**ENERGY STORAGE SERVICES AGREEMENT**

***between***

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

***and***

**[*OWNER*]**

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**ENERGY STORAGE SERVICES AGREEMENT**

**between**

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

**and**

**[*OWNER’S NAME*]**

**THIS ENERGY STORAGE SERVICES AGREEMENT**, together with the exhibits attached hereto (as amended and in effect from time to time, this “Agreement”) is made and entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Effective Date”) by and between **CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**, a New York corporation (“CECONY”), and **[*OWNER*]**, a **[*Owner entity and state of formation*]** (“Owner”). CECONY and Owner are sometimes referred to herein individually as a “Party” and jointly as the “Parties.”

**RECITALS**

A. CECONY is an investor-owned electric utility serving customers in New York City and Westchester County, New York.

B. CECONY seeks to procure bulk energy storage scheduling and dispatch rights as directed by the New York State Public Service Commission (the “NYPSC”) in its *Order Establishing Energy Storage Goal and Deployment Policy*, issued December 13, 2018, in Case 18-E-0130, In the Matter of Energy Storage Deployment Program, and subsequent orders.

C. Owner is willing to construct, own, operate and maintain an energy storage system electrically interconnected in CECONY’s service territory consistent with the requirements set forth herein, exclusively for the benefit of CECONY during the Term, including bulk energy storage scheduling and dispatch rights and all Products (as hereinafter defined) the energy storage system is capable of producing.

**AGREEMENT**

NOW, THEREFORE, in consideration of these recitals and the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows.

# PROJECT AND EXCLUSIVE USE

## Product

s.

### The “Products” consist of any and all Capacity, Energy, Ancillary Services, and any other products or benefits associated with the Project (whether or not saleable in NYISO or any other electric wholesale market), including, without limitation, Installed Capacity (ICAP), Energy, Operating Reserve Service (including both Non-Synchronized and Spinning Reserves), Voltage Support Service and Regulation Service, each as defined in the NYISO Tariff, products recognized in markets other than NYISO (such as any credits or other products associated with environmental, public policy or other attributes) and products associated with uses of the Project for the benefit of CECONY’s distribution or transmission system unrelated to sales into NYISO or any other market.

### Owner shall not substitute or purchase any portion of the Products from any other generating resource, non-generator resource, or storage device or from the market for delivery hereunder.

## Project

. The “Project” consists of the Storage Unit, Owner’s Interconnection Facilities, Prevention Equipment and System Protection Facilities, together with all materials, equipment systems, structures, features and improvements necessary to store, charge, discharge and deliver electric energy at the Project, all as more fully described in Exhibit B.

### Project Name. **[*name*]**.

### Location of Project. **[*****project address*]**, as further described in Exhibit B.

### Energy Delivery Point. The Energy Delivery Point shall be the Interconnection Point.

### Interconnection Point. The Interconnection Point is **[*insert name and location*]**, as specified in Exhibit B.

### Interconnection Queue Position. **[*number to be inserted*]**.

## Contract Capacity

. The contract power capacity of the Project shall be equal to **[*●*]** MW (“Contract Capacity”), which shall be confirmed at the Initial Commercial Operation Test and reaffirmed through Performance Testing. Owner shall maintain the Contract Capacity throughout the Contract Term.

## Exclusive Rights

. Subject only to the Operating Restrictions set forth in Exhibit D, CECONY shall have the exclusive use of the Project during the Contract Term, including all rights to market, use and sell the Products, all rights to store, charge, and dispatch electric energy, and any associated rights and rights to all revenues generated from such use of the Project.

## Data from Project

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### Prior to the Commercial Operation Date, all data and information related to or arising from the operation, scheduling, dispatch, testing, and maintenance of the Project that is generated, stored or transmitted prior to the Contract Term (the “Owner Project Data”), in whatever form or medium generated, stored, or transmitted, shall be and remain the property of Owner and shall be considered Confidential Information of Owner for all purposes under this Agreement; provided, that, Owner shall provide the Owner Project Data to CECONY promptly upon request.

### Beginning on the Commercial Operation Date and continuing beyond the termination or expiration of this Agreement, Owner hereby irrevocably, perpetually and unconditionally grants and transfers to CECONY all of Owner’s rights, title and interest in all data and information related to or arising from operation, scheduling, dispatch, testing, and maintenance of the Project that is generated, stored or transmitted during the Contract Term (the “CECONY Project Data”), in whatever form or medium generated, stored, or transmitted. Owner further acknowledges and agrees that the CECONY Project Data shall be and remain the property of CECONY and shall be considered Confidential Information of CECONY for all purposes under this Agreement. CECONY hereby grants to Owner a non-exclusive, non-transferable license to use the CECONY Project Data solely for the limited purposes of operation, scheduling, dispatch, testing and maintenance of the Project.

# TERM; DELIVERY PERIOD; SUBSTANTIAL COMPLETION DEADLINE; GUARANTEED COMMERCIAL OPERATION DEADLINE

## Term

. The “Term” of this Agreement shall commence upon the Effective Date and continue until the expiration or termination of the Contract Term.

## Delivery Period

. The “Delivery Period” shall commence on the Commercial Operation Date and continue until midnight on the date that is **[*****Insert time period up to fifteen (15) years*]** after the Commercial Operation Date.

## Substantial Completion Deadline

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### The “Substantial Completion Deadline” is [***Insert Date***][[1]](#footnote-2), as such date may be extended up to the Guaranteed Commercial Operation Deadline in accordance with Section 2.03(b).

### If Owner reasonably determines that (i) due exclusively to an event of Force Majeure or Interconnection-Caused Delay, Owner will not be able to achieve Substantial Completion by the Substantial Completion Deadline, and (ii) the delay beyond the Substantial Completion Deadline caused by such event cannot be overcome by the commercially reasonable efforts of Owner or any of its contractors or its contractors’ subcontractors (including, without limitation, by the re-arrangement or re-sequencing of any work necessary to achieve Substantial Completion of the Project by the Substantial Completion Deadline), Owner shall be entitled to an extension of the Substantial Completion Deadline up to the Guaranteed Commercial Operation Deadline for the number of days of delay on the critical path to achievement of Substantial Completion caused by such event of Force Majeure or Interconnection-Caused Delay, as applicable; provided, however, in the event any failure to achieve Substantial Completion by the Substantial Completion Deadline is due, at least in part, to an independent event or circumstance that does not qualify as a Force Majeure or Interconnection-Caused Delay (each, a “Non-Excused Cause”) and the period of delay on the critical path to achievement of Substantial Completion arising from such Non-Excused Cause overlaps (in whole or in part) with a period of delay on the critical path to achievement of Substantial Completion caused by a Force Majeure or Interconnection-Caused Delay (such period of overlap, the “Concurrent SC Delay Period”), then Owner shall not be entitled to any extension of the Substantial Completion Deadline for the Concurrent SC Delay Period (but shall remain entitled to an extension of the Substantial Completion Deadline for any remaining portion of the delay on the critical path arising exclusively from the Force Majeure or Interconnection-Caused Delay).

### Notwithstanding anything to the contrary herein, in no event will the Substantial Completion Deadline be extended beyond the Guaranteed Commercial Operation Deadline for any reason, including by reason of Force Majeure or Interconnection-Caused Delay.

## Substantial Completion

. “Substantial Completion” of the Project shall occur upon delivery of notice from CECONY to Owner that CECONY has received evidence reasonably satisfactory to CECONY that the following conditions have been satisfied. The “Substantial Completion Date” shall be the date on which CECONY delivers such notice to Owner.. The Parties acknowledge that satisfaction of the below conditions may occur over time, but all such conditions shall have been satisfied and remain satisfied on the Substantial Completion Date:

### Owner shall have entered into, and complied in all material respects with its obligations under, the Interconnection Agreement; interconnection of the Project has been completed in accordance with the Interconnection Agreement, including installation of all metering and telemetry equipment required to deliver all Products in accordance with the NYISO Tariff; the Interconnection Facilities are sufficient to enable delivery of the installed capacity of the Project up to the Contract Capacity; and the Interconnection Agreement remains in full force and effect;

### Owner shall have provided a certificate from an Independent Engineer that the Project has been mechanically completed in all material respects, excepting items that do not adversely affect the ability of the Project to achieve Commercial Operation in accordance with the requirements of this Agreement;

### Owner shall have obtained all Permits necessary for Owner to perform its obligations under this Agreement and all such Permits are in final form and in full force and effect;

### Owner shall have obtained authority from FERC, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, to sell electric energy, capacity and ancillary services at market-based rates (“Market-Based Rate Authority”);

### Owner shall have registered in NYISO as a market participant (as defined in the NYISO Tariff) for the Project;

### Owner shall have registered the Project in NYISO for use as a dispatchable energy storage resource operating in the NYISO Markets;

### Owner shall have completed all registrations with NERC and NPCC as applicable to Owner as the owner and operator of the Project;

### Owner shall have delivered to CECONY all insurance documents required under Section 14.07 (Insurance) and all documented insurance shall be in full force and effect with all required premiums paid;

### the Project shall not be subject to any Encumbrances other than Permitted Encumbrances;

### Owner shall have delivered to CECONY a final, comprehensive list of remaining tasks required for completion of the Project (“Punch List”), which has been revised to reflect comments received from CECONY on a draft Punch List previously provided by Owner; and

### Owner shall not be in breach of any obligation under this Agreement, including payment of any accrued and outstanding Substantial Completion Delay Liquidated Damages.

## Substantial Completion Delay Liquidated Damages

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### If Owner fails to achieve Substantial Completion by the Substantial Completion Deadline, as it may have been extended due to Force Majeure or Interconnection-Caused Delay, Owner shall be liable for and pay to CECONY liquidated damages in an amount equal to [(***Total Compensation Amount divided by the total number of days during the Delivery Period divided by the Contract Capacity) multiplied by .5***] per MW of Contract Capacity per day (“Substantial Completion Delay Liquidated Damages”) for each day from and including the Substantial Completion Deadline to and excluding the earlier to occur of (i) the date that the Project achieves Substantial Completion or (ii) the Guaranteed Commercial Operation Deadline.

### As soon as Owner anticipates that it will not achieve Substantial Completion by the Substantial Completion Deadline (which shall be prior to the Substantial Completion Deadline), Owner shall notify CECONY in writing of the date on which it reasonably expects the Project to achieve Substantial Completion and shall, contemporaneously therewith, remit payment to CECONY of the Substantial Completion Delay Liquidated Damages payable with respect to such revised anticipated Substantial Completion Date. If the Owner anticipates that the Project will fail to achieve Substantial Completion by the revised date, then Owner shall, upon such assessment (which shall be prior to the revised anticipated Substantial Completion Date) again notify CECONY of its newly revised anticipated Substantial Completion Date and remit payment to CECONY of the additional Substantial Completion Delay Liquidated Damages payable, as applicable. CECONY reserves the right to invoice Owner for any unpaid Substantial Completion Delay Liquidated Damages and shall refund any excess payments of Substantial Completion Delay Liquidated Damages received. Nothing herein shall alter Owner’s performance obligations, require CECONY to accept a revised schedule(s) or alter CECONY’s right to terminate this Agreement as set forth herein (including Sections 4.06 and 10.01).

## Guaranteed Commercial Operation Deadline

.

### The “Guaranteed Commercial Operation Deadline” is [***Insert Date***][[2]](#footnote-3), as such date may be extended up to the Commercial Operation Outside Deadline pursuant to Section 2.06(b) and/or Section 2.06(c).

### If Owner reasonably determines that (i) due exclusively to an event of Force Majeure or Interconnection-Caused Delay, Owner will not be able to achieve Commercial Operation by the Guaranteed Commercial Operation Deadline, and (ii) the delay beyond the Guaranteed Commercial Operation Deadline caused by such event cannot be overcome by commercially reasonable efforts of Owner or any of its contractors or its contractors’ subcontractors (including, without limitation, by the re-arrangement or re-sequencing of any work necessary to achieve Commercial Operation of the Project), Owner shall be entitled to an extension of the Guaranteed Commercial Operation Deadline up to the Commercial Operation Outside Deadline for the number of days of delay on the critical path to achievement of Commercial Operation caused by such event of Force Majeure or Interconnection-Caused Delay, as applicable; provided, however, in the event any failure to achieve Commercial Operation by the Guaranteed Commercial Operation Deadline is due, at least in part, to a Non-Excused Cause and the period of delay on the critical path to achievement of Commercial Operation arising from such Non-Excused Cause overlaps (in whole or in part) with a period of delay on the critical path to achievement of Commercial Operation caused by a Force Majeure or Interconnection-Caused Delay (such period of overlap, the “Concurrent COD Delay Period”), then Owner shall not be entitled to any extension of the Guaranteed Commercial Operation Deadline for the Concurrent COD Delay Period (but shall remain entitled to an extension of the Guaranteed Commercial Operation Deadline for any remaining portion of the delay on the critical path arising exclusively from the Force Majeure or Interconnection-Caused Delay).

### As soon as Owner anticipates that it will not achieve Commercial Operation by the Guaranteed Commercial Operation Deadline (which shall be prior to the Guaranteed Commercial Operation Deadline), Owner shall notify CECONY in writing of the date on which it reasonably expects the Project to achieve Commercial Operation. In the event that the revised anticipated Commercial Operation Date is prior to the Commercial Operation Outside Deadline, Owner shall have a one-time right to extend the Guaranteed Commercial Operation Deadline up to the Commercial Operation Outside Deadline by remitting payment to CECONY of liquidated damages in an amount equal to [(***Total Compensation Amount divided by the length of the Delivery Period (in days) divided by the Contract Capacity) multiplied by .75***] per MW of Contract Capacity per each day of such extension (the “Commercial Operation Delay Liquidated Damages”) prior to or on the Guaranteed Commercial Operation Deadline. Owner’s election to pay Commercial Operation Delay Liquidated Damages shall not limit Owner’s rights to an extension to the Guaranteed Commercial Operation Deadline for Force Majeure or Interconnection-Caused Delay pursuant to Section 2.06(b). If it is reasonably determined by the Parties that any period of extension of the Guaranteed Commercial Operation Deadline for which Owner paid Commercial Operation Delay Liquidated Damages coincides with a period of extension of the Guaranteed Commercial Operation Deadline to which Owner is entitled under Section 2.06(b) due to an event of Force Majeure or Interconnection-Caused Delay, then Owner shall be entitled to a refund of the pro rata portion of such Commercial Operation Delay Liquidated Damages attributable to the number of days of such coincident Force Majeure or Interconnection-Caused Delay.

### Notwithstanding anything to the contrary herein, in no event will the Guaranteed Commercial Operation Deadline be extended beyond the earlier of (i) the date that is twelve (12) months after the Guaranteed Commercial Operation Deadline established as of the Effective Date and (ii) December 31, 2030 (the “Commercial Operation Outside Deadline”)[[3]](#footnote-4) for any reason, including by reason of Force Majeure, Interconnection-Caused Delay or payment of Commercial Operation Delay Liquidated Damages.

## Commercial Operation

. “Commercial Operation” of the Project shall occur upon delivery of notice from CECONY to Owner that CECONY has received evidence reasonably satisfactory to CECONY that the following conditions have been satisfied. The “Commercial Operation Date” shall be the date CECONY delivers such notice. The Parties acknowledge that satisfaction of the below conditions may occur over time, but all such conditions shall have been satisfied and remain satisfied on the Commercial Operation Date:

### The Substantial Completion Date shall have occurred;

### Owner shall have (i) completed testing and commissioning of all components of the Project, individually and in the aggregate, to ensure the Project is mechanically, electrically and structurally capable of performing in accordance with the requirements of this Agreement, including completion of an end-to-end system controls test and verification in accordance with the testing protocols set forth in Exhibit C, (ii) provided to CECONY test results that demonstrate that the Project meets or exceeds the Guaranteed Capacity and Guaranteed Round-Trip Efficiency, and (iii) delivered a certificate from an Independent Engineer affirming each of (i) and (ii) above;

### Owner shall have obtained all Permits necessary for Owner to own and operate the Project and perform its obligations under this Agreement, and all such Permits shall be in final form and in full force and effect;

### Owner shall have delivered to CECONY the applicable Performance Assurance pursuant to Section 7.02(b) and executed and delivered to CECONY all other documents or instruments required under ARTICLE 7 (Credit and Collateral);

### Owner shall have designated CECONY as the Financially Responsible Party (as defined by the NYISO Tariff) for the Project, at such time mutually agreed upon with CECONY;

### Owner shall have obtained confirmation from NYISO that it has satisfied all NYISO requirements to obtain Energy Resource Interconnection Service (or ERIS) and Capacity Resource Interconnection Service (or CRIS) in amounts not less than the Contract Capacity and the commensurate Contract Capacity Energy;

### Owner shall have completed all tasks set forth in the Punch List;

### Owner shall have delivered to CECONY a NYISO-approved initial Outage Schedule for the Project;

### the Project shall not be subject to any Encumbrances other than Permitted Encumbrances;

### Owner shall not be in breach of any obligation under this Agreement.

## Failure to Meet Guaranteed Commercial Operation Deadline

. If the Project has not achieved Commercial Operation by the Guaranteed Commercial Operation Deadline, CECONY shall have the right to terminate this Agreement effective at midnight of the date on which CECONY delivers written notice of termination to Owner. In the event CECONY terminates this Agreement pursuant to this Section 2.08, such termination shall be deemed a termination for an Event of Default by Owner and Owner shall owe to CECONY a Termination Payment calculated in accordance with Section 10.03(a)(i); provided, that, if Owner reasonably demonstrates (with substantiating evidence) to CECONY’s satisfaction that the failure to achieve Commercial Operation by the Guaranteed Commercial Operation Deadline was due solely to a Force Majeure event, or an Interconnection-Caused Delay, such failure shall not constitute an Event of Default by Owner and such termination will be without further liability to either Party arising from such termination.

# BILLING AND PAYMENTS

## Pre-Commercial Operation Date

### Owner shall be entitled to all of the revenue, and shall bear all of the costs, arising from or related to sale of the Products from the Project prior to the Commercial Operation Date.

### For each of the first two (2) Contract Years, a “Capacity Difference Amount” shall be calculated based on the positive or negative impact on Capacity Market Payments resulting from the difference between the EFORD the Project is assigned for the year in which the derating factor is adjusted by NYISO due to the reduced Capacity of the Project prior to the commencement of the Contract Term (“EFORD”) and the EFORD the Project would have been assigned by NYISO had it not been operating prior to the start of the Contract Term, which value shall be calculated as follows: the Capacity Market Payments (assuming the calculated EFORD the Project is assigned by NYISO during that Contract Year) minus the Capacity Market Payments (assuming the EFORD the Project would have been assigned by NYISO had it not been operating prior to the start of the Contract Term). If the value of the Capacity Difference Amount is positive for such Contract Year, then a payment equal to that amount shall be due to the Owner from CECONY. If the value of the Capacity Difference Amount is negative for such Contract Year, then a payment equal to the absolute value of that amount shall be due to CECONY from Owner.

## Compensation to Owner

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* + 1. Commercial Operation Payment. CECONY shall pay the Commercial Operation Payment to Owner after the Project achieves Commercial Operation. The Parties acknowledge and agree that the Commercial Operation Payment is not a milestone payment for the achievement of Commercial Operation, but is a pre-payment toward Owner’s performance of its obligations under this Agreement during the Delivery Period.
		2. Annual Post-Commercial Operation Payments. Provided that no Event of Default has occurred and is continuing, CECONY shall pay Owner annually, in arrears, an Annual Post-Commercial Operation Payment.

## Billing and Payment

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### Billing Information. On or before Substantial Completion, Owner shall provide its wiring instructions and W-9 tax information to CECONY in writing, certified as true and correct by a duly authorized officer of Owner, and shall cooperate with CECONY to provide all information necessary for CECONY to comply with its billing policies and procedures, including completion of CECONY’s third party risk assessment questionnaire(s).

### Commercial Operation Payment. No later than five (5) Business Days after the Commercial Operation Date, Owner shall invoice CECONY for the Commercial Operation Payment, which CECONY shall pay within thirty (30) days of receipt of such invoice.

### Annual Post-Commercial Operation Payment. No later than the tenth (10th) Business Day of the anniversary month of the Commercial Operation Date, Owner shall invoice CECONY for the then-applicable Annual Post-Commercial Operation Payment, which CECONY shall pay on or before the last Business Day of the month in which the invoice is received, subject to CECONY’s right to setoff amounts owed CECONY by Owner in accordance with Section 3.05.

### Amounts Payable by Owner.In addition to Owner’s obligations to prepay liquidated damages in accordance with Section 2.05(b), Owner may incur liabilities to CECONY hereunder for damages, penalties, fees, or otherwise. In such event, CECONY shall invoice Owner for the amounts owed, setting forth in reasonable detail the calculation thereof, and Owner shall pay the same, within ten (10) Business Days after receipt.

### Failure to Pay. Any amounts not paid by Owner by the due date will be deemed delinquent and will accrue interest at the Default Interest Rate from and including the due date until paid in full.

## Disputes and Adjustments of Invoices

. A Party may, in good faith, dispute the correctness of any invoice by providing written notice within thirty (30) days of its receipt, stating the basis for the Dispute. A Party that does not deliver such notice within thirty (30) days is deemed to have waived its right to dispute. Subject to Section 3.05 or manifest error, the disputing Party shall pay the entire amount due under the disputed invoice, notwithstanding the dispute. Any amounts to be paid to the disputing Party shall be made within five (5) Business Days of resolution of the Dispute, together with interest accrued at the Interest Rate, from and including the date of such overpayment until the date of repayment. In no event shall CECONY be obligated to pay amounts to which it exercises its right of setoff under Section 3.05, except to the extent it is later determined that such setoff was not permitted hereunder.

## Netting and Setoff Rights

. In addition to other legal remedies available to CECONY under Applicable Law, CECONY reserves the right to net any amounts CECONY owes to Owner under this Agreement against any and all amounts Owner owes CECONY under this Agreement, including any costs associated with the supply and delivery of power for Station Use.

# OWNER’S OBLIGATIONS WITH RESPECT TO THE PROJECT

## Generally

. At no cost to CECONY, Owner shall:

### maintain Site Control for the duration of the Term;

### design and construct the Project as required for Owner to operate the Project and perform its obligations under this Agreement;

### not modify the Project without obtaining CECONY’s prior written consent, which consent may not be unreasonably withheld, conditioned or delayed;

### design, construct, own, operate and maintain the Project as required under this Agreement, in accordance with Good Utility Practice and in compliance with all Applicable Law, Permits, and site agreements;

### except as expressly permitted under Section 14.04, retain exclusive ownership of the entirety of the Project;

### meet the various Project milestones in the Milestone Schedule;

### not make any use of the Project other than as directed by CECONY;

### timely file all applications or other appropriate requests for, and acquire and maintain, all Permits required for siting, construction, operation and maintenance of the Project during the Term;

### complete all environmental impact assessments, statements, or studies required under Applicable Law, including obtaining public review and certification of any final documents relating to any environmental impact assessments or studies and comply with CECONY’s resiliency guidelines set forth in Exhibit O;

### obtain and maintain in full force and effect all agreements necessary for electric service for Station Use and Charging Energy Requirements;

### obtain and maintain without modification, and take no action to invalidate, manufacturer’s warranties on the components of the Project, which minimum warranty requirements are identified in Exhibit E (“Warranty Requirements”);

### not withdraw the Interconnection Queue Position without CECONY’s prior written consent;

### ensure the Interconnection Facilities are sufficient to enable delivery of the installed capacity of the Project up to the Contract Capacity;

### provide CECONY, 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 any NERC Reliability Standards and any other governing reliability standards applicable to the Project, including registration with NERC as the Generator Operator for the Project or other applicable category under the NERC Reliability Standards and implementation of all applicable processes and procedures required by FERC, NERC, NPCC, the NYISO or other Governmental Authority for compliance with the NERC Reliability Standards or other governing reliability standards;

### comply with all requirements of the Interconnection Agreement, including to furnish and install System Protection Facilities and Prevention Equipment, as applicable, for proper and safe operation of the Project in parallel with the Transmission Owner’s electric system;

### provide accurate and complete operating characteristics of the Project in compliance with the NYISO Tariff:

#### at least thirty (30) days before Substantial Completion, and

#### thereafter, within ten (10) days following any change to such information;

### comply with CECONY’s cybersecurity requirements, set forth in Exhibit J, as applicable to vendors interconnected with CECONY’s information systems;

### comply with the Federal Acquisition Regulations, which regulations are set forth in Exhibit K;

### maintain and preserve its existence as a corporation, limited liability company, or other business entity, formed under the laws of its jurisdiction of formation or organization (as such jurisdiction may be changed by Owner from time to time pursuant to Applicable Law), and maintain and preserve the necessary corporate, limited liability company or other business entity status for Owner to be qualified to do business under Applicable Law and retain all material rights, privileges and franchises necessary or desirable to enable it to perform its obligations under this Agreement;

### in such time period as CECONY may reasonably require, provide CECONY all data and information CECONY requests from time to time, to be able to sell Products and/or substantiate the costs for the Project, which costs may be part of an inquiry, investigation or proceeding before a Governmental Authority or the NYISO;

### 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 to sell Products under the NYISO Tariff;

### comply with all requirements under the NYISO Tariff to qualify for and maintain CRIS and ERIS at least equal to Contract Capacity;

### install all software and hardware necessary to ensure that the desired charging and discharging levels for the Project set forth in the applicable Charging Notice or Dispatch Notice, as applicable, at any given time cannot be exceeded; and

### for the duration of the Contract Term, with respect to the Project, not be enrolled in or receive any compensation from any Retail Tariff Program or receive any incentive from New York City, the state of New York, or any other state agency or public authority thereof.

## Use of EPC Contractor and Subcontractors; Approval by CECONY

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### Owner may subcontract all or any portion of the work related to the procurement, construction, commissioning or maintenance of the Project; provided, that, Owner must obtain CECONY’s prior written consent before engaging an EPC Contractor or any other subcontractor expected to perform work on the Project (which consent may not be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing, the Parties acknowledge and agree that CECONY may withhold approval of any EPC Contractor or any other subcontractor, irrespective of the expected contract price for such subcontractor’s work, including Owner’s Energy Management System supplier, (a) if CECONY reasonably determines that (1) use of such subcontractor to perform the intended subcontracted work would violate Applicable Law or (2) such subcontractor’s country of formation or organization poses potential cybersecurity risks to the Project, or (b) in the case of Owner’s Energy Management System supplier, if such Energy Management System supplier (1) is organized under the laws of a jurisdiction outside of the United States of America, or (2) is based in a jurisdiction or location outside of the United States of America.

### Owner’s request for consent pursuant to this Section 4.02 shall be in writing and specify the proposed subcontractor’s name, address, experience, and role on the Project, and any documentation in support of the same. CECONY shall respond to such request within ten (10) Business Days. If CECONY does not respond to any such request within the ten (10) Business Day period, Owner’s request shall be deemed approved.

### Nothing contained herein shall create any contractual rights in any subcontractor against CECONY. No subcontractor or supplier of Owner is intended to be or shall be deemed a third-party beneficiary of this Agreement.

### Owner shall remain ultimately responsible and liable for the acts and omissions of any subcontractor (including its employees) that Owner engages to the same extent as if such acts or omissions were made by Owner or its employees. Further, Owner shall not be relieved of any of its obligations under this Agreement by reason of such subcontracting. Owner shall be responsible for all fees and expenses payable to its subcontractor.

## Provision of Information

. In addition to other information required to be provided to CECONY in accordance with this Agreement, Owner shall provide the following information to CECONY:

### Prior to Commercial Operation, Owner shall provide CECONY with the following documents within ten (10) Business Days of Owner’s receipt (unless otherwise noted below):

#### any completed Interconnection Study for the Project ;

#### letters, notices, filings, approvals, and other material correspondence related to Permits for the Project;

#### executed Interconnection Agreement;

#### within thirty (30) days of the Effective Date, a Project Summary Schedule (or a Level 2 Schedule) for the entire Project time frame divided into categories consistent with CSI Masterformat Divisions;

#### a detailed three-line diagram of the Project that depicts all of the major electrical equipment that is part of the Site, including inverters, transformers, meters, breakers and ratings. The three-line diagram must also show the Interconnection Point and the Energy Delivery Point; and

#### the EPC Contract, and any other agreements with subcontractors expected to perform material work on the Project, as related to design, engineering, procurement, or construction services for the Project, including all amendments thereto.

### Following Substantial Completion, Owner shall provide CECONY with copies of the following documents within ten (10) Business Days following Owner’s receipt:

#### any executed agreements with subcontractors related to the operation and maintenance services for the Project, including all amendments thereto; and

#### any reports, data or information provided to NYISO, the NYPSC, FERC, or any other Governmental Authority relating to the Project.

### At any time and from time to time during the Term, Owner shall provide CECONY with copies of the following documents promptly, and in any event within ten (10) Business Days of CECONY’s request:

#### information, reports and responses CECONY requests to enable it to comply with disclosure requirements of the NYPSC, including requests to verify data provided by Owner;

#### reports, studies, or assessments performed or produced for Owner by an independent engineer on the Site or the Project; and

#### any other information reasonably requested by CECONY from Owner, including without limitation, completing third party risk assessment questionnaire(s).

## Inspection and Access Rights

. CECONY shall have the right at any time during the Term to enter the Site to inspect the Project, witness testing, verify conditions have been met, evaluate circumstances regarding Outages or unavailability, or for any other reasonable purpose, provided that, except in the case of emergency, CECONY shall only be permitted to enter the Site during normal business hours and following 48-hour advance notice. CECONY shall have the right to inspect or audit Owner’s EPC Contract and its books and records to verify Owner’s compliance with the Milestone Schedule and other obligations under this Agreement. In addition, Owner shall, and shall cause its subcontractors to, provide CECONY with prompt access to the Site and all applicable documents and records to permit CECONY to determine whether:

### Owner has obtained and maintained all Permits, and that such Permits do not contain Permit Requirements that might restrict CECONY’s ability to charge or discharge, or store energy in, the Project as provided for in this Agreement;

### any agreements with subcontractors and suppliers, as described in Section 4.02, have been entered into and have become effective and neither Owner nor any other party thereto is in default thereunder;

### all contracts or other arrangements necessary to interconnect the Project have been entered into and become effective on a timely basis pursuant to the Milestone Schedule and Owner is not in default thereunder;

### all contracts and other arrangements necessary to support the construction, installation, operation, and maintenance of the Project, including any agreements and other arrangements for the interconnection and procurement of power for Station Use and Charging Energy Requirements and, if necessary, water supply and waste disposal have been entered into and become effective on a timely basis and Owner is not in default thereunder; and

### any statement, claim, charge or calculation made by Owner pursuant to this Agreement is accurate.

Owner shall retain, and CECONY shall have the right to request, copies of the aforementioned documents, records, and data for a period of four (4) years following the expiration or earlier termination of this Agreement, unless the documents, records, or data are the subject of or are relevant to an outstanding indemnity or other claim under this Agreement, in which event such documents, records, or data shall be retained until such indemnity or other claim is resolved and is no longer subject to appeal.

## Milestone Schedule; Monthly Construction Report

. Beginning on the first full month following the Effective Date, no later than the tenth (10th) day of each month before the Project achieves Commercial Operation, or within five (5) Business Days after CECONY’s request, Owner shall deliver to CECONY a monthly progress report, substantially in the form set forth in Exhibit G (“Construction Report”), describing its progress in relation to the Milestone Schedule, including (i) Owner’s projected time to complete applicable milestones, (ii) any problems or issues that could materially impact its ability to meet the Milestone Schedule, and (iii) a list of all letters, notices, applications, approvals, authorizations and filings relating to Permits received by Owner since the last Construction Report delivered to CECONY.

## Critical Path Milestones

. Owner shall achieve each Critical Path Milestone and provide evidence, reasonably satisfactory to CECONY, of such achievement on or before the applicable deadline specified below.

| **Critical Path Milestone** | **Deadline to achieve Critical Path Milestone** |
| --- | --- |
| File for all material Permits for the Project needed to meet the Contract Capacity |  |
| Execution of agreement and payment of fee to perform a System Reliability Impact Study (“SRIS”) |  |
| Receive a completed SRIS Study (or equivalent) accepted by NYISO Operating Committee sufficient to meet the Contract Capacity of the Project |  |
| Execution of Facilities Study Agreement and payment of fee to join Class Year Interconnection Facilities Study or Cluster Study |  |
| Execute the Interconnection Agreement with Transmission Owner that is suitable to interconnect the Project and ensure deliverability of Contract Capacity  |  |
| Execute purchase order for the battery system, inverter(s) and transformer(s) {CECONY Note: TBD Major Equipment} needed to construct the Project at a size sufficient to achieve the Contract Capacity and other performance requirements specified in this Agreement |  |
| Obtain all material Permits for the Project needed to meet the Contract Capacity |  |
| Achieve Substantial Completion |  |

If Owner fails to achieve a Critical Path Milestone on or before the applicable deadline Owner may cure such failure; *provided*, that:

### Within ten (10) Business Days after any such failure (other than the failure to achieve Substantial Completion by the Substantial Completion Deadline, which shall be governed by the notice requirements set forth in Section 2.05), Owner either (i) completes the Critical Path Milestone or (ii) submits to CECONY (A) a written description of the reason for the failure, (B) the date Owner expects to complete the missed Critical Path Milestone (“CP Milestone Extension Date”), and (C) a written recovery plan for completing the work necessary to complete the missed Critical Path Milestone and the remaining Critical Path Milestones, and achieve Commercial Operation by the Guaranteed Commercial Operation Deadline (the “Recovery Plan”). The Recovery Plan shall also include an updated schedule of the Critical Path Milestones with revised dates for each remaining Critical Path Milestone, which updated schedule shall be subject to acceptance by CECONY, in its reasonable discretion.

### Owner shall commence the work contemplated by the Recovery Plan within five (5) Business Days after submitting such Recovery Plan to CECONY.

### Owner shall be solely responsible for any costs or expenses incurred by Owner as a result of the formulation and implementation of the Recovery Plan.

### If Owner fails in any material respect, as reasonably determined by CECONY, to: (i) meet the requirements of the Recovery Plan; (ii) make sufficient progress in effecting the Recovery Plan; or (iii) complete the missed Critical Path Milestone by the CP Milestone Extension Date, such failure shall constitute a failure to meet a Critical Path Milestone and be subject to the requirements of this Section 4.06.

Nothing in this Section 4.06 shall be construed to: (x) relieve Owner of its obligations to achieve each Critical Path Milestone except as expressly provided herein; or (y) relieve Owner of its obligations to achieve Substantial Completion by the Substantial Completion Deadline and Commercial Operation by the Guaranteed Commercial Operation Deadline.

# INTERCONNECTION; METERING; TESTING

## Interconnection

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### Interconnection Studies. Owner represents and warrants that, as of the Effective Date, (i) Owner understands and is responsible for satisfying all requirements for interconnection and wholesale market participation, (ii) has submitted and will continue to submit all information requested by NYISO and the Transmission Owner for Interconnection Studies for the Project in order to be approved for interconnection, and (iii) it has obtained Energy Resource Interconnection Service and Capacity Resource Interconnection Service sufficiently sized to enable full delivery of the Project’s total output to the Interconnection Point to enable delivery of Products from the Project to the NYISO’s wholesale market. Owner covenants that it will comply with all interconnection requirements of the Transmission Owner, the Interconnection Agreement and the NYISO Tariff.

### Interconnection Cost Allocation. Owner shall be solely responsible for payment of all Interconnection Costs allocated to Owner under the Interconnection Agreement.

### Establishment of Electric Service for Station Use. Owner acknowledges that this Agreement does not provide for the supply of any electric service by CECONY to Owner and that to the extent owner requires electrical service to serve the ancillary electric needs of the Project, including but not limited to electricity for lighting, security, cooling towers, draft fans, climate control, ventilation mechanisms, control systems, operation and other auxiliary systems necessary for operation, and maintenance of the Project (“Station Use”), Owner shall be responsible for establishing such service pursuant to a separate agreement with CECONY. Owner shall be responsible for all fees and costs associated with establishing and use of electricity for Station Use, including fees and costs billed to CECONY from NYISO, if any, based on meter data from Owner’s Station Use.

### Separate Obligations Under Interconnection and Electric Service Agreements. Owner acknowledges and agrees that nothing in this Section 5.01 is intended to abrogate, amend or modify the terms of any other agreement between Owner and CECONY, including any interconnection agreement or electric service agreement, and that no breach under such other agreement shall excuse Owner’s nonperformance under this Agreement.

## Metering, Communications and Telemetry

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### Control and Communication System. All communication, metering, telemetry, and associated operation equipment will be centralized into the Project’s Distributed Control System. Owner shall configure the Project’s Distributed Control System to allow Owner to monitor and respond to real time operations (“Generation Management System”), as necessary to communicate and respond to NYISO and Transmission and Distribution Operator(s) orders, using telemetry requirements conforming to NYISO, Transmission Owner, and CECONY standards and requirements and qualifying for participation as a dispatchable resource in NYISO Markets. Owner shall comply with the communications requirements set forth in Exhibit H. In addition, Owner shall ensure that the access link will provide a monitoring and control interface to provide real-time information to Owner regarding the Project’s Stored Energy Level. Owner shall ensure that the same real-time information used by Owner to monitor the Project is communicated to CECONY via an approved CECONY communication network, using existing industry standard network protocol, as approved by CECONY.

### Control Logic. Owner will ensure that the Project’s Distributed Control System control logic will be configured to control the Project in multiple configurations. The Project’s control logic will incorporate control signals from multiple locations to perform Energy dispatch, charging and Ancillary Services functions. Control logic will perform all coordinated megawatt control and automatic generation control independently.

### Station Use Metering Equipment. Owner shall separately meter Station Use with a revenue quality meter or meters, installed in accordance with and conforming to the electrical service requirements, metering and applicable tariffs applicable to the Station Use.

### Project Metering Equipment. Owner shall comply with all NYISO metering requirements, including where necessary for revenue quality metering for market settlements.

### CECONY Access to Interface. Owner shall take all actions and execute all documents reasonably necessary to grant CECONY access to the metering, communications, and telemetry systems specified in this Section 5.02.

## Testing

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### Initial Commercial Operation Test. At least thirty (30) days before the target Commercial Operation Date, Owner shall schedule and complete an Initial Commercial Operation Test using the procedures set forth in Exhibit C. Owner shall undertake such activities in sufficient time to achieve Commercial Operation of the Project by the Guaranteed Commercial Operation Deadline and CECONY will reasonably cooperate with Owner to meet such deadline. The Initial Commercial Operation Test shall verify the Contract Capacity for purposes of calculating the Total Compensation Amount and shall be deemed an Owner Initiated Test.

### Performance Testing. During the Contract Term, additional Storage Rating Tests shall be conducted from time to time in accordance with Exhibit C.

# OWNER’S OPERATION, MAINTENANCE AND REPAIR OBLIGATIONS

## Standard Performance, Maintenance and Repair

. Owner shall operate, maintain, repair and, if necessary, replace the Project and any portion thereof, in accordance with Good Utility Practice, Applicable Law, Permit Requirements, and Warranty Requirements as necessary to make the Products available to CECONY in accordance with the terms of this Agreement.

## Operating Records

. Owner shall maintain complete and accurate records of all information necessary for the proper administration of this Agreement and for Owner to comply with its obligations under this Agreement, consistent with industry standards.

Owner shall maintain a daily operations log, which log shall include information on:

### electrical characteristics of the Project and settings or adjustments of the Project’s control equipment (including the power conversion system) and protective devices,

### charging and discharging (including charging and discharging efficiency), Station Use consumption and efficiency, Stored Energy Level, and availability (including availability to charge and discharge and State of Charge),

### maintenance performed,

### Outages and changes in operating status,

### inspections, and

### any other significant events and reports related to operation, performance, or safety of the Project.

Information maintained pursuant to this Section 6.02 shall be provided to CECONY, within fifteen (15) days after CECONY’s request. In addition, Owner shall deliver to CECONY a monthly operations and maintenance report by the tenth (10) day of each month describing operations and maintenance activities performed with respect to the Project during the previous month.

## Performance Guarantees

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### Availability.

#### Guaranteed Availability. Owner guarantees the Project will be available for use by CECONY for at least ninety-eight percent (98.0%) of the 5-minute intervals in each Contract Year during the Contract Term, as measured below (“Guaranteed Availability”). After completion of each Contract Year, CECONY shall calculate the actual availability percentage of the Project (“Actual Availability”) during the preceding Contract Year, which calculation shall be:



Where:

“MW Available” means the total MW available during any 5-minute interval measured by the total MWs of inverters communicating to the dispatch system and available to charge or discharge, subject to the Operating Restrictions set forth in Exhibit D as recorded by the Project Energy Management System, excluding any 5-minute interval that occurred during Performance Testing, a Planned Outage, a period of unavailability due to Force Majeure, an act or omission of the Transmission Owner or NYISO not caused by any act or omission of Owner, or any act or omission by CECONY that is in material breach of this Agreement or in violation of Applicable Law; *provided that* any part of a 5-minute interval during which the Project is unavailable shall constitute unavailability for the full 5-minute interval.

“Reference Period” means the total number of 5-minute intervals during the applicable Contract Year, excluding any 5-minute interval that occurred during Performance Testing, a Planned Outage, a period of unavailability due to Force Majeure, an act or omission of the Transmission Owner or NYISO not caused by any act or omission of Owner, or any act or omission by CECONY that is in material breach of this Agreement or in violation of Applicable Law.

Availability Liquidated Damages. If the Actual Availability calculated during any Contract Year is less than the Guaranteed Availability, then Owner shall owe CECONY liquidated damages (“Availability Liquidated Damages”) equal to (Guaranteed Availability - Actual Availability) x Contract Capacity x (Total Compensation Amount / the length of the Delivery Period (in days) / the Contract Capacity)x days in the applicable Contract Year.

*For example*: (98.0% - 96.5%) x [*insert* *Contract Capacity*] MW x $[***insert value for Total Compensation Amount / the length of the Delivery Period (in days) / Contract Capacity***] MW-day x 92 days = $**[*●*]**

#### DLDR Event LDs for Distribution-Connected Assets. For any day for which CECONY declares a Distribution Level Demand Response Event (currently known as a Commercial System Relief Program (CSRP), Distribution Load Relief Program (DLRP), Term-DLM, and Auto-DLM Event) that applies to the distribution network where the distribution-connected Project is located, Owner shall pay CECONY an amount equal to $18,000 per MW of Contract Capacity per each day in which the total average MW Available for such day is less than the Contract Capacity (the “DLDR Event LDs”). The DLDR Event LDs are in addition to, and cumulative of, any Availability Liquidated Damages.

Where:

“Distribution Level Demand Response Event” means an event called by CECONY in response to high temperatures or based on local conditions to prevent or mitigate critical situations on the utility’s electric grid.

### Capacity.

#### Guaranteed Capacity. Owner guarantees the Project will maintain Capacity not less than the Contract Capacity (“Guaranteed Capacity”) for the Contract Term, as measured in the Storage Rating Tests described in Exhibit C.

#### Capacity Liquidated Damages. If the Storage Capacity Rating is less than the Guaranteed Capacity, then Owner shall owe CECONY liquidated damages equal to:

(Contract Capacity – Storage Capacity Rating) x $[***Total Compensation Amount / the length of the Delivery Period (in days) / the Contract Capacity***] x Cure Days where:

“Cure Days” means the number of days between the day on which a Storage Rating Test that results in a deficient Storage Capacity Rating is performed and the day on which a Storage Capacity Rating is equal to or greater than the Contract Capacity.

### Round-Trip Efficiency.

#### Guaranteed RTE. Owner guarantees the Project will maintain Round-Trip Efficiency not less than **[*80*]**% (“Guaranteed Round-Trip Efficiency”) for the Contract Term, as measured in the Storage Rating Tests described in Exhibit C.

#### RTE Liquidated Damages. If the Round-Trip Efficiency is less than the Guaranteed Round-Trip Efficiency, then Owner shall owe CECONY liquidated damages equal to, for each hour:

(Guaranteed Round-Trip Efficiency – Round-Trip Efficiency) x LBMP at time of charging x Charging Energy

Where:

“Charging Energy” is the quantity of MWh metered at the Energy Delivery Point to charge the Storage Unit for such hour.

“LBMP” is the NYISO locational-based marginal pricing node proximate to the Project for the DAM or RTM (or combination thereof), depending on which market the purchase to address the shortfall is made in.

### Ramp Rate

#### Owner guarantees a minimum response rate of [***ten percent (10%)***] of the Project’s Contract Capacity per minute for each of the Ramp Up Rate Test and Ramp Down Rate Test (collectively, the “Guaranteed Ramp Rate”)

#### The ramp rate for each of the Ramp Up Rate Test and Ramp Down Rate Test will be measured per the procedure outlined in Exhibit C. If the Project is unable to demonstrate the Guaranteed Ramp Rate, Owner shall place the Project into an Unplanned Outage immediately and resolve any issues so that the Project can achieve the Guaranteed Ramp Rate.

### Planned Outages.

#### No later than ninety (90) days prior to the Guaranteed Commercial Operation Deadline, and no later than May 15th in each calendar year during the Contract Term, Owner shall submit to CECONY the Project’s proposed schedule of Outages planned for maintenance of the Project (“Planned Outage”), for the thirty-six (36) month period following the date such schedule is provided (“Outage Schedule”). Owner shall submit the Outage Schedule substantially in the form of Exhibit I, as may be revised from time to time based on NYISO requirements.

#### Owner shall provide the following information for each proposed scheduled Planned Outage:

##### Description of the reasoning for such outage;

##### Description of the work to be performed during the Planned Outage;

##### Start date and time;

##### End date and time;

##### Recall time; and

##### Products available (if any) during the Planned Outage.

#### The duration of Planned Outages for the Project over a Contract Year, in the aggregate, shall not exceed three hundred thirty-six (336) Equivalent Hours (the “Planned Outage Cap”); provided, that, in those years in which Owner is required to conduct a Planned Outage by FERC or NERC (other than pursuant to annual FERC or NERC requirements), concurrently with its submission of an Outage Schedule, Owner may submit a request to CECONY to extend the amount of permitted Equivalent Hours for Planned Outages during a Contract Year commensurate with the required outage time required by FERC or NERC that exceeds the Planned Outage Cap for such year along with reasonable documentation of the NERC or FERC requirements (“Planned Outage Cap Extension Request”). CECONY will review any Planned Outage Cap Extension Requests and provide notice of its consent or rejection of such requests within [30] days of receipt, provided that, CECONY’s consent of any Planned Outage Cap Extension Request shall not be unreasonably withheld. If CECONY accepts a Planned Outage Cap Extension Request, CECONY’s notice of consent shall include the revised Planned Outage Cap for such Contract Year which shall be deemed to be the Planned Outage Cap for purposes of this Agreement only for such Contract Year. Owner shall carry out activities during Planned Outages in compliance with Good Utility Practice.

#### CECONY and NYISO shall be entitled to direct changes to the Outage Schedule by notifying Owner in writing, and Owner shall comply with CECONY’s or NYISO’s direction regarding the timing of any Planned Outages.

#### Owner shall provide Notice to the CECONY scheduling department at least (A) fourteen (14) days prior to the start of any Planned Outage scheduled to last less than or equal to fourteen (14) days and (B) sixty (60) days prior to any Planned Outage scheduled to last more than fourteen (14) days. The foregoing advance notice requirements shall apply irrespective of whether the applicable Planned Outage is within or in excess of the Planned Outage Cap. Owner shall maintain close coordination as the Planned Outage approaches.

#### Owner shall cooperate with CECONY to arrange and coordinate all Outage Schedules with NYISO in compliance with the NYISO and Transmission Owner requirements.

#### If a condition occurs that causes Owner to revise its Planned Outages, Owner shall promptly provide Notice to the CECONY scheduling department of such change (including an estimate of the length of such Planned Outage) after the condition causing the change becomes known to Owner, provided that Owner shall bear any costs incurred by CECONY for revisions made less than sixty (60) days before the start date of the Planned Outage or that results in a Planned Outage being scheduled less than sixty (60) days before the start of the revised Planned Outage.

### No Planned Outages During Summer Months or NYISO-Directed Emergency. No Planned Outages shall be scheduled from each May 15 through September 30 in any year during the Contract Term. If Owner has a previously scheduled Planned Outage that becomes coincident with either a NYISO or Transmission Owner local reliability issue or a NYISO-declared system emergency, Owner shall be required to reschedule such Planned Outage.

### Notice of Unplanned Outages. Any time period during which the Project is offline other than during a Planned Outage is an “Unplanned Outage.”

#### If Owner determines an Unplanned Outage is required or has occurred, Owner shall coordinate the timing of such Unplanned Outage with CECONY and, subject to Owner’s obligations under Section 6.01, accommodate CECONY’s scheduling preferences.

#### In the event of an Unplanned Outage, Owner shall provide notice to CECONY by telephone at the telephone number(s) listed in Exhibit H within fifteen (15) minutes following the occurrence of such Unplanned Outage.

#### Thereafter, Owner shall, as soon as reasonably practicable, provide CECONY with a notice that includes: (i) the event or condition, (ii) the date and time of such event or condition, (iii) the expected end date and time of such event or condition, (iv) the Products available (if any) during such event or condition, and (v) any other information reasonably requested by CECONY.

#### Notwithstanding the delivery of a notice of an Unplanned Outage or coordination with CECONY to resolve an Unplanned Outage, the Project shall be deemed to be unavailable for the duration of an Unplanned Outage for purposes of calculating the Project’s Availability under Section 6.03(a)(i).

### Restoration of the Project. Owner shall provide CECONY as much advance notice as reasonably practicable of the date and time the Project will be back online, provided that Owner shall provide at least three (3) days’ prior notice of a Planned Outage restoration date and at least three (3) hours’ notice of an Unplanned Outage restoration. CECONY shall be entitled to rely on such notice for purposes of bidding Products into real-time or day ahead wholesale electric markets. For purposes of calculating the availability of the Project, the Project shall only be considered available in the first full hour in which the Project could have been bid into real-time wholesale electric markets.

## Operational Notices

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### Unavailability Notice. CECONY shall be entitled to assume that the Project will be available and capable of performing at the maximum Contract Capacity, Charging Capacity and Discharging Capacity as set forth on Exhibit D during each Settlement Interval of each Operating Day, except as otherwise noted in the then current Outage Schedule or in an Unavailability Notice delivered to CECONY not later than three (3) Business Days before the applicable Operating Day. Owner shall update CECONY immediately if the Available Capacity of the Project changes or is likely to change. Owner must follow up all such updates with updates sent via electronic mail to CECONY’s personnel designated in Exhibit H to receive such communications. Owner shall accommodate CECONY’s reasonable requests for changes in the time or form of delivery of the Unavailability Notices. If an electronic submittal is not available, or is not possible for reasons beyond Owner’s control, Owner may provide Unavailability Notices using a form to be provided by CECONY. Delivery of an Unavailability Notice shall be made by (in the following order of preference unless the Parties agree to a different order) electronic mail, facsimile transmission or, as a last resort, telephonically to CECONY’s personnel designated in Exhibit H to receive such communications. Notwithstanding the delivery of an Unavailability Notice, the Project shall be deemed to be unavailable for the duration of an Unplanned Outage for purposes of calculating the Project’s Availability under Section 6.03(a)(i).

### Dispatch Notices.

#### During the Contract Term, CECONY will have the right to direct the Owner to dispatch the Project seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Dispatch Notices to Owner electronically (in a form to be provided by CECONY), and subject to the requirements and limitations set forth in this Agreement. Such Dispatch Notices will apply to schedules for the Day-Ahead Market. Subject to Section 6.04(f) (Operating Restrictions), each Dispatch Notice will be effective unless and until CECONY modifies such Dispatch Notice by providing Owner with an updated Dispatch Notice.

#### If an electronic submittal is not possible for reasons beyond CECONY’s control, CECONY may provide Dispatch Notices by (in the following order of preference, unless the Parties agree to a different order) electronic mail, facsimile transmission or telephonically to Owner’s personnel designated in Exhibit H to receive such communications. In addition to any other requirements set forth in this Agreement, all Dispatch Notices will be made in accordance with market notice timelines as specified in the NYISO Tariff.

#### Within the Operating Day, changes to the dispatch schedule shall be provided through the Real-Time Market and communicated through telemetry dispatch signals from NYISO to the Project or as directed by CECONY in the event of emergencies.

### Charging Notice.

#### During the Contract Term, CECONY will have the right to charge the Project in the Day-Ahead Market, seven days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Owner electronically, subject to the requirements and limitations set forth in this Agreement. Each Charging Notice will be effective unless and until CECONY modifies such Charging Notice by providing Owner with an updated Charging Notice. If an electronic submittal is not possible for reasons beyond CECONY’s control, CECONY may provide Charging Notices by (in the following order of preference, unless the Parties agree to a different order) electronic mail, telephonically or by facsimile transmission to Owner’s personnel designated in Exhibit H to receive such communications.

#### Within the Operating Day, changes to the charging schedule shall be provided through the Real-Time Market and communicated through telemetry signals from NYISO to the Project or as directed by CECONY in the event of emergencies or mandated direct communication.

### Derate Notice. Owner will notify CECONY within fifteen (15) minutes of any condition requiring a Derate in order to permit CECONY to modify its wholesale market positions. The Project’s Derated Capacity shall be deemed to be unavailable for the duration of the system Derate for purposes of calculating the Project’s Availability under Section 6.03(a)(i).

### Communication Protocols. The Parties shall agree to the communication protocols outlined in Exhibit H to facilitate the exchange of information between them and Owner shall comply with the System Operation Procedures provided in Exhibit H. Owner shall at all times ensure the notice information provided in Exhibit H is up-to-date to ensure CECONY is able to directly communicate to Owner’s Battery Operations Center to facilitate such any direct orders.

### Operating Restrictions. All Operating Restrictions associated with the Project are specified in Exhibit D. In providing a Dispatch Notice or Charging Notice, CECONY shall use reasonable efforts to comply with the Operating Restrictions. If CECONY submits a Dispatch Notice or Charging Notice that does not conform with the Operating Restrictions, then Owner shall notify CECONY immediately to permit CECONY to revise its Dispatch Notice or Charging Notice accordingly. Until such time as CECONY submits a modified Dispatch Notice or Charging Notice, Owner shall, as applicable, dispatch or charge the Project consistent with the Operating Restrictions, and the Project will not be deemed to be unavailable for purposes of Section 6.03(a) due to its inability to operate outside of the Operating Restrictions.

## Charging Energy Management and Payments

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### CECONY’s Charging Energy Management Responsibilities. Except as set forth in Section 6.05(c) below, CECONY shall be responsible for managing, purchasing, and scheduling the Charging Energy Requirements for the Project.

### Owner Charging Energy Responsibilities. The facilities required for the delivery of the Charging Energy Requirements for the Project are part of the Project. Owner shall be responsible for the maintenance, repair, and replacement of equipment in its possession and control that is used to facilitate delivery of the Charging Energy Requirements and, in addition to responsibility for damages, costs or expenses for unavailability of the Project as contemplated under this Agreement, Owner shall take such actions as are necessary to cause the delivery of the Charging Energy Requirements to the Project.

### Charging Energy Costs. Supply Charging Energy Costs and Distribution Charging Energy Costs shall be the responsibility of the Parties as specified below:

|  |  |
| --- | --- |
| Party | Cost Responsibility |
| Owner | * Supply Charging Energy Costs incurred before the Commercial Operation Date;
* Supply Charging Energy Costs arising out of or pertaining to a Non-CECONY Dispatch or a Non-CECONY Charge; and
* Distribution Charging Energy Costs before the Commercial Operation Date.
 |
| CECONY | * Supply Charging Energy Costs during the Contract Term, other than costs arising out of or pertaining to a Non-CECONY Dispatch or a Non-CECONY Charge.
* Distribution Charging Energy Costs incurred during the Contract Term, other than costs arising out of or pertaining to a Non-CECONY Dispatch or a Non-CECONY Charge.
 |

 Notwithstanding the foregoing, this Section 6.05(c) does not modify the Parties’ obligations with respect to electricity for Station Use, which is addressed in Section 5.01(c).

### Non-CECONY Charge. After the Commercial Operation Date, Owner shall not charge the Project other than pursuant to a Charging Notice or a dispatch signal from NYISO related to the CECONY bid, or in connection with an Owner Initiated Test. If Owner (i) charges the Project to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (ii) charges the Project without a Charging Notice (each, a “Non-CECONY Charge”), then (x) Owner shall be responsible for all energy costs associated with such charging, and (y) CECONY shall be entitled to discharge such energy without notice and entitled to all the benefits associated with such discharge, without credit to Owner.

### Owner shall be responsible and pay for any charges, sanction, or penalties associated with a Non-CECONY Charge, any failure to charge the Project consistent with a Charging Notice, and any deviations from a Charging Notice or charging instruction or award.

# CREDIT AND COLLATERAL

## Development Security

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### Amount. Owner shall post and thereafter maintain Development Security in an amount not less than $[***210 x (the Total Compensation Amount divided by the length of the Delivery Period (in days) divided by the Contract Capacity)***] per MW of the Contract Capacity of the Project.

### Posting Requirements. Owner shall post the Development Security simultaneously with its execution and delivery of this Agreement. The Development Security shall:

#### be in the form of cash or a Letter of Credit, substantially in the form of Exhibit N; and

#### be held by CECONY as security for Owner’s obligations under this Agreement, including achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Deadline.

### Return of Development Security. If no Event of Default with respect to Owner has occurred and is continuing, and no Early Termination Date has occurred or been designated as the result of an Event of Default with respect to Owner, then CECONY shall return to Owner the unused portion of the Development Security, if any:

#### As soon as reasonably practicable after the Commercial Operation Date, unless Owner authorizes CECONY, and CECONY consents, to retain the same as Performance Assurance posted under Section 0; or.

#### As soon as reasonably practicable after the termination of this Agreement by either Party.

CECONY shall have no obligation to invest any Development Security provided in the form of cash, and no interest shall be payable upon the return of any cash Development Security. Performance Assurance.

## Performance Assurance

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### Amount. At all times during the Contract Term, Owner shall post on or before the first day of each Contract Year, and thereafter maintain during the Contract Year, Performance Assurance in an amount not less than **[*****For the Upfront Payment Structure: (i) during the first Contract Year, the Commercial Operation Payment and (ii) during each subsequent Contract Year, the Commercial Operation Payment (a) multiplied by the number of Contract Years remaining in the*** ***Contract Term divided by (b) [insert the total number of Contract Years in the*** ***Contract Term*] / [*****For the Levelized Payment Structure: the Commercial Operation Payment*]**.

###  Posting Requirements. Owner shall post the Performance Assurance on or before the Commercial Operation Date. The Performance Assurance shall:

#### be in the form of cash or a Letter of Credit; and

#### be held by CECONY as security for Owner’s performance of its obligations under this Agreement during the remainder of the Term.

### Return of Performance Assurance. CECONY shall return to Owner the unused portion of the Performance Assurance, as soon as reasonably practicable after the Term has ended; provided Owner has satisfied all monetary obligations under this Agreement that survive termination of this Agreement. CECONY shall be under no obligation to invest any Performance Assurance provided in the form of cash, and no interest shall be payable upon the return of any cash Performance Assurance.

## Administration of Project Security

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### Cash.

#### CECONY shall have the right to sell, pledge, re-hypothecate, assign, invest, use, commingle or otherwise use in its business any cash that it holds as Project Security hereunder, free from any claim or right of any nature whatsoever of Owner, including any equity or right of redemption by Owner.

#### In the event that CECONY uses the cash collateral to recover damages payable to CECONY from Owner, other than to satisfy a Termination Payment, Owner shall replenish cash collateral to (or otherwise post a Letter of Credit that, when combined with the cash collateral, equals) the full Project Security amount.

### Letters of Credit.

#### Each Letter of Credit shall be maintained for the benefit of CECONY.

#### Owner shall:

##### renew or cause the renewal of each outstanding Letter of Credit no less than thirty (30) days before the Letter of Credit’s expiration;

##### if the issuer of an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide alternative Project Security no less than thirty (30) days prior to the Letter of Credit’s expiration;

##### if the issuer of a Letter of Credit fails to honor CECONY’s properly documented request to draw on an outstanding Letter of Credit, provide substitute Project Security within three (3) Business Days after such refusal; and

##### promptly (and in any event within three (3) Business Days) replenish a Letter of Credit to the full Project Security amount in the event CECONY draws against the Letter of Credit for any reason other than to satisfy a Termination Payment.

#### Upon the occurrence of a Letter of Credit Default, Owner shall provide to CECONY alternative Project Security on or before the third (3rd) Business Day after the occurrence thereof.

#### Upon or at any time after the occurrence and continuation of an Event of Default by Owner, CECONY may seek assurance by drawing upon any outstanding Letter of Credit an amount up to the damages CECONY reasonably determines it has suffered due to the Event of Default and upon submission to the issuer of such Letter of Credit of one or more certificates specifying that such Event of Default has occurred and is continuing. In addition, CECONY will have the right to draw on the Letter of Credit for any of the reasons set forth in such Letter of Credit (or its accompanying draw certificate).

#### Cash proceeds received by CECONY from drawing upon the Letter of Credit that are not used to satisfy the damages claimed by CECONY shall be deemed Project Security for Owner’s obligations to CECONY, and CECONY shall have the rights and remedies set forth in this Agreement with respect to such cash proceeds.

#### In all cases, all costs associated with a Letter of Credit, including the costs and expenses of establishing, renewing, substituting, canceling, and changing the amount of a Letter of Credit, shall be borne by Owner.

### Liability Following Application of Collateral. Notwithstanding CECONY’s use of cash collateral or receipt of cash proceeds of a drawing under the Letter of Credit, Owner shall remain liable for:

#### any failure to provide or maintain the required Project Security if, following such application, the remaining Project Security is less than the amount required hereunder (including failure to replenish cash collateral or a Letter of Credit to the full Project Security amount in the event that CECONY uses the cash collateral or draws against the Letter of Credit for any reason other than to satisfy a Termination Payment); or

#### any amounts owing to CECONY that remain unpaid after the application of the amounts drawn by CECONY.

## Grant of Security Interest

. To secure its performance of its obligations under this Agreement, and until released as provided herein, Owner hereby grants to CECONY a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right of setoff against), and assignment of any and all cash held by CECONY as Project Security and any and all proceeds resulting therefrom (including any cash proceeds held by CECONY from the liquidation of any Letter of Credit posted as Project Security), whether now or hereafter held by, on behalf of, or for the benefit of CECONY, and Owner agrees to take such action as CECONY reasonably requires in order to perfect CECONY’s Security Interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

## Remedies

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### Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, CECONY, if it is the Non-Defaulting Party, may do any one or more of the following:

#### exercise any of its rights and remedies with respect to the Project Security, including any rights and remedies available under law;

#### exercise rights of setoff against any of Owner’s property in the possession of CECONY or its agent;

#### draw on any outstanding Letter of Credit issued for its benefit; and

#### liquidate any Project Security then held by or for the benefit of CECONY free from any claim or right of any nature whatsoever of Owner, its Lender or any other party, including any equity or right of purchase or redemption by Owner or its Lender.

### CECONY shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Owner’s obligations under this Agreement, but shall return any surplus proceeds remaining after such obligations are satisfied in full.

### CECONY shall be under no obligation to prioritize the order in which it exercises any one or more of the rights and remedies available hereunder or under law. Owner shall in all events remain liable to CECONY for any of its obligations remaining unpaid after any exercise by CECONY of its rights and remedies.

## Credit and Collateral Covenants

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### Owner shall, from time to time as requested by CECONY, execute, acknowledge, record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid and enforceable under all Applicable Law the rights, liens and priorities of CECONY with respect to the Security Interest provided for herein and therein.

### During any period during which Owner is a Defaulting Party, Owner shall not:

#### declare or pay any dividend, or make any other distribution or payment, on account of any equity interest in Owner; or

#### otherwise make any distribution or payment to any Affiliate of Owner except those distributions or payments that meet all of the following conditions: (A) are made in accordance with a contract between Owner and such Affiliate existing as of the date upon which Owner became a Defaulting Party with respect to the applicable Event of Default that is continuing, (B) are made in the ordinary course of business, and (C) payment of which is not reasonably expected to result in Owner’s failure to pay all of its debts and obligations as such debts and obligations mature or otherwise become due.

## Financial Information

. If requested by CECONY, Owner shall deliver the following financial statements for the most recent accounting period, prepared in accordance with GAAP:

### Within one hundred twenty (120) days following the end of each fiscal year, a copy of its annual report containing true and complete copies of its audited, consolidated financial statements (consisting of its income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) (the “Audited Financial Statements”) for such fiscal year, setting forth in each case, in comparative form, the figures for the previous year for the Party; and

### Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements (consisting of its income statement, balance sheet, statement of cash flows and statement of retained earnings and all notes accompanying such statements) for such fiscal quarter and the portion of the fiscal year through the end of such quarter (the “Interim Financial Statements”), setting forth in each case, in comparative form, the figures for the previous year.

In each case, the financial statements specified above must be certified in accordance with all Applicable Law, including all applicable SEC rules and regulations, if such Party is an SEC reporting company, or certified by the chief financial officer, controller, treasurer or any assistant treasurer of Owner as fairly presenting the financial condition as of the respective dates they were prepared and the results of operations for the periods indicated (subject, in the case of the Interim Financial Statements, to normal and recurring year-end audit adjustments, the effect of which would not be materially adverse), and the absence of notes that, if presented, would not differ materially from those presented in the Audited Financial Statements, if the Owner is not an SEC reporting company.

# FORCE MAJEURE; IMPOSSIBILITY; SAFETY EVENT; CASUALTY EVENT

## No Default for Force Majeure

. Neither Party will be considered to be in default of its obligations set forth in this Agreement when and to the extent failure of performance is caused by Force Majeure; *provided*, a failure to make payments when due for payment obligations that accrue prior to the Force Majeure event shall not be excused. Notwithstanding the preceding sentence, CECONY’s payment obligations shall be reduced commensurate with the ratio that the duration of the Force Majeure event preventing Owner’s performance hereunder bears to the Contract Term.

## Force Majeure Claim

. If either Party is unable to perform its obligations hereunder due to Force Majeure, such Party (the “Claiming Party”) shall be excused from the performance that is affected by the Force Majeure to the extent it is unable to perform due to the Force Majeure; *provided*:

### the Claiming Party, no more than ten (10) days after the initial occurrence of the claimed Force Majeure, gives the other Party Notice describing the particulars of the occurrence;

### the Claiming Party provides timely evidence reasonably sufficient to establish that the occurrence constitutes a Force Majeure as defined in this Agreement and that the Force Majeure prevents the Claiming Party from performing the obligations;

### the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and

### as soon as the Claiming Party is able to resume performance of its obligations under this Agreement, it shall do so and shall promptly give the other Party Notice of this resumption.

## Extended Force Majeure Termination Event

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### If a Force Majeure event prevents a Party from performing its obligations under this Agreement for a period of one hundred eighty (180) consecutive days or two hundred forty (240) non-consecutive days over the term of this Agreement, the non-Claiming Party may terminate this Agreement by providing thirty (30) days’ advance written notice to the Claiming Party. From and after such termination, neither Party shall have any further liability or obligation to the other Party, except for liabilities and obligations incurred prior to the date of such termination[, including Owner’s obligation to refund CECONY’s any pre-paid amounts as described in the remainder of this paragraph][[4]](#footnote-5).

### [***For the Upfront Payment Structure:*** Owner acknowledges and agrees that the Commercial Operation Payment represents an up-front payment for [***seventy percent (70%)***] of the Total Compensation Amount for the services to be provided by Owner during the Delivery Period.] [***For the Levelized Payment Structure:*** Owner acknowledges and agrees that the Commercial Operation Payment represents an up-front payment for a portion of the Total Compensation Amount for [***one Contract Year***] of the services to be provided by Owner during the Delivery Period.] Accordingly, if the non-Claiming Party elects to terminate the Agreement pursuant to this Section 8.03 after Owner has received the Commercial Operation Payment, then Owner shall promptly (but in any event within five (5) Business Days after such termination) refund a pro rata amount of the Commercial Operation Payment paid as of the effective termination date reflecting the number of days remaining in the Delivery Period after the effective termination date *divided* *by* the total number of days in the Delivery Period.

### Additionally, in the event of termination pursuant to this Section 8.03, Owner shall be entitled to a pro-rata amount of the Annual Post-Commercial Operation Payment for the Contract Year in which the Agreement was terminated pursuant to this Section 8.03 reflecting the number of days in the then-current Contract Year (minus the total of any consecutive and non-consecutive days in which Owner was prevented from performance due to Force Majeure during the then-current Contract Year) before the effective termination date *divided by* the total number of days in the then-current Contract Year.

## Impossibility

. If a Change in Law renders the performance of this Agreement (in whole or in part) illegal, unenforceable, or otherwise impossible (increased costs to perform shall not qualify as impossible), the Parties shall engage in good faith negotiations to modify this Agreement as necessary or appropriate to account for such Change in Law, while preserving to the maximum extent possible the ability of each Party to perform its material obligations under this Agreement and the allocation of the economic benefits and costs between the Parties as contemplated by this Agreement as of the Effective Date. Upon receipt of notice requesting negotiations, the Parties will promptly (but in any event no later than fifteen (15) days after such request) meet and negotiate in good faith such changes. If the Parties are unable to reach agreement on such changes within sixty (60) days, despite such good faith efforts, then, either Party may submit the dispute to dispute resolution pursuant to Article 12.

## Safety Event; Investigation and Remedy

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### If at any time during the Term (i) any Governmental Authority takes any action with respect to the Project for safety concerns that prevents or restricts the Project from being operated in accordance with the terms of this Agreement or (ii) a fire or other adverse event occurs with respect to any energy storage system (other than the Project) that shares the same manufacturer or substantially similar design as the Project and that is reasonably attributable to defective design or manufacture, CECONY shall have the right to provide a notice to Owner to investigate concerns with the Project. Upon provision of such Notice, such Governmental Authority action or adverse event shall be deemed a Force Majeure event notwithstanding anything to the contrary herein.

### Following receipt of a notice from CECONY as provided in Section 8.05(a), Owner shall engage an Independent Engineer to evaluate whether remediation with respect to the Project is necessary to address safety concerns. Owner shall deliver a written report from the Independent Engineer to CECONY with the results of such evaluation and all remedial actions necessary to resolve the safety concerns identified, if any, and the Independent Engineer’s reasonable time estimate for completion of such remedial actions (such time estimate, the “Remediation Time” and such report, a “Remediation Plan”).

### Owner shall promptly implement any Remediation Plan identified by the Independent Engineer. including placing the Project in an Unplanned Outage to the extent necessary to implement any Remediation Plan (a “Remediation Outage”). In the event that a Remediation Outage is necessary to implement a Remediation Plan, CECONY’s payment obligation for such period of Unplanned Outage shall be reduced pro-rata based on the period of duration of such Unplanned Outage event preventing Owner’s performance of its obligations under this Agreement.

### If Owner fails to complete any Remediation Plan within the Remediation Time, and such failure either presents an imminent risk to health or safety or renders the Project inoperable under Applicable Law or in accordance with the terms of this Agreement then CECONY may initiate a procedure to terminate this Agreement by providing thirty (30) days advance written notice to Owner; provided that in order to exercise such termination right, CECONY must provide such termination notice by no later than thirty (30) days after the end of the Remediation Time. Notwithstanding the foregoing, if Owner fails to complete any Remediation Plan within ninety (90) days of the Remediation Time, CECONY may terminate this Agreement by delivering notice to Owner of the same. Any such termination under this Section 8.05(d) shall not be an Event of Default by Owner and shall not be subject to any Termination Payment; provided, that, such termination shall be treated as a termination pursuant to Section 8.03. From and after such termination, neither Party shall have any further liability or obligation to the other Party, except for liabilities and obligations incurred prior to the date of such termination and any amount required to be refunded by Owner to CECONY pursuant to Section 8.03.

## Loss Due to Casualty

. If any part of the Project is damaged, destroyed or rendered inoperable, whether by an event of Force Majeure or otherwise (“**Casualty Loss**”), Owner shall be required to repair, restore or reconstruct the Project, as applicable. Any failure to do so shall constitute an Event of Default.

# REPRESENTATIONS AND WARRANTIES

## Representations and Warranties of Both Parties

. As of the Effective Date, each Party represents and warrants to the other Party that:

### It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

### It has all authorizations from Governmental Authorities (including Permits) necessary for it to legally perform its obligations under this Agreement;

### The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;

### This Agreement constitutes its legally valid and binding obligation, enforceable against it in accordance with its terms, subject to any Equitable Defenses;

### It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

### There are no pending, or to its knowledge, threatened against it or, in the case of Owner, any of its Affiliates, legal proceedings that could materially adversely affect its ability to perform under this Agreement;

### With respect to the Party making the representation, no Event of Default has occurred or, if an Event of Default has occurred, no Event of Default is continuing;

### Entering into this Agreement and performance of the obligations hereunder will not result in an Event of Default or a default under another agreement;

### It is acting for its own account and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

### It has not relied upon any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement.

# EVENTS OF DEFAULT; TERMINATION

## Events of Default

. An “Event of Default” means, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

### With respect to either Party:

#### Such Party fails to make when due any payment required under this Agreement and the failure is not cured within ten (10) Business Days after Notice of the failure;

#### Any representation or warranty made by such Party in this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, provided, if the misrepresentation or breach of warranty is capable of a cure, an Event of Default will be deemed to occur (a) if the misrepresentation or breach of warranty is not capable of being cured, five (5) Business Days after Notice from the non-breaching Party or (b) if the misrepresentation or breach is capable of being cured, if such misrepresentation or breach is not remedied within thirty (30) days after Notice from the non-breaching Party;

#### Such Party fails to perform any material covenant or obligation set forth in this Agreement (which does not constitute an independent Event of Default) that is not remedied within thirty (30) days (or up to sixty (60) days, if such additional time is reasonably necessary to cure the failure and the Party promptly commences and diligently pursues the cure) after notice setting forth the nature of the failure;

#### Dissolution or liquidation of such Party; or

#### such Party becomes Bankrupt.

### With respect to Owner:

#### Owner transfers or assigns the Interconnection Queue Position or the Interconnection Agreement;

#### Owner fails to achieve a Critical Path Milestone and does not submit a Recovery Plan with respect to such Critical Path Milestone.

#### Owner’s Abandonment of construction of the Project;

#### Owner fails to achieve Commercial Operation of the Project by the Guaranteed Commercial Operation Deadline;

#### the occurrence of any event for which CECONY’s consent is required under Section 14.04 without CECONY providing prior written consent;

#### Owner fails to satisfy the credit and collateral requirements set forth in ARTICLE 7, including failure to post or maintain Project Security, and such failure is not cured within three (3) Business Days after Notice from CECONY;

#### Owner fails to maintain insurance of the types and in the amounts required under Section 14.07 and such failure is not cured within three (3) Business Days;

### With respect to Owner as it concerns performance of the Project:

#### the Actual Availability with respect to a Contract Year is less than eighty-nine percent (89%), provided, however, Owner shall be entitled to cure an Event of Default under this Section 10.01(c)(ii) by achieving an Actual Availability of at least eighty-nine percent (89%) in the Contract Year immediately following the applicable Contract Year in which such Event of Default occurred; provided, that, Owner shall not be entitled to exercise this cure right more than three (3) times during the Contract Term and, provided further, within ninety (90) days of the commencement of the Contract Year immediately following a Contract Year in which (1) the Actual Availability was less than eighty-nine percent (89%) and (2) a Straddle Period Unavailability Event commenced, Owner may notify CECONY in writing of such Straddle Period Unavailability Event (which notice shall include the start date and end date of such Straddle Period Unavailability Event). Upon delivery of such notice, solely for purposes of determining whether such Event of Default is cured pursuant to the preceding sentence, the Actual Availability for the then-current Contract Year will be calculated such that the first day of the then-current Contract Year for the Actual Availability calculation is deemed to be the earlier of (a) the first day after the end of the Straddle Period Unavailability Event as designated by Owner in good faith in the applicable written notice to CECONY and (b) ninety (90) days after the first day of the-then current Contract Year;

#### the Storage Capacity Rating is ninety-five percent (95%) or below the Contract Capacity for a period of 365 consecutive days, or below the Contract Capacity, by any amount, for 547 consecutive days;

#### the Round-Trip Efficiency demonstrated during any Storage Rating Test is less than the Guaranteed Round-Trip Efficiency unless the Round Trip Efficiency is cured by demonstrating that it is at least equal to the Guaranteed Round-Trip Efficiency within three hundred sixty-five (365) days after Notice from CECONY except Owner shall not be entitled to exercise this cure right more than 5 times during the Contract Term;

#### Owner delivers or otherwise makes available a Product under this Agreement that is not produced by the Project;

#### Use of the Project for the benefit of any Person other than CECONY;

#### A termination under any agreement where such termination arises from a breach or default by Owner under such agreement and such agreement is necessary for Owner to:

##### interconnect the Project to the Transmission Owner’s electric system;

##### be a market participant under the NYISO Tariff; or

##### receive electric service sufficient for all Station Use and Charging Energy Requirements;

#### Subject to the terms of any Collateral Assignment Agreement executed by CECONY, the occurrence and continuation of an event of default of Owner after the Commercial Operation Date under one or more agreements or instruments relating to indebtedness for borrowed money, in the aggregate amount of **[*6.25% of the Total Compensation Amount*]** dollars ($**[*Number*]**) which results in the indebtedness being declared immediately due and payable;

#### Owner fails to implement a remediation identified by an Independent Engineer to resolve a safety event, as described in Section 8.05(b);

#### Owner fails to repair, restore or reconstruct the Project following a Casualty Loss as required under Section 8.06;

#### Owner makes any material misrepresentation or omission in any report, including any status report, or the Milestone Schedule (including the log, records and reports required under Sections 6.02, 6.04(a) and 14.06 and Exhibit C) required to be made or furnished by Owner pursuant to this Agreement and such misrepresentation or omission is not remedied within five (5) Business Days after Notice from CECONY; or

#### Owner does not have Site Control in accordance with Section 4.01(a) and such failure materially adversely affects Owner’s ability to perform its obligations under this Agreement.

## Early Termination Date

. Except as otherwise provided in Section 2.08, if an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right, by delivery of Notice to the Defaulting Party, to (a) designate a day, no earlier than the day such Notice is effective and no later than fifteen (15) Business Days after such Notice is effective, as an “Early Termination Date,” and to terminate this Agreement as of the Early Termination Date, (b) accelerate all amounts owed by the Defaulting Party under this Agreement, (c) withhold any payments due to the Defaulting Party under this Agreement, (d) suspend performance pending termination of this Agreement; and (e) pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages and, where appropriate, specific performance or injunctive relief), except to the extent that such remedies are limited by the terms of this Agreement.

## Calculation of Termination Payment

. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Termination Payment in accordance with this Section 10.03.

### Termination Payment Prior to Commercial Operation Date. If the Early Termination Date occurs before the Commercial Operation Date, then the Termination Payment shall be calculated in accordance with this Section 10.03(a).

#### If Owner is the Defaulting Party, then the Termination Payment shall be owed to CECONY and shall equal the Development Security, plus any interest accrued thereon. CECONY shall be entitled to retain all funds held as Development Security and any interest accrued thereon. There will be no amounts owed to Owner.

#### If CECONY is the Defaulting Party, then the Termination Payment shall be owed to Owner and shall equal the sum of the actual, documented and verifiable costs incurred by Owner between the Effective Date and the Early Termination Date in connection with the Project, less the fair market value (determined in a commercially reasonable manner) of (A) the individual assets acquired by Owner for the Project, or (B) the entire Project, whichever is greater, regardless of whether or not any Owner asset or the entire Project is actually sold or disposed of. If the result of such calculation is negative, the value of such Termination Payment shall be $0.

### Termination Payment After the Commercial Operation Date. If the Early Termination Date occurs on or after the Commercial Operation Date, then the Termination Payment shall be calculated in accordance with this Section 10.03(b).

#### If Owner is the Defaulting Party, then the Termination Payment shall be owed to CECONY and shall be equal to [***for the Levelized Payment Structure***: the sum of (A) The product of (1) the Commercial Operation Payment and (2) the number of days remaining in the Delivery Period as of the effective date of the termination *divided by* the total number of days in the Delivery Period AND (B) the greater of (1) the product of (i) the Total Compensation Amount *minus* the Commercial Operation Payment, (ii) the number of days remaining in the Delivery Period as of the effective date of termination divided by the total number of days in the Delivery Period, and (iii) twenty percent (20%) and (2) the positive difference between the Remaining Contract Period Market Value and the Remaining Contract Value.][***for the Up-front Payment Structure***: the greater of (A) the product of (1) the Total Compensation Amount and (2) the number of days remaining in the Delivery Period as of the effective date of termination divided by the total number of days in the Delivery Period and (B) the sum of (1) the product of (i) the Commercial Operation Payment and (ii) the number of days remaining in the Delivery Period as of the effective date of termination divided by the total number of days in the Delivery Period and (2) the positive difference between the Remaining Contract Period Market Value and the Remaining Contract Value.]

#### If CECONY is the Defaulting Party, then the Termination Payment shall be owed to Owner and shall be equal to the sum of the product of (1) the Total Compensation Amount, (2) the number of days remaining in the Delivery Period as of the effective date of termination divided by the total number of days in the Delivery Period, and (3) twenty percent (20%).

## Notice of Termination Payment

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### As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the Termination Payment.

### The Notice must include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment, together with appropriate supporting documentation. If CECONY is the Non-Defaulting Party and reasonably expects to incur penalties, fines or costs from the NYISO, the NYPSC, or any other Governmental Authority, then CECONY may estimate the amount of those penalties and fines and include them in the Termination Payment amount.

### The Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party within five (5) Business Days after the Notice is provided. In the event that the Defaulting Party disputes any portion of the Termination Payment calculation, in good faith, such disputing Party shall pay the entire amount of the calculated Termination Payment set forth in the Notice provided by the Non-Defaulting Party, notwithstanding the dispute. Any amounts to be paid to the disputing Party shall be made within five (5) Business Days of resolution of the Dispute, together with interest accrued at the Interest Rate, from and including the date of such overpayment until the date of repayment.

## Effect of Termination

. Termination of this Agreement shall not operate to discharge any liability that has been incurred by either Party prior to the effective date of such termination.

# LIMITATIONS OF REMEDIES AND DAMAGES

SUBJECT TO SECTION 12.04 (PROVISIONAL RELIEF), IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, AND SUCH DIRECT ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING THE PROVISIONS OF ARTICLE 13 (INDEMNIFICATION), WHICH PERMIT INDEMNIFICATION FOR DAMAGES CLAIMED BY A THIRD PARTY, WHETHER SUCH DAMAGES ARE CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT, NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE AND AGREE THAT THE DAMAGES OWED IN SUCH CIRCUMSTANCES WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE WERE NOT EASILY OR REASONABLY ASCERTAINABLE AT THE TIME OF EXECUTION OF THE AGREEMENT, AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS TO THE PARTY OWED LIQUIDATED DAMAGES.

NOTHING IN THIS ARTICLE PREVENTS OR IS INTENDED TO PREVENT CECONY FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO ANY PROJECT SECURITY.

# DISPUTES

## Dispute Resolution

. The Parties shall attempt in good faith to resolve any Dispute arising out of or relating to this Agreement or any related agreements by prompt negotiations between each Party’s authorized representative as designated in writing (each, a “Manager”). Either Manager, may, by Notice to the other Party, request a meeting to initiate negotiations to be held within ten (10) days after the other Party’s receipt of such request, at a mutually agreed time and place (either in person or via video or telephone conference). If the Dispute is not resolved with fifteen (15) Business Days after the first meeting between the Managers, then the Managers shall refer the Dispute to the designated senior officers of their respective companies that have authority to settle the Dispute (each, an “Executive”). Either Executive may, by Notice to the other Party, request a meeting to initiate negotiations to be held within five (5) Business Days after the other Party’s receipt of such request, at a mutually agreed time and place (either in person or via video or telephone conference) (the date of such initial meeting, the “Initial Negotiation Start Date”). After the initial meeting between the Executives, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute.

If the Parties have been unable to resolve a Dispute pursuant to the informal dispute resolution procedures in this Section 12.01 within thirty (30) days following the Initial Negotiation Start Date (the “Initial Negotiation End Date”), then the Parties may submit such Dispute to mediation under the procedures described in Section 12.02 (Mediation) below. If such Dispute is not submitted to mediation by either Party within fifteen (15) days after the Initial Negotiation End Date, or is not resolved through mediation within sixty (60) days after the scheduled date of mediation (subject to any extension of time mutually agreed to by the Parties), then either Party may pursue any remedies available to it under this Agreement or otherwise available at law or in equity in a court of competent jurisdiction with respect to such Dispute.

## Mediation

. A Party may initiate mediation in accordance with Section 12.01 by providing Notice to the other Party requesting mediation and setting forth a description of the Dispute and the relief requested.

The Parties will cooperate with one another in selecting a mediator with energy sector expertise (“Mediator”) from the panel of neutrals from Judicial Arbitration and Mediation Services, Inc. (“JAMS”), its successor, or any other mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation.

The Parties will select the Mediator and schedule the time and place of the mediation within thirty (30) Business Days after Notice of the request for mediation.

Unless otherwise agreed to by the Parties, the mediation will not be scheduled for a date that is greater than one hundred twenty (120) days from the date of Notice of the request for mediation.

Each Party will participate in the mediation in good faith, and share equally in its costs (except that each Party will bear costs of its own counsel fees and any out of pocket expenses related to the Party’s participation in the mediation).

All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator’s agents, representatives and employees, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding between or involving the Parties, or either of them; *provided* that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

## Jurisdiction and Venue

. Owner irrevocably submits to the jurisdiction of the state and federal courts situated in the City of New York or in Westchester County with regard to any controversy arising out of or relating to this Agreement. Owner agrees that service of process on it may be made, at CECONY’s option, either by registered or certified mail addressed to Owner at the address shown herein or at the address of any office actually maintained by Owner, or by actual personal delivery to Owner. Such service shall be deemed sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, process may be served as stated above whether or not it may be properly served in a different manner. Owner consents to the selection of the state and the federal courts situated in the City of New York or in Westchester County as the exclusive forums for any legal proceeding arising out of or relating to this Agreement. Owner also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester County.

## Provisional Relief

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### The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of this Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Sections 4.04, 6.02, 10.02 or 14.05 in any court of competent jurisdiction.

### Such a request for provisional relief does not waive a Party’s right to seek other remedies for the breach of the provisions specified above in accordance with this ARTICLE 12, notwithstanding any prohibition against claim-splitting or other similar doctrine. The other remedies that may be sought include specific performance and injunctive or other equitable relief, plus any other remedy specified in this Agreement for the breach of the provision, or if the Agreement does not specify a remedy for the breach, all other remedies available at law or equity to the Parties for the breach.

## Consolidation of Matters

. The Parties shall make diligent good faith efforts to consolidate any provisional relief, mediation, or other dispute resolution proceedings arising pursuant to this ARTICLE 12 that arise from or relate to the same act, omission or issue.

# INDEMNIFICATION; GOVERNMENTAL CHARGES

## Owner’s Indemnification Obligations

. To the greatest extent permitted by Applicable Law, Owner releases, and shall indemnify, defend and hold harmless CECONY, its Affiliates, and their respective officers, directors, trustees, employees, agents, assigns and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, penalty, fine or expense of any kind or nature (including any direct damage, claim, cost, charge, demand, or expense, and attorneys’ fees (including cost of in-house counsel) and other costs of litigation or mediation, and in the case of third-party claims only, indirect or consequential loss or damage of such third party), arising out of or in connection with:

### any breach made by Owner of any representation, warranty, covenant or agreement contained herein;

### injury or death to Persons, including CECONY employees, and physical damage to property, including CECONY 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 this Agreement;

### any violation of Applicable Law, 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 this Agreement;

### any (i) storage, generation, use, handling, manufacture, processing, transportation, treatment, release or disposal of any Hazardous Material by Owner, its EPC Contractor, or any of Owner’s or its EPC Contractor’s subcontractors; or (ii) alleged, threatened, or actual violation of any Environmental Law by Owner or its EPC Contractor or any of Owner’s or its EPC Contractor’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;

### the failure to pay any Governmental Charges or Environmental Costs for which Owner is responsible under Section 13.04;

### NERC Standards Non-Compliance Penalties or an attempt by any Governmental Authority or other Person to assess such NERC Standards Non-Compliance Penalties against CECONY;

### 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 financial settlement for Products requiring payment by CECONY, any monetary penalties or fines assessed against CECONY or any other losses or damages suffered by CECONY resulting from:

#### Owner’s failure to dispatch the Project in accordance with a Dispatch Notice or charge the Project in accordance with a Charging Notice, other than due to a Force Majeure; or

#### Owner’s failure to provide notice of the non-availability of any portion of the Contract Capacity for any portion of the Contract Term as required under Section 6.04(a);

#### Owner’s failure to satisfy its obligations with regard to Unplanned Outages in accordance with Sections 6.03(g) and 6.03(h).

#### any Non-CECONY Dispatch, including all charges, sanctions, and penalties imposed by the NYISO, and related Charging Energy Requirements.

To the extent permitted under Applicable Law, this indemnity applies notwithstanding CECONY’s active or passive negligence.

## Indemnification Claims

. All claims for indemnification by a Person entitled to be indemnified under this Agreement (an “Indemnified Party”) will be asserted and resolved as follows:

### If a claim or demand for which an Indemnified Party may claim indemnity is asserted against or sought to be collected from an Indemnified Party by a third party, the Indemnified Party shall as promptly as practicable give Notice to the Owner; *provided*, failure to provide this Notice will relieve Owner only to the extent that the failure actually prejudices Owner.

### Owner shall retain counsel reasonably acceptable to the Indemnified Party with respect to any claims or demands for which an Indemnified Party is entitled to be indemnified under this Agreement. Owner will have the right to control the defense and settlement of any claims in a manner not adverse to Indemnified Party but cannot admit any liability or enter into any settlement without Indemnified Party’s approval.

### Indemnified Party may employ counsel at its own expense with respect to any claims or demands asserted or sought to be collected against it; *provided*, if counsel is employed due to a conflict of interest or because Owner does not assume control of the defense, Owner will bear the expense of this counsel.

## Cooperation to Minimize Tax Liabilities

. Each Party shall use reasonable efforts to implement and administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected thereby.

## Governmental Charges

. For the Contract Term, Owner shall pay or cause to be paid all taxes, charges or fees imposed by a Governmental Authority, including ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project (collectively, “Governmental Charges”).

### For the Contract Term,

#### Owner shall pay or cause to be paid all Governmental Charges on or with respect to the Products at or before the Energy Delivery Point.

#### CECONY shall pay or cause to be paid all Governmental Charges on or with respect to Product after the Energy Delivery Point.

### If either Party is required by Applicable Law to remit or pay Governmental Charges that are the other Party’s responsibility hereunder, it shall promptly be reimbursed for such amounts upon request.

## Environmental Costs

. Owner is solely responsible for:

#### all Environmental Costs, and

#### all taxes, charges or fees imposed on the Project or Owner by a Governmental Authority for greenhouse gas emitted by and attributable to the Project during the Term.

# MISCELLANEOUS

## General

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### Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to its subject matter.

### Amendment. This Agreement can only be amended by a writing signed by both Parties.

### No Third-Party Beneficiaries. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

### Waiver. The failure of either Party to insist in any one instance upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishments of such rights for the future but the same shall continue and remain in full force and effect. Waiver by either Party of any default of the other Party shall not be deemed a waiver of any other default.

### Disclaimer on Inspection. Any review by CECONY or its consultants of (a) the Project, including the design, construction or refurbishment, testing, operation or maintenance of the Project, or otherwise, or (b) approval of Owner’s subcontractors is, in each case, solely for CECONY’s information. By making such review, CECONY makes no representation as to the economic and technical feasibility, operational capability, or reliability of the Project or the suitability or competence of Owner’s subcontractors, and Owner shall in no way represent to any third party that any such review or acceptance by CECONY constitutes any such representation by CECONY. Owner is solely responsible for the economic and technical feasibility, operational capability, and reliability of the Project and the suitability and competence of its subcontractors.

### Section Headings; Technical Terms. The headings used in this Agreement are for convenience and reference purposes only. Words having well-known technical or industry meanings have these meanings unless otherwise specifically defined in this Agreement.

### Successors and Assigns. This Agreement is binding on each Party’s successors and permitted assigns.

### Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF) or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes.

### Survival. The following provisions of this Agreement shall continue in effect after termination, including early termination: (i) all applicable provisions to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination, (ii) all applicable provisions to the extent necessary to provide for final billings and adjustments related to the period prior to termination and repayment of any money due and owing to either Party pursuant to this Agreement, (iii) the indemnifications specified in this Agreement, in each case subject to any applicable limitations on liability contained in this Agreement, and (iv) any such provision necessary for the resolution of any of the above (i) through (iii), including provisions on dispute resolution, notices, governing law, records, insurance, and confidentiality.

### No Agency. Except as otherwise provided explicitly herein, in performing their respective obligations under this Agreement, neither Party is acting, or is authorized to act, as the other Party’s agent.

### Authorized Representatives. Each Party may designate specific representatives that are authorized (“Authorized Representatives”) to represent the Party for the specific purpose indicated by the authorizing Party. The lists of Authorized Representatives for each Party are set forth in Exhibit H.

### Independent Contractors. The Parties are independent contractors. Nothing contained herein shall be deemed to create an association, joint venture, or partnership relationship between the Parties or to impose any partnership obligations or liability on either Party in any way.

### Severability. If any term, section, provision or other part of this Agreement, or the application of any term, section, provision or other part of this Agreement, is held to be invalid, illegal or void by a court or regulatory agency of proper jurisdiction, all other terms, sections, provisions or other parts of this Agreement shall not be affected thereby but shall remain in force and effect unless a court or regulatory agency holds that the provisions are not separable from all other provisions of this Agreement.

### Rules of Construction.

#### This Agreement will be considered for all purposes as prepared through the joint efforts of the Parties and may not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

#### The term “including” when used in this Agreement is by way of example only, shall be read as “including, but not limited to,” in each instance it occurs, and may not be considered in any way to be in limitation.

#### The word “or” when used in this Agreement includes the meaning “and/or” unless the context unambiguously dictates otherwise.

#### Where days are not specifically designated as Business Days, they will be considered as calendar days.

#### All references to time shall be in Eastern Standard Time unless stated otherwise.

#### No provision of this Agreement is intended to contradict or supersede any agreement or Applicable Law governing transmission, distribution, metering, scheduling or interconnection, including the Interconnection Agreement. In the event of an apparent contradiction between this Agreement and any such agreement or Applicable Law, such agreement or Applicable Law shall control. Each Party agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

#### Whenever this Agreement specifically refers to any Applicable Law, tariff, Governmental Authority, regional transmission organization or reliability council, Transmission Owner, accounting standard, or Ratings Agency, the reference includes any successor thereto.

## Notices

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### Notices Generally. All notices, requests, invoices, statements or payments must be made as specified in Exhibit L (the “Notices”).

### Notices must, unless otherwise specified herein, be in writing and may be provided by hand delivery, first class United States mail, overnight courier service, e-mail or facsimile.

### Notice provided in accordance with this Section 14.02 will be deemed given as follows:

#### Notice by e-mail, facsimile or hand delivery will be deemed given at the close of business on the day actually received, if during business hours on a Business Day, and otherwise will be deemed given at the close of business on the next Business Day;

#### Notice by overnight United States mail or courier service will be deemed given on the next Business Day after such Notice was sent;

#### Notice by first class United States mail will be deemed given two (2) Business Days after the postmarked date;

#### Notice of curtailment will be deemed given on the date and time made by CECONY and will be effective immediately.

### Notices will be effective on the date deemed given, unless a different date for the Notice to go into effect is stated in such Notice or in another section of this Agreement.

### A Party may change its designated representatives, addresses and other contact information by providing Notice of same in accordance herewith.

### All Notices, requests, invoices, statements or payments related to this Agreement or the Project must reference the ID# and clearly identify the fact, circumstance, request, issue, dispute or matter to which such Notice relates.

## Governing Law; Waiver of Jury Trial

. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

## Assignment; Transfer of Project or Equity Interests in Owner

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### Except as otherwise provided in this Section 14.04, Owner shall not (i) assign this Agreement or any of its rights or obligations hereunder or (ii) transfer or assign any interest in all or any portion of the Project, in each case without the prior written consent of CECONY, which consent may be given or denied at the sole discretion of CECONY.

### Except for any Change of Control in connection with a Tax Equity Financing of Owner, any Change of Control of Owner will require the prior written consent of CECONY, which consent shall not be unreasonably conditioned, withheld, or delayed. CECONY shall consent to a Change of Control of Owner if the Controlling Person of Owner immediately following such Change of Control (i) acquires ownership of the Project, (ii) has the legal capacity and authority to enter into and perform the obligations of Owner under this Agreement and (iii) CECONY reasonably determines has (x) financial resources available to it, sufficient to enable it to perform the obligations of Owner under this Agreement taking into account any credit support that will be provided with respect to such Person’s obligations under this Agreement and (y) through its own employees or contract with a third party operator, the technical skills and experience reasonably necessary to permit it to perform the obligations of Owner under this Agreement (a “Qualified Substitute Owner”). Owner shall provide at least thirty (30) days’ written notice to CECONY prior to consummation of any proposed Change of Control.

### Owner may, by providing at least thirty (30) days’ prior written notice to CECONY of the names and contact information of proposed assignees, pledge or assign this Agreement (or any of Owner’s rights hereunder), the Project or any direct or indirect equity interests in Owner to any Lender as security for any debt financing for the Project; In connection with any debt financing for the Project by Owner that contemplates any such pledge or assignment, CECONY agrees to enter into a consent to collateral assignment (“Collateral Assignment Agreement”), in the form of Exhibit M [***for up-front payment structure*:** ; provided that such pledge or assignment terminates by its terms upon receipt by Owner of the Commercial Operation Payment]. Owner shall be responsible for CECONY’s reasonable costs associated with the preparation, review, execution and delivery of a Collateral Assignment Agreement, including its attorneys’ fees. Except as otherwise provided in a Collateral Assignment Agreement entered into by Owner and a Lender, any further assignment or transfer by a Lender of any of Owner’s rights under this Agreement, any interest in all or any portion of the Project or any direct or indirect equity interests in Owner shall be subject to the restrictions in this Section 14.04.

### Any requests for consent of CECONY under this Section 14.04 shall be provided at least thirty (30) days in advance of the closing date of the proposed transaction. In connection with any consent of CECONY requested under this Section 14.04, Owner shall provide certification to CECONY as to receipt by Owner of all approvals of Governmental Authorities required in connection with such transaction and such other matters as CECONY shall reasonably require.

## Confidentiality

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### Confidentiality Obligation. Except as otherwise expressly agreed in writing by the other Party, and except as otherwise agreed in Sections 14.05(b) (Permitted Disclosures) and 14.05(c) (Duty to Seek Protection), each receiving Party shall, and shall cause its Representatives to, (i) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information, and (ii) use all Confidential Information solely for the purposes of performing its obligations under this Agreement and not for any other purpose; *provided*, a Party may disclose Confidential Information to those of its Representatives who need to know such information for the purposes of performing the receiving Party’s obligations under this Agreement (and, in the case of Representatives of Owner engaged wholly or in part in the purchase and sale of electrical power or natural gas, are directly engaged in performing Owner’s obligations under this Agreement) if, prior to being given access to Confidential Information, such Representatives are informed of the confidentiality thereof and the requirements of this Agreement and are obligated to comply with the requirements of this Agreement. Each Party will be responsible for any breach of this Agreement by its Representatives.

### Permitted Disclosures.

#### Notwithstanding anything to the contrary herein, CECONY shall be permitted, if required or requested, to file or submit a copy of this Agreement, and certain other documentation and information relating to the Project to the NYPSC; provided it use commercially reasonable efforts to exclude or redact Confidential Information of Owner from such filing or submission (including by requesting confidential treatment thereof from the NYPSC). If such exclusion or redaction is not permitted by the NYPSC, then CECONY shall submit only that portion of Owner’s Confidential Information that has been required or requested by the NYPSC. CECONY shall notify Owner promptly if it receives notification from the NYPSC that Owner’s Confidential Information is the subject of a Freedom of Information Law request so that Owner may seek an appropriate protective order or other reliable assurance that its Confidential Information will not be disclosed. The same procedures shall apply if Owner is required or requested by the NYPSC to submit Confidential Information of CECONY to the NYPSC. Notwithstanding anything to the contrary set forth in this Agreement, a Party who follows the procedures described immediately above shall not be liable to the other Party if the NYPSC causes or permits the applicable Confidential Information of the disclosing Party to be disclosed or otherwise made available to the public.

#### The Parties may disclose Confidential Information to the extent necessary to comply with Applicable Law, any accounting rule or standard, and any applicable summons, subpoena or order of a Governmental Authority, and any securities or commodities exchange, Control Area or NYISO rule, without any liability to the other Party hereunder. Provided further, to the extent such request requires disclosure of Confidential Information that is aggregated such that the Confidential Information is not individually identifiable, the disclosing Party shall be permitted to disclose such Confidential Information without advance notice to the other Party or compliance with Section 14.05(c).

#### Either Party shall be permitted to disclose the following terms with respect to this Agreement: (A) Party names, (B) technology type, (C) Delivery Period, (D) Project location, (E) Contract Capacity, (F) Guaranteed Commercial Operation Deadline, and (G) the Project’s expected energy deliveries.

### Duty to Seek Protection.

#### If a Party is required by a summons, subpoena, order or similar request of a Governmental Authority, or pursuant to any discovery or data request of a party to any proceeding before a Governmental Authority, to disclose Confidential Information, it will, to the extent permitted by Applicable Law, (A) promptly notify the other Party of the existence, terms, and circumstances of such requirement(s) so that such other Party may seek a protective order or other appropriate remedy or waive its right to seek a protective order, and (B) will, and will cause its Representatives to, cooperate fully with such other Party in seeking to limit or prevent such disclosure of such Confidential Information. The requirements under this Section 14.05(c)(i) do not apply to disclosures under Section 14.05(b)(i), disclosures containing the information set forth in Section 14.05(b)(iii), or disclosures containing aggregated Confidential Information pursuant to Section 14.05(b)(iii).

#### If a Party or its Representatives are compelled to make disclosure in response to a requirement described in Section 14.05(c)(i), the compelled Person may disclose only that portion of the Confidential Information protected by this Agreement which its counsel advises that it is legally required to disclose and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to the disclosed Confidential Information protected by this Agreement.

### Ownership and Return of Information. All Confidential Information shall be and remain the property of the Party providing it. Nothing in this Agreement shall be construed as granting any rights in or to Confidential Information to the Party or Representatives receiving it, except the right of use in accordance with the terms of this Agreement. Notwithstanding the foregoing, the Parties shall have the right to retain copies of Confidential Information, subject to the confidentiality obligations in this Section 14.05.

## Records

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### Performance Under This Agreement. Each Party and its Representatives shall maintain records and supporting documentation relating to this Agreement, the Project, and the performance of the Parties hereunder in accordance with, and for the applicable time periods required by, all Applicable Law, but in no event less than four (4) years after final payment is made under this Agreement.

### Other Regulatory and Governmental Requirements. At CECONY’s request, Owner shall maintain and deliver to CECONY copies of such records and supporting documentation with respect to the Project that Owner is not already required to maintain or deliver under this Agreement, that CECONY reasonably determines are necessary to comply with all Applicable Law.

## Insurance

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### Owner shall and shall require its contractors and subcontractors to procure and maintain in force throughout the period of this Agreement and as otherwise required herein, the following minimum insurance coverages, with insurance companies licensed to write insurance in the state of New York with a minimum A.M. Best financial strength rating of A and a minimum financial size category of VIII:

#### **Workers' Compensation Insurance**. Owner shall maintain Worker’s Compensation Insurance as required by Applicable Law, which shall contain a waiver of subrogation in favor of Consolidated Edison, Inc, and CECONY.

#### **Employers' Liability Insurance**. Owner shall maintain Employer’s Liability Insurance meeting with following minimum requirements:

##### Bodily Injury by Accident: $1,000,000 for each accident

##### Bodily Injury by Disease: $1,000,000 policy limit

##### Bodily Injury by Disease: $1,000,000 each employee

#### **Other Employment Insurance.** Where applicable, Owner shall maintain insurance required by the United States Longshoremen's and Harbor Workers' Act, the Federal Employers Liability Act, the Jones Act and Maritime Employers Liability.

#### **Commercial General Liability Insurance**. Owner shall maintain Commercial General Liability insurance, including Contractual Liability, with annual limits of not less than Two Million Dollars ($2,000,000) per occurrence and Four Million Dollars ($4,000,000) in the aggregate for bodily injury, including death, and property damage and, for at least six (6) years after this agreement terminates, and Products/Completed Operations Liability Insurance with similar but separate and independent limits.  The policy shall cover all operations (including crane and rigging activities if applicable) and not contain any exclusions directed towards any types of projects or materials or processes involved in the work.  The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" determinant of coverage.  There shall be no policy deductibles without CECONY’s prior written approval.  The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards, work on or near a railroad, or independent contractors.  Sudden and accidental pollution coverage shall be included.  The insurance policy or policies shall name the Consolidated Edison, Inc. and CECONY  as additional insureds for both ongoing work/operations and completed operations.  The policy shall contain endorsements CG 20 10 04 13 and CG 20 37 04 13 (or equivalent).  The policy shall contain a severability of interest clause.  There shall be no exclusions for claims by Owners, its contractors’ or subcontractors’ employees against CECONY based on injury to Owner, its contractors or subcontractor's employees.  Owner shall comply with any request from CECONY to include additional parties as additional insured.  The policy(ies) shall be primary and non-contributory and contain a waiver of subrogation in favor of Consolidated Edison, Inc. and CECONY.  Limits of insurance will be on a per project/location basis.

#### **Comprehensive Automobile Liability Insurance**. Owner shall maintain comprehensive automobile liability insurance covering all owned, non-owned and hired vehicles used by Owner, its contractors, or any subcontractors, with a combined single limit of not less than One Million Dollars ($1,000,000) per accident for bodily injury, including death, and property damage.  The policy shall be primary and non-contributory, contain a waiver of subrogation and will name Consolidated Edison, Inc. and CECONY as additional insureds.

#### **Excess or Umbrella Liability Insurance**. Owner shall maintain Excess or Umbrella Liability Insurance on an occurrence coverage form and a drop down and follow form basis over and above the Employers' Liability, Commercial General Liability and Comprehensive Automobile Liability Insurance coverages, with a minimum combined single limit not less than Twenty-five Million Dollars ($25,000,000) per occurrence and annual aggregate.  The Excess policy(ies) must be as broad as the underlying policies and must contain the same extensions (additional insured, waiver of subrogation and primary and non-contributory) required under the primary underlying policies.   Owner shall maintain a minimum $25 Million Excess or Umbrella coverage per occurrence and in the annual aggregate throughout the term of the agreement including during construction. Owners’ prime contractor shall maintain $10 Million Excess or Umbrella Liability limit of coverage. Subcontractors shall carry a minimum of $6 Million Excess or Umbrella Liability coverage per occurrence and in the annual aggregate.

#### **Pollution Liability Insurance.** Owner shall maintain a pollution liability policy with limits not less than Ten Million ($10,000,000) per occurrence and in the annual aggregate**.** The policy shall be kept in place throughout the term of the Agreement. Such insurance is to include coverage for cleanup, third party bodily injury and property damage and remediation and will be written on an occurrence basis; or, if on a claims-made basis, the coverage must respond to all claims reported within six (6) years following the period for which coverage is required and that would have been covered had the coverage been on an occurrence basis.  There shall be no exclusions for asbestos, lead paint, silica or mold/fungus/legionella. Coverage shall apply to sudden and non-sudden conditions, transportation and disposal.  The policy shall name Consolidated Edison, Inc, and CECONY as additional insureds, be primary and non-contributory and contain a waiver of subrogation in favor of Consolidated Edison, Inc, and CECONY.

#### **Contractor's Pollution Liability Insurance.** Owner’s contractors shall maintain Pollution Liability Insurance in an amount of not less than Ten Million Dollars ($10,000,000) per occurrence and aggregate.   The policy shall provide coverage for claims resulting from pollution or other environmental impairment arising out of or in connection with the contractor’s work on the Project and from transportation (including transportation by watercraft if applicable) and disposal of pollutants or anything contaminated by pollution.  Such insurance is to include coverage for cleanup, third party bodily injury and property damage and remediation and will be written on an occurrence basis; or, if on a claims-made basis, the coverage must respond to all claims reported within six (6) years following the period for which coverage is required and that would have been covered had the coverage been on an occurrence basis.  There shall be no exclusions for asbestos, lead paint, silica or mold/fungus/legionella.  Coverage shall apply to sudden and non-sudden conditions.  The policy shall name Consolidated Edison, Inc, and CECONY as additional insureds, be primary and non-contributory and contain a waiver of subrogation in favor of Consolidated Edison, Inc, and CECONY.

#### **Professional Liability Insurance.** Owner shall maintain Professional Liability Insurance in the amount not less than Five Million Dollars ($5,000,000) per claim and Five Million Dollars ($5,000,000) in the aggregate for the duration of the Term and for at least three (3) years following termination or expiration of the Agreement.  Owner and its contractors or subcontractors providing engineering, architect, design services, maintenance or services shall also maintain this coverage.

#### **Cyber Security/Risk Insurance.** Owner shall maintain Cyber Security/Risk Insurance in an amount of at least Ten Million Dollars ($10,000,000) per claim and annual aggregate, providing coverage for third party financial losses and claims expenses resulting from transmission of a computer virus, network security breach or data privacy breach; failure to protect the confidential or proprietary information (personal and commercial information) and intellectual property from unauthorized disclosure or unauthorized access; first party costs for responding to a cyber incident; fines and penalties related to the improper use of personal and confidential information; costs resulting from cyber extortion demands; costs to restore data that has been corrupted or destroyed; and lost revenue/extra expense for a business interruption resulting from a cyber incident (including failure of network systems that are essential to an insured or to third parties or cost resulting from failure to supply power pursuant to a power purchase agreement).

#### **Aircraft Liability Insurance**. Where the work involves the use of aircraft, Owner and the applicable contractors and subcontractors will purchase and maintain aircraft liability insurance, covering all owned, non-owned and hired aircraft, manned and/or unmanned, including helicopters, and drones used by Owner or any of its Contractors or Subcontractors, with a combined single limit of not less than Ten Million Dollars ($10,000,000) for bodily injury, including death, and property damage.  The insurance policy shall name Consolidated Edison, Inc. and CECONY as additional insureds, be primary and non-contributory and contain a waiver of subrogation.

#### **Builder's Risk Insurance and All-Risk Property and Business Interruption.** Owner shall procure and maintain a Builder’s Risk Insurance policy to cover the Project during construction for direct physical loss or damage from fire, lightning, windstorm, hail, explosion, riot, smoke, earthquake, flood, collapse, sinkhole, terrorism and other insurable perils as are included typically under an "all risk" policy.  Such policy shall include endorsements as are commercially available and typically procured for projects of a scope and size similar to the Project including coverage for transit and storage.  The policy limit shall be equal to the replacement cost of the Project. The Builder's Risk policy will remain in effect for the duration of the Project until Commercial Operation. An   All-Risk Property policy on a replacement cost basis shall be purchased and maintained to cover all assets associated with the Project.  The policy shall provide coverage for direct physical loss or damage from fire, lightning, windstorm, hail, explosion, riot, smoke, earthquake, flood, collapse, sinkhole, terrorism and other insurable perils as are included typically under an "all risk" policy.  The policy shall include business interruption coverage  deductibles under the Builders Risk and All-Risk Property, and Business Interruption policy(s) shall be no greater than $250,000 unless approved by CECONY.  Consolidated Edison, Inc. and CECONY shall be added as loss payees on all Property and Builders Risk policies as their interests may appear. Both the Builder’s Risk and all Property policies shall contain a Waiver of Subrogation in favor of Consolidated Edison, Inc, and CECONY.

#### **Insurance for Design Builder's and Subcontractors' Property and Equipment.**Owner shall be responsible for any loss to personal property and equipment owned, rented or leased by Owner or its contractors and/or subcontractors.  Such policies shall contain a waiver of subrogation in favor of Consolidated Edison, Inc. and CECONY.

### Additional Insurance Requirements.

#### Throughout the Term and for such additional periods as may be specified above, Owner and its contractors and subcontractors shall, at their own expense, provide and maintain in effect the insurance policies and minimum limits of coverage specified in and such additional coverage as may be required by Applicable Law.

#### All policies of insurance required hereunder, except with regard to Worker' Compensation, Professional Liability, Cyber Liability, and Property insurance shall name the Consolidated Edison, Inc. and CECONY as additional insureds and include a waiver of subrogation.

#### Each required policy in Section 14.07(a) above shall provide that the insurance provided to Consolidated Edison, Inc. and CECONY is primary and non-contributory to any insurance or self-insurance held by Consolidated Edison, Inc. or CECONY.  All insurance policies, including Workers' Compensation shall include clauses stating that the insurers(s) waive all rights of recovery/subrogation, where not prohibited by any Applicable Law.  All liability policies shall include a severability of interest clause.

#### The requirements contained herein as to the types and limits of all insurance to be maintained by Owner are not intended to and shall not in any manner, limit or qualify Owner’s liabilities and obligations assumed under this Agreement.

#### Owner, its contractors and subcontractors shall pay all premiums, costs and expenses within any deductibles or self-insured retentions, regardless of the number of losses and Owner shall obtain CECONY’s written approval for to the terms and amount of any of deductibles or self-insured retentions.

#### Owners’ contractors and subcontractors must maintain the same insurance requirements provided in Section 14.07(a) (unless otherwise stated) and comply with the additional insured requirements herein.  In addition, their policies must state that they are primary and noncontributory and contain a waiver of subrogation in favor of Consolidated Edison, Inc. and CECONY.

####  Owner shall, and shall cause its contractors and subcontractors to, furnish CECONY with written notice at least thirty (30) days prior to the effective date of cancellation of the insurance or any changes in policy limits or material scope of coverage. In addition, all policies are to be endorsed to provide thirty (30) day notice of cancellation and ten (10) days for non-payment of premium to CECONY.

#### CECONY shall have the right, upon request, to require Owner or its contractors to furnish CECONY, with a copy of the insurance policy or policies (or binders) required herein. Within at least fourteen (14) days after the Effective Date, Owner shall furnish CECONY with certificates of insurance evidencing that all required insurance policies have been obtained, showing their expiration dates and stating that the Consolidated Edison, Inc. and CECONY are additional insureds where being requested.  In addition, Owner shall collect certificates of insurance from all of its contractors and subcontractors evidencing the required coverages and extensions, which shall be submitted to CECONY upon request.

#### When any insurance required is scheduled to expire, due to the attainment of a normal expiration date or renewal date, Owner and its contractors:  (i) not less than fourteen (14) days prior to such expiration or renewal date, will supply CECONY with updated replacement certificates of insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection and scope of coverage as was provided by the certificates of insurance and amendatory riders or endorsements originally supplied.

#### CECONY reserves the right to revise the insurance requirements as it deems necessary.

#### In the event of any claim/allegation, bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with the Project or the Agreement, Owner, in accordance with the provisions of the insurance policies shall inform promptly and in writing the insurers that notice is being provided on behalf of Owner and Consolidated Edison, Inc. and CECONY.  Simultaneously when providing the written notice required by this paragraph to the applicable insurers, Owner shall provide a copy of such written notice, including a copy of any incident report or accident report to CECONY.

## Mobile Sierra

. Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall be the ‘public interest’ standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) and *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

## Notwithstanding any provision of this Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by Applicable Law, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Parties have read this Agreement, understand it, and agree to be bound by its terms as of the Effective Date.

|  |  |  |
| --- | --- | --- |
| **[OWNER’S NAME]**, a **[Owner’s jurisdiction of organization and type of organization]**By: Name: Title: Date:  |  | CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporationBy: Name: Title: Date:  |

**EXHIBIT A**

**DEFINITIONS**

“Abandonment” means (i) following commencement of construction of the Project, complete cessation of the work on the Project for thirty (30) consecutive days by Owner and/or Owner’s contractors, or (ii) following the Commercial Operation Date, the relinquishment of all possession and control of the Project by Owner, except if caused by or attributable to an Event of Default of, or request by, CECONY, or an event of Force Majeure.

“Actual Availability” has the meaning set forth in 6.03(a)(i).

“Affiliate” means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, Controls, is under the Control of, or is under common Control with such Party.

“Agreement” has the meaning set forth in the preamble.

“Ancillary Services” or “A/S” means services solicited by NYISO in the NYISO Markets to support the transmission of energy from generators to loads, while maintaining reliable operation and shall include any such existing or new service defined in the NYISO Tariff during the Term that the Project is capable of providing, including Scheduling, System Control and Dispatch Service, Reactive Supply and Voltage Support Service, Regulation Service, Energy Imbalance Service, Operating Reserve Services and Black Start Capability, each as defined in the NYISO Tariff.

“Annual Post-Commercial Operation Payment” means **[*****For the Upfront Payment Structure: (a) the Total Compensation Amount minus (b) the Commercial Operation Payment divided by (c) [insert the total number of years in the Term]*]** **/ [*****For the Levelized Payment Structure:*** ***(a) the Total Compensation Amount divided by (b) [insert the total number of years in the*** ***Contract Term plus one year]*]**.

“Applicable Law” means the NYISO Tariff and all international, federal, state and local constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to either or both Parties, the Project or the terms of this Agreement.

“Attachment Facilities” means the facilities and equipment of Owner and the Transmission Owner located between the Project and the Interconnection Point, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Project to the New York Transmission System, and expressly excludes Network Upgrades.

“Audited Financial Statements” has the meaning set forth in Section 7.07(a).

“Authorized Representatives” has the meaning set forth in Section 14.01(k).

“Availability Liquidated Damages” has the meaning set forth in Section 6.03(a).

“Available Capacity” means, collectively, Available Charging Capacity, Available Discharging Capacity, and Available Storage Capacity.

“Available Charging Capacity” means the amount of Charging Capacity that the Project is capable of providing under this Agreement during any Settlement Interval.

“Available Discharging Capacity” means the amount of Discharging Capacity that the Project is capable of providing under this Agreement during any Settlement Interval.

“Available Storage Capacity” means the Storage Capacity amount of the Project for the applicable Settlement Interval. For purposes of this definition, the amount of Available Storage Capacity shall be expressed in megawatts according to the following:

Available Storage Capacity = (Storage Capacity / Maximum Storage Level) \* Contract Capacity

“Bankrupt” means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

“Battery Operations Center” means one or more facilities hosting operating personnel that monitor and control the Battery Energy Storage System (BESS) in real time to perform operations and reliability tasks.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day begins at 8:00 a.m. local time and ends at 5:00 p.m. local time for the Party sending the Notice or payment or performing a specified action.

“Capacity” means the capability to generate, transmit and deliver electrical power, or the ability to control demand at the direction of a transmission system operator and shall include (a) all capacity-based products and services the Project is capable of providing and (b) individually or collectively, as applicable, Charging Capacity, Discharging Capacity, and Storage Capacity.

“Capacity Difference Amount” has the meaning set forth in Section 3.01(b).

“Capacity Resource Interconnection Service” or “CRIS” means the service provided by NYISO to developers of facilities interconnected to the New York Transmission System in connection with the NYISO requirements for Project to be eligible as a supplier of Capacity.

“Casualty Loss” has the meaning set forth in Section 8.05(d).

“CECONY” has the meaning set forth in the preamble.

“Change in Law” means the adoption, enactment, promulgation, or issuance of, a new Applicable Law, or a changed interpretation by a Governmental Authority of any Applicable Law, which occurs on or after the Effective Date and materially adversely affects the affected Party’s performance under this Agreement; provided, that, Change in Law does not include (i) any Applicable Law enacted as of the Effective Date, even if such Applicable Law does not become effective until after the Effective Date, (ii) any new or change in interpretation of any federal, state or local tax law, or (iii) any consequence of the affected Party’s noncompliance with any Applicable Law.

“Change of Control” means (i) a conveyance, transfer or other disposition, directly or indirectly, of equity interests of Owner or voting rights with respect thereto, whether in one transaction or a series of transactions, as a result of which the Controlling Person of Owner immediately prior to such conveyance, transfer or disposition shall cease to Control Owner or (ii) a merger or consolidation as a result of which the Controlling Person of Owner immediately prior to such merger or consolidation shall cease to Control Owner.

“Charging Capacity” means the maximum dependable operating capability of any storage resource to charge electric energy into a storage device, and shall include any other products that may be developed or evolve from time to time during the Term that relate to the capability of a storage resource to store and charge energy.

“Charging Energy Requirements” means electric energy stored in the Project to be discharged at a later time, excluding any electric energy required for Station Use.

“Charging Notice” means the operating instruction, and any subsequent updates, given by CECONY or the NYISO to Owner, directing the Project to charge at a specific rate to a specified Stored Energy Level, provided that any schedule, including self-schedules, submitted by CECONY or awarded by the NYISO in order to effectuate an Owner Initiated Test shall not be considered a Charging Notice.

“Claiming Party” has the meaning set forth in Section 8.02.

“Class Year Interconnection Facilities Study” means a study conducted by NYISO or its consultant to determine the facilities, cost of those facilities, and the time required to interconnect storage, generation and transmission projects with the New York Transmission System.

“Class Year Start Date” means the deadline for an interconnecting project to enter a Class Year Interconnection Facilities Study.

“Cluster Study” means a study conducted by NYISO or its consultant to determine the facilities, cost of those facilities, and the time required to interconnect storage, generation and transmission projects with the New York Transmission System.

“Collateral Assignment Agreement” has the meaning set forth in Section 14.04(c).

“Commercial Operation” has the meaning set forth in Section 2.07.

“Commercial Operation Date” has the meaning set forth in Section 2.07.

“Commercial Operation Outside Deadline” has the meaning set forth in Section 2.06(d).

“Commercial Operation Payment” means **[*****For the Upfront Payment Structure: an amount equal to seventy percent (70%) of the Total Compensation Amount*]** / **[*****For the Levelized Payment Structure: an amount equal to*** ***(a) the Total Compensation Amount divided by (b) [insert the total number of years in the*** ***Contract Term plus one year]*]**.

“Concurrent COD Delay Period” has the meaning set forth in Section 2.06(b).

“Concurrent SC Delay Period” has the meaning set forth in Section 2.03(b).

“Confidential Information” means this Agreement, the terms and conditions and other facts with respect to this Agreement, and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party or its Representatives to the other Party or its Representatives in connection with this Agreement, including any and all analyses, compilations, studies, documents, or other material prepared by the receiving Party or its Representatives to the extent containing or based upon such information, data, analyses, documents, and materials. Confidential Information does not include information, data, analyses, documents, or materials that (a) are when furnished or thereafter become available to the public other than as a result of a disclosure by the receiving Party or its Representatives, or (b) are already in the possession of or become available to the receiving Party or its Representatives on a non-confidential basis from a source other than the disclosing Party or its Representatives, provided, to the best knowledge of the receiving Party or its Representatives, as the case may be, such source is not and was not bound by an obligation of confidentiality to the disclosing Party or its Representatives, or (c) the receiving Party or its Representatives can demonstrate that the information has been independently developed by the receiving Party’s personnel acting without use of or reference to the Confidential Information.

“Consolidated Net Worth” means, at any date, with regard to any Person, the higher of (a) the sum (in U.S. Dollars) as of such date of (i) the aggregate paid in capital (including additional paid in capital), (ii) accumulated other comprehensive income or loss, (iii) accumulated surplus or deficit, (iv) minority interests, and (v) any other account which, in accordance with GAAP, constitutes owner’s equity, of such Person and its subsidiaries, determined in accordance with GAAP, as of the end of the most recent calendar month, and (b) the fair market value of such Person’s equity, with any such valuation being that which has been most recently approved by such Person’s independent public accountants from time to time.

“Construction Report” has the meaning set forth in Section 4.05.

“Contract Capacity” has the meaning set forth in Section 1.03.

“Contract Capacity Energy” means the amount of Energy capable of being discharged, expressed in megawatt hours, by the Project based on its Contract Capacity.

“Contract Term” means either (i) the Delivery Period or (ii) if the Agreement is terminated before the end of the Delivery Period, the period from the Commercial Operation Date through the effective date of termination.

“Contract Year” means each year during the Delivery Period as measured from the Commercial Operation Date to the day before the next anniversary of the Commercial Operation Date.

“Control” means, with respect to any Person, the possession, directly or indirectly, of the power either to (i) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of such Person or (ii) direct or cause the direction of management or policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise.

“Control Area” means the electric power system (or combination of electric power systems) under the operational control of the NYISO or any other electric power system under the operational control of another organization vested with authority comparable to that of the NYISO.

“Controlling Person of Owner” means any Person (i) that directly or indirectly Controls Owner and (ii) of which no other Person has Control. As of the Effective Date, the Controlling Person of Owner is **[*Insert name of Controlling Person of Owner*]**.

“CP Milestone Extension Date” has the meaning set forth in Section 4.06(a).

“Credit Facility Agreement” means any credit facility agreement, credit agreement, facility letter, loan agreement, reimbursement agreement, or bond agreement, in each case, between Owner or an affiliate of Owner and a Financing Party.

“Credit Rating” means with respect to any entity, the rating then assigned by a Rating Agency to such entity’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancements) or, if no such rating is assigned by any Ratings Agency, then the general corporate credit rating or long-term issuer rating assigned to such entity by a Rating Agency. If an entity is rated by more than one Rating Agency and the ratings are at different levels, then “Credit Rating” means the lowest such rating.

“Critical Path Milestone” means any of the milestones set forth in Section 4.06.

“CSI Masterformat Divisions” means an industry standard for organizing categories of specifications for construction as published by Construction Specifications Institute.

“Day-Ahead Market” or “DAM” has the meaning set forth in the NYISO Tariff.

“Default Interest Rate” means the Interest Rate increased by three hundred basis points.

“Defaulting Party” has the meaning set forth in Section 10.01.

“Delivery Period” has the meaning set forth in Section 2.02.

“Derate” means a reduction in the Charging Capacity, Discharging Capacity or Storage Capacity of the Project, as applicable.

“Development Security” means the collateral required under Section 7.01.

“Discharging Capacity” means the maximum dependable operating capability of any storage resource to discharge energy, and shall include any other products that may be developed or evolve from time to time during the Term that relate to the capability of a storage resource to store and discharge energy.

“Dispatch Notice” means the operating instruction, and any subsequent updates, given by CECONY to Owner, directing the Project to discharge at a specified megawatt output or pursuant to a dispatch given by the NYISO. Dispatch Notices may be communicated electronically (i.e. through Automated Dispatch System, as defined by the NYISO Tariff, or e-mail), via facsimile, telephonically or other verbal means. Telephonic or other verbal communications shall be documented (either recorded by tape, electronically or in writing) and such recordings shall be made available to both CECONY and Owner upon request for settlement purposes. For the avoidance of doubt, any Schedule, including self-schedules, submitted by CECONY or awarded by the NYISO in order to allow for an Owner Initiated Test shall not be considered a Dispatch Notice for the period that is the greater of:

(a) the number of hours required to complete the test, or

(b) the minimum amount of time that the Project must stay on-line after being started-up prior to being shutdown, due to physical operating constraints.

“Dispute” means any dispute, claim or controversy arising out of, or relating to, this Agreement, or a Party’s performance hereunder.

“Distributed Control System” or “DCS” means the integrated automation system for monitoring and controlling the critical operation functions of a facility that perform tasks essential to the charge, discharge and storage of electricity.

“Distribution Charging Energy Costs” means distribution system costs associated with delivery of the Charging Energy Requirements pursuant to a utility tariff, including stand-by charges, buyback charges, and wheeling charges.

“Distribution Level Demand Response Event” has the meaning set forth in Section 6.03(a)(ii).

“DLDR Event LDs” has the meaning set forth in Section 6.03(a)(ii).

“Early Termination Date” has the meaning set forth in Section 10.02.

“Effective Date” has the meaning set forth in the preamble.

“EFORD” has the meaning set forth in Section 3.01(b).

“Energy Management System” means the software application used to control the battery energy storage system’s operations and process Project performance data.

“Energy Resource Interconnection Service” or “ERIS” means the service provided by NYISO to interconnect the Project to the New York Transmission System to enable the New York Transmission System to receive Energy and Ancillary Services from the Project.

“Encumbrance” means any lien, pledge, mortgage, deed of trust, security interest, charge, claim, easement, encroachment or other similar encumbrance.

“Energy” means all electrical energy produced, discharged and stored by the Project, measured in kilowatt-hours or multiple units thereof. Energy shall include any energy-based products and services that may be developed by or evolve from the Project from time to time during the Term, including participation in the DAM or RTM.

“Energy Delivery Point” means the point set forth in Section 1.02(c).

“Environmental Costs” means costs incurred in connection with (1) acquiring and maintaining all environmental Permits for the Project, and (2) the Project’s compliance with all applicable Environmental Law, including (i) capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Project, (ii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iii) costs of permit maintenance fees and emission fees as applicable, and (iv) costs associated with the disposal and clean-up of Hazardous Materials introduced to the Site, disposal of battery cells, and the decontamination or remediation, on or off the Site, necessitated by the introduction of such Hazardous Materials on the Site.

“Environmental Laws” means all applicable federal, state, or local laws (including common law) statutes, regulations, ordinances or rules, and orders, judgements, decrees, injunctions, rulings, restrictions, protocols, and requirements of any Governmental Authority (including actions by regulatory and judicial agencies and tribunals) relating in whole or in part to the protection of the environment (including, without limitation air, surface water, ground water, or soil) or relating to human health and safety and includes those laws relating to the storage, generation, use, handling, manufacture, processing, transportation, treatment, release or disposal of any Hazardous Materials, including the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq., the Toxic Substances and Control Act, 15 U.S.C. § 2601 et seq., the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., the New York Environmental Conservation Law, and the New York Navigation Law, each as amended from time to time.

“EPC Contract” means Owner’s engineering, procurement and construction contract with the EPC Contractor.

“EPC Contractor” means the entity selected by Owner and approved by CECONY to perform the engineering, procurement and construction activities for the Project.

“EPT” or “Eastern Prevailing Time” means the prevailing time in the Eastern Time Zone.

“Equitable Defense” means any bankruptcy, insolvency, reorganization or other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain equitable remedies may be pending.

“Equivalent Hour” means, with respect to any hour during a Planned Outage, 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.

“Event of Default” has the meaning set forth in Section 10.01.

“Executive” has the meaning set forth in Section 12.01.

“FERC” means the Federal Energy Regulatory Commission.

“Financing Party” means a lender or equity investor (including any trustee or agent on behalf of such party) providing equity or debt financing or refinancing to Owner or any of its Affiliates, whether that financing or refinancing takes the form of private debt or equity, public debt or equity or any other form.

“Force Majeure” means any occurrence that was not reasonably foreseeable as of the Effective Date that:

1. In whole or in part:
	1. delays a Party’s performance under this Agreement;
	2. causes a Party to be unable to perform its obligations; or
	3. prevents a Party from complying with or satisfying the conditions of this Agreement;
2. Is not within the reasonable control of that Party;
3. Is not the result of the negligence or fault of that Party or a lack of due diligence, a breach of the Agreement or a failure to comply with Good Utility Practice by that Party; and
4. The Party has been unable to overcome such occurrence by the exercise of due diligence,
5. Provided that the criteria set forth in subsections (a)-(d) are met, a Force Majeure includes:
	1. acts of God, including hurricanes, tornadoes, lightning, earthquakes, flood, landslides, unusually severe weather and drought;
	2. acts of civil or military authority;
	3. acts of war whether declared or undeclared;
	4. acts of terrorism;
	5. civil disturbance, insurrection or riot;
	6. civil strife, revolts or rebellions; sabotage, theft or vandalism;
	7. fire, not caused by the Project;
	8. epidemic or plague; quarantine;
	9. delay or accident in shipping or transportation; or perils of the sea; and

Force Majeure does not include:

1. Any failure to comply with Applicable Law;
2. Any inability to obtain sufficient labor, equipment, materials or other resources to construct, own, operate or maintain the Project, except to the extent such event is the direct result of an event that would otherwise qualify as a Force Majeure;
3. Economic hardship;
4. Any change in market conditions, including those affecting the cost or availability of labor, equipment, materials or other resources, except to the extent such event is the direct result of an event that would otherwise qualify as a Force Majeure;
5. 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, except to the extent such event is the direct result of an event that would otherwise qualify as a Force Majeure;
6. Curtailment or reduction in deliveries as a result of distribution system contingencies or planned outages if the Project is interconnected at a level of reliability less than the area’s level of reliability [***N-1/N-2***][[5]](#footnote-6);
7. 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;
8. 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;
9. 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;
10. 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;
11. 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 CECONY under this Agreement;
12. Owner’s failure to obtain or retain any tax credits or incentives with respect to any portion of the Project; and
13. changes in temperature or humidity conditions.

“GAAP” means United States generally accepted accounting principles as in effect from time to time, consistently applied.

“Generation Management System” has the meaning set forth in Section 5.02(a).

“Generator Operator” means the entity that operates generating unit(s) and performs the functions of supplying energy and interconnected operations services and the other functions of a generator operator as described in NERC’s Statement of Compliance Registry Criteria located on the NERC website.

“Generator Owner” means an entity that owns the Project and has registered with NERC as the entity responsible for complying with those NERC Reliability Standards applicable to owners of generating units as set forth in the NERC Reliability Standards.

“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

“Governmental Authority” means:

(a) any federal, state, local, municipal or other government;

(b) any governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power;

(c) any court or governmental tribunal; and

(d) NYISO.

“Governmental Charges” has the meaning set forth in Section 13.04.

“Guaranteed Availability” has the meaning set forth in Section 6.03(a)(i).

“Guaranteed Capacity” has the meaning set forth in Section 6.03(b)(i)

“Guaranteed Commercial Operation Deadline” has the meaning set forth in Section 2.06.

“Guaranteed Ramp Rate” has the meaning set forth in Section 6.03(d)(i).

“Guaranteed Round-Trip Efficiency” has the meaning set forth in Section 6.03(c)(i).

“Hazardous Material” means any substance or material that has been defined or regulated by any Environmental Law as a “hazardous substance”, “hazardous waste”, “hazardous material”, or “toxic substance” or words of similar import, under any Environmental Law, including substances that are radioactive, toxic, hazardous, chemicals or otherwise a pollutant, contaminant or waste, or any substance waste or material having any constituent elements displaying any of the foregoing characteristics.

“Indemnified Party” has the meaning set forth in Section 13.02.

“Independent Engineer” means an engineer engaged by Owner from a nationally recognized engineering firm with battery storage experience, as reasonably acceptable to CECONY.

“Initial Commercial Operation Test” means tests performed in accordance with the testing procedures, requirements, and protocols set forth in Exhibit C in advance of Commercial Operation.

“Initial Negotiation End Date” has the meaning set forth in Section 12.01.

“Initial Negotiation Start Date” has the meaning set forth in Section 12.01.

 “Interconnection Agreement” means the agreement between Owner, Transmission Owner and NYISO to interconnect the Project with the New York Transmission System, or the agreement between Owner and Transmission Owner to interconnect the Project with the local distribution system, as applicable.

“Interconnection Commercial Operation Date” means the “Commercial Operation Date” as defined under the Interconnection Agreement at the time of execution of the Interconnection Agreement.[[6]](#footnote-7)

“Interconnection Cost” means costs to be incurred by the Transmission Owner for Interconnection Facilities and Network Upgrades for which Owner must pay without any right to reimbursement by the Transmission Owner.

“Interconnection Facilities” means all Attachment Facilities, Network Upgrades, and other facilities that are required to connect the Owner’s Project to the New York Transmission System.

“Interconnection In-Service Date” means the “In-Service Date” as defined under the Interconnection Agreement at the time of execution of the Interconnection Agreement.[[7]](#footnote-8)

“Interconnection Point” has the meaning set forth in Section 1.02(d).

“Interconnection Queue Position” is the order of Owner’s valid request for interconnection relative to all other valid interconnection requests, as specified in Section 1.02(e).

“Interconnection Study” means any of the studies defined in any Transmission Owner’s tariff and/or NYISO Tariff, as applicable, that reflect methodology and costs to interconnect the Project to the Transmission Owner’s electric grid.

“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 Fault 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 Owner Personnel.] [***For distribution-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 a delay beyond [***insert date***] 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 Fault 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 Owner Personnel.]

“Interest Rate” means an annual rate of interest equal to fifty basis points above the prime rate of interest effective for the payment due date as published in the Wall Street Journal under “Money Rates”. If there is no publication on the payment due date, then the most recent preceding day’s publication will be used. The Interest Rate shall not be more than the lawful maximum rate of interest.

“Interim Financial Statements” has the meaning set forth in Section 7.07(b).

“JAMS” has the meaning set forth in Section 12.02.

“Lender” means any financial institutions that provide(s) development, bridge, construction, permanent debt or Tax Equity Financing or refinancing for the Project to Owner.

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit substantially in the form of Exhibit N (or is otherwise acceptable to CECONY, in its sole discretion), provided by Owner from an issuer acceptable to CECONY that must meet each of the following criteria: (a) is a U.S. commercial bank or a U.S. branch of a foreign commercial bank, (b) with total assets of at least ten billion U.S. dollars (US$10,000,000,000) and (c) a Credit Rating of at least “A-” from S&P or “A3” from Moody’s. If such bank is rated by more than one Ratings Agency and the ratings are at different levels, the lowest rating shall be the Credit Rating for this purpose.

“Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events:

(a) the issuer of such Letter of Credit fails to maintain a Credit Rating of at least “A-” from S&P or “A3” from Moody’s, as required in the definition of “Letter of Credit”;

(b) the issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;

(c) the issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;

(d) such Letter of Credit expires or terminates, or fails or ceases to be in full force and effect at any time during the Term of the Agreement, in any such case without replacement;

(e) Owner fails to provide an extended or replacement Letter of Credit prior to thirty (30) days before the Letter of Credit expires or terminates; or

(f) the issuer of such Letter of Credit becomes Bankrupt;

*provided*, no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

“Manager” has the meaning set forth in Section 12.01.

“Market-Based Rate Authority” has the meaning set forth in Section 2.04(d).

“Maximum Battery Throughput” means the amount of Energy discharged in a Contract Year, as measured in kWh, under “Maximum Battery Throughput” as set forth in Exhibit D.

“Maximum Charge” has the meaning set forth in Exhibit D.

“Maximum Discharge” has the meaning set forth in Exhibit D.

 “Maximum Storage Level” means the MWh amount under “Maximum Storage Level” as set forth in Exhibit D.

“Mediator” has the meaning set forth in Section 12.02.

“Milestone Schedule” means Owner’s schedule to develop the Project as described in Section 4.05 and as set forth in Exhibit F, including any revisions thereto accepted by CECONY in accordance with this Agreement.

“Minimum Storage Level” means the MWh amount under “Minimum Storage Level” as set forth in Exhibit D.

“Moody’s” means Moody’s Investors Service, Inc., or any successor entity.

“MW” means a megawatt of alternating current electric energy, unless expressly stated as direct current electric energy.

“MWh” means megawatt-hour of alternating current electric energy, unless expressly stated as direct current electric energy.

“NERC” means the North American Electric Reliability Corporation.

“NERC Reliability Standards” means those reliability standards applicable to a generating or storage facility, or to the Generator Owner or the Generator Operator with respect to a generating or storage facility, that are adopted by NERC and approved by the applicable regulatory authorities and available on the NERC website.

“NERC Standards Non-Compliance Penalties” means all penalties assessed by FERC, NERC (through NPCC or otherwise) or other Governmental Authority for violations of the NERC Reliability Standards by the Project or Owner, as Generator Operator or other applicable category.

“Network Upgrades” means all apparatus, modifications, and additions to the Transmission Owner’s electric system, the New York Transmission System or, if applicable, an affected system, that is required at or beyond the Interconnection Point that are required for the Project to connect reliably to the New York Transmission System.

“New York Transmission System” means the transmission and distribution facilities operated by the NYISO and Transmission Owner, respectively, now or hereafter in existence, which provide energy transmission service downstream from the Energy Delivery Point.

“Non-CECONY Charge” has the meaning set forth in Section 6.05(d).

“Non-CECONY Dispatch” means a dispatch by Owner either (a) pursuant to an Owner Initiated Test or (b) as required by Applicable Law.

“Non-Defaulting Party” has the meaning set forth in Section 10.02.

“Non-Excused Cause” has the meaning set forth in Section 2.03(b).

“Notices” has the meaning set forth in [Section 14.02](#_Notices.)(a).

“NPCC” means Northeast Power Coordinating Council, Inc.

“NYISO” means the New York Independent System Operator, Inc.

“NYISO Markets” means any of the wholesale electricity markets administered by the NYISO, including the DAM, RTM, Capacity markets, and Ancillary Services markets.

“NYISO Tariff” means (a) NYISO’s Market Administration and Control Area Services Tariff, (b) NYISO’s Open Access Transmission Tariff, and (c) all rules, practices, protocols, procedures and standards adopted by NYISO related to each of (a) and (b), as the same may be amended or modified from time to time.

“NYPSC” means the New York State Department of Public Service, including the New York State Public Service Commission and its staff.

 “Operating Day” means a day within the Contract Term on which the Project operates.

“Operating Restrictions” means the limitations on CECONY’s ability to schedule and use Capacity, Ancillary Services, and Energy during the Contract Term that are identified in Exhibit D.

“Outage” means a disconnection, separation or reduction in Capacity, planned or unplanned, of one or more elements of the Project.

“Outage Schedule” has the meaning set forth in Section 6.03(e)(i).

“Owner” has the meaning set forth in the preamble.

“Owner Fault” means (a) Owner’s failure to perform its obligations under this Agreement, or (b) the fault, negligence, or willful misconduct of Owner or any of Owner’s Affiliates or any of their respective employees, contractors, agents or representatives.

“Owner Initiated Test” means (a) a test of the Project during any period in the Contract Term in which Owner has not received a Dispatch Notice or Charging Notice, or such test interferes with the Project’s ability to meet a Dispatch Notice or Charging Notice, (b) any test performed before the Commercial Operation Date.

“Party” or “Parties” has the meaning set in the preamble.

“Performance Assurance” means the collateral required under Section 0.

“Performance Guarantees” means, collectively, the Guaranteed Availability, the Guaranteed Capacity, the Guaranteed Round-Trip Efficiency and the Guaranteed Ramp Rate.

“Performance Testing” means testing as described in Exhibit C.

“Permits” means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the NYISO, in order to develop, construct, operate, maintain, improve, refurbish and retire the Project, including environmental permits.

“Permit Requirements” means any requirement or limitation imposed as a condition of a permit or other authorization relating to construction or operation of the Project or related facilities, including limitations on any pollutant emissions levels, limitations on fuel combustion or heat input throughput, limitations on operational levels or operational time, limitations on any specified operating constraint; or any other operational restriction or specification related to compliance with any Applicable Law.

“Permitted Encumbrances” means (i) Encumbrances for taxes, impositions, assessments, fees, or other governmental charges levied or assessed or imposed not yet delinquent or being contested by appropriate proceedings and for which appropriate reserves have been established in accordance with GAAP, (ii) Encumbrances created by CECONY, or its successors and assigns, (iii) Encumbrances securing obligations of Owner under commercially reasonable and appropriate construction financing, and (iv) any Encumbrances permitted through prior written consent by CECONY.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Planned Outage” has the meaning set forth in [Section 6.04(a)](#_Planned_Outages.).

“Planned Outage Cap Extension Request” has the meaning set forth in Section 6.04(a)(iii).

“Prevention Equipment” means all equipment necessary to prevent, suppress and contain any fire, flooding, explosion, leak of hazardous material or other injury or damage at the Site.

“Products” has the meaning set forth in [Section 1.01(a)](#_Product.).

“Project” has the meaning set forth in Section 1.02.

“Project Security” means Development Security or Performance Assurance.

“Punch List” has the meaning set forth in Section 2.07(g).

“Qualified Substitute Owner” has the meaning set forth in Section 14.04(b).

“Ramp Up Rate Test” has the meaning set forth in Exhibit C.

“Ramp Down Rate Test” has the meaning set forth in Exhibit C.

“Rating Agency” means either of S&P or of Moody’s, and “Rating Agencies” means S&P and Moody’s, collectively.

“Real-Time Market” or “RTM” has the meaning set forth in the NYISO Tariff.

“Recovery Plan” has the meaning set forth in Section 4.06(a).

“Remaining Contract Period Market Value” means the net present value of the net earnings or net economic benefits projected to be realized by CECONY from monetization or utilization of the expected Products over the remaining portion of the Delivery Period following the effective date of termination of this Agreement for an Owner Event of Default, as determined in a commercially reasonable manner by a reputable independent third-party energy market consulting firm selected by CECONY. The Remaining Contract Period Market Value shall be calculated assuming that the Performance Guarantees are met during the remaining portion of the Delivery Period following the effective date of termination of this Agreement.

“Remaining Contract Value” means the net present value of the portion of the Total Compensation Amount that would have been payable to Owner under this Agreement for the remaining portion of the Delivery Period following termination of this Agreement for an Owner Event of Default if the Agreement had not been terminated, as determined by CECONY. The Remaining Contract Value shall be calculated assuming that Owner meets all of its performance obligations under this Agreement (including meeting the Performance Guarantees) during the remaining portion of the Delivery Period following the effective date of termination of this Agreement.

“Remediation Outage” has the meaning set forth in Section 8.05(c).

“Remediation Plan” has the meaning set forth in Section 8.05(b).

“Remediation Time” has the meaning set forth in Section 8.05(b).

“Representatives” means the respective officers, directors, trustees, employees, and agents (including counsel, accountants and advisors) of the Parties and their Affiliates.

“Retail Tariff Program” means any compensation programs under the CECONY’s Schedule for Electricity Service, P.S.C. No. 10 – Electricity tariff, such as (but not limited to) demand response programs and Value Stack Tariff (as defined therein) credits.

“Round-Trip Efficiency” or “RTE” means the ratio of Energy put in to the Storage Unit, measured in MWh, to the Energy delivered from storage to the Energy Delivery Point, expressed as a percentage, which ratio shall be measured as shown in Exhibit C.

“S&P” means Standard & Poor’s Financial Services LLC, or any successor entity.

“Schedule,” “Scheduled” or “Scheduling” means the action of CECONY in submitting bids to the NYISO and receiving all NYISO Markets results from the NYISO.

“SEC” means the Securities and Exchange Commission.

“Security Interest” has the meaning set forth in Section 7.04.

“Settlement Interval” means any one of the twelve five-minute (5 minute) time intervals beginning on any hour and ending on the next hour (e.g. 12:00 to 12:05, 12:05 to 12:10, etc.), as NYISO may modify such time intervals from time to time.

“Site” means the real property on which the Project is, or will be located, as further described in Section 1.02(b) and Exhibit B, including any accompanying parcel maps, surveys, or legal descriptions.

“Site Control” means that Owner has control of the Site through:

(a) fee simple ownership of the Site; or

(b) a valid and enforceable lease agreement;

in each case, that is not subject to any restriction or encumbrance prohibiting, restricting or otherwise affecting Owner’s ability to construct, install, own, operate and maintain the Project and has a duration of not less than the Term.

“Spinning Reserve” has the meaning set forth in the NYISO Tariff.

“State of Charge” or “SOC” means, at a particular time, the ratio of (a) the Stored Energy Level of the Project, minus the Minimum Storage Level of the Project specified in Exhibit D to (b) the Maximum Storage Level of the Project, expressed as a percentage (e.g., 80% State of Charge).

“Station Use” has the meaning set forth in Section 5.01(c).

“Storage Capacity” means the maximum amount of energy that is capable of being stored in a storage device, and shall include, without limitation, any other products that may be developed or evolve from time to time during the Term that relate to the capability of a storage resource to store energy.

“Storage Capacity Rating” means a rating of Storage Capacity established by testing of the Project, as provided in Exhibit C.

“Storage Rating Test” means a test of the Project’s Storage Capacity Rating conducted in accordance with the requirements of Exhibit B.

“Storage Unit” means the storage unit specified in Exhibit B.

“Stored Energy Level” or “SEL” means, at a particular time, the amount of electric energy in the Project, expressed in MWh.

“Straddle Period Unavailability Event” means an event that reduces the Actual Availability of the Project for a period commencing in one Contract Year and ending in the next Contract Year.

“Substantial Completion” has the meaning set forth in Section 2.04.

“Substantial Completion Deadline” has the meaning set forth in Section 2.03.

“Substantial Completion Delay Liquidated Damages” has the meaning set forth in Section 2.05(a).

“Supply Charging Energy Costs” means the costs associated with obtaining Charging Energy Requirements from NYISO Markets.

“System Protection Facilities” means the equipment, including necessary protection signal communications equipment, required to (1) protect the New York Transmission System from faults or other electrical disturbances occurring at the Project and (2) protect the interconnected Project from faults or other electrical system disturbances occurring on the New York Transmission System or on other delivery systems or other generating systems to which the New York Transmission System is directly connected.

“Tax Equity Financing” means a transaction or series of transactions involving one or more investors seeking a return that is supported or enhanced by the receipt of tax credits and/or tax depreciation and generally (i) described in Revenue Procedures 2001-28 (sale-leaseback (with or without “leverage”)), 2007-65 (flip partnership) or 2014-12 (flip partnership and master tenant partnership) as those revenue procedures are reasonably applied to a battery storage project transaction (as opposed to a wind farm or rehabilitated real estate) or (ii) contemplated by Section 50(d)(5) of the Internal Revenue Code of 1986, as amended (a pass-through lease).

“Term” has the meaning set forth in Section 2.01.

“Termination Payment” means the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, as calculated under Section 10.03.

“Total Compensation Amount” means the amount equal to the product of $**[*amount*]** per MW multiplied by the Contract Capacity.

“Transmission Owner” means any entity or entities responsible for the interconnection of the Project with a Control Area or transmitting the Energy on behalf of Owner from the Project to the Interconnection Point.

“Unavailability Notice” means the hourly schedule of the Available Capacity (including Energy and Ancillary Services) that the Project is expected not to be available for each hour of an Operating Day.

“Unplanned Outage” has the meaning set forth in Section 6.03(g).

“Warranty Requirements” has the meaning set forth in Section 4.01(k).

***\*\*\* End of*** ***EXHIBIT A \*\*\****

**EXHIBIT B**

**PROJECT DESCRIPTION**

PART I. DESCRIPTION OF PROJECT.

|  |  |
| --- | --- |
| Project Name |  |
| Storage Unit |  |
| Contract Capacity (MWAC) |  |
| Contract Capacity Energy (MWh) |  |
| Site Address |  [ # Street Name, City, CA, zip code] |
| Storage Unit Technology |   |
| Primary Storage Fuel Type |  Electricity |
| Peak Discharging Hours  |  |
| NYISO Resource ID | TBD |
| Deliverability restrictions |  None  |
| Charging Restrictions |  |
| Discharging Restrictions |  |
| Interconnection Queue Number |    |
| Interconnection Voltage (kV) |  |
| Cell manufacturer and Type |  |
| Power Conversion System including Inverter manufacturer and model |  |

1. Project Description

*{CECONY Comment: Owner may provide additional written description of the* *site beyond what is summarized in* *Part II of this* *Exhibit B.}*

2. Site Plan Drawing

*{CECONY Comment: Owner must provide a depiction of the Project and where it is located on the Site. Details shall include the Interconnection Point, points of ingress and egress, adjacent roads, labels of the Project components and a legend if* *necessary}*

3. Site Legal Description

*{CECONY Comment: Owner must provide a legal description of the* *site, including APN number.}*

4. Site Map

*{CECONY Comment: Owner must provide a map of the area where the* *project is located**. The map should indicate major highways and/or landmarks near the* *project as well as other roadways important to locate the* *site**. The map should also include a latitude and longitude for the* *site.}*

PART II. ELECTRICAL THREE LINE DIAGRAM.

To be provided by Owner prior to Commercial Operation and within ten (10) Business Days of Owner’s receipt, pursuant to the requirements of Section 4.03(a)(v).

*{CECONY Comment: Owner must provide an electrical three line diagram that depicts all of the major electrical equipment that is part of the* *site**. This includes inverters, transformers, meters, breakers, etc**. Include ratings when possible**. This drawing must also show the Interconnection Point and the Energy Delivery Point.}*

***\*\*\* End of*** ***EXHIBIT B \*\*\****

**EXHIBIT C**

**STORAGE RATING TESTS**

1. **Storage Rating Test**. Owner shall provide advance notice to CECONY for, and CECONY shall be entitled to be present at, any and all commissioning, permitting and performance tests conducted pursuant to this Agreement that are material to Owner’s satisfaction of its material performance obligations under this Agreement, as determined by CECONY in its reasonable discretion, including (but not limited to) those performance tests conducted pursuant to the EPC Contract as a condition precedent to achieving substantial completion under the EPC Contract, and shall be entitled to have an independent third party witness any such testing at CECONY’s sole expense. Upon no less than ten (10) Business Days prior notice to CECONY, Owner shall schedule and complete a Storage Rating Test in accordance with this Exhibit C as a condition to achieving Commercial Operation. All operations during testing shall be done in accordance with Good Utility Practice, Applicable Law and Permit Requirements
2. **Subsequent Storage Rating Tests**. Following the Commercial Operation Date, CECONY shall have the right to schedule a Storage Rating Test not more frequently than twice per Contract Year; provided, however, in any Contract Year, CECONY shall have the right to schedule additional Storage Rating Tests no more frequently than once per month if the operating data of the Project indicates that any of the performance metrics of the Project are deficient, as reasonably determined by CECONY. If CECONY or Owner seeks to conduct a specific performance test, the tests must be, at a minimum, grouped accordingly: Capacity and RTE; Ramp Rate (as described in 6.03(d)), and Swing; Signal Following independently and Voltage Support Service individually.
3. **Test Results Reporting**.
	1. No later than five (5) business days following any Storage Rating Test, Owner shall submit a testing report detailing results and findings of the test. The report shall include at a minimum:
		1. digital plant log sheets verifying the operating conditions and output of the Project, including the following data at one (1) second resolution:
			1. Time;
			2. Storage system MW output in AC at the Energy Delivery Point;
			3. Storage system ramp rate as measured in MW/min at the Energy Delivery Point;
			4. SOC and Usable SOC;
			5. Storage system MVAR at the Energy Delivery Point;
			6. Power factor at the Energy Delivery Point;
			7. Frequency as measured in Hertz at the Energy Delivery Point;
			8. AC current and voltage at the Energy Delivery Point;
			9. DC current and voltage to be measured at or by the power conversion system; and
			10. Additional variables that CECONY, in its sole discretion, deems relevant and request Owner prior to the test to capture and report;
		2. a record of the personnel present during all or any part of the Test, whether serving in an operating, testing, monitoring or other such participatory role;
		3. a record of any unusual or abnormal conditions or events that occurred during the Test and any actions taken in response thereto;
		4. Owner’s statement of either Owner’s acceptance of the Test or Owner’s rejection of the Test results and reason(s) therefor.
	2. Within ten (10) Business Days after receipt of such report, CECONY shall notify Owner in writing of either CECONY’s acceptance of the Test results or CECONY’s rejection of the Test and reason(s) therefore. If CECONY rejects the results of any Test or Retest, CECONY may require a retest.
4. **Operating Personnel**. During any Test, the same operating personnel shall operate the Project that Owner contemplates will operate the Project during the Term.
5. **CECONY Representative**. CECONY shall be entitled to have at least two (2) representatives from CECONY and one (1) independent third party witness present to witness each Test and shall be allowed unrestricted access to the area from where the plant is being controlled (e.g., plant control room), and unrestricted access to inspect the instrumentation necessary for Test data acquisition prior to commencement of any Test. CECONY shall be responsible for all costs, expenses and fees payable or reimbursable to its representatives and the third party, if any.
6. **Testing Protocols**.
	1. **NYISO Coordination**. All testing shall be coordinated with the NYISO and CECONY to ensure grid conditions are available for testing conditions. Unity power factor shall be tested (power factor must be one to conduct the test) unless otherwise specified by NYISO or utility practices.
	2. **Storage Rating Test Sequencing**:
		1. **Storage Rating Test and Round Trip Efficiency Test**:

STEP 1: Precharging Project prior to Storage Rating Test. To commence a Storage Rating Test the Project must be charged to 100% Usable SOC.

STEP 2: Initiating Storage Rating Test. CECONY shall initiate a dispatch instruction for the Project to be discharged at its Maximum Charge (MW) as defined in Exhibit D per Exhibit B as soon as practicable. Owner will report when the Project has reached 0% Usable SOC.

STEP 3: Calculating Storage Capacity Rating. The total amount of discharged energy delivered to the Energy Delivery Point (expressed in MWh AC) during each hour of discharge shall be measured during four continuous hours of discharge.

 The average MWh AC discharged during the four-hour test shall determine the Storage Capacity Rating, which shall be expressed in MW AC.

STEP 4: Recharging after Storage Rating Test. Within two hours of the Project reaching 0% Usable SOC, CECONY shall initiate a dispatch instruction for the Project to be continuously charged with Maximum Charge (MW) as defined in Exhibit D. Owner will report when the Project has reached 100% Usable SOC.

STEP 5: Calculating Round Trip Efficiency. The total amount of discharged energy delivered to the Energy Delivery Point (expressed in MWh AC) during the period of continuous discharge as measured in Step 2 shall be summed and divided by the total amount of charged energy (expressed in MWh AC) as measured in Step 4 during the period of continuous charge, after CECONY has initiated the dispatch instructions.

The resulting ratio shall determine the Round-Trip Efficiency.

RTE shall be net of losses due to transformation.

If such transformation is not separately metered and accounted for, prior to COD, CECONY, in its sole discretion, shall establish a protocol for netting such electric loads out of the RTE calculation.

* + 1. **The Storage Ramp Rate Test**

STEP 6: Precharging Storage prior to Storage Ramp Rate Test. To commence a Storage Ramp Rate test the Project must be charged to between 40% and 60% Usable SOC.

STEP 7: Initiating Storage Ramp Up Rate Test. CECONY shall issue dispatch instruction as soon as practicable to increase Project output from zero (0) MW to its Maximum Charge (MW)as defined in Exhibit D.

STEP 8: Calculating Storage Ramp Up Rate. Each minute following the CECONY issued dispatch instruction, a meter reading of power (as measured in MW AC) shall be taken at the Energy Delivery Point. After five (5) minutes, the corresponding five (5) distinct meter readings will be summed and then divided by fifteen (15).

The resulting number shall be recorded as the test Ramp Up Rate.

Ramp Up Rate shall be tested four (4) times within an hour as part of the Storage Ramp Rate Test with the average of the three highest results serving as the recorded Ramp Up Rate for the test. This must be higher than Regulation Up Ramp Rate (MW/min) defined in Exhibit D.

STEP 9: Initiating Storage Ramp Down Rate Test. Within one hour of the Ramp Up Test, CECONY shall issue dispatch instruction to decrease Project output (charge the energy storage system) from zero (0) MW to its Maximum Discharge (MW) as defined in Exhibit D as soon as practicable.

STEP 10: Calculating Storage Ramp Down Rate. Each minute following the CECONY issued dispatch instruction, a meter reading of power (as measured in MW AC) shall be taken at the Energy Delivery Point. After five (5) minutes, the corresponding five (5) distinct meter readings will be summed and then divided by fifteen (15).

The resulting number shall be recorded as the test Ramp Down Rate.

Ramp Down Rate shall be tested four (4) times within an hour as part of the Storage Ramp Rate Test with the average of the three lowest results serving as the recorded Ramp Down Rate for the test.

Step 11: The Ramp Rate shall be calculated as the mean of the absolute value of (x) the Ramp Up Rate and (y) the Ramp Down Rate.

* + 1. **Signal Following and Swing Test**

STEP 11: Precharging Project prior to Storage Signal Following and Swing Test. To commence a Storage Signal Following and Swing Test the Project must be charged to between 40% and 60% Usable SOC.

STEP 12: Initiating the Signal Following Test. Beginning with the Project receiving a dispatch instruction of 0 MW, CECONY shall initiate a dispatch instruction for the Project to be charged or discharged at any power amount between Maximum Charge (MW) and Maximum Discharge, as determined solely by CECONY.

The Project shall ramp to the selected power amount and then hold that output amount for ten (10) minutes.

CECONY, in its sole discretion, may elect to repeat a Signal Following Test up to four (4) different times to demonstrate the Project’s ability to accurately follow a dispatch instruction.

STEP 13: Calculating performance of the Storage Swing Test. Each minute following the CECONY issued dispatch instruction, a meter reading of power (as measured in MW AC) shall be taken at the Energy Delivery Point.

After ten (10) minutes, if a positive power amount was dispatched, each of the corresponding ten (10) distinct meter readings shall be subtracted from the power amount requested by CECONY in the dispatch instruction.

The absolute difference between the ten distinct meter readings and the power amount requested by CECONY in the dispatch instruction shall be recorded.

* + 1. **Storage Voltage Support Service Verification**

Prior to COD, Owner and CECONY shall test and certify the Project’s ability to both produce and absorb reactive power (collectively, “Voltage Stability Services”) as defined in the NYISO tariff. Such testing and verification shall be done in coordination with NYISO and according to the test procedures detailed by NYISO Manual 2 “Ancillary Services” or by successor requirements as determined by NYISO.

At minimum, a Project must verify it can:

* + - 1. Produce and absorb Reactive Power within the reactive capability range defined in Exhibit D,
			2. Maintain a specific voltage level under both steady-state and post-contingency operating conditions, subject to the limitation of its tested reactive capability,
			3. automatically respond to voltage control signals, and
			4. Successfully perform a reactive power capability tests in accordance with the NYISO procedures.
	1. **Operating Conditions During Testing**. At all times during testing, the Project shall not be operated with abnormal operating conditions such as unstable load conditions, or operation outside of regulatory restrictions. Environmental considerations, such as ambient temperature, humidity, and barometric pressure shall not be considered limiting factors to conducting a Storage Rating Test unless those factors constitute a Force Majeure event. If abnormal operating conditions occur on the day of or during a test, Owner may postpone such test in its reasonable discretion in accordance with the following paragraph.
1. **Communications**. The end-to-end communications will be tested by sending the above signals remotely and confirming the system responds accordingly, with an automated acknowledgment.
2. **Incomplete or Postponed Tests**. If any test is postponed or otherwise not fully completed in accordance herewith, Owner shall repeat such test on the same date as the incomplete test, or if repeating the test on the same day is not reasonably possible, within no longer than ten (10) Business Days after the date of the incomplete test, upon five (5) Business Days’ prior notice to CECONY (or any shorter period reasonably acceptable to CECONY).
3. **Additional Testing Details**. Only energy discharged and delivered at the Energy Delivery Point during Storage Rating Tests shall be included in all calculations of the Storage Ratings Test. CECONY shall cooperate with Owner to coordinate and carry out testing, including by scheduling tests and discharge events.
4. **Supplementary Storage Rating Test Protocol**. No later than sixty (60) days prior to commencing Project construction, Owner shall deliver to CECONY for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit C with additional and supplementary details, procedures and requirements applicable to Storage Rating Tests based on the then current design of the Project (“Supplementary Storage Rating Test Protocol”). Thereafter, from time to time during construction, Owner may deliver to CECONY for its review and approval (such approval not to be unreasonably delayed or withheld) any Owner recommended updates to the then current Supplementary Storage Rating Test Protocol. The initial Supplementary Storage Rating Test Protocol (and each update thereto), once approved by CECONY, shall be deemed an amendment to this Exhibit C.

***\*\*\* End of*** ***EXHIBIT C \*\*\****

**EXHIBIT D**

**PROJECT OPERATING RESTRICTIONS**

|  |  |
| --- | --- |
| **File Update Date:** | **[XX/XX/20XX]** |
| **Technology:** | **[Technology]** |
| **Storage Unit Name:** | **[Unit Name and Number]** |
| 1. **Contract Capacity**
 |
| **Contract Capacity (MW):** | [X] |
| 1. **Total Unit Dispatchable Range Information**
 |
| **Maximum Storage Level (MWh):** | [X] |
| **Minimum Storage Level (MWh):** | [X] |
| **Maximum Discharge (MW):** | [X] |
| **Maximum Charge (MW):** | [X] |
| **Guaranteed Round Trip Efficiency (%)** | [X] |
| **Maximum Battery Throughput per year** | The product of (x) 350 for the number of allowed battery cycles, (y) the Contract Capacity expressed in MW, (z) 4 hours = MWh of throughput |
| **TC. Ancillary Services** |
|  | **AS range and** **capacity** |
| **Mode** | **Lower MW** | **Higher MW** | **Ramp Rate (MW/min)** | **A/S Maximum Capacity (MW) [1]** | **A/S Minimum Capacity (MW)** |
| **Regulation Up** | [X] | [X] | [X] | [X] | [X] |
| **Regulation Down** | [X] | [X] | [X] | [X] | [X] |
| **Spin** | [X] | [X] | [X] | [X] | [X] |
| **Voltage Support Service** |  |  |  |  |  |
|  |
|  |
| [1] As of the Effective Date, NYISO calculates the A/S Maximum Capacity provided by a Storage Unit based on a 10-minute period at the stated Ramp Rate. If NYISO uses a period limitation other than the 10-minute period limitation, the A/S Maximum Capacity for each A/S and region shall be calculated according to (a) NYISO's period limitation while preserving the Ramp Rate stated for each A/S or the (b) range between the minimum A/S capacity and the maximum A/S capacity for such region, whichever is smaller. |
|  |

***\*\*\* End of*** ***EXHIBIT D \*\*\****

**EXHIBIT E**

**MINIMUM WARRANTY REQUIREMENTS**

1. The Project and all component parts, including the energy storage modules, power conversion system, communications and control equipment, cooling and climate control equipment, protection equipment, and switchgear shall be new and of good quality and workmanship; free from defects in materials, workmanship, and design; and conform materially to all applicable specifications and contractual requirements in the Agreement.
2. The Project and all component parts shall perform as specified in Exhibit B and Exhibit D.
3. The Project shall be installed and maintained to ensure continued performance and all costs associated with the replacement and repair of the Project or its component parts, if deemed to be non-performing, shall be borne by the Owner.
4. Owner shall obtain sufficient warranties and/or service agreements to ensure continued performance of the Project for the duration of the Delivery Period.
5. Any warranties or service agreements entered into by Owner with a manufacturer or service provider must indemnify Owner with respect to damages and losses incurred in connection with the negligence and willful misconduct of such manufacturer or service provider.
6. Any service warranty or service agreement obtained by Owner to service the Project shall cover all system maintenance, including system support, problem diagnosis, on-site repair and preventive maintenance.
7. Owner shall provide CECONY with supporting warranty documents from the original equipment manufacturer for energy storage modules, power converter systems, and necessary climate control or key auxiliary equipment that:
	1. covers the entire Delivery Period
	2. articulates standards and methods for establishing that the equipment is not performing to specification and should be repaired or replaced, and
	3. establishes a maximum allowable time for faulty equipment to be repaired or replaced, particularly for long-lead items.

***\*\*\* End of*** ***EXHIBIT E \*\*\****

**EXHIBIT F**

**MILESTONE SCHEDULE**

**[*CECONY Note: Exhibit is subject to modification for*** ***project specific differences*]**

**– Project Schedule –**

Owner has provided dates for development, construction, commissioning, and testing of the Project, showing all significant elements and milestones, as applicable, such as permitting, procurement, financing, engineering, acceptance testing, the Guaranteed Commercial Operation Deadline, and proposed Delivery Period.

In the event any of the milestones are changed, Owner shall deliver an updated Milestone Schedule for approval by CECONY.

**[*CECONY Note: Subject to modification based on bid, however, CECONY expects the Milestone Schedule submitted with the bid to be substantially similar to the table below.*]**

| **No.**  | **Milestones[[8]](#footnote-9)**  | **Date** |
| --- | --- | --- |
| 1\*  | Obtain Site Control  |  |
| 2\*  | Execution of agreement and payment of fee to perform a System Reliability Impact Study (“SRIS”) |  |
| 3\*  | File for all material Permits for the Project needed to meet the Contract Capacity |  |
| 4\*  | Receive a completed SRIS Study (or equivalent) accepted by NYISO Operating Committee sufficient to meet the Contract Capacity of the Project |  |
| 5\*  | Execution of Facilities Study Agreement and payment of fee to join a Class Year Interconnection Facilities Study |  |
| 6\*  | Receive permitting approval(s) from the Fire Department of New York and the New York City Department of Buildings, as applicable |  |
| 7  | Execute an equipment (turbine/panel/battery, etc.) supply contract  |  |
| 8\*  | Execute an Engineering, Procurement and Construction contract  |  |
| 9  | Deliver full Notice to Proceed under EPC contract and begins construction of the Project  |  |
| 10\*  | Execute the Interconnection Agreement with Transmission Owner that is suitable to interconnect the Project and to ensure the deliverability of installed capacity up to the Contract Capacity |  |
| 11\*  | Battery Delivery onsite  |  |
| 12\* | Achieve Mechanical Completion  |  |
| 13\* | Obtain all Permits for the Project needed to achieve Substantial Completion |  |
| 14\*  | Achieve Substantial Completion |  |
| 15\* | Complete On Site Commissioning and Witness Testing  |  |
| 16 | Receive any additional Permits necessary to achieve Commercial Operation  |  |
| 17 | Execute Project Financing  |  |
| 18\*  | Commercial Operation Date   |  |

\* Indicates mandatory milestone

***\*\*\* End of*** ***EXHIBIT F \*\*\****

**EXHIBIT G**

**CONSTRUCTION REPORT**

**Date: \_\_\_\_\_\_\_\_\_\_**

**Executive Summary:**

**Updated Schedule:**

**Updates on General Work Status:**

|  |  |
| --- | --- |
| **Engineering:** |  |
| **Procurement:** |  |
| **Permitting:** |  |
| **Major Construction Activities:** |  |
| **Testing:** |  |
| **Interconnection:** |  |
| **Other:** |  |

**Forecast of Activities for Next Month:**

**Potential Project Issues:**

**Safety Updates:**

**CECONY Action Items:**

***\*\*\* End of*** ***EXHIBIT G \*\*\****

**EXHIBIT H**

**COMMUNICATIONS PROTOCOLS**

**Communication Protocols**

These Communication Protocols are subject to change and shall be modified by CECONY as evolving market conditions and rules may require.

**1. Contacts and Authorized Representatives**

The “Contact Information” tables set forth those contact functions, phone/fax numbers and e-mail information by which each Party elects to be contacted by the other. Notification provided under this Agreement shall be made to the applicable point of contact as set forth in the Contact Information Table. A Party may update its Contact Information by providing Notice to the other Party.

**2. Communication Protocols – General**

2.1 Daily Communication: Owner shall communicate via email to CECONY’s Scheduling Desk the expected status of the Project no later than 10:00 am EPT on the second Business Day prior to the Operating Day. CECONY Scheduling Desk shall deliver the Owner a Dispatch Notice (Day Ahead Schedule) for each of the NYISO market products via email communication by 1:00 pm EPT on the Business Day prior to the Operating Day.

2.2 Intra-day Communication: Within the Operating Day, the Owner shall receive notice of changes to the Day Ahead Schedule associated with charging and discharging via base point signals using six (6) second telemetry as required for NYISO market participation. The Owner shall conversely communicate its response to the NYISO via the same telemetry. CECONY shall monitor the Project’s response via a user interface.

2.3 Unplanned Outage Communications: If the Owner deems that an Unplanned Outage is required, the Owner shall communicate via email to CECONY’s scheduling desk, control center, and utility dispatch rights commercial team at the contacts set forth in Exhibit L no later than 5:00 pm EPT on the third (3rd) Business Day prior to the Operating Day an Unavailability Notice requesting an Unplanned Outage, noting the length of outage requested, status of the Project, and the reason or cause of the outage. CECONY shall submit the Unplanned Outage request to the NYISO for evaluation and approval. Once approved/disapproved, CECONY shall notify the Owner via email communication.

2.4 Forced Outage Communication: If an unanticipated Unplanned Outage occurs, the Owner shall call the CECONY Scheduling Desk no later than fifteen (15) minutes after the Project is offline and provide the best available information reporting the cause and the expected duration of the unplanned outage. As soon as reasonably practicable, the Owner will follow up with an email communication notifying CECONY of Project condition, date and time of event, approximate return time, products available, and any other pertinent information. The Scheduling Desk will inform the NYISO of the assets change in status.

2.5 Return to Service Communications: Expected return from a forced or planned extended outage, shall be communicated to CECONY via email as soon as possible but no later than two (2) Business Days prior to the Operating Day in order to receive a Dispatch Notice for the Operating Day. If returning to service on the same Operating Day as the forced outage the Owner shall notify CECONY as soon as reasonably possible via a telephone communication no later than two (2) hours prior to the top of the hour that the Project is expected to return to service.

2.6 Communication Failure: In the event of a failure of the primary communication link between Seller and CECONY, both Parties will try all available means to communicate, including cell phones or additional communication devices as installed.

2.7 System Emergency: CECONY and Owner shall communicate as soon as possible all changes to the schedule directed by the NYISO as a result of a system emergency to the contacts for the CECONY scheduling desk, control center, and utility dispatch rights commercial team set forth in Exhibit L.

2.8 Confidentiality: Confidential communications between the Parties in discharging their rights and obligations under the Agreement and these Communication Protocols will be subject to the applicable restrictions set forth in the Agreement.

2.9 Staffing: The Parties will make personnel available to communicate regarding the implementation of these Communication Protocols 24 hours a day, seven days a week and will have a staffed Battery Operations Control Center 24 hours a day, seven days a week.

**Contact Information Table**

To be delivered by each Party at Substantial Completion.

**Contacts and Authorized Representatives for CECONY**

Outlined below is the contact and communication information for the relevant contact groups. This list may be amended by CECONY with timely Notice to Seller.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Contact** | **Primary Phone** | **Secondary Phone** | **Fax** | **Email** |
| Scheduling Desk |  |  |  |  |
| Outage Scheduling |  |  |  |  |
| Settlements  |   |  |  |  |
| Contract Administration |   |  |  |   |

**Contacts and Authorized Representatives for Owner**

Outlined below is the contact and communication information for the relevant Owner employees. This list may be amended by Seller with timely Notice to CECONY.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Desk:** | **Contact:** | **Direct Phone:** | **Secondary Phones:** | **Fax** | **Email:** |
| Dispatch Desk (Day-Ahead) |  |  |  |  |  |
| Dispatch Desk (Real Time) |  |  |  |  |  |
| Outage Desk |  |  |  |  |  |
| Plant Manager |  |  |  |  |  |
| Contract Administration |  |  |  |  |  |
| Settlements |  |  |  |  |  |
| Operations Manager |  |  |  |  |  |
| Operations Supervisor |  |  |  |  |  |

**Con Edison – System Operation Procedure**

[***to be provided by CECONY based on the specifics of each Project***]

***\*\*\* End of*** ***EXHIBIT H \*\*\****

**EXHIBIT I**

**OPERATIONAL NOTICE FORMS**

OUTAGE SCHEDULE REPORT

|  |  |
| --- | --- |
| **DATE OF UPDATE** |  |
| **RESOURCE NAME** |  |
|  |  |  |
|  |  |  |  |  |
| **Scheduled Outages** |  |  |  |  |
| **Start Date** | **HE** | **End Date** | **HE** | **MW Available** |
|   |   |   |   |   |
|   |   |   |   |   |
|   |   |   |   |   |
|   |   |   |   |   |
|   |   |   |   |   |

AVAILABILITY NOTICE

Operating Day:

Station: Issued By:

Unit: Issued At:

Unit 100% Available No Restrictions:

Stored Energy Level:

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Hour Ending | Available Capacity to Discharge | Available Capacity to Charge | Minimum Output | AGC Available | AGC Min Limit | AGC Max Limit | Storage Capacity Available to Charge | Storage Capacity Available to Discharge | Comments |
|  | (MW) | (MW) | (MW) (non AGC) | YES/NO | (MW) | (MW) | (MWh) | (MWh) |  |
| 1:00 |  |  |  |  |  |  |  |  |  |
| 2:00 |  |  |  |  |  |  |  |  |  |
| 3:00 |  |  |  |  |  |  |  |  |  |
| 4:00 |  |  |  |  |  |  |  |  |  |
| 5:00 |  |  |  |  |  |  |  |  |  |
| 6:00 |  |  |  |  |  |  |  |  |  |
| 7:00 |  |  |  |  |  |  |  |  |  |
| 8:00 |  |  |  |  |  |  |  |  |  |
| 9:00 |  |  |  |  |  |  |  |  |  |
| 10:00 |  |  |  |  |  |  |  |  |  |
| 11:00 |  |  |  |  |  |  |  |  |  |
| 12:00 |  |  |  |  |  |  |  |  |  |
| 13:00 |  |  |  |  |  |  |  |  |  |
| 14:00 |  |  |  |  |  |  |  |  |  |
| 15:00 |  |  |  |  |  |  |  |  |  |
| 16:00 |  |  |  |  |  |  |  |  |  |
| 17:00 |  |  |  |  |  |  |  |  |  |
| 18:00 |  |  |  |  |  |  |  |  |  |
| 19:00 |  |  |  |  |  |  |  |  |  |
| 20:00 |  |  |  |  |  |  |  |  |  |
| 21:00 |  |  |  |  |  |  |  |  |  |
| 22:00 |  |  |  |  |  |  |  |  |  |
| 23:00 |  |  |  |  |  |  |  |  |  |
| 0:00 |  |  |  |  |  |  |  |  |  |

Comments:

***\*\*\* End of*** ***EXHIBIT I \*\*\****

**EXHIBIT J**

**CYBERSECURITY REQUIREMENTS**

1. Cybersecurity, General Security Requirements.
	1. Defined Terms. For purposes of this Exhibit J, the following terms shall have the meanings set forth below. Capitalized terms used in this exhibit that are note defined herein shall have the meanings ascribed to them in the Agreement.

“Agreement” means the Energy Storage Services Agreement dated \_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_ by and between Consolidated Edison Company of New York, Inc. (“CECONY”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Owner”), as the same may be amended from time to time.

“CECONY Information” means all information, data, compilations, studies, documents, telemetry, and metadata relating to the Project provided by CECONY or to which CECONY is entitled, whether exchanged pursuant to Exhibit H (Communication Protocols) or otherwise pursuant to the terms of this Agreement or any other agreement to which CECONY and Owner are parties.

“Data Protection Requirements” means collectively, (a) all federal, state, and local laws, regulations, or other binding standards issued by a governmental or quasi-governmental agency or commission relating to the protection of certain categories of information, including, without limitation, personally identifiable information and critical energy infrastructure information; (b) to the extent made available to Owner, CECONY’s requirements and procedures relating to a vendor or service provider’s handling and protection of CECONY Information (as such may be amended from time to time); and (c) industry best practices or frameworks to secure information, computer systems, networks, and devices using a defense-in-depth approach.

“Deliverables” means those services, products, goods and equipment provided by Owner to CECONY pursuant to the Agreement.

“Malicious Code” means any computer code designed to allow unauthorized access to, or to disable, delete, disrupt or damage CECONY’s use of, any software or any CECONY computer, system or network, or any data residing on any CECONY computer, system or network, without CECONY’s express written consent, including, without limitation, viruses, malware, ransomware, adware, worms, time bombs, Trojan horses, and other harmful, malicious or destructive computer code.

“Owner Personnel” means Owner, its Affiliates and its and their respective officers, directors, employees, agents and subcontractors.

“Process” “Processing” and “Processed” mean any action or operation that is performed using or upon CECONY Information, whether by physical, automated or electronic means, including without limitation, the use, access, storage, transfer, hosting, collection, recording, organization, maintenance, handling, retrieval, disclosure, sharing, dissemination, copying, processing, erasure, deletion, or destruction of CECONY Information.

“Security Incident” means, to Owner’s knowedge or reasonable belief, there has been any: (i) unauthorized access, acquisition, use, modification, disclosure, corruption or destruction of, or damage to or loss of, CECONY Information, or (ii) other breach of Applicable Law, the Data Protection Requirements, or the requirements of this exhibit.

* 1. Owner shall ensure that any Owner Personnel who receive CECONY Information comply with this Exhibit as if each were Owner. Owner shall be responsible for and liable to CECONY for any breach of the confidentiality provisions set forth in the Agreement or the requirements of this Exhibit by Owner Personnel.
	2. If Owner Personnel connect to the computing systems or networks of CECONY, Owner agrees that Owner Personnel: (i) will not access, and will not permit any other person or entity to access, CECONY’s computing systems or networks without CECONY’s authorization and any actual or attempted access shall be consistent with such authorization; (ii) shall connect and attempt to connect to CECONY’s computing systems and networks only through CECONY’s security gateways/firewalls; and (iii) shall use industry standard virus and malware detection/scanning program prior to any attempt to access CECONY’s computing systems or networks.
	3. Prior to providing access to CECONY’s computing systems or networks as may be required under the Agreement, and to the extent otherwise required by Applicable Law or CECONY’s standard procedures based on the type of work being performed by Owner Personnel or the type of access being granted to Owner Personnel to CECONY facilities, systems, or infrastructure, Owner shall, in accordance with all Applicable Law, perform background investigations of Owner Personnel performing work under the Agreement, and shall provide CECONY with evidence, upon request, that such background checks have been performed and have returned “clear” or other results deemed satisfactory by CECONY. Owner shall not permit any Owner Personnel to perform Services under the Agreement prior to obtaining “clear” or otherwise satisfactory background check results.
	4. Without limiting the foregoing provisions, if CECONY gives Owner Personnel access (either on-site or remotely) to its networks or computer systems to perform services under the Agreement, Owner Personnel shall limit its authorized access and use to those computer systems, files, software or services reasonably required to perform such services.
	5. Owner has provided, to the satisfaction of CECONY, a response to CECONY’s Vendor Product/Service Security Assessment Checklist (the “IT Vendor Risk Assessment”). Owner represents that all information provided to CECONY in connection with the IT Vendor Risk Assessment, including information regarding any of its applicable procedures and/or software, applications, interfaces, or the like was, as of the date of its submission to CECONY, and is, as of the date of the Agreement, true, accurate and complete in all material respects. During the term of the Agreement, Owner shall update the IT Vendor Risk Assessment from time to time as may be reasonably requested by CECONY. Owner shall promptly (i.e., within 5 days) respond to any CECONY comments, request or questions regarding the updated IT Vendor Risk Assessment and shall implement any necessary changes to the security measures described in such updated assessment, including applicable procedures and/or software, applications, interfaces, or the like, as may be required by CECONY. Owner shall promptly (i.e., within 5 days) notify CECONY in writing (A) of any reduction or degradation to the security measures described by Owner in the IT Vendor Risk Assessment (or any updated IT Vendor Risk Assessment) or (B) if there is a change in the information provided by Owner in connection with the IT Vendor Risk Assessment (or any updated IT Vendor Risk Assessment) or such information becomes or is discovered to be untrue. Any such notification shall entitle CECONY to conduct an audit in accordance with Section 2(c) below notwithstanding the once–per-year limitation on such audits.
	6. Owner shall ensure that all Deliverables consisting of or containing software or firmware are developed using security coding practices that minimize security flaws within the Deliverables and include the latest anti-Malicious Code protections, where applicable.
	7. Owner represents, warrants and covenants that, at the time of delivery to CECONY, all Deliverables consisting of or containing hardware or software shall be free of Malicious Code.
	8. Upon CECONY’s request, Owner shall, and shall cause Owner Personnel to, reasonably cooperate with the CECONY’s Information Technology group in performing security risk assessments with respect to any Deliverables consisting of or containing software or firmware. Without limiting the generality of the foregoing, such requested cooperation may include assistance with assessing risks related to the design and functionality of the applicable Deliverable, assessing how the applicable Deliverable interconnects with other CECONY networks while maintaining the security of those networks, and providing CECONY with a list of all third party software used in the applicable Deliverable, whether commercial, free open source or closed source.
	9. Owner Personnel shall comply with any additional access, safety and security requirements and procedures (including cybersecurity requirements and procedures) that CECONY provides to Owner in writing.
1. Information Security Matters.
	1. Information Security Program.
		1. Owner Personnel shall:
			1. develop, implement, maintain, and monitor a comprehensive, written information security program that contains administrative, technical and physical safeguards to protect against anticipated threats or hazards to the security, confidentiality or integrity of, the unauthorized or accidental destruction, loss, alteration or use of, and the unauthorized access to, acquisition of or Processing of, CECONY Information (“Information Security Program”);
			2. conduct a risk assessment whenever there is a material change in Owner’s business practices that may reasonably affect the security, confidentiality, availability or integrity of CECONY Information, to identify and assess reasonably foreseeable internal and external risks to the security, confidentiality and integrity of electronic, paper and other records containing CECONY Information, and to evaluate and improve, where necessary, the effectiveness of its safeguards for limiting those internal and external risks; and
			3. ensure that its Information Security Program is consistent with: (1) CECONY’s information security practices and requirements as may be issued to Owner by CECONY from time to time and (2) the Data Protection Requirements.
		2. Owner Personnel shall review and, as appropriate, revise its Information Security Program: (i) at least annually or whenever there is a material change in Owner or its Affiliates’ business practices that may reasonably affect the security or integrity of CECONY Information; (ii) whenever there is a change in Exhibit H (Communication Protocols); (iii) in accordance with prevailing industry practices, Applicable Law and the Data Protection Requirements; and (iv) as reasonably requested by CECONY. If Owner Personnel modifies its Information Security Program following such a review, Owner shall promptly notify CECONY of the modifications and provide the modifications to CECONY in writing upon CECONY’s request. Owner Personnel may not alter or modify its Information Security Program in such a way that may weaken or compromise the confidentiality, security and integrity of CECONY Information.
		3. Owner Personnel shall maintain and enforce its Information Security Program at each location from which Owner provides Deliverables and/or stores CECONY Information.
		4. Owner Personnel shall ensure that its Information Security Program covers all networks, systems, servers, computers, notebooks, laptops, mobile phones, and other devices and media that Processes CECONY Information or that provides access to CECONY networks, systems or information.
		5. Owner Personnel shall ensure that its Information Security Program includes industry standard password protections, multi-factor authentication, firewalls and anti-virus and malware protections to protect CECONY Information stored on Owner computer systems.
		6. Owner Personnel shall conduct security testing at least once per calendar year using a third party to provide monitoring, penetration, and intrusion testing with respect to Owner Personnel’s computer systems and networks that process CECONY Information or that provide access to CECONY computing systems or networks and promptly provide a copy of the results to CECONY. To the extent any issues are identified in such testing, Owner shall use commercially reasonable efforts to address such issues as recommended by such third-party provider and promptly notify CECONY of the steps taken.
		7. Owner shall not, and shall cause Owner Personnel to not, physically or electronically transfer CECONY Information to, or Process CECONY Information in, any location outside the United States unless specifically agreed to in writing by CECONY.
		8. Owner shall maintain reasonable and appropriate security systems at all Owner sites at which an information system that accesses or stores CECONY Information is located. Owner shall reasonably restrict access to such Owner information systems.
		9. Owner shall encrypt, using industry standard encryption tools, all records and files containing CECONY Information that Owner: (i) transmits or sends wirelessly or across public networks; (ii) stores on laptops, personal computers, storage media or other portable devices; or (iii) stores on any device that is transported outside of the physical or logical controls of Owner. Owner shall safeguard the security and confidentiality of all encryption keys associated with encrypted CECONY Information.
	2. Data Access Controls.Owner agrees that: (i) Owner Personnel shall maintain appropriate access controls, including, but not limited to, limiting access to CECONY Information to the minimum number of Owner Personnel who require such access in order to provide Deliverables to CECONY under this Agreement and (ii) Owner shall use reasonable measures to detect and block unauthorized access of CECONY Information and the systems on which it is Processed; (iii) Owner Personnel who will be provided access to, or otherwise come into contact with, CECONY Information will be required (including during the term of their employment or retention and thereafter) to protect such CECONY Information in accordance with this Section 2, and will have entered into appropriate confidentiality agreements or be bound by appropriate obligations of confidentiality and (iv) Owner shall provide such Owner Personnel with appropriate training regarding information security. In addition, Owner shall maintain a log file of all access to, and Processing operations performed by Owner Personnel of, CECONY Information and shall provide a copy of such log to CECONY promptly upon request.
	3. Audit Rights. CECONY shall have the right, but not the obligation, to audit Owner’s compliance with this Exhibit J. Upon reasonable notice to Owner, Owner shall permit CECONY, its auditors, designated audit representatives, and regulators to audit and inspect, at CECONY’s sole expense, during regular business hours and no more often than once per year (unless otherwise required by CECONY’s regulators or if a Security Incident has occurred with respect to CECONY Information): (i) the facilities of Owner and Owner Personnel where CECONY Information is Processed by, or on behalf of, Owner; (b) any computerized or paper systems used to Process CECONY Information; and (c) Owner’s security practices and procedures, facilities, resources, plans, procedures and books and records relating to the privacy and security of CECONY Information.
	4. Security Incidents. Owner shall be responsible for any and all Security Incidents involving Owner’s networks, systems, servers, computers, notebooks, laptops, mobile devices and media that Process CECONY Information. Owner shall notify the CECONY Cyber Security Operations Center in writing immediately (and in any event within twenty-four (24) hours) if there has been a Security Incident. After providing such notice, Owner shall investigate the Security Incident, take all necessary steps to eliminate or contain the event or circumstance that gave rise to the Security Incident and any exposure of CECONY Information, and keep CECONY advised of the status of such Security Incident and all matters related thereto. Owner further agrees to provide, at Owner’s sole cost, (i) reasonable assistance and cooperation as requested by CECONY to correct, remediate, and /or investigate, the Security Incident, (ii) mitigation of any potential damage, including any notification required by law or that CECONY may determine appropriate to send to individuals impacted or potentially impacted by the Security Incident, and (iii) any credit reporting service required by law or that CECONY reasonable deems appropriate to provide to such individuals.  Unless required by law, Owner shall not notify any individual or any third party other than law enforcement of any potential Security Incident involving CECONY Information in any manner that would identify, or is reasonably likely to identify or reveal the identity of CECONY, without first consulting with, and obtaining the permission of, CECONY.  In addition, within thirty (30) days of identifying or being informed of a Security Incident, Owner shall develop and execute a plan, subject to CECONY’s approval, that reduces the likelihood of a recurrence of such Security Incident. If a Security Incident occurs, Owner agrees that CECONY may, at its discretion, without penalty and in addition to any other rights and remedies CECONY may have, immediately suspend performance under the Agreement.

***\*\*\* End of*** ***EXHIBIT J \*\*\****

**EXHIBIT K**

**FEDERAL ACQUISITION REGULATIONS COMPLIANCE REQUIREMENTS**

**REQUIRED CLAUSES AND CERTIFICATIONS**

As a contractor for the U.S. government, CECONY must require Owner to agree to be bound by and comply with the Federal Acquisition Regulation (“FAR”) clauses below, which are hereby incorporated by reference with the same force and effect as if they were provided in full text. These clauses, together with any relevant law, regulations, and guidance, should be consulted to determine their applicability to the Owner or this ESSA. If any of the clauses are not applicable by their terms, they shall be self-deleting. The full text of a clause may be accessed electronically at this address: <https://www.acquisition.gov>. This Exhibit K shall be deemed updated as clauses are modified, replaced, or supplemented, or additional clauses become applicable, in accordance with U.S. government requirements.

Where necessary to derive proper meaning in connection with a prime-subcontractor relationship, the following modifications to defined terms within the clauses shall be made: “Contractor” means “Owner;” the “party other than Con Edison” means “Owner;” “Con Edison” means “CECONY;” “Contracting Officer” means “CECONY;” “Contract” means “this ESSA;” and “Government” means “CECONY.” However, the words “Government” and “Contracting Officer” do not change: (a) when a right, act, authorization, or obligation can be granted or performed only by the Government or the Government Contracting Officer or duly authorized representative and (b) when title to property is to be transferred directly to the Government.

**FAR Clause Title/Date**

 52.202-1 Definitions (JUL 2004)

 52.203-6 Restrictions on Subcontractor Sales to the Government (SEPT 2006)

52.203-7 Anti-Kickback Procedures (MAY 2014)

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (OCT 2010)

[52.204-25](https://www.acquisition.gov/far/52.204-25%22%20%5Cl%20%22FAR_52_204_25) Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2020) (subsection (b)(2) does not apply)

52.219-8 Utilization of Small Business Concerns (OCT 2018)

52.222-21 Prohibition of Segregated Facilities (APR 2015)

52.222-26 Equal Opportunity (SEP 2016)

52.222-35 Equal Opportunity for Veterans (OCT 2015)

52.222-36 Equal Opportunity for Workers with Disabilities (JUL 2014)

52.222-50 Combating Trafficking in Persons (JAN 2019)

ADDITIONAL REQUIREMENTS

In addition to the above, the Owner further agrees to be bound by and comply with the applicable regulations contained in Chapter 60 of Title 41 of the Code of Federal Regulations which implement Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, as amended, and Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended and set forth the Owner’s obligations, including its affirmative action obligations. **Specifically, the Owner and its subcontractors shall abide by the requirements of** **Sections 60-****1.4(a), 60-300.5(a) and 60-741-5(a) of** **Title 41 of the Code of Federal Regulations. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime** **contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

***\*\*\* End of*** ***EXHIBIT K \*\*\****

**EXHIBIT L**

**Notice Information**

In the event any of any changes to the notice information provided below, the applicable Party shall furnish the other Party an updated Exhibit L as soon as reasonably practicable.

| ***[OWNER’S NAME]***(“Owner”) | **CONSOLIDATED EDISON COMPANY OF NEW YORK, INC****.** (“CECONY”) |
| --- | --- |
| All Notices are deemed provided in accordance with [Section 14.02](#_Notices.) if made to the address and facsimile numbers provided below: | Unless otherwise specified, all Notices are deemed provided in accordance with [Section 14.02](#_Notices.) if made to CECONY at the address or facsimile number provided below: |
| **All Notices:**Attn:  Street: City: Phone: Facsimile:Email:  | **All Notices:**Attn: Street: City: Phone: Facsimile:Email:  |
| **Reference Numbers:**Duns: Federal Tax ID Number:  | **Reference Numbers:**Duns: Federal Tax ID Number:  |
| **Contract Administration:**Attn: Phone: Facsimile:Email:  | **Contract Administration:**Attn: Phone: Facsimile: Email:  |
| **Invoices:**Attn: Phone: Facsimile: E-mail: | **Invoices:**Attn: Phone: Facsimile: E-mail:  |
| **Payments:** Attn: Phone: Facsimile: E-mail:  | **Payments:**Attn: Phone: Facsimile: E-mail:  |
| **Battery Operations Center:**  | **CECONY Scheduling Desk:** **CECONY Control Center:** **Utility Dispatch Rights Team:**  |
| **Wire Transfer:**BNK: ABA: ACCT: For the Account of: | **Wire Transfer:**BNK: ABA: ACCT: For the Account of: |
| **Credit and Collections:**Attn: Phone: Facsimile: E-mail:CollateralAttn: Phone: Email:  | **Credit and Collateral:**CreditAttn: Phone: Facsimile:Email: CollateralConsolidated Edison Company of New York, Inc. Attn: Phone: Email:  |
| **With additional Notices of an Event of Default or Potential Event of Default to:**Attn: Phone: Facsimile: E-mail:  | **With additional Notices of an Event of Default or Potential Event of Default to:**Consolidated Edison Company of New York, Inc. Attn: Phone:Facsimile:Email:  |

***\*\*\* End of*** ***EXHIBIT L \*\*\****

**EXHIBIT M**

**FORM OF CONSENT TO COLLATERAL ASSIGNMENT AGREEMENT**

This CONSENT TO COLLATERAL ASSIGNMENT AGREEMENT (this “**Consent**”), entered into as of \_\_\_\_\_\_\_\_\_\_\_, by and among Consolidated Edison Company of New York, Inc., a New York corporation (“**CECONY**”), **[*****Name of Owner*]**, a **[*legal status of Owner*]** and **[*****Name of Collateral Agent*]**, a **[*legal status of Collateral Agent*]**, as collateral agent (together with its successors and assigns in such capacity, “**Collateral Agent**”) for the Lenders (as defined below). CECONY, Owner and Collateral Agent are each sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**”. Capitalized terms used and not otherwise defined herein shall have the meanings given in the ESSA (as hereinafter defined).

A. **[*Name of Owner*]**, a **[*legal status of Owner*]** (“**Owner**”) and CECONY have entered into that certain Energy Storage Services Agreement, dated as of \_\_\_\_\_\_\_\_\_\_\_\_, (as amended, restated, supplemented or otherwise modified from time to time, the “**ESSA**”), pursuant to which Owner will develop, construct, commission, test, own, operate, and maintain the Project and sell to CECONY the exclusive rights to schedule, use, and sell all Product from the Project and CECONY will purchase and pay for such rights;

B. **[*names of Lender(s)*]** (collectively, “**Lenders**”) and Owner have entered into that certain **[*title of loan document*]**, dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_ (as amended, restated, modified or otherwise supplemented from time to time, the “**Financing Agreement**”) pursuant to which the Lenders have made commitments to make loans and, as applicable, extend credit to Owner to fund completion of the Project; and

C. As collateral security for Owner’s obligations under the Financing Agreement and related agreements (collectively, the “**Financing Documents**”), Owner has assigned all of its right, title and interest in and to the ESSA to Collateral Agent *[describe any other grants of security interests in Owner’s assets/pledges of equity]* (collectively, the “**Security Interests**”) until such time as such Security Interests are automatically released (as described herein and therein).

In consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. Collateral Agent shall have the right, but not the obligation, upon the occurrence and continuance of an Event of Default under the Financing Agreement (a “**Financing Default**”), in exercise of the Lender’s rights and remedies thereunder, to perform any act required to be performed by Owner under the ESSA, and any such act performed by Collateral Agent in accordance with the terms of the ESSA shall be as effective to prevent or cure a default under the ESSA as if performed by Owner itself. Collateral Agent’s right under this Section 1 is subject to the condition that Collateral Agent provide prompt written notice to CECONY of any such Financing Default (not later than two business days following the occurrence of a Financing Default).

2. Upon the occurrence of a breach, default or event of default by Owner under the ESSA (herein called an “**ESSA Default**”), CECONY agrees that it will not terminate or suspend its performance under the ESSA until it notifies Collateral Agent in writing of such ESSA Default and affords Collateral Agent the same right to cure and the same cure period provided under the ESSA.

Notwithstanding the foregoing, if Collateral Agent notifies CECONY in writing of its intention to cure an ESSA Default, describing in reasonable detail the actions to be taken to cure the ESSA Default and the time period in which it will perform such actions, and diligently proceeds to cure the ESSA Default, then Collateral Agent shall have (a) ten (10) Business Days from its receipt of the notice of the ESSA Default from CECONY to cure the ESSA Default (if for failure by Owner to pay any amount due and payable under the ESSA) or (b) thirty (30) days from its receipt of such notice with respect to any other ESSA Default. CECONY will not terminate or suspend its performance under the ESSA during any such extended cure period so long as Collateral Agent is diligently proceeding to cure, or cause the cure of, the applicable ESSA Default. Collateral Agent shall provide CECONY with reports concerning the status of efforts to cure an ESSA Default upon CECONY’s reasonable request.

3. CECONY hereby consents and agrees that during the continuance of a Financing Default, upon not less than thirty (30) days’ notice to CECONY, Collateral Agent may exercise its rights and remedies pursuant to the Financing Documents in a manner that constitutes a Change of Control so long as such Change of Control results in a Qualified Substitute Owner becoming the Controlling Person of Owner.

CECONY hereby consents and agrees that during the continuance of a Financing Default, upon not less than thirty (30) days’ notice to CECONY, (i) Collateral Agent may sell, assign, transfer or otherwise dispose of the ESSA and all of the assets comprising the Project to a Qualified Substitute Owner (any such entity that is so substituted, the “**Substitute Owner**”) and (ii) CECONY shall continue to perform its obligations under the ESSA in favor of the Substitute Owner if such Substitute Owner assumes in writing, in form and substance reasonably satisfactory to CECONY, the obligations of Owner under the ESSA (including the obligation to cure any then-existing payment defaults under the ESSA and all non-payment defaults under the ESSA which are reasonably susceptible of being cured). “**Qualified Substitute Owner**” means any Person that (i) acquires ownership of all assets comprising the Project, (ii) has the legal capacity and authority to enter into and perform the obligations of Owner under the ESSA, (iii) CECONY reasonably determines has (x) financial resources available to it sufficient to enable it to perform the obligations of Owner under the ESSA, and (y) through its own employees or through a contract with an Affiliate, has the technical skills and experience reasonably necessary to permit it to perform the obligations of Owner under the ESSA, and (iv) is otherwise acceptable to CECONY.

4. Provided that Collateral Agent has otherwise complied with the requirements hereof to exercise rights hereunder, if the ESSA is rejected or terminated by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding involving Owner, and if, within sixty (60) days after such rejection or termination, Collateral Agent shall so request and in connection therewith shall cure or cause to be cured any then-existing payment defaults under the ESSA and all non-payment defaults under the ESSA which are reasonably susceptible of being cured, CECONY will promptly enter into a new agreement with a Qualified Substitute Owner that shall be for the balance of the remaining term under the ESSA (before giving effect to such rejection or termination) and shall contain the same agreements, terms and conditions as the ESSA (a “**Replacement ESSA**”). CECONY shall be entitled to assume that Collateral Agent’s actions in connection with such bankruptcy or insolvency proceeding are in accordance with the Financing Documents without independent investigation thereof, but shall have the right to require that Collateral Agent provide reasonable evidence demonstrating the same. To the extent CECONY is, or was otherwise prior to its termination as described in this Section 4, entitled to suspend performance of its obligations under the ESSA, CECONY may suspend performance of its obligations under such Replacement ESSA, unless and until all ESSA Defaults of Owner under the ESSA or Replacement ESSA have been cured.

5. CECONY hereby represents and warrants to Collateral Agent that:

(a) CECONY is a corporation validly existing and in good standing under the laws of the State of New York.

(b) The execution and delivery by CECONY of, and performance by CECONY of its obligations under, the ESSA and this Consent have been duly authorized by all necessary corporate action of CECONY and do not violate any federal or state law, rule, regulation, judgment, injunction or similar matter applicable to CECONY.

(c) CECONY has duly executed and delivered the ESSA and this Consent.

(d) The ESSA and this Consent are in full force and effect, and constitute the legal, valid and binding obligation of CECONY, enforceable against CECONY in accordance with their respective terms, except as may be limited by bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors’ rights in general and except to the extent that the availability of equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought.

(e) CECONY is not in breach or default of its obligations under the ESSA, and no circumstances exist that immediately, or with the giving of notice or the passage of time or both, would permit Owner to suspend its obligations under, or terminate, the ESSA. To CECONY’s knowledge, Owner is not in breach or default of its obligations under the ESSA, and no circumstances exist that immediately, or with the giving of notice or the passage of time or both, would permit CECONY to suspend its obligations under, or terminate, the ESSA.

6. Notwithstanding any other provision of this Consent, Collateral Agent acknowledges that a Financing Default constitutes an Event of Default under the ESSA and, as such, CECONY shall be entitled to exercise any and all remedies available to it under the ESSA, at law or in equity, with respect to such event, subject only to its agreement to suspend such exercise or to permit a Change in Control of Owner in strict conformity with the terms of this Consent.

7. Owner hereby represents and warrants to CECONY and Collateral Agent that:

(a) Owner is a **[***type of entity***]** duly organized, validly existing and in good standing under the laws of the State of **[***state of formation***]**.

(b) The execution and delivery by Owner of, and performance by Owner of its obligations under, the ESSA and this Consent have been duly authorized by all necessary corporate action of Owner and do not violate any federal or state law, rule, regulation, judgment, injunction or similar matter applicable to Owner.

(c) Owner has duly executed and delivered the ESSA and this Consent.

(d) The ESSA and this Consent are in full force and effect, and constitute the legal, valid and binding obligation of Owner, enforceable against Owner in accordance with their respective terms, except as may be limited by bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors’ rights in general and except to the extent that the availability of equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought.

(e) Owner is not in breach or default of its obligations under the ESSA, and no circumstances exist that immediately, or with the giving of notice or the passage of time or both, would permit Owner to suspend its obligations under, or terminate, the ESSA. To Owner’s knowledge, CECONY is not in breach or default of its obligations under the ESSA, and no circumstances exist that immediately, or with the giving of notice or the passage of time or both, would permit Owner to suspend its obligations under, or terminate, the ESSA.

(f) Owner has not previously assigned or transferred all or any part of its rights or obligations under the ESSA or any interest in any assets that comprise the Project, and no Change of Control of Owner has occurred since the Effective Date.

(g) [***For up-front payment structure***: Under the terms of the Financing Documents, the Security Interests automatically terminate upon receipt by Owner of the Commercial Operation Payment, and upon Owner’s request, Collateral Agent is obligated to provide to Owner documentation effectuating such release of the Security Interests.]

8. Collateral Agent hereby represents and warrants to CECONY and Owner that:

(a) Collateral Agent is a **[***type of entity***]** validly existing and in good standing under the laws of the State of **[***state of formation***]**.

(b) The execution and delivery by Collateral Agent of, and performance by Collateral Agent of its obligations under, this Consent have been duly authorized by all necessary corporate action of Collateral Agent and do not violate any federal or state law, rule, regulation, judgment, injunction or similar matter applicable to Collateral Agent.

(c) Collateral Agent has duly executed and delivered this Consent.

(d) This Consent is in full force and effect, and constitutes the legal, valid and binding obligation of Collateral Agent, enforceable against Collateral Agent in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors’ rights in general and except to the extent that the availability of equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought.

8. All notices to CECONY under this Consent shall be made to the address set forth in Exhibit L of the ESSA and all notices to Collateral Agent shall be made to the address set out below (as such address may be changed by written notice to CECONY in accordance with this Section 8). To be effective, a notice must be in writing and delivered in person or nationally recognized courier delivery service. Notice delivered in person shall be deemed to have been given when received. Notice by nationally recognized courier delivery service shall be deemed to have been given on the date and time evidenced by the delivery receipt.

**[*Collateral Agent name and address*]**

9. THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY, SHALL BE GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

10. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

11. All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the ESSA. Subject to the foregoing, each Party irrevocably submits to the jurisdiction of the state and federal courts situated in the City of New York or in Westchester County with regard to any controversy arising out of or relating to this Agreement. Each Party agrees that service of process on it may be made, at the election of the serving Party, either by registered or certified mail addressed to the address shown herein for that Party or at the address of any office actually maintained by a Party, or by actual personal delivery of service. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law. Each Party consents to the selection of the state and the federal courts situated in the City of New York or in Westchester County as the exclusive forums for any legal proceeding arising out of or relating to this Agreement. Each Party agrees that all discovery in any proceeding will take place in the City of New York or in Westchester County.

12. In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

13. Neither this Consent nor any of the terms hereof may (a) be terminated, amended, supplemented or modified, except by an instrument in writing signed by CECONY, Project Owner and Collateral Agent or (b) waived, except by an instrument in writing signed by the waiving Party.

14. This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assignee permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person’s successors and assigns permitted under and in accordance with this Consent.

15. This provisions of this Consent supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any such prior negotiations or writings, the terms, conditions and provisions of this Consent shall prevail.

16. This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the Parties and may be used in lieu of the original Consent for all purposes.

[signature pages follow]

IN WITNESS WHEREOF, the Parties by their duly authorized officers have duly executed this Consent as of the date first set forth above.

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

By:
Name:
Title:

**[*OWNER SIGNATURE PAGE*]**

**[*COLLATERAL AGENT SIGNATURE*]**

***\*\*\* End of*** ***EXHIBIT M \*\*\****

**EXHIBIT N**

**FORM OF LETTER OF CREDIT**

IRREVOCABLE TRANSFERABLE STANDBY LETTER OF CREDIT FORMAT
DATE OF ISSUANCE:

[Address]

Re: Credit No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

We (the “Issuing Bank”) hereby establish this Irrevocable Transferable Standby Letter of Credit in favor of Consolidated Edison Company of New York, Inc. (“Beneficiary”)] [ Orange and Rockland Utilities, Inc. (“Beneficiary”)] [Consolidated Edison Company of New York, Inc. and/or Orange and Rockland Utilities, Inc. (individually and collectively, “Beneficiary”)] for the account of **[*insert name of supplier*]** (the “Applicant”), for drawings in the aggregate amount not exceeding \_\_\_\_\_\_\_\_\_\_\_\_ United States Dollars ($\_\_\_\_\_\_\_), available to Beneficiary at sight upon demand at our counters at [Location] on or before the expiration hereof against presentation to us of any of the following statements, dated and signed by a representative of the Beneficiary:

1. “An Event of Default (as defined in the \_\_\_\_\_\_\_\_\_\_\_\_\_ Agreement dated as of \_\_\_\_\_\_\_\_\_ between Beneficiary and the Applicant, as the same may have been amended (the “Agreement”)) has occurred and is continuing with respect to the Applicant under the Agreement”;

2. “This Letter of Credit expires in thirty (30) days or less and Applicant has failed to renew or replace this Letter of Credit”;

3. “Beneficiary has received notice from Issuing Bank of its election not to extend the Expiration Date of this Letter of Credit for an additional one year period” and replacement issuing bank meeting minimum issuing bank criteria has not been provided; or

4. “The senior unsecured credit rating of Issuing Bank has been downgraded to below A- by S&P or A3 by Moody’s and Applicant has failed to provide replacement credit support”.

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any previous drawings that have been duly honored by the Issuing Bank. Partial and multiple drawings are permitted hereunder.

This Letter of Credit shall expire \_\_\_\_\_\_\_, 20\_\_. However, the expiration date of this Letter of Credit shall automatically be extended without amendment for a period of one year from the present or any future expiration date unless, at least 60 days before any expiration date, the Issuing Bank notifies Beneficiary in writing that the Issuing Bank has elected not to extend this Letter of Credit beyond the current expiration date (such notice is referred to as “Notice of Non-Renewal”). Any such Notice of Non-Renewal shall be sent by registered mail or overnight courier to:

[Name of Beneficiary]
[Address]

with a copy to:

Consolidated Edison Company of New York, Inc.
4 Irving Place, New York, NY 10003
Attention: General Counsel

or to such other address(es) as Beneficiary may from time to time specify in a written notice to the Issuing Bank.

Drawings by facsimile are acceptable and should be faxed to: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. In the event of facsimile presentation, a telephone confirmation may be made to (but is not required) [insert name of person or department] at [insert telephone #] or [may insert 2nd telephone #] (or at such other facsimile or telephone number as may be specified from time to time by the Issuing Bank). Beneficiary’s failure to seek such a telephone confirmation does not affect the Issuing Bank’s obligation to honor such a presentation. A presentation via facsimile shall be effective upon receipt of the facsimile. The original documents do not need to be forwarded to the Issuing Bank. Such documents presented by facsimile transmission are deemed to be effective as originals and the terms thereof, as so presented, shall prevail in the event of any discrepancy between the terms of thereof and the originals when and if delivered to the Issuing Bank.

If requested by Beneficiary in its demand for payment hereunder, payment under this Letter of Credit shall be made by wire transfer of funds to Beneficiary’s account in a bank on the Federal Reserve wire system in accordance with wire transfer instructions set forth in such demand for payment, provided that the Issuing Bank shall have no liability for any errors in such wire transfer instructions.

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified. In addition, our undertaking under this Letter of Credit is in no way contingent upon reimbursement with respect to any drawing hereunder or upon our ability to perfect any security interest or other lien.

This Letter of Credit shall be governed by the International Standby Practices – ISP 98, 1998 Version, International Chamber of Commerce Publication No. 590 (the “ISP”), provided, however, that where the ISP is silent, this Letter of Credit shall be governed by New York law, without reference to its choice of law provisions; and provided further that to the extent that the terms hereof are inconsistent with the provisions of the ISP, including Rules 2.01 and/or 5.01 of the ISP, the terms of this Letter of Credit shall govern.

**[*Issuing Bank may select either*** ***Option 1 or Option 2 to include in LOC*]**

***Option 1:*** With respect to Rules 2.01 and/or 5.01 of the ISP, the Issuing Bank shall have a reasonable amount of time, not to exceed one (1) Business Day (as defined in the ISP) following the date of its receipt of documents from the Beneficiary, to examine the documents and determine whether to take up or refuse the documents and to inform and make payment to the Beneficiary accordingly.

**—OR—**

***Option 2:*** With respect to the Rules 2.01 and/or 5.01 of the ISP, if a drawing is made by Beneficiary hereunder on a Business Day (as defined in the ISP) before 2:00 P.M. (New York City time) payment shall be made of the amount specified in immediately available funds by the close of business (New York City time) on the following Business Day; if a drawing is made by Beneficiary hereunder on a Business Day after 2:00 P.M. (New York City time) payment shall be made of the amount specified in immediately available funds by the close of business (New York City time) on the second following Business Day.

This Letter of Credit may not be amended, changed or modified, or limited by reference to any document, instrument or agreement referred to herein or in which this Letter of Credit is referred to, or to which this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement, without the express written consent of the Beneficiary, the Issuing Bank and the Applicant.

[BANK SIGNATURE]

By:
Name:
Title:

***\*\*\* End of*** ***EXHIBIT N \*\*\****

**Exhibit O**

**Resiliency Guidelines**

1. In addition to all federal, state, local, and company design requirements, Owner is required to satisfy the following resiliency considerations in the design of the Project:

1.1 **Coastal Floodplain Standards**: Owner must identify whether its assets are in the future 1% annual chance floodplain map. If the asset is within the future floodplain maps, coastal flood protection is required for the asset. Below is the minimum Design Flood Elevation (“DFE”) for Bidders.

1.1.1 **CECONY Coastal Floodplain Design Flood Elevation**: FEMA 1% + 4’ Design Flood Elevation (DFE) applies. The exposure map represents the 100-year floodplain with 4(ft) of sea level rise.

1.2 If the asset is not in the future 1% annual chance floodplain within the determined useful life of the asset, no coastal flood protection required for the asset. The most up-to-date FEMA Flood Insurance Rate Map (FIRM) map is the 2015 National Flood Hazard Layer (NFHL) for the State of New York, which reflects the FIRMs done by each county. <https://www.fema.gov/flood-maps/national-flood-hazard-layer>.

1.3 Temperature & Precipitation Projections

1.3.1 **Temperature:** Owner must ensure that energy storage systems can operate normally in line with the following projections. The following lower and upper bounds represent minimum parameters:

|  |  |  |
| --- | --- | --- |
| **Variable** | **Unit** | **CECONY** |
| Days per year with ambient daily temperature at or over 95˚F  | Days | 1 |
| Number of 3-day heat waves with daily ambient temperatures over 90˚F | Heat waves | 1 |
| Minimum and maximum annual operating temperature | ˚F | 10 – 104.1 |
| Days per year with minimum daily temperature at or under 32˚F  | Days | 90 |
| Days per year with minimum daily temperature at or Under 15˚F | Days | 7 |

1.3.2 **Precipitation:** Owner must ensure that energy storage systems can operate normally in line with the following projections. The following lower and upper bounds represent minimum parameters:

|  |  |  |
| --- | --- | --- |
| **Variable** | **Unit** | **CECONY** |
| Annual 3-day design precipitation | Inches | 4.8 |
| Annual 5-day design precipitation | Inches | 5.5 |
| 95th percentile daily precipitation | Inches | 1.6 |

1. **NTD**: To be confirmed on a project-specific basis. [↑](#footnote-ref-2)
2. **NTD**: To be confirmed on a project-specific basis. [↑](#footnote-ref-3)
3. This date has been set by the NYPSC and cannot be modified. [↑](#footnote-ref-4)
4. **NTD**: To include for the up-front payment structure. [↑](#footnote-ref-5)
5. NTD: To reflect the Project’s connection level. [↑](#footnote-ref-6)
6. **NTD**: To be included for transmission-interconnected projects only. [↑](#footnote-ref-7)
7. **NTD**: To be included for transmission-interconnected projects only. [↑](#footnote-ref-8)
8. NTD: Owner to order milestones in sequential order by date. [↑](#footnote-ref-9)