall, at all times during the Delivery Period, maintain all necessary authorization from FERC to sell Energy at market-based rates as contemplated by the Agreement.

8.6 **Renewable Energy Resource.** Seller shall be solely responsible for certifying the Facility and each of the Units as a Renewable Energy Resource under the Maryland Renewable Portfolio Standard, New Jersey Renewable Portfolio Standards, and Pennsylvania Alternative Energy Portfolio Standards and shall maintain such certification during the Delivery Period.

8.7 **Additional Compliance.** Throughout the Term of the Agreement, Buyer may request Seller to qualify the Facility for additional Environmental Products. Seller shall make reasonable accommodation of Buyer's requests at no cost to Buyer up to the Compliance Cost Cap. If compliance costs exceed the Compliance Cost Cap, Buyer may elect to pay for the additional costs. In such case Seller shall accommodate Buyer's request.

8.8 **Compliance Reporting.** To the extent Buyer is subject to any certification or compliance reporting requirement with respect to the Products produced by Seller and delivered to Buyer hereunder, Seller shall provide any information in its possession (or, if not in Seller's possession, available to it and not reasonably available to Buyer) reasonably necessary to permit Buyer to comply with any such reporting requirement.

## **ARTICLE 9 METERING**

9.1 **Metering**. All electric metering associated with the Facility, including the Facility Meter and any other real-time meters, billing meters and back-up meters, shall be installed, operated, maintained and tested in accordance with Good Utility Practice and any applicable requirements and standards issued by NERC, the Transmitting Utility in whose territory the Point of Interconnection is located and any applicable Regional Reliability Entity. The Facility Meter shall be used for the registration, recording and transmission of information regarding the Energy output of the Facility. As between the Parties, Seller shall be responsible for the installation, operation, maintenance and calibration of the Facility Meter and any other real-time meters, billing meters and back-up meters at the Facility in accordance with the Interconnection Agreement, Good Utility Practice and any applicable requirements and standards issued by NERC, the Transmitting Utility in whose territory the Point of Interconnection is located and any applicable Regional Reliability Entity. Seller shall provide Buyer with a copy of all metering and calibration information and documents regarding the Facility Meter and any other real-time meters, billing meters and back-up meters at the Facility promptly following receipt thereof by Seller.

8.6 **Measurement**. Readings of the Facility Meter and any other real-time meters, billing meters and back-up meters at the Facility by the Transmitting Utility in whose territory the Facility is located (or an independent Person mutually acceptable to the Parties) shall be conclusive as to the amount of Energy generated by the Facility.

9.6 **Additional Testing and Calibration**. Buyer, at its sole expense, shall have the right to request additional testing or calibration of the Facility Meter and any other real-time meters, billing meters and back-up meters at the Facility. Repair or replacement of the Facility Meter shall be paid by Seller. Any overcharges resulting from a faulty meter shall be paid by Seller.

9.7 **Audit of the Facility Meter**. Buyer shall have access to the Facility Meter and any other real-time meters, billing meters, and back-up meters at the Facility.

9.8 **Notice of Malfunction**. Seller shall provide Buyer with prompt notice of any malfunction or other failure of the Facility Meter or other telemetry equipment necessary to accurately report the quantity of Energy being produced by the Facility.

9.9 **Telemetry**. The Facility Meter shall be capable of sending meter telemetry into the PJM eMeter system and Seller shall provide Buyer with access to such eMeter data. Without limiting the foregoing, all such telemetry equipment shall comply with PJM requirements for PJM transmission owners as set forth in the PJM Transmission Owner Guidelines (<https://www.pjm.com/planning/design-engineering/maac-to-guidelines>).

## **ARTICLE 10 SETTLEMENT, BILLING, AND PAYMENT**

8.6 **Monthly Settlement**. For each Calculation Period, the Parties shall settle all Energy delivered to the Point of Interconnection for Buyer's account in accordance with Attachment 4 [Settlement Schedule and Contract Strike Price].

10.6 **Billing.** On or before the tenth (10<sup>th</sup>) day of each month (or the first Business Day thereafter), Seller shall deliver to Buyer, via electronic transmission or other means agreed to by the Parties, an invoice that sets forth: (a) the net amount due from one Party to the other for all Products delivered by Seller to Buyer pursuant to the terms of this Agreement as of the end of the immediately preceding calendar month; and (b) any other credits, charges, and liabilities due pursuant to the terms of this Agreement, including any adjustments and outstanding amounts due pursuant to prior invoices. Seller agrees to include on the face of all invoices billed to the State, its Taxpayer Identification Number, which is the Social Security Number for individuals and sole proprietors and Federal Employer Identification Number for all other types of organizations. Buyer shall pay to Seller or Seller shall pay to Buyer, as the case may be, the total amount due pursuant to such invoice no later than thirty (30) days after the receipt of such Invoice (“Monthly Settlement Date”). The total amount that remains due after the Monthly Settlement Date shall be considered the delinquent amount for the purpose of calculating interest pursuant to Article 10.4 [Interest].

8.6 **Payment.** All payments shall be made by “Electronic Funds Transfer” (EFT) via “Automated Clearing House” (ACH), to a bank designated in writing by the Party to which payment is owed, by 11:59:59 pm Eastern Prevailing Time (EPT) on the Monthly Settlement Date. Payment of an Invoice shall not be deemed an admission or waiver with respect to any matter related to such Invoice or the charges reflected therein.

10.7 **Interest.** Subject to Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, interest on delinquent amounts (including amounts determined to be owed as a result of the resolution of a billing dispute) shall accrue at the Interest Rate: (a) beginning on the 31st day after the day on which payment becomes due under the Contract or, if later, the day on which Buyer receives an Invoice; or (b) in the case of reimbursement obligations, from the date an overpayment was received until the date of reimbursement. Charges for late payment of Invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.

10.8 **Set-Off.** Buyer and Seller shall have the right to set-off any undisputed amounts by the other Party pursuant to the Agreement against any undisputed amounts that it owes to such Party pursuant to the Agreement.

10.9 **Billing Disputes.** Either Party may, in good faith, dispute any amount charged or paid pursuant to an Invoice within fourteen (14) months of the date of such Invoice by providing a written statement setting forth the basis of such dispute. Each Party shall remain obligated to pay any undisputed amounts pending resolution of a billing dispute. Failure by a Party to deliver notice of a billing dispute within the time period set forth herein shall be deemed a waiver of such Party's right to dispute such Invoice. The Parties shall continue to perform under the Agreement during the period of any billing dispute but shall not be precluded from exercising any other remedy available under the Agreement. A billing dispute shall be subject to the provisions of Article 14 [Dispute Resolution]. Any amount determined to be owed as a result of the resolution of a billing dispute shall be paid within thirty (30) days of such resolution, along with accrued interest in accordance with Article 10.4 [Interest].

10.10 **PJM Accounting Procedures**. The Parties shall comply with all applicable PJM accounting procedures in connection with invoicing and settlement for amounts due under the Agreement.

## **ARTICLE 11 TAXES**

8.6 **Regulatory Charges**. Seller shall pay or cause to be paid all taxes, fees and other charges imposed by any Governmental Authority (“Regulatory Charges”) on or with respect to the Products arising before and at delivery thereof in accordance with the Agreement, including ad valorem taxes, taxes related to the operation or maintenance of the Facility, and other taxes attributable to the Facility or interests in land associated with the Facility. Buyer shall pay or cause to be paid all Regulatory Charges on or with respect to the Products being delivered to Buyer hereunder after delivery thereof in accordance with the Agreement (other than ad valorem, franchise or income taxes related to the sale of the Products, which shall be the responsibility of Seller). In the event a Party is required by Law to pay Regulatory Charges which are the other Party's responsibility hereunder: (a) the Party that is assessed such Regulatory Charges shall notify the Party responsible for payment (which notice shall include supporting documentation) of such assessment; (b) the assessed Party shall timely pay such Regulatory Charges; and (c) the responsible Party shall reimburse the assessed Party in full no later than the next Monthly Settlement Date, with interest at the “Interest Rate” from and including the date on which the assessed Party paid such Regulatory Charges until (but excluding) the date on which the responsible Party reimburses the assessed Party. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Regulatory Charges from which it is exempt under the Law; provided however, that an exempt Party shall bear the responsibility of proving upon request its exemption as necessary to avoid the unjust imposition of Regulatory Charges on the other Party.

## **ARTICLE 12 FORCE MAJEURE EVENTS**

### 8.6 **Definition of Force Majeure Event**.

(i) A Force Majeure Event means any act or circumstance that: (a) prevents a Party from performing its obligations under the Agreement; (b) was not foreseeable by such Party; (c) was not within the reasonable control of, or the result of the negligence of such Party; and (d) such Party is unable to mitigate or avoid or cause to be avoided with the exercise of due diligence.

(ii) Notwithstanding the foregoing, under no circumstance shall a Force Majeure Event be based on: (a) Seller's ability to sell a Product at a price greater than that received under the terms of the Agreement; (b) Buyer's ability to purchase a Product at a price lower than that paid under the terms of the Agreement; (c) economic conditions that render a Party's performance of this Agreement at the Contract Strike Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy electric energy at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price than under this Agreement); (d) Seller's inability to obtain permits or approvals of any type for the

construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (e) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors or any other third party employed by Seller to work on the Facility; or (f) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

(iii) Notwithstanding anything in this Article, a Party may not declare Force Majeure for a single Force Majeure Event more than once.

12.7 **Notice of Force Majeure Event.** A Party unable to perform under the Agreement due to a Force Majeure Event must declare such event and shall: (a) provide prompt written notice of such Force Majeure Event to the other Party (in no event later than five (5) days after the occurrence of the Force Majeure Event), which notice shall include a description of the Force Majeure Event and its effect on performance under the Agreement, and an estimate of the expected duration of such Party's inability to perform due to the Force Majeure Event; and (b) provide prompt notice to the other Party when performance resumes.

12.8 **Excused Performance.** Notwithstanding anything in the Agreement to the contrary, a Party shall be excused from performing its obligations under the Agreement (other than the obligation to make payments when due) and shall not be liable for damages due to its failure to perform such obligations during any period that such Party is unable to perform due to a Force Majeure Event; provided however, that the Party claiming a Force Majeure Event shall: (a) have the burden of proving the existence and consequences of such Force Majeure Event; and (b) act expeditiously to resume performance. The suspension of performance due to a Force Majeure Event shall be of no greater scope and of no longer duration than is required by the Force Majeure Event.

12.9 **No Extension of Term.** In no event will any delay or failure of performance caused by any Force Majeure Event extend the Agreement beyond the Delivery Period.

12.10 **Right to Terminate.** In the event that any delay or failure of performance caused by one or more Force Majeure Events continues for an uninterrupted period of one-hundred and fifty (150) days, the Party not claiming the Force Majeure Event may at any time such Force Majeure Event is continuing, upon not less than thirty (30) days' advance written notice, terminate the Agreement without liability.

## **ARTICLE 13 EVENTS OF DEFAULT; REMEDIES**

8.6 **Events of Default.** An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:

- (a) Any false representation or warranty made by such Party that is material in nature and remains uncured for a period of thirty (30) days after written notice thereof is received;
- (b) the failure to perform any material covenant or obligation set forth in the Agreement (except to the extent constituting a separate Event of Default): (A) if



such failure is not remedied within thirty (30) days after written notice thereof is received if such failure can be cured within thirty (30) days after receipt of written notice of such failure (the “Initial Cure Period”), or (B) if such failure is not reasonably capable of being cured within such Initial Cure Period, such failure is not remedied within the Supplemental Cure Period, as set forth herein. If such a failure to perform is not reasonably capable of being cured within the Initial Cure Period, the Defaulting Party shall (i) commence and diligently pursue a cure within such Initial Cure Period, and (ii) submit to Buyer for review and approval no later than the last day of the Initial Cure Period a plan to complete the cure within an additional reasonable period of time, not to exceed sixty (60) days (“Supplemental Cure Period”). Buyer’s consent, which shall not be unreasonably withheld, is required to initiate a Supplemental Cure Period;

- (c) such Party becomes Bankrupt;
- (d) such Party assigns the Agreement or any rights, interests, or obligations hereunder without the prior written consent of the other Party when such consent is required; and
- (e) any Permit necessary for a Party to be able to perform as contemplated by the Agreement is not received, expires or is revoked or suspended and is not renewed or reinstated within a reasonable period of time following the expiration, revocation or suspension thereof, by reason of the action or inaction of such Party and such expiration, revocation or suspension creates a material adverse impact on the other Party

13.7 **Additional Seller Events of Default**. Any of the following events shall constitute a Seller Event of Default.

- (a) The failure by Seller to deliver to Buyer in accordance with the Agreement any Products required to be delivered hereunder or the delivery or sale of any such Products to any Person other than Buyer if not expressly permitted under the Agreement;
- (b) PJM or any other RTO shall have declared such Party to be in default of any provision of such RTO’s agreements or procedures;
- (c) the failure by Seller to provide a Letter of Credit or Guaranty as required by Article 16 [Security Requirements];
- (d) the failure by Seller to comply with Article 3.1 [Conditions Precedent], Article 8.4 [PJM Membership] or 8.5 [Market-Based Rate Authority]; and
- (e) the transfer by Seller of all or substantially all of its assets to another Person without the prior written consent of Buyer.

13.8 **General Remedies.** If an Event of Default has occurred and is continuing with respect to a Defaulting Party, the other Party (the “Non-Defaulting Party”) shall have the right to: (a) suspend performance under the Agreement; and/or (b) exercise any remedies available at law, including termination of the Agreement. Without limiting the generality of the foregoing, upon a Seller Event of Default, Buyer shall have the right to exercise its remedies under any Letter of Credit or the Guaranty.

13.9 **Termination for Convenience.** The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Seller has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract. However, the Seller shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A (2).

13.10 **Delays or Hindrances.** The Seller agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hinderances from any cause whatsoever during the portion of the work specified in this Contract.

13.11 **Termination Due to Unavailability of Financing.** Seller may terminate this Agreement up until six (6) months after the Effective Date of this Agreement (a) if Seller is unable to obtain Financing for the Facility due to market conditions or Lenders' denial of financing or (b) if Seller is unable to obtain financing for the Facility on commercially reasonable terms; provided, that, Seller's liability to Buyer for such early termination shall be fifteen million dollars (\$15,000,000) to account for Buyer's costs and lost opportunities during the preparation of this agreement. Buyer may terminate this Agreement on or after the date eighteen (18) months after the Effective Date of this Agreement if Seller is unable to demonstrate that it has obtained financing commitments by that date for the Facility or for the Buyer's Percentage of the Facility. Seller's liability to Buyer for such early termination shall also be fifteen million dollars (\$15,000,000) to account for Buyer's costs and lost opportunities during the preparation of this agreement.

13.12 **Delay Damages.** In the event the Commercial Operation Date does not occur on or prior to the Guaranteed Commercial Operation Date and such delay is not directly attributable to a Force Majeure Event (as reasonably determined by Buyer), for each day beginning with the day after the Guaranteed Commercial Operation Date indicated on Attachment 2 [Facility Information], through and including the date on which the date Commercial Operation actually occurs, Buyer's exclusive remedy shall be payment by Seller of liquidated damages in the amount of the Development Security identified in Article 16.2 [Security] divided by one hundred and twenty (120) for every day COD is delayed beyond the Guaranteed Commercial Operation Date. Buyer shall have the right to terminate the Agreement by the Guaranteed COD date if Commercial Operation has not been achieved. The Parties acknowledge and agree that the amount of Delay Damages constitutes a fair and reasonable

approximation of the damages Buyer will incur as a result of delay in the Initial Delivery Date and is not intended as, nor shall it be deemed, a penalty. The rights set forth pursuant to this Article 13.6 [Delay Damages] and in connection with Article 16.1 [Seller Credit] shall be Buyer's exclusive remedy for Seller's delay in achieving the Guaranteed Initial Delivery Date. The Seller agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract except as provided herein.

13.13 **Cumulative Remedies.** The remedies provided for in this Article 13 shall be without prejudice and in addition to any right of set-off, combination of accounts, Lien, or other right to which any Party is at any time otherwise entitled (whether by operation of Law, contract or otherwise).

13.14 **Facility Lender's Right to Cure.** In the event Seller notifies Buyer of the contact information for a Facility Lender: (i) Buyer shall provide notice of any Seller Event of Default to such Facility Lender; and (ii) Buyer shall accept a cure of any Seller Event of Default by the Facility Lender, so long as the cure is accomplished within the applicable cure periods set forth in the Agreement.

13.15 **Exclusion of Consequential Damages.** Buyer shall not be liable to the Seller for consequential, incidental, punitive, exemplary, or indirect damages, lost profits, or other business interruption damages, by statute, in tort, in contract or otherwise.

## ARTICLE 14 DISPUTE RESOLUTION

8.6 **Provisions Governing Dispute Resolution.** This Contract is subject to Buyer's Procurement Policies, which are incorporated herein by reference and set forth in relevant part as follows:

- (a) Except as otherwise provided by law, all disputes arising under or as a result of a breach of this Contract that are not disposed of by mutual agreement shall be resolved in accordance with this Article.
- (b) As used herein, "claim" means a written demand or assertion by one of the Parties seeking, as a legal right, the payment of money, adjustment or interpretation of Contract terms, or other relief, arising under or relating to this Contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this Article. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed as to liability or amount, it may be converted to a claim for the purpose of this Article.
- (c) Within thirty (30) days of when the basis of the claim is known or should have been known, whichever is earlier, the claim shall be made in writing and submitted to the Procurement Officer for decision in consultation with the Office of the Attorney General, as appropriate.
- (d) When a claim cannot be resolved by mutual agreement, Seller shall submit

a written request for final decision to the Procurement Officer. The written request shall set forth all the facts surrounding the controversy.

(e) Seller, at the discretion of the Procurement Officer, may be afforded an opportunity to be heard and to offer evidence in support of its claim.

(f) The Procurement Officer shall render a written decision on all claims within one hundred eighty (180) days of receipt of Seller's written claim, unless the Procurement Officer determines that a longer period is necessary to resolve the claim. If a decision is not issued within one hundred eighty (180) days, the Procurement Officer shall notify Seller of the time within which a decision shall be rendered and the reasons for such time extension. The decision shall be furnished to Seller, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The Procurement Officer's decision shall be deemed the final action of Buyer.

(g) The Procurement Officer's decision shall be the final action of the agency.

(h) Pending resolution of a claim, Seller shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision.

14.7 **Further Legal Action Following Dispute Resolution.** After the requirements of Article 14 [Provisions Governing Dispute Resolution] have been satisfied, either Party may seek further legal action for any and all actions or matters subject to the exclusive or primary jurisdiction of FERC, the Maryland PSC or the courts having jurisdiction over the Maryland PSC or FERC matters, in accordance with Article 20.12 [Jurisdiction, Venue and Governing Law].

## **ARTICLE 15 INDEMNIFICATION**

8.6 **Seller's Indemnification.** Seller shall indemnify, hold harmless and defend Buyer and the State of Maryland and their respective officials, employees, agents, contractors, subcontractors, invitees, successors, representatives and permitted assigns (collectively, "Buyer's Indemnitees") from and against any and all claims, liabilities, costs, losses, damages and expenses, including without limitation, attorney and expert fees and disbursements, actually incurred for: (a) damage to property of or injury to, or death of, any person; and (b) any penalties or fines imposed by Governmental Authorities, in any such case to the extent directly caused by the negligence or willful misconduct of Seller and/or its officers, directors, employees, agents, contractors, subcontractors or invitees, and arising out of, or connected with, Seller's performance under the Agreement, Seller's exercise of rights under this Agreement or Seller's breach of this Agreement.

### **15.6 Defense of Indemnified Claims.**

(a) Within a reasonable time after receipt by a Person (the "Indemnified

Person”) of any claim as to which the indemnification provided for in Article 15.1 [Seller's Indemnification] may apply, the Indemnified Person shall notify the indemnifying Party (the “Indemnifying Party”) in writing of such fact; provided however, that delay in notifying the Indemnifying Party shall not relieve the Indemnifying Party of its indemnification obligations except to the extent that it is materially prejudiced by such delay.

(b) The Indemnifying Party shall diligently, competently and in good faith control and conduct the defense, with counsel reasonably satisfactory to the Indemnified Person, of any claim as to which the indemnification provided for in Article 15.1 [Seller's Indemnification] applies; provided however, that the Indemnifying Party may not settle or compromise any such claim without the Indemnified Person's consent unless the terms of such settlement or compromise unconditionally release the Indemnified Person(s) from any and all liability with respect thereto and do not impose any obligations on any Indemnified Person.

(c) An Indemnified Person shall have the right, at its option (but not the obligation), to be represented by advisory council of its own selection and at its own expense and to monitor the progress and handling of an indemnified claim. An Indemnified Person shall also have the right, at its option (but not the obligation), to assume the defense of any such claim with counsel of its own choosing at its sole cost and expense; provided however, that an Indemnified Person shall have the right to assume the defense of, and to settle or compromise, any such indemnified claim at the Indemnifying Party's expense if: (i) the Indemnifying Party fails to acknowledge, in writing, its responsibility to assume the defense of such claim; (ii) the Indemnifying Party fails to diligently, competently and in good faith control and conduct the defense of such claim with counsel reasonably satisfactory to the Indemnified Person; (iii) there is an apparent conflict of interest between the Indemnifying Party and the Indemnified Person with respect to such claim; or (iv) such Indemnified Person shall have reasonably concluded that there are legal defenses available to it which are different from, additional to, or inconsistent with, those available to the Indemnifying Party.

(d) The Indemnifying Party's obligations to indemnify, defend and hold each Indemnified Person harmless shall not be reduced or limited by reason of any limitation on the amount or type of damages, compensation or benefits payable by or for the Indemnifying Party or any of its subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

15.7 **Additional Information.** Seller further agrees to indemnify and hold harmless the Buyer's Indemnitees from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any materials, deliverables, supplies, equipment, services or works provided under this Agreement infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (“Third Party Claims of Infringement”). If a Third-Party Claim of Infringement is threatened or made before Seller

receives payment under this Agreement, Buyer shall be entitled, upon written notice to Seller, to withhold some or all of such payment.

15.8 This indemnification clause shall not be construed to mean that the Seller shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.

15.9 The State has no obligation to provide legal counsel or defense to the Seller or its subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the Seller or its subcontractors as a result of or relating to the Seller's performance under this Contract.

15.10 The State has no obligation for the payment of any judgments or the settlement of any claims against the Seller or its subcontractors as a result of or relating to the Seller's performance under this Contract.

15.11 The Seller shall immediately notify the Procurement Officer of any claim or suit made or filed against the Seller or its subcontractors regarding any matter resulting from, or relating to, the Seller's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Seller's performance under this Contract.

15.12 This Section 15 shall survive termination of this Contract.

## **ARTICLE 16 SECURITY REQUIREMENTS.**

8.6 **Seller Credit.** Seller shall provide a Letter of Credit, cash, or Guaranty pursuant to Articles 16.2, 16.3 and 16.4 below.

16.6 **Security.** Seller shall deliver Financing Security to Buyer within ten (10) days of the Effective Date in the amount of fifteen million dollars (\$15,000,000). The Financing Security shall be returned to the Seller within thirty (30) days of receiving notification that the Seller has entered a financing agreement. Seller shall deliver Development Security in the amount of one hundred twenty million dollars (\$120,000,000) to Buyer within ten (10) days of the Buyer receiving notification that the Seller has entered a financing agreement. Seller shall maintain the Development Security in full force and effect until COD. Upon COD, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (A) fails to maintain its status as a Lendor, (B) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (C) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

16.7 **Guaranty.** For any period of the Contract Term during which Seller provides a Guaranty from a Qualified Institution, the amount of the Delivery Period Development Security shall be reduced by the amount of the Guaranty.

16.8 **Supporting Information.** For any period of the Delivery Period for which the amount of a Letter of Credit has been reduced: (a) Seller shall notify Buyer of any change to the Credit Rating of Seller or Guarantor, as applicable, no later than two (2) Business Days after the date of such change; (b) Seller shall provide Buyer with written financial information regarding Seller or Guarantor, as applicable, including audited annual reports, balance sheets, financial statements and quarterly balance sheets (each prepared in accordance with GAAP) and schedules of long-term debt (including maturity dates).

16.9 **No Limit of Liability.** Except to the extent expressly stated in the Agreement, the required amounts of any Letters of Credit shall not be deemed to be a limitation of Seller's liability.

## **ARTICLE 17 REPRESENTATIONS AND WARRANTIES; AUTHORITY**

8.6 **Representations and Warranties.** Each Party hereby represents and warrants to the other Party as of the Effective Date that:

- (a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and is qualified to transact business in each jurisdiction in which its operations or the ownership of its properties require it to be qualified;
- (b) it has all Permits necessary for it to legally perform its obligations under the Agreement except: (i) in the case of Buyer, Maryland PSC Approval; and (ii) in the case of Seller, those Permits identified on Attachment 6, each of which Seller anticipates will be obtained by Seller in the ordinary course of its development and construction of the Facility;
- (c) the execution, delivery and performance of the Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation or order applicable to it, the violation of which could reasonably be expected to have a material adverse effect on its ability to perform its obligations under the Agreement;
- (d) it has full power and authority to carry on its business as now conducted and to enter into, and carry out its obligations under, the Agreement;
- (e) the execution and delivery of the Agreement and performance or compliance with any provision herein will not result in the creation or imposition of any Lien upon its properties (except as expressly contemplated in favor of Buyer pursuant to the Agreement), the creation or imposition of which could reasonably be expected to have a material adverse effect on its ability to perform its obligations under the Agreement;
- (f) the Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject only to applicable

bankruptcy, insolvency or other similar laws relating to or affecting the enforcement of creditors' rights generally and general equitable principles (regardless of whether such enforceability is considered in a proceeding at law or in equity);

(g) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(h) there is no pending, or to its knowledge threatened, actions, suits, or proceedings against it or any of its Affiliates before any court or Governmental Authority that could reasonably be expected to materially adversely affect its ability to perform its obligations under the Agreement;

(i) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance will occur as a result of its entering into or performing its obligations under the Agreement; and

(j) it is not relying upon the advice or recommendations of the other Party in entering into the Agreement, it is capable of understanding, understands and accepts the terms, conditions and risks of the Agreement and its rights and obligations hereunder, and the other Party is not acting as a fiduciary for or advisor to it in respect of the Agreement.

(k) it is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified

(l) it is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract

(m) it shall comply with all federal, State and local laws, regulation and ordinances applicable to its activities and obligations under this Contract, and

(n) it shall obtain, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

17.7 **Disclaimer of Implied Warranties.** Except for the express warranties set forth in the Agreement, there are no warranties of any kind, including warranties of merchantability or fitness for a particular purpose and any and all implied warranties are disclaimed.

## **ARTICLE 18 CONFIDENTIALITY**



18.1 **Non-Disclosure of Confidential Information.** Subject to the Maryland Public Information Act (found at Md. Code Ann., General Provisions, § 4-101 *et seq.* )(the “Public Information Act”), neither Party (a “Receiving Party”) shall disclose any Confidential Information of the other Party (the “Disclosing Party”) obtained pursuant to, or in connection with, the execution or performance of the Agreement to any Person other than an officer, director, employee, agent, representative or consultant of the Receiving Party without the express prior written consent of the Disclosing Party.

18.2 **Designation of Confidential Information.** A Party seeking to classify any material as Confidential Information must specifically designate such material as confidential prior to disclosing it to the Receiving Party. A Disclosing Party may not seek confidential treatment of any material unless such material was designated as confidential at the time of disclosure to the Receiving Party.

18.3 **Other Permitted Disclosures.** Notwithstanding Article 18.1 [Non- Disclosure of Confidential Information], either Party may:

- (a) produce Confidential Information in response to a subpoena, discovery request or other compulsory process issued by a Governmental Authority upon reasonable prior notice to the Disclosing Party; provided however, that prior to such disclosure, the Receiving Party must use reasonable efforts in cooperation with the Disclosing Party to seek confidential treatment of such Confidential Information;
- (b) disclose whatever information FERC requires it to disclose in connection with the filing of quarterly or annual reports and may make such disclosure without notification to the Disclosing Party; and/or
- (c) disclose Confidential Information to its Affiliates and their officers, directors, employees, agents, representatives and consultants; provided however, (i) that such Affiliates, officers, directors, employees, agents, representatives and consultants must be bound by the confidentiality obligations set forth in this Article 18 ; and (ii) that in no event shall a document or information be disclosed in violation of the FERC Code of Conduct or Standards of Conduct requirements.

18.4 **Third Party Confidentiality** Any Third Party performing an audit on behalf of a Party pursuant to Article 20.7 [Audit] shall be required to execute a confidentiality agreement with the Party being audited requiring that any Confidential Information disclosed in connection with such audit be treated as confidential pursuant to Article 18.

18.5 **Equitable Relief.** The Parties agree that monetary damages may be inadequate to compensate a Disclosing Party for a Receiving Party's breach of its obligations. Each Receiving Party accordingly agrees that a Disclosing Party shall be entitled to equitable relief, by way of injunction or otherwise, if the Receiving Party breaches or threatens to breach its obligations, which equitable relief shall be granted without bond or proof of damages, and the Receiving

Party shall not plead in defense that there would be an adequate remedy at law.

18.6 **Survival.** The confidentiality provisions of this Article 18 shall survive any termination of the Agreement for a period of three (3) years.

## **ARTICLE 19 INSURANCE**

19.1 **Insurance.** Throughout the Term of this Agreement, Seller shall maintain the following insurance requirements:

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, commercial general liability insurance, including products and completed operations and personal injury insurance, with a limit of Ten Million Dollars (\$10,000,000) per occurrence, and an annual aggregate of not less than Twenty Million Dollars (\$20,000,000), including contractual liability covering Seller's obligations under this Agreement and naming Buyer as an additional insured as respects both premises and operations, and products and completed operations of seller but only to the extent of the liabilities assumed hereunder by Seller). Seller must also provide a waiver of subrogation (WOS) in favor of the State.

(b) **Employer's Liability Insurance.** Seller, if it has employees, shall maintain Employers' Liability insurance of One Million Dollars (\$1,000,000) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) **Workers Compensation Insurance.** Seller, if it has employees, shall maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of the law of the state in which the work is being performed. Seller must also provide a waiver of subrogation (WOS) in favor of the State.

(d) **Business Auto Insurance.** Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement. Seller must also include the State as an additional insured and provide a waiver of subrogation (WOS) in favor of the State.

(e) **Umbrella Liability Insurance.** Seller shall maintain or cause to be maintained an umbrella liability policy with a limit of liability of Ten Million Dollars (\$10,000,000) per occurrence and in the aggregate. Such insurance shall in be excess of the General Liability, Employer's Liability, and Business Auto Insurance coverages and shall contain standard cross-liability and severability of interest provisions. Seller may choose any combination of primary and excess or umbrella liability policies to meet the insurance limits required under Articles 19.1(a), 19.1(b) and 19.1(d) above. Seller must also include the State as an additional insured.

(f) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility equipment and prior to the Commercial Operation Date, construction all-risk form property insurance, including coverage for Earthquake and Tsunami perils, at replacement cost valuation, covering the Facility during such construction periods.

(g) Pollution Legal Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Sudden and Accidental Pollution Legal Liability Insurance in the amount of Two Million Dollars (\$2,000,000) per occurrence and in the aggregate, naming Buyer as additional insured, which may be provided by the combination of primary General Liability and excess policies. Seller must also provide a waiver of subrogation (WOS) in favor of the State.

(h) Property Insurance. On and after the Commercial Operation Date, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under standard “all risk” property insurance coverage in amounts that are not less than the actual replacement value of the Facility, provided, however, with respect to property insurance for natural catastrophes, such coverage shall be in amounts required by Seller’s Lender. Earthquake/Tsunami perils shall be included for coverage under the permanent property insurance. Seller must also provide a waiver of subrogation (WOS) in favor of the State.

(i) Subcontractor Insurance. Seller shall require all of its subcontractors to carry the same levels of insurance as Seller, with the exception of the insurance required pursuant to Articles 19.1(e) (Umbrella limit shall be commensurate with each subSeller’s scope of work), 19.1(f), 19.1(g) and 19.1(h). All subcontractors shall name Seller as an additional insured to commercial general liability insurance.

(j) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such Seller coverage under Articles 19.1(a) through 19.1(e), with the exception of Construction All-Risk Insurance, Pollution Legal Liability Insurance, and Property Insurance. Certificates of insurance evidencing Construction All-Risk Insurance and Pollution Legal Liability Insurance shall be provided prior to the commencement of any physical construction on Site and evidence of Property Insurance shall be provided prior to the Commercial Operation Date and at every renewal thereafter. These policies shall specify that Buyer shall be given at least ninety (90) days prior Notice by insurer in the event of any cancellation or termination of coverage, except if such cancellation or termination of coverage is due to non-payment of premium, in which case insurer shall provide Buyer with ten (10) days prior Notice, however in the event any insurer is not willing or able to provide such notice to Buyer then the responsibility for providing such notice shall be borne by Seller. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(k) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 19, Seller, among other things and without restricting

Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 19 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of Maryland.

## **ARTICLE 20 MISCELLANEOUS**

20.1 **Notices.** Whenever the Agreement requires or permits delivery of a notice or requires a Party to notify the other Party, all notices, requests, statements, or payments shall be made to the Parties using the contact information in Attachment 12, as updated from time by each Party by providing written notice to the other Party. Notices required to be in writing shall be delivered by registered mail or hand delivered letter or facsimile. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day during which the notice is sent by facsimile (and confirmed) or hand delivered. Notice by overnight mail or courier shall be deemed to have been received upon delivery as evidenced by the delivery receipt.

20.2 **Joint Preparation.** Joint Preparation. The Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, negotiation or drafting hereof.

20.3 **No Third-Party Beneficiaries.** Nothing in the Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any Person not a Party to the Agreement. The Agreement shall not impart any rights enforceable by any Person other than a Party or a permitted successor or assignee thereof.

20.4 **Severability.** If any provision in the Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of the Agreement and the Parties shall use their best efforts to modify the Agreement to give effect to the original intention of the Parties.

20.5 **Headings.** The headings used in the Agreement are for convenience and reference purposes only and shall have no bearing on the interpretation hereof.

20.6 **Records.** Each Party shall keep and maintain all books and records as may be necessary or useful in performing or verifying any calculations made pursuant to the Agreement or in verifying such Party's performance hereunder, including operating logs, Facility output data, meter readings and financial records, all in accordance with Good Utility Practice. Each

Party shall provide such books and records to the other Party within fifteen (15) days of a written request for such information. All records shall be retained by each Party for at least three (3) years following the year in which such records were created or any applicable statute of limitation, whichever is longer.

(a) The Seller shall retain and maintain all records and documents relating to this Contract for three years after the final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the procurement officer or designee, at all reasonable times per COMAR 21.07.01.21

20.7 **Audit**. Buyer shall have the right, on at least three (3) Business Days prior written notice, at its sole expense and during normal working hours, to examine the records of the Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to the Agreement, including records necessary to verify that Buyer has received and is receiving Buyer's Percentage of Products produced by the Facility and to verify that Seller is complying with the terms and conditions herein. If any such examination reveals any inaccuracy in any Invoice, the necessary adjustments in such Invoice and the payments thereof shall be made in accordance with Article 10.6 [Billing Disputes],

20.8 **Successors**. The Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

20.9 **No Dedication**. No undertaking by one Party to the other under any provision of the Agreement shall constitute the dedication of that Party's property or any portion thereof to the other Party or the public, nor affect the status of Buyer or Seller. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate, and attempt, in good faith, to resolve the dispute quickly, informally, and inexpensively in accordance with Article 14 [Dispute Resolution].

20.10 **Assignment**. Neither Party shall assign the Agreement or delegate its rights or obligations hereunder without the prior written consent of the other Party; provided however, that without the consent of the other Party:

(a) A Party may transfer, sell, pledge, encumber, or assign the Agreement or the Facility, or any accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements of the Facility; or

(b) A Party may transfer or assign the Agreement to any Person whose creditworthiness is equal to or higher than that of the transferring Party; *provided however*, that in the case of an assignment by the Seller the assignee must also own the Facility.

(c) Any consent required by Article 20.10 shall not be unreasonably withheld, conditioned or delayed; provided however, that neither Party shall be required to consent to any assignment or transfer that would require it to accept any limitation of its rights under the

Agreement or expansion of the liability, risks or obligations imposed on it under the Agreement.

(d) It shall be a condition of any assignment, transfer, delegation or other disposition of the Agreement that: (a) all Letters of Credit and Guaranties required pursuant to Article 14 [Security] shall remain in place in favor of Buyer notwithstanding such assignment, transfer, delegation or disposition; or (b) replacement Letters of Credit and Guaranties in form and substance acceptable to Buyer shall have been provided prior to such assignment, transfer, delegation, or disposition

20.11 **Designated Agents.** Throughout the Term of this agreement, a Party may authorize a Third Party perform the day-to-day obligations of this Agreement (“**Designated Agent**”); provided however, that such authorization shall not constitute a change in Assignment nor relieve the authorizing Party from liability should the Designated Agent fail to perform obligations of this Agreement. The authorizing Party shall provide prompt notice to the other Party in this Agreement identifying the Designated Agent and the duties they are authorized to perform.

20.12 **Jurisdiction, Venue, and Governing Law.** Except for matters subject to the exclusive or primary jurisdiction of FERC, the Maryland PSC or the courts having jurisdiction over the Maryland PSC or FERC matters, all disputes hereunder shall be resolved in accordance with Title 15, subtitle 2 of the State Finance and Procurement Article, Annotated Code of Maryland and the Code of Maryland Regulations, Title 21, subtitle 10 - Administrative and Civil Remedies, as may be amended from time to time. Each Party hereby irrevocably submits to the in-person jurisdiction of the Maryland State Board of Contract Appeals and Maryland State Courts for such purpose. This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

20.13 **Amendments.** The Agreement shall not be amended, modified, or supplemented, nor shall any provision hereof be waived unless mutually agreed, in writing, by both Parties.

20.14 **Modification of PJM Agreements.** Notwithstanding Article 1.2 [Interpretation]: (a) if the PJM Agreements are amended or modified so that any Schedule or Article referenced herein to such agreement is changed, such Schedule or Article reference shall be deemed to automatically (and without any action by the Parties) refer to the new or successive schedule or Article in such PJM Agreement that replaces the provision originally referred to in the Agreement; and (b) if any provision of any of the PJM Agreements referenced herein, or any other PJM rule relating to the implementation of the Agreement, is changed materially from that in effect on the Effective Date, both Parties shall cooperate to make conforming changes to the Agreement to fulfill the purposes of the Agreement; provided however, that neither Party shall be obligated to agree to any change that diminishes the benefits of the Agreement to such Party.

20.15 **Bankruptcy Considerations.** The Parties acknowledge and agree that the standard of review for any proposed avoidance, breach, rejection, termination or other cessation of performance or changes to any portion of the Agreement over which the United States District Court or the United States Bankruptcy Court for the district in which a proceeding is pending, whether proposed by Seller, Buyer, or a non-Party, shall be the standard of review set forth in *In re Mirant Corp.*, 318 B.R. 100 (N.D. Tex. 2004). Nothing in this Article 20.15 shall adversely

affect, in any way, the protections afforded to a non-debtor counterparty under the United States Bankruptcy Code. The Parties acknowledge and agree that the Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code and that each of Seller and Buyer is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

20.16 **Delay and Waiver**. Except as otherwise provided in the Agreement, no delay or omission to exercise any right, power or remedy accruing to a Party upon any breach or default by the other Party shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character of any breach or default under the Agreement, and any waiver of any provision or condition of the Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing.

20.17 **Entire Agreement**. This Agreement, including the Attachments and Schedules hereto, and Solicitation BPM045055 (and the attachments thereto) embody the entire agreement and understanding of the Parties in respect of the subject matter hereof. There are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings between the Parties with respect to the matters contemplated by this Agreement. If there is any conflict between this Agreement and Solicitation BPM045055, or any other contract documents, the following order of precedence shall determine the prevailing provision:

This Agreement;  
Solicitation BPM045055; and  
Any other contract documents.

20.18 **Counterparts**. The Agreement may be executed in two or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

20.19 **Obligation of Good Faith**. In carrying out its rights, obligations and duties under the Agreement, each Party shall act reasonably and in accordance with the principles of good faith and fair dealing.

20.20 **Independent Contractor**. It is understood and agreed that the Seller is an independent contractor of the Buyer and not an employee. The Buyer shall not withhold income taxes, social security, or any other sums from the payments made to the Seller hereafter. If the Seller employs additional persons in the performance of the Agreement, those persons shall in no way be considered employees of the Buyer, but rather they shall be employees or contractors of the Seller, and the Seller bears full responsibility for compensating those persons.

20.21 **Non-Hiring of Officials and Employees**. No official or employee of the State of

Maryland, as defined under General Provisions Article § 5-101 , Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Agreement or the related Sole Source Solicitation BPM045055, shall, during the pendency and term of this Agreement and while serving as an official or employee of the State become or be an employee of the Seller or any entity that is a subSeller on this Agreement.

20.22 **Contingent Fees.** The Seller warrants that it has not employed or retained any person, partnership or other entity other than a bona fide employee or agent working for the Seller, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this agreement.

20.23 **Incorporation by Reference.** All terms and conditions of the Purchase Power Agreement and attachments thereto are made a part of this Contract.

20.24 **Antibribery.** The Seller warrants that neither it nor any of its officers, directors, or partners nor any of its employees who are directly involved in obtaining or performing contracts with any public body has been convicted of bribery, attempted bribery, or conspiracy to bribe, under the laws of any state or of the federal government or has engaged in conduct since July 1, 1977, which would constitute bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government.

20.25 **Registration.** Pursuant to §7-201 et seq. of the Corporations and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State shall be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at the State Office Building, Room 803, 301 West Preston St., Baltimore, Maryland 21201. Before doing any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall qualify with the Department of Assessments and Taxation. The website for the SDAT is <https://www.egov.maryland.gov/businessexpress>, e-mail address is [charterhelp@dat.state.md.us](mailto:charterhelp@dat.state.md.us), and phone numbers for the State Department of Assessments and Taxation are: (410) 767-1340 or (888) 246-5941.

#### 20.26 **Indemnification**

(a) The Seller shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities, and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Seller or its subcontractors under this Contract.

(b) This indemnification clause shall not be construed to mean that the Seller shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.

(c) The State has no obligation to provide legal counsel or defense to the Seller or its subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the Seller or its subcontractors as a result of or relating to the Seller's performance under this Contract.



- (d) The State has no obligation for the payment of any judgments or the settlement of any claims against the Seller or its subcontractors as a result of or relating to the Seller's performance under this Contract.
- (e) The Seller shall immediately notify the Procurement Officer of any claim or suit made or filed against the Seller or its subcontractors regarding any matter resulting from, or relating to, the Seller's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Seller's performance under this Contract.
- (f) This Section 20.25 shall survive termination of this Contract
- 20.27 **Cost and Price Certification.** The Seller by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:
- (a) A negotiated contract, if the total contract price is expected to exceed \$100,000, or smaller amount set by the procurement officer; or
- (b) A change order or contract modification, expected to exceed \$100,000, or smaller amount set by the procurement officer.
- (c) The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Seller furnished cost or price information, which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.
- 20.29 **Drug and Alcohol Free Workplace.** The Seller warrants that the Seller shall comply with COMAR 21.11.08 Drug and Alcohol Free Workplace, and that the Seller shall remain in compliance throughout the term of this purchase order.
- 20.30 **Political Contribution Disclosure.** Maryland Law requires persons doing business with Maryland Government and/or person employing lobbyists to file a Disclosure of Contributions. Reports are due every six months on November 30 and May 31 with the transaction period ending the last day of the month prior to the due date. Additionally, there is an initial report that a person doing business with the State is required to file at the time the government contract is awarded. Additional information is available on the State Board of Election website:  
[https://elections.maryland.gov/campaign\\_finance/disclosure\\_of\\_contributions.html](https://elections.maryland.gov/campaign_finance/disclosure_of_contributions.html)
- 20.31 **Nondiscrimination in Employment.** The Seller agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry genetic information or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in

conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

20.32 **Commercial Non-Discrimination**

(a) As a condition of entering into this Agreement, Seller represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under State Finance and Procurement Article, Title 19, Annotated Code of Maryland. As part of this compliance, Seller may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Seller retaliate against any person for reporting instances of such discrimination. Seller shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Seller understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Seller from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

(b) The Seller shall include the provision in §A of this regulation in all subcontracts to the State contract.

(c) As a condition of entering into this Agreement, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Seller under State Finance and Procurement Article, Title 19, Annotated Code of Maryland, as amended from time to time, Seller agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Seller has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Seller on each subcontract or supply contract. Seller further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under State Finance and Procurement Article, Title 19, Annotated Code of Maryland, and to provide any documents relevant to any investigation that is requested by the State. Seller understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

20.33 **General Right of Access**. Upon reasonable notice, Buyer may access the premises of the Seller to observe the status of development and construction of the Facility.

20.33 **Pre-Existing Regulations**. The regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Contract are applicable to this Contract.

**Article 21**  
**MINORITY BUSINESS ENTERPRISE NOTICE**

SIGNATURES APPEAR ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

**[SELLER]**

**State of Maryland Department of General Services**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Approved as to form and legal sufficiency:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTACHMENT 1**

**BUYER'S PERCENTAGE OF FACILITY'S NAMEPLATE RATING**

<b>Effective Date</b>	<b>Riding Entities</b>	<b>Riding Entities' Percentage of Nameplate Rating</b>	<b>Buyer's Percentage of Nameplate Capacity</b>

If, after the Effective Date, the Nameplate Capacity is modified (including by a modification of the rated output of any Unit(s) or a change in the number of Units in the Facility), Buyer's Percentage shall be adjusted so that, as a percentage of the modified Nameplate Capacity, it represents the same quantity as Buyer's Percentage of the original Nameplate Capacity.

**ATTACHMENT 2**

**FACILITY INFORMATION AND OPERATING LIMITS**

Facility Name	
Nameplate Capacity (AC)	
Point of Interconnection	
Annual Energy Output Degradation	
Guaranteed Initial Delivery Date	
Delivery End Date	
BOEM Block Lease Area	
Turbine Model	
Expected Availability	

Wind Speed Operating Limits:

Facility Diagram:

**ATTACHMENT 3**

**FACILITY EXPECTED ENERGY PRODUCTION**

Average Expected Energy (in MWh)

	1:0 0	2:0 0	3:0 0	4:0 0	5:0 0	6:0 0	7:0 0	8:0 0	9:0 0	10:0 0	11:0 0	12:0 0	13:0 0	14:0 0	15:0 0	16:0 0	17:0 0	18:0 0	19:0 0	20:0 0	21:0 0	22:0 0	23:0 0	24:0 0
JAN																								
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SEP																								
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1.

## ATTACHMENT 4

### SETTLEMENT SCHEDULE AND CONTRACT STRIKE PRICE

- 1) Contract Strike Price (Energy and RECs): (\$/MWH)
- 2) Settlement Point: Point of Interconnection.
- 3) The Monthly Settlement Amount with respect to each Calculation Period will be calculated by the difference between the Contract Strike Price and the Settlement Point Price multiplied by the Delivered Energy for each Settlement Interval during the Calculation Period according to the following formula:

Where,

*MSA* is the Monthly Settlement Amount

*CSP* is the Contract Strike Price

*SPP* is the Settlement Point Price for a given Settlement Interval *i*

*DE* is the Delivered Energy for a given Settlement Interval *i*

*i* is a given Settlement Interval in a Calculation Period



**ATTACHMENT 5**

**COMMERCIAL MILESTONES**

<b>Project Milestone</b>	<b>Expected Completion Date</b>	<b>Current Status</b>
Site Acquisition/Site Control		
PJM Queue		
Executed Interconnection Agreement		
Executed Turbine Agreement		
Executed Engineering Procurement and Construction Contract		
Financing Secured (Financier's Notice to Proceed)		
Construction Start		
Operating Permit		
All other Permits		
Initial Synchronization		
Commercial Operation Date		

## ATTACHMENT 6

### PERMIT STATUS

Seller is responsible for acquiring in a timely fashion all necessary licenses, permits, certifications, and approvals required by federal, state, and local government laws, regulations and policies that are related to the design, construction, and operation of the relevant project as well as the sale of the project's capacity and/or Energy. In addition, the Seller shall fully support all of Maryland's regulatory requirements associated with the proposed power supply arrangement. Seller shall be solely responsible for securing all necessary financing for the relevant project. Buyer shall have no responsibility in identifying or securing any licenses, permits, or regulatory approvals or in securing any financing required for the construction or operation of the relevant project.

Below is a list provided by Seller of all permits required by the project, noting which permits have already been obtained and the status of pending permits.

<b>List Required Permit</b>	<b>Obtained (Y/N)</b>	<b>Status of Pending Permit</b>



## ATTACHMENT 7

### CONTRACT YEAR AVAILABILITY CALCULATION

**Contract Year Availability Calculation.** For each Contract Year during the Delivery Period, an availability factor (the "Contract Year Availability") shall be calculated as follows:

Where,

$AA$  is the Actual Availability for a given Contract Year  
 $EA$  is the Expected Availability for a given Contract Year  
 $y$  is the applicable Contract Year

**Actual Availability Calculation.** The Actual Availability shall be calculated as follows:

Where,

$DE$  is the sum of all Delivered Energy for Contract Year  $y$  expressed in MWh  
 $EE$  is the sum of all Excused Energy for Contract Year  $y$  expressed in MWh  
 $y$  is the applicable Contract Year

**Expected Availability Calculation.** The Expected Availability shall be calculated as follows:

**Excused Energy Calculation.** Excused Energy shall be calculated using (a) where available and applicable the forecasted Energy expected to be delivered by the Facility, or (b) Buyer's Percentage of Name Capacity multiplied by the Facilities capacity factor and by the duration of an Excused Event.

**ATTACHMENT 8**

**FORM OF COMMERCIAL OPERATION DATE CERTIFICATE**

This certification (“**Certification**”) of Commercial Operation is delivered by [licensed professional engineer] (“**Engineer**”) to the Department of General Services (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between [Seller Entity] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of [Date], Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Participating Transmission Utility and PJM.
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Nameplate Capacity.
3. Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications.
4. A performance test for the Facility demonstrated peak electrical output of \_\_ MW AC at the Point of Interconnection, as adjusted for ambient conditions on the date of the performance test (“**Installed Capacity**”).
5. The Installed Capacity is not less than ninety-five (95%) of the Guaranteed Capacity.
6. Authorization to parallel the Facility was obtained by the Participating Transmission Owner on [Date].
7. The Participating Transmission Owner has provided documentation supporting full unrestricted release for Commercial Operation by the Participating Transmission Owner on [Date].
8. The PJM has provided notification supporting Commercial Operation, in accordance with the PJM Protocols on [Date].

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT 9**  
**FORM OF LETTER OF CREDIT**

**IRREVOCABLE STANDBY LETTER OF CREDIT**

Issuing Bank: \_\_\_\_\_

Date and Place of Issue: \_\_\_\_\_, 20\_\_

Letter of Credit No.: \_\_\_\_\_

Stated Amount: US \$ \_\_\_\_\_ (AMOUNT IN WORDS United States Dollars)

Expiration Date: \_\_\_\_\_, 20\_\_

Beneficiary's Name and Address: NAME and ADDRESS

(“Beneficiary”)

Applicant's Name and Address:

(“Applicant”)

To Beneficiary:

We hereby issue this irrevocable standby letter of credit no. \_\_\_\_\_ (“Letter of Credit”) in your favor for the account of the Applicant for payment at sight up to the aggregate amount stated above (“Stated Amount”). Drawing(s) made under and in accordance with the terms and conditions of this Letter of Credit will be duly honored. This Letter of Credit is effective as of DATE.

Funds under this Letter of Credit, in an amount not to exceed the Stated Amount, will be made available to you upon your presentation of a statement (“Beneficiary Statement”), purportedly signed by an authorized officer of Beneficiary, that substantially mirrors one of the two options below:

1. “Pursuant to [insert either (i) LAW/REGULATION SPECIFICS or (ii) the NAME OF CONTRACT(S) between SUB and Beneficiary], SUB’s payment to Beneficiary of \$[\_\_\_\_\_] is due and owing. Wherefore, Beneficiary hereby demands payment of the above referenced amount under Letter of Credit no. \_\_\_\_.”

Or

2. “This Letter of Credit No. \_\_\_\_\_ will expire in less than thirty (30) days, Beneficiary has not received an extension of said Letter of Credit or other acceptable replacement collateral, and SUB’s (“SUB”) failure to provide this Letter of Credit and/or acceptable collateral would be [insert either (i) a violation of LAW/REGULATION SPECIFICS or (ii) an Event of Default under NAME OF CONTRACT(S) between SUB and Beneficiary]. Wherefore, Beneficiary hereby demands payment of \$[\_\_\_\_\_], to be held as collateral until Beneficiary is provided with a new letter of credit or other acceptable collateral.”

#### Special Conditions

1. Payment under this Letter of Credit will be effected per your instructions against a Beneficiary Statement presented at (“Place of Presentation”). Such presentation may be made (i) in person, (ii) by first class certified and registered U.S. mail, or (iii) by overnight mail.
2. Partial and/or Multiple drawings are permitted. Such partial drawings shall reduce the amount thereafter available for drawing under this Letter of Credit.

3. [OPTIONAL] This Letter of Credit shall be deemed automatically extended without amendment for an additional period of twelve (12) months from the then-current Expiration Date, unless Issuing Bank notifies Beneficiary at least sixty (60) days prior to such Expiration Date that Issuing Bank elects not to extend the Letter of Credit for an additional period.
4. This Letter of Credit will terminate at 5:00 PM New York time on the earlier of (i) the Expiration Date, (ii) the date of surrender by you of this Letter of Credit for cancellation, and (iii) the date of our honoring of drawing(s) under this Letter of Credit that, in the aggregate, equal the Stated Amount.
5. All Issuing Bank charges are for the account of Applicant.
6. This Letter of Credit shall not be amended except with the written concurrence of Beneficiary, Applicant, and Issuing Bank.
7. Any communications to us with respect to this Letter of Credit shall be addressed to the Place of Presentation and refer to "Letter of Credit No. \_\_\_\_\_".
8. Unless otherwise expressly stated herein, this Letter of Credit is governed by the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600 ("UCP"). As to matters not governed by the UCP, this Letter of Credit is governed by the laws of the State of Maryland. Additionally, the forum for any disputes related to this Letter of Credit shall be the State or federal courts located in Baltimore, Maryland.
9. The following Articles under UCP are modified as follows:
  - (i) Article 14(b) is modified such that the issuing bank shall have a maximum of three (3) banking days following the day of presentation to determine if a presentation is complying; and
  - (ii) Article 36 is amended such that if the Letter of Credit expires while the Place of Presentation is closed due to events described in said Article, then the Expiration Date of this Letter of Credit shall be automatically extended without amendment to a date thirty (30) calendar days after the Place of Presentation reopens for business.

Very truly yours,



**ATTACHMENT 10**  
**FORM OF GUARANTY**

**ATTACHMENT 11**  
**TECHNICAL PROPOSAL AND METER LINE DIAGRAM**

**ATTACHMENT 12**

**NOTICES**