EBCE 2020 Renewable Energy & Storage RFO Attachment E.3

**Power Purchase Agreement Term Sheet – Stand-alone Storage**

This indicative term sheet (“**Term Sheet**”) is entered into as of \_\_\_\_\_, 2020 (the “**Effective Date**”) between East Bay Community Energy Authority, a California joint powers authority (“**EBCE**”) and [Respondent Name] (“**Respondent**”) in connection with the 2020 Renewable Energy & Storage Request for Offers (“**RFO**”). This Term Sheet is intended to set forth the key commercial terms and conditions to be included in a proposed power purchase agreement (“**PPA**”) between Seller and Buyer for the purchase and sale of the Product (the “**Proposed Transaction**”) from the Facility. Negotiation of the PPA is subject to Buyer selecting the Proposed Transaction for the negotiation shortlist, the terms and conditions of the RFO, timely execution of the Exclusive Negotiating Agreement (as defined below) and posting of the Shortlist Deposit (as defined in the Exclusive Negotiating Agreement) by Seller. Until a definitive PPA is approved by EBCE management and the EBCE Board of Directors, and signed and delivered, no party shall have any legal obligations, expressed or implied, or arising in any other manner, under this Term Sheet.

1. **PPA Terms and Conditions**.

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| **Seller:** | [Seller Name, e.g., Project Company LLC] (“**Seller**”) |
| **Buyer:** | East Bay Community Energy Authority, a California joint powers authority (“**Buyer**”). As used in the PPA, Buyer and Seller are each a “**Party**” and collectively the “**Parties**.” |
| **Description of Facility:** | A [\_\_\_\_] MW / [\_\_] MWh grid-connected battery energy storage facility (the “**Facility**”), located in [\_\_\_\_\_\_] County, in the State of California. |
| **Product:** | “**Product**” means energy tolling service, along with resource adequacy, other capacity and storage attributes, and ancillary services based upon Seller’s maintenance of the Operational Parameters set forth on attached Exhibit A.  For clarity, during the Delivery Term Seller may not use the Facility to provide services or attributes to any third party. |
| **Storage Contract Capacity** | The Facility will have an initial Storage Capacity of [XX] MW for four (4) hours (the “**Storage Contract Capacity**”). |
| **RA capacity** | The Net Qualifying Capacity (NQC) of the Facility is [XX] MW (the “**Guaranteed RA Amount**”).[*If there is an annual adjustment for degradation, this should be noted with a table.*] |
| **Interconnection:** | The Facility shall interconnect to the [\_\_\_\_\_\_\_\_\_\_\_] Switching Station (the “**Interconnection Point**”). The Facility has no less than [\_\_\_] MW of dedicated interconnection capacity. Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point. |
| **Storage Rate, Tolling Rate and Monthly Payment:** | All Storage Product shall be paid on a monthly basis at the Storage Rate multiplied by the current Storage Contract Capacity, as adjusted for the Storage Capacity Test (as set forth in the PPA), multiplied by the Round-Trip Efficiency Factor, and multiplied by the monthly Availability Adjustment. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product.  The “**Storage Rate**” shall be [[XX] ]/kW-month] for four (4) hour discharge]. The Storage Rate shall not be subject to an escalator and is based on a maximum number of [XXX] cycles per Contract Year [*not less than 365 cycles per Contract Year*].  *Alternate Storage Rate Option. Please indicate whether Seller is offering this alternative*.  The “**Storage Rate**” shall be $[XX]/kw-month based upon 200 cycles per Contract Year. If Buyer dispatches the Storage Facility for more than 200 cycles, Seller shall receive an additional payment of [$[XX]/MWh] “**Tolling Rate**” multiplied by the MWh throughput, and multiplied by the Round Trip Efficiency Factor. The Tolling Rate assumes a maximum number of additional cycles of [XXX] per Contract Year. |
| **Standalone Storage Tax Credit Price Reduction:** | In the event any Federal or State tax credit is enacted for standalone energy storage projects, Seller shall use commercially reasonable efforts to cause such credit to be available for the Facility. Seller shall share with Buyer the value of any credit received by Seller, as follows: Contract price reduction, per 1%: $[per bid]per MW-mo/MWh (reduction can be applied to Storage Rate, Tolling Rate (if applicable), or both (if applicable)). |
| **Monthly Settlement and Invoice:** | Within ten (10) days after the end of each month of the Delivery Term, Seller shall send a detailed invoice to Buyer for the amount due during such month. The invoice shall include all information necessary to confirm the amount due.  Payment for undisputed amounts shall be due within thirty (30) days from the invoice date, with disputed payments subject to a dispute resolution process. |
| **Charging Energy:** | Buyer is solely responsible, at Buyer’s sole cost, for procuring Charging Energy. |
| **Transmission Charges:** | Buyer is solely responsible, at Buyer’s sole cost, for arranging transmission and wheeling required to deliver Charging Energy to the Interconnection Point and to accept Discharging Energy at the Interconnection Point. |
| **Scheduling Requirements and CAISO Settlements:** | Buyer or Buyer’s agent shall act as Scheduling Coordinator (as defined by the CAISO) for the Facility. Buyer shall be financially responsible for such services and shall pay for all CAISO charges and retain all CAISO payments. |
| **Delivery Term:** | Commencing on the Commercial Operation Date as defined below and ending on the [\_\_\_]th anniversary thereof. |
| **Battery Operating Parameters:** | Buyer’s scheduling of the Facility may not contravene the “**Operating Parameters**” attached as Exhibit A. |
| **Operations and Maintenance:** | Seller shall not during the months of June through September inclusive schedule any non-emergency maintenance that reduces the storage capability of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September, (iii) such outage is required in accordance with prudent operating practice, or (iv) the Parties agree otherwise in writing.  Seller shall not replace existing batteries unless for critical maintenance purposes or increase the capacity of the Storage Facility without the prior consent of Buyer. |
| **Storage Operations and Maintenance:** | Buyer shall at all times retain operational control of the Storage Facility and be responsible for dispatching and coordinating charging of the Storage Facility. Seller shall at all times retain all other aspects of operation and maintenance of the Storage Facility in accordance with prudent operating practice and applicable law and adhering to all operational data, interconnection and telemetry requirements applicable to the Storage Facility. |
| **Resource Adequacy Failure:** | The Parties acknowledge and agree that if Seller has failed to obtain Full Capacity Deliverability Status for the Storage Facility in the amount equal to the Guaranteed RA Amount by the Guaranteed Commercial Operation Date, or if Seller otherwise fails to provide Resource Adequacy Benefits as required hereunder (or Replacement RA in lieu thereof), then Seller shall pay to Buyer the RA Deficiency Amount for each RA Shortfall Month as liquidated damages due to Buyer, and as Buyer’s sole remedy, for the Capacity Attributes that Seller failed to convey to Buyer.  RA Deficiency Amount Calculation. For each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of the difference, expressed in kW, of (i) Guaranteed RA Amount, minus (ii) the lowest amount of Available Storage Capacity eligible to be qualified as System RA and, if applicable, Local RA by both the CPUC and CAISO for such month, (such difference, the “**RA Shortfall**”) , multiplied by the the sum of (a) the CPUC System RA Penalty and (b) CPM Soft Offer Cap; *provided* that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA up to the RA Shortfall, provided that any Replacement RA capacity is (i) communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form attached to the PPA least seventy-five (75) days before the compliance deadline for the applicable CPUC operating month. |
| **Ancillary Services Capability:** | The Facility shall be able to provide the full suite of ancillary services in CAISO markets and Seller will dispatch the Facility in response to signals from the Buyer/scheduler, subject to the Operating Parameters. These services include Frequency Regulation, Spinning Reserve, Ramp Support, Frequency Response, Voltage Control, VAR Dispatch, and Power Factor Correction. |
| **Expected Construction Start Date:** | Seller reasonably expects to achieve Construction Start by the following date [\_\_\_\_\_\_\_] (the “**Expected Construction Start Date**”).  “**Construction Start**” will occur following Seller’s execution of an engineering, procurement and construction (EPC) contract related to the Facility and issuance of a full notice to proceed with the construction of the Facility under the EPC contract, mobilization to site by Seller and/or its designees, and includes the physical movement of soil at the site. |
| **Guaranteed Construction Start Date:** | The “**Guaranteed Construction Start Date**” means the Expected Construction Start Date, subject to extensions on a day-for-day basis due to Force Majeure Event for a period of up to one-hundred twenty (120) days on a cumulative basis (the “**Development Cure Period**”). For clarity, the permitted extensions under the Development Cure Period 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 for each day of delay in the amount of the Development Security divided by 120 (“**Construction Delay Damages**”). The Construction Delay Damages shall be refundable to Seller if, and only if, Seller achieves COD on or before the Guaranteed COD.  Failure to achieve Construction Start for any reason within 120 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 PPA and receive a damage payment in the amount of the Development Security (the “**Damage Payment**”). |
| **Other Critical Milestones:** | Seller shall cause the development and construction of the Facility to meet each of the following (“**Critical Milestones**)” by the date set forth:  (i) Site control: [\_\_/\_\_/\_\_\_\_]  (ii) Execution of interconnection agreement(s): [\_\_/\_\_/\_\_\_\_]  Seller shall cause the Facility to become Commercially Operable on or before the Commercial Operation Deadline. This is referred to as the “**Commercial Operation Milestone**.” “**Commercially Operable**” means, with respect to the Facility, a condition occurring after such time as mechanical completion has occurred, commissioning is complete, the Facility has been released by the EPC contractor to Seller for commercial operations, and permission to operate has been formally obtained from the applicable transmission or distribution utility  If Seller anticipates that it will not be able to timely satisfy a Critical Milestone or the Commercial Operation Milestone, Seller shall submit to Buyer no later than thirty (30) days prior to the relevant deadline a remedial action plan (“**Remedial Action Plan**”), which will describe in detail the actual delay, any anticipated delay beyond the scheduled deadline, the cause of the delay, and Seller’s proposed course of action to achieve the missed deadline, any subsequent Critical Milestones, and the Commercial Operation Date by the Expected Commerical Opeation Date. So long as Seller complies with its obligation to deliver a Remedial Action Plan, Seller shall not be considered in default of its obligations under the Agreement solely as a result of failing to timely satisfy a Critical Milestone.  In the event Seller misses any Critical Milestones and cannot reasonably demonstrate a plan for completing the Facility by the Guaranteed COD, Buyer shall have the right to terminate the PPA and retain the Development Security as damages, in addition to any other remedies it may have at law or equity. |
| **Expected Commercial Operation Date:** | Seller reasonably expects to achieve Commercial Operation by the following date [\_\_\_\_\_\_\_] (the “**Expected Commercial Operation Date**”). |
| **Guaranteed Commercial Operation Date:** | The “**Guaranteed Commercial Operation Date**” or “**Guaranteed COD**” means the Expected Commercial Operation Date, subject to extensions on a day-for-day basis for the Development Cure Period.  If the Seller does not achieve COD of the Facility by the Guaranteed COD, Seller shall pay COD Delay Damages to the Buyer for each day of delay until Seller achieves COD (such period of days, the “Development Cure Period”).  “**COD Delay Damages**” are equal to the Development Security divided by 60. COD Delay Damages shall be paid for each day of delay and shall be paid to Buyer in advance on a monthly basis. A prorated amount will be returned to Seller if COD is achieved during the month for which COD Delay Damages were paid in advance.  Failure to achieve COD for any reason 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 PPA and receive the Damage Payment. For the avoidance of doubt, Seller’s liability for an Event of Default comprising the failure to timely achieve COD shall equal the sum of any Construction Delay Damages and COD Delay Damages that are due and owing, plus the Damage Payment. |
| **Conditions Precedent to Commercial Operation Date (“COD”):** | The COD shall be the later of (a) the Expected Commercial Operation Date or (b) 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:   1. Seller shall have secured all CAISO and governmental approvals as are necessary for the safe and lawful operation and maintenance of the Facility and to enable Seller to deliver the Product to Buyer, including at the Contract Amounts; 2. Seller has secured and maintained site control; 3. Seller shall have caused the Facility to become Commercially Operable; 4. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Storage Contract Capacity. 5. The Facility is fully capable of charging, storing and discharging energy up to no less than ninety-five percent (95%) of the Storage Contract Capacity and receiving instructions to charge, store and discharge energy, all within the operational constraints and subject to the applicable Operating Restrictions. 6. Seller shall have provided to Buyer a certification of Seller and a licensed professional engineer, demonstrating (i) that the Commercial Operation Date has occurred and (ii) satisfactory completion of the Facility at the site; 7. Seller shall have provided to Buyer all documentation reasonably acceptable to Buyer demonstrating that the Facility successfully completed all applicable testing and registration procedures required by CAISO to bid into the CAISO markets; 8. Seller has demonstrated functionality of the Facility’s communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the PPA and/or the CAISO. 9. The Facility is fully capable of charging, storing and discharging energy up to no less than ninety-five percent (95%) of the Storage Contract Capacity and receiving instructions to charge, store and discharge energy, all within the operational constraints and subject to the applicable Operating Restrictions. 10. Seller shall have executed and complied with any necessary interconnection agreement(s) and installed any necessary metering to deliver Product to Buyer; and 11. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation. 12. Seller shall have submitted to Buyer a Facility safety plan.   Seller shall provide notice of expected COD to Buyer in writing no less than sixty (60) days in advance of such date.  If Seller has not installed one hundred percent (100%) of the Storage Contract Capacity within one hundred twenty (120) days after the Commercial Operation Date, Seller shall pay Capacity Damages \to Buyer for each MW that the Storage Contract Capacity exceeds the Installed Battery Capacity, and the Storage Contract Capacity and other applicable portions of the PPA shall be adjusted accordingly.  **“Capacity Damages**” means an amount equal to Two Hundred Fifty  Thousand Dollars ($250,000) per MW. |
| **Seller Performance Assurance:** | Seller shall deliver to Buyer and maintain Performance Assurance in the form of cash or Letter of Credit acceptable to Buyer to secure its obligations under the Agreement, which shall include both Development Security and Delivery Term Security in the amounts below:  **Development Security**: $[90]/kW of Storage Contract Capacity, due within thirty (30) days of contract Effective Date.  **Delivery Term Security**: $[105]/kW of Storage Contract Capacity, due on or before Commerical Operation Date.  Seller shall replenish the Development Security and Delivery Term Security within five (5) business days of any draw thereupon. |
| **Guaranteed Storage Capacity:** | Prior to the Commerical Operation Date and annually thereafter, the Facility will be subject to storage capacity testing to demonstrate it has achieved and maintains the Storage Contract Capacity. In the event such testing shows the Facility has an actual capacity lower than the Storage Contract Capacity, the Seller will pay Capacity Damages and the Facility’s Contracted Capacity will be reduced to the actual storage capacity for the remainder of the Delivery Term. |
| **Guaranteed Storage Availability:** | Ninety-eight percent (98%) |
| **Availability Adjustment:** | If the Monthly Storage Availability (as defined in the PPA) during any month is less than the Guaranteed Storage Availability, Buyer’s payment for the Storage Product shall be calculated by the “**Availability Adjustment**” or “**AA**” is calculated as follows:   1. If the monthly storage availability is greater than or equal to the Guaranteed Storage Availability, then:   AA = 100%   1. If the monthly storage availability is less than the Guaranteed Storage Availability, but greater than or equal to 70%, then:   AA = 100% - [(98% - monthly storage availability) × 2]   1. If the monthly storage availability is less than 70%, then:   AA = 0 |
| **Station Use:** | Seller will be responsible for all providing station power and station use power will not be provided by the Facility. |
| **Mutual Events of Default:** | The Agreement will include customary events of default, including but not limited to the following:   1. Failure to make any required payment if failure is not remedied within ten (10) business days after notice thereof; 2. Any representation or warranty made is false or misleading in any material respect and such default is not remedied within thirty (30) days after notice thereof, or such longer additional period, not to exceed an additional sixty (60) days, if the defaulting party is unable to remedy such default within such initial thirty (30) days period despite exercising best efforts; or 3. Failure to perform any material covenant or obligation set forth in the Agreement, except to the extent constituting a separate event of default, and such failure is not remedied within thirty (30) days after notice thereof, or such longer additional period, not to exceed an additional ninety (90) days, if the defaulting party is unable to remedy such default within such initial thirty (30) days period despite exercising best efforts. |
| **Seller Events of Default:** | The Agreement will contain Seller- and Facility-specific events of default, including but not limited to the following:   1. Failure to post or maintain the Performance Assurance; 2. Failure to meet the Construction Start Deadline, subject to extensions for Force Majeure and payment of Construction Delay Damages; 3. Failure to meet the Commerical Operation Date, subject to the Development Cure Period and extensions for Force Majeure; 4. Failure, in any two consecutive Contract Years during the Delivery Term, to maintain an average Monthly Storage Availability of at least seventy percent (70%) over the two-year period; 5. Failure to maintain an average Actual Round Trip Efficiency of at least 70% over a rolling 12-month period ;and 6. Failure to maintain a Storage Capacity equal to at least seventy-five percent (75%) of the Storage Contract Capacity for longer than three hundred sixty (360) days. |
| **Termination Payment:** | In an event of default, the non-defaulting party has the right to terminate the Agreement, whereby the defaulting party will owe the non-defaulting party: (i) the Damage Payment, in the case of an event of default by Seller occurring before the Commercial Operation Date, or (ii) the Termination Payment, in the case of any other event of default by either party.  “**Termination Payment**” means the aggregate of the Settlement Amount plus any or all other amounts due to or from the non-defaulting Party netted into a single amount.  “**Settlement Amount**” means an amount equal to the greater of (a) the amount of Delivery Term Security required under the Agreement and (b) the non-defaulting Party’s costs and losses, on the one hand, netted against its gains, on the other, in each case as incurred as a result of the termination of the Agreement. The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages. |
| **Workforce & Community Investment Obligations:** | Seller must abide by any workforce and community investment obligation proposals included in its bid. Seller to provide commitments related to utilizing union workforce. |
| **Limitations on Liability:** | EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES SET FORTH IN THE AGREEMENT, OR PART OF AN INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT. |
| **Indemnification:** | Seller shall defend, indemnify and hold harmless Buyer, its directors, officers, agents, attorneys, employees, and representatives (“**Buyer Group**”) from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys’ and expert witness fees, however described (collectively, “**Claims**”), which arise out of or relate to or are in any way connected with (i) Seller’s delivery of the Product to Buyer, (ii) Seller’s or its affiliates’ ownership, development, construction, operation or maintenance of the Facility, including the site(s); (iii) Seller’s or its affiliates’ actions or inactions, including Seller’s breach of the Agreement or other agreements related to the development, construction, ownership, operation or maintenance of the Facility or site; (iv) any environmental matters associated with the Facility, including the disposal and transportation of hazardous substances by or on behalf of the Seller or at the Seller’s direction or agreement; (v) any agreement between Seller or its affiliates and a third party; or (vi) Seller’s or its Affiliates’ violation of any applicable law; in each case including any loss, claim, action or suit, for or on account of injury to, bodily or otherwise, or death of, persons, or for damage to or destruction or economic loss of property belonging to Buyer, Seller, Seller’s affiliates, or others, excepting only such losses, to the extent solely caused by the willful misconduct or gross negligence of a member of the Buyer Group. |
| **Assignment:** | Neither party may assign the Agreement or its rights or obligations under the Agreement, without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, that Seller has the right to assign the PPA as collateral for any financing or refinancing of the Facility without the consent of Buyer.  Any direct or indirect change of control of Seller or Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other party, which consent shall not be unreasonably withheld.  Seller shall pay Buyer’s reasonable expenses, including attorneys’ fees, incurred to provide consents, estoppels, or other required documentation in connection with Seller’s financing for the Facility. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer’s rights, benefits, risks or obligations under the PPA, or to modify such PPA.  Buyer may make a limited assignment in connection with a municipal prepayment transaction to an entity that has creditworthiness that is equal to or better than the creditworthiness of Buyer (“Limited Assignee”) of Buyer’s right to receive Product and Buyer’s obligation to make payments to the Seller. The limited assignment shall be expressly subject to the Limited Assignee’s timely payment of amounts due under the PPA. Buyer may make such assignment upon not less than thirty (30) days’ notice by delivering a written request for such assignment in the form attached to the PPA. Subject to the foregoing, Seller agrees to (i) comply with Limited Assignee’s reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer. |
| **Force Majeure:** | 1. “**Force Majeure Event**” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under the PPA or from complying with all or a portion of the conditions under the PPA if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance. 2. Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic, or pandemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below. For the avoidance of doubt, so long as the event, despite the use of reasonable efforts, cannot be avoided by, and is beyond the reasonable control of (whether direct or indirect) and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance, Force Majeure Event may include an epidemic or pandemic, including in connection with the impacts of and efforts to combat or mitigate the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof (“**COVID-19**”). 3. Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of the PPA at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy Energy at a lower price, or Seller’s ability to sell Energy at a higher price, than the Contract Price); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility; (iii) the inability of a Party to make payments when due under the PPA, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Period; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) Seller’s inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date due to a Force Majeure Event; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.   Within two (2) Business Days of commencement of a Force Majeure Event, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of the Force Majeure Event the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely Notice as described in the preceding sentence constitutes a waiver of a Force Majeure claim. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. |
| **Changes in Law:** | If a change in CAISO or CPUC requirements renders the Agreement incapable of being performed, then either party may request that Buyer and Seller enter into negotiations to make the minimum changes to the Agreement necessary to make the Agreement capable of being performed, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in the Agreement as of its execution. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to the Agreement or to resolve issues relating to changes to the Agreement, then either party may resort to the formal dispute resolution process under the Agreement. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render the Agreement incapable of being performed or administered and (ii) all unaffected provisions of the Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution. |
| **Information Sharing and Shared Learning:** | Seller understands that Buyer is entering into the Agreement in part to gain operational and market information regarding the performance, efficiency, operations, maintenance, and multiple uses of energy storage and storage assets as an integral part of Buyer’s portfolio of assets to meet its customers’ needs as well as to gain an understanding of the impact of energy storage on load forecasting as a load serving entity. Throughout the Term upon Buyer’s request, and annually in a written report, Seller agrees to share such information with Buyer, including meter data and hourly charging and discharging data but excluding cost or similar proprietary information, with such information to be treated by Buyer as Confidential Information. Seller shall provide such applicable meter data to Buyer in a format and to a platform specified by Buyer that is reasonably acceptable to Seller. |
| **Governing Law and Venue:** | California, Alameda County |
| **Definitions:** | The following terms, when used herein with initial capitalization, shall have the meanings set forth below:  “**Available Storage Capacity**” means the capacity of the Facility, expressed in whole MWs, that is mechanically available to store electrical energy.  **“Battery Energy Storage System”** meansthe Energy Management Software and related storage equipment including but not limited to transformers, batteries, fire suppression, thermal management, enclosures, and inverters.  “**Bid**” has the meaning as set forth in the CAISO Tariff.  “**CAISO**” means the California Independent System Operator.  “**CAISO-Controlled Grid**” has the meaning set forth in the CAISO Tariff.  “**CAISO Tariff**” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.  “**Contract Year**” means a period of twelve (12) consecutive months beginning on January 1st and continuing through December 31st of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and the last Contract Year shall end at midnight at the end of the day prior to the anniversary of the Commercial Operation  “**Full Capacity Deliverability Status**” has the meaning set forth in the  CAISO Tariff.  “**Letter(s) of Credit**” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) having a credit rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s or (b) being reasonably acceptable to Buyer.  “**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.  “**MWh**” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.  “**Round-Trip Efficiency Factor**” means (a) if the Actual Round-Trip Efficiency is greater than or equal to the Guaranteed Round-Trip Efficiency, one hundred percent (100%), (b) if the Actual Round-Trip Efficiency is less than the Guaranteed Round-Trip Efficiency but greater than or equal to the Minimum Round-Trip Efficiency, the Actual Round-Trip Efficiency, or (c) if the Actual Round-Trip Efficiency is less than the Minimum Round-Trip Efficiency, zero percent (0%).  “**Scheduling Coordinator**” has the meaning set forth in the CAISO Tariff. |

1. **Additional Term Sheet Provisions.**
2. **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 a PPA with respect to the Proposed Transaction and does not obligate EBCE, Respondent or any party to enter into the Proposed Transaction or execute any agreement, including the PPA, in connection with the Proposed Transaction. Neither Buyer or Seller will be deemed to have agreed to the PPA or will be bound by any term thereof, unless and until authorized representatives of Buyer and Seller have executed final definitive documents, enforceable in accordance with their terms.
3. **Other Agreements**. In connection with this Term Sheet, Respondent shall execute that certain Exclusive Negotiating Agreement (“**Exclusive Negotiating Agreement**”) with EBCE and provide a Shortlist Deposit (as defined in such agreement) in accordance with the Exclusive Negotiating Agreement. The Shortlist Deposit will be returned in accordance with, and subject to, the terms of the Exclusive Negotiating Agreement.
4. **Expenses**. Each of EBCE and Respondent 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.
5. **Termination**. This Term Sheet will terminate upon the earlier of (a) execution of the PPA or (b) expiration of the Exclusivity Deadline (as defined in the Exclusive Negotiating Agreement), as such Exclusivity Deadline may be extended in accordance with the Exclusive Negotiating Agreement.
6. **Governing Law**. This Term Sheet is governed by, and construed in accordance with, the laws of the State of California.
7. **Prior Agreements**. This Term Sheet supersedes all prior communications and agreements, oral or written, between and among EBCE and Respondent regarding the subject matter herein contemplated.
8. **Assignment**. This Term Sheet will be binding upon and inure to the benefit of the EBCE and Respondent and their respective successors and permitted assigns. Neither EBCE nor Respondent will assign, pledge or otherwise transfer this Term Sheet or any right or obligation under this Term Sheet without first obtaining the other party’s prior written consent (which consent will not be unreasonably withheld, delayed, or encumbered).
9. **No Consequential Damages**. IN NO EVENT SHALL EBCE OR RESPONDENT OR ANY OF THEIR AFFILIATES AND/OR REPRESENTATIVES BE LIABLE 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.

[*Signatures appear on the following page*.]

**IN WITNESS WHEREOF**, EBCE and Respondent have by their duly authorized representatives executed this Term Sheet as of the Effective Date.

|  |  |
| --- | --- |
| **EAST BAY COMMUNITY ENERGY AUTHORITY,**  **a California joint powers authority** | **[RESPONDENT]** |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

[*Exhibit A follows this page*]

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|  |

**EXHIBIT A**

**Operating Parameters**

**[*Subject to ongoing discussion of the Parties*]**

|  |  |
| --- | --- |
| **Maximum Storage Level:** | [XX] MWh [number in MWh representing maximum amount of energy that may be charged] |
| **Minimum Storage Level:** | 0 MWh [number in MWh representing the lowest level to which the Facility may be discharged] |
| **Maximum Charging Capacity:** | [\_\_\_] MW [based on final system configuration, number in MW representing the highest level to which the Facility may be charged] |
| **Minimum Charging Capacity:** | 0.01 MW [number in MW representing the lowest level at which the Facility may be charged] |
| **Maximum Discharging Capacity:** | [\_\_\_] MW [based on final system configuration, number in MW representing the highest level at which the Facility may be discharged] |
| **Minimum Discharging Capacity:** | 0.01 MW [number in MW representing the lowest level at which the Facility may be discharged] |
| **Maximum State of Charge (SOC) during Charging:** | 100 % |
| **Minimum State of Charge (SOC) during Discharging:** | 0 % |
| **Guaranteed Round-Trip Efficiency:** | |  |  | | --- | --- | | Contract Year | Guaranteed Round-Trip Efficiency | | 1 | 88.0% | | 2 - XX | [*Seller to fill out rest of table*] |   Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate: If during any month during the Delivery Term, the Actual Round-Trip Efficiency for such month is less than the Guaranteed Round-Trip Efficiency, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by multiplying (i) the total Charging Energy for such month, by (ii) the percentage amount by which the Actual Round-Trip Efficiency is less than the Guaranteed Round-Trip Efficiency, by (iii) the Storage Rate, which amount Seller shall set off against amounts payable by Buyer in the applicable monthly invoice. |
| **Minimum Round-Trip Efficiency:** | [70]% |
| **Ramp Rate:** | The Storage Facility shall have the ability to discharge at Maximum Discharging Capacity in two seconds. |
| **Response Time:** | The BESS shall execute the commanded power within one (1) second |
| **Cycles or Throughput:** | [TBD based on final configuration and OEM warranties, likely to be an annual battery energy throughput (BET) limit equal to approximately 1 cycle per day but providing buyer with more daily flexibility] |
| **Daily Dispatch Limits:** | Charging: 2 per day  Discharging: 2 per day  Partial Charging/Discharging: No limits beyond the operational conditions specified. |
| **Maximum Time at Minimum Storage Level:** | [Seller-specified, if applicable] |
| **Energy Management Software** | Seller must provide remotely operable, 2-4 second timestamps, data historian (at least 5 years of storage), SCADA/AGC communication and operability.  Applications/Modes:   * Dynamic Voltage Support * Shifting * Regulation * Flexible RampSpinning Reserve * ITC Compliance if applicable |
| **Other Operating Limits:** | [Seller-specified, if applicable] |