

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Term Sheet”) is entered into as of May 25, 2024 (the “Effective Date”) by and between the State of New Jersey and the New Jersey Board of Public Utilities (the “Board” and, together with the State of New Jersey, the “State”), on the one hand, and Ørsted A/S, Orsted North America Inc., Orsted Wind Power North America LLC,<sup>1</sup> Ocean Wind LLC, and Ocean Wind II, LLC (collectively, “Orsted”), on the other. The State and Orsted are from time to time referred to herein as the “Parties” and individually as a “Party.”

### **RECITALS**

**WHEREAS**, on or about June 21, 2019, the Board issued an Order (“Ocean Wind 1 Order”) in In the Matter of Board of Public Utilities Offshore Wind Solicitation for 1,100 MW – Evaluation of the Offshore Wind Applications, Board Docket No. QO18121289, approving the Ocean Wind 1,100 MW project as a Qualified Offshore Wind Facility (the “Ocean Wind 1 Project”);

**WHEREAS**, on or about June 30, 2021, the Board issued an Order (“Ocean Wind 2 Order”) in In the Matter of the Opening of Offshore Wind Renewable Energy Certificate (OREC) Application Window For 1,200 to 2,400 Megawatts of Offshore Wind Capacity in Furtherance of Executive Order No. 8 and Executive Order No. 92, Board Docket No. QO20080555, and in In the Matter of the Board of Public Utilities Offshore Wind Solicitation 2 for 1,200 to 2,400 MW – Ocean Wind II, LLC, Board Docket No. QO21050825, approving the 1,148 MW Project B proposed by Ocean Wind II, LLC as a Qualified Offshore Wind Project (the “Ocean Wind 2 Project”);

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<sup>1</sup> The Board has sometimes referred to Orsted North America Inc. as Ørsted Offshore North America, Inc. or Ørsted North America in various documents.

**WHEREAS**, on or about September 5, 2023 and October 4, 2023, Ocean Wind LLC submitted compliance filings (the “Compliance Filing”) to the Board in In the Matter of Ocean Wind LLC Compliance Filing Pursuant to P.L. 2023, c. 99, BPU Docket No. QO23090671, related to L. 2023, c. 99 (the “Tax Credit Law”);

**WHEREAS**, Ocean Wind LLC submitted a “Parent Company Guaranty” dated October 4, 2023 (the “Guaranty”);

**WHEREAS**, Ocean Wind LLC also submitted an “Escrow Agreement” dated October 4, 2023 (the “Escrow Agreement”), and it caused the deposit of U.S. \$200,000,000 (the “Escrow Funds”) with TD Bank;

**WHEREAS**, on or about October 31, 2023, Orsted announced that it was ceasing development of the Ocean Wind 1 Project and the Ocean Wind 2 Project (together, the “Ocean Wind Projects”);

**WHEREAS**, on or about November 1, 2023, Ocean Wind LLC sent a letter to the Board to withdraw the Compliance Filing (the “Withdrawal”);

**WHEREAS**, on or about January 25, 2024, Orsted filed a Notice of Claim (the “Notice of Claim”) with the Board pursuant to Section 5 of the Contractual Liability Act, N.J.S.A. 59:13-1 to -10, with respect to, *inter alia*, the Guaranty and the Escrow Agreement;

**WHEREAS**, disputes have arisen, or may arise, between the Parties in connection with the matters set forth in the Notice of Claim and in connection with the Ocean Wind 1 Order and the Ocean Wind 2 Order (the “Ocean Wind Orders”), the Ocean Wind Projects, the Tax Credit Law, the Compliance Filing and Withdrawal, the Guaranty, the Escrow Agreement, and the Escrow Funds, including as relates to their rights and obligations thereunder or with respect thereto, and the effectiveness and enforceability thereof (collectively, the “Disputed Matters”);

**WHEREAS**, both Parties have denied all liability in connection with the Disputed Matters;

**WHEREAS**, neither Party has filed nor commenced any legal action or proceeding, or any arbitration proceeding, against the other Party arising out of or relating to any Disputed Matters (any such action or proceeding, a “Related Action”) and the Parties entered into a Standstill Agreement, dated April 24, 2024 (the “Standstill Agreement”); and

**WHEREAS**, the Parties have agreed upon all material terms of a settlement between them concerning the Disputed Matters without any admission of fault or liability.

**NOW, THEREFORE**, in consideration of the above, the amounts to be paid hereunder, and the mutual agreements and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties AGREE as follows:

1. **Incorporation of Recitals.** The foregoing recitals are incorporated herein and made a part of this Agreement as if set forth herein at length.

2. **Binding.** This Agreement contains all material terms of the settlement between the parties (the “Settlement”) concerning the Disputed Matters and is legally binding upon and enforceable against the Parties.

3. **Payment and Release of Escrow Funds.** Orsted agrees to pay the State the sum of one hundred twenty-five million dollars (\$125,000,000) (the “Payment”) from the Escrow Funds. The remaining Escrow Funds plus any accrued interest, less any fees and expenses due to TD Bank, shall be released to Orsted (the “Release”). The Payment and Release shall be effectuated through a Sole Written Direction issued by the State to TD Bank in the form attached hereto as **Exhibit A**. Orsted agrees to provide written notification to TD Bank of its consent to

the Sole Written Direction within 5 days of receipt of the Sole Written Direction. In the absolute sole discretion of the Board, the Payment shall be used by the Board for clean energy programs, including, but not limited to, additional investments in qualified wind energy facilities, investments in one or more offshore wind component manufacturing facilities, and other clean energy programs to encourage meeting the State's clean energy goals under the State's Energy Master Plan.

4. **Mutual Limited Releases.** Upon receipt of the Payment and the Release, the State, on the one hand, and Orsted, on the other, each on behalf of themselves and their respective legal representatives, administrators, successors, and assigns (collectively, the "Releasing Parties"), absolutely, irrevocably, and unconditionally RELEASES, ACQUITS, AND FOREVER DISCHARGES each other, any and all of their respective affiliates, divisions, departments, agencies, receivers, officers, directors, owners, members, managers, principals, employees, agents, trustees, consultants, servants, and attorneys, and any and all of the legal representatives, heirs, executors, administrators, successors, and assigns of any of the foregoing (collectively, the "Released Parties"), from all claims, actions, causes of action, suits, debts, damages, liabilities, obligations, and demands whatsoever, in law or equity, of whatever kind or character, whether known or unknown, fixed or contingent, which against the Released Parties, the Releasing Parties ever had, now have or hereafter can, shall or may have arising out of or related to the Disputed Matters (the "Released Claims"). For the avoidance of doubt, Orsted will move to vacate the Ocean Wind Orders and the Board Orders granting easements to certain real property owned by Ocean City and Cape May County to construct and operate Ocean Wind 1, and the State consents to such vacation and agrees to take all action reasonably necessary to effectuate such vacation. Notwithstanding the foregoing, the releases, acquittals, discharges, and

covenants in this Section and Section 5 shall not apply to any obligations or liabilities arising under this Agreement.

5. **Mutual Covenant Not to Sue.** Each Party on behalf of themselves and their respective legal representatives, administrators, successors, and assigns hereby covenants and agrees never to commence, prosecute, or cause to be prosecuted against the Released Parties any complaint, suit, action, cause of action, claim, or proceeding concerning, arising out of or related to any Released Claims, except to enforce the terms of this Agreement.

6. **Termination of the Standstill Agreement.** The Standstill Agreement and amendments thereto, if any, are hereby terminated and are of no further force or effect.

7. **Status of Escrow Agreement and Guaranty.** The Parties agree that this specific Escrow Agreement and this specific Guaranty, under the specific circumstances presented here, were not legally binding contracts and, as such, neither Party has any rights with respect to those documents, including the ability to enforce the Escrow Agreement and/or the Guaranty. The Parties never agreed for any third party (a) to have any rights under, or related to, the Escrow Agreement, the Guaranty, or the Compliance Filing; (b) to benefit from the Escrow Agreement, the Guaranty, or the Compliance Filing; or (c) to have the ability to enforce the Escrow Agreement, the Guaranty, or the Compliance Filing. The Parties further agree, for the avoidance of doubt, that any obligation Orsted may have had pursuant to the Tax Credit Law, the Ocean Wind Orders, or the Ocean Wind Projects, to make investments in qualified wind energy facilities or offshore wind component manufacturing facilities, has been fully satisfied.

8. **Notice.** Any notice provided for or allowed under this Agreement shall be in writing and shall be sent by reputable courier service (*e.g.*, Fed Ex, UPS) and email to the Parties at the addresses specified below:

(a) If to Orsted:

Ørsted A/S  
Nesse Allé 1, 2820 Gentofte, Denmark  
Attn: General Counsel  
Email: [GS\\_HeadofLegal@orsted.dk](mailto:GS_HeadofLegal@orsted.dk)

With a copy to:

Lowenstein Sandler LLP  
One Lowenstein Drive  
Roseland, New Jersey 07068  
Attn: Christopher S. Porrino  
Email: [cporrino@lowenstein.com](mailto:cporrino@lowenstein.com)

Lowenstein Sandler LLP  
One Lowenstein Drive  
Roseland, New Jersey 07068  
Attn: Kent D. Anderson  
Email: [kanderson@lowenstein.com](mailto:kanderson@lowenstein.com)

Legal Counsel  
Email: [us\\_legal\\_notices@orsted.com](mailto:us_legal_notices@orsted.com)

(b) If to the Board:

New Jersey Board of Public Utilities  
44 South Clinton Avenue  
Post Office Box 350  
Trenton, NJ 08625-350  
Attn: Board Secretary  
Email: [Board.Secretary@bpu.nj.gov](mailto:Board.Secretary@bpu.nj.gov)

With a copy to:

Christine Guhl-Sadovy, President  
Email: [Christine.Guhl-Sadovy@bpu.nj.gov](mailto:Christine.Guhl-Sadovy@bpu.nj.gov)

Robert Brabston, Executive Director  
Email: [Robert.Brabston@bpu.nj.gov](mailto:Robert.Brabston@bpu.nj.gov)

Michael Beck, General Counsel  
Email: [Michael.Beck@bpu.nj.gov](mailto:Michael.Beck@bpu.nj.gov)

New Jersey Office of Attorney General  
Division of Law

Richard J. Hughes Justice Complex  
25 Market Street  
Trenton, New Jersey 08625-0093  
Email: David.Apy@law.njoag.gov

or at such other address(es) as a Party may designate from time to time by written notice to the other Party in accordance with the notice provisions in this Agreement. Notice in accordance with the notice provisions of this Agreement shall be deemed made and given as of the date of receipt of the emails as set forth above.

9. **Miscellaneous.**

a. **Headings.** The captions and headings of the sections of this Agreement are for convenience of reference only and shall not be deemed to define or limit any provisions.

b. **Authority.** Each Party hereby represents and warrants that the individual executing this Agreement on its behalf is fully authorized and empowered to do so and to bind such Party to the terms of this Agreement, and each signatory represents and warrants that they have the authority to bind the respective Parties identified below to the terms of this Agreement.

c. **Construction.** This Agreement has been jointly negotiated and prepared by each of the Parties and their respective counsel and shall be treated as jointly drafted by the Parties with respect to the construction of any provision in this Agreement or any ambiguity or uncertainty in this Agreement. No provision and no ambiguity or uncertainty that may exist or arise in this Agreement shall be interpreted against a Party on the basis that it drafted the provision or language.

d. **Careful Review.** Each Party hereby acknowledges that it is entering into this Agreement voluntarily, without duress, with the consultation and advice of its legal counsel, and with full understanding of its terms.

e. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, beneficiaries, administrators, legal representatives, successors, and assigns. No assignment by any Party shall operate to relieve such Party of its obligations hereunder.

f. Governing Law and Jurisdiction. This Agreement and any disputes concerning the Disputed Matters shall be governed by and construed in accordance with the laws of the State of New Jersey, without giving effect to any choice of law or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction. In the event of any dispute arising out of or related to this Agreement, each Party submits to the exclusive jurisdiction of the state courts in and of the State of New Jersey, and irrevocably waives and agrees not to assert whatever rights it may have to challenge or dispute such jurisdiction or venue therein.

g. Amendments and Waivers. This Agreement cannot be changed orally, and no amendment, modification, supplement, waiver, or other change to this Agreement will be valid, effective, or binding unless in a written instrument signed by all Parties hereto. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provisions.

h. Violation of Agreement. The Parties agree that if either Party violates this Agreement, the other Party shall have the right to bring an action in New Jersey Superior Court to enforce that Party's rights. The prevailing Party in such an action shall be entitled to receive reasonable attorneys' fees, costs, and expenses to enforce its rights.

i. No Admission of Liability. This Agreement constitutes a compromise of disputed claims for purposes of achieving an amicable and efficient resolution of the Disputed



Matters. Nothing in this Agreement shall be taken or construed to be an admission or concession by either Party of any kind with respect to any liability or fault.

j. Entire Agreement. This Agreement constitutes the complete and entire agreement between the Parties, and supersedes any and all prior agreements, arrangements, or understandings between the Parties, with respect to the subject matter hereof. The Parties acknowledge that they have not relied on any promise, representation, warranty, covenant, agreement, or undertaking of any other Party (or its counsel or agents) with respect to the subject matter of this Agreement not contained herein and no such promise, representation, warranty, covenant, agreement, or undertaking has been made.

k. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement is invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected thereby and they shall remain in full force and effect. To the extent permitted and possible, the invalid or unenforceable provision shall be deemed replaced by a provision that is valid and enforceable and comes closest to expressing the intention of such invalid or unenforceable provision.

l. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument, and execution and/or delivery may be by facsimile signature, .pdf, or electronic transmission of the signature page hereof executed by such party, which shall be deemed an original.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed on their behalf by their undersigned counsel and delivered as of the Effective Date.

On behalf of:

**STATE OF NEW JERSEY AND NEW  
JERSEY BOARD OF PUBLIC  
UTILITIES**

*s/ Michael T.G. Long*

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Michael T.G. Long  
Director, Division of Law  
NEW JERSEY OFFICE OF THE  
ATTORNEY GENERAL  
RJ Hughes Justice Complex  
25 Market Street, PO Box 112  
Trenton, NJ 08625-0112  
(609) 376-3232  
*Attorneys for the State of New Jersey and  
New Jersey Board of Public Utilities*

On behalf of:

**ØRSTED A/S, ØRSTED NORTH AMERICA  
INC., ØRSTED WIND POWER NORTH  
AMERICA LLC, OCEAN WIND LLC, and  
OCEAN WIND II, LLC**

*s/ Christopher S. Porrino*

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Christopher S. Porrino  
LOWENSTEIN SANDLER LLP  
One Lowenstein Drive  
Roseland, New Jersey 07068  
(973) 597-2500  
*Attorneys for Ørsted A/S, Orsted North America  
Inc., Orsted Wind Power North America LLC,  
Ocean Wind LLC, and Ocean Wind II, LLC*

# EXHIBIT A

## SOLE WRITTEN DIRECTION

[*Date*]

ATTN: Tifanie Kline  
TD Bank, National Association  
12000 Horizon Way, 3<sup>rd</sup> Floor  
Mount Laurel, NJ 08054

Re: Escrow Agreement dated October 4, 2023, (the “Escrow Agreement”) by and among Ocean Wind LLC (“Investor”), New Jersey Board of Public Utilities (the “Board”), and TD Bank, National Association (as “Escrow Agent”)

Ladies and Gentlemen:

This Sole Written Direction is provided pursuant to Section 22(vi) of the Escrow Agreement. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Escrow Agreement.

Please be advised that the Board has authorized the distribution of the entirety of the Escrow Funds as set forth herein. Accordingly, the Board hereby directs Escrow Agent to distribute the Escrow Funds as follows: one hundred twenty-five million dollars (\$125,000,000) shall be wired to the account of **Board**; the remainder of the Escrow Funds and any Escrow Earnings, less any fees or expenses due to the Escrow Agent, shall be wired to the account of **Investor** designated on Exhibit A attached hereto.

Very truly yours,

[                    ]

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

Exhibit A

**NEW JERSEY BOARD OF PUBLIC UTILITIES**

Name of Account Holder:

Account Number:

Account Name:

Bank Name:

Bank ABA Number:

**OCEAN WIND LLC**

Name of Account Holder:

Account Number:

Account Name:

Bank Name:

Bank ABA Number: