

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

**CONDITIONAL GRANT DISBURSEMENT AGREEMENT**

**Port of Albany**

1. Agreement Number: 179783
2. Grant Recipient: Renewable Energy Shared Assets LLC
3. Execution Date: January 14, 2022
4. Proposed Total Amount of Grant Award: \$40 Million Dollars (“Grant Award”)
5. Estimated Project Completion Date: [REDACTED]
6. Commitment Terms and Conditions

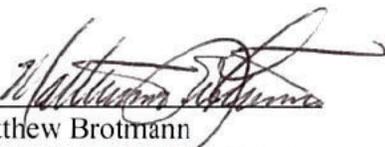
This Agreement consists of this form and incorporates the following documents attached hereto:

- Exhibit A, Statement of Work
- Exhibit A-1, Detailed Project Description
- Exhibit B, General Contract Provisions, Terms and Conditions
- Exhibit C, Standard Terms and Conditions
- Exhibit D, Prompt Payment Policy Statement
- Exhibit E, 2017 Report Content Guide
- Exhibit F, Project Labor Agreement
- Exhibit G, Form of Guarantee
- Exhibit H, Memorandum of Understanding

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.

**RENEWABLE ENERGY SHARED  
ASSETS LLC**

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

Signature:   
Name: Matthew Brotmann  
Title: Senior Counsel and Assistant  
Secretary

Signature: Doreen M. Harris Digitally signed by Doreen M. Harris  
Date: 2022.01.14 07:46:43 -05'00'  
Name: Doreen Harris  
Title: President and CEO

**EXHIBIT A  
STATEMENT OF WORK**

**Project Title: Port of Albany Port Infrastructure Investment Plan**

Grant Recipient: Renewable Energy Shared Assets LLC

**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.

“Agreement” means this Conditional Grant Disbursement Agreement.

“Alternate Economic Investment” shall have the meaning provided for in Section 5.01(d) and 5.02(f) of Exhibit B to this Agreement.

“APDC” means Albany Port District Commission.

“Assignment Option” shall have the meaning provided for in Exhibit B Section 5.01(a).

“BBB+ Rated Credit” 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+ or better by Standard & Poor’s (S&P) or an equivalent rating with Moody’s Investor Services (Moody’s) or Fitch IBCA (Fitch).

“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.

“BW” means the Beacon Wind project proposed in response to NYSERDA’s ORECRFP20-1.

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

“Contract Information” means reports and documentation produced by Grant Recipient in the performance of this Agreement that are delivered to NYSERDA by Grant Recipient,

including the Final Report delivered by Grant Recipient pursuant to Exhibit A, Statement of Work, if applicable.

“Developer” and “Developers” mean, individually or collectively, as the context requires, APDC and/or M/W.

“Developer Event of Default” means any act or omission of either Developer which constitutes a Construction Event of Default or a Default (as such terms are defined in the Project Agreement) to the extent that such Default gives rise to the right of Sponsor or the non-defaulting Developer to terminate the Project Agreement prior to Substantial Completion.

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

“Eligible Expenses” shall have the meaning ascribed to such term in Appendix C.2 of ORECRFP20-1.

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

“EW2” means the Empire Wind Project, Phase 2 proposed in response to NYSERDA’s ORECRFP20-1.

“Excused Delay” shall mean a delay or suspension of the construction of the Port Improvements caused by (i) an act or omission of NYSERDA or other third party (but expressly excluding any Developer Event of Default), including, without limitation, a failure to respond or comply with any time period(s) required of such party to a written request for consent or approval; (ii) one or more properly approved change orders or change directives that individually or in the aggregate results in a material change in the timing to Substantially Complete the Port Improvements; (iii) a Change in Law that results in a delay or suspension of construction of the Port Improvements, if such delay or suspension cannot be overcome or avoided through commercially reasonable efforts of Grant Recipient; or (iv) a delay in obtaining, or inability to obtain, required permits or governmental approvals, except to the extent that such failure is the direct result of the negligence of Grant Recipient.

“Force Majeure” shall have the meaning ascribed to such term by Section 8.01 of Exhibit B of this Agreement.

“Grant Recipient” means the Sponsor.

“Guarantee” means a guarantee or guaranties, consistent with the form of Exhibit G, executed by Guarantors.

“Guarantors” means BBB+ Rated Credit (or such other rating as permitted by the Guarantee) entities affiliated with the Grant Recipient.

“Information” shall have the meaning provided for in Section 9.01(e) of Exhibit B of this Agreement.

“M/W” means Marmen/Welcon.

“MOU” means that certain Memorandum of Understanding entered into between Equinor, APDC and M/W dated October 19, 2020 and attached hereto as Exhibit H.

“Notice” shall mean a notice properly memorialized and delivered in accordance with Section 16.01 of Exhibit B of this Agreement.

“OREC Agreements” means NYSERDA Agreement No. 177285 entered into between NYSERDA and EW2 and NYSERDA Agreement No. 177286 entered into between NYSERDA and BW resulting from NYSERDA ORECRFP20-1 regarding the acquisition by NYSERDA of offshore wind renewable energy certificates.

“Outer Limit Date” means [REDACTED]

“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.”

“Person” means 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.

“PIIP-E”—the Port Infrastructure Investment Plan-E submitted in response to NYSERDA’s ORECRFP20-1.

“POA Facilities” means the Port Improvements and a tower manufacturing factory being constructed by the Developers at the Port of Albany as further described in the MOU.

“Port Improvement Budget” means the budget for construction of the Port Improvements provided by Sponsor to NYSERDA in accordance with Section 3.01 of Exhibit B to this Agreement and as modified from time to time by Sponsor and Developer.

“Port Improvements” means the port upgrades described in Exhibit A-1 of this Agreement

as modified from time to time in accordance with the terms and conditions of the Project Agreement and the terms and conditions of this Agreement (including Section 3.03).

“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 Exhibit B Section 15.03.

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

“Project Agreement” means the port development agreement among Sponsor, APDC, and M/W, as amended, modified, or supplemented from time to time in accordance with the terms of this Agreement. As of the date of execution of this Agreement, the Parties anticipate that the Project Agreement will be executed in the first calendar quarter of 2022.

“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 Grant Recipient, contractors in the construction industry working on the POA Facilities, and a bona fide building and construction trade labor organization representing craft workers on the POA Facilities.

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

“Proprietary Information” means 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.

“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).

“Sponsor” means Renewable Energy Shared Assets LLC, a limited liability company organized under the laws of Delaware, or an affiliate owned, directly or indirectly, by Equinor US Holdings Inc. and BP Corporation North America Inc.

“Sponsor’s Capital Contribution” is the amount equal to the lower of (i) the amount of capital committed by Sponsor to the Developers for the construction of the POA Facilities under the Project Agreement and [REDACTED]

“Sponsor Event of Default” means any act or omission of Sponsor which constitutes a Default (as defined in the Project Agreement) to the extent that such Default gives rise to the right of either Developer to terminate the Project Agreement prior to Substantial Completion.

“Statement of Work” means the Statement of Work attached hereto as Exhibit A.

“Subcontractor” means a Person who performs Port Improvements directly for or on behalf of the Grant Recipient or a Developer, including Grant Recipient’s or Developer’s general contractor and other contractors and design professionals, but not including any employees of the Grant Recipient or the Subcontractors.

“Substantial Completion” and “Substantially Completed” shall mean the completion of the Port Improvements, 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 or (ii) other reasonable evidence demonstrating that Substantial Completion has occurred.

“Termination Event” shall have the meaning provided for in Exhibit B, Section 13.01(a) herein.

***Grant Recipient*** address information:

Company Name:

Contact Name

Street Address

City, State Zip code

Email/Phone/Fax



***The Project Site*** is:

Site Name: Port of Albany (APDC)

Site Street Address: 106 Smith Blvd.

City, State Zip code: Albany, NY 12202

Site Name: Beacon Island (APDC)

Site Street Address: East of River Road (NYS Rt. 144)

City, State Zip code: Bethlehem, NY

## **BACKGROUND/OBJECTIVES**

Sponsor intends to make a financial contribution to support the efforts of APDC and M/W to establish the Port of Albany as the first offshore wind tower manufacturing site in the United States. In order to support these efforts, NYSERDA intends to make \$40 million in grant funding available under this Agreement as further described herein.

The Parties acknowledge and agree that neither Sponsor nor its affiliates will have any ownership or leasehold interest in the POA Facilities, the Sponsor and its affiliates will not have any means of designing or performing the construction of the POA Facilities, and that the role of the Sponsor is limited to making a defined financial commitment towards the construction thereof with the actual performance and completion of the POA Facilities by APDC, M/W, and their respective contractors.

## **PROJECT DESCRIPTION**

The Port Improvements are set forth in Exhibit A-1 of this Agreement. The Parties acknowledge that Exhibit A-1 provides preliminary engineering details regarding the Port Improvements, and that these details are subject to change in accordance with the terms of the Project Agreement.

## **FUNDING & ASSURANCES**

### Credit Support

Sponsor will cause Guarantors to provide Guarantees in the amount of Sponsor's Capital Contribution within fifteen (15) Business Days of the Effective Date of this Agreement. In the event of a credit downgrade or other event that results in a downgrade of the credit rating of one of the Guarantors below BBB+ Rated Credit, Sponsor shall ensure that such Guarantor promptly provides to NYSERDA cash, a letter of credit, or other security reasonably acceptable to NYSERDA, such acceptance not to be unreasonably withheld or delayed.

### Sponsor's Capital Contribution

Sponsor or its affiliates will provide a financial contribution in the amount of the Sponsor's Capital Contribution towards the construction of the POA Facilities in accordance with the terms and conditions of the Project Agreement. If completion of the POA Facilities is achieved under budget, any savings in the Sponsor's Capital Contribution shall fully inure to the benefit of the Sponsor without reduction of the Grant Award. Sponsor intends to make Sponsor's Capital Contribution available to Developers in accordance with a pre-funding and draw mechanism as will be further detailed in the Project Agreement.

Assignment of Project Agreement

Sponsor will use commercially reasonable efforts to negotiate adequate assignment provision(s) to allow NYSERDA to assume Sponsor's rights and obligations under the Project Agreement in the event of a Sponsor Event of Default or Developer Event of Default in accordance with Article 5 of Exhibit B of this Agreement. Any assignment by Sponsor will be without representation or warranty, express or implied, and shall be without recourse to Sponsor. Sponsor shall not be liable for any statement, omission, or default under such Project Agreement.

**DISBURSEMENT OF GRANT AWARD**

Upon completion of the conditions precedent set forth in Section 3.01 of Exhibit B of this Agreement, NYSERDA shall disburse 50% of the total Grant Award to Grant Recipient. NYSERDA will disburse the remaining 50% of the total Grant Award upon verification of Substantial Completion by the Parties to the Project Agreement in accordance with the terms and conditions thereof.

NYSERDA shall have the right to review the Project Agreement prior to execution thereof and the definition of "Substantial Completion" shall not thereafter be materially amended or modified in any way without the prior written consent (not to be unreasonably withheld, conditioned or delayed) of NYSERDA. NYSERDA and its advisors shall be permitted reasonable rights to attend and observe the Substantial Completion verification process; provided, however, that NYSERDA's and its advisor's rights shall be limited to observing the verification process. NYSERDA and its advisors will cooperate in good faith with Sponsor and Developers to ensure that the Substantial Completion verification process is conducted promptly and without delay.

NYSERDA's commitment to provide grant funding shall terminate, and Sponsor shall repay any previously disbursed Grant Award, if Substantial Completion is not achieved by the Outer Limit Date; provided, that the Outer Limit Date shall be delayed, day-for-day to the extent that Substantial Completion is delayed as a result of a Force Majeure or Excused Delay.

In the event NYSERDA fails to disburse the Grant Award in accordance with the terms of the Agreement, Sponsor shall have the right to pursue any remedies available to it in law and equity. For the avoidance of doubt, NYSERDA hereby waives any sovereign immunity from either jurisdiction or enforcement for any claims or proceedings commenced pursuant to this Agreement.

**PROGRESS REPORTS**

The following sections describe ongoing reporting requirements associated with the progress and completion of the port upgrades. NYSERDA and the Sponsor will work

together to ensure that commercially sensitive information, trade secrets, and other classes of information that are exempt from disclosure under the New York Freedom of Information Law (“FOIL”) contained in the reports described below are appropriately protected from disclosure.

Progress Reports

Subject to timely receipt by the Sponsor of Developers’ reporting deliverables under the Project Agreement, the Sponsor 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. The Parties acknowledge and agree that the Progress Reports will be based on the information provided to Sponsor by Developers, and the Sponsor shall not be responsible for any inaccuracies or omissions in the information provided by Developers. To the extent provided by Developers, the Progress Reports shall include information on the following subjects, with appropriate explanation and discussion:

- a. Name of Grant Recipient
- b. Title of the project.
- c. Agreement number.
- d. Reporting period.
- e. Project progress including a summary of progress, findings, data, analyses, results and field-test results from all tasks carried out in the covered period.
- f. Planned work for the next reporting period.
- g. Identification of problems.
- h. Planned or proposed solutions to identify problems described in (f) above.
- i. Ability to meet schedule, reasons for slippage in schedule.
- j. Schedule - percentage completed and projected percentage of completion of performance by calendar quarter - may be presented as a bar chart or milestone chart.
- k. Budget- analysis of actual costs incurred in relation to the budget.

Deliverables: Written Periodic Progress Reports.

Final Report

Within ninety (90) days of Grant Recipient’s receipt of grant proceeds following Substantial Completion, the Grant Recipient shall prepare a draft final report for submission to NYSERDA’s Project Manager covering the Port Improvements. The Parties acknowledge and agree that the draft Final Report will be based on information provided by Developers to Grant Recipient, and the Grant Recipient shall not be responsible for any inaccuracies or omissions in the information provided by Developers. To the extent practicable based on the information provided by the Developers, the report shall include information on the following subjects:

- a. Discussions of the observations and findings and recommendations, if any, from all tasks, and avenues for further improvements, as appropriate; and
- b. Discussions of the project results and lessons learned regarding configuration, capabilities, and benefits of the project; and
- c. Environmental, and economic benefits, and implementation scenarios associated with such.

NYSERDA will comment on the draft version within sixty (60) Business Days after receipt of such draft. Within thirty (30) Business Days after receipt of NYSERDA's comments, the Grant Recipient shall prepare a final version of the report. Grant Recipient will consider NYSERDA's comments in good faith when preparing 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 Report.

Deliverables: A draft version of the Final Report.  
A final version of the Final Report.

## **ENVIRONMENTAL REVIEW PHASE**

Grant Recipient has taken and will continue to take commercially reasonable measures to facilitate, cooperate with, and otherwise provide information for any environmental review of the Port Improvements overseen by an authorized governmental entity or entities pursuant to the New York State Environmental Quality Review Act ("SEQRA"). NYSERDA will provide a prompt notice of the issuance of a final findings statement under SEQRA to Grant Recipient. Notwithstanding anything to the contrary herein, the Total Amount of Award shall not be determined or committed before NYSERDA, in its sole discretion, makes findings pursuant to SEQRA with regard to the Port Improvements described in Exhibit A.

## **PREVAILING WAGE**

Although the POA Facilities are not a public work covered by NYS Article 8, and unless otherwise provided in a PLA covering the construction of the POA Facilities, all laborers, workmen and mechanics (within the meaning of those terms under NYS Labor Law Article 8) performing construction activities within the United States (including federal waters) with respect to the POA Facilities, including, but not limited to, the assembly, staging, installation, erection, and placement of the POA Facilities, whether through long-term or short-term employment, must be paid wages and benefits in an amount not less than the Prevailing Rates that would be applicable in the area where the POA Facilities construction activities occur. 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 POA Facilities construction activities occur that would

be applicable to a public work. For the avoidance of doubt, a laborer, workman, or mechanic will not be deemed to be based at a port due solely to his or her short-lived or incidental presence at, or transit through, the port (or state in which the port is located). 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 POA Facilities, 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 its Proposal.

### **PROJECT LABOR AGREEMENT**

(a) It is understood and agreed that the APDC has engaged a consultant to conduct a feasibility study to evaluate use of a Project Labor Agreement ("PLA") in connection with the APDC's construction of the Port Improvements as described in Exhibit A-1 of this Agreement and the building envelope of the tower manufacturing factory (collectively, the "Covered Works").

(b) Following receipt of the feasibility study, the APDC will determine whether a PLA will serve its and the public's interest. In the event that the APDC determines that a PLA is not in its and the public's interest, Grant Recipient shall cause the APDC to solicit bids from union and non-union entities in connection with construction of the Covered Works. Regardless of whether the APDC determines that a PLA is in its and the public's interest, Grant Recipient shall cause the APDC to use good faith efforts to employ contractors at levels consistent with APDC targets with respect to MWBE, SDVOB, Disadvantaged Communities (as defined in the New York Climate Leadership and Community Protection Act), and local hiring in connection with construction of the Covered Works.

(c) In the event that the APDC determines that a PLA is in its and the public's interest, Grant Recipient shall cause the APDC to proceed to negotiate a PLA to cover construction of the Covered Works. For the avoidance of doubt, the requirements set forth in Section 18.11 of the OREC Agreements shall not apply to these activities. Notwithstanding the foregoing, Grant Recipient shall cause APDC to keep NYSERDA reasonably apprised of negotiations as they proceed.

(d) In the event that the APDC and the trades do not agree to a final form PLA prior to the time the APDC reasonably deems it necessary to award work to maintain the construction schedule of the Port Improvements, the APDC may award work and commence construction on the Port Improvements without use of a PLA. In such case, Grant Recipient shall cause the APDC to notify NYSERDA of the foregoing, and NYSERDA may choose to mediate to assist the APDC and the trades in their negotiations. In the event that the

APDC and the trades thereafter reach agreement as to a final form PLA, all work awarded in advance of such agreement shall be exempt from the negotiated PLA.

(e) To the extent that APDC no longer has responsibility for the construction of the Covered Works, Grant Recipient shall promptly notify NYSERDA and the Parties shall cooperate in good faith to modify this Agreement with the objective of establishing a framework for the negotiation of a PLA covering the Covered Works consistent with the provisions of Exhibit F of this Agreement.

(f) Nothing in this Agreement shall be deemed to require the negotiation of a PLA covering the operation of the POA Facilities or any other activities at the Port of Albany other than the construction of the Covered Works.

EXHIBIT A-1

DETAILED DESCRIPTION OF PORT IMPROVEMENTS

**Site Description**

The project will be located on ~80 acres of undeveloped land on Beacon Island along the Hudson River, immediately adjacent to the existing Port of Albany facilities (the "Site").

**Port Improvements**

In accordance with this Grant Agreement, Renewable Energy Shared Assets LLC and its affiliates are committing to certain funding obligations to be used by the Developers for the engineering and construction of certain improvements at the Site. The Parties acknowledge that the Developers shall be solely responsible for the physical completion of the engineering and construction of the planned improvements at the Site. A list of major improvements to be completed at the Site is provided below.

[REDACTED]

EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

Section 1.01 Definitions. Unless the context otherwise requires, the terms used herein shall have the respective meanings set forth in the Definitions section of Exhibit A hereto and be equally applicable to both the singular and plural forms of any of the terms defined.

Article II

Performance of POA Facilities

Section 2.01 Manner of Performance. The Parties acknowledge that Sponsor is not responsible for designing, engineering, constructing, completing, operating, or maintaining the POA Facilities. Developers shall be responsible for designing, engineering, constructing, completing, operating, and maintaining the POA Facilities. Sponsor and its affiliates shall not be liable to NYSERDA for any failure of Developers or their Subcontractors to design, engineer, construct, complete, operate, or maintain the POA Facilities in accordance with professional standards and industry practice. Neither Sponsor nor NYSERDA shall have any obligation to furnish personnel or procure materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to design, engineer, construct, complete, operate, or maintain the POA Facilities.

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

Deliverables

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) The execution of this Conditional Grant Agreement by the Parties hereto.

(b) Satisfactory review of the Port Improvement Budget and Port Improvement project schedule by NYSERDA, such satisfaction not to be unreasonably withheld, conditioned, or delayed; provided that any Port Improvement Budget and schedule that is in material compliance with the budget and schedule included in the MOU shall be deemed to satisfy this condition.

(c) Execution of the Project Agreement by Sponsor and Developers on or before June 1, 2022, including provisions respecting the standards for modification of the scope of the Port Improvements that are reasonably satisfactory to NYSERDA (such satisfaction not to be unreasonably withheld, conditioned, or delayed). Such deadline shall be extended on a day for day basis for any Force Majeure or Excused Delay, and may be extended with the written consent of NYSERDA, such consent not to be unreasonably withheld, conditioned, or delayed. NYSERDA shall be given a reasonable opportunity to review the Project Agreement prior to its execution (subject to the right of Grant Recipient and Developers to exclude trade secret or commercially sensitive information).

(d) Start of construction by the Developers of the Port Improvements on or before July 31, 2022. Such deadline shall be extended on a day for day basis for any Force Majeure or Excused Delay, and may be extended by mutual agreement of the Parties.

(e) The issuance by NYSERDA of a findings statement under SEQRA finding that the disbursement of the proposed grant funding is approvable.

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.

Section 3.03 Modifications to Port Improvements. In connection with the exercise of any rights that Grant Recipient has under the Project Agreement to approve or consent to material modifications to the scope of the Port Improvements, Grant Recipient shall promptly notify NYSERDA of any request of Developers for Grant Recipient's approval thereof. NYSERDA will cooperate in good faith with Grant Recipient to reach prompt agreement on whether to approve, or consent to, such material modifications prior to the date (if any) on which Grant Recipient must respond to Developers' request under the Project Agreement. NYSERDA's approval and consent of a proposed material 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 (i) have the effect of materially increasing (as reasonably determined by Grant Recipient) the costs of, or delaying completion of, the Port Improvements; (ii) that are opposed by Developers; or (iii) that Grant Recipient determines would adversely affect the timing or cost of EW2 or BW. In the event that the Developers notify Grant Recipient of any material modifications to the Port Improvements that will require Developers to obtain a new permit or amend an

existing permit, Grant Recipient will promptly inform NYSERDA, and NYSERDA agrees to participate in any supplemental environmental review that may be required.

Article IV

Payment

Section 4.01 Payment of Grant Proceeds

(a) Initial Payment: Within thirty (30) days of satisfaction of the conditions precedent set out in Section 3.01 of this Exhibit B, NYSERDA shall remit payment of \$20 million to Sponsor.

(b) Payment at Substantial Completion: Upon Substantial Completion, Grant Recipient will submit an invoice requesting payment of any remaining grant proceeds that have not been disbursed under this Agreement. Grant Recipient shall provide NYSERDA with a copy of the certification of Substantial Completion, or other reasonable evidence that Substantial Completion has occurred, when submitting an invoice to NYSERDA. Within thirty (30) days of the receipt of invoice from Sponsor, NYSERDA shall remit payment of any remaining grant proceeds that have not been disbursed under 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 pursuant to Section 4.01(b) shall constitute the final payment pursuant to this Agreement.

Section 4.03 Release of Claims. The Substantial Completion and acceptance by the Grant Recipient of final payment shall release NYSERDA, Grant Recipient, and Grant Recipient's affiliates from all claims and liability that a Party, its representatives, or assigns might otherwise have relating to this Agreement except for the reporting requirements as expressly set forth herein.

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 two (2) years after Substantial Completion, full and detailed books, accounts, and records pertaining to Grant Recipient's obligations under 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 as grant proceeds by NYSERDA to the Grant Recipient shall be the amount appearing on page one of this Agreement. 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 Port Improvements.

Section 4.06 Audit. NYSERDA shall have the right, at its sole cost and expense, 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.

## Article V

### Project Agreement Default and Termination

#### Section 5.01 Developer Default.

(a) Assignment of Project Agreement. Within thirty (30) days of either providing or receiving a notice of a Developer Event of Default, Sponsor shall notify NYSERDA of the Developer Event of Default, including what steps, if any, Developers are taking to remedy the default, or whether Sponsor intends to exercise any right to cure such Developer Event of Default. Prior to exercising any right to terminate the Project Agreement and no later than one hundred and eighty (180) days after the issuance of a notice of Developer Event of Default, or such longer period if the Developer Event of Default cannot be cured within one hundred and eighty (180) days and Developers are exercising reasonable diligence to effectuate a cure, Sponsor will provide NYSERDA with the option to assume Sponsor's rights and obligations under the Project Agreement to the extent permitted by the terms and conditions thereof ("**Assignment Option**"). No later than the later of (i) fourteen (14) days after receiving the Assignment Option and (ii) sixty (60) days after NYSERDA's receipt of notice of the Developer Event of Default from Sponsor, NYSERDA will notify Sponsor of whether it has elected to exercise the Assignment Option. If NYSERDA elects to exercise the Assignment Option, then the Sponsor and NYSERDA will work in good faith to promptly enter into an agreement for the assignment of all rights and obligations of Sponsor under the Project Agreement to NYSERDA. Any assignment by Sponsor will be without representation or warranty, express or implied, and shall be without recourse to Sponsor or any of its affiliates. Sponsor shall not be liable for any statement, omission, or default under such Project Agreement, and NYSERDA shall indemnify Sponsor against any claims arising under the Project Agreement following assignment of such agreement.

(b) Post-Assignment Funding Of POA Facilities. In the event that NYSERDA assumes the Project Agreement in accordance with Section 5.01(a) of this Exhibit B,

NYSERDA shall be solely responsible for all obligations under the Project Agreement, including responsibility for making any further capital contributions to Developers, and any liability, causes of action, or claims arising under such Agreement. Following the assumption of all rights and obligations under the Project Agreement by NYSERDA, Sponsor shall make available to NYSERDA in accordance with Section 5.01(c) any amounts of the Sponsor's Capital Contribution that have not been paid or committed to the Developers under the Project Agreement as of the date of the assignment to NYSERDA minus any amounts paid by Sponsor or its affiliates to Developers to satisfy any claims made by Developers in connection with NYSERDA's exercise of the Assignment Option or termination of the Project Agreement ("**Remaining Capital Contribution**"). Following assumption of the Project Agreement, NYSERDA promptly shall provide Sponsor with copies of any notices or other material communications delivered under such agreement, and shall provide Sponsor with quarterly reports detailing the progress of the POA Facilities.

(c) Use and Disbursement of Remaining Capital Contribution. Sponsor shall use the Remaining Capital Contribution to reimburse NYSERDA for any amounts paid by NYSERDA to Developers under the Project Agreement towards the construction of the POA Facilities. NYSERDA may draw upon the Remaining Capital Contribution by submitting an invoice to Sponsor with reasonable documentation of the payments made by NYSERDA under the Project Agreement, and Sponsor shall reimburse NYSERDA for all undisputed invoiced amounts within thirty (30) days of the receipt of such invoice. Any amounts reimbursed to NYSERDA by Sponsor shall count towards EW2 or BW Verified Dollars pursuant to the OREC Agreement of the applicable project. To the extent that the sum of the Remaining Capital Contribution and the amount of grant proceeds that had not been disbursed as of the effective date of the assignment of the Project Agreement to NYSERDA exceeds the expenses paid under the Project Agreement towards the POA Facilities following such assignment, NYSERDA shall refund the difference to Sponsor within ninety (90) days of completion of the POA Facilities or upon abandonment of further efforts by Developers to complete the POA Facilities.

(d) Termination of Project Agreement. In the event that Sponsor terminates the Project Agreement due to a Developer Event of Default and NYSERDA has not elected to take assignment of the Project Agreement, NYSERDA may elect that any remaining Sponsor's Capital Contribution that has not been spent towards the POA Facilities as of the effective date of termination of the Project Agreement be used by Sponsor or its affiliates for alternate economic investments ("**Alternate Economic Investment**") in New York State; provided however that Sponsor and its affiliates shall have no obligation to make an Alternate Economic Investment until final adjudication of any claims by Developer or Sponsor related to the Project Agreement. The amount of any required Alternate Economic Investment shall be reduced by any amount, if any, payable by Sponsor to Developer as a result of adjudication of any claims related to termination of the Project Agreement by Sponsor or NYSERDA.

(e) Selection of Alternate Economic Investment. Within ninety (90) days of the later of termination of the Project Agreement and adjudication of any claims by Developer or Sponsor, Sponsor will submit a plan outlining the planned Alternate Economic Investment, including a proposed funding schedule and timeline. Any expenditures made as part of the Alternate Economic Investment shall count towards EW2 or BW Verified Dollars pursuant to the OREC Agreements of the applicable project solely to the extent such investment satisfies the definition of EW2 Verified Dollars or BW Verified Dollars, as applicable, under the applicable OREC Agreement.

Section 5.02 Sponsor Default.

(a) Notice of Sponsor Default. Upon the occurrence of a Sponsor Event of Default under the Project Agreement and receipt of notice by Sponsor of Developers' intent to terminate the Project Agreement, Sponsor shall provide NYSERDA with written notice of: (i) Developers' intent to terminate the Project Agreement; (ii) whether Sponsor contests termination of the Project Agreement; and (iii) whether Sponsor intends to cure such Sponsor Event of Default. Such notice shall be provided to NYSERDA no later than seven (7) Business Days following Sponsor's receipt of notice of termination of the Project Agreement.

(b) Contested Termination. If Sponsor contests termination of the Project Agreement, Sponsor shall make commercially reasonable efforts to avoid termination and enforce its rights under the Project Agreement, including commencing an action for wrongful termination if deemed appropriate by Sponsor. In the event that a court renders a final, non-appealable judgment finding that Developer appropriately terminated the Project Agreement for Sponsor Event of Default, Sponsor shall be responsible for making an Alternate Economic Investment in accordance with Section 5.02(f).

(c) Uncontested Termination. If Sponsor does not contest termination of the Project Agreement and elects not to cure Sponsor Event of Default, Sponsor shall offer to assign the Project Agreement to NYSERDA to allow it to cure Sponsor Event of Default. No later than the later of (i) fourteen (14) days after receiving an offer for assignment and (ii) sixty (60) days after NYSERDA's receipt of the notice of the Sponsor Event of Default, NYSERDA shall notify Sponsor of whether it has elected to take assignment of the Project Agreement. If NYSERDA accepts the offer of assignment, the Sponsor and NYSERDA will work in good faith to promptly enter into an agreement for the assignment of all rights and obligations of Sponsor under the Project Agreement to NYSERDA. Any assignment by Sponsor will be without representation or warranty, express or implied, and shall be without recourse to Sponsor or any of its affiliates (except to the extent of any liabilities of Sponsor or any of its affiliates arising prior to the date of such assignment). Sponsor shall not be liable for any statement, omission, or default under such Project Agreement.

(d) Post-Assignment Funding Of POA Facilities. In the event that NYSERDA assumes the Project Agreement in accordance with Section 5.02(c) of this Exhibit B,

NYSERDA shall be solely responsible for all obligations under the Project Agreement, including responsibility for making any further capital contributions to Developers, and any liability, causes of action, or claims arising under such Agreement. Following the assumption of all rights and obligations under the Project Agreement by NYSERDA, Sponsor shall make available to NYSERDA any Remaining Capital Contribution (calculated in accordance with Section 5.01(b) of this Agreement). The parties understand and agree that the Sponsor's liability pursuant to this section shall be limited to any Remaining Capital Contribution. Following assumption of the Project Agreement, NYSERDA promptly shall provide Sponsor with copies of any notices or communications delivered under such agreement, and shall provide Sponsor with quarterly reports detailing the progress of the POA Facilities.

(e) Use and Disbursement of Remaining Capital Contribution. Within three (3) Business Days of the effective date of the assignment of the Project Agreements to NYSERDA, Sponsor shall release to NYSERDA one hundred percent (100%) of the Remaining Capital Contribution into a segregated account (or an escrow account with an unaffiliated trustee reasonably acceptable to NYSERDA) for use toward the Port Improvements. Any amounts reimbursed to NYSERDA by Sponsor shall count towards EW2 or BW Verified Dollars pursuant to the OREC Agreement of the applicable project. To the extent that the sum of the Remaining Capital Contribution and the amount of grant proceeds that had not been disbursed as of the effective date of the assignment of the Project Agreement to NYSERDA exceeds the expenses paid under the Project Agreement towards the POA Facilities following such assignment, NYSERDA shall refund the difference to Sponsor within ninety (90) days of completion of the POA Facilities or upon abandonment of further efforts by Developers to complete the POA Facilities.

(f) Alternate Economic Investment. If the Project Agreement is terminated by Developers for Sponsor Event of Default and a court has rendered a final, non-appealable judgment affirming termination of the Project Agreement, NYSERDA may elect that any remaining Sponsor's Capital Contribution that has not been spent towards the POA Facilities as of the effective date of termination of the Project Agreement be used by Sponsor or its affiliates for an Alternate Economic Investment in New York; provided however that Sponsor and its affiliates shall have no obligation to make an Alternate Economic Investment until final adjudication of any claims by Developer or Sponsor related to the Project Agreement. The amount of any required Alternate Economic Investment shall be reduced by any amount, if any, payable by Sponsor to Developer as a result of adjudication of any claims related to termination of the Project Agreement.

(g) Selection of Alternate Economic Investment. Within ninety (90) days of the later of termination of the Project Agreement and adjudication of any claims by Developer or Sponsor, Sponsor will submit a plan outlining the planned Alternate Economic Investment, including a proposed funding schedule and timeline. Any expenditures made as part of the Alternate Economic Investment shall count towards EW2 or BW Verified Dollars pursuant to the OREC Agreements of the applicable project solely

to the extent such investment satisfies the definition of EW2 Verified Dollars or BW Verified Dollars, as applicable, under the applicable OREC Agreement.

Section 5.03 Sole and Exclusive Remedy. Sponsor's Payment of Sponsor's Capital Contribution towards completion of the POA Facilities or towards an Alternate Economic Investment shall represent NYSERDA's sole and exclusive remedy against Sponsor and its affiliates for failure to complete the Port Improvements, whether due to a Sponsor Event of Default, Developer Event of Default, or other cause. NYSERDA waives any additional remedies in respect of any such failure to complete the Port Improvements to which it may be entitled including, for the avoidance of doubt, any remedies available at law or equity. Notwithstanding the foregoing, in the event that Substantial Completion is not achieved by the Outer Limit Date and NYSERDA has disbursed 50% or twenty million dollars (\$20,000,000) of the total Grant Award to Grant Recipient, NYSERDA shall be entitled to a reimbursement of twenty million dollars (\$20,000,000) 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 the twenty million dollars (\$20,000,000). 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). NYSERDA shall not be permitted to charge a collection fee, interest, or any other fees associated with a late paid invoice except as set forth in this section.

Section 5.04 Failure to Complete Due to Causes Beyond Control of Sponsor. If the POA Facilities are not completed due to Force Majeure or Excused Delay, neither Sponsor nor NYSERDA shall have any future funding obligations under this Agreement and neither Sponsor nor its affiliates shall have any further liability to NYSERDA.

## Article VI

### Assignments and Performance

Section 6.01 General Restrictions. Except as specifically provided otherwise in this Article, 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; provided however that NYSERDA's consent shall not be required to assign or otherwise transfer this Agreement or any rights, obligations, or responsibilities thereunder to an affiliate of Grant Recipient. 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 or to an affiliate of Grant Recipient, 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.

Section 6.02 Performance. The Grant Recipient shall make best efforts to avoid taking any action that would impair NYSERDA's rights under this Agreement. Grant Recipient shall promptly notify NYSERDA in the event that it becomes aware that Developers are taking actions for the purpose of impairing NYSERDA's rights under this Agreement.

## Article VII

### Schedule

Section 7.01 Schedule. The construction of the Port Improvements shall be performed in material compliance with the schedule delivered to NYSERDA as modified by the Grant Recipient and Developers in accordance with the Project Agreement from time to time.

## Article VIII

### Force Majeure

Section 8.01 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.

## Article IX

### Rights in Information; Confidentiality

Section 9.01 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 certain information concerning the Port Improvements that is collected and stored by, or on behalf of, NYSERDA and is either non-public, confidential or proprietary in nature as classified per the policies and procedures outlined in the New York State Information Security Controls Standard,<sup>1</sup> identified in writing as such by Project Manager when provided to Grant Recipient (the "Information"). The Information will be kept confidential and will not, without NYSERDA's prior written consent, be disclosed by you, your agents, employees, directors, officers, contractors, affiliates or professional advisors, in any manner whatsoever, in whole or in part (except, in each case, (i) as required by law, regulation, subpoena, or by order of a court of competent jurisdiction or other legal process, (ii) as requested by any regulatory authority, ratings agency or stock exchange, and (iii) in connection with any litigation or dispute or the exercise of any remedy hereunder involving Grant Recipient, its affiliates, any Guarantor and NYSERDA; in which case Grant Recipient will promptly notify NYSERDA of its intent or requirement to disclose such Information unless such notice is otherwise prohibited by law or court order; provided that failure to notify NYSERDA shall not give rise to any liability to Grant Recipient or its affiliates), and will not be used by Grant Recipient, Grant Recipient's agents, employees, directors, officers, contractors, affiliates or professional advisors other than in connection with the Port Improvements. Grant Recipient agrees to transmit the Information only to Grant Recipient's agents, employees, directors, officers, contractors, affiliates 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 either (i) will agree in writing to be bound by the terms and conditions of this Section 9.01(e) of this Agreement, or (ii) are bound by internal procedures maintained by the Grant Recipient

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<sup>1</sup> <https://its.ny.gov/document/information-security-controls-standard>

or such other person as are reasonably calculated to maintain the confidentiality of the Information in accordance with this Section 9.01). Notwithstanding the foregoing provisions of this Section 9.01(e), (i) the foregoing obligation of confidentiality shall not apply to any Information that was known to Grant Recipient or any of its affiliates prior to the time it received such Information, other than as a result of the disclosure thereof by a person who, to the knowledge or reasonable belief of Grant Recipient, was prohibited from disclosing it by any duty of confidentiality arising (under this Agreement or otherwise) by contract or law, and (ii) the foregoing obligation of confidentiality shall not apply to any Information that becomes part of the public domain independently of any act of Grant Recipient not permitted hereunder or when identical or substantially similar information is received by Grant Recipient, without restriction as to its disclosure or use, from a person who was not prohibited from disclosing it by any duty of confidentiality arising (under this Agreement or otherwise) by contract or law.

Grant Recipient shall conform to requirements of the New York State Information Technology Services (ITS) Information Security Policy (NYS-P03-002<sup>2</sup>) and any amendments thereto, to maintain the security of and to prevent unauthorized access to Information that is maintained in electronic form on your systems. Such measures shall include:

- a. Access Control on Servers, Systems, Apps, Databases, i.e., role-based permissions, authentication, authorization, and password policy;
- b. Network Security, i.e., isolation of Information, secure V-LANS, Firewalls;
- c. Patch Management, i.e., formal patch cycles and maintenance process;
- d. Malware Prevention, i.e., anti-virus, anti-spyware, vulnerability assessments, penetration testing, audits;
- e. Encryption of Information in transit and Information in storage on desktops, backups, and removable media;
- f. Change Control to ensure that new and modified system software are authorized, tested, and implemented accurately;
- g. Security Event Logging/Monitoring that provides real time alerting of security events
- h. IDS, WS, Website Monitoring of websites for compromise indicators which indicates website defacements, compromises or inappropriate content (Application/Host/Network IDS and IPS);
- i. Web Application scanning that is performed on code and application in compliance with Open Web Application Security project (OWASP) and

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<sup>2</sup> [https://its.ny.gov/sites/default/files/documents/nys-p03-002\\_information\\_security\\_0.pdf](https://its.ny.gov/sites/default/files/documents/nys-p03-002_information_security_0.pdf)

SANS (SysAdmin, Audit, Network, and Security) Institute standards.

At the termination of this Agreement, Grant Recipient will return to NYSERDA all the Information and/or certify to NYSERDA that the Information was destroyed. Grant Recipient will, for a period of two (2) years following expiration of this Agreement, comply with any further reasonable requests of NYSERDA to concerning the return or destruction of the Information.

(f) If, in the course of performance of the Agreement, Grant Recipient encounters 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, Grant Recipient shall notify NYSERDA immediately and Grant Recipient shall not 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 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. FOIL provides 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." If the Agreement specifically requires submission of information that Grant Recipient, its affiliates, or its Subcontractors consider to be proprietary and/or confidential trade secret information, 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. To the extent that NYSERDA receives a request for disclosure of information that Grant Recipient has identified as confidential or proprietary, NYSERDA shall address such requests in accordance with the requirements of FOIL, including the exemptions from disclosure provided thereunder.

## Article X

### Warranties and Guarantees

Section 10.01 Warranties and Guarantees. The Grant Recipient warrants and guarantees that:

(a) all written information provided, and all representations made as a part of the PIIP-E submitted to NYSERDA in order to obtain this Agreement were, to the best of

Grant Recipient's knowledge, complete, true and accurate in all material respects, taken as a whole, when provided or made;

(b) as of the Effective Date, it is financially and technically qualified to enter into this Agreement and the transactions contemplated hereby, 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, except where the failure to be so qualified could not reasonably be expected to have a materially adverse effect on Grant Recipient or the ability to Substantially Complete the Port Improvements;

(c) it is familiar with and will comply in all material respects with all applicable 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) as of the Effective Date, 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 Port Improvements or any part thereof infringes any patent or otherwise interferes with any other right of any Person;

(e) to the best of Grant Recipient's knowledge, there are no existing undisclosed or threatened in writing legal actions, claims, or encumbrances, or liabilities as of the Effective Date that may adversely affect the Port Improvements or NYSERDA's rights hereunder;

(f) 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 Substantially Complete the Port Improvements;

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

(h) Grant Recipient shall at all times during the Agreement term remain Responsible, and Grant Recipient agrees, if reasonably requested by NYSERDA, to present reasonable evidence of the same;

(i) 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;

(j) Grant Recipient (i) is a limited liability company 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

(k) 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 XI

### Indemnification

Section 11.01 Indemnification by Grant Recipient. The Grant Recipient shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all third party 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 Grant Recipient's gross negligence or willful misconduct in its performance of 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. For the avoidance of doubt and notwithstanding anything to the contrary herein or otherwise, Grant Recipient's liability shall not exceed the aggregate amount of grant proceeds disbursed to it hereunder.

## Article XII

### Insurance

Section 12.01 Maintenance of Insurance; Policy Provisions. The Grant Recipient shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified in the Section 12.02 of this Exhibit B; provided however that Grant Recipient shall only be obligated to obtain insurance covering Grant Recipient and its employees.

Section 12.02 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 12.03 Delivery of Policies; Insurance Certificates. Prior to the commencement of construction of the Port Improvements, 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 XII hereof.

### Article XIII

#### Termination and Remedies

Section 13.01 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 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 ORECRFP20-1 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;

(d) by NYSERDA in the event it is found that the certification filed by the Grant Recipient in accordance with State Finance Law Sections 139-j and 139-k was intentionally false or intentionally incomplete at the time of submission if such misrepresentation or

omission is not cured within thirty (30) days after the receipt of notice from NYSERDA;  
or

(e) as permitted by Section 15.02 of this Agreement.

Section 13.02 Remedies. NYSERDA's sole and exclusive remedy for a Termination Event described in clauses (a) – (e) of Section 13.01 shall be: (i) the termination of this Agreement and the termination of NYSERDA's obligation to disburse the grant proceeds pursuant to this Agreement; and (ii) if this Agreement is terminated due to an Event of Default by Sponsor, the return of any grant monies received by Sponsor as of the date of termination. NYSERDA otherwise waives any and all additional remedies to which it may be entitled, including for the avoidance of doubt, any remedies available at law or equity.

#### Article XIV

##### Independent Contractor

Section 14.01 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.

(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 POA Facilities a "public work" for purposes of Article 8 and Article 9 of the New York State Labor Law or any other provision thereof.

#### Article XV

##### Compliance with Certain Laws

Section 15.01 Laws of the State of New York. The Grant Recipient shall comply with all of the requirements set forth in Exhibit C hereto.

Section 15.02 All Legal Provisions Deemed Included. 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 on the effective date of 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 the application 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. 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. In the event that 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 13.01 of this Agreement.

Section 15.03 Permits and Approvals. The NYSERDA award in no way replaces or modifies the necessity or applicability of any permit or approval process including SEQRA. Upon request by NYSERDA, Grant Recipient shall work in good faith with NYSERDA to obtain copies of all permits and approvals acquired by Developers in connection with the Port Improvements. 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 Port Improvements 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 15.04 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 15.05 Sexual Harassment Policy. The Grant Recipient 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 XVI

Notices, Entire Agreement, Amendment, Counterparts

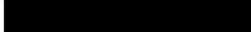
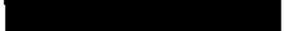
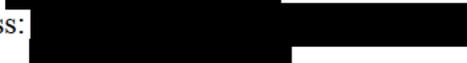
Section 16.01 Notices.

(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 facsimile transmission;
- (iii) by personal delivery;
- (iv) by expedited delivery service; or
- (v) 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  
 Address: 17 Columbia Circle, Albany, New York 12203  
 Attention: Office of the General Counsel  
 Email: [ceslegal@nyserda.ny.gov](mailto:ceslegal@nyserda.ny.gov)

  
 Name:   
 Title:   
 Address:   
 E-Mail Address: 

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



(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 16.02 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 16.03 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 XVII

### Publicity

#### Section 17.01 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 POA Facilities. In addition, the Grant Recipient shall notify NYSERDA's Director of Communications (or its designee) regarding any media interview involving Grant Recipient in which the POA Facilities is 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>3</sup>

(b) This Exhibit applies generally to payments due and owing by the 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.

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<sup>3</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>

(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 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**

**New York State Energy Research and Development Authority (NYSERDA)**

**2017 Report Content Guide**

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Revised 8/26/16

(Replaces the 2016 NYSERDA Report Content Guide)

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This Report Content Guide should be used in conjunction with the following documents, which are available at [nyserdera.ny.gov/Doing-Business-with-NYSERDA](http://nyserdera.ny.gov/Doing-Business-with-NYSERDA):

- 2017 NYSERDA Report Formatting Guide
- 2017 NYSERDA Marketing’s Template for Reports (including example)

## **1** Purpose

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This document explains how to prepare and submit a report to the New York State Energy Research and Development Authority (NYSERDA). It includes details on the elements of the report, specifications for formatting and accessibility, and information on electronic submission. Please follow these instructions unless your NYSERDA contract specifies otherwise.

NYSERDA will publish the finished report deliverable online and/or in print unless the NYSERDA Project Manager approves special circumstances. Please direct questions about technical content and submission deadlines to your NYSERDA Project Manager. For questions related to formatting and electronic submission of the report, contact Diane Welch in NYSERDA Marketing at 518-862-1090, ext. 3276 or [diane.welch@nyserda.ny.gov](mailto:diane.welch@nyserda.ny.gov).

## **2** Required Elements

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Section 6 includes a checklist of the required elements. This section contains details about the items that are required in all reports (unless noted as optional). Items should appear and be paginated in the following sequence:

- Title page (no page number):
  - Include title of report, draft or final, prepared for NYSERDA, NYSERDA Project Manager (name and title), prepared by name of organization, individuals and affiliation, report number (NYSERDA will provide during editing), contract number and date report submitted.
- Notice (small Roman numerals for page numbers i.e., ii):

### Notice

This report was prepared by [Insert Preparer's Name] in the course of performing work contracted for and sponsored by the New York State Energy Research and Development Authority (hereafter "NYSERDA"). The opinions expressed in this report do not necessarily reflect those of NYSERDA or the State of New York, and reference to any specific product, service, process, or method does not constitute an implied or expressed recommendation or endorsement of it. Further, NYSERDA, the State of New York, and the contractor make no warranties or representations, expressed or implied, as to the fitness for particular purpose or merchantability of any product, apparatus, or service, or the usefulness, completeness, or accuracy of any processes, methods, or other information contained, described, disclosed, or referred to in this report. NYSERDA, the State of New York, and the contractor make no representation that the use of any product, apparatus, process, method, or other information will not infringe privately owned rights and will assume no liability for any loss, injury, or damage resulting from, or occurring in connection with, the use of information contained, described, disclosed, or referred to in this report.

NYSERDA makes every effort to provide accurate information about copyright owners and related matters in the reports we publish. Grant Recipients are responsible for determining and satisfying copyright or other use restrictions regarding the content of reports that they write, in compliance with NYSERDA's

policies and federal law. If you are the copyright owner and believe a NYSERDA report has not properly attributed your work to you or has used it without permission, please email [print@nyserda.ny.gov](mailto:print@nyserda.ny.gov).

Information contained in this document, such as web page addresses, are current at the time of publication.

NYSERDA makes every effort to provide accurate information about copyright owners and related matters in the reports we publish. Grant Recipients are responsible for determining and satisfying copyright or other use restrictions regarding the content of the reports that they write, in compliance with NYSERDA's policies and federal law. If you are the copyright owner and believe a NYSERDA report has not properly attributed your work to you or has used it without permission, please email [print@nyserda.ny.gov](mailto:print@nyserda.ny.gov).

Information contained in this document, such as web page addresses, are current at the time of publication.

- Abstract and Keywords (optional; small Roman numerals for page numbers):
  - The Abstract is a brief, approximately 200-word description of project objectives, investigative methods used, and research conclusions or applications. This information will be used when NYSERDA registers the report with the New York State Library and the Library of Congress. A list of keywords that describe the project and identify the major research concept should be submitted with the report. Four to six precise descriptors are generally sufficient and will be used for indexing, registering and distributing the report.
- Acknowledgments (optional; small Roman numerals for page numbers):
  - If included, the Acknowledgments page precedes the Table of Contents and is generally no longer than two paragraphs in length.
- Table of Contents (small Roman numerals for page numbers):
  - The Table of Contents should list front matter material (except the Table of Contents) and titles and section numbers for heading levels one through four. Additional levels should not be used in the report. If the heading styles are applied in Word, the list can be automatically generated.
- List of Figures (small Roman numerals for page numbers).

- If the report contains three or more figures, they should be listed using the style of the Table of Contents. (If the figure titles in text have the caption function applied in Word, the list can be automatically generated.)
- List of Tables (small Roman numerals for page numbers).
  - If the report contains three or more tables, they should be listed using the style of the Table of Contents. (If the figure titles in text have the caption function applied in Word, the list can be automatically generated.)
- Acronyms and Abbreviations List (small Roman numerals for page numbers):
  - All acronyms and abbreviations should be spelled out and followed by the acronym or abbreviation in parentheses on first use.
  - First reference to NYSERDA in text should be “the New York State Energy Research and Development Authority (NYSERDA).” Subsequent references should read simply “NYSERDA.”
  - When referring to New York State, use “New York State” on first use and abbreviate “the State” for subsequent uses.
  - Use a one- or two-column layout for the list, but do not use a table.
- Executive Summary or Summary (optional; ES-1 or S-1 etc. for page numbers of Executive Summary and Summary, respectively):
  - An Executive Summary is two pages in length maximum. A Summary is a shorter version of the report and varies in length but less than 10 percent of the main report is a good guideline.
- Main Text (sequentially numbered pages i.e., 1, 2, 3 etc. preferred, but chapter-page numbering is acceptable).
- Figures and tables with sequential numbering (Figure 1, Figure 2, etc. preferred but sequential chapter-number are acceptable), callouts in text (i.e., Figure 1 shows...) and Alternative Text to comply with ADA Accessibility are required. Refer to ADA guidelines for the best way to represent data with reference to colors. Preferences for tables are listed in this document.
  - Figures and tables at the back of the document are preferred for documents that NYSERDA will be formatting; figures and tables placed in-line with text near callout is acceptable. Do not use wrap text.
- References Cited and Bibliography information (as needed; continue sequential page numbering):

- References Cited vs. Bibliography: References Cited has specific references called out in text to document sources of specific information, and a bibliography is a list of sources used to compile a document but does not have callouts for specific facts in the text.
- Endnote style for reference citations is preferred but footnotes are acceptable.
- Format of reference callout in text for footnote or endnote is the author-date callout in text (i.e., Wood and Stone 2010).
- Full reference citations listed alphabetically by the last name of the first author.
- Citation format is based on Chapter 15 (Documentation II: Author-Date References) of The Chicago Manual of Style (16th edition).
- Use the following format to refer to reports published by NYSERDA:  
New York State Energy Research and Development Authority (NYSERDA).  
Year of publication. “Title of Report,” NYSERDA Report Number xx-yy.  
Prepared by organization, company or individual names and city/state  
location (optional). [nyserdera.ny.gov/publications](http://nyserdera.ny.gov/publications)
- Appendices (optional; A-1 etc. for Appendix A, B-1 etc. for Appendix B page numbering):
  - In NYSERDA reports, Appendices should be called appendices and not Attachments. Attachments are used to append a document to an appendix. (Attachments may have different definitions in emails and legal documents.)
- Alternative text that describes figures and tables to meet Accessibility requirements. (A separate Word file is fine—see Section 2.2 for more details).

## **2.1 Copyright for Intellectual Property**

All material borrowed or adapted from other sources should be properly identified (i.e., document, source, date, and page). The contractor must obtain and submit to NYSERDA the copyright owner’s written permission to use any illustrations, photographs, tables, figures, or substantial amounts of text from any other publication.

For each figure and table, the contractor must also provide a source line that gives the original source and any language stating permission to reprint that should be published with each respective table or figure.

## **2.2 Proprietary or Confidential Information**

Propriety or confidential information must be clearly labeled in the report submission as “proprietary” or “confidential.” To the extent possible, the information should be contained within one section or appendix

that can be easily removed prior to publishing. Consult your NYSERDA Project Manager with any questions.

### **2.3 Americans with Disabilities Act (ADA) Accessibility Compliance**

As a State Authority, NYSERDA is obligated to ensure that all documents published on NYSERDA’s website are accessible, pursuant to Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220 August 7, 1998).

To meet the needs of persons with visual or mobility disabilities, reports must be in a format that allows for conversion of written words of an electronic document into speech, thus allowing the person with a disability to hear the text. The formatting of these documents is critical to the success of the conversion from text to speech. Screen reading software will read the document as one long series of paragraphs with no differentiation for new topics unless properly formatted with Heading Styles. (Imagine reading a textbook with no difference in text from one paragraph to the next.)

Reports submitted to NYSERDA must meet the following requirements:

- Use numbered headings in the document up to Level 4 (i.e., 1.1.1.1).
- Pick one of the formatting options outlined in Section 3 of this document.
- Provide short titles for all tables, images, and figures.
- Provide Alternative Text (also known as alt-text) that describes the visual elements of each image and figure—and does not just repeat the title or caption. Include alt text for any tables that are inserted as images.
  - Write out links in documents that will be printed. Write the sentence so that the URL is not at the end and followed by a period. See the last bulleted item for an example (“Visit...”).
  - Avoid linking to “click here” or including extremely long URLs. For web-only documents, use contextual links, such as linking NYSERDA’s website to “NYSERDA” instead of putting a long URL in text.
  - Visit [nyserderda.ny.gov/Doing-Business-with-NYSERDA](http://nyserderda.ny.gov/Doing-Business-with-NYSERDA) for more information about how to make a document accessible.

## **3 Formatting**

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Grant Recipients have two options for the format of a submitted document:

### **Option 1—NYSERDA does the formatting**

- Grant Recipient emails to NYSERDA Project Manager a Word file of all report components with all text in Times New Roman 10 pt font.

- File should include outline level numbering with each section head (1 is Level 1 Heading, 1.1 is Level 2 Heading, 1.1.1 is Level 3 Heading, 1.1.1.1 is Level 4 Heading), not to exceed Level 4.
- Each figure and table should have a call-out in the main text (i.e., Figure 1 shows... or According to Figure 1,... or (Figure 1) at the end of a sentence).
- Figures and tables along with their titles and sources (and captions if necessary) should be grouped together at the back of the file or supplied in a separate file. Grant Recipient can request inline or back-of-report placement of figures.
- NYSERDA will format the document according to the 2017 NYSERDA Marketing's Template for Reports.

### **Option 2—Grant Recipient does the formatting**

- Visit [nyserda.ny.gov/Doing-Business-with-NYSERDA](http://nyserda.ny.gov/Doing-Business-with-NYSERDA) to download:
  - Report template (2017 NYSERDA Marketing's Template for Reports).
  - Details about report formatting (2017 NYSERDA Report Formatting Guide).
- Apply each of the Word Styles in the template to the elements of the document as appropriate, such as apply Heading 1 to all first-level headings, Body Text to all body text and References to reference materials. Place figures and captions after each respective call-out OR in order at the back of the report. Do not hyperlink websites.

## **4 Submitting a Report to NYSERDA**

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No print drafts of the report are required. An electronic Word version of the draft report should be emailed to the NYSERDA Project Manager. Contact the Project Manager regarding how to transfer large files. The contractor is responsible for satisfactorily addressing comments from NYSERDA and other stakeholders. When making corrections, the contractor must ensure that technical content is not compromised. After editorial corrections have been made, the contractor must email to the Project Manager a Word version of the final report. NYSERDA will consider high-resolution image submissions for report covers.

## **5 Contacts**

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- The NYSERDA Project Manager should be the contractor's primary point of contact.
- For additional questions, contact Diane Welch in NYSERDA Marketing at [diane.welch@nyserda.ny.gov](mailto:diane.welch@nyserda.ny.gov) or 518-862-1090 x3276.

- Grant Recipients can also email [print@nyscrda.ny.gov](mailto:print@nyscrda.ny.gov) or call 518-862-1090 and ask for Marketing.

## **6** Required Elements Checklist

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The following elements should be included in reports, unless noted as optional, along with the style of page numbers is listed in parentheses:

- Title page (no page number).
- Notice (small Roman numeral page numbers, i.e., ii).
- Abstract
- Keywords (optional; small Roman numerals).
- Acknowledgments (optional; small Roman numerals).
- Table of Contents (small Roman numerals).
- List of Figures (small Roman numerals).
- List of Tables (small Roman numerals).
- Acronyms and Abbreviations List (small Roman numerals).
- Executive Summary or Summary (optional; ES-1 or S-1 etc).
- Main Text (pages sequentially numbered i.e., 1, 2, 3 etc.).
- Figures and tables with sequential numbering (Figure 1, Figure 2, etc.), callouts in text (i.e., Figure 1 shows...), and Alt Text for ADA Accessibility.
  - Figures and tables at the back of the document are preferred for documents that NYSERDA will be formatting; figures and tables placed in-line with text after first callout are acceptable. Do not wrap text.
- References Cited and Bibliography information.
- Appendices (optional; page numbering is A-1 etc. for Appendix A, B-1 etc. for Appendix B).
- Copyright information for intellectual property (i.e., images, figures, tables or large pieces of text that have been previously published)—include written permission from the copyright holder at the end of the document and use appropriate language in the captions of the images, figures and tables such as “Reprinted with permission from [publisher’s name].”
- Alternative text that describes each image and figure (include Alt text for tables that are included as images) —and does not just repeat the title or caption. (See Section 2.3 for more information.) The text should be listed at the end of the document or provided in a separate file.

**Exhibit F**

**PROJECT LABOR AGREEMENT REQUIREMENTS**

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

1. Provisions that appropriately limit applicability of the PLA to United States-based (including Federal waters) covered work on the POA Facilities (and not extending to any other work performed by contractors and subcontractors, or to the work of their affiliated entities), ensuring that POA Facilities 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 POA Facilities (subject to appropriate exceptions), and the PLA should be available to all contractors and subcontractors, of whatever tier, regardless of their union affiliation;
2. Provisions for appropriate union recognition and security (limited to POA Facilities 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);
3. Comprehensive labor harmony provisions to ensure against schedule disruption as a result of worksite disputes or other labor disputes of any kind;
4. 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 POA Facilities), and appropriate provisions for labor management cooperation;
5. 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);

6. Appropriate provisions promoting minority- or women-owned business enterprise (“MWBE”) employment and service-disabled veteran owned business (“SDVOB”) employment, as well as the employment of low-income workers in New York;
7. Appropriate provisions for the use of apprentices; and
8. Appropriate provisions for rules governing worksite access and conduct.

**Exhibit G**

**FORM OF GUARANTEE**



## GUARANTY

THIS GUARANTY is dated and effective as of [ ], 2022 (as amended, restated or modified from time to time, the “Guaranty”), and is made by [ ], a corporation organized under the laws of [ ] and [ ], a corporation organized under the laws of [ ] (“the “Guarantors,” and each a “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 Grant Agreement (defined below).

WHEREAS, the Grant Recipient has agreed to make a capital contribution towards making certain improvements at the Port of Albany to support the development of a wind turbine tower manufacturing facility at such port as further described in the Grant Agreement.

WHEREAS, NYSERDA has entered into a Conditional Grant Disbursement Agreement (“Grant Agreement”) dated [ ], 2022 with Grant Recipient under which NYSERDA has agreed to make grant funding available to Grant Recipient to support certain eligible port improvements at the Port of Albany;

WHEREAS, pursuant to the Grant Agreement, the Grant Recipient has agreed to make available the Remaining Capital Contribution (as defined in the Grant Agreement) to NYSERDA in certain limited circumstances more specifically described in the Grant Agreement;

WHEREAS, as a condition to effectiveness of the Grant Agreement, each 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 Grant Agreement; and

WHEREAS, each Guarantor owns 50%, directly or indirectly, of the issued and outstanding membership interests in the Grant Recipient, and such Guarantor will significantly benefit from NYSERDA’s disbursement of the grant proceeds to the Grant Recipient pursuant to the Grant Agreement.

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) Subject to the Guaranty Capped Value (defined below), each Guarantor hereby, jointly and severally, irrevocably, absolutely and unconditionally guarantees 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 (x) one hundred percent (100%) of the Remaining Capital Contribution plus (y) any grant amounts (including any interest, if applicable) owed and reimbursable to NYSERDA (such amount, the “Reimbursable Grant Proceeds”), that have not

been previously paid by Grant Recipient, pursuant to Section 5.03 of the Grant Agreement (the sum of (x) and (y), the “Guaranteed Obligations”) if (i) NYSERDA is entitled to draw upon such amounts under, and subject to, Article V of Exhibit B of the Grant Agreement and (ii) Grant Recipient fails to make available such amounts to NYSERDA in accordance with the terms of the Grant Agreement.

(b) Subject to Article V of the Grant Agreement and Section 1(a) above, each Guarantor understands, agrees and confirms that NYSERDA may enforce this Guaranty up to the full amount of the Guaranteed Obligations (subject to the Guaranty Capped Value) against any 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.

(c) The aggregate amount covered by this Guaranty shall not exceed USD \$[\_\_\_\_\_] plus the Reimbursable Grant Proceeds (in the aggregate, the “Guaranty Capped Value”).

2. LIABILITY OF GUARANTOR ABSOLUTE. The liability of each 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 such Guarantor, any other guarantor or by any other party, and the liability of each Guarantor hereunder shall not be affected or impaired by any circumstance or occurrence whatsoever, including, without limitation: (a) any other guaranty, undertaking or maximum liability of such 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 Grant Agreement that NYSERDA repays Grant Recipient pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceeding, and each 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 each 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. Nothing in this Section 2 shall be construed as limiting any Guarantor’s right to raise a defense available to it under Section 4(b) hereof.

3. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF GUARANTOR. Each Guarantor represents, warrants and covenants that:

(a) such 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) such 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) such 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 such 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 such 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 such Guarantor of this Guaranty;

(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 such Guarantor of this Guaranty; and

(f) such Guarantor shall at all times during the term of this Guaranty maintain a credit rating of BBB+ (or the equivalent) or better by one or more of the three main independent rating agencies, namely; Standard & Poor's (S&P), Moody's Investor Services (Moody's), and Fitch IBCA (Fitch); provided, however, that should any Guarantor suffer a credit downgrade below the BBB+ rating required herein, such Guarantor shall promptly provide to NYSERDA such cash, letter of credit, or other security in such amounts and in such form as reasonably acceptable by NYSERDA, such acceptance not to be unreasonably withheld, conditioned or delayed.

#### 4. WAIVERS BY GUARANTOR.

(a) Each 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, except with respect to such Guarantor's right to receive written demand as expressly set forth in Section 1(a) above, 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 such Guarantor, any other guarantor or Grant Recipient) and each 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) Subject to the limitations set forth in Section 1(a) and 1(b) above (and, for the avoidance of doubt, Article V of the Grant Agreement), each Guarantor waives: (i) any right to require NYSERDA to proceed against Grant Recipient, any other guarantor of the Guaranteed Obligations or any other party, and (ii) any defense 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, any defense based on or arising out of the disability of Grant Recipient, any other guarantor of the Guaranteed Obligations or any other party, or the unenforceability of the Guaranteed Obligations or any part thereof from any cause, or the cessation from any cause of the liability of Grant Recipient, other than (A) payment in full in cash or other defeasance of the Guaranteed Obligations, or (B) any defenses available to the Grant Recipient under the Grant Agreement for failure to perform its obligations thereunder. NYSERDA may, at its election, exercise any right or remedy it may expressly have under the Grant Agreement against Grant Recipient or any other party 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. Except to the extent that the Guaranteed Obligations have been paid, each 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 such Guarantor against Grant Recipient, any other guarantor of the Guaranteed Obligations or any other party or any security.

(c) Each 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 Remaining Capital Contribution in accordance with the terms of the Grant 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 Grant Agreement, and agrees to assume the responsibility for keeping, and to keep, so informed for so long as this Guaranty is in effect.

(d) Each 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, any Guarantor, without incurring responsibility to any Guarantor, without impairing or releasing the obligations or liabilities of any Guarantor hereunder, upon or without any terms or conditions and in whole or in part:

(a) exercise or refrain from exercising any express rights against Grant Recipient pursuant to the Grant Agreement, 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 Grant Agreement or any of the instruments or agreements referred to therein, or otherwise amend, modify or supplement the Grant Agreement or any of such other instruments or agreements;

(c) act or fail to act in any manner which may deprive any 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 any 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 any Guarantor in any case shall entitle such 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. Each Guarantor, jointly and severally, hereby agrees to pay all reasonable and documented 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 and documented fees and disbursements of counsel employed or retained by NYSERDA (other than in-house counsels)).

8. BENEFIT AND BINDING EFFECT. This Guaranty shall be binding upon each 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 as set forth in Section 12 hereof) except with the written consent of each 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 Grant Agreement, and (b) in the case of each 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 WAS NEGOTIATED IN THE STATE OF NEW YORK, ACCEPTED BY NYSERDA IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE GRANT FUNDS WERE, OR ARE TO BE, DISBURSED BY NYSERDA FROM THE STATE OF NEW YORK. THE GUARANTORS AGREE THAT THE STATE OF NEW YORK HAS A SUBSTANTIAL RELATIONSHIP TO THE TRANSACTION EVIDENCED HEREBY AND AGREE THAT THIS GUARANTY AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW). The Guarantors hereto irrevocably acknowledge and accept that all actions arising under or relating to this Guaranty or the Grant Agreement 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 hereto 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. Each 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 such Guarantor at its address set forth opposite its signature below, such service to become effective 30 days after such mailing. Each 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 any Guarantor in any other jurisdiction.

(b) Each 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) EACH GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS THAT GUARANTOR MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS GUARANTY OR THE GRANT AGREEMENT OR ANY OTHER DOCUMENTS EXECUTED BY THE GUARANTORS IN CONNECTION THEREWITH, OR ANY OTHER STATEMENTS OR ACTIONS OF NYSERDA. EACH GUARANTOR ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR NYSERDA TO ENTER INTO THE GRANT AGREEMENT.**

12. TERMINATION. This Guaranty shall automatically and irrevocably terminate, without any action by NYSERDA or any other person, upon the earliest to occur of (a) the date on which the Guaranteed Obligations have been paid in full in accordance with the terms hereof, (b) the date Substantial Completion has been achieved in accordance with the Grant Agreement, (c) the date that the Remaining Capital Contribution is equal to or less than zero Dollars (\$0.00) as calculated by the Grant Recipient and NYSERDA has received the Reimbursable Grant Proceeds (to the extent applicable), or (d) the termination of the Grant Agreement for reasons other than an Event of Default arising from the failure of Grant Recipient to meet a payment obligation to NYSERDA under Article V of the Grant Agreement prior to the termination thereof.

13. 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. Delivery of an executed counterpart of a signature page of this Guaranty by fax, as an attachment to an email or other similar electronic means shall be effective as delivery of a manually executed counterpart of this Guaranty.

14. ELECTRONIC EXECUTION. Delivery of an executed counterpart of a signature page of this Guaranty and/or any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Guaranty and/or the transactions contemplated hereby (each an "Ancillary Document") that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Guaranty or such Ancillary Document, as applicable, and Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means shall have the same legal effect, validity, and enforceability as any paper original. Without limiting the generality of the foregoing, each Guarantor waives any argument, defense or right to contest the legal effect, validity or enforceability of this Guaranty and/or any Ancillary Document based solely on the lack of paper original copies of this Guaranty and/or such Ancillary Document, respectively, including with respect to any signature pages thereto, and waives any claim against the other Guarantor for any liabilities arising solely from such Guarantor's reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any liabilities arising as a result of the failure of such Guarantor to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature. For purposes of this paragraph, "Electronic Signature" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record..

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

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

Address:

\_\_\_\_\_

as Guarantor

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

Name:

Title:

Address:

\_\_\_\_\_

as Guarantor

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

Name:

Title:

Acknowledged and Agreed to:

RENEWABLE ENERGY SHARED  
ASSETS LLC

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

Name:

Title:

**Exhibit H**

**MEMORANDUM OF UNDERSTANDING**





































































