

STORAGE FACILITY TERM SHEET

THIS ENERGY STORAGE SERVICE AGREEMENT TERM SHEET (“**Term Sheet**”) is entered into as of [____], 2023 (the “**Effective Date**”), between San Diego Community Power (“**SDCP**”) and [Respondent] (“**Respondent**”). This Term Sheet is intended to set forth the key commercial terms and conditions to be included in a proposed agreement for energy storage product (each such agreement, as “**ESSA**”) to be negotiated between SDCP (“**Buyer**”) and [e.g., Project Company LLC] (“**Seller**”) (the “**Proposed Transaction**”). As used herein, Buyer and Seller are each a “**Party**” and collectively the “**Parties**.” Notwithstanding anything herein to the contrary, until a definitive agreement is fully negotiated and all applicable approvals have been received for each Party, no Party shall have any legal obligations, expressed or implied, or arising in any other manner under this Term Sheet to continue negotiations or enter into the Proposed Transaction or the ESSA.

1. ESSA Terms and Conditions

Term	Description	Applicability to Product Offered
Facility:	A [XX MW/XXX MWh] battery energy storage facility, located in _____ County, in the State of California.	All
Guaranteed Capacity:	[XX] AC at [no less than four (4)] hours of continuous discharge.	All
Product:	“ Product ” means the right of buyer to charge and discharge the Facility twenty-four (24) hours per day and seven (7) days per week throughout the Delivery Term, subject to Operating Restrictions set forth in the ESSA, along with all capacity, resource adequacy, and any ancillary services that can be produced by the Facility.	For RA Only offers, limited to capacity attributes, including resource adequacy.
Delivery Term:	“ Delivery Term ” means [XX] Contract Years. “ Contract Year ” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.	All
Interconnection Point:	“ Interconnection Point ” means [_____].	All

	Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point.	
Delivery Point:	“ Delivery Point ” means the Facility Pnode on the CAISO grid.	All
Contract Price:	The Contract Price shall be [X.XX]/kWmonth multiplied by current Effective Capacity, determined pursuant to a Capacity Test (as set forth in the ESSA), multiplied by an Availability Adjustment, multiplied by an Efficiency Rate Adjustment.	All
Guaranteed Storage Availability:	Ninety-eight percent (98%)	All
Monthly Storage Capacity Availability:	Shall be calculated each month of the Delivery Term as a percentage that represents the total number of hours, or partial hours, in the month during which the Facility was available to charge and discharge Energy between the Facility and the Delivery Point and to provide Ancillary Services at the Delivery Point. “ Excused Events ”, which are included as available hours include: Force Majeure Events (excluding Insurable Force Majeure Events), Buyer Dispatched Tests, or the Operating Restrictions. “ Insurable Force Majeure Event ” means any Force Majeure Event which results in direct, physical loss to the Facility.	All
Availability Adjustment:	If the Monthly Storage Capacity Availability during any month of the Delivery Period is less than the Guaranteed Storage Availability, the Monthly Storage Capacity Payment shall be multiplied by an Availability Adjustment (“ Availability Adjustment ” or “ AA ”), which is calculated as follows: (i) If the Monthly Storage Capacity Availability is greater than or equal to the Guaranteed Storage Availability, then:	All

	<p>AA = 100%</p> <p>(ii) If the Monthly Storage Capacity Availability is less than the Guaranteed Storage Availability, but greater than or equal to 70%, then:</p> $AA = 100\% - [(Guaranteed\ Storage\ Availability - Monthly\ Storage\ Capacity\ Ava) \times 2]$ <p>(iii) If the Monthly Storage Capacity Availability is less than 70%, then:</p> $AA = 0$	
Guaranteed Efficiency Rate:	[] percent (XX%)	All
Minimum Efficiency Rate:	Seventy percent (70%)	All
Efficiency Rate Adjustment:	<p>If the Efficiency Rate, determined pursuant to a Capacity Test (as set forth in the ESSA), during any month of the Delivery Period is less than the Guaranteed Efficiency Rate, the Monthly Storage Capacity Payment shall be multiplied "<u>Efficiency Rate Adjustment</u>", calculated as follows:</p> <p>(i) If the Efficiency Rate is greater than or equal to the Guaranteed Efficiency Rate, then:</p> $Efficiency\ Rate\ Adjustment = 100\%$ <p>(ii) If the Efficiency Rate is less than the Guaranteed Efficiency Rate, but greater than or equal to the Minimum Efficiency Rate, then:</p> $Efficiency\ Rate\ Adjustment = 100\% - [(Guaranteed\ Efficiency\ Rate - Efficiency\ Rate) \times 0.5]$ <p>(iii) If the Efficiency Rate is less than the Minimum Efficiency Rate, then:</p> $Efficiency\ Rate\ Adjustment = 0$	N/A for RA Only offers

<p>Guaranteed RTE Damages:</p>	<p>If during any month during the Delivery Term, the Efficiency Rate for such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by multiplying (i) the total quantity of Charging Energy for such month by (ii) the percentage amount by which the Efficiency Rate is less than the Guaranteed Efficiency Rate, by (iii) Buyer’s average cost of procuring Charging Energy for the relevant month.</p>	<p>All</p>
<p>Performance Defaults:</p>	<p>It shall constitute an Event of Default if, in any Contract Year, the simple average of the Monthly Capacity Availability calculations for such Contract Year is not equal to at least seventy percent (70%).</p> <p>It shall constitute an Event of Default if Seller fails to maintain an average Efficiency Rate, determined pursuant to a Capacity Test (as set forth in the ESSA), equal to or greater than the Minimum Efficiency Level over a rolling twelve (12) month period.</p> <p>It shall constitute an Event of Default if Seller fails to maintain an Effective Capacity, determined pursuant to a Capacity Test (as set forth in the ESSA), equal to at least seventy-five percent (75%) of the Installed Storage Capacity for more than three hundred sixty (360) days.</p>	<p>All</p>
<p>RA Guarantee Date:</p>	<p>“RA Guarantee Date” means the Commercial Operation Date.</p>	<p>All</p>
<p>Guaranteed RA Amount:</p>	<p>“Guaranteed Flexible Capacity” means, at any point in time, the maximum quantity of Flexible Capacity (in MWs) for which a stand-alone storage facility, without on-site generation, charging from the grid, having a PMAX equal to the Installed Capacity, with a maximum dependable operating capacity to discharge Energy for four (4) hours of continuous discharge, having achieved FCDS, and performing with operational characteristics equal</p>	<p>All</p>

	<p>to those required by the Guaranteed Availability, Guaranteed Efficiency Rate, and the Operating Restrictions may be counted in any given Showing Month pursuant to the then current Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources.</p> <p>“Guaranteed Net Qualifying Capacity” means, at any point in time, the maximum quantity of Net Qualifying Capacity (in MWs) for which a stand-alone storage facility, without on-site generation, charging from the grid, having a PMAX equal to the Installed Capacity, with a maximum dependable operating capacity to discharge Energy for four (4) hours of continuous discharge, having achieved FCDS, and performing with operational characteristics equal to those required by the Guaranteed Availability, Guaranteed Efficiency Rate, and the Operating Restrictions may be counted in any given Showing Month pursuant to the then current Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources.</p>	
<p>Resource Adequacy Failure:</p>	<p>“RA Shortfall Month” means any Showing Month during the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, during which either: (a) the Net Qualifying Capacity of the Facility for such Showing Month was either (i) not published by or otherwise established with the CAISO by the Notification Deadline for such Showing Month, or (ii) was less than the then applicable Guaranteed Net Qualifying Capacity of the Facility for such Showing Month; or (b) the Effective Flexible Capacity of the Facility for such Showing Month was either (i) not published by or otherwise established with the CAISO by the Notification Deadline for such Showing Month, or (ii) was less than the then applicable Guaranteed Flexible Capacity of the Facility for such Showing Month.</p>	<p>All</p>

	<p>For each RA Shortfall Month occurring after the RA Guarantee Date, Seller shall pay to Buyer an amount (the “RA Deficiency Amount”) equal to the RA shortfall multiplied by the sum of the CPM Soft Offer Cap and the RA Penalties for System RAR applicable to the RA shortfall for such RA Shortfall Month; <i>provided</i>, Seller may, as an alternative to paying RA Deficiency Amounts, 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 RA Shortfall Month.</p> <p>“RA Penalties” means the RA penalties assessed against load serving entities by the CPUC for RA deficiencies that are not replaced or cured, as established by the CPUC in the Resource Adequacy Rulings and subsequently incorporated into the annual Filing Guide for System, Local and Flexible Resource Adequacy Compliance Filings that is issued by the CPUC Energy Division, or any replacement or successor documentation established by the CPUC Energy Division to reflect RA penalties that are established by the CPUC and assessed against load serving entities for RA deficiencies.</p>	
Maximum Annual Throughput:	<p>[XX] MWh per Contract Year.</p> <p>“Throughput” means, for a day or Contract Year (as the context dictates), the cumulative amount of Discharging Energy from the Facility for such time period.</p>	N/A for RA Only
Maximum Daily Throughput:	[XX] MWh per day.	N/A for RA Only
Ancillary Services Capability:	[Seller-specified]	N/A for RA Only
Guaranteed Construction Start Date:	The “ Guaranteed Construction Start Date ” shall be [____], 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	All

	<p>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 (the “<u>Development Cure Period</u>”). For clarity, these permitted extensions extend both the Guaranteed Construction Start Date and the Guaranteed COD simultaneously.</p> <p>Seller may extend the Guaranteed Construction Start Date by paying delay damages to Buyer in advance, for each day of delay, in the amount of the Development Security divided by one-hundred twenty (120) (the “<u>Daily Delay Damages</u>”). The Daily Delay Damages shall be refundable to Seller if, and only if, Seller achieves COD on or before the Guaranteed COD.</p> <p>Failure to achieve Construction Start on or before the Guaranteed Construction Start Date, as may be extended by a Development Cure Period and/or the payment of Daily Delay Damages, shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the ESSA and retain a damage payment in the amount of the Development Security.</p>	
<p>Guaranteed Commercial Operation Date:</p>	<p>The “<u>Guaranteed Commercial Operation Date</u>” or “<u>Guaranteed COD</u>” shall be [REDACTED]. Seller may extend the Guaranteed COD for the duration of a Development Cure Period or by paying delay damages to Buyer in advance, for each day of delay, in the amount of the Development Security divided by sixty (60) (the “<u>Commercial Operation Delay Damages</u>”).</p> <p>Failure to achieve Commercial Operation on or before the Guaranteed COD, which may be extended by a Development Cure Period and/or the payment of Commercial Operation Delay Damages, shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the ESSA and retain the Development Security.</p>	<p>All</p>

<p>Commercial Operation Date (“COD”):</p>	<p>The COD shall be the date when all of the following requirements have been met to Buyer’s reasonable satisfaction including Seller providing a certificate from an independent engineer to Buyer certifying to the following:</p> <ul style="list-style-type: none"> (i) The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System. (ii) The Facility has met all Interconnection Agreement requirements and is capable of receiving Charging Energy from, and delivering Discharging Energy to, the CAISO Balancing Authority. (iii) The commissioning of the equipment has been completed in accordance with the applicable material requirements of the manufacturers’ specifications. (iv) The Facility’s Installed Capacity is no less than ninety-five percent (95%) of the Guaranteed Capacity and the Facility is capable of charging, storing and discharging Energy, all within the operational constraints and subject to the applicable Operating Restrictions. (v) Seller has provided Buyer with a copy of written notice from CAISO that the Facility has achieved Full Capacity Deliverability Status. (vi) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer. 	<p>All</p>
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	<ul style="list-style-type: none"> (vii) Seller has obtained CAISO Certification for the Facility. (viii) The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to operate the Facility. (ix) All applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect. (x) Seller has Site Control. (xi) Seller has delivered the Performance Security to Buyer. (xii) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer. (xiii) Seller has paid Buyer for all amounts owing, if any, including Daily Delay Damages and Commercial Operation Delay Damages. <p>Seller shall provide notice of expected COD to Buyer in writing no less than sixty (60) days in advance of such date.</p>	
<p>Facility Development Milestones:</p>	<ul style="list-style-type: none"> • [mm/dd/yyyy] – Obtain Site Control • [mm/dd/yyyy] – Obtain Conditional Use Permit • [mm/dd/yyyy] – Execute Interconnection Agreement • [mm/dd/yyyy] – Financial Close • [mm/dd/yyyy] – Guaranteed Construction Start Date 	<p>All</p>

	<ul style="list-style-type: none"> • [mm/dd/yyyy] – Initial Synchronization • [mm/dd/yyyy] – Expected Network Upgrade Completion • [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.	All
Scheduling Requirements and CAISO Settlements:	Buyer or Buyer’s agent shall act as Scheduling Coordinator (as defined by the CAISO) for the Facility. Seller shall provide to Buyer non-binding annual, monthly and day-ahead forecasts of available Facility capacity that allows Buyer’s Scheduling Coordinator to meet the CAISO day-ahead scheduling protocols and deadlines.	Seller is SC for Toll Only or RA Only products, otherwise Buyer is SC.
Credit Requirements:	<p>Seller shall post security as follows:</p> <p><u>Development Security</u> – \$90,000 per MW of Guaranteed Capacity</p> <p><u>Performance Security</u> – \$105,000 per MW of Guaranteed Capacity</p> <p>To secure its obligations under this ESSA, 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.</p> <p>To secure its obligations under this ESSA, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Performance Security shall be in the form of cash, Letter of Credit, or Guaranty.</p> <p>Within five (5) Business Days following any draw by Buyer on the Development Security or the Performance Security, Seller shall replenish</p>	All

	the amount drawn such that the security is restored to the applicable amount.	
Site Control:	Seller shall maintain site control of the Facility throughout the Delivery Term.	All
Other Standard Terms:	<ul style="list-style-type: none"> • <u>Event of Default</u>: Events of Default shall include, but not be limited to, failure to pay any amounts when due, breach of representations and warranties, failure to perform covenants and material obligations in the ESSA, bankruptcy, and assignment other than as permitted by the ESSA. • <u>Indemnification</u>: Mutual indemnification for third party claims arising from negligence, willful misconduct, or breach of the ESSA. • <u>Governing Law</u>: State of California • <u>Venue</u>: San Diego County 	All

2. Additional Term Sheet Provisions.

(a) **No Obligation to Enter Into Proposed Transaction.** This Term Sheet is intended to provide an overview of the Proposed Transaction and is not intended to constitute a binding contract or an offer to enter into an ESSA with respect to the Proposed Transaction and does not obligate any Party to enter into the Proposed Transaction or execute any agreement, including the ESSA, in connection with the Proposed Transaction. Neither Buyer nor Seller will be deemed to have agreed to the ESSA and will not be bound by any term thereof, unless and until authorized representatives of both Buyer and Seller execute final definitive documents, enforceable in accordance with their terms.

(b) **Other Agreements.** In connection with this Term Sheet, Respondent shall execute that certain Exclusivity Agreement (“**Exclusivity Agreement**”) with Buyer and provide an Exclusivity and Bid Deposit (as defined in such agreement) of \$3,000 per MW of proposed Guaranteed Capacity to Buyer(s) within seven (7) Business Days after execution of the Exclusivity Agreement. The Shortlist Deposit will be returned in accordance with, and subject to, the terms of the Exclusivity Agreement.

(c) **Expenses.** Each Party will pay its own costs and expenses (whether internal or out-of-pocket, and whether for legal, financial, technical or other consultants, or other purposes) in connection with the Term Sheet and any definitive agreements.

(d) **Termination.** This Term Sheet will terminate upon the earlier of (a) execution of the ESSA or (b) expiration of the Negotiation Period and any applicable Extension Period (as

defined in the Exclusivity Agreement), as such Exclusivity Deadline may be extended pursuant to the Exclusivity Agreement.

(e) **Governing Law.** This Term Sheet is governed by, and construed in accordance with, the laws of the State of California.

(f) **Counterparts and Electronic Signatures.** This Term Sheet may be executed electronically and in counterparts, each of which will be enforceable against the Parties actually executing such counterparts, and all of which together will constitute one instrument. The Parties may rely on electronic or scanned signatures as originals. Delivery of an executed signature page of this Term Sheet by electronic transmission (including email transmission of a PDF image) shall be the same as delivery of an original executed signature page.

(g) **Prior Agreements.** This Term Sheet supersedes all prior communications and agreements, oral or written, between the Parties regarding the subject matter herein contemplated.

(h) **Assignment.** This Term Sheet will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party will assign, pledge or otherwise transfer this Term Sheet or any right or obligation under this Term Sheet without prior written consent of the other Party.

(i) **No Consequential Damages.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT OR EXEMPLARY DAMAGES UNDER OR IN RESPECT TO THIS TERM SHEET.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have signed this Term Sheet effective as of the Effective Date.

**SAN DIEGO COMMUNITY POWER, a
California joint powers authority**

[RESPONDENT]

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____