

## **Appendix J**

### **Standard Form SCIP Facility Funding Agreement**

**New York State Energy Research and Development Authority**

#### **GRANT DISBURSEMENT AGREEMENT<sup>1</sup>**

**[Supply Chain Project Name]**

1. Agreement Number:
2. Grant Recipient:
3. Execution Date:
4. Proposed Total Amount of Award: \$                      Dollars
5. Estimated Construction Start Date:
6. Substantial Completion Date:
7. Commitment Terms and Conditions:

This Agreement consists of this form and incorporates the following documents attached hereto:

- Exhibit A, Grant Terms
- Exhibit A-1, Detailed Project Description
- Exhibit B, NYSERDA Contract Provisions, Terms and Conditions
- Exhibit C, Standard NYSERDA Terms and Conditions
- Exhibit D, NYSERDA Prompt Payment Policy Statement
- Exhibit E, Form of Progress Report
- Exhibit F, Project Labor Agreement
- Exhibit G, ~~Form of Repayment Guaranty~~ [\[Reserved\]](#)
- Exhibit H, Form of Irrevocable Standby Letter of Credit (Contract Security)
- Exhibit I, Form of Acceptable Guaranty (Contract Security)

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<sup>1</sup> The form of this agreement will be finalized with the Grant Recipient at the time of award, but the agreement will not be signed unless and until NYSERDA has issued a findings statement under SEQRA that meets the requirements of 6 NYCRR 617.11.

**EXHIBIT A  
GRANT TERMS**

**Project Title:** [REDACTED]

**Grant Recipient:** [REDACTED]

**I. DEFINITIONS**

“Acceptable Guaranty” means an unconditional, irrevocable, direct-pay guaranty (a) in the form of Exhibit I duly executed by an Acceptable Guarantor; and (b) as to which NYSERDA has received (i) such financial statements in respect of such Acceptable Guarantor as it has reasonably requested, (ii) customary legal opinions with respect to capacity, authority and enforceability of such guaranty and as to such other matters as reasonably requested by NYSERDA, and (iii) corporate documents, resolutions, copies of any necessary consents and approvals and customary certificates by and in respect of such Acceptable Guarantor as may be reasonably requested by NYSERDA.

“Acceptable Guarantor” means a corporation, business trust, partnership, limited liability company or other legal entity that has outstanding senior unguaranteed and unsecured long-term debt that is rated at least “BBB” by S&P or “Baa2” by Moody’s.

“Agreement” means this Grant Disbursement Agreement.

“Annual Operations Disbursements” shall have the meaning ascribed to such term in Section IV.E.21.C.

“Bid Submission Date” means the date on which proposals were due to be submitted under ORECRFP22-1, which was [January 26, 2023].

“Business Day(s)” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day begins at 8 a.m. eastern prevailing time and ends at 5:00 p.m. eastern prevailing time.

“Change in Law” means a change in any applicable law, statute, rule, regulation, decision, writ, order, decree, judgment, permit, or any interpretation thereof, promulgated or issued by a governmental authority following the execution of this Agreement by the Parties except changes that were known or reasonably knowable prior to the execution.

“Commencement of Construction” shall mean that (i) all permits, access rights and other approvals needed for the Project are in place (including as defined in Exhibit A-1) and (ii) the construction of on-site structure or civil site works for the Project has commenced.

“Contract Security” means all amounts provided to NYSERDA, in the form of cash, Letter of Credit, certified funds, or an Acceptable Guaranty, as determined in Article ~~XV~~VIII of this Agreement.

“Effective Date” means the date on which all conditions precedent set forth in Section 3.01 of Exhibit B of this Agreement have been met.

“Eligible Expenses” shall have the meaning ascribed to such term in Appendix C.2 of ORECRFP22-1.

“Enforcement Event” means (i) the failure of the Grant Recipient to achieve Substantial Completion of the Supply Chain Facility on or before the Outer Limit Date; or (ii) the abandonment of the Project by the Grant Recipient evidenced in a written statement by the Grant Recipient or an order of a court; ~~or (iii) an Event of Default that remains uncured during relevant time periods~~ other than, in the each case ~~of clauses (i) or (ii)~~, as a result of a force majeure event (described in Section 7.01 of Exhibit B of this Agreement) or an Excused Delay.

“Event of Default” means a breach of any material covenant under this Agreement that remains uncured for thirty (30) days following written notice from the non-defaulting party, provided that if the failure is not reasonably capable of being cured within the thirty (30) day cure period, the Party will have an additional one hundred eighty (180) days (but in no event exceeding the Outer Limit Date) to cure the failure so long as the Party promptly commences and diligently pursues the cure.

“Excused Delay” shall mean a delay or suspension of the construction of the Supply Chain Facility caused by (i) an act or omission of NYSERDA including, without limitation, a failure to respond or comply with any time period(s) required of such party to a written request for consent or approval; (ii) a Change in Law that results in a delay or suspension of construction of the Supply Chain Facility, if such delay or suspension cannot be overcome or avoided through commercially reasonable efforts of Grant Recipient; or (iii) actions taken by a permitting authority that affect the Supply Chain Facility but also apply to the Supply Chain Facility Activity industry as a whole.

“Grant” and “Grant Proceeds” means the total grant funding to be awarded by NYSERDA to Grant Recipient subject to the terms and conditions of this Agreement.

“Grant Recipient” means                     .

“Information” shall have the meaning provided for in Section 8.01(e) of Exhibit B of this Agreement.

“Letter of Credit” shall have the meaning ascribed to such term in Section VIII.B.

“Major Supplier” means any supplier to the Supply Chain Facility of goods and/or services with an anticipated aggregate contract value of at least \$1,000,000.

“Notice” shall mean a notice properly memorialized and delivered in accordance with Section 15.01(a) of Exhibit B of this Agreement.

“Outer Limit Date” means [REDACTED].

“Partners” refers to third parties providing material investments in the Project (including those funders required to meet the investment threshold required by this Agreement) or third parties that will have a material ownership, leasehold or operating role in the Project either before or after commencement of the Supply Chain Facility Activity.

“Party” or “Parties” refer to NYSERDA and Grant Recipient. NYSERDA and Grant Recipient are each referred to herein as a “Party” and are collectively referred to herein as the “Parties.”

“Prevailing Rates” means, for construction activities occurring in New York, the rate determined under NYS Labor Law Section 220 and, for construction activities that occur outside of New York, the rate determined under the prevailing wage law of the state in which the construction activities at issue occur that would be applicable to a public work.

~~“Prevailing Wage” shall have the meaning provided for in Exhibit A of this Agreement.~~

“Process” shall have the meaning provided for in Section 14.03 of Exhibit B of this Agreement.

“Progress Report” shall have the meaning provided for in the “Progress Reports” section of Exhibit A.

“Project” shall mean the development, construction and operation of the Supply Chain Facility.

“Project Labor Agreement” or “PLA” means a collective bargaining agreement (including a pre-hire agreement) satisfying the requirements set forth herein and in Exhibit F covering contractors in the construction industry working on the construction of the Supply Chain Facility, and a bona fide building and construction trade labor organization representing craft workers on the construction of the Supply Chain Facility.

“Project Manager” shall mean NYSERDA’s Director of Contract Management, [REDACTED], or such other person who may be designated, in writing, by NYSERDA.

“Qualifying Federal Support” means any direct federal financial support in the form of tax credits or other direct financial benefits expressly intended to incentivize (i) the development and operation of facilities that manufacture, assemble or stage equipment, components or subcomponents used for offshore wind electric generation facilities or transmission (including, for the avoidance of doubt, Primary Components and Sub-components as defined in ORECRFP22-1) and (ii) which either (A) arises from an act of the U.S. Congress after the Bid Submission Date or (B) [ ]<sup>2</sup>. Qualifying Federal Support shall not include ordinary course tax deductions, federal loans, federal loan guarantees, or federal research and development grants that are awarded competitively. Qualifying Federal Support also shall not include funds that otherwise meet the definition of Qualifying Federal Support but that are received by Grant Recipient solely in connection with a scope of work not contemplated as part of the Project at the time of notice of the applicable Qualifying Federal Support.

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

~~“Repayment Guaranty” means a guaranty of Grant Recipient’s obligations set forth in Section IV.E.4, made by an Acceptable Guarantor in favor of NYSERDA in the form attached hereto as Exhibit G. The Repayment Guaranty will remain in place throughout the term of this Agreement.~~

“Substantially Completed” and “Substantial Completion” shall mean the completion of the Supply Chain Facility, functionally and legally in a condition for their use and occupancy for all intended purposes as verified by (i) a certificate prepared by the applicable architect or engineer of record delivered to Grant Recipient, its affiliates, its consultants, or its contractors certifying that Substantial Completion has occurred; (ii) where applicable to

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<sup>2</sup> The SCIP Facility Funding Agreement will be tailored to ensure that federal financial support not reasonably expected to be obtained at the time of Proposal submission will be treated as Qualifying Federal Support.

## II. BACKGROUND/OBJECTIVES

Grant Recipient intends to develop and construct the Supply Chain Facility as defined in Exhibit A-1.

## III. ENVIRONMENTAL REVIEW

Grant Recipient shall comply with, and cooperate with NYSERDA in complying with, applicable environmental laws including the State Environmental Quality Review Act (SEQRA) including any supplemental review required for any changes to the Project, and/or its budget or schedule.

## IV. PROJECT IMPLEMENTATION

### A. Project Costs and Funding

1. Grant Recipient agrees to fund the development and construction of the Supply Chain Facility with (i) the Grant, which shall be used exclusively to fund Eligible Expenses ~~with (i) the Grant~~ and (ii) a capital match of at least two (2) dollars for every one (1) dollar of Grant Proceeds. -The capital match may be comprised of public and/or private funds.
2. Grant Recipient and other investors recognize that its Project budget is subject to change, including due to further refinement of the Project. Grant Recipient is solely responsible for any increase in costs to complete and operate the Project.
3. Prior to Commencement of Construction, Grant Recipient shall submit a Project budget to NYSERDA for approval, which shall not be unreasonably withheld, conditioned or denied.

### B. Partners [Brief explanation of the role of each Partner].

### C. Modifications to Project

1. Grant Recipient shall provide prior written notice to NYSERDA of all proposed Material Modifications to the Project and shall inform NYSERDA of all other proposed modifications to the Project in a timely manner.
2. A proposed modification shall constitute a “Material Modification” for purposes of this Agreement, in each case, requiring NYSERDA approval unless (1) the change to the Project is *de minimis* (as reasonably determined by Grant Recipient); (2) the change does not require (a) further review under SEQRA or (b) new or material amendments to government permits or approvals issued or previously identified for

- c. 5% annually for five (5) years beginning one (1) year after the date that the Supply Chain Facility Activity commences (“Annual Operations Disbursements”) subject to achievement of the operations phase minimum metrics described in Exhibit A-1.
  2. Verification: NYSERDA’s obligation to make each of the installment payments described above shall be contingent on Grant Recipient’s demonstration to NYSERDA’s reasonable satisfaction that it has met applicable Project milestones for each such installment as described below:
    - a. Commencement of Construction. In its request for the first installment of the Grant Proceeds, Grant Recipient must provide (i) a certification of Commencement of Construction, or provision of other reasonable evidence that Commencement of Construction has occurred, and (ii) any other evidence that NYSERDA may reasonably request.
    - b. Substantial Completion. In its request for the second installment of Grant Proceeds, Grant Recipient must provide (i) a certification of Substantial Completion, or provision of other reasonable evidence that Substantial Completion has occurred, (ii) documentation substantiating the achievement of the construction phase minimum metrics described in Exhibit A-1 (which at a minimum must include the Category 2 metrics listed in Table C.2.3 of Appendix C.2 of ORECRFP22-1) and (iii) any other evidence that NYSERDA may reasonably request, including, but not limited to, the right to attend and observe the Substantial Completion verification process and copies of documentation delivered to Grant Recipient from its material consultants and/or material contractors that Substantial Completion has been achieved.
    - c. Annual Operations Disbursements: In its request for each of the five (5) Annual Operations Disbursements, Grant Recipient must provide (i) Annual Operations Reports as further described below evidencing Grant Recipients’ achievement of the operations phase minimum metrics as set forth in Exhibit A-1 (which at a minimum must include the Category 4 metrics listed in Table C.2.3 of Appendix C.2 of ORECRFP22-1), and (ii) any other documentation that NYSERDA may reasonably request to evidence that operations phase minimum metrics have been achieved.
3. Payment: Upon satisfaction of the requirements in Section IV.E.2 above [and the provision of Contract Security in accordance with Section VIII](#), NYSERDA will make payments in the manner set forth in Section 4.01 of Exhibit B.
4. Repayment: In the event that a Termination Event occurs, [other than pursuant to Section 12.01\(a\) if NYSERDA is the defaulting party or pursuant to Section](#)

12.01(b). NYSERDA shall be entitled to a reimbursement of the amount of Grant Proceeds that have been disbursed under this Agreement plus interest calculated using the 10-year treasury rate plus ninety-five (95) basis points calculated based on the date NYSERDA disbursed to Grant Recipient such Grant Proceeds.

NYSERDA will invoice Grant Recipient in such event, which Grant Recipient shall pay within thirty (30) days of receipt. If this invoice is not paid by the due date indicated in the invoice, Section 18 of the State Finance Law authorizes NYSERDA to collect, in addition to the stated invoice amount, the greater of: (a) interest on the amount due accruing from five (5) days after the invoice date, computed at the underpayment rate charged by the Commissioner of Taxation and Finance pursuant to subsection (e) of section 1096 of the State Tax Law less four percentage points; or (b) a late payment charge of ten dollars (\$10.00).

## **V. PROGRESS REPORTS**

The following sections describe ongoing reporting requirements associated with the progress and completion of the Project. Each report shall be substantially in the form of Exhibit E and shall contain at a minimum:

1. Name of grant recipient.
2. Title of the project.
3. Agreement number.
4. Reporting period.
5. Project progress including a summary of progress during the covered period.
6. Planned work for the next reporting period.
7. Schedule - percentage completed and projected percentage of completion of performance by calendar quarter - may be presented as a bar chart or milestone chart.
8. Appropriate discussion of the role of Partners.
9. Discussion of any permits or governmental approvals obtained and certification that Project remains in compliance with applicable laws.

A. Progress Reports During Design and Construction. Beginning with the date of this Agreement, The Grant Recipient shall submit quarterly Progress Reports to NYSERDA's Project Manager no later than the 15<sup>th</sup> day of the month immediately following the end of each quarter (or such later date as NYSERDA's Project Manager may agree in its reasonable discretion). Progress Reports will end with submission of the final construction report.

B. Final Construction Report.

1. Within ninety (90) days of Grant Recipient's receipt of the second installment payment of the Grant Proceeds following Substantial Completion, the Grant



for review and approval no later than three (3) months prior to the Commencement of Construction (unless extended by NYSERDA, which request for extension shall not be unreasonably withheld, conditioned, or delayed).

C. NYSERDA may appoint a mediator of its own choosing who shall endeavor to assist the parties in their negotiations: (i) at any time upon mutual agreement of Grant Recipient and the trades; (ii) at the request of either Grant Recipient or the trades at any point after active negotiations on a PLA have been ongoing for no less than ninety (90) days or (iii) at the request of either Grant Recipient or the trades at any point more than one hundred eighty (180) days after the date of this Agreement. In the event that mediation does not result in a final form of PLA agreed to by the Grant Recipient and the trades within three (3) months of the date that the mediator is appointed, NYSERDA shall determine whether the time for negotiations should be extended. In the event that NYSERDA decides not to extend the time for negotiation, NYSERDA may determine that, notwithstanding good faith efforts by Grant Recipient, satisfactory completion of PLA negotiations is no longer practicable.

D. NYSERDA's review of any agreed-upon final form of PLA will be based on the specific terms of the negotiated PLA and will take into account the best interests of NYSERDA with respect to the Project, and the public it serves, and will include consideration of project viability, the cost-effectiveness of the PLA, and the need for timely completion of the Supply Chain Facility. NYSERDA will complete and provide the results of such review to Grant Recipient within thirty (30) days or the final form of the PLA as presented shall be deemed approved. If NYSERDA disapproves the final form of PLA, NYSERDA will identify changes to the final form of each PLA that would render it approvable, and Grant Recipient will promptly resume negotiations with the trades. No more than sixty (60) days after such disapproval, so long as Grant Recipient and the trades have negotiated in good faith during that period, NYSERDA will render a determination regarding whether satisfactory completion of PLA negotiations is no longer practicable.

E. Grant Recipient may appoint or delegate to a contractor or third party the authority to conduct negotiations and/or execute the PLA; however, the responsibility to comply with all the requirements of this VII will remain with Grant Recipient.

F. Grant Recipient will be required to report quarterly on all eight items required in the PLA, as described in Exhibit [JF](#), including the number of in-state jobs provided, MWBE and SDVOB employment statistics, education and apprenticeship programs, quantitative and qualitative data regarding engagement with, inter alia, New York labor groups which are reflective of ongoing compliance with the PLA.

## VIII. CONTRACT SECURITY

A. Contract Security. ~~No more than five (5) Business Days after~~ At the date of this Agreement, unless otherwise agreed to by NYSERDA ~~times and in the amounts set forth below~~, Grant Recipient must provide Contract Security ~~in an amount equal to the product of four percent (4%) and the total amount of the Grant~~, in the form of (i) cash, (ii) certified funds, (iii) a Letter of Credit conforming to the requirements of Section VIII.B., or (iv) an Acceptable Guaranty ~~conforming to the requirements of Section VIII.D.~~ Grant Recipient may provide the Contract Security through any combination of the forms set forth in the preceding sentence.

1. No more than five (5) Business Days after the date of this Agreement, unless otherwise agreed to by NYSERDA, Grant Recipient must provide Contract Security (“Initial Security”) in an amount equal to the product of four percent (4%) and the total amount of the Grant. The Initial Security shall be refunded as set forth in Section VIII.E.1 below.
2. As a condition precedent to the receipt of the installment of Grant Proceeds described in Section E.1.a, Grant Recipient must provide Contract Security (“Construction Phase Security”) in an amount equal to the total amount of such Grant Proceeds plus [amount to be set based on the maximum potential amount of accrued interest pursuant to Section IV.E.4] . The Construction Phase Security shall be refunded as set forth in Section VIII.E.2 below.
3. As a condition precedent to the receipt of each of the first four (4) Annual Operations Disbursements, Grant Recipient must provide Contract Security (“Operations Phase Security”) in an amount equal to the total amount of such Annual Operations Disbursement plus [amount to be set based on the maximum potential amount of accrued interest pursuant to Section IV.E.4]. The Operations Phase Security shall be refunded as set forth in Section VIII.E.3 below.

B. Letter of Credit. Any Letter of Credit shall be a clean, unconditional and irrevocable standby letter of credit in favor of NYSERDA as beneficiary, issued for direct payment by a bank that is either (a) a member of the New York Clearinghouse Association or (b) holds a credit rating of A or better by Standard and Poor’s, A or better by Fitch, or A2 or better by Moody’s, and is a United States bank, or a United States branch of a foreign bank, with a New York branch preferred. Such letter of credit shall be substantially in the form of the letter of credit attached hereto as Exhibit H (“Letter of Credit”), in a face amount that, either individually or in combination with another form of Contract Security, is equal to the Contract Security amount, and which Letter of Credit shall provide that the issuing bank will pay to NYSERDA amounts in aggregate up to that same face amount upon presentation of only the Sight Draft in the amount to be drawn and the Payment

Certificate, in the form of Annex A and Annex B, respectively, to such Letter of Credit, and have an expiration date not shorter than one (1) year together with an automatic renewal provision. At any time prior to NYSERDA drawing on the Letter of Credit, Grant Recipient shall be permitted to substitute the Letter of Credit with a Letter of Credit from another bank that is either (i) a member of the New York Clearinghouse Association or (ii) holds a credit rating of A or better by Standard and Poor's, A or better by Fitch, or A2 or better by Moody's, and is a United States bank, or a United States branch of a foreign bank, with a New York branch preferred; *provided* that the substitute Letter of Credit is substantially in the form of Exhibit H and for the same face amount as the Letter of Credit it is replacing.

C. Replacement Letter of Credit. Any assignee of Grant Recipient shall, simultaneously with its assignment becoming effective, deliver to NYSERDA a replacement Letter of Credit meeting the requirements of this Article, and NYSERDA shall, within twenty (20) Business Days after receipt of a compliant replacement Letter of Credit, return the original Letter of Credit to Grant Recipient. Upon the failure of an assignee to deliver a compliant replacement Letter of Credit to NYSERDA simultaneously with its assignment becoming effective, NYSERDA shall be thereupon entitled to draw on the Letter of Credit for the full amount then outstanding and the funds received shall be held by NYSERDA for application against subsequent obligations of Grant Recipient and/or the assignee under this Agreement.

D. Acceptable Guaranty. Grant Recipient may fulfill the requirements of Section VIII.A. through an Acceptable Guaranty. If at any time a guaranty provided under this Section ceases to be an Acceptable Guaranty, Grant Recipient shall provide to NYSERDA replacement Contract Security in the form of cash, certified funds, a substitute Acceptable Guaranty, or Letters of Credit conforming to the requirements of Section VIII.A. and Section VIII.B within five (5) Business Days.

E. Refund of Security. Amounts required by Grant Recipient as Contract Security will be refunded by NYSERDA to Grant Recipient within thirty (30) Business Days of:

~~E.1. With respect to the Initial Security. Commencement of Construction and satisfaction of the other requirements set forth in Section IV.E.2.a; *provided* that (i) Contract Security shall not be refunded an Event of Default is ongoing or if a Termination Event occurs and (ii) NYSERDA shall have the right in its sole discretion to retain the Contract Security until Substantial Completion in the event that construction is delayed or suspended prior to the refund of Contract Security.~~

2. With respect to the Construction Phase Security, Substantial Completion and satisfaction of the other requirements set forth in Sections IV.E.1.b and IV.E.2.b.;
3. With respect to the Operations Phase Security, satisfaction of the requirements set forth in Sections IV.E.1.c and IV.E.2.c in respect of the fifth year of operations;
4. With respect to any Contract Security, upon termination pursuant to Section 12.01(a) of Exhibit B if NYSERDA is the defaulting party, pursuant to Section 12.01(b) of Exhibit B or pursuant to Section 12.01(f) of Exhibit B) or (y),

in each case, provided that (i) Contract Security shall not be refunded if an Event of Default (in which Grant Recipient is the defaulting party) is ongoing or if a Termination Event occurs (other than pursuant to Section 12.01(a) of Exhibit B if NYSERDA is the defaulting party or pursuant to Section 12.01(b) of Exhibit B).

F. Retention of Security. Amounts provided by Grant Recipient as Contract Security and not refunded pursuant to Section VIII.E. above will be retained by NYSERDA in their entirety, ~~(i) upon termination of this Agreement under Article XII of Exhibit B due other than pursuant to the occurrence of Section 12.01(a) Grant Recipient Event of Default if such Event of Default remains uncured after the expiration of the applicable cure period, or (ii) upon termination under Article XII~~ of Exhibit B; if NYSERDA is the defaulting party, pursuant to Section 12.01(b) of Exhibit B or pursuant to Section 12.01(f) of Exhibit B).

G. Stipulated Damages. NYSERDA and Grant Recipient hereby agree, acknowledge and stipulate that NYSERDA's retention of amounts provided by Grant Recipient as Contract Security pursuant to this Article VIII, in the proportions stated within this Article, is fair and reasonable under the circumstances and in light of the uncertainty and inability to quantify adequately the harm that would result to NYSERDA as a result of the events that permit NYSERDA to retain such amounts of the Contract Security.

## **IX. MAJOR SUPPLIERS**

For Major Suppliers, Grant Recipient agrees to and shall consult the New York Offshore Wind Supply Chain Database, and shall use commercially reasonable efforts to source and procure components, materials, equipment, spare parts and other items necessary to construct the Supply Chain Facility from supply chain and manufacturing facilities located in New York State. Grant Recipient shall report Major Supplier procurement efforts in accordance with Section V. Grant Recipient shall include this requirement in all subcontracts with its Major Suppliers.

## EXHIBIT B

### GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

#### Article I. Definitions

Section 1.01 Definitions. Unless the context otherwise requires, the terms defined below shall have, for all purposes of this Agreement, the respective meanings set forth below or in the other Exhibits hereto, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined.

(a) General Definitions:

Budget: The project budget necessary to achieve Substantial Completion with respect to the Supply Chain Facility as set forth in Exhibit A-1 hereto.

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

Contract Information: Recorded information regardless of form or characteristic first produced in the performance of this Agreement, that is specified to be compiled under this Agreement, specified to be delivered under this Agreement, or that is actually delivered in connection with this Agreement, and including the final construction report delivered by Grant Recipient pursuant to Exhibit A, if applicable.

Permitted Transferee: Any Person who: (a) has, or whose parent entity has, (i) creditworthiness equal to or higher than that of Grant Recipient, as determined by NYSERDA in its reasonable discretion applying its credit standards and policies consistently<sup>4</sup> or (ii) ~~has~~ creditworthiness equal to or higher than that level of creditworthiness required by NYSERDA's then-current credit standards and policies; (b) together with its affiliates, has experience in the operation of or development of facilities that carry out Supply Chain Facility Activity of similar technology and size as the Supply Chain Facility, or has retained third-party ~~operators~~contractors who, individually or collectively, have such experience with respect to such technology; and (c) as of the date of such assignment, has not been a party adverse to NYSERDA in litigation or regulatory proceedings within the preceding five (5) years and is not currently a party adverse to NYSERDA in any pending litigation, arbitration, administrative, regulatory, or formal dispute resolution proceeding.

Person: An individual, a corporation, an association or partnership, an organization, a business or a government or political subdivision thereof, or any governmental agency or instrumentality.

Proprietary Information: Recorded information regardless of form or characteristic, produced or developed outside the scope of this Agreement and without NYSERDA financial support, provided that such information is not generally known or available from other sources without obligation concerning their confidentiality; has not been made available by the owner to others without obligation concerning its confidentiality; and is not already available to NYSERDA without obligation concerning its confidentiality. Under no circumstances shall any information included in the final construction report delivered by Grant Recipient pursuant to Exhibit A be considered Proprietary Information.

Responsible: Responsible or Responsibility means the financial ability, legal capacity, integrity and past performance of Grant Recipient and as such terms have been interpreted relative to public procurements. See NYS Finance Law § 163(1)(c).

Statement of Work: The Statement of Work attached hereto as Exhibit A.

Subcontract: An agreement for the performance or supply of goods or services relating to the construction of the Supply Chain Facility by a Subcontractor, including any purchase order for the procurement of permanent equipment or expendable supplies in connection therewith.

Subcontractor: A person who supplies goods or performs services under a Subcontract directly for or on behalf of the Grant Recipient (or an affiliate of Grant Recipient), including Grant Recipient's general contractor and other contractors,

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<sup>4</sup> [If so desired by Grant Recipient, prong \(i\) can be re-drafted prior to execution as an objective test designed by NYSERDA based on Grant Recipient's particular circumstances.](#)

Subcontractors and design professionals, but not including any employees of the Grant Recipient or the Subcontractors.

Article II.  
Performance of Work

Section 2.01 Manner of Performance. The Grant Recipient shall perform or contract with a Subcontractor to perform or supply goods or services with respect to the Project in accordance with the current professional standards and with the diligence and skill expected for the performance of work of the type described in the Budget, Grant Terms and Project Description. NYSERDA shall have no obligation to furnish personnel or procure materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform or supply goods or services in respect of the Project in accordance with this Agreement.

Section 2.02 Title to Equipment and Property. NYSERDA shall not have title to any equipment or property purchased with funds made available in accordance with this Agreement.

Article III.  
Conditions Precedent

Section 3.01 Conditions Precedent. Except the provisions of Section 3.01 and 3.02 of [this Exhibit B](#) ~~of this Agreement~~, which shall be effective upon the date of the execution of this Agreement by the Parties, the provisions of this Agreement shall not become effective unless and until each of the following conditions precedent are satisfied or waived in writing by both Parties:

~~(a) — Only if the Grant Recipient is not itself an Acceptable Guarantor, the execution and delivery by an Acceptable Guarantor of a Repayment Guaranty.~~

~~(b)~~(a) The delivery of ~~Contract~~[Initial](#) Security in accordance with ~~Section XV~~[Article VIII](#) of this Agreement.

~~(c)~~(b) [[Other conditions \(if any\) to be inserted here](#).]

Section 3.02 Failure to Satisfy Conditions Precedent. Except for the provisions of Section 3.01 and 3.02 of [this Exhibit B](#) ~~of this Agreement~~, this Agreement shall be null and void and of no force or effect unless and until each of the conditions precedent in Section 3.01 are satisfied or otherwise waived in accordance with Section 3.01.

Article IV.  
Payment



Section 4.01 Payments and Invoicing: Grant Recipient will submit an invoice to NYSERDA requesting payment of the Grant Proceeds in accordance with Agreement Exhibit A, Section IV.E along with any required documentation demonstrating compliance with the terms of Exhibit A, Section IV.E. Within thirty (30) days of the receipt of an invoice from Grant Recipient for an installment payment along with the required supporting documentation, NYSERDA shall remit such payment to the Grant Recipient pursuant to the terms of this Agreement in the manner provided for, in all material respects, in the Prompt Payment Policy set forth in Exhibit D. Documentation shall be submitted electronically via email to the assigned Project Manager or, if this project is managed through NYSERDA's Salesforce application, via NYSERDA's Salesforce Grant Recipient Portal with the Grant Recipient's log-in credentials.

Section 4.02 Final Payment. NYSERDA's payment of the Grant Proceeds in full pursuant to Section 4.01 shall constitute the final payment pursuant to this Agreement.

Section 4.03 Release of Claims. The acceptance by the Grant Recipient of final payment of Grant Proceeds shall release NYSERDA, from all claims and liability that the Grant Recipient, its representatives and assigns might otherwise have relating to this Agreement.

Section 4.04 Maintenance of Records. Unless otherwise addressed by separate provision(s) within this Agreement governing the destruction of certain project data, the Grant Recipient shall keep, maintain, and preserve throughout the term of the Agreement and for a period of five (5) years after Substantial Completion, full and detailed books, accounts, and records pertaining to this Agreement, including, if applicable, all data, bills, invoices, payrolls, time records, expense reports, subcontracting efforts and other documentation evidencing, or in any material way related to, Grant Recipient's performance under this Agreement.

Section 4.05 Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Grant Recipient shall be the amount appearing on page one of this Agreement. Payment of the maximum shall be contingent upon Grant Recipient's continued compliance with the capital commitment minimum described in Section IV.A.1. NYSERDA shall not be liable for any costs or expenses in excess of such amount incurred by the Grant Recipient in the performance and completion of the Project.

Section 4.06 Audit. NYSERDA shall have the right, from time to time and at all reasonable times during the term of this Agreement and for the maintenance period set forth in Section 4.04 hereof to inspect and audit any and all books, accounts and records related to this Agreement or reasonably necessary to the performance of an audit at the office or offices of the Grant Recipient where they are then being kept, maintained and preserved pursuant to Section 4.04 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Grant Recipient by NYSERDA, the State of



New York or an agency of the United States not to constitute an allowable charge or cost hereunder.

Article V.

Assignments, Subcontracts and Performance; Limitation on Debt

Section 5.01 General Restrictions.

- (a) Except as specifically provided otherwise in this Article, (i) the assignment, transfer, conveyance, subcontracting or other disposal of this Agreement or any of a Party's rights, obligations, interests or responsibilities hereunder, in whole or in part, without the express consent in writing of the other Party shall be void and of no effect and (ii) any Change of Control without the prior express written consent of NYSERDA shall constitute an Event of Default under this Agreement.
- (b) Notwithstanding clause (a) above, Grant Recipient may assign or otherwise transfer this Agreement or any rights, obligations, or responsibilities thereunder to an affiliate of Grant Recipient upon NYSERDA's approval, which shall not be unreasonably withheld.
- (c) No assignment or transfer of this Agreement by a Party shall operate to release such Party from any of its obligations under this Agreement unless such assignee or transferee (i) agrees in writing to assume all of the Party's obligations under this Agreement and, (ii) except in the case of assignment by NYSERDA, provides contract security to replace that previously provided by Grant Recipient. If assignee or transferee satisfies (i) and (ii) of this Section, a Party (or its successors or assigns) will execute a release of the other Party from its obligations under this Agreement at such Party's request.
- (d) Notwithstanding clause (a) above, Grant Recipient's consent shall not be required for any assignment or other disposal by NYSERDA to another entity affiliated with New York State government.
- (e) Notwithstanding clause (a) above, NYSERDA's consent shall not be required for any Change of Control that constitutes a disposition to a Permitted Transferee. If Grant Recipient provides NYSERDA with written notice of its intent to effectuate a Change of Control setting forth a description of the transferee describing how it fits within the definition of Permitted Transferee and NYSERDA does not respond within fifteen (15) business days, NYSERDA shall be deemed to have confirmed that the proposed Change of Control does not require NYSERDA's consent.
- (f) To the extent not prohibited by the U.S. securities laws and regulations (and to the extent Grant Recipient determines any such prohibition exists, Grant Recipient agrees to confer with NYSERDA), Grant Recipient agrees to provide NYSERDA advance notice, in accordance with Section 15.01 of this Exhibit B, of (i) any

assignment, transfer, conveyance, or other disposal of this Agreement or any of Seller's rights, obligations, interests or responsibilities hereunder, in whole or in part and (ii) any Change of Control in which Grant Recipient has or should reasonably have actual knowledge of such transaction likely to cause the Change in Control, in each case regardless of whether or not NYSERDA's consent is required hereunder. NYSERDA agrees to execute a confidentiality agreement, as reasonably determined by Grant Recipient as necessary, to protect the disclosures required by this Section.

Section 5.02 Subcontract Procedures. Without relieving it of, or in any way limiting, its obligations to NYSERDA under this Agreement, the Grant Recipient may enter into Subcontracts for the performance of services with respect to the Project and for the purchase of goods, materials or equipment necessary or incidental thereto. Grant Recipient shall maintain a list of all Subcontracts entered into for the Project and include such list in each report to NYSERDA required hereunder. Grant Recipient shall be responsible for ensuring that no contractors or Subcontractors have a conflict of interest that are material to the Project and ensuring Subcontractors comply with applicable laws. Each Subcontract shall make express reference to this Agreement, and shall state that in the event of any conflict or inconsistency between any Subcontract and this Agreement, the terms and conditions of this Agreement shall control as between Subcontractor and Grant Recipient. For each contract and Subcontract valued at \$100,000 or more, Grant Recipient shall require that a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form (made available to the Grant Recipient by NYSERDA) be maintained on file and provided to NYSERDA upon reasonable request. Each such Subcontract shall contain a provision whereby the Subcontractor warrants and guarantees that there is and shall be no actual or potential conflict of interest that could prevent the Subcontractor's satisfactory or ethical performance of duties required to be performed pursuant to the terms of the Subcontract and that the Subcontractor shall have a duty to notify NYSERDA immediately of any actual or potential conflicts of interest.

Section 5.03 Performance. The Grant Recipient shall promptly and diligently comply with its obligations under each Subcontract and shall take no action that would impair its rights thereunder. The Grant Recipient shall take no action, and shall take all reasonable steps to prevent its Subcontractors from taking any action, that would impair NYSERDA's rights under this Agreement.

Section 5.04 Limitation on Debt.

(a) Grant Recipient shall not incur, assume or permit to exist any indebtedness for borrowed money (or act as a guarantor of any such indebtedness) whether secured or unsecured before Substantial Completion, or otherwise encumber the assets constituting the Project before Substantial Completion, in each case, without the prior written consent of NYSERDA, such consent not to be unreasonably withheld, provided that no such consent shall be required if the financing agreements under which Grant Recipient incurs

Grant Recipient will keep a record of the location of the Information. At the conclusion of the Project Period, Grant Recipient will return to NYSERDA all the Information and/or provide proof to NYSERDA that the Information was destroyed. Grant Recipient also agrees to submit to an audit of its data security/destruction practices by NYSERDA or its representative during the contract term and for up to two (2) years following the expiration of the Agreement.

Additional information on the above can be found on the Doing Business with NYSERDA webpage at <https://www.nyserdera.ny.gov/About/Doing-Business-with-NYSERDA>, as amended and superseded.

(f) If, in the course of performance of the Agreement, Grant Recipient or Subcontractors (if any) encounter any information in NYSERDA's Salesforce or other database platforms that a reasonable person would identify as unrelated to the Agreement or otherwise inadvertently produced to Grant Recipient or Subcontractors, Grant Recipient shall notify NYSERDA immediately and neither Grant Recipient nor Subcontractor shall use such inadvertently produced information for its own use. Any Grant Recipient access to NYSERDA information shall be used solely for NYSERDA-related matters. This shall include, but not be limited to, access to the Salesforce CRM.

(g) Grant Recipient acknowledges that NYSERDA may publish this Agreement and certain information included in reports submitted to NYSERDA pursuant to Section V of Exhibit A. Prior to such publication, NYSERDA will redact any ~~critical electric infrastructure information~~ Critical Energy/Electric Infrastructure Information (as defined in 18 CFR § 388.113) contained in the Agreement or such report, and will consider Grant Recipient's requests for the redaction of confidential business information; provided, however that NYSERDA shall not accept any such request to redact information related to the amount of the Grant or Grant Recipient's achievement of the minimum metrics described in Exhibit A-1.

#### Article IX. Warranties and Guarantees

Section 9.01 Warranties and Guarantees. The Grant Recipient warrants and guarantees that:

(a) all information provided, and all representations made by or on behalf of Grant Recipient as a part of the proposal submitted to NYSERDA in order to obtain this Agreement were, to the best of Grant Recipient's knowledge, complete, true and accurate when provided or made;

(b) as of the Effective Date, it is financially and technically qualified to carry out the Project, and is qualified to do business and is in good standing in all jurisdictions necessary for Grant Recipient to perform its obligations under this Agreement;

(c) by NYSERDA, if at any time ~~neither Grant Recipient nor the provider of a Repayment Guaranty~~ Contract Security does not meet the requirements set forth in effect ~~as of such time is an Acceptable Guarantor~~ Section VIII;

(d) by NYSERDA, if any written information, document or written statement furnished by the Grant Recipient, taken as a whole with such other written information, documents and written statements furnished by the Grant Recipient, in connection with this Agreement or the documents submitted by Grant Recipient to NYSERDA under ORECRFP22-1 are found to have contained any untrue statement of a material fact or have omitted a material fact at the time that such document or statement was furnished by Grant Recipient, making such information, document or written statement misleading in light of the circumstances under which they were made or furnished;

(e) by NYSERDA ~~in the event~~ in the event that the certification filed by the Grant Recipient in accordance with State Finance Law Sections 139-j and 139-k is found to have been intentionally false or intentionally incomplete, or that the certification filed by the Grant Recipient in accordance with New York State Tax Law Section 5-a is found to have been intentionally false when made. Terminations under this subsection (d) will be effective upon Notice;

(f) as permitted by Section 14.02 of this Agreement; or

(g) by NYSERDA, in the event that an Enforcement Event has occurred ~~and is continuing beyond any applicable cure period.~~

### Article XIII. Independent Contractor

Section 13.01 Independent Contractor. (a) This Agreement is intended to create, and creates, a contractual relationship and is not intended to create, and does not create, any agency, partnership, joint venture, or any similar relationship between the Parties. It is understood and agreed that the personnel furnished by Grant Recipient to perform the Project shall be Grant Recipient's employee(s) or agent(s), and under no circumstances are such employee(s) to be considered NYSERDA's contractors, employee(s), or agent(s), and shall remain the employees of Grant Recipient, except to the extent required by Section 414(n) of the Internal Revenue Code.

(b) Grant Recipient expressly acknowledges NYSERDA's need to be advised, on an immediate basis, of the existence of any claim or event that might result in a claim or claims against NYSERDA, Grant Recipient and/or Grant Recipient's personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, Grant Recipient expressly covenants and agrees to notify NYSERDA of any such claim or event, including but not limited to, requests for accommodation and allegations of harassment and/or discrimination, immediately upon contractor's discovery of the same, and to fully and honestly cooperate with NYSERDA in its efforts to investigate and/or

address such claims or events, including but not limited to, complying with any reasonable request by NYSERDA for disclosure of information concerning such claim or event even in the event that this Agreement should terminate for any reason.

(c) Nothing in this Agreement shall be deemed to render this Agreement a “public work agreement” or the Project a “public work” for purposes of Article 8 and Article 9 of the New York State Labor Law or any other provision thereof.

Article XIV.  
Compliance with Certain Laws

Section 14.01 Laws of the State of New York. The Grant Recipient shall comply with all of the requirements set forth in Exhibit C hereto.

Section 14.02 All Legal Provisions Deemed Included.

(a) It is the intent and understanding of the Grant Recipient and NYSERDA that each and every provision of law required by the laws of the State of New York to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon a written request of either NYSERDA or the Grant Recipient, promptly be amended so as to comply strictly with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions ~~;~~ provided that if a Party demonstrates that it has used reasonable efforts to accommodate such an amendment but despite such efforts the Parties have been unable to reach agreement on such amendment within sixty (60) days of the date of receipt of a Party’s written request to amend the Agreement, or such other period as mutually agreed to by the Parties, such Party may terminate this Agreement in accordance with Section 12.01 of this Agreement.

(b) In the event that NYSERDA or Grant Recipient requests that this Agreement be amended to reflect a Change in Law that occurs after the effective date of this Agreement, NYSERDA and Grant Recipient will negotiate in good faith to amend this Agreement to comply with applicable law.

(c) In the event ~~of that~~ (i) a Change in Law occurs that frustrates the purpose of the Project or materially increases the Budget and (ii) the Parties are unable to reach ~~Agreement~~agreement within sixty (60) days of the date of receipt of a Party’s request to amend the Agreement to take into account a Change in Law, or such other period as mutually agreed to by the Parties, either Party may terminate this Agreement in accordance with Section 12.01 of this Agreement.

Section 14.03 Permits and Approvals. The Grant Recipient shall be responsible to obtain all applicable permits and regulatory approvals that may be required in order to develop and/or operate the Project over the duration of this Agreement. The NYSERDA award in no way replaces or modifies the necessity or applicability of any permit or



Effective Date: [MM.DD.YYYY]

Project Employment Opportunity					
Project Operation Impact					

4. Updates On Number of Direct Jobs Created, Their Industry Sector, Numbers for New Hires and Location of Hiring and the Number of Retained Jobs Including Duration

[Insert Update]

*Using elements from the Project’s New York Jobs and Workforce Plan, please provide information on the Jobs claims. Please include labor hours, locations, wages, benefits, and training investments. Jobs in Disadvantaged Communities, MWBEs and SDVOBs should be identified as well. Jobs claims must include labor hours, locations, wages, benefits, and training investments. Jobs in Disadvantaged Communities, MWBEs and SDVOBs should be identified as well.*

*Commencing with the first progress report that indicates that construction activities falling within the scope of Section VI of the Agreement have commenced and with each subsequent progress report submitted on June 1 and December 1 thereafter, please attach a written attestation prepared by a New York State independent certified public accountant or other qualified party confirming that the **Prevailing Wage** requirement is being met as outlined in Section VI of the Agreement. Please attach the job attestations as described as Appendixes D.1 and D.2 to this report.*

5. Purchases, Delivery, and/or Installation of any Major Services and Equipment Associated with the Development and Construction of the SCIP Project

[Insert Update]

*Using elements from the Project’s Economic Benefits Plan, please include the following:*

*Please attach executed supply agreements and purchase orders or summaries thereof issued for goods and services within the previous quarter as Appendix E.1 to this report. The Economic Benefit should align with Table C.2.2: Template for Economic Benefits Claims Entry of the SCIP.*

<b>Project Name+ Proposed Site</b>	<b>Contractual In-State Expenditure Eligible</b>	<b>Contractual In-State Expenditure non-</b>	<b>Amount Paid for this</b>	<b>Total Amount Paid-to-Date</b>	<b>Quarterly Difference</b>	<b>% Total of Target of contractua</b>



**Exhibit G**  
**Form of Repayment Guaranty**

This Guaranty is dated and effective as of \_\_\_\_\_ (as amended, restated or modified from time to time, the “Guaranty”), and is made by \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of the \_\_\_\_\_ (“Guarantor”), in favor of the New York State Energy Research and Development Authority (“NYSERDA”), a New York public benefit corporation, having a principal business address of 17 Columbia Circle, Albany, New York 12203. All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

WHEREAS, pursuant to Grant Disbursement Agreement dated as of \_\_\_\_\_ (the “Agreement”) by and between \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of the \_\_\_\_\_ (the “Grant Recipient”), and NYSERDA, the NYSERDA has agreed to fund the Grant to Grant Recipient on terms set forth in the Agreement; and

WHEREAS, in order to induce NYSERDA to fund the Grant, and with full knowledge that NYSERDA would not fund the Grant without this Guaranty, Guarantor has agreed to execute and deliver this Guaranty to NYSERDA, for the benefit of NYSERDA, as security for Grant Recipient’s performance of certain of its obligations under the Agreement;

WHEREAS, Guarantor is a \_\_\_\_\_ of Grant Recipient and will significantly benefit from the Grant; and  
NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties each intending to be legally bound, hereby do agree as follows:

**1. GUARANTY.**

(a) — Guarantor irrevocably, absolutely and unconditionally guarantees as a primary obligor and not merely as surety, to NYSERDA the full and prompt discharge of the Guaranteed Obligations as and when the same shall be due and payable pursuant to the terms of this Guaranty. Guarantor hereby irrevocably and unconditionally covenants and agrees that it is liable for the Guaranteed Obligations (as defined below) as a primary obligor. This Guaranty is absolute, independent and continuing under all circumstances.

(b) — Guaranteed Obligations. For all purposes of this Guaranty, the term “Guaranteed Obligations” shall mean, in the event that a Termination Event occurs, a reimbursement of the amount of Grant Proceeds that have been disbursed under the Grant Agreement plus interest calculated using the 10-year treasury rate plus ninety-five (95)

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~~basis points calculated based on the date NYSERDA disbursed to Grant Recipient such Grant Proceeds.~~

~~(e) Guarantor understands, agrees and confirms that NYSERDA may enforce this Guaranty up to the full amount of the Guaranteed Obligations against Guarantor without proceeding against Grant Recipient or under any other guaranty covering all or a portion of the Guaranteed Obligations. This Guaranty is a guaranty of prompt payment and performance and not of collection, and is limited to payment and performance of the Guaranteed Obligations.~~

~~2. LIABILITY OF GUARANTOR ABSOLUTE. The liability of Guarantor hereunder is primary, absolute and unconditional and is exclusive and independent of any security for or other guaranty of the obligations of Grant Recipient whether executed by Guarantor, any other guarantor or by any other party, and the liability of Guarantor hereunder shall not be affected or impaired by any circumstance or occurrence whatsoever, including, without limitation: (a) any other continuing or other guaranty, undertaking or maximum liability of Guarantor or of any other party as to the Guaranteed Obligations, (b) any payment on or in reduction of any such other guaranty or undertaking, (c) any dissolution, termination or increase, decrease or change in personnel by Grant Recipient, (d) the failure of either Guarantor to receive any benefit from or as a result of its execution, delivery and performance of this Guaranty, (e) any payment made to NYSERDA pursuant to the Agreement that NYSERDA repays Grant Recipient pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceeding, and Guarantor waives any right to the deferral or modification of its obligations hereunder by reason of any such proceeding, (f) any action or inaction by NYSERDA as contemplated in Section 5 hereof, (g) any invalidity, rescission, irregularity or unenforceability of all or any part of the Guaranteed Obligations, (h) any statute of limitations affecting its liability hereunder or the enforcement thereof, which Guarantor hereby waives to the fullest extent permitted by applicable law, (i) any law that provides that the obligation of a guarantor must neither be larger in amount or in other respects more burdensome than that of the principal or that reduces a guarantor's obligation in proportion to the principal obligation, (j) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation or dissolution proceeding commenced by or against any Person, including without limitation any discharge of, or bar or stay against collecting, all or any of the Guaranteed Obligations in or as a result of any such proceeding, (k) any extension of credit or the grant of any lien under Section 364 of the United States Bankruptcy~~





~~Code, or (l) the application or non-application of Section 1111(b)(2) of the United States Bankruptcy Code.~~

~~3. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF GUARANTOR.~~

~~In order to induce NYSERDA to fund the Grant pursuant to the Agreement, Guarantor represents, warrants and covenants that:~~

~~(a) Guarantor (i) 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 and (ii) has the 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;~~

~~(b) Guarantor has the corporate, trust, partnership or limited liability company power and authority, as the case may be, to execute, deliver and perform the terms and provisions of this Guaranty and has taken all necessary corporate, trust, partnership or limited liability company action, as the case may be, to authorize the execution, delivery and performance by it of this Guaranty;~~

~~(c) Guarantor has duly executed and delivered this Guaranty, and this Guaranty constitutes the legal, valid and binding obligation of such Guarantor enforceable in accordance with its terms;~~

~~(d) neither the execution, delivery or performance by Guarantor of this Guaranty, nor compliance by it with the terms and provisions hereof, will (i) contravene any provision of any applicable law, statute, rule or regulation or any applicable order, writ, injunction or decree of any court or governmental instrumentality or (ii) conflict with, violate or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under any agreement, contract or instrument to which Guarantor is a party, except where non-compliance would not reasonably be expected to have a material adverse effect upon the legality, validity, binding effect or enforceability against Guarantor of this Guaranty; and~~

~~(e) no order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except as have been obtained or made prior to the date when required and which remain in full force and effect), or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorize, or is required in connection with, (i) the execution, delivery and performance~~



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~~of this Guaranty by such Guarantor or (ii) the legality, validity, binding effect or enforceability of this Guaranty, in each case, except where non-compliance would not reasonably be expected to have a material adverse effect upon the legality, validity, binding effect or enforceability against Guarantor of this Guaranty.~~

~~4. WAIVERS BY GUARANTOR.~~

~~(a) — Guarantor hereby waives to the fullest extent permitted by applicable law notice of acceptance of this Guaranty and notice of the existence, creation or incurrence of any new or additional liability to which it may apply, and waives promptness, diligence, presentment, demand of payment, demand for performance, protest, notice of dishonor or nonpayment of any such liabilities, suit or taking of other action by NYSERDA against, and any other notice to, any party liable thereon (including Guarantor, any other guarantor or Grant Recipient) and Guarantor further hereby waives any and all notice of the creation, renewal, extension or accrual of any of the Guaranteed Obligations and notice or proof of reliance by NYSERDA upon this Guaranty, and the Guaranteed Obligations shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended, modified, supplemented or waived, in reliance upon this Guaranty.~~

~~(b) — Guarantor waives any right to require NYSERDA to: (i) proceed against Grant Recipient, any other guarantor of the Guaranteed Obligations or any other party; (ii) file or enforce a claim in any bankruptcy or other proceeding with respect to any person; and (iii) pursue any remedy in NYSERDA's power whatsoever. Guarantor waives any and all defenses based on or arising out of any defense of Grant Recipient, any other guarantor of the Guaranteed Obligations or any other party including, without limitation, (1) defenses arising from the bankruptcy, insolvency, dissolution or liquidation of the Grant Recipient, or any injunction, stay or similar action in any bankruptcy, insolvency or other proceeding barring or limiting payment of any Guaranteed Obligation by the Grant Recipient; (2) defenses relating to the power or authority of the Grant Recipient to enter into the Agreement, and to perform the Guaranteed Obligations thereunder, including, without limitation, any lack or limitation of status or of power, or any incapacity or disability, of the Grant Recipient, or of any other guarantor or obligor in respect of any Guaranteed Obligation, or any change whatsoever in the capital structure, constitution or business of the Grant Recipient; (3) defenses arising from any release or amendment or waiver of, or consent to departure from, any other guarantee or support document, or any exchange, release or non-perfection of any collateral, for any Guaranteed Obligation; and (4) defenses arising from any event or circumstance constituting fraud in the inducement or any other similar event or circumstance; except that such waiver shall not include a defense of the~~



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~~Grant Recipient arising from payment in full in cash of the Guaranteed Obligations. NYSERDA may, at its election, exercise any right or remedy it may have against Grant Recipient or any other party, or any security, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent the Guaranteed Obligations have been paid in full in cash. Guarantor waives any defense arising out of any such election by NYSERDA, even though such election operates to impair or extinguish any right of reimbursement, contribution, indemnification or subrogation or other right or remedy of Guarantor against Grant Recipient, any other guarantor of the Guaranteed Obligations or any other party or any security.~~

~~(c) — Guarantor has adequate means to obtain from Grant Recipient on an ongoing basis information relating thereto and Grant Recipient’s ability to perform its obligations under the Agreement, and agrees to assume the responsibility for keeping, and to keep, so informed for so long as this Guaranty is in effect.~~

~~(d) — Guarantor warrants and agrees that each of the waivers set forth in Section 2 and in this Section 4 is made with full knowledge of its significance and consequences and that if any of such waivers are determined to be contrary to any applicable law or public policy, such waivers shall be effective only to the maximum extent permitted by applicable law.~~

~~5. RIGHTS OF NYSERDA. NYSERDA may at any time and from time to time without the consent of, or notice to, Guarantor, without incurring responsibility to Guarantor, without impairing or releasing the obligations or liabilities of Guarantor hereunder, upon or without any terms or conditions and in whole or in part~~

~~(a) exercise or refrain from exercising any rights against Grant Recipient, any other guarantor of Grant Recipient or others or otherwise act or refrain from acting;~~

~~(b) — consent to or waive any breach of, or any act, omission or default under, the Agreement or any of the instruments or agreements referred to therein, or otherwise amend, modify or supplement the Agreement or any of such other instruments or agreements;~~

~~(c) — act or fail to act in any manner which may deprive Guarantor of its right to subrogation against Grant Recipient to recover full indemnity for any payments made pursuant to this Guaranty; and/or~~

~~(d) — take any other action or omit to take any other action which would, under otherwise applicable principles of common law, give rise to a legal or equitable discharge~~



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~~of Guarantor from its liabilities under this Guaranty (including, without limitation, any action or omission whatsoever that might otherwise vary the risk of such Guarantor or constitute a legal or equitable defense to or discharge of the liabilities of a guarantor or surety or that might otherwise limit recourse against such Guarantor).~~

~~6. CONTINUING GUARANTY. This Guaranty is a continuing one and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. No failure or delay on the part of NYSERDA in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein expressly specified are cumulative and not exclusive of any rights or remedies that NYSERDA would otherwise have. No notice to or demand on Guarantor in any case shall entitle Guarantor to any other further notice or demand in similar or other circumstances or constitute a waiver of the rights of NYSERDA to any other or further action in any circumstances without notice or demand.~~

~~7. EXPENSES. Guarantor hereby agrees to pay all reasonable out-of-pocket costs and expenses of NYSERDA in connection with the enforcement of this Guaranty and the protection of NYSERDA's rights hereunder and any amendment, waiver or consent relating hereto (including, in each case, without limitation, the reasonable out-of-pocket fees and disbursements of counsel employed or retained by NYSERDA).~~

~~8. BENEFIT AND BINDING EFFECT. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of NYSERDA and its successors and assigns.~~

~~9. AMENDMENTS; WAIVERS. Neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated except with the written consent of Guarantor directly affected thereby and with the written consent of NYSERDA.~~

~~10. NOTICE. All notices and other communications shall be in writing and addressed to such party at (a) in the case of NYSERDA, as provided in the Agreement, and (b) in the case of Guarantor, at its address set forth opposite its signature page below; or in any case at such other address as any of the Persons listed above may hereafter notify the others in writing.~~



~~11. CONSENT TO JURISDICTION; SERVICE OF PROCESS.~~

~~(a) — This Guaranty shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts executed and to be performed in New York State without regard to its conflicts of laws principles. The parties irrevocably acknowledge and accept that all actions arising under or relating to this Guaranty shall be brought exclusively in a United States District Court or New York State Court located in Albany, New York having subject matter jurisdiction over such matters, and each of the Parties hereby consents to and accepts such personal jurisdiction of, and waives any objection as to the laying of venue in, such courts for purposes of such action. Guarantor further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to Guarantor at its address set forth opposite its signature below, such service to become effective 30 days after such mailing. Guarantor hereby irrevocably waives any objection to such service of process and further irrevocably waives and agrees not to plead or claim in any action or proceeding commenced hereunder that such service of process was in any way invalid or ineffective. Nothing herein shall affect the right of NYSERDA to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Guarantor in any other jurisdiction.~~

~~(b) — Guarantor hereby irrevocably waives (to the fullest extent permitted by applicable law) any objection that it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Guaranty brought in the courts referred to in Section 11(a) above and hereby further irrevocably waives and agrees not to plead or claim in any such court that such action or proceeding brought in any such court has been brought in an inconvenient forum.~~

~~(c) — GUARANTOR AND NYSERDA (BY ITS ACCEPTANCE OF THE BENEFITS OF THIS GUARANTY) HEREBY IRREVOCABLY WAIVES ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY.~~

~~12. COUNTERPARTS. This Guaranty may be executed in any number of counterparts and by the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.~~



**NYSERDA**

Offshore Wind Renewable Energy Certificate  
Purchase and Sale Agreement by and between  
the New York State Energy Research and Development Authority  
and [DEVELOPER]

Effective Date: [MM.DD.YYYY]

~~IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed  
and delivered as of the date first above written.~~

<b>Address:</b>	<b>as Guarantor</b>  <b>By:</b> _____ _____ <b>Name:</b> <b>Title:</b>
<b>Accepted and Agreed to:</b> <b>NYSERDA</b>	

[Reserved]

**Exhibit H**  
**Form of Irrevocable Standby Letter of Credit**  
**(Contract Security)**

IRREVOCABLE STANDBY LETTER OF CREDIT NO. \_\_\_\_\_

DATE: \_\_\_\_\_, 20\_\_

**BENEFICIARY:**

THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY  
17 COLUMBIA CIRCLE, ALBANY, NEW YORK 12203-6399

**LADIES AND GENTLEMEN:**

BY THE ORDER OF:

~~[SELLER]~~  
~~[SELLER'S~~ GRANT RECIPIENT]  
[GRANT RECIPIENT'S ADDRESS]

WE HEREBY ISSUE OUR IRREVOCABLE CREDIT NO: \_\_\_\_\_ IN YOUR FAVOR FOR THE ACCOUNT OF \_\_\_\_\_ (THE "~~SELLER~~ GRANT RECIPIENT") FOR AN AMOUNT OR AMOUNTS NOT TO EXCEED IN THE AGGREGATE [STATE IN WORDS] U.S. DOLLARS AVAILABLE BY YOUR DRAFTS AT SIGHT ON [INSERT NAME AND ADDRESS OF ISSUING BANK], NEW YORK, NEW YORK, USA, WHEN ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

1. YOUR SIGHT DRAFT DRAWN ON US IN THE FORM OF ANNEX A HERETO (THE "SIGHT DRAFT"); AND
2. A DATED PAYMENT CERTIFICATE PURPORTEDLY SIGNED BY A DULY AUTHORIZED OFFICER OF NYSEDA IN THE FORM OF ANNEX B HERETO (THE "PAYMENT CERTIFICATE").

MULTIPLE DRAWINGS ARE PERMITTED IN AMOUNTS NOT TO EXCEED, IN COMBINATION, THE AGGREGATE AMOUNT.

DRAWINGS PRESENTED BY FACSIMILE TO FACSIMILE NUMBER \_\_\_\_\_ ARE ACCEPTABLE; PROVIDED THAT SUCH FAX PRESENTATION IS RECEIVED ON OR BEFORE THE EXPIRY DATE ON THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, IT BEING UNDERSTOOD THAT ANY SUCH FAX PRESENTATION SHALL BE CONSIDERED THE SOLE OPERATIVE INSTRUMENT OF DRAWING. IN THE EVENT OF PRESENTATION BY FAX, THE ORIGINAL DOCUMENTS SHOULD NOT BE PRESENTED.

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 [INSERT DATE] 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 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

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Effective Date: [MM.DD.YYYY]

[NAME AND ADDRESS OF ISSUING BANK]

\_\_\_\_\_  
AUTHORIZED SIGNATURE  
OF OFFICER OF ISSUING BANK

Annex A to Exhibit B - Irrevocable Standby Letter of Credit

SIGHT DRAFT

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

Date of Letter of Credit: \_\_\_\_\_

Date of Draft: \_\_\_\_\_

FOR VALUE RECEIVED

Pay on Demand to: THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT  
AUTHORITY, 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 ~~Seller~~ Grant Recipient].

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 and Title]