

## **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: [REDACTED]
2. Grant Recipient: [REDACTED]
3. Execution Date: [REDACTED]
4. Proposed Total Amount of Award: \$ [REDACTED] Dollars
5. Estimated Construction Start Date: [REDACTED]
6. Substantial Completion Date: [REDACTED]
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
- 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.



ACCEPTANCE OF THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNLESS EXECUTED BELOW BY THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY (“NYSERDA”) AND GRANT RECIPIENT AND IS SUBJECT TO THE CONDITIONS PRECEDENT SET FORTH HEREIN.

**[Grant Recipient]**

**NEW YORK STATE ENERGY  
RESEARCH AND  
DEVELOPMENT AUTHORITY**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A GRANT TERMS

**Project Title:**   
**Grant Recipient:**

### 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.2.

“Bid Submission Date” means the date on which proposals were due to be submitted under ORECRFP22-1, which was [~~December 22, 2022~~[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.



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 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 ~~arise~~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 any buildings or structure pertaining to the Project, a certificate of occupancy issued by a municipality; and (ii) other evidence demonstrating that Substantial Completion has

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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.](#)

occurred as may be reasonably required by NYSERDA.

“Supply Chain Facility” shall mean the project submitted in response to NYSERDA’s ORECRFP22-1, as further described in Exhibit A-1, as modified from time to time, subject to NYSERDA’s right to review Material Modifications in accordance with this Agreement.

“Supply Chain Facility Activity” shall mean *[insert the proposed long-term use of the Supply Chain Facility as related to offshore wind, such as manufacturing, staging or operation and maintenance]*.<sup>3</sup>

“Termination Event” shall have the meaning provided for in Section 12.01 of Exhibit B of this Agreement.

**Grant Recipient** address information:

Company Name:	
Contact Name	
Street Address	
City, State Zip code	
Email/Phone/Fax	

**The Project Site** is:

Site Name:	
Site Street Address:	
City, State Zip code:	

The Project Site is more particularly described as follows: *[define size, address, and tax lot information]*

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<sup>3</sup> **Note to Draft:** To be tailored to each agreement as necessary.



## 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 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 the Project; and (3) the change does not involve changes to the expected date of Substantial Completion.

3. NYSERDA shall have thirty (30) days from the date of receipt of written notice of a Material Modification from Grant Recipient to approve, provide comments on, or disapprove of such Material Modification. In the event that NYSERDA fails to comment upon or disapprove such Material Modification within thirty (30) days of the receipt of such notice, NYSERDA shall be deemed to have approved the proposed Material Modification.
4. Grant Recipient will cooperate in good faith and consider NYSERDA's proposed comments or changes to the proposed Material Modifications, provide information reasonably requested by NYSERDA in respect of such modifications, and provide NYSERDA with reasonable access to the site and contractors during normal working hours for the purpose of NYSERDA's consideration of such modifications upon not less than two (2) Business Days advance written notice. NYSERDA will cooperate in good faith with Grant Recipient to reach prompt agreement on any Material Modification and acknowledges that other parties may have approval rights over the same Material Modification. NYSERDA's approval of a proposed modification shall not be unreasonably withheld, conditioned, or delayed. NYSERDA may not withhold, condition, or delay approval based upon Grant Recipient's decision to reject changes recommended by NYSERDA that would have the effect of materially increasing (as reasonably determined by Grant Recipient) the costs of, or delaying completion of, the Project.
5. Notwithstanding anything to the contrary set forth above, the approval process described above shall not apply to any modifications that Grant Recipient reasonably determines are required by a Change in Law, governmental authority or otherwise required under the terms of an agreement governing Project Site control (excluding for the purposes of this sentence where such modification is itself a requirement of a new permit or an amendment to an existing permit).
6. Grant Recipient shall make commercially reasonable efforts to cooperate with, and provide information to, NYSERDA in connection with any Material Modification to ensure continued compliance with SEQRA and applicable law. In the event that Grant Recipient receives notice of any material modifications to the Project that will require a new permit, a material amendment to an existing permit or other substantive government approval, Grant Recipient will promptly inform NYSERDA, and NYSERDA agrees to participate in any supplemental environmental review that may be required. No approval from NYSERDA shall constitute authorization to waive or not comply with applicable law.

#### D. Qualifying Federal Support

1. In the event Grant Recipient receives Qualifying Federal Support, Grant Recipient shall determine the QFS Amount and promptly provide notice of the same to NYSERDA, including supporting calculations thereto. Grant Recipient shall also

make available or cause to be made available to NYSERDA all books and records in its control that are reasonably necessary to determine the QFS Amount and shall use commercially reasonable efforts to provide NYSERDA with any other books and records reasonably requested by NYSERDA. Except with respect to transaction costs and expenses incurred by Grant Recipient in connection with obtaining Qualifying Federal Support, which shall be for Grant Recipient's account, the QFS Amount shall be calculated on a net basis, taking into account any reduction in current or future economic value or costs incurred as a result of Grant Recipient's realization of the applicable Qualifying Federal Support. For example, the Parties acknowledge and agree that, to qualify for a higher level of Qualifying Federal Support, Grant Recipient may be required to incur increased costs related to development, construction or operation of the Project including costs related to new U.S. content or similar sourcing requirements, prevailing wage requirements or apprenticeship requirements. For the avoidance of doubt, if Grant Recipient incurs such increased costs for the purpose of qualifying for such higher level of support, the QFS Amount shall be reasonably adjusted by Grant Recipient to reflect the total economic value of the Qualifying Federal Support after accounting for such increased costs.

2. In the event Grant Recipient receives Qualifying Federal Support for the Project, the amount of Grant Proceeds owed by NYSERDA to Grant Recipient under this Agreement shall be reduced by fifty cents for each dollar of the QFS Amount, regardless of whether or not such Grant Proceeds have been previously disbursed to Grant Recipient.
3. NYSERDA shall provide notice to Grant Recipient of any adjustment required under this Section IV.D to the amount of Grant Proceeds owed under this Agreement, and any refunds due to NYSERDA as a result of such Adjustment. In the event NYSERDA determines that any Grant Proceeds must be refunded due to the receipt by Grant Recipient of Qualifying Federal Support, Grant Recipient shall deliver such Proceeds to NYSERDA within thirty (30) calendar days of notice of same.

E. Verification and Payment Process

1. Installments: The Parties agree that Grant Recipient shall request distribution of the Grant Proceeds in seven (7) installments as follows:
  - a. 50% at Commencement of Construction.
  - b. 25% at Substantial Completion and achievement of the construction phase minimum metrics described in Exhibit A-1.
  - 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, 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, 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 Recipient shall prepare a draft final construction report for submission to NYSERDA's Project Manager covering all aspects of the Project; the report shall include relevant information on the following subjects:

- a. Explanation of how the Project scope outlined in Exhibit A-1 is substantially complete.
  - b. Documentation of compliance with all findings and mitigation measures required by environmental review; compliance with government permits and approvals.
  - c. Documentation of receipt of all permits required for operation of the Project including building permits, certificates of occupancy, in-water permits, etc.
  - d. Confirmation of material payment to contractors and Subcontractors involved in construction and the end of their roles. Discussion of any payment disputes that remain unresolved.
  - e. Discussion of ongoing roles, if any, in the Project of each Partner.
  - f. Discussions of the observations and findings and recommendations, if any, from all tasks, and avenues for further improvements, as appropriate;
  - g. Discussions of the project results and lessons learned regarding configuration, capabilities, and benefits of the project; and
  - h. Qualitative discussion of environmental benefits of the Project and quantitative discussion of economic benefits from the construction phase.
2. Grant Recipient shall submit both draft and final versions of the final construction report. NYSERDA will comment on the draft version within sixty (60) days after receipt of such draft. Within thirty (30) days after receipt of NYSERDA's comments, the Grant Recipient shall prepare a final version of the report. Grant Recipient will consider in good faith NYSERDA's comments to the report, and, if such comments are deemed applicable and acceptable by Grant Recipient, Grant Recipient will incorporate such comments in the final version of the report. Grant Recipient will submit two (2) paper copies and one (1) electronic copy of the final version of the final construction report.
- C. Annual Operations Reports. It shall be Grant Recipient's obligation to achieve and document the operations phase minimum metrics set forth in Exhibit A-1 below (which at a minimum must include the Category 4 metrics listed in Table C.2.3 of Appendix C.2 of ORECRFP22-1), for operation of the Project. Annual Operations Reports shall include information adequate for NYSERDA to assess (1) achievement of operations phase minimum metrics annually; (2) compliance with any environmental mitigation measures required pursuant to SEQRA or otherwise; (3) compliance with permits and regulatory approvals governing operation of the Project. Annual reporting periods shall begin upon the date of Substantial Completion. Annual Operations Reports shall be due to NYSERDA within thirty (30) days of the last day of each such annual reporting period.

## **VI. PREVAILING WAGE**

- A. Although the Project is not a public work covered by NYS Labor Law Article 8, unless otherwise provided in a PLA covering the construction of the Supply Chain Facility, Grant Recipient shall ensure that all laborers, workmen and mechanics (within the meaning of those terms under NYS Labor Law Article 8) constructing the Supply Chain Facility are paid wages and benefits in an amount not less than the Prevailing Rates that would be applicable in the area where the Project construction activities occur.
- B. For construction activities occurring in New York, the Prevailing Rates shall be determined under NYS Labor Law Section 220. For construction activities that occur outside of New York, the Prevailing Rates shall be determined under the prevailing wage law of the state in which the Project construction activities occur that would be applicable to a public work. For the avoidance of doubt, a laborer, workman or mechanic will be deemed to be based at the site where he or she performs Project work. The incidental presence at, or transit through, the site (or state in which the site is located) shall not dictate the applicable Prevailing Rates.
- C. Unless provided otherwise in any negotiated PLA, it is generally expected that covered construction, for the purpose of this Section, will include United States-based offsite fabrication traditionally performed on-site by construction craft when that fabrication produces items specifically designed for construction of the Supply Chain Facility, fabrication occurs off-site for the convenience of the contractor, and the fabrication is part of a single integrated construction process. This requirement applies: (1) to all laborers, workmen and mechanics performing construction activities, whether direct employees of the Grant Recipient or of Grant Recipient's Subcontractor(s), and (2) regardless of whether or not such employment was claimed as an Economic Benefit in Proposal.

## **VII. PROJECT LABOR AGREEMENT**

A. As of the date of this Agreement, Grant Recipient shall have presented to NYSERDA a plan outlining its intentions with respect to the negotiation of a PLA to cover construction of the Supply Chain Facility. NYSERDA should be kept reasonably apprised of negotiations as they proceed, and NYSERDA shall have the right to have one or more representatives attend negotiation sessions as it determines is in its best interests.

B. A final form of PLA, agreed to by Grant Recipient and the trades, consistent with the description in Exhibit F to this Agreement shall be presented to NYSERDA 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 J, 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 the date of this Agreement, unless otherwise agreed to by NYSERDA, 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.

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 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.

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 to the occurrence of 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;

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 A-1 Project Description**

Exhibit A-1 will include a detailed, approximately 7 to 10-page Project description that addresses the following:

1. Construction plan. List major permits, regulatory approvals, site access agreements and construction contracts that will be in place prior to the start of construction.
2. Project Description. (1) size and location of Project Site; (2) key planning, architectural and engineering professionals; (3) role of the Grant Recipient and Partners in building the Project; (4) descriptions of new and renovated buildings and other structures, including in-water structures; (5) purpose of new and renovated buildings and structures; (6) transportation and roadway improvements onsite or offsite; (7) new infrastructure and connections to existing infrastructure; (8) environmental mitigation required by the environmental review process or otherwise required by NYSERDA or other regulatory agencies—including climate and storm resiliency; and (9) a site plan.
3. Project description shall be drafted to reflect fact that NYSERDA will use this Project Description to determine Substantial Completion for the purposes of the second grant installment of 25%. Timeline and schedule for permits, regulatory approvals, site access, construction, completion and other relevant Project dates.
4. Description of any N.Y. Green Bank Financing and any other government funding that has been obtained for the Project.
5. Summary of need for the Grant and how Grant Recipient intends to use it for eligible expenditures as defined by ORECRFP22-1.
6. Summary of Partners and contracts with those Partners, including investors, operators, major contractors and their roles in building and operating the Project.
7. Detailed description of minimum construction phase and operations phase minimum metrics (which at a minimum must include the metrics listed in Table C.2.3 of Appendix C.2 of ORECRFP22-1), to be applied in accordance with Section IV.E.
8. Detailed discussion of plans for use of local supply chains and local suppliers of subcomponents. Document any contracts in place for supply.
9. Reporting on benefits to New York State. Detail expected efforts with regard to the following:
  - a. Project's ability to reduce costs to New York State electricity ratepayers through creation of this in-state Supply Chain Facility.
  - b. Project's ability to provide transition job opportunities, including worker retraining, to workers that may be displaced from other jobs as the State transitions to clean energy.
  - c. Opportunities for New York State Disadvantaged Communities, Service-Disabled Veteran Owned Businesses and MWBEs.

- d. Project efforts to use creative solutions to minimize imbedded greenhouse gas emissions in development and from operation of the Project.
  - e. Project ability to deliver greenhouse gas emissions reductions in New York State.
  - f. Number of clean energy generation projects (presented in megawatts or otherwise) that the Project is intended to serve.
  - g. Climate resiliency and adaptation designs, particularly for coastal projects.
  - h. Methodology for Grant Recipient to track, record, and monitor a. through g. Grant Recipient should specify in detail the measures that will be deployed and implemented and how the performance of those measures will be tracked.
10. Pricing Structure and Commitments: Details the products and services that the Project will supply when operational, pricing structures, and expected customers, clients and beneficiaries.

## 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 entity or entities possessing 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 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 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, 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 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) The delivery of Contract Security in accordance with Section XV of this Agreement.
- (c) [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 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) 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) 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) 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 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.

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 or guarantees such indebtedness provide that (i) if the exercise by lender (or any trustee or agent on behalf of such lender) of a remedy thereunder would result in the cessation of the completion of the Project or the foreclosure and sale of the existing Project, such lender (or such trustee or agent) shall not exercise such remedy without first providing NYSERDA not less than thirty (30) days (which period of time shall be in addition to the cure period provided to Grant Recipient thereunder) in which to cure the applicable default(s) and (ii) in the case of any default under such financing agreements, Grant Recipient shall have the right to prepay the outstanding amounts thereunder to cure any such defaults, after which any related lien or other security interest shall be released.

(b) In the event that NYSERDA elects to cure a default of the type described in clause (i) of Section 5.04(a) above, Grant Recipient shall cooperate with NYSERDA so that NYSERDA may use any funds available to it to cure any such default and pursue Substantial Completion.

(c) Grant Recipient further agrees that it shall deliver a copy of documentation governing any indebtedness that complies with Section 5.04(a)(i) and (ii) within three (3) Business Days of execution thereof and shall promptly deliver to NYSERDA copies of any notice of default received by Grant Recipient in connection therewith.

(d) Grant Recipient agrees to cooperate with NYSERDA to determine how to prevent the exercise of any such remedy which may result in termination of the work to complete the Project. NYSERDA agrees and acknowledges that the terms of this Section 5.04 shall not apply (A) to any obligations, contingent or otherwise, as an account party or applicant under or in respect of bankers' acceptances, letters of credit, surety bonds, warehouse receipt or similar facilities entered into by Grant Recipient in the ordinary course of business or (B) to any unsecured indebtedness owed by Grant Recipient to any affiliate or equity holder or to any indebtedness reflecting non-cash intercompany allocations of overhead and other parent-level costs, and, in each case of the foregoing clauses (A) – (B), replacements or refinancings of any such indebtedness.

Article VI.  
Schedule

Section 6.01 Schedule. The construction of the Supply Chain Facility shall be performed in material compliance with the schedule delivered to NYSERDA per Exhibit A-1 above as modified by the Grant Recipient from time to time. Grant Recipient shall deliver the progress, final and annual reports in accordance with the requirements of Exhibit A of this Agreement.

Article VII.  
Force Majeure

Section 7.01 Force Majeure. Neither Party hereto shall be liable for any failure or delay in the performance of its respective obligations hereunder if and to the extent that such delay or failure is due to a cause or circumstance beyond the reasonable control of such Party, including, without limitation, acts of God or the public enemy, expropriation or confiscation of land or facilities, compliance with any law, order or request of any Federal, State, municipal or local governmental authority, acts of war, rebellion or sabotage or damage resulting therefrom, fires, floods, storms, explosions, accidents, riots, strikes, or the delay or failure to perform by any Subcontractor (unless substantially due to the action or inaction of Grant Recipient such as failure to pay such Subcontractor) but with respect to delays or suspension of the construction of the Supply Chain Facility, not including any Change in Law or action of a permitting authority that would not qualify as an Excused Delay.

Article VIII.  
Rights in Information; Confidentiality

Section 8.01 Rights in Contract and Proprietary Information.

- (a) All Contract Information shall be the property of NYSERDA.
- (b) All Proprietary Information shall be the property of Grant Recipient.

(c) The use, public performance, reproduction, distribution, or modification of any materials used by Grant Recipient in the performance of this Agreement does not and will not violate the rights of any third parties, including, but not limited to, copyrights, trademarks, service marks, publicity, or privacy. The Grant Recipient shall be responsible for obtaining and paying for any necessary licenses to use any third-party content.

(d) The Grant Recipient agrees that to the extent it receives or is given any information from NYSERDA or a NYSERDA contractor or subcontractor, the Grant Recipient shall treat such data in accordance with any restrictive legend contained thereon or instructions given by NYSERDA, unless another use is specifically authorized by prior written approval of the NYSERDA Project Manager. Grant Recipient acknowledges that in the performance of its obligations under this Agreement, Grant Recipient may come into possession of personal information as that term is defined in Section 92 of the New York State Public Officers Law. Grant Recipient agrees not to disclose any such information without the consent of NYSERDA, except as required by law or the order of a court of competent jurisdiction.

(e) In conjunction with Grant Recipient's performance of the Project, NYSERDA or other entities may furnish Grant Recipient with information concerning the Project that is collected and stored by, or on behalf of, NYSERDA (the "Information"). The Grant Recipient must follow the policies and procedures outlined in the [New York State Information Classification Policy \(NYS-S14-002<sup>4</sup>\)](#) and the [New York State Information Security Controls Standard<sup>5</sup>](#).

Any non-public, confidential, or proprietary Information will be kept confidential and will not, without NYSERDA's prior written consent, be disclosed by Grant Recipient, Grant Recipient's agents, employees, contractors or professional advisors, in any manner whatsoever, in whole or in part, and will not be used by Grant Recipient, Grant Recipient's agents, employees, contractors or professional advisors other than in connection with the Project. Grant Recipient agrees to transmit the Information only to Grant Recipient's agents, employees, contractors and professional advisors who need to know the Information for that purpose and who are informed by Grant Recipient of the confidential nature of the Information and who will agree in writing to be bound by the terms and conditions of this Agreement.

The NYS Office of Information Technology Services (ITS) establishes and regularly updates policies, standards, and guidelines for technology and information security (collectively referred to as "ITS Security Policies") for State Entities, including NYSERDA. Grant Recipient shall conform to the requirements of ITS Security Policies when conducting work on behalf of NYSERDA including, but not limited to, application development, web development, hosting, or managing NYSERDA's sensitive data are required to comply with the NYS requirements. These requirements include, but are not

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<sup>4</sup> <https://its.ny.gov/document/information-classification-standard>

<sup>5</sup> <https://its.ny.gov/document/information-security-controls-standard>

limited to, the NYS Information Security Policy NYS-P03-002 which sets forth the minimum requirements, responsibilities, and accepted behaviors to establish and maintain a secure environment and achieve the State's information security objectives. In addition to this umbrella policy, the following standards establish specific minimum information security requirements:

- [Vulnerability Scanning Standard \(NYS-S15-002\)](#)
- [Security Logging Standard \(NYS-S14-005\)](#)
- [Patch Management Standard \(NYS-S15-001\)](#)
- [Encryption Standard \(NYS-S14-007\)](#)

A complete list of ITS Security Policies is available at: <https://its.ny.gov/tables/technologypolicyindex>.

Grant Recipient shall notify NYSERDA's Information Security Officer immediately upon discovery or notification of any security breaches or vulnerabilities:

- [information.security@nyserda.ny.gov](mailto:information.security@nyserda.ny.gov)
- (518) 862-1090 x3486

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.nyserda.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 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) it is familiar with and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;

(d) the design, supervision and workmanship furnished with respect to performance of the Project shall be in accordance with sound and currently accepted scientific standards and engineering practices;

(e) neither the Grant Recipient nor any of its employees, agents, representatives or servants has actual knowledge of any patent issued under the laws of the United States or any other matter which could constitute a basis for any claim that the performance of the Project or any part thereof infringes any patent or otherwise interferes with any other right of any Person;

(f) to the best of Grant Recipient's knowledge, there are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect the Project or NYSERDA's rights hereunder;

(g) it has no actual knowledge that any information or document or statement furnished by the Grant Recipient in connection with this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading, and that all facts have been disclosed that would materially adversely affect the ability to carry out the Project;

(h) all information provided to NYSERDA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate;

(i) Grant Recipient is familiar with and will comply with NYSERDA's Code of Conduct for Contractors, Consultants, and Vendors with respect to the performance of this Agreement, including, but not limited to, the provisions that ensure the appropriate use



of public funds by requiring Contractors, Consultants and Vendors to refrain from policy advocacy on behalf of NYSERDA unless explicitly authorized, and in the manner described, under the terms of their Agreement; and to refrain from providing advocacy positions or opinions of their own that could be construed as those of NYSERDA;

(j) Grant Recipient shall at all times during the Agreement term remain Responsible, and Grant Recipient agrees, if requested by NYSERDA, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity;

(k) Grant Recipient represents that there is and shall be no actual or potential conflict of interest that could prevent the Grant Recipient's performance of this Agreement in accordance with applicable law and the terms hereof. If Grant Recipient knows of, or learns of, any actual or potential conflict of interest concerning its performance of this Agreement, Grant Recipient shall notify NYSERDA;

(l) Grant Recipient (i) is a [specify corporate entity form] duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization; (ii) has or will have all requisite corporate power, and has or will have all material governmental permits necessary to execute and deliver this Agreement; and (iii) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary, except where failure to be so qualified could not reasonably be expected to have a material adverse effect on Grant Recipient; and

(m) that the execution, delivery and performance by Grant Recipient of and under this Agreement will not: (i) violate any applicable law or any provision of the limited liability company agreement or other governing documents of Grant Recipient; (ii) violate, conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default or an event of default under any material indenture, agreement, mortgage, deed of trust, note, lease, contract or other instrument to which Grant Recipient is a party or by which it or any of its property is bound; or (iii) result in the creation or imposition of any lien upon any property or assets of Grant Recipient, in the case of each of clauses (i)-(iii) except to the extent as would not result in a material adverse effect on Grant Recipient.

Article X.  
Indemnification

Section 10.01 Indemnification. The Grant Recipient shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to (i) this Project or (ii) Grant Recipient's or its Subcontractors' gross negligence, willful



misconduct or failure to comply with this Agreement. The obligations of the Grant Recipient under this Article shall survive any expiration or termination of this Agreement and shall not be limited by any enumeration herein of required insurance coverage.

Article XI.  
Insurance

Section 11.01 Maintenance of Insurance; Policy Provisions. The Grant Recipient, at no additional direct cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified in Section 11.02. All such insurance shall be evidenced by insurance policies, each of which shall:

- (a) except policies in evidence of insurance required under Section 11.02(b), name or be endorsed to cover NYSERDA, the State of New York and the Grant Recipient as additional insureds;
- (b) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and
- (c) be reasonably satisfactory to NYSERDA in all other respects.

Section 11.02 Types of Insurance. The types and amounts of insurance required to be maintained under this Article are as follows:

(a) Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster; and

(b) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State.

Section 11.03 Delivery of Policies; Insurance Certificates. Prior to commencing the Project, the Grant Recipient shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by Article XI hereof. In the event any policy furnished or carried pursuant to this Article will expire on a date prior to Substantial Completion, the Grant Recipient, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Contractor shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary

by NYSERDA due to events rendering a review necessary, upon request the Grant Recipient shall deliver to NYSERDA a certified copy of each policy.

Article XII.  
Termination and Remedies

Section 12.01 Termination. This Agreement may be terminated (each, a “Termination Event”):

(a) at any time by either NYSERDA or Grant Recipient if: (1) an Event of Default occurs (and following the expiration of any applicable cure period), (2) the Party seeking to terminate this Agreement hereunder is the non-defaulting Party, and (3) the non-defaulting Party has not waived such Event of Default in writing;

(b) at any time by the mutual written consent of Grant Recipient and NYSERDA;

(c) by NYSERDA, if at any time neither Grant Recipient nor the provider of a Repayment Guaranty in effect as of such time is an Acceptable Guarantor;

(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) 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.

(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 (i) Change in Law that frustrates the purpose of the Project or materially increases the Budget and (ii) the Parties are unable to reach 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 approval process, including SEQRA. NYSERDA's obligations to make payments to Grant Recipient are conditional on the acquisition by Grant Recipient of all such permits and approvals. Upon request by NYSERDA, Grant Recipient shall demonstrate such acquisition and/or provide copies of all permits and approvals acquired. Grant Recipient shall provide prompt Notice to NYSERDA of the initiation of any criminal or regulatory investigation, hearing, proceeding, or review process ("Process") by any federal or State entity regarding any actual or alleged violation of any permit or approval obtained or applied for with respect to the Project and/or the site, as well as of any modification, penalty and/or fine that may be imposed or occur as a result of such a Process or violation, in either case which actual or alleged violation, modification, penalty and or fine, if true or imposed, would substantially impair Grant Recipient's performance of its obligations under this Agreement.

Section 14.04 Other Legal Requirements. The references to particular laws of the State of New York in this Article, in Exhibit C and elsewhere in this Agreement are not intended to be exclusive and nothing contained in such Article, Exhibit and Agreement shall be deemed to modify the obligations of the Grant Recipient to comply with all legal requirements.

Section 14.05 Sexual Harassment Policy. The Grant Recipient and all Subcontractors must have a written sexual harassment prevention policy addressing sexual harassment in the workplace and must provide annual sexual harassment training to all employees.

#### Article XV.

#### Notices, Entire Agreement, Amendment, Counterparts

##### Section 15.01 Notices.

(a) All notices, requests, consents, approvals and other communications which may or are required to be given by either Party ("Notice") to the other under this Agreement shall be in writing and shall be transmitted either:

- (i) via certified or registered United States mail, return receipt requested;

- (ii) by personal delivery;
- (iii) by expedited delivery service; or
- (iv) by e-mail, return receipt requested.

Such Notice shall be addressed as follows, or to such different addresses as the parties may from time-to-time designate as set forth in paragraph (c) below:

**NYSERDA**

17 Columbia Circle  
Albany, New York 12203  
Attention: Office of the General Counsel  
Email: [ceslegal@nyserda.ny.gov](mailto:ceslegal@nyserda.ny.gov)

**Grant Recipient**

Name: [redacted]  
Title: [redacted]  
Address: [redacted]  
E-Mail Address: [redacted]

with a copy to (which shall not constitute notice):

[legal counsel]  
[redacted]  
[redacted]  
[redacted]

(b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

(c) The Parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other Party sent in accordance herewith. The Parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the Parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

Section 15.02 Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between NYSERDA and the Grant Recipient and supersedes all prior agreements and understandings relating to the subject matter hereof. Except for no-cost time extensions, which may be signed by NYSERDA and require no

counter-signature by the Grant Recipient, and except as otherwise expressly provided for herein, this Agreement may be changed, waived, discharged or terminated only by an instrument in writing, signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

Section 15.03 Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

## Article XVI. Publicity

### Section 16.01 Publicity.

(a) The Grant Recipient shall collaborate with NYSERDA's Director of Communications (or its designee) to prepare any press release and to plan for any news conference concerning the Project. In addition, the Grant Recipient shall notify NYSERDA's Director of Communications (or its designee) regarding any media interview in which the Project are referred to or discussed.

(b) It is recognized that Grant Recipient or its employees may from time-to-time desire to publish information regarding scientific or technical developments made or conceived in the course of or under this Agreement. In any such information, the Grant Recipient shall credit NYSERDA's funding participation in the Project and shall state that "NYSERDA has not reviewed the information contained herein, and the opinions expressed in this report do not necessarily reflect those of NYSERDA or the State of New York." Notwithstanding anything to the contrary contained herein, the Grant Recipient shall have the right to use and freely disseminate project results for educational purposes, if applicable, consistent with the Grant Recipient's policies.

(c) Commercial promotional materials or advertisements produced by the Grant Recipient shall credit NYSERDA, as stated above, and shall be submitted to NYSERDA for review and recommendations to improve their effectiveness prior to use. The wording of such credit can be approved in advance by NYSERDA, and, after initial approval, such credit may be used in subsequent promotional materials or advertisements without additional approvals for the credit, provided, however, that all such promotional materials or advertisements shall be submitted to NYSERDA prior to use for review, as stated above. Such approvals shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Grant Recipient within thirty (30) days after receipt of request for approval, the promotional materials or advertisement shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Grant Recipient within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to one hundred and eighty (180) days. If

NYSERDA and the Grant Recipient do not agree on the wording of such credit in connection with such materials, the Grant Recipient may use such materials, but agrees not to include such credit.

## EXHIBIT C

REVISED 12/19

### STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

(Based on Standard Clauses for New York State Contracts and Tax Law Section 5-a)

The Parties to the Agreement agree to be bound by the following clauses which are hereby made a part of the Agreement to the extent applicable:

1. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Grant Recipient will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is an Agreement for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Agreement shall be performed within the State of New York, Grant Recipient agrees that neither it nor its Subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. If this is a building service Agreement as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Grant Recipient agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Grant Recipient is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second subsequent violation.

2. WAGE AND HOURS PROVISIONS. If this is a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement covered by Article 9 thereof, neither Grant Recipient's employees nor the employees of its Subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Grant Recipient and its Subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective



April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Grant Recipient understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

3. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 2878 of the Public Authorities Law, if this Agreement was awarded based upon the submission of bids, Grant Recipient warrants, under penalty of perjury, that its bid (or the bid of its affiliate) was arrived at independently and without collusion aimed at restricting competition. Grant Recipient further warrants that, at the time Grant Recipient (or its affiliate) submitted a bid, an authorized and responsible person executed and delivered to NYSERDA a non-collusive bidding certification on behalf of Grant Recipient or its affiliate.

4. INTERNATIONAL BOYCOTT PROHIBITION. If this Agreement exceeds \$5,000, the Grant Recipient agrees, as a material condition of the Agreement, that neither the Grant Recipient nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 U.S.C. App. Sections 2401 et seq.) or regulations thereunder. If such Grant Recipient, or any of the aforesaid affiliates of Grant Recipient, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Agreement's execution, such Agreement, amendment or modification thereto shall be rendered forfeit and void. The Grant Recipient shall so notify NYSERDA within five (5) business days of such conviction, determination or disposition of appeal. (See and compare Section 220-f of the Labor Law, Section 139-h of the State Finance Law, and 2 NYCRR 105.4).

5. SET-OFF RIGHTS. NYSERDA shall have all of its common law and statutory rights of set-off. These rights shall include, but not be limited to, NYSERDA's option to withhold for the purposes of set-off any moneys due to the Grant Recipient under this Agreement up to any amounts due and owing to NYSERDA with regard to this Agreement, any other Agreement, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to NYSERDA for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

6. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Grant Recipient and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law ("FOIL," Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is statutorily

exempt from disclosure. Therefore, unless the Agreement specifically requires otherwise, Grant Recipient should submit information to NYSERDA in a non-confidential, non-proprietary format. FOIL does provide that NYSERDA may deny access to records or portions thereof that “are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise.” See Public Officers Law, § 87(2)(d). Accordingly, if the Agreement specifically requires submission of information in a format Grant Recipient considers a proprietary and/or confidential trade secret, Grant Recipient shall fully identify and plainly label the information “confidential” or “proprietary” at the time of disclosure. By so marking such information, Grant Recipient represents that the information has actual or potential specific commercial or competitive value to the competitors of Grant Recipient or its affiliates. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA’s policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. -More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<http://www.dos.ny.gov/about/foil2.html>) and NYSERDA’s Regulations, Part 501 <http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx> .

7. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. As a condition to NYSERDA’s obligation to pay any invoices submitted by Grant Recipient pursuant to this Agreement, Grant Recipient shall provide to NYSERDA its Federal employer identification number or Federal social security number, or both such numbers when the Grant Recipient has both such numbers. Where the Grant Recipient does not have such number or numbers, the Grant Recipient must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by Grant Recipient to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

8. CONFLICTING TERMS. In the event of a conflict between the terms of the Agreement (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit C, the terms of this Exhibit C shall control.

9. GOVERNING LAW. This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

10. NO ARBITRATION. Disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily required) without the NYSERDA's written consent, but must, instead, be heard in a court of competent jurisdiction of the State of New York.

11. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), Grant Recipient hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Grant Recipient's actual receipt of process or upon NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Grant Recipient must promptly notify NYSERDA, in writing, of each and every change of address to which service of process can be made. Service by NYSERDA to the last known address shall be sufficient. Grant Recipient will have thirty (30) calendar days after service hereunder is complete in which to respond.

12. CRIMINAL ACTIVITY. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of any allegation previously unknown to it that the Grant Recipient or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Grant Recipient's proposal to NYSERDA, convicted of a felony, under the laws of the United States or Territory of the United States, then NYSERDA may exercise its stop work right under this Agreement. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of the fact, previously unknown to it, that Grant Recipient or any of its principals is under such indictment or has been so convicted, then NYSERDA may exercise its right to terminate this Agreement. If the Grant Recipient knowingly withheld information about such an indictment or conviction, NYSERDA may declare the Agreement null and void and may seek legal remedies against the Grant Recipient and its principals. The Grant Recipient or its principals may also be subject to penalties for any violation of law which may apply in the particular circumstances. For a Grant Recipient which is an association, partnership, corporation, or other organization, the provisions of this paragraph apply to any such indictment or conviction of the organization itself or any of its officers, partners, or directors or members of any similar governing body, as applicable.

13. PERMITS. It is the responsibility of the Grant Recipient to acquire and maintain, at its own cost, any and all permits, licenses, easements, waivers and permissions of every nature necessary to perform the work.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Grant Recipient certifies and warrants that all wood products to be used under this Agreement will be in accordance with, but not limited to, the specifications and provisions of State Finance Law Section 165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by NYSERDA.

15. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
625 Broadway  
Albany, New York 12207  
Telephone: 518-292-5200  
Fax: 518-292-5884  
<http://www.esd.ny.gov>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
625 Broadway  
Albany, New York 12207  
Telephone: 518-292-5200  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this Agreement, Grant Recipients certify that whenever the total amount is greater than \$1 million:

(a) The Grant Recipient has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Grant Recipient has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Grant Recipient agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Grant Recipient agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Grant Recipient acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

16. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

17. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Grant Recipient shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

18. PROCUREMENT LOBBYING. To the extent this Agreement is a “procurement contract” as defined by State Finance Law Sections 139-j and 139-k, by signing this Agreement the Grant Recipient certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, NYSERDA may terminate the agreement by providing written notification to the Grant Recipient in accordance with the terms of the agreement.

19. COMPLIANCE WITH TAX LAW SECTION 5-a. The following provisions apply to Grant Recipients that have entered into agreements in an amount exceeding \$100,000 for the purchase of goods and services:

- a) Before such agreement can take effect, the Grant Recipient must have on file with the New York State Department of Taxation and Finance a Grant Recipient Certification form (ST-220-TD).

- b) Prior to entering into such an agreement, the Grant Recipient is required to provide NYSERDA with a completed Grant Recipient Certification to Covered Agency form (Form ST-220-CA).
- c) Prior to any renewal period (if applicable) under the agreement, the Grant Recipient is required to provide NYSERDA with a completed Form ST-220-CA.

Certifications referenced in paragraphs (b) and (c) above will be maintained by NYSERDA and made a part hereof and incorporated herein by reference.

NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Grant Recipient in accordance with Tax Law Section 5-a was false when made.

20. IRANIAN ENERGY SECTOR DIVESTMENT. In accordance with Section 2879-c of the Public Authorities Law, by signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law (See <https://ogs.ny.gov/iran-divestment-act-2012>).

21. COMPLIANCE WITH NEW YORK STATE DIESEL EMISSION REDUCTION ACT (DERA) OF 2006. Grant Recipient shall comply with and, if applicable to this Agreement, provide proof of compliance with the New York State Diesel Emission Reduction Act of 2006 (“DERA”), Environmental Conservation Law (ECL) Section 19-0323, and the NYS Department of Environmental Conservation (DEC) Law implementing regulations under 6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel Fuel (ULSD) and Best Available Retrofit Technology (“BART”). Compliance includes, but is not limited to, the development of a heavy-duty diesel vehicle (HDDV), maintaining documentation associated with BART evaluations, submitting to and receiving DEC approval of a technology or useful-life waiver, and maintaining records where BART-applicable vehicles are primarily located or garaged. DEC regulation under 6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel and Best Available Technology for Heavy Duty Vehicles can be found at: <https://www.dec.ny.gov/regs/2492.html>.

22. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Grant Recipient acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, regardless of whether the original of said contract is in existence.



## EXHIBIT D

### NYSERDA PROMPT PAYMENT POLICY STATEMENT

**504.1. Purpose and Applicability.** (a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations.<sup>6</sup>

(b) This Exhibit applies generally to payments due and owing by NYSERDA to the Grant Recipient pursuant to this Agreement. However, this Exhibit does not apply to Payments due and owing when NYSERDA is exercising a Set-Off against all or part of the Payment, or if a State or Federal law, rule or regulation specifically requires otherwise.

**504.2. Definitions.** Capitalized terms not otherwise defined in this Exhibit shall have the same meaning as set forth earlier in this Agreement. In addition to said terms, the following terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) "Date of Payment" means the date on which NYSERDA requisitions a check from its statutory fiscal agent, the Department of Taxation and Finance, to make a Payment.

(b) "Designated Payment Office" means the Office of NYSERDA's Controller, located at 17 Columbia Circle, Albany, New York 12203.

(c) "Payment" means payment properly due and owing to Grant Recipient pursuant to Article IV, Exhibit B of this Agreement.

(d) "Payment Due Date" means the date by which the Date of Payment must occur, in accordance with the provisions of Sections 504.3 through 504.5 of this Exhibit, in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(e) "Prompt Payment" means a Payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Exhibit in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(f) "Proper Invoice" means a written request for Payment that is submitted by a Grant Recipient setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating

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<sup>6</sup> This is only a summary; the full text of Part 504 can be accessed at: <http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx>

documentation, as NYSERDA may reasonably require, including but not limited to any requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

(g)(1) "Receipt of an Invoice" means:

(i) if the Payment is one for which an invoice is required, the later of:

(a) the date on which a Proper Invoice is actually received in the Designated Payment Office during normal business hours; or

(b) the date by which, during normal business hours, NYSERDA has actually received all the purchased goods, property or services covered by a Proper Invoice previously received in the Designated Payment Office.

(ii) if the Agreement provides that a Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice the 30th calendar day, excluding legal holidays, before the date so specified or predetermined.

(2) For purposes of this subdivision, if the Agreement requires a multifaceted, completed or working system, or delivery of no less than a specified quantity of goods, property or services and only a portion of such systems or less than the required goods, property or services are working, completed or delivered, even though the Grant Recipient has invoiced NYSERDA for the portion working, completed or delivered, NYSERDA will not be in Receipt of an Invoice until the specified minimum amount of the systems, goods, property or services are working, completed or delivered.

(h) "Set-off" means the reduction by NYSERDA of a payment due a Grant Recipient by an amount equal to the amount of an unpaid legally enforceable debt owed by the Grant Recipient to NYSERDA.

**504.3. Prompt Payment Schedule.** Except as otherwise provided by law or regulation or in Sections 504.4 and 504.5 of this Exhibit, the Date of Payment by NYSERDA of an amount properly due and owing under this Agreement shall be no later than thirty (30) calendar days, excluding legal holidays, after Receipt of a Proper Invoice.

**504.4. Payment Procedures.**

(a) Unless otherwise specified in this Agreement, a Proper Invoice submitted by the Grant Recipient to the Designated Payment Office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the Designated Payment Office during normal business hours, such invoice shall be date-stamped. The



invoice shall then promptly be reviewed by NYSERDA.

(b) NYSERDA shall notify the Grant Recipient within fifteen (15) calendar days after Receipt of an Invoice of:

- (1) any defects in the delivered goods, property or services;
- (2) any defects in the invoice; or
- (3) suspected improprieties of any kind.

(c) The existence of any defects or suspected improprieties shall prevent the commencement of the time period specified in Section 504.3 until any such defects or improprieties are corrected or otherwise resolved.

(d) If NYSERDA fails to notify a Grant Recipient of a defect or impropriety within the fifteen (15) calendar day period specified in subdivision (b) of this Section, the sole effect shall be that the number of days allowed for Payment shall be reduced by the number of days between the 15th day and the day that notification was transmitted to the Grant Recipient. If NYSERDA fails to provide reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the Payment Due Date shall be calculated using the original date of Receipt of an Invoice.

(e) In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution of a defect or suspected impropriety, NYSERDA shall make Payment, consistent with any such correction or resolution and the provisions of this Exhibit.

**504.5. Exceptions and Extension of Payment Due Date.** NYSERDA has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Exhibit, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the Payment Due Date:

(a) If this Agreement provides Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice, if any documentation, supporting data, performance verification, or notice specifically required by this Agreement or other State or Federal mandate has not been submitted to NYSERDA on a timely basis, then the Payment Due Date shall be extended by the number of calendar days from the date by which all such matter was to be submitted to NYSERDA and the date when NYSERDA has actually received such matter.

(b) If an inspection or testing period, performance verification, audit or other review or documentation independent of the Grant Recipient is specifically required by this Agreement or by other State or Federal mandate, whether to be performed by or on

behalf of NYSERDA or another entity, or is specifically permitted by this Agreement or by other State or Federal provision and NYSERDA or other entity with the right to do so elects to have such activity or documentation undertaken, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when any such activity or documentation has been completed, NYSERDA has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

(c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the Contract, prior to Payment, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when the State or Federal agency, or other contributing party to the Contract, has completed the inspection, advised NYSERDA of the results of the inspection, and any deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.

(d) If appropriated funds from which Payment is to be made have not yet been appropriated or, if appropriated, not yet been made available to NYSERDA, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when such funds are made available to NYSERDA.

**504.6. Interest Eligibility and Computation.** If NYSERDA fails to make Prompt Payment, NYSERDA shall pay interest to the Grant Recipient on the Payment when such interest computed as provided herein is equal to or more than ten dollars (\$10.00). Interest shall be computed and accrue at the daily rate in effect on the Date of Payment, as set by the New York State Tax Commission for corporate taxes pursuant to Section 1096(e)(1) of the Tax Law. Interest on such a Payment shall be computed for the period beginning on the day after the Payment Due Date and ending on the Date of Payment.

**504.7. Sources of Funds to Pay Interest.** Any interest payable by NYSERDA pursuant to Exhibit shall be paid only from the same accounts, funds, or appropriations that are lawfully available to make the related Payment.

**504.8. Incorporation of Prompt Payment Policy Statement into Contracts.** The provisions of this Exhibit shall apply to all Payments as they become due and owing pursuant to the terms and conditions of this Agreement, notwithstanding that NYSERDA may subsequently amend its Prompt Payment Policy by further rulemaking.

**504.9. Notice of Objection.** Grant Recipient may object to any action taken by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to NYSERDA. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and

Development Authority, at the notice address set forth in Exhibit B to this Agreement. The Vice President of NYSERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSERDA's action. Within fifteen (15) working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the Grant Recipient either that NYSERDA's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed thirty (30) working days.

**504.10. Judicial Review.** Any determination made by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid is subject to judicial review in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules. Such proceedings shall only be commenced upon completion of the review procedure specified in Section 504.9 of this Exhibit or any other review procedure that may be specified in this Agreement or by other law, rule, or regulation.

**504.11. Court Action or Other Legal Processes.**

(a) Notwithstanding any other law to the contrary, the liability of NYSERDA to make an interest payment to a Grant Recipient pursuant to this Exhibit shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.

(b) With respect to the court action or other legal processes referred to in subdivision (a) of this Section, any interest obligation incurred by NYSERDA after the date specified therein pursuant to any provision of law other than Public Authorities Law Section 2880 shall be determined as prescribed by such separate provision of law, shall be paid as directed by the court, and shall be paid from any source of funds available for that purpose.

Exhibit E

~~[This exhibit is being finalized to incorporate stakeholder feedback. This document will be updated on NYSERDA's 2022 Offshore Wind Solicitation page, and stakeholders will be~~

~~notified by email.]~~ Progress Report

[GRANT RECIPIENT]

Date: [March/June/September/December] 1, 20[XX]

Dear NYSERDA Offshore Wind Team,

[GRANT RECIPIENT] submits this Progress Report pursuant to Article V of the Grant Form Agreement (“the Agreement”) between the New York State Energy Research and Development Authority (“NYSERDA”) and Grant Recipient.

Pursuant to Article VIII of the Agreement, all information enclosed herein that Grant Recipient wishes to protect from disclosure to third parties has been marked “confidential” or “proprietary.” Grant Recipient acknowledges that NYSERDA is subject to and must comply with the requirements of New York’s Freedom of Information Law (“FOIL”). See Public Officers’ Law Article 6.

I, the undersigned certify that I am an Officer or otherwise authorized representative of Grant Recipient, that I am authorized to provide this Progress Report on behalf of Grant Recipient and that all statements herein are true and accurate.

Grant Recipient’s Authorized Representative: \_\_\_\_\_

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

Representative Signature: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

Instructions:

*Please complete and submit this Progress Report by 5:00 p.m. ET as of the Date referenced above to (1) NYSERDA’s designated Contract Manger via email, and (2) to NYSERDA’s Offshore Wind Contract Management SharePoint Platform via the link: [INSERT LINK] NYSERDA’s Offshore Wind Team will confirm its receipt pending review and approval via email to NYSERDA’s designated Contract Manager. Updates in summary form should be provided to the maximum extent possible in each section. Activities where no update is relevant or where status remains unchanged should be acknowledged as “No Update” in the Summary and the relevant appendix is not required. NYSERDA reserves the right to provide comment and/solicit updates to ensure satisfactory assessment of project progress pursuant to the Agreement.*



1. Status of Development and/or Construction Planning or Activities

[Insert Update]

Please attach an updated project schedule as Appendix A.1 to this report showing original schedule and identifying change in dates. The update should outline the percentage completed and projected percentage of completion of performance by calendar quarter - may be presented as a bar chart or milestone chart

Please attach an updated financing plan as Appendix A.2 to this report. An analysis of actual costs incurred in relation to the budget and should align with procurement report from section 8 of the progress report.

Please attach updated state and or federal grants/loans/other submissions and/or awards as Appendix A.3 to this report.

Please attach an updated Site Layout Plan including links to associated Shape Files as Appendix A. to this report.

Please attach Construction Progress Report including Site / Installation Photos as Appendix A.5 to this report.

Please attach any findings, data, analyses, results and field-test results from all tasks carried out in the covered period as Appendix A.6.

Please attach planned work for the next reporting period as Appendix A.7.

Please attach any identified problems and the planned or proposed solution to identified problems as Appendix A.8.

2. Progress in Obtaining All Required Environmental or Other Permits and/or Local Approvals and Environmental Mitigation Plans;

[Insert update]

Please attach any Federal and/or State and/or Local permitting/approval applications as filed within the previous quarter as Appendix B.1 to this report.

Please attach the current version (including Mitigation Plan version number) of the Environmental Mitigation Plan as Appendix B.2 to this report.

If the version has changed since the last Progress Report after consultation with NYSERDA, please attach a redline update of the Environmental Mitigation Plan as Appendix B.3 to this report.

Please attach the number of Distinct Engagements and Feedback from Environmental Industry Representatives B.4 to this report.



Effective Date: [MM.DD.YYYY]

3. Activities Undertaken pursuant to Project Stakeholder Engagement Plan (Appendix C.2 section C.6) to track progress and communications including Upcoming Meetings and Known Outreach Activities for the Next Quarter.

Using elements from the Project’s Stakeholder Engagement Plan, please provide specific details on tracking Stakeholder Engagement for the current Quarter and for the upcoming quarterly reporting period as Appendix C.1 to this report. Feedback and outcomes from engagements should be reported.

Please attach a list of completed meetings, outreach activities, and outcomes including Consultations with NYS Agencies and Technical Working Group (TWG) Participation for the previous quarter including outcomes as Appendix C.2 to this report.

<u>Organization Type</u>	<u>Engagement Type</u>	<u>Goal/Subject of Engagement</u>	<u>Marketing Ahead of Event</u>	<u>Attendance Targeted</u>	<u>Final Attendance</u>	<u>Date of Event</u>	<u>Follow-Up Material Provided</u>

Using elements from the Project’s Stakeholder Engagement Plan, please provide specific details on tracking Stakeholder Marketing Efforts for the current Quarter and for the upcoming quarterly reporting period as C.3 to this report.

<u>Project detail to be communicated: Project status, schedule change, or employment opportunity</u>	<u>Marketing Campaign Method</u>	<u>Frequency of Communication or Marketing Collateral</u>	<u>Feedback or Inquiries from campaign</u>	<u>Dates and Duration of Campaign</u>	<u>Location of Campaign</u>
<u>Project Permitting</u>					
<u>Project Construction</u>					



Effective Date: [MM.DD.YYYY]

<a href="#">Project Employment Opportunity</a>					
<a href="#">Project Operation Impact</a>					

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.

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



Effective Date: [MM.DD.YYYY]

<u>Activity + EB [2,4,5] ID</u>	<u>Expenses (non-NYS Funding)</u>	<u>Eligible Expenses (non-NYS Funding)</u>	<u>Reporting Period</u>			<u>non-NYS Funding</u>

*Total tally in E.1.*

*Please attach an updated summary of any New York State DAC Benefits delivered, and SDVOBS/MWBES engaged (live templates to be provided by NYSERDA) as Appendix E.2 to this report.*

*Please attach a list of **upcoming activities, tenders, supplier/buyer engagements, awards** related to Projects Economic Benefits Plan as Appendix E.3 to this report.*

6. Status of Grant Recipient’s activities associated with Sub-Components and the New York State Supplier Opportunity

[Insert Update]

*Please attach a summary update of the development of the commodity catalogue as well as the updated document as Appendix F.1. The commodity catalogue will articulate the following for major and minor Sub-components and services – description of Sub-component or service; key characteristics; process steps; technical criteria and special commercial considerations.*

*Please attach a description and status of the supplier engagement obligated or proposed sub-component items in terms of cost and lead times to be localized.*

<u>Sub-component</u>	<u>Purpose</u>	<u>Number of Jobs</u>	<u>Timeline to Localize</u>	<u>Where does Capacity exist?<sup>2</sup></u>

*Please attach a summary of communication efforts and outcomes for all opportunities for contracts with an anticipated contract value of \$1 million or greater to the New York State Supplier Database, as Appendix F.2 to this report. Note per the terms of ORECRFP22-1 Section 2.2.13 this includes the communication efforts for goods or services directly tendered by the Grant Recipient or from goods and services tendered by its Major Suppliers.*

*Please attach a summary of exemptions for the provision of goods and services that cannot practically be performed by the New York State supply chain at this time as Appendix F.3 to this report.*

*Please attach a list of hosted and upcoming Supplier Forums for NYS firms including proof of planning activities, event venues, date selection, attendance as Appendix F.4 to this report.*





7. Industry Growth Activities

Please attach a summary related to specific Industry Growth Activities committed to the Project as Appendix F.1 to this report. The summary should include updates on key performance indicators agreed to for each activity. At the least meeting dates and attendees, negotiating of contracts, establishment of facilities, steering members and board members, hiring of employees, establishment of funds, dollars spent, R&D challenge areas, submitted proposals, awarded proposals, launch dates, workers trained, etc. should be included.

<u>Industry Growth Activity</u>	<u>Expected First investment (month/year)</u>	<u>KPI</u>	<u>KPI</u>	<u>KPI</u>

8. Estimated Date for Commercial Operation

[Insert Update]

Please attach Estimated Date for Commercial Operation as Appendix G.1. Note this date must align with information provided in Appendix A.1

9. New York Jobs & Workforce Plan for SCIP Activity

Please attach an updated hiring summary schedule including New York State hiring as Appendix H.1 to this report. Hiring summary should highlight the number of new jobs created AND filled in New York State per quarter and should outline the ramp-up of the SCIP activity.

10. Green Infrastructure and Responsible Development Performance Monitoring once Activity is in Commercial Operation

Please attach data/evidence of quarterly carbon savings based on agreed upon measures that were deployed and implemented and how the performance of those measures will be tracked of the project over the last quarter (if applicable) as Appendix I.1 to this report.



**NYSERDA**

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and [DEVELOPER]

Effective Date: [MM.DD.YYYY]

[Appendix \[A.1\] Updated Project Schedule](#)

[\[Insert Update\]](#)



Offshore Wind Renewable Energy Certificate  
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Effective Date: [MM.DD.YYYY]

[Appendix \[A.2\] Updated Financing Plan](#)

[\[Insert Update\]](#)



**NYSERDA**

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and [DEVELOPER]

Effective Date: [MM.DD.YYYY]

Appendix [A.3] Updates on Federal or State Grants/loans/other and Approvals

<u>Description</u>	<u>Planned</u>	<u>Progress</u>	<u>Date of Award and/or associated approval</u>



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Effective Date: [MM.DD.YYYY]

[Appendix \[A.4\] Updated Site Layout Plan](#)

[\[Insert Update\]](#)



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Effective Date: [MM.DD.YYYY]

[Appendix \[A.5\] Updated Construction Progress Report including Site / Installation  
Photos](#)

[\[Insert Update\]](#)



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Effective Date: [MM.DD.YYYY]

[Appendix \[A.6\] Finding, data, analyses, results and field-test results from all tasks carried out.](#)

[\[Insert Update\]](#)



**NYSERDA**

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Effective Date: [MM.DD.YYYY]

[Appendix \[A.7\] Planned work for the next reporting period](#)

[\[Insert Update\]](#)





**NYSERDA**

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Effective Date: [MM.DD.YYYY]

[Appendix \[A.8\] Any identified problems and the planned or proposed solution to identified problems](#)

[\[Insert Update\]](#)



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Effective Date: [MM.DD.YYYY]

Appendix [B.1] Federal and/or State and/or Local Applications

<u>Description</u>	<u>Planned</u>	<u>Progress</u>	<u>Approval Status</u>



**NYSERDA**

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Effective Date: [MM.DD.YYYY]

[Appendix \[B.2\] Environmental Mitigation Plan Update](#)

[\[Insert Update\]](#)



**NYSERDA**

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and [DEVELOPER]

Effective Date: [MM.DD.YYYY]

[Appendix \[B.3\] Redline Update Environmental Mitigation Plan](#)

[\[Insert Update\]](#)



**NYSERDA**

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Effective Date: [MM.DD.YYYY]

[Appendix \[B.4\] Number of Distinct Engagements and Feedback from  
Environmental Industry Representatives](#)

[\[Insert Update\]](#)



Effective Date: [MM.DD.YYYY]

Appendix [C.1] Stakeholder Engagement for the current Quarter and for the upcoming quarterly reporting period

[Insert Update]

<u>Organization Type</u>	<u>Engagement Type</u>	<u>Goal/Subject of Engagement</u>	<u>Marketing Ahead of Event</u>	<u>Attendance Targeted</u>	<u>Final Attendance</u>	<u>Date of Event</u>	<u>Follow-Up Material Provided</u>



Effective Date: [MM.DD.YYYY]

Appendix [C.2] Please attach a list of completed meetings, outreach activities, and outcomes including Consultations with NYS Agencies and Technical Working Group (TWG) Participation for the previous quarter including outcomes

[Insert Update]

<u>Organizational Type</u>	<u>Engagement Type</u>	<u>Goal/Subject of Engagement</u>	<u>Marketing Ahead of Event</u>	<u>Attendance Targeted</u>	<u>Final Attendance</u>	<u>Date of Event</u>	<u>Follow-Up Material Provided</u>



Effective Date: [MM.DD.YYYY]

Appendix [C.3] Please provide specific details on tracking stakeholder marketing efforts for the current quarter and for the upcoming quarterly reporting period

<u>Project detail to be communicated: Project status, schedule change, or employment opportunity</u>	<u>Marketing Campaign Method</u>	<u>Frequency of Communication or Marketing Collateral</u>	<u>Feedback or Inquiries from campaign</u>	<u>Dates and Duration of Campaign</u>	<u>Location of Campaign</u>
<u>Project Permitting</u>					
<u>Project Construction</u>					
<u>Project Employment Opportunity</u>					
<u>Project Operation Impact</u>					





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Effective Date: [MM.DD.YYYY]

[Appendix \[D.1\] Job Reporting: Project Labor Agreement](#)

[\[Insert Update\]](#)



**NYSERDA**

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Effective Date: [MM.DD.YYYY]

[Appendix \[D.2\] Job Reporting: Attestation](#)

[\[Insert Update\]](#)





Appendix [D.2] New York State Supplier Opportunity Activities Summary

Appendix D.2.1: Overall Summary

<u>Activities</u>	<u>Date</u>

<u>New York State suppliers that have been awarded contracts since last quarterly report</u>

Appendix D.2.2: Project MWBE/SDVOB Utilization Update

<u><b>Commitment to Diversity, Equity, and Inclusion Information:</b> Please include information related to the <b>Grant Recipient, and each contractor's and subcontractor's</b> (over \$500,000) adoption of practices and policies that promote diversity, equity and inclusion.</u>	<u>Responses</u>
<u>Does your company have a policy to respond to incidents of discrimination?</u>	
<u>Does your company have employee diversity training or diversity awareness events?</u>	
<u>Does your company have strategies, policies, or programs to increase the number of:</u>	
<u>1. female hires?</u>	
<u>2. minority hires?</u>	
<u>3. LGBTQ+ hires?</u>	
<u>4. veteran hires?</u>	
<u>Does your company have a supplier diversity program, or a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives?</u>	
<u>Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program?</u>	
<u>Does your company have the following policies or programs?</u>	
<u>1. Mentorship programs for women</u>	
<u>2. Mentorship programs for minorities</u>	
<u>3. Mentorship programs for veterans</u>	
<u>4. Mentorship programs for LGBTQ+</u>	
<u>5. Promotion policies for women</u>	
<u>6. Promotion policies for minorities</u>	
<u>7. Promotion policies for veterans</u>	
<u>8. Promotion policies for LGBTQ+</u>	



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List all MWBE/SDVOB Subcontractors Name, address, phone number, and email address for each subcontractor. <i>(Check appropriate box if firm is a certified MBE/WBE/SDVOB)</i>	Certifications/ Designations	Estimated Start/End Date	Agreement Amount	Brief Description of Work to be Performed
	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB	Start Date: <input type="text"/> End Date: <input type="text"/>	\$ <input type="text"/>	



**NYSERDA**

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Effective Date: [MM.DD.YYYY]

[Appendix \[E.3\] Upcoming Activities Related to New York State Economic Benefit](#)

[\[Insert Update\]](#)



**NYSERDA**

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Effective Date: [MM.DD.YYYY]

[Appendix \[F.1\] Commodity Catalogue Sub-component Item Localization](#)

<u>Sub-component</u>	<u>Purpose</u>	<u>Number of Jobs</u>	<u>Timeline to Localize</u>	<u>Where does Capacity exist?</u>



**NYSERDA**

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Effective Date: [MM.DD.YYYY]

Appendix [F.2] New York State Supplier Opportunity

<u>Procurement Process</u>	<u>Communication Efforts and Outcomes</u>

[Insert Update]





**NYSERDA**

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Effective Date: [MM.DD.YYYY]

[Appendix \[F.3\] New York State Supplier Opportunity Exemptions](#)

<u>Procurement Process</u>	<u>Reason for Exemption</u>



**NYSERDA**

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Effective Date: [MM.DD.YYYY]

[Appendix \[F.4\] Host Supplier Forums and upcoming Forums](#)

[\[Insert Update\]](#)



**NYSERDA**

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Effective Date: [MM.DD.YYYY]

[Appendix \[G.1\] List Industry Growth Activities](#)

[\[Insert Update\]](#)



Offshore Wind Renewable Energy Certificate  
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Effective Date: [MM.DD.YYYY]

[Appendix \[H.1\] New York Jobs & Workforce Plan](#)

[\[Insert Update\]](#)



Offshore Wind Renewable Energy Certificate  
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and [DEVELOPER]

Effective Date: [MM.DD.YYYY]

[Appendix \[I.1\] Quarterly Carbon Savings Metrics](#)

[\[Insert Update\]](#)

## **Exhibit F**

### **PROJECT LABOR AGREEMENT REQUIREMENTS**

The PLA presented to NYSERDA for review and approval pursuant to this Grant Agreement should address:

Provisions that appropriately limit applicability of the PLA to United States-based (including Federal waters) covered work on the Project (and not extending to any other work performed by contractors and Subcontractors, or to the work of their affiliated entities), ensuring that Project contractors or Subcontractors are not required to become a signatory to any other labor agreement, and appropriately providing for the supremacy of the PLA over any potentially conflicting labor agreements that might otherwise apply to contractors and Subcontractors. The PLA must apply to all covered construction and all contractors and Subcontractors, of whatever tier, performing construction work on the Project (subject to appropriate exceptions), and the PLA should be available to all contractors and Subcontractors, of whatever tier, regardless of their union affiliation;

Provisions for appropriate union recognition and security (limited to Project work) and the referral of skilled craft workers, including provisions for staffing in the event qualified referrals are not reasonably available and for the reasonable use of a number of core employees by contractors and Subcontractors (regardless of union affiliation and referral practices that might otherwise exist);

Comprehensive labor harmony provisions to ensure against schedule disruption as a result of worksite disputes or other labor disputes of any kind;

Comprehensive provisions for the resolution of workplace disputes through third party resolution, including provisions for the resolution of jurisdictional disputes (without disruption to the schedule of the Project), and appropriate provisions for labor management cooperation;

Appropriate provisions to allow the cost-effective and efficient coordination of multiple trades and contractors and Subcontractors (notwithstanding any local labor agreements that might otherwise be applicable to contractors and Subcontractors), as well as other appropriate management rights (such as appropriate provisions respecting specialty work and/or workers; adequately ensuring the contractors' or Subcontractors' choice of materials, techniques, methods, technology or design, or, regardless of source or location; use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials, tools, or other labor-saving devices; the installation or use of materials, supplies or equipment regardless of their source (including as may be required by a vendor and/or to ensure warranty coverage); and to perform off-site work, subject to any restrictions imposed by law);

Appropriate provisions promoting minority- or women-owned business enterprise

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Effective Date: [MM.DD.YYYY]

("MWBE") employment and service-disabled veteran owned business ("SDVOB") employment, as well as the employment of low-income workers in New York;

Appropriate provisions for the use of apprentices; and

Appropriate provisions for rules governing worksite access and conduct.

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

~~{This exhibit is being finalized to incorporate stakeholder feedback. This document will be updated on NYSERDA's 2022 Offshore Wind Solicitation page, and stakeholders will be notified by email.}~~

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

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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.

(c) 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 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 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 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).



Effective Date: [MM.DD.YYYY]

- 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



Effective Date: [MM.DD.YYYY]

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.

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

<u>Address:</u>	<u>as Guarantor</u>
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**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]

	<u>By:</u> _____ <u>Name:</u> <u>Title:</u>
<u>Accepted and Agreed to:</u> <u>NYSERDA</u>	

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

~~**[This exhibit is being finalized to incorporate stakeholder feedback. This document will be updated on NYSERDA's 2022 Offshore Wind Solicitation page, and stakeholders will be notified by email.]**~~

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 ADDRESS]

WE HEREBY ISSUE OUR IRREVOCABLE CREDIT NO: \_\_\_\_\_ IN YOUR FAVOR FOR THE ACCOUNT OF \_\_\_\_\_ (THE "SELLER") FOR AN AMOUNT OR AMOUNTS NOT TO EXCEED IN THE AGGREGATE [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 NYSERDA 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]

PRESENTATION AFTER 10:30 A.M., NEW YORK TIME, THE THIRD) BANKING DAY AFTER PRESENTATION.

ALL PAYMENTS MADE BY US UNDER THIS LETTER OF CREDIT WILL BE MADE IN IMMEDIATELY AVAILABLE FUNDS AND WILL BE DISBURSED FROM OUR OWN FUNDS. IF REQUESTED BY YOU, PAYMENT UNDER THIS LETTER OF CREDIT MAY BE MADE BY WIRE TRANSFER OF FEDERAL RESERVE BANK OF NEW YORK FUNDS TO YOUR ACCOUNT IN A BANK ON THE FEDERAL RESERVE WIRE SYSTEM. BENEFICIARY'S BANK [INSERT NAME AND ACCOUNT NUMBER].

THIS LETTER OF CREDIT IS NOT TRANSFERABLE. ONLY YOU MAY MAKE ANY PAYMENT CERTIFICATE AND SIGHT DRAFT UNDER THIS LETTER OF CREDIT.

ANY SIGHT DRAFT DRAWN HEREUNDER MUST BE MARKED "DRAWN UNDER [INSERT NAME AND ADDRESS OF ISSUING BANK], STANDBY LETTER OF CREDIT NUMBER [INSERT] DATE [INSERT]."

ALL BANK CHARGES INCLUDING BUT NOT LIMITED TO, FEES OR COMMISSIONS, SHALL BE FOR APPLICANT'S ACCOUNT.

MISCELLANEOUS

THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING. SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED OR AMPLIFIED BY REFERENCE TO ANY DOCUMENT OR INSTRUMENT REFERRED TO HEREIN OR IN WHICH THIS LETTER OF CREDIT IS REFERRED OR TO WHICH IT RELATES (INCLUDING, WITHOUT LIMITATION, THE AGREEMENT) AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT OR INSTRUMENT.

WE HEREBY AGREE WITH YOU THAT EACH DULY COMPLETED PAYMENT CERTIFICATE AND SIGHT DRAFT DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION TO US ON OR BEFORE THE EXPIRY DATE. THE OBLIGATION OF [ISSUING BANK] UNDER THIS LETTER OF CREDIT IS THE INDIVIDUAL OBLIGATION OF [ISSUING BANK] AND IS IN NO WAY CONTINGENT UPON REIMBURSEMENT WITH RESPECT THERETO.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION 600 (PROVIDED, HOWEVER, THAT DRAWINGS PERMITTED HEREUNDER SHALL NOT BE DEEMED TO BE DRAWINGS BY INSTALLMENTS WITHIN ARTICLE 32 OF THE UCP) AND AS TO MATTERS NOT GOVERNED BY THE UCP, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND APPLICABLE U.S. FEDERAL LAW.

PLEASE ADDRESS ALL CORRESPONDENCE REGARDING THIS LETTER OF CREDIT TO THE ATTENTION OF OUR STANDBY LETTER OF CREDIT UNIT, INCLUDING THE LETTER OF CREDIT REFERENCE NUMBER AS IT APPEARS ABOVE.

ALL PARTIES TO THIS LETTER OF CREDIT ARE ADVISED THAT THE U.S. GOVERNMENT HAS IN PLACE CERTAIN SANCTIONS AGAINST CERTAIN COUNTRIES, INDIVIDUALS, ENTITIES, AND VESSELS. OUR ENTITIES, INCLUDING BRANCHES AND, IN CERTAIN CIRCUMSTANCES, SUBSIDIARIES, ARE/WILL BE PROHIBITED FROM ENGAGING IN TRANSACTIONS OR OTHER ACTIVITIES WITHIN THE SCOPE OF APPLICABLE SANCTIONS.



**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]

[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].

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]

**Exhibit I**  
**Form of Acceptable Guaranty (Contract Security)**

~~{This exhibit is being finalized to incorporate stakeholder feedback. This document will be updated on NYSERDA's 2022 Offshore Wind Solicitation page, and stakeholders will be notified by email.}~~

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 \_\_\_\_\_ (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 (or other Contract Security (as defined in the Agreement)), 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 payment no later than two (2) business days following written demand by NYSERDA, of an amount in U.S. dollars equal to the Contract Security that (i) is calculated in accordance with Section 8.A of Exhibit A to the Agreement, and (ii) NYSERDA is entitled to retain or, in the event that Contract Security is provided in the form of an Acceptable Guaranty, to receive, in accordance with Section 8.F of Exhibit A to the Agreement (the "Guaranteed

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Effective Date: [MM.DD.YYYY]

Obligations”); provided that Guarantor’s aggregate liability under this Guaranty, including, without limitation, on account of the Guaranteed Obligations, shall not exceed [ ] Dollars (\$ ) under any circumstances (“Guaranty Capped Value”).

(b) 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 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 Grant Recipient arising from (i) payment in full in cash of the Guaranteed Obligations, or (ii) Grant Recipient's entitlement to a refund of all or a portion of the Contract Security pursuant to the terms of Section 8.E of Exhibit A to the Agreement. NYSERDA may, at



Effective Date: [MM.DD.YYYY]

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 knowledge and assumes all responsibility for being and keeping itself informed of Grant Recipient's affairs and assets and of all other circumstances bearing upon the likelihood of events giving rise to NYSERDA's right to retain the amounts of the Contract Security in accordance with the terms of the Agreement, and 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) change the manner, place or terms of payment of the Contract Security pursuant to the terms of the Agreement, which may have the effect of changing the amount of the Guaranteed Obligations, and the guaranty herein made shall apply to the Guaranteed Obligations as so changed; provided that in no event shall the amount exceed the Guaranty Capped Value;

(b) 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;

(c) 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;

(d) 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

(e) 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 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



**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]

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.

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

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