

EXECUTION VERSION

Agreement No. 231326

**OFFSHORE WIND RENEWABLE ENERGY CERTIFICATE
PURCHASE AND SALE AGREEMENT**

BY AND BETWEEN

THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

AND

EMPIRE OFFSHORE WIND LLC

Dated: May 31, 2024

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This Offshore Wind Renewable Energy Certificate Purchase and Sale Agreement (“Agreement”) is entered into as of May 31, 2024 (the “Effective Date”) by and between the New York State Energy Research and Development Authority (“NYSERDA”), a public benefit corporation, having a principal business address of 17 Columbia Circle, Albany, New York 12203, and Empire Offshore Wind LLC (“Seller”), a limited liability company, having a principal business address of 600 Washington Blvd., Suite 800, Stamford CT 06901. NYSEDA and Seller are each referred to herein as a “Party” and are collectively referred to herein as the “Parties.”

WHEREAS, the New York State Public Service Commission (“PSC”) through its “Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement”¹ (“Phase 1 Order”) established, as part of its Clean Energy Standard,² an Offshore Wind Standard with a goal of having 2,400 megawatts (“MW”) of offshore wind facilities operational and delivering energy to New York State by 2030; and

WHEREAS, in 2019 the New York State Legislature enacted the Climate Leadership and Community Protection Act, which directed the achievement of 9 Gigawatts of offshore wind delivered into New York State by the year 2035; and

WHEREAS, on April 23, 2020 the PSC issued an order (“2020 Offshore Wind Order”)³ that approved certain modifications to the manner in which NYSEDA, as the central procurement administrator, conducts solicitations for the procurement of the renewable energy certificates representing the attributes associated with the generation of electric energy by offshore wind facilities (hereinafter defined in Article I as “ORECs”); and

WHEREAS, on October 15, 2020 the PSC issued an order (“CES Modification Order”)⁴ that directed and authorized NYSEDA to issue solicitations for the procurement of ORECs on an ongoing basis; and

WHEREAS, on January 20, 2022 the PSC issued an order (“Power Grid Study Order”)⁵ that directed NYSEDA to incorporate certain new requirements and criteria into its OREC procurements and contracts; and

WHEREAS, NYSEDA has conducted a competitive solicitation in the form of ORECRFP23-1 to procure ORECs; and

WHEREAS, Seller has participated in ORECRFP23-1 and has been selected by NYSEDA for an award with respect to the first phase of the Empire Wind project (hereinafter defined in Article I as the “Selected Project”); and

WHEREAS, the Parties entered into that certain Conditional Termination Agreement dated as of January 25, 2024, whereby Seller agreed to increase the contract security held by NYSEDA

¹ See Case 18-E-0071, In the Matter of Offshore Wind Energy, issued and effective July 12, 2018.

² See Case 15-E-0302, et al., Large-Scale Renewable Program and Clean Energy Standard, Order Adopting a Clean Energy Standard issued and effective August 1, 2016.

³ See Case 18-E-0071, In the Matter of Offshore Wind Energy, Order Authorizing Offshore Wind Solicitation in 2020, issued and effective April 23, 2020; Order on Power Grid Study Recommendations issued on January 20, 2022.

⁴ See Case 15-E-0302, et al., Order Adopting Modifications to the Clean Energy Standard (issued October 15, 2020).

⁵ See Case 18-E-0071, et al., Order on Power Grid Study Recommendations (issued January 20, 2022).

pursuant to this Agreement in an amount equal to the contract security currently held by NYSERDA pursuant to the terminated Offshore Wind Renewable Energy Certificate Purchase and Sale Agreement dated as of October 23, 2019 (the “Terminated PSA”) by and between the Parties; and

WHEREAS, Seller agrees to sell to NYSERDA, and NYSERDA agrees to purchase from Seller, the ORECs associated with the energy production of the Selected Project during the Contract Delivery Term, on the terms and subject to the conditions set forth herein;

NOW, THEREFORE, for and in consideration of the premises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency, and adequacy of which are hereby acknowledged, this Agreement has been entered into by the Parties to define, among other things, their rights and obligations concerning the ORECs associated with the generation of electric energy by the Selected Project, the delivery by Seller of ORECs to NYSERDA, and payments by NYSERDA to Seller during the term of this Agreement.

Article I

Definitions

The terms defined in the recitals, the preamble, this Article I or any other Articles of this Agreement, whenever used in this Agreement (including in any Exhibit hereto), shall have the respective meanings indicated in such provision for all purposes of this Agreement (each such meaning to be equally applicable to the singular and the plural forms of the respective terms so defined). All references herein to a Section, Article or Exhibit are to a Section, Article or Exhibit of or to this Agreement, unless otherwise indicated. The headings of Articles, Sections and subsections are for convenience only and shall be ignored in construing this Agreement. The words “hereby”, “herein”, “hereof”, “hereunder” and words of similar import refer to this Agreement as a whole (including any Exhibit) and not merely to the specific section, paragraph or clause in which such word appears unless so specified. The words “include”, “includes”, and “including” shall be deemed, in every instance, to be followed by the phrase “without limitation.” Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. Except as otherwise expressly provided herein, all references to “dollars” and “\$” shall be deemed references to the lawful money of the United States of America. Unless expressly stated otherwise, references to a person include its successors and permitted assigns and, in the case of a governmental entity, any person succeeding to its functions and capacities. As used in this Agreement, references to “days” shall mean calendar days, unless the term “Business Days” or “business days” is used. If the time for performing a payment or notice obligation under this Agreement expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day.

Acceptable Guaranty: An unconditional, irrevocable, direct-pay guaranty (a) in the form of Exhibit G duly executed by an Acceptable Guarantor; and (b) as to which NYSERDA has received (i) such financial statements in respect of such Acceptable Guarantor as it has reasonably requested, (ii) customary legal opinions with respect to capacity, authority and enforceability of such guaranty and as to such other matters as reasonably requested by NYSERDA, and (iii) corporate documents, resolutions, copies of any necessary consents and approvals and customary certificates by and in respect of such Acceptable Guarantor as may be reasonably requested by NYSERDA.

Acceptable Guarantor: A corporation, business trust, partnership, limited liability company or other legal entity that has outstanding senior unguaranteed and unsecured long-term debt that is rated at least

“BBB” by S&P or “Baa2” by Moody’s.

Actual Production: The amount of electric energy production in MWh generated by the Selected Project during any Contract Year.

Affiliate: Each Person that directly or indirectly controls, is controlled by, or is under common control with, such designated Person, with “control” meaning the possession, directly or indirectly, of the power to direct management and policies, whether through the ownership of voting securities (if applicable) or by contract or otherwise.

Annual Operating Report: An operating report submitted by Seller to NYSERDA on an annual basis, in a form substantially similar to Exhibit S to this Agreement, that includes information depicting the performance of the Selected Project for the reporting year, major operations and maintenance activities performed and planned, planned or unplanned outages, curtailment directives, or dispatch issues.

Annual OREC Cap: An amount of ORECs equal to the product of 1.10 and the P10 Annual OREC Exceedance. The Annual OREC Cap under this Agreement shall be 4,046,731.7 ORECs unless and until the P10 Annual OREC Exceedance is adjusted by Seller in accordance with Section 2.01(e). Seller will retain ownership and all rights to ORECs that exceed the Annual OREC Cap.

Applicable Law: All applicable provisions of all constitutions, treaties, statutes, laws (including the common law), rules, regulations, ordinances, and codes and any order, writ, injunction, decree, judgment, award, permit, approval, authorization, decision or determination of any court of jurisdiction or any federal, state, municipal or other governmental department, commission, board, bureau, agency, authority or instrumentality, including the NYISO tariffs.

Applicable OREC Price: The methodology for determining the Monthly OREC Price as set out in Section 4.01 of this Agreement.

Applicable Zone: The NYISO load zone that includes the Delivery Point included in Exhibit H to this Agreement. The Applicable Zone for purposes of this Agreement shall be Zone J. In the event that Seller elects to change the Delivery Point to one that is located in a different NYISO load zone, Seller may elect to retain the Applicable Zone stated above, or the Parties may mutually agree to modify the Applicable Zone stated above; provided, however that in no circumstance will NYSERDA modify the Agreement in a manner that would increase its expected net levelized cost of procuring ORECs under this Agreement.

Bid Submission Date: The date on which Proposals were due to be submitted under ORECRFP23-1, which was January 25, 2024.

BOEM: The Bureau of Ocean Energy Management within the U.S. Department of the Interior.

Business Day: Means any day except a Saturday, Sunday or a New York State or NERC recognized holiday.

Capacity Accreditation Factor: The Capacity Accreditation Factor established by NYISO in accordance with applicable NYISO tariffs.

Capacity Accreditation Resource Class: The Capacity Accreditation Resource Class established by NYISO in accordance with applicable NYISO tariffs.

Change of Control: Any transfer, sale, assignment, pledge, or other disposition of shares of or equity interests in Seller having the result (directly or indirectly and either immediately or after giving effect to the exercise of any options that have vested) of changing the entity or entities which possess the power (directly or indirectly and either immediately or after giving effect to the exercise of any options that have vested) to direct or cause the direction of the management or policies of Seller (from the entity or entities possessing such power as to Seller as of the Effective Date), whether such change is voluntary or involuntary on the part of Seller; provided, however, that a Change of Control with respect to Seller shall not include any transfer, sale assignment, pledge or other disposition if: (a) such transfer, sale, assignment, pledge or other disposition is in connection with a financing of the Selected Project, or is the result of the exercise of remedies by financing parties providing a financing; (b) such transfer, sale, assignment, pledge or disposition is pursuant to a tax equity financing of the Selected Project, or is the result of the exercise of remedies by a tax equity investor upon a default under such tax equity financing documents; or (c) following such transfer, sale assignment, pledge or other disposition, the management and policies of Seller continue to be directly or indirectly controlled solely by an entity or entities that possessed such power as to Seller as of the Effective Date.

Clean Electrolytic Hydrogen: Hydrogen produced from water through electrolysis, utilizing renewable electricity to electrochemically split water into hydrogen and oxygen.

Commercial Operation: A state of operational readiness under which (i) any portion of the Selected Project has been mechanically constructed and interconnected, (ii) any portion of the Selected Project is available to physically produce and deliver electric energy to the Delivery Point and generate associated ORECs, and (iii) all rights, abilities, permits and approvals to schedule and deliver energy to the Delivery Point have been obtained.

Construction and Operations Plan (COP): The Construction and Operations Plan required to be submitted to BOEM.

Consulting State Agency: The New York State Department of State, the New York State Department of Environmental Conservation, the New York State Office of Parks, Recreation and Historic Preservation, the New York State Office of General Services, and NYSERDA, and any other state agency that NYSERDA directs Seller to include.

Contingent Award Notification Date: The date on which NYSERDA notified Seller that it had been selected for an award contingent on the negotiation of this Agreement. For purposes of this Agreement, the Contingent Award Notification Date was February 28, 2024.

Contract Delivery Term: A period that shall commence on the first day of the month after any portion of the Selected Project commences Commercial Operation and end at the earlier of (i) the date upon which the Contract Tenor has elapsed, or (ii) the Outer Limit Date. If less than twenty-five percent (25%) of the Selected Project has commenced Commercial Operation (as determined on an installed capacity basis as compared to the Offer Capacity), Seller may elect to delay the commencement of the Contract Delivery Term for a period not to exceed one (1) year after any portion of the Selected Project has achieved Commercial Operation. Seller must make such election in writing in conformance with the requirements of Article XIX of this Agreement.

Contract Security: All amounts provided to NYSERDA, in the form of cash, Letter of Credit, or an Acceptable Guaranty, as determined in Article XV of this Agreement.

Contract Tenor: The maximum duration of the Contract Delivery Term. The Contract Tenor under this Agreement shall be twenty five (25) Contract Years; provided that, once the Contract Delivery Term has begun, if a Force Majeure causes the cessation of production or delivery of at least fifty percent (50%) of the Operational Installed Capacity, the Contract Tenor for such portion of the Selected Project affected by such Force Majeure shall be extended on a day-for-day basis for the duration of such cessation of production or delivery.

Contract Year: A twelve (12) month period commencing with the beginning of the Contract Delivery Term and each anniversary thereof within the Contract Delivery Term. As used in this Agreement, the phrase “Contract Year” followed by a number shall refer to a discrete Contract Year within the Contract Delivery Term such that “Contract Year 1” refers to the first twelve (12) month period commencing with the beginning of the Contract Delivery Term, “Contract Year 2” refers to the second such twelve (12) month period, and so on.

COP Approval: BOEM’s approval of the Selected Project’s Construction and Operations Plan.

Delivery Point: For Selected Projects that inject energy directly into the NYCA, the generator bus or location where (a) the administrator of the wholesale power market, or (b) the operator of the transmission/distribution utility, public authority or municipal electric company, measures, or otherwise determines, energy production from the Selected Project. For Selected Projects that inject energy outside of the NYCA, the generator bus or location where the NYISO measures energy delivery from the Selected Project into the NYCA.

Disadvantaged Communities: The term “Disadvantaged Communities” shall have the meaning established by the New York Climate Leadership and Community Protection Act in § 75-0101(5) of the New York Environmental Conservation Law.

Disadvantaged Community Commitment: Specific, quantifiable commitments to providing benefits to Disadvantaged Communities as specified in Section 6.05 of this Agreement regardless of whether such investment or expenditures were made by Seller, an Affiliate, or a third party.

DOS: New York State Department of State.

Economic Benefits: Financial expenditures benefitting New York State (for this purpose, expenditures for iron and steel manufactured in the United States shall be deemed to benefit New York State even if incurred outside of New York State), as specified in Exhibit I, that Seller can demonstrate accrued after the Economic Benefits Start Date.

Economic Benefits Claim: An expenditure or set of expenditures described in a single row of Part V of the Offer Data Form and associated with a specific EB1 ID.

Economic Benefits Reports: Confidential reports submitted by Seller to NYSERDA in accordance with Section 12.01 and Exhibit I of this Agreement.

Economic Benefits Start Date: May 15, 2019.

Economic Benefits Shortfall: Means either an Expected Near-Term Dollars Shortfall, Economic Benefits Subcategory Shortfall, or Other Economic Benefits Shortfall.

Economic Benefits Subcategory Shortfall: Means either an Expected Labor Dollars Shortfall,

Expected U.S. Iron and Steel Dollars Shortfall, or Expected MWBE and SDVOB Dollars Shortfall.

Environmental Attributes: All environmental characteristics, claims, credits, benefits, emissions reductions, offsets, allowances, and allocations, however characterized, denominated, measured or entitled, attributable to the generation of Actual Production by the Selected Project, including but not limited to: (i) any direct emissions or any avoided emissions of pollutants to the air, soil or water including but not limited to sulfur oxides (“SOx”), nitrogen oxides (“NOx”), carbon monoxide (“CO”), particulate matter and other pollutants; (ii) any direct or avoided emissions of carbon dioxide (“CO₂”), methane (“CH₄”) and other greenhouse gases that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change to contribute to altering the Earth’s climate by trapping heat in the atmosphere; (iii) all set-aside allowances and/or allocations from emissions trading programs made unnecessary for compliance in such program as a result of performance under this Agreement, including but not limited to allocations available under 6 NYCRR §§ 204, 237 and 238; and (iv) all credits, certificates, registrations, recordations, or other memorializations of whatever type or sort, representing any of the above; provided, however, that Environmental Attributes shall not include: (a) any federal production tax credits; (b) any state or federal investment tax credits or other tax credits associated with the construction or ownership of the Selected Project; (c) any depreciation deductions under Applicable Laws (including any bonus or accelerated depreciation); or (d) any state, federal or private grants, financing, guarantees or other credit support relating to the construction or ownership, operation or maintenance of the Selected Project or the output thereof, in each case whether arising before or after the Effective Date.

ESD: Empire State Development.

Expected Labor Dollars: The Expected Total Dollars associated with labor expenditures described in Section II.a of Exhibit I. The amount of Expected Labor Dollars under this Agreement is \$253,194,300.

Expected Labor Dollars Shortfall: The amount by which the Verified Labor Dollars is less than the product of 0.85 and the Expected Labor Dollars.

Expected MWBE and SDVOB Dollars: The Expected Total Dollars expected to accrue specifically to MWBEs and SDVOBs. The amount of Expected MWBE and SDVOB Dollars under this Agreement is \$100,000,000.

Expected MWBE and SDVOB Dollars Shortfall: The amount by which the Verified MWBE and SDVOB Dollars is less than the product of 0.85 and the Expected MWBE and SDVOB Dollars.

Expected Near-Term Dollars: The total amount, in nominal dollars, of Economic Benefits (as described in Exhibit I) expected to accrue to New York State as a result of the development, construction, installation, modification, interconnection, operation and maintenance of the Selected Project during the Near-Term Period. The amount of Expected Near-Term Dollars under this Agreement is \$1,370,572,400.

Expected Near-Term Dollars Shortfall: The amount by which the Verified Near-Term Dollars is less than the product of 0.85 and the Expected Near-Term Dollars.

Expected Total Dollars: The total amount, in nominal dollars, of Economic Benefits (as described in Exhibit I) expected to accrue to New York State as a result of the development, construction,

installation, modification, interconnection, operation and maintenance of the Selected Project from the Economic Benefits Start Date through the end of the first three (3) Contract Years. The amount of Expected Total Dollars under this Agreement is \$1,765,019,500.

Expected Total Subcategory Dollars: The total amount of Expected Labor Dollars, Expected MWBE and SDVOB Dollars and Expected U.S. Iron and Steel Dollars.

Expected U.S. Iron and Steel Dollars: The Expected Total Dollars associated with expenditures for iron and steel manufactured in the United States. The amount of Expected U.S. Iron and Steel Dollars under this Agreement is \$92,340,000.

Expected U.S. Iron and Steel Dollars Shortfall: The amount by which the Verified U.S. Iron and Steel Dollars is less than the Expected U.S. Iron and Steel Dollars.

Forward Certificate Transfer: An automated monthly transfer of ORECs to NYSERDA as described in Section 9.3 of the NYGATS Operating Rules, as such rules may be amended or changed from time to time.

General Terms of Use: The terms of use for the NYGATS, operated and administered by APX, Inc. (or its successor) for NYSERDA.

HVDC: High voltage direct current.

Independent Engineer: A licensed professional engineer with expertise in the development of offshore wind energy projects, reasonably selected by and retained by Seller in order to determine the Operational Installed Capacity of the Selected Project as provided in Section 2.01(c) of this Agreement.

Independent System Operator/Transmission Owner Agreement (“ISO/TO Agreement”): The agreement, which includes Appendices A-1 and A-2, that establishes the terms and conditions under which the transmission owners transferred to the ISO Operational Control (as defined in the ISO/TO Agreement) over designated transmission facilities.

Index OREC Price: An adjustable price in dollars per OREC that nets a fixed, as-offered strike price monthly against a reference price expressed in a market index as determined pursuant to Section 4.03 of this Agreement.

Index OREC Strike Price: The fixed strike price set forth in Section 4.03(a)(i) of this Agreement.

Interconnection Cost Allocation: The total costs actually allocated to and borne by the Selected Project (either directly or through reimbursement to a transmission owner or other party) pursuant to the Selected Project’s Class Year Interconnection Facilities Study, interconnection agreement and/or other relevant agreement(s) (such as an engineering, procurement and construction contract) with NYISO or any relevant transmission owner, including any allocated costs of Connecting Transmission Owner’s Attachment Facilities, Distribution Upgrades, System Upgrade Facilities and/or System Deliverability Upgrades; provided that any costs (i) attributable to Developer’s Attachment Facilities or (ii) of operation, maintenance or other ongoing compliance requirements shall not be included in the Interconnection Cost Allocation. Terms capitalized but not defined in this definition shall have the meanings assigned to them by applicable NYISO tariffs.

Interconnection Cost Allocation Baseline: The estimated amount of Interconnection Cost Allocation established for the Selected Project in ORECRFP23-1. The Interconnection Cost Allocation Baseline under this Agreement is [REDACTED]

Interconnection Net Savings: The amount, if positive, resulting from the following equation: (i) Interconnection Cost Allocation Baseline *minus* (ii) Interconnection Cost Allocation *minus* (iii) only if the Selected Project has switched its Delivery Point from that set forth in Exhibit H to this Agreement, any additional costs incurred as a result of such change and any reasonably-incurred development costs (e.g., NYISO interconnection study fees) spent with respect to the Delivery Point set forth in Exhibit H to this Agreement.

Interconnection Price Reduction: The reduction in dollars per OREC to the Index OREC Strike Price (as applicable) as calculated pursuant to Section 5.04(c) of this Agreement.

Internal Revenue Code: The Internal Revenue Code of 1986, as may be amended from time to time.

Major Supplier: Any supplier to the Seller of goods and/or services with an anticipated aggregate contract value of at least \$1,000,000; provided, however, for reporting of information or activities that are not related to New York State, "Major Supplier" shall mean any supplier to the Seller of goods and/or services with an anticipated aggregate contract value of at least \$5,000,000.

Maximum Project Capacity: The product of the Offer Capacity and 1.10. The Maximum Project Capacity for the Selected Project is 891 MW.

Monitoring Plan has the meaning given in Section 12.10.

Monthly OREC Price: A price in dollars per OREC for each month of the Contract Delivery Term. The Monthly OREC Price shall be calculated pursuant to Section 4.03 of this Agreement.

MWBE: Minority- and/or Women-Owned Businesses Enterprises as such terms are defined under New York State Executive Law Article 15-A.

Near-Term Economic Benefits Report: As defined in Section 12.01(a).

Near-Term Period: January 1, 2024 through December 31, 2026.

NEPA: The National Environmental Policy Act of 1970.

New York Control Area (NYCA): The geographic bounds of the electricity system that is under the control of the NYISO, which includes transmission facilities listed in the ISO/TO Agreement Appendices A-1 and A-2, as may be amended from time to time.

New York Generation Attribute Tracking System (NYGATS): The tracking system, administered under the auspices of NYSERDA, that records electricity generation attribute information within New York State, and processes generation attribute information from energy imported and consumed within New York State, as a basis for creating generation attribute certificates, including ORECs. NYGATS will create exactly one (1) OREC per MWh of generation attributable to the Selected Project and delivered to the Delivery Point in accordance with the applicable electricity delivery requirement set forth in Article III of this Agreement.

New York Offshore Wind Supply Chain Database: the database maintained by NYSERDA listing companies with capabilities to serve the offshore wind industry.

New York State Environmental Disclosure Rules: The program rules adopted by the PSC in Case 94-E-0952, Opinion No. 98-19, Opinion and Order Adopting Environmental Disclosure Requirements and Establishing a Tracking Mechanism, (issued December 15, 1998) Appendix pp. 2-3, as amended from time to time.

North American Electric Reliability Corporation (NERC): The Electric Reliability Organization for North America certified by the Federal Energy Regulatory Commission to establish and enforce reliability standards for the bulk power system or any successor in that capacity.

NYGATS Operating Rules: The operating rules, the General Terms of Use, and other guidelines published by NYGATS and as amended from time to time.

NYDPS: New York State Department of Public Service.

NYISO: The New York Independent System Operator, Inc. is the administrator of the wholesale power markets in New York and manages the physical electrical operations of the New York Control Area or any successor in that capacity.

NYISO Capacity Market: Collectively, the wholesale markets for capacity administered by NYISO.

NYISO Energy Market: Collectively, the wholesale markets for electric energy administered by NYISO.

NYSDEC: New York State Department of Environmental Conservation.

NYSERDA NYGATS Account: The NYGATS account established by NYSERDA into which Seller shall Transfer ORECs as performance under this Agreement.

Offer Capacity: The electric generating capacity ascribed to the Selected Project in the Proposal. The Offer Capacity under this Agreement shall be 810 MW, unless and until reduced by Seller pursuant to Section 15.07(b) of this Agreement.

Offer Data Form: The offer data form submitted with the Proposal and assigned the proposal code EMP-810-Zone J.

Offshore Wind Renewable Energy Certificate (OREC): The electronic record of generation data created by NYGATS and representing all of the attributes including the Environmental Attributes of one MWh of electricity generation from the Selected Project.

Offshore Wind Standard: The program of OREC procurements and purchase obligations established by the PSC in Case 18-E-0071, as modified and amended from time to time.

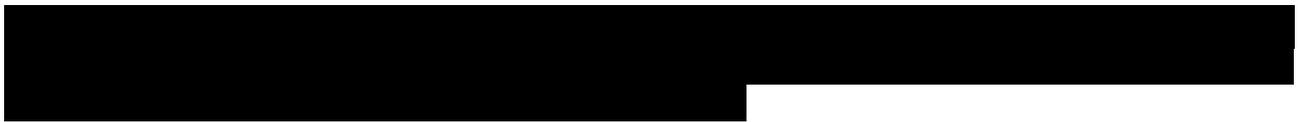
OGS: New York State Office of General Services.

Operational Installed Capacity: The gross generating capacity, in MW, of the Selected Project that has achieved Commercial Operation and for which an Independent Engineer's report has been submitted to NYSERDA pursuant to Section 2.01(c) of this Agreement.

OPRHP: New York State Office of Parks, Recreation and Historic Preservation.

Other Economic Benefits Shortfall: The amount by which the Verified Total Dollars, other than Verified Total Subcategory Dollars, of Economic Benefits is less than the product of 0.85 and the Expected Total Dollars other than Expected Total Subcategory Dollars. For the avoidance of doubt, any Verified Labor Dollars in excess of Expected Labor Dollars, any Verified MWBE and SDVOB Dollars in excess of Expected MWBE and SDVOB Dollars and/or any Verified U.S. Iron and Steel Dollars in excess of Expected U.S. Iron and Steel Dollars, as the case may be and without duplication, shall be included in Verified Total Dollars for all purposes, including the calculation of any Other Economic Benefits Shortfall.

Outer Limit Date: A backstop date upon which the Contract Delivery Term ends, regardless of whether the Contract Tenor has elapsed. The Outer Limit Date is January 1, 2058, subject to any extension applicable under Section 5.06(c) and/or 18.12.



Permitted Transferee: Any Person who: (a) has, or whose parent entity has, (i) creditworthiness equal to or higher than that of Seller, as determined by NYSERDA in its reasonable discretion applying its credit standards and policies consistently or (ii) creditworthiness equal to or higher than that level of creditworthiness required by NYSERDA's then-current credit standards and policies; (b) together with its Affiliates, has at least two (2) years of experience in the operation of or development of contractually-committed capacity of at least two hundred (200) MWs of offshore wind projects of similar technology to the Selected Project, or has retained third-party contractors who, individually or collectively, have such experience with respect to such technology; and (c) as of the date of such assignment, has not been a party adverse to NYSERDA in litigation or regulatory proceedings within the preceding five (5) years and is not currently a party adverse to NYSERDA in any pending litigation, arbitration, administrative, regulatory, or formal dispute resolution proceeding (in each case other than ordinary course and routine filings and proceedings).

Person: means a natural person, corporation, electric cooperative, partnership, trust, association, joint venture, real estate investment trust or business trust (including any beneficiary thereof), unincorporated association, municipal corporation, municipally-owned utility, municipality or other governmental authority, and any other form of business or legal entity.



Prevailing Wage: As described in Section 18.10 of this Agreement.

Project Labor Agreement or PLA: As described in Section 18.11 of this Agreement, a collective bargaining agreement (including a pre-hire agreement) covering Seller, contractors in the construction industry working on the Selected Project, and a bona fide building and construction trade labor organization representing craft workers on the Selected Project.

Proposal: Documents submitted by Seller in response to ORECRFP23-1 with respect to the Selected Project, described as EMP-810-Zone J ("Base").

P10 Annual OREC Exceedance: An amount of electrical energy (in MWh), such that the estimated probability in any given year that generation from the Selected Project delivered to the Delivery Point would exceed that amount is ten (10) percent. As of the Effective Date, the P10 Annual OREC Exceedance for the Selected Project is 3,678,847 MWh and may be updated as provided in Section 2.01(e) of this Agreement.

P50 Annual OREC Exceedance: An amount of electrical energy (in MWh), such that the estimated probability in any given year that generation from the Selected Project delivered to the Delivery Point would exceed that amount is fifty (50) percent. As of the Effective Date, the P50 Annual OREC Exceedance for the Selected Project is [REDACTED] MWh and may be updated as provided in Section 2.01(e) of this Agreement.

Qualifying Federal Support: Any direct federal financial support to the Selected Project in the form of Renewable Tax Benefits or direct financial benefits expressly intended to incentivize (i) the development and operation of (x) energy infrastructure (including electrical transmission, storage and/or generation and/or the production of fuels from electrical energy) and/or (y) facilities that manufacture equipment or components used for such purposes, and (ii) which either (a) arises from a law enacted by the U.S. Congress after the Bid Submission Date or (b) arises from Section 45(b)(9) (or its successor at Section 45Y(g)(11)), Section 45(b)(11) (or its successor at Section 45Y(g)(7)), Section 48(a)(12) (or its successor at Section 48E(a)(3)(B)) or Section 48(a)(14) (or its successor at Section 48E(a)(3)(A)) of the Internal Revenue Code in existence on the Bid Submission Date. Notwithstanding the foregoing, any support arising solely from Section 45(b)(11) or Section 48(a)(14) (or their successors as identified above) of the Internal Revenue Code as in existence on the Bid Submission Date shall not be considered Qualifying Federal Support to the extent such support is (I) obtained in reliance, in all material respects, on meeting conditions that were sufficient for qualification under the applicable Internal Revenue Code section pursuant to official IRS guidance issued prior to the Bid Submission Date and (II) not obtained as a result of material reconfigurations of the Selected Project such as a change in the Selected Project's point of interconnection. Qualifying Federal Support shall not include ordinary course tax deductions, federal loans, federal loan guarantees, or federal research and development grants that are awarded competitively.

Qualifying Federal Support Amount (QFS Amount): The total economic value realized by the Seller or any of its Affiliates from the Qualifying Federal Support or the monetization thereof. Subject to the foregoing, the QFS Amount shall include, without limitation or duplication: (i) any reduction in tax liability realized by Seller or its Affiliates in connection with the Qualifying Federal Support; (ii) any amounts received directly from the U.S. government in connection with the Qualifying Federal Support, (iii) any excess economic value realized by the Seller or its Affiliates in any tax equity financing or other transaction the primary purpose of which is for a party to realize the value of Qualifying Federal Support and in which the Qualifying Federal Support is exchanged for economic value (relative to a scenario with no Qualifying Federal Support) and includes without limitation any leasing transaction (including a sale-leaseback, inverted lease or the like) that has the result of the foregoing; and (iv) any reduction in procurement, equipment supply, or other direct costs related to the Selected Project and realized by the Seller or its Affiliates as a result of the Qualifying Federal Support.

Qualifying Federal Support Price Reduction (QFS Price Reduction): The reduction in dollars per OREC to the Index OREC Strike Price (as applicable) as calculated pursuant to Section 5.07 of this Agreement.

Reference Capacity Price: An index of NYISO Capacity Market prices for the Applicable Zone calculated as set forth in Section 4.03 of this Agreement.

Reference Energy Price: An index of NYISO Energy Market prices for the Applicable Zone calculated as set forth in Section 4.03 of this Agreement.

Renewable Tax Benefits: means (i) any investment tax credits under Section 48 (or its successor found at Section 48E) of the Internal Revenue Code, as amended from time to time, (ii) any production tax credits under Section 45 (or its successor found at Section 45Y) of the Internal Revenue Code, as amended from time to time, (iii) any other federal production tax credits, depreciation deductions or other tax credits that are intended to provide a specific tax benefit (A) to an owner of, operator of, or security interest holder in a project or facility that is producing or storing electricity, and (B) would not otherwise be available to such person for tax purposes but for the development and operation of the project or facility or production or storage of electricity, (iv) any direct payments or grants that are in lieu of or in addition to the any of the incentives or assistance described in (i), (ii) and (iii), above, and (v) cash grants, cash payments and other financial incentives from the federal government available to the owner of, operator of, or security interest holder in, a project or facility that is producing or storing electricity.

SBMT: South Brooklyn Marine Terminal.

SDVOB: Service-Disabled Veteran Owned Businesses as defined under the Service-Disabled Veteran Owned Business Act of New York State.

Selected Project: The offshore wind generation facility and associated infrastructure selected for award by NYSERDA in ORECRFP23-1 and as described in Exhibit H to this Agreement.

Supply Chain Investment: Any investment in, or purchase of goods or services from, an offshore wind port or other offshore wind supply chain facility (including facilities that provide training or workforce development, conduct scientific research and/or conduct environmental conservation activities) located in New York State that is either a new (greenfield) facility or requires significant upgrades to an existing facility to accommodate the contemplated usage regardless of whether such investment or expenditures were made by Seller, an Affiliate, or a third party.

Transfer/Transferred: The delivery of ORECs to the NYSERDA NYGATS Account designated by NYSERDA.

Treasury Regulations: The rules and regulations promulgated by the U.S. Department of Treasury.

Uncompleted Offer Capacity: The amount by which the product of 0.95 and the Offer Capacity exceeds the Operational Installed Capacity.

Unfulfilled Dollar Value: The amount equal to (i) the value of a Supply Chain Investment or Disadvantaged Community Commitment as specified in Section 6.05(a) or Section 6.06(a), as applicable, minus (ii) any amounts spent towards fulfilling such Supply Chain Investment or Disadvantaged Community Commitment following the Economic Benefits Start Date.

U.S. Iron and Steel Contractor Certification: A certification signed by the responsible contractor with respect to an iron or steel component substantially in the form attached hereto as Exhibit O.

U.S. Iron and Steel Manufacturer Certification: A certification signed by the manufacturer(s) of an iron or steel component substantially in the form attached hereto as Exhibit O.

Verified Labor Dollars: The Verified Total Dollars associated with labor expenditures described in Section II.a of Exhibit I from the Economic Benefits Start Date through the end of the first three (3) Contract Years.

Verified MWBE and SDVOB Dollars: The Verified Total Dollars that accrue specifically to certified MWBEs and certified SDVOBs from the Economic Benefits Start Date through the end of the first three (3) Contract Years. For the avoidance of doubt, an entity that at the time of the applicable expenditure qualifies as a MWBE or SDVOB as those terms are defined under New York State law as of the Effective Date shall be considered an MWBE or SDVOB for purposes of Verified MWBE and SDVOB Dollars.

Verified Near-Term Dollars: The total dollar amount of Economic Benefits as calculated pursuant to Exhibit I and verified to have accrued to New York as a result of the development, construction, modification, interconnection, and operation of the Selected Project during the Near-Term Period.

Verified Total Dollars: The total dollar amount of Economic Benefits as calculated pursuant to Exhibit I and verified to have accrued to New York as a result of the development, construction, modification, interconnection, and operation of the Selected Project from the Economic Benefits Start Date through the end of the first three (3) Contract Years. For the avoidance of doubt, Verified Total Dollars include Verified Total Subcategory Dollars and Verified Near-Term Dollars.

Verified Total Subcategory Dollars: The total amount of Verified Labor Dollars, Verified MWBE and SDVOB Dollars and Verified U.S. Iron and Steel Dollars.

Verified U.S. Iron and Steel Dollars: The Verified Total Dollars associated with expenditures on procurement of iron and steel manufactured in the United States for the Selected Project from the Economic Benefits Start Date through the date of the commencement of the Contract Delivery Term. Only expenditures substantiated by a U.S. Iron and Steel Manufacturer Certification shall be considered Verified U.S. Iron and Steel Dollars.

Article II

Purchase and Sale of ORECs

Section 2.01. Purchase and Sale Obligations.

- (a) On the terms and subject to the conditions of this Agreement, Seller agrees to sell, assign, convey, deliver and Transfer to NYSERDA, and NYSERDA agrees to purchase from Seller, all right, title and interest in the ORECs produced by the Selected Project during each month of the Contract Delivery Term.
- (b) For the avoidance of doubt, the only products Seller is selling and NYSERDA is buying under this Agreement are ORECs and all rights, title, and interest associated with those ORECs and the Environmental Attributes of the Actual Production as further described in Section 2.04. Seller is not selling to NYSERDA and NYSERDA is not purchasing any electric energy, capacity, or ancillary services associated with the Selected Project.

- (c) As a condition precedent to NYSERDA's purchase obligation in Section 2.01(a), Seller shall deliver to NYSERDA the report of an Independent Engineer demonstrating that the Operational Installed Capacity of the Selected Project is no greater than the Maximum Project Capacity.
- (i) If Seller elects to build the Selected Project in phases, Seller may deliver an Independent Engineer's report for each phase; provided that NYSERDA shall purchase ORECs only from those portions of the Selected Project for which the Operational Installed Capacity has been confirmed by an Independent Engineer's report.
 - (ii) If Seller elects to install additional offshore wind facilities within the same leased area as the Selected Project, Seller shall deliver to NYSERDA, in writing, a plan for verifying that the generation and associated ORECs from the Selected Project will be accounted for separately from any generation and ORECs produced by such additional facilities.
- (d) Notwithstanding Section 2.01(a), in no Contract Year shall NYSERDA be obligated under this Agreement to purchase from Seller, nor Seller obligated under this Agreement to sell to NYSERDA, more ORECs than the Annual OREC Cap. Seller shall be free to sell, assign, transfer or otherwise subject to any encumbrance any ORECs produced by the Selected Project in excess of the Annual OREC Cap.
- (e) With NYSERDA's written consent, which shall not be unreasonably withheld, conditioned, or delayed, Seller may, at any time prior to Commercial Operation of the Selected Project, adjust the P10 Annual OREC Exceedance (and, thereby, the Annual OREC Cap) and the P50 Annual OREC Exceedance to reflect changes in the technical or meteorological assumptions upon which the prior estimate was based or changes in the capacity of the Selected Project up to the Maximum Project Capacity.

Section 2.02. NYSERDA's Rights, Title and Interest in ORECs. The right, title, and interest to the ORECs NYSERDA is acquiring under this Agreement shall include perpetual and exclusive rights to such ORECs and the underlying Environmental Attributes of the Actual Production up to the Annual OREC Cap, including but not limited to the exclusive rights to claim or represent, consistent with New York State Environmental Disclosure Rules: (i) that the ORECs are associated with energy generated by the Selected Project; and (ii) that New York State and/or the Offshore Wind Standard is responsible for the environmental benefits, including reductions in emissions and/or other pollution or any other environmental benefit resulting from the generation of the energy associated with the ORECs.

Section 2.03. Transfer. Seller shall register the Selected Project in NYGATS. Transfer shall be a necessary part of Seller performance. Seller shall Transfer ORECs, up to the Annual OREC Cap, to the NYSERDA NYGATS Account on a monthly basis via a Forward Certificate Transfer. At the time of Transfer by Seller to NYSERDA, the ORECs shall be free and clear of all liens, judgments, encumbrances and restrictions. Seller shall not discontinue its election to utilize a NYGATS Forward Certificate Transfer without prior written permission from NYSERDA.

Section 2.04. Other Attributes. The Parties agree that this Agreement entitles NYSERDA to

all Environmental Attributes of the Actual Production up to the energy equivalent (in MWh) of the Annual OREC Cap. Accordingly, Seller shall not sell, transfer, retire or otherwise dispose of any Environmental Attributes associated with the Actual Production during the Contract Delivery Term unless (a) approved by NYSERDA, or (b) if such other Environmental Attributes are associated with the Actual Production produced in excess of the energy equivalent (in MWh) of the Annual OREC Cap. In the event that, because of the Environmental Attributes of the Actual Production, Seller becomes eligible for credits, allowances or other benefits under any emission-trading, emission-recording, renewable energy, or other greenhouse gas emissions reduction regime other than the Clean Energy Standard and the Offshore Wind Standard (“Credits”), NYSERDA may request that Seller take all commercially reasonable actions necessary to apply for and secure such title to such Credits, to the maximum extent to which the Selected Project is entitled. In the event the incremental costs to Seller of obtaining such Credits exceeds a de minimis administrative cost, Seller shall provide written notice to NYSERDA prior to incurring any such incremental costs, and the Parties shall discuss in good faith reimbursement for such incremental costs. Seller shall provide NYSERDA with evidence of taking such actions. NYSERDA and Seller shall reasonably cooperate to cause title to such Credits to be conveyed to NYSERDA after such title is secured by Seller.

Section 2.05. Assignment of ORECs. NYSERDA shall be free to sell, assign, transfer or otherwise subject to any encumbrance, any of the ORECs NYSERDA acquires under this Agreement, at any time and from time to time to any entity and on such terms and conditions as NYSERDA may desire. Any financial or other consideration received by NYSERDA from any such action shall inure solely to NYSERDA’s benefit, to be applied as determined by NYSERDA as the central procurement administrator of the Offshore Wind Standard program or a successor and shall not affect Seller’s rights or obligations under the terms of this Agreement.

Article III

Electricity Delivery Requirements

Section 3.01. Selected Project Interconnecting in the New York Control Area. The Actual Production associated with the ORECs for the Selected Project must either be (a) delivered into a market administered by the NYISO for end-use in New York State, (b) delivered through a wholesale meter under the control of a utility, public authority or municipal electric company such that it can be measured, and such that consumption within New York State can be tracked and verified by such entity or by the NYISO, or (c) delivered through a dedicated generation meter at the Delivery Point that shall be compliant with the requirements and standards stated in Section 5.3 of the NYGATS Operating Rules, as such rules may be amended or changed from time to time.

Section 3.02. Reserved.

Section 3.03. Bilateral Sales. Nothing in this Agreement shall be read to prohibit bilateral sales by Seller for electric energy, capacity, or ancillary services produced by the Selected Project; provided that electric energy used for any purpose other than delivery to the Delivery Point shall be subject to Section 3.04. Electric energy from the Selected Project sold on a bilateral basis will produce ORECs and NYSERDA will purchase such ORECs in accordance with Article II of this Agreement until the Annual OREC Cap is reached, provided that the energy is delivered and sold within the NYCA in accordance with this Article.

Section 3.04. Alternate Uses. Unless otherwise agreed to in writing by NYSERDA, use of the

Selected Project's electric energy for any purpose other than delivery to the Delivery Point (for example, to produce Clean Electrolytic Hydrogen) shall be limited to electric energy that is (i) in excess of the amount of energy associated with ORECs sold hereunder up to the Annual OREC Cap or (ii) generated at times during which the delivery of such electrical energy at the Delivery Point is not possible due to curtailment of the Selected Project by the administrator of the local control area. Prior to engaging in any such alternate use, Seller agrees to (i) provide notice to NYSERDA of its intent to do so and (ii) establish specific mechanisms reasonably acceptable to NYSERDA for measuring and allocating electric energy to ensure that the alternate use is associated only with electric energy falling within the two categories referenced in this Section 3.04.

Article IV

Pricing and Payment

Section 4.01. Determination of Applicable OREC Price. The Applicable OREC Price shall be the Index OREC Price, as selected by NYSERDA pursuant to ORECRFP23-1 and as set forth in Section 4.03 of this Agreement.

Section 4.02. Reserved.

Section 4.03. Index OREC Price.

- (a) For each month, the Monthly OREC Price shall equal the Index OREC Strike Price minus the Reference Energy Price minus the Reference Capacity Price; provided that in no case shall the Monthly OREC Price exceed the Index OREC Strike Price.
- (i) The Index OREC Strike Price, for each month in the respective Contract Years shall be \$155.00/MWh.
 - (ii) Using data published by NYISO for its day-ahead energy market, NYSERDA shall calculate the Reference Energy Price for each month by:
 - (A) identifying the locational-based marginal price ("LBMP") for each hour of the month in the Applicable Zone; and
 - (B) calculating the around the clock simple (not load-weighted) average of each such hourly LBMP during the entire month to determine the Reference Energy Price.
 - (iii) The Reference Capacity Price for each month shall be calculated by NYSERDA using data published by NYISO for its spot market unforced capacity ("UCAP") prices. NYSERDA shall:
 - (A) identify the UCAP price (in dollars per kW-month) for such month in the Applicable Zone ("Reference UCAP Price");
 - (B) take the product of⁶ (1) the Reference UCAP Price (\$/kW-month), (2)

⁶ Because the Relative UCAP Production Factor (rUPF) value will be set to 1 for the duration of the contract tenor, no reference to the rUPF is needed.

Reserved, (3) the Operational Installed Capacity (MW), (4) a conversion factor of one thousand (1,000) kW/MW and (5) the Capacity Accreditation Factor for the Selected Project’s Capacity Accreditation Resource Class (“CARC”); and

(C) divide the total amount of dollars calculated in (B) by the total amount of ORECs produced from the Selected Project for that month (including any ORECs produced in excess of the Annual OREC Cap) to determine the Reference Capacity Price.

(b) The following formulae depict the calculation of the Monthly OREC Price based on the Index OREC Price in accordance with Section 4.03(a).

$$\text{Monthly OREC Price} = \text{OSP}^{\text{Index}} - \text{REP} - \text{RCP}$$

where:

$\text{OSP}^{\text{Index}}$ = Index OREC Strike Price (\$/MWh)

REP = Reference Energy Price (\$/MWh)

RCP = Reference Capacity Price (\$/MWh)

$$\text{RCP} = \frac{\text{RUP} \times \text{IC} \times 1,000 \times \text{CAF}}{\text{Total ORECs}}$$

where:

RUP = Reference UCAP Price (\$/kW-month)

IC = Installed capacity (ICAP) of the generator (MW)

Total ORECs = Total amount of ORECs produced by the Selected Project in the subject month (MWh)

1,000 = kW to MW conversion factor

CAF = Capacity Accreditation Factor for the Selected Project’s CARC

Section 4.04. Invoices.

(a) Within fifteen (15) days after NYSERDA has received the information for the Selected Project necessary to compute a Monthly OREC Price, NYSERDA shall inform Seller of the Monthly OREC Price for that month.

(b) Seller shall submit monthly invoices for the ORECs Transferred by Seller into the NYSERDA

NYGATS Account and associated with the Actual Production delivered to the Delivery Point in each month during the Contract Delivery Term. Invoices shall not be submitted before NYSERDA provides Seller with the Monthly OREC Price for a given month in accordance with Section 4.04(a) of this Agreement; invoices submitted before NYSERDA provides Seller with the Monthly OREC Price for a given month shall not be considered proper invoices for purposes of NYSERDA's Prompt Payment Policy. Invoices shall be submitted electronically to NYSERDA's online invoice system at: <https://services.nyserda.ny.gov/Invoices/> or, if this Selected Project is managed through NYSERDA's Salesforce application, via NYSERDA's Salesforce Portal with Seller's log-in credentials. Invoices shall include a statement of the amount due and payable by NYSERDA to Seller, which amount shall be calculated in accordance with Section 4.05. Invoices must reflect the quantity of ORECs Transferred to the NYSERDA NYGATS Account for that month. NYSERDA may request additional information and data sufficient for NYSERDA to verify compliance with the electricity delivery requirements in Article III and other requirements in this Agreement. With the exception of an invoice submitted in accordance with Article V of this Agreement, NYSERDA shall have no obligation to pay any invoice submitted more than one hundred twenty (120) calendar days after NYSERDA provides Seller with the Monthly OREC Price for a given month for which payment is requested. Invoices submitted by Seller shall be deemed to have been submitted on its initial date of receipt by NYSERDA even if Seller subsequently adjusts such initial invoice (including pursuant to Section 5.01, or to comply with this Section 4.04(b)).

Section 4.05. Payment. The amount payable to Seller with respect to each monthly invoice shall be the product of: (i) the number of ORECs associated with the Actual Production during the month and Transferred to the NYSERDA NYGATS Account in accordance with Section 2.01, and (ii) the Monthly OREC Price for the vintage month of the ORECs Transferred. NYSERDA will not pay for ORECs beyond the Annual OREC Cap for any Contract Year. If, for any month, the amount payable to Seller is a negative amount because the Monthly OREC Price for that month was negative, NYSERDA shall make no payment to Seller for that month and instead shall record a debit in such amount ("Monthly Debit"). Any Monthly Debit shall be deducted from each subsequent month's payment by NYSERDA until the Monthly Debit is fully recovered. Any Monthly Debit that goes unrecovered for twelve (12) months shall be settled by Seller in cash within thirty (30) days after the conclusion of such twelve (12)-month period, except that all Monthly Debts outstanding at the conclusion of the Contract Delivery Term shall be settled by Seller in cash within thirty (30) days after the conclusion of the Contract Delivery Term.

Section 4.06. Prompt Payment Policy. Subject to Section 4.04, NYSERDA shall make payments to Seller in accordance with and subject to its Prompt Payment Policy Statement, attached hereto as Exhibit C. Such payments shall be made by wire transfer to an account designated by Seller. NYSERDA shall have no obligation to pay any invoice not accompanied by all information requested by NYSERDA in accordance with Section 6.01.

Section 4.07. Changes in Law.

- (a) In the event that a change in Applicable Law after the Effective Date changes, or on the date such change takes effect ("Change in Law Date") will change, the price structure or methodology, settlement, zonal structure, or terminology used in either the NYISO Energy Market or NYISO Capacity Market such that the calculation of Reference Energy Price or Reference Capacity Price becomes impossible or no longer reasonably reflects the objective

of providing a market-based index of energy and/or capacity prices in the Applicable Zone, in each case as they existed on the Effective Date, the Parties shall negotiate in good faith to amend this Agreement, prospective from the Change in Law Date, to make such conforming changes as are necessary to achieve that objective.

- (b) In the event that a change in Applicable Law after the Effective Date eliminates the NYISO Capacity Market entirely and without replacement, the Parties agree that the Reference Capacity Price shall be zero. In the event that a change in Applicable Law after the Effective Date replaces the NYISO Capacity Market with a new resource adequacy construct or materially modifies its design, the Parties agree to negotiate in good faith to amend this Agreement, prospective from the Change in Law Date, to make such conforming changes as are necessary to replace the current Reference Capacity Price formula with a formula that reasonably comprises an index of prices available to, or actual capacity revenue received by, offshore wind generators in the Applicable Zone under the new resource adequacy construct.
- (c) In the event that a change in Applicable Law after the Effective Date subjects or, on the date such change takes effect, will subject offshore wind generators to buyer-side market power mitigation (or similar restriction limiting the ability of such resources to clear the NYISO Capacity Market) the Parties shall amend this Agreement in a manner that will cause the Reference Capacity Price to be appropriately reduced by a mitigation factor or similar mechanism to reflect the application of such mitigation or restriction to offshore wind generators in the Applicable Zone.

Article V

Adjustments

Section 5.01. True-Up Adjustments. NYSERDA may (and, at the request of Seller, shall) review past invoices, including, but not limited to, the calculation of the Reference Energy Price and Reference Capacity Price, to determine if a true-up adjustment is necessary. If necessary, NYSERDA shall adjust, including by means of set-off, payments to subsequent invoices consistent with adjustments by NYGATS based on NYISO or other local control area billing settlement true-up procedures, based on actual metered production data measured at the Delivery Point, actual and verified data reflecting compliance with the electricity delivery requirements set forth in Article III, and/or based on the number of ORECs Transferred.

Section 5.02. Time Period for Disputes and Adjustment of Invoices. A Party may seek a correction of any invoice, or any adjustment to an invoice, rendered under this Agreement within twelve (12) months of the date the invoice or adjustment to an invoice was rendered. Unless a party has submitted a written request for review of an invoice or an adjustment to an invoice within twelve (12) months of the date of the invoice or adjustment to the invoice, the invoice or adjustment shall be considered final and not subject to further adjustment.

Section 5.03. Reserved.

Section 5.04. Interconnection Cost Adjustment.

- (a) The Seller shall make commercially reasonable efforts to cause Interconnection Net Savings to occur, including but not limited to changing its Delivery Point where appropriate.

- (b) On or before the date that is ninety (90) days prior to the commencement of the Contract Delivery Term, Seller shall make available or cause to be made available to NYSERDA all books and records reasonably necessary for NYSERDA to quantify the Interconnection Cost Allocation.
- (c) To the extent Interconnection Net Savings exist, the Index OREC Strike Price will be reduced by the Interconnection Price Reduction, calculated as follows:

$$\text{Interconnection Price Reduction} = \frac{\text{NYSERDA Interconnection Savings Share (\$)} \times \text{RF}}{\text{P50 Annual OREC Exceedance}}$$

where:

NYSERDA Interconnection Savings Share = the greater of (i) 80% of the Interconnection Net Savings and (ii) Interconnection Net Savings minus \$50,000,000.

RF = Recovery Factor of 0.0781.

- (d) Reserved.

Section 5.05. Reserved.

Section 5.06. Offshore Transmission System Integration and Adjustment.

- (a) In the event that NYSERDA and Seller mutually agree that changes to the design or scope of the Selected Project are necessary or appropriate to prepare for or implement a future offshore transmission system, the schedule, delivery and/or pricing provisions of this Agreement shall be adjusted to account for any delays and/or reasonably expected increases or decreases in project cost established based on a cost estimate or other study carried out on behalf of the Selected Project and reviewed by a third party mutually acceptable to the Seller and NYSERDA.
- (b) Prior to the Selected Project being connected to an offshore transmission system, the Parties shall negotiate in good faith to amend the pricing and delivery provisions of this Agreement, prospective from the date on which the Selected Project would be connected to such a system (the "Offshore System Date"), to ensure that (i) the economic value to the Seller of the Selected Project is not reduced for reasons attributable to the implementation of the offshore transmission system (for example, changes in expected dispatch, ability to provide capacity services, nodal vs. zonal pricing basis risk, potential out-of-state delivery, and/or project delays) and (ii) to the extent economic value accrues to the Selected Project from implementing the offshore transmission system, that those additional economic benefits are passed through to ratepayers.
- (c) In the event that implementation of an offshore transmission system causes delays in commencement of Commercial Operation of the Selected Project, the Outer Limit Date shall

be extended by the period of such delay. For the avoidance of doubt, any such extension to the Outer Limit Date as set forth in this Section 5.06(c) shall not be included in the two (2) year aggregate Outer Limit Date extension specified in Section 18.12.

- (d) In the event that implementation of an offshore transmission system causes the Selected Project to experience downtime or a delay in the commencement of Commercial Operation of the Selected Project, the OREC price will be adjusted, or the Seller will be otherwise compensated, on terms established in the amendment to this Agreement negotiated pursuant to Section 5.06(b).

Section 5.07. Qualifying Federal Support.

- (a) In the event that Seller or any of its Affiliates receives Qualifying Federal Support, Seller shall determine the QFS Amount and provide notice of the same to NYSERDA, including supporting calculations thereto. Seller shall also make available or cause to be made available to NYSERDA all books and records in its control that are reasonably necessary to determine the QFS Amount and shall use commercially reasonable efforts to provide NYSERDA with any other books and records reasonably requested by NYSERDA. Such books and records shall include all tax and other filings made with respect to obtaining any of the Renewable Tax Benefits that Seller or any tax equity party is claiming or proposing to claim as well as all work papers and other due diligence and compliance records, files and data related to the qualification for the Renewable Tax Benefits to which Seller has in its possession or reasonably has access.
- (b) Except with respect to transaction costs and expenses incurred by Seller or its Affiliates in connection with obtaining Qualifying Federal Support, which shall be for Seller's account, the QFS Amount shall be calculated on a net basis, taking into account any reduction in current or future economic value or costs incurred as a result of Seller's or its Affiliates' realization of the applicable Qualifying Federal Support. For example, the Parties acknowledge and agree that, in order to qualify for a higher level of Qualifying Federal Support, Seller or its Affiliates may be required to incur increased costs related to development, construction or operation of the Selected Project including costs related to new U.S. content or similar sourcing requirements, prevailing wage requirements or apprenticeship requirements. For the avoidance of doubt, if Seller or its Affiliates incur such increased costs for the purpose of qualifying for such higher level of support, the Qualifying Federal Support Amount shall be reasonably adjusted by Seller to reflect the total economic value of the Qualifying Federal Support after accounting for such increased costs.

If applicable, the QFS Price Reduction shall be applied prospectively from the beginning of the Contract Year immediately following the date that the economic value of the Qualifying Federal Support benefit is realized, computed in accordance with the following formula:

$$QFS\ Price\ Reduction = \frac{QFS\ Amount\ (\$) \times 0.75 \times RF}{P50\ Annual\ OREC\ Exceedance}$$

provided that with respect to Qualifying Federal Support that arises from Section 45(b)(9) (or its successor at 45Y(g)(11)), Section 45(b)(11) (or its successor at Section 45Y(g)(7)), Section 48(a)(12) (or its successor at Section 48E(a)(3)(B)) or Section 48(a)(14) (or its successor at Section 48E(a)(3)(A)) of the Internal Revenue Code in existence on the Bid Submission Date

and is realized other than through, for domestic content requirements, a waiver process as described in 49 C.F.R. § 661.7 (or similar process) offered by the U.S. Department of Treasury, the Internal Revenue Service or other federal authority under which the steel, iron, or manufactured products of the Selected Project were not produced in the United States and did not meet the requirements of 49 C.F.R. § 661.5(b)-(d), or for energy communities, a waiver or exception process, 0.75 will be replaced with 0.50.

where:

RF = Recovery Factor determined in accordance with the following table, in which the Annuitization Term shall equal the number of full Contract Years remaining in the Contract Delivery Term:

Table of Recovery Factors for Qualifying Federal Support

Nominal Annual Discount Rate 7.25%

Full Contract Years Remaining in Contract Delivery Term	Recovery Factor
1	1.0725
2	0.5550
3	0.3828
4	0.2969
5	0.2455
6	0.2114
7	0.1872
8	0.1691
9	0.1551
10	0.1440
11	0.1350
12	0.1276
13	0.1214
14	0.1161
15	0.1115
16	0.1076
17	0.1042
18	0.1012
19	0.0986
20	0.0962
21	0.0942
22	0.0923
23	0.0906
24	0.0891
25	0.0878

(c) In the event that any Qualifying Federal Support changes (including through modification,

repeal and/or any other action) after the determination of the QFS Amount and/or the application of the QFS Price Reduction, Seller shall provide notice of such occurrence to NYSERDA and redetermine the QFS Amount based on such development using the process set forth in Sections 5.07(a) and (b). In such event, the adjusted QFS Price Reduction shall be applied prospectively in a manner that reflects the effect of such change.

Article VI

Records and Reports

Section 6.01. Monthly Reports. Seller shall, at NYSERDA's request, provide NYSERDA access to generation and delivery data, including detailed monthly market accounting settlement or other pertinent data from the administrator(s) of the energy market into which energy from the Selected Project was delivered, from the entity or party in control of any meter through which the energy from the Selected Project was delivered, and from the administrator of any attribute accounting system operating in such control area. Seller may be required to waive confidentiality, as to NYSERDA, for the direct transfer to NYSERDA by an energy market administrator or the operator of the transmission and/or distribution system into which the energy from the Selected Project is delivered of transactional and/or delivery information and data pertinent to the verification of attribute creation and electricity delivery.

Section 6.02. Progress Reports. Beginning on the first such date following the Effective Date, and continuing through the date on which the Contract Delivery Term has commenced, Seller shall provide quarterly written progress reports to NYSERDA, on March 1, June 1, September 1, and December 1 (with such report covering the immediately preceding calendar quarter). Progress reports shall be made based on facts known to Seller on the date of submittal to NYSERDA, and NYSERDA acknowledges that the facts underlying the subject matter of such reports are constantly changing. The first two reports may be in the form of quarterly reports previously provided by Seller to NYSERDA under the Terminated PSA. Starting with the third such report, such reports shall be substantially in the form of Exhibit K to this Agreement, and shall describe at a minimum:

- (a) Seller's progress in obtaining all required environmental or other permits and/or local approvals;
- (b) the status of development and/or construction planning or activities with regard to the Selected Project;
- (c) the status of the interconnection process between the Selected Project and the administrator of the control area;
- (d) purchases, delivery, and/or installation of any major equipment associated with the Selected Project, including actions taken pursuant to Section 12.11;
- (e) activities undertaken pursuant to Seller's Stakeholder Engagement Plan, including how Seller has taken into account the interests of Disadvantaged Communities, updates on Seller's consultations with the Consulting State Agencies and reasonable notice, with a preference of two (2) weeks before (if such notice is less than two (2) weeks, Seller to provide reasoning of why two (2) week notice was not practicable), of upcoming meetings and known outreach events and activities for the next quarter;

- (f) information relating to the employment on the Selected Project, as both contractors and sub-contractors, of MWBEs and SDVOBs registered with DOS, including identifying information for such firms, the expenditure on such firms, and the time period in which such firms were engaged, Seller's diversity, equity, and inclusion efforts, and other information described in Exhibit K;
- (g) updates with respect to expenditures on community benefit funds, grants, apprenticeships and internships, educational cooperative efforts, Supply Chain Investments, and/or training initiatives;
- (h) updates with respect to jobs created and retained;
- (i) the status of specific industry growth activities including industry event dates and attendees, negotiating of contracts, establishment of facilities, steering members and board members, hiring of employees, establishment of funds, dollars spent, submitted and awarded proposals, launch dates, and workers trained;
- (j) engagements with fisheries and environmental stakeholders and any updates to Seller's Fisheries Mitigation Plan, Environmental Mitigation Plan and/or Seller's Data Availability Plan;
- (k) updates on Seller's monitoring of fish and invertebrates that support economically important fisheries and wildlife of conservation concern; and
- (l) an estimated date for Commercial Operation, including the reason for any changes to the date compared with prior reports.

Such reports shall also include copies of any permits or approvals granted and/or copies of any correspondence of any type denying or refusing any permit or approval. Seller shall notify NYSERDA within twenty (20) days of discovering any event that could reasonably cause a material delay in any of the activities listed above. Commencing with the first progress report that indicates that construction activities falling within the scope of Section 18.10 have commenced and with each subsequent progress report submitted on June 1 and December 1 thereafter, Seller shall include a written attestation prepared by a New York State independent certified public accountant or other qualified party, in a form to be agreed upon, confirming that the Prevailing Wage requirement of Section 18.10 is being met.

Section 6.02-a. Annual Operating Reports. Seller shall provide NYSERDA with an Annual Operating Report on March 15 of each year within the Contract Delivery Term and one year thereafter covering the activities of the immediately preceding Calendar Year in which any ORECs were transferred to NYSERDA. Annual Operating Reports shall be submitted in a form substantially similar to Exhibit S to this Agreement, as may be modified by NYSERDA from time to time. To maximize efficiencies, NYSERDA will consider accepting, upon Seller request, Annual Operating Report formats that differ from that contained in Exhibit S to match the format of existing reporting formats utilized by Seller or its Affiliates.

Section 6.03. Additional Documents. Within thirty (30) days of the Effective Date, Seller shall provide to NYSERDA:

- (a) a certificate, dated as of the most recent practicable date prior to the Effective Date, issued by the jurisdiction of the Seller's organization confirming the corporate good standing of Seller;
- (b) a certificate of an appropriate officer or authorized representative of Seller, dated as of the most recent practicable date prior to the Effective Date, in form and substance reasonably satisfactory to NYSERDA and certifying: (i) the names and signatures of the officers or authorized representatives of Seller authorized to sign any documents to be delivered hereunder, and (ii) the accuracy and completeness of resolutions of Seller, authorizing and approving all matters in connection with the transactions contemplated thereby; and
- (c) a rendering of the site layout plan required by Section 6.4.4 of ORECRFP23-1 in shapefile format for geographic information system software.

Seller shall promptly provide NYSERDA with updated and corrected versions of the above-referenced materials upon any change in the information provided therein.

Section 6.04. Maintenance of Records. Except as excused by NYSERDA in writing, Seller shall keep, maintain, and preserve throughout the term of this Agreement and for a period of seven (7) years following the expiration of this Agreement, full and detailed books, accounts, and records pertaining to Seller's performance under the Agreement, including without limitation, all bills, invoices, payrolls, subcontracting efforts and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by Seller in the course of such performance. The foregoing records may be kept, maintained, or preserved on any information storage device, or one or more electronic networks or databases, provided that such records can be converted into clearly legible form within a reasonable time. Seller may destroy or otherwise dispose of a record falling within the scope of this Section seven (7) years following the creation thereof with the written consent of NYSERDA, such consent not to be unreasonably withheld, conditioned or delayed.

Section 6.05. Disadvantaged Community Commitments. The Parties acknowledge the importance of designing the relevant investments made by the Selected Project to provide benefits to and reduce burdens on Disadvantaged Communities in accordance with the PSC's "Order Adopting Modifications to the Clean Energy Standard".⁷ Consistent with this goal:

- (a) Seller agrees to fulfill (directly or indirectly through an Affiliate or third party) the following Disadvantaged Community Commitments from and after the Economic Benefits Start Date:
 - (i) 
 - (ii) No later than the end of the third Contract Year of the Contract Delivery Term, Seller shall provide \$5,000,000 in funding to support workforce development through the Offshore Wind Ecosystem Fund (or similar organization).
 - (iii) No later than the end of the third Contract Year of the Contract Delivery Term, Seller

⁷ See Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard, Order Adopting Modifications to the Clean Energy Standard (issued October 15, 2020).

shall provide [REDACTED] in funding to establish and operate an offshore wind learning center in a Disadvantaged Community that provides community members with access to information about the offshore wind sector.

- (iv) No later than the end of the third Contract Year of the Contract Delivery Term, Seller shall invest [REDACTED] in initiatives that benefit Disadvantaged Communities or members of such communities through the regional collaboration model consistent with Exhibit D of this Agreement.
 - (v) Seller shall fund the construction of a new substation and associated facilities at SBMT to support the interconnection of the Selected Project; provided however that Seller's obligation to provide funding to support such works shall not exceed [REDACTED]
 - (vi) No later than the end of the third Contract Year of the Contract Delivery Term, Seller shall provide [REDACTED] to support the Offshore Wind Innovation Hub developed in partnership with New York University, the National Offshore Wind Research and Development Consortium, and the New York City Economic Development Corporation.
 - (vii) Seller shall pay for the use of SBMT through the third Contract Year of the Contract Delivery Term; provided however that Seller shall not have any obligation to make payments in excess of [REDACTED] for such use of SBMT.
 - (viii) Seller shall pay for the use of a project office located in the vicinity of SBMT through the third Contract Year of the Contract Delivery Term; provided however that Seller shall not have any obligation to make payments in excess of [REDACTED] for the use of such project office.
 - (ix) Seller shall invest \$500,000 in the New York City Economic Development Corporation's Offshore Wind NYC Waterfront Pathways Program. The Parties acknowledge that this Disadvantaged Community Commitment has been fulfilled as of the Effective Date of this Agreement.
- (b) With NYSERDA's consent (which shall not be unreasonably withheld, conditioned, or delayed), Seller may substitute a Disadvantaged Community Commitment identified in Section 6.05(a) with a substitute Disadvantaged Community Commitment of equal or greater value to Disadvantaged Community(ies) in New York State.
 - (c) Should Seller fail to fulfill any Disadvantaged Community Commitment it is obligated to fulfill under Section 6.05(a) or 6.05(b), unless addressed through a cure pursuant to Section 12.02 of this Agreement, Seller shall make payment to NYSERDA in the amount of the applicable Unfulfilled Dollar Value, or propose a replacement Disadvantaged Community Commitment of equivalent value, no later than sixty (60) days after the Selected Project commences Commercial Operation or the date identified in such commitment, whichever is later. Any payment to NYSERDA or replacement Disadvantaged Community Commitment made pursuant to this section shall be eligible to count towards meeting Seller's Economic Benefits commitments under this Agreement. For the avoidance of doubt, (i) any Economic Benefits associated with any replacement Disadvantaged Community Commitment made pursuant to this section shall be eligible to count as Verified

Total Dollars and subcategories thereof to the extent such investment meets the definition of Verified Total Dollars or an applicable subcategory thereof and (ii) any payment made pursuant to this section shall be eligible to count as Verified Total Dollars and, to the extent meeting the definition thereof, Verified Near-Term Dollars. If Seller fails to make a specific investment that is listed in both Section 6.05(a) and Section 6.06(a), (i) Seller's payment of the applicable Unfulfilled Dollar Value of that specific investment shall satisfy both Section 6.05(c) and Section 6.06(c) without the need for a second duplicate payment, and (ii) any single replacement investment that constitutes both a Disadvantaged Community Commitment and a Supply Chain Investment shall satisfy both Section 6.05(c) and Section 6.06(c) without the need for a second replacement investment.

- (d) Seller intends to make investments in New York State to help ensure that members of Disadvantaged Communities share in the Economic Benefits that will be generated as a result of this Agreement. Seller will make reasonable efforts to ensure that members of Disadvantaged Communities are apprised of employment opportunities in connection with the Selected Project and to put in place processes to ensure that businesses in Disadvantaged Communities have the opportunity and awareness to compete for contracting opportunities and, to advance the interests of Disadvantaged Communities when making the investments set out in Exhibit D of this Agreement in accordance with Section 12.01(c). In connection with such activities and obligations, Seller shall conduct ongoing stakeholder and community engagement and must agree to coordinate with NYSERDA throughout implementation of the Selected Project to reasonably align the investments and associated benefits claimed with NYSERDA's broader approach for the delivery, measurement, tracking, and reporting of benefits to Disadvantaged Communities, pursuant to the provisions of the Climate Leadership and Community Protection Act.
- (e) As part of the quarterly progress reports described in Section 6.02, Seller shall describe the activities undertaken in accordance with this Section 6.05 associated with Disadvantaged Communities.

Section 6.06. Supply Chain Investments.

- (a) Seller agrees to fulfill (directly or indirectly through an Affiliate or third party) the following Supply Chain Investments from and after the Economic Benefits Start Date:
 - (i) Seller shall redevelop SBMT to make it capable of supporting the staging of wind turbines; provided however that Seller shall not have an obligation to spend more than [REDACTED] under this Agreement to support redevelopment of SBMT.
 - (ii) Seller shall pay for the use of SBMT through the third Contract Year of the Contract Delivery Term; provided however that Seller shall not have any obligation to make payments in excess of [REDACTED] for such use of SBMT.

[REDACTED]

- (b) With NYSERDA's consent (which shall not be unreasonably withheld, conditioned, or

delayed), Seller may substitute a Supply Chain Investment identified in Section 6.06(a) with a substitute Supply Chain Investment of equal or greater value in New York State.

- (c) Should Seller fail to fulfill any Supply Chain Investment it is obligated to fulfill under Section 6.06(a) or 6.06(b), unless addressed through a cure pursuant to Section 12.02 of this Agreement, Seller shall make payment to NYSERDA in the amount of the applicable Unfulfilled Dollar Value, or propose a replacement Supply Chain Investment of equivalent value, no later than sixty (60) days after the Selected Project commences Commercial Operation or the date identified in such commitment, whichever is later. Any payment to NYSERDA or replacement Supply Chain Investment made pursuant to this section shall be eligible to count towards meeting Seller's Economic Benefits commitments under this Agreement. For the avoidance of doubt, (i) any Economic Benefits associated with any replacement Supply Chain Investment made pursuant to this section shall be eligible to count as Verified Total Dollars and subcategories thereof to the extent such investment meets the definition of Verified Total Dollars or an applicable subcategory thereof and (ii) any payment made pursuant to this section shall be eligible to count as Verified Total Dollars and, to the extent meeting the definition thereof, Verified Near-Term Dollars. If Seller fails to make a specific investment that is listed in both Section 6.05(a) and Section 6.06(a), (i) Seller's payment of the applicable Unfulfilled Dollar Value of that specific investment shall satisfy both Section 6.05(c) and Section 6.06(c) without the need for a second duplicate payment, and (ii) any single replacement investment that constitutes both a Disadvantaged Community Commitment and a Supply Chain Investment shall satisfy both Section 6.05(c) and Section 6.06(c) without the need for a second replacement investment.
- (d) As part of the quarterly progress reports described in Section 6.02, Seller shall describe the activities undertaken in accordance with this Section 6.06 associated with Supply Chain Investments.

Section 6.07. Reporting Failures. In the event that at any time after the Effective Date Seller (a) fails to provide information expressly required by this Agreement to be reported to NYSERDA, or (b) fails to provide information reasonably requested by NYSERDA in connection with the matters contemplated by this Agreement, in either case within the time period required by this Agreement or, if a time period is not specified in this Agreement, as otherwise reasonably required by NYSERDA (but in no case earlier than ten (10) Business Days after a written request from NYSERDA) and Seller does not cure the failure within thirty (30) days of receipt of written notice from NYSERDA of such failure (or such longer period if such failure is not capable of being cured within such thirty (30) day period and Seller is diligently pursuing such cure), NYSERDA shall be permitted to draw from Seller's Contract Security (or, if elected by Seller or if no Contract Security is in place, Seller shall pay NYSERDA) an amount equal to ten thousand dollars (\$10,000) per uncured failure to provide information; provided that the amount shall increase to twenty thousand dollars (\$20,000) per uncured failure after the first three (3) times this provision is triggered. The payments contemplated in Section 6.07 for reporting failures are designed to help compensate NYSERDA for, among other things, the damages that result from the failure to timely submit information to NYSERDA and do not constitute a penalty payment; such payments shall be NYSERDA's sole and exclusive remedy for Seller's failure to provide information falling within the scope of Section 6.07. Seller may request a fifteen (15)-day extension to any of its reporting deadlines to account for reporting delays outside of Seller's control. Seller's first such extension request will be deemed automatically approved, and subsequent requests

will be approved or denied in NYSERDA's sole discretion. If Seller makes commercially reasonable efforts to provide information falling within the scope of Section 6.07(b) to NYSERDA but is unable to obtain or provide such information despite Seller's efforts, NYSERDA shall not draw on Seller's Contract Security or demand payment from Seller under this section. If information falling within the scope of Section 6.07(a) related to contracts resulting from a procurement tender issued prior to the Effective Date of this Agreement is not in the possession, custody, or control of Seller (or its Affiliates) and Seller is unable to obtain or provide such information despite making commercially reasonable efforts to do so, NYSERDA shall not draw on Seller's Contract Security or demand payment from Seller under this section.

Section 6.08. Outages. Seller agrees to provide notice to NYSERDA of any planned or unplanned outages or deratings of the Selected Project that are reportable to the NYISO. Such notice shall be provided reasonably promptly after, but in no event later than twenty-four (24) hours after, the outage or derating is reported to the NYISO.

Article VII

Audits

Section 7.01. Audits. NYSERDA shall have the right from time to time and at all reasonable times during the term of the Agreement and a period of seven (7) years thereafter to inspect and audit any and all books, accounts and records pertaining to Seller's performance under this Agreement, at the office or offices of Seller where they are then being kept, maintained and preserved in accordance with Section 6.04. If such books, accounts and records are not kept at an office within the State of New York, within a reasonable time of a request by NYSERDA, Seller shall make such books, accounts and records available to NYSERDA at NYSERDA's offices or at an agreed upon location within the State of New York. Except to the extent any invoice or adjustment to an invoice is final under Section 5.02, any invoice rendered under this Agreement shall be subject to retroactive adjustment (reduction or increase) regarding amounts included therein that are found by NYSERDA on the basis of any audit of Seller by an agency of the United States, the State of New York or NYSERDA not to constitute a properly invoiced amount.

Article VIII

Assignment and Change of Control

Section 8.01. General Restrictions. Except as specifically permitted by this Article VIII, (a) the assignment, transfer, conveyance, or other disposal of this Agreement or any of Seller's rights, obligations, interests or responsibilities hereunder, in whole or in part, without the prior express written consent of NYSERDA is prohibited and shall be void *ab initio* and of no effect as to NYSERDA and (b) any Change of Control without the prior express written consent of NYSERDA shall constitute an Event of Default under this Agreement. Any such consent shall not be unreasonably withheld, conditioned, or delayed. Seller agrees to reimburse NYSERDA for NYSERDA's reasonable out of pocket costs and expenses incurred by its use of outside attorneys, consultants, accountants and advisors in connection with any of Seller's requests for NYSERDA's consent made pursuant to this Section 8.01, without regard to whether such consent is provided. NYSERDA shall provide an invoice to Seller for such charges, with appropriate documentation, and Seller shall pay such invoice within thirty (30) days. Without limiting NYSERDA's right to reasonably withhold any requested consent, any NYSERDA consent will, in any event, be conditioned on (x) the execution and delivery by Seller

and its proposed assignee of an instrument of assignment pursuant to which such assignee assumes all of Seller's duties and obligations under this Agreement, (y) delivery by such assignee of Contract Security to NYSERDA in substitution of the Contract Security provided by Seller hereunder, and (z) the execution and delivery by Seller and NYSERDA of mutual releases of liability with respect to this Agreement, in each case, in form and substance satisfactory to NYSERDA.

Section 8.02. Permitted Assignments by Seller. Notwithstanding Section 8.01, NYSERDA's consent shall not be required for Seller to either (a) pledge or assign the Selected Project, this Agreement, or the accounts, revenues, or proceeds from this Agreement in connection with financing arrangements, or (b) assign the Selected Project and this Agreement to an Affiliate if the then-current Contract Security remains in place. Upon Seller's reasonable request, NYSERDA shall execute a consent to assignment associated with a financing in a commercially reasonable form acceptable to NYSERDA and Seller.

Section 8.03. Permitted Change of Control. Notwithstanding Section 8.01, NYSERDA's consent shall not be required for any Change of Control that constitutes a disposition to a Permitted Transferee. If Seller provides NYSERDA with written notice of its intent to effectuate a Change of Control setting forth a description of the transferee describing how it fits within the definition of Permitted Transferee and NYSERDA does not respond within fifteen (15) Business Days, NYSERDA shall be deemed to have confirmed that the proposed Change of Control does not require NYSERDA's consent. NYSERDA agrees to execute a confidentiality agreement, as reasonably determined by Seller as necessary, to protect the disclosures required by this Section.

Section 8.04. Change in Tax Identification Number. Seller must notify NYSERDA within five (5) Business Days of any change in the Seller's federal tax identification number (W- 9 form), and Seller shall promptly provide NYSERDA with a replacement W-9 form.

Section 8.05. Advance Notice. To the extent not prohibited by the U.S. securities laws and regulations or other Applicable Law (and to the extent Seller determines any such prohibition exists, Seller agrees to confer with NYSERDA to the extent permitted under Applicable Law), Seller agrees to provide NYSERDA advance notice, in accordance with Section 19.01 of this Agreement, of (i) any assignment, transfer, conveyance, or other disposal of this Agreement or any of Seller's rights, obligations, interests or responsibilities hereunder, in whole or in part and (ii) any Change of Control in which Seller has or should reasonably have actual knowledge of such transaction likely to cause the Change in Control, in each case regardless of whether or not NYSERDA's consent is required hereunder. NYSERDA agrees to execute a confidentiality agreement, as reasonably determined by Seller as necessary, to protect the disclosures required by this Section.

Article IX

Seller's Representations, Warranties and Guarantees

Section 9.01. Seller Representations, Warranties and Guarantees. As a material inducement to NYSERDA to enter into this Agreement, Seller makes the following representations, warranties and guarantees, as of the Effective Date, all of which shall survive the execution and delivery of this Agreement:

- (a) that Seller (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 own its assets or lease and operate its properties and carry on its business as now being or as proposed to be conducted, to construct, finance, own, maintain and operate the Selected Project, to execute and deliver this Agreement, and to consummate the transactions contemplated herein; 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;

- (b) that the execution, delivery and performance by Seller, the entry into this Agreement by Seller, and the consummation of the transactions contemplated by this Agreement will not:
 - (i) violate any Applicable Law or any provision of the limited liability company agreement or any other governing documents of Seller; (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 indenture, agreement, mortgage, deed of trust, note, lease, contract or other instrument to which Seller 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 Seller;
- (c) that Seller has, or reasonably expects to have prior to the time needed, all real property rights to construct, interconnect, and operate the Selected Project;
- (d) that the ORECs Transferred to NYSERDA under this Agreement, will be free and clear of any liens, encumbrances and/or defects of title as of the date of Transfer;
- (e) that the attributes included in the ORECs Transferred to NYSERDA under this Agreement have not been, committed to be, nor will they be sold, retired, claimed or represented as part of electricity output or sales, or used to satisfy obligations in any other jurisdiction;
- (f) that this Agreement has been duly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with the terms herein;
- (g) as of the Effective Date, that there are no undisclosed material legal actions, claims, or encumbrances, or liabilities pending or, to the best of Seller's knowledge after due inquiry, threatened, that may adversely affect Seller's performance of this Agreement or NYSERDA's rights hereunder;
- (h) as of the Effective Date, that Seller has no knowledge that any information or document or statement furnished by Seller in connection with this Agreement or the documents submitted to NYSERDA under ORECRFP23-1 contain any untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading;
- (i) Reserved;
- (j) that Seller is familiar with and will comply with the Code of Conduct for NYSERDA Contractors, Consultants, and Vendors dated November 2019 with respect to the performance of this Agreement (<https://www.nyserda.ny.gov/-/media/Project/Nyserda/files/About/Board-Governance/NYSERDA-Code-of-Conduct-Contractors.pdf>); and

- (k) Seller certifies that all information provided to NYSERDA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate.

Section 9.02. Continuing Nature of Representations, Warranties and Guarantees. The representations, warranties and guarantees set forth in this Article are made as of the Effective Date and deemed made continually throughout the Contract Delivery Term, except to the extent that such representation, warranty or guarantee states that it is permitted or required to be made only as of a specific date. If at any time during the Contract Delivery Term, Seller has knowledge of any event or information that causes any of the representations, warranties or guarantees of an ongoing nature in this Article IX to be untrue or misleading, Seller shall provide NYSERDA with prompt written notice of the event or information, the representations, warranties or guarantees affected, and the corrective action Seller shall take. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

Section 9.03. Limitation on Warranties and Guarantees. Except as expressly set forth herein, there is no warranty of merchantability or fitness for a particular purpose with respect to the ORECs Transferred hereunder, and any and all implied warranties are disclaimed.

Article X

NYSERDA's Representations, Warranties and Guarantees

Section 10.01. NYSERDA Representations, Warranties and Guaranties. As a material inducement to Seller to enter into this Agreement, NYSERDA makes the following representations, warranties and guarantees, as of the Effective Date, all of which shall survive the execution and delivery of this Agreement:

- (a) that NYSERDA is an instrumentality of the State of New York and a public authority and public benefit corporation, created under the New York State Public Authorities Law, validly existing and in good standing under the laws of the State of New York;
- (b) that NYSERDA has all necessary power and authority to execute and deliver this Agreement and all other agreements contemplated herein and hereby and to consummate the transactions contemplated hereby and thereby. The execution and delivery by NYSERDA of this Agreement and all other agreements contemplated herein and hereby and the consummation of the transactions contemplated hereby and thereby have been or, if not yet executed and delivered, will be when executed and delivered, duly authorized by all necessary actions on the part of NYSERDA, and no other actions or proceedings on the part of NYSERDA are necessary to authorize this Agreement or any other agreement contemplated herein and hereby or the consummation of the transactions contemplated hereby and thereby;
- (c) that the execution, delivery and performance by NYSERDA of this Agreement does not (i) violate any Applicable Law; (ii) violate, conflict with, result in a material breach of or constitute (alone or with notice or lapse of time or both) a material default or event of default under any indenture, agreement, mortgage, deed of trust, note, lease, contract or other instrument to which NYSERDA is a party or by which NYSERDA or any of its property is bound; or (iii) result in the creation or imposition of any lien upon any property or assets of NYSERDA. This Agreement will not conflict with any other agreement or contract to which NYSERDA is a party;

- (d) that this Agreement has been duly executed and delivered by NYSERDA and constitutes the legal, valid and binding obligation of NYSERDA enforceable against NYSERDA in accordance with the terms herein;
- (e) that NYSERDA is familiar with and in compliance with all Applicable Law, except where the failure to so comply would not result in a material adverse effect on NYSERDA's ability to perform its obligations; and
- (f) that there is no action, suit or claim at law or in equity, or before or by a governmental authority pending or, to the best knowledge of NYSERDA after due inquiry, threatened against NYSERDA or affecting any of its properties or assets that could reasonably be expected to result in a material adverse effect on NYSERDA's ability to perform its obligations.

Section 10.02. Continuing Nature of Representations, Warranties and Guarantees. The representations, warranties and guarantees set forth in this Article are made as of the Effective Date and deemed made continually throughout the Contract Delivery Term, except to the extent that such representation, warranty or guarantee states that it is permitted or required to be made only as of a specific date. If at any time during the Contract Delivery Term, NYSERDA has knowledge of any event or information that causes any of the representations warranties or guarantees in this Article X to be untrue or misleading, NYSERDA shall provide Seller with prompt written notice of the event or information, the representations, warranties and guarantees affected, and the corrective action NYSERDA shall take. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

Article XI

Indemnification and Insurance

Section 11.01. Indemnification. Seller 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, reasonable attorneys' and/or experts' fees and expenses) ("Loss") imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, or arising out of or relating to Seller's breach of this Agreement or to the extent caused by the alleged negligence, unlawful act or omission, or intentional misconduct of Seller in the course of the development of the Selected Project, or the production or delivery of ORECs under this Agreement. Seller shall have no obligation to protect, indemnify, or hold harmless NYSERDA or the State of New York with respect to any claims asserted against NYSERDA or the State of New York challenging (i) the legal validity of (a) this Agreement, (b) the purchase or sale of ORECs, or (c) the competitive solicitation process held by NYSERDA to procure ORECs, or (d) the 2020 Offshore Wind Order, the CES Modification Order and/or the Power Grid Study Order; or (ii) the administration of NYGATS and/or the OREC program under the Phase 1 Order and related regulatory proceedings (including any dispute arising out of the resale of ORECs by NYSERDA). The obligations of Seller under this Article shall survive any expiration or termination of this Agreement and shall not be limited by the amount of Seller's insurance coverage.

Section 11.02. Indemnification Procedures. NYSERDA shall give reasonable notice to Seller of any claim or notice of the commencement of any action, administrative or legal proceeding or investigation as to which indemnification under this Article may apply or promptly after NYSERDA has actual knowledge of any other Loss that would result in a claim for indemnification. NYSERDA

shall reasonably cooperate with Seller in the defense of any such claim. Seller shall use counsel reasonably satisfactory to NYSERDA to defend any such claim (with consent to counsel not to be unreasonably withheld, conditioned, or delayed) and shall control the defense of any such claim. NYSERDA may participate in the defense of any such claim at its own expense. Seller may not agree to any settlement or compromise of any claim without NYSERDA's prior written consent (which consent may not be unreasonably withheld, conditioned, or delayed) that is not an unconditional release of NYSERDA from any and all liabilities upon the payment of money that will be paid by Seller.

Section 11.03. Failure to Defend. If Seller fails to assume the defense of a claim meriting indemnification, NYSERDA may at the expense of Seller contest, settle or pay such claim, and Seller shall promptly reimburse NYSERDA for all costs reasonably incurred and documented by NYSERDA associated therewith.

Section 11.04. Insurance. Seller, at no cost to NYSERDA, shall maintain or cause to be maintained, on or before the date upon which construction begins and continuing throughout the duration of the Contract Delivery Term, commercial general liability insurance in an amount customary for projects of this type and size. All such insurance shall be evidenced by certificates of insurance, each of which shall: (a) name or be endorsed to cover NYSERDA and the State of New York as additional insureds; and (b) provide that such insurance may not be cancelled or modified until at least thirty (30) days after receipt by NYSERDA of written notice thereof.

Article XII

Economic Benefits, Fisheries, Environmental, Design and Stakeholder Obligations

Section 12.01. Economic Benefits Report and Verification.

- (a) No later than the second December 31st following the Effective Date, Seller shall submit an initial Economic Benefits Report for the Selected Project. No later than December 31st of each subsequent calendar year prior to the year in which the third anniversary of the commencement of the Contract Delivery Term occurs, Seller shall submit supplemental Economic Benefits Reports to NYSERDA (collectively, with the initial Economic Benefits Report, the "Preliminary Economic Benefits Reports"); provided that the obligation to submit a supplemental Economic Benefits Report in a particular year may be waived by mutual agreement of the Parties. Within one hundred twenty (120) days after the end of the third Contract Year of the Contract Delivery Term, Seller shall submit a final Economic Benefits Report to NYSERDA detailing any Economic Benefits associated with the Selected Project that accrue through the end of the first three (3) Contract Years that have not been reflected in prior Economic Benefits Reports. Each Economic Benefits Report shall be funded at the Seller's expense and prepared in accordance with Exhibit I. Within one hundred twenty (120) days after the Near-Term Period, and in lieu of the Preliminary Economic Benefits Report due on December 31, 2026, Seller shall submit an Economic Benefits Report to NYSERDA detailing any Economic Benefits associated with the Selected Project that accrued during the Near-Term Period (the "Near-Term Economic Benefits Report"); provided, however, at any time prior to Seller's delivery of the Near-Term Economic Benefits Report Seller shall have the right to submit a preliminary proposal requesting NYSERDA's validation of proposed Economic Benefits associated with the Selected Project set to accrue during the Near-Term Period and NYSERDA shall use commercially reasonable efforts to review and respond within thirty (30)

days confirming if such proposed Economic Benefits will count for the Near-Term Period. The Economic Benefits Report shall calculate and verify the actual Economic Benefits, in dollars, that have resulted from Seller's activities.

- (b) Within sixty (60) Business Days of receipt of each Economic Benefits Report, NYSERDA will either accept the Economic Benefits Report in its entirety or respond with a description of any Economic Benefits claimed by Seller that have been preliminarily determined to be invalid or improperly documented, if any. If NYSERDA's preliminary determination is inconsistent with the Agreed-Upon Procedures Report, such response also will explain NYSERDA's basis for such variance. Seller will be given a reasonable opportunity to dispute NYSERDA's preliminary conclusion and/or to revise and resubmit the Economic Benefits Report. NYSERDA will reach a final determination regarding the validity or adequacy of documentation for any claimed Economic Benefit within sixty (60) Business Days of receipt of Seller's reply or re-submission of the Economic Benefits Report.
- (c) Seller agrees to make reasonable efforts to undertake and complete all activities and perform all obligations described in Exhibit D (Industry Growth Activities) to this Agreement.
- (d) When in receipt of all Preliminary Economic Benefits Reports and the final Economic Benefits Report for the Selected Project, and after having verified the claimed Economic Benefits as described in Sections 12.01(b) and 12.01(e) of this Agreement, NYSERDA shall determine whether there are any Economic Benefits Subcategory Shortfalls and/or an Other Economic Benefits Shortfall.
- (e) When in receipt of the Near-Term Economic Benefits Report for the Selected Project, and after having verified the claimed Economic Benefits as described in Section 12.01(b) of this Agreement, NYSERDA shall determine whether there is an Expected Near-Term Dollars Shortfall.

Section 12.02. Economic Benefits Shortfalls.

- (a) For each Expected Near-Term Dollars Shortfall, Economic Benefits Subcategory Shortfall or Other Economic Benefits Shortfall, Seller shall: (1) provide to NYSERDA for NYSERDA's approval a plan to make expenditures in New York State (or, in the case of an Expected U.S. Iron and Steel Dollars Shortfall, expenditures that benefit the U.S. Iron and Steel industry or otherwise are reasonably acceptable to NYSERDA) in an amount reasonably comparable to the amount of the applicable Expected Near-Term Dollars Shortfall, Economic Benefits Subcategory Shortfall or Other Economic Benefits Shortfall, which in the case of any Expected Near-Term Dollars Shortfall must comply with Section 12.02(b); or (2) upon the mutual agreement of the Parties, pay the amount of the applicable Expected Near-Term Dollars Shortfall, Economic Benefits Subcategory Shortfall or Other Economic Benefits Shortfall or cause such amount to be paid into an account for the receipt of such funds created by NYSERDA, within six (6) months of NYSERDA's final notification of the amount owed under Section 12.01(d) of this Agreement or, in the case of an Expected Near-Term Dollars Shortfall, within sixty (60) days of NYSERDA's final notification of the amount owed under Section 12.01(e) of this Agreement; such amounts may, at Seller's direction, be deducted by NYSERDA from payments owed to Seller under Article IV of this Agreement. For the avoidance of doubt, for purposes of (1) above, a single expenditure may count towards the cure of more than one type of Economic Benefits Shortfall if the nature of the expenditure

aligns with more than one category of Economic Benefits Shortfall. For purposes of (2) above, if the failure to make the total expenditures associated with an Economic Benefits Claim contributes to more than one type of Economic Benefits Shortfall, the total amount due from Seller for all such resulting Economic Benefits Shortfalls shall not exceed (i) the amount specified in the column labeled “Total Dollars” in the Offer Data Form for such Economic Benefits Claim minus (ii) any Verified Total Dollars within the scope of such Economic Benefits Claim.

- (b) In the case of any Expected Near-Term Dollars Shortfall, Seller’s plan shall be submitted to NYSERDA no later than sixty (60) days after NYSERDA notifies Seller of the amount of the Expected Near-Term Dollars Shortfall under Section 12.01(e) of this Agreement. NYSERDA shall approve a plan submitted pursuant to Section 12.02(a) to address an Expected Near-Term Dollars Shortfall if (1) Seller proposes to make expenditures that are reasonably comparable to the amount of the applicable Expected Near-Term Dollars Shortfall and (2) Seller demonstrates that, (a) at the time of the submission of the plan, Seller or its Affiliates have legally binding commitments to make such expenditures or (b) Seller or its Affiliates have a plan to, within sixty (60) days after NYSERDA’s acceptance of the plan, make such expenditures or to enter into legally binding commitments to make such expenditures. In any case, NYSERDA’s approval of a plan submitted pursuant to Section 12.02(a) shall not be unreasonably withheld, conditioned, or delayed. If, at the time that Seller submits its plan, Seller or its Affiliates have not made or do not have legally binding commitments to make such expenditures and Seller demonstrates that Seller or its Affiliates will be unable to enter into legally binding commitments or make such expenditures within sixty (60) days of NYSERDA’s acceptance of the plan due to circumstances beyond their reasonable control, such deadline may be extended with NYSERDA’s consent (such consent not to be unreasonably withheld, conditioned, or delayed).

Section 12.03. Consultation with New York State Agencies. The Parties acknowledge and agree that Seller has complied with Section 12.03 to date and that after the Effective Date, the Seller shall continue to carry out activities described in Section 12.03 to the extent appropriate in light of the circumstances.

- (a) Seller shall consult with the Consulting State Agencies at the request of such agencies regarding the planning and development of the Selected Project, and will make best efforts to respond to feedback timely provided by the Consulting State Agencies. Concurrent with its initial submission of the COP for the Selected Project to BOEM, including a draft COP, Seller shall share such COP with NYSERDA for distribution to any Consulting State Agency that may request a copy of same. NYSERDA acknowledges that, after submission of the COP, the review process organized under the NEPA will present a forum for some New York State Agencies to participate in the analysis of the Selected Project’s environmental impacts, including as cooperating agencies in the scoping, data collection, and alternatives-evaluation aspects of the NEPA process. Accordingly, NYSERDA will rely on the NEPA review process to create opportunities for the Consulting State Agencies to engage with and analyze the COP for the Selected Project to the greatest extent practicable. Nevertheless, without compromising the centrality of the NEPA review process with respect to the COP, Seller agrees to meet with Consulting State Agencies, at their reasonable request, during the development, construction, and operational phases of the Selected Project.
- (b) At a minimum, Seller shall consult with the following agencies relating to agency goals and

responsibilities on the following topics:

- (i) DOS with respect to the Selected Project's consistency with the policies set forth in New York State's Coastal Management Program;
- (ii) NYSDEC with respect to assessment and mitigation of potential environmental impacts, including but not limited to, water quality, air quality, benthic communities, fish, fisheries and wildlife impacts of the Selected Project;
- (iii) OPRHP with respect to the assessment and mitigation of effects on sites of historic or archeological significance;
- (iv) NYDPS with respect to the Selected Project's electrical interconnection and any applicable regulatory requirements under the Public Service Law;
- (v) OGS with respect to the Selected Project's electrical interconnection involving State land;
- (vi) NYSERDA as a point of contact with respect to the Selected Project's general consistency with the New York State Offshore Wind Master Plan and stakeholder feedback; and
- (vii) NYSERDA with respect to identifying and delivering benefits to Disadvantaged Communities.

(c) More specifically, the required consultation will consist of the following steps:

- (i) At the time it submits a proposed Site Assessment Plan (SAP) to BOEM, Seller shall also submit the proposed SAP to DOS, NYSDEC, OPRHP, NYDPS, OGS, NYSERDA, and any other Consulting State Agency, so that each such Consulting State Agency may provide input on the SAP concurrently with BOEM's review. Each Consulting State Agency will provide to Seller the agency's initial comments on the proposed SAP – either jointly or individually – within sixty (60) calendar days of receipt. Seller then must meet or engage with each Consulting State Agency that requests a meeting at reasonable times and intervals in an effort to attempt to resolve any issues.
- (ii) At the time Seller submits a proposed COP to BOEM, Seller shall submit the proposed COP to the Consulting State Agencies, so that each Consulting State Agency may provide input on the SAP concurrently with BOEM's review. Each Consulting State Agency will provide to the Seller that agency's initial comments on the proposed COP – jointly or individually – within sixty (60) days of receipt. Seller then must meet or engage with those Consulting State Agencies that request such a meeting, at reasonable times and intervals in order to attempt to resolve any issues.
- (iii) The requirements and processes set forth in paragraphs (i) and (ii) above will apply to any component, or resubmittal of a SAP or a COP, respectively, that Seller submits to BOEM, including, but not limited to, any required surveys or documentation required under NEPA. Thus, Seller will submit all SAP and COP components and revisions to the Consulting State Agencies concurrent with submission to BOEM.

- (iv) The consultation requirements set forth above in this Section 12.03 do not obviate or replace the federal Coastal Zone Management Act regulatory requirement in 15 CFR Part 930 and in the event of conflicting timeframes, the federal regulations will prevail.
- (v) Seller will provide NYSERDA updates on these consultations in the quarterly progress reports required by Section 6.02.

Section 12.04. Technical Working Group Participation. Upon NYSERDA's request, Seller shall participate in any technical working groups convened by NYSERDA and related to offshore wind development, and through such technical working groups engage with the relevant stakeholder groups regarding the Selected Project.

Section 12.05. Fisheries Mitigation Plan. Seller has provided as Exhibit E to this Agreement a Fisheries Mitigation Plan. The Parties contemplate that the Fisheries Mitigation Plan will evolve due to various factors, including, but not limited to, the consultation with the Consulting State Agencies and technical working group participation described above, and through interactions with BOEM and other federal agencies during the federal review of the Site Assessment Plan ("SAP") and COP. Seller shall amend the Fisheries Mitigation Plan from time to time to reflect such continuing consultation and processes and shall provide updated Fisheries Mitigation Plans to NYSERDA. Seller may also amend the Fisheries Mitigation Plan in ways that do not derive from consultation with state or federal agencies if (i) such amendment does not materially reduce Seller's mitigation commitments in the Fisheries Mitigation Plan, or (ii) NYSERDA consents in writing (such consent not to be unreasonably withheld, conditioned, or delayed). Updates to the Fisheries Mitigation Plan shall be noted in the quarterly progress reports required by Section 6.02. Seller shall undertake all activities and perform all obligations described in the Fisheries Mitigation Plan, as provided in Exhibit E and updated from time to time, unless excused by NYSERDA on the grounds that such activities or obligations are impractical in light of project objectives or unnecessary to protect fishery resources. In the case of any inconsistency between Exhibit E and the body of this Agreement, the body of this Agreement shall control.

Section 12.06. Environmental Mitigation Plan. Seller has provided as Exhibit F to this Agreement an Environmental Mitigation Plan. The Parties contemplate that the Environmental Mitigation Plan will evolve due to various factors, including, but not limited to, the consultation with the Consulting State Agencies and technical working group participation described above, and through interactions with BOEM and other federal agencies during the federal review of the SAP and COP. Seller shall amend the Environmental Mitigation Plan from time to time to reflect such continuing consultation and processes and shall provide updated Environmental Mitigation Plans to NYSERDA. Seller may also amend the Environmental Mitigation Plan in ways that do not derive from consultation with state or federal agencies if (i) such amendment does not materially reduce Seller's mitigation commitments in the Environmental Mitigation Plan, or (ii) NYSERDA consents in writing (such consent not to be unreasonably withheld, conditioned, or delayed). Updates to the Environmental Mitigation Plan shall be noted in the quarterly progress reports required by Section 6.02. Seller shall undertake all activities and perform all obligations described in the Environmental Mitigation Plan, as provided in Exhibit F and updated from time to time, unless excused by NYSERDA on the grounds that such activities or obligations are impractical in light of project objectives or unnecessary to protect environmental resources. In the case of any inconsistency between Exhibit F and the body of this Agreement, the body of this Agreement shall control.

Section 12.07. Site and Environmental Data.

- (a) Seller agrees to make publicly available information or data and supporting metadata that is developed in furtherance of the Selected Project relating to environmental characteristics, or use by wildlife, of any offshore, nearshore or onshore areas, as well as any data sponsored or developed by Seller relating to the potential impacts of the construction, operation, or decommissioning of the Selected Project on the environment and wildlife of such areas (separately and collectively, “Site and Environmental Data”) in accordance with the Data Availability Plan provided by Seller pursuant to Section 12.07(b). Data or information shall not be subject to the requirements of this Section 12.07 to the extent that (i) a state or federal agency has requested that such data or information be kept confidential and not disclosed, (ii) such data or information is restricted from public disclosure due to its culturally sensitive nature (such as certain archaeological data and information of importance to Tribal Nations), (iii) such data or information has been requested for a reason other than a legitimate scientific need, or (iv) such data or information is reasonably designated by Seller as commercially sensitive or proprietary.
- (b) Within ninety (90) days of the Effective Date, Seller, in consultation with NYSERDA, shall develop a “Data Availability Plan” detailing when and how previously-collected Site and Environmental Data will be made available, and how new Site and Environmental Data will be made available on an ongoing basis as soon after collection as is practicable for use by third parties in decision-making around adaptive management. The Data Availability Plan shall detail how Seller will make Site and Environmental Data available and must follow the guidelines in Wildlife Data Standardization and Sharing: *Environmental Data Transparency for New York State Offshore Wind Development*.⁸ The Data Availability Plan must include a list of relevant data that has been collected or is expected to be collected with commitments to submit raw data to appropriate database(s) as soon as feasible, but not more than two (2) years after collection. The Data Availability Plan will provide for making publicly available information relating to topics such as air quality and emissions, water quality, fish and fish habitats, birds and bats, marine mammals and sea turtles, and benthic communities. All data should include comprehensive metadata using Federal Geographic Data Committee standards, or others, as appropriate. After consultation with NYSERDA, updates to the Data Availability Plan shall be submitted with quarterly progress reports required by Section 6.02.
- (c) Real- or near real-time reporting of marine mammal sighting and detections may be required and the timing of the availability of other data will be determined through consultations with DOS, NYSDEC or NYSERDA, either individually or as a group. Other environmental data must be made available by the Seller as soon after collection as is reasonable, on an ongoing and routine basis as appropriate to the collection method and as discussed with DOS, NYSDEC, NYDPS, or NYSERDA, either individually or as a group.
- (d) Seller may choose to use existing publicly accessible data repositories and/or developer sponsored websites as venues to host the data and metadata. The intention of this requirement is to allow independent data users the opportunity to develop an understanding of the environmental characteristics of potential offshore wind energy development areas, including areas within which Selected Projects may be located, and to independently assess

⁸ <https://www.nyserda.ny.gov/-/media/project/nyserda/Files/Programs/offshore-wind/21-11-Wildlife-Data-Standardization-and-Sharing-Environmental-Data-Transparency-for-NYS-OSW-Energy.pdf>

the impacts of offshore wind energy development on those characteristics in a timely manner. Site and Environmental Data includes information that Seller develops before, during, and after the ORECRFP23-1 process, and includes, but is not limited to, information relating to the following topics: (i) air quality and emissions; (ii) water quality; (iii) fish and fish habitats; (iv) birds and bats; (v) marine mammals and sea turtles; and (vi) benthic communities.

(e) Reserved.

(f) Upon commissioning of the Selected Project, Seller agrees to make commercially reasonable efforts to work with NYSERDA to validate a final accounting of the Selected Project's (i) carbon footprint and (ii) energy and carbon payback periods. Seller further agrees to public disclosure of NYSERDA's determination of the Selected Project's carbon footprint, and energy and carbon payback periods.

Section 12.08. Lighting Controls. Seller shall install lighting controls on the Selected Project to minimize nighttime visibility from shore and risk to wildlife. Subject to the immediately following sentence, the Selected Project will employ aircraft detection lighting systems (ADLS) in order to meet Federal Aviation Administration obstruction lighting requirements while minimizing lighting-related visual impact and impacts on avian species. In the event that ADLS systems do not meet Federal Aviation Administration Requirements or another technology produces a better outcome, the best available approved technology may be used upon consultation and approval of NYSERDA. ADLS, or an alternative approved by NYSERDA, shall be included in the Seller's COP submitted to BOEM.

Section 12.09. Site Perimeter. Seller's Proposal included a site layout plan that delineated the perimeter of the area in which offshore wind turbines may be placed for the Selected Project ("Site Perimeter"). Pursuant to Section 6.03 of this Agreement, Seller has agreed to render the site layout plan, including the Site Perimeter, in a shapefile format for geographic information system software. Seller agrees that no more than five percent (5%) of the offshore wind electric generation facilities that comprise the Selected Project, measured on an installed capacity basis, shall be located outside the Site Perimeter, as determined according to the geographic information system file submitted by Seller, without NYSERDA's prior written consent (not to be unreasonably withheld, conditioned, or delayed).

Section 12.10. Support for Monitoring of Key Commercial Fish Stocks and Wildlife of Conservation Concern. Within ninety days (90) days of the Effective Date, Seller shall provide for NYSERDA's consent, which shall not be unreasonably withheld, conditioned, or delayed, a plan for the commitment of the funding required by this Section 12.10 ("Monitoring Plan"). The Monitoring Plan shall require the commitment of fifty percent (50%) of the funding required by this Section 12.10 within one (1) year of the Effective Date, and the remaining fifty percent (50%) within two (2) years of the Effective Date. In accordance with the Monitoring Plan, Seller shall make a financial commitment for monitoring fish and invertebrates that support economically important fisheries and wildlife of conservation concern in an amount no less than ten thousand dollars (\$10,000) per MW of Offer Capacity. Of that amount, no less than five thousand dollars (\$5,000) per MW of Offer Capacity shall be allocated to support regional monitoring of fish and invertebrates that support economically important fisheries to better understand how offshore wind energy development is potentially altering the biomass and/or distribution of these stocks, and no less than five thousand dollars (\$5,000) per MW of Offer Capacity shall be allocated to support regional monitoring of wildlife of conservation

concern to better understand how offshore wind energy development effects distribution and abundance of sensitive species. Seller understands that this financial support is above any site-specific monitoring or survey programs that are required by state and federal regulatory agencies in order for the Selected Project to meet permitting requirements. These monitoring efforts may be committed via regional monitoring organizations (e.g., Regional Wildlife Science Collaborative for Offshore Wind or Responsible Offshore Science Alliance) or independently by Seller (or some combination) upon NYSERDA approval. In any case, such funding shall be directed to advance the responsible development of the offshore wind energy industry, and not limited exclusively to the Selected Project. The financial support required by this Section 12.10 may be provided by any combination of (i) donation by Seller to a not-for-profit organization with the capacity for undertaking the monitoring work described herein, and (ii) direct expenditure by Seller to finance the monitoring work described. Seller shall report the specific spending activity, including amount, purpose and result of investment, in the quarterly progress reports required by Section 6.02.

Section 12.11. Supply Chain Facilities and Iron and Steel Usage. For contracts with Major Suppliers resulting from a procurement tender issued after the Effective Date of this Agreement, Seller agrees to and shall consult the New York Offshore Wind Supply Chain Database and shall use commercially reasonable efforts to (a) source and procure components, materials, equipment, spare parts and other items necessary to construct the Selected Project from supply chain and manufacturing facilities located in New York State and (b) utilize iron and steel manufactured in the United States. Seller shall report Major Supplier procurement efforts in accordance with Section 6.02. Seller shall include this requirement in all contracts with its Major Suppliers resulting from a procurement tender issued after the Effective Date of this Agreement. Seller shall require any construction contractor that procures U.S. Iron and Steel components that Seller counts as Expected U.S. Iron and Steel Dollars to execute and furnish to Seller who shall in turn furnish to NYSERDA a duly executed U.S. Iron and Steel Contractor Certification. Seller shall communicate all opportunities for subcontracts related to the Selected Project with an anticipated contract value of \$1 million or greater arising under contracts with Major Suppliers resulting from a procurement tender issued after the Effective Date of this Agreement to New York State companies using the New York Offshore Wind Supply Chain Database.

Section 12.12. New York Jobs and Workforce Plan. Seller shall undertake all activities and perform all obligations required of Seller as described in the New York Jobs and Workforce Plan, as provided in Exhibit M, which may be updated from time to time with NYSERDA's prior written consent.

Section 12.13. Stakeholder Engagement Plan. Seller shall undertake all activities and perform all obligations required of Seller as described in the Stakeholder Engagement Plan, as provided in Exhibit N, which may be updated from time to time with NYSERDA's prior written consent. Seller further agrees to conduct ongoing stakeholder and community engagement to inform the public about activities being undertaken by the Seller, gain community and stakeholder input on how these activities can benefit communities, and connect residents and communities to these benefits. These engagement activities will be focused on Disadvantaged Communities and other communities directly affected by the Selected Project and will include, but not necessarily be limited to:

- (a) Convening of regular and ongoing stakeholder meetings and regular and ongoing engagement and participation in public meetings and briefings of local officials and stakeholders to keep communities and residents apprised of the Selected Project's progress; to identify

opportunities for Disadvantaged Communities and other affected communities and residents to benefit from activities being undertaken by the Selected Project;

- (b) Formation of one or more advisory or working groups with representation from Disadvantaged Communities and other affected communities to inform community benefit investments, including workforce development activities, made as part of the Selected Project;
- (c) Maintenance of a website and social media channels through which residents and communities may stay apprised of the Selected Project's progress and submit questions and comments during the development, construction, and operation of the Selected Project;
- (d) Making reasonable efforts to hire from within communities directly affected by the Selected Project, including through the publicizing of job opportunities within Disadvantaged Communities and other affected communities;
- (e) Coordinating closely with NYSERDA prior to scheduling public events to avoid redundancy and facilitate appropriate outreach; and
- (f) Documenting the input and feedback received from stakeholder and community engagement activities and making reasonable attempts to address feedback received through these activities.

Section 12.14. Site Access. Seller agrees to (i) not unreasonably withhold site accessibility (including vessels buoys and other structures) for the advancement of third-party scientific and technological study, including installation of cellular capabilities, near-real time data sharing functionality, power sources for platform or benthic monitoring equipment, weather reporting equipment for increased navigational safety, use of other navigational aids beyond current regulations (such as automatic identification systems) and environmental sensors and (ii) work with state, federal and other stakeholders to assess the most appropriate means of third-party scientific monitoring plan development and implementation including addressing potential health and safety requirements. For purposes of clause (i) above, Seller shall not be deemed to have unreasonably withheld site accessibility solely on the basis that Seller requires that such access and/or installation (a) does not interfere in any respect with the operation and/or functionality of the Selected Project, (b) fully complies with all permits applicable to, and Seller's health, safety and security requirements of, the Selected Project, and (c) fully reimburses and otherwise protects Seller and its Affiliates with respect to all material costs and liabilities associated with such activities.

Section 12.15. HVDC Cabling. Seller agrees that:

- (a) subject to clause (d), any transmission cabling used by the Selected Project that traverses the Narrows, the East River between the Brooklyn and Throgs Neck Bridges, or the Hudson River north of Battery Park shall utilize HVDC technology;
- (b) subject to clause (d), any transmission cabling that traverses the Lower Bay, Raritan Bay, Arthur Kill, the Narrows, the Upper Bay (New York Harbor), the East or Hudson Rivers, Block Island Sound or the Long Island Sound shall utilize HVDC technology unless (i) such transmission cabling is required to connect the Selected Project's converter station to a point of interconnection and (ii) the Seller demonstrates to NYSERDA's reasonable satisfaction that there is adequate remaining right of way to install at least two additional marine HVDC

cables, beyond any cabling already planned under existing contracts to NYSERDA, in the same location(s) as the proposed HVAC cable(s);

- (c) Reserved; and
- (d) Notwithstanding clauses (a) and (b), up to two radial high-voltage alternating current cables may be sited from the Selected Project to shore in a manner such that the cable route crosses Lower New York Bay, the Narrows, and/or the Upper Bay (New York Harbor) south of Governors Island.

Section 12.16. Additional Undertakings.

- (a) *Fisheries Compensation.* Seller shall follow the guidance developed by BOEM for the mitigation of impacts from offshore wind energy projects on commercial and recreational fishing communities as further described in its June 23, 2022 Draft Fisheries Mitigation Guidance (<https://www.boem.gov/renewable-energy/reducing-or-avoiding-impacts-offshore-wind-energy-fisheries>); provided that to the extent aspects of such guidance are memorialized in the Selected Project's COP Approval, the requirements of the COP Approval shall prevail.
- (b) *Responsible Offshore Science Alliance and Regional Wildlife Science Collaborative Membership.* Seller shall become, or shall cause one of its Affiliates to become on Seller's behalf, in each case to the extent not already, an active member of the Advisory Council of the Responsible Offshore Science Alliance and an active member of a caucus of the Regional Wildlife Science Collaborative for Offshore Wind in good financial standing. Seller shall not voluntarily terminate such membership without the prior approval of NYSERDA (which shall not be unreasonably withheld, conditioned, or delayed).
- (c) *Noise Mitigation.* Seller shall not commence offshore activities related to the Selected Project that generate significant noise, including but not limited to unexploded ordinance detonation and impact pile driving, during poor visibility conditions such as darkness, fog, and heavy rain, except as authorized by BOEM and the National Oceanic and Atmospheric Administration (NOAA) pursuant to the COP Approval.
- (d) *Acoustic Monitoring.* If Seller will use pile driving or other methods of installation that result in high underwater noise levels, Seller will monitor underwater acoustics during foundation installation to measure variations in sound pressure levels, record sound levels in the water column and assess the effectiveness of a noise mitigation system to reduce underwater noise generated during pile installation. NYSERDA acknowledges that (i) any such monitoring shall be done in accordance with, and only to the extent authorized by, Applicable Law and (ii) that if the COP Approval identifies a noise mitigation system for this purpose Seller shall not be required to assess a noise mitigation system other than such system identified in the COP Approval. Sixty (60) days prior to the monitoring effort, Seller will provide NYSERDA an "Underwater Acoustic Monitoring Plan" detailing how Seller's acoustic monitoring data will be collected and made available as soon after collection as is practicable for use by third parties. The plan must include commitments to make publicly available Seller's acoustic monitoring data, including raw and metadata, no more than six (6) months after installation is complete to the extent such public release is not restricted by BOEM, NOAA or other federal or local authorities, or otherwise limited in accordance with Applicable Law. To the

extent that other plans and noise mitigation permit conditions and protocols approved by BOEM and/or NOAA cover the same information that would be included in the Underwater Acoustic Monitoring Plan, a copy of such plans, conditions and protocols may be provided in lieu of including such information in a separate Underwater Acoustic Monitoring Plan.

- (e) *Commercial Fishing Gear Loss.* Seller shall report the number and value of claims submitted, number and value of claims paid, and a general description of each incident and status/resolution in each quarterly progress report submitted pursuant to Section 6.02 of this Agreement.
- (f) *Regional Collaboration.* Upon a reasonable request by NYSERDA, including sufficient advance notice to Seller, Seller (directly or through an Affiliate) shall endeavor to participate in a multi-state or regional coordination and/or collaboration effort concerning fisheries and/or environmental issues related to offshore wind; provided that Seller shall have no obligation to participate in a coordination and/or collaboration effort unless NYSERDA is actively participating in such effort.

Section 12.17. MWBE and SDVOB Requirements. For procurement tenders issued after the Effective Date of this Agreement involving service contracts valued over \$100,000, and for goods contracts valued over \$250,000, Seller agrees to and shall consult with the ESD MWBE Database and the OGS SDVOB directory and shall make commercially reasonable efforts to contract with MWBEs and SDVOBs. Seller agrees to consult the New York Offshore Wind Supply Chain Database, the ESD MWBE Database, and the OGS SDVOB directory for subcontracting opportunities for goods and services related to Project development, manufacturing, construction, maintenance and operations, including for iron and steel pursuant to Section 12.11, to the extent that such opportunities arise under contracts resulting from a procurement tender issued after the Effective Date of this Agreement. Seller agrees to use commercially reasonable efforts to maximize opportunities for MWBEs and SDVOBs in relation to the Selected Project; such opportunities include but are not limited to subcontracting opportunities, mentorship programs, joint venturing, and other business development activities. Seller shall document commercially reasonable efforts undertaken pursuant to this Section in each quarterly progress report submitted pursuant to Section 6.02 of this Agreement. Seller agrees to flow down the requirements in this Section 12.17 in contracts with Major Suppliers resulting from a procurement tender issued after the Effective Date of this Agreement.

Section 12.18. Health and Safety Organization. Seller will become, or will cause one of its Affiliates to become on Seller's behalf, a member (if not a member already) and remain a member of the G+ Global Offshore Wind Health and Safety Organization or an equivalent organization.

Article XIII

Events of Default

Section 13.01. Event of Default. For the purposes of this Agreement, "Event of Default" shall mean any of the following:

- (a) Representations, Warranties and Guarantees. Any representation, warranty, or guarantee made in this Agreement, or any attestation made pursuant to Section 15.06 of this Agreement, that shall prove to have been false or misleading in any material respect as of the time made

or deemed to be made, and such false or misleading representation, warranty, or guarantee is not fully cured within ten (10) days after the responsible Party discovers its error, provided, however, that such period shall be extended for an additional period of up to sixty (60) days if the responsible Party is unable to cure within the initial ten (10) day period so long as such cure is diligently pursued by the responsible Party until such breach has been corrected; or

- (b) Other Obligations. A Party shall default in the performance of any of its obligations under Sections 2.01, 2.03, 4.05, 6.04, 6.05, 7.01, 12.02, 12.15, or any other material obligations under this Agreement and such default shall continue un-remedied for a period of thirty (30) days after the defaulting Party receives notice thereof from the non-defaulting Party; provided, however, that such period shall be extended for an additional period of up to thirty (30) days if, despite using commercially reasonable efforts, the defaulting Party is unable to cure within the initial thirty (30) day period so long as such cure is diligently pursued by the defaulting Party until such breach has been corrected; or
- (c) Voluntary Proceedings. A Party shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (ii) make a general assignment for the benefit of its creditors; (iii) commence a voluntary case under the Bankruptcy Code; (iv) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or readjustment of debts; (v) fail to convert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code; or (vi) take any corporate action for the purpose of effecting any of the foregoing; or
- (d) Involuntary Proceedings. A proceeding or case shall be commenced against a Party, without its application or consent, in any court of competent jurisdiction, seeking (i) its liquidation, reorganization, dissolution or winding-up, or the composition or readjustment of its debts; (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of all or any substantial part of its assets; or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case shall continue un-dismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue un- stayed and in effect, for a period of sixty (60) or more days; or an order for relief against a Party, shall be entered in an involuntary case under the Bankruptcy Code; or
- (e) Reserved.
- (f) Reserved.
- (g) Abandonment. On or after the Effective Date, (i) the permanent relinquishment by Seller of all or a material portion of its possession and control of the Selected Project, other than a transfer permitted under this Agreement or to the extent caused by Force Majeure or an Event of Default by NYSERDA, (ii) the participation of the Selected Project in any offshore wind solicitation other than a solicitation issued by NYSERDA, or (iii) a senior officer of the Seller issues a press release or makes a public filing stating that Seller no longer intends to develop the Selected Project or that the Selected Project is not economically viable; or
- (h) Failure to Provide Additional Contract Security. Failure by Seller to provide to NYSERDA,

on or before January 1, 2025, and periodically thereafter, additional Contract Security, by the dates and in the amounts set out in Section 15.02, and such failure is not remedied within ten (10) Business Days of the respective due dates of such additional Contract Security; or

- (i) Reserved.
- (j) Prevailing Wage Default. Failure by Seller to ensure that any failure to pay the Prevailing Wage in accordance with Section 18.10 is cured within twelve (12) months from the date of written notification by NYSERDA; or
- (k) Non-Permitted Change of Control. A Change of Control of the Seller, other than as specifically permitted by Article VIII, occurs; or
- (l) Failure to Commence Construction. Failure by Seller to commence construction of the Selected Project within six (6) months of the later of the Selected Project having secured (i) COP approval or (ii) approval of the Selected Project's First Part of the Environmental Management and Construction Plan in the New York Public Service Commission Case 21-T-0366 from the New York Public Service Commission, unless either such approval is stayed or subject to litigation; provided however that the deadline for commencing construction shall be extended for delays due to circumstances beyond the reasonable control of Seller.

Section 13.02. Effect of an Event of Default. In addition to any other remedy available to it under this Agreement or under Applicable Law, upon any occurrence of an Event of Default, the non-defaulting Party shall be entitled to suspend performance of its obligations under this Agreement until the earlier of such time as (a) such Event of Default has been cured, or (b) the non-defaulting Party has elected to terminate this Agreement pursuant to Article XIV below.

Notwithstanding the foregoing, (i) for any Event of Default by Seller prior to commencement of Commercial Operation of the Selected Project (or any portion thereof), NYSERDA shall be entitled only to stipulated damages pursuant to Article XV; and (ii) for any Event of Default after commencement of Commercial Operation of the Selected Project (or any portion thereof), if NYSERDA elects not to suspend performance of its obligations and Seller Transfers ORECs to NYSERDA, NYSERDA shall be obligated to accept such ORECs and pay for such ORECs in accordance with this Agreement.

Section 13.03. Specific Performance. The Parties agree that, in the case of a default of Seller, irreparable damage would occur in the event that NYSERDA could not obtain ORECs pursuant to this Agreement from the date of such Event of Default in which Seller was the defaulting Party, and accordingly, each Party hereby agrees that NYSERDA shall be entitled to elect specific performance of this Agreement to compel the Transfer of all ORECs produced by the Selected Project following the date of any such an Event of Default in accordance with the terms hereof, including payment, together with any other remedy at law or equity available to NYSERDA in connection therewith, without the necessity of demonstrating the inadequacy of money damages. Notwithstanding the foregoing, for any Event of Default by Seller prior to the date of commencement of Commercial Operations, NYSERDA shall be entitled only to stipulated damages pursuant to Article XV.

Article XIV

Termination

Section 14.01. Termination. This Agreement may be terminated:

- (a) at any time by either NYSERDA or Seller if: (i) an Event of Default occurs (and following the expiration of any applicable cure period), (ii) the Party seeking to terminate this Agreement hereunder is the non-defaulting Party, and (iii) the non-defaulting Party has not waived such Event of Default in writing;
- (b) at any time by the mutual written consent of Seller and NYSERDA;
- (c) at any time prior to Commercial Operation of the Selected Project by Seller upon an attestation from an appropriate representative of Seller that (i) the Selected Project is less than twenty-five percent (25%) constructed on an installed capacity basis, and (ii) Seller has relinquished any and all effort to further develop or construct the Selected Project;
- (d) by NYSERDA in the event it is found that the certification filed by Seller in accordance with New York State Finance Law Sections 139-j and 139-k was intentionally false or intentionally incomplete; and
- (e) by NYSERDA in the event it is found that Seller made material misrepresentations in the certification filed by Seller in accordance with New York State Tax Law Section 5-a that were intentionally false when made.

Section 14.02. Effect of Termination. Except as otherwise set forth in Section 18.03 below, in the event of a termination of this Agreement as provided in Section 14.01 above, neither Party shall have any further right or obligation hereunder.

Section 14.03. Good Faith Negotiation. Both Parties agree that, should any dispute arise during the term of this Agreement, the Parties will make a good faith, though non-binding effort to reconcile any difference or dispute before the filing of an action in any court.

Section 14.04. Damages. Neither Party shall be liable to the other for consequential, incidental, punitive, exemplary, or indirect damages, lost profits or other business interruption damages arising from the breach of this Agreement; provided, however, that nothing in this Section 14.04 shall limit (i) Seller's obligations under Section 11.01 of this Agreement, or (ii) either Party's liability for fraud.

Section 14.05. No Recourse. The Parties agree that their obligations arising under (or relating to) this Agreement shall be without recourse to any member, unitholder, director, officer, shareholder, authorized representative or partner of either Party, any controlling person thereof, or any successor of any such member, unitholder, director, officer, shareholder, authorized representative, partner or controlling Person (each a member of the "Extended Group"); and no member of the Extended Group shall have any liability in such capacity for the obligations of either Party; provided, however, that notwithstanding the foregoing, nothing in this Section 14.05 shall negate, excuse, limit, reduce, or otherwise affect (a) the obligations and liability of any member of the Extended Group under any guaranty executed by such member of the Extended Group pursuant to Section 15.05 below; or (b) NYSERDA's right and ability to pursue, enforce, and obtain any and all remedies and relief against any member of the Extended Group under any guaranty executed by such member of the Extended Group pursuant to Section 15.05 below. The Parties reserve the right to modify or terminate this Agreement without the consent of any member of the Extended Group.

Article XV

Contract Security

Section 15.01. Initial Contract Security. No more than five (5) Business Days after the Effective Date, unless otherwise agreed to by NYSERDA, Seller must provide Contract Security, in the form of cash, certified funds, a Letter of Credit conforming to the requirements of Section 15.03, or an Acceptable Guaranty conforming to the requirements of Section 15.05, in an amount equal to \$59,736,000, representing (i) the product of the Offer Capacity (in MW) and forty thousand dollars (\$40,000) plus (ii) an additional \$27,336,000 representing the amount of contract security that was previously provided pursuant to the Terminated PSA. Seller may provide the Contract Security through any combination of the forms set forth in the preceding sentence.

Section 15.02. Additional Contract Security. Seller shall provide additional Contract Security in an amount equal to the product of the Uncompleted Offer Capacity (in MW) (less any Offer Capacity Reduction as defined in Section 15.07(b)) and twenty-thousand dollars (\$20,000) on or before January 1, 2025. Every twelve (12) months thereafter, Seller shall provide incremental additional Contract Security in an amount equal to the product of the Uncompleted Offer Capacity (in MW) (less any Offer Capacity Reduction as defined in Section 15.07(b)) and ten-thousand dollars (\$10,000), until such time as the Operational Installed Capacity equals or exceeds the product of 0.95 and the Offer Capacity (less any Offer Capacity Reduction as defined in Section 15.07(b)). If prior to the time additional Contract Security is due NYSERDA, in its sole discretion, confirms in writing that in the time period following Seller's prior provision of Contract Security Seller has provided information to NYSERDA in a timely and responsive manner and has otherwise performed at a high standard, the amount of additional Contract Security required at that time shall be reduce by ten percent (10%).

Section 15.03. Letter of Credit. Any Letter of Credit shall be a clean, unconditional and irrevocable standby letter of credit in favor of NYSERDA as beneficiary, issued for direct payment by a bank that is either (a) a member of the New York Clearinghouse Association or (b) holds a credit rating of A or better by Standard and Poor's, A or better by Fitch, or A2 or better by Moody's, and is a United States bank, or a United States branch of a foreign bank, with a New York branch preferred. Such letter of credit shall be substantially in the form of the letter of credit attached hereto as Exhibit B ("Letter of Credit"), in a face amount that, either individually or in combination with another form of Contract Security under Section 15.01, is equal to the Contract Security amount, and which Letter of Credit shall provide that the issuing bank will pay to NYSERDA amounts in aggregate up to that same face amount upon presentation of only the Sight Draft in the amount to be drawn and the Payment Certificate, in the form of Annex A and Annex B, respectively, to such Letter of Credit, and have an expiration date not shorter than one (1) year together with an automatic renewal provision. At any time prior to NYSERDA drawing on the Letter of Credit, Seller shall be permitted to substitute the Letter of Credit with a Letter of Credit from another bank that is either (i) a member of the New York Clearinghouse Association or (ii) holds a credit rating of A or better by Standard and Poor's, A or better by Fitch, or A2 or better by Moody's, and is a United States bank, or a United States branch of a foreign bank, with a New York branch preferred; *provided* that the substitute Letter of Credit is substantially in the form of Exhibit B and for the same face amount as the Letter of Credit it is replacing. Should the Operational Installed Capacity be less than the product of 0.95 multiplied by the Offer Capacity by a date thirty (30) days prior to the expiration date of the Letter of Credit, and Seller not having provided NYSERDA or arranged with NYSERDA to provide a substitute Letter of Credit

prior to such expiration, NYSERDA shall be thereupon entitled to draw on the Letter of Credit for the full amount then outstanding and the funds received shall be held by NYSERDA until a substitute Letter of Credit has been provided, or for application against subsequent obligations of Seller.

Section 15.04. Replacement Letter of Credit. Any assignee within Article VIII of this Agreement shall, simultaneously with its assignment becoming effective, deliver to NYSERDA a replacement Letter of Credit meeting the requirements of this Article, and NYSERDA shall, within twenty (20) Business Days after receipt of a compliant replacement Letter of Credit, return the original Letter of Credit to Seller. Upon the failure of an assignee to deliver a compliant replacement Letter of Credit to NYSERDA simultaneously with its assignment becoming effective, NYSERDA shall be thereupon entitled to draw on the Letter of Credit for the full amount then outstanding and the funds received shall be held by NYSERDA for application against subsequent obligations of Seller and/or the assignee under this Agreement.

Section 15.05. Acceptable Guaranty. Seller may fulfill the requirements of Sections 15.01 and Section 15.02 through one or more Acceptable Guaranties. If at any time a guaranty provided under this Section 15.05 ceases to be an Acceptable Guaranty, Seller shall provide to NYSERDA replacement Contract Security in the form of cash, certified funds, a substitute Acceptable Guaranty, or Letters of Credit conforming to the requirements of Section 15.01 and Section 15.03 within five (5) Business Days.

Section 15.06. Refund of Security. Amounts required by Seller as Contract Security will be reduced and refunded by NYSERDA to Seller as follows:

- (a) In their entirety, within thirty (30) Business Days of NYSERDA's receipt of an Independent Engineer's report (which may be the same report submitted for purposes of Section 2.01(c) of this Agreement) demonstrating that the Operational Installed Capacity equals or exceeds the product of 0.95 and the Offer Capacity.
- (b) On a prorated basis, expressed as a fraction of the Contract Security equal to the Operational Installed Capacity divided by the product of 0.95 and the Offer Capacity, within thirty (30) Business Days of NYSERDA's receipt of an attestation from the appropriate representative of Seller that the Operational Installed Capacity is greater than zero and less than the product of 0.95 and the Offer Capacity. For clarity, the cumulative total amount of Contract Security returned to Seller under this Section 15.06(b) at any point in time shall not exceed the amount equal to the Contract Security multiplied by the Operational Installed Capacity at that point in time divided by the product of 0.95 and the Offer Capacity.

Section 15.07. Retention of Security. Amounts provided by Seller as Contract Security and not refunded pursuant to Section 15.06 above will be retained by NYSERDA as follows:

- (a) In their entirety, (i) upon termination of this Agreement under Section 14.01(a) of this Agreement due to the occurrence of a Seller Event of Default if such Event of Default remains uncured after the expiration of the applicable cure period, or (ii) upon termination under Section 14.01(c);
- (b) On a prorated basis if either, (i) Seller notifies NYSERDA in writing that Seller intends to build the Selected Project such that, within twelve (12) months of commencement of the Contract Delivery Term (unless such period is extended under Section 15.07(c)), the

Operational Installed Capacity will be less than the product of 0.95 and the Offer Capacity (such amount by which the Operational Installed Capacity is less than ninety-five percent (95%) of the Offer Capacity being the “Offer Capacity Reduction”) or (ii) the Operational Installed Capacity has not exceeded the product of 0.95 and the Offer Capacity within twelve (12) months after commencement of the Contract Delivery Term (unless such period is extended under Section 15.07(c)). The amount that will be retained, expressed as a fraction of the total Contract Security held by NYSERDA as of the date of such notification or after the expiration of such twelve (12) month period, as applicable, shall equal the Offer Capacity Reduction divided by the Offer Capacity. In the event that Seller has provided the Contract Security in the form of a Letter of Credit or an Acceptable Guaranty, NYSERDA shall be entitled to draw on the Letter of Credit or obtain payment under the Acceptable Guaranty, respectively, for the prorated amount of the Contract Security calculated in accordance with this Section 15.07(b) either as of the date of Seller’s written notification to NYSERDA of Seller’s intent in respect of the Offer Capacity Reduction or at any time after the expiration of the twelve (12) month period described above; and

- (c) If, after Commercial Operation, construction of the Selected Project is delayed such that the Operational Installed Capacity will not exceed the product of 0.95 and the Offer Capacity by the end of the twelve (12) month period described in Section 15.07(b), Seller shall notify NYSERDA of such circumstance and the reasons for such delay. If the delay is due to circumstances beyond Seller’s reasonable control, NYSERDA may extend the twelve (12) month period described in Section 15.07(b) (with such extension not to be unreasonably withheld, conditioned, or delayed).

Section 15.08. Stipulated Damages. NYSERDA and Seller hereby agree, acknowledge and stipulate that NYSERDA’s retention of amounts provided by Seller as Contract Security pursuant to this Article XV, in the proportions stated within this Article, is fair and reasonable under the circumstances and in light of the uncertainty and inability to quantify adequately the harm that would result to NYSERDA as a result of the events that permit NYSERDA to retain such amounts of the Contract Security.

Section 15.09. Failure to Extend BOEM Lease. In the event that the Contract Delivery Term exceeds the duration of Seller’s offshore wind lease issued by BOEM, Seller shall use commercially reasonable efforts to seek an extension of the lease as necessary to allow the Seller to fulfill its obligations under this Agreement. If Seller is unable, wholly or in part, to perform its obligations under this Agreement due to expiration of the operations term of such lease or denial of its extension request, such non-performance shall be excused. Seller shall not be liable for any losses or damages arising out of a failure to perform that occurs due to expiration of the operations term of its offshore wind lease.

Article XVI

Force Majeure

Section 16.01. Force Majeure Defined. “Force Majeure” means an event or circumstance that was not reasonably anticipated as of the Effective Date: (a) that was not within the control of the Party claiming its occurrence; (b) that could not have been prevented or avoided by such Party through the exercise of reasonable diligence; and (c) that directly prohibits or prevents such Party from performing its obligations under this Agreement. For avoidance of doubt, to the extent meeting the foregoing requirements, examples of events that may constitute Force Majeure include: acts of God, an act or

threatened act of the public enemy, war (imminent, declared or otherwise), blockade, accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistances to, or adjuncts of, shipping or navigation, perils of the sea, air crash, shipwreck, train wrecks or other failures or delays of transportation, nuclear emergency, radioactive contamination, cyber-attack, ionizing radiation, release of hazardous waste or materials, sabotage, terrorist acts, invasion, insurrection, riot, non-site specific industrial disturbance by a union or organized labor (including any non-site specific strike or boycott), fire, flood, lightning, earthquake, hurricane, tornado, waves or winds of extreme force, access to the Selected Project being limited due to weather or sea state conditions, extreme accumulation of snow or ice, naturally occurring epidemic, explosion or any similar cataclysmic occurrence, acts, inaction or restraints of a governmental authority (which do not constitute a change in Applicable Law falling within the scope of Section 4.07 of this Agreement) which temporarily or permanently prevent required performance under this Agreement, including limitations on the scheduling of Selected Project installation and maintenance directly arising out of or resulting from such Force Majeure or unavailability of NYGATS.

Under no circumstances shall Force Majeure include (w) any full or partial curtailment in the electric output of the Selected Project that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such curtailment or mishap would otherwise qualify as a Force Majeure, (x) any occurrence or event that merely increases the costs or causes an economic hardship to a Party, or (y) any occurrence or event that was caused by or contributed to by the Party claiming the Force Majeure. In addition, a delay or inability to perform attributable to a Party's lack of preparation, a Party's failure to timely obtain and maintain all necessary permits or qualifications, a failure to satisfy contractual conditions or commitments, or lack of or deficiency in funding or other resources shall each not constitute a Force Majeure or be the basis for a claim of Force Majeure.

Section 16.02. Effect of Force Majeure. If either Party is unable, wholly or in part, by Force Majeure to perform obligations under this Agreement, such performance shall be excused and suspended so long as the circumstances that give rise to such inability exist or would exist if the Party claiming the Force Majeure used commercially reasonable efforts to cure such circumstances, but for no longer period. The Party whose performance is affected shall give prompt notice thereof; such notice may be given orally or in writing but, if given orally, it shall be promptly confirmed in writing, providing details regarding the nature, extent and expected duration of the Force Majeure, its anticipated effect on the ability of such party to perform obligations under this Agreement, and the estimated duration of any interruption in service or other adverse effects resulting from such Force Majeure, and shall be updated or supplemented to keep the other Party advised of the effect and remedial measures being undertaken to overcome the Force Majeure. Such inability shall be promptly corrected to the extent it may be corrected through the exercise of commercially reasonable due diligence. Neither Party shall be liable for any losses or damages arising out of a suspension of performance that occurs because of Force Majeure.

Article XVII

Compliance with Certain Laws

Section 17.01. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts executed and to be performed in New York State without regard to its conflicts of laws principles. The Parties irrevocably

acknowledge and accept that all actions arising under or relating to this Agreement, and the transactions contemplated hereby and thereby, shall be brought exclusively in a United States District Court or New York State Court located in Albany, New York having subject matter jurisdiction over such matters, and each of the Parties hereby consents to and accepts such personal jurisdiction of, and waives any objection as to the laying of venue in, such courts for purposes of such action.

Section 17.02. Laws of the State of New York. Seller shall comply with all of the requirements set forth in Exhibit A hereto.

Section 17.03. All Legal Provisions Deemed Included. It is the intent and understanding of Seller and NYSERDA that each and every provision of law required by the laws of the State of New York to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either NYSERDA or Seller, 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 such event, the Parties shall negotiate such amendment in good faith with the intent that such amendment reflects, as closely as possible, the terms and conditions of this Agreement in effect prior to such amendment; provided that such amendment shall not in any event alter (a) the purchase and sale obligations of the Parties pursuant to this Agreement, or (b) the pricing and payment provisions of this Agreement.

Section 17.04. Permits and Approvals. Seller will comply with all Applicable Law that may in any material way affect the performance of this Agreement. Seller shall be responsible to obtain all applicable permits and regulatory approvals that may be required in order to develop and/or operate the Selected Project over the duration of the Contract Delivery Term, and NYSERDA's obligations to purchase ORECs is conditional on Seller's acquisition of such permits and approvals. Nothing in this Agreement in any way replaces or modifies the necessity or applicability of any permit or approval process. Seller 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 Selected Project, 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.

Section 17.05. Other Legal Requirements. The references to particular laws of the State of New York in this Article 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 each Party to comply with all legal requirements.

Article XVIII

Additional Provisions

Section 18.01. Forward Contract. Each Party represents and warrants to the other that it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code, that this Agreement is a "forward contract" within the meaning of the United States Bankruptcy Code, and that the remedies identified in this Agreement shall be "contractual rights" as provided for in 11 U.S.C. § 556 as that provision may be amended from time to time.

Section 18.02. Taxes/Costs. Seller shall be responsible for and obligated to pay all present and

future taxes, fees, levies and costs that may be assessed by any entity including but not limited to NYGATS with respect to Seller's provision of ORECs to NYSERDA, or with respect to the measurement, tracking, and verification and participation in NYGATS necessary for the creation and Transfer of the ORECs and/or the energy with which they are associated, into the NYSERDA NYGATS account.

Section 18.03. Term. Unless terminated earlier under this Article, this Agreement shall expire upon the expiration of the Contract Delivery Term. Upon such date or upon earlier termination of this Agreement under Article XIV, neither Party shall have any further obligation to the other, except that Article I, Sections 2.02, 2.03, 5.01, 7.01, 11.01, 11.02, 14.02, 15.06, 17.01, 18.03, 18.04, 19.01, 19.02, 20.01, 21.02, 21.03, 21.04, and all payment obligations under Article IV shall survive.

Section 18.04. Waiver. Either Party to this Agreement may (a) extend the time for the performance of any of the obligations or other acts of the other Party, (b) waive any inaccuracies in the representations and warranties of the other Party contained herein or in any document delivered by the other Party pursuant hereto, or (c) waive compliance with any of the agreements or conditions of the other Party contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the Party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition, of this Agreement. No provision of this Agreement will be deemed to have been waived unless the waiver is in writing; no delay by either Party in exercising its rights hereunder, including the right to terminate this Agreement, shall be deemed to constitute or evidence any waiver by such Party of any right hereunder. The rights granted in this Agreement are cumulative of every other right or remedy that the enforcing Party may otherwise have at law or in equity or by statute.

Section 18.05. Independent Contractor. The status of Seller under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, Seller and its respective officers, agents, employees, representatives and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit. Nothing in this Agreement shall be construed as creating a partnership, joint venture or other relationship between NYSERDA and Seller for any reason.

Section 18.06. Severability. Without limiting the terms of Section 4.01, if any provision of this Agreement shall be declared by any court of competent jurisdiction to be illegal, void or unenforceable, all other provisions of this Agreement shall not be affected and shall remain in full force and effect. If any provision of this Agreement is so broad as to be unenforceable, that provision shall be interpreted to be only so broad as will enable it to be enforced.

Section 18.07. Seller Expense. Seller shall, at its own expense, make all arrangements necessary to: (a) register the Selected Project and Transfer ORECs to the NYSERDA NYGATS Account, and (b) interconnect the Selected Project and comply with the electricity delivery requirements set out in Article III. This requirement encompasses Seller's purchasing or arranging for all services including, without limitation, transmission, ancillary services, any control area services,

line losses and transaction fees necessary to deliver energy to the New York Control Area, in accordance with all rules and protocols of the NYISO, throughout the Contract Delivery Term. NYSERDA shall, at its own expense, make all arrangements necessary to accept the Transfer of ORECs pursuant to this Agreement, and shall be responsible for any applicable fees or charges incident to the purchase or subsequent sale of ORECs to third parties.

Section 18.08. Environmental Disclosure. The Parties agree that, at the time of the execution of this Agreement, New York employs NYGATS for the tracking, registration, and trading of generation attributes, including renewable or environmental attributes or credits, and that NYGATS will be used by the New York State Department of Public Service to accomplish verification of the transactions consummated hereunder as part of the New York State Environmental Disclosure Rules.

Section 18.09. No Third Party Beneficiaries. Nothing herein is intended to or should be construed to create any rights of any kind whatsoever in any persons not party to this Agreement.

Section 18.10. Prevailing Wage. Although this is not a public work covered by NYS Labor Law Article 8, and unless otherwise provided in a PLA covering the construction of the Selected Project, 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 Selected Project, including, but not limited to, the assembly, staging, installation, erection, and placement of the Selected Project and its electrical interconnection as well as those construction activities related to start-up and commissioning of the Selected Project, 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 Selected Project construction activities occur. For construction activities occurring in New York, the prevailing rates shall be determined under NYS Labor Law § 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 Selected Project construction activities occur that would be applicable to a public work. For construction activities in federal waters, the rates shall be those applicable at the location of the port or ports from which the laborers, workmen, or mechanics are based for purposes of that offshore 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 Selected Project, fabrication occurs off-site for the convenience of the contractor, and the fabrication is part of a single integrated construction process. This requirement applies (unless otherwise provided in a PLA covering the construction of the Selected Project): (1) to all laborers, workmen and mechanics performing construction activities, whether direct employees of the Seller or of Seller's subcontractor(s), and (2) regardless of whether or not such employment was claimed as an Economic Benefit in its Proposal.

Section 18.11. Project Labor Agreement.

- (a) Unless extended by NYSERDA, Seller shall, no later than thirty (30) days after the Effective Date of this Agreement, present to NYSERDA for its review a plan outlining its intentions with respect to the negotiation of one or more PLAs to cover all construction activities within the United States (including in federal waters) on the Selected Project. NYSERDA should be kept reasonably apprised of negotiations as they proceed, and NYSERDA shall have the right

to have one or more representatives attend negotiation sessions as it determines is in its best interests. A final form of each PLA, agreed to by Seller and the trades, consistent with the description in Exhibit J to this Agreement shall be presented to NYSERDA for review and approval no later than one hundred eighty (180) days after BOEM's approval of the COP for the Selected Project (unless extended by NYSERDA, which request for extension shall not be unreasonably withheld, conditioned, or delayed).

- (b) NYSERDA may appoint a mediator of its own choosing who shall endeavor to assist the parties in their negotiations: (i) at any time upon mutual agreement of Seller and the trades; (ii) at the request of either Seller or the trades at any point after active negotiations on a PLA have been ongoing for no less than ninety (90) days; or (iii) at the request of either Seller or the trades at any point more than one hundred eighty (180) days after BOEM's approval of the COP for the Selected Project. In the event that mediation does not result in a final form of PLA agreed to by the Seller and the trades within three (3) months of the date that the mediator is appointed, NYSERDA shall determine whether the time for negotiations should be extended. In the event that NYSERDA decides not to extend the time for negotiation, NYSERDA may determine that, notwithstanding good faith efforts by Seller, satisfactory completion of PLA negotiations is no longer practicable.
- (c) NYSERDA's review of any agreed-upon final form of PLA will be based on the specific terms of the negotiated PLA and will take into account the best interests of NYSERDA with respect to the Selected Project, and the public it serves, and will include consideration of project viability, the cost-effectiveness of the PLA, and the need for timely completion of the Selected Project. NYSERDA will complete and provide the results of such review to Seller within thirty (30) days or the final form of PLA as presented shall be deemed approved. If NYSERDA disapproves the final form of PLA, NYSERDA will identify changes to the final form of PLA that would render it approvable, and Seller will promptly resume negotiations with the trades. No more than sixty (60) days after such disapproval, so long as Seller and the trades have negotiated in good faith during that period, NYSERDA will render a determination under Section 18.11(b) of this Agreement regarding whether satisfactory completion of PLA negotiations is no longer practicable.
- (d) Seller may appoint or delegate to a contractor or third party the authority to conduct negotiations and/or execute the PLA(s); however, the responsibility to comply with all the requirements of this Section 18.11 will remain with Seller.
- (e) Seller will be required to report quarterly on all eight items required in PLA(s), as described in Exhibit J, including the number of in-state jobs provided, MWBE and SDVOB employment statistics, education and apprenticeship programs, quantitative and qualitative data regarding engagement with, *inter alia*, New York labor groups which are reflective of ongoing compliance with the PLA(s).
- (f) In accordance with this Section 18.11, the Parties acknowledge and agree, the following PLAs have already been approved by NYSERDA:
 - (i) South Brooklyn Marine Terminal Project – Building & Construction Trades Council of Greater New York

Section 18.11-a. Labor Peace Agreement. Pursuant to New York State Public Service Law 66-

r (3), the Parties understand and agree that the owner of the Selected Project, or a third party acting on the Seller's behalf, will be obligated to enter into a labor peace agreement ("Labor Peace Agreement" or "LPA") with at least one bona fide labor organization either where such bona fide labor organization is actively representing employees providing necessary operations and maintenance services for the renewable energy system at the time of such agreement or upon notice by a bona fide labor organization that is attempting to represent employees who will provide necessary operations and maintenance services for the renewable energy system employed in the state. The Labor Peace Agreement will, at a minimum, protect the State of New York's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the construction or operation of the Selected Project. The Parties further understand and agree that, pursuant to and to the extent legally required by New York State Public Service Law 66-r (3), the maintenance of such a LPA shall be an ongoing material condition of any continuation of payments under this Agreement. Seller agrees to notify NYSERDA of any event triggering Seller's obligation under this Section, or an obligation under New York State Public Service Law § 66-r (3), within fifteen (15) Business Days of the occurrence of such an event. Within thirty (30) days after the occurrence of any event triggering Seller's obligation under this Section, Seller, as owner, shall submit to NYSERDA a confidential plan to complete negotiations with its counterparty under New York State Public Service Law § 66-r (3), which shall provide for the execution of an LPA within: (1) the later of (a) one hundred and twenty (120) days after the triggering event or (b) one hundred and twenty (120) days prior to Commercial Operation (unless extended with the consent of NYSERDA, which request for extension shall not be unreasonably withheld, conditioned, or delayed); or (2) sooner if required by Applicable Law.

Section 18.12. Outer Limit Date Extensions. The Outer Limit Date may be extended by up to two (2) years in the aggregate as a result of any of the following circumstances causing a delay of Commercial Operation beyond Seller's reasonable control:

- (a) Reserved;
- (b) Delays caused by third parties in completion of infrastructure required for the Selected Project to interconnect at the Delivery Point;
- (c) Actions taken by a permitting authority that affect the Selected Project but also apply to the offshore wind industry as a whole;
- (d) Action or inaction of the NYISO or an interconnecting transmission owner that delays the ability of the Selected Project to obtain interconnection service; and
- (e) Delays due to Force Majeure.

Article XIX

Notices, Entire Agreement, Amendment, Counterparts

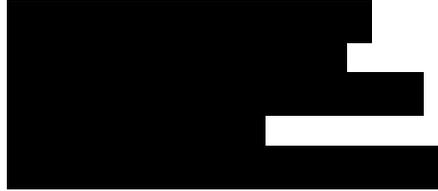
Section 19.01. Notices.

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

- (1) via certified or registered United States mail, return receipt requested;
- (2) by personal delivery;
- (3) by expedited delivery service; or
- (4) by e-mail, return receipt requested.

Such notices 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:

To Seller:



With a copy to:



To NYSERDA:

NYSERDA
Attn: Office of the General Counsel
17 Columbia Circle
Albany, New York 12203-6399
email address: ceslegal@nyserda.ny.gov

With a copy to:

NYSERDA
Attn: Large-Scale Renewables Director
17 Columbia Circle
Albany, New York 12203-6399
email address: offshorewind@nyserda.ny.gov

- (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 of an email acknowledgement of 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 designate individuals mutually 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 19.02. Entire Agreement; Amendment. This Agreement, including the Exhibits and Schedules hereto, embodies the entire agreement and understanding between NYSERDA and Seller and supersedes all prior agreements and understandings relating to the subject matter hereof. Except

as otherwise expressly provided for herein, this Agreement may be amended, modified, changed, waived, discharged or terminated only by an instrument in writing, signed by the Party against which enforcement of such amendment, modification, change, waiver, discharge or termination is sought.

Section 19.03. 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. Facsimile and electronic signatures shall have the same force and effect as original signatures for all purposes of this Agreement.

Article XX

Publicity

Section 20.01. Publicity. Seller and/or the Selected Project owner will collaborate with NYSERDA with regard to the preparation of any press release, public announcement, publication or media interview with respect to the Parties' entry into this Agreement or the subject matter thereof or which concerns NYSERDA or the Offshore Wind Standard program. To the extent applicable, in any such press release, public announcement publication, or media interview Seller and/or its employees shall credit NYSERDA and the funding participation of the Offshore Wind Standard program in the activities of the Selected Project. Seller may not represent that positions taken or advanced by Seller represent the opinion or position of NYSERDA, the PSC, or the State of New York.

Section 20.02. Publication of Agreement. Seller acknowledges that NYSERDA may file this Agreement publicly with the PSC or otherwise publish the Agreement. Prior to such publication, NYSERDA will redact any critical electric infrastructure information contained in the Agreement, including in the exhibits hereto, and will consider Seller's requests for the redaction of confidential business information; provided, however that NYSERDA shall not accept any such request to redact price information contained in this Agreement.

Article XXI

Confidentiality

Section 21.01. Seller Authorization. Seller may be required to authorize the direct transfer to NYSERDA by an energy market administrator or the operator of the transmission and/or distribution system into which the energy from the Selected Project is delivered of transactional and/or delivery information and data pertinent to the verification of attribute creation and electricity delivery, and thereby to waive confidentiality with respect to the disclosure of such information to NYSERDA. To the maximum extent allowed by law, NYSERDA shall treat any such information so received in accordance with the applicable confidentiality requirements of the energy market administrator or transmission operator.

Section 21.02. Freedom of Information Law. Seller acknowledges that NYSERDA is subject to and must comply with the requirements of New York's Freedom of Information Law ("FOIL"). See Public Officers' Law Article 6.

Section 21.03. Trade Secrets/Commercial Information. The FOIL (Public Officers Law § 87(2)(d)) provides an exception to disclosure for 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 NYSERDA receives a request from a third party for information or a document received from Seller that has been marked “Confidential” or “Proprietary,” NYSERDA will process such request under the procedures provided by NYSERDA’s FOIL regulations. In connection with any such request, to the extent Seller marks its material as “Confidential” or “Proprietary”, Seller agrees to provide NYSERDA with a full set of specific, proposed redactions of the applicable material along with Seller’s justification for each proposed redaction. To the extent Seller fails to comply with the immediately preceding sentence, Seller consents to NYSERDA’s disclosure of the material in NYSERDA’s sole discretion.

Section 21.04. Claim of Confidentiality. Information of any tangible form including any document that Seller wishes to be protected from disclosure to third parties, including any information provided as a part of a Proposal submitted in response to ORECRFP23-1, must be marked “Confidential” or “Proprietary” at the time such information is provided to NYSERDA. NYSERDA reserves the right to make public, after the fifth anniversary of the Contingent Award Notification Date, this Agreement, in its entirety or in part.

The Parties hereto have caused this Agreement to be executed and delivered by their duly authorized representatives.

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

Doreen M.
By: Harris  Digitally signed by Doreen M.
Harris
Date: 2024.05.31 16:12:27
-04'00'

Name:

Title:

Date:

EMPIRE OFFSHORE WIND LLC:

E-SIGNED by Teddy Muhlfelder

By: on 2024-05-31 15:28:40 GMT

Name: Teddy Muhlfelder

Title: President

Date:

**EXHIBITS TO OFFSHORE WIND RENEWABLE ENERGY CERTIFICATE
STANDARD FORM PURCHASE AND SALE AGREEMENT**

Exhibit A	Standard Terms and Conditions for all NYSERDA Agreements
Exhibit B	Form of Irrevocable Standby Letter of Credit
Exhibit C	NYSERDA Prompt Payment Policy
Exhibit D	Seller's Industry Growth Activity Commitments
Exhibit E	Fisheries Mitigation Plan
Exhibit F	Environmental Mitigation Plan
Exhibit G	Form of Guaranty
Exhibit H	Description of Selected Project
Exhibit I	Economic Benefits Claims and Verification
Exhibit J	Project Labor Agreement Requirements
Exhibit K	Progress Report Template
Exhibit L	Reserved
Exhibit M	New York Jobs and Workforce Plan
Exhibit N	Stakeholder Engagement Plan
Exhibit O	U.S. Iron and Steel Certification Forms
Exhibit P	Reserved
Exhibit Q	Reserved
Exhibit R	Reserved
Exhibit S	Annual Operating Report
Exhibit T	Disadvantaged Communities Benefits Guidance

EXHIBIT A

REVISED 1/24

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 Contractor 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, Contractor 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, Contractor 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. Contractor 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 an agreement for a public work covered by Article 8 of the Labor Law or a building service covered by Article 9 thereof, neither Contractor'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, if this is an agreement for a public work or a building service as covered above, or a covered project as defined in Labor Law section 224-a, Contractor 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 Contractor 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, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to NYSERDA a non-collusive bidding certification on Contractor's behalf.

4. INTERNATIONAL BOYCOTT PROHIBITION. If this Agreement exceeds \$5,000, the Contractor agrees, as a material condition of the Agreement, that neither the Contractor 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 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, 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 Contractor 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 Contractor 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, Contractor 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, Contractor 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 Contractor considers a proprietary and/or confidential trade secret, Contractor shall fully identify and plainly label the information "confidential" or "proprietary" at the time of disclosure. By so marking such information, Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of Contractor. 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 Contractor pursuant to this Agreement, Contractor shall provide to NYSERDA its Federal employer identification number or Federal social security number, or both such numbers when the Contractor has both such numbers. Where the Contractor does not have such number or numbers, the Contractor 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 Contractor 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 A, Exhibit A shall control except in circumstances where the Agreement itself states that the Agreement controls in a particular circumstance.

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"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor 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. Contractor 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 Contractor or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Contractor'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 Contractor 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 Contractor knowingly withheld information about such an indictment or conviction, NYSERDA may declare the Agreement null and void and may seek legal remedies against the Contractor and its principals. The Contractor or its principals may also be subject to penalties for any violation of law which may apply in the particular circumstances. For a Contractor 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 Contractor 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 Contractor 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, Contractors certify that whenever the total amount is greater than \$1 million:

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

(c) The Contractor 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 Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor 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. Contractor 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 Contractor 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 Contractor in accordance with the terms of the agreement.

19. COMPLIANCE WITH TAX LAW SECTION 5-a. The following provisions apply to Contractors 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 Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).
- b. Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).
- c. Prior to any renewal period (if applicable) under the agreement, the Contractor 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 Contractor 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. Contractor 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 Contractor 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 B

LETTER OF CREDIT

FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

DATE: _____, 20__

BENEFICIARY:

THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
17 COLUMBIA CIRCLE, ALBANY, NEW YORK 12203-6399

LADIES AND GENTLEMEN:

BY THE ORDER OF:

[SELLER]

[SELLER'S ADDRESS]

WE HEREBY ISSUE OUR IRREVOCABLE CREDIT NO: _____ IN YOUR FAVOR FOR THE ACCOUNT OF _____ (THE "SELLER") FOR AN AMOUNT OR AMOUNTS NOT TO EXCEED IN THE AGGREGATE [STATE IN WORDS] U.S. DOLLARS AVAILABLE BY YOUR DRAFTS AT SIGHT ON [INSERT NAME AND ADDRESS OF ISSUING BANK], NEW YORK, NEW YORK, USA, WHEN ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

1. YOUR SIGHT DRAFT DRAWN ON US IN THE FORM OF ANNEX A HERETO (THE "SIGHT DRAFT"); AND
2. A DATED PAYMENT CERTIFICATE PURPORTEDLY SIGNED BY A DULY AUTHORIZED OFFICER OF NYSERDA IN THE FORM OF ANNEX B HERETO (THE "PAYMENT CERTIFICATE").

MULTIPLE DRAWINGS ARE PERMITTED IN AMOUNTS NOT TO EXCEED, IN COMBINATION, THE AGGREGATE AMOUNT.

DRAWINGS PRESENTED BY FACSIMILE TO FACSIMILE NUMBER _____ ARE ACCEPTABLE; PROVIDED THAT SUCH FAX PRESENTATION IS RECEIVED ON OR BEFORE THE EXPIRY DATE ON THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, IT BEING UNDERSTOOD THAT ANY SUCH FAX PRESENTATION SHALL BE CONSIDERED THE SOLE OPERATIVE INSTRUMENT OF DRAWING. IN THE EVENT OF PRESENTATION BY FAX, THE ORIGINAL DOCUMENTS SHOULD NOT BE PRESENTED.

FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO YOU AGAINST YOUR PAYMENT CERTIFICATE AND SIGHT DRAFT PRESENTED IN FULL COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT ON OR BEFORE 5:00 P.M., NEW YORK TIME, ON THE EXPIRATION DATE HEREOF. THIS LETTER OF CREDIT WILL EXPIRE ON [INSERT DATE] SUBJECT TO THE FOLLOWING SENTENCE. IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED FOR SUCCESSIVE ADDITIONAL PERIODS OF 1 YEAR FROM ANY FUTURE EXPIRATION DATE HEREOF, WITHOUT AMENDMENT, UNLESS AT LEAST 90 DAYS PRIOR TO ANY SUCH EXPIRATION DATE WE NOTIFY YOU BY COURIER OR REGISTERED MAIL THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT FOR ANY SUCH ADDITIONAL PERIOD.

PAYMENT AGAINST CONFORMING DOCUMENTS PRESENTED UNDER THIS LETTER OF CREDIT SHALL BE MADE BY US AT OR BEFORE 5:00 P.M., NEW YORK TIME, ON THE SECOND (OR, IN THE CASE OF A PRESENTATION AFTER 10:30 A.M., NEW YORK TIME, THE THIRD) BANKING DAY AFTER PRESENTATION.

ALL PAYMENTS MADE BY US UNDER THIS LETTER OF CREDIT WILL BE MADE IN IMMEDIATELY AVAILABLE FUNDS AND WILL BE DISBURSED FROM OUR OWN FUNDS. IF REQUESTED BY YOU, PAYMENT UNDER THIS LETTER OF CREDIT MAY BE MADE BY WIRE TRANSFER OF FEDERAL RESERVE BANK OF NEW YORK FUNDS TO YOUR

ACCOUNT IN A BANK ON THE FEDERAL RESERVE WIRE SYSTEM. BENEFICIARY'S BANK [INSERT NAME AND ACCOUNT NUMBER].

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

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

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

MISCELLANEOUS

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

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

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

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

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

[NAME AND ADDRESS OF ISSUING BANK]

AUTHORIZED SIGNATURE
OF OFFICER OF ISSUING BANK

Annex A to Exhibit B - Irrevocable Standby Letter of Credit

SIGHT DRAFT

Letter of Credit No. _____

Date of Letter of Credit: _____

Date of Draft: _____

FOR VALUE RECEIVED

Pay on Demand to: THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, U.S. _____ Dollars (U.S. \$_____). The amount of this draft does not exceed the amount available to be drawn by the Beneficiary under the Letter of Credit.

Charge to account of [Name of Seller].

Drawn under [Name of Bank] Letter of Credit No. _____.

Payment by the bank pursuant to this drawing shall be made to _____, ABA Number _____, Account Number _____, Attention: _____, Re: _____.

To: [Issuing Bank]
[Address]
Attention: _____

As Beneficiary

By: _____
[Name and Title]

Annex B to Exhibit B - Irrevocable Standby Letter of Credit

PAYMENT CERTIFICATE

To:
[Issuing Bank]
[Address]

Re: Irrevocable Standby Letter of Credit No: _____ [Insert]

The undersigned, a duly authorized officer of the undersigned Beneficiary, hereby certifies to [Issuing Bank], with reference to the Irrevocable Standby Letter of Credit No: [Insert] ("Letter of Credit"), that Seller, having provided the Letter of Credit to the New York State Energy Research and Development Authority ("NYSERDA") as Security for performance under NYSERDA Agreement No. _____ ("Agreement") in the aggregate amount of \$ _____, ("Letter of Credit Amount") either [check the appropriate space]:

_____ Seller failed to provide and maintain contract security in the manner required by Article XV of Agreement, under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount.

_____ The Agreement has been terminated prior to Commercial Operation; under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount.

_____ Seller failed to provide to NYSERDA proof that the system reliability impact study was accepted by the NYISO Transmission Planning Advisory Subcommittee within the timeline prescribed by Section 13.01(e) of the Agreement.

_____ Seller failed to submit its Construction and Operations Plan to the Bureau of Ocean Energy Management within the U.S. Department of the Interior within the timeline prescribed by Section 13.01(f) of the Agreement.

_____ The Operational Installed Capacity is less than 95% of the Offer Capacity or Seller has notified NYSERDA in writing that Seller intends to build the Selected Project such that, once complete, the Operational Installed Capacity will be less than 95% of the Offer Capacity; under either which circumstance, NYSERDA is authorized to draw a percentage of the Letter of Credit Amount, such percentage will be equal to 95% of the Offer Capacity minus the actual or intended Operational Installed Capacity, divided by the Offer Capacity.

_____ Seller failed to submit its certificate application to the New York Public Service Commission within the timeline prescribed by Section 13.01(i) of the Agreement.

_____ Seller has assigned its rights under the Agreement and the assignee has not delivered to the undersigned Beneficiary a replacement letter of credit satisfying the requirements of the Agreement; under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount;

_____ the Letter of Credit is currently set to expire within thirty (30) days and the Seller has not made arrangements acceptable to the undersigned Beneficiary to provide a substitute letter of credit prior to such expiration; under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount.

The terms used herein which are not specifically defined herein are defined in the Letter of Credit or the Agreement, referenced above.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this payment Certificate as of the ____ day of _____.

As Beneficiary

By: _____
[Name and Title]

EXHIBIT C

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.⁹

(b) This Exhibit applies generally to payments due and owing by the NYSERDA to the Contractor 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 Contractor pursuant to Article IV of this Agreement.

(d) "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.

(e) "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.

(f) "Proper Invoice" means a written request for Payment that is submitted by a Contractor 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 this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

⁹ This is only a summary; the full text of Part 504 can be accessed at: <https://www.nyserda.ny.gov/About/New-York-State-Regulations>

(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.

(g)(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 Contractor 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 Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor. 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 Contractor 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 Contractor 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. Contractor 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 Article XIX of 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 Contractor 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 Contractor 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 D

SELLER'S INDUSTRY GROWTH ACTIVITY COMMITMENTS

Seller will invest [REDACTED] in workforce and community development (such amount includes the Disadvantaged Community spending described in Section 6.05(a)(iv)) using a regional collaboration strategy described in Exhibit M that will leverage local expertise and partnerships to help ensure that these investments are made in a manner that is sensitive to local needs.

EXHIBIT E

Fisheries Mitigation Plan
for
Empire Wind 1 Project
Version 2.0

Prepared Pursuant to

Agreement No. 231326, May 31, 2024

for

New York State Energy Research and Development Authority

Albany, NY

Prepared by

Empire Offshore Wind LLC

600 Washington Blvd
Stamford, CT 06901



May 2024

Communication Officers, Contact Information, Links		
Name/Title	Role	Contact Information
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Jennifer Dupont Head of Technical Environmental Affairs, Empire Wind	Interim contact for Marine Affairs,	+1 346 262 6266 jdup@equinor.com
Audrey Bard, Strategic Environmental Affairs, Empire Wind	Interim contact for F-TWG	+1 346 234 0433 abard@equinor.com
Scott Lundin Head of US Permitting and Environmental Affairs	Primary point of contact for Empire Offshore Wind LLC on environmental matters	sclu@equinor.com
Joshua Verleun Director of Permitting, Empire Wind	Primary Point of contact for Permitting	+1 845 863 9032 jver@equinor.com

Link to Project information:

Project website: www.empirewind.com

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Acronyms and Abbreviations

Acronym	Definition
AIS	Automatic Identification System
Advisory Council	Advisory Council for RODA
BOEM	Bureau of Ocean Energy Management
CBRA	Cable Burial Risk Assessment
CFR	Code of Federal Regulations
COLREGS	Convention on the International Regulations for Preventing Collisions at Sea
COP	Construction and Operations Plan
EMF	electromagnetic fields
Empire Wind	Empire Offshore Wind LLC
E-TWG	New York State Environmental Technical Working Group
FIR	Fishing Industry Representative
ft	feet
FCP	Fisheries Communications Plan
FLO	Fisheries Liaison Officer
FLOWW	Fishing Liaison with Offshore Wind and Wet Renewables Group
FMP	Fisheries Mitigation Plan
F-TWG	New York State Fisheries Technical Working Group
HDD	horizontal directional drilling
IHA	Incidental Harassment Authorization
LNM	Local Notice to Mariners
m	meters
NEFMC	New England Fisheries Management Council
NMFS	NOAA's National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
Normandeau	Normandeau Associates
NOS	NOAA National Centers for Coastal Ocean Science
NYSDEC	New York State Department of Environmental Conservation
NYSERDA	New York State Energy Research and Development Authority
OFLR	Offshore Fishery Liaison Officer
O&M	Operations and maintenance
OSRP	Oil Spill Response Plan
Project	Empire Wind 1
PVI	Plan View Imaging
QA/QC	quality assurance and quality control
RODA	Responsible Offshore Development Alliance
ROSA	Responsible Offshore Science Alliance
SAP	Site Assessment Plan
SPI	Sediment Profile Imaging
USCG	United States Coast Guard
USFWS	U.S. Fish and Wildlife Service

1 Fisheries Mitigation Plan Summary

1.1 Overall philosophy and principles

This section should describe the overall philosophy and principles the developer will follow to avoid, minimize, restore, and off-set potential fisheries impacts.

- Empire Offshore Wind LLC’s (“Empire Wind”) approach and philosophy to project development is premised on the belief that the fishing industry and offshore wind energy developments can share ocean resources. Empire Wind believes that that impacts to fisheries can be minimized by carefully evaluating existing uses of the lease area, avoiding impacts where feasible, or reducing impacts through mitigation.
- Empire Wind’s approach to fisheries mitigation is founded upon the fisheries mitigation hierarchy. More specifically, this approach means that we anticipate and avoid impacts on fisheries resource and fishermen; minimize impacts where avoidance is not possible; and take steps to offset any significant residual adverse impacts that are predicted to remain.
- Empire Wind believes that Empire Wind 1 (“EW1” or the “Project”) can be developed in a manner that minimizes disruption to the natural environment, natural resources, and existing uses of the Lease Area. Empire Wind believes that a successful coexistence strategy requires open and regular communication between the Empire Wind Project team and the fishing industry, starting with the development and survey phase, and continuing through permitting, construction, operation, and decommissioning of the wind farm.
- Empire Wind does not intend to restrict or apply for broad-based restrictions on fishing activities within the operational wind farm. To the extent that any restrictions are necessary, these may be limited to standard safety zones during the construction phase, and operational safety zones around manned or sensitive offshore platforms or access points.
- Empire Wind recognizes the importance of adaptive management and will continue to evolve its procedures for the evaluation and mitigation of fisheries resources.
 - For example, the Plan described herein is an update to the details submitted by Empire Wind 1 as part of ORECRFP18-1 that was reviewed and commented on by the New York State Energy Research and Development Authority (“NYSERDA”), and subsequently presented to the Fisheries Technical Working Group (“F-TWG”) on November 20, 2019.

1.2 Overall approach to incorporating data and stakeholder feedback

This section should describe how the developer will use research, data, and stakeholder feedback to update the FMP and support decision-making throughout the life cycle of the project (pre-construction, surveys, site design, construction, operations, and decommissioning).

- Mitigation measures will be identified and developed with relevant fisheries stakeholders through an iterative process of project design, including site selection, cable routing, timing of works, and consideration of construction and operations methods.
- Empire Wind has already taken the following steps to minimize potential impacts:
 - Modifying survey schedules and locations in survey planning, and in real-time by adaptive management of survey locations to avoid areas with active and/or seasonal fishing;
 - Early spatial planning incorporating data and feedback, and real-time adaptive management during survey data acquisition, to avoid high use, high value, and high sensitivity fisheries areas in planning the export cable routes;
 - Establishing a fisheries communications and outreach strategy to effectively engage with and solicit input from a wide range of fishers and stakeholders in multiple regions; and

- Applying data and fisheries feedback in early spatial planning for the Project, including setting “Layout Rules” for the wind farm layouts that aim to minimize impacts on fishing and facilitate continued safe access to traditional fishing grounds. Empire Wind will continue to seek consultation and coordinate with relevant stakeholders.
- Empire Wind will review existing research and data and seek input from stakeholders regarding data gaps to inform decisions made throughout the Project life cycle.
- Empire Wind will review and seek input from stakeholders on proposed and conducted survey rationales and methodologies as well as design, construction and operation, and decommissioning plans for the Project.
- Pre- and post-construction monitoring will and has been designed to improve the understanding of the impacts of offshore wind energy development and operations on fisheries.

1.3 Existing guidance and best practices that will be followed

This section should present a list of existing guidance documents, publications, tools, and/or plans that will be followed to support the FMP. Include links, if available, for all references.

- Empire Offshore Wind Fisheries Communications Plan (“FCP”) which provides an overview of Empire Wind’s overall approach to offshore wind development and consideration of fisheries resources; the principles of which have been adopted for the Empire Wind. The FCP can be found on the Project website at www.empirewind.com.
- To achieve the objective of co-existence and cooperation, the Empire Wind Projects have been and will continue to follow industry best practices, including, but not limited to:
 - Development of Mitigation Measures to Address Potential Use Conflicts between Commercial Wind Energy Lessees/Grantees and Commercial Fishermen on the Atlantic Outer Continental Shelf, Bureau of Ocean Energy Management (BOEM) 2014-654;
 - Best Practice Guidance for Offshore Renewables Developments: Recommendations for Fisheries Liaison - Fishing Liaison with Offshore Wind and Wet Renewables Group (“FLOWW”), UK;
 - Fishing and Submarine Cables Working Together – published by the International Cable Protection Committee;
 - BOEM 2015 – Guidelines for Providing Information on Fisheries Social and Economic Conditions for Renewable Energy Development on the Atlantic Outer Continental Shelf Pursuant to 30 Code of Federal Regulations (“CFR”) Part 585;
 - BOEM 2013 – Guidelines for Providing Information on Fisheries for Renewable Energy Development on the Atlantic Outer Continental Shelf Pursuant to 30 CFR Part 585;
 - BOEM n.d.(a) – Previously Identified Offshore Wind Development Concerns;
 - BOEM n.d.(b) – Possible Best Management Practices and Mitigation Measures to Reduce Conflicts between Fishing and Wind Industries;
 - Hooker 2014 – Bureau of Ocean Energy Management Fishing and Offshore Energy - Best Management Practices;
 - McCann 2012 – Developing Environmental Protocols and Modelling Tools to Support Ocean Renewable Energy and Stewardship;
 - Ecology and Environment 2014 – Development of Mitigation Measures to Address Potential Use Conflicts between Commercial Wind Energy Lessees/Grantees and Commercial Fishermen on the Atlantic Outer Continental Shelf: Report on Best Management Practices and Mitigation Measures;
 - Virginia Coastal Zone Management Program 2015 – Collaborative Fisheries Planning for Virginia’s Offshore Wind Energy Area;
 - Lipsky et al. 2016 – Addressing Interactions between Fisheries and Offshore Wind Development: The Block Island Wind Farm;

- Moura et al. 2015 – Options for Cooperation between Commercial Fishing and Offshore Wind Energy Industries: A Review of Relevant Tools and Best Practices;
 - Gray et al. 2016 – Changes to fishing practices around the UK as a result of the development of offshore windfarms – Phase 1;
 - Petruny-Parker et al. 2015 – Identifying Information Needs and Approaches for Assessing Potential Impacts of Offshore Wind Farm Development on Fisheries Resources in the Northeast Region;
 - Mid-Atlantic Fishery Management Council 2014 – Offshore Wind Best Management Practices Workshop;
 - New York States Offshore Wind Master Plan: Fish & Fisheries Study, Section 6 and Appendix D (2017); and
 - Anticipated best practice guidance tools that may be developed through initiatives such as F-TWG, Environmental Technical Working Group (“E-TWG”), Responsible Offshore Development Alliance (“RODA”) Task Force, and other groups.
- Guidelines for Providing Benthic Habitat Survey Information for Renewable Energy Development on the Atlantic Outer Continental Shelf (Benthic Guidelines; BOEM 2013a)
 - Experience gained from collaborating with the fishing industry in Equinor’s offshore wind energy developments in Europe.
 - The application of lessons learned from the US as the offshore wind industry develops.

2 Communications and Collaboration Approach

2.1 Overview and communication plan objectives

This section should provide an overview of the communication plan and objectives and its importance in fisheries mitigation.

- Transparency is a core value and cornerstone of the Empire Wind Project’s approach to fisheries liaison and communications. Regular, open consultation is key to ensuring that all parties are well informed of offshore activities and Project updates, and to provide meaningful input in design and mitigation options.
- Empire Wind understands that effective, clear, and inclusive communication is required to ensure as many affected stakeholders as possible can be reached.
- Empire Wind intends that its fisheries outreach will be as inclusive as possible. This includes engagement with fisheries stakeholders through Fishing Industry Representatives (“FIR”) and/or groups such as F-TWG as well as engaging with organizations or individual fishers not represented in these groups.
- Empire Wind will seek methods and processes to allow for a two-way flow of information between key stakeholders and developers, highlighting how feedback informs their decision making.
- Empire Wind will provide updates to the fishing industry stakeholders in an appropriate manner that is easily accessed and widely distributed.
- Empire Wind will seek collaboration with the fishing industry to use technical applications to enhance communication and coordination for all on-water activities.

Further information on out stakeholder engagement with the fisheries community can be found in the Stakeholder Engagement Plan.

2.2 Communication officers/positions, responsibilities, and contact information

This section will provide a list of communication officers, their role, and name and contact information. The list should provide stakeholders with an understanding of who should be called for a particular issue or question. It should also include links to the project website so readers know where to find additional information.

Table 2-1 Communication Officers, Contact Information, Links

Name/Title	Role/Responsibilities	Contact Information
Elizabeth Marchetti; Fisheries Liaison Officer Empire Wind	<ul style="list-style-type: none"> • Primary contact with Empire Wind Management Team on fisheries matters • Representative on New York F-TWG, Massachusetts Fisheries Working Group, and other working groups : ACP Fisheries Subcommittee and ACP NYB Fisheries Working Group. • Point of contact between Project and fishing fleets • Maintain database of fisheries interactions • Arrange meetings and disseminate Project information • Consult with FIRs (see below) • Monitor fishing activity during surveys and for assessments • Attendance at Fisheries Council meetings • Fisheries data collection and supporting on impact assessments and identification of appropriate mitigation • Provision of Offshore Fishery Liaison Officers (“OFLRs”) and scout vessels during surveys and construction activities. 	+1 401 954 2902 emarc@equinor.com
Fishing Industry Representatives (“FIRs”)	<ul style="list-style-type: none"> • Essential contacts within fishing community to represent/relay views of majority of fishermen • Main point of contact for Fisheries Liaison Officer (“FLO”) • Identify individuals/groups to provide feedback on specific topics • Assist in distribution of information such as project updates and developments, meeting notices, offshore installation/construction schedules 	As above
Offshore Fisheries Liaison Officer (“OFLR”), representing Empire Wind	<ul style="list-style-type: none"> • Present onboard vessels working on behalf of Empire Wind, for example survey and construction vessels • Maintain daily contact with and keep records of fishing vessels • Keep masters and watch officers informed of fishing vessels or fishing gear in the area • Outreach to fishing vessels • Ad-hoc assistance to wind farm-related vessel officers to support co-existence, including ensuring the principles of the Fisheries Mitigation Plan (“FMP”) are adhered to offshore 	Contact details for contacting OFLRs vessel to vessel at sea will be distributed via email notification on Survey Updates Empire Wind FLOs will be the primary point of contact for inquiries related to survey activity (see above).
Jennifer Dupont, Head of Technical Environmental Affairs Empire Wind	<ul style="list-style-type: none"> • Interim support for project with fisheries management, maritime law rescue and port state control issues and will serve as a primary point of contact between the Project and the maritime transportation sector. • Supports FL with fisheries issues and engagements. 	+1 346 262 6266 jdup@equinor.com

2.3 Identification of fishing industry stakeholders

This section should describe the process by which stakeholders relevant to fisheries and the fishing industry will

be identified and classified by stakeholder group.

- Effective consultation is essential for sharing information and soliciting feedback. Effective consultation is facilitated with the establishment of a comprehensive contact database for local and regional fisheries associations, societies, groups, individual fishermen, and the various industry organizations. This database is maintained and regularly updated by the FLO in conjunction with Empire Wind’s key Project team members.
- Members of the commercial and recreational fishing communities are identified through various channels and include, but are not limited to:
 - Contacting fishing industry leaders known through the combined FLOs, and industry experience;
 - Contacting fishing industry association leaders;
 - Attending Fishery Management Council meetings;
 - Attending meetings related to offshore wind and fisheries interactions;
 - Manning stands/booths at commercial and recreational fishing forums;
 - Recommendations from state and federal fisheries staff;
 - Fisheries Management Council Advisory Panel lists;
 - Public comments and documents;
 - Word of mouth from the fishing community;
 - Automatic Identification System (“AIS”) monitoring including ship identification;
 - Fishing vessels identified offshore during surveys by the OFLR;
 - National Oceanic and Atmospheric Administration’s (“NOAA”) National Marine Fisheries Service (“NMFS”) permit holder lists;
 - Dock/Port visits; and
 - Fisheries contacts information referenced in NYSERDA’s New York State Offshore Wind Master Plan Fish and Fisheries Study (NYSERDA 2017; Appendix J).

2.4 Participation in stakeholder and technical working groups

2.4.1 Communication with F-TWG

This should describe the communication and collaboration approach with members of the F-TWG and consultations.

- Empire Wind has and will continue to dedicate Project-specific technical resources to the F-TWG.
- Empire Wind has routinely worked with and will continue to attend future F-TWG meetings and sponsored conferences.
- Empire Wind will continue to participate in the F-TWG, represented by the FLO (see contacts in Table 2-1).
- Empire Wind will continue to present all aspects of the Empire Wind FMP to the F-TWG during dedicated workshops at appropriate timing intervals to ensure the goals of the FMP are met and the FMP is evolved to reflect feedback. For example, Empire Wind provided FMP updates to the F-TWG on September 20, 2022 and December 1, 2022 which was instrumental in providing feedback and input to the development of the Empire Wind Fishery and Benthic Monitoring Plan.
- In addition to working with the F-TWG, Empire Wind will proactively engage with the fishing industry not represented on F-TWG. This may be via industry groups such as RODA, other FIRs, or with individual fishing organizations or fishers.

2.4.2 Communication with other New York State agencies

This should describe communication with New York State agencies during each phase of the project. Empire Wind is committed to continuing consultation with New York state agencies throughout the Empire Wind Project development process. This includes:

- The Article VII Certificate included a Joint Proposal that was signed by several New York State agencies, including New York State Department of Public Service (“NYSDPS”), New York State Department of Environmental Conservation (“NYSDEC”), New York Department of State (“NYSDOS”), and New York State Department of Agriculture and Markets following extensive settlement negotiations with these agencies occurring approximately every two weeks spanning more than a year.
- The Joint Proposal signatory state agencies have also been, and will continue to be, reviewers of the Article VII Environmental Management & Construction Plan (“EM&CP”) submissions, including receiving pre-submittal drafts of the several plans and providing comments on both the draft and formal submissions. In addition, EW1 has been in frequent consultation with NYSDEC on the development of a Net Conservation Benefit Plan for Atlantic and shortnose sturgeon for inclusion in EM&CP Part 2.
- Consultation on matters including the Empire Wind Project development updates and schedules, benthic and fisheries resources, fisheries outreach and coexistence.
- Site Assessment Plan (“SAP”), approved on November 21, 2018, included consultation with NYSDEC.
- Consultation on the Construction and Operations Plan (“COP”), including provision of the COP for review and feedback at the time of submission to BOEM. The state agencies include:
 - NYSDOS;
 - NYSDEC;
 - New York State Office of Parks, Recreation and Historic Preservation;
 - NYSDPS;
 - New York Office of General Services; and
 - NYSERDA.
- During construction and operation, the Article VII Certificate Conditions and the EM&CP include the need for ongoing communication and consultation with NYSDPS, NYSDEC, and NYSDOS, including direct communication with Environmental Monitors.

2.4.3 Communication with other stakeholder and working groups

This should describe any relevant participation with other stakeholder groups, such as international fisheries groups that would help inform the FMP.

- Empire Wind is participating on international fisheries groups, including the UK’s FLOWW.
- Empire Wind is participating in the E-TWG.
- Empire Wind is participating on the F-TWG
- Empire Wind is a founding member of the RODA joint industry task force.
- Empire Wind is a founding board member of the Responsible Offshore Science Alliance (“ROSA”) and participates as a member of the ROSA Advisory Council.
- Empire Wind has/is hosting webinars for fisheries open houses.
- Empire Wind’s Fisheries Liaison Officer has served as a member of the New England Fisheries Management Council (“NEFMC”) Habitat Advisory Panel.
- Empire Wind will continue to engage with federal agencies, including:

- BOEM as the lead agency to ensure a smooth permitting process and soliciting feedback on baseline data requirements;
 - NMFS in relation to development of survey plans, baseline characterization data (for example, benthic and fisheries data sources), and providing feedback on Empire Wind’s data collection efforts, strategic advice on threatened and endangered species, Incidental Harassment Authorizations (“IHAs”) for geophysical surveys, and the potential future requirements for IHAs in relation to construction activities.
 - U.S. Fish and Wildlife Service (“USFWS”);
 - U.S. Environmental Protection Agency;
 - U.S. Coast Guard (“USCG”) and U.S. Army Corps of Engineers; and
 - National Park Service
- Empire Wind will continue to engage with the public and fishing communities, which includes open houses and public hearings to address comments and questions. Empire Wind’s fisheries team has been conducting contact events with fishermen since 2018.

2.4.4 Communication and collaboration with other developers

This should describe any relevant participation and collaboration with other developers in the offshore space, with a focus on communication and collaboration with adjacent leaseholders. This may include but is not limited to shared research efforts, coordination of survey methods, or standardization of navigational and safety protocols.

- Empire Wind will continue to seek collaborative efforts with other developers particularly those in adjacent lease areas taking on similar initiatives such as fisheries research and monitoring, dissemination of project developments, electronic resources, certifications and trainings.

Other collaborating efforts include:

- Monthly Port Hours in New Bedford, MA, Point Judith MA, Montauk NY
- Informational Sessions at the New England Fishery Management Council meetings
- Collaboration with consistency with the Gear Claim and Application Process
- ACP NYB Fisheries Working Group
- ACP Fisheries Subcommittee
- NYSERDA F-TWG
- Coordination with scout/safety vessels and offshore fisheries liaison representatives
- Agreement to share PSO sightings in real time via the Mysticetus program
- Empire Wind continues to engage actively in the development of the RWSC integrated science plan and will coordinate research efforts through the RWSC to ensure that priority regional studies are addressed and that data/results are made available for broad regional application/use.

2.5 Communication methods and tools

2.5.1 Methods by phase

This section should describe the communication and outreach methods and tools that will be employed for each stakeholder group during each phase of the project.

Table 2-2 Proposed Outreach Methods and Tools

Proposed Outreach Methods/Tools	Phase*			
	1	2	3	4
Contact with FIRs	X	X	X	X
Contact with fisheries associations	X	X	X	X
Directly from the FLO to individual fishermen not represented by an FIR, but identified on the FLO’s database	X	X	X	X
USCG Notice to Mariners	X	X	X	X
Electronic email distribution to commercial fishing permit holders (NOAA or state agencies)	X	X	X	X
Empire Wind’s website- “Fisheries” page	X	X	X	X
Offshore Wind-Fisheries-specific websites for disseminating information, for example F-TWG	X	X	X	X
Local harbor masters	X	X	X	X
State Fisheries mailing lists	X	X	X	X
3D Simulation Tool demonstrations (provides perspective on turbine layouts, spacing, which facilitates discussions on ability to fish and transit between turbines)	X	X		
Survey flyers / Notification Flyers (includes information related to surveys, construction or maintenance schedules and activities, contact information and requests for feedback)	X	X	X	X
Fisheries specific newsletters (includes project overview, schedules, meetings; requests for information; contact information and other information)	X	X	X	X
Presentations or networking at fishing conferences and exhibitions	X	X	X	X
Notices in fishing news publications	X	X	X	X
<i>*Phase: 1: Survey/Design; 2: Construction; 3: Operation; 4: Decommission</i>				

2.5.2 Communication with vessels

This section should describe communication methods/tools with vessels actively fishing in areas in or adjacent to the Project area during site assessment and construction activities and facilitate proper notification to vessels and resource managers.

- Notification of upcoming site assessment and/or construction activities via various sources, including Survey Flyers, Local Notices to Mariners (“LNMs”), email notifications, details on Project-specific webpages, and relevant fisheries web pages.
- To avoid fisheries conflicts, to the greatest extent practicable Empire Wind will seek to employ a fisherman (“OFLR”) or other experienced FIR to be onboard vessels during key time/activities where potential conflicts could be greatest.
- The OFLR will be responsible for monitoring the presence of fishing vessels and/or fishing gear in or around locations of site assessments and/or construction activity.
- The OFLR will also be responsible for communications with vessels at sea and for relaying information back to the FLO.
- The FLO will be responsible for engaging with fisheries managers, fleet managers, FIRs, and individual fishermen prior to and during site assessment and/or construction activity.
- The FLO will monitor AIS in real-time to identify fishing activity (for those fishing vessels carrying AIS) in or around locations of sites assessment and/or construction activity.
- Where appropriate, Scout Vessels acting on behalf of Empire Wind will monitor for the presence of static fishing gear, relay the information to site assessment/construction vessels/OFLRs, and the FLO.

3 Monitoring and Research Pre-, During, and Post-Construction

3.1 Identification of scope of monitoring activities/studies

This section should provide an overview of the anticipated monitoring activities, including how the specific scope of monitoring activities will be identified and what types of scientific questions will be addressed.

- Monitoring methods and scientific designs will meet the highest scientific standards.
- To the greatest extent practicable, fisheries and related research will be performed onboard commercial and recreational fishing vessels. These vessels will meet all appropriate regulatory safety and scientific standards prior to the beginning of any monitoring activity.
- Monitoring plans for the Empire Wind Project have been developed. Baseline data characterization and monitoring is ongoing and will be conducted in accordance with best practices, including BOEM guidance as well as consideration of recommendations for further research from groups such as F-TWG, E-TWG, RODA, and ROSA.
- Monitoring methods and scientific designs will meet the highest scientific standards and should follow guidance mentioned in the Offshore Wind Project Monitoring Framework and Guidelines developed by ROSA.

3.2 Baseline data and characterization approach

This section should describe how baseline data will be established on the spatial and temporal presence of fish and invertebrates in the proposed area of the Project at multiple life history stages included egg, larval, juvenile, adult, and spawning stages, as well as associated fish and invertebrate habitats.

3.2.1 Existing literature and data of benthic and fisheries resources

Describe existing literature and datasets that are available for baseline characterization.

- Public data sources suitable for characterizing benthic habitat and fisheries resources in the relevant area, including evaluation of NYSERDA’s Master Plan Fish and Fisheries Study (2017; Appendix J).
- NOAA National Centers for Coastal Ocean Science and BOEM Comprehensive Seafloor Substrate Mapping and Model Validation in the Atlantic (2019).
- Estuarine Living Marine Resource database (NOAA 2000) provide descriptions of spatial and temporal distributions of species (by life stage) in Hudson River/Raritan Bay and the Great South Bay; however, the database is not updated regularly.
- Use of fisheries effort data as a proxy for fish species (see 3.2.3).

3.2.2 Data collected of benthic and fisheries resources

This section should describe survey activities undertaken or that will be undertaken by the developer that will inform the baseline characterization of benthic and fisheries resources.

- NOAA National Centers for Coastal Ocean Science (“NOS”) and BOEM Comprehensive Seafloor Substrate Mapping and Model Validation in the Atlantic research/survey collected sediment grab samples at 400 locations in the lease area, as well as bathymetric data and opportunistic fisheries data.
 - Status: Complete
- Empire Wind commissioned benthic sampling by Gardline Environmental in 2018, covering the entire Lease Area and building on previous comprehensive benthic surveys carried out by NOAA’s NOS. These surveys were conducted at a total of 67 sample stations, and included grab samples, drop down digital video and stills imagery. Grab samples were analyzed for sediment grain size distribution and macro faunal analysis. This report has been made publicly available for download from the Empire Wind website: <https://www.empirewind.com/wp-content/uploads/2022/04/2018-sap-benthic-survey-report.pdf>.
 - Status: Complete

- Empire Wind commissioned benthic sampling by Inspire Environmental in 2019, covering proposed potential export cable routes for the Lease Area, including the proposed Gowanus export cable route for the Empire Wind 1 Project. Sampling included Sediment Profile Imaging (“SPI”) and Plan View Imaging (“PVI”) at 157 sample stations, with 15 reference stations and sediment grab samples for sediment grain size analysis and macrofaunal analysis for verification. This report has been made publicly available for download from the Empire Wind website: v.
 - Status: Complete
- Geophysical, benthic habitat (through geophysical interpretation), and geotechnical surveys were conducted from March 2018 to November 2018 across the entire Lease Area and export cable corridors, with additional geophysical and geotechnical surveys carried out in 2019 to fill in data gaps and cover areas from landfall to the 65-foot (“ft”) (20-meter (“m”)) depth contour.
 - Status: Complete
- With the site specific and existing benthic data, and the existing fisheries data, there is sufficient data for the purpose of the COP impact assessments, spatial planning, and/or mitigation.
- Empire Wind will consult with E-TWG, F-TWG, ROSA, and the fishing industry, including fisheries scientists and managers, on requirements for further surveys for targeted fisheries monitoring and research.

3.2.3 Existing literature and data of the fishing industry

This section should describe the existing literature and data that are available for baseline characterization of the commercial and recreational fishing industry.

The key data sources referenced for the purpose of understanding the fisheries use baseline are summarized below and include, but are not limited, to the following:

- BOEM’s 2017 Study entitled, Socio-Economic Impact of Outer Continental Shelf Wind Energy Development on Fisheries in the U.S. Atlantic;
- New York State’s Master Plan Fish and Fisheries Study (2017);
- State by State analyses of public, commercial fisheries statistics as published by the NOAA Office of Science and Technology;
- NOAA Fisheries Marine Recreational Information Program data on recreational fishing;
- Rhode Island Department of Environmental Management - Division of Marine Fisheries’ paper entitled, Spatiotemporal and economic analysis of vessel monitoring system data within wind energy areas in the greater North Atlantic;
- The Mid-Atlantic Regional Ocean Council Data Portal;
- The BOEM & NOAA Marine Cadaster National Viewer for geospatial data; and
- The Northeast Regional Ocean Council’s spatial data portal.
- A full description of the data sources to inform the baseline will be presented in the Lease OCS-A 0512 COP, which includes the Empire Wind Project.

3.2.4 Data collected by the Developer or the fishing industry

This section should describe data collected, or will be collected, to support baseline characterization.

- Using long term purchased AIS datasets, real-time AIS data, and collecting AIS in the field with AIS receivers on Empire Wind survey vessels (noting not all fishing vessels carry AIS).

- Providing nautical charts to recreational and commercial fishermen and asking them to mark fished areas and hang ups. Charts included Long Range Navigation to help aid positioning.
- Requesting navigation plotter/logger data of tows, which have been provided by a number of trawlers and used for planning purposes.
- General discussions with fishermen.
- Using fisheries resource baseline and in particular commercial species, as a proxy to areas that are or may be fished.
- Using Vessel Monitoring System data.
- Visual and radar observations in the field, conducted by the OFLR since March 2018, including those fishing vessels not carrying AIS.
- Observations from the Empire Wind digital aerial avian surveys, where vessel images were an opportunistic data point.

3.3 Monitor for potential impacts during each phase

This section should describe how potential impacts will be monitored on these types of life history stages during each phase of physical work for the Project (site assessment, construction, operation, and decommissioning) to inform mitigation planning for later phases of the Project as well as for future Projects.

- As part of its Article VII commitments, Empire Wind has prepared the following plans related to marine and fisheries resources, as contained in the EM&CP:
 - Navigation Safety Plan (Appendix L EM&CP Part 2)
 - Offshore Spill Prevention, Control, and Countermeasures Plan (Appendix M EM&CP Part 2)
 - Offshore Hazardous Waste and Petroleum Work Plan (Appendix N EM&CP Part 2)
 - Suspended Sediment and Water Quality Monitoring Plan (Appendix R EM&CP Part 2)
 - Dredge Management Plan (Appendix W EM&CP Part 2)
 - Atlantic and Shortnose Sturgeon Avoidance, Monitoring, and Impact Minimization Plan (Appendix X EM&CP Part 2)
 - Mariner Notification and Public Input Process (Appendix AA EM&CP Part 2)
 - Fisheries and Benthic Monitoring Plan (Appendix BB EM&CP Part 2)
 - Fisheries Management Plan (Appendix CC EM&CP Part 2)
 - AC Magnetic Field Study Plan (Appendix DD EM&CP Part 2)
 - Operations and Maintenance Plan (Appendix EE EM&CP Part 2)
 - Net Conservation Benefit Plan (Appendix FF EM&CP Part 2)
- Empire Wind acknowledges that ongoing research and monitoring at the Project site and wider regional scale is important to refine the understanding of impacts, potential mitigation options, and for future planning purposes, including facilitating the responsible leasing and development of future offshore wind energy areas within the New York Bight.
- Empire Wind acknowledges that ongoing research and monitoring at the lease area and wider regional scale is important to refine the understanding of impacts, potential mitigation options, and for future planning purposes, including facilitating the responsible leasing and development of future offshore wind energy areas within the Northeast and Mid-Atlantic Ocean.
- Empire Wind understands that from the outset, any research and monitoring to assess changes and impacts should be statistically robust. However, for some biological monitoring, this level of robustness to adequately detect

change as a direct result of an offshore wind farm is not always possible as many outside factors can influence these variations with much greater significance than the factors that can be attributed to causes from offshore wind energy developments (*e.g.*, seawater temperature, nutrient levels, etc.).

- As such, Empire Wind is open to monitoring and exploring other approaches to detect and quantify change, where further monitoring is appropriate, for example, behavioral responses or changes in temporal or spatial distribution of biological resources or fishing practices as a direct result of the offshore wind energy development. Empire Wind will work with the regulatory agencies, F-TWG, and relevant stakeholders to identify research and monitoring needs and agree on methodology.
- Empire Wind will conduct studies consistent with identified needs and priorities in collaboration with other developers and stakeholders, such as regulatory agencies, fishers, F-TWG, and other fisheries groups or initiatives (*i.e.*, ROSA and the RODA Task Force).
- Potential studies should be tested for statistical power prior to initiating.
- Empire Wind is in favor of developing and supporting research initiatives aimed at improving opportunities for continued and enhanced access for recreational and commercial fishing in the operational offshore wind energy developments. For example, Empire Wind is supportive of research aimed at innovative technical approaches to issues such as turbine spacing, impacts on navigation equipment, trawling equipment, safety equipment, training and/or information dissemination options.
- Ideally, specific questions and focal taxa will be chosen for the Project either based on site- specific fisheries risk assessment, or in relation to broader regional efforts to assess variation between sites and understand cumulative impacts for sensitive species.
- Outside expertise has been and will, if practicable, be consulted during study design and data analysis processes.
- Empire Wind is committed to exploring appropriate monitoring protocols, for example monitoring of potential behavioral responses or changes in spatial and temporal distribution of biological resources or fishing practices as a direct result of the offshore wind energy development.
- Monitoring and research should ideally be targeted towards interactions between offshore wind energy developments and the receptors it is being judged against.
- Monitoring has used and will, to the extent practicable, use appropriate study designs and methodologies to effectively analyze risk prior to construction and evaluate impacts during construction and operation by testing hypotheses and helping to assure statistical power for meaningful data analysis.

3.4 Assess and quantify changes to fishery resources

This section should describe how changes to fisheries resources will be quantified using statistically sound methods

- Since June 2023, Empire Wind has commenced fishery and benthic preconstruction monitoring of the Empire Wind lease area and proposed export cable routes. The monitoring plan (insert reference or link here) outlines the sampling procedures, methodology, and data analysis and management that seeks to measure abundance and species composition from pre-construction to construction to operation.
- The development of the monitoring plan and its methodology also used the guidance outlined in previous versions of the Empire Wind Fishery Mitigation Plan which are repeated here:
 - Ideally, specific questions and focal taxa have and will be chosen for the Project either based on site-specific fisheries risk assessment, or in relation to broader regional efforts to assess variation between sites and understand cumulative impacts for sensitive species.
 - Monitoring has used and will, to the extent practicable, use appropriate study designs and methodologies to effectively analyze risk prior to construction and evaluate impacts during construction and operation by testing hypotheses and helping to assure statistical power for meaningful data analysis.

- Outside expertise has been and will, if practicable, be consulted during study design and data analysis processes. Additionally:

Detecting change in biological resources such as fisheries resources as a direct result of an offshore wind development can be challenging, as the fisheries resource may be subject to natural fluctuations in abundance and spatial and temporal distribution due to outside factors, for example oceanographic conditions. As such, any proposals for monitoring should be statistically robust and Empire Wind advocates for technical experts to conduct statistical power analyses up front in the planning process before implementing future studies.

Empire Wind will collaborate with F-TWG and E-TWG and seek input from stakeholders on monitoring requirements and methods.

Empire Wind supports collaborative research and monitoring opportunities.

- Empire Wind is committed to exploring appropriate monitoring protocols, for example monitoring of potential behavioral responses or changes in spatial and temporal distribution of biological resources as a direct result of the offshore wind energy development.
- Empire Wind is willing to explore collaborative fisheries research and monitoring initiatives, such as ROSA.

3.5 Assess potential changes to commercial and recreational fishing activities

3.5.1 Current and historical usage

This section should describe how the proposed Project area is used by commercial and recreational fisheries in the region, including current and historic usage as well as how associated transit routes will be determined.

- Current and historical use of the Empire Wind Project Area by commercial and recreational fisheries has and will continue to be determined by the means described in section 2.3.

3.5.2 Changes in usage

This section should describe how changes in commercial and recreational fishing patterns will be calculated postconstruction using statistically sound methods.

- Monitoring changes in pre- and post-construction fishing effort due to the presence of an offshore wind energy development can be challenging. Many factors dictate fishing effort within a given area on a seasonal and year by year basis which make statistically detecting “change” difficult. For example, fishing effort may be influenced by factors independent of an offshore wind farm such as quota, presence of a mobile species, market prices, fuel prices, and fisheries closures. As such, due to the complexities and the need to design a methodology that has both industry and fisheries support, Empire Wind proposes that, if required, such studies be discussed as part of the F-TWG.
- Empire Wind has consulted and will consult on potential monitoring and research with the fishing industry.
- Empire Wind is committed to exploring alternative monitoring protocols, such as behavioral responses or changes in spatial and temporal distribution of biological resources or fishing practices.
- For NYS waters, Empire Wind has established a Fisheries Studies Working Group (“FSWG”) for input on pre- and post-construction fisheries studies designed to understand the pre-construction marine fish and invertebrate condition and identify any potential post-construction impacts. The Fisheries Studies will collect data on seasonal composition, abundance, migration patterns, and/or seasonality of fish stocks common to the area of submarine export cable route. Studies may focus on bait fish (*e.g.*, Atlantic menhaden, sand lance, bay anchovy, Atlantic and blueback herring, alewife, mullet, and longfin squid), and certain other key species (*e.g.*, winter flounder, striped bass, dogfish, skates, fluke, Atlantic cod, black sea bass and tautog. Studies specifically targeting Atlantic sturgeon may be conducted if deemed appropriate by the FSWG).

- No more than six (6) months after the completion of two (2) years of post-construction Fisheries Studies data collection, a report analyzing the Fisheries Studies data (“Fisheries Studies Report”) will be compiled by the SMEs, in consultation with the FSWG members. The FSWG will meet to review the results of the Fisheries Studies Report and discuss potential mitigation measures. The Certificate Holder will consider any mitigation measures proposed by the FSWG.
- If impacts are present, Empire Wind will consider several options, including:
 - exploring whether further mitigation can be applied to reduce impacts (*e.g.*, improved access through technical solutions to fishing practices and/or navigation equipment);
 - using adaptive management by applying mitigation in the spatial planning and layouts of later phases of the Lease development; and
 - sharing the results so that they can be used in adaptive management on a wider scale, for development of future lease areas in the Northeast and Mid-Atlantic Ocean and wider offshore wind energy space.

3.6 Addressing data gaps

This section should describe how data gaps will be addressed.

- Empire Wind works with stakeholders, including regulatory agencies, to identify data gaps to be addressed through surveys or permitting applications.
- Empire Wind is committed to working with F-TWG, regulators, and the fishing community to establish if fisheries data gaps exist, the potential data sources and/or studies that can better inform these gaps or impacts, and to agree on methodologies for conducting meaningful studies.

3.7 Data availability

This section should describe how fisheries data will be made available in accordance with Section 2.2.8 of the RFP.

- Empire Wind will make non-proprietary environmental and fisheries data publicly available in a format and manner best suited for efficient distribution.
- The following studies and reports are available to the public as part of the COP on BOEM’s website¹⁰:
 - Benthic Resources Characterization Reports
 - Essential Fish Habitat Assessment
 - Offshore Electric and Magnetic Field Assessment
 - Onshore Electric and Magnetic Field Assessment
 - Underwater Acoustic Assessment
 - Sediment Transport Analysis
 - USFWS Information for Planning and Consultation Report and NYSDEC Natural Heritage Response Letters
 - Conceptual Project Design Drawings
 - Oil Spill Response Plan
 - Coastal Zone Management Consistency Statements
 - Summary of Agency and Stakeholder Engagement

¹⁰ <https://www.boem.gov/renewable-energy/state-activities/empire-wind-construction-and-operations-plan>
FMP - Empire Offshore Wind LLC, May 2024

- Empire Wind’s benthic survey reports are provided as part of the COP Appendix T, which is publicly available on BOEM’s website¹¹. This includes:
 - 2018 benthic survey report covering the SAP-related survey locations within Lease Area (benthic grab samples with grain size and macro fauna analysis, drop down video stills, habitat description). This report is also currently available on the Empire Wind webpage <https://www.empirewind.com/wp-content/uploads/2022/04/2018-sap-benthic-survey-report.pdf> ;
 - 2018 benthic survey report covering COP-related survey locations within Lease Area totaling 67 sample locations (benthic grab samples with grain size and macro fauna analysis, drop down video stills, habitat description);
 - 2019 benthic survey report covering COP-related survey locations within the proposed export cable corridors (SPI and PVI), benthic grab samples with grain size and macro fauna analysis, drop down video stills, habitat description);
 - 2020 benthic survey report covering COP-related survey locations within the proposed export cable corridors;
 - 2020/2021 benthic survey report covering COP-related survey locations associated with the EW 2 export cable corridor.
- Additional data available to the public includes:
 - 2017 to 2018 digital aerial survey images, monthly, quarterly, and annual reports of avian species, marine mammals, sea turtles and data of large bony fish assemblages as observed from the monthly digital aerial surveys carried out from November 2017 to October 2018. These data and reports are all currently available on Normandeau Associates’ (“Normandeau”) Remote Marine and Onshore Technology (“ReMOTe”) webpage;¹²
 - 2018 to 2019 digital aerial survey images, monthly and quarterly reports of large bony fish assemblages as observed from the monthly digital aerial surveys carried out from November 2018 to October 2019; and
 - Oceanographic data not deemed proprietary (*i.e.*, seawater temperature and salinity) from the Metocean Facilities deployed within the Lease Area.
- Prior to any disclosure, data made available by Empire Wind will undergo final quality assurance/quality control (“QA/QC”) checks to be performed by Empire Wind.
- Empire Wind is open to exploring additional outlets for sharing information (*e.g.*, the F- TWG webpage or other data portals), however, version control will be important.

4 Supporting Other Research

4.1 Support of collaborative research

This section should describe how opportunities for developing or investing in collaborative research with the fishing industry to collect ecological and/or fishing data will be identified and undertaken. The description must account for the need to coordinate with members of the F-TWG during data gathering and assessment.

- Empire Wind is committed to collaborate with the scientific community, F-TWG, relevant stakeholders, other offshore wind energy developers and third-party groups to conduct robust and relevant research studies that relate

¹¹ [EOW COP Appendix T Benthic Resource Characterization Reports \(boem.gov\)](https://www.boem.gov/cop-appendix-t-benthic-resource-characterization-reports)

¹² https://remote.normandeau.com/ewind_overview.php

to fisheries and offshore wind energy developments. Studies may include fishing feasibility (by technique) within operational wind farms.

- Options for research can be discussed through the F-TWG or other fisheries related initiatives, such as ROSA and the fishing industry.
- Empire Wind is and will continue to be an active member of regional science organizations. Empire Wind is a board member of the ROSA and active member of the Advisory Council.
- Additionally, Empire Wind will:
 - Consider making existing wind farm related vessels, buoys, or structures available for research opportunities where this does not materially impact existing objectives of those resources. For example, Empire Wind will consider proposals for adding additional or third-party self-contained sensors on survey vessels, construction vessels, operations and maintenance (“O&M”) vessels, wind farm structures, or wind farm related buoys and Metocean moorings.
 - Explore appropriate monitoring protocols, for example monitoring of potential behavioral responses or changes in spatial and temporal distribution of biological resources as a direct result of the offshore wind energy development.
 - Consider requests to access existing Equinor’s operating offshore wind energy developments in Europe.
- Empire Wind advocates that technical experts conduct statistical power analyses up front in the planning process before implementing any future studies. In addition, F-TWG and/or E-TWG are appropriate forums in which to discuss the development of such analyses and should be part of this process.

4.2 Handling/processing requests

This section should describe how requests for coordination with third-party supported scientists will be processed - including providing reasonably-requested Project data and access to the Project area for independent scientists examining environmental and fishery sensitivities and/or the impacts of offshore wind energy development on fish, invertebrates and fisheries for the purpose of publication in peer reviewed journals or other scientifically vigorous products.

- Empire Wind will make an effort to meet with any interested parties when contacted to discuss prospective research.

4.3 Proposed restrictions

This section should describe any restrictions on data provision or access that may be required to protect trade secrets or maintain site security.

- Empire Wind will seek to explain why identified data types are considered commercially sensitive.
- Additionally, Empire Wind will restrict access to commercially sensitive data (*e.g.*, wind resource data and operational availability estimates, geological information, etc.).

4.4 Financial commitment for third party research

This section should provide a level of financial commitment, if elected, that will be appropriated to leverage third-party environmental research funding related to fish, invertebrates and fisheries, including federal or State-supported research. Or, if elected, provide the level of commitment to a general fund for supporting third-party research into relevant fish and invertebrate communities and associated commercial and recreational fisheries and the effects of offshore wind energy development. These financial commitments are outside those identified in Section 2.2.7 of the RFP and beyond those identified to fulfill state and federal regulatory permitting requirements.

- Empire Wind will support regional monitoring of wildlife and key commercial fish stocks equivalent to the specified value of \$10,000 per MWh offer capacity. Half of this will support regional monitoring of key commercial fish stocks to better understand how offshore wind energy development is potentially altering the biomass and/or distribution of these stocks; and the other half will support regional monitoring of wildlife to better understand how offshore wind energy development effects distribution and abundance of sensitive species. These monitoring efforts may be committed via regional monitoring organizations (e.g., ROSA, Regional Wildlife Science Collaborative (“RWSC”) or similar) or independently by Empire Wind. Additional studies and financial commitments are as follows:
- Empire Wind will commit to facilitating and/or conducting at least one research study into improving coexistence, for example studies that consider understanding and/or improving fishing access to operating offshore wind farms, and at least one study related to fisheries resources in relation to offshore wind farm development.
- Empire Wind is committed to continue participating in ROSA, where Scott Lundin (Head of Environment and Permitting) sits on the Board of Directors.
- Empire Wind is committed to continue participating in the Massachusetts Fisheries and Habitat Working Groups.
- Empire Wind’s FL has served as a member of the NEFMC’s Habitat Committee Advisory Panel. The Council’s Habitat Committee is actively engaged in the development of offshore wind in the Northeast region, participating in various groups seeking to mitigate the effects of offshore wind on marine species and fisheries and helping to facilitate coordinated regional science and monitoring.
- Empire Wind has established the Empire Wind Fisheries Study Working Group to support with active monitoring in state waters along the export cable route. (This working group is in response to AVII requirements and of the Certificate of Environmental Compatibility and Public Need).

4.5 Proposed or existing commitments/collaborations

This section should describe proposed or existing commitments and collaborations with third-party researchers in support of monitoring activities and assessing impacts.

- Empire Wind has collaborated with Statue University of New York Stony Brook to attach four fish tag receiver gates to the Empire Wind 1 and 2 Metocean Facilities. The receiver gates, used primarily for detecting Atlantic sturgeon but also capable of detecting other tagged species, were part of a previously BOEM-funded study. Empire Wind has been coordinating with Stony Brook on opportunities to download and service the sensors during scheduled service for the sensors approximately every 6 months. Empire intends to explore continuing this collaboration.
- Empire Wind is collaborating with the Wildlife Conservation Society and Woods Hole Oceanographic Institute on real-time large whale detection and notification buoys in a minimum 3-year monitoring program. This includes an exhibit at the New York Aquarium concerning the program.
- Empire Wind has and will continue to contribute to ROSA.
- Empire Wind is a founding member of the RODA Task Force.
- Empire Wind is working with Inspire Environmental on the Empire Wind Fisheries and Benthic Monitoring Surveys and began conducting these surveys in which commenced in 2023. The Plan can be found online.¹³

5 Proposed Mitigation of Impacts to Benthic/Fisheries Resources

5.1 Potential impacts/risks and mitigation measures by project stage

The table below should list the potential impacts and risks to benthic/fisheries resources and proposed

¹³ <https://www.empirewind.com/environment-and-sustainability/mariners-and-fisheries/>

mitigation measures. To this end, a description of how the potential adverse impacts of infrastructure design elements (e.g., turbine spacing and layout, turbine foundation type, cable burial and protection methods, and cable crossing designs) on fishing in the proposed Project area will be considered in mitigating impacts should be included. The mitigation measures should also demonstrate that the Project area and proposed site design allows for reasonable flexibility in the site layout (e.g. orientation of turbine lines, distance between turbines, and navigation areas) to accommodate changes that may be needed in the future. The section should also describe the planned operational protocol to avoid, minimize, and mitigate impacts to fish, invertebrates and fisheries during Project construction and operation phases, such as vessel transit routes, designation and monitoring of safety zones, gear monitoring and retrieval, and communication with fishing vessels and resource managers.

Table 5-1 Potential Impacts to Benthic/Fishery Resources and Proposed Mitigation Measures

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
Physical disturbance and habitat loss, including sensitive habitats	<ul style="list-style-type: none"> • Avoid, to the extent possible, siting structures (e.g., offshore wind turbine foundations) in areas of sensitive benthic habitat. • Include NMFS in survey plan review in coordination with BOEM to address potential impacts to threatened or endangered species. • Avoid, to the extent possible, sensitive benthic habitats through the planning of routing export cable corridors. • Bury wind farm electrical cables to sufficient depth to minimize surface protection requirements that modify the existing conditions. • Apply real time measures to avoid intrusive sampling of sensitive habitats, using drop down cameras. • Appropriate and reasonable use of foundation scour protection where needed as identified in modelling. • Calculate extent of potential habitat loss as part of COP assessments and share results with F-TWG and other working groups 	X	X	X	X
Underwater noise	<ul style="list-style-type: none"> • A “soft start” will be applied at the startup of piling during pile driving. • Use of noise reducing technologies during pile driving in accordance with noise mitigation procedures provided to BOEM and NMFS. 	X	X		
Increased suspended sediment concentration and deposition	<ul style="list-style-type: none"> • Apply best management practices and timing during cable installation and decommissioning (if removal required) to minimize sediment suspension and dispersal during sensitive periods (e.g., certain spawning events). • Sediment transport modeling was completed to quantify sediment concentrations and affected areas for COP assessments, which has been shared with F-TWG. • Use of scour protection around wind turbine foundations as appropriate to reduce sediment resuspension. 		X	X	X
Exposure to accidental spills, pollution or trash from Project-related vessels and structures	<ul style="list-style-type: none"> • Apply best practices for vessel operations. • Implement an Oil Spill Response Plan (“OSRP”). 	X	X	X	X
Potential exposure to Electromagnetic Fields (EMF)	<ul style="list-style-type: none"> • Cables will be armored. • Cables will be buried to sufficient depths (for a variety of reasons), to the extent possible. • If sufficient burial is not feasible, potential for further barriers through surface cable protection. • EMF modeling and assessments were conducted. • Post construction surveys will be conducted at an appropriate interval during operations to monitor for exposed cables. 			X	
Water Quality	<ul style="list-style-type: none"> • Export cable routing will, to the extent possible, avoid existing and historic dumping grounds to avoid resuspension of materials during construction. 		X		X
Micro-siting conflicts with habitats and fishery resources	<ul style="list-style-type: none"> • Empire Wind will seek input from regulatory authorities, the fishing industry, and maritime industry to locate foundations and cable routes in the least impactful manner that is practicable. 	X			

Table 5-1 Potential Impacts to Benthic/Fishery Resources and Proposed Mitigation Measures

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<ul style="list-style-type: none"> • Empire Wind will avoid, to the extent possible, siting structures (wind turbines, offshore substations, and submarine cables) in areas of sensitive habitat, where feasible. • Empire Wind will consider the timing of construction activities, working with the fishing industry and fisheries agencies on sensitive spawning and fishing periods to actively avoid or reduce interaction with receptors, where feasible, and apply agency-required time of year restrictions for activities such as pile driving. • Micro-siting of the export cable route to further reduce potential impacts on sensitive habitats and minimize areas where burial is more challenging. 				
Temporary, alteration of the seabed and localized increases in noise and turbidity	<ul style="list-style-type: none"> • Most construction vessels will maintain position using dynamic positioning, limiting the use of anchors and jack-up features, where feasible. Any anchors or jack-up features associated with turbine installation would be placed within the previously cleared and/or disturbed area around the foundations. • Empire Wind will consider the use of appropriate measures and timing during cable installation activities to minimize sediment resuspension and dispersal in areas of known historically contaminated sediments. • Empire Wind will seek to use commercially available and technically feasible noise reducing technologies, in accordance with associated authorizations. 	X	X	X	X
Long-term changes to seabed and habitat	<ul style="list-style-type: none"> • Empire Wind will, to the extent possible, avoid sensitive benthic habitats. • Empire Wind will implement mitigation and avoidance measures to protect water quality, such as spill prevention. Specifically, Empire Wind will use appropriate measures for vessel operation and implementing an OSRP, which includes measures to prevent, detect, and contain accidental release of oil and other hazardous materials. Project personnel will be trained in accordance with relevant laws, regulations, and Project policies, as described in the OSRP. • During construction and maintenance, Empire Wind will implement an agency-reviewed OSRP. • During construction, operations, and maintenance, Empire Wind will utilize sensitive lighting schemes to minimize exposure of light, as available. • Most construction vessels will maintain position using dynamic positioning, limiting the use of anchors and jack-up features, where feasible. Any anchors or jack-up features would be placed within the previously cleared and/or disturbed area around the foundations. • Empire Wind would implement appropriate measures during HDD activities to minimize potential release of HDD fluid. To minimize an inadvertent fluid return, an Inadvertent Returns Plan would be developed and implemented for HDDs. 	X	X	X	X
EMF Impacts	<ul style="list-style-type: none"> • Empire Wind will use proper shielding to reduce EMF impacts. • Empire Wind has conducted EMF modeling and assessments. • Electrical cables will be sufficiently buried where feasible to reduce EMF effect. 		X	X	
Cable burial	<ul style="list-style-type: none"> • Empire Wind will bury export cables to an appropriate minimal depth to reduce exposure risk. If depth cannot be reached, Empire Wind will add protective materials over the cable. 		X	X	
Turbine Scour Protection	<ul style="list-style-type: none"> • Empire Wind will minimize the footprint of scour protection measures at the WTG and OSS foundations and conduct periodic inspections of scour protection performance. 			X	
Additional proposed mitigations	<ul style="list-style-type: none"> • Empire Wind will develop a monitoring program to address specific questions, identify key species of interest, and when possible, contribute to the understanding of long-term Project-specific impacts and large-scale efforts to understand cumulative impacts. 	X	X	X	X

*Phase: 1: Survey/Design; 2: Construction; 3: Operation; 4: Decommission

5.2 Coordination with F-TWG and other stakeholders

This section should describe how the developer will engage with stakeholder groups such as the F-TWG and

other regional fishermen that address stakeholder concerns related to benthic and fisheries resources. Specifically, describe the key types of information and design decisions where feedback will be solicited from stakeholders.

- Empire Wind will coordinate with the F-TWG stakeholders to address concerns and mitigate impacts to benthic/fisheries resources.
- Upon request the developer will provide a detailed, step by step breakdown of the process used to create the Project layout.
- Empire Wind has and will continue to engage in discussion on the following topics with F-TWG, E-TWG, regulators and other stakeholder groups as appropriate to solicit feedback on studies and designs:
 - Spatial planning of export cable routing;
 - Sediment transport modeling;
 - EMF modeling and assessment;
 - Project Design Envelope;
 - Project Layouts; and
 - Benthic and fisheries resource data collected and assessed as part of the COP submission.

6 Proposed Mitigation of Impacts to the Recreational and Commercial Fishing Industry

6.1 Potential impacts/risks and mitigation measures by project stage

The table below should list the potential impacts and risks to recreational and commercial fisheries and proposed mitigation measures. To this end, this section should describe how the potential adverse impacts of infrastructure design elements (e.g., turbine spacing and layout, turbine foundation type, cable burial and protection methods, and cable crossing designs) on fishing in the proposed Project area will be considered in mitigating impacts. The mitigation measures should also demonstrate that the Project area and proposed site design allows for reasonable flexibility in the site layout (e.g. orientation of turbine lines, distance between turbines, and navigation areas) to accommodate changes that may be needed in the future. The section should also describe the planned operational protocol to avoid, minimize, and mitigate impacts to fisheries during Project construction and operation phases, such as vessel transit routes, designation and monitoring of safety zones, gear monitoring and retrieval, and communication with fishing vessels and resource managers.

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
Impacts to commercial fish species	<ul style="list-style-type: none"> • See section 5.1 	X	X	X	X
Temporary displacement/loss of access to traditional fishing grounds during survey activities	<ul style="list-style-type: none"> • Empire Wind is actively avoiding areas being fished during survey activities. • Pre-survey consultation with fishing industry to determine upcoming spatial and temporal use, which is avoided by survey vessels where feasible. • Planning of export cables routes that avoid heavily fished areas, for example static gear, prior to surveying. • Timing of offshore surveys to avoid seasonal fishing where feasible. • Dissemination of information related to offshore survey activities, with contact details for further information. 	X	X	X	X

Table 6-1 Potential Impacts and Risks to Recreation and Commercial Fishing and Proposed Mitigation Measures

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<ul style="list-style-type: none"> Real-time adaptive management and monitoring of fishing activity using OFLRs, real-time AIS and consultation with the fishing community to modify survey areas of coverage as appropriate. Engagement with recreational fishermen in the field by the OFLR. 				
Temporary displacement/loss of access to traditional fishing grounds during construction phase	<ul style="list-style-type: none"> To the extent possible and reasonable, actively avoiding areas being fished during construction activities through pre-planning the timing and location of activities. Dissemination of construction scheduling information as early as possible with fishers. Use of real-time fisheries monitoring and adaptive management of construction timing and location, to the extent possible. Potential for use of construction practices such as rolling construction safety zones in consultation with the appropriate regulators, F-TWG and fishing community, to minimize overall area of temporary closed areas. 		X		
Displacement/loss of access to traditional fishing grounds during operations phase activities	<ul style="list-style-type: none"> Empire Wind does not intend to restrict or apply for broad-based restrictions on fishing activities within the operational wind farm. To the extent that any restrictions are necessary, these may be limited to standard safety zones during the construction phase, and operational safety zones around manned or sensitive offshore platforms or access points. Sufficient burial of inter-array and export cables to facilitate continued seabed penetrating fishing activity. Thoughtful spatial planning and Project design, including the application of “Layout Rules” to ensure transparency of future layouts, with flexibility to modify layouts following consultation. Layout Rules to be finalized and consulted on with F-TWG, regulators and with wider fishing industry, and as part of development of the Navigation Safety Risk Assessment. The Layout Rules have been designed to facilitate continued access to fishing grounds, with orientation of turbine rows, alignments and spacing that are sympathetic to existing practices, based on data and feedback. 			X	
Navigational safety concerns and loss of fishing gear from construction activities and the presence of structures and cables and subsequent decommissioning	<ul style="list-style-type: none"> Potential use of rolling construction safety zones. Dissemination of information to fishers on wind turbine and cable locations. Provision of wind turbine locations for inclusion on navigational charts. Intention to bury inter-array and export cables where feasible and based on Cable Burial Risk Assessment. Periodical post installation cable surveys as appropriate, with sharing of information on identified navigational risks as appropriate. 		X	X	X
Navigational safety concerns due to increased Project-related vessel traffic	<ul style="list-style-type: none"> Dissemination of information of planned construction vessel activities, timing, location, routes, vessel details, etc. Notification to fishing community of any unscheduled O&M activities. Communications plan with emergency contacts and procedures. Prescribed transit routes for offshore wind energy development construction and support vessels between ports and the offshore site. Project-related construction and support vessels to follow best practice guidance, including Convention on the International Regulations for Preventing Collisions at Sea (“COLREGS”). Project-related vessels to be made aware of final FMP and mitigation measures. 		X	X	X

Table 6-1 Potential Impacts and Risks to Recreation and Commercial Fishing and Proposed Mitigation Measures

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<ul style="list-style-type: none"> • Where appropriate and feasible, an OFLR on at least one Project-related construction and support vessel in the field during construction to aid communications. • FLO for contact by fishermen during construction, operations and decommissioning activities. • Real-time monitoring of fishing vessel activity to apply adaptive management to Project-related vessel movements. 				
Fishing gear loss	<ul style="list-style-type: none"> • Empire Wind will seek consultation with regulatory authorities and fisheries stakeholders for the development and use of a Gear Loss Prevention and Claim Procedure. • Use scout vessels to identify fixed gear in advance of Project-specific activities. • Continue implementation of a FMP throughout the construction process to alert local fishing industries to relevant construction activities through the use of in-person communications, social media, website communications, and LNMs. • Undertake cable route planning to avoid areas of high fishing activity. • Where feasible, plan the location and timing of construction activities to minimize overlap with areas or times of high activity. • Continue active engagement with the fishing industry on the timing and location of construction so that they can, where possible, elect to fish in other areas and plan accordingly. • Continue to use offshore OFLRs to facilitate communications with the fishing community. • Continue communications between FLO and fisheries on the areas of temporary construction closures, when they are re-opened, updates on schedules through email serves, flyers, websites. • Utilize a cable burial risk assessment (“CBRA”) to determine sufficient burial depth along the export cable route and, where target burial depth cannot be reached, secondary protection will be considered. • Utilize a guard vessel to alert mariners to Safety Zones and/or active construction areas where appropriate. • In the event of maintenance within the offshore environment, alert the fishing industry to the occurrence of these activities. Communication methods will include the use of FLOs, social media, website communications, and LNM. • Utilize the Layout Rules to achieve wind farm layouts, wind turbine spacing, and lines of orientation within the array that facilitate continued access to traditional fishing grounds. • Bury export and interarray cables to a target burial depth of 6 ft (1.8 m) in order to minimize the risk of snagging. • Following installation of the export and interarray cables, conduct cable burial surveys at appropriate intervals to assess if target burial depth is being maintained. • To minimize risk of anchors and fishing gear snagging the submarine export cable, route the export cable route to target areas where chances of burial are improved. • Minimize the use of concrete mattresses as surface cable protection, to the extent practicable. • Provide all submarine export cable, interarray cable, wind turbine, and offshore substation locations to NOAA for updates to nautical charts. 	X	X	X	X

Table 6-1 Potential Impacts and Risks to Recreation and Commercial Fishing and Proposed Mitigation Measures

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<ul style="list-style-type: none"> To the extent practicable and in consultation with the fishing industry, mark turbine locations and cable routes on the most common types of software used by fishermen for navigation and fishing. 				
Navigation safety concerns	<ul style="list-style-type: none"> Empire Wind will seek consultation with appropriate regulators, F-TWG and fishing community, to minimize the overall area of temporary closed areas. Highly visible marking and lighting of active construction sites. Compliance by vessels associated with the Project with international and flag state regulations including the COLREGs and the International Convention for the Safety of Life at Sea. Utilization of existing Traffic Separation Schemes, maintained channels, and transit lanes by vessels associated with the Project to comply with existing uses and management of the surrounding waterway, to the extent practicable. Marine coordination for vessels associated with the Project (<i>i.e.</i>, a central coordination hub from which all Project vessel movements will be managed, and third-party traffic will be monitored). Minimum advisory safe passing distances for cable laying vessels (where feasible). Monitoring of third-party vessel traffic by AIS. The implementation of up to a 1,640-ft (500-m) dynamic safety zone around active construction sites (including partially installed wind turbines) pending agreement with USCG. Implementation of the Layout Rules. Regular updates, including the positions of installed and partially installed structures, to the local marine community through social media, the USCG LNM, and active engagement with Maritime Association of the Port of New York and New Jersey Harbor Safety, Navigation, and Operations Committee. The potential use of buoys and/or support vessels to mark temporary working areas or potential hazards (<i>e.g.</i>, partially installed structures). Empire Wind will develop a Navigational Enhancement Plan in consultation with regulatory authorities and fisheries stakeholders. The plan may include payments to enable the acquisition of navigation equipment, the development of appropriate training for use of navigation equipment or other navigational aids, or the creation of other programs to enable fishermen to safely continue effective navigation and fishing activities to encourage project coexistence. 	X	X		
Displacement/loss of access to traditional fishing grounds during survey and construction activities	<ul style="list-style-type: none"> Empire Wind will coordinate with fishing stakeholders to determine spatial and temporal use. Empire Wind will, to the extent practicable, avoid heavily fished areas. Empire Wind is actively avoiding areas being fished during survey activities. Pre-survey consultation with fishing industry to determine upcoming spatial and temporal use, which is avoided by survey vessels where feasible. Planning of export cables routes that avoid heavily fished areas, for example static gear, prior to surveying as practicable. Timing of offshore surveys to avoid seasonal fishing where feasible. Dissemination of information related to offshore survey activities, with contact details for further information. 	X	X	X	X

Table 6-1 Potential Impacts and Risks to Recreation and Commercial Fishing and Proposed Mitigation Measures

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<ul style="list-style-type: none"> • Real-time adaptive management and monitoring of fishing activity, using OFLRs, real-time AIS, and consultation with the fishing community to modify survey areas of coverage as appropriate. • Engagement with recreational fishermen in the field by the OFLR. • To the extent possible and reasonable, actively avoiding areas being fished during construction activities through pre-planning the timing and location of activities. • Dissemination of construction scheduling information as early as possible with fishermen. • Use of real-time fisheries monitoring and adaptive management of construction timing and location, to the extent possible. • Potential for use of construction practices such as rolling construction safety zones in consultation with the appropriate regulators, F-TWG and fishing community, to minimize overall area of temporary closed areas. 				
EMF Impacts	<ul style="list-style-type: none"> • Empire Wind will use proper shielding to reduce EMF impacts. • Empire Wind has conducted EMF modeling and assessments. • Electrical cables will be armored and sufficiently buried where feasible to reduce EMF effects. 	X	X	X	X
Cable Burial	<ul style="list-style-type: none"> • Empire Wind will bury export cables to an appropriate minimal depth to reduce risk. If depth cannot be reached, Empire Wind will add protective materials over cable which allows fishing activity to occur. • Sufficient burial of inter-array and export cables to facilitate continued seabed penetrating fishing activity. • Dissemination of information to fishers on cable locations including inclusion on navigational charts. • Intention to bury inter-array and export cables based on Cable Burial Risk Assessment • Periodical post installation cable surveys as appropriate, with sharing of information on identified navigational risks as appropriate. • Completion of a Cable Installation Plan, detailing how cable installation will be managed. 	X	X	X	X
Impacts to Sensitive areas	<ul style="list-style-type: none"> • Empire Wind will collaborate with state regulatory authorities and key stakeholders to collect data and avoid sensitive areas to the extent that is reasonably practicable. • Empire Wind will, to the extent possible, avoid sensitive benthic habitats. • Empire Wind will implement mitigation and avoidance measures to protect water quality, such as spill prevention. Specifically, Empire Wind will use appropriate measures for vessel operation and implementing an OSRP, which includes measures to prevent, detect, and contain accidental release of oil and other hazardous materials. Project personnel will be trained in accordance with relevant laws, regulations, and Project policies, as described in the OSRP. • During construction and maintenance, Empire Wind will implement an agency-reviewed OSRP. • During construction, operations, and maintenance, Empire Wind will utilize sensitive lighting schemes to minimize exposure of light, as available. • Most construction vessels will maintain position using dynamic positioning, limiting the use of anchors and jack-up features, where feasible. Any anchors or jack-up features would be placed within the previously cleared and/or disturbed area around the foundations. 	X	X	X	
Turbine Scour Protection	<ul style="list-style-type: none"> • Empire Wind will seek collaboration with state and federal regulatory authorities and key stakeholders to assess the use of ecological 	X	X	X	-

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	enhancements for turbine scour protection to provide offsets from potential adverse impacts				

**Phase: 1: Survey/Design; 2: Construction; 3: Operation; 4: Decommission*

6.1.1 General approach to avoiding and mitigating fishing gear loss

This section should describe how potential loss of fishing gear due to snags on turbine structures, associated cables or cable mattresses, or related structures installed or deployed as a result of offshore wind energy development, will be minimized.

- Empire Wind will endeavor to bury export cables to sufficient to minimize exposure risk. If the “appropriate depth” cannot be reached, the developer will add protective materials over the cable which to the extent practicable also allows for fishing to occur.
- Additionally, Mitigation measures include:
 - Use of scout vessels to identify fixed gear in advance of Project-specific activities;
 - Marking & lighting of partially built structures following Private Aids to Navigations;
 - Dissemination of charted locations of partially built and installed structures to the fishing community;
 - Provision of locations of partially built structures and installed structures in digital formats that can be uploaded to typical navigation equipment, for example navigation plotters;
 - USCG LNMs;
 - Provision of locations of partially built structures and installed structures for updating NOAA Nautical Charts, as well as USCG LNM at greater frequency (*i.e.*, weekly);
 - Consultation with the fishing community with the potential to establish temporary safety exclusion zones around partially installed wind farm electrical cables;
 - Provision of safety vessels around high-risk structures;
 - Prescribed transit routes for Project-related vessels;
 - Real-time monitoring and notifications to fishing vessels;
 - Bury cables to depths below fishing gear penetration where feasible and making the position of cables available for the fishing community; Where burial is not feasible, use of cable protection where appropriate to findings of the CBRA and consultation; and
 - Avoidance of use of concrete mattresses in areas of snagging risk, where feasible.

6.1.2 Processing claims for lost fishing gear

This section should describe how the developer will approach claims of lost gear in the event of a snag that provides for a fair and timely review and appeals of the claim and appropriate compensation of impacted parties.

Per NYSERDA:

- Empire Wind will work with F-TWG and fishing community to establish the appropriate procedures in advance of the start of construction activities. When practical, the procedures will be standardized across projects, fisheries, gear types, and geographic regions.
- Additionally, Empire Wind will work with F-TWG and fishing community to establish the appropriate procedures in advance of the start of construction activities.

6.2 Coordination with F-TWG and other stakeholders

This section should describe how the developer will engage with stakeholder groups such as the F-TWG and other regional fishermen and shipping and navigation to determine Project layouts that address stakeholder concerns. Specifically, describe the key types of information and design decisions where feedback will be solicited from stakeholders. Describe how changes to environmental resources will be quantified using statistically sound methods.

- Empire Wind will coordinate with the F-TWG (in accordance with Section 12.04 of the Purchase and Sale Agreement) and stakeholders to address concerns and mitigate impacts to the fishing industry.
- Empire Wind will engage with the F-TWG, regional fishermen, and other maritime stakeholders such as maritime experts, consultants, and marine safety committees to refine Project layouts that aim to minimize impacts on existing fishing practices and facilitate ongoing access to traditional fishing grounds.
- Empire Wind will work with fisherman and other stakeholders through the developer’s dedicated fisheries staff to help address key concerns such as navigation, vessel access, and safety.
- Additionally,
 - Fisheries data and consultation feedback from the fishing industry and maritime community has resulted in the Empire Wind 1 and 2 Projects establishing Layout Rules that aim to minimize impacts on existing fishing practices and facilitate ongoing access to traditional fishing grounds. The Layout Rules also consider existing and future maritime navigation trends and Search and Rescue capabilities.
 - Empire Wind has and will continue to consult with the fishing industry on the Project’s Layout Rules and indicative layouts via F-TWG, RODA and fishing organizations.
 - Empire Wind presented the Project’s Layout Rules and some indicative layouts to facilitate feedback in a “Layouts Brochure”. Empire Wind distributed the layouts brochure directly to fisheries contacts and made the brochure publicly available on the Empire Wind webpage.¹⁴
 - Feedback from the Layouts consultations has been used to develop a potential layout for Empire Wind

7 Considerations for Subsea Cables

7.1 Mitigation strategies for subsea and overland cables

This section should describe any additional fish and fisheries mitigation strategies for proposed subsea cable routes that support the offshore wind project.

- Proposed subsea and overland cable routes are described in the Empire Wind COP, the Article VII Certificate, and EM&CP Parts 1 and 2. These documents also contain the full list of reference materials and mitigation measures. Some of these are summarized below.
- Empire Wind onshore facilities have been sited in a manner that avoids natural habitat. Almost all of the onshore portions of the Project Area consist of impervious surfaces in a developed industrial urban environment that does not include any aquatic habitats. Offshore, the project will microsite to avoid sensitive benthic habitats and will

¹⁴ <http://www.empirewind.com/fisheries>

submit a micro siting plan to BOEM and BSEE prior to seabed disturbing activities. Empire will also submit an anchoring plan, a boulder relocation plan, and a pre-lay grapnel run plan that will detail how the Empire will avoid or minimize impacts to sensitive benthic habitats.

- Empire Wind will adhere to time of year restrictions for Atlantic sturgeon and shortnose sturgeon, as detailed in Article VII Certificate Condition I2, including conducting no in-water seabed disturbing work between March 1 and June 30 and between October 1 to November 30, except as allowed in this condition.
- Empire Wind is developing a Net Conservation Benefit Plan for Atlantic and shortnose sturgeon, in consultation with NYSDEC, to establish avoidance, minimization, and mitigation measures for potential sturgeon take.
- Empire Wind has developed an Atlantic and Shortnose Sturgeon Avoidance, Monitoring, and Impact Minimization Plan for inclusion in EM&CP Part 2 that details the measures to be taken to avoid and minimize impacts to sturgeon during construction.
- Empire Wind will not construct in waters less than 20 feet in depth between December 15 and May 31 in order to avoid winter flounder spawning and overwintering.
- Empire Wind will conduct an AC Magnetic Field Study during the first six months of operation to assess potential impacts to marine species.
- Empire Wind will conduct cable monitoring throughout the life of the project, as specified in the Cable Monitoring and Management Plan, and in the ROD, to ensure that any cable exposure is identified and repaired, and appropriate notice is given to mariners and fishermen.
- Empire Wind has established a Fisheries Studies Working Group (“FSWG”) for input on pre- and post-construction fisheries studies designed to understand the pre-construction marine fish and invertebrate condition and identify any potential post-construction impacts. The Fisheries Studies will collect data on seasonal composition, abundance, migration patterns, and/or seasonality of fish stocks common to the area of submarine export cable route. Studies may focus on bait fish (e.g., Atlantic menhaden, sand lance, bay anchovy, Atlantic and blueback herring, alewife, mullet, and longfin squid), and certain other key species (e.g., winter flounder, striped bass, dogfish, skates, fluke, Atlantic cod, black sea bass and tautog. Studies specifically targeting Atlantic sturgeon may be conducted if deemed appropriate by the FSWG).
- No more than six (6) months after the completion of two (2) years of post-construction Fisheries Studies data collection, a report analyzing the Fisheries Studies data (“Fisheries Studies Report”) will be compiled by the SMEs, in consultation with the FSWG members. The FSWG will meet to review the results of the Fisheries Studies Report and discuss potential mitigation measures. The Certificate Holder will consider any mitigation measures proposed by the FSWG.
- Empire Wind has prepared a Fisheries Compensation Plan as part of the Fisheries Management Plan in EM&CP Part 2. This plan contains an overview of the claim process from commercial fisheries gear losses during all phases of the project and a reimbursement process.
- Empire Wind is conducting fisheries and benthic monitoring according to the Empire Wind to assess fisheries and benthic habitat status in the Project area pre-, during, and post-construction.
- Empire Wind will monitor indirect impacts associated with charter and recreational fishing gear lost from expected increases in fishing around WTG foundations by annually surveying at least 10 of the WTGs located closest to shore in the Lease Area.
- Empire Wind maintains a fisheries gear loss claims procedure. The fisheries gear loss claims procedure is available to all fishermen impacted by Project activities or infrastructure.
- Empire Wind will establish a Navigation Enhancement Training Program for New York State commercial and for-hire fishermen in an amount equivalent of up to \$13,000 per commercial vessel or inspected charter/party vessel and up to \$8,000 per uninspected charter/party vessel.
- The project plans to avoid the use of boomers and sparkers in HRG surveys.
- Avoidance, minimization, and mitigation measures proposed to be implemented during conceptual decommissioning are expected to be similar to those experienced during construction and operations. A full

decommissioning plan will be approved by BOEM prior to any decommissioning activities, and avoidance, minimization, and mitigation measures for decommissioning activities will be proposed at that time.

8 Project Decommissioning

8.1 Potential impacts based on available information and experience

This section should describe potential impacts to benthic/fisheries and the fishing industry from decommissioning the project, based on available information and relevant experience (if any).

- Empire Wind’s waste handling processes during decommissioning will focus on re-use or recycling, with disposal as the last option.
- Empire Wind will collaborate with regulatory authorities and key fisheries stakeholder groups to better understand the effects and potential impacts associated with decommissioning.
- Additionally,
 - At this early stage it is not possible to accurately predict impacts and appropriate mitigation from decommissioning. It can be reasonably judged that impacts from decommissioning are not expected to exceed impacts from construction.
 - Potential impacts and mitigation options will become clearer post construction and during operations, facilitated by monitoring.
 - Empire Wind will consult regulators and fisheries stakeholders to study the potential impacts of decommissioning.

8.2 Approach for developing plan and coordination with stakeholders

This section should describe how a decommissioning plan will be developed to identify and mitigate potential impacts, including coordination with fisheries stakeholders, and any elements of its contemplated decommissioning plan that can be identified at this stage.

- Empire Wind is developing decommissioning plans for work within NYS waters as part of the EM&CP. EM&CP Part 2 contains the draft Decommissioning Plan for submarine aspects of the project.
- As part of decommissioning within NYS waters, the Certificate Holder will survey and use best efforts to remove installed cable protection measures that are within 2 feet of the seabed surface.
- Empire Wind will decommission the Project in accordance with all necessary laws and regulations and generate a detailed Project-specific decommissioning plan.
- Empire Wind will seek input on the detailed Project-specific decommissioning plan from regulatory agencies, fisheries and marine stakeholders, and local communities.
- Empire Wind will use “lessons learned” from the construction and operation activities and apply them when appropriate to the decommissioning plan.
- Additionally,
 - The process for development of a decommissioning plan will be discussed further with E- TWG and F- TWG and relevant regulators and stakeholders.
 - Lessons learned from the construction and operations activities will be applied to the decommissioning plan at the appropriate time.
 - Empire Wind will consult with the fishing industry on the Empire Wind decommissioning plans at the appropriate time, closer to the decommissioning activities.

9 Fisheries Compensation Plan

9.1 Consideration of compensation plan

This section should describe how it will determine instances where all reasonable attempts to avoid and minimize Project impacts, or restoration to predevelopment conditions are not feasible and some type of fisheries compensation plan is warranted.

- Empire Wind considers that the primary focus should be on understanding the full extent of potential impacts and what avoidance measures or effective mitigation can be applied to address them from the outset.
- In addition to avoidance, minimization, and mitigation measures otherwise specified in New York State Department of State's ("NYSDOS") decision letters for the Project, Empire has agreed to work with other offshore wind developers, federal and state regulators to establish a Compensatory Mitigation Fund to compensate fishermen for verifiable claims of negative impacts of a significant nature, including potential economic losses due to the construction, operation, or decommissioning of the Project.
- Since June 2021, NYSERDA has been working on a multi-state compensatory mitigation initiative that includes the States of New Jersey, New York, Massachusetts, Connecticut, Rhode Island, New Hampshire, Maine, Delaware, Maryland, Virginia, and North Carolina and has solicited comments from the states on a framework for a Regional Fisheries Compensatory Mitigation Fund. The states, in turn, have encouraged and assisted BOEM in developing a standardized fisheries mitigation guidance that will encourage developers to compensate fishermen who incur damages from unavoidable impacts of offshore wind projects as a mitigation measure for their projects.
- Empire Wind supports these regional efforts and will continue to participate and cooperate fully with BOEM, NYSERDA, and the 11 coastal states initiative. In contributing to the Compensatory Mitigation Fund, Empire Wind has agreed to utilize and contribute to the Regional Fund outlined above for fisheries mitigation claims once it is established.
- If the Fund fails to be established, Empire agrees to utilize and contribute to a compensatory mitigation fund acceptable to NYSDOS, through which impacted New York State fishermen are eligible to submit compensation claims to offset demonstrated impacts from the Projects. This will follow guidance being developed as part of BOEM's 2022 Draft Fisheries Mitigation Guidance <https://www.boem.gov/renewable-energy/reducing-or-avoiding-impacts-offshorewind-energy-fisheries>.

9.2 Approach to developing compensation plan

9.2.1 Coordination with stakeholders

This section should describe how a fisheries compensation plan was, or will be developed; how the developer will coordinate with the F-TWG and other entities in the design or review of the fisheries compensation plan.

- As per section 9.1.

9.2.2 Third-party administration

This section should describe how the compensation plan will be administered by a nongovernmental third-party to provide reasonable and fair compensation for impacts that cannot be sufficiently addressed through other means.

- Noting that the principles around compensation need to be addressed, Empire Wind supports a process for identifying recipients and values that is open to third-party scrutiny and may be managed by an independent third-party (under confidential agreements where sensitive information exists).

10 Additional Considerations

10.1 Additional mitigation strategies and FMP refinement

This section should describe any additional mitigation strategies not otherwise described herein that would improve the Plan and reduce impacts on the fishing community. In addition, describe how the FMP will be updated and refined based on additional information and stakeholder feedback.

- Empire Wind will engage with the F-TWG and fisheries organizations and use feedback in these discussions to evolve the FMP.
- Empire Wind will support collaborative research on potential mitigation strategies, with other developers, agencies and stakeholders.
- Additionally,
 - Empire Wind will continuously evaluate and evolve this FMP, including addressing additional guidance and information, so it remains complete and sufficient.
 - Empire Wind will engage with the F-TWG and fisheries organizations and use feedback in these discussions to evolve the FMP.

10.2 Process for updating the FMP

This section should describe how feedback from fisheries stakeholders, F-TWG, and other agencies and working groups will be incorporated and updated in the FMP.

- The developer will update the FMP to reflect the results of iterative exchanges with members of the F-TWG and other relevant stakeholders.
- Additionally:
 - Currently Empire Wind is working with the F-TWG to establish a process for updating the Empire Wind FMP, where formal updates will likely occur after major Project milestones (e.g., a Project Notice of Intent).
 - Empire Wind will continuously evaluate and evolve this FMP so that all the components of the FMP are complete and sufficient.
 - Empire Wind expects that additional guidance and information will become available throughout the planning and regulatory process and as such will continue to consider its relevance to the FMP at the appropriate intervals.

Exhibit F

Environmental Mitigation Plan
for
Empire Wind 1 Project
Version 2.0

Prepared Pursuant to

Agreement No. 231326, date May 31, 2024

for

New York State Energy Research and Development Authority

Albany, NY

Prepared by

Empire Offshore Wind LLC

600 Washington Blvd
Stamford, CT 06901



May 2024

Communication Officers, Contact Information, Links		
Name/Title	Role	Contact Information
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Jennifer Dupont Head of Technical Environmental Affairs	New York State Environmental Technical Working Group (E-TWG) Representative (primary) and point of contact for Empire Offshore Wind LLC on environmental matters.	jdup@equinor.com
Julia Lewis Head of Permitting	Point of contact for Equinor Wind US on portfolio-level permitting matters.	julew@equinor.com
Joshua Verleun Director of Permitting, Empire Wind	Point of contact for Empire Offshore Wind LLC on permitting matters.	jver@equinor.com

Links to Project information:

Project website: www.empirewind.com

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Acronyms and Abbreviations

Acronym	Definition
ABPCMP	Avian and Bat Post-Construction Monitoring Plan
ADLS	Aircraft Detection Lighting System
ANSI	American National Standards Institute
BOEM	Bureau of Ocean Energy Management
BRI	Biodiversity Research Institute
CBRA	Cable Burial Risk Assessment
COP	Construction and Operations Plan
CTV	Crew Transfer Vessels
DEPONS	Disturbance Effect on the Harbour Porpoise in the North Sea
DMA	Dynamic Management Area
EFH	essential fish habitat
EMF	electromagnetic fields
EMP	Environmental Mitigation Plan for the Empire Wind Project
Empire Wind	Empire Offshore Wind LLC
ENGOS	environmental nongovernmental organizations
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act of 1973
E-TWG	New York State Environmental Technical Working Group
FAA	Federal Aviation Administration
Final EIS	Empire Offshore Wind Final Environmental Impact Statement, September 2023, BOEM
FR	Federal Register
Framework	Empire Wind Offshore Wind Projects: Proposed Bird and Bat Monitoring Framework
ft	feet
F-TWG	New York State Fisheries Technical Working Group
GARFO	Greater Atlantic Regional Office of NMFS
HDD	horizontal directional drill
IHA	Incidental Harassment Authorization
IPaC	Information for Planning and Conservation
km	kilometer
km/h	kilometer per hour
m	meters
MDAT	Marine-Life Data and Analysis Team
Motus	Motus Wildlife Tracking System
nm	nautical mile
NMFS	NOAA's National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NPS	National Park Service
NYSDEC	New York State Department of Environmental Conservation
NYSDOS	New York State Department of State
NYSDPS	New York State Department of Public Service
NYSERDA	New York State Energy Research and Development Authority
NYSOGS	New York State Office of General Services
NYSOPRHP	New York State Office of Parks, Recreation and Historic Preservation
ORJIP	Offshore Renewables Joint Industry Programme
ORJIP One	UK Carbon Trust ORJIP One Bird Collision Avoidance Study

Acronym	Definition
ORJIP Four	UK Carbon Trust ORJIP Four Acoustic Deterrent Devices
OSRP	Oil Spill Response Plan
PAM	passive acoustic monitoring
PSA	Purchase and Sale Agreement
Project	Empire Wind Project
PSO	Protected Species Observer
QA/QC	quality assurance and quality control
RODA	Responsible Offshore Development Alliance
ROSA	Responsible Offshore Science Alliance
RWSC	Regional Wildlife Science Collaborative
SMA	Seasonal Management Area
SOV	service operations vessel
U.S.	United States
USACE	U.S. Army Corps of Engineers
USCG	United States Coast Guard
USFWS	U.S. Fish and Wildlife Service
WCS	Wildlife Conservation Society
WHOI	Woods Hole Oceanographic Institute
WTG	wind turbine generator

1 Environmental Mitigation Plan Summary

1.1 Overall philosophy and principles

This section should describe the overall philosophy and principles the Developer will follow to avoid, minimize, restore, and off-set potential environmental impacts.

- Empire Offshore Wind LLC (“Empire Wind”) believes that from the outset, measures to avoid or mitigate adverse environmental impacts, while maximizing the positive beneficial environmental impacts of an offshore wind energy project should be:
 - Identified and developed in consultation and coordination with the relevant stakeholders;
 - Based on robust baseline characterization that has been developed in consultation with relevant stakeholders;
 - Evidence based and founded on the latest science;
 - Supplemented through targeted data collection, monitoring and/or research where data gaps exist or the receptor-effect interactions are unknown;
 - Incorporated into spatial planning, for example project siting and design; and
 - Applied to how the project is implemented, for example surveys, construction methods and operations and maintenance activities.
- Empire Wind recognizes the importance of adaptive management and will continue to evolve its procedures for the evaluation and mitigation of environmental resources.
 - For example, the Plan described herein is an update to the details described in connection with prior bid submissions, reviewed and commented on by New York State Energy Research and Development Authority (“NYSERDA”), and presented to the New York State Environmental Technical Working Group (“E-TWG”) on November 20, 2019 and September 20, 2022.

1.2 Overall approach to incorporating data and stakeholder feedback

This section should describe how the Developer will use research, data, and stakeholder feedback to update the EMP and support decision-making throughout the life cycle of the project (preconstruction, surveys, site design, construction, operations, and decommissioning).

- Empire Wind will seek consultation and coordinate with relevant stakeholders.
- Empire Wind will review existing research and data and seek input from stakeholders regarding data gaps to inform decisions made throughout the Empire Wind Project (“EW1” or the “Project”) life cycle.
- Empire Wind will review and seek input from stakeholders on proposed and conducted survey rationales and methodologies as well as design, construction and operation, and decommissioning plans for the Project.
- Pre- and post-construction monitoring will be designed to improve the understanding of impacts of offshore wind energy development and operations on wildlife, for both onshore and offshore components of the Project.
- Additionally:

- Empire Wind believes consultation and coordination with relevant stakeholders is important as a means of identifying potential risks or opportunities for sufficiently avoiding and mitigating environmental impacts.
- Empire Wind has identified proven steps to consult with the relevant stakeholder groups to get feedback on plans, data, mitigation, and buy in on decisions in advance of the regulatory process – a “no surprises” approach.

1.3 Existing guidance and best practices that will be followed

This section should present a list of existing guidance documents, publications, tools, and/or plans that will be followed to support the EMP. Include links, if available, for all references.

- Empire Wind will follow the following guidance documents and update the guidance documents list as appropriate. Empire Wind also notes that, several nearby offshore wind projects are currently under review by BOEM and will provide case studies for best management practices and mitigation measures. Empire Wind will consider and potentially adopt or improve such practices for the Empire Wind Project to the maximum extent practicable.
 - National Oceanic and Atmospheric Administration (“NOAA”) National Marine Fisheries Service (“NMFS”) 2018 Revision to: Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing: Underwater Acoustic Thresholds for Onset of Permanent and Temporary Threshold Shifts. April 1, 2018. Available at: <https://www.fisheries.noaa.gov/resource/document/technical-guidance-assessing-effects-anthropogenic-sound-marine-mammal-hearing>
 - NMFS Greater Atlantic Regional Office (“GARFO”). 2021. Recommendations for Mapping Fish Habitat. NMFS GARFO Habitat Conservation and Ecosystem Services Division. https://media.fisheries.noaa.gov/2021-03/March292021_NMFS_Habitat_Mapping_Recommendations.pdf?null
 - BOEM. 2019. Guidelines for Providing Information on Marine Mammals and Sea Turtles for Renewable Energy Development on the Atlantic Outer Continental Shelf Pursuant to 30 C.F.R. Part 585 Subpart F. June 2019. Available at: <https://www.boem.gov/sites/default/files/renewable-energy-program/Regulatory-Information/BOEM-Marine-Mammals-and-Sea-Turtles-Guidelines.pdf>.
 - BOEM. 2023. Guidelines for Providing Information on Fisheries for Renewable Energy Development on the Atlantic Outer Continental Shelf Pursuant to 30 C.F.R. Part 585. March 27, 2023. Fisheries Study Guidelines. Available at <https://www.boem.gov/sites/default/files/documents/about-boem/Fishery-Survey-Guidelines.pdf>
 - BOEM. 2019. Guidelines for Providing Benthic Habitat Survey Information for Renewable Energy Development on the Atlantic Outer Continental Shelf Pursuant to 30 C.F.R. Part 585. June 2019. Available at <https://www.boem.gov/sites/default/files/renewable-energy-program/Regulatory-Information/BOEM-Renewable-Benthic-Habitat-Guidelines.pdf>. The guidance recommends that the NMFS Essential Fish Habitat (“EFH”) mapper tool (<http://www.habitat.noaa.gov/protection/efh/habitatmapper.html>) be used for species identification and habitat characteristics at any particular location (page 7)
 - BOEM. 2020. Guidelines for Providing Information on Fisheries Social and Economic Conditions for Renewable Energy Development on the Atlantic Outer Continental Shelf

Pursuant to 30 C.F.R. Part 585. October 20, 2015. Available at <https://www.boem.gov/sites/default/files/documents/about-boem/Social%20%26amp%3B%20Econ%20Fishing%20Guidelines.pdf>

- BOEM 2020. Guidelines for Providing Avian Survey Information for Renewable Energy Development on the Outer Continental Shelf. United State Department of the Interior – Bureau of Ocean Energy Management, Office of Renewable Energy Programs. May 27, 2020. Available at <https://www.boem.gov/sites/default/files/documents/newsroom/Avian%20Survey%20Guidelines.pdf>
- Sullivan, Robert G. 2021. Assessment of Seascape, Landscape, and Visual Impacts of Offshore Wind Energy Developments on the Outer Continental Shelf of the United States. April 2021. OCS Study BOEM 2021-032. Available at <https://www.boem.gov/sites/default/files/documents/environment/environmental-studies/BOEM-2021-032.pdf>
- BOEM. 2021. Preferred Data Submission Schema for Offshore Wind Facilities Geospatial Data. September 2022. Available at <https://www.boem.gov/sites/default/files/documents/renewable-energy/Preferred-Data-Submission-Schema-for-Offshore-Wind-Facilities-Geospatial-Data.pdf>
- BOEM. 2022. DRAFT BOEM Nationwide Recommendations for Impact Pile Driving Sound Exposure Modeling and Sound Field Measurement for Offshore Wind Construction and Operations Plans. October 2022. Available at <https://www.boem.gov/sites/default/files/documents/renewable-energy/DRAFT%20BOEM%20Impact%20Pile%20Driving%20Sound%20Exposure%20Modeling%20BOEM-2022-0057.pdf>

2 Communications and Collaboration Approach

2.1 Overview and communication plan objectives

This section should provide an overview of the communication plan and objectives and its importance in environmental mitigation.

- Empire Wind will seek methods and processes to allow for a two-way flow of information between key stakeholders and developers, specifically highlighting how the developer uses this feedback to inform their decision making.
- Empire Wind will provide updates to environmental stakeholders in an appropriate manner that would be easily accessed and widely distributed.
- Additionally:
 - Openness is a core value and cornerstone of Empire Wind’s approach to engaging with and sharing data with stakeholders.
 - Empire Wind will continue to approach Project development on a “no surprises” basis. This includes sharing Project updates, plans, results, and information regularly and at all stages of the Project so that all relevant interested parties have had sufficient opportunities to input into these processes, while also being sensitive to the potential for stakeholder fatigue.
 - Empire Wind notes that this approach has proven effective and well-received throughout the continued development of projects and the Empire Wind permitting process.

2.2 Communication officers/positions, responsibilities, and contact information

This section will provide a list of communication officers, their role, and name and contact information. The list should provide stakeholders with an understanding of who should be called for a particular issue or question. It will also include links to the project website so readers know where to find additional information.

A list of communication officers, roles, and contact information is provided in Table 2-1.

Name/Title	Role	Contact Information
Scott Lundin Vice President of Permitting, Community and Technical Environmental Affairs	Primary point of contact for Empire Offshore Wind on broad permitting, environment and community matters	sclu@equinor.com
Jennifer Dupont Head of Technical Environmental Affairs	E-TWG Representative (primary) Point of contact for Empire for environmental matters.	jdup@equinor.com

Julia Lewis Head of Permitting	Point of contact for cross-portfolio permitting matters for Equinor. E-TWG representative (alternate)	julew@equinor.com
Joshua Verleun Director of Permitting, Empire Wind	Point of contact for Empire permitting matters.	jver@equinor.com
Elizabeth Marchetti Fisheries Manager, Empire Wind	Point of contact for Empire Offshore Wind LLC on matter related to commercial and recreational fisheries. F-TWG representative	emarc@equinor.com

Project website: www.empirewind.com

2.3 Identification of stakeholders

This section should describe the process by which stakeholders relevant to environmental issues will be identified and classified by stakeholder group.

- Empire Wind will continue to engage with regulatory agencies, Environmental NGOs (“ENGOS”), research institutions, and relevant stakeholders either via independent meetings or through environmental round tables to maximize opportunities to discuss the Project and solicit feedback. The Empire Wind Project held its latest ENGO roundtable October 30, 2023.
- Empire Wind has presented study results at the NYSERDA State of the Science Workshop in 2021, has engaged in a discussion with the E-TWG on September 20, 2022 with Project and mitigation plan updates, and actively participates in the Regional Wildlife Science Collaborative (RWSC) with membership on the marine mammal, avian and bat, habitat and ecosystem, and sea turtle subcommittees, as well as the Industry Caucus and the Steering Committee.
- This process will continue throughout the development of all Empire Wind projects.
- Stakeholder lists, contact details and correspondence are listed on Empire Wind’s internal stakeholder tracking tool and classified accordingly.

2.4 Participation in stakeholder and technical working groups

2.4.1 Communication with E-TWG

This should describe the communication and collaboration approach with members of the E-TWG and consultations.

- Empire Wind has dedicated Project-specific technical resources to the E-TWG.
- Empire Wind continues to work with the E-TWG and attends E-TWG meetings and workshops.

- Empire Wind has identified specific individuals to serve at least one-year terms in the role of primary (Jennifer Dupont) and secondary (Michelle Fogarty) core members.
- Empire Wind continues to work with NYSERDA to plan and host Project-specific EMP consultations.
- Additionally:
 - Empire Wind has been active in the E-TWG since its inception and is committed to actively participate to collaborate on best practices and research for offshore wind energy development, balance environmental concerns with responsible technically and commercially feasible development, while fostering opportunities for future offshore wind energy development.
 - Empire Wind will engage with the E-TWG based on the portfolio of projects in development, rather than on a project-by-project basis. This approach is intended to streamline communication by providing a single point of contact for information exchange and consistent message.
 - Current representation of Empire Wind on the E-TWG can be found within the Communication Officers table located within Section 2.2 of this document.
 - Empire Wind considers the ENGOs on E-TWG as a proxy “ENGO steering committee” for engagement with the ENGO community on responsible development and to provide guidance on additional outreach that may be valuable.
 - Empire Wind will also proactively engage with ENGOs not directly represented on the E-TWG, for example through direct engagement or Environmental Round Tables hosted by Empire Wind, as appropriate.
 - Empire Wind actively participates in the Regional Wildlife Science Collaborative, with membership on the marine mammal, avian and bat, habitat and ecosystem, and sea turtle subcommittees. In addition, Equinor Wind is a member of the RWSC Steering Committee and Industry Caucus lead (rotating off in 2024 but will continue to remain engaged).

2.4.2 Communication with other New York State agencies

This should describe communication with New York State agencies during each phase of the project.

- Empire Wind will continue to engage with New York (“NY”) State Agencies throughout the Project development process, including Project updates and plans, environmental data collection, baseline data, potential mitigation options, terrestrial archaeology, historic architecture, and permitting. Communication with NY State Agencies regarding the Empire Wind Project was initiated on September 25, 2020. The NYS agencies included:
 - NY State Department of Environmental Conservation (“NYSDEC”);
 - NY State Department of State (“NYSDOS”);
 - NY State Office of Parks, Recreation and Historic Preservation (“NYSOPRHP”);
 - NY State Office of General Services (“NYSOGS”);
 - NY State Energy Research and Development Authority (“NYSERDA”); and
 - NY State Department of Public Service (“NYSDPS”).

- Empire Wind will also continue to consult with additional state agencies, as appropriate.

2.4.3 Communication with other stakeholder and working groups

This should describe any relevant participation with other stakeholder groups that would help inform the EMP.

- Empire Wind will seek to collaborate with other regulatory agencies and stakeholder groups and participate in such collaborative efforts.
- Empire Wind is a member of the Steering Committee and Industry Caucus that is working with NYSERDA and other partners on the Regional Wildlife Science Collaborative (“RWSC”) that provides support for regional science collaboration focused on studying the potential impacts from offshore wind development on sensitive environmental receptors. Empire Wind participates actively in technical subcommittees including avian & bat, marine mammals, technology, and habitat.
- Empire Wind is a board member of the Responsible Offshore Science Alliance (“ROSA”) and active member of the Advisory Council.
- Empire Wind is a founding member of the Responsible Offshore Development Alliance (“RODA”) Joint Industry Task Force.
- Empire Wind’s Fisheries Manager is a member of the New England Fisheries Management Council Habitat Advisory Panel
- Empire Wind will continue to participate in the F-TWG and current representation can be found within Section 2.2 of this document.
- Empire Wind actively participates in the Massachusetts Habitat Working Group and Fisheries Working Group, which are similar in scope and membership to the E-TWG and F-TWG.
- Empire Wind will continue to engage with Tribal Nations, including but not limited to the Shinnecock Indian Nation, Mashpee Wampanoag Tribe, Mashantucket Pequot Tribal Nation, Wampanoag Tribe of Gay Head – Aquinnah, the Delaware Tribe of Indians, the Delaware Nation and the Stockbridge-Munsee Community Band of Mohican Indians.
- Empire Wind will continue to engage with federal agencies, including:
 - BOEM as the lead agency to ensure a smooth permitting process and soliciting feedback on baseline data requirements.
 - NOAA’s National Marine Fisheries Service (“NMFS”) in relation to development of survey plans, baseline characterization data, for example, benthic and fisheries data sources and providing feedback on Empire Wind’s data collection efforts, strategic advice on threatened and endangered species, Incidental Harassment Authorizations (IHAs) for geophysical surveys and the potential future requirements for IHAs in relation to construction activities.
 - U.S. Fish and Wildlife Service (“USFWS”).
 - U.S. Environmental Protection Agency (“EPA”).
 - U.S. Coast Guard (“USCG”) and U.S. Army Corps of Engineers (“USACE”).
 - National Park Service (“NPS”).

- Empire Wind will continue to engage with the public, which includes openhouses and public hearings to address comments and questions.

2.4.4 Communication and collaboration with other developers

This should describe any relevant participation and collaboration with other developers in the offshore space, with a focus on communication and collaboration with adjacent leaseholders. This may include but is not limited to shared research efforts, coordination of survey methods, or standardization of navigational and safety protocols.

- Empire Wind will seek to maximize the impact of research efforts such as data collection, methodology, analysis and dissemination by collaborating with other developers, particularly those in adjacent lease areas, taking on similar initiatives.
 - For example, protected species observers will often use the Mysticetus software system during survey campaigns. Several developers, including Equinor, have agreed to share PSO sightings in real-time with PSOs from other developers via the Mysticetus platform. PSO-to-PSO sharing allows for greater regional awareness of the presence of protected species during vessel operations.
- Empire Wind continues to engage actively in the development of the RWSC integrated science plan and will coordinate research efforts through the RWSC to ensure that priority regional studies are addressed and that data/results are made available for broad regional application/use.

2.5 Communication methods and tools by phase

2.6

This section should describe the communication and outreach methods and tools that will be employed for each stakeholder group during each phase of the project.

A list of proposed outreach methods and tools is provided in Table 2-2.

Event or Method	Phase*			
	1	2	3	4
Public meetings, Open houses	X	X	X	X
Stakeholder workgroups	X	X	X	X
Website promotion	X	X	X	X
Visual simulation tools	X	X	X	X
ENGO Round Tables, in person	X	X	X	X
Federal Agency Meetings, in person, webinars	X	X	X	X
State Agency Meetings, in person, webinars	X	X	X	X
E-TWG and F-TWG Meetings	X	X	X	X
Tribal Meetings; in person, webinars	X	X	X	X
Project Newsletters	X	X	X	X
Scientific and Technical Conferences	X	X	X	X

**Phase: 1: Survey/Design; 2: Construction; 3: Operation; 4: Decommissioning*

3 Supporting Other Research

3.1 Support of collaborative research

This section should describe how opportunities for developing or investing in collaborative research with the environmental community to collect ecological data will be identified and undertaken. The description must account for the need to coordinate with members of the E-TWG during data gathering and assessment.

- Empire Wind is and will continue to be an active member of regional science organizations including the RWSC and ROSA. Empire Wind is a member of the RWSC Steering Committee that has worked with NYSERDA and other partners to stand-up the RWSC; Equinor representative will rotate off the Steering Committee in early 2024 but is still an active member on industry caucus and all the major technical subcommittees under the RWSC.
- Empire Wind is a board member of the ROSA and active member of the Advisory Council.
- Empire Wind is a board member of the Atlantic Marine Conservation Society, which collects data and provides regional response in support of marine mammal and turtle conservation.
- Empire Wind is committed to collaborating with the scientific community, E-TWG, relevant stakeholders, other offshore wind energy developers and third-party groups to conduct robust and relevant research studies that relate to environmental resources and offshore wind energy developments. For example:
 - Historical meteorological and oceanographic data collected by the instruments deployed in Empire Wind from 2018-2020 under the Site Assessment Plan are publicly available on [MARACOOS OceansMap](#).
 - Equinor and MARACOOS have signed a Memorandum of Understanding for Equinor projects to continue to share ocean observation data through MARACOOS and to work together to leverage MARACOOS expertise and Equinor development efforts to benefit stakeholders through enhances ocean and coastal observing data products. Empire Wind's data collection to mitigate HF radar interference by the wind turbines will be shared through MARACOOS, for example.
 - During the 2023 Empire Wind Munitions and Explosives of Concern survey campaign, the teams at Project WOW and Wildlife Conservation Society received automatic alerts of whale sightings made by protected species observers onboard the survey vessel. Sharing of these real-time observations was done to inform research efforts to find and tag whales in the New York Bight.
- Additionally, Empire Wind will:
 - Consider making existing wind farm related vessels, buoys, or structures available for research opportunities.
 - Explore appropriate monitoring protocols, for example monitoring of potential behavioral responses or changes in spatial and temporal distribution of biological resources as a direct result of the offshore wind energy development.
- Empire Wind advocates that technical experts conduct statistical power analyses up front in the planning process before implementing any future studies. In addition, F-TWG and/or E-TWG are appropriate forums in which to discuss the development of such analyses and should be part of this process.

3.2 Handling/processing requests

This section should describe how requests for coordination with third-party supported scientists will be processed - including providing reasonably-requested Project data and access to the Project area for independent scientists examining environmental sensitivities and/or the impacts of offshore wind energy development on the environment for the purpose of publication in peer reviewed journals or other scientifically rigorous products.

- Empire Wind will endeavor to meet with any interested parties when contacted to discuss prospective research.
- Empire Wind is willing to consider requests to access Empire Wind's affiliates' existing operating offshore wind energy developments in Europe to conduct research and monitoring. For example, in September 2023, Empire Wind project personnel hosted a group of 13 ENGOs (NWF, TNC, Ocean Conservancy, MassAudubon) and accompanied them out on 2 CTV trips to Equinor's Hywind Scotland floating offshore wind farm. In addition, there was a day's session with environment and fisheries researchers that have been studying impacts and benefits of offshore wind farms in the North Sea.

3.3 Data availability

This section should describe how data will be made available in accordance with Section 2.2.8 of the RFP.

- Empire Wind will make publicly available relevant information or data and supporting metadata that is developed across our portfolio of projects to enhance the understanding of environmental characteristics, or use by wildlife, of any offshore, nearshore or onshore areas, so long as it is not considered proprietary in nature and done in accordance with permitting timelines/requirements. This includes the following data/studies:
 - 2017 to 2019 digital aerial survey images, monthly and quarterly reports of avian species, marine mammals, sea turtles and large bony fish assemblages as observed from the 12 x monthly digital aerial surveys carried out from November 2017 to December 2019. These data and reports are available at the following website: https://remote.normandeau.com/ewind_overview.php. Data are also publicly available on Duke University's Ocean Biodiversity Information System Spatial Ecology Analysis of Megavertebate Populations (OBIS-SEAMAP) [OBIS-SEAMAP Dataset - Empire Wind Digital Aerial Wildlife Surveys for BOEM Lease Area OCS-A 0512, Equinor Wind US LLC, November 2017-October 2018 \(duke.edu\)](#) and [OBIS-SEAMAP Dataset - Empire Wind Digital Aerial Wildlife Surveys for BOEM Lease Area OCS-A 0512, Equinor Wind US LLC, February - December 2019 \(duke.edu\)](#)
 - The following studies are currently available for download from the Empire Wind website (<https://www.empirewind.com/resources/>) and <https://www.empirewind.com/environment-and-sustainability/environmental-protection/> :
 - 2018 benthic survey report covering the SAP related survey locations within the lease area (benthic grab samples with grain size and macro fauna analysis, drop down video stills, habitat description);
 - 2018 benthic survey report covering COP related survey locations within the lease area totaling 67 sample locations (benthic grab samples with grain size and macro fauna analysis, drop down video stills, habitat description).

- 2019 benthic survey report covering COP related survey locations within the proposed export cable corridors (sampling included Sediment Profile Imaging and Plan View imaging at 157 sample stations, with 15 reference stations and sediment grab samples for sediment grain size analysis and macrofaunal analysis for verification).
- Whales of New York, in collaboration with the Wildlife Conservation Society (“WCS”). 2023. <https://whalesofnewyork.wcs.org/>
- Empire Wind will continue to make non-proprietary environmental data publicly available as the Project continues to contribute to the development of the RWSC integrated science plan and its data sharing and governance recommendations, as these recommendations are likely to include preferred data portals and repositories. In the meantime, Empire Wind may be contacted directly to request access to environmental data not already made public.
- Prior to any disclosure, data made available by Empire Wind will undergo final quality assurance/quality control (“QA/QC”) to be performed by Empire Wind.
- Empire Wind is open to exploring outlets for sharing information (*e.g.*, the E-TWG webpage or other data portals); however, version control will be important.
- The following studies and reports are part of the COP and are available for review or download from the BOEM website at (<https://www.boem.gov/renewable-energy/state-activities/empire-wind-construction-and-operations-plan>).
 - Coastal Zone Management Consistency Statements
 - Summary of Agency and Stakeholder Engagement
 - Conceptual Project Design Drawings
 - Oil Spill Response Plan
 - Safety Management System
 - Sediment Transport Analysis
 - Air Emissions Calculations and Methodology
 - In-Air Acoustic Assessment
 - Underwater Acoustic Assessment
 - Information for Planning and Conservation (“IPaC”) Report and New York State Department of Environmental Conservation Natural Heritage Response Letters
 - Ornithological and Marine Fauna Aerial Survey
 - Avian Impact Assessment for the Proposed Empire Wind Project in the New York Bight
 - 2018 Bat Survey Report
 - Bat Impact Assessment for the Proposed Empire Wind Project in the New York Bight
 - Benthic Resources Characterization Reports
 - Essential Fish Habitat (“EFH”) Assessment
 - Fisheries Mitigation Plan
 - Marine Archaeological Resource Assessment
 - Terrestrial Archaeological Resource Assessment
 - Analysis of Visual Effects to Historic Properties

- Visual Impact Assessment
- Aircraft Detection Lighting System (“ADLS”)
- Obstruction Evaluation & Airspace Analysis
- Navigation Safety Risk Assessment
- Offshore Electric and Magnetic Field Assessment
- Onshore Electric and Magnetic Field Assessment

3.4 Proposed restrictions

This section should describe any restrictions on data provision or access that may be required to protect trade secrets or maintain site security.

- Empire Wind will restrict confidential, propriety, and commercially sensitive data (as noted above).

3.5 Financial commitment for third party research

This section should provide a level of financial commitment, if elected, that will be appropriated to leverage third-party environmental research funding including federal or State-supported research. Or, if elected, provide the level of commitment to a general fund for supporting third-party research into potential environmental effects of offshore wind energy development. These financial commitments are outside those identified in Section 2.2.7 of the RFP and beyond those identified to fulfill state and federal regulatory permitting requirements.

- Empire Wind will support regional monitoring of wildlife and key commercial fish stocks equivalent to the specified value of \$10,000 per MWh offer capacity. Half of this will support regional monitoring of key commercial fish stocks to better understand how offshore wind energy development is potentially altering the biomass and/or distribution of these stocks; and the other half will support regional monitoring of wildlife to better understand how offshore wind energy development effects distribution and abundance of sensitive species. These monitoring efforts may be committed via regional monitoring organizations (*e.g.*, ROSA, Regional Wildlife Science Collaborative (“RWSC”) or similar) or independently by Empire Wind.
- Additional studies and financial commitments outside of the \$10,000 per megawatt have been made by the project and planned as outlined in section 3.6 below.

3.6 Proposed or existing commitments/collaborations

This section should describe proposed or existing commitments and collaborations with third-party researchers in support of monitoring activities and assessing impacts.

- Empire Wind has established an Expert Panel consisting of 6 external experts to help advise on mitigation measures and monitoring program for construction phases of the Empire Project in order to protect marine mammals. The Panel has helped provide recommendations on passive acoustic monitoring buoy deployment, infrared cameras, visual observers, and other mitigation measures which the Empire Wind project is actively working to integrate into construction plans. Hourly consulting fees apply and are disbursed to each of the panel members per contract agreements.
- Empire Wind funded the deployment and testing of an infrared camera (Toyon) during a recent Munitions and Explosives of Concern (MEC) survey in the lease area. The purpose of the test

was to collect information on detection capabilities of the camera and to understand how the technology can best be used to augment visual observers. Results from the test are currently being analyzed and will be shared externally when available. The camera has been purchased and is owned by Equinor and will be utilized on additional project marine operations/campaigns.

- Empire Wind has collaborated with SUNY Stony Brook to attach four fish tag receiver gates to the Empire Wind metocean facilities. The receiver gates, used primarily for detecting Atlantic sturgeon but also capable of detecting other tagged species, were part of a previously BOEM-funded study.
- Empire Wind entered into a funding agreement related to a grant with the WCS and Woods Hole Oceanographic Institute (“WHOI”) through 2028 (\$9.5 million USD), which consists of two near real-time acoustic whale monitoring buoys spaced appropriately in the lease area. This funding includes maintenance of buoys, near real-time data transfer, external website data sharing ([Whales of New York > Near Real-time Data \(wcs.org\)](#)), and a kiosk at the NY Aquarium.
- Empire Wind will continue to participate in the development of regional science plans with RWSC, including payment of annual membership fee (\$20k/year).
- Empire Wind was a founding board member of ROSA and is committed to continue supporting ROSA. Empire has provided one year of administrative support funding (\$360k) to ROSA to develop a framework structure for future RFPs and research program administration. Scott Lundin (VP Permitting, Community and Technical Environmental Affairs) sits on the Board of Directors.
- Empire Wind’s affiliates have funded and collaborated in the UK Carbon Trust Offshore Renewables Joint Industry Programme (“ORJIP”) One Bird Collision Avoidance Study, ORJIP Four Acoustic Deterrent Devices, WCS/WHOI passive acoustic monitoring (“PAM”) buoy deployment in Empire Wind, and the developer led study of Disturbance Effect on the Harbour Porpoise in the North Sea (DEPONS), 2015.

4 Proposed Mitigation of Impacts to Marine Mammals and Sea Turtles

4.1 Baseline characterization

4.1.1 Available information

Describe existing key literature and datasets that are available for baseline characterization.

- Data collected during NYSDEC's multi-year, monthly aerial survey data collection effort from March 2017 through February 2020. Reports, including the two annual and final 3-year compendium are available here: <https://www.dec.ny.gov/lands/113818.html>
- NYSDEC, Schlesinger and Bonacci 2014, NYSEDA, WCS, and the Atlantic Marine Assessment Program for Protected Species surveys (NOAA NEFSC 2017 and SEFSC 2016).
- NYSEDA quarterly digital aerial survey program to evaluate the NY Bight area and Empire Wind Project area
- Empire Wind evaluated the extent to which existing, and publicly available data sources were suitable for characterizing environmental resources in the relevant area, including evaluation of NYSEDA's Master Plan (2017).
- Empire Wind has referenced the NYSEDA Master Plan Marine Mammals and Sea Turtles Study (2017; Appendix L) to characterize baseline conditions. This study reviewed the available data and has provided summaries of "Best Available Data" in the form of comprehensive lists of datasets for marine mammals and sea turtles and notes that current studies will provide reliable species counts when they are complete. Empire Wind has also referenced NOAA Fisheries Stock Assessment Reports and monitoring surveys conducted for NYSDEC to characterize baseline conditions, including the following.
 - NOAA Fisheries 2019. Annual Report of a Comprehensive Assessment of Marine Mammal, Marine Turtle, and Seabird Abundance and Spatial Distribution in US waters of the Western North Atlantic Ocean – AMAPPS II. In Press. 2019.
 - Tetra Tech and LGL. 2020. Final Comprehensive New York Bight Whale Monitoring Aerial Surveys Years 1-3 Survey Report for March 2017 – February 2020. Technical Report produced By Tetra Tech and LGL for NYSDEC under Tetra Tech contract C009926. May 18, 2020.
 - WHOI. 2018. Autonomous real-time marine mammal detections – New York Bight Buoy. Woods Hole Oceanographic Institution and Wildlife Conservation Society. Available online at: http://dcs.who.edu/nyb0218/nyb0218_buoy.shtml.
- Empire Wind will rely on additional studies to assess the impact of noise on marine mammals and sea turtles, as follows:
 - Popper, A.N., A.D. Hawkins, R.R. Fay, D. Mann, S. Bartol, T. Carlson, S. Coombs, W.T. Ellison, R. Gentry, M.B. Halvorsen, S. Lokkeborg, P. Rogers, B.L. Southall, D.G. Zeddies, and W.N. Tavolga. 2014. ASA S3/SC1.4 TR-2014 Sound Exposure Guidelines for Fishes and Sea Turtles: A Technical Report prepared by ANSI-Accredited Standards Committee S3/SC1 and registered with ANSI, ASA Press. This study found that sea turtles have fairly limited capacity to detect sound, although all results are based on a limited number of individuals and must be interpreted cautiously.

- Limited research has shown that the upper limit of the hearing range of sea turtles is generally in the range of 1,000 to 1,200 hertz:
 - Tech Environmental, Inc. 2006. Final EIR Underwater Noise Analysis. Tech Environmental, Inc. (Report 5.3.2-2). Waltham, Massachusetts.
 - Martin, K.J., S.C. Alessi, J.C. Gaspard, A.D. Tucker, G.B. Bauer, and D.A. Mann. 2012. Underwater hearing in the loggerhead turtle (*Caretta caretta*): a comparison of behavioral and auditory evoked potential audiograms. *The Journal of Experimental Biology* 215:3001-3009.
- McCauley, R.D., J. Fewtrell, A.J. Duncan, C. Jenner, M.N. Jenner, J.D. Penrose, R.I.T. Prince, A. Adhitya, J. Murdoch, and K. McCabe. 2000. Marine seismic surveys: A study of environmental implications. *Appea Journal* 692-706. This study serves as the best available information on the levels of underwater noise that may produce a startle, avoidance, and/or other behavioral or physiological response in sea turtles.
- Noise injury thresholds established by the Fisheries Hydroacoustic Working Group and adopted by NOAA Fisheries.
- Some data covering several years of time-series currently exists on the ambient underwater sound levels within or near to the lease area, collected from noise sensors installed by the WCS as part of their 'Blue York' real-time whale monitoring buoy.
- NOAA-established guidance for evaluating noise impacts, which defines harassment thresholds for broad categories of marine species:
- NOAA Fisheries. 2018a. 2018 Revisions to: Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0): Underwater Thresholds for Onset of Permanent and Temporary Threshold Shifts. U.S. Dept. of Commerce, NOAA. NOAA Technical Memorandum NMFS-OPR-59, 167 p.
- The National Marine Fisheries Service Endangered Species Act Section 7 Consultation Biological Opinion outlines the specific mitigation measures to sea turtles, these are incorporated into BOEM's Final Environmental Impact Statement ("Final EIS") and Record of Decision.
- Cornell University passive acoustic monitoring survey for 6 large whale species (right, fin, sei, blue, sperm, and humpback) in NY Bight.
- The following unpublished reports that could be made available by request of the authors:
 - Bioacoustic Research Program. 2010. Determining the Seasonal Occurrence of Cetaceans in New York Coastal Waters using Passive Acoustic Monitoring February 2008 - March 2009. Final Report 14 June 2010 Prepared for: State Wildlife Grants Program 205 Funding C/O Bureau of Fisheries New York State Dept. of Environmental Conservation R2 625 Broadway, Albany NY 12233-4753
 - Estabrook, B.J., D.V. Harris, K.B. Hodge, D.P. Salisbury, D. Ponirakis, J. Zeh, S.E. Parks,
 - A.N. Rice. 2019. "Year 1 Annual Survey Report for New York Bight Whale Monitoring Passive Acoustic Surveys October 2017- July 2018." Contract C009925. New York State Department of Environmental Conservation. East Setauket, NY.
 - Estabrook, B.J., K. B. Hodge, D. P. Salisbury, D. Ponirakis, D. V. Harris, J. M. Zeh, S. E. Parks, A. N. Rice. 2020. "Year 2 Annual Survey Report for the New York Bight Whale Monitoring Passive Acoustic Surveys October 2018 - October 2019. Contract C009925. New York State Department of Environmental Conservation. East Setauket, NY.

- Other data collection efforts include the Georgia Department of Natural Resources' focus on tagging right whales and Geographic Information Gateway, CetMap, and other efforts to collect spatial data. <https://cetsound.noaa.gov/cda-index>
- Empire Wind will comply with BOEM's requirements in 30 C.F.R. § 585.626.

4.1.2 Data being collected

Describe data collected, or will be collected, to support baseline characterization.

- Observations of all right whales and dead, entangled, or distressed marine mammals will be communicated to federal authorities as soon as is practicable, and no later than 24 hours after occurrence
- Empire Wind has commissioned and funded a number of studies to collect baseline information to inform the Environmental Impact Assessment process. Details can be found in the Empire Wind Construction and Operations Plan, Final Environmental Impact Statement, and with conditions and mitigation measures issued in the Record of Decision. A summary of data is provided below:
 - Offshore site characterization surveys including, oceanographic and meteorological (metocean) measurements, geophysical and geotechnical investigations, sediment & water quality sampling, and benthic sampling;
 - Underwater acoustic modeling;
 - Sediment transport analysis;
 - Navigation Risk Safety Assessment;
 - Tourism and recreation;
 - Offshore cable burial risk assessments (still in progress); and
 - Electromagnetic Field (“EMF”) modeling.
- Empire Wind contracted APEM, as supported by Normandeau, to conduct monthly digital aerial surveys, which capture digital images and of marine mammals and sea turtles in addition to avian species, large fish assemblages and opportunistic vessel sightings.
 - The Avian Survey Protocol, which included marine mammals and sea turtles, was submitted, and approved by BOEM and USFWS.
 - Data and reports from past and future surveys have been and will continue to be made available at: https://remote.normandeau.com/ewind_overview.php
- Empire Wind will use data and observations from PSOs onboard Project related offshore survey vessels across projects comprising of a northeast regional dataset, where appropriate. PSOs recorded observations from ongoing and future surveys (initiated August 2020).
- Empire Wind is working with USFWS to plan deployment of Motus avian acoustic receivers and will contribute to the Motus database once deployed.
- WCS/WHOI collection of near real-time acoustic observations of whale species, including North Atlantic right whale, sei whale, humpback whale and fin whale. The data buoys are also recording the ambient sound environment at the eastern end of the lease area. Real-time detections are available here: <http://dcs.who.edu/>

4.2 Species at risk

Describe which species the Developer believes to be of greatest concern and why.

- Empire Wind notes that 39 marine mammals and 5 sea turtles are known to occur within the waters of the NY Bight and the Lease Area. All 39 marine mammals are protected by the MMPA, and some are protected by the Endangered Species Act of 1973 (“ESA”) or NY State Law.
- There are five species of sea turtles that have been documented in or within the Northwest Atlantic OCS region waters which includes waters of the Project Area.
- Empire Wind is also aware of the importance of the species categorized with the additional protections mentioned above. Empire Wind’s assessments, design, and mitigations are developed in a manner meant to appropriately address the needs and requirements of all the species known to occur within the Project Area without having to prioritize some over others.
- Full details of species at risk, likely impact, and proposed mitigation are described in the COP, which was developed in consultation with the relevant stakeholders, including the E-TWG. The Final Environmental Impact Assessment contains the full impact picture, and the Record of Decision has been issued which includes the conditions required to mitigate impacts.

4.3 Potential impacts and mitigation measures by phase

The table below should list the potential impacts to marine mammals and sea turtles and proposed mitigation measures. To this end, a description of proposed measures to minimize the impacts of sound on marine mammals and sea turtles during all phases of Project development should be included. In addition, provide a description of the anticipated pre- and post-construction survey techniques to establish an ecological baseline and changes to that baseline within the Project site; the minimum size of exclusion zone intended to be monitored during geophysical surveys and construction; planned approaches to understanding marine mammal and sea turtle presence and absence within development site exclusion zone during site assessment and construction (e.g., a combination of visual monitoring by protected species observers and passive acoustic monitoring, the use of night vision and infra-red cameras during nighttime activities, etc.); proposed temporal constraints on construction activities and geophysical surveys with noise levels that could cause injury or harassment in marine mammals (e.g., seasonal restrictions during periods of heightened vulnerability for priority species; commencing activities during daylight hours and good visibility conditions, dynamic adjustments following the detection of a marine mammal); and proposed equipment and technologies the Developer would use to reduce the amount of sound at the source, if any.

Potential impacts to marine mammals and sea turtles and proposed mitigation measures are provided in Table 4-1.

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
Underwater Noise impacts from geophysical survey equipment	<ul style="list-style-type: none"> • Exclusion, clearance, and monitoring zones will be maintained around noise-generating activities to help measure and mitigate potential noise-related effects on marine mammals, including with NMFS-approved PSOs, as identified through the survey plan approval process; • Monitoring during noise-generating activities will be done through an integrated monitoring approach, including the use of PAM, NMFS-approved PSOs, 	X	X	X	

Table 4-1 Potential Impacts to Marine Mammals and Sea Turtles and Proposed Mitigation Measures					
Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<p>and/or other proven technologies, as appropriate, to the extent practicable and in compliance with federal regulation;</p> <ul style="list-style-type: none"> • Noise generating geophysical survey work will not commence after dark or at other times of low visibility as appropriate, unless an alternative mitigation measure or monitoring plan that does not rely on visual observations has been determined to be effective, to the extent compatible with practicability and worker safety; • Soft starts and shut-down procedures to minimize impacts associated with noise emitting survey equipment, where technically feasible and in accordance with associated authorizations; and • Before beginning any geophysical surveys and when new personnel join the work, Empire Wind will conduct briefings for all staff to explain responsibilities and protected species requirements. 				
Underwater noise impacts from construction and installation activities	<ul style="list-style-type: none"> • Empire Wind will seek to use noise attenuation technologies to reduce sound from pile driving of foundations; • Monitoring during construction and installation activities, including those done during times of reduced visibility, will be done through an integrated monitoring approach, including the use of PAM, NMFS-approved PSOs, and other proven technologies, as appropriate, to the extent practicable; • Empire Wind will not commence pile driving for foundation installation during poor visibility conditions, such as darkness, fog, and heavy rain, unless an alternative mitigation monitoring plan that does not rely on visual observation has been determined to be effective, to the extent compatible with practicability and worker safety; • Empire Wind will apply monitoring and exclusion zones as appropriate to underwater noise assessments and impact thresholds, enforced by: <ul style="list-style-type: none"> ○ Qualified NOAA Fisheries approved PSOs; ○ Real-time monitoring systems, as appropriate; ○ Use of PAM systems; ○ Use of reduced visibility monitoring tools/technologies (e.g., night vision, infrared and/or thermal cameras); 		X		

Table 4-1 Potential Impacts to Marine Mammals and Sea Turtles and Proposed Mitigation Measures					
Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<ul style="list-style-type: none"> • Empire Wind may seek to use quiet foundation solutions or foundation installation technology solutions that reduce acoustic stress, where technically and commercially feasible; and • Before beginning any activities involving vessel use or pile driving and when new personnel join the work, Empire Wind will conduct briefings for all staff to explain responsibilities and protected species requirements. 				
Vessel strikes on marine mammals	<ul style="list-style-type: none"> • Empire will ensure that all vessel personnel are trained regarding animal identification and protocols when sightings occur; • Empire Wind will provide reference materials on board all Project vessels for identification of marine mammals and sea turtles; • Appropriate Project-related personnel onboard Project vessels will be provided marine mammal sighting and reporting procedures training appropriate for each specific phase and its potential impacts to marine mammal species, as necessary. These monitoring, sighting, and reporting protocols will be outlined in any IHA deemed necessary for the Project, in an effort to emphasize individual responsibility for marine mammal awareness and protection. • Use of exclusion/safety zones: <ul style="list-style-type: none"> ○ Real-time monitoring systems as appropriate (e.g., visual observations by PSOs, passive acoustic monitoring, use of night vision and infrared during nighttime activities) to facilitate exclusion and monitoring zones for survey and construction vessels; ○ NOAA NMFS approved PSOs and PAMS where appropriate for monitoring during vessel transits • Empire Wind empowers all personnel onboard a vessel to raise an alert of potential marine mammals and sea turtle risk via the Lead PSO, with the Lead PSO given full mandate for mitigation decisions. • Empire Wind’s vessel strike avoidance measures will (and have been) consistent with: (1) NOAA NMFS guidance to avoid ship collision with marine mammals and sea turtles; (2) conditions within the lease area; (3) and any Incidental Take Authorizations issued by NOAA NMFS. • Vessel collision avoidance mitigation measures include: 	X	X	X	X

<i>Table 4-1 Potential Impacts to Marine Mammals and Sea Turtles and Proposed Mitigation Measures</i>					
Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<ul style="list-style-type: none"> ○ Vessel operators and crew awareness of collision avoidance measures; ○ Project-related vessels will comply with NOAA Fisheries speed restrictions of 10 knots (18.5 km/h) or less for vessels 65 ft (20 m) or greater within the Mid- Atlantic U.S. Seasonal Management Area (“SMA”) for North Atlantic right whales during the period of November 1 through April 30, and will comply with the 10 knots or less speed recommendations in any voluntary Dynamic Management Area (DMA), as currently defined in regulations (73 FR 60173, October 10, 2008); ○ Reduction of speed to 10 knots or less if mammal identified near a vessel (within 330 ft/100 m) ○ Maintain separation distance of 1,640 ft or greater from North Atlantic right whale. If observed, must move away from whale at 10 knots or less until separation distance is achieved. If in vessels path, engines must not be engaged until it has moved outside path and beyond 330 ft/100m. ○ Maintain separation distance of 300 ft or greater from any sighted non-delphinoid cetacean. If sighted – follow similar procedures for siting North Atlantic right whale. ○ Maintain separation distance of 164 ft (50 m) or greater from any sighted delphinoid cetacean. If sighted – follow similar procedures for siting North Atlantic right whale. ○ Maintain a separation distance of 164 ft (50 m) or greater from any sighted pinniped ● Empire Wind will adopt vessel collision avoidance measures for Project-related vessels working in or in transit to and from the Lease Area, including a 164 ft (50 m) separation distance from all sea turtle species; ● Will adopt vessel speed restrictions associated with SMA and DMA relevant to the size of the vessels used and other vessel strike avoidance measures; ● Real-time marine mammal monitoring systems for monitoring and exclusion zones, as appropriate; ● Vessel collision avoidance mitigation measures for Project-related vessels working in or in transit to and from the Lease Area, including a 328 ft (100 m) separation distance from all marine mammals, except 				

<i>Table 4-1 Potential Impacts to Marine Mammals and Sea Turtles and Proposed Mitigation Measures</i>					
Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<p>for the right whale, which requires a 1,640 ft (500 m) separation;</p> <ul style="list-style-type: none"> Any vessel larger than 300 gross tonnes moving into right whale habitat will report in as part of the right whale Mandatory Ship Reporting System, where they will be immediately responded to with updated reports of right whale sightings in the area, in addition to reminders of safe vessel speeds and movements within the management area. In the event of contact with a North Atlantic right whale, a report must be made immediately to NOAA’s National Marine Mammal Stranding Network; Marine mammal observers and/or Project personnel will check NOAA’s website for any update on DMAs and will respond with vessel movement strategies or work hours accordingly; Empire Wind will consider the use of dedicated trained crew members (independent of PSOs) to help reduce the risk of collision under certain circumstances; Empire Wind will consider the use of a Service Operations Vessel (“SOV”) concept, supported by a Crew Transfer Vessel (“CTV”), to reduce vessel traffic associated with Operations and Maintenance for the Project, if technically and commercially feasible; and Before beginning any activities involving vessel use and when new personnel join the work, Empire Wind will conduct briefings for all staff to explain responsibilities and protected species requirements. 				
Electromagnetic Fields (EMF), resulting in potential disturbance to marine mammals/sea turtles and/or their prey resource	<ul style="list-style-type: none"> Empire Wind will use proper shielding to reduce EMF impacts. Empire Wind will conduct EMF modeling assessments to identify potential mitigation requirements Electrical cables will be sufficiently buried where feasible to reduce EMF effects. Surface cable protection where sufficient burial is not possible and where appropriate based on a Cable Burial Risk Assessment (“CBRA”) and EMF assessments (acting as a further barrier 	X	X	X	

<i>Table 4-1 Potential Impacts to Marine Mammals and Sea Turtles and Proposed Mitigation Measures</i>					
Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	between EMF and receptor).				
Additional proposed mitigations	<ul style="list-style-type: none"> Continued engagement with regulatory agencies and ENGOs on potential mitigation and best practices, as appropriate; Project-related vessels will operate in accordance with laws regulating the at-sea discharges of vessel-generated waste; Empire Wind will conduct marine debris awareness training, prevention, reporting, and recovery; During operations and maintenance, Empire Wind will commit to vessel and structure lighting, including ADLS on wind turbine generators and the offshore substation, that minimizes illumination of the sea surface where feasible and subject to approval; Empire Wind will consider micro-siting of Project-components to avoid and minimize impacts to sensitive benthic habitat and habitat of high value to marine mammals and sea turtles, directly and indirectly; Empire Wind will consider development of appropriate monitoring program(s) in close coordination with regulatory agencies and stakeholders; and Continual adaptation of project monitoring programs, building on initial baseline monitoring of marine mammals and sea turtles to assess whether detectable changes are occurring associated with proposed operations and post-construction monitoring. These may include aerial or boat-based surveys and leveraging of PAM buoy data in the lease area. Continual contribution to regional monitoring programs through RWSC and ROSA. 	X	X	X	X
<i>*Phase: 1: Survey/Design; 2: Construction; 3: Operation; 4: Decommission</i>					

4.4 Monitor for potential impacts during each phase

Describe how potential impacts will be monitored on marine mammals and sea turtles during each phase of physical work for the Project (site assessment, construction, operation, and decommissioning) to inform mitigation planning for later phases of the Project as well as for future Projects.

- Empire Wind has established an Expert Panel consisting of 7 researchers (biologists and acousticians) who are helping inform the project on recommended mitigation measures and monitoring components. The results from the panel have been presented publicly (*e.g.*, at the NARW Symposium) and will be published in peer-reviewed literature. Recommendations are currently being incorporated into construction plans.
- Empire Wind will seek to collaborate with other regulatory agencies and stakeholder groups to identify research needs and opportunities.
- Empire Wind will leverage lessons learned and best practices in developing monitoring frameworks (*e.g.*, additional noise mitigation and monitoring plans for marine mammals, as appropriate) from the Empire Wind Project, which has ongoing consultations with regulators and the E-TWG to scope and shape monitoring plans.

4.4.1 Assess and quantify changes

Describe how changes to environmental resources will be quantified using statistically sound methods.

- Ideally, specific questions and focal taxa will be chosen for the Project either based on site-specific environmental risk assessment, or in relation to broader regional efforts to assess variation between sites and understand cumulative impacts for sensitive species.
- Monitoring will, to the extent practicable, use appropriate study designs and methodologies to effectively analyze risk prior to construction and evaluate impacts during construction and operation by testing hypotheses and helping to assure statistical power for meaningful data analysis.
- Outside expertise will, if practicable, be consulted during study design and data analysis processes.
- Additionally:
 - Empire Wind will ideally target monitoring and research towards interactions between offshore wind energy developments and the potential receptors that may be impacted.
 - Empire Wind, in collaboration with WCS/WHOI, has installed two monitoring buoys to help to further understand the spatial and temporal distribution of the four large whale species within the lease area, including potential for extending deployments to post-construction monitoring.
 - The WCS/WHOI buoys offer an opportunity for real-time monitoring and detection during survey and installation activities.
 - Empire Wind will explore the use of Habitat and Agent Based Modeling to facilitate a better understanding of the spatial and temporal distribution and fine scale movements of key large whale species within the New York Bight, in particular in relation to changes in environmental conditions (*e.g.*, prey resource, seawater temperature).
 - Empire Wind understands that from the outset, any research and monitoring to assess changes and impacts should be statistically robust. However, for some biological monitoring, this level of robustness is not always possible as many outside factors can influence these variations with much greater significance than the factors that can be attributed to causes from offshore wind energy developments (*e.g.*, seawater temperature, nutrient levels, etc.). As such, Empire Wind is open to sharing or using oceanographic data from the Metocean facilities for a better understanding of these relationships.

4.4.2 Address data gaps

Describe how data gaps will be addressed.

- Empire Wind believes there is sufficient marine mammal and sea turtle data to inform spatial planning and support assessments in the COP and Construction Letter of Authorization Applications. However, Empire Wind is willing to collaborate on studies, research and monitoring to supplement what is required under the regulations, to inform mitigation options.
- Empire Wind will engage with relevant stakeholders, for example through the regulatory process and E-TWG to identify areas where data gaps beyond the COP document design exist for further monitoring and research and will consider proposals for research on a case-by-case basis.

4.5 Strategies for developing alternate protocols

Describe the process for determining when mitigation strategies are insufficient and under what conditions they might elect to rehabilitate or restore impacted marine mammals and sea turtles in an alternative location.

- As necessary, Empire Wind will explore this further in consultation with the E-TWG, regulatory agencies, and relevant stakeholders.
- Additionally:
 - Empire Wind has not finalized a process for alternative protocols but is open to exploring this further in consultation with the E-TWG, regulatory agencies and relevant stakeholders.
 - Empire Wind will take additional measures to avoid or reduce potential impacts to marine mammal and sea turtle prey resources in consultation with E-TWG and BOEM and other stakeholders, consistent with the EMP.
 - Empire Wind will continue to consult with NMFS and other key stakeholders throughout the Project development process to determine if any alternative or additional appropriate and proportionate mitigation measures may be necessary.
 - All required mitigation and monitoring measures will be integrated into the Project's "Protected Species Mitigation Protocol(s)".
 - Empire Wind is open to consulting with relevant agencies, ENGOs and E-TWG on further appropriate and proportionate mitigation options, for example, real-time monitoring or observations of marine mammals when in transit and commitments to monitor daily reports on marine mammal sightings and DMAs.

5 Proposed Mitigation of Impacts to Birds and Bats

5.1 Baseline characterization

Describe how baseline data will be established on the presence of bird and bat assemblages, temporal, and spatial use of the site by key species within the area of the proposed Project.

5.1.1 Available information

Describe key existing literature and datasets that are available for baseline characterization.

- Empire Wind has followed BOEM guidelines on the baseline assessment of avian and bat species and potential impacts in support of the COP (30 C.F.R. § 585.626(a)(3)).
- A comprehensive list of information used for baseline characterization of birds and bats can be found in COP Appendix Q and Appendix S. The Final EIS and USFWS Biological Opinion for Empire Wind provide baseline information for birds and bats as well. Biological Opinion for Empire Wind provide baseline information for birds and bats as well.
- Key information used for baseline characterization of birds is as follows:
 - Equinor funded digital aerial avian surveys covering the Lease Area over 12 monthly surveys. Report included as Appendix P: Ornithological and Marine Fauna Aerial Survey, of the Empire Offshore Wind: Empire Wind Project COP available at <https://www.boem.gov/renewable-energy/appendix-p-ornith-marine-fauna-survey>
 - NYSERDA funded digital aerial avian surveys covering the New York Offshore Planning Area (“OPA”) over twelve quarterly surveys. Data and reports are publicly available on https://remote.normandeau.com/portal_data.php?pj=6&public=1
 - Marine-Life Data and Analysis Team (“MDAT”) Bird Abundance and Occurrence Models (Version 2) available at <http://seamap.env.duke.edu/models/mdat/>
 - Northwest Atlantic Seabird Catalog, provided by NOAA with BOEM’s approval.
 - Mid-Atlantic Diving Bird Tracking Study
 - Spiegel, C. S., A. M. Berlin, A. T. Gilbert, C. O. Gray, W. A. Montevecchi, I. J. Stenhouse, S. L. Ford, G. H. Olsen, J. L. Fiely, L. Savoy, M. W. Goodale, and C. M. Burke (2017). Determining Fine-scale Use and Movement Patterns of Diving Bird Species in Federal Waters of the Mid-Atlantic United States Using Satellite Telemetry. OCS Study BOEM 2017-069. [Online.] Available at <https://www.boem.gov/environment/boem-2017-069pdf>
 - Migrant Raptor Studies
 - Positional data on Peregrine Falcons and Merlins during fall migration along the Atlantic flyway. Positional data available online on the Movebank Data repository, used with permission.
 - DeSorbo, C. R., K. G. Wright, and R. Gray (2012). Bird migration stopover sites: ecology of nocturnal and diurnal raptors at Monhegan Island. [Online.] Available at <https://briwildlife.org/wp-content/uploads/2022/02/DeSorbo-Wright-Gray-2012-Bird-migration-stopover-sites-ecology-of-nocturnal-and-diurnal-raptors-at-Monhegan-Island-annotated.pdf>
 - DeSorbo, C. R., L. Gilpatrick, C. Persico, and W. Hanson (2018a). Pilot Study: Establishing a migrant raptor research station at the Naval and Telecommunications Area

- Master Station Atlantic Detachment Cutler, Cutler Maine. Biodiversity Research Institute, Portland, Maine. 6 pp.
- DeSorbo, C. R., C. Persico, and L. Gilpatrick (2018c). Studying migrant raptors using the Atlantic Flyway. Block Island Raptor Research Station, Block Island, RI: 2017 season.
 - Tracking movements of vulnerable terns and shorebirds in the Northwest Atlantic using nanotags.
 - Loring, P. H., P. W. C. Paton, J. D. McLaren, H. Bai, R. Janaswamy, H. F. Goyert, C. R. Griffin, and P. R. Sievert (2019). Tracking Offshore Occurrence of Common Terns, Endangered Roseate Terns, and Threatened Piping Plovers with VHF Arrays. Sterling (VA): US Department of the Interior, Bureau of Ocean Energy Management. OCS Study BOEM 2019-017. 140 p. [Online.] Available at https://espis.boem.gov/final%20reports/BOEM_2019-017.pdf
 - Tracking movements of rufa red knots in the U.S. Atlantic outer Continental Shelf Waters.
 - Loring, P., H. Goyert, C. Griffin, P. Sievert, and P. Paton (2017). Tracking Movements of Common Terns, Endangered Roseate Terns, and Threatened Piping Plovers in the Northwest Atlantic: 2017 Annual Report to the Bureau of Ocean Energy Management (“BOEM”). In. Interagency Agreement No. M13PG00012 to U.S. Fish and Wildlife Service Northeast Region Division of Migratory Birds, Hadley, Massachusetts.
 - Sea Duck Tracking Studies
 - Loring, P. H., P. W. C. Paton, J. E. Osenkowski, S. G. Gilliland, J.-P. L. Savard, and S. R. McWilliams (2014). Habitat use and selection of black scoters in southern New England and siting of offshore wind energy facilities. *The Journal of Wildlife Management* 78:645–656. doi: 10.1002/jwmg.696
 - Meatey, D. E., S. R. McWilliams, P. W. C. Paton, C. Lepage, S. G. Gilliland, L. Savoy, G. H. Olsen, and J. E. Osenkowski (2018). Annual cycle of White-winged Scoters (*Melanitta fusca*) in eastern North America: migratory phenology , population delineation , and connectivity. *Canadian Journal of Zoology* 96:1353–1365.
 - Meatey, D. E., S. R. McWilliams, P. W. C. Paton, C. Lepage, S. G. Gilliland, G. H. Olsen, and J. E. Osenkowski (2019). Resource selection and wintering phenology of White-winged Scoters in southern New England : Implications for offshore wind energy development. 121:1–18. doi: 10.1093/condor/duy014
 - Information on threatened and endangered species and/or their habitat is also available through USFWS IPaC, available at <https://ecos.fws.gov/ipac/>
 - NYSDEC Environmental Resource Mapper, available at <https://www.dec.ny.gov/animals/38801.html>
 - eBird data, available at <https://ebird.org/home>
 - New York Wildlife Action Plan, available at https://extapps.dec.ny.gov/docs/wildlife_pdf/swapfinaldraft2015.pdf
 - NYSERDA 2017. New York State Offshore Wind Master Plan, November 2017, available at <https://www.nyserda.ny.gov/All-Programs/Programs/Offshore-Wind/Offshore-Wind-in-NewYork-State-Overview/NYS-Offshore-Wind-Master-Plan>
 - Studies funded by BOEM on baseline offshore and near-shore avian studies:
 - Williams, K.A, I.J. Stenhouse, E.E. Connelly, and S.M. Johnson. 2015. Mid-Atlantic Wildlife Studies: Distribution and Abundance of Wildlife along the Eastern Seaboard

2012-2014. Biodiversity Research Institute. Portland, Maine. Science Communications. Series BRI 2015-19. 32 pp.

- Carbon Trust ORJIP One Bird Collision Avoidance Study co-funded by Equinor - Skov, H., Heinanen, S. Norman, T., Ward, R.M., Mendez-Roldan, S & Ellis, I. 2018. ORJIP Bird Collision and Avoidance Study. Final Report- April 2018. The Carbon Trust. United Kingdom. 247 pp., available at https://www.carbontrust.com/media/675793/orjip-bird-collision-avoidance-study_april2018.pdf
- ESRI. 2023. Audubon Important Bird Areas. Available at <https://hub.arcgis.com/maps/c885ff1a954d4f9a87c5babc18dd3f5b/explore>. Accessed December 7, 2023.
- Empire Wind relied on the following existing information for its baseline characterization of bats:
 - Equinor funded acoustic surveys within the Lease Area.
 - Tetra Tech (2019). 2018 Bat Study Survey Report: Equinor Wind Offshore Wind Project ICS-A 0512. Prepared for Equinor Wind US, LLC.
 - Mid-Atlantic Baseline Surveys within the Mid-Atlantic Wind Energy Areas- high-definition video aerial surveys and visual boat based surveys of wildlife, including bats.
 - Hatch, S. K., E. E. Connelly, T. J. Divoll, I. J. Stenhouse, and K. A. Williams (2013). Offshore observations of eastern red bats (*Lasiurus borealis*) in the Mid-Atlantic United States using multiple survey methods. *PLoS ONE* 8:e83803.
 - University of Maryland Center for Environmental Science Acoustic Surveys along the Mid-Atlantic coast from Massachusetts to North Carolina - acoustic bat detectors deployed aboard multiple ships.
 - Sjollem, A. L., J. E. Gates, R. H. Hilderbrand, and J. Sherwell (2014). Offshore activity of bats along the Mid-Atlantic Coast. *Northeastern Naturalist* 21:154–163.
 - Rhode Island Acoustic Studies along the Atlantic Coast of Southern New England – acoustic bat detectors deployed at multiple locations within the Rhode Island National Wildlife Refuge Complex
 - Smith, A. D., and S. R. McWilliams (2016). Bat activity during autumn relates to atmospheric conditions: Implications for coastal wind energy development. *Journal of Mammalogy* 97:1565–1577.
 - Carl Herzog, NYSDEC, email communication November 18, 2019 – Northern long-eared bat maternity roosts and hibernacula reported on Long Island.
 - Dowling, Z., P. R. Sievert, E. Baldwin, L. Johnson, S. von Oettingen, and J. Reichard (2017). Flight Activity and Offshore Movements of Nano-Tagged Bats on Martha’s Vineyard, MA.
 - NYSDEC. 2015a. List of Endangered, Threatened and Special Concern Fish & Wildlife Species of New York State. New York State Department of Environmental Conservation. Available at <http://www.dec.ny.gov/animals/7494.html>.
 - NYSDEC. 2015b. New York State Wildlife Action Plan (“SWAP”) Species of Greatest Conservation Need, available at <http://www.dec.ny.gov/animals/7179.html>
 - NYSERDA 2017. New York State Offshore Wind Master Plan, November 2017, available at <https://www.nyserda.ny.gov/All-Programs/Programs/Offshore-Wind/Offshore-Wind-in-NewYork-State-Overview/NYS-Offshore-Wind-Master-Plan>

5.1.2 Data collected

Describe data collected, or will be collected, to support baseline characterization.

- Empire Wind conducted digital aerial avian surveys within the Empire Wind Project area. Detailed methods and findings can be found in COP Appendix P.
 - Status: Complete
- Empire Wind installed a passive bat detector onboard geophysical research vessel to detect bats while the vessel was engaged in other survey activity in the Lease Area in May through December 2018. Detailed methods and findings can be found in COP Appendix R.
 - Status: Complete
- Surveys for ESA-listed bat species at the South Brooklyn Marine Terminal in Brooklyn, New York.
 - Status: Active
- Empire Wind is working with USFWS to plan deployment of Motus avian acoustic receivers and will contribute to the Motus database if deployed.
 - Status: Planning
- Empire Wind has and will continue to share the results of the monitoring with the relevant regulatory authorities and stakeholders.
 - Status: Active

5.2 Species at risk

Describe which species the Developer believes to be of greatest concern and why.

- The Biodiversity Research Institute (“BRI”) conducted an avian and bat risk assessment for onshore and offshore Project components using quantitative and semi-quantitative methods to assess exposure and vulnerability risk of coastal and marine birds and bats. Detailed methods and findings can be found in COP Appendix Q and Appendix S. Based on the assessment, species and taxa groups of greatest concern include:
 - For coastal birds, migratory falcons and songbirds, which may have some risk of exposure to the offshore Project Area, as uncertainty exists about the behavior of falcons around and potentially attraction to offshore wind platforms and understanding of songbird migration is limited. However, mortalities of songbirds and falcons at offshore wind projects have generally not been documented and thus population level impacts are unlikely.
 - For marine birds, terns, and loons, as terns may have moderate exposure to the offshore Project Area, particularly during spring, and moderate vulnerability to collision with turbines, though terns are expected to fly below the Rotor Swept Zone. Loons may exhibit avoidance behavior but are expected to have low exposure to the Lease Area and any displacement is unlikely to affect population trends because of the relatively small size of the Lease Area in relation to available foraging habitat.
 - ESA-listed avian species, such as the Rufa Red Knot (*Calidris canutus*), Piping Plover (*Charadrius melodus*), and Roseate Tern (*Sterna dougallii*), due to their depleted or declining population numbers. However, these species are only expected to fly through the Lease Area during migration in limited numbers and their likelihood of occurrence is low.

- For bats, tree-roosting species such as eastern red bats (*Lasiurus borealis*), hoary bats (*Lasiurus cinereus*), and silver-haired bats (*Lasionycteris noctivigans*), which may pass through the Lease Area during spring and fall migration and have been documented in the Lease Area.
- ESA-listed northern long-eared bat (*Myotis septentrionalis*) and a species proposed for ESA-listing, tricolored bat (*Perimyotis subflavus*), due to their depleted or declining population numbers. However, neither species is expected in the Lease Area given minimal acoustic detections in the offshore environment and that any movement offshore would likely occur near the mainland, and so exposure is likely to be minimal. Acoustic surveys on land have documented no northern long-eared bats. Empire Wind is implementing conservation measures to ensure no effects to potential tricolored bats.
- The Final EIS for Empire Wind further describes the bird and bat species that may be affected by the Project but indicates that impacts to birds will be minimal and negligible, respectively.

5.3 Potential impacts/risks and mitigation measures by project stage

The table below should list the potential impacts and mitigation measures to understand and minimize the Project’s risk to birds and bats. At a minimum this should include the steps the Developer will pursue to minimize risk to birds and bats (e.g., lighting); and identification of technological approaches to assess impacts or any Proposals for other research or mitigations relating to birds or bats planned or under consideration at this time.

Potential impacts to birds and bats and proposed mitigation measures are provided in Table 5-1.

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
Collision risk to marine birds and bats	<ul style="list-style-type: none"> ● Lighting technology will be used in the offshore Project Area that minimizes attraction- and disorientation-related impacts to birds and bats to the extent practicable, such as shielding of lighting at each wind turbine generator (“WTG”) and Offshore Substation to minimize upward illumination, where safe while maintaining human safety and compliance with Federal Aviation Administration (“FAA”), USCG, BOEM and other regulations. Lighting reduction measures will also be implemented onshore such as downward projecting lights, lights triggered by motion sensors, and limiting artificial light to the extent practicable, where safe. ● Install an ADLS, which will activate the FAA hazard lighting only when aircraft is in the vicinity of the wind facility to reduce visual impacts at night. ● Empire Wind will install anti-perching devices on offshore, above-water Project-related structures, where feasible from a health and safety perspective. Monitoring will be conducted to assess effectiveness 		X	X	X

Table 5-1 Potential Impacts to birds and bats and Proposed Mitigation Measures

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<p>of the perching deterrents and locations and types of deterrents may be modified accordingly.</p> <ul style="list-style-type: none"> Review current technology and methods for minimizing collision risk of ESA-listed birds, and implementing those methods deemed reasonable and prudent. Empire Wind will document and report to the appropriate federal agencies any dead or injured birds found on vessels and structures during construction, operations, and decommissioning. Empire Wind will also report the occurrence of any dead or injured ESA-listed bird as soon as practicable. Empire Wind will provide appropriate compensatory mitigation as needed to offset projected levels of take of listed birds from WTG collision. 				
Habitat impacts, including breeding and nesting areas	<ul style="list-style-type: none"> Site and construct onshore components in previously disturbed areas, existing roadways, and/or rights-of-way to the extent practicable. Adhere to time of year restrictions as necessary in sensitive onshore bird habitats, where feasible and required, unless otherwise determined acceptable by the applicable agencies. Develop and enforce an Oil Spill Response Plan (“OSRP”). For both birds and bats, temporarily disturbed areas will be revegetated with appropriate native species, as appropriate. 		X	X	X
Additional proposed mitigations	<ul style="list-style-type: none"> Develop an adaptive, long-term monitoring program to address specific questions related to ESA-listed and non ESA-listed bird and bat species, and when possible, to contribute to the understanding of long-term Project-specific impacts and larger scale efforts to understand cumulative impacts. 	X	X	X	X

**Phase: 1: Survey/Design; 2: Construction; 3: Operation; 4: Decommission*

5.4 Monitor for impacts during each phase

Describe how potential impacts will be monitored on birds and bats during each phase of physical work for the Project (site assessment, construction, operation, and decommissioning) to inform mitigation planning for later phases of the Project as well as for future Projects.

5.4.1 Construction, Operation and Decommissioning: Pre/Post monitoring to assess and

quantify changes

Describe how changes to environmental resources will be quantified using statistically sound methods.

- Site assessment activities have concluded for EW1 and results have been used to inform the COP.
- Pre- and post-construction monitoring will be designed in such a way that it improves understanding of the impacts of offshore wind energy development on birds and bats, including identifying specific questions and taxa on which to focus monitoring efforts for the proposed project, or in relation to broader regional efforts to assess variation between sites and understand cumulative impacts for sensitive species.
- Monitoring will, to the extent practicable, use appropriate study designs and methodologies to effectively analyze risk prior to construction and evaluate impacts during construction and operation by testing hypotheses and helping to assure statistical power for meaningful data analysis.
- Consistent with requirements in the Final EIS, Empire Wind has committed to an adaptive, long-term monitoring approach that uses statistically sound methods to assess potential impacts to environmental resources. In consultation with stakeholders, including regulatory agencies, Empire Wind has developed the Empire Wind Offshore Wind Projects: Proposed Bird and Bat Monitoring Framework (“Framework”), which has been approved by BOEM, and will be developed into a formal, detailed Avian and Bat Post-Construction Monitoring Plan (“ABPCMP”).
- Equinor will support pre- and post-construction digital aerial surveys across the Lease Area to understand avoidance behavior of birds exposed to the Project and whether densities vary across the Lease Area. To determine which survey configurations are most effective at statistically modeling displacement, a simulation analysis was conducted to assess auk, gannet, and loon distributions and their displacement after construction in the Empire Wind Lease Area. Once surveys are completed, changes in the spatial distribution or overall abundance of animals in the Lease Area before compared to after construction activities will be investigated using spatially explicit density modeling methods.
- Empire Wind will continue to consult with BOEM, USFWS, other relevant regulatory agencies, outside experts, and other stakeholders to determine the need for adjustments to its approach and/or additional periods of monitoring based on an ongoing assessment of results.
- Empire Wind will continue to consult with BOEM, USFWS, and other relevant regulatory agencies, outside experts and stakeholders to develop monitoring plans and strategies in preparation for decommissioning phase of the project.

5.4.2 Address data gaps

Describe how data gaps will be addressed.

- Empire Wind will implement an adaptive, long-term monitoring program to address data gaps related to ESA-listed and non ESA-listed bird and bat species.
- A detailed monitoring plan, the ABPCMP, will be developed based on the BOEM-approved Framework through ongoing discussion with stakeholders and regulators and will be coordinated with regional research efforts.
- Questions to be addressed in the monitoring program include:
 - What ESA-listed and non ESA-listed bird and bat species are present in the Lease Area?

- What time of year are marine birds and bats present in the Lease Area?
- What time of year are birds migrating offshore and how is migratory activity related to weather?
- How does bird and bat activity relate to temperature and wind speed?
- What dead or injured species are found incidentally?
- To address these questions, Empire Wind will:
 - Install bat acoustic detectors at multiple turbines across the Lease Area and acoustically monitor for bats at night once operations at Empire Wind begin.
 - Install bird acoustic detectors at offshore substations and acoustically monitor for migrating birds once operations begin.
 - Install Motus stations at multiple turbines following current USFWS Offshore Motus Guidance and support Motus tagging efforts to track ESA-listed species around the Lease Area once operations begin.
 - Document dead or injured birds and bats around the Lease Area during all phases of the Project.
- Empire will submit annual monitoring reports to BOEM, BSEE and other relevant agencies that include all data, analyses, and summaries regarding ESA-listed and non-ESA-listed birds and bats.

5.5 Strategies for developing alternate protocols

Describe the process for determining when mitigation strategies are insufficient and under what conditions they might elect to rehabilitate or restore impacted birds and bats in an alternative location.

- As necessary, Empire Wind will explore this further in consultation with the E-TWG, regulatory agencies and relevant stakeholders.
- Following the submission of an annual monitoring report, Empire Wind will meet with BOEM and USFWS to discuss the following: the monitoring results; the potential need for revisions to the ABPCMP, including technical refinements or additional monitoring; and the potential need for any additional efforts to reduce impacts. If BOEM or USFWS determines that revisions to the ABPCMP are necessary, Empire Wind may modify the ABPCMP accordingly.
- Empire will also conduct an annual review of current technology and methods for minimizing collision risk of ESA-listed birds and will implement those methods deemed reasonable and prudent.
- Empire will provide appropriate compensatory mitigation as needed to offset projected levels of take of listed birds from WTG collision.

6 Proposed Mitigation of Impacts to Fish, Invertebrates, and their Habitats

6.1 Baseline characterization

Describe what is known about the proposed site in terms fish and invertebrate assemblage, and temporal and spatial variations in fish, invertebrates and their habitats at the proposed site. The use of collaborative monitoring models with the fishing community is encouraged to develop trusted baseline data.

6.1.1 Available information

Describe key existing literature and datasets that are available for baseline characterization.

- Public data sources are suitable for characterizing benthic habitat and fisheries resources in the Project Area, including:
 - The evaluation of NYSERDA’s Master Plan Fish and Fisheries Study (2017; Appendix J).
 - NOAA National Centers for Coastal Ocean Science and BOEM Comprehensive Seafloor Substrate Mapping and Model Validation in the Atlantic (2019).
 - Estuarine Living Marine Resource database (NOAA 2000) provide descriptions of spatial and temporal distributions of species (by life stage) in Hudson River/Raritan Bay and the Great South Bay, however, the database is not updated regularly.
 - Use of commercial and recreational fisheries effort data as a proxy for fish species.
- The Empire Wind COP provides a detailed review of available baseline data.

6.1.2 Data being collected

Describe data collected, or will be collected, to support baseline characterization.

- NOAA National Centers for Coastal Ocean Science and BOEM Comprehensive Seafloor Substrate Mapping and Model Validation in the Atlantic research/survey collected sediment grab samples at 400 locations in the Lease Area, as well as bathymetric data and opportunistic fisheries data.
 - Status: Complete
- Empire Wind commissioned benthic sampling in 2018 by Gardline Environmental covering the entire Lease Area and building on previous comprehensive benthic surveys carried out by NOAA’s National Center for Coastal Ocean Science (“NOS”). These Empire Wind surveys were conducted at a total of 67 sample stations, and included grab samples, drop down digital video and stills imagery. Grab samples were analyzed for sediment grain size distribution and macro faunal analysis. This report has been made publicly available for download from the Empire Wind website:
<https://www.empirewind.com/wp-content/uploads/2022/04/2018-sap-benthic-survey-report.pdf>
 - Status: Complete
- Benthic sampling was conducted in 2019 by Inspire Environmental covering proposed potential export cable routes for the Lease Area. Sampling included Sediment Profile Imaging and Plan View imaging at 157 sample stations, with 15 reference stations and sediment grab samples for sediment grain size analysis and macrofaunal analysis for verification. This report has been made publicly available for download from the Empire Wind website [EW1 Appendix-E Benthic Resource Characterization Reports-ALL.pdf \(empirewind.com\)](#)

- Status: Complete
- Geophysical, benthic habitat (through geophysical interpretation), and geotechnical surveys were conducted from March 2018 to November 2018 across the entire Lease Area and export cable corridors, with additional geophysical and geotechnical surveys carried out in 2019 to fill in data gaps and cover areas from landfall to the 65 ft (20 m) depth contour.
 - Status: Complete
- With the site specific and existing benthic data, and the existing fisheries data, there is sufficient data for the purpose of the COP impact assessments, spatial planning and/or mitigation. However, Empire Wind will consult with the E-TWG and relevant federal agencies and stakeholders on requirements for further surveys for targeted benthic and fisheries monitoring and research.

6.2 Species at risk

Describe which species the Developer believes to be of greatest concern and why.

- Empire Wind notes that fish and invertebrate species of interest in the lease area fall into three groups based on regulatory status: (1) species managed under the MSA; (2) species listed under the ESA; and (3) non-game fish and invertebrate species that are considered important prey (or shelter, in the case of biogenic habitats) for fish and wildlife.
- In addition, the role of the benthic habitat as a fisheries resource is fundamental to the identification of EFH, as reflected in the emphasis on EFH in BOEM's benthic survey guidance (BOEM 2019). EFH has been designated in the Lease Area for various life stages of more than two dozen nonmigratory managed species, including finfish, sharks and rays, and invertebrates.
- Designated EFH for three (3) coastal migratory pelagic and seventeen (17) highly migratory managed fish species also occurs in the Lease Area.
- Three federally-listed endangered fish may occur in the Lease Area:
 - Atlantic salmon (*Salmo salar*);
 - Atlantic sturgeon (*Acipenser oxyrinchus*); and
 - shortnose sturgeon (*Acipenser brevirostrum*).
- NYSDEC lists a number of other fish species as endangered, most if not all, are associated with freshwater habitat which will be evaluated, as applicable to the export cable route.
- Full details of species at risk, likely impact, and proposed mitigation have been described in the COP in consultation with the relevant stakeholders, including in the presentation and updates of the EMP to the E-TWG.

6.3 Potential impacts/risks and mitigation measures by project stage

The table below should list the potential impacts to fish, invertebrates, and their habitats and proposed mitigation measures. To this end, this section should describe how the Developers will minimize risk to fish, invertebrates and their habitats (e.g., foundation type, scour protection, cable shielding for electromagnetic fields, construction windows, siltation/turbidity controls, use of dynamic-positioning vessels and jet plow embedment).

Potential impacts to fish, invertebrates, and their habitats and proposed mitigation measures are provided in Table 6-1.

Table 6-1 Potential Impacts to Fish, Invertebrates, and Their Habitats and Proposed Mitigation Measures					
Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
Micro-siting conflicts with habitats and fishery resources	<ul style="list-style-type: none"> • Empire Wind will seek input from regulatory authorities, the fishing industry, and maritime industry to locate foundations and cable routes in the least impactful manner that is practicable. • Empire Wind will prepare and implement micrositing plans designed to avoid, to the extent possible, siting structures (wind turbines, offshore substations, and submarine cables) in areas of sensitive habitat, where feasible; • Empire Wind will consider the timing of construction activities; working with the fishing industry and fisheries agencies on sensitive spawning and fishing periods to actively avoid or reduce interaction with receptors, where feasible. 	X			
Temporary, alteration of the seabed and localized increases in noise and turbidity	<ul style="list-style-type: none"> • Empire Wind will seek to use quiet foundation solutions or foundation installation technology solutions that reduce acoustic stress, where technically and commercially feasible. • Empire Wind will seek to use noise attenuation technologies to reduce the sound from pile driving of foundations. • Most construction vessels will maintain position using dynamic positioning, limiting the use of anchors and jack-up features, where feasible. Where anchors or jack-up features are required, Empire Wind will develop and implement an Anchoring Plan to ensure any anchors or jack-up features would be placed within the previously cleared and/or disturbed areas around the foundations and along the cable routes; • Empire Wind will develop and implement a Boulder Identification and Relocation Plan designed to avoid or minimize impacts to sensitive benthic habitats; • Empire Wind will consider the use of HDD at landfall to minimize physical disturbance of coastal habitats. Empire Wind would implement appropriate measures during HDD activities at landfalls to minimize potential release of HDD fluid. To minimize an inadvertent fluid return, an HDD Contingency Plan would be developed and implemented; • Empire Wind will consider the use of appropriate measures and timing during cable installation 	X	X	X	X

Table 6-1 Potential Impacts to Fish, Invertebrates, and Their Habitats and Proposed Mitigation Measures

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<p>activities to minimize sediment resuspension and dispersal in areas of known historically contaminated sediments; and</p> <ul style="list-style-type: none"> • Empire Wind will seek to use commercially available and technically feasible noise reducing technologies, in accordance with associated authorizations. 				
Long-term changes to seabed and habitat	<ul style="list-style-type: none"> • Empire Wind will, to the extent possible, avoid sensitive benthic habitats. • Empire Wind will implement mitigation and avoidance measures to protect water quality, such as spill prevention. Specifically, Empire Wind will use appropriate measures for vessel operation and will develop and implement an OSRP, which will include measures to prevent, detect, and contain accidental release of oil and other hazardous materials. Project personnel will be trained in accordance with relevant laws, regulations, and Project policies, as described in the OSRP; • During construction, operations, and maintenance, Empire Wind will utilize sensitivelighting schemes to minimize exposure of light, as practicable; • Most construction vessels will maintain position using dynamic positioning, limiting the use of anchors and jack-up features, where feasible. Any anchors or jack-up features would be placed within the previously cleared and/or disturbed area around the foundations; • Empire Wind will consider the use of HDD at the landfall to minimize physical disturbance of coastal habitats. Empire Wind would implement appropriate measures during HDD activities at landfalls to minimize potential release of HDD fluid. To minimize an inadvertent fluid return, an HDD Contingency Plan would be developed and implemented. 	X	X	X	X

Table 6-1 Potential Impacts to Fish, Invertebrates, and Their Habitats and Proposed Mitigation Measures					
Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
EMF Impacts	<ul style="list-style-type: none"> • Empire Wind will use proper shielding to reduce EMF impacts; • Empire Wind will conduct EMF modeling and assessments to identify potential mitigation requirements; • Electrical cables will be armored and sufficiently buried where feasible to reduce EMF effects; and • As noted above, Empire Wind will conduct both onshore and offshore EMF assessments for the COP. 		X	X	
Cable burial	<ul style="list-style-type: none"> • Empire Wind will bury export and interarray cables to an appropriate minimal depth to reduce exposure risk. If depth cannot be reached, Empire Wind will add protective materials over the cable; • Sufficient burial of inter-array and export cables to facilitate continued seabed penetrating fishing activity; • Dissemination of information to fishers on cable locations including inclusion on navigational charts; • Intention to bury inter-array and export cables based on Cable Burial Risk Assessment; • Development of a Cable Installation Plan, detailing how cable installation will be managed; • Where plows, jets, grapnel runs, or other similar methods are used to install submarine cables, Empire Wind will conduct post-construction surveys to determine the height and width of any created berms, and if there are bathymetric changes in berm height greater than 1 meter above grade Empire Wind will develop and implement a Berm Remediation Plan to restore created berms to match adjacent natural bathymetric contours as technically and/ or economically practical or feasible; and • Empire Wind will conduct routine surveys or inspections of sub-sea cables during operation, and will conduct a survey or inspection to ensure and correct for cable exposure following hurricane or other major events causing disturbance to the seabed. 		X	X	
Turbine Scour Protection	<ul style="list-style-type: none"> • Empire Wind will seek collaboration with state and federal regulatory authorities and key stakeholders to assess the feasibility and use of ecological enhancements for turbine scour protection. 	X			

Table 6-1 Potential Impacts to Fish, Invertebrates, and Their Habitats and Proposed Mitigation Measures

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
Additional proposed mitigations	<ul style="list-style-type: none"> • Empire Wind will develop and implement a number of measures to mitigate potential impacts on commercial fisheries and for-hire and recreational fisheries as described in Condition 6 of BOEM’s draft Record of Decision. Additional information is available on the Empire Wind website at https://www.empirewind.com/environment-and-sustainability/mariners-and-fisheries/; • Empire Wind will install scour protection, as needed; • Empire Wind will develop and implement a monitoring program, including a Fisheries and Benthic Monitoring Plan, to address specific questions, to include identifying key species of interest, and when possible, to contribute to the understanding of long-term Project-specific impacts and larger scale efforts to understand cumulative impacts; and • Empire Wind will develop and implement a Protected Species Monitoring Plan that will include mitigation measures for pile driving noise and vessel strike avoidance. 	X	X	X	X

**Phase: 1: Survey/Design; 2: Construction; 3: Operation; 4: Decommission*

6.4 Monitor for impacts during each phase

Describe how potential impacts will be monitored on these types of fish and invertebrates during each phase of physical work for the Project (site assessment, construction, operation, and decommissioning) to inform mitigation planning for later phases of the Project as well as for future Projects.

6.4.1 Pre/Post monitoring to assess and quantify changes

Describe how changes to environmental resources will be quantified using statistically sound methods.

- Ideally, specific questions and focal taxa will be chosen for the Project either based on site-specific fisheries risk assessment, or in relation to broader regional efforts to assess variation between sites and understand cumulative impacts for sensitive species.
- Monitoring will, to the extent practicable, use appropriate study designs and methodologies to effectively analyze risk prior to construction and evaluate impacts during construction and operation by testing hypotheses and helping to assure statistical power for meaningful data analysis.

- Outside expertise will, if practicable, be consulted during study design and data analysis processes.
- Empire Wind will seek to collaborate with other regulatory agencies and stakeholder groups to identify research needs and opportunities.
- Additionally:
 - Empire Wind understands that from the outset, any research and monitoring to assess changes and impacts should be statistically robust. However, for some biological monitoring, this level of robustness to adequately detect change as a direct result of an offshore wind farm is not always possible as many outside factors can influence these variations with much greater significance than the factors that can be attributed to causes from offshore wind energy developments (*e.g.*, seawater temperature, nutrient levels, etc.).
 - As such, Empire Wind is open to monitoring that explores other approaches to detect and quantify change, where further monitoring is appropriate, for example behavioral responses. Empire Wind will work with the regulatory agencies, E-TWG, F-TWG, ROSA, and relevant stakeholders to identify research and monitoring needs and agree on methodology.

6.4.2 Addressing data gaps

Describe how data gaps will be addressed.

- Empire Wind will seek to work with stakeholders, including regulatory agencies, to identify data gaps to be addressed through surveys or permitting applications.
- Additionally:
 - Empire Wind will conduct further research and monitoring where data and knowledge gaps remain that present uncertainties over potential significant adverse impacts attributable to the effects of offshore wind farm development.
 - Empire Wind is open to discussing further monitoring and research to fill data gaps as appropriate through regulatory agencies, E-TWG, F-TWG, ROSA, and relevant stakeholders.

6.5 Strategies for developing alternate protocols

Describe the process for determining when mitigation strategies are insufficient and under what conditions they might elect to rehabilitate or restore impacted fisheries in an alternative location or when the provision of compensation of some form may be appropriate.

- As necessary, Empire Wind will explore this further in consultation with the E-TWG, F-TWG, ROSA, and regulatory agencies and relevant stakeholders.
- Additionally:
 - Empire Wind has yet to finalize a process for alternative protocols, but is open to exploring this further in consultation with the E-TWG, regulatory agencies and relevant stakeholders.

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7 Considerations for Subsea and Overland Cables

7.1 Mitigation strategies for subsea and overland cables

This section should describe any additional environmental mitigation strategies for proposed subsea and overland cable routes that support the offshore wind project.

- Proposed subsea and overland cable routes are described in the Empire Wind COP, along with the full list of reference materials and mitigation measures. These are summarized below.
- Baseline terrestrial vegetation and wildlife condition studies were conducted using the following resources:
 - 2019 National Land Cover Dataset: Land cover conterminous United States (USGS 2019); and
 - 2020 Half-Foot 4 and Long Island Zone New York City Aerial Ortho-Photography (NYSDEC 2021)
 - Environmental Resource Mapper used to check for the presence of Rare Plants and Animals and Significant Natural Communities
 - New York Nature Explorer digital database (NYSDEC 2021a)
 - USFWS National Wetlands Inventory (USFWS 2021)
 - NYSDEC Regulatory Freshwater Wetlands, Queens and Bronx Counties, Tidal Wetlands, and Water Quality Classifications reports
- The onshore component of the Empire Wind Project Area is located in a highly developed area with few areas of natural vegetation cover.
- Five federal and state-listed wildlife species (northern long-eared bat, Piping Plover, Red knot, and Roseate Terns) and one flowering plant, seabach amaranth (*Amaranthus pumilus*) were identified as potentially occurring within the Brooklyn, New York Project Area. The three federally-listed birds are considered shorebird species that require natural stretches of beaches and other coastal, marine, and estuarine habitats and the roseate tern nests almost exclusively on islands to avoid higher predation rates on the mainland. The seabach amaranth occurs on wide sandy beaches above the high tide line and adjacent to foredune areas. Northern long-eared bats are found primarily known to occur in forested areas and has not been found during acoustic surveys on site. The tricolored bat is proposed federally endangered, and the decision listing is anticipated by March 1, 2024. Empire Wind is working with USFWS to implement conservation measures to avoid any effects to potential tricolored bats.
- Empire Wind onshore facilities have been sited in a manner that avoids natural habitat – approximately 96% of the onshore portions of the Project Area consist of impervious surfaces, maintained lawn, and disturbed open space.
- Impacts to the shoreline and intertidal zones at the landfall locations may be avoided or minimized by using trenchless installation methods to connect the marine cable to the onshore substation facilities.
- Onshore substation facility locations, onshore export and interconnection cable routes, and POIs are situated within an intensely developed landscape of commercial/industrial buildings, roads, and maintained lawns which further discourages the use of this area by bird species sensitive to human disturbance.

- During construction, Empire Wind will commit to the following avoidance, minimization, and mitigation measures to mitigate impacts:
 - Limiting lighting associated with construction vehicles and work zones to the extent practicable, to reduce the attraction of insect prey for wildlife species such as bats and insectivorous birds;
 - The siting of onshore components in previously disturbed areas, existing roadways, and/or rights-of-way to the extent practicable;
 - The implementation of soil erosion and sediment control plans, which will be provided for agency review and approval, as applicable, for each onshore component
 - The implementation of an Inadvertent Return Plan, which will be provided for agency review and approval, as applicable
 - The management of accidental spills or releases of oils or other hazardous wastes through a Spill Prevention, Control and Countermeasure plan, which will be provided for agency review and approval, as applicable;
 - During construction, access will be restricted to existing paved roads and approved access routes to avoid impacts to naturally vegetated areas and wildlife resources;
 - The implementation of an invasive species control plan, which will be provided for agency review and approval, as applicable, to avoid the spread of invasive species and replant with native vegetation only; and
 - Landscaping and restoration work will be completed with appropriate native species, per a Landscape Restoration Plan or other appropriate plan, and in compliance with an invasive species control plan to prevent the introduction of invasive plant species, which will be provided for agency review and approval, as applicable.
- In addition, during construction, Empire Wind will consider the following avoidance, minimization, and mitigation measures to mitigate impacts
 - A trenchless method may be used for installation of the export cable landfalls to avoid surficial disturbances and impacts to coastal resources including the intertidal zone, freshwater and tidal wetlands, naturally vegetated areas and wildlife resources;
 - Although not anticipated within the Project Area due to the highly developed nature of the onshore area and absence of suitable habitat, evaluation of seasonal restrictions will be conducted should sensitive species be detected prior to vegetation clearing or other construction related activities, to mitigate potential impacts to breeding individuals; and
 - Consideration of staggering silt fencing or other erosion control devices in sensitive areas to facilitate the passage of biota, if deemed effective. The strategy will be implemented on a site specific basis and finalized during the permitting process. As the Project design is still preliminary, detailed mitigation strategies will be developed as part of the final design and conform to the requirements of state and federal permitting respective to wetlands and waterbody resources.
- During operations, Empire Wind will commit to the following avoidance, minimization, and mitigation measures to mitigate impacts:
 - Protective measures will be installed around Project-components to restrict access to wetlands, naturally vegetated areas, and wildlife resources during operation and maintenance activities;

- Revegetation monitoring will be conducted consistent with a Landscaping Restoration Plan and Invasive Species Control Plan, which will be provided for agency review and approval,
 - Mitigation monitoring, as required and defined during the regulatory process for any areas identified as mitigation sites because of long-term unavoidable impacts to freshwater and tidal wetlands, naturally vegetated areas, and wildlife resources; and •
 - The implementation of lighting reduction measures such as downward projecting lights, lights triggered by motion sensors, and limiting artificial light to the extent practicable, where safe.
- Avoidance, minimization, and mitigation measures proposed to be implemented during conceptual decommissioning are expected to be similar to those experienced during construction and operations. A full decommissioning plan will be approved by BOEM prior to any decommissioning activities, and avoidance, minimization, and mitigation measures for decommissioning activities will be proposed at that time.

8 Additional Considerations

8.1 Additional mitigation strategies and EMP refinement

This section should describe any additional mitigation strategies not otherwise described herein that would improve the Plan and reduce impacts on wildlife. In addition, describe how the EMP will be updated and refined based on additional information and stakeholder feedback.

- Empire Wind will support collaborative research on potential mitigation strategies and best management practices, with other developers, agencies, and stakeholders.
- Additionally:
 - Empire Wind will continue to monitor new and novel approaches to mitigation in the offshore wind industry both in the US and from existing offshore wind farms owned by Empire Wind's affiliates and developments elsewhere in the world, including the forums and networks in which Empire Wind's affiliates participate.

8.2 Process for updating the EMP

This section should describe how feedback from the fishing industry stakeholders, F-TWG, and other agencies and working groups will be incorporated and updated in the EMP.

- Updates to the EMP are intended to reflect the results of iterative exchanges with members of the E-TWG, F-TWG, and relevant stakeholders.
- Additionally:
 - Empire Wind will continuously evaluate and evolve this EMP so that all the components of the EMP are complete and sufficient.
 - Empire Wind expects that additional guidance and information will become available throughout the planning and regulatory process and as such will continue to consider its relevance to the EMP at the appropriate intervals.
 - Updates to the EMP are intended to reflect the results of iterative exchanges with members of the E-TWG, F-TWG, and relevant stakeholders.
 - Currently Empire Wind is working with the E-TWG to establish a process for updating the Empire Wind EMP, where formal updates will likely occur after major Project milestones (e.g., a Project Notice of Intent).

9 Project Decommissioning

9.1 Potential impacts on marine wildlife, birds, bats, and fisheries

This section should describe potential impacts to marine mammals, sea turtles, birds, bats, and fisheries and habitats from decommissioning the project, based on available information and relevant experience (if any).

- Empire Wind’s waste handling processes during decommissioning will focus on re-use or recycling, with disposal as the last option.
- Empire Wind will collaborate with regulatory authorities and key environmental stakeholder groups better understand the effects and potential impacts associated with decommissioning.
- Additionally:
 - Empire Wind does not expect impacts from decommissioning to exceed impacts resulting from the maximum design scenarios associated with construction.
 - As monitoring during operations provides a better understanding of the spatial and temporal presence of marine mammals, sea turtles, birds, bats, and fish habitats within the Lease Area, mitigation measures can be more tailored and effective at further reducing the likelihood and level of impacts.
 - Empire Wind will collaborate on further research into the effects and potential impacts associated with decommissioning, including coordination with the E-TWG and F-TWG, using the experiences in Europe to help inform that process as well as experiences from decommissioning of oil and gas installations and other offshore wind developments on the eastern seaboard of the United States.
 - Empire Wind will continue to investigate potential evolving technologies and processes for implementing the mitigation hierarchy related to waste, through incorporation of circularity principles and life cycle assessment work that is being conducted within the broader organization and externally.

9.2 Approach for decommissioning plan and coordination with stakeholders

This section should describe how a decommissioning plan will be developed to identify and mitigate potential impacts, including coordination with stakeholders, and any elements of its contemplated decommissioning plan that can be identified at this stage

- Empire Wind will decommission the Project in accordance with all necessary laws and regulations and generate a detailed Project-specific decommissioning plan.
- Empire Wind will seek input on the detailed Project-specific decommissioning plan from regulatory agencies, fisheries and marine stakeholders, and local communities.
- Empire Wind will use “lessons learned” from the construction and operations activities and apply them when appropriate to the decommissioning plan.
- Additionally:
 - Empire Wind will continuously evaluate and improve this EMP so that all the components of the EMP are complete and sufficient, including the decommissioning plan.

- Empire Wind expects that additional guidance and information will become available throughout the planning and regulatory process and will continue to consider its relevance to the EMP at the appropriate intervals.

EXHIBIT G

FORM OF GUARANTY

THIS GUARANTY is dated and effective as of _____ (as amended, restated or modified from time to time, the “Guaranty”), and is made by _____, a _____ organized under the laws of the _____ (the “Guarantor”), in favor of the New York State Energy Research and Development Authority (“NYSERDA”), a New York public benefit corporation, having a principal business address of 17 Columbia Circle, Albany, New York 12203. All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

WHEREAS, pursuant to an Offshore Wind Renewable Energy Certificate Standard Form Purchase and Sale Agreement dated as of _____ (the “Agreement”) by and between _____, a _____ organized under the laws of the _____ (the “Seller”), and NYSEDA, the Seller has agreed to sell to NYSEDA and NYSEDA has agreed to purchase from Seller certain renewable energy certificates (“ORECs”), as more specifically set forth in the Agreement; and

WHEREAS, in order to induce NYSEDA to purchase the ORECs, and with full knowledge that NYSEDA would not purchase the ORECs without this Guaranty, Guarantor has agreed to execute and deliver this Guaranty to NYSEDA, for the benefit of NYSEDA, as security for Seller’s performance of certain of its obligations under the Agreement;

WHEREAS, Guarantor is a _____ of Seller and will significantly benefit from NYSEDA’s purchase of the ORECs from the Seller; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties each intending to be legally bound, hereby do agree as follows:

1. GUARANTY.

(a) Guarantor irrevocably, absolutely and unconditionally guarantees as a primary obligor and not merely as surety, to NYSEDA the full and prompt payment no later than two (2) business days following written demand by NYSEDA, of an amount in U.S. dollars equal to the Contract Security that (i) is calculated in accordance with Sections 15.01 and 15.02 of the Agreement, and (ii) NYSEDA is entitled to retain or, in the event that Contract Security is provided in the form of an Acceptable Guaranty, to receive, in accordance with Section 15.07 of the Agreement (the “Guaranteed Obligations”); provided that Guarantor’s aggregate liability under this Guaranty, including, without limitation, on account of the Guaranteed Obligations, shall not exceed [] Dollars (\$ _____) under any circumstances (“Guaranty Capped Value”).

(b) Guarantor understands, agrees and confirms that NYSEDA may enforce this Guaranty up to the full amount of the Guaranteed Obligations against Guarantor without

proceeding against Seller or under any other guaranty covering all or a portion of the Guaranteed Obligations. This Guaranty is a guaranty of prompt payment and performance and not of collection, and is limited to payment and performance of the Guaranteed Obligations.

2. LIABILITY OF GUARANTOR ABSOLUTE. The liability of Guarantor hereunder is primary, absolute and unconditional and is exclusive and independent of any security for or other guaranty of the obligations of Seller whether executed by Guarantor, any other guarantor or by any other party, and the liability of Guarantor hereunder shall not be affected or impaired by any circumstance or occurrence whatsoever, including, without limitation: (a) any other continuing or other guaranty, undertaking or maximum liability of Guarantor or of any other party as to the Guaranteed Obligations, (b) any payment on or in reduction of any such other guaranty or undertaking, (c) any dissolution, termination or increase, decrease or change in personnel by Seller, (d) the failure of either Guarantor to receive any benefit from or as a result of its execution, delivery and performance of this Guaranty, (e) any payment made to NYSERDA pursuant to the Agreement that NYSERDA repays Seller pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceeding, and Guarantor waives any right to the deferral or modification of its obligations hereunder by reason of any such proceeding, (f) any action or inaction by NYSERDA as contemplated in Section 5 hereof, (g) any invalidity, rescission, irregularity or unenforceability of all or any part of the Guaranteed Obligations, (h) any statute of limitations affecting its liability hereunder or the enforcement thereof, which Guarantor hereby waives to the fullest extent permitted by applicable law, (i) any law that provides that the obligation of a guarantor must neither be larger in amount or in other respects more burdensome than that of the principal or that reduces a guarantor's obligation in proportion to the principal obligation, (j) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation or dissolution proceeding commenced by or against any Person, including without limitation any discharge of, or bar or stay against collecting, all or any of the Guaranteed Obligations in or as a result of any such proceeding, (k) any extension of credit or the grant of any lien under Section 364 of the United States Bankruptcy Code, or (l) the application or non-application of Section 1111(b)(2) of the United States Bankruptcy Code.

3. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF GUARANTOR. In order to induce NYSERDA to enter into the purchase of ORECs pursuant to the Agreement, Guarantor represents, warrants and covenants that:

(a) Guarantor (i) is a duly organized and validly existing corporation, partnership, or limited liability company, as the case may be, in good standing under the laws of the jurisdiction of its organization and (ii) has the corporate, trust, partnership or limited liability company power and authority, as the case may be, to own its property and assets and to transact the business in which it is engaged and presently proposes to engage;

(b) Guarantor has the corporate, trust, partnership or limited liability company power and authority, as the case may be, to execute, deliver and perform the terms and provisions of this Guaranty and has taken all necessary corporate, trust, partnership or limited liability company action, as the case may be, to authorize the execution, delivery and performance by it of this Guaranty;

(c) Guarantor has duly executed and delivered this Guaranty, and this Guaranty constitutes the legal, valid and binding obligation of such Guarantor enforceable in accordance with its terms;

(d) neither the execution, delivery or performance by Guarantor of this Guaranty, nor compliance by it with the terms and provisions hereof, will (i) contravene any provision of any applicable law, statute, rule or regulation or any applicable order, writ, injunction or decree of any court or governmental instrumentality or (ii) conflict with, violate or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under any agreement, contract or instrument to which Guarantor is a party, except where non-compliance would not reasonably be expected to have a material adverse effect upon the legality, validity, binding effect or enforceability against Guarantor of this Guaranty; and

(e) no order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except as have been obtained or made prior to the date when required and which remain in full force and effect), or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorize, or is required in connection with, (i) the execution, delivery and performance of this Guaranty by such Guarantor or (ii) the legality, validity, binding effect or enforceability of this Guaranty, in each case, except where non-compliance would not reasonably be expected to have a material adverse effect upon the legality, validity, binding effect or enforceability against Guarantor of this Guaranty.

4. WAIVERS BY GUARANTOR.

(a) Guarantor hereby waives to the fullest extent permitted by applicable law notice of acceptance of this Guaranty and notice of the existence, creation or incurrence of any new or additional liability to which it may apply, and waives promptness, diligence, presentment, demand of payment, demand for performance, protest, notice of dishonor or nonpayment of any such liabilities, suit or taking of other action by NYSERDA against, and any other notice to, any party liable thereon (including Guarantor, any other guarantor or Seller) and Guarantor further hereby waives any and all notice of the creation, renewal, extension or accrual of any of the Guaranteed Obligations and notice or proof of reliance by NYSERDA upon this Guaranty, and the Guaranteed Obligations shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended, modified, supplemented or waived, in reliance upon this Guaranty.

(b) Guarantor waives any right to require NYSERDA to: (i) proceed against Seller, any other guarantor of the Guaranteed Obligations or any other party; (ii) file or enforce a claim in any bankruptcy or other proceeding with respect to any person; and (iii) pursue any remedy in NYSERDA's power whatsoever. Guarantor waives any and all defenses based on or arising out of any defense of Seller, any other guarantor of the Guaranteed Obligations or any other party including, without limitation, (1) defenses arising from the bankruptcy, insolvency, dissolution or liquidation of the Seller, or any injunction, stay or similar action in any bankruptcy, insolvency or other proceeding barring or limiting payment of any Guaranteed Obligation by the Seller; (2) defenses relating to the power or authority of the Seller to enter into the Agreement, and to perform the Guaranteed Obligations thereunder, including, without limitation, any lack or limitation of status or of power, or any incapacity or disability, of the Seller, or of any other guarantor or obligor in respect of any Guaranteed Obligation, or any change whatsoever in the capital structure, constitution or

business of the Seller; (3) defenses arising from any release or amendment or waiver of, or consent to departure from, any other guarantee or support document, or any exchange, release or non-perfection of any collateral, for any Guaranteed Obligation; and

(4) defenses arising from any event or circumstance constituting fraud in the inducement or any other similar event or circumstance; except that such waiver shall not include a defense of the Seller arising from (i) payment in full in cash of the Guaranteed Obligations, or (ii) Seller's entitlement to a refund of all or a portion of the Contract Security pursuant to the terms of Section 15.06 of the Agreement. NYSERDA may, at its election, exercise any right or remedy it may have against Seller or any other party, or any security, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent the Guaranteed Obligations have been paid in full in cash. Guarantor waives any defense arising out of any such election by NYSERDA, even though such election operates to impair or extinguish any right of reimbursement, contribution, indemnification or subrogation or other right or remedy of Guarantor against Seller, any other guarantor of the Guaranteed Obligations or any other party or any security.

(c) Guarantor has knowledge and assumes all responsibility for being and keeping itself informed of Seller's affairs and assets and of all other circumstances bearing upon the likelihood of events giving rise to NYSERDA's right to retain the amounts of the Contract Security in accordance with the terms of the Agreement, and has adequate means to obtain from Seller on an ongoing basis information relating thereto and Seller's ability to perform its obligations under the Agreement, and agrees to assume the responsibility for keeping, and to keep, so informed for so long as this Guaranty is in effect.

(d) Guarantor warrants and agrees that each of the waivers set forth in Section 2 and in this Section 4 is made with full knowledge of its significance and consequences and that if any of such waivers are determined to be contrary to any applicable law or public policy, such waivers shall be effective only to the maximum extent permitted by applicable law.

5. RIGHTS OF NYSERDA. NYSERDA may at any time and from time to time without the consent of, or notice to, Guarantor, without incurring responsibility to Guarantor, without impairing or releasing the obligations or liabilities of Guarantor hereunder, upon or without any terms or conditions and in whole or in part:

(a) change the manner, place or terms of payment of the Contract Security pursuant to the terms of the Agreement, which may have the effect of changing the amount of the Guaranteed Obligations, and the guaranty herein made shall apply to the Guaranteed Obligations as so changed; provided that in no event shall the amount exceed the Guaranty Capped Value;

(b) exercise or refrain from exercising any rights against Seller, any other guarantor of Seller or others or otherwise act or refrain from acting;

(c) consent to or waive any breach of, or any act, omission or default under, the Agreement or any of the instruments or agreements referred to therein, or otherwise amend, modify or supplement the Agreement or any of such other instruments or agreements;

(d) act or fail to act in any manner which may deprive Guarantor of its right to subrogation against Seller to recover full indemnity for any payments made pursuant to this Guaranty; and/or

(e) take any other action or omit to take any other action which would, under otherwise applicable principles of common law, give rise to a legal or equitable discharge of Guarantor from its liabilities under this Guaranty (including, without limitation, any action or omission whatsoever that might otherwise vary the risk of such Guarantor or constitute a legal or equitable defense to or discharge of the liabilities of a guarantor or surety or that might otherwise limit recourse against such Guarantor).

6. CONTINUING GUARANTY. This Guaranty is a continuing one and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. No failure or delay on the part of NYSERDA in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein expressly specified are cumulative and not exclusive of any rights or remedies that NYSERDA would otherwise have. No notice to or demand on Guarantor in any case shall entitle Guarantor to any other further notice or demand in similar or other circumstances or constitute a waiver of the rights of NYSERDA to any other or further action in any circumstances without notice or demand.

7. EXPENSES. Guarantor hereby agrees to pay all reasonable out-of-pocket costs and expenses of NYSERDA in connection with the enforcement of this Guaranty and the protection of NYSERDA's rights hereunder and any amendment, waiver or consent relating hereto (including, in each case, without limitation, the reasonable out-of-pocket fees and disbursements of counsel employed or retained by NYSERDA).

8. TERM OF GUARANTY. This Guaranty and the rights and obligations hereunder shall terminate and be of no further force or effect (and no party hereto shall have any further liability hereunder) at such time as all of the Guaranteed Obligations have been fully performed; provided, however, that for purposes of this Guaranty the discharge or modification of the Guaranteed Obligations in a bankruptcy or insolvency proceeding shall not constitute performance thereof.

9. BENEFIT AND BINDING EFFECT. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of NYSERDA and its successors and assigns.

10. AMENDMENTS; WAIVERS. Neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated except with the written consent of Guarantor directly affected thereby and with the written consent of NYSERDA.

11. NOTICE. All notices and other communications shall be in writing and addressed to such party at (a) in the case of NYSERDA, as provided in the Agreement, and (b) in the case of Guarantor, at its address set forth opposite its signature page below; or in any case at such other address as any of the Persons listed above may hereafter notify the others in writing.

12. CONSENT TO JURISDICTION; SERVICE OF PROCESS.

(a) This Guaranty shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts executed and to be performed in New York State without regard to its conflicts of laws principles. The parties irrevocably acknowledge and accept that all actions arising under or relating to this Guaranty shall be brought exclusively in a United States District Court or New York State Court located in Albany, New York having subject matter jurisdiction over such matters, and each of the Parties hereby consents to and accepts such personal jurisdiction of, and waives any objection as to the laying of venue in, such courts for purposes of such action. Guarantor further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to Guarantor at its address set forth opposite its signature below, such service to become effective 30 days after such mailing.

(b) Guarantor hereby irrevocably waives any objection to such service of process and further irrevocably waives and agrees not to plead or claim in any action or proceeding commenced hereunder that such service of process was in any way invalid or ineffective. Nothing herein shall affect the right of NYSERDA to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Guarantor in any other jurisdiction.

(c) 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 12(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.

(d) GUARANTOR AND NYSERDA (BY ITS ACCEPTANCE OF THE BENEFITS OF THIS GUARANTY) HEREBY IRREVOCABLY WAIVES ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY.

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.

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

Address:

as Guarantor

By: _____

Name:

Title:

Accepted and Agreed to:

NYSERDA

By: _____

Name:

Title:

EXHIBIT H

DESCRIPTION OF SELECTED PROJECT

Selected Project: Those turbines, identified below and with the attributes described herein, owned or controlled by Seller within the OCS-A-0512 BOEM lease area and designated by Seller to be included in the Selected Project, and related equipment necessary to deliver electric energy to the Delivery Point. Seller shall update the facility descriptions contained in this Exhibit H from time to time in accordance with the terms herein; provided, however, that any change to the Offer Capacity, Site Perimeter, transmission cabling, Delivery Point, or other project characteristics must be undertaken in conformance with this Agreement, including Article III, and Sections 2.01(c), 12.09 and 12.15.

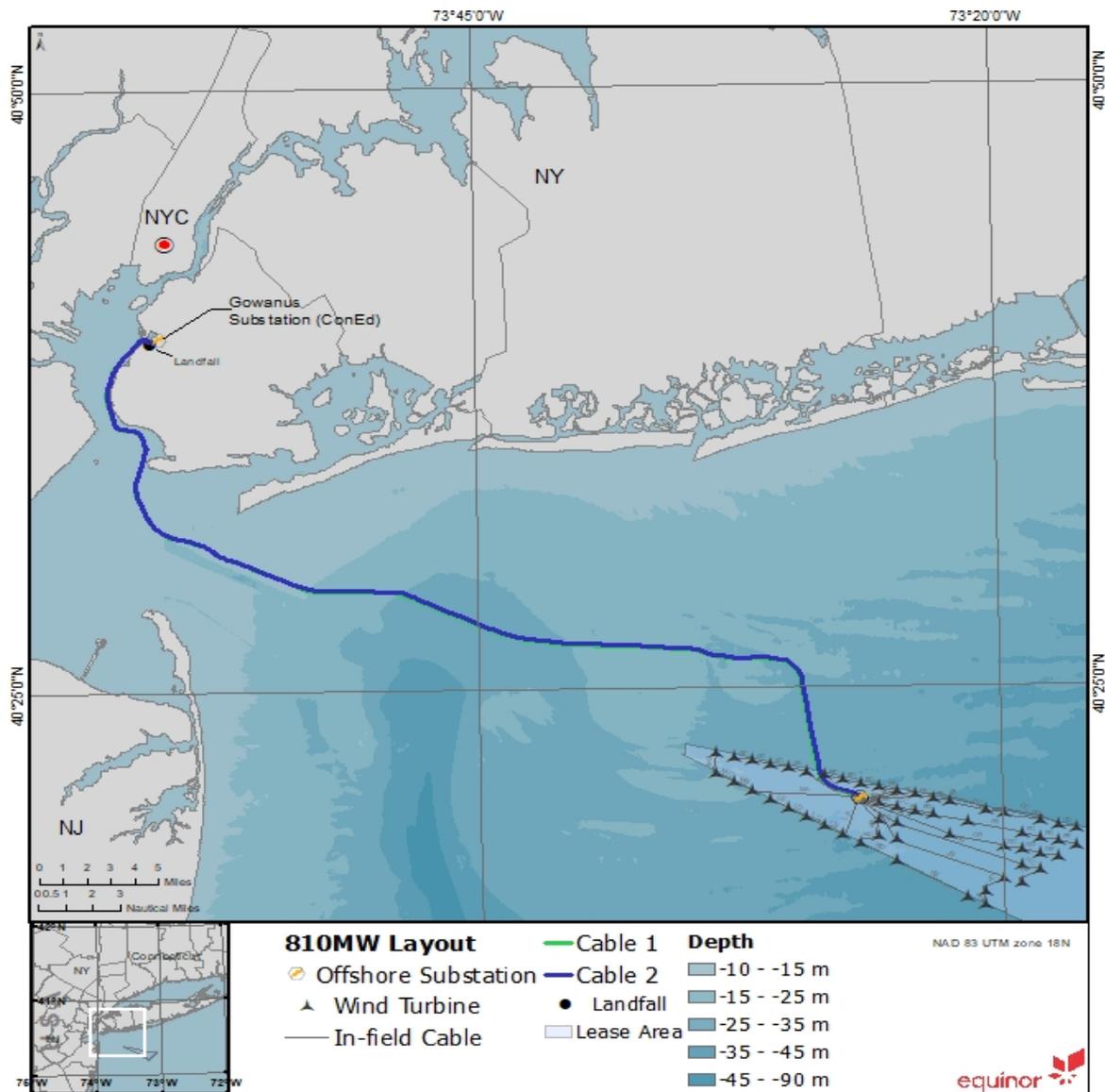


EXHIBIT H



Delivery Point: Consolidated Edison Company of New York, Inc.’s (“ConEd”) Gowanus 345 kV Substation.

Point of Interconnection: ConEd’s Gowanus 345 kV Substation. Seller may change its proposed point of interconnection in response to the outcome of (a) the NYISO interconnection process, or (b) the process under Article VII of the Public Service Law. Any other change to the proposed points of interconnection shall be subject to NYSERDA’s approval, which shall not be unreasonably denied, conditioned, or delayed. Notwithstanding the provision of Section 13.01(e), if Seller has changed the Point of Interconnection pursuant to this paragraph, the deadline for such acceptance shall be extended to eighteen (18) months after effecting such change with NYISO.

Offer Capacity: 810 MW.

Lighting Controls: Seller shall install aircraft detection lighting systems, unless the available systems are determined not to meet the requirements of the Federal Aviation Administration or are prohibited by any state or federal regulatory authority with jurisdiction over the Selected Project.

Related Equipment (excludes Critical Energy/Electric Infrastructure Information):

One-Line Diagram designated as Critical Energy/Electric Infrastructure Information

EXHIBIT H

Cable Route:

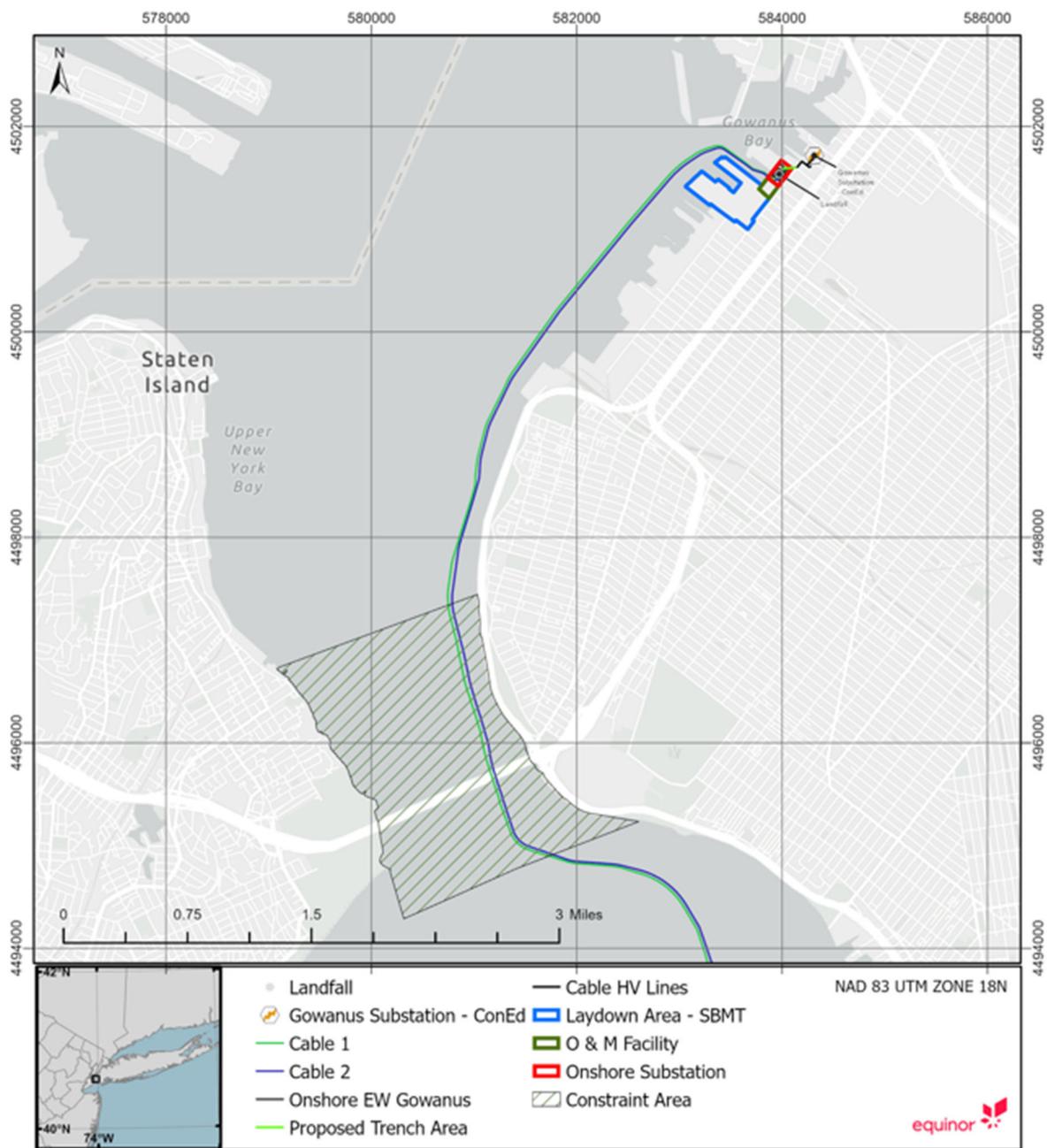
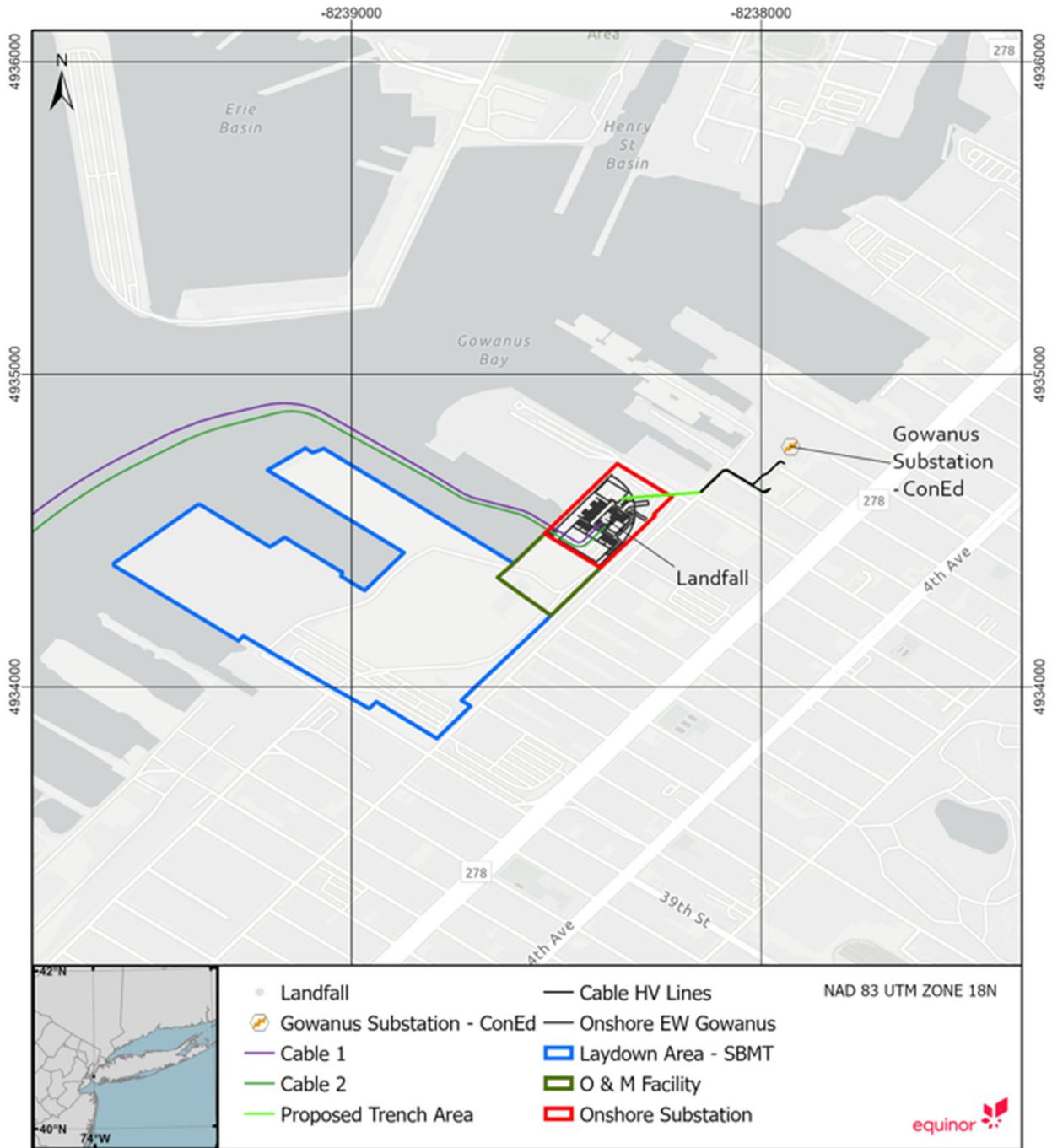


EXHIBIT H



Cable Landfall Location: South Brooklyn Marine Terminal.

EXHIBIT I
ECONOMIC BENEFITS CLAIMS AND VERIFICATION

I. Definitions

For purposes of this Exhibit I, the following definitions apply:

Agreed-Upon Procedures Report (AUPR) – a confidential report of findings based on specific procedures performed on a subject matter; defined by the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Attestation Engagements, Number 18, Attestation Standards: Clarification and Recodification. Independent CPAs performing an AUPR do not provide an opinion or negative assurance. Instead, the AUPR is in the form of procedures and the Independent CPA’s findings resulting from the performance of those procedures. It is produced by the Independent CPA pursuant to this Exhibit I to support Seller’s Economic Benefits claims.

Claimed Expense – an expenditure included as an Eligible Economic Benefit in the Economic Benefits Reports prepared by the Seller.

Eligible Economic Benefit – an expenditure described in Section II of this Exhibit I.

General Contractor – an individual or company that has a direct contractual relationship with Seller (including any Affiliate acting on behalf of Seller) for work related to the construction and installation of the Selected Project.

Host Community Agreement – a contract between Seller and a state or municipal government entity within New York State, or with a New York State non-governmental organization, detailing the rights and obligations of each party during the construction, operation, and decommissioning of the Selected Project, including financial, health, economic development and/or environmental benefits that will be provided to the community by Seller.

Independent CPA – the independent New York State certified public accountant, funded at the Seller’s expense, that performs the steps to complete the agreed upon procedures and prepare an AUPR. The Independent CPA must not be an employee of Seller or its Affiliates, and must not prepare the Economic Benefits Reports and accompanying documents.

New York State Firm – a company, business, or entity with a principal place of business in New York State. A branch, office or worksite location of a non-New York State firm that operates within New York will be treated as a New York State Firm for the purposes of Economic Benefits verification so long as the supporting documentation from such firm makes evident that the Claimed Expense was for work performed in New York State, services provided in New York State, or for materials, goods, or equipment sourced from New York State.

Payment Application – a construction document (for example, AIA Form G702 or similar) that details payments made to a General Contractor or subcontractor.

Payments in Lieu of Taxes (PILOT) – payments made to local government(s) to compensate for some or all of the tax revenue lost as a result of tax-exempt ownership or use of land or property.

II. Types of Eligible Economic Benefits

Eligible Economic Benefits shall include expenditures made from the Economic Benefits Start Date through the end of the first three (3) Contract Years of the Contract Delivery Term within the following categories. Economic Benefits associated with the Selected Project that fall within the following categories shall qualify as Eligible Economic Benefits even if they are not solely associated with the Selected Project. Economic Benefits counted in this Agreement will not generally be eligible for attribution in future NYSERDA solicitations.

- a. Payments for labor-related expenditures for work that is performed in New York State or subject to a Project Labor Agreement or Labor Peace Agreement as described and subject to the approval in Section 18.11 and the requirements set forth in 18.11-a of this Agreement (regardless of the location of work performed under such PLAs and LPAs). Examples include gross wages (including employer-side payroll tax payments), and benefit costs incurred in association with the employment of construction, boat crews, rail and port workers, contractors and laborers, operations and maintenance personnel, engineering or environmental service providers, researchers, consultants, other employees and financial and legal service providers associated with the Selected Project. Work performed in federal waters shall be considered to be performed in New York State for purposes of this Exhibit I if the workers are based out of facilities located in New York State. For the sole purpose of economic benefits verification, a worker can be considered to be based out of a facility for this purpose if the worker's income is associated with such facility for tax purposes or if other factors reasonably establish that the worker is based out of the facility.
- b. Payments for in-state purchases of goods and services. Includes expenditures as a result of:
 - i. The purchase and consumption of local goods and services (including sales tax), such as, but not limited to, food, lodging, vehicles, equipment, fuel; and/or
 - ii. The purchase of materials sourced from within New York State such as, but not limited to, gravel, steel, iron, concrete and similar materials and/or the purchase and use of equipment and products manufactured or assembled within New York State and/or the use of rental equipment or similar supplies sourced within New York State (wind turbine components not manufactured within New York State are excluded).
- c. Payments, rents and taxes paid to local New York State entities. Includes:
 - i. Lease costs, rent for offices, utilities, and various fees and charges associated with leased premises;

- ii. New or increased payments to jurisdictions in New York State from the Economic Benefits Start Date through the end of the first three (3) Contract Years of the Contract Delivery Term, including tax payments, PILOT payments, and/or payments under Host Community Agreements;
 - iii. Payments to fishing mitigation or compensation initiatives; and/or
 - iv. Payments intended to mitigate the visual, environmental, historical, cultural or other impacts associated with development, construction, operation or decommissioning of the Selected Project.
- d. Financing expenditures (fees to in-state banks related to financing transactions but not the cost of borrowing).
- e. Transmission and interconnection fees and expenditures, including those paid to NYISO or a New York utility relating to services provided within New York State. Expenditures associated with overbuilt transmission, that is, transmission in excess of what is required to accommodate the Selected Project, may not be claimed; provided, however, that fees and expenditures associated with transmission and interconnection facilities, and upgrades to such facilities, identified through the NYISO interconnection process and funded by the Seller shall qualify as Eligible Economic Benefits.
- f. Other expenditures, accompanied by supporting explanation that establishes that such expenditures are specific to the Selected Project and support spending and job creation in New York; provided, however, that in no case shall Seller's costs of preparing the Proposal be considered an Eligible Economic Benefit.
- g. Long-term capital investments by Seller and/or its Affiliates in offshore wind-enabling supply chain, infrastructure, workforce development and research and development initiatives in the state that are intended to have an enduring impact on the offshore wind industry and the New York State economy. These Economic Benefits may include:
 - i. Investments in the offshore wind-related supply chain, such as the Supply Chain Investments set out in this Agreement, ports that provide staging, assembly or other services to the offshore wind industry, and manufacturing infrastructure for components used in the manufacture of offshore wind generation or interconnection equipment. For the avoidance of doubt, spending on long-term capital investments by Seller, its Affiliates, or third parties shall be eligible to count towards meeting Seller's Economic Benefit commitments even if Seller or its Affiliates may be eligible to be reimbursed for a portion of these expenses through grant funding or other sources.
 - ii. Investment in transportation facilities capable of serving future offshore wind installation, operation and maintenance needs, such as investment in Jones Act-

compliant vessels.

- iii. Investments in workforce development applicable to future offshore wind development in New York State, such as establishing a training facility, donating key components for training purposes to technical schools in New York State, building of training labs or materials testing facilities. Investments in Industry Growth Activities (see Exhibit D) may be included if they create capabilities to support future offshore wind facilities.
 - iv. Investment in research and development in New York State applicable to improvements in offshore wind generation and delivery equipment and technology.
 - v. Investments in development of broadly-applicable sea bed, wind and metocean data (not specific to the Selected Project), fisheries and wildlife data, that will be made publicly available, and that have beneficial impact to future offshore wind development that would benefit New York State. This category shall include expenditures undertaken pursuant to Section 12.10 of this Agreement and approved by NYSERDA as described therein.
 - vi. Other capital investments of this type accompanied by an explanation demonstrating their effect to support the development of the offshore wind industry supply chain and future offshore wind investment in New York.
 - vii. Other Project-specific or offshore wind industry enabling expenditures, accompanied by supporting explanation that establishes that such expenditures support spending, job creation and retention in New York.
- h. U.S. Iron and Steel. For purposes of this Agreement, expenditures for iron and steel manufactured in the United States shall be deemed to benefit New York State even if incurred outside of New York State. However, each Economic Benefit Report must include the amount of expenditures for iron and steel manufactured in New York State as well as the amount of expenditures for iron and steel manufactured elsewhere in the United States.

III. Verification

Economic Benefits Report. Seller must submit Economic Benefits Reports through the Independent CPA in accordance with the schedule set out in Section 12.01 of this Agreement.

Verification Process. The verification process for the Seller is as follows:

- a. No later than one year following the Effective Date, Seller will provide the name of its selected Independent CPA to NYSERDA. Upon engagement, Seller will provide this Agreement, highlighting the Expected Total Dollars and this Exhibit I, to the Independent CPA, with appropriate redactions of any non-public information unrelated to Economic Benefits or the Economic Benefits Report.

- b. Seller's Economic Benefits Reports will summarize in narrative form and document the total dollar amount of actual Economic Benefits accrued to New York as a result of the development, construction, modification, and operation of the Selected Project from the Economic Benefits Start Date through (i) for each Preliminary Economic Benefits Report, the September 30 (or such other date agreed by the Parties) immediately prior to the date of such Preliminary Economic Benefits Report and (ii) for the final Economic Benefits Report, the end of the third (3rd) Contract Year of the Contract Delivery Term. Any Economic Benefits that were set forth in a previously-submitted Economic Benefits Report and verified under the verification process applicable to such Economic Benefits Report shall not be required to be re-verified. The Economic Benefits Reports shall also describe the activities of Seller in fulfillment of Section 12.01(c) of this Agreement with respect to Industry Growth Activities, described in Exhibit D, over the same period. The Independent CPA will not verify those Industry Growth Activities in the AUPR quantitatively, except to the extent such activities result in expenditures claimed as Eligible Economic Benefits.
- c. Acceptable documentation for expenditures incurred shall include by Seller, its Affiliates, and third parties shall include the following (for an individual expense within each category of expense, any one of the listed documents or any combination thereof will be acceptable):
- i. For labor-related expenses: either W-2s, 1099s or other tax documentation; certified payroll or other payroll records; copies of subcontracts or other labor-related arrangements detailing labor provided under such contracts and that provide confirmation that labor is for work performed within New York or is covered by a Project Labor Agreement or Labor Peace Agreement as described and subject to the approval in Section 18.11 and the requirements set forth in 18.11-a of this Agreement.
 - ii. For local goods and services: either receipts for hotels, meals, fuel, rental cars, and equipment purchased in New York (per diem payments without specific, itemized expenses are not an acceptable form of documentation); a check register report per vendor for goods or services sourced from a New York State Firm (which includes the check numbers, dollar amounts, invoice numbers paid and totals); each corresponding individual invoice for services, equipment, materials and goods sourced from a New York State Firm that was submitted for payment accompanied by proof of payment; or a bank statement with applicable checks or wire transfers.
 - iii. For operations and maintenance expenses: either itemized receipts; a check register report per vendor (which includes the check numbers, dollar amounts, invoice numbers paid and totals); each corresponding individual invoice that was submitted for payment accompanied by proof of payment; or a bank statement with applicable checks or wire transfers.

- iv. For other expenditures: such evidence of payment as the context requires, provided that such documentation must show the date and purpose of the expenditure.
 - v. Seller may redact personal, sensitive, legally protected and other non-public information (e.g., social security numbers, tax identification numbers, street addresses, apartment numbers, etc.) from documentation to comply with Applicable Law, enhance privacy protection, and otherwise inhibit the potential improper use of such information.
 - vi. Seller and/or its Affiliates may use other forms of documentation for a category of expense, subject to NYSERDA's approval, which shall not be unreasonably denied, conditioned, or delayed.
- d. Expenditures incurred by a General Contractor (and/or its subcontractor(s)) require the same documentation process as outlined above. Seller is responsible for obtaining all necessary documentation from General Contractors. In addition to the documentation described above, expenditures incurred by the General Contractor and/or its subcontractor can be documented as follows:
- i. If the General Contractor(s) is located in New York State: Acceptable documentation of in-house labor billed to the Selected Project by the contractor includes payroll records with confirmation from the General Contractor that such payments are for work on the Selected Project. General Contractor may also self-certify costs of in-house equipment use. Acceptable documentation includes records of equipment used in construction of the Selected Project. Documentation should be accompanied by a letter signed by a principal of the company attesting to the expenses.
 - ii. New York subcontractors utilized by the General Contractor: Acceptable documentation includes the General Contractor's check register reports by vendor (which includes the check numbers, dollar amounts, invoices paid and totals); the last Payment Application and final release waiver for each subcontractor to corroborate the payments in the check register report; or a bank statement with applicable checks or wire transfers.
 - iii. New York State Firms utilized by the General Contractor (lower tier subcontractors or not part of a subcontract agreement): Acceptable documentation includes the General Contractor's (and/or its direct or lower tier subcontractor's) check register reports by vendor (which includes the check numbers, dollar amounts, invoices paid and totals); corresponding individual invoices that were submitted to the General Contractor and/or its subcontractor at any tier for payment; or a bank statement with applicable checks or wire transfers.

- iv. Labor costs that are undertaken by an out of state firm, but which nonetheless are attributable to work performed in New York and/or by workers covered by a Project Labor Agreement or Labor Peace Agreement as described and subject to the approval in Section 18.11 and the requirements set forth in 18.11-a of this Agreement, may be documented in the manner described above, along with such additional documentation necessary to identify and support any apportionment of such costs among projects.
- e. Seller may not include indirect benefits or those created by any “multiplier effect” or other attribution method under which the creation of peripheral spending and jobs might be credited to direct capital infused into the economy.
- f. Seller should provide each Economic Benefits Report to the Independent CPA, collect all supporting documentation to support the Claimed Expenses in the Economic Benefits Report, and submit all documentation requested by the Independent CPA as needed.
- g. The Independent CPA will submit the Agreed-Upon Procedure Report to NYSERDA in accordance with the schedule set forth in Section 12.01 of this Agreement. Neither Seller nor the Independent CPA shall provide the documentation underlying the claims in the Economic Benefits Report to NYSERDA. Seller, however, must retain such documentation in accordance with Section 6.04 of this Agreement so that it can be made available to NYSERDA upon NYSERDA’s request pursuant to Section 7.01 of this Agreement.
- h. NYSERDA will examine the verified Economic Benefits Report and the Agreed-Upon Procedure Report, and confirm the calculation of the Verified Total Dollars and Verified Total Subcategory Dollars by the Independent CPA as described in Section 12.01 of this Agreement.

IV. Guidance for Independent CPA; Agreed Upon Procedures

This section sets forth the agreed upon procedures that the Independent CPA must follow in order to issue the AUPR related to the Seller’s Economic Benefits Reports.

Deadline for Submission. The Independent CPA is responsible for submitting the AUPR on or before the date the first Economic Benefits Report is submitted to NYSERDA in accordance with the schedule set forth in Section 12.01 of this Agreement. The AUPR must be received by NYSERDA on or before such date unless such deadline is waived or modified by mutual agreement of the Parties.

Organization of Report. The Independent CPA should organize its submission to NYSERDA as follows:

- AUPR
- Procedures and Findings
- Seller’s original Economic Benefits Report

Use of Sampling Techniques. The Independent CPA will review each invoice valued at more than \$1,000,000. The Independent CPA will rely on representative sampling of invoices valued at less than \$1,000,000. If sampling is used, the Independent CPA must review a sample of invoices that the Independent CPA reasonably determines would be statistically significant. If sampling is used, the Independent CPA must also disclose its sampling methodology, including applicable population and sample size, in the AUPR.

Applying General Procedures to Specific Circumstances. This document provides guidance and specific examples of the procedures to be performed in providing NYSERDA with assurances as to the accuracy and completeness of Seller's Economic Benefits Reports. Because accounting systems and data structures vary among companies, the requirements described in this Exhibit I are not intended to be all-inclusive, but rather represent the guidance and principles to be applied in performing tests of the documentation associated with the information submitted to NYSERDA by Seller.

General Notes on Performing the AUPR.

- a. The AUPR must be produced by responding to each step in the Economic Benefits Agreed Upon Procedures that follow this Section. When submitting the AUPR to NYSERDA, a scan of a printout is acceptable, as is a PDF with electronic signatures.
- b. While performing the Agreed Upon Procedures, the Independent CPA may develop a list of questioned costs, including but not limited to unsubstantiated or inaccurate dollar value claims, etc. The Seller may choose to remove any unsubstantiated claims from its report prior to submission of a final Economic Benefits Report to NYSERDA.
- c. If the Independent CPA confronts an issue that the Independent CPA believes is not reasonably resolved by the guidance and principles contained in this Exhibit I, the Independent CPA may email designated points of contact at Seller and NYSERDA, who will make good faith efforts resolve the question by mutual agreement as quickly as possible. Any such resolution shall be memorialized in the AUPR.

Agreed Upon Procedures.

The purpose of performing the agreed upon procedures is to ensure and confirm the information submitted by the Seller in the Economic Benefits Report is accurate and falls within the categories of Eligible Economic Benefits described above.

- a. Inquire of the Seller whether each Claimed Expense is related to the development, construction, operation and/or maintenance of the Selected Project.
- b. From the Seller's Economic Benefits Report, if sampling is used, select an appropriate sample for detailed testing of underlying transactions in accordance with the sampling methodology noted above. Disclose the population as well as the sample size for each category in the AUPR.

- c. For Seller's or its Affiliates' or third party labor-related expenditures:
 - i. Compare the expenditures claimed for each transaction selected to the Seller's or its Affiliates' or third party payroll records (e.g., payroll journals, W-2 forms, or benefits invoices) and determine:
 - 1. The name of the employer/purchaser is the Seller or an Affiliate or third party;
 - 2. The work was performed in New York State or the employer has certified that the employee is covered by a Project Labor Agreement or Labor Peace Agreement as described and subject to the approval in Section 18.11 and the requirements set forth in 18.11-a of this Agreement;
 - 3. Expenditure amounts agree to the payroll records and/or other supporting acceptable documentation;
 - 4. The payment was for services rendered during the time period described in this Exhibit I;
 - 5. Expenditure agrees to the relevant provided financial records of Seller and/or its Affiliates or third party (which may include payroll journal, general ledger, cancelled checks, etc.); and
 - 6. Expenditure is listed under the proper category.
- d. For Seller's in-state purchases of goods, services, equipment and materials:
 - i. Compare the expenditures claimed for each transaction selected to the Seller's or its Affiliates' supporting documentation accompanying the Economic Benefits Reports and determine:
 - 1. Seller (or an Affiliate, contractor, or vendor) is named as the employer, payor on the invoice, and/or as party to the applicable agreement;
 - 2. Expenditure amounts agree to the supporting acceptable documentation;
 - 3. The payment was for services rendered or goods received during the time period specified in this Exhibit I;
 - 4. Payment is associated with goods, services, equipment, materials, operations and/or maintenance expenses;
 - 5. The vendor is a New York State Firm; and

6. Expenditure agrees to the relevant provided financial records of Seller and/or its Affiliates (which may include cash disbursements journal, payroll journal, general ledger, cancelled checks, etc.).
- ii. Inspect records supporting in-house equipment expenditures and obtain copy of letter provided by the Seller (or an Affiliate, contractor, or vendor) attesting to the accuracy of the expenditures reported for in-house equipment use.
- e. For Long-term capital investments by Seller and/or its Affiliates in offshore wind-enabling supply chain, infrastructure, workforce development and research and development initiatives in the state that are intended to have an enduring impact on the offshore wind industry and the New York State economy and/or investments not covered by (c) or (d) above:
 - i. Compare each Claimed Expense to Seller's supporting documentation accompanying the Economic Benefits Report and determine:
 1. Seller (or an Affiliate, contractor, or vendor) made the expenditure and/or investment;
 2. Expenditure/investment amounts agree to the supporting acceptable documentation;
 3. The payment was made during the time period specified in this Exhibit I; and
 4. The payee or investment is in New York, or the expenditure and/or investment was made for an above-described purpose for the benefit of New York (including the establishment of a fund accessible by New York residents or entities, or for a purpose to benefit New York).
- f. For other expenditures:
 - i. Compare the expenditures claimed for each transaction selected to the Seller's supporting documentation accompanying the Economic Benefits Report and determine:
 1. Seller (or an Affiliate, contractor, or vendor) is named as the employer, payor on the invoice, and/or as party to the applicable agreement or other documentation;
 2. Expenditure amounts agree to the supporting acceptable documentation;
 3. The payment was for services rendered or goods received during the time period specified in this Exhibit I;

4. The expenditure is an Eligible Economic Benefit as described above;
5. The payee is a New York State Firm, a New York State municipality, or other counterparty as described above; and
6. Expenditure agrees to the relevant provided financial records or documentation (which may include cash disbursements journal, payroll journal, general ledger, cancelled checks, etc.).

EXHIBIT J

PROJECT LABOR AGREEMENT REQUIREMENTS

The final form of PLA presented to NYSERDA for review and approval pursuant to Section 18.11 of this Agreement should address:

1. Provisions that appropriately limit applicability of the PLA to United States-based (including Federal waters) covered work on the Selected Project (and not extending to any other work performed by contractors and subcontractors, or to the work of their affiliated entities), ensuring that Selected Project contractors or subcontractors are not required to become a signatory to any other labor agreement, and appropriately providing for the supremacy of the PLA over any potentially conflicting labor agreements that might otherwise apply to contractors and subcontractors. The PLA must apply to all covered construction and all contractors and subcontractors, of whatever tier, performing construction work on the Selected Project (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 Selected Project work) and the referral of skilled craft workers, including provisions for staffing in the event qualified referrals are not reasonably available and for the reasonable use of a number of core employees by contractors and subcontractors (regardless of union affiliation and referral practices that might otherwise exist);
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 Selected Project), 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 K

Progress Report

[DEVELOPER]

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

Dear NYSERDA Offshore Wind Team,

[DEVELOPER] (“Seller”) submits this Progress Report pursuant to Section 6.02 of the Offshore Wind Renewable Energy Certificate Purchase and Sale Agreement (“the Agreement”) between the New York State Energy Research and Development Authority (“NYSERDA”) and Seller.

Pursuant to Section 21.04 of the Agreement, all information enclosed herein that Seller wishes to protect from disclosure to third parties has been marked “confidential” or “proprietary.” Seller acknowledges that NYSERDA is subject to and must comply with the requirements of New York’s Freedom of Information Law (“FOIL”). See Public Officers’ Law Article 6.

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

Seller’s Authorized Representative: _____
 Representative Title: _____
 Representative Signature: _____
 Date of Signature: _____

Instructions:

Please complete and submit this Progress Report by 5:00 p.m. ET as of the Date referenced above to (1) NYSERDA’s designated Contract Manger via email, and (2) to NYSERDA’s Offshore Wind Contract Management SharePoint Platform via the link: [INSERT LINK] NYSERDA’s Offshore Wind Team will confirm its receipt pending review and approval via email to NYSERDA’s designated Contract Manager. Updates in summary form should be provided to the maximum extent possible in each section. Activities where no update is relevant or where status remains unchanged should be acknowledged as “No Update” in the Summary and the relevant appendix is not required. NYSERDA reserves the right to provide comment and/solicit updates to ensure satisfactory assessment of project progress pursuant to the Agreement. This report shall cover the immediately preceding quarter prior to the reporting deadline except as otherwise specified. For the avoidance of doubt: the report submitted on June 1 shall cover the period January through March; the September 1 report shall cover the period April through June, the December 1 report shall cover July through September, and the March 1 report will cover the immediately preceding October through December. To the extent that there have been no changes to information submitted in the relevant section of a previously submitted report, the Seller may indicate that there has been no change from the previous quarter, in such case, Seller must indicate which previously submitted quarterly report includes the relevant information.

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

Please attach an updated project schedule as Appendix A.1 to this report showing the original schedule and a comparison identifying any change in dates. Major supply milestones from Section 4 should be included in the overall project schedule.

Please attach an updated financing plan as Appendix A.2 to this report.

Please attach an updated jobs summary schedule including New York State jobs as Appendix A.3 to this report. This summary should highlight the number of jobs (full-time equivalent) in New York State each quarter. To the extent that the jobs summary does not include information regarding any particular scope of work due to that information not being available from the relevant contractor or subcontractor, a specific explanation of the efforts taken to obtain such information must be included with respect to the particular information, scope of work and contractor or subcontractor at issue, the reasons for its unavailability and the steps being taken to obtain it for future reporting (unless the Seller has informed NYSERDA in a previous quarterly report that it cannot obtain the information despite commercially reasonable efforts to do so and Seller (i) confirms that the situation remains the same as was described in such previous quarterly report and (ii) indicates which previously submitted quarterly report includes the relevant information).

Please attach an updated Site Layout Plan for offshore and onshore project components including links to associated Shape Files as Appendix A.4 to this report.

Please attach proof of office establishment (initial) or proof of office continuation (planning activities, lease agreement, lease renewal, number of FTE equivalents hired in quarter) (if applicable) in Appendix A.5 to this report.

Please attach an offshore and onshore Construction Progress Report including Site / Installation Photos as Appendix A.6 to this report.

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

Please attach any Federal and/or State and/or Local permitting/approval applications as filed within the previous quarter as Appendix B.1 to this report, including but not limited to the Bureau of Ocean Energy Management (BOEM) Construction and Operations Plan. Please attach all quarterly updates to the Construction and Operations Plan for the project to Appendix B.1 to this report in the included chart.

Please attach any completed permits and/or approvals, duly authorized by the relevant Federal and/or State and/or Local authority, as Appendix B.2 to this report including titles and dates of revisions made to the federal Construction and Operations Plan for the project as Appendix B.2.

3. Status of the Interconnection Process between the Selected Project and the Administrator of the Control Area

Please attach an updated interconnection plan including updated interconnection study submission activity, results, cable routing plan, and status of obtaining related permits as Appendix C.1 to this report.

Please attach interconnection applications as filed within the previous quarter as Appendix C.2 to this report.

Please attach completed interconnection and/or approvals, duly authorized by the relevant authority, as Appendix C.3 to this report.

4. Purchases, Delivery, and/or Installation of any Major Services and Equipment Associated with the Selected Project, including actions taken pursuant to Section 12.11 of the Agreement

Updates in this section should be linked to elements of the Selected Project's Economic Benefits Plan.

*Please attach executed supply agreements and purchase orders or summaries thereof issued for **goods and services** within the previous quarter as Appendix D.1 to this report.*

*Please attach a list of **upcoming activities, tenders and/or supplier/buyer engagements** related to New York State supplier opportunity as Appendix D.2 to this report.*

*Please attach a description and status of major supplier items in terms of **lead times related to key project components** as Appendix D.3 to this report.*

Seller shall describe actions taken in furtherance of compliance with the last sentence of Section 12.11, including how Major Suppliers have utilized the New York Offshore Wind Supply Chain Database to identify and contact companies for potential opportunities for subcontracts related to the Selected Project with an anticipated contract value of \$1 million or greater arising for procurement tenders issued after the Effective Date of this Agreement.

Please attach a summary of exemptions for the provision of goods and services that cannot practically be performed by the New York State supply chain at this time as Appendix D.5 to this report.

Please attach a list of hosted Supplier Forums for New York State firms including proof of planning activities, event venues, date selection and attendance as Appendix D.6 to this report.

5. The Status of Specific Industry Growth Activities Including Industry Event Dates and Attendees, Negotiating of Contracts, Establishment of Facilities, Steering Members and Board Members, Supply Chain Investments, Hiring of Employees, Establishment of Funds, Dollars Spent, Submitted and Awarded Proposals, Launch Dates, and Workers Trained

Please attach a summary related to the specific industry growth activities committed to the Selected Project as Appendix E.1 to this report.

6. Updates With Respect to Expenditures on Community Benefit Funds, Grants, Apprenticeships and Internships, Educational Cooperative Efforts, and/or Training Initiatives

Please attach a list of dollars per quarter spent (not budgeted or allocated) in pursuit of community benefit funds, grants, apprenticeship and internships, educational cooperative efforts, or training as Appendix F.1 to this report.

7. Activities Undertaken Pursuant to Seller's Stakeholder Engagement Plan, Including How Seller Has Taken into Account the Interests of Disadvantaged Communities, Updates on Seller's Consultations with the Consulting State Agencies, Timely Notice of Upcoming Meetings and Known Outreach Events and Activities for the Next Quarter that Representatives of NYSERDA May Attend

Using elements from the Selected Project's Stakeholder Engagement Plan, please provide specific details on tracking Stakeholder Engagement, inclusive of engagement with Tribal Nations, for the current quarter and for the upcoming quarterly reporting period as Appendix G.1 to this report, using the templates provided.

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

Using elements from the Selected Project's Stakeholder Engagement Plan, please provide specific details on tracking Stakeholder Marketing Efforts for the current quarter and for the upcoming quarterly reporting period as Appendix G.3 to this report.

8. Disadvantaged Community Benefits

Please attach as Appendix H.1 an update with respect to Seller's progress towards achieving its Disadvantaged Community Commitments. Seller also shall describe any other benefits to Disadvantaged Communities arising from the Selected Project to the extent reasonably available and considering the types of benefits to Disadvantaged Communities listed in Exhibit T. ¹⁵

9. Updates to Fisheries Mitigation Plan and Environmental Mitigation Plans

Please attach the current version (including Mitigation Plan version number) of the Fisheries Mitigation Plan as Appendix I.1 to this report. If the version has changed since the last Progress Report after consultation with NYSERDA, please attach a redline update of the Fisheries Mitigation Plan as noted in Appendix I.1.

Please include the number and value of commercial fishing gear loss claims submitted to the Selected Project. Also include general description and resolution of each incident as Appendix I.2 to this report.

Please attach the current version (including Mitigation Plan version number) of the Environmental Mitigation Plan as Appendix I.3 to this report. If the version has changed since the last Progress Report after consultation with NYSERDA, please attach a redline update of the Environmental Mitigation Plan as noted in Appendix I.3.

10. Engagements with Fisheries and Environmental Stakeholders

Please highlight the number of distinct engagements with Fishing industry representatives, working groups and panels for the quarter. Please also identify and log (if applicable) any relevant feedback from Fishing industry

¹⁵ For the avoidance of doubt, Seller shall not have any obligation to demonstrate that expenditures made towards its Disadvantaged Community Commitments comply with, or are otherwise consistent with, Exhibit T.

representatives, working groups and panels for the quarter as Appendix J.1 to this report.

Please highlight the number of distinct engagements with Environmental industry representatives, working groups and panels for the quarter. Please also identify and log (if applicable) any relevant feedback from Environmental industry representatives, working groups and panels for the quarter as Appendix J.2 to this report.

11. Updates to the Fisheries and Environmental Data Availability Plan

For quarterly reports submitted after Seller's submission of a Data Availability Plan, please describe any updates to the Data Availability Plan, including a description of where data is housed and how many requests for data were received during the applicable reporting quarter.

12. Monitoring of Fish and Invertebrates That Support Economically Important Fisheries and Wildlife of Conservation Concern per Financial Commitment

Please deliver a Monitoring Plan as Appendix L.1 to this report within one year of contract Effective Date per Section 12.10 of the Agreement.

Please include dollar per MW of offer capacity spent per quarter for regional monitoring of fish and invertebrates that support economically important fisheries and wildlife of conservation concern as Appendix L.2 to this report.

Please include (if applicable) any dollars per quarter spent on Fisheries / Environmental research (i.e. coexistence / resource research) as Appendix L.3 to this report.

13. Updates With Respect to Jobs Created and Retained (by Industry Sector and Location)

Using elements from the Selected Project's New York Jobs and Workforce Plan, please provide information on jobs claims. Please include labor hours, locations, wages, benefits, and training investments. Jobs in Disadvantaged Communities, MWBEs and SDVOBs should be identified as well.¹⁶

Commencing with the first progress report that indicates that construction activities falling within the scope of Section 18.10 of the Agreement have commenced and with each subsequent progress report submitted on June 1 and December 1 thereafter, please attach a written attestation prepared by a New York State independent certified public accountant or other qualified party confirming that the Prevailing Wage requirement is being met as outlined in Section 18.10 of the Agreement.

Please attach the attestation as described as Appendix M.1 to this report.

Please attach an update as to Project Labor Agreement plan as Appendix M.2 to this report.

Please attach an update regarding cumulative full-time equivalent jobs (FTEs) as Appendix M.3 to this report. After the initial quarterly report including cumulative FTE information, Seller shall update Appendix M.3 on an annual basis.

To the extent that information on jobs claims and cumulative FTEs does not include information regarding any particular scope of work due to that information not being available from the relevant contractor or subcontractor, a specific

¹⁶ For the avoidance of doubt, Seller shall not have any obligation to create a specific amount of jobs in New York State.

explanation of the efforts taken to obtain such information must be included with respect to the particular information, scope of work and contractor or subcontractor at issue, the reasons for its unavailability and the steps being taken to obtain it for future reporting (unless the Seller has informed NYSEDA in a previous quarterly report that it cannot obtain the information despite commercially reasonable efforts to do so and Seller (i) confirms that the situation remains the same as was described in such previous quarterly report and (ii) indicates which previously submitted quarterly report includes the relevant information).

14. Information relating to the employment on the Selected Project, as both contractors and sub-contractors, of Minority and Women-Owned Business Enterprises (“MWBEs”) and Service-Disabled Veteran-Owned Businesses (“SDVOBs”) registered with the Department of State, including identifying information for such firms, the expenditure on such firms, and the time period in which such firms were engaged, and additional reporting metrics set forth under New York State Labor Law Section 224-d (7).

Please provide this information on form provided by NYSEDA in Appendix N.1 to the extent reasonably available; after the initial quarterly report containing N.1 information, Seller shall only be required to update Appendix N.1 on an annual basis.

As part of one of the quarterly reports each year, Seller will include in Appendix N.2, to the extent reasonably available, information regarding the gender and ethnicity of workers employed in connection with the construction of the Selected Project consistent with the information reported in form EEO-1 submitted to the U.S. Equal Employment Opportunity Commission each year. Seller shall not be required to report information for contractors and subcontractors that are not subject to an obligation to submit form EEO-1 on an annual basis.

15. Estimated Date for Commercial Operation Including the Reason for any Changes to the Date Compared with Prior Reports

Provide the estimated date of commencement of Commercial Operation (as of the date of the deadline for the submission of the quarterly report) along with a description of the reason for any change in such estimated commercial operation date, as identified in Appendix A.1.

Appendix A.1 Updated Project Schedule

[Insert Update from Section 1]

Appendix A.2 Updated Financing Plan

[Insert Update from Section 1]

Appendix A.3 Updated Job Summary Schedule

[Insert Update from Section 1]

Cumulative New York State Direct Hires into Developer	Quarter/Year	Cumulative New York State Full Time Equivalent positions of Suppliers (Tier 1/2) for the Selected Project	Quarter/Year

Appendix A.4 Updated Lease and Site Layout Plan Offshore and Onshore

[Insert Update from Section 1]

Appendix A.5 Proof of Office Establishment / Continuation

[Insert Update from Section 1]

Appendix A.6 Offshore and Onshore Construction Progress

[Insert Update from Section 1]

Appendix B.1 State and Local Approvals

[Insert Update from Section 2]

Description	Planned	Progress

Appendix B.2 Updates on COP and other Federal Approvals

[Insert Update from Section 2]

Section Title	Planned BOEM Submission/Revision	Date of BOEM submission	Date of current working version
Construction and Operations Plan (COP)¹⁷			
Other Federal Approvals			

¹⁷ Each description should include the appropriate section or appendix as specified in the Information Guidelines for a Renewable Energy Construction and Operations Plan (COP). Available at: <https://www.boem.gov/sites/default/files/documents/about-boem/COP%20Guidelines.pdf>.

Appendix C.1 Updated Interconnection Plan and Activities

[Insert Update from Section 3]

Appendix C.2 Interconnection Applications

[Insert Update from Section 3]

Appendix C.3 Interconnection Approvals

[Insert Update from Section 3]

Appendix D.1 Executed Supply Agreements and Purchase Orders

[Insert Update from Section 4]

<u>Project Name</u>	<u>Executed Contract (Y/N)</u>	<u>Good Faith Estimate Of Expected Total Of NYS Economic Benefits (Can be a range)</u>	<u>Good Faith Estimate Of Projected Realized NYS Economic Benefit to Date (Can be a range)</u>	<u>Good Faith Estimate Of Projected Realized Labor Dollars (Can be a range)</u>	<u>Good Faith Estimate Of Projected Realized U.S. Iron and Steel Dollars (Can be a range)</u>	<u>Good Faith Estimate Of Projected Realized MWBE and SDVOB Dollars (Can be a range)</u>

Appendix D.2 New York State Supplier Opportunity Activities Summary

Appendix D.2.1: Overall Summary

Activities	Date

Appendix D.2.2: Recent Contracting

New York State suppliers that have been awarded contracts since last quarterly report

Appendix D.2.3: Upcoming Activities, Tenders and/or Supplier/Buyer Engagements Related to New York State Supplier Opportunity

Procurement Process	Communication Efforts and Outcomes

Appendix D.3 Major Supplier Items in Terms of Cost and Lead Times

[Insert Update from Section 4]

Equipment / Services	Executed Contract (Y/N)	Shipping from:	Expected Delivery Date	Comment for Status or Delays (must align with project schedule in Appendix A.1)	Name/Utilization of NYS Facilities (if applicable)	Utilization of U.S. Iron and Steel (Y/N)
1. Vessels						
2. Towers						
3. Blades						
4. Nacelles						
5. Inter array Cable						
6. Substation (topside)						
7. Substation (bottom side)						
8. Export Cable						
9. Onshore Substation						
10. Foundations						
11. Crew Transfer Vessel Services						

12. Service Operations Vessels						
13. Other						
TOTAL						

Appendix D.4 List of Contracts from New York State Supplier Database

[Insert Update from Section 4]

Appendix D.5 List of Exemptions from New York State Supplier Database

[Insert Update from Section 4]

Procurement Process	Reason for Exemption

Appendix D.6 List of Supplier Forums for New York State Firms

[Insert Update from Section 6]

Appendix E.1 List of Industry Growth Activities

[Insert Update from Section 5]

Appendix F.1 With Respect to Expenditures on Community Benefit Funds, Grants, Apprenticeships and Internships, Educational Cooperative Efforts, and/or Training Initiatives

[Insert Update from Section 6]

Community Benefit Recipient	Description of Service / Product	Total Benefit Commitment	Amount Paid for this Reporting Period	Total Amount Paid-to-Date	% of Target	Expected Timeframe to Realize Benefit

Appendix G.1 Stakeholder Engagement Activities By Quarter; Narrative Update

[Insert Update from Section 7]

Appendix G.2 Stakeholder Engagement Activities: Tracking Summary

[Insert update from Section 7]

Engagements with Tribal Nations

Date	Tribal Nation, Representative Name, Representative Title	Engagement Type	Topics Discussed	Response to information / Outcomes	Follow up scheduled/ provided	Change in project plan?

Engagements with Elected Officials

Date	Elected Official and district / area they represent	Supporting staff in attendance	Engagement Type (ex. Public/private, briefing/event)	Topics Discussed	Response to information / Outcomes	Follow up scheduled/ provided	Change in project plan?

Other Stakeholder Meetings, including consultation with New York State Agencies and participation in TWGs.

Date	Organization / stakeholder group	Engagement Type (ex. Public/private, briefing/event)	Topics Discussed	Response to information / Outcomes	Follow up scheduled/ provided	Change in project plan?

Hosted Public Events

Date of Event	Engagement Type	Goal/Subject of Engagement	Marketing Ahead of Event	Attendance Targeted	Final Attendance	Elected Officials Invited / Attended	Follow-Up Material Provided	Feedback Received

Appendix G.3 Stakeholder Engagement: Marketing Efforts

[Insert Update from Section 7]

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

Appendix H.1 Disadvantaged Community Benefits and Engagement

Geographic Location	Progress towards achieving Disadvantaged Communities Commitments and (to the extent reasonably available) other benefits to Disadvantaged Communities					
<u>Census Tracking Code</u>	<u>Description of Engagement</u>	<u>Taxes/PILOT/Capital Improvements (In dollars \$US)</u>	<u>Labor (In dollars \$US)</u>	<u>Materials/Equipment/Services (In dollars \$US)</u>	<u>Land Purchase, Easements or Lease (In dollars \$US)</u>	<u>Other (In dollars \$US)</u>

Appendix I.1 Updates to Fisheries Mitigation Plan

[Insert Update from Section 9]

Appendix I.2 Commercial Fishing Loss Claims

[Insert Update from Section 9]

Appendix I.3 Updates to Environmental Mitigation Plan

[Insert Update from Section 9]

Appendix J.1 Number of Distinct Engagements and Feedback from Fishing Industry Representatives

[Insert Update from Section 10]

Appendix J.2 Number of Distinct Engagements and Feedback from Environmental Industry Representatives

[Insert Update from Section 10]

Appendix K Updates from Fisheries and Environmental Data Acquisition Plans

[Insert Update from Section 11]

Appendix L.1 Fisheries and Environmental Monitoring Plans

[Insert Update from Section 12]

Appendix L.2 Financial Commitments/MW for Regional Monitoring of Wildlife and Key Commercial Fish Stocks

[Insert Update from Section 12]

Appendix L.3 Financial Commitments by Quarter for Regional Research of Wildlife and Key Commercial Fish Stocks

[Insert Update from Section 12]

Appendix M.1 Job Reporting: Attestation

[Insert Required Attestation Form]

Appendix M.2 Job Reporting: Project Labor Agreement Plan and Updates

[Insert Update from Section 13]

Scope	Union Counterparties	PLA Status	PLA Execution Target Date	Contractor	NYSERDA Review Date

Appendix M.3 Job Reporting: Cumulative FTEs

Occupation by SOC ¹⁸	Cumulative FTEs - Planning and Development	Cumulative FTEs - Construction and Installation	Cumulative FTEs - Manufacturing and Assembly	Cumulative FTEs - Operations and Maintenance

Census Tract	Cumulative FTEs - Planning and Development	Cumulative FTEs - Construction and Installation	Cumulative FTEs - Manufacturing and Assembly	Cumulative FTEs - Operations and Maintenance

¹⁸ The Parties acknowledge that the SOC and Census Tract codes may not be readily applicable to all persons employed in connection with the Selected Project. The Parties will work in good faith to establish a workable framework for reporting jobs in such cases.

Appendix N.1: Project MWBE/SDVOB Utilization Update
 To the extent reasonably available

Commitment to Diversity, Equity, and Inclusion Information: Please include information related to the Seller, and each contractor’s and subcontractor’s (over \$500,000) adoption of practices and policies that promote diversity, equity and inclusion. ¹⁹	Responses
Does your company have a policy to respond to incidents of discrimination?	
Does your company have employee diversity training or diversity awareness events?	
Does your company have strategies, policies, or programs to increase the number of:	
1. female hires?	
2. minority hires?	
3. LGBTQ+ hires?	
4. veteran hires?	
Does your company have a supplier diversity program, or a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives?	
Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program?	
Does your company have the following policies or programs?	
1. Mentorship programs for women	
2. Mentorship programs for minorities	
3. Mentorship programs for veterans	
4. Mentorship programs for LGBTQ+	
5. Promotion policies for women	
6. Promotion policies for minorities	
7. Promotion policies for veterans	
8. Promotion policies for LGBTQ+	

Seller will describe any actions for violations of equal employment opportunity requirements or anti-discrimination laws of which it is aware that (i) have been brought against Seller or its contractors and (ii) have resulted in a final determination by the Equal Employment Opportunity Commission, a court, or any federal, states, or municipal government or body requiring the payment of damages or other corrective action by Seller or its contractors.

¹⁹ Following initial report containing DEI information, Seller shall only be required to update information to the extent that there is a material change in facts requiring an update.

Appendix N.1: Project MWBE/SDVOB Utilization Update
 To the extent reasonably available

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

Along with the above, please also provide a list of all Tier 1 and Tier 2 contractors / subcontractors that are not MWBE/SDVOBs reasonably identified and categorized by scope of work.

Appendix N.2: Project Staffing Update (To the extent reasonably available)

Appendix O.1 Expected Commercial Operation Date and explanation of reasons for any change

[Update from Section 15]

EXHIBIT L
RESERVED

EXHIBIT M

New York Jobs and Workforce Plan

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11. Jobs and Workforce Plan

Empire Wind and its affiliates are broad energy companies committed to long-term value creation in a low-carbon future. Their purpose is to turn natural resources into energy for people and progress for society. Empire Wind and its affiliates have adopted ambitious renewable and low-carbon goals, with ambitions of becoming carbon-neutral companies.

Empire Wind and its affiliates already have established themselves as leading partners with New York State to ensure that the benefits of the energy transition are broadly shared by all New Yorkers, including members of Disadvantaged Communities, minority and/or women-owned businesses (“MWBE”), service-disabled veteran-owned businesses (“SDVOB”), and skilled laborers and labor union-represented workers. Empire Wind and its affiliates view public engagement related to workforce development and reliance on partnerships as essential aspects of their project development strategy and a manifestation of the strong commitment that they have already made to further New York’s clean energy and workforce development goals. Through these efforts, Empire Wind and its affiliates already have made significant strides towards identifying opportunities where New York workers and organized labor can play a role in addressing gaps in the existing offshore wind supply chain in the United States (“U.S.”) and making the investments in workforce development necessary to ensure that a broad array of New Yorkers have the skills necessary to support the rapidly expanding offshore wind industry.

Empire Wind also recognizes the importance of promoting the use of, and partnership with, labor unions that have the capabilities to support the growth of an offshore wind workforce, including providing training and apprenticeship opportunities. Empire Wind recently concluded negotiations of an initial Project Labor Agreement (“PLA”) that covers construction of the South Brooklyn Marine Terminal (“SBMT”) and certain onshore work that will ensure that union-represented workers are given the opportunity to obtain positions with the Project. Empire Wind anticipates negotiating two additional PLAs that will cover certain onshore and offshore work.

Consistent with their recognition of the importance of public engagement on these issues, Empire Wind has led, or participated in, more than 160 community outreach discussions in the state of New York, with an emphasis on communities that will be affected by the development of the first phase of the Empire Wind Project (“EW1” or “Project”), and has further engaged in one-on-one conversations with local stakeholders. Empire Wind has approached these discussions focused on the following goals:

- Solidifying partnerships with workforce development organizations and community leaders, including labor unions and labor-management joint training programs.
- Identifying opportunities to demonstrate commitment to New York’s clean energy goals through investments that build a workforce across the offshore wind development, deployment, and operations value chain.
- Working with partners to develop labor strategies and evaluate the best approach to creating opportunities in disadvantaged and underserved communities consistent with diversity, equity, and inclusion principles, including effective methods to create

opportunities for MWBEs and SDVOBs and to bring economic opportunities to Disadvantaged Communities.

- Identifying opportunities to work with labor unions to leverage existing programs to identify workers to support the Project and provide job training through apprenticeship programs and other support.
- Gaining greater appreciation and understanding of the full range of underserved priority communities, including veterans, members of tribal nations, individuals with disabilities, low-income individuals, incumbent or unemployed power plant workers, previously incarcerated individuals, unhoused individuals, and single parents.

Through this work, Empire Wind has established strong relationships with leading workforce development organizations and labor unions in New York State and obtained a better understanding of the workforce development opportunities and challenges facing New York. As the New York State Energy Research and Development Authority (“NYSERDA”) acknowledged in its 2023 Clean Energy Report, the energy transition already is creating significant opportunities for New Yorkers, with approximately 170,857 clean energy workers at the end of 2022.²⁰ The number of employment opportunities in the clean energy industry, including offshore wind, is expected to grow substantially in the coming decade. Yet, businesses already are having difficulty finding the workers necessary to fill existing positions. At the same time, the number of members of historically underrepresented and/or Disadvantaged Communities and groups that currently are participating in the clean energy industry remains relatively low, despite recent improvements.

Empire Wind’s Jobs and Workforce Plan is designed to help resolve these challenges through strategic partnerships and investments that promote workforce development in a manner that is effective and sensitive to local needs. Importantly, Empire Wind’s Jobs and Workforce Plan is not solely aspirational in nature. Building on years of engaging with local stakeholders in New York (“NY”), Empire Wind already is making investments promoting the growth of a clean energy workforce. Indeed, Empire Wind works every day with its contractors and New York stakeholders, including organized labor, to identify opportunities to further workforce development and create new economic opportunities for New Yorkers.

An example of the commitment of Empire Wind to workforce development is its recently announced GENext Regional Workforce Development initiative. Announced in May 2023, The GENext strategy is a comprehensive cradle-to-career approach to developing regional partnerships supporting offshore wind education, workforce development, and robust supply chains. It identifies three key priority areas for collaboration, partnership, and investment:

- **K–12 Education Science, Technology, Engineering, and Math (“STEM”) Investment:** Partnerships that integrate offshore wind and STEM curriculums within local schools to

²⁰ 2023 New York Clean Energy Industry Report, Fact Sheet available at: <https://www.nysesda.ny.gov/About/Publications/New-York-Clean-Energy-Industry-Report>.

increase awareness of career pathways within the clean energy industry as well as introduce the technological concepts of wind energy in a fun and age-appropriate manner.

- **Post-Secondary Education & Training:** Developing technical talent by working with local higher educational institutions and training centers to facilitate post-secondary degrees and certifications in fields connected to the offshore wind industry such as electrical engineering. Empire Wind also prioritizes supplemental wraparound services, such as scholarships, housing, transportation, and childcare for underserved New York communities, to help ensure robust participation and increased graduation rates, regardless of socioeconomic status or other factors.
- **Supply Chain and Capacity Building:** Working with companies in the supply chain to build their capacity and ensure that their workforce is well equipped to enter and complete training programs; help local businesses access the supply chain; build out required training programs that will allow these businesses to qualify for work in the offshore wind sector; and provide additional wraparound services to help reduce the cost for these diverse small businesses and their workforces to enter into the offshore wind industry.

Empire Wind’s approach is to identify and support initiatives in each category at a regional level, ensuring opportunities for communities most impacted by the development of the Project, with a focus on Empire Wind and its affiliates’ goals of increasing worker training and job creation within Disadvantaged Communities and for MWBE and SDVOB businesses. Empire Wind and its affiliates will continue to provide support to ensure the achievement of the Regional Collaborative Model goals.

11.1 Empire Wind’s Workforce Development Philosophy

The Proposer must briefly present their goals on workforce training and the recruitment of trained individuals for positions made available within the New York State offshore wind market. The Proposer should comment on perceived opportunities or challenges, existing research on the New York workforce, overall goals for jobs creation and retention, and any experience/partnerships/relationships with labor and workforce training development in New York State or similar environment. The Plan should include clear details as to how the Proposer will support equitable, statewide access to quality training, jobs, and economic opportunities across the offshore wind sector.

11.1.1 Empire Wind’s Regional Collaboration Strategy

Empire Wind and its affiliates believe that the best approach to meeting the challenges associated with jobs and workforce development is through a stakeholder-driven approach in which developers and employers work collaboratively with community leaders, local organizations, labor unions, and special interest groups to identify opportunities, define priorities, and implement strategic initiatives. For that reason, Empire Wind and its affiliates have adopted a regional, multi-tier collaborative strategy that is premised on proactive engagement and partnership with key community organizations in the areas of New York State that will be most affected by the development of the Project.

Opportunities and Challenges by Market

Long Island

Long Island's challenges include a lack of coordinated collaboration between workforce development entities. This has led to a certain amount of inter-agency competition that has stalled progress in some areas. Housing prices and the overall cost of living are high, and communities of color are not well represented throughout the island but rather are concentrated in several municipalities. The region also faces recruitment and retention challenges associated with an aging population. According to the Long Island Index, the number of Long Islanders aged 70 and older is expected to increase by more than 220,000 over the next 25 years, while those aged 15–30 will decrease by 80,000.

The workforce on Long Island faces significant commuting challenges, limited access to job opportunities, and other challenges that serve as a barrier to equity. The cost of new car ownership has reached more than \$12,000 per year according to AAA,²¹ and even the cost of insurance and maintenance on a used car can be prohibitively expensive for members of underserved communities. Populations lacking cars are depending on Long Island's bus network, which transit advocates identify as limited and unreliable, particularly in the north-south corridor, which has significantly reduced schedules for weekend and night service. Alternatively, monthly rail tickets can reach as much as \$500, which places a burden on low- to moderate-income populations as well as students and young professionals. Local organizations like ERASE Racism identify the lack of transit service as a primary barrier to access to good jobs and reducing poverty.

Long Island's strengths include its historically strong manufacturing sector, a pro-business outlook, and an increasing recognition that environmental stewardship of Long Island Sound and its beaches is a privilege and responsibility with which elected officials must grapple.

New York City

In New York City's dynamic landscape, the pursuit of clean energy workforce development emerges as a unique and transformative opportunity, aligning environmental sustainability with economic growth and community empowerment. However, despite these opportunities, New York City is a case study in both challenges and strengths that impact workforce development feasibility and progress.

Approximately 18% of New York City adults lack basic literacy skills, which has strong implications for workforce training design. Additionally, the impact of the pandemic on workforce development is only now being fully felt. The pandemic left students, families, and teachers dealing with multiple crises; more than 40% of students missed at least 18 days of school in 2022, and city students recorded large drops in reading and math proficiency. After years of making progress, crime is up in all categories.

Despite reports portraying a robust post-pandemic economic recovery in New York City, there remains significant income inequality, with disparities between income levels at their highest since 2006. The richest New Yorkers earn more than 53 times that of the poorest ones, making Manhattan, Brooklyn, and the Bronx among the top 10 counties in the U.S. with the largest income inequality gap.

²¹ See, e.g., Annual New Car Ownership Costs Boil over \$12k, AAA Newsroom (Aug. 30, 2023), available at: <https://newsroom.aaa.com/2023/08/annual-new-car-ownership-costs-boil-over-12k/>.

With income inequality exacerbating the city's economic disparities, access to quality education and training is essential. Approximately 18% of adults in New York City lack basic literacy skills, ultimately preventing them from securing even basic employment and workforce development opportunities. Lower-income communities face the worst resource constraints, hindering accessibility to education and skill development. Moreover, financial burdens, including high tuition fees and living costs, impede participation in training programs, particularly affecting economically disadvantaged groups. To address this, implementing affordable education initiatives, providing financial assistance, and offering flexible training options are crucial for inclusivity.

With a diverse and skilled workforce, proximity to ports, and a commitment to sustainability, New York City offers a potentially robust talent pool and logistical advantages. Additionally, the economic impact of offshore wind projects can stimulate local businesses, create jobs, and contribute to the city's broader economic development goals. However, addressing the clean energy workforce deficit will require targeted programs that remove barriers to these opportunities for members of Disadvantaged Communities and other historically marginalized groups. NYSERDA has allocated over \$170 million to workforce development advancement, following the Clean Energy Fund and Climate Act guidelines, emphasizing that a minimum of 35% to 40% of benefits should go to Disadvantaged Communities and other priority populations such as low-income, disabled, and previously incarcerated individuals, veterans, and unemployed fossil fuel workers. Collaborations among government agencies, educational institutions, community organizations, and renewable energy developers can break down barriers, fostering inclusive workforce development. These collaborative efforts must address the gap between training and job placement, where industry partners provide information on the specific skills needed within their organizations and associated job opportunities. As recognized in a 2021 Natural Resources Defense Council report, it is also essential that information on actual jobs created or likely to be created is readily available to job seekers, including a plain language description of the possibilities of career advancement, family-sustaining wages, and the connections and support systems needed to get and keep previously excluded individuals in those jobs. This is a role the renewable energy project developers must play in the advancement of workforce development opportunities.

One of New York City's greatest strengths is the vibrancy of its communities and their potential for fostering diverse partnerships. The redevelopment of SBMT demonstrates the city's commitment to renewable energy and community enrichment. The SBMT redevelopment is poised to inject substantial investment, create jobs, and boost the local economy, aligning with the city's resilience and commitment to equitable clean energy growth. Clean energy initiatives, such as the Project and SBMT, will play a pivotal role in investing in communities by creating sustainable job opportunities and a robust, diverse workforce. Through these programs and partnerships, clean energy projects not only address climate concerns, but also contribute to economic empowerment and resilient communities at every level.

The Regional Collaboration Model

At the heart of Empire Wind's jobs and workforce plan is a regional collaboration model that seeks to leverage local expertise to ensure that workforce development initiatives are deployed effectively in a manner that reflects the needs of the community. This model is designed to:

- Create an organized approach to engaging with jobs and workforce needs in the areas most affected by the Project's development in a manner that enables and ignites local and statewide action.

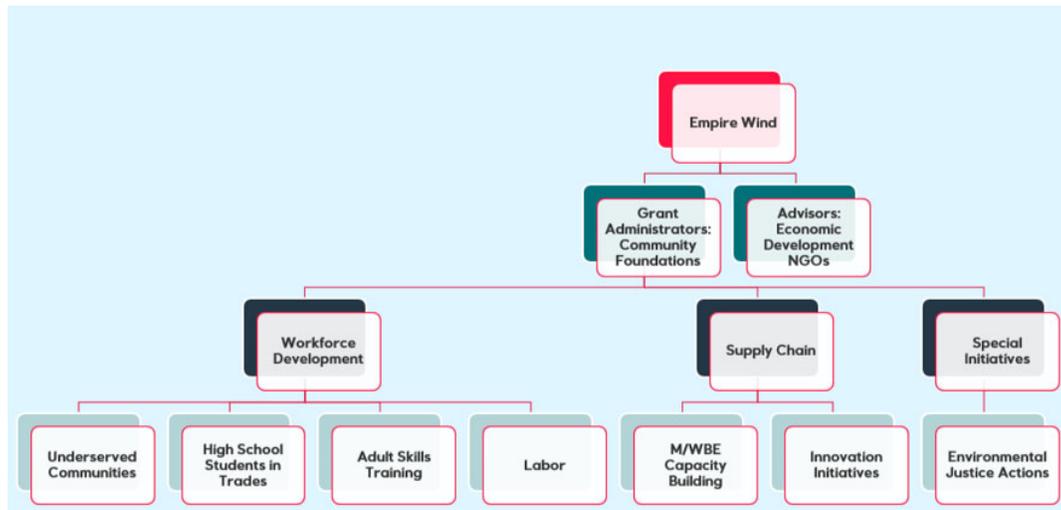
- Establish a replicable approach to workforce and supply chain development predicated on consistency, coordination, and equity.
- Tap the leadership of respected community foundations and non-governmental organizations (“NGO”) to build a structure that connects stakeholders, pools expertise, and deepens Empire Wind’s relationship and collaboration with these organizations.

Through this Regional Collaboration framework, Empire Wind and its affiliates anticipate utilizing partnerships with key community foundations and NGOs to optimize coordination to achieve the jobs and workforce development goals in the regions most affected by the development of the Project, which will also yield benefits across the state. The Regional Collaboration model ensures effective distribution and deployment of the funding that Empire Wind commits to support workforce development through its programs and initiatives using a multi-tier collaborative structure:

- Each regional collaborative is led by a top tier consisting of a community foundation paired with an experienced and regionally recognized economic development NGO.
- The second tier focuses on three sectors: workforce development, supply chain, and special initiatives, each led by a notable NGO. The first and second tier organizations help Empire Wind develop its regional priorities and requests for proposals to distribute funding, then will encourage applicants to come forward with proposals designed to help support the development of a world-class offshore wind workforce.
- The third and final tier consists of boots-on-the-ground community organizations working within the workforce and related areas identified in Figure 1, each vetted by Empire Wind. Representatives from each of these organizations participate in regular coordination and strategy development meetings guided by the Empire 1 team and Tier 1 organizations. Many of these organizations will receive counsel from the second-tier organizations on how to formulate funding request proposals, launch projects, measure progress, and interact with a reporting system.

The purpose of this approach is three-fold. First, it engages respected, deeply knowledgeable New York organizations specializing in fostering development within their regions. Second, it utilizes the local knowledge and expertise in program administration and grant administration to ensure a professional, equitable, and measurable approach to expanding partnership networks and grant allocation. Third, the structure provides support to NGOs from NGOs, so they can succeed with their workforce development projects, by collaborating to make a strong case for funding, planning and executing a strategy, and collecting metrics to inform continual improvement in the strategic approach.

Figure 11.1: Regional Collaboration Model



The structure of the Regional Collaboration model is designed to bring organizations together to create strategic partnerships, engagement opportunities, and funding to further key objectives in a number of areas:

- With labor unions:
 - Ensure opportunities for union labor, provide necessary skills training, set high safety standards, reduce timeline risk, and promote a more diverse workforce.
 - Identify partnerships with labor unions and labor-management joint training programs, local workforce development boards and registered apprenticeship programs, universities, and research institutions.
 - Raise awareness, in collaboration with the labor unions, of the pre-apprenticeship and apprenticeship programs available to members of the community.
- With Disadvantaged Communities and members of other underserved communities:
 - Engage workforce development experts to identify meaningful program support that can be offered to ensure community members are reached with career awareness, training opportunities, and solutions that remove barriers to training and job opportunities.
 - Demonstrate a commitment to maximizing opportunities for members of Disadvantaged Communities, MWBEs, and SDVOBs, especially through supply chain opportunities.
- With supply chain and market participants:
 - Make key investments to support manufacturing, transport, and operations that will help create job opportunities across all aspects of the offshore wind development, deployment, and operations value chain.

- Allow flexibility, room for growth, and iteration to be incorporated into the community benefits plan as the Empire Wind Project matures and as it collaborates with advisors and partners.
- Provide an approach for sourcing labor and build clear career pipelines for job growth in New York State in a collaborative approach.
- Address health and safety training and commitment to incident reporting and loss prevention.
- In keeping with New York State policy, link these regional markets to leverage their distinctive expertise and contributions to the state's economy.

The assessment of organizations to prioritize within the Regional Collaboration strategy will be informed by stakeholder identification and stakeholder mapping efforts as described in the Stakeholder Engagement Plan being submitted with this proposal.

Empire Wind and its affiliates will also use the Regional Collaboration model to support special initiatives such as energy efficiency—New York's largest clean energy sector—a sector that was hit hard by the pandemic. Empire Wind and its affiliates will be working with partners to support building electrification initiatives, with shared goals to electrify and reduce the burden on the grid.

As part of their commitment to workforce development in New York and in connection with commitments made in earlier solicitations, Empire Wind has already committed to investing more than \$8 million in workforce and innovation initiatives, including Empire Wind's announcement of \$5 million in grants through the Offshore Wind Ecosystem Fund and establishment of the Innovation Hub Technology Accelerator in Sunset Park. In addition, Empire Wind plans to make additional funding available through the Regional Collaboration initiative in support of goals of the GENext initiative.

The Offshore Wind Ecosystem Fund is illustrative of the types of partnerships that Empire Wind is creating through the Regional Collaboration framework. The Offshore Wind Ecosystem Fund was created in partnership with the New York City Economic Development Corporation ("NYCEDC") and the Sunset Park Task Force. The Offshore Wind Ecosystem Fund is a \$5 million clean energy community grant program designed to support sustainable growth, workforce development, empowerment of Disadvantaged Communities, and climate justice. The investments made through this fund will scale the talent pipeline in offshore wind-related careers, support low-income New Yorkers and New York City Housing Authority residents in participating in the energy transition, and grow the green energy innovation ecosystem in New York City.

To administer the fund, Empire Wind established a Strategy Development Committee responsible for directing these funds towards strategies that align with the fund's objective and a

Selection Committee that helped evaluate and select funding proposals. Both included representatives of the Sunset Park Task Force, which advocates maximizing the economic potential and community links between Sunset Park residents and the waterfront, and the offshore wind community. Together, these committees determined priority areas to maximize the fund's impact by identifying and supporting stakeholders with critical needs, including providing funding for initiatives that make the offshore wind industry more accessible by furthering workforce development initiatives, creating obtainable career pathways, and elevating local businesses' and individuals' participation in the industry. In October 2023, eight local organizations were selected for funding. As a result of this funding, 450 individuals will receive career training and experiences over the next three years and more than 350 MWBE businesses will be engaged to increase understanding of how they can benefit from offshore wind opportunities, with direct support to ensure a number of businesses receive contracts related to offshore wind. The Ecosystem Fund award recipients and funded initiatives are further detailed below.

As Empire Wind moves forward with implementation of its Regional Collaboration strategy, Empire Wind will continue to evaluate the effectiveness of its engagements and the programs that it funds, including whether the skills that are being created align with the job opportunities that exist in the offshore wind supply chain. As part of this assessment, Empire Wind will continue to monitor and evaluate key metrics, including information about:

- The number of New York workers employed by Empire Wind and its contractors;
- The dollar value of grants and scholarships relative to their impact with help from our community partners, including recruitment numbers, the number of individuals and businesses served and their geographic location, the number of individuals that earned a degree or certification, the number of individuals that found employment, and the types of support provided to trainees;
- The number of Disadvantaged Communities reached and the impact on these communities;
- The impact on just transition priorities, such as retraining fossil fuel sector workers; and
- The impact on MWBEs and SDVOBs.

Empire Wind and its affiliates appreciate the opportunity to build upon existing jobs and workforce development efforts through this solicitation process.

11.2 Labor Engagement

Proposers must name a Labor Liaison in the Plan, who is instrumental in the Plan formation, and who will be engaged early in development to help identify and establish relationships with relevant Labor unions. The Labor Liaison's primary role will be to assist in establishing trust with New York State labor unions through continued collaborative communication and assisting in the creation of a PLA. The Labor Liaison will ensure that union labor and employees are correctly identified and engaged. This is an important first step to ensure that labor concerns and statewide coordination are considered in even the earliest stages of project development. A brief biography of the Labor Liaison should be provided to support an assessment of their subject matter expertise.

Plans should detail which labor unions have already been identified and if any partnerships exist presently or are planned. The Proposer must describe how, specifically, it will identify labor union stakeholders relevant to both the onshore and offshore development, construction, and operation of the Project. The Proposer must also describe how it will communicate and work with labor unions and workforce training suppliers throughout project development including appropriate project milestones for labor engagement (i.e., prior to feasibility studies on PLAs, upon permitting, prior to hiring, etc.), construction, and operation.

Proposers should detail a plan to engage and begin negotiating a PLA with the unions whose members perform work in transmission and distribution, power generation, as well as the construction, operation and maintenance of power plants and port or marine infrastructure. Examples of unions and trade groups to establish consistent outreach with include, but are not limited to, Climate Jobs NY, the New York State Building and Construction Trades Council (and associated regional trades councils), Long Island Federation of Labor, the Utility Workers Union of America, International Brotherhood of Electrical Workers (IBEW), United Association of Plumbers, Pipefitters and Steamfitters, Laborers International Union of North America, U.S. Steel Workers, and the International Union of Operating Engineers, among others. Labor organizations such as the United Steelworkers, whose members currently manufacture components for onshore wind turbines, and the United Autoworkers are also recommended as part of the manufacturing needs Offshore Wind will create within the state. Further, within the PLA, Proposers shall include detailed proposed funding or partnerships that will provide access to training, internships, and recruitment for members of Disadvantaged Communities, as well as MWBEs and SDVOBs. Preference will be given to PLAs that include collaboration and funding for individuals who fall under one of these priority populations. Detailed communications plans should be included in Appendix F, the Stakeholder Engagement Plan.

Key labor unions have robust training programs that can be readily and swiftly adapted to offshore wind companies' skill needs, as long as Proposers are specific about those needs—including global safety certifications—and resources are made available to support that training. Details on how the Proposer intends to incorporate labor requirements set forth in the RFP, such as payment of Prevailing Wages, negotiating a PLA, adhering to LPA requirements, and maximizing opportunities for members of Disadvantaged Communities, NYS-Certified MWBEs, and NYS-Certified SDVOBs are required. Preference will be given to PLAs that incorporate maximizing opportunities for members of those priority populations.

11.2.1 Labor Team

Empire Wind and its affiliates currently have a multi-member team, including a dedicated labor liaison, that is focused on engaging with organized labor on matters related to the Empire Wind Project and the other projects being developed by Empire Wind and its affiliates. A brief overview of key team members is below.

Empire Wind Team Members

Marc Hanan, Equinor's U.S. Renewables Labor Relations Leader and Lead Negotiator, joined the Equinor team in December of 2022. Mr. Hanan has 25 years of applicable professional experience, including 15+ years with a Labor Relations focus spanning a multitude of industries. Mr. Hanan has supported organizations with U.S. and international interests. Marc holds a Bachelor of Arts in Health and Human Services from the University at Buffalo's department of

Social Sciences Interdisciplinary Studies. As the labor liaison, Mr. Hanan is responsible for leading U.S. REN efforts to build and maintain positive relationships with labor organizations as well as developing and negotiating labor agreements in support of our projects.

Carol Faherty, Lead Counsel Legal Employment Law, U.S., Equinor, is focused on negotiation of the project labor agreements for the Equinor U.S. wind projects. Ms. Faherty joined Equinor in 2022 and serves as legal counsel on labor and employment matters for Equinor. She previously worked as an employment lawyer at Epstein Becker & Green, a national management-side law firm. Ms. Faherty received her law degree from University of Connecticut.

Teddy Muhlfelder, Vice President, Renewables U.S., Equinor, is focused on the development and execution of the Equinor offshore wind lease areas. He joined Equinor in 2011 and has over 15 years of experience in U.S. energy markets including asset management, commodity trading and origination, and commercial negotiations. He serves as President for the Empire Wind Project. Prior to working in offshore wind, he was head of energy origination for Equinor's North American marketing and trading team leading complex negotiations and deal execution across North and South America. Prior to joining Equinor, he was Associate Director at IHS Markit (formerly CERA). Mr. Muhlfelder holds a Bachelor of Arts in Economics from Colorado College and a Master of Business Administration with a concentration in Finance from Columbia University.

Matthew Brotmann, Senior Counsel, Renewables U.S., Empire Wind is responsible for Equinor's U.S.-based renewables portfolio. Prior to joining Equinor, Mr. Brotmann served as Senior Counsel at the New York Power Authority, where he focused on power, transmission, and regulation. In addition, he previously served as Assistant General Counsel at the MTA/Tri-borough Bridge and Tunnel Authority and as a Special Advisor to the New York Attorney General. He earned his Bachelor of Arts from Denison University, and he holds a Juris Doctorate from Pace University Law School where he later served as an Adjunct Professor teaching international and environmental law.

External Counsel and Support

Jackson Lewis P.C.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s more than 1,000 attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. The firm helps employers develop proactive strategies, strong policies, and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable, and diverse and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee.

Stephen M. Silvestri is a principal in the Baltimore, Maryland, office of Jackson Lewis P.C. He has 30 years of experience representing companies, public sector employers, and institutions of higher learning in complex labor disputes and has acted as their chief spokesperson and bargaining strategist in negotiations throughout the country. He also has substantial experience in National Labor Relations Board hearings and related federal court litigation, often on complex issues such as impasse disputes, single employer issues, and secondary boycotts. He is lead counsel in Equal Employment Opportunity jury trials in state and federal courts, employee benefits litigation, labor arbitrations, and restrictive covenant litigation.

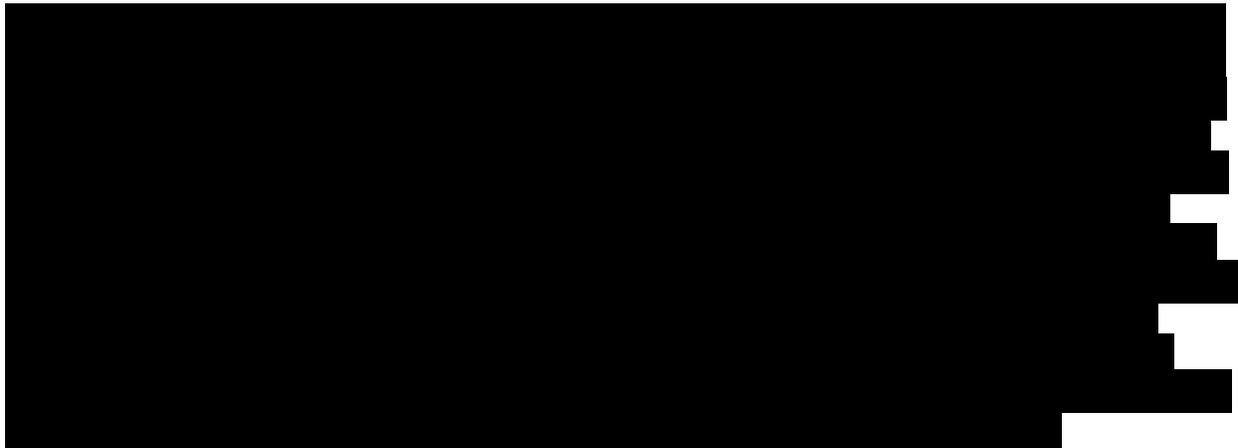
Mr. Silvestri is primary labor and trial counsel to employers in a broad range of industries, including higher education, health care, retail, transportation, and manufacturing. In addition to his litigation and bargaining practice, he is transactional counsel providing advice to asset and stock purchase parties on labor contracts, and union fund obligations and risks.

For the six years prior to joining Jackson Lewis, Mr. Silvestri was the head of the labor law practice at a leading competitor firm. Prior to that, he served as chief outside counsel to an international manufacturing company with facilities throughout the U.S. During law school, he was the law clerk to the Honorable John Fanning, chair of the National Labor Relations Board.

11.2.2 Labor Engagement and Project Labor Agreements

As a result of their ongoing engagement in New York since acquiring their first offshore wind lease areas, Empire Wind and its affiliates have developed strong relationships with local, state, and national-level labor organizations. Empire Wind and its affiliates are engaged in ongoing dialogue with labor leaders and unions, including through community meetings, open houses, and participating in partner events across New York State.

The engagement of Empire Wind and its affiliates with labor only has deepened since they hired a dedicated labor liaison, Mr. Hanan, who has worked to expand existing relationships and create new relationships at the local, state, and national levels. Examples of organizations that Mr. Hanan has engaged with include the AFL-CIO (local, state, and national levels), the Building & Construction Trades Council of Greater NY (“BCTC”) of Greater New York and of Nassau and Suffolk Counties, the International Longshoremen’s Association (“ILA”), the Laborers’ International Union of North America (“LIUNA”), the North America’s Building Trades Unions (“NABTU”), and a variety of skilled trades unions (e.g., District Council of Carpenters, IBEW, International Union of Operating Engineers (“IUOE”), and Iron Workers).



Empire Wind’s holistic approach to labor engagement has included partnering with contractors and suppliers to provide labor organizations with clarity and transparency about the proposed plans for the construction of Empire Wind and related supply chain facilities. Understanding the importance of developing a domestic industry, attention continues to be paid to understanding what is needed to develop a local skilled workforce to gain the necessary experience to ensure safe participation in the construction of offshore wind projects. Empire Wind has been learning

from the BCTC and their respective skilled trades unions about their existing apprenticeship programs. We continue to discuss and learn more about the apprenticeship programs and recruitment channels that labor organizations have in place and are assessing how to most efficiently support these initiatives for the growth of the industry. Although the programs themselves will be administered by the BCTC, Empire Wind plans to raise awareness, in collaboration with the labor unions, of the pre-apprenticeship and apprenticeship programs available to members of the community. This will help ensure that additional investments and initiatives are informed by, and account for, the views of labor organizations as experts in training skilled workers to support the industry for the long term. This collaborative approach will also ensure that investments leverage existing programs and initiatives to help fill any gaps and amplify their reach. We will partner with labor, in consideration of the capabilities of community-based organizations, academic institutions, and other partners, to provide training opportunities and support to New York workers and to identify pathways into the offshore wind industry and into good-paying union-represented jobs for members of the local Disadvantaged Communities in New York. These efforts will look to amplify and deepen existing work by academic institutions in K-12 and beyond and support and mentorship for MWBE and SDVOB businesses as appropriate. Further details regarding Empire Wind's efforts to negotiate PLAs are provided below.

11.3 Project Labor Agreements

The Plan should include an estimate on the number of PLAs the Project expects to execute, the focus of work for each PLA, and during what phase of the Project the PLA would be executed. The Plan should articulate and quantify, to the extent possible, the potential cost savings that PLAs could offer to the Project. For example, building trades workers may begin construction at a port site or along a cable route and be organized to work longer night shifts. Alternatively, offshore laborers may work longer shifts of several weeks on a vessel to improve efficiency and reduce the number of trips to transport personnel. In total, teams of workers such as welders, electricians, carpenters, steelworkers, and painters may be paid by the hour at varying rates or at agreed upon Prevailing Wages. Detail how incorporating PLAs into the development, construction, and operation of the Project may offer project savings, schedule savings, shift expectations, labor harmony, training opportunities, and other benefits. Preference will be given to Plans that detail training opportunities and recruitment for members of Disadvantaged Communities, MWBEs and SDVOBs. Proposers will detail the number of PLAs expected with their Project and an estimate of what phase of the Project each PLA would need to be in place.

Supporting estimates of jobs created, program funding, number of individuals trained and their geographic locations, grants or scholarships provided, recruitment numbers and jobs retained should be provided as described in Section G. NYSERDA encourages a focus on jobs related to Disadvantaged Communities, MWBEs and SDVOBs.

11.3.1 Plan to Negotiate a PLA

As noted above, Empire Wind, under the direction of Mr. Hanan, is responsible for leading the development and negotiations of labor agreements for our U.S. offshore wind projects. Our ongoing labor engagement efforts have yielded positive relationships and partnerships with labor organizations. We have leveraged these partnerships, along with the partnerships with our contractors/suppliers, to collaboratively develop and negotiate labor agreements.

Empire Wind anticipates that it will negotiate three separate PLAs: two PLAs for onshore construction activities and one PLA for offshore construction activities. On March 27, 2024, Empire Wind and BCTC signed a PLA that covers the construction of SBMT as well as the construction of Empire Wind’s onshore electric substation and onshore export and interconnection cables. Among other things, the PLA includes provisions:

- Requiring contractors to recognize trade unions as representing workers and to employ qualified skilled workers referred by the trade unions on the Project;
- Permitting the use of apprenticeships and establishing a framework for unions to provide apprentices in their respective crafts;
- Requiring contractors to promote the engagement of certified MWBE and SDVOB contractors qualified to perform work on the Project;
- Securing an opportunity for non-union MWBEs to be considered for contract awards to participate in the construction of the Project;
- Providing that local union job referral systems shall give priority to New York City Housing Authority residents, residents of Sunset Park, New York City residents, and New York State residents; and
- Encouraging local hiring initiatives, including job fairs, apprenticeship program general recruitment, and use of New York State Department of Labor approved direct entry pre-apprenticeship programs that partner with the unions.

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

11.3.2 Project Labor Agreement Cost Savings

Empire Wind is optimistic that negotiation of a PLA has the potential to play a role in reducing the costs of construction of the Empire Wind Project and offshore wind resources more generally. As a general matter, there is evidence that the use of PLAs in construction projects can reduce overall costs. For instance, studies of four PLAs that were entered into between the BCTC and New York City for major infrastructure projects uniformly concluded that “PLAs would produce substantial direct and indirect cost savings for [New York City], provide job stability, and promote productivity and greater efficiency.”²² Similarly, studies of the use of PLAs across the country support the conclusion that PLAs can play a role in supporting efficient project construction and development and generally do not have the effect of increasing costs.²³ Empire Wind believes that negotiation of a PLA will support the efficient construction and development of the Empire Wind Project by:

- Establishing a framework for hiring and resolving disputes;
- Controlling construction costs;
- Supporting on-time completion of projects;

²² Kotler, F., *Project Labor Agreements in New York State II: In the Public Interest and of Proven Value*, at 36, Ithaca, NY: Cornell University, School of Industrial and Labor Relations (May 2011).

²³ See, e.g., Phillips, P, *Did PLAs on LA Affordable Housing Project Raise Construction Costs*, University of Utah, Department of Economics, Working Paper No. 2015-03 (Sept. 2015).

- Establishing standards for fair wages and benefits;
- Establishing procedures that can be used to provide new employment opportunities for members of Disadvantaged Communities, MWBEs, and SDVOBs; and
- Avoiding disputes and labor disruptions, such as strikes and picketing.

11.4 Industry Wide Training and Education

New York State presently has over \$100 million in public and private funding committed to the development and support of offshore wind workforce training. Examples of existing funded offshore wind workforce training entities include, but are not limited to, the Offshore Wind Training Institute, the Upper Hudson Offshore Wind Workforce Development funding efforts, the National Offshore Wind Training Center (NOWTC) in Suffolk County; the Stony Brook University Advance Energy and Research Technology Center (AERTC); the CUNY Bridges to Offshore Wind program, SUNY Maritime's Offshore Wind Center of Excellence, and existing community workforce benefit funding from procured NYS offshore wind projects that can be further supported. Further, IBEW has over 300 training centers across the country.

Proposers shall identify opportunities for collaborating, developing, investing in, or establishing partnerships with the New York State offshore wind workforce training efforts currently underway or in the planning stages. Proposers shall provide details on utilization or creation of workforce development programs including whether their proposed project will integrate pre-apprenticeship programs, registered apprenticeship programs, or other labor-management programs. Proposers should utilize offshorewindtraining.ny.gov to understand the workforce training available across the state and work towards supporting those programs, and hiring individuals from programs with a strong Offshore Wind Focus. The Plan must account for the need to coordinate with members of the Jobs and Supply Chain Technical Work Group (JSC-TWG) and a narrative depicting awareness of the current offshore wind workforce training ecosystem.

Collaboration between industry, labor, academia, and government is a priority for workforce development. Proposers must describe how they will support training and trainers, including detailing the numbers of people that need to be trained by when and for what skill sets. Proposers must be aware and detail their plans to recruit and invest in existing workforce training within the state. Plans may include funding to establish a new training center or seek to utilize existing and geographically diverse training centers, schools, and apprenticeship programs. Proposers shall prioritize hiring and training directly from local host communities as well as individuals from adjacent disadvantaged communities or historically marginalized backgrounds. Proposers should leverage participation in the JSC-TWG to coordinate with industry-wide training and education entities. Proposers with active commitments and efforts are preferred.

Detailed metrics on program funding and scheduling should be cross referenced with the Proposer's Economic Benefits Plan, as described in Section 6.2.10 of the RFP and Appendix B.1.

Empire Wind and its affiliates are committed to advancing the offshore wind workforce through industry-wide education and training initiatives with a focus on technical skills, safety protocols, and sustainable practices, both through internal programs and by collaborating with external partners, including labor unions, in support of existing education and training initiatives.

The structure of the GENext program aligns with efforts to catalyze regional knowledge and enhance the

efforts of organizations working in workforce development and related activities. This program is designed to be dynamic, evolving with the latest industry trends and technologies. Externally, Empire Wind and its affiliates are actively partnering with educational institutions, industry associations, labor training initiatives, labor unions, and government agencies. These partnerships seek to align training standards across the industry, ensuring a consistent skill set among professionals. By coordinating with these external entities, Empire Wind is not only enhancing its training programs, but also contributing to the development of a standardized, industry-wide framework for workforce training in offshore wind energy. This dual approach ensures a robust, well-equipped workforce poised to meet the growing demands and challenges of the offshore wind sector. Through these multifaceted efforts, the GENext initiative aims not only to cultivate a skilled workforce for the offshore wind industry, but also to create inclusive opportunities, ensuring a diverse and competent talent pool for the future.

11.4.1 Support for Existing Initiatives

Empire Wind and its affiliates are actively engaged in existing, externally-managed education, training, and resource coordination initiatives. Examples include:

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

- Representatives from Empire Wind and its affiliates have been members of the Jobs and Supply Chain Technical Working Group (“JSC-TWG”), led by NYSERDA, since its inception and continue to participate in collaborative meetings with the aim of advancing New York’s offshore wind training initiatives and supply chain partnerships. Given the maturity of our projects, Empire Wind has shared lessons learned and internal best practices with other members of the group to help enhance job opportunities and supply chain contracts for the broader industry. We have also helped connect members of our own supply chain network with other members of the JSC-TWG to foster partnerships and new opportunities for those in the industry and have participated in NYSERDA’s supply chain studies and analyses.

Empire Wind also has established an Offshore Wind Ecosystem Fund as a vehicle for providing

support for local New York City organizations to develop career pathways in the offshore wind ecosystem through job education and training, support New Yorkers from historically marginalized communities by prioritizing environmental justice and access to workforce and business opportunities, and grow the green energy ecosystem in New York City by supporting and fostering innovation by local small, MWBEs, SDVOBs, and Disadvantaged Community businesses. Recipients of the fund were announced in October 2023. Awards range from \$125,000 to \$900,000 over a three-year period that commenced in December 2023. Details on the organizations and programs awarded through the Ecosystem Fund, including training and education goals, are provided below.

- **City University of New York (“CUNY”):** The CUNY’s Offshore Wind Advisory Network, comprised of Kingsbridge Community College, LaGuardia Community College, New York City College of Technology, and the College of Staten Island, was awarded [REDACTED] to implement the “Bridges to Offshore Wind Program.” This program is structured to provide New York City’s workforce with the information, knowledge, and skills necessary to begin careers in the offshore wind industry. An interactive seminar will be used to educate participants about the regional offshore wind industry, emphasizing maritime, electrical, construction, and supply chain sectors. Participants will explore various career pathways in offshore wind, understand educational requirements, and assess how their skills align with industry careers and needs. Participants also will learn about available training and degree programs at CUNY. The colleges will prioritize recruitment in environmental justice communities, collaborating with local community board organizations to reach underserved residents. Recruitment for the program will focus on engaging underrepresented, traditionally marginalized (e.g., black, indigenous, and other people of color), and disadvantaged and environmental justice communities. The Bridges to Offshore Wind program aims to enroll 560 students over the course of three years, with the goal of referring at least 280 of these students to offshore wind training programs.
- **UPROSE:** UPROSE was awarded [REDACTED] to support the establishment of the Just Transition Worker Resource Initiative, an initiative to connect the historically marginalized and low-income residents of Sunset Park to offshore wind and clean energy training and jobs by offering resources, education, training, and support through a network of partners. UPROSE will focus on engaging residents of marginalized neighborhoods, environmental justice areas, and people with other barriers to access training and employment opportunities in the offshore wind industry and will provide residents with personalized outreach opportunities, mentorship, and guidance on career pathways. The initiative aims to provide job readiness services for a minimum of 50 participants.
- **Jewish Community Center of Staten Island (“JCCSI”):** Through a [REDACTED] award, JCCSI is establishing the “Creating Career Pathways in Offshore Wind” program targeting K–12 students and families, adults in the offshore wind workforce, and workers with transferrable skills to educate, train, raise career awareness, and develop career pathways in the offshore wind industry. The program aims to fill gaps in the offshore wind workforce, including providing new opportunities to workers that may be displaced by the clean energy transition. The program will also focus on serving those who have been historically marginalized or reside in environmental justice areas. The program will educate over 3,500

residents, including 2,500 young people, about wind energy careers over two years. The JCCSI also will collaborate with TMI Waterfront Services, a MWBE, SDVOB, and Disadvantaged Community Business, and New York's first and only Global Wind Organization ("GWO") accredited facility, which brings world-class training to New Yorkers, to provide foundational GWO training for 22 adults.

- **New York City District Council of Carpenters ("CTC"):** The CTC was awarded [REDACTED] to train skilled workers, especially from environmental justice communities, for union carpenter careers. The CTC will focus recruitment efforts on environmental justice communities, including low-income and underserved areas, by working with community-based social service organizations that have expertise working with these groups. The three-year initiative aims to produce 240 carpenter apprentices equipped for the emerging offshore wind industry jobs. Apprentices will receive 144 hours of training at the CTC and 1,400 hours of on-the-job training on worksites throughout the city. Training will include health and safety instruction, blueprint reading, drywall installation, concrete forms, house framing, welding, steam turbine generator installation, general carpentry, and specialty trades related to offshore wind that include millwrights, dock builders, and divers.
- **New York Academy of Sciences ("NYAS"):** The NYAS was awarded [REDACTED] to operate a clean energy city-wide challenge that will bring real-world, experiential learning directly to thousands of public-school students in grades 3–12 across environmental justice areas and communities in need of STEM learning support. The program will focus on engaging underserved children, environmental justice communities, New York City Department of Education and Department of Youth and Community Development schools, and afterschool sites. The challenge-based learning experience includes: mentor-led team building, problem solving, research, and applications of design thinking as well as final team presentations. The New York Academy of Sciences aims to have 50 teams with 4–6 students per team, engaging 200–300 students across the boroughs.
- **IBEW Local #3 Educational and Cultural Trust Fund:** The Ecosystem Fund awarded [REDACTED] to launch a program to prepare a diverse workforce for New York's Offshore Wind Industry using virtual reality. The Joint Industry Board of the Electrical Industry ("JIBEI"), a joint-management cooperative organization among IBEW, Local Union No. 3, and the National Electrical Contractors Association ("NECA") will launch a program in collaboration with Vinci VR, a leading provider of virtual reality ("VR") training and industry education technology for offshore wind, to recruit, educate, and train a skilled and diverse workforce for New York's Offshore Wind Industry. The program will utilize Vinci VR's existing offshore wind training modules and simulations and create new customized training modules to align with the IBEW curriculum specific to electrical duties during the installation and maintenance of offshore wind turbines, which include cable splicing, component and system testing, and inspection. JIBEI aims to engage and provide training and job opportunities to K–12 students and adult career transitioners with a focus on New York City high school seniors, underserved communities, and women through its relationships with non-profits and New York City Career and Technical Education programs. JIBEI aims to train at least 225 workers and apprentices from historically marginalized communities in the three years of the program as well as help at least 10 MWBEs and/or SVDObS receive work contracts related to offshore wind. IBEW will also

provide VR training to at least 20 members from MWBE and SVDOB contractors each year.

- **City Growers:** The Ecosystem Fund award of [REDACTED] will allow City Growers and the Brooklyn Grange to create opportunities for youth, families, and members of Sunset Park to develop environmental literacy and discover the potential of the green and offshore wind workforces. The funding from the grant will support Family Farm Days and Sunday Open Houses that welcome the public to the Brooklyn Grange rooftop farm for free, expand outreach, provide free farm tours, youth and family activities, performances and artists, food, to host vendors, and offer translation support for American sign language, mandarin, and Spanish. Past open houses have engaged 800–1,350 community members, and this number is expected to grow with support from this grant. The funding will also expand the Green Ambassadors program, an after-school apprenticeship for Sunset Park High School students, into a full-year program that will engage students in peer-to-peer learning, training, and networking that builds paths to green job employment. The program will include wind power education along with training in green careers.
- **Southwest Brooklyn Industrial Development Corporation (“SBIDC”):** A [REDACTED] Ecosystem Fund grant will support Wind Connections, SBIDC, and the Business Outreach Center Network’s program to build capacity for local minority-owned, women-owned, and disadvantaged business enterprise (“MWDBE”) firms to understand the offshore wind industry in New York and get involved in business opportunities. The program will prioritize education, outreach, and technical assistance to help small businesses understand and participate in the offshore wind industry’s supply chain. The program will deliver unique educational programming including workshops, creative networking opportunities, and new digital communication channels accessible to small businesses. Over the three years, the program anticipates engaging 360 small businesses through workshops and 250 individuals through networking events.

Empire Wind has worked closely with NYCEDC to develop a Monitoring & Evaluation Reporting Plan to measure the impact and success of programs and initiatives funded by the Ecosystem Fund. Currently, the process envisions:

- Quarterly and Annual Reports from each of the grantees intended to capture detailed metrics on successes and challenges towards goals.
- Grantee convenings to facilitate space for grantees to share updates on their programs and continue to identify areas of collaboration and partnership.
- Site visits to organizations to capture the programs in action.
- Surveying of participants to further collect data on participant satisfaction (as applicable).

This process remains subject to change and refinement. Collecting this data will not only track progress towards the Ecosystem Fund’s goals, but also offer valuable insights and lessons learned that can be shared to further benefit workforce development and industry growth in the state. Empire Wind plans to include the relevant information in its quarterly reports to the extent reasonably available.

Empire Wind has also committed to support the establishment and operation of an Offshore Wind Innovation Hub in Sunset Park. The Innovation Hub was developed in partnership with New York University's ("NYU") Urban Futures Lab, National Offshore Wind Research and Development Consortium, and the NYCEDC. The objective of the Hub is to accelerate start-ups and guide them into the wind industry through a curriculum managed by NYU, providing investor networking opportunities and industry mentorship from leading industry professionals. The Hub is located in Sunset Park's Industry City and serves as a site for offshore wind programming and a center for the industry's innovation ecosystem. The Hub has two programs:

- The Hub's Accelerator program advances inclusive supply chain and business development and accelerates the green economy in New York. The program supports selected start-up companies over a six-month period to advance commercialization goals and support the development of their offshore wind innovations. Startups participate in a program specifically designed to help bridge the gap between technology development and commercialization. The first Accelerator cohort was selected in June 2023, and recruitment of the second cohort is currently ongoing.
- The Innovation Hub Community leverages the space of the Hub to build New York City's community of offshore wind stakeholders. Hub Community members become part of the growing and empowering offshore wind ecosystem in New York and have access to co-working space, Hub specific social events, and expert seminars. Applications for membership are accepted year-round; 22 members have been accepted to date and include organizations such as Economic Development at Stony Brook University, McAllister Towing and Transportation Co, and Emerald Energy.

In 2022, Empire Wind and its affiliates provided \$500,000 to NYCEDC to fund the Offshore Wind ("OSW") NYC Waterfront Pathways Program, a capacity-building program for MWDBEs in the maritime and offshore wind industry. NYCEDC developed the program to counter disparities in public procurement by increasing opportunities for MWDBEs in the offshore wind and waterfront industries. [REDACTED]

[REDACTED] of which 18 were selected. The first training cohort launched in March 2023 and concluded in June 2023.

Empire Wind is also in the process of establishing an Offshore Wind Learning Center in partnership with NYCEDC as part of its development of SBMT. The Learning Center will conduct offshore wind educational outreach to community stakeholders, including but not limited to K-12 students from New York City public schools, participants in offshore wind educational programming, and unaffiliated adults interested in entering the industry. It will serve as a central hub for educational outreach in New York City as well as informational videos and interactive exhibits about port activities at SBMT and offshore wind operations.

The Learning Center will be located in Industry City in Sunset Park and will be hosted and maintained by Empire Wind and its affiliates for at least 10 years. It will make information about the offshore wind industry and the SBMT wind port easily accessible and will provide free access to community meeting spaces within. It will directly support impacted New Yorkers from Disadvantaged Communities by prioritizing offshore wind education and access to workforce and business opportunities. The Learning Center Design Committee is led by the Empire Wind team and comprised of community stakeholders, including the Central Brooklyn EDC, New York City Public Schools, and NYCEDC. The Design Committee collaborates on design elements and educational aspects of the OSW Learning Center, focusing on community engagement, innovation, and environmental impact.

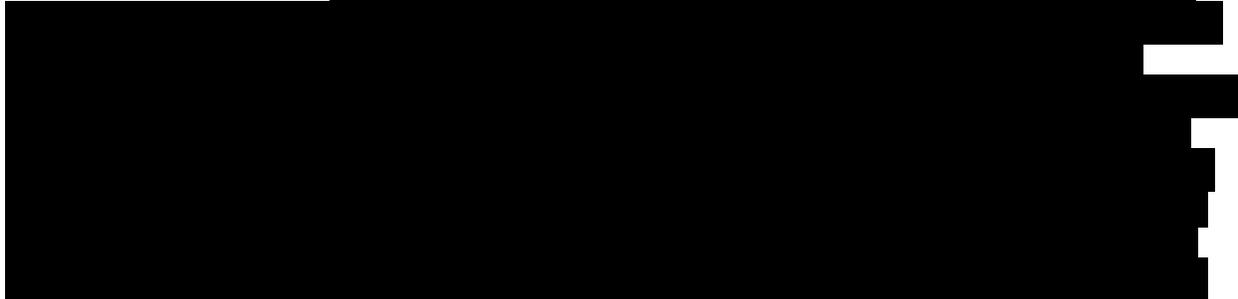
11.4.2 Planned Initiatives

Building off of the Ecosystem Fund, which is currently focused on supporting organizations in New York City, Empire Wind plans to use the Regional Collaboration model described above for future partnership with community foundations, community organizations, and representatives of manufacturing interests, educational institutions, and labor organizations in the areas most affected by the Project's development. The purpose of this strategy is to leverage the expertise, resources, and experience of well-established organizations that have deep ties with the communities in which they work and a concrete understanding of the steps that are necessary to ensure that New York workers have the support and skills necessary to take advantage of the myriad opportunities that will flow from the significant investments that New York State and NYSERDA are making in the offshore wind industry, with a particular emphasis on providing opportunities for members of Disadvantaged Communities, MWBEs, and SDVOBs as well as labor unions. Based on the discussions that Empire Wind has had to date with potential partners, Empire Wind anticipates that the future partnerships that will be created if the Project is selected through the solicitation will support an array of job training and vocational programs, including apprenticeships, talent pipeline programs, technical training and support, workforce retention programs, and mentoring programs. If Empire Wind is selected through this solicitation, Empire Wind will commit to additional funding to be distributed through its Regional Collaboration framework, with the amount depending on the proposal selected by NYSERDA, as described in Empire Wind's economic benefit plans.

Empire Wind anticipates working with these organizations to identify the programs and initiatives that are likely to have the greatest impact given the specific needs of the communities that they serve. Given this alignment with stakeholder-driven workforce development programs, fully developed partnerships and investments will be finalized once Empire Wind has been selected through this solicitation process. Empire Wind will also align these activities with statewide priorities through continued membership and involvement in the Jobs and Supply Chain Technical Work Group and Environmental Justice Technical Working Group.

The Regional Collaboration framework will ensure that the collaboration and funding made available as a result of Empire Wind's selection through this solicitation process will support a broad array of groups and communities. Notably, the vast majority of the organizations that Empire Wind anticipates supporting through this effort serve members of Disadvantaged Communities and historically underrepresented communities. Additionally, by employing a multi-region strategy, Empire Wind's proposed funding framework will ensure that the funding made available as a result of this solicitation is not concentrated within any particular community or region within the state.

As a central component of its Regional Collaboration strategy, Empire Wind and its affiliates have met with more than



[REDACTED]

Each of these community foundations is an expert at ensuring that community benefit funding is distributed with integrity and streamlined efficiency. These organizations also have significant experience with designing and administering requests for proposals, including crafting eligibility criteria in a manner that encourages applications from a wide array of diverse organizations with demonstrated strengths in job recruitment and training that is sensitive to diversity, equity, and inclusion considerations. These community foundations will play a key role in working with Empire Wind and its affiliates to guide engagement with organizations and key contacts in Tier 2 and 3 and lead development of criteria that will be used to monitor the distribution of funding and measure the results of funded initiatives as well as coordinating ongoing monitoring and engagement with those organizations receiving funding, including full accounting of the use of funding, itemization of all funds spent, activities undertaken, stakeholders' involvement, project barriers encountered, progress relative to milestones and main objectives, and actual outcomes relative to planned outcome.

To ensure that the community foundations have the best information about the goals of this effort, each of these community foundations will work and consult with trusted NGOs in the renewable energy and workforce development sectors in their regions. For example:

- [REDACTED]
- [REDACTED]

Other community foundations and NGOs will continue to be evaluated as appropriate.

Within each region, each community foundation and the relevant NGO will be responsible for engaging in dialogue with community organizations to discuss potential projects, partnership opportunities, and to problem-solve for any gaps, overlaps, or other issues so that the organizations can work collaboratively within their markets, not in "silos" but rather in coordination with other organizations seeking to advance career awareness and workforce development in their regions. [REDACTED]

In the New York City region, Empire Wind anticipates [REDACTED]

- [REDACTED]
- [REDACTED]

just workforce transition to offshore wind and clean energy economy jobs. The Plan should describe how the Proposer is considering providing support for the transition of New York's communities, local unions, and workers impacted by reduced use of fossil fuel electricity generation or repurposing of fossil fuel infrastructure. The Plan should detail how workers are transitioned from known, New York State, fossil fuel infrastructure or other displaced workers into the clean energy economy or other adjacent fields through workforce training and innovative recruitment methods. The just transition of workers affected by Fossil Repurposing Proposals must be specifically addressed in the Plan, if applicable.

Furthermore, Proposers are encouraged to explore ways of providing new private investments to foster job growth in areas impacted by the closure of fossil fuel, coal energy plants, and nuclear energy plants.

Proposers are encouraged to explore creating advisory boards comprised of community members, workers, and unions representing those workers, to evaluate any transition programs proposed which will help ensure a just transition.

Proposers may wish to consult with materials presented and produced by the Just Transition Working Group of New York's Climate Action Council, including as pertains to workforce development, power plant site reuse, and the Climate Jobs Study (materials available on climate.ny.gov). Particular attention should be paid to Section 7 of the [Draft Scoping Plan](#).

Just Transition is an increasingly important priority for governments, communities, and the private sector as the energy transition unfolds. The concept of a “Just Transition” has been developed by trade unions and can refer to an equitable transition for workers in any sector. In the context of the Paris Agreement, it refers to a just transition to a low-carbon economy. There is no single universally accepted definition of this term, but the emphasis is on achieving the energy transition in a fair and just way that does not place disproportionate burdens on some groups, and that supports long-term social, economic, environmental, and human rights benefits for workforces and communities. As recognized by the New York State Climate Action Council, “[a] just transition is one that builds connections, creates opportunity, and ensures a good quality of life for New Yorkers from all different walks of life.”²⁴ Empire Wind fully supports the objective of supporting a “fair and equitable movement from fossil fuel-based economies toward the achievement of the carbon neutral future envisioned by the Climate Act.”²⁵

As noted above, Empire Wind has provided financial support for jobs and workforce development through the Offshore Wind Ecosystem Fund. This funding has been directed to an array of organizations that are acutely focused on promoting a just transition through education and training of workers currently employed in connection with thermal generation resources to prepare them for positions in the clean energy economy. For example, Empire Wind's grant to UPROSE as part of the Ecosystem Fund is supporting the establishment of their Just Transition Worker Resource Initiative (“JTWRI”) to connect the historically marginalized and low-income residents of Sunset Park to training and employment opportunities in offshore wind and other industries of the emerging clean energy economy. Empire Wind is also supporting the New York City District Council of Carpenters Apprenticeship, Journeyman Retraining, Educational and Industry Fund with a [REDACTED] grant that will enable the recruitment and enrollment of 240 new apprentices from Environmental Justice communities, preparing them for careers

²⁴ New York State Climate Action Council Draft Scoping Plan at 41 (Dec. 30, 2021), available at: <https://climate.ny.gov/-/media/project/climate/files/Draft-Scoping-Plan.pdf>.

²⁵ Draft Scoping Plan at 41.

as union carpenters.

Additionally, the Regional Collaboration strategy, described above, has been designed in a manner consistent with the just transition principle identified by the Climate Action Council. Among other things, this stakeholder-driven approach will:

- Engage a diverse range of stakeholders through inclusive engagement that supports a transition to a decarbonized economy, including New York’s workforce and Disadvantaged Communities;
- Encourage collaborative, community-based long-term planning and capacity building;
- Preserve and respect local cultures and traditions;
- Provide training opportunities and wrap-around support across generations, genders, and communities, including young adults and experienced workers looking to acquire the skills necessary to thrive in a decarbonized economy;
- Connect workers to new employment opportunities;
- Support redevelopment of deindustrialized communities and regions of the state;
- Support the development of a low-carbon supply chain; and
- Support investment in sustainable infrastructure.

The Regional Collaboration strategy is also ideally structured for coordination with programs New York has established to advance Just Transition efforts in New York, including the Office of Just Energy Transition and NYSERDA’s Clean Energy Hubs and Just Transition programs.

- **New York Office of Just Energy Transition.** Empire Wind will coordinate with the New York Office of Just Energy Transition. The Office of Just Energy Transition connects workers to opportunities for quality jobs, upskilling, and training. It focuses on serving those who are traditionally underrepresented, especially within Disadvantaged Communities. The office develops and delivers training and income support programs for workers impacted by the transition from fossil fuel generation. It also provides technical assistance and economic development support for businesses and communities to retool for new clean energy activities, products, and services. The office aims to ensure high-quality job creation and economic development efforts are maximized. Empire Wind’s strategy can support the new Office by funding proposals that focus on these three areas.
- **NYSERDA Clean Energy Hubs program.** NYSERDA has established 12 Regional Clean Energy Hubs across New York State to promote clean energy awareness, education, and participation in the state’s clean energy transition. Each hub is a team of trusted, knowledgeable, community-based organizations in and from the region of the state. They have experience with clean energy, energy efficiency, workforce and economic development, education, health, and housing. Hubs help and provide information to individuals, small businesses, and affordable housing owners about the benefits of the clean energy economy, ways to reduce energy use and costs, and how to make more informed energy decisions. The hubs serve as centers of outreach and education for residents, including job placement support, particularly those in underserved or Disadvantaged Communities. Empire Wind will coordinate with the Clean Energy Hubs’ designated outreach organizations in the Long Island, Brooklyn, and Bronx Regions through the Regional Collaboration model.
- **NYSERDA Just Transition program.** The Just Transition Site Reuse Planning Program is a program designed to provide communities with planning services to inform future decision-making at the local level to help mitigate any negative impacts of pending or future fossil fuel power plant closures. The program is intended to advance New York State’s goal of moving to a clean energy economy by assisting communities transitioning away from conventional energy infrastructure they

have hosted over the past several decades, including fossil-fuel power plants. Under the program, NYSERDA provides site reuse planning and technical support services to individual municipalities that are navigating power plant retirement and site reuse opportunities. Site reuse planning is provided with no cost share required by the applicant. The scope of services to be provided by NYSERDA and its contractors in developing site reuse planning studies is still being discussed. The program is part of New York State's Climate Leadership and Community Protection Act ("Climate Act"), which requires the state to transition to 100% zero emission electricity by 2040.

Empire Wind and its affiliates will also continue to support the proposal to create a state Worker Support and Community Assurance Fund, as outlined in section 7 of the Draft Scoping Plan for the New York State Climate Action Plan, prepared by the Just Transition Working Group.

11.6 Jobs Commitments

The Plan should provide detail on an estimated total number of workers needed per occupation title listed on the [NYSERDA Offshore Wind Workforce page](#). Proposers should, to the best extent possible, list the 117 unique offshore wind occupation titles as using these titles helps standardize the review of Project workforce needs. The estimates will not be contractually binding, but rather offer a target for workforce and job expectations for the Project as of the Proposal Submission Deadline.

The Plan should connect the estimated workforce estimates above with the Incremental Economic Benefits claims as detailed in Appendix B.1 that are contractually binding as Expected Labor Dollars, which are an important part of the evaluation of 20 points for New York Economic Benefits as described in Section 3.3 of the RFP. Section B.1.A of Appendix B.1 describes the types of Incremental Economic Benefits that may be claimed. Section B.1.B describes the format of the Incremental Economic Benefits claim documentation that is required to be included in the Economic Benefits Plan.

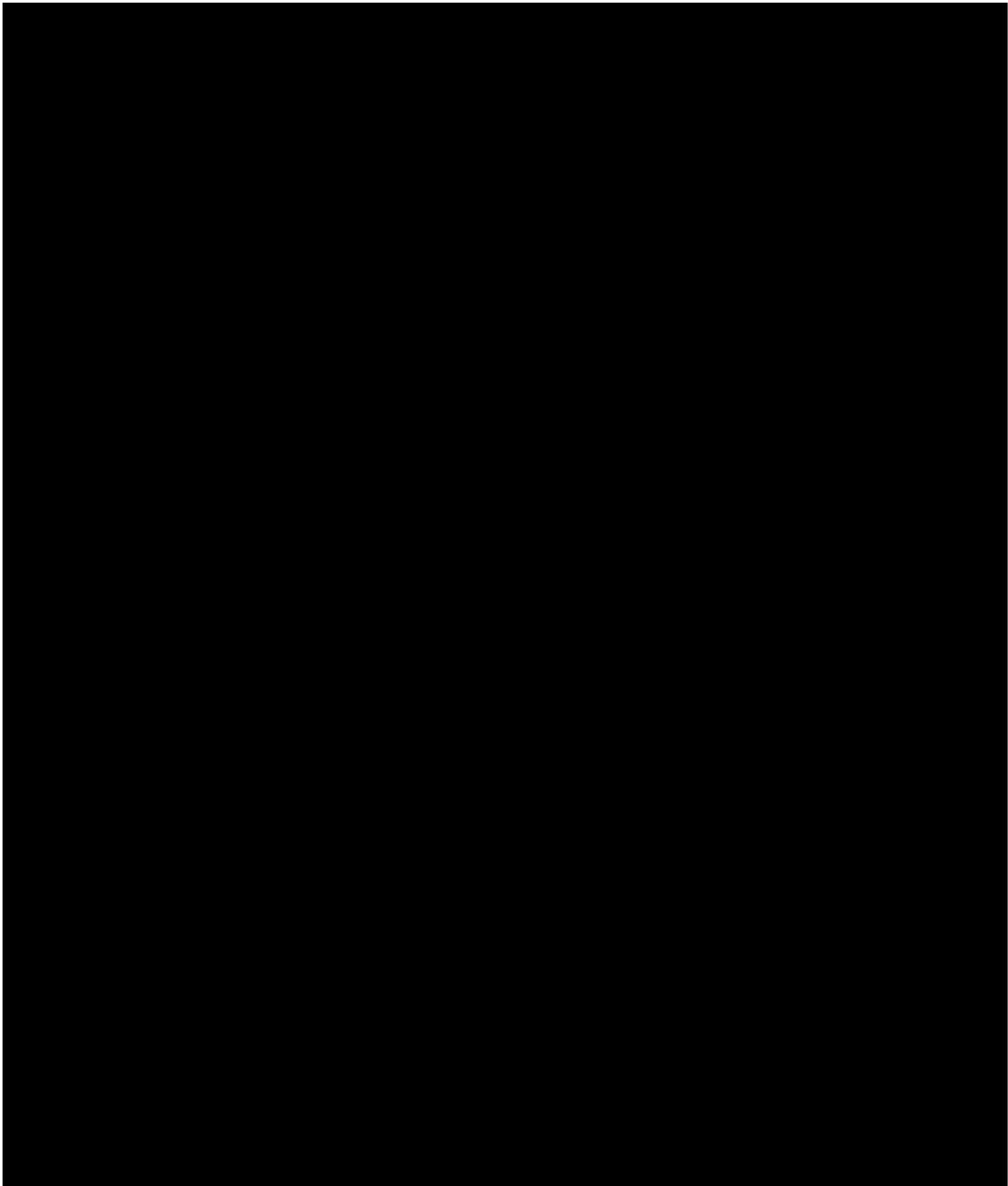
The Plan will connect and detail commitments to the Incremental Economic Benefits claimed as Disadvantaged Community Commitments, such that it clear that expenditures associated with the construction, operation, and maintenance of the Project will indeed benefit Disadvantaged Communities.

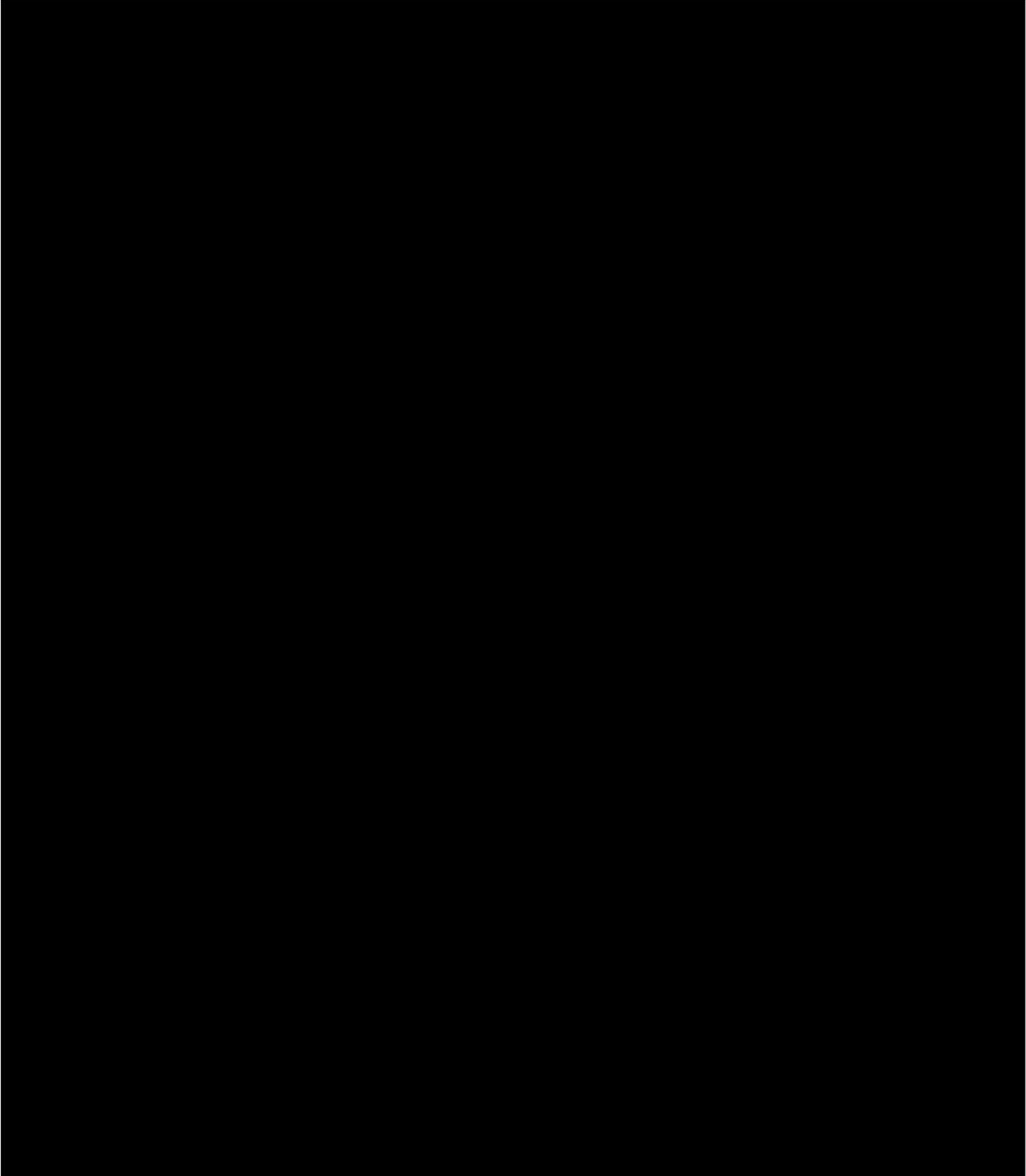
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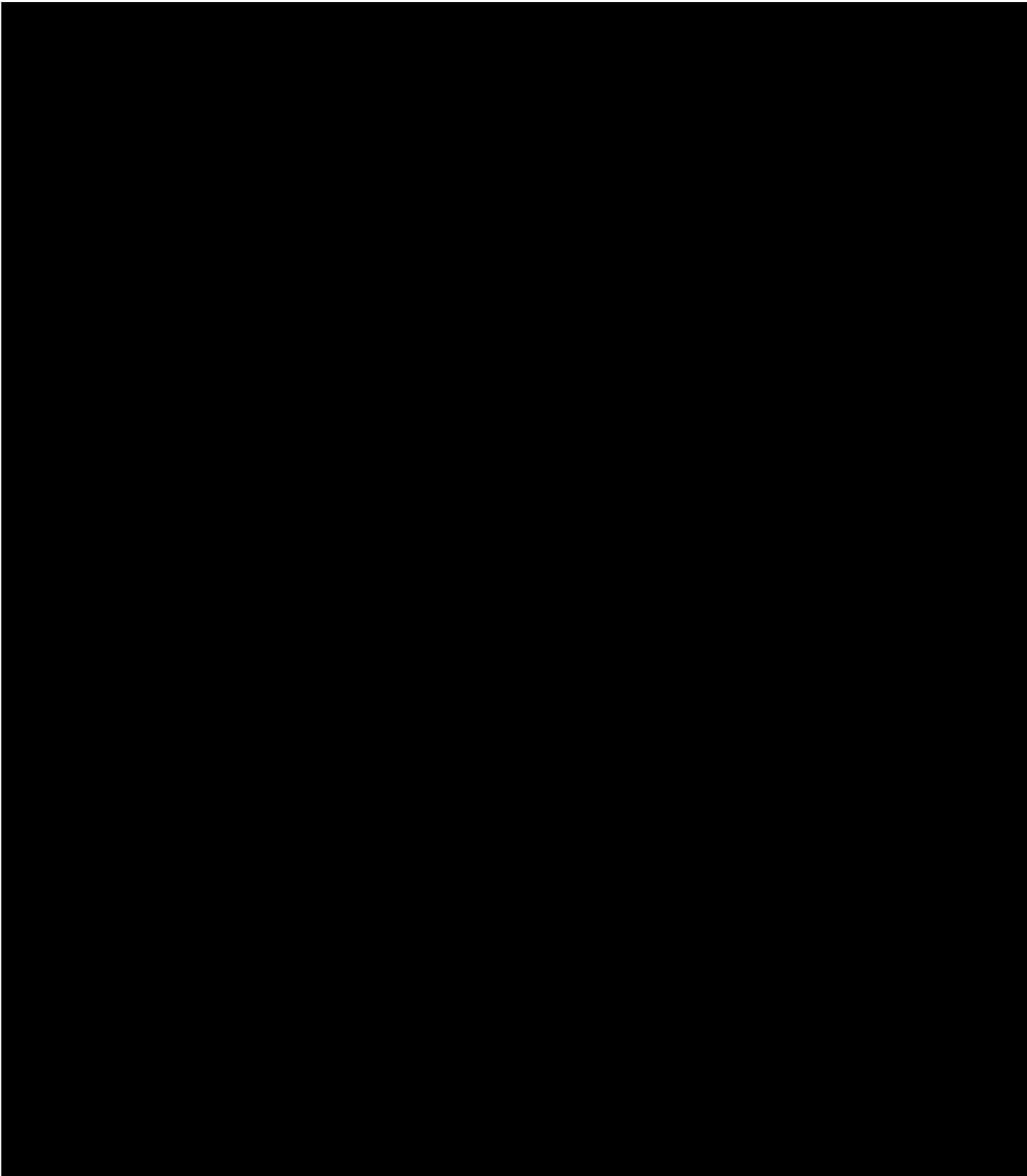
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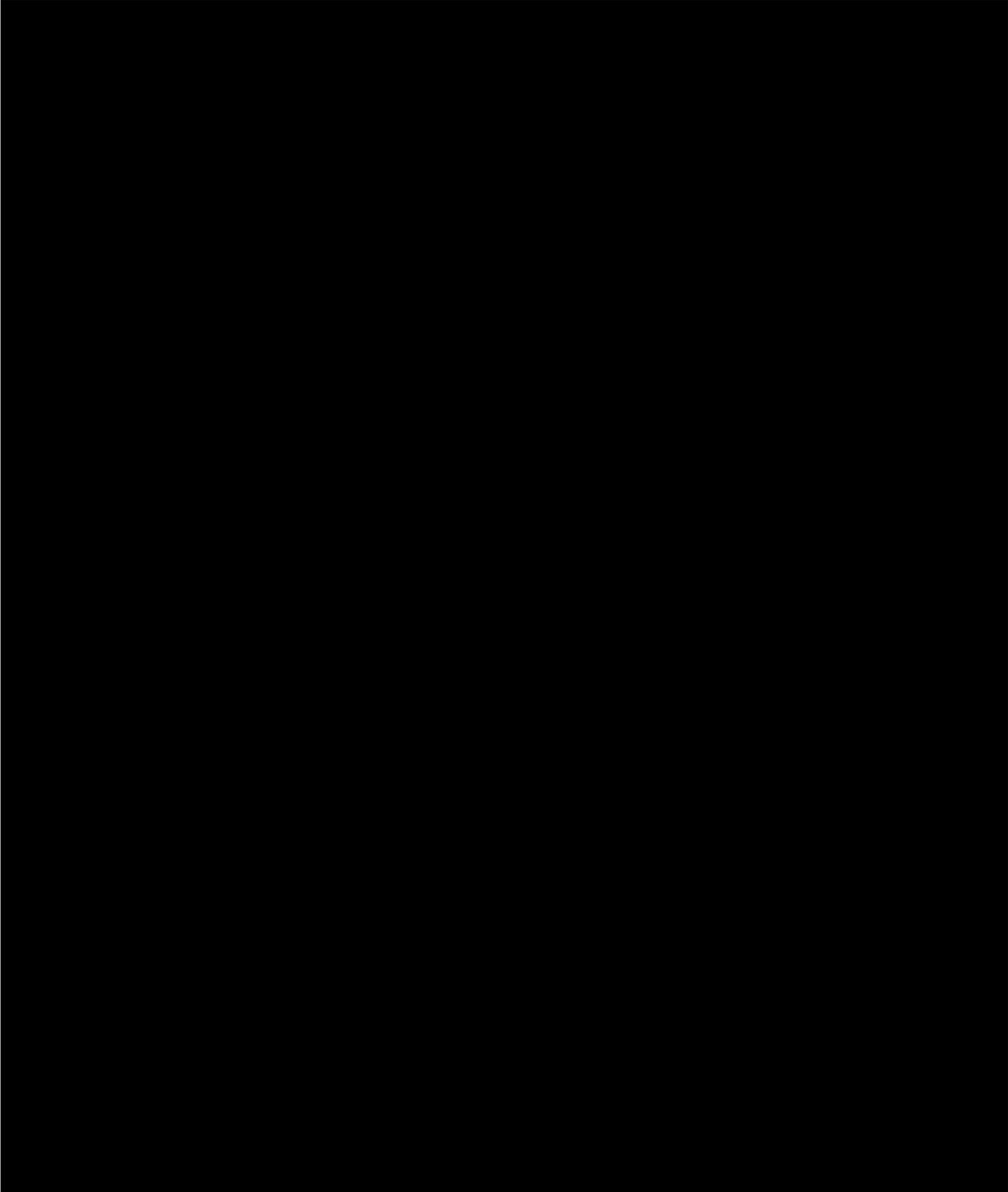
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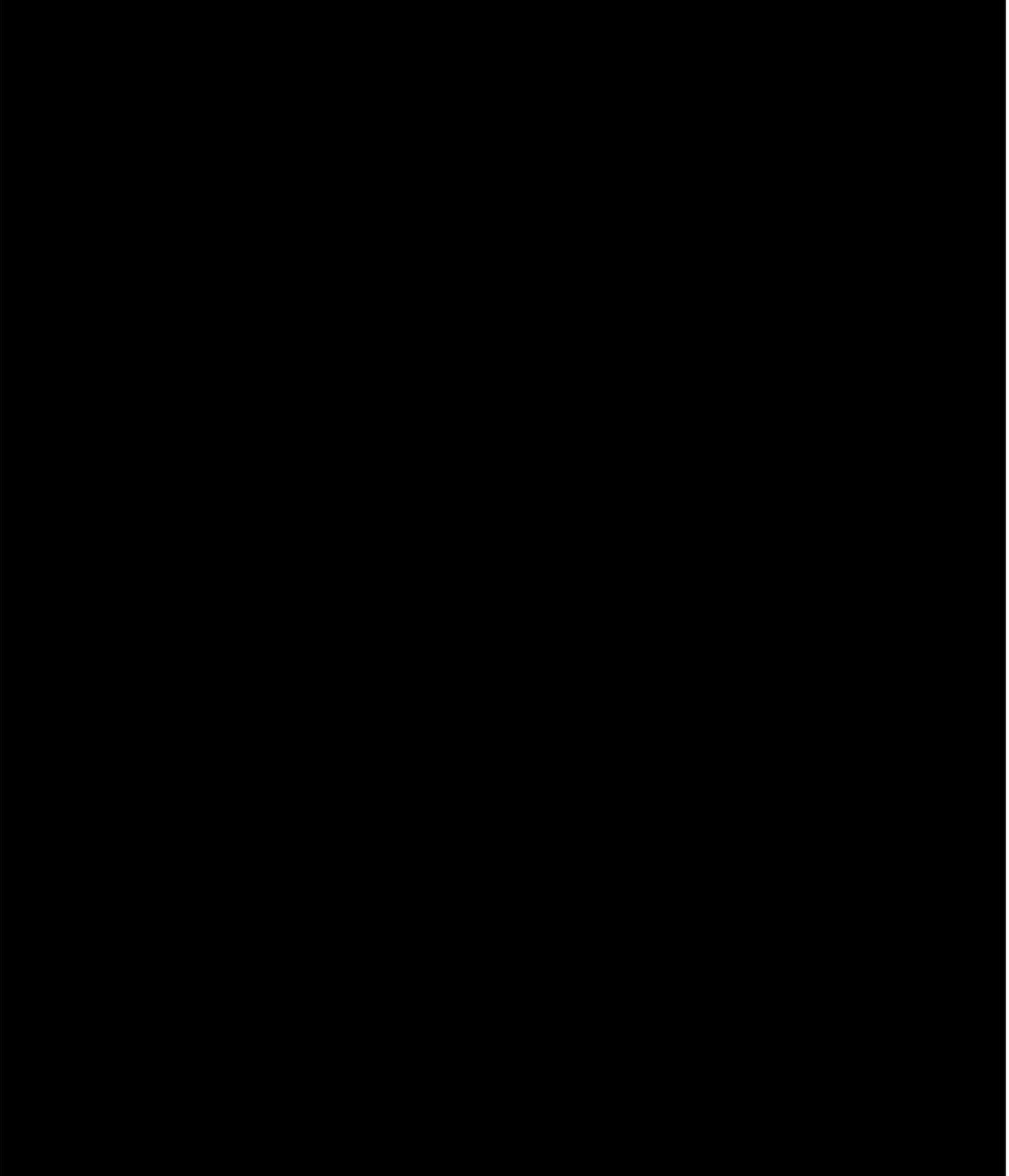
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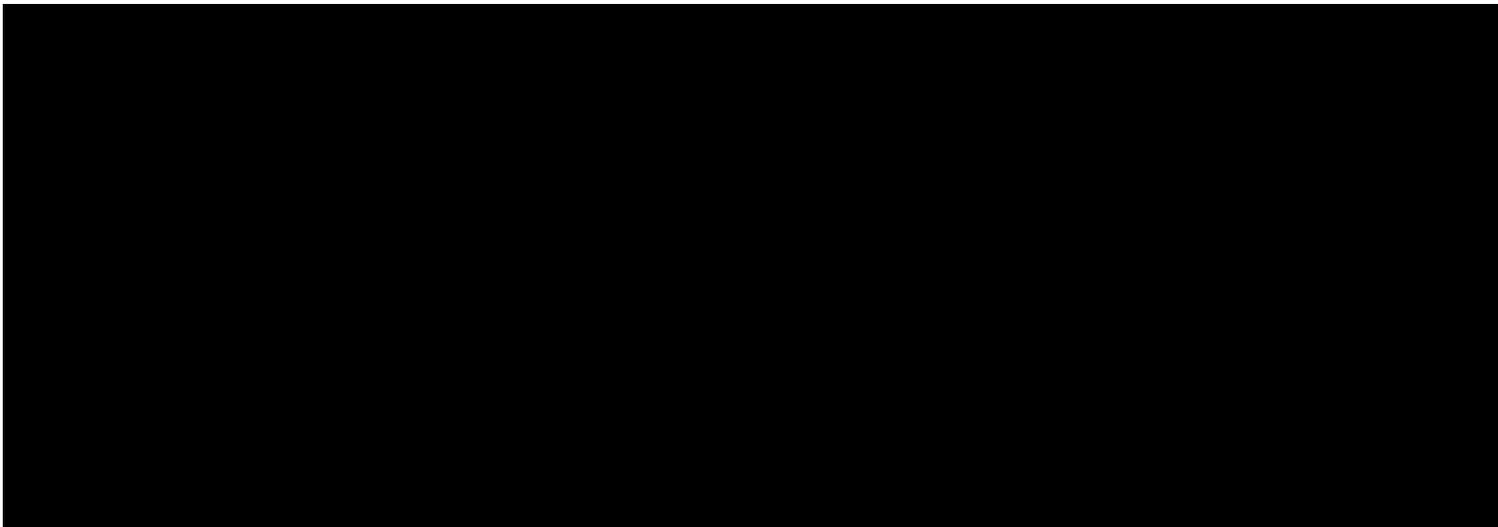


EXHIBIT N

Stakeholder Engagement Plan for Empire Wind Project 1 Version 1.0

**Prepared pursuant to
Agreement No. 231326, May 31, 2024**

with
New York State Energy Research and Development Authority
Albany, NY

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May 2024



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Acronyms and Abbreviations

BOEM	Bureau of Ocean Energy Management
EW1	Empire Wind 1
DAC	Disadvantaged Communities
EJ	Environmental Justice
Empire Wind	Empire Offshore Wind LLC
NY Project	Empire Wind Project
NYS	New York State
NYSDEC	New York State Department of Environmental Conservation
NYSERDA	New York State Energy Research and Development Authority
Project	Empire Wind Project
SEP	Stakeholder Engagement Plan

1. Stakeholder Engagement Plan Summary

1.1 Overall Philosophy and Principles

This section should describe the overall philosophy and principles Proposers will follow to understand, incorporate, and respond to the diverse perspectives, needs, and concerns of stakeholders at every stage of development. Proposers are encouraged to consider a mission statement that drives their engagement and supports accountability.

- Empire Wind has prepared the Stakeholder Engagement Plan (SEP) described herein as part of its ongoing commitment to meaningful engagement and dialogue with interested stakeholders, including the community and the general public.
- The SEP demonstrates Empire Wind’s commitment to robust, inclusive, and transparent engagement, and details the approach Empire Wind will take to:
 - Identify stakeholders in the area of the proposed project;
 - Build public awareness and understanding of the project;
 - Encourage and collect public input and incorporate that input into planning and execution of the project; and
 - Ensure project benefits accrue to the community.
- The SEP encourages and champions community representation, putting disadvantaged and underserved communities at the forefront of initiatives to maximize environmental benefits, spur economic development, and create jobs in New York.
- Empire Wind’s approach to public engagement is to be a responsible, accountable, and engaged member of the communities in which it works and operates.
- Empire Wind will make efforts to engage with and respond to a diverse array of stakeholders early and often consistent with the following principles:
 - Open: Empire Wind promotes transparency and embraces diversity and new perspectives.
 - Courageous: Empire Wind uses foresight, identifies opportunities, and manages risk.
 - Collaborative: Empire Wind engages with, respects, and earns the trust of Empire Wind’s business partners and society.
 - Caring: Empire Wind seeks zero harm to people, wildlife, or the environment, acting in a sustainable, ethical, and socially responsible manner.
- In terms of stakeholder engagement, Empire Wind’s mission is to communicate with affected communities to help realize the benefits that offshore wind energy can provide, including the use of benefit agreements for host communities where appropriate, initiatives focused on workforce training and supply chain access for small, minority and women-owned businesses and service-disabled veteran owned businesses, creating opportunities for DACs, and reducing pollution brought on by replacing fossil fuels with renewable energy sources.
- In terms of accountability, Empire Wind is focused on being an active, responsible neighbor and member of the community that listens closely to community input when evaluating the plan for developing its projects.

- Our core mission aligns with New York State’s requirement that community members who are impacted by a public works project should have a say in the project’s decision-making process.
- Empire Wind will make an effort to engage municipalities and interested groups, and account for their views in the project planning and decision-making process in order to build support for the project from the ground up.
- Empire Wind seeks to achieve five specific objectives:
 - Identify and provide accurate, factual, timely, and relevant information to stakeholders.
 - Build and maintain trustworthy and constructive stakeholder relationships.
 - Provide a range of opportunities for meaningful public engagement and stakeholder consultations through each project phase.
 - Incorporate stakeholder input into project design, construction, and operations plans, wherever feasible.
 - Deliver tangible and direct economic benefits equitably to local communities, with a specific focus on DACs.

1.2 Overall Approach to Incorporating Data and Stakeholder Feedback

This section should describe how Proposers will use research, data, and stakeholder feedback to update the Stakeholder Engagement Plan, and support decision-making throughout the life cycle of the Project (preconstruction, surveys, site design, construction, operations, and decommissioning).

- Empire Wind employs a systematic approach to stakeholder engagement that enables us to identify and track the full range of potentially affected stakeholders and their views, including using stakeholder analysis tools to map the overall universe of engaged participants in Empire Wind’s project and to identify gaps in engagement to ensure robust coverage of all stakeholders.
- Empire Wind will track progress and adjust strategies to achieve the goals set for meaningful stakeholder engagement in the SEP.

1.2.1 Stakeholder Mapping

- Empire Wind has and will continue to perform stakeholder mapping exercises to obtain up-to-date population, cultural, and economic statistics and information on relevant communities and interest groups.
- Empire Wind will use stakeholder mapping as a key component of its long-term approach to public engagement to obtain population, cultural, and economic statistics, and information on communities or interest groups relevant to the Project.
- Tools Empire Wind uses in stakeholder mapping include:
 - Borealis Software’s Stakeholder Engagement Platform (or other appropriate software or platforms) to understand stakeholders and structure and implement an effective engagement process.
 - US Census Bureau Datasets and EJSCREEN
 - New York State Opportunity Zones

- NYS Potential EJ Areas
- Guidance on DACs
- Empire Wind will thoroughly track, analyze, and consistently update the stakeholder engagement process in Borealis to review the progression of stakeholders' levels of interest in the project, understanding of the project, and their level of support.
 - Investment in this activity enables institutional knowledge across projects and phases, allows for consistency and accountability with Empire Wind's stakeholders, and provides essential reports that document stakeholder awareness, understanding, and engagement.
 - Empire Wind will utilize these reports to evolve its outreach program to fit the changing needs of stakeholders.
- Empire Wind will detail the allocated resources that it will use to continuously support long-term engagement and EW1 initiatives.
- Empire Wind will implement a long-term engagement process that produces input that will be shared with Empire Wind's technical project teams over the lifetime of project development, construction, and operations.
- Empire Wind will review and seek input from stakeholders on avoiding, minimizing, or mitigating adverse impacts from Project construction and operation, local economic development, reduced energy burden, avoided health costs, added climate resiliency, avoided environmental costs, added environmental benefits, workforce training opportunities, and economically DAC participation.
- Empire Wind will seek input and respond to community and stakeholder concerns, to build understanding of project benefits, which include:
 - Reduced energy burden
 - Avoided health and social costs
 - Added climate resiliency and avoided environmental costs
 - Host community tax and economic benefit agreements
 - Community focused permitting process
 - Jobs and job training
 - Expanded supply chain opportunity and capacity
 - Equitable participation and benefits accruing to economically disadvantaged and EJ communities
- Empire Wind will share and review reports on stakeholder activity and input with engagement and technical teams, and with NYSERDA, to update progress, affirm the commitment to engagement, and to identify opportunities for enhanced messaging and communication throughout and beyond the development process.

1.3 Existing Guidance and Best Practices that Will Be Followed

This section should present a list of existing guidance documents, publications, tools, and/or plans that will be followed to support the Stakeholder Engagement Plan. Include links, if available, for all references.

- Empire Wind will follow the practice of public participation, as published by the International Association of Public Participation (iap2), which include:

- Public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process.
- Public participation includes the promise that the public's contribution will influence the decision.
- Public participation promotes sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers.
- Public participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision.
- Public participation seeks input from participants in designing how they participate.
- Public participation provides participants with the information they need to participate in a meaningful way.
- Public participation communicates to participants how their input affected the decision.
- Empire Wind will periodically review guidance documents, publications, and public engagement plans for similar large scale infrastructure projects elsewhere to collect best practices and lessons learned.
- Such documents include:
 - NYSERDA Guiding Principles for Offshore Wind Stakeholder Engagement and other NYSERDA guidance materials.
 - NYSERDA Learning from the Experts, webinar series.
 - International Association of Public Participation: The Journal of Deliberative Democracy
 - Resources available from the U.S. Department of Energy, U.S. Department of Environmental Protection and Federal Highway Administration,
 - Guides and procedures as defined by NYSERDA, and
 - Plans and reports issued by other relevant state and federal regulatory authorities.

2. Stakeholder Identification and Stakeholder List

2.1 Overview and Stakeholder Identification Objectives

This section should provide an overview of the stakeholder identification and relationship management methods.

- Empire Wind will create and implement different communication strategies for the different stakeholder groups identified for this SEP for public outreach.
- Empire Wind will use established relationships to be responsive to public concerns and to build support through a robust, meaningful, and transparent public involvement process. The information gained from outreach related to Empire Wind and its affiliates' existing projects, and from pre-bid outreach, has bolstered Empire Wind's understanding of what affected communities value and seek from the project, and has forged strong relationships between Empire Wind, its affiliates, and key stakeholder groups. Pre-bid outreach activity has included more than 550 meetings and public information sessions with groups in each of the below categories to initiate conversations, present EW1, and collect stakeholder and community input.
- Empire Wind will identify specific stakeholders through ongoing engagement and information provided by members of the community, other stakeholders, guidance from local and state government contacts,

prior submissions of other offshore wind solicitations, review of New York State GIS (Geographic Information Systems) records, tax records, research, and the extensive experience of Empire Wind’s stakeholder engagement team in advancing similar projects.

- Empire Wind has taken the following steps in its pre-bid preparatory work to identify DAC potentially impacted by the project:
 - Empire Wind has identified and will address preliminary goals, issues, and desired outcomes for each of the potentially impacted DACs using the New York State Disadvantaged Communities Map.
 - Data has been collected from the US Census Bureau American Community Survey 2018-2023 5-Year Estimates for the purposes of this planning including economic, social, and language diversity data for the Project area, sourced from ACS: Census report: <https://censusreporter.org/profiles/79500US3604101-nyc-queens-community-district-1-astoria-long-island-city-puma-ny/#language>.
 - Empire Wind has utilized New York City Department of Health ArcGIS to identify EJ Areas in and around the project area.
 - Empire Wind has consulted with community-based organizations and leaders, elected officials, business owners, and other citizens (including local residents and property owners) in many potential EJ areas and will continue to meet with and expand engagement.
 - Empire Wind has identified DAC that are potentially affected by the Project, including those in the vicinity of the South Brooklyn Marine Terminal.
 - Empire Wind will add or remove communities following annual review processes and make appropriate engagement adjustments.
 - Empire Wind has established an office in the Sunset Park area of Brooklyn in close proximity to SBMT and the proposed point of interconnection for EW1. Empire Wind will continue to engage with stakeholders and participate in public meetings in affected communities.
 - Empire Wind will hire community and tribal liaison officers. Empire Wind will continue to engage with Tribal Nations, including the Shinnecock Indian Nation and the Unkechaug Indians.

- Empire Wind has identified the following stakeholder categories for the NY Project Area and assigned each to a department within Empire Wind:

Category	Department
Host Communities	Community Affairs
Federal, State, and Local Governments	Public/Political Affairs
Environmental Organizations, NGOs, and Special Interest Groups	Permitting/Community Affairs
Environmental Justice Groups	Community Affairs
Labor Organizations	Labor Liaison/Labor Counsel
School, Civic, and Community Organizations	Community Affairs
Affected Property Owners	Permitting/Commercial
Native American Tribal Groups	Permitting/Community Affairs
Port Owners and Operators	Facilities Management
Fisheries and Marine-Based Businesses	Permitting
Media	Communications
Representatives of U.S. Iron and Steel	Commercial

2.2 Assigning Team Members as the Primary Relationship Holder

This section will provide a list of communication officers, their role, and name and contact information. The list should provide stakeholders with an understanding of who should be called for a particular issue or question. Proposers should indicate if and who reports to certain staff members such that NYSERDA may understand organizational structure. In addition to this list, Proposers should explain how stakeholders will access this list and how it will be kept current to reflect organic changes and turnovers in responsibilities throughout the Project life cycle.

- Empire Wind’s team of government relations, communications, and community outreach professionals lead on-the-ground stakeholder engagement, including that which is focused on the Empire Wind project.
- The following is the organization and listing of team members with primary responsibility for stakeholder engagement and external relations, including government, community, and media. This list will be published on the Empire Wind project website and will be reviewed to reflect organizational changes throughout the project lifecycle.

Name	Role/Responsibilities	Contact Information
Harrison Feuer	Senior Director of Public Affairs	hfeu@equinor.com 917-495-4914
Ashley Ball	Director of Community Affairs, Empire Wind 1	aball@equinor.com 347-383-3002
Lauren Shane	Director of Communications	laush@equinor.com 917-392-4252

3. Stakeholder Engagement Goals

3.1 Defining Goals and Desired Outcomes

This section should describe goals and desired outcomes developed through a collective understanding of shared interests for each stakeholder group identified in Section 2.1.

- Empire Wind will define the issues and/or information prioritized by each stakeholder group in collaboration with stakeholders. As part of these efforts, Empire Wind will:
 - Engage stakeholders and interested parties in an approach that is both inclusive and equitable, developed in alignment with Climate Act requirements.
 - Encourage public involvement through the development, construction, and operation phases of the project.
 - Address local interests and identify strategies to mitigate concerns raised by the public, working toward actionable solutions that contribute to long term social and economic development.
 - Solicit feedback and input early and often from the public and affected agencies.
 - Deliver outreach materials and project information to ensure stakeholders are well informed regarding project timelines, progress, and key decision dates, amplifying opportunities to participate in the process.

- Partner with local governments and community groups to ensure transparent and mutually beneficial project outcomes.
- Empire Wind has initiated stakeholder collaboration to define the issues priorities by each stakeholder group, and to set preliminary goals, and desired outcomes for each of the specified stakeholder categories as follows:
 - **Host communities:** engage members of such communities in collaborative partnership to build positive relationships and ensure input and feedback is collected from affected communities.
 - **Federal, State, and local governments:** ensure that elected leadership and policymakers at the local, county, state, and federal levels are informed of the project, and can provide input and raise questions.
 - **Non-Governmental Environmental and Special Interest Groups:** engage with such groups to help identify specific concerns, resources, opportunities, and interests in key areas, such as wildlife preservation, maritime and fisheries, and the clean energy transition.
 - **EJ Groups and DACs:** reach out to members of EJ groups and DACs to encourage participation and input, and identify opportunities to advance economic and health objectives.
 - **Labor organizations:** outreach and engagement with labor organizations to collect information and identify opportunities for ensuring jobs and economic development, including workforce training programs and wraparound services for trainees.
 - **School, Civic, and Community Organizations:** attend meetings held by these groups to better understand local needs and interests and provide information about the project development on an ongoing basis.
 - **Affected Property Owners:** maintain and update the list of affected landowners and intervenors to ensure they receive project information and are specifically engaged to comment on the project and identify specific concerns, such as property value, viewshed impacts, safety, and traffic.
 - **Tribal Nations:** build on existing outreach to Tribal Nations by continuing to brief interested tribes on the Project, guided by its Native American Tribes Communication Plan.
 - **Port Owners and Operators:** meet with port owners and operators throughout project development, briefing them on project progress, and identifying collaborative initiatives to maximize the advantages to the new offshore wind industry.
 - **Media:** keep media apprised of project developments with regular releases, advisories, notice of public events, and periodic briefings.
 - **Fisheries and Marine-based businesses:** continue to conduct outreach to fisheries groups and businesses, including inviting their participation in public information meetings, consistent with Empire Wind's fisheries mitigation plan.
- Empire Wind has established the following goals consistent with the Climate Act's focus on building an inclusive, clean energy economy including education, training, and hiring opportunities, with a specific focus on DACs.
 - Empire Wind will develop an approach that is both inclusive and equitable, developed in alignment with Climate Act requirements.
 - Empire Wind's will help to achieve the CLCPA's goal of ensuring that investments in clean energy are shared equitably and broadly with New Yorkers.

- EW1 and affiliated projects will strive to create new jobs and attract investment in areas located in or in close proximity to DACs.
- Empire Wind will identify opportunities for collaborative decision-making and efforts throughout the development process with community members, local elected officials, relevant businesses, institutions, EJ communities, DACs, and non-profit organizations including but not limited to MOUs and LOIs.

4. Stakeholder Engagement Goals Activities, Consultations and Partnerships

4.1 Planned Activities and Outreach

This section shall detail options for engagement activities and follow-up with community members, local elected officials, institutions, local businesses, and nonprofit organizations. Engagement activities detailed in this section should specify with what stakeholder groups they will be leveraged.

- Empire Wind’s engagement will incorporate a wide range of voices, including the key stakeholder groups identified in the sections above, and direct a concerted effort towards engagement to include historically marginalized groups traditionally left out of development decisions, such as disadvantaged and frontline communities.
- Empire Wind will uniquely consider each stakeholder group and increase awareness and participation from each group at each phase of EW1 to ensure stakeholders are informed, involved, and engaged in project development.
- Empire Wind will incorporate appropriate communications methods throughout project development to provide access to information, ensure opportunities to have questions answered, and to solicit and collect feedback as detailed in Section 3.
- Empire Wind will address and consider accessibility factors affecting DACs and other stakeholders including convenience of meeting times and accessibility of locations or virtual platforms, childcare needs, language and interpretation needs, and providing a variety of opportunities to participate and ways to provide input are considered in planned activity and outreach.
- Empire Wind will provide detailed anticipated outreach schedules prior to informing stakeholders of planned activities including alerting NYSERDA and posting public events to their project website’s event pages.
- Empire Wind will provide consistent follow-up with the stakeholders they have engaged, especially members of DACs, to make clear how their input was considered, and/or provide learning opportunities to raise awareness of and gain support for the Project with the stakeholders.
- Empire Wind will participate in technical working groups related to environment, fisheries, maritime, jobs and supply chain, environmental justice, and other potential technical working groups to ensure industry coordination.
- Empire Wind has proactively conducted outreach to stakeholders to build on partnerships established during Empire Wind’s prior New York projects, initiate new partnerships, collect input, and identify potential collaborative activities for educational partnerships, and initiatives related to workforce and supply chain development.
- Empire Wind will maintain and update its website to ensure that it serves as a hub for communicating updates on project progress and opportunities for participation and for maintaining a repository of information about the project, enabling stakeholders to easily find content as the project develops. Content will include:
 - Project information

- Project benefits and need
- Project map
- Addresses of local document repositories
- Library and links to project documents
- Outreach event schedule and key milestones
- FAQs
- E-blast and newsletter opt-in
- Advertisements for upcoming public outreach events
- Project contact information, email, and comment forms
- Empire Wind will continue to host a variety of workshops, open houses, and information sessions to provide multiple opportunities to facilitate dialogue in the community, distribute project information, and solicit feedback.
 - Such events will be focused on collecting input from the public, and ensuring ample opportunity for participants to ask questions, and share comments.
 - Meeting materials such as comment cards and/or questionnaires/surveys will be provided to gather feedback for future consideration.
 - Public meeting locations will be selected for accessibility and convenience, to enable the widest participation
 - Public meetings and events will be promoted via advertising, media advisories, direct mail, and social posts.
 - Meeting materials will be translated as needed, and American Sign Language interpreters will be available during live meetings.
 - Hybrid events, with both in-person and virtual options, will be utilized to reach stakeholders with information and participatory opportunities, regardless of their location and attendance preferences.
- Meetings and events will be advertised in a variety of ways, including the following:
 - Display advertisements, including legal notices, will be placed in the local newspaper of record, as well as in daily and weekly newspapers to promote attendance at public meetings, workshops, and other outreach events.
 - When required, notifications of meetings will include direct first-class mail communication to property owners whose properties about the project area.
 - E-blasts will be developed and used to announce meetings and opportunities to participate in the process.
 - The Empire Energizer, Empire Wind's monthly newsletter, will list upcoming events and provide information and materials on events that took place over the past month, with all embedded links directing recipients of the newsletter to visit the project's website.

- In addition to providing access to official project documents on the project website, and via link to official sites, Empire Wind will provide copies of milestone documents at repositories in the project area. Such repositories will include such public libraries as:

Service Area	Library Name	Street Address	Telephone
Manhattan Beach	Brighton Beach Library	16 Brighton First Rd. at Brighton Beach Ave. Brooklyn, NY 11235	718.946.2917
Brighton Beach	Brighton Beach Library	16 Brighton First Rd. at Brighton Beach Ave. Brooklyn, NY 11235	718.946.2917
Coney Island	Coney Island Library	1901 Mermaid Ave. (Near W. 19th St.) Brooklyn, NY 11224	718.265.3220
Seagate	Coney Island Library	1901 Mermaid Ave. (Near W. 19th St.) Brooklyn, NY 11224	718.265.3220
Bath Beach	New Utrecht Library	1743 86th St. at Bay 17th St. Brooklyn, NY 11214	718.236.4086
Fort Hamilton	Fort Hamilton Library	9424 Fourth Ave. Brooklyn, NY 11209	718.748.6919
Dyker Heights	Dyker Library	8202 13th Ave. (@ 82nd St.) Brooklyn, NY 11228	718.748.6261
Bay Ridge	Bay Ridge Library	7223 Ridge Blvd. at 73rd St. Brooklyn, NY 11209	718.748.5709
Sunset Park	Sunset Park Library	5108 Fourth Avenue Brooklyn, NY 11220	718.230.2255
Gowanus	Park Slope Library	431 6th Ave Brooklyn, NY 11215	718.832.1853

- A wide range of media channels, including print, broadcast, cable, and social media outlets serving the project area will be kept apprised with regular press releases related to project milestones, briefings as needed, and distribution of fact sheets and other materials.
- The media will be invited to attend public information meetings, and sign up for email updates and newsletters, and view website postings. Media channels include, but are not limited to the New York Daily News, New York Times, New York Post, Brooklyn Eagle, Red Hook Star-Review, Canary Media, BK Reader, Brooklyn Paper, Brooklyn Patch, Brooklyn Reporter, Crain’s NY, WNBC-4, WABC-7, WCBS-2, News 12 BK, NY-1, Fox 5 NY, PIX 11/WPIX, WNYC, WCBS880, 1010 WINS
- A wider list of statewide media will also be kept apprised of project progress.
- Empire Wind will utilize social media platforms to share information and collect input from stakeholders.
 - Social media posts, photos, and videos will feature information on project status and milestones on, for example:

- Facebook Page
 - LinkedIn Page
 - Nextdoor Profile
 - YouTube – Equinor Renewables Americas Playlist
 - X/Twitter (@EquinorWindUS)
- Empire Wind will develop project brochures, flyers, and fact sheets, which will be translated into multiple languages, written in plain English, and will be available on the project website and distributed at in-person events as well as high traffic areas.
 - A toll-free local hotline 833-699-1965 and regularly monitored e-mail in-box empirewind@equinor.com have been established for the project to allow individuals to contact Empire Wind for information, ask specific questions, or share concerns and comments.
 - The number and address will be included on all communication materials.
 - Calls placed to the Infoline will be recorded and documented and logged in Empire Wind’s stakeholder database.
 - Inquiries received via the Infoline will be directed to the appropriate subject matter expert for response, and responses, along with further correspondence, will be entered in the stakeholder management system.
 - A project newsletter published online and in print, and translated as needed, will be developed and distributed periodically to communicate project progress and opportunities to participate throughout Project development.
 - In addition to direct distribution, the project newsletter will be featured in social media, and posted on the project website, with an opt-in to subscribe to the distribution list.
 - The content of the newsletter will also evolve as the project matures. For example, as construction accelerates, the newsletter will include relevant construction activity updates and associated details.
 - Informal “pop-up” booths, display tables, or exhibits will be scheduled during existing or previously planned, local events and activities, such as farmers markets and fairs to create opportunities to bring Project information to the public, supplementing formal public information meetings and public hearings. These activities will be posted to the website and on social media.
 - Project “Walkshops” (an outdoor public education event that can be used if state or local regulations prohibit indoor meetings) will be conducted along development areas for informal discussions with stakeholders.
 - Displays will be developed for use in tabling at local events to bring project information to local residents.
 - Intercept polls may be conducted at events to collect input and ideas from attendees.

4.2 Planned and Active Partnerships and Initiatives

This section should describe proposed or existing partnerships with community organizations, institutions, local businesses, and nonprofit organizations.

- The Offshore Wind Innovation Hub is an initiative, led by Equinor, in collaboration with Urban Future Lab at NYU Tandon School of Engineering and the National Offshore Wind R&D Consortium

<https://nationaloffshorewind.org/>(NOWRDC), supported by New York City Economic Development Corporation (NYCEDC).

- The mission of the Innovation Hub is to catalyze startups and innovation collaboration to unleash the potential of offshore wind in New York.
- The Innovation Hub is a three-year \$5 million investment launching a technology accelerator to identify and develop promising start-up companies to drive new innovations in the OSW industry.
- Designed to facilitate testing opportunities, fast-track commercialization, and develop strategic partnerships. Located at Industry City Adjacent to SBMT.
- The first cohort graduated in December 2023, and the second call for innovators is to be published on January 24, 2024, with a new cohort taking part in the six-month program from May 2024.
- Empire Wind has developed a unique public engagement strategy involving Community Advisory Committees (“CACs”), which are diverse, voluntary groups of community members and organization representatives that will provide valuable input and perspectives on EW1.
 - CACs will be established in communities in which EW1 is located to discuss issues, community needs, and desired opportunities.
 - Members will serve as liaisons between the groups they represent and the project team.
 - CACs will provide an important link to the community, with members sharing input from the organizations they represent and helping disseminate information about the project.
 - CACs will act as a sounding board on issues relevant to project development, including the environment, land use, traffic, climate impact, EJ, and other community concerns.
 - Empire Wind will meet with CACs periodically, to supplement public outreach activity that will be conducted across the project development area to foster the open exchange of information.
 - Starting with the current Learning Center CAC, which is initially intended as the primary CAC to perform a centralizing function for community feedback, Empire Wind intends to establish additional issue- or topic-specific CACs as the community expresses a desire for them.
- Empire Wind has developed a unique collaboration with supply chain, labor, and workforce organizations across the state.
 - The Empire Wind strategy is an organized, regional, structure of the leading community foundations and non-governmental supply chain and labor organizations to plan, monitor, allocate, and implement workforce and community development that Empire Wind and its affiliates have already committed to in order to ignite and enable supply chain capacity building, and workforce development related to the new Offshore Wind industry in New York State.
- Empire Wind launched a historic Acoustic Marine Monitoring Project agreement in a stakeholder engagement collaboration with the New York Wildlife Conservation Society and Woods Hole Oceanographic Institution to monitor four large migratory whale species is now in place through 2028.
 - Data will be collected during the pre-construction, construction, and post-construction phases of Empire Wind’s wind projects, and data will be shared publicly.
- In a stakeholder engagement collaboration with the NYC Economic Development Corporation and the Sunset Park Task Force, Empire Wind completed the development and distribution of a \$5 million clean Stakeholder Engagement Plan – Empire Offshore Wind LLC, May 2024

energy community investment fund to support sustainable growth, empowerment of underserved areas, and climate justice in the offshore wind ecosystem in New York City. The fund awarded eight grants to qualified applicants supporting workforce development in environmental justice communities in New York City.

- Empire Wind and its affiliates announced the GENext strategy in New York in May 2023, with the goal of providing workers with the training and support necessary to participate in the green energy economy and creating a more diverse and inclusive workforce with a broad representation of all New Yorkers. GENext is a comprehensive cradle-to-career approach to developing regional partnerships supporting offshore wind education, workforce development, and robust supply chains. It addresses K-12 education (STEM), post-secondary education and training, supply chain and capacity building.

5. Tracking Progress and Communications

5.1 Tracking Stakeholder Engagement

This section should detail the tracking of relationships, activities, and both successful or unsuccessful outcomes from engagements.

- Empire Wind has implemented a Borealis stakeholder engagement tracking system to inform and enhance outreach activities, understand the development of stakeholder awareness and engagement, and address the information needs of individuals, groups, and organizations in the project area.
 - Its organized methodology utilizes Empire Wind’s database to enable the outreach team to monitor and keep detailed records of all stakeholder interaction.
 - The system provides built-in features that store and analyze stakeholder communication, sentiment, and relationships over time, driving the methods and strategies we utilize to engage with existing stakeholders, build on those relationships and initiate new ones.
 - The tracking mechanism will enable Empire Wind’s team to enter data from individual communications, as well as from events, public hearings, and feedback contributions, tracking the progress of the stakeholder engagement effort in encouraging participation by a wide and diverse audience.
 - Empire Wind will employ key performance indicators to evaluate the progress of stakeholder engagement.
 - Empire Wind will provide early and regular engagement with stakeholders that may be potentially affected by the project activities and track progress in Quarterly Reports.
 - This public engagement plan is predicated on knowledge that stakeholders come to a project at different times and with different levels of awareness.
 - Leveraging these distinct steps enables us to build and measure clear objectives and performance indicators, which we chart, monitor, analyze, and report in the stakeholder tracking software.
- Empire Wind will employ tracking tables for goals that include when and where the goal is supported or achieved through engagement activities. An example of the types of information that will be provided is reflected in the table below.

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

5.2 Tracking Stakeholder Marketing Efforts

This section should detail the tracking of general communications or marketing campaigns to raise awareness among communities proximal to activities related to Project development, construction, operation, and decommissioning.

- Empire Wind will submit reports on tracking marketing and public awareness campaigns.
- Empire Wind will create and maintain a list of such public campaigns or marketing efforts consistent with the information shown in the table below.

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

- Empire Wind will provide details regarding public awareness campaigns leveraged to communicate or advertise project development status, hiring opportunities and impacts on local communities.
 - Empire Wind will keep community members aware of project development impacting them, regardless of their individual support or interest in the activity.
- Empire Wind will create detailed marketing methods plans for raising awareness of workforce opportunities within DACs.

EXHIBIT O

U.S. IRON AND STEEL CERTIFICATION FORMS

Contractor's Certification

U.S. IRON AND STEEL CONTRACTOR CERTIFICATION FOR CONTRACTS FOR
CONSTRUCTION OF A COVERED RENEWABLE ENERGY SYSTEM INVOLVING THE
NEW YORK STATE ENERGY RESEARCH DEVELOPMENT AUTHORITY'S
PROCUREMENT OF RENEWABLE ENERGY CERTIFICATES

Project Title:

Contractor's Name:

Offshore Wind Project:

Developer Name:

I certify that iron and steel products that will be permanently incorporated into the offshore wind project will have been manufactured in the United States from the initial melting stage through the application of coatings (except metallurgical processes involving the refinement of steel additives), such that a minimum of \$[●] (fabricated/finished cost) of steel components are manufactured in the United States. I will also develop and maintain the necessary documentation to demonstrate that iron and steel products incorporated into the project were manufactured in the United States, in the amount specified, and make such documentation available to NYSERDA or their authorized representatives, upon request.

Signature:

Name:

Title:

Date:

Manufacturer's Certification

The following information is provided as a manufacturer's sample letter of certification for compliance with the ORECRFP23-1 requirement that that a minimum of \$114,000 per megawatt capacity (fabricated/finished cost) of iron or steel components that will be permanently incorporated into the offshore wind project will have been manufactured in the United States from the initial melting stage through the application of coatings (except metallurgical processes involving the refinement of steel additives).

Date

Company Name

Company Address City, State Zip

Subject: United States Iron and Steel Certification for [project name]

I, (company representative), certify that the following iron or steel products and/or materials shipped or provided for the subject project were manufactured in the United States, from the initial melting stage through the application of coatings (except metallurgical processes involving the refinement of steel additives).

Item, Products and/or Materials, and Manufacturing Location:

1. XXXX
2. XXXX
3. XXXX

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

[Signed by company representative]

EXHIBIT P
RESERVED

EXHIBIT Q

RESERVED

EXHIBIT R

RESERVED

EXHIBIT S

ANNUAL OPERATING REPORT

1. General Site Information

- a. Project Name
- b. Owner
- c. Address
- d. Latitude-Longitude
- e. AC Capacity
- f. DC Capacity
- g. Interconnecting Utility
- h. Major Equipment
 - i. Wind
 - 1. Turbines
 - 2. Other
 - ii. Energy Storage (if applicable)
 - iii. Transformers
- i. PTID/GenID:
- j. Operator
- k. Subcontractors

2. Production

Provide the following project performance metrics for the current year.

Table 1 Production Statistics

Month	Actual MWh	Weather-Adjusted Expected MWh ¹	Expected MWh	Actual/Weather-Adjusted Expected	Capacity Factor ²
January					
February					
March					
April					
May					
June					
July					
August					
September					
October					
November					

December					
Total Annual					
¹ Expected production using the latest project production model adjusted for actual weather conditions on site during the current year. ² Actual MWh / (8760 x AC Capacity)					

3. Outages and Availability

Provide a summary of lost generation due to outages during the current year.

Table 2 Outage Summary

	Forced Outages (MWh)	Planned/ Maintenance Outages (MWh)	Curtailement ¹ (MWh)	Transmission / Distribution Grid Outages ² (MWh)	Other (MWh)	Total Outage Losses (MWh) ³	Effective Availability ⁴ (%)
January							
February							
March							
April							
May							
June							
July							
August							
September							
October							
November							
December							
Total Annual							

¹ NYISO Curtailment Order
² Utility Outages or ordered Temporary Disconnection due to emergency, forced outages, maintenance/planned outages, or reliability (adverse operating effects)
³ Sum of Outages and Curtailment
⁴ Total Outage Losses/Actual Production

Table 3 Curtailment and Grid Outages Summary

Date	Event Type: Curtailment ¹ or Transmission/Distribution Grid Outages ²	Start Date and Time	End Date and Time	Lost Generation (MWh)	Notes
Total Annual					

¹ NYISO Curtailment Order
² Utility Outages or Temporary Disconnection due to emergency, forced outages, maintenance/planned outages, or reliability (adverse operating effects)

4. Corrective Maintenance

Provide a summary of all Corrective Maintenance activities performed on major components during the current year.

Table 4 Corrective Maintenance Summary (with examples)

Equipment	Issue Description	Corrective Maintenance Description	Outage Start	Outage End	Lost Generation (MWh)	Status	Notes
Gear Box on WTG 21	Replacement	Proactive replacement of Gear Box due to failures in	8/1/22	8/20/22	800	Complete	Gearbox under warranty; replacement

		this turbine model					performed by site operator

5. Preventative Maintenance

a. Current Year

Provide a summary of all Preventative Maintenance activities performed during the current year. Weekly or monthly inspections only need to be listed once.

Table 5 Preventative Maintenance Summary – Current Year (with examples)

Equipment	Preventative Maintenance Description	Maintenance Start	Maintenance End	Lost Generation (MWh)	Status	Notes
Turbine 21	Inspection	8/1/2022	8/9/2022	340	Complete	Routine Inspection of WTG (biannual)

b. Next Calendar Year (Planned)

Provide a summary of Planned Maintenance outages expected to result in lost generation for next Calendar year.

Table 6 Preventative Maintenance Summary – Next Calendar Year (with examples)

Equipment	Preventative Maintenance Description	Planned Maintenance Start	Planned Maintenance End	Planned Lost Generation (MWh)	Notes
Turbines 2 – 27	Inspection & cleaning	8/1/2022	9/1/2022	540	

6. Environmental and Permitting Activities

Provide a summary of any environmental or permitting activities performed during the current year.

7. Detailed Production Data (8760)

Provide 8760 production data in Microsoft Excel for the current year in the format below.

Date	Day	Hour Ending	Production (MWh)	Notes

EXHIBIT T
DISADVANTAGED COMMUNITY BENEFITS GUIDANCE

Type of Benefit	Description and Methodology
Taxes / PILOT / Capital Improvement	<ul style="list-style-type: none"> • All taxes or payment in lieu of taxes (PILOT) payments made to a municipality or to a school district within a municipality that is all or partially identified as a Disadvantaged Community. • The percentage of taxes or PILOT payments made to a county/city/town/village that is equivalent to the proportion of the population²⁹ that lives in the Disadvantaged Community(ies) within the municipality. • The percentage of taxes or PILOT payments made to a school district that serves a population from a Disadvantaged Community, with such percentage reflecting the student population drawn from Disadvantaged Communities.³⁰ • Any portion of an investment in a Disadvantaged Community that funds an enhancement or capital improvement project that goes above and beyond typical restoration normally required as a result of project activities to re-establish pre-existing conditions or bring the restored area into jurisdictional compliance, will be considered a Disadvantaged Community benefit (e.g., adding sidewalks, electric bike infrastructure, street lamps, or bike lanes) to the extent its programmatic cost is not already a designated Disadvantaged Community benefit (e.g., services rendered by a non- Disadvantaged Community located firm to design the sidewalks <i>etc.</i>).
Labor	<ul style="list-style-type: none"> • Construction payroll-related expenditures benefiting workers residing in Disadvantaged Communities, including wages and benefits. • Payroll expenditures associated with operations and maintenance, plant management, and long-term project development benefiting workers residing in Disadvantaged Communities. • Administrative and general payroll-related expenditures benefiting workers residing in Disadvantaged Communities, including wages and benefits. • Financial, legal, technical, and other consulting services, including wages and benefits benefiting workers residing in Disadvantaged Communities. • Investment in education and training programs that exist within and are focused on jobseekers and workers living within Disadvantaged Communities related to clean energy career pathways, including community-based job training providers, BOCES, pre-apprenticeship and apprenticeship programs, adult basic education, and workforce programs at community colleges. Wraparound services, such as shuttle buses, childcare, etc.

²⁹ Based on Census Tract population data as identified and updated by the US Census Bureau Table DP05. See the US Census Bureau Table DP05, <https://data.census.gov/cedsci/table?q=population%20of%20New%20York&y=2019&tid=ACSDP5Y2019.DP05>.

³⁰ See footnote above.

Type of Benefit	Description and Methodology
Materials / Equipment / Services	<ul style="list-style-type: none"> • Purchases of goods and services benefiting Disadvantaged Communities associated with construction, general project-related activities, and supporting consulting services (including sales tax where applicable). • Materials, equipment, goods and services that are sourced from businesses (or divisions of businesses) located within a Disadvantaged Community during pre-construction, construction and on-going operations and maintenance. This includes financial, legal, technical, and other consulting services and encompass all phases of the Selected Project.
Land Purchase, Easements or Lease	<ul style="list-style-type: none"> • Land use payments (<i>e.g.</i>, option payments, easement payments, lease payments) associated with the Selected Project that are paid to owners who reside in, or businesses located in, a Disadvantaged Community or for properties located in a Disadvantaged Community.