

Execution Version

Agreement No. 177285

**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: January 14, 2022

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This Offshore Wind Renewable Energy Certificate Purchase and Sale Agreement (“Agreement”) is entered into as of January 14, 2022 (the “Effective Date”) by and among 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 (“Empire Wind” or “Seller”), a Delaware limited liability company having a principal business address of 120 Long Ridge Road, Suite 3E01, Stamford, CT 06902. 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;

WHEREAS, on April 23, 2020 the PSC issued an order (“2020 Offshore Wind Order”)³ that directed and authorized NYSEDA, as the central procurement administrator, to issue a solicitation in 2020 for the procurement of the renewable energy certificates representing the attributes associated with the generating capacity of offshore wind generating capacity (hereinafter defined in Article I as “ORECs”); and

WHEREAS, NYSEDA has conducted a competitive solicitation in the form of ORECRFP20-1 to procure ORECs; and

WHEREAS, Seller has participated in ORECRFP20-1 and has been provisionally selected by NYSEDA for an award with respect to a proposal that included both the Empire Wind Phase 2 Project (hereinafter defined in Article I as the “Selected Project”) and the Beacon Wind Project (together with the Selected Project, the “Selected Combined Projects”). Notwithstanding that both the Empire Wind 2 Project and the Beacon Wind Project were included in a single proposal in ORECRFP20-1, and selected by NYSEDA as a single proposal, the Parties have elected to enter an agreement for the purchase and sale of ORECs from the Selected Combined Projects through two Purchase and Sale Agreements for the ORECs generated by each of the two respective projects. The purchase and sale of ORECs from the Beacon Wind Project are governed by that certain Offshore Wind Renewable Energy Certificate Purchase and Sale Agreement also executed on this Effective Date (hereinafter defined as the “Beacon Wind Agreement”). The Beacon Wind Agreement is entered into by Beacon Wind LLC (“Beacon Wind”) and NYSEDA. As described in Article XII of this Agreement and the Beacon Wind Agreement, the Parties intend that both

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 (“2020 Offshore Wind Order”).

Seller and Beacon Wind shall be responsible for the fulfillment of the economic benefits commitments contained in the proposal submitted under ORECRFP20-1 in accordance with the terms of this Agreement; 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. The Recitals set forth above are true and correct and are incorporated into and are made a part 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 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.

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, measured at the Delivery Point.

Annual OREC Cap: An amount of ORECs equal to the product of 1.1 and the P10 Annual OREC Exceedance. The Annual OREC Cap under this Agreement for the Selected Project shall be 6,341,610 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, 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 Class Year: The Class Year in which the Selected Project has been placed for purposes of the NYISO interconnection process.

Applicable Zone: The NYISO load zone that includes the Delivery Point included in the Proposal. The Applicable Zone for purposes of this Agreement shall be Zone K. 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.

Beacon Wind Verified 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, installation, modification, interconnection, operation, and maintenance of Beacon Wind from January 1, 2020 through the end of the first three (3) contract years as defined in the Beacon Wind Agreement.

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.

Commercial Operation: A state of operational readiness under which (i) generating capacity is available and physically producing electric energy, and (ii) all rights, abilities, permits and approvals to schedule and deliver energy to the Delivery Point have been obtained.

Conditional Grant Disbursement Agreement: The agreement between SBMT Asset LLC and NYSERDA, executed January 14, 2022, establishing a framework for making available grant funding to support improvements at the South Brooklyn Marine Terminal and the agreement between Renewable Energy Shared Assets LLC and NYSERDA, executed January 14, 2022, establishing a framework for making available grant funding to support improvements at the Port of Albany subject to the satisfactory completion of an environmental impact assessment and other

conditions precedent set forth therein, as amended, restated, supplemented, or otherwise modified from time to time.

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 provisionally selected for an award contingent on the negotiation of this Agreement. For purposes of this Agreement, the Contingent Award Notification Date was December 8, 2020.

Contract Delivery Term(s): The Contract Delivery Term 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 of the Selected Project), Seller may elect to delay the commencement of the Contract Delivery Term for a period not to exceed one 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) 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 of the Selected Project, 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 12-month period commencing with the beginning of each 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 12-month period commencing with the beginning of the Contract Delivery Term, "Contract Year 2" refers to the second such 12-month period, and so on.

Delivery Point: 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.

Disadvantaged Communities: The term "Disadvantaged Communities" shall have the meaning set out in the New York Climate Leadership and Community Protection Act.

Economic Benefits: Financial expenditures benefitting New York State, as specified in Exhibit I, that Seller can demonstrate will accrue after January 1, 2020.

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

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

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 (SO_x), nitrogen oxides (NO_x), 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.

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 and Beacon Wind from January 1, 2020 through the end of the first three (3) Contract Years of each such facility. The amount of Expected Total Dollars under this Agreement is \$ 2,534,031,000.

EW2 Verified 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, installation, modification, interconnection, operation, and maintenance of the Selected Project from January 1, 2020 through the end of the first three (3) Contract Years.

Forward Certificate Transfer: An automated monthly transfer of ORECs to NYSERDA as described in Section 10.3 of the NYGATS Operating Rules.

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

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 Strike Price: shall be \$107.50, for each month in the respective Contract Years, except as may be adjusted pursuant to Section 4.01(a)(ii) of this Agreement.

Letter of Credit: A letter of credit satisfying the requirements of Section 15.03 of this Agreement.

Maximum Project Capacity: The product of the Offer Capacity and 1.15. The Maximum Project Capacity for the Selected Project is 1,449 MW.

Monthly OREC Price: A price in dollars per OREC for each month of the Contract Delivery Term calculated pursuant to Section 4.01 of this Agreement.

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.

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 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 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.

New York State Financing Agreements: The Sponsor Guaranty and any grant or financing agreements relating to ORECRFP20-1 that may be entered into by Seller or its affiliates with NYSERDA or the New York Green Bank.

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

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.

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.

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 for the Selected Project is 1,260 MW.

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.

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.

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, 2054, subject to any extension applicable under Section 12.11.

Port Completion Deadline: The Port Completion Deadline is [REDACTED] provided that the Port Completion Deadline may be modified by mutual agreement of the Parties.

Port Infrastructure Investment Plan: The Port Infrastructure Investment Plans designated as PIIP-A and PIIP-E that were submitted by the Combined Selected Projects in response to ORECRFP20-1.

Prevailing Wage: Shall have the meaning set forth 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 and Beacon Wind in response to ORECRFP20-1 with respect to the Selected Project and the Beacon Wind Project, described as EQN-2490-AE ("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 its Delivery Point would exceed that amount is 10 percent. As of the Effective Date, the P10 Annual OREC Exceedance for the Selected Project is 5,765,100, and may be updated as provided in Section 2.01(e) of this Agreement.

Reference Capacity Price: An index of NYISO Capacity Market prices for each Applicable Zone calculated as set forth in Section 4.01 of this Agreement.

Reference Energy Price: An index of NYISO Energy Market prices for each Applicable Zone calculated as set forth in Section 4.01 of this Agreement.

Selected Project: The Empire Wind Phase 2 Project provisionally selected for award by NYSERDA in ORECRFP20-1 and as described in Exhibit H to this Agreement.

Sponsor Guaranty: Shall mean the guarantees executed by affiliates of Seller in favor of NYSERDA and its successors and assigns in connection with the Conditional Grant Disbursement Agreement with respect to each of the South Brooklyn Marine Terminal and Port of Albany, as amended, restated, supplemented, or otherwise modified from time to time.

Summer Capability Period: The period commencing May 1 through October 31 of each year.

Total Verified Dollars: The sum of EW2 Verified Dollars and Beacon Wind Verified Dollars.

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

Winter Capability Period: The period commencing November 1 of each year through April 30 of the following year.

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. 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, or additional generation facilities located at the same point of interconnection, 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 Subsection 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 from the Selected Project than the Annual OREC Cap. Seller shall be free to sell, assign, transfer or otherwise subject to any encumbrance any ORECs produced 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, adjust the P10 Annual OREC Exceedance (and, thereby, the Annual OREC Cap) 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, provided that no such adjustment or adjustments shall exceed 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, including but not limited to the exclusive rights to claim or represent, consistent with New York State Environmental Disclosure Rules: (a) that the energy associated with ORECs was generated by the Selected Project; and (b) 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 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.

Section 2.04. Other Attributes. In the event that, because of the Environmental Attributes of the Actual Production, Seller becomes eligible, at no incremental cost to Seller other than de minimis administrative cost, for credits, allowances or other benefits under any emission-trading, emission-recordation, 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. 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 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. 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. 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, provided that the energy is delivered into the NYCA in accordance with this Article.

Article IV

Pricing and Payment

Section 4.01. Determination of Monthly 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 \$107.50, except as may be adjusted pursuant to Section 4.01(a)(ii) of this Agreement.
 - (ii) In connection with the negotiation of this Agreement, Seller has agreed to reduce the Index OREC Strike Price from its bid price of \$109 to an Index OREC Strike Price of \$107.50; provided that if the

Total Verified Dollars demonstrated through the verification process set out in Section 12.01 of this Agreement equal, or exceed, \$2,634,031,000, the Index OREC Strike Price for ORECs produced by the Selected Project will automatically increase by \$1.50 per OREC to \$109 for all ORECs produced by the Selected Project during the Contract Delivery Term. To the extent that the verification process set out in Section 12.01 of this Agreement does not occur until after the Selected Project has commenced Commercial Operation, NYSERDA shall make a true-up payment to Seller in an amount equal to \$1.50 multiplied by the number of ORECs produced by the Selected Project during periods prior to the month associated with the first invoice reflecting the adjusted Index OREC Strike Price. Following the verification of the Total Verified Dollars in accordance with the terms of Section 12.01 of this Agreement, Seller shall submit an invoice to NYSERDA reflecting Seller's calculation of the amount of the true-up payment. NYSERDA shall make payment to Seller of the true-up payment within thirty (30) days of receipt of such invoice in accordance with NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit C.

- (iii) 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 location-based marginal price ("LBMP") for each hour of the month in the Applicable Zone; and
 - (B) taking the simple (not load-weighted) average of each such hourly LBMP to determine the Reference Energy Price.
- (iv) The Reference Capacity Price for each month shall be calculated by NYSERDA using data published by NYISO for its monthly 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 of (1) the Reference UCAP Price (\$/kW-month), (2) the UCAP Production Factor submitted by Seller in its Proposal for the Winter Capability Period (51%) or Summer Capability Period (34%), as applicable, (3) the Operational Installed Capacity (MW), and (4) a conversion factor of 1,000 kW/MW;
 - (C) dividing the total amount of dollars calculated in (ii) by the total amount of ORECs produced from the Selected Project for that month (irrespective of whether the Annual OREC

Cap has been exceeded) to determine the corresponding Reference Capacity Price; and

- (D) In any month in which NYISO subjects the Applicable Zone to buyer-side mitigation in a manner that has the effect of excluding one or more offshore wind generators from participating at their full capacity in the NYISO Capacity Market for the Applicable Zone, the Reference Capacity Price shall be multiplied by a Mitigation Factor. The Mitigation Factor shall be calculated as the percentage of UCAP offered in the Applicable Zone and Applicable Class Year by Qualified Renewable Exemption Applicants, as defined in the NYISO Services Tariff Att. H, that has been determined to be exempt from the Offer Floor requirement imposed by the NYISO Services Tariff Att. H, Section 23.4.5.

- (b) The following formulae depict the calculation of the Monthly OREC Price in accordance with Section 4.01(a):

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

where:

- $\text{OSP}^{\text{Index}}$ = Index OREC Strike Price (\$/MWh)
- REP = Reference Energy Price (\$/MWh)
- RCP = Reference Capacity Price (\$/MWh)
- MF = Mitigation Factor (%) (if applicable)

The calculation of each month’s Reference Capacity Price will be based on a Reference UCAP Price. The Reference UCAP Price is converted to its \$/MWh equivalent, the Reference Capacity Price, through the following equation.

$$\text{RCP} = \frac{\text{RUP} \times \text{UPF} \times \text{IC} \times 1,000}{\text{OQ}}$$

where:

- RUP = Reference UCAP Price (\$/kW-month)
- UPF = UCAP Production Factor (decimal fraction), for the Winter Capability Period (51%) and for the Summer Capability Period (34%)
- IC = Installed capacity (ICAP) of the generator (MW)
- OQ = Metered delivered energy (MWh)
- 1,000 = kW to MW conversion factor

Section 4.02. Invoices.

- (a) Within fifteen (15) days after the conclusion of each month, 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 in the prior month during the Contract Delivery Term. Invoices for the prior month shall not be submitted before the fifteenth (15) day of the following month; invoices submitted before the fifteenth (15) day of the following 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 managed through NYSERDA's Salesforce application, via NYSERDA's Salesforce Portal with Seller's log-in credentials. Invoices must reflect the quantity of ORECs transferred to the NYSERDA NYGATS Account for the prior month, and must be accompanied by such information and data requested by NYSERDA and sufficient for NYSERDA to verify compliance with the electricity delivery requirements in Article III and other requirements in this Agreement. Except in the case of a true-up payment made in accordance with Section 4.01(a)(ii) of this Agreement, NYSERDA shall have no obligation to pay any invoice submitted more than six (6) months after NYSERDA notifies Seller of the Monthly OREC Price for the ORECs transferred in the 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 4.02(b)).

Section 4.03. Payment. The amount payable to Seller shall be the product of: (i) the number of ORECs associated with the Actual Production from the Selected Project during the prior month and transferred to the NYSERDA NYGATS Account, and (ii) the applicable Monthly OREC Price for the prior month, subject to the Annual OREC Cap during each Contract Year. If, for any month, the amount payable to Seller is a negative amount because of a negative Monthly OREC Price for that month, 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-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 4.04. 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 4.05. 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, 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 generators in the Applicable Zone under the new resource adequacy construct.

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.

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.

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. 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. 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 for the Selected Project; (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; (e) activities undertaken pursuant to Seller's community outreach plan for the Selected Project, including how Seller has taken into account the interests of Disadvantaged Communities, timely notice of upcoming meetings and known outreach events and activities for the next quarter that representatives of NYSERDA may attend; (f) on a form to be provided by NYSERDA, 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; (g) the status of Seller's activities associated with the New York State Supplier Opportunity (See ORECRFP20-1 at Section 2.2.10); (h) updates to Seller's Fisheries Mitigation Plan and/or Environmental Mitigation Plan; (i) updates on Seller's supported monitoring of key commercial fish stocks and wildlife of conservation concern; and (j) an estimated date for Commercial Operation. 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 for the Selected Project 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 6.03. Disadvantaged Communities. 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”.⁴ Consistent with this goal, in accordance with the terms of Section 12.01(e), Seller and Beacon Wind intend 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 Combined Projects, 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(e). As part of the quarterly progress reports described in Section 6.02, Seller shall describe the activities undertaken in accordance with Section 12.01(e) associated with Disadvantaged Communities.

Section 6.04. Additional Documents. Within thirty (30) days of the Effective Date, Seller shall provide to NYSERDA:

- (a) certificates, dated as of the most recent practicable date prior to the Effective Date, issued by the Delaware Secretary of State 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 ORECRFP20-1 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 6.05. 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

⁴ 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).

falling within the scope of this Section 6.05 seven (7) years following the creation thereof with the written consent of NYSERDA, such consent not to be unreasonably withheld, conditioned, or delayed.

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 6.05. 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, 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 and of no effect as to NYSERDA. Such consent shall not be unreasonably withheld, conditioned, or delayed. Seller agrees to reimburse NYSERDA for NYSERDA's reasonable costs and expenses incurred by its use of outside attorneys, consultants, accountants and advisors in connection with this Agreement in response to Seller's requests 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. When assignable, this Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the successors and assignees of the Parties; provided, however, that no assignment, pledge or other transfer of this Agreement by Seller shall operate to release Seller from any of its obligations under this Agreement (and shall not impair any Contract Security provided by Seller hereunder) unless such assignee, pledgee or transferee (a) agrees in writing to assume all of Seller's obligations under this Agreement, and (b) provides Contract Security to replace that previously provided by Seller, in which case, at Seller's request, NYSERDA (or its successors or assigns) will execute a release of Seller from its obligations thereunder.

Section 8.02. Permitted Assignments by Seller. 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. For purposes of this Section 8.02, the term "affiliate" shall include any company, corporation, or other entity that controls, is controlled by, or is under common control with Seller, but only for so long as such control, directly or indirectly, meets the following definition. For purposes of this definition, "control" shall mean ownership or control, directly or indirectly, of at least fifty percent (50%) of the shares having voting rights, or other equivalent rights of the subject entity entitled to vote.

Section 8.03. Assignment with Change of Control. Seller may, upon written notice, assign its rights and obligations hereunder, or transfer such rights and obligations by operation of law, to any entity (a) with which or into which such Seller merges or consolidates; (b) which acquires greater than fifty percent (50%) of Seller's equity interests or actual control of Seller; or (c) to which Seller transfers all or substantially all of its assets; in each case provided that such other entity agrees to be bound by the terms hereof.

Article IX

Seller's Representation, 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 Empire Wind: (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 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 (including the limited liability company agreement of Seller), 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 shall not have otherwise been, nor will 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 will be duly executed and delivered by Seller and will constitute the legal, valid and binding obligation of Seller enforceable against Seller in accordance with the terms thereof;
- (g) as of the Effective Date, to the best of Seller's knowledge after due inquiry, that there are no existing undisclosed or threatened material legal actions, claims, or encumbrances, or liabilities 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 ORECRFP20-1 contain any untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading; and
- (i) 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 and 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 guarantee 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 thereof;
- (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 and 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 (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, and Environmental Obligations

Section 12.01. Economic Benefits Report and Verification.

- (a) No later than December 31, 2026, 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 third anniversary of the commencement 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. Each Economic Benefits Report shall calculate and verify the actual Economic Benefits, in dollars, that have resulted from activities in connection with the Selected Project (“EW2 Verified Dollars”). Seller may include in such Economic Benefits Reports common expenses incurred to develop, construct, interconnect, and operate both the Selected Project and Beacon Wind that Seller has determined cannot reasonably be assigned or apportioned among the two projects, and such expenses will be counted for purposes of calculating the EW2 Verified Dollars in accordance with Exhibit I; provided, however, that the same expense may not be counted for both the EW2 Verified Dollars and the Beacon Wind Verified Dollars.
- (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. Upon the submission and acceptance of Economic Benefits Reports that demonstrate that the Selected Project and the Beacon Wind Project have generated Economic Benefits that equal, or exceed, \$2,634,031,000 in the aggregate, Seller shall be entitled to an automatic increase in the Index OREC Strike Price in accordance with Section 4.01(a)(ii) of this Agreement.

- (c) When in receipt of all Preliminary Economic Benefits Reports and the final Economic Benefits Reports for both the Selected Project and Beacon Wind, and after having verified the claimed Economic Benefits as described in Section 12.01(b) of this Agreement and Section 12.01(b) of the Beacon Wind Agreement, NYSERDA shall determine whether there is an Economic Benefits Shortfall. For the avoidance of doubt, when evaluating whether there is an Economic Benefits Shortfall, NYSERDA shall sum any EW2 Verified Dollars and Beacon Wind Verified Dollars verified through any Economic Benefits Reports submitted for the Selected Project and Beacon Wind.
- (d) In the event that Beacon Wind does not reach Commercial Operation and the Beacon Wind OREC Purchase and Sale Agreement is terminated, Seller may include in the Economic Benefits Reports submitted in accordance with the provisions of Section 12.01 and Exhibit I to this Agreement Economic Benefits to New York State that accrued in connection with the failed development, construction, and interconnection of Beacon Wind, and such expenditures shall be treated as Beacon Wind Verified Dollars pursuant to Section 12.01(b) of the Beacon Wind OREC Purchase and Sale Agreement (notwithstanding its termination) and credited to Seller when determining whether an Economic Benefits Shortfall exists under this Agreement. In the event that Beacon Wind fails to reach commercial operation and the Beacon Wind Agreement is terminated, the Expected Total Dollars under this Agreement shall be reduced by \$828,649,000 and shall equal \$1,705,382,000.
- (e) 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.

Section 12.02. Economic Benefits Shortfall. If there is an Economic Benefits Shortfall, Seller shall: (a) provide to NYSERDA for NYSERDA's approval a plan to make additional

economic investments in New York State in an amount reasonably comparable to the amount of the Economic Benefits Shortfall; or (b) upon the mutual agreement of the Parties, pay the amount of the 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 Subsection 12.01(b) 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. Any approved investment plan or payment made under Section 12.02(a) of the Beacon Wind Agreement shall be credited by NYSERDA toward fulfillment of the Economic Benefits Shortfall under this Section 12.02.

Section 12.03. Consultation with New York State Agencies. 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 Construction and Operations Plan ("COP") to BOEM, including draft COPs, 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 National Environmental Policy Act ("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 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.

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 Plans. Seller has provided as Exhibit E to this Agreement a Fisheries Mitigation Plan for the Selected Project. 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 any updated Fisheries Mitigation Plan 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 Plans. Seller has provided as Exhibit F to this Agreement an Environmental Mitigation Plan for the Selected Project. 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 any updated Environmental Mitigation Plan to NYSERDA. Seller may also amend an 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 provide to NYSERDA, upon NYSERDA's request, any information or data and supporting metadata that is developed in furtherance of the Selected Project and relates 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 (collectively, "Site and Environmental Data"). Seller shall provide NYSERDA, within one hundred twenty (120) days of the Effective Date, 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. Seller further agrees, upon NYSERDA's request, to make Site and Environmental Data publicly available on an ongoing basis as soon after collection as is practicable. Data that Seller, a third party that Seller has consulted as part of the environmental review process or in the course of developing its fisheries mitigation plan, or a regulatory authority deems proprietary or confidential business information, or otherwise is inappropriate for disclosure (such as cultural resource survey results, wind resource data, Metocean data and geophysical/geotechnical data), or that Seller has received subject to a non-disclosure agreement, will not be considered Site and Environmental Data for purposes of this Section.

- (b) 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.

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 6.04 of this Agreement, Seller has agreed to render the site layout plan, including the Site Perimeter, in 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 one (1) year 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 two (2) years of the Effective Date, and the remaining fifty percent (50%) within three (3) years of the Effective Date. In accordance with the Monitoring Plan, Seller shall make a financial commitment for monitoring key commercial fish stocks and wildlife of conservation concern in an amount no less than \$10,000 (ten thousand dollars) per MW of Offer Capacity. Of that amount, no less than \$5,000 (five thousand dollars) per MW of Offer Capacity shall be allocated to support regional monitoring of key regional commercial fish stocks to better understand how offshore wind energy development is potentially altering the biomass and/or distribution of these stocks, and no less than \$5,000 (five thousand dollars) 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. 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.

Section 12.11. Port Infrastructure Investment Plan.

- (a) NYSERDA acknowledges that Seller's affiliates currently intend to make investments at the South Brooklyn Marine Terminal and Port of Albany to make these ports suitable for staging activities and an offshore wind tower manufacturing site as further described in Exhibit A-1 of the Conditional Grant Disbursement Agreements. Seller currently intends to use these ports

to support staging activities and to supply components for the construction and installation of the Selected Project.

- (b) The Parties acknowledge and agree that improvements at the South Brooklyn Marine Terminal and the Port of Albany must be completed no later than the Port Completion Deadline in order for these ports to support staging activities and supply components for the Selected Project. In the event that the ports are not completed by the Port Completion Deadline, due to no fault of Seller and its affiliates and despite Seller and its affiliates' best efforts, and Seller or its affiliates elect to use the South Brooklyn Marine Terminal or the Port of Albany facilities to support the Selected Project despite the failure to meet the Port Completion Deadline, the Outer Limit Date will be extended by one month for each month of such delay past the Port Completion Deadline, for a period no longer than two (2) years.
- (c) NYSERDA's sole and exclusive remedies for a failure by Seller and its affiliates to undertake the activities and make the investments set out in the Port Infrastructure Investment Plan (other than with respect to Seller's commitment of Expected Total Dollars) shall be set forth in the New York State Financing Agreements. The failure to undertake the activities and investments set out in the Port Infrastructure Investment Plans shall not constitute an Event of Default under this Agreement. NYSERDA shall have no right to initiate any action against Seller or Seller's affiliates under this Agreement for a failure to undertake the activities and investments set out in the Port Infrastructure Investment Plans; provided however that nothing in this Section 12.11 shall excuse Seller from complying with the requirements of Section 12.02 of this Agreement in the event that such failure results in an Economic Benefits Shortfall.

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, 4.03, 6.05, 7.01, and 12.02 of 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 undismissed, 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) Interconnection. Unless otherwise agreed in writing by NYSERDA (not to be unreasonably withheld, conditioned, or delayed), failure of the NYISO Transmission Planning Advisory Subcommittee to accept the system reliability impact study within [REDACTED] after the Effective Date of this Agreement; or
- (f) COP Submission. Unless otherwise agreed in writing by NYSERDA (not to be unreasonably withheld, conditioned, or delayed), failure of Seller to submit its COPs to BOEM within [REDACTED] after the Effective Date of this Agreement; or
- (g) Public Service Commission Submission. Unless otherwise agreed in writing by NYSERDA (not to be unreasonably withheld, conditioned, or

delayed), failure of Seller to submit to the New York Public Service Commission within eighteen (18) months after the Effective Date of this Agreement such applications for such certificates of environmental compatibility and public need as are necessary to construct the facilities that will deliver energy from the Selected Project to its corresponding Delivery Point; or

- (h) Abandonment. On or after the Selected Project (or any phase thereof) enters Commercial Operation, the permanent relinquishment by Seller of all 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; or
- (i) Failure to Provide Additional Contract Security. Failure by Seller to provide to NYSERDA, on or before January 1, 2024, 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
- (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.

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.

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 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;
- (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. In addition, the Parties agree that, in the case of a termination based on the default of Seller, irreparable damage would occur in the event that NYSERDA could not obtain ORECs pursuant to this Agreement from the date of Event of Default in which Seller was the defaulting Party, and accordingly, each Party hereby agrees that NYSERDA shall be entitled to elect to compel specific performance of this Agreement to compel the transfer to NYSERDA of all ORECs associated with Actual Production following the date of any termination for such an Event of Default in accordance with the terms hereof, subject to payment in accordance with this Agreement, 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 termination by Seller or NYSERDA prior to Commercial Operation of any portion of the Selected Project, NYSERDA shall be entitled only to stipulated damages pursuant to Article XV.

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 the product of the Offer Capacity (in MW) and five thousand dollars (\$5,000). 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, 2024. 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), for amounts due on January 1, 2025 and twenty-five thousand dollars (\$25,000) for amounts due on or after January 1, 2026, 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)).

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 a member of the New York Clearinghouse Association, 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. 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 or any assignee may fulfill the requirements of Sections 15.01 and Section 15.02 through an Acceptable Guaranty. 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) 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 Subsection 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 Seller notifies NYSERDA in writing that Seller intends to build the Selected Project such that, once complete, 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”). 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, 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) as of the date of Seller’s written notification to NYSERDA of Seller’s intent in respect of the Offer Capacity Reduction.

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 such 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 4.05 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 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. 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 Article 8, and unless otherwise provided in a PLA covering the construction of the 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 Section 220. For construction activities that occur outside of New York, the prevailing rates shall be determined under the prevailing wage law of the state in which the 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; for the avoidance of doubt, the fabrication of gravity-based structure foundations shall be covered by this Section 18.10. This requirement applies: (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 date of BOEM's approval of the COP, present to NYSERDA for

its review a plan outlining its intentions with respect to the negotiation of a PLA to cover 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 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 (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 the 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. 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 the 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 the PLA as presented shall be deemed approved. If NYSERDA disapproves the final form of PLA, NYSERDA will identify changes to the final form of each 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.

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:



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 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(d)(2)) 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 and that has been marked “Confidential” or “Proprietary,” NYSERDA will process such request under the procedures provided by NYSERDA’s FOIL regulations.

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 ORECRFP20-1, 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.

Signature page follows.

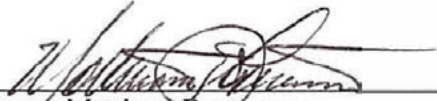
The Parties hereto have caused this Agreement to be executed and delivered by their duly authorized representatives.

EMPIRE OFFSHORE WIND LLC

NEW YORK STATE ENERGY RESEARCH
AND DEVELOPMENT AUTHORITY

By:

By:



Name: Matthew Brotmann
Title: Senior Counsel and Assistant Secretary
Date: January 14, 2022

Doreen M. Harris

Digitally signed by Doreen M.
Harris
Date: 2022.01.14 07:43:11 -05'00'

Name: Doreen Harris
Title: President and CEO
Date: January 14, 2022

**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 A

REVISED 5/12

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:

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 Agreement. 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 a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement 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 a public work Agreement, 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 (<https://openfoil.ny.gov/newfoilrequest?agencyCode=DOS>) and NYSERDA's Regulations, Part 501 (<https://www.nyserda.ny.gov/About/New-York-State-Regulations>).

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, the terms of this Exhibit A shall control.

9. GOVERNING LAW. This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

10. NO ARBITRATION. Disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily required) without the NYSERDA's written consent, but must, instead, be heard in a court of competent jurisdiction of the State of New York.

11. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), 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.esd.ny.gov>

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 Agreement 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 Agreement, 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 www.ogs.ny.gov/about/regs/ida.asp).

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 NYSEDA 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.

_____ Seller failed to submit its certificate application to the New York Public Service Commission within the timeline prescribed by Section 13.01(g) 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 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.⁵

(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.

⁵ 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.

(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 and its affiliate, Beacon Wind LLC (“Beacon Wind”), have developed a plan to provide significant economic benefits associated with the development of the Empire Wind Phase 2 and Beacon Wind Projects (“the Projects”) through investments in, and engagements with, New York workers and businesses. These engagements and investments are an extension of Seller and Beacon Wind’s commitment to ensuring that their activities create lasting value for local communities, with a particular focus on Disadvantaged Communities.

Sunset Park Office

As part of their effort to create new opportunities for members of Disadvantaged Communities and support workforce development, Seller and Beacon Wind intend to work with their affiliates to establish a project office in Sunset Park, Brooklyn that will provide space for community engagement and collaboration. As part of the Sunset Park office, Seller and Beacon Wind will provide opportunities for members of the surrounding communities to learn more about employment opportunities associated with, and the progress of, the Projects.

SBMT Offshore Wind Hub

Seller and its affiliates intend to establish a long-term operations and maintenance hub at the South Brooklyn Marine Terminal for the Selected Project and certain affiliated offshore wind projects.

Workforce Development

Seller and Beacon Wind appreciate the importance of ensuring that the Projects contribute to the development of a workforce with the skills necessary to attract offshore wind manufacturers and developers to the State. Seller and Beacon Wind believe that New York's world-class workforce already makes New York uniquely situated to benefit from the development of a robust offshore wind industry on the east coast. In furtherance of these goals, following the date that each Project reaches a positive final investment decision, Seller and Beacon Wind will take the following steps to foster the growth and development of an offshore wind workforce in New York:

- Seller and Beacon Wind will work with the NYCEDC to support workforce development in the Disadvantaged Communities surrounding South Brooklyn Marine Terminal (“SBMT”) through a Green Energy Innovation and Community Fund. Each Project will commit [REDACTED] to support initiatives that ensure that job opportunities and development programs created through SBMT are marketed to local job seekers and historically Disadvantaged Communities.
- Seller and Beacon Wind will work with NYC’s Workforce 1 career agency to provide members of Disadvantaged Communities information about potential opportunities to support the Projects.
- Each Project will commit [REDACTED] towards general workforce development. Seller and

Beacon Wind will consult with NYSERDA prior to investing these funds and will consider NYSERDA's views when determining how to invest these funds.

- Each Project will invest [REDACTED] to develop a multi-year offshore wind technology accelerator in New York City.

Community Benefits Fund

Following the date that its Project reaches a positive final investment decision, Seller will commit [REDACTED] in community benefit funds to facilitate investments in communities in the vicinity of the interconnection point for the Selected Project to promote resilience to climate change and help facilitate a just transition.

Funding Timeline

Beginning with the first quarterly progress report submitted in accordance with Section 6.02 of this Agreement following the date that its Project reaches a positive final investment decision, Seller will provide a plan detailing how the funds described in this Exhibit will be allocated and the timeline for disbursements.

EXHIBIT E

FISHERIES MITIGATION PLAN

Fisheries Mitigation Plan
for
Empire Wind 2
Version 1.0

Prepared Pursuant to
Section 12.05 of the 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

Albany, NY

Prepared by
Empire Offshore Wind LLC

120 Long Ridge Road Ste 3E01
Stamford, CT 06902

December 2021

Communication Officers, Contact Information, Links		
Name/Title	Role	Contact Information
Elizabeth Marchetti Fisheries Manager, Empire Offshore Wind LLC	Primary point of contact between the project and fisheries	emarc@equinor.com
Stephen Drew Fisheries Liaison Officer for Empire Offshore Wind LLC	Primary point of contact between the project and fisheries	sdrew@searisksolutions.com
Scott Lundin Head of Permitting – Empire Offshore Wind LLC	Overall responsibility for Fisheries Manager, Fisheries Liaison Officers	sclu@equinor.com
Laura Morales Director of Permitting, Empire Wind	Point of contact for Empire Offshore Wind LLC on environmental matters related to Empire Wind.	lmora@equinor.com
Julia Lewis Director of Permitting, Beacon Wind	Point of contact for Beacon Wind LLC on environmental matters related to Beacon Wind.	julew@equinor.com

Links to project information:

Project website: www.empirewind.com

Fisheries website: www.empirewind.com/fisheries (click on *Information for Mariners*)

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1. Fisheries Mitigation Plan Summary

1.1. Overall philosophy and principles

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

- Empire Wind’s 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 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 fishers; 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 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 cooperation requires open and regular communication between the 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 described in the original Empire Wind 1 bid submittal, reviewed and commented on by NYSERDA, and subsequently presented to the 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).

- 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 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 shall be designed to improve the understanding of the impacts of offshore wind energy development and operations on fisheries.
- Additionally,
 - Empire Wind will identify mitigation measures 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 area, 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, establishing principles around layouts for EW1 and EW2, and establishing preferred layouts through engagement with the Responsible Offshore Development Alliance (RODA) and non-RODA members.

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.

- Seller’s Fisheries Communication Plan (FCP), which provides an overview of Seller’s overall approach to offshore wind development and consideration of fisheries resources; the principles of which have been adopted for the Empire Wind 1 and 2 projects. The FCP can be found at www.empirewind.com/fisheries
- To achieve the objective of cooperation, Empire Wind has 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;
 - Bureau of Ocean Energy Management (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 Code of Federal Regulations (CFR) Part 585, available at <https://www.boem.gov/sites/default/files/documents/about-boem/Social%20%26amp%3B%20Econ%20Fishing%20Guidelines.pdf>;
 - BOEM 2019 – Guidelines for Providing Information on Fisheries for Renewable Energy Development on the Atlantic Outer Continental Shelf Pursuant to 30 CFR Part 585, available at <https://www.boem.gov/sites/default/files/renewable-energy-program/BOEM-Fishery-Guidelines.pdf>;
 - 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 (VCZMP) 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 (MAFMC) 2014 – Offshore Wind Best Management Practices Workshop;
- New York State Offshore Wind Master Plan: Fish & Fisheries Study, Section 6 and Appendix D (2017);
- Anticipated best practice guidance tools that may be developed through initiatives such as F-TWG, E-TWG, Responsible Offshore development Alliance (RODA) Task Force, and other groups;
- 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, 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 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);
- Experience gained from collaborating with the fishing industry in Seller's affiliates' offshore wind energy developments in Europe; and
- 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.

- 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.
- Additionally:
 - Openness is a core value and cornerstone of Empire Wind’s approach to fisheries liaison and communications. Regular, open consultation will be key to ensuring that all parties are well informed of offshore activities and project updates, and in order 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; including engagement with fisheries stakeholders through Fishing Industry Representatives (“FIR”) and/or groups such as F-TWG and RODA, as well as engaging with organizations or individual fishers not represented in these groups.
 - Empire Wind notes that this approach has proven effective and well-received throughout the continued development of projects and submission of the Empire Wind COP.

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.

Name/Title	Role/Responsibilities	Contact Information
Elizabeth Marchetti; Fisheries Manager, Empire Offshore Wind LLC	<ul style="list-style-type: none"> • Primary contact with Empire Wind Management Team on fisheries matters; • Member of the New England Fisheries Management Council (NEFMC) Habitat Advisory Panel; • Representative on F-TWG, Responsible Offshore Science Alliance (ROSA), Mass FWG and other working groups; • Point of contact between Project and fishing fleets; 	emarc@equinor.com

Name/Title	Role/Responsibilities	Contact Information
	<ul style="list-style-type: none"> • 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 Officer's (OFLRs) and scout vessels during surveys and construction activities. 	
<p>Stephen Drew; Fisheries Liaison Officer (FLO; Empire Wind Project)</p>	<ul style="list-style-type: none"> • Point of contact between Project and fishing fleets; • Maintain database and track all interactions between project team and fishers; • Arrange meetings and disseminate information; • Consult with FIRs (see below); • Support development of procedures to address lost/damaged fishing gear claims as appropriate; • 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 	<p>sdrew@searisksolutions.com</p>
<p>Fishing Industry Representatives (FIRs)</p>	<ul style="list-style-type: none"> • Essential contacts within fishing community to represent/relay views of majority of fishers; • Main point of contact for FLO; • Identify individuals/groups to provide feedback on specific topics; • Assist in distribution of information. 	<p>FIRs are being sourced from the following organizations:</p> <ul style="list-style-type: none"> • Port of New Bedford, MA • Massachusetts Lobsterman's Association • Commercial Fisheries Center of Rhode Island

Name/Title	Role/Responsibilities	Contact Information
Offshore Fisheries Liaison Officer (OFLR), representing Empire Offshore Wind LLC	<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. 	<p>Contact details for contacting OFLRs vessel to vessel at sea will be distributed with Survey Flyers.</p> <p>Empire Wind FLOs will be the primary point of contact for enquiries related to survey activity (see above)</p>

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 fishers 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 Fisheries Manager’s liaison and industry experience;
- Contacting fishing industry association leaders;
- Attending Fishery Management Council meetings;
- Attending meetings related to offshore wind and fisheries interactions;
- Manning stands at commercial and recreational fishing forums;
- Recommendations from state and federal fisheries staff;
- Fisheries Management Council Advisory Panel lists online;
- Public comments and documents online;
- Word of mouth from the fishing community;
- Automatic Identification System (AIS) monitoring including ship identification;
- Fishing vessels identified offshore during surveys by the OFLR;
- NMFS permit holder lists online;
- Dock 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 will dedicate project specific technical resources to the F-TWG.
- Empire Wind will work with and attend future F-TWG meetings and sponsored conferences.
- Additionally:
 - Empire Wind will continue to participate in the F-TWG, represented by those listed within the Communication Officers table located in Section 2.2.
 - Empire Wind will 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.
 - As well as the F-TWG, Empire Wind will proactively engage with the fishing industry not represented on F-TWG, or in addition to those 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:

- Consultation on matters including the Empire Wind project development updates and schedules, benthic and fisheries resources and fisheries outreach and cooperation.
- Site Assessment Plan (SAP), approved on November 21, 2018, included consultation with the New York State Department of Environmental Conservation (NYSDEC).
- The New York State agencies including:
 - New York Department of State;
 - New York State Department of Environmental Conservation;
 - New York State Office of Parks, Recreation and Historic Preservation;
 - New York State Department of Public Service;
 - New York Office of General Services; and
 - New York State Energy Research and Development Authority.

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 is participating on international fisheries groups, including the UK's Fishing Liaison with Offshore Wind and Wet Renewables Group (FLOWW);
- Empire Wind is a founding member of the RODA joint industry task force and participates regularly in meetings;
- Empire Wind is a founding board member of ROSA (Responsible Offshore Science Alliance) and participates as a member of the advisory council;
- Empire Wind is hosting webinars for fisheries open houses during COVID-19 pandemic
- Empire Wind's Fisheries Manager is 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;
 - 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. Coastguard ("USCG") and U.S. Army Corps of Engineers ("USACE"); and
 - National Park Service ("NPS")
- Empire Wind will continue to engage with the general public, which includes open houses and public hearings to address comments and questions. Empire Wind's fisheries team has over 1,100 contact events with fishermen documented since 2018.

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.

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 Local Notice to Mariners	X	X	X	X
Electronic email distribution to commercial fishing permit holders (National Oceanic and Atmospheric Administration (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
Statements of Common Ground (SoCG) (Established between developers and stakeholders to set out areas of agreement, disagreements, and unresolved issues. May include description of development and affected parties, summary of consultation to date, issues discussed, resolved, unresolved, etc.)	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 and webinars	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>				

2.5.1 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.

- To avoid fisheries conflicts, to the greatest extent practicable Empire Wind shall seek to employ a fishing captain or other experienced fishing industry representative to be onboard vessels during key time/activities where potential conflicts could be greatest.

- Additionally:
 - Notification of upcoming site assessment and/or construction activities via various sources, including Survey Flyers, Local Notice to Mariners (LNMs), email notifications, details on project specific webpages and relevant fisheries web pages.
 - 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, and communications with vessels at sea and for relaying information back to the FLO.
 - The FLO and Fisheries Manager 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, identify owners and contact details, and 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 shall 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 shall meet all appropriate regulatory safety and scientific standards prior to the beginning of any monitoring activity.
- Additionally:
 - Baseline data characterization and monitoring 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 and ROSA.
 - Empire Wind will explore appropriate monitoring protocols, including, 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 plans for the Empire Wind project are not yet defined. It is felt this is best dealt with in consultation and in collaboration with other wind developers, the fishing industry and the regulators.

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 including 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 key 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 NYSEDA'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 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.
 - Status: Complete
- Empire Wind commissioned, benthic sampling was conducted in 2019 by Inspire Environmental, 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 (PV) 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.
 - Status: Complete
- Geophysical, benthic habitat (through geophysical interpretation), and geotechnical surveys 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 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.

3.3. 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.

- Empire Wind will seek to collaborate with other regulatory agencies and stakeholder groups (e.g., E-TWG, F-TWG, and ROSA) to identify research needs and opportunities.
- Additionally,
 - 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 proposes to 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, such as 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 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 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.

- Ideally, specific questions and focal taxa shall 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.
- 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 2.4.

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, EmpireWind proposes that if required, such studies be discussed as part of the F-TWG.
- Empire Wind 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.
- If impacts are present, Empire Wind will consider several options, including:
 - (i) exploring whether further mitigation can be applied to reduce impacts (e.g., improved access through technical solutions to fishing practices and/or navigation equipment);
 - (ii) using adaptive management by applying mitigation in the spatial planning and layouts of later phases of the Lease development; and
 - (iii) 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 will seek to work with stakeholders, including regulatory agencies, to identify data gaps to be addressed through surveys or permitting applications.
- Additionally,

- 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 2.2.6 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.
- Additionally, Empire Wind has made the following fisheries related studies publicly available:
 - 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 currently available on the Empire Wind webpage;
 - 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). This report will be made available on the Empire Wind webpage;
 - 2019 benthic survey report covering “COP” related survey locations within the proposed export cable corridors (Sediment Profile Imaging (SPI) Plan View Imaging (PVI), benthic grab samples with grain size and macro fauna analysis, drop down video stills, habitat description). This report will be made available on the Empire Wind webpage ;
 - 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 12 x monthly digital aerial surveys carried out from November 2017 to October 2018. These data and reports are all currently available on the ReMOTe webpage https://remote.normandeau.com/ewind_overview.php ;
 - 2018 to 2019 digital aerial survey images, monthly and quarterly reports of large bony fish assemblages as observed from the 12 x monthly digital aerial surveys carried out from November 2018 to October 2019. These data and reports will be made available on the ReMOTe webpage https://remote.normandeau.com/ewind_overview.php; and
 - Oceanographic data, not deemed proprietary, for example seawater temperature and salinity, from the “Metocean Facilities” deployed within the Lease Area.
- The following studies and reports will be available to the public once the COP has been issued by BOEM for public comment:

- Benthic Resources Characterization Reports
- Essential Fish Habitat (EFH) Assessment
- Offshore Electric and Magnetic Field Assessment
- Onshore Electric and Magnetic Field Assessment
- Underwater Acoustic Assessment
- Sediment Transport Analysis
- Information for Planning and Conservation (IPaC) Report and New York State Department of Environmental Conservation Natural Heritage Response Letters
- Conceptual Project Design Drawings
- Oil Spill Response Plan
- Coastal Zone Management Consistency Statements
- 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 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 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 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 operating offshore wind energy developments in Europe of Empire Wind's affiliates.
- 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.

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

Empire Wind is willing to consider requests to access its affiliates existing operating offshore wind energy developments in Europe to conduct research and monitoring.

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 shall 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.

- Empire Wind will support regional monitoring of wildlife and key commercial fish stocks equivalent to the specified value of \$10,000 per MW. 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 Entity (RWSE) or similar) or independently by Empire Wind.
- Empire Wind is committed to continue participating in the development of RWSE, and Laura Morales (Head of Environment and Permitting (NY)) sits on the Steering Committee.
- Empire Wind is committed to continue participating in ROSA, where Scott Lundin (Head of Environment and Permitting (MA)) sits on the Board of Directors.
- Empire Wind is committed to continue participating in the Massachusetts Fisheries and Habitat Working Groups (MA FWG and MA HWG, respectively).
- Empire Wind's OFLR is a member of the New England Fishery Management Council'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.

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 SUNY 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 (WCS) and Woods Hole Oceanographic Institute (WHOI) 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 the startup of ROSA.
- Empire Wind is a member of the RODA Task Force.

5. Proposed Mitigation of Impacts to Benthic/Fishery Resources

5.1. Potential impacts/risks and mitigation measures by project stage

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

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. <p>Additionally,</p> <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. • Micro-siting of the export cable route to further reduce potential impacts on sensitive habitats and minimize areas where burial is more challenging. 	X			
Temporary, alteration of the seabed and localized increases in noise and turbidity	<p>General:</p> <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 would be placed within the previously cleared and/or disturbed area around the foundations; • Empire Wind will consider the use of HDD at landfall to minimize physical disturbance of coastal 	X	X	X	X

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<p>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; and</p> <ul style="list-style-type: none"> • 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. 				
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 	X	X	X	X

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<p>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;</p> <ul style="list-style-type: none"> • 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. 				
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 shall be 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 shall 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	
Additional proposed mitigations	<ul style="list-style-type: none"> • Empire Wind will install of scour protection, as needed; and • 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 resource. Specifically, describe the key types of information and design decisions where feedback will be solicited from stakeholders.

- Empire Wind shall coordinate with the F-TWG stakeholders to address concerns and mitigate impacts to benthic/fisheries resources.
- Upon request the developer shall provide a detailed, step by step breakdown of the process used to create the Project layout.
- Additionally, 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 fishing 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 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.

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
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 Fisheries Mitigation Plan 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 	X	X	X	X

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<p>closures, when they are re-opened, updates on schedules through email serves, flyers, websites;</p> <ul style="list-style-type: none"> Utilize a CBRA to determine sufficient burial depth along the export cable route and, where target burial depth cannot be reached, secondary protection shall 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 4 ft (1.2 m) and 6 ft (1.8 m) where clam dredging is known to occur 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; 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; 	X	X		

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<ul style="list-style-type: none"> • Compliance by vessels associated with the project with international and flag state regulations including the COLREGs and the SOLAS; • Utilization of existing TSSs, 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.e., 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 (e.g., partially-installed structures). 				
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; 	X	X	X	X

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<ul style="list-style-type: none"> • Dissemination of information related to offshore survey activities, with contact details for further information; • 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 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. 				
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. 				
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 shall 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; 				

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<ul style="list-style-type: none"> 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. 				
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; 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	
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 			X	

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	phase, and operational safety zones around manned or sensitive offshore platforms or access points.				
<i>*Phase: 1: Survey/Design; 2: Construction; 3: Operation; 4: Decommission</i>					

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 (PATONS);
 - 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 Local Notice to Mariners (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 cable burial risk assessment (CBRA) and consultation;
 - 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 an snag that provides for a fair and timely review of the claim and appropriate compensation of impacted parties.

Per NYSERDA:

- Empire Wind shall work with F-TWG and fishing community to establish the appropriate procedures in advance of the start of construction activities. When practical, the procedures shall 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 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 take into account 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 at www.empirewind.com/fisheries.
- Feedback from the Layouts consultations has been used to develop a potential layout for Empire Wind 1 and will be considered in further consultations for potential layouts for Empire Wind 2.

7. Project Decommissioning

7.1. 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 shall 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.

7.2. 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 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.

8. (Optional) Fisheries Compensation Plan

8.1. Consideration of compensation plan

If a fisheries compensation plan is being considered to offset impacts, 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 at this early stage of development, 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. It is therefore too early to assume the need for and quantify financial compensation measures.
- As such, Empire Wind is not in a position to provide further details of financial compensatory measures related to potential temporary displacement or restricted access of fisheries to traditional fishing grounds related to Empire Wind.
- Noting that the principles around compensation need to be addressed, Empire Wind will work with the relevant regulators and fisheries organizations to establish the details and principles around compensation, if assessed as need to address unmitigated impacts.

8.2. Approach to developing compensation plan

8.2.1 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 8.1.

8.2.2 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).

9. Additional Considerations

9.1. 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.

9.2. Process for updating the FMP

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 FMP.

- The developer shall 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 NOI).
 - 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

Environmental Mitigation Plan
for
Empire Wind 2
Version 1.0

Prepared Pursuant to:
**Section 12.06 of the 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**

Prepared by
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December 2021

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Links to project information:

Project website: www.empirewind.com

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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 impacts to environmental resources.

- 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;
 - Where data gaps exist or the receptor-effect interactions are unknown, information gaps are satisfied through targeted data collection, monitoring and/or research;
 - 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 the original Empire Wind bid submittal, reviewed and commented on by NYSERDA, and subsequently presented to the E-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 EMP and support decision-making throughout the life cycle of the project (pre-construction, 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 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.
- 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, updating the guidance documents list as appropriate:
 - NOAA NMFS. 2018. 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 GARFO. 2020. Recommendations for Mapping Fish Habitat. NMFS GARFO Habitat Conservation and Ecosystem Services Division.
 - 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. Available online at: <https://www.boem.gov/sites/default/files/renewable-energy-program/Regulatory-Information/BOEM-Marine-Mammals-and-Sea-Turtles-Guidelines.pdf>.
 - BOEM. 2019. Guidelines for Providing Information on Fisheries for Renewable Energy Development on the Atlantic Outer Continental Shelf Pursuant to 30 C.F.R. Part 585. Fisheries Study Guidelines. Available at <https://www.boem.gov/sites/default/files/renewable-energy-program/BOEM-Fishery-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. 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 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&%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>

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 migration.

- Empire Wind will seek methods and processes to allow for a two-way flow of information between key stakeholders and Empire Wind, specifically highlighting how Empire Wind 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 approach project development and other state and federal permits 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 submission of the Empire Wind COP.

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.

Communication Officers, Contact Information, Links		
Name/Title	Role	Contact Information
Scott Lundin Head of US Permitting and Environmental Affairs	Primary point of contact for Empire Offshore Wind LLC on environmental matters. F-TWG representative (primary)	sclu@equinor.com
Laura Morales Director of Permitting, Empire Wind	Point of contact for Empire Offshore Wind LLC on environmental matters related to Empire Wind. E-TWG representative (primary)	lmora@equinor.com

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

Project website: www.empirewind.com

2.3. Identification of stakeholders

This section should describe the process by which stakeholders 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 in order to maximize opportunities to discuss the project and solicit feedback.
- This process will continue throughout the development of all of Beacon Wind’s 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 will coordinate with the E-TWG (in accordance with Section 12.04 of the Agreement) and stakeholders to address concerns and mitigate impacts to the wildlife and environmental resources.
- Empire Wind will dedicate project-specific technical resources to the E-TWG.
- Empire Wind will work with the E-TWG and shall attend E-TWG meetings and workshops.
- Additionally:
 - Empire Wind has been active in the E-TWG since its inception and is committed to active participation as a means to collaborate on best practices and research for offshore wind energy development, balancing 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 on the basis of the portfolio of projects in development, rather than on a project-by-project basis. This is

approach is intended to streamline communication by providing a single point of contact for information exchange and consistent message

- Current representation of Empire Wind can be found within the Communication Officers table located in 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.

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 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. This has included presentation of the COP for review and feedback. 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);
 - New York State Energy Research and Development Authority (NYSERDA); and
 - NY State Department of Public Service (NYSDPS).

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 EMP.

- Empire Wind is a member of the Steering Committee that is working with NYSERDA and other partners to stand-up a Regional Wildlife Science Entity (RWSE) that is envisioned to provide support for regional science collaboration focused on studying the potential impacts from offshore wind development on sensitive environmental receptors.
- 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 in 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.
- 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. Coastguard (“USCG”) and U.S. Army Corps of Engineers (“USACE”); and
 - National Park Service (“NPS”)
- Empire Wind will continue to engage with the general public, which includes open houses and public hearings to address comments and questions.

2.5. Communication methods and tools 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.

Proposed Outreach Methods/Tools	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
<i>*Phase: 1: Survey/Design; 2: Construction; 3: Operation; 4: Decommission</i>				

3. Supporting Other Research

3.1. Support of collaborative research

This section should describe how opportunities for developing or investing in collaborative research with environmental and academic entities 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 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.
- Empire Wind is a member of the Steering Committee that is working with NYSDERA and other partners to stand-up a Regional Science Entity that is envisioned to provide support for regional science collaboration focused on studying the potential impacts from offshore wind development on sensitive environmental receptors.
- Empire Wind is a board member of the ROSA and active member of the Advisory Council.
- Specifically, 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 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.

- Empire Wind will make an effort to meet with any interested parties when contacted to discuss prospective research.
- Empire Wind is willing to consider requests to access its affiliates' existing operating offshore wind energy developments in Europe to conduct research and monitoring.

3.3. Data availability

This section should describe how data will be made available in accordance with Section 2.2.5 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.
- 2017 to 2018 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 October 2018. These data and reports are currently or will be made available at the following website: https://remote.normandeau.com/ewind_overview.php;
- The following studies are currently available for download from the Empire Wind website:
 - 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 (SPI) and Plan View (PV) imaging at 157 sample stations, with 15 reference stations and sediment grab samples for sediment grain size analysis and macrofaunal analysis for verification).
- The following data can be obtained by contacting Empire Wind:
 - Oceanographic data, not deemed proprietary, for example seawater temperature and salinity, from the “Metocean Facilities” deployed within the lease area.;
 - Non-commercially sensitive data from metocean buoys.
 - Protected Species Observer (PSO) observation reports, as appropriate.
- The following studies and reports will be available to the public once the COP has been issued by BOEM for public comment:
 - Ornithological and Marine Fauna Aerial Survey
 - Avian Impact Assessment for the Selected Project in the New York Bight
 - 2018 Bat Survey Report
 - Bat Impact Assessment for the Selected Project in the New York Bight
 - Benthic Resources Characterization Reports
 - Essential Fish Habitat (EFH) Assessment
 - Offshore Electric and Magnetic Field Assessment
 - Onshore Electric and Magnetic Field Assessment
 - In-Air Acoustic Assessment
 - Underwater Acoustic Assessment
 - Sediment Transport Analysis
 - Analysis of Visual Effects to Historic Properties
 - Visual Impact Assessment
 - Aircraft Detection Lighting System (ADLS)

- Obstruction Evaluation & Airspace Analysis
- Navigation Safety Risk Assessment
- Information for Planning and Conservation (IPaC) Report and New York State Department of Environmental Conservation Natural Heritage Response Letters
- Air Emissions Calculations and Methodology
- Conceptual Project Design Drawings
- Oil Spill Response Plan
- Safety Management System
- Coastal Zone Management Consistency Statements
- 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 additional outlets for sharing information (e.g., the E-TWG webpage or other data portals), however, version control will be important.

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 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.

- Empire Wind, will support regional monitoring of wildlife and key commercial fish stocks equivalent to the specified value of \$10,000 per MW. 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 Entity (RWSE) or similar) or independently by Empire Wind.

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 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 has been coordinating with Stony Brook on opportunities to download and service the sensors during scheduled service visits approximately every 6 months. Empire Wind intends to explore continuing this collaboration.

- Empire Wind entered into a funding agreement related to a grant with the Wildlife Conservation Society (WCS) and Woods Hole Oceanographic Institute (WHOI) up to 3 years, which consists of two “Blue York” style real-time acoustic whale monitoring buoys spaced appropriately in the lease area to add to the existing data from the buoy on the eastern edge of the lease area which were deployed in January 2020. As a part of this funding, Empire Wind will explore opportunities to expand these studies further.
- Empire Wind will continue to participate in the development of the Regional Wildlife Science Entity (RWSE) as it matures, where Laura Morales (Head of Environment and Permitting (NY)) sits on the Steering Committee.
- Empire Wind was a founding board member of ROSA and is committed to continue supporting ROSA. Scott Lundin (Head of Environment and Permitting – New England) sits on the Board of Directors and is a member of the Advisory Council.
- Empire Wind’s affiliate has funded and collaborated in the UK Carbon Trust ORJIP One Bird Collision Avoidance Study (ORJIP One), UK Carbon Trust ORJIP Four Acoustic Deterrent Devices (ORJIP Four), and the developer-led DEPONS (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 key existing literature and datasets that are available for baseline characterization.

- 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 NYSERDA’s Master Plan (2017).
- Empire Wind has referenced the NYSERDA 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.
- 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 (Woods Hole Oceanographic Institution). 2018. Autonomous real-time marine mammal detections – New York Bight Buoy. Woods Hole Oceanographic Institution and Wildlife Conservation Society. Available online at: http://dcs.whoi.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. Tavalga. 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 (Hz):
 - 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 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.
 - Empire Wind will comply with BOEM's requirements in 30 C.F.R. § 585.626.
 - In consultation with federal agencies, Empire Wind has concluded that there are sufficient data to appropriately characterize and assess impacts to marine mammals and sea turtles in support of project development.
 - Empire Wind COP will provide a detailed review of the available baseline data.

4.1.2 Data 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.
- Additionally:
 - 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>
 - Status: Data collection complete; Synthesis reporting ongoing
 - NYSDEC, Schlesinger and Bonacci 2014, NYSERDA, WCS, and the Atlantic Marine Assessment Program for Protected Species ("AMAAPS") surveys (NOAA NEFSC 2017 and SEFSC 2016).
 - Status: Complete
 - NYSERDA quarterly digital aerial survey program to evaluate the NY Bight area and Empire Wind project area.
 - Status: Complete

- 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 databuoys 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/>
 - Status: Active
- Atlantic Marine Assessment Program for Protected Species (“AMAAPS”) surveys (NOAANEFSC 2017 and SEFSC 2016). Recent reports available here: <https://www.fisheries.noaa.gov/resource/publication-database/atlantic-marine-assessment-program-protected-species>
 - Status: Active. Information is currently available from surveys conducted from 2010-2016.
- Cornell University passive acoustic monitoring survey for 6 large whale species (right, fin, sei, blue, sperm, and humpback) in NY Bight.
 - Status: Active
- The following unpublished reports that could be made available by request of the authors:
 - Bioacoustic Research Program (BRP). 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>
 - Status: Active
- The following items are representative of additional data being collected by Empire Wind to address data gaps and support baseline characterization:
 - Empire Wind collected baseline data, and has analyzed data from site specific surveys, conducting assessments and carrying out extensive consultation on baseline data, potential receptors and potential environmental impacts. These efforts have been incorporated into

Empire Wind permit applications, including the submission of the Project's COP.

- Empire Wind completed the following assessments to support the baseline characterization:
- 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 supported by Normandeau to conduct monthly digital aerial surveys, which captures 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 Protected Species Observers (PSOs) onboard project related offshore survey vessels where appropriate. PSOs recorded observations from March 2018 to December 2018, and April 2019 to August 2019 and ongoing surveys initiated in June 2020.
- Empire Wind will consider installing additional receivers in addition to those deployed as part of the WCS/WHOI collaboration to support the development of "smart" monitoring tools in support of reducing the likelihood of impacts during pile driving activities.

4.2. Species at risk

Describe which species Empire Wind 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 ESA or NY State Law.
- Empire Wind is also aware of the importance of the species categorized with the additional protections mention above. The project's assessments, design, and mitigations are being
- developed in a manner meant to appropriately address the needs and requirements of all of the species known to occur within the Lease Area without having to prioritize some over others.

- Full details of species at risk, likely impacts, and proposed mitigation have been described in the COP, which was prepared in consultation with relevant stakeholders, including in the presentation and updates of the EW1 EMP to the E-TWG.

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 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 the 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 Empire Wind would use to reduce the amount of sound at the source, if any.

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 shall 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 and in compliance with federal regulation; and • Noise generating geophysical survey work shall not commence after dark or at other times of low visibility that would prevent sufficient monitoring of exclusion zones, 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. 	X	X	X	

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
Underwater noise impacts from construction and installation activities	<ul style="list-style-type: none"> • Empire Wind shall 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 shall not commence impact pile driving to 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); and/or ○ Ramping up of noise generating activities for an agreed upon duration based on consultation with the authorities. • Empire Wind will consider the potential use of commercially available and technically feasible noise reducing technologies, in accordance with associated authorizations. • 		X		

Vessel strikes on marine mammals	<ul style="list-style-type: none">• Empire Wind shall ensure that all vessel personnel are trained regarding animal identification and protocols when sightings occur• Empire Wind shall 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	X	X	X	X
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Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<p>impacts to marine mammal species, as necessary. These monitoring, sighting, and reporting protocols will be outlined in any Incidental Harassment Authorization (IHA) deemed necessary for the Project, in an effort to emphasize individual responsibility for marine mammal awareness and protection.</p> <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> ○ Use of dedicated shipping lanes ○ Vessel operators and crew awareness of collision avoidance measures; ○ Project-related vessels will comply with NOAA Fisheries speed restrictions within the Mid-Atlantic U.S. SMA for right whales of 10 knots (18.5 km/h) or less for vessels 65 ft (20 m) or greater during the period of November 1 through April 30. Project-related vessels will also comply with the 10 knot (<18.5 km/h) speed restrictions in any DMA; ○ 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 				

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<p>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.</p> <ul style="list-style-type: none"> ○ 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 seasonal management areas (“SMA”) and dynamic management areas (“DMA”) relevant to the size of the vessels used and other vessel strike avoidance measures; ● The development and enforcement of an Oil Spill Response Plan (an appendix to the Empire Wind COP); ● 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 for the right whale, which requires a 1,640 ft (500 m) separation; ● 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 				

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<p>report must be made immediately to NOAA’s National Marine Mammal Stranding Network;</p> <ul style="list-style-type: none"> • 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; and • 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. 				
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 shall use proper shielding to reduce EMF impacts • Empire Wind shall conduct EMF modeling assessments to identify potential mitigation requirements • Electrical cables shall be sufficiently buried where feasible to reduce EMF effects. • Empire Wind has conducted both onshore and offshore EMF assessments, included with the COP. • 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 between EMF and receptor). 	X	X	X	
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; • During operations and maintenance, Empire Wind will commit to vessel and structure lighting that minimizes illumination of the sea surface where feasible and subject to approval; • Empire Wind will consider siting of project-components to avoid and minimize impacts to sensitive benthic habitat and habitat of high value to 	X	X	X	X

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	marine mammals and sea turtles, directly and indirectly; and <ul style="list-style-type: none"> • Development of a monitoring program 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. 				
*Phase: 1: Survey/Design; 2: Construction; 3: Operation; 4: Decommission					

4.4. Monitor for impacts during each phase

Describe how potential impacts will be monitored on these species 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 shall seek to collaborate with other regulatory agencies and stakeholder groups to identify research needs and opportunities.

4.4.1 Pre/Post Monitoring to assess and quantify impacts and changes

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

- Ideally, specific questions and focal taxa shall 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.
- Additionally:
 - Empire Wind will ideally target monitoring and research towards interactions between offshore wind energy developments and the receptors it is being judged against.
 - 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 shall work with stakeholders, including regulatory agencies and local groups, in the design phase of the project to identify data gaps to be addressed through surveys or permitting applications.
- Additionally:
 - Empire Wind believes there is sufficient marine mammal and sea turtle data to inform spatial planning and support assessments in the COP and IHA 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. For example, the collaboration with WCS/WHOI as described previously.
 - 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 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 shall 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 it 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 NOAA NMFS and other key stakeholders throughout the project development process in order 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 the 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)) and will follow other guidelines associated consultations under Section 7 of the Endangered Species Act with the USFWS.
- Empire Wind will rely on the following information for its baseline characterization of birds:
 - NYSERDA-funded digital aerial avian surveys covering the Lease Area over four quarterly surveys and the Offshore Planning Area (OPA) over twelve quarterly surveys (data have been combined with surveys for species abundance modelling). Data and reports are also publicly available on https://remote.normandeau.com/nyserda_overview.php
 - 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>
 - Kinlan, B.P., Menza, C., & F. Huettmann. 2012. Predictive Modeling of Seabird Distribution Patterns in the New York Bight. Chapter 6 in "A biogeographic assessment of seabirds, deep sea corals and ocean habitats of the New York Bight: science to support offshore spatial planning." NOAA Technical Memorandum NOSNCCOS 141 (2012).
 - NYSERDA 2010a. Pre-development of avian species for the proposed Long Island – New York City Offshore Wind Project Area. Final Report prepared for the New York State Energy Research and Development Authority. October 2010.
 - Kinlan, B.P., Winship, A.J., White, T.P., & J. Christensen. 2016. Modeling At-Sea Occurrence and Abundance of Marine Birds to Support Atlantic Marine Renewable Energy Planning: Phase I Report. U.S. Department of the Interior, Bureau of Ocean Energy Management, Office of Renewable Energy Programs, Sterling, VA. OCS Study BOEM 2016-039. xvii+113 pp., available at <https://www.data.boem.gov/PI/PDFImages/ESPIS/5/5512.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-New-York-State-Overview/NYS-Offshore-Wind-Master-Plan>
 - Studies funded by BOEM on baseline offshore and near-shore avian studies:

- Paton, P., K. Winiarski, C. Trocki, and C. McWilliams. 2010. Spatial Distribution, Abundance and Flight Ecology of Birds in Nearshore and Offshore Waters in Rhode Island. Chapter 11a in: Rhode Island Ocean Special Area Management Plan (Ocean SAMP) Volume 2. University of Rhode Island, Kingston, RI. 304pp.
- Veit, R.R., T.P. White, S.A. Perkins, and S. Curley. 2016. Abundance and Distribution of Seabirds off Southeastern Massachusetts, 2011-2015. U.S. Department of the Interior, Bureau of Ocean Energy Management, Sterling, Virginia. OCS Study BOEM 2016-067. 82 pp.
- 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.
- NJDEP 2010a. Ocean/Wind Power Ecological Baseline Studies, Final Report, January 2008 - December 2009. New Jersey Department of Environmental Protection Office of Science, available at <https://www.nj.gov/dep/dsr/ocean-wind/report.htm>
- Cetacean and Seabird Assessment Program (CSAP) database of bird observations from 1980-1988
- Rhode Island Block Island Wind Farm and the Massachusetts Cape Wind Project baseline assessment data
- 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
- Empire Wind will rely on the following existing information for its baseline characterization of bats:
 - 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>
- The Empire Wind COP provides a detailed review of available baseline data.

5.1.2 Data Collected

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

- Empire Wind contracted APEM, supported by Normandeau, to conduct monthly digital aerial surveys from November 2017 to October 2018 for the Empire Wind

Lease Area, with monthly results, monthly reports, and quarterly and final reports made publicly available on the following webpage:

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

- Status: Completed
- APEM and the methodology chosen was similar to the approach taken by NYSERDA having used APEM and these methods to conduct quarterly digital aerial surveys over the New York Bight and Lease Area. A summary of the scope of the digital aerial survey is as follows:
 - Surveys conducted once per month over a 12-month period;
 - Image resolution at sea surface of 1.5 cm ground sampling distance (“GSD”);
 - Grid survey design;
 - Grid imagery footprint of 310 m by 219 m;
 - A 2.5-mi (4 km) buffer around the lease area;
 - Minimum of 20% of the lease area and buffer imaged, with 10% of area analyzed;
 - Monthly results displayed online; and
 - Monthly, quarterly and annual reporting, also provided online.
- The assessment approach and methods were designed to supplement the substantial body of existing data and to meet BOEM’s data requirements for site characterization studies to evaluate the potential effects of the proposed project. In addition, the supplemental quarterly digital aerial surveys conducted by APEM Ltd. on behalf of NYSERDA provide an excellent spatial and temporal characterization of the lease area.
- The Empire Wind “Avian Survey Protocol” survey plan, which included marine mammals and sea turtles, was submitted and accepted by BOEM and USFWS.
 - Status: Complete
- Empire Wind installed a passive bat detector onboard the survey vessel RV Ocean Researcher to detect passing bats while the vessel was engaged in other survey activity in the lease area from April 2018 through December 2018.
 - Status: Complete
- Empire Wind installed a passive bat detector onboard the survey vessel RV Stril Explorer to detect passing bats while the vessel was engaged in other survey activity in the 0520 lease area starting in August 2020.
 - Status: Active
- Empire Wind has and will continue to share the results of the monitoring with the relevant regulatory authorities and stakeholders, and consider whether there is a further need to collect additional site-specific data offshore.
 - Status: Active
- In addition to the above survey work, Empire Wind has performed a number of desktop studies to characterize bird and bat baseline conditions.
 - Status: Complete

5.2. Species at risk

Describe which species Empire Wind believes to be of greatest concern and why.

- The Lease Area provides habitat for approximately 40 waterbird species, including seaducks, loons, gulls, scoters, terns, alcids, gannets, and shorebirds (NYSERDA 2010a, Kinlan et al. 2012, Kinlan et al. 2016, NYSERDA 2017d).
- Full details of avian species at risk, likely impact and proposed mitigation has been described in the COP, and Empire Wind continues to consult with relevant stakeholders and present this EMP at the E-TWG.
- Empire Wind identified the following bats with the greatest potential to migrate through the lease area on their way between breeding and wintering grounds in the spring and fall:
 - eastern red bat,
 - hoary bat, and
 - silver-haired bat.
- Empire Wind has followed BOEM’s guidelines and has used the Mid-Atlantic Ocean Data Portal’s data of temporal use, abundance, and species distribution by avian species or groups in the Lease Area. The modeling data can also be used to potentially identify species that are high risk for collision or displacement, and species that are protected by federal and/or state laws.

5.3. Potential impacts and mitigation measures by phase

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 Empire Wind 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	Proposed Mitigation Measures	Phase*			
		1	2	3	4
Collision risk to marine birds and bats	<ul style="list-style-type: none"> • To avoid and minimize attraction- and disorientation-related impacts to birds and bats, artificial lighting on the Empire Wind project will be reduced to the extent practicable while maintaining human safety and compliance with FAA, USCG, BOEM and other regulations; • Monitoring will be conducted to determine if there is a need for perching-related deterrents 		X	X	X

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<p>to reduce attraction and minimize potential perching and loafing opportunities for birds;</p> <ul style="list-style-type: none"> • During construction, installation of anti-perching devices where appropriate on offshore, above-water, project-related vessels and structures to minimize introduction of perching structures to the offshore environment; • Project-related vessels will be instructed to avoid rafting seabirds to minimize disturbance during construction, operations, and maintenance; • Empire Wind will consider the use of HDD for installation of the export cable landfall to avoid surficial disturbances; and • Empire Wind will consider the maintenance of anti-perching devices where appropriate on offshore, above-water Project-related vessels and structures to minimize introduction of perching structures to the offshore environment, during operations and maintenance. 				
Habitat impacts, including breeding and nesting areas	<ul style="list-style-type: none"> • Siting and construction of nearshore and onshore project components for offshore wind farms (including but not limited to nearshore export cable routes, landfall sites, onshore cable routes, and onshore substations) shall be conducted in such a way as to avoid or minimize the loss or alteration of bird and bat habitat, as well as avoid or minimize disturbance and direct and indirect effects to bird and bat populations and their prey. Specifically, onshore infrastructure (i.e., landfall site, cable routes, substations) and development activities should 1) maximize the use of previously developed or disturbed areas, and 2) avoid unique or protected habitats, as well as habitat for key species, where feasible; • For bats, Empire Wind will avoid tree-clearing at the onshore project components, unless otherwise determined acceptable by the USFWS and NYSDEC, to minimize risks to bats; 		X	X	X

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<ul style="list-style-type: none"> Avoidance of key habitats and tree clearing within the onshore substation sites where appropriate and required during sensitive times of year (e.g., breeding season), to minimize risk to bats and tree nesting birds; Adherence to time of year restrictions as necessary in sensitive onshore bird habitats, where feasible and required, unless otherwise determined acceptable by the applicable agencies; and For both birds and bats, temporarily disturbed areas will be revegetated with appropriate native species, as appropriate. 				
Additional proposed mitigations	<ul style="list-style-type: none"> Development of a monitoring program to address specific questions, including identification of 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. 	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 these species 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 Pre/Post Monitoring to assess and quantify changes

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

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

- Additionally:
 - Empire Wind believes that monitoring of highly mobile species, such as birds, should focus on behavioral responses rather than pre-, during, and post construction monitoring of abundance, which may not always have robust statistical power to identify change as a direct result of the wind farm.
 - Should further monitoring of birds be required, for example for Roseate terns, then Empire Wind is willing to explore monitoring through novel techniques such as GPS tagging exercises, subject to approvals from the relevant regulatory agencies.
 - Empire Wind will continue desktop studies and stakeholder discussions for avian and bat species. During field studies, Empire Wind will complete appropriate surveys to further characterize the project area and determine presence/absence of habitat within proposed project activities.
 - Impacts to avian and bat species will be sufficiently examined as part of BOEM's NEPA process and as part of the COP, through state permitting processes, and in consultation with USFWS and relevant stakeholders. Where appropriate, mitigation will be implemented to reduce impacts to as low as practicable.

5.4.2 Address data gaps

Describe how data gaps will be addressed.

- Empire Wind shall work with stakeholders, including regulatory agencies and local groups, in the design phase of the project to identify data gaps to be addressed through surveys or permitting applications.
- Additionally:
 - Empire Wind notes that further research and monitoring is important where data and knowledge gaps remain and where there remains uncertainties over potential significant adverse impacts attributable to the offshore wind farm.
 - Empire Wind will engage with relevant stakeholders, for example through the regulatory process and E-TWG, to identify areas where data gaps may exist for further monitoring and research and will consider proposals for research on a case-by-case basis.

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.
- 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.

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 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; and
 - 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.
 - 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 (SPI) and Plan View (PV) 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.

- 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 Empire Wind 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 essential fishing habitat (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 EW1 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 Developer 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	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 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	<p>General:</p> <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 would be placed within the previously cleared and/or disturbed area around the foundations; • 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; and 	X	X	X	X

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	<ul style="list-style-type: none"> • 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. 				
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 implement 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, operations, and maintenance, Empire Wind will utilize sensitive lighting 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 	X	X	X	X

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	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.				
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 shall 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. 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. • Development of a Cable Installation Plan, detailing how cable installation will be managed. 		X	X	
Additional proposed mitigations	<ul style="list-style-type: none"> • Empire Wind will install scour protection, as needed; and • Empire Wind will development a monitoring program to address specific questions, to include identifying key species of interest, and when possible, to contribute to the understanding of long-term project-specific 	X	X	X	X

Potential Impacts	Proposed Mitigation Measures	Phase*			
		1	2	3	4
	impacts and larger scale efforts to understand cumulative impacts.				
*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 shall 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 shall 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 explore 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 and relevant stakeholders to identify research and monitoring needs and agree on methodology.

6.4.2 Address data gaps

Describe how data gaps will be addressed.

- Empire Wind will work with stakeholders, including regulatory agencies, to identify datagaps 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 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, 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.

7. Project Decommissioning

7.1. 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 to 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.

7.2. Approach for developing a 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 has and 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.

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 the environment. 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 Empire's existing offshore wind farms 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 has and will continuously evaluate and improve 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.
 - Currently Empire Wind is working with the E-TWG in establishing a process for updating the EMP, where formal updates will likely occur after major project milestones (e.g., NOI).

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 NYSERDA, the Seller has agreed sell to NYSERDA and NYSERDA 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 NYSERDA to purchase the ORECs, and with full knowledge that NYSERDA would not purchase the ORECs without this Guaranty, (a) Guarantor has agreed to execute and deliver this Guaranty to NYSERDA, for the benefit of NYSERDA and (b) [Second Guarantor] has agreed to execute and deliver a Guaranty to NYSERDA, dated the date hereof and for the benefit of NYSERDA, together as security for Seller’s performance of certain of its obligations under the Agreement;

WHEREAS, Guarantor, along with [Second Guarantor], is a parent company of Seller and will significantly benefit from NYSERDA’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 NYSERDA the full and prompt payment no later than two (2) business days following written demand by NYSERDA, of an amount in U.S. dollars equal to fifty percent (50%) of the Contract Security that (i) is calculated in accordance with Sections 15.01 and 15.02 of the Agreement, and (ii) NYSERDA 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”).

- (b) Guarantor understands, agrees and confirms that NYSERDA 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; provided that NYSERDA shall endeavor to proceed against Guarantor under this Guaranty and against [Second Guarantor] under the [Second Guaranty] in equivalent amounts; provided further that failure of NYSERDA to do so will not diminish NYSERDA's rights hereunder. This Guaranty is a guaranty of prompt payment and performance and not of collection.
- (c) The aggregate amount covered by this Guaranty shall not exceed [] (the "Guaranty Capped Value").

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. 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.

9. 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.

10. NOTICE. All notices and other communications shall be in writing and addressed to such party at (a) in the case of NYSERDA, as provided in the 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.

11. 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 thirty (30) days after such mailing. 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.

- (b) Guarantor hereby irrevocably waives (to the fullest extent permitted by applicable law) any objection that it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Guaranty brought in the courts referred to in Section 11(a) above and hereby further irrevocably waives and agrees not to plead or claim in any such court that such action or proceeding brought in any such court has been brought in an inconvenient forum.
- (c) 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.

12. 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:

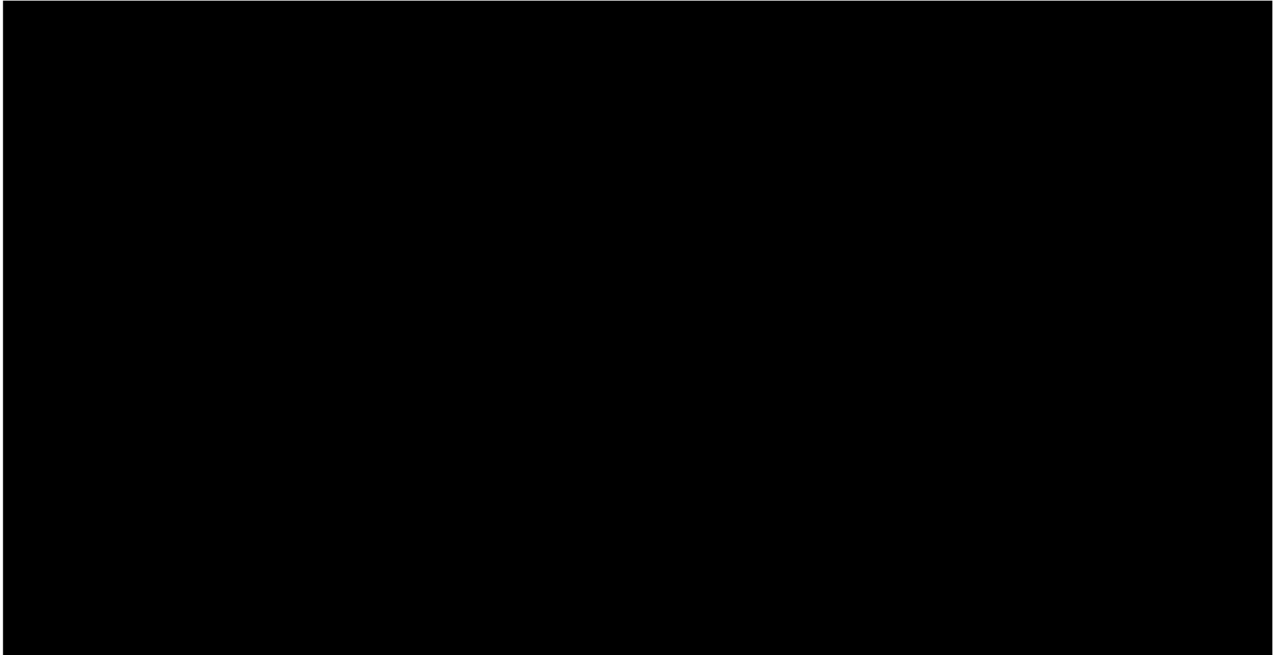
NYSERDA

EXHIBIT H

DESCRIPTION OF SELECTED PROJECT

Empire Wind Phase 2 Project:

Those turbines, identified below and with the attributes described herein, owned or controlled by Seller within the [REDACTED] 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 for the Empire Wind Phase 2 Project or Site Perimeter must be undertaken in conformance with this Agreement.

A table with three columns and multiple rows. Each cell in the table is completely redacted with a solid black box. The table is overlaid on a light blue grid background.

Delivery Point: Barrett Substation in Oceanside, New York.

Point of Interconnection: Barrett Substation in Oceanside, New York.

Offer Capacity: 1,260 MW.

[REDACTED]

[REDACTED]

[REDACTED]

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 performed in federal waters 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 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 January 1, 2020 through the end of the first three (3) Contract Years of the Contract Delivery Term within the following categories:

- a. Payments for labor-related expenditures for work that is performed in New York State or subject to a Project Labor Agreement approved by NYSERDA pursuant to Section 18.11 of this Agreement or a project labor agreement entered into in accordance with the New York State Financing Agreements. 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, 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.
- 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, 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. New or increased revenues for jurisdictions in New York State from January 1, 2020 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.
 - ii. Payments to fishing mitigation or compensation initiatives; and/or

- iii. 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 Bid 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 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. Investments in and payments for the use of ports shall be eligible Economic Benefits under this Exhibit I. For the avoidance of doubt, expenses paid with New York state funds made available to Seller through the New York State Financing Agreements shall not be eligible Economic Benefits under this Exhibit I. However, any amounts paid by Seller and its affiliates towards port improvements at South Brooklyn Marine Terminal, the Port of Albany, or other ports within New York shall count as eligible Economic Benefits under this Exhibit I.
 - 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.

- 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. Any amounts paid by Seller's affiliates towards an Alternative Investment payable in accordance with the terms of the New York State Financing Agreements.
- vii. 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.

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 July 1, 2026, 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 January 1, 2020 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) 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(e) 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 by Seller and/or its affiliates 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; 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 the Project Labor Agreement described in Section 18.11 of this Agreement or a project labor agreement entered into in accordance with the New York State Financing Agreements.
 - 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:
 - 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 use 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 the Project Labor Agreement described in Section 18.11 of this Agreement or a project labor agreement entered into in accordance with the New York State Financing Agreements, 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. Seller will inform the Independent CPA that the economic benefits from the Empire Wind 1 Project and Beacon Wind Project will be

separately accounted for, and will provide additional information requested by the Independent CPA that is reasonably necessary to satisfy the Independent CPA that there has been no double-counting of economic benefits among the three projects.

- 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 each Economic Benefits Report to NYSERDA. Seller, however, must retain such documentation in accordance with Section 6.05 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 EW2 Verified 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 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 expenditure valued at more than \$50,000 over the period covered by, and as reported in, the Economic Benefits Report. At its discretion, the Independent CPA may rely on sampling of representative expenditures under \$50,000. If sampling is used, however, the Independent CPA must review a sample of transactions to be determined by the value and number of items included in the overall population, but no fewer than one hundred fifty (150) such transactions or the number of such transactions that the Independent CPA determines would be statistically significant, whichever is greater. If sampling is used, the Independent CPA must also disclose the 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 the 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' labor-related expenditures:
 - i. Compare the expenditures claimed for each transaction selected to the Seller's or its affiliates' 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;
 2. The work was performed in New York State or the employer has certified that the employee is covered by a Project Labor Agreement approved by NYSERDA pursuant to Section 18.11 of this Agreement or a project labor

agreement entered into in accordance with the New York State Financing Agreements;

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 (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 and services:

- 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 Seller's affiliate or General Contractor) 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 its affiliate(s)) or General Contractor 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 Seller's affiliate or General Contractor) 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).
 - ii. Any amounts paid by Seller or Seller's affiliates towards an Alternative Investment payable in accordance with the terms of the New York State Financing Agreements shall count as Eligible Economic Benefits.
- 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 Seller's affiliate or General Contractor) 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 (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.



Offshore Wind Renewable Energy Certificate
Purchase and Sale Agreement by and between
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and [DEVELOPER]

Effective Date: [MM.DD.YYYY]
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EXHIBIT K

Progress Report

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

Dear NYSDERDA Offshore Wind Team,

3. [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 (“NYSDERDA”) 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 NYSDERDA 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) NYSDERDA’s designated Contract Manger via email, and (2) to NYSDERDA’s Offshore Wind Contract Management SharePoint Platform via the link [\[INSERT LINK\]](#). NYSDERDA’s Offshore Wind Team will confirm its receipt pending review and approval via email to NYSDERDA’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. NYSDERDA reserves the right to provide comment and/solicit updates to ensure satisfactory assessment of project progress pursuant to the Agreement.



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4. Status of Development and/or Construction Planning or Activities with Regard to the Project

[Insert Update]

Please attach an updated project schedule as Appendix A.1 to this report.

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

Please attach an updated hiring summary schedule including New York State hiring as Appendix A.3 to this report.

Please attach an updated Site Layout Plan including links to associated ShapeFiles as Appendix A.4 to this report.

5. Progress in Obtaining Environmental Permits and/or Local Approvals

[Insert update]

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.

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.

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

[Insert Update]

Please attach an updated interconnection plan including updated interconnection study 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.

7. Purchases, Delivery, and/or Installation of any Major Services and Equipment Associated with the Project

[Insert Update]

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.



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Please attach an updated summary of any New York State DAC Benefits delivered, M/WBEs and SDVOBs engaged by the Project in the following format (live templates to be provided by NYSDERDA) as appendices to this report:

Appendix D.2.1: Project DAC Benefits Update

List all DAC Beneficiaries Name, address, phone number, and email address for each beneficiary .	Census Tract Number	Estimated Start/End Date	Benefit Amount	Brief Description
		Start Date: _____ End Date: _____	\$ _____	

Appendix D.2.2: Project MWBE/SDVOB Utilization Update

List all MWBE/SDVOB Subcontractors Name, address, phone number, and email address for each subcontractor. <small>(Check appropriate box if firm is a certified MBE/WBE/SDVOB)</small>	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: _____	\$ _____	

Appendix D.2.3: Project MWBE/SDVOB Staffing Update

Occupation Classifications (SOC Major Group)	SOC Job Title	EEO Job Title	SOC Job Code	Minority %	Women %

Number of Employees and Hours Worked by Race/Ethnic Identification During Reporting Period																			
White				Black/African American				Hispanic/Latino				Asian/Native Hawaiian or Pacific Islander				Native American/Alaskan Native			
Male		Female		Male		Female		Male		Female		Male		Female		Male		Female	
# Employees	# Hours	# Employees	# Hours	# Employees	# Hours	# Employees	# Hours	# Employees	# Hours	# Employees	# Hours	# Employees	# Hours	# Employees	# Hours	# Employees	# Hours	# Employees	# Hours

8. Activities Undertaken pursuant to Project Community Outreach Plan, including Upcoming Meetings and Known Outreach Activities for the Next Quarter

[Insert Update]

Please attach a list of completed meetings, outreach activities, and outcomes including Consultations with NYS Agencies and Technical Working Group (TWG) Participation for the previous quarter including outcomes as Appendix E.1 to this report.



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Please attach a list of upcoming meetings, outreach activities, and outcomes including Consultations with NYS Agencies and TWG Participation for the next quarter as Appendix E.2 to this report.

9. Status of Seller’s activities associated with the New York State Supplier Opportunity

[Insert Update]

Please attach a summary of communication efforts and outcomes for all opportunities for contracts with an anticipated contract value of \$5 million or greater to the New York State Supplier Database, as Appendix F.1 to this report. Note per the terms of ORECRFP18-1 Section 2.2.9, this includes the communication efforts for goods or services directly tendered by the Seller or from goods and services tendered by its Major Suppliers.

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 F.2 to this report.

10. Updates to Fisheries Mitigation Plan and/or Environmental Mitigation Plan

[Insert Update]

Please attach the current version (including Mitigation Plan version number) of the Fisheries Mitigation Plan as Appendix G.1 to this report.

If the version has changed since the last Progress Report, please attach a redline update of the Fisheries Mitigation Plan as Appendix G.2 to this report.

Please attach the current version (including Mitigation Plan version number) of the Environmental Mitigation Plan as Appendix G.3 to this report.

If the version has changed since the last Progress Report, please attach a redline update of the Environmental Mitigation Plan as Appendix G.4 to this report.

11. Site and Environmental Data Acquisition

[Insert Update, Including all current links]

12. Financial Support for Monitoring Fisheries and Wildlife

[Insert update regarding expenditures and associated activity confirming that the requirement of Section 12.10 of the Agreement has been met].

13. Prevailing Wage and Project Labor Agreement

[Insert Update]



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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 of Section 18.10 is being met.

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

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

14. Estimated Date for Commercial Operation

[Insert Update]



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15. Appendix [X.Y]

[Insert Content]

