CONVENTION TO FACILITATE THE REGISTRATION AND FINANCING OF MOBILE OFFSHORE RENEWABLES UNITS, 20__. (MORU FINANCE CONVENTION 20__)
[INSERT Date] Draft

WHEREAS the Parties to this Convention, BELIEVE that maritime law should be universal for reasons of certainty and predictability, as well as for the facilitation of the sustainable and economic use of the ocean and its renewable energy resources and for the avoidance of disputes and conflicts of laws; AND are therefore moved to establish uniform rules for the regulation of certain matters, as hereinafter set forth, and protection of those engaged in offshore activities and potentially affected by those offshore activities and incorporate mobile offshore renewable units into the body of law governing offshore activities; AND believe that this would be best achieved through a Convention covering all mobile offshore renewables units and structures, RECOGNIZE the need to reconcile interests of States and participants in mobile offshore renewable energy investments and activities; CONFIRM that the provisions of this Convention be consistent with the principles of the 1982 United Nations Convention on the Law of the Sea, and the United Nations Framework Convention on Climate Change; AFFIRM the principles of State sovereignty and autonomy of national economic development consistently with the international obligations of States to avoid damage to the environment of other States; RECOGNIZE the desirability of facilitating the commercial and technological evolution of mobile offshore renewable energy and other sustainable offshore activities by establishing rules for their more efficient finance and insurance.

HAVE AGREED AS FOLLOWS:

ARTICLE I

Definitions

1.1 For the purposes of this Convention:

(a) “Coastal State” shall mean the State Party to this Convention which exercises rights recognized under the United Nations Convention on the Law of the Sea, 1982 (“UNCLOS”) for the purpose of engaging in Economic Activities in the area in or above which the Mobile Offshore Renewables Unit is situated [or equivalent rights in the case of a State Party to this Convention which is not party to UNCLOS].

(b) "Economic Activities" shall mean the production of energy from the water, currents[, tides, sun,][1] and winds by a Mobile Offshore Renewable Unit,

(c) "Exclusive Economic Zone" has the meaning provided the term "exclusive economic zone" in UNCLOS.

(d) "Flag State" shall have the meaning given that term in paragraph 3.1.

(e) "Internal Waters" has the meaning provided the term "internal waters" in UNCLOS.

(f) "Licence" shall mean a licence, concession, permit or other authorization issued by a Coastal State for any Economic Activities.

(g) "Licensee" shall include a holder of a Licence or any person or corporation with a right to a Licence.

(h) "Maritime lien" means any charge that is recognized as a maritime lien or privilège maritime on a ship under applicable law;

(i) "Mobile Offshore Renewables Unit" means any non-self-propelled, floating offshore unit or facility (including all Related Appurtenances) which is:

1) is primarily designed for the purpose of directly or indirectly generating electric power or other form(s) of renewable energy by conversion of wind, wave, tidal, or solar energy, or differences in water temperatures or salinity, or a combination of any of the foregoing; OR
2) is primarily dedicated to the conversion, transformation, conditioning, transmission, distribution, and/or temporary storage and subsequent release of electrical power or other form of renewable energy originally generated by one or more MORUs described in paragraph (1) above; OR
3) is primarily dedicated to the conversion of any electrical power or other form of renewable energy generated by one or more MORUs described in paragraph (1) above into chemical products; OR
4) is a hybrid unit combining the functions of two or more of the classes of units described in any of the paragraphs (1), (2), and/or (3) above.

(j) "Owner" shall include the owner, charterer, lessee, and operator of a Mobile Offshore Renewables Unit.

(k) "Mortgage or hypothèque" means any mortgage or hypothèque (or such other form of publicly registered security interest that the State Party has declared in accordance with paragraph 11.1(a)) that is effected on a MORU and registered in the Flag State in whose register of ships or equivalent register the MORU is registered;

(l) "Related Appurtenances" shall consist of (in relation to all Mobile Offshore Renewables Units) those structures or installations associated with that Mobile Offshore Renewables Unit (including any

[1] Note that neither "tides" nor "sun" are explicitly mentioned in Art. 56(1)(a) of UNCLOS, but not excluded and arguably fit within the inclusive construction of that provision.

detachable pontoons) and which are used or intended for use with respect to activities ancillary to Economic Activities or in related Mobile Offshore Renewables Unit Occupant accommodation [but excluding any mooring system which is not capable of being retracted onto the Mobile Offshore Renewables Unit itself].

(m) "State Registry" has the meaning given that term in paragraph 4.1.

(n) "Territorial Sea" has the meaning provided the term "territorial sea" in UNCLOS.

ARTICLE II

Application

2.1 This Convention applies to all Mobile Offshore Renewables Units registered by a State Party in accordance with Article IV.

ARTICLE III

Ownership

3.1 In order to enjoy the protections and benefits of this Convention, a Mobile Offshore Renewables Unit and Related Appurtenances must be registered in a State Registry of a State Party (such State Party, a "Flag State").

3.2 Every Mobile Offshore Renewables Unit and Related Appurtenances shall be owned by a legal entity or entities, being one or a combination of, a natural or legal person or by a State Party to this Convention.

3.3 Every State Party's law shall provide for and recognize ownership interests and mortgages or hypothèques in Mobile Offshore Renewables Units registered by any State Party, including Related Appurtenances (if any), registered in the other State Party's State Registry, regardless of where the Mobile Offshore Renewables Unit is located.

3.4 Every State Party's law shall provide for and recognize rights of transfer of ownership of Mobile Offshore Renewables Units and Related Appurtenances.

3.5 All Mobile Offshore Renewables Units to which this Convention applies shall have a nationality in the Flag State.

ARTICLE IV

Registration

4.1 State Parties may by their national law, provide for the publicly accessible registration of ownership and mortgages or hypothèques in Mobile Offshore Renewables Units at the port of the Mobile Offshore Renewables Unit's publicly accessible registry, a central office, or such other publicly accessible registry or registries as the State Party declares in accordance with paragraph 11.1(b) (any such registry, a "State Registry").

4.2 Proprietary rights of ownership and mortgages or hypothèques in Mobile Offshore Renewables Units registered in a State Registry shall be governed by this Convention and by the law of the Flag State.

4.3 Each Flag State shall take necessary measures to ensure that the owners of Mobile Offshore Renewables Units it enters in its State Registry are effectively identifiable.

4.4 Recognition and enforcement of rights of ownership and mortgages or hypothèques in Mobile Offshore Renewables Units and Related Appurtenances shall be governed exclusively by the law of the Flag State.

ARTICLE V

Mortgages or hypothèques and Creditors' Remedies

Mortgages or hypothèques

5.1 A Mobile Offshore Renewables Unit may form the subject of a mortgage or hypothèque.

5.2 State Parties may implement and administer publicly accessible State Registries for the purpose of registering mortgages or hypothèques in a Mobile Offshore Renewables Unit.

Liens

5.3 State Parties may, under their national laws (including under their choice of law rules), permit certain claims upon Mobile Offshore Renewables Units to be secured by maritime liens having priority over mortgages or hypothèques on that Mobile Offshore Renewables Unit, provided that the State Party shall not permit under its national laws any such claim upon a Mobile Offshore Renewables Unit to be secured by a maritime lien having priority over a mortgage or hypothèque if such a claim would not be secured by a maritime lien have priority over mortgages or hypothèques on a self-propelled ship under the laws of that State Party.

Creditors' Remedies

5.4 Maritime Liens under paragraph 5.3 shall have priority over mortgages or hypothèques on a Mobile Offshore Renewables Unit. State Parties may, under their national laws, grant a lien in respect of claims other than those referred to in paragraph 5.3, so, provided that the State Party shall not permit

under its national laws any such claim upon a Mobile Offshore Renewables Unit to be secured by such a lien if such a claim upon a self-propelled ship would not capable of being secured by a lien on the self-propelled ship under the laws of that State Party on an equal basis. Further, the State Party shall not permit its national laws to modify the ranking of claims secured by a mortgage or hypothèque, or by the liens taking precedence thereof, on Mobile Offshore Renewables Units which would not also apply to self-propelled ships on an equal basis.

5.5 Among themselves, mortgage or hypothèques shall have priority according to the laws of the Flag State.

ARTICLE VI

Civil Jurisdiction

6.1 This Convention is without prejudice to each State Party's general right of regulation of Mobile Offshore Renewables Units engaged in Economic Activities within its Internal Waters, Territorial Sea, and Exclusive Economic Zone.

6.2 Each State Party shall designate or establish a competent and adequate administration for the purpose of carrying out its obligations under this Convention.

6.3 Each State Party shall ensure that its Courts possess the necessary jurisdiction to determine rights and claims arising from subjects covered by this Convention.

6.4 State Parties and legal persons engaged in the ownership or operation of Mobile Offshore Renewables Units may contract or stipulate that rights and claims arising from subjects covered by this Convention may be determined by any Court established by any State Party, or by an arbitral tribunal subject to the law of any State Party.

6.7 Each State Party shall confer on its Courts the jurisdiction to consolidate or coordinate the determination of claims commenced in the Courts of different State Parties, arising from the same accident or occurrence in respect of a matter covered by this Convention.

6.8 Any judgment given by a Court of a State Party in respect of or arising from a matter covered by this Convention, which is enforceable in the State Party of origin where it is no longer subject to ordinary forms of review, shall be recognized by any State Party except where the judgment was obtained by fraud or where the defendant was not given reasonable notice of the claim or a fair opportunity to present its case. A judgment recognized under this paragraph 6.8 shall be enforceable without the merits of the case being re-opened. Nothing in the foregoing sentence shall permit any State Party to review or reject a judgment of another State in violation of such State Party's obligations under the UN Convention on the International Effects of Judicial Sales of Ships.

ARTICLE VII

Limitation of Liability

7.1 The State Parties, amongst themselves, agree that any limitation of liability and the establishment of any compensation funds in respect of claims subject to limitation (whether under international agreement or the national laws of the relevant State Party or Parties) and the provisions governing such limitations of liability and funds, shall apply in relation to each Mobile Offshore Renewables Unit as that limitation of liability applies in relation to a self-propelled ship on an equal basis.

7.2 The tonnage of the Mobile Offshore Renewables Units for the purposes of limitation of liability and any compensation fund will be determined by the laws of the State Party where limitation of liability is being claimed or compensation fund is being constituted. If there are no applicable State Party laws to determine the tonnage of the Mobile Offshore Renewables Units, the tonnage shall be determined by the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969 and if no tonnage certificate pursuant to that Convention has been issued, then the displacement tonnage of the Mobil Offshore Renewables Unit will be deemed to be its gross tonnage.

ARTICLE VIII

Financial Responsibility

8.1 To cover its liability under this Convention, each Owner of a Mobile Offshore Renewables Unit and its Related Appurtenances shall be required to have and maintain insurance or other financial security of such type and on such terms as the Flag State Party of the Mobile Offshore Renewables Unit shall specify.

ARTICLE IX

Freedom of Navigation

9.1 No State Party to this Convention shall seek to impair, limit, or deny a Mobile Offshore Renewables Unit [registered as a ship or otherwise in any other State Party] any freedom of the high seas or navigational right which it recognizes as applying to a self-propelled ship, regardless of whether such freedom or right is recognized by the first State Party in relation to a self-propelled ship:

(a) under and in accordance with UNCLOS (if applicable); or

(b) to the extent that State Party is not a Party to UNCLOS, in accordance with customary international law,

and each State Party hereto which is also a party to UNCLOS shall notify the depository of UNCLOS of their intent to conclude this Convention (including this Article IX) in accordance with article 311 of UNCLOS.

9.2 As between the State Parties to this Convention which are also party to UNCLOS, paragraph 9.1 of this Convention shall be read and interpreted consistently with UNCLOS.

9.3 A Party to this Convention shall have no duty to apply the provisions of this Article IX in relation to any Mobile Offshore Renewables Unit which is unregistered or is registered in a state which is a Party to UNCLOS but which is not a Party to this Convention. As between the Parties to this Convention, denunciation by any of them of UNCLOS, in accordance with article 317 thereof, shall not be construed in any way as a denunciation of UNCLOS as amended by this Convention.

9.4 Nothing in paragraphs 9.1 or 9.2 above shall be construed as creating any freedoms or rights in relation to Mobile Offshore Renewables Units, which do not exist for self-propelled ships under the law applied by the Court of a State Party which has *seisin* in relation to the Mobile Offshore Renewables Unit, nor as creating any such freedoms or rights for Mobile Offshore Renewables Units which do not exist for self-propelled ships under such law or under UNCLOS, if the latter is applicable.

9.5 Nothing in this Article shall affect the continued application of Article 60 of UNCLOS to Mobile Offshore Renewables Units, including the rights of coastal States to establish safety zones under Article 60(5)–(6).

ARTICLE X

Allocation of Nationally Determined Contributions under the Paris Agreement to the UNFCC

10.1 In the absence of any valid and binding bilateral or multilateral agreement to the contrary, the State Parties hereto agree that the Coastal State, and not the Flag State, shall be entitled to include any foreign registered Mobile Offshore Renewable Units operating under a Licence issued by the Coastal State in its Nationally Determined Contributions under the Paris Agreement to the UNFCCC and each State Party hereto which is also a party to the Paris Agreement shall notify the Conference of the Parties to Paris Agreement in accordance with of their agreement between themselves to this default international transfer of mitigation outcomes and allocation of Nationally Determined Contributions in accordance with articles 6(1) to 6(3) of the Paris Agreement with the enactment of this Convention.

Article XI

State Party's Declaration of its Form of Mortgage or Hypothèque for MORUs

11.1 In its document of accession to this Convention, each State Party shall declare:

(a) the form of publicly accessible registered security interest (be it a mortgage, hypothèque, or another form of publicly accessible registered in rem non-possessory collateral right), which, when registered in the State Registry of such State Party, shall have, subject to this Convention, priority over all other registered and unregistered security interests in a Mobile Offshore Renewables Unit; and

(b) the public or private entity or entities authorized by such State Party to act in the capacity of its State Registry or Registries.

ARTICLE XII ET SEQ

[provisions on signature, ratification, acceptance, approval, accession, coming into effect, denunciation in relation to MORUs of any other potentially applicable and conflicting topical maritime Conventions, and depository authority, in each instance in relation to both the MORU Convention itself and each of the Protocols thereto]