RCEA RESOURCE ADEQUACY TERM SHEET

Complete this form to reflect your primary offer terms.

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| **Project Name** |  |
| **Location** | [\_\_\_\_\_\_\_\_\_] County, in the State of [\_\_\_\_\_\_\_\_\_] |
| **CAISO Resource ID, if known** |  |
| **Unit SCID, if known** |  |
| **Unit NQC** | [\_\_\_] MW (the “**Guaranteed RA Amount**”). Buyer is entitled to all project Capacity Attributes. |
| **Unit EFC** | [\_\_\_] MW |
| **Resource Type** | A [\_\_\_] MW nameplate [renewable energy generation] project.  A [\_\_\_] MW/[\_\_\_] MWh (at \_\_\_ hour discharge) nameplate energy storage facility.  A [\_\_\_] MW nameplate [renewable energy generation] project, and a [co-located][hybrid] [\_\_\_] MW/[\_\_\_] MWh (at \_\_\_ hour discharge) energy storage facility |
| **Resource Category (1, 2, 3 or 4)** |  |
| **FCR Category (1, 2 or 3)** |  |
| **Path 26** | North  South |
| **Local Capacity Area (if any)** |  |
| **Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment** |  |
| **RA Product and Attributes** | RAR and LAR Attributes  RAR Attributes  RAR Attributes with FCR Attributes  LAR Attributes  LAR Attributes with FCR Attributes  FCR Attributes  Flexible RA Product  Contingent Firm RA Product |
| **Price:** | $[\_\_\_] per kW-month of NQC for each Showing Month of the Delivery Term |
| **Delivery Term:** | [\_\_\_] Contract Years. |
| **Interconnection Point:** | The Facility shall interconnect to [*e.g., XX substation*] (the “**Interconnection Point**”). Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point. |
| **Commercial Operation Date (COD):** | The date on which Seller has satisfied the following conditions:  (a) 100% of the generation/storage equipment needed to acheive the capacity specified in the Description of the Facility has been installed and Commissioned;  (b) the Project systems (other than the generation/storage equipment) have been completed in all material respects and Seller has commenced delivering energy related to Buyer’s Capacity to the Interconnection Point in accordance with prudent industry practices; and  (c) the Seller has delivered to Buyer a notice confirming that clauses (a) and (b) of this definition of Commercial Operation have been satisfied (“***COD Notice***”).  “***Commissioned***” shall mean, as to each discrete generator included in the generation equipment, the performance of the start-up, commissioning and testing activities identified in the manufacturer’s commissioning completion checklist. In addition to meeting the capacity test in order to reach Commercial Operation, the Storage Facility will be required to demonstrate required capabilities in roundtrip efficiency, charge and discharge ramp rate, system latency, frequency response and ancillary services. |
| **Guaranteed Construction Start Date:** | The “**Guaranteed Construction Start Date**” means the following date [\_\_\_\_\_\_\_], subject to extensions on a day-for-day basis due to Force Majeure or delays caused by transmission provider (e.g., the CAISO) or transmission owner (e.g., PG&E) that are outside of the reasonable control of Seller. Such day-for-day extensions, including for Force Majeure, shall be no longer than one-hundred twenty (120) days on a cumulative basis. For clarity, these permitted extensions extend both the Guaranteed Construction Start Date and the Guaranteed COD simultaneously.  In the event that Seller fails to achieve the Guaranteed Construction Start Date, Seller shall pay delay damages to Buyer, (the “**Daily Delay Damages**”) for each day of delay, in the amount of the Development Security divided by 120. The Daily Delay Damages shall be refundable to Seller if, and only if, Seller achieves COD on or before the Guaranteed COD.  Failure to achieve Guaranteed Construction Start within 180 days of the Guaranteed Construction Start Date shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the Agreement and retain the Development Security. |
| **Guaranteed Commercial Operation Date (Guaranteed COD):** | The COD described in Seller’s proposal may be extended on a day-for-day basis only for delays caused by events of Force Majeure, for interconnection delays not due to fault of Seller and Buyer’s default (“Guaranteed COD”).  Extensions of the Guaranteed COD for events of Force Majeure and interconnection delays shall not exceed one hundred and twenty (120) days after the Guaranteed COD.  If the Seller does not achieve COD by the Guaranteed COD, Seller shall pay delay damages to Buyer (“COD Delay Damages”) for each day of delay, in the amount of the Development Security divided by 60, until Seller achieves COD  Failure to achieve COD within 60 days of the Guaranteed COD shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the Agreement and retain the Development Security. For clarity, Buyer’s right to terminate the Agreement and retain the Development Security shall come into effect no later than 180 days after the COD described in Seller’s proposal. |
| **Energy and Environmental Attributes:** | As a resource adequacy-only contract, Buyer will not be entitled to energy or any environmental attributes associated with the Project.  Seller will retain all energy and ancillary service dispatch rights and receive or incur all market revenues and costs associated with such energy and ancillary services. |
| **Buyer Performance Assurance:** | Buyer will not provide performance assurance. |
| **Seller Performance Assurance:** | Seller shall post security as follows:  **Development Security** – $60/kW of the Generation Facility Capacity and $90/kW of the Storage Facility Capacity  **Performance Security** – $40/kW of the Generation Facility Capacity and $60/kW of the Storage Facility Capacity  Seller shall deliver the Development Security to Buyer within thirty (30) days of the Effective Date. Development Security shall be in the form of cash or a Letter of Credit.  Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date.  Within five (5) Business Days following any draw by Buyer on the Performance Security, Seller shall replenish the amount drawn such that the security is restored to the applicable amount. |
| **RA Failure** | For each calendar month during which the Net Qualifying Capacity of the Facility for such month was less than the Qualifying Capacity of the Facility (“**RA Shortfall Month**”) occurring after the RA Guarantee Date, Seller shall pay to Buyer Liquidated Damages on the difference, expressed in kW, of (i) the maximum Qualifying Capacity of the Facility for such month, minus (ii) the Net Qualifying Capacity of the Facility for such month, including any adjustments for unforced capacity (UCAP) or similar adjustments, however described; provided that Seller may, as an alternative to paying Liquidated Damages, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Generating Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Generating Facility with respect to such month, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice to Buyer at least seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting, and further provided that such Replacement RA capacity shall be required to comply with the requirements of D.21-06-035, and in addition, meet the same sub-category attributes if contracted for one of the sub-categories of D.21-06-035, only to the extent required for the Product purchased hereunder to be applied towards Buyer’s compliance with its procurement obligations under D.21-06-035 as confirmed through a decision, resolution, publicly issued guidance document, letter from the CPUC Executive Director, or other communication of approval or confirmation mutually agreed to by the Parties. |
| **Operations & Maintenance:** | Seller shall develop written operating procedures for each Project before the applicable initial delivery date which shall set forth the protocol under which the Parties shall perform their respective obligations under the Agreement. During the Term, each Project shall be operated and maintained by Seller or its designee in accordance with those practices, methods, and acts that are commonly used by a significant portion of the electric generation industry.  During the four-month period of June-September, Seller shall not schedule any non-emergency maintenance that reduces the Resource Adequacy Capacity of the Project(s), unless (i) such outage is required to avoid an emergency or damage to the Project or its Interconnection Facilities, (ii) such maintenance is necessary to maintain equipment warranties or is otherwise required by the equipment manufacturer and cannot be scheduled outside the months of June-September, (iii) such outage is in connection with Force Majeure events, (iv) such outage is required by law, or the requirements of CAISO or the interconnecting utility and/or each other applicable Governmental Authority, or (v) the Parties agree otherwise in writing. |
| **Invoicing:** | Seller shall provide statement of amounts due within fifteen (15) days after the end of each Settlement Period.  Payment for undisputed amounts shall be due to the applicable party thirty (30) days from the invoice date, with disputed payments subject to the Dispute Resolution process described below. |
| **Costs:** | Any charges of the CAISO and other third-party costs and charges shall be the responsibility of Seller, and subject to Change in Law. |
| **Facility Development Milestones:** | * [*mm/dd/yyyy*]– Demonstrate site control * [*mm/dd/yyyy*]– Execute Interconnection Agreement * [*mm/dd/yyyy*] – Procure major equipment * [*mm/dd/yyyy*] – Obtain federal and state discretionary permits * [*mm/dd/yyyy*] – Expected Construction Start Date * [*mm/dd/yyyy*] – Guaranteed Construction Start Date * [*mm/dd/yyyy*] – Obtain Full Capacity Deliverability Status * [*mm/dd/yyyy*]– Expected Commercial Operation Date * [*mm/dd/yyyy*]– Guaranteed Commercial Operation Date |
| **Deliverability:** | The Facility will have Full Capacity Deliverability Status by the Commercial Operation Date. |
| **Changes in Law:** | If a Change in Law occurs that Seller reasonably expects will result in Compliance Costs in excess of $[\_\_\_\_] per Project, Seller will provide a notice to Buyer that describes the Change in Law, a calculation of the Compliance Costs that Seller reasonably expects to incur as a result of the Change in Law and reasonable supporting documentation. Seller shall provide such additional information reasonably requested by Buyer. Buyer will have 15 business days to confirm its acceptance of the submittal made by Seller. If not accepted by Buyer, Seller may terminate the Agreement at no cost or liability to either Party (except for any liability arising prior to the date of termination).If the Agreement is terminated other than due to a Buyer default thereof, then for a period of one (1) year from the date upon which Seller notifies Buyer of such termination, neither Seller nor its affiliates will enter into an obligation or agreement to sell or otherwise transfer Resource Adequacy Capacity from the Project(s) to any third party, unless Seller first notifies Buyer of the same and Buyer shall have the right of first offer for any proposed sale of such capacity, on substantially the same terms and conditions as set forth in this Agreement (other than the purchase price, which shall be the price set forth in Buyer’s binding purchase offer). If the Parties do not consummate the transaction within the time period designated in the Agreement, Seller may sell the capacity of the Project(s) to any third party so long as the price for such output is higher than the price proposed by Buyer.  “***Compliance Costs***” means those costs that result from a Change in Law, and that require either a physical change to the Project or changes in the method of operation of the Project, or result in a material increase in the costs that could have been reasonably expected by Seller as of the Effective Date in order to comply with Seller’s obligations under the Agreement with respect to the construction and operation of the Project, and the delivery of capacity.  “***Change in Law***” means the adoption, promulgation, taking effect of, implementation or modification of law by a Governmental Authority after the Effective Date that relates to the registration, valuation, retirement, or transfer of the Product, or that otherwise relates to any performance obligations under the Agreement, that has increased Seller’s costs above the costs that could reasonably have been contemplated as of the Effective Date to take all actions to comply with Seller’s obligations under the Agreement. |
| **Change in Tax Law:** | In the event that as a result of a Change in Tax Law, Seller or the Project becomes eligible for or entitled to any new Tax Benefits or changes to or extensions of existing Tax Benefits, Seller and Buyer shall share such additional Tax Benefit Amount on a 50%/50% basis by making an adjustment to the Contract Price for the remainder of the Delivery Term.  “***Change in Tax Law***” means (a) (i) any change in or amendment to the Code or another applicable federal income tax statute; (ii) any change in, or issuance of, or promulgation of any temporary or final regulations by the U.S. Department of the Treasury that would result in any change to the interpretation of the Tax Code or existing temporary or final regulations promulgated by the U.S. Department of the Treasury; (iii) any IRS guidance published in the Internal Revenue Bulletin and/or Cumulative Bulletin, notice, announcement, revenue ruling, revenue procedure, technical advice memorandum, examination directive or similar authority issued by the IRS Large Business and International division, or any published advice, advisory, or legal memorandum issued by IRS Chief Counsel, that applies, advances or articulates a new or different interpretation or analysis of any provision of the Code, any other applicable federal tax statute or any temporary or final Treasury Regulation promulgated thereunder; or (iv) any change in the interpretation of any of the authorities described in clauses (a)(i) through (iii) by a decision of the U.S. Tax Court, the U.S. Court of Federal Claims, a U.S. District Court, a U.S. Court of Appeals or the U.S. Supreme Court, that applies, advances or articulates a new or different interpretation or analysis of federal income tax law, and (b) in the case of (a)(i) through (iv), such change or new or different interpretation, as applicable, occurs between the Execution Date and before the end of the Congress in session when the Commercial Operation Date occurs.  “***Tax Benefits***” means any state, local and/or federal tax benefit or incentive, including energy credits determined under Section 45 or 48 of the Internal Revenue Code of 1986, as amended, investment tax credits, production tax credits, depreciation, amortization, deduction, expense, exemption, preferential rate, and/or other tax benefit or incentive associated with the operation of, construction, investments in or ownership of the Project (including any cash payment or grant). |
| **Force Majeure:** | The Agreement will contain customary Force Majeure provisions. No events of Force Majeure may extend beyond 120 days. |
| **Termination for Force Majeure** | If an event of Force Majeure delays or prevent a Party from carrying out, in whole or in part, its obligations under this Agreement for a period of 120 consecutive days or longer (so long as the consecutive days of excused performance are continuing), then either Party may terminate this Agreement without liability of either Party arising out of such termination, except liability that arose prior to the date of termination, upon at least 30 days written notice; provided, that if the applicable Force Majeure event is cured within the applicable 30-day notice period, the applicable termination right shall expire at the time of such cure. |
| **Dispute Resolution** | In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement any Party may deliver to the other Parties notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a “Dispute Notice”). The senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the thirty (30) day period following receipt of the Dispute Notice in good faith negotiations to resolve the Dispute to the satisfaction of each Party. In the event a Dispute is not resolved by the expiration of the thirty (30) day period, then a Party may pursue any legal remedy available to it in accordance with this Agreement. |
| **Applicable Law** | California |
| **Assignment:** | Except with respect to collateral assignment to support a financing by Seller of the Facility and assignment to an affiliate, prior written consent of the non-assigning party shall be required for assignment of any interest in the Agreement including a change of control. |
| **Events of Default:** | The Agreement will provide for the following events of defaults, with cure periods to be negotiated by the Parties: (a) failure to pay, (b) breach of material obligation, (c) breach of representation or warranty, (d) failure to meet performance assurance requirements, (e) bankruptcy, and (f) unauthorized assignment. |
| **Termination Damages:** | With respect to a termination of the Agreement by a Non-Defaulting Party upon an Event of Default, the Non-Defaulting Party will be entitled to its Termination Damages. The Agreement shall define Termination Damages to mean, with respect to a termination of the Agreement by a Non-Defaulting Party, the amount equal to (a) the difference (positive or negative) to such Non- Defaulting Party between the present value of the payments to be made and received under the Agreement (less the costs and expenses to be incurred in performing the Agreement) during the remaining term of the Agreement and the present value of the payments to be made and received (less the costs and expenses to be incurred) under transaction(s) replacing the Agreement, plus (b) reasonable attorneys’ fees and expenses, brokerage fees and commissions and other third-party transaction costs and expenses to be reasonably incurred by the Non-Defaulting Party in enforcing the Agreement, terminating any arrangement pursuant to which it has hedged its obligations under the Agreement, or entering into transaction(s) replacing the Agreement, and other reasonable incremental costs and expenses to be reasonably incurred by the Non-Defaulting Party in connection with the termination or enforcement of the Agreement and any other reasonable incremental costs and expenses to be reasonably incurred by such Non-Defaulting Party in connection with the termination of the Agreement and/or in entering into transaction(s) replacing the Agreement; provided, however, that, if the foregoing amount is negative, the Termination Damages shall be deemed to be zero. |