

ENERGY STORAGE SERVICES AGREEMENT

between

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

and

BAYONNE ENERGY CENTER III, LLC


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ENERGY STORAGE SERVICES AGREEMENT

between

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

and

BAYONNE ENERGY CENTER III, LLC

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 February 13, 2025 (“Effective Date”) by and between **CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**, a New York corporation (“CECONY”), and **BAYONNE ENERGY CENTER III, LLC**, a Delaware limited liability company (“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 the City of New York, New York 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.

C. Owner is willing to construct, own, operate and maintain an energy storage system that utilizes an Energy Delivery Point and Interconnection Point in CECONY’s service territory, or otherwise in NYISO Zone J, consistent with the requirements set forth herein, exclusively for the benefit of CECONY during the Term (except during the period prior to the Commercial Operation Date as contemplated under the Agreement), 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.

ARTICLE 1. PROJECT AND EXCLUSIVE USE

1.01 Product.

(a) The “Product” consists 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 in markets other than NYISO (including 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.

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

1.02 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 and discharge electric energy at the Project, all as more fully described in Exhibit B. [REDACTED]

[REDACTED]

(a) Project Name. Bayonne Energy Center III, LLC.

(b) Location of Project. 401 Hook Rd., Bayonne, New Jersey, as further described in Exhibit B.

(c) Energy Delivery Point. The Energy Delivery Point shall be the Interconnection Point.

(d) Interconnection Point. The Interconnection Point is the termination of the generator lead (G27) from the Project at the Gowanus 345 kV substation between breaker 20 and breaker 22, as specified in Exhibit B.

(e) Interconnection Queue Position. Q815.

1.03 Contract Capacity. The contract power capacity of the Project shall be equal to 49.8 MW ("Contract Capacity"), as confirmed at the Initial Commercial Operation Test and reaffirmed through Performance Testing. Owner shall maintain the Contract Capacity throughout the Contract Term.

1.04 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 Product, 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.

[REDACTED]

ARTICLE 2.
TERM; DELIVERY PERIOD; SUBSTANTIAL COMPLETION DEADLINE;
GUARANTEED COMMERCIAL OPERATION DEADLINE

2.01 Term. The “Term” of this Agreement shall commence upon the Effective Date, and shall continue for the Contract Term.

2.02 Delivery Period. The “Delivery Period” shall commence on the Commercial Operation Date, and shall continue until midnight on the date that is [REDACTED] after the Commercial Operation Date, as such Delivery Period may be extended pursuant to Section 8.07.

2.03 Substantial Completion Deadline.

(a) [REDACTED]

[REDACTED] Notwithstanding anything to the contrary herein, in no event will the Substantial Completion Deadline be extended beyond the Guaranteed Commercial Operation Deadline [REDACTED]

2.04 Substantial Completion. “Substantial Completion” shall occur upon notice from CECONY to Owner that CECONY has received evidence reasonably satisfactory to CECONY of satisfaction of all the following conditions. The “Substantial Completion Date” shall be the date

the Project achieves Substantial Completion. The Parties agree that review and approval of these conditions may occur on an incremental basis as such conditions are satisfied:

(a) Owner has 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 the Product 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;

(b) 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;

(c) Owner has 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;

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

(e) Owner is registered in NYISO as a market participant (as defined in the NYISO Tariff) for the Project;

(f) Owner has registered the Project in NYISO for use as a dispatchable energy storage resource operating in the NYISO Markets;

(g) Owner has completed all registrations with NERC and NPCC as applicable to Owner as the owner and operator of the Project;

(h) Owner has 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;

(i) the Project shall not be subject to any Encumbrances other than Permitted Encumbrances;

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

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

2.05 Substantial Completion Delay Liquidated Damages.

(a) If Owner fails to achieve Substantial Completion by the Substantial Completion Deadline. [REDACTED]



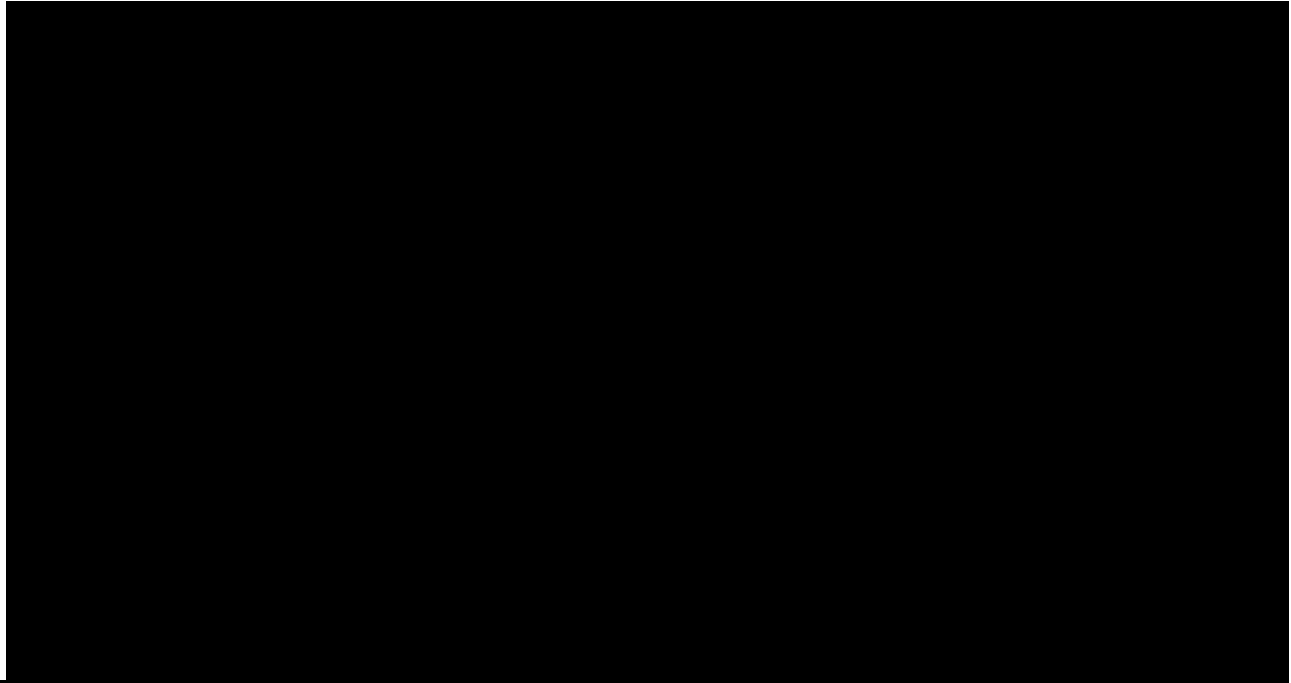
(b) As soon as Owner anticipates that it will not achieve Substantial Completion by the Substantial Completion Deadline (which shall be prior to the Substantial Completion Deadline), Owner shall notify CECONY in writing of the date on which it reasonably expects the Project to achieve Substantial Completion and shall, contemporaneously therewith, remit payment to CECONY of the Substantial Completion Delay Liquidated Damages payable with 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 Substantial Completion Delay Liquidated Damages, as applicable. [REDACTED]

[REDACTED] 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).

2.06 Guaranteed Commercial Operation Deadline.

(a) [REDACTED]

[REDACTED]



2.07 Commercial Operation. “Commercial Operation” shall occur upon notice from CECONY to Owner that CECONY has received evidence reasonably satisfactory to CECONY of satisfaction of all of the following conditions. The “Commercial Operation Date” shall be the date the Project achieves Commercial Operation. The Parties agree that review and approval of these conditions may occur on an incremental basis as such conditions are satisfied:

(a) The Substantial Completion Date shall have occurred;

(b) 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;

(c) 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;

(d) 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);

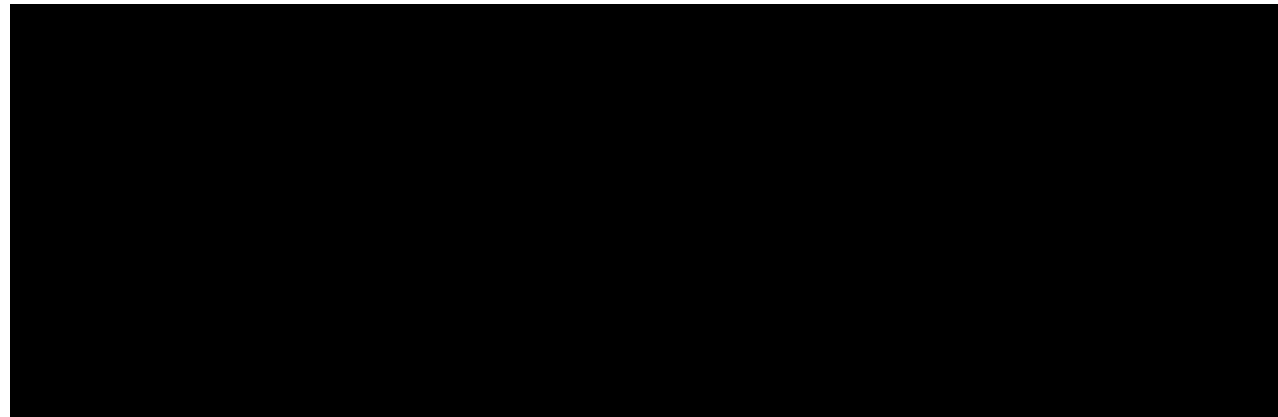
(e) CECONY shall have been designated as the Financially Responsible Party (as defined by the NYISO Tariff) for the Project by Owner, the effective date of such designation occurring after Substantial Completion has been achieved as mutually agreed by the Parties, provided that CECONY shall reasonably cooperate in good faith to reach agreement with Owner on such effective date and effectuate such designation as of the applicable date;

(f) 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;

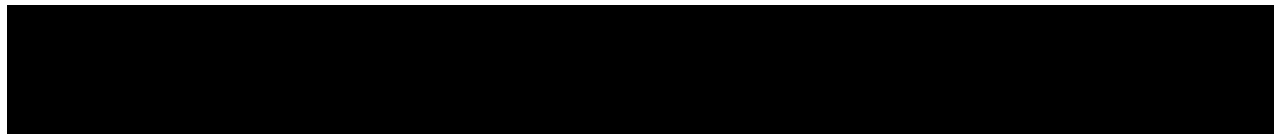
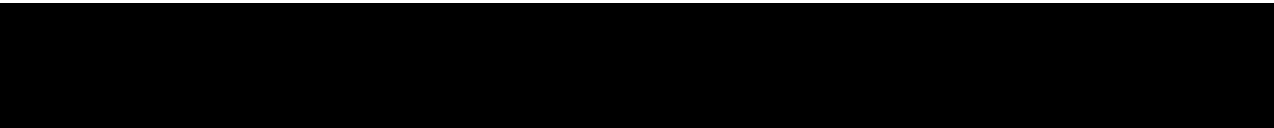
(g) Owner shall have delivered to CECONY a NYISO-approved initial Outage Schedule for the Project;

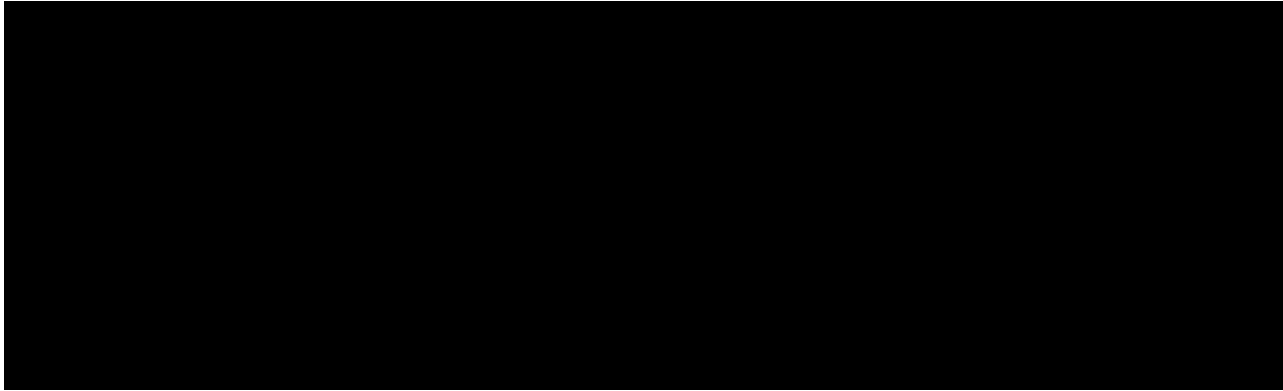
(h) the Project shall not be subject to any Encumbrances other than Permitted Encumbrances; and

(i) Owner shall not be in breach of any obligation under this Agreement.



**ARTICLE 3.
BILLING AND PAYMENTS**





3.02 Compensation to Owner.

(a) Commercial Operation Payment. CECONY shall be obligated to pay to Owner the Commercial Operation Payment after Owner achieves Commercial Operation of the Project.

(b) Annual Post-Commercial Operation Payments. Provided that no Event of Default has occurred and is continuing, CECONY shall be obligated to pay to Owner annually, in arrears, an Annual Post-Commercial Operation Payment.

3.03 Billing and Payment.

(a) 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.

(b) Commercial Operation Payment.

(i) *Invoice.* No later than five (5) Business Days after the Commercial Operation Date, Owner shall deliver an invoice to CECONY setting forth in reasonable detail the amount of the Commercial Operation Payment.

(ii) *Payment.* Within thirty (30) days of receiving an invoice from Owner for the Commercial Operation Payment, CECONY shall make payment of all amounts invoiced by Owner for the Commercial Operation Payment.

(c) Annual Post-Commercial Operation Payment.

(i) *Invoice.* No later than the tenth (10th) Business Day of the anniversary month of the Commercial Operation Date, Owner shall deliver an invoice to CECONY setting forth in reasonable detail the amount of the then-applicable Annual Post-Commercial Operation Payment.

(ii) *Payment.* On or before the last Business Day of the anniversary month of the Commercial Operation Date, CECONY shall make payment of all amounts invoiced by Owner for the Annual Post-Commercial Operation Payment, subject to any right CECONY exercises to setoff amounts owed to CECONY by Owner under Section 3.05.

(d) Amounts Payable by Owner.

(i) *Invoice.* In addition to the obligations of Owner in Section 2.05(b) to prepay liquidated damages, in the event Owner incurs a liability to CECONY for damages, penalties, fees, or otherwise, CECONY shall prepare and deliver an invoice to Owner setting forth in reasonable detail the amount of outstanding amounts payable by Owner.

(ii) *Payment.* No later than ten (10) Business Days after receipt of an invoice from CECONY, Owner shall pay CECONY all amounts invoiced.

(e) Failure to Pay. Any amounts not paid by a Party 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.

3.04 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or invoice adjustment provided by the other Party by providing written notice within thirty (30) days of receipt of an invoice or invoice adjustment, 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 make payment of the entire amount due under the disputed invoice before the notice is deemed to have been delivered. Any amounts to be paid to the disputing Party shall be made within two (2) 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.

3.05 Netting and Setoff Rights. In addition to other legal remedies available to CECONY under Applicable Laws, CECONY reserves the right to net any amounts that would otherwise be due to Owner hereunder against any amount Owner owes to CECONY under this Agreement, including any costs associated with the supply and delivery of power for Station Use.

ARTICLE 4. OWNER'S OBLIGATIONS WITH RESPECT TO THE PROJECT

4.01 Generally. At no cost to CECONY, Owner shall:

(a) obtain Site Control by the date specified in the Critical Path Milestone schedule and maintain Site Control for the duration of the Term;

(b) design and construct the Project as required for Owner to perform its obligations under this Agreement;

(c) not modify the Project without obtaining prior written consent from CECONY, which consent may not be unreasonably withheld, conditioned or delayed;

(d) 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 Laws, Permits, and site agreements;

(e) except as expressly permitted under Section 14.04, retain exclusive ownership over the entirety of the Project;

(f) not make any use of the Project other than as directed by CECONY, except during the period prior to the Commercial Operation Date;

(g) 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;

(h) complete all environmental impact assessments, statements, or studies required pursuant to Applicable Laws, including obtaining public review and certification of any final documents relating to any environmental impact assessment or studies;

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

(j) obtain and maintain without modification, and shall 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");

(k) not withdraw the Interconnection Queue Position without CECONY's prior written consent;

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

(m) provide to 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;

(n) comply with any NERC Reliability Standards or other 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 reliability standards;

(o) 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;

(p) provide accurate and complete operating characteristics of the Project in compliance with the NYISO Tariff;

- (i) at least thirty (30) days before Substantial Completion, and
- (ii) within ten (10) days after such information changes after Substantial Completion;

(q) comply with CECONY's cybersecurity requirements, set forth in Exhibit J, as applicable to vendors interconnected with CECONY's information systems;

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

(s) maintain and preserve its existence as a limited liability company, formed under the law of the State of Delaware and all material rights, privileges and franchises necessary or desirable to enable it to perform its obligations under this Agreement;

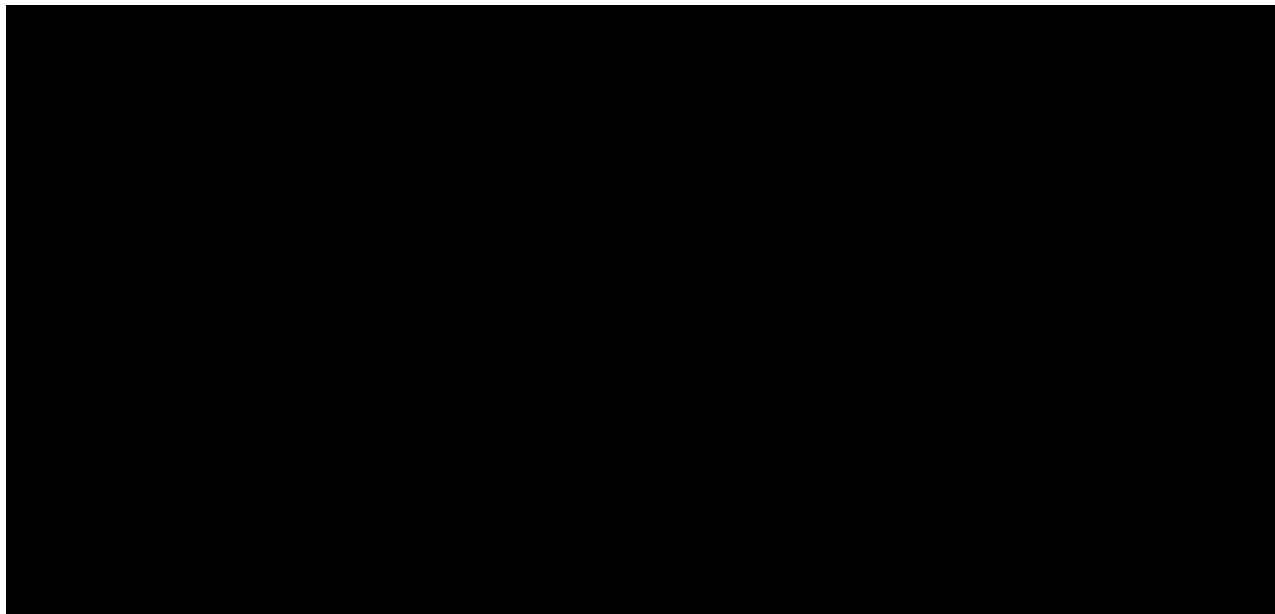
(t) in such time period as CECONY may reasonably require, provide to CECONY all data and information requested by CECONY from time to time, to be able to sell Product and to substantiate the costs for the Project, which costs may be part of an inquiry or investigation by the NYISO, or a proceeding before FERC, NYPSC or other Governmental Authority;

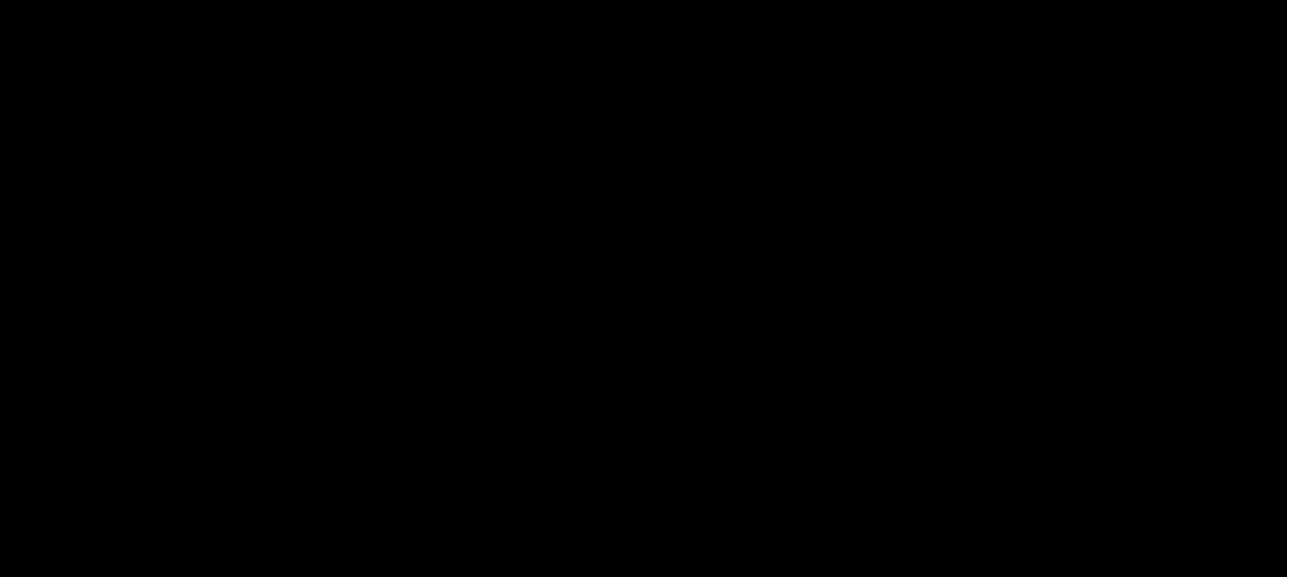
(u) obtain and maintain Market-Based Rate Authority from FERC as applied to sales made within the NYISO Markets;

(v) take all actions necessary to register and maintain the qualification of the Project under all NYISO tariffs required to sell Products;

(w) comply with all requirements to qualify for and maintain CRIS and ERIS at least equal to Contract Capacity pursuant to the NYISO Tariff; and

(x) take all actions necessary to install software and hardware measures with respect to the Project to ensure that the desired charging and discharging levels set forth in the applicable Charging Notice or Dispatch Notice, as applicable, at any given time cannot be exceeded.





4.03 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:

(a) 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):

- (i) any completed Interconnection Study for the Project;
- (ii) material notices, filings, approvals, and other material correspondence related to Permits for the Project;
- (iii) executed Interconnection Agreement;
- (iv) 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;
- (v) a detailed 3-line diagram of the Project; and
- (vi) 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.

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

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

(ii) any material reports, data or information provided to NYISO, the NYPSC, or any Governmental Authority relating to the Project.

(c) At any time during the Term, Owner shall promptly, and in any event within ten (10) Business Days, provide CECONY with copies of:

(i) information, reports and responses requested by CECONY for CECONY to comply with disclosure requirements of the NYPSC, which requests for information, reports and responses Owner shall use commercially reasonable efforts to accommodate, even for requests to verify data provided by Owner;

(ii) any reports, studies, or assessments done for Owner by an independent engineer on the Site or the Project; and

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

4.04 Inspection and Access Rights. CECONY shall have the right at any time during the Term to enter onto the Site during normal business hours on any Business Day to inspect the Project, witness testing, verify conditions have been met, evaluate circumstances regarding Outages or unavailability, or for any other reasonable purpose. CECONY will comply with Owner's and its subcontractors' reasonable safety and security requirements when present at the Project Site to the extent CECONY's personnel are provided reasonable prior notice of such requirements. 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:

(a) 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;

(b) 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;

(c) 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;

(d) 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

(e) 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 two (2) 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.

4.05 Milestone Schedule; Monthly Construction Report. Owner shall use reasonable efforts during the construction period to meet the various Project related milestones set forth in Exhibit F (“Milestone Schedule”) and avoid or minimize any delays in meeting such Milestone Schedule. No later than the tenth (10th) day of each month while the Project has not yet achieved Commercial Operation, or within five (5) 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 projected time to completion of any milestones. Owner shall include in any Construction Report a list of all letters, notices, applications, approvals, authorizations and filings referring or relating to Permits. In addition, Owner shall advise CECONY, as soon as reasonably practicable, of any problems or issues of which Owner is aware that could materially impact its ability to meet the Milestone Schedule.

4.06 Critical Path Milestones. Owner shall achieve each Critical Path Milestone and shall provide CECONY with 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
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Critical Path Milestone	Deadline to achieve Critical Path Milestone
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

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

(a) 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 it will achieve completion of the missed Critical Path Milestone (“CP Milestone Extension Date”), and (C) a written recovery plan for completing all necessary work to achieve completion of the missed Critical Path Milestone, the remaining Critical Path Milestones, and Commercial Operation by the Guaranteed Commercial Operation Deadline (the “Recovery Plan”). The Recovery Plan shall also include an updated Milestone Schedule with revised dates for each remaining Critical Path Milestone, which updated Milestone Schedule shall be subject to acceptance by CECONY, in its reasonable discretion.

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

(c) 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.

(d) 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) achieve completion of 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 under this Agreement; (y) modify the deadlines for achieving the remaining Critical Path Milestones (except for any update to the Milestone Schedule pursuant to this Section 4.06 and the missed Critical Path Milestone that Owner is attempting to cure under this Section 4.06); or (z) relieve Owner of its obligations to achieve Substantial Completion by the Substantial Completion Deadline and Commercial Operation by the Guaranteed Commercial Operation Deadline.

ARTICLE 5. INTERCONNECTION; METERING; TESTING

5.01 Interconnection.

(a) Interconnection Studies. Owner represents and warrants that, as of the Effective Date, (i) Owner has submitted and will continue to submit all information requested by NYISO and the Transmission Owner for Interconnection Studies for the Project, and (ii) it has submitted and maintained an application for Energy Resource Interconnection Service and Capacity Resource Interconnection Service sufficiently sized to enable delivery of the Project's output to the Interconnection Point to enable delivery of Products from the Project. Owner covenants that it will comply with all of the interconnection requirements contained in the NYISO Tariff, applicable requirements of the Transmission Owner, and the Interconnection Agreement.

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

(c) 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. Owner shall procure, meter separately, and pay for all electrical service required to serve the ancillary electric needs of the Project, including 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 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.

(d) 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.

5.02 Metering, Communications and Telemetry.

(a) 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 real

time operations (“Generation Management System”), as necessary to communicate with NYISO using telemetry conforming to NYISO 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. In addition, 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, utilizing existing industry standard network protocol, as approved by CECONY.

(b) 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.

(c) 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.

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

(e) 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.

5.03 Testing.

(a) 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, which test shall be conducted 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.

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

ARTICLE 6. OWNER’S OPERATION, MAINTENANCE AND REPAIR OBLIGATIONS

6.01 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 Laws, Permit Requirements, and Warranty Requirements as necessary to make the Products available to CECONY in accordance with the terms of this Agreement.

6.02 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:

- (a) electrical characteristics of the Project and settings or adjustments of the Project's control equipment (including the power conversion system) and protective devices
- (b) 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).
- (c) maintenance performed,
- (d) Outages and changes in operating status,
- (e) inspections, and
- (f) any other significant events related to operation 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 for the Project during the previous month.

6.03 Performance Guarantees.

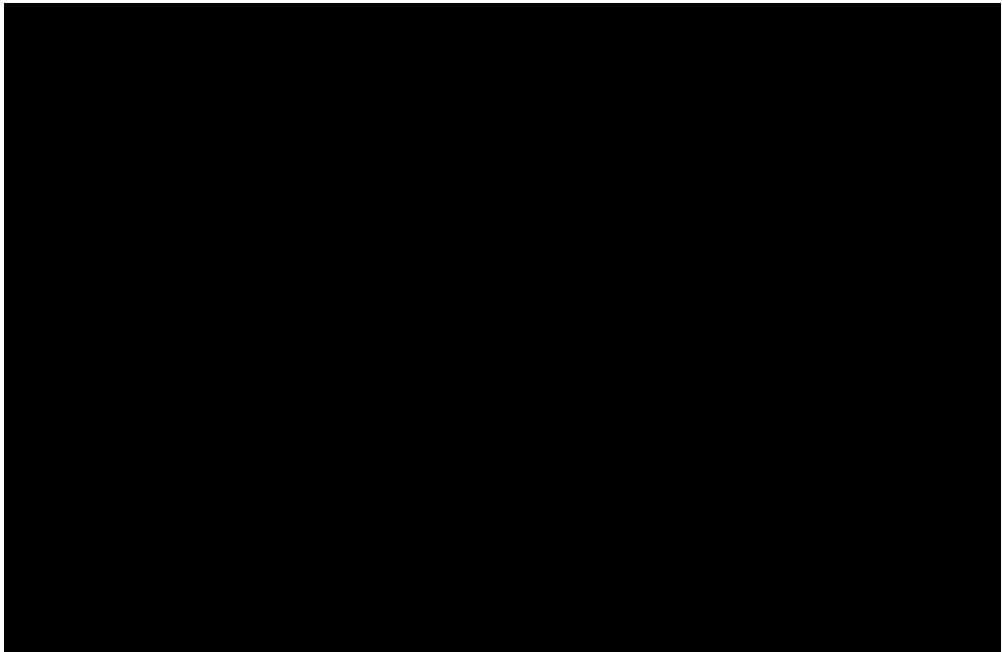
- (a) Availability.

Guaranteed Availability. Owner guarantees the Project will be available for use by CECONY for at least [REDACTED] of the [REDACTED] intervals in each Contract Year during the Contract Term ("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:

$$Actual\ Availability = \frac{\sum_{period=0}^{period=Reference\ Period} MW\ Available}{Contract\ Capacity * Reference\ Period}$$

Where:

"MW Available" means [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]



“Reference Period” means the total number of [redacted] intervals during the applicable Contract Year, *minus* the number of [redacted] intervals that occurred during [redacted]



[redacted] 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 [redacted]



(b) Capacity.

(i) 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.

Where:

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

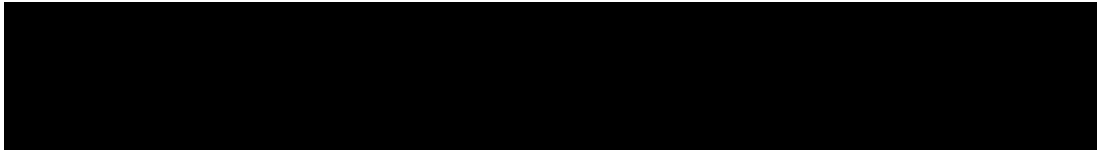
“LBMP” is the NYISO locational-based marginal pricing node proximate to the Project for the DAM or RTM, depending on which market is engaged to purchase the shortfall.

[Redacted]

[Redacted]

[Redacted]

[Redacted]



(e) Ramp Rate

(i) **Guaranteed Ramp Rate.** Owner guarantees a minimum response rate [REDACTED] per minute for each of the Ramp Up Rate Test and Ramp Down Rate Test (collectively, the “Guaranteed Ramp Rate”)

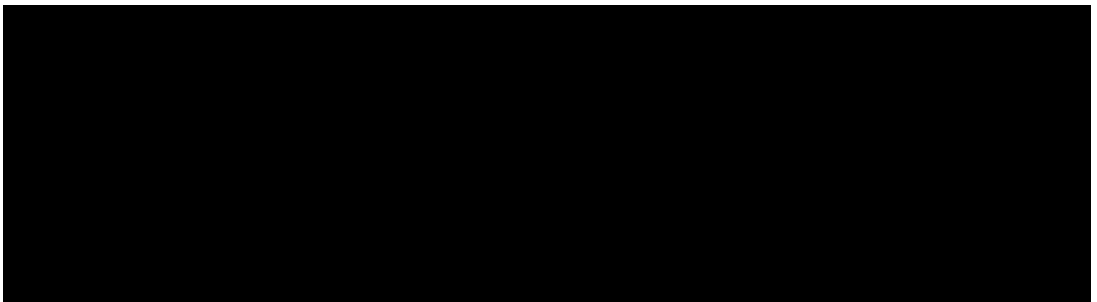
(ii) The ramp rate [REDACTED] will be measured per the procedure outlined in Exhibit C. If the Project is unable to demonstrate the Guaranteed Ramp Rate, Owner shall place the Project into an Unplanned Outage immediately and resolve any issues so that the Project can achieve the Guaranteed Ramp Rate.

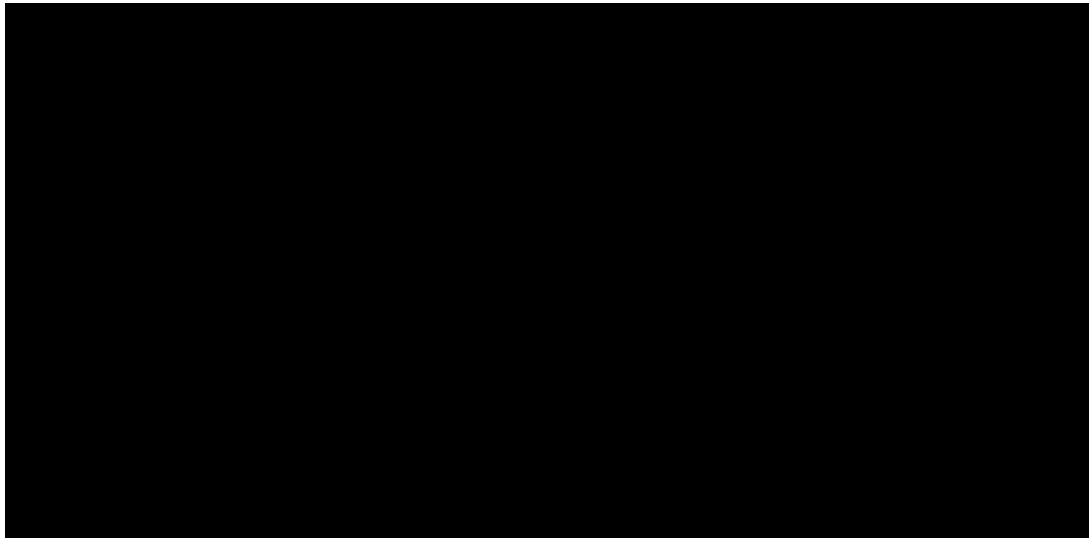
(f) Planned Outages.

(i) 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 at Exhibit I, as may be revised from time to time based on NYISO requirements.

(ii) Owner shall provide the following information for each proposed scheduled Planned Outage:

- (A) Description of the work to be performed during the Planned Outage;
- (B) Start date and time;
- (C) End date and time;
- (D) Recall time; and
- (E) Products available (if any) during the Planned Outage.





(iv) CECONY and NYISO shall be entitled to direct changes to the Outage Schedule by notification to Owner in writing, and Owner shall comply with CECONY's or NYISO's direction regarding the timing of any Planned Outages.

(v) Owner shall provide Notice to CECONY at least seven (7) days prior to the start of any Planned Outage and shall maintain close coordination as the Planned Outage approaches.

(vi) Owner shall cooperate with CECONY to arrange and coordinate all Outage Schedules with NYISO in compliance with the NYISO Tariff.

(vii) If a condition occurs that causes Owner to revise its Planned Outages, Owner shall promptly provide Notice to CECONY 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 [REDACTED] before the start date of the Planned Outage before such revision occurs or that results in a Planned Outage being scheduled [REDACTED] before the start of the revised Planned Outage.

(g) 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.

(h) 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, Owner shall coordinate the timing of such Unplanned Outage with CECONY and, subject to Owner's obligations

under Section 6.01, shall accommodate CECONY's preferences for the scheduling of such Unplanned Outage.

In the event of an unexpected Unplanned Outage, Owner shall provide notice to CECONY by telephone at the telephone number(s) listed in Exhibit H no more than fifteen (15) minutes following the occurrence of such Unplanned Outage, [REDACTED]

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 as applicable to the calculation of Guaranteed Availability under Section 6.03(a)(i).

(i) Restoration of the Project. Owner shall provide as much advance notice as reasonably practicable to CECONY of the date and time the Project will be back online, provided that Owner shall provide at least two (2) days' prior notice for restoration from a Planned Outage and at least two (2) hours' notice for restoration from an Unplanned Outage. CECONY shall be entitled to rely on such notice for purposes of bidding Product into real-time wholesale electric markets. For purposes of calculating the availability of the Project, the Project shall only be considered available [REDACTED] in which the Project could have been bid into real-time wholesale electric markets. For the avoidance of doubt, the Project shall be considered available in any [REDACTED] interval that the Project was dispatched as per instructions as per the NYISO.

6.04 Operational Notices.

(a) 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 such that Owner should reasonably believe that the Guaranteed Capacity cannot be met. 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 as applicable to the calculation of Guaranteed Availability under Section 6.03(a)(i).

(b) 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 be applicable to schedules for the Day-Ahead Market. Subject to Section 6.04(e) (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 shall be communicated through telemetry dispatch signals from NYISO to the Project.

(c) 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 shall be communicated through telemetry signals from NYISO to the Project.

(d) 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.

(e) 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

immediately notify CECONY of the non-conformity and CECONY will modify its Dispatch Notice or Charging Notice to conform to the Operating Restrictions. Until such time as CECONY submits a modified Dispatch Notice or Charging Notice, Owner shall, as applicable, dispatch the Project in accordance with the Operating Restrictions or charge the Project in accordance with the Operating Restrictions, and the Project will not be deemed to be unavailable, but only to the extent the Project was otherwise available but could not be dispatched or charged because of its inability to operate outside of the Operating Restrictions.

6.05 Charging Energy Management and Payments.

(a) 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.

(b) Owner Charging Energy Responsibilities. The facilities required for the delivery of the Charging Energy Requirements for the Project are part of the Project. The maintenance, repair, and replacement of equipment in Owner’s possession and control that is used to facilitate delivery of the Charging Energy Requirements shall be the responsibility of Owner and, [REDACTED], Owner shall take such actions as are necessary to cause the delivery of the Charging Energy Requirements to the Project.

(c) Charging Energy Costs. Supply Charging Energy Costs shall be the responsibility of the designated Party under each of the circumstances provided below:

<u>Party</u>	<u>Cost Responsibility</u>
Owner	[REDACTED]
CECONY	[REDACTED]

(d) 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 of 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.

ARTICLE 7. CREDIT AND COLLATERAL

7.01 Development Security.

(a) Amount. Owner shall post and thereafter maintain Development Security in an amount not less than [REDACTED] of the Contract Capacity of the Project.

(b) Posting Requirements. Owner shall post the Development Security in accordance with the following terms and conditions:

(i) Owner shall post the Development Security simultaneously with Owner's execution and delivery of this Agreement;

(ii) The Development Security must be in the form of cash or a Letter of Credit, substantially in the form of Exhibit N; and

(iii) The Development Security and any interest accrued thereon in accordance with Section 7.03(a) shall 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.

(c) 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:

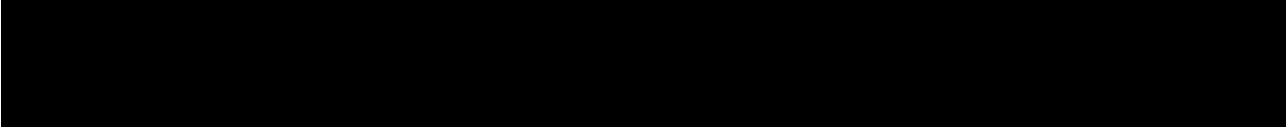
(i) As soon as reasonably practicable after the Commercial Operation Date, CECONY shall return to Owner the unused portion of the Development Security including any interest accrued thereon pursuant to Section 7.03(a).

(ii) As soon as reasonably practicable after the termination of this Agreement by either Party, CECONY shall return to Owner the unused portion of the Development Security, if any.

Owner may, with CECONY's consent, authorize CECONY to retain cash or Letter(s) of Credit initially posted as Development Security as Performance Assurance posted under Section 7.02.

7.02 Performance Assurance.

(a) 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 [REDACTED].



(b) Posting Requirements. Owner shall post the Performance Assurance in accordance with the following terms and conditions:

(i) Owner shall post all of the Performance Assurance on or before the Commercial Operation Date;

(ii) Performance Assurance must be in the form of cash or a Letter of Credit; and

(iii) The Performance Assurance and any interest accrued thereon in accordance with Section 7.03(a) shall be held by CECONY as security for Owner's performance of its obligations under this Agreement during the remainder of the Term.

(c) Return of Performance Assurance. CECONY shall return to Owner the unused portion of the Performance Assurance, including any interest accrued thereon pursuant to Section 7.03(a), as soon as reasonably practicable after (i) the Term has ended; and (ii) Owner has satisfied all monetary obligations under this Agreement that survive termination of this Agreement (including Owner's obligation to pay any Termination Payment in accordance with Section 10.03).

7.03 Administration of Project Security.

(a) Cash.

(i) 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.

(ii) 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.

(b) Letters of Credit.

(i) Each Letter of Credit shall be maintained for the benefit of CECONY.

(ii) Owner shall:

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

(B) 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 its expiration;

(C) 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

(D) replenish a Letter of Credit to the full Project Security amount in the event that CECONY draws against the Letter of Credit for any reason other than to satisfy a Termination Payment.

(iii) 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.

(iv) 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).

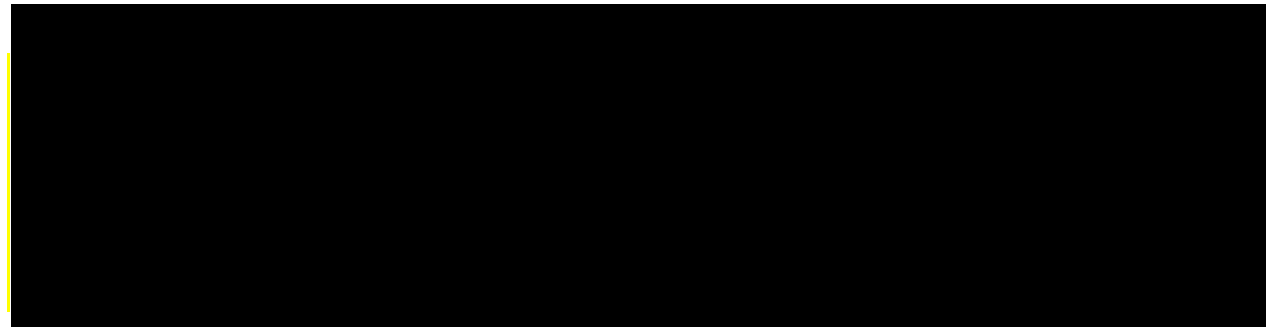
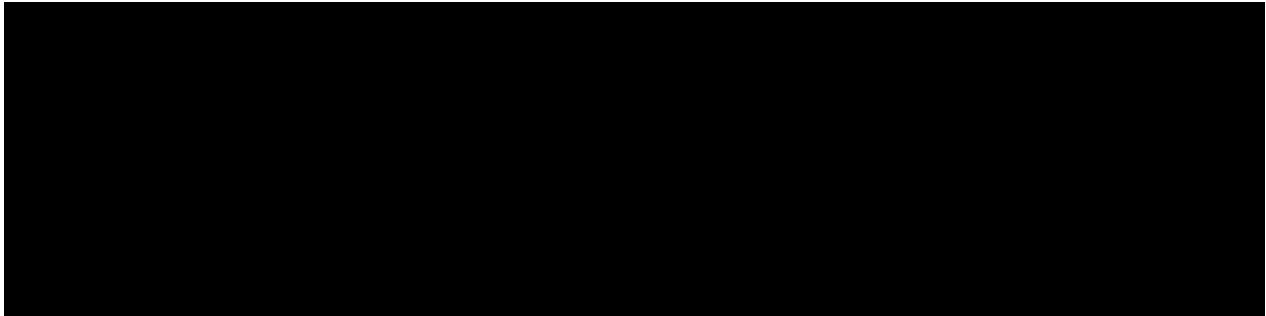
(v) Cash proceeds received by CECONY from drawing upon the Letter of Credit and that are not used to satisfy the damages claimed by CECONY shall be deemed Project Security for Owner's obligations to CECONY, and CECONY shall have the rights and remedies set forth in this Agreement with respect to such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

(vi) 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.

(c) 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:

(i) 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

(ii) any amounts owing to CECONY that remain unpaid after the application of the amounts drawn by CECONY.



7.05 Remedies.

(a) 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:

- (i) exercise any of its rights and remedies with respect to the Project Security, including any such rights and remedies under law then in effect;
- (ii) exercise any of its rights of setoff against any and all property of Owner in the possession of CECONY or its agent;
- (iii) draw on any outstanding Letter of Credit issued for its benefit; and
- (iv) 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.

(b) 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, subject to CECONY's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

(c) CECONY shall be under no obligation to prioritize the order with respect to which it exercises any one or more of the rights and remedies available hereunder. Owner shall in all

events remain liable to CECONY for any amount payable by Owner in respect of any of its obligations remaining unpaid after any such liquidation, application and set off.

7.06 Credit and Collateral Covenants.

(a) 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 Laws the rights, liens and priorities of CECONY with respect to the Security Interest provided for herein and therein.

(b) Owner shall at all times during the Term of the Agreement comply with the debt-to-capital ratio and debt-to-equity ratio set forth in any Credit Facility Agreement, or in the event either (i) there is no Credit Facility Agreement or (ii) such Credit Facility Agreement does not set forth a debt-to-capital ratio or a debt-to-equity ratio, [REDACTED]

[REDACTED] Owner shall provide notice to CECONY of any default notices issued to Owner under any Credit Facility Agreement within (3) Business Days of receipt of the same.

7.07 Financial Information. If requested by CECONY, Owner shall deliver the following financial statements, which in all cases must be for the most recent accounting period and prepared in accordance with GAAP:


(a) 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

(b) 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.

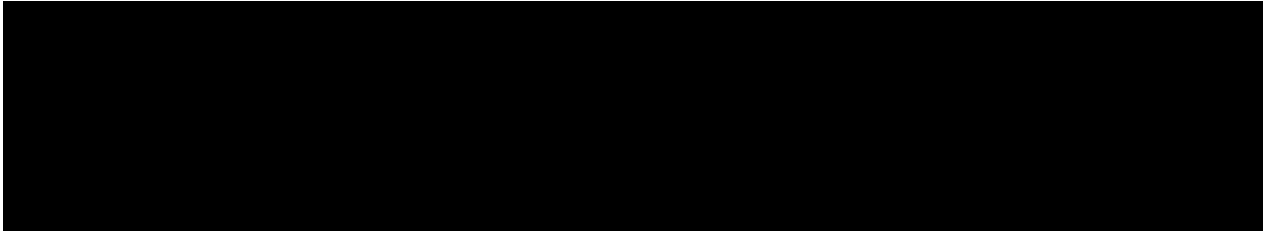
In each case, the financial statements specified above must be certified in accordance with all Applicable Laws, including all applicable SEC rules and regulations, if such Party is an SEC reporting company, or certified by the chief financial officer, controller, treasurer or any assistant treasurer 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.

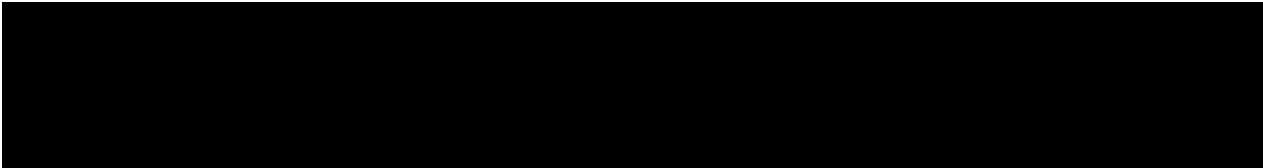
ARTICLE 8.

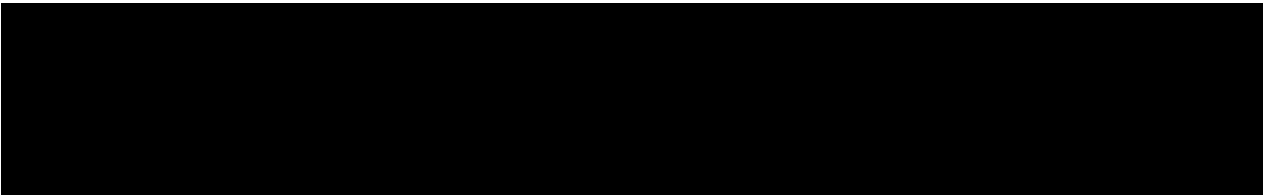
FORCE MAJEURE; IMPOSSIBILITY; SAFETY EVENT; CASUALTY EVENT

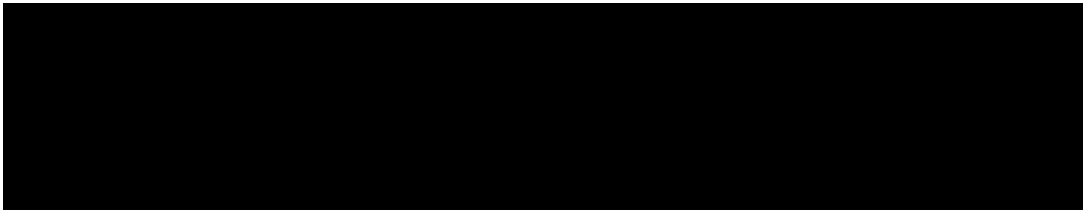
 No Default for Force Majeure. Neither Party will be considered to be in default in the performance of any of its obligations set forth in this Agreement when and to the extent failure of performance is caused by Force Majeure; *provided*, a failure to make payments when due for payment obligations that accrue prior to the Force Majeure event shall not be excused.

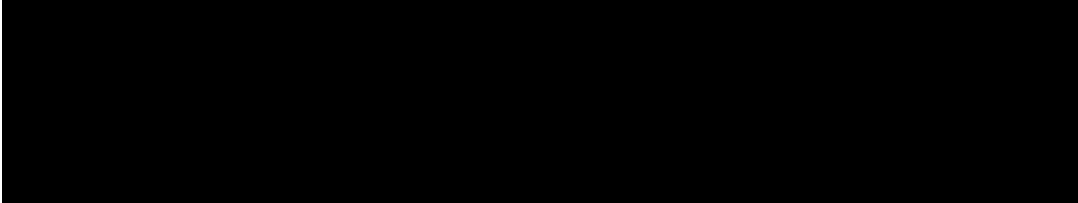


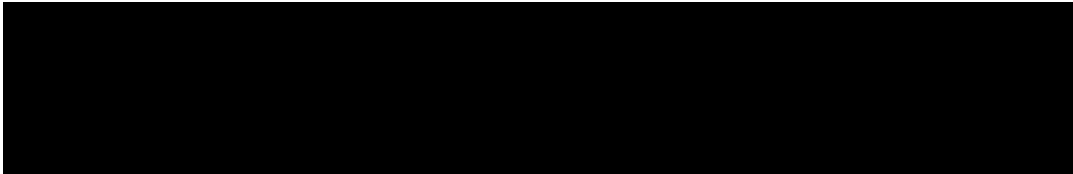






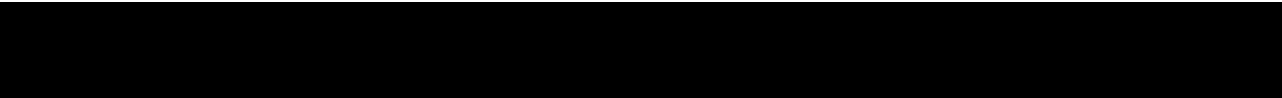






8.02 Force Majeure Claim. If, because of a Force Majeure, either Party is unable to perform its obligations under this Agreement, such Party (the "Claiming Party") shall be excused

from whatever performance is affected by the Force Majeure to the extent it is unable to perform due to the Force Majeure; *provided:*

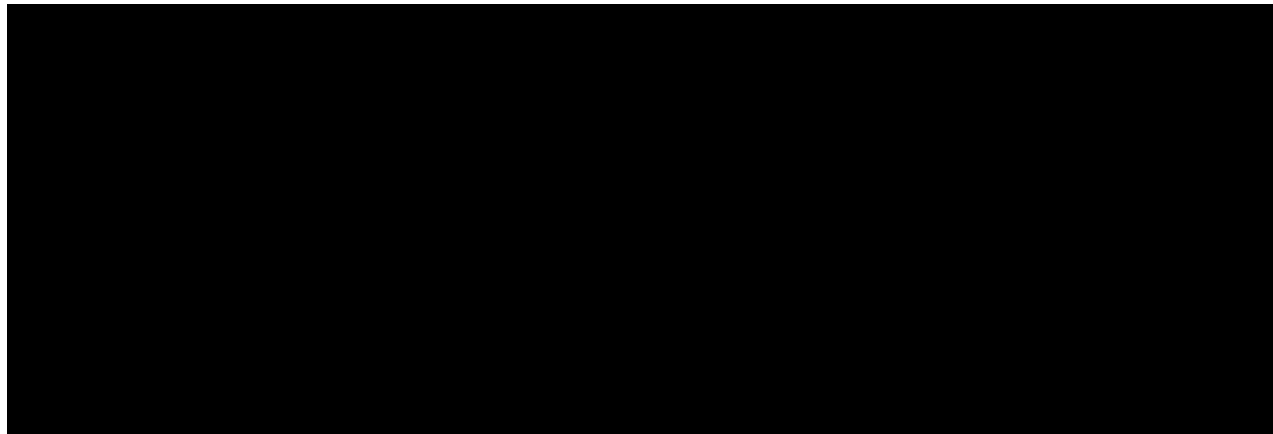
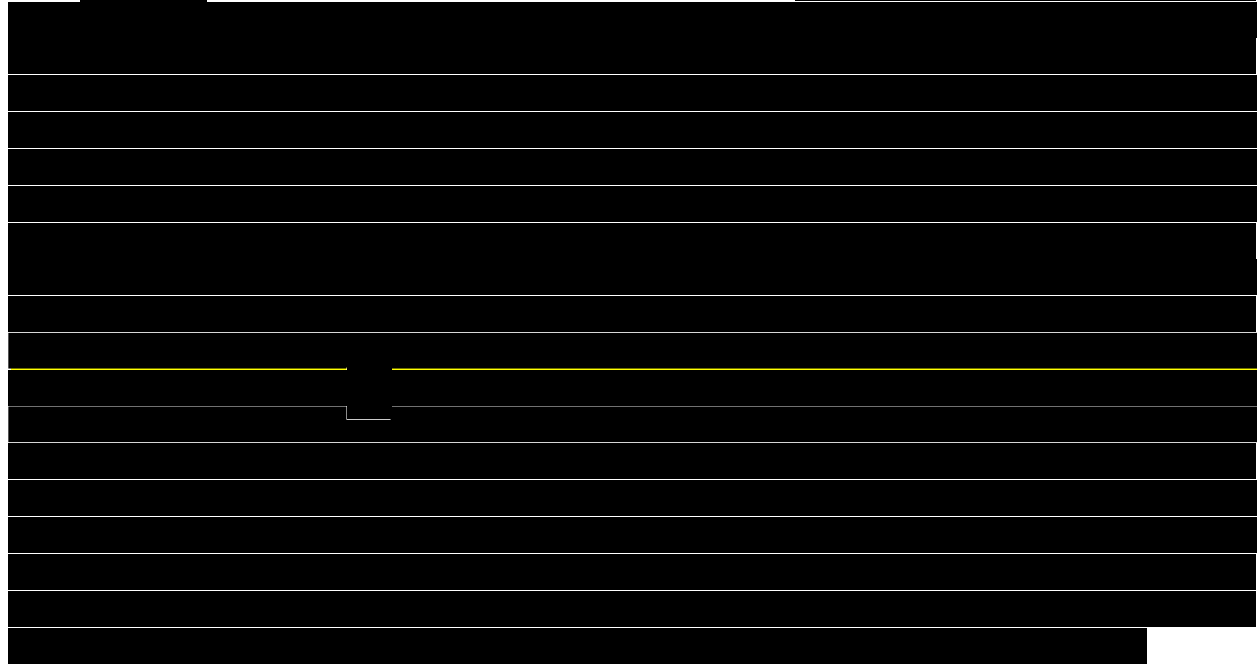


(b) the Claiming Party provides timely evidence reasonably sufficient to establish that the occurrence constitutes a Force Majeure as defined in this Agreement and that the Force Majeure prevents the Claiming Party from performing the obligations;

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

(d) 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.



[Redacted]

8.05 Safety Event; Investigation and Remedy.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

8.06 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.



**ARTICLE 9.
REPRESENTATIONS AND WARRANTIES**

9.01 Representations and Warranties of Both Parties. As of the Effective Date, each Party represents and warrants to the other Party that:

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

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

(c) 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 Laws;

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

(e) It is not Bankrupt and there are not proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or become Bankrupt;

(f) There is not pending, or to its knowledge, threatened against it or, in the case of Owner, any of its Affiliates, any legal proceedings that could materially adversely affect its ability to perform under this Agreement;

(g) 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;

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

(i) 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;

(j) 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.

9.02 Additional Owner Representations and Warranties.

(a) On each day on which Project Security is held by CECONY under this Agreement, Owner hereby represents and warrants that:

(i) Owner has good title to and is the sole owner of such Project Security, and the execution, delivery and performance of the covenants and agreements of this Agreement do not result in the creation or imposition of any lien or security interest upon any of its assets or properties, including the Project Security, other than the security interests and liens created under this Agreement;

(ii) Upon the posting of Project Security by Owner to CECONY, CECONY shall have a valid and perfected first priority continuing security interest therein, free and clear of any liens, claims or encumbrances, except those liens, security interests, claims or encumbrances arising by operation of law that are given priority over a perfected security interest; and

(iii) Owner is not and will not become a party to or otherwise be bound by any agreement, other than this Agreement, which restricts in any manner the rights of any present or future holder of any of the Project Security with respect hereto.

ARTICLE 10. EVENTS OF DEFAULT; TERMINATION

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

(a) With respect to either Party:

(i) 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;

(ii) 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, (a) if the misrepresentation or breach of warranty is not capable of a cure, an Event of Default will be deemed to occur five (5) Business Days after Notice

from the non-breaching Party or (b) if the misrepresentation or breach is capable of being cured, an Event of Default will have occurred if such misrepresentation or breach is not remedied within thirty (30) days after Notice from the non-breaching Party;

(iii) Such Party fails to perform any material covenant or obligation set forth in this Agreement, [REDACTED]

- (iv) Dissolution or liquidation of such Party; or
- (v) such Party becomes Bankrupt.

(b) With respect to Owner:

(i) Owner transfers or assigns the Interconnection Queue Position or the Interconnection Agreement, except as may be required by a NYISO Comprehensive System Planning Process;

(ii) Subject to Owner’s right to cure pursuant to Section 4.06, Owner fails to achieve a Critical Path Milestone on or before the deadline to achieve such Critical Path Milestone set forth in this Agreement;

(iii) Owner’s Abandonment of construction of the Project;

(iv) Owner fails to achieve Commercial Operation for the Project by [REDACTED];

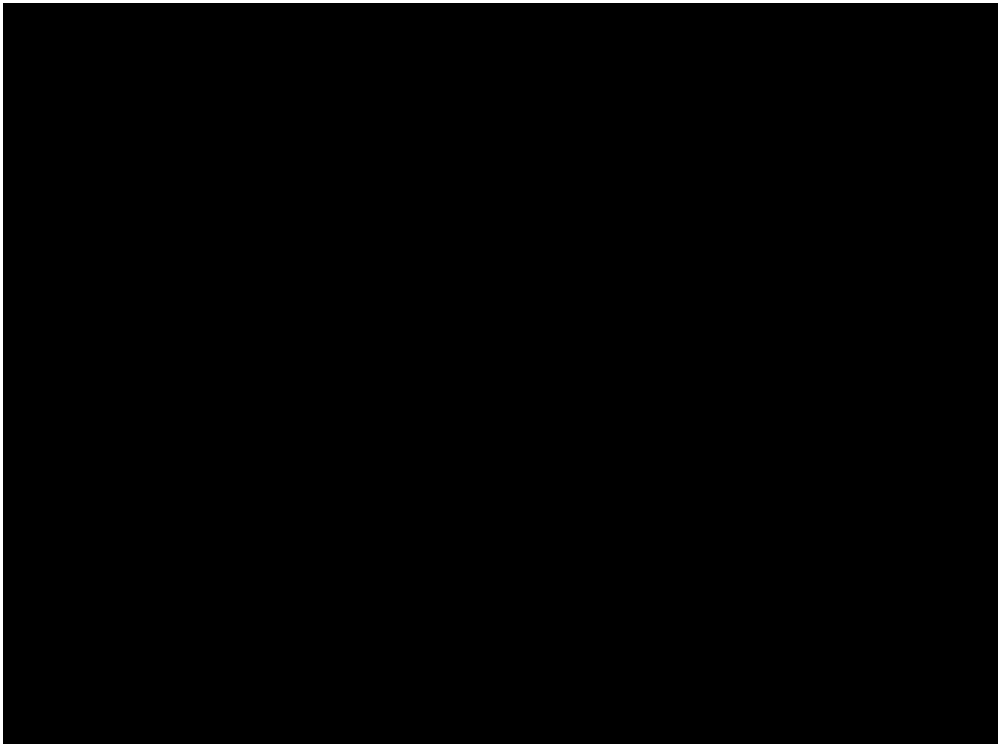
(v) the occurrence of any event for which CECONY’s consent is required under Section 14.04 without CECONY providing prior written consent;

(vi) Owner fails to satisfy the credit and collateral requirements set forth in ARTICLE 7, including failure to post or maintain Project Security, [REDACTED]

(vii) Owner fails to maintain insurance of the types and in the amounts required under Section 14.07 [REDACTED];

(viii) As it concerns performance of the Project,

(A) [REDACTED]



(B) [Redacted]

(C) [Redacted]

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

(x) Use of the Project for the benefit of any Person other than CECONY, except during the period prior to the Commercial Operation Date;

(xi) [Redacted]
[Redacted]
[Redacted]
[Redacted]:

(A) interconnect the Project to the Transmission Owner's electric system;

- (B) be a market participant under the NYISO Tariff; or
- (C) receive electric service sufficient for all Station Use and Charging Energy Requirements;

(xii) 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 [REDACTED]

(xiii) Owner does not repair, restore or reconstruct the Project, as applicable, following a Casualty Loss as required under Section 8.06;

(xiv) 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 ten (10) Business Days after Notice from CECONY; or

(xv) Owner does not have Site Control in accordance with Section 4.01(a), [REDACTED]

10.02 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 twenty (20) 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.

[REDACTED] Calculation of Termination Payment. [REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

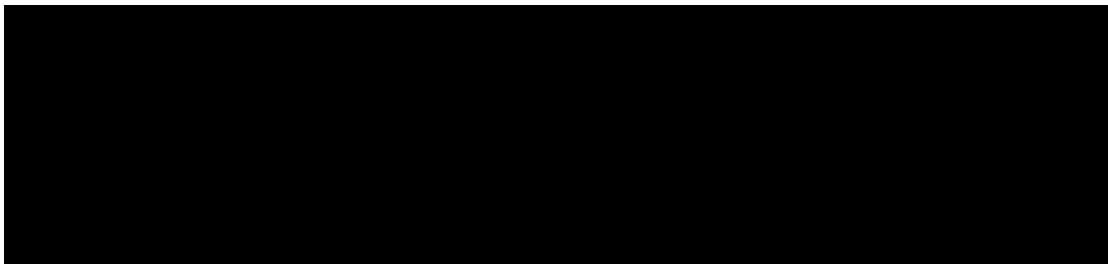
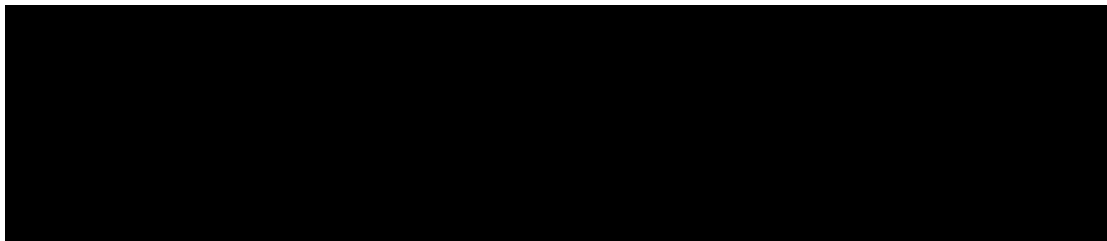
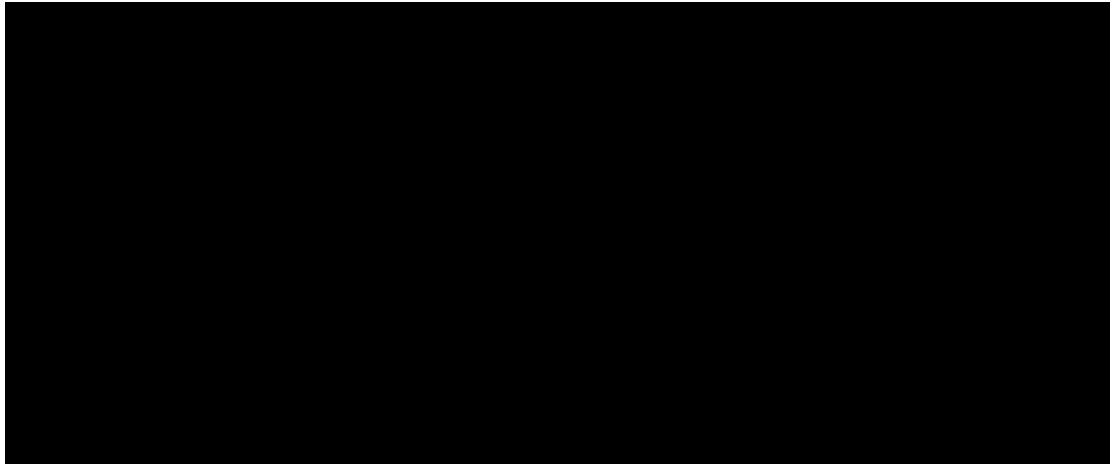
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



10.04 Notice of Termination Payment. 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.

10.05 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.

**ARTICLE 11.
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, 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 THAT THE DAMAGES OWED IN SUCH CIRCUMSTANCES WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, 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.

**ARTICLE 12.
DISPUTES**

12.01 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 designated in writing as a representative of the Party (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 telephonically). If the Dispute is not resolved with twenty (20) 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 telephonically) (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.

12.02 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 forty-five (45) 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 that will share equally in its costs (other than each Party’s individual attorneys’ fees and costs related to the Party’s participation in the mediation, which fees and costs will be borne by such Party).

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.

12.03 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.

12.04 Provisional Relief. 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.

12.05 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.

ARTICLE 13. INDEMNIFICATION; GOVERNMENTAL CHARGES

13.01 Owner's Indemnification Obligations. To the greatest extent permitted by Applicable Laws, 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:

(a) any breach made by Owner of any representation, warranty, covenant or agreement contained herein;

(b) 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;

(c) 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;

(d) 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;

(e) any violation of Applicable Laws, failure to obtain and maintain Permits, or failure to perform Permit Requirements related to the Project or Owner's performance, or failure to perform, under this Agreement;

(f) 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;

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

(h) any financial settlement for Products requiring payment by CECONY, monetary penalties or fines assessed against CECONY by the NYPSC, the NYISO or any other entity having jurisdiction, resulting from:

(i) Owner's failure to dispatch the Project in accordance with a Dispatch Notice, other than due to a Force Majeure;

(ii) 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); or

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

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

13.02 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:

(a) 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.

(b) 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.

(c) 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.

13.03 Cooperation to Minimize Tax Liabilities. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is adversely affected in a material way by such efforts.

13.04 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”) on or with respect to the Project or the Product.

For the Contract Term,

(a) Owner shall pay or cause to be paid all Governmental Charges on or with respect to the Product at or before the Energy Delivery Point.

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

If CECONY is required by Applicable Laws to remit or pay Governmental Charges that are Owner’s responsibility hereunder, Owner shall promptly reimburse CECONY for such amounts upon CECONY’s request. If Owner is required by Applicable Laws to remit or pay Governmental Charges that are CECONY’s responsibility hereunder, CECONY shall promptly reimburse Owner for such Governmental Charges upon Owner’s request.

13.05 Environmental Costs. [REDACTED]

[REDACTED]

ARTICLE 14.
MISCELLANEOUS

14.01 General.

(a) Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to its subject matter.

(b) Amendment. This Agreement can only be amended by a writing signed by both Parties.

(c) 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).

(d) 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.

(e) 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 by CECONY of the Project, including any review of the design, construction or renovation, operation, or maintenance of the Project by CECONY or acceptance of Owner's subcontractors, 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.

(f) 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.

(g) Successors and Assigns. This Agreement is binding on each Party's successors and permitted assigns.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(l) 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.

(m) 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.

(n) Rules of Construction.

(i) 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.

(ii) 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.

(iii) The word "or" when used in this Agreement includes the meaning "and/or" unless the context unambiguously dictates otherwise.

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

(v) All references to time shall be in Eastern Standard Time unless stated otherwise.

(vi) No provision of this Agreement is intended to contradict or supersede any agreement or Applicable Laws covering 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 Laws, such agreement or Applicable Laws control. Each Party agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

(vii) Whenever this Agreement specifically refers to any Applicable Laws, tariff, government department or agency, regional reliability council, Transmission Owner, accounting standard, or Ratings Agency, the Parties hereby agree that the reference also refers to any successor to such law, tariff, standard or organization.

14.02 Notices.

(a) 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(a) will be deemed given as follows:

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

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

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

(iv) 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 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.

14.03 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.

14.04 Assignment; Transfer of Project or Equity Interests in Owner.

(a) 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.

(b) 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 immediately following such Change of Control

Owner shall provide at least thirty (30) days' prior written notice to CECONY prior to consummation of any proposed Change of Control.

(c) Owner may, with at least thirty (30) days prior notice to CECONY, including the names and contact information of the assignees, pledge or assign as security for any debt financing for the Project (i) all or any of its rights under this Agreement or proceeds therefrom, (ii) all or any portion of the Project and (iii) all or any portion of the direct or indirect equity interests in Owner. 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. Requests for a Collateral Assignment Agreement must be received by CECONY at least thirty (30) days in advance of the anticipated closing date for the transaction in question. Owner shall also be responsible for CECONY's reasonable costs associated with the preparation, review, execution and delivery of a Collateral

Assignment Agreement, including 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 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.

[REDACTED]

14.05 Confidentiality.

(a) 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;

[REDACTED]

(b) Permitted Disclosures.

(i) Notwithstanding anything to the contrary herein, each of the Parties acknowledges and agrees that CECONY may be 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. In connection with any such NYPSC required or requested filings or submissions, CECONY shall use commercially reasonable efforts to exclude or redact Confidential Information of Owner from the NYPSC required or requested filing or submission, and if the foregoing is not permitted by the NYPSC, CECONY (a) shall, upon advice of its counsel, submit only that portion of Owner's Confidential Information that has been required or requested by the NYPSC, (b) to the extent applicable, shall request the NYPSC to grant

confidential treatment to the Owner's Confidential Information so filed or submitted and (c) shall notify Owner promptly if the NYPSC notifies CECONY 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.

(ii) The Parties may disclose Confidential Information to the extent necessary to comply with Applicable Laws, any accounting rule or standard, and any applicable summons, subpoena or order of a Governmental Authority, and any exchange, Control Area or NYISO rule.

(iii) 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.

(c) Duty to Seek Protection.

(i) In connection with requests or orders to produce Confidential Information protected by this Agreement and in accordance with 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, each Party, to the extent permitted by Applicable Laws, (A) will 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 compliance with the provisions of this Agreement, and (B) will, and will cause its Representatives to, cooperate fully with such other Party, to the extent permitted by Applicable Laws, in seeking to limit or prevent such disclosure of such Confidential Information. Notwithstanding the preceding sentence, the requirements under this Section 14.05(c)(i) do not apply to Section 14.05(b)(i).

(ii) 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.

(d) 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

Pollution Liability Insurance.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(d) All Risk Property Insurance.

[Redacted]

Cyber/Network Security and Data Privacy Liability Insurance.

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED] Third Party Liability Insurance. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] CECONY as Additional Insured. [REDACTED]

[REDACTED]

Proof of Insurance.

[REDACTED]

Reporting.

[REDACTED]

Failure to Comply.

[REDACTED]

14.08 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 Laws, 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.

14.09 Service Contract. The Parties agree that this Agreement constitutes a service contract in accordance with Internal Revenue Code Section 7701(e).

[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.

BAYONNE ENERGY CENTER III, LLC,
a Delaware limited liability company



Date: _____

Signatures continued on next page

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC., a New York
corporation

By: _____

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 [REDACTED] by Owner and/or Owner’s contractors, or (ii) following the Commercial Operation Date of the Project, the relinquishment of all possession and control of the Project by Owner, but not including any such relinquishment or cessation that is 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 Section 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 by NYISO 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, and any other ancillary service defined in the NYISO Tariff during the Term.

[REDACTED]

“Applicable Laws” means the NYISO Tariff and all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to either or both of the 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:

$$\text{Available Storage Capacity} = (\text{Storage Capacity} / \text{Maximum Storage Level}) * \text{Contract Capacity}$$

“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, [REDACTED], (b) makes an assignment or any general arrangement for the benefit of creditors, or (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar 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.

“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.

[REDACTED]

“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 8.06.

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

[REDACTED]

“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 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, which term expressly excludes 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” a study conducted by NYISO or a third party consultant for a developer to determine a list of facilities, the cost of those facilities, and the time required to interconnect generation facilities 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.

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

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

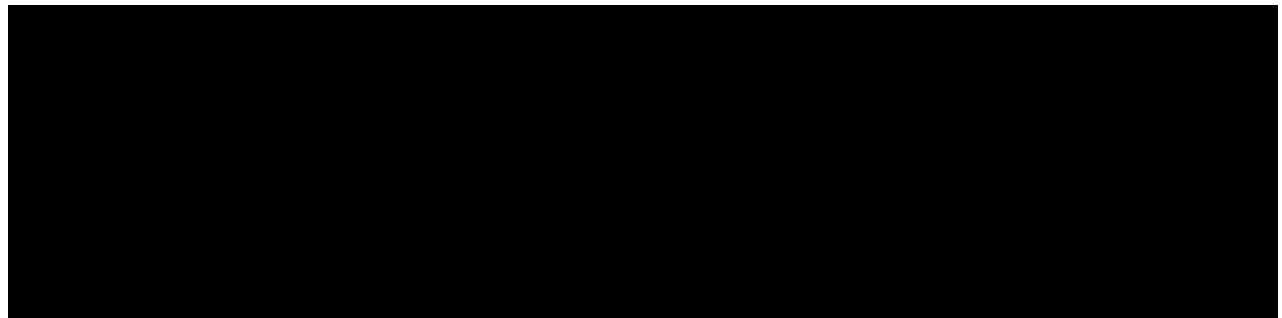
“Commercial Operation Date” has the meaning set forth in Section 2.07.

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

“Commercial Operation Payment” means an amount equal to (a) the Total Compensation Amount; divided by (b) sixteen (16).

“Communication Protocol” has the meaning set forth in Exhibit H.

“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.



“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 more than fifty percent (50%) 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. [REDACTED]

“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, with a Financing Party to which Owner is a party or otherwise bound.

“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). If no rating is assigned to such entity’s unsecured, senior long-term debt or deposit obligations by any Rating Agency, then “Credit Rating” means 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 the Construction Specifications Institute.

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

[REDACTED]

“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.

“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 that is consistent with Good Utility Practice. 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:

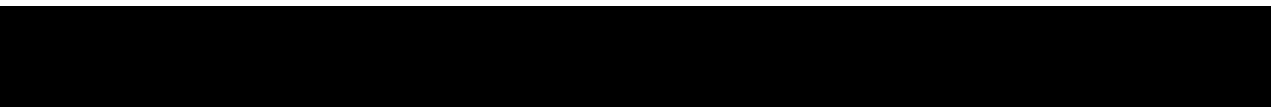
- (a) the number of hours required to complete the test, or
- (b) the minimum amount of time that the Project must stay on-line after being started-up prior to being shut down, due to physical operating constraints.

“Dispute” means any and all disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Agreement, or to either Party’s performance or failure of performance under this Agreement.

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

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

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



“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 in connection with the NYISO requirements 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, flowing or supplied by discharged and stored by the Project or the Project, as applicable, 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.

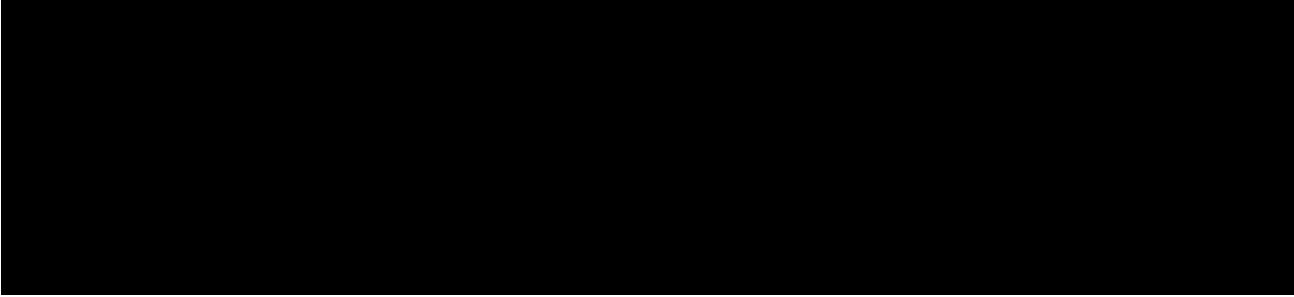
“EPT” or “Eastern Prevailing Time” means the prevailing time in the Eastern Time Zone.

“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.

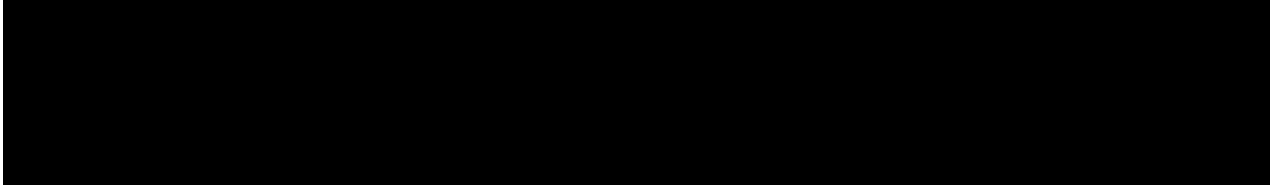
“Equivalent Hour” means, with respect to any hour during a Planned Outage, the product of multiplying such hour by the percentage of the Contract Capacity rendered unavailable as a result of a Planned Outage during such hour.

“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.



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

- (a) In whole or in part:
 - (i) delays a Party’s performance under this Agreement;
 - (ii) causes a Party to be unable to perform its obligations; or
 - (iii) prevents a Party from complying with or satisfying the conditions of this Agreement;
- (b) Is not within the reasonable control of that Party;
- (c) Is not the result of the negligence or fault of that Party or a lack of due diligence, a breach of the Agreement or a failure to comply with Good Utility Practice by that Party; and
- (d) The Party has been unable to overcome such occurrence by the exercise of due diligence,
- (e) Provided that the criteria set forth in subsections (a)-(d) are met, a Force Majeure includes:
 - (i) acts of God, including hurricanes, tornadoes, lightning, earthquakes, flood, landslides, unusually severe weather and drought;
 - (ii) acts of civil or military authority;
 - (iii) acts of war whether declared or undeclared;
 - (iv) acts of terrorism;
 - (v) civil disturbance, insurrection or riot;

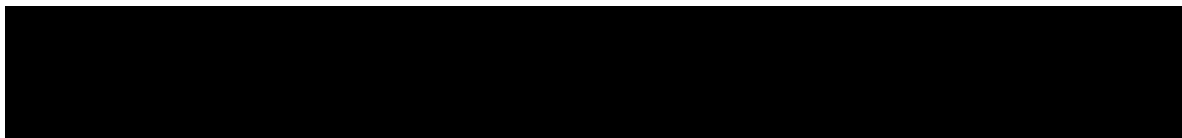
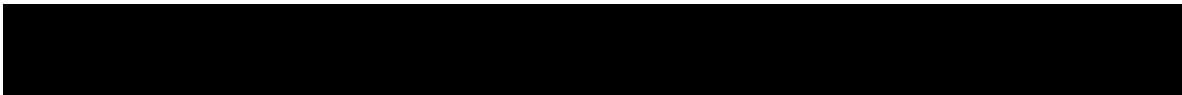
- (vi) civil strife, revolts or rebellions; sabotage, theft or vandalism;
- (vii) fire, not caused by the Project;
- (viii) epidemic or plague; quarantine;
- (ix) delay or accident in shipping or transportation; or perils of the sea;

and



Force Majeure does not include:

- (a) Any failure to comply with Applicable Laws;
- (b) 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;
- (c) Economic hardship;
- (d) 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;
- (e) 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;
- (f) 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;

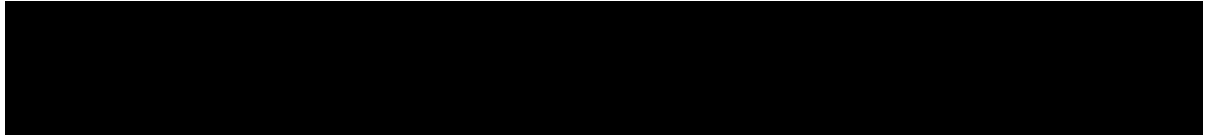


- (i) A failure of performance of any other entity, including Owner's contractors, suppliers or vendors, except to the extent such event is the direct result of an event that would otherwise qualify as a Force Majeure;

(j) 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;

(k) Owner's failure to obtain or retain any tax credits or incentives with respect to any portion of the Project;

(l) changes in temperature or humidity conditions; or



“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) for purposes of this definition, 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).

“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).

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

“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 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 NYISO and/or the NYISO Tariff, as applicable, determine are required to connect the Owner’s Project to the New York Transmission System.

“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.

“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 withdrawn from the Project 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 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 distribution facilities operated by the Transmission Owner and the transmission facilities operated by the NYISO, 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 Laws.

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

“Notices” has the meaning set forth in Section 14.02(a).

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

“NYISO Comprehensive System Planning Process” means the numerous assessments, evaluations and plans developed and relied upon by the NYISO to conduct transmission system planning processes, including the following: demand forecast & analysis, Short-Term Reliability Process, Reliability Planning Process, Public Policy Transmission Planning Process, interregional planning and interconnection studies.

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

“NYISO Planning Unavailability Event” has the meaning set forth in Section 8.07.

“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(f)(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 7.02.

“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 Laws.

“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 or other financing with respect to the Project or the ownership interests in Owner, 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 Outage Cap Extension Request” has the meaning set forth in Section 6.03(f)(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.

“Product” has the meaning set forth in Section 1.01(a).

“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 2.04(j).

“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).

“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.

[REDACTED]

[REDACTED]

“Round-Trip Efficiency” or “RTE” means the ratio of Energy put into 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 [REDACTED] time intervals beginning on any hour and ending on the next hour [REDACTED]

“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.

“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).

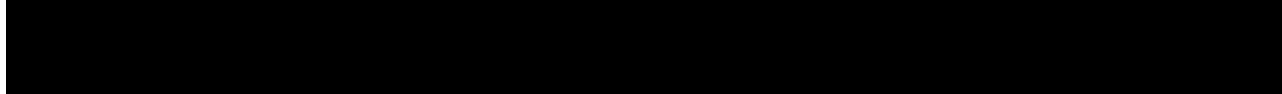
“Storage Capacity” means the maximum amount of energy that is capable of being stored in a storage device, and shall include, without limitation, any other products that may be developed or evolve from time to time during the Term that relate to the capability of a storage resource to store energy.

“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.



“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 (i) a transaction or series of transactions involving one or more investors seeking a return that is enhanced by tax credits and/or tax depreciation and generally (a) 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 or analogized to a battery storage project transaction (as opposed to a wind farm or rehabilitated real estate) or (b) contemplated by Section 50(d)(5) of the Internal Revenue Code of 1986, as amended (a pass-through lease); or (ii) a transaction or series of transactions involving the sale of tax credit and/or tax depreciation with respect to the Project to one or more other Persons.

“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  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(h).

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

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

EXHIBIT B

PROJECT DESCRIPTION

PART I. DESCRIPTION OF PROJECT.

Project Name	Bayonne Energy Center 3
Storage Unit	[REDACTED]
Contract Capacity (MW _{AC})	49.8
Contract Capacity Energy (MWh)	199.2
Site Address	401 Hook Road, Bayonne, NJ 07002
Storage Unit Technology	Lithium Ion Battery
Primary Storage Fuel Type	Electricity
Configuration	[REDACTED]
NYISO Resource ID	Owner to provide to CECONY prior to Commercial Operation Date
Deliverability restrictions	None
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
Interconnection Queue Number	815
Interconnection Voltage (kV)	345kV
Cell manufacturer and Type	[REDACTED]
Power Conversion System including Inverter manufacturer and model	[REDACTED]

1. Project Description

BEC III is a 49.8 MWac / 199.2 MWh utility-scale BESS project located in Bayonne, NJ. [REDACTED]

[REDACTED]

BEC III will have an interconnection agreement with NYISO.

2. [REDACTED]

[REDACTED]

3. Site Legal Description

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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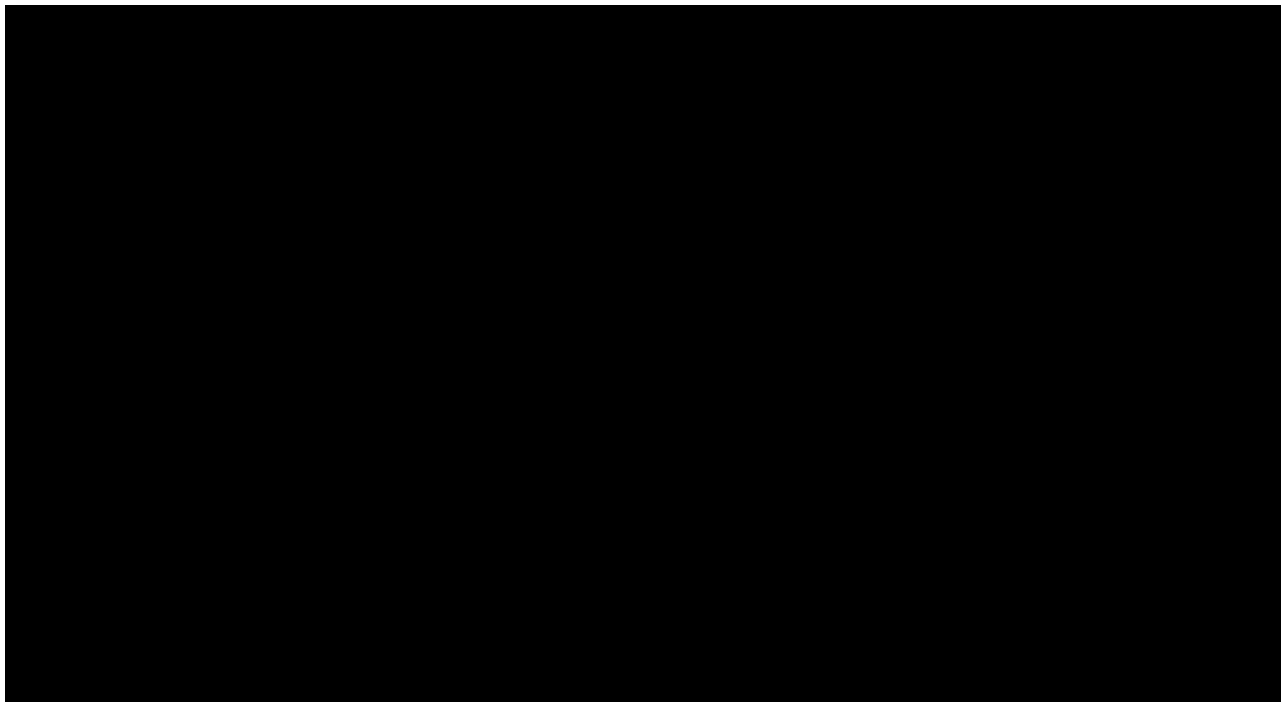
[REDACTED]

[REDACTED]

[REDACTED]

4. [REDACTED]

[REDACTED]

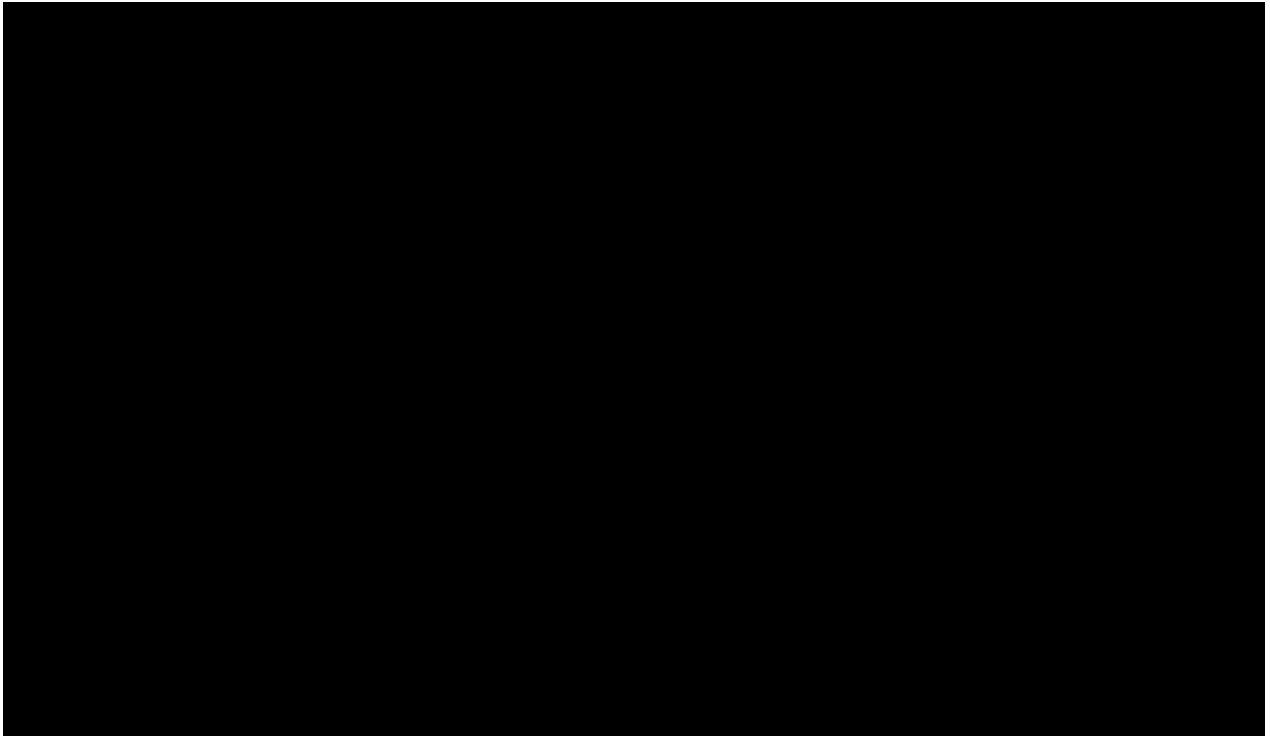
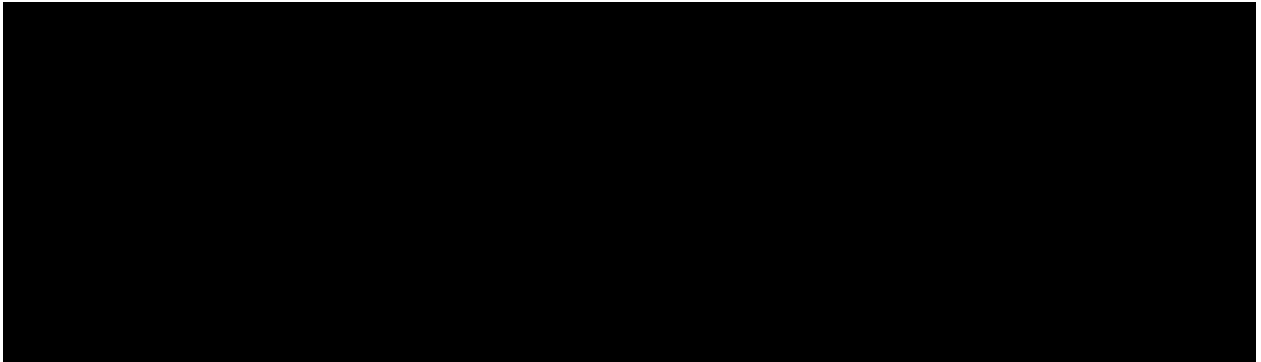


[REDACTED] II. ELECTRICAL THREE LINE DIAGRAM.

[REDACTED]

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

EXHIBIT C
STORAGE RATING TESTS



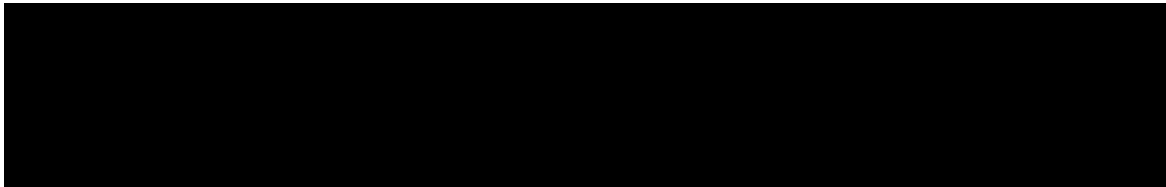
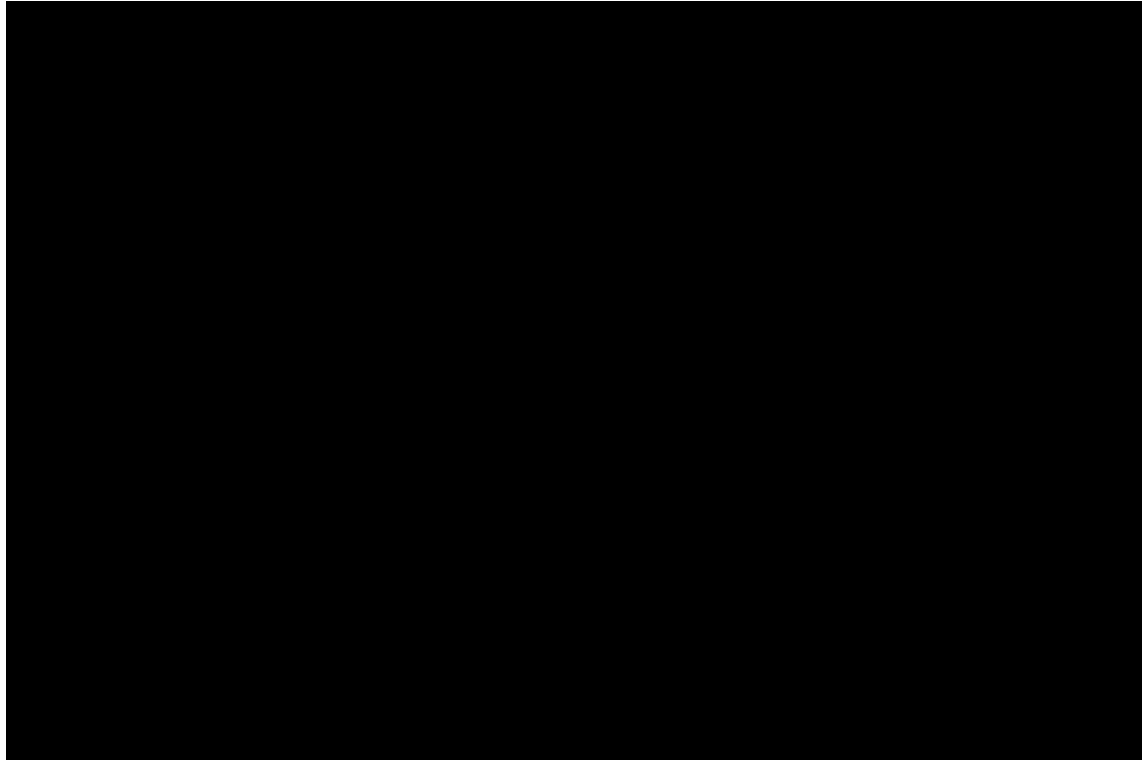
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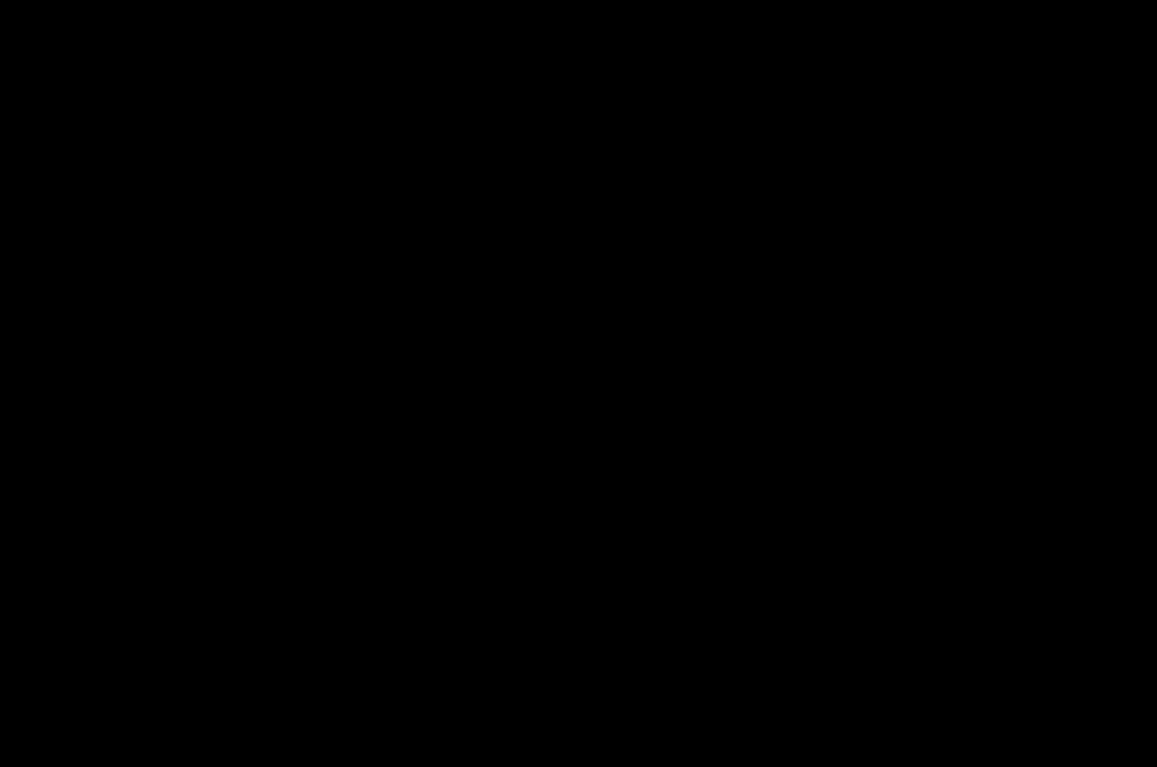
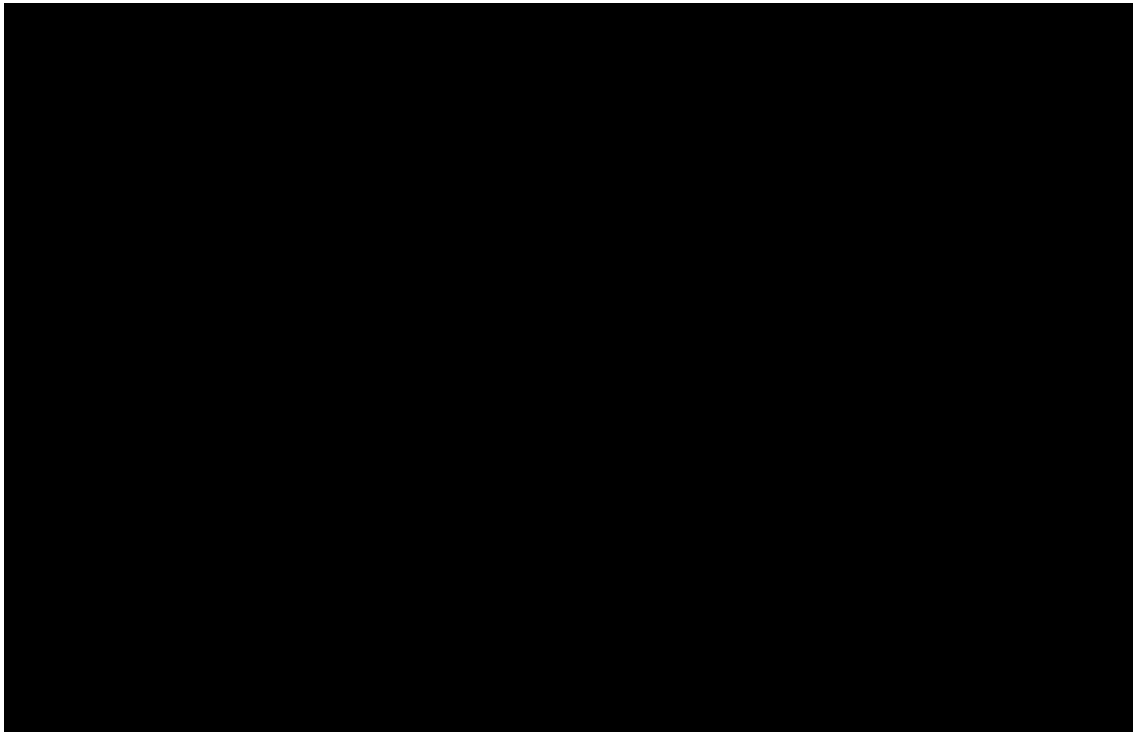
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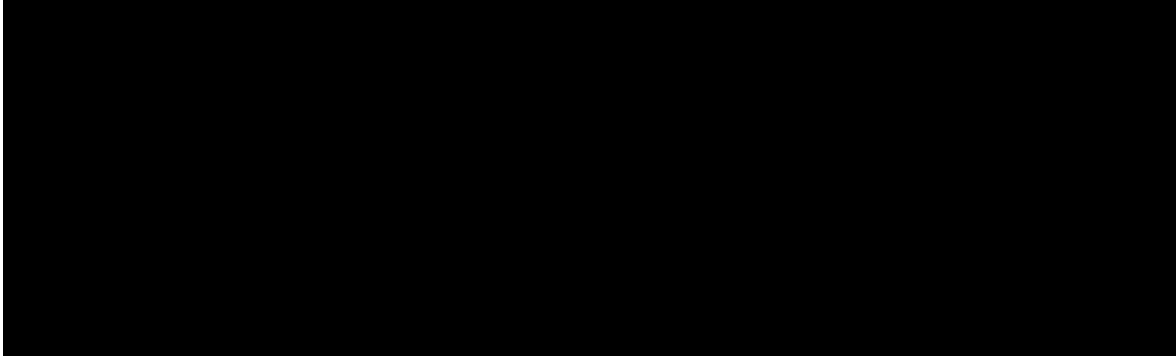
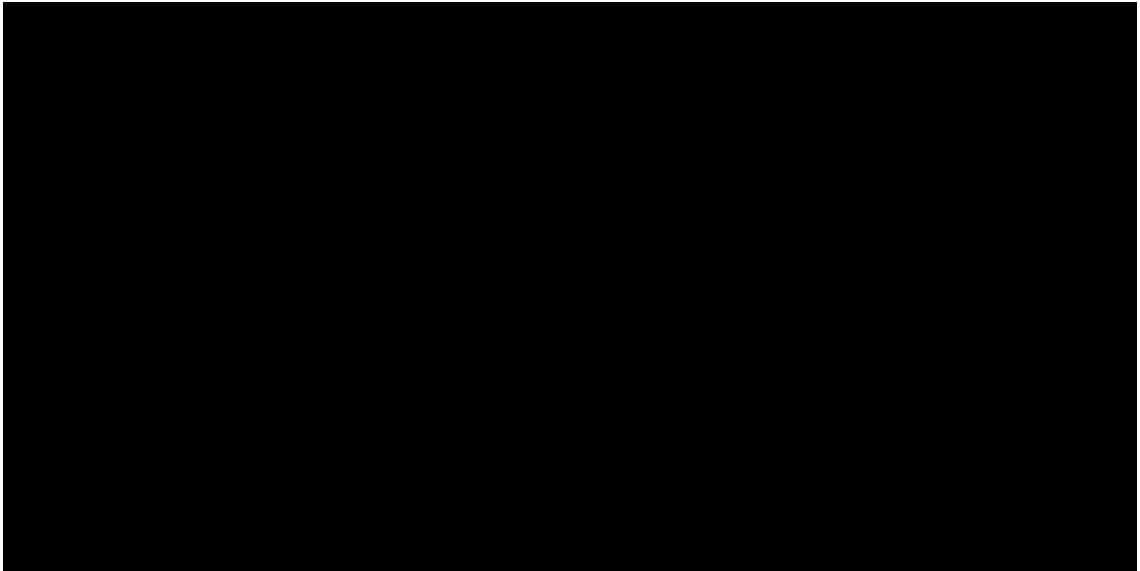
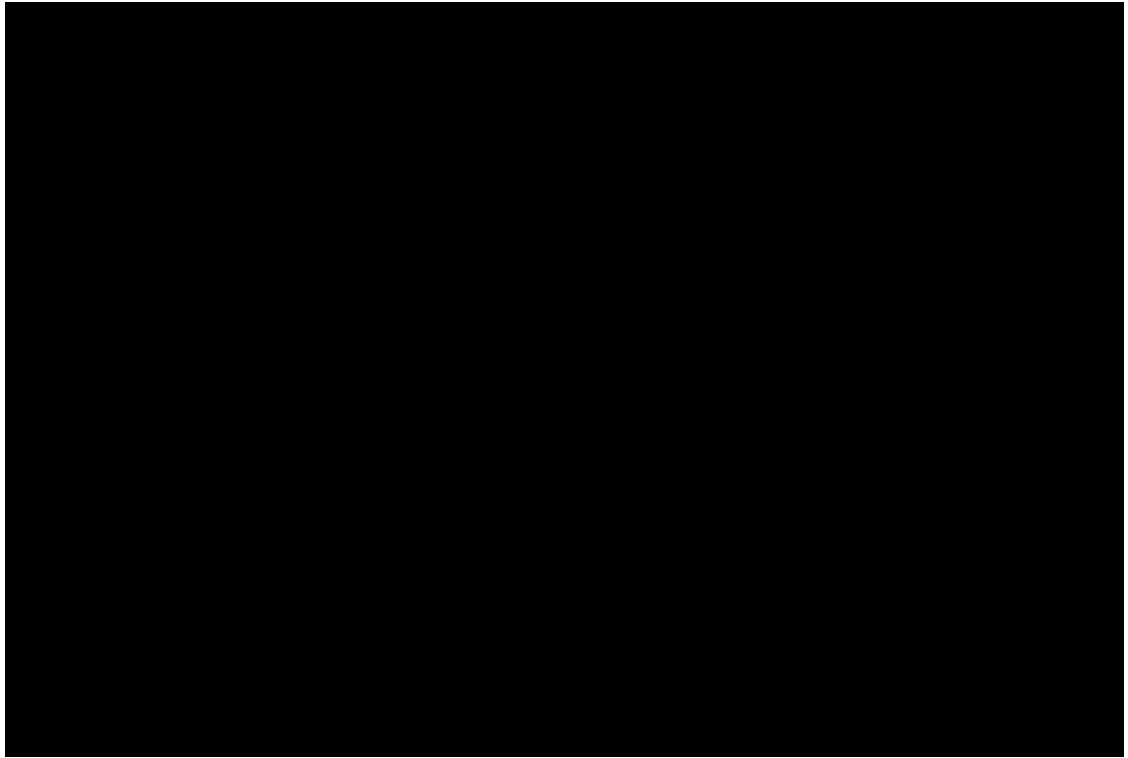
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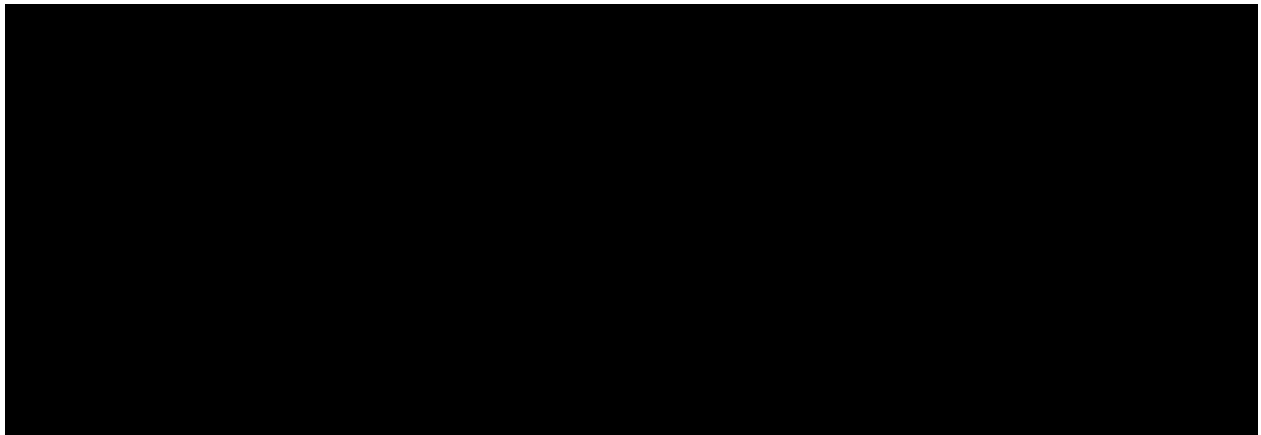
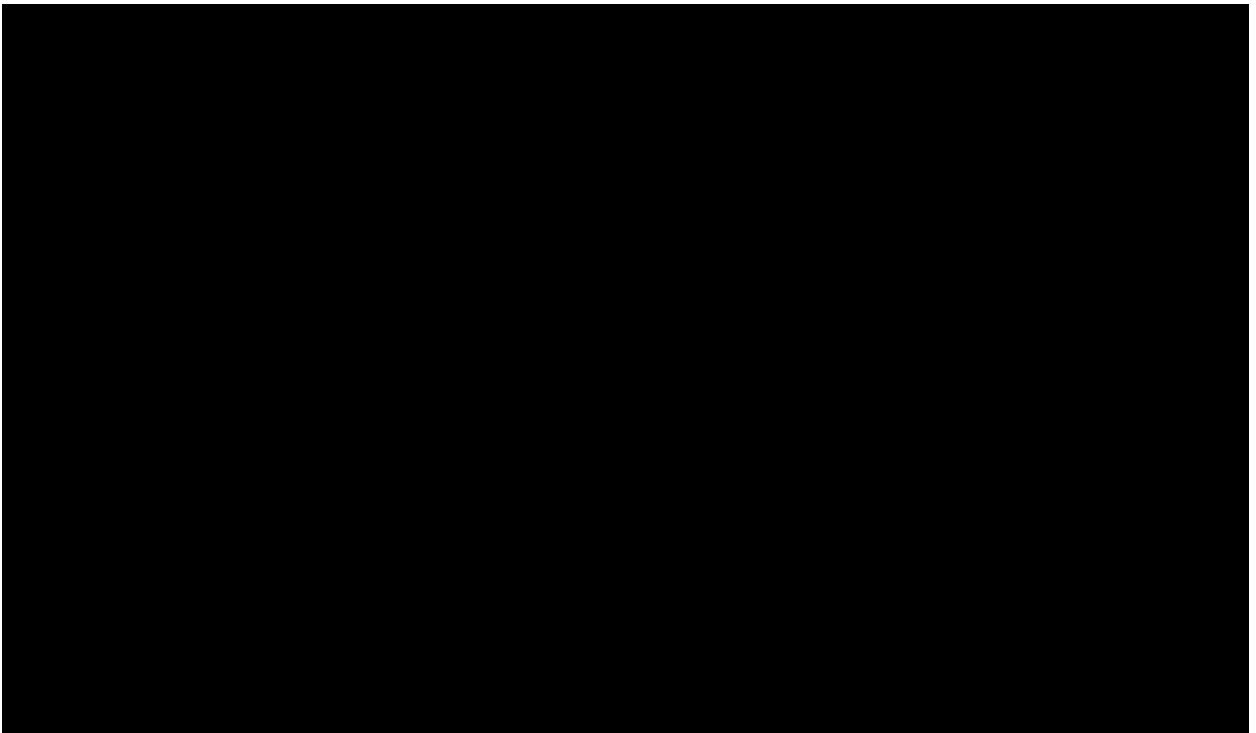
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***** End of EXHIBIT C *****

EXHIBIT D

PROJECT OPERATING RESTRICTIONS

File Update Date:	[REDACTED]
Technology:	Lithium-ion
Storage Unit Name:	[REDACTED]
A. Contract Capacity	
Contract Capacity (MW):	49.8 MW
B. Total Unit Dispatchable Range Information	
Maximum Storage Level (MWh):	199.2 MWh
Minimum Storage Level (MWh):	0 MWh
Maximum Discharge (MW):	49.8 MW
Maximum Charge (MW):	49.8 MW
Guaranteed Round Trip Efficiency (%)	[REDACTED]
Maximum Battery Throughput per Year [1]	[REDACTED]
TC. Ancillary Services	

Regulation

Operating Range (MW)

Lower MW (Charging)	Higher MW (Discharging)	Regulation Capacity Response Rate (MW/min)	Maximum Regulation Capacity (MW) [2]
-49.8	49.8	[REDACTED]	[REDACTED]

10-Minute Spinning Reserves

Operating Range (MW)

Lower MW (Charging)	Higher MW (Discharging)	Response Rate (MW/min)	Maximum Reserves Capacity (MW) [2]
-49.8	49.8	[REDACTED]	[REDACTED]

Voltage Support Service (if applicable)

[REDACTED]

[1] Maximum Battery Throughput per Year is measured off the Storage Unit Discharge.

[2] As of the Effective Date, NYISO calculates the Maximum Regulation Capacity and Maximum Reserves 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 Maximum Regulation Capacity or Maximum Reserves Capacity for each A/S and region shall be calculated according to NYISO's period limitation while preserving the Ramp Rate stated for each A/S.

*** 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 the Storage Unit that:
 - a. covers the entire Delivery Period
 - b. articulates standards and methods for establishing that the equipment is not performing to specification and should be repaired or replaced, and
 - c. 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

– 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.

No.	Milestones	Date
1*	[REDACTED]	[REDACTED]
2*	[REDACTED]	[REDACTED]
3*	[REDACTED]	[REDACTED]
4*	[REDACTED]	[REDACTED]
5*	[REDACTED]	[REDACTED]
6*	[REDACTED]	[REDACTED]
7*	[REDACTED]	[REDACTED]
8*	[REDACTED]	[REDACTED]
9*	[REDACTED]	[REDACTED]
10*	[REDACTED]	[REDACTED]
11*	[REDACTED]	[REDACTED]
12*	[REDACTED]	[REDACTED]

* 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:

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 (as set forth herein). 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 (the "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 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 (as set forth in Exhibit H) 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 Owner 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.

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.

Contact Information Table (To be provided by each Party at or prior to 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

Subject – Interconnecting Facilities

CECONY to provide prior to Substantial Completion.

***** 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									
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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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

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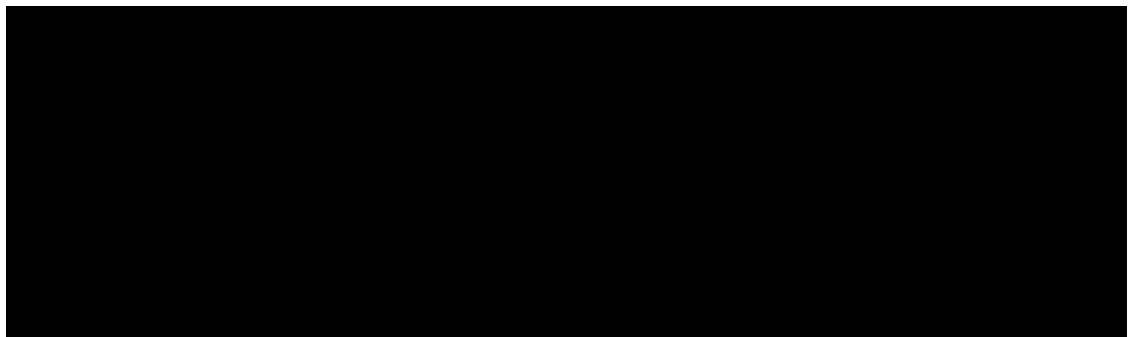
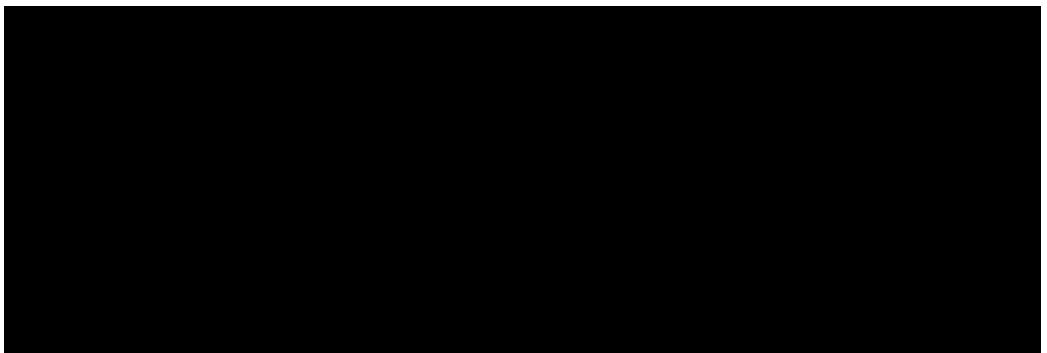
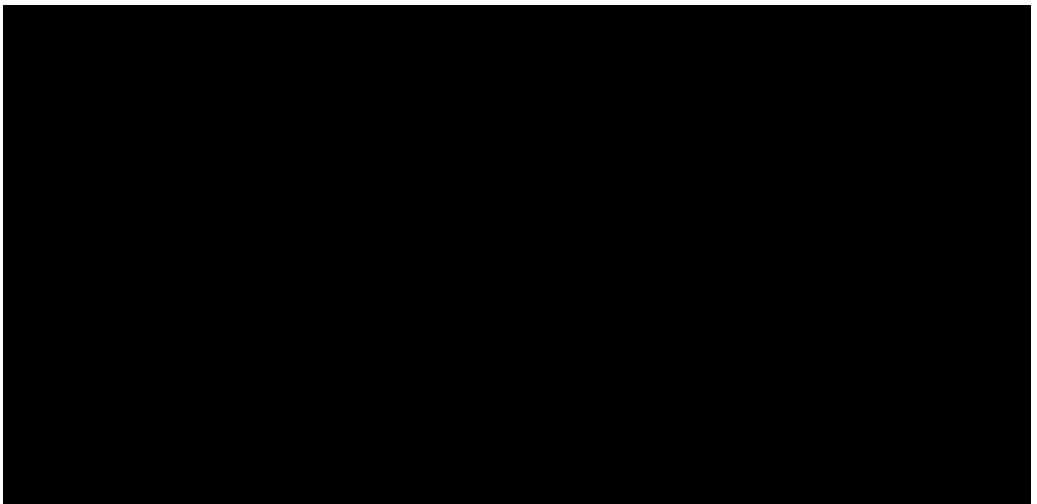
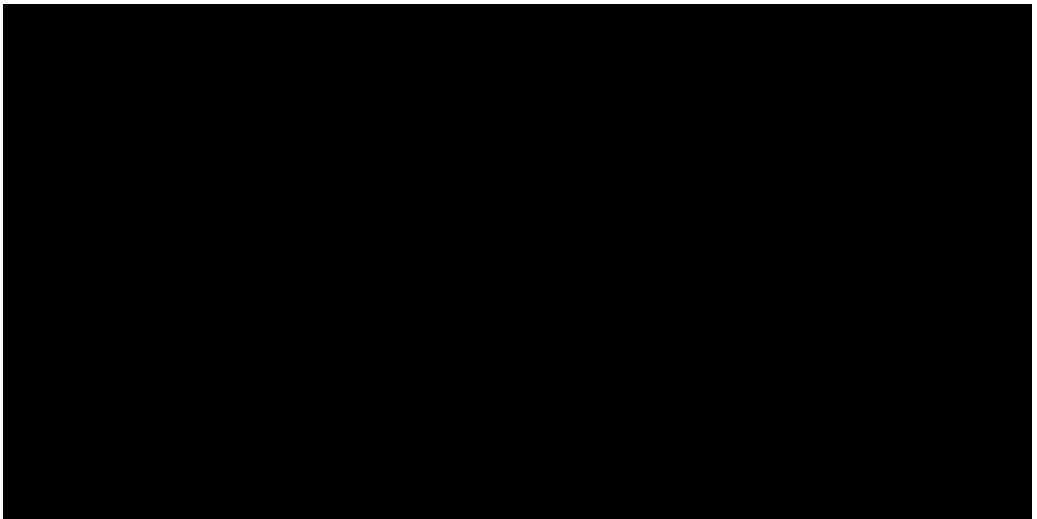
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***** End of EXHIBIT J *****

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	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


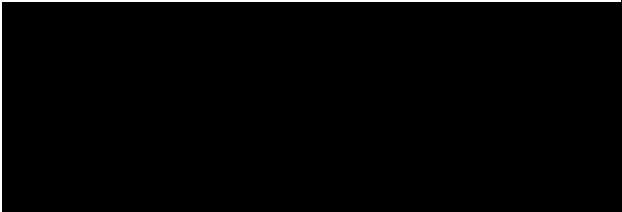

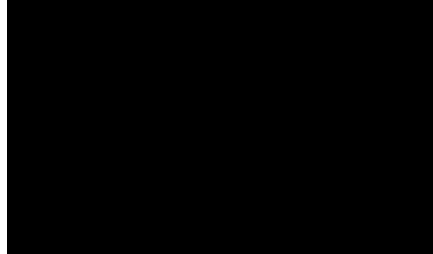

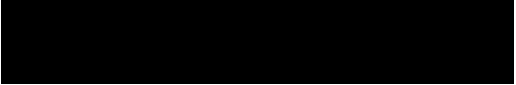
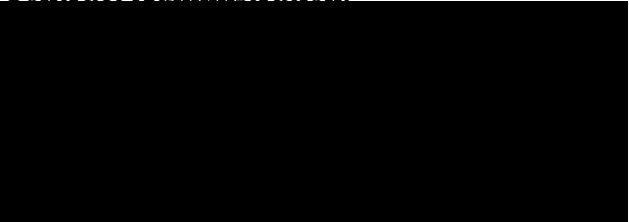

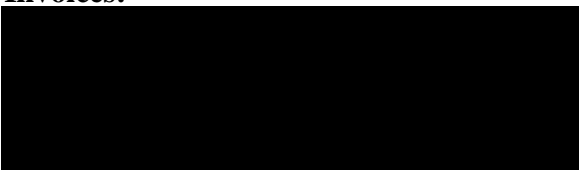
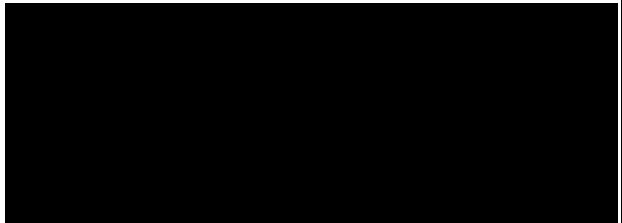
In addition to the above, the Owner further agrees to be bound by and comply with the applicable regulations contained in Chapter 60 of Title 41 of the Code of Federal Regulations which implement Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, as amended, and Vietnam Era Veterans’ 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-**

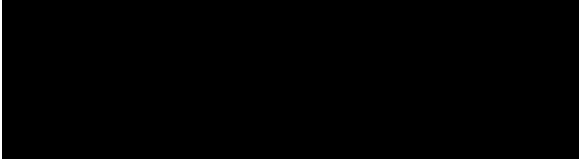
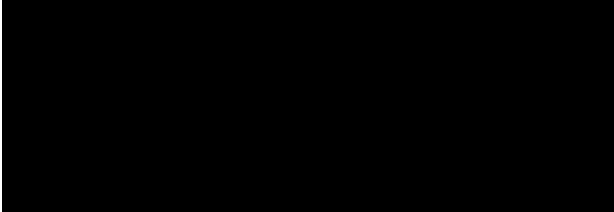
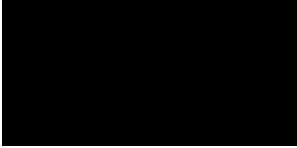
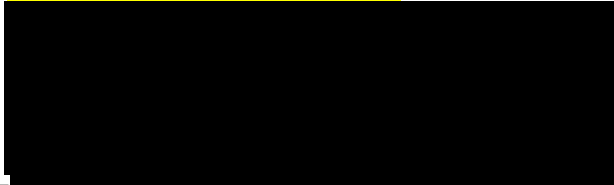
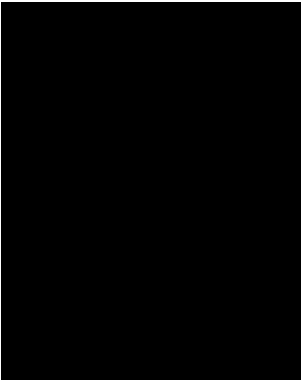
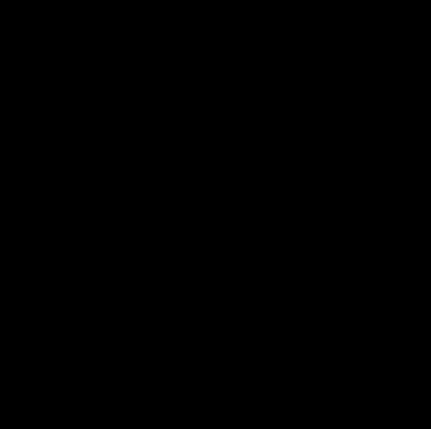
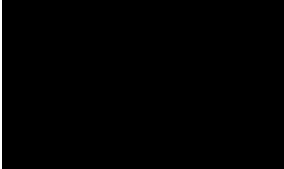
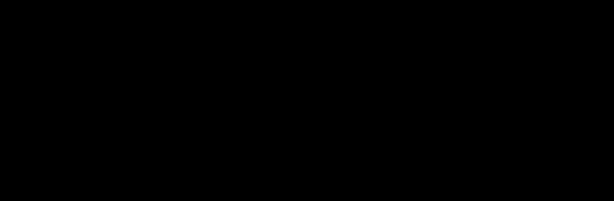
741-5(a) of Title 41 of the Code of Federal Regulations. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex or 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

BAYONNE ENERGY CENTER III, LLC ("Owner")	CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. ("CECONY")
All Notices are deemed provided in accordance with <u>Section 14.02</u> if made to the address and facsimile numbers provided below:	Unless otherwise specified, all Notices are deemed provided in accordance with <u>Section 14.02</u> if made to CECONY at the address or facsimile number provided below:
All Notices: Bayonne Energy Center III, LLC 	All Notices:   
Reference Numbers: 	Reference Numbers: 
Contract Administration: 	Contract Administration: 
Invoices: 	Invoices: 

BAYONNE ENERGY CENTER III, LLC (“Owner”)	CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. (“CECONY”)
Payments: 	Payments: 
Wire Transfer: 	Wire Transfer: 
Credit and Collections: 	Credit and Collateral: 
With additional Notices of an Event of Default or Potential Event of Default to: 	With additional Notices of an Event of Default or Potential Event of Default to: 

***** 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: [REDACTED]

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:

[REDACTED]

[REDACTED]

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:

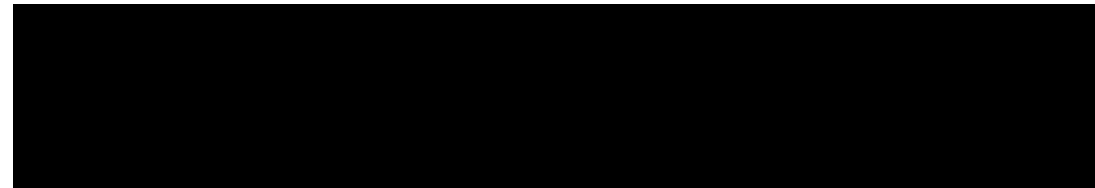
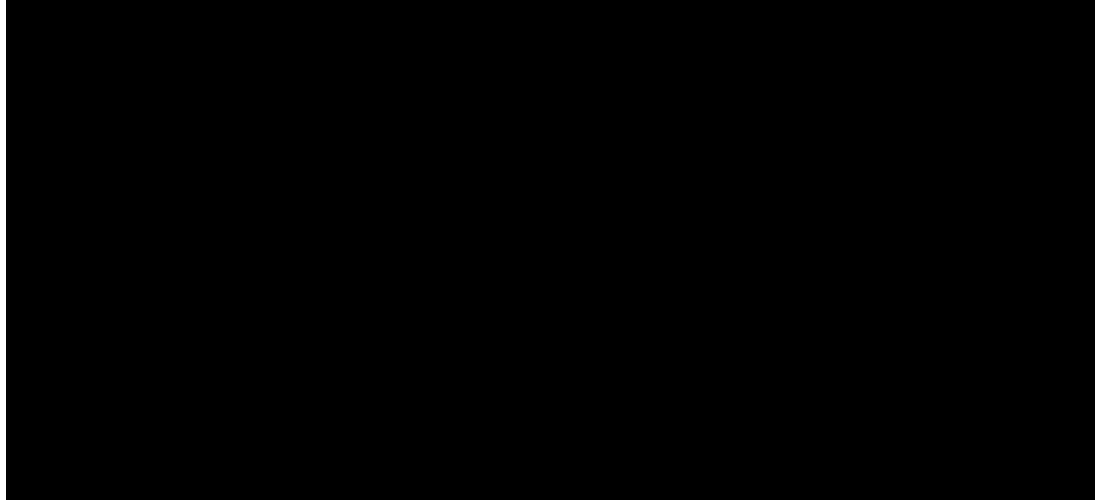
(a) Collateral Agent acknowledges that a Financing Default [REDACTED]

[REDACTED] constitutes an Event of Default under the ESSA (a **“Debt Acceleration ESSA Default”**).

[REDACTED]

[REDACTED]

[REDACTED]



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.

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.

€ 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. 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*]

Exhibit M, Page 10

The contents of this document are subject to restrictions on disclosure as set forth herein.

[*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* ***