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| **Commercial Term Sheet for Build Own Transfer (BOT) Agreement** | |
| **Overall Transaction for a Turnkey Energy Storage System Project and Long-Term Maintenance and Services** | The overall transaction will consist of two components:  (1) a Build Own Transfer Agreement (BOT) with \_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_ or Seller) for a \_\_\_\_ MW [Note: minimum of 10 MW], \_\_\_ hour duration [Note: minimum of 4 hour], \_\_\_\_\_\_\_\_\_\_\_\_\_ [Note: insert technology] battery energy storage system (BESS) that will comply with PG&E’s technical specifications and operational requirements (Project); and  (2) a separate Long-Term Performance and Maintenance Agreement (LTPMA) for the 24/7 remote monitoring and maintenance for the \_\_\_ year duration [Note: minimum of ten] for warranties, performance guarantees and maintenance activities.  The BOT will contain warranty obligations and the LTPMA will contain annual performance guarantees. |
| **The Work**  **and**  **Seller’s**  **Overall Responsibilities** | Seller shall perform or provide, or cause to be performed and provided, all work and services required to be performed in connection with the design, engineering, development, supply, manufacture, procurement, construction, installation, supervision, commissioning, start-up, testing and completion of the Project, including the labor, materials, equipment, goods, actions, work and services specified in PG&E’s Scope of Work and the Warranties, all in accordance with the BOT (collectively, “Work”).  Seller will obtain Project site and all other necessary real property interests, Governmental Approvals, Permits and Consents, and Interconnection Agreements required to develop, construct, test and operate the Project, finance the Project, and cause the Project to be constructed and commissioned, to have achieved Mechanical Completion and to be ready for placement into regular commercial operation by the Guaranteed Substantial Completion Date, and to have achieved Final Project Completion, all in accordance with the standards in the BOT and on a turnkey basis at its own risk and at no cost or expense to the PG&E other than indirectly through its payment of the Purchase Price. Subject to the satisfaction of all conditions precedent set forth in the BOT, the Seller will sell, transfer, assign and deliver the Project to the PG&E.  To be defined in the BOT: Governmental Approvals, Permits, Consents, Interconnection Agreement as well as each Project Milestone |
| **Energy Storage System** | Seller will manufacture or procure, install, test and commission an energy storage system [and any necessary transformers and medium-voltage switchgear from a PG&E-approved manufacturer].  Seller’s subcontractors demonstrate compliance with PG&E’s Contractor Safety Program requirements prior to commencing the performance of work at project site. Seller shall, and shall cause each subcontractor (as applicable) to, design, engineer, manufacture, procure, construct, install, test, complete, operate, maintain, and ready the Project for Substantial Completion and Final Project Completion, in compliance with each of the following: Prudent Utility Practices; CPUC General Order No. 167; and all applicable requirements of Law, the Transmission Provider, Governmental Rules, Governmental Approvals, Permits, Consents, the CAISO, the CARB, the NERC and the WECC..  “Prudent Utility Practices” shall mean those practices, criteria, methods, applicable codes and acts engaged in or approved by a significant portion of the utility power 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 a decision is made, that could have been expected to accomplish a desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Utility Practices are not intended to be limited to the optimum practices, criteria, methods, or acts to the exclusion of others, but rather to those practices, criteria, methods and acts generally accepted or approved by a significant portion of the electric power or energy storage industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.  Prudent Utility Practices also includes taking reasonable steps to ensure that: (a) Safeguards are implemented and maintained for the Project, the Project Site, and the Laydown Area, and are sufficient to address reasonably foreseeable incidents and emergencies; (b) Equipment, material, and supplies are sufficient and accessible to operate the Project safety and reliably; (c) applicable Personnel are trained, equipped, and capable of responsible design, procurement, construction, commissioning, testing, operation and maintenance of the Project, including identifying and responding to any safety incidences and emergencies, System Emergencies, Emergencies, or Exigent Circumstances originating from or impacting the Project; (d) the Project’s material components and control systems are designed, manufactured, and configured to meet the standard of durability and safety generally used for electric power or energy storage facilities operating in the relevant region; and (e) the Project is appropriately designed, operated, maintained, monitored, and tested to ensure it continues to function safely, reliably, and consistently with the intended design specifications, Governmental Rules, Laws, Governmental Approvals, Permits and Consents, and over the complete range of environmental conditions reasonably expected to occur at the Project Site. |
| **Contract Term and Minimum Performance Guarantees** | Upon constructing, testing and commissioning the facility for placement into Commercial Operation, all on a turnkey basis, and upon ensuring the project has been built to [PG&E’s specification] and that the facility has satisfied minimum performance guarantees, PG&E will purchase, own and operate the project. Seller will provide a \_\_\_-year performance guarantee for the following key operating characteristics: Dmax, Discharge Duration, Full-Duty Cycle Efficiency, Frequency Regulation Accuracy, and Equivalent Outage Rate. Seller’s performance will be tested annually, with liquidated damages charged against their annual Performance Guarantee payment, which is paid in arrears after the performance tests are completed. |
| **Purchase Price** | **Purchase Price: $\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Project Location** | TBD |
| **Guaranteed Commercial Operation Date** | Guaranteed Commercial Operation Date is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. |
| **Payment Schedule** | PG&E does not pay until the successful completion of all performance tests and satisfaction of all Closing conditions. At Closing, PG&E will pay 100% of the Purchase Price adjusted for the results of certain performance tests less withholding for punch list and other items for Final Project Completion. |
| **Project Milestones** | As defined in the BOT:   * CPUC Approval * Design/Engineering Complete * Delivery of Major Equipment * Mechanical Completion * Substantial Completion, which requires among other things Commercial Operation as a condition precedent (which will be defined in the BOT) * Final Project Completion |
| **Interconnection** | Distribution or Transmission connected at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Note: identify substation] |
| **Assignment of Regulatory Risk** | The effectiveness of the BOT is contingent on a final and non-appealable CPUC Approval, finding that the BOT is reasonable and PG&E’s costs are recoverable. If Commission approval is not obtained within \_\_ [ xx ]\_\_\_\_ of PG&E filing its Application, either party can terminate the BOT without owing damages. |
| **Land** | The Project will be constructed on approximately \_\_\_\_ acre(s) located \_\_\_\_\_\_\_\_\_\_\_ and enclosed within its own fenced perimeter. |
| **Performance Assurance; pre-closing and post-closing** | * $15/kW due 10 business days after Execution Date of BOT, and * Greater of A) $45/kW or B) 10% of Purchase Price due 10 business days after receipt of CPUC approval * 10% of the Purchase Price due on the Substantial Completion Date plus an acceptable warranty by an issuer acceptable to the Utility. |
| **Warranties** | * Energy Storage System (ESS) Equipment Warranty (including all spare parts for the ESS) – \_\_\_ (minimum of ten) years following the Closing Date * Power Transformers and Generator Step Up Transformers – 5 years following the Closing Date * Non-ESS Spare Parts Equipment Warranty – 3 years following the Closing Date * Switchgear – 5 years following the Closing Date * General Warranty for equipment not stated above – 5 years following Closing * Software Warranty – Co-terminus with longest warranty * Design Warranty – General Warranty and each equipment warranty shall include a coterminous design Warranty * Services Warranty – Each of the General Warranty, Equipment Warranties, Software Warranty, and Design Warranty shall include a coterminous Services Warranty |
| **Safety** | * Any and all safety related compliance, work, expenses, liabilities and risks are Seller’s exclusive and sole responsibility * Seller and its contractors and subcontractors must demonstrate compliance with PG&E Contractor Safety Program Standards * Initial Site Safety Plan (as set forth in the BOT) will be developed by the Execution Date and will be updated as the Project progresses:   + Seller will identify the applicable safety-related Codes, Standards, and Regulations (CSR) that govern the design, engineering, procurement, construction, commissioning, testing, operation and maintenance of the Project using the \_\_\_\_\_\_\_\_\_\_ [Note: insert technology] energy storage technology   + Seller shall provide safety programs and policies, including stated compliance any applicable safety-related industry standards or any industry certification (American National Standards Institute (ANSI), International Organization for Standardization (ISO), etc.   + Seller shall identify and describe potential hazards and risks to life, safety, public health, property, or the environment due to or arising from the Project as part of the Site Safety Plan. The applicable site-specific safety plans will include risk mitigation, safeguards and layers of protection, including but not limited to:     - Engineering controls     - Work practices     - Administrative controls     - Personal protective equipment and procedures     - Incident response and recovery plans     - Contractor management     - Operating procedures     - Emergency plans     - Training and qualification programs     - Disposal, recycle, and re-use procedures     - Physical security measures |