**MCE 2020 Open Season**

**ENERGY STORAGE AGREEMENT TERM SHEET**

This term sheet (“**Term Sheet**”) is entered into between Marin Clean Energy, a California joint powers authority (“**MCE**” or “**Buyer**”) and [*INSERT SELLER NAME*] (“**Seller**”), as of [*mm/ dd/yyyy*] (the “**Effective Date**”). Buyer and Seller are each a “**Party**” and, collectively, the “**Parties**.” This Term Sheet includes the key commercial terms and conditions to be included in a proposed energy storage agreement (the “**ESA**”) for certain energy storage services (the “**Proposed Transaction**”) to be negotiated between Seller and Buyer in connection with the MCE 2020 Open Season (“**Open Season**”). Negotiation of the ESA is subject to Seller’s selection for the Open Season shortlist by Buyer, the terms and conditions of the Open Season, timely execution of the Exclusive Negotiating Agreement (as defined below) and delivery of the Shortlist Deposit (as defined below) to Buyer. Until a definitive agreement is approved by MCE’s management and Board of Directors, and signed and delivered, no party shall have any legal obligations, expressed or implied, or arising in any other manner, to proceed with the Proposed Transaction or the ESA.

**1. Energy Storage Agreement Terms and Conditions**

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| **Storage Facility:** | “**Storage Facility**” means [*Insert location and description of energy storage facility, and any other relevant identifying details, including technology, e.g., lithium ion.*] |
| **Storage Capacity:** | XX MWAC |
| **RA Capacity:** | XX MW [NQC] |
| **Product:**  | “**Product**” means [*Parties to select applicable Product*]:[ ]  Storage Product – includes all energy, capacity, Resource Adequacy Benefits, and ancillary services produced by or associated with the Storage Facility.“**Resource Adequacy Benefits**” means the rights and privileges attached to the Storage Facility that satisfy any entity’s resource adequacy obligations, and includes any local, zonal or otherwise locational attributes associated with the Storage Facility, in addition to flex attributes. [ ]  RA Product – includes Resource Adequacy Benefits only.  |
| **Contract Price:** | Storage Product: $[XX]/kW-month of Storage Capacity, as adjusted for the Storage Capacity Test (as set forth in the ESA), multiplied by the actual round-trip efficiency, and subject to the Availability Adjustment. RA Product: $[XX]/kW-month of delivered RA Capacity. |
| **Delivery Term:** | XX Contract Years from the Delivery Term Start Date, with each 12-month period following the Delivery Term Start Date considered a “**Contract Year**.” |
| **Interconnection Point:** | The Storage Facility shall interconnect to [*e.g., XX substation*] (the “**Interconnection Point**”). Seller shall be responsible for all costs of interconnecting the Storage Facility to the Interconnection Point. |
| **Delivery Point:** | “**Delivery Point**” means [the Storage Facility Pnode] on the CAISO grid. |
| **Maximum Storage Level:** | [XX] MWh [number in MWh representing maximum amount of energy that may be discharged from the Storage Facility] |
| **Minimum Storage Level:** | [XX] MWh [number in MWh representing the lowest level to which the Storage Facility may be discharged] |
| **Maximum Charging Capacity:** | [XX] MW [number in MW representing the highest level to which the Storage Facility may be charged] |
| **Minimum Charging Capacity:** | [XX] MW [number in MW representing the lowest level at which the Storage Facility may be charged] |
| **Maximum Discharging Capacity:** | [XX] MW [number in MW representing the highest level at which the Storage Facility may be discharged] |
| **Minimum Discharging Capacity:** | [XX] MW [number in MW representing the lowest level at which the Storage Facility may be discharged] |
| **Maximum State of Charge (SOC) during Charging:** | 100% |
| **Minimum State of Charge (SOC) during Discharging:** | 0% |
| **Maximum Round-Trip Efficiency:** | [peak efficiency of conversion between charging energy and discharging energy (i.e. ratio of maximum charging energy to maximum discharging energy)] %If actual round-trip efficiency is greater than or equal to Maximum Round-Trip Efficiency, then for purposes of calculating the monthly payment amount, the actual round-trip efficiency will be deemed to be 100%. |
| **Minimum Round-Trip Efficiency:** | [minimum guaranteed efficiency of conversion between charging energy and discharging energy (i.e. ratio of maximum charging energy to maximum discharging energy)] %If actual round-trip efficiency is less than Minimum Round-Trip Efficiency, then for purposes of calculating the monthly payment amount, the actual round-trip efficiency will be deemed to be 0%. |
| **Ramp Rate:** | [XX] MW/minute |
| **Monthly Cycles:** | [XX] cycles per month  |
| **Daily Dispatch Limits:** | Charging: [XX per day]Discharging: [XX per day]Partial Charging/Discharging: [maximum number of times per day Buyer may begin charging or discharging the Storage Facility without reaching either the Maximum SOC or Minimum SOC, respectively] |
| **Maximum Time at Minimum Storage Level:** | [Seller-specified, if applicable] |
| **Other Operating Limits:** | [Seller-specified, if applicable] |
| **Ancillary Services Capability:** | [Seller-specified, if applicable] |
| **Station Use:** | Buyer will not be responsible for Station Use and Station Use will not be provided by the Storage Facility.  |
| **Guaranteed Storage Availability:** | 98% |
| **Availability Adjustment:** | The Availability Adjustment (“**AA**”), which 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 |
| **Expected Construction Start Date:**  | Seller reasonably expects to achieve Construction Start by the following date [\_\_\_\_\_\_\_] (the “**Expected Construction Start Date**”). |
| **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 extend both the Guaranteed Construction Start Date and the Guaranteed COD simultaneously.In the event that Seller fails to achieve the Guaranteed Construction Start Date, Seller shall pay delay damages to Buyer, (the “**Daily Delay Damages**”) for each day of delay, in the amount of the Development Security divided by 120. The Daily Delay Damages shall be refundable to Seller if, and only if, Seller achieves COD on or before the Guaranteed COD.Failure to achieve Guaranteed Construction Start within 180 days of the Guaranteed Construction Start Date shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the PPA and retain the Development Security.  |
| **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 due to Force Majeure or delays caused by transmission provider (e.g., the CAISO) or transmission owner (e.g., PG&E) that are outside of the reasonable control of Seller. Such day-for-day extensions, including for Force Majeure, shall be no longer than one-hundred twenty (120) days on a cumulative basis. For clarity, these permitted extensions extend both the Guaranteed Construction Start Date and the Guaranteed COD simultaneously.If the Seller does not achieve COD of the Storage Facility by the Guaranteed COD, Seller shall pay Delay Damages to the Buyer for each day of delay until Seller achieves COD.“**Delay Damages**” are equal to the Development Security divided by 60. 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 Delay Damages were paid in advance.Failure to achieve COD within 60 days of the Guaranteed COD shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the PPA and retain the Development Security.  |
| **Commercial Operation Date (“COD”):** | 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 with respect to subparts (i), (iii), (iv) and (v): 1. Storage Facility has met all Interconnection Agreement requirements and is capable of receiving charging energy from, and delivering discharging energy to, the CAISO Balancing Authority;
2. Seller has provided Buyer with a copy of written notice from the CAISO that the Storage Facility has achieved Full Capacity Deliverability Status (as defined in the CAISO tariff), if applicable;
3. Commissioning of equipment has been completed in accordance with the manufacturer’s specification;
4. 100% of Storage Capacity has been installed and commissioned;
5. Storage Facility has successfully completed all testing required by prudent utility practices or any requirement of law to operate the Storage Facility;
6. All applicable permits and government approvals required for the operation of the Storage Facility have been obtained;
7. Seller has obtained all real property rights;
8. Security requirements for the Delivery Term have been met; and
9. Insurance requirements for the Storage Facility have been met, with evidence provided in writing to Buyer.

Seller shall provide notice of expected COD to Buyer in writing no less than sixty (60) days in advance of such date. Seller shall notify Buyer in writing when Seller believes that it has provided the required documentation to Buyer and met the conditions for achieving COD. Buyer shall have five (5) Business Days to approve or reject Seller’s request for COD. Upon Buyer’s approval of Seller’s achievement of COD, Buyer shall provide Seller with written acknowledgement of the COD. |
| **Storage Facility Development Milestones:** | * [*mm/dd/yyyy*]– Execute Interconnection Agreement
* [*mm/dd/yyyy*] – Procure major equipment
* [*mm/dd/yyyy*] – Obtain federal and state discretionary permits
* [*mm/dd/yyyy*] – Expected Construction Start Date
* [*mm/dd/yyyy*] – Guaranteed Construction Start Date
* [*mm/dd/yyyy*] – Obtain Full Capacity Deliverability Status
* [*mm/dd/yyyy*]– Expected Commercial Operation Date
* [*mm/dd/yyyy*]– Guaranteed Commercial Operation Date
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| **Deliverability:** | The Storage Facility will have Full Capacity Deliverability Status by the Commercial Operation Date. |
| **Site Control:** | Seller shall maintain site control of the Storage Facility throughout the Delivery Term. |
| **Scheduling Requirements and CAISO Settlements:** | For Storage Product: Buyer or Buyer’s agent shall act as Scheduling Coordinator (as defined by the CAISO) for the Storage Facility. Buyer shall be financially responsible for such services and shall pay for all CAISO charges (including for charging energy) and retain all CAISO payments (including for discharging energy); provided however, that notwithstanding the foregoing, Seller shall assume all liability and reimburse Buyer for any and all costs or charges (i) incurred by Buyer because of Seller’s failure to perform, (ii) incurred by Buyer because of any outages for which notice has not been provided as required, (iii) associated with Resource Adequacy Capacity (as defined by the CAISO) from the Storage Facility (including Non-Availability Charges (as defined by the CAISO)), if applicable or (iv) to the extent arising as a result of Seller’s failure to comply with a timely Buyer Curtailment Order if such failure results in incremental costs to Buyer. Outage and curtailment notifications will be required by Buyer as well as access to Storage Facility charging and discharging data. For RA Product: Seller or Seller’s agent shall act as Scheduling Coordinator (as defined by the CAISO) for the Storage Facility. Seller shall be financially responsible for such services and shall pay for all CAISO charges and retain all CAISO payments. |
| **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 for Product delivered during such month. The invoice shall include all information necessary to confirm the amount due.Payment for undisputed amounts shall be due to the applicable party thirty (30) days from the invoice date, with disputed payments subject to Buyer’s billing dispute process.A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with the ESA within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived. |
| **Operations and Maintenance:**  | Seller shall not during the months of June through September inclusive schedule any non-emergency maintenance that reduces the energy storage capability of the Storage Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Storage 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 electrical practices, or (iv) the Parties agree otherwise in writing. |
| **Progress Reporting:** | After execution of the ESA, Seller shall provide a monthly report to Buyer that (a) describes the progress towards meeting the Storage Facility Development Milestones; (b) identifies any missed Storage Facility Development Milestones, including the cause of the delay; and (c) provides a detailed description of Seller’s corrective actions to achieve the missed Storage Facility Development Milestones and all subsequent Storage Facility Development Milestones by the Guaranteed Commercial Operation Date.  |
| **Credit Requirements:** | The Seller shall post security as follows:**Development Security** – $90,000 per MW of Contract Capacity**Performance Security** – $105,000 per MW of Contract CapacityTo secure its obligations under this ESA, 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.Within five (5) Business Days following any draw by Buyer on the Development Security or the Performance Security, Seller shall replenish the amount drawn such that the security is restored to the applicable amount.To secure its obligations under this ESA, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. |
| **Prevailing Wage:** | Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws. |
| **Diversity Reporting:** | Seller shall be required under the ESA to complete the Supplier Diversity and Labor Practices questionnaire in MCE’s Offer Form, or a similar questionnaire, and agrees to comply with similar regular reporting requirements related to diversity and labor practices. |
| **Assignment:** | Neither party may assign the ESA without prior written consent of the other party, which shall not be unreasonably withheld. Any direct or indirect change of control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which shall not be unreasonably withheld. Seller shall pay Buyer’s out of pocket expenses, including reasonable attorneys’ fees, incurred to provide consents, estoppels, or other required documentation in connection with Seller’s financing for the Storage 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 definitive ESA. |
| **Dispute Resolution:** | In the event of any dispute arising under the ESA, within ten (10) days following the receipt of a written notice from either Party identifying such dispute, the authorized members of the Parties’ senior management shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days of initiating such discussions, the parties shall submit the dispute to mediation prior to seeking any and all remediates available to it at Law in or equity.  |

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| **Confidentiality:** | Upon shortlisting, Seller shall execute a Mutual Non-Disclosure Agreement with Buyer.  |
| **Exclusivity:** | Upon shortlisting, Seller shall execute an Exclusive Negotiating Agreement with Buyer.  |
| **No Recourse to Members of Buyer:** | Buyer is organized as a Joint Powers Authorities in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer 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 Buyer’s constituent members in connection with this Agreement. |
| **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 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.
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; 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.

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 Buyer’s 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 Storage 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 Storage 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 Storage Facility; (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 Storage Facility, except to the extent expressly permitted as an extension under the ESA. |
| **Other Standard Contract Terms to be included in the ESA:** | * Event of Default: 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 ESA, bankruptcy, assignment other than as permitted by the ESA. In addition, it shall be a Seller Event of Default if COD is not achieved within achieved within 60 days after the Guaranteed COD.
* Indemnification: Mutual indemnification for third party claims arising from negligence, willful misconduct, or breach of the ESA.
* Governing Law: State of California
* Venue: San Francisco County
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1. **Additional Term Sheet Provisions**
2. **Neither Party Obligated 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 ESA with respect to the Proposed Transaction and does not obligate either Party to enter into the Proposed Transaction or execute any agreement, including the ESA, in connection with the Proposed Transaction. Neither Party will be deemed to have agreed to the ESA and will not be bound by any term thereof, unless and until authorized representatives of both Parties execute final definitive documents, enforceable in accordance with their terms.
3. **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.
4. **Termination**. This Term Sheet will terminate upon the earlier of (a) execution of the ESA or (b) expiration of the Exclusivity Deadline (as defined in the Exclusive Negotiating Agreement), as such Exclusivity Deadline may be extended by the Parties in accordance with the Exclusive Negotiating Agreement.
5. **Governing Law**. This Term Sheet is governed by, and construed in accordance with, the laws of the State of California.
6. **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, facsimile or scanned signatures as originals. Delivery of an executed signature page of this Term Sheet by electronic transmission (including facsimile and email transmission of a PDF image) shall be the same as delivery of an original executed signature page.
7. **Prior Agreements**. This Term Sheet supersedes all prior communications and agreements, oral or written, between the Parties regarding the subject matter herein contemplated.
8. **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 first obtaining the other Party’s prior written consent.
9. **No Consequential Damages**. IN NO EVENT SHALL EITHER PARTY, ITS 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.

IN WITNESS WHEREOF, the Parties hereto have by their duly authorized representatives executed this Term Sheet as of the Effective Date.

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| **MARIN CLEAN ENERGY, a California joint powers authority** | **[*SELLER***] |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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