

Attachment 13

Performance Guarantee Requirement

This document provides further information on the Performance Guarantee. The document is constructed to apply following the award under Solicitation 4.

On [Month] [Day], 20[Year], pursuant to the Offshore Wind Economic Development Act, N.J.S.A. 48:3-87.1, et. seq. (“OWEDA”), the New Jersey Board of Public Utilities (“Board” or “BPU”) issued an Order (“[Same Date as Above] Order” or “Order”) awarding [Project’s Full Name] (“Project” or [Project’s Abbreviated Name]) status as a Qualified Offshore Wind Project (“QOWP”).¹ Under OWEDA, Project, as a QOWP, holds a status enabling it to receive Offshore Wind Renewable Energy Credits (“ORECs”). Under the [Month] [Day], 20[Year] Order, as well as under the terms of the before-issued Fourth Offshore Wind Solicitation Guidance Document (“SGD”), Project must provide a Commitment Security binding the QOWP to meeting the commitments made during the Fourth Offshore Wind Solicitation process.

Project made the following commitments requiring a Commitment Security:

- 1. Tier I Investment Commitment** - Providing \$[U.S. Dollar Amount] for Tier I Facility Investments.
- 2. Commercial Operation Date Commitment** - Achieving a COD for the QOWP by [Month] [Day], 20[Year].
- 3. Re-Bid Commitment** - Achieving a COD for the QOWP by [Month] [Day], 20[Year], as applicable to Re-Bid projects described in Section 2.6 of the SGD.

Project must submit a compliance filing within the timeframe specified in the Board Order to establish a schedule with specific dates for each of the Critical Milestones listed in Section 1 below (“Compliance Filing”). If the Project has proposed certain Critical Milestone dates, and if the Order has approved any of those dates, Project shall ensure the dates in its Compliance Filing match those in the Order. Unless otherwise noted, all amounts listed herein are in U.S. Dollars.

I. Critical Milestones

A. Tier I Investment Commitment - Critical Milestones

¹ [Name of Matter], BPU Docket No. [Insert Docket No.], Order dated [Same Date as First Listed Above] (“[Same Date as First Listed Above] Order”).

1. **Tier 1 Critical Milestone 1** - Providing at least \$[U.S. Dollar Amount], representing the funding that is at least 25% of the total funding commitment as proposed by Project and approved by the Board in the Order, on or before [Month] [Day], 20[Year] (“Tier I Critical Milestone 1 Date”).
2. **Tier 1 Critical Milestone 2** - Providing at least \$[U.S. Dollar Amount], representing the funding that is at least 50% of the total funding commitment as proposed by Project and approved by the Board in the Order, on or before [Month] [Day], 20[Year] (“Tier I Critical Milestone 2 Date”).
3. **Tier 1 Critical Milestone 3** - Providing the remaining \$[U.S. Dollar Amount], representing the balance of the Tier I funding, on or before [Month] [Day], 20[Year] (“Tier I Critical Milestone 3 Date”).

B. Commercial Operation Date Commitment – Critical Milestones

1. **Project Critical Milestone 1** – Approval of Project’s Construction and Operation Plan (“COP”) by the Bureau of Ocean Energy Management (“BOEM”) on or before [Month] [Day], 20[Year] (“BOEM COP Approval Date”).

[For the balance of this Section B, select Alternative 1 or Alternative 2 below, as applicable, based on whether the Project is constructed in phases.]

[Alternative 1, used if the Project has a single COD and is not constructed in phases:]

2. **Project Critical Milestone 2** – Achievement of the Project’s COD Commitment.

[Alternative 2, used if the Project’s COD is split into two phases:]

2. **Project Critical Milestone 2** – Achievement of Phase I COD on or before, [Month] [Day], 20[Year] (“Phase I COD Date”).
3. **Project Critical Milestone 3** – Achievement of the Project’s COD Commitment.

C. Re-Bid Commitment – Critical Milestones

1. **Re-Bid Critical Milestone 1** – Execution of a binding agreement on or before [Month] [Day], 20[Year] with the OEM supplying Project wind turbine generators.
2. **Re-Bid Critical Milestone 2** – Achievement of the Project’s COD Commitment.

The Compliance Filing must also provide Board Staff a copy of the proposed financial instrument(s) to secure the commitments, with a copy of the fully-executed version of such financial instrument(s) to be provided to Board Staff promptly upon each such instrument's execution, but in no event later than seven (7) days following such execution. As established by the SGD, the proposed financial instrument and Commitment Security may be in the form of:

- (a) one or more Parent Company Guarantee,
- (b) one or more Letters of Credit, or
- (c) upon petition and approved by the Board, another financial instrument that provides a comparable level of security as the immediately prior items.

If items these instruments – (a) and (b) above – are used for the Commitment Security, the Compliance Filing shall provide them substantially in the form as provided in Exhibit A (Form of Parent Company Guarantee) and Exhibit B (Form of Irrevocable Standby Letter of Credit) attached hereto. The Project may propose to use financial instruments in any combination, such as one or more Parent Company Guarantee combined with one or more Letters of Credit.

The Re-Bid Commitment Security must be in the form of one or more Letters of Credit, in the aggregate amount of \$100,000,000.

The Compliance Filing shall be due not less than 180 days post award. The Compliance Filing will be subject to Board approval. Once approved, the Project and any securing parties must fully execute the Commitment Securities within seven (7) days of the Board's action approving the Compliance Filing. The Project shall also provide Board Staff with copies of any amendment made to a commitment security within seven (7) days of the date on which such amendment is fully executed. The Project shall keep Board Staff informed of the anticipated date of execution of each such commitment security or amendment, as applicable.

II. Parent Company Guarantee

Any Parent Company Guarantee must be from one of the Project's parent companies that is investment grade, meaning it has a credit rating of BBB or above from Standard and Poor's, a credit rating of BBB or above from Fitch, or a credit rating of Baa3 or above from Moody's.

Exhibit A provides a form of Parent Company Guarantee that the Board has pre-approved ("Form of Guarantee"). Project shall use such Form of Guarantee in its Compliance Filing, such that any Guarantee it submits as part of its Compliance Filing shall be substantially in the same form as the Form of Guarantee. Any material modifications the Project makes to the Form of Guarantee will require Board approval. If Project intends to allocate the cumulative amount of its guarantee to the Board ("Cumulative Guarantee Amount") among two or more of its parent companies, then the Compliance Filing must provide copies of each proposed Guarantee so that

each Guarantee is included and so that the total amount of all Guarantees when aggregated total the Cumulative Guarantee Amount and contain any modifications deemed necessary to provide security through multiple agreements.

The Form of Guarantee contains the details and mechanisms to implement the security.

III. Letter(s) of Credit

Any Letter of Credit must be from an investment-grade third-party financial guarantor, meaning an institution with a credit rating of BBB or above from Standard and Poor's, a credit rating of BBB or above from Fitch, or a credit rating of Baa3 or above from Moody's. Any Letter of Credit shall be a clean, unconditional, and irrevocable standby letter of credit in favor of the Board as beneficiary, and be issued by a United States bank, or a United States branch of a foreign bank. Any Letter(s) of Credit shall be implemented with the conditions and in the manner detailed below.

1. **Posting Date and Amounts**. Any Letter of Credit must be in a face amount that, either individually or collectively with any other Letter(s) of Credit, is equal to the full U.S. dollar amount of the applicable commitment security – accounting for any amount that is being secured by a Parent Company Guarantee or other approved financial instrument – described below. The Letter of Credit(s) may be stepped up according to the milestones described below.

A. Tier I Investment Commitment - Commitment Security for Each Critical Milestone

The full amount of the Tier I Investment Commitment Security is \$[*Cumulative Amount*] (“Tier I Amount”). Half of the Tier I Amount, \$[*Half of the Tier I Amount*], must be posted by one or more Letters of Credit on or before the earlier of the one (1) year anniversary date of the Order's effective date or sixty (60) days before prior to the Tier 1 Critical Milestone 1 Date. The balance shall be posted within the earlier of sixty (60) days prior the Tier 1 Critical Milestone 2 Date or 60 days after the Critical Milestone 1 Date.

B. Commercial Operation Date Commitment Security

The full amount of the Commercial Operation Date Commitment Security is \$[*Cumulative Amount*] (“COD Amount”). Half of the COD Amount, \$[*Half of the COD Amount*] must be posted by one or more Letters of Credit on or before [Month] [Day], 20[Year], which is the one (1) year anniversary date of the Order's effective date. The other half of the COD

Amount must be posted by one or more Letters of Credit on or before [Month] [Day], 20[Year], which is the three (3) year anniversary date of the Order's effective date.

C. Re-Bid Commitment Security

The full amount of the Re-Bid Commitment Security is \$100,000,000.

The full amount shall be posted by one or more Letters of Credit with the Compliance Filing.

2. **Achievement of Critical Milestones.** Upon achievement of a Critical Milestone the Letter(s) of Credit shall be reduced and returned as described below. Project shall promptly notify the Board when the applicable Critical Milestone is reached. Board Staff shall have 45 days to review this written notice in order to verify the reasonableness of such representation(s) before providing its recommendation to the Board. The Board will issue a Board Order, within 90 days of Board Staff's review, allowing or disallowing the Commitment Security to be reduced as described below. Board Staff may request additional information from the Qualified Project about its filing, including additional documentation, access to company personnel, or other information. The Board Staff review period is renewed and automatically resets upon receipt of the requested documentation or clarification from the Qualified Project.

A. Tier I Investment Commitment - Critical Milestones

- i. Tier I Investment Critical Milestone 1** - Providing at least \$[One-fourth of the Tier I Amount], representing the funding that is at least 25% of the total \$[Tier I Amount] funding commitment as proposed by Project for Tier I Investments by the Tier I Investment Commitment Critical Milestone 1 Date. If the Critical Milestone is achieved, the total and original amount of the commitment security obligation shall be reduced by 20% of \$[Tier I Amount] (such resulting reduced amount, the "Tier I Critical Milestone 1 Reduction Amount").
- ii. Tier I Investment Critical Milestone 2** - Providing at least \$[One-half of the Tier I Amount], representing the funding that is at least 50% of the original total funding commitment as proposed by Project for Tier I Investments by Tier I Investment Commitment Critical Milestone 2 Date. If the Critical Milestone is achieved, the total and original amount of the commitment security obligation shall be reduced by 20% of \$[Tier I Amount] (such resulting

reduced amount, the “Tier I Critical Milestone 2 Reduction Amount”).

B. Commercial Operation Date Commitment

- i. Commercial Operation Date Critical Milestone I** - Approval of the Project’s Construction and Operation Plan by BOEM on or before the BOEM COP Approval Date. If the Critical Milestone is achieved on or before the BOEM COP Approval Date, the obligation shall be reduced by 20% of \$[*COD Amount*] (such resulting reduced amount, the “COD Reduction Amount”).

- ii. Commercial Operation Date Critical Milestone II, (if Alternate 2, described above, is used)** - Achievement of Phase I COD. If the Critical Milestone is achieved on or before the Phase I COD, the obligation shall be reduced by 20% of \$[*COD Amount*] (such resulting reduced amount, the “COD Reduction Amount II”).

C. Re-Bid Commitment

- i. Re-Bid Critical Milestone I** – Execution of a binding agreement with an OEM supplying Project wind turbine generators. If the Critical Milestone is achieved on or before [*Month*] [*Day*], 20[*Year*], the obligation shall be reduced by \$20,000,000.

- 3. **Partial and Full Draw Downs on Letters of Credit.** The Board shall have the right to draw on the Letter(s) of Credit a partial or a full amount, as applicable, of the full-posted amount – accounting for amounts previously returned or drawn upon – or a particular Letter of Credit if Project does not timely satisfy the related Critical Milestone. The Board shall provide Project with thirty (30) days’ notice of its intent to draw on and retain from the applicable Letter of Credit for either its partial or full amount. The Board may draw from the Letter(s) of Credit if it presents only a Sight Draft to the issuing bank in the amount to be drawn and a Payment Certificate.

A. Tier I Investment Commitment

- i. Tier I Investment Critical Milestone I – Partial Amount**
If the Tier I Investment Critical Milestone I is not satisfied by Tier I Investment Commitment Critical Milestone 1 Date, the Board shall have the right to retain and draw from the Letter(s) of Credit up to a face value of 25% of \$[*Tier I Amount*] (“Tier I Milestone I Draw Down Amount”).

ii. Tier I Investment Critical Milestone II – Partial Amount

If the Tier I Investment Critical Milestone II is not satisfied by Tier I Investment Commitment Critical Milestone 2 Date, the Board shall have the right to retain and draw from the Letter(s) of Credit up to a face value of 50% of \$[Tier I Amount] (“Tier I Milestone II Draw Down Amount”).

iii. Tier I Investment Full Amount

The Board shall have the right to draw and retain from the Letter(s) of Credit the full amount of the Tier I Investment Commitment Security not refunded or previously drawn if Project does not provide the full \$[Tier I Amount] of its Tier I Investment Commitment by the Tier I Investment Commitment Critical Milestone 3 Date or announces termination or cancellation of the Qualified Project. The Board may draw from the Letter(s) of Credit if it presents only a Sight Draft in the amount to be drawn and a Payment Certificate.

B. Commercial Operation Date Commitment

i. Commercial Operation Date Critical Milestone I

If the Commercial Operation Date Critical Milestone I is not satisfied by [Month] [Day], 20[Year], the Board shall have the right to retain and draw from the Letter(s) of Credit up to a face value 25% of \$[COD Amount] (“COD Draw Down Partial Amount”).

ii. Commercial Operation Date Critical Milestone II (if Alternative 2, described above, is used)

If the Commercial Operation Date Critical Milestone II is not satisfied by Phase I COD Date, the Board shall have the right to retain and draw from the Letter(s) of Credit up to a face value of 50% of [\$COD Amount] (“COD Draw Down Partial Amount II”).

iii. Commercial Operation Full Amount

The Board shall have the right to draw and retain from the Letter(s) of Credit the full amount of the Commercial Operation Date Commitment Security not refunded or previously drawn if the Project does not reach commercial operation by its Commercial Operation Date Commitment or announces termination or cancellation of the Qualified Project. The Board may draw from the Letter(s) of Credit if it presents only a Sight Draft in the amount to be drawn and a Payment Certificate.

C. Re-Bid Commitment

i. Re-Bid Critical Milestone I

If the Re-Bid Critical Milestone I is not satisfied by [Month] [Day], 20[Year], the Board shall have the right to retain and draw from the Letter(s) of Credit up to a face value \$25,000,000.

ii. Re-Bid Full Amount

The Board shall have the right to draw and retain from the Letter(s) of Credit the full amount of the Re-Bid Commitment Security not refunded or previously drawn if the Project does not reach commercial operation by its Commercial Operation Date Commitment or announces termination or cancellation of the Qualified Project. The Board may draw from the Letter(s) of Credit if it presents only a Sight Draft in the amount to be drawn and a Payment Certificate.

4. **Refunds on Letters of Credit.** The Letter(s) of Credits(s) shall be reduced and refunded in full, less any draws made for a Project's failure to meet certain Critical Milestones on the date that is the earlier of the Board confirming completion of all Critical Milestones or twelve (12) months after the Project's Commercial Operation Date. The 12 months may be tolled if there are any ongoing disputes between the Project and the Board respecting the securities.
5. **Other Remedies; Damages.** The Project agrees that nothing in this or in any Letter(s) of Credit is intended to limit or restrict the rights of the Board to pursue additional damages or remedies under law, against Project, should Project fail to reach commercial operation by its Commercial Operation Date.
6. **Term for Any Letter of Credit.** Any Letter of Credit shall have an expiration date not shorter than one (1) year together with an automatic renewal provision. Any Letter of Credit shall automatically renew until all amounts under such Letter of Credit have either been refunded or drawn.
7. **Assignment.** Any assignee of the Project shall, simultaneously with its assignment becoming effective, deliver to the Board a replacement security in the form of one or more Letter(s) of Credit or Parent Company Guarantee(s) that collectively meet Project's outstanding commitments in satisfaction of the Critical Milestones stated herein.

8. **Security Transfer.** The Project may, upon Board approval, transfer and convert any posted amounts in the Letter of Credit(s) to another existing or new Letter of Credit, Parent Company Guarantee or other approved form of security.

Exhibit A

Form of Parent Company Guarantee

This Parent Company Guarantee (“Guarantee”) is made by [*Parent Company Name(s)*] (“Guarantor”) in favor of the New Jersey Board of Public Utilities (“Board” or “Guaranteed Party,” and together with the Guarantor, the “Parties” and each a “Party”). [*Parent Company Name*] with an address of [*Address*] is a [*type of organization*] organized under the laws of [*Jurisdiction*]. [*Include immediately prior sentence for each applicable Parent Company.*] The New Jersey Board of Public Utilities, with an address of 44 South Clinton Ave., Trenton, New Jersey 08625, is a state agency established under New Jersey Statutes at Title 48.

This Parent Company Guarantee has an effective date of [*Month*] [*Day*], 20[*Year*] (“Effective Date”).

On [*Month*] [*Day*], 20[*Year*], pursuant to the Offshore Wind Economic Development Act, N.J.S.A. 48:3-87.1, the Board issued an Order awarding [*Project’s Full Name*] (“Project” or [*Project’s Abbreviated Name*]) status as a Qualified Offshore Wind Project (“QOWP”). Under OWEDA, Project, as a QOWP, holds a status enabling it to receive Offshore Wind Renewable Energy Credits (“ORECs”). Project is a [*Relationship to Parent Company*] of [*Parent Company Name(s)*]. [*Include the immediately prior sentence for each applicable Parent Company.*]

This Guarantee is provided in consideration for Project’s eligibility to receive ORECs. The Guarantee provides security for Project’s commitments made during the solicitation process.

Tier I Investment Commitment - Project committed to provide \$[*Tier I Amount*] for Tier I Facility Investments

Commercial Operation Date Commitment – Project committed to achieve a Commercial Operation Date, as defined below, for the QOWP of [*COD Date*].

The Parties agree as follows:

1. **Definitions**

All capitalized terms not defined in the preamble or herein shall have the meaning ascribed to them in the Order or Solicitation Guidance Document.

Board shall mean the New Jersey Board of Public Utilities.

Commercial Operation Date (“COD”) shall mean the date approved under the Order, as may be later amended, by which Project shall reach commercial operations with at least 90% of the Project’s capacity approved under the Order.

Force Majeure Event shall mean means any occurrence or event that (1) was not within the control of the Party claiming its occurrence, (2) the Project or [*Parent Company*] has been unable to avoid or overcome by the exercise of due diligence or commercially reasonable efforts, and (3) directly prohibits or prevents such Party from performing its obligations under this Agreement.

Notwithstanding the foregoing, a Force Majeure Event shall not include, (1) unusual and severe weather conditions that occur in the locale of the Project whether or not reasonably projected or predicted to occur, and whether occurring underground, in the benthic environment, underwater or in waters in the general vicinity of the Project, or in the atmosphere, (2) fires or explosions, including tremors or earthquakes that these events may cause; (3) strikes and other labor disputes (including collective bargaining disputes and lockouts) of the labor force under the control of the Project or [*Parent Company*] claiming Force Majeure or its affiliates or subcontractors unless the strike is part of a more widespread or general strike extending beyond the Project or its [*Parent Company*], affiliates, or subcontractor, (4) unavailability, late delivery or failure of equipment or materials, unless the Project or [*Parent Company*] claiming a Force Majeure Event can point to an independent event of a Force Majeure Event causing such unavailability, late delivery or failure, (5) Project’s or [*Parent Company’s*] economic hardship or financial inability to perform under the Order, (6) delays in transportation, other than resulting from transportation accidents, perils at sea or delays in transportation resulting from (i) closure of roads or other transportation routes (including on-shore or nautical routes) or re-routing of original nautical routes by governmental authorities or (ii) an independent event of a Force Majeure Event to which the Project or [*Parent Company*] claiming a Force Majeure Event can point, (7) any delay in obtaining, inability or failure to obtain, suspension, non-renewal or cancellation of any governmental approval to the extent caused (i) by the claiming Project’s or [*Parent Company’s*] failure to timely submit a final, complete permit application, renew such governmental approval, or provide any information or requested responses thereto in accordance with good utility practice, (ii) by failure of a government authority to timely issue a permit or approval, or (iii) by litigation related to any requested permit or approval, (8) following the Effective Date, changes to existing or imposition of new sales taxes, export and/or import tariffs, duties or similar costs, (9) any provision or any future law or regulation, or (10) any material modifications to Project that result from a Board order or a governmental order, are imposed or required by another governmental agency, or occur as a result of negotiation, finding, consultation or settlement agreement within the Project’s permitting, construction, or maintenance process.

Order shall mean the order issued by the Board on [*Month*] [*Day*], 20[*Year*] in [*BPU Docket No.*] awarding [*Project*] QOWP status.

Solicitation Guidance Document shall mean the guidance document published by the Board on [*Month*] [*Day*], 2024 to assist applicants in submitting bid during the Board’s fourth offshore wind solicitation.

Tier I Investments shall mean the amount Project committed in funds toward the development of Tier I Facilities, as defined in the Solicitation Guidance Document.

2. **Guarantee**

2.1. Guarantor hereby unconditionally and irrevocably guarantees to the Guaranteed Party that it will provide the amount described here if the Project does not reach commercial operation by the Project's Commercial Operation Date. Subject to Section 3, all monies due and owing shall be payable to the Guaranteed Party in U.S. Dollars on the applicable date. The Guarantor's obligation under this subsection is \$[*U.S. Dollar Amount*] ("COD Amount"), which represents \$50,000 per megawatt of delivered capacity awarded under the Order.

a. The obligation under Section 2.1 will become effective in two phases. Half of the obligation will become active on [Month] [Day], 20[Year], which is one year after the Order's effective date. The other half will become active on [Month] [Day], 20[Year], which is three years after the Order's effective date.

b. The obligation in Section 2.1 may be reduced as each Critical Milestone stated in the Performance Guarantee Requirements are accomplished. Guarantor shall promptly notify the Guaranteed Party that the critical milestone is reached. Board Staff shall have 45 days to review this written notice in order to verify the reasonableness of such representation(s) before providing its recommendation to the Board. The Board will issue a Board Order, within 90 days of Board Staff's review, allowing or disallowing the Commitment Security to be reduced as described below. Board Staff may request additional information from the Qualified Project about its filing, including additional documentation, access to company personnel, or other information. The Board Staff review period is renewed and automatically resets upon receipt of the requested documentation or clarification from the Qualified Project.

Critical Milestone 1 - Approval of the Project's Construction and Operation Plan by the Bureau of Ocean Energy Management on or before [Month] [Day], 20[Year], BOEM COP Approval Date. If the Critical Milestone is achieved, the Guarantor's obligation under Section 2.1 shall be reduced by 20% of \$[COD Amount].

Critical Milestone 2 (if project is being constructed in two phases) - Achievement of the Project's Phase I on or before [Month] [Day], 20[Year], Phase I COD. If the Critical Milestone is achieved, the Guarantor's obligation under Section 2.1 shall be reduced by 20% of \$[COD Amount].

c. For each Critical Milestone that is not achieved, the Guaranteed Party shall have the right to, upon thirty (30) days prior written notice to the Guarantor, demand and receive payment for 25% of \$[COD Amount] for the corresponding Critical Milestone.

d. If the Guarantor does not reach commercial operation by the Commercial Operation Date or announces termination or cancellation of the Project, the Guaranteed Party shall have the right to, upon thirty (30) days prior written notice, demand and receive payment for the \$[COD Amount] identified in Section 2.1, less any amount reduced under Section 2.1.b or demanded and paid to the Guaranteed Party under Section 2.1.c.

2.2. Guarantor hereby unconditionally and irrevocably guarantees to the Guaranteed Party that the Project shall contribute [\$Amount] (“Tier 1 Amount”) total of Tier I Investments by [Month] [Day], 20[Year]. Subject to Section 3, all monies shall be payable to the Guaranteed Party in U.S. Dollars.

a. The obligation under Section 2.2 will become effective in two (2) phases. Half of the obligation will become active the earlier of the one (1) year anniversary date of the Order’s effective date or sixty (60) days before prior to the Tier 1 Critical Milestone 1 date identified in Section 2.2.b. The balance shall be posted within the earlier of sixty (60) days prior the Tier 1 Critical Milestone 2 date, identified in Section 2.2.b, or 60 days after the date for Critical Milestone 1 identified in Section 2.2.b.

b. The obligation in Section 2.2 may be reduced as the following critical milestones are accomplished. Guarantor shall promptly notify the Guaranteed Party that the critical milestone is reached. Board Staff shall have 45 days to review this written notice in order to verify the reasonableness of such representation(s) before providing its recommendation to the Board. The Board will issue a Board Order, within 90 days of Board Staff’s review, allowing or disallowing the Commitment Security to be reduced as described below. Board Staff may request additional information from the Qualified Project about its filing, including additional documentation, access to company personnel, or other information. The Board Staff review period is renewed and automatically resets upon receipt of the requested documentation or clarification from the Qualified Project.

Critical Milestone 1 - Providing at least \$[Amount], representing the funding that is at least 25% of the total funding commitment as proposed by the Project for Tier 1 Investments by [Month] [Day], 20[Year]. If the Critical Milestone is achieved, the original and total amount of the Guarantor’s commitment security obligation under Section 2.2 shall be reduced by 20% of \$[Tier 1 Amount].

Critical Milestone 2 - Providing at least \$[Amount], representing the funding that is at least 50% of the total funding commitment as proposed by the Project for Tier 1 Investments by [Month] [Day], 20[Year]. If the Critical Milestone is achieved, the original and total amount of the Guarantor's commitment security obligation under Section 2.2 shall be reduced by 20% of \$[Tier 1 Amount].

c. For each Critical Milestone above that is not achieved, the Guaranteed Party shall have the right to, upon thirty days prior written notice, demand payment from the \$[Tier 1 Amount], 25% for Critical Milestone 1 and 50% for Critical Milestone 2, for the corresponding Critical Milestone.

d. If the Guarantor does provide its full Tier 1 Investment Commitments by [Month] [Day], 20[Year], the Guaranteed Party shall have the right to, upon thirty days prior written notice, demand and receive payment for the Tier 1 Amount identified in Section 2.2 less any amount reduced under Section 2.2.b or demanded and paid to the Guaranteed Party under Section 2.2.c.

2.3. Guarantor agrees that the Board may enforce this Guarantee against the Guarantor without a proceeding against the Project. Any payments demanded under this section by the Guaranteed Party shall be delivered and performed by the Guarantor promptly.

3. **Limitation of Liability**

3.1. The Guarantor's liability under this Guarantee shall be the values identified under Sections 2.1 and 2.2.

3.2. In the event of a claimed Force Majeure Event, the Guarantor shall provide written notice to the Guaranteed Party within 7 days of such claimed Force Majeure Event. The Project and Guarantor shall then petition the Board, within a reasonable time, to request a modification of the Order and the obligations identified in Section 2.1 and 2.2 of this Guarantee. If such petition is filed, the Board's 30-day notice obligations under Sections 2.1 and 2.2 shall be tolled.

4. **Representations**

4.1. The Guarantor is a duly organized and validly existing corporation, partnership, or limited liability company, as the case may be, in good standing under the laws of the jurisdiction of its organization.

4.2. The Guarantor has the requisite corporate, trust, partnership, or limited liability company power and authority, as the case may be, to own its property and assets and to transact the business in which it is engaged and presently proposes to engage.

4.3. In entering this agreement, the Guarantor confirms that this agreement does not contravene any applicable law, order, writ, or injunction of any court or jurisdiction. The Guarantor confirms that there is no active, pending, or threatened suit against it that would affect its ability to perform under this Guarantee. The Guarantor confirms that this Guarantee does not conflict with violate or breach any other agreements, contracts, or instruments to which the Guarantor is party.

5. **Disputes**

5.1. The Parties consent to the exclusive jurisdiction and venue of any state court sitting in the State of New Jersey over any action or proceeding arising out of or relating to this Guarantee. All claims and actions may be only heard and determined by such state court.

5.2. This Guarantee shall be governed and construed in accordance with the laws of the State of New Jersey, without giving effect to any conflict of law principles that would give effect to the laws of any other jurisdiction.

6. **Waivers**

6.1. No failure or delay by the Guaranteed Party in exercising rights under this Guarantee shall operate as a waiver of those rights.

6.2. Guarantor waives, including any rights attributable to the [*Project Name*], arising out of (1) defenses relating to bankruptcy, insolvency, dissolution or liquidation, or any proceeding barring or limiting payment to the Guaranteed Party; and (2) defenses relating to the authority of the Guarantor to enter into this Guarantee.

6.3. Guarantor agrees that is assumes all responsibility for keeping itself informed of Project's progress and status, and any circumstances, as it relates to the obligations described in Sections 2.1 and 2.2.

7. **Assignment**

7.1. This Guarantee shall be binding upon Guarantor and its successors and assigns and shall be to the benefit of the Guaranteed Party and its successors and assigns.

7.2. The Guarantor shall not assign this Guarantee without the prior written consent of Guaranteed Party.

8. **Termination**

8.1. This Guarantee shall terminate on the earlier of the Board confirming completion of all Critical Milestones or the twelve (12) month anniversary date, [*Month*] [*Day*], 20[*Year*],

after the Project has reached commercial operation (the “Termination Date”), as may be tolled during any disputes associated with or arising out of this agreement.

8.2. The Guarantor may request early termination under this Guarantee if the Project and Guarantor no longer intend to complete the QOWP. In such case, Project and Guarantor must submit a duly written notification to the Board to explain their intent to cease development of the QOWP. All posted and unreduced obligations under Sections 2.1 and 2.2 will become promptly due to the Guaranteed Party. Once all obligations are paid to the Guaranteed Party, and no disputes associated with or arising out of this agreement remain outstanding, this Guarantee shall terminate prior to the Termination Date.

9. **Amendments**

9.1. This Guarantee may be modified only with a duly executed written consent of the Guarantor and the Guaranteed Party.

10. **Notices and Communications**

10.1. All notices under this shall be in writing and deemed served if sent by email and a mail carrier that provides receipt of delivery.

10.2. Notices to the Guaranteed Party shall be sent to:

New Jersey Board of Public Utilities
Attention: Board Secretary
44 South Clinton Avenue
Post Office Box 350
Trenton, New Jersey 08525-350
E-mail: Board.Secretary@bpu.nj.gov

10.3. Notices to the Guarantor shall be sent to:

[Name]
[Address]
[E-Mail]

11. **Counterparts**

11.1. This Guarantee may be executed in any number of counterparts by the Parties, each of which when so executed and delivered shall be an original, but all of which when taken together collectively shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Parent Company Guarantee has been executed as of the Effective Date first written above.

[*Name of Guarantor*] _____ NEW JERSEY BOARD
OF PUBLIC UTILITIES

By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

Exhibit B

Form of Irrevocable Standby Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [__]

ISSUE DATE: [__]

Beneficiary:

The New Jersey Board of Public Utilities
44 South Clinton Avenue
Post Office Box 350
Trenton, New Jersey 08525-350

Attention:

By the order of:

[Applicant Name]

[Applicant Address]

We hereby issue our irrevocable credit no: [__] in your favor for the account of [__] (the "seller") for an amount or amounts not to exceed in the aggregate \$[*U.S. Dollar Amount*] U.S. Dollars available by your Drafts at Sight on [Issuing Bank Name] [Issuing Bank Address], when accompanied by the following documents:

1. Your sight draft drawn on us in the form of Annex 1 hereto (the "sight draft"); and
2. A dated payment certificate purportedly signed by a duly authorized officer of the New Jersey Board of Public Utilities in the form of Annex 2 hereto (the "payment certificate").

Multiple drawings are permitted in amounts not to exceed, in combination, the aggregate amount.

Presentation of any drawing may be made by hand-delivery, express courier, or certified mail at the following address:

[Issuing Bank Name]

[Bank Address]

Ph: [Number]

Attention: [Name]

Funds under this Letter of Credit are available to you against your payment certificate and sight draft presented in full compliance with the terms and conditions of this Letter of Credit on or before 5:00 p.m., New York time, on the expiration date hereof. This Letter of Credit will expire on *[Month]/[Day]*, 20*[Year]* subject to the following sentence. It is a condition of this Letter of Credit that it shall be deemed automatically extended for successive additional periods of one (1) year from any future expiration date hereof, without amendment, unless at least 90 days prior to any such expiration date we notify you by courier or registered mail that we elect not to extend this Letter of Credit for any such additional period.

Payment against conforming documents presented under this Letter of Credit shall be made by us at or before 5:00 p.m., New York time, on the second (or, in the case of a presentation after 10:30 a.m., New York time, the third) banking day after presentation.

All payments made by us under this Letter of Credit will be made in immediately available funds and will be disbursed from our own funds. If requested by you, payment under this letter of credit may be made by wire transfer. Beneficiary's bank *[Issuing Bank Name]*, *[Account Number]* *[Issuing Bank Account Number]*.

This Letter of Credit is not transferable. Only you may make any payment certificate and sight draft under this letter of credit.

We hereby agree with you that each duly completed payment certificate and sight draft drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to us on or before the expiry date. The obligation of *[Issuing Bank Name]* under this Letter of Credit is the individual obligation of *[Issuing Bank Name]* and is in no way contingent upon reimbursement with respect thereto.

If any demand for payment under this Letter of Credit does not conform to the terms and conditions of this Letter of Credit, the *[Issuing Bank Name]* shall give the beneficiary prompt written notice of the same stating the reasons therefor, and the *[Issuing Bank Name]* will, upon the beneficiary's request, hold the documents presented to the issuing bank at the beneficiary's disposal or return the same to the beneficiary. Upon being notified that any demand for payment did not conform to this Letter of Credit, the beneficiary may attempt to correct any such non-conforming demand for payment.

All commissions and other banking charges with respect to this Letter of Credit will be borne by *[Applicant Name]*.

[Applicant's Name's] filing of a bankruptcy, receivership or other debtor-relief petition, and/or applicant's discharge thereunder, shall in no way affect the liability of the issuer under this Letter

of Credit and, as a result, the issuer shall always remain liable to the beneficiary for the full amount of this Letter of Credit, notwithstanding said bankruptcy, receivership, petition or discharge - not to exceed the available amount of this letter of credit.

This Letter of Credit sets forth in full the terms of our undertaking. With the exception of increases this Letter of Credit may not be amended, changed or modified without the express written consent of the beneficiary and [*Issuing Bank Name*].

Except as otherwise expressly stated herein, this Letter of Credit is subject to and shall be governed by and construed in accordance with the laws of the State of New Jersey and applicable U.S. Federal law.

All parties to this Letter of Credit are advised that the U.S. Government has in place certain sanctions against certain countries, individuals, entities, and vessels. Our entities, including branches and, in certain circumstances, subsidiaries, are/will be prohibited from engaging in transactions or other activities within the scope of applicable sanctions.

[*Issuing Bank Name*]

[*Issuing Bank Address*]

By: _____

Name: _____

Title: _____

Authorized signature

Of officer of issuing bank

Annex 1 to Letter of Credit - Form of Sight Draft

Letter of Credit No. _____

Date of Letter of Credit: _____

Date of Draft: _____

FOR VALUE RECEIVED

Pay on Demand to: The New Jersey Board of Public Utilities, U.S. _____
Dollars (U.S. \$_____). The amount of this draft does not exceed the amount available to be
drawn by the Beneficiary under the Letter of Credit.

Charge to account of [Name of Applicant].

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

Payment by the bank pursuant to this drawing shall be made to:

[_____] ,
ABA Number [_____],
Account Number [_____],
Attention: [_____],
Re: _____ .

To: [*Issuing Bank*]

[*Address*]

Attention: _____

As Beneficiary

By: _____

[*Name*]

[*Title*]

Annex 2 to Letter of Credit – Payment Certificate

To:

[*Issuing Bank*]

[*Address*]

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

The undersigned, a duly authorized officer of the undersigned Beneficiary, hereby certifies to [Issuing Bank], with reference to the Irrevocable Standby Letter of Credit No: [Insert] (“Letter of Credit”), that [Applicant Name], having provided the Letter of Credit to the New Jersey Board of Public Utilities as security for performance under [Board Order] and in the aggregate amount of \$[*U.S. Dollar Amount*], (“Letter of Credit Amount”) either [check the appropriate space]:

_____ [*Project Name*] failed to meet one of the critical milestones identified in the Board Order, entitling the beneficiary to draw up to \$[*U.S. Dollar Amount*] from the Letter of Credit.

_____ [*Project Name*] failed to reach commercial operation by its Committed Commercial Operation Date, entitling the beneficiary to draw up to \$[*U.S. Dollar Amount*] from the Letter of Credit.

_____ [*Project Name*] failed to provide the full Tier I Investment Commitment, entitling the beneficiary to draw up to \$[*U.S. Dollar Amount*] from the Letter of Credit.

_____ [*Project Name*] has notified the Beneficiary that it intends to cease development of the [*Project Name*] or otherwise announced termination of cancellation of the [*Project Name*], entitling the beneficiary to any outstanding \$[*U.S. Dollar Amount*] in the Letter of Credit.

The terms used herein which are not specifically defined herein are defined in the Letter of Credit or the [*Board Order*], referenced above.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this payment Certificate as of the [] day of [], 20[].

As Beneficiary

By: _____
[Name]
[Title]