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**UNIFORM PROJECT AGREEMENT (SBMT ASSET FACILITY)**

by and between

**NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**

and

**SBMT ASSET LLC**

Dated as of March 1, 2025

2025 SBMT Asset Project

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## **UNIFORM PROJECT AGREEMENT (SBMT ASSET FACILITY)**

This **UNIFORM PROJECT AGREEMENT (SBMT ASSET FACILITY)**, dated as of March 1, 2025 (this “**Agreement**”), is by and between **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, having its principal office at One Liberty Plaza, New York, New York 10006 (the “**Agency**”), party of the first part, and **SBMT ASSET LLC**, a limited liability company organized and existing under the laws of the State of Delaware (the “**Lessee**”), and authorized to conduct business in the State of New York, having its principal office at 600 Washington Blvd., Suite 800, Stamford, Connecticut 06901, party of the second part (capitalized terms used herein shall have the respective meanings assigned to such terms throughout this Agreement or the Agency Lease (as defined below)).

### **WITNESSETH:**

**WHEREAS**, the Enabling Act authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their prosperity and standard of living; and

**WHEREAS**, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by the Agency Act for the benefit of the City and the inhabitants thereof; and

**WHEREAS**, to accomplish the purposes of the Act, the Agency has entered into certain agreements with each of the Lessee and EOW regarding two interrelated “projects” within the meaning of the Act and within the territorial boundaries of the City, consisting of the construction, furnishing, equipping and installation of industrial facilities for the purpose of connecting OSW power from EOW’s Future OSW Development to the City’s power grid; and

**WHEREAS**, the SBMT Asset Project will further the purposes of the Act and promote job opportunities for the benefit of the City and the inhabitants thereof; and

**WHEREAS**, to facilitate the SBMT Asset Project, the Agency and the Lessee have entered into negotiations to enter into a Straight-Lease Transaction pursuant to which (i) the Lessee has subleased the Facility Realty (SBMT Asset Facility), and leased the Facility Personalty (SBMT Asset Facility), to the Agency pursuant to the Company Lease (SBMT Asset Facility) and (ii) the Agency has subleased the Facility Realty (SBMT Asset Facility) and the Facility Personalty (SBMT Asset Facility) to the Lessee pursuant to the Agency Lease; and

**WHEREAS**, in furtherance of the Straight-Lease Transaction, the Agency adopted its Inducement Resolution and its Authorizing Resolution inducing and authorizing the undertaking of the SBMT Asset Project and the SBMT Asset Project Work, the sublease of the Facility Realty (SBMT Asset Facility), and the lease of the Facility Personalty (SBMT Asset Facility), by the Lessee to the Agency pursuant to the Company Lease (SBMT Asset Facility), and the sublease of the Facility Realty (SBMT Asset Facility) and the Facility Personalty (SBMT Asset Facility) by the Agency to the Lessee pursuant to the Agency Lease; and

**WHEREAS**, the provision by the Agency of Financial Assistance to the Lessee through a Straight-Lease Transaction has been determined to be necessary to induce the Lessee, EOW and Equinor to proceed with the Equinor Projects and the Future OSW Development, and if the Agency does not provide such Financial Assistance, the Lessee and EOW could not feasibly proceed with the respective Equinor Projects, and Equinor could not feasibly proceed with the Future OSW Development;

**NOW, THEREFORE**, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

## **ARTICLE I**

### **DEFINITIONS AND CONSTRUCTION**

**Section 1.1. Definitions.** The following capitalized terms shall have the respective meanings specified for purposes of this Agreement.

**Act** shall mean, collectively, the Enabling Act and the Agency Act.

**Additional Improvements (SBMT Asset Facility)** shall have the meaning assigned to such term in the Agency Lease.

**Agency Act** shall mean Chapter 1082 of the 1974 Laws of New York, as amended.

**Agency Lease** shall mean the Agency Lease and Agreement (SBMT Asset Facility), dated as of even date herewith, between the Agency and the Lessee, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms thereof.

**Agency Lease Agreement (EOW Facility)** shall have the meaning assigned to such term in the Agency Lease.

**Agent** shall mean a contractor, subcontractor or other party appointed by the Lessee to act as the Agency's agent for the purpose of effecting purchases that are eligible for the Sales Tax Exemption.

**Agreement** shall mean this Uniform Project Agreement (SBMT Asset Facility), dated as of the date set forth in the first paragraph hereof, between the Agency and the Lessee,

and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

**Application Date** shall mean the date on which the Inducement Resolution was adopted with respect to the application of the Lessee and EOW for Financial Assistance.

**Approved SBMT Asset Project Operations** shall have the meaning assigned to such term in the Agency Lease.

**Authorized Representative** shall mean, (i) in the case of the Agency, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director or General Counsel, or any other officer or employee of the Agency who is authorized to perform specific acts or to discharge specific duties, (ii) in the case of the Lessee, a person named in Exhibit C of the Agency Lease, or any other officer or employee of the Lessee who is authorized to perform specific duties hereunder or under any other SBMT Asset Project Document and of whom another Authorized Representative of the Lessee has given written notice to the Agency, and (iii) in the case of the Guarantor, a person named in Exhibit C to the Agency Lease, or any other officer or employee of the Guarantor who is authorized to perform specific duties hereunder or under any other SBMT Asset Project Document and of whom another Authorized Representative of the Guarantor has given written notice to the Agency; provided, however, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of this Agreement or any other SBMT Asset Project Document, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

**Authorizing Resolution** shall mean the resolution of the Agency adopted on March 12, 2024, as amended on January 28, 2025, providing for Financial Assistance and authorizing, among other documents, the SBMT Asset Project Documents to which the Agency is a party.

**Benefits (SBMT Asset Facility)** shall mean, collectively, the Sales Tax Savings and all miscellaneous monetary benefits derived from the Agency's participation in the Straight-Lease Transaction contemplated by this Agreement.

**City** shall mean The City of New York, New York.

**Commencement Date** shall mean March 6, 2025, on which date this Agreement was executed and delivered.

**Company Lease (SBMT Asset Facility)** shall mean the Company Lease Agreement (SBMT Asset Facility), dated as of even date herewith, between the Lessee, as landlord, and the Agency, as tenant, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms thereof.

**Completion Deadline (SBMT Asset Facility)** shall mean April 1, 2028, as such deadline may be extended due to a Construction Delay.

**Construction Delay** shall have the meaning assigned to such term in the Agency Lease.

**Eligible Items** shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Lessee and any Agent shall be entitled to claim a Sales Tax Exemption in connection with and as part of the SBMT Asset Project:

- (i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Facility Realty (SBMT Asset Facility) other than the EOW Substation;
- (ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more, and which are located at, and constitute part of the Facility, but which are not required to be incorporated into the Facility Realty (SBMT Asset Facility) as an integral component thereof;
- (iii) with respect to the eligible items identified in (i) and (ii) above: purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs;
- (iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility Realty (SBMT Asset Facility) (but excluding (y) the EOW Substation and (z) fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and
- (v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility Realty (SBMT Asset Facility) other than the EOW Substation.

**Enabling Act** shall mean the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended.

**Entity** shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

**EOW** shall mean Empire Offshore Wind LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its permitted successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of EOW under Section 8.9 or 8.20 of the Agency Lease Agreement (EOW Facility).

**EOW Project** shall have the meaning assigned to such term in the Agency Lease Agreement (EOW Facility).

**EOW Substation** shall have the meaning assigned to such term in the Agency Lease.

**Equinor** shall mean Equinor ASA, a company organized under the laws of Norway, and its permitted successors and assigns.

**Equinor Projects** shall have the meaning assigned to such term in the Agency Lease.

**Equinor USH** shall mean Equinor US Holdings Inc., a corporation organized and existing under the laws of the State of Delaware, and its permitted successors and assigns pursuant to the Guaranty Agreement (SBMT Asset Facility).

**Existing Improvements (SBMT Asset Facility)** shall have the meaning assigned to such term in the Agency Lease.

**Facility** shall mean, collectively, the Facility Personalty (SBMT Asset Facility) and the Facility Realty (SBMT Asset Facility).

**Facility Personalty (SBMT Asset Facility)** shall have the meaning assigned to such term in the Agency Lease.

**Facility Realty (SBMT Asset Facility)** shall have the meaning assigned to such term in the Agency Lease.

**Financial Assistance** shall have the meaning assigned to such term in the Enabling Act.

**Future OSW Development** shall have the meaning assigned to such term in the Agency Lease.

**General Municipal Law** shall mean Chapter 24 of the Consolidated Laws of New York, as amended.

**Guarantor** shall have the meaning assigned to such term in the Agency Lease.

**Guaranty Agreement (EOW Facility)** shall have the meaning assigned to such term in the Agency Lease Agreement (EOW Facility).

**Guaranty Agreement (SBMT Asset Facility)** shall have the meaning assigned to such term in the Agency Lease.

**Improvements (SBMT Asset Facility)** shall have the meaning assigned to such term in the Agency Lease.

**Inducement Resolution** shall mean the resolution of the Agency adopted on March 12, 2024, as amended on January 28, 2025, inducing the SBMT Asset Project and the EOW Project.

**Ineligible Items** shall mean the following items of personal property and services with respect to which the Lessee and any Agent shall not be entitled to claim a Sales Tax Exemption in connection with the SBMT Asset Project:

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) fine art and other similar decorative items;
- (v) plants, whether potted or landscaped;
- (vi) ordinary office supplies such as pencils, paper clips and paper;
- (vii) any materials or substances that are consumed in the operation of machinery;
- (viii) the EOW Substation;
- (ix) any personal property or services (x) located outside of the Facility Realty (SBMT Asset Facility), (y) the acquisition or purchase of which shall have preceded the Commencement Date, or (z) the acquisition or purchase of which shall not have been effected in accordance with the Agency Lease and the Sales Tax Agent Authorization Letter (SBMT Asset Facility);
- (x) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
- (xi) maintenance of the type as shall constitute janitorial services.

**Land (SBMT Asset Facility)** shall have the meaning assigned to such term in the Agency Lease.

**Lessee** shall mean SBMT Asset LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its permitted successors and assigns under the Agency Lease; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Lessee under Section 8.9 or 8.20 of the Agency Lease.

**Maximum Sales Tax Savings Amount** shall have the meaning assigned to such term in the Agency Lease.

**Mortgage Recording Taxes** shall mean those taxes imposed by the City and the State upon the recording of mortgages against real property in the City.

**NYCDOF** shall mean the New York City Department of Finance.

**OSW** shall have the meaning assigned to such term in the Agency Lease.

**Person** shall mean an individual or any Entity.

**Qualified Use** shall have the meaning assigned to such term in the Agency Lease.

**Real Estate Taxes** shall mean real property taxes levied by the City on real property within the City.

**Sales and Use Taxes** shall mean City and State sales and compensating use taxes and fees imposed pursuant to Article 28 or 28-A of the New York State Tax Law, as the same may be amended from time to time.

**Sales Tax Agent Authorization Letter (SBMT Asset Facility)** shall mean the Sales Tax Agent Authorization Letter (SBMT Asset Facility), substantially in the form set forth in Exhibit H to the Agency Lease and to be delivered in accordance with Section 5.2(e) thereof.

**Sales Tax Exemption** shall mean an exemption from Sales and Use Taxes resulting from the Agency's participation in the SBMT Asset Project .

**Sales Tax Savings** shall mean all Sales Tax Exemption savings realized by or for the benefit of the Lessee, including any savings realized by any Agent, pursuant to the Agency Lease and each Sales Tax Agent Authorization Letter (SBMT Asset Facility) issued in connection with the SBMT Asset Project.

**SBM Terminal** shall have the meaning assigned to such term in the Agency Lease.

**SBMT Asset Project** shall have the meaning assigned to such term in the Agency Lease.

**SBMT Asset Project Completion Date** shall have the meaning assigned to such term in the Agency Lease.

**SBMT Asset Project Documents** shall have the meaning assigned to such term in the Agency Lease.

**SBMT Asset Project Improvements** shall have the meaning assigned to such term in the Agency Lease.

**SBMT Asset Project Work** shall have the meaning assigned to such term in the Agency Lease.

**State** shall mean the State of New York.



**Straight-Lease Transaction** shall have the meaning assigned to such term in the Enabling Act.

**Section 1.2. Construction.** In this Agreement, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” shall mean after the Commencement Date.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships and limited liability partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) References to designated “Appendices,” “Sections” and other subdivisions are to the designated Appendices, Sections and other subdivisions of or to this Agreement.

(f) The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”

(g) The word “will” shall be construed to have the same meaning and effect as the word “shall.”

(h) Any definition of or reference to any agreement, instrument or other document herein shall be construed to refer to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein or herein).

(i) Any reference to any Person, or to any Person in a specified capacity, shall be construed to include such Person’s successors and assigns or such Person’s successors in such capacity, as the case may be.

## **ARTICLE II**

**Section 2.1. Acknowledgments of the Lessee.** The Lessee acknowledges that:

(a) In connection with the SBMT Asset Project, the Lessee will receive the following types of Financial Assistance (the Lessee acknowledging and agreeing that no exemption from Mortgage Recording Taxes nor from Real Estate Taxes will be included within

the Financial Assistance): Exemption from Sales and Use Taxes on the purchase of Eligible Items in an amount not to exceed the Maximum Sales Tax Savings Amount, as more particularly set forth in Section 5.2 of the Agency Lease.

(b) The Financial Assistance described herein is subject to suspension, modification, discontinuance and/or recapture, as more particularly set forth in Section 5.4 of the Agency Lease attached hereto as Appendix A, and as set forth in Section 5.2 of the Agency Lease.

(c) The description of the SBMT Asset Project (as defined in Section 1.1 hereof) is true, correct and complete.

(d) Undertaking the SBMT Asset Project is anticipated to serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State.

**Section 2.2. Covenants and Certifications of the Lessee.** The Lessee shall provide annually to the Agency on August 1 of each year commencing August 1, 2025, a certified statement and supporting documentation:

(i) enumerating the full-time equivalent jobs retained, if any, and the full-time equivalent jobs created, if any, as a result of the Financial Assistance described in Section 2.1(a) above, by category, including full-time equivalent independent contractors or employees of independent contractors that work at the Facility; provided, however, that as stated in Section 8.16(b) of the Agency Lease, nothing herein shall be construed as requiring the Lessee to maintain a minimum number of employees on its payroll; and

(ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that were provided in the Project Application Information are still accurate and, if not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created, and an explanation for why the averages or ranges provided in the Project Application Information are not still accurate.

(b) The Lessee does hereby certify, under penalty of perjury, that it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

### **ARTICLE III**

Except for the Agency Lease and the other SBMT Asset Project Documents, this Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and all prior negotiations and agreements are merged in this Agreement. This Agreement shall only be changed, modified or discharged in whole or in part by a written instrument executed by the Lessee and the Agency.

#### **ARTICLE IV**

All notices, certificates or other communications hereunder shall be sufficient if sent (i) by registered or certified United States mail, return receipt requested and postage prepaid, (ii) by a nationally recognized overnight delivery service for overnight delivery, charges prepaid or (iii) by hand delivery, addressed, as provided in Section 11.5 of the Agency Lease.

#### **ARTICLE V**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State, without regard or giving effect to the principles of conflicts of laws thereof.

The terms of this Agreement are and shall be binding upon and inure to the benefit of the Agency and the Lessee and their respective successors and assigns.

If any one or more of the provisions of this Agreement shall be ruled illegal or invalid by any court of competent jurisdiction, the illegality or invalidity of such provision(s) shall not affect any of the remaining provisions hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Lessee relating to the Facility, other than the Agency Lease or any other SBMT Asset Project Document.

#### **ARTICLE VI**

This Agreement shall become effective upon its delivery on the Commencement Date. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

#### **ARTICLE VII**

All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent (other than the Lessee) of the Agency in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent (other than the Lessee) of the Agency or any natural person executing this Agreement on behalf of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation the Agency may incur for the payment of money shall not subject the Agency to any pecuniary or other liability or create a debt of the State or the City, and neither the State nor the City shall be liable on any obligation so incurred and any such obligation shall be payable solely out of amounts payable to the Agency by the Lessee under the Agency Lease.

All covenants, stipulations, promises, agreements and obligations of the Lessee contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Lessee, and not of any member, director, officer, manager, partner, employee or agent of the Lessee in their individual capacity, and no recourse shall be had for the payment of any amounts hereunder against any member, director, officer, manager, partner, employee or agent of the Lessee.


#### **ARTICLE VIII**

Each party acknowledges that this Agreement is a legally binding contract and that it was represented by legal counsel in connection with the drafting, negotiation and preparation of this Agreement. Each party acknowledges that it and its legal counsel has cooperated in the drafting, negotiation and preparation of this Agreement and agrees that this Agreement and any provision hereof shall be construed, interpreted and enforced without regard to any presumptions against the drafting party. Each party hereby agrees to waive any rule, doctrine or canon of law, including without limitation, the *contra proferentem* doctrine, that would require interpretation of any ambiguities in this Agreement against the party that has drafted it.

*[Signature Page Follows]*

IN WITNESS WHEREOF the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director or General Counsel, and the Lessee has caused its name to be subscribed hereto by its Authorized Representative all being done as of the year and day first above written.

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
\_\_\_\_\_  
Noah Schumer  
Deputy Executor Director

**SBMT ASSET LLC**

By: \_\_\_\_\_  
Theodore Muhlfelder  
President

**IN WITNESS WHEREOF** the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director or General Counsel, and the Lessee has caused its name to be subscribed hereto by its Authorized Representative all being done as of the year and day first above written.

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Noah Schumer  
Deputy Executor Director

**SBMT ASSET LLC**

By:  \_\_\_\_\_  
Theodore Muhlfelder  
President

[See attached copy of Section 5.4 of the Agency Lease]

**Section 5.4. Recapture of Benefits.** It is understood and agreed by the parties to this Agreement that the Agency is entering into this Agreement in order to provide Financial Assistance to the Lessee for the EOW Project and to accomplish the public purposes of the Act. In consideration therefor, the Lessee hereby agrees as follows:

(a) If there shall occur a Recapture Event during the Recapture Period, the Lessee shall pay to the Agency as a return of Financial Assistance conferred by the Agency, a recapture amount (the “**Recapture Amount**”) equal to the product of (y) all Benefits (EOW Facility) realized by the Lessee and (z) the recapture percentage below (the “**Recapture Percentage**”) for the period during which the Recapture Event occurs, as determined by the Agency:

(i) if the Recapture Event occurs during the period commencing on the Commencement Date and ending on the day before the third anniversary of the Facility Operations Commencement Date, the Recapture Percentage is 130%;

(ii) if the Recapture Event occurs during the period commencing on the third anniversary of the Facility Operations Commencement Date and ending on the day before the fourth anniversary of the Facility Operations Commencement Date, the Recapture Percentage is 120%;

(iii) if the Recapture Event occurs during the period commencing on the fourth anniversary of the Facility Operations Commencement Date and ending on the day before the fifth anniversary of the Facility Operations Commencement Date, the Recapture Percentage is 110%;

(iv) if the Recapture Event occurs during the period commencing on the fifth anniversary of the Facility Operations Commencement Date and ending on the day before the sixth anniversary of the Facility Operations Commencement Date, the Recapture Percentage is 100%; or

(v) if the Recapture Event occurs during the period commencing on the sixth anniversary of the Facility Operations Commencement Date and ending on or before the tenth anniversary of the Facility Operations Commencement Date, the Recapture Percentage is 100% minus the product of (y) 1.666% and (z) the number of months elapsed since the sixth anniversary of the Facility Operations Commencement Date.

(b) Interest on any Recapture Amount due pursuant to the provisions of Section 5.4(a) shall accrue at a rate equal to the higher of nine percent (9%) per annum, or the amount of interest and penalties imposed by the Act or other law, from the date that the Recapture Event occurred until the date of repayment of the Recapture Amount to the Agency.

(c) Notwithstanding the foregoing, with respect to State Sales Tax Savings, the computation of the amount of State Sales Tax Savings to be recaptured shall equal the greater of the amount determined pursuant to this Section 5.4 and the amount due to the State pursuant to the Special Provisions.

(d) For purposes of this Section 5.4, demand for payment by the Agency shall be made in accordance with the notice requirements of this Agreement and the due date for payment shall be not less than seven (7) Business Days from the date of the notice.

(e) The Lessee shall furnish the Agency with written notification of any Recapture Event within twenty (20) days of its occurrence and shall subsequently provide to the Agency in writing any additional information that the Agency may request.

(f) The provisions of this Section 5.4 shall survive the termination of this Agreement for any reason whatsoever, notwithstanding any provision of this Agreement to the contrary.