CECONY and O&R - Energy Storage Services Agreement (“**ESSA**”)

Outline of Commercial Terms

This term sheet (this “**Term Sheet**”) is provided for informational purposes for respondents evaluating the non-binding request for proposals (“RFP”) issued by Consolidated Edison Company of New York, Inc. (“**CECONY**”) and Orange and Rockland Utilities, Inc. (“**O&R**”) for energy storage services. The Term Sheet does not (a) create any obligation on the part of any person, including CECONY or O&R, or (b) purport to address all of the terms that may be reflected in, and would be qualified in all respects by, definitive binding agreements. This Term Sheet does not entitle any person any right of specific performance or to any payment or damages for failure to negotiate or consummate a transaction. References made herein to a “**Company**” refers to either CECONY or O&R and to “**Companies**” refers to CECONY and O&R, together. References made herein to a “**Party**” or jointly as the “**Parties**” refers to CECONY or O&R and an undesignated owner of an energy storage system (“**Owner**”) that will provide energy storage services to CECONY or O&R.

Please note that the Companies will produce an Energy Services Storage Agreement (ESSA) that governs individual Projects or Projects that are within a Portfolio. For Portfolios, the commercial terms applicable to each Project will be negotiated collectively as though a single Project and be standardized across the portfolio though Owners will sign separate ESSAs (i.e., with these same terms for each Project in a Portfolio).

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| **Product** | Capacity, Energy, Ancillary Services, distribution services, and any other products or benefits associated with the Project. |
| **Project** | Owner’s Energy Storage System, including Interconnection Facilities, Prevention Equipment and System Protection Facilities, together with all materials, equipment systems, structures, features and improvements necessary to store, charge and discharge electric energy at the Project. |
| **Portfolio** | A collection of Distribution Connected Projects governed by the same contractual terms whose dispatch rights are purchased at the same per MW purchase price. The performance of each Project will be assessed separately. The minimum size of any individual Project in a Portfolio shall be at least 2 MW and the size of the Portfolio must be at least 5 MW at the time of Contract signing. A Portfolio may contain no more than ten (10) Projects. |
| **Term** | Up to 15 years from Commercial Operation of the Project.  |
| **Payment Structure** | Owner is entitled to one of two payment structures: upfront or levelized.Upfront structure is:Owner is entitled to receive payment of the Commercial Operation Payment, equal to 70% of the Total Compensation Amount, after Owner achieves Commercial Operation of the Project.Owner is entitled to receive annual payments each year, in arrears, equal to the remaining 30% of the Total Compensation Amount divided by the total number of years in the Term.Levelized structure is: Owner is entitled to receive annual payments, beginning on the Commercial Operation Date (the Commercial Operation Payment) and on each anniversary thereafter, equal to the Total Compensation Amount divided by the total number of years in the Term plus one.The “Total Compensation Amount” is equal to the product of the $ per MW agreed to by Owner and Company multiplied by the Contract Capacity bid by Owner. |
| **Capacity and Requirements** | Owner must meet certain performance requirements to achieve Commercial Operation and maintain certain performance guarantees throughout the Term, subject to liquidated damages and, if applicable, termination by Company. |
| **Exclusive Use** | Company shall have the exclusive right to dispatch the Energy Storage System from Substantial Completion through the Term.  |
| **Owner Credit Support** | At execution, Owner shall post Development Security not less than the product of 210, the number of MW of the Contract Capacity of the Project or Portfolio, and the per MW per day Liquidated Damages Rate (as defined herein) based on the Owner’s Total Compensation Amount. This amount is intended to cover the equivalent of the loss of seven months of performance.For the Upfront Structure, by the Commercial Operation Date, Owner shall post Performance Assurance in an amount not less than 100% the Commercial Operation Payment, which amount decreases following the completion of each subsequent contract year by the Commercial Operation Payment divided by the total number of years in the Term.For the Levelized Structure, by the Commercial Operation Date, Owner shall post Performance Assurance in an amount not less than 100% the Commercial Operation Payment, which amount shall endure through, and be released upon, completion of the Term.Credit support shall be in the form of cash or a Letter of Credit. |
| **Substantial Completion, Guaranteed Commercial Operation, and Commercial Operation Outside Deadlines**  | Substantial Completion. The deadline for Substantial Completion for the Project must be on or before June 1, 2030, which date may be extended for Force Majeure or Interconnection-Caused Delay (but only to the extent that a delay not attributable to Force Majeure or Interconnection Causes did not concurrently occur). If Owner is unable to achieve Substantial Completion by such date, then Owner shall pay Company liquidated damages, on a per MW, per Day of delay basis, equal to the Total Compensation Amount divided by the number of days in the Term divided by the number of MW of Contract Capacity. This amount shall be the “Liquidated Damages Rate.” Guaranteed Commercial Operation Deadline: The guaranteed Commercial Operation Date may be extended for Force Majeure or Interconnection-Caused Delay up to the Guaranteed Commercial Operation Outside Deadline (but only to the extent that a delay not attributable to Force Majeure or Interconnection Causes did not concurrently occur). The Guaranteed Commercial Operation Outside Deadline for a Project or Portfolio may not be extended. Failure to achieve Commercial Operation by such date constitutes an Event of Default by Owner and will result in the automatic termination of the ESSA.Commercial Operation Outside Deadline: The Commercial Operation Outside Deadline for a Project is December 31, 2030. Failure to achieve Commercial Operation by such date constitutes an Event of Default by Owner and will result in the automatic termination of the ESSA.  |
| **Substantial Completion** | Substantial Completion means, among other things:* the Project has been interconnected to the grid in compliance with an executed Interconnection Agreement;
* Owner has delivered to Company a certificate of an Independent Engineer certifying the Project is mechanically completed in all material respects;
* Owner has received all Permits necessary for Owner to perform its obligations under the ESSA and such Permits are in final form and in full force and effect;
* Owner has FERC market-based rate authority and is registered as a market participant in NYISO for the Project;
* the Project has been registered with the NYISO as a dispatchable energy storage resource capable of operating in NYISO;
* Owner has completed registrations with NERC as the owner and operator of the Project; and
* Other conditions as set forth in the definitive agreements.
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| **Commercial Operation** | Commercial Operation means, among other things:* Substantial Completion has occurred;
* testing and commissioning of the Project to verify mechanical, electrical and structural performance per the specifications in the ESSA, including verification of Contract Capacity and Guaranteed Round-Trip Efficiency, among other performance criteria, has been completed;
* Owner has obtained all Permits necessary for Owner to perform its obligations under the ESSA;
* Owner has delivered Performance Assurance;
* Owner has designated Company as the Financially Responsible Party for the Project;
* Owner has obtained confirmation from NYISO that it has satisfied all NYISO requirements to obtain Capacity Resource Interconnection Service (or CRIS) and Energy Resource Interconnection Service (or ERIS) and in amounts not less than the Contract Capacity and the commensurate Contract Capacity Energy;
* the Project is not subject to any Encumbrances other than Permitted Encumbrances; and
* Owner is not in default under the ESSA.
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| **Interconnection-Caused Delay** | For transmission-connected Projects, means a delay on the critical path for achieving the Substantial Completion Date by the Substantial Completion Deadline or the Commercial Operation Date by the Guaranteed Commercial Operation Deadline, as applicable, solely resulting from an extension of the Interconnection In-Service Date and/or Interconnection Commercial Operation Date granted by NYISO in connection with the Interconnection Agreement, but in each case, only to the extent that (a) such delay, failure, act or failure to act is not caused by Owner or Owner’s failure to take reasonable actions with respect to any Interconnection Facilities, or other activities for which the Transmission Owner or NYISO require Owner cooperation in order to meet any milestones for interconnection of the Project, and (b) such delay could not have been prevented or overcome by reasonable efforts and due diligence of Owner or any of its employees or representatives. For distribution-connected Projects, means a delay on the critical path for achieving Substantial Completion by the Substantial Completion Date or the Commercial Operation Date by the Guaranteed Commercial Operation Deadline, as applicable, solely resulting from a delay in completing construction of the Interconnection Facilities for which the Transmission Owner and/or NYISO, as applicable, is responsible for construction under the Interconnection Agreement but, in each case, only to the extent that (a) such delay is not caused by Owner or Owner’s failure to take reasonable actions with respect to any Interconnection Facilities, or other activities for which the Transmission Owner or NYISO require Owner cooperation in order to meet any milestones for interconnection of the Project, and (b) such delay could not have been prevented or overcome by the reasonable efforts and due diligence of Owner or any of its employees or representatives.  |
| **Construction Milestones / Recovery Plan** | Owner will comply with a schedule of milestones for development of the Project, to help ensure the Project will achieve Commercial Operation before the deadline for Commercial Operation.In the event Owner misses a milestone designated as critical, Owner may cure its failure pursuant to a written recovery plan. |
| **Charging Costs** | Owner shall be responsible for costs associated with (1) charging the Project before the Contract Term commences (if any), and (2) any auxiliary charging costs. Company shall be responsible for costs associated with charging the Project during the Contract Term.For distribution connected assets, the Owner shall notify the Company of any charging restrictions under the interconnection agreement. The owner must install measures to ensure that desired charging and discharging levels cannot be exceeded.  |
| **Access** | Owner shall grant Company access to the Project and the Project site, from and after execution of the ESSA and during the Term, to inspect the Project, witness testing, verify conditions have been met, evaluate circumstances regarding outages or other unavailability, or for any other reasonable purpose with reasonable notice except in case of emergencies. |
| **Owner Obligations** | Owner shall, among other things:* obtain site control by the milestone date specified and maintain site control for the Term;
* design, construct, own, operate and maintain the Project as required under the ESSA, in accordance with Good Utility Practice and in compliance with all Applicable Laws, Permits, site agreements, a Company-approved Environmental, Health, and Safety Plan and the applicable Interconnection Agreement;
* modify the Project only after obtaining prior written consent from Company;
* retain exclusive ownership over the entirety of the Project, except as otherwise expressly permitted;
* not make any use of the Project other than as directed by Company after the Contract Term commences, except as expressly permitted under the contract;
* obtain and maintain all Permits required for siting, construction, operation and maintenance of the Project during the Term;
* complete environmental impact assessments, statements, or studies required by Applicable Laws;
* obtain and maintain electric service for station use and Charging Energy Requirements;
* obtain and maintain manufacturer’s warranties on the components of the Project for the duration of the Delivery Period;
* not withdraw the Interconnection Queue Position without Company’s prior written consent;
* ensure the Interconnection Facilities are sufficient to enable delivery of the Contract Capacity of the Project;
* provide to Company, prior to commencement of any construction activities on the Site, a report from an Independent Engineer certifying that Owner has a written plan for the safe construction and operation of the Project in accordance with Good Utility Practice;
* comply with NERC reliability standards applicable to the Project, including registering with NERC as the Generator Owner and Generator Operator and implementing all applicable processes and procedures required by FERC, NERC, NPCC, the NYISO or other Governmental Authorities;
* comply with the Interconnection Agreement, including furnishing and installing sufficient facilities for power system protection for proper and safe operation of the Project in parallel with Transmission Owner’s electric system;
* interconnect consistent with the reliability standard included in the owner’s award during the RFP.
* provide accurate and complete operating characteristics of the Project in compliance with the NYISO Tariff
* comply with Company’s cybersecurity requirements and Federal Acquisition Regulations compliance requirements;
* provide Company such data and information reasonably requested by Company from time to time, as it concerns the sale of the Product and to substantiate the costs for the Project, which costs may be part of an inquiry or investigation by a Governmental Authority;
* obtain and maintain Market-Based Rate Authority from FERC as applied to sales made within the NYISO Markets;
* take all actions necessary to register and maintain the qualification of the Project under all NYISO tariffs required to sell Products; and
* comply with all requirements to qualify for and maintain CRIS and ERIS as required at Commercial Operation.
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| **Performance Guarantees –** | The Project will be designed for the following levels of reliability and availability (excluding in each case planned maintenance outages in accordance with the ESSA):1. 98% availability for all 5-minute intervals in a Contract Year (Guaranteed Availability);
2. 100% of the Contract Capacity (Guaranteed Capacity);
3. 80% round-trip efficiency (Guaranteed Round-Trip Efficiency); and
4. 10% minimum Ramp Up Rate and Ramp Down Rate of the Contract Capacity per minute.

Liquidated damages shall apply to each of Guaranteed Availability, Guaranteed Capacity, and Guaranteed Round-Trip Efficiency as follows:* Guaranteed Availability. The sum of (a) the (Guaranteed Availability – Actual Availability per year expressed as a %) x Contract Capacity x the Liquidated Damages Rate x days in the year
* For any day on which the Company calls a distribution level demand response event (currently known as a CSRP, DLRP, Term-DLM, and Auto-DLM event) in the network where the battery is located, the penalty for unavailability is Contract Capacity X $18,000 per MW for CECONY and $3,000 per MW for O&R.
* Guaranteed Capacity. The shortfall capacity x Liquidated Damages Rate x the number of days before Owner cures the deficiency
* Guaranteed Round-Trip Efficiency. The shortfall round-trip efficiency x locational-based marginal pricing (LBMP) proximate to the Project x charging energy.
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| **Operations and Maintenance** | Owner shall operate, maintain, repair and, if necessary, replace the Project and any portion thereof, in accordance with Good Utility Practice, Applicable Laws, Permit Requirements, and Warranty Requirements as necessary to make the Product available to Company in accordance with the terms of the ESSA. |
| **Outages** | Planned Outages. Owner shall periodically deliver non-binding 36-month schedules of planned maintenance outages during the Term, showing (i) a description of the work to be performed, (ii) start date and time, (iii) end date and time, (iv) recall time, (v) the availability of the affected Project (if any), (vi) MW derate (if any), and (vii) name or single point identifier (or PTID) of the asset.Planned Outages in a Contract Year may not exceed 336 Equivalent Hours, which is the product of multiplying such hour by the percentage of the Contract Capacity rendered unavailable as a result of a Planned Outage during such hour.In those years in which Owner is required by FERC or NERC to conduct a Planned Outage (other than pursuant to an annual requirement), Owner may submit a request to CECONY or O&R, as applicable, to extend the number of permitted Equivalent Hours for Planned Outages in a Contract Year commensurate with the outage time required by FERC or NERC that exceeds 336 Equivalent Hours for that Contract Year.Owner shall not conduct any Planned Outages from May 15 through September 30 in any year during the Contract Term and shall carry out activities during Planned Outages in compliance with Good Utility Practice. Unplanned Outages. An unplanned outage is any outage of the Project other than a Planned Outage. Owner shall notify Company of any unexpected Unplanned Outage within 15 minutes. |
| **Force Majeure** | A Party may be excused from performance or a delay in the performance of its obligations due to the occurrence of Force Majeure. “**Force Majeure**” means any occurrence that was not reasonably foreseeable as of the Effective Date that: (a) in whole or in part (i) delays a Party’s performance under the ESSA, (ii) causes a Party to be unable to perform its obligations or (iii) prevents a Party from complying with or satisfying the conditions of the ESSA; (b) is not within the reasonable control of that Party; (c) is not the result of the negligence or fault of that Party or a lack of due diligence, a breach of the ESSA or a failure to comply with Good Utility Practice by that Party; and (d) the Party has been unable to overcome such occurrence by the exercise of due diligence.Provided the above criteria are met, Force Majeure includes typical events (including acts of God, hurricanes, tornadoes, lightning, earthquakes, flood, landslides, unusually severe weather and drought; acts of civil or military authority; acts of war whether declared or undeclared; acts of terrorism; civil disturbance, insurrection or riot; fire (not caused by the Project); pandemic or plague; and other similar events).Force Majeure does not include:* failure to comply with Applicable Laws;
* change in Applicable Laws after the execution of the ESSA; change in Applicable Laws after the execution of the ESSA unless such a change in Applicable Laws renders the contract illegal, unenforceable, or impossible to be performed (increased costs to perform not qualifying as impossible)
* inability to obtain sufficient labor, equipment, materials or other resources to construct, own, operate or maintain the Project;
* Economic hardship;
* change in market conditions, including those affecting the cost or availability of labor, equipment, materials or other resources;
* Reductions in the ability of the Project to store, charge or discharge energy resulting from ordinary wear and tear, deferred maintenance, operator error, or the failure of equipment or parts;
* curtailment or reduction in deliveries as a result of distribution system contingencies or planned outages if the Project is interconnected at a reliability standard less than the area’s local reliability standard when the basis of the curtailment or reduction ordered by a Transmission Owner or NYISO is congestion arising in the ordinary course of operations of the Transmission Owner’s system or the New York Transmission System, including congestion caused by outages or capacity reductions for maintenance, construction or repair;
* Owner’s inability to obtain or maintain, or delay in obtaining, any approvals or consents of any Governmental Authority or other third party, including any Permits, for the construction, operation or maintenance of the Project;
* Any equipment failure or equipment damage, except to the extent such event is the direct result of an event that would otherwise qualify as a Force Majeure;
* Any delay in providing, or cancellation of, interconnection service by a Transmission Owner, except to the extent such event is the direct result of an event that would otherwise qualify as a Force Majeure;
* A failure of performance of any other entity, including Owner’s contractors, suppliers or vendors, except to the extent such event is the direct result of an event that would otherwise qualify as a Force Majeure;
* Owner’s failure to obtain additional funds, whether authorized by a state or the federal government or agencies thereof, to supplement the payments made by Company under the ESSA;
* Owner’s failure to obtain or retain any tax credits or incentives with respect to any portion of the Project; and
* Changes in temperature or humidity conditions.
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| **Safety Event** | If a Governmental Authority takes action with respect to the Project due to safety concerns or an adverse event (including fire) occurs with respect to any energy storage system (other than the Project) that shares the same manufacturer or substantially similar design as the Project, then the Project will be placed in a Force Majeure and then Owner shall (a) force the Project into an Unplanned Outage, (b) engage an independent engineer to evaluate remediation options, if any, and (c) implement any remediation efforts, including placing the Project in an Unplanned Outage, identified by the independent engineer, at Owner’s cost. with CECONY being relieved of its payment obligations removed during that period of Unplanned Outage. |
| **Defaults** | Events of Default with respect to either Company or Owner include customary events of default. As specific to Owner, Events of Default include:* transfer of the Interconnection Queue Position or the Interconnection Agreement;
* Abandonment of construction of the Project
* failure to achieve Commercial Operation by the Guaranteed Commercial Operation Deadline;
* failure to provide and maintain credit support as required by the ESSA;
* occurrence of any event for which Company’s consent is required, including the use of the Project for the benefit of any Person other than Company, without obtaining Company’s providing prior written consent;
* performance of the Project: (A) Actual Availability is less than 85% in any Contract Year; (B) the average Actual Availability over three consecutive Years is less than 95%, or the Actual Availability in any Contract Year is an amount such that it would be impossible for the average Actual Availability over the three consecutive Contract Years to equal or exceed 95%; the aggregate hours of unavailability in any calendar year due to Unplanned Outages exceeds 336 hours; (C) the Storage Capacity Rating is less than the Contract Capacity for a period of 180 or more consecutive days; or (D) the Round-Trip Efficiency demonstrated during any Storage Rating Test is less than the Guaranteed Round-Trip Efficiency by 10% or more; or (E) the Round-Trip Efficiency demonstrated during any Storage Rating Test conducted separately in any three consecutive Contract Years is less than the Guaranteed Round-trip Efficiency by 3% or more;
* Owner delivers a product to Company that is not produced by the Project;
* Owner is unable to implement a remediation identified by an Independent Engineer to resolve a safety event; and
* Owner does not have Site Control.
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| **Default Remedies** | Remedies available to the non-defaulting Party shall be typical remedies, including: termination of the ESSA, acceleration of all amounts owed by the Defaulting Party under the ESSA, withholding of any payments due to the Defaulting Party under the ESSA, suspension of performance pending termination of the ESSA, and pursuit of any and all remedies available at law or in equity against the Defaulting Party.A Termination Payment applies to any early termination, other than a termination resulting from an extended Force Majeure in which case the contract shall be terminated without other party having further obligation to the other.  |
| **Owner Indemnification** | The ESSA will impose customary indemnification obligations on Owner, including for losses, claims or liabilities related to, resulting from or arising out of:* any breach made by Owner of any representation, warranty, covenant or agreement contained in the ESSA;
* NERC Standards Non-Compliance Penalties or an attempt by any Governmental Authority or other Person to assess such NERC Standards Non-Compliance Penalties against Company in connection with the Project;
* injury or death to Persons, including Company employees, and physical damage to property, including Company property, where the damage arises out of, is related to, or is in connection with, Owner’s design, development, construction, ownership, operation or maintenance of the Project, or obligations or performance under the ESSA;
* an infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party resulting from the use of any equipment, software, applications or programs (or any portion of same) in connection with the Project;
* any violation of Applicable Laws, failure to obtain and maintain Permits, or failure to perform Permit Requirements related to the Project or Owner’s performance, or failure to perform, under the ESSA;
* any (i) storage, generation, use, handling, manufacture, processing, transportation, treatment, release or disposal of any Hazardous Material by Owner or any of Owner’s subcontractors; (ii) alleged, threatened, or actual violation of any environmental law by Owner or any of Owner’s subcontractors, including, without limitation, any enforcement or compliance proceeding relating to or in connection with any such alleged, threatened or actual violation and any action reasonably necessary to abate, investigate, remediate or prevent any such violation or threatened violation; (iii) presence, release or cleanup of any Hazardous Materials at, from, to, under, or on real property or equipment; or (iv) environmental compliance costs, in each case in connection with the Project;
* the failure to pay any taxes, fees or charges imposed by any Governmental Authority on the Project or Project site or environmental compliance costs in connection with the Project for which Owner is responsible;
* any financial settlement for Products requiring payment by Company, monetary penalties or fines assessed against Company by the NYPSC, the NYISO or any other entity having jurisdiction, resulting from:
* Owner’s failure to dispatch the Project in accordance with a Dispatch Notice, other than due to a Force Majeure;
* Owner’s failure to provide notice of the non-availability of any portion of the Contract Quantity for any portion of the Term; or
* any non-Company dispatch, including all (i) charges, sanctions, and penalties imposed by the NYISO, and (ii) the related Charging Energy Requirements.
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| **Company Standards Applicable** | Company requires counterparties to comply with a series of contract requirements, including:* compliance with cybersecurity requirements;
* compliance with Federal Acquisition Regulations requirements;
* compliance with Company-approved Environmental, Health, and Safety Plan requirements.
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| **Data** | During the Contract Term, all data and information recorded from operation, scheduling, dispatch, testing and maintenance of the Project shall be property of the Company.  |
| **Assignment and Change of Control** | Owner may not assign the ESSA or its interest in the Project without the prior written consent of Company, which consent may be given or denied in its sole discretion.In addition, any change in equity ownership of Owner due to (i) tax equity financing or (ii) direct or indirect change of control of Owner, shall require the prior written consent of Company, which consent shall not be unreasonably conditioned, withheld, or delayed. Owner may collaterally assign its rights under the ESSA to providers of debt financing for the Project. |
| **Confidentiality** | To the extent permitted by Applicable Laws, each Party shall maintain the confidentiality of information and data transmitted under the ESSA, provided that Company and Owner may disclose information required to apply for and comply with the requirements of any regulatory obligations.  |
| **Dispute Resolution** | Any disputes between Company and Owner will be advanced informally to authorized representatives for negotiation and resolution, followed by negotiation of senior officers if the authorized representatives are unable to reach resolution within 10 days. If the parties are unable to resolve the dispute informally, either Party may initiate mediation before a mutually acceptable mediator with energy sector expertise from JAMS. If neither Party initiates mediation, or if mediation does not result in a settlement within 30 days, either Party is may seek remedy from a court of competent jurisdiction. |