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**COMPETITIVE PROCESS FOR GRANTING THE TEMPORARY OCCUPANCY PERMIT  
OVER MARITIME AREAS, FOR THE DEVELOPMENT OF OFFSHORE  
WIND ENERGY GENERATION PROJECTS IN COLOMBIA**

**TEMPORARY OCCUPANCY PERMIT PROPOSAL  
RESOLUTION NUMBER ( ) MD-DIMAR**

*Whereby a temporary occupancy permit XXX is granted for conducting activities related to the measurement and data collection to assess the feasibility of an offshore wind energy project; and those necessary to acquire the requisite licenses and permits for its construction, within the jurisdiction of the General Maritime Directorate.*

**THE MARITIME DIRECTOR GENERAL**

Acting under the legal authority granted by items 21 and 22 of Article 5 of Decree Law 2324 of 1984, item 2 of Article 2 of Decree 5057 of 2009, and as per the stipulations of Resolution 40284 of August 3, 2022 - amended by Resolution XXX of 2023, issued by the Ministry of Mines and Energy and the General Maritime Directorate, and

**CONSIDERING**

The General Maritime Directorate-DIMAR, as the National Maritime Authority, is tasked with implementing government maritime policy and is responsible for the direction, coordination, and oversight of maritime activities as outlined in Decree Law 2324 of 1984, and in alignment with Decree 5057 of 2009.

According to Article 2 of Decree Law 2324 of 1984, *"The General Maritime Directorate exerts jurisdiction up to the outer limit of the exclusive economic zone, over areas including internal maritime waters, intercostal and maritime traffic channels, and all marine and river-marine systems; territorial sea, contiguous zone, exclusive economic zone, seabed and subsoil, superseding waters, coasts, inclusive of beaches and low-tide territories, (...)"*.

Items 21 and 22 of Article 5 of Decree Law 2324 of 1984 designate the General Maritime Directorate's duties and powers to include authorizing and regulating concessions and permits, as well as the construction and utilization of islands and artificial structures in the waters, low-tide territories, beaches, and other public domain assets within its jurisdiction.

Law 1715 of 2014, in its Article 6, subparagraph e), dictates the Ministry of Mines and Energy's competencies, among others, to:

*"Advocate for a low-carbon development of the energy sector through the promotion and development of non-conventional energy sources and energy efficiency."*

Furthermore, for the development of wind energy, Article 20 thereof sets forth in items 2 and 3:

*"2. The National Government, through the Ministry of Mines and Energy, will encourage the use of wind resources in power generation projects in isolated or interconnected zones.*

*3. The Ministry of Mines and Energy, directly or via an appointed entity, will determine the technical and quality requirements to be met by facilities utilizing wind resource for power generation".*

Article 2 of Decree 381 of 2012 endowed the Ministry of Mines and Energy with the following functions:

*"3. Devise, enact, steer, and coordinate policies related to the generation, transmission, distribution, and commercialization of electric power.*

*4. Devise, enact, steer, and coordinate policies on the judicious use of energy and the development of alternative energy sources (...)."*

Pursuant to Resolution 40311 of 2020, the Ministry of Mines and Energy defined the Public Policy Guidelines for the allocation of transportation capacity to generators within the National Interconnected System.

Grounded in the public policy guidelines delineated by the Ministry of Mines and Energy via Resolution 40311 of 2020, the Energy and Gas Regulatory Commission (CREG) promulgated Resolution CREG 075 of 2021, *"Which delineates the provisions and procedures for assigning transportation capacity in the National Interconnected System"*.

Resolution CREG 025 of 1995 sets forth the Network Code as an integral part of the Operating Regulation of the National Interconnected System. The Network Code specifies, among other elements, the planning criteria for the National Transmission System (STN), as well as the requisite minimum technical standards for the design, building, assembly, commissioning, operation, and maintenance that all users must satisfy for or on behalf of their connection to the STN.

Moreover, Law 143 of 1994 establishes the framework for the generation, interconnection, transmission, distribution, and marketing of electricity nationally, provides certain authorizations, and issues other energy-related mandates.

Article 16 of Law 143 of 1994 posits that the Mining and Energy Planning Unit (UPME) is tasked with "*developing and refreshing the National Energy Plan and the Electrical Sector Expansion Plan, in alignment with the National Development Plan Project*", as well as "*rendering technical planning and advisory services and levying charges for them*",

Article 85 of Law 143 of 1994 asserts: "*The onus of investment decisions in generation, interconnection, transmission, and distribution of electric power lies with the investors, who fully bear the inherent risks associated with the project's execution and operation*".

CONPES 4075 of 2022 concerning Energy Transition decreed that: "*The General Maritime Directorate, together with the Ministry of Mines and Energy, will define the rules and execute the mechanism that allows assigning maritime areas for the development of offshore wind energy projects.*"

The Colombian Maritime Authority (DIMAR), in coordination with the Ministry of Mines and Energy, concluded that the most fitting method for allocating areas for the development of offshore wind energy generation projects is via competitive processes for the granting of Temporary Occupation Permits and subsequent concession concerning the aforementioned areas to investors possessing the requisite legal, technical, and financial capacity.

Through Resolution 40284 of August 3, 2022, issued by the Ministry of Mines and Energy (MME) and the General Maritime Directorate (DIMAR), the rules, requirements, and minimum conditions for the competitive process of granting Temporary Occupancy Permits for Colombian maritime areas for the development of Offshore Wind Energy Generation Projects, among other provisions, have been established.

Pursuant to Article 2 of Resolution 40284, dated August 3, 2022, a Temporary Occupancy Permit, or simply 'the Permit', is defined as the administrative act issued by DIMAR, which grants the Successful Bidder exclusivity over a designated area for activities related to the measurement and collection of data and information to establish a project's feasibility. Upon

confirming feasibility, it includes the necessary activities to secure licenses and permits for constructing the Offshore Wind Energy Generation Project.

Moreover, Article 2 of the aforementioned Joint Resolution 40284 of August 3, 2022, states that *"The Administrator of the Competitive Process, or the Administrator, shall be DIMAR or a third party appointed by DIMAR, as stipulated in Article 3 of this resolution."*

Consistent with the foregoing, Article 3 of Joint Resolution 40284 of 2022 indicates that DIMAR may conduct the competitive process outlined in this Resolution or may appoint a third party, whether a private or public legal entity, as the Administrator to design, administer, and execute the competitive process, under a contract or inter-administrative agreement.

In line with Articles 3 of Decree Law 4137 of 2011, and 2 of Decree 714 of 2012, the National Hydrocarbons Agency (ANH) *" (...) is tasked with the comprehensive management of hydrocarbon reserves and resources owned by the Nation; promoting the optimal and sustainable exploitation of hydrocarbon resources and contributing to the national energy security..."*

Additionally, items 5 and 23 of Article 3 of Decree 714 of 2012 delineate ANH's functions, which include supporting the Ministry of Mines and Energy in the formulation of governmental policy concerning hydrocarbons, the drafting of sectoral plans, the achievement of respective goals, and other duties assigned or delegated by the Ministry of Mines and Energy, in accordance with current regulations.

By Resolution 40234 of February 23, 2023, titled *"Which delegates certain functions to the National Hydrocarbons Agency,"* the Ministry of Mines and Energy resolved *"to delegate to the National Hydrocarbons Agency (ANH) the task of creating inputs and providing the necessary support for the ongoing formulation and design of public policy overseen by the Ministry of Mines and Energy, regarding the following energy resources: geothermal, wind energy, and hydrogen, capture, storage and use of carbon (CCUS); as well as geological alternatives for the underground storage of Carbon Dioxide (CO2), through the use of Non-Conventional Energy Sources (FNCE)." The inputs referred to in this article encompass the development of studies, diagnostics, need assessments, research, public policy recommendations, structuring and carrying out processes, as well as all necessary activities to promote the FNCE subject to this delegation".*

On July 12, 2023, the National Agency of Hydrocarbons (ANH) and the General Maritime Directorate (DIMAR) signed an Interadministrative Agreement with the objective of consolidating administrative, technical, technological, physical, and logistical efforts to administer and execute the competitive process set forth in Joint Resolution 40284 of

August 3, 2022, in a coordinated and efficient manner. This process pertains to the allocation rounds for the Temporary Occupancy Permit on Colombian maritime areas for offshore wind energy generation projects.

By Resolution XX of 2023, promulgated by the Ministry of Mines and Energy and the General Maritime Directorate, Resolution 40284 of 2022 is amended. This amendment redefines the competitive process for granting the Temporary Occupancy Permit over maritime areas, aimed at the development of offshore wind energy projects, and introduces other regulations.

Through the competitive process conducted by the National Hydrocarbons Agency, in its capacity as Administrator, and following the stipulations of the tender documents and conditions for the award of the area offered in the first round as set out in Joint Resolution 40284 of August 3, 2022, as evidenced by the minutes dated XXXXX, the Company/Consortium XXXX was selected to develop the project XXXX, intended for offshore wind energy generation.

Similarly, it was shown that prior to the formalization of the Temporary Occupancy Permit, a commercial joint-stock company with a single purpose and joint and several liabilities among the constituents regarding the obligations incurred in the awarding of the Temporary Occupancy Permit was established, as described in subparagraph b) of the legal qualification in Article 18 of Resolution 40284 of August 3, 2022, issued by the Ministry of Mines and Energy and the General Maritime Directorate. **Optional - only in cases where applicable.**

By an official letter filed internally with No. XXXX on the XXXX of XXX of the year, the Company/Consortium XXXX, awardee of the competitive process, submitted to DIMAR within ninety (90) calendar days following the effective date of the award resolution, the following documents:

- a) The creation of the Temporary Occupancy Permit Performance Guarantee. No. XXXX in favor of the Nation – Ministry of Defense – General Maritime Directorate, as stipulated in Article 31 of Joint Resolution 40284 of August 3, 2022, serving as a guarantee for the compliance with the activities and timeline of the offer and fulfillment of the obligations of the Temporary Occupancy Permit.
- b) The establishment and delivery of the general third-party liability insurance policy and the policy for the payment of wages and social benefits.
- c) The incorporation of the Promised Company based on which they participated in the Process and with which Qualification was obtained, if applicable.



- d) Establish a Consortium or Promise of a Future Company with a business that includes National Energy Sector Shareholding, previously verified by the Ministry of Mines and Energy, and submit to DIMAR the evidence of such activity.

The Colombian Maritime Regulation No. 5, Part 3, Title 6, Article 5.3.6.17 stipulates that for the authorization of temporary infrastructure installation for data capture, in a maritime area, which can be fixed or floating, aimed at gathering data or monitoring climatic, environmental, physical, and coastal marine scientific research information, the following requirements must be fulfilled:

1. Detailed description of the subject of the data capture, areas to be occupied, as well as the type of elements and materials of the infrastructure to be installed, without using materials that present environmental risks.
2. A stability study of the infrastructure to be installed, which must comply with the safety and environmental protection criteria.
3. Plan of the sector or area that is the subject of the request and projected location for the elements to be installed in the National Geocentric Reference Framework (MAGNA-SIRGAS, by its Spanish acronym), Official Datum of Colombia.
4. In the corresponding events, the Preventive Archeology Program must be presented to the Colombian Institute of Anthropology and History (ICANH), in accordance with Article 131 of Decree 2106 of 2019.
5. Current documentation of the motor vessels to be used in operations or activities in maritime waters.

Furthermore, pursuant to Resolution 40284 of 2022 and related regulations, the following will be required:

1. The Timeline and S-Curve for the Temporary Occupancy Permit phase.
2. If the Successful Bidder is composed of several legal entities, it must be specified which one meets the Technical Capacity requirements and has been selected to act as the Operator, with a participation of no less than thirty percent (30%) in the participation interests of the Multiple Contractor association for the corresponding approval.
3. Certification of the total annual payroll for personnel dedicated to the project must be provided, which shall be verified with a certificate issued by the statutory auditor.

According to the stipulations in Colombian Maritime Regulation No. 5, Part 3, Title 6, Article 5.3.6.18, upon receiving all requirements and based on the concept of the Maritime and Port Security Area from the Harbor Master and Maritime Signaling, the Maritime Development Sub-Directorate issued technical concept XXX.

Article 5.3.6.20 ibidem mandates that upon the end of the authorization or cessation of data capture, all installed infrastructure on the surface, seabed or subsoil must be removed, considering the environmental conditions or guidelines that have been established in the statement provided by the environmental authority, as well as other obligations set out in the administrative act granting authorization, in order to protect, recover, and/or conserve the environmental and safety conditions of the area where the infrastructures were installed, within no more than fifteen (15) business days.

Additionally, Article 5.3.6.21 of Colombian Maritime Regulation No. 5 aforementioned, requires the delivery to the Colombian Oceanographic Data Center (CECOLDO) of the data from oceanography, geochemistry, and marine meteorology disciplines obtained through measurements while the infrastructure is in place, applying the established procedures, standards, and best practices, in line with the technical and scientific data policy of the General Maritime Directorate (REMAC 4, Part 5, Title 2).

Lastly, in accordance with Colombian Maritime Regulation No. 5, Part 3, Title 6, Article 5.3.6.22, where applicable, the Successful Bidder must carry out the appropriate signaling in compliance with the administrative act that grants the authorization for the installation of data capture infrastructure, and in accordance with Resolution 556 MD-DIMAR-SUBDEMARGINSEM-ASEM of July 2, 2019.

Law 1115 of 2006 sets forth the system and method for setting and collecting tariffs for services provided by the General Maritime Directorate, DIMAR. Therefore, the Society/Consortium XXXX, awardee of the competitive process, must verify the payment for the procedure to obtain the Temporary Occupancy Permit. Moreover, it is required to make payment for the service fees associated with the administrative management of public-use assets under its jurisdiction, as these are pertinent to the operations linked with data measurement and gathering to determine the feasibility of an offshore wind energy project.

Pursuant to the current regulations, through communication No. xxxxx, the successful bidder in the competitive process submitted the following documents and information: XXXXX.

In accordance with Article 79, section 4 of Decree Law 19 of 2012, an absence of drug trafficking reports was verified for the following individual: XXXXXX, identified by XXXXX.

Given that the applicant has met the stipulated requirements, this General Maritime Directorate will issue a Temporary Occupancy Permit to XXXX for the execution of operations connected with the measurement and collection of data and information to assess the viability of an offshore wind energy project; this also includes tasks necessary to secure licenses and permits for the construction of the project named "XXXXX". This will encompass a total area of XXXXXXXXX square meters (XXXX m2), situated in maritime waters within the jurisdiction of the Port Authority of XXXX, as detailed in Technical Concept XXXX, composed by the Subdirectorate of Maritime Development, included in Annex A of Joint Resolution 40284 of 2022, which will constitute an integral part of this Administrative Act.

Therefore, the General Maritime Director,

**DECIDES:**

**ARTICLE 1. PURPOSE** To award the company/consortium XXXXX, winner of the competitive process conducted by the ANH, a temporary occupation permit for carrying out operations associated with the measurement and collection of data and information to assess the viability of an offshore wind energy project; along with related activities required for obtaining construction licenses and permits for the project known as "XXXXX", at their own risk, in the maritime area under the jurisdiction of the General Maritime Directorate, at the following coordinates:

POINT	EAST	NORTH
1		
2		
3		
4		
5		

Figure No. 1. Geographic location

**PARAGRAPH 1** This authorization encompasses an area of XXXX square kilometers (XXXX Km2) in maritime waters under the authority of the Port Captaincy of XXX, as characterized in Technical Concept number CT. XXXX, issued by the Maritime Development Subdirectorate of this General Directorate, which forms an integral part of this resolution.

**PARAGRAPH 2 (AS APPLICABLE)** Given that the successful bidder comprises a plurality of legal entities, XXXX company is hereby authorized to act as the Operator.



The Operator, concerning Plural Proponents, is the legal entity that meets the requirements for capability and is designated to represent the Consortium before DIMAR and the Administrator. In the latter case, it must be the same legal entity appointed as the legal representative of the Consortium. Throughout the validity of the Temporary Occupancy Permit, either the Holder or the legal entity member of the Consortium shall be responsible for leading the Activities, assuming leadership and representation, and directing the adherence to the Permit obligations and engagement with DIMAR. The same rules are applied to the figure of the Promise to Form a Corporation in the Future.

The criteria set forth by the Terms of Reference and Specific Conditions of the competitive process to qualify as an Operator, and fulfilled by the company xxxx are: a) evidence of Technical Proficiency, and b) maintain a minimum thirty percent (30%) stake in the partnership interests of the plural bidders' association-consortium.

**ARTICLE 2 SCOPE** The Temporary Occupancy Permit granted by this Resolution, which facilitates activities pertinent to the measurement and data collection aimed at ascertaining the feasibility of the Project, as well as obtaining the necessary licenses and permits for the construction of the Offshore Wind Energy Generation Project, shall be confined to the following parameters:

1. It shall apply exclusively to the Area Awarded in accordance with the rules of the offering detailed in the Tender Documents and the Specific Conditions Basis of the competitive process.
2. It will confer exclusivity over the Awarded Area strictly for the progression of the activities delineated in this administrative decree.
3. This authorization encompasses the infrastructure, works, and activities with the specific features and conditions outlined as follows: "XXXX". The installation of any additional elements necessitated by the Temporary Occupancy Permit must be pre-approved by DIMAR.
4. The Temporary Occupancy Permit does not bestow any rights for the provision, operation, exploitation, organization, or full or partial management of a public service, nor for the construction, exploitation, or conservation of a work or property used for public service, or the exploitation of any resources within the Assigned Area.
5. The execution of the Temporary Occupancy Permit shall conform to the Terms of Reference and Specific Conditions of the Competitive Process by which it was granted, and the legal framework set forth in these documents.

**PARAGRAPH 1** For the duration of this Temporary Occupancy Permit, the Successful Bidder is permitted to seek approvals from DIMAR for conducting measurements along potential Submarine Cable corridors, to determine their path for connection to the National Interconnected System (SIN).

**ARTICLE 3 DURATION** This Temporary Occupancy Permit is hereby granted for a duration of eight (8) years, commencing from the date this administrative action takes effect.

This duration may be extended, subsequent to a request from the Successful Bidder, should the S-Curve and the project timeline be updated pursuant to any of the stipulations outlined in Article 11 of Resolution 40284 of 2022.

**PARAGRAPH 1** Notwithstanding the eight (8) year period stipulated herein, the developer may seek, subsequent to fulfilling the legal prerequisites, a Maritime Concession at least nine (9) months before the expiration of this permit's term.

**PARAGRAPH 2** The General Maritime Directorate (DIMAR) reserves the right to prematurely conclude this Temporary Occupancy Permit if any conditions justifying the enforcement of the performance guarantee issued by the Successful Bidder, as set forth in Article 13 of this administrative document, are met. In such an event, the designated area will be relinquished.

**ARTICLE 4 OBLIGATIONS OF THE SUCCESSFUL BIDDER** Throughout the validity of the Temporary Occupancy Permit, the Successful Bidder is bound to fulfill the following obligations:

1. To establish, renew, update, submit, and maintain, as necessary, the performance guarantee for the Temporary Occupancy Permit as mentioned in Article 31 of the Joint Resolution 40284 dated August 3, 2022, issued by the Ministry of Mines and Energy and DIMAR. This includes the policies ensuring compliance with employment duties and non-contractual civil liability as detailed in the Specific Conditions and Specifications of the Competitive Process and as encompassed within this Temporary Occupancy Permit.
2. To adhere to the activities specified in the S-Curve and the tendered schedule, in accordance with Annex 7.1. of the Specific Terms and Conditions, which constitutes part of this administrative act.
3. To hire an auditor and bear the costs for auditing the S-Curve and the proposed schedule as delineated in Article 34 of Resolution 40284 of August 3, 2022, promulgated by the Ministry of Mines and Energy and the General Maritime Directorate, within two (2) months following the enactment of this administrative

action.

4. Cover the costs for inspections conducted to oversee adherence to the Temporary Occupancy Permit as addressed in Article 34 of Joint Resolution 40284 of August 3, 2022, enacted by the Ministry of Mines and Energy alongside the General Maritime Directorate, for its entire duration.
5. The Successful Bidder is required to consistently and promptly update DIMAR on the progress and outcomes of the activities scheduled in the S curve and any others related to the Temporary Occupancy Permit. This includes conducting Preliminary Consultations when necessary and completing the procedures to acquire environmental licenses; carrying out environmental protection work and the conservation of renewable natural resources; implementing the Technical Skills Transfer Program, and generally, on meeting all obligations, rendering services, and fulfilling commitments, as well as the execution of the timeline(s). As such, they must provide DIMAR with technical information every four (4) months, aligning with the directives set forth in this Resolution.
6. Provide any information or documentation requested by the auditor, inspector, or DIMAR as part of the monitoring process.
7. Retain and make available to DIMAR all data and information collected during the validity of the temporary occupancy permit, to be exclusively used for planning, monitoring, and safeguarding the marine environment in the short, medium, and long term. The Successful Bidder's shared information will be regarded as classified according to the stipulations of Law 1712 of 2014, Decree number 1081 of 2015, and subsequent amendments, additions, or replacements.
8. Present to DIMAR detailed information on the Technical Skills Transfer Program offered in the bid, identifying the commitments for the transfer of technical skills, knowledge, or experience, benefits to communities, enhancement of existing national, regional, or local infrastructure and workforce in relation to the Offshore Wind Industry during the Temporary Occupancy Permit period, which will be auditable throughout the project's development and implementation.
9. Identify the Project's Direct Influence Area, where the activities described in the Technical Skills Transfer Program will take place.
10. Should the Successful Bidder comprise multiple legal entities, the holder of the Temporary Occupancy Permit must notify DIMAR in writing when the Operator has

completed their assigned operations, decides to resign, or is removed from their role, providing at least twenty (20) business days' notice prior to the effective date of the operations' conclusion, resignation, or removal. In the same written notice, the consortium of Successful Bidders must request authorization from DIMAR to appoint a new Operator, provided they meet the requirements set out in article 1, paragraph 2 of this Resolution to act as an operator. DIMAR will assess the operator change request and will issue a decision within twenty (20) business days on whether to grant authorization. The operator change will come into effect following DIMAR's authorization.

11. Regarding tax obligations, the holder and the operations conducted in relation to or due to the award, fulfillment, and conclusion of this administrative act are governed by Colombian tax laws.

**ARTICLE 5 TERMS OF USE** The Successful Bidder is bound by the following in relation to the area of this Temporary Occupancy Permit:

1. Use the area and installed assets solely for the activities authorized by this administrative act, which confers the Temporary Occupancy Permit.
2. Notify the Harbor Master at the onset of the authorized activities under this Temporary Occupancy Permit, and of any sanctioned interference with the public utility property, which is the subject of this Temporary Occupancy Permit.
3. Ensure that work adheres to the stipulated safety conditions, project's technical studies, activity schedule, and diagrams outlined in the Specific Conditions and Tender Documents of the competitive process.
4. Due to its status as public property of the Nation, preserve any traditional use of the sector and ensure the right of passage for individuals and vessels.
5. Implement and uphold all necessary preventative measures to prevent the disposal of trash, waste, or any pollutants or potential pollutants in marine waters, maritime beaches, and/or low-tide lands. This also includes ensuring the collection of trash resulting from the activities in the permitted area.
6. Refrain from constructing any protective structures like breakwaters, groins, spurs, seawalls, or any other additional or complementary works within the permitted area or its vicinity.
7. Allow inspections by various authorities to verify that the Temporary Occupancy

Permit is upheld as authorized.

8. Fencing or enclosing any elements and/or works authorized under this Temporary Occupancy Permit is prohibited.
9. Promptly inform DIMAR in the event that any partial or total modifications to the Temporary Occupancy Permit authorization are required, to facilitate the processing of the necessary authorization after verifying compliance with legally established requirements.
10. Request authorization for the navigation aid plan and, if applicable, install such aids for the authorized activities.
11. Upon expiration of the Temporary Occupancy Permit, whether by term completion or other causes, without concession application proceedings, dismantle and remove installed assets and surrender the area without any payment from the Nation - National Defense Ministry - General Maritime Directorate to the Successful Bidder.
12. Abstain from any legal transactions involving the public utility property subject to this Temporary Occupancy Permit.
13. Strictly comply with the security provisions and measures required for conducting maritime activities, as established by the Maritime Authority.
14. This Resolution does not relieve the beneficiary of the responsibility to comply with the legal norms and necessary procedures with other entities for the appropriate authorizations. In this regard, it is required to adhere to the conditions set out in the licenses, authorizations, permits, and statements issued by the relevant authorities, which are essential for the performance of the activities covered by this Temporary Occupancy Permit.

**ARTICLE 6 SUBMISSION OF TECHNICAL INFORMATION** The Successful Bidder must make available to the General Maritime Directorate all scientific, technical, environmental, economic, financial, and community benefit program development information, in fulfillment of the obligations incumbent upon them as outlined in the Temporary Occupancy Permit.

To this end, in addition to the documents required as per this Resolution, the Successful Bidder commits to submitting to DIMAR a technical report every four (4) months, recording the following:



1. Progress and outcomes of the activities carried out under the Temporary Occupancy Permit as laid out in the S-Curve.
2. Data from the fields of oceanography, geochemistry, and marine meteorology collected through measurements while the infrastructure is in place, utilizing procedures, standards, and best practices in line with the General Maritime Directorate's policy on technical and scientific data.
3. Engagement processes for Prior Consultations and environmental licenses.
4. Activities concerning the protection of the environment and renewable natural resources;
5. Implementation of Technical Capacity Transfer Programs; and
6. Overall compliance with their obligations, benefits, and commitments, as well as the execution of the schedule(s) for the Temporary Occupancy Permit.

The comprehensive technical report must be submitted to DIMAR no later than five (5) business days after the conclusion of each four-month period.

**ARTICLE 7 AMENDMENT OF THE S-CURVE AND TEMPORARY OCCUPANCY PERMIT SCHEDULE** Throughout the validity of this Temporary Occupancy Permit, the Successful Bidder may request changes to the project's schedule and S-Curve in the following scenarios:

1. Delays in securing permits, licenses, or necessary procedures for the Project's execution, resulting from factors outside the Project implementer's due diligence.
2. Acts of force majeure.
3. Project development delays due to public order issues, verified by the responsible authority or entity.
4. Delays in the expansion projects of the National Transmission System – STN, which affect the Project's operational commencement, in accordance with the connection concept provided by the UPME.

**PARAGRAPH 1** A request for amendment to the S-Curve and/or the Temporary Occupancy Permit's schedule must be submitted in writing to DIMAR by the Operator within fifteen (15) days following the occurrence that gave rise to the request. The request must be properly justified and supported with documents that substantiate one or more of the events described in this article. Likewise, the Successful Bidder must send a copy of the Temporary Occupancy Permit to the auditor, who in turn must submit their opinion on the modification request to DIMAR. DIMAR is then responsible for making a decision on the request for modification within thirty (30) business days after receiving the auditor's opinion.

**PARAGRAPH 2** The Successful Bidder may request changes to the Project's Schedule and S-Curve for up to one (1) year during the validity of the Temporary Occupancy Permit. If the

Successful Bidder seeks to modify the S-Curve or the schedule of the Temporary Occupancy Permit due to reasons not mentioned in this article, they must demonstrate that they have acted cautiously and diligently to meet the obligations of the Temporary Occupancy Permit in a timely, effective, and efficient manner. In this case, the value of the Performance Guarantee's coverage must be double the amount in effect at the time of requesting the modification.

**PARAGRAPH 3** Should the submitted request be incomplete, DIMAR will notify the awardee within ten (10) days from the submission date to complete the application within a maximum of thirty (30) calendar days. The request will be considered abandoned if the Successful Bidder fails to fulfill this requirement, unless they request an extension before the end of the granted period, for a duration of up to the same length.

**PARAGRAPH 4** The General Maritime Directorate shall have thirty (30) business days to make a substantive decision on the modification request, starting from the date the Temporary Occupancy Permit holder provides all necessary information for the assessment.

#### **ARTICLE 8 MODIFICATION OF THE HOLDER OF THE TEMPORARY OCCUPANCY PERMIT**

The beneficiary of the Temporary Occupancy Permit may request a change of the permit holder at any time. For this, the holder of the Permit will submit an application to DIMAR demonstrating that the interested party seeking to become the new holder meets the following criteria:

- a) They must fulfill, at a minimum, the enabling requirements and provide equal or better conditions that resulted in the qualification score awarded to the current holder during the evaluation phase of the competitive process; and
- b) They must provide a document committing to take on the burdens and responsibilities arising from the Temporary Occupancy Permit, under the same terms as it was originally issued.

**PARAGRAPH 1** Should DIMAR deem it appropriate after reviewing the documents and qualifications of the interested legal entity, it will authorize a change of holder through an administrative action.

**PARAGRAPH 2** In all instances, the Successful Bidder is obliged to maintain the guarantees associated with the Temporary Occupancy Permit and will be accountable for fulfilling these obligations and all others stemming from the Temporary Occupancy Permit until DIMAR approves the request to amend the Temporary Occupancy Permit and all the guarantees that the new permit holder must provide.

**PARAGRAPH 3** The General Maritime Directorate shall have thirty (30) business days to make a substantive decision on the modification request, starting from the date the Temporary Occupancy Permit holder provides all necessary information for the assessment.

**PARAGRAPH 4** Any corporate transaction resulting in a change of the Real Beneficiary or Controlling entity, or in a merger or demerger of the Holder, Operator, and/or of those who have met the Eligibility requirements in cases of multiple awardees, requires prior, explicit, and written approval from DIMAR. This is to ensure the retention of at least the same legal, technical, and financial eligibility requirements specified in the Specific Terms and Conditions of the Tender that led to the selection of the Successful Bidder and the issuance of the Temporary Occupancy Permit. Violation of the rules established in this article may initiate an administrative sanctioning process in accordance with Law 1437 of 2011.

**ARTICLE 9 MONITORING AND OVERSIGHT** In line with the commitments made by the selected Proponent(s), DIMAR will monitor the implementation of activities throughout the duration of the Temporary Occupancy Permit. This will involve two types of monitoring:

**a) Audits**

DIMAR will call for audit reports that detail the compliance with milestones, activities, and features outlined in the S-Curve and schedule submitted in the bid for the Temporary Occupancy Permit.

These reports are to be conducted annually and compiled by audit firms listed as eligible for audits of construction of new or specialized generation plants or units by the National Operations Center (CNO, by its Spanish acronym).

The auditor is required to provide the Ministry of Mines and Energy with copies of all the audit reports.

Reports may be requested at any time by DIMAR or the MME from the Concession Holder, or directly from the Auditor, either independently or jointly.

**b) Inspections**

DIMAR may designate one of its inspectors to verify adherence to the obligations unrelated to the S-Curve and timeline of the Temporary Occupancy Permit.

**PARAGRAPH 1** The costs for audits and inspections during the Temporary Occupancy Permit period will be borne by the Successful Bidder.

**PARAGRAPH 2** Moreover, the General Maritime Directorate has the authority to convene informational, monitoring, verification, and control meetings with the Successful Bidder, who must send an appropriately authorized representative, equipped with the knowledge and authority to provide or gather information and to make relevant decisions. Such summonses should be issued with reasonable notice, at any point during the effective period of this Administrative Act.

**ARTICLE 10 AUDITOR'S DUTIES** The audit firm hired by the Holder of the Temporary Occupancy Permit, selected from the roster published by the National Operations Center (CNO), will perform the following general duties:

1. Verify adherence to the S-Curve and the timeline for activities stipulated by the Temporary Occupancy Permit as outlined in Article 34 of Resolution 40284 of 2022.
2. Provide annual audit reports and issue a certificate confirming the execution and adherence to the monitoring and closure activities conducted by the Successful Bidder under the Temporary Occupancy Permit, detailing progress, results, goals, and objectives met.
3. Request any necessary reports and documents and summon the required meetings to fulfill their responsibilities. Accordingly, they may sign the minutes that document the meetings, agreements, and disputes between parties, as well as partial progress and final reports.
4. Inform DIMAR of any potential non-compliance by the Successful Bidder. To this end, they will conduct the necessary field visits and include supporting evidence in the report.
5. Promptly identify risks that could impact the wind energy generation project's efficacy and recommend measures to mitigate them.
6. Present an audit report on the fulfillment of activities projected in the S-Curve and the timetable of the Offer to support requests for extension, modification, or relinquishment by the Holder of the Temporary Occupancy Permit, aiming to reach an appropriate decision and determine if conditions warrant the application of penalties and/or the activation of the performance guarantee.
7. Monitoring and oversight of the Technical Skill Transfer Program.
8. Manage administrative and human resource aspects of the project, whereby they will

certify compliance with social security, occupational health, contingency planning, environmental regulations, and other applicable standards by the Holder of the Temporary Occupancy Permit.

9. Prepare and submit the reports requested by the regulatory agencies. Additionally, inform and report to the competent authorities any act or omission that compromises public morality, providing the appropriate evidence.
10. Review adherence to technical norms, particularly those associated with comprehensive maritime safety, as stipulated in the Temporary Occupancy Permit.
11. On the Commissioning Date (FPO, by its Spanish acronym), the audit must present the density (in MW/km<sup>2</sup>) and the installed capacity.

**ARTICLE 11 AUDITOR RESPONSIBILITIES** The audit firm hire by the Successful Bidder must preserve its independence and objectivity while performing its duties at all times.

Therefore, the auditor is civilly, fiscally, criminally, and administratively responsible for any misconduct committed during the performance of their duties, including any consequences arising from their actions and omissions.

**ARTICLE 12 DUTIES OF THE INSPECTORS** The inspectors designated by the General Maritime Directorate will check the fulfillment of the obligations established in this administrative act, which authorizes the Occupation of a national public use asset for the development of an offshore wind energy project throughout its validity and will undertake the following specific tasks:

1. Ensure the project's activities are executed as planned, review the contents of Resolutions and Technical Opinions regarding the approved projects, as well as commitments and duties listed in the Administrative Acts, Authorizations, and other concepts issued, and address any queries from the Maritime Authority concerning these matters.
2. Confirm adherence to the specific directives included in Regulation 39 of Annex I of the MARPOL Convention for fixed or floating platforms, and those pertaining to the facilities stated in Regulations 12, 14, and their supplements.
3. Ensure that only authorized personnel manage and store noxious liquid substance waste on board, using suitable containers until its evacuation. Request from the Operator, its contractor or subcontractor, and with the assistance of the support or supply vessel Inspector, written evidence of proper final disposal in compliance with



- Rules 13 and 18 of Annex II, supplementary provisions, and Annex V of the MARPOL Convention, ensuring proper recording in the corresponding Cargo Record Book or Garbage Record Book, as well as confirming the training of assigned personnel for this task.
4. Similarly, oversee the handling of hazardous materials waste until it is delivered to port, and request certification of proper final disposal according to the IMDG Code.
  5. Ensure adherence to established procedures by coordinating with the designated person on board for reviewing manuals, procedures, and instructions associated with the ISM Code and security - PBIP Code.
  6. For vessels where applicable, scrutinize the standard procedures in the Shipboard Oil Pollution Emergency Plan (SOPEP) related to the transfer of substances, and oversee all the prescribed safety measures to prevent incidents that could affect the marine environment, in alignment with the requirements of Rule 37 of Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol, including the color coding of flanges during bulk substance transfer operations.
  7. For authorized support and supply ships, check compliance with the Code of Safe Practice regarding the transport of cargo and people as per the OSV Code.
  8. If relevant to the operation, ensure that support or supply ships are not used under any circumstances to lead, divert, or encourage marine fauna to exit the operational area.
  9. Confirm the safety of motor ship maneuvers to secure navigation and human life at sea.
  10. Check the adherence to the Communication Plan with relevant authorities such as DIMAR, AID Port Captains, Coast Guard, etc., to sustain an ongoing and relevant exchange of information about the progress of authorized activities.
  11. Review daily meteorological reports and discuss them with those responsible on board.
  12. Ensure that awareness sessions for staff are conducted, addressing basic norms of safety, hygiene, and conduct.

13. Promptly notify the General Maritime Directorate, the Captain or the person in charge of the operation on board of any risk situation, detected anomalies or work-related accidents that occur on board.
14. Submit quarterly reports in written or digital form, supplemented by audiovisual aids, diagrams, and any other pertinent information on the progress of authorized activities and findings during inspections.

**ARTICLE 13 PERFORMANCE GUARANTEE** Within ninety (90) calendar days following the notification of the Award Resolution, the respective Individual or Joint Successful Bidder shall establish and submit a bank performance guarantee or stand-by letter of credit to cover, secure, and support the fulfillment of all obligations stipulated in the Temporary Occupancy Permit, including the activities and timeline as outlined in the submitted Proposal. This shall be provided by a financial institution authorized for such a purpose in favor of the Nation - Ministry of National Defense - General Maritime Directorate (DIMAR). The validity of the Performance Guarantee will be for the duration of the Temporary Occupancy Permit and up to one (1) more year.

The Performance Guarantee must be in effect and produce full effects, without interruption, during the entire term of the Temporary Occupancy Permit. Accordingly, the permit holder is required to maintain the validity of the guarantee for the duration of this administrative act, including any extensions or amendments, plus an additional term of one (1) year.

The Holder may present independent Performance Guarantees for terms of no less than two (2) years. The guarantee must be renewed in such a way that there are no uncovered periods.

Such guarantees shall be issued, reissued, or renewed as needed and formally presented to DIMAR for approval no later than one (1) month prior to their scheduled effective date.

In the event the Performance Guarantee does not fully satisfy any requirement, DIMAR will request the Holder for the pertinent amendments, adjustments or corrections, granting a period of eight (8) business days to adopt them, so there are no uncovered gaps.

DIMAR will reject any compliance guarantees submitted by the Temporary Occupancy Permit holder that do not fulfill all legal requirements. Failure of the Temporary Occupancy Permit Beneficiary to procure, renew, or extend the guarantees as mandated will be considered a serious violation of obligations and will trigger the execution of the existing performance guarantee.

**ARTICLE 14 AMOUNT OF THE PERFORMANCE GUARANTEE** The amount of the Temporary Occupancy Permit Performance Guarantee is estimated by applying the following formula:

$$\text{Performance Guarantee Value (VGC)} = 11,000,000 - \left[ 5,000,000 \right] + \left( \frac{\text{CIMP}}{\text{Proposed Cap.}} \right)$$

Where:

**VGC** = Performance Guarantee Value during the Concession in US dollars.

**CIMP** = Minimum installed capacity of the process in MW

**Proposed Cap.** = Offered project capacity in MW

The value of the performance guarantee shall equate to the figure derived from the formula specified in this Article, in United States Dollars (USD). The guarantee must minimally cover the following:

1. Damages derived from or related to non-compliance by the Holder with the obligations arising from the Permit, including damages derived from or related to (i) total or partial non-compliance with the Permit; and (ii) the Holder's late or defective compliance with the Permit obligations.
2. The amount the Holder must pay under the Permit for fines and sanctions.

For this particular case, it amounts to XXXX million United States Dollars (USD XXXX) to ensure compliance with the obligations set forth in this Resolution, including the prescribed activities and schedule, as well as the payment of potential fines for breaches of maritime activity regulations.

The same formula will apply for any renewals and/or modifications, as needed.

**ARTICLE 15 RENEWAL OF THE PERFORMANCE GUARANTEE** Performance Guarantee renewals must be issued and formally delivered to DIMAR for approval, no less than one (1) month before the date their term must begin. In the event the Performance Guarantee does not fully satisfy any requirement, DIMAR will request the Holder for the pertinent amendments, adjustments or corrections, granting a period of eight (8) business days to adopt them, so there are no uncovered gaps.

DIMAR will reject the performance guarantees presented by the Holder when they do not meet all the requirements. Failure by the Holder to secure, renew, or extend the performance guarantee according to the specified requirements constitutes a severe infringement of the Permit, thereby authorizing DIMAR to enact the existing performance guarantee.

**ARTICLE 16 ENFORCEMENT OF THE PERFORMANCE GUARANTEE** The Performance Guarantee will be enforced under the following circumstances, except in cases of force majeure or unforeseeable events duly substantiated or caused by a third party:

1. If, upon the expiration of the Temporary Occupancy Permit, the developer has not applied for the Maritime Concession nor initiated the relinquishment procedure in compliance with Article 7 of Resolution 40284 of 2022.
2. If the developer issues a relinquishment request and subsequent audits demonstrate non-compliance with the S-curve activities and the established schedule as of the waiver date, due to reasons not covered by Article 11 of Resolution 40284 of 2022.
3. Should audits reveal delays in executing the S-curve and the timetable presented in the bid, unrelated to the causes mentioned in Article 11 of Resolution 40284 of 2022.
4. If the inspections show non-compliance with any of the obligations of the Temporary Occupancy Permit.
5. In the event that, following the Permit's lapse of enforceability, the removal of installed infrastructure is not completed.
6. If the renewal and delivery for approval of the Guarantee is not carried out within the times provided in the Permit.
7. If any other cause for execution of the Performance Guarantee established in the Temporary Occupancy Permit is configured.

**ARTICLE 17 BANK GUARANTEE REQUIREMENTS** The holder of the Temporary Occupancy Permit must provide a first-demand bank guarantee as assurance for fulfilling the obligations outlined in this administrative act. Issued in Colombia, the guarantee must possess the following minimum characteristics:

Types of Guarantees	Minimum characteristics of the issuer	Applicable rules
Standby letter of credit issued in Colombia	<ul style="list-style-type: none"> <li>● It must be a Colombian bank.</li> <li>● On the date of issuance, the issuing bank must have a long-term counterparty rating from a risk rating agency</li> <li>● Risk rating authorized by the Financial Superintendence of Colombia and internationally recognized, of at least: (i) AAA if a local rating, or (ii) BBB- if a global-scale rating.</li> </ul>	<ul style="list-style-type: none"> <li>● ISP98 or UCP600</li> </ul>

Standby letter of credit issued outside of Colombia	<ul style="list-style-type: none"> <li>• It must be a financial entity in the place of issuance.</li> <li>• On the date of issuance, the bank must have a long-term counterparty rating from a risk rating agency authorized by the Financial Superintendence of Colombia and of international recognition, of at least: (i) AAA if a local rating, or (ii) BBB- if a global-scale rating.</li> </ul>	<ul style="list-style-type: none"> <li>• ISP98 or UCP600</li> <li>• It must be confirmed by a Colombian bank.</li> </ul>
First-demand guarantee issued in Colombia	<ul style="list-style-type: none"> <li>• It must be an entity supervised by the Financial Superintendence.</li> <li>• On the date of issuance, it must have a long-term counterparty rating from a risk rating agency authorized by the Financial Superintendence of Colombia and of international recognition, of at least: (i) AAA if a local rating, or (ii) BBB- if a global-scale rating.</li> </ul>	<ul style="list-style-type: none"> <li>• URDG758</li> </ul>

**ARTICLE 18 OBLIGATIONS OF THE GUARANTOR** Beyond all obligations and demands specified in the Temporary Occupancy Permit, the banking entity issuing the performance guarantee must undertake the following responsibilities:

1. The guarantor's payment obligation must be upon first demand: The guarantor must unconditionally, absolutely, jointly and irrevocably undertake to pay DIMAR the amounts it requires, up to the full value of the performance guarantee, upon first demand, in the terms provided in the guarantee and Permit. The guarantor must undertake to comply with its obligations under the performance guarantee upon simple notification of non-compliance sent to it by DIMAR. The guarantor must be bound in the sense that it may not request or demand any documentation or requirements in addition to DIMAR's requirement, to comply with its payment obligation.
2. The guarantor's obligations must be irrevocable: The guarantor must make both the Performance Guarantee and the obligations assumed under it irrevocable, and that



any cancellation, modification or revocation of the guarantee must necessarily have the prior, written and express approval of DIMAR for it to proceed.

3. The obligations of the guarantor must be autonomous and independent from those of the Holder. The guarantor must be bound in the sense that the performance guarantee is autonomous and independent from the obligations of the Holder and any other guarantee created in favor of DIMAR, and may be made effective upon first demand, regardless of the execution of any other current guarantee granted by the guarantor and/or Holder in favor of DIMAR.
4. The guarantor's obligations are enforceable regardless of any of the following circumstances:
  - a. Changes in the corporate existence of the Holder or guarantor, its shareholding structure, or the occurrence of any other procedure that may affect the Holder or guarantor;
  - b. The existence of any claim, compensation or right the guarantor may have at any time against the Holder;
  - c. The existence of any claim, compensation or right the guarantor may have at any time against DIMAR;
  - d. Any dispute, regardless of its nature, that exists or may exist between the Holder and/or DIMAR and/or the guarantor, regardless of whether said disputes are or may be subject to the decision of a judicial or arbitration authority;
  - e. Any extension, waiver, or other modification of the obligations of the Holder, whether or not they have been approved by the guarantor;
  - f. Any bankruptcy, insolvency, reorganization, restructuring, readjustment, assignment of liabilities to creditors, liquidation, assignment of assets and liabilities or similar process related to the Holder or any of its properties, whether voluntary or involuntary, or the action taken by the agent, promoter or authority in said procedure.
5. No proposal for exceptions and minimum waivers. The guarantor must undertake to abstain from proposing any type of real or personal exception to DIMAR, including any related to the Permit, the guarantee or the administrative acts issued by DIMAR with respect to executing the guarantee and the Permit.
6. The guarantor must irrevocably renounce:
  - a) Any right that prevents, diminishes, impairs, delays or objects to DIMAR's rights to payment and execution of the performance guarantee. This waiver must include, among other things, but is not limited to, the right to retract or revoke

its obligation, as well as the rights in articles 2381, 2382, 2383, 2392 and 2394 of the Colombian Civil Code, or the regulations that amend and replace them, and any and all other situations that may or may not have a basis in the financial, legal or administrative situation of the Holder and/or guarantor, or in a direct or indirect claim to the Holder and/or guarantor or from the Holder and/or guarantor to the DIMAR.

- b) Any judicial or extrajudicial requirement for a notice of default.
  - c) To object to or refuse payment for any factual or legal circumstance, other than the absence of a payment requirement by DIMAR.
  - d) To object to or refuse payment due to inaccuracies or reticence attributable to DIMAR or the Holder.
7. Payment term: The guarantor must deposit the owed amounts based on the payment requirement by DIMAR in the account DIMAR determines when it makes the respective payment requirement, within a maximum period of one (1) month after receiving the payment request.
8. Net payments: The guarantor must make the payments to DIMAR in the same currency in which the guarantee was issued, free of all deductions for present and future taxes, charges, contributions, deductions, rates or withholdings, established by any competent jurisdiction.
- The guarantor must assume that, if the law requires it or any financial entity to deduct and/or retain any of these items with respect to any amount that must be paid under the performance guarantee, after making all necessary deductions and/or withholdings (including the deductions and withholdings applicable to additional amounts that must be paid according to this section), the amount payable must be increased by as necessary for DIMAR to receive an amount equal to the amount that would have been received if such deductions and/or withholdings had not been made.
9. Direct payment: The guarantor must undertake to pay DIMAR directly and to abstain from doing so through third parties unless DIMAR has expressly and previously authorized it.
10. Exchange obligations: The guarantor must undertake to comply with all obligations and carry out all applicable and pertinent procedures, in accordance with the international exchange regulations provided in Colombian regulations and/or the

issuing jurisdiction and/or any other jurisdiction that establishes any exchange rate requirements.

11. Information to DIMAR: The guarantor must immediately inform DIMAR of any fact or circumstances that may affect the existence, validity, enforceability, compliance or execution of the performance guarantee.

**ARTICLE 19 LABOR OBLIGATIONS COMPLIANCE POLICY** The Successful Bidder is required to establish and maintain a valid compliance policy for labor obligations in favor of the Nation - Ministry of National Defense - General Maritime Directorate. Failing to do so is a reason for not granting the Temporary Occupancy Permit. Moreover, non-renewal of the policy is a serious breach of the Temporary Occupancy Permit.

The purpose of the labor obligations compliance policy must be to guarantee and secure all labor, social security, and occupational health and safety obligations of the Holder derived from hiring the personnel used (including employees and contractors of the Holder, as well as contractors of the latter) to implement the Temporary Occupancy Permit and/or fulfill the obligations contracted by the Holder under the Permit.

The purpose of the policy must include payment of all amounts for any loss, obligation, damage, cost, and/or expense caused or related to any administrative, judicial or extrajudicial action, lawsuit or claim, as a result of any breach by the Holder of its labor, social security, and occupational health and safety obligations derived from hiring personnel used (including employees and contractors of the Holder, as well as contractors of the latter) to execute the purpose of the Permit and/or comply with the obligations it contracted under the Permit. This compliance policy must originate from the date when the administrative act granting the Temporary Occupancy Permit becomes definitive, with its validity extending for the duration of the permit and an additional three (3) years.

The Temporary Occupancy Permit Holder may accredit compliance with this requirement by presenting guarantees with annual terms. In any case, the renewal of the next annuity must be submitted at least one (1) month before its expiration.

The labor obligations compliance policy and obligations of the guarantor must be in effect and produce full effects, without interruption, during the entire term of the Temporary Occupancy Permit and three (3) more years.

**ARTICLE 20 APPROVAL OF THE LABOR OBLIGATIONS COMPLIANCE POLICY** In the period allotted for the formalization process, the Successful Bidder must issue a compliance policy for labor obligations and submit it for DIMAR's approval.

For the purpose of approving or rejecting the compliance policy, DIMAR must:

1. Verify its authenticity with the person issuing it;
2. Make sure it meets all the requirements.

In the event the labor obligations compliance policy does not fully satisfy any requirement, DIMAR will request the pertinent amendments, adjustments or corrections from the Successful Bidder, determining the peremptory period to adopt them, so there are no uncovered gaps. DIMAR will reject the labor obligations compliance policy presented by the Successful Bidder when it does not meet all the legal requirements. The Successful Bidder's failure to obtain, renew or extend the labor obligations compliance policy in the required term is grounds for rejecting issuance of the Temporary Occupancy Permit. Moreover, non-renewal of the policy is a serious breach of the Temporary Occupancy Permit.

**ARTICLE 21 AMOUNT OF THE LABOR OBLIGATIONS COMPLIANCE POLICY** The labor obligations compliance policy must be issued for an amount equal to five (5%) of the total value of the annual payroll of the personnel dedicated to the project, which must be accredited with a certificate issued by the statutory auditor.

The Successful Bidder must be designated as the bonded policyholder, the insurer for the labor obligations compliance policy, and the beneficiary as the Nation - Ministry of National Defense - General Maritime Directorate.

In this particular case, it should be issued in the amount of XXXXX Colombian pesos.

**ARTICLE 22 REQUIREMENTS FOR THE LABOR OBLIGATIONS COMPLIANCE POLICY** The holder of the Temporary Occupancy Permit shall provide as a guarantee for the fulfillment of labor obligations, an insurance policy that must meet the following:

1. Since it is an insurance policy, the rules provided in articles 2.2.1.2.3.2.1 to 2.2.1.2.3.2.7 of the Single Regulatory Decree of the National Planning Administrative Sector 1082 of 2015 or the provisions that amend, complement or replace them will apply in that which is not expressly established in this regulated.
2. Analogous Application of the Rules of State Contracting Guarantees. In matters not specifically provided for by the Permit regarding guarantees, the rules regarding state contracting guarantees will apply, especially Law 1150 of 2007 and Single Regulatory Decree Sector of Planning or the provisions that amend, complement or replace them.
3. Minimum policy compliance characteristics. The Holder must obtain and maintain an insurance policy that meets the following characteristics:

- a. Registered models: The insurance policy models with their annexes must have been registered by the insurance entity with the Financial Superintendence of Colombia, in accordance with the provisions of the Basic Legal Notice of said entity (C.E 029/14).
- b. Characteristics of the issuer and requirements: The policies must be issued by Colombian insurance companies. When, in accordance with the terms of the insurance policies, the risk retention of the Colombian insurance companies that issue them is equal to or greater than 10% of the risk, the following requirements must be met concurrently:
  - i. On the date of issuance, the issuing Colombian insurance companies must have a financial strength rating from a risk rating agency authorized by the Financial Superintendence of Colombia and with international recognition of (i) AAA if a local rating, or (ii) at least BBB- if a global-scale rating;
  - ii. Reinsurance companies that assume the risk not assumed by the issuing Colombian insurance companies must be registered in REACOEX and have, on the date of issuance, a financial strength rating from a risk rating agency authorized by the Financial Superintendence of Colombia and with international recognition, of (i) AAA if a local rating, or (ii) at least BBB- if a global-scale rating, and
  - iii. Reinsurance companies that assume the risk not assumed by the issuing Colombian insurance companies must issue a confirmation of the reinsurance support for the terms of the insurance policies issued by the issuing Colombian insurance companies.
4. When, in accordance with the terms of the insurance policies, the risk retention of the Colombian insurance companies that issue them is less than 10% of the risk, the following requirements must be met concurrently:
  - a. On the date of issuance, the issuing Colombian insurance companies must have a financial strength rating from a risk rating agency authorized by the Financial Superintendence of Colombia and with international recognition of (i) AA- if a local rating, or (ii) at least BB- if a global-scale rating.
  - b. Reinsurance companies that assume the risk not assumed by the issuing Colombian insurance companies must be registered in REACOEX and have, on the date of issuance, a financial strength rating from a risk rating agency authorized by the Financial Superintendence of Colombia and with international



recognition, of (i) AAA if a local rating, or (ii) at least BBB- if a global-scale rating, and

- c. Reinsurance companies that assume the risk not assumed by the issuing Colombian insurance companies must issue a confirmation of the reinsurance support for the terms of the insurance policies issued by the issuing Colombian insurance companies.

**ARTICLE 23 DEADLINE FOR THE PAYMENT OF THE LABOR OBLIGATIONS COMPLIANCE POLICY** The guarantor must deposit the owed amounts based on the payment requirement by DIMAR in the account DIMAR determines when it makes the respective payment requirement, within a maximum period of one (1) month after receiving the payment request.

1. Net payments: The guarantor must make the payments to DIMAR in Colombian pesos, free of all deductions for present and future taxes, charges, contributions, deductions, rates or withholdings, established by any competent jurisdiction.

The guarantor must assume that, if the law requires it or any financial entity to deduct and/or retain any of these items with respect to any amount that must be paid under the labor obligations compliance policy, after making all necessary deductions and/or withholdings (including the deductions and withholdings applicable to additional amounts that must be paid according to this section), the amount payable must be increased by as necessary for DIMAR to receive an amount equal to the amount that would have been received if such deductions and/or withholdings had not been made, in Colombian pesos.

2. Direct payment: The guarantor must undertake to pay DIMAR directly and to abstain from doing so through third parties unless DIMAR has expressly and previously authorized it.

**PARAGRAPH** The guarantor is required to promptly notify DIMAR of any event or circumstance that may affect the existence, validity, opposition, fulfillment, or enforcement of the compliance policy.

**ARTICLE 24 OBLIGATIONS OF THE COMPLIANCE POLICY INSURER FOR LABOR OBLIGATIONS** In the case of an insurance policy, the insurance company must commit to the following:

1. Should the law require that it or any financial entity withhold and/or deduct any of these items with respect to any amount to be paid under the labor obligations

compliance policy, the amount payable shall be increased as necessary so that, after making all necessary withholdings and/or deductions (including those applicable to additional sums to be paid under this Clause), DIMAR receives in Colombian pesos a total equal to the sum it would have received had such withholdings and/or deductions not been made.

2. Direct payment: The insurance entity must commit to pay DIMAR directly and refrain from doing so through third parties unless DIMAR has expressly and previously authorized it.
3. Information to DIMAR. The insurer must commit to immediately inform DIMAR of any event or circumstance that could affect the existence, validity, opposition, fulfillment, or execution of the labor claims compliance policy or extra-contractual civil liability.

**ARTICLE 25 NON-CONTRACTUAL CIVIL LIABILITY POLICY** The Successful Bidder is required to obtain and maintain a valid extra-contractual civil liability policy, and failure to do so is a reason for not granting the Temporary Occupancy Permit. Likewise, non-renewal of the policy is a serious breach of the Temporary Occupancy Permit.

The non-contractual civil liability insurance policy is intended to cover all obligations of the Holder arising from damages to third parties, resulting from actions, facts, or omissions attributable to the Holder and/or its employees and/or dependents and/or agents and/or representatives and/or contractors and/or subcontractors, occurring from the date when the administrative act granting the Temporary Occupancy Permit becomes definitive, for its duration and an additional three (3) years.

Non-contractual civil liability insurance will cover at least the following:

- Work premises and operations
- Emerging damage
- Lost profits
- Moral damage and extra-property damages
- Owned and third party vehicles
- Ships and naval artifacts.
- Archaeological heritage.
- Coverage for contractors and subcontractors
- Cross-liability
- Employers liability
- Civil liability for pollution and sudden, accidental and unforeseen contamination
- Medical expenses without prior demonstration of responsibility
- Assets under care, possession and control

- Loading and unloading operations
- Guards
- Defense expenses
- Costs of the process and judicial guarantees
- Civil liability for using explosives
- Any other risk arising from the development of the project and activities authorized under this Temporary Occupancy Permit.

The non-contractual civil liability policy and obligations of the guarantor must be in effect and produce full effects, without interruption, during the entire term of the Temporary Occupancy Permit and three (3) more years.

The Temporary Occupancy Permit Holder may accredit compliance with this requirement by presenting the policy with annual terms. In any case, the renewal of the next annuity must be submitted at least one (1) month before its expiration.

**ARTICLE 26 APPROVAL OF THE NON-CONTRACTUAL CIVIL LIABILITY POLICY** Within the prescribed period for formalization proceedings, the Successful Bidder is required to establish a non-contractual civil liability policy and submit it to the DIMAR for approval.

For the purpose of approving or rejecting the compliance policy, DIMAR must:

1. Verify its authenticity with the person issuing it;
2. Make sure it meets all the requirements.

Should the non-contractual civil liability performance policy not meet any requirement in full, DIMAR will direct the Successful Bidder to make the relevant amendments, adjustments, or corrections, specifying a peremptory deadline for their implementation to avoid any gaps in coverage. DIMAR will reject the non-contractual civil liability policy presented by the Successful Bidder when it does not meet all the legal requirements.

The failure of the Successful Bidder to obtain, renew, or extend the non-contractual civil liability policy as required is grounds for withholding the issuance of the Temporary Occupancy Permit. Likewise, non-renewal of the policy is a serious breach of the Temporary Occupancy Permit.

**ARTICLE 27 AMOUNT OF THE NON-CONTRACTUAL CIVIL LIABILITY POLICY** The performance policy for non-contractual civil liability must be issued for an amount equivalent to five percent (5%) of the value of the investments related to the Temporary Occupancy Permit, based on a certificate issued by the Statutory Auditor.

The Successful Bidder must be named as the insured, with the Nation - Ministry of National Defense - General Maritime Directorate additionally insured for incidents for which it may be deemed jointly and severally liable. Moreover, the Nation - Ministry of National Defense - General Maritime Directorate, along with other third parties impacted, must be named as beneficiaries of the non-contractual civil liability insurance.

#### **ARTICLE 28 REQUIREMENTS FOR THE NON-CONTRACTUAL CIVIL LIABILITY POLICY**

The holder of the temporary occupancy permit will provide an insurance policy as a guarantee for the fulfillment of labor obligations and non-contractual civil liability, which must adhere to the following:

1. Since it is an insurance policy, the rules provided in articles 2.2.1.2.3.2.1 to 2.2.1.2.3.2.7 of the Single Regulatory Decree of the National Planning Administrative Sector 1082 of 2015 or the provisions that amend, complement or replace them will apply in that which is not expressly established in this regulated.
2. Analogous Application of the Rules of State Contracting Guarantees. In matters not specifically provided for by the Permit regarding guarantees, the rules regarding state contracting guarantees will apply, especially Law 1150 of 2007 and Single Regulatory Decree Sector of Planning or the provisions that amend, complement or replace them.
3. Minimum policy compliance characteristics. The Holder must obtain and maintain an insurance policy that meets the following characteristics:
  - a. Registered models: The insurance policy models with their annexes must have been registered by the insurance entity with the Financial Superintendence of Colombia, in accordance with the provisions of the Basic Legal Notice of said entity (C.E 029/14).
  - b. Characteristics of the issuer and requirements: The policies must be issued by Colombian insurance companies. When, in accordance with the terms of the insurance policies, the risk retention of the Colombian insurance companies that issue them is equal to or greater than 10% of the risk, the following requirements must be met concurrently:
    - i. On the date of issuance, the issuing Colombian insurance companies must have a financial strength rating from a risk rating agency authorized by the Financial Superintendence of Colombia and with international recognition of (i) AAA if a local rating, or (ii) at least BBB- if a global-scale rating;
    - ii. Reinsurance companies that assume the risk not assumed by the issuing

Colombian insurance companies must be registered in REACOEX and have, on the date of issuance, a financial strength rating from a risk rating agency authorized by the Financial Superintendence of Colombia and with international recognition, of (i) AAA if a local rating, or (ii) at least BBB- if a global-scale rating, and

- iii. Reinsurance companies that assume the risk not assumed by the issuing Colombian insurance companies must issue a confirmation of the reinsurance support for the terms of the insurance policies issued by the issuing Colombian insurance companies.
4. When, in accordance with the terms of the insurance policies, the risk retention of the Colombian insurance companies that issue them is less than 10% of the risk, the following requirements must be met concurrently:
- a. On the date of issuance, the issuing Colombian insurance companies must have a financial strength rating from a risk rating agency authorized by the Financial Superintendence of Colombia and with international recognition of (i) AA- if a local rating, or (ii) at least BB- if a global-scale rating.
  - b. Reinsurance companies that assume the risk not assumed by the issuing Colombian insurance companies must be registered in REACOEX and have, on the date of issuance, a financial strength rating from a risk rating agency authorized by the Financial Superintendence of Colombia and with international recognition, of (i) AAA if a local rating, or (ii) at least BBB- if a global-scale rating, and
  - c. Reinsurance companies that assume the risk not assumed by the issuing Colombian insurance companies must issue a confirmation of the reinsurance support for the terms of the insurance policies issued by the issuing Colombian insurance companies.

**ARTICLE 29 DEADLINE FOR PAYMENT OF THE NON-CONTRACTUAL CIVIL LIABILITY POLICY** The guarantor must deposit the owed amounts based on the payment requirement by DIMAR in the account DIMAR determines when it makes the respective payment requirement, within a maximum period of one (1) month after receiving the payment request.

1. Net payments: The guarantor must make the payments to DIMAR in Colombian pesos, free of all deductions for present and future taxes, charges, contributions, deductions, rates or withholdings, established by any competent jurisdiction.



The guarantor must assume that, if the law requires it or any financial entity to deduct and/or retain any of these items with respect to any amount that must be paid under the labor obligations compliance policy, after making all necessary deductions and/or withholdings (including the deductions and withholdings applicable to additional amounts that must be paid according to this section), the amount payable must be increased by as necessary for DIMAR to receive an amount equal to the amount that would have been received if such deductions and/or withholdings had not been made, in Colombian pesos.

3. Direct payment: The guarantor must undertake to pay DIMAR directly and to abstain from doing so through third parties unless DIMAR has expressly and previously authorized it.

**PARAGRAPH** The guarantor is required to promptly notify DIMAR of any event or circumstance that may affect the existence, validity, opposition, fulfillment, or enforcement of the compliance policy.

**ARTICLE 30 OBLIGATIONS OF THE INSURER OF THE NON-CONTRACTUAL CIVIL LIABILITY POLICY** In the case of an insurance policy, the insurance company must commit to the following:

1. Should the law require that it or any financial entity withhold and/or deduct any of these items with respect to any amount to be paid under the labor obligations compliance policy, the amount payable shall be increased as necessary so that, after making all necessary withholdings and/or deductions (including those applicable to additional sums to be paid under this Clause), DIMAR receives in Colombian pesos a total equal to the sum it would have received had such withholdings and/or deductions not been made.
2. Direct payment: The insurance entity must commit to pay DIMAR directly and refrain from doing so through third parties unless DIMAR has expressly and previously authorized it.
3. Information to DIMAR. The insurer must commit to immediately inform DIMAR of any event or circumstance that could affect the existence, validity, opposition, fulfillment, or execution of the labor claims compliance policy or extra-contractual civil liability.

**ARTICLE 31 TRANSFER OF AREA** The Port Captaincy of XXXX is tasked with officially handing over the area covered by this temporary occupancy permit once this administrative order becomes definitive, in line with Article 87 of Law 1437 of 2011. This transfer cannot

proceed until the required guarantees are approved and the announcement in the Official Gazette, as outlined in this resolution, is published.

**ARTICLE 32 WAIVER OF THE TEMPORARY OCCUPANCY PERMIT** The Successful Bidder may waive the Temporary Occupancy Permit without incurring penalties or the activation of any guarantee, provided these two conditions are satisfied:

1. An audit report must be submitted demonstrating that the activities outlined in the S-Curve and the schedule of the bid up to the date of the report request have been fulfilled. The Successful Bidder must directly request such a report from the auditor.
2. The Successful Bidder must submit a report that details the technical or economic infeasibility of the Project, attributable not to the developer, which justifies the abandonment of the Project.

**PARAGRAPH 1** Should any of the aforementioned conditions not be met, DIMAR will accept the Successful Bidder's resignation via a motivated administrative act, and will command the enforcement of the guarantee for compliance with the Temporary Occupancy Permit. Only a petition for reconsideration may be filed against this administrative act.

**PARAGRAPH 2** The Successful Bidder may relinquish the Temporary Occupancy Permit at any time without the need to provide justification, in which case DIMAR will accept the resignation through a motivated administrative act and will command the enforcement of the current compliance guarantee for the duration of the Temporary Occupancy Permit.

**PARAGRAPH 3** After the administrative act that accepts the Successful Bidder's resignation becomes irrevocable, said Bidder must submit to DIMAR the outcomes of the studies and investigations conducted during the tenure of the Temporary Occupancy Permit. This submission should occur within fifteen (15) business days. This information will only be used for planning, monitoring and caring for the marine environment in the short, medium and long-term. The information delivered to DIMAR will be regarded as classified according to Law 1712 of 2014, Decree No. 1081 of 2015, and any subsequent modifications, additions, or replacements to these regulations.

**PARAGRAPH 4** The handling, storage, and processing of information as specified in the preceding paragraph and section g) of Article 5 will adhere to Law 1712 of 2014, Decree 1081 of 2015, and any other rules that may amend, supplement, or supersede them. The information received by DIMAR may only be utilized to fulfill the agency's duties and within the scope of DIMAR's authority.

**ARTICLE 33 PARTIAL AREA RETURNS** The Successful Bidder may conduct partial returns of areas prior to the expiration of the term stipulated in this Temporary Occupancy Permit. To this end, in relation to the area intended for return, compliance with the conditions set forth for the renunciation of the Temporary Occupancy Permit as referred to in the preceding Article 32, and as stipulated in its subsections, is required. The Successful Bidder shall proceed with the authorized activities on the non-returned area.

**ARTICLE 34 RISKS** The risks identified for activities related to measuring and collecting data and information to determine the feasibility of an offshore wind energy generation project; and those necessary for securing licenses and permits for its construction, will be fully borne by the holder of the Temporary Occupancy Permit granted by this administrative act, including any amendments or extensions.

Thus, the holder of the permit will assume all favorable or unfavorable outcomes and costs stemming from safety measures in maritime operations, the management of the environmental license or environmental feasibility; the handling of cultural interest goods or submerged cultural heritage within the area; the conduction of consultations with peoples and ethnic communities, the formalization of prior consultations or variations in implementing new prior consultations when required; the transfer, intervention, protection and/or relocation of networks; the establishment of infrastructure, and the operation and maintenance of the project; delays due to adverse meteorological, geological, or geotechnical conditions; commercial risk resulting from changes in regulated income due to infrastructure usage or uncertainty about demand levels; risks associated with the lack of installation or operation of toll mechanisms; evasion risks of these toll mechanisms; the additional costs incurred from the purchase or leasing of areas needed for conducting studies or project development; force majeure risks, and overall, third-party claims.

**ARTICLE 35 CONTRACTUAL AUTONOMY** The Successful Bidder is fully and exclusively responsible for the negotiation, execution, termination, and settlement of all contracts it initiates to acquire the goods, services, and provisions required for conducting activities within the scope of this Temporary Occupancy Permit.

As a result, it assumes complete and sole responsibility for any negotiation, execution, termination, and settlement of all legal agreements undertaken to procure works, goods, and services necessary for the execution and development of the activities under this Temporary Occupancy Permit, as well as any potential claims or jurisdictional proceedings due to discrepancies or non-compliance. DIMAR will not undertake any commitment, obligation, or responsibility in any of the aforementioned aspects, as there is no employment or contractual relationship or bond created or existing between it and the contractors, subcontractors, or the employees, workers, or contractors thereof.

### **ARTICLE 36 ADMINISTRATIVE PROCEDURE FOR NONCOMPLIANCE AND SANCTIONS**

Failure by the Successful Bidder to fulfill any obligations set forth in this Resolution may initiate an administrative sanctioning process, initially led by the Harbor Master and subsequently by the General Maritime Director as established by articles 47 to 52 of Law 1437 of 2011—Code of Administrative Procedure and of the Contentious Administrative.

Furthermore, the breach may result in the sanctions stipulated in Article 80 of Decree Law 2324 of 1984, which may include the following:

- a) Written admonition or notice to the offender. In such cases, a copy of the report or letter will be filed with the General Maritime Directorate and the Harbor Master offices;
- b) Suspension, signifying the temporary revocation of privileges, licenses, permits, authorizations, or certifications granted by the General Maritime Directorate;
- c) Cancellation of the Temporary Occupancy Permit;
- d) Fines ranging from five (5) to one thousand (1,000) minimum wages.

In accordance with the principles of gradualness, reasonableness, and proportionality when applying punitive measures, the Maritime Authority will assess the circumstances of each specific case, such as intent, repeated behavior, social impact, and based on the severity of the non-compliance incident — whether minor, moderate, or severe — to determine the appropriate sanction or set the fine amount.

This does not affect the exercise of powers granted by the legal framework or the sanctions that other state authorities may impose within the scope of their duties.

### **ARTICLE 37 LOSS OF ENFORCEABILITY OF THE TEMPORARY OCCUPANCY PERMIT**

Should the beneficiary fail to initiate the authorized activities within one (1) year from the entry into force of this Temporary Occupancy Permit, or if there is repeated non-compliance with the stipulated obligations, this may lead to the loss of enforceability of this administrative act, as stipulated in Article 91 of Law 1437 of 2011 - Code of Administrative Procedure and Contentious Administrative Law.

### **ARTICLE 38 RETURN OF THE AREA**

For the return of the area granted under this Temporary Occupancy Permit, whether due to the expiration of its term without granting a concession or for another cause, the Port Authority will determine the specific conditions under which the public use property of the Nation will be received in each individual case.

### **ARTICLE 39 PAYMENT OF RATES AND DUTIES**

The temporary occupancy permit issued through this administrative act is subject to the tariff legal regime established by Law 1115 of 2006, along with any amending or regulating statutes, which is why the Successful Bidder

must pay the rates corresponding to the costs of services provided by the General Directorate of the Maritime Authority,

**ARTICLE 40 HANDLING OF CLASSIFIED PUBLIC INFORMATION** The General Maritime Directorate (DIMAR) shall maintain custody of classified public information, which pertains to the private and semi-private domains of the Successful Bidder. Accordingly, access to this information may be restricted or excluded in instances where it could cause harm to private or semi-private rights, as stipulated in Article 18 of Law 1712 of 2014.

**ARTICLE 41 NOTIFICATION AND PUBLICATION** This resolution must be notified to xxxxx, through their representative or whoever acts in their stead, and to the other interested parties, in accordance with Articles 67 and following of the Code of Administrative and Contentious-Administrative Procedure.

Moreover, the administrative act must be published by the titleholder in the Official Gazette within ten (10) business days following its notification, as required by clause d) of Article 95 of Decree 2150 of 1995. Evidence of payment and a copy of the publication must be provided to the respective Port Captainty.

**ARTICLE 42 COMMUNICATION** Once confirmed, this administrative act will be communicated through the Port Captainty to the Ministry of Mines and Energy, the National Hydrocarbons Agency, the UPME, the National Environmental Licensing Authority, the National Fisheries Authority, and the National Infrastructure Agency for the relevant purposes within their jurisdictions.

**ARTICLE 43 REMEDY** A petition for reconsideration may be filed against this resolution, which must be submitted within ten (10) business days of its notification.

**ARTICLE 44 EFFECTIVE DATE** This resolution shall come into force as established by Article 87 of the Administrative Procedure and Contentious Administrative Code.

#### **NOTIFY, PUBLISH, AND ENSURE COMPLIANCE,**

Issued in Bogotá, D.C. on the XXX day of XXX, 2023.

**THE MARITIME DIRECTOR GENERAL**