

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
STATE OF NEW YORK**

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**Application of Empire Offshore Wind LLC for a** )  
**Certificate of Environmental Compatibility and** )  
**Public Need for the Construction of** )  
**Approximately 17.5 Miles of Transmission Lines** )  
**from the Boundary of New York State Waters to** )  
**a Point of Interconnection in Brooklyn, Kings** )  
**County, New York** )  
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**Case No.: 21-T-0366**

**Empire Offshore Wind LLC**

**Empire Wind 1 Project**

**DRAFT CERTIFICATE CONDITIONS**

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The Commission orders:

**A. GENERAL CONDITIONS OF THE ORDER**

- A1. Subject to the conditions set forth in this Opinion and Order, Empire Offshore Wind, LLC (“Certificate Holder”) is granted a Certificate of Environmental Compatibility and Public Need (“Certificate”) authorizing construction and operation of electric transmission facility consisting of: (i) two three-core 230-kilovolt (“kV”) high-voltage alternating current (“HVAC”) submarine export cables (“submarine export cables”) from the boundary of New York State (“State”) waters 3 nautical miles (5.6 kilometers) offshore to the cable landfall in Brooklyn, New York ; (ii) two three-core 230-kV HVAC Empire Wind 1 onshore export cables buried underground from the cable landfall either directly to the cable terminations or to a vault within the onshore substation (“onshore export cables”); (iii) an onshore substation located at the South Brooklyn Marine Terminal (“SBMT”) (“onshore substation”), which will step up the voltage to 345-kV for the onshore interconnection cables; and (iv) two 345-kV cable circuits, each with three single-core HVAC onshore interconnection cables (“interconnection cables”), buried underground from the onshore substation to the POI. The submarine export cables, onshore export and interconnection cables, and onshore substation shall collectively be referred to herein as the “Project.” The terms of the Joint Proposal, with the additional conditions adopted herein, are adopted in their entirety and incorporated as part of this Opinion and Order. The Certificate and conditions set forth herein shall apply only to the Project, which is within the jurisdictional boundaries of the State of New York.
- A2. The Project shall be located as shown on the maps included as Appendix B to the Joint Proposal. The Project shall be located within easements, leaseholds, or other interests to be acquired by the Certificate Holder in lands owned by the State of New York and the City of New York (“City”). The Project is defined geographically by a deviation zone (“Allowed Deviation Zone”) around a nominal centerline (the “Centerline”), as depicted in Appendix B to the Joint Proposal. The Allowed Deviation Zone corresponds to a variable-width submarine export cable siting corridor that is typically approximately 500 feet (“ft”) wide, and up to approximately 900 ft wide in certain locations. The Allowed Deviation Zone corresponds to an approximately 50-ft (15.2-meter) wide corridor along the nominal centerline for the onshore export and interconnection cables, depicted in Appendix B. Route deviations are allowable within this pre-defined corridor, subject to any restrictions in the proprietary rights such as the New York City revocable consent. Nothing in this Certificate shall guarantee exclusive use of the submarine export cable siting corridor by the Certificate Holder.
- A3. For purposes of the Certificate Conditions, “Project Area” shall be defined as the area in which Certificate Holder is authorized to construct, operate, maintain, repair, and decommission the Project, including any laydown yards and staging areas, pursuant to any permanent and/or temporary easements, leases, licenses, right of way agreements, or other land use authorizations it receives. The Certificate Holder shall further detail the Project Area in the Environmental Management and Construction Plan(s) (“EM&CP”). The Certificate Holder shall confine construction, operation, maintenance, repair, and decommissioning activities to the Project Area.

- A4. The Certificate Holder shall, within thirty (30) days after the issuance of the Certificate, file with the Secretary of the Public Service Commission (“Secretary”) either a petition for rehearing or a verified statement that it accepts and will comply with the Certificate. Failure to comply with this condition shall invalidate the Certificate.
- A5. The Certificate Holder shall notify the Secretary in writing should it decide not to complete construction of all or any portion of the Project within thirty (30) days of reaching such a decision and shall serve a copy of such notice upon all parties to this proceeding.
- A6. The Certificate Holder shall construct the Project in accordance with this Certificate and the approved EM&CP.
- A7. For purposes of this Certificate, “Commencement of Construction” shall be defined as: the beginning of tree clearing, site clearing, ground disturbance, site preparation, or grading activities related to installation of the Project. Commencement of Construction does not include soils or groundwater testing, surveying (including but not limited to geotechnical drilling, bathymetric survey, cable/pipeline location surveys, unexploded ordnance [UXO] surveys), remediation activities under a Brownfield Cleanup Agreement and Remedial Action Work Plan (“RAWP”), if applicable, or similar pre-construction activities offshore or onshore to determine the adequacy of the site for construction and the preparation of filings pursuant to this Certificate. Commencement of Construction also does not include other activities, such as limited staging and limited tree cutting, that are required to perform such pre-construction activities.
- A8. If construction of the Project hereby certified is not commenced within eighteen (18) months after the later of approval of the EM&CP by the Commission or receipt of all applicable federal permits and approvals, the Certificate may be vacated by the Commission with notice to the Certificate Holder and all parties.
- A9. The Certificate Holder may request an extension of the 18-month commencement deadline. Any request for an extension must be in writing, must include a justification for the extension, and must be filed with the Secretary at least one (1) day prior to the affected deadline. If a request for an extension is approved, the Certificate Holder must submit the approval to the New York City Department of Transportation (“NYCDOT”).
- A10. The filing and review of the EM&CP may be segmented (each, a “Segment”) in order to facilitate construction sequencing and scheduling, provided that with its first EM&CP filing, the Certificate Holder shall identify the remaining EM&CP Segments of on-land components of the Project that do not require other permits. In the event that the Certificate Holder elects to segment the EM&CP, the Certificate Holder shall follow the process and procedures described herein for each Segment of the EM&CP.
- A11. Construction of any Segment of the Project, whether on land or under water, shall not commence until Certificate Holder has received the authorizations, leases, necessary rights and easements from property owners as are necessary to commence construction of that Segment, including as applicable authorizations from the New York State Office of General Services (“NYSOGS”), and NYCDOT. The Certificate Holder shall operate the Project in accordance with the approved tariffs and applicable rules and protocols of Consolidated

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Edison Company of New York, Inc. (“Con Edison”), the New York State Independent System Operator (“NYISO”), the North American Electric Reliability Corporation (“NERC”), the New York State Reliability Council (“NYSRC”), and the Northeast Power Coordinating Council (“NPCC”). The Certificate Holder shall also obey operational orders issued by the NYISO. The Certificate Holder shall not initiate Commencement of Construction of any Segment of the Project until the Certificate Holder has obtained all applicable federal permits and approvals. Copies of all applicable permits required for construction or operation of the Project and any amendments or modifications thereto will be filed with the Commission’s Secretary within fifteen (15) business days of issuance.

- A12. For the purposes of these Certificate Conditions, “Certificate Holder” includes contractors in the Certificate Holder’s employ. Where a condition will be undertaken by the Certificate Holder’s contractor, the Certificate Holder is responsible for providing the contractor documents containing the relevant conditions, as required in Condition E6.
- A13. Where any portion of the Project will impact any facilities, property and/or equipment owned by Con Edison, the Certificate Holder must design, engineer, and construct that portion of the Project in accordance with Con Edison’s standards, specifications, guidance, and practices.
- A14. During preparation of the EM&CP, the Certificate Holder shall consult with Con Edison regarding the substation it owns that needs upgrading in order to interconnect the Project facilities. Notwithstanding that any necessary substation upgrade work may be authorized to be performed under the Certificate and the EM&CP, such substation shall not thereafter become subject to Article VII jurisdiction post construction of the Project solely as a result of such Article VII authorization.

## **B. LAWS AND REGULATIONS**

- B1. Each substantive federal, State, and local law, regulation, code, and ordinance applicable to the Project shall apply, except to the extent that the Commission has expressly refused to apply any substantive local law or regulation as being unreasonably restrictive.
- B2. No State or local legal provision purporting to require any approval, consent, permit, certificate, or other condition for the construction or operation of the Project authorized by the Certificate (collectively, “State or municipal approvals”) shall apply, except: (i) those of the Public Service Law (“PSL”) and regulations and orders adopted thereunder; (ii) those provided by otherwise applicable State law for the protection of employees engaged in the construction and operation of the facilities; and (iii) those permits issued under a federally delegated or pursuant to a federally approved environmental permitting program, or federal consistency review pursuant to the federal Coastal Zone Management Act, and (iv) those municipal and state approvals expressly authorized in Conditions B4 through B6 of this Certificate, all of which shall be subject to the Commission’s continuing jurisdiction. The Certificate Holder will seek a revocable consent from the City of New York for use of City-owned land, and such consent will be filed with the Commission for approval pursuant to Section 68 of the PSL.
- B3. The Certificate Holder shall construct the Project in a manner that conforms to all the applicable local, regional, State, national and international electrical standards, including the applicable and published planning and design standards of Con Edison, the NYISO, NYSRC,

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NPCC and NERC, and successor organizations. Upon completion of the Project, the Certificate Holder shall file a letter with the Secretary certifying that the Project was constructed in full conformance with the National Electric Safety Code.

- B4. Nothing herein shall preclude the Certificate Holder from voluntarily subjecting itself to applicable State or local approval, consent, permit, certificate, or other condition for the construction or operation of the Project, subject to the Commission's ongoing jurisdiction.
- B5. To the extent required in connection with the delivery of oversized components, supplies, or equipment for the Project, the Certificate Holder or its suppliers shall obtain any required permits from applicable State or local agencies, including New York State Department of Transportation ("NYSDOT") and NYCDOT, subject to the ongoing jurisdiction of the Commission. Oversized delivery of cable and other materials for the Project are expected to be transported primarily via marine transportation, but as applicable, oversized deliveries transported over land shall be coordinated with NYSDOT, NYCDOT, and other local jurisdictions, as appropriate, and will occur in accordance with traffic controls specified herein and in the EM&CP for the applicable Segment to minimize, to the extent practical, disruption of traffic.
- B6. The Certificate Holder will apply for certain enumerated local regulatory permits and approvals listed in the Revised Exhibit 7 of the Application as filed with the Public Service Commission in Case 21-T-0366<sup>1</sup> which would be applicable to construction and operation of those portions of the Project located within the boundaries of the City of New York in the absence of PSL § 130. The Certificate Holder will comply with the substantive provisions of all local laws, New York City Administrative Code, and Rules of the City of New York, including the New York City Zoning Resolution, except to the extent of any waivers granted by the Commission.
- B7. The Certificate Holder shall obtain the services of a professional engineer licensed in the State of New York to inspect the Project prior to the commencement of operation to ensure that it complies with the New York City Construction Code to the extent applicable under this Certificate.

**C. ENVIRONMENTAL MANAGEMENT AND CONSTRUCTION PLAN PROCESS**

- C1. The following conditions will be applicable for each Segment of the EM&CP.
- C2. The Certificate Holder shall file a copy of the EM&CP with the Secretary for approval by the Commission. Contemporaneously with the submission and service of the EM&CP, Certificate Holder shall provide notice, in the manner specified below, that the EM&CP has been filed ("EM&CP Filing Notice"). In addition, the Certificate Holder shall provide copies of the EM&CP as follows:
  - a. Three (3) hard copies and one (1) electronic copy (USB drive) to the Secretary and City of New York;

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<sup>1</sup> See Case 21-T-0366, Revised Exhibit 7, Dated August 15, 2023, DMM #21-01462.

- b. One (1) hard copy to: (i) the Commissioner of the New York State Department of Environmental Conservation (“NYSDEC”); (ii) the Commissioner of the New York State Office of Parks, Recreation and Historic Preservation (“OPRHP”); (iii) the Commissioner of the NYSDOT; (iv) Con Edison; and (v) the Commissioner of the New York City Department of Environmental Protection (“NYCDEP”);
  - c. One (1) electronic (USB drive) to NYSDEC’s Division of Environmental Permits, Bureau of Energy Project Management, in Albany, and to the Secretary of State of the State of New York (“NYSDOS”);
  - d. One (1) electronic (USB drive) and one (1) hard copy to the Executive Director of the Long Island Commercial Fishing Association (“LICFA”)
  - e. One (1) hard copy to any other New York State agency (and its relevant regional offices) that requests the document;
  - f. One (1) electronic copy (USB drive) on all parties on the service list for Case 21-T-0366 who request such document; and
  - g. One (1) hard copy for inspection by the public in at least one (1) public library or other convenient location in Brooklyn, New York.
- C3. The Certificate Holder shall serve a copy of the EM&CP Filing Notice on all parties to this proceeding and on persons who own (or reside at, if different from owners) properties that are crossed by or abut against the Project Area. Further, the Certificate Holder shall contemporaneously publish the EM&CP Filing Notice in a newspaper of general circulation in the vicinity of the Project.
- C4. The written EM&CP Filing Notice and the newspaper notice(s) shall contain, at a minimum, the following:
- a. a statement that the EM&CP has been filed;
  - b. a general description of the Project, the need for the Project, and of the proposed EM&CP;
  - c. a listing of the locations and website where the proposed EM&CP is available for public inspection;
  - d. a statement that any person desiring additional information about a specific geographical location or specific subject may request such information from the Certificate Holder;
  - e. the name, address, email, and toll-free or local telephone numbers of the Certificate Holder’s representative;
  - f. the email and postal address of the Secretary and the New York State Department of Public Service (“DPS”) Document Management and Matter system; and
  - g. a statement that any person may be heard by the Commission on any matter or objection regarding the proposed EM&CP by filing written comments with the Secretary within thirty (30) days of the EM&CP filing date or within thirty (30) days of the date of the newspaper notice, whichever is later. Comments on subsequent revisions to the EM&CP,

in response to the aforementioned written comments, shall be permitted within fifteen (15) days of service by electronic means of said revisions.

- C5. The Certificate Holder shall submit to the Secretary a certificate of service with supporting affidavit indicating upon whom all EM&CP documents and EM&CP Filing Notices were served along with a copy of the EM&CP Filing Notice within five (5) business days after the proposed EM&CP is filed, and shall be a condition precedent to approval of the EM&CP. When available, the Certificate Holder shall file with the Secretary proof of newspaper publication of a copy of the EM&CP Filing Notice.
- C6. The Certificate Holder shall follow the following procedures for any proposed amendments to the EM&CP:
- a. The Certificate Holder shall report any proposed changes to the approved EM&CP to DPS Staff. Any proposed changes to the approved EM&CP that will not result in an increase in adverse environmental impacts or are not directly related to contested issues decided by the presiding Administrative Law Judge or the Commission during the proceeding (“minor change”) may in consultation with the DPS Compliance Staff be approved in writing by the Deputy Director or Chief of Environmental Certification and Compliance of the Office of Electric, System Planning and Performance (ESPP), or their designee. DPS Staff will refer all proposed changes that will result in an increase in adverse environmental impacts or are directly related to contested issues decided by the presiding Administrative Law Judge or the Commission during the proceeding (“major change”) to the Commission for approval.
  - b. Upon being advised that DPS Staff will refer a proposed change to the Commission, the Certificate Holder shall serve written notice(s) of the filing of proposed changes to the EM&CP in accordance with Condition C2: (i) on all parties to this proceeding; (ii) on all statutory parties to this proceeding; (iii) on all persons required to be served with the Application by statute or regulation; (iv) on persons who own properties that are crossed by or abut against the Project Area; and (v) as set forth in the Mariner Notification and Public Input Process in Appendix G and shall attach a copy of the notice to each copy of the filing.
  - c. The notice shall describe the original conditions and the requested change and include any documents supporting the request. Where DPS Staff refers the proposed change to the Commission, the notice shall also state that persons may comment by writing or calling (followed by written confirmation) to the Commission within twenty-one (21) days of the notification date. Any delay in receipt of written confirmation will not delay Commission action on the proposed change.
  - d. The Certificate Holder shall not execute any proposed change until the Certificate Holder has received oral or written approval, except in emergency situations threatening personal injury, property, or severe adverse environmental impact. Any oral approval from DPS Staff will be followed by written approval from the Director of ESPP, or their designee, or the Commission.



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**D. PUBLIC HEALTH AND SAFETY**

- D1. The Certificate Holder shall design, engineer, and construct the Project such that its operation shall comply with the electric and magnetic field (“EMF”) guidelines and standards established by the Commission in Opinion No. 78-13, issued June 19, 1978, and the Statement of Interim Policy on Magnetic Fields of Major Electric Transmission Facilities, issued September 11, 1990 or the Commission’s most recent electric and magnetic field guidelines and standards in effect at the time the Commission grants the Certificate.
- D2. The Certificate Holder shall engineer and construct the Project to be compatible with the operation and maintenance of any nearby electric, gas, telecommunication, water, sewer, and related facilities; details of such other facilities and measures to protect the integrity, operation, and maintenance of those facilities shall be presented in the EM&CP for the applicable Segment. The EM&CP for the applicable Segment will identify details of nearby electric, gas, telecommunication, water, wastewater, steam, sewer, and related facilities (whether underground, aboveground, or underwater), as well as measures to protect the integrity, operation, and maintenance of those facilities. The EM&CP for the applicable Segment will also explain the safety procedures that will be implemented during construction of the Project.
- D3. The Certificate Holder shall keep the Fire Department of the City of New York (“FDNY”) and New York City Emergency Management (“NYCEM”), and DPS Staff apprised of the presence of on-site hazardous chemicals and waste. Procedures for the handling of any hazardous chemicals and waste are detailed in Section V, below.
- D4. The Certificate Holder shall comply with the requirements for the protection of underground facilities set forth in 16 New York Code of Rules and Regulations (“NYCRR”) Part 753 “Protection of Underground Facilities.”
- D5. The Certificate Holder shall have the right to require that any person seeking to access the Project first be appropriately trained in environmental protection and worksite safety. The Certificate Holder will provide site inspectors and scheduled visitors with appropriate personal protective equipment for any tours of the Project. This may include a properly fitted, currently valid hardhat, safety glasses with side shields and high visibility vest at any time while on site, unless the visitor is in a vehicle or in a construction trailer. The Certificate Holder may require site inspectors and scheduled visitors to comply with all safety and security requirements, including supplying their own steel or ceramic toed boots to the extent necessary.
- D6. The Certificate Holder will provide periodic training sessions upon request by the FDNY, to review the procedures and protocols necessary to safely respond to emergency events at the onshore facilities. The Certificate Holder shall coordinate with Con Edison to ensure that such training includes procedures and protocols for emergency events at the existing facilities adjacent to the Project’s onshore facilities.
- D7. The Certificate Holder shall require its contractors or subcontractors to give an on-site tailboard safety briefing to site inspectors/visitors prior to any safety inspectors/visitors entering the Project site.

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- D8. Any stop work order made in accordance with these Certificate Conditions will be immediately complied with, subject only to any actions needed to (i) obey safety procedures, and (ii) avoid or prevent imminent harm to life, property, the environment or any structure.
  - D9. The Certificate Holder will comply with 46 U.S. Code § 70114 requirements for Automatic Information System (AIS) tracking, and all construction and operations vessels associated with the Project will be equipped with working AIS transceivers. AIS systems will be turned on during vessel operations and transit.

## **E. NOTICES AND PUBLIC COMMENTS**

- E1. The Certificate Holder will facilitate the submission of comments through the use of a dedicated contact person. The Certificate Holder shall make available to the public a toll-free or local phone number of an agent or employee who will, for the duration of construction of the Project, be available to receive inquiries or complaints from the public about the construction of the Project, and such agent or employee must respond with acknowledgement of receipt to the commenter within one (1) business day. The toll-free or local phone number shall include a recorded outgoing message that will, when a call is not answered by a person, provide the caller with: (i) the number to be called at any time in case of emergency, (ii) when the caller can expect a return call, (iii) the phone number and email address of the Secretary, and (iv) the phone number of the DPS Environmental Certification and Compliance (“EC&C”) Section.
- E2. The Certificate Holder’s Project website shall provide a means for the public to communicate questions and concerns to the Certificate Holder about the Project (*e.g.*, to register complaints or ask questions) through either a direct link to a comment form or email or by providing the contact information (phone and/or email address) of a representative of the Certificate Holder. The Certificate Holder shall post construction notices and other publicly relevant information (*e.g.* night-time work, traffic information) to the Project website. The Project website shall allow users to subscribe (or unsubscribe) to an electronic mailing list for Project update notifications.
- E3. The Certificate Holder shall create a Complaint Management and Resolution Plan to be included as part of the EM&CP. The Complaint Management and Resolution Plan shall:
  - a. Identify and include procedures for filing a complaint (*e.g.* by telephone, email, website, mail, or in-person) including any protocols that may be unique based on the type of complaint (*e.g.* noise, marine) and the steps the Certificate Holder will take if the complaint remains unresolved. The Plan shall also include a description of how the complaint process will be communicated to the public (*i.e.* via the Project website, community meetings, NOI to Commence Construction, etc.) including how these procedures correspond to the notifications required in Appendix G, as well as copies of any public materials informing potential complainants how or when to contact the Certificate Holder to file a complaint.
  - b. Require the Certificate Holder to retain, for a period of five (5) years, electronic copies of: (i) the telephone logs for any calls made to the Project’s toll-free number; and (ii) any submission to the Project email/website. Such records shall be made available to DPS

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Staff, the NYSDEC, NYSDOS, and the City upon request. A copy of a blank complaint form and log form will be included in the Complaint Plan.

- c. Require the Certificate Holder to report to DPS Staff and NYSDEC every complaint, and describe the actions taken to address the complaint, within ten (10) business days after receipt of the complaint. Where the complainant provides contact information, require Certificate Holder to inform the complainant of actions Certificate Holder is taking to address the complaint.
- E4. The Certificate Holder shall comply with the following Notice of Intent to Commence Work (“Construction NOI”) requirements:
- a. No less than fourteen (14) days before commencing construction, the Certificate Holder shall:
    - i. Provide the Construction NOI to DPS Staff, the NYSDEC, NYSDOS, NYCDEP, New York City Department of Small Business Services (“NYCSBS”), NYCEM, and NYCDOT;
    - ii. Provide the Construction NOI to the Brooklyn Borough President, State and local legislators, and Community Boards which represent the communities in which construction will occur;
    - iii. Provide the Construction NOI to Con Edison and any other affected utilities;
    - iv. Provide the Construction NOI for dissemination to local media, including newspaper or newspapers of general circulation in the vicinity of the Project and a free publication or publications in the vicinity of the Project, and display in public places, including but not limited to the Brooklyn Public Library; Red Hook Branch, Flatbush Branch, Sunset Park Interim Branch, Park Slope Branch, and Bay Ridge Branch.
    - v. Provide Construction NOI as set forth in the Mariner Notification and Public Input Process in Appendix G.
  - b. Provide the Construction NOI to persons who own properties (or reside at such properties, if different from owners) that are crossed by or abut against the Project Area. The Certificate Holder shall give such notices by affixing them to the doors of residences or by mailing the notices via United States Postal Service Mail. The Certificate Holder shall file a copy of the generic form of the Construction NOI to the Secretary prior to the commencement of construction and shall post the same to the Project website.
  - c. The Construction NOI shall be written in language reasonably understandable to the average person and shall contain:
    - i. a map, including nautical maps with coordinates, and a description of the Project;
    - ii. the anticipated date for start of construction;

- iii. the name, address, local or toll-free telephone number, and e-mail address of an employee or agent of the Certificate Holder who will be available to receive complaints, if any, from the public about the construction of the Project;
  - iv. a description of where to get more information about the Project including the Project website address and the location of document repositories; and
  - v. a statement that construction of the Project is under the jurisdiction of the Commission, which is responsible for enforcing compliance with environmental and construction conditions, and which may be contacted at an address and telephone number to be provided in the NOI.
- E5. The following pre-construction meeting requirements shall apply to the Certificate Holder:
- a. At least fourteen (14) days prior to the Commencement of Construction, the Certificate Holder shall hold a preconstruction meeting. An agenda, location, date, and invitation list shall be agreed upon among DPS Staff, New York City Office of Environmental Coordination, and the Certificate Holder. The Certificate Holder shall consult with NYSDEC prior to finalizing the date of the meeting. The Certificate Holder shall provide notice of the meeting to all invitees at least ten (10) days prior to the meeting date;
  - b. Maps showing designated travel routes, construction worker parking and access road locations and a general project schedule will be available at the meeting for the attendees;
  - c. The invitation list shall include at a minimum the contractors, DPS Staff, NYSDEC, New York State Department of Agriculture and Markets (“NYSAGM”), NYSDOS, LICFA, the City, and Con Edison representatives; and
  - d. The Certificate Holder shall supply draft minutes from this meeting to all attendees, the attendees may offer corrections or comments, which the Certificate Holder will consider in good faith, and the Certificate Holder shall issue the finalized meeting minutes to all attendees and invitees.
- E6. The Certificate Holder shall provide contractors providing services for construction of the Project with complete copies, including any amendments and modifications, of the Certificate, the EM&CP, the Order(s) approving the EM&CP, any permit issued pursuant to Section 404 of the Federal Clean Water Act, the Section 401 Water Quality Certification, and the federal consistency decision issued pursuant to the federal Coastal Zone Management Act. If, for any reason, the construction contractor cannot finish the construction of the Project, and a new construction contractor is needed, the Certificate Holder shall hold another pre-construction meeting using the same format as outlined above.
- E7. At least fourteen (14) days (or as authorized by DPS Staff) before construction of the onshore interconnection cable route begins in any area, the Certificate Holder shall, in such area: (a) delineate both edges of the onshore interconnection cable corridor, as certified; (b) mark, stake and/or flag all access roads and all work pads and pulling pads for the interconnection cable corridor; and (c) notify DPS Staff, NYSDEC, NYCDEP, and NYCDOT when the above-described field mark-out is complete in such area.

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- E8. For public notification purposes to the mariners and fishermen licensed by NYSDEC (hereinafter referred to as “NYSDEC-Licensed Fishermen”), the Certificate Holder shall adhere to the public input processes laid out in Appendix G to the Joint Proposal in this proceeding (Mariner Notification and Public Input Process).
- E9. During construction, the Certificate Holder shall provide DPS Staff and NYSDEC, with bi-weekly status reports transmitted by electronic mail summarizing construction and indicating construction activities and locations scheduled for the following thirty (30) days.
- E10. The Certificate Holder shall notify the public, mariners, NYCDEP, NYCDOT, United States Coast Guard Waterways Management Office, recreational fishermen, and NYSDEC-Licensed Fishermen of: (i) all cable protection measure locations (including coordinates and protection type); (ii) any areas where the minimum Target Burial Depth (defined in Condition J2) is six (6) ft and where the post-installation burial depth is less than Target Burial Depth ft; (iii) any areas where the minimum Target Burial Depth is fifteen (15) ft below the existing depth or the authorized dredge depth within federally maintained channels and anchorages, and where the post-installation burial depth is less than twelve (12) ft below the existing depth or the authorized dredge depth; (iv) location of cables that deviate outside of the NYSOGS easement(s); and (v) any other potential obstructions caused and/or created by the Project (i.e., relocated boulders) with coordinates and corresponding nautical charts on the Project website, which shall include an accessible graphic/geo-referenced repository for all such information. Such notification will be provided as set forth in the Mariner Notification and Public Input Process in Appendix G. Certificate Holder shall provide such notice as soon as possible, but no later than fifteen (15) calendar days of each occurrence of (i) through (iii).
- E11. The Certificate Holder shall notify the Secretary no later than ten (10) days after the date on which the Project has achieved commercial operation, defined as the date on which energy is sold in commercial quantities, excluding test energy, and is transmitted through the Project (“Commercial Operation Date” or “Commercial Operation”).
- E12. Final restoration of the Project site may occur in phases in order to comply with required work windows and other restrictions. Where final restoration will not occur until a subsequent construction phase, the area shall be stabilized until final restoration can be achieved. Within ten (10) days of the completion of final restoration for any Segment of the Project, the Certificate Holder shall file notice with the Secretary that all restoration for that Segment has been completed in compliance with this Certificate and the EM&CP for the applicable Segment and shall demonstrate that all other locations have been stabilized until the commencement of the following phase of construction. The Certificate Holder shall periodically monitor the site during the non-construction season to ensure that areas that have not achieved final restoration remain adequately stabilized. The timing of such periodic monitoring shall be described in the EM&CP for the applicable Segment. Corrective measures shall be implemented as soon as practicable for any locations where stabilization is observed to be inadequate.
- E13. The Certificate Holder shall file with the Secretary as-built drawings and shapefiles of the Project certified by a Professional Engineer that is licensed in New York State within one hundred and twenty (120) days following achievement of Commercial Operation. Within one

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hundred twenty (120) days of Commercial Operation, the Certificate Holder shall submit to DPS Staff, NYSDEC, NYSDOS, and the City as-built drawings and shapefile data providing final elevations of the cable and seabed and actual burial depth of the cable. To the extent that the drawings and shapefiles contain Critical Energy Infrastructure Information, they shall only be provided to the Commission's Records Access Officer.

## **F. OVERSIGHT AND SUPERVISION**

- F1. During construction, the Certificate Holder shall retain at least five (5) individual monitors for Project oversight, as follows:
- a. One (1) independent, third-party consultant will be assigned as an environmental monitor ("Environmental Monitor") to the Project for any onshore facility work activities (during or after normal hours) that require environmental monitoring, subject to Condition F3. The environmental monitor may also function as the Stormwater Pollution Prevention Plan ("SWPPP") inspector ("SWPPP Inspector"). The Certificate Holder must assign at least one additional environmental monitor(s) for the duration of all in-water work ("Aquatic Environmental Monitor") to the extent such work is undertaken simultaneously with onshore facility construction activities that also require the presence of an environmental monitor.
  - b. One (1) construction supervisor assigned full-time to the Project;
  - c. One (1) safety inspector who will inspect the work site full time;
  - d. One (1) quality assurance inspector who will inspect the work site full time; and
  - e. One (1) independent, third-party fishing interests monitor ("Fishing Monitor") who will be on-site during in-water construction activities.
- F2. As an update to or to the extent not already included in Appendix E, thirty (30) calendar days in advance of Project Commencement of Construction, the Certificate Holder shall provide an Environmental Compliance Plan regarding the environmental monitor to DPS Staff and NYSDEC for review and acceptance. Upon acceptance by DPS Staff and NYSDEC, the Certificate Holder shall provide a copy of the Environmental Compliance Plan to NYCDEP and LICFA. The Environmental Compliance Plan must include the following information:
- a. The Environmental Monitor(s) responsible for compliance with this condition, including:
    - i. Names, titles, responsibilities, training, years of relevant experience, and licensing (including, but not limited to, the Environmental Monitor's qualifications that shall satisfy those of a "Qualified Inspector" pursuant to the State Pollutant Discharge Elimination System ["SPDES"] General Permit); and
    - ii. Organization structure, including specific names, duties, and responsibilities.
  - b. Certification confirming the independence of the Environmental Monitor(s) from the Certificate Holder.
  - c. The procedures established to ensure compliance with the Certificate and the applicable Environmental Conservation Law ("ECL") provisions and implementing regulations.

- d. Environmental compliance tracking and reporting procedures, including:
    - i. Checklist of matters to inspect for compliance, including specific items or locations to be inspected and acceptability criteria to be applied by the environmental monitor(s);
    - ii. Purpose and frequency of reports;
    - iii. Environmental compliance schedule;
    - iv. Methods of reporting non-compliance with Certificate Conditions and the ECL and implementing regulations; and
    - v. Quality Assurance/Quality Control (“QA/QC”) procedures for environmental compliance.
  - e. Procedure for the Certificate Holder to respond to and correct problems found by the environmental monitors.
- F3. During periods of relative inactivity on the Project, after consultation with and acceptance from DPS Staff, the Certificate Holder may temporarily decrease the number of hours worked by Project oversight personnel and the extent of their presence at the Project site commensurate with the decline in Project activity. Likewise, during periods of relatively high activity on the Facility, the number of inspectors and the extent of their presence at the Project site may be temporarily increased commensurate with the increase in activity levels. The Certificate Holder shall ensure that the frequency of inspections by the Environmental Monitor(s) comply with the requirements of the SPDES General Permit.
- F4. Subject to Condition F8, the Environmental Monitor(s) shall have stop work authority over aspects of the Project that could violate the terms of the Certificate, EM&CP, or § 401 Water Quality Certification.
- F5. The Certificate Holder shall provide to DPS Staff, NYCDEP, and NYCEM the cell phone numbers and weekly schedules of the Certificate Holder’s Environmental Monitor(s), Fishing Monitor(s), safety inspector, quality assurance inspector, and construction supervisor(s).
- F6. The Environmental Monitor(s), Fishing Monitor(s) and construction supervisor(s) shall be equipped with sufficient documentation, transportation, and communication equipment to effectively monitor contractor compliance with the provisions of this Certificate, applicable sections of the PSL, ECL, the EM&CP, every Commission order issued in this proceeding, City Rules and Codes, and the § 401 Water Quality Certification.
- F7. Subject to the requirements of Conditions D5 and D7, NYSDEC, NYSDOS, and City representatives shall be permitted scheduled visits to the Project site.
- F8. The authority granted in the Certificate and any subsequent order(s) in this proceeding is subject to the following conditions necessary to ensure compliance with such order(s):
- a. The Certificate Holder shall regard DPS Staff representatives (authorized pursuant to PSL § 8) as the Commission’s designated representatives in the field. In the event of any emergency resulting from the specific construction or maintenance activities that violate

or may violate the terms of the Certificate or any other order in this proceeding, such DPS Staff representatives may issue a stop-work order for that location or activity.

- b. A stop-work order shall expire in twenty-four (24) hours unless confirmed by a single Commissioner. If a stop-work order is confirmed, the Certificate Holder may seek reconsideration from the confirming Commissioner or all Commissioners. If the emergency prompting the issuance of a stop-work order is resolved to the satisfaction of the Commissioner or the Commission, the stop-work order will be lifted. If the emergency has not been satisfactorily resolved, the stop-work order will remain in effect.
- c. Stop-work authority will be exercised with due regard to environmental impacts, economic costs involved, public health and safety, possible impact on construction activities, and whether an applicable statute or regulation is violated. Before exercising such authority, DPS Staff representatives will, wherever practicable, consult with the Certificate Holder representatives possessing comparable authority. Within reasonable time constraints, all attempts will be made to address any issue and resolve any dispute in the field. In the event the dispute cannot be resolved, the matter will be immediately brought to the attention of the Certificate Holder, the project manager, and the Director of ESPP. In the event that a DPS Staff representative issues a stop-work order, neither the Certificate Holder nor the contractor will be prevented from undertaking any such safety-related activities as they deem necessary and appropriate under the circumstances. The issuance of a stop-work order or implementation of measures, as described below, may be directed at the sole discretion of the DPS Staff representative during these consultations.
- d. If a DPS Staff representative discovers that a specific activity is a significant environmental threat that is, or may immediately become, a violation of the Certificate, Water Quality Certification, or any other order in this proceeding, the DPS Staff representative may—in the absence of responsible Certificate Holder supervisory personnel or the presence of such personnel who, after consultation with the DPS Staff representative, refuse to take appropriate action—direct the field crews to stop the specific environmentally harmful activity immediately. If responsible Certificate Holder personnel are not on site, the DPS Staff representative will immediately thereafter inform the supervisor and/or environmental monitor of the action taken. The DPS Staff representative may lift the stop-work directive if the situation prompting its issuance is resolved.
- e. If the DPS Staff representative determines that a significant threat exists such that protection of the public or the environment at a particular location requires the immediate implementation of specific measures, the DPS Staff representative may, in the absence of responsible Certificate Holder supervisory personnel, or in the presence of such personnel who, after consultation with the Staff representative, refuse to take appropriate action, direct the Certificate Holder or its contractors to implement corrective measures. The field crews shall comply with the DPS Staff representative directive immediately. The DPS Staff representative will immediately thereafter inform the Certificate Holder's supervisor or environmental monitor of the action taken.



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- F9. The Certificate Holder shall organize and conduct site compliance audit inspections for DPS Staff, NYSDEC, and the City as needed, but not less frequently than once per month during the construction and restoration phases of the Project. Inspections shall conclude upon the final sign-off of the SWPPP by the SWPPP Inspector.
- a. The inspection shall include a review of the status of compliance with all certification conditions, requirements, and commitments, as well as a field review of the Project site, if necessary. The inspection shall also include:
    - i. Review of all complaints received, and their proposed or actual resolutions;
    - ii. Review of any significant comments, concerns, or suggestions made by the public, local governments, or other agencies;
    - iii. Review of the status of the Project in relation to the overall schedule established prior to the commencement of construction; and
    - iv. Other items the Certificate Holder or DPS Staff consider appropriate.
  - b. The Certificate Holder shall provide draft minutes of the inspection audit and/or meeting, including resolution of issues and additional measures to be taken, to all attendees for corrections or comments. Thereafter, the Certificate Holder shall issue to DPS Staff, NYSDEC, and the City the final written record of the results of the inspection audit as part of its scheduled construction update reports, describing resolution of issues and additional measures to be taken.

**G. CONTRACTORS AND SUPPLIES**

- G1. The Certificate Holder shall notify all contractors that the Commission may seek to recover penalties for violation of the Certificate, not only from the Certificate Holder, but also from its contractors, and that contractors may also be liable for other fines, penalties, and environmental damage caused by their actions.
- G2. The Certificate Holder's employees, contractors, and subcontractors assigned to the construction of the Project shall be properly trained in their respective responsibilities.
- G3. At least fourteen (14) days prior to Commencement of Construction, the Certificate Holder shall file a report with the Secretary confirming that required construction materials are available. For purposes of this paragraph, an item of construction material is available: (i) if it is located at a staging area or laydown yard; (ii) if it is in a Certificate Holder warehouse or other routine Certificate Holder inventory stocking location; or (iii) if it is on order from a vendor with a scheduled delivery date prior to the time scheduled for its use in the Project.
- G4. All equipment shall be located at the staging area(s), laydown yard(s), in construction workspace or on the Project corridor, provided, however, that if a local contractor is used for the work, the local contractor's facility shall be considered as a staging area or laydown yard.
- G5. If an accident occurs in connection with work on the Project, the Certificate Holder shall report any such accident to DPS Staff as soon as possible, but no later than twenty-four (24) hours

after Certificate Holder becomes aware of such accident. A copy of the accident report, if any, shall be provided to DPS Staff and the City after it has been finalized.

- G6. If a contractor installs materials, structures, or components that do not meet or exceed the specifications for the same described in the EM&CP for the applicable Segment, the Certificate Holder shall, within thirty (30) days after becoming aware of such deviation, prepare and deliver to DPS Staff a summary report detailing the deviation and the steps to be, or that have been, taken to address the deviation.
- G7. The Certificate Holder shall develop a quality control plan (“Quality Control Plan”) for inclusion in the EM&CP describing how it will ensure that the transmission line components it purchases for the Project conform to the specification for components described in the approved EM&CP. At a minimum, the Quality Control Plan shall include: (i) the name(s) and qualifications of the individual(s) who will conduct audits under the Quality Control Plan (“Quality Control Audits”); and (ii) the frequency with which the Quality Control Audits will be performed.
- G8. Within ten (10) business days following completion of each Quality Control Audit, the Certificate Holder shall provide to DPS Staff a report of such audit that includes: (i) a description of the results of the audit, particularly with respect to results that identify that one or more components the Certificate Holder purchased for installation in the Project did not conform to the specifications for components described in the approved EM&CP; and (ii) any notes pertinent to the subject matter of such audit which were made at audit meetings by Certificate Holder personnel and/or contractors who performed the audit.
- G9. If any Quality Control Audit conducted by the Certificate Holder identifies that one or more structures or components the Certificate Holder purchased for installation in the Project did not conform to the specification for components described in the approved EM&CP, the Certificate Holder shall: (i) provide written notification to the Secretary within not more than seventy-two (72) hours of the Certificate Holder’s discovery of such non-conformity; and (ii) describe the steps the Certificate Holder will take to correct the non-conformity, including whether any components must be dismantled and returned to the manufacturer.
- G10. The Certificate Holder shall avoid direct disturbance to properties by accessing the Project from existing roadways or off-right-of-way (“ROW”) access roads as identified in the EM&CP for the applicable Segment. Parking for Project construction workers shall be in designated areas that do not interfere with normal traffic, cause a safety hazard, or interfere with existing land uses, including public access and recreation. The Certificate Holder shall minimize vehicles traveling to the Project Area and on-street parking for workers where practicable.

## **H. INFRASTRUCTURE CROSSINGS**

- H1. As discussed in Condition D2, the Certificate Holder shall engineer and construct the Project to be compatible with the operation and maintenance of nearby (within 300 feet of the submarine export cable corridor where the infrastructure is located offshore, or within the same right-of-way where the infrastructure is located onshore) infrastructure including, but not limited to, electric, gas and petroleum products, telecommunication, water, sewer, and

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related facilities (whether underground, aboveground or underwater) (“Third-Party Infrastructure”). In order to maintain and protect the integrity, operation, and maintenance of the Third-Party Infrastructure, the Certificate Holder will use good faith efforts to enter into a bi-lateral infrastructure crossing, encroachment, cost reimbursement or other agreement (collectively “Crossing Agreement”) with Third-Party Infrastructure owners or to obtain letter of no objection (“Letter of No Objection”) from Third-Party Infrastructure owners wherever the Project is expected to cross Third-Party Infrastructure or is expected to come in such proximity to Third-Party Infrastructure that Good Utility Practice, as defined in the NYISO Open Access Transmission Tariff (OATT) and as required by applicable utility specifications or requirements, would require a specific design, physical support for the integrity of the Third-Party Infrastructure and/or protection measures to be developed and implemented by Certificate Holder, or the Third-Party Infrastructure owner for the crossing or encroachment. The Letter of No Objection may set forth only reasonable conditions or specifications to be followed by the Certificate Holder, at its sole cost and expense during the construction, operation and maintenance of the Project so as to appropriately protect such Third-Party Infrastructure and to ensure the owner’s access thereto. The Certificate Holder’s plans must include pertinent studies, calculations, tests, results, explanations, protocols, drawings, proposed construction schedules, and other documents which demonstrate or support the Certificate Holder’s position that the Third-Party Infrastructure will be appropriately protected and deleterious impacts will be avoided.

- a. The Certificate Holder shall submit to the Commission as part of the applicable EM&CP Segment filing, a report detailing:
  - i. A figure or map detailing all utility crossings and the associated utilities within the Project corridor;
  - ii. A listing of all utility crossings with the associated Crossing Agreement and/or Letter of No Objection for each;
  - iii. For each and any utilities where the Certificate Holder has not or cannot obtain a Crossing Agreement and/or Letter of No Objection, a detailed explanation of the good faith efforts made to obtain a Crossing Agreement or Letter of No Objection;
  - iv. Details of Third-Party Infrastructure, as well as measures to be implemented by Certificate Holder to protect the integrity, operation, and maintenance of such Third-Party Infrastructure and to ensure owners’ access to such Third-Party Infrastructure during construction, operation and maintenance of the Project;
  - v. An explanation of the safety procedures related to Third-Party Infrastructure that will be implemented by Certificate Holder during construction, operation and maintenance of the Project;
  - vi. A demonstration that the crossings will comply with Certificate conditions and permit requirements; and
  - vii. In the instance where the Certificate Holder obtains a Letter of No Objection from a Third-Party Infrastructure owner, and if the Certificate Holder believes the Letter of No Objection includes unreasonable and burdensome requests by the Third-

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Party Infrastructure owner which are above and beyond of what is expected under Good Utility Practice, the Certificate Owner will provide a report as part of the EM&CP detailing the reasons why the Letter of No Objection is unduly burdensome. The Third-Party Infrastructure owner will be afforded a reasonable opportunity to comment within the time period as described in Certificate Condition C4.

- b. Such report to the Commission will include all proposed protections, mitigation, studies, and avoidance measures that were presented to the existing utility owner/operator and will report, if applicable, the Third-Party Infrastructure Owners' objections for not executing a Crossing Agreement or Letter of No Objection.
  - c. If a Crossing Agreement or a Letter of No Objection is not obtained at the time of EM&CP filing, the EM&CP will include a narrative detailing the Certificate Holder's good faith efforts to obtain Crossing Agreements or Letters of No Objection, or, a statement that Project construction and operations will meet the Third-Party Infrastructure owner's technical and safety requirements and all relevant technical and safety manuals to the extent the Certificate Holder believes such requirements are not overly burdensome and impracticable. The contents of a bi-lateral crossing agreement is outside of the scope of this Article VII proceeding; nonetheless, the Certificate Holder, at least thirty (30) days prior to the crossing of individual Third-Party Infrastructure, will file with the Secretary to the Commission, the executed Crossing Agreement or Letter of No Objection, or provide an update of the Certificate Holder's good faith efforts with such Third-Party Infrastructure owners to reach a Crossing Agreement or obtain a Letter of No Objection. A limited notice to proceed from the Department of Public Service is expected to be issued within fifteen (15) days of the notification in the absence of a Crossing Agreement or a Letter of No Objection that will allow work to proceed in accordance with the details of the specific EM&CP segment as outlined in Section H1(a), above. For instances when Crossing Agreements or Letters of No Objection are not secured due to unresponsive Third-Party Infrastructure owners, the Certificate Holder shall file, prior to requesting a Notice to Proceed, a narrative describing efforts made in attempting to contact such unresponsive owners. Filing of Crossing Agreements or Letters of No Objection will also include a site plan detailing the final design as agreed upon by the Third-Party Infrastructure owner and the Certificate Holder in the Crossing Agreement or Letter of No Objection. If any designs finalized through Crossing Agreements or Letters of No Objection result in modification to the proposed location or design of the transmission route or related facilities in the EM&CP, then the Certificate Holder shall address and request approval for such changes in accordance with this Certificate and any applicable Commission regulations.
- H2. Prior to filing the EM&CP, or any segment thereof, the Certificate Holder will use good faith efforts to consult with Third-Party Infrastructure owners to discuss potential impacts arising from the construction and/or operation of the Project on Third-Party Infrastructure, including the studies required by the exercise of Good Utility Practice regarding the manner in which the Project will be designed and installed wherever they are expected to cross Third-Party Infrastructure or are expected to come in such proximity to Third-Party Infrastructure that Good Utility Practice would require a specific design to be developed.
- H3. Notwithstanding any Crossing Agreement or Letter of No Objection that may be entered into between the Certificate Holder and Third-Party Infrastructure owner, during operation of the

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Project, the Certificate Holder will provide at least thirty (30) days' prior notice to Third-Party Infrastructure owner of any planned repair, construction, or maintenance activity relating to the Project that has the potential to impact Third-Party Infrastructure and the measures the Certificate Holder will undertake, at its sole cost and expense, to prevent any impacts and/or protect the Third-Party Infrastructure. In the event there is a need for unplanned repair, construction, or maintenance activity relating to the Project that has the potential to impact Third-Party Infrastructure, the Certificate Holder will provide notice to the Third-Party Infrastructure owners immediately upon knowledge or discovery of the need for unplanned repair, construction, or maintenance activities and include the same information as stated above.

- H4. In the circumstance where a Crossing Agreement, a Letter of No Objection, or other agreement regarding the reimbursement of repair costs between the Certificate Holder and Third-Party Infrastructure owner is not reached between the Certificate Holder and a Third-Party Infrastructure owner, the Conditions of this Certificate, and specifically Condition H5 below, will govern the processes for reimbursement and/or restoration of potential damages to Third-Party Infrastructure assets. In the event the Certificate Holder has reason to believe any damage to, or adverse effect on, any Third-Party Infrastructure has occurred due to its pre-construction, construction, operations, or maintenance activities, the Certificate Holder shall notify the affected Third-Party Infrastructure owner immediately, to the extent the Certificate Holder can identify the contact information for the Third-Party Infrastructure owner, of the nature and existence of such impact, damage or effect and known facts relating to the cause thereof.
- H5. If there is no Crossing Agreement, Letter of No Objection, or other agreement regarding the reimbursement of repair costs between the Certificate Holder and Third-Party Infrastructure owners, the Certificate Holder shall reimburse such Third-Party Infrastructure owners, to the extent the Certificate Holder can identify the contact information for the Third-Party Infrastructure owners, for the reasonable costs they incur to support and protect the physical integrity of the Third Party Infrastructure, and mitigate, monitor, restore, remedy and/or repair damage to their infrastructure caused by the Certificate Holder and/or its contractors in connection with the Project, including, without limitation, any studies, surveys, testing, sampling, preliminary engineering, pre-construction activities, construction, operation, maintenance or repair of the Project, subject to the following conditions:
- a. The Certificate Holder must provide to the Third-Party Infrastructure owner and to the Department of Public of Service a written description of the scope of any support, protection, mitigation, monitoring, remedy, repair and/or restoration work required hereunder and a good faith estimate of the expected costs to be incurred by the Third-Party Infrastructure owner established under this Section H5 arising out of the Certificate Holders construction, operation and maintenance of the Project.
  - b. The affected Third-Party Infrastructure owner shall be afforded a reasonable opportunity to review and comment on the information provided by the Certificate Holder under

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subsection (a) above, and to provide the Department of Public Service and the Certificate Holder a good faith estimate of costs it expects to incur under this Section H5.

- c. The Certificate Holder must file with the Commission any agreement with the Third-Party Infrastructure owner, in a form reasonably acceptable to Third Party Infrastructure Owner, to waive any and all claims of loss of profit, indirect, incidental, special, punitive or consequential damages (Indirect Damages) arising out of or relating to the event or events causing or contributing to the damage to their infrastructure for which the Third-Party Infrastructure owner is entitled to reimbursement under this certificate condition. To the extent the Certificate Holder cannot file with the Commission an agreement with the Third-Party Infrastructure owner to waive the Indirect Damages, all parties may pursue any legal remedies they may have available as discussed under H6.
  - d. Within sixty (60) days of completion of activities for which costs are incurred under this Section H5, or a later date as agreed to between the Third-Party Infrastructure owner and the Certificate Holder, the Third-Party Infrastructure owner will tender an invoice for reimbursement of the actual costs it has incurred.
  - e. The Certificate Holder shall pay the invoice amount within thirty (30) days of receipt unless it disputes the invoice.
- H6. Nothing in this Certificate shall limit or waive any right of the Third-Party Infrastructure owner to pursue any remedy at law or equity in the event of damage to its infrastructure arising from the Project.

## **I. CONSTRUCTION AND MAINTENANCE WINDOWS AND TIMING**

- II. The Certificate Holder shall conduct onshore construction work outside the walls of buildings whose exterior walls and roof are substantially complete between 7:00 a.m. and 6:00 p.m., as required by the New York City Noise Control Code. As set forth in Exhibit 7, to the extent that certain construction phases and activities require additional work hours, the Certificate Holder may make arrangements for the extension of additional work hours with appropriate City authorities, and submit to DPS Staff a request to proceed at least 48 hours in advance if planned weekend, evening, or holiday construction becomes necessary. Staff will use appropriate efforts to respond to Certificate Holder's request in a timely manner.
- I2. Species Related Work Restrictions
  - a. No in-water seabed disturbing work, except as identified in I2(a)(i) (1)-(4) below, shall occur during the following seasonal windows:
    - i. between March 1 and June 30 and between October 1 to November 30 in any year to avoid the risk for incidental take of Atlantic and shortnose sturgeon, except as follows:
      - 1. From kilometer post (KP) 0 to KP 0.6, as shown in mapping in Appendix B of the Joint Proposal the Certificate Holder may conduct Project activities in June, October and/or November, if conducted in accordance with an Atlantic and Shortnose Sturgeon Avoidance, Monitoring and Impact Minimization Plan, including mechanical

dredging; backfill; rock protection installation; relieving platform removal; relieving platform pile removal; cable landfall trenching; installation of piles and cable landfall ducts; pre-installation debris clearance; boulder removal/relocation; cable lay and backfill; cable landfall pull-in; installation of sheet piles; work activities associated with the new bulkhead installation and new concrete deck; pre-lay mattress installation and post-lay mattress installation.

2. From KP 0.6 to the New York State boundary, as shown in mapping in Appendix B of the Joint Proposal, the Certificate Holder may conduct the following activities in October and November, if conducted in accordance with an Atlantic and Shortnose Sturgeon Avoidance, Monitoring and Impact Minimization Plan and a Net Conservation Benefit Plan (NCBP) that meets the substantive requirements of 6 NYCRR Part 182 that has been developed in consultation with and accepted by NYSDEC and DPS staff: post-lay mattress and rock protection installation.
  3. From KP 0.6 to the New York State boundary, as shown in mapping in Appendix B of the Joint Proposal, the Certificate Holder may conduct the following activities in June, if conducted in accordance with an Atlantic and Shortnose Sturgeon Avoidance, Monitoring and Impact Minimization Plan and a Net Conservation Benefit Plan (NCBP) that meets the substantive requirements of 6 NYCRR Part 182 that has been developed in consultation with and accepted by NYSDEC and DPS staff: pre-installation trials for the submarine export cables, pre-lay grapnel runs, debris clearance, and boulder removal/relocation.
    - ii. within water depths of 20 ft or less, NAVD88, between December 15 and May 31 of any year, to avoid winter flounder spawning and overwintering, unless the NYSDEC, DPS Staff and NYSDOS agree to waive this timing window on the basis of project-specific habitat surveys or mitigation measures.
  - b. The Atlantic and Shortnose Sturgeon Avoidance, Monitoring and Impact Minimization Plan and the NCBP shall be included as part of the EM&CP for the applicable Segment. The Certificate Holder shall provide the Atlantic and Shortnose Sturgeon Avoidance, Monitoring and Impact Minimization Plan to NYSDEC forty-five (45) days prior to filing of the EM&CP for the applicable Segment for NYSDEC's review and acceptance.
13. After consultation with the NYSDEC, NYSDOS and DPS Staff, the Certificate Holder may petition the Commission for a modification of any construction window limitation by filing such petition with the Secretary. Such petition shall describe the consultation efforts and results and shall include a request for a thirty (30) day public comment period. The Certificate Holder shall notify the NYCDOT Office of Construction Mitigation and Coordination of any approved modifications of the construction window.

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**J. SUBMARINE EXPORT CABLE INSTALLATION**

- J1. At least 30 days prior to the commencement of construction of the submarine export cables in the New York Harbor, Narrows, New York Bay, and Gravesend Bay, or at such other time as set by the United States Coast Guard (USCG), the Certificate Holder will discuss the details and of its final construction plans, including the submarine export cable route, construction sequence, rate of movement of its vessels, and schedule of time frames for specified waypoints or locations, with the USCG's Waterways Management Office. In coordination with and as directed by the USCG, the Certificate Holder will communicate this information to other maritime users of the New York Harbor, Narrows, New York Bay, and Gravesend Bay. Any and all subsequent changes to the planned route or construction schedule will be communicated immediately to the USCG's Waterways Management Office and maritime users of the Harbor, Narrows, and Bays identified by USCG. Before meeting with the USCG, the Certificate Holder will communicate with NYPD, FDNY, NYCDEP, NYCDOT, ferry operators, and other maritime users of the Harbor identified by USCG regarding its planned schedule of construction (i.e., the days and times when it expects to be at specified waypoints or locations) to identify and avoid or minimize any conflicts between its work and the activities of or overseen by such entities.
- J2. For the purpose of these conditions, Target Burial Depth refers to the depth of burial below the seabed (measured from top of cable) that the Certificate Holder will attempt to achieve during the installation of the submarine export cables.
- J3. Prior to the commencement of installation of the submarine export cables, the Certificate Holder will engage in certain offshore site preparation ("pre-installation activities"). Offshore site preparation shall include the following activities, which the Certificate Holder will describe in more detail (e.g., provide methods, locations, and impact minimization measures) in the EM&CP:
- a. Boulder removal, which will be minimized to the maximum extent practicable, will be conducted in accordance with Condition J8;
  - b. Prelay grapnel run;
  - c. Marine debris removal, as necessary;
  - d. UXO clearance, if necessary;
  - e. Pre-installation surveys;
  - f. Pre-sweeping through use of mass flow excavation or a dredge, where needed for sandwave leveling or utility crossings;
  - g. Utility crossing preparation;
  - h. Pre-trenching by running the cable burial equipment over portions of the route prior to cable lay, where deeper burial depths or seabed conditions may otherwise limit the ability to achieve Target Burial Depth.
- J4. Exclusive of the portion of the cable approaching the cable landfall, the Certificate Holder shall install the submarine export cables a minimum Target Burial Depth of six (6) ft below



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the existing seabed, except as described in Condition J5. Except as described in Condition J5, should the Target Burial Depth not be achieved during the initial pass of the cable installation tool that is best suited to achieve Target Burial Depth, the Certificate Holder shall perform up to two (2) additional passes with the installation tool, or other burial tool that complies with the requirements of the Certificate, unless (a) additional passes risk causing damage to the submarine export cables or the installation tool; or (b) due to geologic obstructions, additional passes would not increase the burial depth or risk causing cable exposure. The Certificate Holder shall use best efforts to micro-route the cable within the cable corridor to achieve Target Burial Depth during installation.

- J5. The Certificate Holder shall comply with burial depth requirements of United States Army Corps of Engineers- (“USACE”) issued permits for the Project and as shown in the EM&CP. The Certificate Holder shall install the submarine export cables to a minimum Target Burial Depth of fifteen (15) ft below the existing seabed or below the authorized depth in federally authorized channels, and anchorages, whichever is deeper, and where determined by the Cable Burial Risk Assessment (“CBRA”). The Certificate Holder shall make at least two (2) attempts to pre-trench the submarine export cable route, before abandoning the attempt and seeking out an alternate route. The Certificate Holder shall use best efforts to micro-route the cable within the submarine export cable siting corridor and conduct offshore site preparation described in Condition J2 to achieve Target Burial Depth during installation.
- J6. Submarine export cables will be placed in such a manner that the Project will not preclude navigation during construction, operation and maintenance, except as approved in the EM&CP and coordinated with the USCG. Vessels will be allowed to continue to move through the navigation channels safely and efficiently during construction, operation and maintenance of the Project.
- J7. When the cable siting corridor is proposed parallel to a federally authorized navigation channel at KP 6.1 to KP 8.5, the cable(s) shall be installed a lateral distance from the channel side slope that is equal to or greater than the repair bight and in a manner that maximizes the distance, to the extent practicable, from said side slope. Should the Project adversely impact contours of the federal navigation channel such that navigation is impeded, the Certificate Holder will notify DPS Staff and USACE for potential corrective action.
- J8. If boulders are not identified during pre-construction surveys but are later identified during installation, and therefore micro-routing the cable is impracticable, the Certificate Holder shall, if required to increase the likelihood of achieving Target Burial Depth, relocate any encountered boulders within sixty-five (65) ft of the planned centerline of the cable. Boulders should be placed together where possible to reduce overall area of obstruction. Where the Certificate Holder has relocated a boulder one (1) meter or more in diameter a distance of two (2) meters or more from the location where it was initially encountered, the Certificate Holder shall provide notice to mariners, recreational fishermen, and NYSDEC-Licensed Fishermen in accordance with Condition E8, *supra*.
- J9. The Certificate Holder will develop an Anchoring Plan to be provided in the EM&CP that will discuss how the use of anchoring, if any, during construction and maintenance activities will avoid and/or minimize impacts to sensitive benthic habitats (Condition J12), Recognized

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Ecological Complexes (Condition Y17), historic and archeological resources, and impacts to existing buried assets (*e.g.*, telecommunications cables, pipelines, water siphons). The Anchoring Plan will outline the parameters for the use of anchors and spuds, the limits of the anchoring corridor, and identify discrete “No Anchor” areas in the event anchoring is ultimately required. The Anchoring Plan will describe the measures that will be employed to minimize sediment disturbance caused by the anchoring during construction of the submarine export cables (*e.g.*, use of floating mooring ropes). The Certificate Holder shall provide the Anchoring Plan at least forty-five (45) days prior to filing the EM&CP to DPS Staff, NYSDOS, and NYSDEC for review and comment.

- J10. The Certificate Holder shall install the submarine export cables using either simultaneous lay and burial or pre-lay and post-burial processes. The Certificate Holder shall be permitted to conduct pre-installation activities described in Condition J2 prior to submarine export cable lay, where necessary to install the submarine export cables and achieve Target Burial Depth.
- a. The following technologies may be used, individually or in combination, for pre-sweeping, pre-trenching and to install the submarine export cables: mechanical cutter, mechanical plow, jet sled, jet trencher, vertical injector, hydraulic/suction hopper dredging, mechanical dredging and/or mass flow excavator.
- J11. The Certificate Holder will use best efforts to avoid the use of cable protection if the actual burial depth achieved provides adequate protection. In areas where seabed conditions or geologic or topographic features, or utility crossings do not allow the Certificate Holder to achieve Target Burial Depth, the Certificate Holder is authorized, but not required, to use cable protection methods. Cable protection may include tapered engineered concrete mattresses, rock bags, crushed rock, or other appropriate protection method(s). If cable protection is necessary in “non-trawlable” habitat, then the Certificate Holder shall use materials that reflect the pre-existing conditions of the benthic environment in those locations, to the extent technically feasible. The Certificate Holder shall install and maintain any necessary cable protection measures in a manner that is consistent with the objectives of Condition Y12 (*i.e.*, ability to maintain overtrawlability, minimize shifting over time, and avoids creating a discernable berm). The Certificate Holder shall not leave any portions of the cable exposed on the seabed without cable protection measures.
- J12. The Certificate Holder must avoid all known sensitive benthic habitats (*i.e.*, hard bottom habitat, commercial shellfish beds, salt marsh, submerged aquatic vegetation, and corals) when installing the cable in New York State waters. If unknown sensitive benthic habitat is encountered, the Certificate Holder will use best efforts to avoid impacts to the greatest extent practicable via micro-siting. If full avoidance is not possible, the Certificate Holder’s EM&CP and Benthic Sampling Plan, described in Condition N5, shall describe procedures for avoidance of long-term adverse impacts and to conduct benthic monitoring in the case that any previously unknown sensitive benthic habitat is encountered during construction and is unavoidable.
- J13. In-water activities shall be undertaken in a manner that minimizes the potential for interference with safe navigation and other maritime uses of the area, including but not limited to fishing

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and other maritime users identified in the Mariner Notification and Public Input Process (Appendix G).

- J14. A pre-installation trial will be conducted for any proposed jetting tools (jet sled, jet trencher, vertical injector) and mass flow excavation tools. If alternative jetting tools are proposed in the EM&CP, pre-installation trials for those tools will be included in the Pre-Installation Trial Plan. Pre-installation trials in accordance with the Pre-Installation Trial Plan must be conducted within representative sections or areas proximate to the proposed underwater cable route in NYS waters or during pre-installation activities prior to cable installation to evaluate compliance with Total Suspended Solids (“TSS”) threshold limit, turbidity, and water quality standards as defined in Condition U6 and U8. The goal of the pre-installation trial is to establish operating conditions that will minimize the suspension of in-situ sediments and contaminants during the jetting and mass flow excavation activities, consistent with the objectives of Conditions U6 and U8. The trial will include approximately one thousand (1,000) ft of operations within an area to be specified in the Pre-Installation Trial Plan that will be submitted as part of the EM&CP for the applicable Segment. The following conditions apply to pre-installation trials:
- a. Appropriate instruments will be specified in the EM&CP and used to measure water column TSS and turbidity on selected transects in the field. Companion water samples will be collected and analyzed by a NYSDOH Environmental Laboratory Approval Program (“ELAP”) certified laboratory for TSS;
  - b. Samples of TSS and constituents listed in Condition U8 will be collected up-current (for baseline) and at the edge of the mixing zone down-current of the pre-installation trial, at three-interval depths (near surface, mid-depth, and near bottom); the mixing zone shall be as defined in Condition U2 and the Suspended Sediment and Water Quality Monitoring Plan;
  - c. The Certificate Holder must work cooperatively with the Aquatic Environmental Monitor, DPS Staff and NYSDEC, to review the results of the TSS field measurements during the pre-installation trials to evaluate whether the operating conditions result in TSS concentrations that exceed the TSS threshold limit;
  - d. If the pre-installation trials demonstrate that the operating conditions result in TSS concentrations that exceed the TSS limit (100 mg/L above background concentration) established in this Certificate, the Certificate Holder must work with the Aquatic Environmental Monitor, DPS Staff and NYSDEC to evaluate and implement practicable operational modifications to the jetting or mass flow excavation tools to further reduce in-situ sediment re-suspension associated with the equipment operations. Operational controls implemented to minimize exceedances of the TSS limit will not result in the material delay of the progress of work to complete in-water installation during one construction season; and
  - e. Jetting and mass flow excavation operations may proceed after the pre-installation trial field results of the applicable equipment are submitted by the Certificate Holder to DPS Staff and NYSDEC and reviewed in real-time. Review of this information by DPS Staff and NYSDEC shall not unreasonably delay the commencement of installation of the

underwater cable system. Laboratory results from the pre-installation trial shall be submitted electronically to DPS Staff and NYSDEC as soon as possible, but no later than the 48 hours following receipt from the laboratory.

- J15. The following conditions apply if jetting or mass flow excavation technologies are used:
- a. The Certificate Holder must operate the jetting and mass flow excavation tools in accordance with the operating conditions determined through Pre-Installation Trial Plan;
  - b. If, during water quality monitoring, TSS measurements exceed the limit established in this Certificate, DPS Staff, NYSDEC, and the Aquatic Environmental Monitor shall be immediately notified. The Certificate Holder shall employ one or more of the following operational modifications as soon as possible after consultation with the Aquatic Environmental Monitor, DPS Staff and NYSDEC: changing the rate of advancement of the equipment, modifying hydraulic pressures, or implementing other reasonable operational controls that may reduce suspension of in situ sediments but not in a manner that would materially delay the progress of work to complete the in-water installation procedures. The Certificate Holder shall not be required to reduce hydraulic jetting pressures to levels which would not allow burial to the Target Burial Depth specified in the EM&CP or other permits. TSS will be measured after the operational modifications, in accordance with the procedures outlined in the Suspended Sediment and Water Quality Monitoring Plan, and communicated to the Aquatic Environmental Monitor. Measurements will include laboratory analyses of TSS, and if north of KP 15, the constituents listed in Condition U8, the results of which will be provided to DPS Staff, NYSDEC and the Aquatic Environmental Monitor; and
  - c. During implementation of feasible operational modifications, DPS Staff and NYSDEC may specify additional monitoring until compliance with the TSS limit and water quality standards is demonstrated. Samples shall be collected until resumption of routine monitoring is authorized by DPS Staff in consultation with NYSDEC.
- J16. No changes in the installation technology in Condition J10 or reduction in Target Burial Depth specified in Conditions J4 and J5 shall be allowed without prior consultation with DPS Staff and NYSDOS and a written statement from NYSDOS stating that the deviation would not result in coastal effects that differ significantly from the coastal effects reviewed by NYSDOS in Certificate Holder's original Federal Coastal Consistency Certification ("Coastal Consistency Certification"). In the event that NYSDOS determines that such deviation would result in coastal effects that differ significantly from those reviewed in the Coastal Consistency Certification, the Certificate Holder shall seek a written concurrence from NYSDOS for any such project changes that would require an amendment to the Certificate Holder's Coastal Consistency Certification. Nothing in this Certificate shall be construed to limit or expand any rights Certificate Holder may have to seek administrative or judicial review of any action or inaction by NYSDOS relating to any such deviation.

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**K. DREDGING**

- K1. The Certificate Holder shall conduct dredging activities using either mechanical dredging or hydraulic/suction hopper dredging equipment. The Certificate Holder may also use mass flow excavation, which is not a dredging activity, for pre-sweeping.
- K2. The Certificate Holder shall use mechanical dredging for dredging operations from the cable landfall to the edge of the Bay Ridge Channel, at approximately kilometer post (KP) 0.6, as shown in mapping in Appendix B of the Joint Proposal. From the Bay Ridge Channel to the New York State boundary offshore, the Certificate Holder shall minimize dredging activities and shall use mass flow excavation for pre-sweeping and utility crossing preparation to the extent practicable. If dredging is necessary, the Certificate Holder may use hydraulic/suction hopper dredging or mechanical dredging.
- K3. For all dredging operations (mechanical dredging and hydraulic/suction hopper dredging), the Certificate Holder shall:
- a. only use vessels or barges in good operating condition;
  - b. use vessels, barges or scows of solid hull construction or which are sealed;
  - c. avoid washing the gunwales of the scow except to the extent necessary to ensure the safety of workers;
  - d. conduct required water quality monitoring as described in condition U2;
  - e. not sidecast excavated dredged material;
  - f. not use a dragline for excavation; and
  - g. develop and provide a Dredge Management Plan in the EM&CP for all applicable Segments.
- K4. For mechanical dredging operations, the Certificate Holder shall:
- a. use a closed (*i.e.*, sealed) environmental (*e.g.*, clamshell) bucket with sealing gaskets or an overlapping sealed design at the jaws and seals or flaps positioned at locations of vent openings to minimize sediment suspension. Drawings and specifications of the environmental bucket must be provided to the NYSDEC Staff and DPS Staff prior to the anticipated start of dredging;
  - b. ensure that seals or flaps designed or installed at the jaws and locations of vent openings tightly cover these openings while the bucket is lifted through the water column and into the barge;
  - c. equip the closed environmental bucket with sensors to ensure complete closure of the bucket before lifting through the water;
  - d. excessive loss of water from the environmental bucket will be investigated and resolved;
  - e. operate the bucket so as to control the rate of the descent and to maximize the depth of penetration without overfilling the bucket;
  - f. control bucket retrieval rates to minimize turbidity;

- g. lower the bucket to the level of the barge gunwales prior to release of the load and place the excavated material deliberately and in a controlled manner;
  - h. bucket hoist speed shall be limited to approximately two (2) ft per second and the bucket shall be lifted in a continuous motion through the water column and into the barge;
  - i. suspend operations until any necessary repairs or replacements are made when a significant loss of water and visible sediments from the bucket is observed;
  - j. not use deck barges, unless modified to allow no barge overflow and approved by the Environmental Monitor and DPS Staff in consultation with NYSDEC;
  - k. allow no barge overflow during dredging operations;
  - l. not commence decanting of barges until approved by DPS Staff, in consultation with NYSDEC. If decanting is proposed, a plan for decanting must be included in the Dredge Management Plan in the EM&CP for the applicable segment for DPS and NYSDEC staff to review. If decanting is permitted, allow a minimum twenty-four (24) hours of settlement prior to decanting barges and ensure that decanting does not violate water quality standards or guidance values for TSS, turbidity, and contaminants;
- K5. For hydraulic/suction hopper dredging, the Certificate Holder shall:
- a. remove displaced dredged material to a barge or trailing suction hopper dredger. The dredged material will be transported for beneficial reuse or disposal at a permitted disposal facility;
  - b. The Certificate Holder shall operate the equipment so as to minimize sediment transport.
- K6. If the use of dredge material as backfill is proposed, the Certificate Holder shall submit a plan to DPS Staff and NYSDEC for review and comment. If backfilling with dredge material occurs, it must be conducted in accordance with Condition I2. The dredged material may be used as the top three (3) ft of backfill.
- K7. If the Certificate Holder cannot reuse dredged material and backfill is needed, the Certificate Holder may use clean material of similar grain size to the dredged material to the extent possible. The Certificate Holder shall consult with NYSDEC, NYSDOS, and DPS Staff on the source and grain size of such fill material prior to use and shall include the source location in the EM&CP for the applicable Segment.
- K8. Management of contaminated dredged material shall be as follows:
- a. if the material is not eligible for a Beneficial Use Determination, prior to dredging, the Certificate Holder shall identify the final dredged material disposal location, including a letter from the permitted disposal facility verifying that they will accept the material. All contaminated material shall be handled in accordance with the Hazardous Waste and Petroleum Work Plan and Materials Management Plan submitted as part of the EM&CP for the applicable Segment.
  - b. the final material disposal location shall be submitted to DPS Staff, and NYSDEC at least fourteen (14) days prior to disposal. Disposal of all material must comply with 6 NYCRR Part 360 et seq.

- c. Contaminated material may not be used as backfill.
- K9. The Environmental Monitor shall inspect all excavating and backfilling equipment prior to use and shall perform periodic inspections of all such equipment no less than once per week when in use. For mechanical dredging, the Certificate Holder shall demonstrate to the Environmental Monitor that the equipment operator has sufficient control over the bucket operation so that the sediment re-suspension from bucket contact with the bottom and bucket over-filling is minimized.
- K10. If dewatering or on-barge decanting of dredge material is proposed, the Certificate Holder shall submit a Dredge Management Plan in the EM&CP for the applicable Segment for DPS and NYSDEC staff for review and comment.
- K11. During excavation and backfill activities, the Certificate Holder shall provide to DPS Staff, NYSDEC and NYSDOS monthly progress reports that demonstrate compliance with Certificate requirements and such other information as determined necessary based on consultation with DPS Staff, NYSDEC, and NYSDOS.

**L. ONSHORE CONSTRUCTION**

- L1. The method for installation of the onshore interconnection cables within the NYCDOT ROW will be detailed in the EM&CP for the applicable Segment and comply with NYCDOT specifications. Prior to filing the EM&CP for the applicable Segment, the Certificate Holder shall consult with the NYCDOT.
- L2. The onshore interconnection cables may be installed in an underground duct bank consisting of PVC and/or PE conduits, utilizing temporary cable pull-in pits and permanent cable vaults for installation and maintenance access. Each vault will be accessible by a manhole cover visible from the surface.
- L3. The Certificate Holder shall instruct its contractors to park in designated areas, which do not interfere with normal traffic, do not cause any safety hazard or interfere with existing land uses.
- L4. The Certificate Holder shall periodically consult with the NYCDOT about traffic conditions near the Project site and shall make good faith efforts to minimize the impact of the construction of the facilities on area traffic circulation.
- L5. The Certificate Holder shall coordinate construction activities with other construction and maintenance activities taking place at the same time and in the same vicinity conducted by entities including but not limited to the federal, State and City agencies (such as Gowanus Canal dredging), SBMT, other utilities, nearby property owners, and business owners. Details of construction schedule planning and coordination with these entities and a design plan for emergency access during local road closures shall be included in the EM&CP for the applicable Segment.
- L6. The Certificate Holder shall confine construction and subsequent maintenance activities to the locations identified in Appendix B of the Joint Proposal and approved additional work areas, as detailed in the EM&CP for the applicable Segment.

- L7. The Certificate Holder shall coordinate with Con Edison to minimize outages.
- L8. The Certificate Holder shall thoroughly clear debris related to underground electric line construction within the interconnection cable corridor.
- L9. The Certificate Holder shall take appropriate measures, as outlined in the Fugitive Dust Plan in the EM&CP for the applicable Segment, to minimize fugitive dust and airborne debris from construction activities. Except where such activities may create ice, exposed soils and roadways shall be wetted as needed during extended dry periods to minimize dust generation. To the extent practicable, water for dust control shall come from municipal water supplies/sources. The Fugitive Dust Plan will be consistent with Title 15, Chapter 13 of the Rules of the City of New York. Under the NYSDEC BCP Program (DEC Site No. C224360) on the onshore substation site (as indicated in mapping in Appendix B of the Joint Proposal), the Certificate Holder shall conform to practices and procedures described in the DER-10/Technical Guidance for Site Investigation and Remediation and the NYSDOH Generic Community Air Monitoring Plan (“CAMP”), to the extent applicable.
- L10. Following construction, all Project areas shall be restored to pre-construction contours, unless the EM&CP specifies otherwise. Erosion controls and permanent vegetation shall be restored as appropriate for those locations. Disturbed pavement, curbs, and sidewalks (if applicable) shall be restored to their original preconstruction condition or improved.
- L11. The Certificate Holder shall, upon completion of construction of the Project:
  - a. Conduct an assessment of the need for additional restoration work and landscape improvements, including vegetation planting, earthwork or installed features to screen or landscape the Project with respect to road crossings, residential areas, and substations. The Certificate Holder shall consult with NYCDOT regarding any restoration work and landscape improvement assessments involving streets, sidewalks, and other public rights-of-way, and it should consult with affected landowners regarding such assessments, where applicable.
  - b. Prepare plans for any visual mitigation found necessary, and, in connection therewith, removal, rearrangement and supplementation of existing landscape improvements or plantings should be considered, as appropriate.
  - c. Present draft assessments and visual mitigation plans to DPS Staff for review and acceptance and file a final plan with the Secretary within one year after the date the Project is placed in service. Any assessments and plans that pertain to streets, sidewalks, and other public rights-of-way should also be presented to NYCDOT for review and input.
  - d. Install, as appropriate, visual mitigation measures as identified in final plans as identified in (a) through (c), above.
- L12. At the time the Certificate Holder places an order with a supplier for GIE for the Project (“Project GIE”), the Certificate Holder shall comply with all applicable laws and regulations relating to SF6 then in effect. To the extent acquired Project GIE contains SF6 (“SF6-Containing Project GIE”), the SF6-Containing Project GIE shall have an annual SF6 emission



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rate of 1% or less or be hermetically sealed<sup>2</sup>. To the extent the installation of SF6 in GIE is prohibited by applicable law or regulation that comes into effect before the Certificate Holder installs any SF6-Containing Project GIE, the Certificate Holder may avail itself of any applicable exception, variance or grandfathering provision provided for in any law or regulation applicable to SF6 in GIE.

## **M. ROADS AND TRANSPORTATION**

- M1. The Certificate Holder shall coordinate all construction work on the onshore Project Area with the appropriate State and City officials, and shall obtain the required authorization for such work, subject to the Commission's continuing jurisdiction as appropriate. The Certificate Holder shall periodically consult with NYCDOT about traffic conditions near the Project site and shall notify NYCDOT of the approximate date manhole-related work will begin within roadways under their jurisdiction.
- M2. All work zones shall be compliant with the NYSDOT Manual of Uniform Traffic Control Devices ("MUTCD") and the NYS Supplement to the National MUTCD. Per the MUTCD, the minimum lane width standard shall be 10 ft on local roads as measured from the near edge of the channelizing devices to the edge of the pavement or the outside edge of the paved shoulder.
- M3. The Certificate Holder, with respect to all work it performs on the onshore Project, shall coordinate with the NYCDOT regarding a Traffic Management Plan that details traffic management of roads under State and municipal jurisdiction. The Traffic Management Plan shall be included as part of the EM&CP for the applicable Segment. The Certificate Holder shall consult, not less than weekly, with the NYCDOT about traffic conditions near the Project site and shall implement appropriate modifications to traffic management protocols as necessary to minimize disruption to traffic circulation during construction.
- a. The Certificate Holder shall consult with the NYC Department of Education prior to the commencement of construction and will include the outcome of that consultation, as well as any traffic-related measures taken by the Certificate Holder based on that consultation, in the Traffic Management Plan.
- M4. The Certificate Holder shall not construct, improve, or use any access roads not described in the EM&CP except in the case of emergency situations. A notice of any such emergency shall be promptly filed with the Secretary.
- M5. NYCDOT shall have authority to place inspectors on site to monitor and observe the Certificate Holder's activities on local roads, or to request the presence of State or local police to ensure the safety of travelers, at such times and for such periods as NYCDOT deems appropriate. All costs thereof shall be borne by the Certificate Holder.
- M6. The Certificate Holder shall comply with the following provisions for snow and ice removal on all roads on which Project construction is occurring.

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<sup>2</sup> GIE is considered hermetically sealed when a gas tight seal is applied by the manufacturer at the factory, and the GIE is designed by the manufacturer to not be refillable by the GIE owner or a third-party designee during the expected operating life.

- a. Interference with snow plowing operations by drums, barricades, and other traffic control equipment shall be kept to a minimum. Any devices disturbed or damaged by snow and ice control operations shall be replaced and/or reset as necessary and as soon as possible by the Certificate Holder;
- b. Drainage frames, grates and covers, and other castings shall not be adjusted in a travel lane unless the final pavement course is to be placed prior to the onset of snow and ice weather. Steel plates, etc. shall not protrude above the adjacent pavement. If any of these protrusions exist in a non-travel lane prior to a snow and ice condition, then temporary asphalt ramps must be placed so that for every one (1) inch of rise, there is a six (6) -ft run of ramp;
- c. All pavement cuts shall be restored to the adjacent pavement grade to eliminate recessed areas where snow cannot be plowed or where the plows may snag; and
- d. Where the work zone traffic control schemes require installation of single or multiple runs of temporary concrete barrier, the Certificate Holder shall remove any snow remaining along the temporary barrier.

## **N. MITIGATION AND MONITORING**

- N1. The Certificate Holder shall conduct an AC Magnetic Field Study of the 60-Hertz (Hz) alternating current (AC) magnetic field associated with the operation of both onshore and offshore cables as detailed below and in a plan included as part of the EM&CP for the applicable Segment. The AC Magnetic Field Study shall occur during commercial operation of the Project and shall cover the first six (6) months after the Project has achieved full Commercial Operation (when all turbines are available for commercial operation). The AC Magnetic Field Study will establish the relationship between the wind farm-generated electrical current measured in amperes on the export cables and AC magnetic field levels. The Certificate Holder shall file a written report of the results of the AC Magnetic Field Study with the Secretary within six (6) months of the conclusion of the measurements. The AC Magnetic Field Study will include reporting on the following elements:
  - a. Sensitivity of marine species to AC fields: a tabular summary of the reported biological sensitivities of marine species common in the Project Area to AC electric and magnetic fields.
  - b. Bathymetric measurements: Post-construction bathymetric measurements will be used to locate the submarine export cables and burial depths, which will be analyzed by the Certificate Holder along with the submarine export cables' as-built configuration, installation plan and profile drawings, and maps to identify deviations that could potentially cause the cables to exceed stated cable ratings (*i.e.*, to carry long-term currents greater than stated in the Appendix F to the Application). Any such deviations shall be reported and summarized in a detailed impact assessment, including an evaluation as to whether any deviations would pose a hazard to public safety, adverse impact to marine navigation, or is demonstrated to adversely impact marine species.
  - c. Cable current flow: Monitoring of the current flow on the submarine export cables (the current flow on the onshore underground cables will be similar) for the first six months

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after full Commercial Operation. Measurements of the harmonic frequencies of AC currents flowing on the cables will be recorded monthly during this period.

- d. **Magnetic field study:** Based upon the as-built configurations and recorded current flows, the Certificate Holder will file with the Secretary a study of the magnetic field produced by the submarine export cables during the first six months of full Commercial Operation. The AC Magnetic Field Study will validate the results of Certificate Holder's Application (*i.e.*, Appendix F) by comparing the calculated levels of magnetic fields, and induced electric fields submitted in the Application to the levels of the fields determined from the as-built operational data. A statistical summary and evaluation of recorded current flow data on the cables will be part of this assessment and included in the AC Magnetic Field Study report. Representative onshore and offshore locations will be selected for the AC Magnetic Field Study:
  - i. Offshore:
    1. the locations selected for the assessment of the offshore submarine export cables will span a range of burial depths and cable configurations as identified in the post-construction bathymetric survey. Additionally, the crossing locations of existing 138-kV, 345-kV third-party submarine cables in New York Harbor, as well as the HVDC Neptune Regional Transmission System (The Neptune Cable) will be included in the assessment. The AC magnetic field modeling study based upon the as-built configurations and recorded current flows shall be provided for each representative location at 1 meter (3.28 ft) above the seabed above the centerline of one of the submarine export cables and will provide tabular and graphical representations of the AC magnetic fields (reported in units of milligauss) at one-foot intervals for horizontal distances of 0 ft up to 200 ft along transects perpendicular to the submarine export cable. Additionally, a best effort calculation will be provided for the combined magnetic field above the crossing locations of existing 138-kV and 345-kV third-party submarine cables in New York Harbor, as well as the Neptune Cable, to the extent data on such third-party cables is publicly available, can be reasonably assumed, or is provided by the third-party cable owner upon request.
    2. Field measurements of the AC magnetic field taken above representative offshore segments of the submarine export cable after energization will be included for comparison with the magnetic field assessment results consistent with the limits of the combined measurement accuracy and measurement variation. AC magnetic-field measurements will be performed, except as otherwise identified:
      - (a) along transects out to 100 ft taken to either side of the cable at up to three (3) representative locations to establish the magnetic field from the submarine export cable;
      - (b) at a minimum of one location sufficiently far from cable magnetic field sources to establish the background AC field level, and a DC measurement

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will be taken to establish the background DC field level at the same location;

(c) as close as practicable to each of the crossing locations of existing 138-kV and 345-kV AC third-party submarine cables in New York Harbor;

(d) as close as practicable to the crossing of the Neptune Cable, which will include both AC and DC magnetic field measurements; and

(e) at locations sufficiently far from the Empire wind offshore cable to characterize AC magnetic-field levels at each of the third-party cables in (c) and (d), including DC magnetic-field levels at the Neptune Cable, based on available data for the locations of the third-party cables.

All such measurements will be limited to the energy generation conditions and burial depth/configuration of the respective cables at the time of measurement.

- ii. Onshore: The representative locations selected by the Certificate Holder for assessment of the onshore export cables and interconnection cables will describe the range of the different cable configurations proposed by the Project. At each representative location, the Certificate Holder will submit measurements of the AC magnetic field before and after energization of the cable taken 1 m above ground over the centerline of the duct bank housing the onshore cables and at a horizontal distance of 12.5 ft from the centerline of the duct bank, if possible. These measurements will be performed in general accordance with applicable standards (*e.g.*, IEEE Std. 644-2019 or C95.3-2021) to confirm that the magnitudes of the calculated AC magnetic fields at each location, based upon as-built specifications and recorded AC current flow, are an accurate predictor of the measured AC magnetic field, consistent with the limits of the combined measurement accuracy and measurement variation. The measurements will be included in the AC Magnetic Field Study report.
  - e. The data collected for the AC Magnetic Field Study will be summarized in a report to be submitted by the Certificate Holder within six months after the end of monitoring of the first six months of full Commercial Operation (*i.e.*, within one year of full Commercial Operation).
- N2. The Certificate Holder shall submit, after prior consultation with DPS Staff, NYSDEC, and NYSDOS, a Cable Monitoring and Management Plan in the Operations and Maintenance Plan (“O&M Plan”) as part of the EM&CP for the applicable Segment. The Certificate Holder will comply with the measures described in the Cable Monitoring and Management Plan to maintain burial or protection of the submarine export cables. The Cable Monitoring and Management Plan shall include, at a minimum:
- a. the method for determining the actual cable location and burial depth of the submarine export cables and the timing for undertaking such efforts, including, for example, the use of distributed temperature sensing (DTS) technology;

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- b. a requirement that the Certificate Holder establish depth of burial relative to seabed and the accurate level of the seabed relative to vertical datum during post-construction survey operations. Following this, the Certificate Holder will conduct multibeam echo sounder (MBES) surveys to inspect sections of the export cables in higher risk locations as defined in the CBRA, and areas where Target Burial Depth could not be achieved and other protection measures are utilized, in Commercial Operation in: year 1, between years 2 and 3, and between years 5 and 8. Any findings from these MBES surveys will trigger a full survey of the cable system. Throughout the operational life of the Project additional MBES surveys will be conducted after storm events resulting in 1-in-100 year wave heights as will be defined in the EM&CP based on wave height, and associated temporal descriptions, and after any cable repair activity. Timing/frequency of inspections following year 8 and additional to these will be determined through application of a risk-based assessment to ensure required cable burial. This risk-based assessment will be described and detailed further in the EM&CP.
    - i. The risk-based assessment shall identify a risk to exist if the submarine export cable reaches a burial depth less than 4 ft (measured from top of cable) below the seabed for greater than 25 linear feet, in areas where the actual burial depth at the time of installation was greater than 4 ft. If this risk is identified, the Certificate Holder shall follow the process outlined in Condition N3.
  - c. a plan for remedying cable exposures within time-of-year restrictions described in Condition I2;
  - d. a plan for remedying exposures that pose a hazard to public safety, navigation, or marine resources outside of time-of-year restrictions, including avoidance and minimization techniques for T&E species;
  - e. a description of methods to maintain burial depth;
  - f. a plan for marking the location of any cable exposures; and
  - g. a plan for notifying DPS Staff and providing incident details and anticipated next steps to the Secretary in the event that a third-party anchor strikes the submarine export cables during Project operations.
- N3. The Cable Monitoring and Maintenance Plan in the O&M Plan shall specify that if the Certificate Holder finds or is alerted that the burial depth poses a hazard to public safety, navigation, or marine resources, or the integrity of the submarine export cables as per the risk-based assessment, the Certificate Holder shall undertake remedial measures including burial and/or protection measures consistent with the Certificate and approved EM&CP for the applicable Segment. Before undertaking any such remedial action, the Certificate Holder shall provide a notice to DPS Staff, NYSDOS, and NYSDEC describing its immediate and long-term plan of actions for reducing the risk to acceptable levels while minimizing impacts. The Certificate Holder shall notify mariners, recreational fishermen, and NYSDEC-Licensed Fishermen in accordance with the process set forth in Condition E8, supra.

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- a. The Cable Monitoring and Maintenance Plan shall further specify that, in the event the cable's burial depth is determined to pose a risk as defined in Condition N2 (b) (i), the Certificate Holder will consult with DPS Staff, NYSDEC, and NYSDOS and a determination will be made as to whether the cable poses an unacceptable risk to existing uses or resources per the risk-based assessment and necessitates remedial action consistent with the Certificate and approved EM&CP. Before undertaking any such remedial action, the Certificate Holder shall provide a notice describing its immediate and long-term plan of actions for reducing the risk to acceptable levels while minimizing impacts to DPS Staff, NYSDOS, and NYSDEC. The Certificate Holder shall notify mariners, recreational fishermen, and NYSDEC-Licensed Fishermen in accordance with the process set forth in Appendix G to the Joint Proposal.
- N4. The Certificate Holder shall be responsible for remedying any exposure of the submarine export cables in accordance with the Cable Monitoring and Maintenance Plan. The Certificate Holder shall begin implementing the Cable Monitoring and Maintenance Plan within a maximum of 15 days of when the Certificate Holder is notified of such submarine export cable exposure, unless the Certificate Holder files a request with the Commission to extend the start of implementation on the basis of risks to safety, the environment, or maritime operations, weather conditions, equipment availability and/or service impacts. Any such extension request will provide the reason for the extension and the anticipated repair schedule. Unless the Commission approves an extension request, if the Certificate Holder does not begin implementing the Cable Monitoring and Maintenance Plan within 15 days of the date the Certificate Holder is notified of such submarine export cable exposure, or if the Certificate Holder ceases to diligently implement the Cable Monitoring and Maintenance Plan with respect to such exposure to the reasonable satisfaction of the Commission, the appropriate letter of credit identified in Condition Z2 may be drawn upon pursuant to the terms of Condition Z2. Within 120 days of Commercial Operation, the Certificate Holder shall submit to DPS Staff, NYSDEC, NYCDOT, NYSDOS, and LICFA as-built drawings and shapefile data providing final elevations of the cable and seabed and actual burial depth of the cable and locations of any cable protection measures; also, drawings will include locations and type of cable protection measures installed along the Project.
- N5. The Certificate Holder shall include in the EM&CP for the applicable Segment a Benthic Sampling Plan that provides for one additional pre-cable installation benthic sampling survey and at least two (2) post-cable installation benthic sampling surveys for the area along the submarine export cables from the proposed cable landfall to the territorial limit of NYS waters (the "Benthic Sampling Plan"). The Benthic Sampling Plan will specify that:
- a. pre-construction sampling shall occur between August 1 and October 31, prior to construction, at intervals of one thousand (1,000) ft along the proposed centerline of the submarine export cable corridor from the shore to the territorial limit of NYS waters;
- b. the pre-construction survey shall consist of the collection and analysis of at least three (3) replicate paired images from each station collected with a Sediment Profile Imaging/Plan-View Imaging system ("SPI/PV") consistent with the techniques utilized in the Application. At each SPI/PV station a conductivity, temperature, depth sensor will be used to measure the salinity and temperature through the water column to the sediment surface.
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The temperature of the sediments will also be measured at each SPI/PV station. The SPI/PV sampling will be supplemented with three (3) replicate grab samples collected at intervals of two thousand (2,000) ft. A minimum of three (3) replicate grab samples will be analyzed and results will be summarized with metrics. The variance estimated from these data will be used in a statistical power analysis for the comparison of these metrics between pre- and post-installation time periods. Results of the statistical power analysis and estimation of ecologically meaningful difference will be presented to NYSDEC for review prior to the post-construction sampling surveys.

- c. the post-construction benthic sampling shall occur between August 1 and October 31, within twenty-four (24) months of the Project's Commercial Operation Date, in an area extending approximately one hundred (100) ft on either side of the submarine export cables. The Benthic Sampling Plan shall explain that:
  - i. during the post-construction benthic sampling, three (3) stations will be sampled with SPI/PV in a transect perpendicular to the submarine export cables at the centerline with one (1) station as close as practicable to the centerline of one of the cables and two (2) stations each approximately one hundred (100) ft on either side of both cables. Each set of stations will be at one thousand (1,000) -ft intervals from the cable landfall to the territorial limit of NYS waters. At each SPI/PV station a conductivity, temperature, depth sensor will be used to measure the salinity and temperature through the water column to the sediment surface. The temperature of the sediments will also be measured at each SPI/PV station.
  - ii. at each station, a minimum of three (3) replicate paired images shall be collected and analyzed. The SPI/PV sampling will be supplemented with two (2) grab stations with one (1) station as close as practicable to the centerline and one (1) station approximately one hundred (100) ft on the eastern side of the cable with three (3) replicate grab samples at each grab station collected at intervals of two thousand (2,000) ft. One of the replicate grab samples at each grab station will be tested, and the remaining replicates will be archived. Where analysis indicates that there is an ecologically meaningful difference with pre-installation results, the additional replicates will be analyzed. The Benthic Sampling Plan shall require that results of the pre-cable installation SPI/PV benthic sampling event and of each post-cable installation benthic sampling event shall be submitted to DPS Staff, NYSDOS and NYSDEC in a final written report, including the benthic community analysis ("BCA") within six (6) months of the completion of the sampling event.
  - iii. The Benthic Sampling Plan shall include pre- and post-installation sediment chemistry monitoring in areas of contaminated sediment from KP 15 north to the landfall. The plan shall provide that pre- and post-installation surficial sediment samples (top two centimeters) will be collected and analyzed prior to and subsequent to the completion of the in-water installation of the cable system, and that post-installation sampling shall commence as soon as practicable and in conjunction with other benthic sampling efforts. Specific methods and equipment shall be described to ensure the top two centimeters of ambient sediment are adequately collected, retained and sequestered for analysis. Samples shall be

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collected and analyzed for total arsenic, total lead, total copper, total cadmium, total mercury, total PAH, and sum of DDT, DDE, DDD and Total PCBs using a congener-specific method, as outlined in the USACE/Environmental Protection Agency (“EPA”) Regional Testing Manual for Dredged Materials, as described in NYSDEC TOGS 5.1.9. Three (3) stations will be sampled in a transect perpendicular to the submarine export cables at the centerline with one (1) station as close as practicable to the centerline of one of the cables and two (2) stations each approximately one hundred (100) ft on either side of both cables. Each set of stations will be at five thousand (5,000) -ft intervals from the cable landfall to KP 15 of the cable route, such locations to be determined after consultation with DPS Staff in consultation with NYSDEC. The Certificate Holder shall submit to the NYSDEC and DPS Staff a report which provides the analytical results and compares them to pre-installation chemical concentrations in surficial sediments located along the approved route.

- N6. The Certificate Holder shall establish a Fisheries Studies Working Group (“FSWG”) for the purposes of designing, conducting, and analyzing: (i) an appropriate study of the marine fish and invertebrates along the submarine export cable route prior to the commencement of construction; and (ii) an acoustic telemetry study of the potential AC Magnetic Frequency and thermal impacts associated with the operation of the submarine cables on behaviors and migratory patterns of commercially and ecologically important species along the submarine export cable route for (the “Fisheries Studies”). Because the as-built configurations and recording of operational current levels on the submarine export cables will allow accurate evaluation of magnetic and induced electric field levels at any time, location, and distance from the installed submarine export cables, the Certificate Holder will provide the EMF levels obtained for specific locations, days, and time of operation in conjunction with the above-referenced study to the researchers conducting the monitoring under the FSWG. The Fisheries Studies shall provide for monitoring of the composition of the pre- and post-construction nearshore fish community with a focus on species important to recreational and commercial fisheries along the submarine export cable route. A final Fisheries Studies Work Plan shall be included as part of the EM&CP for the applicable Segment. The Certificate Holder shall provide funding for five (5) study years and provide at minimum one year, and a goal of two (2) years of pre-construction data, one (1) year of data during construction, and two (2) years of data following Commercial Operation of the Project.
- a. A draft Fisheries Study Work Plan shall be developed in consultation with a select group of qualified Subject Matter Experts (“SMEs”) and scientists, which encourages use of technology and innovation as well as utilizing traditional methods as appropriate. The draft Fisheries Study Work Plan shall be presented to the FSWG for review and comment a minimum of 45 days prior to the final Fisheries Studies Work Plan being included as part of the EM&CP for the applicable Segment. The FSWG shall consist of representatives from the Certificate Holder, NYSDEC, DPS Staff, NYSDOS, LICFA, SMEs from certain marine science research institutions, and the fishing industry (“FSWG Members”). A list of the FSWG Members shall be included in the final Fisheries Studies Work Plan.



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- b. The Fisheries Studies will collect data on seasonal composition, abundance, migration patterns, and/or seasonality of fish stocks common to the area of submarine export cable route. Studies may focus on bait fish (*e.g.*, Atlantic menhaden, sand lance, bay anchovy, Atlantic and blueback herring, alewife, mullet, and longfin squid), and certain other key species (*e.g.*, winter flounder, striped bass, dogfish, skates, fluke, Atlantic cod, black sea bass and tautog. Studies specifically targeting Atlantic sturgeon may be conducted if deemed appropriate by the FSWG).
  - c. After one (1) year of data collection, the FSWG shall meet to discuss the collected data.
  - d. In all instances, the Fisheries Study data and reporting will be reviewed and analyzed by the Certificate Holder's SMEs, in consultation with the FSWG members. No more than six (6) months after the completion of two (2) years of post-construction Fisheries Studies data collection, a report analyzing the Fisheries Studies data ("Fisheries Studies Report") will be compiled by the SMEs, in consultation with the FSWG members. The FSWG shall meet to review the results of the Fisheries Studies Report and discuss potential mitigation measures. The Certificate Holder shall consider any mitigation measures proposed by the FSWG.
  - e. During the Fisheries Studies, the Certificate Holder shall also collect the following data:
    - (i) temperature; (ii) salinity; and (iii) conductivity.
- N7. The Certificate Holder shall make publicly available in raw form survey data collected during the Benthic and Fisheries pre- and post- energization studies and surveys. The AC Magnetic Field Study Report (Condition N1) will be filed with the Commission's Secretary and be publicly available on the Commission's website for this docket.

## **O. ONSHORE EROSION AND SOIL HANDLING**

- O1. Prior to Commencement of Construction, the Certificate Holder shall install erosion and sediment control practices as indicated in any applicable EM&CP and any stormwater and erosion control plans. Installed erosion and sediment control practices shall be inspected daily and promptly repaired, where necessary in areas of active construction. In areas without active construction, where temporary stabilization measures have been applied to all disturbed areas, erosion and sediment control practices shall be inspected weekly and promptly repaired, where necessary, if permanent stabilization has not been achieved. All erosion and sediment control practices shall be designed and installed per the "New York State Standards and Specifications for Erosion and Sediment Control" and shall be inspected and maintained in accordance with the requirements of the SPDES General Permit in effect at the time of construction.
- O2. To the extent available, all erosion control fabric or netting used for slope or soil stabilization will be 100 percent biodegradable natural product (not photodegradable fabric), excluding geotextiles used for road construction and temporary erosion control devices such as silt fence and silt sock.
- O3. The Certificate Holder shall comply with the following debris and fill requirements:

- a. Any debris or excess construction materials shall be removed to a facility duly authorized to receive such material. No burying or burning of construction debris or excess construction materials will be allowed.
  - b. Except where required to comply with the design specifications, to restore roadway and shoulder surfaces, and to reuse suitable excavated materials, all fill shall consist of clean soil, sand, crushed concrete aggregate (“CCA”), and/or gravel that is free of the following substances: asphalt, slag, broken concrete, rebar, demolition debris, garbage, household refuse, tires, woody materials including tree or landscape debris, and metal objects. Best efforts will be made use fill materials that are visually free of invasive species as outlined in Appendix H (“Invasive Species Plan Specifications”).
- O4. The Certificate Holder shall prepare a “Geotechnical Site Investigation Report,” to be included in the EM&CP for the applicable Segment, verifying subsurface conditions for the approved onshore facilities.
  - O5. Soil and sediment control measures will be implemented early in the construction process and be installed prior to and maintained in acceptable condition for the duration from any clearing or earthmoving operations through to the permanent stabilization of the soil. Erosion and sediment control devices shall be installed in accordance with the New York State Standards and Specifications for Erosion and Sediment Control, the approved EM&CP, the SWPPP, permit conditions, regulatory approvals, and as otherwise necessary or directed by the Environmental Monitor to prevent adverse impacts to environmentally sensitive areas.
  - O6. The Certificate Holder will develop a stormwater management plan to preserve the existing pre-development drainage patterns to the maximum extent possible. Stormwater Management Practice (“SMP”) shall be implemented to comply with the NYCDEP requirements.

**P. WATER RESOURCES**

- P1. Except as otherwise permitted in the Certificate or EM&CP, no construction activities shall occur within any regulated wetlands, including tidal and freshwater wetlands and regulated adjacent areas, and no construction materials, equipment, or vehicles shall be allowed to enter upon such wetlands.
- P2. Jurisdictional waterbodies and wetlands will be referred to herein as “wetlands and waterbodies” and the “regulated adjacent areas” shall mean (i) the 100-foot adjacent area associated with State jurisdictional Article 24 Freshwater Wetlands, and (ii) the 150-foot (or less due to the presence of a qualifying structure[s] as defined by 6 NYCRR Part 661) adjacent area associated with State jurisdictional Article 25 Tidal Wetlands. When the terms are used together, they will be listed as “wetlands and waterbodies and/or regulated adjacent areas.”
- P3. The Certificate Holder shall perform all construction, operation, and maintenance activities along the onshore interconnection cable route in a manner that avoids or minimizes adverse impacts to waterbodies, wetlands, and/or regulated adjacent areas. Any such activities shall be performed in accordance with a Wetland Impact Minimization and Mitigation Plan to be included in the EM&CP for the applicable Segment.

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- P4. The Certificate Holder shall notify DPS Staff, NYSDOS and NYSDEC within two (2) hours of observing or being made aware of a discharge to a wetland or waterbody by the Certificate Holder or a contractor of the Certificate Holder resulting in a violation of NYS Water Quality Standards, or as described in the Suspended Sediment and Water Quality Monitoring Plan in the EM&CP for the applicable Segment per Condition U4. For each occurrence of discharge to a wetland or waterbody, the Certificate Holder shall provide a follow-up report via email to DPS Staff, NYSDOS and NYSDEC that includes a written description of the occurrence, photographs, and a summary of the corrective or remedial actions taken.
- P5. The Certificate Holder shall take all necessary precautions to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate, washings from transit mix trucks, mixers, or other devices or any other environmentally deleterious materials associated with the Project. If required, concrete batch plant operations and concrete washout areas shall be located a minimum of one hundred and fifty (150) ft away from any wetland or waterbody.
- a. If concrete batch plant operation(s) are required, the location(s), site plans and appropriate measures for avoiding adverse impacts, restoring sites upon project completion, and complying with local code requirements will be included in the EM&CP.
- P6. Except as detailed in the EM&CP, the Certificate Holder shall secure and safely contain all equipment and machinery more than one hundred (100) ft landward of any freshwater wetlands and one hundred and fifty (150) ft from tidal wetlands, at the end of each work day, unless moving the equipment will cause additional environmental impact. Storage of materials that do not contain potential contaminants are allowed within these areas.
- P7. Except as detailed in the EM&CP, all mobile equipment, excluding dewatering pumps, must be fueled, repaired, or maintained in a location at least one hundred (100) ft from freshwater wetlands and one hundred and fifty (150) ft from tidal wetlands, to the maximum extent practicable or unless moving the equipment will cause additional environmental impact. Dewatering pumps operated closer than one hundred (100) ft from the freshwater wetlands or within one hundred and fifty (150) ft from tidal wetlands, must be within secondary containment large enough to hold the pump and accommodate refueling. Requirements for refueling within one hundred (100) ft of freshwater wetlands or within one hundred and fifty (150) ft from tidal wetlands will be allowed under certain circumstances as identified in the EM&CP.
- a. Refueling of handheld equipment will be allowed within one hundred (100) ft of freshwater wetlands or one hundred and fifty (150) ft from tidal wetlands when secondary containment is used. Secondary containment will be constructed of an impervious material capable of holding the handheld equipment to be refueled and at least 110 percent of the fuel storage container capacity. Fuel tanks of handheld equipment will be initially filled in an upland location greater than one hundred (100) ft from freshwater wetlands or one hundred and fifty (150) ft from tidal wetlands in order to minimize the amount of refueling within these sensitive areas. Crews will have sufficient spill containment equipment on hand at the secondary containment location and shall use such equipment to provide prompt control

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and cleanup in the event of a release. Absorbent pads or portable basins will be deployed under the refueling operation.

- b. Refueling of equipment that is not handheld equipment will be allowed within one hundred (100) ft of freshwater wetlands or one hundred and fifty (150) ft from tidal wetlands when necessary to maintain continuous operations and where removing equipment from a sensitive area for refueling would increase adverse impacts to the sensitive area. Fuel tanks of such equipment will be initially filled in an upland location greater than one hundred (100) ft from freshwater wetlands or one hundred and fifty (150) ft from tidal wetlands in order to minimize the amount of refueling within these sensitive areas. All refueling of equipment within one hundred (100) ft of freshwater wetlands or one hundred and fifty (150) ft from tidal wetlands will be conducted under the direct supervision of the environmental monitor. Prior to any refueling that occurs within one hundred (100) ft of freshwater wetlands or one hundred and fifty (150) ft from tidal wetlands, absorbent pads or portable basins will be deployed under the refueling operation. In addition, the fuel nozzle will be wrapped in an absorbent pad and the nozzle will be placed in a secondary containment vessel (e.g., bucket) when moving the nozzle from the fuel truck to the equipment to be refueled. All equipment operating within one hundred (100) ft of freshwater wetlands or one hundred and fifty (150) ft from tidal wetlands will have sufficient spill containment equipment on board and shall use such equipment to provide prompt control and cleanup in the event of a release.
- P8. The Certificate Holder shall submit an Onshore Dewatering Plan in the EM&CP for DPS, NYSDEC staff, and NYCDEP review and comment. The Onshore Dewatering Plan must address all onshore temporary dewatering operations associated with installation of the transmission cable, substation, and appurtenant structures. All dewatering operations shall comply with the following conditions:
- a. Dewatering operations must be conducted as specified in the Certificate Holder's Onshore Dewatering Plan in the EM&CP for the applicable Segment;
  - c. In consultation with NYSDEC Staff, groundwater baseline sampling will occur prior to the start of construction at representative locations where excavations are anticipated to extend below the groundwater table to identify potential groundwater contamination that may require testing, treatment, or disposal during construction. The testing, treatment, baseline sampling, and/or disposal practices, as necessary, will be addressed in the Certificate Holder's Onshore Dewatering Plan;
  - d. Water generated from dewatering operations that exceeds NYSDEC standards, criteria, or guidance values, or more stringent applicable levels of other authorities or agencies in effect at the time of dewatering operations must be treated and disposed of in compliance with the approved Onshore Dewatering Plan and/or SPDES permit issued by NYSDEC; and
  - f. Water resulting from dewatering operations shall not be directly discharged into any wetland or waterbody, except in accordance with an approved SPDES permit if required.

- g. Where any effluent from dewatering operations will be discharged into the sewer system, the Certificate Holder will provide advance notice to NYCDEP, including the timing and expected amount of effluent to be discharged. In the event NYCDEP seeks additional information regarding such discharges, the Certificate Holder shall timely respond to such requests. The Certificate Holder may discharge effluent from dewatering operations into the sewer system only during construction, and only during periods when there is no precipitation occurring or forecast to occur within 24 hours.
  - h. Dewatering operations involving water withdrawal from one or more dewatering wells on a single property with a total capacity in excess of 45 gallons per minute (“gpm”) or 64,800 gallons per day (“gpd”), will be conducted in compliance with the substantive requirements of 6 NYCRR Part 602.
- P9. All sampling, disposal, and construction activities must be performed in a manner consistent with NYSDEC standards, criteria, or guidance in effect at the time of such activities.
- P10. The Certificate Holder shall inform the USACE and NYSDOS of any changes in the design of the Project that have the potential to impact any USACE-issued permit or authorization and shall file a copy of such correspondence with the Secretary.
- P11. Equipment or machinery shall not be washed in any regulated wetland or adjacent area, and runoff resulting from washing operations or other construction activities shall not be permitted to directly enter any wetland or waterbody.

## **Q. CULTURAL RESOURCES**

- Q1. The Certificate Holder shall not undertake construction in previously undisturbed areas where archeological surveys have not been completed until such time as the appropriate authorities, including OPRHP, and DPS Staff, have reviewed the results of any historic properties and archeological surveys that are required.
- Q2. Should archeological materials be encountered during onshore construction, and continuing construction in the immediate vicinity (within fifty [50] ft) would be incompatible with the objective of preserving the quality and integrity of the resource, the Certificate Holder shall stabilize the area and cease all ground-disturbing activities in the immediate vicinity (within 50 ft) of the find and protect the find from further damage. The restricted areas would extend from the maximum discernable limit of the archaeological resource. The only earth-moving activities that may occur within the restricted areas prior to notifications are those necessary for immediate stabilization of the exposed archaeological feature or deposit. The Certificate Holder shall flag, fence off, or securely cover with steel plates the archaeological discovery location and take reasonable measures to ensure site security. If unanticipated archaeological discoveries occur during offshore construction, the Certificate Holder shall stop work in the immediate vicinity (one hundred fifty [150] ft) and consult a qualified marine archaeologist to assist in determining the origin of any finds and immediate measures, if appropriate and feasible, to stabilize the archaeological resource. Within twenty-four (24) hours of such onshore or offshore discovery, the Certificate Holder shall notify and consult with DPS Staff and OPRHP to determine the best course of action. Any discovery made on a weekend (from 5pm on Friday to 9am on Monday) or state holiday will be protected until DPS Staff and

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OPRHP are notified of the discovery. No construction activities shall be permitted in the vicinity of the find until such time as the significance of the resource has been evaluated by OPRHP and the need for and scope of impact mitigation has been determined by DPS Staff in consultation with OPRHP and the Certificate Holder. The Certificate Holder may engage qualified archaeologists to assist in preliminary visual assessments and documentation, consultations with OPRHP and DPS Staff, and development of appropriate treatment/mitigation measures.

- Q3. Should human remains or evidence of human burials be encountered during the conduct of archeological data recovery fieldwork or during construction, all work in the immediate vicinity (within fifty [50] ft) of the find shall be halted immediately for the remains to be protected from further disturbance. Immediately upon any such discovery, the Certificate Holder shall notify and consult with DPS Staff and OPRHP. The Certificate Holder shall ensure that treatment of human remains is done in accordance with the OPRHP's Human Remains Discovery Protocol (dated August 2018).
- Q4. The Certificate Holder shall ensure that all archaeological or remains-related encounters and their handling are reported in the status reports summarizing construction activities.
- Q5. The Certificate Holder shall have a continuing obligation during construction to respond promptly (within seventy-two [72] hours) to complaints of negative archeological impacts from New York State agencies or the public and, if necessary, to mitigate any actual impacts through on-site design modifications and off-site mitigation techniques in accordance with the Marine Archeological Resources Treatment Plan and Unanticipated Discoveries Plan developed in consultation with OPRHP as required in the federal Construction and Operations Plan ("COP") approval for the Project.

## **R. TERRESTRIAL AND WILDLIFE RESOURCES**

- R1. The Certificate Holder shall refer to 6 NYCRR Part 182 and <http://www.dec.ny.gov/animals/7494.html> for lists of New York State threatened and endangered ("T&E") animal species and with 6 NYCRR Part 193 for New York State T&E plant species. Prior to the commencement of construction of the onshore Project, the Certificate Holder will provide all workers with pertinent information on potential T&E species in the Project Area.
- R2. If any T&E animal or plant species, or associated habitat are directly or incidentally observed from the onshore Project construction corridor, access roads, laydown yards, staging areas, and any other areas where Project activities authorized in this Certificate are conducted, the Certificate Holder shall immediately notify the Environmental Monitor to determine the appropriate actions, if any, to protect the identified species or its potentially occupied habitat from immediate harm, and shall also notify DPS Staff and NYSDEC within twenty-four (24) hours.
- R3. To protect such T&E species or its habitat from immediate harm from construction activities, the Certificate Holder shall secure the area where access rights exist and safely cease construction in that area until DPS Staff, in consultation with NYSDEC authorizes recommencement of activities. Prior to the recommencement of construction in the secured

- area, the Certificate Holder shall provide all workers with pertinent information on the species encountered and indicate measures to minimize risks to the T&E species during construction.
- R4. During construction, restoration, operation and maintenance of the Facility and associated facilities, the Certificate Holder shall maintain a record of all observations T&E species as follows:
- a. Construction. During construction, the on-site Environmental Monitor shall be responsible for recording all occurrences of Federal and NYS threatened or endangered species within the Project construction corridor. All occurrences shall be reported in a biweekly monitoring report submitted to the DPS Staff and NYSDEC and such reports shall include the information described in subparagraph (c) of this paragraph. If a NYS threatened or endangered bird species is demonstrating breeding or roosting behavior, it shall be reported to the DPS Staff and NYSDEC within twenty-four (24) hours (or as soon as possible, in the event that more than 24 hours are needed to compile the required details for such reports/notifications).
  - b. Post-Construction Restoration. After construction is complete, incidental observations of any NYS threatened or endangered species shall be documented and reported to the DPS Staff and NYSDEC, in accordance with the reporting requirements in subparagraph (c) of this paragraph.
  - c. Reporting Requirements. All reports of NYS and/or federally threatened or endangered species shall include the following information: species; number of individuals; age and sex of individuals (if known); observation date(s) and time(s); Global Positioning System (“GPS”) coordinates of each individual observed (if operation and maintenance staff do not have GPS available; the report shall specify the nearest road or cross roads location); behavior(s) observed; identification and contact information of the observer(s); and the nature of and distance to any Project construction, maintenance or restoration activity.
- R5. If any work results in or is likely to result in an incidental take of a T&E species as defined in ECL § 11-0535 and 6 NYCRR Part 182, the Certificate Holder must stop work where the take occurred or is likely to occur (“Stop Work Area”), notify the Environmental Monitor, and must submit an Endangered or Threatened Species Mitigation Plan and Implementation Agreement (“T&E Plan/Agreement”) demonstrating proposed mitigation measures that will result in a Net Conservation Benefit to that species. Such T&E Plan/Agreement must be prepared in accordance with ECL § 11-0535 and 6 NYCRR Part 182. Work must not recommence in the Stop Work Area until the T&E Plan/Agreement is developed in consultation with and accepted by NYSDEC and such T&E Plan/Agreement is implemented.
- R6. For bald eagles, an area at least 660 ft in radius with a visual buffer, or 1/4 mile with no visual buffer, around the active nest or roost shall be posted and avoided until notice to continue construction, ground clearing, grading, maintenance, or restoration activities are granted by DPS Staff and NYSDEC. The active nest(s) or nest tree(s) or roost(s) shall not be approached under any circumstances unless authorized by DPS Staff and NYSDEC.

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**S. INVASIVE SPECIES**

- S1. The Certificate Holder shall prepare an Invasive Species Control and Management Plan in accordance with the applicable requirements of ECL Article 9 and 6 NYCRR Part 575 and 6 NYCRR Part 663. Forty-five (45) days prior to filing the EM&CP for the applicable Segment, the Certificate Holder shall submit the Invasive Species Control and Management Plan to DPS Staff and NYSDEC, for review and comment. The Certificate Holder shall file said Invasive Species Control and Management Plan as part of the EM&CP for the applicable Segment. The Invasive Species Control and Management Plan shall be developed in accordance with the Invasive Species Control and Management Plan Specifications, which are attached as Appendix H of the Joint Proposal.
- S2. To minimize the risk of introducing invasive species, use of hay is strictly prohibited.

**T. MARINE RESOURCES**

- T1. The Certificate Holder must comply with Bureau of Ocean Energy Management (“BOEM”) and National Oceanic and Atmospheric Administration (“NOAA”) requirements for noise mitigation for protected species in New York State waters as required in the federal COP approval and Incidental Take Authorization issued for the Empire Wind 1 Project.
- T2. The Certificate Holder must comply with NOAA and BOEM requirements for protected species mitigation, monitoring and reporting as detailed in the federal COP approval and Incidental Take Authorization issued for the Empire Wind 1 Project. All protected species reports submitted to BOEM and NOAA will be copied to NYSDEC.
- T3. Sightings of North Atlantic Right whales must be reported as soon as possible, but no later than 24 hours, to NOAA.

**U. WATER QUALITY**

- U1. Water quality standards set forth in 6 NYCRR Parts 701, 702, 703 and 704, and sections 301, 302, 303, 306, and 307 of the federal Clean Water Act (*see* 33 USC §§ 1311, 1312, 1313, 1313a, and 1317) shall not be contravened. Issuance of a Water Quality Certification also implies compliance with standards assuming that conditions placed in the certification are complied with.
- U2. Limits for TSS, turbidity and water quality standards for other chemical parameters must be achieved at the defined mixing zone distance, down current (based on tide direction) of sediment disturbing activities. The mixing zone distances shall be defined as follows:
  - a. For TSS and turbidity, the mixing zone shall be 1,500 ft for the portion of the submarine export cable route from approximately KP 15, as shown in mapping in Appendix B of the Joint Proposal, south to the limits of New York State waters;
  - b. For TSS and turbidity, the mixing zone shall be 500 ft for the portion of the submarine export cable route from approximately KP 15, as shown in mapping in Appendix B of the Joint Proposal, north to the cable landfall;



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- c. For dissolved arsenic, dissolved lead, dissolved copper, dissolved cadmium, total mercury, benzo(a)pyrene, DDT, DDE, DDD and Total PCBs the mixing zone shall be 500 ft. As detailed in Condition U4, monitoring for these constituents shall be conducted from approximately KP 15, as shown in mapping in Appendix B of the Joint Proposal, north to the cable landfall; and
  - d. The mixing zone distances along the submarine cable route will be restated in the Suspended Sediment and Water Quality Monitoring Plan, which must be prepared in accordance with the “Scope of Study: Suspended Sediment and Water Quality Monitoring” attached as Appendix B of the Joint Proposal.
- U3. Water quality monitoring shall be conducted during dredging, dewatering of dredged material, barge decanting, pre-sweeping, pre-trenching, jet trenching activities, cable installation and maintenance and decommissioning activities (together, “Monitored Construction Activities”) that involve disturbance of sediments in accordance with the Suspended Sediment and Water Quality Monitoring Plan. Monitoring shall also be conducted during pre-installation trials in accordance with Condition J12. Cable installation, maintenance and decommissioning activities that result in only minor disturbance of sediments, including: (i) anchor sweep; (ii) anchoring; (iii) placement of jack-up barge; (iv) hand jetting; (v) temporary cable lay without simultaneous burial; (vi) other activities as determined by DPS Staff, in consultation with NYSDEC, shall not require water quality monitoring.
- U4. The Certificate Holder shall incorporate within the EM&CP for the applicable Segment and implement, a Suspended Sediment and Water Quality Monitoring Plan pertaining to offshore activities. The Certificate Holder must submit a Suspended Sediment and Water Quality Monitoring Plan for review and acceptance by DPS Staff, NYSDEC, and NYSDOS forty-five (45) days prior to the filing of the EM&CP for the applicable Segment. The Suspended Sediment and Water Quality Monitoring Plan must be prepared in accordance with the “Scope of Study: Suspended Sediment and Water Quality Monitoring” attached as Appendix I of the Joint Proposal. The Suspended Sediment and Water Quality Monitoring Plan must:
- a. Specify sample location, depth of samples, frequency of sampling, and sampling during various tidal cycles;
  - b. Describe procedures for background sampling and monitoring during construction;
  - c. Include daily sampling during each tidal cycle;
  - d. Use an Acoustic Doppler Current Profiler, or similar technology, to locate the plume;
  - e. Require whole water samples in the vertical water column (from at least 3 depths – approximately 18 inches below the surface, at mid-depth and at three ft above the bottom) at the edge of the applicable mixing zone;
  - f. Include an up-current transect outside the influence of Monitored Construction Activities;
  - g. Provide that prior to commencing maintenance and decommissioning activities, the Certificate Holder shall submit for NYSDEC review a water quality monitoring plan for activities that may require such monitoring;
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- h. Provide that during Monitored Construction Activities, the Certificate Holder will measure dissolved arsenic, dissolved lead, dissolved copper, dissolved cadmium, total mercury, benzo(a)pyrene, DDT, DDE, DDD, Total PCBs, and TSS, within the water column at a point outside the effects of the Monitored Construction Activities (the up-current background station) and at the transects down-current of the Monitored Construction Activities described in the Suspended Sediment and Water Quality Monitoring Plan. Metals shall be reported both as totals and as dissolved fractions, except mercury, which shall be reported as total mercury:
    - i. Dissolved arsenic, dissolved lead, dissolved copper, dissolved cadmium, total mercury, benzo(a)pyrene, DDT, DDE, DDD and Total PCBs shall only be measured during Monitored Construction Activities along the portion of the submarine export cable route from approximately KP 15, as shown in mapping in Appendix B of the Joint Proposal, north to the cable landfall.
    - ii. TSS (laboratory and field) and optical backscatter (OBS turbidity) shall be measured during Monitored Construction Activities along the entire submarine export cable route.
  - i. Identify a procedure whereby, if sampling results indicate consistent compliance with the monitoring standards, the Certificate Holder can submit a request in writing to DPS Staff and NYSDEC to reduce the sampling frequency;
  - j. Specify that TSS estimates in the field must be collected during daytime using appropriate instrumentation and by collecting water samples daily at various depths for laboratory analysis of TSS according to the methods and method detection limits identified in the Suspended Sediment and Water Quality Monitoring Plan;
  - k. Require that monitoring locations must be (i) at the edge of the applicable mixing zone defined in Condition U2, down current of any Monitored Construction Activities; and (ii) at a background/control station for monitoring ambient conditions, as defined in the Suspended Sediment and Water Quality Monitoring Plan, which will be up-current and out of the influence of the Monitored Construction Activities; and
  - l. Specify that, if Monitored Construction Activities resulting in sediment disturbance occur concurrently in multiple locations, each activity that may cause resuspension of bottom sediments must be monitored separately.
- U5. A pre-activity water quality calibration will be conducted to ensure that TSS may be accurately estimated in the field during water quality monitoring activities. The pre-activity water quality calibration will be described in detail in the Suspended Sediment and Water Quality Monitoring Plan.
- U6. The following conditions apply to TSS during sediment disturbing activities:
- a. None from sewage, industrial waste or other wastes that will cause deposition or impair the waters for their best usages;

- b. A TSS limit of 100 mg/L above ambient will be achieved at the mixing zone distance down current (based on tide direction) of sediment disturbing activities, wherever practicable operational controls can be implemented without compromising health and safety, the integrity of the cable, or the achievement of the Target Burial Depth. If, during Monitored Construction Activities, TSS concentrations estimated in the field at the edge of the mixing zone distance defined in Condition U2 exceed the up current background station by the TSS limit (100 mg/L), the Aquatic Environmental Monitor shall be notified, and the Certificate Holder's contractor shall be alerted to employ practicable operational controls to bring TSS levels back into compliance. Operational controls implemented to minimize exceedances of the TSS limit will not be implemented in such a manner that it will result in the material delay of the progress of work to complete the in-water installation during one construction season. The Certificate Holder shall not be required to reduce hydraulic jetting pressures to levels which would not allow burial to the Target Burial Depth specified in the EM&CP or other permits.
- U7. Visual observations of turbidity caused by Monitored Construction Activities must be conducted to ensure compliance with the narrative water quality standard in 6 NYCRR § 703.2, which states, "No increase that will cause a substantial visible contrast to natural conditions."
- U8. The concentrations of the constituents listed in the table below measured in the samples collected down-current of the sediment disturbance activities, at the edge of the applicable mixing zone, shall not exceed the greater of: (A) the levels set forth in the table below or (B) 1.3 times the highest ambient background level measured during the same sampling day at the up-current background station at the same depth as the down-current sample.

Parameter	Water Quality Standard	Type	Units	Method	Detection Limit*
Dissolved Arsenic	63	A(C)	ug/L	EPA 200.7	25
Dissolved Cadmium	7.7	A(C)	ug/L	EPA 200.7	5
Dissolved Copper	5.6	A(C)	ug/L	EPA 200.8	2
Dissolved Lead	8	A(C)	ug/L	EPA 200.8	2
Total Mercury	$7 \times 10^{-4}$ (0.05**)	H(FC)	ug/L	EPA 1631E	0.0005
Total PCBs	$1 \times 10^{-6}$	H(FC)	ug/L	EPA 608.3	0.095
p,p'-DDD	$8 \times 10^{-5}$	H(FC)	ug/L	EPA 608.3	0.033
p,p'-DDE	$7 \times 10^{-6}$	H(FC)	ug/L	EPA 608.3	0.012

p,p'-DDT	$1 \times 10^{-5}$	H(FC)	ug/L	EPA 608.3	0.036
Benzo(a)pyrene	$6 \times 10^{-4}$ ***	H(FC)	ug/L	EPA 610	0.1
Using EPA analytical method with the lowest possible detection limit as promulgated under 40 CFR Part 136.					
* The detection limits listed in the table above represent the Minimum Level (ML) for the specified analytical methodology.					
** Limit based on General Level Currently Achievable described in TOGS 1.3.10.					
*** Benzo(a) pyrene will be used as an indicator for the total concentration of Polycyclic Aromatic Hydrocarbons (PAHs)					

- a. When a detection limit listed above is greater than the water quality standard, the water quality standard will be presumed to be met when analytical results demonstrate compliance with the detection limit.
- U9. All water quality analyses required by this Certificate must be conducted by a laboratory certified by the NYSDOH ELAP.
- U10. The Certificate Holder shall use commercially reasonable efforts to request the most expedited turnaround time available for laboratory samples for locations along the submarine export cable route. Analytical results must be sent electronically to DPS Staff and NYSDEC within forty-eight (48) hours of receipt from the laboratory. Exceedances must be highlighted.
- U11. During Monitored Construction Activities, if the TSS limit or any water quality standards are exceeded at the edge of the mixing zone, the Certificate Holder will notify DPS Staff and NYSDEC. The Certificate Holder will implement practicable operational modifications to reduce in-situ sediment re-suspension as described in Condition U6(b) when the TSS limit is exceeded. If modifications do not restore compliance with the TSS limit and/or any water quality standard, the Certificate Holder shall consult with DPS staff and NYSDEC regarding an acceptable solution; nothing in this Condition shall result in a material delay of progress of work to complete the in-water installation during one construction season.
- U12. Within four (4) months of the completion of the submarine export cable installation, the Certificate Holder must file with the Secretary an analysis comparing the actual water quality monitoring results obtained during installation with any model predictions previously provided in support of the Project.
- U13. Within four (4) months of completion of dredging, the Certificate Holder shall file with the Secretary a "Dredging and Water Quality Monitoring Report" report summarizing the results of dredging, associated water quality monitoring, and dredged material management operations. The report must include:
- a. Location and extent of dredging;
  - b. Total amount of material dredged;

- c. Ultimate placement location of dredged material;
  - d. Description of problems or difficulties encountered during dredging;
  - e. Water quality monitoring results and corrective actions (when needed) taken.
- U14. Certificate Holder shall comply with any conditions contained in a Water Quality Certification issued pursuant to Section 401 of the Federal Clean Water Act, a draft of which is set forth in Appendix F.

## **V. HANDLING OF PETROLEUM & HAZARDOUS SUBSTANCES**

- V1. Stationary fuel tanks and hazardous chemical storage must be appropriately contained and shall be located a minimum of one hundred and fifty (150) ft from streams, waterbodies and wetlands, and chemicals and petroleum products will not be stored, mixed, or loaded within one hundred and fifty (150) ft from streams, waterbodies and wetlands, unless: (i) the EM&CP provides justification, including that impacts have been avoided or minimized to the maximum extent practicable; or (ii) adequate secondary containment (containing at least 110 percent of the volume stored), as identified in the EM&CP, is otherwise provided, in which case storage can occur within one hundred and fifty (150) ft of such resources.
- V2. Uncontaminated drill cuttings and drilling muds from drilling processes which utilize only air, water, or water-based drilling fluids are considered construction and demolition debris under 6 NYCRR Part 360 (“Solid Waste”) and can be disposed of at either construction and demolition debris landfills or at municipal solid waste (“MSW”) landfills. Drill cuttings from drilling processes that utilize polymer-based mud containing mineral oil lubricant are considered contaminated and can only be disposed of at MSW landfills. Dewatered drilling muds including polymer-based mud containing mineral oil lubricant can only be disposed of at MSW landfills.
- V3. The Certificate Holder shall comply with the following spill requirements:
- a. A Spill Prevention, Control, and Countermeasure (“SPCC”) Plan to minimize the potential for unintended releases of petroleum and other hazardous chemicals during Project construction and operation shall be included in the EM&CP;
  - b. All non-passenger vehicles must be equipped with a spill kit that is appropriate for the volume of fuel carried by the vehicle. Any leaks must be stopped and cleaned up immediately;
  - c. Spillage of fuels, waste oils, other petroleum products or hazardous materials shall be reported to NYSDEC’s Spill Hotline (1-800-457-7362) within two (2) hours, in accordance with the NYSDEC Spill Reporting and Initial Notification Requirements Technical Field Guidance ([http://www.dec.ny.gov/docs/remediation\\_hudson\\_pdf/1x1.pdf](http://www.dec.ny.gov/docs/remediation_hudson_pdf/1x1.pdf)); and
  - d. The Certificate Holder shall report all spills meeting the NYSDEC spill reporting criteria, regardless of whether it is the spiller, to both the NYSDEC Spill Hotline and DPS Staff, in

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accordance with all federal and State regulations, and provide a copy of such notification contemporaneously to the NYCDEP and affected property owner.

**W. VEGETATION MANAGEMENT AND HERBICIDE, FUNGICIDE, AND PESTICIDE USE**

- W1. The Certificate Holder shall prepare an O&M Plan as part of the EM&CP for the applicable Segment. Such O&M Plan shall include a plan for vegetation management. Forty-five (45) days prior to filing the EM&CP for the applicable Segment, the Certificate Holder shall submit the O&M Plan to DPS Staff and NYSDEC for review and comment.
- W2. The Certificate Holder shall use best efforts to maximize the use of mechanical vegetation management techniques, and where necessary, shall only use the organic pesticides, fungicides, and herbicides specified in the EM&CP. If the Certificate Holder desires a change to the organic pesticides, herbicides, and fungicides specified in the EM&CP, including mix proportions, additives (with the exception of dyes), or method of application, the Certificate Holder shall submit the proposed change for approval pursuant to Condition C6. No change inconsistent with the labeling for such pesticides, herbicides, fungicides shall be approved.
- W3. The Certificate Holder shall comply with the currently effective NYSDEC general permit for vegetation maintenance for pesticide applications in regulated wetlands and adjacent areas, if available. If no NYSDEC general permit is available for vegetation maintenance for the geographical area or type of wetland resource, the Certificate Holder shall apply for an individual permit to apply pesticides in regulated wetlands and adjacent areas.
- W4. The supervising certified applicator shall be certified in accordance with all applicable NYS laws and shall be familiar with and understand the applicable provisions of this Certificate and the most recent version of the Certificate Holder's O&M Plan.
- W5. Unless described otherwise in the EM&CP, all trees over four (4) inches in diameter (measured four (4) ft above ground) or shrubs over four (4) ft in height damaged or destroyed by the Certificate Holder's activities during construction, operation, or maintenance, regardless of where located, shall be replaced by the Certificate Holder with the equivalent type trees or shrubs, subject to the provisions of 6 NYCRR Part 575, Prohibited and Regulated Invasive Species, except where:
- a. equivalent-type replacement trees or shrubs would interfere with the proper clearing, construction, operation, or maintenance of the Project;
  - b. replacement would be contrary to sound ROW management practices or to any approved O&M Plan applicable to the Project; or
  - c. a property owner on whose land the damaged or destroyed trees or shrubs were located, or other recorded easement or license holder with the right to control replacement, declines replacement.
- W6. Clearing of natural vegetation shall be limited to the Commission-accepted O&M Plan and vegetation that poses a hazard or hindrance to construction activity and/or operation.

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- W7. Application of herbicides shall conform to all label instructions and all applicable federal and state laws and regulations. Applicators shall reference the EM&CP to identify treatment areas, and wetland and adjacent area boundaries, prior to treating. Applications required in seasonally flooded freshwater wetlands shall be undertaken during a dry season.

**X. RESTORATION**

- X1. The Certificate Holder, where necessary, shall negotiate for additional temporary easements for construction purposes as identified in the EM&CP and approved by the Commission. Any temporary easement or construction areas not identified in the approved EM&CP may be requested through changes thereto. Unless otherwise specified in the EM&CP, Certificate Holder shall, following restoration, let the temporary construction area revegetate naturally or return to its original land use to the extent that it does not interfere with the inspection, operation, or maintenance of the utility facilities. Except where otherwise specified in the EM&CP, stem-specific removal of trees or side trimming shall be conducted in accordance with long-range ROW management plans, real property rights of the City, and provisions of any and all host community agreements, easements, leases, and/or license agreements.

**Y. EM&CP CONTENTS**

- Y1. The Certificate Holder shall not undertake Commencement of Construction for any Segment of the Project before the Certificate Holder has submitted to the Commission and the Commission has approved, an EM&CP for that Segment.
- Y2. The EM&CP shall be prepared in accordance with the terms of the Certificate for the construction, operation, and maintenance of the Project. Provisions of the Certificate, EM&CP, and orders approving the EM&CP, shall be incorporated in any design, construction, and maintenance associated with the Project. The Certificate Holder shall provide the following details in the EM&CP, where applicable to the EM&CP Segment:
- a. The delineation of certified ROW and additional work areas to which Certificate Holder shall confine construction and subsequent maintenance activities, depicting property rights, clearing rights, access rights, and such other matters as appropriate to address the site and environmental conditions and property interests of affected landowners, and relevant conditions and requirements of the EM&CP. The delineation shall include the specific location and acreage of all needed real property or real property rights.
  - b. Details of street work, after prior consultation with the City, including provisions for minimizing the duration and extent of open excavation, traffic disruptions, and work within and adjoining public streets and ROWs;
  - c. Drawings delineating the locations for existing and proposed access roads. Proposed access road improvements shall be indicated, including measures for environmental impact minimization and access control; and
  - d. A TMP for all roadways directly affected by construction activities prepared in conformance with the MUTCD and NY State Supplement.

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- Y3. During the preparation of the EM&CP(s) and prior to Commencement of Construction, the Certificate Holder shall contact NYSDEC, NYS Natural Heritage Program, NYSDOS, NOAA, and United States Fish and Wildlife Service (“USFWS”) to check for any updates or changes of known T&E species or habitat, NYS Significant Coastal Fish and Wildlife Habitats, Recognized Ecological Complexes, or Significant Natural Communities in the Project Area.
- Y4. The Certificate Holder shall prepare a detailed Soil Handling and Erosion Control Plan to be included in the SWPPP in the EM&CP for the applicable Segment. The Soil Handling and Erosion Control Plan shall include specifications for testing, stockpiling, reuse or removal from site, storage, erosion control, restoration, and compaction of backfill in trenches. Such plan shall be consistent with the acknowledged SPDES General Permit (“SPDES General Permit”) and SWPPP. The Certificate Holder shall develop the EM&CP for the applicable Segment in accordance with the SWPPP requirements in the SPDES General Permit in effect at the time of the filing of the EM&CP for the applicable Segment. The SWPPP shall include a schedule for necessary inspections at all control measure locations. The SWPPP shall be available at the construction site and available to the public upon five (5) days written notice.
- Y5. Prior to the approval of the EM&CP for the applicable Segment, the Certificate Holder shall file with the Secretary upon receipt: the Municipal Separate Storm Sewer (“MS4”) approval(s), 5-acre waiver (if necessary), and NYSDEC’s letter of acknowledgement of the Notice of Intent for coverage under the SPDES General Permit. If any of the aforementioned documents require modification of the EM&CP, such modifications shall be filed with the Secretary prior to EM&CP approval. Notwithstanding the foregoing, if the MS4 approval has not been obtained by the Certificate Holder prior to the EM&CP for the applicable Segment being filed with the Secretary, the Certificate Holder shall file a draft SWPPP at the time it files the EM&CP for the applicable Segment with the Secretary.
- Y6. The Certificate Holder shall include a Lighting Plan as part of the EM&CP for the applicable Segment, which shall include:
- a. security lighting needs at the onshore substation and any exterior equipment storage yards;
  - b. plan and profile figures to demonstrate the lighting area needs and proposed lighting arrangement at the onshore substation and any exterior equipment storage yards;
  - c. a specification that lighting should be designed to provide safe working conditions at appropriate locations;
  - d. a specification that exterior lighting design shall be specified to avoid off-site lighting effects, by:
    - i. using task lighting only as needed and as appropriate to perform specific installation, maintenance, repair, or emergency-response tasks; task lighting shall be designed to be capable of manual or auto-shut off switch activation rather than motion detection; and
    - ii. requiring full cutoff fixtures, with no drop-down optical elements (that can spread illumination and create glare) for permanent exterior security lighting.



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- e. manufacturer's cut sheets of all proposed lighting fixtures shall be provided.
- Y7. The EM&CP for the applicable Segment shall include details of proposed noise control features and design requirements of the onshore substation to comply with the substantive requirements of local regulations for operational noise at noise-sensitive receptor locations.
- Y8. At least sixty (60) days prior to the start of construction, the Certificate Holder shall file with the Secretary the following:
- a. Final drawings for the onshore substation, incorporating any changes to the design, including:
    - i. Location of all noise sources and receptors identified with Geographic Information Systems (GIS) coordinates and GIS files;
    - ii. Proposed grading and noise source heights and ground elevations;
    - iii. Site plan and elevation details of substation components as related to the location of all relevant noise sources (e.g., transformers, reactors, HVAC equipment, and emergency generators, if any);
    - iv. Identified mitigations, specifications, and appropriate clearances (e.g., for sound walls, barriers, enclosures);
  - b. Sound information from the manufacturers for all noise sources (e.g. transformers, reactors, HVAC equipment, emergency generators, if any).
  - c. Revised sound modeling with the final specifications of equipment selected for construction to demonstrate that the Project is modeled to meet limits contained in Section § 42-21 (Performance Standards Regulating Noise) (more specifically Sections 42-213 and 42-214) and § 24-232 of the New York City Zoning Resolution for properties or buildings existing as of the date the Certificate Order is issued as noted.
  - d. Final computer noise modeling and tonal evaluation shall be conducted in accordance with the Specifications for Computer Noise Modeling and Tonal Evaluation, Appendix J.
- Y9. The EM&CP for the applicable Segment shall identify any water withdrawal activities that the Certificate Holder anticipates will be regulated pursuant to 6 NYCRR §§ 601.3 and 601.6, including dewatering directly from the excavation not meeting the exemption criteria pursuant to 6 NYCRR §§ 601.9(o). The EM&CP shall also provide the information outlined in 6 NYCRR § 601.10 for any such activities. Prior to commencement of such activities, DPS Staff, in consultation with NYSDEC, will determine whether to recommend that the Commission impose any conditions or restrictions on such activities. Such determination will be based on the substantive portions of the following regulations: 6 NYCRR §§ 601.11, 601.12, 601.16, 601.19, and 601.20.
- Y10. The EM&CP for the applicable Segment shall identify the property locations, if any, where the Certificate Holder anticipates that it will install one or more wells to conduct temporary dewatering activity for the Project at a total withdrawal capacity of such well or wells on any one property in excess of 45 gpm (with capacity based on the capacity of the pumps to be installed, not on the contemplated draft). The EM&CP for the applicable Segment shall also provide the substantive information outlined in 6 NYCRR § 602.3(c)-(d) for any such

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activities. Prior to commencement of such activities, DPS Staff, in consultation with NYSDEC, will determine whether to recommend that the Commission impose any conditions or restrictions on such activities. Such determination will be based on the standards of issuance in ECL § 15-1527(4).

- Y11. Certificate Holder shall provide an Onshore Dewatering Plan at least forty-five (45) days prior to filing the EM&CP for the applicable Segment to DPS Staff, NYSDEC, NYCDOT, and NYCDEP for review and comment. The Onshore Dewatering Plan shall be in compliance with any required SPDES permit issued by NYSDEC. The Onshore Dewatering Plan shall be filed with the EM&CP for the applicable Segment and include:
- a. groundwater sampling results from the Hazardous Waste and Petroleum Work Plan;
  - b. evaluation of any known or suspected contaminated sites to determine if proposed dewatering operations will influence or draw in any contamination from the site, and the expected maximum concentrations of the contaminants;
  - c. locations where dewatering will be required, including the anticipated depth of groundwater and the installation depth of the cable and vaults at those locations;
  - d. method of dewatering, including the number and depth of the well points (if applicable);
  - e. pump capacity, rate, and estimated daily pumpage and duration of dewatering for each location requiring dewatering;
  - f. details on any dewatering operations involving water withdrawal from one or more dewatering wells on a single property with a total capacity in excess of 45 gallons per minute (gpm) or 64,800 gallons per day;
  - g. if uncontaminated water from dewatering operations will be discharged to groundwater or surface water, include the following:
    - i. a map showing proposed discharge location points;
    - ii. if discharging to a storm drain or recharge basin, verify these systems are designed to handle the proposed rate for the duration of the discharge and the substantive requirements for all State, county, and City approvals are being met for such discharges;
    - iii. if discharging to a storm drain, identify the ultimate surface water outfall location;
    - iv. if discharging to an existing recharge basin or creating a new recharge basin, evaluate mounding effects to ensure that mounding does not adversely affect any surrounding properties and underground structures; and
    - v. best management practices to prevent erosion and sedimentation from dewatering operations;
  - h. maps of areas requiring dewatering with wells (if applicable);

- i. verification that dewatering operations conducted using wells are carried out by a well driller duly registered in accordance with ECL § 15-1525;
  - j. effluent limits provided by NYSDEC based on applicable regulations, standards, criteria, and guidance values;
  - k. treatment and disposal plan for contaminated water generated from the dewatering operations;
  - l. sampling plan that will be followed during dewatering operations of influent and effluent; and
  - m. sampling plan that will be followed in the event dewatering is required in locations that were not anticipated.
- Y12. The EM&CP shall address, as applicable for the EM&CP Segment, but shall not be limited to, the following information:
- a. a construction schedule detailing work activities and allowable work windows, which shall be provided to DPS Staff, NYSDEC, NYSDOT, NYSDOS, NYCDEP, NYCDOT, NYCSBS, New York Police Department, and LICFA, at least forty-five (45) days prior to filing the EM&CP for review and comment;
  - b. detail on pre-installation activities, including any proposed pre-sweeping, prior to submarine export cable installation. The EM&CP shall describe how the Certificate Holder has avoided or minimized pre-sweeping (sandwave leveling), especially in areas with contaminated sediments, with the submarine cable export cable route. The Certificate Holder will describe further measures minimize pre-sweeping during submarine export cable installation, for example, by micro-siting; reducing the disturbance corridor by adjusting the equipment power, pressure, progress speed, and height above seabed; and/or undertaking pre-installation trials to calibrate. The Certificate Holder shall provide this information to DPS Staff, NYSDEC and NYSDOS at least forty-five (45) days prior to the filing of the EM&CP for review and comment;
  - c. cable burial techniques and adjustments, including a detailed graphical representation of anticipated minimum and maximum achievable burial depths based on sediment conditions (*e.g.*, sediment densities, shear strengths, and other limiting factors) at 100-ft intervals along the submarine export cable route, and written evaluation of the likelihood of achieving target burial depths based on the results of the study; and a quantitative CBRA that analyses of risks to the cable and coastal users along the submarine export cable route and adjustments to deeper cable burial depths as warranted based upon risk assessment and geotechnical conditions. The Certificate Holder shall also include a written evaluation of the efficacy of alternative cable protection measures that may be required along the submarine export cable route and justification for why the selected cable protection method is preferred at each site. The analysis shall: (i) include, to the extent available, technical documentation from cable protection manufacturers; and (ii) evaluate a range of cable protection measures (*e.g.*, concrete mattresses with taper edges, dagger boards, self-burying, crushed rock, and rock bags or other appropriate protection method[s]) with

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respect to their ability to maintain overtrawlability, minimize shifting over time, and avoid creating a discernable berm on the seafloor. The Certificate Holder shall provide this information to DPS Staff, NYSDEC, and NYSDOS at least thirty (30) days prior to filing the EM&CP for the applicable Segment for review and comment;

- d. measures employed during design and installation to minimize the lateral separation distance between the EW 1 submarine export cables to the maximum extent practicable.
- e. a Dredge Management Plan for dredging activities including specific practices to be used during dredging, specifications of any dredging equipment and equipment purpose, and proof of the ability to provide proper disposal, which shall be provided to DPS Staff, NYSDEC, and NYSDOS at least forty-five (45) days prior to filing the EM&CP for the applicable Segment for review and comment;
- f. drawings and specifications of any closed environmental bucket or other dredging equipment, including specifications demonstrating that appropriate design considerations are incorporated in equipment selected for deployment, which shall be provided to DPS Staff, NYSDEC, and NYSDOS at least forty-five (45) days prior to filing the EM&CP for the applicable Segment for review and comment;
- g. a Suspended Sediment and Water Quality Monitoring Plan for in-water construction activities, which shall be provided to DPS Staff, NYSDEC and NYSDOS at least forty-five (45) days prior to filing the EM&CP for the applicable Segment for review and comment;
- h. details of cable pulling and splicing plans. The splicing plan shall be provided to DPS Staff, NYSDEC, LICFA and NYSDOS at least forty-five (45) days prior to filing the EM&CP for the applicable Segment for review and comment; and
- i. details on the area and duration of any temporary in-water closures needed during pre-installation and submarine export cable installation activities; a summary of coordination with ferry terminals and other shoreside facilities and plans to preserve the facilities' uninterrupted water access and operations; how these areas and durations have been minimized; details on how mariners and fishermen will be alerted to the presence of the in-water work area, including any Private Aids to Navigation ("PATON") that may be required in State waters; and identification of activities that will be the subject of USCG Local Notice to Mariners.
- j. analysis of the potential impacts to Gravesend Bay anchorage area by estimating the number of vessels and duration that they will be displaced from using this area during each project phase; evaluation of avoidance and minimization measures to address temporary and permanent reductions in anchorage capacity; and assessment of potential mitigation measures such as installing and maintaining mooring buoys or alternative berthing options to offset reduced capacity, if any.
- k. details on the locations of water-dependent recreational and commercial uses, if known at the time of the EM&CP submission for the applicable Segment, that would affect or be affected by facility construction, operation, and maintenance. Explain how these uses or plans will be accommodated.

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- Y13. The Certificate Holder must comply with the Hazardous Waste and Petroleum Work Plan provided in the EM&CP for the applicable Segment.
- Y14. The Certificate Holder shall provide in the EM&CP for the applicable Segment a Hazardous Waste and Petroleum Work Plan for the entire onshore facilities for testing and treatment and/or disposal of soil and groundwater, as described in (a)-(c) below, unless the Certificate Holder demonstrates such work has already completed as part of remediation activities under a Brownfield Cleanup Agreement, RAWP, and Site Management Plan (“SMP”), if applicable. The Certificate Holder shall provide the Hazardous Waste and Petroleum Work Plan at least forty-five (45) days prior to filing the EM&CP for the applicable Segment to DPS Staff and NYSDEC for review and comment. The Hazardous Waste and Petroleum Work Plan must be consistent with the Brownfield Cleanup Agreement, RAWP, and SMP, if applicable, as well as NYSDEC guidance as set forth in the Division of Environmental Remediation’s Technical Guidance for Site Investigation and Remediation (“DER-10”), or other NYSDEC standards, criteria, or guidance in effect at the time the EM&CP for the applicable Segment is filed with the Secretary, and must include the following:
- a. Provide protocols for sampling to be completed during construction, including sampling if visibly contaminated material is encountered or if groundwater is encountered in areas that were not previously sampled;
  - b. Identify location(s) where all material exceeding NYSDEC standards, criteria, or guidance values will be disposed; and
  - c. Identify source(s) of clean backfill (clean sand, recycled concrete aggregate, gravel, or soil) to be used wherever contaminated material is encountered and removed.
- Y15. For the purposes of the Hazardous Waste and Petroleum Work Plan, and Certificate Conditions K8, Y11, Y14, and V2, the following definitions apply:
- “Contaminant” shall include the following: all substances in the full Target Analyte List/Target Compound List (inclusive of volatile organic compounds [VOCs] and semi-volatile organic compounds [SVOCs]); Per- and Polyfluoroalkyl Substances; 1,4-Dioxane; and pesticides and herbicides.
- "Contaminated" shall mean the presence of any contaminant above applicable NYSDEC standards, criteria, guidance, or more stringent applicable levels of other authorities or agencies, that are to be determined in consultation with NYSDEC, in any environmental medium, such as soil, surface water, sediment, groundwater, soil vapor, ambient air, or indoor air, along the proposed terrestrial cable route or at the onshore substation.
- Y16. The Certificate Holder must submit a Fisheries Compensation Plan for Project activities in New York State waters as part of Fisheries Management Plan in the EM&CP for the applicable Segment. The Fisheries Compensation Plan shall include:
- a. A narrative overview of the claim process, including summary of the initial decision-making process;
    - i. This narrative will include more details on the Fishing Conflict Prevention/Hazard Notification Claim Procedure, which covers claims for:

1. commercial fisheries gear losses during all phases of the Project, including fisheries and benthic monitoring efforts, scientific study, survey, construction, operation, maintenance, and/or decommissioning for the life of the Project (up to 100% value of gear); and
  2. a reimbursement process for any temporary displacement, or temporary impairment to fishing following gear loss, of commercial fishing directly resulting from the Project's fisheries and benthic monitoring efforts, scientific study, survey, construction and maintenance activities, including any necessary cable reburial activities, and decommissioning activities (up to 50% of lost gross revenue).
- ii. As will be detailed further in the Fisheries Compensation Plan: (1) a claimant may take advantage of both types of claims for a single event, and (2) in the event a claim is denied initially, the claimant will be informed why.
  - iii. The Fisheries Compensation Plan will not preclude the Certificate Holder from delegating the claims process to a third-party administrator and will conform to BOEM's Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries on the Outer Continental Shelf, to the extent practicable.
  - iv. The Fisheries Compensation Plan will identify the methods by which the Certificate Holder will notify potential claimants of the claims process and how the Fisheries Compensation Plan corresponds with the Mariner Notification and Public Input Process as required by this Certificate.
- b. A narrative overview of the process for claimants to appeal any decision regarding their claims to an independent third-party arbitrator, including the ability of a claimant who is successful on appeal to seek reimbursement for any lost revenue associated with the appeal process; and
    - i. Certificate Holder will inform any claimant when a third-party arbitrator has been assigned to their appeal. The third-party arbiter will be unbiased (i.e. individuals not employed by the Certificate Holder). He or she will be a practicing or retired attorney, current or former judge, arbitrator and/or mediator. In all cases, the third-party arbiter will have knowledge of the offshore environment and general knowledge of various offshore activities including but not limited to fishing, shipping, surveying and offshore construction. Appeals will be provided to the third-party arbiter with the Notice of Appeal and the claimant's complete claim. No new information will be considered on appeal.
  - c. A statement that the number of claims submitted by persons or entities pursuant to sections (i) (1) and (2) of this section and adjudicated by the Certificate Holder shall not be limited.
  - d. The Certificate Holder shall file with the Secretary a summary of all claims filed and/or settled on an annual basis, including the claim type the impacted fishing activity, date of the incident, claim filing date, date closed, value requested, and value paid;

- e. The Certificate Holder must notify DPS Staff, NYSAGM, NYSDEC, and NYSDOS via electronic mail within 30 days of any resolution (i.e., denial or award) of a fisheries compensation claim. The notification must include the claim, claim type, species impacted, and the fishing activity disrupted and/or displaced and the resolution;
  - f. The Certificate Holder shall not require any fisherman, as a condition of filing a claim, to waive their right to seek resolution of such claim within a court of competent jurisdiction in the event the claim is not resolved through the Fisheries Compensation Plan process;
  - g. The Certificate Holder must not require any fisherman settling a fisheries compensation claim to sign a Non-Disclosure Agreement nor require waiver of any claims beyond the loss event initially claimed; and
  - h. Following resolution of a successful claim under Condition Y16 that involves a repeatable incident, Certificate Holder will circulate appropriate internal messaging, including, as appropriate, to its contractors, to reduce likelihood of such recurrence.
- Y17. In the EM&CP for the applicable Segment, the Certificate Holder will detail the activities and anticipated timeframes proposed within all Recognized Ecological Complexes (RECs) (i.e., Gravesend Bay REC) and identify avoidance and impact minimization measures.

## **Z. DECOMMISSIONING**

- Z1. As part of decommissioning, the Certificate Holder shall survey and use best efforts to remove installed cable protection measures that are within 2 feet of the seabed surface.
- Z2. The Certificate Holder shall prepare a Decommissioning Plan, for inclusion in the EM&CP for the applicable Segment. The Certificate Holder shall provide the Decommissioning Plan to the DPS Staff, NYSDEC, NYSOGS, LICFA, NYSDOS NYCDEP, NYCDOT, and NYCSBS at least forty-five (45) days prior to filing the EM&CP for the applicable Segment for review and comment. The Decommissioning Plan shall include: (i) the anticipated life of the Project; (ii) estimates of the decommissioning costs (in current dollars scrap and resale value cannot be used for offsetting decommissioning costs) for each of: (a) that portion of the submarine export cable route from the boundary of New York State territorial waters to the mean high water line (the “New York State Area”); and (b) the onshore facilities; (iii) letters of credit or performance bond with surety will be available for decommissioning and restoration as provided in the Plan; (iv) an analysis of the options for decommissioning the Project, including any cable protection measures used, and restoring the Project Area, including any decommissioning methods and potential impacts to the environment and fishermen for each option; (v) if applicable, how the Certificate Holder will address impacts of leaving any portion of the Project in place, including but not limited to, potential impacts to fishermen, fisheries, and other environmental resources, etc.; and (vi) procedures and timeframes for notifying municipal officials and landowners and residents (if different from owners) of all properties that are crossed by or abut against the Project Area along the route about decommissioning activities. An outline of the Decommissioning Plan is attached as Appendix K to the Joint Proposal.
  - a. The decommissioning estimates contained in the Decommissioning Plan shall be updated based on the as-built Project, to reflect inflation, and any other increases due

to labor or other costs, by a qualified independent engineer licensed in the State of New York, after one year of Project operation, and every fifth year thereafter provided that the Certificate Holder may submit an attestation with appropriate justification if there are no material changes to the previously filed decommissioning estimates. Such updates shall be filed (one year after commercial operation date and every fifth year thereafter), with the Secretary to the Commission. Scrap and re-sale value cannot be used for offsetting of decommissioning costs in the required estimate updates. The value of the letters of credit secured for decommissioning purposes shall never be reduced below the initial Decommissioning Cost Estimate.

- b. The Certificate Holder shall work with DPS Staff, and/or the NYSOGS to craft a letter of credit that will establish a right for the Commission and/or NYSOGS to draw on an irrevocable letter of credit in the event of the Certificate Holder's failure to timely decommission the facilities located in the New York State Area and for the State to use such funds to restore that area in accordance with the Decommissioning Plan (the "New York State Area Letter of Credit"). The New York State Area Letter of Credit shall state on its face that it is held by and for the sole benefit of the Commission and/or NYSOGS.
- c. The Certificate Holder shall engage the services of an independent trustee and enter into a Standby Trust Agreement for the administration of the funds from the Letter of Credit. The form of the Standby Trust Agreements shall be included as part of the EM&CP with proof of obtaining the relevant security.
- d. The Letter of Credit shall provide that the beneficiaries thereof may, subject to the cure provisions set forth in Condition Z3, exercise their right to draw on it and enter the Project area and carry out the Decommissioning Plan in accordance with the terms of the Letter of Credit following the occurrence of any of the events set forth in subsection (i) hereof:
  - i. Decommissioning will commence if: (1) the Project's construction has halted for a period of 12 continuous months, unless the 12-month period of inactivity is the result of reasonably unforeseen circumstances, recommencement is being actively pursued in good faith by the Certificate Holder, the period of inactivity is due to a Force Majeure event, or the Certificate Holder otherwise obtains approval from the Commission for such construction inactivity; or (2) after commercial operation of the Project, if the Project has not generated electricity for a period of 12 continuous months, unless the 12-month period of no energy output is due to a Force Majeure event or the result of a repair, restoration, or improvement to an integral part of the Project that affects the generation of electricity and that repair, restoration, or improvement is being actively pursued in good faith by the Certificate Holder, or the Certificate Holder otherwise obtains approval from the Commission for the Project to not generate electricity for such period of time. The Certificate Holder shall file notice with the Secretary within 30 days of becoming aware of any condition which precipitates Certificate Holder's request, if it is anticipated that repairs or completion of



construction (or similar) will extend beyond a 12-month inactive period; written notice shall also be provided to: (1) DPS Staff, NYSDEC, NYSDOT, and NYSDOS, and (2) landowners and residents (if different from owner) of property crossed or abutted by the Project of planned decommissioning and site restoration activities prior to commencement of those activities.

- Z3. Prior to exercising the right to draw on a letter of credit, the beneficiaries thereof shall provide the Certificate Holder written notice by certified mail of their intent to draw on a letter of credit. If within ninety (90) days of the date of such written notice Certificate Holder has documented to the beneficiaries' reasonable satisfaction that Certificate Holder is, as applicable: (i) diligently implementing the Decommissioning Plan; (ii) diligently acting to restore commercial operations; or (iii) diligently addressing the subject cable exposure, then the letter of credit shall not be drawn upon. If, after ninety (90) days, the beneficiaries thereof determine that the Certificate Holder has not met the requirements set forth in (i) through (iii), above, the beneficiaries shall, at their sole individual discretion, draw on the letter of credit. In the event that a letter of credit is drawn upon, Certificate Holder shall have no further liability relating to the activities for which the letter of credit was drawn.

**AA. PRESERVATION OF RIGHTS**

- AA1. Certificate Holder shall not assert, argue, or claim, in any action or proceeding or before any court, commission, agency, mediator, or other tribunal, that the New York State Public Service Law, any federal law applicable to the Project, any regulations promulgated under any such State and/or federal laws, this Certificate, and/or any condition of this Certificate preempts, supersedes, nullifies, or renders unenforceable in whole or in part any right under, or provision of, any contract, easement, lease, or other agreement that the City has entered into, or may enter into in the future, with Certificate Holder, or with any entity affiliated or associated with Certificate Holder or the Project.