

## **CONFIDENTIALITY AGREEMENT**

**Between**

**New Jersey Economic Development Authority**

***and***

**(LEGAL ENTITY NAME)**

This Confidentiality Agreement dated \_\_\_\_\_, 2024 (the "Agreement"), by and between (LEGAL ENTITY NAME) ("Company") having an address at (LEGAL ENTITY ADDRESS), and the New Jersey Economic Development Authority ("NJEDA"), a public body corporate and politic constituting an instrumentality of the State of New Jersey having an address at 36 West State Street, P.O. Box 990, Trenton, NJ 08625-0990. Company and NJEDA shall sometimes be referred to individually as a "Party" and collectively as the "Parties".

Parties are planning to share certain confidential information regarding offshore wind related port development and supply chain development in New Jersey.

THE PARTIES AGREE AS FOLLOWS:

1. This Agreement shall be effective as of the date hereof and shall continue in effect for a period of five (5) years.
2. "Confidential Information" shall mean any information or records, unless exempted by the provisions of paragraph 7 hereof, provided by Company to NJEDA or NJEDA to Company in connection with the Parties' evaluation of offshore wind-related port development and supply chain development in New Jersey, if the information or records contain or pertain: (a) to financial records, to proprietary information, or to personal matters; and (b) the disclosing Party notifies the receiving Party, in writing, of such classification at the time the information is provided to the receiving Party. For the avoidance of doubt, such notification to the receiving Party may be accomplished by labeling documents as "confidential."
3. The Parties shall use the Confidential Information received from the other Party solely in connection with the Wind Port Project for the purpose of evaluating offshore wind-related port development and supply chain development in New Jersey, as agreed to by NJEDA and Company.
4. Subject to Paragraphs 12-14 below, each Party shall be obligated to maintain as secret and confidential the Confidential Information and shall not disclose any of such information, directly or indirectly, to any third party, other than its officers, directors, employees, consultants, contractors, affiliates, and agents ("Representatives"), all of whom shall be informed of this Confidentiality Agreement and all of whom shall be bound by its terms. For purposes of this Agreement, the Company represents that the employees of Company's affiliates who are working for and on behalf of Company are considered "agents" for purposes of this Agreement and shall be bound by its terms.
5. Subject to Paragraphs 12-14 below, Confidential Information shall remain the property of the disclosing Party. No rights or licenses to any Confidential Information are granted or implied by this Agreement.

6. Subject to Paragraphs 12-14 below, the receiving Party shall not make copies of any Confidential Information without the disclosing Party's prior consent. Notwithstanding the foregoing, NJEDA shall have the right to retain copies of any project-related information received by it from Company, or on behalf of Company, submitted to NJEDA.
7. It is understood that the term "Confidential Information" does not include information which:
  - a. prior to disclosure by the disclosing Party or the disclosing Party's agents hereunder, was within the possession of the receiving Party, as evidenced by their records; or
  - b. prior to disclosure was, or subsequent to disclosure becomes, generally known to the public or in the public domain through no fault of the receiving Party; or
  - c. subsequent to disclosure is obtained on a non-confidential basis by the receiving Party from a third party not bound by a confidentiality agreement with the disclosing Party; or
  - d. is requested by any federal or state investigatory or regulatory agency, including the United States and New Jersey Departments of Labor and Workforce Development.
8. This Agreement is intended to cover only the matter of maintaining the confidentiality of Confidential Information.
9. None of the terms or conditions hereof may be changed, modified, waived or canceled except by a writing signed by both parties hereto, specifying such change, modification, waiver or cancellation.
10. If any of the provisions of this Agreement are held by a court to be unenforceable then such holding shall be enforced to the maximum extent permitted by law and the remaining provisions of this Agreement shall remain in full force and effect.
11. This Agreement shall be construed and governed in accordance with the laws of the State of New Jersey in the United States of America.
12. In the event that the receiving Party or its Representatives are required (under applicable law, legal process, or regulation, including by stock exchange regulations or by a governmental order, decree, regulation or rule or by oral questions administered under oath in a court or investigative proceeding, interrogatories, depositions, subpoena or other judicial or investigative process) to disclose any Confidential Information supplied by the disclosing Party or its Representative, such party shall provide to the disclosing Party, via the EMAIL address set forth below, (or at such other address that the disclosing Party has provided the receiving Party, at least fifteen (15) days' notice of) prompt notice of such requests so that the disclosing Party may seek a protective order or other appropriate relief from such request or requirement to disclose Confidential Information. If in the absence of a timely protective order or other relief, upon the advice of counsel of their own choosing, the receiving Party or its Representative determine that disclosure of any Confidential Information is compelled under penalty of contempt or liability, the receiving Party or its Representative may disclose such Confidential Information without liability hereunder.
13. Company acknowledges that NJEDA is an authority of the State of New Jersey which is subject to the N.J. Open Public Records Act (N.J.S.A. 47:1A-A et seq.). Company acknowledges that a copy of the N.J. Open Public Records Act is made available at <http://www.state.nj.us/grc/act.html> Company

further acknowledges that the N.J. Open Public Records Act set forth very strict time frames for responding to requests for public records and severe penalties for failure to comply with the N.J. Open Public Records Act. Company understands and agrees that it shall not be a violation of this Agreement and that NJEDA shall have no liability to Company for releasing documents under an N.J. Open Public Records request if NJEDA determines, in its best judgment, that such documents were required to be released under the N.J. Open Public Records Act.

14. Company also acknowledges that NJEDA is an authority of the State of New Jersey which is required to operate under the N.J. Open Public Meetings Act (N.J.S.A. 10:4-6 et seq.). Company further acknowledges that certain transactions which may result from Company's negotiations with NJEDA cannot be approved without Company information being presented to and discussed by the NJEDA Board of Members at an open, public meeting. Company understands and agrees that it shall not be a violation of this Agreement and that NJEDA shall have no liability to Company for any discussions by NJEDA Board members or NJEDA staff members regarding – to the extent necessary to evaluate the transaction - Company's Confidential Information during such an open and public NJEDA Board meeting.
15. Any and all claims made or to be made against NJEDA based in tort law for damages shall be governed by and subject to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. Notwithstanding any provision in the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. to the contrary, Company agrees that any and all claims made or to be made against NJEDA based in contract law for damages shall be governed by and subject to the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.
16. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same agreement.
17. Each individual signing below warrants and represents that he or she has the authority to enter into this Agreement on behalf of the person, firm, agency or corporation, if any, listed below his or her name. Each Party acknowledges and confirms their respective acceptance of the foregoing terms and conditions by signing the Agreement where indicated below and returning it to the other Party.

Please indicate Company's acceptance of the foregoing terms and conditions by signing the enclosed duplicate copy of this Agreement and returning it to the NJEDA.

**(LEGAL ENTITY NAME)**

Notice Address:

By \_\_\_\_\_

Name:

Title:

Email:

Accepted and Agreed to this

\_\_\_\_\_ day of \_\_\_\_\_, 2024

**New Jersey Economic Development Authority**

Notice Address:

By \_\_\_\_\_

Name:

Title:

Email: