# Appendix C PPA Terms and Conditions

To expedite the Power Purchase Agreement (PPA) process, SVCE offers the following expected terms to be included in any negotiated PPA. This is not intended to be an exhaustive list of terms and Respondents under an Exclusivity Agreement will be required to include a Term Sheet.

SVCE’s Expected PPA Terms

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| **Security:** | Buyer will not post security. |
| **Additional Incentives Passthrough:** | Should additional incentives become available to Seller, and the offered project is eligible to receive it, SVCE expects the benefit of such incentives be passed through to SVCE. |
| **Resource Adequacy Failure:** | For each RA Shortfall Month occurring after the RA Guarantee Date, Seller shall pay to SVCE an amount (the “**RA Deficiency Amount**”) equal to the product of the difference, expressed in kW, of (i) the 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, minus (ii) the Net Qualifying Capacity of the Facility for such month, multiplied by the CPM Soft Offer Cap as listed in Section 43A.4.1.1 of the CAISO Tariff (or its successor); provided that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, provided that any Replacement RA capacity is communicated by Seller to SVCE with Replacement RA product information in a written notice to SVCE at least seventy-five (75) days before the applicable CPUC operating month for the purpose of  monthly RA reporting. |
| **Station Use:** | SVCE will not be responsible for Station Use and Station Use will not be provided by the Facility. |
| **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 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 (the “**Development Cure Period**”) extend both the Guaranteed Construction Start Date and the Guaranteed COD simultaneously. Notwithstanding anything to the contrary, no extension shall be given if (i) the delay was the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide written notice to Buyer as required in the |

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|  | next sentence. Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from SVCE, Seller shall provide documentation demonstrating to SVCE’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.  In the event that Seller fails to achieve the Guaranteed Construction Start Date, Seller shall pay delay damages to SVCE, (the “**Construction Delay Damages**”) for each day of delay, in the amount of the Development Security divided by 120. 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 Guaranteed Construction Start within 180 days of the Guaranteed Construction Start Date shall constitute an Event of Default, and SVCE shall have the right, in their sole discretion, to terminate the PPA and retain a damage payment in the amount of the Development  Security. |
| **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 under the Development Cure Period.  If Seller does not achieve COD of the Facility by the Guaranteed COD, Seller shall pay COD Delay Damages to SVCE for each day of delay until Seller achieves COD. “**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 SVCE 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 within 60 days of the Guaranteed COD shall constitute an Event of Default, and SVCE shall have the right, in its sole discretion, to terminate the PPA  and retain the Development Security. |
| **Credit Requirements:** | Seller shall post security as follows:  **Development Security** – $125,000 per MW of Guaranteed Capacity  **Performance Security** – $125,000 per MW of Guaranteed Capacity  To secure its obligations under this PPA, Seller shall deliver the Development Security to SVCE within thirty (30) days of the Effective Date. Development Security shall be in  the form of cash or a Letter of Credit. |

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|  | To secure its obligations under this PPA, Seller shall deliver Performance Security to SVCE on or before the Commercial Operation Date.  Within five (5) Business Days following any draw by SVCE on the Development Security or the Performance Security, Seller shall replenish the amount drawn such that  the security is restored to the applicable amount.  Seller performance assurance must be in the form of cash, letter of credit from an Acceptable Issuer, or parent guaranty from an investment-grade parent entity. |
| **Prevailing Wage and Project Labor Agreement:** | **Prevailing Wage**. Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including without limitation employment discrimination laws and prevailing wage laws. In addition, Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction  work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by  applicable California law, if any (“**Prevailing Wage Requirement**”). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws. Buyer agrees that Seller’s obligations under this Section 13.4 will be satisfied upon the execution of a community workforce agreement, work site, project labor agreement, collective bargaining agreement, or other similar agreement by Seller’s primary EPC contractor related to construction of the Facility. |
| **Exclusivity:** | Upon shortlisting, Seller shall execute an Exclusivity Agreement with SVCE. |
| **No Recourse to Members of SVCE:** | SVCE is organized as Powers Authorities in accordance with the Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to their Powers Agreement and are public entities separate from their constituent members. SVCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions, or assert any remedies against any of SVCE’s constituent members in connection with this Agreement. |
| **Force Majeure:** | “**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 this Agreement or from complying with all or a portion of the conditions under this Agreement 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.  Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including SVCE’ ability to buy the Product at a lower price, or Seller’s ability to sell Product 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 this Agreement, 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, except to the extent such Curtailment Period is caused by a Force Majeure Event; (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; |

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|  | (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) events otherwise constituting a Force Majeure Event that prevent Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as an extension under the PPA.  For the avoidance of doubt, so long as the 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, Force Majeure Event may include an epidemic or pandemic but expressly excludes any epidemic or pandemic caused by the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof  (“**COVID-19**”). |
| **Prohibition on use of Forced Labor** | Seller represents and warrants that it has not and shall not knowingly utilize materials, products or components for the construction, operation or maintenance of the Facility that rely on work or services exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily (“Forced Labor”). Seller shall comprehensively implement due diligence procedures for its and its Affiliate’s suppliers, subcontractors and other participants in its supply chains, to comply with this prohibition on the use of Forced Labor. Seller shall notify Buyer as soon as it becomes aware of any breach, or potential breach, of its obligations under this Section 13.5. Consistent with the business advisory issued by the  U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or  resources sourced from the Xinjiang region of China are presumed to involve Forced Labor. |
| **Performance Assurance** | * Seller performance assurance from PPA execution to commercial operation date of the Facility (“Development Security”): $125/kW * Seller performance assurance from commercial operation date of the Facility through the end of the Term: $125/kW * Seller performance assurance must be in the form of cash, letter of credit from an Acceptable Issuer, or parent guaranty from an investment-grade parent entity |
| **Commercial Operation Date** | The following conditions must be met in order for Seller to notify Buyer of the commercial operation date of the Facility:   * All governmental approvals, permits (including CAISO approvals), long-term easements and/or real property rights, and commercial arrangements necessary for the construction, engineering, commercial operation and maintenance of the Facility and sale by Seller of Product to Buyer have been obtained (unless typically received after the commercial operation date in ordinary course); * (i) The Facility interconnection agreement and any other material agreements between Seller and applicable transmission owners / CAISO that are required for Seller’s performance under the PPA are in full force and effect; (ii) all transmission network and distribution network upgrades required by CAISO have been completed and paid for by Seller; and (iii) commercial operation of the Facility has been achieved in accordance with the terms of the interconnection agreement. * Installed commissioned capacity must be no more than the Contract Capacity (as defined in the PPA) and no less than 95% of the Contract Capacity. * The Facility (including the interconnection facilities and the communication systems required under the PPA) has been completed in all material respects and the facility is capable of delivering to the interconnection point the full installed capacity of the Facility * The Facility has completed all requirements to be able to deliver Green Attributes to, or have Green Attributes recognized by, the registry that can be completed prior to the commercial operation date in accordance with registry rules. * Performance Assurances have been posted and any amounts owed by Seller to Buyer have been paid. * The California Energy Commission (“CEC”) has issued a precertification for the Facility indicating that the planned operations of the Facility woud comply with applicable CEC requirements for certification of the Facility as an eligible renewable energy resource for purposes of the California renewables portfolio standard.   The Facility must achieve the commercial operation date on or before the Guaranteed Commercial Operation Date defined in the PPA.   * Excused delay in achieving the commercial operation date includes only: delay resulting from: (a) Force Majeure; (b) a delay by transmission owner not caused by any act or omission of Seller; or (c) any act or omission of Buyer that is in material breach of the PPA or in violation of applicable law. * Minimum daily delay liquidated damages for unexcused delay: $100/MW/day * Require liquidated damages, on a $/MW basis, for capacity deficiency (after any applicable cure period), for each MW of installed capacity that is less than contract capacity. * Minimum liquidated damages for failure to achieve commercial operation date by the COD Termination Deadline defined in the PPA: Seller’s Development Security less daily delay damages already paid. In addition, Buyer has the right to terminate the PPA. |
| **Interconnection Costs** | * Seller is responsible for all costs and charges associated with interconnection facilities and network upgrades necessitated by the interconnection of the Facility. |
| **Facility Environmental & Economic Impacts** | * In developing the Facility, Seller will adhere to the most current published guidance of the Avian Power Line Interaction Committee for reducing avian collisions with power lines; for a wind project, Seller will also adhere to the most current editions of the U.S. Fish and Wildlife Service Land-Based Wind Energy Guidelines and Eagle Conservation Plan Guidance. ● Within 5 Business Days of the commercial operation date, Seller will provide Buyer a written report describing (a) the Facility’s actual economic impact through the date of such report, including capital expenditures and number of construction jobs created, (b) the Facility’s anticipated prospective capital expenditures and construction and operations jobs to be created and (c) all Minority-Owned Businesses that supplied goods or services to Seller in connection with the Facility through the date of such report, including certifications or other documentation of such Minority-Owned Businesses’ status as such, and the aggregate amount paid to Minority-Owned Businesses in connection with the Facility. |
| **Shared Facilities** | * If applicable, shared facilities must be governed by shared facilities agreements that clearly designate a single interconnection manager, equally divide costs and charges for operation and maintenance costs based on pro rata share of capacity, and require each user to indemnify all other users for damages caused by such user’s actions or omissions. |
| **Interconnection Costs** | * Seller is responsible for all costs and charges associated with interconnection facilities and network upgrades necessitated by the interconnection of the Facility |
| **Delivery Point** | * Facility PNode |
| **Overproduction** | * When deliveries plus Deemed Delivered Energy (as such is defined in the PPA) exceed 115% of the Expected Energy (such quantity as specified in the PPA) for a contract year, Buyer does not pay for Product. * When deliveries plus Deemed Delivered Energy (as such is defined in the PPA) exceed 100% but are less than 115% of the Expected Energy (such quantity as specified in the PPA) for a contract year, Buyer pays the lesser of the PNode day-ahead LMP or 75% of the contract price. |
| Market Curtailment Period | * The period of time, as measured using current Settlement Intervals, during which Seller reduces generation of Facility Energy during a Settlement Period or Settlement Interval in which the LMP for the Day-Ahead Market at the Settlement Point for such Settlement Interval or Settlement Period is less than the DA Price Floor; provided that the Market Curtailment Period shall also include the time required for the Facility to ramp down to implement such curtailment and ramp up following such curtailment in accordance with the Operating Restrictions. |
| Curtailment Cap | * The yearly quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Guaranteed Capacity |
| **Negative Pricing** | * If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Facility Energy, in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours (“Excess MWh”), then the price applicable to all such excess MWh in such Settlement Interval will be zero dollars ($0), and if there is a Negative LMP during such Settlement Interval, Seller will pay to Buyer an amount equal to the absolute value of the Negative LMP times such excess MWh (“Negative LMP Costs”). |
| **Ancillary Services** | * Ancillary Services, At Buyer’s election, Seller will complete any regulatory filing necessary to receive such revenues and other benefits and rights, including, but not limited to any regulatory filing related to Seller’s capability to provide reactive power and voltage control services and to be compensated for such capability. Within a commercially reasonable timeframe (to be negotiated with Seller) following Buyer’s election, Seller will file with FERC a rate schedule for Reactive Supply and Voltage Control from Generation and Other Resources under Schedule 2 of the CAISO tariff, to establish a reactive revenue requirement; provided, if the cost or technical data regarding the Facility necessary to prepare such filing is not available to Seller within such negotiated period despite Seller’s commercially reasonable efforts, the filing may be delayed until such time as the necessary cost or technical data is reasonably available to Seller. The filing will include the cost-of-service support required by FERC to support a reactive revenue requirement reflecting the Facility’s full reactive power capability. Seller will provide Buyer the opportunity to review and comment on the draft of the filing to FERC submitting such rate schedule and supporting materials, and will use reasonable efforts to accommodate Buyer’s comments. Seller will also provide Buyer with monthly updates regarding the status of the proceeding. Seller will obtain Buyer’s consent for any settlement of the reactive rate proceeding, with such consent not to be unreasonably withheld. |
| **Green Attributes** | * Prior to delivery term, Seller will establish a WREGIS account and maintain it for the duration of the term. Issuance, tracking and transfer of the RECs are at Seller’s expense. Seller is responsible for ensuring the facility is eligible for Green-e certification. * To the extent the registry or applicable law establishes a program for time-based tracking of renewable energy information or production of Green Attributes (as such is defined in the PPA), Seller will take, at its sole cost and expense, all commercially reasonable steps to ensure that production of Green Attributes is tracked with the greatest precision feasible (e.g., daily, hourly). Seller will bear all costs associated with such time-based tracking, provided that Buyer will bear all costs related to reporting and tracking that are incurred after it has taken title to such Green Attributes. |
| **Guaranteed Energy Production** | * Starting with the end of the second contract year, and at the end of each contract year thereafter during the delivery term, if the sum of the delivered energy, Deemed Delivered Energy and Excused Output (defined as Product not delivered due to Force Majeure or LMP below the Minimum LMP) during the applicable measurement period (“Annual Output”) does not equal or exceed a customary and agreed upon percentage of the Forecasted Annual Production, such percentage to equal at least 90% of the P90 value for the project (Production Deficiency), then Seller will pay Buyer as liquidated damages an amount equal to the Production Deficiency Payment (a payment in US dollars equal to the product of (a) the positive difference, if any, of (i) the Green Power Price (defined as the sum of the price for replacement energy and the price for replacement Green Attributes) for such measurement period, minus (ii) the contract price, and (b) the Production Deficiency for such measurement period). * No events of default related to shortfalls in Annual Output |
| **Metering** | * Facility must have a CAISO resource ID dedicated to the generating facility and may have a second CAISO resource ID dedicated to a storage facility, if any. |
| **Non-Performance Charges** | * Buyer takes no responsibility for non-performance charges incurred due to actions or omissions of Seller contrary to the agreement. |
| **Assignment** | * Buyer may withhold consent for Seller’s assignment of the PPA to a Competitor. A “Competitor” is defined as any person or entity which is engaged, directly or indirectly through any of its affiliates, in activities that are competing with (a) cloud or on-demand computing, data storage or related services, (b) datacenter or related infrastructure development, servicing, ownership or management, (c) web- based hosting services, web search services or “software as a service” or (d) other internet-based services, but excluding any person or entity, or wholly owned subsidiary of a person or entity. * Buyer may withhold consent for a change of control with respect to Seller or upstream affiliates of such Seller pursuant to which Seller would become owned or controlled by a Competitor. * Buyer Limited Assignment: Buyer may make a limited assignment to an entity that has creditworthiness that is equal to or better than the Buyer. |