

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this "Agreement") is made this the \_\_\_ day of \_\_\_\_\_, 201\_\_ (the "Effective Date") by and among the STATE OF MISSISSIPPI (the "State"), the MISSISSIPPI DEVELOPMENT AUTHORITY ("MDA") and the MISSISSIPPI MAJOR ECONOMIC IMPACT AUTHORITY (the "Authority") acting for and on behalf of the State, the MISSISSIPPI STATE PORT AUTHORITY AT GULFPORT (the "Port"), the HARRISON COUNTY DEVELOPMENT COMMISSION (the "HCDC"), the CITY OF GULFPORT, MISSISSIPPI (the "City"), and HARRISON COUNTY, MISSISSIPPI (the "County" and together with the MDA, the Authority, the Port, the HCDC, and the City, the "Inducers"), and TOPSHIP L.L.C., a Mississippi limited liability company (the "Company").

WHEREAS, the Company and the State, acting by and through MDA and the Port have entered into that certain Agreement for the Lease of MSPA Property and Facilities dated to be effective as of March 26, 2015, wherein Company leases, within the limits of a port facility of the Mississippi State Port at Gulfport certain real property and improvements (the "Facility"); and

WHEREAS, the Company will operate the Facility for the manufacture and fabrication of offshore marine vessels (the "Project"); and

WHEREAS, the Company will invest at the Facility, in land, buildings and equipment not less than Sixty-Eight Million Dollars (\$68,000,000.00) by not later than December 31, 2020, and will create no less than seven hundred (700) new Full Time Jobs (as defined in Section 2.2 hereof) not later than December 31, 2020, and will create no less than an additional three hundred (300) new Full Time Jobs within five (5) years after the Start of Commercial Production but not later than December 31, 2022, for a total of one thousand (1,000) jobs (as defined in Section 2.2 hereof), all with an average annual compensation, excluding benefits which are not subject to Mississippi income taxes, of at least Forty Thousand Dollars (\$40,000.00), and will maintain no less than one thousand (1,000) Full Time Jobs for at least five (5) years; and

WHEREAS, the Inducers have determined that the Project will benefit the residents of the State by increasing both employment and tax revenues and have further determined that the Project will improve the standard of living for the residents of Mississippi; and

WHEREAS, the parties hereto acknowledge that the participation of the Inducers is for the benefit of the residents of the State, the City of Gulfport and Harrison County and therefore the Company recognizes its obligation to employ low-to-moderate income residents of the County, Jackson County and Hancock County, Mississippi as more particularly described in this Agreement; and

WHEREAS, in connection with its desire to provide incentives described herein to the Company, the Mississippi Legislature passed House Bill No. 1, 1<sup>st</sup> Extraordinary Session, 2016 (the "Enabling Legislation"), which the Governor of the State (the "Governor") signed into law and

WHEREAS, the parties hereto wish to set forth and memorialize their mutual understandings and obligations with respect to the Project.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants, promises and agreements contained herein, and other good and valuable consideration, the parties agree as follows:

## ARTICLE 1

### OBLIGATIONS

Section 1.1 The parties hereby agree that, in consideration of the Company undertaking the Project with its employment opportunities, investment and tax revenues in the County, the Inducers will provide the respective incentives set forth herein.

Section 1.2 The Company hereby agrees that in consideration of the provision of said incentives, it will develop and maintain the Project in the City and County in accordance with the terms hereof and undertake reasonable efforts to employ residents of Mississippi.

## ARTICLE 2

### THE COMPANY'S COMMITMENTS

Section 2.1 The Company agrees to develop and maintain the Project at the Facility.

Section 2.2 In consideration of the performance by the Inducers of their commitments set out in this Agreement, the Company commits that the Project will result in the following:

(a) an investment by the Company in land, building, new and used equipment, and tooling of not less than Sixty-eight Million Dollars (\$68,000,000.00), not inclusive of any incentive provided by the Inducers herein, by not later than December 31, 2020, and

(b) the creation of at least one thousand (1,000) new jobs providing no less than thirty- five (35) hours per week and that did not exist in the State prior to this Agreement ("Full Time Jobs") to be implemented as follows: creation of not less than seven hundred (700) new Full Time Jobs of which 51% must be filled by low- to moderate-income individuals not later than December 31, 2020 and an additional three hundred (300) new Full Time Jobs within five (5) years after the Start of Commercial Production (as defined below) but not later than December 31, 2022, for a total of One thousand (1,000) new Full Time Jobs ("Job Creation Commitment"). For purposes of this Agreement, a "low-to-moderate-income individual" means a member of a family having an income equal to or less than the Section 8 low-income limit established for the three coastal counties (Harrison, Hancock, and Jackson Counties, Mississippi) by the United States Department of Housing and Urban Development ("HUD"). HUD income limits are published annually and can be found at <http://www.huduser.org/portal/datasets/il/.html>.

Section 2.3 Start of Commercial Production shall be defined as the date on which commercial production for product commences as evidenced by product invoiced for sale or payment to wholesale or retail customers exclusive of any production for testing or trials, and maintain one thousand (1,000) jobs for a period of five (5) years commencing on the earlier of (a) the date that is five (5) years after the Start of Commercial Production, or (b) December 31 of the year during which the Company notifies the State that it has created at least one thousand (1,000) new Full Time Jobs (the "Maintenance Period"); however, under no circumstances will the Maintenance Period start date be later than December 31, 2022.

Section 2.4 At all times during the Maintenance Period, said Full Time Jobs shall have in the aggregate an average annual compensation, excluding benefits which are not subject to Mississippi income taxes, of at least Forty Thousand Dollars (\$40,000.00).

Section 2.5 The Company agrees to comply in all material respects with all federal, state and local requirements related to the Project, including the provision of financial and other documentation in connection with the incentive programs as described in this Agreement or other referenced agreements.

Section 2.6 The Company specifically agrees to enter into a Memorandum of Agreement ("MOA") with the Port and to be bound by all the terms and conditions contained therein, including, but not limited to, the requirement that the Company create seven hundred (700) new Full Time Jobs at the Facility of which 51% – or three hundred fifty seven (357) new Full Time Jobs – must be filled by low- to-moderate- income individuals; to provide the necessary books, records, and documentation to demonstrate compliance with all the terms and conditions of the MOA; and to participate in the Port's "Pathways to the Port" Program and any other programs designed to assist low-to-moderate-income individuals in being employed by the Company as designated by the Port.

Section 2.7 The Company acknowledges that there are applications and other forms to be completed and statutory, regulatory, and guideline requirements to be met for the Company to obtain various program incentives set out herein and that there may be penalties for failure to perform included in these separate grant and loan agreements.

Section 2.8 The Company understands and agrees that, due to the public funding being provided for the Project, it must maintain all necessary books, records, papers, forms, and other documents to demonstrate its compliance with all terms and conditions contained within this Agreement and any other governing agreements with the parties. Furthermore, the Company agrees to provide reasonable verification of its compliance with its obligations, including specifically those related to job creation. As such, the Inducers and any governmental entity with authority to do so shall have the right to inspect books, records, plans, papers, and other documentation related to the Project. It is understood and agreed that the Company may be required to provide such records in such a form and manner as required by the reviewing governmental entity, as well as at such times specified by it.

Section 2.9 The Company acknowledges that it is subject to the requirements of the Mississippi Employment Protection Act, Section 71-11-3, Miss. Code of 1972 as amended, and covenants and agrees to adhere to and abide by the requirements of said Act. The Company specifically agrees that it will register and participate in the status verification system for all newly hired employees from the effective date of this Agreement. The Company will maintain records of such compliance and, upon request, provide a copy of each such verification to the State. The Company further acknowledges that a violation of the Act subjects it to the cancellation of this Agreement and further damages as allowed by law.

Section 2.10 The Company agrees that if its commitments contained in Section 2.2 and Section 2.4 of this Agreement are not met, all or a portion of the funds provided by the Inducers for the Project pursuant to this Agreement shall be paid as provided under applicable law or repaid as set out in Article 7 of this Agreement. Furthermore, MDA, the Authority and the Port reserve all rights to take action pursuant to any and all agreements entered into concerning any KCDBG (as defined below) funding.

Section 2.11 The Company shall make commercially reasonable efforts to place out for bid, such that Mississippi Contractors and Mississippi Disadvantaged Business Enterprises ("DBEs")

shall have an equal opportunity to respond to such bid, any contract by the Company which (i) is subject to tax pursuant to Mississippi Code Section 27-65-21 (i.e., contracts for constructing, building, erecting, grading, excavating, etc.), and (ii) will be paid, or payment thereunder by the Company will be reimbursed, using any portion of the grant proceeds or funds provided by the Authority to the Company in accordance with this Agreement. In carrying out such efforts, in order to increase the pool of qualified DBE bidders, the Company will request that successful prime contract bidders include in their response a commitment to (a) participate in and/or host forums that highlight subcontract bidding opportunities for DBEs; and (b) work with various trade associations and the Mississippi Development Authority to promote increased participation from DBEs. With respect to awarding any contract placed out for bid, the Company shall be allowed to award such contract in the Company's sole discretion (e.g., based upon optimization of quality, cost and efficiency or on any other basis as the Company may see fit). MDA agrees that it will offer to eligible contractor DBEs that have an opportunity to work on the Project assistance through its Minority Surety Bond Guaranty Program.

### ARTICLE 3

#### STATE COMMITMENTS

Section 3.1 The State, acting by and through the Authority and MDA acknowledges that certain commitments are being made to the Company to induce it to develop the Project at the Port of Gulfport, Harrison County, Mississippi. The State, through MDA and the Authority, agrees to provide the Company with:

(a) Eleven Million Dollars (\$11,000,000.00) as authorized by the Enabling Legislation to a "project" as defined in Mississippi Code Section 57-75-5(f)(xxx) be disbursed in support of the Project as follows:

(i) Upon proper request and approval, reimbursement of the Company, County, or Port in an amount not to exceed a total of Five Million Dollars (\$5,000,000.00) in Grant Funds for public infrastructure needs, site preparation, building improvements, purchase of launch system or other expenditures as approved by MDA and the Authority; and

(ii) At such time as the Company creates at least Five Hundred (500) new Full Time Jobs and upon proper request and approval, reimbursement of the Company, County, or Port in an additional Five Million Dollars (\$5,000,000.00) in Grant Funds for public infrastructure needs, site preparation, building improvements, purchase of launch system or other expenditures as approved by MDA and the Authority; and

(iii) Upon proper application and approval a Workforce Funding Grant to reimburse the Company up to One Million Dollars (\$1,000,000.00) (the "Workforce Grant") from the Authority to pay for costs and expenses incurred by the Company to recruit new employees to fill Full Time Jobs, provide internal company training and train prospective, new and existing employees of the Company associated with the Project, including training of Company employees who will utilize such instruction to teach other prospective, new and existing employees of the Company and other workforce expenses as approved by MDA and the Authority.

(b) An exemption from State income tax for a period of twenty (20) years (the "Income Tax Exemption") as provided in the Enabling Legislation. The Income Tax Exemption

shall apply to: State income of the Company which is generated by the Project. The Company may elect the date upon which the twenty (20) year period will begin (the "Income Tax Exemption Commencement Date"); provided, however, that the Income Tax Exemption Commencement Date shall not be earlier than the date on which the Company achieves the Jobs Creation Commitment or later than the date that is sixty (60) months following the Start of Commercial Production but no later December 31, 2022. The Income Tax Exemption shall apply in the taxable year in which the Income Tax Exemption Commencement Date occurs, and in each of the nineteen (19) consecutive years.

(c) A franchise tax fee-in-lieu agreement with the Company by which Twenty-Five Thousand Dollars (\$25,000.00) annually shall be paid by the Company in Mississippi franchise taxes on the Project for a term of twenty (20) years. The twenty (20) year period of the franchise tax fee-in-lieu agreement shall commence in the first taxable year in which the franchise tax liability attributable to the Project exceeds Twenty-Five Thousand Dollars (\$25,000.00).

(d) An exemption from sales and use taxes for purchases and leases to establish and operate the Project, including (i) all payments and purchases required to establish the Project, including, but not necessarily limited to, sales of component building materials, machinery, and equipment required to establish the Project facility and any additions or improvements thereon, an (ii) An exemption from sales and use tax for machinery, special tools (such as dies, molds, and jigs) or repair parts thereof, or replacements and lease thereof, repair services thereon, fuel, supplies and electricity, coal and natural gas used in the manufacturing process and purchased by Company for the benefit of the Project.

(e) Upon proper application and approval, designation of the Company as an approved business enterprise so that the Company will be eligible under the Mississippi Advantage Jobs Act, as set out in Mississippi Code Section 57-62-1, *et seq.*, for a rebate of a percentage of state income tax withheld from eligible employees working on the Project whose employment constitutes a "new direct job" as such term is defined in Mississippi Code Section 57-62-5;

Section 3.2 Each of the Authority and MDA will use its best efforts to cause all other government entities to take all actions, including the granting of approvals, necessary for the State to fulfill its commitments which are described herein.

Section 3.3 MDA and the Authority will offer and make available to the Company the full support and services of MDA and the Authority's Minority and Small Business Development Division, including but not limited to the scheduling of a meeting (telephone or in person, based upon availability and scheduling) between and/or among appropriate representatives of the Division and the Company within 30 days of execution of agreement. Company shall not be obligated, however to make any commitments regarding the Project, however unless otherwise stated in this Agreement.

## ARTICLE 4

### PORT COMMITMENTS

Section 4.1 Subject to any necessary concurrences by any other required governmental entity, the Port agrees to the following in support of the Project:

(a) Following execution of the Memorandum of Agreement referenced in Section 2.6, to allocate a total of Twenty-five million (\$25,000,000.00) of its Katrina Community Development Block Grant ("KCDBG") funds received pursuant to the Port of Gulfport Restoration Program Action Plan and to administer said funds for the purpose of completing a specific designated project, as agreed upon by the parties, at the Facility; and

(b) To grant an ad valorem tax exemption for the Project pursuant to Mississippi Code Sections 59-5-31 and 59-5-35 for a period of ten (10) years for all ad valorem taxes; provided, however, that the Port shall not provide any exemption from taxes for school districts.

(c) To use its best efforts to cause all other government entities to take all actions, including the granting of approvals, necessary for the Port to fulfill its commitments.

Section 4.2 All commitments by the Port shall be performed in a timely manner.

Section 4.3 Section 4.3 Company acknowledges and agrees that all property tax exemptions, both real and personal, under this Agreement shall run concurrently

## **ARTICLE 5**

### **COUNTY COMMITMENTS**

Section 5.1 Subject to agreements by any other necessary governmental entity, the County agrees to provide the following in support of the Project:

(a) To approve an industrial property tax exemption for the Project pursuant to Mississippi Code Section 27-31-101 for a period of ten (10) years; provided, however, that no exemption shall be provided from taxes for school districts; and

(b) To grant a Free Port Warehouse exemption to the Project in perpetuity.

Section 5.2 All commitments by the County shall be performed in a timely manner.

## **ARTICLE 6**

### **CITY COMMITMENTS**

Section 6.1 Subject to agreements by any other necessary governmental entity, the City agrees to approve an industrial property tax exemption for the Project pursuant to Mississippi Code Section 27-31-101 for a period of ten (10) years; provided, however, that no exemption shall be provided from taxes for school districts.

Section 6.2 All commitments by the City shall be performed in a timely manner.

## **ARTICLE 7**

### **REMEDIES FOR FAILURE TO PERFORM**

Section 7.1 Upon request of HUD, the State, the Office of the State Auditor, the Port, the City, County, or any other governmental entity having authority to do so, the Company will provide

reasonable verification of its compliance with the jobs creation and maintenance commitment and the investment commitment as set out in Article II, Section 2.2 herein.

Section 7.2 In the event that all or a portion of the Grant Funds have been expended for the benefit of the Project, then in the event the Company has defaulted on its commitments as set out in Article II, Section 2.2 herein, the following shall apply:

(a) In the event that all or any portion of the Grant Funds have been expended, then in the event the Company has defaulted on its investment requirement as set out in Article II, 2.2(i), then the Company shall repay the State the percentage of the Grant Funds spent by the State that was expended on the Project which equals the percentage of the investment not met, including, but not limited to, any accrued interest and penalties and costs incurred by the State in the issuance of the bonds for the Grant Funds. The State shall provide the Company with notice of default and the Company will be given thirty (30) days following receipt of such notice to cure such default prior to any repayment becoming due and payable.

(b) If all or any portion of the proceeds of the Grant Funds have been expended and the Company fails to satisfy the Job Creation Commitment for any calendar year during the Maintenance Period, then not later than January 31 of the following year, the Company shall pay the State an amount calculated in accordance with the following formula:

$$(a) * (1 - b / 1,000) * (.20)$$

a = the amount of Grant Funds expended

b = the number of new qualified jobs created by the Company for the calendar year

The State shall provide the Company with notice of default and the Company will be given one (1) year following receipt of such notice to cure such default prior to the per job payment becoming due and payable.

Section 7.3 In the event that all or a portion of the proceeds of the Grant Funds have been expended for the benefit of the Project, then in the event the Company has not placed the Facility into Commercial Production on or before December 31, 2017, the sum equal to the amount of the Grants Funds provided by the Inducers to the Company for the Project shall be paid by the Company to the State within sixty (60) days of written demand by the State or the Port.

Section 7.4 The Company's total repayment obligation under this Article 7 shall not exceed the amount of the Grant Funds provided by the MDA and the Authority to the Company, plus the actual interest, penalties and costs.

Section 7.5 It is understood and agreed that, in addition to the foregoing, should the Company fail to perform any of its terms and conditions with regard to the KCDBG allocation and/or breach any of the agreements concerning the same, MDA and the Authority and/or the Port will take all actions available to them pursuant to those governing agreements, as well as those provided by the governing laws, regulations, and guidelines.

## ARTICLE 8

### MISCELLANEOUS

Section 8.1 If any clause, provision or paragraph of this Agreement is held to be illegal or invalid by any court, the illegality or invalidity of such clause, provision or paragraph shall not

affect any remaining clauses, provisions or paragraphs hereof, and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision or paragraph had not been contained herein.

Section 8.2 The terms of this Agreement may be modified or waived only by a separate writing signed by each of the parties that expressly modifies or waives any such term.

Section 8.3 This Agreement may be executed in several counterparts all of which shall be regarded for all purposes as original and shall constitute and be but one and the same instrument.

Section 8.4 The parties agree to execute and deliver such additional instruments and documents, provide such additional financial or technical information, and to take such additional actions as may be reasonably required from time to time in order to accomplish the realization of the incentives contained herein.

Section 8.5 Each party shall coordinate with the other parties all press releases, other announcements, events and publications concerning the Project, and, except as otherwise required by applicable law, no press release or public statement shall be issued without the express consent of the other party.

Section 8.6 The term of this Agreement shall commence on the date of the last execution and continue in effect through the date all obligations and covenants herein are met.

Section 8.7 This Agreement shall be governed by the laws of the State of Mississippi and venue shall lie in the First Judicial District of Hinds County, Mississippi. However, in the event of a dispute involving the Company and the County, City or the Port, and not involving the MDA and the Authority or State, venue shall lie in Harrison County, Mississippi. In the event the County assigns all or part of its rights against the Company to the State, venue shall remain in the First Judicial District of Hinds County, Mississippi.

Section 8.8 All communications and notices expressly provided for herein shall be sent, by registered first class mail, postage prepaid, or by nationally recognized courier for delivery on the next business day, or by telecopy (with such telecopy to be promptly confirmed in writing sent by mail or overnight courier as aforesaid) as follows:

MISSISSIPPI DEVELOPMENT AUTHORITY  
MISSISSIPPI MAJOR ECONOMIC IMPACT AUTHORITY

Glenn McCullough, Jr.  
Executive Director  
501 North West St. (39202)  
P. O. Box 849  
Jackson, MS 39205

MISSISSIPPI STATE PORT AUTHORITY AT GULFPORT

Jonathan T. Daniels  
Executive Director & CEO  
2510 14<sup>th</sup>, Suite 1450  
Gulfport, MS 39501

The City of Gulfport, Mississippi

Billy Hewes  
Mayor  
110 N. Court Street  
Gulfport, MS 39437  
Fax: 601- 477-3323

Harrison County Development Commission

Bill Hessel  
Executive Director  
12281 Intraplex Parkway  
Gulfport, MS 39503  
Fax: (228) 896 6020

Harrison County, Mississippi

Beverly Martin  
President Board of Supervisors  
1801 23<sup>rd</sup> Avenue  
Gulfport, MS 39501  
Fax: 228-435-8289

Topship, L.L.C.

Gary Chouest Gary Chouest  
President & CEO, Edison Chouest Offshore  
16201 East Main Street  
Cut Off, LA 70345  
Fax: 985.632.2282

Section 8.9 The Company may not sell, assign or otherwise transfer the Project and/or this Agreement and the benefits provided herein to any party without the consent of the Authority, MDA and the Port which will not be unreasonably withheld.

Section 8.10 In the event that the Constitution or laws of the United States or State of Mississippi limit the ability of an Inducer to perform its commitments hereunder in any way, said Inducer shall not be liable to Company for any substitute incentive or the economic value associated therewith.

Section 8.11 The commitments and obligations set out in this Agreement shall be subject to force majeure which shall be defined as any failure or delay by any party hereto to perform its obligations and commitments under the terms of this Agreement by reason of an act of God, war, insurrections, orders or other acts of any kind of the government of the United States or the State or County, riots, epidemics, explosions, failure of utilities for an extended period of time, terrorism, strikes, civil insurrection or natural disaster or similar event. If such should occur, the parties hereto agree to negotiate in good faith to resolve any such situation. The party impacted by force majeure however shall be excused from its obligations for the duration of the event plus a reasonable period of time after the expiration of such event, and shall not be required to extend its performance obligations beyond the period originally established by this Agreement.

IN WITNESS WHEREOF, the Company has caused its name to be hereunto subscribed by its Chief Executive Officer, the State has caused its name to be hereunto subscribed by the Executive Director of the Mississippi Development Authority, the Port has caused its name to be hereunto subscribed by the President of the Port, and the County has caused its name to be hereunto subscribed by the President of the Board of Supervisors and the Clerk of the Board, City of Gulfport, the Authority, and HCDC as of the date hereinafter written.

[SIGNATURES ON FOLLOWING PAGES]

STATE OF MISSISSIPPI  
MISSISSIPPI MAJOR ECONOMIC IMPACT AUTHORITY

and

MISSISSIPPI DEVELOPMENT AUTHORITY

\_\_\_\_\_  
DATE

BY: \_\_\_\_\_

Glenn McCullough, Jr.  
Executive Director

HARRISON COUNTY, MISSISSIPPI

\_\_\_\_\_  
DATE BY: \_\_\_\_\_  
President, on Behalf of the of Supervisors

ATTESTED BY:

\_\_\_\_\_  
Chancery Clerk

THE CITY OF GULFPORT, MISSISSIPPI

\_\_\_\_\_  
DATE

BY: \_\_\_\_\_  
MAYOR

ATTESTED BY:

\_\_\_\_\_  
City Clerk

Harrison County Development Commission

\_\_\_\_\_  
DATE

BY: \_\_\_\_\_  
President

ATTESTED BY:

\_\_\_\_\_  
Officer

TOPSHIP, L.L.C.

\_\_\_\_\_  
DATE

BY: \_\_\_\_\_

ATTESTED BY:

\_\_\_\_\_  
Officer

The Mississippi State Port Authority at Gulfport

\_\_\_\_\_  
DATE

BY: \_\_\_\_\_  
President

ATTESTED BY:

\_\_\_\_\_  
Officer